

## **Statement of Environmental Effects**

Proposed residential development incorporating  
the retention of the existing heritage item

**307 Sydney Road and 12 Boyle Street  
Balgowlah**



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# **Statement of Environmental Effects**

## **Proposed Residential Development**

**307 Sydney Road and 12 Boyle Street, Balgowlah**

Prepared on behalf of

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## 1.0 INTRODUCTION/ BACKGROUND

On 7<sup>th</sup> March 2018 development application DA2018/0355 was submitted to Council proposing the construction of 6 x 3 bedroom apartments and 1 x 3 bedroom 2 storey dwelling house with both basement and at-grade off-street parking for a total of 13 vehicles. The proposal involved alterations and additions to the existing heritage listed building on the site.

The application was subsequently notified to surrounding property owners with a number of issues raised including parking, setbacks, privacy loss, overshadowing shadowing, excavation impacts, impacts on the Right of Carriageway (ROW) from Sydney Road, heritage conservation and view loss. A number of issues were also raised by Council staff including privacy, potential view loss, the design and geometry of the proposed basement parking area, the stacked parking configuration, the shortfall of 1 car parking space and the location of the proposed waste storage and collection area accessed from Boyle Street.

Development application DA2018/0355 was subsequently withdrawn to enable a considered review of the issues raised with the development, the subject of this report, representing a highly considered and resolved response to the issues raised.

This document has been prepared as a component of a development application proposing a residential development across the consolidated allotment incorporating the existing heritage listed dwelling house. The development incorporates 5 x 3 and 1 x 2 bedroom apartments and 2 x 3 bedroom townhouses with both basement and at-grade off street parking for a total of 17 vehicles. The application also proposes the implementation of an enhanced site landscape regime and integrated stormwater management system.

The architect has responded to the client brief to provide a site-specific design response which takes advantage of the properties locational attributes whilst respecting the environmental characteristics of the site and the amenity of adjoining development. Particular attention has been given to ensuring that the heritage significance of the existing heritage item is maintained through the adoption of a highly articulated and modulated pavilion style development form which steps down the site in response to topography.

Careful consideration has also been given to maintaining appropriate residential privacy through a combination of building design, sensitive use and location of fenestration and the strategic placement of secondary intervening landscape attenuation treatments. Further, the accompanying view loss diagrams demonstrates that a view sharing outcome is maintained to the apartments within the residential flat building at No. 10 Boyle Street having regard to the view sharing principles established by the NSW Land and Environment Court in the matter of *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140.

Having regard to the issues previously raised by adjoining property owners and Council staff in relation to DA2018/0355 we have formed the considered opinion that the current development, the subject of this report, achieves the following outcomes:

- The development will not give rise to any unacceptable streetscape or heritage conservation impacts;
- The development maintains a contextually appropriate spatial relationship with surrounding development with appropriate residential amenity maintained in relation to privacy, solar access and view sharing;
- The height, bulk and scale of the development (as reflected by FSR) is contextually appropriate with the highly articulated pavilion style nature of the proposal ensuring that the proposed floor space is appropriately distributed across the site reflecting a detached style housing built form typology with a landscaped setting;
- The development provides appropriately for vehicular access and parking with a waiting bay provided adjacent to Boyle Street and the required quantum of parking provided onsite. The only stacked (tandem) spaces are allocated to the same residential apartment being an acceptable circumstance on a constrained allotment;
- The development incorporates a permanent waste storage and collection area for Units 1, 2, 3, 4, 6 and 7 within 6 metres of the Boyle Street frontage with a waste collection area for Units 5 and 8 located within 6 metres of the Sydney Road frontage; and
- The proposal provides appropriately for landscaping and stormwater management.

In the preparation of this document, consideration has also been given to the following statutory planning documents:

- The Environmental Planning and Assessment Act, 1979 as amended;
- Manly Local Environmental Plan 2013;
- Manly Development Control Plan 2013; and
- State Environmental Planning Policy No. 55 – Contaminated Lands.

Architectural drawings including floor plans, sections and elevations have been prepared in relation to the development proposed. The application is also accompanied by a site analysis, survey plan, Statement of Heritage Impact, geotechnical report, arborist report, Stormwater Management Report, Building Code of Australia Compliance Assessment Report, access report, landscape plans, view loss analysis, waste management plan, schedule of finishes, BASIX certificate, QS report and perspective images.

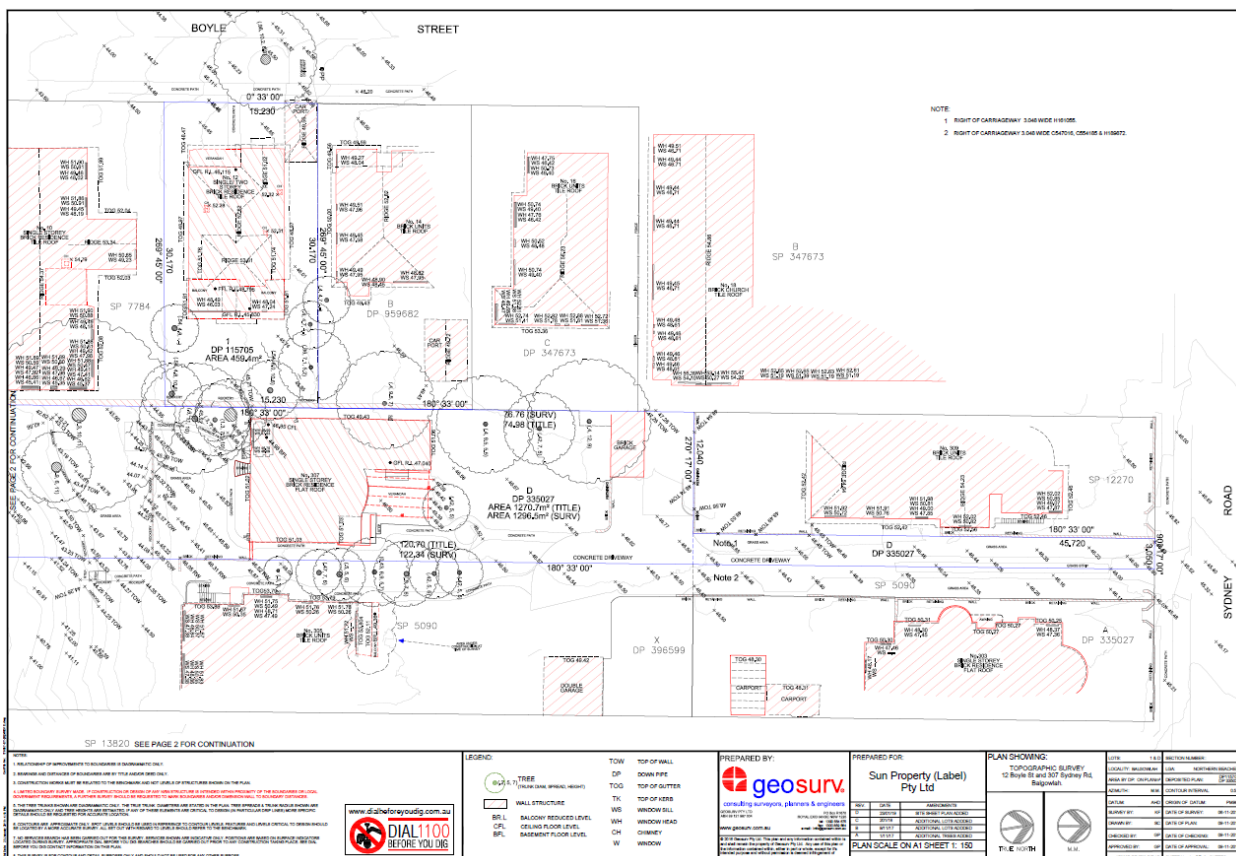
The proposal is permissible and generally compliant with the development standards contained within Manly Local Environmental Plan 2013 (MLEP 2013) as they relate to this form of development on this particular site and the intent of built form guidelines contained within Manly Development Control Plan 2013 (MDCP 2013) as reasonably applied to the proposed development. We note that the provisions of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG) do not apply given the 2 storey nature of the development proposed.

Whilst the proposal requires the consent authority to give favourable consideration to minor building height and FSR variations, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the attainment of an appropriate contextual fit, site topography and the general paucity of streetscape, heritage conservation and residential amenity impacts. Sufficient environmental planning grounds existing to support the variations proposed with the accompanying clause 4.6 variation requests well founded.

The identified non-compliances with MDCP 2013 in relation to dwelling density, setbacks and landscaped area have been acknowledged and appropriately justified having regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of controls/ standards for dealing with that aspect of the development.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

The development site comprises 2 allotments legally described as Lot D, DP 335027, No. 307 Sydney Road and Lot 1, DP 115705, No. 12 Boyle Street, Balgowlah. The Sydney Road fronting property is a 122.34 metre deep battle-axe shaped allotment with access via a 3 metre wide handle from Sydney Road. This allotment is currently occupied by single storey dwelling which is a member of a heritage group encompassing 3 houses (303 – 307 Sydney Road, Balgowlah) listed under Schedule 5 of MLEP. The Boyle Street fronting property has frontage of 15.230 metres, depth of 30.170 metres and is occupied by a 1 and 2 storey brick federation style cottage with pitched and tile roof. The consolidated development site has an area of 1755.9 square metres and falls approximately 6 metres across its surface in a southerly direction. The development site contains a number of trees none of which are considered significant in terms of height, species or form with the established site circumstance depicted in the survey plan below and over page.





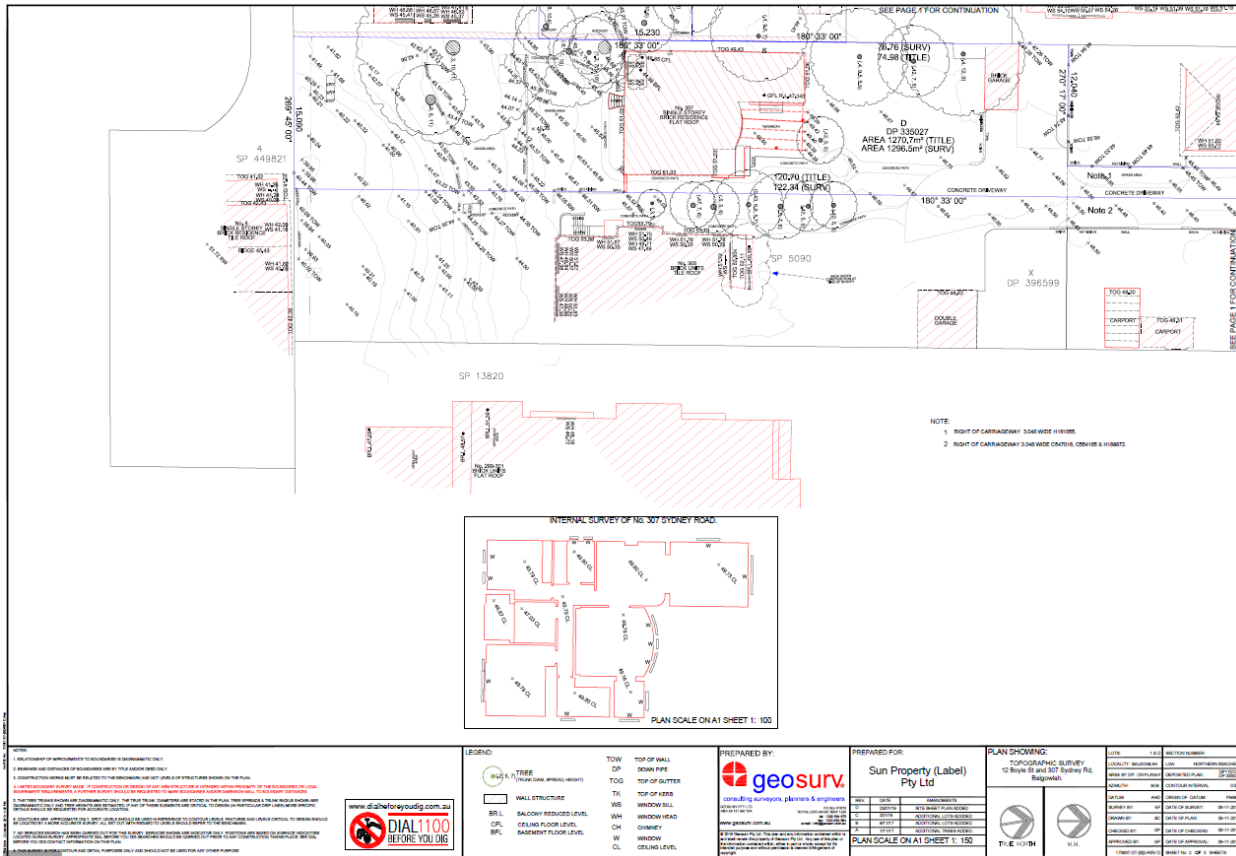


Figure 1 – Site Survey



Source: NBRIS Statement of Heritage Impact

**Figure 2** – Aerial location/ context photograph





Source: NBRIS Statement of Heritage Impact

**Figure 3** – View looking down access handle towards No. 307 Sydney Road.



Source: NBRIS Statement of Heritage Impact

**Figure 4** – Primary northern façade of heritage item at No. 307 Sydney Road





Source: Google maps

**Figure 5** – No. 12 Boyle Street

The properties to the north of the site, along Boyle Street, are occupied by single storey detached dwelling houses, a 2 storey residential flat building and All Saints Anglican Church located on the corner of Boyle Street and Sydney Road. The property to the south of No. 12 Boyle Street is occupied by a 3 and 4 storey residential flat building with garaging under. No. 8 Boyle Street is a battle-axe allotment which shares the rear boundary of No. 307 Sydney Road. This property is occupied by a single storey dwelling house accessed from Boyle Street.

The properties to the west, No's 303 and 305 are occupied by the balance of the heritage listed dwellings in the group as depicted in Figure 2 with residential flat development at No 299 – 301 Sydney Road beyond.



Source: Google maps

**Figure 6** – No. 10 Boyle Street

The balanced of development within the sites visual catchment is eclectic in nature comprising predominantly 1, 2 and 3 storey residential development. The subject properties are located within short walking distance of the Balgowlah Local Centre and the Stockland Balgowlah Shopping Centre.

### 3.0 PROPOSED DEVELOPMENT

The application proposes the construction of a residential development across the consolidated allotment incorporating the existing heritage listed dwelling house. The development incorporates 5 x 3 and 1 x 2 bedroom apartments and 2 x 3 bedroom townhouses with both basement and at-grade off street parking for a total of 17 vehicles. The application also proposes the implementation of an enhanced site landscape regime and integrated stormwater management system.

The scope of the works is depicted on Architectural plans A000, A100(A), A200(A) to A204(A), A300(A) - A303(A) and A400(A) to A407(A) prepared by Roberts Day Architects. The proposed landscape regime is depicted on plans 000, 101, 501 and 502 prepared by Site Image. Specifically, the development has been broken into 4 visually detached 2 and 3 storey building pavilions to maintain the general form and rhythm of development established within the site's visual catchment, to retain the footprint of the existing heritage item and a detached building form typology. Such outcome provides a contextually informed design solution for the site.

We confirm that all dwellings have open plan living areas with 2 or 3 bedrooms (main with ensuite), separate bathroom/ guest WC and laundry. All living areas have orientation to both the north and south to take advantage of solar access and views. We confirm that accessibility throughout the site addressed in detail within the accompanying Building Code of Australia C Assessment Report prepared by Credwell.

The application is accompanied by a schedule of materials and finishes (Plan A600(A)) prepared by the project Architect in consultation with the project heritage consultant which has also been informed by site location and context. The accompanying landscape plans prepared by Site Image show appropriate ground level and planter box planting to ensure the building sits within a landscape setting and that appropriate visual privacy is maintained between adjoining development. Such landscaping regime appropriately compensates for the proposed tree removal as detailed in the accompanying arborist addendum report prepared by Tree Wise Men.

All stormwater will be disposed of as detailed in the accompanying Stormwater Management Report prepared by Woolacotts Consulting Engineers with the extent of excavation addressed in the accompanying Geotechnical Investigation Report prepared JK Geotechnics.



## 4.0 STATUTORY PLANNING FRAMEWORK

### 4.1 Manly Local Environmental Plan 2013

#### 4.1.1 Zone and Objectives

The subject property is zoned R1 General Residential pursuant to Manly Local Environmental Plan 2013 (MLEP 2013) with both dwelling houses and residential flat buildings permissible in the zone with consent. The stated objectives of the R1 General Residential zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

A residential flat building means a building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing. The proposed development incorporates 4 detached style pavilions 3 of which are 2 storeys in height and occupied by residential apartments. Units 1 and 2 are attached and properly described as multi dwelling housing (townhouses) with both uses permissible with consent in the zone.

The proposed development meets the relevant zone objectives as it provides for the housing needs of the community through the provision of a variety of housing types and densities which will provide for the housing needs of the community. The development is consistent with the zone objectives as outlined.

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

#### 4.1.2 Height of Buildings

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

- (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.*

Building height is defined as follows:

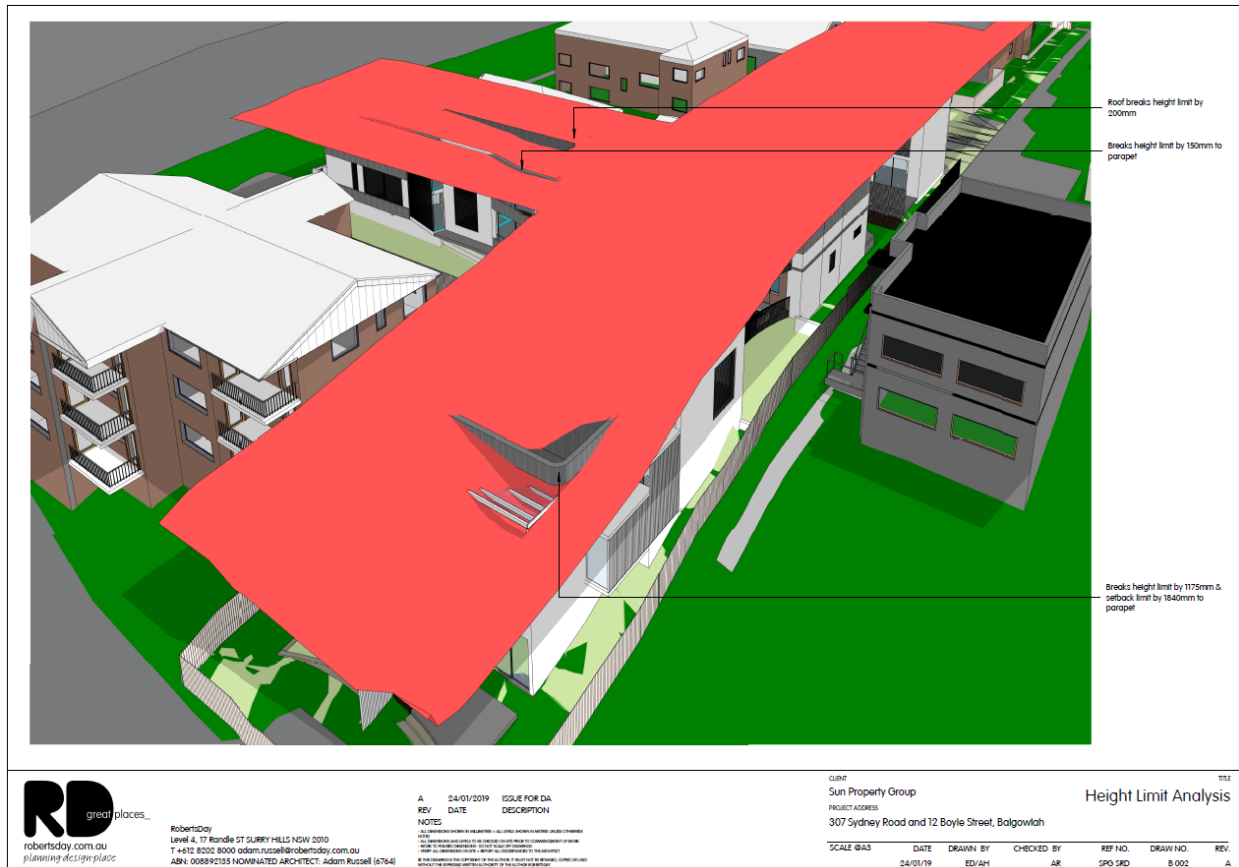
***building height (or height of building)*** means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

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

It has been determined that there are 3 minor breaching roof/ pergola elements with the maximum height of the development being 9.675 metres above ground level existing. These breaches occur in the south eastern corner of town house 1 and the clerestory element over Unit 6 as depicted on plan B002(A) as reproduced in Figure 7 over page. This represents a maximum non-compliance of 1.175 metres or 13.8%. The balance of the development sits comfortably below the 8.5 metre height standard.





**Figure 7** – Plan extract showing 8.5 metre height breaching roof/ pergola elements

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

- a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has

considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

## **Claim for Variation**

### **Zone and Zone Objectives**

The developments permissibility and consistency with the zone objectives has been discussed in detail in section 4.1.1 of this statement.

### **Height of Buildings Standard and Objectives**

This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- (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,*

Comment: The height, bulk, scale and roof form proposed are entirely consistent with the built form characteristics established by surrounding development with the minor breaching roof and pergola elements not leading to inconsistency in this regard. The areas of non-compliance are appropriately described as minor and can be attributed to the topographical characteristics of the site which falls away adjacent to its southern boundary. This objective is satisfied.

- (b) *to control the bulk and scale of buildings,*

Comment: The minor breaching roof and pergola elements do not contribute to unacceptable bulk and scale with the highly articulated and modulated pavilion style development form, which steps down the site in response to topography, achieving a contextually appropriate bulk and scale. This objective is satisfied.

- (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),*

Comment: Having inspected the site and its surrounds and undertaken a detailed view loss analysis as detailed in section 4.2.1.4 of this report We have formed the considered opinion that the minor breaching elements will not give rise to adverse public or private view affectation. The breaching elements will not be readily discernible as viewed from the public domain. This objective is satisfied.

- (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,*

Comment: As depicted on the accompanying shadow diagrams (plans A500(A) to A502(A)) we have determined that the minor breaching elements will not contribute to any unreasonable overshadowing of the public or private domains with compliant levels of solar access maintained to all surrounding residential properties. This objective is satisfied.

- (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.*

Comment: N/A

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 proposed development, by virtue of the minor building height breaching elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

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.

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including topography of the land which makes strict compliance more difficult to achieve and the increased amenity afforded by the breaching clerestory and pergola elements. Further, the compatibility of the proposed building height with the height and form of surrounding development, the developments compliance with the objectives of the height standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.

A better environmental planning and urban design outcome is achieved through the facilitation of the building height variation proposed.

### **Conclusions**

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and

- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

#### **4.1.3 Floor Space Ratio**

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.6:1 representing a gross floor area of 1053.5 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 proposal has a gross floor area of 1116 square metres, as defined, representing a floor space ratio of 0.63:1 and therefore non-compliant with the FSR standard by 62.5 square metres or 5.9%.

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied as previously outlined. This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

### **Claim for Variation**

#### **Zone and Zone Objectives**

The developments permissibility and consistency with the zone objectives has been discussed in detail in section 4.1.1 of this statement.

#### **Floor Space Ratio Standard and Objectives**

This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment: The bulk and scale of the development (as reflected by FSR) is contextually appropriate with the highly articulated pavilion style nature of the proposal ensuring that the proposed floor space is appropriately distributed across the site reflecting a detached style housing built form typology with a landscaped setting. The development presents to Boyle Street as a 2 storey detached dwelling typology with the development not readily discernible from Sydney Road.

We have formed the considered opinion that the bulk and scale of development is consistent with the existing and desired streetscape character and accordingly is consistent with this objective.

- (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,*

Comment: The footprint of the development is compliant with the total open space provisions of MDCP with the resultant building forms not obscuring important landscape and townscape features as view from the public domain or surrounding residential properties. The proposal is consistent with this objective.

- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment: The development maintains an appropriate spatial relationship with surrounding development, and as detailed previously, will present to Boyle Street as a detached 2 storey single dwelling house building form. The development will not otherwise be readily discernible as viewed from the public domain. The proposal provides appropriately for landscaping with a compliant quantum of total open space achieved in accordance with the applicable MDCP provision. Such built form and landscape outcomes ensure that the development will maintain an appropriate visual relationship between new development and the existing character and landscape of the area. The proposal is consistent with this objective.

- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment: We have formed the considered opinion that the development will have no adverse environmental impact on the use or enjoyment of the public domain in terms of visual bulk, overshadowing or landscaping.

In relation to potential impacts on the amenity of surrounding residential properties we note that the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the site having regard to the height, proximity, and orientation of adjoining residential development. Particular attention has been given to ensuring that the development not only responds to its immediate built form context, and the form of development anticipated within the zone, but importantly, to ensure that appropriate residential amenity is maintained to the immediately adjoining residential properties in relation to solar access, views and privacy.

It has been determined that the proposed development will not give rise to any unacceptable/ non-compliant residential amenity impacts in terms of overshadowing as depicted on the accompanying shadow diagrams prepared by the project Architect. In this regard, we note that the principal living areas of all apartments at No. 10 Boyle Street are oriented to the south to take advantage of views with no shadowing impact to these south-facing windows or adjacent private open space balconies. The same can be said for the dwelling house at No. 8 Boyle Street. Existing compliant levels of solar access to the balance of surrounding properties is not compromised due to the maintenance of appropriate spatial separation.

In relation to privacy we confirm that a combination of appropriate window placement and design and the introduction of fixed privacy attenuation measures involving landscape planter boxes and fixed privacy screens (as detailed on the schedule of finishes) will collectively maintain appropriate visual privacy between properties.

Such privacy is further augmented through the introduction of perimeter intervening landscaping which will further soften and screen the development as viewed from the adjoining properties. All primary balconies have been orientated to the street with the majority of habitable windows also orientated to the front and rear of the site.

In relation to potential view affectation we refer to the view loss diagrams prepared by the project Architect from available survey information (Plans A700(A) to A705(A)). Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140 as they relate to an assessment of view impacts, we have formed the following opinion:

### **First Step - Assessment of views to be affected**

***An assessment of the view to be affected. The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.***

Comment: Having inspected the site and its surrounds to identified potential view corridors, and having regard to the submission previously received from a number of property owners within the adjoining residential flat building at No. 10 Boyle Street, it has been determined that the Town Houses 1 and 2 will impact district and distant harbour views currently available from the east facing bedroom windows (Bed 01 and Bed 02 as depicted on plans A201(A) to A204(A)) of the ground, first and second floor apartments in a south easterly direction across the subject site towards the harbour.

We note that the views currently obtained from the south facing principal living rooms and adjacent balcony will be preserved.

### **Second Step - From what part of the property are the views obtained**

***The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant.***

*Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*



Comment: These views are available from the bedroom areas of the adjoining apartments from both a seated and standing position. The views are across side and/or rear boundaries and across multiple properties. They are highly vulnerable to view impacts from any complaint development on the subject site.

### **Third Step – Assessment of extent of the impact**

***The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.***

Comment: The extent of view impact is depicted on plans A700(A) to A705(A) with existing views available in an easterly direction across the rear portion of the subject site totally obscured from both bedroom windows at both ground and first floor level. That said, oblique views obtained from these windows are maintained to varying extent such that at no location are 100% of available views obscured. Scenic distant harbour views from both bedrooms on level 2 are unaffected.

We have formed the considered opinion that the view impact will range from negligible to moderate from these bedrooms areas however in the context of the totality of the views maintained, including 100% from the principal living and adjacent balcony areas of each apartment, we are of the opinion that the overall view loss, having regard to the view loss assessment criteria, is appropriately described as minor.

### **Fourth Step – Reasonableness of the proposal**

***The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.***

***Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.***

***If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.***

As previously indicated, minor areas of upper level roof and walls to townhouses 1 and 2 breach the height control however such breaching elements do not contribute, to any measurable extent, to the view loss from the adjacent bedroom areas.

Under such circumstances there can be no reasonable expectation for these bedroom views to be preserved.

Having reviewed the detail of the application we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140 and Davies v Penrith City Council [2013] NSWLEC 1141.

Council can be satisfied that the development has minimised adverse environmental impacts on the use or enjoyment of adjoining land and the public domain and accordingly is consistent with this objective.

- (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.*

Comment: N/A

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 proposed development by virtue of its bulk and scale (as reflected by FSR) offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

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.

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the exceptional design quality of the building and the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the sites visual catchment. The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.

### **Conclusions**

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the floor space ratio standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and floor space ratio standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a floor space ratio variation in this instance.

#### 4.1.4 Heritage Conservation

Pursuant to clause 5.10(4) of MLEP 2013 the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

Further, pursuant to clause 5.10(5) the consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or*
- (b) require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.*

No. 307 Sydney Road is occupied by single storey dwelling which is a member of a heritage group encompassing 3 houses (303 – 307 Sydney Road, Balgowlah) listed under Schedule 5 of MLEP. The subject property is also located within proximity of a number of heritage items as depicted on the MLEP Heritage Map extract at Figure 8 below.



**Figure 8 - MLEP Heritage Map extract**

In this regard, the application is accompanied by a Statement of Heritage Impact prepared by Heritage 21 which details the performance of the proposal when assessed against the applicable heritage considerations. The report contains the following conclusions:

## **7.2 General Conclusion**

We believe the proposal to offer a contextually informed design solution for the site in which the old and new have been blended in a manner that speaks to the cultural and historic roots of Balgowlah as well as its current state and desired future. It is our assessment that the development complies with the pertinent heritage aims of the relevant planning instruments and, further, is in line with the management of change for heritage places advocated by the *Burra Charter* (rev. 2013). Heritage 21 would commend this proposal to Council for approval and suggest that its acceptable heritage outcome be further augmented by the application of the recommended mitigation measure (see Section 7.3 below).

## **7.3 Mitigation Measures**

To ensure maximum conservation of cultural heritage significance for the heritage group, Heritage 21 recommends that the following be undertaken if consent permission is granted:

### **7.3.1 Photographic Archival Record**

Prior to the commencement of any works at the site a Photographic Archival Recording (PAR) should be undertaken, including measured drawings, by a suitably qualified heritage professional and submitted to Council.

The report must consist of an archival standard photographic record of the on-site heritage item including exteriors and interiors, landscape setting, public domain views and visual relationship with the listing group.

The recording shall be undertaken in accordance with the guidelines for Photographic Recording of Heritage Items Using Film or Digital Capture (2006) prepared by the NSW OEH.

Such conclusion accords with the pre-DA advice received from Council's Heritage Officer in relation to the previous scheme on this site. Accordingly, Council can be satisfied that the proposal succeeds when assessed against the applicable heritage considerations and accordingly there is no statutory impediment to the granting of consent.

## **4.1.5 Acid Sulphate Soils**

Pursuant to clause 6.1 MLEP 2013 the site is mapped as Class 5 on the Acid Sulfate soils map. The application is accompanied by a geotechnical investigation, dated 21<sup>st</sup> December 2018, prepared by JK Geotechnics which contains the following commentary in terms of potential acid sulfate soils:

*Based on this assessment, EIS are of the opinion that ASS or potential ASS (PASS) are unlikely to be present at the site and that an ASS management plan is not required for the proposed development. This is based on the following lines of evidence:*

- The site is mapped as being within an area of “no known occurrence” of ASS based on the risk map prepared by the Department of Land and Water Conservation;*
- The site is within a Class 5 ASS risk area based on the Manly Council Local Environmental Plan 2013. Works that trigger a more detailed assessment of ASS or preparation of an ASS management plan for a Class 5 site include works within 500m of adjacent Class 1, 2, 3, or 4 land which are likely to lower the water table below 1m AHD on the adjacent land. The proposed development works do not trigger this requirement;*
- The site lies at an elevation of approximately RL45m AHD, within a geological landscape characterised by shallow sandstone bedrock outcrops. ASS and PASS are typically associated with low-lying, alluvial soils at elevations below RL10m AHD; and*
- The boreholes drilled for the geotechnical investigation did not identify any soils that were suspected to be ASS or PASS.*

#### **4.1.6 Earthworks**

Having regard to the clause 6.2 MLEP 2013 Earthworks considerations the application is accompanied by a geotechnical investigation prepared by JK Geotechnics.

Such report identifies excavation to a depth of approximately 2 metres and confirms that the development will not give rise to adverse environmental consequences subject to a number of construction recommendations. Compliance with the recommendations of this report should form a condition of development consent.

#### **4.1.7 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 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 are contextually appropriate having regard to the built form characteristics established by adjoining development.
- The property is located a considerable distance from the nearest foreshore area with intervening built form and landscape elements ensuring that the proposed development will not be readily discernible as viewed from the harbour, coastal foreshore or foreshore or any public place.
- 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 will not give rise to any actual or perceived impact on the Foreshore Scenic Protection Area having regard to the Clause 6.9 considerations.

#### **4.1.8 Essential Services**

Pursuant to clause 6.12 development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

We confirm that essential services and access are available to the proposed development without the need for augmentation.



## **4.2 Manly Development Control Plan 2013**

### **4.2.1 General Principles of Development**

#### **4.2.1.1 Streetscape (Residential Areas)**

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 proposed.
- The height, form and massing of the development is complimentary and compatible with that established by adjoining development and medium density development generally within the site's visual catchment.
- The height, bulk and scale of the development will not give rise to any adverse streetscape impacts.
- The proposed front setbacks are consistent with those established by adjoining development and development generally along Boyle Street.
- 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.

#### **4.2.1.2 Alterations or Additions to Heritage Items**

These DCP provisions have been effectively dealt with in the accompanying Statement of Heritage Impact prepared by Heritage 21 and section 4.1.4 of this report.

#### **4.2.1.3 Landscaping**

In accordance with the provisions of clause 3.3 of Manly DCP the application is accompanied by a landscape plans prepared by Site Image nominating appropriate ground level and planter box plantings to ensure the building sits within a landscape setting and appropriate visual privacy is maintained between adjoining development.

Such landscaping will provide for a significantly enhanced landscape outcome for the site and will soften the edges of the building form as viewed from the immediately adjoining residential properties. Such landscaping regime appropriately compensates for the proposed tree removal as detailed in the accompanying arborist report prepared by Tree Wise Men which contains the following summary in relation to tree impacts:

##### **4. Conclusions and Recommendations**

- 4.1. The proposed redesign has minimal additional impact on the assessed trees with no more trees requiring removal than with the earlier layout.
- 4.2. Eleven (11) trees are to be retained and two (2) are to be transplanted; one on and one off site.
- 4.3. The only ®Retention Value A tree (Tree 24) and five (5) of the eight (8) ®Retention Value B trees are to be retained thus reflecting a responsive development layout.
- 4.4. A Transplant feasibility report followed by a site-specific Transplant Method Statement are to be prepared by a professional tree transplant company for the transplantation of the Canary Island Date Palm, *Phoenix canariensis* (Tree 16) and Tree Aloe, *Aloidendron barberae* (Tree 21).
- 4.5. Tree 1 will require minor crown lifting. Trees 5 - 11 on neighbouring property will require pruning to the boundary to allow for the new landscape plantings. The owner's consent should be sought for this pruning.
- 4.6. The site security fencing is to include shade cloth to enhance screening during construction.
- 4.7. All pruning works should be undertaken by AQF Level 3 Arborists to AS4373-2007 *Pruning of amenity trees*.

No objection is raised to the recommendations contained within the original and addendum arborist reports forming appropriate conditions of development consent.

These provisions are satisfied.

#### **4.2.1.4      Amenity (Views, Overshadowing, Overlooking/ Privacy, Noise)**

The scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the site having regard to the height, proximity, and orientation of adjoining residential development. Particular attention has been given to ensuring that the development not only responds to its immediate built form context, and the form of development anticipated within the zone, but importantly, to ensure that appropriate residential amenity is maintained to the immediately adjoining residential properties in relation to solar access, views and privacy.

It has been determined that the proposed development will not give rise to any unacceptable/ non-compliant residential amenity impacts in terms of overshadowing as depicted on the accompanying shadow diagrams prepared by the project Architect. In this regard, we note that the principal living areas of all apartments at No. 10 Boyle Street are oriented to the south to take advantage of views with no shadowing impact to these south-facing windows or adjacent private open space balconies. The same can be said for the dwelling house at No. 8 Boyle Street. Existing compliant levels of solar access to the balance of surrounding properties is not compromised due to the maintenance of appropriate spatial separation.

In relation to privacy we confirm that a combination of appropriate window placement and design and the introduction of fixed privacy attenuation measures involving landscape planter boxes and fixed privacy screens (as detailed on the schedule of finishes) will collectively maintain appropriate visual privacy between properties. Such privacy is further augmented through the introduction of perimeter intervening landscaping which will further soften and screen the development as viewed from the adjoining properties. All primary balconies have been orientated to the street with the majority of habitable windows also orientated to the front and rear of the site.

In relation to potential view affectation we refer to the view loss diagrams prepared by the project Architect from available survey information (Plans A700(A) to A705(A)). Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140 as they relate to an assessment of view impacts, we have formed the following opinion:

**First Step - Assessment of views to be affected**

***An assessment of the view to be affected. The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.***

Comment: Having inspected the site and its surrounds to identified potential view corridors, and having regard to the submission previously received from a number of property owners within the adjoining residential flat building at No. 10 Boyle Street, it has been determined that the Town Houses 1 and 2 will impact district and distant harbour views currently available from the east facing bedroom windows (Bed 01 and Bed 02 as depicted on plans A201(A) to A204(A)) of the ground, first and second floor apartments in a south easterly direction across the subject site towards the harbour.

We note that the views currently obtained from the south facing principal living rooms and adjacent balcony will be preserved.

**Second Step - From what part of the property are the views obtained**

***The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant.***

*Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Comment: These views are available from the bedroom areas of the adjoining apartments from both a seated and standing position. The views are across side and/or rear boundaries and across multiple properties. They are highly vulnerable to view impacts from any complaint development on the subject site.

### **Third Step – Assessment of extent of the impact**

***The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.***

Comment: The extent of view impact is depicted on plans A700(A) to A705(A) with existing views available in an easterly direction across the rear portion of the subject site totally obscured from both bedroom windows at both ground and first floor level. That said, oblique views obtained from these windows are maintained to varying extent such that at no location are 100% of available views obscured. Scenic distant harbour views from both bedrooms on level 2 are unaffected.

We have formed the considered opinion that the view impact will range from negligible to moderate from these bedrooms areas however in the context of the totality of the views maintained, including 100% from the principal living and adjacent balcony areas of each apartment, we are of the opinion that the overall view loss, having regard to the view loss assessment criteria, is appropriately described as minor.

### **Fourth Step – Reasonableness of the proposal**

***The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.***

***Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.***

***If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.***

As previously indicated, minor areas of upper level roof and walls to townhouses 1 and 2 breach the height control however such breaching elements do not contribute, to any measurable extent, to the view loss from the adjacent bedroom areas.

Under such circumstances there can be no reasonable expectation for these bedroom views to be preserved.

Having reviewed the detail of the application we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140 and Davies v Penrith City Council [2013] NSWLEC 1141.

#### **4.2.1.5 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.

#### **4.2.1.6 Accessibility**

We confirm that accessibility throughout the site addressed in detail within the accompanying access report prepared by Credwell. The report details the developments performance when assessed against the applicable statutory considerations and confirms that compliance is able to be achieved subject to adoption of the recommendations contained within the document.

#### **4.2.1.7 Stormwater Management**

All stormwater will be disposed of as detailed in the accompanying Stormwater Management Report prepared by Woolacotts Consulting Engineers.

#### **4.2.1.8 Waste Management**

An appropriately sized and conveniently located bin storage areas have been provided and will not be discernible as viewed from the street.

The application is accompanied by a Waste Management Plan The report confirms that waste facilities and equipment have been designed in accordance with the Manly Council's Zero Waste Strategy 2005, Manly Development Control Plan 2013 and the applicable Australian Standards.

## **4.2.2 Residential Development Controls**

### **4.2.2.1 Dwelling Density and Subdivision**

The subject site is located within Residential Density – Area D3 which prescribes a maximum density of 1 dwelling per 250m<sup>2</sup> of site area. This equates to a maximum density of 7.0236 dwellings on the site.

The proposal provides for 8 dwellings representing a dwelling density of 1 dwelling per 219m<sup>2</sup> of site area and is accordingly non-compliant with the control. The stated objectives of this control are as follows:

- 1) To promote a variety of dwelling types and residential environments in the LGA.*
- 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.*
- 3) To promote a variety of allotments sizes, residential environments and housing density.*
- 4) To maintain character of the locality and streetscape.*
- 5) To maximise the use of existing infrastructure.*

We note that there is no direct relationship between dwelling density and building height, formal massing with density determined by how the available floor space is divided up and distributed across the site.

Having regard to the objectives of the control we note that the proposed development will satisfy a clear demand for 2 and 3 bedroom apartments/ town houses within this particular precinct with no additional impact associated with the dwelling density on existing vegetation, waterways, riparian land or topography. The proposed development provides for a variety of housing densities within the locality with the minor variation proposed able to be accommodated without augmentation of existing infrastructure. As previously indicated the density proposed has no influence on the 3 dimensional form and massing of the development which has previously been identified as being complimentary and compatible with the character of the locality and the streetscape.

Accordingly, Council can be satisfied that the development is consistent with the objectives of the control as they relate to dwelling density. Such variation succeeds pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

Strict compliance has been found to be both unreasonable and unnecessary under the circumstances.



#### **4.2.2.2 Height of Buildings**

The developments performance when assessed against the clause 4.3 Manly LEP height of buildings development standard has been detailed at clause 4.1.2 of this report. Council is aware that the Act provides that a DCP provision must not derogate from an LEP development standard and to that extent the primary control remains the 8.5 metre height standard within the LEP.

Notwithstanding, consideration has been given to the maximum wall height and storeys controls contained a clause 4.1 of Manly DCP. Given the variable topography of the land a maximum wall height of between 6.5 and 8 metres applies with the vast majority of building forms compliant with this control as depicted on the accompanying plans.

Accordingly, Council can be satisfied that the development is compliant with the control and associated objectives as they relate to building height and storeys.

#### **4.2.2.3 Floor Space Ratio**

This matter has been discussed in detail at section 4.1.3 of this report with the development fully compliant with the standard.

#### **4.2.2.4 Setbacks**

Pursuant to these provisions street front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity. Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. Finally, the distance between any part of a building and the rear boundary must not be less than 8 metres. The stated objectives of such controls are as follows:

- 1) *To maintain and enhance the existing streetscape;*
- 2) *To ensure and enhance local amenity by:*
  - *providing privacy;*
  - *providing equitable access to light, sunshine and air movement; and*
  - *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- 3) *To promote flexibility in the sighting of buildings;*

4) *To enhance and maintain natural features by:*

- *accommodating planting, including native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining open space lands and National Parks; and*
- *ensuring the provision of State Environmental Planning Policy number 19 – Urban Bushland are satisfied.*

5) *To assist in appropriate bushfire asset protection zones.*

Having regard to the clause 4.1.4 setback provisions we note that the proposed development maintains a complimentary and compatible above ground front setback to Boyle Street having regard to the setbacks established by adjoining development. We have formed the considered opinion that the proposed development by virtue of its front setback will not be perceived as inappropriate or jarring in a streetscape context.

In relation to the rear (southern) setback to town houses 1 and 2 we confirm that the required 8 metre setback is maintained at Lower Ground 1 and Lower Ground 2 levels with a minor encroachment to the ground floor level planter box of 960mm. We note that the trafficable area of the ground floor level balcony maintains the required 8 metre setback to the rear boundary.

Given the minor, non-trafficable nature of the breaching planter box element, and the fact that this element prevents persons standing within 8 metres of the rear boundary, we considered strict compliance to be both unreasonable and unnecessary under the circumstances. Privacy and landscape outcomes are not compromised and to that extent we consider the objectives of the control to be satisfied notwithstanding the minor breach of the numerical control.

Consistent with the provisions of section 4.15(3A)(B) of the Act that prescribe that Council must apply some flexibility in applying DCP provisions particularly in circumstances where it can be demonstrated that the objectives of the control are achieved we are satisfied that strict compliance with the rear setback control is both unreasonable and unnecessary under the circumstances.

In relation to side setbacks we confirm that small areas of ground floor east and west facing wall and roof elements to Town Houses 1 and 2 breach the side boundary setback control as do the upper wall elements to Unit 7 where the setbacks established by the existing heritage building are maintained. The only other minor breaches occur to the upper northern roof and wall edge to Unit 6 (in part) and the eastern upper level wall and roof edge to Unit 5. Having regard to the objectives of the control we make the following comments:

- The areas of non-compliance are appropriately described as minor involving small sections of first floor upper wall and roof elements.
- The 'strictly compliant' envelope, involving walls being setback by increased dimensions as well height increases, in a stepped form (referred to colloquially as a 'wedding cake' form) from the side boundaries is not a desirable urban form. The side setbacks adopted present minor upper level encroachments with the development having a similar bulk and scale to a fully compliant development and in urban design/planning terms provides for a more superior outcome than a strictly compliant 'wedding cake' form. The visible bulk and scale of the development is acceptable.
- The breaching areas of the building are well setback from the street frontage and are in locations where such setbacks do not give rise adverse streetscape, view loss, overshadowing or unacceptable privacy impacts.
- The outcome is a building of exceptional design quality able to respond to its immediate built form context and associated constraints in relation to heritage, privacy, solar access and views.
- The highly articulated side boundary setbacks and pavilion style nature of the development maintains the rhythm of development and building setbacks established by adjoining development and provide appropriately for spatial separation, landscape opportunity, privacy, solar access and view sharing.
- The proposed development, by virtue of its side setbacks and building design, will maintain appropriate levels of visual and aural privacy to adjoining development as previously detailed in this report.
- The proposed development, by virtue of its side setbacks and building design, will provide appropriate access for adjoining development to light, sunshine and air movement.

- The proposed development, by virtue of its side setbacks and building design, will achieve a view sharing outcome with adjoining development as previously detailed within this report. The proposal will not give rise to any adverse public view affectation.
- The proposed front and side boundary setbacks provide appropriately for landscaping around the perimeter of the development.
- A variation to the control will promote flexibility in the siting of buildings with the development not giving rise to any adverse natural environmental impacts. We note that the subject site is not bushfire prone.

Consistent with the provisions of section 4.15(3A)(B) of the Act that prescribe that Council must apply some flexibility in applying DCP provisions particularly in circumstances where it can be demonstrated that the objectives of the control are achieved we are satisfied that strict compliance is both unreasonable and unnecessary under the circumstances.

Accordingly, the site specific and contextually responsive setbacks are considered entirely appropriate under the circumstances.

#### **4.2.2.5 Open Space and Landscaping**

Pursuant to clause 4.1.5 development on the land shall provide a minimum open space of 55% of the site area of which 35% shall be landscaped area. A maximum of 40% of the required open space can be above ground level. A minimum of 12m<sup>2</sup> of private open space must be provided for each apartment with a minimum dimension of 2 metres.

It has been determined that the development provides for 965.6sqm of total open space representing a compliant quantum of 55% of the site area. We confirm that the development provides an at ground deep soil landscaped area of 220sqm (as defined) representing 22.7% of the required 965.6sqm of total open space. When all landscaping proposed on the site is included (such as above ground landscape elements) the development provides for a total landscaped of 354 square metres or 36.65 of the required total open space. These areas are depicted on landscape plan 502(A) prepared by Site Image.

Accordingly, whilst the proposal complies with the total open space requirement the proposal does not technically comply with the landscaped area control.

Having regard to the stated objectives of the control we are satisfied that the proposal provides for an appropriate building form, broken into a series of pavilions with a compliant open space area achieved. The landscaped areas provide for suitable perimeter landscape treatments with the buildings sitting within a landscaped setting. The inclusion of above ground landscape treatments provides for the required quantum of landscaped area with such treatments assisting to soften and screen the edges of the development in accordance with the objectives of the control. We also note that the majority of the existing dry stack stone wall located along the eastern boundary of No. 307 Sydney Road is being retained as a compliant of the landscaping proposed.

Consistent with the provisions of section 4.15(3A)(B) of the Act that prescribe that Council must apply some flexibility in applying DCP provisions particularly in circumstances where it can be demonstrated that the objectives of the control are achieved we are satisfied that strict compliance is both unreasonable and unnecessary under the circumstances.

In relation to private open space we note that all apartments have well in excess of the 12sqm minimum requirement affording superior levels of amenity for all apartments. Under such circumstances, we have formed the considered opinion that the proposal provides appropriately for open space and landscaping.

#### **4.2.2.6 Parking, Vehicular Access and Loading**

These provisions are addressed in the Traffic and Parking Assessment Report prepared by Transport and Traffic Planning Associates. Such report confirms a carparking demand of 14 car spaces comprising 8 residential and 2 visitor spaces. The proposal provides a total of 17 spaces and as such exceeds the minimum parking control.

The report concludes that the proposed parking facilities satisfy the relevant requirements specified in both Council's Parking Code as well as the Australian Standards and it is therefore concluded that the proposed development will not have any unacceptable parking or traffic related implications.

### 4.2.3 Compliance Table

Site Area – 1755.9sqm	Control	Proposed	Compliance
<b>Manly Local Environmental Plan 2013</b>			
Height of Buildings	Max 8.5m overall	Maximum 9.675m	NO Clause 4.6 variation well founded
Floor Space Ratio	Max 0.6:1	0.63:1	NO Clause 4.6 variation well founded
<b>Manly Development Control Plan 2013</b>			
Dwelling Density	1 dwelling/ 250sqm	1 dwelling/ 219sqm	NO Acceptable on merit
Front Setback	Maintain consistent setback	Maintains consistent setback	YES
Side Setbacks	1/3rd wall height.	Non-compliant various locations	NO Complimentary and compatible and satisfies objectives of control
Wall and Building Height	Max wall height 6.5m 2 storey form	Generally compliant 2 storeys	YES YES
Open Space	Min 55% of the site area (965.6sqm metres) of 35% (337.96 square metres) is to be soft landscaped	965.6 square metres or 55%  Landscaped area is 220 square metres or 22.7% (as defined in MDCP) however the total area of the site comprising soft landscaped treatments is 354 square metres or 36.6% of required total open space	YES  NO Acceptable on merit
Private Open Space	Min 12sqm / dwelling	>12sqm/ dwelling	YES
Carparking	Min 14 spaces	17 spaces provided	YES

#### 4.3 State Environmental Planning Policy No.55 – Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land.

Clause 7 of SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to carrying out of any development on that land. In this regard, the likelihood of encountering contaminated soils on the subject site is extremely low given the following:

- The subject site and surrounding land are not currently zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55.
- The subject site does not constitute land declared to be an investigation area by a declaration of force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

Given the above factors no further investigation of land contamination is warranted at this time. The site is suitable in its present state for the continuation of the existing residential use of the land. Therefore, pursuant to the provisions of SEPP 55, Council can consent to the carrying out of development on the land.

#### 4.4 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 italics*) to help identify the issues to be considered have been prepared by the Department of Urban Affairs and Planning. The relevant issues are:

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

The proposal is permissible and generally in accordance with the development standards contained within Manly Local Environmental Plan 2013 (MLEP 2013) as they relate to this form of development on this particular site and the intent of built form guidelines contained within Manly Development Control Plan 2013 (MDCP 2013) as reasonably applied to the subject development.

The identified non-compliances with MDCP 2013 dwelling density, setback and landscaped open provisions have been acknowledged and appropriately justified having regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of controls/standards for dealing with that aspect of the development.

**The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economical 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?***

The proposed development is of high architectural quality and will significantly improve the streetscape. The development provides an appropriate response to the form and character anticipated in the R1 General Residential zone whilst ensuring that the development does not result in any unacceptable impacts on adjoining residential development in terms of loss of solar access, views, acoustic or visual privacy.

***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 throughout this report. In summary, the development will not result in any unreasonable loss of solar access to the adjoining residential properties nor will it result in any acoustic, privacy or visual privacy impacts that are beyond that which can reasonably be expected within a medium density urban environment.



### ***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 building is conveniently located within short walking distance of the Balgowlah Local Centre and the Stockland Balgowlah Shopping Centre. The immediate proximity to public transport will assist in minimising traffic generation and dependency on motor vehicles.

The development provides appropriately for car parking as detailed within this report.

### ***Public domain***

The development will contribute positively to the public domain.

### ***Utilities***

Existing utility services will adequately service the development.

### ***Flora and fauna***

The site does not contain any significant flora or fauna with landscaping enhanced as a component of the works proposed.

### ***Waste***

Residential waste collection is required for the proposed development. In this regard appropriate provision has been made for the waste storage and collection as detailed in this report.

### ***Natural hazards***

The site is not affected by any known hazards.

### ***Economic impact in the locality***

The proposed development will generate temporary employment during construction and through the employment of building and strata managers for the building.

### ***Site design and internal design***

#### ***i) Is the development design sensitive to environmental conditions 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 policy controls.

#### ***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 building will comply with the provisions of the Building Code of Australia as detailed in the Building Code of Australia assessment report prepared by 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 site safety or environmental impacts will arise during construction.

**The suitability of the site for the development.*****Does the proposal fit in the locality?***

- ***are the constraints posed by adjacent developments 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?***

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

***Are the site attributes conducive to development?***

The site being of moderate grade, adequate area, and having no special physical or engineering constraints is suitable for the proposed development.

**Any submissions received in accordance with this Act or the regulations.**

It is envisaged that council will take into consideration any submissions made in relation to the proposed development.

**The public interest.**

It is considered that the public interest is best served in providing certainty in the planning process through encouraging development of good design that satisfies the desired built form outcomes as reflected through the reasonable application of the adopted legislative framework. In this regard, the development is consistent with the objectives of the relevant planning provisions, despite variations to the numeric controls, with the visual amenity of the area significantly enhanced through the introduction of building of exceptional design quality and amenity. Under such circumstances approval of the development is in the public interest.

## 5.0 CONCLUSION

The proposal is permissible and generally compliant with the development standards contained within Manly Local Environmental Plan 2013 (MLEP 2013) as they relate to this form of development on this particular site and the intent of built form guidelines contained within Manly Development Control Plan 2013 (MDCP 2013) as reasonably applied to the proposed development.

The architect has responded to the client brief to provide a site-specific design response which takes advantage of the properties locational attributes whilst respecting the environmental characteristics of the site and the amenity of adjoining development. Particular attention has been given to ensuring that the heritage significance of the existing heritage item is maintained through the adoption of a highly articulated and modulated pavilion style development form which steps down the site in response to topography.

Careful consideration has also been given to maintaining appropriate residential privacy through a combination of building design, sensitive use and location of fenestration and the strategic placement of secondary intervening landscape attenuation treatments. Further, the accompanying view loss diagrams demonstrates that a view sharing outcome is maintained to the apartments within the residential flat building at No. 10 Boyle Street having regard to the view sharing principles established by the NSW Land and Environment Court in the matter of *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140.

Having regard to the issues previously raised by adjoining property owners and Council staff in relation to DA2018/0355 we have formed the considered opinion that the current development, the subject of this report, achieves the following outcomes:

- The development will not give rise to any unacceptable streetscape or heritage conservation impacts;
- The development maintains a contextually appropriate spatial relationship with surrounding development with appropriate residential amenity maintained in relation to privacy, solar access and view sharing;
- The height, bulk and scale of the development (as reflected by FSR) is contextually appropriate with the highly articulated pavilion style nature of the proposal ensuring that the proposed floor space is appropriately distributed across the site reflecting a detached style housing built form typology with a landscaped setting;
- The development provides appropriately for vehicular access and parking with a waiting bay provided adjacent to Boyle Street and the required quantum of parking provided onsite. The only stacked (tandem) spaces are allocated to the same residential apartment being an acceptable circumstance on a constrained allotment;

- The development incorporates a permanent waste storage and collection area for Units 1, 2, 3, 4, 6 and 7 within 6 metres of the Boyle Street frontage with a waste collection area for Units 5 and 8 located within 6 metres of the Sydney Road frontage; and
- The proposal provides appropriately for landscaping and stormwater management.

Whilst the proposal requires the consent authority to give favourable consideration to minor building height and FSR variations, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the attainment of an appropriate contextual fit, site topography and the general paucity of streetscape, heritage conservation and residential amenity impacts. Sufficient environmental planning grounds existing to support the variations proposed with the accompanying clause 4.6 variation requests well founded.

The identified non-compliances with MDCP 2013 dwelling density, setback and landscaped area provisions have been acknowledged and appropriately justified having regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of controls/ standards for dealing with that aspect of the development.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is my opinion that the application should be granted development consent subject to conditions.

**Boston Blyth Fleming Pty Limited**



**Greg Boston**  
B Urb & Reg Plan (UNE) MPIA  
**Director**