

2010SYE113 – 531-533 Kingsway, Miranda
DA10/1292

ASSESSMENT REPORT APPENDICES

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Appendix A

DEVELOPMENT REFUSAL

Environmental Planning and Assessment Act 1979

DATE OF DETERMINATION 3 November 2010
AUTHORITY Joint Regional Planning Panel

DETERMINATION OF DEVELOPMENT APPLICATION NO. DA10/0720

LAND DESCRIPTION:

Lot 18 DP 8461, Lot 19 DP 8461, Lot 1 DP 21256
531-533 Kingsway, Miranda

APPLICANT:

A V Tripodina
13 Carlotta Rd
DOUBLE BAY NSW 2028

Sutherland Shire Council, pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act 1979, hereby notifies that the abovementioned Development Application for development described below has been determined by the issuing of development refusal for the reasons specified in this notice.

PROPOSED DEVELOPMENT:

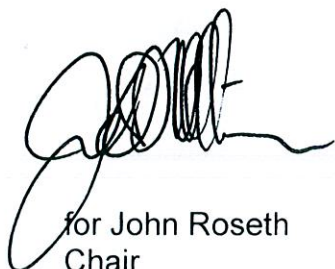
Commercial Development - Demolition of Existing Structures and Construction of a Four (4) Storey Commercial Building

The reasons for REFUSAL are based on the matters for consideration in Section 79C(1) of the Environmental Planning and Assessment Act, and in particular:-

REASONS FOR REFUSAL

1. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to comply with the development standard for maximum height contained within Clause 33(8)(b)(ii) of Sutherland Shire Local Environmental Plan 2006.
2. The Objection submitted pursuant to the provisions of Clause 6 of SEPP 1 with respect to the developments standard for height established in Clause 33(8)(b)(ii) of Sutherland Shire Local Environmental Plan 2006 is not considered to be well founded as the applicant has not demonstrated why, in the case of this application, compliance with this development standard is either unreasonable or unnecessary.
3. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to comply with the development standard for density contained within Clause 35(11)(b) of Sutherland Shire Local Environmental Plan 2006.
4. The Objection submitted pursuant to the provisions of Clause 6 of SEPP 1 with respect to the development standard for density established in Clause 35(11)(b) of Sutherland Shire Local Environmental Plan 2006 is not considered to be well founded as the applicant has not demonstrated why, in the case of this application, compliance with this development standard is either unreasonable or unnecessary.
5. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to comply with the control for minimum car parking numbers required by Clause 7.1.b.18.1 of Sutherland Shire Development Control Plan 2006 and will result in adverse impacts on surrounding residential streets.
6. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to provide an appropriate loading facility as required by Clause 7.4.b.9.2 of Sutherland Shire Development Control Plan 2006 and will result in an adverse impact on the operation of Clubb Lane.

7. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to comply with the front, side and rear setbacks for levels above ground floor required by Clauses 3.2.b.7.2 and 3.3.b.11.3 of Sutherland Shire Development Control Plan 2006 and results in a development which is bulkier than anticipated by the controls.
8. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning & Assessment Act 1979 in that the proposed development adversely impacts on the streetscape resulting from the elevation of the development above street level, large expanses of blank walls and termination of the awning two thirds of the way through the site (Clauses 3.8.b.1.4; 3.11.b.13.1; 3.11.b.6.11 of Sutherland Shire Development Control Plan 2006).
9. The application is considered unacceptable pursuant to the provisions of s.79C(1)(b) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to adequately consider the principles of Crime Prevention through Environmental Design.
10. The application is considered unacceptable pursuant to the provisions of s.79C(1)(e) of the Environmental Planning & Assessment Act 1979 in that the proposed development is not considered to be in the public interest.



for John Roseth
Chair
Sydney East Regional Planning Panel

NOTES

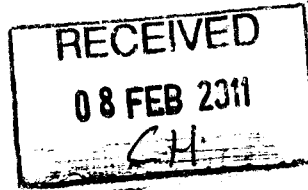
1. This Notice of Development Refusal is issued by Sutherland Shire Council as the Authority responsible in respect of development under the provisions of Sutherland Shire Local Environmental Plan 2006.
2. Section 82A of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 12 months from this determination. Should a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination. Please note also that you cannot request a review under S82A for any applications for Integrated Development, or any Land and Environment Court determined applications.
3. Note- Review provisions do not apply to Complying Development, Designated Development, State Significant Development and Integrated Development.
4. Section 97 of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.
5. In view of the above **REFUSAL, NO WORK MAY BE COMMENCED.**

DA101292

Our Ref: CAC 10M1753 SYD11/00020
Contact: Aleks Tancevski T 8849 2313
Your Ref: DA10/1292



Appendix B



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

Attention: Carolyn Howell

531-533 KINGSWAY, MIRANDA COMMERCIAL DEVELOPMENT

Dear Sir/Madam

I refer to Council's correspondence dated 15 December 2010 with regard to the above-mentioned development application, which was referred to the Roads and Traffic Authority (RTA) for comment under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007.

The RTA has reviewed the above-mentioned development application and the following advisory comments are provided to Council for its consideration in the determination of the development application:

- I. Any redundant driveways along the Kingsway shall be removed with kerb and gutter reinstated to RTA's requirements.

Details of further requirements of the proposed kerb and gutter works can be obtained from the RTA's Project Services Manager, Traffic Projects Section, Parramatta (ph: 02 8849 2144).

A certified copy of the design plans shall be submitted to the RTA for consideration and approval prior to the release of any new construction certificate(s) for the development by Council or commencement of any works.

The RTA fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of the works.

2. Council shall ensure that post development storm water discharge from the subject site into the RTA drainage system does not exceed the pre-development application discharge.

Should there be changes to the RTA's drainage system then detailed design plans and hydraulic calculations of the stormwater drainage system are to be submitted to the RTA for approval, prior to the commencement of any works.

Details should be forwarded to:

The Sydney Asset Management
Roads and Traffic Authority
PO Box 973
Parramatta CBD 2124.

A plan checking fee will be payable and a performance bond may be required before the RTA's approval is issued. With regard to the Civil Works requirement please contact the RTA's Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

3. 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 the Kingsway and detailing how the carriageway would be monitored for settlement.
 - b. The impact of the excavation on the structural stability of the Kingsway.
 - 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.
4. The proposed development should be designed such that road traffic noise from the Kingsway 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.
 5. The provision of off-street car parking and bicycle storage and loading area shall be provided to the satisfaction of Council.
 6. 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.
 7. 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 AUSTROADS. In this regard a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
 8. Clear sight lines shall be provided at the property boundary line to ensure adequate visibility between vehicles leaving the car park and pedestrians along the frontage road footpath in accordance with Figure 3.3 of AS 2890.1 - 2004 for light vehicles and AS 2890.2 - 2002 for heavy vehicles.

9. 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 the Kingsway.
10. 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.
11. All works/regulatory signposting associated with the proposed development are to be at no cost to the RTA.

Any enquiries in relation to this development application further, please contact Aleks Tancevski on 8849 2313.

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

Yours faithfully



James Hall
Senior Land Use Planner
Transport Planning, Sydney Region

31 January 2011

Architectural Review Advisory Panel

Proposal:

Commercial Development - Construction of a Three (3) Storey Commercial Building

Property:

531-533 Kingsway MIRANDA NSW 2228

Applicant:

Adrian Vincent Tripodina

File Number:

DA10/1292

The following is the report of the Architectural Review Advisory Panel Meeting held on 3 February 2011 at the Administration Centre, Sutherland Shire Council, Eton Street, Sutherland. The report documents the Panel's consideration of the proposed development described above.

"2. Consideration of Development Application No. 10/1292 – Commercial Development at 531-533 Kingsway, Miranda

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

Anthony Nolan, Adrian Tripodina and Jeff Mead 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. Surrounding properties address the Kingsway with two (2) storey commercial/retail buildings and are serviced via a rear laneway (Clubb Lane) to the north of the site. Residential precincts are located to the north and east.

Construction of a three (3) storey commercial building with three (3) levels of car parking is proposed. It was explained by the applicant that level floor plates have been provided for each commercial level to allow flexible spaces that are capable of housing either single or multiple tenants per floor.

A previous application for this site was refused consent and the proposed design has been developed to address concerns raised regarding that application (DA10/0720). Issues previously raised by the Panel have been successfully addressed by the new proposal. However, further consideration of the following issues is still necessary:

Context

The proposed building relates appropriately to the future desired context of the precinct. However the blank walls of the eastern and western elevations are likely to be visible for some time. The eastern wall is particularly exposed. A clear design intent should be proposed for these walls (including the consideration of colour and finish). Something in line with the scale of these walls (eg. a simple delineation of the construction system) would be preferred over any superficial or applied decoration.

Scale/Built Form

The scale and form of the proposed building are appropriate responses to the immediate context of the site.

Density

The density of the proposed building is also acceptable.

Resource, Energy and Water

It is recommended that some openable windows are provided in the building, particularly with the southern façade. This will create the potential for some natural ventilation within the commercial spaces and give the occupants a greater sense of control over their environment. It is accepted that air conditioning may be appropriate when the weather is hot or cold but there will be periods when natural ventilation is adequate (and even desirable).

To increase natural light and ventilation in the car park it is suggested that the wall in the north facing car park be made more permeable with small (breezeblock size) openings or perforations. Increasing the openness of the car park wall could also help the proposal better address the laneway, if the increased openings are expressed appropriately. Noise from vehicle movements may be an issue but as this is a commercial building it is possible to avoid a significant impact on residential amenity.

Whilst the unusually high ground and upper floor to floor heights may offer some amenity and/or aesthetic advantages, these need to be balanced with their impact on energy consumption (heating, cooling and lighting) and sustainability of excess construction material usage and waste associated with non-standard height office partitioning.

Landscape

It is suggested that the terrace and basement car park on the north-eastern corner be cut back by approximately 3m to allow trees Nos. 1 and 2 on the adjoining property to be retained. Tree No. 3 on the adjoining property is a Camphor Laurel and not a Pittosporum as noted on landscape drawings. This tree is exempt from Council's Tree Preservation Order and should be removed. Providing a wider planting strip along the northern boundary (adjacent to the lane) would also facilitate the planting of more substantial trees and shrubs. This will improve both the appearance of the laneway and the outlook from the residential building opposite.

It is also recommended that consideration is given to providing street trees to the Kingsway.

Amenity

Generous ceiling heights have been used for commercial spaces, in particular the 4.4m floor to floor height allocated to the ground floor. Subject to verified sustainability, this is supported.

Safety and Security

There are no significant safety and security concerns.

Social Dimension

The building will provide an appropriate working environment for those people who relocate into these premises.

Aesthetics

The Panel questioned the rationale to split the south facing street façade of the building into two elements. In response, the applicant explained the intent is to create a visual split at the point of entry into the building as an aid to modulating the scale of the building. From the drawings provided, the changes in the treatment of the two (2) elements appear too subtle to establish two (2) clearly defined elements. This can be attributed partly to the drawing not clearly expressing the design intent. However, it also highlights the need for some further finessing of the façade treatment.

As a line of reference marking the street opposite this point of change in the façade is considered a little tenuous. A stronger solution would either accentuate a transition between both sides across the overall façade (eg. a series of uniformly spaced and proportioned blades that progressively change colour) or simply treating it in a more quiet and uniform way. The inclusion of opening windows to the offices may well assist this. Whilst the entry at ground might suggest an appropriate moment to effect a transition in a more subdued solution this could just be dealt with below the canopy.

A deeply recessed cornice type roof edge has been created to the edge of the southern roof. This element will form a strong continuous sculptural roof line. Materials that form this element and how those materials are detailed will greatly impact the aesthetic success of the roof. Further detail and confirmation of materials are required to demonstrate that the sculptural intent of the diagram shown on DA18 will be realised.

The vertical glazed fins on the southern elevation currently abut the underside and align with the face of the roof cornice. This creates a well defined grid pattern on the southern elevation. It is suggested that the roof line could be more clearly expressed if there were to be more separation between the fins and the roof. This could be achieved by either providing some separation between the underside of the cornice and the top of the fin or recessing the fin behind the line of the cornice.

Recommendation/Conclusion:

The previous decision of the JRPP has provided clear criteria for the preparation of an amended design. As a consequence, the proposed building is of an appropriate scale and generally sits comfortably in its immediate context. However, it is suggested that the building's presentation to the rear laneway could be further improved by reducing the building footprint to retain the two large existing trees (on the adjoining property) and to create opportunities for more significant landscaping.

The proposed building has the potential to establish a new benchmark for buildings in this precinct. Further finishes and detail information (more detailed section, rationale for storey heights and a finishes board) should be submitted at this stage to ensure the design intent is realised."

Colleen Baker - ARAP Coordinator
14 February 2011

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: December 10, 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 three 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 four 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 and comments by Council's ARAP and the Sydney East Region JRPP 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 to strictly comply with the three storey height limit, which is likely to result in a two storey building fronting the Kingsway 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.

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 three 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 effect, the proposed building will read as a three storey building from the most significant public domain areas in the vicinity of the site.

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 living areas or private open spaces of surrounding residential

development. 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 20m. 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 frontage 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 20m 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 require strict compliance with the three storey height limit, which would as a result of site topography likely lead to a two storey form at the Kingsway frontage, 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. In any case, the proposal has been reduced in height from the scheme presented under DA 10/0720 and now reads as a three storey building from the Kingsway.

Therefore, 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 required to achieve strict compliance with the height control would not be compatible with the development forms encouraged by Council's controls for surrounding properties. The subject site is capable of absorbing the minor additional height proposed 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.

Appendix E

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: March 15, 2011

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.

Gross floor area (GFA) is defined by the LEP as follows:

" gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:
- (d) any area for common vertical circulation, such as lifts and stairs, and

- (e) any basement:
- (i) storage, and
- (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above."

Of relevance to the current proposal is the "exclusion" listed as part (g) which essentially limits car parking to that prescribed under SSDCP 2006 (treating those rates as a maximum), and thereby including any additional car parking as GFA.

Based on a commercial floor area of 3,241m² the proposal requires a maximum of 109 car spaces however provides 119 spaces. Therefore, 10 spaces must be included as GFA. These spaces have dimensions of 2.4m x 5.4m and therefore contribute an additional 129.6m² of GFA resulting in a total gross floor area of 3,370.6m², which based on the site area of 1,623m², provides an FSR of 2.08:1. 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)

In terms of area character, the proposed additional car spaces are located entirely below ground level and will therefore in no way alter the appearance of the proposed building.

In terms of responding to the site characteristics, it is noted that there are no significant constraints to development, and particularly excavation, in the sense of topographical, environmental or hazard

risks. Basement parking is not uncommon in the locality. The proposal could be made to technically comply with the floor space ratio requirement by conversion of parking areas to storage or larger plant, garbage rooms or the like. It is considered that this would provide no tangible benefit in terms of meeting objective (a).

Objective (b)

As indicated above, the proposed additional car parking results in no change to the apparent bulk and scale of the proposed building, these measures of building appearance typically being applied to parts of a building that are entirely above ground level.

Objective (c)

The proposed additional car parking will not result in any adverse amenity impacts on adjoining properties in a built form sense. The additional GFA is located below ground and will therefore not affect views, solar access, acoustic or visual privacy. Given that the actual useable floor area within the building complies with the FSR requirement, the intensity of traffic generation will be commensurate with that expected of commercial development in this zone. The additional parking spaces will not generate additional traffic but will rather assist with mitigating potential spill-over of parking demand to the surrounding street network. This will have benefits for surrounding residents.

We note that Council officers and the Joint Regional Planning Panel raised concern relating to potential spill-over parking to surrounding streets from the proposed development in assessment of the original application for this site. Whilst these comments were made in the context of a scheme that did not comply with the DCP car parking rates, the proposed additional parking will assist with appeasing Council's general concern that the Miranda Centre faces parking supply issues.

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 proposal will provide for a commercial building that will activate the eastern end of the Kingsway commercial strip. The provision of minor excess parking will not conflict with the zone objectives but will rather assist with promoting economic activity by easing demand for on-street parking in the locality generated by the proposal.

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, it is considered unnecessary to reduce car parking to achieve strict compliance with the FSR control. The additional car parking will not generate additional vehicle trips to the site and will in fact reduce potential impacts on surrounding development through lessening demand for on-street parking. The proposal could be amended to strictly comply through conversion of parking spaces to storage space which is excluded from being included as GFA, however this approach is considered to be counter-productive in meeting the objectives of the control ie. additional car parking will have greater benefit than additional storage space.

(ii) Yes. Whilst from a town planning point of view, reduced car parking in town centres with good public transport access should be encouraged, Council officers have pointed to parking supply issues in Miranda. A nexus can be made between economic objectives and car parking supply. That is, future uses within the proposed building and surrounding businesses will be benefitted by a convenient and generous supply of car parking. Strict compliance with the FSR control would hinder the ability to provide this benefit, conflicting with the objects of the Act.