

21 March 2019

**Mills Oakley**  
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**Privileged and confidential**

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**By email:** Greg.gould@avenor.com.au

**Attention:** Greg Gould

Dear Greg

**Advice re planning proposal for 173 – 179 Walker Street, North Sydney**

You have asked to us to provide you with legal advice in relation to the proposed planning controls for the above site.

We have reviewed the proposed planning controls prepared by Urbis (received 20 March 2019).

**Summary advice**

In our opinion:

- The proposed changes to the *North Sydney Local Environmental Plan 2013* are capable of being lawfully made.
- In our opinion the proposed LEP provisions are well-precedented and are not exceptional.
- The proposed changes to *North Sydney Development Control Plan 2013* changes are proper matters for inclusion in a development control plan.
- The proposed DCP provisions are fairly standard and require no special comment.

**Detailed advice**

**1. Lawful power**

- 1.1 The proposed change to planning controls can be divided into two categories.
- 1.2 **Firstly**, there are proposed changes to *North Sydney Local Environmental Plan 2013* (the LEP).
- 1.3 The changes alter the maximum height and floor space ratio for the subject land.
- 1.4 Additionally, a site-specific clause is inserted which allows for additional height and gross floor area if the sites that comprise the subject land are proposed to be amalgamated.
- 1.5 The proposed changes to the LEP are capable of being lawfully made. The proposed changes:
  - (a) fall squarely within the definition of a 'development standard' (under section 4(1) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act)); and

- (b) are therefore within the scope matters that may be lawfully dealt with in an environmental planning instrument (under section 3.14(1)(b) of the EP&A Act).
- 1.6 **Secondly**, there are proposed changes to *North Sydney Development Control Plan 2013 (the DCP)*.
- 1.7 These changes are plainly directed towards:
  - (a) giving effect to the aims of the LEP (as proposed to be amended);
  - (b) facilitating development that is permissible under that instrument; and
  - (c) achieving the objectives of the subject land's R4 'High Density Residential' zoning.
- 1.8 This means that the proposed changes are proper matters for inclusion in a development control plan under section 3.42(1) of the EP&A Act.

## 2. Precedent

- 2.1 In our opinion the proposed LEP provisions are well-precedented and are not exceptional.
- 2.2 We say this for the following reasons:
  - (a) It is not uncommon to define height by reference to reduced level. This is now expressly provided for in the definition of 'building height' in the dictionary of the LEP.
  - (b) There are many example of instances where some additional height and floor space contingent on site amalgamation, for example:
    - (i) clause 6.37 of *Sydney Local Environmental Plan 2012*;
    - (ii) clauses 4.4(2A) and 4.3(2E)(c) of the *Sutherland Shire Local Environmental Plan 2015*; and
    - (iii) clause 4.3A of *Camden Local Environmental Plan 2010*.
  - (c) The proposal that certain additional density/height will be contingent on satisfaction of adequate provision of social and community infrastructure is based on similar provisions elsewhere. For example, clause 6.9(3)(a) of the *Ryde Local Environmental Plan 2014*.
- 2.3 The proposed DCP provisions are fairly standard and require no special comment.

Please do not hesitate to contact me on (02) 8035 7858 if you would like to discuss this advice.

Yours sincerely




**Aaron Gadiel**  
**Partner**  
 Accredited Specialist — Planning and Environment Law