



DESIGN COLLABORATIVE Pty Limited

ABN 36 002 126 954
ACN 002 126 954

Town Planning & Liquor Licensing
Consultants

www.designcollaborative.com.au

Managing Director

J Lidis
BTP (UNSW)
MPIA

Director

David Rippingill
BEP (WSU)
Juris Doctor (UNE)
RPIA

Consultant

G W Smith BSurv(QLD)
MCP(MIT)
FPIA MRTPI FAPI
MIS Aust

WRITTEN REQUEST PROVIDING GROUNDS FOR VARIATION TO FSR DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6 OF MANLY LEP 2013

PART OF 19-23 THE CORSO, MANLY

ALTERATIONS AND ADDITIONS TO THE EXISTING SHOP TOP HOUSING BUILDING AT 19-21 THE CORSO, MANLY

Context – Clause 4.6 of Manly LEP 2013

This written request has been prepared in respect of Clause 4.6 of Manly LEP 2013 (the LEP) to accompany a Development Application for alterations and additions to the existing shop top housing and ground floor retail building at 19-21 The Corso, Manly which forms part of the site at 19-23 The Corso.

The Development Application seeks a variation to the development standard provided at Clause 4.4 of the LEP, being Floor Space Ratio (FSR). Under Clause 4.4 of the LEP, the FSR development standard for the site is 2.5:1.

The existing building on the site already exceeds the 2.5:1 FSR standard under the LEP with a FSR of 2.59:1 (1356.84 sqm GFA), an exceedance of 0.09:1 (46.84 sqm GFA) (see Drawing 17349-A-DA-514 A prepared by NBRS, attached).

The proposed development results in an increase in the existing FSR to 2.61:1 (1365.84 sqm GFA), an increase of 9 sqm GFA (0.02:1) compared with the existing situation.

The proposal therefore involves an overall exceedance of the standard by 0.11:1 (55.84sqm GFA).

The increase in the FSR of the proposed development results from the removal of the stairs at the Ground and First Floors.

The proposed FSR of 2.61:1 represents a variation to the controls provided by Clause 4.4 of 0.11:1, or 4.4%.

Clause 4.6 of the LEP provides:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (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*
 - (b) the concurrence of the Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the Development Application's proposed variation to the FSR development standard.

It is noted that the NSW Department of Planning and Environment provides guidance on how to prepare clause 4.6 variations in the form of *Varying development standards: A Guide* (August 2011). This written request to vary the FSR development standard is based on the DP&E's Guide.

This written request has also been prepared having regard to the recent judgment of the Chief Justice of the Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action). At paragraphs 17 – 21 of *Initial Action*, Preston CJ confirmed the findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe), regarding the available avenues to establish that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case (in

accordance with the test provided by cl 4.6(3)(a) of the LEP) including establishing that the objectives of the development standard are achieved notwithstanding non-compliance with the standard (*Initial Action* at [17]).

Further, Preston CJ found in *Initial Action*, at paragraphs 87 and 88, in the context of Clauses 4.6(3)(a) and (b) that:

“...Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...”

...The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard...”

Written Request

As stated above, when measured in accordance with the definition in the LEP, the existing building on the site already exceeds the 2.5:1 FSR standard under the LEP with a FSR of 2.59:1 (1356.84sqm GFA), an exceedance of 0.09:1 (46.84 sqm GFA) (see Drawing 17349-A-DA-514 A prepared by NBRIS, attached).

The proposed development results in an increase in the existing FSR to 2.61:1 (1365.84 sqm GFA), an increase of 9 sqm GFA (0.02:1) compared with the existing situation.

The proposal therefore involves an overall exceedance of the standard by 0.11:1 (55.84sqm GFA).

The increase in the FSR of the proposed development results from the removal of the stairs at the Ground and First Floors.

The questions set out in the DP&E’s Guide are addressed below.

1. *What is the name of the environmental planning instrument that applies to the land?*

Manly Local Environmental Plan 2013 (the LEP).

2. *What is the zoning of the land?*

The zoning of the land is B2 Local Centre.

3. What are the objectives of the zone?

The objectives of the B2 zone are:

- *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.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *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.*

4. What is the development standard being varied?

The development standard being varied is the FSR development standard.

5. Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under clause 4.4 of the LEP.

6. What are the objectives of the development standard?

The objectives of clause 4.4 are:

- to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- to provide for the viability of business zones 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.*

7. What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the FSR development standard is 2.5:1.

8. What is the proposed numeric value of the development standard in your development application?

The maximum numeric value proposed is 2.61:1, equating to an additional FSR of 0.11:1.

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation is 4.4%.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

In the circumstances of the case, it is considered that strict compliance the FSR development standard applicable to the site is unreasonable and unnecessary for the following reasons:

A. The objectives of the development standard are achieved notwithstanding non-compliance with the standard (cl 4.6(3)(a), cl 4.6(4)(ii) and *Initial Action* at [17])

Objective 4.4(1)(a) - to ensure the bulk and scale of development is consistent with the existing and desired streetscape character

Objective 4.4(1)(b) - to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features

Objective 4.4(1)(c) - to maintain an appropriate visual relationship between new development and the existing character and landscape of the area

Assessment:

The bulk and scale of the proposed development, including the proposed FSR variation, is considered to be acceptable in its context and would not give rise to unacceptable impacts on the existing streetscape, townscape or character of the area as it reflects the existing situation in terms of the existing building bulk, scale and density on the site.

As noted above, the existing building already exceeds the FSR standard with a FSR of 2.59:1. The proposal represents a very minor increase (9 sqm GFA) from the existing situation with a FSR of 2.61:1.

The change in the GFA/FSR compared with the existing building results from internal alterations within the building, being the removal of stairs at the Ground and First Floors. There is no change in the external built form or its bulk and scale compared with the existing situation.

The proposal, including the FSR variation, does not involve any change to the existing bulk and scale of the building as viewed from the street as the existing built form is maintained and the existing relationship of building forms in the streetscape. The proposed development will therefore be compatible with the adjoining development, the streetscapes of The Corso and Market Place and will maintain the amenity of the public domain.

There is no change to the visibility and visual prominence of the parts of the building in excess of the FSR standard when viewed from the public domain and there is no change to the existing streetscape/townscape character of the building as viewed from The Corso and Market Place.

Desired Future Streetscape Character

The desired future streetscape character of the subject building is set out in Manly DCP 2013 which contains townscape objectives and provisions for local and neighbourhood centres in Section 3.1, townscape provisions for Manly Town Centre in Section 4.2.5.1 and character provisions for Manly Town Centre Heritage Conservation Area and The Corso in Section 5.1. The proposed development, including the proposed FSR variation, is considered to be consistent with these provisions, as follows.

Manly DCP Townscape Objectives and Provisions

The townscape objectives of the DCP are as follows:

Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.

Objective 5) To assist in maintaining the character of the locality.

Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.

Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.

The proposal is consistent with the above objectives, in that:

- no parking exists on the site and none is now proposed;
- the proposed development maintains the character of the locality by proposing conservation works, refurbishment and alterations to the existing building, including the height variation, which:
 - maintain the existing built form, bulk and scale of the existing building as viewed from the public domain;
 - do not exceed the existing maximum building height or other existing heights of parts of the building;
 - do not change the visual prominence of the building when viewed from the public domain to maintain the existing streetscape character; and
 - include the retention and upgrade of the existing building, including its façades to The Corso and Market Place, in a manner consistent with its heritage significance.
- it recognises the importance of pedestrian movement and townscape design in strengthening and promoting Manly Town Centre by:
 - maintaining and increasing the active frontage to The Corso and increasing the level of activation to Market Place;
 - by refurbishing the existing awning to The Corso and providing a new awning to Market Place to improve pedestrian amenity; and
 - by improving the appearance of the existing building from both streets through the upgrade and refurbishment of the street front façades;
- it minimises negative visual impacts to promote townscape qualities with improvements in the appearance and condition of the building as a result of the proposed works with no change in the existing built form.

The proposal, including the FSR variation, is consistent with the applicable townscape provisions of the DCP, as follows.

Local role of the site

The proposal maintains the local role of the site as no changes are proposed to the overall form and scale of the building as viewed from The Corso and Market Place. The proposal maintains the existing built form relationship with adjoining development and public spaces.

No changes are proposed to the street frontage façade to The Corso which is to be retained and conserved in accordance with the HIS (see **Appendix 4** in the SEE) which will enhance the appearance of the building within the heritage item of The Corso. The proposed modifications to the rear façade will contribute to the presentation of the building to Market Place, will improve the amenity of the rear units and will have a satisfactory heritage impact.

Townscape Principles Map

The proposed development is consistent with the Townscape Principles map as it relates to the subject site by maintaining and improving the existing important vistas along The Corso and from Darley Road towards the site.

Design Details

The proposal is consistent with the relevant design details controls in that:

The proposal is consistent with the relevant design details controls in that:

- as set out in the HIS (see **Appendix 4**) the proposal is complementary to adjacent buildings and the wider conservation area in terms of the design detailing of the façades. As noted above, no changes are proposed to the façade to The Corso which is to be conserved and refurbished;
- no change is proposed to the height of the building and no change is proposed to floor levels within the building, apart from the provision of ramps within the rear Ground Floor;
- the materials, textures and original colours of the existing building are to be retained or reinstated where there is sufficient available evidence;
- the proposal maintains the architectural style of the existing building fabric;
- no change is proposed to the existing building footprint;
- the proposal will not give rise to any additional overshadowing or adverse wind effects as no change is proposed to the height and form of the building;
- the proposal will improve the appearance of the side walls of the building, to the extent that they are visible, through the proposed refurbishment and removal of external services;
- the Ground Floor has level access from The Corso and Market Place with internal ramps within the entry from Market Place;
- retail space occupies the majority of the width of the building frontage to The Corso, with the remainder occupied by the residential entry;
- street numbering will be provided as required; and
- the proposal includes internal ducting for water supply, waste and mechanical exhaust to the existing units. The retail area air-conditioning plant will be housed within a re-purposed terrace level communal laundry rather than reinstated on the roof.

Manly DCP Character Provisions for Manly Town Centre Heritage Conservation Area and The Corso

General Character

The proposal, including the FSR variation is consistent with the general character of the Town Centre Conservation Area as set out in the DCP (see also **Appendix 4** to the SEE) in that it involves alterations and additions to an existing building which:

- maintain the existing scale of the street frontage façades;
- is built to the property boundaries to The Corso and Market Place;
- provides a good level of pedestrian amenity afforded by the existing and proposed footpath awnings; and
- contributes to the range of architectural styles in the area.

The Corso

The proposed development is consistent with the guidelines for The Corso (see also **Appendix 4** in the SEE), in that:

- the existing building at 19-21 The Corso, which is part of the group heritage item on The Corso, is to be conserved, not redeveloped;
- the importance of internal changes is recognised in the approach to the design of the proposed development as detailed in the submitted HIS (see **Appendix 4**);
- no change is proposed to the existing building height or built form;
- the parapet to The Corso will continue to be read against the sky;
- there are no critical views to be kept open to or through the site;
- no change is proposed to the existing subdivision pattern;
- a new building is not proposed;
- windows and balconies open to the street;
- there is no existing arcade through the site;
- the existing footpath awning to The Corso façade is to be refurbished. A new awning is proposed to the Market Place façade as required;
- the shopfront to The Corso occupies most of the width of the frontage to maximise activity. Roller shutters are not proposed;
- the shop front is existing on the site;
- the proposal will utilise external colours that are appropriate for the type and age of the building. The original external colours will be re-instated if there is sufficient evidence on-site;
- transmission of noise into the dwellings will be controlled through the use of appropriate glazing within replacement windows and doors to the existing units;
- external details for plant, exhausts, ducts etc. are designed to be part of the overall building structure;
- the proposal will contribute to the presentation of the building to Market Place through the upgrade of the rear façade and will improve casual surveillance of Market Place through the proposed changes to the rear façade; and
- the site specific controls in Schedule 6 to the DCP state in relation to 21 The Corso *redesign the two ground level entrance doors to the upper floors to give a more substantial appearance, with transparent glazing (to increase connection with street) and solid returns*. The proposed development removes the eastern ground level door to the upper floors from the front elevation as that access is redundant due to the separation of the subject building from No. 23, adjoining. That door is converted to a shop window and forms part of the retail frontage of the building. The proposal upgrades the second, western door to the residential lobby with a new glass panelled door with hood over and tiled entry surround consistent with the requirements.

In addition, the proposed FSR variation is an appropriate response to the heritage significance of the site and the streetscape of The Corso (see **Appendix 4** to the SEE).

Accordingly, despite the FSR variation of the proposed development, the bulk and scale of development is consistent with the existing and desired streetscape character, will not obscure important landscape and townscape features and maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

Objective 4.4(1)(d) - to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain

Assessment:

The proposed FSR variation will not result in significant adverse impacts on the amenity of surrounding properties or the public domain in terms of privacy, overshadowing/solar access or view loss/disruption.

Sunlight Access and Overshadowing

The proposed FSR variation will not result in any significant adverse impacts on the public domain or residential properties in terms of overshadowing/solar access.

The proposal does not give rise to any additional overshadowing as no change is proposed to the bulk, scale or form of the building.

Privacy

The proposed FSR variation will not result in a loss of visual privacy to any neighbouring developments. The units have their primary outlook over The Corso and Market Place. Where they also have windows facing the side boundaries, these either face the side wall enclosing the lightwell or, for those at the Third Floor, are over the roofs of the neighbouring buildings.

Views

The proposed FSR variation will not result in any significant impact on views. As noted above, there is no increase in the height of the existing building and no change to the existing built form.

Accordingly, the FSR variation will not result in adverse environmental impacts on the use or enjoyment of adjoining land and the public domain by way of loss of privacy, overshadowing or loss of views.

Objective 4.4(1)(e) - to provide for the viability of business zones 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

Assessment:

The proposed FSR variation will have no effect on the viability of the business zone.

The proposed development provides for continued retail activity at the ground floor level within a refurbished and upgraded retail space that will enable the proposal to contribute to the economic growth, retention of local services and employment opportunities in the

centre. The quantum of non-residential floor space proposed on the site exceeds Council's minimum floor space for such uses.

B. Consistency with the objectives of the B2 Local Centre zone (cl 4.6(4)(a)(ii))

Assessment:

As well as achieving the objectives of clause 4.3 as demonstrated above, the proposal is also in the public interest as it is consistent with the relevant objectives of the B2 Local Centre zone in that:

- it contributes to the range of retail uses in the zone that serve the needs of people who live in, work in and visit the local area, including existing and future residents of the subject building;
- it provides for employment opportunities in a highly accessible location through the non-residential floor space which exceeds Council's minimum floor space for such uses;
- it maximises public transport patronage and encourages walking and cycling with residential development in a highly accessible, walkable location without private car parking; and
- it minimises conflict between land uses in the zone and adjoining zones and ensures amenity for the people who live in the local centre by maintaining the existing land use mix on the site.

It is therefore considered that the proposed FSR variation does not compromise the ability of the Development Application to satisfy the relevant B2 Local Centre zone objectives. The Development Application must therefore be considered to be in the public interest.

11. *How would strict compliance hinder the attainment of the objects specified in Section 1.3(a) and (c) of the Act?*

The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives. The proposal will result in a better outcome and contribute to a better environment by providing for the upgrade and refurbishment of the existing building already exceeding the applicable FSR standard in a manner which responds appropriately to existing surrounding development, the heritage significance of the building and neighbouring development and which will make a positive contribution to the character of the streetscape and the locality.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

In this regard, the proposal also meets the object of the Act with respect to good design and amenity of the built environment.

It is also noted that there is no public interest in requiring compliance with the relevant FSR standard on the basis that doing so would hinder the attainment of the objects of section 1.3(a) and (c) of the Act, which are to promote the social and economic welfare of the community and to provide a better environment by the proper management, development and conservation of the State's natural and other resources, in addition to promoting and coordinating orderly and economic use and development of land.

The development as proposed, including the FSR variation is consistent with the provisions of orderly and economic development.

12. *Is the development standard a performance based control? Give Details.*

The FSR development standard is a performance based control as the control contains objectives which the standard is targeted to achieve.

13. *Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?*

This matter is addressed in detail above in the answer to Question 10. Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development.

The development is consistent with the provisions of orderly and economic development and good design and amenity of the built environment.

14. *Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.* (cl 4.6(3)(b) and *Initial Action* at [24])

There are sufficient environmental planning grounds to support the variation to the FSR development standard applicable to the site, being:

- The existing development on the site involves a breach of the FSR standard. The additional breach now proposed is very minor at 0.02:1 (10 sqm GFA).
- There is no change in the form, bulk and scale of the existing building associated with the breach of the FSR standard.
- The bulk and scale of the proposed development, including the proposed FSR variation, are consistent with the existing and desired streetscape character, will not obscure important landscape and townscape features and maintain an appropriate visual relationship between new development and the existing character and landscape of the area.
- The proposed development, including the FSR variation, is consistent with the townscape objectives and design principles for the Manly Town Centre and The Corso.
- The proposed development, including the FSR variation, is consistent with the heritage significance of the site, as part of The Corso heritage item, and the wider Manly Town Centre Conservation Area as detailed in the submitted HIS (see **Appendix 4** to the SEE).
- The FSR variation will not give rise to any adverse amenity impacts on surrounding development in terms of overshadowing, loss of solar access or loss of views as no change in building height, bulk or form is proposed.
- The proposed development, including the FSR variation, achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.

The above factors confirm that there are sufficient environmental planning grounds to justify the variation and that the Clause 4.6 variation request is well-founded.

Summary

Accordingly, it is considered that there are more than sufficient environmental planning grounds to justify the variation on the basis that compliance with the FSR standard would be unreasonable and unnecessary in the circumstances of this particular case. As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the FSR standard and the objectives of the B2 zone.

In the context of the other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

The proposal also meets the objects of the EP&A Act with respect to good design and amenity of the built environment and will contribute to a better environment by providing a built form which respects the scale and definition of the existing streetscape and townscape qualities.

This request is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case.

Despite the proposal's non-compliance with the FSR development standard, the proposed development is considered to meet the relevant objectives of the standard and the objectives of the B2 zone.