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Attention: Mr Peter Janssen

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MEMORANDUM OF ADVICE

Re: Other Change Application to MCU/2022/588

1. Instructing solicitors have asked me to urgently advise whether an Other Change Application to MCU/2022/588 (**Application**) recently made over land located at 776 Pacific Parade, Currumbin on the Gold Coast (**Land**) is code or impact assessable.
2. The land is the *Neighbourhood Centre Zone*. Under Table 5.5.5 of *City Plan*, all activities are impact assessable where there is an MCU involving building work and height exceeds either the height identified on the Building Height Overlay Map or, where not identified on the Building Height Overlay Map, 14 metres, with no more than 2 storeys,.
3. The relevant height provided for in the Height Overlay Map for the Land is three storeys or 15 metres.
4. Section 3.3.2.1 of *City Plan* relevantly deals with how the Height Overlay Map works

“(8) The Building height overlay map shows the building height pattern and desired future appearance for local areas within urban neighbourhoods. This map also shows areas where building heights change abruptly to achieve a deliberate and distinct contrast in built form within and between low, medium or high rise areas.

...

Note: Where the Building height overlay map shows both storeys and metres, the lesser of the two shall apply, and any fraction which results from the calculations shall be rounded down to the nearest floor or partial floor.”

5. So for the Application to be code assessable the proposed building must be the lesser of three storeys or 15 metres. If it is not, it is impact assessable.
6. I have been provided with the plans submitted in relation to the Application. Having reviewed those plans, in particular the plans at pages 9 to 14, it seems to me that the proposed building, as contemplated by the Application, does not comply with the Height Overlay Map. It is, at a minimum, a four storey building and, arguably, a five storey building.
7. Central to that conclusion is the definition of “storey” in the *City Plan*. It provides as follows:

“A space within a building between two floor levels, or a floor level and a ceiling or roof:
other than:
 a space containing only a lift shaft, stairway or meter room; or
 a space containing only a bathroom, shower room, laundry, toilet or other sanitary compartment; or
 a space containing only a combination of the things stated in (i) or (ii); or
 a basement with a ceiling that is not more than one metre above ground level; and
 includes:
 a mezzanine; and
 a roofed structure that is on, or part of, a rooftop, if the structure does not only accommodate building plant and equipment.”
8. A review of the proposed building, as detailed in the amended plans provided with the Application, shows that it is at least four storeys. That is apparent from a review of:
 - (a) the plan for level 4, which shows unit 4;
 - (b) the plan for level 5, which shows unit 5 in a similar configuration to unit 4 and with the same footprint as, and directly on top of, unit 4;
 - (c) the plan of level 6, which shows the first level of unit 6 over about half of the footprint of unit 4 and 5 below; and
 - (d) the plan of level 7, which shows the second level of unit 6, with a similar but smaller footprint to that on level 6 and directly on top of the first level of unit 6.
9. As I read the plans, each of these levels are one level high. There are no voids. Each level consists of a combination of bedrooms, kitchens, laundries, dens and bathrooms.
10. Accordingly, it seems to me that, at least by reference to levels 4, 5, 6 and 7, there is a four storey building proposed on the Land.
11. The position in fact appears to be worse than that. If one has regard to the plan for level 3, there is an area that is marked “BC Store”. That appears to be a dedicated storage space for the body

corporate: i.e. a storage room. If that is the case, there is a good argument that that area falls within the definition of storey. While it is true that that this western part of level 3 contains a stairway and a lift, it seems to me it will be difficult to argue that that this western part of level 3 marked “BC Store” is a “space containing only” a stairway or a lift. It is a space that contains more than that. It contains an area which is dedicated for storage for the body corporate.

12. On that basis, the proposed building is in fact five storeys high.
13. Irrespective of whether the building is four or five storeys high, it exceeds the Height Overlay Map for the Land. As such the Application is impact assessable and not code assessable. The Application should have been publicly notified and submitters allowed to make submissions to the Council in relation to the development generally, and more particularly, the serious non-compliance with the height restrictions in *City Plan*.
14. If you have any questions, please do not hesitate to contact me.

With compliments,



DAMIEN O'BRIEN
Chambers
28 March 2025