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WRITTEN REQUEST PROVIDING GROUNDS FOR VARIATION TO THE FSR DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF MANLY LEP 2013

DEVELOPMENT APPLICATION FOR A CHANGE OF USE FROM SHOP TO PUB AT 19-23 AND ASSOCIATED WORKS TO INCORPORATE 19-23 THE CORSO AS PART OF THE IVANHOE HOTEL AT 19-31 THE CORSO, MANLY

Context – Clause 4.6 of Manly LEP 2013

Clause 4.6 of the LEP provides for the variation of development standards in respect of a particular development proposal. In particular, Clause 4.6(3) provides:

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.*

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

It is noted that the NSW Department of Planning and Environment (DP&E) 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 standards is based on the DP&E's Guide.

Written Request

The existing building on the site exceeds the maximum FSR of 2.5:1 under the LEP with a FSR of 2.66:1 (1397sqm GFA), an exceedance of 0.16:1 (87sqm GFA).

DA 2019/0512 has been lodged on 23 May 2019 for alterations and additions to the existing shop top housing building at 19-21 The Corso, Manly. The Application results in a total increase of the existing FSR to 2.78:1 (1456.9sqm GFA), an increase of 59.9sqm GFA (0.12:1) compared with the existing situation. Nevertheless, the

Application involves an exceedance of the FSR standard of 2.5:1 by 0.28:1 (147sqm or 11.2%).

The commercial component at ground floor and first floor of 19-23 The Corso will only result in a total increase of 4.85sqm GFA. The majority of the increase of floorspace are for the residential component at 19-21 The Corso which has been addressed in detail under DA 2019/0512.

The increase in the FSR of the Application results from the minor extension at the rear of the building in order to provide better accessible facilities and match the façade of the adjoining building for increased public safety.

The questions set out in the DP&I's Guide are addressed below.

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

Manly Local Environmental Plan 2012.

2. What is the zoning of the land?

B2 Local Centre.

3. What are the objectives of the zone?

The objectives of the B2 zone are:

- a) 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.
- b) To encourage employment opportunities in accessible locations.
- c) To maximise public transport patronage and encourage walking and cycling.
- d) 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 this clause are as follows:

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

- 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,
- c) To maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
- d) To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
- 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.

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

Maximum FSR 2.5:1, up to a maximum FSR of 3:1 within B2 zone if more than 50% of the FSR is for commercial use.

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

The proposed FSR is 2.78:1

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

The percentage variation is 11.2%.

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

In the circumstances of the case, strict numerical compliance would be unreasonable or unnecessary due to the matters set out below.

As mentioned above, the majority of the increased floor space are related to the residential component at 19-21 The Corso. This has been addressed under a separate application (DA 2019/0512) lodged with Council.

It must be noted that the commercial component at ground floor and first floor of 19-23 The Corso will result in a total increase of 4.85sqm GFA.

The bulk and scale of the proposed development is considered to be acceptable in its context and would not give rise to unacceptable impacts on any of the neighbouring properties or on the public domain.

The existing building exceeds the maximum FSR standard by 0.28:1 at 2.78:1, therefore the Application is seeking a minimal increase of 59.9sqm, equivalent to a 11.2% variation from the existing FSR.

Both the zone and FSR objectives in the LEP encourages commercial development within the B2 local centre, which is especially important as the

Hotel is located within the Town Centre of Manly, which is also a well-known tourist attraction. The Application seeks a change of use from a shop to pub and the works associated to incorporate 19-23 The Corso with the existing Ivanhoe Hotel at 25-31 The Corso.

The works include extending the rear to match the wall of the adjoining building. The increase in floorspace provides for a new accessible facility within the Hotel, and also provides a clear sightline and better lighting at the rear, which increases surveillance and therefore deters any potential anti-social behaviour. The new entrance to the proposed gaming room would also reduce opportunities for crime as it would be well used. Furthermore, it is considered that the proposed uniformed rear at Market Place would be more visual appealing to pedestrians and passing traffic.

Clause 4.4 (2A) of the LEP states that developments within a B2 zone may exceed the maximum floor space ratio allowed under the subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the GFA of the building will be used for purpose of commercial purposes. Although the increase in floorspace for Application is entirely for commercial use and could potentially benefit from the increased FSR, it does not comply as the adjoining building under the same title is mainly residential.

It must be noted that the proposed changes to the adjoining four storey mixed use building under the same title has been addressed under a separate application and therefore does not form part of this Application. This Application only relates to the change of use from a shop to pub and its associated works.

11. How would strict compliance hinder the attainment of the objects specified in Section 5 (a)(i) and (ii) of the Act?

Compliance with the standard would hinder the attainment of the objects of Section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and coordinate orderly and economic use and development of land.

The Application 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.

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.

The development as proposed is consistent with the provisions of orderly and economics development as it relates to an existing building already exceeding the FSR standard and provides for the upgrade and refurbishment of that building in a manner which is consistent with underlying intent of Council's controls, which responds appropriately to existing development in the site context and which will make a positive contribution to the character of the streetscape and the locality.

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?

The matter is addressed above. 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.

14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

Yes. In the circumstances of this Application, there are sufficient planning grounds to justify contravening the development standard being:

The existing development on the site involves a breach of the FSR standard. The Application is to increase the FSR by a minimal 1% further in order to match the adjoining building façade and provide improved facilities for patrons.

The Application will maintain the bulk and scale of the existing development on the site. It would improve the streetscape character of the site and neighbouring development as the façade at the rear will be consistent with the adjoining building.

The Application is consistent with the objectives of the LEP in that it encourages development that can facilitate growth especially in business zones.

The Application will not give rise to adverse amenity impacts on surrounding development.

Summary

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

In the context of 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.

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

Despite the Application'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.