

STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed Shop Top
Housing Development

35-43 Belgrave Street,
Manly

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ANNEXURE 2 – CLAUSE 4.6 REQUEST – COMMERCIAL FLOOR SPACE

1 Introduction

This Statement of Environmental Effects (SEE) has been prepared in support of a development application proposing the demolition of the existing structures and the construction of a shop top housing development at 35-43 Belgrave Street, Manly. The application proposes 512m² of commercial floor space at the ground floor, 25 residential apartments throughout the upper four floors, and two levels of basement carparking for 45 cars. The application also includes basement storage, separate residential and commercial waste rooms, associated infrastructure and landscaping.

SJB Architects, the project architects, have responded to the client brief to design a contextually responsive building of exceptional quality with high levels of amenity for future occupants of both the commercial floor space and the residential apartments. In this regard, the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this site having regard to the height, scale, proximity, use and orientation of surrounding development and the flood affectation of the land. The proposal has also evolved in response to the feedback received through Council's Pre-Lodgement process and from Council's Design and Sustainability Advisory Panel.

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

- Survey by LTS
- Architectural Plans by SJB Architects
- ADG Compliance Report and Design Verification Statement by SJB Architects
- Landscape Plans by Land and Form
- Preliminary Site Inspection by JK Geotechnics
- Flood Report by Van der Meer
- Stormwater Management Plans by Van der Meer
- BCA Assessment Report by Hontas Hatzi & Co
- Access Report by Hontas Hatzi & Co
- Transport Impact Assessment Assessment Report by JMT Consulting
- Construction Traffic Management Plan by JMT Consulting
- Geotechnical Report by JK Geotechnics
- BASIX Certificate by E-LAB Consulting
- Heritage Impact Statement by Urbis
- Acoustic Report by E-LAB Consulting
- Waste Management Plan by SLR Consulting Australia

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

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

- State Environmental Planning Policy (Transport and Infrastructure) 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 variations to the building height and commercial floor space development standards, strict compliance has been found to be unreasonable and unnecessary in this instance. The development is otherwise consistent with the objectives of these development standards and sufficient environmental planning grounds exist to support the variations (as outlined in the attached Clause 4.6 Variation Requests).
- The non-compliance with the car parking and adaptable housing requirements prescribed by MDCP 2013 has been acknowledged and appropriately justified having regard to the associated objectives. Such variation succeeds pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.
- The proposal will provide a notable increase to the supply of residential floor space whilst maintaining an appropriate allocation of commercial floor space on a site ideally suited to a mixed use development.
- The proposed development has been amended in response to the feedback from Council at the Pre-Lodgement Meeting and the separate advice from Council's Design and Sustainability Advice Panel at the separate meeting on 25 May 2023.

2 Site Analysis

2.1 Site Description and location

2.1.1 The Site

The subject property comprises five separate allotments, as follows:

- SP14133, known as 35-39 Belgrave Street, Manly
- Lot 1 in DP 100633, known as 40 Belgrave Street, Manly
- Lot 1 in DP 104766, known as 41 Belgrave Street, Manly
- Lot 1 in DP 34395, known as 42 Belgrave Street, Manly
- Lot 1 in DP719821, known as 43 Belgrave Street, Manly

When site is irregular in shape, with a 41.615m wide frontage to Belgrave Street to the west, a 32.1m wide frontage to Raglan Street to the north, a 24.41m wide frontage to Whistler Street to the east and a total area of 1060m².

The site is generally flat and contains series of two and three storey mixed use developments. The site is affected by Low and Medium Risk flooding.

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



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

The physical and topographical characteristics of the site are depicted on the site survey extract at Figure 2, and the site images at Figures 3-6.

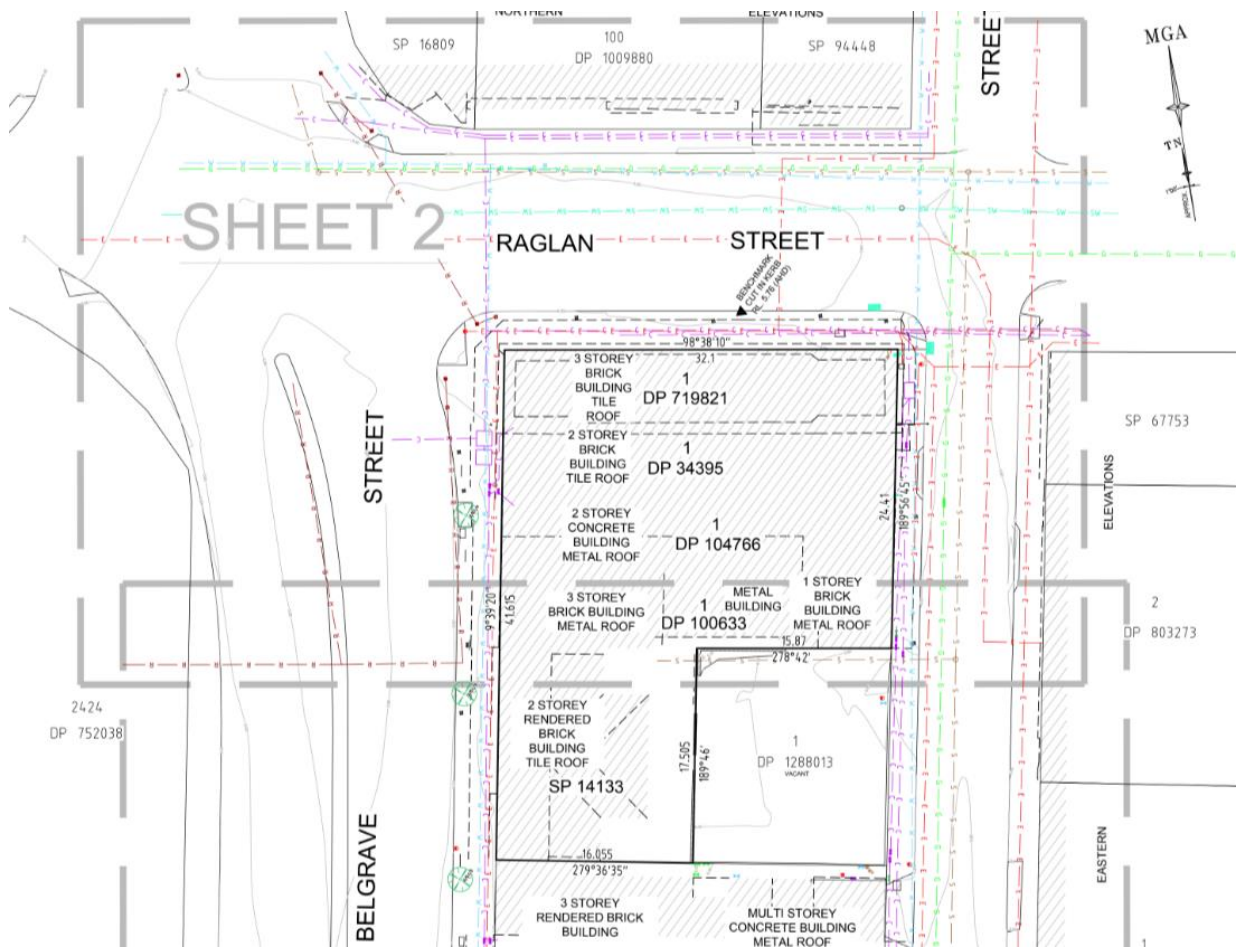


Figure 2: Site survey extract



Figure 3: Subject property as viewed from Belgrave Street from the north-west



Figure 4: Subject property as seen from Belgrave Street from the south-west



Figure 5: Subject property as seen from Raglan Street from the north-east



Figure 6: Subject property as seen from Whistler Street from the east

2.1.1 The Locality

The site is located within the E1 Local Centre Zone, as shown on the Zoning Map of MLEP 2013 (Figure 7).



Figure 7: 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 is shown in Figures 8 and 9, below.



Figure 8: Recently completed shop top housing development at 21 Belgrave Street



Figure 9: Varied development along Raglan Street

3 Description of Proposed Development

3.1 Details of the proposed development

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

- Demolition of the existing site structures,
- Construction of a 5 storey shop top housing development over 2 levels of basement, comprising:
 - Basement 2: 24 x residential car spaces, plant store, individual storage cages, stair and lift access,
 - Basement 1: 11 x residential car spaces, 6 x residential visitor car space, 4 x retail car spaces, individual storage cages, grease arrestor, stair and lift access,
 - Ground: 512m² of retail floor space in four retail tenancies, residential access from Whistler Street, residential waste store, commercial waste store, electrical substation, plant store, stair and lift access,
 - Level 1: 5 x 2 bedroom apartments, 2 x 3 bedroom apartments, central courtyard, stair and lift access,
 - Level 2: 5 x 2 bedroom apartments, 2 x 3 bedroom apartments, stair and lift access,
 - Level 3: 5 x 2 bedroom apartments, 2 x 3 bedroom apartments, stair and lift access,
 - Level 4: 4 x 3 bedroom apartments, stair and lift access,
 - Roof: 4 x roof terraces, plant, and lift overrun.
- Driveway access to Whistler Street,
- Landscaping, and
- Stormwater infrastructure.

The proposed development demonstrates a superior architectural design solution for the site, providing high levels of amenity for future occupants of the development. The application is supported by a Design Verification Statement (DVS) by SJB Architects, inclusive of a detailed response to the design criteria of SEPP 65 and the objectives of the ADG.

The architectural design is complemented by integrated central and perimeter plantings, as shown on the Landscape Plans prepared by Land and Form. The proposed landscaping creates a central oasis within the building and will improve air quality within the courtyard space.

The proposal's readiness to comply with the relevant provisions of the BCA and the acceptability of the access and adaptable housing arrangements is detailed within the BCA Compliance Report and Access Report by Hontas Hatzis & Co.

The suitability of the proposed driveway design and parking arrangements is confirmed in the Traffic and Parking Report by JMT Consulting.

Stormwater is to be collected in an on-site detention tank, with overflow directed to Council's stormwater pit in Whistler Street. The proposed stormwater management solution developed for the site is detailed in the Stormwater Plans prepared by Van der Meer, with a Flood Risk Management Report also prepared by Van der Meer in response to the low and medium risk flood affectation of the land.

In light of the excavation proposed to accommodate the basement, the application is supported by a Geotechnical Report by JK Geotechnics, with a separate Preliminary Site Investigation considering the potential contamination of the site, also prepared by JK Geotechnics.

The site is located within the vicinity of a number of items of local heritage significance. The suitability of the proposal with regard to the significance of nearby items is considered and positively confirmed in the Heritage Impact Statement prepared by Urbis.

The application is supported by a BASIX Certificate prepared by E-LAB Consulting, confirming that relevant industry standards have been achieved.

An Acoustic Report by E-LAB Consulting also accompanies the application, confirming the suitability of noise levels within the proposed residential component of the development, noting the ground floor retail spaces proposed and the proximity of the development to arterial roads.

Finally, the application is supported by a Waste Management Plan prepared by SLR Consulting Australia 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 E1 Local Centre zone and the proposed shop top housing development is permissible with consent.

The proposal is consistent with the stated objectives of the E1 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 512m² of retail floor space to contribute to the existing range of retail, business, entertainment and community uses within the Manly Town Centre.

- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

Comment: The proposed development represents a significant investment in the revitalisation of the site, generating employment opportunities and economic growth as a consequence of the ground floor retail tenancies, in addition to the management and maintenance of the upper floor residential apartments.

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

Comment: The proposed development provides high-quality residential apartments on a site that is perfectly suited for increased residential development. Future residents of the proposed development will contribute to the vibrancy of the Manly Town Centre.

- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

Comment: The proposed development provides retail tenancies on the ground floor, strategically oriented with maximum presentation to Belgrave Street and Raglan Street, with primary residential access and service arrangements from Whistler Street, to minimise disruption to the primary street frontages.

- *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 proposed development is informed by a detailed site analysis, which confirms that there are no adjoining or nearby land uses that cause conflict in relation to the residential floor space proposed. Furthermore, the development has been designed to ensure acceptable noise levels for all residences in light of the ground floor retail tenancies and traffic noise associated with Belgrave Street (as confirmed in the accompanying Acoustic Report).

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

Comment: The proposal includes four retail tenancies on the ground floor presenting to Belgrave Street, Raglan Street, and the northern end of Whistler Street, with a total retail floor space of 512m². The retail spaces are designed with large, glazed frontages, strategically designed planters, high ceilings and projecting awnings to maximise activation and amenity along the footpath and at street level in general. The proposal has also been designed with the residential access, driveway access and service areas to Whistler Street, which acts as more of a rear laneway, to maximise retail presence along the higher order streets.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment: The proposed development appropriately responds to the scale and form of surrounding and nearby development throughout the town centre, most notably that of recent approvals at 21 Belgrave Street, 26 Whistler Street and 21 Whistler Street (which immediately adjoins the site).

It is noted that the FSR development standard is the primary control to limit the bulk and scale of development in the Manly Town Centre, and in this regard, the proposal is maintained below the maximum prescribed.

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 15m.

The objectives of this control are as follows:

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

Building height is defined as follows:

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

The proposed development reaches a maximum height of 18.27m, measured from existing ground level to the top of the proposed vaulted roof form at RL 24.070m AHD. Whilst inconsistent with the maximum height prescribed by this clause, the height of the development is generally consistent with other recent development approved along Belgrave Street and Whistler Street, including that on the adjoining site at 21 Whistler Street, with a maximum RL of 25.00m AHD and a maximum height of 19.295m, and that approved and constructed at 21 Belgrave Street, with a maximum RL of 25.00m AHD and a maximum height of 19.4m.

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

The objectives of clause 4.6 of MLEP 2013 are:

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

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

4.1.3 Floor space ratio

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

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

The proposed development has a gross floor area of 3156m² and a floor space ratio of 2.98:1, consistent with the provisions of this clause.

4.1.4 Heritage conservation

The site is located in the vicinity of a number of sites of local heritage significance. The application is supported by a Heritage Impact Statement by Urbis which confirms that:

- The proposed development will not physically impact any listed heritage items, nor any listed Heritage Conservation Areas.
- Impacts on the setting of the listed substation building on Whistler Street are considered acceptable in the context of Whistler Street's current and future built character. The substation building will remain visually legible and intact. The street, more broadly, contains built forms of a range of ages and types (including a new 9-storey development being constructed immediately to the south of the listed substation) and is characterised by this fine grain of development within a narrow secondary street.
- The existing building at 35-39 Belgrave Street has been assessed by Urbis for its potential heritage significance. The assessment has found that the building does not meet the threshold for individual heritage listing. Its proposed demolition as part of this development is therefore supportable from a heritage perspective.
- The development seeks to introduce a new, architecturally designed building which is befitting of the importance of Belgrave Street as an important civic and commercial strip within the Manly town centre. It will vastly improve the site's interface with surrounding heritage items (including Ivanhoe Park, opposite) and HCAs.

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

4.1.5 Flood planning

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

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

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

4.1.6 Acid sulfate soils

The site is located within Class 4 as shown on the Acid Sulfate Soils Map of MLEP 2013. The application is site is supported by a Preliminary Site Investigation by JK Geotechnics which includes an assessment on the likelihood of disturbance of acid sulfate soils.

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 JK Geotechnics which confirms that the proposed excavation can be undertaken safely, with minimal risk to adjoining properties.

4.1.8 Stormwater management

Detailed Stormwater Management Plans prepared by Van der Meer 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 Scenic protection area

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

- (a) *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*

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

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

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

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

Comment: The proposed has been designed to sensitively respond to the context of the site, which is located approximately 180m from the beach promenade. The proposed shop top housing development is permitted on the land and is of a form that is consistent and compatible with surrounding and nearby 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

All three street frontages of the site are identified on the Active Street Frontages Map of MLEP 2013. Pursuant to clause 6.11 of MLEP 2013, development consent must not be granted to the erection of a building unless the consent authority is satisfied that the building will have active street frontages. 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.

With the exception of services that must present to the street, fire exits, the residential lobby and the driveway, the ground floor facades of the development comprise retail shop fronts. As such, Council can be satisfied that the building has active street frontages to all three frontages and that all premises on the ground floor are to be used for retail development.

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

The site is identified as “Gross Floor Area for Certain Commercial Premises” on the Key Sites Map of MLEP 2013. 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 this site 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 application is supported by detailed Shadow Diagrams by SJB Architects to confirm that the proposed development does not result in any unreasonable or excessive overshadowing of nearby public places. Specifically, Council can be satisfied that the proposed development will not result in any additional overshadowing of the tennis courts on the opposite side of Belgrave Street.

- (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 the pedestrian experience and general streetscape of Belgrave Street, Raglan Street and Whistler Street.

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

Comment: The proposed development clearly differentiates between public and private property, with an emphasis on public activity along Belgrave Street and Raglan Street,

being the higher order streets. The residential access point is located along Whistler Street, where a perforated screen provides a view to the landscaped courtyard beyond.

Where services are proposed along the street frontage, they are recessed from the dominant façade, to give appropriate emphasis to the retail tenancies.

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

Comment: The proposed development facilitates a cohesive streetscape and treatment of the public domain, reducing the visual clutter associated with the many different buildings currently occupying the site. The proposal skilfully maximises retail frontages to the higher order streets, with residential access points and services to Whistler Street.

The ground floor plan also provides low planters at both the north-eastern and north-western corners of the site, with glazing to both sides, to maximise visibility around the corners of the site, providing an ease of movement and circulation for pedestrians.

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

Comment: The commercial floor space and upper-level residential windows and balconies will provide casual surveillance to all three adjacent streets. The perforated screens and gateway at the residential entranceway maximise light and surveillance from the residential lobby.

- (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 adjoining development 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 does not impede upon any vistas from public places towards prominent landmarks. At the ground level, glazing has been maximised to facilitate views through the structure and the north-eastern and north-western corners of the retail space are softened to maximise visibility at the corners.

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

Comment: The proposed building is a superior design response that will significantly enhance the architectural quality of built form in the Manly Town Centre. The proposal comprises superior products and materials to ensure that the building requires minimal maintenance/upkeep and ages appropriately, as identified in the Materials Legend on the Architectural Plans.

- (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 primarily serviced from Whistler Street, with the electrical substation and hydrant booster to Belgrave Street (where it can be accessed most conveniently in the event of an emergency).

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 E1

Clause 6.16(3) of MLEP 2013 prescribes that development consent must not be granted to the erection of a building on land identified as “Gross Floor Area for Certain Commercial Premises” on the Key Sites Map of MLEP 2013 unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises.

The proposed development provides a total of 512m² of retail floor space, being 16.4% of the gross floor area of the building.

The retail floor space requirement prescribed by clause 6.16 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.

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 2**.

Clause 6.16(4) of MLEP 2013 prescribes that development consent must not be granted for development on land to which this clause applies if the gross floor area of any retail premises on the land would exceed 1,000 square metres. The commercial component of the building is limited to a gross floor area of 512m². Council can be satisfied that the proposed development is consistent with the provisions of clause 6.16(4) of MLEP 2013.

4.2 Manly Development Control Plan 2013

4.2.1 Townscape (Local and Neighbourhood Centres)

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

- The proposed building has been designed to sensitively respond to the context of the site, to ensure that the bulk of the development does not detract from the significance of nearby items of local heritage significance.
- The height of the development responds to the height of surrounding and nearby development, ensuring a consistent height along the streetscape.
- An accessible path of travel is provided into and through the building.
- The front setback of the development is responsive to the setbacks of adjoining and nearby development, to positively contribute to the established streetscape setting.
- The scale and form of the development mimics that at the opposite (southern) end of the block, consistent with the townscape principles of MDCP 2013, noting that both ends are nominated as “Important Corners” on Map A of Schedule 2 of MDCP 2013.

4.2.2 Heritage Consideration

The site is located in the vicinity of a number of sites of local heritage significance. The application is supported by a Heritage Impact Statement by Urbis 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 nearby items of local heritage significance.

4.2.3 Landscaping

The application is supported by detailed Landscape Plans prepared by Land and Form that demonstrate a highly considered landscape solution for the site. The landscaping complements the proposed architectural form and positively contributes to the amenity of the proposed development. The proposed landscaping is consistent with the requirements and objectives of clause 3.3.1 of MDCP 2013.

4.2.4 Sunlight Access and Overshadowing

The proposed development is supported by Shadow Diagrams and View from the Sun Diagrams by SJB Architects which demonstrate:

- That the proposal will not result in any adverse impacts upon solar access to adjoining or nearby development, and
- That suitable levels of sunlight will be achieved to the residential apartments proposed.

4.2.5 Privacy and Security

The proposed development is oriented towards the three street frontages, with the roadways providing sufficient spatial separation to ensure that the development 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 visitors, with appropriate casual surveillance achieved from the retail premises, entrance lobby and the residential apartments above.

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

4.2.6 Maintenance of Views

Upon review of the Assessment Report for the adjoining development at 21 Whistler Street, which was approved with a greater height than that currently proposed, a view towards the ocean may be obtained over the existing development from properties upslope of the site, including 7 Tower Street.

Noting the height of existing development between the site and the ocean, it appears unlikely that the proposal will impact upon any ocean views. However, if any such impact occurs, it is relevant to note that the impact associated with the non-compliant development at 21 Whistler Street was nonetheless considered reasonable by Council.

The proposal is considered to be consistent with the objectives and requirements of clause 3.4.3 of MDCP 2013.

4.2.7 Sustainability

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

4.2.8 Accessibility

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

Clause 3.6.3.1 of MDCP 2013 requires 25% of dwelling to be adaptable, in accordance with the requirements of AS4299. The proposed development is consistent with this requirement, with 7 or 28% of the proposed apartments designed to be adaptable in accordance with AS4299.

4.2.9 Stormwater Management

Clause 3.7 of MDCP 2013 requires the management of stormwater to comply with the provisions of Council's Water Management for Development Policy. Stormwater is to be collected and directed to Council's stormwater drainage system as detailed in the Stormwater Plans prepared by Van der Meer.

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 SLR Consulting Australia detailing how waste is to be managed both during construction and throughout the life of the development.

4.2.11 Mechanical Plant Equipment

The proposed lift overrun is centrally located and is appropriately integrated into the design of the development. Plant equipment will be sited and maintained to prevent adverse acoustic impacts for future occupants of the development and adjoining properties. The proposed development is consistent with the requirements and objectives of clause 3.9 of MDCP 2013.

4.2.12 Safety and Security

The proposed commercial building has been designed to appropriately respond the CPTED 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 JK Geotechnics 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
Part 4.2 – Development in Business Centres			
4.2.1 FSR	3.0:1	2.98:1	Yes
4.2.2 Height of Buildings	In determining whether to grant an exception to the LEP height standard, the environmental planning grounds to justify contravening the development standard (LEP clause 4.6(3)) may include consideration of the design principles at paragraph 3.1.3.1 Design Principles in this DCP.	Noted. The proposed development has been designed in response to the height of neighbouring and nearby buildings, specifically that at the opposite end of the block at 13 Belgrave Street, consistent with the provisions of this clause.	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	All buildings must be constructed to the public road and side boundaries of the allotment.	The proposed development has nil setbacks to all three street frontages and to the southern side boundary.	Yes
4.2.5.1 Design for Townscape Carparking	Maintain the predominant pattern of narrow fronted buildings within the town centre with new buildings incorporating modulation of the street wall such as	The facades of the development are appropriately articulated to mimic the pattern of existing development. The footprint of the existing buildings is maintained, with the height of the proposal reflective of nearby and adjoining development.	Yes

Control	Requirement	Proposed	Compliance
	recesses or modulation in the building facade to visually reduce the length and perceived bulk of the street wall. Maintain existing setbacks. New development to enhance townscape characteristics, disregarding existing unsympathetic buildings.	The proposed development positively contributes to the existing streetscape and the Manly Town Centre.	
4.2.5.2 Height of Buildings: Consideration of Townscape	Consideration of the appropriate heights within the maximum Building Height development standard and exceptions to the standard in the LEP.	The height of the proposed development achieves consistency with the Town Centre Design Principles.	Yes
4.2.5.3 Security Shutters	Shop window security roller shutters are not permitted on the external face of the building. Such screens may only be used behind the window display.	Security shutters are not proposed.	Yes
4.2.5.4 Car Parking and Access	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	In accordance with Schedule 3 of MDCP 2013, the proposed development generates demand for 50 parking spaces. The proposed shortfall in parking spaces, specifically retail parking spaces, has been sufficiently justified	Acceptable on merit

Control	Requirement	Proposed	Compliance
	Town Centre (including residential and commercial) where the applicant has demonstrated that: 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; 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 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.	in the accompanying Traffic and parking Report by JMT Consulting. In particular, the report identifies that no carparking is provided on the existing site, despite a greater provision of retail/commercial floor area. As such, the proposed development will reduce reliance upon public carparking, compared to existing circumstances. It is noted that this position was supported by Council's Traffic Engineer at the Pre-Lodgement Meeting.	

Control	Requirement	Proposed	Compliance
4.4.4.1 Awnings	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 street frontages.	Yes
4.4.5 Earthworks	A dilapidation survey report and geotechnical assessment may be required for excavation works exceeding 1m.	The application is supported by a Geotechnical Report by JK Geotechnics. There is no objection to the imposition of conditions of consent requiring the production of dilapidation reports, if deemed necessary by Council.	Yes
5.4.3 Flood Prone Land	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.	The site is identified as being prone to low and medium risk flooding, as identified on Council's Flood Risk Hazard Map of MDCP 2013. The application is supported by a Flood Risk Management Report by Van der Meer.	Yes

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. The site is not identified as a contaminated site on the NSW EPA's list of notified sites, nor is it in the vicinity of any listed sites.

The application is supported by a Stage 1 Preliminary Site Investigation by JK Geotechnics, which provides a series of recommendations to ensure that the site will be suitable for the development proposed.

4.4 State Environmental Planning Policy (Transport and Infrastructure) 2021

The site is adjacent to Belgrave Street and Raglan Street, which are identified as classified roads. Pursuant to clause 2.119 of State Environmental Planning Policy (Transport and Infrastructure) 2021, the consent authority must not grant consent to development on land that has a frontage to classified road unless it is satisfied of certain matters. These matters are addressed, as follows:

- a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*

Comment: Vehicular access to the site is proposed to be gained from Whistler Street.

- b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - i. *the design of the vehicular access to the land, or*
 - ii. *the emission of smoke or dust from the development, or*
 - iii. *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

Comment: The safety, efficiency and ongoing operation of Belgrave Street and Raglan Street will not be adversely affected by the proposed development. The application is supported by a Transport Impact Assessment and a Construction Traffic Management Plan by JMT Consulting to ensure that impacts upon classified roads will be avoided both during construction and in the long term.

- c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment: The application is supported by an Acoustic Report prepared by E-LAB Consulting to confirm that traffic noise will not adversely impact upon the amenity of the proposed development.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the residential component of the development and aims to encourage sustainable residential development. A BASIX Assessment accompanies the development application and demonstrates that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

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

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

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

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

As the proposed development is for the erection of a 5 storey shop top housing development containing 25 dwellings, the provisions of SEPP 65 are applicable to the proposed development.

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

Clause 28(2)(c) of SEPP 65 requires the consent authority to take into consideration the Apartment Design Guide. In this regard, an Apartment Design Guide Compliance Table prepared by SJB Architects accompanies this application.

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

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the EP&A Act (as amended):

(i) any environmental planning instrument

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

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

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

(iii) Any development control plan

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

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

N/A

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

N/A

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

N/A

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

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

Context and Setting

i. What is the relationship to the region and local context in terms of:

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

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

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

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

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be acceptable with regard to the relevant provisions of MDCP 2013 and the ADG.

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 this report and in the accompanying Transport Impact Assessment by JMT Consulting.

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, specifically in light of the flood affectation of the site.

Economic Impact in the locality

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

Site Design and Internal Design

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

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

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

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

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*
- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

The proposed development will comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

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

- *The environmental planning issues listed above*
- *Site safety*

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

(c) The suitability of the site for the development

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

The adjacent development does not impose any unusual or impossible development constraints. The development will not cause excessive or unmanageable levels of transport demand.

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

(d) Any submissions received in accordance with this act or regulations

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

(e) The public interest

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

5 Conclusion

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

SJB Architects, the project architects, have responded to the client brief to design a contextually responsive building of exceptional quality with high levels of amenity for future occupants of both the commercial floor space and the residential apartments. In this regard, the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this site having regard to the height, scale, proximity, use and orientation of surrounding development and the flood affectation of the land. The proposal has also evolved in response to the feedback received through Council's Pre-Lodgement process and from Council's Design and Sustainability Advisory Panel.

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 variations to the building height and commercial floor space development standards, strict compliance has been found to be unreasonable and unnecessary in this instance. The development is otherwise consistent with the objectives of these development standards and sufficient environmental planning grounds exist to support the variations (as outlined in the attached Clause 4.6 Variation Requests).
- 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 residential floor space whilst maintaining an appropriate allocation of commercial floor space on a site ideally suited to a mixed use development.
- The proposed development has been amended in response to the feedback from Council at the Pre-Lodgement Meeting and the separate advice from Council's Design and Sustainability Advice Panel at the separate meeting on 25 May 2023.

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