Attachment C

Submissions

From: Williams, Matt MR 7 <[redacted] on behalf of Williams, Matt MR 7 [redacted] <Williams, Matt MR 7 <[redacted]

Sent on: Tuesday, March 18, 2025 2:50:39 PM

To: council@cityofsydney.nsw.gov.au

Subject: D/2015/661/D [SEC=OFFICIAL]

OFFICIAL

Good afternoon City of Sydney.

The Department of Defence (Defence) thanks Council for the opportunity to comment on the development proposal at 410 Pitt Street, Haymarket, Potts Point.

Defence has considered the application and no objections.

Regards,

Matthew Williams
Estate Strategic Planner

Land Planning and Regulation
Estate Planning Branch
Security & Estate Group

Department of Defence
BP3-01-A005 | 26 Brindabella Cct, Brindabella Business Park ACT 2609
T: [redacted] E: [redacted]

Mon	Tues	Wed	Thur	Fri
☑ Office	☑ WFH	☑ Office	☑ WFH	☑ Office

From: Adrian McKeown <AMcKeown@cityofsydney.nsw.gov.au> on behalf of Adrian McKeown <AMcKeown@cityofsydney.nsw.gov.au> <Adrian McKeown <AMcKeown@cityofsydney.nsw.gov.au>>
Sent on: Tuesday, May 27, 2025 11:15:34 AM
To: DASubmissions <DASubmissions@cityofsydney.nsw.gov.au>
Subject: FW: Objection to D/2020/1387/C & D/2015/661/D – 410 Pitt Street, Haymarket
Attachments: Objection Letter S4.55 DA - 410 Pitt Street, Haymarket.pdf (1.76 MB)

From: TRANPLAN - David Tran [redacted]
Sent: Monday, 26 May 2025 4:24 PM
To: Adrian McKeown <AMcKeown@cityofsydney.nsw.gov.au>
Cc: DASubmissions <DASubmissions@cityofsydney.nsw.gov.au>; City of Sydney <council@cityofsydney.nsw.gov.au>; Sue Ostler <[redacted]>; Edward Lee <[redacted]>
Subject: Objection to D/2020/1387/C & D/2015/661/D – 410 Pitt Street, Haymarket

Hi Adrian,

Please find attached the Detailed Submission **objecting** to D/2020/1387/C & D/2015/661/D – 410 Pitt Street, Haymarket (**site**), on behalf of the residents at the Mirramar Building adjoining the site. .

The Objection details how the incremental overdevelopment of the site will have extremely unreasonable, significant and adverse cumulative impacts for the adjacent neighbours surrounding the site.

If you have any questions regarding this submission, please do not hesitate to contact me.

Thanks

David Tran *B. Planning (Honours)*
Director | **Principal Planner**

TRAN**PLAN** | Town **Planners** & **Heritage** Consultants
M: [redacted] | **E:** [redacted]
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20 May 2025

Ms Monica Barone
Chief Executive Officer
City of Sydney Council

By email: AMcKeown@cityofsydney.nsw.gov.au

Attention: Adrian McKeown – Senior Town Planner

Re: Objection to Development Applications D/2020/1387/C & D/2015/661/D – 410 Pitt Street, Haymarket

1

TRANPLAN Consulting has been engaged by the residents of the *Miramar Apartments* (**Miramar**) at *SP44910* being *No. 398 – 408 Pitt Street* (**the neighbours / residents**) to consider & respond to the Council on their behalf in respect of the following Development Applications (DA) at *410 Pitt Street, Haymarket* (**the site**):

- **D/2020/1387/C** Section 4.55(2) modification of the existing consent for a new Hotel, and
- **D/2015/661/D** Section 4.55(2) modification to amend the approved concept building envelope to reflect an amended design for the lift overrun, increasing the approved height of the lift overrun and concrete housed tuned sloshing damper by 1.9m from RL 121.110 (AHD) to RL123.100 (AHD)

This submission is made pursuant to Section 4.15(1)(d) of the *Environmental Planning & Assessment Act 1979 (***the Act***)*. The objection relates to the significant amenity impacts arising from the non-compliant and extremely unreasonable nature of the development, as detailed in the following section.

1 BACKGROUND

1.1 D/2015/661

The original Stage 1 Concept DA *D/2015/661* (**2015 DA**) was granted consent on 19 May 2015 by the *NSW Land and Environment Court* (**LEC / Court**) in *NFF at 410 Pitt Street Pty Ltd v Council of the City of Sydney [2016] NSWLEC 1181* (Case 10752 of 2015) for:

- Demolition of the existing 74-room boarding house; and
- Stage 1 building envelope for a 31-storey accommodation hotel tower comprising:
  - A maximum building height of up to RL 115.460 (AHD); and
  - A podium with a maximum RL 34.860 (AHD).

It is also important to note the following:

- Council's contentions in its *SOFAC* indicated that the constraints (small size and narrow dimensions) of the site serve to limit the provision of a building envelope that would maintain acceptable levels of residential amenity (in terms of solar access, privacy, outlook, ventilation, visual bulk and scale and

servicing requirements) to the adjoining development and that the site is therefore unsuitable for a tower development (paragraphs 43-45).

- The original 2015 DA's design was for a 33-storey (6-storey podium with 27-storey tower above). However, the applicant had made the **concession** to **reduce** 2-storeys from 33 to **31-storeys** and made an **undertaking** to the Court will **not** be **seek**ing **bonus** floor space and/or **height** (paragraph 71 of *NSWLEC 1181*) – see Figure 1 below and Heading 1.2.

Design excellence

70 The Council contends that the proposed building envelope does not exhibit design excellence and the site is not suitable for the scale of the proposed building envelope. The proposed building envelope does not have adequate regard for the need to achieve an acceptable relationship with the towers on the neighbouring sites, particularly in terms of separation, setbacks, amenity and urban form.

71 The applicant gave an undertaking that no additional height or floor space will be sought under cl 6.21(7) of LEP 2012 for any future Stage 2 development application.

72 For the reasons provided above, I am satisfied that the proposed building envelope achieves an acceptable relationship with the towers on the neighbouring sites. The approval of a Stage 1 development application is to establish an appropriate building envelope and demonstrate that an acceptable layout is achievable within that envelope. On that basis, the proposed building envelope meets the requirements in sub-cl 6.21(4) relevant to a building envelope. The Stage 2 development application will need to address the outstanding requirements in cl 6.21 of LEP 2012.

Figure 1 – Undertaking to the NSW Court that no additional height will be sought

1.2 D/2020/1387 & D/2015/661/B

D/2020/1387 & **D/2015/661/B** sought to invalidate the Court's ruling in the original 2015 DA, and "back-flipped" on its undertaking to the Commissioner Susan O'Neill and the Court, and increased the development's envelope to:

- Increase the number of storeys from 31 to 33, plus roof level
- Increase the maximum building height from RL 115.46 to RL 121.11 to the lift and stair overrun area atop the roof.

2 THE PROPOSED S4.55 DAS (D/2020/1387/C & D/2015/661/D)

The subject proposed DAs (**D/2020/1387/C & D/2015/661/D**) now seek to further increase the development's envelope, resulting in increased adverse impacts to the upper levels of the Miramar building.

2.1 IMPACT OF THE CURRENT APPROVED BUILDING ENVELOPE ON THE SOUTHERN ELEVATION OF MIRAMAR APARTMENTS

There are 2 windows on each level of the southern façade of the Miramar Apartments on the upper levels. On a typical level, there are 2 apartments on the southern side of the building:

- one in the south-east corner with an outlook to the rear of the site and
- one in the south-western corner with an outlook towards Pitt Street.

Both apartments have a balcony at the southern corners of the Miramar Apartments. The windows provide significant amenity to the living room and on the upper levels there are sweeping district views from the windows in the southern façade, which include, inter alia, Central Station and its clock tower.

In the original 2015 DA, the planning experts agreed that the view loss from the windows in the southern façade of the Miramar Apartments affects only the upper levels of the Miramar Apartments from levels 33 to 36 and the leading edge of the proposed building envelope will be visible from level 37, because district views at the lower levels are obstructed by the Regis Towers.

> **Note**: The above consensus by the experts were entirely predicated on the applicant's concession to reduce 2-storeys from 33 to 31-storeys and their undertaking to the Court that no bonus floor space and/or height will be sought in the future.

Following the Council approvals of D/2020/1387 & D/2015/661/B – which "back-flipped" on the site's undertaking to the Commissioner Susan O'Neill, and concessions made to the Court in the original 2015 DA approval, and further increase to the approved envelope[1] – the upper levels of the Miramar building were forced to bear increased adverse amenity impacts (e.g. view loss, and loss of daylight).

2.2 IMPACTS OF THE PROPOSED S4.55 BUILDING ENVELOPE ON THE SOUTHERN ELEVATION OF MIRAMAR APARTMENTS

The current S4.55 DAs now propose to further increase to the approved envelope i.e. an additional **2m** (from RL 121.110 to RL 123.100 to) will completely wipe out the remaining views for the upper level neighbours e.g. Apartment 262 on Level 37 and any remnant access to daylight or ambient light to their primary living areas (lounge room, kitchen, winter garden and balcony).

[1] an additional 2-storeys plus roof level (with plants/rooftop structures), and 5.65m (from RL 115.460 to RL 121.110)

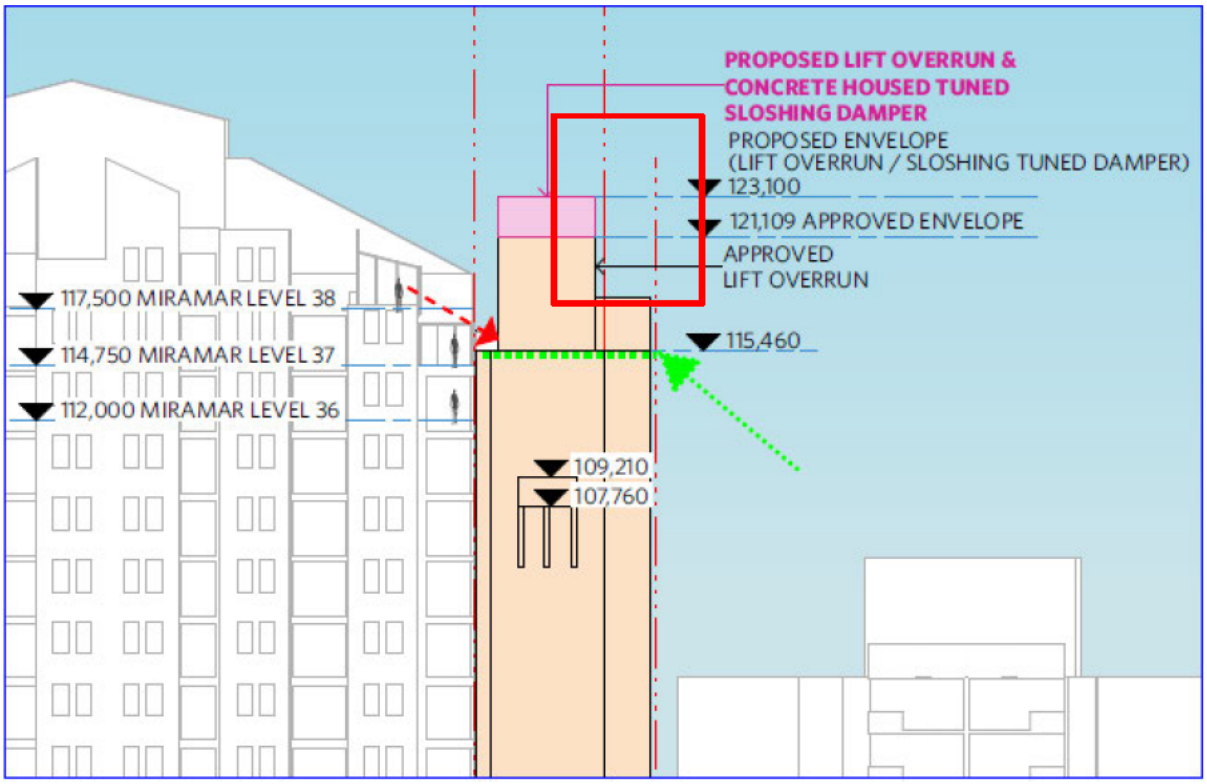

Figure 2 – Proposed extra 2m in height (pink) would have devastating daylight /ambient light and view loss for the upper levels of Miramar

The green dashed-line and arrow in Figure 1 above indicates the Court's ruling in the original 2015 DA approval. This site has already "back-flipped" once on its undertaking to Commissioner Susan O'Neill and the Court, to not further increase the original approved-height of RL 115.46.

The S4.55's proposed new RL of 123.100 represents a **7.64m** increase (from the original Court-approved height of RL 115.460), and the proposed new envelope would result in complete/total and devastating view loss and loss of daylight for Apartment 262 – see Headings 5.1 & 5.2 for more details.

3 INCREMENTAL MODIFICATIONS

In our previous submission letter (dated 5 February 2021) objecting against *D/2020/1387* & *D/2015/661/B*, we correctly predicted that the applicant will certainty seek further increases to the approved height/FSR as part of future DAs / modifications. This practice of modifications in increments serve the ulterior motive to impose "creeping" additional impacts whilst attempting to ultimately conceal the true cumulative impact of a development.

For example, looking from a holistic view, the S4.55's proposed new RL of 123.100 represents a **7.64m** increase (from the original Court-approved height of RL 115.460). The development has had covert intentions for the building/site and has "drip-feed" Council and neighbours through incremental modifications, with the motive to mask and trivialise the cumulative impacts.

We presume that Council has a strong stance against such practices, and will "draw the line" by refusing this DA to vehemently protect the integrity of Council's assessment process and the neighbours quality of life.

4 IMPACTS

It is considered that the development's attempt to further impose unacceptable impacts to the neighbours residential amenity (adversely affecting quality-of-life factors such as daylight, views/outlook, ventilation, visual bulk and scale) is unacceptable. It is inconceivable that any such development could be supported given that previous DAs were approved on the basis of certain undertakings and concessions (which are now being undone).

5

In the Judgement / Decision for the original 2015 DA, Commissioner Susan O'Neil noted (paragraph 71, page 25) that "***The applicant gave an undertaking that no additional height or floor space will be sought under cl 6.21(7) of LEP 2012 for any future Stage 2 development application"***. This is a critical point – that the Court heavily based its decision to approve the original DA on the proviso that the development site had made the concession to reduce from 33 to 31-storeys and will not be seek any further increase to floor space and/or height – a concession which the development site has already "back-flipped" on, and now seeking further reversal. Accordingly, Council should not support this S4.55 proposal as:

- adequate daylight, visual/acoustic privacy, and reasonable views/outlook *cannot* be maintained for adjoining residences; and
- the development site has shown contempt for *NSW Land and Environment Court* process, which culminated in the Court approval of the Stage 1 original DA (but with strict Conditions of Consent requiring compliance with height & envelope); and
- it makes a mockery of Council's assessment process with incremental modifications concealing the cumulative impacts, and have total disregard for neighbours residential quality-of-life.

4.1 TOTAL & DEVASTATING VIEW LOSS

The concept of view sharing relates to the equitable distribution of views between development and neighbouring dwellings. The development has already "eaten" into previous concessions, but now seek a building envelope which will totally devastate any remaining views currently obtained from the uppermost south-facing apartments within the Miramar Apartment Building[2], providing a clear indicator of the applicant's disregard to impacts on neighbours.

The remaining views contribute significantly to the amenity for the neighbouring dwellings. A comprehensive *View Sharing Analysis* (**VIA**) is required to clearly depict the magnitude of view loss impact of the proposed S4.55 development on the upper

[2] Views towards the State Heritage-listed Central Railway Station (and its clock tower) and distant views, including land-water interface, to Botany Bay.

levels of the neighbouring Miramar building. This critical issue of view loss is discussed in further detail in Part 5.1 of this Submission.

4.2 Daylight Access

Access to adequate daylight and ambient light cannot be maintained for the upper levels of the Miramar which will lose a substantial amount of daylight and ambient light from the unacceptable increase in height & envelope.

It is noted that a *Daylight Factor Assessment* was prepared for *D/2020/1387* & *D/2015/661/B* (for the Hotel). It is strongly recommended that Council require this S4.55 to carry out a *Daylight Factor Assessment* for the Miramar's upper level apartments, to assess the current and proposed daylight conditions.

4.3 Future Public Access to Rooftop

This S4.55 DA seeks to introduce lift access to the rooftop under the pretext of plant/equipment maintenance regime. However, we predict that the development will ultimately seek usage of the rooftop as a rooftop bar/entertainment space accessible to the public as part of future DAs / modifications. This is almost certainly the true ulterior motive behind the proposed direct elevator access to the rooftop – see Heading 3 for discussion about our concern regarding this deceitful practice of incremental modifications.

4.4 Acoustic & Visual Privacy

Apart from the abovementioned impacts, the proposed new location for the lift overrun, tuned sloshing damper, and motor room will have increased acoustic impacts for the Miramar's upper level apartments.

Furthermore, the proposed direct elevator access to the rooftop will ultimately result in the usage of the rooftop as a bar/entertainment space accessible to the public – as part of future DAs / modifications; see Heading 4.3 above – which will have significant acoustic & visual privacy for all neighbours surrounding the site.

The residents strongly objects to the use of the roof for any public / hotel / recreational purposes due to the severe lack of privacy/noise given the extreme proximity.

4.5 Construction Impacts

The site is significantly constrained by the small size and narrow dimensions of the site, and the size, form and location of the residential towers to the north, east and south of the site. These previous concerns regarding the constraints on development posed by the restricted size of the site have unfortunately already been realised with the Mirramar building sustaining damage to its boundary wall due to the development's construction/demolition activities. This matter has been documented and raised separately with Council.

5 PLANNING PRINCIPLES

5.1 VIEW SHARING

The planning principle for considering the acceptability of the impact of a proposed development on the views enjoyed from private property in the vicinity of the development was set out by the *NSW Land & Environment Court*'s Senior Commissioner, Dr John Roseth, in the case of *Tenacity Consulting v Warringah (NSWLEC 140 – 2004)* and was adopted through the LEC collegiate process or the derivation of such principles. In assessing this case, Dr Roseth set out the following planning principles (with our comments in green):

> *The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.) To decide whether or not view sharing is reasonable, I have adopted a four-step assessment.*
>
> *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Applying the above principles to the adjoining Miramar residences, it is considered that the existing view to the State heritage-listed Central Railway Station (and its clock tower), Belmore Park and distant views to land-water interface of Botany Bay as highly iconic and what most people would describe as wonderful/desirable. Refer to existing view photographs (Figures 3, 4 and 5) below for more details.

Figure 3 – (Picture 1) Existing view from living room of Unit 262 on Level 37

Figure 4 – (Picture 2) Existing view from winter garden of Unit 262

Figure 5 – (Picture 3) Existing view from balcony of Unit 262 (Level 37)

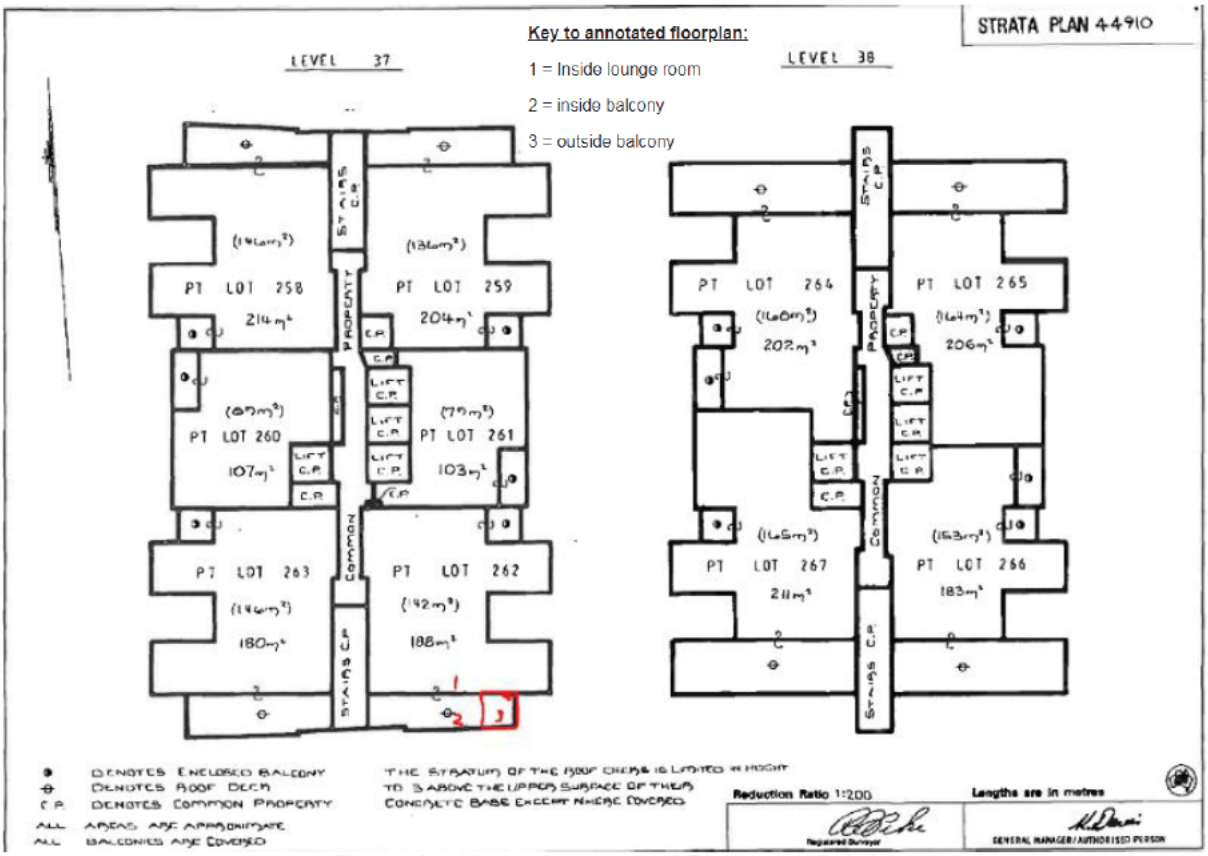

Figure 6 – Key to locations of Pictures 1, 2 & 3

The S4.55 SoEE Report concedes that "*the most affected view from the modification is to Unit 262 (on Level 37)*", with the proposed extra 2m in height (pink) to result in total and devastating view loss and daylight /ambient light loss for the upper levels of Miramar, particularly Unit 262 on Level 37 – see extract below (Figure 7).

Figure 7 – Proposed extra 2m in height (pink) would have devastating view loss and daylight loss

However, only 1 view/vantage point (from within Unit 262's living room looking out to the winter garden) has been provided for analysis. It is critical that Council require a comprehensive *View Sharing Analysis* (**VIA**) to be provided from several additional view/vantage points, per on-site discussion with Adrian McKeown Council Senior Town Planner:

- within the winter garden (centre)
- within the winter garden (left/east side)
- within the outdoor balcony (east)

Analysis from several additional view/vantage points is required to clearly depict the magnitude of view loss impact of the proposed S4.55 development.

> *27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

All photos were taken from various areas within Unit 262 (Level 37) of the Miramar i.e. living room, winter garden, and outside the balcony, which are primary living areas that are heavily utilised throughout the day by the residents.

As discussed previously the Court heavily based its decision to approve the original 2015 DA (which Council refused) on the proviso that the development had made the concession to reduce from 33 to 31-storeys and will not be seek any further increase to floor space and/or height – a concession which the development site has already "back-flipped" on once, and now seeking further reversal. Accordingly, Council should not support this S4.55 proposal as:

- adequate daylight, visual/acoustic privacy, and reasonable views/outlook cannot be maintained for adjoining residences; and
- the development site has shown contempt for the Court process, which culminated in the Court approval of the Stage 1 original DA (but with strict Conditions of Consent requiring compliance with height & envelope); and
- it makes a mockery of Council's assessment process with incremental modifications concealing the cumulative impacts, and have total disregard for neighbours residential quality-of-life.

> *28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

The uppermost south-facing Miramar apartments currently retain partial views to Central Railway Station (and its clock tower), Belmore Park and distant views to Botany Bay. These currently-retained views are regarded as highly iconic (e.g. Central Station is listed as a Heritage Item of State significance), and will be totally and completely devastated by the proposed S4.55 incremental encroachment.

> *29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

This S4.55 proposal's significant view impacts are highly unreasonable as it will devastatingly and totally remove the remaining partial views retained by the neighbour and therefore are not consistent with the intent and controls of Planning Instruments, the Court's Planning Principle, and Council's development processes.

The development have made no attempt to preserve an equitable amount of views for the adjoining residents. Looking from a holistic view, the S4.55's proposed new RL of 123.100 represents a **7.64m** increase (from the original Court-approved height of RL 115.460). The development has had covert intentions for the building/site and has "drip-feed" Council and neighbours through incremental modifications, with the motive to mask and trivialise the cumulative impacts.

5.2 ACCESS TO SUNLIGHT / DAYLIGHT / AMBIENT LIGHT

The planning principle for considering the adequacy of sunlight (which will be interchanged with daylight / ambient light, and arguably as-critical in the case of south-facing residents) was set out by the NSW Land & Environment Court's Senior Commissioner, Tim Moore, in the case of *The Benevolent Society v Waverley Council [2010] NSWLEC 1082* and was adopted through the LEC collegiate process or the derivation of such principles. In assessing this case, SC Moore set out the following principles (with our comments in green):

> *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

There is a reasonable expectation that the development will respect the concessions and impacts that have already been imposed on the residents, to ensure that the neighbour's internal living areas & private open space can retain the remaining daylight / ambient light.

Figure 8 – The existing views and daylight for Unit 262's kitchen will be completely loss

As shown in Figure 8 above, the current approved envelope will result in complete loss of the existing views and daylight for the kitchen. The development is now seeking to impose complete loss of the remaining partial views and residue daylight for Unit 262's living room.

> *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

As discussed above, the development is now seeking to impose complete loss of the remaining partial views and residue daylight for Unit 262's living room.

> *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

This S4.55 proposal is poorly designed with no regard to its position & context relative to the adjoining residents, and shows contempt for the Council DA processes and no respect for neighbours quality-of-life. We presume that Council has a strong stance against such practices, and will "draw the line" by refusing this DA to vehemently protect the integrity of Council's assessment process and the neighbours amenity.

> *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

Changes can be anticipated but there is a reasonable expectation that developments will comply with planning controls and respect the Court ruling in the original DA to mitigate adverse impact to neighbours, particularly in the context of this site.

5.3 PROTECTION OF VISUAL PRIVACY

In addition to non-compliance with Council's development objectives & controls, the DA is also contrary to the NSW Land & Environment Court's planning principles for protection of visual privacy, which were established by Senior Commissioner Dr John Roseth in *Meriton v Sydney City Council [2004] NSWLEC 313* and some are reproduced below (in *italics*), with our comments in green:

> *When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space. Most planning instruments and development control plans acknowledge the need for privacy, but leave it to be assessed qualitatively.*

> *Generalised numerical guidelines such as above, need to be applied with a great deal of judgment, taking into consideration **density**, **separation**, **use** and **design**. The following principles may assist:*

> *The ease with which privacy can be protected is inversely proportional to the **density** of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.*

As discussed previously, this S4.55 DA seeks to introduce lift access to the rooftop under the pretext of plant/equipment maintenance regime. However, we predict that the development will ultimately seek usage of the rooftop as a rooftop bar/entertainment space accessible to the public as part of future DAs /

modifications. This is almost certainly the true ulterior motive behind the proposed direct elevator access to the rooftop – see Heading 3 for discussion about our concern regarding this deceitful practice of incremental modifications. The loss of privacy due to exploitation of the DA process, and no respect for neighbours amenity is unacceptable.

> *Privacy can be achieved by **separation**. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*

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Privacy can be achieved primarily through complying with planning provisions and also considerate planning & clever design, to protect the visual and acoustic privacy of the adjoining neighbour and its private open space and living areas. The cumulative impact of the incremental encroachments, and likely future rooftop use will result in significant loss of visual and acoustic privacy for the neighbours from overlooking/noise directly onto their living areas & private open spaces.

> *The **use** of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*

The impacted areas of the adjoining residences are its private open spaces and living areas, which are heavily utilised areas throughout the day.

> *Overlooking of neighbours that arises out of poor **design** is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*

The latest design iteration will adversely impact the neighbour's level of residential amenity through complete loss of highly iconic views, as well as any residual daylight / ambient light due to the excessive building envelope obtained covertly through incremental, creeping changes that constantly tips the scales of reasonableness in favour of the development at the expense of the neighbours.

5.4 ASSESSING IMPACT ON NEIGHBOURING PROPERTIES

The revised planning principle for assessing impact on neighbouring properties was established in *Davies v Penrith City Council [2013] NSWLEC 1141* by Senior Commissioner Tim Moore. The planning principles (in *italics*) for assessing impact on neighbouring properties are reproduced below, with our comments in green:

> *How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?*

This S4.55 proposal will result in absolute and unacceptable loss of remaining iconic views, loss of residual daylight / ambient light, and loss of visual/acoustic privacy for the neighbours.

How reasonable is the proposal causing the impact?

In the Judgement / Decision of the original DA, Commissioner Susan O'Neil noted (paragraph 71, page 25) that "***The applicant gave an undertaking that no additional height or floor space will be sought under cl 6.21(7) of LEP 2012 for any future Stage 2 development application***". This is a critical point – that the Court heavily based its decision to approve the original 2015 DA on the proviso that the development had made the concession to reduce from 33 to 31-storeys and will not seek further additional floor space and/or height – a concession which the development has already nullified, and exceeded for good measure.

The proposed new/additional amenity impacts are evidence that this S4.55 proposal is extremely unreasonable with maximum regard to private commercial interests and no regard/respect for neighbours and the interests of the public and contrary to Section 4.15(1)(e) of the Environmental Planning & Assessment Act.

How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?

The neighbours are vulnerable to severe impacts due to the unreasonable and poor design. The current proposed S4.55 is just latest iteration of a series of incremental encroachments which have had no regard for the original Court judgement, Council DA assessment process, and no respect to the neighbours.

Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

The history and outcome of the Court-approved original DA and the extremely amenity impacts are a good indication that this S4.55 proposal is extremely unreasonable with maximum regard for private commercial interests and minimal regard for neighbours, and contrary to Section 4.15(1)(e) of *the Act*.

Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?

The impacts are a direct result of an attempt to further "back-flip" on its undertaking to the Court to not increase the height/RL and FSR in the future (which formed the core basis for the Court's approval of the 2015 DA).

6 CONCLUSION

Given the significant planning issues associated with this S4.55 proposal and the ensuing extreme and highly unreasonable amenity impacts upon the neighbouring residents, this S4.55 proposal is not in the interest of the public pursuant to Section 4.15(1)(e) of *the Act*.

The development has shown contempt for Council's assessment process and the Court's appeal/judgement process, and is seeking to further renege on the undertaking previously given to the Court that no additional height or floor space will be sought for any future DAs.

The development's practice of modifications in increments serve the ulterior motive to impose "creeping" additional impacts, whilst attempting to ultimately conceal the true cumulative impact of the development. For example, the proposed new RL of 123.100 represents a 7.64m increase (from the original Court-approved height of RL 115.460). The development has had covert intentions for the building/site and has "drip-feed" Council and neighbours through incremental modifications, with the motive to mask and trivialise the collective accrued impacts.

We sincerely urge Council to take a strong stance against such practices and "draw the line" by refusing this DA, to preserve the remaining level of amenity for neighbours so that their quality of life – and the integrity of Council's assessment process – can be protected.

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If you have any questions regarding this submission, please do not hesitate to contact TRANPLAN Consulting.

Yours faithfully,

David Tran *B. Planning (Hon)*
Principal Planner
TRANPLAN Consulting

From: Adrian McKeown <AMcKeown@cityofsydney.nsw.gov.au> on behalf of Adrian McKeown <AMcKeown@cityofsydney.nsw.gov.au> <Adrian McKeown <AMcKeown@cityofsydney.nsw.gov.au>>
Sent on: Tuesday, May 27, 2025 12:03:40 PM
To: DASubmissions <DASubmissions@cityofsydney.nsw.gov.au>
Subject: FW: Objection to D/2020/1387/C & D/2015/661/D – 410 Pitt Street, Haymarket

Please register

Thanks

From: Sue Ostler [redacted]>
Sent: Tuesday, 27 May 2025 10:43 AM
To: Adrian McKeown <AMcKeown@cityofsydney.nsw.gov.au>
Cc: DASubmissions <DASubmissions@cityofsydney.nsw.gov.au>; City of Sydney <council@cityofsydney.nsw.gov.au>; Edward Lee [redacted]
Subject: Re: Objection to D/2020/1387/C & D/2015/661/D – 410 Pitt Street, Haymarket

Dear Adrian,

Thank you for granting an extension and the opportunity to provide further feedback on the proposed modification to**D/2020/1387/C and D/2015/661/D** for 410 Pitt Street, Haymarket.

In accordance with your advice, and in collaboration with stakeholders, we hand-delivered**73 letters** to Town Hall, with many opting to submit individual objections directly via email by COB on 26 May 2024.

To support our objection, the Owners Corporation commissioned **independent town planner David Tran** to prepare a formal planning submission. His report, submitted with our objection, presents clear and compelling expert evidence that the proposed modification:

- **Fails the legal test** of being "substantially the same development" under Section 4.55(2) of the EP&A Act
- **Results in excessive view loss and overshadowing** of neighbouring residences
- **Introduces new and materially different amenity impacts** far beyond the scope of the original DA approval

It is our view that the modification represents a **misleading and deceptive departure** from the approved scheme and seeks to exploit the Section 4.55 process in a way that**undermines community expectations and the integrity of planning outcomes**.

The report also highlighted the **particularly severe and disproportionate impacts** on**Units 262, 263, and 267**, which have already endured significant reductions in**privacy, natural light, and residential amenity** due to adjacent development activity.

Of further concern is the apparent intent of this modification to function as a**staging mechanism for future public rooftop use** — a use not previously disclosed and clearly outside the original approval. This would result in**unacceptable ongoing amenity impacts**, including:

- Unreasonable noise and disturbance
- Excessive light spill during evening hours
- Serious loss of privacy from rooftop overlooking

The Owners Corporation considers this a **deliberate and outrageous attempt** to sidestep the community consultation process by reintroducing significant changes under the guise of a minor modification.

Additionally, we draw Council's attention to **unreported structural damage** and**unacceptable builder conduct**,

including:

- **Structural damage to basement levels B1 through B3**, which remains unresolved and has not been acknowledged in any documentation
- A persistent **lack of transparency and professional oversight** which has further eroded community trust and confidence in the regulatory process

This ongoing disregard for resident well-being and planning compliance has caused widespread distress. To date, our Owners Corporation has spent tens of thousands of dollars on legal, planning, and expert input—not to contest a new development but to**defend what had already been approved** through a lawful and exhaustive process.

The emotional and financial toll on our community is now untenable.

Accordingly, and respectfully, we strongly urge Council to:

1. **Reject** the proposed Section 4.55 modification on legal, planning, and procedural grounds.
2. **Investigate** the physical, structural, and amenity impacts currently being caused to those units noted as 'most impacted'.
3. **Uphold the integrity** of the original DA approval and ensure that community consultation is not subverted through inappropriate use of modification pathways.

We respectfully request confirmation that our submissions have been received and formally recorded.

Should Council require further clarification, Mr Tran remains available for comment.

Many thanks

Sue Ostler
On behalf of the Miramar Apartments Owners Corporation (SP44910)
✉✉ [redacted]
✆✆

On Mon, 26 May 2025 at 16:24, TRANPLAN - David Tran [redacted] wrote:

> Hi Adrian,
>
> Please find attached the Detailed Submission **objecting** to D/2020/1387/C & D/2015/661/D – 410 Pitt Street, Haymarket (**site**), on behalf of the residents at the Mirramar Building adjoining the site. .
>
> The Objection details how the incremental overdevelopment of the site will have extremely unreasonable, significant and adverse cumulative impacts for the adjacent neighbours surrounding the site.
>
> If you have any questions regarding this submission, please do not hesitate to contact me.
>
> Thanks
> David Tran *B. Planning (Honours)*
> **Director** | **Principal Planner**
>
> TRAN**PLAN** | Town **Planners** & **Heritage** Consultants
> **M:** [redacted] | **E:** [redacted]
> **W:** https://www.townplanning-urbanplanning.com | https://www.tranplansydney.com.au
>
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