

## 6.1 Floor Space Ratio FSR\_003 LEP Clause 4.6 Exception to Development Standard – Revision C

The objectives contained within Manly LEP 2013 clause 4.6 as paraphrased below are to allow the consent authority:

- (1a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, &
- (1b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances
- (2)...even though the development would contravene a development standard imposed by the LEP or any other environmental planning instrument.

However, to grant development consent the consent authority must be satisfied that the applicant has demonstrated:

(3a) that compliance with the development standard is unreasonable & unnecessary in the circumstances of the case; &

(3b) that there are sufficient environmental planning grounds to justify contravening the development standard; and that the consent authority is satisfied that

(4a(ii)) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out and the planning secretary must consider

(5b) the public benefit of maintaining the development standard.

In this particular case, the applicant requests a variation to the **Floor Space Ratio** FSR standard, clause 4.4 of Manly Local Environmental Plan LEP 2013.

The proposed development is located within Zone N of the Manly LEP Floor Space Ratio Map FSR\_003 which has a floor space ratio to site area control for the zone of 1.0:1. With 360.0m<sup>2</sup> of site area, the allowable floor space permitted on the site is 360.0m<sup>2</sup>. The existing mixed use building identified as heritage item I-65 of local environmental significance is understood to have been built in 1934 in the style described as *Inter War Spanish Mission*. The existing development on Lot 1 of DP 329155 contains 4x retail units and 4x residential units which have an approximate existing GFA gross floor area of 523.5m<sup>2</sup> resulting in an existing floor space ratio of 1.46:1. The existing heritage listed mixed use building has a percentage variation of 146% of the development standard.

The proposed development includes a minor redistribution of the residential units 2 & 4 floor areas and a reduction to the level 4 common area by removing the common Laundry within the staircase without changing the building footprint on levels 2, 3 or 4. The new works proposed include a new retail Bin Store on level 1 which increases the retail floor space by 6.5m<sup>2</sup>. However, with the proposed decrease in residential area from the new unit 2 internal staircase and the removal of the common Laundry, the total proposed net combined residential & retail GFA is 522.6m<sup>2</sup> which results in a total net GFA reduction of -0.9m<sup>2</sup>.

The additional 6.5m<sup>2</sup> of retail floor space on level 1 arises from the owners requirement to relocate the retail waste currently stored off site back to “on site” and provide a new retail bin storage facility on the subject site.

The existing retail waste storage consists of 1x 1100L & 1X 600L wheelie bins which are collected by contract waste services multiple times per week. After the proposed development, the existing waste collection service shall continue & the current collection times are as follows:

*660L Red Bin M W F between 5.00am - 6.00am*

*1100L Blue Bin Tu Th between 9.00am - 10.00am*

As per the table below, the proposed new GFA gross floor area = 522.6m<sup>2</sup> which retains the existing floor space ratio of 1.46:1. The proposed alterations to the heritage listed mixed use building retains the existing percentage variation of 146% of the development standard.

With the proposed location of the new retail bin store within the rear courtyard and the proposed landscape screening and new roof garden, there are no increased adverse environmental impacts anticipated and the proposed reduction of 0.9m<sup>2</sup> of gross floor area does not create any additional building bulk that is visible from the public domain. The proposed bulk and scale of the development will be consistent with the bulk & scale of the existing mixed use building.

The retail bins require generally level & convenient access to the street & the proposed new retail bin store could not reasonably be located within the existing heritage building without modifying the existing streetscape and changing the façade of the heritage listed building which would result in an undesirable outcome.

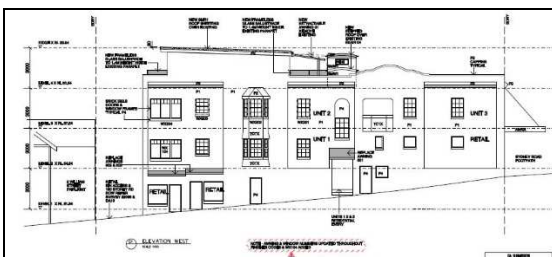
Manly Local Environment Plan – Clause 4.4 – Floor Space Ratio				
Development Control	LEP Requirements	Existing	Proposed	Comments
Floor Space Ratio MAP FSR_003	Zone N = 1.0:1 site area = 360.0 m <sup>2</sup> x 1.0 = 360.0m <sup>2</sup>	523.5m <sup>2</sup> = 1.46:1	522.6m <sup>2</sup> = 1.46:1	* Areas are Approximate
GFA = Gross Floor Area m <sup>2</sup> Retail + Commercial	GFA – Level 1	44.2m <sup>2</sup>	50.7m <sup>2</sup>	*
	GFA – Level 2	224.5m <sup>2</sup>	224.8m <sup>2</sup>	*
	GFA – Level 3	206.3m <sup>2</sup>	206.3m <sup>2</sup>	*
	GFA – Level 4	48.5m <sup>2</sup>	40.8m <sup>2</sup>	*
	Total GFA	523.5m <sup>2</sup>	522.6m <sup>2</sup>	*
	% Variation from LEP Standard	146%	146%	*



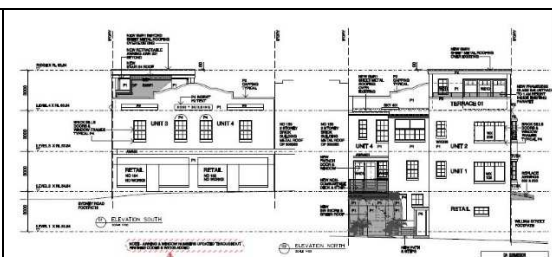
Existing Building viewed as 4 stories from William Street – exceeds permissible FSR



Existing Building viewed as 2 stories from Sydney Road – exceeds permissible FSR



Proposed West Elevation – Substantially the Same Development – Refer DA20



Proposed South & North Elevation – Substantially the Same Development – Refer DA21

With the introduction of a new internal staircase within unit 2 between levels 3 & 4 & the removal of the common laundry reducing the total proposed floor area essentially negating the addition of the new retail bin store, the resulting floor space to site ratio will remain unchanged from the existing at 1.46:1 with the existing percentage variation of 146% of the development standard.

As strict numerical compliance with the Floor Space Ratio clause 4.4 for both the existing building and the proposed development cannot be achieved and is considered unreasonable & unnecessary in this particular case, Manly LEP clause 4.6 allows the consent authority some degree of flexibility if the objectives of the clause and the objectives of the zone can be met.

**The objectives of LEP clause 4.4 Floor space ratio and the proposed development response to the objectives are:**

Objective (1a) to ensure the bulk and scale of development are consistent with the existing and desired streetscape character

Proposed Development Response – The proposed works will result in a development that is “substantially the same” and the existing bulk & scale of development are retained

Objective (1b) to control building density and bulk in relation to site area to ensure that development does not obscure important landscape and townscape features

Proposed Development Response – The proposed works will result in a development that is “substantially the same” and the development will not obscure important landscape and townscape features

Objective (1c) to maintain an appropriate visual relationship between new development and the existing character & landscape of the area

Proposed Development Response – The proposed works will result in a development that is “substantially the same” and the visual relationship between new development and the existing character & landscape of the area will remain

Objective (1d) to minimize adverse environmental impacts on the use or enjoyment of adjoining land and the public domain

Proposed Development Response – The proposed works will result in a development that is “substantially the same” and there are no new adverse environmental impacts anticipated for the use or enjoyment of adjoining land and the public domain

Objective (1e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres

Proposed Development Response – The proposed works will result in a development that is “substantially the same” and the development, expansion and diversity of the existing business activities that contribute to economic growth, the retention of local services and employment opportunities in local centres will continue to be ongoing

Objectives (2) & (2A) - Not applicable to this development

Given that the existing building cannot achieve numerical compliance for floor space ratio without a detrimental impact upon the existing heritage listed building, strict compliance is considered unreasonable & unnecessary in this particular case.

As the above objectives of LEP clause 4.4 for floor space ratio have been met for building bulk & streetscape, Council as the consent authority can exercise their degree of flexibility under clause 4.6 to grant consent to the development, in this case.

## Objectives of the B1 / E1 Land Use Zones

At the time of lodgement of the DA for this development in December 2022, the subject site was zoned B1 Neighbourhood Centre as per map 5150\_COM\_LZN\_003\_010\_20180713.

We understand the zoning has since been renamed E1 as per Manly LEP dated 26/04/2023, but the land use map has not been updated. However, the objectives are similar & for the current LEP, the E1 Local Centre Zone objectives and the proposed development response to the objectives are as follows:

**Objective** - To provide a range of retail, business and community uses that serve the needs of people who live in work in or visit the area

**Development Response** – With its existing retail facilities, the existing development is consistent with the objectives of the zone and the proposed development will continue to provide a range of retail, business and community uses that serve the needs of people who live in work in or visit the area

**Objective** - To encourage investment in local commercial development that generates employment opportunities and economic growth

**Development Response** – With its existing retail tenancies, the existing development is consistent with the objectives of the zone and the proposed development will continue to encourage investment in local commercial development that generates employment opportunities and economic growth

**Objective** - To enable residential development that contributes to a vibrant and active local centre and is consistent with Council's strategic planning for residential development in the area

**Development Response** – With its existing residential accommodation, the existing development is consistent with the objectives of the zone and the proposed development will continue to enable residential development that contributes to a vibrant and active local centre

**Objective** - To encourage business retail community and other non-residential land uses on the ground floor of buildings

**Development Response** – With retail development on the ground floor, the existing development is consistent with the objectives of the zone and the proposed development will continue to encourage business retail community and other non-residential land uses on the ground floor of buildings

**Objective** - 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

**Development Response** – With the landscape buffers to the adjoining residential site, the existing development is consistent with the objectives of the zone and with the relocated bin storage on site, the proposed development will continue 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

**Objective** - To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant diverse and functional streets and public spaces

**Development Response** – The existing development is consistent with the objectives of the zone and the proposed development will continue to provide diverse and active street frontages to

attract pedestrian traffic and to contribute to vibrant diverse and functional streets and public spaces

**Objective** - To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment

**Development Response** – The existing retail form is built to the site boundaries to reinforce the urban pattern of the local centre and the proposed development shall continue the existing pattern. The existing 4 storey building is able to provide both retail and residential uses for the local centre and provides a positive scale to the neighbouring land uses. The proposed development will retain the existing established built form.

As strict numerical compliance with FSR floor space ratio LEP clause 4.4 cannot be achieved for the existing heritage listed building or the proposed development without unreasonable impact to the existing Local Centre, strict compliance with Floor Space Ratio clause 4.4 is considered unreasonable & unnecessary in this particular case. Northern Beaches Council however, as the consent authority can exercise it's degree of flexibility under clause 4.6 to achieve a better outcome & grant consent to the development as it has been demonstrated that the development proposals comply with both the objectives for the Land use zone E1 Local Centres and the objectives of clause 4.4 for Floor space ratio.

The proposed works will result in a development that is “substantially the same” and the environmental impacts of the proposed development are minimal. The proposed development will be in the public interest because it has been demonstrated that the proposed development is consistent with both the objectives of standard and the objectives of land use zone and there are sufficient environmental & heritage grounds to justify contravening the development standard to achieve a better outcome.

In this particular case, there is no public benefit to maintaining the development standard and the consent authority can use their degree of flexibility to grant development consent under clause 4.6 of Manly Local Environment Plan to permit a variation to development standard clause 4.4 of Manly Local Environment Plan 2013, in this particular case.



## **6.2 Height of Buildings HOB\_003 LEP Clause 4.6 Exception to Development Standard – Revision B**

The objectives contained within Manly LEP 2013 clause 4.6 as paraphrased below are to allow the consent authority:

- (1a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, &
- (1b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances
- (2)...even though the development would contravene a development standard imposed by the LEP or any other environmental planning instrument.

However, to grant development consent the consent authority must be satisfied that the applicant has demonstrated:

- (3a) that compliance with the development standard is unreasonable & unnecessary in the circumstances of the case; &
- (3b) that there are sufficient environmental planning grounds to justify contravening the development standard; and that the consent authority is satisfied that

(4a(ii)) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out and the planning secretary must consider

(5b) the public benefit of maintaining the development standard.

In this particular case, the applicant requests a variation to the **Height of Buildings** HOB standard, clause 4.3 of Manly Local Environmental Plan LEP 2013.

The proposed development is located within Zone I of the Manly LEP Height of Buildings Map HOB\_003 which permits a maximum building height of 8.5m. The existing mixed use building identified as heritage item I-65 of local environmental significance is understood to have been built in 1934 in the style described as *Inter War Spanish Mission*. The existing building presents as a 2 storey retail and shop top housing development to Sydney Road forming part of the Fairlight Shops. On the corner allotment fronting William Street the land falls approximately 4m from Sydney Road towards the northern boundary & adjacent 2 storey town houses at No 2 William Street.

The existing maximum building height facing the western boundary is 12.3m above ground level existing. The existing heritage listed mixed use building has a percentage variation of 145% of the development standard. The proposed development includes re-sheeting the original roof with battens insulation & a new metal deck roof sheeting laid over the existing. A nominal allowance of 80mm has been allowed to insulate, top-up & or replace the original roof sheeting. As per the table below, the proposed heritage listed mixed use building new height of building HOB = 12.4m resulting in a proposed percentage variation of 146% of the development standard.

The objectives of LEP height of buildings clause 4.3 include providing for building heights and roof forms that are consistent with the topographical landscape, prevailing building heights and desired future character of the streetscape. The Manly LEP 2013 recognises the significance of the existing building and its role as a strategic neighbourhood centre with its B1 / E1 Land Zoning resulting from its contribution to the local streetscape and as a community landmark, forming part of the “Fairlight Shops”.

The proposed bulk and scale of the development will be consistent with the bulk & scale of the existing mixed use building. As per the details following, the proposal is compliant with the objectives of LEP clause 4.3 for building height.

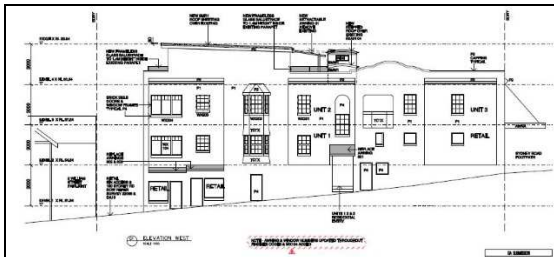
<b>Manly Local Environment Plan – Clause 4.3 – Height of Buildings</b>				
Development Control	LEP Requirements	Existing	Proposed	Comments
Height of Buildings MAP HOB_003	Zone I = 8.5m	12.3m	12.4m	Similar to & consistent with the existing building & streetscape
	% Variation from LEP Standard	145%	146%	



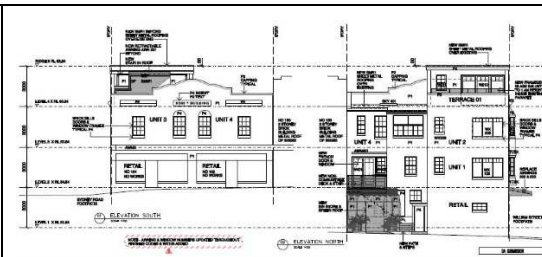
Existing Building viewed as 4 stories from William Street – exceeds permissible HOB



Existing Building viewed as 2 stories from Sydney Road – exceeds permissible HOB



Proposed West Elevation – Substantially the Same Development – Refer DA20



Proposed South & North Elevation – Substantially the Same Development – Refer DA21

With only 80mm of additional building height proposed, the resulting height of building will remain similar to the existing at 146% of the standard which will result in only a 1% increase to the percentage variation from the standard.

As strict numerical compliance with the HOB Height of Buildings clause 4.3 for both the existing building and the proposed development cannot be achieved, Manly LEP clause 4.6 allows the consent authority some degree of flexibility if the objectives of the clause and the objectives of the zone can be met.

#### **The objectives of LEP clause 4.3 Height of Buildings and the proposed development response to the objectives are:**

Objective (1a) to provide for building heights and roof forms that are consistent with the topographical landscape, prevailing building heights and desired future streetscape character in the locality

Proposed Development Response – The proposed works will result in a development that is “substantially the same” and the existing building heights and predominant roof forms are retained

Objective (1b) to control the bulk and scale of buildings

Proposed Development Response – The proposed works will result in a development that is “substantially the same” and the existing predominant bulk & scale of the building is retained

Objective (1c) to minimise disruption to (i) views to nearby residential development from public spaces & (ii) views from nearby residential development to public spaces & (iii) views between public spaces (including the harbour and foreshores)

Proposed Development Response – The proposed works will result in a development that is “substantially the same” and the existing predominant bulk & scale of the building is retained with no disruption to existing views

Objective (1d) to provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and habitable rooms of adjacent dwellings

Proposed Development Response – The proposed works will result in a development that is “substantially the same” and the existing predominant bulk & scale of the building is retained with no significant additional impact to public or private open space

Objective (1e) to ensure the height and bulk of any proposed structure in a recreation or conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses

Proposed Development Response – The proposed works will result in a development that is “substantially the same” and the existing predominant bulk & scale of the building is retained with no significant additional impact to bushland or surrounding land uses

Given that the existing building cannot achieve numerical compliance for height of buildings without a detrimental impact upon the existing heritage listed building, strict compliance is considered unreasonable & unnecessary in this particular case.

As the above objectives of LEP clause 4.3 for height of buildings have been met for the proposed building heights which retain the predominant existing roof forms, Council as the consent authority can exercise their degree of flexibility under clause 4.6 to grant consent to the development, in this case.

### **Objectives of the B1 / E1 Land Use Zones**

At the time of lodgement of the DA for this development in December 2022, the subject site was zoned B1 Neighbourhood Centre as per map 5150\_COM\_LZN\_003\_010\_20180713.

We understand the zoning has since been renamed E1 as per Manly LEP dated 26/04/2023, but the land use map has not been updated. However, the objectives are similar & for the current LEP, the E1 Local Centre Zone objectives and the proposed development response to the objectives are as follows:

**Objective** - To provide a range of retail, business and community uses that serve the needs of people who live in work in or visit the area

**Development Response** – With its existing retail facilities, the existing development is consistent with the objectives of the zone and the proposed development will continue to provide a range of retail, business and community uses that serve the needs of people who live in work in or visit the area

**Objective** - To encourage investment in local commercial development that generates employment opportunities and economic growth

**Development Response** – With its existing retail tenancies, the existing development is consistent with the objectives of the zone and the proposed development will continue to



encourage investment in local commercial development that generates employment opportunities and economic growth

**Objective** - To enable residential development that contributes to a vibrant and active local centre and is consistent with Council's strategic planning for residential development in the area

**Development Response** – With its existing residential accommodation, the existing development is consistent with the objectives of the zone and the proposed development will continue to enable residential development that contributes to a vibrant and active local centre

**Objective** - To encourage business retail community and other non-residential land uses on the ground floor of buildings

**Development Response** – With retail development on the ground floor, the existing development is consistent with the objectives of the zone and the proposed development will continue to encourage business retail community and other non-residential land uses on the ground floor of buildings

**Objective** - 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

**Development Response** – With the landscape buffers to the adjoining residential site, the existing development is consistent with the objectives of the zone and with the relocated bin storage on site, the proposed development will continue 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

**Objective** - To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant diverse and functional streets and public spaces

**Development Response** – The existing development is consistent with the objectives of the zone and the proposed development will continue to provide diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant diverse and functional streets and public spaces

**Objective** - To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment

**Development Response** – The existing retail form is built to the site boundaries to reinforce the urban pattern of the local centre and the proposed development shall continue the existing pattern. The existing 4 storey building is able to provide both retail and residential uses for the local centre and provides a positive scale to the neighbouring land uses. The proposed development will retain the existing established built form.

As strict numerical compliance with HOB Height of Buildings LEP clause 4.3 cannot be achieved for the existing heritage listed building or the proposed development without unreasonable impact to the existing Local Centre, strict compliance with Height of Buildings LEP clause 4.3 is considered unreasonable & unnecessary in this particular case. Northern Beaches Council however, as the consent authority can exercise its degree of flexibility under clause 4.6 to achieve a better outcome & grant consent to the development as it has been demonstrated that the development proposals comply with both the objectives for the Land use zone E1 Local Centres and the objectives of clause 4.3 for Height of Buildings.

The proposed works will result in a development that is “substantially the same” and the environmental impacts of the proposed development are minimal. The proposed development will be in the public interest because it has been demonstrated that the proposed development is consistent with both the objectives of standard and the objectives of land use zone and there are

sufficient environmental & heritage grounds to justify contravening the development standard to achieve a better outcome.

In this particular case, there is no public benefit to maintaining the development standard and the consent authority can use their degree of flexibility to grant development consent under clause 4.6 of Manly Local Environment Plan to permit a variation to development standard clause 4.3 of Manly Local Environment Plan 2013, in this particular case.