

STATEMENT OF ENVIRONMENTAL EFFECTS

Modification of
Development Consent

DA 220/2013

Mixed Use Development

9 – 11 Victoria Parade,
Manly

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1 INTRODUCTION

On 13th August 2015, The Land and Environment Court of NSW upheld an appeal against Council's refusal of the application and granted consent to Development Application DA220/2013 proposing the demolition of existing structures and construction of a new 7-storey mixed-use building containing retail premises on the ground floor level, 12 apartments and basement car parking on the subject site. The application has been subsequently modified on a number of occasions.

We have been engaged to prepare a further modification application pursuant to section 4.56 of the Act. Specifically, the application seeks to refine the architectural detailing of the development based on detailed construction certificate design development to address BCA requirements, enhance buildability and provide superior residential amenity outcomes. The modifications are summarised as follows:

1. The fire hydrant booster location has been revised to be positioned in front of Retail 1 on ground floor.
2. Internal layouts and associated services and structure have been revised.
3. Units 10 and 11 on level 4 have been amalgamated to form single SOU's.
4. Minor amendments to window sizes and locations have been made, as reflected in the updated plans and elevations.
5. BBQ facilities have been added to the terraces to enhance outdoor amenity and functionality.
6. Skylights have been added and modified at the roof level to reflect design updates.
7. The core location has been revised following further coordination to improve traffic flow within the basement.
8. The landscaping area has been revised to improve accessibility and enhance the quality of the outdoor terrace spaces.
9. The fire stairs have been revised following further coordination to improve the overall fire exit strategy.
10. Storage cages have been revised following further coordination to enhance traffic flow.
11. Addition of a hot water plant and additional AC units on the roof.
12. Blade walls have been added within the terrace area to enhance fire protection.
13. The addition of photovoltaic panels has been incorporated within the roof space.
14. The enclosure of five parking spaces into private garages for increased safety and security.

Having regard to the detail of the modifications we are satisfied that the previously approved streetscape, heritage conservation and residential amenity outcomes are not compromised as consequence the modifications sought. Importantly, the development maintains a view sharing outcome with the immediately adjoining properties at 2 – 4 Wentworth Street and 5 Victoria Parade, Manly.

In addition to this Statement of Environmental Effects, the application is also accompanied by the following:

- Architectural plans, elevations and sections
- Landscape plans
- Heritage Impact Statement
- Traffic statement
- BCA Capability Statement
- Fire Engineering Statement
- Waste management statement
- BASIX

In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act, 1979 (the Act),
- Manly Local Environmental Plan 2013 (MLEP),
- Manly Development Control Plan 2013 (MDCP),
- State Environmental Planning Policy (Biodiversity and Conservation) 2021, and
- State Environmental Planning Policy (Sustainable Buildings) 2022.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the Act. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The modified scheme exhibits design excellence.
- The proposal maintains the massing of the approved development in relation to heights and setbacks with the approved residential density as reflected by FSR not altered as a consequence of the modifications sought.
- The approved roof and lift overrun heights are maintained although hot water plant, additional AC units and PV panels are provided at roof level to enhance the sustainability credentials of the development.
- The approved GFA/ FSR is unaltered although Units 10 and 11 on Level 4 are consolidated into a single Unit.
- The proposed development does not compromise the heritage conservation outcomes achieved through approval of the original application.
- The proposed development, as modified, will not compromise the residential amenity afforded to surrounding development through approval of the original scheme in terms of privacy, solar access and view sharing.

On the basis of the above analysis we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.56 of the Act.

2 DESCRIPTION OF PROPOSED MODIFICATIONS

2.1 Detail of the Proposed Architectural Modifications

The development, as modified, is depicted on the plans A1.01a(P8), A1.01(P8), A1.02(P5) to A1.09(P5), A2.01(P6) to A2.04(P6), A301(P4) and A3.03(P5) prepared by Platform Architects.

Specifically, the modifications can be summarised as follows:

1. The fire hydrant booster location has been revised to be positioned in front of Retail 1 on ground floor.
2. Internal layouts and associated services and structure have been revised.
3. Units 10 and 11 on level 4 have been amalgamated to form single SOU's.
4. Minor amendments to window sizes and locations have been made, as reflected in the updated plans and elevations.
5. BBQ facilities have been added to the terraces to enhance outdoor amenity and functionality.
6. Skylights have been added and modified at the roof level to reflect design updates.
7. The core location has been revised following further coordination to improve traffic flow within the basement.
8. The landscaping area has been revised to improve accessibility and enhance the quality of the outdoor terrace spaces.
9. The fire stairs have been revised following further coordination to improve the overall fire exit strategy.
10. Storage cages have been revised following further coordination to enhance traffic flow.
11. Addition of a hot water plant and additional AC units on the roof.
12. Blade walls have been added within the terrace area to enhance fire protection.
13. The addition of photovoltaic panels has been incorporated within the roof space.
14. The enclosure of five parking spaces into private garages for increased safety and security.

The application also proposes additional balcony planter elements depicted on the accompanying landscape plans prepared by Paul Scrivener Landscape.

The proposed modifications include the modification of Condition DA1A to reflect the modified plans and documentation and the modification of Condition 43L to remove the need for a bulky waste storage area. Further, the application seeks the modification of Conditions 33, 35 and 36 to require that all parking bays comply with the 85th percentile and/or 95th percentile requirements of AS2890.1 as justified in the accompanying traffic and parking advice prepared by TTPA given the highly constrained geometry of the site.

3 STATUTORY PLANNING FRAMEWORK

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15(1) of the Environmental Planning & Assessment Act, 1979 as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

3.1 Environmental Planning and Assessment Act 1979

Section 4.56 of the Act provides that:

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—*
 - (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (b) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, and*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
 - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (1A) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In answering the above threshold question as to whether the proposal represents “substantially the same” development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls.

In order for Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - *Moto Projects (no. 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 per Bignold J.

The above reference by Bignold J to “essentially” and “materially” the same is taken from Stein J in *Vacik Pty Ltd v Penrith City Council* (unreported), Land and Environment Court NSW, 24 February 1992, where his honour said in reference to Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):

“Substantially when used in the Section means essentially or materially or having the same essence.”

What the abovementioned authorities confirms is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval).

When one undertakes the above analysis in respect of the subject application it is clear that the approved development remains, in its modified state, a mixed use building which will continue to spatially relate to its surrounds and adjoining development in substantially the same fashion as originally approved. The previously approved privacy, solar access, view sharing and general amenity outcomes afforded by the original application are generally maintained with internal amenity streetscape outcome and design quality also maintained.

We also note that the previously approved heritage conservation outcomes are not compromised as a consequence of the modifications sought.

The Court in the authority of *Stavrides v Canada Bay City Council* [2007] NSWLEC 248 established general principles which should be considered in determining whether a modified proposal was “substantially the same” as that originally. A number of those general principles are relevant to the subject application, namely:

- The proposed use does not change.
- The proposal maintains the massing of the approved development in relation to heights and setbacks with the approved residential density as reflected by FSR not altered as a consequence of the modifications sought.
- The approved roof and lift overrun heights are maintained although hot water plant, additional AC units and PV panels are provided at roof level to enhance the sustainability credentials of the development.
- The approved GFA/ FSR is unaltered although Units 10 and 11 on Level 4 are consolidated into a single Unit.
- The proposed development does not compromise the heritage conservation outcomes achieved through approval of the original application.
- The proposed development, as modified, will not compromise the residential amenity afforded to surrounding development through approval of the original scheme in terms of privacy, solar access and view sharing.

We also note that the modifications do not compromise any of the fundamental considerations which lead to approval of the previous applications in relation to streetscape, heritage conservation, design excellence and residential amenity outcomes.

On the basis of the above analysis, we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.56 of the Act.

3.2 Manly Local Environmental Plan 2013

3.2.1 Height of Buildings

Pursuant to clause 4.3 MLEP 2013 the height of any building on the land shall not exceed 11 metres above ground level (existing) as detailed on the heights of building map. The stated objectives of this clause are:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

The dictionary to the LEP defines building height to mean:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

ground level (existing) means the existing level of a site at any point.

The subject modified proposal maintains the previously approved parapet height of RL26.9m AHD and lift overrun height of RL 29.13m AHD. The proposal does however propose hot water plant, additional AC units and associated screening and PV panels at roof level to enhance the sustainability credentials of the development although given their location and height relative to the approved roof parapet alignment will not be discernible as viewed from outside the site.

Although these elements exceed the 11m building height standard they sit below the height of the approved lift overrun and therefore do not increase the maximum height of the approved development. We also note that a number of the façade, fenestration and skylight modifications sit above the 11m building height standard.

Although the clause 4.6 MLEP variation provisions do not apply to an application involving the modification of a consent we had undertaken an analysis as to the acceptability of the additional building height having regards to the objectives of the standard as follows.

- The proposal maintains the massing and setbacks of the approved development with the approved residential density as reflected by FSR not altered as a consequence of the modifications sought.
- The modified development remains compliant with the 3:1 floor space ratio development standard with the non-compliant building height elements providing for the appropriate servicing of the development in relation to hot water, air conditioning and PV panels.
- The resultant height, bulk, scale of the building remain entirely consistent with the built form characteristics established by adjoining development and development generally within the sites visual catchment.
- It has been determined that the modifications located above the 11m building height standard will not give rise to any adverse residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk. The proposal will continue to provide for the sharing of public and private views.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the height of the building elements located above the 11m building height standard offensive, jarring or unsympathetic in a streetscape context nor the built form characteristics of development within the sites visual catchment. Accordingly it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour, foreshore areas, public domain and surrounding properties.
- Approval of the modifications located above the 11m building height standard will provide for the orderly and economic use and development of the land.
- Having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

Consistent with the first test in Wehbe as the proposal, as modified, satisfies the objectives of the standard strict compliance is unreasonable and unnecessary under the circumstances.

3.2.2 Floor Space Ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 3:1 representing a gross floor area of 1728.6 square metres. The stated objectives of this clause are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

It has been determined that the modified proposal has a gross floor area compliant with the 3:1 FSR standard. As the proposal satisfies the numerical standard it is also deemed to comply with the associated objectives. Accordingly, there is no statutory impediment to the granting of consent.

3.2.3 Heritage Conservation

Pursuant to clause 5.10 MLEP 2013 development consent is required for any of the following:

- (a) *demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):*
 - (i) *a heritage item,*
 - (ii) *an Aboriginal object,*
 - (iii) *a building, work, relic or tree within a heritage conservation area,*

The stated objectives of this clause are as follows:

- (a) *to conserve the environmental heritage of Manly,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*

- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

We confirm that No. 11 Victoria Parade is identified as a local heritage item pursuant to Schedule 5 of Manly LEP 2013. Further the property immediately to the east and known as number 13 Darley Road and the street trees along Victoria Parade are also identified in Schedule 5 as heritage items.

In this regard, the application is accompanied by a Heritage Impact Statement prepared by Architectural Projects which provides detailed background in relation to the identified heritage items and contains an assessment as to the acceptability of the proposed development having regard to the clause 5.10 MLEP 2013 provisions and the identified significance of the items and their setting including the retention and adaptive reuse of the existing heritage building located on the subject site.

3.2.4 Acid Sulfate Soils

Pursuant to clause 6.1 MLEP 2013 the site is mapped as Class 4 on the Acid Sulfate soils map and accordingly a preliminary assessment report must be provided given that excavation in excess of 2 metres in depth is proposed.

In this regard, as the modifications do not result in any additional excavation these provisions remain satisfied.

3.2.5 Foreshore Scenic Protection Area

Pursuant to clause 6.9(2) the land is identified on the Foreshore Scenic Protection Area Map. Pursuant to clause 6.9(3) development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) *measures to protect and improve scenic qualities of the coastline,*
- (c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Having regard to these provisions we have formed the considered opinion that the proposed development, as modified, will not result in any actual or perceivable impact on the Foreshore Scenic Protection Area in that:

- The height, scale and architectural presentation of the development remain contextually appropriate having regard to the built form characteristics established by adjoining development noting that the development is obscured, to a significant extent, as viewed from Manly Beach and Manly Cove by intervening built form and landscape elements.

The overall design quality of the building ensures that it will be a landmark development within its context.

- Having regards to the Land and Environment Court of NSW planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed building offensive, jarring or unsympathetic to its context or surrounds.
- The development will not give rise to any adverse physical or amenity impacts on the foreshore areas and will enhance the visual amenity of the area generally.

For these reasons, Council can be satisfied that the development, as modified, will not give rise to any actual or perceived impact on the Foreshore Scenic Protection Area having regard to the Clause 6.9 considerations.

3.2.6 Active Street Frontages

We confirm that pursuant to clause 6.11 that the site is not identified on the Active Street Frontages Map and accordingly these provisions do not apply. The exclusion of the subject site from the active street frontages map reflects the site's location on the very fringe of the Manly Town Centre and its limited role in terms of street activation and the provision of non-residential uses to satisfy the zone objectives.

3.2.7 Design Excellence

Pursuant to clause 6.13 development consent must not be granted for development on land in Zone B2 Local Centre unless the consent authority considers that the development exhibits design excellence. In considering whether development exhibits design excellence, the consent authority must give consideration to whether the development:

- (a) *contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and*

Comment: The modifications will not result in any additional shadowing impact to public open space areas.

- (b) *is likely to protect and enhance the streetscape and quality of the public realm, and*

Comment: This report clearly demonstrates that the height, bulk, scale and form of development proposed remains contextually appropriate and will contribute positively to the streetscape and the built form quality of development generally within the site's visual catchment. In this regard, the streetscape and quality of the public realm will be significantly enhanced as a consequence of the development proposed.

- (c) *clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and*

Comment: The development continues to appropriately defines the street edge. We note that the subject site is not identified on the Active Street Frontages map pursuant to the clause 6.11 provisions.

- (d) *minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and*

Comment: The proposed modifications do not require any works within the adjacent road reserve and accordingly maintain existing levels of access adjacent to the front of the property.

- (e) *encourages casual surveillance and social activity in public places, streets, laneways and plazas, and*

Comment: The modified development continues to incorporate residential uses orientated to their Victoria Parade frontage with the adjacent living areas and associated balconies providing excellent levels of casual surveillance to the street and surrounding public domain.

- (f) *is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and*

Comment: The design of the development continues to give consideration to the adjoining heritage item in terms of providing a transitional form and character between it and the modern high-rise residential development to the west. The articulated forms and use of compatible small-scaled design elements and face brickwork provides a suitable fit to the context of Victoria Parade.

- (g) *protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and*

Comment: There is no significant vegetation or natural features on the subject site. Existing site landscaping will be significantly enhanced as a consequence of the integrated landscaping regime proposed.

- (h) *promotes vistas from public places to prominent natural and built landmarks, and*

Comment: The modifications do not impact public views.

- (i) *uses high standards of architectural design, materials and detailing appropriate to the building type and location, and*

Comment: The modifications do not compromise the previously approved high standard of architectural design including materials and detailing.

- (j) *responds to environmental factors such as wind, reflectivity and permeability of surfaces, and*

Comment: No change.

- (k) *coordinates shared utility infrastructure to minimise disruption at street level in public spaces.*

Comment: The development as modified will not create any unusual or unacceptable demand for utility infrastructure such as to cause disruption at Street level.

Having regard to the developments performance when assessed against the clause 6.13 design excellence provisions we have formed the considered opinion that the development exhibits design excellence and therefore satisfies the LEP provision.

3.3 Manly Development Control Plan 2013

3.3.1 Street Townscape

We have formed the considered opinion that the development appropriately responds to the design principles contained at clause 3.1.1 of the Manly DCP as follows:

- The design quality and visual aesthetic of development on this site is significantly enhanced as a consequence of the contemporary building design sought.
- The height, form and massing of the development is complimentary and compatible with that established by adjoining residential flat development and medium density development generally within the site's visual catchment.
- The height, bulk and scale of the development, as modified, will not give rise to any adverse streetscape impacts and will in fact enhance the scenic amenity of the area when viewed from surrounding public and private land.
- The proposed front and side boundary setbacks are consistent with those originally approved and established by recently approved and constructed development within the precinct.
- Development incorporates a varied palette of materials and finishes providing for a visually interesting building presentation in the round.
- Bin storage is integrated into the design of the development and appropriately screened such that it will not be discernible as viewed from the street.
- The development maintains appropriate levels of privacy, sunlight and view sharing to surrounding development as detailed in this report.

Council can be satisfied that the development responds appropriately to the Design Principles contained at clause 3.1.1 of the Manly DCP.

3.3.2 Amenity (Views, Overshadowing, Overlooking/ Privacy, Noise)

Given the minor nature of the modifications sought we are satisfied that they will not result in any individual or collective impact on the residential amenity of surrounding residential and commercial development in relation to views, privacy and overlooking. In this regard, the visual privacy, solar access and view sharing outcomes achieved through approval of the previous application (as modified on a number of occasions) are not compromised.

The proposal provides continues to provide for the sharing of both public and private views.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the modified development offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

3.3.3 Sustainability

The design provides for sustainable development, utilising passive solar design principles, thermal massing and achieves cross ventilation to a complying number of dwellings within the development.

A BASIX Certificate accompanies this application which confirms that development will exceed the NSW Government's requirements for sustainability.

3.3.4 Waste Management

The proposed modifications include the modification of condition 43L to remove the need for a bulky waste storage area. This modification is supported by the attached Waste Management Conditions Statement prepared by MRA Consulting Group which contains the following commentary:

It is anticipated that the proposed development as modified will generally be capable of achieving the requirements of the NBCWVG, however proposed layout as approved in 2015 and subsequently modified does support a dedicated and separate bulky waste storage area in accordance with Section 4.5 (see below excerpt) of Chapter 4 in the NBCWVG.

.....

With reference to Section 4.5 of the NBCWVG, dedicated bulky waste storage for residents is not expected to be necessary for the site, for several reasons outlined as follows:

- 1. Each unit has sufficient individual storage space for the temporary holding of any bulky waste items such as appliances, mattresses, or furniture prior to scheduled kerbside cleanups.*
- 2. The proposed development only exceeds Council's guideline requirement for inclusion of a separate bulky waste storage area by 2 units (proposed 12 units, compared to the 10-unit threshold set out).*
- 3. Given the DA history and approved design, changes to accommodate a separate bulky waste room are not achievable without significant redesign.*
- 4. Council offer an 'individual booking' bulk waste service which may be appropriate for the proposed development to permit residents to organise their own bulky waste cleanups as required.*

In summary, the proposed development is expected to achieve compliance with the core objectives of the NBCWVG as directed by conditions of consent as modified, apart from the provision of a dedicated bulky waste storage area.

Based on the justifications presented above, the absence of a bulky waste storage area for use by residents is not expected to have undue impacts on the waste management outcomes of the proposal.

3.3.5 Mechanical Plant Equipment

The mechanical plant is to be located on the roof with appropriate conditions ensuring that it complies with the applicable acoustic noise criteria. The mechanical plant is located such that it will not be discernible as viewed from the street.

3.3.6 Dwelling Density and Subdivision

The modifications provide for the consolidation of Units 10 and 11 on Level 4 although the GFA/FSR is unaltered. Dwelling density remains appropriate given the sites location within the Manly Town Centre.

3.3.7 Setbacks

Having regard to the clause 4.1.4 setback provisions we note that the previously approved setbacks are maintained which are complimentary and compatible with those established by adjoining development and development generally within the sites visual catchment.

Accordingly, the site specific and contextually responsive setbacks remain entirely appropriate.

3.3.8 Parking, Vehicular Access and Loading

The previously approved quantum of off-street parking spaces is maintained. The application seeks the modification of Conditions 33, 35 and 36 to require that all parking bays comply with the 85th percentile and/or 95th percentile requirements of AS2890.1 as justified in the accompanying traffic and parking advice prepared by TTPA. Such modification is justified on the basis of the highly constrained geometry of the site.

3.4 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

As the original application was assessed and considered pursuant to this state planning policy it remains relevant to an assessment of the modifications sought. The application is accompanied by the required Design Verification Statement prepared by Platform Architects demonstrating that the overall design quality of the development is not compromised.

3.5 State Environmental Planning Policy (Sustainable Buildings) 2022

This SEPP applies to the residential component of the development and aims to encourage sustainable residential development.

A BASIX Assessment accompanies the development application and demonstrates that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

3.6 State Environmental Plan (Biodiversity and Conservation) 2021

The State Environmental Plan (Biodiversity and Conservation) 2021 aims to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour is recognised, protected, enhanced and maintained.

The site is located within the Sydney Harbour Catchment area but it is not identified:

- (a) within the Foreshores and Waterways Area;
- (b) as a strategic foreshore site;
- (c) as a heritage item under the SREP;
- (d) within the wetlands protection area;

In this regard only Part 1 of the SREP is applicable to the proposed development. Part 1 identifies aims of the plan from (a) to (h). The aims set out in Part 1 of the SEPP have been considered and the application is consistent with such aims.

3.7 Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

3.7.1 The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations

This report clearly and comprehensively addresses the statutory regime applicable to the application pursuant to the Manly LEP 2013 and Manly DCP 2013.

3.7.2 The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality.

Context and Setting

- i. What is the relationship to the region and local context in terms of:*
 - *The scenic qualities and features of the landscape*
 - *The character and amenity of the locality and streetscape*

- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

These matters have been discussed in the body of this report.

ii. *What are the potential impacts on adjacent properties in terms of:*

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*
- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be acceptable with regard to the applicable legislation.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

The previously approved quantum of off-street parking spaces is maintained. The application seeks the modification of Conditions 33, 35 and 36 to require that all parking bays comply with the 85th percentile and/or 95th percentile requirements of AS2890.1 as justified in the accompanying traffic and parking advice prepared by TTPA. Such modification is justified on the basis of the highly constrained geometry of the site.

Public Domain

The proposed development will have no adverse impact on the public domain.

Utilities

This matter has been discussed in detail in the body of this report.

Flora and Fauna

The site will be landscaped. The planting and landscaping treatments will enhance the landscape quality of the locality.

Waste Collection

The proposed modifications include the modification of condition 43L to remove the need for a bulky waste storage area. This modification is supported by the attached Waste Management Conditions Statement prepared by MRA Consulting Group

Natural hazards

N/A

Economic Impact in the locality

The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate additional employment opportunities through the construction period with respect to the proposed development.

Site Design and Internal Design

i) *Is the development design sensitive to environmental considerations and site attributes including:*

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*
- *the size (bulk, height, mass), form, appearance and design of buildings*
- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the desired future character and built form controls of the DCP.

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*

- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

The proposed development can comply with the provisions of the Building Code of Australia as detailed within the accompanying report prepared by a Credwell.

Construction

- i) *What would be the impacts of construction activities in terms of:*
- *The environmental planning issues listed above*
 - *Site safety*

Normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

3.7.3 The suitability of the site for the development

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

The adjacent development does not impose any unusual or impossible development constraints. The site is well located with regards to public transport and utility services. The development will not cause excessive or unmanageable levels of transport demand.

The development responds to the topography of the site, is of adequate area, and has no special physical or engineering constraints is suitable for the proposed development

3.7.4 Any submissions received in accordance with this act or regulations

It is envisaged that Council will appropriately consider any submissions received during the notification period.

3.7.5 The public interest

It is considered that the development is sensitive both to the natural and built environments and is consistent with the provisions of the Manly LEP and DCP.

4 CONCLUSION

We have been engaged to prepare a further modification application pursuant to section 4.56 of the Act. Specifically, the application seeks to refine the architectural detailing of the development based on detailed construction certificate design development to address BCA requirements, enhance buildability and provide superior residential amenity outcomes.

Having regard to the detail of the modifications we are satisfied that the previously approved streetscape, heritage conservation and residential amenity outcomes are not compromised as consequence the modifications sought. Importantly, the development maintains a view sharing outcome with the immediately adjoining properties at 2 – 4 Wentworth Street and 5 Victoria Parade, Manly.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the Act. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The modified scheme exhibits design excellence.
- The proposal maintains the massing of the approved development in relation to heights and setbacks with the approved residential density as reflected by FSR not altered as a consequence of the modifications sought.
- The approved roof and lift overrun heights are maintained although hot water plant, additional AC units and PV panels are provided at roof level to enhance the sustainability credentials of the development.
- The approved GFA/ FSR is unaltered although Units 10 and 11 on Level 4 are consolidated into a single Unit.
- The proposed development does not compromise the heritage conservation outcomes achieved through approval of the original application.
- The proposed development, as modified, will not compromise the residential amenity afforded to surrounding development through approval of the original scheme in terms of privacy, solar access and view sharing.

On the basis of the above analysis we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.56 of the Act.

BOSTON BLYTH FLEMING PTY LIMITED



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