

Attachment 1:

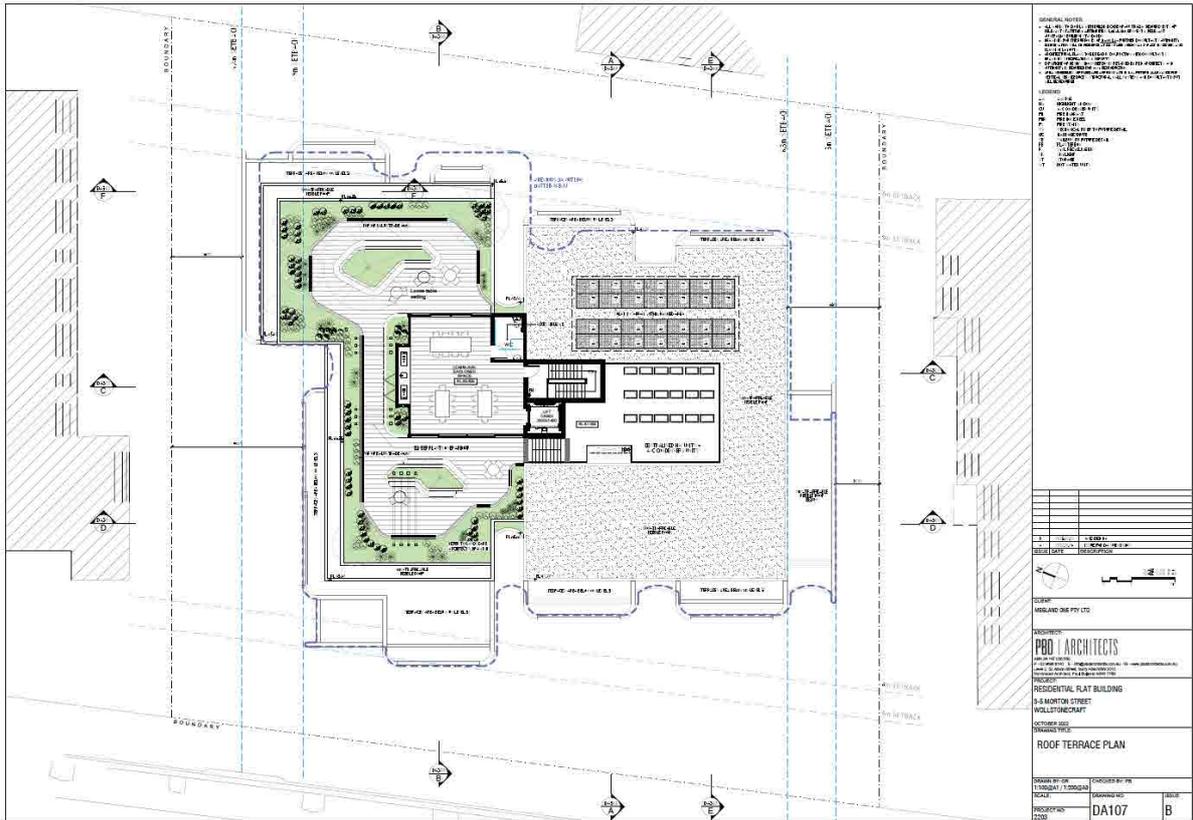
Justification under Clause 4.6 of North Sydney Local Environmental Plan 2012 –  
Exceptions to Development Standards.

Clause 4.3 Height

Control	12m	
Proposed Height	15.47m (to lift overrun) 3.47m (28.9%)	
	14.3m (communal open space and pergolas) 2.3m (19.2%)	
	13.65m (surrounding planting) 1.65m (13.8%)	
	13.33m (to fire stair) 1.33m (11.1%)	
	13m (to plant encl.) 1m (8.3%)	
Breach	15.47m	3.47m (28.9%)

1.0 Introduction

The proposed height was 15.47m to the top of the lift overrun 3.47m (28.9%), 14.3m (communal open space and pergolas) 2.3m (19.2%), 13.65m (surrounding planting) 1.65m (13.8%), 13.33m (to fire stair) 1.33m (11.1%) and 13m (to plant encl.) 1m (8.3%). The height breach was limited to a minor part of the parapet on the south and the lift overrun, fire stair, plant enclosure and the planters. The communal open space area was incorporated onto the lower northern portion of the roof. This has been included in the proposal and the lift has been extended to provide equitable access to the roof top communal open space. This has meant that the proposal has increased in height in order to provide equitable access to the roof top communal open space. It is noted that the lift and fire stair are centrally located on the roof top so that they do not overshadow the surrounding properties and are difficult to see from the street and surrounding properties.



Centrally located lift overrun and fire stair.



West photomontage

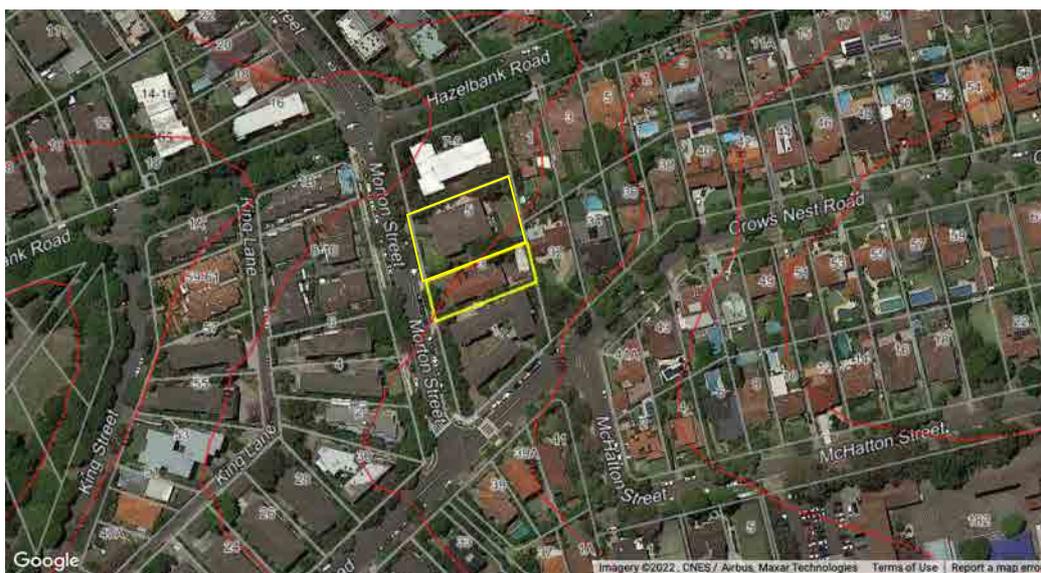
The proposed height is 15.47m to the top of the lift overrun 3.47m (28.9%), 14.3m (communal open space and pergolas) 2.3m (19.2%), 13.65m (surrounding planting) 1.65m (13.8%), 13.33m (to fire stair) 1.33m (11.1%) and 13m (to plant encl.) 1m

(8.3%). and further height breach are limited to a minor part of the parapet on the north.

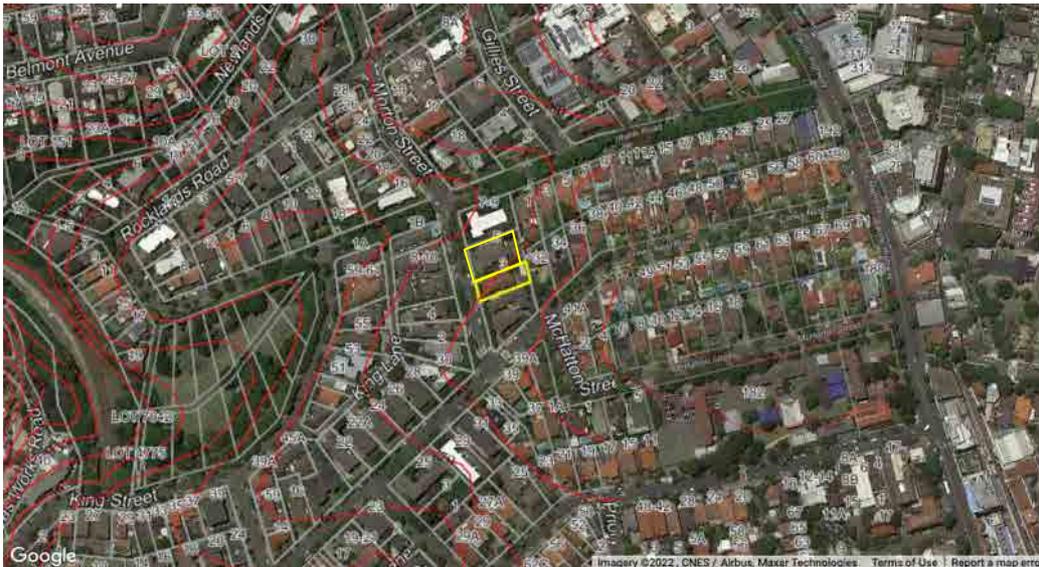
The site is located approximately 900m west of the North Sydney CBD and within 1,400m of North Sydney station. It is noted that extensive bus routes follow on the Pacific Highway and the nearest bus stop is 400m away in close proximity to the Pacific Highway and Crows Nest Road. The site is located within an area characterised by a mix of high to large residential flat buildings and large single dwellings. The land falls from south to north with the street pattern generally crossing the contours.



Site with 5m contour overlay Source: RPData 2022



Site with 5m contour overlay Source: RPData 2022



Site context with contour overlay Source: RPData 2022

The subject site is located on the eastern side of Morton Street north of the intersection with Crows Nest Road. The site has a frontage to Morton Street.



Site: Source RPData 2022

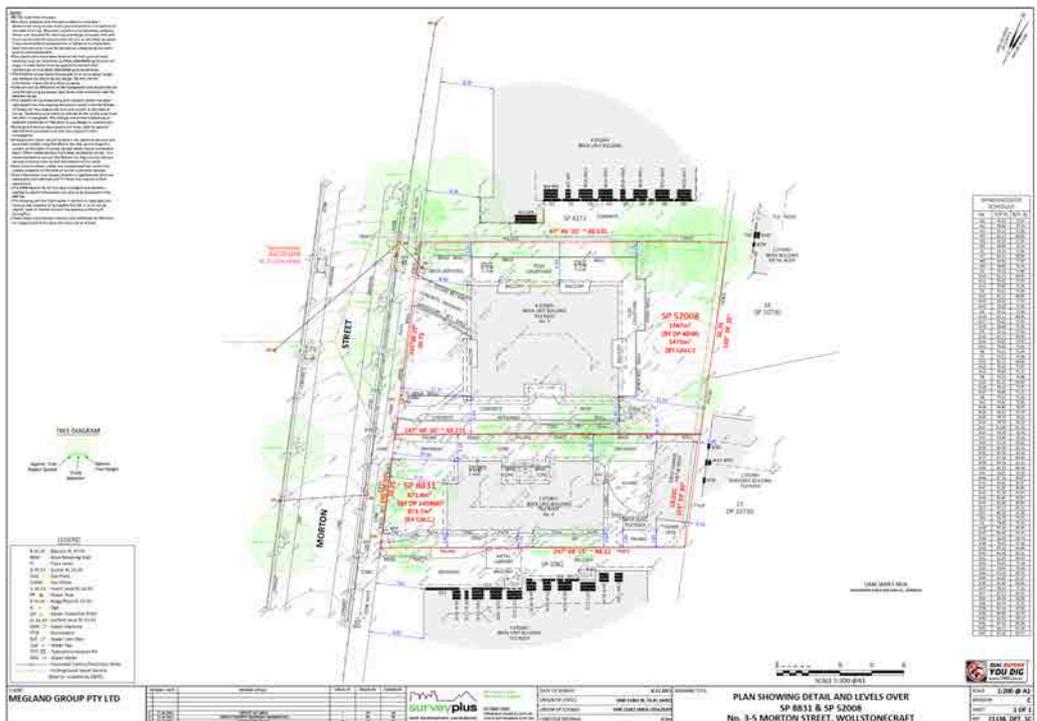
The subject site is legally described as SP 8831 and SP 52008) and is known as 3 - 5 Morton Street, Wollstonecraft.

The subject site comprises two allotments oriented east-west and each with frontage to Morton Street (west). The land at 3 - 5 Morton Street comprises two rectangular lots. The land at 3 Morton Street has an area of 873.7m<sup>2</sup> with northern common boundary with 5 Morton Street of approximately 48.275m and a common southern boundary of approximately 48.12m. The 3 Morton Street (west) frontage

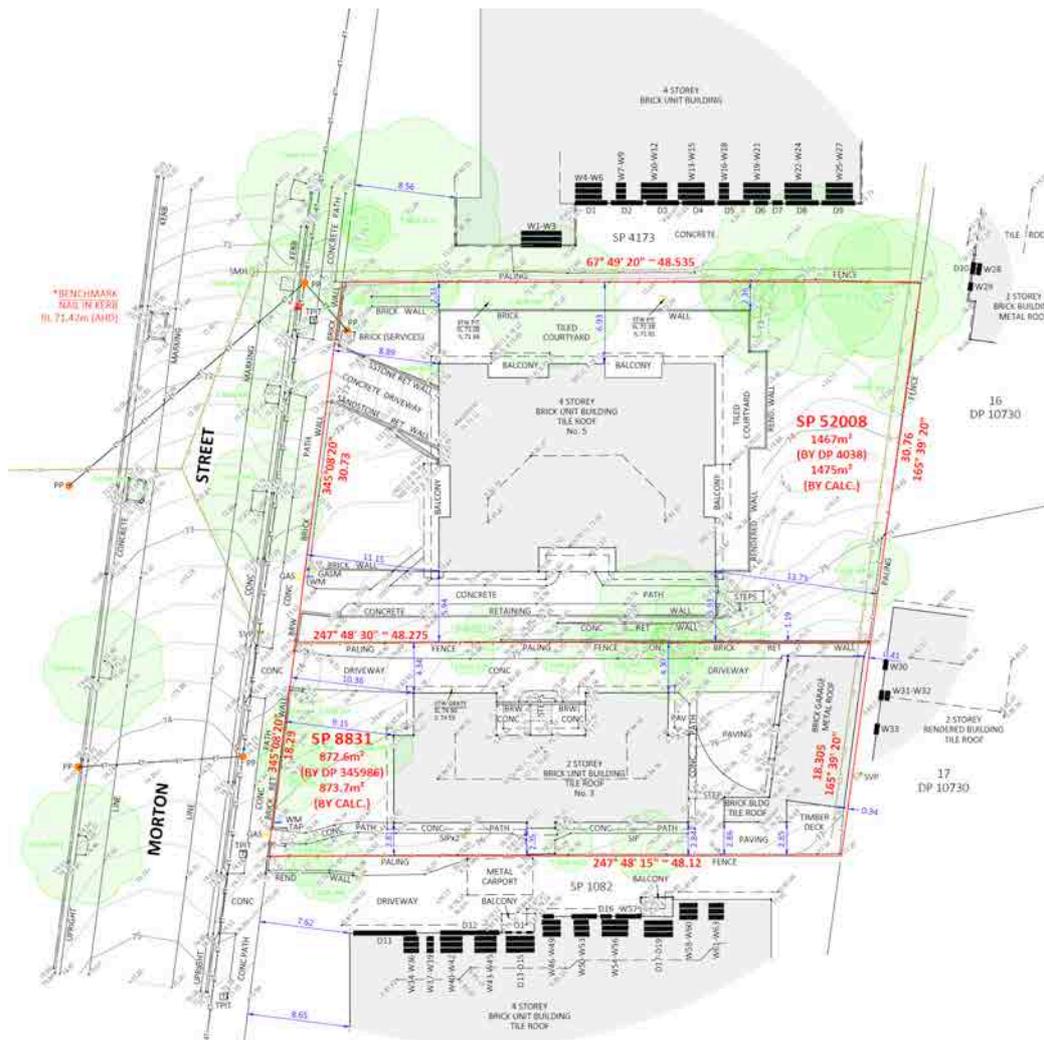
of approximately 18.29m and a common eastern boundary of approximately 18.305m.

The land at 5 Morton Street has an area of 1,475m<sup>2</sup> with southern common boundary with 3 Morton Street of approximately 48.275m and a common northern boundary of approximately 48.535m. The 5 Morton Street (west) frontage of approximately 30.73m and a common eastern boundary of approximately 30.76m. The site has a total area of 2,348.7m<sup>2</sup>.

3 Morton Street (SP 8831) comprises 5 apartments which are all two bedroom units. 5 Morton Street (SP 52008) comprises 12 apartments which are all two bedroom units.



Survey prepared by Surveyplus Surveying 2021



Extract from Survey prepared by Surveyplus Surveying 2021

The land falls from south to north across the site from RL75.30 to RL71.67 (around 3.63m). Two residential flat buildings of masonry construction with a hipped, tiled rooves. The residential flat buildings have minimal side and rear setbacks which do not satisfy the ADG compliance requirements.



3 Morton Street view from north-west



5 Morton Street frontage view from south-west.



5 Morton Street frontage view from north-west.



5 Morton Street interface with 7 – 9 Morton Street.



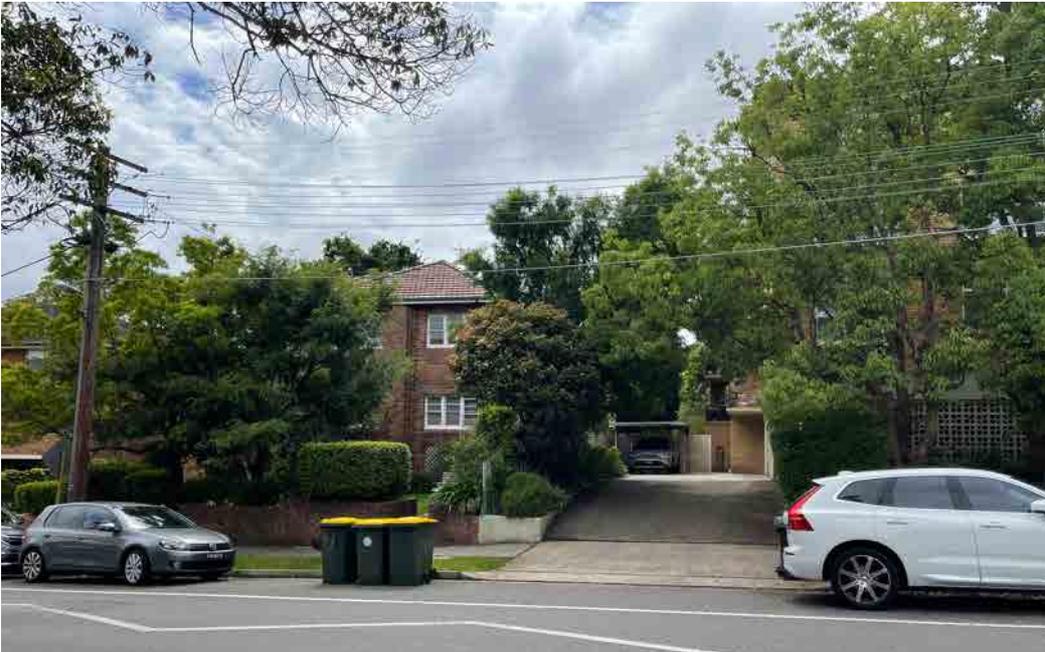
3 - 5 Morton Street frontage view from south-west.



3 - 5 Morton Street frontage view from south-west.



3 - 5 Morton Street frontage view from west.



3 - 5 Morton Street frontage view from west interface with 1 Morton Street.



3 - 5 Morton Street frontage view from west interface with 7 - 9 Morton Street.

While the proposal breaches the height control by 3.47m this occurs at the top of the lift overrun which provides accessibility to the roof top communal open space. The proposed development is consistent with the Council DCP accessibility requirements. It should be noted that the proposal is stepped in two parts across the width of the site in order to respond to the cross-fall of the topography as can be understood from the section below. It is noted that the breach to the height control arises from the lift overrun and supporting features for the communal open space with a minor breach to the leading edge of the roof. This is clearly illustrated in the 12m height blanket raised from the survey plan below.



Section C & D



12m Building Envelope



### 12m Building Envelope

The stepped building is retained at four stories with a roof top communal open space above a two storey base and the upper level contained within a metal clad roof form consistent with the provisions of the DCP. This is clearly understood from the photomontage above.

It is not anticipated that any significant view loss arises from the proposal given the siting of the building and the extent of the surrounding residential flat buildings to the north, west and south. The four storey building form effectively sits within the mature tree canopy surrounding the site. It is considered that on balance the view outcome is acceptable.

It is considered that the increase in height has insignificant shadow impact and as part of the assessment process the applicant has provided views from the sun for the proposal to allow the assessment of solar access. It is clear that the impact of shadows arise predominantly from the compliant portions of the building.



9:00am



10:00am



11:00am



12:00am



1:00pm



2:00pm



3:00pm

**3-5 MORTON STREET, WOLLSTONECRAFT  
SOLAR COMPLIANCE CHECK**

LEVEL	UNIT	LIVING								POS							
		9AM	10AM	11AM	12PM	1PM	2PM	3PM	ADG TOTAL (9am-3pm)	9AM	10AM	11AM	12PM	1PM	2PM	3PM	ADG TOTAL (9am-3pm)
Ground Floor	Unit G01		Y	Y	Y	Y	Y	Y	6	Y	Y	Y	Y	Y	Y	Y	6
	Unit G02			Y	Y	Y	Y	Y	4	Y	Y	Y	Y	Y	Y	Y	6
	Unit G03	Y	Y	Y	Y				4	Y	Y	Y	Y	Y	Y		6
	Unit G04	Y	Y	Y					3	Y	Y	Y	Y	Y			5
	Unit G05	Y	Y	Y					3	Y	Y	Y	Y	Y			5
	Unit G06							Y	1			Y	Y	Y	Y	Y	5
	Unit G07								0					Y	Y	Y	3
Level 1	Unit 101			Y	Y	Y	Y	Y	5	Y	Y	Y	Y	Y	Y	Y	6
	Unit 102			Y	Y	Y	Y	Y	5	Y	Y	Y	Y	Y	Y	Y	6
	Unit 103	Y	Y	Y	Y				4	Y	Y	Y	Y	Y			5
	Unit 104	Y	Y						2	Y	Y	Y	Y	Y			5
	Unit 105	Y	Y	Y					3	Y	Y	Y	Y				4
	Unit 106	Y	Y	Y	Y				4	Y	Y	Y	Y				4
	Unit 107							Y	1						Y	Y	2
	Unit 108								0						Y		1
Level 2	Unit 201			Y	Y	Y	Y	Y	5	Y	Y	Y	Y	Y	Y	Y	6
	Unit 202			Y	Y	Y	Y	Y	5	Y	Y	Y	Y	Y	Y	Y	6
	Unit 203	Y	Y	Y	Y				4	Y	Y	Y	Y				4
	Unit 204	Y	Y	Y	Y				4	Y	Y	Y	Y				4
	Unit 205	Y	Y	Y					3	Y	Y	Y	Y				4
	Unit 206	Y	Y	Y	Y				4	Y	Y	Y	Y				4
	Unit 207							Y	1						Y	Y	2
	Unit 208							Y	1						Y	Y	2
Level 3	Unit 301	Y	Y	Y	Y	Y	Y	Y	6	Y	Y	Y	Y	Y	Y	Y	6
	Unit 302	Y	Y	Y	Y	Y	Y	Y	6	Y	Y	Y	Y	Y	Y	Y	6
	Unit 303	Y	Y	Y	Y				4	Y	Y	Y	Y	Y			5
	Unit 304	Y	Y	Y	Y				4	Y	Y	Y	Y	Y	Y		6
	Unit 305	Y	Y	Y	Y	Y	Y	Y	6						Y	Y	3

<b>TOTAL UNIT</b>			28
<b>UNIT COMPLIANT (ADG)</b>	<b>LIVING</b>	22	79%
	<b>POS</b>	27	96%
<b>NO DIRECT SOLAR</b>		2	7%

The assessment of the solar impacts must be considered in the context of the R4 High Density zoning of the site and immediate context. A consideration of the views from the sun shows that 79% of these units achieve 2 hours of solar access to their balconies and windows and the neighbouring properties are unaffected by the elements of the height breach.

Clause 4.6 of the North Sydney Local Environmental Plan 2012 (NSLEP 2012) enables Council to grant consent for development even though the development varies a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6 (3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard, namely:

1. that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
3. that 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.

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court has given consideration to the matters that must be addressed in relation to whether a variation to development standards should be approved. While these cases originally referred to the former SEPP 1, the principles still remain relevant, more recently, further guidance on the approach to apply to applications to vary development standards under clause 4.6 of the Standard Instrument was provided by the Land and Environment Court. This Clause 4.6 gives consideration to the matters raised in:

- Big Property v Randwick City Council [2021];
- HPG Projects Pty Ltd v Mosman Municipal Council [2021];
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Turland v Wingecarribee Shire Council [2018] NSWLEC 1511;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;

and

- Moskovich v Waverley Council [2016] NSWLEC 1015.
- Wehbe v Pittwater Council [2007] NSW LEC 827; and
- Winten Property Group Ltd v North Sydney Council [2001] 130 LGERA 79 at 89;

In accordance with the above requirements, this Clause 4.6 variation request:

2. identifies the development standard to be varied;
3. identifies the variation sought;
4. establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
5. demonstrates there are sufficient environmental planning grounds to justify the contravention;
6. demonstrates that the proposed variation is in the public interest; and
7. provides an assessment of the matters the secretary is required to consider before providing concurrence.

This Clause 4.6 variation request relates to the development standard for Height of Buildings under Clause 4.3 of the NSLEP and should be read in conjunction with the Amended Statement of Environmental Effects (ASEE) prepared by Mersonn dated October 2022 as well as the supplementary documentation submitted to Council. This Clause 4.6 variation request demonstrates that compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify variation to the standard.

## 2.0 Development Standard to be Varied

The development standard that is sought to be varied as part of this application is Clause 4.3 of the NSLEP, relating to the Height of Buildings. Under the NSLEP 2012, the site is afforded Height of Buildings of 12m.

## 3.0 Nature of the Variation Sought

The maximum Height of Buildings on the site under the NSLEP 2012 for this application is 12m. The proposed building on the site has a height of 15.47m to the lift overrun, and is in excess of the maximum Height of Buildings development standard applicable under the NSLEP 2012 and requires a variation to the maximum Height of Buildings development standard through clause 4.6.

The proposed development seeks consent to exceed the Height of Buildings development standard applicable under the NSLEP 2012 by 3.47m or 28.9%.

It is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under Clause 4.6. Decisions in respect of *Micaul Holdings P/L V Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) and *Moskovich V Waverley Council* (65% exceedance of FSR) support this.

4.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The five methods outlined in *Wehbe* include:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
- 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 (Fourth Method).*
- 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 (Fifth Method).*

In this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a

whole (Initial Action v Woollahra Municipal Council [24] and Turland v Wingecarribee Shire Council [42]).

In this instance part of the lift overrun of the proposed development exceeds the Height of Buildings development standard by 3.47m in order to provide equitable access to the roof top communal open space and the supporting elements of the building consistent with the North Sydney DCP and the accessibility provisions and standards and therefore require a further variation to that standard.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of Clause 4.3 Height of Buildings in NSLEP 2012 are;

*(1) The objectives of this clause are as follows:*

- (a) to promote development that conforms to and reflects 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 R4 High Density Residential and Zone E4 Environmental Living.*

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

It is demonstrated in the plans that the proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposal presents as a building predominantly within the maximum height of buildings as it presents to the street.

It should be noted that the proposed is stepped in two parts across the width of the site in order to respond to the cross-fall of the topography as can be understood

from the section below. It is noted that the breach to the height control arises from the lift overrun with a minor breach to the leading edge of the roof. This is clearly illustrated in the 12m height blanket raised from the survey plane below.



Section C & D



12m Building Envelope



### 12m Building Envelope

The stepped building is retained at four stories with a three storey base and the upper level contained within a metal clad roof form consistent with the provisions of the DCP.

It is considered that the proposal meets this objective of the standard.

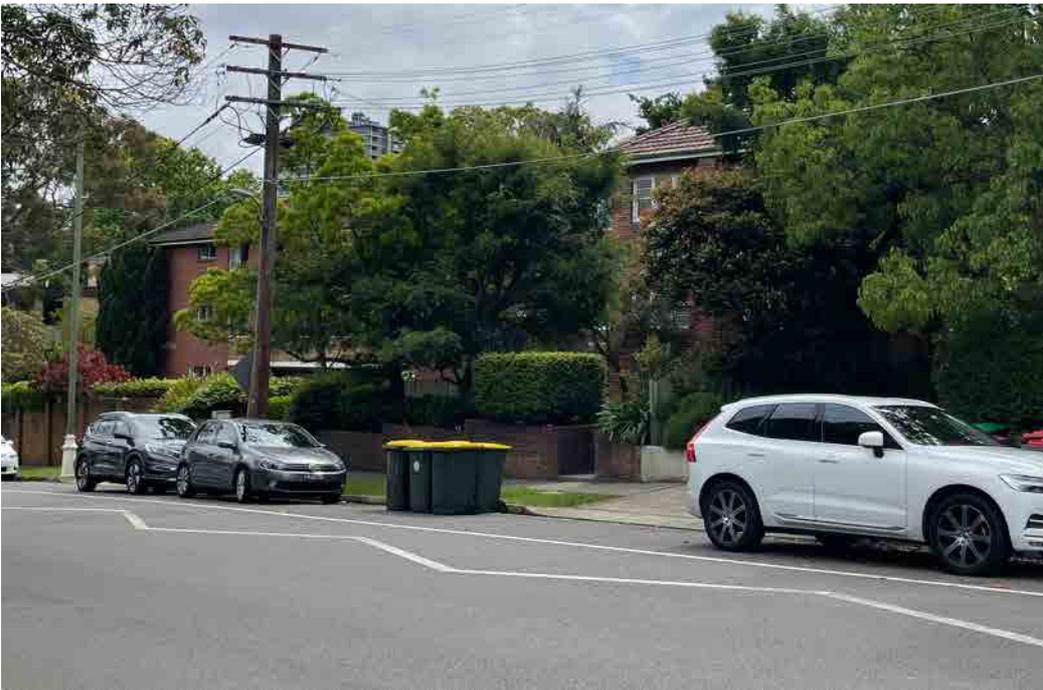
*(b) to promote the retention and, if appropriate, sharing of existing views,*

It is not anticipated that any significant view loss arises from the proposal given the siting of the building and the extent of the residential flat buildings to the north, west and south. The four storey building form effectively sits within the mature tree canopy surrounding the site.

It is apparent from consideration of the surrounding buildings to the north, west and south where residential flat buildings exist that views are only obtained through the existing tree canopy. The buildings to the north, west and south of the site are similarly of four storeys with views obscured by the existing tree canopy. This is apparent from the photographs included below.



3 - 5 Morton Street frontage view from south-west.



3 - 5 Morton Street frontage view from south-west.



3 - 5 Morton Street frontage view from west interface with 1 Morton Street.

It is considered that on balance the view outcome is acceptable. It is considered that the proposal meets this objective of the standard.

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

The height of the proposal is considered to be consistent with the desired character of the locality and the surrounding buildings and public areas will continue to receive satisfactory exposure to sky and sunlight. The proposal provides an appropriate built form and land use intensity consistent with the objectives of this clause.

The height of the proposal is considered to be consistent with and appropriate to the condition of the site and its context. The desired character of the locality and the surrounding buildings and public areas will continue to receive satisfactory exposure to sky and sunlight. The proposal provides an appropriate built form and land use intensity consistent with the objectives of this clause.

It is considered that the increase in height has insignificant shadow impact as can be seen by the preceding views from the sun to allow the assessment of solar access. It is clear that the impact of shadows arise predominantly from the compliant portions of the building.

The assessment of the solar impacts must be considered in the context of the recent R4 High Density zoning of the site and immediate context. A consideration of the views from the sun shows that 79% of these units achieve 2 hours of solar access to their balconies and windows and the neighbouring properties are unaffected by the elements of the height breach.

It is considered that on balance the solar access outcome is acceptable. It is considered that the proposal meets this objective of the standard.

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

Where windows are within 12m – 15m of a habitable window on an adjoining property, living room and bedroom windows have been screened by dense landscaping and opaque/highlight windows provided to bathrooms. The proposal has increased separation distances from adjoining properties and introduced screening and landscaped planting retaining mature trees on site for privacy.

It is considered that on balance the privacy outcome is acceptable. It is considered that the proposal meets this objective of the standard.

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

The height of the proposal is considered to be consistent with the desired character of the locality and the surrounding buildings particularly at zone boundaries. The proposal provides an appropriate built form and land use intensity consistent with the adjoining properties and ensures compatibility by the amended proposal.

It is considered that on balance the compatibility outcome is acceptable. It is considered that the proposal meets this objective of the standard.

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

The scale and density of the development is considered to be consistent with the desired character of the locality and the surrounding buildings and promotes the character of the area particularly through the change in materials. The proposal has adopted a facebrick form with a metal clad upper level consistent with the character of the locality. The proposal provides an appropriate built form, scale and density consistent with the character of the area.

It is considered that on balance the proposal promotes the character of the area and is acceptable. It is considered that the proposal meets this objective of the standard.

It is demonstrated in the plans that the proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposed height breach is predominantly in the centre of the building and located to minimise any view or solar impacts.

Furthermore, its central location means that it will not be significantly visible from the streetscape or surrounding properties.

The ASEE details that the proposal is largely consistent with the relevant environmental planning instruments and does not give rise to any adverse environmental impacts in respect to overshadowing, traffic, heritage, wind, reflectivity, stormwater, flooding, noise, waste, economic and social impacts.

It is considered that these objectives are met by the proposal.

5.0 There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the NSLEP 2012 requires the departure from the development standard to be justified by demonstrating:

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

There are sufficient environmental planning grounds to justify a flexible approach to the application of the Height of Buildings control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site.

The applicable circumstances that relate to the site are discussed below.

The proposal seeks flexibility in the application of the standard where the breach to the height control arises from a building, which is consistent in bulk and scale with the desired future character and the breach predominantly arises from the lift overrun providing equitable access to the roof top communal open space of the building. It is apparent from the views from the sun that the ground level open space is overshadowed by the buildings to the north and landscaping, consequently, the roof top communal open space provides good solar access and amenity with very low levels of amenity impact to the neighbours given that it is located on the north of the residential flat building on the subject site. A compliant building would unnecessarily fail to provide good solar access, amenity and equitable access to the upper level of the building in order to achieve the height control. This is considered to achieve flexibility consistent with the objectives of this clause.

The proposal provides for a better outcome in making available communal open space on the building the provides equitable access from all levels, which benefits from high amenity and high levels of solar access and outlook. This is considered to be a better outcome consistent with the objectives of this clause.

A consideration of the application and the submitted shadow diagrams demonstrate that no significant overshadowing, privacy, view or bulk and scale amenity impacts arise from the proposal. It is considered that the proposal is the better planning outcome encouraged by the provisions of Clause 4.6.

The proposed works above the height have no significant view impact and cause no overshadowing, nor bulk or scale impacts to the existing surrounding dwellings.

In the circumstances where there are sound environmental and site specific sufficient environmental planning grounds reasons for the breach to the height control it is considered to justify contravention of the control and consequently the exception to the height control standard under Clause 4.6 is considered acceptable.

In this regard, there are sufficient environmental planning grounds to justify contravening the development standard. The proposed additional height sought in this Clause 4.6 better allows the built form on the site to achieve the desired future character of the locality, as expressed under the DCP, as compared to the do nothing scenario.

6.0 It is in the public interest because it is consistent with the objectives of the

particular standard and the zone.

#### 6.1 Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the FSR development standard, for the reasons discussed in Section 4.1 of this report.

#### 6.2 Consistency with the Zoned R4 – High Density Residential Zone objectives.

The objectives for development in this zone are;

##### *1 Objectives of zone*

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *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 improves the provision of high density housing for the needs of the community without compromising amenity of the surrounding area. The proposal is consistent with the desired pattern of land use and density achieves a reasonably high level of residential amenity.

The proposal provides a variety of housing types in an area which is undergoing a transition in housing stock from 2 bedroom units to two and three bedroom apartments.

Of most significance is the provision of equitable access to all levels of the building in achieving a reasonably high level of residential amenity consistent with this zone objective.

The proposal maintains the pattern of predominantly residential uses.

The proposal is considered to meet the objectives for development in the zone.

The proposal is considered consistent with the objectives of the standard and for development in this zone as required by this subclause.

#### 7.0 Secretary's Concurrence.

Under Clause 4.6(5) of NSLEP 2012, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of the NSLEP, which must be considered by the Secretary.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The variation to the Height of Buildings standard of NSLEP 2012 will not raise any matter in which could be deemed to have State or Regional significance. The extent of variation sought is minor in the context of the building heights.

The public benefit of maintaining the development standard.

Maintaining the development standard would not result in any public benefit in this situation. As detailed within the ASEE, the height and bulk of the existing building is predominantly unchanged and the proposal responds to the surrounding urban context and the requirements of the North Sydney DCP and ADG.

The built-form provided by the proposed building is generally consistent with the bulk and scale of the surrounding buildings, and requiring compliance with the Height of Buildings standard would result in an inconsistent building form or a lack of equitable access to all levels of the building.

The proposed development would allow the building as a whole to better meet the objectives of the DCP by providing equitable access to all levels of the building. The proposed variation to the Height of Buildings standard therefore allows the site to better meet the objectives of the DCP, ADG and the desired future character of the area. DCPs are guiding documents prepared to express the desired future character; protect the public interest and are prepared through an extensive public

exhibition process.

Therefore, to better meet the objectives of the DCP can be said to improve the development's presentation to the public domain and is in the public interest.

Any other matters to be taken into consideration by the Secretary  
None.

## 8.0 Conclusion

The assessment above demonstrates that compliance with the maximum Height of Buildings development standard contained in Clause 4.3 of NSLEP 2012 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded on environmental planning grounds.

It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a superior outcome in planning and design terms. This Clause 4.6 variation demonstrates, notwithstanding the non-compliance with the maximum building height development standard, that:

- The development as proposed will deliver a superior built-form outcome in consideration of the site's characteristics and its location amongst the surrounding buildings;
- The development as proposed will provide environmental benefits particular to the site through the provision of equitable access and improved amenity for future occupants of the development and for the surrounding area generally; and
- Compliance with the development standard would be both unreasonable and unnecessary in the instance because the development is able to fully satisfy the objectives of the R4 – High Density Residential Zone and the objectives of the Height of Buildings development standard.

The NSLEP 2012 applies a maximum Height of Buildings development standard for the site of 12m. The proposed development has a height of 15.47m and is therefore in excess of the maximum Height of Buildings development standard allowable under the NSLEP 2012.

This variation therefore seeks consent for the proposed works as consistent with the specific site constraints and the character and form of the surrounding

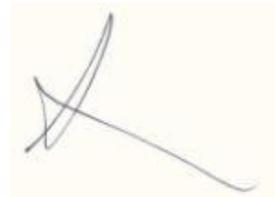
buildings and does not result in an over development of the site or any adverse impacts on the public domain. The proposed additional height is commensurate with surrounding developments and the built form that characterises the locality. It is also consistent with the design approach applied to other buildings within the immediate vicinity.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the Height of Buildings development standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the Height of Buildings development standard, the proposed development is considered to satisfy the objectives of the development standard and the R4 – High Density Residential Zone.

The proposal will provide environmental benefits particular to the site through the provision of equitable access and improved amenity for future occupants of the development and for the surrounding area generally. On this basis, the Clause 4.6 variation is considered well founded and should be supported.

In this instance it is considered appropriate to make an exception to the Height of Buildings development standard under the provisions of Clause 4.6 for the reasons outlined in the preceding discussion.

A handwritten signature in blue ink, appearing to be 'A. Darroch', is centered on a light yellow rectangular background.

Signature:

Name:

Andrew Darroch

Date:

July 2023