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

PART OF 19-23 THE CORSO, MANLY

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

Context – Clause 4.6 of Manly LEP 2013

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

No works are proposed to the existing two storey shop building at No. 23 The Corso as part of the subject proposal as it is to be the subject of a separate DA to Council.

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

The existing building on the site already exceeds the 2.5:1 FSR standard under the LEP with a FSR of 2.66:1 (1397 sqm GFA), an exceedance of 0.16:1 (84 sqm GFA) (see **Appendix 3** to the SEE).

The proposed development results in an increase in the existing FSR to 2.78:1 (1456.9 sqm GFA), an increase of 59.9 sqm GFA (0.12:1) compared with the existing situation.

The proposal therefore involves an overall exceedance of the standard by 0.28:1 (147 sqm GFA).

The increase in the FSR of the proposed development results from the proposed roof top additions, together with additional floor space within the existing light wells.

The proposed FSR of 2.78:1 represents a variation to the controls provided by Clause 4.4 of 0.28:1, or 11.2%.

Clause 4.6 of the LEP provides:

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

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

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

This written request has also been prepared having regard to the recent judgment of the Chief Justice of the Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action). At paragraphs 17 – 21 of *Initial Action*, Preston CJ confirmed the findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe), regarding the available avenues to establish that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case (in accordance with the test provided by cl 4.6(3)(a) of the LEP) including establishing that the objectives of the development standard are achieved notwithstanding non-compliance with the standard (*Initial Action* at [17]).

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

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

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

Written Request

As stated above, and as set out in the Statement of Environmental Effects dated May 2019 (the SEE), when measured in accordance with the definition in the LEP, the existing building on the site already exceeds the 2.5:1 FSR standard under the LEP with a FSR of 2.66:1 (1397 sqm GFA), an exceedance of 0.16:1 (84 sqm GFA) (see **Appendix 3** to the SEE).

The proposed development results in an increase in the existing FSR to 2.78:1 (1456.9 sqm GFA), an increase of 0.12:1 (59.9 sqm GFA) compared with the existing situation. The proposal therefore involves an overall exceedance of the standard by 0.28:1 (147 sqm GFA).

The increase in the FSR of the proposed development results from the proposed roof top additions, together with additional floor space within the existing light wells.

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

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

Manly Local Environmental Plan 2013 (the LEP).

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

The zoning of the land is B2 Local Centre.

3. What are the objectives of the zone?

The objectives of the B2 zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

4. What is the development standard being varied?

The development standard being varied is the FSR development standard.

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

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

6. What are the objectives of the development standard?

The objectives of clause 4.4 are:

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

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

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

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

The maximum numeric value proposed is 2.78:1, equating to an additional FSR of 0.28:1.

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

The percentage variation is 11.2%.

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

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

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

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

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

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

Assessment:

The bulk and scale of the proposed development, including the proposed FSR variation, is considered to be acceptable in its context and would not give rise to unacceptable impacts on the existing streetscape, townscape or character of the area. The existing building already exceeds the FSR standard with a FSR of 2.67:1. The proposal represents a minor increase (59.9 sqm GFA) from the existing situation with a FSR of 2.78:1.

The proposed FSR variation relates to the proposed additions to the rear of the building comprising the proposed roof top additions, together with additional floor space within the existing light wells.

The proposed FSR variation would be sympathetic to the existing development on the site and in the wider area. As alterations and additions to an existing building, the proposal, and the associated breach of the FSR standard, maintains the overall bulk and scale of the existing building and, in particular, does not extend beyond the building's existing maximum height set by the parapet to The Corso.

The proposal, including the FSR variation, maintains the overall bulk and scale of the existing development as viewed from the public domain and the existing relationship of built forms in the streetscapes. The proposed development will therefore be compatible with the adjoining development, the streetscapes of The Corso and Market Place and will maintain the amenity of the public domain.

The proposed additional floor space, and the FSR variation, are sited and designed to minimise their visual prominence when viewed from the public domain in order to maintain the existing streetscape/townscape character of the site as viewed from The Corso and Market Place. The proposed FSR variation will not obscure any important landscape or townscape features having regard to the siting and design of the proposed additions.



Figure 1: Street View from The Corso (top row - existing; bottom row – proposed)

Source: Extract from Dwg No. 17349-A-12, NBR5 Architecture, see Appendix 3 to the SEE

From The Corso and Market Place, the proposed FSR variation will only be apparent in oblique views of the side elevations available over the roofs of neighbouring, lower buildings (see **Figures 1** and **2**).

From The Corso, the proposed FSR variation would only be visible over the roof of No. 23 The Corso (see **Figure 1**). It would not be visible in direct views of the building from The Corso as it would be screened by the existing parapet and built form.

The proposed rooftop additions, and associated FSR variation, are set back a minimum of 3.5m from the rear façade with varying setbacks (up to 1.47m) from the side boundaries to minimise their visible bulk and scale (see **Figure 2**). When viewed directly from the rear in Market Place, the proposed FSR variation associated with proposed Unit 11 will not be visible and the proposal maintains the existing maximum height, bulk and scale of the rear façade set by the parapet/balustrade at RL 18.25. Only the edge of the roof form of the proposed unit, and the FSR variation, would be visible in angled views to the rear of the building from Market Place.



Figure 2: Street View from Market Place (top row - existing; bottom row – proposed)

Source: Extract from Dwg No. 17349-A-12, NBR Architecture, see Appendix 3 to the SEE

The proposed additions, and associated FSR variation, are an extension of the existing built form at the Third Floor of the building and, to the extent that they would be visible along the side elevations, would appear as a logical extension of the existing built form, compatible with its height, scale and bulk. While the materials and finishes of proposed Unit 11 are contemporary to distinguish the addition from the existing building in accordance with heritage requirements, the proposed darker colours will ensure that the proposed addition and FSR variation, where visible, are visually recessive.

Desired Future Streetscape Character

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

Manly DCP Townscape Objectives and Provisions

The townscape objectives of the DCP are as follows:

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

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

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

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

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

- no parking exists on the site and none is now proposed;
- the proposed development maintains the character of the locality by proposing alterations and additions to the existing building, including the FSR variation, which:
 - maintain the overall built form, bulk and scale of the existing building as viewed from the public domain;
 - do not exceed the existing maximum building height;
 - are sited and designed to minimise their visual prominence from the public domain to maintain the existing streetscape character; and
 - include the retention and upgrade of the existing building, including its façades to The Corso and Market Place, in a manner consistent with its heritage significance.
- it recognises the importance of pedestrian movement and townscape design in strengthening and promoting Manly Town Centre by:
 - maintaining and increasing the active frontage to The Corso and increasing the level of activation to Market Place through the location of the residential entry;
 - by refurbishing the existing awning to The Corso and providing a new awning to Market Place to improve pedestrian amenity; and
 - by improving the appearance of the existing building from both streets through the upgrade and refurbishment of the street front façades;
- it minimises negative visual impacts to promote townscape qualities through the siting and design of the proposed additions to minimise their visual prominence from the public domain, as detailed above and shown in **Figure 2**.

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

Local role of the site

The proposal generally maintains the local role of the site as minimal changes are proposed to the overall form and scale of the building as viewed from The Corso and Market Place. The proposed additions would only be visible from these vantage points in oblique views to the side elevations over the roofs of neighbouring buildings; they would not be visible in direct views from these frontages. The proposal maintains the existing built form relationship with adjoining development and public spaces.

While the proposed rooftop addition (Unit 11), and associated FSR variation, would be visible from higher surrounding vantage points (eg. Whistler car park upper levels), it is considered satisfactory as it is below the existing maximum height of the building, is clearly distinguishable from the original building fabric through its design and materials and its visual bulk and visibility from Market Place is minimised through its setbacks and height, as noted above.

No changes are proposed to the street frontage façade to The Corso which is to be retained and conserved in accordance with the HIS (see **Appendix 5** in the SEE) which will enhance the appearance of the building within the heritage item of The Corso. The proposed modifications to the rear façade to Market Place are compatible with the use and location of the building and satisfactory from a heritage perspective.

Townscape Principles Map

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

Design Details

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

- as set out in the HIS (see **Appendix 5** to the SEE) the proposal is complementary to adjacent buildings and the wider conservation area in terms of the design detailing of the façades. As noted above, no changes are proposed to the façade to The Corso;
- no change is proposed to the overall maximum height of the building which is the existing parapet to The Corso. The proposed additions sit below this height. No change is proposed to floor levels within the building, apart from the lowering of the floor levels at the rear Ground Floor in the lobby entry and waste storage area;
- the materials, textures and colours of the existing building are to be retained or reinstated where there is sufficient available evidence, while the proposed additional unit utilises contemporary design, materials and finishes and darker colours to distinguish it as new work;
- the proposal maintains the architectural style of the existing building fabric. The proposed rooftop addition is distinguishable from the original fabric through its materials and detailing;
- no change is proposed to the existing building footprint;
- the proposal will not give rise to any significant additional overshadowing or adverse wind effects as minimal change is proposed to the height and form of the building;
- the proposal will improve the appearance of the side walls of the building, to the extent that they are visible, through the rationalisation of the light wells and removal of external attachments/infrastructure;
- the Ground Floor has level access from The Corso and Market Place with an internal ramp within the entry from Market Place;
- retail space occupies the full width of the building frontage to The Corso;
- street numbering will be provided as required; and
- new plant and associated installations are proposed over the rear of the existing roof top. Screening in the form of a minimum 990mm high slatted screen is proposed around the plant to minimise any adverse visual impact on existing outlooks over the rear of the site.

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

General Character

The proposal, including the FSR variation is consistent with the general character of the Town Centre Conservation Area as set out in the DCP (see also **Appendix 5** to the SEE) in that it involves alterations and additions to an existing building which:

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

The Corso

The proposed development is consistent with the guidelines for The Corso (see also **Appendix 5** in the SEE), in that:

- the existing building at 19-21 The Corso, which is part of the group heritage item on The Corso, is to be conserved, not redeveloped;
- the importance of internal changes is recognised in the approach to the design of the proposed development as detailed in the submitted HIS (see **Appendix 5**);
- the proposed addition is sited to the rear of the Third Floor;
- the parapet to The Corso will continue to be read against the sky as the proposed works match or are below the parapet height;
- there are no critical views to be kept open to or through the site;
- no change is proposed to the existing subdivision pattern;
- a new building is not proposed;
- windows and balconies open to the street;
- the building height has been determined by site-specific requirements, in particular the height of the existing built elements on the site. As noted above, the proposed development does not result in any increase in the overall maximum height of the existing building;
- there is no existing arcade through the site;
- the existing footpath awning to The Corso façade is to be retained and conserved. A new awning is proposed to the Market Lane façade as required;
- the shopfront to The Corso occupies the width of the frontage (apart from piers) to maximise activity. Roller shutters are not proposed.
- the shop front is existing on the site. Alterations are proposed to provide articulation that relates to the loadbearing masonry above and a solid plinth below the contemporary glazing as described in the submitted HIS (see **Appendix 5**);
- the proposed rooftop addition has a clear contemporary design idiom;
- the proposal will utilise external colours that are appropriate for the type and age of the building. The original external colours will be re-instated if there is sufficient evidence on-site;
- all of the residential units within the building (including the existing units) will incorporate measures to reduce transmission of noise into the dwellings to meet the applicable internal noise level criteria as set out in the submitted Acoustic Report (see **Appendix 9**). That Report specifies glazing requirements for all living and bedroom

windows and external roof, ceiling and wall construction requirements for lightweight elements with which the proposed development will comply;

- external details for plant, exhausts, ducts etc. are designed to be part of the overall building structure;
- the proposal will contribute to the presentation of the building to Market Place and will improve casual surveillance of Market Place through the proposed changes to the rear façade; and
- the site specific controls in Schedule 6 to the DCP state in relation to 21 The Corso *redesign the two ground level entrance doors to the upper floors to give a more substantial appearance, with transparent glazing (to increase connection with street) and solid returns.* The proposed development removes the ground level doors to the upper floors from the front elevation. Access to the upper floors is via the residential lobby accessible from Market Place. The shopfront has been widened accordingly with masonry piers added to provide articulation that responds to the loadbearing masonry above.

In addition, the proposed FSR variation is an appropriate response to the heritage significance of the site and the streetscape of The Corso. As set out in the submitted HIS (see **Appendix 5** to the SEE):

- *The proposed development supports and enhances the cohesive low-scale development of Manly Town Centre through the retention and conservation of the primary façade and footpath awning to The Corso. It does not result in an increase in development height to a principle street and increases pedestrian amenity through retention and conservation of the footpath awning and full activation of the shopfront facing The Corso.* (p. 40)
- *The proposed development supports and enhances the significance of The Corso through the retention and conservation of a prominent commercial and residential building representative of the early 20th Century development of the Corso. Conservation of the building contributes to the significance and an appreciation of the fine collection of late 19th and early 20th Century buildings and therefore has the potential to enhance the visitor experience of The Corso.*

The proposed development does not attempt to alter the parapet details or the silhouette of the primary street façade against the sky. The conservation and refurbishment of 19-21 The Corso supports an appreciation of the character of The Corso gained through the gradual visual progression from Manly Cove to Ocean Beach through the retention of a prominent façade, its footpath awning and through the re-activation of the shopfront. (p. 42)

- *The primary façade to The Corso will be retained and conserved and will significantly enhance the appearance of the building within the heritage item and heritage listed Town Centre.*

The design of the refurbishment and additions has been carefully considered. It aims to retain and reinstate heritage detailing externally and internally and new additions are in contemporary materials, so they can be read as new fabric.

All existing views to and from the heritage items in the vicinity, and the character of Manly Town Centre and The Corso special Character Area and the Manly Town

Centre Conservation Area will be retained and conserved. The additions will not be visible in critical views as defined in the Townscape Principles. (p. 49)

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

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

Assessment:

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

Sunlight Access and Overshadowing

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

As shown in the submitted shadow diagrams (see **Appendix 3** to the SEE), the proposal does not give rise to any significant additional overshadowing as minimal change is proposed to the height and form of the building.

The diagrams show that the proposal, including the FSR variation, will result in minimal additional overshadowing of public open spaces affecting small areas of Whistler Street and Market Place. However, it is noted that those areas are likely to already be subject to overshadowing by existing neighbouring buildings and, taking into account that existing impact, the proposal will have no additional impact.

In addition, as the only change to its form, bulk or massing is at the rear of the existing building, the proposal will not result in any additional overshadowing of The Corso

Further, the proposal will not result in additional overshadowing of any residential development.

Privacy

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

The proposed FSR variation will not result in a loss of aural privacy to any neighbouring developments. Noise from the mechanical plant is considered in the assessment undertaken in the preparation of the Acoustic Report (see **Appendix 9**). That Report recommends that detailed acoustic review of plant selections should be undertaken at CC stage to determine appropriate acoustic treatments to meet the applicable noise emission

criteria. The Report states that satisfactory levels will be achievable through plant selection and location and standard acoustic treatments, if required.

The proposal will comply with the recommendations of the Acoustic Report and, therefore, it will not result in a loss of acoustic privacy to surrounding properties.

In addition, the proposal provides for an appropriate acoustic environment within the existing and proposed residential units through compliance with the recommendations of the Acoustic Report with respect to glazing requirements for all living and bedroom windows and external roof, ceiling and wall construction requirements for lightweight elements (see **Appendix 9**). Implementation of these measures will ensure that the development meets the applicable internal noise level criteria.

Views

The proposed FSR variation will not result in any significant impact on views. As noted above, the FSR variation does not exceed the existing maximum height of the building to The Corso and the additions to the rear of the Third Floor are of a lesser height designed to have minimal visual prominence from the public domain. To the extent that the FSR variation would be visible from the rear of the site, the additions and the FSR variation are designed to be compatible with the bulk and scale of the existing building.

The proposed addition to the rear of the Third Floor (Unit 11) extends some 3.5m beyond the rear building line of the existing rooftop laundry with a similar height. While there are taller residential developments to the west that may enjoy views over the subject site, the proposed development, including the FSR variation, would have a marginal impact on those views given its limited additional bulk compared with the existing building on the site.

The proposed additions, and the FSR variation, would also be visible from the upper levels of the Whistler Car Park to the north of the site. However, it would not disrupt views from this vantage point as it does not exceed the existing maximum height of the building as set by the parapet to The Corso.

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

Objective 4.4(1)(e) - to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres

Assessment:

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

The proposed development provides for continued retail activity at the ground floor level within a refurbished and upgraded retail space that will enable the proposal to contribute to the economic growth, retention of local services and employment opportunities in the centre. The quantum of non-residential floor space proposed on the site exceeds Council's minimum floor space for such uses.

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

Assessment:

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

- it contributes to the range of retail uses in the zone that serve the needs of people who live in, work in and visit the local area, including existing and future residents of the subject building;
- it provides for employment opportunities in a highly accessible location through the non-residential floor space proposed which exceeds Council's minimum floor space for such uses;
- it maximises public transport patronage and encourages walking and cycling through the provision of residential development in a highly accessible, walkable location without the provision of private car parking; and
- it minimises conflict between land uses in the zone and adjoining zones and ensures amenity for the people who live in the local centre. In particular, it includes design measures to meet applicable acoustic criteria to ensure appropriate internal and external noise levels as set out in the Acoustic Report accompanying the application (see **Appendix 9** to the SEE).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- The existing development on the site involves a breach of the FSR standard. The additional breach now proposed is minor at 0.12:1 (59.9 sqm GFA).
- The bulk and scale impacts associated with the breach of the FSR standard are addressed by the proposed development through the siting and design of the proposal to minimise its visual prominence from the public domain and to maintain the existing townscape views of the site from The Corso and Market Place.
- The bulk and scale of the proposed development, including the proposed FSR variation, are consistent with the existing and desired streetscape character, will not obscure important landscape and townscape features and maintain an appropriate visual relationship between new development and the existing character and landscape of the area.
- The proposed development, including the FSR variation, is consistent with the townscape objectives and design principles for the Manly Town Centre.
- The proposed development, including the FSR variation, is an appropriate response to the heritage significance of the site, as part of The Corso heritage item, and the wider Manly Town Centre Conservation Area as detailed in the submitted HIS (see **Appendix 5** to the SEE).
- The FSR variation will not give rise to any significant adverse amenity impacts on surrounding development in terms of overshadowing, loss of solar access, loss of privacy, loss of views or noise.
- The proposed development results in the upgrade of the existing residential units and improvements in their amenity to achieve the Design Quality principles in SEPP 65.

- The additional apartment constructed as a result of the proposed FSR variation will enjoy a high level of amenity, which in the absence of significant external amenity impacts, confirms that the FSR variation can be accommodated on the site.
- The proposed development, including the FSR variation, achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.

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

Summary

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

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

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

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

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