

### **Clause 4.6 variation request – Floor Space Ratio**

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 2.5:1 representing a gross floor area of 1225.75 square metres. The stated objectives of this clause are:

- (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.*

It has been determined that the proposal increases the existing gross floor area by 21 square metres to a total gross floor area of 1277 square metres representing an FSR of 2.6:1 and a non-compliance of 51.25 square metres or 4%.

Again clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied.

### **Claim for Variation**

#### **Consistency with zone objectives**

The subject property is zoned B2 Local Centre pursuant to Manly Local Environmental Plan 2013 (“MLEP 2013”) with commercial premises and shop top housing permissible in the zone with consent. The developments consistency with the stated objectives of the B2 zone are as follows:

- *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.*

Response: The proposed development retains the existing ground floor and mezzanine level retail uses the area of which far exceed the minimum 25% floor space requirement. The proposal is consistent with this objective.

- *To encourage employment opportunities in accessible locations.*

Response: Again, the proposed development retains the existing ground floor and mezzanine level retail uses the area of which far exceed the minimum 25% floor space requirement.

Manly CBD is one of the most accessible commercial areas within the northern beaches LGA and as such the proposal is also consistent with this objective.

- *To maximise public transport patronage and encourage walking and cycling.*

Response: The proposal does not provide any carparking and as such satisfies this objective.

- *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.*

Response: The development is not within proximity of any zone boundaries. The change of use from backpacker accommodation to shop top housing will reduce potential noise and odour impacts with no impacts associated with the delivery of materials or use of machinery. In this regard no objection is raised to standard conditions pertaining to the acoustic performance of roof mounted air conditioning condensers.

The proposed development is consistent with the zone objectives as outlined.

### **Consistency with floor space ratio objectives**

Pursuant to Clause 4.4 MLEP 2012 the floor space ratio of any building on the land shall not exceed an FSR of 2.5:1. The objectives of this clause have been previously identified.

It has been determined that the proposal increases the existing gross floor area by 21 square metres to a total gross floor area of 1277 square metres representing an FSR of 2.6:1 and a non-compliance of 51.25 square metres or 4%.

Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

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

Response: The bulk and scale of the building is not significantly altered with the minor increase in floor space located within the established building envelope. The roof top communal open space, pergola and access structures do not contribute towards GFA/ FSR.

The application is accompanied by a detailed Architect Design Statement prepared by the project Architect which details the design philosophy and considerations which influenced the design and final built form and heights proposed. Such design response was dictated, to a large extent, by the advice received during the design phase from the project heritage consultant and as detailed within the accompanying HIS. Particular attention must be given to the content of these documents as they form a critical component of the application. The conclusion contained at clause 9.6 of the HIS is as follows:

*Given the heritage significance of the building and its condition, options for retention and adaptive reuse of the building are most appropriate. The scale and alignment of the building reinforce the character of the adjacent New Brighton Hotel and anchor this important corner opposite the Steyne Hotel.*

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as reflected by GFA/FSR, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of adjoining development and development generally along the length of The Corso. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings and representative of the existing and desired future character of development within the Town Centre Heritage Conservation Area.

This proposal is consistent with this objective.

- (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,*

Response: Having inspected the site to determine available view lines to and from the site from surrounding residential development and public spaces (including Manly Beach and The Corso) we have formed the considered opinion that the building, by virtue of its height, bulk and scale will not obscure important landscape and townscape features.

This proposal is consistent with this objective.

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

Comment: We rely on our response to objective (a) and (b) noting the landscaped setting of the site and its surrounds is maintained.

This proposal is consistent with this objective.

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

Response: The accompanying shadow diagrams clearly demonstrate that the only minor additional shadowing created by the development between 9am and 3pm will occur to adjoining development. The extent of additional shadowing is appropriately described as minor and will not unreasonably impact on the amenity of the adjoining properties. No additional overshadowing will occur to The Corso. Similarly, the proposal will not result in any unacceptable visual or aural privacy impacts on any adjoining land. The change of use from backpacker accommodation to shop top housing will minimise potential/ existing adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

This proposal is consistent with this objective.

- (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.*

Response: The established level of retail floor space is maintained as a consequence of the works proposed and accordingly the proposal is consistent with this objective.

Having regard to the matter of *Veloshin v Randwick City Council* [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

It is considered that there are sufficient environmental planning grounds to justify the variation sought namely the minor increase in GFA/FSR proposed and its location within the established building envelope/ void spaces where it will not materially alter the buildings appearance as viewed from outside the site.

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 the proposed development and associated additional GFA/FSR are consistent with objectives 1.3(c), (f) and (g) of the Act in they that promote good design and amenity (facilitate the adaptive reuse of the building), promote the sustainable management of built and cultural heritage with the approval of the variation facilitating the orderly and economic use and development of the land.

### **Conclusions**

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the floor space ratio standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and floor space ratio standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a floor space ratio variation in this instance.

Yours sincerely

**Boston Blyth Fleming Pty Limited**



**Greg Boston**  
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**Director**