

# **STATEMENT OF ENVIRONMENTAL EFFECTS**

Proposed Shop Top  
Housing Development  
& Strata Subdivision

17-19 Sydney Road,  
Manly

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# Statement of Environmental Effects

## Proposed Shop Top Housing Development and Strata Subdivision



### 17-19 Sydney Road, Manly

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**ANNEXURE 1 – CLAUSE 4.6 REQUEST – BUILDING HEIGHT**

## 1 Introduction

This Statement of Environmental Effects (SEE) has been prepared in support of a development application proposing the demolition of the existing structures and the construction of a shop top housing development and Strata subdivision of the resultant development at 17-19 Sydney Road, Manly. The application proposes 364.5m<sup>2</sup> of commercial floor space at the ground and basement levels, with 11 residential apartments throughout the upper 3 floors. The application also includes basement storage, all associated infrastructure and a through-site link between Market Place and Sydney Road.

MHN Design Union Pty Ltd, the project architects, have responded to the client brief to design a contextually responsive building of exceptional quality with high levels of amenity for future occupants of both the commercial floor space and the residential apartments. In this regard, the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this site having regard to the height, scale, proximity, use and orientation of surrounding development and the flood affectation of the land.

In addition to this SEE, the application is also accompanied by the following:

- Architectural Plans by MHN Design Union Pty Ltd
- Design Report and Design Verification Statement by MHN Design Union Pty Ltd
- Survey by Bee & Lethbridge Pty Ltd
- Landscape Plans by Conzept Landscape Architecture
- Shadow Diagrams by Cad Draft P/L
- Flood Report by S&G Consultants Pty Limited
- Access Report by Design Confidence (Sydney) Pty Ltd
- Adaptable Housing Assessment Report by Design Confidence (Sydney) Pty Ltd
- BCA Design Assessment Report by Design Confidence (Sydney) Pty Ltd
- Stormwater Management Plans by Smart Structures Australia
- Geotechnical Report by Crozier Geotechnical Consultants
- Quantity Surveyors Report by Berco Consulting
- BASIX Certificate by BASIX Certificate Centre
- Heritage Impact Statement by Weir Phillips
- State 1 Preliminary Site Investigation by Edwards Blasche Group Pty Ltd
- Waste Management Plan by Elephants Foot Consulting Pty Ltd
- Draft Strata Plan by Copland C. Lethbridge

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

- Environmental Planning and Assessment Act 1979 (**EP&A Act**),
- Manly Local Environmental Plan 2013 (**MLEP 2013**),
- Manly Development Control Plan 2013 (**MDCP 2013**),
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (**SEPP 65**)
- Apartment Design Guide (**ADG**)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Resilience and Hazards) 2021,

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the EP&A 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 accompanying plans depict a high quality and contextually appropriate built form outcome that responds to adjacent and nearby development and the surrounding environment. The proposed development is a suitable design solution in light of the zoning of the land and the context of the site.
- The apparent height and bulk of the proposed development is compatible with that of surrounding development, and consistent with the desired future character of the locality.
- 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 apparent size of the proposed development offensive, jarring or unsympathetic in the streetscape context.
- Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height development standard, strict compliance has been found to be unreasonable and unnecessary in this instance as the development is otherwise consistent with the objectives of the development standard and sufficient environmental planning grounds exist to support the variation (as outlined in the attached Clause 4.6 Variation Request).
- The non-compliance with the car parking and adaptable housing requirements prescribed by MDCP 2013 has been acknowledged and appropriately justified having regard to the associated objectives. Such variation succeeds pursuant to section 4.15(3A)(b) of the EP&A 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.

- The proposal will provide a notable increase to the supply of residential floor space whilst maintaining an appropriate allocation of commercial floor space on a site ideally suited to a mixed use development.
- The proposed development has been amended in response to the pre-lodgement feedback from Council at the meeting on 22 July 2021 and the subsequent Pre-lodgement Meeting Notes.

## 2 Site Analysis

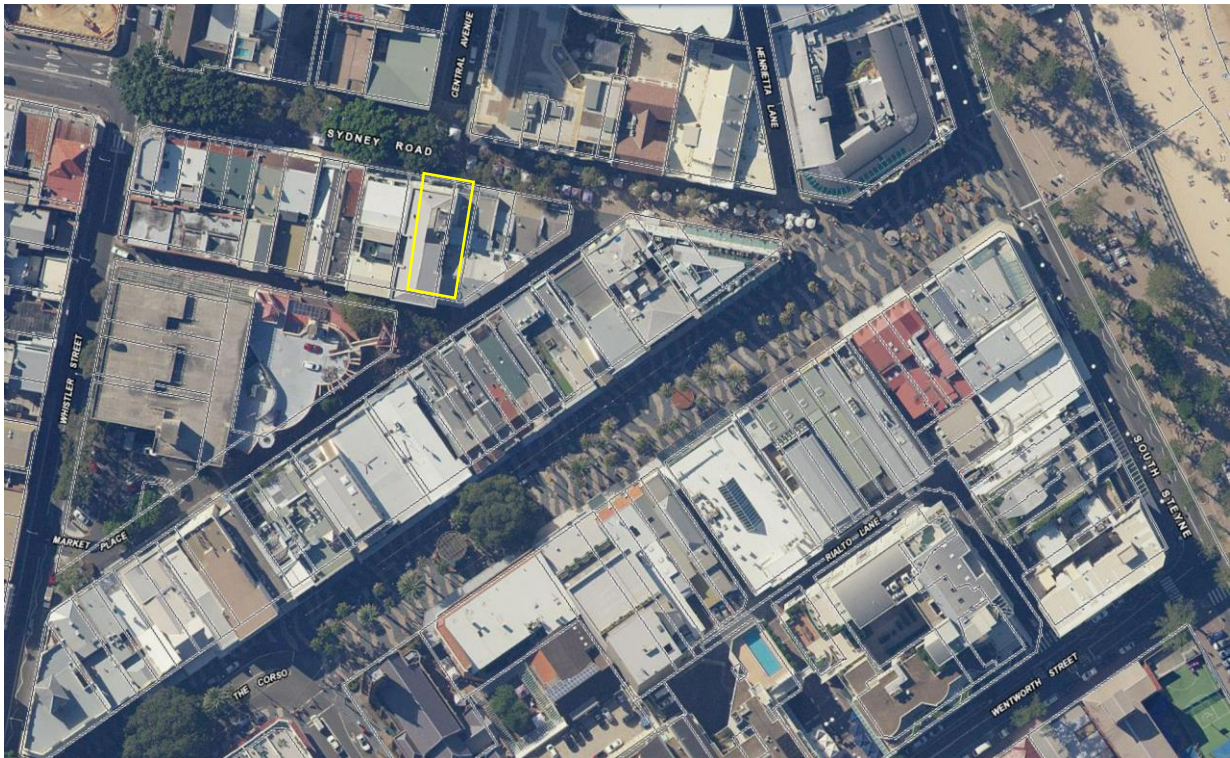
### 2.1 Site Description and location

#### 2.1.1 The Site

The subject property is legally described as Lot 20 in Deposited Plan 235980 and is referred to as 17-19 Sydney Road, Manly. The site is generally rectangular in shape, with a 12.19m wide frontage to Sydney Road to the north, a 12.18m wide frontage to Market Place to the south, a maximum depth of 30.45m and a total area of 370.5m<sup>2</sup>.

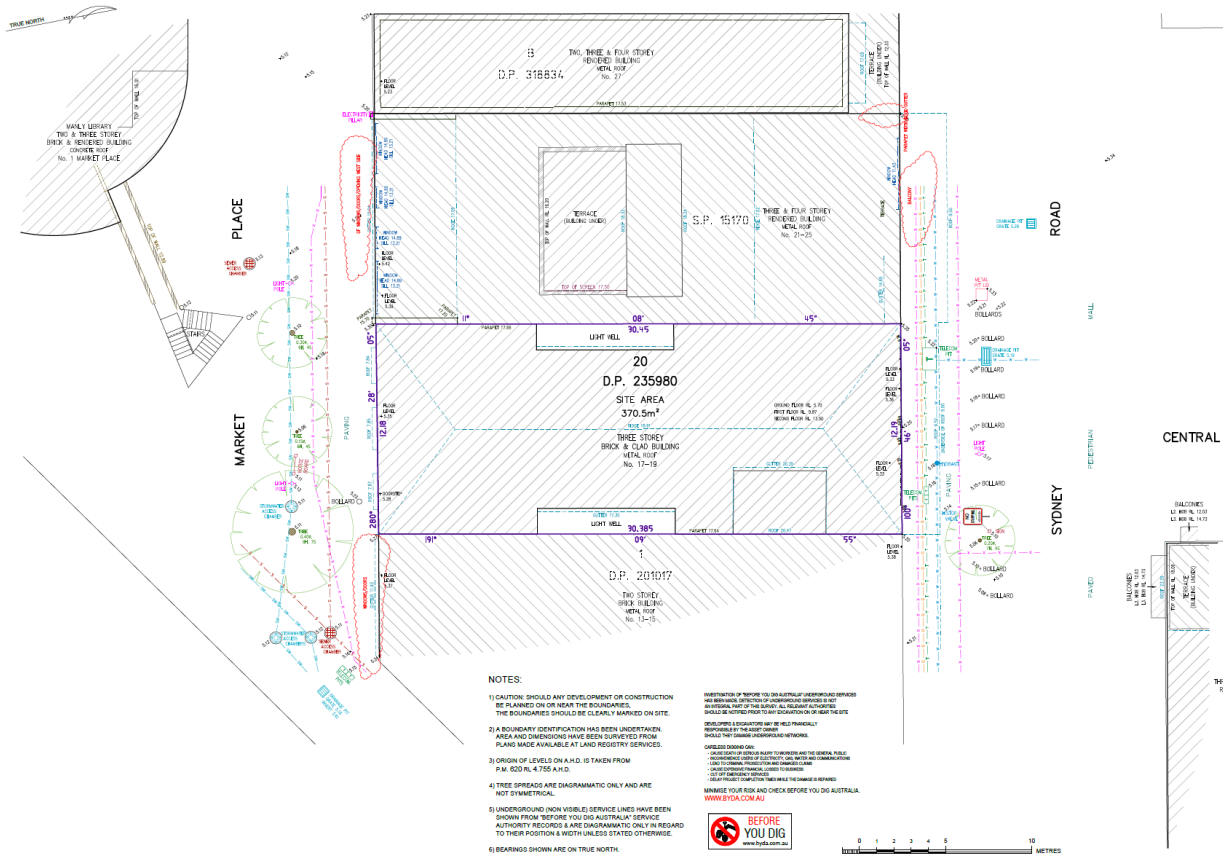
The site is generally flat and contains an existing three storey commercial development with a basement beneath the southern side of the building. The site is affected by Low and Medium Risk flooding.

The site is highlighted in the aerial image in Figure 1 below.



**Figure 1: Aerial photograph of the site**  
**Source: Six Maps**

The physical and topographical characteristics of the site are depicted on the site survey extract at Figure 2, and the site images at Figures 3 and 4.



**Figure 2: Site survey extract**



**Figure 3: Subject property as viewed from Sydney Road**





**Figure 4: Subject property as seen from Market Place**

### 2.1.1 The Locality

The site is located within the B2 Local Centre Zone, as shown on the Zoning Map of MLEP 2013 (Figure 5).

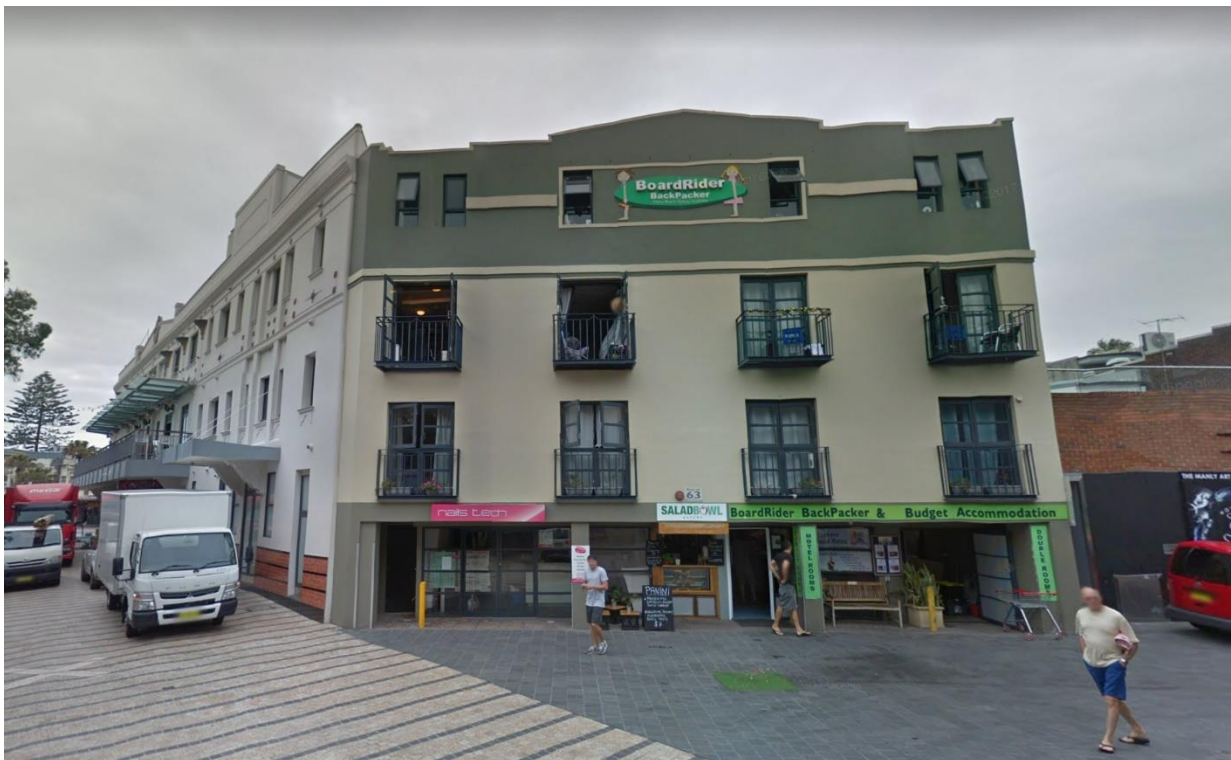


**Figure 5: Extract of Zoning Map of MLEP 2013**

The surrounding area comprises development of varying use, scale, density, age and architectural style. A visual representation of the surrounding development, including development in the wider B2 zone is shown in Figures 6 and 7, below.



**Figure 6: View along Central Avenue in a northerly direction**



**Figure 7: Development at the intersection of Sydney Road and Central Place**

## 3 Description of Proposed Development

### 3.1 Details of the proposed development

The proposed development is depicted in the architectural plans set prepared by MHN Design Union Pty Ltd. This application provides for the following built form and land use outcomes:

- Demolition of the existing site structures, with the retention of the existing basement
- Construction of a 4 storey shop top housing development over 1 basement level, comprising:
  - Basement: retention of the existing basement to provide commercial waste store, residential storage, electrical and comms room, pump room, residential waste store, grease trap, stair access and new basement floor space comprising commercial floor space (149.3m<sup>2</sup>) associated with Tenancy 01, and lift access,
  - Ground Floor: commercial floor space (215.2m<sup>2</sup>) with Tenancy 01 presenting to Sydney Road and Tenancy 02 presenting to Market Place, through site link, garbage holding area, stair and lift access, and awnings to both street frontages,
  - Level 1: 4 x 1 bedroom apartments, central lobby, stair and lift access,
  - Level 2: 4 x 1 bedroom apartments, central lobby, stair and lift access,
  - Level 3: 2 x 1 bedroom apartments, 1 x 2 bedroom apartment, central lobby, stair and lift access,
  - Roof: solar panels
- Landscaping, and
- Stormwater infrastructure,

The proposed development presents as a three storey building to both Market Place and Sydney Road, with the front facades designed to match the height of the existing building. The fourth storey is setback from both street frontages and will not be readily visible from the public domain, particularly noting the narrow nature of the streets.

The proposed development demonstrates a superior architectural design solution for the site, providing high levels of amenity for future occupants of the development. The proposal provides a skilfully designed through-site pedestrian link, that is naturally lit and ventilated from the central courtyard and the openings at both the north and south facades.

The application is supported by a design verification statement by the project architects, inclusive of a detailed response to the design criteria of SEPP 65 and the objectives of the ADG.

The architectural design is complemented by upper level plantings, as shown on the Landscape Plans prepared by Conzept Landscape Architecture. The proposed landscaping creates a central oasis within the building and will improve air quality within the courtyard space.

The acceptability of the access and adaptable housing arrangements is detailed within the accompanying Access Report and Adaptable Housing Assessment Report prepared by Design Confidence (Sydney) Pty Ltd.

The proposal's readiness to comply with the relevant provisions of the BCA is detailed in the BCA Compliance Report prepared by BCA Design Assessment Report by Design Confidence (Sydney) Pty Ltd

Stormwater is to be collected from the site and directed to Council's stormwater pit in Market Place. The proposed stormwater management solution developed for the site is detailed in the Stormwater Plans prepared by Smart Structures Australia.

In light of the excavation proposed to accommodate the basement, the application is supported by a Geotechnical Report by Crozier Geotechnical Consultants, which includes consideration of acid sulfate soils.

A Flood Risk Management Report, prepared by S&G Consultants Pty Limited, has been prepared in response to the low and medium risk flood affectation of the land.

The site is located within the Town Centre Conservation Area and in the vicinity of a number of heritage items. The suitability of the proposal with regard to the local heritage significance of the conservation area and nearby items is considered and positively confirmed in the Heritage Impact Statement prepared by Weir Phillips.

Finally, the application is supported by a Waste Management Plan prepared by Elephants Foot Consulting Pty Ltd detailing how waste is to be managed during construction and throughout the life of the development.

## 4 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 of the EP&A Act, 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.

### 4.1 Manly Local Environmental Plan 2013

#### 4.1.1 Zoning

MLEP 2013 applies to the subject site and this development proposal. The subject site is located within the B2 Local Centre zone and the proposed commercial building is permissible with consent.

The proposal is consistent with the stated objectives of the B2 Local Centre zone, as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment: The proposed development provides 364.5m<sup>2</sup> of commercial floor space to contribute to the existing range of retail, business, entertainment and community uses within the Manly Town Centre.

- *To encourage employment opportunities in accessible locations.*

Comment: The subject site is in a highly accessible location, within walking distance of Manly Wharf and a number of bus stops serviced by differing bus routes.

- *To maximise public transport patronage and encourage walking and cycling.*

- Comment: The proximity of the site to public transport options and nearby pedestrian and cycle pathways, combined with the generally flat nature of the land within the Manly Town Centre, will actively encourage public transport patronage and walking and cycling. This is further encouraged by the specific design solution proposed, which provides bicycle parking within the basement.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment: The subject site adjoins land of the same B2 zoning.

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

#### 4.1.2 Height of buildings

Pursuant to the Height of Buildings Map of MLEP 2013, the site has a maximum building height limit of 12m.

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

The proposed development reaches a maximum height of 18m, measured from the finished floor level of the existing excavated basement to the top of the skylight over Unit 204.

The proposed development has a perceived maximum height of 14.2m, measured from the finished floor level of the ground floor and adjacent footpaths to the top of the lift overrun.

The maximum building height prescribed by clause 4.3 of MLEP 2013 is a development standard, as defined by the EP&A Act. Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied.

The objectives of clause 4.6 of MLEP 2013 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.*

Having regard to these provisions, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the ability to satisfy the objectives of the zone and the objectives of the development standard. Sufficient environmental planning grounds exist to support the variation proposed, as outlined in the accompanying clause 4.6 variation request at **ANNEXURE 1**.

#### 4.1.3 Floor space ratio

Clause 4.4(2) of MLEP 2013 prescribes a maximum floor space ratio of 3.0:1 with respect to the subject site. The 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.*

The proposed development has a gross floor area of 1020.7m<sup>2</sup> and a floor space ratio of 2.8:1, consistent with the provisions of this clause.

Note: In accordance with the provisions of clause 4.2.1.1 of MDCP 2013, the area of the through-site link has been excluded from the calculation of gross floor area for the purpose of determining the FSR calculation.

#### 4.1.4 Heritage conservation

The site is located at the south-eastern most point of the Town Centre Conservation Area and is in the vicinity of a number of sites of local heritage significance. The application is supported by a Heritage Impact Statement by Weir Phillips which concludes:

*The proposed works will have an acceptable impact on the ability to understand the established significance of the Town Centre Heritage Conservation Area Heritage Conservation Area.*

*The impact of the proposed works on the Conservation Area will be minor, the proposal complies with the townscape requirements set out in the Manly DCP 2013 and the increase scale and massing are mitigated by the height and scale of the existing and adjacent buildings.*

*The proposal complies with the townscape requirements of Section 4.2.5.1 in the Manly DCP 2013 as follows:*

- *Maintains the pattern of narrow fronted buildings and incorporates modulation, by the inclusion of balconies on the Market Place elevation, to reduce the perceived bulk of the street wall.*
- *The building will not adversely dominate the height of the corner buildings in the same block or adjoining buildings, as the form will appear largely as existing due to the proposed upper-level setback of the additional level.*
- *There is no consistent architectural detail, parapet height or window heights in this section of Sydney Road. The overall height of the building relates to the adjacent buildings. No views to the Church will be interrupted.*
- *The proposal will maintain the existing pattern of openings providing a well-designed modern building with a well-articulated elevation to Sydney Road, which provide improved amenity for local residents.*

Overall, Council can be satisfied that the proposed development is consistent with the requirements and objectives of clause 5.10 of MLEP 2013.

#### 4.1.5 Flood planning

The site is identified as being prone to low and medium risk flooding, as identified on Council's Flood Risk Hazard Map of MDCP 2013. The application is supported by a Flood Risk Management Report by S&G Consultants Pty Limited which confirms that the proposed development is consistent with the design requirements of clause 5.4.3 of MDCP 2013.

As such, Council can be satisfied that the development is consistent with the requirements and objectives of clause 5.21 of MLEP 2013, in so far as the development-

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourses.*

#### 4.1.6 Acid sulfate soils

The site is located within Class 4 as shown on the Acid Sulfate Soils Map of MLEP 2013. The site is supported by a Geotechnical Report by Crozier Geotechnical Consultants which includes an assessment of acid sulfate soils. The report confirms that based on their detailed



investigation, acid sulfate soils do not appear to be present at the site and an Acid Sulfate Soils Management Plan is not required.

#### 4.1.7 Earthworks

The consent authority can be satisfied that the excavation proposed to accommodate the basement will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, consistent with the provisions of clause 6.2 of MLEP 2013.

The application is supported by a Geotechnical Report by Crozier Geotechnical Consultants which confirms that the proposed excavation can be undertaken safely, with minimal risk to adjoining properties.

#### 4.1.8 Stormwater management

Detailed Stormwater Management Plans prepared by Smart Structures Australia accompany the application and demonstrate a suitable stormwater management solution for the site. The consent authority can be satisfied that the proposal is consistent with the provisions of clause 6.4 of MLEP 2013.

#### 4.1.9 Foreshore scenic protection area

Clause 6.9 of MLEP 2013 identifies matters that must be considered with respect to foreshore scenic protection before consent is granted to the proposed development. These matters are considered, as follows:

- (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,*

Comment: The proposed development will not overshadow the foreshore. Further, noting the absence of any apparent public view corridors across the site, the proposed development will not impact upon views of the foreshore from any public places.

- (b) *measures to protect and improve scenic qualities of the coastline,*

Comment: The proposed development is a high-quality architectural design response that will positively contribute to the scenic quality of the area.

- (c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*

Comment: The proposed has been designed to sensitively respond to the context of the site. The proposed development has also had appropriate regard for the amenity of adjoining properties, ensuring that resultant impacts upon sunlight, visual privacy and views are minimal and not unreasonable.

- (d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment: The proposed development will not result in any conflict between land-based and water-based coastal activities.

The consent authority can be satisfied that the proposal is consistent with the objectives and requirements of clause 6.9 of MLEP 2013.

#### 4.1.10 Active street frontages

Both the Market Place and Sydney Road street frontages are identified on the Active Street Frontages Map of MLEP 2013. Pursuant to clause 6.11 of MLEP 2013, development consent must not be granted to the erection of a building unless the consent authority is satisfied that the building will have an active street frontage after its erection. An “active street frontage” is said to be achieved if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises.

Council can be satisfied that the building has active street frontage to both Market Place and Sydney Road, with commercial floor space opening to both streets, excluding the portion of the façades associated with the fire access stairs, bin holding area and the through-site link.

#### 4.1.11 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.*

The consent authority can be satisfied that these services will be available prior to occupation, and conditions of consent can be imposed in this regard.

#### 4.1.12 Design excellence

In accordance with the provisions of clause 6.13 of MLEP 2013, development consent must not be granted for the erection of a new building on land within the B2 Local Centre zone unless the consent authority considers that the development exhibits design excellence.

Clause 6.13(4) of MLEP 2013 prescribes a series of matters to be considered when determining whether the development exhibits design excellence. These matters are considered, as follows:

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

Comment: The proposed development does not result in any unreasonable or excessive overshadowing of nearby public places.

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

Comment: The proposed development is a high-quality architectural design that will positively enhance both the Sydney Road and Market Place streetscapes.

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

Comment: The proposed development provides a skilfully designed through-site link, providing both a physical and visual connection between Sydney Road and Market Place. The entrances to the through-site link and the individual components of the building are clearly defined and are appropriately located with respect to the context of the site.

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

Comment: The proposed development does not impede pedestrian movement along Sydney Road or Market Place. Rather, the proposal provides improved pedestrian amenity and circulation by virtue of the through-site link.

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

Comment: The commercial floor space at the ground floor will provide casual surveillance of both Sydney Road and Market Place. The lobby of the residential component of the development is strategically located midway along the through site link, providing light and surveillance of the proposed pedestrian through-site link. The upper floor residential balconies also provide enhanced casual surveillance of the pedestrian thoroughfares.

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

Comment: The proposed development has been sensitively designed to respond to the surrounding context, specifically the heritage significance of the Town Centre Conservation Area and nearby items of local heritage significance.

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

Comment: The site does not contain any significant natural features.

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

Comment: The proposed development provides a new view corridor from Market Place to Sydney Road and Central Road beyond, by virtue of the proposed through-site pedestrian link.

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

Comment: The proposed building is a superior design response that will significantly enhance the architectural quality of built form in the Manly Town Centre.

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

Comment: The project has been underpinned by detailed site analysis that has informed the function and expression of each element of the building. The proposed building is thermally efficient and sustainable, providing a high level of amenity for future occupants of the spaces proposed.

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

Comment: The building is to be serviced from Sydney Road, consistent with current servicing of the site and surrounding properties.

As such, we are confident that Council will find that the development exhibits design excellence, consistent with the provisions of clause 6.13 of MLEP 2013.

#### 4.1.13 Gross floor area in Zone B2

Clause 6.16(3) of MLEP 2013 prescribes that development consent must not be granted to the erection of a building on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises. Council can be satisfied in this regard, noting that 35.7% of the floor space of the building is to be used as commercial premises.

Clause 6.16(4) of MLEP 2013 prescribes that development consent must not be granted for development on land to which this clause applies if the gross floor area of any retail premises on the land would exceed 1,000 square metres. The commercial component of the building is limited to a gross floor area of 364.5m<sup>2</sup>.

Council can be satisfied that the proposed development is consistent with the provisions of clause 6.16 of MLEP 2013.

## 4.2 Manly Development Control Plan 2013

### 4.2.1 Townscape (Local and Neighbourhood Centres)

The proposed development is consistent with the requirements and objectives of clause 3.1.3 of MDCP 2013, as follows:

- The proposed building has been designed to sensitively respond to the context of the site, to ensure that the bulk of the development does not detract from the significance of the Town Centre Conservation Area or nearby items of local significance.
- The height of the development as it presents to Market Place and Sydney Road responds to the overall parapet height of the existing building.
- The proposed development provides a through-site link between Market Place and Sydney Road.
- An accessible path of travel is provided into and through the building.
- The front setback of the development is responsive to the setbacks of adjoining and nearby development, to positively contribute to the established streetscape setting.

### 4.2.2 Heritage Consideration

The site is located at the south-eastern most point of the Town Centre Conservation Area and is in the vicinity of a number of sites of local heritage significance. The application is supported by a Heritage Impact Statement by Weir Phillips that concludes that the proposed development is appropriate with respect to the requirements and objectives of MLEP 2013 and MDCP 2013, and that the proposed development will not have an adverse impact upon the heritage significance of the Town Centre Conservation Area or nearby items of local heritage significance.

### 4.2.3 Landscaping

The application is supported by detailed Landscape Plans prepared by Concept Landscape Architecture that demonstrate a highly considered landscape solution for the site. The landscaping complements the proposed architectural form and positively contributes to the amenity of the proposed development.

The proposed landscaping is consistent with the requirements and objectives of clause 3.3.1 of MDCP 2013.

### 4.2.4 Sunlight Access and Overshadowing

The proposed development is supported by Solar Access Diagrams by Cad Draft P/L that demonstrate the additional overshadowing resulting from the proposed development. The form of the proposed development is not drastically different to the existing building, and as such, the

additional overshadowing arising from the proposal is minimal, with no unreasonable impacts upon solar access to nearby development.

#### 4.2.5 Privacy and Security

The proposed development is oriented to the front and rear of the site and will not result in any unreasonable impacts upon the privacy of adjoining or nearby properties.

The site will be appropriately managed to maximise safety for occupants of the development and people passing through, with appropriate casual surveillance achieved from the ground floor retail premises, the upper level residential apartments and the central lobby.

The proposed development is consistent with the objectives and requirements of clause 3.4.2 of MDCP 2013.

#### 4.2.6 Maintenance of Views

There are no apparent view corridors obtained over the subject site, and as such, it appears unlikely that the proposed development will result in any unreasonable impacts upon views.

If views are obtained over the roof of the existing buildings, it is noted that the height and form of the proposal is not dissimilar to the existing building, with any impacts reasonably minimised, consistent with the objectives and requirements of clause 3.4.3 of MDCP 2013.

#### 4.2.7 Sustainability

The application is supported by a BASIX Certificate which confirms that the proposed development meets the relevant water, thermal comfort and energy requirements.

#### 4.2.8 Accessibility

Clause 3.6.1 of MDCP 2013 requires all new development to meet the relevant requirements of the Disability (Access to Premises – Buildings) Standards 2010 and the BCA with respect to the design of equitable access. The application is supported by an Access Report and BCA Design Assessment Report which confirm compliance in this regard.

Clause 3.6.3.1 of MDCP 2013 requires 25% of dwelling to be adaptable, in accordance with the requirements of AS4299. The proposed development is inconsistent with this requirement, with one (9%) adaptable apartment designed in accordance with AS4299.

The provision of one adaptable unit is considered to be reasonable in this particular circumstance given the inability to provide on-site carparking for persons with a disability.

#### 4.2.9 Stormwater Management

Clause 3.7 of MDCP 2013 requires the management of stormwater to comply with the provisions of Council's *Water Management for Development Policy*.

Stormwater is to be collected and directed to Council's stormwater drainage system as detailed in the Stormwater Plans prepared by Smart Structures Australia.

#### 4.2.10 Waste Management

Clause 3.8 of MDCP 2013 requires all development to comply with the appropriate sections of Council's Waste Management Guidelines, with all development applications to be accompanied by a Waste Management Plan.

The application is supported by a Waste Management Plan prepared by Elephants Foot Consulting Pty Ltd detailing how waste is to be managed both during construction and throughout the life of the development.

#### 4.2.11 Mechanical Plant Equipment

The proposed lift overrun is centrally located and is appropriately integrated into the design of the development. Plant equipment will be sited and maintained to prevent adverse acoustic impacts for future occupants of the development and adjoining properties.

The proposed development is consistent with the requirements and objectives of clause 3.9 of MDCP 2013.

#### 4.2.12 Safety and Security

The proposed commercial building has been designed to appropriately respond the CPTED design principles, providing an environment that is safe and secure for all future occupants and visitors, consistent with the provisions of clause 3.10 of MDCP 2013.

#### 4.2.13 Earthworks (Excavation and Filling)

The application is supported by a Geotechnical Investigation by Crozier Geotechnical Consultants which has assessed and considered the subsurface conditions of the site and provides comments and recommendations to ensure that the development is undertaken safely, with minimal impact to the surrounding environment.

#### 4.2.14 Built Form Controls Compliance Table

A table demonstrating compliance with the relevant provisions of the DCP is detailed as follows:

Control	Requirement	Proposed	Compliance
<b>Part 4.2 – Development in Business Centres</b>			
<b>4.2.1 FSR</b>	Arcades and other types of thoroughfares which are available for public use at all times may be excluded from the calculation of gross floor area for the purpose of determining the FSR.	Noted.  The proposed development complies with the maximum FSR prescribed for the site, irrespective of whether the GFA of the through-site link is included within the FSR calculation or not.	Yes
<b>4.2.2 Height of Buildings</b>	In determining whether to grant an exception to the LEP height standard, the environmental planning grounds to justify contravening the development standard (LEP clause 4.6(3)) may include consideration of the design principles at paragraph 3.1.3.1 Design Principles in this DCP.	Noted.  The proposed development has been designed in response to the height of the existing building, consistent with the provisions of this clause.	Yes
<b>4.2.3 Setbacks Controls in LEP Zones B1 and B2</b>	All buildings must be constructed to the public road and side boundaries of the allotment.	The proposed development has nil setbacks to Sydney Road, Market Place and both side setbacks.	Yes



Control	Requirement	Proposed	Compliance
<p><b>4.2.5.1 Design for Townscape Carparking</b></p>	<p>Maintain the predominant pattern of narrow fronted buildings within the town centre with new buildings incorporating modulation of the street wall such as recesses or modulation in the building facade to visually reduce the length and perceived bulk of the street wall.</p> <p>Maintain existing setbacks.</p> <p>New development to enhance townscape characteristics, disregarding existing unsympathetic buildings.</p>	<p>The width of the lot, and in turn the subdivision pattern, is reflected by the front façades of the development.</p> <p>The alignment of the existing building is maintained, with the development mimicking the existing parapet height to both Market Place and Sydney Road.</p> <p>The proposed development positively contributes to the existing streetscape and the Manly Town Centre Conservation Area.</p>	<p>Yes</p>
<p><b>4.2.5.2 Height of Buildings: Consideration of Townscape</b></p>	<p>Consideration of the appropriate heights within the maximum Building Height development standard and exceptions to the standard in the LEP.</p>	<p>The height of both façades is consistent with that of the existing building, with the upper floor setback to minimise the visual impact of the development.</p>	<p>Acceptable on merit</p>
<p><b>4.2.5.3 Security Shutters</b></p>	<p>Shop window security roller shutters are not permitted on the external face of the building. Such screens may only be used behind the window display.</p>	<p>Security shutters are not proposed.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
<p><b>4.2.5.4 Car Parking and Access</b></p>	<p>In exceptional circumstances and having regard to the merits of the application, Council may be prepared to allow a reduction in the any parking rate/ requirements in Manly Town Centre (including residential and commercial) where the applicant has demonstrated that:</p> <ul style="list-style-type: none"> <li>i) in the case of all uses other than dwellings, the dimensions or topography of the site would physically prevent the provision of some or all of the required spaces;</li> <li>ii) the required access interferes with the continuity of retail frontage or interrupts the frontage of the property in other ways such that there would be a conflict with any other provisions of this DCP in particular the townscape objectives; or</li> <li>iii) the movement of vehicles to and from the site would cause unacceptable</li> </ul>	<p>In accordance with Schedule 3 of MDCP 2013, the proposed development generates demand for 19 parking spaces.</p> <p>However, whilst the site adjoins two public road reserves, the site is essentially landlocked with no vehicular access available, and no parking proposed.</p> <p>It is noted that Council was supportive of the lack of parking at the subject site, with the following comments made by Council in the Pre-lodgement Meeting Notes:</p> <p><i>As the site is effectively landlocked by a pedestrian mall and the area is well serviced by public transport, it will be acceptable that no parking for the residences and commercial floor space be provided.</i></p>	<p>Acceptable on merit</p>

Control	Requirement	Proposed	Compliance
	<p>conflict with pedestrian movements, special servicing arrangements for pedestrianised areas or contribute to congestion at key intersections.</p>		
<p><b>4.4.4.1 Awnings</b></p>	<p>Continuous footpath awnings must be provided on all street frontages generally consistent with the streetscape. The width, fascia height and method of support of all awnings in any street block must be consistent with entrances to public lands and through-site links allowed to be accentuated and generally in accordance with given dimensions.</p>	<p>Awnings are provided along street frontages.</p>	<p>Yes</p>
<p><b>4.4.5 Earthworks</b></p>	<p>A dilapidation survey report and geotechnical assessment may be required for excavation works exceeding 1m.</p>	<p>The application is supported by a Geotechnical Report by Crozier Geotechnical Consultants. There is no objection to the imposition of conditions of consent requiring the production of dilapidation reports, if deemed necessary by Council.</p>	<p>Yes</p>
<p><b>5.1 Manly Town Centre Heritage Conservation Area</b></p>	<p>The Manly Town Centre Conservation Area maintains a high level of social significance, as a</p>	<p>The site is located within the Town Centre Conservation Area and is in the vicinity of a number of sites of local heritage significance. The application is supported by a Heritage</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	<p>popular destination for local, national and international tourists, as well as through its encapsulation of the Australian beach culture.</p>	<p>Impact Statement by Weir Phillips that concludes that the proposed development is appropriate with respect to the requirements and objectives of MLEP 2013 and MDCP 2013, and that the proposed development will not have an adverse impact upon the heritage significance of the Town Centre Conservation Area or nearby items of local heritage significance.</p>	
<p><b>5.4.3 Flood Prone Land</b></p>	<p>Development must comply with the prescribed Matrix. Development on flood prone land requires the preparation of a Flood Management Report by a suitably qualified professional.</p>	<p>The site is identified as being prone to low and medium risk flooding, as identified on Council's Flood Risk Hazard Map of MDCP 2013. The application is supported by a Flood Risk Management Report by S&amp;G Consultants Pty Limited.</p>	<p>Yes</p>

## 4.3 State Environmental Planning Policy (Resilience and Hazards) 2021

### 4.3.1 Remediation of Land

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. The site has been used for commercial purposes for an extended period of time with no known prior land uses. In this regard, the potential for contamination is considered to be extremely unlikely. The site is not identified as a contaminated site on the NSW EPA's list of notified sites, nor is it in the vicinity of any listed sites.

The application is supported by a Stage 1 Preliminary Site Investigation by Edwards Blasche Group Pty Ltd, which confirms that historical uses have not impacted the site and that a Stage 2 Detailed Investigation is not required.

The consent authority can be satisfied that the subject site is suitable for the proposed development.

As such, the proposed development is consistent with the provisions of Chapter 4 of this policy.

## 4.4 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 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.

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

SEPP 65 aims to improve the design quality of shop top housing development to provide sustainable housing in social and environmental terms that is a long-term asset to the community and presents a better built form within the streetscape.

It also aims to better provide for a range of residents, provide safety, amenity and satisfy ecologically sustainable development principles. In order to satisfy these aims, the plan sets design principles in relation to context, scale, built form, density, resources, energy and water efficiency, landscaping, amenity, safety and security, social dimensions and aesthetics to improve the design quality of residential flat building in the State.

SEPP 65 applies to new shop top housing developments that are at least 3 or more storeys in height and that contain at least 4 dwellings.

As the proposed development is for the erection of a 4 storey shop top housing development containing 11 dwellings, the provisions of SEPP 65 are applicable to the proposed development.

Clause 28(2)(b) SEPP 65 requires the proposal to be assessed against the 9 design quality principles contained in Schedule 1. The proposal's compliance with the design quality principles is detailed in the Design Report and Design Verification Statement by MHN Design Union Pty Ltd provided to support this application.

Clause 28(2)(c) of SEPP 65 requires the consent authority to take into consideration the Apartment Design Guide. In this regard, an Apartment Design Guide compliance table prepared by MHN Design Union Pty Ltd accompanies this application.

#### 4.6 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 EP&A Act (as amended):

(i) *any environmental planning instrument*

The proposed shop top housing development is permissible and consistent with the provisions of MLEP 2013 and MDCP 2013 as they are reasonably applied to the proposed works given the constraints imposed by the site's location, environmental and topographical characteristics.

(ii) *Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

There are no draft environmental planning instruments relevant to the proposed development.

(iii) *Any development control plan*

MDCP 2013 is applicable to this application and has been considered in detail in this report.

(iiia) *Any Planning Agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and*

N/A

(iv) *The Regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

N/A

- (v) *Any Coastal Zone Management Plan (within the meaning of the Coastal Protection Act 1979)*

N/A

- (b) *The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality,*

[The assessment considers the Guidelines (in italics) prepared by the Department of Planning and Environment in this regard].

*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 relevant provisions of MDCP 2013.

*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*

These issues have been discussed in detail in the report. Potential pedestrian conflict is ameliorated by the lack of vehicular access on on-site parking.

#### *Public Domain*

The proposed development will have no adverse impact on the public domain. Rather, the proposal will result in a significant enhancement of the public domain, by virtue of the high-quality architectural design solution proposed.

#### *Utilities*

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

#### *Flora and Fauna*

The proposal will not result in any adverse impacts upon flora and fauna.

#### *Waste Collection*

Waste will be managed appropriately on the site.

#### *Natural hazards*

The site has been designed to be safe from natural hazards.

#### *Economic Impact in the locality*

The proposed development will generate temporary employment during construction. On-going employment will be provided through the commercial floor spaces proposed, in addition to services associated with the management of the building and proposed tenancies/land uses.

#### *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 general principles, desired future character and built form 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 proposed development will comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

#### *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.

(c) *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 development will not cause excessive or unmanageable levels of transport demand.

The development responds to the topography and constraints of the site, is of adequate area, and is a suitable design solution for the context of the site.

*(d) 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.

*(e) The public interest*

The proposed works are permissible and consistent with the intent of the LEP and DCP controls as they are reasonably applied to the proposed development. The development would not be contrary to the public interest.

## 5 Conclusion

The proposal is permissible and in conformity with the objectives of MLEP 2013 as they reasonably relate to this form of development on this particular site. The proposed development appropriately responds to the guidelines contained within the MDCP 2013 and the massing and built form established by nearby developments.

MHN Design Union Pty Ltd, the project architects, have responded to the client brief to design a contextually responsive building of exceptional quality with high levels of amenity for future occupants of both the commercial floor space and the residential apartments. In this regard, the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this site having regard to the height, scale, proximity, use and orientation of surrounding development and the flood affectation of the land.

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 accompanying plans depict a high quality and contextually appropriate built form outcome that responds to adjacent and nearby development and the surrounding environment. The proposed development is a suitable design solution in light of the zoning of the land and the context of the site.
- The apparent height and bulk of the proposed development is compatible with that of surrounding development, and consistent with the desired future character of the locality.
- 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 apparent size of the proposed development offensive, jarring or unsympathetic in the streetscape context.
- Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height development standard, strict compliance has been found to be unreasonable and unnecessary in this instance as the development is otherwise consistent with the objectives of the development standard and sufficient environmental planning grounds exist to support the variation (as outlined in the attached Clause 4.6 Variation Request).
- The non-compliance with the car parking and adaptable housing requirements prescribed by MDCP 2013 has been acknowledged and appropriately justified having regard to the associated objectives. Such variation succeeds pursuant to section 4.15(3A)(b) of the EP&A 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.

- The proposal will provide a notable increase to the supply of residential floor space whilst maintaining an appropriate allocation of commercial floor space on a site ideally suited to a mixed use development.
- The proposed development has been amended in response to the pre-lodgement feedback from Council at the meeting on 22 July 2021 and the subsequent Pre-lodgement Meeting Notes.

Having given due consideration to the matters pursuant to Section 4.15(1) of the EP&A Act as amended, it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

**Boston Blyth Fleming Pty Limited**



**Greg Boston**

**Director**