

# STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed Commercial  
Building

34 – 35 South Steyne,  
Manly

Suite 1, 9 Narabang Way Belrose NSW 2085

Phone: (02) 9986 2535 | Web: [www.bbfplanners.com.au](http://www.bbfplanners.com.au)

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# Statement of Environmental Effects

## Proposed Commercial Building



## 34 - 35 South Steyne, Manly

### Greg Boston

B Urb & Reg Plan (UNE) MPIA  
Boston Blyth Fleming Pty Ltd  
(ACN 121 577 768)

Suite 1/9 Narabang Way  
Belrose NSW 2085

Tel: (02) 99862535

July 2022

**TABLE OF CONTENTS**

<b>1</b>	<b>Introduction.....</b>	<b>4</b>
<b>2</b>	<b>Site Analysis .....</b>	<b>6</b>
2.1	Site Description and location.....	6
2.1.1	The Site .....	6
2.1.1	The Locality .....	8
<b>3</b>	<b>Description of Proposed Development .....</b>	<b>12</b>
3.1	Details of the proposed development.....	12
<b>4</b>	<b>Statutory Planning Framework .....</b>	<b>14</b>
4.1	Manly Local Environmental Plan 2013 .....	14
4.1.1	Zoning.....	14
4.1.2	Height of buildings .....	15
4.1.3	Floor space ratio .....	16
4.1.4	Heritage conservation.....	17
4.1.5	Flood planning .....	18
4.1.6	Acid sulfate soils .....	19
4.1.7	Earthworks.....	19
4.1.8	Stormwater management .....	19
4.1.9	Foreshore scenic protection area .....	19
4.1.10	Active street frontages.....	20
4.1.11	Essential services .....	21
4.1.12	Design excellence.....	21
4.1.13	Gross floor area in Zone B2 .....	23
4.2	Manly Development Control Plan 2013.....	23
4.3	State Environmental Planning Policy (Resilience and Hazards) 2021 .....	32
4.3.1	Remediation of Land .....	32
4.4	State Environmental Planning Policy (Biodiversity and Conservation) 2021 .....	32
4.4.1	Sydney Harbour Catchment .....	32
4.5	Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended.....	32
<b>5</b>	<b>Conclusion.....</b>	<b>37</b>

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

## 1 Introduction

This Statement of Environmental Effects (SEE) has been prepared on behalf of Fortis Development Group in support of a development application proposing the demolition of the existing structures and the construction of a multistorey commercial building at 34-35 South Steyne, Manly. The application also includes basement parking, a swimming pool, the implementation of an integrated site landscape regime, all associated infrastructure and a through-site link between Rialto Lane and South Steyne.

Durbach Block Jagers, 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 the commercial spaces. 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 Durbach Block Jagers
- Survey by Hill & Blume Consulting Surveyors
- Landscape Plans by Wyer & Co
- Traffic and Parking Assessment Report by Varga Traffic Planning Pty Ltd
- Flood Report by Edge Consulting Engineers
- Access Report by Code Performance Pty Ltd
- BCA Compliance Report by Blackett Maguire & Goldsmith
- Acoustic Report by Integrated Group Services
- Stormwater Management Plans by Edge Consulting Engineers
- Structural Support Letter by M & G Consulting Engineers Pty Ltd
- Geotechnical Report by Morrow Geotechnics Pty Ltd
- Acid Sulfate Soils Assessment by Geosyntec Consultants Pty Ltd
- Quantity Surveyors Report by Newton Fisher Group
- Section J – JV3 Assessment Report by Integrated Group Services
- Heritage Impact Statement by Weir Phillips
- Construction Management Plan by Lords Group
- Waste Management Plan by Dickens Solutions
- Fire Safety Strategy by Affinity Fire Engineering

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 (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 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 commercial floor space on a site ideally suited to an appropriate mix of business, office and retail premises.
- The proposed development has been amended in response to the feedback from Council's Design and Sustainability Advisory Panel (DSAP) provided at the DSAP meeting on 26 May 2022 and in the subsequent minutes provided.

## 2 Site Analysis

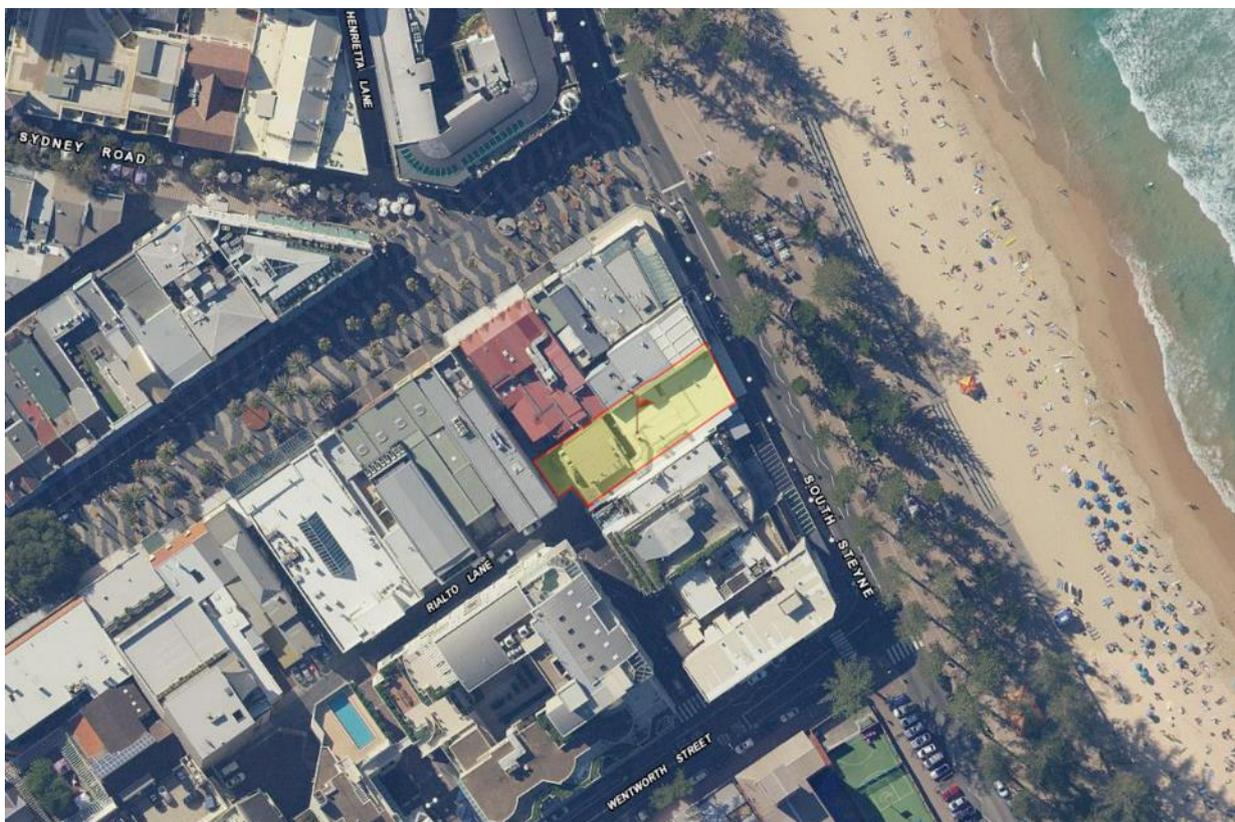
### 2.1 Site Description and location

#### 2.1.1 The Site

The site is comprised of the following land holdings:

- Lot 2 in DP 861591 (34 South Steyne, Manly)
- Lot B in DP 102407 (35 South Steyne, Manly)

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



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

The site is irregularly shaped, with a 15.305m wide frontage to South Steyne to the north-east, a maximum depth of 46.815m and a total area of 690.2m<sup>2</sup>. The site has a secondary frontage to Rialto Lane at the rear. The site is generally level and is partially affected by flooding.

A two storey commercial building currently occupies the site, with at-grade parking at the rear. The site is burdened by a 3.0m wide right of carriageway that runs parallel along the south-western boundary.

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 South Steyne



**Figure 4: Subject property as seen from Rialto Lane**

### 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 to 10, below.



**Figure 6: View of South Steyne in a northerly direction, with the subject property to the left**



**Figure 7: View of South Steyne in a southerly direction, with the subject property on the right**



**Figure 8: The opposite side of the street (eastern side of South Steyne)**



**Figure 9: Four and five storey development to the south of the subject site**



***Figure 7: Four and five storey development to the north of the subject site***

## 3 Description of Proposed Development

### 3.1 Details of the proposed development

The proposed development is depicted in the architectural plans set prepared by Durbach Block Jagers. This application provides for the following built form and land use outcomes:

- Demolition of the existing site structures,
- Construction of a 3-4 storey commercial building over 2 basement levels, comprising:
  - Basement Level 02: commercial bin store and 12 parking spaces, inclusive of a loading bay, a disabled parking space, an EV charging space and 2 carshare/rideshare spaces,
  - Basement Level 01: 152.04m<sup>2</sup> of commercial floor space, retail bin store, amenities, plant areas, end of trip (EOT) facilities & bicycle storage,
  - Ground Level: 370.54m<sup>2</sup> of retail floor space presenting to both South Steyne and Rialto Lane, basement entry from Rialto Lane, through site link connecting South Steyne and Rialto Lane, services and lobby for upper level commercial space,
  - Level 01: 502.75m<sup>2</sup> of commercial floor space, amenities, services, balcony to South Steyne, central courtyard,
  - Level 02: 522.29m<sup>2</sup> of commercial floor space, amenities, services, balcony to South Steyne, central courtyard,
  - Level 03: 209.42m<sup>2</sup> of commercial floor space, amenities, services, plant equipment, and roof terrace with lap pool,
  - Roof: solar panels
- Internal lift and stair access,
- Landscaping, and
- Stormwater infrastructure,

The proposed development presents as a three storey building to South Steyne, marrying with the parapet heights of the adjoining buildings. The fourth level is setback at the rear of the site and will not be readily visible from South Steyne or the beachfront reserve.

The proposed development demonstrates a superior architectural design solution for the site, providing exceptional levels of amenity for future occupants of the development whilst also exceeding sustainability and thermal performance targets. The proposal provides a skilfully designed through-site pedestrian link, that is naturally lit and ventilated from the central courtyard and the enlarged openings at both ends.

The architectural design is complemented by upper level plantings, as shown on the Landscape Plans prepared by Wyer & Co. The proposed landscaping will soften the visual impact of the development as seen from South Steyne, will reduce the thermal loading of the building and will provide a pleasant outlook and environment for occupants of the development and occupants from nearby buildings that overlook the subject site.

The acceptability of the access, car parking and servicing arrangements are detailed within the accompanying Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd with the proposal's acceptability in relation to accessibility addressed in the accompanying Access Assessment Report prepared by Code Performance Pty Ltd.

The proposal's readiness to comply with the relevant provisions of the BCA is detailed in the BCA Compliance Report prepared by Blackett Maguire & Goldsmith, with a Fire Safety Strategy prepared by Affinity Fire Engineering.

Stormwater is to be collected from the site, directed to the required rainwater tanks or piped to Council's stormwater pit in Rialto Lane. The proposed stormwater management solution developed for the site is detailed in the Stormwater Plans prepared by Edge Consulting Engineers.

The application is supported by an Acoustic Report by Integrated Group Services that provides a series of detailed recommendations to ensure that the acoustic amenity of future occupants is maximised and that any impacts to adjoining properties associated with mechanical plant is minimised.

In light of the excavation proposed to accommodate the basement, the application is supported by a Geotechnical Report by Morrow Geotechnics Pty Ltd and an Acid Sulfate Soils Assessment by Geosyntec Consultants Pty Ltd. Noting that the Geotechnical Report confirms that groundwater was encountered 4m below ground level, structural certification from M & G Consulting Engineers Pty Ltd has also been provided to detail the tanked basement design proposed.

A Flood Risk Management Report, prepared by Edge Consulting Engineers, has been prepared in response to the 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. Further commentary by Weir Phillips is also provided in response to feedback from Council's Development and Sustainability Advisory Panel.

The application is supported by a Section J – JV3 Assessment Report by Integrated Group Services, confirming that the building performs highly with regard to sustainability and meets and/or exceeds relevant industry standards.

Finally, the application is supported by a Waste Management Plan prepared by Dickens Solutions 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 1386.5m<sup>2</sup> of commercial floor space and 370.54m<sup>2</sup> of retail 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 EOT facilities and bicycle parking within Basement Level 01.

- *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. Nonetheless, the application is supported by an Acoustic Report to ensure that noise levels associated with proposed plant equipment and use of the building are acceptable.

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 10m fronting South Steyne, increasing to 12m at the rear of the site.

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

Within the portion of the site that is subject to the 10m height limit, the proposed development has a height of approximately 11.3m presenting to South Steyne, being the dominant parapet height and the height of all proposed roof top planters. The balustrade of the central staircase and the lap pool reach a maximum height of approximately 12m, with a small awning adjacent to the lift core reaching a maximum height of 13.6m.

Within the portion of the site that is subject to the 12m height limit, the proposed development has a height of approximately 14m presenting to Rialto Lane, reaching a maximum height of 14.5m at the lift core.

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 2.5:1 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.*

However, clause 4.4(2A) of MLEP 2013 prescribes that the floor space ratio of a building on land in the B2 Local Centre zone may exceed the maximum floor space ratio allowed under subclause (2) by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises. In consideration of this clause, the potential maximum floor space ratio for the site is 3.0:1.

The proposed development has a gross floor area of 1757.04m<sup>2</sup> and a floor space ratio of 2.55:1. As the entirety of the gross floor area proposed is to be used for commercial purposes, the bonus floor space prescribed by subclause (2A) is applicable and the proposed development is maintained below the maximum floor space ratio prescribed.

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 Conservation Area because it replaces a neutral infill building with a well-designed contemporary building that sits comfortably in the streetscape. The proposed building is consistent in scale with other buildings and will use a high-quality materials palette of off-form concrete and steel. The proposed building will have a simply detailed front elevation and maintains the established pattern of front setback and orientation to the street. The proposed works will have a minimal and acceptable impact on heritage items within the vicinity as there will be no impact on their fabric, or on significant view corridors towards them. The proposed building is consistent with the setting of the items as characterised by existing infill development. The proposed building is well-designed and will sit comfortably in their setting. The proposed works will, overall, have no impact on the ability of the public to understand and appreciate the historic and aesthetic significance of the items.*

*The proposed works fulfil the aims and objectives of the Manly LEP 2013 and the Manly DCP 2013 by improving the quality and diversity of commercial options in Manly while respecting the heritage significance of the area in which it lies.*

The potential impact upon the heritage significance of the conservation area and adjoining buildings was addressed in the minutes from Council's Design and Sustainability Advisory Panel, who commented:

*The proposal is generally in conformity and achieves the objective of Manly DCP 5.1.1 The proposal is within the foreshore scenic protection area and Heritage Conservation Area (HCA) of Manly although not itself of heritage significance. In accordance with Manly LEP 2013 cl 5.10 (4) the consent authority must consider the impact of the proposed development on the heritage significant of the item or area concerned.*

*The subject site is on the very edge of the HCA. The proposal for a completely glazed eastern façade is in stark contrast to the adjoining buildings although having architectural merit.*

*The Panel was of the view that recessing the glass to provide some articulation to the façade in addition to that provided by the curved glass sections could be desirable, as would the introduction of some solid sections or masonry blades to relate to the adjoining buildings and most buildings in the HCA.*

#### *Recommendation*

- 1. Investigate recessing of glazing and the introduction of some solid elements to the eastern façade to better relate to adjoining and nearby buildings*

Weir Phillips have also provided a response to the comments of the Design and Sustainability Advisory Panel under separate cover, as follows:

*The site and the adjoining buildings are not contributory to the HCA. The buildings in this section of South Steyne do not exhibit a cohesion or integrity of architectural style that depicts the early development of Manly. The elevations present a contemporary, diverse and stylistically chaotic urban response to Manly Beach, the foreshore scenic protection area and the HCA that has developed ad hoc with little appreciation of architectural form, detail or context. The range of projecting awnings, glazing, materiality, shade structures and balcony treatments to the street are all different and not recessive or sympathetic to the HCA.*

*The simplicity and translucency of the proposal is in direct contrast to the surrounding visual clutter of projecting forms, shapes and materials. The composure and geometry of the rectangular brass framing is juxtaposed with the gentle and recessed curvilinear glazing and concrete parapet, provides a quiet but robust response to its location within the HCA and proximity to heritage items. Articulation of the elevation is further enhanced by the fine but grand scale treatment of the window framing, chamfered awning details and arched walkway entry through to Rialto Lane.*

*The proposal reverses the traditional solid to void ratio of the heritage items in the HCA as presented by the Hotel Steyne and in so doing provides a highly considered response that is clearly contemporary in Architectural style. In so doing the finer grain detail of the Inter-War Deco Hotel and other heritage items can be viewed and appreciated for their different architectural style...*

*Council advises that the proposal for a completely glazed eastern façade is in stark contrast to the adjacent buildings whereas in fact there is extensive glazing on these elevations which are complicated with clunky balconies and balustrades and a multitude of different window and door framing profiles.*

*The proposed scheme in contrast is devoid of these small-scale cluttered elements. The large-scale glass curvature and sweeping concrete parapet provides a subtle but grand gesture to the curve of Manly Beach and ocean waves.*

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 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 Edge Consulting Engineers which concludes:

*The flood risk management report was completed on the review of Council's Flood Information Report (22/05/2022) undertaken by Northern Beaches Council to assess the impact of the development to the floodplain and to demonstrate the flood risk management requirements set by Northern Beaches Council have been met.*

*Flood mapping for the development depicts the proposed development is within a medium risk precinct, that is typically within the 1% AEP Flood Planning Area (although we note the site in question is not in fact not in the 1% AEP Flood Planning Area). The*

*report has identified how the development has complied with flood-related development controls outlined in Council's Development Control Plan 2013. These include highlighting the finished floor level is below the FPL but protected at each entrance with [hydraulic] flood barriers and the inclusion of flood-compatible materials for all structures at or below the FPL.*

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 river banks 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 an Acid Sulfate Soils Assessment by Geosyntec Consultants Pty Ltd, which concludes 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 Morrow Geotechnics Pty Ltd and structural certification from M & G Consulting Engineers Pty Ltd in relation to the tanked design of the proposed basement.

#### 4.1.8 Stormwater management

Detailed Stormwater Management Plans prepared by Edge Consulting Engineers 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, with any additional overshadowing to the east limited to the confines of the roadway. 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. Rather, the proposed through-site link will provide a new view corridor from Rialto Lane through to Manly Beach, providing a point of context for people travelling along the rear laneway.

- (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.

When viewed from the waterway, the proposed development will be seen to be complementary and compatible with surrounding development.

- (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

The boundary of the subject site presenting to South Steyne is 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 an active street frontage to South Steyne, with retail floor space extending across the full width of the street façade, excluding the portion of the façade associated with the fire access stairs and the through-site link.

Whilst not mapped as an active street frontage, the proposed development also includes retail floor space at the Rialto Lane street frontage, to enhance and complement the existing presence of retail premises along the laneway and to further activate the proposed 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 South Steyne and Rialto Lane 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 Rialto Lane and the beachfront. 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 the South Steyne public road reserve or Rialto Lane. Rather, the proposal provides improved pedestrian amenity and circulation by virtue of the through-site link. The basement carpark and service bay is appropriately accessed via Rialto Lane, with no vehicular access proposed along the South Steyne frontage.

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

Comment: The retail floor space at the ground floor will provide casual surveillance of both South Steyne and Rialto Lane. The lobby of the upper floor commercial floor space is strategically located midway along the through site link, providing light and surveillance of the proposed pedestrian through-site link. The upper floor commercial spaces also provide enhanced causal surveillance of the rear laneway and the beachfront promenade.

- (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 Rialto Lane through to Manly Beach, 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: As confirmed by Weir Phillips in their response to the minutes of the DSAP meeting, Durbach Block Jagers are a reputable design focused practice that have proven they consistently provide quality buildings of fine architectural merit. 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 services from Rialto Lane to minimise disruption along South Steyne, the primary frontage of the site.

Further, we note that Council has established a Design and Sustainability Advisory Panel (DSAP) to ensure the promotion and delivery of high-quality built environments which feature design excellence and sustainability. Whilst we assume that the subject proposal will be referred to DSAP, we note that the proposal was supported by DSAP during the pre-lodgement process, who stated:

*The Panel believes that the building would be a good urban fit, and appropriate to its location in a heritage conservation area.*

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 100% 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 retail component of the building is limited to a gross floor area of 370.54m<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 commercial 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 South Steyne responds to the overall wall and parapet height of adjoining buildings.
- The proposed development provides a through-site link between Rialto Lane and South Steyne.
- The level of the through-site link and the retail premises are at footpath level, providing an accessible path of travel 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 Wyer & Co 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 and the surrounding environment.

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 Durbach Block Jagers that demonstrate the additional overshadowing resulting from the proposed development. The additional overshadowing arising from the proposal is largely maintained within the public road reserves, with no unreasonable impacts upon solar access to nearby residential apartments.

#### 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 commercial premises and the central lobby.

The application is supported by an Acoustic Report by Integrated Group Services that considers future internal noise levels and external noise emissions from the operation of services, collection of waste and the use of the proposed roof terrace and pool. The report confirms that the internal noise levels comply with the relevant provisions of AS2107:2016 and that noise generated by the use of the building will comply with the EPA Noise Policy for Industry, subject to a series of recommendations.

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

#### 4.2.6 Maintenance of Views

Views of Manly Beach are available from the subject site in an easterly direction. These views are also enjoyed by upper-level apartments of buildings to the west of the subject site. As demonstrated in the View Analysis prepared by Durbach Block Jaggers, the proposed development has been designed to align with the levels of adjoining buildings, with views of the ocean and the Norfolk Island Pines that line the foreshore maintained over the top of the proposed development.

In this respect, Council can be satisfied that the disruption of views from nearby properties has been reasonably minimised and that view sharing between properties is achieved, consistent with the objectives and requirements of clause 3.4.3 of MDCP 2013.

#### 4.2.7 Sustainability

The proposed development promotes ecologically sustainable design practices, with a high performance façade, low embodied energy construction, rain water harvesting and storage on site, PV cells, passive ventilation, EOT bicycle facilities and efficient HVAC Controls and Zoning.

The application is supported by a Section J – JV3 Assessment Report by Integrated Group Services confirming that the proposed development meets or exceeds necessary requirements and industry standards.

#### 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 prepared by Code Performance Pty Ltd that confirms compliance with the provisions of this clause.

#### 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 from the site, directed to the required rainwater tanks and either reused on site or piped to Rialto Lane. The proposed stormwater management solution

developed for the site is detailed in the Stormwater Plans prepared by Edge Consulting Engineers.

#### 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 Dickens Solutions 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 application is supported by an Acoustic Report by Integrated Group Services that provides a series of detailed recommendations to ensure that the acoustic amenity of future occupants is maximised and that any impacts to adjoining properties associated with the operation and use of the building is minimised.

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 Morrow Geotechnics Pty Ltd 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 to complement the parapet height of adjoining development, 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 South Steyne, Rialto Lane and both side setbacks.	Yes

Control	Requirement	Proposed	Compliance
<b>4.2.5.1 Design for Townscape Carparking</b>	<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 narrow width of the subdivision pattern is carried onto the front façade, with two distinct panels of glazing presenting to South Steyne.</p> <p>The alignment of the existing building is maintained, to marry with the height and alignment of the adjoining buildings.</p> <p>The proposed development positively contributes to the existing streetscape and the Manly Town Centre Conservation Area.</p>	<p>Yes</p>
<b>4.2.5.2 Height of Buildings: Consideration of Townscape</b>	<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 the façade presenting to South Steyne marries that of adjoining buildings. The height of the building increases at the rear, in response to both the height plane prescribed by MLEP 2013 and the height of adjoining and nearby buildings at the rear.</p>	<p>Yes</p>
<b>4.2.5.3 Security Shutters</b>	<p>Shop window security roller shutters are not permitted on the external face of the building. Such screens may only be</p>	<p>Security shutters are not proposed.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	used behind the window display.		
<b>4.2.5.4 Car Parking and Access</b>	<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> </ul>	<p>In accordance with Schedule 3 of MDCP 2013, the proposed development generates demand for 40 parking spaces. The proposed development provides a total of 12 spaces, including 2 car share spaces (which equate to 5 spaces each), therefore equating to a total of 20 parking spaces.</p> <p>As addressed in the Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd, the proposed parking arrangement is appropriate for the specific context of the site, noting the limitations associated with the area of the site and access via Rialto Lane.</p>	<p>Acceptable on merit</p>

Control	Requirement	Proposed	Compliance
	iii) the movement of vehicles to and from the site would cause unacceptable conflict with pedestrian movements, special servicing arrangements for pedestrianised areas or contribute to congestion at key intersections.		
<b>4.4.4.1 Awnings</b>	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.	Awnings are provided along the South Steyne façade. The design of the awning over the entrance to the through-site link is deliberately different to that of the retail space to make a distinction between the public and retail spaces.	Yes
<b>4.4.5 Earthworks</b>	A dilapidation survey report and geotechnical assessment may be required for excavation works exceeding 1m.	The application is supported by a Geotechnical Report by Morrow Geotechnics Pty Ltd. There is no objection to the imposition of conditions of consent requiring the production of dilapidation reports, if deemed necessary by Council.	Yes

Control	Requirement	Proposed	Compliance
<b>5.1 Manly Town Centre Heritage Conservation Area</b>	<p>The Manly Town Centre Conservation Area maintains a high level of social significance, as a popular destination for local, national and international tourists, as well as through its encapsulation of the Australian beach culture.</p>	<p>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.</p>	<p>Yes</p>
<b>5.4.3 Flood Prone Land</b>	<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 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 Edge Consulting Engineers.</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 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 (Biodiversity and Conservation) 2021

#### 4.4.1 Sydney Harbour Catchment

The subject property is located within the Sydney Harbour Catchment and therefore, the provisions of Chapter 10 of this policy apply to this development. An assessment of the proposal against the relevant aims of the chapter has been undertaken, and the consent authority can be satisfied in this regard. Whilst referral to the Foreshores and Waterways Planning and Development Advisory Committee is at the discretion of Council, it is our opinion that referral is not warranted in the circumstances of this application.

### 4.5 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 commercial building 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. The development provides adequate carparking facilities in consideration of the context of the site.

*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 and retail 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.

Durbach Block Jagers, 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 the commercial spaces. 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 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 commercial floor space on a site ideally suited to an appropriate mix of business, office and retail premises.

- The proposed development has been amended in response to the feedback from Council's Design and Sustainability Advisory Panel (DSAP) provided at the DSAP meeting on 26 May 2022 and in the subsequent minutes provided.

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**

**ANNEXURE 1**

**CLAUSE 4.6 VARIATION REQUEST – HEIGHT OF BUILDINGS**

## 1 Clause 4.6 variation request – Height of Buildings

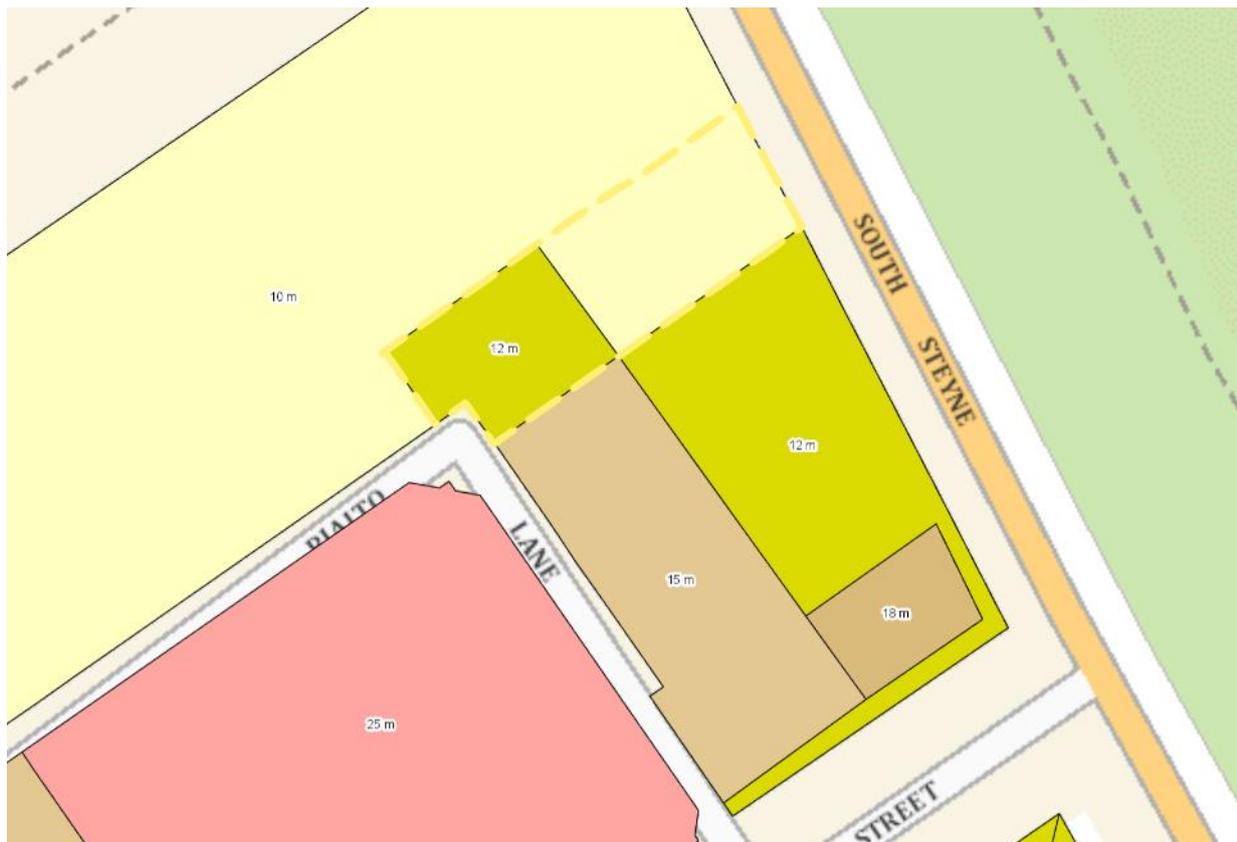
### 1.1 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

### 1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

#### 1.2.1 Clause 4.3 – Height of Buildings

Pursuant to the Height of Buildings Map of MLEP 2013, the site has a maximum building height limit of 10m fronting South Steyne, increasing to 12m at the rear of the site, as shown in Figure 1, below.



**Figure 1: Height of Buildings Map of MLEP 2013**

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.

Within the portion of the site that is subject to the 10m height limit, the proposed development has a height of approximately 11.3m presenting to South Steyne, being the dominant parapet height and the height of all proposed roof top planters. The balustrade of the central staircase and the lap pool reach a maximum height of approximately 12m, with a small awning adjacent to the lift core reaching a maximum height of 13.6m.

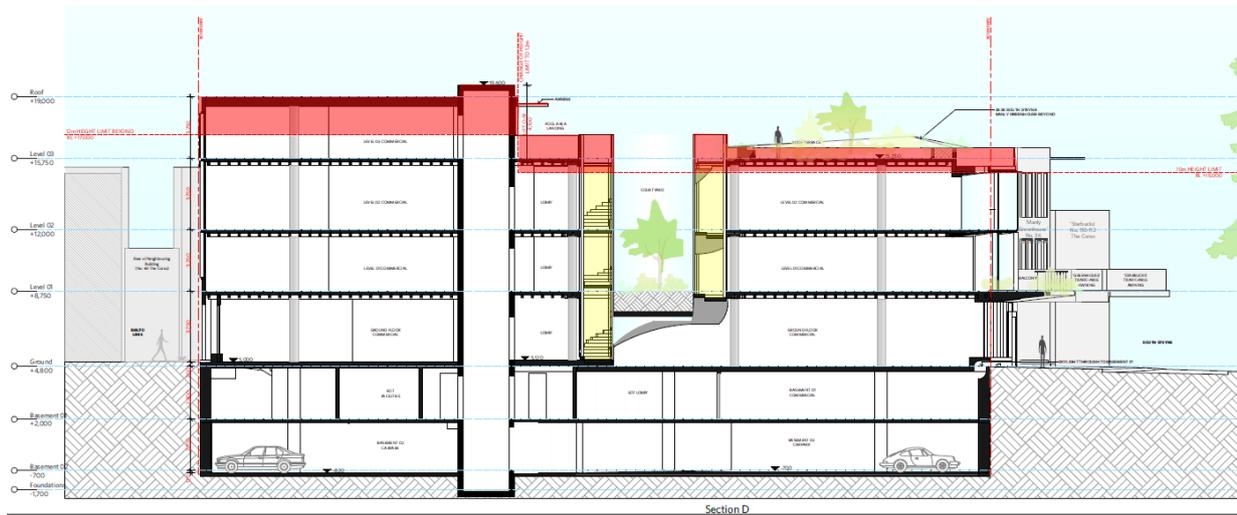
Within the portion of the site that is subject to the 12m height limit, the proposed development has a height of approximately 14m presenting to Rialto Lane, reaching a maximum height of 14.5m at the lift core.

The extent of the proposed variations can be summarised, as follows:

- Dominant parapet height = 11.3m, 1.3m or 13% variation to 10m height limit
- Central staircase and lap pool = 12.0m, 2.0m or 20% variation to 10m height limit
- Small awning adjacent to lift = 13.6m, 3.6m or 36% variation to 10m height limit

- Level 4 commercial area = 14m, 2m variation of 16.7% variation to 12m height limit
- Lift Overrun = 14.5m, 2.5m or 20.8% variation to 12m height limit

The extent of non-compliance is highlighted in red in the extract of Section D in Figure 2, over the page.



**Figure 2: Extract of Section D with breaching elements highlighted in red**

### 1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

*The objectives of this clause are:*

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by clause 4.6(3).

*Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

*“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the*

*clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP 2013 provides:

*Development 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 building height development standard in clause 4.3 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

*Development 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.*

The proposed development does not comply with the building height development standard at clause 4.3 of MLEP 2013 which specifies a building height of 10m-12m. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP 2013 provides:

*Development 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 Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10%.

Clause 4.6(5), which relates to matters that must be considered by the Director-General in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP 2013 from the operation of clause 4.6.

### **1.3 Relevant Case Law**

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

*The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*

*A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

*A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

*A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

*A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of MLEP 2013 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 of MLEP 2013 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP 2013?

## **1.4 Request for variation**

### **1.4.1 Is clause 4.3 of MLEP 2013 a development standard?**

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 of MLEP 2013 prescribes a height limit for development on the site. Accordingly, clause 4.3 of MLEP 2013 is a development standard.

### **1.4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary**

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

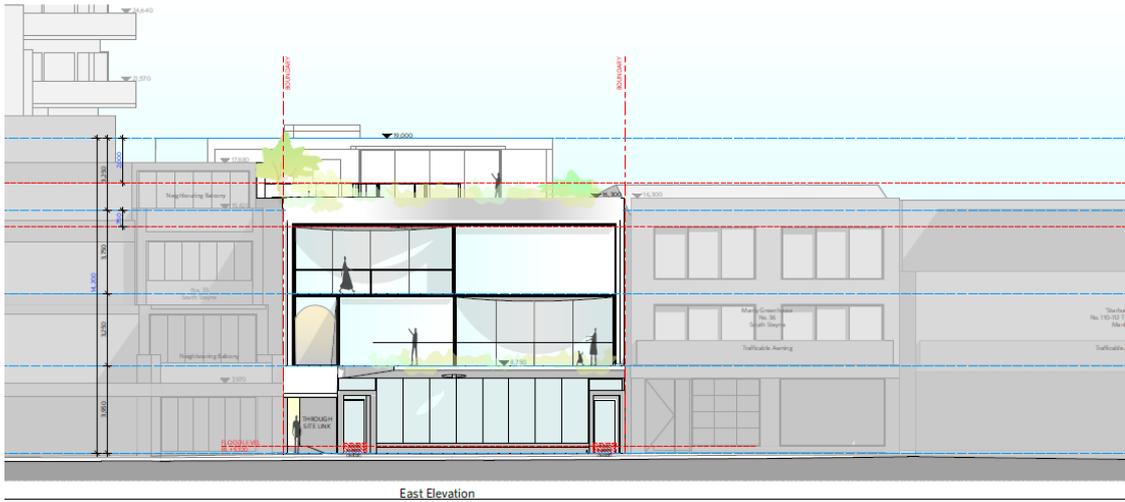
The first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

### **Consistency with objectives of the building height development standard**

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

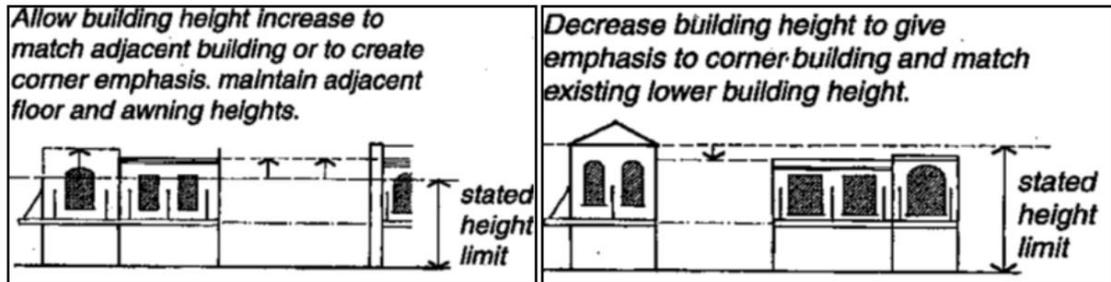
- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment: The height of the proposed development is consistent with that of surrounding development and development within the visual catchment of the site. In particular, the front parapet height of the development has been designed to marry with the height of adjoining buildings, as shown in Figure 3 over the page.



**Figure 3: South Steyne Elevation**

It is noted that this approach, where the parapet height matches that of adjacent buildings, is encouraged by clause 4.2.2 of MDCP 2013, as shown in Figure 4, below.

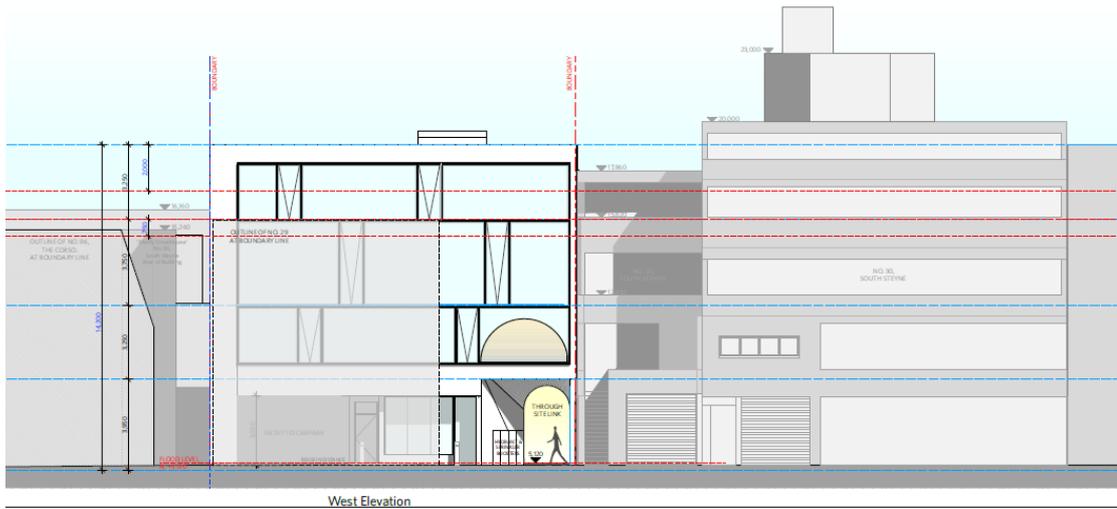


**Figure 4: Extract of clause 4.2.2 of MDCP 2013**

The increased height at the rear of the development is set back from the primary street frontage and will not be readily visible as seen from South Steyne. The height of the building presenting to Rialto Lane is contextually appropriate, having regard to the increased height anticipated by MLEP 2013 and the height of surrounding and nearby development, as shown in Figure 5 over the page.

It is noted that the proposal has been reviewed by Council’s Design and Sustainability Advisory Panel, who raised no objection to the height of the proposed development, or the variations proposed.

The non-compliant elements of the proposed development do not detract from consistency with this objective.



**Figure 5: Rialto Lane Elevation**

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

Comment: The proposed development is well articulated with a height that is consistent with surrounding built form. Further, the proposed development is maintained well below the maximum permitted floor space ratio, which is the primary development standard to control the bulk and scale of development.

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

Once again, it is noted that the proposal has been reviewed by Council's Design and Sustainability Advisory Panel, who raised no objection to the height of the proposed development, or the variations proposed. Of particular relevance, the panel confirmed that they are generally supportive of the bulk and scale proposed.

- (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: Views of Manly Beach are available from the subject site in an easterly direction. These views are also enjoyed by upper-level apartments of buildings to the west of the subject site. As demonstrated in the View Analysis prepared by Durbach

Block Jagers, the proposed development has been designed to align with the levels of adjoining buildings, with views of the ocean and the Norfolk Island Pines that line the foreshore maintained over the top of the proposed development.

In consideration of the objectives of MLEP 2013 and MDCP 2013 that encourage consistency with the prevailing building height and noting the bonus floor space provisions prescribed by clause 4.4 of MLEP 2013 for commercial development in this location, Council can be satisfied that disruptions to views haven been reasonably minimised.

- (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: The non-compliant elements of the proposed development do not result in any adverse impacts upon the amount of sunlight received by adjoining properties.

- (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: Not applicable – the site is located within the B2 Local Centre zone and not within a recreation or environmental protection zone.

### **Consistency with zone objectives**

The subject property is zoned B2 Local Centre zone pursuant to MLEP 2013. The development's consistency with the stated objectives of the B2 zone is 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 1386.50m<sup>2</sup> of commercial floor space and 370.54m<sup>2</sup> of retail 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 from 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 EOT facilities and bicycle parking within Basement Level 01.

- *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. Nonetheless, the application is supported by an Acoustic Report to ensure that noise levels associated with proposed plant equipment and use of the building are acceptable.

The non-compliant development, as it relates to building height, demonstrates consistency with objectives of the zone and the building height development standard objectives. Adopting the first option in *Wehbe*, strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary in the circumstances of this application.

#### 1.4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In *Initial Action* the Court found at [23]-[25] that:

*As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

*The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

*The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

### **Sufficient environmental planning grounds**

#### **Ground 1 – Contextually responsive building design**

Despite non-compliance with the building height development standard, the proposed development is consistent and compatible with the height of immediately adjoining buildings, other development within the visual catchment of the site and other development subject to the same height provisions.

Specifically, the height of the front parapet aligns with that of adjoining and nearby development, as shown on in the photomontage in Figure 6, below.



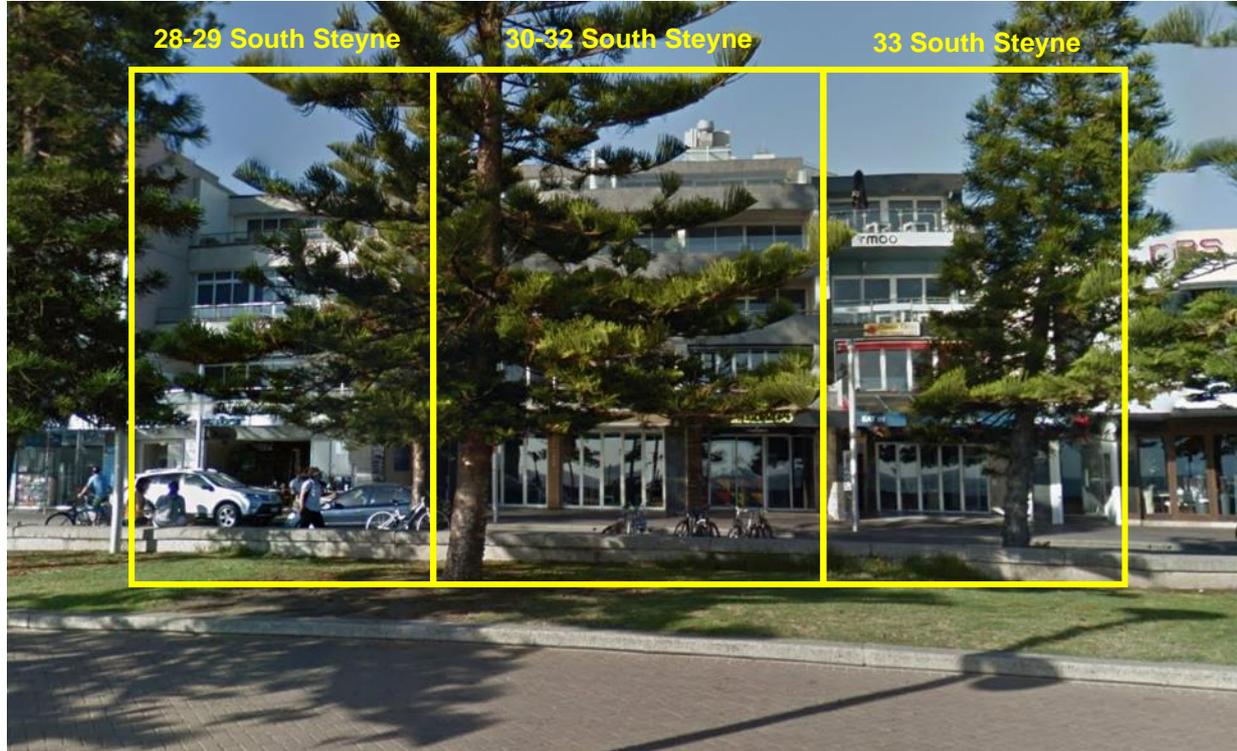
**Figure 6: Photomontage of development as seen from South Steyne**

Consistent with the provisions of clause 4.2.2.1 of MDCP 2011, consistency with the height of adjacent and adjoining buildings can be relied upon as sufficient environmental planning grounds to justify contravention of the building height development standard.

Although the site is not subject to a number of storeys control, it can be assumed that a three storey development is anticipated within the 10m portion of the site, with a four storey development anticipated within the 12m portion of the site. This assumption is confirmed by nearby and adjoining development that are subject to the same height limits including:

- The four storey street façade at 28-29 South Steyne (12m height limit) (Figure 7),
- The four storey street façade at 30-32 South Steyne (12m height limit) (Figure 7),
- The four storey street façade at 33 South Steyne (12m height limit) (Figure 7),
- The three-five storey building at 43-45 South Steyne (10m-12m height limit) (Figure 8),
- The three-five storey building at 46-47 South Steyne (10m-12m height limit) (Figure 8).

The proposed development is limited to 3 storeys within the portion of the site that is subject to the 10m height limit and 4 storeys within the portion of the site that is subject to the 12m height limit, consistent with the perceived height and scale of nearby and surrounding development.



**Figure 7: Adjoining & nearby development along South Steyne**



**Figure 8: Nearby development along South Steyne**

Council's acceptance of the proposed height variation will ensure the orderly and economic development of the site, in so far as it will ensure conformity with the scale and character established by other existing development within the visual catchment of the site, consistent with Objective 1.3(c) of the EP&A Act.

The proposed development is also compatible with the height of immediately adjacent development along South Steyne and has been sensitively designed to respond to both the location of the site and also the form and massing of adjoining development. The building is of exceptional design quality with the variation facilitating a height that provides for contextual built form compatibility, consistent with Objective 1.3(g) of the Act.

## **Ground 2 – Consistency with Council's Policies**

### Front Façade

The proposed breach of the building height plane at the street frontage is consistent with the provisions of clause 4.2.2 of MDCP 2013, which provide that conformity with the prevailing parapet height constitutes sufficient environmental planning grounds to justify a breach to the height plane.

### Floor Space Ratio Bonus

The provisions of clause 4.4(2A) of MLEP 2013 prescribe that the floor space ratio of a building on land in the B2 Local Centre zone may exceed the maximum floor space ratio shown on the Floor Space Ratio Map by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

Essentially, the LEP provides a floor space bonus, above what is otherwise permitted, on sites within the B2 zone that are to be used primarily for commercial purposes. 100% of the proposed development is to be used for commercial purposes, and as such, the additional floor space is reasonably applied. The proposed development has sought to minimise the visual impact of this additional floor space by providing commercial floor space within the basement.

Strict compliance with the height of buildings development standard would detract from consistency with the specific standards and controls that apply with respect to the specific use proposed at the subject site and discourage the application of the commercial floor space bonus.

In consideration of the objectives of the B2 Local Centre zone, which emphasise the need for and importance of commercial floor space within the zone, the floor space ratio bonus is considered to hold greater determining weight than the height standard, particularly in circumstances where the development is of such an exceptionally high architectural standard and consistent with the prevailing heights of adjoining and nearby development.

Allowing for the height breach in consideration of other the application of other standards and controls is considered to ensure the orderly and economic development of the site, consistent with Objective 1.3(c) of the EP&A Act.

### **Ground 3 – Public Benefit**

The proposed development comprises a pedestrian through-site link, that will significantly improve pedestrian connectivity throughout the town centre and the activation of Rialto Lane. The voluntary inclusion of the site link, which is highly endorsed/supported by Council, reduces the area of floor space at the ground level of the subject site, which has a premium rental return noting the site's location and outlook to Manly Beach.

The provision of additional floor space partially above the height plane is considered to be justified in consideration of the public benefit associated with the incorporation of the through-site link at the ground floor.

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

#### **1.4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the B2 Local Centre Zone**

The consent authority needs to be satisfied that the proposed development will be in the public interest. A development is said to be in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

*The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.*

*It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest.

#### **1.4.5 Secretary's concurrence**

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve

development that contravenes a development standard imposed by an environmental instrument by more than 10%.

Concurrence of the Secretary can therefore be assumed in this case.

## **1.5 Conclusion**

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I 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.

**Boston Blyth Fleming Pty Limited**



**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**