

APPENDIX 2: CLAUSE 4.6: EXCEPTIONS TO DEVELOPMENT STANDARDS – HEIGHT OF BUILDINGS

1. Introduction

The Clause 4.6 application has been prepared on behalf of the applicant, The Morson Group, in support of a Development Application for the demolition of the existing structures and the construction of a part-four/part-five storey hotel accommodation with 49 rooms, ground floor café/restaurant, communal rooftop terrace, basement car parking for 22 vehicles and associated site and landscaping works at no. 22 Victoria Parade, Manly NSW 2095.

The request seeks to vary the maximum height of buildings development standards prescribed in Clause 4.3: Height of Buildings and the variation of the development standard has been prepared pursuant of Clause 4.6: Exceptions to Development Standards of MLEP2013.

Clause 4.3(2) specifies that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

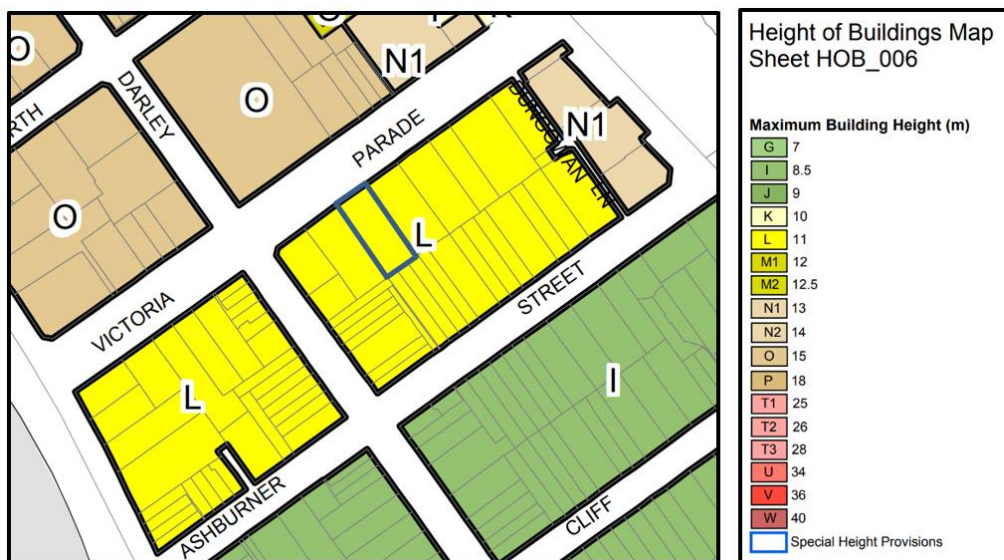


Figure 25: Height of Buildings Map of the Manly Local Environmental Plan 2013

The Height of Buildings Map of MLEP2013 prescribes that the site is within area 'L' and has a maximum building height of 11m.

2. Variation to the maximum height of buildings requirements

The area of non-compliance to the maximum height of building requirements extends from the upper half of the fourth-floor level and above including all associated pergola structures and lift overruns at the rooftop level of the building.



Figure 26: The proposed southern elevation of the building

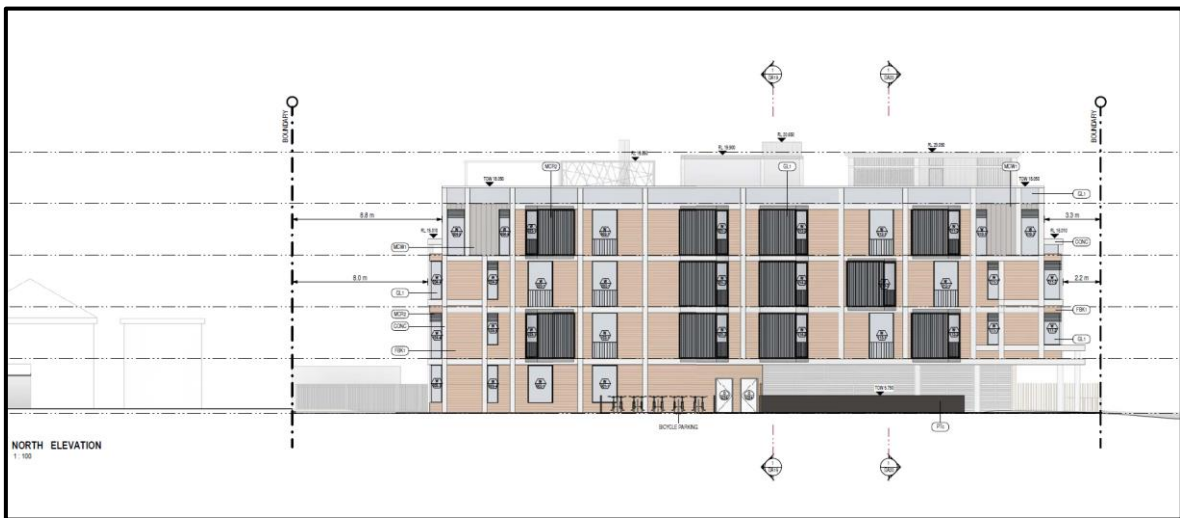


Figure 27: The proposed northern elevation of the building

The areas of non-compliance and the degree in which the proposed building breaches the maximum building height are as follows:

| Areas of non-compliance | Proposed RL | Breach of Height |
|---|-------------|------------------|
| Proposed lift overrun | RL20.65 | 4.92m (44%) |
| Proposed roof of the fifth-floor level | RL20.05 | 4.32m (39%) |
| Proposed fire stairs | RL19.90 | 4.17m (37%) |
| Proposed roof pergola structure | RL19.55 | 3.82m (34%) |
| Proposed roof parapet of fourth floor level | RL18.05 | 3.32m (30%) |

The maximum variation to the height is as follows:

| | |
|---|------------------------------|
| Proposed Height of Buildings | 15.92m |
| Maximum Permissible Height of Building | 11m |
| Exceedance of the LEP Development Standard | 4.92m (44% variation) |

The Clause 4.6: Exceptions to Development Standards contends that strict compliance with the maximum height of 18m as prescribed within Clause 4.3(2) of the Manly Local Environmental Plan 2013 is unreasonable and unnecessary in the circumstances of the case and that exceedance by a maximum of 4.92m can be supported by Council in considering the merits of the proposal.

The maximum height control is a development standard to which exceptions can be granted pursuant to Clause 4.6 of the LEP are achieved. The relevant Objectives and Provisions of the Clause 4.6 are as follows:

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.*

3. Compliance with Clause 4.6(4) Exceptions to Development Standards

3.1 The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)(a). The compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Subclause (3)(a) of Clause 4.6 prescribes that 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 that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council [2018] NSWLEC118* the position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in one or more of the following ways:

- *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- *The underlying objective or purpose is not relevant to the development.*
- *The underlying objective or purpose would be thwarted if compliance with the standard was required.*
- *The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard.*
- *The zoning of the land is unreasonable or inappropriate.*
- *Some other way.*

3.1.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The objectives of Clause 4.3: Height of Buildings are as follows:

- (a) *To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character.*

The topographical nature of the existing street characteristics within the urban block of Victoria Parade is relatively flat with a nominal fall from the street alignment (from east to west) as well as from the front to the rear of the site. The buildings along Victoria Parade are not characterised by any topographical fall or slope of the site and generally consist of a similar ground level (existing) when measured from the Council footpath level. The built form within the street is also typified with residential flat buildings which vary between four to six storeys in building height and are the prevailing built form pattern within this street section of Victoria Parade. The existing buildings contain mostly low profile skillion roof profiles, aside from nos. 18-20 and 34 Victoria Parade, consisting of a hipped roof and curved roof feature, respectively.

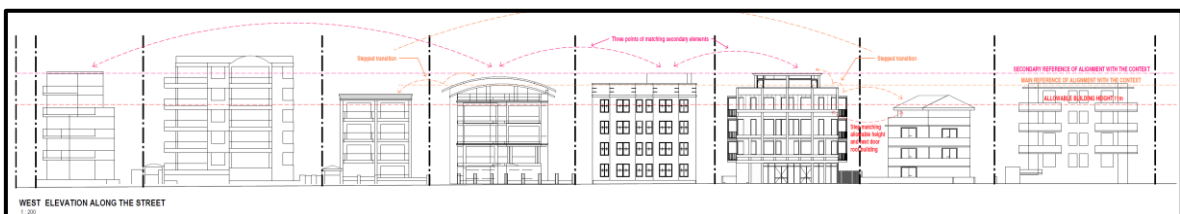


Figure 28: Streetscape elevation of Victoria Parade within the urban block

The proposed five-storey scale of the building will be entirely compatible with the height and scale of the existing buildings within the urban block. The proposed building height plane as measured from the upper floor level will remain entirely compatible with the size and scale of the existing buildings within the street. The proposed roof parapet will not extend above the predominant building height plane that has been set by the adjoining buildings and will appear sympathetic with the scale of buildings that present to the street.

In addition, the built form has been designed to ensure it appropriately transitions between the lower four-storey scale of the southern neighbour by incorporating an increased setback at the upper floor level at 5.7m. The increased setback recognises the lower building profile and provides a step in which the bay window has been designed to match the ridge height of the gable roof element of the immediate southern neighbour. This improves the relationship between the height of the proposed development and the immediate adjoining neighbour. The low profile skillion roof element of the building will also be compatible with the style and configuration of the existing roof forms within Victoria Parade.

As the proposal remains the last undeveloped site within the urban block, the development will ensure the design scheme replicates the height and scale of the existing building, and is consistent with the desired future character of the existing buildings.

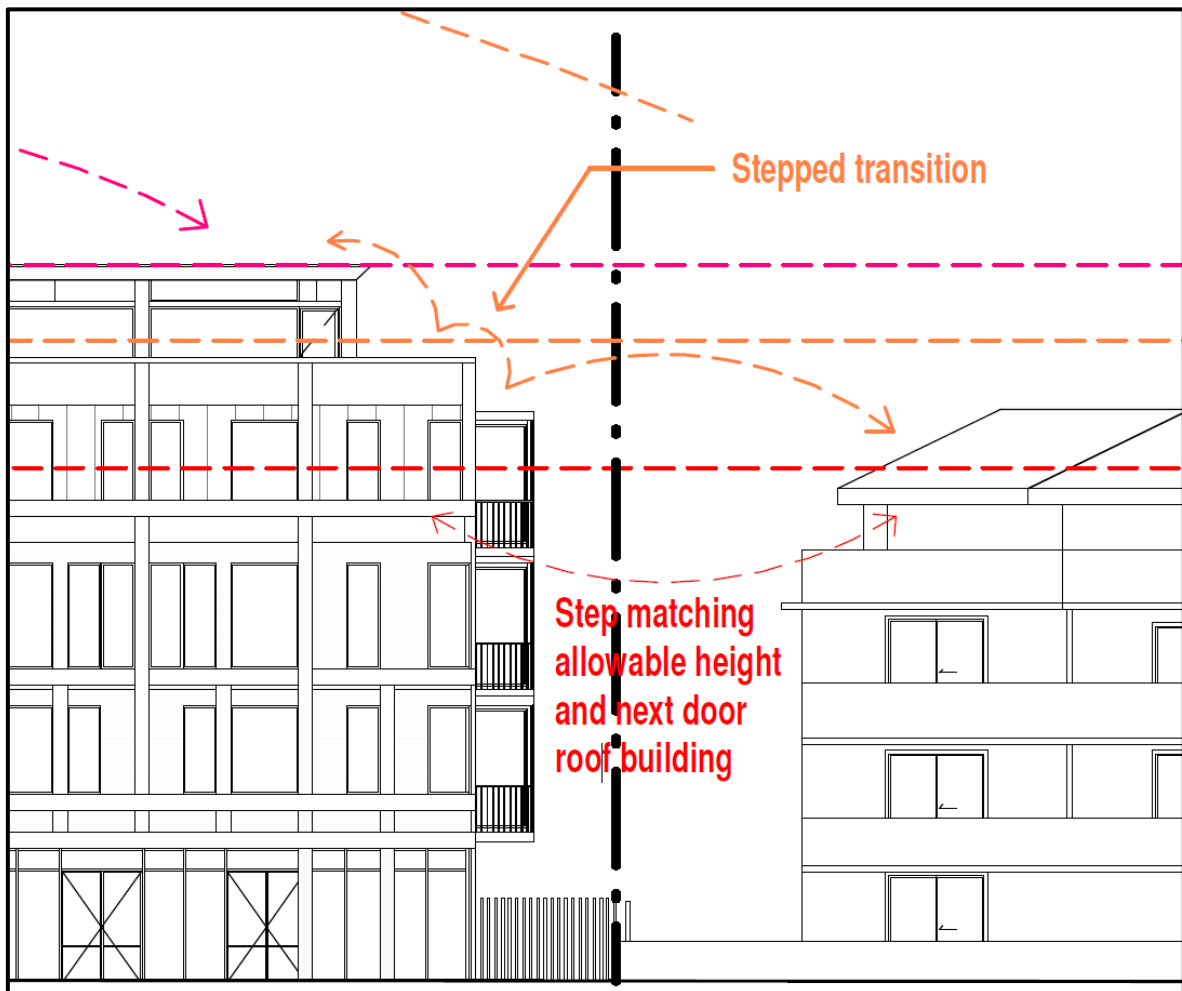


Figure 29: Proposed transition between the five-storey scale to the four-storey scale of the southern neighbour

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

In considering all of the existing four-to-six storey buildings within the urban block, exceed the maximum building height provisions of 11m, it would appear that development standard has been virtually abandoned or destroyed by Council's decisions in granting consents that depart from the standard. Any development that is required to fully comply with the maximum building height of 11m will appear a full one to two-storeys lower than the existing buildings within the street and fails to consider the established building height planes within the street. Further consideration should be given to the more recent development approval at no. 46 Victoria Street, which was granted development consent for the construction of a five-storey building (367/2010) with a maximum building height of 19.5m.

Notwithstanding this, the architectural design of the building ameliorates the bulk and scale of the building when viewed from the existing streetscape. The building comprises a number of front building setbacks including 4.9m at the ground floor level, 2.2m at the first and second floor, 3.4m at the third floor and 4.9m at the fourth-floor level. The varying front setbacks provide a modulated façade incorporating a number of recesses within the building envelope plane. Additionally, a combination of materials and finishes to the building include a face brick at the ground to second floor levels and a more lightweight metal clad wall finish to the upper floor levels which further enhances the articulated elements of the building. The bulk and scale is mitigated through a combination of articulated architectural design treatments including modulation to the external wall and use of finishes to the building, all of which contribute to the fine grain architecture of the building.

(c) *To minimise disruption to the following:*

- i. *Views to nearby residential development from public spaces (including the harbour and foreshores)*

The proposal will be in keeping with the heights and average front setbacks of the existing buildings within the street. The part-four/part-five storey hotel accommodation will not detract from the views of the scenic foreshore protection or harbour areas to the residential development, given the proposal will adopt a similar building height plane as the existing buildings within the street. The proposed development will remain entirely compatible with the height and scale of the buildings within Victoria Parade and will not disrupt existing views.

- ii. *Views from nearby residential development to public spaces (including the harbour and foreshores)*

The proposal will not contribute to any adverse view loss impacts to the neighbouring buildings, in particular the immediate adjoining neighbours at nos. 18-20 Victoria Parade and no. 28 Victoria Parade. It should be noted that any existing views as appreciated from south of East Manly Cove Beach and to the north of Manly Beach are not considered to be views worthy of retention in accordance with the Planning Principles of Tenacity Consulting v Warringah [2004] NSWLEC140. The existing views to the west that are appreciable from no. 28 Victoria Parade are only visible from existing bedrooms and are considered to be side views. In addition, the existing views to the east that are appreciable from no. 18-20 Victoria parade are also side views and will be compromised due to the existing buildings along Victoria Parade and the Norfolk Island Pine Trees that are located within the road reservations. In considering the above, the view loss impacts are considered to be negligible/minor and are not significant views worthy of retention.

- iii. *Views between public spaces (including the harbour and foreshores)*

The proposal will maintain the existing view corridor through Victoria Parade which provides views from Manly Beach to East Manly Cove Beach. The development incorporates an appropriate setback to the front property boundary to maintain views between the two areas of public open space.

- (d) *To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.*

The proposal will continue to provide a reasonable level of direct solar access to the immediate adjoining neighbours. The existing single dwellings at the rear (east) of the site including nos. 17,19 and 21 Ashburner Street will ensure that the main living areas will continue to receive more than the required two hours of direct solar access and will not reduce the total amount of direct solar access to the private open spaces by more than one-third between the hours of 9am – 3pm, 21 June. Further, the existing residential units to the south at no. 18-20 Victoria Parade will not further reduce the amount of direct solar access received by the units at the ground and first floor levels of the building than the current development approval (167/2015). In accordance with the shadow diagrams prepared by Morson Group, the immediate neighbours will continue to receive the required two hours of direct solar access between 9am – 3pm and will comply with the solar access provisions of MDCP2013 (amendment 11).

In respect to the areas of public open space, the proposed development does not contribute to any overshadowing on the existing public domain. In considering the above, the proposal is supportable in providing a compliant number of hours of direct solar access to the neighbouring dwellings and will comply with the above objective.

- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

The subject site is not located within a recreation or an environmental protection zone. Not applicable.

3.1.2 The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

Not applicable. The underlying objective or purpose of the development standard is relevant to the development application and is achieved in the matters raised above.

3.1.3 The underlying objective or purpose would be thwarted if compliance with the standard was required.

Not applicable. The underlying objective or purpose of the standard would not be defeated or thwarted if compliance with the standard were required.

3.1.4 The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard.

Agreed. The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard. It should be noted that all of the existing buildings within the street range from either four to six storeys in height. All the existing buildings within the urban block exceed the maximum building height of 11m and sets the desired future character of the street through Council granting development consents to buildings which deviate from the maximum height provisions. It is also worthwhile noting that the most recent development consent including no. 46 Victoria Parade granted development consent for the construction of a five-storey residential flat building comprising a maximum building height of 19.5m (367/2010). The approved development results in an exceedance of 8.5m and an exceedance to 77% of the maximum building height provisions.

3.1.5 The zoning of the land is unreasonable or inappropriate.

Not applicable. The zoning of the land as an R3: Medium Density Residential in which 'tourist and visitor accommodation' and 'café/restaurants' are a permissible form of development within the zone. The proposal represents development that is typified and expected within the R3: Medium Density Residential Zone.

3.1.6 Some other way.

Not applicable. The above represents that these five ways are not exhaustive of the ways in which an applicant must demonstrate that compliance with a development standard is unreasonable or unnecessary. In this instance it is sufficient to establish only one way, which is compliance with the objectives of the development standard. In this instance there are two ways which demonstrates that the development standard is unreasonable and unnecessary. See 3.1.1 and 3.1.4, above.

3.2 The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)(b). That there are sufficient environmental planning grounds to justify contravening the development standard.

Subclause (3)(a) of Clause 4.6 prescribes that 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 that there are sufficient environmental planning grounds to justify contravening the development standard.

Also, in the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council [2018] NSWLEC118* the position that there are sufficient environmental planning grounds to justify contravening the development standards identifies that in *Four2Five Pty Ltd. v. Ashfield Council [2015] NSWLEC90* it is necessary to determine:

- 'Environmental planning grounds' by their nature, being grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* including Section 1.3 of the EPA Act;
- Must be 'sufficient'
 - First, the environmental planning grounds advanced in the written request must be sufficient to 'justify contravening the development standard'. The focus of Clause 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.
 - Second, the written request must 'demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard' so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i).

3.2.1 Sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient grounds to justify the contravention of the development standard for the following reasons:

- The exceedance above the maximum height of buildings requirement of MLEP2013 is supportable in that the proposed building height plane will be compatible with the size and scale of existing buildings within the streetscape setting of Victoria Parade. The existing streetscape setting consists of residential flat buildings that range between four to six storeys in height. The proposal is five storeys in height, will sit comfortably within the site and be commensurate with the built form pattern along Victoria Parade.
- The proposed part-four/part-five storey scale of the building will be compatible with the number of storeys of the existing residential flat buildings within the urban block. The building does not detract from the existing streetscape setting in that the proposed roof parapet will be similar to the height of the neighbouring buildings within the street.
- The proposed part-four/part-five storey scale of the building has been sensitively and skillfully designed to appropriate transition between the five-storey building element to the four-storey scale of the southern neighbour through the provision of an increased side boundary setback

and a stepped built form transition along the southern façade of the building. The stepping will ensure that the bay window will remain compatible in height with the gable roof element of the building.

- The subject allotment is an infill site and remains as the last undeveloped lot within the street. Due to the existing residential flat buildings along the street being subject to strata subdivision it is unlikely that these buildings will undergo any further redevelopment. Subsequently, while the proposed development will exceed the maximum height of buildings, it is unlikely that the exceedance will contribute to an undesirable planning precedent given the nature of the adjoining buildings.
- The proposal will not contribute to any adverse environmental impacts in terms of solar access and overshadowing, visual and acoustic privacy, view loss or bulk and scale.

In considering the above, there are sufficient environmental planning grounds to justify the contravention to the development standard.

3.3 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 following requires that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3: Height of Buildings and R3: Medium Density Residential Zone of MLEP2013.

3.3.1 The objectives of Clause 4.3 Height of Buildings

Refer to Section 3.1.1 of Clause 4.6: Exceptions to Development Standards for detailed assessment.

3.3.2 The objectives of Zone R3: Medium Density Residential

The proposal will be compatible with the objectives of the R3: Medium Density Residential Zone in the following ways:

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposal involves the construction of 'tourist and visitor accommodation', specifically 'hotel or motel accommodation' as defined within MLEP2013. While the proposal does not provide for permanent housing on the site, it provides for temporary accommodation for tourists and visitors all of which is permissible within the R3: Medium Density Residential Zone. It is expected that the provision of a new hotel accommodation with 49 rooms will likely reduce the demand for other temporary accommodation such as occupants letting out rooms for periods of less than three months including air-bnbs within the immediate vicinity of the site. This will further support housing needs by consolidating hotel or motel accommodation to designated areas of the site.

- *To provide a variety of housing types within a medium density residential environment.*

As raised above, the proposal does not provide for any permanent housing accommodation on the site. The proposal is for the purposes of a 'tourist and visitor accommodation', specifically 'hotel or motel accommodation' as defined by MLEP2013. The provision of temporary accommodation will reduce the ongoing demand for other forms of temporary accommodation including Air-BnB's. It is expected that the provision of new hotel accommodation with 49 new rooms will increase the supply for temporary accommodation within the immediate locality. This will lower the market demand of existing Air-BnB's being let out as tourist and visitor accommodation and promote existing dwellings being let out for the purposes of residential accommodation, as intended. This will promote residential accommodation in providing a range of housing types to the local area.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal includes the provision of a café/restaurant at the ground floor level of the building. The use of this premises will provide pre-packaged goods and takeaway food and drink from the premises which will continue to meet the needs of local residents. It should be noted that the existing site currently provides for a café/restaurant at the ground floor level and the proposal will retain this use to ensure this service continues as part of the new development.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment*

The proposal will continue to encourage revitalisation of the residential areas within the R3: Medium Density Residential Zoning. The proposed part-four/part-five storey hotel accommodation represents a contemporary addition to the existing streetscape setting. The development is appropriately articulated from the existing street façade in that the building incorporates a number of articulations to the built form including recesses to the street façade with a stepped building alignment as the site steps up to the upper floor levels as well as a number of materials and finishes to enhance the urban qualities of the building within the street. The building incorporates an appropriate disposition of building elements, textures, materials and colours, which reflect the function, internal layout and structure of the development. The building façade is articulated to complement and enhance the streetscape and neighbourhood character.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

The existing site is currently occupied by the 'Manly Lodge' known as a boutique hotel accommodation. The proposal involves the demolition of the existing structures and construction of a part four/part five storey hotel accommodation containing 49 rooms. The proposal will provide a greater number of accommodation rooms to the immediate locality and will retain existing tourist accommodation uses on site. The quality of the rooms and the development will represent a significant improvement to the existing hotel accommodation on site and will reinforce Manly as an iconic area and an international tourist destination.

APPENDIX 2: CLAUSE 4.6: EXCEPTIONS TO DEVELOPMENT STANDARDS – FLOOR SPACE RATIOS

1. Introduction

The Clause 4.6 application has been prepared on behalf of the applicant, Morson Group, in support of a Development Application for the demolition of the existing structures and the construction of a part four/part five storey hotel accommodation with 49 rooms, ground floor café/restaurant, communal rooftop terrace, basement car parking for 22 vehicles and associated site and landscaping works at no. 22 Victoria Parade, Manly NSW 2095.

The request seeks to vary the maximum floor space ratio development standards prescribed in Clause 4.4: Floor Space Ratio and the variation of the development standard has been prepared pursuant of Clause 4.6: Exceptions to Development Standards of MLEP2013.

Clause 4.4(2) specifies that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

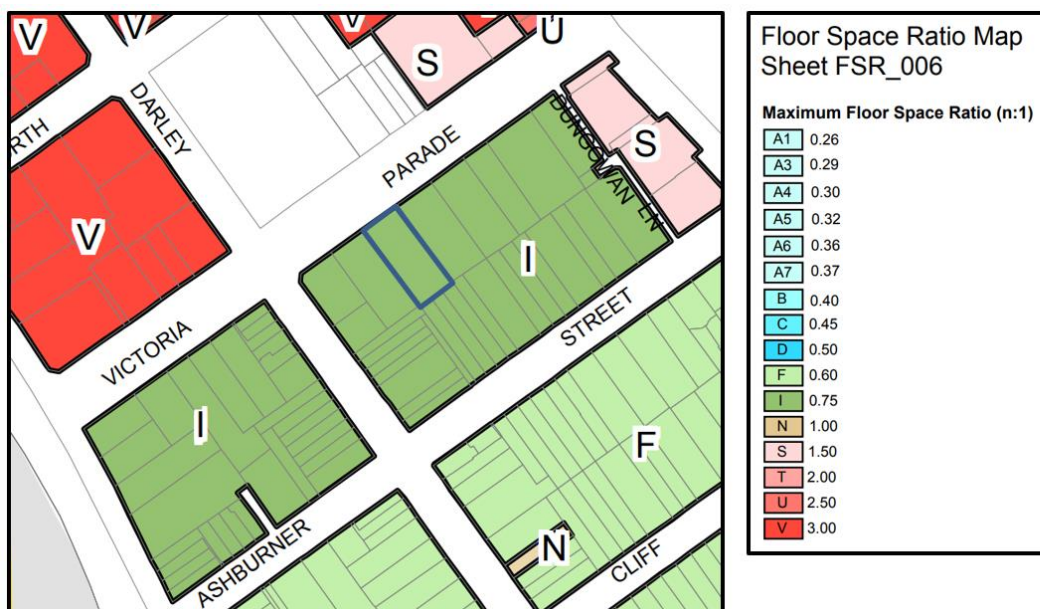


Figure 30: Floor Space Ratio Map of the Manly Local Environmental Plan 2013

The Floor Space Ratio Map of MLEP2013 prescribes that the site is within area 'I' and has a maximum floor space ratio of 0.75:1.

2. Variation to the maximum floor space ratio requirements

In accordance with the Floor Space Ratio Map, the subject site is identified as being within a site 'I' area and contains a maximum floor space ratio map 0.75:1 (724.5sqm).

Clause 4.4(2) prescribes 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 proposal will result in a maximum gross floor area of 1674.4sqm which equates to a floor space ratio of 1.73:1. The proposal will exceed the maximum gross floor area by 949.9sqm.

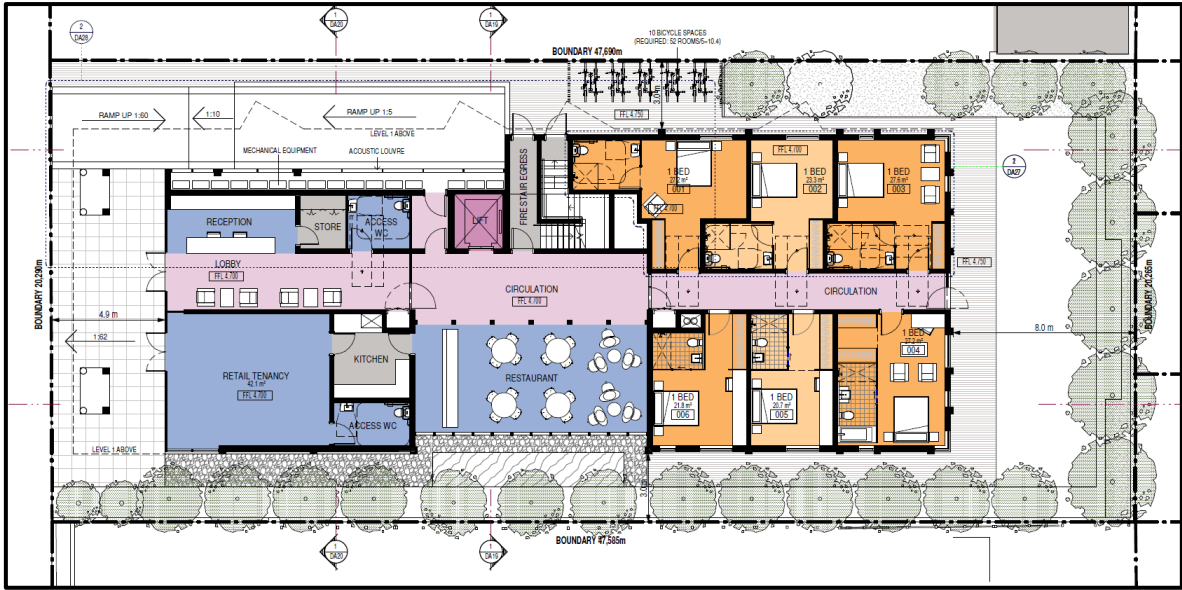


Figure 31: Proposed ground floor level of the building



Figure 32: Proposed typical floor level of the building

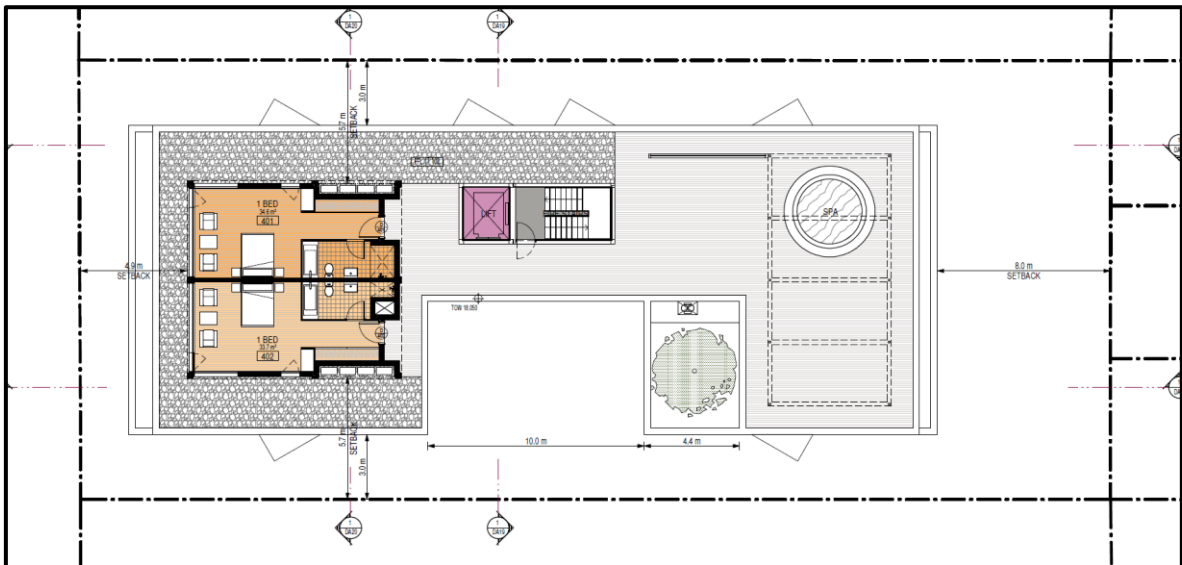


Figure 33: Proposed upper floor level of the building

The Clause 4.6: Exceptions to Development Standards contends that strict compliance with the maximum floor space ratio of 0.75:1 as prescribed within Clause 4.4(2) of the Manly Local Environmental Plan 2013 is unreasonable and unnecessary in the circumstances of the case and that exceedance by a maximum gross floor area by 949.9sqm can be supported by Council in considering the merits of the proposal.

The maximum height control is a development standard to which exceptions can be granted pursuant to Clause 4.6 of the LEP are achieved. The relevant Objectives and Provisions of the Clause 4.6 are as follows:

6. *The objectives of this clause are as follows:*
 - c. *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - d. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
7. *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.*
8. *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:*
 - c. *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - d. *that there are sufficient environmental planning grounds to justify contravening the development standard.*
9. *Development consent must not be granted for development that contravenes a development standard unless:*
 - c. *the consent authority is satisfied that:*
 - iii. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - iv. *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*
 - d. *the concurrence of the Secretary has been obtained.*
10. *In deciding whether to grant concurrence, the Secretary must consider:*
 - d. *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - e. *the public benefit of maintaining the development standard, and*
 - f. *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

3. Compliance with Clause 4.6(4) Exceptions to Development Standards

- 3.1 **The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)(a). The compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,**

Subclause (3)(a) of Clause 4.6 prescribes that 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 that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council* [2018] NSWLEC118 the position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in one or more of the following ways:

- *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- *The underlying objective or purpose is not relevant to the development.*
- *The underlying objective or purpose would be thwarted if compliance with the standard was required.*
- *The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard.*
- *The zoning of the land is unreasonable or inappropriate.*
- *Some other way.*

3.1.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The objectives of Clause 4.4: Floor Space Ratios are as follows:

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

The proposal will remain compatible with the bulk and scale of the development and the existing buildings within the urban block of Victoria Parade. The existing street is characterised by residential flat buildings between four to six storeys in scale, all of which exceed the maximum building height requirements of 11m. The additional building height and the number of storeys translates to an increase in the gross floor area, above the minimum requirements, which each building is expected to absorb under a compliant development scheme. This translates to all of the existing buildings exceeding both the maximum building height and floor space ratio permitted under the MLEP2013.

When viewed from the streetscape setting, the additional gross floor area will be appropriately absorbed into the building and will remain compatible in terms of the size and scale of the neighbouring buildings along Victoria Parade. The additional gross floor area, which exceeds the minimum requirements from the original Development Approval (167/2015), translates to both a fourth and fifth storey to the building, and the additional storeys will be in keeping with the building heights of the neighbouring buildings within the street. The proposed development will be compatible with the predominant building height plane as set by the existing buildings and will be commensurate to the built form pattern including the size and scale of developments situated in the urban block.

When viewed from the adjoining neighbours, the additional gross floor area has been sensitively and skillfully distributed throughout the building envelope without contributing to the visual bulk and scale from the neighbouring premises. The building envelope has largely been configured as a U-shaped envelope which consists of a substantial void provided through the central portion of the building. The extensive void level provides an increased building separation of approximately 9m to the southern neighbours to minimise the appreciable visual bulk and massing of the building to the south. To the north, the distribution of the gross floor area has been limited to the western end of the site, fronting Victoria Parade. The eastern end of the site is a single-storey lower at four storeys in scale with rooftop structures located on the building. The height of the building at the rear will be lower when measured from the roof parapet of the northern neighbour at no. 28 Victoria Parade. The four-storey scale of the building and the 8m setback are both appropriate in minimising the apparent bulk and scale visible from the rear neighbours at nos. 17, 19 and 21 Ashburner Street.

(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 proposed development is located in close proximity to the existing Manly Town Centre in accordance with Schedule 2 – Map A of MDCP2013. The proposed bulk and scale of the development does not impact upon any existing views to the landscape and townscape features to/from the site. The proposed works are adequately set back from important street corners located at the intersections of Victoria Parade and South Steyne and will not impede any view vistas through the site, in particular those identified for retention including Sydney Road, The Corso and Whistler Street. The proposed development when viewed from the townscape will not detract from the appearance of the adjoining buildings in terms of bulk and scale given the development has been designed to ensure that it is compatible with the building height plane to the neighbouring buildings.

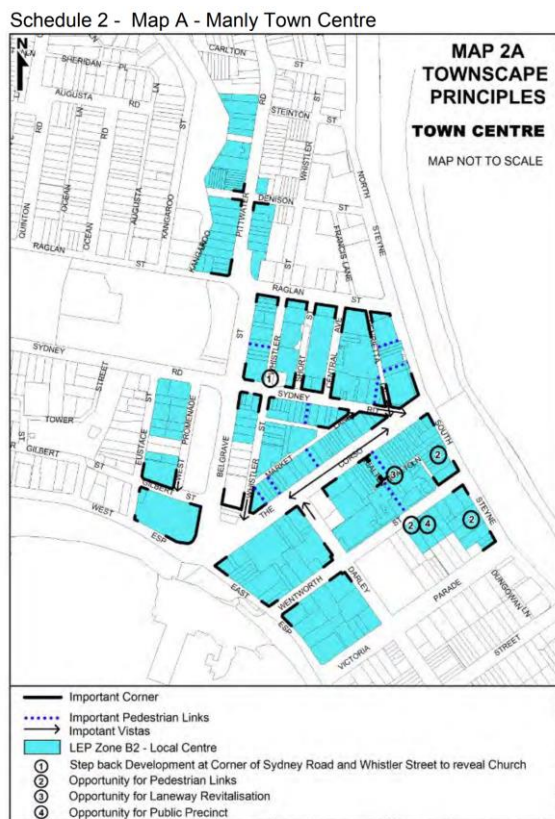


Figure 34: Schedule 2 - Map A of the Manly Town Centre of the Manly Development Control Plan 2013

In terms of landscape features, the existing Norfolk Island Pine Trees are located on the road reservation of Victoria Parade. The trees are identified as being of a high retention value and contribute to the heritage setting of the local area, being identified as heritage items as per Schedule 5: Heritage Conservation of MLEP2013. The proposal will not compete with or conceal the location of the existing trees given the proposed building is adequately set back from these trees. The proposed building will continue to sit beneath the tree line and will preserve the landscape qualities of the existing trees. When viewed from key viewing vistas along Victoria Parade the existing trees will continue to dwarf the development.

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

The proposal will continue to provide a positive visual relationship between the new and existing character within the street. The existing character consists of residential flat buildings between four-six storeys in scale with a reduced front setback to the street. The proposed development is part four/part five storeys, which will be entirely compatible in terms of overall building height from the

front façade and is in keeping with the existing streetscape context. The parapet of the upper floor level will be consistent with the roof parapet of the adjoining buildings and additional design measures have been adopted to alleviate the visual bulk and scale of the building when viewed from the street. The building incorporates an increased setback to the upper floor level to reduce the continuous length of the external wall and appropriate stepping has been provided to the four-storey scale of the building to the south. While the proposal does not provide any soft landscaping within the front setback, it is noted that this is generally consistent with the current arrangement of the existing building which similarly does not provide any soft landscaping to the front. The proposed front setback of the building is consistent with the previous development approval with a greater setback provided at the upper floor level to minimise the bulk and scale of the development. The proposed setback is adequate in providing appropriate visual separation between the proposed building and the existing Norfolk Island Pine Trees located on the road reserve of Victoria Parade.

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

The non-compliant gross floor area to the proposed development will not contribute to any adverse environmental impacts to the adjoining neighbours or the public domain. The inclusion of the large over-sized voids provided through the central portion of the building envelope provides increased building separation to the southern neighbour (18-20 Victoria Parade). The increased building separation will not contribute to any further overshadowing to the north-facing window openings at the ground and first floor levels of the southern neighbour than the current development approval (167/2015). In addition, the second and third floor levels of the building will continue to receive the required two hours of direct solar access.

In terms of visual privacy, the northern and southern façades of the building consists of a combination of narrow window openings, articulated bay windows and off-set window openings along the northern and southern elevations of the building. The combined window treatments will minimise any direct overlooking into the habitable room windows of the northern and southern neighbours and will provide a reasonable level of visual amenity to the adjoining buildings. Any direct overlooking from the rooftop terrace will be largely minimised due to its being co-located to a communal rooftop terrace at no. 28 Victoria Parade and will overlook the hipped roof form to the southern neighbour to the east.

The public domain will remain unimpacted by the proposed development. The proposal does not contribute to any overshadowing to the existing road and street verge or result in any view loss impacts visible from the existing public domain. A number of accommodation rooms and window openings will front the existing street alignment and will offer casual surveillance to the existing streetscape.

(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.

The site is not located within a business zone or identified as being located within a local centre zoning. Nevertheless, the proposal involves retaining the existing use of the premises for the purposes of a tourist and visitor accommodation and will increase the provision of local services including temporary accommodation to tourists and visitors as well as employment to ensure the upkeep of the premise is kept to a high standard.

3.1.2 The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

Not applicable. The underlying objective or purpose of the development standard is relevant to the development application and is achieved in the matters raised above.

3.1.3 The underlying objective or purpose would be thwarted if compliance with the standard was required.

Not applicable. The underlying objective or purpose of the standard would not be defeated or thwarted if compliance with the standard was required.

3.2.4 The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard.

Agreed. The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard. It should be noted that all of the existing buildings within the street range from either four to six storeys in height, all of which exceed the maximum permitted floor space ratio of 0.75:1. The proposed building density will be comparatively similar to the massing and scale of the existing development within the street in terms of proportions and building configurations. The proposed development will maintain similar front, side and rear setbacks and occupies a similar building footprint as a number of existing developments including nos. 14, 40, 42 and 46 Victoria Parade.

It should be also considered that more recent development applications including no. 46 Victoria Parade was granted development consent for the construction of a five-storey residential flat building resulted in a floor space ratio of 2.06:1 with a floor space ratio of 1392sqm.

3.2.5 The zoning of the land is unreasonable or inappropriate.

Not applicable. The zoning of the land is R3: Medium Density Residential in which 'tourist and visitor accommodation' and 'café/restaurants' are a permissible form of development within the zone. The proposal represents development that is typified and expected within the R3: Medium Density Residential Zone.

3.2.6 Some other way.

Not applicable. The above represents that these five ways are not exhaustive of the manner in which an applicant must demonstrate that compliance with a development standard is unreasonable or unnecessary. In this instance it is sufficient to establish only one way which is compliance with the objectives of the development standard. However, there are two ways which demonstrate that the development standard is unreasonable and unnecessary.

3.3 The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)(b). That there are sufficient environmental planning grounds to justify contravening the development standard.

Subclause (3)(a) of Clause 4.6 prescribes that 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 that there are sufficient environmental planning grounds to justify contravening the development standard.

Also, in the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council [2018] NSWLEC118* the position that there are sufficient environmental planning grounds to justify contravening the development standards identifies that in *Four2Five Pty Ltd. v. Ashfield Council [2015] NSWLEC90* it is necessary to determine:

- 'Environmental planning grounds' by their nature, being grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* including Section 1.3 of the EPA Act;
- Must be 'sufficient'
 - First, the environmental planning grounds advanced in the written request must be sufficient to 'justify contravening the development standard'. The focus of Clause 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

- Second, the written request must 'demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard' so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i).

3.2.1 Sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient grounds to justify the contravention of the development standard for the following reasons:

- The non-compliant floor area of the proposed development will not result in a development that is excessive in size and scale within the streetscape. The additional gross floor area above the maximum requirements will be distributed to levels four and five of the building and the additional storeys above the approved development will maintain the predominant building height plane of the neighbouring buildings.
- The non-compliant floor area will not contribute to adverse visual bulk and scale impacts from the neighbouring buildings. The proposal includes a significant building separation to the southern neighbour through the provision of a large central void within the building footprint. The oversized void will provide ample building separation and recesses the southern external façade which minimises the length of the continuous wall plane along the southern elevation. The northern and southern (side) elevations have also been appropriately articulated through the provision of bay windows and varying window openings to each respective level of the building.
- The exceedance to the maximum floor space ratio will result in a similar building footprint as the existing buildings within the street. The proposal will occupy a similar building footprint relative to the site area as the neighbouring developments including nos. 14, 40, 42 and 46 Victoria Parade.
- The allotment is an infill site and remains as the last undeveloped lot within the street. Due to the existing residential flat buildings within the street being subject to strata subdivision, it is unlikely that these buildings will undergo any further redevelopment. Subsequently, while the proposed development will exceed the maximum floor space ratio is unlikely that the exceedance will contribute to an undesirable planning precedent given the nature of the adjoining buildings.
- The proposal will not contribute to any adverse environmental impacts in terms of solar access and overshadowing, visual and acoustic privacy, view loss or bulk and scale.

In considering the above, there are sufficient environmental planning grounds which justify the contravention to the development standard.

3.3 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 following requires that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.4: Floor Space Ratio and R3: Medium Density Residential Zone of MLEP2013.

3.3.1 The objectives of Clause 4.4 Floor Space Ratio

Refer to Section 3.1.1 of Clause 4.6: Exceptions to Development Standards for detailed assessment.

3.3.2 The objectives of Zone R3: Medium Density Residential

The proposal will be compatible with the objectives of the R3: Medium Density Residential Zone in the following ways:

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposal involves the construction of 'tourist and visitor accommodation', specifically 'hotel or motel accommodation' as defined within MLEP2013. While the proposal does not provide for permanent housing on the site, it provides for temporary accommodation for tourists and visitors all of which is permissible within the R3: Medium Density Residential Zone. It is expected that the provision of a new hotel accommodation with 49 rooms will likely reduce the demand for other temporary accommodation such as occupants letting out rooms for periods of less than three months including air-bnbs within the immediate vicinity of the site. This will further support housing needs by consolidating hotel or motel accommodation to designated areas of the site.

- *To provide a variety of housing types within a medium density residential environment.*

As raised above, the proposal does not provide for any permanent housing accommodation on the site. The proposal is for the purposes of a 'tourist and visitor accommodation', specifically 'hotel or motel accommodation' as defined by MLEP2013. The provision of temporary accommodation will reduce the ongoing demand for other forms of temporary accommodation including Air-BnB's. It is expected that the provision of new hotel accommodation with 49 new rooms will increase the supply for temporary accommodation within the immediate locality. This will lower the market demand of existing Air-BnB's being let out as tourist and visitor accommodation and promote existing dwellings being let out for the purposes of residential accommodation, as intended. This will promote residential accommodation in providing a range of housing types to the local area.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal includes the provision of a café/restaurant at the ground floor level of the building. The use of this premises will provide pre-packaged goods and takeaway food and drink from the premises which will continue to meet the needs of local residents. It should be noted that the existing site currently provides for a café/restaurant at the ground floor level and the proposal will retain this use to ensure this service continues as part of the new development.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment*

The proposal will continue to encourage revitalisation of the residential areas within the R3: Medium Density Residential Zoning. The proposed part-four/part-five storey hotel accommodation represents a contemporary addition to the existing streetscape setting. The development is appropriately articulated from the existing street façade in that the building incorporates a number of articulations to the built form including recesses to the street façade with a stepped building alignment as the site steps up to the upper floor levels as well as a number of materials and finishes to enhance the urban qualities of the building within the street. The building incorporates an appropriate disposition of building elements, textures, materials and colours, which reflect the function, internal layout and structure of the development. The building façade is articulated to complement and enhance the streetscape and neighbourhood character.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

The existing site is currently occupied by the 'Manly Lodge' known as a boutique hotel accommodation. The proposal involves the demolition of the existing structures and construction of a part four/part five storey hotel accommodation containing 49 rooms. The proposal will provide a greater number of accommodation rooms to the immediate locality and will retain existing tourist accommodation uses on site. The quality of the rooms and the development will represent a

significant improvement to the existing hotel accommodation on site and will reinforce Manly as an iconic area and an international tourist destination.