

2010SYE057 – 531-533 The Kingsway, Miranda  
DA10/0720

## ASSESSMENT REPORT APPENDICES

Appendix	A	Summary of Submissions
	B	Submission from RTA
	C	Minutes from Architectural Review Advisory Panel Meeting
	D	Applicant's SEPP1 Objection Building Height
	E	Applicant's SEPP1 Objection Density

# Appendix A

Address	Date of Letter/s	Issues
12/12-14 Clubb Cres Miranda	Received 20 August 2010	- Increased noise and traffic in Clubb crescent - potential Increased noise because of unknown uses
22/9-13 Clubb Cres Miranda	Received 2 September 2010	- Traffic - Overdevelopment and potential for adverse impact on residential amenity - Height - floorspace - Concern about unauthorised use of visitor spaces belonging 9-13 Clubb Crescent
Part owner 525 Kingsway, Miranda	9 September 2010	- Support the application
561-563 Kingsway, Miranda	6 September 2010	- Support the application
535 Kingsway, Miranda	Received 29 September 2010	- Support the application
575 Kingsway, Miranda	7 September 2010	- Support the application
569 Kingsway, Miranda	Received 29 September 2010	- Support the application
581-587 Kingsway, Miranda	Received 29 September 2010	- Support the application
565-569 Kingsway, Miranda	6 September 2010	- Support the application
607 Kingsway, Miranda	Received 29 September 2010	- Support the application
573 Kingsway, Miranda	Received 29 September 2010	- Support the application
587 Kingsway, Miranda	27 September 2010	- Support the application
Shop 7, 581-587 Kingsway, Miranda	Received 29 September 2010	- Support the application
Level 12, 90 Arthur St, North Sydney	28 September 2010	- Support the application
Miranda and District Chamber of Commerce	9 September 2010	- Support the application
537-539 Kingsway Miranda	Received 29 September 2010	- Support the application

Our Ref: CAC 10M1753 SYD10/00654  
Contact: Stella Qu T 8849 2520  
Your Ref: DA10/0720

## Appendix B



DA100720

The General Manager  
Sutherland Shire Council  
Locked Bag 17  
SUTHERLAND NSW 1499

Attention: Carolyn Howell

**531-533 KINGSWAY, MIRANDA  
COMMERCIAL DEVELOPMENT-DEMOLITION OF EXISTING STRUCTURES AND  
CONSTRUCTION OF A FOUR(4) STOREY COMMERCIAL BUILDING**

Dear Sir/Madam

I refer to Council's correspondence dated 12 August 2010 with regard to the above-mentioned development application, which was referred to the Roads and Traffic Authority (RTA) for comment in accordance with Clause 104 and Column 2 of Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007.

The RTA has reviewed the application and provides the following advisory comments to Council for its consideration in the determination of the development application:

1. No vehicular access shall be provided on Kingsway Road. All the vehicular accesses shall be via Clubb Lane.
2. The proposed development should be designed such that road traffic noise from Kingsway Road is mitigated by durable materials and comply with the requirements of Clause 102 – (Impact of road noise or vibration on non-road development) of State Environmental Planning Policy (Infrastructure) 2007.
3. The provision of off-street car parking and bicycle storage and loading area shall be provided to the satisfaction of Council.
4. The layout of the proposed car parking areas associated with the subject development (including, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004 and AS2890.2-2002.
5. The swept path of the longest vehicle entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTRROADS. In this regard a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.

Roads and Traffic Authority

6. The developer shall submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to the RTA for assessment (prior to the approval of any Construction Certificate). The developer shall meet the full cost of the assessment by the RTA.

The report would need to address the following key issues:

- a. The impact of excavation/rock anchors on the stability of Kingsway Road and detailing how the carriageway would be monitored for settlement.
  - b. The impact of the excavation on the structural stability of Kingsway Road.
  - c. Any other issues that may need to be addressed (Contact: Geotechnical Engineer Stanley Yuen on Ph: 8837 0246 or Graham Yip on Ph: 8837 0245) for details.
7. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Kingsway Road.
  8. A Demolition and Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council, for approval, prior to the issue of a construction certificate.
  9. All works/regulatory signposting associated with the proposed development are to be at no cost to the RTA.

If you wish to discuss this development application further, please contact Stella Qu on 8849-2520.

Following Council's determination of this application, would you please forward a copy of the development consent to the RTA.

Yours faithfully



James Hall  
A/Land Use Planning & Assessment Manager  
Transport Planning, Sydney Region

27 September 2010

## Architectural Review Advisory Panel

Proposal:

**Commercial Development - Demolition of Existing Structures and Construction of a Four (4) Storey Commercial Building**

Property:

**531-533 Kingsway MIRANDA NSW 2228**

Applicant:

**Adrian Vincent Tripodina**

File Number:

**DA10/0720**

---

The following is the report of the Architectural Review Advisory Panel Meeting held on 19 August 2010 at the Administration Centre, Sutherland Shire Council, Eton Street, Sutherland. The report documents the Panel's consideration of the proposed development described above.

#### **"4. Consideration of Development Application No. 10/0720 – Commercial Development at 531-533 Kingsway, Miranda**

Council's David Jarvis, Carolyn Howell and Chris Greig outlined the proposal, including providing details of Council's relevant codes and policies.

Anthony Nowlan, Jeff Mead, Adrian Tripodina, Peter Tripodina and Mark Longo addressed the Panel regarding the aims of the proposal and the constraints of the site.

The proposed building is located at the eastern extremity of the main commercial/retail area of Miranda. Adjoining properties address the Kingsway with two (2) storey commercial/retail buildings and are serviced via a rear lane (Clubb Lane) to the north of the site. Medium density residential development is located to the north and east.

The proposal consists of the construction of a four (4) storey commercial building with two (2) levels of car parking. It was explained by the applicant that even though the site slopes from west to east, level floor plates have been provided for each commercial level. This is in response to market demands for flexible spaces that are capable of housing either single or multiple tenants per floor.

The Panel could not support this proposal in its current form. While some issues can be resolved through an amended design, there are some more significant concerns.

Further consideration of the following issues is recommended:

#### Context/Scale

It was explained to the Panel that the proposed building is in excess of the Sutherland Shire Local Environmental Plan (SSLEP) requirements for height (proposed five (5) storeys, permissible three (3) storeys) and floor space ratio (proposed 2.9:1, permissible 2:1). These variations are substantial. A building with a floor space ratio of 2.0:1 over three (3) storeys would be more consistent with the existing context than what is now

proposed. The existing controls would produce a building with a smaller footprint for the upper levels.

The proposed building height is considered to be out of scale with its existing context, but potentially appropriate for the future desired character of the area. Due to its location, this site is a transition from the retail/commercial core to the adjacent residential precincts. As such any development must be respectful of the residential units. While it is always beneficial to review the appropriateness of any existing controls, such a review should be undertaken for the whole precinct.

There was some merit in the applicant's argument for an increase in height (33% increase) but there was no strength in the argument for an increase in the bulk and scale of the building (45% increase in floor space). The increased floor area of the building is considered excessive, resulting in a very poor relationship with the existing residential development to the north. It is recommended that the building be set back further from the lane (particularly at the upper levels) and the building form developed to create a more considered relationship with the residential development to the north.

The Kingsway slopes down approximately 2.5m towards the east across the length of the site, however, the ground floor of the proposed building has been set on a level plane. This results in the ground floor of the building being disengaged from the street at its eastern end. The treatment of the base of the building should provide a continuity of the street that reinforces links with the adjoining commercial development to the east and the main pedestrian circulation routes through the commercial/retail centre.

Insufficient consideration has been given to the relationship with the commercial building immediately to the east. This is a substantial building in this setting, which could be expected to remain for many years. It is dominated by this proposal rather than the new building acknowledging that the eastern section of the building will be prominent for many years.

#### Built Form

Further development of how the base of the building addresses the Kingsway, is recommended to overcome the contextual issues highlighted above.

An awning has been proposed running from the western end of the Kingsway street elevation to the building entrance located in the centre of the elevation. The proposed awning effectively terminates the covered access along the street prior to the connection with the pedestrian access to the commercial development and pedestrian crossing to the east of the site. A continuation of the weather protection across the entire length of the site is essential.

A recessed balcony has been provided on the south-eastern corner of the top floor. The applicant advised that the positioning of this balcony is intended to help articulate the eastern elevation of the building. It is acknowledged that some articulation of the eastern elevation is necessary whilst the adjoining site to the east remains under developed. However, should this site be developed into a building of a similar height to that proposed on the subject site, the amenity provided by the balcony will be much reduced.

It is suggested that consideration be given to the articulation and composition of the elevation by reducing the bulk of the building on the northern side and reducing the extent of the balcony on the eastern side so as not to result in a deep/narrow balcony space once the adjoining building to the east is developed.

### Density

The proposed building density is considered excessive and results in a poor relationship with the existing residential development to the north of the site. Increased setbacks to the north of the building are recommended to reduce the visual intrusion and potential privacy issues with the existing residential building to the north.

One consequence of the excessive density is the inability of the development to provide sufficient car parking. Within a centre such as Miranda, car parking is an essential facility. Additional car parking would necessitate a larger basement. This can be avoided by a reduction in the density of the development.

### Resource, Energy and Water Efficiency

It is evident that a considered approach has been given to the environmental performance of the proposed building. However, it is suggested that further consideration be given to providing more natural light and that the incorporation of air conditioning and associated plant be resolved.

One consequence of the increase in density is that the depth of each floor from the external windows to the centre of the building is increased. Natural lighting of the central section of the building is consequentially reduced, resulting in an increase in artificial lighting. Introducing photovoltaic panels may decrease the impact, but an alternative approach could produce a better result.

### Landscape/Amenity

A greater area of landscaping would benefit the development. Not only would the scheme be improved, but the interface with the residential development to the north across Clubb Lane could be enhanced. As submitted, the terrace on the Lane overlooks the residential development and compromises its privacy. Additional setback for deep soil planting at grade is required along the northern boundary. Landscaping to the terrace at the level above could also be provided, with planters being introduced to provide space for screen planting.

The species noted on the current planting plan are considered to be inappropriate. The input of a landscape architect to develop a more appropriate response to the site is recommended. The climbing fig is not appropriate; it will damage the building and is not a useful design element.

It is suggested that the addition of a roof garden would help to reduce the building's heat load and reduce the building's dependency on air conditioning.

This addition would also significantly improve the green credentials of the proposal, as well as providing amenity for the building's occupants.

---

### Safety and Security

When developing the base of the building, consideration should be given to the treatment of any recess within the façade to ensure that “Safer by Design” principles are incorporated.

### Aesthetics

The aesthetics of the building appear well resolved (with the exception of the treatment of the building base). However, for the intricate treatment of the building façades to be successfully realised the detail design of the façade is crucial. It is recommended that further detail is provided to document façade treatments.

### **Recommendation/Conclusion:**

The proposed building height is considered out of scale with its existing context, but further research as part of a policy study may establish heights appropriate for the future desired character for the area. The increased floor area of the building is considered excessive, resulting in a very poor relationship with the existing residential development to the north. The base of the building is also considered to respond poorly to its immediate context.

Should the applicant choose to prepare another, scheme further development of the building form is required to address these issues.

Further development of the appropriate landscaping and additional information to document the proposed façade treatments are also required.”

Colleen Baker  
ARAP Coordinator

31 August 2010





Town Planners  
Project Managers  
Expert Witnesses  
Strategic Planners  
Certified Practising Planners  
Local Government Specialists

## **State Environmental Planning Policy No.1**

### **Objection to the Building Height Development Standard**

**531-533 Kingsway Miranda**

Client: Mr Adrian Tripodina  
Rialto Sports Pty Ltd  
PO Box 1472  
DARLINGHURST NSW 1300

Project Ref: 0041/10  
Date: July 21, 2010

**STATE ENVIRONMENTAL PLANNING POLICY NO. 1  
DEVELOPMENT STANDARDS  
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979**

**APPLICANT'S NAME:** Rialto Sports Pty Ltd  
**SITE ADDRESS:** 531-533 Kingsway, Miranda  
**PROPOSAL:** Commercial building

**1. (i) Name of the applicable planning instrument which specifies the development standard;**

Sutherland Shire Local Environmental Plan (LEP) 2006

**(ii) The number of the relevant clause therein**

Clause 33

**2. Specify the nature of Development Standard sought to be varied and details of variation:**

Clause 33 of the LEP relates to building height limits throughout the Sutherland Shire. Subclause 33(8) specifically relates to development within Zones 8, 9 and 10 (the site is within Zone 8) and states inter alia:

- " **(8) Buildings in Zone 8, 9 or 10**  
A building on land in Zone 8—Urban Centre, Zone 9—Local Centre or Zone 10—Neighbourhood Centre must not comprise more than:
- (a) the maximum number of storeys specified on the Height and Density Controls Map in relation to the land concerned, or
  - (b) if that map does not specify a maximum number of storeys in relation to the land concerned:
    - (i) 2 storeys in the case of a building located on land in Zone 10—Neighbourhood Centre, or
    - (ii) 3 storeys in any other case.
- (9) A building on land in Zone 8—Urban Centre, Zone 9—Local Centre or Zone 10—Neighbourhood Centre must not exceed **any** maximum height specified on the Height and Density Controls Map in relation to the land concerned.

A 'storey' is defined under the LEP in the following terms:

- " **storey** means a space within a building situated between one floor level and the floor level above, or the ceiling or roof above, and includes the space within the following:
- (a) foundation areas, garages, workshops, storerooms, basements and the like, whose external walls have a height of more than 1 metre, as measured from the ground level of the lowest point on the site,

- (b) an attic within a residential building, but only if:
  - (i) the roof of the attic is pitched from more than 300mm above the floor of the attic or at an angle of more than 35 degrees, or
  - (ii) the area of the attic exceeds 60 percent of the floor space of the floor level below."

The LEP Height and Density Control Maps do not specify a height limit for the subject site and as such a 3 storey height limit applies. The proposed development has four floor levels above basement car parking. However, due to the site slope, the wall to the basement car parking will protrude above ground level by more than 1m along the eastern end of the Kingsway frontage and at the rear northern elevation, technically producing a five storey building at these points.

**3. State the objective of the standard to be varied as it relates specifically to the subject site and proposal:**

The objectives of Council's building height standards are contained in clause 33(2) of the LEP that states, inter alia:

- "
- (a) to ensure the scale of buildings:
    - (i) is consistent with the desired scale and character of the street and locality in which the buildings are located, and
    - (ii) complements any natural landscape setting of the buildings,
  - (b) to allow reasonable daylight access to all buildings and the public domain,
  - (c) to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,
  - (d) to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves,
  - (e) to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings on land in those zones."

It is noted that these objectives apply to all zones and development types, not just to development within commercial zones. The importance of certain objectives is likely to be weighted to the specific zone or development type.

**4. Explain how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard.**

***Objective (a)***

Objective (a) places emphasis on achieving consistency with the "desired scale and character of the street and locality" rather than consistency with the existing scale and character. Whilst the latter is still of importance in assessing the appropriateness of the proposal, the emphasis on future character is of particular importance to the subject proposal.

Of assistance in interpreting this objective in terms of the notion of scale are comments made by Roseth SC in *Veloshin v Randwick Council* [2007] NSWLEC 428:

“While bulk and scale tend to be used interchangeably, strictly speaking, bulk refers to the mass of a building and scale is properly used only when referring to the relative size of two or more things.”

Where objective (a) talks about “desired scale”, a comparison must be made to development that is desired or likely to result from planning controls relative to not only the site but also surrounding land.

The subject site is located at the eastern end of a commercial strip that contains a mix of two and three storey buildings. This strip has not seen any significant redevelopment for many years other than some properties having undergone relatively minor alterations, additions or refurbishment.

The LEP height map reproduced below identifies the height controls that apply to the subject site and the Miranda Centre. Areas where a height (in number of storeys) is not identified are subject to a 3 storey limit. As can be seen, other than the strip immediately to the west, the site is surrounded by land subject to height limits generally well in excess of 3 storeys.

The northern side of the Kingsway strip, west of Kiora Road, as well as land extending north along Kiora Road to Willock Avenue, is subject to a 7 storey limit. The site immediately to the north has a 7 storey height limit and land to the south between Jackson Avenue and Wandella Road has a height limit of 8 storeys or 32m pursuant to Clause 33(10) of the LEP. Height limits transition to 4 storeys east of Clubb Crescent moving towards lower density residential areas.



In this context, the height controls that apply to the subject site can clearly be seen as an anomaly. Pre-application meetings with Council

staff have confirmed this opinion. The “desired character of the street and locality” is one of increased height and density, to support the important commercial and regional shopping role of the Miranda Centre. Development of the subject site and adjoining land to the west to three storeys would be inconsistent with this character and would in fact over time result in a “missing tooth” or “doughnut” effect in the streetscape and overall built form.

The future context of the site, based on allowable heights for surrounding sites, is well described on the site analysis plan and computer model images prepared by Kennedy Associates Architects and submitted separately with this application. It is concluded that from an urban design point of view, a built form of up to six storeys would be beneficial to achieving the streetscape and urban form goals established by the planning controls for future development of surrounding sites. However, in the interests of minimizing variation to the current controls, the development scheme has been reduced to four storeys (with sub-floor technically resulting in a five storey component).

Urban design analysis of the site and locality confirms that development undertaken strictly in accordance with the current planning controls would result in an inferior design outcome for the site, inconsistent with Council’s stated Strategy for the Miranda Centre as well as the desired future scale and character established by the controls for surrounding sites.

Whilst objective (a) does not contemplate existing character of a locality, the Westfield Shopping Centre to the south-west at a height equivalent to 6 storeys (20m) and the 7 storey hotel/commercial building to the south-east set the existing context for development of the subject site to four storeys (plus basement protrusion). Also to the north is a five storey residential flat building which again reiterates an established character of surrounding buildings in excess of 3 storeys.

In terms of the proposed building design, it is considered that the form is well articulated by elevation treatment and subtle variations in detail. The subtle appearance of the building will assist with integrating the building with surrounding development and likely future development rather than drawing attention to its height and scale through overstated architecture.

In relation to objective a(ii), it is noted that the subject site does not contain any significant vegetation and with the exception of the property to the east, surrounding commercial development does not incorporate any natural vegetation. Therefore, complementing the natural setting of the building is not considered a relevant objective in assessing height non-compliance in this zone.

**Objective (b)**

In terms of solar access, as shown in Shadow Diagrams of the proposed development prepared by Kennedy Associates Architects and discussed in detail in the Statement of Environmental Effects submitted with this application, shadow impacts fully comply with the requirements under DCP 2006 for solar access.

The location and orientation of the subject site results in the majority of shadow cast by the proposed development falling on the surrounding road reserves. The proposal will not result in any shadow being cast on surrounding residential development, other than a negligible portion of the front setback of the residential flat building on the eastern side of Clubb Crescent at 3pm. Given the northern orientation of the subject site, the proposed building will enjoy high levels of solar access.

Accordingly, the proposal is considered to be consistent with Objective (b) of the height development standard.

**Objective (c)**

The impact of the proposed development on neighbouring properties in terms of views, privacy and overshadowing are discussed in detail in the Statement of Environmental Effects submitted with this application.

With regard to views, the subject site sits near to the ridge that runs along the southern side of the Kingsway. As a result, the site has the opportunity for distant northern views towards Botany Bay and the Sydney city skyline. Residential development to the north and east of the site do not enjoy any significant views across the site and therefore the proposal will not result in any adverse impacts. To the south, existing development is limited to a church and auto repair centre which do not currently enjoy any views across the site. The seven storey hotel and commercial building to the south-east will maintain views directly to the north, rather than across the subject site, and the Westfield building to the south-west contains a blank wall on its northern elevation and therefore will not be affected by the proposal.

In terms of privacy, given that the proposal relates to commercial development that will be used for retail and office uses, it is unlikely that any noise generated will be audible outside of the building. The height of the building will not exacerbate potential noise impacts.

In terms of visual privacy, the subject site is located within a commercial zone and will comprise office and retail uses that will typically operate during business hours. The nearest residential property is located immediately to the north on the opposite side of Clubb Lane. The minimum building to building separation measured between the glass line on the northern elevation of the proposed building and the southern edge of balconies on the residential flat building will be approximately 19m. Whilst not directly applicable, this separation is considered to be acceptable in light of the recommended

separation distances outlined in the *NSW Residential Flat Design Code*. Accordingly, the proposal is considered to be consistent with Objective (c).

**Objective (d)**

As indicated in discussion of Objective (a), the visual impacts of the proposed development are considered to be acceptable and consistent with the desired scale and character of development in the locality. The proposal will present an active facade to the Kingsway, with a high quality commercial facade. As highlighted by computer modelled images prepared by Kennedy Associates Architects and submitted separately with this application, the scale of the building is not such that it would dominate the Kingsway, particularly given the road reserve width of approximately 30m and the nature of surrounding buildings including the blank wall to Westfield shopping complex and 7 storey hotel/commercial building diagonally opposite. The proposed building represents a significantly higher quality architectural response to the local context than the aforementioned buildings and will perform an important gateway role for traffic and pedestrians approaching from the east.

The proposed building will also be highly visible from the residential flat building to the north. The proposal will present an attractive northern elevation to Clubb Lane rather than merely presenting the rear of a building to this frontage as do neighbouring properties to the west which are characterised by blank walls and loading areas. The building provides a separation of approximately 19m between the proposed glass line on the northern elevation and the outer edge of balconies to the adjacent residential building. This proposed separation is considered to be well proportioned to the height of the proposed building on the northern elevation.

Accordingly, it is considered that the proposed building will not result in any significant adverse visual impacts as a result of its height. In fact, it is considered that the proposal will significantly enhance the visual character of the eastern end of the Miranda Centre which is characterised by several dated and architecturally insignificant buildings along the Kingsway strip.

**Objective (e)**

Objective (e) is not relevant to the current proposal.

Accordingly, notwithstanding non-compliance with the height development standard, the proposal is considered to satisfy the objectives of the standard. In the circumstances of the particular case, the SEPP No. 1 Objection for the non-compliance is considered to be well founded.

**5. Will non-compliance with the development standard be inconsistent with any planning objectives for the locality? State why.**

Under the LEP the subject property is within *Zone 8 – Urban Centre*, the specific objectives of which are identified in the LEP as follows:

**1 Objectives of zone**

The objectives of this zone are as follows:

- (a) to identify appropriate land for the provision of a wide range of retail, business and professional activities,
- (b) to promote viable businesses through increased economic and employment activity,
- (c) to provide for an integrated mix of commercial, office, retail and residential buildings,
- (d) to create attractive, vibrant and safe establishments and facilities as a focus for community spirit."

The proposal is considered to be entirely consistent with the objectives of the Zone. The zone objectives do not contain any specific built form objectives other than to create "attractive, vibrant and safe" built forms. The proposal will clearly activate the street frontage and is likely to significantly increase pedestrian activity levels at the eastern end of the Kingsway commercial strip. The proposal will also promote economic and employment activity through development of a building with internal layouts suitable for a variety of business sizes and types.

Similarly, Councils Precinct specific controls for the "Northern Side of the Kingsway" do not provide specific built form objectives other than to encourage "active frontages with a nil setback from the street and an awning which spans the length of the façade." The proposal is consistent with this objective.

The proposal is also considered to be consistent with the general aims for the Miranda Centre Locality, stipulated in Chapter 2.3.b of SSDCP 2006. These aims do not include any specific objectives relating to building height however they do encourage activation of the Kingsway strip, support of Westfield retail services with specialised commercial services and pursuit of energy efficient development forms. The proposal is considered to be consistent with all of these aims, as discussed throughout the Statement of Environmental Effects.

**6. In the circumstances of the proposal, would strict compliance with the development standard:**

- (i) **be unnecessary or unreasonable?**
- (ii) **tend to hinder the attainment of the objectives under Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?**

- (i) Yes. In the circumstances of the case, to limit any redevelopment of the site to a maximum of three storeys is considered to be unnecessary and unreasonable given the likely



future scale and form of development encouraged by the height controls for surrounding properties. The height limit that applies to the subject site is considered to be inappropriate and has no clear relationship to Council's expression of desired future character for the locality. That is, the subject site should be included within a height zone consistent with properties opposite the site to the south, and west of Kiora Road.

It is considered that strict adherence to the height control is likely to result in development that is less appropriate to achieving consistency in scale and character with future development in the locality, which is in clear contradiction of the objectives of the height control. Should support of the proposed development and variation of the height control set a precedent for adjoining development sites to the west, it is considered that this would be a positive outcome.

Whilst variation of a development standard should not typically be used as a mechanism to bring about strategic planning change, it is considered that in the current circumstances and in the absence of any significant adverse amenity impacts on surrounding properties, strict compliance with the control would in fact be counter-productive in terms of achieving the objectives of the control, the zone and Council's LEP and DCP. Accordingly, it is considered that strict compliance with the development standard is unreasonable and unnecessary and this Objection is well founded on the basis that the objectives of the standard are achieved notwithstanding non-compliance.

- (ii) Yes. For the reasons stated in this Objection, it is considered that strict compliance with the development standard for height would specifically be contrary to the promotion and co-ordination of the orderly and economic use and development of land, an object of the Act. The planning controls that apply to the site are inconsistent with Council's expression of desired future character in that a lower scale of development would not be compatible with the development forms encouraged by Council's controls for surrounding properties. The subject site is capable of absorbing additional height without any significant amenity impacts on surrounding development and in a manner that is consistent with the desired future character for the locality. Strict compliance would hinder or limit the contribution that development of the site can make to economic use of finite commercial land in the Miranda Centre.

## **State Environmental Planning Policy No.1**

### **Objection to the Floor Space Ratio Development Standard**

#### **531-533 Kingsway Miranda**

Client: Mr Adrian Tripodina  
Rialto Sports Pty Ltd  
PO Box 1472  
DARLINGHURST NSW 1300

Project Ref: 0041/10  
Date: July 21, 2010

**STATE ENVIRONMENTAL PLANNING POLICY NO. 1  
DEVELOPMENT STANDARDS  
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979**

**APPLICANT'S NAME:** Rialto Sports Pty Ltd  
**SITE ADDRESS:** 531-533 Kingsway, Miranda  
**PROPOSAL:** Commercial building

1. (i) **Name of the applicable planning instrument which specifies the development standard;**  
Sutherland Shire Local Environmental Plan (LEP) 2006
- (ii) **The number of the relevant clause therein**  
Clause 35

2. **Specify the nature of Development Standard sought to be varied and details of variation:**

Clause 35 of the LEP relates to building density. Subclause 35 (11) specifically relates to development in Zones 8 and 9 (the site is within Zone 8) and states inter alia:

- " (11) The maximum floor space ratio applying to development for the purpose of a building on a site in Zone 8—Urban Centre or Zone 9—Local Centre is:
- (a) if a floor space ratio is specified on the Height and Density Controls Map in relation to the site concerned—~~the floor space ratio~~ specified on that map, or
  - (b) if a floor space ratio is not specified on that map in relation to the site concerned—2:1."

The LEP Height and Density Control Maps do not specify an FSR requirement for the subject site and as such a maximum FSR of 2:1 applies to the subject site. The proposal results in a gross floor area of 4,716m<sup>2</sup>, which based on the site area of 1,623m<sup>2</sup>, provides an FSR of 2.9:1. Accordingly, the proposal does not comply with the LEP.

3. **State the objective of the standard to be varied as it relates specifically to the subject site and proposal:**

The objectives of Council's floor space ratio standard are contained in clause 35(2) of the LEP that states, inter alia:

- " (a) to ensure that development is in keeping with the characteristics of the site and the local area,

- (b) to provide a degree of consistency in the bulk and scale of new buildings that relates to the context and environmental qualities of the locality,
- (c) to minimise the impact of buildings on the amenity of adjoining residential properties,
- (d) to ensure, where possible, that non-residential buildings in residential zones are compatible with the scale and character of residential buildings on land in those zones.”

**4. Explain how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard.**

***Objective (a)***

The subject site is located at the eastern end of a commercial strip that contains a mix of two and three storey buildings. This strip has not seen any significant redevelopment for many years other than some properties having undergone relatively minor alterations, additions or refurbishment. Notwithstanding, the planning controls that apply to the surrounding locality are likely to result in significant increases in building scale over time. Furthermore, the context for scale is currently set by buildings such as the hotel/commercial building to the south-east and the Westfield building to the south-west which present a scale of development well in excess of the 2:1 FSR requirement applicable to the site. The existing context of the site is well described on the site analysis plan and computer model images prepared by Kennedy Associates Architects and submitted separately with this application. These studies show that from an urban design point of view, despite the FSR non-compliance the proposed building fits well with the streetscape and built form context of the locality.

In terms of the proposed building design, it is considered that the form is well articulated by elevation treatment and subtle variations in detail. Its scale is well metered in comparison to surrounding overbearing built forms such as the Westfield building to the south-west.

In terms of responding to the site characteristics, it is noted that there are no significant constraints to development in the sense of topographical, environmental or hazard risks. Similarly, the pattern of development in the locality presents no unusual relationships with adjoining properties that would require a special built form response in terms of privacy, views or overshadowing. Therefore, it is considered that the proposal adequately responds to the site characteristics.

***Objective (b)***

The context of the site is well described on the site analysis plan and computer model images submitted separately with this application. As discussed above, the built form of the locality comprises a mix of two and three storey buildings along the northern side of the Kingsway as well as much larger buildings such as the hotel/commercial building and Westfield building to the south. Furthermore, it is considered

appropriate to make a comparison between the proposal and development that is desired or likely to result from planning controls relative to surrounding land. In this regard, as shown by the computer modeling prepared by Kennedy Associates Architects, the proposal will be compatible with the existing larger buildings, however will not overbear lower scale development on sites yet to be redeveloped.

The bulk of the proposed building is well mediated and the architectural form presents a subtle and refined street elevation to the Kingsway, well articulated by variation in architectural detailing.

It is further noted that were ground or first floor level car parking to be provided within the development, as is permitted by Council, the actual FSR of the proposal would be significantly lowered as a result of this area not being included as GFA, however the building envelope could be identical to that proposed. This approach is also useful in analysing the scale of the Westfield building to the south-west, which despite including car parking which is not technically floor space, the scale and volume of the building is well beyond the FSR controls for that site.

In terms of environmental qualities of the locality, the proposal will not impact on any significant vegetation, topography or other environmental attributes. In fact, it is considered that the proposal will have beneficial environmental impacts through the encouragement of alternative modes of travel to private car. The proposal provides for reduced car parking on the basis of its transport rich location and will provide for bicycle parking well in excess of Council's DCP requirements. As indicated in the Traffic and Parking Report prepared by McLaren Traffic Engineering, it is unlikely that the proposal will result in any significant adverse impacts on service levels of local transport infrastructure. The proposed building also responds well to environmental sustainability objectives as detailed in a separate report prepared by Kennedy Associates Architects.

Therefore, given the scale of surrounding development, the massing and design of the proposal and the surrounding built form, it is considered that the proposal is consistent with objective (b).

**Objective (c)**

The impact of the proposed development on neighbouring properties in terms of views, privacy and overshadowing are discussed in detail in the Statement of Environmental Effects submitted with this application.

With regard to views, the subject site sits near to the ridge that runs along the southern side of the Kingsway. As a result, the site has the opportunity for distant northern views towards Botany Bay and the Sydney city skyline. Residential development to the north and east of the site do not enjoy any significant views across the site and therefore the proposal will not result in any adverse impacts on those properties. To the south, existing development is limited to a church and auto

repair centre which do not currently enjoy any views across the site. The seven storey hotel and commercial building to the south-east will maintain views directly to the north, rather than across the subject site, and the Westfield building to the south-west contains a blank wall on its northern elevation and therefore will not be affected by the proposal.

In terms of visual privacy, the subject site is located within a commercial zone and will comprise office and retail uses that will typically operate during business hours. The nearest residential property is located immediately to the north on the opposite side of Clubb Lane. The minimum building to building separation measured between the northern elevation of the proposed building and the southern edge of balconies on the residential flat building to the north will be approximately 19m. Whilst not directly applicable, this separation is considered to be acceptable in light of the recommended separation distances outlined in the *NSW Residential Flat Design Code*.

In terms of solar access, as shown in Shadow Diagrams of the proposed development prepared by Kennedy Associates Architects and discussed in detail in the Statement of Environmental Effects submitted with this application, shadow impacts fully comply with the requirements under DCP 2006 for solar access.

Accordingly, the proposed non-compliance with the FSR control will not result in any adverse amenity impacts on adjoining residential development and is considered to be consistent with Objective (c).

**Objective (d)**

Objective (d) is not relevant to the current proposal.

Accordingly, notwithstanding non-compliance with the FSR development standard, the proposal is considered to satisfy the objectives of the standard. In the circumstances of the particular case, the SEPP No. 1 Objection for the non-compliance is considered to be well founded.

**5. Will non-compliance with the development standard be inconsistent with any planning objectives for the locality? State why.**

Under the LEP the subject property is within *Zone 8 – Urban Centre*, the specific objectives of which are identified in the LEP as follows:

**“ 1 Objectives of zone**

The objectives of this zone are as follows:

- (a) to identify appropriate land for the provision of a wide range of retail, business and professional activities,
- (b) to promote viable businesses through increased economic and employment activity,
- (c) to provide for an integrated mix of commercial, office, retail and residential buildings,

---

(d) to create attractive, vibrant and safe establishments and facilities as a focus for community spirit.”

The proposal is considered to be entirely consistent with the objectives of the Zone. The zone objectives do not contain any specific built form objectives other than to create “attractive, vibrant and safe” built form. The proposal will clearly activate the street frontage and is likely to significantly increase pedestrian activity levels at the eastern end of the Kingsway commercial strip. The proposal will also promote economic and employment activity through development of a building with internal layouts suitable for a variety of business sizes and types.

Similarly, Councils Precinct specific controls for the “Northern Side of the Kingsway” do not provide specific built form objectives other than to encourage “active frontages with a nil setback from the street and an awning which spans the length of the façade.” The proposal is consistent with this character objective.

The proposal is also considered to be consistent with the general aims for the Miranda Centre Locality, stipulated in Chapter 2.3.b of SSDCP 2006. These aims do not include any specific objectives relating to building density or form however they do encourage activation of the Kingsway strip, support of Westfield retail services with specialised commercial services and pursuit of energy efficient development forms. The proposal is considered to be consistent with all of these aims, as discussed throughout the Statement of Environmental Effects.

**6. In the circumstances of the proposal, would strict compliance with the development standard:**

- (i) be unnecessary or unreasonable?**
- (ii) tend to hinder the attainment of the objectives under Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?**

- (i) Yes. In the circumstances of the case, to limit any redevelopment of the site to a maximum of 2:1 FSR is considered to be unnecessary and unreasonable given the likely future scale and form of development encouraged by the planning controls, particularly height controls, for surrounding development sites. The FSR requirement for the site is also particularly limiting in terms of providing for a scale and form of development that can provide a strong and active street edge proportionate to the width of the Kingsway and compatible in scale to existing development along the southern side of the Kingsway to the south-east and south-west.

Therefore, it is considered that strict adherence to the FSR control is likely to result in development that is less appropriate to achieving consistency in scale and character with existing and future development in the locality, which is in clear contradiction of the objectives of the FSR control and the general LEP and

DCP objectives relating to built form. Should support of the proposed development and variation of the FSR control set a precedent for adjoining development sites to the west, it is considered that this would be a positive outcome.

Whilst variation of a development standard should not typically be used as a mechanism to bring about strategic planning change, it is considered that in the current circumstances and in the absence of any significant adverse amenity impacts on surrounding properties, strict compliance with the control would in fact be counter-productive in terms of achieving the objectives of the control, the zone and Council's LEP and DCP. Accordingly, it is considered that strict compliance with the development standard is unreasonable and unnecessary and this Objection is well founded on the basis that the objectives of the standard are achieved notwithstanding non-compliance.

- (ii) Yes. For the reasons stated in this Objection, it is considered that strict compliance with the development standard for FSR would specifically be contrary to the promotion and co-ordination of the orderly and economic use and development of land, an object of the Act. The planning controls that apply to the site are inconsistent with Council's expression of desired future character in that a lower intensity or density of development would not achieve Council's objectives and strategy for the Miranda Centre. The subject site is capable of absorbing additional floor area without any significant amenity impacts on surrounding development and in a manner that is consistent with the desired future character for the locality. Strict compliance would hinder or limit the contribution that development of the site can make to economic use of finite commercial land in the Miranda Centre.