



NSLPP MEETING HELD ON 04/06/2025

Attachments:

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement

ADDRESS/WARD: 89 Union Street, McMahons Point

APPLICATION No: 397/2024

PROPOSAL: Alterations and additions to an existing terrace house

PLANS REF:

Plan No.	Rev	Description	Prepared by	Dated
A102	F	Ground Floor Plan	Architects Ink	24/04/25
A103	F	Upper Floor Plan	Architects Ink	24/04/25
A104	F	Attic Floor Plan	Architects Ink	24/04/25
A105	F	Site and Roof Plan	Architects Ink	24/04/25
A106	F	West and South Elevations	Architects Ink	24/04/25
A107	F	East and North Elevations	Architects Ink	24/04/25
A108	F	Sections S1 and S3	Architects Ink	24/04/25
A109	F	Section S2	Architects Ink	24/04/25
Sheet 1	D	Landscape Plan	Architects Ink	07/05/25
-	-	Schedule of Colours, Materials, Finishes	Architects Ink	-

OWNER: Laurence Laveau

APPLICANT: Laurence Laveau

AUTHOR: Jack Varka, Senior Assessment Officer

DATE OF REPORT: 16 May 2025

DATE LODGED: 7 January 2025

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the attached dwelling at 89 Union Street, McMahon's Point.

The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to the building height development standard by more than 10%. In accordance with the Minister's Directions the application must be determined by the Local Planning Panel.

The application was notified to adjoining properties and the Euroka Precinct Committee inviting comment between 7 – 21 March 2025. There were three (3) submissions received in response to notification.

The site is identified as Lot 4 DP 437049. The site is rectangular in shape and has an area of 181m². The site is occupied by a two storey attached terrace which is one of a group of five two-storey terraces (Nos. 83, 85, 87, 89, 91 Union Street) circa 1880. The dwelling is a contributory item and is located within the Union, Bank, and Thomas Street Conservation Area.

No significant trees or vegetation is proposed to be removed as a result of the proposed alterations and additions. Standard conditions have been imposed in the determination of the application.

The subject site has a maximum permitted building height of 8.5m pursuant to sub-clause 4.3(2) in *NSLEP 2013*. The existing building exceeds the building height standard, with a maximum height of 9.61m. Whilst the proposal does not change the existing maximum height of the dwelling, the construction of a new rear dormer is located above the maximum building height of 8.5m.

The proposal also creates new habitable living space within the attic level above the maximum building height. The development proposes alterations and additions to an existing dwelling house and the works will not alter the existing maximum building height or alter the existing natural landform. Privacy will be retained for neighbours with no direct overlooking into any key living areas. The proposal will create only minor increases in shadow impacts to 91 Union Street to the rear private open space; however, the property retains 3 hours solar access in mid-winter.

Council's Heritage Officer considers that the infill of the rear breezeway would not reinforce the characteristic pattern of setbacks and building orientation as well as creating substantial additional bulk at the side boundary, which will impact upon the amenity of the neighbouring property at 87 Union Street and negative impact upon the conservation area. As detailed in this report, the proposal is to be amended by way of condition that ensures the retention of the original breezeway whilst retaining part of the rear addition, in an effort to minimise both heritage and amenity impacts without significantly compromising upon the effective design of the rear addition.

Design changes are recommended to improve the legibility of the original breezeway, which largely retains the pattern of development seen in the group of terraces. It will also allow for reasonable contemporary additions at the ground floor level without significantly compromising the heritage character of the contributory item and conservation area.

Subject to the recommended design changes, the development application is considered to be reasonable in the circumstances and is recommended for **approval** subject to conditions.

[illegible]

Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The proposed development is for alterations and additions to the existing attached dwelling, to create a 4 bedroom dwelling on the subject site. The proposed works are as follows:

Ground Floor

- Demolition of the rear of the dwelling
- Construction and internal reconfiguration of the rear portion of the dwelling to create an open concept kitchen and living area
- Rear extension to be extended to enclose the northern side breezeway and create small 'light court'
- Construction of new terrace space with operable roof and revised rear landscaping

First Floor

- Extension of the first floor wing to create a new master bedroom suite
- Incorporation of green roof of the ground floor below
- Minor internal alterations and additions including extension of staircase, new robes, and layout changes

Attic Floor

- New dormer windows on the upper floor to create bedroom 4, cupboards, landing and staircase to access the first floor

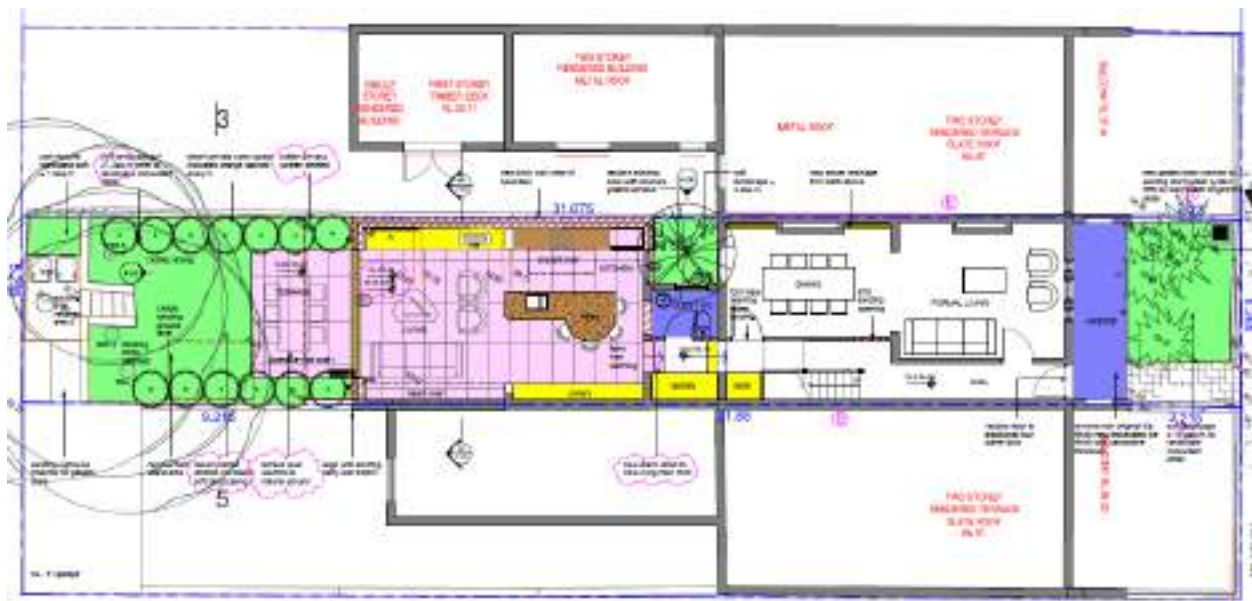


Figure 1: Proposed Ground Floor

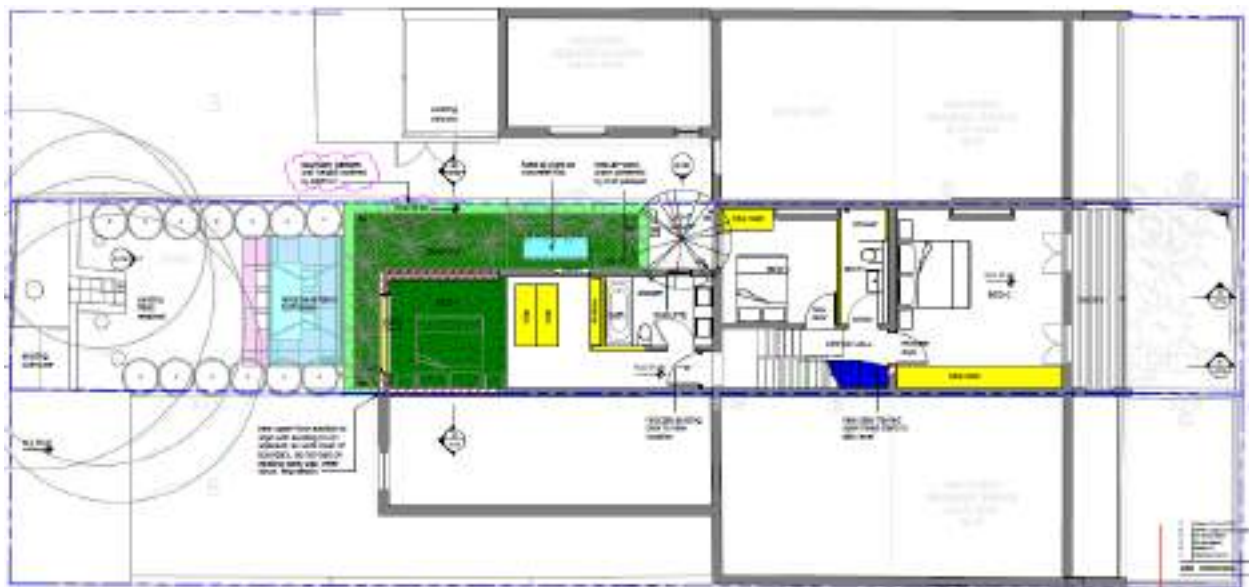


Figure 2: Proposed First Floor

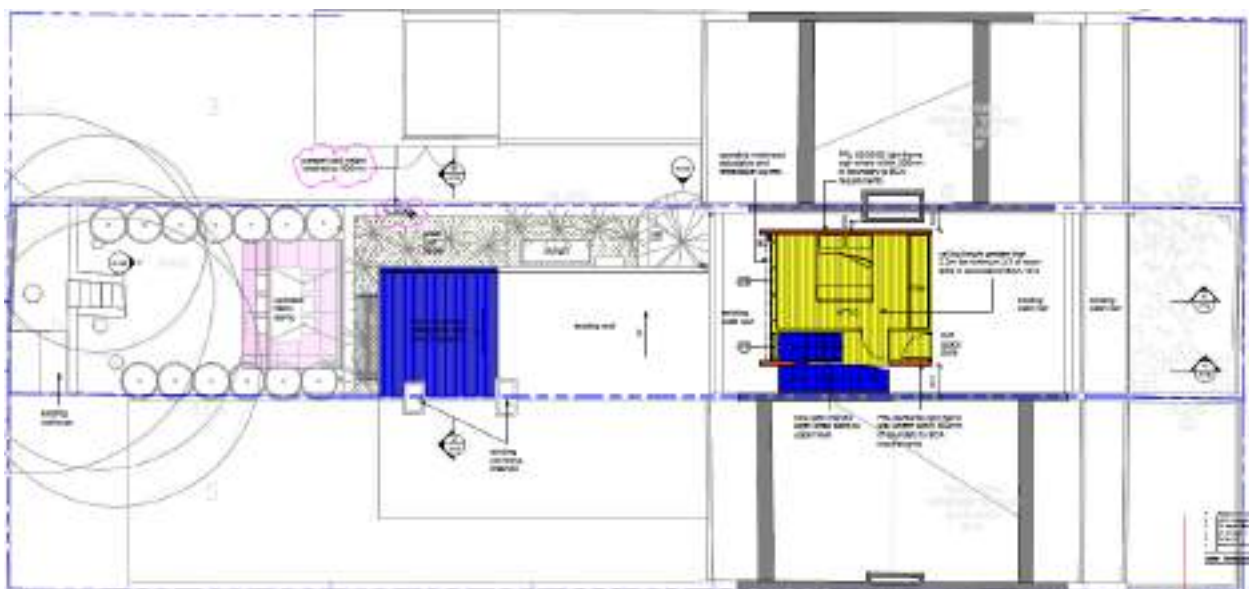


Figure 3: Proposed Attic Floor



Figure 4: Proposed West Elevation

Amended Proposal

On 16 April 2025, Council issued a RFI letter requesting the following:

- Amended Architectural Plans to the proposed Ground Floor rear addition at the western side boundary/service wing, which is considered excessive and fails to reinforce the characteristic pattern of setbacks and breezeway orientation within the group of terrace dwellings.
- Amended Landscape Plan with additional detail reflecting the ground levels and existing trees to be retained, and the submission of an arborist report to support this.

On 6 May 2025, the applicant provided a response to the RFI letter which contained the following:

- Amended Architectural Plans, Revision F, which retains the 0m western side boundary setback as DA submitted, however, with reduced height of the ground parapet wall and rear ground addition floor level by 600mm (see Figure 5 below).
- Amended Landscape Plan to include new and existing rear ground levels and confirms no change in ground levels in proximity of existing rear trees.
- An arborist report, prepared by ArborLogix, which the existing trees structural and tree protection zones.

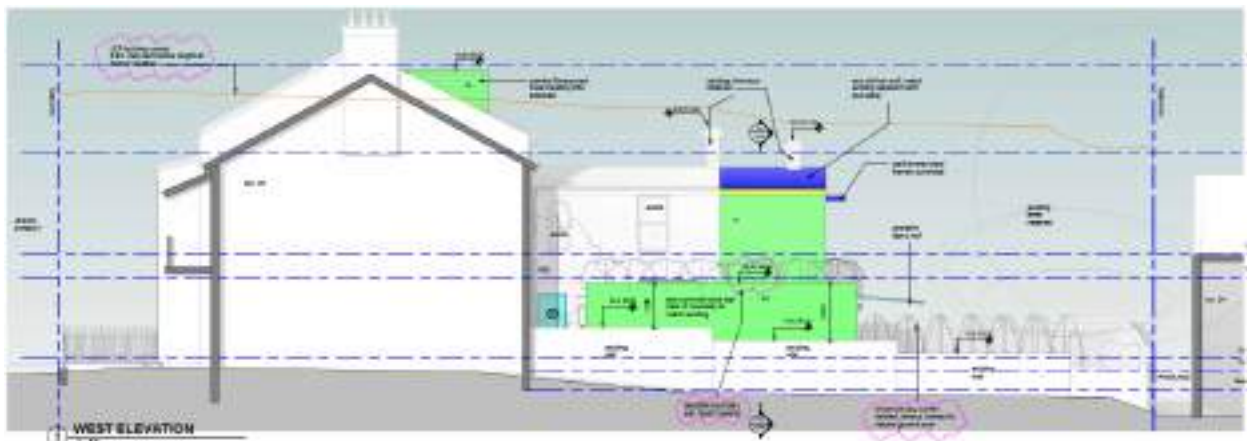


Figure 5: Amended West Elevation

In consultation with the applicant's heritage architect, the applicant determined that the infilling of part of ground floor breezeway is a common design approach for rear ground terrace modifications in conservation zones, as the partial infill of ground breezeway would not be visible from the public domain and therefore would not impact the contributory element of the terrace group.

Referral to NSLPP:

The application is reported to NSLPP for determination because the proposed alterations and additions includes works conducted that breach the building height standard of 8.5m for the site. The proposal includes the addition of a dormer above the building height standard at a variation that exceeds more than 10% of the standard. Further to this, it is noted that new habitable space is created partially above the building height standard.

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R3 Medium Density Residential
- Item of Heritage - No

- In Vicinity of Item of Heritage – Yes (I0501, I0502, I0809)
- Conservation Area – Yes (Union, Bank, Thomas Street Conservation Area)

Environmental Planning & Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

- Chapter 2 – Vegetation in Non-rural Areas
- Chapter 6 – Water Catchments

SEPP (Resilience and Hazards) 2021

- Chapter 4 – Remediation of Land

SEPP (Sustainable Buildings) 2022

Local Development

POLICY CONTROLS

North Sydney Development Control Plan 2013 (NSDCP 2013)

- Appendix 1 (Heritage) – Contributory Item

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The site is identified as Lot 4 DP 437049 and is known as 89 Union Street, McMahon's Point. The site is rectangular in shape and has an area of 181m². The topography of the site slopes from front to rear. The site also has shared rear access to a pedestrian lane off Chuter Street.

The site is occupied by a two storey attached terrace which is one of a group of five two-storey terraces (Nos. 83, 85, 87, 89, 91 Union Street) circa 1880. The building is constructed with slate and corrugated iron verandah roofs. The dwellings present with cast iron lace to their balconies which are supported mid-span by cast iron columns. The front garden is contained by iron picket fences which are largely intact and there are fine three-section windows to the ground floor fittings. The construction is of brick plastered internally and stuccoed externally. The building is designed in the Victorian Filigree style.

The site is located in an area predominantly occupied by low and medium density residential dwellings. Some small scale mixed use and commercial developments are located to the east of the site on Union Street. Across to the opposite side of the street are the grounds of SHORE School.



Figure 4: Aerial Map

RELEVANT HISTORY

Previous applications

On **16 December 2024**, DA389/2024 was returned by North Sydney Council as works proposed are located on the party wall and therefore written landowner's consent is required from 91 Union Street.

No other recent development history is available in Council records.

Current Application

Date	Action
7 January	Application was lodged with North Sydney Council
21 January	A stop the clock letter was issued by North Sydney Council requesting: <ul style="list-style-type: none">• Party wall consent clarification• Building height plane diagrams
22 January	The applicant provided a response to the stop the clock letter
6 March	Site Inspection was undertaken
7 – 21 March	Notification Period
16 April	A RFI letter was issued by North Sydney Council requesting: <ul style="list-style-type: none">• Amendments to the rear ground floor extension on the basis of heritage considerations• Updated landscape plan and detail
7 May	The applicant provided a response to the RFI letter
15 May	A second site inspection was undertaken as a result of the RFI response

INTERNAL REFERRALS

HERITAGE

The application was referred to Council's Heritage Officer who provided the following comments:

The subject dwelling is from the significant period of development relating to the conservation area. Whilst the form and scale first floor addition are complementary to the character of the service-wing element of the terrace, the infilling of much of the lightwell area at the ground floor is over-scaled and will create an uncharacteristic and inappropriate knock-on impact to the group of which the subject terrace is part.

The proposed dormer in the rear roof plane is supported in principle. The western side setback from the party wall is to match the dimensions of the setback on the eastern party wall to improve its fit within the roof plane and with respect to the likely future insertion of similar dormers in the rear roof planes.

The proposal has been assessed in relation to Part 5 Clause 5.10 Heritage Conservation of the North Sydney LEP 2013 and relevant provisions of Section 13 Heritage and Conservation of the North Sydney DCP 2013. As it stands, the proposal does not satisfy:

- *Part B: s13.6.1 General Objectives O1*
- *s13.6.2 Form, massing and scale OO1/ P1/ P2*
- *s13.9 Controls for specific building elements as per Part C: s9.10.7 over-scaled additions*
- *s13.9.2 Dormers O1/ P8/ P9*

As a result of the RFI response package, the application was re-referred to Council's Heritage Officer who attended site on 15 May and reaffirmed their original comments.

Planner's Comments

The conclusion of Council's Heritage Planner is largely concurred with noting that the rear wings for each of the existing grouping of terrace dwellings in this part of Union Street are intact with original breezeways retained at Nos. 83 to 91 (including the subject site). The proposal to extend into the breezeway would erode this legibility of breezeway setbacks and would present issues for the light and ventilation to the breezeway of the immediately adjoining terrace at No. 87 Union Street.

To ensure the legibility of the breezeway is retained, and the design language and character of the terrace dwellings are reinforced it is recommended that the ground floor extension into the breezeway be reduced in favour of a large and more open courtyard space. The following condition is recommended:

Design Amendments

A5. The following design amendments are required to improve the response to heritage context and to address amenity impacts:

- a) The western wall of the existing kitchen in the rear service wing is to be retained;
- b) The north facing side window opening of the service wing is to be retained;
- c) The proposed light court is to be extended to the full extent of the service wing's northern side wall to the point of the proposed living space addition
- d) The proposed kitchen is to be reconfigured and incorporated into the retained service wing and increase breezeway courtyard;

- e) A corner wall nib is to be retained, to a width of 150mm, at the north-western extent of the service wing and will serve to reinforce the original heritage character of the dwelling

Amended plans incorporating the above design amendments must be prepared and submitted with the Construction Certificate. The Certifying Authority must also ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To retain the heritage significance of the dwelling and character of the conservation area.)

The changes required by this conditions reflect site conditions in the following locations



Figure 5: Existing breezeway and courtyard site levels

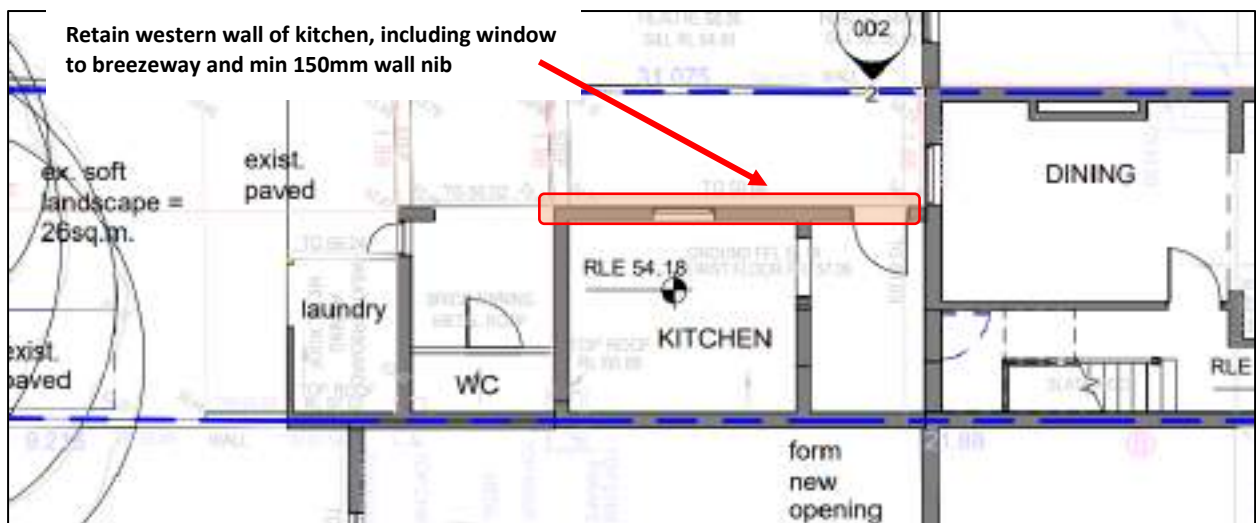


Figure 6: Extract from existing floor plans detailing the extent of the kitchen wall and western window to be retained



Figure 7: Image of existing kitchen (Source: <https://www.realestate.com.au/property/89-union-st-mcmahons-point-nsw-2060/>)

The retention of this space will improve the legibility of the original breezeway which largely retains the pattern of development seen in the group of terraces, as reinforced by Council's Heritage Officer. It will also allow for reasonable contemporary additions at the ground floor level without significantly compromising the heritage character of the contributory item and conservation area. The conditioned amendment will also have the effect of granting greater light and ventilation to the breezeway of the neighbouring property at 87 Union Street when compared to the original proposal, and improving amenity to this space over the original.

ENGINEERING

The application was referred to Council's Engineering Team who provided the following comments:

In reference to the proposed development, the following matters have been considered:

Traffic Management:

No conditions applied.

Stormwater:

To be discharged into the existing stormwater disposal system. Appropriate conditions can be imposed to achieve compliance with requirements.

Parking and Access:

No work is proposed in this regard. No conditions applied.

Sediment and Erosion controls:

Appropriate conditions can be imposed to achieve compliance with requirements.

Excavation and Retaining Walls:

Appropriate conditions can be imposed to achieve compliance with requirements.

Recommendations:

The application has been assessed, and it is recommended that standard conditions be included in the Development Consent.

Planner's Comments:

The comments of Council's Engineering Team are endorsed and reflected in the determination of the application.

LANDSCAPING

The application has been referred to Council's Landscape Team who provided the following comments:

*The landscape plans lack sufficient detail to carry out a full assessment; levels within the rear setback are not clearly shown and require amendment/clarification.
It is noted that the trees within the rear setback of the site are to be retained. An arborist report is required to be prepared which addresses the impact of the proposal on these trees within the rear setbacks of subject site as well as those in neighbouring properties (not required for front setback).*

Planner's Comments:

The comments raised by Council's Landscape Team have been resolved through the RFI response package issued on 6 May 2025. The amended landscape plan now provides an acceptable level of detail as well as a planting schedule. An arborist report has also been prepared and submitted which assesses the existing trees on site and neighbouring properties. All trees have been identified for retention and the proposed works to the building will not impact upon the TPZ or SRZ of any existing trees. Standard conditions are imposed in this regard.

SUBMISSIONS

Original proposal

On 7 March 2025 Council notified adjoining properties and the Euroka Precinct of the proposed development seeking comment between 7 – 21 March. Council received three (3) submissions; however, submissions were only received from two notified properties. The matters raised in the submissions are listed below.

The issues raised in the submissions are summarised below and addressed later in this report. The original submissions may be viewed by way of DA tracking on Council's website:

https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs

Basis of submissions:

- The new dormer will impact upon the views from the neighbouring attic at 91 Union Street.
- The ground floor redevelopment is 1m deeper than the residence at 91 Union Street and is not in alignment with the rear neighbouring terrace. This will block part of the view towards the west of Sydney Harbour and will cast shadow over the winter months.
- This development would extend the back half of the house completely to the boundary with my property (87 Union Street). The impact of noise is one of my concerns as is the reduction of light, which is also limited, especially in winter.
- The construction to the boundary will set a precedent for these terraces.

Amended Proposal

The applicant submitted amended architectural plans that were deemed not necessary to be renotified to adjoining properties, submitters, and the precinct. This is as a result of the minor changes to the amended proposal (600mm reduction in parapet height at the western side boundary) and inclusion of additional information.

CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

Environmental Planning and Assessment Act 1979 (as amended)

SEPP (Biodiversity and Conservation) 2021

- **Chapter 2 – Vegetation in Non-Rural Areas**

The use of the land, relying upon the alterations and additions, did not involve the removal of, or impact to, trees prescribed in Section 16 of Part B of NSDCP 2013 and therefore the requirement to obtain consent, authorised by the Policy, is not required.

- **Chapter 6 Water Catchments**

Having regard to Chapter 6 of the *SEPP (Biodiversity and Conservation) 2021* the proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given the site's inland location. The proposed development would not adversely affect the quantity or quality of water entering Sydney Harbour, being a regulated catchment for the purpose of Section 6.6 of the Policy. The application satisfies the requirements of the Policy.

SEPP (Resilience and Hazards) 2021

- **Chapter 4 Remediation of Land**

Section 4.6 of the SEPP requires the consent authority to consider whether the land is contaminated, and if so whether the land is suitable for the intended use or any remediations measures required. Council's records indicate that the site has historically been used for residential development, having been constructed in c. 1907. Therefore, the site is unlikely to contain any contamination. Furthermore, the proposed works do not require any excavation and would not disturb soils. The subject site is therefore considered suitable for the proposed use given that contamination is unlikely.

SEPP (Sustainable Buildings) 2022

A valid BASIX Certificate A1775700_02 dated 7 May 2025 for the proposed alterations and additions to the existing dwelling has been submitted with the application to satisfy the Aims of the SEPP.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The proposed works can be defined as alterations and additions and are permissible in the zone with development consent.

2. Objectives of the zone

The objectives for the R3 zone are stated below:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.
- To provide for a suitable visual transition between high density residential areas and lower density residential areas.
- To ensure that a high level of residential amenity is achieved and maintained.

The proposal is generally consistent with the objectives for development on land within the R3 zone as demonstrated throughout this assessment report. The proposal will generally improve the viability and vitality of the dwelling to ensure that the site provides for the housing needs of the community.

Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area - 181m²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	9.61m	8.5	NO

3. Height of Building

The following objectives for the permissible height limit (8.5m) pursuant to clause 4.3 in *NSLEP 2013* are stated below:

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

The subject site has a maximum permitted building height of 8.5m pursuant to sub-clause 4.3(2) in *NSLEP 2013*. The existing building has a maximum height of 9.61m. The proposal relies upon works undertaken that exceed the maximum permitted building height, however, are contained within the existing building envelope.

The works proposed include the addition of a rear facing dormer of the southern roof plane of the dwelling. These works are proposed to a maximum height of 9.61m, which is a 1011mm (13%) exceedance of the standard measured to the highest point of the dormer.

To justify the use of the non-complying elements, a written request to vary the development standard made pursuant to Clause 4.6 in *NSLEP 2013* has been submitted and is assessed below.

Clause 4.6(3)(a) Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?

The most common way to demonstrate that compliance with the development standard is unreasonable and unnecessary is to demonstrate that the objectives of the development standard are met notwithstanding the non-compliance. This is identified as test 1 in *Wehbe. Wehbe v. Pittwater Council [2007] NSWLEC 827 ("Wehbe")*.

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

The development proposes alterations and additions to an existing dwelling house and the works will not alter the existing maximum building height or alter the existing natural landform. As described above, the variation to the maximum building height control, results from the proposed dormer windows within the existing roof form, at a maximum height of 9.61 metres which represents a 13% variation and is contained below the existing maximum height ridge of the roof.

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

The subject site and neighbouring properties enjoy obscured and partial views towards Sydney Harbour to the south-west. A submission received from the property at 91 Union Street raised the concern that the proposed dormer would views towards the south-west as observed from their rear facing attic window/skylight. The objector provided no photographs as part of their submission.

A site visit was undertaken on the subject site, and it was determined that no views will be impacted by the development, as works are located within the existing building footprint of the rear plane. Views from the neighbouring site at 91 Union Street are partial, obscured, and viewed across the side boundary from an oblique angle in the attic bedroom.

Any impact to views of the proposed dormer would be very minor, however it is noted that these views would be difficult to protect, as determined under the Tenacity Principles despite the non-compliance in height:

- Protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries
- The impact on views from living areas is more significant than from bedrooms or service areas (attic space is a bedroom as confirmed through approved plans in DA439/02/2)
- Whole views are valued more highly than partial views

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

The DCP requires that solar panels, habitable room windows, and principal private open space of both the subject site and adjoining residential properties, obtain 3 hours solar access between 9am and 3pm on 21 June.

Hourly shadow diagrams between 9am to 3pm during the winter solstice have been provided, which illustrate that the proposal will create only minor increases in shadow impacts to 91 Union Street to the rear private open space, however these new overshadowed areas will fall at the rear most areas of the neighbouring site and along the eastern side boundary. As a result, the proposal will not result in any discernible increase in overshadowing to the neighbouring properties.

It is noted that the dormer addition will generate very minor additional overshadowing to the eastern window of the first floor bedroom window of No. 87 Union Street at 9am. This impact would be highly transitional at midwinter, with no residual impact beyond 9:45am.

A full solar access assessment and shadow diagrams has been provided with this application which is addressed in greater detail below. The shadowing impact considered in the context of the height variation is limited to the dormer window only.

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

Privacy will be retained for neighbours with no direct overlooking into any key living areas.

The Attic Level is visually separated from the neighbouring properties, with the dormer being setback from side boundaries. A number of privacy measures have been incorporated into the design of the dormer including inset windows, high sill height, and adjustable louvres.

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

The alterations and additions proposed, retain the existing residential land use and dwelling density on the site, ensuring there will be no compatibility issues. Setbacks proposed of the dormer are consistent with the dormer controls of the NSDCP 2013, allowing for the appropriate refurbishment of the site. The proposed alterations and additions will not be visible from the streetscape.

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

The appearance of the proposed dormer structure will remain consistent with the existing dwelling and adjoining dwellings. The bulk and scale are an appropriate presentation and is compatible with other dwellings in the locality.

(1)(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.

The development retains a 2 storey (plus attic) presentation. The scale proposed is consistent with surrounding properties, including the adjoining dwellings.

Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation

The written request has provided various environmental planning grounds to justify the variation on page six of the written request which are briefly summarised below.

- *The proposal is permissible within the R3 Low Density Residential Zone and is consistent with the relevant zone objectives*
- *The proposed attic works above the LEP height limit are minor in extent and consistent with Council policy and No. 83 property approved roof dormer*
- *The extent of non-compliance will have no discernible adverse impacts in respect of solar access, visual and acoustic privacy or views, and will not be readily visible from either street frontage*
- *minor portion of the proposed works occur above the height limit, this is a technical breach, and these works will not increase the maximum height of the building*
- *the area of non-compliance is not discernible within the context of surrounding development, is contextually appropriate in the locality and does not result in amenity impacts*

The above environmental planning grounds are considered to be sufficient to justify the variation in the circumstances.

Clause 4.6(4)(a)(i) Applicant's written request

The written request provided by the applicant adequately addresses the matters required by subclause (3) as discussed above.

4. Heritage Conservation

The subject site is listed located in a Conservation Area under Schedule 5 in *NSLEP 2013*, so the following planning objectives apply to the site:

- (a) *to conserve the environmental heritage of North Sydney,*
- (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.*

As noted by Council's Heritage Officer, the subject dwelling is from the significant period of development relating to the conservation area. Subject to design amendments recommended above, the form and scale of the first floor addition would be generally complementary to the character of the service-wing element of the terrace, however, the infilling of much of the lightwell area at the ground floor is over-scaled and will create an uncharacteristic and inappropriate knock-on impact to the group of which the subject terrace is part. The proposed dormer in the rear roof plane is supported.

As detailed previously in this report, the proposal is to be amended by way of condition that ensures the retention of the original breezeway whilst retaining part of the rear addition, in an effort to minimise both heritage and amenity impacts without significantly compromising upon the effective design of the rear addition.

The retention of this space will improve the legibility of the original breezeway which largely retains the pattern of development seen in the group of terraces, as reinforced by Council's Heritage Officer. It will also allow for reasonable contemporary additions at the ground floor level without significantly compromising the heritage character of the contributory item and conservation area.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013


The proposal has been assessment under the following heading within NSDCP 2013:

DEVELOPMENT CONTROL PLAN 2013 - Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.2 Maintaining Residential Accommodation	YES	The proposal would not change the population mix and the level of residential accommodation available within the locality.
1.3 Environmental Criteria		
1.3.1 Topography	YES	The proposal would not alter the existing landform of the subject site.
1.3.6 Views	YES	<p>The proposed alterations and additions would not adversely impact surrounding properties. The alterations and additions, with respect to the rear dormer, are contained within the existing building envelope.</p> <p>Two submissions were received from the property at 91 Union Street which raised concerns that the proposed dormer and ground floor addition would impact upon views towards the southwest as observed from their rear facing windows. The objector provided no photographs as part of their submission.</p> <p>A site visit was undertaken on the subject site, and it was determined that no views will be impacted by the development, as the new dormer is located within the existing building footprint of the rear plane. Views from the neighbouring site at 91 Union Street are partial, obscured, and viewed across the side boundary from an oblique angle in the attic bedroom. Views at the ground floor are fully obscured, whilst first floor views are highly impacted and viewed from oblique angles.</p> <p>Additions to the ground and first floor will not impact upon any potential views received from the neighbouring property at 91 Union Street towards the southwest, as the proposal maintains a rear building line that is consistent with neighbouring dwellings at both 91 and 87 Union Streets. The first floor addition is perfectly aligned with the rear extent of the first floor at 91 Union Street.</p> <p>Any impact to views of the proposed dormer would be very minor, however it is noted that these views would be difficult to protect, as determined under the Tenacity Principles, as discussed previously.</p>
1.3.7 Solar Access Provisions P1 Developments designed and sited such that solar access at the winter solstice (21st June) of a minimum of 3 hours between the hours of 9.00am and 3.00pm to: (a) any solar panels; (b) the windows of main internal living areas; (c) principal private open space areas; and (d) any communal open space areas. located on the subject property and any adjoining residential properties. <i>Note: Main internal living areas excludes bedrooms, studies, laundries, storage areas.</i> Residential Flat Buildings	YES	Shadow context & Analysis A detailed analysis of the shadow diagrams submitted with the application indicates that solar access impacts to adjoining properties will mostly affect adjoining properties during early morning periods from 9am. The existing shadow context has been taken into consideration and the proposal has been assessed against the solar access requirements of the DCP 2013 as follows: <ul style="list-style-type: none"> • Impact at 9am: There are no new shadow impacts created as a result of the proposed alterations and additions. All proposed shadows will fall within already shaded areas. • Impact at midday: Minor additional shadows will be cast by the proposal towards the rear most portions of the rear yard at 91 Union Street, as well as further overshadowing to the roof. • Impact at 3pm: Similarly, minor additional shadows will be cast towards the rear yard of the neighbouring property at 91 Union Street along the southern side boundary of the property, as well as new shadows at their roof.

<p>70% of units receive 2 hours of solar access between 9.00am and 3.00pm (21 June).</p>	<p>An assessment of the shadow impacts of the proposal on the affected dwelling, conducted in accordance with the principles established by the Land and Environment Court in <i>The Benevolent Society v Waverley Council</i> [2010] NSWLEC 1082 is provided below.</p> <p>The shadow assessment in this report has had regard to the submitted shadow diagrams and taken into account the relative elevation of the adjoining property at 91 Union Street.</p> <p>The development will result in additional overshadowing of adjoining residences during midwinter, primarily affecting the adjoining to the south at 91 Union Street.</p> <p>The principles established in <i>The Benevolent Society v Waverley Council</i> [2010] NSWLEC 1082 for the assessment of the adequacy of solar access are summarised as follows:</p> <ul style="list-style-type: none"> • The ease with which sunlight access can be protected is inversely proportional to the density of development. At higher densities sunlight is harder to protect and the claim to retain it is not as strong. • The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained. • 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. • For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area. • For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate. • Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence. • 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. <p>Assessment of shadow impacts</p> <p>The proposal will create only minor increases in shadow impacts to 91 Union Street to the rear most portions of their private open space. The property at 91 Union Street will retain 3 hours of solar access. The existing solar access for 87 Union Street will not be impacted by the proposal.</p>
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		<p>It is noted that the alterations and additions will create additional overshadowing to the rear private open space of the subject site, however, is generally limited to 9am. The rear private open space receives significant overshadowing from the neighbouring property at 91 Union Street as existing.</p> <p>A condition is recommended to require the proposed operable awning over the rear deck area to be limited to the width of the opening provided for Window 1 only. No consent is granted for a permanent awning in this location.</p> <p>Solar access – Conclusion</p> <p>On balance, it is considered that the proposed development will maintain reasonable and acceptable solar access to adjoining dwellings. In particular, the solar access maintained to internal living areas and private open space at the most affected property 91 Union Street is considered to be reasonable, having regard for the highly density urban character of the locality, the orientation of allotments, the fall of land, the size and location of the adjoining private open space, the configuration of existing adjoining buildings and existing shadow profiles.</p> <p>The proposed development would result in a net reduction of solar access at certain times during midwinter; however, it is concluded that the proposed development is a reasonable response to the constraints of the land and achieves the objective outlined in section B1.3.7 O1 of the DCP 2013.</p>
<p>1.3.8 Acoustic Privacy 1.3.10 Visual Privacy</p>	<p>YES (subject to conditions)</p>	<p>Subject to conditions, compatibility can be ensured with respect to acoustic and visual privacy. Due to the nature of the site and neighbouring properties, neighbouring sites at are unavoidably closely located due to the orientation of the subdivision pattern.</p> <p>The proposed location of the living room will not impact any noise-sensitive locations of adjacent dwellings, such as bedrooms.</p>
1.4 Quality built form		
1.4.1 Context	<p>YES (subject to conditions)</p>	<p>The proposed alterations and additions, with the exception to the ground floor addition to the western side boundary, have a neutral / negligible impact on the heritage nature of the site and immediate context.</p>
1.4.3 Streetscape	<p>YES</p>	<p>Standard conditions have been recommended by Council's Engineer and Landscape officers and are reflected in the determination of this report.</p>
1.4.5 Siting	<p>YES (subject to conditions)</p>	<p>The proposed alterations and additions are generally consistent with the siting and built form of the existing dwelling and consistent with the dwellings on the adjoining lots, with the exception of the ground floor infill of the breezeway.</p> <p>Conditions have been imposed to ensure the compatibility of the development.</p>
1.4.6 Setback – Side	<p>YES (subject to conditions)</p>	<p>The dwelling will maintain the existing nil side setbacks to the side boundaries for the primary form of the dwelling, which its adjoined on both sides. As the proposal retains both nil side setbacks of the dwelling, an assessment of the Land and Environment Court Planning Principle — 'Building to the side boundary in residential areas' established in <i>Galea v Marrickville Council [2003] NSWLEC 113</i> is not required.</p>

P1 Front setback P5 Rear Setback	No Change	<p>With respect the breezeway at the rear, the infilling of much of the lightwell area at the ground floor is over-scaled and will create an uncharacteristic and inappropriate knock-on impact to the group of which the subject terrace is part.</p> <p>The proposed infill of the breezeway does not align with the objectives of Section 1.4.6 of the NSDCP 2013 in that proposal fails to reinforce the characteristic pattern of setbacks and building orientation as well as creating substantial additional bulk at the side boundary, which will impact upon the amenity of the neighbouring property at 87 Union Street.</p> <p>Conditions have been imposed to ensure the compatibility of the development and the preservation of amenity for neighbouring properties.</p>
	YES	<p>The proposal will maintain the existing front setback alignment of the dwelling.</p> <p>The dwelling will retain a consistent rear alignment with the neighbouring dwellings.</p>
1.4.7 Form Massing Scale	YES (subject to conditions)	<p>The proposed alterations and additions are generally consistent with the prevailing scale and form of the immediate context with the exception of the ground floor breezeway infill.</p> <p>The infill of this space directly contravenes the prevailing form of the terrace group (Nos. 83, 85, 87, 89, 91 Union Street) of which the subject dwelling forms part of, which maintains a strong and reinforced pattern of development that retains the original breezeways. The retention of this space is deemed necessary as a matter of heritage significance and therefore conditions have been imposed to ensure the compatibility of the development to retain much of the breezeway as existing.</p> <p>Irrespective of this, there is no change to the overall height of the building and only increases to the bulk and scale at the rear of the dwelling, which is generally consistent with the prevailing form and scale of neighbouring properties.</p>
1.4.8 Built Form Character	YES (subject to conditions)	<p>The proposed alterations and additions would not be inconsistent with these provisions, with the exception of the ground floor breezeway infill. Where alterations and additions affected the external character of the building, the design and materiality of the alterations are considered compatible with the relevant character statement, noting the contributory status of the property, and the semi-detached neighbour. The alterations and additions proposed are largely concentrated internally and rear facing and are not readily visible to the streetscape.</p>
1.4.10 Roofs	YES	<p>The primary roof form is to be retained. The rear of the dwelling retains its flat roof which is not visible from the street front.</p>
1.4.11 Dormers	YES	<p>The proposed new rear facing dormer will maintain the existing ridge line of the primary roof and is wholly contained within the building envelope.</p> <p>The dormer is setback 420mm from the ridge, 1.4m from the rear roof edge, and 870mm and 640mm from the party walls with 87 and 91 Union Street respectively. No balcony has been incorporated.</p> <p>The dormer is acceptable with respect to 1.4.11 of the NSDCP 2013.</p>
1.4.12 Materials	YES	<p>The development has been designed to complement the existing site and surrounds.</p>

		Materials proposed are consistent with the existing dwelling, with full details provided in the materials and finishes schedule.																
1.5 Quality Urban Environment																		
1.5.5 Site Coverage 60% Site Coverage	NO (acceptable subject to conditions)	<p>The existing site has a total site area of 181m² and existing site coverage of 98.3m² which represents 55% of the total area.</p> <p>It is proposed to increase site coverage by 27m² to 125.3m² (69%), which is derived from the addition at the rear, including covered terrace, and breezeway infill.</p> <p>The design exceedance of 9% would be unacceptable and an overdevelopment of the site noting the extension into the breezeway would compromise the amenity of the adjoining neighbour at 87 Union Street, as well as creating inconsistency in the pattern of development through the retention of the breezeways.</p> <p>However, As a result of the design changes included in the recommended conditions, the proposal will be capable of maintaining an additional 12.1m² of unbuilt upon area through the retention of part of the breezeway, which would reduce the site coverage to 113.2m².</p> <p>This would represent 62% of the site and 2% exceedance to the design control. The design changes required would also permit the additions to improve the amenity within the subject dwelling whilst allowing a negligible variance to the site coverage standard. Such variation would be acceptable.</p>																
																		
Figure 8: Site Calculation Diagram																		
1.5.6 Landscape Area 20% Landscape Area 20% Unbuilt Upon Area	YES	<table><tr><th>Control</th><th>Existing</th><th>Proposed</th><th>Compliance</th></tr><tr><td>Site coverage</td><td>98.3m² 55%</td><td>113.2m² 62%</td><td>2% exceedance</td></tr><tr><td>Landscaped area</td><td>39.3m² 22%</td><td>47.1m² 26%</td><td>Yes</td></tr><tr><td>Unbuilt-upon area</td><td>43.4m² 23%</td><td>20.7m² 12%</td><td>Yes</td></tr></table> <p>The existing site presents a minor non-compliance with respect to unbuilt upon area. However, as a result of the alterations and additions and conditioned reconfiguration to the breezeway, both landscape and unbuilt upon areas are proposed to be compliant being 26% landscape area and 12% unbuilt upon, as per the table above.</p> <p>The works result in a finer balance of the site that will improve amenity for occupants and improve landscaping outcomes.</p>	Control	Existing	Proposed	Compliance	Site coverage	98.3m ² 55%	113.2m ² 62%	2% exceedance	Landscaped area	39.3m ² 22%	47.1m ² 26%	Yes	Unbuilt-upon area	43.4m ² 23%	20.7m ² 12%	Yes
Control	Existing	Proposed	Compliance															
Site coverage	98.3m ² 55%	113.2m ² 62%	2% exceedance															
Landscaped area	39.3m ² 22%	47.1m ² 26%	Yes															
Unbuilt-upon area	43.4m ² 23%	20.7m ² 12%	Yes															
1.5.7 Landscaping 1.5.8 Front Gardens	YES	<p>The applicant has revised the landscape context of the rear yard which introduces more low level planting within the garden, screen planting along the side boundaries, and supplementary garden areas that complement to new outdoor private open space. The proposal also facilitates the retention of the existing trees within the rear setback. On this basis, the proposed landscaping is acceptable.</p>																

		The front garden setback will be redesigned with updated landscaping and hedging that will improve the appearance of the dwelling in the streetscape.
1.5.9 Private and Communal Open Space	YES	The rear garden will provide sufficient and high quality private open space for use of the occupants.
1.6 Efficient Use of Resources		
1.6.1 Energy Efficiency	YES	A valid BASIX certificate has been submitted as part of this application.

Relevant Planning Area – Waverton/Wollstonecraft – Part C of NSDCP 2013

The subject site is located within the Union, Bank, Thomas Street Conservation Area of the Waverton/Wollstonecraft Planning Area. The proposed development in its current form is generally consistent with the character of the conservation area as the proposed development works to the dwelling are largely located at the rear and will not be readily visible from the streetscape. Subject to the proposed conditioned amendments to the breezeway, the proposed works will contribute to the maintenance of the dwelling as a 'contributory' item. The proposed dormer and attic conversion are considered acceptable, and Council's Heritage Officer has raised conditional support in this regard. The primary façade is to be retained as existing which is consistent with the character of the conservation area.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal is subject to Local Infrastructure Contributions in accordance with the North Sydney Local Infrastructure Contributions Plan (as amended). The required contribution has been calculated in accordance with the applicable contribution rates as follows:

Applicable Contribution Type		
S7.12 contribution detail	Development cost: \$429,750	\$ 4,298

Conditions requiring payment of contributions are included in the attached recommended conditions of consent (See Condition C#).

The proposal maintains the existing configuration of bedrooms as part of this application and thus there is no increase to the density of the site that would trigger a s.7.12 contribution.

HOUSING PRODUCTIVITY CONTRIBUTION

The Ministerial Order for Housing Productivity Contribution came to effect on 1 July 2024. The order applies to land in that includes the Greater Sydney Region in which North Sydney Council is located. The proposal is characterised as alterations and additions and not a new dwelling. The application is not subject to a contribution in accordance with Clause 7 of the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and car parking provision	Yes
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S4.15 considerations of <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	Yes

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Euroka Precinct. Council received three (3) submissions where the following matters were raised:

- ***The new dormer will impact upon the views from the neighbouring attic at 91 Union Street***

Comment

The subject site and neighbouring properties enjoy obscured and partial views towards Sydney Harbour to the south-west. The objector provided no photographs as part of their submission.

It was determined that no views will be impacted by the development, as works are located within the existing building footprint of the rear plane. Views from the neighbouring site at 91 Union Street are partial, obscured, and viewed across the side boundary from an oblique angle in the attic bedroom. Any impact to views of the proposed dormer would be very minor, however it is noted that these views would be difficult to protect, as determined under the Tenacity Principles despite the non-compliance in height.

- ***The ground floor redevelopment is 1m deeper than the residence at 91 Union Street and is not in alignment with the rear neighbouring terrace. This will block part of the view towards the west of Sydney Harbour and will cast shadow over the winter months***

Comment

The proposed rear building line is consistent with the rear building lines of the adjacent properties, noting that the addition is aligned with the rear building line of 87 Union Street. No views will be impacted from the ground level. The neighbouring site at 87 Union Street will also maintain 3 hours solar access on the winter solstice.

- ***This development would extend the back half of the house completely to the boundary with my property (87 Union Street). The impact of noise is one of my concerns as is the reduction of light, which is also limited, especially in winter***

Comment

As a result of the conditional amendments and retention of the original breezeway, the effective bulk of the rear addition at the ground floor is reduced and works to maintain the existing amenity and light received to 87 Union Street.

- ***The construction to the boundary will set a precedent for these terraces***

Comment

As noted above, the retention of the breezeway space will improve the legibility of the original breezeway, which will largely retain the pattern of development seen in the group of terraces whilst allowing for reasonable contemporary additions at the ground floor level.

PUBLIC INTEREST

The proposal would provide improved amenity for the residents without causing any unreasonable impacts on local character, the streetscape, and/or adjoining properties so the proposal would not be contrary to the public interest.

SUITABILITY OF THE SITE

The proposal involves residential development in a residential zone, so the proposal is considered to be suitable for the subject site.

CONCLUSION + REASONS

The development application has been assessed against the relevant planning instruments and policies, in particular the *North Sydney Local Environmental Plan 2013* and the *North Sydney Development Control Plan 2013*, and generally found to be satisfactory.

Given that part of the proposed works will be conducted above the building height standard, being the construction of the rear dormer and attic conversion, there would be no significant additional or unreasonable overshadowing, view loss, privacy loss and/or bulk and scale, and is considered acceptable with regards to the objectives of Clause 4.6.

Council's Heritage Planner has not support the proposal as submitted due to potential loss of existing breezeway and noting that the rear wings for each of the existing grouping of terrace dwellings in this part of Union Street are intact. The proposal to extend into the breezeway would erode this legibility of breezeway setbacks and would present issues for the light and ventilation to the breezeway of the immediately adjoining terrace at No. 87 Union Street.

To ensure the legibility of the breezeway is retained, and the design language and character of the terrace dwellings are reinforced it is recommended that the ground floor extension into the breezeway be reduced in favour of a large and more open courtyard space. A condition is recommended to ensure this.

The proposed works, subject to the conditional amendments detailed in this assessment, are recessive in form and scale and are sympathetic to the existing heritage item within the Union, Bank, Thomas Street Conservation Area, with no significant loss of original internal or external fabric.

The proposed works will provide additional resident amenity through improved comfort and the enhancement of private indoor space without negatively impacting upon the heritage significance of the contributory item, the neighbourhood character of the locality or the amenity of adjoining properties.

The application is considered to be acceptable in the circumstances, and it is recommended for approval subject to standard and site-specific conditions.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Euroka Precinct for 14 days where a number of issues were raised that have been addressed in this report where appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties and the character of the conservation area.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to the non-compliance with Clause 4.3 and grant consent to Development Application No. 397/24 for alterations and additions on land at 89 Union Street subject to the following site specific and standard conditions:

Design Amendments

- A5. The following design amendments are required to improve the response to heritage context and to address amenity impacts:
- a) The western wall of the existing kitchen in the rear service wing is to be retained;
 - b) The north facing side window opening of the service wing is to be retained;
 - c) The proposed light court is to be extended to the full extent of the service wing's northern side wall to the point of the proposed living space addition
 - d) The proposed kitchen is to be reconfigured and incorporated into the retained service wing and increase breezeway courtyard;
 - e) A corner wall nib is to be retained, to a width of 150mm, at the north-western extent of the service wing and will serve to reinforce the original heritage character of the dwelling

Amended plans incorporating the above design amendments must be prepared and submitted with the Construction Certificate. The Certifying Authority must also ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To retain the heritage significance of the dwelling, to preserve residential amenity and character of the conservation area.)

Operable Awning

- A6. The proposed operable awning over the rear deck area to be limited to the width of the opening provided for Window 1 only. No consent is granted for a permanent awning in this location.

Amended plans incorporating the above design amendments must be prepared and submitted with the Construction Certificate. The Certifying Authority must also ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To minimise associated impacts of additional bulk and overshadowing to preserve residential amenity.)

JACK VARKA
ASSESSMENT OFFICER

DAVID HOY
TEAM LEADER

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
89 UNION STREET, MCMAHONS POINT
DEVELOPMENT APPLICATION NO. 397/24

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings endorsed with Council's approval stamp and other documentation listed in the tables to this condition, or cited by other conditions, and as amended by other conditions of this consent.

Plan No.	Rev	Description	Prepared by	Dated
A102	F	Ground Floor Plan	Architects Ink	24/04/25
A103	F	Upper Floor Plan	Architects Ink	24/04/25
A104	F	Attic Floor Plan	Architects Ink	24/04/25
A105	F	Site and Roof Plan	Architects Ink	24/04/25
A106	F	West and South Elevations	Architects Ink	24/04/25
A107	F	East and North Elevations	Architects Ink	24/04/25
A108	F	Sections S1 and S3	Architects Ink	24/04/25
A109	F	Section S2	Architects Ink	24/04/25
Sheet 1	D	Landscape Plan	Architects Ink	07/05/25
-	-	Schedule of Colours, Materials, Finishes	Architects Ink	-

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Plans on Site

- A2. A copy of all plans endorsed with Council's approval stamp, specifications and documents (including the plans, specifications and documents submitted and approved with all Construction Certificates) must be always kept on site and be readily available for perusal by an officer of Council or the Principal Certifier.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the Principal Certifier upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

**89 UNION STREET, MCMAHONS POINT
DEVELOPMENT APPLICATION NO. 397/24**

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No Demolition of Extra Fabric

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

External Finishes and Materials

- A4. External finishes and materials must be in accordance with the submitted schedule prepared by Architects Ink, unless otherwise modified by Council in writing. Substitution of materials must not be undertaken, except where otherwise approved in writing by Council.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Design Amendments

- A5. The following design amendments are required to improve the response to heritage context and to address amenity impacts:

- a) The western wall of the existing kitchen in the rear service wing is to be retained;
- b) The north facing side window opening of the service wing is to be retained;
- c) The proposed light court is to be extended to the full extent of the service wing's northern side wall to the point of the proposed living space addition
- d) The proposed kitchen is to be reconfigured and incorporated into the retained service wing and increase breezeway courtyard;
- e) A corner wall nib is to be retained, to a width of 150mm, at the north-western extent of the service wing and will serve to reinforce the original heritage character of the dwelling

Amended plans incorporating the above design amendments must be prepared and submitted with the Construction Certificate. The Certifying Authority must also ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To retain the heritage significance of the dwelling, to preserve residential amenity and character of the conservation area.)

Operable Awning

- A6. The proposed operable awning over the rear deck area to be limited to the width of the opening provided for Window 1 only. No consent is granted for a permanent awning in this location.

**89 UNION STREET, MCMAHONS POINT
DEVELOPMENT APPLICATION NO. 397/24**

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Amended plans incorporating the above design amendments must be prepared and submitted with the Construction Certificate. The Certifying Authority must also ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To minimise associated impacts of additional bulk and overshadowing to preserve residential amenity.)

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)***Dilapidation Report Damage to Public Infrastructure**

- C1. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the predeveloped condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any infrastructure damaged before development commences, so Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

The Applicant may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The Applicant shall be responsible for the cost of repairing any public infrastructure damaged during the course of the development. No occupancy of the development shall be permitted until all such damage has been rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Principal Certifier with submission of the relevant Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C2. A photographic survey and dilapidation report of adjoining property No. 91 Union Street, McMahon's Point detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, MUST BE submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of the relevant Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

**89 UNION STREET, MCMAHONS POINT
DEVELOPMENT APPLICATION NO. 397/24**

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Should access for undertaking the photographic survey and dilapidation report be denied by an adjoining owner, the Applicant must demonstrate, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record-keeping purposes only and may be used by an Applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the Applicant's and adjoining owner's interest for it to be as full and detailed as possible

(Reason: Proper management of records)

Structural Adequacy (Semi-detached and Terrace Buildings)

- C3. A report from an appropriately qualified and practising structural engineer, certifying the structural adequacy of the adjoining property No. 91 Union Street, McMahon's Point which certifies its ability to withstand the proposed works and outlines any measures required to be implemented to ensure that no damage will occur to adjoining premises during the works, must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The measures outlined in the certified report must be complied with at all times.

Under no circumstances shall the party or common wall be extended or altered without the prior written consent of the adjoining owner. Any such extension of the party wall shall be noted on title by way of appropriate easement or section 88B instrument.

(Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognised)

Structural Adequacy of Existing Building

- C4. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Principal Certifier for approval prior to issue of the relevant Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

Work Zone

- C5. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of any Construction Certificate.

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Note: For major development, an application for work zone permit must be considered by the North Sydney Local Traffic Committee.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Works Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Work Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Principal Certifier to enable issue of the relevant Construction Certificate.

Where approval of the Work Zone is given by the Committee, the requirements of the Committee, including installation of the necessary "Work Zone" signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the Applicant is required to remove the Work Zone signs and reinstate any previous signs, all at the Applicant's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

Maintain Property Boundary Alignment Levels

- C6. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure interface between property and public land remains uniform)

Stormwater Disposal

- C7. Stormwater runoff generated by the approved development must be conveyed by gravity to the existing site stormwater drainage disposal system. A licensed tradesman shall install plumbing components to achieve this requirement in accordance with the NCC and current plumbing standards and guidelines. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure appropriate provision for disposal and stormwater management arising from the development)

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Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

C8. Prior to the issue of the relevant Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$6,000 to be held by Council for the payment of the cost for the following relevant matters:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent,
- c) remedying any defects in any such public work that arise within 6 months after the work is completed, and
- d) Council reserves the right to retain all bonds on infrastructure works relating to the completion of required Infrastructure work for a 12-month defect liability period. Council may elect to provide a lesser period for minor residential work.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of six months from the issue of the relevant Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Development Engineers or Manager of Development Services.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the Applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Principal Certifier must ensure that security is provided to North Sydney Council prior to issue of the relevant Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

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Tree Protection

- C9. To ensure the protection of all trees to be retained, the following measures are to be undertaken:
- a) All documentation for the development authorised by this consent must show the site trees to be retained, and retention of the adjoining trees, with their positions and diameters of trunks and crowns (canopies) to be clearly and accurately shown in relation to all levels of the approved development.
 - b) All plans and correspondence must refer to the required compliance with the approved Tree Protection and Management Plan, and clearly show the assigned number of each tree on-site, adjoining and Council land.
 - c) A Consulting Arboriculturist ("the project arboriculturist"), who holds a minimum Australian Qualification Framework Level 5 in Arboriculture and is a registered consulting member of a nationally recognised arboricultural organisation or association, and who does not remove or prune trees in the North Sydney local government area, shall be engaged before work commences and for the duration of all works authorised by this consent.
 - d) The project arboriculturist shall inspect, monitor, supervise, provide recommendations and written reports and certification relating to protection of the trees and compliance with the conditions of consent.
 - e) The contact details of the project arboriculturist shall be advised to Council before work commences and maintained up to date for the duration of works. If a new project arborist is appointed, details of the new project arborist shall be notified to council within seven days.

(Reason: Tree protection measures)

Asbestos and Hazardous Material Survey

- C10. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a SafeWork NSW licensed contractor;

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- b) all removal must be in strict accordance with the requirements of the SafeWork NSW in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Principal Certifier as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

Local Infrastructure Contributions

- C11. A monetary contribution pursuant to the provisions of section 7.11/7.12 (delete as appropriate) of *the Environmental Planning and Assessment Act 1979* is to be paid to Council, in accordance with the North Sydney Council's Local Infrastructure Contributions Plan, to provide for local infrastructure improvements.

Based on the net increase in the cost of development at the date of determination, the total contribution payable to Council is \$4,298.

Indexation

The monetary contribution required under this consent will be indexed between the date of the grant of the consent and the date on which the contribution is paid the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Timing of Payment

The contribution must be paid to Council prior to issue of the relevant Construction Certificate for any work approved by this consent.

A copy of *the North Sydney Local Infrastructure Contribution Plan 2020* can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, NORTH SYDNEY, or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To provide for local infrastructure identified in the *North Sydney Council Local Infrastructure Contributions Plan 2020*)

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Security Deposit/Guarantee Schedule

- C12. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of the relevant Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Footpath Damage and Infrastructure Damage Bond	\$6,000
TOTAL BONDS	\$6,000

Note: The following fees applicable

Fees	
Local Infrastructure Contributions	\$4,298
TOTAL FEES	\$4,298

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

BASIX Certificate

- C13. Under section 75 of the *Environmental Planning and Assessment Regulation 2021*, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A1775700_02 dated 7 May 2025 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

D. Prior to the Commencement of any Works (and continuing where indicated)
Protection of Trees

- D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation, and construction on the site, in accordance with AS4970-2009 (Protection of trees on development sites).

The tree protection measures detailed in the approved Tree Protection and Management Plan, and as directed by the project arboriculturist must be established before work commences and be maintained at all times during construction activity.

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Sensitive construction techniques including hand excavation, pier and beam construction, and flexible location of piers/footings shall be used within the TPZ of any protected tree. No roots greater than 40mm shall be cut. No stormwater or any underground services shall be directed through the TPZ of any protected tree.

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

Tree Protection

- D2. The tree protection measures detailed in the approved Tree Protection Management Plan, and as directed by the project arborist, shall be established before work commences.

(Reason: To ensure that the stability and ongoing viability of trees being retained are not compromised; tree protection)

Asbestos Material Survey

- D3. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination, and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a SafeWork NSW licensed contractor;
- b) all removal must be in strict accordance with the requirements of the SafeWork NSW in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Principal Certifier as proof of correct disposal of asbestos-laden waste.

The report must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

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Commencement of Works' Notice

- D4. Works in accordance with this development consent must not be commenced until the Applicant has given at least two days' notice to North Sydney Council of the person's intention to commence works in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

E. During Demolition and Building Work**Parking Restrictions**

- E1. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions, or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Applicant will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

Road Reserve Safety

- E2. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public accessways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out when and as directed by Council officers (at full Applicant cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads." **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

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Temporary Disposal of Stormwater Runoff

- E3. During construction, stormwater runoff must be disposed of in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Principal Certifier.

(Reason: Stormwater control during construction)

Council Inspection of Public Infrastructure Works

- E4. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points:

a) Formwork for layback, kerb/gutter, footpaths.

All works must proceed in accordance with *the Roads Act 1993* approvals or other permits relating to roads issued by Council. A minimum of 48 hours' notice must be given to Council to book an inspection. Work must not proceed until the works or activity covered by the inspection is approved.

(Reason: To ensure quality of construction joints and connections in the drainage system)

Removal of Extra Fabric

- E5. Should any portion of the existing building, trees, or curtilage of the site, which is indicated on the approved plans to be retained, be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

No Work on Public Open Space

- E6. No work can be undertaken within adjoining public lands (i.e., parks, reserves, roads, etc.) without the prior written consent of Council. In this regard the Applicant is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land, and to ensure public safety and proper management of public land)

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Applicant's Cost of Work on Council Property

- E7. The Applicant or the person, company or other entity that is acting upon this consent, must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

Protection of Trees

- E8. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the arborist's report prepared by Arbor Logix dated 6 May 2025 must be implemented for the duration of the works and as amended by other conditions of this consent.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- 1) If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- 2) An application to modify this consent pursuant to section 4.55 of *the Environmental Planning and Assessment Act 1979* will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

Special Permits

- E9. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The Applicant, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

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1) On-street mobile plant

For example, cranes, concrete pumps, cherry-pickers, etc., - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the Applicant's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) Hoardings

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) Storage of building materials and building waste containers (skips) on Council's property

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

4) Kerbside restrictions, construction zones

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made, and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

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Construction Hours (All Other Zones)

- E10. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

Standard Construction Hours	
Day	Hours
Monday - Friday	7.00am - 5.00pm
Saturday	8.00am - 1.00pm
Sunday Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above, *the EPA Noise Policy for Industry 2017* and any Construction Noise Management Plan required under this consent. In the event of breach to the approved hours of construction, Council take may take enforcement action under Part 9 of *the Environmental Planning and Assessment Act 1979* and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Out-of-hours' Work Permits

- E11. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued, the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is not at risk**. Applications which seek a variation to construction hours solely to benefit the Applicant will require the lodgement and favourable determination of a modification application pursuant to the provisions of section 4.55 of *the Environmental Planning and Assessment Act 1979*.

Note:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on-the-spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out-of-hours' work cease, without prior warning.
- 2) Applications for out-of-hours' works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
 - the erection of awnings,
 - footpath, road, and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
 - the erection and removal of hoardings and site cranes, and
 - craneage of materials which cannot be done for public convenience reasons within normal working hours.

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- 4) Examples of activities for which permits WILL NOT be granted include:
- extended concrete pours
 - works which are solely to convenience the Applicant or client, and
 - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at www.northsydney.nsw.gov.au.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Installation and Maintenance of Erosion and Sediment Controls

- E12. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and Erosion Control Plan submitted and approved with the relevant Construction Certificate.

Erosion and sediment measures must be maintained in accordance with the publication *Managing Urban Stormwater: Soils and Construction 4th ed. Landcom, 2004*. commonly referred to as the “Blue Book” and can only be removed when development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Sediment and Erosion Control Signage

- E13. Most development consents require a durable sign to be displayed in a prominent location on construction sites during building works which displays information and warning of penalties should appropriate erosion and sedimentation control measures not be maintained.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Prohibition on Use of Pavements

- E14. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

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Plant and Equipment Kept Within Site

- E15. All plant and equipment used in the undertaking of the development/works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc., must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

Asbestos Removal

- E16. All demolition works involving the removal and disposal of asbestos must only be undertaken by contractors who hold a current SafeWork NSW Asbestos or "Demolition Licence," and a current SafeWork NSW "Class 2 (Restricted) Asbestos Licence" (or equivalent). Removal must be carried out in accordance with National Occupational Health and Safety Commission requirements.

(Reason: To ensure works are carried out in accordance with relevant SafeWork NSW requirements)

Service Adjustments

- E17. The adjustment or inclusion of any new utility service or facilities must be carried out by an appropriately qualified contractor in accordance with the requirements of the relevant utility authority.

These works shall be at no cost to Council. It is the Applicant's responsibility to contact the relevant utility authorities to ascertain the impacts of the proposal upon utility services prior to the commencement of any work, including demolition (including water, phone, gas and the like).

Council accepts no responsibility for any impact on, or influence upon, utility services provided by another authority.

(Reason: To ensure the service requirements are met)

F. *Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation*

National Construction Code

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

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Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in *the Home Building Act 1989*) for which *the Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifier for the development to which the work relates, has given North Sydney Council written notice of the contract of insurance being issued, and of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
 - b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this condition is out of date, work must cease, and no further work may be carried out unless the Principal Certifier for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of *the Home Building Act 1989* that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this condition, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifier

- F3. Building or excavation works in accordance with the development consent must not be commenced until the Applicant has appointed a Principal Certifier for the building work in accordance with the provisions of *the Environmental Planning and Assessment Act 1979* and its Regulation.

(Reason: Statutory, to ensure appropriate safeguarding measures are in place prior to the commencement of any building or excavation works)

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Construction Certificate

- F4. Building or excavation works in accordance with the development consent must not be commenced until the Construction Certificate for the relevant part of the work has been issued.

Note: For clarity, this condition does not apply to demolition of whole buildings and works. A Construction Certificate is not required for these works. Demolition is controlled by AS 2601-2001 - Demolition of Structures. This Australian Standard requires safeguards to be in place before demolition commences, including traffic control and management, which may form part of the Construction Traffic Management Plan. Vegetation may also be removed or cleared unless the development consent requires that specified vegetation must not be removed.

(Reason: Statutory, to ensure appropriate safeguards are in place prior to the commencement of any works)

Occupation Certificates

- F5. A person must not commence occupation or use of the whole or any part of a new building (new building includes an altered portion of, or an extension to, an existing building) unless the relevant Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifier appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory compliance)

Critical Stage Inspections

- F6. Building work must be inspected by the Principal Certifier at the critical stages prescribed by *the Environmental Planning and Assessment Act 1979* and *the Environmental Planning and Assessment Regulation 2021*, and as directed by the appointed Principal Certifier.

(Reason: Statutory)

Commencement of Works

- F7. Works in accordance with this development consent must not be commenced until the Applicant has given at least two days' notice to North Sydney Council of the intention to commence those works.

(Reason: Statutory, to ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

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Excavation/Demolition

F8. Excavation and demolition shall be carried out as follows:

- a) All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- b) All excavation associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- c) Demolition work must be undertaken in accordance with the provisions of AS2601 - Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

Protection of Public Places

- F9.
- 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
 - 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
 - 3) The work site must be kept lit between sunset and sunrise, if it is likely to be hazardous to persons in the public place.
 - 4) Any such hoarding, fence or awning, is to be removed when the work has been completed.
 - 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property, owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance, or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

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Site Sign

- F10. 1) A sign must be erected in a prominent position on the site:
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifier for the work.
- 2) Any such sign must be maintained while building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. *Prior to the Issue of an Occupation Certificate*

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of the relevant Occupation Certificate, any and all works relating to the development:
- a) in the road reserve must be fully completed; and
 - b) to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council. Council's development engineer must be contacted to arrange inspections of the completed works in the Public Domain.

(Reason: Maintain quality of Public assets)

Damage to Adjoining Properties

- G2. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

**89 UNION STREET, MCMAHONS POINT
DEVELOPMENT APPLICATION NO. 397/24**

Page 22 of 22

Utility Services

- G3. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of the relevant Occupation Certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

Asbestos Clearance Certificate

- G4. For building works where asbestos-based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Principal Certifier (and a copy forwarded to Council if it is not the Principal Certifier) for the building work prior to the issue of the relevant Occupation Certificate. The asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos; or
- b) the building/land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from www.epa.nsw.gov.au.

(Reason: To ensure that building works involving asbestos-based products are safe for occupation and will pose no health risks to occupants)

BASIX Completion Certificate

- G5. In accordance with section 45 *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, prior to issuing the relevant Occupation Certificate the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

I. Ongoing/Operational Conditions**Single Occupancy**

- I1. Nothing in this consent authorises the use of the premises other than for a single occupancy.

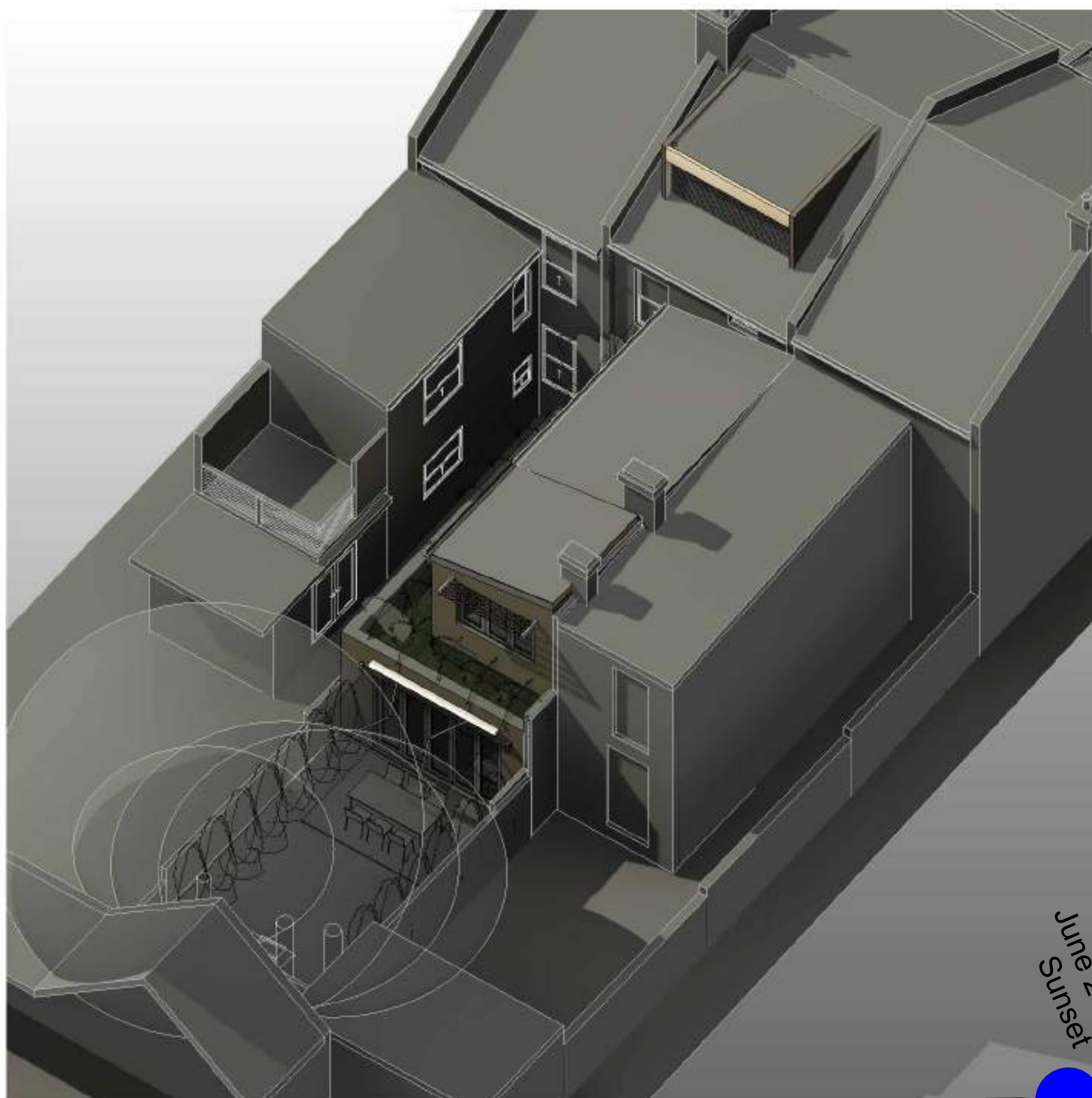
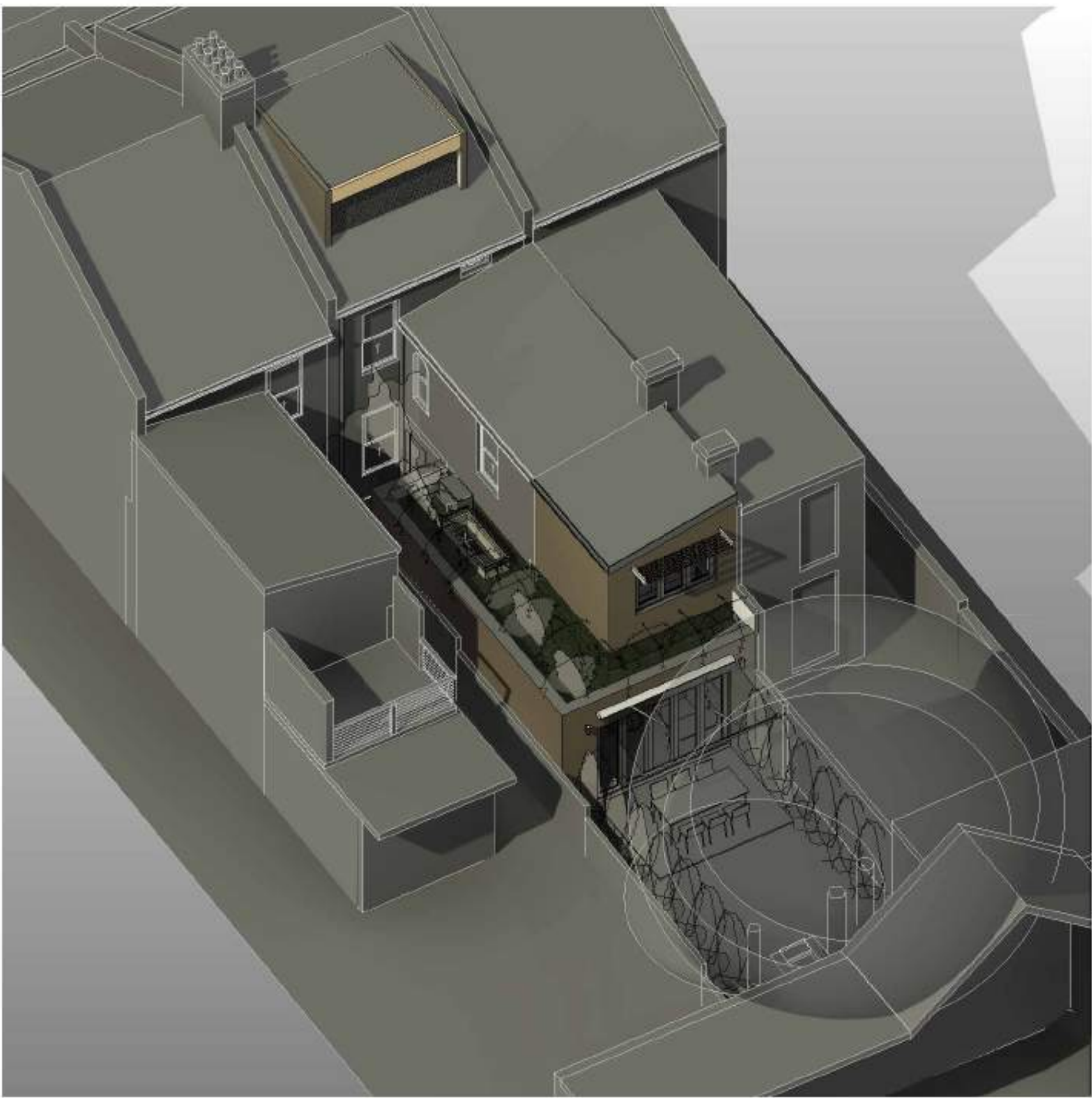
(Reason: To ensure compliance with the terms of this consent)



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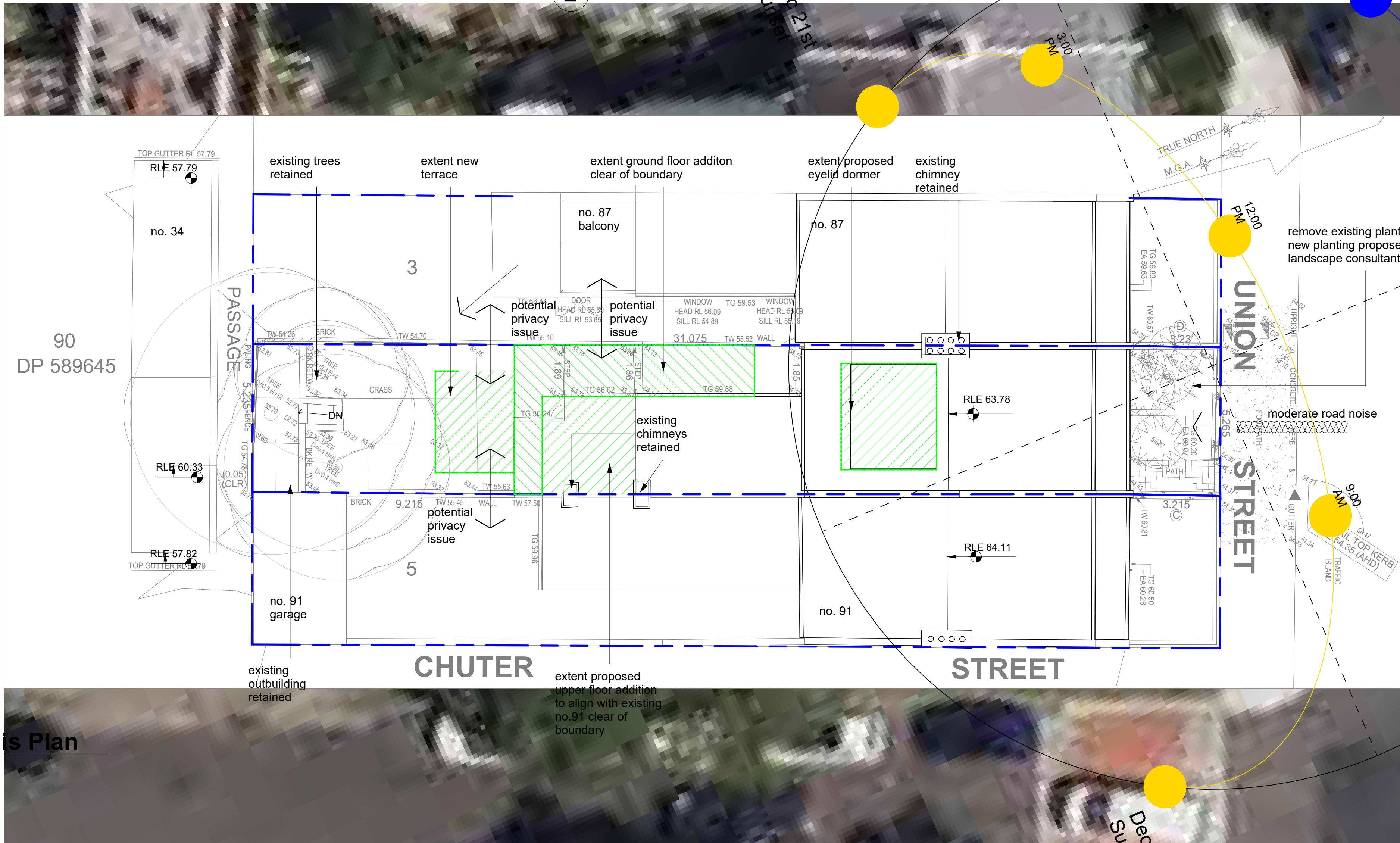
Scale: 1:600 approx.





1 View-1

2 View-2



4 Site Analysis Plan
1 : 100

F	Respond Council RFI	24/04/25	PD
E	LEP 8.5 height control added	22/01/25	PD
D	DA resubmission	16/12/24	PD
C	DA submission	4/12/24	PD
B	Revision B	30/09/24	PD
A	Measured Survey	2/09/24	PT

Letter	Revisions/Issue	Date	By
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DO NOT SCALE OFF DRAWINGS
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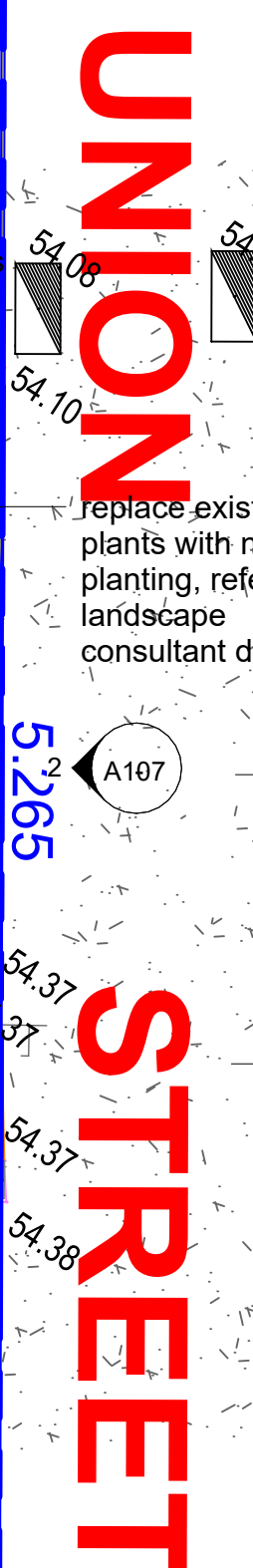
Project
Laurence Laveau and
Harry Sargent

Address
89 Union Street McMahon's
Point
LOT 4, DP437049

Drawing
SITE ANALYSIS and
PERSEPECTIVE VIEWS

Drawn	Author	Sheet size
Scales	1 : 100	
Date	2/09/24	
Project Number	2410	Issue
	A101	F

24/04/25



F	Respond Council RFI	24/04/25	PD
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Henry Sargent

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Drawing

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Scales	As indicated	
Date	2/09/24	
Project Number		Issue
2410		F
A102		

1 GROUND FLOOR PLAN

CHUTER

STREET

WALL TYPES KEY:		DRAINAGE KEY:		GENERAL KEY:		AREA CALCULATIONS:	
existing wall		downpipe location	dp	existing relative level	+RLE00.00	site area	181 sq.m.
wall to demolish		downpipe and spreader location	dps	proposed structural relative level	+RL00.00	proposed site coverage	115.1 sq.m. (63.5%)
new brick wall		overflow as specified	of	proposed finished relative level	+RLfin21.55	proposed landscape area	43.4 sq.m. (24%)
new H2 grade ex90x45 timber framed wall and insulation as specified		rainhead and downpipe location	rh	smoke detector hard wired in accordance with AS 3786 and B.C.A. 3.7.2		proposed unbuilt upon area	22.6 sq.m. (12.4%)
as above except ex150x45 timber framed wall and insulation as specified		sump fitted with heel guard grate as specified	sump	air-conditioning condensor nominal location		proposed Private Open Space	44 sq.m.
fire rated wall FRL 60-60-60		grated spoon drain, refer stormwater eng. details		letter box location	lb	permissible site coverage	60% maximum
200 AFS wall		nominal floor waste location	fw	steel post location	sp	permissible landscape area	20% minimum
200 AFS "rediwall" retaining wall		nominal sewer stack location, acoustic wrap aerial drainage and sewer stack as specified	swr			permissible unbuilt upon area	20% maximum
150 AFS wall							
120 AFS wall							
150 AFS wall and thermal insulated plasterbd. as specified							
200 AFS partywall to achieve FRL 60/60/60 and Rw+Ctr 50 in accordance BCA 3.7.1.8 and 3.8.6.2							
as above except discontinuous construction in accordance BCA 3.8.6.1, minimum 20mm cavity and 70mm framed wall							
100mm "hebel" aerated concrete wall							
250 brick veneer wall							

BASIX COMMITMENTS - A177500_02 : 89 UNION STREET McMAHONS POINT 2060

Hot water system to be gas instantaneous min. 5 star rated.

New or altered light fixtures to be minimum 40% fitted with fluorescent, compact fluorescent or LED lamps.

Showersheds, and taps to be min. 3 star water rating, have a flow rate no greater than 9 Litres/minute
Toilet cisterns to be min. 3 star water rating, have a flow rate no greater than 4 Litres/average flush

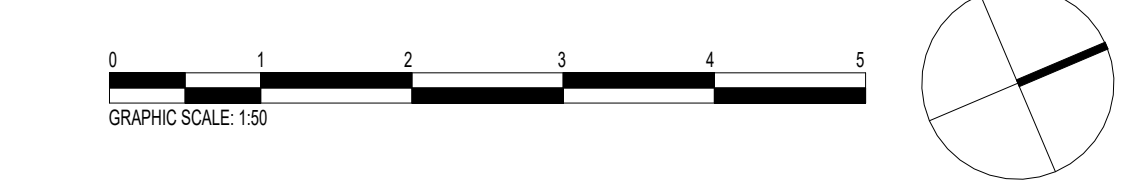
External framed walls are to have min. R1.30 insulation added, (or R1.70 including construction)
Foil lined, framed, skillion roof - dark solar absorbance 0.70 with foil / sarking plus roof insulation plus minimum R2.5 ceiling insulation added.
Raked ceiling, framed, skillion roof - dark solar absorbance 0.70 with 55mm foil backed blanket plus roof insulation plus minimum R1.74 ceiling insulation added.
Flat ceiling, concrete/plasterboard internal flat roof - dark solar absorbance 0.70 with 50mm foil backed polystyrene board roof insulation plus minimum R0.43 ceiling insulation added.

All external glazed windows and doors are to be timber, uPVC, single pyrolytic low-E or better with maximum U-value 3.67 and maximum SHGC value 0.59 or better

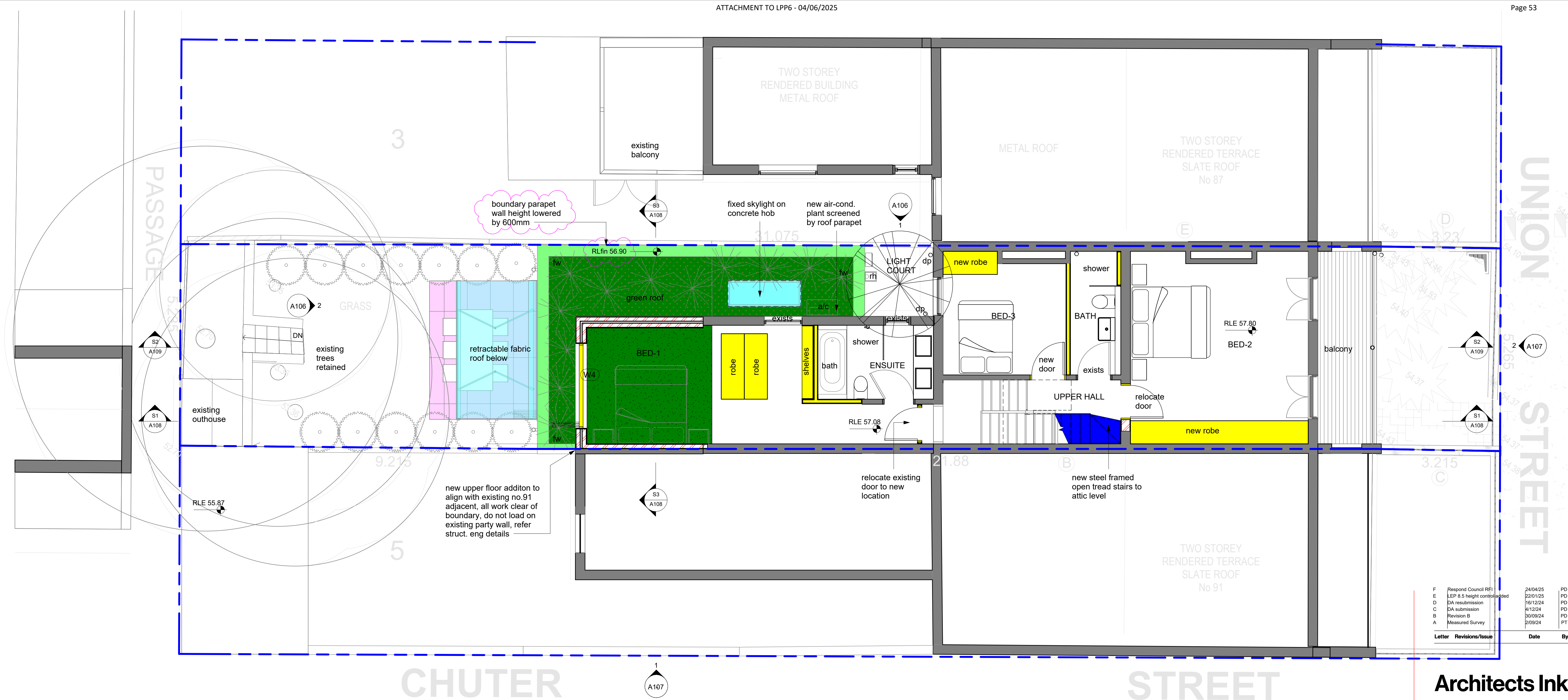
For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500mm above the head of the window or glazed door and no more than 2400mm above the sill.

Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50mm.

Skylights to be timber, low-E internal argon filled, clear external with maximum U-value 4.3 and maximum SHGC value 0.5 or better



24/04/25



1 UPPER FLOOR PLAN
1 : 50

BASIX COMMITMENTS - A1775700_02 : 89 UNION STREET McMAHONS POINT 2060

Hot water system to be gas instantaneous min. 5 star rated.

New or altered light fixtures to be minimum 40% fitted with fluorescent, compact fluorescent or LED lamps.

Showerheads, and taps to be min. 3 star water rating, have a flow rate no greater than 9 Litres/minute

Toilet cisterns to be min. 3 star water rating, have a flow rate no greater than 4 Litres/average flush

External framed walls are to have min. R1.30 insulation added.(or R1.70 including construction)
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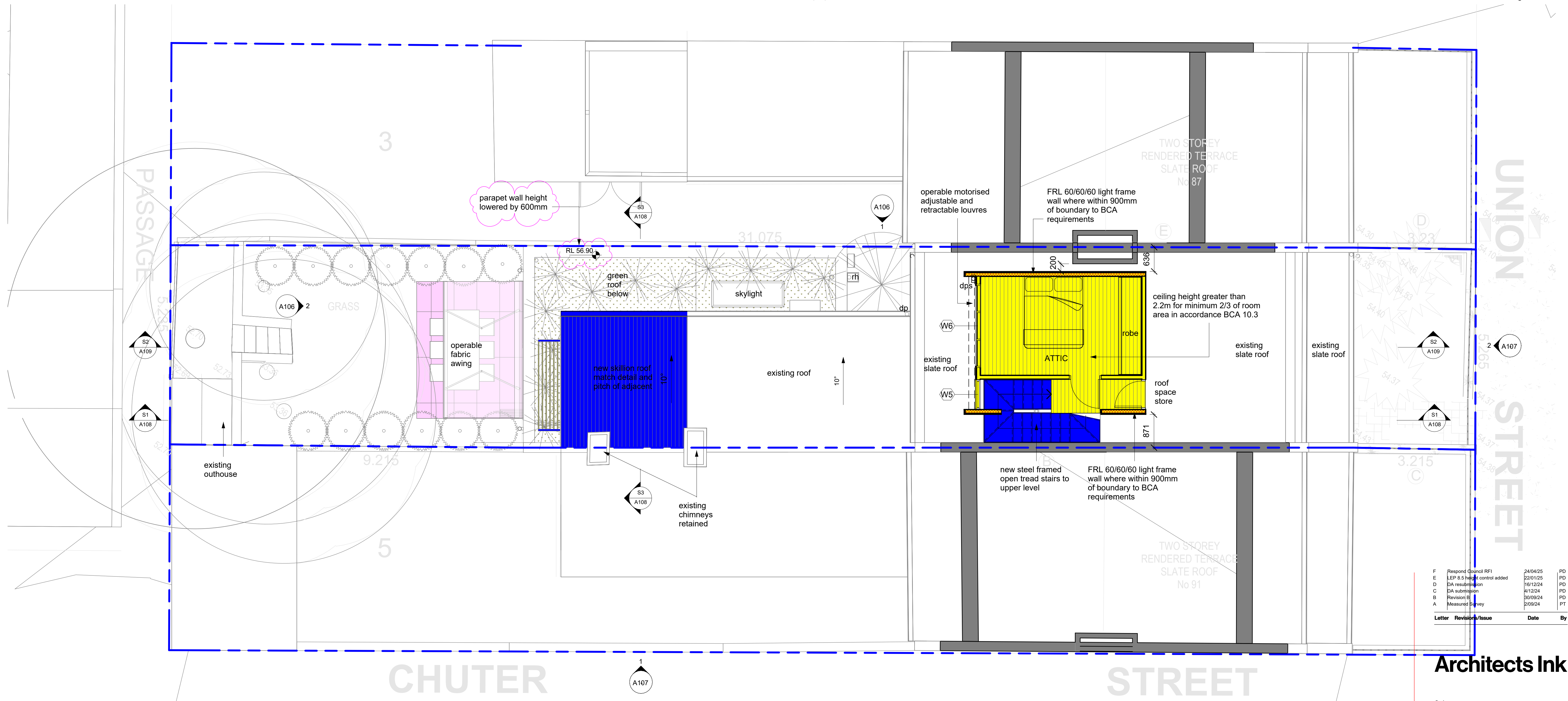
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Project
Laurence Laveau and
Harry Sargent

Address
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Drawing
UPPER FLOOR PLAN

Drawn	Author	Sheet size
Scales	As indicated	
Date	2/09/24	
Project Number		Issue
2410		F
A103		



1 ATTIC FLOOR PLAN
1 : 50

BASIX COMMITMENTS - A1775700_02 : 89 UNION STREET McMAHONS POINT 2060

Hot water system to be gas instantaneous min. 5 star rated.

New or altered light fixtures to be minimum 40% fitted with fluorescent, compact fluorescent or LED lamps.

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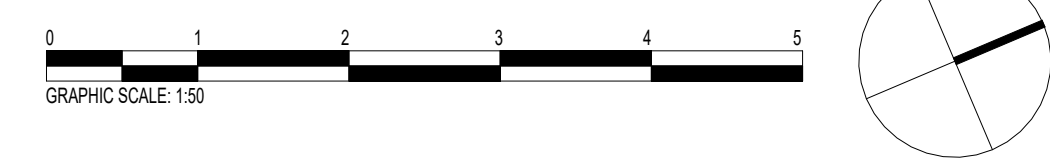
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Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50mm.

Skylights to be timber, low-E internal argon filled, clear external with maximum U-value 4.3 and maximum SHGC value 0.5 or better



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E	LEP 8.5 height control added	22/01/25	PD
D	DA resubmission	16/12/24	PD
C	DA submission	4/12/24	PD
B	Revision B	30/09/24	PD
A	Measured Survey	20/09/24	PT

Letter	Revisions/Issue	Date	By
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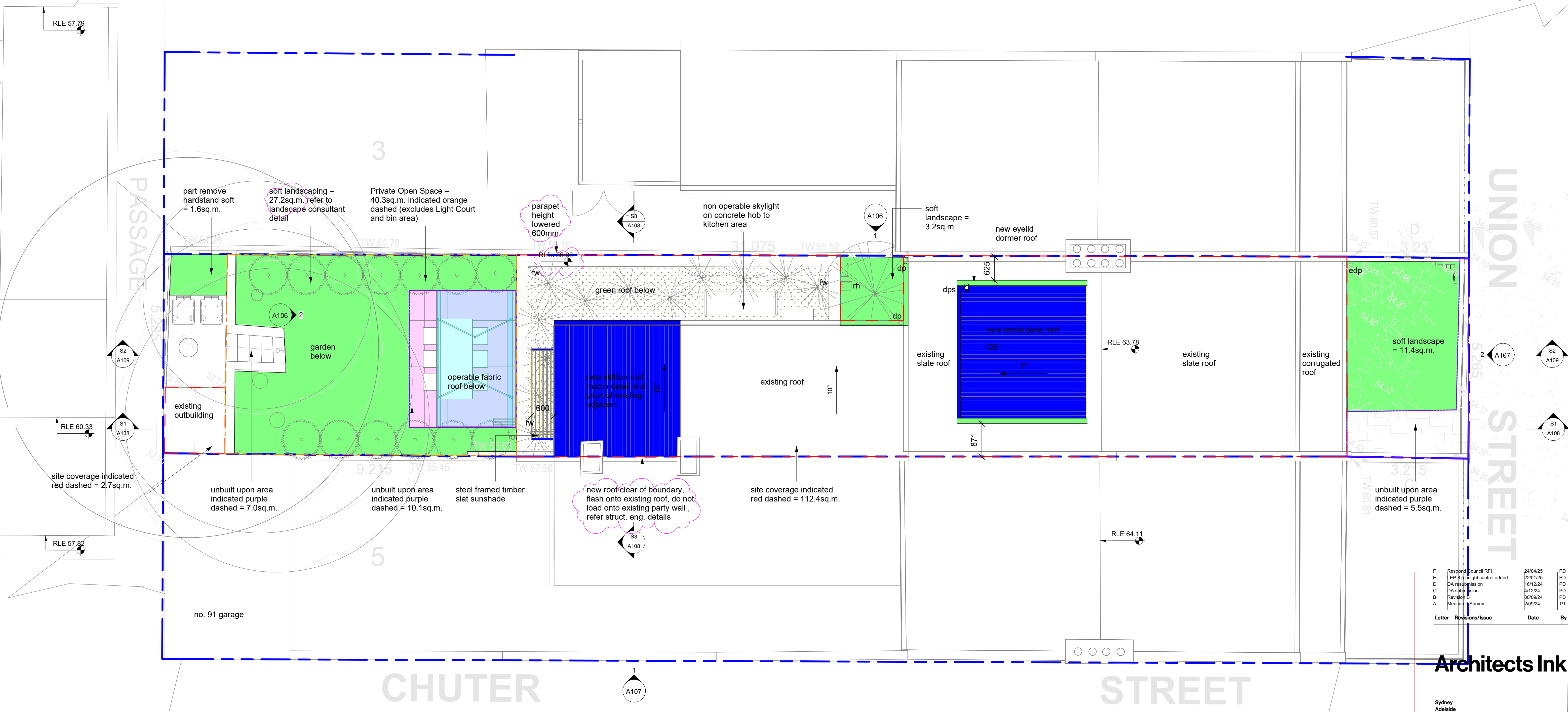
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Drawing
ATTIC FLOOR PLAN

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Scales	As indicated	
Date	2/09/24	
Project Number		Issue
2410		F
A104		

24/04/25



1 SITE AND ROOF PLAN
1 : 50

AREA CALCULATIONS:	
site area	181 sq.m.
proposed site coverage	115.1 sq.m. (63.5%)
proposed landscape area	43.4 sq.m. (24%)
proposed unbuilt upon area	22.6 sq.m. (12.4%)
proposed Private Open Space	44 sq.m.
permissible site coverage	60% maximum
permissible landscape area	20% minimum
permissible unbuilt upon area	20% maximum

BASIX COMMITMENTS - A1775700_02 : 89 UNION STREET McMAHONS POINT 2060

- Hot water system to be gas instantaneous min. 5 star rated.
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24/04/25

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D	DA resubmission	16/12/24	PD
C	DA submission	4/12/24	PD
B	Revisions 5	30/09/24	PD
A	Measured Survey	20/09/24	PT

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Laurence Laveau and
Harry Sargent

Address
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Drawing
SITE and ROOF PLAN

Drawn	Author	Sheet size
Scales	As indicated	
Date	2/09/24	Issue
Project Number	2410	
A105		F



acrylic render finish	R
painted Hardies Linear fibreceement cladding	CL
timber finish	TM
"colorbond" steel	CB
painted steel finish	PS
sandstock brick finish	BR
anodised aluminium finish	AN
powdercoat finish	PWC
fixed obscure glazing	ob.fg.

0 1 2 3 4

GRAPHIC SCALE: 1:50

F	Respond Council RFI	24/04/25	PD
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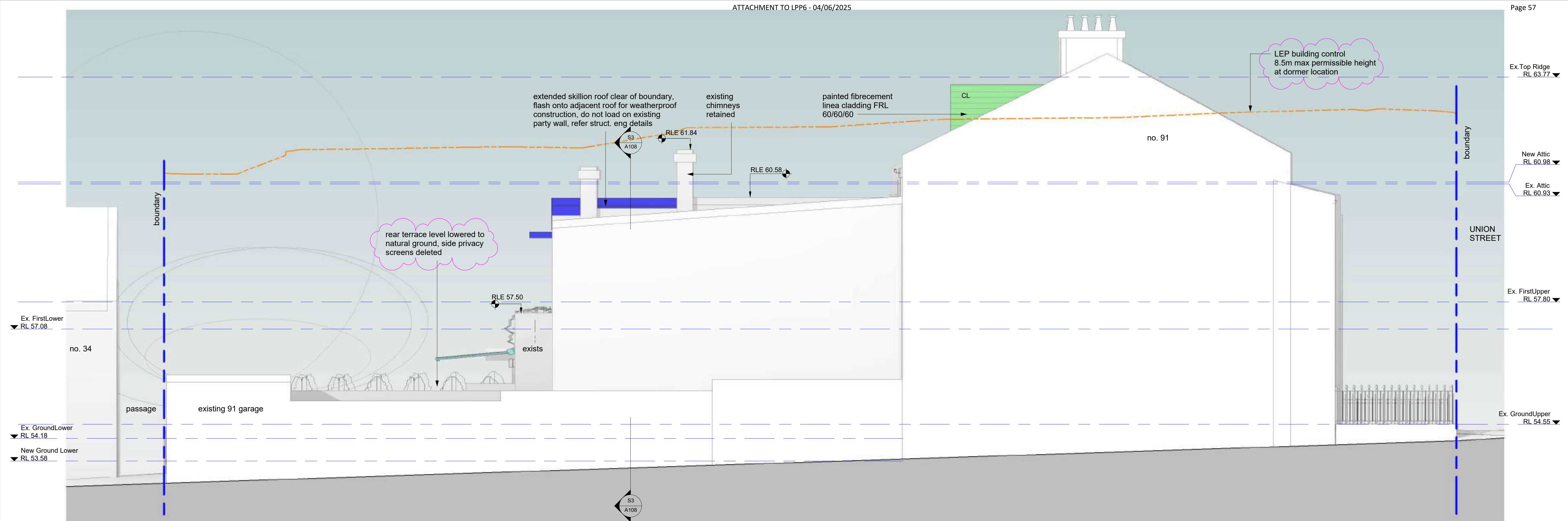
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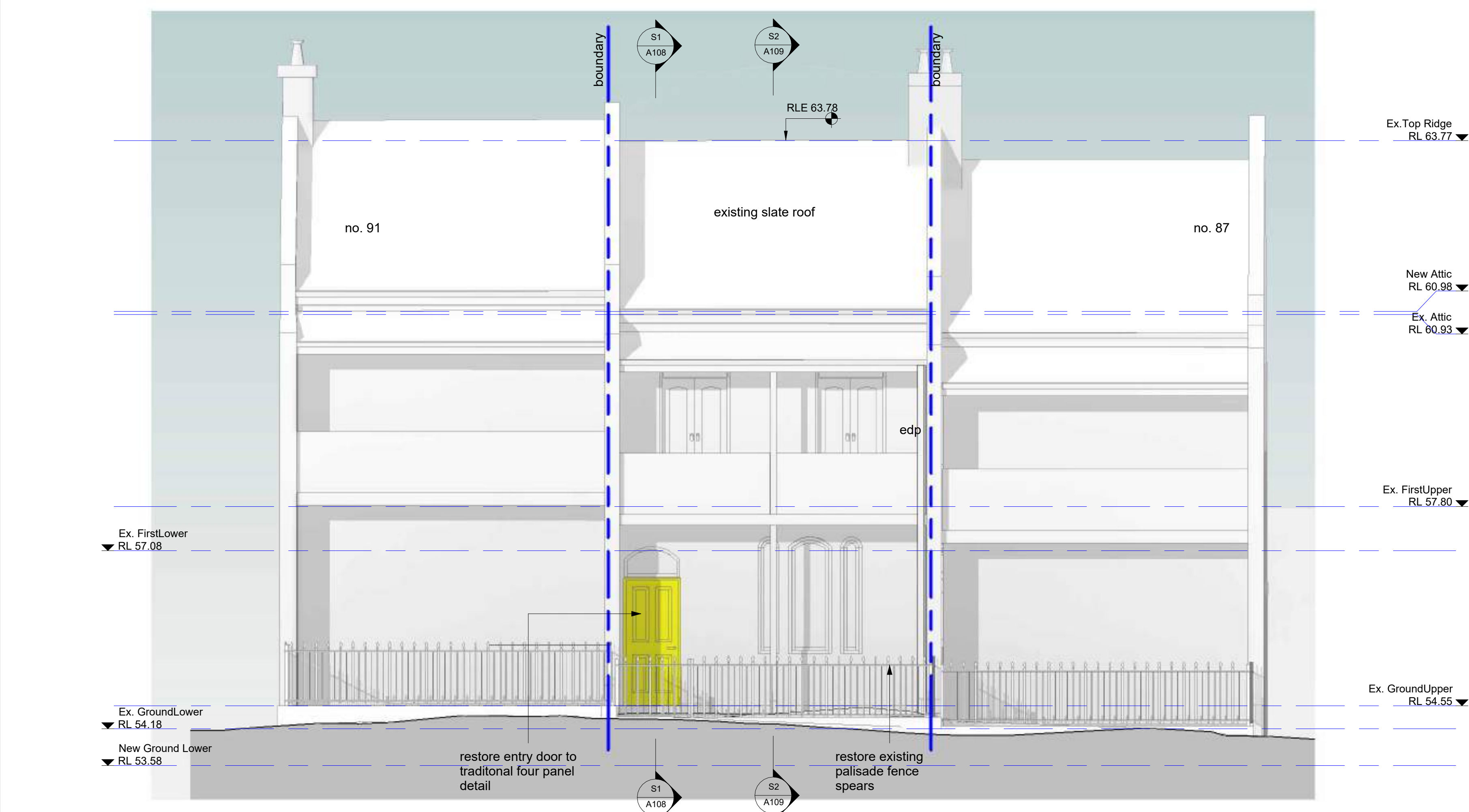
Drawing
WEST and SOUTH
ELEVATIONS

Drawn	Author	Sheet size
Scales	As indicated	
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Project Number		Issue
2410		F
A106		

24/04/25



1 EAST ELEVATION (CHUTER STREET)
1 : 50



2 NORTH ELEVATION (UNION STREET)
1 : 50

EXTERNAL FINISHES KEY:

acrylic render finish	R
painting Hardies Linear fibrecement cladding	CL
timber finish	TM
"colorbond" steel	CB
painting steel finish	PS
sandstock brick finish	BR
anodised aluminium finish	AN
powdercoat finish	PWC
fixed obscure glazing	ob.fg.

BASIX COMMITMENTS - A1775700_02 : 89 UNION STREET McMAHONS POINT 2060

Hot water system to be gas instantaneous min. 5 star rated.

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Toilet cisterns to be min. 3 star water rating, have a flow rate no greater than 4 Litres/average flush

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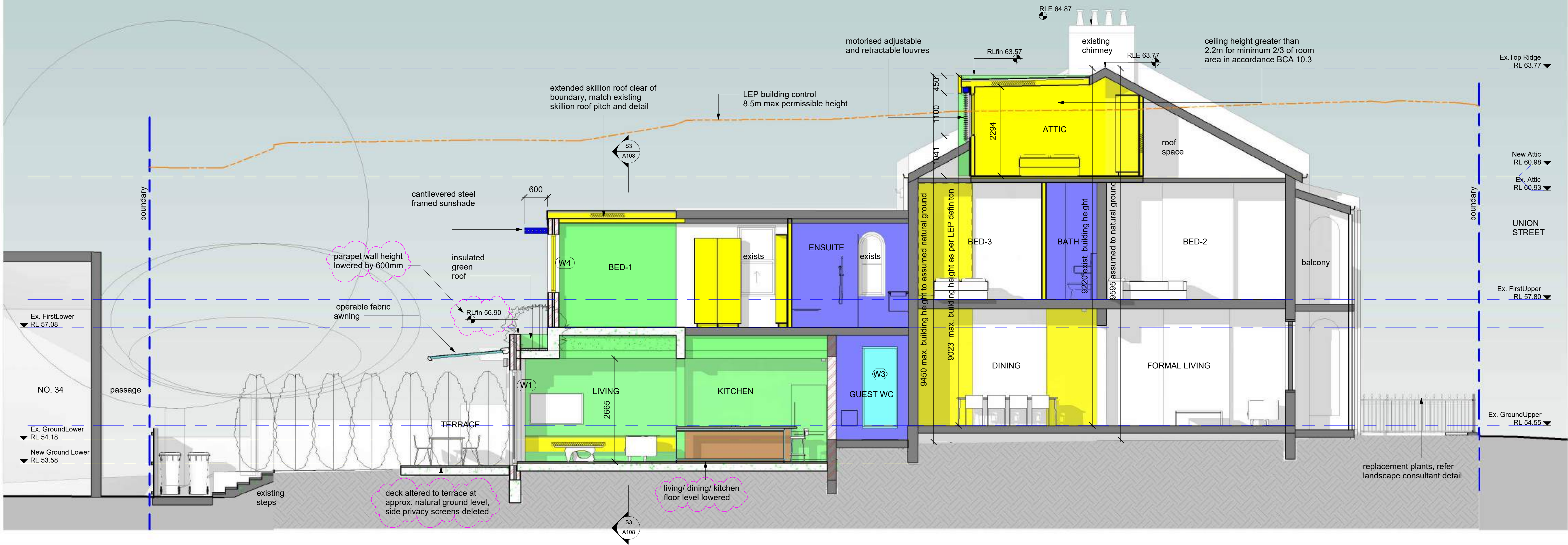
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Drawing
EAST and NORTH
ELEVATIONS

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Scales	As indicated	
Date	2/09/24	
Project Number	2410	Issue
		F
		A107

24/04/25



S2 SECTION S2
1 : 50

EXTERNAL FINISHES KEY:

acrylic render finish	R
painted Hardies Linear fibrecement cladding	CL
timber finish	TM
"colorbond" steel	CB
painted steel finish	PS
sandstock brick finish	BR
anodised aluminium finish	AN
powdercoat finish	PWC
fixed obscure glazing	ob.fg.

BASIX COMMITMENTS - A1775700_02 : 89 UNION STREET McMAHONS POINT 2060

Hot water system to be gas instantaneous min. 5 star rated.

New or altered light fixtures to be minimum 40% fitted with fluorescent, compact fluorescent or LED lamps.

Showerheads and taps to be min. 3 star water rating, have a flow rate no greater than 9 Litres/minute

Toilet cisterns to be min. 3 star water rating, have a flow rate no greater than 4 Litres/average flush

External framed walls are to have min. R1.30 insulation added.(or R1.70 including construction)

Flat ceiling,framed, skillion roof - dark solar absorptance 0.70 with foil / sarking plus roof insulation plus minimum R2.5 ceiling insulation added.

Raked ceiling,framed, skillion roof - dark solar absorptance 0.70 with 55mm foil backed blanket plus roof insulation plus minimum R1.74 ceiling insulation added.

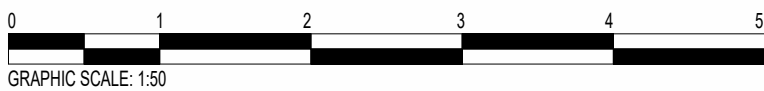
Flat ceiling,concrete/plasterboard internal flat roof - dark solar absorptance 0.70 with 50mm foil backed polystyrene board roof insulation plus minimum R0.43 ceiling insulation added.

All external glazed windows and doors are to be timber, uPVC, single pyrolytic low-E or better with maximum U-value 3.67 and maximum SHGC value 0.59 or better

For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500mm above the head of the window or glazed door and no more than 2400mm above the sill.

Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50mm.

Skylights to be timber, low-E internal argon filled, clear external with maximum U-value 4.3 and maximum SHGC value 0.5 or better



F	Respond Council RF1	24/04/25	PD
E	LEP 8.5 height control added	22/01/25	PD
D	DA resubmission	16/12/24	PD
C	DA submission	4/12/24	PD
B	Revision B	30/09/24	PD
A	Measured Survey	2/09/24	PT
Letter	Revisions/Issue	Date	By

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DIMENSIONS ARE IN MILLIMETERS UNLESS OTHERWISE STATED

VERIFY ALL LEVELS AND DIMENSIONS ON SITE BEFORE THE COMMENCEMENT OF ANY WORK OR SHOP DRAWINGS

DON'T SCALE OFF DRAWINGS

DRAWINGS SHALL BE READ IN CONJUNCTION WITH ENGINEERS AND OTHER CONSULTANTS SPECIFICATIONS AND DETAILS

ANY DISCREPANCIES ARE TO BE REFERRED TO ARCHITECTS FOR CLARIFICATION BEFORE PROCEEDING WITH FURTHER WORK

Project
Laurence Laveau and
Harry Sargent

Address
89 Union Street McMahon's
Point
LOT 4 , DP437049

Drawing
SECTIONS2

Drawn	Author	Sheet size
Scales	As indicated	
Date	2/09/24	
Project Number		Issue
2410		F
A109		

24/04/25

North Sydney LEP 2013
Clause 4.6 Exceptions to
Development Standards
– Height of Buildings

Alterations and Additions to the Existing
Terrace Dwelling at

89 Union Street, McMahon's Point

Prepared for:
Laurence Laveau and
Harry Sargeant

AR
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PIERRE DELLA-PUTTA & ASSOCIATES PTY LTD TRADING AS ARCHITECTS INK. ACN 101 247 732 REG NO. 5492

NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN (LEP) 2013
 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Laurence Laveau and Harry Sargeant

SITE ADDRESS: 89 Union Street, McMahon's Point

PROPOSAL: Proposed Alterations and Additions to the Existing
 Terrace Dwelling

1. (i) Name of the applicable planning instrument which specifies the development standard:

North Sydney LEP Local Environmental Plan (LEP) 2013

- (ii) The land is zoned:

R3 Low Density Residential. The zone objectives are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.
- To provide for a suitable visual transition between high density residential areas and lower density residential areas.
- To ensure that a high level of residential amenity is achieved and maintained.

- (iii) The number of the relevant clause therein:

Clause 4.3 – height of buildings. The Clause states:

- (1) The objectives of this clause are as follows—
- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
 - (b) to promote the retention and, if appropriate, sharing of existing views,
 - (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
- (e) to ensure compatibility between development, particularly at zone boundaries,
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Architects Ink.

2. Overview

This clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and as demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is 4.3 of the LEP – Height of Buildings. This clause operates in conjunction with the Height of Buildings Map which indicates a maximum 8.5m building height applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The existing building has a maximum height of 9.7m to the ridge. The proposed eyelid dormer structure will have a maximum height of 9.45m and exceed the 8.5m LEP height limit by 0.95m (11%). As a result of the existing height non-compliance, the provision of eyelid dormer and attic room within existing roof form will be above the LEP height limit (see Figure 1).

The proposal will not increase the existing building height and will not increase the bulk of the building above the LEP height limit. The terrace dwelling will continue to appear as two storeys to the Union Street frontage and will maintain a building height of 9.7m measured from the existing roof ridge at RLE 63.77 AHD. As such, the proposed works will continue to be in keeping with the existing design of the terrace dwelling.

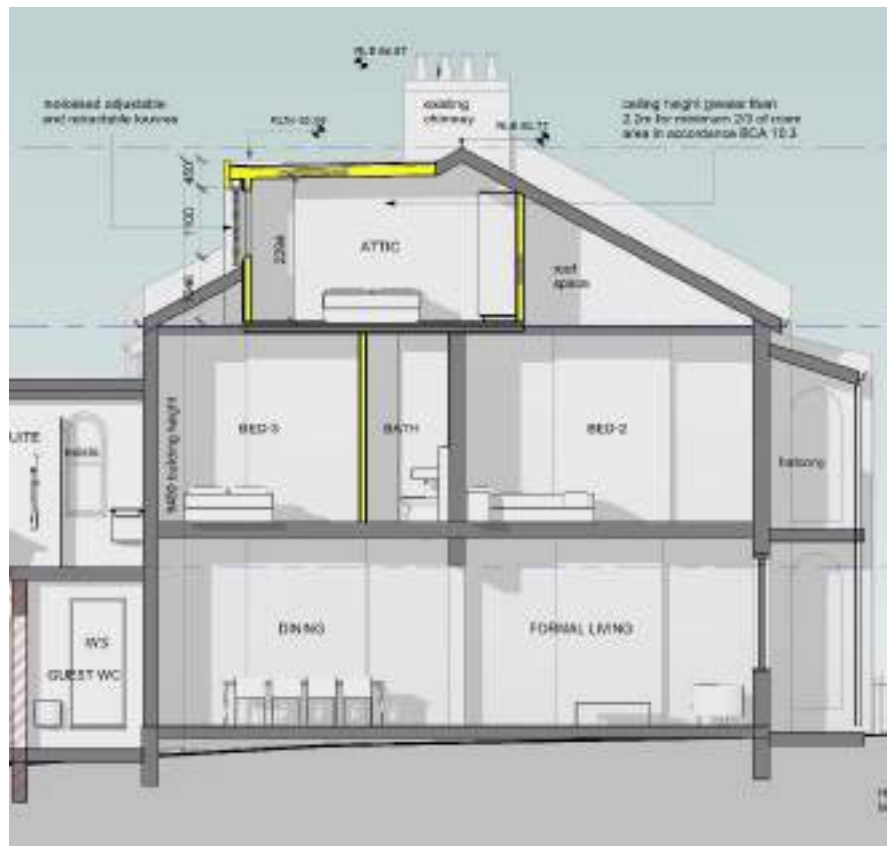


Fig. 1

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for and from the development.

The objectives of Clause 4.6 and our planning response are as follows:

- Objective (a)* *to provide an appropriate degree of flexibility in applying development standards to particular development.*
- Objective (b)* *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The proposal seeks flexibility in the application of the height development standard in the circumstance of this particular case as a portion of the existing building is above the maximum height limit. The proposed attic room and associated eyelid dormer will not adversely impact the appearance of the building when viewed from Union Street and is not generally visible from Chuter Street from street level and is necessary to enhance the amenity of the building as well as provide district and distant harbour views. The overall height of the dwelling will not be increased. Accordingly, the dwelling will remain consistent with surrounding development and associated group of terraces.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (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.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1. Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council (2007) 156 LGERA 446 (Wehbe)*, Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 – The objectives of the standard are achieved notwithstanding non-compliance with the standard;

It is noted under Clause 4.6(4)(a)ii, 'achieved' has been replaced by the lesser test of 'consistent'. Despite the height non-compliance, the proposal is consistent with the desired medium density character of the area, as required in the LEP. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. The proposal is also consistent with the

objectives of the LEP building height development standard's in particular Clause 4.3, which will now be discussed.

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

The maximum building height will remain as existing 9.7m. The terrace house when viewed from the primary Union Street frontage will continue to form an integral part of an existing group of five terraces that are stepped to follow the natural gradient.

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

The proposed development will permit distant harbour views and district views to be enjoyed by the occupants without impacting on views from neighbouring properties or the public domain.

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

The proposed eyelid dormer and attic room addition will not significantly impact on existing solar access and shadow patterns which is influenced by the existing building height and terrace structures.

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

The proposed eyelid dormer is a sufficient distance >11m from adjacent properties Private Open Space to maintain privacy of adjoining properties.

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

The proposed eyelid dormer structure to rear roof pitch is compatible with the Victorian terrace development consistent with approved eyelid dormer at No. 83 Union Street which forms part of the same terrace group.

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

The proposed eyelid dormer structure will not alter the existing two storey scale of the development as viewed from the public domain and is consistent with the objectives of the R3 zone.

- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.

The proposed development will continue to present as a two storey form as viewed from Union Street.

5.2. There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is permissible within the R3 Low Density Residential Zone and is consistent with the relevant zone objectives and satisfies one of the tests established by the Court in *Wehbe*.

As a minor portion of the existing building exceeds the 8.5m height limit, it is inevitable that any works to the roof level would also not comply. To ensure strict compliance with the development standard would require the existing roof to be lowered, which would be inconsistent with the streetscape pattern and have adverse heritage impact. The proposed attic works above the LEP height limit are minor in extent and consistent with Council policy and No. 83 property approved roof dormer. The extent of non-compliance will have no discernible adverse impacts in respect of solar access, visual and acoustic privacy or views, and will not be readily visible from either street frontage. The works have been carefully designed to maintain compatibility with the built form of the existing terrace dwelling and surrounding development.

While a minor portion of the proposed works occur above the height limit, this is a technical breach, and these works will not increase the maximum height of the building. It is also noted that the area of non-compliance is not discernible with in the context of surrounding development, is contextually appropriate in the locality and does not result in amenity impacts.

Enforcing strict compliance would effectively inhibit additional amenity at roof level of the building and restrict available views is contrary to the intentions of the zoning objectives of the Environmental Planning and Assessment Act (1979).

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must 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.

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal is consistent with the objectives of the Height of Buildings Development Standard, as already demonstrated; and the R3 Low Density Residential Zone, as discussed below:

Objective: To provide the housing needs of the community within a medium density residential environment.

Response: The development will continue to provide single residential development therefore providing for the housing needs within a medium density residential environment.

Objective: To provide a variety of housing types within a medium density residential environment.

Response: The development will continue to provide single residential development which is one variety of housing type.

Objective: To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Response: Not applicable.

Objective: To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.

Response: The provision of additional attic amenity and associated eyelid dormer encourage the development, upgrade and continual maintenance of the terrace dwelling.

Objective: To provide a suitable visual transition between high density residential areas and lower density residential areas.

Response: The proposed development continues to present a two storey scale which is an appropriate transition scale from higher density apartment developments to single level lower density residential forms in nearby locality.

Objective: To ensure that a high level of residential amenity is achieved and maintained.

Response: The provision of additional attic room and eyelid dormer will encourage and ensure the upgrade of the existing residential amenity to a high standard and ensure the continual maintenance of the residential amenity.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. Since the conditions in the table do not apply in this case, the concurrence of the Secretary can be assumed.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height variation will enhance the amenity and appearance of the dwelling without significantly, unreasonably or unacceptably impacting neighbouring properties. This is because the exceedance is below the existing roof height and will not be easily visible from the street or nearby sites, given the exceedance is existing.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the R3 Medium Density Residential Zone pursuant to the LEP. Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted, and the request to vary Clause 4.3 should be granted.