

STATEMENT OF ENVIRONMENTAL EFFECTS

Modification of
Development Consent

DA 220/2013

Mixed Use Development

9 – 11 Victoria Parade,
Manly

Suite 1, 9 Narabang Way Belrose NSW 2085

Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

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Prepared by Greg Boston

B Urb & Reg Plan (UNE) MPIA
Suite 1/9 Narabang Way
Belrose NSW 2085

Tel: (02) 99862535

May 2024

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1 INTRODUCTION

On 13th August 2015, The Land and Environment Court of NSW upheld an appeal against Council's refusal of the application and granted consent to Development Application DA220/2013 proposing the demolition of existing structures and construction of a new 6-storey mixed-use building containing retail premises on the ground floor level, 29 apartments and basement car parking on the subject site. The application has been subsequently modified on a number of occasions.

We have been engaged to prepare a further modification application pursuant to section 4.56 of the Act. Specifically, the application seeks to refine the architectural detailing of the development application to provide superior residential amenity and buildability outcomes. The modifications are summarised as follows:

1. Retail 1 on Ground floor has been pushed out to enhance the usable area and to suit new columns for balconies above.
2. The front facade's angle has been adjusted to enlarge the front balconies and comply with ADG regulations of balcony size.
3. Front balconies on level 1 and level 2 were extended to the north east to align with the approved balconies above to avoid looking 'top-heavy' and unbalanced.
4. Level 4 brick wall shifted to align with adjacent brick walls.
5. Cladding colour proposed to be off-white to visually lighten the bulk of the upper floors.
6. Allocation of 1 bicycle space per unit in large storage cages in lieu of separate bicycle parking to satisfy the intention of condition 43D.
7. Private roof terrace introduced to improve amenity of unit 14. The glass stair enclosure is not readily visible from the street and has no real impact on privacy, bulk or overshadowing.
8. Increase in width of high-light windows to improve ventilation and natural lighting in the bedrooms with no privacy impacts.
9. Minor adjustment to the GFA due to the above— still less than LEC approved FSR 3:1.
10. Window heads have been lowered to 2.58m to fit services

Having regard to the detail of the modifications we are satisfied that the previously approved streetscape, heritage conservation and residential amenity outcomes are not compromised as consequence the modifications sought. Importantly maintains a view sharing outcome with the immediately adjoining properties in particular No. Unit 216/ 2 – 4 Wentworth Street and the apartments within No. 5 Victoria Parade.

In addition to this Statement of Environmental Effects, the application is also accompanied by the following:

- Architectural plans, elevations, sections, shadow diagrams
- Heritage Impact Statement
- BASIX

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

- Environmental Planning and Assessment Act, 1979 (the Act),
- Manly Local Environmental Plan 2013 (MLEP),
- Manly Development Control Plan 2013 (MDCP),
- State Environmental Planning Policy (Biodiversity and Conservation) 2021, and
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the 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 modified scheme exhibits design excellence.
- The proposal maintains the general massing of the approved development in relation to heights and setbacks with the approved residential density as reflected by FSR not altered as a consequence of the modifications sought.
- The proposed building height, as modified through the introduction of a private roof terrace, continues to satisfy the objectives of the standards and accordingly strict compliance is unreasonable and unnecessary under the circumstances.
- The minor increase in GFA remains below that originally approved and continues to provide for the contextually appropriate distribution of floor space on this particular site.
- The proposed development does not compromise the heritage conservation outcomes achieved through approval of the original application.
- The proposed development, as modified, will not compromise the residential amenity afforded to surrounding development through approval of the original scheme in terms of privacy, solar access and view sharing.

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 4.56 of the Act.

2 DESCRIPTION OF PROPOSED MODIFICATIONS

2.1 Detail of the Proposed Architectural Modifications

The development, as modified, is depicted on the following architectural plans prepared by Platform Architects:

A0.00	COVER PAGE	A
A0.01	GFA SUMMARY	A
A1.01 a	SECOND BASEMENT PLAN	A
A1.01 b	FIRST BASEMENT PLAN	A
A1.03	FIRST FLOOR PLAN	A
A1.04	SECOND FLOOR PLAN	A
A1.05	THIRD FLOOR PLAN	A
A1.06	FOURTH FLOOR PLAN	A
A1.07	FIFTH FLOOR PLAN	A
A1.08	SIXTH FLOOR PLAN	A
A1.09	ROOF PLAN TERRACE	A
A2.01	SOUTHEAST ELEVATION	A
A2.02	SOUTHWEST ELEVATION	A
A2.03	NORTHWEST ELEVATION	A
A2.04	NORTHEAST ELEVATION	A
A3.01	SECTION B	A
A3.02	SECTION A	A
A3.03	SECTION C	A
A4.01	EXTERNAL FINISHES	A

Specifically, the modifications can be summarised as follows:

1. Retail 1 on Ground floor has been pushed out to enhance the usable area and to suit new columns for balconies above.
2. The front facade's angle has been adjusted to enlarge the front balconies and comply with ADG regulations of balcony size.
3. Front balconies on level 1 and level 2 were extended to the north east to align with the approved balconies above to avoid looking 'top-heavy' and unbalanced.
4. Level 4 brick wall shifted to align with adjacent brick walls.
5. Cladding colour proposed to be off-white to visually lighten the bulk of the upper floors.
6. Allocation of 1 bicycle space per unit in large storage cages in lieu of separate bicycle parking to satisfy the intention of condition 43D.
7. Private roof terrace introduced to improve amenity of unit 14. The glass stair enclosure is not readily visible from the street and has no real impact on privacy, bulk or overshadowing.
8. Increase in width of high-light windows to improve ventilation and natural lighting in the bedrooms with no privacy impacts.
9. Minor adjustment to the GFA due to the above– still less than LEC approved FSR 3:1.
10. Window heads have been lowered to 2.58m to fit services

The proposed modifications include the modification of DA1A to reflect the modified plans and documentation, the deletion of condition 43K on the basis of the advice contained within the accompanying Heritage Impact Statement in the modification of condition 26 to reflect the amended schedule of materials and finishes.

3 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(1) of the Environmental Planning & Assessment Act, 1979 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.

3.1 Environmental Planning and Assessment Act 1979

Section 4.56 of the Act provides that:

- (1) 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*
 - (b) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, and*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
 - (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

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.

The above reference by Bignold J to “essentially” and “materially” the same is taken from Stein J in *Vacik Pty Ltd v Penrith City Council* (unreported), Land and Environment Court NSW, 24 February 1992, where his honour said in reference to Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):

“Substantially when used in the Section means essentially or materially or having the same essence.”

What the abovementioned authorities confirms is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval).

When one undertakes the above analysis in respect of the subject application it is clear that the approved development remains, in its modified state, a mixed use building which will continue to spatially relate to its surrounds and adjoining development in substantially the same fashion as originally approved. The previously approved privacy, solar access, view sharing and general amenity outcomes afforded by the original application are generally maintained with internal amenity streetscape outcome and design quality significantly enhanced.

We also note that the previously approved heritage conservation outcomes are not compromised as a consequence of the modifications sought.

The Court in the authority of *Stavrides v Canada Bay City Council* [2007] NSWLEC 248 established general principles which should be considered in determining whether a modified proposal was “substantially the same” as that originally. A number of those general principles are relevant to the subject application, namely:

- The proposed use does not change.
- The proposed building height, as modified through the introduction of a private roof terrace, continues to satisfy the objectives of the standards and accordingly strict compliance is unreasonable and unnecessary under the circumstances.
- The minor increase in GFA remains below that originally approved and continues to provide for the contextually appropriate distribution of floor space on this particular site.
- The proposed development does not compromise the heritage conservation outcomes achieved through approval of the original application.
- The proposed development, as modified, will not compromise the residential amenity afforded to surrounding development through approval of the original scheme in terms of privacy, solar access and view sharing.

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 4.56 of the Act.

3.2 Manly Local Environmental Plan 2013

3.2.1 Height of Buildings

Pursuant to clause 4.3 MLEP 2013 the height of any building on the land shall not exceed 11 metres above ground level (existing) as detailed on the heights of building map. The stated objectives of this clause are:

- (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.*

The dictionary to the LEP defines building height to mean:

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

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

The subject modified proposal maintains the previously approved parapet height of RL26.9 with the extension of the stair and lift access core to provide access to roof level private open space increasing the overall height of the building, measured to the top of the lift overrun, by 2.23 metres. This results in a maximum building height of 25.38 metres measured to the lift overrun with such building height exceed the 15 metre height standard by 10.38 metres or (69%).

Although the clause 4.6 MLEP variation provisions do not apply to an application involving the modification of a consent we had undertaken an analysis as to the acceptability of the additional building height having regards to the objectives of the standard as follows.

- Detailed site analysis identified a number of site-specific constraints and opportunities the majority of which relate to the height, proximity, orientation and heritage significance of adjoining development. Through such analysis appropriate setbacks, building envelopes and transitional building heights were identified providing for the highly articulated and modulated building form currently proposed.
- The modified development remains compliant with the 3:1 floor space ratio development standard with the additional building height reflecting the desire to provide private open space on the site through the provision of a roof top terrace.
- The resultant height, bulk, scale of the building are entirely consistent with the built form characteristics established by adjoining development and development generally within the sites visual catchment.
- It has been determined that the additional building height will not give rise to any adverse residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk. The proposal provides for the sharing of public and private views. The proposal provides for the sharing of both public and private views with view corridors maintained across the site and down the eastern boundary of the property. The accompanying view analysis diagrams clearly demonstrate that a view sharing outcome with the immediately adjoining properties in particular No. Unit 216/ 2 – 4 Wentworth Street and the apartments within No. 5 Victoria Parade.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the height of the proposed development offensive, jarring or unsympathetic in a streetscape context nor the built form characteristics of development within the sites visual catchment. Accordingly it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour, foreshore areas, public domain and surrounding properties.
- Having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

Consistent with the first test in Wehbe as the proposal, as modified, satisfies the objectives of the standard strict compliance is unreasonable and unnecessary under the circumstances.

3.2.2 Floor Space Ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 3:1 representing a gross floor area of 1728.6 square metres. The stated objectives of this clause are:

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

It has been determined that the modified proposal has a gross floor area compliant with the 3:1 FSR standard. As the proposal satisfies the numerical standard it is also deemed to comply with the associated objectives. Accordingly, there is no statutory impediment to the granting of consent.

3.2.3 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.*

We confirm that No. 11 Victoria Parade is identified as a local heritage item pursuant to Schedule 5 of Manly LEP 2013. Further the property immediately to the east and known as number 13 Darley Road and the street trees along Victoria Parade are also identified in Schedule 5 as heritage items.

In this regard, the application is accompanied by a Heritage Impact Statement prepared by Architectural Projects which provides detailed background in relation to the identified heritage items and contains an assessment as to the acceptability of the proposed development having regard to the clause 5.10 MLEP 2013 provisions and the identified significance of the items and their setting including the retention and adaptive reuse of the existing heritage building located on the subject site.

Acid Sulfate Soils

Pursuant to clause 6.1 MLEP 2013 the site is mapped as Class 4 on the Acid Sulfate soils map and accordingly a preliminary assessment report must be provided given that excavation in excess of 2 metres in depth is proposed.

In this regard, as the modifications do not result in any additional excavation, we rely on the previously approved Geotechnical Assessment prepared by Crozier Geotechnical. The report identifies that as the existing buildings present an obstacle to detailed geotechnical investigation a staged construction certificate may be required to allow demolition of the existing structures prior to the geotechnical investigation. Further, provided the recommendations of this report are adhered to the development may be achieved with negligible risk to neighbouring structures or persons.

In this regard, borehole testing for acid sulphate soils will also need to be undertaken following demolition of the site structures.

Such outcome is not unreasonable given the built form characteristics of the existing site and the need for the structures to be demolished to undertake the required geotechnical and acid sulphate soil analysis. No objection is raised to such requirements forming a condition of development consent.

3.2.4 Foreshore Scenic Protection Area

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

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

Having regard to these provisions we have formed the considered opinion that the proposed development, as modified, will not result in any actual or perceivable impact on the Foreshore Scenic Protection Area in that:

- The height, scale and architectural presentation of the development are contextually appropriate having regard to the built form characteristics established by adjoining development noting that the development is obscured, to a significant extent, as viewed from Manly Beach and Manly Cove by intervening built form and landscape elements.
- The overall design quality of the building ensures that it will be a landmark development within its context.
- Having regards to the Land and Environment Court of NSW planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed building offensive, jarring or unsympathetic to its context or surrounds.
- The development will not give rise to any adverse physical or amenity impacts on the foreshore areas and will enhance the visual amenity of the area generally.

For these reasons, Council can be satisfied that the development, 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.

3.2.5 Active Street Frontages

We confirm that pursuant to clause 6.11 that the site is not identified on the Active Street Frontages Map and accordingly these provisions do not apply. The exclusion of the subject site from the active street frontages map reflects the site's location on the very fringe of the Manly Town Centre and its limited role in terms of street activation and the provision of non-residential uses to satisfy the zone objectives.

3.2.6 Design Excellence

Pursuant to clause 6.13 development consent must not be granted for development on land in Zone B2 Local Centre unless the consent authority considers that the development exhibits design excellence. In considering whether development exhibits design excellence, the consent authority must give consideration to whether the development:

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

Comment: The accompanying shadow diagrams confirm that the form bulk massing and modulation of the development will not give rise to any unacceptable overshadowing impact on any public open spaces.

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

Comment: This report clearly demonstrates that the height, bulk, scale and form of development proposed is contextually appropriate and will contribute positively to the streetscape and the built form quality of development generally within the site's visual catchment. In this regard, the streetscape and quality of the public realm will be significantly enhanced as a consequence of the development proposed.

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

Comment: The development appropriately defines the street edge and introduces and active retail use at Street level in recognition of the zoning of the land. We note that the subject site is not identified on the Active Street Frontages map pursuant to the clause 6.11 provisions.

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

Comment: The proposed development does not require any works within the adjacent road reserve and accordingly maintains existing levels of access adjacent to the front of the property.

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

Comment: The development incorporates residential uses orientated to their Victoria Parade frontage with the adjacent living areas and associated balconies providing excellent levels of casual surveillance to the street and surrounding public domain.

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

Comment: The design has taken consideration of the adjoining heritage item in terms of providing a transitional form and character between it and the modern high-rise residential development to the west. The articulated forms and use of compatible small-scaled design elements and face brickwork provides a suitable fit to the context of Victoria Parade.

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

Comment: There is no significant vegetation or natural features on the subject site. Existing site landscaping will be significantly enhanced as a consequence of the integrated landscaping regime proposed.

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

Comment: the development has been designed through details site and

View line analysis to ensure that the existing views and vistas from both the public and private domains are not unreasonably compromised as a consequence of the development proposed.

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

Comment: As previously indicated, the development has been highly articulated in both the horizontal and vertical planes with the building providing an appropriate transitional form to adjoining development. The use of compatible small scaled design elements and face brickwork provides a suitable fit to the context of Victoria Parade and provides for a visually stimulating building presentation of high architectural quality.

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

Comment: The proposed development has been designed and orientated in response to the constraints imposed by the design and orientation of adjoining development and the opportunities associated with the site's northern orientation. We have formed the considered opinion that the development responds to environmental factors.

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

Comment: The development will not create any unusual or unacceptable demand for utility infrastructure such as to cause disruption at Street level.

Having regard to the developments performance when assessed against the clause 6.13 design excellence provisions we have formed the considered opinion that the development exhibits design excellence and therefore satisfies the LEP provision.

3.3 Manly Development Control Plan 2013

3.3.1 Street Townscape

We have formed the considered opinion that the development appropriately responds to the design principles contained at clause 3.1.1 of the Manly DCP as follows:

- The design quality and visual aesthetic of development on this site is significantly enhanced as a consequence of the contemporary building design sought.
- The height, form and massing of the development is complimentary and compatible with that established by adjoining residential flat development and medium density development generally within the site's visual catchment.
- The height, bulk and scale of the development, as modified, will not give rise to any adverse streetscape impacts and will in fact enhance the scenic amenity of the area when viewed from surrounding public and private land.
- The proposed front and side boundary setbacks are consistent with those originally approved and established by recently approved and constructed development within the precinct.
- Development incorporates a varied palette of materials and finishes providing for a visually interesting building presentation in the round.
- Bin storage is integrated into the design of the development and appropriately screened such that it will not be discernible as viewed from the street.
- The development maintains appropriate levels of privacy, sunlight and view sharing to surrounding development as detailed in this report.

Council can be satisfied that the development responds appropriately to the Design Principles contained at clause 3.1.1 of the Manly DCP.

3.3.2 Amenity (Views, Overshadowing, Overlooking/ Privacy, Noise)

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

It has been determined that the highly articulated and modulated building form and massing will not give rise to any unacceptable/ non-compliant residential amenity impacts in terms of overshadowing as depicted on the accompanying shadow diagrams.

In relation to privacy, we confirm that internal living and adjacent private open space areas have been oriented towards both street frontages with side boundary facing fenestration limited and off-set from windows in adjoining development where possible to prevent direct overlooking opportunities between properties.

The proposal provides for the sharing of both public and private views with view corridors maintained across the site and down the eastern boundary of the property. A view sharing outcome is maintained with the immediately adjoining properties in particular No. Unit 216/ 2 – 4 Wentworth Street and the apartments within No. 5 Victoria Parade.

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the DCP provision and the view sharing principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140.

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

3.3.3 Sustainability

The design provides for sustainable development, utilising passive solar design principles, thermal massing and achieves cross ventilation to a complying number of dwellings within the development.

A BASIX Certificate accompanies this application which confirms that development will exceed the NSW Government's requirements for sustainability.

3.3.4 Waste Management

The previously approved waste storage and collection arrangements are not altered.

3.3.5 Mechanical Plant Equipment

The mechanical plant is to be located on the roof with appropriate conditions ensuring that it complies with the applicable acoustic noise criteria. The mechanical plant is located such that it will not be discernible as viewed from the street.

3.3.6 Dwelling Density and Subdivision

The previously approved dwelling density is maintained.

3.3.7 Setbacks

Having regard to the clause 4.1.4 setback provisions we note that the proposed development generally maintains the previously approved setbacks which are complimentary and compatible with those established by adjoining development and development generally within the sites visual catchment. We have formed the considered opinion that the proposed development by virtue of its front and side setbacks will not be perceived as inappropriate or jarring in a streetscape context.

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

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

3.3.8 Parking, Vehicular Access and Loading

The previously approved quantum of off-street parking spaces is maintained with the acceptability of the modified car parking layout detailed in the accompanying parking design statement prepared by CJP.

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

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) aims to improve the design quality of residential flat developments 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 residential flat buildings, the substantial redevelopment/refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

Clause 3 of SEPP 65 defines a residential flat building as follows:

“Residential flat building means a building that comprises or includes:

- a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.”*

The proposed development is for the erection of a mixed use development containing 17 apartments. As per the definition of a ‘Residential Flat Building’ and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the proposed development.

SEPP 65 requires any development application for residential flat development to be assessed against the 9 principles contained at Schedule 1 of SEPP 65 and the matters contained in the Apartment Design Guide (ADG).

The application is accompanied by the required Design Verification Statement prepared by Platform Architects.

The proposed development satisfies the design principles of the plan as follows:

3.5 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.

3.6 State Environmental Plan (Biodiversity and Conservation) 2021

The State Environmental Plan (Biodiversity and Conservation) 2021 aims to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour is recognised, protected, enhanced and maintained.

The site is located within the Sydney Harbour Catchment area but it is not identified:

- (a) within the Foreshores and Waterways Area;
- (b) as a strategic foreshore site;
- (c) as a heritage item under the SREP;
- (d) within the wetlands protection area;

In this regard only Part 1 of the SREP is applicable to the proposed development. Part 1 identifies aims of the plan from (a) to (h). The aims set out in Part 1 of the SEPP have been considered and the application is consistent with such aims.

3.7 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 Environmental Planning and Assessment Act 1979 (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

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

This report clearly and comprehensively addresses the statutory regime applicable to the application pursuant to the Manly LEP 2013 and Manly DCP 2013.

3.7.2 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 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 applicable legislation.

Access, transport and traffic:

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

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

These issues have been discussed in detail in the report. The development provides adequate carparking facilities in conformity with the standards of the policy.

Public Domain

The proposed development will have no adverse impact on the public domain.

Utilities

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

Flora and Fauna

The site will be landscaped. The planting and landscaping treatments will enhance the landscape quality of the locality.

Waste Collection

Normal domestic waste collection applies to this development.

Natural hazards

N/A

Economic Impact in the locality

The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate additional employment opportunities through the construction period with respect to the proposed development.

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 desired future character and built form controls of the DCP.

- 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 can 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.

3.7.3 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 site is well located with regards to public transport and utility services. The development will not cause excessive or unmanageable levels of transport demand.

The development responds to the topography of the site, is of adequate area, and has no special physical or engineering constraints is suitable for the proposed development

3.7.4 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.

3.7.5 The public interest

It is considered that the development is sensitive both to the natural and built environments and is consistent with the provisions of the Manly LEP and DCP.

4 CONCLUSION

We have been engaged to prepare a further modification application pursuant to section 4.56 of the Act. Specifically, the application seeks to refine the architectural detailing of the development application to provide superior residential amenity and buildability outcomes.

Having regard to the detail of the modifications we are satisfied that the previously approved streetscape, heritage conservation and residential amenity outcomes are not compromised as consequence the modifications sought. Importantly maintains a view sharing outcome with the immediately adjoining properties in particular No. Unit 216/ 2 – 4 Wentworth Street and the apartments within No. 5 Victoria Parade.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the 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 modified scheme exhibits design excellence.
- The proposal maintains the general massing of the approved development in relation to heights and setbacks with the approved residential density as reflected by FSR not altered as a consequence of the modifications sought.
- The proposed building height, as modified through the introduction of a private roof terrace, continues to satisfy the objectives of the standards and accordingly strict compliance is unreasonable and unnecessary under the circumstances.
- The minor increase in GFA remains below that originally approved and continues to provide for the contextually appropriate distribution of floor space on this particular site.
- The proposed development does not compromise the heritage conservation outcomes achieved through approval of the original application.
- The proposed development, as modified, will not compromise the residential amenity afforded to surrounding development through approval of the original scheme in terms of privacy, solar access and view sharing.

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 4.56 of the Act.

BOSTON BLYTH FLEMING PTY LIMITED



Greg Boston
B Urb & Reg Plan (UNE) MPIA
B Env Hlth (UWS)
Director