

**Request for Variation to the Development Standard for Height of Buildings, pursuant to clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP)  
19-29 The Corso, Manly**

This Request to vary a development standard for the height of buildings is lodged in accordance with cl. 4.6 of the MLEP 2013, which allows for a development standard to be varied. The DA seeks to vary the development standard for the height of buildings, contained at cl. 4.3 of the MLEP for Height of Buildings.

### The Site

The site is located at 19-29 The Corso.

### The Development Application

The development application is as set out in the Statement of Environmental Effects.

### Existing and Proposed Building Height

The existing and proposed building heights are set out in the table below, noting that there is no change in building height to 25, 27 and 29 The Corso.

**Table 1: Existing and proposed building heights**

	Existing Height		Proposed Height	
	RL	Height above GL	RL	Height above GL
<b>19-21</b>				
<i>The Corso Frontage</i>				
Wall height	20.38	14.47m	20.38	14.47m
Parapet	21.75	15.84m	21.645	15.74m
<i>Market Lane Frontage</i>				
Wall height	18.280	12.68m	20.38	14.78m
Stair			23.00	17.09m
Lift			24.58	18.67m
Balustrade			21.38	15.47m
<b>23</b>				
<i>The Corso Frontage</i>				
Wall height	13.68	7.77m	20.38	14.47m
<i>Market Lane Frontage</i>				
Wall height	13.65	8.05m	20.38	14.78m
<b>25-29</b>				
<i>The Corso Frontage</i>				
Parapet	18.49	12.58m		

Building services	20.92	15.01m		
<b>25</b>				
<i>Market Lane Frontage</i>				
Roof height	14.55	8.95m		
<b>27-29</b>				
<i>Market Lane Frontage</i>				
Balustrade	14.37	8.77m		
Roof	19.05	13.42m		
Services	20.92	15.32m		

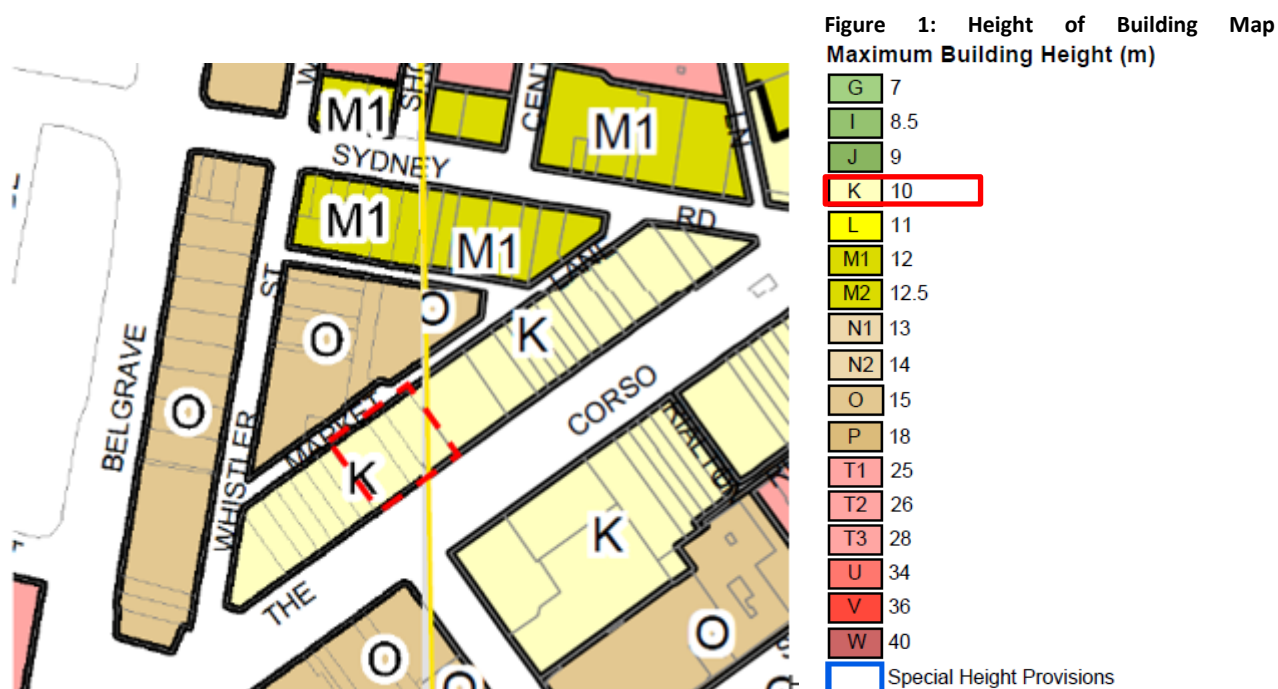
### The Development Standard

*Height of Buildings (cl. 4.3)* Clause 4.3

of the MLEP states:

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

The height of buildings map stipulates the building height permitted is 10m.



### Definitions

The Dictionary to the WLEP provides the following in relation to building height:

*building height (or height of building) means:*

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing)<sup>j</sup> to the highest point of the building, or*



(b) In relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

#### Non-Compliant Section of the Development

The table below demonstrates the extent of non-compliance with the proposed development.

**Table 2: Extent of non-compliance with the development standard for building height**

	Existing Height above GL	Proposed Height above GL	Extent of change over existing building	Extent of Compliance with cl. 4.3	Non-compliance with
<b>19-21</b>					
<i>The Corso Frontage</i>					
Wall height	14.47m	14.47m	0.00m	+4.47m	
Parapet	15.84m	15.74m	- 0.10m	+5.47m	
<i>Market Lane Frontage</i>					
Wall height	12.68m	14.78m	+2.10m	+4.78m	
Stair		17.09m		+7.09m	
Lift		18.67m		+8.67m	
Balustrade		15.47m		+5.47m	
<b>23</b>					
<i>The Corso Frontage</i>					
Wall height	7.77m	14.47m	+6.7m	+4.47m	
<i>Market Lane Frontage</i>					
Wall height	8.05	14.78m	+6.73m	+4.78m	
<b>25-29</b>					
<i>The Corso Frontage</i>					
Parapet	18.49	12.58m	0.00m	+2.58m	
Building services	20.92	15.01m	0.00m	+5.01m	
<b>25</b>					
<i>Market Lane Frontage</i>					
Roof height	14.55	8.95m	0.00m	-1.05m	
<b>27-29</b>					
<i>Market Lane Frontage</i>					
Balustrade	14.37	8.77m	0.00m	-1.33m	
Roof	19.05	13.42m	0.00m	3.42m	
Services	20.92	15.32m	0.00m	5.32m	



In summary:

- the existing building height at 19-21 The Corso remains as *per* the existing situation, with the additional building height attributable to:
  - enhancing the amenity of the building by inclusion of a roof top communal open space area
  - ensuring lift serviceability to improve access to the whole of the building, which is not currently available, for those less mobile
  - ensuring compliant access in terms of fire stairs, which do not currently satisfy the relevant fire safety code requirements and absent of these, represent risk to life and/or property
- the proposed height of 23 The Corso is the same as the wall height of 19-21 The Corso, with the additional building height attributable to:
  - an opportunity to screen the existing, unsightly, public car park to the north of the site which otherwise erodes the built form and character of The Corso, when looking north, consistent with the stipulation in the MDCP at Schedule 6
  - enables residential accommodation to be provided, which is of a more contemporary standard with a significantly higher level of amenity, while being highly accessible to public transport, as well as enhancing opportunities for private open space areas being attached to certain dwellings, as well as maximised opportunities for solar access and cross ventilation, which are designed having regard to the boundary conditions.

### Is Clause 4.3 a Development Standard?

Clause 4.6 can only be used to vary a development standard. Development standards are relevantly defined in s 1.4 of the *Environmental Planning & Assessment Act 1979 (EP & A Act)* *inter alia* as follows:

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...*

*(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Being a provision of the MLEP in relation to the carrying out of development, under which a requirement is fixed in respect to height of buildings in the relevant zone, cl 4.3(2) of the MLEP is a development standard. Accordingly, cl. 4.6 can be used to approve a variation to the standard.

As noted by the Chief Judge of the Land & Environment Court of NSW in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, [**Initial Action**], cl. 4.6 is facultative in permitting a consent authority to grant consent for development even though that development would contravene a development standard set by an environmental planning instrument.



## Variation to the Development Standards

Clause 4.6(3) of the MLEP states:

(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.*

These matters are addressed below.

*(a) that compliance with the development standard is unreasonable or unnecessary*

The common approaches for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. Cases such as *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Randwick Council v Micaul Holdings Pty Ltd* [2017] NSWLEC 7 and, most recently, *Initial Action*, have confirmed that adopting the *Wehbe* principles remains an appropriate approach.

There are five alternatives set out in *Wehbe*, but only one need be satisfied as provided in the table below.

**Table 3: The Wehbe Principles**

The objective of the development standard is achieved notwithstanding non-compliance with the standard	In this case, the objective of the development standard is achieved, notwithstanding non-compliance with the standard.
The underlying objective or purpose of the development standard is not relevant	Not applicable
The underlying objective or purpose would be defeated or thwarted if compliance was required	In this case, the underlying purpose of the site-specific provision in Schedule 6 of the MDCP would be thwarted which states that: <i>Redevelopment may be considered subject to heritage assessment</i> <i>New building height is to be approx.. 600mm below the sill height of the top floor windows of No. 21 to retain outlook from those windows but also to disguise the view of the Market Lane Car Park when viewed from Darley Road.</i> <i>Ducting at south corner at 1<sup>st</sup> floor level should be removed or relocated.</i>
The standard has been abandoned or destroyed	Not applicable



The zoning of the land was unreasonable or inappropriate such that the standards for the zoning are unreasonable or unnecessary.	Not applicable
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These matters are addressed below.

### Achievement of the objectives of the development standards

The objective for height of buildings is addressed below, as it relates to the non-compliant parts of the building, noting that there is no increase in the height of the building proper at 19-21 The Corso; for that building the additional height is attributable only to building services and communal open space area that is located on the rooftop, which was pursued at the direction of the Design Review Panel, with the following comments provided:

*Non compliance with planning controls can be considered where there is demonstrated:*

- *Improvement in amenity (overshadowing, privacy, access to roof top open space)*
- *Contributions to public domain or other benefits (incl environmental performance)*

*The Panel does not feel the compliance issues are problematic for approval given recommended design changes are achieved*

*The proposal exceeds height and FSR however the Panel considers the proposal is NOT an overdevelopment of the site and could be supported*

*(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 desired future character of the neighbourhood is determined by reference to the existing character of buildings, as well as the suite of planning controls applying to the locality, not only those encapsulated within the zone objectives, but inclusive of provisions relating to the Manly Town Centre contained in the MDCP, along with regard to the provisions of State Environmental Planning Policies (*Big Property Group Ltd v Randwick City Council* [2021] NSWLEC 1161 (**Big Property**)).

Desired future character is not solely determined by the LEP development standards, including maximum building height, that are applicable to any site, as these standards do not account for specific site characteristics, local context or any bonus provisions that may benefit a particular development. In this case, the DCP provides benefit in setting out the desired future character of the locality and in conjunction with the various relevant EPs, including SEPP 65, the MLEP and the ADG, which cumulatively assist to establish the desired future character. Specifically, provision is made for No 23 The Corso, as set out above, where site specific provisions endeavour to improve the desired future streetscape character of The Corso, facilitated by additional building height to 23 The Corso to screen the Market Lane car park.



In terms of the prevailing building height, those buildings which dominate the visual landscape include the existing built form of 25, 27 and 29 The Corso, which form part of the site, but remains unaltered in terms of building height, in addition to 19-21, which bookends No 23 to the west. The principle building form has an RL of 18.49 and the building services to RL 20.920.

The photomontage below (Photograph 1) demonstrates that the proposed height of the built form on No. 23 sits comfortably within the prevailing building height in this section of The Corso and does not contravene the desired future character intentions, particularly as it relates to supporting concealment of the Market Lane car park, which has an RL of 27.69 to the top of the lift tower and RL 29.97 to the top of the lift tower vent) and sits well above the proposed form at No. 23 The Corso (RL 20.38) (Photograph 2). While Schedule 6 seeks additional height, to 600mm below the sill height of the top floor windows of No. 21, it is evident from Photograph 2 that the opportunity to conceal the car park without causing a greater impact is available with a recessive form at the fourth floor. Absent of any additional impact, this additional height ensures that this desired characteristic is achieved.



**Photograph 1: View looking north-east towards the subject site, demonstrating how the proposed form above No. 23 sits with the built form directly east and west of the buildings comprising the site**

In addition, both of the photographs demonstrate that, for that portion of the building above 19-21 The Corso that exceeds the existing building height, there is no visual presence of this such that the character of the streetscape is compromised by the provision of this additional height. Instead, there is no visibility of this from the public domain.

The proposed development therefore achieves Objective (a).





**Photograph 2: The proposed height of No. 23 The Corso, in the context of the existing building height and demonstrating concealment of the car park as reflected as an element of the desired future character in Schedule 6 of the MDCP**

From the Market Lane frontage, the existing context is of a more regimented building style with dominant masonry elements, limited articulation and a shortage of openings that otherwise provide an active face to the building; the built form generally takes on a traditional laneway function, treated as the ‘back’ of the building.

The proposed building height, which exceeds the development standard, will not compromise the streetscape character and instead, consistent with the balance of the façade, provide a superior streetscape outcome that will enliven this section of Market Lane and present a more contemporary and appropriate building form.

The additional building height that is proposed for the purpose of outdoor open space and building services above No. 19-21 is not visible from the street frontage, such that the desired future character would otherwise be compromised. Even if it were visible, this would enhance the streetscape context of the development and reduce the perception of the laneway being a subordinate section of the Manly Town Centre, instead promoting its vibrancy, consistent with what is desired at the lower levels of the building.





**Photograph 3: Market Lane frontage of the proposed development, demonstrating the overall facade composition, including that part of the building which is non-compliant with the development standard**



In terms of the desired future streetscape character for the Manly Town Centre, the Townscape Principles, where relevant to the non-compliant height of the proposed building will be achieved by:

- maintaining the predominant pattern of narrow fronted buildings, with the upper storey set back from the building frontage to enable the existing forms that characterise the streetscape to remain as the prominent element when the building is considered from The Corso
- ensuring that the additional building height that accrues from the extension of No 23 causes very limited impact in terms of loss of sunlight, with the effects as shown on the Architectural Drawings and no such impacts to the Market Lane frontage. This limited impact occurs over The Corso only and is restricted because of the extent of the upper floor setbacks to that frontage from the principal face of the building. This is addressed below.

Further, Section 4.2.5 provides further consideration for the design of buildings within the townscape. The proposed form responds to these as follows:

- the photomontages demonstrate that the proposed height of No. 19-21 The Corso, as it faces that frontage, has no adverse appearance given that it is not visible from this vantage.
- For No. 23 The Corso, as it faces that frontage, the architectural embellishments are those that dominate not only that building, but those of 19-21 and 25-29; the proposed materials to the upper floor additions provide a subdued element between these more prominent forms



- the proposed building height at 23 The Corso will not compromise views enjoyed from neighbouring properties, being bookmarked on either side by existing building forms; some visibility will be available from the roof top area of No. 19-21 without compromising the objectives of the townscape.

The aforementioned controls articulate the principles pertaining to redevelopment in the Manly Town Centre which is to be balanced between the development standards and the opportunity to reduce the visual impact of uninviting elements within the streetscape context, that otherwise compromise the desired future character of the Town Centre. The configuration of the allotments as viewed from The Corso remains, with both horizontal and vertical proportions being maintained in the context of the street. The new elements above the permitted building height demonstrate a sympathetic transition between old and new in the streetscape while screening unsightly elements such as building services and lift overruns, as well as other buildings within the context of the site.

It is therefore evident that the objectives and controls, along with the existing conditions are taken account of in the design of the building, in conjunction with the objective of the development standard itself. While the building height intrudes the standard, the characteristics desired in the streetscape will not be absolved by the non-compliant building form; instead, the building form is generally consistent with the expectation in this context, if not improved by the reduction in visible building services that otherwise result across the site as a whole.

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

With regard to moderating the bulk and scale of the building, this is expressed in the SEPP 65 Design Principles statement prepared by DBJ Architects, as follows:

*The bulk height and scale of the building has been developed in reference to the Manly LEP 2013, the Manly DCP 2013, and the Apartment Design Guide (ADG).*

*The Manly LEP 2013 anticipates a 10m height constraint for the subject sites.*

*Schedule 6 of the Manly DCP 2013 includes the following provision; 'new building height is to be approx. 600mm below the sill height of the top floor windows of No. 21 to retain outlook from those windows but also to disguise the view of the Market Lane car park when viewed from Darley Rd.'*

*Although the Corso has a blanket 10m LEP height control, the existing Building at 19-21 the Corso is 4 storeys with a height of approximately 15.85m. Similarly other existing buildings within the Corso conservation area also breach this height control. In particular the adjacent Ivanhoe Hotel which resides on the same larger site is approximately 12.5m high at its street frontage and 15m further back in its site.*

*The proposal seeks to maintain the height of 19-21 the Corso. The proposal also seeks to lift the height of no.23 the Corso to the height envisaged in the Manly DCP2013 Schedule 6. Additional height is*



*proposed to no.23 set back from the street frontage of the Corso and Market lanes. This additional bulk contributes to the screening of the Council Parking structure located in Market Lane/Whistler Street as seen from Darley Road, while being recessed sufficiently so that it can't be seen when moving through the Corso This is illustrated in the photomontages developed with the submission.*

*Additional Height is also proposed on the Market Lane frontage of the no.23 building. Given the varying scales and characters of the building in the immediate vicinity of the proposal, such as the Council Car Park and Library building, this additional height is considered appropriate.*

*At ground level, retail uses and activation are maintained or enhanced thus contributing to the fine grain scale and character of the streetscape.*

The design statement supports the non-compliant form of the building being designed to ensure that unsightly elements within the townscape are depleted in their visibility to improve the overall perception of building form, as desired in the townscape principles and this specific objective. This outcome has been carefully balanced with additional, non-compliant, building height that has limited visibility when navigating the precinct, achieved with recessive building alignments, set back from the street frontage to ensure that the building form has a presence of neither bulk, nor scale.

From Market Lane, the increased section of building height provides the opportunity to enhance living spaces and create outdoor areas, without contributing to the bulk and scale of the building in a manner that is otherwise unsympathetic to this section of the Town Centre; instead, a form is proposed that is highly articulated, particularly when compared to various other building forms within the vicinity of the site, which are utilitarian as they face this frontage.

Therefore, the additional building height is carefully managed to ensure that it does not otherwise result in adverse impacts in terms of bulk.

*(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 non-compliant sections of the building are not considered to have any adverse impacts on views to or from nearby residential development, nor to public spaces. If anything, the additional height proposed over 23 The Corso will improve the view of the public space which depletes the view towards the public car park.



*(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,*

The only potential impact that derives from that part of the building height which exceeds the development standard is the potential impact on public spaces, being The Corso and Darley Road. As set out in the SEE, the additional building height has been designed on 23 The Corso as prescribed by Schedule 6 of the MDCP, which encourages additional height to sit 600mm below the sill height of the top floor window of No. 21 to enable outlook from these windows, while also disguising the view of the Market Lane car park which sits to the north of the site.

The solar access diagrams demonstrate that, by increasing the building height in accordance with the above, the proposed built form will have the following impacts:

- at 9am at the winter solstice, there will be an additional 2m<sup>2</sup> of shadow over the footpath and roadway of The Corso (shown in pink on DA-22)
- at 12 noon at the winter solstice, there will be an additional 14m<sup>2</sup> of overshadowing to The Corso, approximately two-thirds of which falls across the roadway (also shown in pink on DA-22)
- at 3pm, there will be an additional 25m<sup>2</sup> of overshadowing which falls, in part over the pedestrian area of The Corso and, in part, over the façade of St Matthews, Manly, located at 1 Darley Road, to the south of the site (Figure 3). The additional shadow caused, as shown on DA-22 is predominantly on the existing landscaped area in front of the Church and blank sections of wall, facing The Corso (Figure 4). The shadow does not, however, affect the window openings on the northern face of the Church.

**Figure 2: St Matthews Manly, located on the southern side of The Corso, opposite the site, at 1 Darley Road**



Figure 3: Existing landscaping, located on the northern wall of St Matthews Church

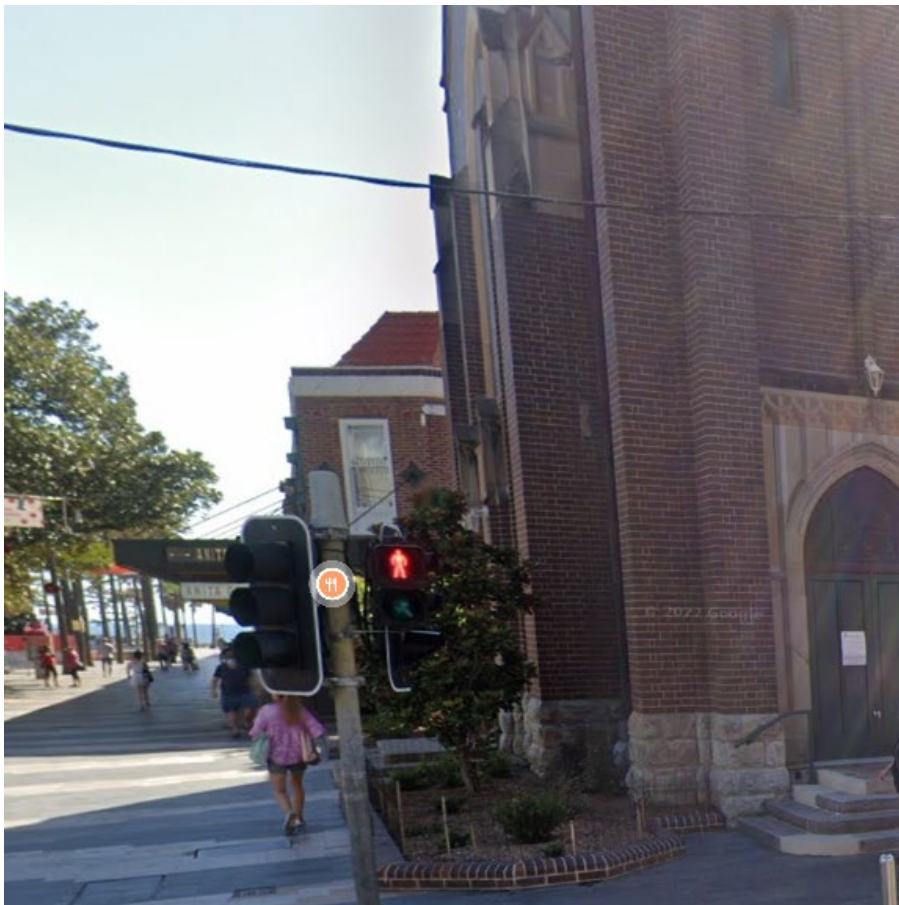


Figure 4: Elevational shadow diagram demonstrating impact of the proposed building height, as directed by the MDCP, on the existing window opening to St Matthews Church



Therefore, if one is to adopt the principle in the MDCP to raise the building height at 23 The Corso to screen the car parking station on Market Lane, this minor increase in shadow is deemed appropriate and without adverse impact.

As demonstrated on the plans, the further additional building form proposed on Level 3 that is set back from The Corso by 5.5m has been positioned to ensure that the additional height has limited visibility from The Corso. In terms of overshadowing, the proposed additional non-compliant form results in a very minor additional increase in shadowing at 3:00pm on June 21 by 8m<sup>2</sup>, with no additional impact at any other time, as evidenced on DA-22. The impact that derives from this is across the landscaping and a blank section of



wall to the northern frontage of St Matthews Church and is considered to be of no consequence, such that the additional building height, from an overshadowing perspective, should be supported and does not fall foul of this objective.

**Figure 5: Additional overshadowing shown in orange that is caused by the additional building height proposed on 23 The Corso, recessed from the property boundary by 5.5m. This falls on existing landscaping and a blank section of wall of St Matthews Church**



Therefore, despite non-compliance with the development standard, the height of the development achieves the objectives of the standard.

#### **The underlying objective or purpose would be defeated or thwarted if compliance was required**

As set out above, Schedule 6 of the MDCP provides for additional building height at 23 The Corso to reduce the visibility of the unsightly car parking area to the north of the site. While this Schedule sits below a development standard in the hierarchy of planning instruments, the role of this site-specific provision should not be discounted such that, if compliance with the development standard were required, the underlying purpose, that is to obscure an unsightly urban form, would be thwarted.

The site-specific purpose is for new building height to be approximately 600mm below the sill height of the top floor windows of No. 21 to retain outlook from those windows but also to disguise the view of the Market Lane car park when viewed from Darley Road. While the proposed form is proposed to a height higher than this provision, it will not preclude visibility from the window at No. 21 due to the proposed new layout and it will disguise the view of the Market Lane car park. It achieves these purposes without resulting in other adverse impacts that may cause adverse impacts, resulting in a significant improvement from the public domain as a result of increasing the building height to obscure the car parking structure.

Therefore, to require compliance with the development standard would defeat the purpose of obscuring the view of the car park which is the site-specific intent and only achieved with additional building height. The height proposed, which is greater than that intended by the MDCP achieves, to a greater extent, the intention of the purpose of additional building height.



*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

There are sufficient environmental planning grounds, despite non-compliance with the development standards for height as:

- the additional building height allows for opportunities to upgrade an existing building that is in poor condition and subject to a fire order, which risks life and safety. The opportunity to service the building with adequate fire stairs and a lift ensures occupant safety being increased significantly over the existing situation
- the additional building height over 19-21 The Corso allows for the provision of common open space area, with a northern orientation that is accessible to all occupants of the building. This will enhance the amenity of the building, which has limited opportunities for open space areas attached to each apartment, having regard to the importance of the building elevations to the streetscape, particularly facing The Corso
- the additional building height provides opportunity for additional accommodation in a highly accessible location, with the focus of access being on walking, cycling and public transport
- the additional building height has a very minor impact over the public domain as a result of non-compliance with the development standard, which is generally limited to the footpath adjacent the church, opposite the site; the additional height does not compromise building openings that may otherwise restrict light to that space. The imposition only occurs for a low section of the existing wall and landscaping adjacent and is therefore not of significant detriment to the setting of that site, nor the public domain as a whole
- the additional building height, having regard to the built form of adjoining properties, does not result in adverse privacy conditions between sites
- from the public domain, the areas of non-compliance have no visibility that otherwise affect the bulk and scale of the building
- the areas of non-compliance provide greater opportunities for passive surveillance over the public domain of both street frontages
- the area of non-compliance across No 23 The Corso has a material public benefit by disguising the view of the Market Lane car park as intended by the planning controls.

On balance, the proposed height breach achieves the planning purpose by providing a high-quality mixed-use development in a suitable location in close proximity to services, employment and transport. These benefits are in absence of any significant additional adverse streetscape or amenity impacts.

Therefore, having regard to the above, there are sufficient environmental planning grounds to permit variation to the development standards for height and floor space ratio.



## The Public Interest

Clause 4.6(4) states as follows:

(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*

The next element that the Council needs to be satisfied with in order to vary the development standard is that the proposed development will be in the public interest if the standard is varied because it is consistent with the zone objectives.

Table 2: Compliance with the zone objectives

<b>1 Objectives of zone</b>	<b>Comment</b>
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.	The proposed development will provide for a range of retail and business uses that will serve the needs of people who live in, work in and visit the local area and retain the required floor space that is desired for development within the Manly Town Centre in the B2 Local Centre zone.
To encourage employment opportunities in accessible locations.	The proposed uses will continue to provide local employment within the area.
To maximise public transport patronage and encourage walking and cycling.	There is no parking provision on the site; the development is entirely reliant upon public transport, 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.	The proposal provides for a mixed-use development comprising of a food and drink premises and retail premises on the ground floor level and residential accommodation on Level 1-3. These issues of amenity are addressed in the Acoustic Impact Assessment and the Traffic and Parking Report.





As demonstrated, the proposed development will comprehensively meet the objectives of the development standards for height of buildings and the zone objectives.

Accordingly, the Council can be satisfied that it is in the public interest to vary the standard for the purpose of this development application. The implementation of the development, despite non-compliance, will ensure that existing resources are utilized without placing undue pressure on the surrounding environment, both natural and built, while complying with the relevant objectives and producing a better outcome for the development, due to its own site constraints.

Separate to the zone objectives are also the benefits of:

- enhancing the amenity of the building by inclusion of a roof top communal open space area, which will enhance opportunities for passive surveillance over the Market Lane frontage, as well as enhance the amenity and lifestyle of building occupants
- ensuring lift serviceability to improve access to the whole of the building, which is not currently available, for those less mobile
- ensuring compliant access in terms of fire stairs, which do not currently satisfy the relevant fire safety code requirements and thus improving the safety of the building
- an opportunity to screen the existing, unsightly public car park to the north of the site which otherwise erodes the built form and character of The Corso, when looking north, consistent with the stipulation in the MDCP
- enables additional residential accommodation to be provided, which is highly accessible to public transport, while significantly enhancing the amenity of accommodation over the existing situation, as well as enhancing opportunities for private open space areas being attached to certain dwellings, as well as maximised opportunities for solar access and cross ventilation, which are designed having regard to the boundary conditions
- reuse of the existing building structure which reduces the environmental footprint of the building, particularly during the construction phase.

### Secretary's concurrence

By Planning Circular dated 21 February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume concurrence to clause 4.6 requests except in the circumstances set out below:

- Lot size standards for rural dwellings
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The Circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP



processes and determinations are subjected to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

### Conclusion

The development application does not comply with the development standard contained at cl. 4.3 of the MLEP. However, the proposal achieves the requirements pertaining to cl.4.6 of the MLEP, which allows for development standards to be varied.

Accepting the control for height of buildings as a development standard, the component of the building that exceeds the height control provides a superior outcome for the site that is enunciated through a skilful and quality design consistent with the objectives of the standards and the zone objectives, as well as the site-specific purpose of increasing building height to reduce the unsightly built form in the vicinity of the site. The proposal is also consistent with the intended streetscape character, taking account of existing conditions which are relevant considerations (see *SJD* and *Big Property*).

The variation to the development standard should therefore be supported by the consent authority in the circumstances of the case and as advocated in the Design Review Panel's consideration of the matter.

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<sup>i</sup> ground level (existing) means the existing level of a site at any point

