

**Amended Request for Variation to the Development Standard for Floor Space Ratio (FSR),
 pursuant to clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP)
 75 The Corso, 41 & 42 North Steyne
 (14 July 2022)**

This Amended Request to vary a development standard for FSR 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 FSR, contained at cl. 4.4 of the MLEP for Floor Space Ratio.

This Amended Request follows on-going discussions with the Respondent Council and relies upon the amended plans prepared by Squillace Architecture and Interiors, as set out in the Schedule of Amended Plans below and subject to the Notice of Motion dated 15 July 2022.

Table 1: Architectural drawings for which development consent is sought

Plan Reference	Plan Name	Revision	Date
DA-018	Lower Basement Level – Demolition Plan	B	11/11/2021
DA-019	Basement Level – Demolition Plan	C	11/07/2022
DA-020	Ground Floor – Demolition Plan	C	11/07/2022
DA-021	Level 1 – Demolition Plan	C	11/07/2022
DA-022	Level 2 – Demolition Plan	C	11/07/2022
DA-023	Level 3 – Demolition Plan	C	11/07/2022
DA-024	Level 4 – Demolition Plan	C	11/07/2022
DA-025	Roof Level – Demolition Plan	B	11/11/2021
DA-098	Lower Basement Plan	B	11/11/2021
DA-099	Basement Floor Plan	E	11/07/2022
DA-100	Ground Floor Plan	D	11/07/2022
DA-101	Level 1 Floor Plan	D	11/07/2022
DA-102	Level 2 Floor Plan	D	11/07/2022
DA-103	Level 3 Floor Plan	D	11/07/2022
DA-104	Level 4 Floor Plan	E	11/07/2022
DA-105	Roof Plan	E	11/07/2022
DA-201	East and West Elevations	C	11/07/2022
DA-202	North and South Elevations	C	11/07/2022
DA-401	Section A	C	11/07/2022
DA-402	Section B	C	11/07/2022

Existing and Proposed FSR

The site benefits from a complex FSR control, which allows for an FSR of 2.5:1 on part of the site and 3:1 on the more central portions of the site, away from the street frontages.

Table 1 below summarises the existing and proposed FSR for the site, as originally lodged. Following that, Table 2 provides the amended proposed FSR calculations for the site and should be read in conjunction with DA801, Revision C, prepared by Squillace.

Table 2: Summary of existing and proposed floor space calculations

	Site A				Site B				Site C & D				TOTAL (m2)
Permitted FSR	m2	FSR (:1)	m2	FSR (:1)	m2	FSR (:1)	m2	FSR (:1)	m2	FSR (:1)	m2	FSR (:1)	
Allowable GFA	3,478	2.5	885	3	320	2.5	402	3	396	2.5	914.1	3	6,395
Existing GFA	2,885	2.07	266	0.9	256	2	356	2.65	579	3.66	1189	3.9	5,531
Proposed GFA	2,943	2.11	254	0.86	398	3.1	621	4.63	460	2.9	1166	3.82	5,842
	GFA proposed which exceeds the standard												
	Locations where GFA is reduced over existing situation												

The gross floor area of the original proposal exceeded the development standards on the following parts of the site:

- Site B, where the permitted FSR is 2.5: 1; the proposed FSR was 3:1
- Site B, where the permitted FSR is 3.0: 1; the proposed FSR was 4.63:1
- Site C & D, where the permitted FSR is 2.5:1; the proposed FSR was 2.9:1 (noting that this is reduced from an existing FSR of 3.66:1)
- Site C & D, where the permitted FSR is 3.0:1; the proposed FSR was 3.82:1 (noting that this is reduced from an existing FSR of 3.90:1).

Table 3: Summary of amended existing and proposed floor space calculations

	Site A				Site B				Site C & D				
Permitted FSR	m2	FSR (:1)	m2	FSR (:1)	m2	FSR (:1)	m2	FSR (:1)	m2	FSR (:1)	m2	FSR (:1)	TOTAL
Allowable GFA	3,478	2.5	885	3	320	2.5	402	3	396	2.5	914.1	3	6,395
Existing GFA	2,885	2.07	288	0.9	256	2	356	2.65	579	3.66	1189	3.9	5,553
Proposed GFA	2,943	2.11	254	0.86	384	3.1	571	4.26	440	2.78	1142	3.75	5,734

The gross floor area of the amended proposal exceeds the development standards on the following parts of the site:

- Site B, where the permitted FSR is 2.5: 1; the proposed FSR is 3:1
- Site B, where the permitted FSR is 3.0: 1; the proposed FSR is 4.26:1
- Site C & D, where the permitted FSR is 2.5:1; the proposed FSR is 2.78:1 (noting that this is reduced from an existing FSR of 3.66:1)
- Site C & D, where the permitted FSR is 3.0:1; the proposed FSR is 3.75:1 (noting that this is reduced from an existing FSR of 3.90:1).

The purpose of this amended Report is to provide sufficient justification to vary the development standard for FSR, which has been reduced from the original development application.

The Site

The site is located at 75 The Corso, 41 and 42 North Steyne. There is no change to the height of 75 The Corso. The site has a total area of 2,073.7m².

The Development Application

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

The Development Standard

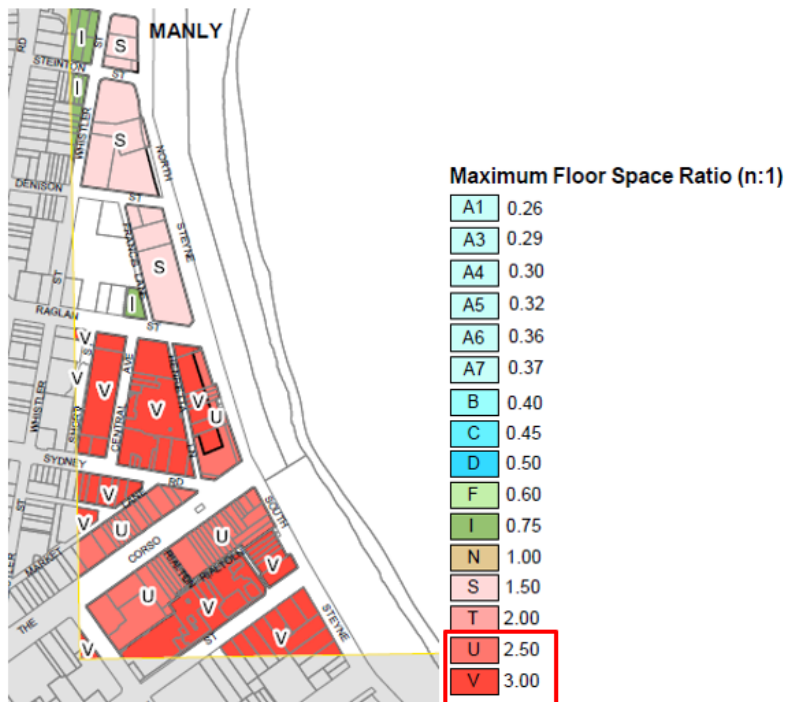
Cl. 4.4 of the MLEP states:

- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*



The FSR map stipulates two separate standards, being 2.5:1 and 3:1.

Figure 1: Floor Space Ratio Map



Definitions

The Dictionary to the WLEP provides the following in relation to how the gross floor area is to be measured:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
 - (b) habitable rooms in a basement or an attic, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement—

- (i) storage, and
- (ii) vehicular access, loading areas, garbage and services, and

- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and



- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

Non-Compliant Section of the Development

As stated above, the gross floor area of the amended proposal exceeds the development standards on the following parts of the site:

- Site B, where the permitted FSR is 2.5: 1; the proposed FSR is 3:1
- Site B, where the permitted FSR is 3.0: 1; the proposed FSR is 4.26:1
- Site C & D, where the permitted FSR is 2.5:1; the proposed FSR is 2.78:1 (noting that this is reduced from an existing FSR of 3.66:1)
- Site C & D, where the permitted FSR is 3.0:1; the proposed FSR is 3.75:1 (noting that this is reduced from an existing FSR of 3.90:1).

On a more holistic basis, for that part of the site where development is to take place (i.e. Sites B, C and D) the permitted FSR is 2.5:1, the proposed FSR is 2.88:1 (reduced from 2.99:1); for that part where the permitted FSR is 3:1, the proposed FSR is 3.90:1 (reduced from 4.07:1). The combined FSR of these sites is 3.49:1 (reduced from 3.64:1). Therefore, the range of exceedance is between 0.39: 1 and 0.9:1 based on the amended proposal.

Is Clause 4.4 a Development Standard?

Cl. 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: ...

- (a) 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 FSR in the relevant zone, cl. 4.4(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.



Equally importantly, it should be noted that in the recent decision of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 the Court at [73] held that “it should be noted cl 4.6 of [LEP] is as much a part of [LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.”

The Proposal's Non-Compliance with the Development Standards

The permitted gross floor area across the site (including Site A) is 6,395m². The existing gross floor area is 5,553m²; the proposed gross floor area is 5,734m², resulting in a minor increase of 3.3% more than the existing gross floor area across the sites combined. However, due to the limitations imposed by cl.6.16 for non-residential floor space in the B2 Local Centre zone, subdivision is proposed to enable Sites B, C & D to remain on an allotment separate to Site A.

For Sites B, C and D, where the permitted FSR is 2.5:1, the proposed FSR is 2.88:1; for that part where the permitted FSR is 3:1, the proposed FSR 3.90:1. The combined FSR of these sites is 3.49:1 (reduced from 3.64:1). Therefore, the range of exceedance is between 0.39: 1 and 0.9:1 based on the amended proposal.

While not necessarily determinative, it is relevant to note that for Sites C and D, there is a proposed **reduction** in FSR over the existing situation, which is further reduced by the amended proposal.

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 4: 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.
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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	Not applicable
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

Achievement of the objectives of the development standards

The objective for FSR is addressed below, as it relates to the non-compliant parts of the proposed building.

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

The desired future streetscape 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 foreshore scenic protection area and design excellence, as well as the Manly Town Centre provisions contained in the Manly DCP, but also having regard to the provisions of State Environmental Planning Policies (*Big Property Group Ltd v Randwick City Council* [2021] NSWLEC 1161 (**Big Property**)).

Also as held by the Court in *Big Property*, desired future character is not solely determined by the LEP development standards, including maximum floor space ratio, 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. There is the opportunity to consider this element of the proposed form within the existing development that forms the built context of the site and is not necessarily reflected in the desired future character statement on a site-specific basis.

In this regard, it is noted that the proposal, carefully and skilfully attributes increased FSR towards the centre and rear of the site, consistent with the standards themselves, to provide a transition away from the more sensitive streetscape area of North Steyne.

In terms of prevailing floor space, the photographic survey contained in the Urban Design Report, prepared by Squillace Architects, dated August 2021, makes it abundantly clear that there is no prevailing bulk and scale in the context of North Steyne, but instead a highly diversified set of buildings with varying heights, forms and scale that do not result in one predominant character in that context.

Along Henrietta Lane, which has a more limited frontage when considered in its visual context, having regard to the proposed form, bulk and scale, as demonstrated in DA901, the proposal provides only a minor and subtle change at the roof level which is recessed from the laneway and creates a degree of visual interest to this frontage in the context of what is otherwise a frontage which has limited architectural interest as a predominately service laneway, with buildings clearly having their rear faces towards this.



In terms of the desired future streetscape character, for the Manly Town Centre, the Townscape Principles, where relevant to the subject site, are addressed in the design scheme as follows:

- there is no change to the strongly defined corner element of Hotel Steyne
- in all cases, the proposed appearance to each of the streetscapes provides a highly responsive approach to the scale, proportion, form, bulk and lines of the visible facades as they relate to the site
- the position of floor space within the proposed development is responsive to the existing floor levels that provide a continuum in visual form to the streetscape character as it fronts both streets thus enabling a form of infill development to the existing streetscape, despite the additional FSR proposed

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 existing pattern of building form to each of the street frontages is retained, consistent with their existing composition, such that the streetscape character is maintained, with increased proportions of recessive elements that ensure that any bulk attributable to street walls is not apparent, despite there being a breach of the FSR standard
- existing setbacks are generally retained aside from a newer section of proposed form at Level 3 and a very minor proportion at Level 4, on the northern side of the building which is forward of the existing building, albeit significantly reduced from the original development proposal (and in turn the development standard), but reinforces both the horizontal and vertical pattern of No. 41 which is responsive to the existing conditions of Hotel Steyne and does not adversely contribute to the bulk of the building, particularly when viewed from the public domain, most notably evidenced where Level 3 peels back from the principal building form and Level 4 is not evident from the streetscape
- there are no embellishments to roof forms that otherwise dominate the scale or form, nor otherwise imposing additional non-compliant FSR that is outside of the building envelope that would otherwise adversely impact the enjoyment from adjoining properties to the west.

The aforementioned controls make clear the principles pertaining to redevelopment in the Manly Town Centre which is to be balanced between the development standards and the retention of existing building envelopes that are responsive to the streetscape context, small allotment frontages, and ensure responsiveness to horizontal proportions. These elements are clearly evidenced in the Urban Design Report and the proposed development demonstrates a sympathetic transition between old and new in the streetscape to those properties both immediately north and south, but also taking account of the broader context of nearby buildings, where there is a significant differentiation in form, architectural design and building scale. Despite the upper section of the building, the amended design reflects a suitable composition of building form that is recessed from both street frontages, and peels away from the principal, compliant, proportion of the building below, thus creating a sympathetic relationship, especially with the listed item, of the Hotel Steyne adjacent. By providing the extent of recession in the building form that is proposed by the amended scheme, the prevailing streetscape setback is proposed to ensure that the upper floors of the building, and indeed the FSR, do not adversely impose upon the streetscape character of either frontage.

At the Henrietta Lane frontage, the character of the building form at the upper non-compliant areas continues the prevalence of horizontal form that dominates this service laneway, while providing an articulated roof element that, at its upper levels, is substantially pulled back to reduce its visual presence, while ensuring that the sense of architectural blandness that is prevalent with the existing form and above the development standard is improved from a streetscape perspective. Again, the setbacks and materiality



are respected having regard to the appearance of both historic and contemporary forms in this laneway, while the narrow vertical expression is maintained to ensure that small allotment frontages are retained.

Importantly, while the GFA increases at the upper level, it does so in a manner which improves the existing visual presentation of the roof with services that are currently highly visible and replaces them with a well designed, contemporary form that is a visual improvement in both visual and streetscape terms Photograph 1: Existing structures on top of 42 North Steyne which compromise the existing visual aspect from Apartment 504 within the adjoining development, looking east



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 FSR intrudes the standard, the characteristics desired in the streetscape will not be absolved by the non-compliant building form and are generally consistent with the expectation of the site in its existing form, while being improved through a more skilfully designed architectural response.

(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,

The density and bulk of the proposed building does not obscure landscape or townscape features. This is addressed in the SEPP 65 Design Principles statement prepared by Squillace, as follows:

The subject site is currently home to a four storey shop top building with basement parking and an old basement nightclub. Vehicular access is currently via a driveway ramp from Henrietta Lane to a basement car park.

The proposed development looks to largely keep the bulk of the existing 4 storey building structure on 42 North Steyne with a new structure that will replace the existing Café Steyne building.



The design takes inspiration from the proportions and materiality of the existing hotel building as well as being a transition for the more modern buildings situated to the north of the site. The proposal utilises the expression of the brown face brick, new painted rendered finishes that accentuate the new curved forms and glass detailing.

The small existing balconies have been enlarged and modified to better suit the modern lifestyle with access to natural light and enjoyment of the iconic views on offer.

The new services on the roof top have been significantly improved to sit entirely under the parapet level. It will provide a cleaner outlook for the neighbouring buildings to the west.

The design statement makes clear that the non-compliant density that is proposed above the development standard for FSR seeks to moderate this from the existing form, particularly when considered from the south, while reducing its impact in terms of bulk through the modulation and materiality, which is also representative of a material improvement over the existing situation. While there is a further protrusion of building density on the eastern side of the site, this comprises both solid and more modulated forms, as well as a recessive element, at the upper floor to ensure that the bulk of the building has limited appearance from the eastern side such that both the bulk and scale of the building are suitably moderated within their context. This is further enhanced in the amended proposal with the built form being angled away from 75 The Corso at the upper building level, thus reducing the visual interface with the courtyard below with Hotel Steyne.

Matters of disruption to views are also addressed in the View Analysis Assessment, which accompanied the original development application, in conjunction with the Updated View Analysis Assessment, which follows the amended design, from the apartment within the adjoining development which would experience the greatest level of impacts because of the proposed development (Attachment 1) Those view loss assessments are adopted for the purposes of this clause 4.6 written request.

It is submitted that the current (amended) design minimises disruption of views to and from nearby residential development, particularly to the west of the site, when compared with the existing situation (and significantly improves the visual appearance of the upper floor and roof of the building, which forms a negative element of the existing views available, and to the extent relevant, also minimises the disruption of views between public spaces.

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

Matters of character as this relates to visual relationship area addressed above.

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

The amended development, at the FSR proposed, minimises the adverse environmental impacts on the use and enjoyment of adjoining land and the public domain. The main issue in this regard is solar access. The proposal does result in a minor loss of solar enjoyment to the public domain along North Steyne, between 12:00pm and 3:00pm, at mid-winter and a similar minor loss over Ocean Promenade by 3:00pm, with some minor improvements being achieved with the amended design.



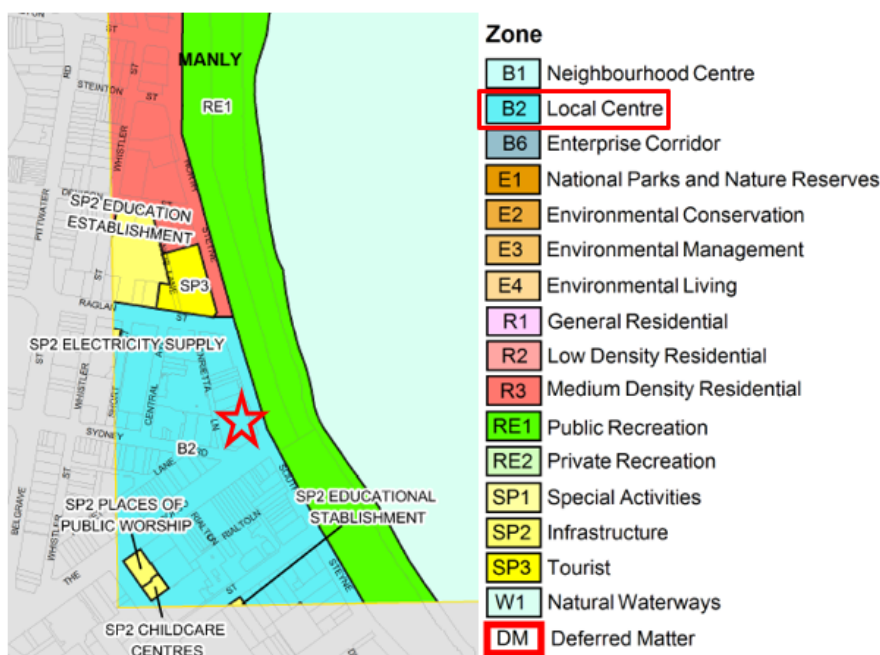
The minor loss does not preclude *adequate sunlight* being achieved to these spaces and the limited extent of loss would not be discernible. The improvement to the public domain does, however, improve the pedestrian space and likely outdoor seating areas that will enhance useability of that space over the existing situation.

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

The green wall to Henrietta Lane (being a public service and access lane directly accessible to Manly Corso) has been designed and included **to positively enhance** 'the use or enjoyment of adjoining land and the public domain', consistent with objective (d) of cl.4.4.

In addition to the FSR objectives, the zoning map below demonstrates that, surrounding the site, there is a desire for medium density housing in the form of shop top housing, within a B2 Local Centre zone. This zoning map, coupled with the height of buildings map, seeks to populate the immediate locality with development balanced between residential and non-residential uses. As the proposed development is for such purpose, and the adjoining properties benefit from the same zone, there is no apparent need for a transition in scale because of a change in zone and is representative of the approach to land use planning as set out at [44] in **Big Property**.

Figure 2: Zoning Map



In terms of the FSR standards in the immediate locality, those in the vicinity of the subject site, generally seek for a built form with greater density in the centre and rear of the sites fronting North Steyne and The Corso, and subsequently increase to 3:1 with sites to the west, albeit that these benefit from a more significant height limit than the subject site.

Figure 3: Streetscape context of the site, which is dominated by the taller building forms to the west (Source: googlemaps)





Taking the actual context into account, aside from the technical standard, it is the as-built context immediately surrounding the site that is relevant, as demonstrated above. The form of these buildings behind the subject site is therefore what dominates the visual catchment, particularly when looking at the site in a westerly direction, from the public domain more so than the built form that accrues along North Steyne itself. This demonstrates that the scale of the non-compliant section of built form comfortably fits within this streetscape and without appearing obtrusive.

(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 FSR, as proposed by the amended development on part of Level 4 and Level 5 of the building as:

- The site and its context, and in particular the existing buildings and the exposed roof element with services visible to the west, are relevant matters for this head of consideration, which have informed the design of the proposal, as detailed further below. As such, the existing site context is a highly relevant *environmental planning ground* for the purposes of this clause 4.6 variation request.
- There is no additional adverse solar impact on the adjoining properties because of the non-compliant form to the south of the subject site; it is the compliant component of the building that causes effect before the non-compliant component does, such that reducing the scale of this, provides no material benefit to adjoining properties.
- The affected parts of the amended building design at Levels 4 and 5 provide increased setbacks to the eastern and western boundaries, to ensure that the built form does not dominate either street frontage, peeling away from the principal building form and being recessive in appearance, while providing sufficient separation to other properties to ensure that adequate privacy is achieved.
- From the public domain, the non-compliant part of the amended building design, when viewed from the eastern side of North Steyne (17m from the site boundary) at a standard eye height of 1.6m, using a 30 degree angle, is not visible as the eye intersects with the awning of Level 2, before it intersects with the proposed height of Level 3, which has been increased in its setback distance from the street, being only marginally forward of the existing building face and all other protrusions being external to the building proper at this level. Visibility of the upper, fifth level, as amended, would not be at all evident, with the view line obstructed by the permitted building height atop Level 2, before any of the non-compliant



proportions of the building. Given the lack of visibility, the amended proposal will not result in adverse impact in terms of bulk and scale where the additional FSR is positioned.

- In contrast, by standing in Henrietta Lane, there would be absolutely no discernible impact of the non-compliant section of the building, over the existing situation as a result of the amended building design.
- The non-compliant FSR does not compromise views from the public domain surrounding the site.
- The additional FSR does not take away from the visual presence of any landscape setting.
- Sufficient solar access is provided to all apartments within the development, with apartments achieving 100% solar access compliance for two hours or more at mid-winter, because of larger floorplates, all of which benefit from dual aspect and enhanced with the provision of light wells.

On balance, the proposed FSR breach achieves a planning purpose by providing a high-quality mixed-use development in a suitable location near services, employment and transport. It is a superior development to that which exists now, from a streetscape presentation perspective, consistent with the broad objectives of clause 4.6 to allow flexibility of LEP controls in order to achieve better outcomes for and from development. 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 floor space ratio.

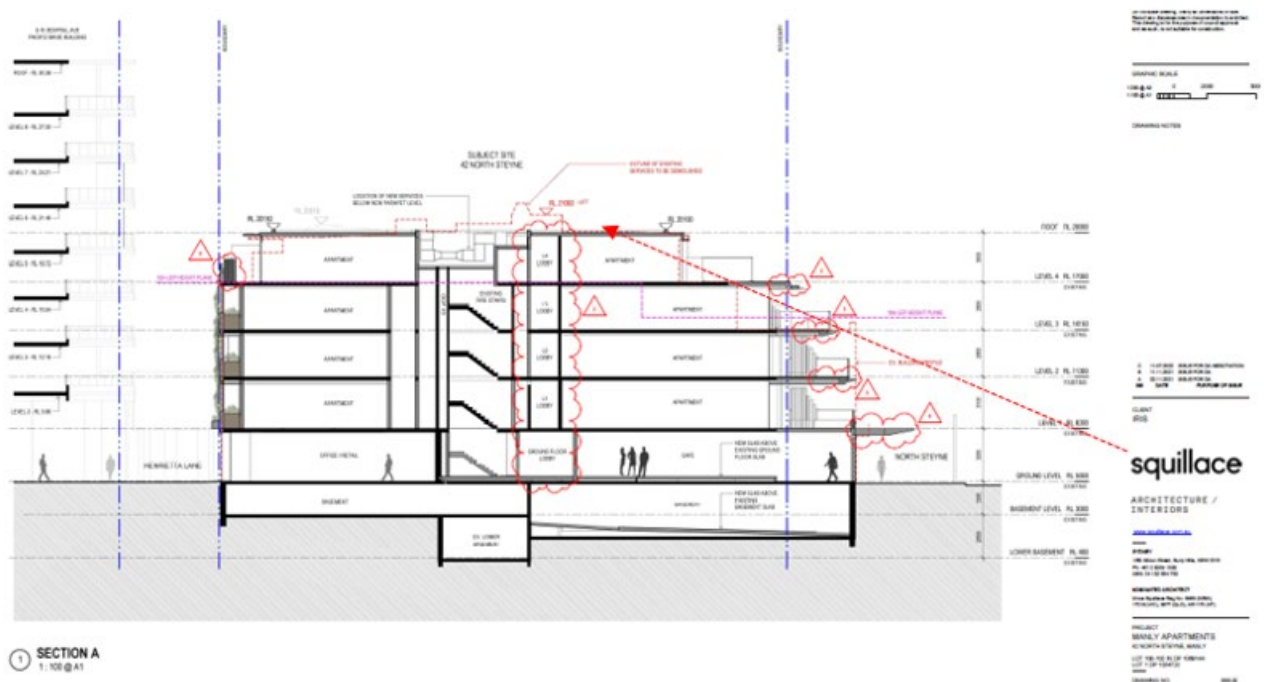


Figure 4: View line from the public domain, opposite the site on the eastern side of North Steyne, looking west, showing the impact of the compliant, versus non-compliant built form

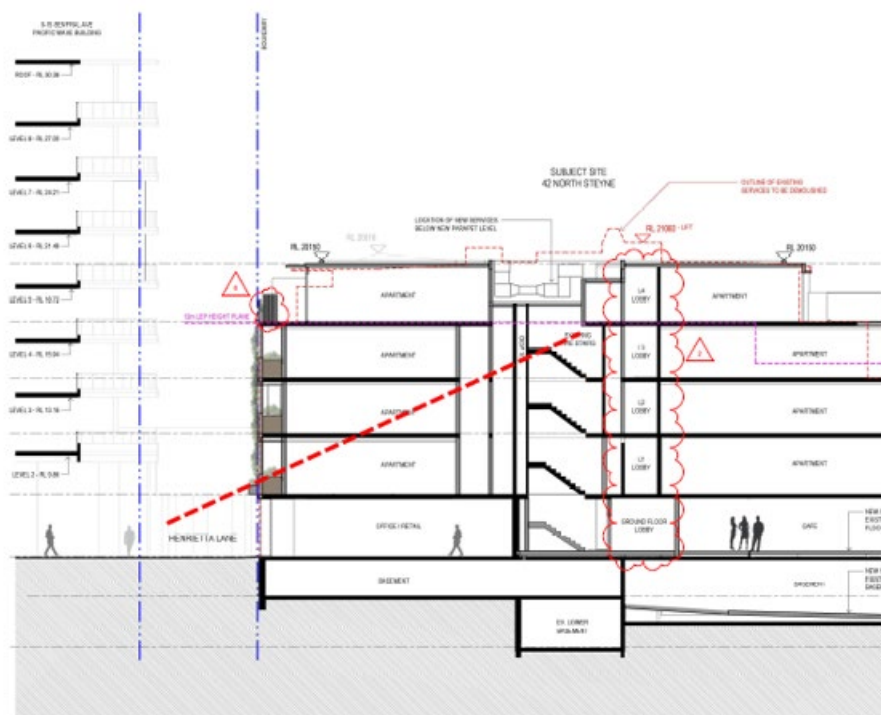


Figure 5: View line from the public domain, opposite the site on the western side of Henrietta Lane, looking east, showing the impact of the compliant, versus non-compliant built form

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 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 5: Compliance with the zone objectives

1 Objectives of zone	Comment
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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.	The proposed parking provision is less than that required under the relevant planning controls, thus encouraging the both 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 on the ground floor level and residential accommodation on Level 1-4. 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.

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. 4.4 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 FSR as a development standard, the component of the amended building design that exceeds the height control provides a superior outcome for the site that is enunciated through a skilful and quality design that is consistent with the objectives of the standards and the zone objectives. 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.

ⁱ ground level (existing) means the existing level of a site at any point

