


**Clause 4.6 exception to development standards request Manly LEP
2013, clause 4.3 - Height of buildings (revised proposal)**
2 West Promenade, Manly

A decorative graphic consisting of a series of vertical bars of varying heights in shades of red and orange, with some bars having diagonal stripes.

Submitted to
Northern Beaches Council
Prepared on behalf of Manly Civic Club
16 March 2017 | 16017

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1.0 Preliminaries

1.1 Land to which this variation applies and overview of the proposal

This revised Clause 4.6 exception to development standards request is submitted to Northern Beaches Council (the **Council**) in support of Development Application (**DA**) DA0176/2016 which proposes the construction of a new six storey mixed-use development comprising a registered club at ground level and residential accommodation above and two levels of basement car parking at 2 West Promenade, Manly (the **site**).

The revised request has been prepared by Robinson Urban Planning Pty Ltd on behalf of Manly Civic Club (the applicant and landowner) and should be read in conjunction with the Addendum Statement of Environmental Effects (**SEE**) (dated 16 March 2017) and Original SEE also prepared by Robinson Urban Planning (dated 30 June 2016) submitted as part of the Original DA.

This revised request describes and assesses a revised proposal prepared in response to Council's letter dated 6 December 2016.

The revised proposal described in this revised Clause 4.6 exception to development standards request comprises of the following:

1. **Construction** of a new six (6) storey mixed use building with two levels of basement car parking, comprising:
 - Ground Floor: Registered club and building services
 - Level 1 – 5: Residential accommodation comprising 38 apartments (*reduction of 7 apartments*)
 - Basement B1 – B2: Car parking comprising 71 car parking spaces and 25 bicycle racks (*an increase of one (1) car space and (1) bicycle space*)
2. **Landscaping** of the site (ground floor, northern boundary setback and residential apartment terraces)
3. **Use** of the ground floor as a *registered club*.

1.2 Relevant environmental planning instrument

This request relates to Manly Local Environmental Plan 2013 (**Manly LEP 2013**).

1.3 Relevant development standard

1.3.1 Manly Local Environment Plan 2013

This request relates to the height of buildings standard at cl. 4.3(2) of Manly LEP 2013, which states:

4.3 Height of buildings

...

- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The height standard for the site is 15m, as shown at **Figure 1**.



Figure 1 – Extract of Manly LEP 2013 – Height Map

1.4 Height of revised proposal

Table 1 outlines the proposed maximum height of the revised and original proposals.

The revised proposal results in a very minor increase to the building's maximum height (0.6m). This is a result of design changes requiring Manly Civic Club's plant (air-conditioning units) to be relocated from the basement level to the roof.

The commercial air-conditioning units are slightly taller in comparison to the residential air-conditioning units which were originally located on the roof.

As a result, the plant screen has been increased in height (600mm). This very minor increase to maximum height relates to a very small portion of the building (as shown at **Figures 2 and 3**)

The main roof form and podium level do not change.

Table 1 – Maximum height (revised proposal and original proposal)

| Height (max) | Revised proposal | Original proposal | Change |
|---------------|-------------------------|--------------------------|--------|
| Manly LEP2013 | 22 metres | 21.4 metres | +0.6m |
| RL | RL 26.25 (plant screen) | RL 25.65 (lift over run) | +0.6m |
| Main roof | RL 24.45 | RL 24.45 | - |
| Podium level | RL 18.20 | RL 18.20 | - |
| Storeys | 6 storeys (+2 basement) | 6 storeys (+2 basement) | - |



Figure 2 – Maximum building height of revised proposal (raised plant screen shown in green)



Figure 3 – Maximum building height of original proposal (lift overrun and services shown in blue). Red dashed line shows current DA approval on the site (DA 149/2008)

1.5 Proposed variation to the standard

Table 2 compares the maximum *building height*¹ of the revised proposal with the applicable height standard under Manly LEP 2013.

Table 2 – Proposed assessment of compliance with Manly LEP 203 height standard

| Proposed building | Manly LEP 2013 height standard | Proposed Building | Variation to the height standard |
|--------------------------------------|--------------------------------|-------------------|----------------------------------|
| Mixed-use building (plant screen) | 15m | 22m (RL 26.25) | 7m (47%) |

Photomontage at Figure 4 show the revised proposal as viewed from Gilbert Park.



Figure 4 – Photomontage of revised proposal – West Promenade

¹ Pursuant to Manly LEP 2013:
building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like
ground level (existing) means the existing level of a site at any point

1.6 Existing consent

Manly Independent Assessment Panel (**MIAP**) (on 18 December 2008) granted approval (DA/149/2008 - as modified) for the demolition of the existing club building and part demolition of the existing garage to facilitate the construction of a five (5) storey building (plus plant room level) with three (3) levels of basement car parking to be used as Manly Civic Club and commercial office space.

A comparison of the proposal and the approved development is detailed in **Table 3**.

Figure 5 is a series of perspectives of the approved development.

The consent for the approved development has been activated with physical commencement works taking place on site.

Table 3 – Proposed revised development summary (compared with approved development)

| | Revised proposal | Approved development (DA/149/2008) |
|---|--------------------------|------------------------------------|
| Site area | 1,562m ² | 1,562m ² |
| Height (max) | | |
| • Building height ² (Manly LEP 2013) | 22 metres | 22.4 metres |
| • Storeys | 6 storeys (+2 basements) | 6 storeys (+3 basement) |
| • RL | RL 26.25 | RL 26.65 |
| Gross Floor Area (GFA) | 4,463m ² | 4,420m ² |
| Floor Space Ratio (FSR) | 2.85:1 | 2.83:1 |

² Pursuant to Manly LEP 2013

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

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



Figure 5 – Perspective of the approved development (DA/149/2008)

1.7 Development controls relevant to the site and proposal

1.7.1 Manly LEP 2013 - Heritage

Heritage listing

The site accommodates the following local heritage item pursuant to Manly LEP 2013 (see Heritage Map, **Figure 6**):

- Auckland Garage (former service station): Gilbert Street (corner of West Promenade and Gilbert Street) (I156)

The item is a single storey brick building with white stucco walls and gabled tiled roof (in the interwar Spanish Mission-style), dating from the 1930s. The building was originally used as a service station known as the Auckland Garage, which was later converted into a retail shop. As of 2013 the garage has been vacant.

A DA for the demolition of the heritage listed Auckland Garage was refused by Council in December 2002 (DA/122/2002), with Council deeming the building worthy of preservation.

The applicant appealed the determination to the Land and Environment Court, but the appeal was dismissed. The key reasons in the judgment noted that the building was reasonably well preserved, could be re-adapted and its removal would have an adverse impact on the heritage significance of the precinct.

Consistent with Council and the Land and Environment Court's decision, the Auckland Garage has been retained on site and incorporated into the design of the new mixed-use building.



Figure 6 – Extract of Manly LEP 2013 – Heritage Map

Conservation Incentives Clause 5.10(10)

As detailed below and within the revised Statement of Heritage Impact (**SoHI**) and Conservation Management Plan (**CMP**) prepared by NBRIS and Partners, the proposed non-compliance with the height standard satisfies the heritage conservation incentive provisions at cl. 5.10(10) of Manly LEP 2013:

a) *The conservation of the heritage item is facilitated by the granting of consent*

Response – As detailed above, the site accommodates a local heritage item known as *Auckland Garage* (1156) (former service station), which is located on the corner of Gilbert Street and West Promenade and occupies approximately 25% of site, as shown at **Figure 7**.

As a result of conserving the single storey garage onsite, and appropriate curtilage around the item to ensure its setting is also preserved a significant portion of the site is precluded from any future development (both above and below ground).

As such, to retain and activate the single storey heritage item on site for the benefit of the wider community, Manly Civic Club (the applicant and landowner) is required to put forward a financially viable option to not only support the retention and activation of the heritage item, but also the construction of a new club house for its 1000 members.



Figure 7 – Portion of site precluded from any future development as a result of conserving the heritage item on site

To achieve these two aims, the GFA which would normally be distributed across the entire site, has been transferred from the portion of the site that is precluded from any future development to the remaining portion of the site.

As a result of this transfer of permissible GFA, the resulting design breaches the height standard. The proposed breach to the height standard is therefore a direct response to preserving the heritage item onsite as the development supports an appropriate density.

- b) *The proposed development is in accordance with a heritage management document that has been approved by the consent authority*

Response – The proposal will be carried out in accordance with the CMP as well as any conditions of development consent imposed by Council.

- c) *The consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out*

Response – In accordance with any future approval, all necessary conservation works identified within the CMP as well as any conditions of development consent imposed by Council will be carried out.

- d) *The proposed development would not adversely affect the heritage significance of the heritage item, including its setting*

Response - As detailed within the SoHI and CMP, the heritage impact of the proposal will be minimal and positive.

By providing a clear setback around the Auckland Garage, and redistributing the buildings permissible GFA to the upper levels, ensures significant views of the building from across Gilbert Park, along West Promenade and to a lesser degree, Gilbert Street are preserved. The recessive design of the building also ensures the garage retains its significant features to allow for its historical interpretation as a service station for the benefit of the community.

- e) *The proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

Response - As detailed in Section 5.0 of the Addendum SEE and Section 5.2 of the Original SEE, the proposal will not give rise to any unreasonable or unexpected adverse amenity impacts for surrounding properties (in terms of overshadowing, views/outlook, privacy and acoustic impacts).

As discussed in Section 4.3 of the Addendum SEE, the revised proposal is also respectful of the existing form and scale of development along West Promenade to the north (by way of increased side boundary setbacks) and to the west ensuring the building sits comfortably within the streetscape.

1.7.2 Manly DCP 2013 – Townscape Requirements

Townscape Requirements

In accordance with Manly DCP 2013 Control 4.2.5.1 – Design for Townscapes, the site's three street frontages to West Promenade, Gilbert Street and Eustace Street are identified as an "Important Corner" within the Manly Town Centre (refer to **Figure 8** an extract of the Manly Town Centre Townscape Principles Maps).

As required by the provisions of this clause, development on site is to be built to the boundary, and have a strong height and façade to establish itself as an important corner site within the townscape. Consistent with the control, the proposal:

- Displays a strong relationship to each of the site's street frontages, as illustrated on the attached Architectural Plans and Photomontage
- Is built to the boundary, except where appropriate setbacks are required to maintain the setting of the heritage listed building on site and to the north
- Has a building height that anchors the site and assists in visually defining the boundary of the Manly Town Centre, around Gilbert Park to the east
- Has a façade design, along with the proposed materials and finishes that promote a relationship with the adjoining RFBs that complement the heritage item on site and to the north
- Has a proposed height that defines the end corner site along West Promenade, consistent in bulk and scale with 61 Sydney Road at its northern end forming a clear "bookend" to the streetscape (**Figure 9**).

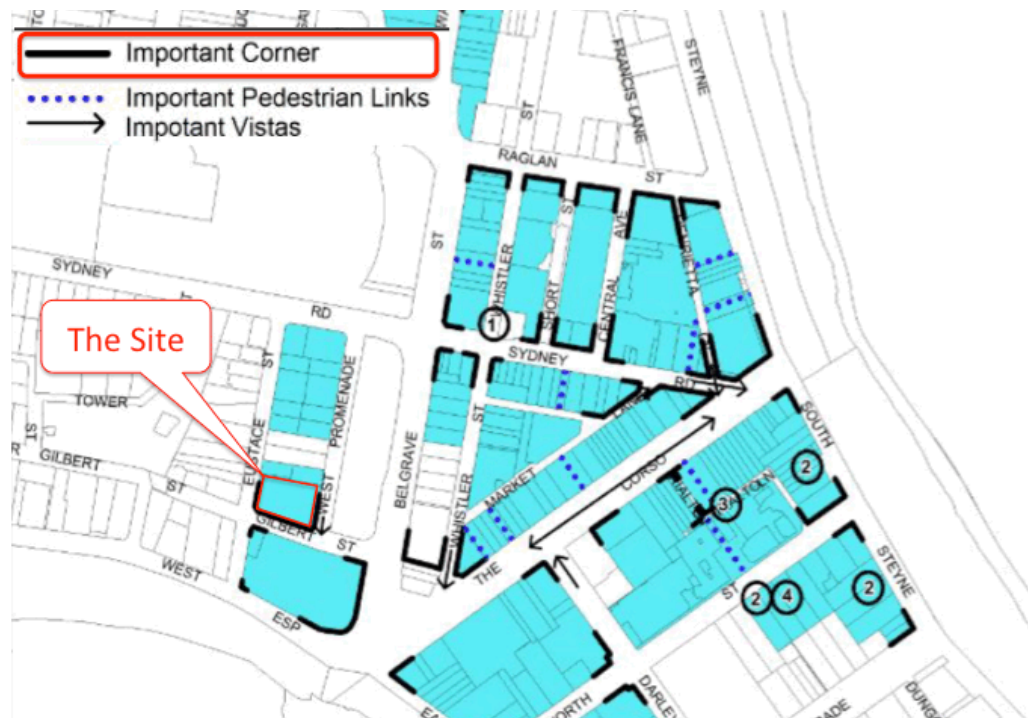


Figure 8 – Extract of Manly DCP 2013 – Townscape Principles

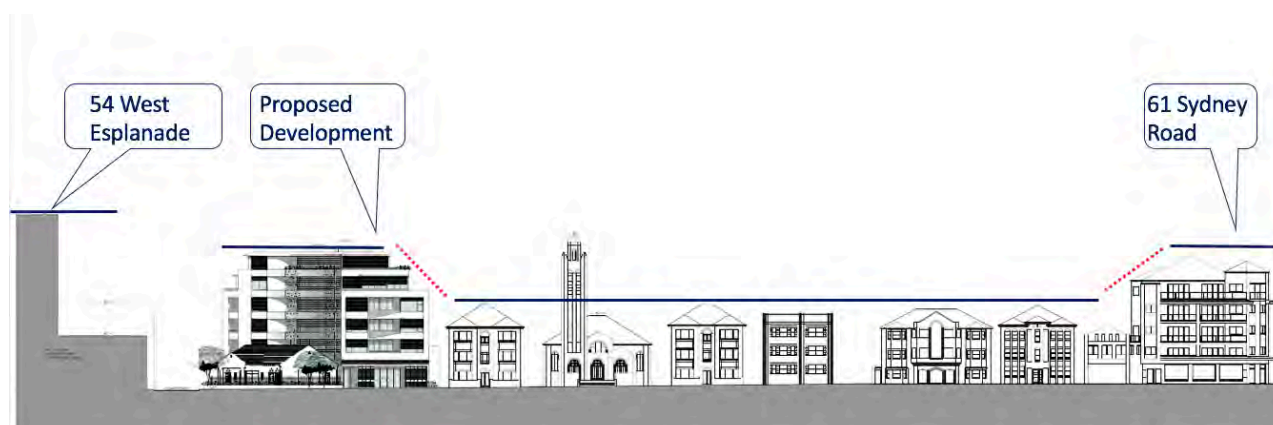


Figure 9 – Streetscape Analysis – West Promenade Street

1.7.3 Manly DCP 2013 –Exceptions to Height in Manly LEP 2013 within the B2 Zone - Manly Town Centre

Manly DCP 2013 Control 4.2.5.2, provides that exceptions to the height standard are permitted within Zone B2– Manly Town Centre if the proposal is subject to consideration of the following provisions:

- Whether the height adversely dominates the heights of end (corner) buildings or adjoining buildings
- Whether the proposed development demonstrates an appropriate relationship to adjoining development in terms of fulfilling the townscape objectives
- Whether new development should be constructed to the same building envelope as existing buildings on a site, provided the other objectives and requirements (including FSR) of this plan are achieved
- Whether new buildings equate with both the overall height as well as the level of each floor of adjoining buildings, in particular architectural details and with particular regard to important end-buildings in the street block.

In accordance with Control 4.2.5.2, the proposed exception to the height standard complies with the provisions as follows:

- The site occupies an end corner, which has been identified as an “Important Corner” on the Manly Townscape Map. The proposed height, in this prominent location is therefore acceptable as it establishes, and defines the end corner site within the streetscape.
- As stated above the proposed building height anchors the site, and assists in visually defining the boundary of the Manly Town Centre, around Gilbert Park to the east.
- The proposed development, and its height form a strong visual connection with development to the south (the Grand Esplanade building which reaches a height of 25 metres). This improved visual connection in built form, will increase pedestrian activity at the street level, by visually linking the currently disconnected and isolated West Promenade with the town centre, consistent with the objectives of Zone B2.
- The departure from the height standard is driven by the need to preserve the heritage listed building on site. By providing a clear setback around the Auckland Garage, and redistributing the buildings permissible GFA to the upper levels, ensures significant views of the building

from across Gilbert Park, along West Promenade and to a lesser degree, Gilbert Street are preserved. The recessive design of the building ensures the garage retains its significant features to allow for its historical interpretation as a service station.

- The proposal complies with the FSR standard of 3:1, and therefore supports an appropriate density on site.
- As detailed within the accompanying Design Report by Mojillo International, the proposed development has been specifically designed to respond to the lower scale of adjacent development (in particular to the north and west). The building facades are layered and broken up to read as a juxtaposition of various scaled horizontal elements. This gives the building the appearance of a smaller scale at the street level, consistent with the adjacent RFBs and the heritage-listed item on site.

2.0 Justification for the exception and matters for consideration

Table 4 assesses the proposed variation from the 15m height standard against the cl. 4.6 considerations in Manly LEP 2013.

More details follow in Sections 3.0 to 5.0 assessing the proposed variation against the accepted tests for the assessment of development standard variations established by the NSW Land and Environment Court in:

- *Wehbe v Pittwater Council* [2007] NSW LEC 82
- *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46)
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3').

Table 4 – Exception to standard - Clause 4.6 Manly LEP 2013 – Height of buildings

| Manly LEP 2013, cl. 4.6 | Compliance |
|--|---|
| <p><i>(1) The objectives of this clause are as follows:</i></p> <p><i>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development</i></p> <p><i>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i></p> | <p>✓ Flexibility is appropriate in this instance given that:</p> <ul style="list-style-type: none"> • The departure from the height standard is driven by the need to preserve the heritage listed building on site. By providing a clear setback/curtilage around the Auckland Garage, the developable ground plane is reduced. This necessitates a redistribution of the permissible GFA to the upper levels. Whilst exceeding the height standard, this solution ensures that significant views of the heritage item (from across Gilbert Park, along West Promenade and to a lesser degree, Gilbert Street) are preserved. The recessive design of the building ensures the garage retains its significant features to allow for its historical interpretation as a service station. • The site occupies an end corner, which has been identified as an “Important Corner” on the Manly Townscape Map. Given the location of the single storey heritage listed building on the sites main corner, the proposed height of the new building which frames the Auckland Garage, is acceptable as it establishes, and defines the prominent end corner site within the streetscape. • The proposed building height anchors the site and assists in visually defining the boundary of the Manly Town Centre, around Gilbert Park to the east. • The proposal and its height form a strong visual connection with development to the south (the Grand Esplanade building which is nine storeys high). This improved visual connection in built form, will increase pedestrian activity at the street level, by visually linking the currently disconnected and isolated West Promenade with the town centre, consistent with the objectives of Zone B2. • The proposal complies with the FSR standard of 3:1, and therefore supports an appropriate density on site. The exception to the height standard is not proposal to realise additional GFA. • The proposed street frontage height is 15m, with the upper levels setback from the boundary. The building therefore presents to the street as a 15m building, consistent with the desired future charter of the area. • The building facades are layered and broken up to read as a juxtaposition of various scaled horizontal elements. This gives the building the appearance of a smaller scale, forming a much better relationship with the adjoining RFBs and the heritage-listed item on site in comparison to the existing approval. • The proposal displays an appropriate design response to the site’s important corner setting, and its role within the Manly Townscape, whilst also ensuring the setting of the heritage listed building on site is preserved. • As detailed in Section 5.0 of the Addendum SEE, the proposal will not give rise to any unreasonable or unexpected adverse amenity impacts for surrounding properties (in terms of overshadowing, views/outlook and privacy impacts). • The SoHI and CMP by NBRs and Partners concludes that the heritage impact of the proposal will be minimal and positive. • The revised Traffic Impact Assessment by Trafix concludes that the traffic impacts of the proposal will be acceptable. • The site has an existing (commenced) development consent, which permits the |

| Manly LEP 2013, cl. 4.6 | Compliance |
|---|--|
| | <p>construction of a five (5) storey building (plus plant room level) reaching a maximum height of 22.4m. The approved building does not comply with the applicable 15m height standard on the site.</p> <ul style="list-style-type: none"> As demonstrated by the existing consent and addressed later at Section 3.0, the 15m height standard in Manly LEP 2013 has been abandoned on the site. The objectives of Zone B2 Local Centre and the height standard are achieved (see later). |
| <i>(2) Development may contravene a standard</i> | ✓ The height standard is not excluded from the clause. |
| <p><i>(3) Written request required that seeks to justify the contravention of the standard by demonstrating:</i></p> <p><i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p> <p><i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p> | <p>✓ Compliance with the 15m height standard in Manly LEP 2013 is unreasonable and unnecessary and there are sufficient environmental planning grounds to justify contravening the standard for the reasons noted above at subclause (1).</p> |
| <p><i>(4) Development consent must not be granted unless:</i></p> <p><i>(c) the consent authority is satisfied that:</i></p> <p><i>(i) the written request has addressed subclause (3)</i></p> <p><i>(ii) the proposed development is in the public interest (consistent with the objectives of the standard and the zone)</i></p> <p><i>(d) the concurrence of the Director-General has been obtained.</i></p> | <p>✓ Subclause 3 has been adequately addressed (see subclause (1) above).</p> <p>✓ The proposal is in the public interest as it:</p> <ul style="list-style-type: none"> Satisfies the objectives of Zone B2 Local Centre as follows: <ul style="list-style-type: none"> <i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area</i> Response – Manly Civic Club is a NSW registered club, a not-for-profit organisation owned by and run for the community. The proposed ground floor use of the site as Manly Civic Club will therefore deliver a wide range services to its members and local community through the provision of a new clubhouse, as well supporting local sporting and charity groups through donations. <i>To encourage employment opportunities in accessible locations</i> Response – Undertaking the construction works will have some short-term positive economic impacts through employment generation, both direct employment and multiplier effects. Further, given the site's proximity to the Manly Bus Interchange and Wharf, the day-to-day operation of Manly Civic Club, will create employment opportunities in a highly accessible location. <i>To maximise public transport patronage and encourage walking and cycling</i> Response – The Manly Civic Club will adopt a house policy of encouraging patrons to utilise public transport given the site's proximity to such services. In addition, residents will be able to take advantage of local bicycle paths as a result of the 25 secure bicycle racks provided onsite and public transport options in the |

| Manly LEP 2013, cl. 4.6 | Compliance |
|-------------------------|---|
| | <p>immediate area.</p> <p>– <i>To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.</i></p> <p><u>Response</u> – The Manly Civic Club opened on 23 October 1959 and has occupied the site up until 2013, when it was demolished as part of the current approval. As detailed within the Addendum SEE and the Original SEE, the new Manly Civic Club will not have a detrimental impact on the RFB located above and residential development within the surrounding area by way of noise, odour and deliveries.</p> <p>All loading is to take place on site, during the hours of 7.00 am and 10.00 pm ensuring the day-to-day operation of the premises does not impact the surrounding area.</p> <p>An Acoustic Report has been prepared (attached) which concluded that the proposed operations of the club (visitor vehicles, site servicing, plant and club use) will not cause a nuisance to the nearest sensitive receivers (onsite and adjoining), ensuring the amenity of the surrounding area is preserved as a result of the development.</p> <p>A Plan of Management will also be adopted by the club, ensuring the premises is managed responsibly.</p> <ul style="list-style-type: none"> • It satisfies the relevant objectives of the height standard (cl. 4.3(1)) as follows: <p>– <i>To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality</i></p> <p><u>Response</u> – As detailed within the accompanying Design Report by Mojillo International, the proposed development has been specifically designed to respond to the lower scale of adjacent development (in particular to the north and west), as follows:</p> <ul style="list-style-type: none"> – The design has been carefully considered in relation to the grain and fabric of its context. A human scale is provided by an articulated street-wall podium form that relates to the West Promenade and Eustace Street residential buildings. The design responds to this by incorporating a four storey podium. The podium is then broken down into smaller portions to provide a finer grain which provides a scaled relationship and dialog with the adjacent development. – The building's podium height corresponds with the 15m height standard, with the upper levels setback and tiered from the site's boundaries. The upper levels are also lightly coloured to appear recessive. As a result, the proposed development at the street levels reads as a 15metre high building (consistent with the controls). – The upper level setbacks (Level 4 – 5) provide an appropriate transition in height between the Grand Esplanade (to the south) when read from afar. – The proposed increase to the northern side boundary setback again improves the transition in building bulk between the proposed development and slightly lower development to the north. |

| Manly LEP 2013, cl. 4.6 | Compliance |
|-------------------------|--|
| | <ul style="list-style-type: none"> – The site occupies an end corner, which has been identified as an “Important Corner” on the Manly Townscape Map. The proposed height, in this prominent location is therefore acceptable as it establishes, and defines the end corner site within the streetscape. – Has a proposed height that defines the end corner site along West Promenade, consistent in bulk and scale with 61 Sydney Road at its northern end forming a clear “bookend” to the streetscape (Figure 9). |
| | <p>– <i>To control the bulk and scale of buildings</i></p> <p><u>Response</u> – The proposed bulk and scale is reasonable in this instant for the following reasons:</p> <ul style="list-style-type: none"> – The proposal complies with the FSR standard of 3:1, and therefore supports an appropriate density on site. – The departure from the height standard is driven by the need to preserve the heritage listed building on site. By providing a clear setback around the Auckland Garage, and redistributing the buildings permissible GFA to the upper levels. Therefore supporting an appropriate density on site. |
| | <p>– <i>To minimise disruption to the following:</i></p> <p><i>Views to nearby residential development from public spaces (including the harbour and foreshores),</i></p> <p><i>Views from nearby residential development to public spaces (including the harbour and foreshores),</i></p> <p><i>Views between public spaces (including the harbour and foreshores)</i></p> <p><u>Response</u> – No water, iconic or significant views will be affected by the proposal (as viewed from private properties or the public domain). As shown on the revised Architectural Plans and Photomontage that accompany the DA, the proposal will not adversely affect any views</p> |
| | <p>– <i>To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings</i></p> <p><u>Response</u> – As detailed at Section 5.1.1 of the Addendum SEE, the proposal maintains a reasonable level of solar access for existing adjoining dwellings, public reserves and streets, and promotes solar access to the future dwellings on site.</p> |
| | <p>– <i>To ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.</i></p> <p><u>Response</u> – The site is not located within a recreation zone or environmental protection area. The site however adjoins a public recreation area to the east (Gilbert Park). The proposal does not have a detrimental impact on the adjacent park, as solar access is maintained.</p> |

| Manly LEP 2013, cl. 4.6 | Compliance |
|---|--------------------|
| (5) <i>The Director-General must consider:</i> (e) <i>whether contravention raises any matter of significance for State or regional environmental planning</i> (f) <i>the public benefit of maintaining standard</i> (g) <i>other matters.</i> | ✓ See Section 5.0. |
| (6) N/A | N/A |
| (7) <i>Consent authority must keep a record of matters in subclause (3).</i> | Noted |
| (8) N/A | N/A |

3.0 *Wehbe v Pittwater Council*

In his decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. The five tests are considered below.

(i) The objectives of the standard are achieved notwithstanding non-compliance with the standard

Consistency with the objectives of the standard, and the absence of any environmental impacts, would demonstrate that strict compliance with the height standard is both unreasonable and unnecessary in this instance.

As noted in **Table 4**, the proposal is consistent with the height standard objectives at cl. 4.3, of Manly LEP 2013 satisfying Wehbe test (i). As such, it is unreasonable and unnecessary in this circumstance to comply with the height development standard.

(ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not applicable. The underlying objective or purpose of the height standard is relevant to the development and is achieved as outlined in (i) above.

(iii) The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Not applicable. The underlying object or purpose of the height standard would not be defeated or thwarted if compliance was required.

(iv) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

The 15m height standard in Manly LEP 2013 has been effectively abandoned on the site as the approved development exceeds the applicable height standard (approved height of 22.4m). The proposal the subject of this DA has been designed to generally fall within or below the existing approved building envelope.

Given the above, compliance with the height standard in this instance is unnecessary and unreasonable.

(v) The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Not applicable. Zone B2 Local Centre is an appropriate zone given the site's location within Manly Town Centre. The proposed community and residential use is also consistent with the zoning. As such this exception to development standards request does not rely on this reason.

4.0 Winten Developments Pty Ltd v North Sydney Council

The exception to development standards request is assessed below against the accepted test for the assessment of development standard variation established by *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46.

A Is the planning control in question a development standard?

Yes, the height standard at cl. 4.3(2) of Manly LEP 2013 is a development standard.

B What is the underlying object or purpose of the standard?

The underlying objectives of the height standard are assessed in Table 4.

C Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?

Table 4 (read in conjunction with other sections of this exception to development standards request) demonstrates that compliance with the 15m height standard is unnecessary and unreasonable in the circumstance of the case.

D. Is compliance with the development standard consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?

The arguments contained in this cl. 4.6 variation support the case to allow flexibility in the application of the height standard.

The non-compliance with the development standard allows for an orderly use of the land and the proposal has been designed with consideration to the desired future character of the area.

Additionally, the Objects of the Act are satisfied as:

- The departure from the 15m height standard in Manly LEP 2013 will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and
- The departure from the 15m height standard in Manly LEP 2013 allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.

E. Is the objection well founded?

As the cl. 4.6 exception to development standards request appropriately addresses *Wehbe v Pittwater Council* [2007] NSW LEC 827, the proposed variation is well founded

5.0 Four2Five Pty Ltd v Ashfield Council

Commissioner Pearson's decision in Four2Five Pty Ltd (and Pain J's endorsement of the reasoning) indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a compliance with a standard is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under clause 4.6, (and 4.6(3)(a) in particular).

Further, the requirement in cl. 4.6(3)(b) to justify that there are sufficient environmental planning grounds for the variation, may well require identification of grounds particular to the circumstances of the proposed development – as opposed merely to grounds that would apply to any similar development on the site or in the vicinity.

The justification for flexibility explained above in **Table 4** and later in the summary justification at Section 7.0 lists numerous planning grounds noting the following circumstances that are particular to the site and proposal:

As a result of conserving the single storey garage onsite, and appropriate curtilage around the item to ensure its setting is also preserved a significant portion of the site is precluded from any future development (both above and below ground).

As such, to retain and activate the single storey heritage item on site for the benefit of the wider community, Manly Civic Club is required to put forward a financially viable option to not only support the retention and activation of the heritage item, but also the construction of a new club house for its 1000 members.

To achieve these two aims, the GFA which would normally be distributed across the entire site, has been transferred from the portion of the site that is precluded from any future development to the remaining portion of the site.

As a result of this transfer of permissible GFA, the resulting design breaches the height standard. The proposed breach to the height standard is therefore a direct response to preserving the heritage item onsite as the development supports an appropriate density.

6.0 Public interest and matters of State or regional significance

6.1 Is the proposal in the public interest?

This clause 4.6 exception to development standards request and the accompanying plans and technical reports demonstrate the public advantages of providing additional and improved *community facilities* and *residential accommodation* on the site.

No unreasonable public disadvantages have been identified as it has been demonstrated that any environmental or other impacts associated with the proposal are minimal and/or can be adequately managed.

6.2 Matters of State or Regional Significance

By providing quality residential accommodation on the site, the proposal will go some way to meeting housing demand. Further, the residential accommodation is located in a highly accessible location in a variety forms (1, 2 and 3 bedroom), fulfilling a range of community needs.

The proposal does not raise any other matters of significance for State or regional planning.

6.3 The public benefit of maintaining the standard

No matters of public interest arise as the impacts of the non-complying elements are reasonable.

7.0 Summary justification

A summary of the matters set out in this revised Clause 4.6 Report request to vary the Manly LEP 2013 15m height standard follows:

Extent of variation

- The proposed mixed-use building has a maximum height of 22m, which exceeds the 15m height standard by up to 7m.

Flexibility is appropriate in this instance and compliance is unreasonable or unnecessary

- The departure from the height standard is driven by the need to preserve the heritage listed building on site. By providing a clear setback/curtilage around the Auckland Garage, the developable ground plane is reduced. This necessitates a redistribution of the permissible GFA to the upper levels. Whilst exceeding the height standard, this solution ensures that significant views of the heritage item (from across Gilbert Park, along West Promenade and to a lesser degree, Gilbert Street) are preserved. The recessive design of the building ensures the garage retains its significant features to allow for its historical interpretation as a service station.
- The site occupies an end corner, which has been identified as an “Important Corner” on the Manly Townscape Map. Given the location of the single storey heritage listed building on the sites main corner, the proposed height of the new building which frames the Auckland Garage, is acceptable as it establishes, and defines the prominent end corner site within the streetscape.
- The proposed building height anchors the site, and assists in visually defining the boundary of the Manly Town Centre, around Gilbert Park to the east.
- The proposal and its height form a strong visual connection with development to the south (the Grand Esplanade building which is nine storeys high). This improved visual connection in built form, will increase pedestrian activity at the street level, by visually linking the currently disconnected and isolated West Promenade with the town centre, consistent with the objectives of Zone B2.
- The proposal complies with the FSR standard of 3:1, and therefore supports an appropriate density on site. The exception to the height standard is not a proposal to realise additional GFA.
- The buildings street frontage height is 15m, with the upper levels setback from the boundary. The building therefore presents to the street as a 15m height building, consistent with the desired future charter of the area.
- The building facades are layered and broken up to read as a juxtaposition of various scaled horizontal elements. This gives the building the appearance of a smaller scale, forming a much better relationship with the adjoining RFBs and the heritage-listed item on site in comparison to the existing approval.
- The proposal displays an appropriate design response to the sites important corner setting, and its role within the Manly Townscape, whilst also ensuring the setting of the heritage listed building on site is preserved.
- As detailed in Section 5.0 of the Addendum SEE, the proposal will not give rise to any unreasonable or unexpected adverse amenity impacts for surrounding properties (in terms of overshadowing, views/outlook and privacy impacts).
- The SoHI and CMP by NBRS and Partners concludes that the heritage impact of the proposal will be minimal and positive.

- The revised Traffic Impact Assessment by Trafrix concludes that the traffic impacts of the proposal will be acceptable.
- The site has an existing (commenced) development consent, which permits the construction of a five (5) storey building (plus plant room level) reaching a maximum height of 22.4m. The approved building does not comply with the applicable 15m height standard on the site, demonstrating that the 15m height standard in Manly LEP 2013 has been effectively abandoned on the site.
- As demonstrated by the existing consent and addressed later at Section 3.0, the 15m height standard in Manly LEP 2013 has been abandoned on the site.
- The objectives of Zone B2 Local Centre and the height standard are achieved.

Objects of the Act and public interest

The Objects of the Act are satisfied and the provision of a new club house and additional residential accommodation on the site is consistent with the public interest as it will provide high quality residential accommodation to meet some of the shortfall in the area, whilst also facilitating the preservation of the heritage listed building on site for the benefit of the local community townscape. The proposed residential accommodation will also fund the construction of a new registered club (Manly Civic Club), one of the sites other well-known historic community uses.

The proposal does not raise any other matters of significance for State or regional planning.

Other tests

The proposed variation satisfies the tests and considerations established in

- *Wehbe v Pittwater Council* [2007] NSW LEC 82
- *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46)
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3').