

Wollongong Local Planning Panel Assessment Report | 6 November 2019

WLPP No.	Item 1
DA No.	DA-2019/96
Proposal	Novotel Northbeach - addition of suite to existing rooftop level
Property	2-14 Cliff Road, North Wollongong
Applicant	Michael Anagnostou
Responsible Team	Development Assessment and Certification – City Centre Team (RW)

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Wollongong Local Planning Panel (WLPP) - Determination

The proposal has been referred to WLPP for determination pursuant to clause 2.19(1)(a) of the *Environmental Planning and Assessment Act 1979*. Under Clause 3 of Schedule 2 of the Local Planning Panels Direction of 1 March 2018, the development involves a variation to a development standard (building height) by more than 10%.

Proposal

The proposal is for alterations and additions to the Novotel Hotel to provide a 'presidential' suite at roof level.

Permissibility

The site is zoned SP3 Tourist pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as **tourist and visitor accommodation** and is permissible in the zone with development consent.

Consultation

The proposal was notified in accordance with Council's Notification Policy and received four (4) submissions which are discussed at section 2.8 of the assessment report. Council's Stormwater Traffic and Building Officers have reviewed the application and given satisfactory referrals.

Main Issues

The main issues are:

- Clause 4.6 exception to development standard – building height
- Heritage impacts
- Visual impacts
- Design excellence

RECOMMENDATION

It is recommended that the application DA-2019/96 be refused for the reasons outlined in Attachment 6.

1 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the development:

State Environmental Planning Policies:

- SEPP No. 55 – Remediation of Land
- SEPP (Coastal Management) 2018

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan (WDCP) 2009

Other policies

- Wollongong City Wide Development Contributions Plan 2018

1.2 PROPOSAL

The proposal is for alterations and additions to the existing hotel (Novotel) to provide a new hotel suite. The new suite is proposed at the eastern end of the roof level of the existing hotel building which is currently comprises of a plant room and open roof area (Level 10). The works include:

- Door and vent openings to plant room removed
- Demolition of existing wall
- Construct 3-bedroom hotel room with 3 ensuite bathrooms and two terrace areas

1.1 BACKGROUND

There are numerous applications pertaining to the site. The most relevant application was a pre-lodgement meeting held on 17 January 2018 (PL-2017/223). The main issues raised were the variation to height limit, built form, and heritage impacts.

Subject application background and additional information requests

- 6 February 2019 – DA lodged
- 8 February 2019 – internal referrals sent
- 14 February - 7 March 2019– public notification period
- 29 March 2019 – all internal referrals complete
- 11 April 2019 – letter to applicant sent requesting additional information and identifying concerns with proposed development
- 20 May 2019 - Council officers met with the applicant and planning consultant to discuss the issues raised.
- 22 July 2019 – revised plans and additional information submitted.
- 2 - 22 August 2019 – re-notification period for revised plans
- 10 September 2019 – further information requested by Council
- 10 October 2019 - further revised plans and additional information submitted. These plans and supporting information form the basis of this report.

Customer service actions

There are no outstanding customer service requests of relevance to the development.

1.2 SITE DESCRIPTION

The site is located at Novotel Northbeach, 2-14 Cliff Road, North Wollongong and the title reference is Lot 1 DP 793327. This land has frontages to Cliff Road (91.16m); Bourke Street (87.83m); Kembla Street (85.97m); and Blacket Street (79.13m), with a total site area of approximately 7,784m².

The Novotel Northbeach currently occupies the site, with the southern portion of the site being 3 storeys in height, and the central and north-western portion of the site being 10 storeys. The current application relates to the 10 storey portion of the building located in the central and north-western portion of the site as indicated on the site plan in attachment 2.

Adjoining development is as follows:

- North: Blackett Street with a mix of single dwellings and residential flat buildings
- East: North Beach, including North Beach Pavilion, kiosk which encompasses North Beach Precinct (State listed heritage items)
- South: Bourke Street and a mix of residential and retail businesses
- West: Kembla Street and mix of residential densities

An aerial photo of the site forms attachment 1.

Property constraints

- Council records identify the land as being impacted by acid sulphate soils. No earthworks are proposed and no concerns are raised in this regard.
- Council records identify the land as being located within the Coastal zone. No impacts are expected on the coastal environment as a result of the development and there are no coastal hazards that affecting the land
- There are no restrictions on the title.

1.3 SUBMISSIONS

The application was notified in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising, including the revised plans. This included a notice in The Advertiser. A total of four (4) submissions were received and the issues identified are discussed below.

Table 1: Submissions

Concern	Comment
1. View impacts	The proposed addition will result in some loss of northerly coastal views from surrounding apartment buildings. The photos submitted with the submission indicates the proposed addition will remove some views of the Norfolk Island pines and some ocean views. The proportion of view loss is relatively minor, however given that the proposed additional suite represents a significant development departure to the maximum building height, the resulting view impacts are not supported. The applicant has submitted a view analysis

Concern	Comment
	<p>which is included in attachment 4 to this report.</p> <p>Further assessment of view impacts is discussed below the submissions table.</p>
<p>2. Non-compliant building height. No part of the building is within the 24m maximum height limit</p>	<p>The proposed addition has a height of 31.55m, which continues the existing (maximum) height of the building. The existing building exceeds the 24m height limit on Levels 9 and 10. The development is seeking a development departure under Clause 4.6 of Wollongong Local Environmental Plan 2009, which is discussed at Part 2.1.3 of this report.</p>
<p>3. Supporting a variation to the height limit will set an undesirable precedent for other development sites to exceed height limits</p>	<p>Each development application is assessed on its own merits. Clause 4.6 of WLEP2009 is a mechanism which allows the consent authority to consider a variation to development standards such as building height.</p> <p>A portion of the existing hotel building on the site has a height greater than the maximum permitted height of 24m. This is not a typical situation that would apply to many other development sites.</p> <p>Future developments in the vicinity that involve a variation to the maximum building height would be required to seek a development departure through Clause 4.6 and would be assessed in accordance with the requirements of this clause.</p>
<p>4. Sunlight impacts on North Beach Precinct and Bathers Pavilion</p>	<p>The shadow diagrams show the proposed addition will lead to a minor degree of overshadowing to the North Beach precinct from 1pm in mid-winter and the southern portion of North Beach Pavilion after 2pm (refer attachment 2). The area south of the North Beach Pavilion has fixed public seating. This area will receive some additional overshadowing after 2pm. Given this additional overshadowing is a direct result of the height departure, this is not considered to be a reasonable impact on the public domain.</p>
<p>5. Overshadowing to Norfolk Island pine trees and palm trees</p>	<p>The shadow diagrams submitted indicate additional overshadowing from the development from 1pm in mid-winter (i.e. worst-case scenario). The submitted shadow diagrams are included in attachment 2.</p>
<p>6. The architectural form and materials do not match the existing building and will be an eyesore.</p>	<p>The original plans submitted indicated black framed windows and had a parapet that exceeded the height of the existing building. The intent behind this was to identify this suite as unique and a later addition.</p> <p>Concern was raised over this approach and revised plans were submitted that have replicated the existing materiality and finishes of the building and does not exceed the existing building height. The revised materials are considered to be an improved design response which integrates with the existing building and</p>

Concern	Comment
	is less visually prominent than the original design.
7. Excessive bulk and scale. The suite is not sympathetic to the area and dominates the skyline.	<p>The existing hotel building has a visually bulky appearance, with limited articulation on all frontages. The proposed additional suite seeks to use the roof area adjacent to existing plant room. Currently, the roof area to the east of the plant room is open with awning structures, providing some visual interest and relief to the bulky building and the skyline (refer visual impact study plans in attachment 2).</p> <p>The proposed development will occupy a large part of this open roof area. The addition incorporates a 1.5m deep balcony to the master bedroom on the southern side and a 4m deep terrace to the living area on the northern side. These terraces will retain some articulation to the eastern façade, as viewed from the north and south. Overall however, the building and roof will present as a bulkier built form as compared to the existing open roof features.</p>

Assessment of View impacts

The Land and Environment Court has set a Planning Principle to assess view sharing based on the court case *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*. This planning principle has adopted a four-step assessment which will be used to evaluate view loss arising from the proposed development.

The site occupies the entire block bounded by Cliff Road, Blacket Street, Kembla Street and Bourke Street and therefore has no other properties that directly adjoin the site. The central portion of the hotel where the addition is proposed has generous setbacks to the north and south. Notwithstanding the site layout, the proposal will lead to some loss of views from surrounding properties that are of a comparable building height, in particular from existing apartment building to the south and south-west of the site. A submission has been received from occupants of the residential flat building known as 'The Quay' at 3-5 Corrimal Street, Wollongong. The views that will be affected relate to northern coastal views and the focus of view impacts will be in relation to this property.

A view analysis carried out by the applicant forms attachment 4.

The 4 step *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* planning principle assessment is outlined as follows:

Step 1 – Assessment of views to be affected

Affected views from the apartment building at 3-5 Corrimal Street, Wollongong include northern coastal and escarpment views, including ocean views and views of the Norfolk Island palm trees. 3-5 Corrimal Street is situated approximately 100m from the proposed addition with a ground level approximately 10-15m higher than the subject site.

Step 2 – What part of the property are the views obtained?

The views affected are obtained from the north facing balconies of 3-5 Corrimal Street. This apartment building is oriented east west with two units per floor and a penthouse level. All units have north facing balconies and living and dining rooms facing north. The photos included in the submission appear to be taken from the balcony.

Step 3 – Assess the extent of the impact

The proposed development will partially obstruct existing northern coastal views from 3-5 Corrimal Street. Existing views available from the north facing balconies comprise expansive coastal views, including the land-water interface which are considered to be the most valuable. Coastal views to the east are also available from the eastern units which will not be affected by the development.

The existing roof form on level 10 of the Novotel has an open concrete column structure allowing views through to the ocean. The northern view also incorporates Norfolk Island palms and distant escarpment views. From the lower levels, views would be available from to the land-water interface of Fairy Meadow beach. It is these views from the balconies and living areas that will be impacted. Given the existing available northern and north-eastern coastal views are expansive, as a proportion of the views lost, the impact on views lost could be described as minor. Substantial coastal views, including views in which the interface between land and water is visible, would be retained after construction of the proposed development.

Step 4 – Assess the reasonableness of the proposal that is causing the impact

The development will result in a minor loss of coastal views and Norfolk Island pine trees from 3-5 Corrimal Street. Units on level 4 and below may lose a small portion of views towards Fairy Meadow beach and the land-water interface.

The proposed development is non-compliant with the 24m height limit for the site however the proposal is compliant with the maximum 3:1 floor space ratio for the site.

In order to reduce the northern coastal view loss, the development would need a reduction in height and increased setbacks from the eastern façade of the building. Opportunities for providing the presidential suite elsewhere within the building could negate any view loss and would still allow for the efficient use of the land in order to achieve the development potential available under the current development standards.

The development as proposed is of a scale outside what is permitted under Wollongong LEP 2009 although is consistent with the SP3 Tourist zone objectives. Land to the south-west of the site has a 32m height limit, and the redevelopment of sites fronting Bourke Street have the potential to impact on northern and north-easterly coastal views for 3-5 Corrimal Street, however the maximum FSR of 1.5:1 may limit view impacts to this property to some degree.

The proposed development will lead to a minor degree of view loss for residents of the building at 3-5 Corrimal Street. Since the view loss is directly attributable to the non-compliant height limit, the proposal is considered unreasonable with regard to the view impacts.

1.4 CONSULTATION

1.4.1 INTERNAL CONSULTATION

Stormwater Engineer, Traffic Engineer and Building Inspector

Council's Stormwater Traffic and Building Officers have reviewed the application and given satisfactory referrals. Conditions of consent were recommended and are included in the consent.

Heritage Officer

The impacts of the development have been assessed having regard to Clause 5.10(3) of the Wollongong LEP 2009 and Chapter E11: Heritage Conservation of the Wollongong DCP 2009.

Council's Heritage Officer has reviewed the application and given an unsatisfactory referral as it does not comply with the height limit and will have significant visual and overshadowing impacts on the state heritage listed North Beach Precinct, as well as set an undesirable precedent for future development in the area.

1.4.2 EXTERNAL CONSULTATION

Office of Heritage and Environment (OEH)

The original proposal was sent to OEH for comment on the potential impacts on the nearby state heritage listed North Beach Precinct. Comments were received on 30 April 2019. Concerns were raised over the additional overshadowing impacts and it was recommended that the rooftop addition be setback from the eastern façade by 1.5m to limit overshadowing and visual bulk.

The revised plans were re-referred to OEH for review and comments were received on 13 August 2019. The comments noted that the proposal had been amended in accordance with the previous Heritage Council recommendation to set back the eastern façade by 1.5m.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – 4.15 EVALUATION

2.1 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

A desktop audit of previous land uses does not indicate any historic use that would contribute to the contamination of the site. There are no earthworks proposed and the proposal does not comprise a change of use. No concerns are raised in regard to contamination as relates to the intended use of the land and the requirements of clause 7.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018

Under the SEPP, the subject site is mapped the following:

- Division 4 Coastal Use Area Map

Is the proposal within the Coastal Use Area?

SEPP (Coastal Management) 2018, Division 4, cl 14.

Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

(a) has considered whether the proposed development is likely to cause an adverse impact on the following: (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	No impact on access to foreshore area.
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,	The development will result in a minor increase in overshadowing to the foreshore area. Although this additional overshadowing is minor having regard to the scale of the existing hotel building, it will have an adverse impact due to the loss of some sunlight access to the foreshore in midwinter.
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,	The addition will be visible from the coastal foreshore, including the state heritage listed 'North Beach Precinct' opposite the site. Although the proposed addition continues the the existing maximum building height, the additional bulk impacts the visual

	amenity when viewed from the foreshore area and surrounding streets and compromises the scenic qualities of the coast.
(iv) Aboriginal cultural heritage, practices and places,	No heritage impacts on Aboriginal cultural heritage, practices and places are envisaged.
(v) cultural and built environment heritage, and	<p>The site is located opposite the foreshore and North Wollongong Beach which incorporates the State heritage listed 'North Beach Precinct'.</p> <p>The additional building bulk and proposed departure to the maximum 24m height limit has a visual impact on the setting and backdrop to the North Beach Precinct.</p> <p>Council's Heritage Division have provided an unsatisfactory referral citing the adverse visual impacts on the nearby heritage items and precincts.</p>
<p>(b) is satisfied that:</p> <p>(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</p> <p>(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and</p> <p>(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</p>	<p>Consideration has been given to this clause. The design of the development has been revised during the course of the assessment to reduce the visual bulk and overshadowing impacts of the additional suite.</p> <p>Despite these changes, the development has not been sited to minimise the impact on the North Beach State listed heritage precinct, noting that an additional suite to meet the requirements of the hotel appears capable of being reasonably provided elsewhere within the building which would lessen the visual bulk, minimise or remove overshadowing and view impacts and not exceed the maximum building height.</p> <p>Some changes to the design have been made during the course of the assessment, including increasing the setback from the eastern façade and proposing external materials and finishes that match the existing building. These changes have improved the integration of the additional suite with the existing building however still lead to adverse impacts that directly stem from the height departure involved in the design.</p> <p>It is considered that alternative designs to achieve the desired outcome for a presidential suite could reasonably avoid the</p>

	adverse impacts.
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Division 5 General

15 Development in coastal zone generally—development not to increase risk of coastal hazards

The development is limited to addition at roof level and will not increase the risk of coastal hazards.

16 Development in coastal zone generally—coastal management programs to be considered

Wollongong Coastal Zone Management Plan

The draft Wollongong Coastal Zone Management Plan was certified on 20 December 2017 and gazetted on 9 March 2018. The NSW Coastal Management Act 2016 came into force on 3 April 2018. Under the Act, any certified CZMP continues in force until 2021. As such, the Wollongong CZMP is considered a Coastal Management Program for the purpose of the Coastal Management Act and is a matter for consideration in the assessment of this development application under the Coastal SEPP.

A review of Council's associated CZMP mapping does not identify the site to be in any inundation extent or subject to reduced foundation capacity.

The site is located within the coastal use and coastal environment area in the maps to this policy. The site is opposite the foreshore and is within an existing urban environment. No impacts are expected on the coastal environment and no concerns are raised in respect of division 3, 4 or 5 of this policy.

2.1.3 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
 - (b) bed and breakfast accommodation,
 - (c) farm stay accommodation,
 - (d) hotel or motel accommodation,
 - (e) serviced apartments,
- but does not include:
- (f) camping grounds, or
 - (g) caravan parks, or
 - (h) eco-tourist facilities.

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned SP3 Tourist.

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- *To provide for a variety of tourist-oriented development and related uses.*

The proposal is satisfactory with regard to the above objectives noting that the existing hotel use provides for tourist accommodation and the additional suite supports the ongoing hotel use.

The land use table permits the following uses in the zone.

2 Permitted without consent

Building identification signs; Business identification signs

3 Permitted with consent

*Advertising structures; Amusement centres; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks; Cellar door premises; Charter and tourism boating facilities; Centre-based child care facilities; Community facilities; Entertainment facilities; Food and drink premises; Function centres; Information and education facilities; Kiosks; Marinas; Markets; Moorings pens; Moorings; Neighbourhood shops; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Roads; **Tourist and visitor accommodation**; Water recreation structures*

4 Prohibited

Any development not specified in item 2 or 3

The proposal is categorised as **tourist and visitor accommodation** as defined above and is permissible in the zone with development consent.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The existing building exceeds the 24m maximum permitted height limit under the Height of Buildings Map, at a height of 31.55m. Any portion of the building above the existing floor level of Level 9 exceeds the current 24m height limit. The proposed suite has a maximum RL of 43.20 to match the existing parapet height. This results in the development exceeding the maximum 24m permitted height for the site. The applicant is seeking an exception to this development standard under Clause 4.6 as discussed below.

Clause 4.4 Floor space ratio

Maximum FSR permitted for the zone: 3:1

Site area: 7,793m²
 GFA: 20,447 (additional 199m²)
 FSR: 20,447/7,793m² = 2.62:1

The proposal complies with the maximum 3:1 FSR.

Clause 4.4A Floor space ratio – Wollongong city centre

This clause applies to land within the city centre. Although the site is within Wollongong city centre, this clause does not apply to land zoned SP3 Tourist.

Clause 4.6 Exceptions to development standards

An exception to the maximum 24m building height permitted under Clause 4.3 is sought.

WLEP 2009 clause 4.6 proposed development departure assessment	
Development departure	Clause 4.3 Building height. The Height of Buildings map sets a maximum 24m height limit for the site. The proposed building height is 31.55m, which is a breach of 7.55m or 31.5%.
Is the planning control in question a development standard	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
that compliance with the development standard is unreasonable or unnecessary in	Yes

the circumstances of the case, and	
that there are sufficient environmental planning grounds to justify contravening the development standard.	Yes
4.6 (4) (a) Consent authority is satisfied that:	
the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	<p>The applicant's written request seeks to justify that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case under subclause 3(a) is based on the following rationale:</p> <ul style="list-style-type: none"> • Objectives (a)-(c) of Clause 4.3 Height of building are satisfied. • The objective of the SP3 Tourist zone will be enhanced by the development to provide accommodation to tourists. • There are sufficient planning grounds given that there is an absence of significant impacts arising from the proposed non-compliance on neighbouring properties, character of the area of future building occupants. • The proposed development will provide a new form of luxury hotel accommodation that will attract a new clientele to the hotel, leading to economic benefits for Wollongong. • That compliance with the maximum height development standard is unnecessary in the circumstances of the case as the objectives of the standard and zone objectives are met and therefore strict compliance with the maximum height standard would be unreasonable. <p>The applicant's Clause 4.6 Statement forms attachment 3. The written request has adequately addressed the matters required to be addressed under subclause (3).</p>
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	<p>There is a public benefit of maintaining the standard relating to building height. The Novotel site covers the entire block, and while the existing tower exceeds the maximum 24m height limit under WLEP2009, the southern and the north-eastern portion of the site is currently 3-4 storeys. Maintaining a 24m height limit is considered appropriate and in the public interest in order to limit the visual bulk and amenity impacts of any future redevelopment on surrounding properties, the heritage significance of the surrounding area and the public domain.</p> <p>The objective for development within the SP3 Tourist zone is:</p> <ul style="list-style-type: none"> • <i>To provide for a variety of tourist-oriented development and related uses.</i> <p>The proposed development seeks approval for a presidential suite which is not currently offered by the hotel. The proposed development is consistent with the zone objective.</p> <p>The objectives of Clause 4.3 building height are:</p>

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
(b) to permit building heights that encourage high quality urban form,
(c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.

In relation to (a), the existing building was approved prior to the current 24m height limitation under WLEP 2009. The existing building height of 31.55m was approved under DA-1986/423 where the maximum height permitted was 11m (under Clause 139 of the Illawarra Regional Environmental Plan No. 1). A SEPP 1 objection was supported for the proposed height.

The additional floor space remains compliant with the maximum floor space permitted for the site under WLEP2009, despite the height limit being exceeded.

In relation to (b), the revised design reflects the existing building style and materials and incorporates open structures on the eastern side. In relation to the existing bulk of the building, the proposed addition will not easily be discernible. However, the location of the proposed development is in a visually prominent location on the site in terms of its proximity to the foreshore and state listed North Beach precinct. The proposed continuation of the existing building height at the uppermost point of the building will have an adverse visual impact and will have minor overshadowing and view impacts. On this basis the proposed development compromises a high-quality urban form being achieved.

The relation to (c), the submitted shadow diagrams indicate that the proposed additions will lead to a minor increase in shadowing. The rear of 1 Corrimal Street will receive additional shadow from the development at 10am on 21 June. This property is a single dwelling and the rear portion of the site contains existing vegetation. The impacts on exposure to sunlight are minimal and this site will continue to have views of the sky. 18 Cliff Road will have a minor increase in overshadowing from 11am on 21 June however this is a commercial property therefore no amenity impacts regarding exposure to sunlight to residential spaces will occur.

Regarding the impact of the development on views to the sky and exposure to sunlight for public areas, the development will create additional shadowing on the foreshore area from 1pm on 21 June, with the additional shadow falling on the 'Blue Mile' shared path at approximately 2pm. This additional impact is minor in relation to the shadow cast by the existing building however does result in a reduction the availability of winter sun to this public area. A reduction of views of the sky from the North Beach Precinct will occur, however this is considered minor. Overall, objective (c) is compromised by the development regarding the loss of sunlight exposure.

<p>the concurrence of the Secretary has been obtained.</p>	<p>In accordance with Planning circular PS 18-003 dated 21 February 2018, the Secretary has granted Council (and their established independent hearing and assessment panels) assumed concurrence for applications made with a supporting objection under Clause 4.6.</p>
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Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

This clause applies to the development as although the subject site is not a heritage item, it is in the vicinity of numerous local heritage items and conservation areas and opposite the state heritage listed North Beach Precinct. As of relevance to the proposal, Schedule 5 lists the following items and heritage conservation areas:

- North Beach Precinct and Belmore Basin – Wollongong – State listed heritage conservation area
- North Beach kiosk and residence – State listed Item 61036
- North Beach Pavilion – State listed item 61033
- North Beach Surf Club – local heritage item 61035
- Railway cuttings and embankments – Cliff Road – Wollongong Foreshore from North Beach to Belmore Basin – local heritage item 6306
- Group of Norfolk Island pines and Canary Island palms, Stuart Park – local heritage item 6283

These items and areas in relation to the subject site are shown in Figure 3 below:

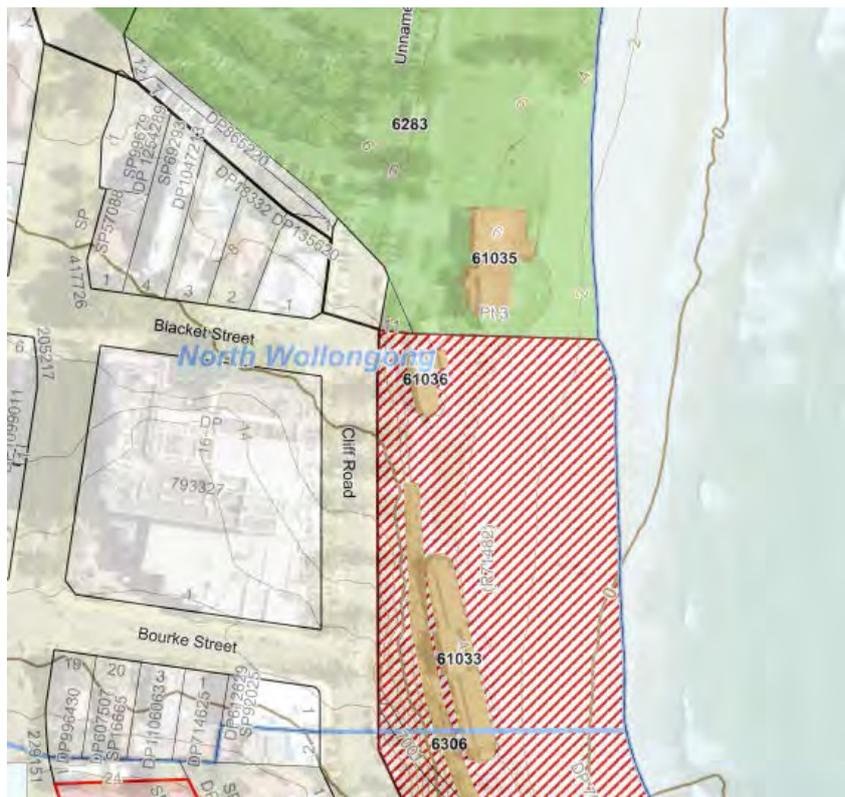


Figure 3: Site plan showing surrounding heritage items and heritage conservation areas (red hatched area is the North Beach precinct)

The objectives of Clause 5.10 are:

- (a) to conserve the environmental heritage of Wollongong,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,

- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The provisions of Clause 5.10 have been considered by Council's heritage division and found unsatisfactory due to the visual impact of the development which arises from the non-compliant building height. The objectives of this clause are not satisfied as the proposed addition will lead to cumulative impacts on the settings and views of the adjacent state heritage listed North Beach Precinct. This is discussed in more detail in part 1.4 of this report.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The development is already serviced by electricity, water and sewage services and can readily be adjusted to service the development.

Clause 7.5 Acid Sulfate Soils

The proposal is identified as being affected by class 5 acid sulphate soils. An acid sulphate soils management plan is not required as no ground disturbance is involved noting the development relates to the top floor of the building.

Clause 7.18 Design excellence in Wollongong city centre and at key sites

The objective of this clause is to deliver the highest standard of architectural and urban design.

Clause 7.18(3) requires that:

- (3) Development consent must not be granted to development to which this clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence.*
- (4) In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:*
 - (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*

The design of the additional suite has improved over the course of the assessment, however still results in adverse visual and overshadowing impacts on the North Beach precinct and surrounding area.

- (b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,*

The development will not improve the quality and amenity of the public domain due to additional visual bulk and overshadowing impacts to the North Beach precinct.

- (c) whether the proposed development detrimentally impacts on view corridors,*

Minor view loss from surrounding residential apartments looking towards the coastal foreshore will result from the development.

- (d) whether the proposed development detrimentally overshadows an area shown distinctively coloured and numbered on the Sun Plane Protection Map,*

NA – the site is not identified on the Sun Plane Protection Map.

- (e) how the proposed development addresses the following matters:*
 - (i) the suitability of the land for development,*
 - (ii) existing and proposed uses and use mix,*
 - (iii) heritage issues and streetscape constraints,*

- (iv) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
- (v) bulk, massing and modulation of buildings,*
- (vi) street frontage heights,*
- (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
- (viii) the achievement of the principles of ecologically sustainable development,*
- (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,*
- (x) impact on, and any proposed improvements to, the public domain.*

The following comments are made with regard to matters (i) to (x) above:

- With regard to (i) the site is suitable for development to provide an additional suite in some form, however this outcome could be reasonably achieved with alternative designs that do not lead to adverse visual and overshadowing impacts. The adverse impacts result from the proposed location of the additional suite together with the substantial height departure.
- With regard to (ii), the use is compatible with the existing and likely future uses in the locality
- With regard to (iii) there are heritage issues that the design has not adequately responded to having regard to the site's relationship to the state heritage listed North Beach Precinct and surrounding heritage items.
- With regard to (v) the proposed addition pushes the building façade towards Cliff Rd which will lead to additional visual bulk at roof level as compared to the existing roof form
- With regard to (vii) the proposed addition will lead to additional overshadowing impacts.
- With regard to (x) the proposed design and siting of the development will result in adverse visual, overshadowing and view impacts on the public domain.

Based on the above matters the proposed development is not considered to exhibit design excellence.

(5) Development consent must not be granted to the following development to which this clause applies unless a design review panel has reviewed the design of the proposed development:

- (a) development in respect of a building that is, or will be, greater than 35 metres in height,*
- (b) development having a capital value of more than \$1,000,000 on a key site,*

The development does not require review by the Design Review Panel under this clause as the building height is less than 35m, nor is it a key site.

Part 8 Local provisions—Wollongong city centre

Clause 8.1 Objectives for development in Wollongong city centre

The objectives of this clause are:

- (a) to promote the economic revitalisation of the Wollongong city centre,*
- (b) to strengthen the regional position of the Wollongong city centre as a multifunctional and innovative centre that encourages employment and economic growth,*
- (c) to protect and enhance the vitality, identity and diversity of the Wollongong city centre,*
- (d) to promote employment, residential, recreational and tourism opportunities within the Wollongong city centre,*
- (e) to facilitate the development of building design excellence appropriate to a regional city,*

- (f) to promote housing choice and housing affordability,*
- (g) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that the Wollongong city centre achieves sustainable social, economic and environmental outcomes,*
- (h) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of the Wollongong city centre for the benefit of present and future generations.*

The current proposal involves alterations and additions to the existing hotel ('Novotel') to provide a 'presidential suite'. This outcome meets objectives (a), (b), and (d) for development in Wollongong city centre as it enhances the tourist and visitor accommodation options already provided in a key location within the city. However, in its current form, the design of the additional suite leads to adverse impacts on the state heritage listed North Beach Precinct as discussed earlier in this report. The development is not considered to exhibit design excellence. The development is contrary to objectives (c), (e), (g) and (h) of this clause.

2.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

None applicable

2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

A full assessment of the relevant DCP provisions forms attachment 5. Specific matters of relevance are discussed below:

CHAPTER E11 HERITAGE CONSERVATION

Part 20.3 of this chapter identifies the North Beach Precinct and Belmore Basin Heritage Conservation Area, noting that this precinct is listed on the NSW State Heritage Register. The northern end of this area is directly opposite the subject site as shown in Figure 3. Buildings including the North Beach Kiosk and residence, North Beach Bathers Pavilion and tramway cutting are within this area.

The provisions of this chapter have been considered by Council's Heritage division and found unsatisfactory given the visual impact of the development on the setting of the state listed North Beach Precinct and local heritage items in the vicinity of the site. These adverse impacts are a direct result of the development departure sought to the 24m building height limit.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2018

The application form identifies the cost of works as \$80,000 which appears significantly lower than likely construction costs for the proposed scope of works. Further information, including a Quantity Surveyors report would be requested of the applicant if the application was not recommended for refusal.

Note: A Cordell's calculation has conservatively estimated the works to be over \$300,000 however an accurate estimate is difficult given the suite is utilising the existing roof area.

2.4 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

2.5 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

The provisions of AS 2601 in relation to demolition are capable of being conditioned if approval was recommended.

93 Fire safety and other considerations

Not applicable – the development involves building works.

94 Consent authority may require buildings to be upgraded

The application has been assessed under Clause 94 by Council's BCA officer and conditions for building upgrades were recommended.

2.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

The development will result in adverse visual and overshadowing impacts on the nearby heritage items and conservation areas.

The impacts are considered unreasonable given the following points:

- The impacts result from a development departure to the maximum 24m height limit permitted under Wollongong LEP 2009.
- Submissions raised following notification have raised concerns about the likely impacts of the development having regard to the non-compliant height limit.
- Despite the changes to the design during the course of the assessment, Council's Heritage division has advised that the development will have an unacceptable impact on State heritage area.

2.7 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR DEVELOPMENT

Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site however is expected to have negative impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

The site is in a prominent location on the foreshore and is opposite the North Beach State heritage listed precinct and numerous heritage items. The existing building is visually prominent when viewed from Cliff Road, the foreshore area and surrounding streets. The central portion of the building exceeds the current 24m height limit by approximately 7 metres.

The additional suite will have a visual impact, however when read in the context of the bulk and scale of the existing building from some vantage points, the visual impact is not considered to be proportionally significant. However, the site's proximity to the North Beach heritage Precinct requires a more sensitive design response to minimise adverse impacts. Given the impacts result from the further encroachment into the 24m height limit, the site attributes are not conducive to the development in its current form.

2.8 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

Refer Part 1.3.

2.9 SECTION 4.15(1)(E) THE PUBLIC INTEREST

In the context of the development departure to the height limit, the application is considered to have an unreasonable impact on the environment or the amenity of the locality. Although the provision of an additional hotel suite supports the objectives of the SP3 Tourist zone, the impacts of the development and the further encroachment to the height limit are not considered to be in the public interest.

3 CONCLUSION

This application has been assessed as unsatisfactory having regard to the Heads of Consideration under Section 54.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies.

The current application seeks a development departure in relation to the maximum 24m building height under Clause 4.3 of Wollongong LEP 2009. A Clause 4.6 variation statement has been provided. Although the existing building height exceeds the 24m building height, the planning justification for the proposed development departure does not demonstrate that the objectives of Clause 4.3 are met and does not adequately respond to the objectives of Clause 5.10 Heritage Conservation.

The application was publicly advertised, and concerns were raised regarding view loss, loss of sunlight and impacts on the North Beach precinct. These concerns were raised in the context of the proposed height variation. The submissions are discussed in detail in Part 1.3 of this report.

Achieving the hotel's desire for a high-end or 'presidential' suite as part of the Novotel's accommodation offerings is acknowledged and is consistent with the objectives of the SP3 Tourist zone. However, on balance, more sensitive design that achieves this outcome without further encroaching on the existing non-compliant building height is considered necessary to ensure no adverse impacts on the scenic quality and heritage significance of the surrounding area will result from the development.

4 RECOMMENDATION

It is recommended that the development application be refused for the reasons outlined in Attachment 6.

5 ATTACHMENTS

- 1 Aerial photo and WLEP 2009 zoning map
- 2 Plans
- 3 Clause 4.6 Statement
- 4 Applicant's view analysis
- 5 Wollongong DCP 2009 compliance table
- 6 Reasons for refusal

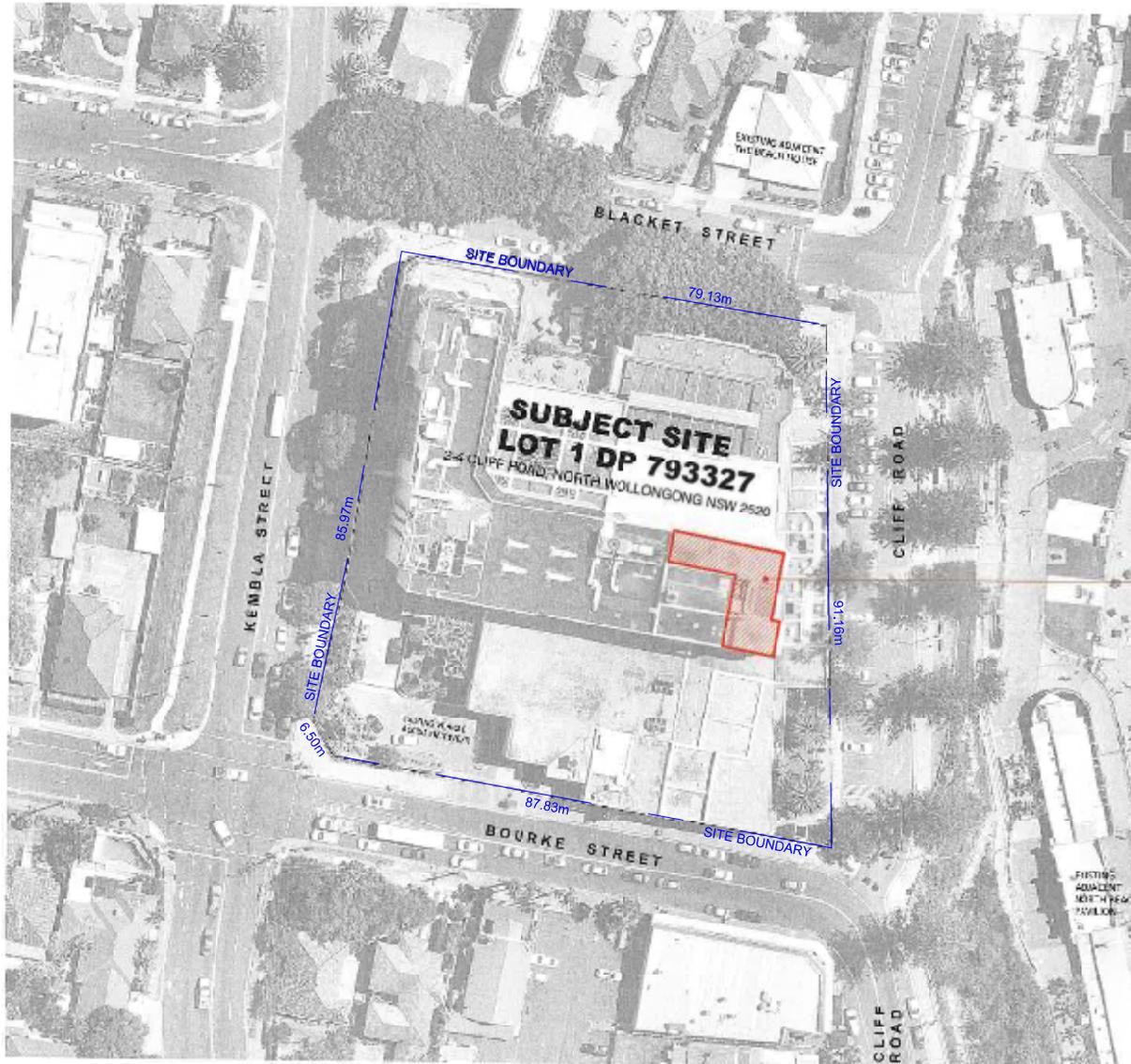
Attachment 1: Aerial photo and WLEP 2009 zoning map



Figure 1: Aerial photograph



Figure 2: WLEP 2009 zoning map



**PROPOSED ADDITIONS
& ALTERATIONS
ZONE SHOWN HATCHED**

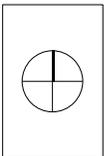
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	EXISTING (SQM)	PROPOSED (SQM)
LEVEL 1	2,319	2,319
LEVEL 2	831	831
LEVEL 3	3,868	3,868
LEVEL 4	3,806	3,806
LEVEL 5	2,240	2,240
LEVEL 6	1,509	1,509
LEVEL 7	1,509	1,509
LEVEL 8	1,509	1,509
LEVEL 9	1,509	1,509
LEVEL 10	1,148	1,347
	20,248 SQM	20,447 SQM

**ADDITION OF 199 SQM REPRESENTING
0.9% INCREASE IN OVERALL GFA)**

* ALL AREAS ARE MEASURED FROM PREVIOUSLY APPROVED PLANS AND ARE SUBJECT TO VERIFICATION BY FINAL SITE SURVEY

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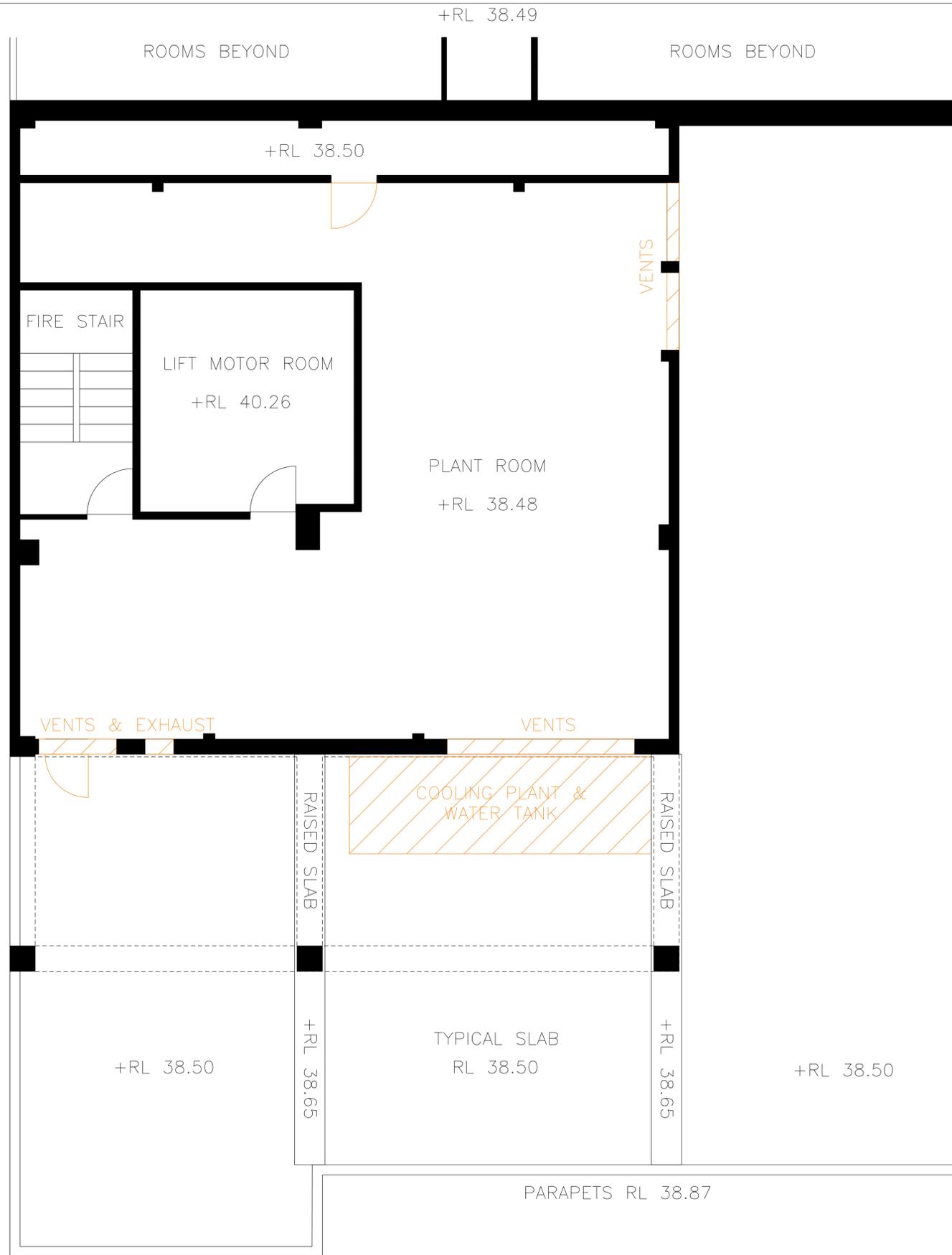
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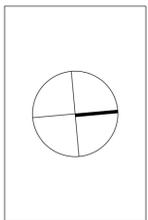
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Web: www.cmtarchitects.com
ACN: 161 791 715

Client
Oscars Hotels Group
Project
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520
Drawing Title
Site

DA SUBMISSION			
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- EXISTING WALLS

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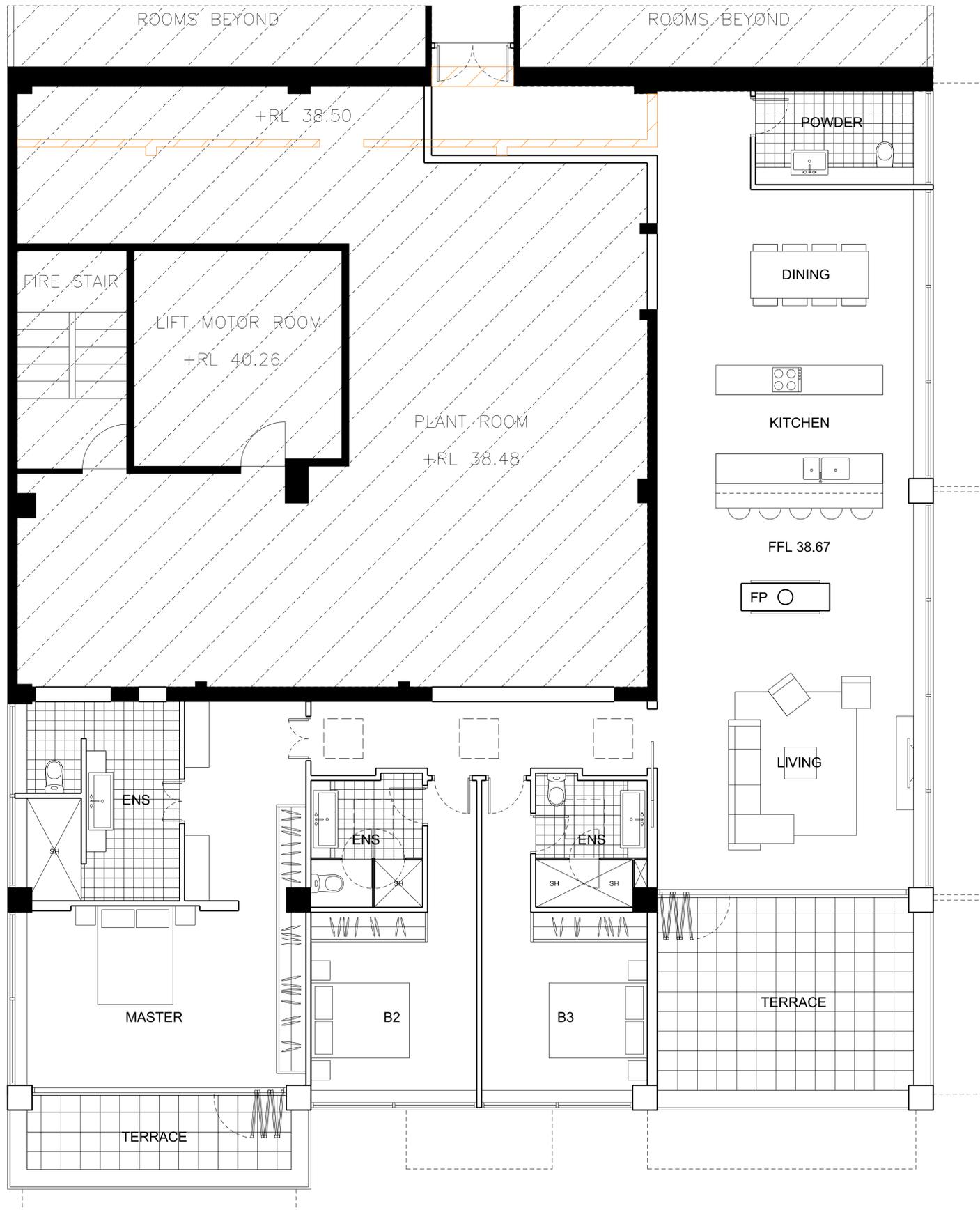
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Drawing Title
 EXISTING LEVEL 10
 ROOF/PLANT ROOM

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+RL 38.49



PRESIDENTIAL SUITE

10th FLOOR

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- EXISTING WALLS TO BE REMOVED
- EXISTING WALLS TO BE RETAINED

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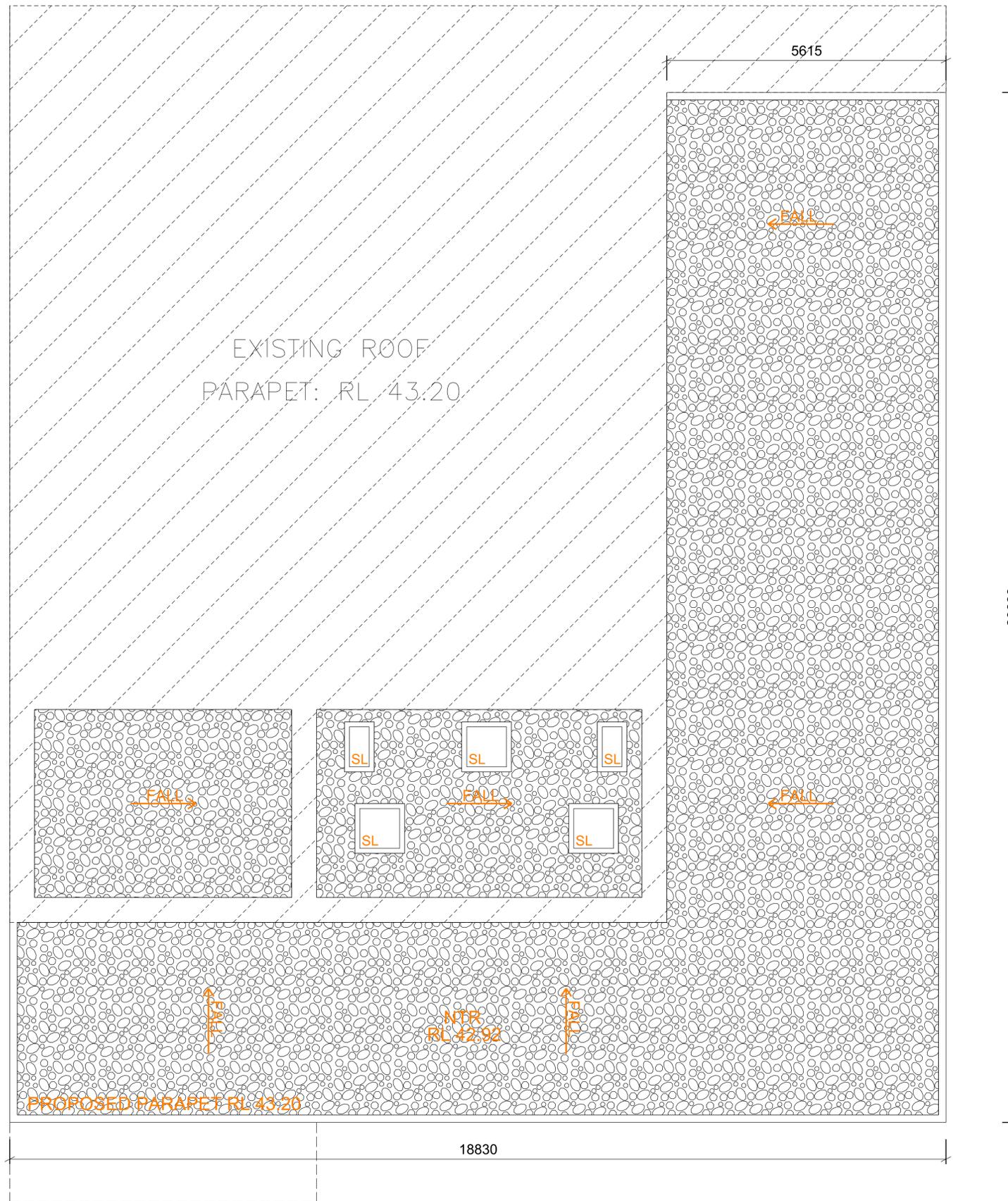
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PROPOSED FLOOR PLAN

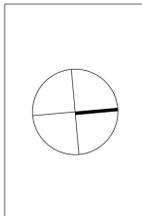
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PRESIDENTIAL SUITE ROOF PLAN



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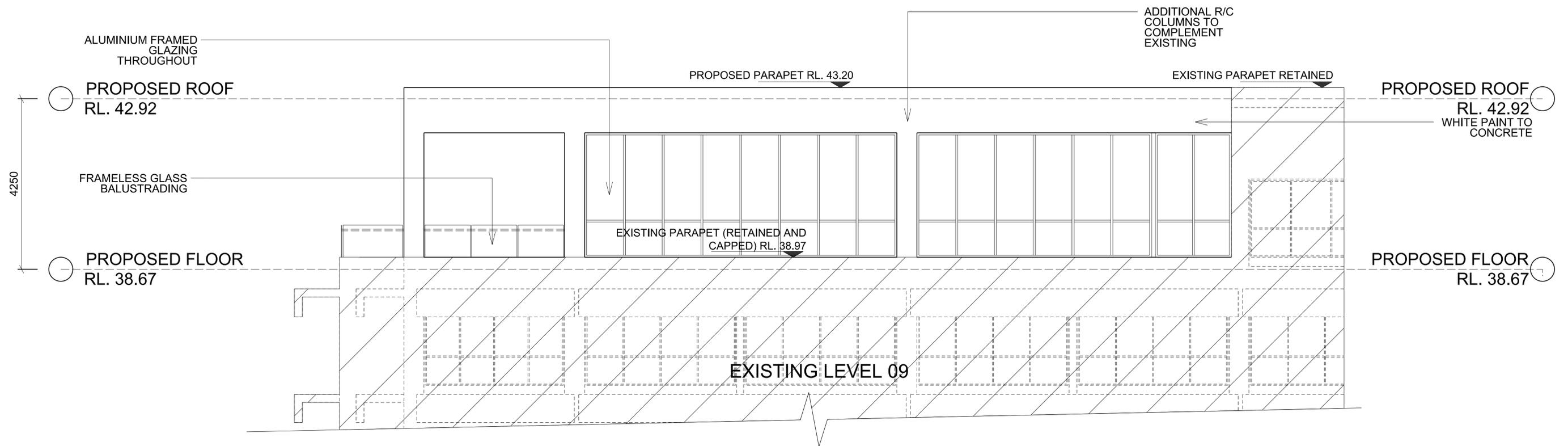
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Drawing Title
PROPOSED ROOF PLAN

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NORTH ELEVATION

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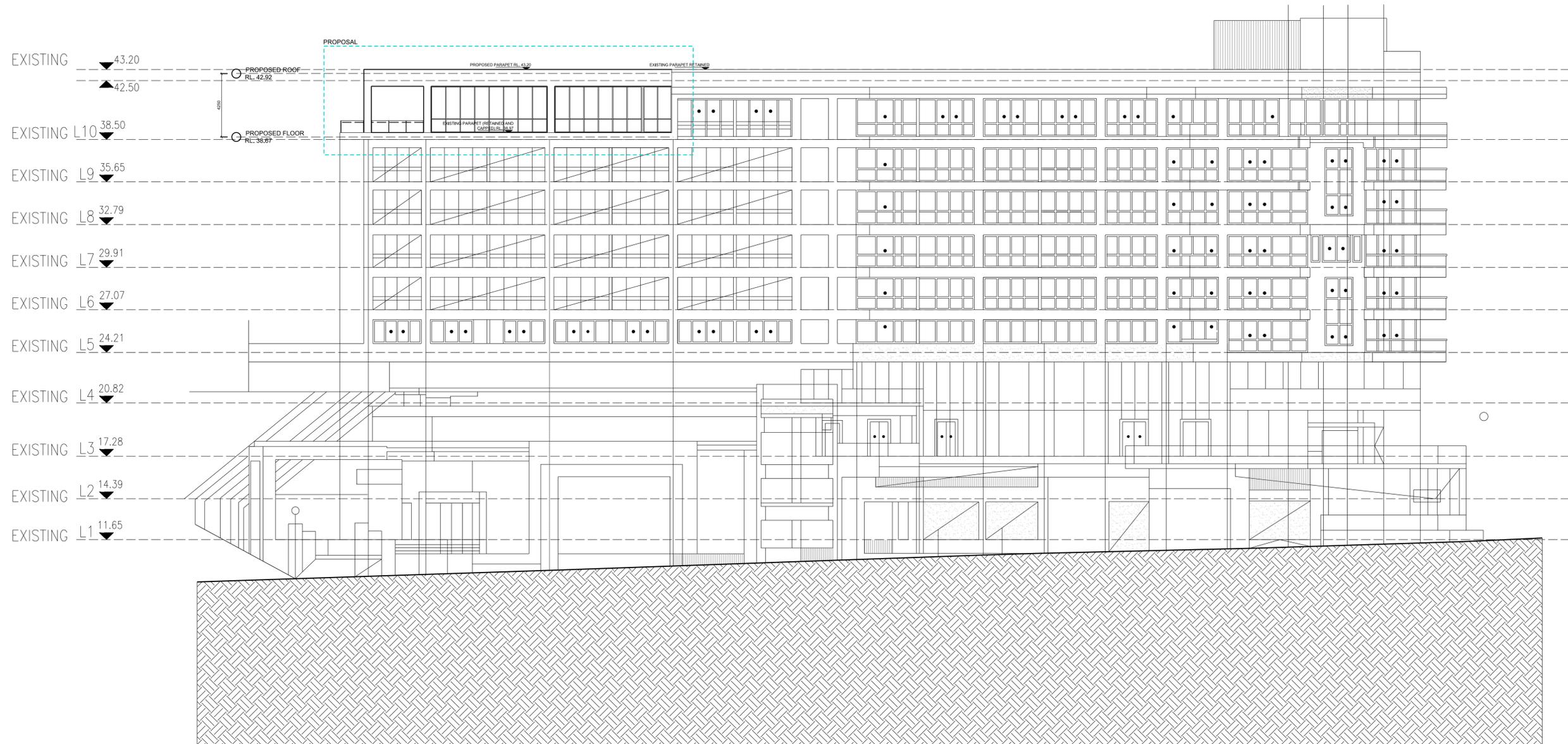
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Drawing Title
PROPOSED NORTH ELEVATION

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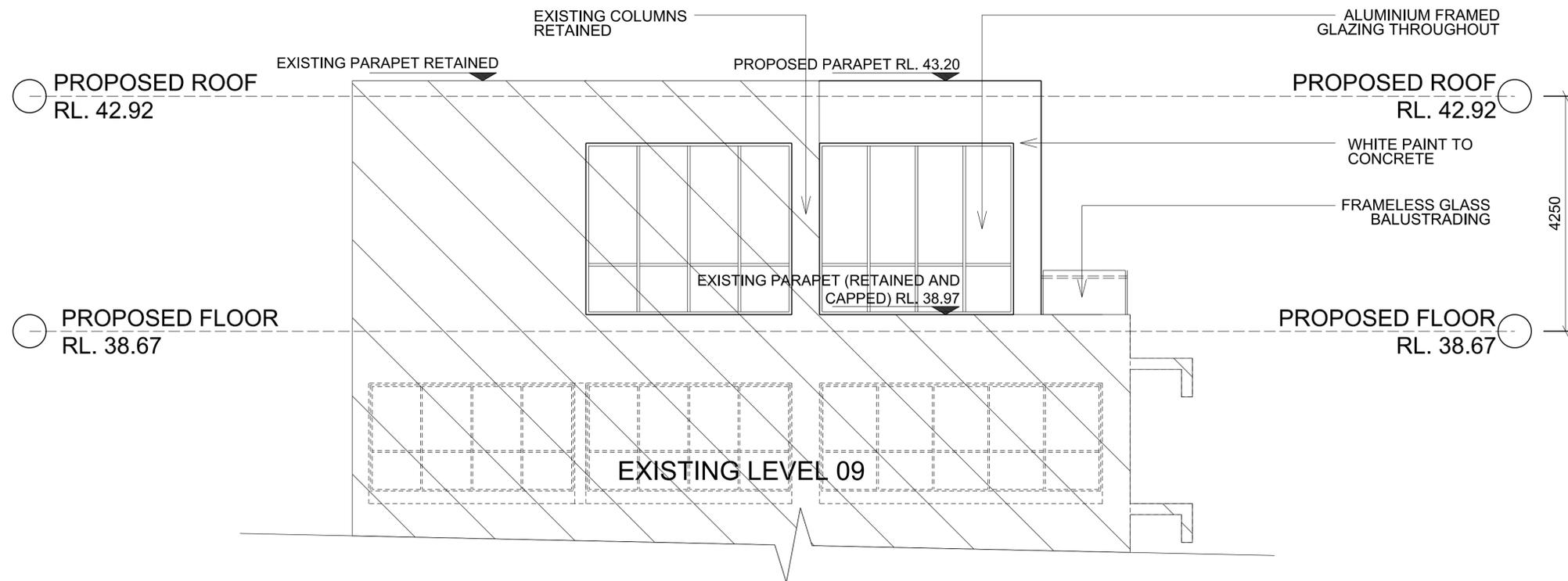
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SOUTH ELEVATION

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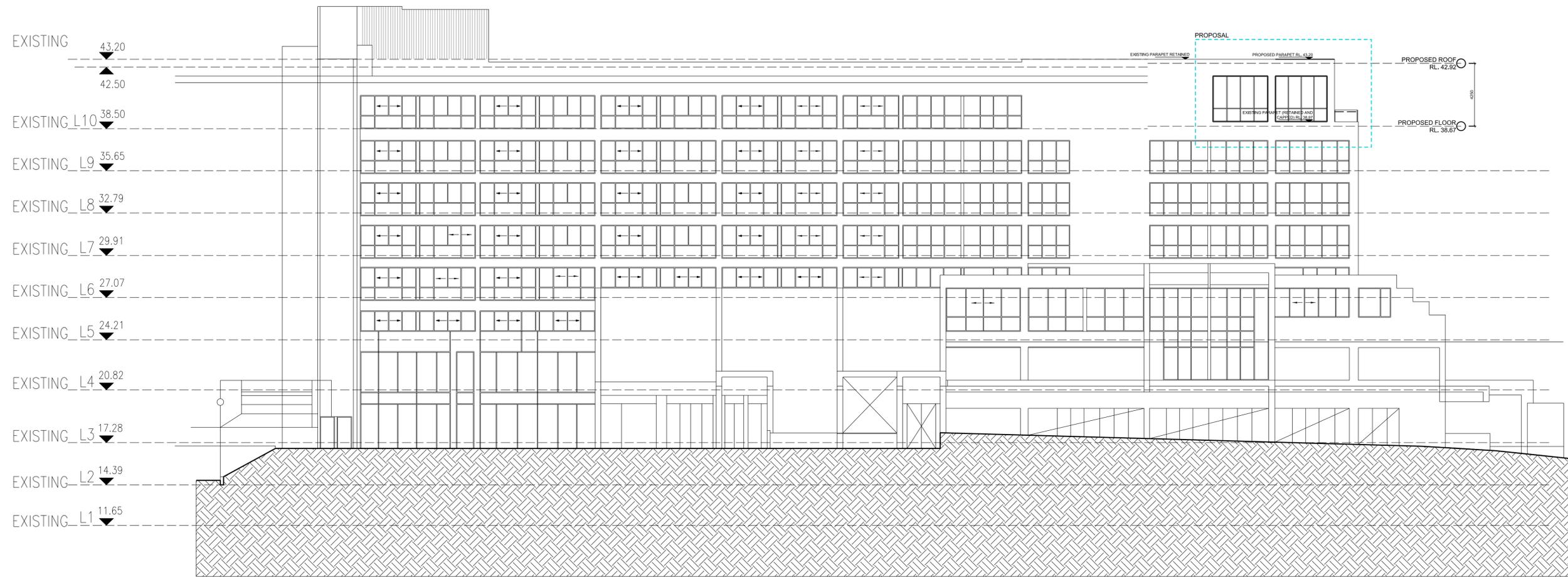
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Project
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Drawing Title
PROPOSED SOUTH ELEVATION

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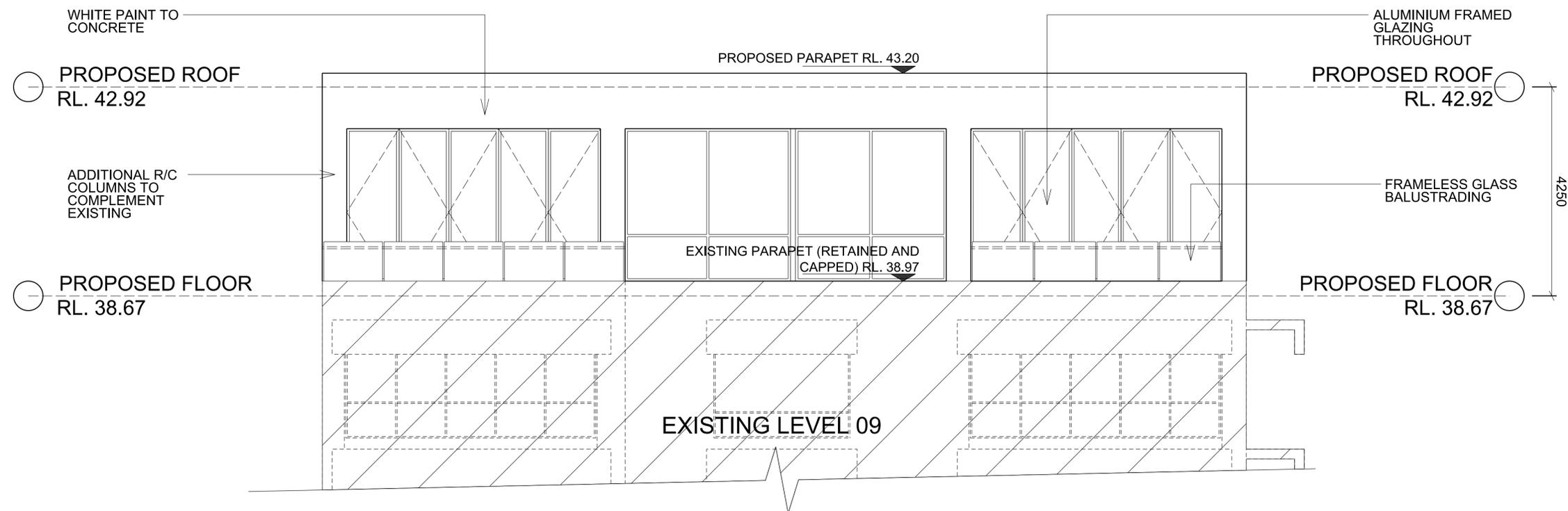
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Drawing Title
 PROPOSED SOUTH
 ELEVATION: CONTEXT

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EAST ELEVATION

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Client
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Project
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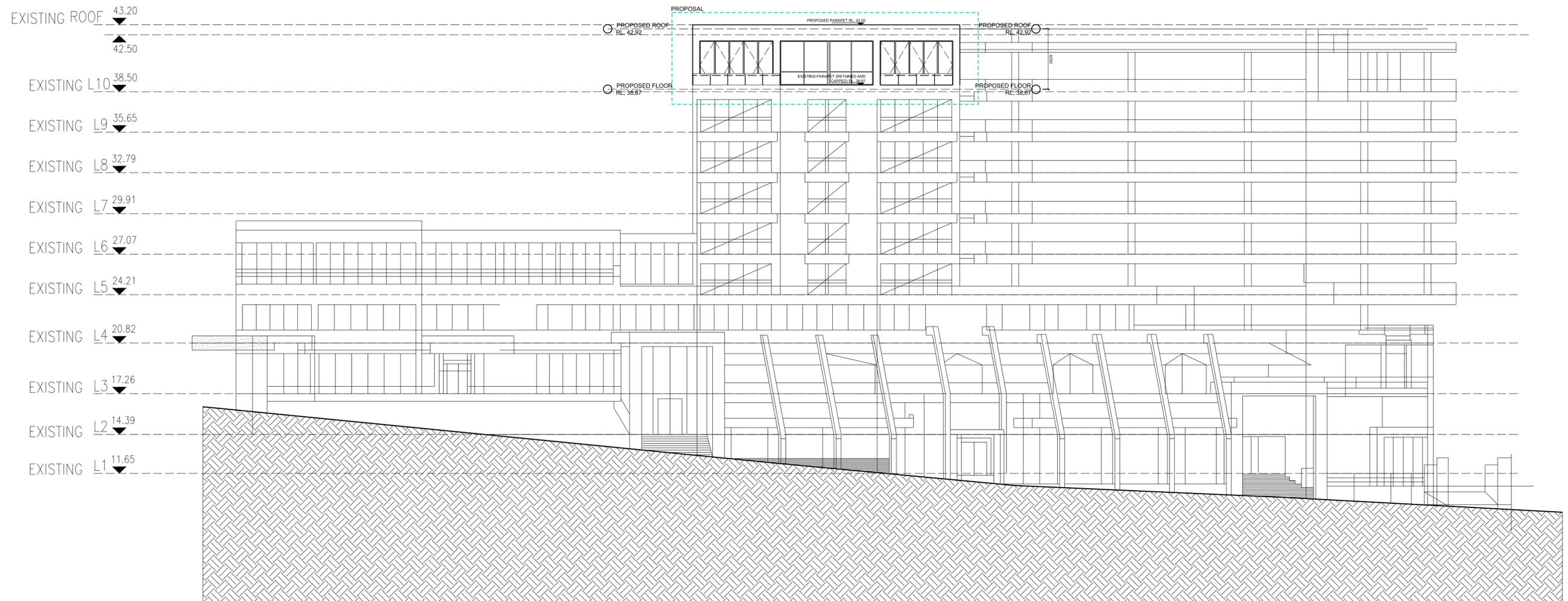
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 PROPOSED EAST ELEVATION

DA SUBMISSION

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EAST ELEVATION

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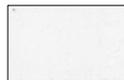
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DA SUBMISSION

Scale	Date	Drawn	Checked
1:150 @ A1 1:300 @ A3	08.10.2019	TO	CT
Job No. 00 00 00	Drawing No. DA 3.04	Issue A	
Design File Ref: Arch/Active/2-4 Cliff Road/01, DA July 2019/01.Drawings			
Design Architect: Chris Tsioulos - Reg. No. 5143 Copyright remains the property of CMT Architects Australia P/L			



(A)



RENDERED PAINT FINISH
Dulux External Paint Natural White
to Match Existing

(B)



**POWDERCOATED ALUMINIUM FRAMED
WINDOW MULLIONS**
Dulux Powdercoat Alphatec (White)
Matt Finish to Match Existing

(C)



PAINT TO ROOF
Bondeck Roofing with Dulux External
Paint Natural White to Concrete

(D)



GLASS BALUSTRADING
Clear Glass & Anodised by TREND3

Notes
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Issue	Date	Description	By
A	08.10.19	For Submission	AS

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Web: www.cmtarchitects.com
ACN: 161 791 715

Client Oscars Hotels Group	
Project Additions and Alterations 2-4 Cliff Road, North Wollongong NSW 2520	
Drawing Title Materials and Finishes Schedule	

DA SUBMISSION			
Scale N.T.S	Date 12.07.2019	Drawn AS	Checked CT
DB No. 00 00 00	Drawing No. DA 7.01	Revision A	
Design File Ref: Arch\Act\2-4 Cliff Road\01-DA-July 2019\011.Dwg			
Design Architect: Chris Tsapalos - Reg. No. 5143 Copyright remains the property of CMT Architects Australia PTY Ltd.			



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A	12.07.19	For Submission	AS
Issue	Date	Description	By

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 ACN: 161 791 715

Client:
 Oscars Hotels Group

Project:
 Additions and Alterations
 2-4 Cliff Road, North Wollongong
 NSW 2520

Design Title:
 Photomontage
 Proposed Bourke St Facade

DA SUBMISSION			
Scale	Date	Drawn	Checked
N.T.S	12.07.2019	AS	CT
Job No.	Drawing No.	Revision	
00 00 00	DA 7.00	A	
Design File Path: Arch\Activo\2-4 Cliff Road\01-DA July 2019\001.Dwg			
Design Architect: Chris Tsajoulos - Reg. No. 5143 Copyright remains the property of CMT Architects Australia PTY LTD			



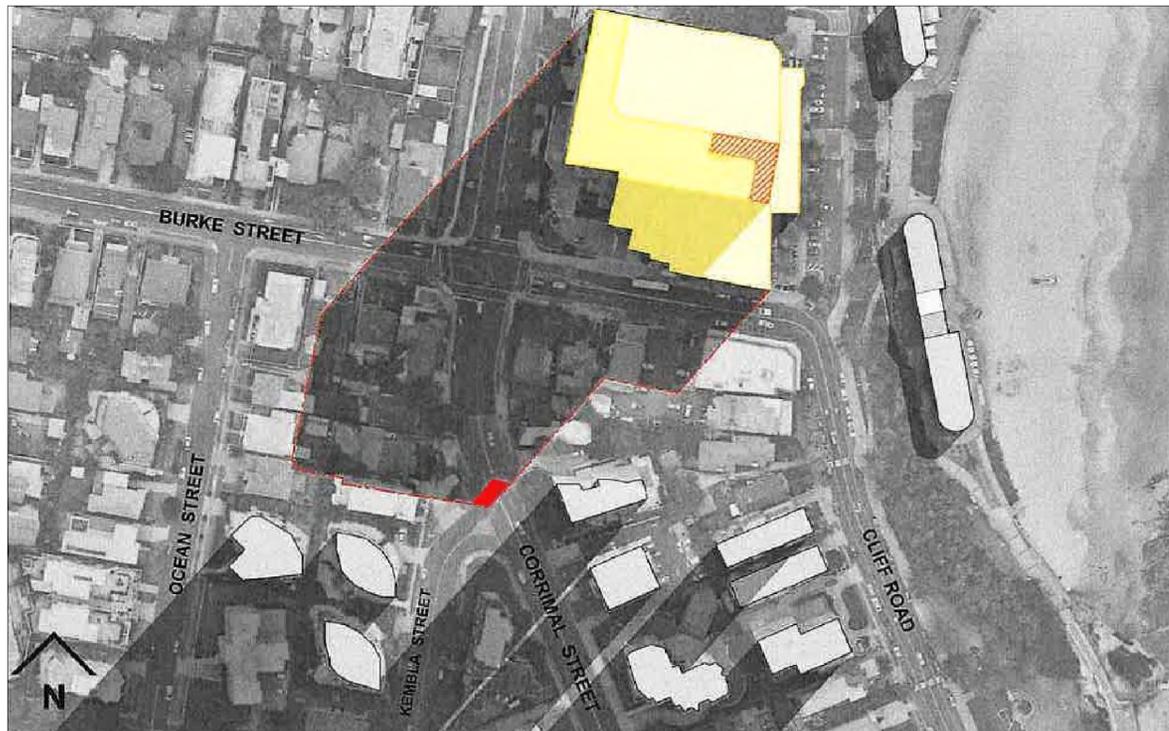
SHADOW DIAGRAM - WINTER SOLSTICE 0900
WITH ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL



SHADOW DIAGRAM - WINTER SOLSTICE 1000
WITH ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL

LEGEND

- EXISTING BUILDING ENVELOPE
- ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL (ADDITION)
- SHADOW PROJECTION OF EXISTING BUILDING
- ADDITIONAL SHADOW PROJECTION FROM SAUNDERS GLOBAL PTY LTD PROPOSAL



SHADOW DIAGRAM - WINTER SOLSTICE 0900
WITH AMENDED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL

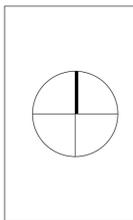


SHADOW DIAGRAM - WINTER SOLSTICE 1000
WITH AMENDED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL

LEGEND

- EXISTING BUILDING ENVELOPE
- REVISED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL (ADDITION)
- SHADOW PROJECTION OF EXISTING BUILDING
- ADDITIONAL SHADOW PROJECTION FROM REVISED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL

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Issue	Date	Description	By

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ACN: 161 791 715

Client
Oscars Hotels Group

Project
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520

Drawing Title
SHADOW DIAGRAMS ANALYSIS

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12.07.2019	AS	CT
Job No.	Drawing No.	Issue	
00 00 00	DA 5.00	A	
Design File Ref: Arch/Active/2-4 Cliff Road/01, DA July 2019/01.Drawings			
Design Architect: Chris Tsioulos - Reg. No. 5143			
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SHADOW DIAGRAM - WINTER SOLSTICE 1100
WITH ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL



SHADOW DIAGRAM - WINTER SOLSTICE 1200
WITH ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL

LEGEND

- EXISTING BUILDING ENVELOPE
- ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL (ADDITION)
- SHADOW PROJECTION OF EXISTING BUILDING
- ADDITIONAL SHADOW PROJECTION FROM SAUNDERS GLOBAL PTY LTD PROPOSAL



SHADOW DIAGRAM - WINTER SOLSTICE 1100
WITH AMENDED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL



SHADOW DIAGRAM - WINTER SOLSTICE 1200
WITH AMENDED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL

LEGEND

- EXISTING BUILDING ENVELOPE
- REVISED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL (ADDITION)
- SHADOW PROJECTION OF EXISTING BUILDING
- ADDITIONAL SHADOW PROJECTION FROM REVISED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL

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Issue	Date	Description	By
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Client
Oscars Hotels Group
Project
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520
Drawing Title
SHADOW DIAGRAMS ANALYSIS

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12.07.2019	AS	CT
Job No. 00 00 00	Drawing No. DA 5.01	Issue A	
Design File Ref: Arch/Active/2-4 Cliff Road/01, DA July 2019/01.Drawings			
Design Architect: Chris Tsioulos - Reg. No. 5143 Copyright remains the property of CMT Architects Australia P/L			



SHADOW DIAGRAM - WINTER SOLSTICE 1300
WITH ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL



SHADOW DIAGRAM - WINTER SOLSTICE 1400
WITH ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL

LEGEND

- EXISTING BUILDING ENVELOPE
- ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL (ADDITION)
- SHADOW PROJECTION OF EXISTING BUILDING
- ADDITIONAL SHADOW PROJECTION FROM SAUNDERS GLOBAL PTY LTD PROPOSAL



SHADOW DIAGRAM - WINTER SOLSTICE 1300
WITH AMENDED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL



SHADOW DIAGRAM - WINTER SOLSTICE 1400
WITH AMENDED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL

LEGEND

- EXISTING BUILDING ENVELOPE
- REVISED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL (ADDITION)
- SHADOW PROJECTION OF EXISTING BUILDING
- ADDITIONAL SHADOW PROJECTION FROM REVISED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL

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Client
Oscars Hotels Group

Project
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520

Drawing Title
SHADOW DIAGRAMS ANALYSIS

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12.07.2019	AS	CT
Job No. 00 00 00	Drawing No. DA 5.02	Issue A	
Design File Ref: Arch/Active/2-4 Cliff Road/01, DA July 2019/01.Drawings			
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SHADOW DIAGRAM - WINTER SOLSTICE 1500
WITH ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL



SHADOW DIAGRAM - WINTER SOLSTICE 1600
WITH ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL

LEGEND

- EXISTING BUILDING ENVELOPE
- ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL (ADDITION)
- SHADOW PROJECTION OF EXISTING BUILDING
- ADDITIONAL SHADOW PROJECTION FROM SAUNDERS GLOBAL PTY LTD PROPOSAL



SHADOW DIAGRAM - WINTER SOLSTICE 1500
WITH AMENDED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL

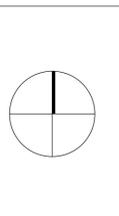


SHADOW DIAGRAM - WINTER SOLSTICE 1600
WITH AMENDED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL

LEGEND

- EXISTING BUILDING ENVELOPE
- REVISED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL (ADDITION)
- SHADOW PROJECTION OF EXISTING BUILDING
- ADDITIONAL SHADOW PROJECTION FROM REVISED CMT ARCHITECTS AUSTRALIA PTY LTD PROPOSAL

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ACN: 161 791 715

Client
Oscars Hotels Group

Project
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520

Drawing Title
SHADOW DIAGRAMS ANALYSIS

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12.07.2019	AS	CT
Job No.	Drawing No.	Issue	
00 00 00	DA 5.03	A	
Design File Ref: Arch/Active/2-4 Cliff Road/01, DA July 2019/01.Drawings			
Design Architect: Chris Tsioulos - Reg. No. 5143			
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**VISUAL IMPACT STUDY - EXISTING
FROM CLIFF ROAD LOOKING SOUTH (TO SITE)**

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ACN: 161 791 715

Client:
 Oscars Hotels Group

Project:
 Additions and Alterations
 2-4 Cliff Road, North Wollongong
 NSW 2520

Drawn By:
 Visual Impact Study - Existing
 From Cliff Rd Looking South

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12/07/2019	AS	CT
ISS No.	Drawing No.	Issue	
00 00 00	DA 7.02A	A	

Design File Ref: Arch/Alter/2-4 Cliff Road/01_Da July 2019/01 Drawings
Design Architect: Chris Takoulas - Reg. No. 5143
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VISUAL IMPACT STUDY - PROPOSED
FROM CLIFF ROAD LOOKING SOUTH (TO SITE)

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Issue	Date	Description	By
A	12/07/19	For Submission	AS

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Web: www.cmtarchitects.com
ACN: 161 791 715

Client
Oscars Hotels Group

Project
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520

Drawn By
Visual Impact Study - Proposed
From Cliff Rd Looking South

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12/07/2019	AS	CT
ISS No.	Drawing No.	Issue	
00 00 00	DA 7.02B	A	

Design File Ref: Architectural-2-4 Cliff Road 01, DA, July 2019 01 Drawings

Design Architect: Chris Takoulas - Reg. No. 5143
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VISUAL IMPACT STUDY - EXISTING
FROM CLIFF ROAD LOOKING NORTH (TO SITE)

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Issue	Date	Description	By
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Web: www.cmtarchitects.com
ACNC: 161 791 715

Client
Oscars Hotels Group

Project
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520

Drawn By JLF
Visual Impact Study - Existing
From Cliff Rd Looking North

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12/07/2019	AS	CT
Doc No	Drawing No	Issue	
00 00 00	DA 7.03A	A	

Design File Ref: Arch/Active/2-4 Cliff Road/01_Dr_Arch_VIS/20190719/Drawings
Design Architect: Chris Takoulas - Reg. No. 5143
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VISUAL IMPACT STUDY - PROPOSED
FROM CLIFF ROAD LOOKING NORTH (TO SITE)

Notes
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ACNC: 161 791 715

Client
Oscars Hotels Group

Project
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520

Drawn By
Visual Impact Study - Proposed
From Cliff Rd Looking North

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12/07/2019	AS	CT
00 00 00	00 00 00	DA 7.03B	A

Design File Ref: Arch/Active/2-4 Cliff Road/01_D.A. July 2019/01 Drawings

Design Architect: Chris Takoulas - Reg. No. 5143
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VISUAL IMPACT STUDY - EXISTING
FROM BATHERS PAVILLION LOOKING NORTH WEST

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Issue	Date	Description	By
A	12/07/19	For Submission	AS

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Web: www.cmtarchitects.com
ACN: 161 791 715

Client:

Oscars Hotels Group

Project
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520

Drawn by: JH

Visual Impact Study - Existing
From Bathers Pav. Looking NW

DA SUBMISSION

State	Date	Drawn	Checked
N.T.S	12/07/2019	AS	CT
Doc No:	00 00 00	Drawing No:	DA 7.04A
Revision		Issue	A

Design File Ref: Arch/Active/2-4 Cliff Road/01_D.A. July 2019/01 Drawings

Design Architect: Chris Takoulas - Reg. No. 5143
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VISUAL IMPACT STUDY - PROPOSED
FROM BATHERS PAVILLION LOOKING NORTH WEST

Notes
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Issue	Date	Description	By
A	12/07/19	For Submission	AS

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ACNC: 161 791 715

Client:

Oscars Hotels Group

Project
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520

Drawn by: JH

Visual Impact Study - Proposed
From Bathers Pav. Looking NW

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12/07/2019	AS	CT
Doc No:	00 00 00	Drawing No:	DA 7.04B
Revision		Issue	A

Design File Ref: Arch/Alter/2-4 Cliff Road/01_D.A. July 2019/01 Drawings

Design Architect: Chris Takoulas - Reg. No. 5143
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VISUAL IMPACT STUDY - EXISTING
FROM BATHERS PAVILLION LOOKING WEST

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Issue	Date	Description	By
A	12/07/19	For Submission	AS

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 W: www.cmtarchitects.com

ACNC: 161 791 715

Client:
 Oscars Hotels Group

Project:
 Additions and Alterations
 2-4 Cliff Road, North Wollongong
 NSW 2520

Drawn By:
 Visual Impact Study - Existing
 From Bathers Pav. Looking West

DA SUBMISSION			
Scale: N.T.S	Date: 12/07/2019	Drawn: AS	Checked: CT
Doc No: 00 00 00	Drawing No: DA 7.05A	Issue: A	
Design File Ref: Arch\Addto2-4 Cliff Road01_DA July 2019\01 Drawings			
Design Architect: Chris Takoulas - Reg. No. 5143 Copyright remains the property of CMT Architects Australia P/L			



VISUAL IMPACT STUDY - PROPOSED
FROM BATHERS PAVILLION LOOKING WEST

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ACN: 161 791 715

Client:
Oscars Hotels Group

Project:
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520

Drawn By:
Visual Impact Study - Proposed
From Bathers Pav. Looking West

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12/07/2019	AS	CT
00 00 00	DA 7.05B		A

Design File Ref: Arch/Action/2-4 Cliff Road/01_D.A. July 2019/01 Drawings
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VISUAL IMPACT STUDY - EXISTING
FROM SAND ON NORTH BEACH

Notes
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ACN: 161 791 715

Client
Oscars Hotels Group

Product
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520

Drawn By
Visual Impact Study - Existing
From Sand on North Beach

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12/07/2019	AS	CT
00:00:00	00:00:00	DA 7.06A	A

Design File Ref: Arch/Alter/2-4 Cliff Road/01_Da July 2019/01 Drawings
Design Architect: Chris Takoulas - Reg. No. 5143
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VISUAL IMPACT STUDY - PROPOSED
FROM SAND ON NORTH BEACH

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Client
Oscars Hotels Group

Project
Additions and Alterations
2-4 Cliff Road, North Wollongong
NSW 2520

Drawn By
Visual Impact Study - Proposed
From Sand on North Beach

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VISUAL IMPACT STUDY - EXISTING
FROM KIOSK LOOKING SOUTH WEST

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Project:
Additions and Alterations
2-4 Cliff Road, North Wollongong
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Drawn By:
Visual Impact Study - Existing
From Kiosk Looking South West

DA SUBMISSION

Scale	Date	Drawn	Checked
N.T.S	12/07/2019	AS	CT
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VISUAL IMPACT STUDY - PROPOSED
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VISUAL IMPACT ASSESSMENT

Introduction

CMT Architects Australia Pty Ltd has been engaged by Oscars Hotels Group to undertake and prepare a Visual Impact Assessment (VIA) to accompany a submission to Wollongong City Council in relation to DA-2019/96 for the Additions and Alterations to Level 10 of the Novotel Building at 2-14 Cliff Road, North Wollongong.

Specifically, email correspondence from Council, dated 10 September 2019, requesting additional information pertaining to the Development Application (DA-2019/96), including a Visual Impact Assessment of the proposed Additions and Alterations works. Current and Proposed views from key locations were also requested from Council, to demonstrate how the proposal is sited relative to the existing surrounding context and State Heritage Precinct.

The VIA has been prepared in response to Council's request for additional information relating to DA-2019/96.

Aims of this Study

This Visual Impact Assessment will aid to i) identify the attributes of the site and its locality that contribute to its visual character and ii) assess if the design responds appropriately to the identified visual qualities and values of the locality.

Methodology

The methodology for this Visual Impact Assessment involves i) review of relevant background documentation, including local planning controls and strategies to ascertain the Consent Authority's expectations with regard to protection of local visual and landscape quality ii) Site and area inspection and photographs to identify the visual character of the locality and the site within its context, as well as the identified critical view locations iii) Assessment of the visual character of the locality with regard to land use, vegetation cover and open space, view lines to and from the project site.

Preparation of the Visual Impact Assessment for the proposed development which includes i) assessment of the visual catchment area and identification of critical viewpoints within the catchment ii) photomontages of the proposed design iii) written assessment of the impacts of the proposal on local visual quality and recommendation for mitigation of any potentially identified impacts.

THE SITE

Site Description

The proposed works are situated at the Novotel, in North Wollongong NSW.



The Site is described as Lot 1 in DP793327. The site sits to the immediate West of North Wollongong Beach, enveloped by Cliff Road (to the East), Bourke Street (to the South), Kembla Street (to the West) and Blacket Street (to the North). The lot measures approximately 8000 SQM, with the proposed additions and alterations to Level 10 of the exiting Novotel Building, amassing a total of 199 SQM.

Site Context

Novotel Wollongong Northbeach is located in the suburb of North Wollongong, approximately 2km North East of Wollongong Train Station and approximately 1km East of North Wollongong Station. Novotel Wollongong Northbeach is approximately 90km South of Sydney CBD. Land North of the Novotel includes low and medium density residential developments and on grade public parking facilities, in addition to open public green spaces. Land to the East comprises of North Wollongong

Beach and associated commercial premises, including restaurants, cafes, bars & kiosks. Land immediately South of the project site includes commercial businesses with additional multi storey residential developments further South & and land to the West incorporates further residential developments of medium – low density in scale.



Existing Visual Character

The visual character of a locality is generally accepted as being generated by:

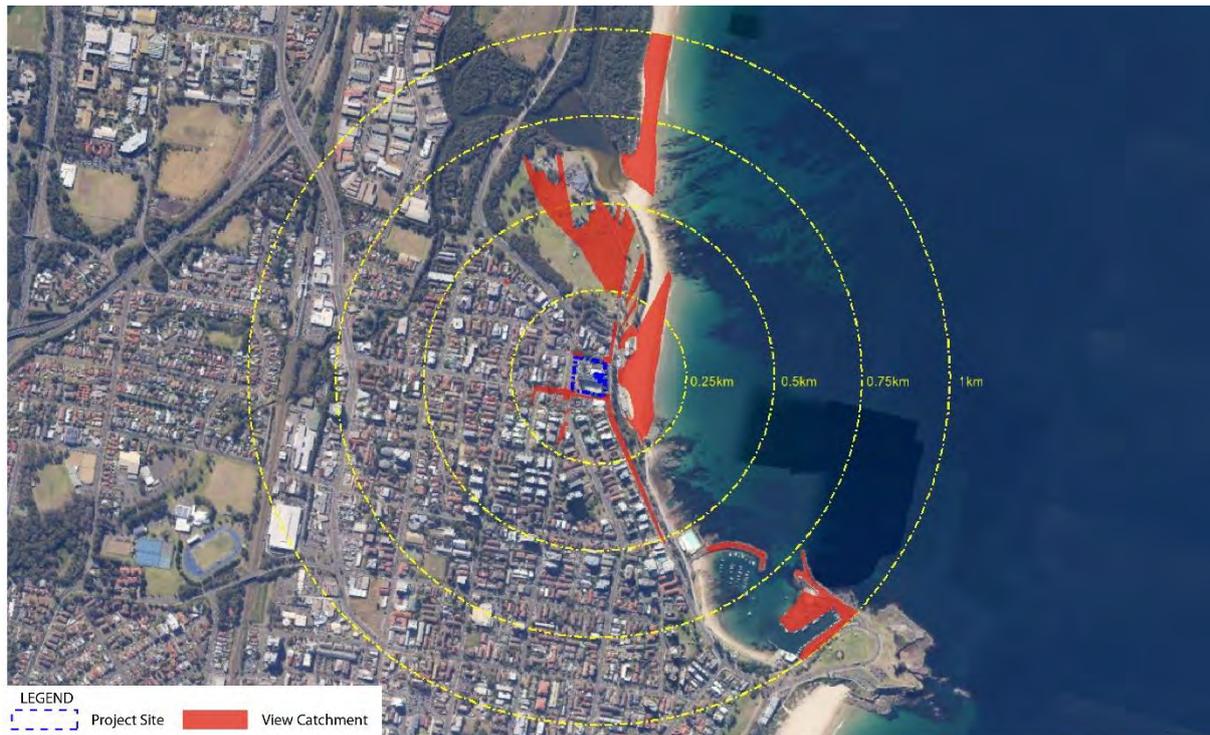
- The type and intensity of human intervention
- The juxtaposition between the various built, natural and semi natural elements of the land
- The topography of the land

The Proposed additions and alterations to Level 10 of the Novotel North Wollongong building is located within the extent of the existing building footprint, and will not exceed the existing building height. The surrounding area to the East is mostly medium to low density residential in character & surrounding developments to the South comprise of commercial businesses with predominantly multistorey residential developments. The surrounding areas to the North are predominantly natural and semi natural elements, including open green spaces with on grade parking facilities, interspersed with some low-medium density residential buildings. Similarly, surrounding land to the East comprises of North Wollongong Beach with commercial businesses dispersed across the beachfront providing open space and recreational facilities to the community.

Visual Catchment

The visual catchment of a site is the land from which the site is potentially visible based on topography. A 1km radius from the site has been identified as a maximum viewing catchment, as it is noted that views to the proposed additions and alterations on Level 10 of the Novotel Building generally become indiscernible at a maximum distance of approx. 500m.

The figure below indicates locations surrounding the site whereby the proposed additions and alterations work will be visible.



It is noted that some locations South West of the site, within a 250m radius, namely on Bourke Street & Kembla Street, in addition to Ocean St, will incur an unobstructed view path to the additions and alterations; yet the extent of additions and alterations will not be discernible given the location of the proposed works on the Eastern side of the Novotel Building and the complimentary materials scheme to match that of the existing building.

It is understood that no visual catchment of the site will be obtained from the North West, with views to the additions and alterations becoming apparent from various locations due North of the site, within a distance of approx. 500m. The characteristics of the natural land form and vegetation further North of the site at Fairy Creek & beyond suggests that views of the proposed works from greater than 650m (North of the site) are obstructed. The additions and alterations proposed to the Novotel become noticeable from the Eastern Coastline, approximately 250m North East of the site. Views further Southward and from immediately East of the site on the Beachfront are intermittently interrupted by the natural vegetation and trees which obscure direct visibility to the entirety of the additions and alterations work. Hence, the proposed works are in essence, not discernible as they do not extend beyond the existing building height and are contained within the existing building footprint and as previously stated, can not be viewed in its entirety.

Views South of the project Site, in particularly from Cliff Road suggests that the additions and alterations work to the Novotel Building will be discernible from a maximum distance of 500m. Given the scale and extent of the proposed works, the additions and alterations also become indiscernible to the human eye from a distance greater than 500m (South of the site) along Cliff Road. It is noted that an unobstructed view path to the additions and alterations is obtained from South East of the project site, for a distance of up to approximately 1km, however these view paths are indiscernible given the scale and complementary nature of the proposed works to the existing Novotel Building.

Critical Viewpoints

A sample of viewing locations within the identified visual catchment was obtained to further the understanding of the local visual character. It is noted that the series of locations (requested by Council) are identified as representative views of various locations towards the site. It is understood that the views obtained for testing have been selected on the basis that they are anticipated to be representative of the types of views that would be available from public spaces and places within the same vicinity as the project site.

Local Viewpoints have been selected (by Council) from the following locations:

- Viewpoint A – Cliff Road (North of Project Site looking South)
- Viewpoint B – Cliff Road (South of Project Site looking North)
- Viewpoint C – From Bathers Pavilion (Looking North West)
- Viewpoint D – From Bathers Pavilion (Looking West)
- Viewpoint E – From *the sand* on North Beach
- Viewpoint F – From the Kiosk (Looking South West)



Viewpoint A – Existing & Proposed



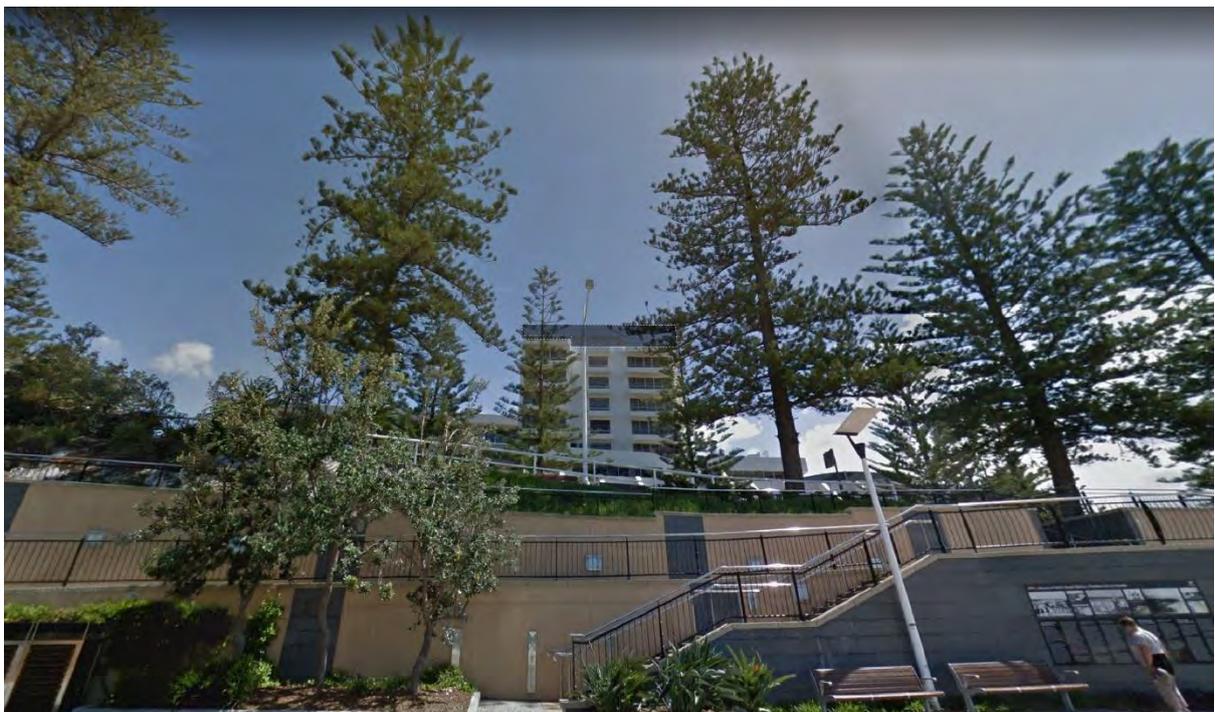
Viewpoint B – Existing & Proposed



Viewpoint C – Existing & Proposed



Viewpoint D – Existing & Proposed



Viewpoint E – Existing & Proposed



Viewpoint F – Existing & Proposed



Conclusion

From the preceding viewpoint assessments and information herein, it is concluded that the proposed additions and alterations to the existing Novotel Wollongong (Northbeach) is visually appropriate in terms of scale and bulk. Furthermore, the nature of the proposed works suggest that they will be complimentary, both in terms of materials and finishes selection, therefore insinuating a indiscernible transition between the existing built form and the proposed works. It is deemed that the proposed development is suitable for approval by the consent authority as the proposal does not generate any adverse impacts in its surrounding context, and all proposed works are complimentary and sighted sympathetically to the existing Novotel Building & surrounding locale.

ATTACHMENT 3 - APPLICANT'S CLAUSE 4.6 STATEMENT



AMENDED CLAUSE 4.6 VARIATION STATEMENT – MAXIMUM HEIGHT

Addition of one hotel room on existing rooftop of hotel

2-14 Cliff Road
North Wollongong

Prepared for: Oscar Hotel Group

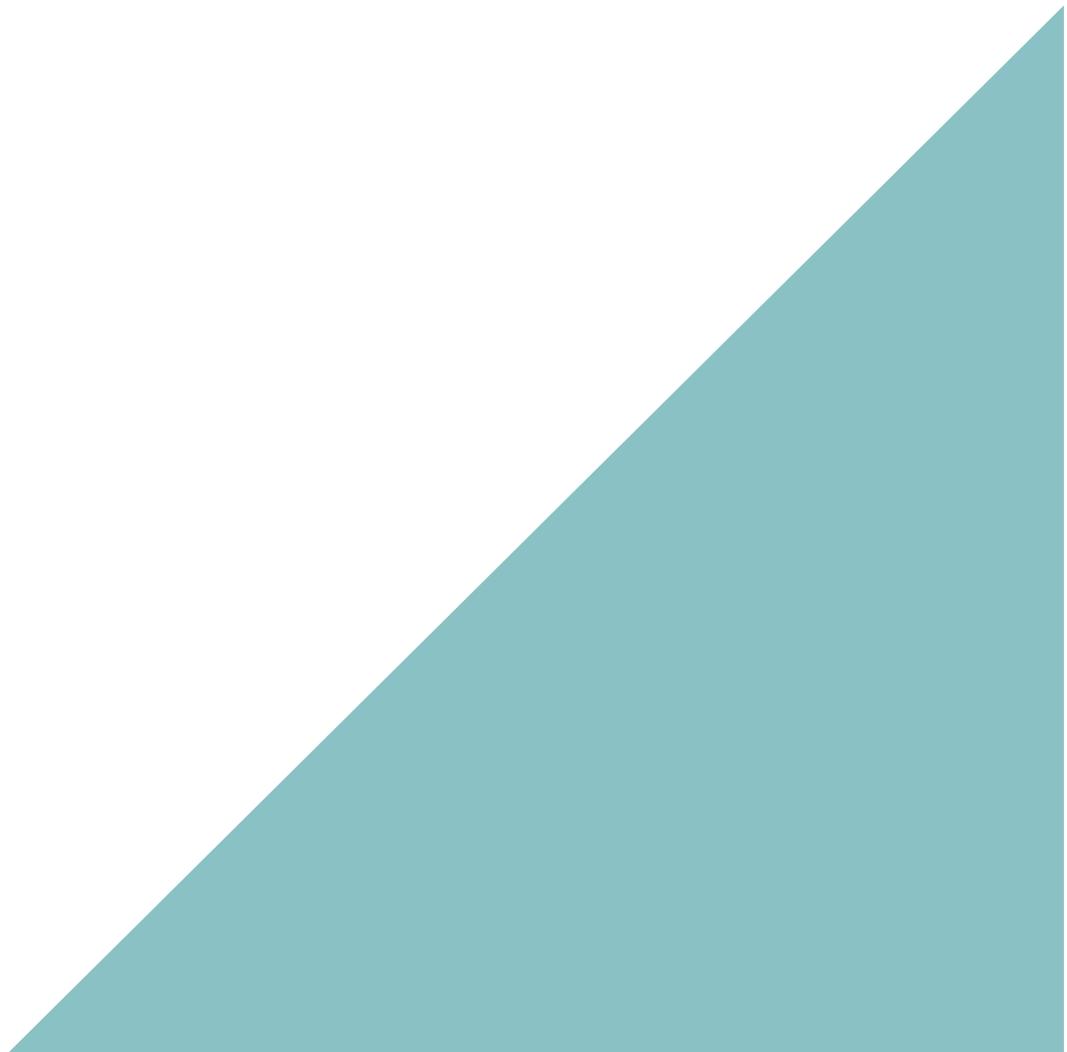
REF: 0173/18
DATE: 11 October 2019



DEVELOPMENT

+

Clause 4.6 Variation Statement – Maximum Height
Prepared for: Oscar Hotel Group
Ref: 0173/18
Date: 11 October 2019





Clause 4.6 variation statement – maximum height (Clause 4.3)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Wollongong Local Environmental Plan 2009 to accompany an application for the addition of one hotel room on the existing rooftop of a hotel at Nos. 2-14 Cliff Road, North Wollongong ('the site').

2. PROPOSED VARIATION

Clause 4.3 (2) of WLEP 2009 relates to the maximum height requirements and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum height of 24m. Building height is defined as:

"building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."

The existing eastern part of the 8 storey portion of the hotel has a maximum height of 31.55m. The proposed hotel room addition will match the existing maximum building height. This is a breach of 7.55m or 31.5%. The hotel room addition is indicated in Figure 3 below.

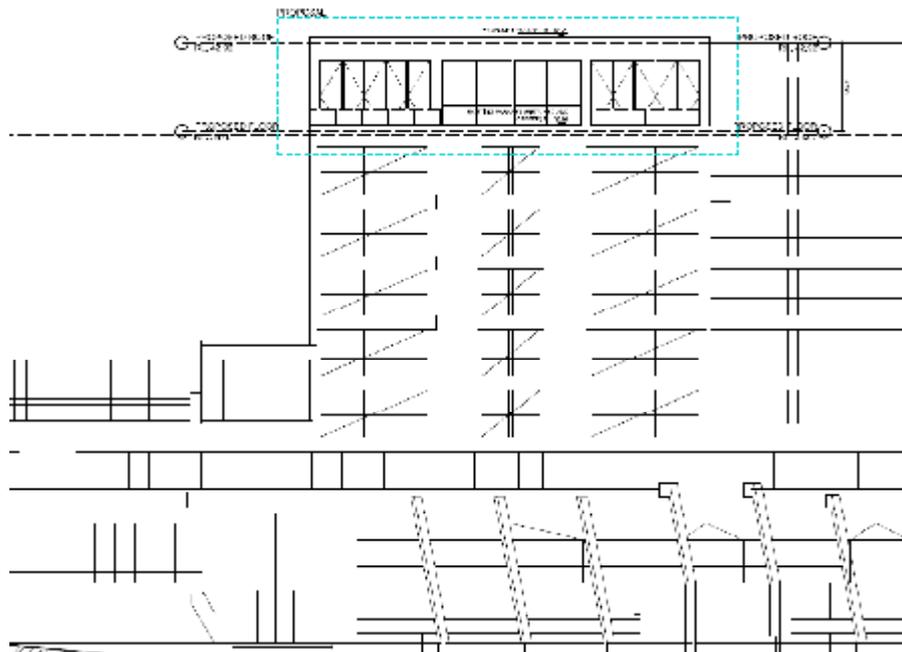


Figure 1 Section indicating location of hotel room addition

That maximum height control is a "development standard" to which exceptions can be granted pursuant to Clause 4.6 of the LEP.



3. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of clause 4.6 are as follows:

“4.6 Exceptions to development standards

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 4.2A, 6.1 or 8.3.

(8A) (Repealed)"

The development standards in clause 4.3 are not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, subclause 4.6(6).

4. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to 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.

The judgement goes on to state that:

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

Annexure A. The objectives of the standard are achieved notwithstanding non-compliance with the standard;

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

Annexure C. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Annexure D. 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;

Annexure E. 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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in Section 7 of this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard 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. Clause 4.6(4)(a)(ii) is addressed in Section 6 below.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of significant impacts of the proposed non-compliance on the amenity of future building occupants, on area character and on neighbouring properties.

On "planning grounds" and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve "a better outcome for and from development", it is considered that the proposal provides for a new form of luxury hotel accommodation that will attract a new clientele to the existing hotel. This has the potential for significant direct and indirect economic benefits for Wollongong City Centre and the broader region. As demonstrated by shadow diagrams and a view analysis submitted with this application, this benefit is achieved without any significant amenity impacts on neighbouring development or the public domain.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not

directly or indirectly establish this test. The requirement in cl 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 have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is in any case considered that the proposal will provide for a better planning outcome than a strictly compliant development due to the enhanced occupant amenity and equitable access provided for. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. CLAUSE 4.6(4)(a)

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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 (CLAUSE 4.6(4)(a)(ii))

7a. Objectives of Development Standard

The objectives and relevant provisions of clause 4.3 are as follows, inter alia:

4.3 Height of buildings

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

(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,

(b) to permit building heights that encourage high quality urban form,

(c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.

(2) 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 of Buildings Map nominates a maximum height of 24m for the site. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a maximum height of 31.55m for the subject development.



In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of clause 4.4 are addressed in turn below.

OBJECTIVE (A)

The existing approved hotel development has a maximum building height of 31.55m. The site therefore has an existing character, scale and bulk which exceeds the maximum height limit stipulated in Wollongong LEP 2009, being 24m. Objective (a) is therefore considered to be of lesser importance on this site, given the established hotel development. Nonetheless, as demonstrated below and throughout this statement, the additional bulk and height breach created by the new hotel room will not have any significant or unreasonable amenity impacts on surrounding development.

OBJECTIVE (B)

The proposed new hotel room will consolidate the form of the existing 8 storey central portion of the hotel. Replacing the existing rooftop with the hotel room removes the step in the built form fronting Cliff Road, forming a more iconic and distinctive structure that addresses Cliff Road and North Wollongong Beach to a greater extent than previously. The proposal will integrate with the external materials and appearance of the existing hotel, resulting in a coherent urban form more in keeping with the location of the hotel adjacent to the beach. The proposal is therefore considered to be consistent with objective (b).

OBJECTIVE (C):

As demonstrated by the montage at Figure 4 below, the proposed hotel room addition will not have a significant impact on views of the sky from surrounding streets or neighbouring development. The proposal forms a minor addition to the existing large hotel development, and therefore will not be perceived as a major change within the locality. Shadow diagrams submitted with this application demonstrate that the additional shadows cast by the hotel room are minor and do not unreasonably impact any neighbouring development or the public domain beyond those shadows cast by the existing hotel. The proposal is therefore considered to be consistent with objective (c).



Figure 2 Cliff Road frontage, viewed from the Bathers Pavilion, existing (left) and proposed (right)



The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.

7b. Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires consideration of the relevant zone objectives. The objective of the SP3 Tourist zone is *“To provide for a variety of tourist-oriented development and related uses”*.

The proposed new hotel room will provide for a luxury form of accommodation not currently provided in this hotel complex, and will therefore further enhance the ability of the hotel to provide accommodation to tourists.

The height variation does not contravene the objective of the zone and for that reason the proposed variation is acceptable.

8. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

9. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(a))

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed building height exceeds the maximum permitted on the site by 7.55m (31.5%), the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

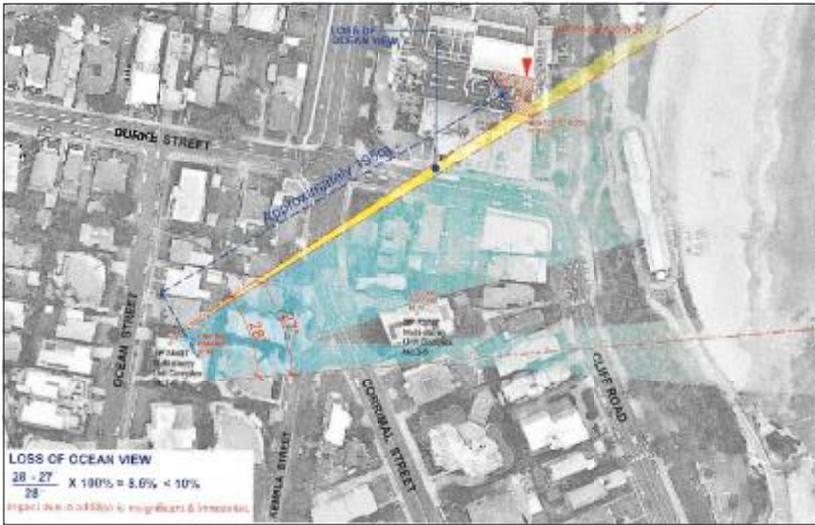
11. CONCLUSION

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

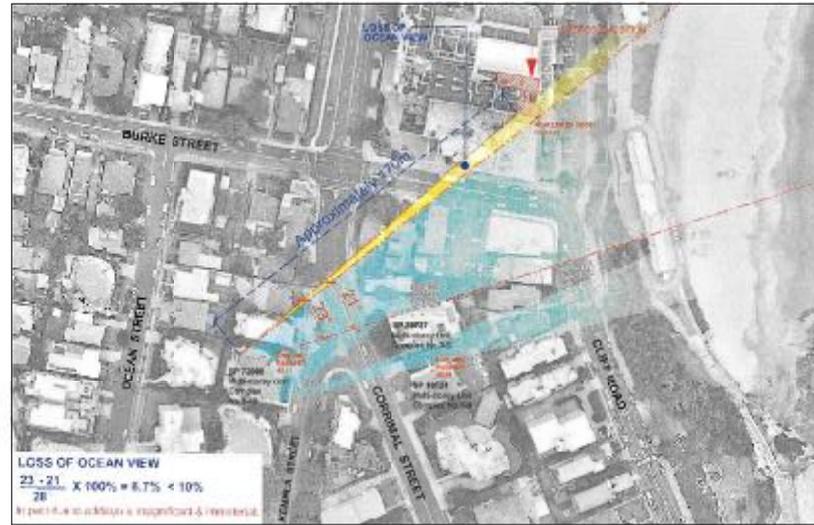
Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.



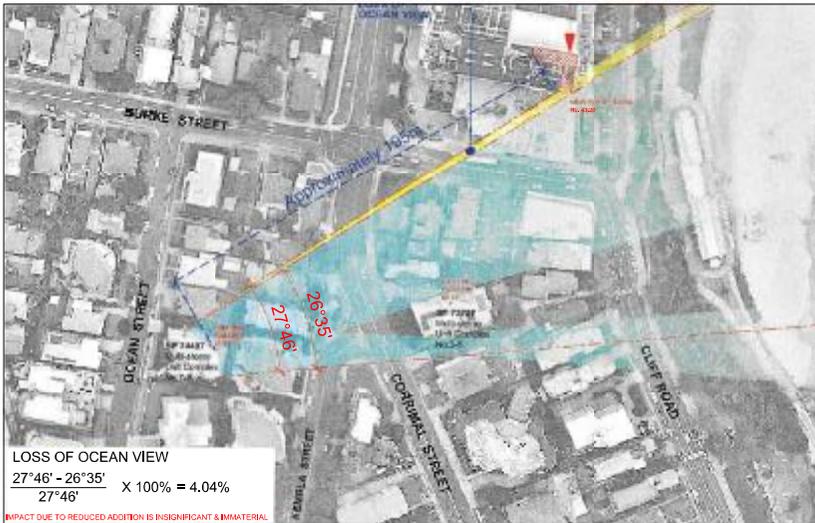
ATTACHMENT 4 - VIEW ANALYSIS



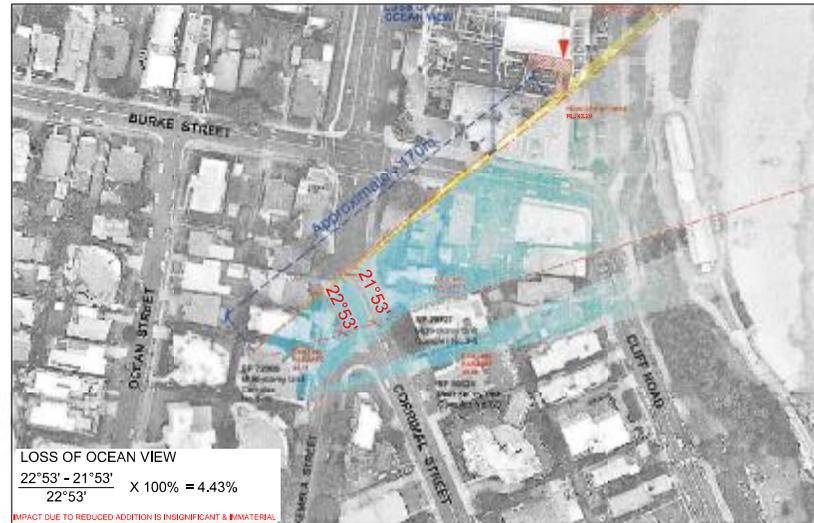
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FIELD OF VIEW ANALYSIS 02 - WITH ORIGINAL SAUNDERS GLOBAL PTY LTD PROPOSAL

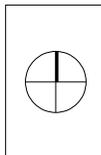


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 Oscars Hotels Group

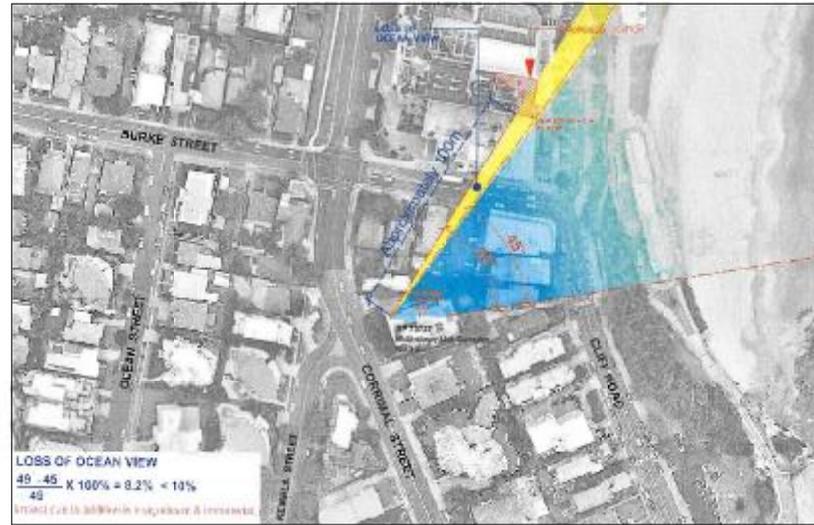
Project
 Additions and Alterations
 2-4 Cliff Road, North Wollongong
 NSW 2520

Design Title
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 FIELD OF VIEW**

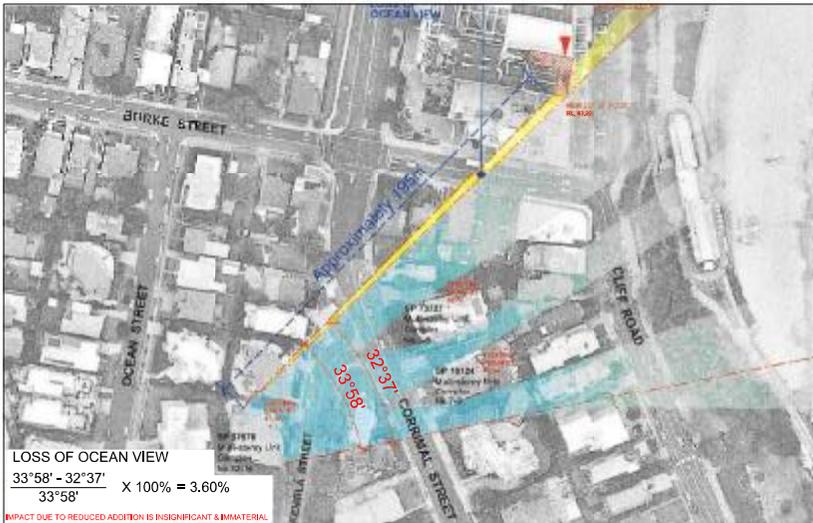
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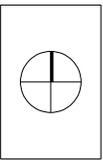


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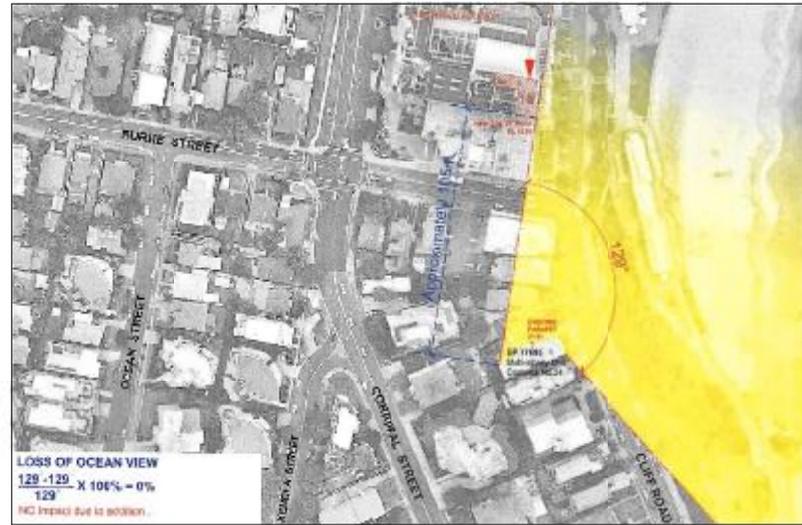
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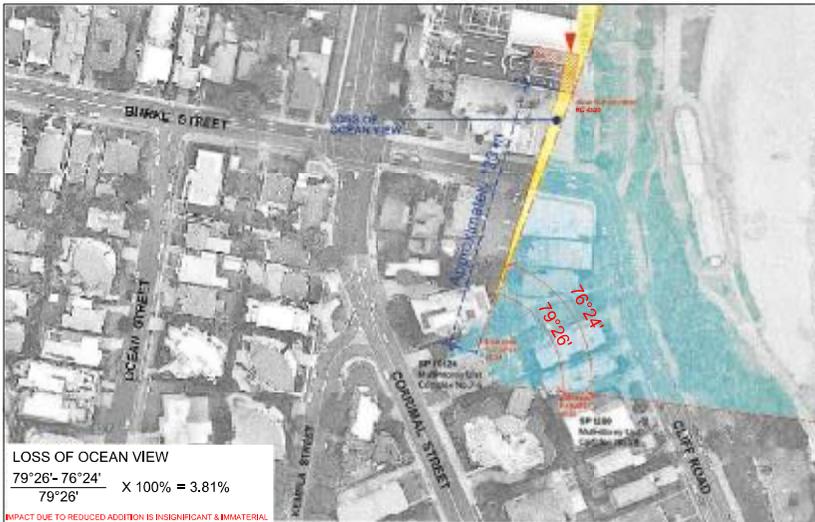
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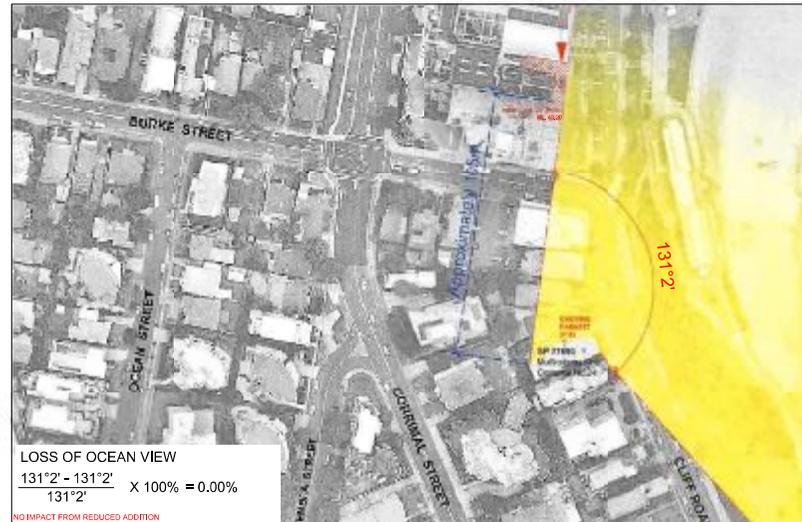
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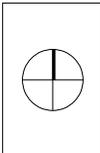


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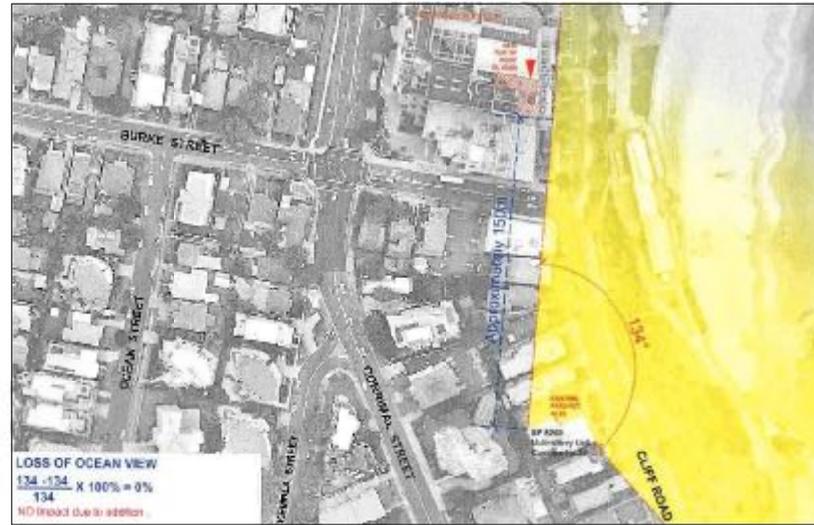
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Drawing Title	VISUAL ANALYSIS FIELD OF VIEW

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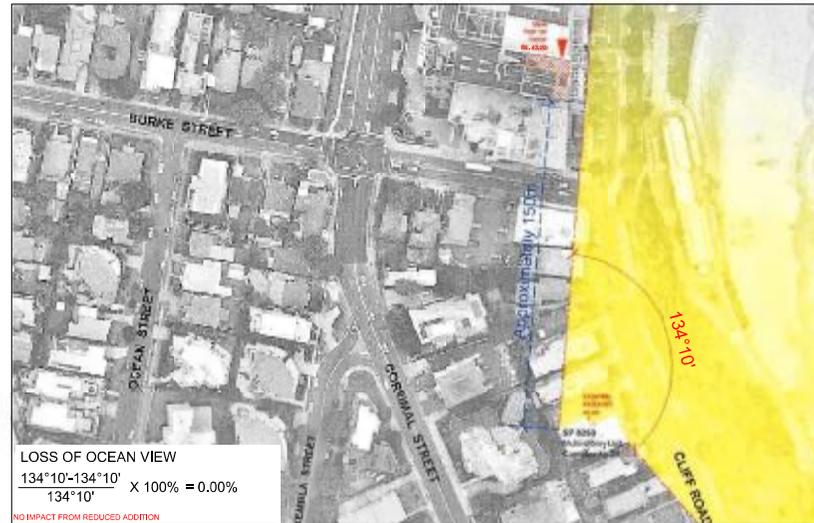
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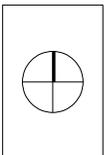


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Attachment 5: Wollongong DCP 2009 compliance table and assessment

CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP.

Generally speaking, the proposal is considered to be consistent with the principles of Ecologically Sustainable Development.

CHAPTER D1 – NORTH WOLLONGONG

Existing Character

North Wollongong is situated directly to the north of Wollongong City Centre and is a medium to high density residential suburb. It comprises predominantly of residential apartment buildings as well as a mix of other low to medium density residential development, including detached dwelling-houses, townhouses and walk up flats.

The Novotel hotel complex and a number of other serviced apartments and motels exist within the close proximity to North Wollongong Beach, Wollongong Harbour / Belmore Basin and Stuart Park.

North Wollongong also contains a number of heritage items including several significant heritage dwellings, the North Beach Kiosk and Surf Club, North Beach Bather's Pavilion, North Wollongong Hotel as well as a group of Norfolk Island pines and Canary Island Date Palm trees within Stuart Park and View Street road reserve.

Desired Future Character

North Wollongong will remain a medium to high density residential area and is likely to experience the replacement of some older housing stock with the erection of new multi-dwelling housing and residential flat buildings given the suburb's proximity to Wollongong City Centre, North Wollongong Beach and Wollongong Harbour / Belmore Basin.

The development is consistent with the existing and future character of North Wollongong.

CHAPTER D13 – WOLLONGONG CITY CENTRE

2 Building form

<i>Objectives/controls</i>	<i>Comment</i>	<i>Compliance</i>
<u>2.2 Building to street alignment and street setbacks</u> Above street frontage height buildings are to be set back to provide sunlight to streets, and daylight to pedestrian areas and lower levels of other buildings. Table 2.1 does not apply to SP3 zone A 10.36m setback to Kembla Street applies	The proposed addition does not extend forward of the existing building to both the Cliff Road and Bourke Street frontages.	Yes
<u>2.3 Street frontage heights in commercial core</u>	NA – site is located outside commercial core	NA

<i>Objectives/controls</i>	<i>Comment</i>	<i>Compliance</i>
<u>2.4 Building depth and bulk</u> 900m ² above 12m in height	The controls do not specifically apply to hotel buildings, however have been assessed against the objectives and against serviced apartments outside the commercial core zone. The existing maximum floor plate size is 900m ² above 12m, which is proposed to increase from 1148m ² to 1347m ² . Despite the proposed floor plate, the objectives of this part are satisfied as the resultant built form is articulated by balconies on the eastern façade.	
<u>2.5 Side and rear building setbacks and building separation</u> Commercial uses above 24m require 6m side setback and 12m rear setback	Hotels are considered commercial uses for the purpose of calculating setbacks under this clause. Although the works occupy existing roof area, the additional floor area has setbacks well over the minimum required under this clause (30m setbacks to north and south boundaries)	Yes
<u>2.8 Landscape design</u>	The proposed development does not necessitate any additional landscaping as it is occupying an existing roof area.	
<u>2.9 green roofs, green walls and planting on structures</u>	NA - does not apply to SP3 zone	
<u>2.10 Sun access planes</u>	NA – site is not affected by the sun access plane provisions under this part.	

3 Pedestrian amenity

The works are limited to the top floor of the hotel and do not impact on pedestrian amenity or change existing vehicle access arrangements.

3.8 Building exteriors

The proposed addition matches the existing external building materials and finishes, is articulated by balconies off both the master bedroom and living areas and limits reflective finishes. The objectives of this part are satisfied by the development.

3.9 Advertising and signage

No signage proposed.

3.10 Views and view corridors

The objectives of this part are:

- a) To maintain and enhance views from the city centre to the foreshore, escarpment and significant objects (such as the lighthouse) wherever possible.
- b) To enhance views along city streets.
- c) To protect silhouettes of the tops of major buildings or structures as seen against the sky or backdrop of the escarpment or foreshore.

Figure 3.12 identifies significant views within the city centre, which is shown below (with the subject site highlighted in yellow).



As can be seen from Figure 3.12, a framed view along Bourke Street is identified. Bourke Street forms the southern boundary of the site. As the proposed addition continues the southern setback of Level 10, when looking east along Bourke Street, the addition in the south-eastern portion of the building will not interrupt these view lines.

An assessment of view impacts from surrounding properties is discussed within the body of the report.

4 Access, parking and servicing

<i>Objectives/controls</i>	<i>Comment</i>	<i>Compliance</i>
<u>4.1 General</u> This part outlines provisions regarding pedestrian and vehicular access, on-site parking and site facilities including waste collection arrangements.	The additional suite will not impact on existing pedestrian or vehicular access arrangements and the existing parking can meet the additional demand resulting from the proposed 'presidential suite'. The additional suite will lead to minimal additional waste generation and existing arrangements will remain in place.	Yes
<u>4.2 Pedestrian access and mobility</u>	No impact	NA
<u>4.3 Vehicular driveways and manoeuvring areas</u>	No impact	NA
<u>4.4 On-site parking</u>	The additional suite generates the need for additional car parking which is able to be accommodated on the site – refer discussion under Chapter E3.	Yes
<u>4.5 Site facilities and services</u>	The building is serviced by the major utilities and the proposal is not expected to result in any need to augment these services.	Yes

5 Environmental management

<i>Objectives/controls</i>	<i>Comment</i>	<i>Compliance</i>
<u>5.1 General</u> The objectives are to reduce the need for mechanical heating and cooling, minimise greenhouse gas emissions and use climatic advantages of the coastal location such as cooling summer breezes and exposure to unobstructed winter sun.	The additional roof top suite incorporates a north-east facing balcony off the living space to take advantage of the summer breezes. The suite faces east so will not provide access to winter sun. Given the hotel use, this is considered acceptable.	Yes
<u>5.2 Energy efficiency and conservation</u>	The proposal is not expected to result in significant energy consumption and there are no particular opportunities to require energy saving measures under this DA other than to require water saving devices, such as flow regulators, 3 stars rated shower heads, dual flush toilets and tap	Yes, subject to conditions

<u>5.3 Water conservation</u>	aerators. This is to be a condition of consent.	Yes, subject to conditions
<u>5.4 Reflectivity</u>	The proposal is not expected to result in significant water consumption and there are no particular opportunities to require water saving measures under this DA other than to require new water fixtures (shower heads, taps, toilets, urinals etc.) to be 3 stars or better rated. This is to be a condition of consent.	Yes, subject to conditions.
<u>5.5 Wind mitigation</u> Wind effects report required for buildings greater than 32m in height	Can be conditioned to avoid adverse reflectivity impacts from the additional glazed areas. The proposed addition to the building achieves an overall height of 31.95m, which is marginally below the height that triggers a wind report to be submitted. Despite this, the enclosure of the roof area comprises a relatively minor increase in overall building bulk and is unlikely to lead to measurable increases in wind impacts.	Satisfactory
<u>5.6 Waste and recycling</u>	Site Waste Management Plan provided. No change to operational waste management.	Yes

6 Residential development standards

The proposal does not include a residential component.

7 Planning controls for special areas

The site is not located within a special area.

8 Works in the public domain

None proposed or required.

CHAPTER E1: ACCESS FOR PEOPLE WITH A DISABILITY

The application has been reviewed by Council's Building Officer. Suitable conditions regarding access for people with disabilities have been recommended. The development is capable of providing the required access and facilities for people with disabilities.

CHAPTER E2: CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposed development relates to roof level and does not raise any safety or security concerns with regard to the provisions of this chapter.

CHAPTER E3: CAR PARKING, ACCESS, SERVICING/LOADING FACILITIES AND TRAFFIC MANAGEMENT

The application has been considered by Council's Traffic engineer who raised no objections to the proposed development and noted that there is sufficient car parking within the site to accommodate the demand generated from one additional hotel suite.

No changes to existing servicing and loading arrangements are proposed as part of the development. This is considered acceptable given the development relates to one additional suite within the existing large hotel complex.

CHAPTER E14 STORMWATER MANAGEMENT

The application has been considered by Council's Stormwater engineer who raised no objections to the proposed development subject to suitable conditions of consent being imposed on any consent granted.

CHAPTER E21 DEMOLITION AND ASBESTOS MANAGEMENT

The provisions of this chapter have been considered and could be reasonably addressed through the imposition of suitable conditions of consent.

Attachment 6: Reasons for Refusal

1. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with Wollongong Local Environmental Plan 2009 with respect to the objectives of Clause 4.3 Height of Buildings.
2. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with Wollongong Local Environmental Plan 2009 with respect to Clause 7.18 Design excellence in Wollongong city centre and at key sites as the proposed development is not considered to exhibit design excellence. Specifically, the design, location and bulk of the development will lead to detrimental impacts on the public domain and surrounding heritage areas.
3. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with Wollongong Local Environmental Plan 2009 with respect to objectives (c), (e), (g) and (h) of Clause 8.1 Objectives for development in Wollongong city centre.
4. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with the State Environmental Planning Policy [Coastal Management] 2018 with respect to the impacts on the Coastal Use area. Specifically, the development will lead to additional overshadowing of the public foreshore area and is likely to cause an adverse impact on the visual amenity and scenic qualities of the coast and on the cultural and built heritage of the North Beach precinct.
5. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with the provisions of Wollongong City Council's Development Control Plan No 2009 with respect to Chapter E11 Heritage Conservation. Specifically, the proposed development will have adverse visual and overshadowing impacts on the state listed North Beach Precinct.
6. Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is excessive in height and would adversely impact upon the amenity of the locality.
7. Pursuant to the provisions of Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development site is not suitable for the proposed development due to the adverse impacts on the significance of the state heritage listed North Beach Precinct and surrounding heritage items.
8. Pursuant to the provisions of Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979 it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.