



**RYAN**

PLANNING & DEVELOPMENT  
PTY LTD

**PROPOSAL DESCRIPTION**

Clause 4.6 Variation to Clause 4.3

**PROPOSAL REFERENCE NUMBER**

J19464

**ADDRESS**

47 The Corso Manly 2095





## QUALITY CONTROL

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## Clause 4.6 Variation to Building Height

### PART 1: PRELIMINARY

#### 1.1 – Introduction

The following Clause 4.6 Variation Report has been prepared in support of a Development Application for a proposed mixed-use development, at 47 The Corso Manly 2095 (hereafter referred to as the site).

The maximum building height for the site is 10 metres. As currently proposed, the development is seeking consent for a proposed maximum building height of 10.7 metres above the existing ground level. It is important to note that the existing structure exhibits a contravention to the prescribed maximum building height regardless of the proposed and that all proposed elements are below this existing contravention... further, the proposed contraventions only exceed the existing building height to a marginal extent are not observable at the human scale from the public domain.

The variation is regardless noted to be 0.7m in exceedance of the maximum building height (10m) or 7%. However, it is considered appropriate to assess the contravention in the context of the existing building height contravention. In this regard, the existing maximum building height is noted to be 12.33m, a variation to the subject standard of 23.3%... Of particular relevance, it is essential to consider that the proposed variation elements have been demonstrated to not be visually dominant and do not impart any adverse outcomes on the desired character of the locality in that these proposed elements are shown to be unobservable from the public domain. Furthermore, the existing height contravention of 23.3% is situated towards the forward façade to The Corso and is visually evident from the public domain. It is concluded that compliance with the standard, in particular on grounds of visual dominance or character impacts, is entirely unreasonable and unwarranted in the circumstances of the case.

As shown via this report, it is apparent that the proposed, in its current form, is representative of beneficial public interest outcomes. The proposed is seen to be accurately representative of the scope and scale of ongoing development within the locality, with is further seen to be a direct embodiment of the established planning framework. The building height contravention itself has been shown as absent of any adverse outcomes in relation to various amenity indices and scope and scale concerns, and ultimately that compliance with the standard is unreasonable and unnecessary in the circumstance of the case. It is then established that the enforcement of the standard in this regard would be an unnecessary and unreasonable obstruction to a development that has been evidenced as achieving attainment of public interest outcomes and overall positive impacts on and to the locality.



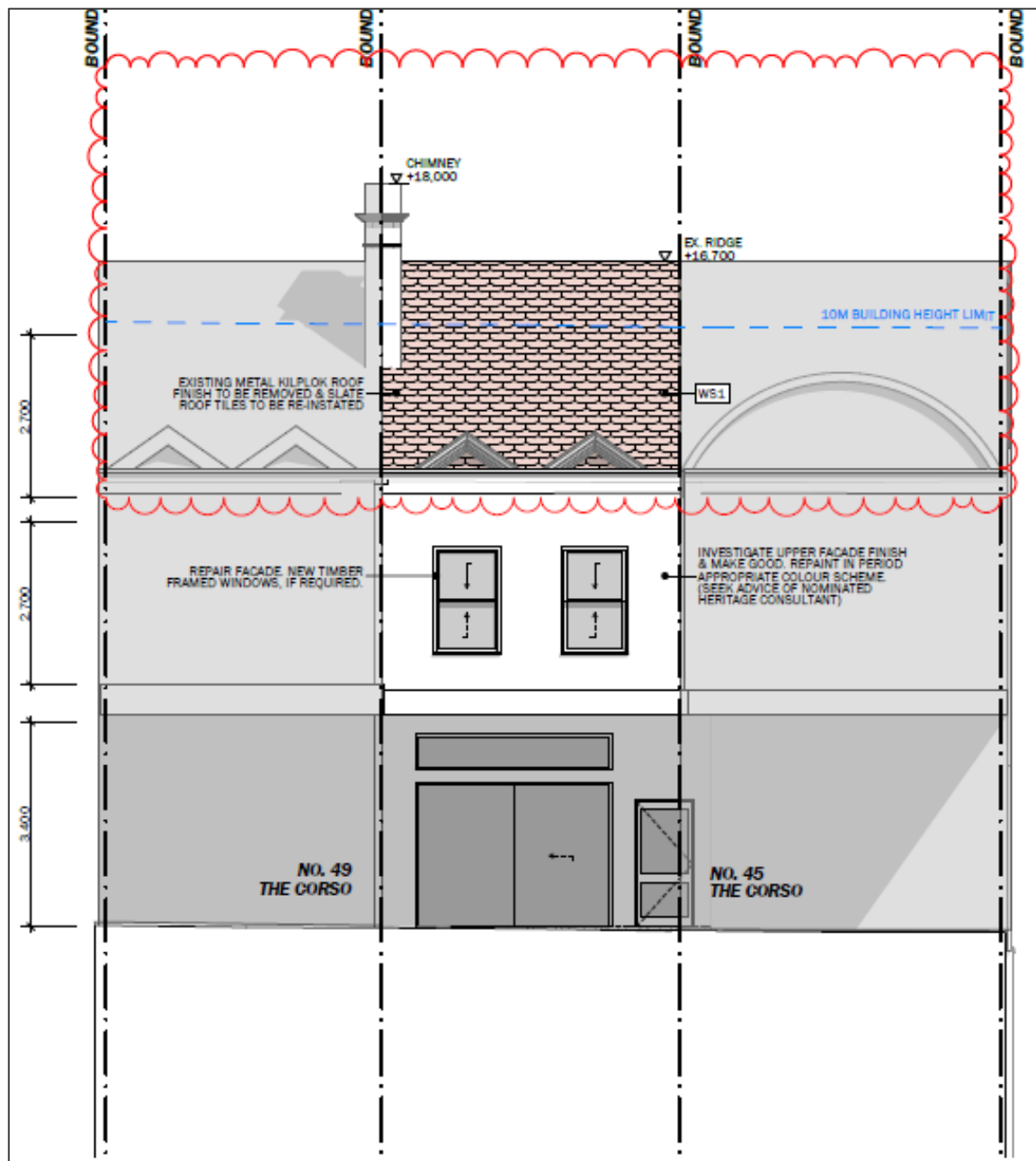


Figure 1 – Excerpt – Southeast Elevation



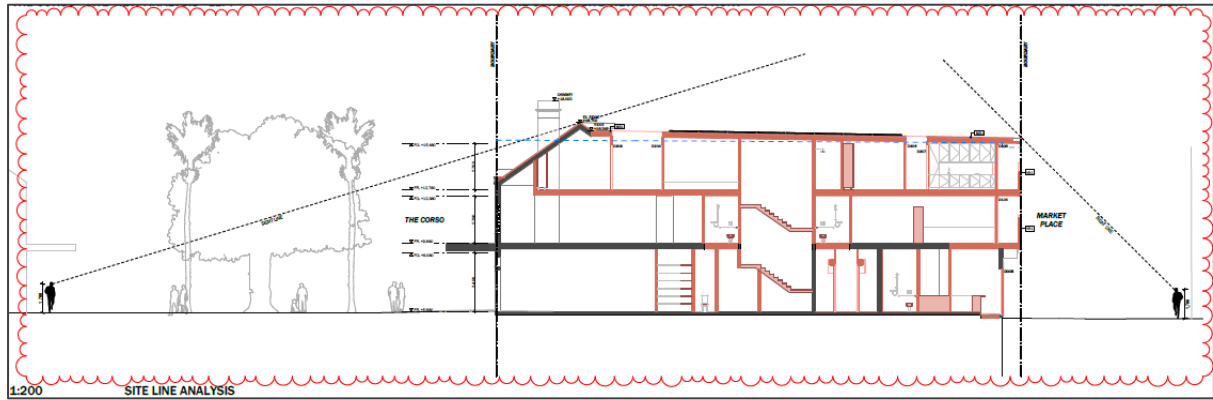
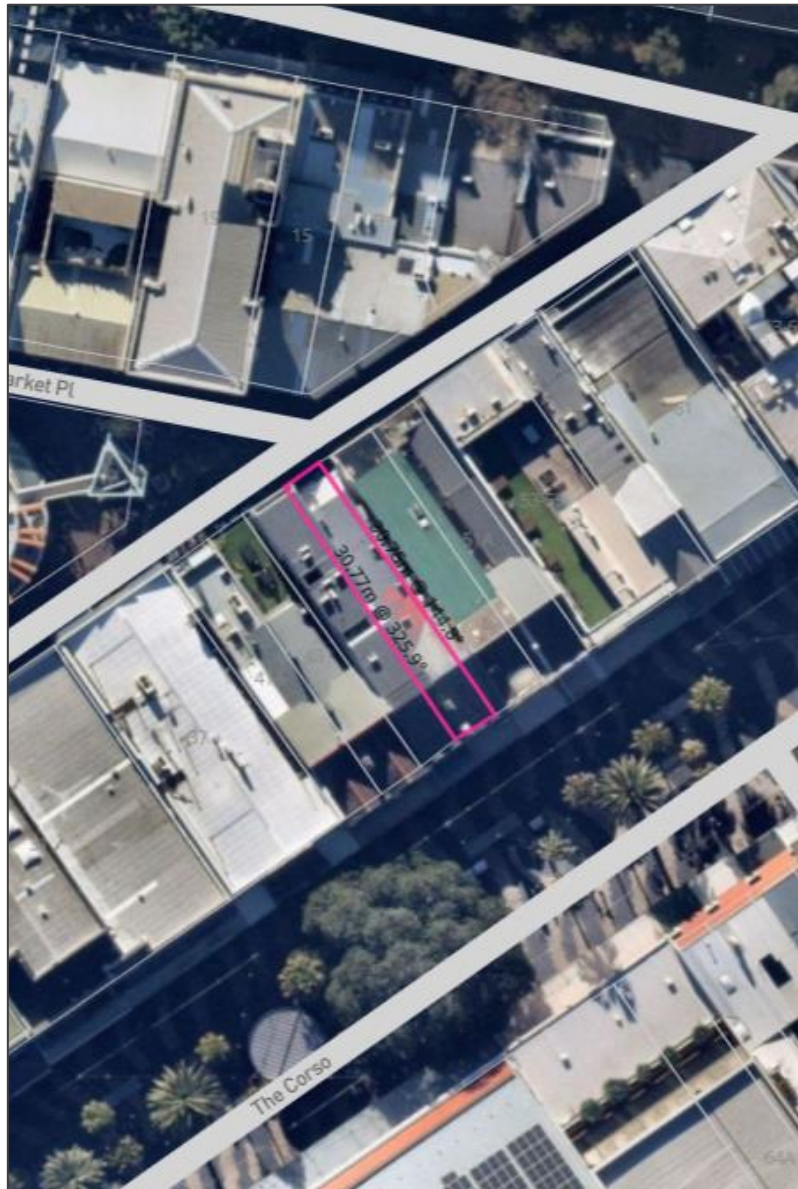


Figure 2 - Excerpt - Site Line Analysis - Variations Are Note Observable from the Public Domain - no impact the visual dominance or character.





*Figure 3 - Subject Site - Nearmaps - 01.08.23*





Notwithstanding the current circumstance of the site, this variation request has been prepared in accordance with Clause 4.6 'Exceptions to Development Standards' of the *Manly Local Environmental Plan 2013*. In this regard, it is considered that the proposed is wholly representative of desirable outcomes of the appropriately flexible application of the subject development standard. In particular, it is considered that the report accurately demonstrates-

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That there are sufficient environmental planning grounds to justify contravening the development standard;
- 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.

Further, in an alternate circumstance where compliance was required with the subject standard, it is noted that the level of residential amenities and high architectural quality would notably drop, in particular with regards to cohesion and transition of the existing building built with the proposed.

It is considered that this report adequately addresses the matters required to be demonstrated by Subclause (3) of Clause 4.6. It is noted that ongoing and future development in the locality in the form of that represented by the proposed is a direct embodiment of the established planning framework and the desired future character of the area. The building height contravention itself is shown to be absent of any adverse outcomes within the context of various statutory objectives and amenity indices, which therefore evidences that compliance with the subject standard is unreasonable and unnecessary in the circumstance of the case.







### 1.1.1 Site Analysis

<b>Address</b>	47 The Corso Manly 2095
<b>Lot/Section/DP</b>	6/-/DP26171
<b>Environmental Planning Instrument/s</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Sustainable Buildings) 2022</li> <li>• State Environmental Planning Policy (Industry and Employment) 2021</li> <li>• State Environmental Planning Policy (Housing) 2021</li> <li>• Manly Local Environmental Plan 2013</li> </ul>
<b>Development Control Plan</b>	<ul style="list-style-type: none"> <li>• Manly Development Control Plan 2013</li> </ul>
<b>Precinct</b>	5.1.2 The Corso
<b>Zone</b>	E1: Local Centre
<b>Zone Objectives</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• To encourage employment opportunities in accessible locations.</li> <li>• To maximise public transport patronage and encourage walking and cycling.</li> <li>• 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.</li> </ul>
<b>Site Area</b>	151m <sup>2</sup> (per survey)





## Manly Local Environmental Plan 2013 Mapping: (MAP Ref: 005)

<b>Zone:</b>	<ul style="list-style-type: none"> <li>E1: Local Centre</li> </ul>
<b>Maximum FSR</b>	<ul style="list-style-type: none"> <li>2.5:1</li> </ul>
<b>Minimum Subdivision Lot Size:</b>	<ul style="list-style-type: none"> <li>N/A</li> </ul>
<b>Maximum Building Height:</b>	<ul style="list-style-type: none"> <li>10m</li> </ul>
<b>Heritage</b>	<ul style="list-style-type: none"> <li>Heritage Conservation Area</li> <li>Heritage Item I108 (site)</li> <li>Heritage Item I106 (Adjoinnig – either side – across the corso)</li> <li>Heritage Item I109 (across the corso)</li> <li>Heritage Item I104 (Corso)</li> </ul>
<b>Acid Sulfate Soils</b>	<ul style="list-style-type: none"> <li>Class 4</li> </ul>
<b>Foreshore Scenic Protection Area Map</b>	<ul style="list-style-type: none"> <li>Mapped as applicable to the site</li> </ul>
<b>Key Sites Map</b>	<ul style="list-style-type: none"> <li>Rear (Market) Lane mapped as applicable – “requirement for development control plan”</li> </ul>
<b>Active Street Frontages Map</b>	<ul style="list-style-type: none"> <li>Mapped as applicable to the site</li> </ul>





## 1.2 – Development Standard to be Varied

It is noted that the proposed development is seeking consent to vary the applicable maximum building height under Clause 4.3 of the *Manly Local Environmental Plan 2013*. As per the provisions of clause (2):

**(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.**

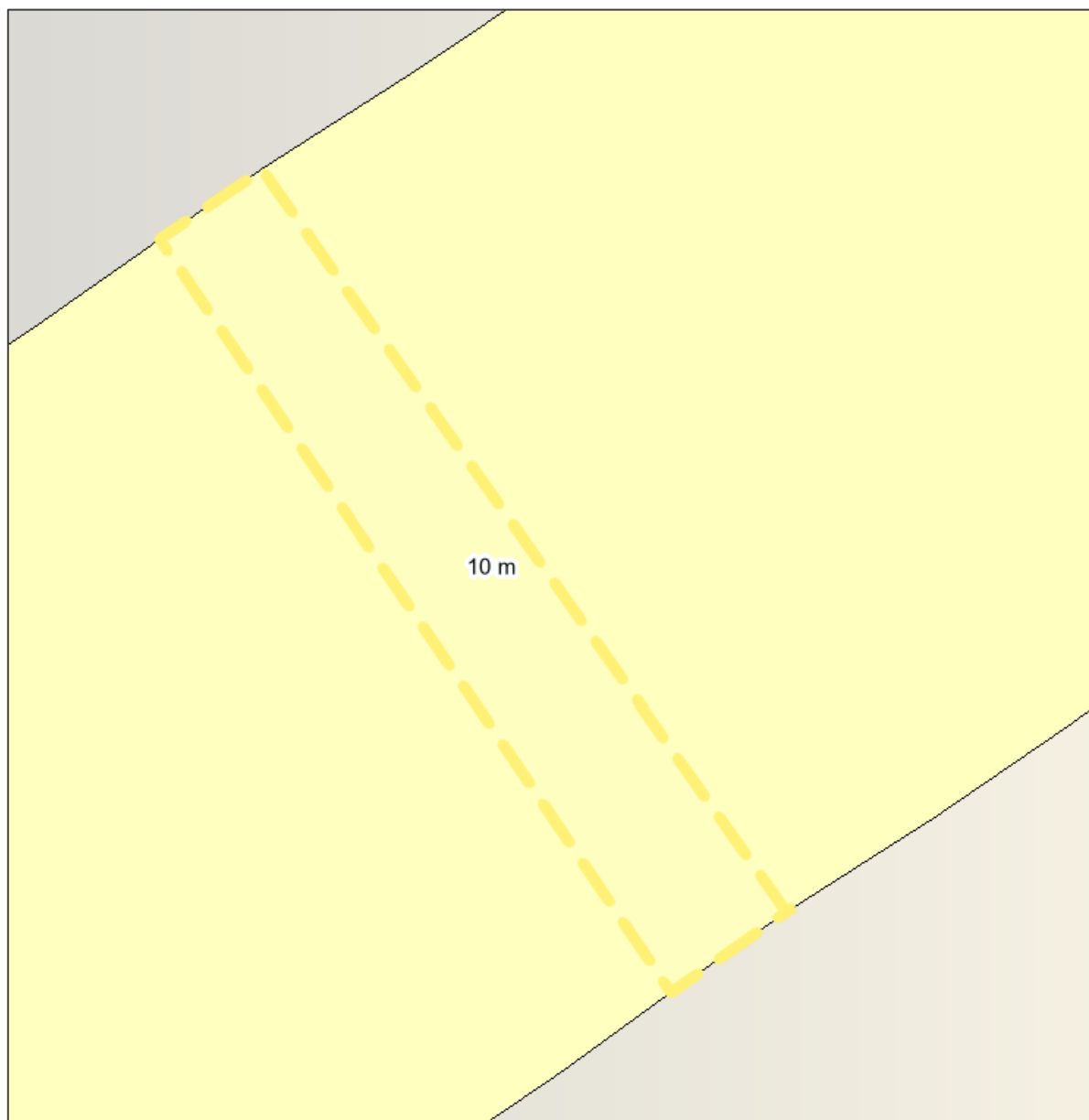


Figure 4: Building Height Map (Spatial Portal Excerpt) (Source: HOB\_005 - Manly Local Environmental Plan 2013)





The maximum building height for the site is 10 metres. As currently proposed, the development is seeking consent for a proposed maximum building height of 10.7 metres above the existing ground level. It is important to note that the existing structure exhibits a contravention to the prescribed maximum building height regardless of the proposed and that all proposed elements are below this existing contravention... further, the proposed contraventions only exceed the existing building height to a marginal extent are not observable at the human scale from the public domain.

The variation is regardless noted to be 0.7m in exceedance of the maximum building height (10m) or 7%. However, it is considered appropriate to assess the contravention in the context of the existing building height contravention. In this regard, the existing maximum building height is noted to be 12.33m, a variation to the subject standard of 23.3%... Of particular relevance, it is essential to consider that the proposed variation elements have been demonstrated to not be visually dominant and do not impart any adverse outcomes on the desired character of the locality in that these proposed elements are shown to be unobservable from the public domain.

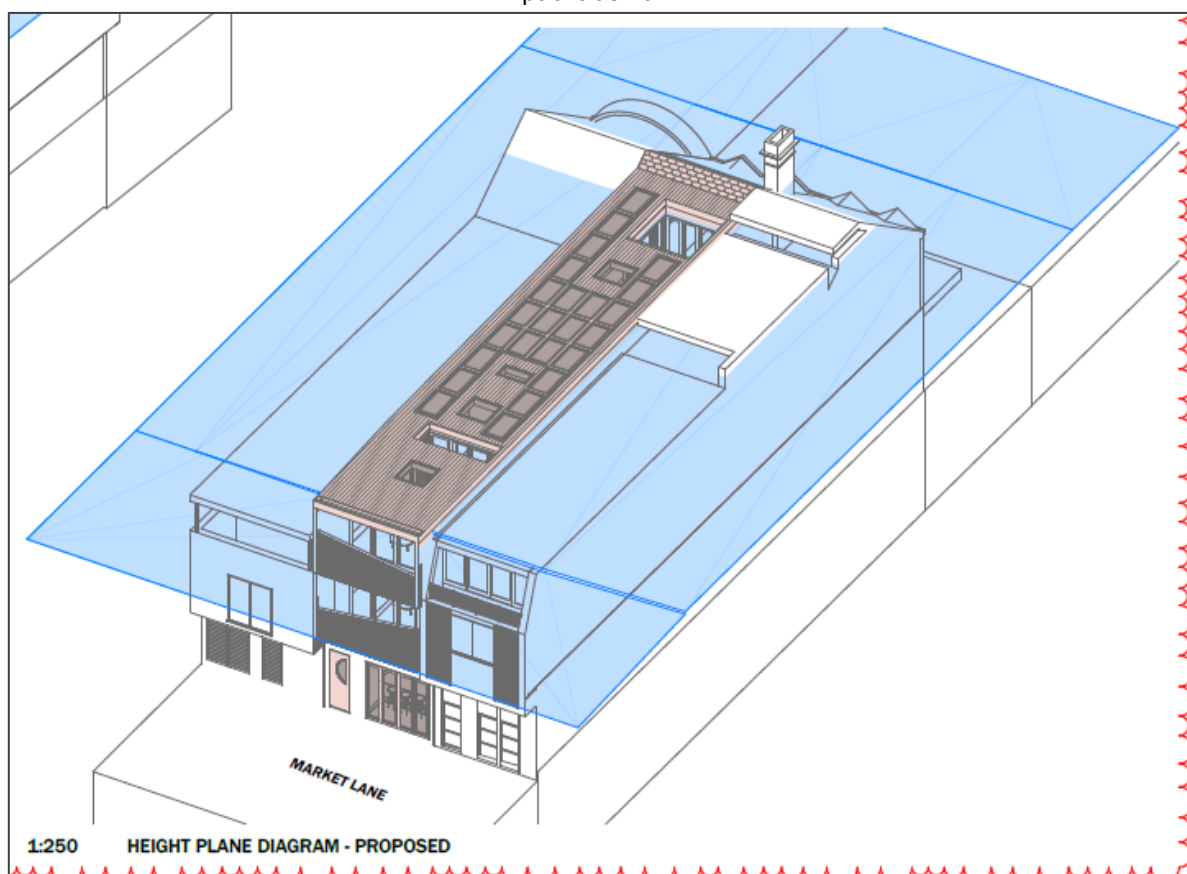


Figure 5 - 3D Image - max height plane.





*Figure 6 - Perspective Diagram - Proposed height contravention not observable.*





*Figure 7 -Perspective Diagram - Proposed height contravention not observable.*



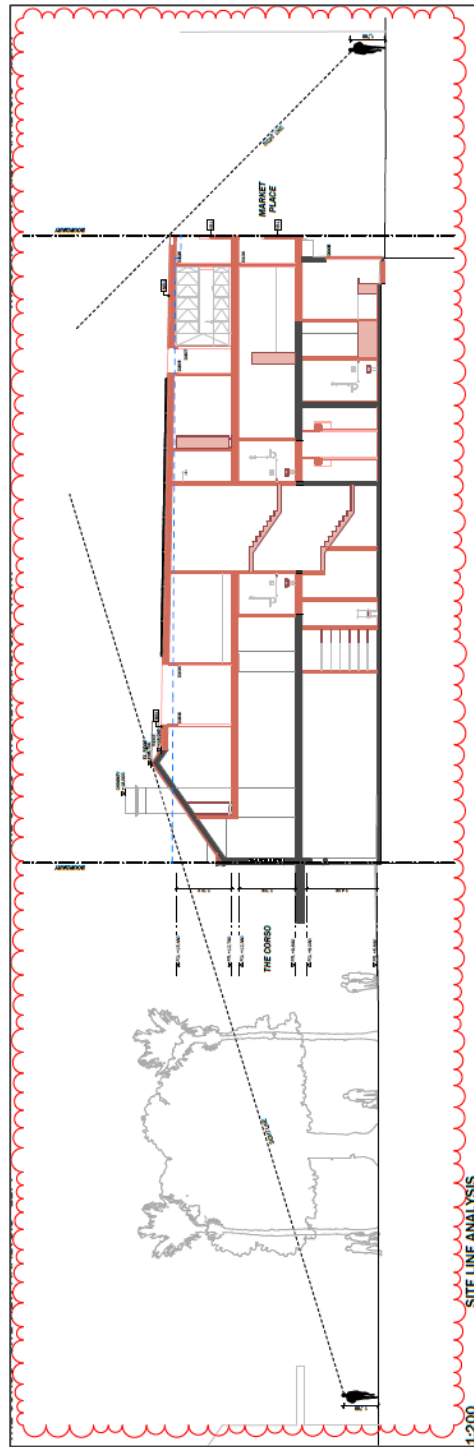


Figure 8 - Site Line Diagram - Proposed height contravention not observable





## PART 2: STATUTORY CONTEXT

### 2.1 - 'Clause 4.6 Exceptions to Development Standards' of the Ku-ring-gai Local Environmental Plan 2015

This 'request for variation' has been prepared in accordance with Clause 4.6 'Exceptions to Development Standards' of the *Manly Local Environmental Plan 2013*. The objectives of this Clause are (per subclause 1) –

- “(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.”***

In consideration of any contravention to a development standard and the subsequent granting of consent, the following is applicable (per subclauses 3,4 & 5) –

- “(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—***

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and  
(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.***

- (4) The consent authority must keep a record of its assessment carried out under subclause (3).***







It is considered that the proposed is representative of desirable outcomes of appropriately flexible application of the subject development standard. In particular, it is considered that this report demonstrates –

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That there are sufficient environmental planning grounds to justify contravening the development standard;
- 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.

## 2.2 – Case Law

In consideration of the primary test prescribed under Clause 4.6, a significant body of case law has been established. In particular, the following proceedings are seen to be essential in the exploration of the suitability of contravention and the proper demonstrations as required under Clause 4.6 –

- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NNSWCA 130;
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* (2020) NSWLEC 1112;

Where appropriate in the circumstance of the subject contravention, these are further explored in Part 3: Statutory Assessment of this report.





### 2.3 - 'Clause 4.3 'Height of buildings' of Manly Local Environmental Plan 2013

As noted under Section 1.2 of this report, the development standard to be varied/contravened is applicable under Clause 4.3 height of Buildings within the *Manly Local Environmental Plan 2013*. In particular, it is understood that subclause (2) gives force to the applicable maximum height of buildings of 10m. As such:

***(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.***

Further to this, it is noted that the objectives of the standard to be varied consist of:

***(a) 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,***

***(b) to control the bulk and scale of buildings,***

***(c) to minimise disruption to the following—***

***(i) views to nearby residential development from public spaces (including the harbour and foreshores),***

***(ii) views from nearby residential development to public spaces (including the harbour and foreshores),***

***(iii) views between public spaces (including the harbour and foreshores),***

***(d) 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,***

***(e) to ensure the height and bulk of any proposed building or 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.***





## 2.4 - Zone 'E1: Local Centre of the Manly Local Environmental Plan 2013

The subject site is noted to be within the E1 Local Centre Zone, under the *Manly Local Environmental Plan 2013*. As per LZN\_005:



Figure 9: Land Zoning Map (Excerpt From the NSW Planning Portal Spatial Viewer)(Source: LZN\_005) - Manly Local Environmental Plan 2013





The prescribed objectives of the E1 zone are listed as follows-

- *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.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *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.*
- *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.*
- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*





## PART 3: STATUTORY ASSESSMENT

### 3.1 – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

#### 3.1.1 - WEHBE V PITTWATER COUNCIL [2007] NSWLEC 827:

A key consideration with regard to the appropriateness of any proposed contravention to a development standard is the demonstration that the compliance is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* [2007] NSWLEC 827, [3] it was established that this can be achieved by justification under ONE of the following tests –

**1. *the objectives of the development standard are achieved notwithstanding non-compliance with the standard***

- In the first instance, it is considered that the objectives of the development standard are achieved notwithstanding non-compliance with the objectives. Further, it is noted that through compliance with the following objectives, the proposed building height, inclusive of the contravention, is seen to be a better representation of the attainment of the objectives of the relevant standard (under the provisions of the *Manly Local Environmental Plan 2013*);
- ***(a) 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,***
  - The proposed is seen to be consistent with the topographic landscape, prevailing building heights and desired future streetscape character of the locality. In fact, it is demonstrable that the subject objective is ameliorated under the circumstances of the proposed contravention... The proposed provides for a rejuvenation of the built form present on the site and the streetscape generally. The viability of the proposed works in that context is supported by the upper-level residential components and rooftop terrace. It is shown that the subject contravention is not perceptible from the public domain (Refer to Figures 5, 6 and 7). So then, the subject objective is seen to be preserved despite the contravention and the opportunity for rejuvenated built form, and thus enhanced streetscape outcomes may otherwise be lost without the contravention. Further, noting the proposed built form is below the existing maximum building height on the site, the development is evidence a consistent with and complementary to the prevailing building heights.
  - It is seen to be of high significance that the proposed variation elements have been demonstrated to not be visually dominant, and not impart any adverse outcomes on the desired character of the locality in that these





proposed elements are shown to be unobservable from the public domain. Furthermore, the existing height contravention of 23.3% is situated towards the forward façade to The Corso and is visually evident from the public domain. It is concluded that compliance with the standard, in particular on grounds of visual dominance or character impacts, is entirely unreasonable and unwarranted in the circumstances of the case.

- ***(b) to control the bulk and scale of buildings,***
  - As is evidenced via Figures 5, 6 and 7, the proposed contravention is not observable from the public domain and thus carries no impact on the bulk and scale of the development... in this regard, it is seen that the subject objective is maintained by the proposed.
- ***(c) to minimise disruption to the following—(i) views to nearby residential development from public spaces (including the harbour and foreshores), (ii) views from nearby residential development to public spaces (including the harbour and foreshores), (iii) views between public spaces (including the harbour and foreshores),***
  - The proposed, irrespective of the subject contravention, is not seen to have any impact with regard to the above objective.
- ***(d) 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,***
  - As demonstrated on the submitted shadow diagrams the proposed contravention imparts no adverse impact with regard to solar access to public and/or private open spaces and habitable rooms, nor sunlight access to such spaces.
- ***(e) to ensure the height and bulk of any proposed building or 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.***
  - The subject objective is not relevant in the circumstances of the case.

## ***2. the underlying objective or purpose of the standard is not relevant to the development***

- It is noted that the underlying objectives and purpose of the standard are relevant to the proposed, and as such, the above matter is not seen to be relevant to the proposed. Regardless, as established, the objectives of the standard are seen to be met by the proposed.





**3. *the underlying objective or purpose would be defeated or thwarted if compliance was required***

- In this regard, it is not seen that the proposed building height contravention is such that the underlying objective or purpose of the standard would be defeated or thwarted if compliance was required (however it is considered that the objectives of the zone would be impacted in this context). It is more so that the proposed is seen to be a better representation of the objectives of the standard being achieved than would be represented if compliance was required. Further, it is seen to be evident that compliance with the standard would result in adverse degraded architectural excellence outcomes, in that the proposed design would be required to be amended, and the high level of architectural quality that affords the proposed may be lost as well as the opportunity for the provision of housing supply which in turn is considered to infer degraded viability for the project holistically.





**4. *the standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or***

- Council's own actions in granting consents departing from the standard within the context of the proposed contravention are not specifically known, and therefore a definitive comment is not able to be made in this regard. Regardless, the proposed is seen to be relative to the surrounding development and contributory to the prevailing character and built form of the locality. The proposed contravention is not envisaged to result in a passively perceptible variation and is therefore not seen to present an issue regarding the subject consideration.

**5. *the zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.***

- The zoning of the land is not seen to be unreasonable or inappropriate, and therefore the above is not seen to be applicable in this regard.







### 3.2 – Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

#### 3.2.1 - FOUR2FIVE PTY LTD V ASHFIELD COUNCIL [2015] NSWLEC 90

Expanding on WEHBE V PITTWATER COUNCIL [2007] NSWLEC 827 the case of FOUR2FIVE PTY LTD V ASHFIELD COUNCIL [2015] NSWLEC 90 has been interpreted as reinforcing the need to demonstrate ‘sufficient environmental planning grounds to justify a contravention’

In this regard, it is considered that the following environmental planning grounds, particular to the subject site, are suitable to meet the required satisfaction in Clause 4.6, (3), (b) –

1. The subject contravention is seen to be minor in negligible in the context of perceptible form and is regardless not seen to be of a negative visual impact. The variation is noted to only exceed the existing building height to a marginal extent, are below the existing maximum building heights on site and are not observable at the human scale from the public domain. Further, the extent of the contravention is reduced when considered in the context of existing built-form elements on the site that encroach beyond the current maximum building height. So then it is arguably more appropriate to grant consent with the contravention than to enforce the standard that is demonstrated to be redundant in terms of actual outcomes and reduced in extent when considered in the context of the existing building height.
2. As per point 1, the proposed contravention is not envisaged to result in any negative perceptible impacts from the public domain. The proposed variation is imperceptible as viewed from the public domain, as the exceedance is isolated to central parts of the site, behind existing built form that exceeds the current prescribed maximum building. Furthermore, the front façade, and general aesthetic of the structure, are seen to be in keeping with the surrounding locality and the general character of the area in which it is situated. The proposed is seen to be of a similar bulk and scale to the built-form landscape in which it is situated.
3. In the context of adjoining properties and public spaces, the proposed does not present any unreasonable overshadowing issues. Further, the proposed is not seen to result in any unreasonable privacy issues to neighbouring habitable spaces or private open space areas.
4. It is considered that forced compliance would ultimately result in degraded outcomes in terms of the broader feasibility of the development, which holistically is seen to impact beneficial outcomes with regard to rejuvenated built form and ameliorated economic activity drivers.





5. The proposed is seen to be representative of a high-standard architectural design. As is evidenced through the architectural plan set, the proposed has incorporated built-form articulation, considered material selection, streetscape aesthetics, and the general character of the heritage conservation area it is situated within. The proposed design is seen to be in keeping with the established local centre character and is successful in providing built-form rejuvenation of the premise that is not only of high architectural quality but also successful in providing a high level of amenity for its residents whilst preserving the prevailing character of the site as well as the broader locality.





### 3.3 Public Interest

3.3.3 - LANE COVE COUNCIL V ORCA PARTNERS MANAGEMENT PTY LTD (NO 2) [2015] NSWLEC 52

In the context of 'FOUR2FIVE PTY LTD V ASHFIELD COUNCIL [2015] NSWLEC 90' it is noted that consideration beyond the unnecessary and unreasonable test explored in 'WEHBE V PITTWATER COUNCIL [2007] NSWLEC 827' is required. In particular Subclause (4), (a), (ii) of Clause 4.6 states –

***“Development consent must not be granted for development that contravenes a development standard unless:***

***(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,”***

**NOTE: UPDATE: Clause 4.6 of the SILEP2006 and subsequently the subject Manly Local Environmental Plan 2013 has been amended so that Subclause (4) no longer requires demonstration that “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,”- It is regardless seen appropriate to explore the compatibility of the development with the objectives of the standard and the zone as described in the referenced caselaw.**

#### 3.3.3.1 – Objectives of the Particular Standard

- Please refer to section 3.1.1 of this report.
- The subject standard is noted as having several objectives under the applicable EPI. In this regard, the submission material, inclusive of this report and the Statement of Environmental Effects, are considered to demonstrate the objectives of the standard to have been attained irrespective of the contravention.





### *3.3.3.2 – Objective for Development within the Zone*

The development is located within the E1: Local Centre Zone under Manly Local Environmental Plan 2013. The objectives of the E1 zone, as per the subject instrument, are listed below. The proposed is considered to demonstrate attainment/compatibility with these objectives to an extent that would otherwise be diminished if compliance with the standard was required. In the context of *LANE COVE COUNCIL V ORCA PARTNERS MANAGEMENT PTY LTD (NO 2) [2015] NSWLEC 52* it is noted, in this case, that the below discussion within the context of the objectives of the zone represents broader considerations as to the benefits and disadvantages of the development in the context of the public interest.

- ***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.***
  - The proposed is a clear representation of the provision of a range of retail business and community uses that serve the needs of the local community. The proposed revitalisation of the existing commercial premises on the site, seen to not only present enhanced economic activation but also higher levels of utilisation and efficiency from the site, is directly associated with the provision of the upper-level residential components. These are seen to require the subject height contravention in order to achieve viability in a highly difficult economic climate. In this regard, it is seen that the subject objective is in fact better progressed as a result of the contravention proposed than would otherwise be the case, which is envisaged to result in lost opportunities for rejuvenation of commercial development/activity in the locality.
  - This is representative of a development that is within the public interest due to consistency with the subjective object and general positive impacts of the proposed.
- ***To encourage investment in local commercial development that generates employment opportunities and economic growth.***
  - The proposed is readily identified as an investment in local commercial development. Further, it is evident that failure to consider the subject variation... would act towards a general disenfranchisement in the NSW Development Consent process and degrade confidence to invest in such development in the locality. It is acknowledged that the area is in high demand however inversely it must be respected that the Development Consent process in NSW is exceedingly onerous (comparatively) and can be a high-risk financial decision. In the circumstances of the case, there is a contravention of a prescribed standard that has been demonstrated to be imperceptible from the public domain, is compatible with the objectives of the standard in question, as well as the zone, and is void and any observed adverse outcomes. To this end then, forced compliance would be seen to be compliance simply for the sake of ticking a numerical checkbox and ultimately detract from the subject objective.





- ***To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.***
  - The proposed is seen to directly contribute to the subject objectives. The development provided for residential development and in doing so, with the subject contravention, contributes to the viability of investment towards the rejuvenation and amelioration of the existing commercial premise... ultimately enhancing the vibrancy of the local centre.
- ***To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.***
  - As per the above comment. The proposed is demonstrated to be compatible in the provision and enhancement of ground floor commercial economic activity/vibrancy in the locality. The subject contravention is envisaged to further contribute to this in that it will foster confidence towards investment in such development as a demonstration of reasonable merit-based development assessments.
- ***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.***
  - The subject contravention, and the development generally, is not seen to contribute or exacerbate a conflict between land uses in the zone. Further, the subject site is a notable distance from any zone boundary/interface and is not considered particularly relevant to the subject objective. The elements of the contravention being components of the rooftop terrace are seen to directly contribute to the amenity of people who live in the local centre.
- ***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***
  - The proposed development has demonstrated a direct contribution towards enhanced economic diversity at the ground level as well as a revitalisation of the activated frontage to The Corse and Market Lane. The development holistically will contribute to pedestrian traffic generation as well as the overall vibrancy and function of the surrounding public domains.
- ***To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.***
  - The proposed development, inclusive of the subject contravention, has demonstrated favourable outcomes in regard to scale and architectural principles. The subject contravention is seen to directly contribute to these outcomes via increased viability of the general investment toward rejuvenating the premise and revitalising the interface between the private and public domain.





Beyond the above specific considerations of the standard within the context of the zone objectives, it is apparent that the proposed, in its current form, is representative of beneficial public interest outcomes. The proposed is seen to be accurately representative of the scope and scale of ongoing development within the locality, which is further seen to be a direct embodiment of the established planning framework. The building height contravention itself has been shown as absent of any adverse outcomes in relation to various amenity indices and scope and scale concerns, and ultimately that compliance with the standard is unreasonable and unnecessary in the circumstance of the case. It is then established that the enforcement of the standard in this regard would be an unnecessary and unreasonable obstruction to a development that has been evidenced as achieving attainment of public interest outcomes and overall positive impacts on and to the locality.





## PART 4: CONCLUSION

In conclusion and on completion of the Clause 4.6 Assessment within this report, it is considered that the requirements of Clause 4.6 have been met. Specifically, the matters required to be demonstrated under Subclause (3) have been addressed.

- In accordance with the emphasis of *WEHBE V PITTWATER COUNCIL* [2007] NSWLEC 827 ‘, ***the objectives of the development standard are achieved notwithstanding non-compliance with the standard***’
- In the context of ‘*FOUR2FIVE PTY LTD V ASHFIELD COUNCIL* [2015] NSWLEC 90, considerations beyond the objectives of the standard in the environmental planning outcomes provide suitable justifications for the contravention.
- Following the approach in *Lane Cove Council v Orca Partners Management Pty Ltd (No 2)* [2015] NSWLEC 52, the public interest outcomes are seen to be enhanced by the contravention than would otherwise be the case if Compliance was required.

As such, it is formally requested that the Consent Authority exercise its discretion (as explored in *RANDWICK CITY COUNCIL V MICAUL HOLDINGS PTY LTD* [2016] NSWLEC 7) and progress to consent for the development regardless of the contravention to Clause 4.3 of the *Manly Local Environmental Plan 2013*.

