

25 July 2014

The General Manager  
North Sydney Council  
200 Miller Street  
NORTH SYDNEY NSW 2060  
**Attention: Lara Huckstepp**

Dear Lara,

## Clause 4.6 Objection to Building Height Control – 18-20 Atchison Street, St Leonards

### 1 Clause 4.6 Objection

#### Development Standard

This Clause 4.6 objection seeks to vary the building height standard stipulated in Clause 4.3 (2) of the North Sydney LEP 2013 (NLEP 2013). Specifically, it states:

*The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The height map stipulates a maximum height of 49 metres for the site.

#### Proposed Variation

The staged development application (DA187/13) was approved by the JRPP on 17<sup>th</sup> December 2013. The consent granted approval for the building envelope of 18-20 Atchison Street to a maximum building height of 57.2m (to of roof plant).

That application was supported by a SEPP 1 objection to the building height control of North Sydney LEP 2001.

The current Stage 2 detailed application for 18-20 Atchison Street, St Leonards before Council for assessment **does not seek to increase the approved maximum building height approved**. Therefore the SEPP 1 that supported the establishment of the maximum height envelope for this site remains valid for consideration as part of this Stage 2 detailed DA.

A small portion of the upper level of the building however sits outside of the building envelope established in the staged DA approval (*refer to elevation drawing No.s 2001, 2002, 2003 from Crone Partners Architects submitted to Council with the DA*). To avoid any concern about the lawfulness should approval be granted without a valid Clause 4.6 objection justifying the portion of the building outside the envelope and above the maximum height control, this variation request has been prepared for Council's consideration.

## 2 Objectives of the Standard

The objectives of the Building Height standard are:

- (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.*

Notwithstanding the proposed variation to the standard, the proposed development is nevertheless consistent with these objectives:

- The building height provides a transitional step down from the taller adjacent approved development at 6-16 Atchison Street.
- The height is consistent with the adjoining approved building at 22-24 Atchison Street.
- The solar access considerations have been addressed in the SEE report and demonstrated that the additional height will not create any unreasonable additional impact on the nearest properties or surrounding public domain.
- The height will achieve a harmonious height and scale relationship with existing and approved developments.
- The proposed height is no taller than the maximum envelope height approved for the site as part of the Staged DA approval. The small additional element outside the envelope constitutes a lightweight roof structure over a swimming pool for the penthouse apartment to provide privacy from overlooking to the taller building to the west.
- The building height is consistent with the current desired character for the Centre.

## 3 Objectives of the Zone

The site is currently zoned *B4 Mixed Use* under NLEP2013. The proposed use of the site for residential flat building development, commercial office, gymnasium, child care and café (retail) are all permitted with consent within the zone.

The provision of a swimming pool and supporting roof structure satisfy the objective to create a high quality urban living environment and therefore the small projection outside of the approved envelope above the height control is entirely consistent with the objectives of the zone.

#### 4 Compliance is Unreasonable or Unnecessary in this case

In **Wehbe v Pittwater Council [2007] NSWLEC 827** Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

1. *Establish that compliance with the development standard is unreasonable or unnecessary because **the objectives of the development standard are achieved notwithstanding non-compliance** with the standard.*
2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that 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.*
5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

In applying the tests of *Wehbe v Pittwater Council [2007] NSWLEC 827*, only one of the above rationales is required to be established. The proposed development is consistent with the underlying objectives of the standard for Building Height and the B4 Mixed Use zone as outlined above and in the SEE.

#### 5 Sufficient environmental planning grounds to justify contravening the development standard

The variation to the development standard for Building Height is considered well founded because, notwithstanding the proposed non-compliance with the Height standard:

- The proposed development is entirely consistent with the underlying objective and purpose of the height standard;
- The proposed building envelope is consistent with the approved staged DA envelope. It is no higher, with only a minor addition to incorporate the rooftop elements for the swimming pool;
- The proposed development positively contributes to the desired future character of the area;
- The resulting change in building height from the approved envelope will have no demonstrable negative impact on the amenity of adjoining occupiers beyond a fully compliant envelope scheme;
- The proposed development will not result in any unreasonable privacy intrusion or loss of daylight access to adjacent properties beyond the level already approved;
- The proposed development complies with all other standards of NLEP 2013 and will create a minimal impact on the locality and its surrounds;

- The design meets the SEPP65 amenity requirements demonstrating the suitability of the site for the density proposed;
- There is no public benefit in maintaining strict compliance with the standard;
- Strict application of the standard is therefore unreasonable and unnecessary in the circumstances of the case; and
- The proposed variation to the standard does not raise any matter of significance for State or regional environmental planning.

Overall, it is considered that the proposed variation to approved building envelope and particular the portion of the building projecting outside of the approved envelope above the maximum height control is entirely appropriate and can be clearly justified having regard to the matters listed within LEP Clause 4.6.

Yours sincerely,

A handwritten signature in black ink that reads 'Stephen White'. The signature is written in a cursive, flowing style.

Stephen White  
Director