

2nd August 2024

The CEO
Northern Beaches Council
Po Box 882
MONA VALE NSW 1660

Dear Sir,

Statement of Environmental Effects
Modification of Development Consent DA2022/1164
Demolition and construction of a commercial building
34-35 South Steyne, Manly

1.0 Introduction

On 18th December 2023 the Northern Beaches Local Planning Panel granted approval for the subject development involving demolition works and the construction of a commercial building on the subject property. Council is currently considering an application seeking relatively minor modifications to the approved development (Mod2024/0225).

We have been engaged to prepare an application seeking further modifications to the development consent pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (the Act). The modifications include changes necessary to comply with the fire safety provisions of the BCA, changes to the design and geometry of the internalised courtyard and an increase in the size and geometry of the Level 3 floorplate. We confirm that no works have commenced on site.

Particular attention has been given to maintaining the view sharing outcomes achieved to apartments 632, 633, 732 and 733, 25 Wentworth Street through approval of the original application as detailed within the accompanying Visual Impact Assessment prepared by Urbane Design Group. Although, the modifications to the Level 3 floorplate will result in additional view impact to the Level 5 apartment 535, 25 Wentworth Street it is considered that a view sharing outcome is maintained when view impacts from this adjoining residential apartment building are considered as a whole rather than to individual units. Such approach is consistent with the findings of the Land and Environment Court in the matters of *Gerrale Group Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1042 and *Arnott v City of Sydney Council* [2015] NSWLEC 1052.

This submission also demonstrates that the residential amenity outcomes afforded to surrounding residential properties through approval of the original scheme are not compromised in terms of privacy, shadowing and acoustic outcomes. Further, the modifications do not compromise the design quality of the original approval nor its relationship with the adjacent heritage conservation area. This application is also accompanied by the following amended/updated documentation:

- Amended Architectural plans (Revision J) prepared by Durback Block Jaggers.
- Statement of Heritage Impact prepared by Weir Phillips Heritage.
- Landscape Plans (Revision 02) prepared by Wyer and Co.
- Visual Impact Assessment prepared by Urbane Design Group.
- Access Compliance Capability Statement prepared by Code Performance.
- BCA Compliance Statement Report prepared by Blackett, Maguire + Goldsmith.
- Fire Safety Report prepared by Affinity Fire Engineering.
- Flood Impact and Risk Management Report Prepared by IGS.
- Noise Impact Statement prepared by E-LAB Consulting.
- Geotechnical letter prepared by Morrow Geotechnics.
- Energy Efficiency Assessment Report prepared by IGS.
- Traffic and Parking Assessment Report prepared by CJP Consulting Engineers.

Based on the contents of these documents the consent authority can be satisfied that the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of Section 4.55(2) of the Act.

2.0 Detail of Modifications Sought

The proposed modifications are shown coloured and described on the Revision J Architectural plans prepared by Durback Block Jaggers. Specifically, the modifications include the following:

Basement 1

- Relocate sprinkler and booster alarm valves to fire stair 2 airlock.

Ground Floor

- Changes to the ground-floor tenancy – additional openings added into Through Site Link.
- Relocation of the sprinkler and hydrant boosters to South Steyne.
- New passive flood barrier to Retail entry 1.
- Sliding fire door added to Through Site Link.

Level 1

- Changes to the central courtyard.
- Minor modifications to core layout.

Level 2

- Changes to the central courtyard.
- Minor modifications to core layout.

Level 3

- Changes to the central courtyard.
- Increase in floor space to the west.
- Changes to amenities to suit revised floor plate.
- Changes to window openings to the west to suit revised floor plate.
- Minor modifications to core layout.

Roof Level

- Revised roof layout to suit new Level 3 arrangement.
- Plant and equipment slightly relocated to suit new roof layout.
- Locate solar panels to suit revised roof layout.
- Minor modifications to mechanical layout

The application also seeks the modification/ deletion of the following conditions:

Condition 1 - The modification of this condition to reference the modified plans and supporting documentation

Condition 19 - The modification this condition to reference the updated BCA Compliance Statement Report prepared by Blackett, Maguire + Goldsmith.

Condition 20 – The modification of this condition to reference the updated Access Compliance Capability Statement prepared by Code Performance

Conditions 25 and 56 - The modification of these conditions to reference the updated Acoustic Report prepared by IGS.

Condition 28 - The deletion of this condition on the basis that the modified Rialto Lane elevation achieves the intent of the condition.

Condition 63 - The modification of the condition as follows to reflect the amended architectural and landscape detailing:

63. Roof areas, Terraces and Roof planting

The following provisions apply:

- ~~i) Rooftop planting at the rear of Level 3 is to be maintained to a height not exceeding 0.3m above the parapet (planter box) edge.~~
- ii) The Level 3 front roof terrace is not to be used for commercial food and beverage purposes.
- ~~iii) Solar voltaic cells are not to be placed on Level 3 roof top or the rear landscaped roof space toward Rialto Lane.~~
- iv) The main upper roof surface of Level 3 is minimise reflectivity to overlooking apartments. (White, light grey or similar colours are not to be used for finished roof treatment)

Reason: To ensure that the development remains consistent with Manly DCP townscape.

3.0 Section 4.55(2) of the Environmental Planning and Assessment Act 1979

Section 4.55(2) of the Act provides that:

- (2) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:
 - (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

.....

In answering the above threshold question as to whether the proposal represents “substantially the same” development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls. In order for Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - Moto Projects (no. 2) Pty Ltd v North Sydney Council [1999] 106 LGERA 298 per Bignold J.

Consideration has also been given to the recent findings of the court in the matters of *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 1437 and *Canterbury-Bankstown Council v Realize Architecture Pty Ltd* [2024] NSWLEC 31.

What can be discerned from the findings in the above matters is that the Court approached its interpretation of the ‘substantially the same’ test in the following ways (consistent with the guidance of earlier Court decisions quoted throughout the Judgments).

- Comparing the quantitative differences between the proposed modified development against the original approved development.
- Comparing the qualitative differences between the proposed modified development against the original approved development.
- Comparing the critical elements of the proposed modified development against the original approved development.
- Most importantly, by then balancing the evidence in respect of all of those factual comparisons before forming a subjective opinion as to whether the proposed modified development was ‘substantially the same’ as the original approved development.

Having regard to the above considerations we provide the following analysis.

Quantitative differences

- An increase in Level 3 floor space towards the western boundary. Since originally approved the commercial GFA has increased by 179.3m² to a total GFA of 1912m² representing an FSR of 2.77:1. This FSR remains below the potential maximum floor space ratio for the site is 3.0:1 pursuant to clause 4.4(2A) of MLEP 2013.
- The roof parapet, lift overrun and mechanical plant heights are maintained.
- A reduction in the size and geometry of the internal courtyard.
- Changes to satisfy BCA fire requirements.
- Associated façade changes.

Qualitative differences

- The modifications maintain the same levels of retail activation to both the South Steyne and Rialto Lane frontages.
- The modifications do not compromise the overall design quality of the development.
- The modifications do not give rise to unacceptable streetscape or heritage conservation impacts.
- The modifications do not give rise to any residential amenity impacts in terms of privacy or solar access.
- A view sharing outcome is maintained consistent with the findings of the Land and Environment Court in the matters of *Gerrale Group Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1042 and *Arnott v City of Sydney Council* [2015] NSWLEC 1052.
- The development will remain safe from flooding hazard.
- The development will continue to be appropriately serviced in relation to car parking and waste management.

Critical elements

- A view sharing outcome is maintained consistent with the findings of the Land and Environment Court in the matters of *Gerrale Group Investments Pty Ltd v Sutherland Shire Council [2020] NSWLEC 1042* and *Arnott v City of Sydney Council [2015] NSWLEC 1052*.
- The development will continue to display design excellence.
- The development will not give rise to adverse heritage conservation impacts.
- The development will remain safe from flooding hazard.
- The development will continue to provide appropriately for off-street carparking given the site's location within immediate proximity to public transport options including bus and ferry.

Balancing

We are satisfied that the critical elements of the proposal are maintained, and that the quantitative and qualitative differences are not such as to render the developments not substantially the same. The additional floor space will enable the developments take advantage of the bonus floor space provisions pursuant to clause 4.4(2A) of MLEP 2013 we seek to encourage commercial floorspace within the Local Centre.

A balance is achieved between the orderly and economic use and development of the land and view sharing with the apartments at 25 Wentworth Street in circumstances where bonus floor space provisions seek to achieve the objectives of the E1 Local Centre zone and the objectives of the FSR standard being to provide for the viability of the zone 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.

In this context, whilst it is acknowledged that the modifications to the Level 3 floorplate will result in a minor additional view impact to the Level 5 apartment 535, 25 Wentworth Street it is considered that a view sharing outcome is maintained when view impacts from this adjoining residential apartment building are considered as a whole rather than to individual units.

That is, view impacts have been minimised to the residential apartments at 25 Wentworth Street through the appropriate distribution of height and floor space to the extent that only one apartment is impacted with view impacts to the balance of the apartments appropriately described as minor or negligible. Such approach is consistent with the findings of the Land and Environment Court in the matters of *Arnott v City of Sydney Council [2015] NSWLEC 1052* and *Gerrale Group Investments Pty Ltd v Sutherland Shire Council [2020] NSWLEC 1042* where at paragraph 165 of the latter judgment Morish AC states:

165 *In regard to view loss, I accept that the current planning regime will result in some level of view loss and, apart from the controversial bedroom section in the south-eastern corner of the building, the view impact is across a side boundary. Therefore, in accordance with the principles in Tenacity Consulting v Warringah (2004) 134 LGERA 23; [2004] NSWLEC 140 some view loss is likely. It is appropriate given the location of the site and the number of units that are in proximity to the site to consider the impact of the proposal as a whole rather than to individual units. Accordingly, there will be some level of view loss. This is consistent with the view taken by O'Neill C in Arnott v City of Sydney Council [2015] NSWLEC 1052 where at [72] she states:*

...."It is partly for this reason that the Tenacity planning principle is less helpfully applied to impacts on views from individual apartments within residential apartment buildings, as there are generally more limited opportunities to rearrange massing to preserve what is often a singular orientation to a view. For this reason, it is also appropriate to consider the residential apartment building as a whole in assessing view impacts."

In this regard, we are satisfied that the critical elements of the proposal are maintained, and that the quantitative and qualitative differences are not such as to render the developments not substantially the same. Accordingly, we are of the considered opinion that the modified development is substantially the same development as the original approved development.

On the basis of the above analysis, we regard the proposed application as being "essentially or materially" the same as the approved development such that the application is appropriately categorised as being "substantially the same" and is appropriately dealt with by way of Section 4.55(2) of the Act.

4.0 Manly Local Environmental Plan 2013

Zone and Objectives

The subject property is zoned E1 Local Centre pursuant to Manly Local Environmental Plan 2013 (MLEP 2013). Commercial premises remain permissible with consent in the zone.

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*

We confirm that the modifications maintain the previously approved Level 3 floor and planter box heights, roof height and lift overrun height which were the subject of a clause 4.6 variation request.

The proposed roof top plant and level 3 floor plate extensions exceed the height of building standard however have been strategically located to ensure that the view corridors achieved through approval of the original application from apartments 632, 633, 732 and 733, 25 Wentworth Street, Manly are maintained. This is demonstrated in the accompanying Visual Impact Assessment prepared by Urbane Design Group.

Although the clause 4.6 variation mechanism does not apply to an application made pursuant to section 4.55 of the Act an assessment of the proposed roof top plant 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 mechanical plant and modified portions of the development located above the height standard are consistent with that of surrounding development and development within the visual catchment of the site.

The mechanical plant and Level 3 floor plate extensions are located outside the view corridors achieved through approval of the original application from apartments 632, 633, 732 and 733, 25 Wentworth Street, Manly. The modified building elements will not be readily discernible from the public domain given available view lines and viewing angles and certainly not to the extent that they will be perceived as inappropriate or jarring. The proposed non-compliant elements of the modified development do not prevent the development from being consistent with this objective.

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

Comment: The additional building height breaching elements will not contribute to the bulk and scale of the approved development to the extent that it will render the development incompatible with the bulk and scale of surrounding development or inappropriate or jarring in a streetscape context. The rooftop plant is limited to that reasonably anticipated for a commercial development within a local centre. Further, overall FSR remains 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* we have formed the considered opinion that most observers would not find the modified 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.

This objective is achieved notwithstanding the modifications sought.

- (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: As previously indicated, a balance is achieved between the orderly and economic use and development of the land and view sharing with the apartments at 25 Wentworth Street in circumstances where bonus floor space provisions seek to achieve the objectives of the E1 Local Centre zone and the objectives of the FSR standard being to provide for the viability of the zone 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.

In this context, whilst it is acknowledged that the modifications to the Level 3 floorplate will result in a minor additional view impact to the Level 5 apartment 535, 25 Wentworth Street it is considered that a view sharing outcome is maintained when view impacts from this adjoining residential apartment building are considered as a whole rather than to individual units.

That is, view impacts have been minimised to the residential apartments at 25 Wentworth Street through the appropriate distribution of height and floor space to the extent that only one apartment is impacted with view impacts to the balance of the apartments appropriately described as minor or negligible. Such approach is consistent with the findings of the Land and Environment Court in the matters of *Arnott v City of Sydney Council* [2015] NSWLEC 1052 and *Gerrale Group Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1042 where at paragraph 165 of the latter judgment Morish AC states:

165 *In regard to view loss, I accept that the current planning regime will result in some level of view loss and, apart from the controversial bedroom section in the south-eastern corner of the building, the view impact is across a side boundary. Therefore, in accordance with the principles in Tenacity Consulting v Warringah (2004) 134 LGERA 23; [2004] NSWLEC 140 some view loss is likely. It is appropriate given the location of the site and the number of units that are in proximity to the site to consider the impact of the proposal as a whole rather than to individual units. Accordingly, there will be some level of view loss. This is consistent with the view taken by O'Neill C in Arnott v City of Sydney Council [2015] NSWLEC 1052 where at [72] she states:*

...."It is partly for this reason that the Tenacity planning principle is less helpfully applied to impacts on views from individual apartments within residential apartment buildings, as there are generally more limited opportunities to rearrange massing to preserve what is often a singular orientation to a view. For this reason, it is also appropriate to consider the residential apartment building as a whole in assessing view impacts."

The proposed roof top plant and level 3 floor plate extensions exceed the height of building standard however have been strategically located to ensure that the view corridors achieved through approval of the original application from apartments 632, 633, 732 and 733, 25 Wentworth Street, Manly are maintained. This is demonstrated in the accompanying Visual Impact Assessment prepared by Urbane Design Group.

In this regard, view impacts to nearby residential development from public spaces and views from nearby residential development to public spaces have been minimised through the appropriate distribution of height and floor space. This objective is achieved notwithstanding the modifications sought.

- (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 modifications do not result in any adverse impacts upon the amount of sunlight received by adjoining properties.

This objective is achieved notwithstanding the modifications sought.

- (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 E1 Local Centre zone and not within a recreation or environmental protection zone.

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.

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 modifications, the subject of this application result in a 139.1m² increase in commercial GFA, which we combined with the 40.2m² increase the subject of Mod2024/0225 results in a total GFA of 1912m² representing an FSR of 2.77:1. This FSR remains below the potential maximum floor space ratio for the site is 3.0:1 pursuant to clause 4.4(2A) of MLEP 2013.

Heritage Conservation

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

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

The stated objectives of this clause are as follows:

- (a) *to conserve the environmental heritage of Manly,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

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:

This Statement of Heritage Impact has been prepared to accompany a S4.55 Application for modifications to the approved DA2022/1164 for an existing site at Nos 34-35 South Steyne, Manly, New South Wales. The site is in the Northern Beaches Council. The principal environmental planning instrument for the site is the Manly Local Environmental Plan 2013. The site is not listed as a heritage item, but is adjacent to heritage items and lies within the Town Centre Heritage Conservation Area by Schedule 5 Parts 1 and 2 of the LEP 2013.

The proposed modifications will have a minimal and acceptable additional impact on the 'Town Centre Heritage Conservation Area' because they are substantially in accordance with the approved DA. They represent minor design developments that will improve the amenity, accessibility and fire protection measures of the approved building. The exterior modifications are minimal and consistent with the general appearance of the approved building. The interior modifications will have no visibility from anywhere in the Conservation Area.

The proposed modifications will have no additional impact on the fabric of, or significant view corridors towards, heritage items in the vicinity. The exterior modifications are minor and consistent with the general appearance of the approved building, as it will present to the heritage items. The proposed modifications to the interior will have no visibility. For the above reasons, there will be no additional impact on the ability of the public to understand and appreciate the heritage significance of these 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.

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

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 IGS which concludes:

IGS has completed a Site-Specific Flood Risk Management Report for the proposed development at 34 – 35 South Steyne, Manly. Based on the available information and flood study, the following summary of recommendations is given below:

- *It is recommended to take refuge within level 1 of the building and await further instruction from SES/relevant authorities.*

- *The flood planning levels mentioned in section 3 of this report and as indicated in the architectural plans by Durback Block Jagers meet the flood planning requirements as per Manly Development Control Plan 2013 DCP. These levels must be maintained to protect the property from flood waters.*

This flood impact and risk management plan has identified the flood risks associated with the site and outlined flood mitigation and management strategies that address potential risks and hazards to the occupants and structure of the building.

Based on the incorporated flood planning levels and flood impact and risk management plan, we believe this development application meets all flooding and risk management requirements stipulated within the Manly Development Control Plan 2013 and Northern Beaches Council Building in Flood Prone Land Guidelines.

These provisions are satisfied.

Acid Sulfate Soils

The site is located within Class 4 as shown on the Acid Sulfate Soils Map of MLEP 2013. We confirm that no additional excavation is proposed and in any event the Acid Sulphate Soils Assessment prepared by Geosyntec Consultants Pty Ltd submitted in support of the original application indicated that acid sulphate soils do not appear to be present at the site and accordingly an Acid Sulphate Soils Management Plan is not required.

These provisions remain satisfied.

Earthworks

In response to the clause 6.2 considerations this submission is accompanied by a geotechnical letter prepared by Morrow Geotechnics Pty Limited confirming that the findings of the previous Morrow Geotechnical reports remain suitable for the proposed development.

Foreshore Scenic Protection Area

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

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

Having regard to these provisions we have formed the considered opinion that as the modifications will not be readily discernible as viewed from the foreshore area or its immediate environs these provisions remain satisfied.

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

Active Street Frontages

Pursuant to clause 6.11 the objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone E1 Local Centre.

We confirm that there is no change to the level of street activation achieved through approval of the original application.

Essential Services

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

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

We confirm that the development, as modified, will remain appropriately serviced.

Design Excellence

Pursuant to clause 6.13 development consent must not be granted for development on land in Zone E1 Local Centre unless the consent authority considers that the development exhibits design excellence. The consent authority can be satisfied that the proposal will continue to display design excellence in accordance with these provisions given that there are no significant changes to the street and laneway facing building façades or the overall design quality of the development.

Gross Floor Area in Zone E1

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 E1 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, as modified, remains below 1,000 square metres and therefore compliant with this standard.

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

5.0 Manly Development Control Plan 2013

Having assessed the modified development against the applicable provision of MDCP we note the following:

- A view sharing outcome is maintained consistent with the findings of the Land and Environment Court in the matters of *Gerrale Group Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1042 and *Arnott v City of Sydney Council* [2015] NSWLEC 1052.
- The development will continue to display design excellence.
- The development will not give rise to adverse heritage conservation impacts.
- The development will remain safe from flooding hazard.

- The development will continue to provide appropriately for off-street carparking given the site's location within immediate proximity to public transport options including bus and ferry. In this regard, we rely on the following commentary contained within the accompanying Traffic and Parking Assessment Report prepared by CJP Consulting Engineers:

In summary, the proposed modifications to the approved DA2022/1164 scheme, from a traffic, parking and access perspective, comprise:

- *Zero nett increase in retail (F&B) service floor area*
- *Nett increase of 122m² of commercial floor area*
- *Nett increase of 1 bicycle parking space, with relocation of all bicycles to B2*
- *Thickening of basement shoring wall and introduction of additional structural columns within B2*
- *Slight adjustments to basement parking layout*
- *Reconfiguration of EOT facilities on B1*

The proposed amendments result in a theoretical nett increase of just 3 additional vehicle trips during the weekday morning and afternoon road network peak periods, however, is likely to be closer to zero as no additional offstreet car parking is proposed. Furthermore, the approved car parking provision remains unchanged, thereby resulting in a numerical shortfall of 3 commercial spaces when assessed under Council's MDCP 2013 rates. The nominal commercial parking shortfall is considered acceptable, however, given the extensive public and active transport options nearby, surrounding residential and commercial areas within walking distance, as well as sustainability by limiting vehicular trips.

The approved car parking provision/mix/general layout, loading, servicing, and waste collection arrangements, site through link, vehicular access location and design remain unchanged from the approved DA2022/1164 scheme.

In the circumstances, it is concluded that the proposed s4.55 scheme will not result in any unacceptable traffic, parking, servicing or access implications.

We also note that the conclusions reached by Councils Traffic Engineer in the assessment and support of the original parking shortfall remain valid namely:

The remaining outstanding traffic issue relates to the shortfall in parking. The DCP requires 40 parking spaces to support the proposed uses on the site with the developer proposing 13 parking spaces including 2 staff car pool spaces and 2 car stackers.

A loading/servicing bay is also proposed. The parking provisions are therefore well below DCP requirements however the applicant has presented the reduced level of parking in a positive light arguing that it encourages workers to travel via sustainable transport and reduces car trip rates in the pedestrian dominated environment in Rialto Lane.

These arguments are accepted noting that removing the basement commercial is likely to result in excessively steep ramps, additional but tighter parking arrangements and loss of the below ground loading bay. Given the above the 13 parking spaces are accepted in this instance

- The proposal continues to be appropriately landscaped as detailed on the amended landscape plans prepared Wyer and Co.
- The modified proposal will remain capable of complying with the provisions of the Building Code of Australia as detailed within the accompanying BCA Compliance Statement prepared by BM+G.
- The previously approved acoustic outcomes are maintained as detailed within the accompanying Noise Impact Statement prepared by E-LAB Consulting.
- The modifications do not compromise the approved developments performance when assessed against the CPTED considerations.
- Waste will continue to be appropriately managed in accordance with the Waste Management Plans prepared by EP Consulting (Mod2024/0225).
- The modifications do not alter the previously approved stormwater management regime.

6.0 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979(as amended):

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

The developments performance when assessed against the relevant statutory planning regime is not compromised as detailed within this report.

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

Context and Setting

- i) *What is the relationship to the region and local context on terms of:*

- *the scenic qualities and features of the landscape?*
- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

The modified development remains contextually appropriate as detailed within 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?*

The approved development will remain, in its modified state, a development which will continue to relate to its surrounds and adjoining development in a contextually appropriate fashion with appropriate view sharing, privacy and solar access outcomes as detailed within this report.

Access, transport and traffic

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

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

The overall quantum of off-street carparking is unaltered with the development continuing to provide appropriately for off-street carparking as detailed within the accompanying Traffic and Parking Assessment Report prepared by CJP Consulting Engineers.

Public domain

There are no public domain changes.

Economic impact in the locality

The proposed development will provide short term employment opportunities during construction and during the ongoing operational management of the development.

Site design and internal design

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

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

We confirm that the modifications maintain appropriate streetscape, heritage conservation, landscape and design quality outcomes as detailed within this report.

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 be capable of complying with the provisions of the Building Code of Australia as detailed within the accompanying BCA Compliance Statement prepared by BM+G.

Construction

i) *What would be the impacts of construction activities in terms of:*

- *the environmental planning issues listed above?*
- *site safety?*

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

The suitability of the site for the development.

Does the proposal fit in the locality?

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

- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The adjacent development does not impose any insurmountable development constraints. The development will remain appropriately serviced.

Are the site attributes conducive to development?

The site has no special physical or engineering constraints is suitable for the proposed development.

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

It is envisaged that any submissions made in relation to the proposed development will be appropriately assessed by Council.

The public interest.

The modifications do not compromise the public benefit achieved through approval of the original application and accordingly approval of the application will be in the public interest.

9.0 Conclusion

The modifications include changes necessary to comply with the fire safety provisions of the BCA, changes to the design and geometry of the internalised courtyard and an increase in the size and geometry of the Level 3 floorplate. We confirm that no works have commenced on site.

Particular attention has been given to maintaining the view sharing outcomes achieved to apartments 632, 633, 732 and 733, 25 Wentworth Street through approval of the original application as detailed within the accompanying Visual Impact Assessment prepared by Urbane Design Group. Although, the modifications to the Level 3 floorplate will result in a minor additional view impact to the Level 5 apartment 535, 25 Wentworth Street it is considered that a view sharing outcome is maintained when view impacts from this adjoining residential apartment building are considered as a whole rather than to individual units. Such approach is consistent with the findings of the Land and Environment Court in the matters of *Gerrale Group Investments Pty Ltd v Sutherland Shire Council [2020] NSWLEC 1042* and *Arnott v City of Sydney Council [2015] NSWLEC 1052*.

This submission also demonstrates that the residential amenity outcomes afforded to surrounding residential properties through approval of the original scheme are not compromised in terms of privacy, shadowing and acoustic outcomes. Further, the modifications do not compromise the design quality of the original approval nor its relationship with the adjacent heritage conservation area.

Based on the analysis contained within this report the consent authority can be satisfied that the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of Section 4.55(2) of the Act. Having given due consideration to the relevant considerations pursuant to s4.15(2) of the Act it is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

BOSTON BLYTH FLEMING PTY LTD

A handwritten signature in black ink, appearing to read 'Greg Boston', is positioned above the printed name.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director