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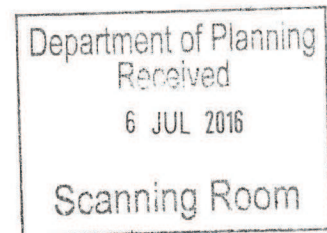


PCU066036

Attention: Yolande Miller

4 July 2016

Dear Ms Miller



RE: Planning Proposal – Building Heights

The attached Planning Proposal seeks to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) by:

- Correcting the colours on the legend and main part of the map to the Height of Buildings Map, consistent with the *DPE's Standard Technical Requirements for Spatial Datasets and Maps* (30 November 2015);
- Removing the maximum building height controls from the following road reserves:
 - Harriet Lane, Neutral Bay;
 - Balls Head Road, Waverton;
 - The Avenue, North Sydney;
 - Gas Lane, North Sydney;
 - High Street, North Sydney;
 - Hill Street, North Sydney;
 - McDonald Lane, North Sydney.
- Removing the maximum building height controls from the following public open space reserves:
 - Mater Gardens, 194 Pacific Highway, Wollstonecraft.
- Imposing a maximum building height of 8.5m on land at 124 Alexander Street, Crows Nest;
- Imposing a maximum building height of 10m on land at 74 McDougall Street, Kirribilli; and
- Deleting clauses 4.3(2A) and 4.3(2B) in their entirety.

At its meeting on 14 June 2016, Council resolved to support the Planning Proposal so that it may be forwarded it to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979. It would therefore be appreciated if the Planning Proposal be referred to the LEP Review Panel for determination under the 'gateway process'.

ENGLISH	If you do not understand this information, please ring the Translating and Interpreting Service (TIS) on 13 14 50, and ask for an interpreter in your language to contact North Sydney Council on (02) 9936 8100. This is a free service.
ARABIC	إذا لم يكن بمقدورك فهم هذه المعلومات، فالرجاء الاتصال بخدمات الترجمة الخطية والفورية (Translating and Interpreting Service (TIS)) على الرقم 13 14 50 والطلب من مترجم فوري يتحدث العربية أن يتصل لك بمجلس مدينة شمال سيدني على الرقم (02) 9936 8100 – هذه الخدمة مجانية.
GREEK	Αν δεν καταλαβαίνετε αυτές τις πληροφορίες, παρακαλώ τηλεφωνήστε στην Υπηρεσία Μετάφρασης και Διερμηνείας (Translating and Interpreting Service (TIS)) στο 13 14 50, και ζητήστε να σας διαθέσουν ένα διερμηνέα στη γλώσσα σας για να επικοινωνήσει με το Δήμο του North Sydney στο (02) 9936 8100. Αυτή είναι μια δωρεάν υπηρεσία.
HINDI	यदि आप इस जानकारी को समझ नहीं सकते हैं तो कृपया अनुवाद और दुभाषिया सेवा (Translating and Interpreting Service - TIS) को 13 14 50 पर फ़ोन करें और अपनी भाषा के दुभाषिए द्वारा उत्तरी सिडनी काउंसिल (North Sydney Council) को (02) 9936 8100 पर फ़ोन करने के लिए कहें। यह सेवा निःशुल्क है।
INDONESIAN	Jika Anda kurang memahami informasi ini, silakan telepon Translating and Interpreting Service (TIS) di 13 14 50, dan mintalah seorang juru bahasa dalam bahasa Anda untuk menghubungi North Sydney Council di (02) 9936 8100. Layanan ini tidak dipungut biaya.
ITALIAN	Se non capite queste informazioni, chiamate il Servizio di Traduzione e Interpretariato (TIS - Translating and Interpreting Service) al numero 13 14 50, e chiedete ad un interprete nella vostra lingua di contattare il North Sydney Council al numero (02) 9936 8100. Il servizio è gratuito.
JAPANESE	上記の情報について何かご質問がございましたら、通訳・翻訳サービス (Translating and Interpreting Service (TIS)) 電話番号 13 14 50 までお問い合わせください。また、ご自分の国の言語で通訳の手配をご希望の方は、ノース・シドニー・カウンスル (North Sydney Council) 電話番号 (02) 9936 8100。まで電話でお問い合わせください。尚、このサービスは、無料です。
KOREAN	이 정보를 이해하지 못하실 경우 번역 통역 서비스 (Translating and Interpreting Service (TIS))에 13 14 50으로 연락하셔서 한국어 통역사를 요청하시고 노스 시드니 카운슬 (North Sydney Council) 연락처인 (02) 9936 8100로 연결하도록 요청하십시오. 이 서비스는 무료입니다.
TAGALOG	Kung hindi ninyo naiintindihan ang impormasyong ito, mangyari lamang na tumawag sa Translating and Interpreting Service (TIS) sa 13 14 50, at hilingin sa interpreter ng inyong wika na tawagan ang North Sydney Council sa (02) 9936 8100. Ito ay isang libreng serbisyo.
TRADITIONAL CHINESE	如果你不明白這份資料，請致電13 14 50聯絡Translating and Interpreting Service (TIS)，要求一名能說你的語言的傳譯員，代你致電(02) 9936 8100聯絡North Sydney Council。這是免費服務。

Council also resolved to seek authorisation for Council to exercise the Minister for Planning's delegation for making the Plan. Given the Planning Proposal is of only local significance, it is requested that the Minister for Planning's plan making functions are delegated to Council.

Please find attached the following:

- Council officer's report including Council's resolution;
- Planning Proposal; and
- Plan Making Delegation Form.

Enquiries should be directed to Karl Stade or the undersigned of Council's Strategic Planning Department on 9936 8100.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Marcelo Occhiuzzi', with a stylized flourish at the end.

MARCELO OCCHIUZZI
MANAGER STRATEGIC PLANNING

Attachment 4 - Evaluation criteria for the delegation of plan making functions

Checklist for the review of a request for delegation of plan making functions to councils

Local Government Area:

North Sydney Council

Name of draft LEP:

Planning Proposal - Building Heights (1/2016)

Address of Land (if applicable):

Applies to entire LGA. Refer to planning proposal.

Intent of draft LEP:

Amend and correct building height controls within the LGA.
Refer to Planning Proposal.

Additional Supporting Points/Information:

Refer to Planning Proposal.



Evaluation criteria for the issuing of an Authorisation				
(NOTE - where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the planning proposal contain details related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?	Y			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		N/A		
Heritage LEPs	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?		N/A		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		N/A		
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		N/A		
Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?	N			
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		N/A		
Is the planning proposal proposed to rectify an anomaly in a classification?		N/A		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		N/A		
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?		N/A		

If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		N/A		
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <i>Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?		N/A		
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		N/A		
Spot Rezoning	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	Y			
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N			
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		N/A		
Does the planning proposal create an exception to a mapped development standard?	N			
Section 73A matters				
Does the proposed instrument a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?; b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land? (NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).		N/A.		
NOTES - Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance. - Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.				

**Report to General Manager**

Attachments:
1. Planning Proposal

SUBJECT: Planning Proposal - Building Heights

AUTHOR: Ben Boyd, Executive Strategic Planner

ENDORSED BY: Joseph Hill, Director City Strategy

EXECUTIVE SUMMARY:

Since the commencement of North Sydney Local Environmental Plan 2013 (NSLEP 2013), Council staff have identified:

- A number of anomalies with the Height of Buildings Map which require correction;
- Confusion by both Council staff and applicants in applying single storey height controls as viewed from a public street frontage; and
- A large number of development applications seeking variations to the maximum building height controls on land having an area less than 230sqm being referred to the North Sydney Independent Planning Panel (NSIPP) for determination.

In response to these issues, a Planning Proposal has been prepared to amend NSLEP 2013 to correct obvious errors on the Height of Buildings Map and to improve the application and interpretation of planning controls relating to building height. In particular, the Planning Proposal seeks to:

- Correct the colours on the legend and main part of the map to the Height of Buildings Map, consistent with the DPE's *Standard Technical Requirements for Spatial Datasets and Maps* (30 November 2015);
- Remove the maximum building height controls from the following road reserves:
 - Harriet Lane, Neutral Bay;
 - Balls Head Road, Waverton;
 - The Avenue, North Sydney;
 - Gas Lane, North Sydney;
 - High Street, North Sydney;
 - Hill Street, North Sydney;
 - McDonald Lane, North Sydney
- Remove the maximum building height controls from the following public open space reserves:
 - Mater Gardens, 194 Pacific Highway, Wollstonecraft
- Impose a maximum building height of 8.5m on land at 124 Alexander Street, Crows Nest;
- Impose a maximum building height of 10m on land at 74 McDougall Street, Kirribilli; and

-
- Deleting clauses 4.3(2A) and 4.3(2B) in their entirety.

The Planning Proposal:

- Generally complies with the relevant Local Environmental Plan making provisions under the Environmental Planning & Assessment Act 1979;
- Generally complies with the Department of Planning's '*A guide to preparing planning proposals*' (October 2012); and
- Is unlikely to result in any adverse impacts on the environment or wider community.

FINANCIAL IMPLICATIONS:

Nil.

Local Government Act 1993: Section 23A Guidelines - Council Decision Making During Merger Proposal Period.

The Guidelines have been considered in the preparation of this report and are not applicable.

RECOMMENDATION:

1. **THAT** Council resolves to adopt the attached Planning Proposal and forward it to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.
 2. **THAT** Council requests the Minister for Planning to provide authorisation to Council to exercise the delegation of the Minister for Planning to make the Plan.
-

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction: 2. Our Built Environment

Outcome: 2.2 Improved mix of land use and quality development through design excellence

BACKGROUND

Since the commencement of North Sydney Local Environmental Plan 2013 (NSLEP 2013), Council staff have identified:

- A number of anomalies with the Height of Buildings Map which require correction;
- Confusion by both Council staff and applicants in applying single storey height controls as viewed from a public street frontage; and
- A large number of development applications seeking variations to the maximum building height controls on land having an area less than 230sqm being referred to the North Sydney Independent Planning Panel (NSIPP) for determination.

With regard to the application of height controls to maintain a single storey built form as viewed from the street, there has been conjecture as to where a building's height is to be measured at the street frontage, where a single storey streetscape prevails. Existing heritage and conservation provisions within NSLEP 2013 and North Sydney Development Control Plan 2013 (NSDCP 2013) currently duplicate the intent of this control via slightly different means. In particular, Part C of NSDCP 2013 contains a number of Area Character Statements which identify the scale of development that is acceptable and desirable within a heritage conservation area. Therefore the LEP controls can be considered to be superfluous.

Development applications that seek to vary the development standards under NSLEP 2013 by more than 10% are required to be referred to NSIPP for determination. With respect to the application of and variation to the requirements of the maximum building height controls under clause 4.3, many of these applications had the potential to be determined under delegated authority. This is primarily due to the majority of these proposals:

- Merely seeking alterations and additions to existing dwellings that already do not comply with the maximum building height requirement;
- The proposed works did not result in any additional degree of non-compliance; and
- Any associated impacts for the proposed works were considered reasonable in the particular circumstances.

This is particularly relevant where an applicant requests a variation to subclause 4.3(2B), which applies a maximum building height to 5.5m to land within a residential zone that also has a site area of less than 230sqm.

Removal of the need to refer applications to NSIPP would provide NSIPP with more time to deliberate on more important planning matters. It would also assist in improving Council's

DA assessment timeframes (i.e. no need to delay applications awaiting to be considered at a monthly meeting).

CONSULTATION REQUIREMENTS

Should Council determine that the Planning Proposal can proceed, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the requirements of any Gateway Determination issued in relation to the Planning Proposal.

SUSTAINABILITY STATEMENT

The following table provides a summary of the key sustainability implications:

QBL Pillar	Implications
Environment	No anticipated impacts.
Social	No anticipated impacts.
Economic	If implemented, the Planning Proposal will in part improve development assessment times by removing requirements to refer development applications to NSIPP, thereby removing associated time costs for Council and applicants.
Governance	If implemented, the Planning Proposal will in part improve development assessment times by removing requirements to refer development applications to NSIPP.

DETAIL

1. Proposed LEP Amendment

The primary intent of the Planning Proposal is to:

- Correct a number of mapping anomalies with regard to maximum building heights;
- Remove an unnecessary requirement with regard to restricting street frontage heights which can be adequately controlled through the application of heritage and conservation provisions through NSLEP 2013 and NSDCP 2013; and
- Remove an unnecessary restriction that results in a large number of development applications being required to submit a 4.6 variation to the building height requirements under Clause 4.3(2B) to the LEP and subsequent referral to NSIPP for determination.

The intent of the Planning Proposal is to be achieved by:

- Amending the Height of Buildings Map to NSLEP 2013 as follows:
 - Correcting the colours on the legend and main part of the map, consistent with the DPE's *Standard Technical Requirements for Spatial Datasets and Maps* (30 November 2015);
 - Removing the maximum building height controls from the following road reserves:
 - Harriet Lane, Neutral Bay;

- Balls Head Road, Waverton;
 - The Avenue, North Sydney;
 - Gas Lane, North Sydney;
 - High Street, North Sydney;
 - Hill Street, North Sydney;
 - McDonald Lane, North Sydney
- Removing the maximum building height controls from the following public open space reserves:
 - Mater Gardens, 194 Pacific Highway, Wollstonecraft;
- Imposing a maximum building height of 8.5m on land at 124 Alexander Street, Crows Nest;
- Imposing a maximum building height of 10m on land at 74 McDougall Street, Kirribilli; and
- Deleting subclauses 4.3(2A) and 4.3(2B) in their entirety.

2. Planning Proposal Structure

The Planning Proposal (refer to Attachment 1) is considered to be generally in accordance with the requirements under Section 55(2) of the Environmental Planning and Assessment Act 1979 and the Department of Planning and Environment's (DPE) *'A guide to preparing planning proposals'* (2012). In particular, the Planning Proposal adequately sets out the following:

- A statement of the objectives or intended outcomes of the proposed local environmental plan;
- An explanation of the provisions that are to be included in the proposed local environmental plan;
- Justification for those objectives, outcomes and provisions and the process for their implementation; and
- Details of the community consultation that is to be undertaken on the Planning Proposal.

3. Justification of the Planning Proposal

The proposed LEP amendment as detailed in the attached Planning Proposal seeks to achieve two aims.

Firstly, the amendments will correct a number of mapping errors which are inconsistent with internal Council policies for applying building height controls to land and the DPE's *Standard Technical Requirements for Spatial Datasets and Maps* (30 November 2015).

Secondly, the deletion of clauses 4.3(2A) and 4.3(2B) amendments will result in the removal of controls which are essentially duplicated under other controls under NSLEP 2013 and NSDCP 2013. In addition, the deletion of these clauses will greatly reduce the number of development applications that are to be determined by NSIPP and thereby improve development assessment times and reduce development costs for applicants.

4. Conclusion

The Planning Proposal seeks to amend NSLEP 2013 such that it:

-
- Corrects a number of mapping anomalies with regard to maximum building heights;
 - Removes an unnecessary requirement with regard to restricting street frontage heights which can be adequately controlled through the application of heritage and conservation provisions through NSLEP 2013 and NSDCP 2013; and
 - Removes an unnecessary restriction that results in a large number of development applications being required to submit a 4.6 variation to the building height requirements under Clause 4.3(2B) to the LEP and subsequent referral to NSIPP for determination.

The relevant requirements under s.55 of the EP&A Act and the matters identified in the Department of Planning's *'A guide to preparing planning proposals'* (October 2012) have been adequately addressed in the Planning Proposal. The proposal is appropriate and is adequately justified.

It is therefore recommended that Council forward the Planning Proposal to the Department of Planning and Environment, seeking a Gateway Determination under s.56 of the EP&A Act 1979.



PLANNING PROPOSAL

Height of Buildings

2 June 2016

1 INTRODUCTION

Since the commencement of North Sydney Local Environmental Plan 2013 (NSLEP 2013), Council staff have identified:

- a number of anomalies with the Height of Buildings Map which require correction;
- confusion by both Council staff and applicants in applying single storey height controls as viewed from a public street frontage; and
- a large number of development applications seeking variations to the maximum building height controls on land having an area less than 230sqm being referred to the North Sydney Independent Planning Panel (NSIPP) for determination.

With regard to the application of height controls to maintain a single storey built form as viewed from the street, there has been conjecture as to where a building's height is to be measured at the street frontage, where a single storey streetscape prevails. Existing heritage and conservation provisions within NSLEP 2013 and North Sydney Development Control Plan 2013 (NSDCP 2013) currently duplicate the intent of this control via slightly different means. In particular, Part C of NSDCP 2013 contains a number of Area Character Statements which identify the scale of development that is acceptable and desirable within a heritage conservation area. Therefore the LEP controls can be considered to be superfluous.

Development applications that seek to vary the development standards under NSLEP 2013 by more than 10% are required to be referred to NSIPP for determination. With respect to the application of and variation to the requirements of the maximum building height controls under clause 4.3, many of these applications had the potential to be determined under delegated authority. This is primarily due to the majority of these proposals:

- merely seeking alterations and additions to existing dwellings that already do not comply with the maximum building height requirement;
- the proposed works did not result in any additional degree of non-compliance; and
- any associated impacts for the proposed works were considered reasonable in the particular circumstances.

This is particularly relevant where an applicant requests a variation to subclause 4.3(2B), which applies a maximum building height to 5.5m to land within a residential zone that also has a site area of less than 230sqm.

Removal of the need to refer applications to NSIPP would provide NSIPP with more time to deliberate on more important planning matters. It would also assist in improving Council's DA assessment timeframes (i.e. no need to delay applications awaiting to be considered at a monthly meeting).

The primary intent of the Planning Proposal is to:

- Correct a number of mapping anomalies with regard to maximum building heights;
- Remove an unnecessary requirement with regard to restricting street frontage heights which can be adequately controlled through the

Planning Proposal – Height of Buildings

application of heritage and conservation provisions through NSLEP 2013 and NSDCP 2013; and

- To remove an unnecessary restriction that results in a large number of development applications being required to submit a 4.6 variation to the building height requirements under Clause 4.3(2B) to the LEP and subsequent referral to NSIPP for determination.

The intent of the Planning Proposal can be achieved by:

- amending the *Height of Buildings* Map to NSLEP 2013; and
- deleting subclauses 4.3(2A) and 4.3(2B) in their entirety.

The Planning Proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979 (EP&A Act) and the Department of Planning and Environment's (DPE) document "*A guide to preparing planning proposals*" (October 2012).

2 BACKGROUND

2.1 Corrections

Since the commencement of NSLEP 2013, Council staff have identified and been informed of a number of anomalies with the Height of Buildings Map.

In particular, the following issues have been identified:

- the application of colours to the Height of Buildings Map in some instances is inconsistent with the DPE's *Standard Technical Requirements for LEP Maps* (November 2012);
- the application of maximum building height requirements to road reserves and public reserves in some instances is inconsistent with Council's adopted policy for applying height controls;
- the application of maximum building height requirements to land zoned *IN4 Working Waterfront* in some instances is inconsistent with Council's adopted policy for applying height controls; and
- the application of maximum building height requirements to land zoned *SP2 Infrastructure* in some instances is inconsistent with Council's adopted policy for applying height controls.

2.1.1 Mandated Colours

The DPE's *Standard Technical Requirements for Spatial Data Sets and Maps* (30 November 2015) sets out how maps under NSLEP 2013 are to be prepared. Council staff have identified that the colours applied to the 24m height limit (also identified by the letter "s") and above on sheets HOB_002, HOB_002A, HOB_003 and HOB_004 to the Height of Buildings Map are incorrect. This colour error applies to both the legend and those properties which have a height limit of 24m and above. The colours to legend and associated properties on Sheet HOB-001 were corrected in 2014 as part of Amendment No.4 to NSLEP 2013 (refer to Figures 1 & 2). The error appears to have merely resulted from applying one of the height colour ranges twice (i.e. the same colour height categories R and S), resulting in colours shifting by one height colour range.

Height of Buildings Map - Sheet HOB_001				Height of Buildings Map - Sheet HOB_001			
Maximum Building Height (m)				Maximum Building Height (m)			
I	8.5	S	24	I	8.5	S	24
K	10	T1	25	K	10	T1	25
L	11	T2	26	L	11	T2	26
M	12	U1	30	M	12	U1	30
N	13	U2	33	N	13	U2	33
O1	15	W1	40	O1	15	W1	40
O2	16	W2	42	O2	16	W2	42
Q1	19.15	X	49	Q1	19.15	X	49
Q2	20	Y	50	Q2	20	Y	50
FIGURE 1: <i>Extract of the Legend to the Height of Buildings Map to NSLEP 2013 as at 13/09/2013</i>				FIGURE 2: <i>Extract of Height of Buildings Map to NSLEP 2013 as at 28/05/2014 (Amendment No.4)</i>			

2.1.2 Council policy for applying height controls

In preparing NSLEP 2013, it was always intended to translate the provisions of NSLEP 2001 into the Standard Instrument Local Environmental Plan (SI LEP) format. Under NSLEP 2001 no height control was applied to roads or public reserves. However, since the commencement of NSLEP 2013, Council staff have identified a number of road reserves and public reserves that have a height limit applied to it which is inconsistent with Council's adopted policy position. The errors appear to have arisen primarily as a result of applying zones to road reserves. In particular, it is proposed to remove height limits applying to the following road reserves:

- Harriet Lane, Neutral Bay;
- Balls Head Road, Waverton;
- The Avenue, North Sydney;
- Gas Lane, North Sydney;
- Hill Street, North Sydney;
- Tucker Lane, North Sydney;
- McDonald Lane, North Sydney

In addition, it is proposed to remove height limits applying to the public reserve known as Mater Gardens located at 194 Pacific Highway, Wollstonecraft.

2.1.3 124 Alexander Street, Crows Nest

In preparing NSLEP 2013, it was always intended to translate the provisions of NSLEP 2001 into the SI LEP format. Under NSLEP 2001 an 8.5m height limit applied to 124 Alexander Street Crows Nest. However, no height limit applies to the site under NSLEP 2013. Accordingly, there is a need to amend the height controls applying to this site consistent with Council's adopted policy position for applying height controls. Therefore, it is proposed to impose an 8.5m maximum building height limit to 124 Alexander Street.

2.1.4 74 McDougall Street, Kirribilli

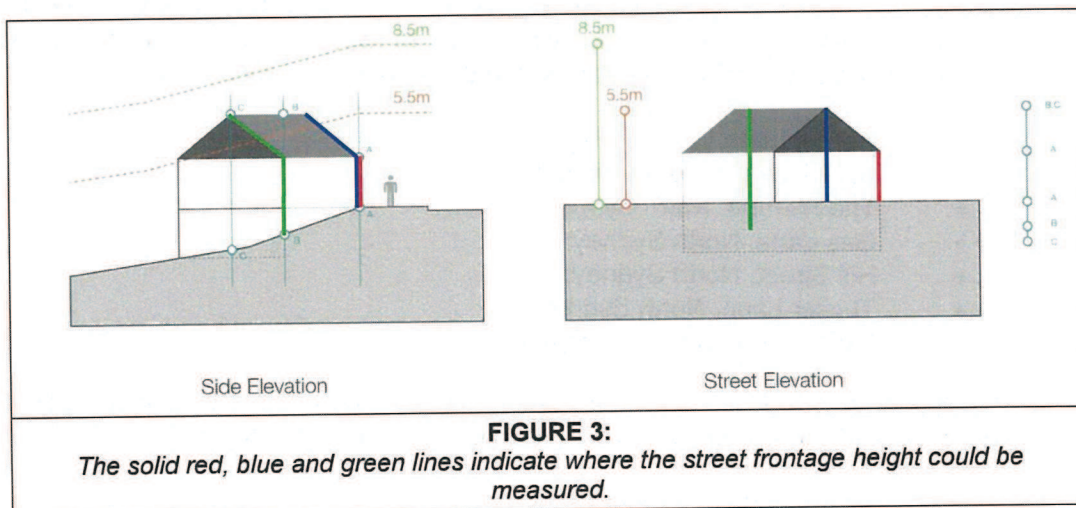
In preparing NSLEP 2013, it was always intended to translate the provisions of NSLEP 2001 into the SI LEP format. Under NSLEP 2001 a 10m height limit applied to 74 McDougall Street, Kirribilli. However, no height limit applies to the site under NSLEP 2013. Accordingly, there is a need to amend the height controls applying to this site consistent with Council's adopted policy position for applying height controls. Therefore, it is proposed to impose an 10m maximum building height limit to 74 McDougall Street, Kirribilli.

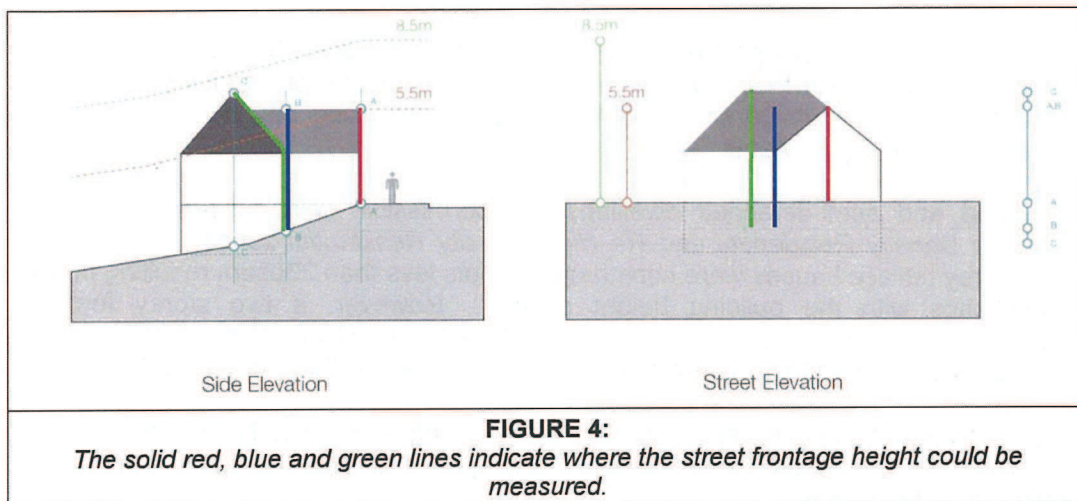
2.2 Maintaining a single storey built form

Since the commencement of NSLEP 2013, both applicants and Council planning officers have had difficulty in determining how a development complies with the requirements of subclause 4.3(2A) of NSLEP 2013 which states:

Despite subclause (2), the height of the street elevation of any building on land in Zone R2 Low Density Residential that is also within a heritage conservation area must not exceed 5.5 metres unless any adjoining buildings with the same street frontage are at least 2 storeys high.

In particular, issues arise when trying to determine where the height of a building's street elevation is to be measured. Figures 3 to 4 illustrate the potential for determining the height of the building at the street frontage. As illustrated, there are many different ways to interpret how the street elevation may be determined. If the way that the building height of the street elevation is not clearly described and consistently applied, there could be potential for this particular control to be challenged in the Land and Environment Court and if upheld, could result in the control being undermined and rendering the control ineffective.





2.3 Maximum building height controls applying to Small Lots

Development applications are required to be referred to NSIPP where an applicant seeks to vary the building height requirements under clause 4.3 by more than 10%.

Since the commencement of NSLEP 2013 and up to 31 December 2015, Council has approved a total of 566 development applications of which 165 were approved by NSIPP. Of these applications:

- 90 (55% of all NSIPP applications and 16% of all applications) were granted a variation to the building height controls under clause 4.3, of which:
 - 33 (37% of all NSIPP applications and 6% of all applications) were granted a variation to the building height controls under clause 4.3(2B)

Council does not keep track and report on all clause 4.6 variations made. Therefore, it is unclear how many applications have been made to vary the requirements of subclause 4.3(2B) and the degree of variation was less than 10%. However, if similar percentages were applied to all development applications, it could be concluded that 37% of all development applications seek to vary the height requirements under subclause 4.3(2B).

All of the NSIPP applications to vary the development standard under subclause 4.3(2B) related to alterations and additions to existing dwellings that already exceeded the maximum building height that applied to the site. Furthermore, in the majority of cases, it was not proposed to further increase the degree of non-compliance with the maximum building height control.

The primary reason why the existing dwellings did not comply with the requirements of subclause 4.3(2B) include:

- the moderately pitched roof profiles of single storey dwelling houses and semi detached dwellings projecting above the maximum requirement in the *R2 Low Density Residential* zone; and
- two storey attached dwellings or semi detached dwellings projecting above the maximum requirement in the *R3 Medium Density Residential* and *R4 High Density Residential* zones.

Moderately pitched roof profiles are required and encouraged by the North Sydney Development Control Plan 2013 (NSDCP 2013). Varying site characteristics has resulted in many roofs to single storey dwellings projecting beyond the maximum building height requirements.

Attached and semi-detached dwellings are permissible with consent in the *R3 Medium Density Residential* and *R4 High Density Residential* zones. Traditionally two storey terrace houses were constructed on lots less than 230sqm resulting in non compliance with the building height control. However, a two storey form is considered acceptable given that it would allow the provision of more floor space without impacting on the provision of private open space at the ground level.

Many of the development applications that are being referred to NSIPP due to non-compliance with clause 4.3(2B) could easily be determined under delegated authority. This is due to:

- the majority of the applications not resulting in any further non-compliance;
- any associated impacts are considered reasonable; and
- general lack of submissions being made in relation to breaching the height control.

Removal of the need to refer applications to NSIPP would provide NSIPP with more time to concentrate on determining more important planning matters.

The high level of requests to vary the building height requirement indicates that the current controls under subclause 4.3(2B) that the current control is not appropriate and an alternative solution is required.