



**NSLPP MEETING HELD ON 07/12/2022**

**Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement

**ADDRESS/WARD:** 54 High Street, North Sydney

**APPLICATION No:** D 105/22

**PROPOSAL:** Use of the former common facilities area on the roof top (level 9) as a residential studio

**PLANS REF:**

| Plan No. /Rev | Description               | Prepared by | Dated    |
|---------------|---------------------------|-------------|----------|
| DA 01 E       | Floor Plan and Elevations | Top Design  | 21.04.22 |

**OWNER:** SP8461, SP55509

**APPLICANT:** Joseph Georghy

**AUTHOR:** Robin Tse, Senior Assessment Officer

**DATE OF REPORT:** 28 November 2022

**DATE LODGED:** 8 April 2022

**RECOMMENDATION:** Approval

---

## EXECUTIVE SUMMARY

This development application seeks approval for the use of the former common facilities area on the roof top (Level 9) as a residential studio at 54 High Street located at the north west junction of High Street and Clarke Road.

The application is referred to North Sydney Local Planning Panel for determination because the subject studio is located above the permissible height limit (12m) with a variation greater than 10% and the application has attracted more than 10 submissions in accordance with the Directions from the NSW Minister of Planning.

Council received nineteen (19) submissions raising concerns about the absence of planning approval for the residential use of the top floor studio, non-compliances with the BCA/NCC, the likelihood that the studio would restrict access to the roof top area for maintenance/repair works to the roof and other safety and building management issues.

The use of the roof top level as a studio within the existing apartment building is a form of development that is permissible on land zoned R4 (High Density Residential). The subject structure has been used for residential purposes without planning approval for some time.

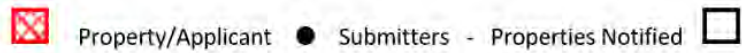
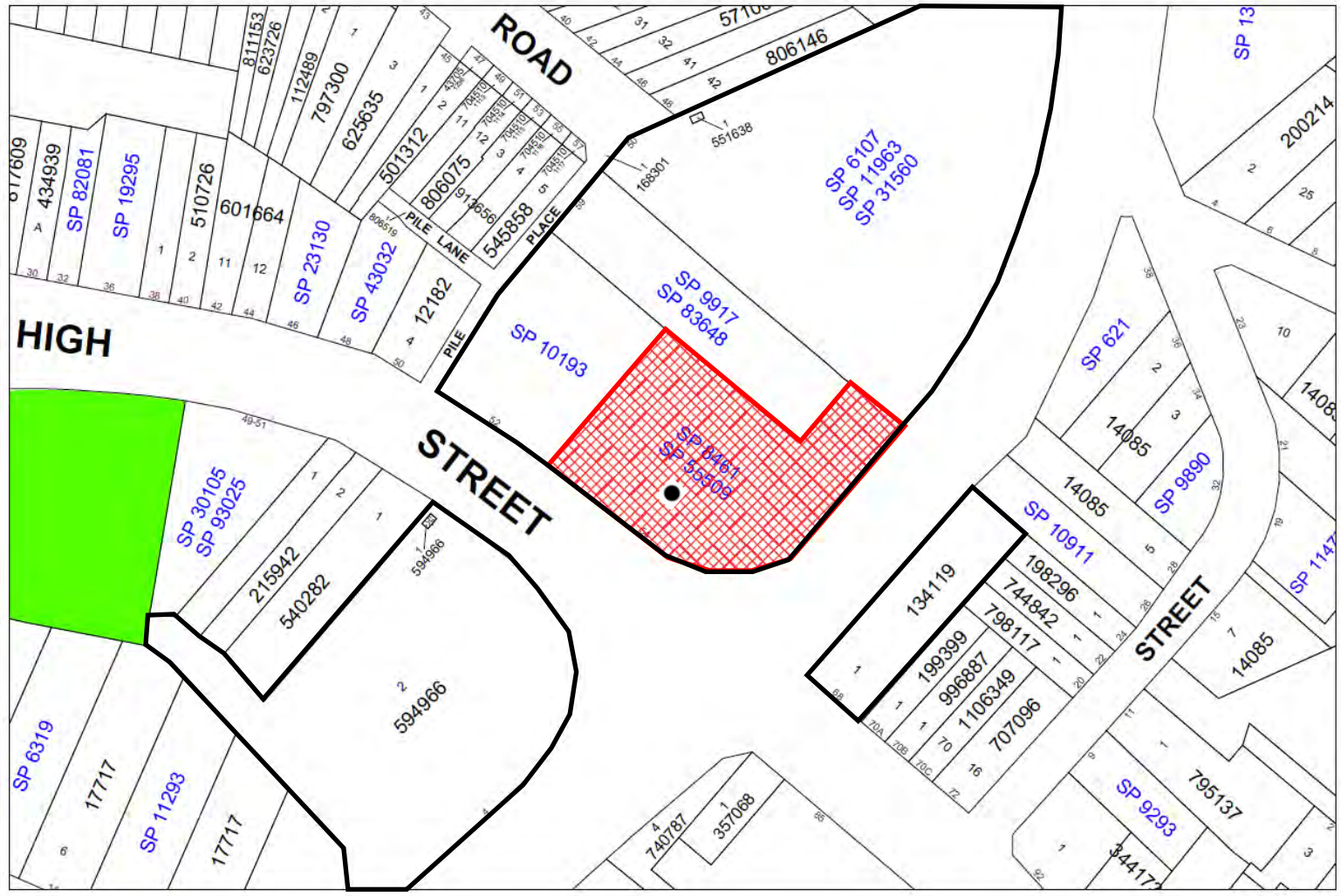
The Clause 4.6 written submission submitted by the applicant for abundant caution seeks a variation to the LEP maximum building height development standard that is acceptable because the proposal would not change the height or the envelope of the existing apartment building and would not result in adverse impacts in terms of the loss of significant views, privacy and solar access for the adjoining properties.

The issues raised in the submissions have been addressed with relevant comments and/or the recommendation of specific conditions to ensure compliance with the NCC/BCA and to facilitate access to the roof top areas for necessary building repair and maintenance work.

The proposal was considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and was generally found to be satisfactory.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate standard and site specific conditions.

**LOCATION MAP**



## DESCRIPTION OF PROPOSAL

The applicant is seeking development consent for use of a converted structure, located on the 9<sup>th</sup> floor of a multi-storey residential flat building at No. 54 High Street, North Sydney, as a studio apartment.

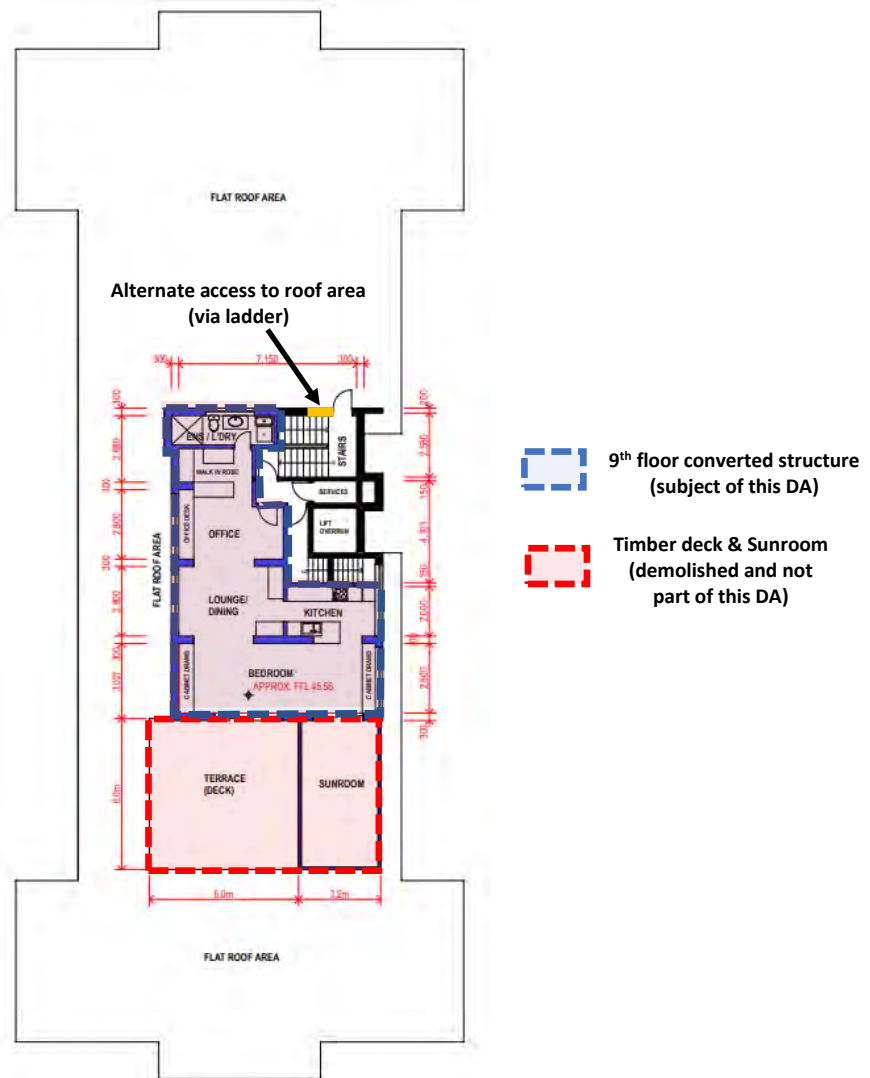
The subject structure was originally approved for use as a laundry, a baggage room and a cleaner's storeroom as part of the building approval for the existing residential flat building in 1961.

The subject structure was subsequently converted to an open plan apartment containing a lounge/dining area, kitchen, amenities and a bedroom without approval. A sunroom and an outdoor timber deck were constructed to the east of the converted structure as a complying development at one stage but it has now been demolished to facilitate roof repair works. The converted structure is also being referred as Unit 901 by the applicant. **The applicant seeks approval for the residential use of the converted structure on the 9<sup>th</sup> floor of the existing apartment building.**

Safety balustrades and glass panels are also required for the eastern elevation of the top floor unit via condition of consent after the demolition of the sunroom and eastern deck.



**Figures 1 – 4: Location of the subject structure**



**Figure 5: 9<sup>th</sup> Floor - Floor Plan**

**Note:** The owners of a ground floor unit (Lot 105) have the exclusive use of the roof top studio as a residence under the By-laws that were executed on 2 March 2022. Furthermore, the Owner's Corporation have granted land owner's consent for the application. It should also be noted that the applicant is required to grant unlimited access to the top floor in accordance with the following By-law to carry out maintenance.

*The Owners Corporation must approve any application by the Owner to carryout any works at the owner's cost, that may be a condition of approval of any Authority for continued residential use of the Exclusive Use Area. For the avoidance of doubt, if an authority requires any work to be undertaken to the common property to facilitate and approve residential use of the Exclusive Use Area, the Owner is liable for the cost of such works and the Owners Corporation is not liable for any such costs.*

It should also be noted that there is an access door above the stair landing to the studio with a ladder that provides an alternative access to the roof area as shown on **Figure 5** above.

## STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R4 High Density Residential
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area - No

Environmental Planning & Assessment Act 1979

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021

SEPP 65 (Design Quality of Residential Apartment Development)

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Local Development

## POLICY CONTROLS

North Sydney Local Infrastructure Contribution Plan

NSDCP 2013

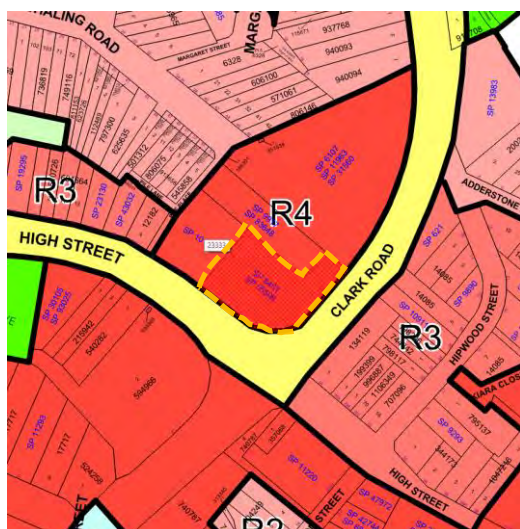


Figure 6: Zoning



Figure 7: Building Height

## DESCRIPTION OF LOCALITY

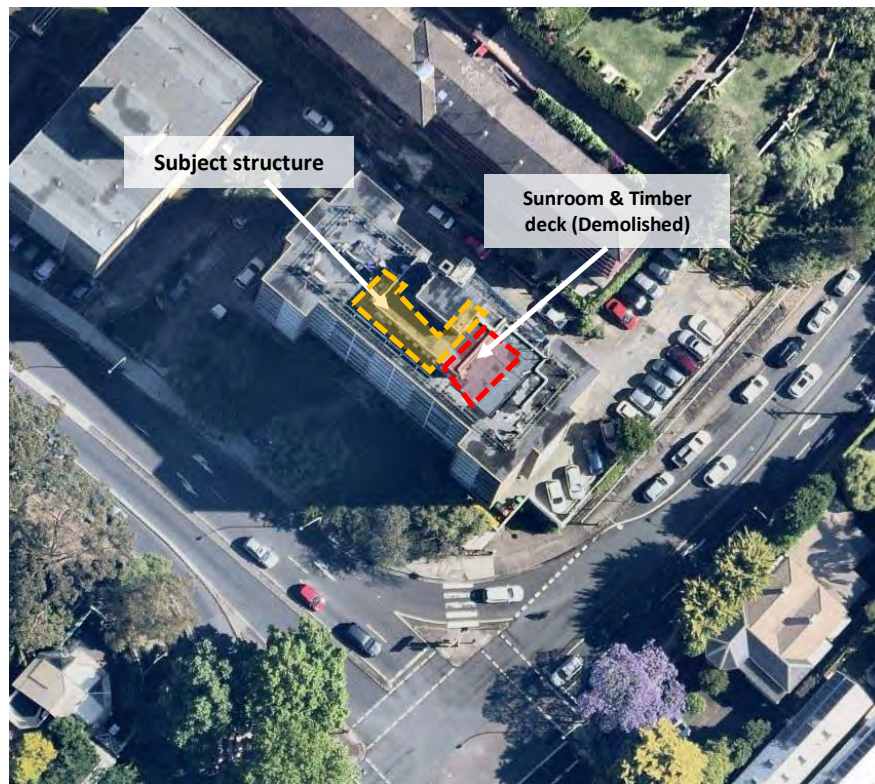
The subject site is located on the north-eastern side of High Street, at the north western junction of Clark Road and High Street.

The property contains two strata plans, i.e. SP8461 and SP 55509. SP 8461 contains all allotments within the development at No.54 High Street with the exception of one ground floor allotment (formerly known as Lot 108) that was subdivision to form Lot 109 in SP55509.

The site encompasses an area of approximately 2,135m<sup>2</sup>, and is irregular in shape with frontages of approximately 46m to High Street and 45m to Clark Road.

The site is currently occupied by a multi-storey residential flat building, also known as *Lelani*, containing a total of 104 apartments. The ground floor level (fronting High Street) accommodates a series of non-residential tenancies.

The subject converted structure is located on the roof level (9<sup>th</sup> floor) of the residential flat building and is only accessible by a staircase connecting the lower floors including the lift lobby on the 8<sup>th</sup> floor. The lift overrun is located above the subject structure as shown in **Figure 8** below.



**Figure 8: Existing apartment building at No. 54 High Street**

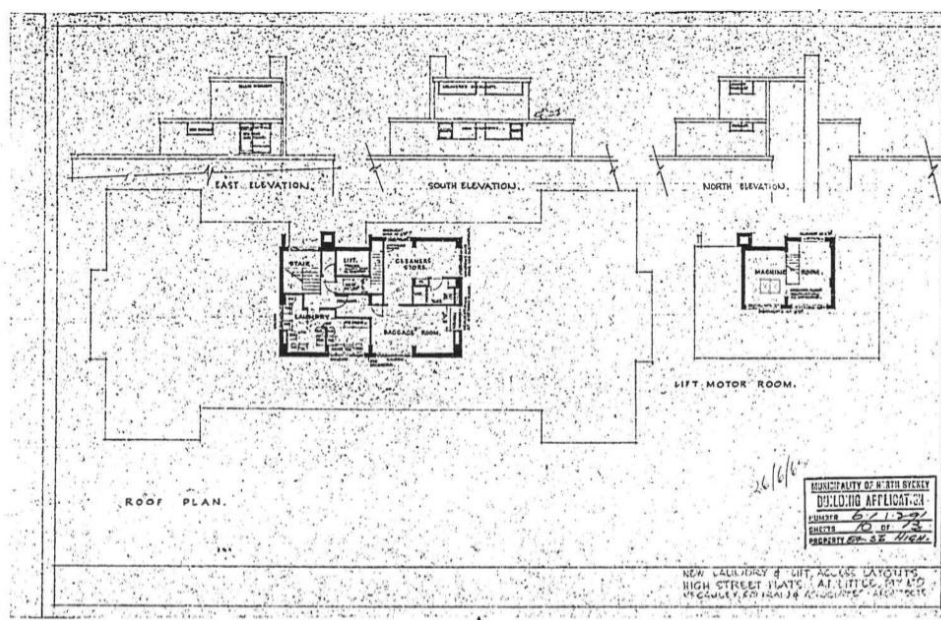
## RELEVANT HISTORY

### Approval for the Residential Flat Building at No.54 High Street:

On **31 August 1961**, Building Application **61/291** was submitted to Council involving the erection a residential flat building on the subject property comprising thirteen bed-sitting rooms on each of the upper eight floors (total of 104 units) with four shops, laundry facilities and entrance lobby at basement level, together with open and covered car parking facilities. The approved structures on the roof level (9<sup>th</sup> floor) included the staircases, a laundry, a cleaner's storeroom and a baggage room. The building consent was subject to the following condition:

5. *the store room on the roof to be utilised as a laundry and the distribution of fittings therein and in the basement laundry to be to the satisfaction of the Building Surveyor;*

The stamped building plans show the roof plan as:

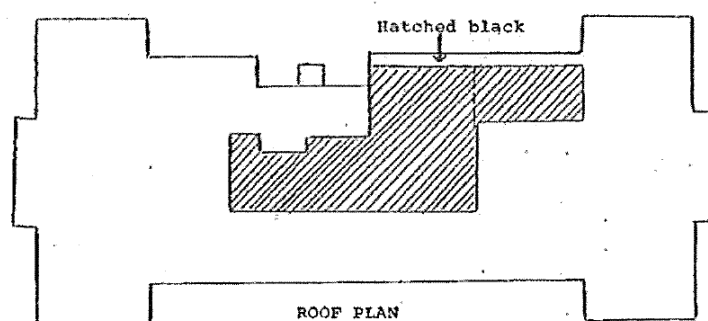


**Figure 9: Original BA (61/291) approved plan**

The approved residential flat building was subsequently completed in the mid 1960's.

**Use of Roof Area and Compliance Actions:**

On 9 September 1974, a By Law was registered by the Owner Corporation to grant the "Exclusive Use Area" for Lot 105 on the ground floor over certain parts of the roof of the building (being common property) including the subject converted structure on the roof level and was depicted on the approved BA61/291 plans as laundry, baggage room and cleaner's storeroom as shown below (Figure 9).



**Figure 10: The exclusive use area as shown in an Annex to the By Law dated 9 September 1974**

The applicant has advised that the area depicted in the 1974 By Law was used as a residence for the building manager/caretaker and was subsequently used as a residential apartment.

On 1 March 2022, the By Law was amended with further provisions relating to the "Exclusive Use Area" including the continued residential use of this area and to allow access for Owners Corporation to carry out repair and maintenance works of the common property.



Notwithstanding the above, a search of Council's records revealed that the studio conversion was undertaken without development consent in 1980s and without consent for office purposes in 1982. There was some compliance action, however, the files do not contain any further information with regard to a resolution of the non-compliances. There is no evidence that approval was ever sought or obtained for the use the roof structure for residential purposes.

In response to complaints received about the unauthorised use of the subject studio, a compliance investigation was undertaken. According to Council's records, no formal Development Consent has been issued for the studio conversion, and staff determined that this was required pursuant to Division 4.3 of the Environmental Planning and Assessment Act, 1979 (the Act). Council must assess any planning implications presented by the dwelling and its use for residential occupation. Consequently, the applicant was invited to lodge a Development Application to initiate the assessment process.

### **Complying Development for Enclosed Pergola and Timber Deck – Z257/01**

On 1 November 2001, approval was granted for a Complying Development Certificate (**Z257/01**) for the construction of an enclosed pergola and timber deck to the east of the 9<sup>th</sup> floor converted structure. This enclosed pergola has been referred by the applicant as the sunroom of the 9<sup>th</sup> floor apartment. The enclosed pergola and timber deck were subsequently constructed and were used as part of unauthorised residential use on the roof level (9<sup>th</sup> floor).

It is noted that the sunroom and the timber deck have been subsequently demolished (between April and May 2022) in order to facilitate repair/maintenance works on the roof level.

### **Previous Development Application - D71/21:**

On 24 May 2021, Development Application (**D71/21**) for the use of the converted apartment including the sunroom and timber deck for residential purposes was refused under delegated authority for the following reasons:

- 1. The structure does not comply with the provisions of the BCA and is not suitable for residential occupation. Given the extent of non-compliances identified within the submitted BCA Report, any future application must include all building works (excluding those required by Council's Fire Order) which are required to ensure compliance with the BCA 2019 Amendment 1. External changes to the structure will also require consideration of the relevant controls under Clause 4.3 and Clause 4.6 North Sydney Local Environmental Plan 2013.*
- 2. Clause 49(1)(b) of the Environmental Planning and Assessment Regulation 2000 provides that a development application may be made by any person with the consent of the owner of the land. The relevant land is common property which is owned by the Owners Corporation - Strata Plan 8461. The consent of the owner has not been provided, accordingly Council is without power to grant consent.*

### **Current Development Application:**

- **8 April 2022** – The subject Development Application (**D105/22**) for the use of the studio on Level 9 of an existing residential flat building for residential use was lodged with Council. Owners consent from the strata plan was granted for the lodgement of the application with a letter from the Senior Strata Manager including the common seal.
- **13 April 2022** – A letter was sent to the applicant requesting additional information including a Clause 4.6 written variation to LEP maximum building height limit, revised architectural plans and an up-to-date BASIX Certificate.
- **22 April to 5 May 2022** - The subject application was notified to surrounding properties and the Milson and Anderson Precincts inviting comment for 14 days. A total of twelve (12) submissions were received.
- **24 May 2022** – Council received a report about the removal of the sunroom on the 9<sup>th</sup> floor.
- **13 July 2022** – A site inspection was conducted by Council's Assessment Officer. The demolition of the sunroom and the outdoor deck were noted during the inspection.
- **29 July 2022** – A letter was received from the applicant's planning consultant providing additional information about the history of events relating to the granting of owners consent from the Owner Corporation.
- **25 August 2022** – A letter was received from the applicant's planning consultant including legal comments relating to the validity of the approved complying development Z257/01.
- **21 October 2022** – The applicant's planning consultant advised in writing that the scope the application be amended to exclude the use of the sunroom and the deck due to the demolition of these structures.
- **11 to 25 November 2022** – The amended application was notified to surrounding properties and the Milson and Anderson Precincts inviting comment for 14 days. A total of four (4) submissions were received.

### **INTERNAL REFERRALS**

#### **Building**

The application, including the submitted fire engineering report, was referred to Council's Senior Building Surveyor who provided the following comments:

*The building will be classified by the NCC BCA 2019 as a 2, 5, 7a & 7b building of Type A construction.*

*The application is supported by a Fire Engineering Report dated 16 July 2021 prepared by AED Group which proposes to address departures from the Deemed to Satisfy provisions of the BCA regarding reduced room heights and fire separation requirements through the use of Performance based Solutions.*

*The application is further supported by a DA Submission Supporting Evidence Report dated 20 August 2021 prepared by Eagle Fire & Safety which concludes that only minor building works are required and compliance with the BCA is readily achievable.*

*Acceptance of any Performance based Solution is a matter for an appropriately registered building certifier during Construction Certificate assessment.*

*A search of Council's records revealed that a Development Control Order – Fire Safety Upgrade Order dated 3 December 2020 is current for the building.*

*Given the above and the minor scope of building works, upgrade of the building pursuant to Clause 64 of the Environmental Planning & Assessment Regulations 2021 is not required.*

*A detailed assessment of compliance with the Building Code of Australia 2019 will be undertaken by an appropriately registered certifier at the Construction Certificate Stage of the proposed development. Additionally, a Fire Safety Schedule is to be prepared by the certifier and accompany the Construction Certificate.*

*Generally, the proposed development can comply with the NCC BCA 2019, Volume 1.*

*It is recommended the following standard Condition F1 is imposed requiring all building works to comply with the NCC/BCA.*

#### **Comment:**

The comments from Council's Senior Building Surveyor are noted and concurred with noting that the sunroom and timber deck to the east of the subject converted apartment have been removed and do not form part of this application.

A condition is recommended requiring the installation of NCC complying balustrades/barriers to the existing openings on the eastern elevation of the subject studio restricting pedestrian access to the external roof areas to ensure the safety of the residents of the studio and/or their visitors. (**Condition C1**).

In addition, a condition is recommended to limit the use of external roof areas to be no-trafficable to ensure public safety (**Condition I1**). The applicant is also required to ensure that the roof areas are accessible at all times for building repairs and maintenance purposes (**Condition I2**).

#### **SUBMISSIONS**

##### **Original proposal**

Council notified adjoining properties and the Milson and Anderson Precincts of the proposed development seeking comment between 22 April and 5 May 2022. Council received twelve (12) submissions.

The issues raised in the submissions are summarised below and addressed later in this report. The original submissions may be viewed by way of DA tracking on Council's website [https://www.northsydney.nsw.gov.au/Building\\_Development/Current\\_DAs](https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs) and are available for review by NSLPP members.

There are eight (8) submissions raising very similar or identical issues which are summarised below:

##### **Basis of Submissions**

- The submission contained background/history relating to the existing apartment building and rooftop uses.

- The subject apartment building was originally approved as an eight storey building and the addition of a residential floor would significantly increase the BCA requirements for the subject apartment building.
- The existing structure does not comply with the NCC/BCA and the development cost would be significantly higher due to the comprehensive building upgrade works required.
- Access to the rooftop is restricted due to the residential use of the studio and the integrity of the entire building compromised leaving the Owner Corporation to be exposed to unacceptable risk.
- The structure is currently part of the common property and the residential use for the structure would result in additional contribution levy.
- Concerns are raised about safety due to the absence of any balustrades and the roof area is easily accessible via the 9<sup>th</sup> floor premises.

The issues raised in the remaining submissions are summarised as follows:

- The roof level is common property and the use of this area as a residence would comprise the implementation of building maintenance works and the servicing of building equipment.
- The subject structure is common property and the applicant does not own premises.
- There is no evidence that the subject structure was used as a residence and the conversion to residential use was unauthorised.
- There is no justification for the use of the studio and any extended areas by the applicant.
- Concerns raised about safety due to the absence of any balustrades and the roof area is easily accessible via the 9<sup>th</sup> floor premises.
- The unauthorised use of the structures on the 9<sup>th</sup> Floor has resulted in poor maintenance of the roof and water leakage causing damages to the apartment building due to the lack of regular maintenance with limited access to the rooftop area for repairs.

### **Amended Proposal**

The applicant submitted an amended proposal, excluding the now demolished sunroom and the timber deck on the eastern side of unit. The amended proposal was renotified to adjoining properties, previous submitters and the precinct for 14 days between 11 and 25 November 2022. Council received seven (7) submissions and the matters raised in submissions are similar to those raised in the submissions received in the first notification with the following additional issues/concerns:

### **Basis of Submissions**

- Concerns are raised about the additional legal cost between the Owners Corporation and the owner of the subject converted apartment for legal matters associated with the use of the premises.
- Concerns are raised about the safety and the financial liability associated with the non-compliance with the building and fire safety requirements arising from the use of the structure.
- The entire rooftop/Level 9 is owned by the Owners' Corporation SP8461 and was designed as a flat waterproof slab with an enclosed brick utility area offering direct access for service contractors to roof ventilation, drainage and other service equipment.
- The unauthorised use over the years has resulted in ad-hoc alterations and additions most of which have not been carried out without the knowledge, approval or visibility of the Owners Corporation.
- Council has refused an identical DA (71/21) without Owners Corporation approval.
- The applicant occupies only a lessor area of the rooftop structures under an exclusive use By-Law dating back to the initial strata submission of the property in the 1970s.
- Since its occupation under this By-law, the occupants have significantly compromised the OC's ability to carrying repair maintenance obligations under the Strata management Act.
- The unauthorised use of the rooftop structure would have negative impacts on building management issues for the residents of the existing apartment building.

- The proposed dwelling/residential use is unsuitable because the subject structure on the 9<sup>th</sup> Floor was formerly used as communal facilities.
- The rooftop/Level 9 is common property and full unfettered access is required by the Owners Corporation.
- The applicant has been obstructing access to the roof top for maintenance works to be carried out by the Owner's Corporation as well as a series of activities requiring the issue of notices from the strata management.
- The proposal would increase the demand for car parking on site.
- The converted structure is inadequate for use as a residence as it was not originally designed as a dwelling with sufficient headroom, lift access, structural adequacy, building services and safety provisions.
- The applicant has installed garden bed/planters that causes further damage to the roof area.

## **CONSIDERATION**

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed under the following headings:

### **SEPP (Biodiversity and Conservation) 2021**

#### **Chapter 10 - Sydney Harbour Catchment**

Having regard to the SEPP (Biodiversity and Conservation) 2021 concerned with the Sydney Harbour Catchment and the Sydney Harbour Foreshores and Waterways Area DCP 2005, the proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given that the proposal would not change the overall appearance of the existing apartment building. As such, the development is acceptable having regard to the provisions contained within the above SEPP 2021 and the Sydney Harbour Foreshores and Waterways DCP 2005.

### **SEPP (Resilience and Hazards) 2021**

The provisions of SEPP (Resilience and Hazards) require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The proposal does not offend the relevant provisions/requirements of the above SEPP because the proposal is for the residential use of an existing structure on the roof of the apartment building only and no earthworks.

### **SEPP (Building Sustainability Index: BASIX) 2004**

A valid BASIX Certificate has been submitted with the application to satisfy the Aims of the SEPP. **(Condition No. C10, G4)**

### **SEPP 65 Design Quality of Residential Apartment Development**

The proposal involves the use of a former communal facilities as a studio on the roof (9<sup>th</sup> floor) of No. 54 High Street. The proposal would result in an increase in the total number of apartments within the existing apartment by one (1) unit to 105 units.

It is considered that the provisions/requirements of SEPP 65 do not strictly apply because the proposal does not involve “*substantial redevelopment or substantial refurbishment of an existing building*” in accordance with Clause 4(1)(a)(ii) of the SEPP.

Notwithstanding the above consideration has been given to the SEPP’s Design Quality Principles and the relevant provisions in the ADG as a measure of the performance of the proposed converted apartment.

### ***Design Quality Principles***

***Principle 1 and 2: Context, Built Form and Scale:*** The proposal would not change the building height and envelope of the existing buildings within the subject site. The proposed converted apartment would be located on the existing structure on the roof level (9<sup>th</sup> floor). There would be no change to the built form and scale of the existing building and no impact on the context of the building and its relationship with surrounding development.

***Principle 3: Density*** – The addition of a studio apartment on the rooftop level of the existing apartment building would increase the number of units within the apartment building to 105 units. The density of the site with the addition of a studio apartment is considered to be appropriate for the locality due to the proximity of the site to amenities and public transport.

***Principles 4 & 5 : Sustainability, Landscape*** – The applicant has submitted a BASIX Certificate demonstrating the efficient use of resources. There would be no change to the existing soft landscaping within the subject site given the location of the subject premises on the roof top of the apartment building.

***Principle 6: Amenity*** – The size of the studio apartment on the roof level (9<sup>th</sup> floor) of the existing apartment building at 78sqm complies with the minimum requirement of the ADG. The proposed converted apartment would receive the required solar access and cross ventilation due to the location and design of the subject premises on the rooftop of the existing apartment building.

***Principle 7: Safety*** - As mentioned earlier in this report, Council’s Senior Building Surveyor considered that the proposal can comply with the relevant NCC/BCA requirements subject to the imposition of appropriate conditions.

A further condition is recommended for the installation of NCC compliant balustrades/barriers to the existing openings on the eastern elevation of the subject studio restricting access pedestrian access to the external roof areas to protect safety of the users of the premises (**Condition C1**).

***Principle 8: Housing Diversity and Social Interaction*** - The proposal would not significantly change the unit mix of the existing apartment building given that it contains a high number of small 1 bedroom units within the existing building.

***Principle 9: Aesthetics*** – The proposed use of the converted apartment would have no material impact on the aesthetic quality of the building because the proposal relates to the use of an existing structure on the roof level (9<sup>th</sup> floor) of the existing apartment building.

It is concluded that the proposed use of the converted apartment generally complies with the design quality principles of SEPP 65 subject to the imposition of a deferred commencement condition requiring fire upgrade works as identified in the submitted NCC/BCA report.

**Apartment Design Guide (ADG)**

The design of subject converted apartment has been considered against the Apartment Design Guide as detailed in the table below:

| Amenity                          | Design Criteria   | Comment   | Compliance                           |
|----------------------------------|---|---|--------------------------------------|
| Solar and daylight access        | minimum 2 hours of direct sunlight  | The subject converted apartment would receive in excess of the required 2 hours of sunlight between 9am and 3pm during mid winter (21 June).  | Yes                                  |
| Natural ventilation              | 60% of apartments are naturally cross ventilated  | The subject converted apartment would achieve good cross ventilation with windows on each elevation of the unit.  | Yes                                  |
| Ceiling Heights                  | 2.7m (habitable rooms)  | 2.345m<br>The ceiling height is constrained by the existing structure. It is however noted that the converted apartment achieves good cross ventilation and good solar access. The non-compliance with the floor to ceiling height, on balance, is considered to be acceptable.                                   | No (acceptable on merit)             |
| Apartment size and layout        | Studio – 35sqm<br><br>Master bedrooms have a minimum area of 10m <sup>2</sup><br><br>Living rooms have a minimum width of 3.6m (Studio and 1B) and 4m (2B and 3B)<br><br>The maximum habitable room depth is 8m from a window | 78sqm<br><br>Studio – N/A<br><br>Studio – 4m<br><br>Studio – max 3.5m   | Yes<br><br>N/A<br><br>Yes<br><br>Yes |
| Private open space and balconies | Studios – 4m <sup>2</sup>   | Studio - 0m <sup>2</sup><br>The proposal is considered to be acceptable because the location of the unit on the rooftop level with significant views to the north, south and east and full height windows on the eastern elevation would provide a sense of openness and visual connection to the outdoor spaces. | No (acceptable on merit)             |
| Common circulation and spaces    | Maximum number of apartments off a circulation core on a single level is 8  | Only one unit on the 9 <sup>th</sup> floor  | Yes                                  |
| Storage                          | 4m <sup>3</sup> (Studio)  | Adequate storage provided within the apartment  | Yes                                  |

It is concluded that the proposed use of the converted apartment generally complies with the design requirements of the ADG.

## **NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)**

### **1. Permissibility**

The proposal involves the use of a converted structure on the roof level of an existing apartment building as a studio. The use of a studio apartment and associated building upgrade works within an existing apartment building are types of development permissible in an R4 (High Density Residential zone with Council consent.

### **2. Objectives of the zone**

The proposal is generally consistent with the relevant objectives of the zone as demonstrated throughout this report.

## **Part 4 – Principal Development Standards**

| <b>Principal Development Standards – North Sydney Local Environmental Plan 2013</b> |                 |                |  |
|---|-----------------|----------------|--|
| <b>Site Area – 2,135m<sup>2</sup></b>   | <b>Proposed</b> | <b>Control</b> | <b>Complies</b>                            |
| Clause 4.3 – Heights of Building  | 32m             | 12m            | NO – Clause 4.6 written variation received |

### **3. Height of Building – Clause 4.3**

The existing apartment building has a maximum building height of 36m, and the roof of the converted structure would have a building height of 32m above the ground level. This represents a variation of 266% from the prescribed 12m building height for the subject site.

Whilst a Clause 4.6 is technically not required for a change of use, the applicant has submitted a written Clause 4.6 request to vary the development standard concerned with the height of buildings as a precautionary measure.

Consequently, consideration has been given to the applicant's Clause 4.6 submission as well as the following objectives of the building height control:

***(1)(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,***

The proposal involves the use of a converted structure on the roof level of an existing apartment building so there would be no change to the existing landform nor the existing building envelope of the existing building.



***(1)(b) to promote the retention and, if appropriate, sharing of existing views,***

The proposal would not change the building envelope of the existing structure on the roof level of the apartment building. Therefore, the proposal would have no additional impacts on the significant views as seen from the adjoining properties or the public domain.

***(1)(c) to maintain solar access to existing dwellings, public reserves, and streets, and to promote solar access for future development,***

There would be no additional shadowing impacts arising from the proposal because there would be no change to the existing building envelope.

***(1)(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,***

The proposal would have no material privacy impacts, visual and acoustic, because the proposed apartment would be more than 15m away from the nearest adjoining property.

***(1)(e) to ensure compatibility between development, particularly at zone boundaries,***

The existing apartment building and the adjoining properties to the north and west are located on land zoned R4 (High Density residential). Furthermore, the proposal would not change the building envelope or the appearance of the existing apartment building nor the relationship with developments on the adjoining properties.

***(1)(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.***

The proposed development would not change the building envelope or the appearance of the existing apartment building. The addition of one (1) apartment within an existing apartment building containing 104 units is considered to be acceptable.

***(1)(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and E4 Environmental Living.***

This objective is not relevant to the subject multi storey building.

***That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and***

Strict compliance with the building height control is considered to be unreasonable and unnecessary as the elements in breach of the height control would not result in changes to the existing building envelope and the proposal would not cause material impacts on the streetscape or the amenity of adjoining properties.

**That there are sufficient environmental planning grounds to justify contravening the development standard.**

It is considered that the proposed use of the former communal facilities above the LEP building height limit would have no material impacts on neighbouring properties and the locality in terms of the built forms and amenity. There are sufficient environmental planning grounds to justify contravening the building height control.

**The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for Residential R4 zone in which the development is proposed to be carried out**

The written justification as submitted by the applicant seeking variation to Clause 4.3(2) in NSLEP 2013 is considered to be well founded in the site circumstances. Compliance with the maximum building height control is therefore considered to be unreasonable and unnecessary in the circumstances, as the objectives of the zone and the control are achieved despite the non-compliance.

**NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013**

The proposal has been assessment under the following heading within NSDCP 2013:

| <b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development</b> |                        |   |
|--|------------------------|---|
|  | <i><b>complies</b></i> | <i><b>Comments</b></i>  |
| <b>1.2 Social Amenity</b>  |                        |   |
| <b>Population Mix</b>  | Yes                    | Whilst the subject application would provide an additional studio apartment, this additional unit would not result in a significant change in population mix within the locality given the minor nature of the increase.  |
| <b>Maintaining Residential Accommodation</b>                                     | Yes                    | The subject site is occupied by an apartment building containing 104 units. The application would not result in a significant change in the quantity and quality of residential accommodation on the site.  |
| <b>Affordable Housing</b>  | Yes                    | There would be no change to the current level of affordable housing within the subject site, if any, given that the existing apartment building is strata subdivided and the proposed studio has been occupied by the applicant for some time.                            |
| <b>1.3 Environmental Criteria</b>  |                        |   |
| <b>Topography</b>  | No change              | The proposal primarily relates to the existing building so there would be no further changes to the topography and landform of the subject site.  |
| <b>Views/Solar access</b>  | Yes                    | The proposal would have no material impact on overshadowing and/or views from the adjoining properties given that the proposed development would not result in changes to the existing building height, bulk and scale of the existing apartment building.                |
| <b>Privacy</b>   | Yes                    | The use of the studio apartment would have no material privacy impacts on the surrounding properties given the location of the subject structure on the top floor of the building and the nearest adjoining property would be more than 15m away from the subject studio. |
| <b>1.4 Quality built form</b>  |                        |   |
| <b>Context Form, Massing Scale Built Form character</b>                          | Yes                    | The proposed development is located entirely within the existing building envelope, therefore, there would be no change in terms of the building height, bulk and scale of the existing apartment building.   |

|  |                          |   |
|--|--------------------------|---|
| <b>Subdivision Pattern</b>                             | No change                | The proposal would not alter the subdivision pattern within the locality.   |
| <b>Siting</b>  | No change                | The proposal would not change the siting and/or the orientation of the existing development on site.  |
| <b>Setbacks – Front, Side and Rear</b>                 | No change                | The proposed modifications would not change the overall building setbacks from all property boundaries as approved in the original DA consent.  |
| <b>Roofs</b>   | No change                | The proposal does not change the roof form of the existing building.  |
| <b>Materials</b>                                       | Yes (via condition)      | The proposed development relates to the use of the converted communal facilities as a studio apartment and the only external material change would be the framing and glazed panels to be installed for the openings on the eastern elevation facing the now demolished sunroom to restrict pedestrian access to the roof top areas ( <b>Condition C1</b> ). A standard condition is recommended to ensure the materials used would be compatible to those on the existing building.  |
| <b>1.5 Quality Urban Environment</b>                   |                          |   |
| <b>Safety and Security</b>                             | Yes (via condition)      | As mentioned earlier in this report, the applicant is required to install of framing and fixed glass panels to the openings on the eastern elevation facing the now demolished sunroom to restrict pedestrian access to the roof top areas and to ensure the safety of occupants/visitors of the proposed studio ( <b>Condition C1</b> ).<br><br>In addition, a condition is recommended that the external roof areas are not trafficable to ensure safety ( <b>Condition I1</b> ). The applicant is required to ensure that the roof areas are accessible at all times for building repairs and maintenance purposes ( <b>Condition I2</b> ).<br><br>As indicted earlier in Council Senior Building Surveyor’s comments, the application is supported by a Fire Engineering Report addressing departures from the Deemed to Satisfy provisions of the NCC/BCA and a Supporting Evidence Report. In addition a Fire Safety Upgrade Order dated 3 December 2020 is still current for the building. However, the proposal can comply with the relevant building/fire safety requirements subject to the imposition of <b>Condition F1</b> requiring compliance with the relevant NCC/BCA codes. |
| <b>Parking</b>   | No (acceptable on merit) | The additional studio unit would require one (1) additional parking space.<br><br>Whilst on-site parking is provided on the ground floor within the subject site, it is unlikely that additional parking spaces would be provided due to limitations of the existing configuration of the parking area.<br><br>It is however noted that the subject site is in close proximity to public transport including Milsons Point/North Sydney railway stations, bus and ferry services. Therefore, the proposal is considered to be acceptable having regard to access to other forms of transport.   |
| <b>Vehicle Access</b>                                  | No change                | There would be no change to the driveway off High Street.   |
| <b>Site Coverage Un-built Upon Area Landscape Area</b> | No change                | The subject studio is located on the roof of the existing apartment building. Therefore, the proposal would not alter the existing site coverage, unbuilt upon area and landscaped area within the subject site.  |
| <b>1.6 Efficient Use of Resources</b>                  |                          |   |
| <b>Energy Efficiency</b>                               | Yes                      | The applicant has submitted a valid BASIX Certificate.  |

### Neutral Bay Planning Area (Neutral Neighbourhood) – Part C of NSDCP 2013

Consideration has been given to Part C of NSDCP 2013 and in particular Section 7 of the Character Statement for the Neutral Bay Planning Area and Section 7.2 for the Neutral Neighbourhood. The proposal is unlikely to have adverse impacts on the character of the locality.

## LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure.

The proposal involves an additional studio apartment within an existing apartment building.

The contributions payable have been calculated in accordance with Council's Contributions Plan as follows:

### Contribution amounts payable

|                           |                                       |                    |
|---------------------------|---------------------------------------|--------------------|
| <b>s7.11 contribution</b> |                                       |                    |
|                           | Open space and recreation facilities: | \$8,296.87         |
|                           | Public domain:                        | \$4,618.62         |
|                           | Active transport:                     | \$263.61           |
|                           | Community facilities:                 | \$1,666.47         |
|                           | Plan administration and management:   | \$221.99           |
|                           |                                       |                    |
|                           | <b>Total:</b>                         | <b>\$15,067.56</b> |

Conditions requiring the payment of contributions at the appropriate time are included in the attached conditions (**Condition C8**).

## ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

### ENVIRONMENTAL APPRAISAL

### CONSIDERED

|    |  |     |
|----|--|-----|
| 1. | Statutory Controls   | Yes |
| 2. | Policy Controls  | Yes |
| 3. | Design in relation to existing building and natural environment                                      | Yes |
| 4. | Landscaping/Open Space Provision   | Yes |
| 5. | Traffic generation and Carparking provision  | Yes |
| 6. | Loading and Servicing facilities   | N/A |
| 7. | Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |
| 8. | Site Management Issues   | Yes |
| 9. | All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979      | Yes |

## SUBMITTERS CONCERNS

Council notified adjoining properties and the Milson and Anderson Precincts of the proposed development seeking comment between 22 April and 5 May 2022. Council received twelve (12) submissions.

The amended proposal, that excludes the now demolished sunroom and the timber deck, was notified to adjoining properties was renotified to adjoining properties, previous submitters and the precinct for 14 days between 11 and 25 November 2022. Council received seven (7) submissions.

The issues raised in the submissions are addressed below:

- ***The subject apartment building was originally approved as an eight storey building and the addition of a residential floor would significantly increase the BCA requirements for the subject apartment building.***
- ***The existing structure does not comply with the building code and the development cost would be significantly higher due to the comprehensive building upgrade works required.***
- ***Concerns raised about the safety and liability concerns associated with the non-compliance with the building and fire safety requirements arising from the use of the structure.***

### Comment:

As indicated earlier in Council Senior Building Surveyor's comments, the application is supported by a Fire Engineering Report addressing departures from the Deemed to Satisfy provisions of the BCA and a Supporting Evidence Report. In addition, a Fire Safety Upgrade Order dated 3 December 2020 is still current for the existing apartment building. The proposal can comply with the relevant building/fire safety requirements subject to the imposition of **Condition F1** requiring compliance with the relevant NCC/BCA codes.

- ***The roof level is common property and the subject structure was designed for use as a utility area allowing direct access to service various building services equipment on the roof top.***
- ***The use of this area as a residence would compromise the implementation of building maintenance works and the servicing of building equipment.***
- ***Access to the rooftop is restricted due to the use of the subject structure and the adverse impacts on the integrity of the building leaving the Owner's Corporation to be exposed to unacceptable liability.***
- ***The applicant has been obstructing access to the roof top for maintenance works to be carried out by the Owner's Corporation as well as a series of activities requiring the issue of notices from the strata management.***
- ***The rooftop/Level 9 is common property and full unfettered access is required by the Owners Corporation.***
- ***The applicant has installed garden bed/planters that causes further damage to the roof area.***

### Comment:

It is noted from the amended By Law dated March 2022 that the owner of the studio must allow access for inspection, repair or maintenance of the common property including the plant and equipment on the roof level. Notwithstanding this, a condition is recommended requiring the applicant to provide access to the rooftop areas for building repairs and maintenance works at all times (**Condition I2**).

It is also noted that there is an access door above the stair landing to the studio with a ladder that provides an alternative access to the roof area as indicated earlier in this report.

Furthermore, a condition is also recommended specifying approval not granted or implied for the demolished sunroom, timber deck and garden bed/planters (**Condition A4**).

- ***The subject structure is common property and the applicant does not own premises.***
- ***The structure is currently part of common property and residential use for the structure would result in additional contribution levy.***

**Comment:**

It is noted that the subject studio is currently common property. Nevertheless, the subject application is supported by a letter from the Senior Strata Manager granting consent for the lodgement of the application with the common seal.

A condition is recommended requiring the applicant to pay S7.11 Contribution for the addition of one studio unit (**Condition C8**).

- ***The proposed dwelling/residential use is unsuitable because the subject structure on the 9<sup>th</sup> Floor was formerly used as communal facilities.***
- ***The unauthorised use of the structure is likely to cause negative impacts and building management issues for the residents of the existing apartment building.***
- ***The proposed studio is inadequate for its use as a residence as it was not originally designed as a dwelling with sufficient headroom, lift access, structural adequacy, building services and safety provisions.***
- ***The proposal would increase the demand for car parking on site.***

**Comment:**

The proposal has been assessed against the relevant planning instrument including North Sydney Local Environment Plan 2013, North Sydney Development Control Plan 2013, SEPP 65 (Design Quality of Residential Apartment Development) and Apartment Design Guide (ADG) and was found to be generally acceptable subject to the imposition of appropriate conditions.

It is noted from the comments of Council's Senior Building Surveyor that the proposal can comply with the NCC/BCA. It is acknowledged that existing building does not fully comply with current design requirements such as floor to ceiling heights and lift access, however, the proposal is considered to be acceptable given that the proposed studio would provide reasonable amenity with adequate daylight and cross ventilation with significant views of the Sydney Harbour and the Sydney City CBD and North Sydney skyline. The lack of a parking space for the subject studio is considered to be acceptable because of the building proximity to various types of public transport modes.

A condition is recommended to ensure the structural adequacy of the existing building (**Condition C3**).

- ***Concern is raised on safety due to the absence of railings around the perimeter of the rooftop and the outdoor roof area is easily accessible via the 9<sup>th</sup> floor premises.***

**Comment:**

The applicant is required to install framing and fixed glass panels to the openings on the eastern elevation facing the now demolished sunroom to restrict pedestrian access to the roof top areas and to ensure the safety of occupants/visitors of the proposed studio unit (**Condition C1**).

In addition, a condition is recommended that the external roof areas are not trafficable to ensure public safety (**Condition I1**).

Furthermore, the submissions also raised concerns about legal costs and management issues between the Owners Corporation and the applicant. Notwithstanding the conditions recommended in this report to cover other relevant matters, the previously mentioned concerns are civil matters to be resolved amongst the affected parties and possibility NCAT.

**PUBLIC INTEREST**

The proposal is considered to be in the public interest for the reasons stated throughout this report.

**SUITABILITY OF THE SITE**

The proposal would be located in a R4 (High Density Residential) where an addition of a studio apartment is a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

**CONCLUSION**

The proposal was considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and was generally found to be satisfactory.

The application proposes the use of a previously approved communal utility rooms on the roof level (9<sup>th</sup> floor) of an existing apartment building as a studio which is a form of permissible development on land zoned R4 (High Density Residential). The subject structure has been used for residential purposes without planning approval for some time.

The Clause 4.6 written submission submitted by the applicant seeking a variation to the LEP maximum building height development standard is acceptable because the proposal would not change the height and the envelope of the existing apartment building and would not result in adverse impacts in terms of the loss of significant views, privacy and/or solar access for the adjoining properties.

Council received a total of nineteen (19) submissions that raised various concerns about the proposed use of the subject structure and the issues have been addressed in this report including the imposition of specific conditions of consent to ensure compliance with the building codes and to facilitate access to the roof top areas for necessary future building repair and maintenance works.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate standard and site specific conditions.

## **HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?**

Council notified adjoining properties and the Milson and Anderson Precincts of the proposed development seeking comment between 22 April and 5 May 2022. Council received twelve (12) submissions. The amended proposal, that excludes the now demolished sunroom and the timber deck, was notified to adjoining properties, previous submitters and the precinct for 14 days between 11 and 25 November 2022. Council received seven (7) submissions.

The issues raised in the above submissions have been addressed in this report.

## **RECOMMENDATION**

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 – maximum building height and grant consent to Development Application No. 105/22 for the use of an existing unauthorised converted structure as a studio apartment on the 9<sup>th</sup> floor of a building on land at 54 High Street, North Sydney subject to the following site specific and attached standard conditions:-

### **No Approval for Sunroom, Timber Deck and Planters**

A4. Nothing in this consent authorises the construction and/or use of the following:

- (a) Sunroom and timber deck to the east of the proposed studio; and
- (b) Garden bed/planters on the roof level with associated planting.

(Reason: To ensure that the terms of consent is clear and only extend to the use)

### **Design Modifications – Eastern Elevation**

C1. The design of the existing openings on the eastern elevation of the subject studio on the roof level (9<sup>th</sup> floor) must be modified as follows:

- (a) Installation of frames and glazed panels to all full height openings. The frames and glazed panels must be contained within the existing openings and must not extend beyond the building envelope; and
- (b) Installation of complying balustrades/railing across the full width of the openings to restrict access to the outdoor areas on the roof level.

The design and installation of the above modified building elements must comply with the relevant building requirements and submitted for the written approval of Council's Team Leader Assessments.



The Certifying Authority must also ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To restrict pedestrian access to the roof top and to ensure safety for occupants)

**Non-trafficable Area**

11. The external areas on the rooftop level (9<sup>th</sup> Floor) must be non-trafficable other than to provide access to carry out maintenance and repair works on the roof level by qualified persons.

(Reason: To restrict pedestrian access to the roof top and to ensure safety for occupants)

**Access to the Roof Level for Repair and/or Maintenance Works**

12. The applicant must provide access through the subject apartment to the external areas on the roof level to carry out maintenance and repair works by qualified/authorised persons.

(Reason: To ensure access to the external areas on the roof level for maintenance and repair works)

**Robin Tse**  
**SENIOR ASSESSMENT OFFICER**

**Robyn Pearson**  
**TEAM LEADER ASSESSMENTS**

---

**STEPHEN BEATTIE**  
**MANAGER DEVELOPMENT SERVICES**

---

**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**54 HIGH STREET, NORTH SYDNEY**  
**DEVELOPMENT APPLICATION NO. 105/22**

**A. Conditions that Identify Approved Plans**

**Development in Accordance with Plans/Documentation**

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

| Plan No. / Rev | Description               | Prepared by | Dated    |
|----------------|---------------------------|-------------|----------|
| DA 01 E        | Floor Plan and Elevations | Top Design  | 21.04.22 |

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**Plans on Site**

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

**No Demolition of Extra Fabric**

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

**No Approval for Sunroom, Timber Deck and Planters**

A4. Nothing in this consent authorises the construction and/or use of the following:

- (a) Sunroom and timber deck to the east of the proposed studio; and
- (b) Garden bed/planters on the roof level with associated planting.

(Reason: To ensure that the terms of consent is clear and only extend to the use)

**C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)*****Design Modifications – Eastern Elevation**

C1. The design of the existing openings on the eastern elevation of the subject studio on the roof level (9<sup>th</sup> floor) must be modified as follows:

- (a) Installation of frames and glazed panels to all full height openings. The frames and glazed panels must be contained within the existing openings and must not extend beyond the building envelope; and
- (b) Installation of complying balustrades/railing across the full width of the openings to restrict access to the outdoor areas on the roof level.

The design and installation of the above modified building elements must comply with the relevant building requirements and submitted for the written approval of Council's Team Leader Assessments.

The Certifying Authority must also ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To restrict pedestrian access to the roof top and to ensure safety for occupants)

**Dilapidation Report Damage to Public Infrastructure**

C2. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

### **Structural Adequacy of Existing Building**

- C3. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Certifying Authority for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

### **Sediment Control**

- C4. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A Sediment Control Plan must be prepared and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and

- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

### **Waste Management Plan**

- C5. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
  - b) The design of the on-site waste storage and recycling area; and
  - c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

### **External Colours and Finishes**

- C6. The external colours and finishes of the window frames, glazing and balustrades shall match those as existing and/or be compatible with surrounding development. A schedule of external colours and finishes must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that the completed colours and finishes of the works are compatible with surrounding development)

**Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement**

- C7. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$2,000.00 to be held by Council for the payment of cost for any/all of the following:
- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
  - b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
  - c) remedying any defects in any such public work that arise within six months after the work is completed.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

### Section 7.11 Contributions

- C8. A monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Local Infrastructure Contribution Plan 2020 for the public amenities/ services detailed in the table below, must be paid to Council.

**s7.11 contribution :**

|                                       |            |
|---------------------------------------|------------|
| Open space and recreation facilities: | \$8,296.87 |
| Public domain:                        | \$4,618.62 |
| Active transport:                     | \$263.61   |
| Community facilities:                 | \$1,666.47 |
| Plan administration and management:   | \$221.99   |

**The total contribution is \$15,067.56**

The contribution MUST BE paid prior issue of any Construction Certificate.

The above amount, will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Local Infrastructure Contribution Plan 2020 can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au)

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

### Security Deposit/Guarantee Schedule

- C9. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

| <b>Security deposit/ guarantee</b> | <b>Amount (\$)</b> |
|------------------------------------|--------------------|
| Infrastructure Damage Bond         | \$2,000.00         |
| <b>TOTAL BONDS</b>                 | <b>\$2,000.00</b>  |

Note: The following fees applicable

| <b>Fees</b>               |                    |
|---------------------------|--------------------|
| Section 7.11 contribution | \$15,067.56        |
| <b>TOTAL FEES</b>         | <b>\$15,067.56</b> |

**54 HIGH STREET, NORTH SYDNEY  
DEVELOPMENT APPLICATION NO. 105/22**

Page 7 of 17

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

**BASIX Certificate**

C10. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1198309M\_03 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

**D. *Prior to the Commencement of any Works (and continuing where indicated)*****Public Liability Insurance - Works on Public Land**

D1. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

**Notification of New Addresses**

D2. Prior to the commencement of any building works, an application must be made and written confirmation received from North Sydney Council of the allocated street address (house number) and/or unit numbers of the completed project.



To assist Council, a plan for unit numbering should be submitted for concurrence. These details will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard relating to rural and urban addressing. A copy of the allocation confirmation must be submitted to the Certifying Authority with the application for a Construction Certificate.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

### **Commencement of Works' Notice**

D3. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

### ***E. During Demolition and Building Work***

#### **Parking Restrictions**

E1. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

#### **Road Reserve Safety**

E2. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

### **Temporary Disposal of Stormwater Runoff**

E3. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

### **Removal of Extra Fabric**

E4. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

### **Dust Emission and Air Quality**

E5. The following must be complied with at all times:

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

**54 HIGH STREET, NORTH SYDNEY  
DEVELOPMENT APPLICATION NO. 105/22**

Page 10 of 17

**Noise and Vibration**

- E6. The works must be undertaken in accordance with the "Interim Construction Noise Guideline," published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

**Applicant's Cost of Work on Council Property**

- E7. The applicant must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

**No Removal of Trees on Public Property**

- E8. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

**Construction Hours**

- E9. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

| <b>Standard Construction Hours</b> |                        |                   |
|------------------------------------|------------------------|-------------------|
| <b>Location</b>                    | <b>Day</b>             | <b>Hours</b>      |
| <b>R4 Zone</b>                     | Monday - Friday        | 7.00 am - 5.00 pm |
|                                    | Saturday               | 8.00 am - 1.00 pm |
|                                    | Sunday, Public holiday | No work permitted |

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

**Installation and Maintenance of Sediment Control**

- E10. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

Erosion and sediment measures must be maintained in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th edition, Landcom, 2004), commonly referred to as the "Blue Book" and can only be removed when development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

**Sediment and Erosion Control Signage**

- E11. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

**Site Amenities and Facilities**

- E12. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

(Reason: To ensure the health and safety of the community and workers on the site)

**Health and Safety**

- E13. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

(Reason: To ensure the health and safety of the community and workers on the site)

**Prohibition on Use of Pavements**

- E14. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

**Plant and Equipment Kept Within Site**

- E15. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To ensure public safety and amenity on public land)

**Waste Disposal**

- E16. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

**Asbestos Removal**

- E17. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

**F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation**

**National Construction Code**

F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

**Home Building Act**

F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:

a) in the case of work for which a principal contractor is required to be appointed:

- i) the name and licence number of the principal contractor, and
- ii) the name of the insurer by which the work is insured under Part 6 of that Act, or

(b) in the case of work to be done by an owner-builder:

- (i) the name of the owner-builder, and
- (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

### **Appointment of a Principal Certifying Authority (PCA)**

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

### **Construction Certificate**

- F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

### **Occupation Certificate**

- F5. A person must not commence occupation or use of the whole or any part of a new building (*new building* includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

### **Demolition**

- F6. Demolition work must be undertaken in accordance with the provisions of AS2601-Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

### **Site Sign**

- F7. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and

- c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

### **G. Prior to the Issue of an Occupation Certificate**

#### **Damage to Adjoining Properties**

- G1. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

#### **Utility Services**

- G2. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

#### **Asbestos Clearance Certificate**

- G3. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos; or  
b) the building/land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au).

(Reason: To ensure that building works involving asbestos-based products are safe for occupation and will pose no health risks to occupants)



**BASIX Completion Certificate**

- G4. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate, the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

**House Numbering (Dwellings)**

- G5. Prior to any Occupation Certificate being issued an application must be made to North Sydney Council for written confirmation, or allocation, of the street address(es) or apartment number(s) for the completed project in accordance with Council's Property Addressing Policy. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2011.

Note: If apartments are to be sold off the plan, the applicant must have written confirmation from Council of the address and apartment numbering if the apartment number is to be identified on the contract.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

**Compliance with Certain Conditions**

- G6. Prior to the issue of any Occupation Certificate, Conditions A4 and C1 must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

***I. Ongoing/Operational Conditions*****Non-trafficable Area**

- I1. The external areas on the roof top level (9<sup>th</sup> Floor) must be non-trafficable other than to provide access to carry out maintenance and repair works on the roof level by qualified persons.

(Reason: To restrict pedestrian access to the roof top and to ensure safety for occupants)

**Access to the Roof Level for Repair and/or Maintenance Works**

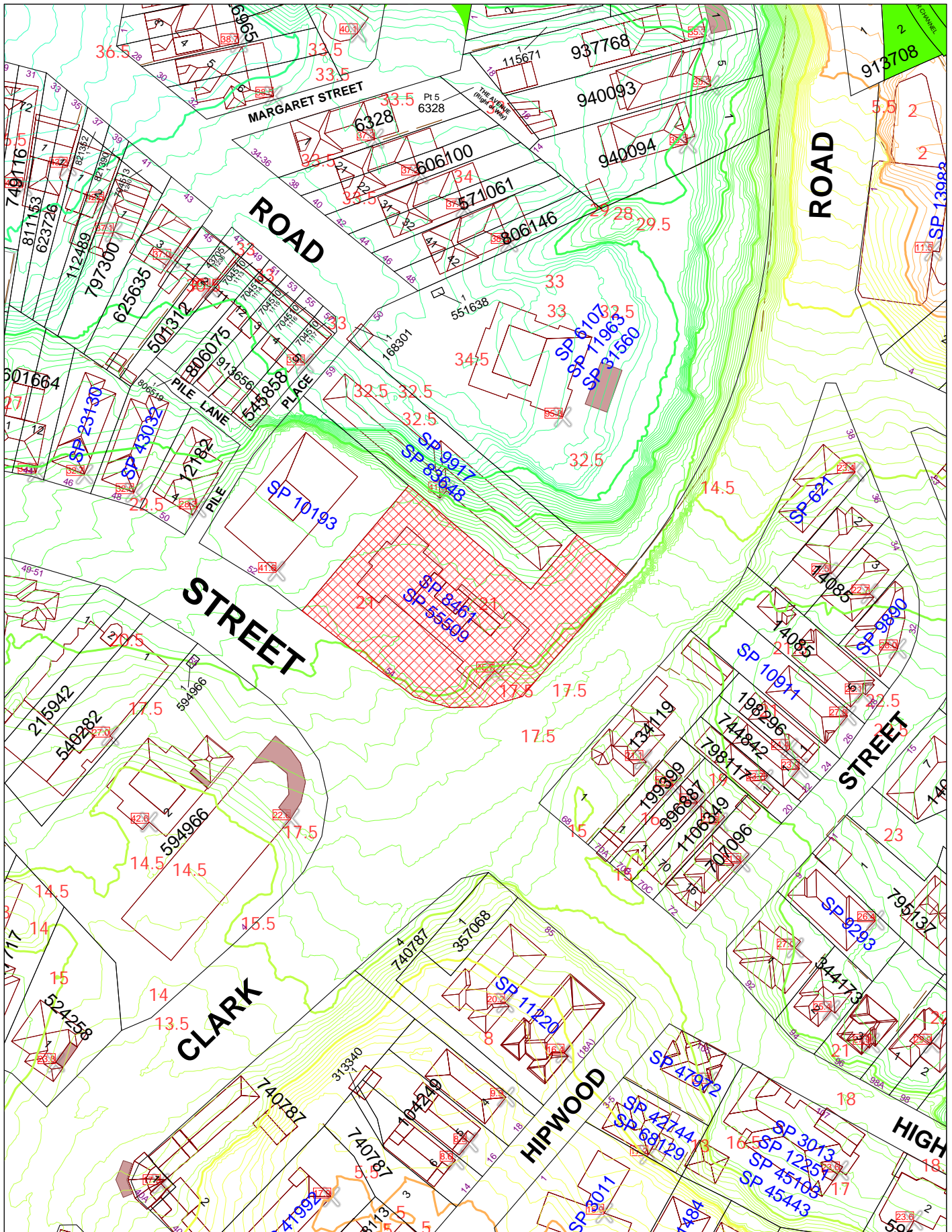
12. The applicant must provide access through the subject apartment to the external areas on the roof level to carry out maintenance and repair works by qualified/authorised persons.

(Reason: To ensure access to the external areas on the roof level for maintenance and repair works)

**Single Occupancy**

13. Nothing in this consent authorises the use of the premises other than for a single occupancy.

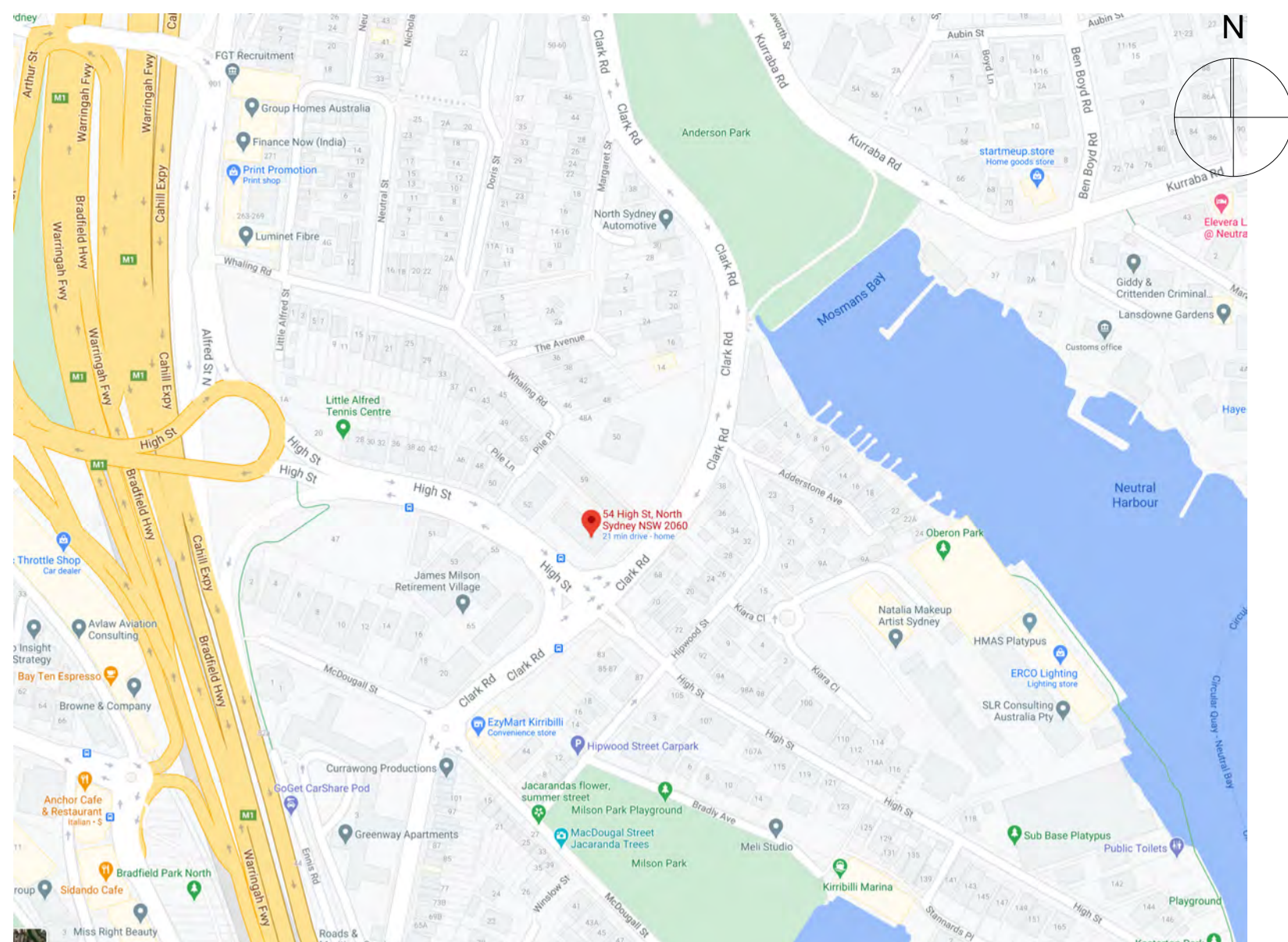
(Reason: To ensure compliance with the terms of this consent)



### North Sydney Council

Copyright © North Sydney Council - No part of this map may be reproduced without permission. Commercial decisions should not be made based on information contained in this map without first checking details held by the responsible Government authority.

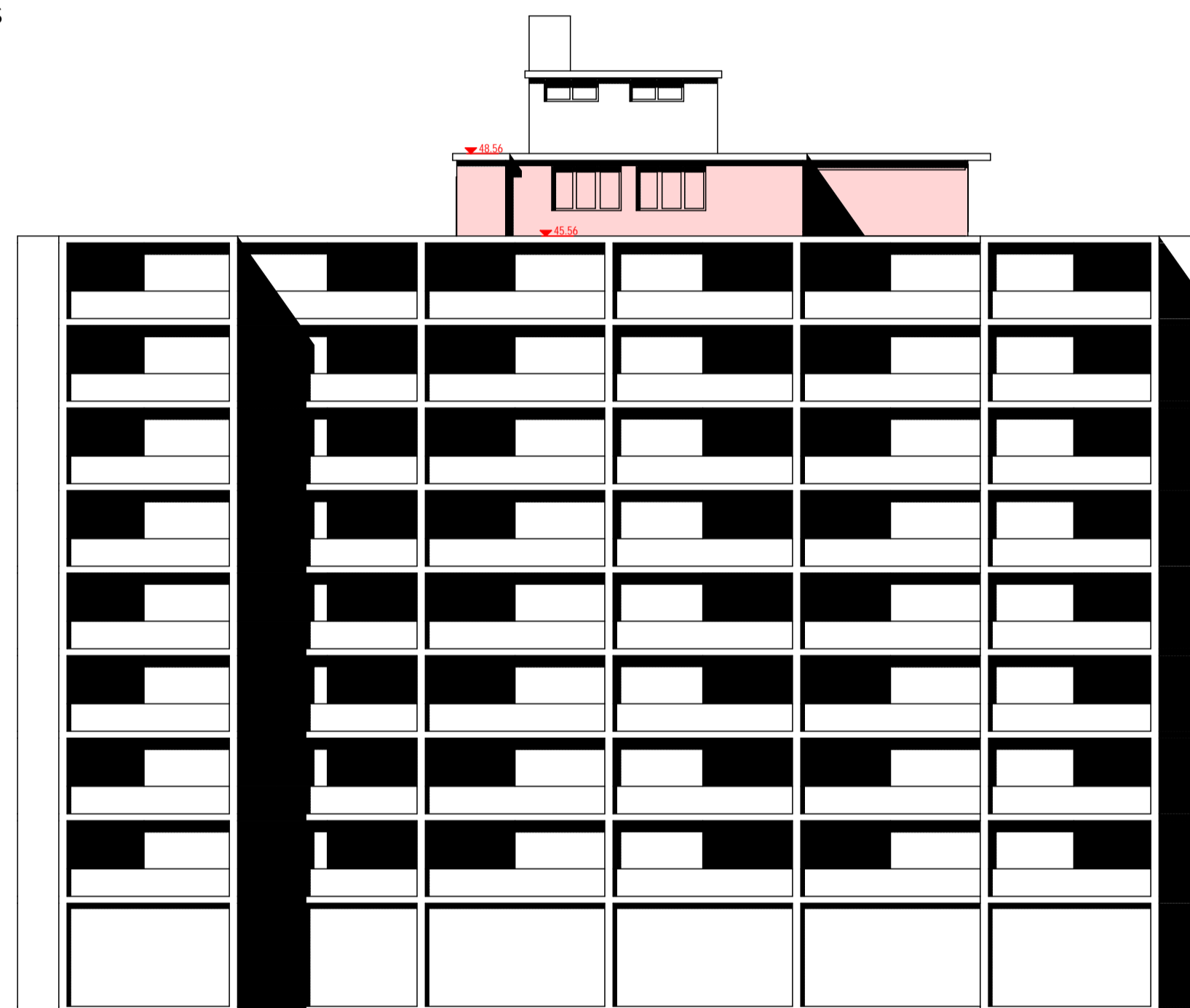
Further details can be obtained by calling (02) 9936 8100 or e-mail [mapping@northsydney.nsw.gov.au](mailto:mapping@northsydney.nsw.gov.au).



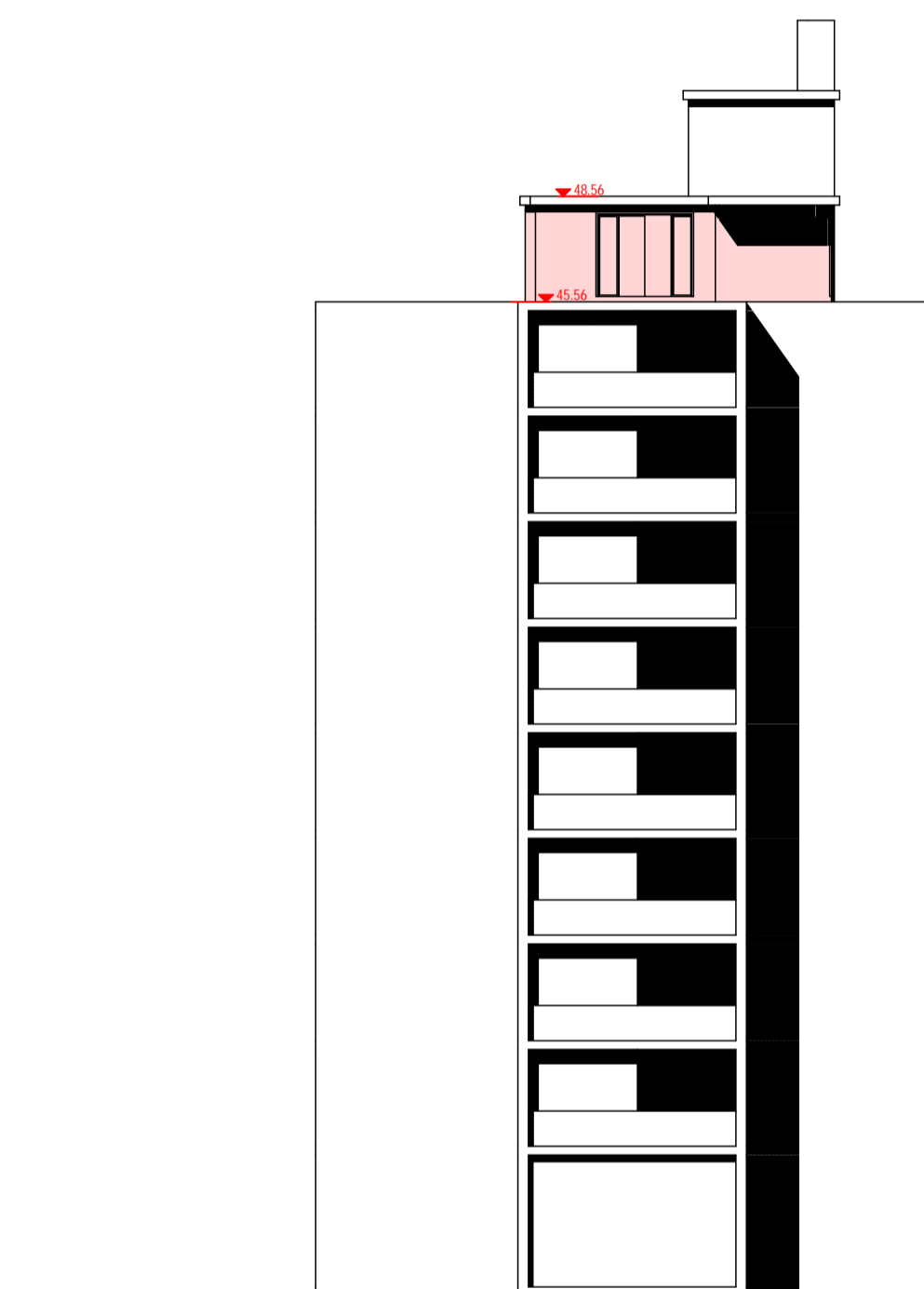
LOCATION MAP  
NTS



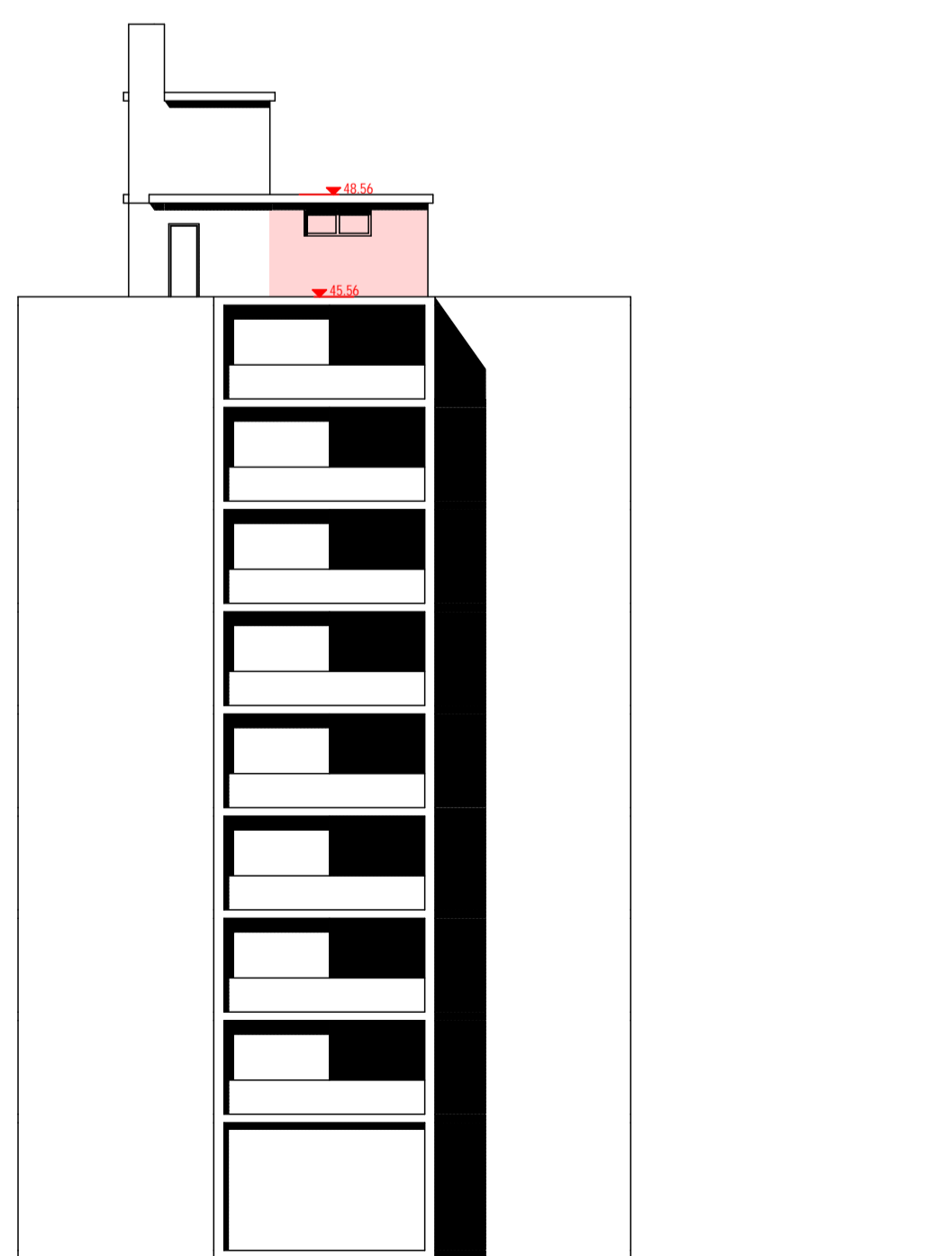
AERIAL VIEW  
NTS



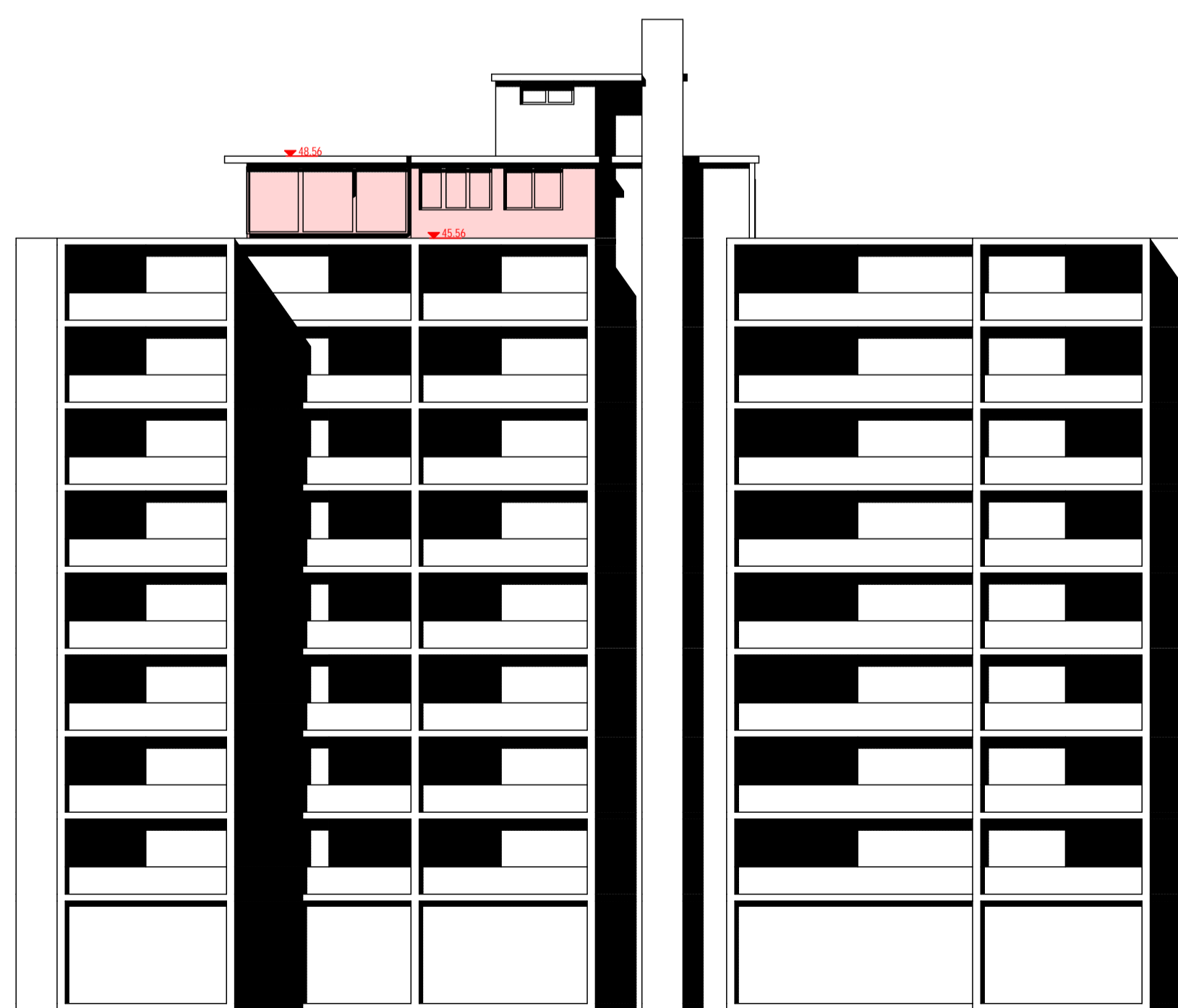
HIGH STREET ELEVATION - SOUTH  
1:200 @ A1



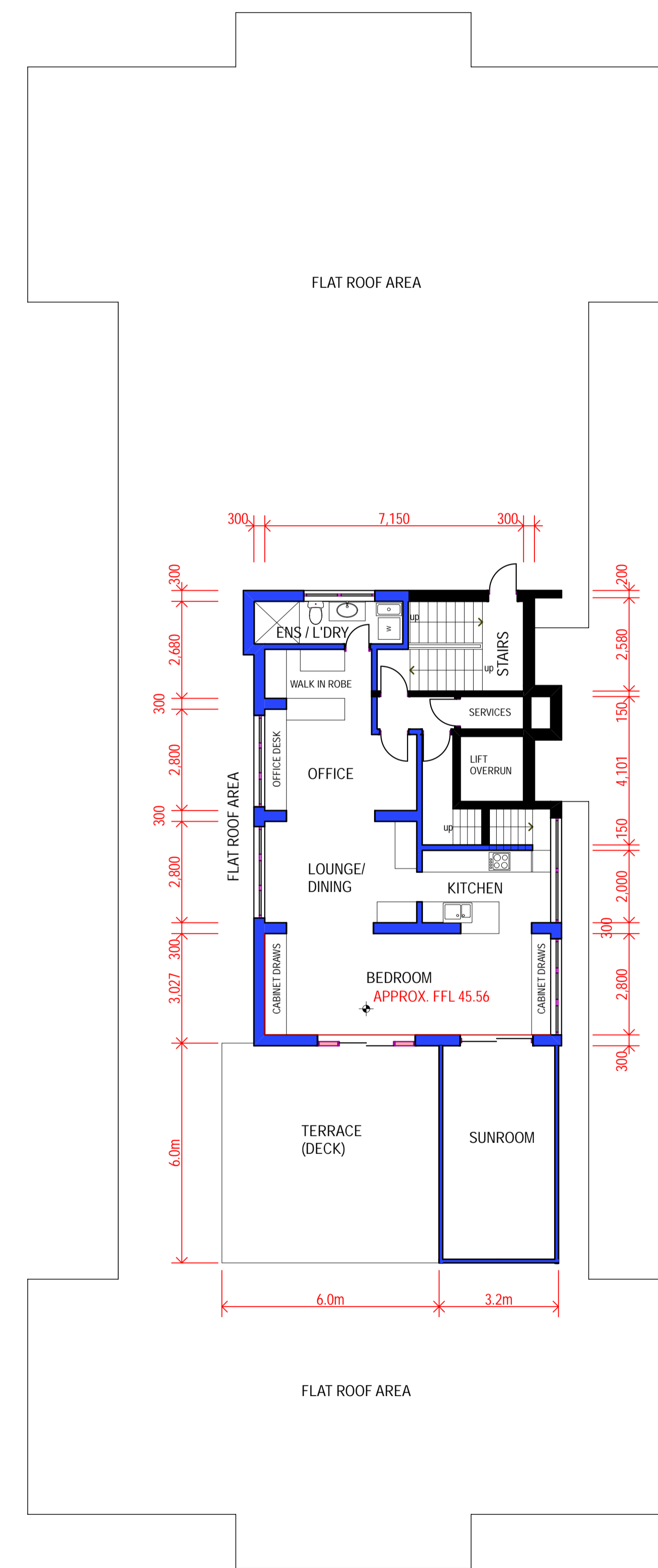
EAST ELEVATION  
1:200 @ A1



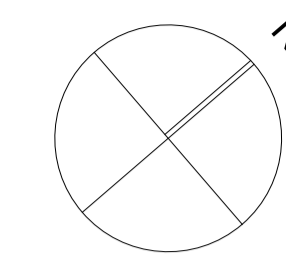
WEST ELEVATION  
1:200 @ A1



NORTH ELEVATION  
1:200 @ A1



EXISTING FLOOR PLAN - LEVEL 9  
1:100 @ A1



| ISSUE NOTES | CHK                  | DWN   | DATE           |
|-------------|----------------------|-------|----------------|
| A           | DA                   | ISSUE | AT AT 28.01.21 |
| B           | DA                   | ISSUE | AT AT 12.08.21 |
| C           | DA                   | ISSUE | AT AT 12.08.21 |
| D           | AMENDED AS REQUESTED |       | AT AT 1.04.22  |
| E           | AMENDED AS REQUESTED |       | AT AT 21.04.22 |

**GENERAL NOTES TO BUILDER / OR CONTRACTOR**  
 These drawings shall be read in conjunction with other consultants' drawings and specifications and with such other written instructions as may be issued during the course of the contract and the construction of the works.  
 All building works, associated works, materials and workmanship in this project are to be in accordance with all relevant and current:  
 - provisions of Building Code of Australia;  
 - Australian Standards issued by "Standards Australia";  
 - and all other relevant Authority requirements.  
 Any discrepancy shall be referred to T.O.P. DESIGN before proceeding with the work.  
 All dimensions must be taken from site and/or verified before commencement of work.  
 Approval by the Architect of this drawing for project use is for the design concept only and does not relieve the Contractor or Builder of any of their responsibilities under the contract.

**COPYRIGHT**  
 © T.O.P. DESIGN. All rights reserved. This work is covered by copyright and cannot be reproduced or copied in any form or by any means (graphic, electronic or mechanical including photocopying) without the written permission of T.O.P. DESIGN.  
 Any licence, express or implied, to use this document for any purpose whatsoever is restricted to the terms of the written agreement between T.O.P. DESIGN and the instructing party.

**TOP design**  
 architecture & interior

1 FLOWER STREET MAROUBRA, NSW, 2035  
 email: toppuz.a@gmail.com  
 MOB: 0412 541 620  
 ABN: 11 090 173 637  
 NSW Architects  
 Registration No: 6733

JAMES LOVELL AND ASSOCIATES CLIENT

PROJECT  
 EXISTING APARTMENT AT 54 HIGH STREET, NORTH SYDNEY  
 FLOOR PLANS AND ELEVATIONS TITLE

PROJECT ARCHITECT: AT SCALE AS NOTED  
 PROJECT / DRAWING NUMBER AMENDMENT

2021.01 DA 01 E

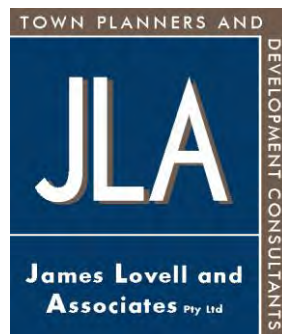
## **Continued Use of Residential Apartment**

**54 High Street, North Sydney**

### **Clause 4.6 Written Request to Vary the Building Height Control**

8 June 2022

Ref: 20151



## INTRODUCTION

This “*written request*” has been prepared (on a without prejudice and non-admissions basis) to vary the building height control incorporated in the North Sydney local Environmental Plan (LEP) 2013.

The “*written request*” has been prepared to accompany a Development Application (DA) for the continued use of Unit 901, an existing residential apartment located at Level 9 of a multi-storey residential flat building at No. 54 High Street, North Sydney.

Unit 901 was first used for residential purposes as a caretaker’s residence when the building was constructed on the basis of a Building Approval (BA) granted by Council on 17 October 1961. Further, on 1 November 2001 a Complying Development Certificate (CDC) was granted by Council for the replacement of an existing deck and an enclosed pergola at the upper level.

The owner of Lot 105 in Strata Plan 8461 (which has exclusive use rights over the area occupied by Unit 901) considers that the use of Unit 901 for residential purposes is already authorised. However, to put the matter beyond doubt, the DA has been lodged at the request of North Sydney Council on a “*without prejudice*” and without admissions basis.

Clause 4.3 of the North Sydney Local Environmental Plan (LEP) 2013 specifies a maximum building height of 12 metres, and the existing approved building extends to a maximum height of approximately 36 metres measured to the top of the lift overrun.

The existing building on the site substantially precedes the current planning controls, and the existing building was constructed in accordance with the Building Approval and CDC.

The physical works associated with the proposed development are limited to:

- installing guttering and a downpipe to the sunroom; and
- installing two (2) fire protected columns and two (2) fire protected beams to the sunroom.

The physical works associated with the proposed development are exclusively internal to the existing apartment, with the only exception being the installation of guttering and a downpipe on the eastern face of the sunroom.

In that regard, the guttering and downpipe are unrelated to the use of the sunroom, and effectively relate to the CDC for the replacement of the enclosed pergola approved on 1 November 2001.

Further, the minor physical works associated with the proposed development are all located well below the highest part of the existing building.

In the circumstances, this “*written request*” to vary the building height control pursuant to Clause 4.6 of the LEP has effectively been prepared in relation to the existing building.

The building height control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

#### **CLAUSE 4.6 OF THE NORTH SYDNEY LEP 2013**

Clause 4.6(1) is facultative and is intended to allow flexibility in applying development standards in appropriate circumstances.

Clause 4.6 does not directly or indirectly establish a test that non-compliance with a development standard should have a neutral or beneficial effect relative to a complying development (Initial at 87).

Clause 4.6(2) of the LEP specifies that “*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*”.

Clause 4.6(3) specifies 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:

- (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.*

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 has a better environmental planning outcome than a development that complies with the development standard (Initial at 88).

Clause 4.6(4) specifies that 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.*

Clause 4.6(5) specifies that 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.*



## CONTEXT AND FORMAT

This “written request” has been prepared having regard to “Varying development standards: A Guide” (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgments:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Moskovich v Waverley Council [2016] NSWLEC 1015;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118; and*
- *Hansimikali v Bayside Council [2019] NSWLEC 1353.*

“Varying development standards: A Guide” (August 2011) outlines the matters that need to be considered in DA’s involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ, in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are effectively five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary as follows:

1. The objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been ‘virtually abandoned or destroyed’ by the Councils own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

As Preston CJ, stated in *Wehbe*, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked 'way' to do this is to show that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The Applicant relies upon ground 1 in *Wehbe* to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.

In that regard, Preston CJ, in *Wehbe* states that "... *development standards are not ends in themselves but means of achieving ends*". Preston CJ, goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve.

The above notion relating to 'numerical limits' is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that:

*As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.*

It is important to emphasise that in properly reading *Wehbe*, an objection submitted does not necessarily need to satisfy all of the tests numbered 1 to 5, and referred to above. This is a common misconception. If the objection satisfies one of the tests, then it may be upheld by a Council, or the Court standing in its shoes. Irrespective, an objection can also satisfy a number of the referable tests.

In *Wehbe*, Preston CJ, states that there are three (3) matters that must be addressed before a consent authority (Council or the Court) can uphold an objection to a development standard as follows:

1. The consent authority needs to be satisfied the objection is well founded;
2. The consent authority needs to be satisfied that granting consent to the DA is consistent with the aims of the Policy; and
3. The consent authority needs to be satisfied as to further matters, including non-compliance in respect of significance for State and regional planning and the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Further, it is noted that the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter).

The decision of Pain J, in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* suggests that demonstrating that a development satisfies the objectives of the development standard is not necessarily sufficient, of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

Further, Commissioner Tuor, in *Moskovich v Waverley Council [2016] NSWLEC 1015*, considered a DA which involved a relatively substantial variation to the FSR (65%) control. Some of the factors which convinced the Commissioner to uphold the Clause 4.6 variation request were the lack of environmental impact of the proposal, the characteristics of the site such as its steeply sloping topography and size, and its context which included existing adjacent buildings of greater height and bulk than the proposal.

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because it is "*consistent with*" the objectives of the development standard and the zone, is not a requirement to "*achieve*" those objectives. It is a requirement that the development be 'compatible' with them or 'capable

of existing together in harmony'. It means "something less onerous than 'achievement'".

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a "better environmental planning outcome for the site" relative to a development that complies with the development standard.

Finally, in *Hansimikali v Bayside Council [2019] NSWLEC 1353*, Commissioner O'Neill found that it is not necessary for the environmental planning grounds relied upon by the Applicant to be unique to the site.

## **ASSESSMENT**

### Is the requirement a development standard?

The building height control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

### What is the underlying object or purpose of the standard?

The objectives of the building height control are expressed as follows:

- (a) *to promote development that conforms to and reflects the natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

- (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and E4 Environmental Living.*

In relation to objective (a), the proposed development does not alter the existing site topography or natural land forms.

In relation to objective (b), the proposed development will have no impact on any existing public or private views.

In relation to objective (c), the proposed development will have no impact on the existing solar access to any surrounding properties, public reserves or streets.

In relation to objective (d), the proposed development will have no impact on the privacy of any surrounding properties.

In relation to objective (e), the proposed development does not change the physical form of the existing building, or its compatibility with surrounding development.

In relation to objective (f), the proposed development will have no impact on the scale or density of the existing development.

In relation to objective (g), the proposed development does not alter the scale or density of the existing building.

In summary, the proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation of the existing building.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The Department of Planning published "*Varying development standards: A Guide*" (August 2011), to outline the matters that need to be considered in Development Applications involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary.

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation of the existing building.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The objectives and purpose of the building height control remain relevant, and the proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation of the existing building.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation of the existing building.

Further, strict compliance with the building height control would unnecessarily require the demolition of the substantial majority of the existing building.

4. *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

The building height control has effectively been abandoned and destroyed by the approval of the existing building on the site, albeit the approval of the existing building substantially preceded the current planning controls, including the building height control.

Further, the objectives of Clause 4.6 of the LEP includes to provide "an appropriate degree of flexibility in applying certain development standards to particular development".

5. *Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

The zoning of the land remains relevant and appropriate. Irrespective, strict compliance with the building height control would unnecessarily require the demolition of the substantial majority of the existing building.

Further, the proposed development will have no impact on the height, bulk and scale of the existing building, or the relationship with the surrounding properties.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed numerical variation to the building height control is reasonable and appropriate in the particular circumstances on the basis that:

- the existing building on the site substantially precedes the current planning controls, and the existing building was constructed in accordance with the Building Approval and CDC;
- the physical works associated with the proposed development are exclusively internal to the existing apartment, with the only exception being the installation of guttering and a downpipe on the eastern face of the existing sunroom;
- the guttering and downpipe are unrelated to the use of the sunroom, and effectively relate to the CDC for the replacement of the enclosed pergola approved on 1 November 2001;
- the minor physical works associated with the proposed development are all located well below the highest part of the existing building;
- the proposed development does not alter the existing site topography or natural land forms;
- the proposed development will have no impact on any existing public or private views;
- the proposed development will have no impact on the existing solar access to any surrounding properties, public reserves or streets

- the proposed development will have impact on the privacy of any surrounding properties;
- the proposed development does not change the physical form of the existing building, or its compatibility with surrounding development;
- the proposed development does not alter the scale or density of the existing building;
- strict compliance with the building height control would unnecessarily require the demolition of the substantial majority of the existing building;
- the building height control has effectively been abandoned and destroyed by the approval of the existing building on the site, albeit the approval of the existing building substantially preceded the current planning controls, including the building height control;
- the proposed development is consistent with good design and the amenity of the built environment which is a recently incorporated object of the Act: *"(g) to promote good design and amenity of the built environment"*;
- the proposed development is consistent with, or not antipathetic to, the relevant objectives of the R4 – High Density Residential zone; and
- the proposed development is generally consistent with, or not antipathetic to, the objectives of the building height control, notwithstanding the numerical variation of the existing building.

Are there any matters of State or regional significance?

The numerical variation to the building height control (in respect of the existing building) does not raise any matters of State or regional significance.

What is the public benefit of maintaining the standard?

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation of the existing building.

In the circumstances, the proposed development does not affect the public benefit of maintaining compliance with the building height control in other instances.



In that regard, the objectives of Clause 4.6 of the LEP includes to provide *"an appropriate degree of flexibility in applying certain development standards to particular development"*.

#### Any other matters?

There are no further matters of relevance to the variation to the building height control of the existing building.

#### Zone Objectives and Public Interest

The site is zoned R4 – High Density Residential pursuant to the North Sydney LEP 2013. The objectives of the zone relating to residential development are expressed as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a reasonably high level of residential amenity is achieved and maintained.*

The proposed development is generally consistent with (or not antipathetic to) the objectives of the zone on the basis that the proposed development will maintain high quality residential accommodation within an established residential precinct.

The proposed development serves the public interest by maintaining the quality of the existing accommodation provided on the site, without imposing any impacts on the amenity of surrounding land.

#### **CONCLUSION**

The purpose of this submission is to formally request a variation in relation to the building height control in Clause 4.3 of the North Sydney LEP 2013.

In general terms, strict compliance with the building height control is unreasonable and unnecessary in the particular circumstances, and there

are sufficient environmental planning grounds to justify the numerical variation.

