

**NSLPP MEETING HELD ON 05/11/2025****Attachments:**

1. Site Plan
2. Architectural Plans
3. Landscape Plan
3. Clause 4.6 Variation Request

ADDRESS: 8 Eaton Street, Neutral Bay

APPLICATION NO: DA 58/25 (PAN-516571)

PROPOSAL: Demolition of existing dwelling house and swimming pool and construction of a multi dwelling housing development comprising 6 dwellings and basement parking

PLANS REF:

Plan No.	Rev	Description	Prepared By	Dated
DA-001	B	Proposed roof plan	COSO	15/05/25
DA-002	B	Proposed basement floor plan	COSO	15/05/25
DA-003	B	Proposed ground floor plan	COSO	15/05/25
DA-004	B	Proposed first floor plan	COSO	15/05/25
DA-005	B	Proposed second floor plan	COSO	15/05/25
DA-006	B	Proposed elevation from Bent Street	COSO	15/05/25
DA-007	B	Proposed elevation from Eaton Street	COSO	15/05/25
DA-008	B	Proposed western elevation	COSO	15/05/25
DA-009	B	Proposed eastern elevation	COSO	15/05/25
DA-010	B	Proposed section elevation A	COSO	15/05/25
DA-011	B	Proposed section elevation B	COSO	15/05/25
DA-012	B	Proposed section elevation C	COSO	15/05/25
DA-013	B	Proposed section DD	COSO	15/05/25
DA-014	B	Proposed section EE	COSO	15/05/25
DA-015	B	Proposed section FF	COSO	15/05/25
DA-016	B	Proposed section GG	COSO	15/05/25
DA-017	B	Proposed section HH	COSO	15/05/25
DA-114	B	Landscape Plan 1/3	COSO	15/05/25
DA-115	B	Landscape Plan 2/3	COSO	15/05/25
DA-116	B	Landscape Plan 3/3	COSO	15/05/25

OWNER: Mohammad Helou

APPLICANT: COSO Architecture

AUTHOR: Report of Jack Varka, Senior Assessment Officer

DATE OF REPORT: 22 October 2025

AMENDED PLANS: 8 October 2025

DATE LODGED: 18 June 2025

RECOMMENDATION: Refusal

EXECUTIVE SUMMARY

This development application seeks consent for Demolition of existing dwelling house and swimming pool and construction of a multi dwelling housing development comprising 6 dwellings and basement parking at 8 Eaton Street, Neutral Bay.

The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to a 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 Anderson Precinct Committee inviting comment between 25 April and 9 May 2025. There were two (2) submissions received in response to notification; however, both were received from the same address and submitter.

The site is occupied by a two storey brick and weatherboard clad dwelling house with a pitched tile roof and metal roof. It has a driveway from Lower Bent Street to a garage on the north side of the house. There is a swimming pool on the south side of the house in the front setback to Eaton Street. There is also an access and driveway from Eaton Street on the eastern end of the frontage. The site is not located within a Conservation Area.

Significant trees are located within and directly adjacent to the site including T12, a 22m tall *Eucalyptus Microcorys*, and T10, a 16m tall *Grevillea robusta*. The proposal involves the removal of eleven trees from the site. Council's Landscape Development Team do not support the proposed development, largely as a result of the major impact to numerous site and neighbouring trees, most notably T12 *Eucalyptus microcorys* (located on the eastern boundary of 6 Eaton Street). It is deemed that the proposal has not provided adequate evidence to suggest that the proposal will not result in a detrimental impact to the health and stability of T12 and therefore cannot be supported.

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 9.88m (16.2%).

The proposed roof form, fall of land, aspect and orientation of the proposed multi-dwelling housing does not provide an ideal orientation for solar access. Additionally, the height, form and placement of the dwellings do not enable the development to achieve sufficient solar access during mid-winter. The height exceedance and form of Unit Nos. 01, 02, 03, and 04, where the exceedances in building height are located at the southern extents of the roof forms (refer to Figure 8 in the report), are not an appropriate design response to the site constraints and directly contribute to the failure of providing adequate solar access.

It is therefore deemed that the proposed exceedance in building height is not sustainable and does not achieve minimum requirements for solar access and amenity within the subject site, particularly to primary living spaces and private open spaces. The breach in building height is inconsistent with Objective (1)(c) under Clause 4.3 of the *NSLEP 2013* and is therefore not supported. The applicant has been advised of poor solar amenity outcomes and tree impacts and has been unable to resolve these outstanding issues.

The development application is recommended for **refusal**.

LOCATION MAP



DESCRIPTION OF PROPOSAL

The proposed development is for the demolition of existing dwelling house and swimming pool and construction of a multi dwelling housing development comprising 6 dwellings and basement parking. Further details of the proposed development are outlined below.

Basement Level

Access to the driveway will be provided via Eaton Street, positioned at the eastern end of the property's Eaton Street frontage. The parking area features an aisle running along the eastern side, leading to a designated accessible parking space, car wash bay, and a waste storage area at the forefront, alongside a lift lobby serving the front residences. The design includes parking for five vehicles parallel to the western wall, spaces for bicycle storage, and a lift lobby catering to the central two units.

Towards the rear, leading to the back of the basement where parallel parking is facilitated by three car spaces. This area also includes provisions for bicycle storage and a lift lobby with elevator access, serving the two rear dwellings that are accessible from Bent Street. A fire stair located on the eastern side adjacent to the driveway.

Above Ground Levels

The buildings orientated towards Eaton Street features two townhouse-style dwellings, each spanning three stories. At the front, entry gates and pathways are positioned at both ends of the property, providing access around the sides of the front building to the entrances of the units, including access to the two central dwellings.

The floor plans of both dwellings mirror each other, with side entries leading directly into an open concept living area, dining space, and kitchen. On the first floor, there's a hallway at the top of the stairs, a laundry cupboard in the hallway, alongside two bedrooms and a bathroom. Bedroom 2 features a small balcony overlooking the front. The top floor is dedicated to the master bedroom suite, which includes a small rumpus room leading to a slender balcony at the front.

The two central townhouse dwellings reflects the layout of the Easton Street front residences, featuring living spaces on the ground floor, a first floor with two bedrooms, and a top floor dedicated to the master bedroom suite and rumpus room.

The rear two townhouse-style dwellings incorporates ground-level bedroom spaces. These bedrooms are set below Bent Street's level to the secondary frontage. The eastern dwelling extends further towards the secondary frontage at Bent Street due to the angled front boundary, resulting in a staggered front appearance while maintaining alignment at the rear.

The first floor serves as the entrance level, with entries to the dwellings positioned side by side along the Bent Street frontage. This level is dedicated to living spaces and features an open layout encompassing a living room, dining area, kitchen. The second floor houses the main bedroom suite and rumpus room. Each dwelling boasts a north-facing front courtyard and a slender courtyard at the rear.

The top floor is home to the primary bedroom suite and a rumpus room, which opens onto a narrow balcony on the south side.

Tree Removal

The proposal involves the removal of eleven trees from the site, of which three will be equitably replaced. An additional five trees are proposed to be planted within the front setback to Eaton Street, within the landscaped area separating the Bent Street and central townhouses, and within the secondary setback to Bent Street. The proposal results in a net neutral balance of trees within the site.

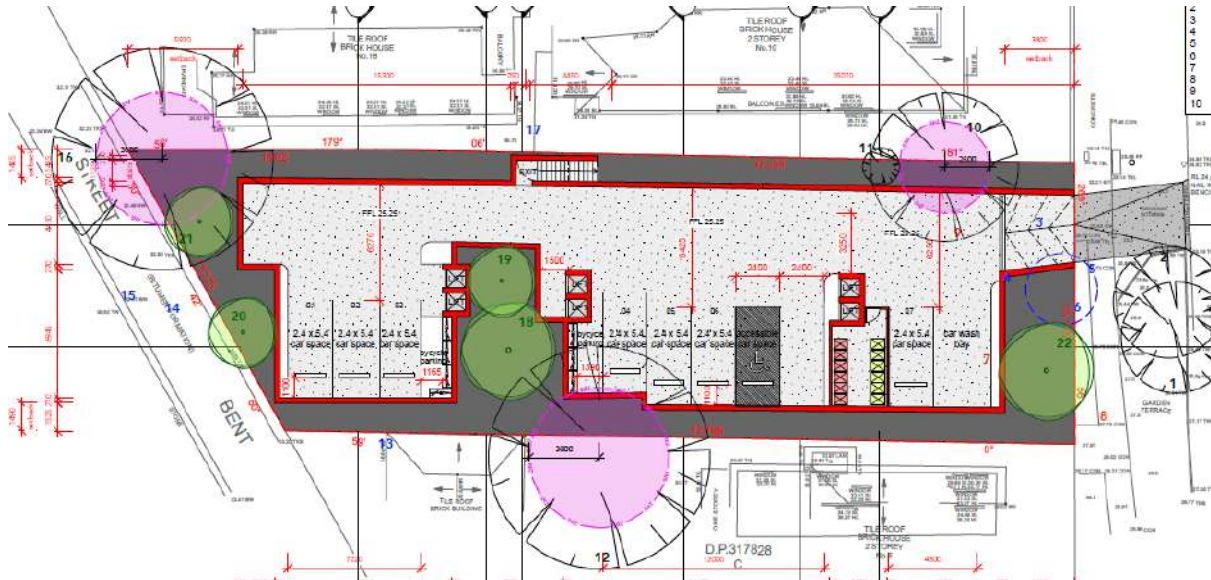


Figure 1: Proposed Basement Level

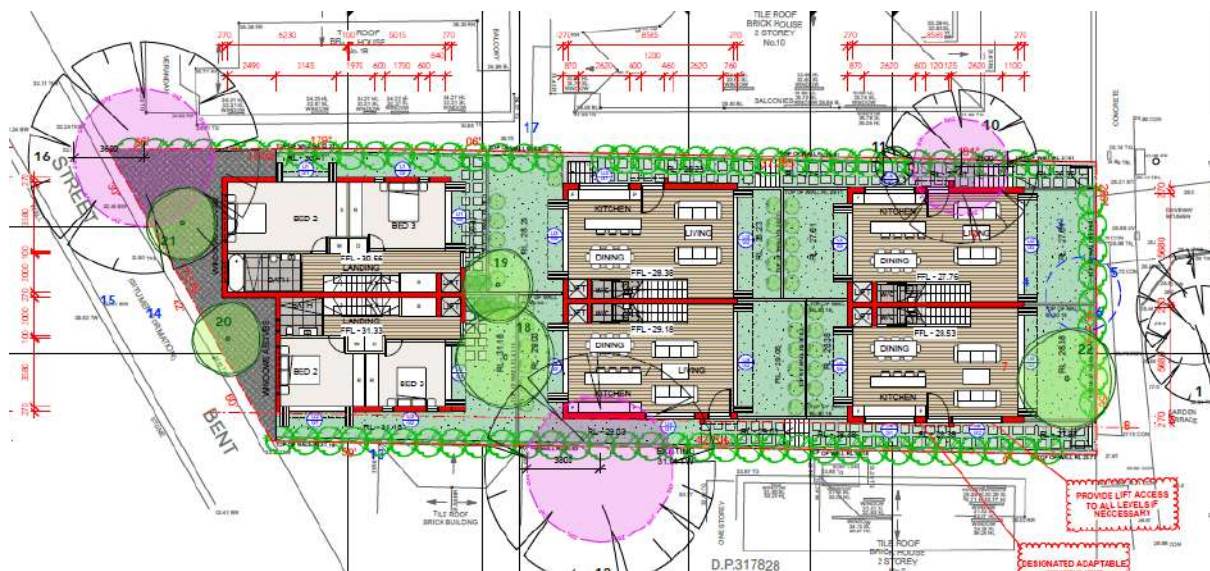


Figure 2: Proposed Ground Floor Level

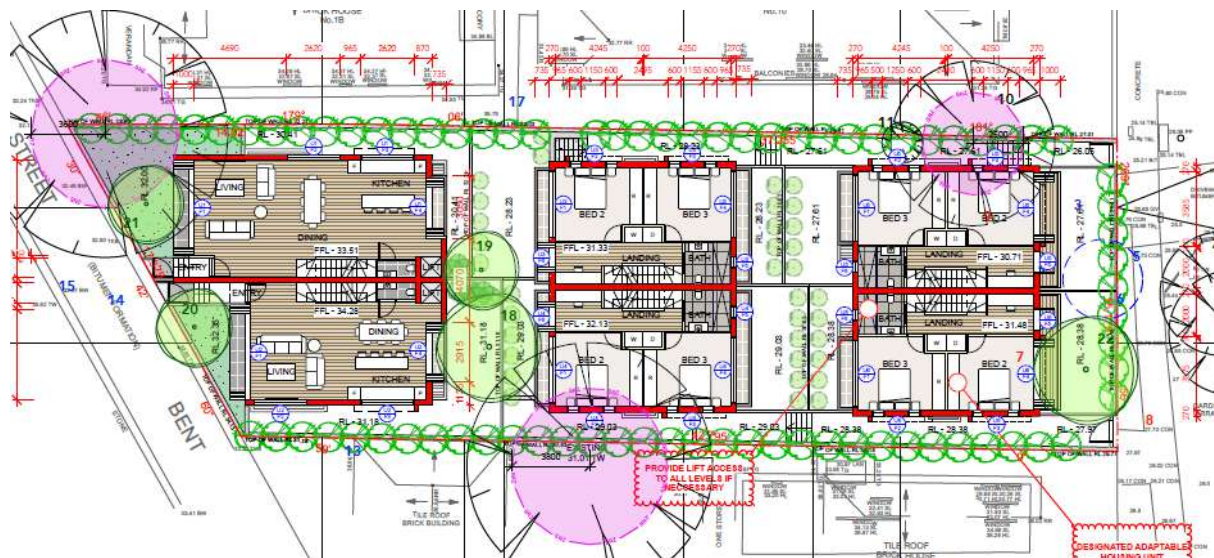


Figure 3: Proposed First Floor Level

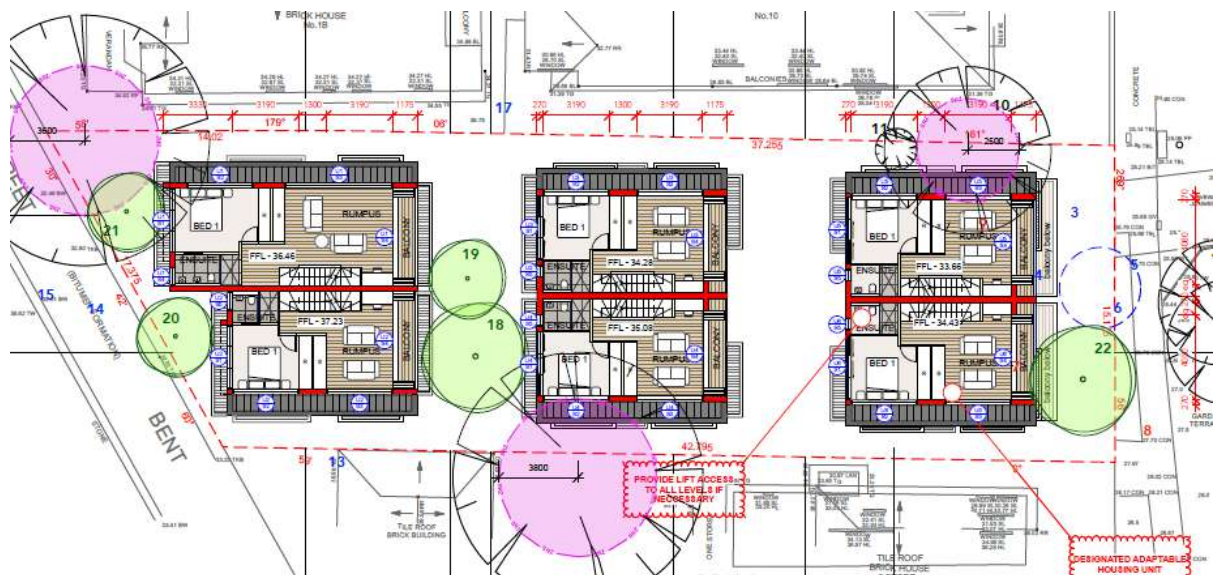


Figure 4: Proposed Upper Floor Level

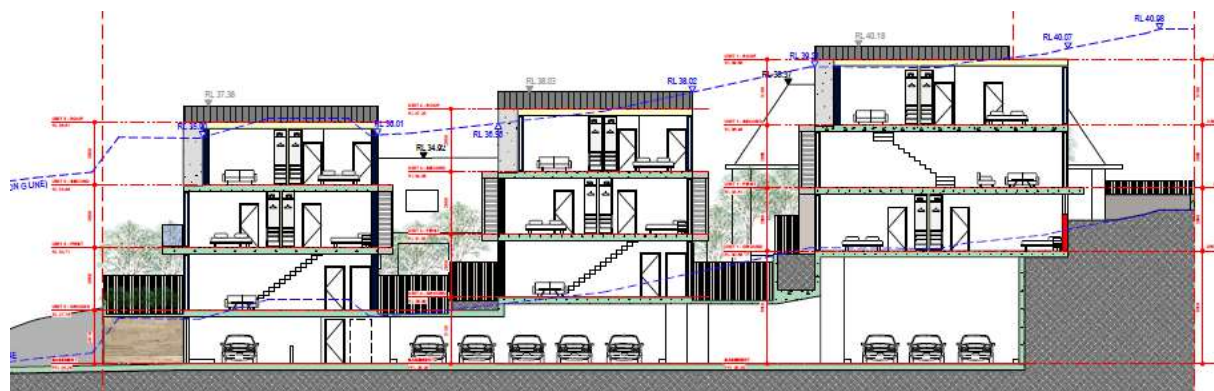


Figure 5: Proposed Long Section

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R3 Medium Density Residential
- Item of Heritage – No
- In Vicinity of Item of Heritage – Yes (2 Nook Lane)
- Conservation Area – No

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

POLICY CONTROLS

NORTH SYDNEY DCP 2013

North Sydney Local Infrastructure Contributions Plan 2020

Housing Productivity Contribution Order 2024

DELEGATIONS TO DETERMINE THE APPLICATION

The application is reported to NSLPP for determination because the proposed multi-dwelling housing includes works conducted that breach the building height standard of 8.5m for the site. The proposal includes the construction of new dwellings above the building height standard at a variation that exceeds more than 10% of the standard.

DESCRIPTION OF LOCALITY

The site is located on the north side of Eaton Street between Alfred Street North and Rawson Street. It has a frontage on the north side to Lower Bent Street. The legal property description of the site is Lot 1 in DP 110220, 8 Eaton Street, Neutral Bay.

The site is irregular in shape with a frontage of 15.175m to Eaton Street. The northern boundary to Lower Bent Street is on an oblique angle and has a length of 17.375m. The land has an area of 715.2m². The land falls from north to south from Bent Street to Eaton Street with a total fall of approximately 6.0m over the length of the site and a slight cross fall from east to west.

The site is developed with a two storey brick and weatherboard clad dwelling house with a pitched tile roof and metal roof. It has a driveway from Lower Bent Street to a garage on the north side of the house. There is a swimming pool on the south side of the house in the front setback to Eaton Street. There is also an access and driveway from Eaton Street on the eastern end of the frontage.

Significant trees are located within and directly adjacent to the site including T12, a 22m tall *Eucalyptus Microcorys*, and T10, a 16m tall *Grevillea robusta*.

To the east of the site at 10 Eaton Street is a three storey duplex with face brick external walls and a pitched tile roof. 1b Bent Street to the north is developed with a single storey Federation style dwelling house with a pitched tile roof. The surrounding development consists of a mix of detached dwelling houses and semidetached dwelling houses on the opposite side of Eaton Street and apartment buildings and townhouses.

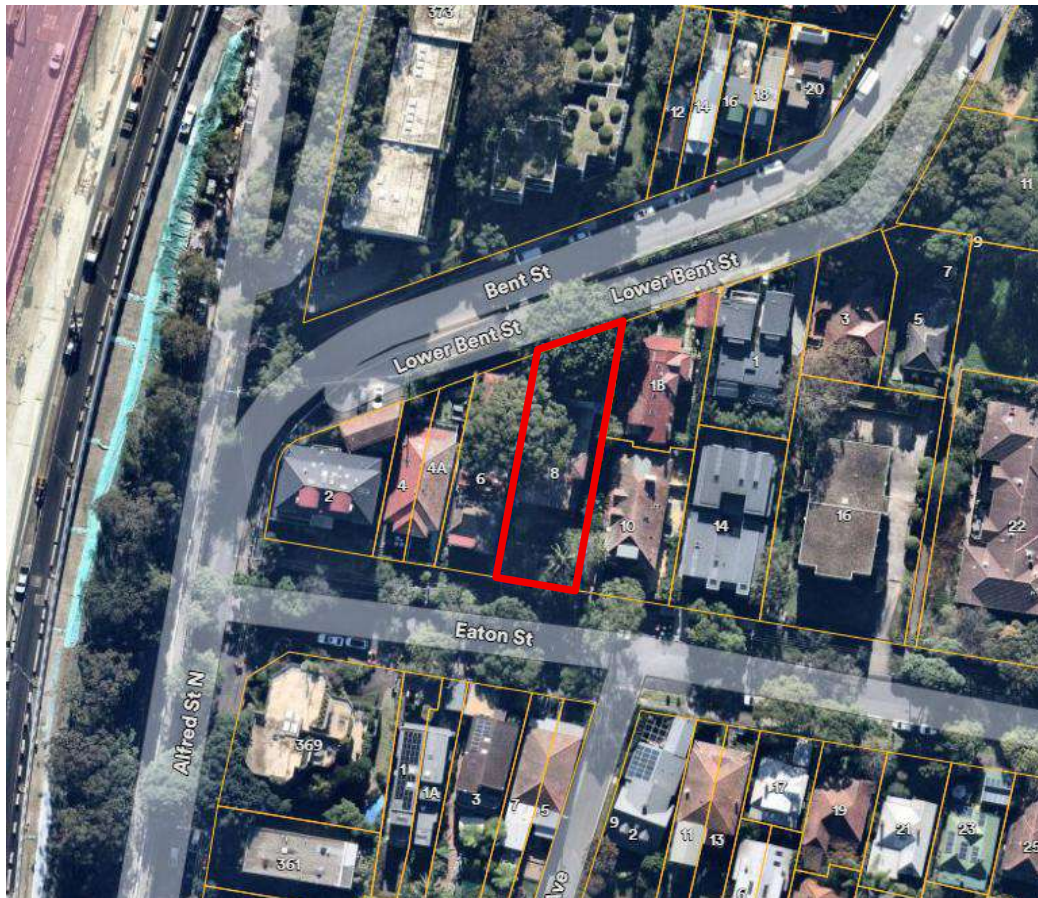


Figure 6: Aerial Map

Previous Applications

DA454/21 was lodged with North Sydney Council for the same development as currently proposed, being the demolition of existing dwelling house and associated works, construction of a 6 unit multi dwelling housing development, basement parking and associated works. The application was refused under Council delegation as the development failed to protect and preserve trees within the site and neighbouring site.

Current application

Date	Action
07/04	Lodged with North Sydney Council
29/04	Stop the clock letter issued seeking additional information
25/04 – 09/05	Notification to surrounding properties
09/05	Site inspection undertaken
18/06	Additional information provided by application, including amended documentation suite
18/06	Lodgement date amended to reflect updated package
08/10	Additional information provided by the applicant; amended solar diagrams

It should be noted that the preliminary assessment of the subject DA identified additional concerns of adverse impacts and therefore a stop the clock letter of 29 April 2025 was issued, requesting the following amendments:

- Updated architectural plans
- Bulk excavation diagram
- Elevation shadow diagrams
- Landscape plan
- Stormwater management plan
- Updated Clause 4.6 variation request
- Updated QS report

The applicant provided a response on 18 June 2025, including the updated package and information requested. Due to the nature of the changes made, the lodgement date was amended to 18 June under Section 38 of the *EPA Regulations 2021*.

The applicant provided addendum solar and shadow diagrams on 8 October 2025 due to errors in the previous revision.

REFERRALS

ENGINEERING

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

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

Planner's Comments:

The comments of Council's Development Engineer are noted, should the recommendation for refusal be upturned, then conditions can be imposed.

LANDSCAPING

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

The proposed development and relevant lodgement documentation has been assessed for potential impact to existing trees as well as the proposed landscape design and associated works.

The proposed development is not supported noting the following site conditions and impacts:

- *Proposal requires removal/has a major impact to numerous site and neighbouring trees (most notably T12 Eucalyptus microcorys located on the eastern boundary of 6 Eaton Street).*

- *It is not considered that the arborist has demonstrated that proposed impacts to T12 roots & canopy are of an acceptable level for such a significant mature neighbouring native tree.*
- *No Landscape Plan has been provided.*
- *The proposed development precludes the successful planting of adequate replacement urban canopy to replace that removed. 2 x replacement trees shown to be planted in deep soil within western setback of the subject site will not have sufficient solar access or physical space to support large trees.*
- *The applicant was repeatedly advised of the above issues during assessment of earlier DA454/21 but does not appear to have considered this advice in this new proposal.*
- *As previously advised, a reduced proposal deleting the dwelling to the east of T12, reducing basement excavation, and reducing impact to other site and neighbouring trees and allowing for canopy replacement is required before an amended proposal could be considered.*

Planner's Comments:

The comments of Council's Landscape Development Officer are concurred with. A landscape plan has been provided, as requested within the stop the clock letter issued by Council on 29 April 2025.

It was stated by Council's Landscape Development Officer that the advice provided for the current proposal is consistent with the previous advice given under DA454/21. Documentation provided to support DA454/21 have been reissued as part of the subject application, noting amendments to the extent of the basement. This includes details of previous root mapping investigation which identified the following:



Figure 7: Tree Root Mapping

The comments outlined are deemed still relevant to the subject proposal, and are as follows:

This amended proposal cannot be supported in its current form. It is not considered that the arborist has provided evidence that the proposed works will not have an unacceptable level of impact to T12 Eucalyptus microcorys (22m) located on the eastern boundary of 6 Eaton St.

It was stated in the arborist report that a number of retaining walls and level changes will have prevented root growth into the subject site, but then uncovers 6 roots, the largest of which is estimated at 120mm diameter - a structural root of considerable significance.

The arborist assesses impact within the SRZ/TPZ only up to the proposed building envelope but fails to consider the further excavation of approx. 1500mm for the new side path immediately adjacent to the tree, and a new retaining wall requiring further excavation on the boundary itself. The proposed works are within the SRZ of this significant neighbouring tree, in contravention of AS4970 and this unsustainable level of negative impact to a neighbouring asset cannot be supported.

This proposal cannot be supported, and an amended, reduced proposal should be considered. As a minimum requirement, any such proposal should allow for the successful retention of T10, not including works within the TPZ of T12, and provide adequate replacement canopy for any trees that require removal.

Based upon the referral review of the application by Council's Landscape Development Officer, and relevant comments provided under the previous DA454/21, the application cannot be supported as it is currently proposed and is therefore recommended for refusal.

EXTERNAL REFERRALS

AUSGRID

The application was referred to Ausgrid who provided the following comments:

The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice...Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.

Proposed driveways shall be located to maintain a minimum clearance of 1.5m from the nearest face of the pole to any part of the driveway, including the layback, this is to allow room for future pole replacements.

Planner's Comments:

The proposed driveway crossover is located within 1.5m of an existing power pole at the Eaton Street frontage of the site. However, as the driveway is not new, and will be a reconstruction of the existing crossover, the setback of the driveway is acceptable in this regard.

SYDNEY WATER

The application was referred to Sydney Water who provided the following comments:

A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994.

The plans must be approved by Sydney Water prior to demolition, excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development.

Planner's Comments:

The comments of Sydney Water are endorsed and can be reflected in the determination of the application should the recommendation be overturned.

SUBMISSIONS

The subject application was notified to adjoining properties and the Precinct inviting comment between 25 April and 9 May 2025. The subject application was notified to adjoining properties and Precinct inviting comment between 25 April and 9 May 2025. There was one (1) submission received that raised the following matters:

Basis of Submissions

- Visual privacy
- Shadow impacts
- Impact to T12 (impact to SRZ)
- Boundary fence and retaining wall (structural impact)
- Population mix inconsistencies

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

Environmental Planning and Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

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

The proposal meets the objectives of the SEPP because there would be no clearance of native vegetation, or any material impacts on bushland (if any) in the vicinity of the subject site.

- **Chapter 10 - Sydney Harbour Catchment**

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. Therefore, the site is unlikely to contain any contamination. The subject site is therefore considered suitable for the proposed use given that contamination is unlikely.

SEPP (Sustainable Buildings) 2022

A valid BASIX Certificate (1768028M_02) for multi dwelling housing has been submitted with the application to satisfy the Aims of the SEPP.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN 2013

Compliance diagram

Principal Development Standards - North Sydney Local Environmental Plan 2013			
Site Area – 715.2m²	Proposed	Control	Complies
Clause 4.3 - Heights of Building	9.88m	8.5m	NO

1. Permissibility

The site is zoned R3 Medium Density Residential under the provisions of the *North Sydney Local Environmental Plan 2013 (NSLEP 2013)*. Development for the purposes of multi dwelling housing is permissible with consent.

2. Objectives of the zone

The objectives for a R3 Medium Density Residential 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 does not align with the zoning objectives in that the proposed multi-dwelling housing will compromise the amenity of the locality through the significant impact to the landscape context, specifically to tree T12. The proposal also fails to maintain the quality of life in the neighbouring area in that it breaches the height standard outlined by *NSLEP 2013* and fails to achieve high levels of residential amenity through the associated solar access impacts, as discussed further in this report.

4. Height of Building

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 9.88m. This is located at the south eastern extent of the proposed right townhouse at the Eaton Street frontage. However, it should be noted that the average height exceedance across the entire proposed development is less than 10% above the height standard.

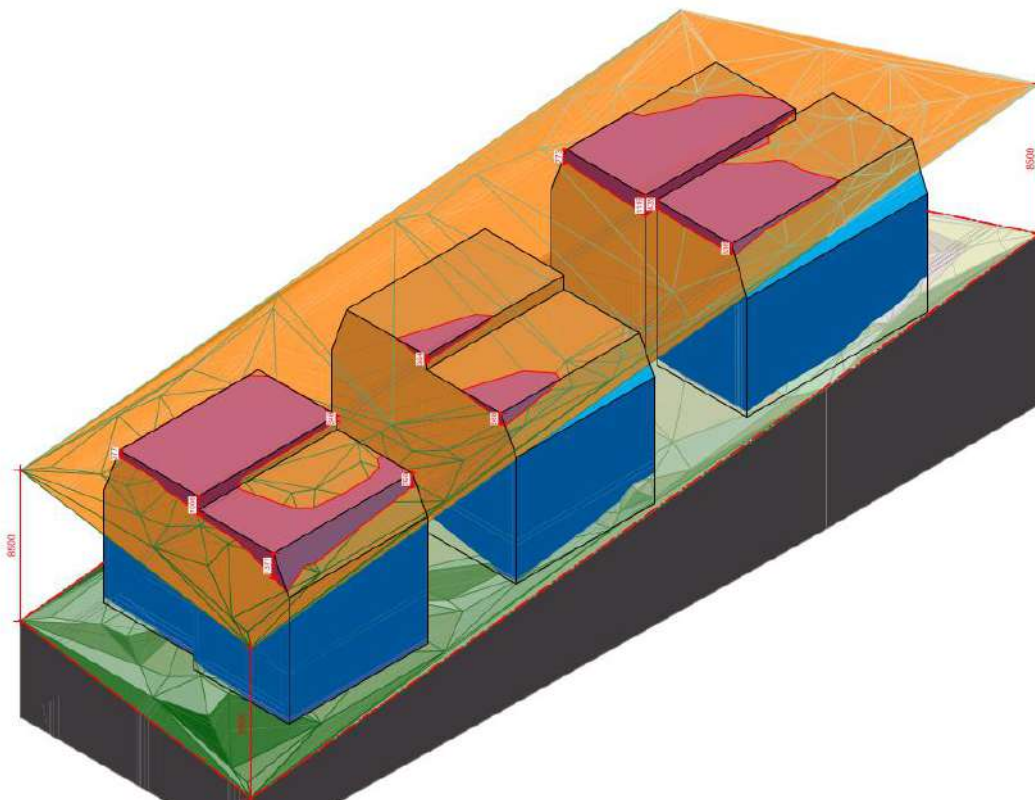


Figure 8: Height Blanket

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.

5. Clause 4.6 - Contravention of a Development Standard

A written request to contravene the development standard for height has been submitted and has been considered 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 the construction of six new townhouses across the site. The land upon which the development is proposed falls approximately 6m across its surface towards Eaton Street. The development presents as 2 storeys, as viewed from Bent Street, and steps down the site in a series of blocks in response to the natural topography of the land consistent with the objective.

In this regard, it is satisfied that the proposed development reflects the natural landforms/ ground levels notwithstanding the building height breaching elements proposed.

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

The subject site and surrounding properties do not have any significant views nor district views of the area. A site visit was undertaken, and it was determined that no views will be impacted by the development.

(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 6 and 10 Eaton Street, and 1B Bent Street side. These new shadows will generally fall at the extremities of neighbouring sites, and generally for a limited time (less an 1-2 hours). A majority of shadows cast by the proposal will fall within existing shadows cast by the dwelling currently located on site. As a result, the proposal will not result in any discernible increase in overshadowing to the neighbouring properties.

Some solar access is available to the site, notably to the street front elevation of the townhouses addressing the secondary frontage at Bent Street, which generally receives full solar access throughout the day.

The private open spaces of the central two townhouses and two townhouses fronting Eaton Street would not meet minimum solar access requirements, with these units achieving less than 1 hour solar access during midwinter. Unit Nos. 03, and 05 do not meet the requirement of 3 hours solar access to main living spaces in midwinter, however, it is noted that the Secondary Floor rumpus rooms of these units receive solar access. Unit Nos. 04 and 06 receive afternoon solar access for approximately 3 hours to the main living spaces, however this is partial access and is highly impacted. Unit No. 03 in particular suffers detrimentally, receiving no valuable or extended period of solar access to any living or private open space.

The proposed roof form, fall of land, aspect and orientation of the proposed dwelling does not provide an ideal orientation for solar access. However, the height, form and placement of the dwellings does not enable the development to achieve sufficient solar access during mid-winter. The height exceedance and form of Unit Nos. 01, 02, 03, and 04, where the exceedances in building height are located at the southern extents of the roof forms (refer to Figure 8 above), are not an appropriate design response to the site constraints and directly contribute to the failure of providing adequate solar access.

It is therefore deemed that the proposed exceedance in building height is not sustainable and does not maintain solar access and amenity within the subject site, particularly to primary living spaces and private open spaces. The breach in building height is inconsistent with Objective (1)(c) under Clause 4.3 of the NSLEP 2013 and therefore cannot be supported.

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

The building height breaching element will not give rise to adverse visual or aural privacy impacts to any surrounding residential property nor compromise the privacy of future occupants of the proposed development.

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

Building compatibility in a broader urban context is obtained from the planning principle established by the Land and Environment Court in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191*.

In this judgement Senior Commissioner Roseth indicated:

22. *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though the difference in these attributes increases, harmony is harder to achieve.*
24. *Where compatibility between a building and its surroundings is desirable, its 2 major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.*
 - *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*

- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*
25. *The physical impacts, such as noise, overlooking, overshadowing and the constraining development potential, can be assessed with relative objectivity. In contrast, to decide whether or not a new building appears to be in harmony with its surroundings is a more subjective task. Analysing the existing context and then testing the proposal against it, however, reduced the degree of subjectivity.*
26. *For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. In some areas, planning instruments or urban design studies have already described the urban character. In others (the majority of cases), the character needs to be defined as part of a proposal's assessment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping. In special areas, such as conservation areas, architectural style materials are also contributors to character.*
27. *Buildings do not have to be the same height to be compatible. Where there are significant differences in height it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape.*

Elements of the development that breach the building height standard will give rise to unacceptable impacts in relation to overshadowing. It is evident from the submitted height blanket diagram above, and the shadow diagrams provided that the shadows cast by non-compliant elements of the building will contribute to an extended duration of shadows during midwinter and at the equinoxes. Whilst shadows cast by compliant elements of the design would present substantial shadow impact, the height, siting and design of the development is not an appropriate response to site constraints, including topography and site orientation.

On the basis that the height breach contributes to an unsatisfactory shadow impact, the applicant's Clause 4.6 written statement is not considered to be well founded and is not supported

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

The proposal, notwithstanding the minor building height breaching elements, is consistent with the desired future character for the Forsyth Neighbourhood in terms of dwelling density and form.

- (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 proposal is predominantly 3 storeys in height consistent with other residential development located along both Eaton Street and Bent Street within proximity of the site, despite the objective, where the sites are steeply sloping and development steps up or down the site in response to topography.

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 12 of the written request which are briefly summarised below.

- *The topography of the land contributes to the extent of building height breach making strict compliance more difficult to achieve whilst realising the orderly and economic use and development of land.*
- *Strict compliance would require additional excavation to enable the buildings to be lowered or a reduction in ceiling heights and in doing so compromise the design quality and overall amenity of the dwellings.*
- *Approval of the variations to the building height standard will promote good contextually appropriate design and facilitate enhanced design quantity and amenity outcomes for the development consistent with that established within the site's visual catchment.*

The environmental planning grounds nominated by the applicant are not sufficient to justify the exceedance in the building height standard, noting the detrimental impacts to solar access within the subject site, as discussed above.

The written variation to the building height standard has failed to demonstrate that adequate amenity can be achieved within the development to ensure adequate solar access for primary living spaces and private open spaces of the proposed units.

Strict compliance would enable improved solar access to these spaces; however, even compliant elements of the design would likely present substantial impact within the site. Strict compliance would enable improved solar access to these spaces; however, even compliant elements of the design would likely present substantial impact within the site. On the basis that the height breach contributes to an unsatisfactory shadow impact, the applicant's Clause 4.6 written statement is not considered to be well founded and is not supported.

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

The written request provided by the applicant does not adequately address the matters required by subclause (3) as discussed above. The proposed variation is not supported, and the application is therefore recommended for refusal.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN (NSDCP) 2013

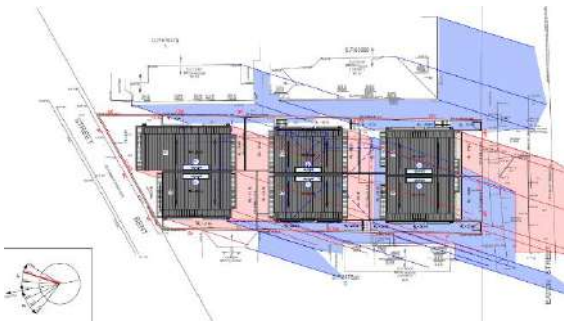
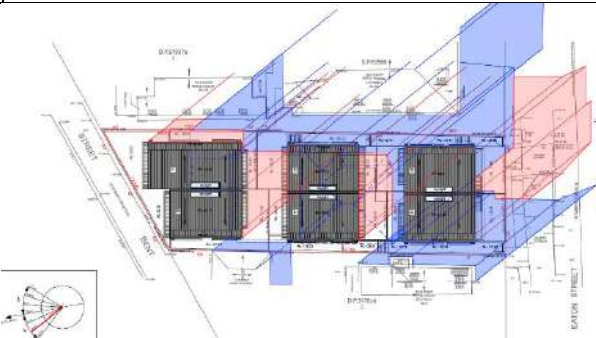
The above Development Control plan applies to the site, so an assessment has been carried out below:

Compliance Table – Residential Development

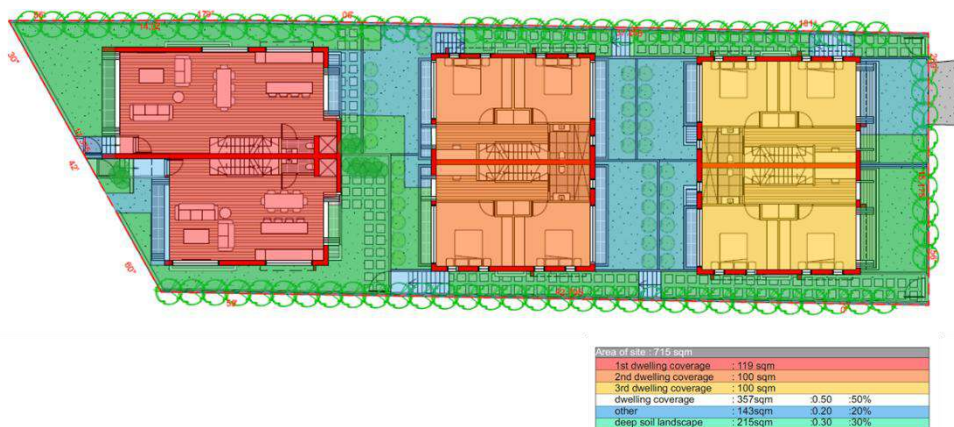
Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.1 Introduction		
General Objectives	No	The proposal fails to satisfy objective Q5 in that the proposed development will have an adverse impact on environmental quality due to the negative impact on trees within and adjacent to the site and fails to provide sufficient replacement plantings.

Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.1 Population Mix	Yes	The proposed dwelling mix of 6 x 3 bedroom dwellings is satisfactory with regard to the location of the site, the type of residential development proposed and the design of the dwellings. While a mix of dwelling sizes is sought, the scale of the development is not sufficient to provide units within all size categories.
1.2.2 Maintaining Residential Accommodation	Yes	The proposal seeks consent for a net increase of five (5) additional dwellings.
1.3 Environmental Criteria		
1.3.1 Topography	No	The scope of site excavation would likely result in the loss of T12 which is a substantial tree within the landscape. Whilst basement design is appropriate for this development type, the basement layout is not supported.
1.3.6 Views	Yes	There are no localised view impacts, nor has any submission raised view impacts as a concern.
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. Note: Main internal living areas excludes bedrooms, studies, laundries, storage areas.	No	<i>Shadow context & Analysis</i> A detailed analysis of the amended shadow diagrams, submitted as part of Rev C plans, has been undertaken with consideration given to the existing shadow context. The submitted shadow diagrams rectify some errors and omissions from the originally submitted shadow diagrams. An assessment of the proposal against the solar access requirements of the DCP 2013 is provided as follows: <u>Neighbouring properties:</u> 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 adjoining properties at Nos. 6 and 10 Eaton Street, and 1B Bent Street. New shadow cast by the proposal will generally fall within the shadow profile of the existing dwelling with new shadow transitioning quickly and generally for a limited time (less than 1-2 hours). As a result, the proposal will not result in any discernible increase in overshadowing to the neighbouring properties. <u>Subject dwellings:</u> Solar access to proposed dwelling Nos. 03, 04, 05 and 06 fall below minimum requirement of 3 hours solar access to private open spaces, and ground floor habitable windows, and the balcony of dwelling No. 03 as required by the DCP. The development will cast shadow within the subject site itself with detrimental impact to the amenity of the proposed development, with private open spaces and habitable windows at the ground floor of each of these units significantly impact throughout the entire day on 21 June. Unit Nos. 03 and 05 will receive highly impacted solar access for less than 1-2 hours, whilst Unit Nos. 04 and 06 will receive partial solar access at 1-2pm and full solar access at 3pm.

Part B Section 1- Residential Development																															
	<i>complies</i>	<i>Comments</i>																													
		It is noted that 3 hours of partial solar access is provided to the Secondary Floor Rumpus Rooms of Unit Nos. 04, 05, and 06, with Unit No. 03 not meeting the required 3 hours solar access. Unit No. 03, of particular note, with receive highly impacted partial solar access for no more than 1-2 hours on 21 June. Whilst these rumpus rooms are technically classified as habitable living spaces, they are not the main living spaces of the units as required under provision P1(b), as these spaces are located at the Ground Floor level. At no point on 21 June do the private open spaces of Unit Nos. 03, 04, 05, and 06 receive solar access. Solar access to units 01 and 02 is satisfactory to the main internal living areas noting the street front elevation of the townhouses addressing the secondary frontage at Bent Street which will receive full solar access throughout the day. However the rear courtyard areas are significantly affected and given the poor dimensions of north facing courtyards, the rear courtyard is the regarded as primary outdoor private open space. A summary of solar access is provided in the following table: <table border="1"> <caption>Table: Solar access Midwinter (21 June) - hrs</caption> <thead> <tr> <th>Unit</th><th>Living</th><th>POS</th><th>Complies</th></tr> </thead> <tbody> <tr> <td>01</td><td>Main >3hrs Rumpus >3hrs</td><td>Front >3hrs Rear <1hr</td><td>POS – No Living – Yes</td></tr> <tr> <td>02</td><td>Main >3hrs Rumpus >3hrs</td><td>Front >3hrs Rear <1hr</td><td>POS – No Living – Yes</td></tr> <tr> <td>03</td><td>Main <1hr Rumpus <1hr</td><td><1hr</td><td>No</td></tr> <tr> <td>04</td><td>Main <1hr Rumpus >3hrs</td><td><1hr</td><td>No</td></tr> <tr> <td>05</td><td>Main <1hr Rumpus ~3hrs</td><td><1hr</td><td>No</td></tr> <tr> <td>06</td><td>Main <1hr Rumpus >3hrs</td><td><1hr</td><td>No</td></tr> </tbody> </table> Assessment of shadow impacts <u>Neighbouring properties:</u> The proposal will create only minor increases in shadow impacts to 6 and 10 Eaton Street, and 1B Bent Street to side accesses and to minor areas within the front and rear setbacks. As stated above these new shadows will generally fall for a limited time (less an 1-2 hours). Therefore, the neighbouring properties will maintain a similar solar outcome to that as existing and is acceptable.		Unit	Living	POS	Complies	01	Main >3hrs Rumpus >3hrs	Front >3hrs Rear <1hr	POS – No Living – Yes	02	Main >3hrs Rumpus >3hrs	Front >3hrs Rear <1hr	POS – No Living – Yes	03	Main <1hr Rumpus <1hr	<1hr	No	04	Main <1hr Rumpus >3hrs	<1hr	No	05	Main <1hr Rumpus ~3hrs	<1hr	No	06	Main <1hr Rumpus >3hrs	<1hr	No
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Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
		<u>Subject dwellings:</u> The proposed roof form, fall of land, aspect and orientation of the proposed dwelling does not provide an ideal orientation for solar access. However, the height, form and placement of the dwellings does not enable the development to achieve sufficient solar access during mid-winter. The height and form of dwelling is not an appropriate design response to the site constraints. The private open spaces of the central two townhouses and two townhouses fronting Eaton Street would not meet minimum solar access requirements, with these units achieving less than 1 hour solar access during midwinter. Unit Nos. 03, 04, 05 and 06 do not meet the requirement of 3 hours solar access to main living spaces in midwinter, however, it is noted that the Secondary Floor rumpus rooms of these units receive solar access. Unit No. 03 in particular suffers detrimentally, receiving no valuable or extended period of solar access to any living or private open space. The development fails to meet the minimum requirements of Section 1.3.7 of the NSDCP 2013 to ensure that all dwellings have reasonable access to sunlight and daylight and as such the application should be refused.
 10am (midwinter)  2pm (midwinter)  Figure 9: Extract from updated shadow long section detailing noon solar plane (mid winter @ 33 degree) and detailing fall of the site		

Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.3.8 Acoustic Privacy	Yes	The proposed townhouses have been designed and constructed to comply with the criteria specified in Table B-1.2 and the building will be constructed pursuant to the provisions of the National Construction Code (F1 National Construction Code). The proposal maintains the current residential use of the site, consistent with surrounding uses and therefore is unlikely to have an adverse impact on the acoustic privacy of adjoining dwellings.
1.3.10 Visual Privacy	No	Large windows have been implemented at the eastern and western side boundaries at the upper floor levels of each pair of townhouses. These large windows will result in adverse visual impacts to existing neighbouring dwellings. Matters of visual privacy were also raised during the notification period, raising similar concerns to that outlined here. Visual privacy will be compromised and is inconsistent with the objectives of 1.3.10 of the NSDCP 2013.
1.4 Quality built form		
1.4.1 Context	Yes	The proposal is generally compatible with the context.
1.4.3 Streetscape	Yes	The proposal will be consistent within the streetscape.
1.4.5 Siting	No	The development is not appropriately sited due to the negative impacts on trees within the site and neighbouring site.
1.4.6 Setbacks	Yes	In the R3 Medium Density Residential zone, for multi-dwelling developments a minimum side setback 1.5m applies to two storey development and 2.5m to three storey development. The proposal will comply with the side setback provisions and will be 1.5m from the eastern and western boundaries to the ground floor and the first floor, and 2.5m to the eastern and western boundaries for the second floor of each building. The front and rear setbacks will be compatible with the front and rear setbacks of the adjoining buildings on the adjoining properties
1.4.7 Form Massing Scale	Yes	The proposal is generally consistent with the form and scale of the locality, noting the difficult topography of the site. Despite the exceedance in the building height standard, the exceedance will not be readily discernible. Further, the setbacks, site coverage and landscaped area are all satisfactory.
1.4.8 Built Form Character	Yes	The proposed contemporary building design is complementary to the existing character of the locality.
1.4.9 Dwelling Entry	Yes	The two dwellings fronting Eaton Street each have their own entry directly off the street. The dwellings behind all have direct entry at ground level.
1.4.10 Roofs	Yes	The proposed roof form is an acceptable roof typology for contemporary buildings and is satisfactory in this location.
1.4.12 Materials	Yes	The colours and materials are acceptable within the context of the streetscape.

Part B Section 1- Residential Development																														
	complies	Comments																												
1.5 Quality Urban Environment																														
1.5.4 Vehicle Access and Parking	Yes	The proposal complies with the maximum parking rate for multi-dwelling housing in accordance with Section 10 of the NSDCP 2013. The basement has been designed to enable vehicles Cars will be able to enter and leave the site in a forward direction. All parking is provided underground. Driveway and pedestrian access is separated.																												
1.5.5 Site Coverage	Yes	The proposed development has a maximum site coverage control of 50% in accordance with 1.5.5 of the NSDCP 2013. The site has an area of 715.2m². The proposed townhouses encompass a total site coverage of 353.4m² which represents 49.4% of the total site area. The proposal is compliant with respect to site coverage.																												
Site area = 715.2m² <table><tr><th colspan="2">Table B-1.6: Max Site Coverage</th></tr><tr><th>Type</th><th>Cover (max)</th></tr><tr><td>Dual Occupancy</td><td>45%</td></tr><tr><td>Multi-dwg housing</td><td>50%</td></tr><tr><td>Residential flat building</td><td>45%</td></tr></table>			Table B-1.6: Max Site Coverage		Type	Cover (max)	Dual Occupancy	45%	Multi-dwg housing	50%	Residential flat building	45%																		
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Figure 10: Applicant's site coverage diagram																														
1.5.6 Landscape Area (min) & Un-built upon area (max)	Yes	The proposed development has been assessed, and the landscape area requirements as follows: Landscape area (20% min required) The proposed landscape area complies with the NSDCP 2013 requirements. The proposed landscape area has a proposed total area of 232.2m² which represents 32.4% of the total site area. The proposal is considered to be consistent with the landscape character of the site and surrounding area. The proposed landscape treatment would enable appropriate landscaping to be established at a scale which would complement the site characteristics and proposed built form. Un-built upon area (20% (max) permitted) The proposed unbuilt upon area of the site complies with the NSDCP 2013 requirements. The total area is 129.6m² which represents 18.1% of the total site area.																												
Site area = 715.2m² Other Development<table><tr><th colspan="3">Table B-1.7: Landscape requirements</th></tr><tr><th>Type</th><th>Landscape (min)</th><th>UBA (max)</th></tr><tr><td>Dual Occupancy</td><td>40%</td><td>15%</td></tr><tr><td>Multi-dwg housing</td><td>30%</td><td>20%</td></tr><tr><td>Residential flat building</td><td>40%</td><td>15%</td></tr></table>			Table B-1.7: Landscape requirements			Type	Landscape (min)	UBA (max)	Dual Occupancy	40%	15%	Multi-dwg housing	30%	20%	Residential flat building	40%	15%													
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Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
		The proposed development also would not alter the site's performance with regard to un-built upon area as works are wholly within the existing building footprint.
1.5.7 Landscaping <i>P9. Trees should provide 50% canopy cover over landscaped areas at maturity</i>	No	The proposed development will have a negative impact on trees within and adjacent to the site and fails to provide sufficient replacement plantings contrary to P2 of 1.5.7 of NSDCP 2013.
1.5.9 Private and Communal Open Space	No	The proposal provides for adequate private open space adjoining living areas. However, it is noted previously that proposed private open spaces lack total solar access on 21 June and therefore does not comply with objective O1 under 1.5.9 of the NSDCP 2013, as it fails to provide with a reasonable level of outdoor amenity.
1.6 Efficient Use of Resources		
1.6.1 Energy Efficiency	Yes	A valid BASIX Certification has been submitted as part of the development application documentation.

CHARACTER STATEMENTS - PART C

Relevant Planning Area (Forsyth Neighbourhood)

The site is located within the Forsyth Neighbourhood to which Part C, Section 7.1 applies. The proposed development is characteristic and provides a built form that is compatible within the streetscape and the future desired character of the 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 proposal includes an increase from a single 3+ bedroom dwelling to six 3 bedroom dwellings and, resulting in a net increase of 5 3-bedroom dwellings which represents an increase of 13 residents to the site. Due to the increase in the floor space and bedrooms, the following breakdown of s7.11 contributions are outlined below:

Open space and recreation facilities:	\$55,064.46
Public domain:	\$30,652.75
Active transport:	\$1,749.54
Community facilities:	\$11,059.95
Plan administration and management:	\$1,473.30
Total:	\$100,000.00

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.

Part 2 Division 1 Clause 5 outlines that Residential Development triggers a contribution if development consent is granted.

(2) States that Residential Development means any of the following –

- (a) subdivision of land (other than strata subdivision) on which development for the purposes of residential accommodation is permitted with development consent by an environmental planning instrument applying to the land (residential subdivision),*
- (b) medium or high-density residential development,*
- (c) development for the purposes of a manufactured home estate.*

Schedule 1 defines medium or high density residential development as –

medium or high-density residential accommodation means any of the following:

- (a) attached dwellings,*
- (b) build-to-rent housing,*
- (c) dual occupancy,*
- (d) multi-dwelling housing,*
- (e) residential flat building,*
- (f) semi-detached dwellings,*
- (g) seniors living consisting of a group of independent living units,*
- (h) shop top housing.*

Based on the subject development application, the application is defined as multi-dwelling housing.

Schedule 2 outlines exemptions for this contribution, of which remains silent on matters such as the proposed development.

Division 2 clause 7 sets out the base contribution amounts as follows:

Region	HPC class of development	Amount	HPC unit
Greater Sydney	Residential subdivision	\$12,000	new dwelling lot
	Medium or high-density residential development	\$10,000	new dwelling
	Commercial development	\$30	square metre of new GFA
	Industrial development	\$15	square metre of new GFA
Central Coast Illawarra-Shoalhaven Lower Hunter	Residential subdivision	\$8,000	new dwelling lot
	Medium or high-density residential development	\$6,000	new dwelling
	Manufactured home estate	\$6,000	new dwelling site
	Commercial development	\$30	square metre of new GFA
	Industrial development	\$15	square metre of new GFA

As the proposal involves the construction of a multi-dwelling housing development resulting in a net increase of five (5) dwellings, the proposal is subject to a contribution of **\$50,000.00** in accordance with Clause 7 of the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*. Should the recommendation be overruled, the total contribution amount will be required to be confirmed via the case in the NSW Planning Portal.

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 Carparking 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

PUBLIC INTEREST

The proposal is not considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal is located in a R3 Medium Density Residential zone where multi dwelling housing is a permissible form of development. Whilst the proposed use is permissible, as discussed herein, the proposed design gives in to the constraints of the site and results in poor amenity for any future occupants and adjoining neighbours. Subsequently, the site is not considered suitable for its intended use.

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Plateau and Bay Precinct. Council received one (1) submission where the following matters were raised:

- ***Visual privacy***

West facing windows were raised as concerns with respect to overlooking into the adjoining property. It was noted during the assessment that large windows are proposed along the eastern and western side boundaries at the upper floor levels of the proposed townhouses. It was deemed during the assessment that the proposal is inconsistent with the objectives and controls of Section 1.3.10 of the NSDCP 2013 in that visual amenity and privacy will be compromised.

- ***Shadow impacts***

Shadow impacts of the proposed development on adjoining properties is compliant with Council's design requirements and is not a basis for refusal. The development is generally consistent with Council's design requirements and is not a basis for refusal. The development will result in minor additional overshadowing to adjoining sites for short periods of time during and morning at mid-winter. The overall impacts are not sufficient to sustain a recommendation for refusal on its own.

- ***Impact to T12 (impact to SRZ)***

Concerns were raised with respect to the impact to the SRZ of T12, which may compromise the health and structural integrity of the tree. It was commented by Council's Landscape Development Team that the proposed development is not supported due to the major impact to numerous site and neighbouring trees, most notably T12, amongst a number of other reasons. It was assessed that the proposal does not demonstrate compliance with 1.4.5 and 1.4.7 of the NSDCP 2013 in relation to the impact on T12.

- ***Boundary fence and retaining wall (structural impact)***

Standard conditions are applicable with respect to the boundary fence and retaining wall. Council's Engineering Team raised no objection to the proposed fence and wall.

- ***Population mix inconsistencies***

Despite the non-compliance with 1.2.1 of the NSDCP 2013, the proposal is considered to be broadly consistent with the provision of dwelling sizes that are characteristic within the context of the site and the R3 Medium density zone. Despite the non-compliance with 1.2.1 of the NSDCP 2013, the proposal is considered to be broadly consistent with the provision of dwelling sizes that are characteristic within the context of the site and the R3 Medium density zone. The proposal provides for a nett increase of 5 multi-dwelling townhouses and meets of the objectives of 1.2.1 of NSDCP 2013. The proposal provides for a nett increase of 5 multi-dwelling townhouses and meets of the objectives of 1.2.1 of NSDCP 2013.

CONCLUSION + REASONS

The development application has been assessed against the *North Sydney Local Environmental Plan 2013* and the *North Sydney Development Control Plan 2013* and is generally found to be unsatisfactory.

The proposed development fails to protect and preserve trees within the site and neighbouring site, in particular T12 located on the eastern boundary of 6 Eaton Street. As stated by Council's Landscape Development Officer, sufficient evidence has not been provided to ensure the proposed works will not have an unacceptable level of impact to T12.

The Clause 4.6 written submission submitted by the applicant is not acceptable. The proposed variation to the building height standard is not sustainable and does not maintain solar access and amenity within the subject site, particularly to primary living spaces and private open spaces. The breach in building height is inconsistent with Objective (1)(c) under Clause 4.3 of the *NSLEP 2013* and therefore cannot be supported.

The proposal will result in unacceptable and unreasonable impacts on the amenity of the site. The development fails to meet the minimum requirements of Section 1.3.7 of the *NSDCP 2013* to ensure that all dwellings have reasonable access to sunlight and daylight.

Large windows at the eastern and western side boundaries at the upper floor levels of each pair of townhouses will result in adverse visual impacts to existing neighbouring dwellings. Impacts of visual privacy were also raised in the submissions received. Visual privacy will be compromised and is inconsistent with the objectives of 1.3.10 of the *NSDCP 2013*.

Having regard to the provisions of Section 4.15(1) of the *Environmental Planning & Assessment Act 1979*, the application is recommended for **refusal**.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Anderson Plateau and Anderson Bay Precinct for 14 days where a number of issues were raised that have been addressed in this report.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel exercise the functions of Council, as the Consent Authority, refuse development consent for the demolition of an existing dwelling house and swimming pool, and construction of a multi dwelling housing development comprising 6 dwellings and basement parking under Development Application No. 58/2025 on land at 8 Eaton Street, Neutral Bay, for the following reasons:

1. Building Height

The application is considered to be unacceptable pursuant to the provision Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development will breach the building height standard.

Particulars:

- a. The proposed townhouses will exceed the maximum building height standard of the site, being 8.5m, by a maximum variation of 1.38m or 16.2%.

- b. The Clause 4.6 written submission submitted by the applicant is not acceptable. The height exceedance and form of Unit Nos. 01, 02, 03, and 04, where the exceedances in building height are located at the southern extents of the roof forms, are not an appropriate design response to the site constraints and directly contribute to the failure of providing adequate solar access.

The proposed exceedance in building height is not sustainable and does not maintain solar access and amenity within the subject site, particularly to primary living spaces and private open spaces. The breach in building height is inconsistent with Objective (1)(c) under Clause 4.3 of the *NSLEP 2013* and therefore cannot be supported.

2. Solar Access

The application is unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is non-compliant with Section 1.3.7 of the *NSDCP 2013*.

Particulars:

- a) The proposed roof form, fall of land, aspect and orientation of the proposed dwelling does not provide an ideal orientation for solar access. However, the height, form and placement of the dwellings does not ensure the development would achieve sufficient solar access during mid-winter.
- b) The shadow diagrams provided with the application are inadequate for assessment purposes and fail to adequately show the full extent of existing and proposed shadows. These documents are unreliable for assessment purposes.
- c) Elevation shadow diagrams at intervals at 2pm & 3pm for unit Nos 04 and 06 which do not correlate with plan view shadow diagrams and have not included shadows cast by adjoining development.
- d) The development fails to meet the minimum solar access requirements of Section 1.3.7 of the *NSDCP 2013* to ensure that all dwellings have reasonable access to sunlight and daylight and as such the application should be refused.
- e) Private open spaces of Unit Nos. 03, 04, 05 & 06 do not meet minimum solar access requirements, with private open space to these units achieving less than 1 hour solar access during midwinter.
- f) Main living spaces to Unit Nos. 03, 04, 05 and 06 do not meet the requirement of 3 hours solar access in midwinter. The inadequate solar access to main internal living spaces is not sufficiently offset by the proposed secondary floor rumpus rooms.
- g) Unit Nos. 03, 04, 05 and 06 will receive no valuable or extended period of solar access to any living or private open space.

The development fails to meet the minimum requirements of Section 1.3.7 of the *NSDCP 2013* to ensure that all dwellings have reasonable access to sunlight and daylight.

3. Impact to trees on adjoining land - T12 *Eucalyptus microcorys*

The application is unacceptable pursuant to the provisions of 4.15 (1)(a) of the *Environmental Planning and Assessment Act 1979* in that the proposed development would have an unreasonable impact to the health and retention of T12 *eucalyptus microcorys* located within the adjoining property at 6 Eaton Street, Neutral Bay.

The proposal therefore does not comply with the following relevant environmental planning instruments and development controls as follows:

Particulars

- a) Aims of *North Sydney LEP 2013*– The proposal unable to satisfy key aim (2)(e)(i).
 - i. The proposal fails to maintain and protect natural landscapes due to the negative impact to T12 *Eucalyptus microcorys*.
- b) North Sydney Development Control Plan 2013, Part B, Section 1 – General Objectives (1.1) – failure to meet objective O5, O7 due to the negative impact to T12 *Eucalyptus microcorys*.
- c) North Sydney Development Control Plan 2013, Part B, Section 1 – Siting (Section 1.4.5), Landscaping (Section 1.5.7) – failure to meet objectives and controls with respect to the negative impact to T12 *Eucalyptus microcorys*.
- d) North Sydney Development Control Plan 2013, Part B, Section 16 – Tree and Vegetation Management (Section 16.1) – failure to meet objectives and controls with respect to the negative impacts to T12 *Eucalyptus microcorys*.
- e) Insufficient information has been provided which has demonstrated that the development would not have a substantial impact on T12 *Eucalyptus microcorys*.
- f) Encroachment of the development within the structural and primary roots zones of T12 *Eucalyptus microcorys* would significantly increase the potential for severance of structural roots and would have an unreasonable risk to the structure of the tree as a result of site excavation.
- g) Owners' consent from the owners of 6 Eaton Street consenting to tree impact has not been provided.

4. Objectives of R3 Medium Density Residential Zone

The application is unacceptable pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not align with the objectives of the R3 Medium Density Residential Zone, as outlined under the Land Use Table of the *North Sydney Local Environmental Plan 2013 (NSLEP 2013)*.

Particulars:

- a. The proposal does not align with the zoning objectives in that the proposed multi-dwelling housing will compromise the amenity of the locality through the significant impact to the landscape context, specifically to tree T12.
- b. The proposal also fails to maintain the quality of life in the neighbouring area in that it breaches the height standard outlined by the planning regulations and fails to achieve high levels of residential amenity through the associated solar access impacts.

5. The proposed development is not suitable for the site

The application is considered unacceptable pursuant to the provisions of s.4.15(1)(c) & (d) of the *Environmental Planning and Assessment Act 1979* in that the development is not suitable for the site due to the adverse environmental impacts on the solar amenity of the proposed units and impacts to T12 *Eucalyptus microcorys*.

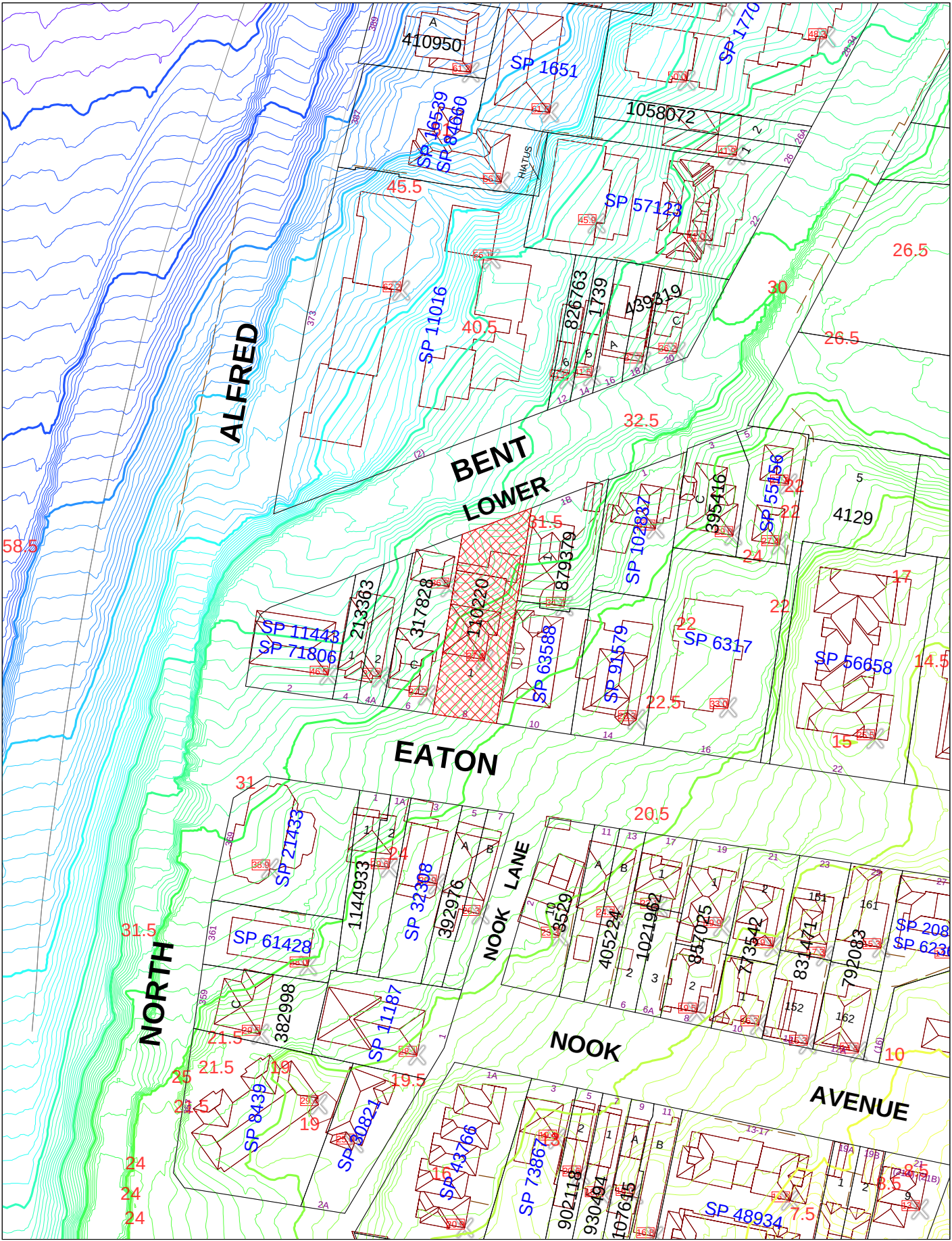
6. Public Interest

The proposed development is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* in that the approval of the proposed development is not in public interest.

JACK VARKA
SENIOR ASSESSMENT OFFICER

DAVID HOY
TEAM LEADER ASSESSMENTS

ISOBELLA LUCIC
A/MANAGER DEVELOPMENT SERVICES



Development Application

New Multi-Residential Development
8 Eaton Street, Neutral Bay, NSW, 2089
Lot 1 DP 110220

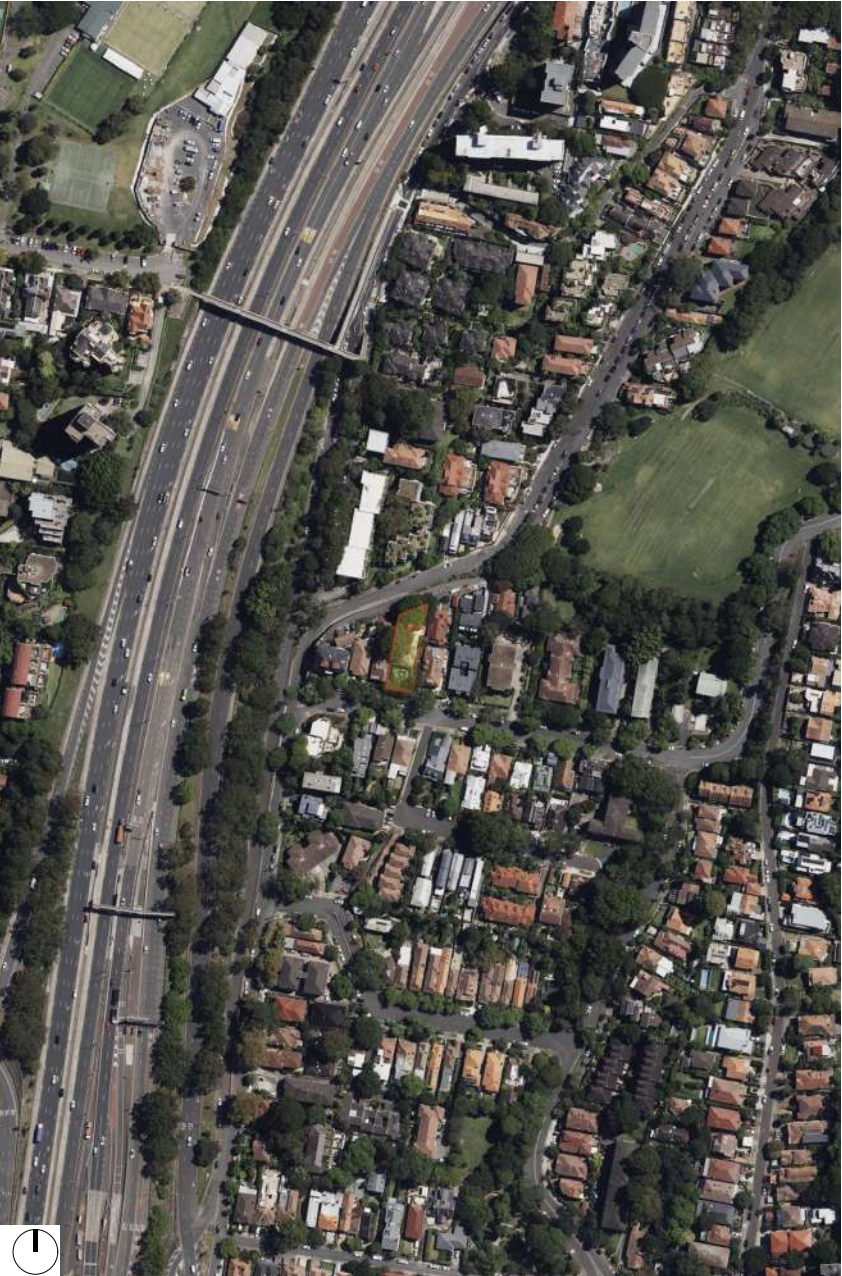
Drawing	Title	Scale
	Drawing Register / Site Map	-
DA-000	Basix Commitments	1:200
DA-001	Proposed roof plan	1:200
DA-002	Proposed basement floor plan design A	1:200
DA-003	Proposed ground floor plan	1:200
DA-004	Proposed first floor plan	1:200
DA-005	Proposed second floor plan	1:200
DA-006	Proposed elevation from Bent street	1:200
DA-007	Proposed elevation from Eaton street	1:200
DA-008	Proposed western elevation	1:200
DA-009	Proposed eastern elevation	1:200
DA-010	Proposed section elevation A	1:200
DA-011	Proposed section elevation B	1:200
DA-012	Proposed section elevation C	1:200
DA-013	Proposed section DD	1:200
DA-014	Proposed section EE	1:200
DA-015	Proposed section FF	1:200
DA-016	Proposed section GG	1:200
DA-017	Proposed section HH	1:200
DA-100	Site Analysis	1:200
DA-101	9am Shadow Diagram - Equinox	1:200
DA-102	12noon Shadow Diagram - Equinox	1:200
DA-103	3pm Shadow Diagram - Equinox	1:200
DA-104	9am Shadow Diagram - Solstice	1:200
DA-105	12noon Shadow Diagram - Solstice	1:200
DA-106	3pm Shadow Diagram - Solstice	1:200
DA-107	Waste Management Plan	1:200
DA-108	Bulk Excavation Plan	1:200
DA-109	Site Calculations	1:200
DA-110	External Materials Schedule	1:200
DA-111	Window Schedule	1:200
DA-112	Height Blanket Diagram	1:200
DA-113	Concept Hydraulic Plan	1:200
DA-114	Landscape Plan 1/3	1:200
DA-115	Landscape Plan 2/3	NTS
DA-116	Landscape Plan 3/3	NTS

Drawing	Title	Scale
DA-200	9am Shadow Diagram- Solstice	1:200
DA-201	10am Shadow Diagram - Solstice	1:200
DA-202	11am Shadow Diagram - Solstice	1:200
DA-203	12pm Shadow Diagram - Solstice	1:200
DA-204	1pm Shadow Diagram - Solstice	1:200
DA-205	2pm Shadow Diagram - Solstice	1:200
DA-206	3pm Shadow Diagram - Solstice	1:200
DA-207	9am Elevation Shadow Diagram - Solstice	1:200
DA-208	10am Elevation Shadow Diagram - Solstice	1:200
DA-209	11am Elevation Shadow Diagram - Solstice	1:200
DA-210	12pm Elevation Shadow Diagram - Solstice	1:200
DA-211	1pm Elevation Shadow Diagram - Solstice	1:200
DA-212	2pm Elevation Shadow Diagram - Solstice	1:200
DA-213	3pm Elevation Shadow Diagram - Solstice	1:200
DA-214	Living Room Solar Access Summary	1:200

Amendments - Revision C - 03.10.25

A	Changes to second floor arrangements for all units swapping RUMPUS and BED 1 to meet minimum solar access requirements for each unit. Changes can be found on DA 05.
B	Elevational shadow analysis for Building B and Building C illustrating solar access for both buildings northern facing facades. Changes can be found on DA 207-213.
C	Solar access summary provided outlining compliance to minimum solar access for Units 3,4,5,6. Changes can be found on DA 214.

Site Map



Scale 1:2257



Location
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Contact

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Nominated Architect

Anthony Solomon RAIA 5684

Compliance

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Legend

Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project

New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client

Mohammad Helou

Status

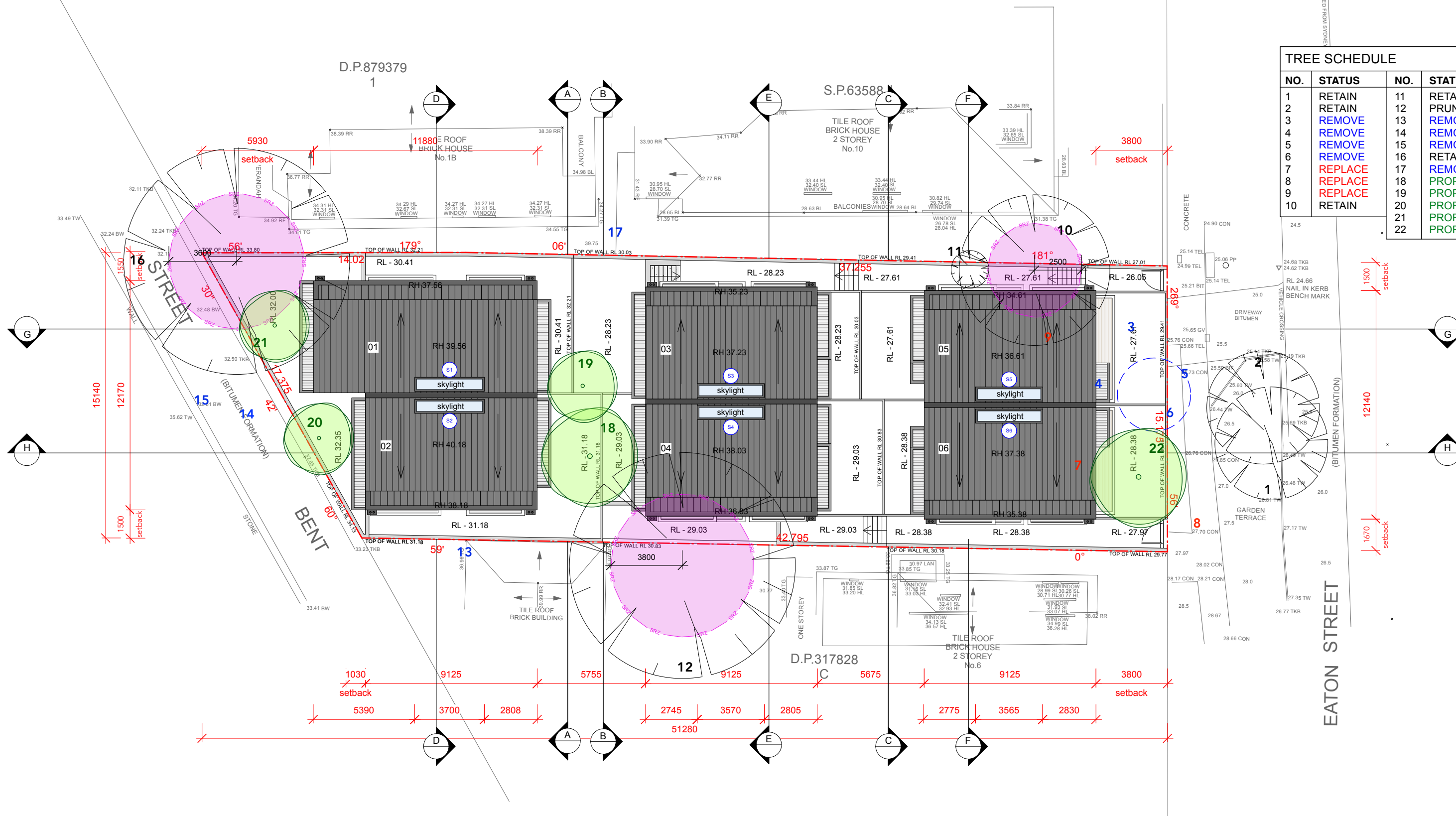
Development Application (DA)
Not For Construction

Drawing

Drawing Register / Site Map

Project No.

23005



TREE SCHEDULE			
NO.	STATUS	NO.	STATUS
1	RETAIN	11	RETAIN
2	RETAIN	12	PRUNE
3	REMOVE	13	REMOVE
4	REMOVE	14	REMOVE
5	REMOVE	15	REMOVE
6	REMOVE	16	RETAIN
7	REPLACE	17	REMOVE
8	REPLACE	18	PROPOSED
9	REPLACE	19	PROPOSED
10	RETAIN	20	PROPOSED
		21	PROPOSED
		22	PROPOSED



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Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
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Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

Scale
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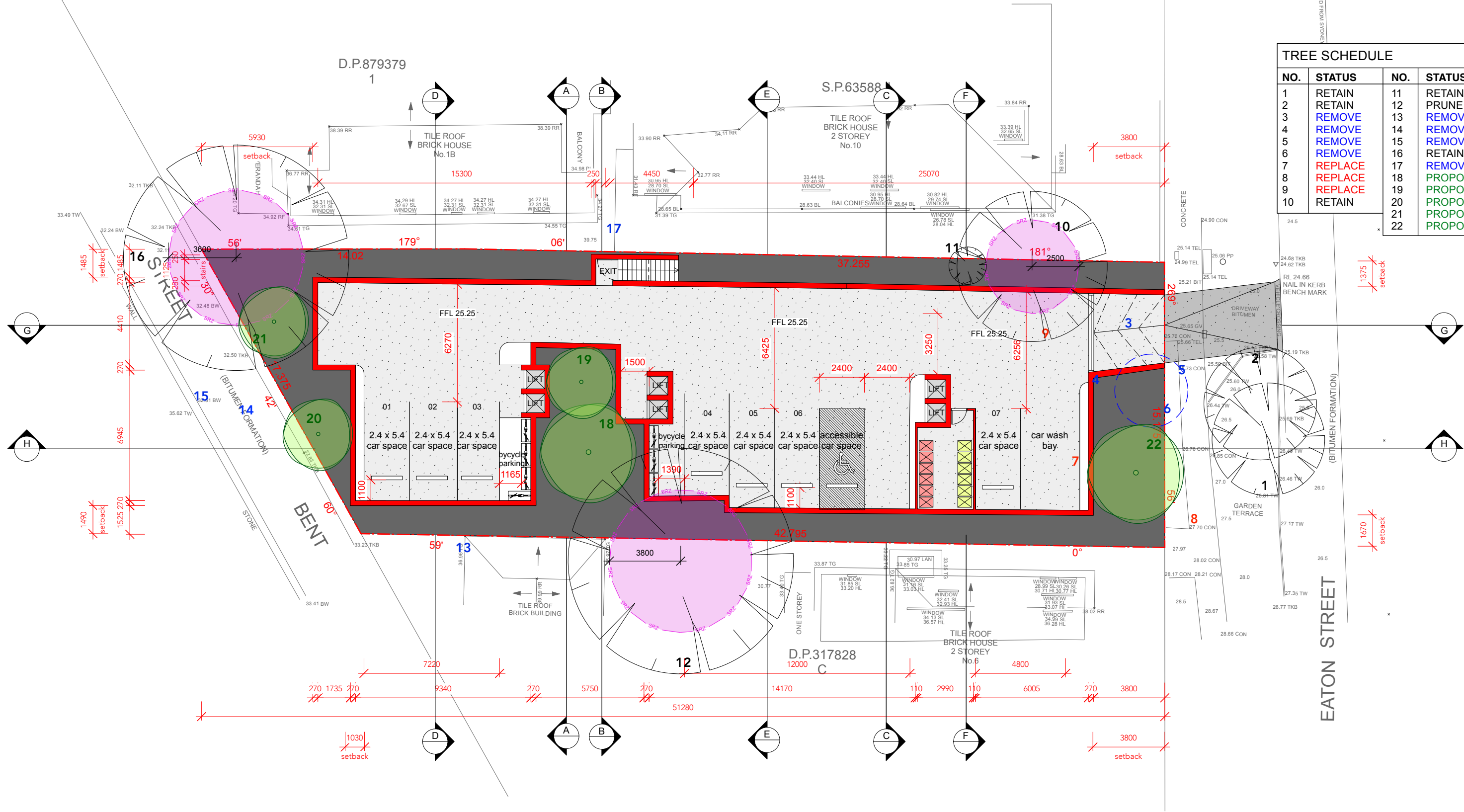
Drawing
Roof Plan

Project No.
23005

Sheet No.
DA-001

North





Location
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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

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Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

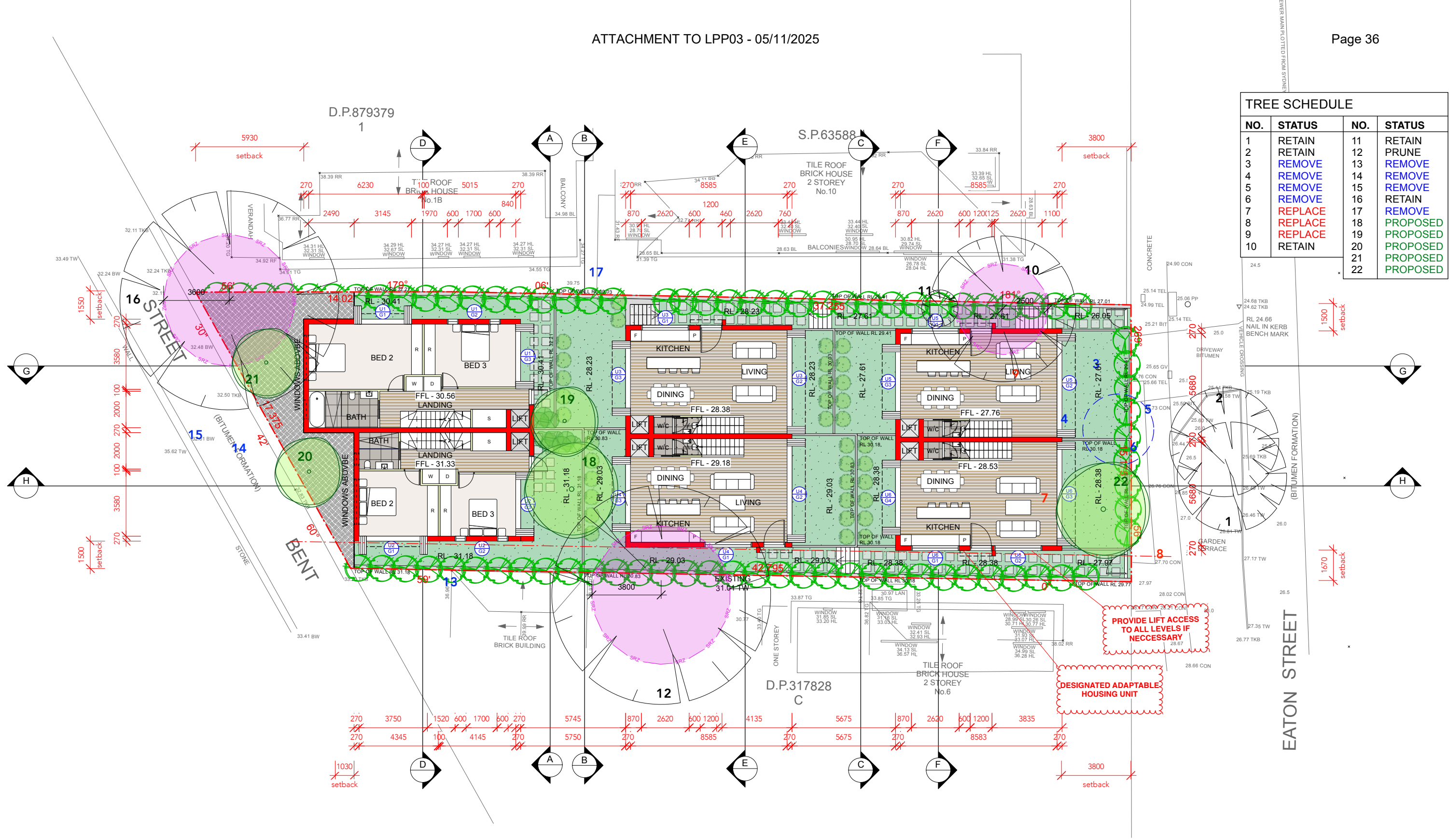
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Drawing
Basement Plan

Project No.
23005

Sheet No.
DA-002





TREE SCHEDULE			
NO.	STATUS	NO.	STATUS
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2	RETAIN	12	PRUNE
3	REMOVE	13	REMOVE
4	REMOVE	14	REMOVE
5	REMOVE	15	REMOVE
6	REMOVE	16	RETAIN
7	REPLACE	17	REMOVE
8	REPLACE	18	PROPOSED
9	REPLACE	19	PROPOSED
10	RETAIN	20	PROPOSED
		21	PROPOSED
		22	PROPOSED



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

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Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

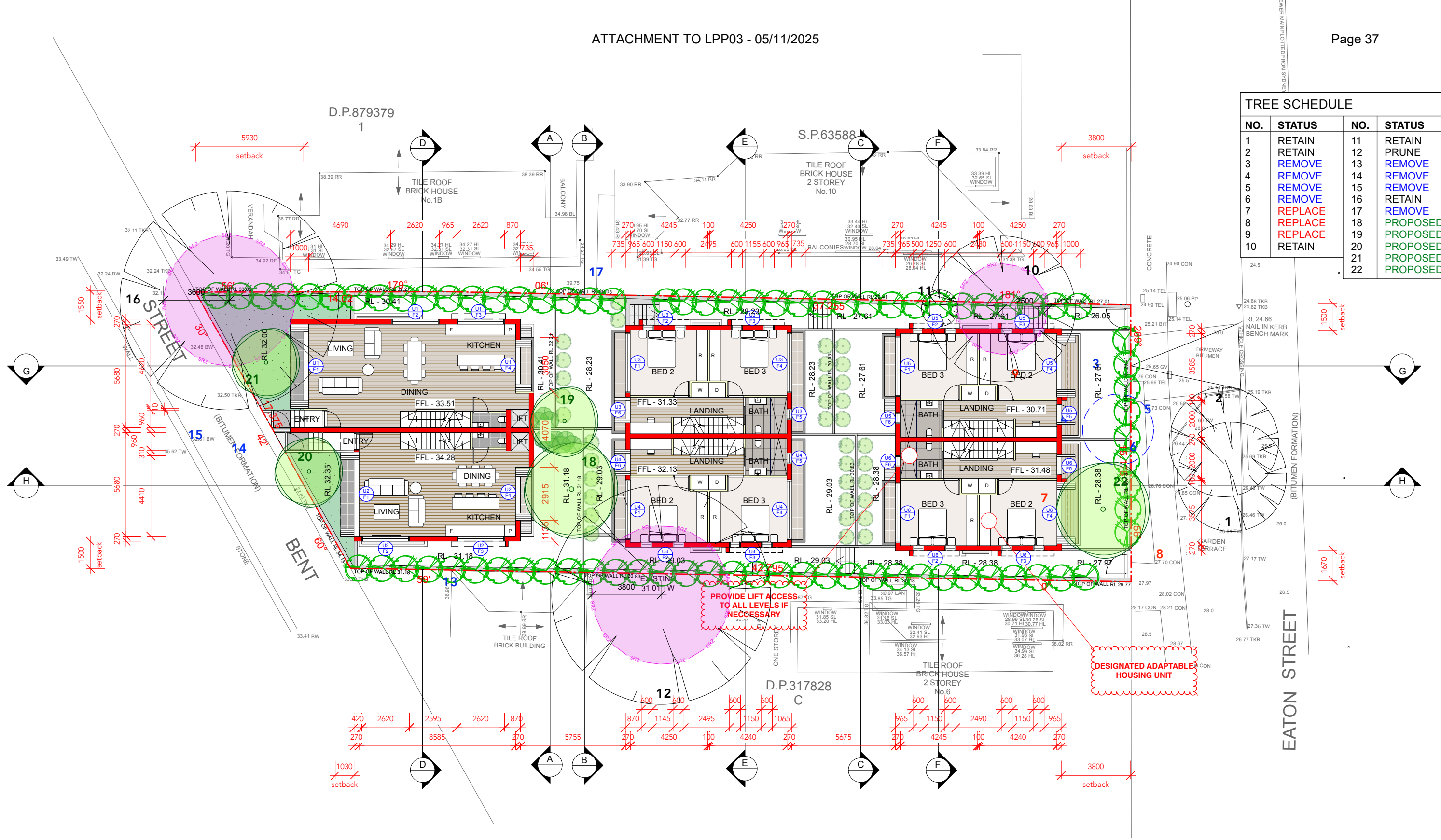
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North

Drawing
Ground Floor Plan

Project No.
23005

Sheet No.
DA-003



TREE SCHEDULE			
NO.	STATUS	NO.	STATUS
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2	RETAIN	12	PRUNE
3	REMOVE	13	REMOVE
4	REMOVE	14	REMOVE
5	REMOVE	15	REMOVE
6	REMOVE	16	RETAIN
7	REPLACE	17	REMOVE
8	REPLACE	18	PROPOSED
9	REPLACE	19	PROPOSED
10	RETAIN	20	PROPOSED
		21	PROPOSED
		22	PROPOSED



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
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Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

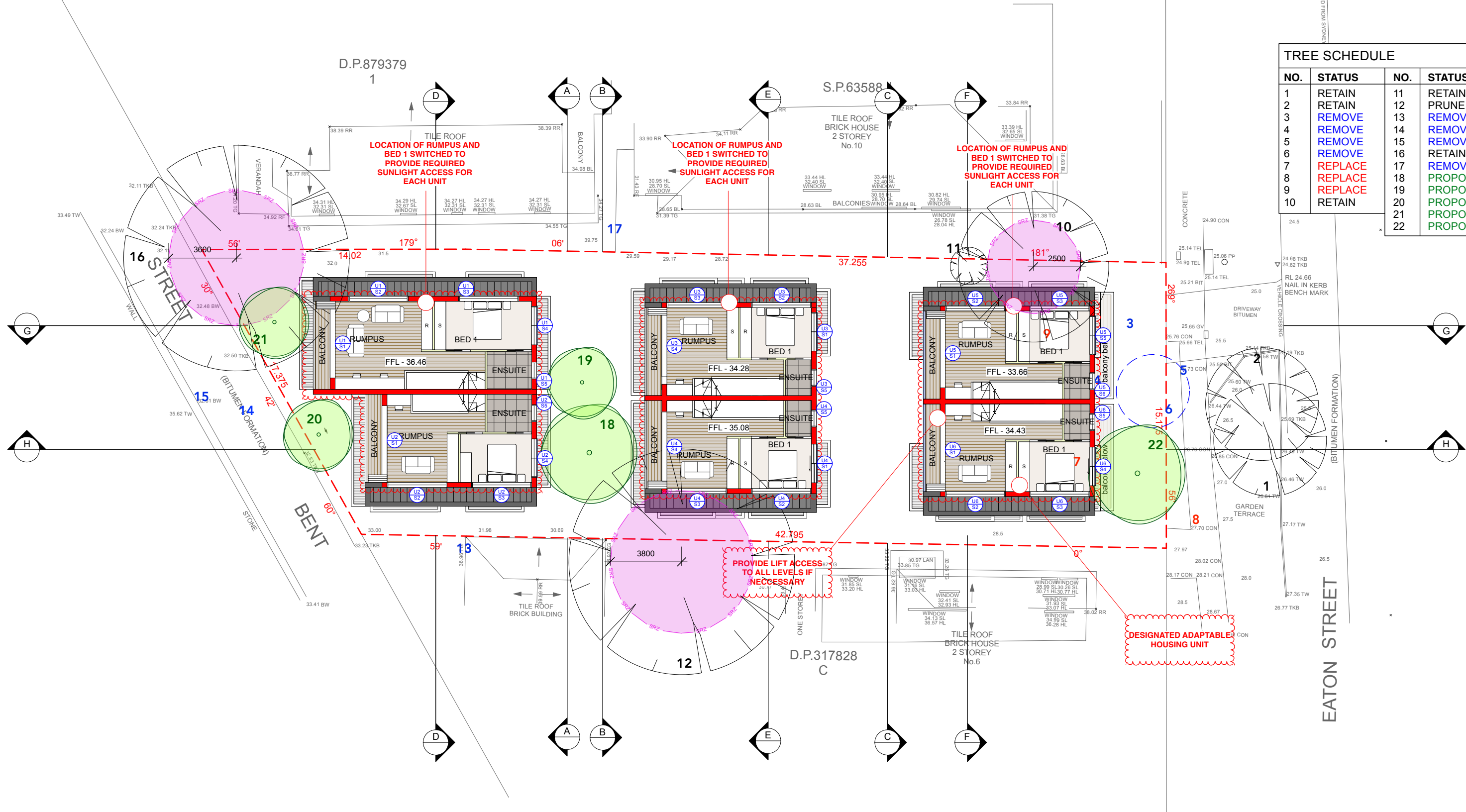
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North

Drawing
First Floor Plan

Project No.
23005

Sheet No.
DA-004



TREE SCHEDULE			
NO.	STATUS	NO.	STATUS
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2	RETAIN	12	PRUNE
3	REMOVE	13	REMOVE
4	REMOVE	14	REMOVE
5	REMOVE	15	REMOVE
6	REMOVE	16	RETAIN
7	REPLACE	17	REMOVE
8	REPLACE	18	PROPOSED
9	REPLACE	19	PROPOSED
10	RETAIN	20	PROPOSED
		21	PROPOSED
		22	PROPOSED

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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

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Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

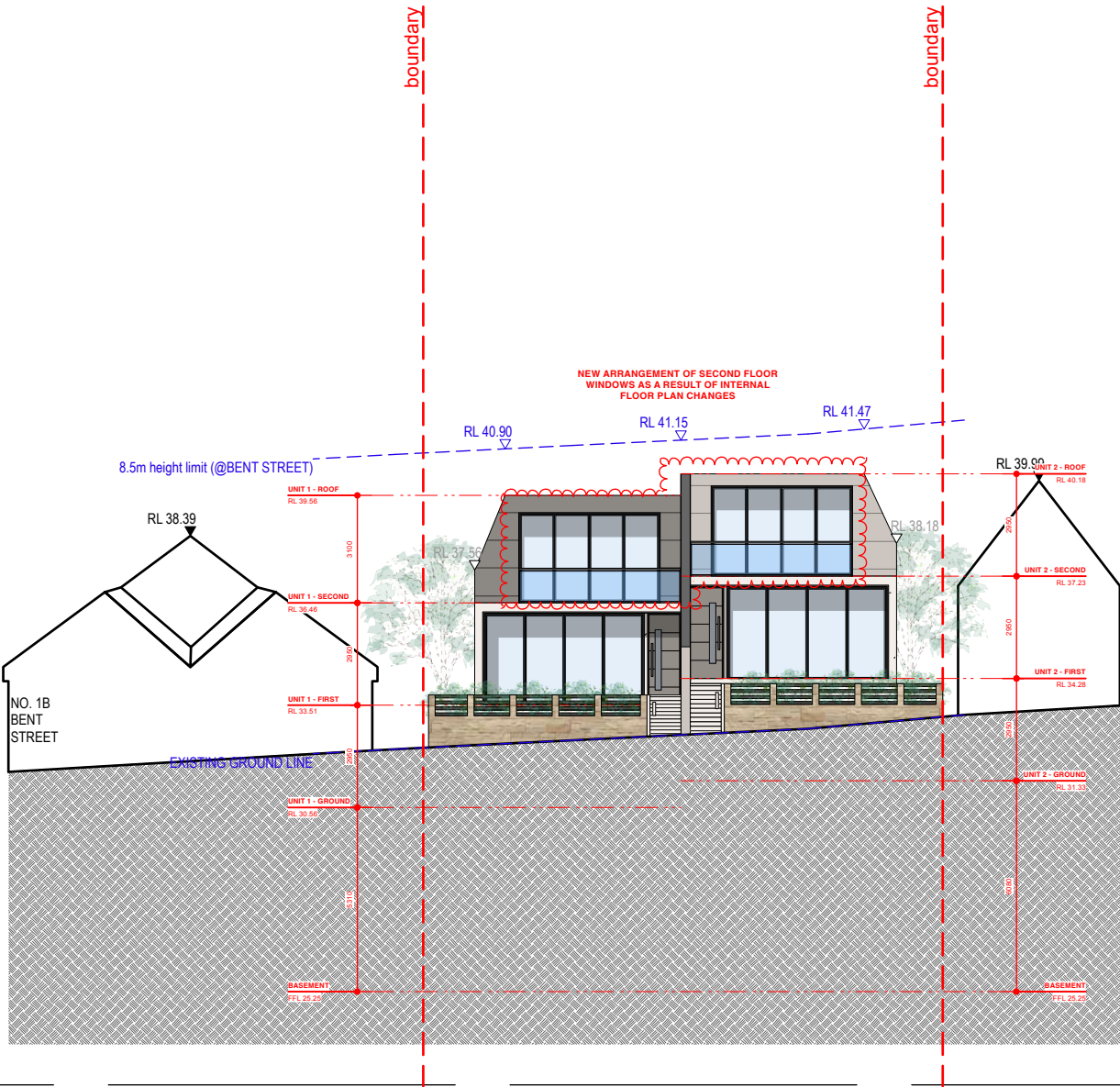
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Drawing
Second Floor Plan

Project No.
23005

Sheet No.
DA-005





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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

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Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

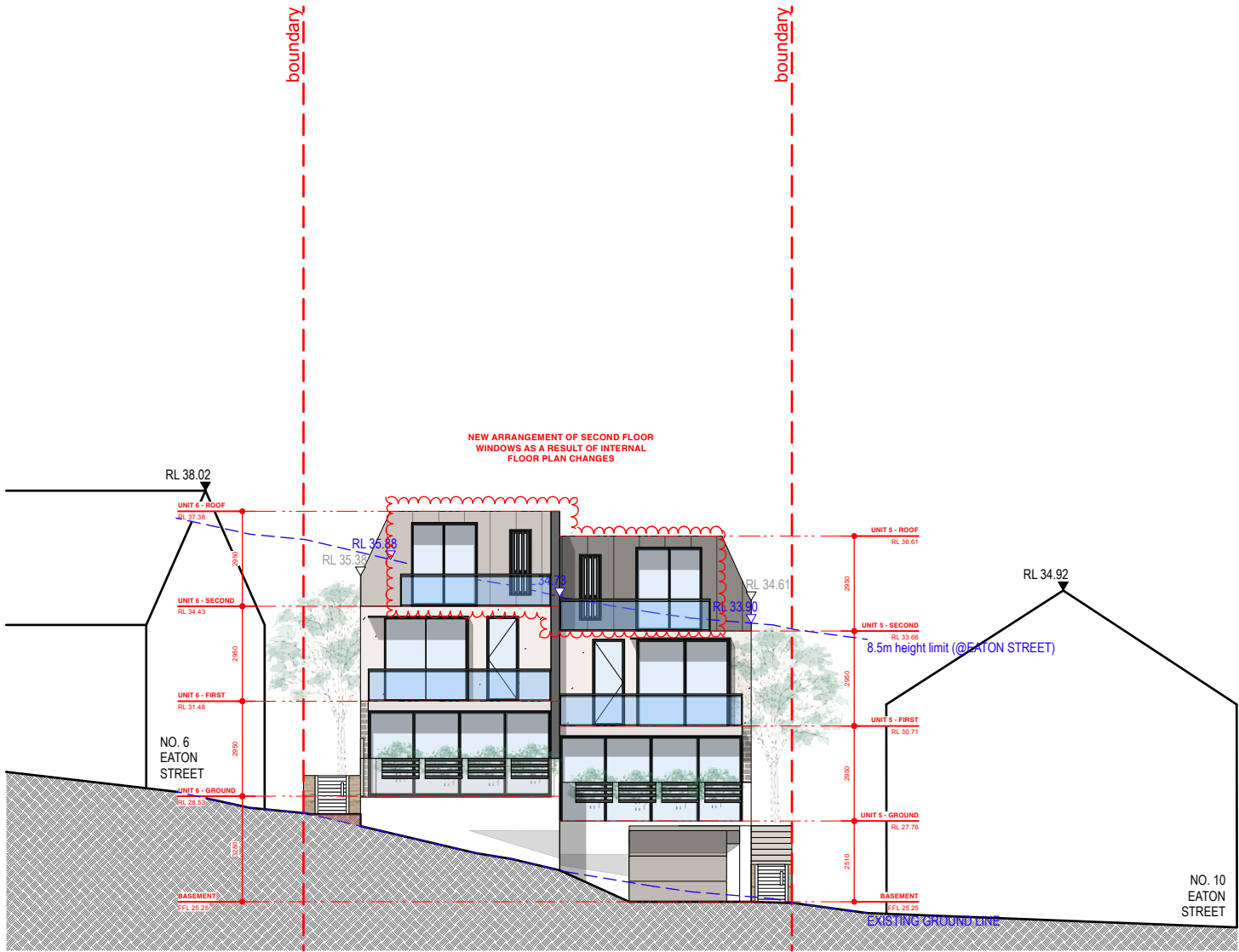
Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

Scale
1:200

Drawing
Elevation - Bent Street

Project No. 23005
Sheet No. DA-006



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

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15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

Scale
1:200

Drawing
Elevation - Eaton Street

Project No. 23005	Sheet No. DA-007
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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
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15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

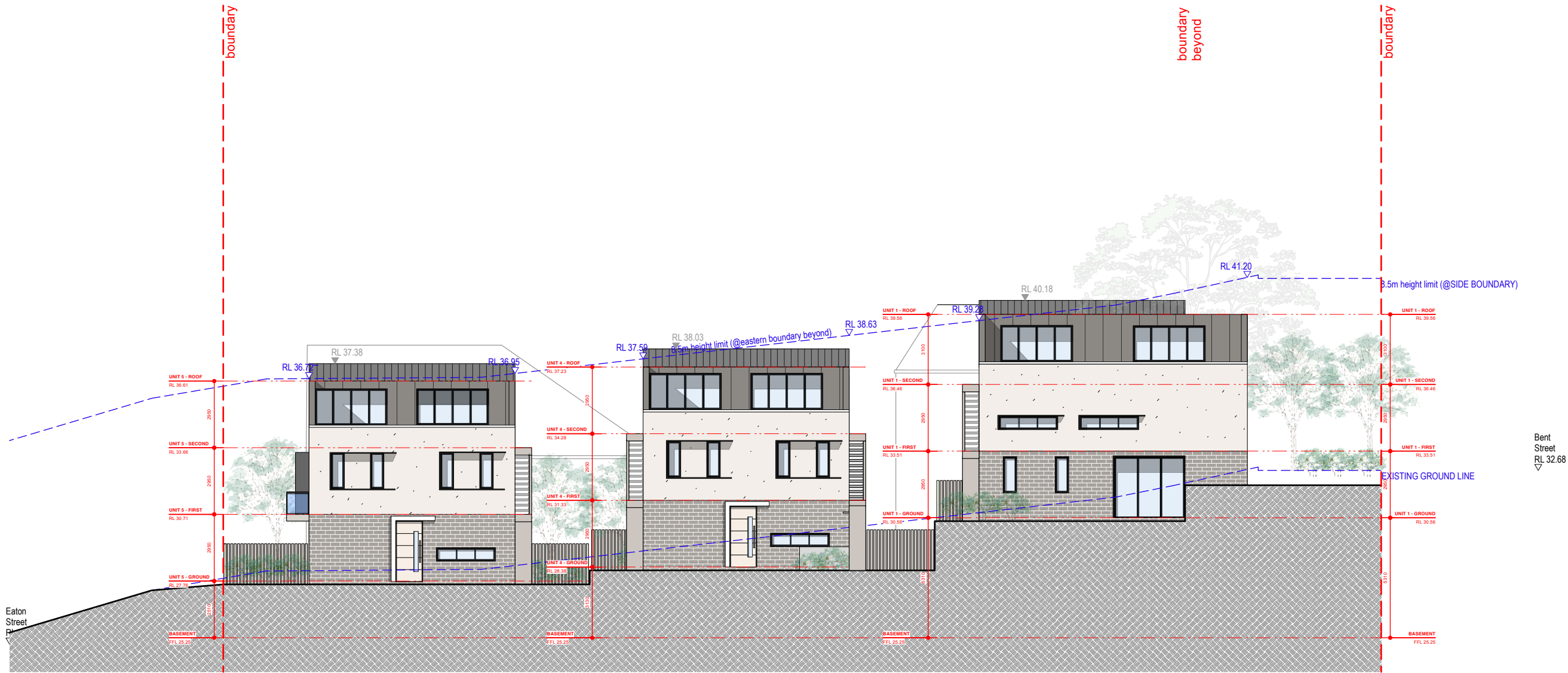
Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

Scale
1:200

Drawing
West Elevation

Project No. 23005	Sheet No. DA-008
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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
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Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

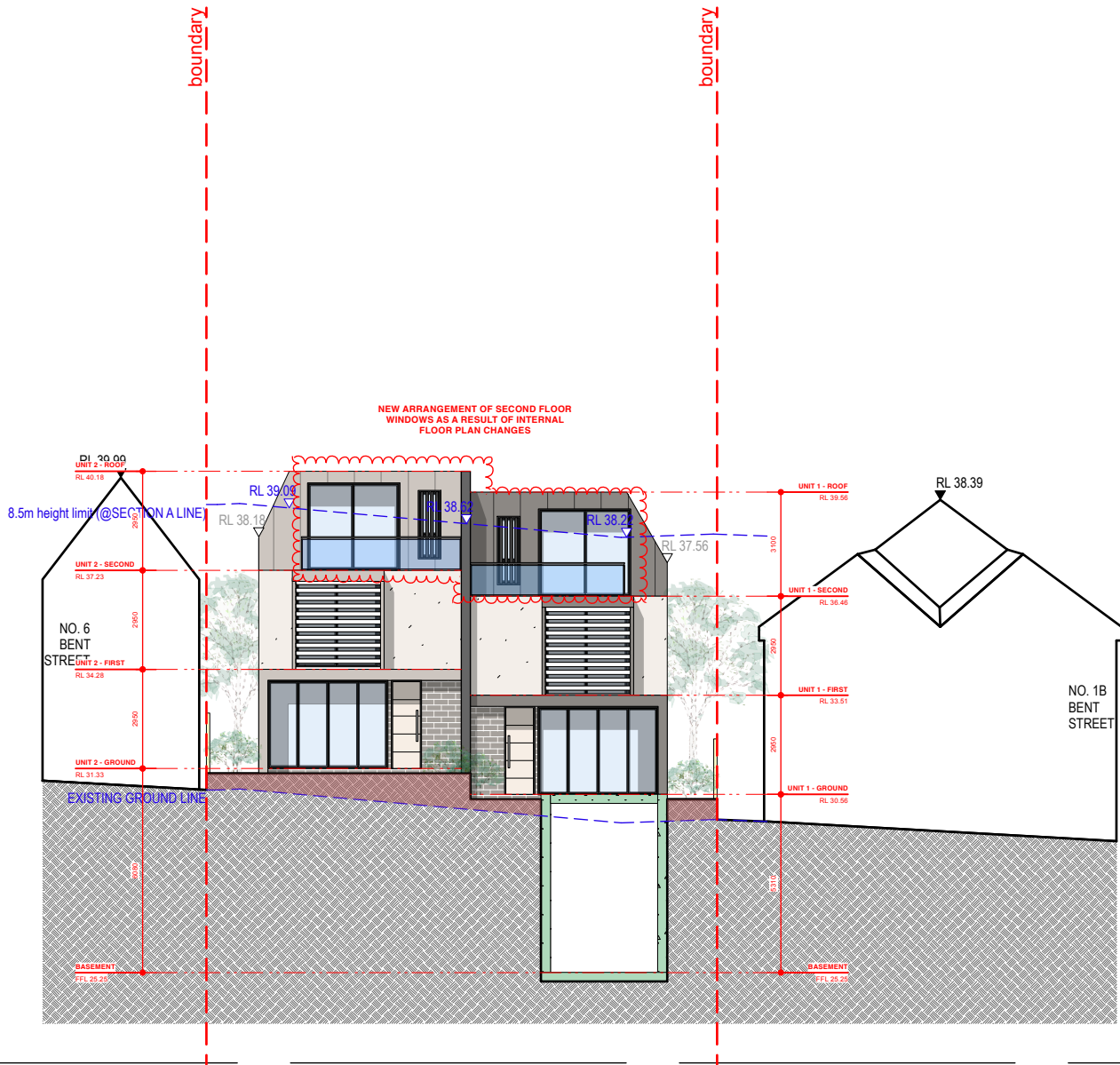
Status
Development Application (DA)
Not For Construction

Scale
1:200

Drawing
East Elevation

Project No.
23005

Sheet No.
DA-009



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
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Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

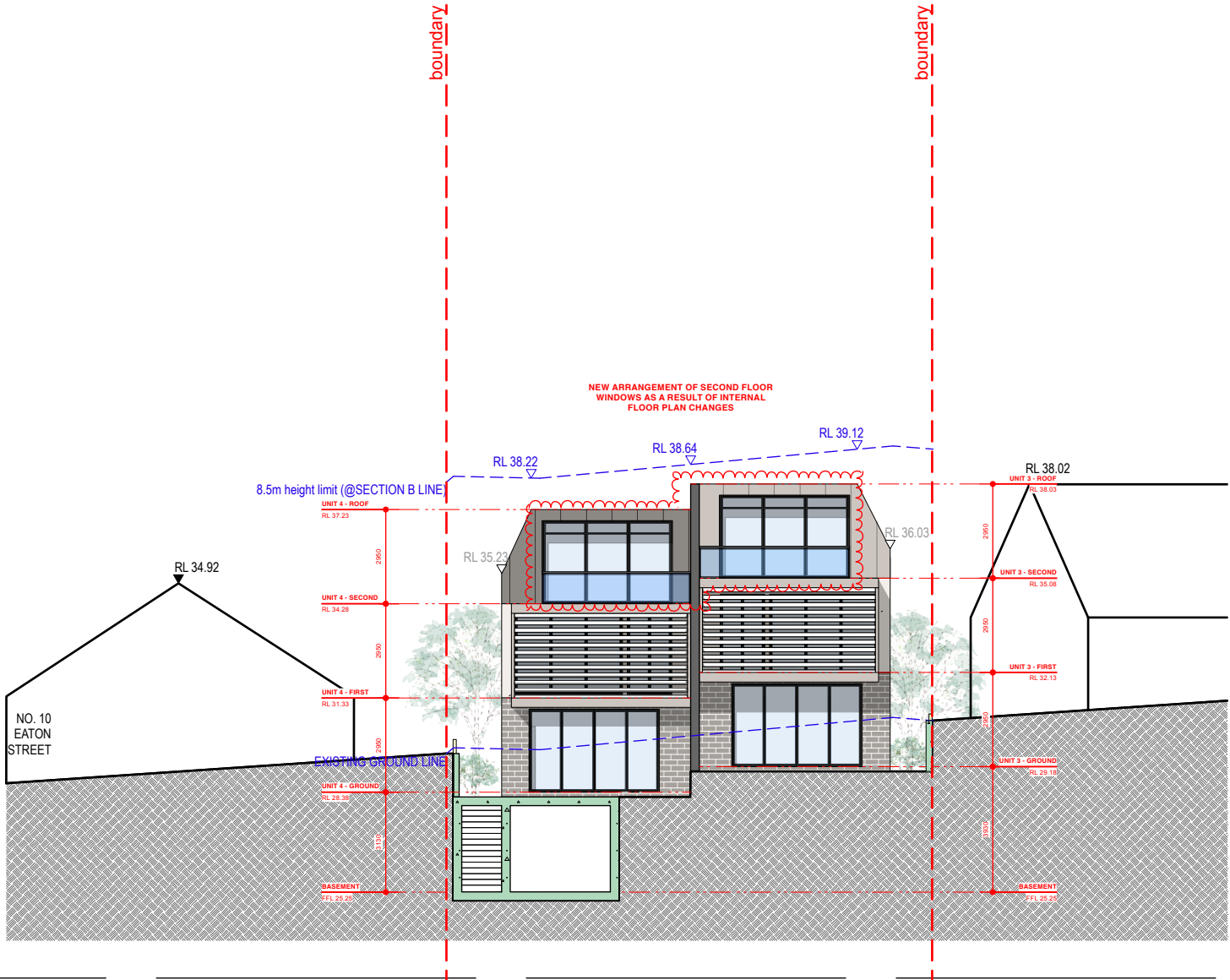
Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

Scale
1:200

Drawing
Section A

Project No. 23005	Sheet No. DA-010
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New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
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Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

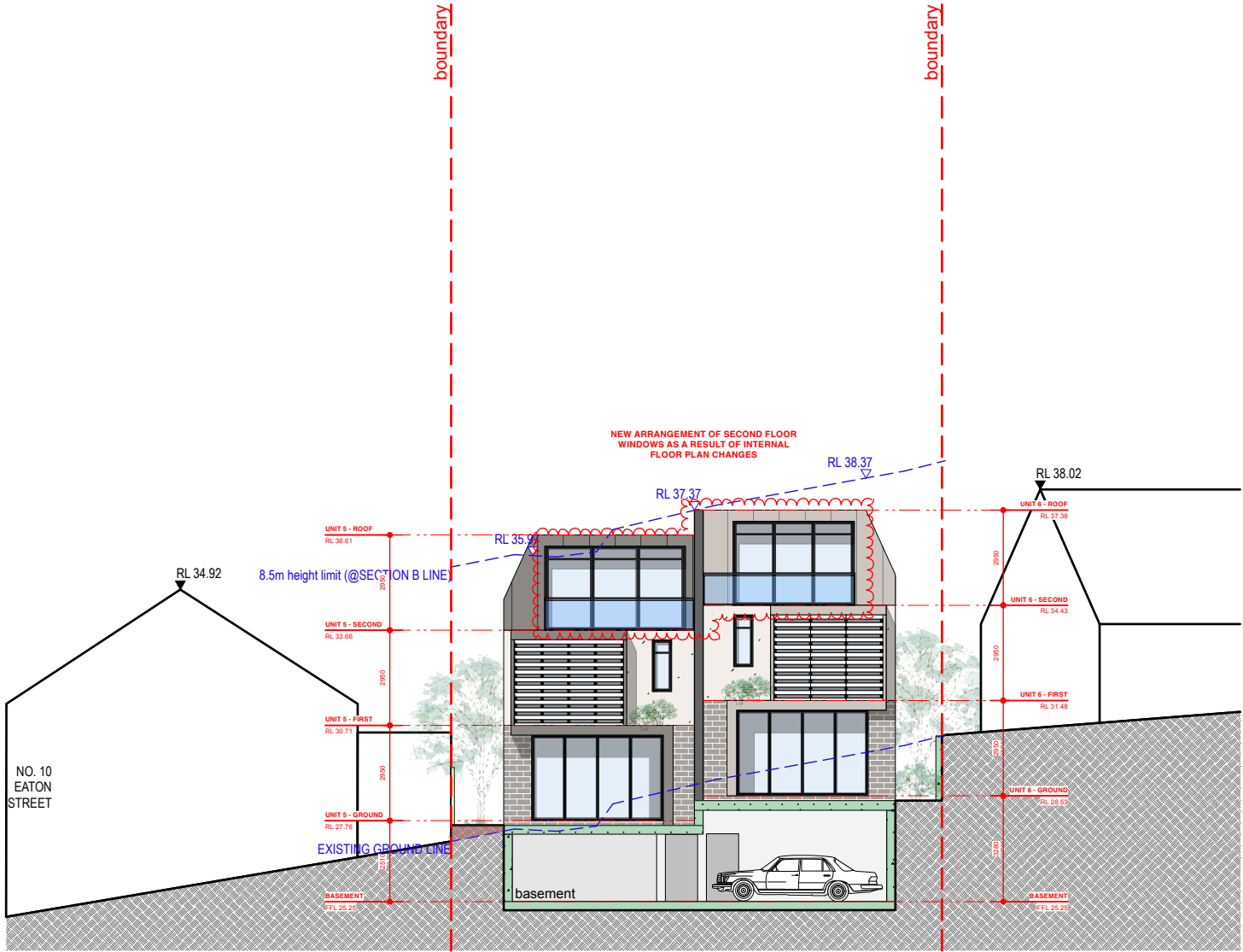
Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

Scale
1:200

Drawing
Section B

Project No. 23005	Sheet No. DA-011
-----------------------------	----------------------------



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Location
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Nominated Architect
Anthony Solomon RAlA 5684

Compliance
Comply with all relevant authorities, NCC and Australian Standards. Dimensions in mm. Do not scale from drawings - use figured dimensions only and notify Architect if discrepancy exists.

Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

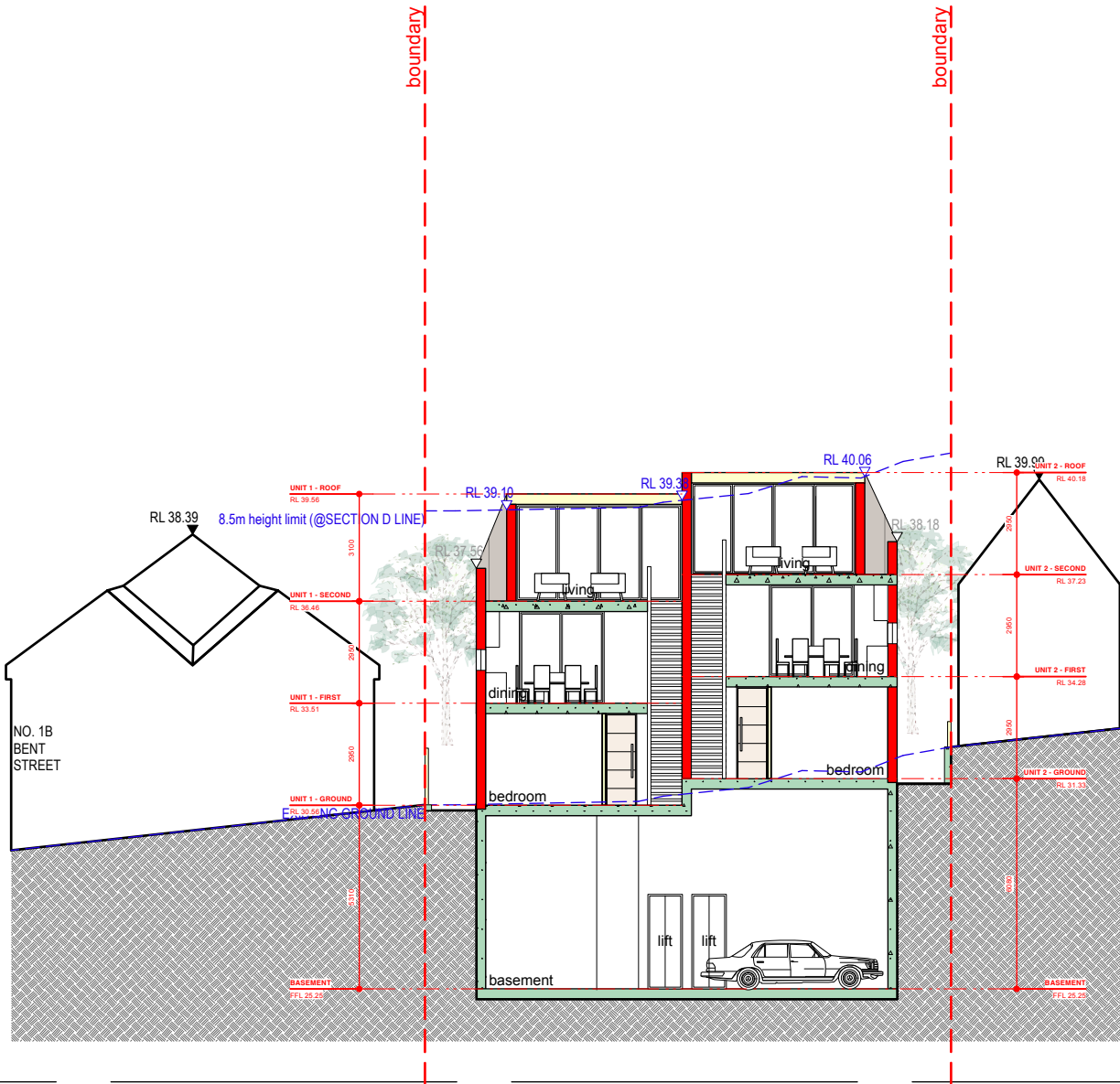
Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

Scale
1:200

Drawing
Section C

Project No. 23005	Sheet No. DA-012
-----------------------------	----------------------------



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

Scale
1:200

Drawing
Section D

Project No. 23005	Sheet No. DA-013
-----------------------------	----------------------------



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Anthony Solomon RAIA 5684

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Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Mohammad Helou

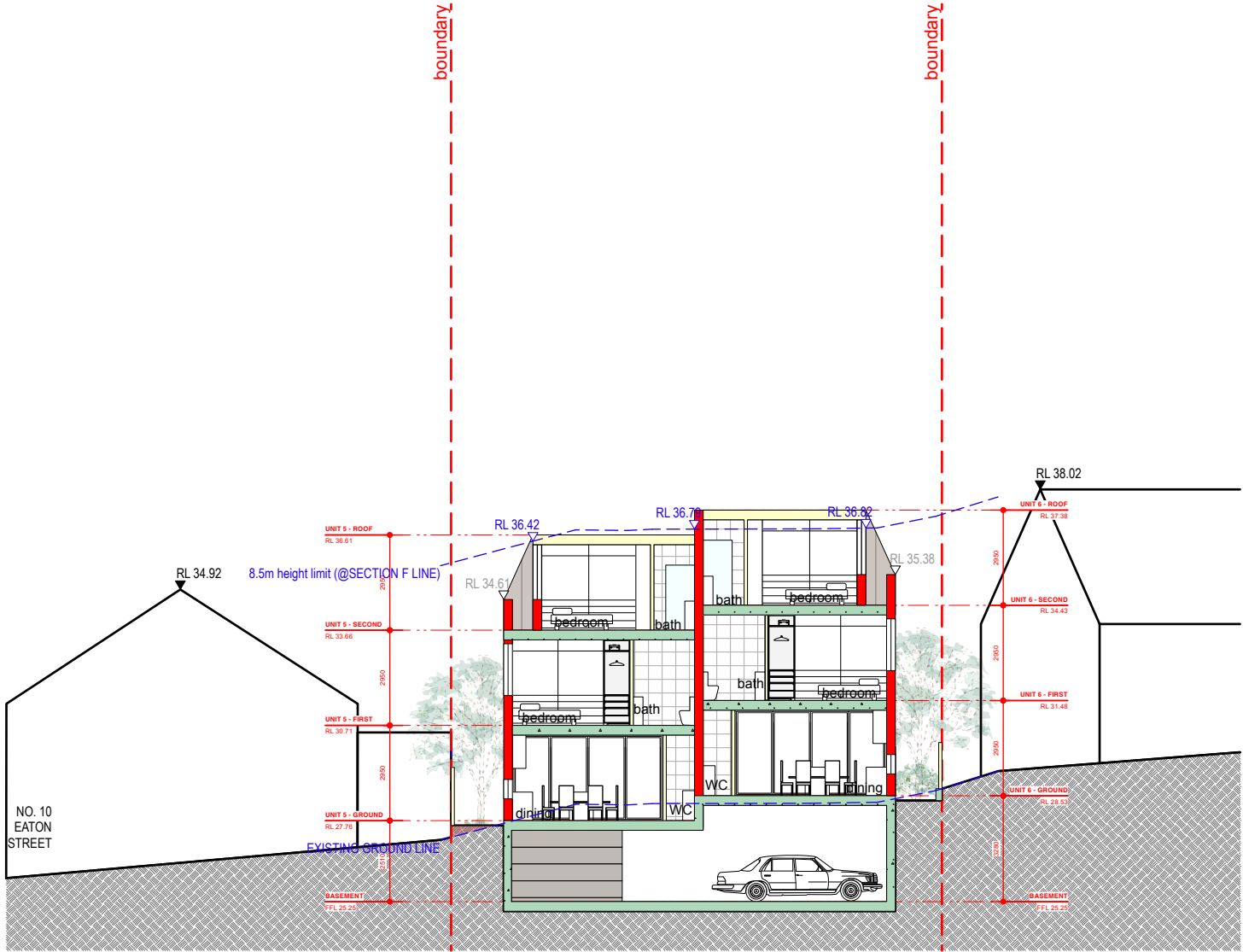
Development Application (DA)
Not For Construction

1:200

Section E

23005

DA-014



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

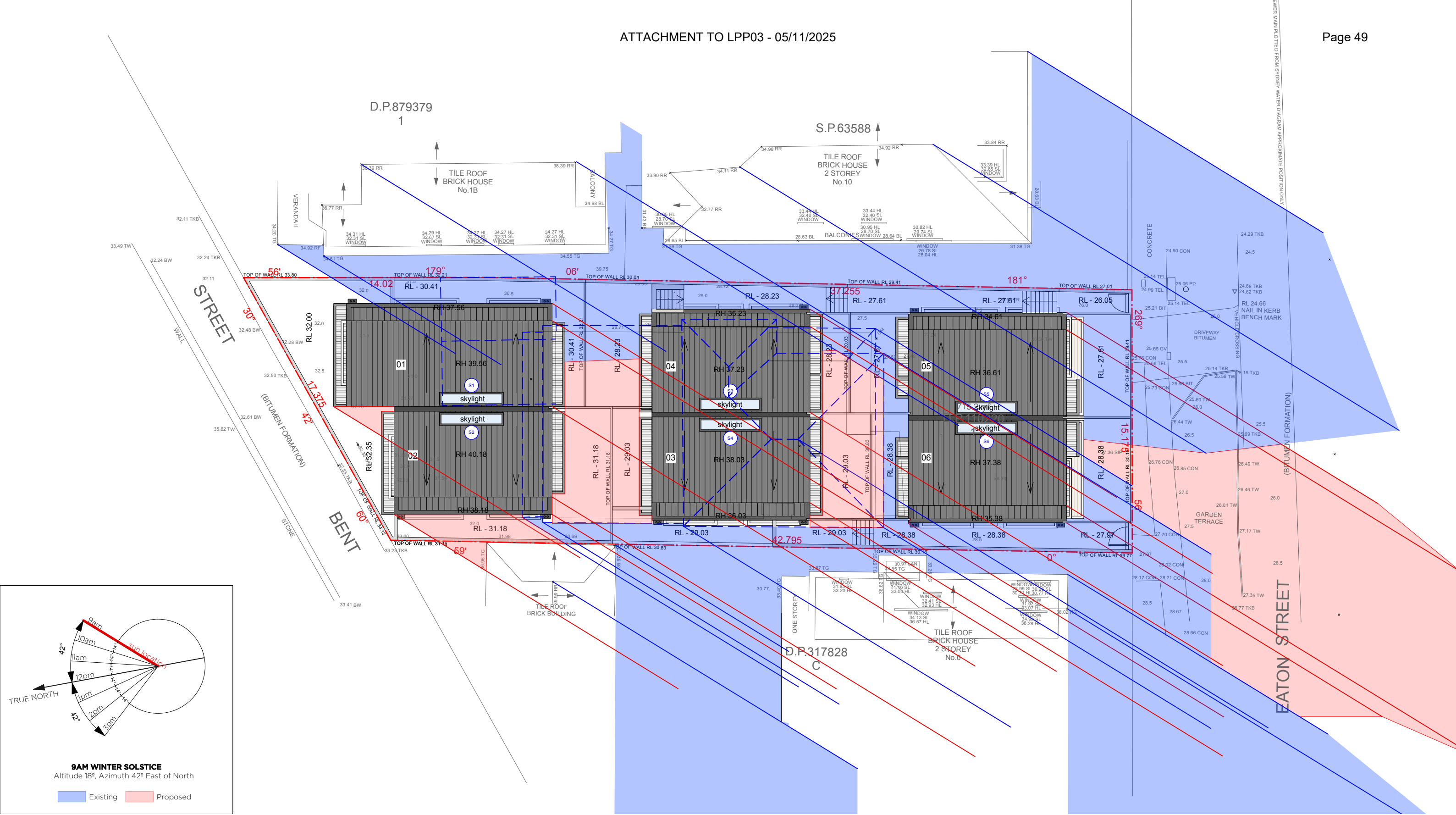
Status
Development Application (DA)
Not For Construction

Scale
1:200

Drawing
Section F

Project No.
23005

Sheet No.
DA-015



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Anthony Solomon RAIA 5684

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Legend
Existing Wall
To be demolished
New Construction / Timber
New Construction / Masonry
New Construction / Concrete
Metal
Glass
Finished floor / relative level
Downpipe

FFL / RL
DP

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

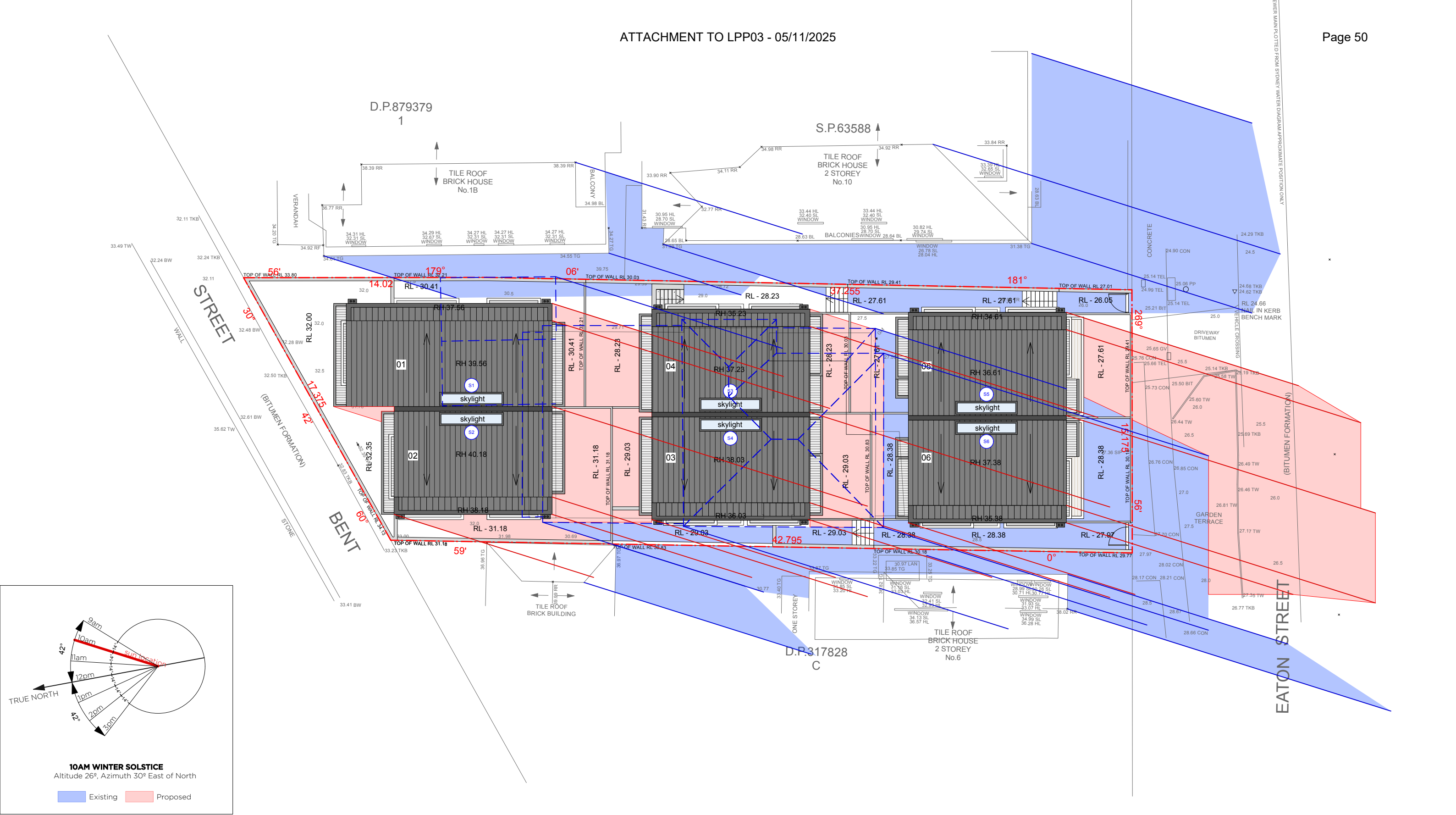
Scale
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Drawing
9am Shadow Analysis - Solstice

Project No.
23005

North

Sheet No.
DA-200



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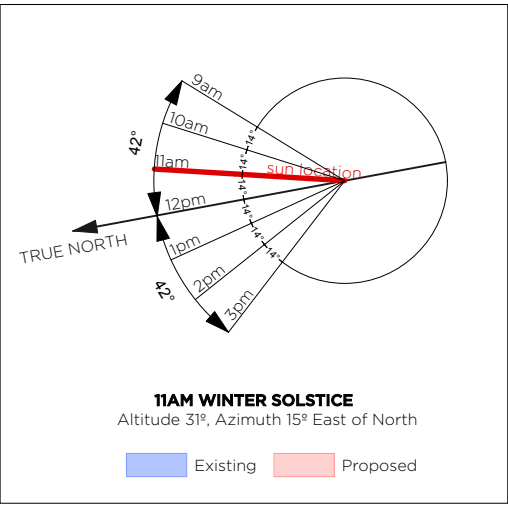
Compliance
Comply with all relevant authorities, NCC and Australian Standards. Dimensions in mm. Do not scale from drawings - use figured dimensions only and notify Architect if discrepancy exists.

Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project	
New Multi-Residential Development	
8 Eaton Street, Neutral Bay, 2089	
Client	
Mohammad Helou	
Status	
Development Application (DA)	
Not For Construction	

Scale	
1:200	
North	
Drawing	
10am Shadow Analysis - Solstices	
Project No.	
23005	
Sheet No.	
DA-201	



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Compliance

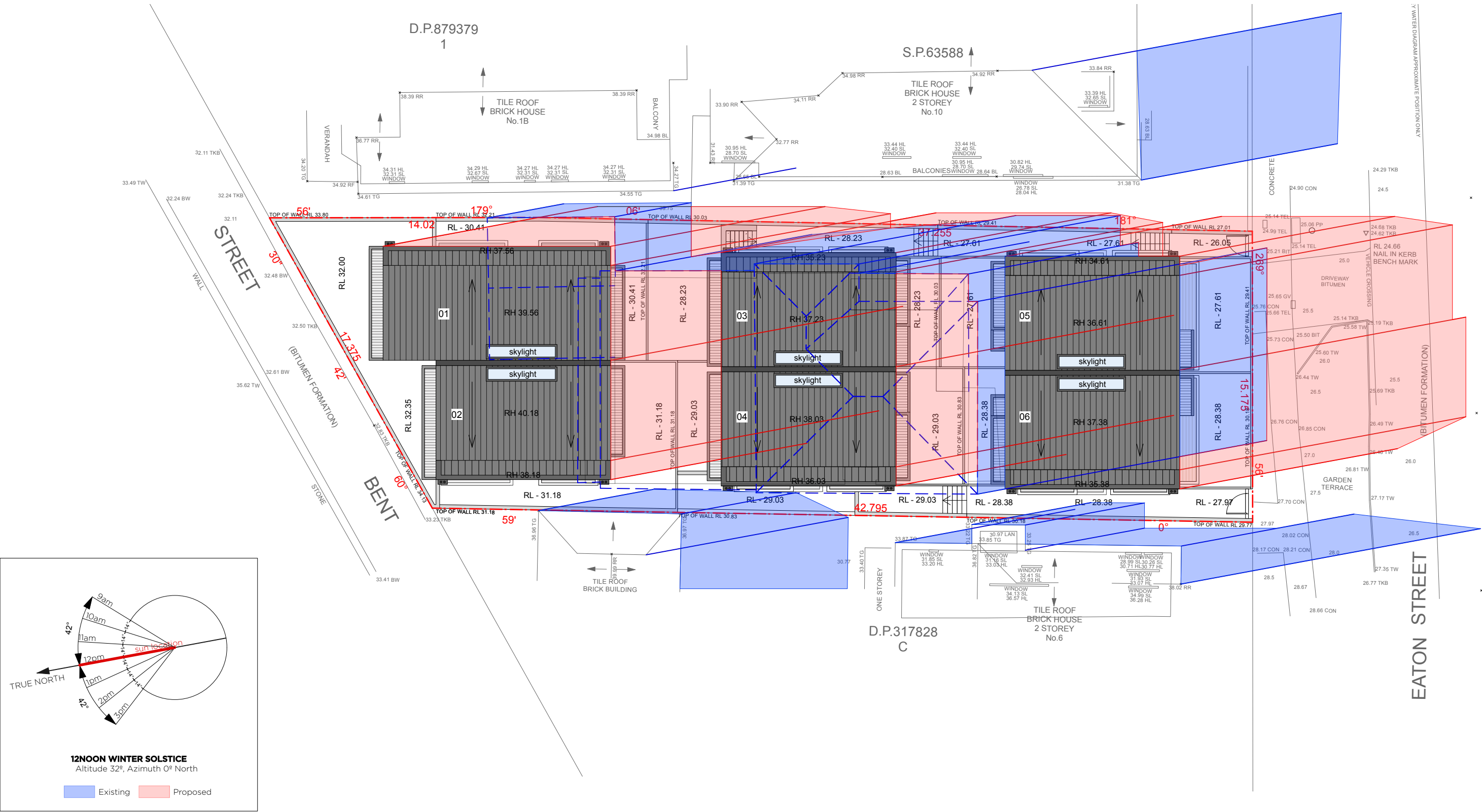
Comply with all relevant authorities, NCC and Australian Standards. Dimensions in mm. Do not scale from drawings - use figured dimensions only and notify Architect if discrepancy exists.

[illegible]

North

A simple compass rose with a circle in the center. Four lines extend from the center to the edges, representing the cardinal directions. The top line is labeled 'North', the bottom line is labeled 'South', the left line is labeled 'West', and the right line is labeled 'East'.

Project No.	Sheet No.
23005	DA-202



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Legend

Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

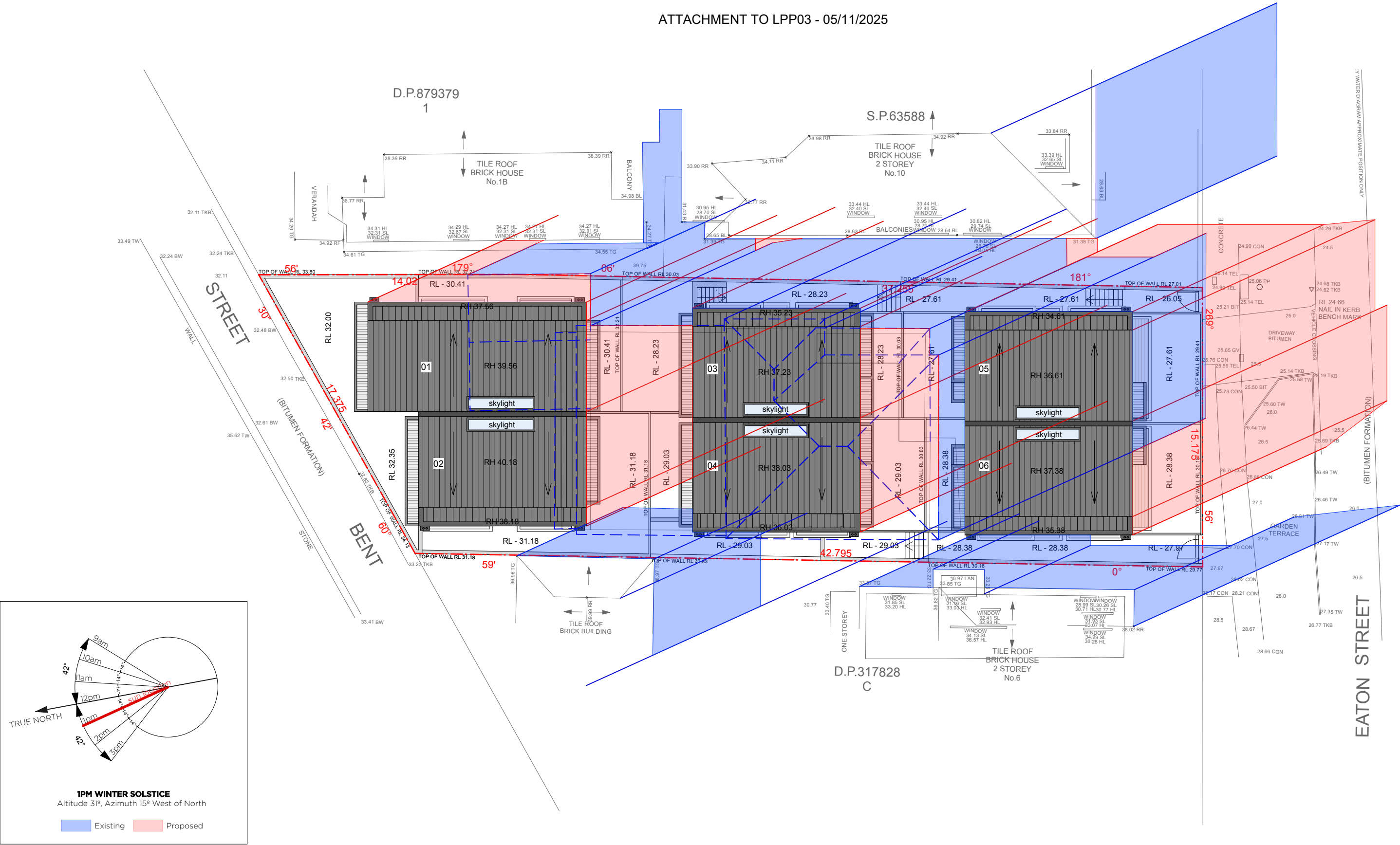
Scale
1:200

North
N

Drawing
12 Noon Shadow Analysis - Solstices

Project No.
23005

Sheet No.
DA-203



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

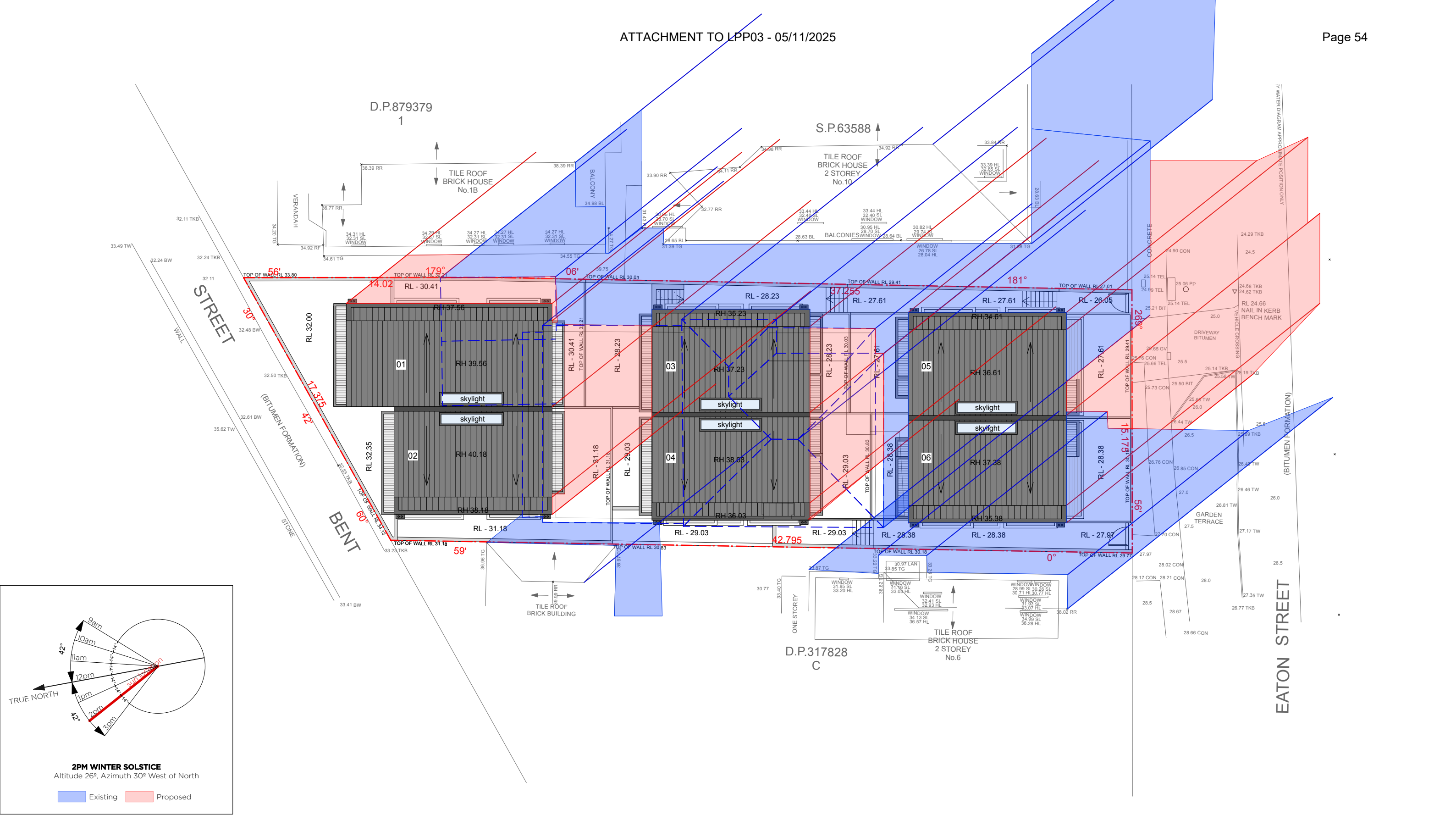
Scale
1:200

Drawing
1pm Shadow Analysis - Solstices

Project No.
23005

North

Sheet No.
DA-204



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

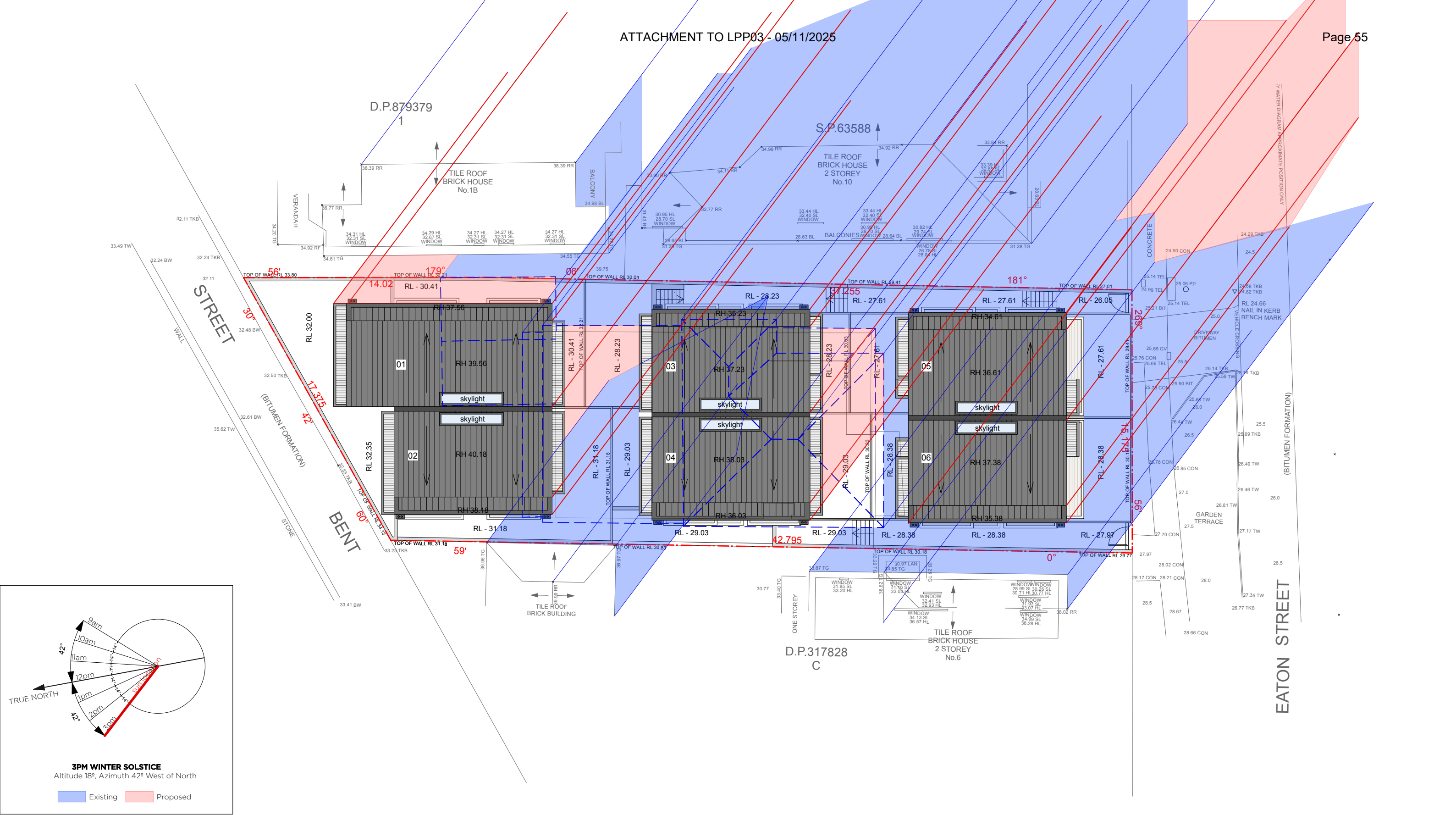
Scale
1:200

Drawing
2pm Shadow Analysis - Solstices

Project No.
23005

Sheet No.
DA-205





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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

Scale
1:200

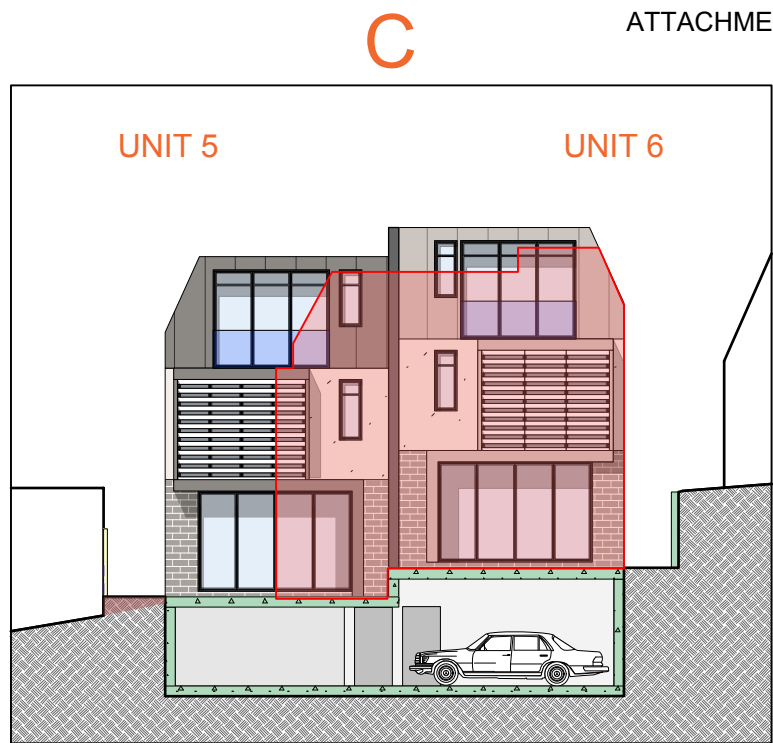
Drawing
3pm Shadow Analysis - Solstices

Project No.
23005

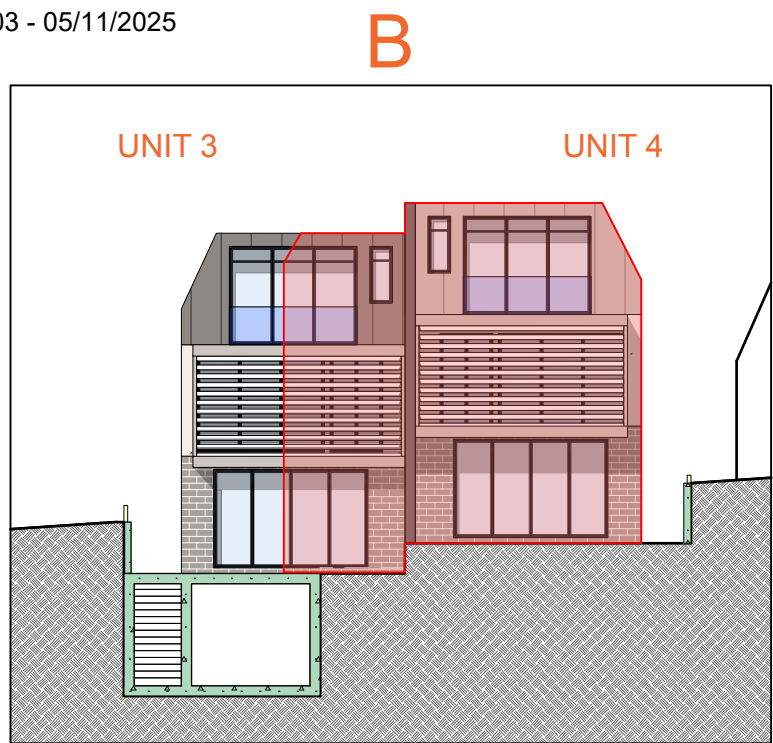
Sheet No.
DA-206



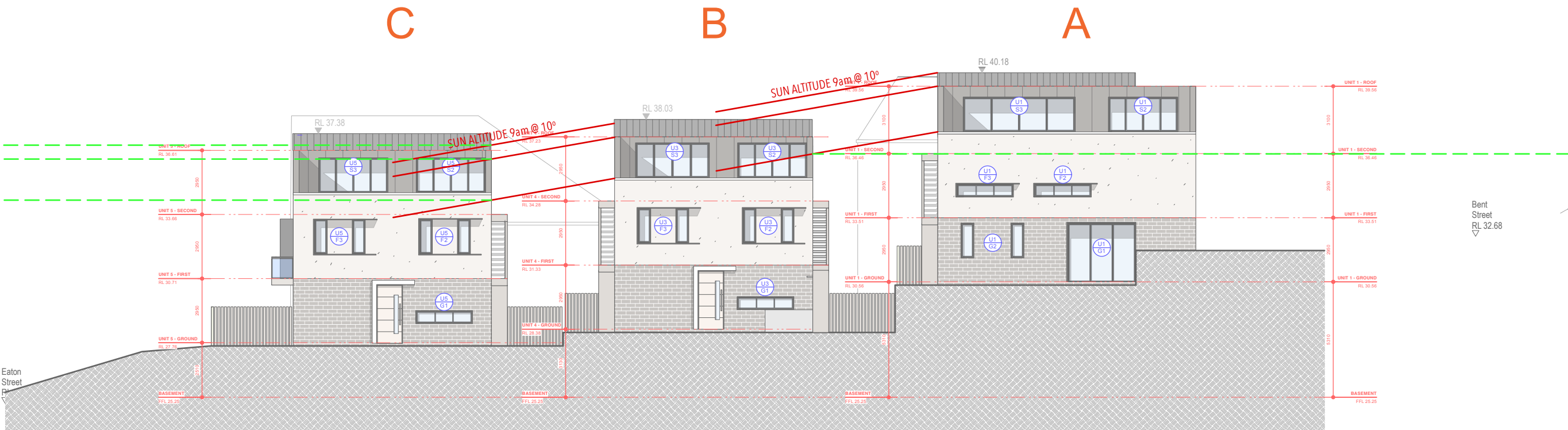
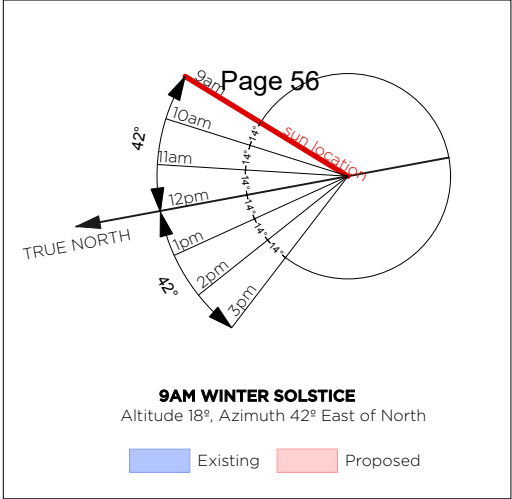
Date:	21/06/2025 GMT10
coordinates:	-33.8352382, 151.2127009
location:	-33.83523820,151.21270090
hour	Elevation
07:59:55	-0.833°
8:00:00	-0.82°
9:00:00	9.7°
10:00:00	18.94°
11:00:00	26.33°
12:00:00	31.15°
13:00:00	32.72°
14:00:00	30.8°
15:00:00	25.69°
16:00:00	18.08°
17:00:00	8.68°
17:53:59	-0.833°



BUILDING C @ 9am:	Solar Access
Unit 5 GF Living	YES
Unit 5 Second Floor Rumpus	YES
Unit 6 GF Living	NO
Unit 6 Second Floor Rumpus	YES



BUILDING B @ 9am:	Solar Access
Unit 3 GF Living	YES
Unit 3 Second Floor Rumpus	YES
Unit 4 GF Living	NO
Unit 4 Second Floor Rumpus	NO



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

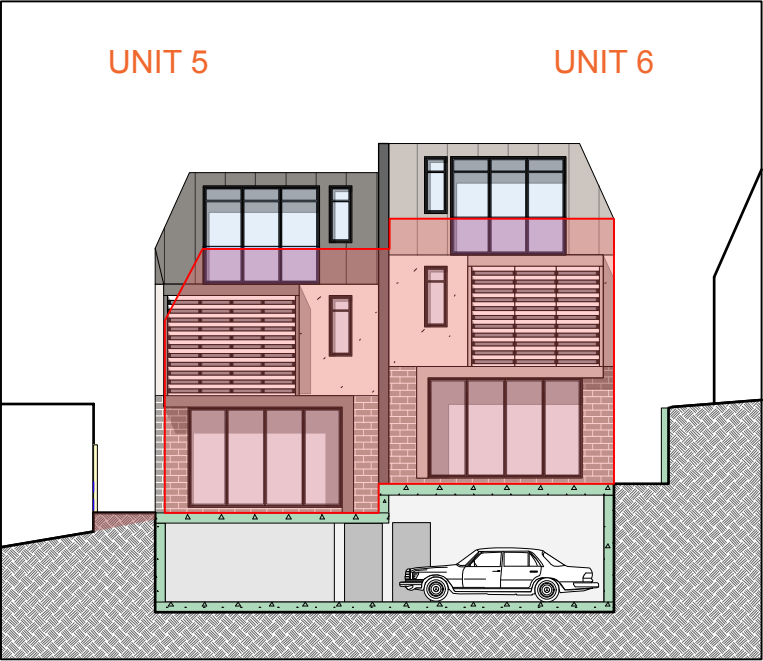
Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development 8 Eaton Street, Neutral Bay, 2089
Client
Mohammad Helou
Status
Development Application (DA) Not For Construction

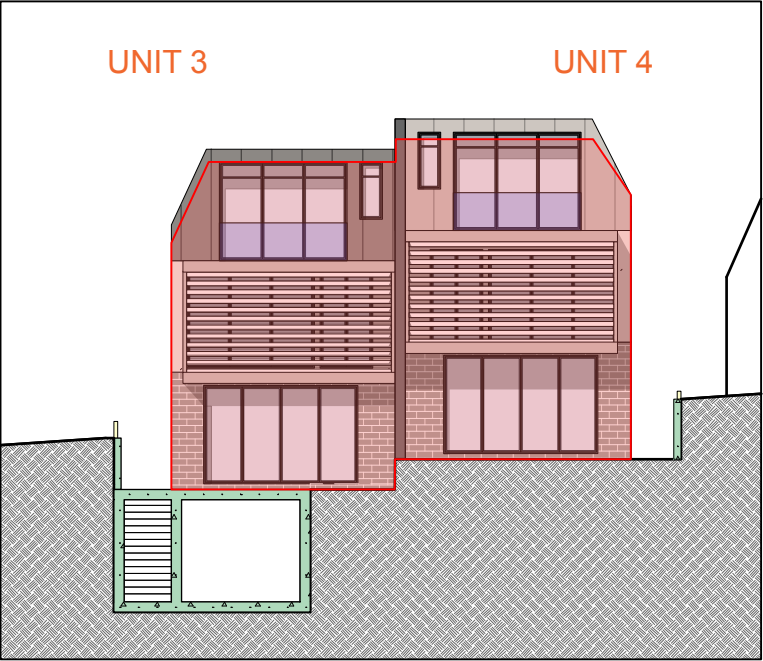
Scale
1:200
Drawing
9am Elevation Shadow Analysis - Solstices
Project No.
23005
Sheet No.
DA-207

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coordinates:	-33.8352382, 151.2127009
location:	-33.83523820,151.21270090
hour	Elevation
07:59:55	-0.833°
8:00:00	-0.82°
9:00:00	9.7°
10:00:00	18.94°
11:00:00	26.33°
12:00:00	31.15°
13:00:00	32.72°
14:00:00	30.8°
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17:00:00	8.68°
17:53:59	-0.833°

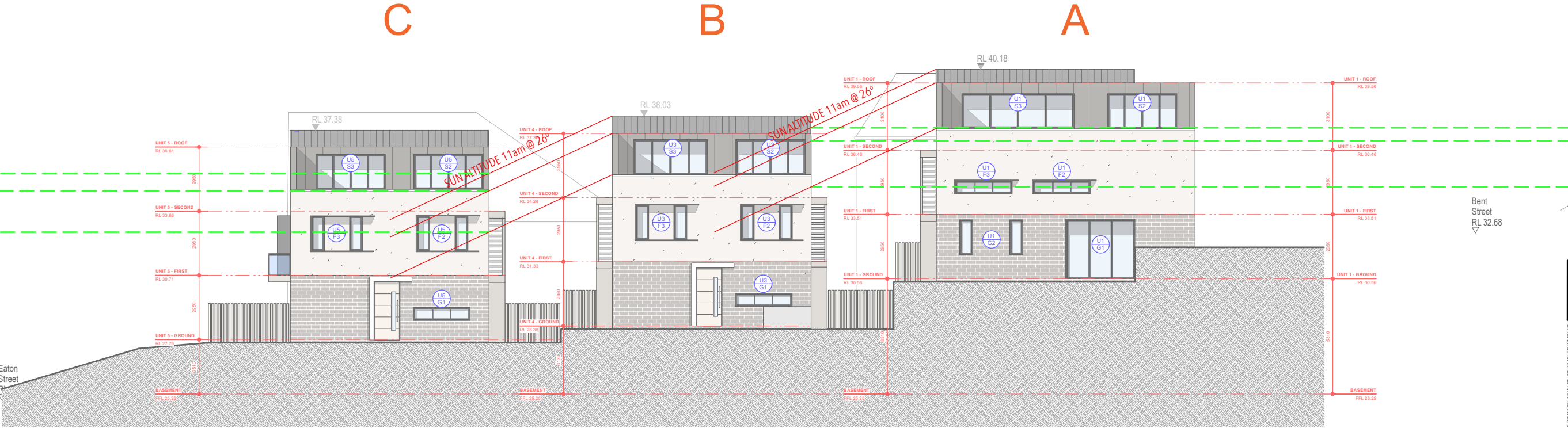
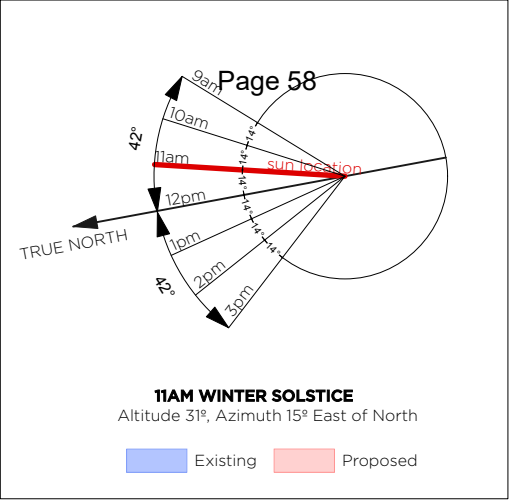
ATTACHMENT TO LPP03 - 05/11/2025



BUILDING C @ 11am:	Solar Access
Unit 5 GF Living	NO
Unit 5 Second Floor Rumpus	YES
Unit 6 GF Living	NO
Unit 6 Second Floor Rumpus	YES



BUILDING B @ 11am:	Solar Access
Unit 3 GF Living	NO
Unit 3 Second Floor Rumpus	NO
Unit 4 GF Living	NO
Unit 4 Second Floor Rumpus	NO



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

Scale
1:200

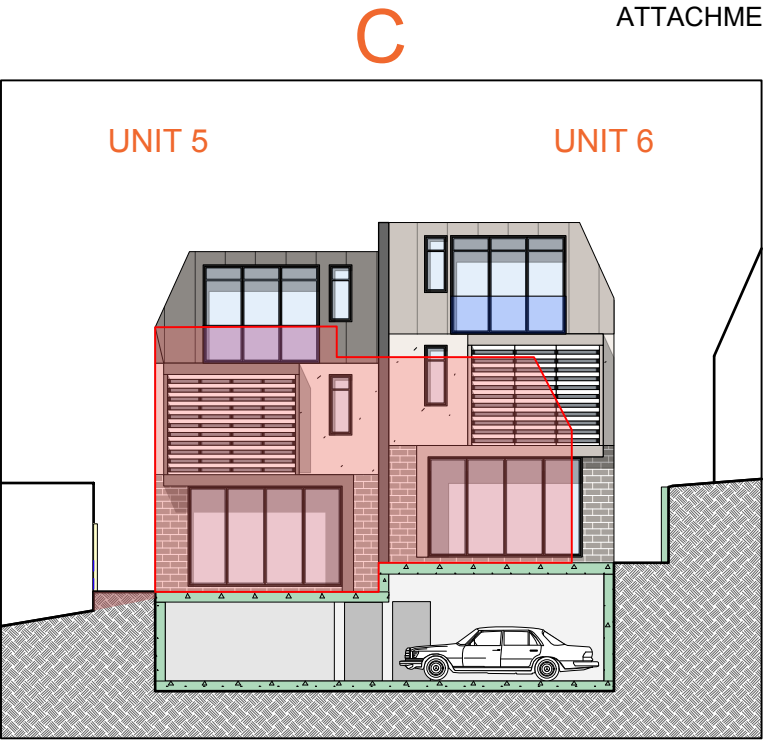
Drawing
11am Elevation Shadow Analysis - Solstices

Project No.
23005

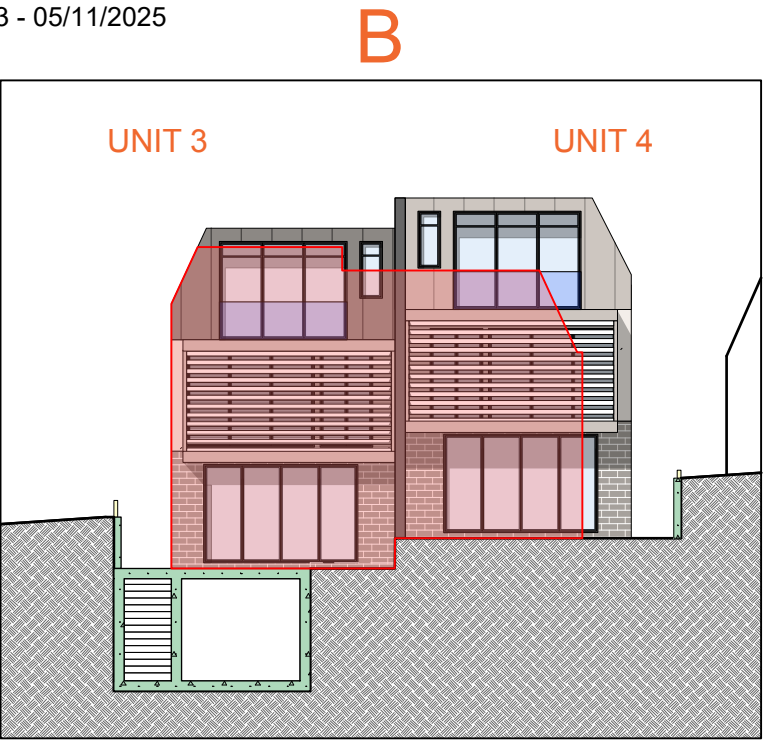
Sheet No.
DA-209

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location:	-33.83523820,151.21270090
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8:00:00	-0.82°
9:00:00	9.7°
10:00:00	18.94°
11:00:00	26.33°
12:00:00	31.15°
13:00:00	32.72°
14:00:00	30.8°
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17:00:00	8.68°
17:53:59	-0.833°

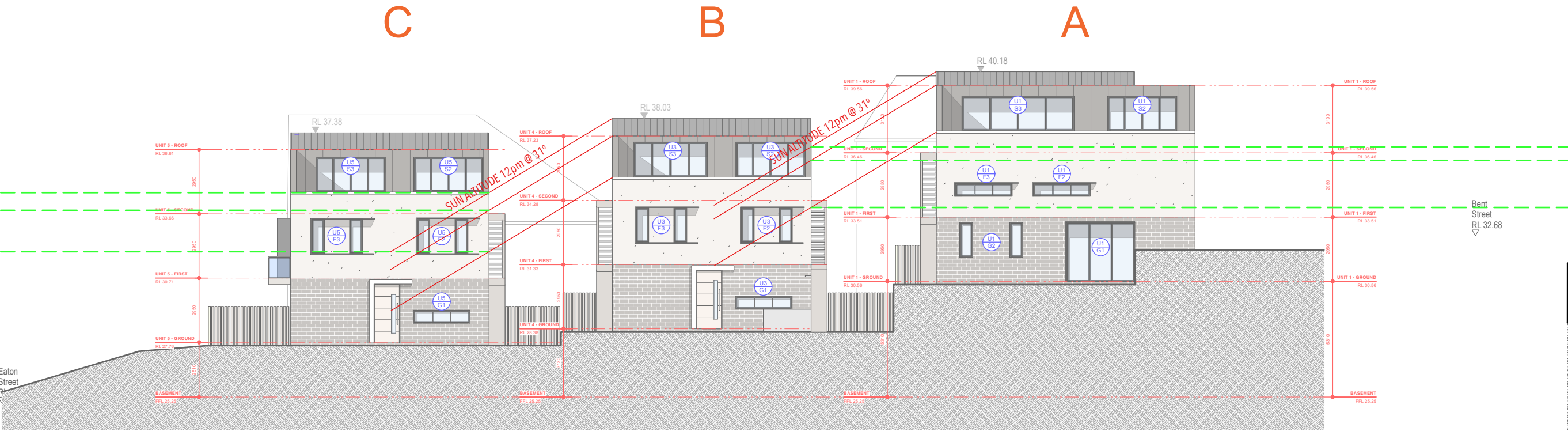
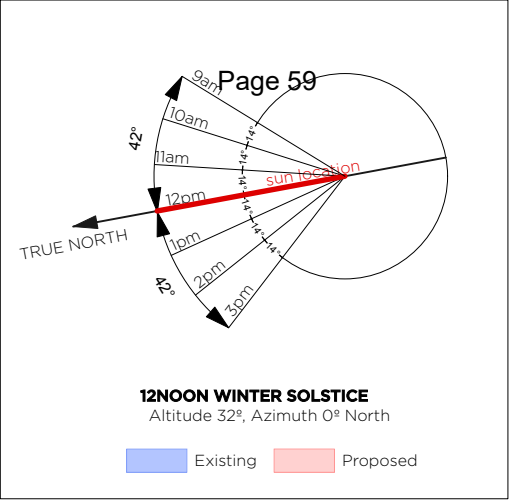
ATTACHMENT TO LPP03 - 05/11/2025



BUILDING C @ 12pm:	Solar Access
Unit 5 GF Living	NO
Unit 5 Second Floor Rumpus	YES
Unit 6 GF Living	NO
Unit 6 Second Floor Rumpus	YES



BUILDING B @ 12pm:	Solar Access
Unit 3 GF Living	NO
Unit 3 Second Floor Rumpus	NO
Unit 4 GF Living	YES
Unit 4 Second Floor Rumpus	YES



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
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Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

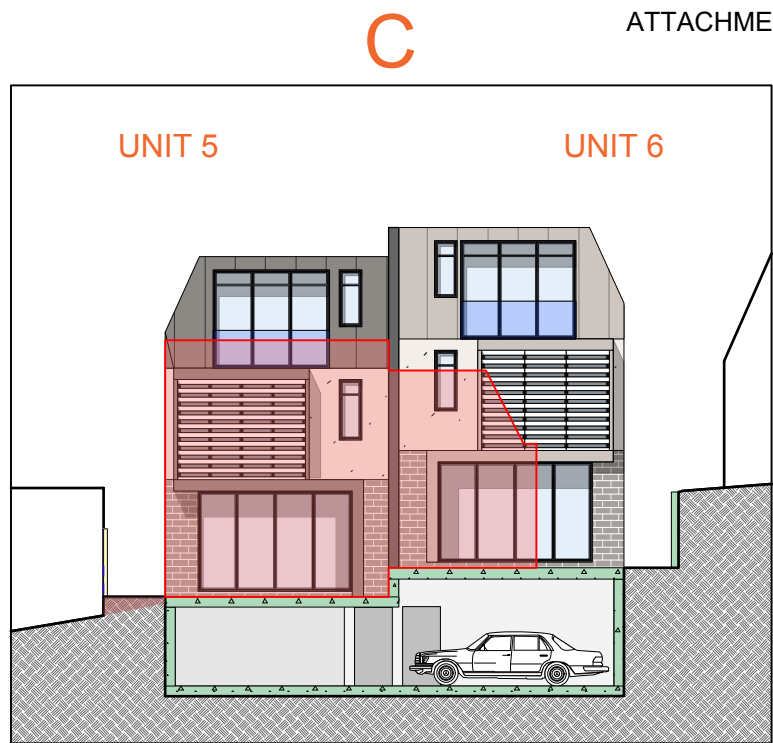
Scale
1:200

Drawing
12noon Elevation Shadow Analysis - Solstices

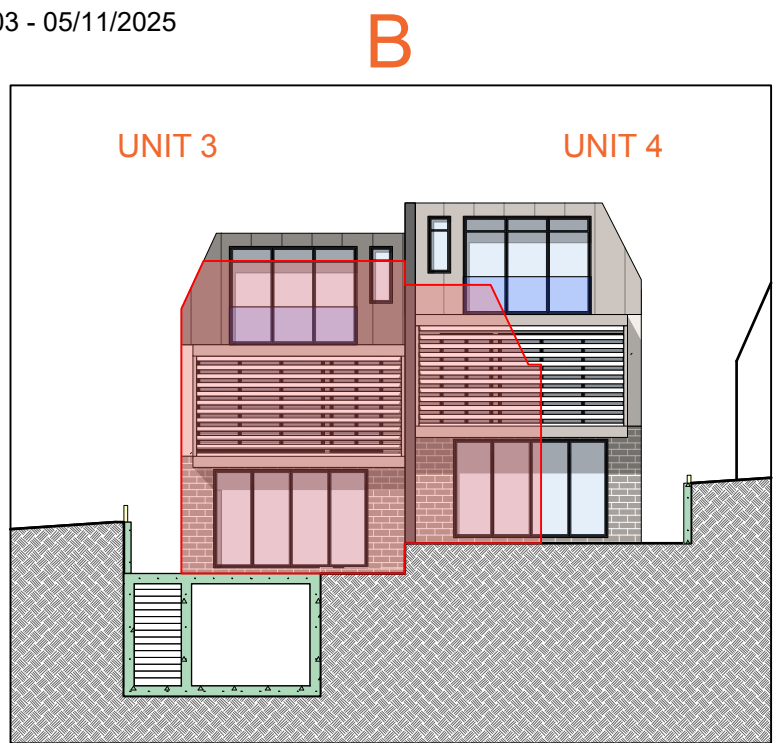
Project No.
23005

Sheet No.
DA-210

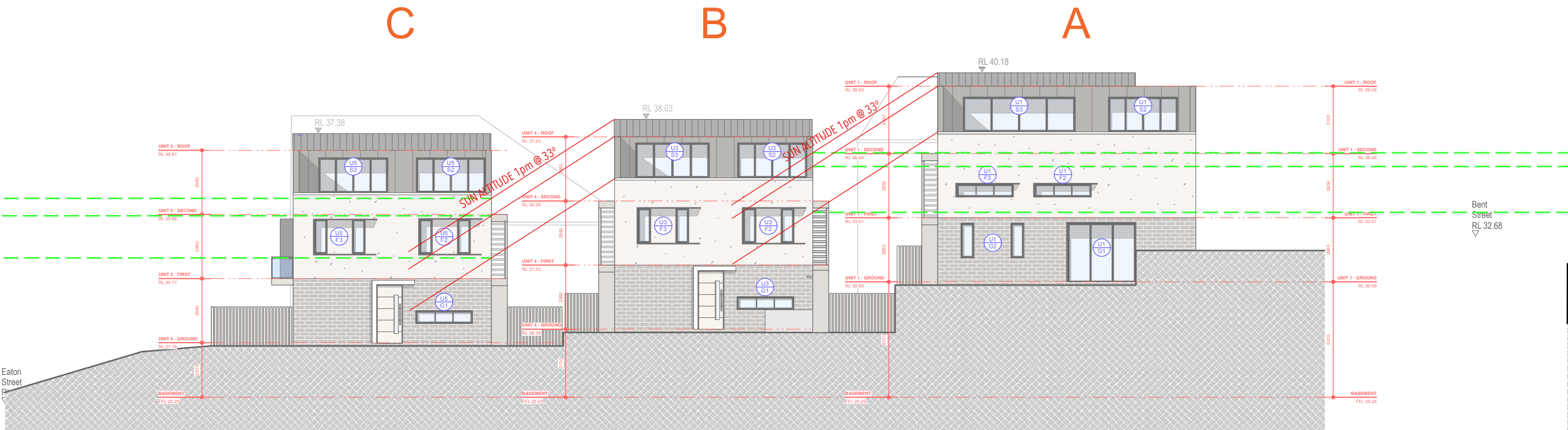
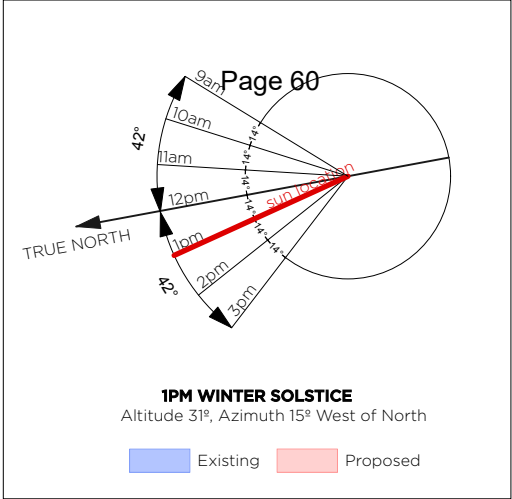
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8:00:00	-0.82°
9:00:00	9.7°
10:00:00	18.94°
11:00:00	26.33°
12:00:00	31.15°
13:00:00	32.72°
14:00:00	30.8°
15:00:00	25.69°
16:00:00	18.08°
17:00:00	8.68°
17:53:59	-0.833°



BUILDING C @ 1pm:	Solar Access
Unit 5 GF Living	NO
Unit 5 Second Floor Rumpus	YES
Unit 6 GF Living	YES
Unit 6 Second Floor Rumpus	YES



BUILDING B @ 1pm:	Solar Access
Unit 3 GF Living	NO
Unit 3 Second Floor Rumpus	YES
Unit 4 GF Living	YES
Unit 4 Second Floor Rumpus	YES



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Location
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Contact
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Nominated Architect
Anthony Solomon RAlA 5684

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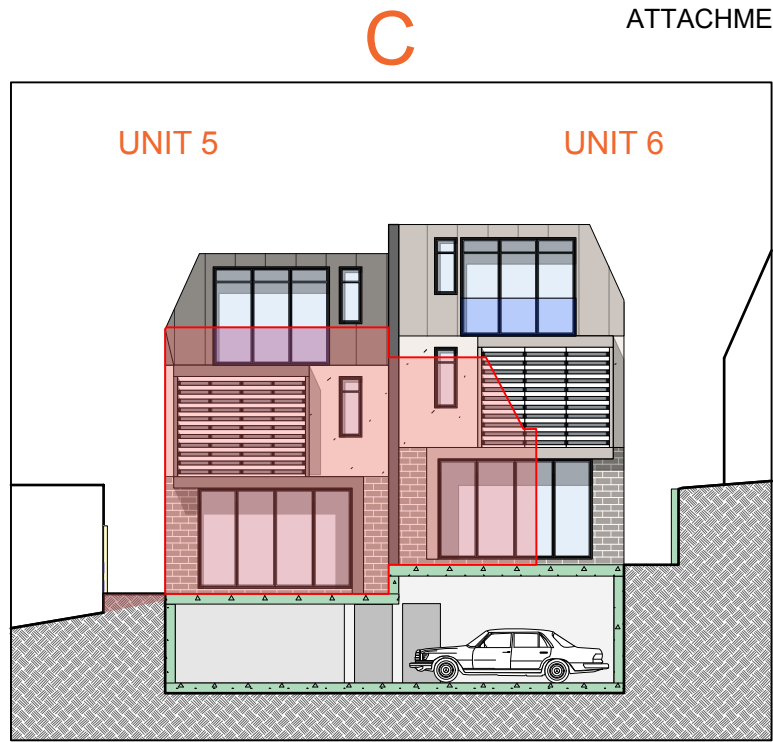
Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

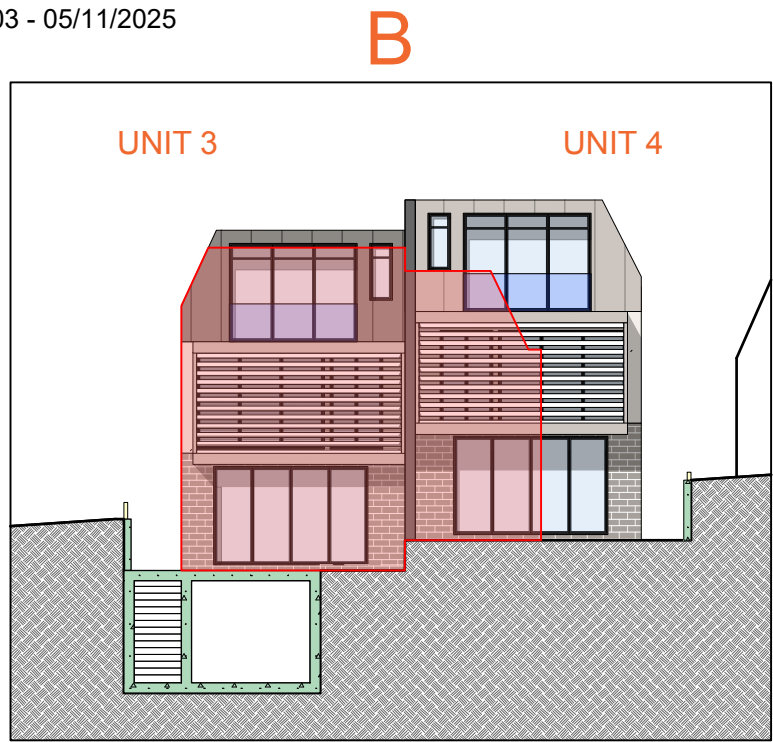
Project
New Multi-Residential Development 8 Eaton Street, Neutral Bay, 2089
Client
Mohammad Helou
Status
Development Application (DA) Not For Construction

Scale
1:200
Drawing
1pm Elevation Shadow Analysis - Solstices
Project No.
23005
Sheet No.
DA-211

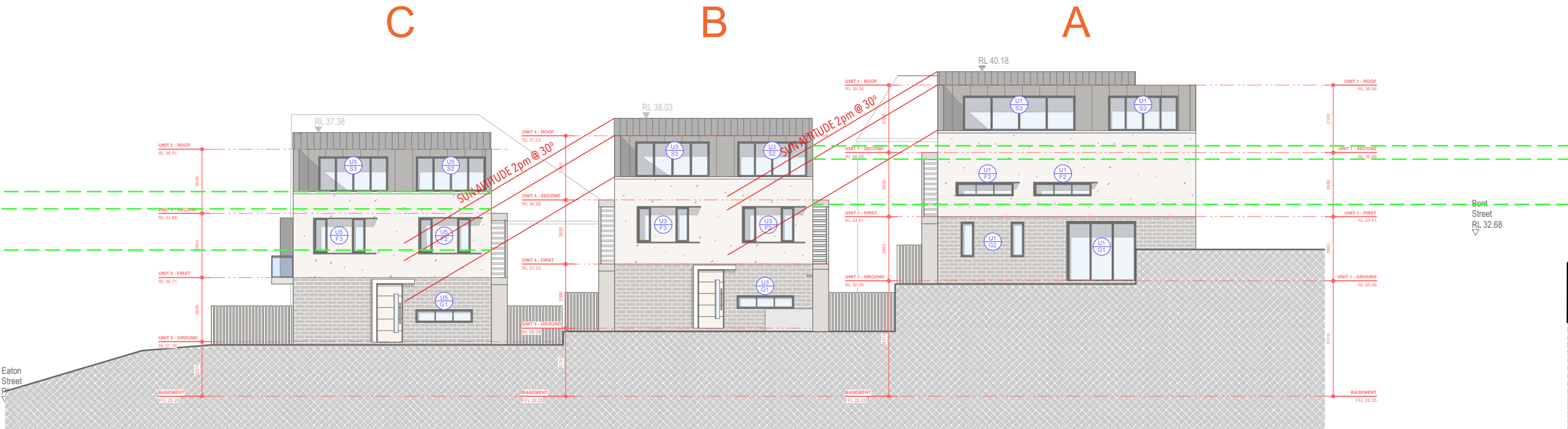
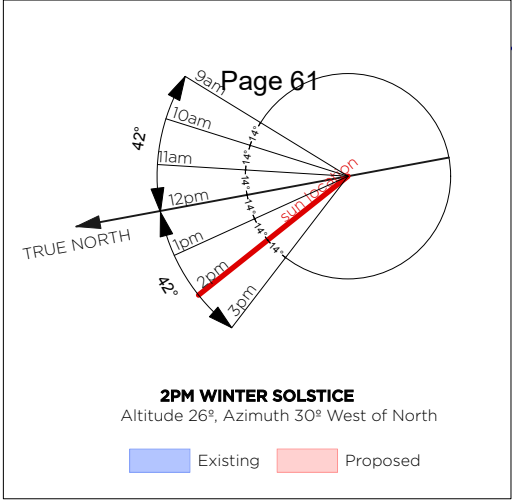
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coordinates:	-33.8352382, 151.2127009
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hour	Elevation
07:59:55	-0.833°
8:00:00	-0.82°
9:00:00	9.7°
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14:00:00	30.8°
15:00:00	25.69°
16:00:00	18.08°
17:00:00	8.68°
17:53:59	-0.833°



BUILDING C @ 2pm:	Solar Access
Unit 5 GF Living	NO
Unit 5 Second Floor Rumpus	YES
Unit 6 GF Living	YES
Unit 6 Second Floor Rumpus	YES



BUILDING B @ 2pm:	Solar Access
Unit 3 GF Living	NO
Unit 3 Second Floor Rumpus	NO
Unit 4 GF Living	YES
Unit 4 Second Floor Rumpus	YES



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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

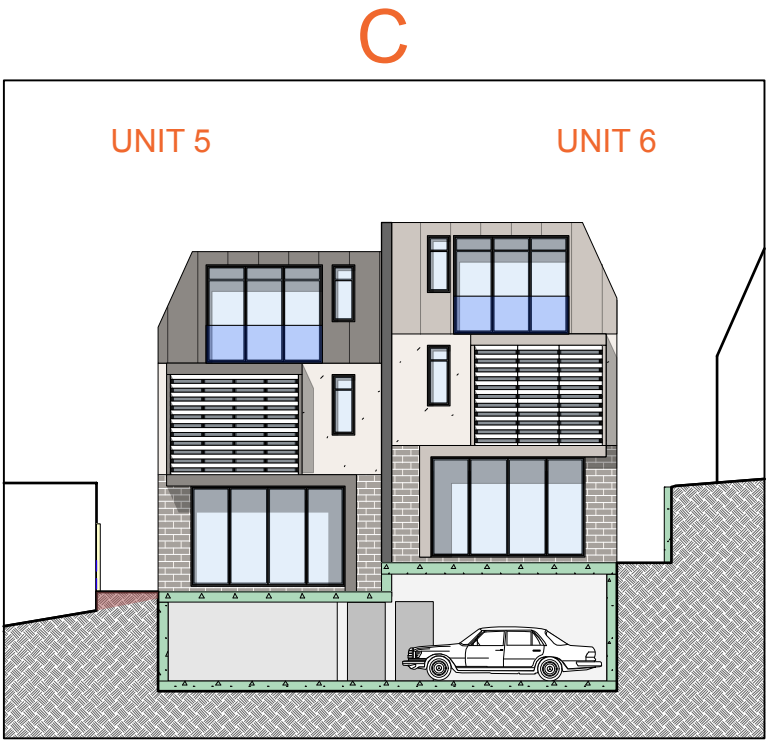
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Not For Construction

Scale
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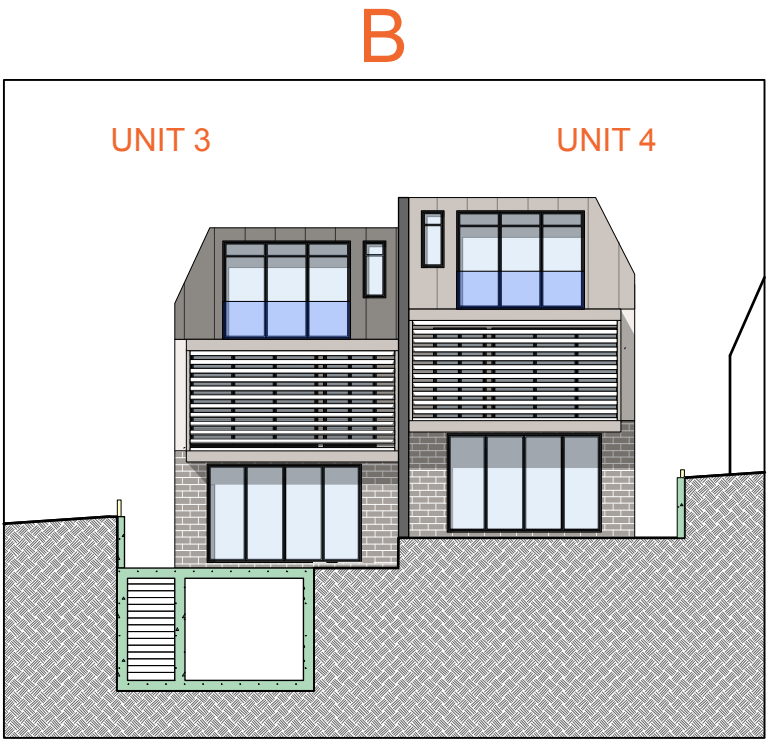
Drawing
2pm Elevation Shadow Analysis - Solstices

Project No.
23005

Sheet No.
DA-212



BUILDING C	9am	10am	11am	12pm	1pm	2pm	3pm	TOTAL	OVERALL MIN. 3 HOURS?
Unit 5 GF Living	YES	YES	NO	NO	NO	NO	YES	3	YES
Unit 5 Second Floor Rumpus	YES	YES	YES	YES	YES	YES	YES	7	
Unit 6 GF Living	NO	NO	NO	NO	YES	YES	YES	3	YES
Unit 6 Second Floor Rumpus	YES	YES	YES	YES	YES	YES	YES	7	



BUILDING B	9am	10am	11am	12pm	1pm	2pm	3pm	TOTAL	OVERALL MIN. 3 HOURS?
Unit 3 GF Living	YES	YES	NO	NO	NO	NO	NO	2	YES
Unit 3 Second Floor Rumpus	YES	YES	NO	NO	YES	NO	YES	4	
Unit 4 GF Living	NO	NO	NO	YES	YES	YES	YES	4	YES
Unit 4 Second Floor Rumpus	NO	NO	NO	YES	YES	YES	YES	4	

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Legend	
Existing Wall	
To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI
03.10.25	C	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

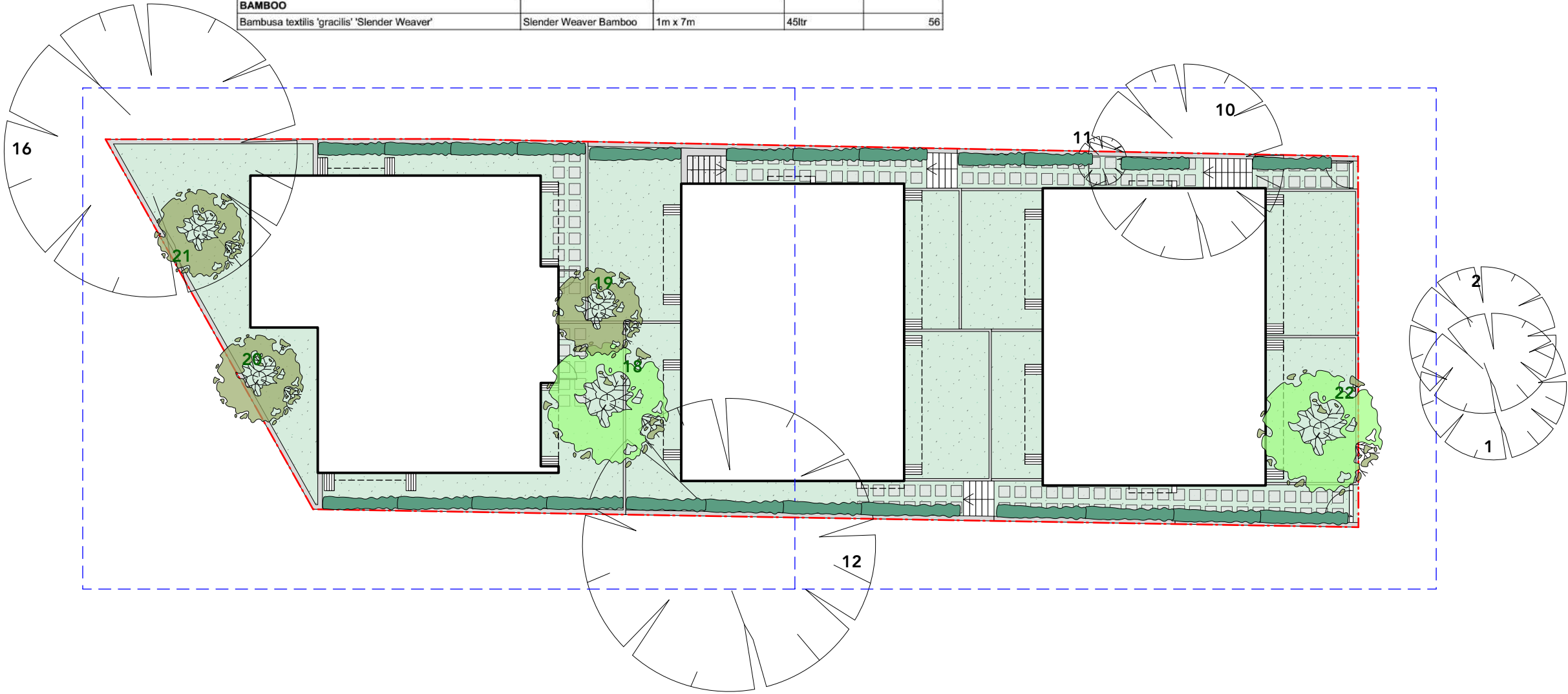
Drawing
3pm Elevation Shadow Analysis - Solstices

Project No. 23005 Sheet No. DA-213

TREE #	BOTANICAL NAME	COMMON NAME	ACTION
1	Jacaranda Mimosifolia	Jacaranda	RETAIN
2	Pottosporum Undulatum	Sweet Pittosporum	RETAIN
3	Ficus Coronata	Sandpaper Fig	Remove
4	Erythrina Crista-Galli	Cockspur Coral Tree	Remove
5	Ligustrum Lucidum	Large Leafed Privet	Remove
6	Pottosporum Undulatum	Sweet Pittosporum	Remove
7	Lagerstroemia Indica	Crepe Myrtle	REPLACE
8	Lagerstroemia Indica	Crepe Myrtle	REPLACE
9	Archonotophoenix Cunninghamiana	Bangalow Palm	REPLACE
10	Grevillea Robusta	Silky Oak	RETAIN
11	Brachychiton Acerifolius	Illawarra Flame Tree	RETAIN
12	Eucalyptus Microcorys	Tallowood	PRUNE
13	Jacaranda Mimosifolia	Jacaranda	Remove
14	Jacaranda Mimosifolia	Jacaranda	Remove
15	Ficus Benjamina	Weeping Fig	Remove
16	Syzygium Panniculatum	Lilly Pilly	RETAIN
17	Stenocarpus Sinuatus	QLD Firewheel Tree	Remove
18	Cupaniopsis Anacardioides	Tuckeroo	Proposed
19	Acacia Impexa	Hickory Wattle	Proposed
20	Acacia Impexa	Hickory Wattle	Proposed
21	Acacia Impexa	Hickory Wattle	Proposed
22	Cupaniopsis Anacardioides	Tuckeroo	Proposed

SYMBOL	BOTANICAL NAME	COMMON NAME	QUANTITY	MATURE HEIGHT	POT SIZE
	Acacia Impexa	Hickory Wattle	3	5-15m	100ltr
	Cupaniopsis Anacardioides	Tuckeroo	2	8-15m	100ltr

SHRUBS and GRASSES					
Acacia Cognata 'LimeLight'	River Wattle	1m x 1m	300mm		24
Chrysocephalum apiculatum	Yellow Buttons	0.2m x 0.5m	200mm		90
Syzygium 'Resilience'	Resilient Lilly Pilly	4m x 2m	300mm		78
Miscanthus sinensis 'Little Zebra'	Little Zebra grass	0.5-1m x 1m	200mm		30
GROUNDCOVERS					
Thymus vulgaris	Thyme	0.1m x 1m	140mm		85
Thymus citriodorus	Lemon Thyme	0.1m x 1m	140mm		280
Mentha requienii	Corsican mint	0.1m x 1m	140mm		45
Senecio serpens	Chalksticks	0.15m x 0.4m	140mm		70
Zoysia 'Empire'	Zoysia Lawn	lawn coverage	m2		176
Mazus reptans	creeping mazus	50mm x 450mm	140mm		222
BAMBOO					
Bambusa textilis 'gracilis' 'Slender Weaver'	Slender Weaver Bamboo	1m x 7m	45ltr		56



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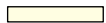
Location
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To be demolished	
New Construction / Timber	
New Construction / Masonry	
New Construction / Concrete	
Metal	
Glass	
Finished floor / relative level	FFL / RL
Downpipe	DP

Date	Rev.	Description
02.09.24	A	Issued for DA
15.05.25	B	Response to RFI

Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

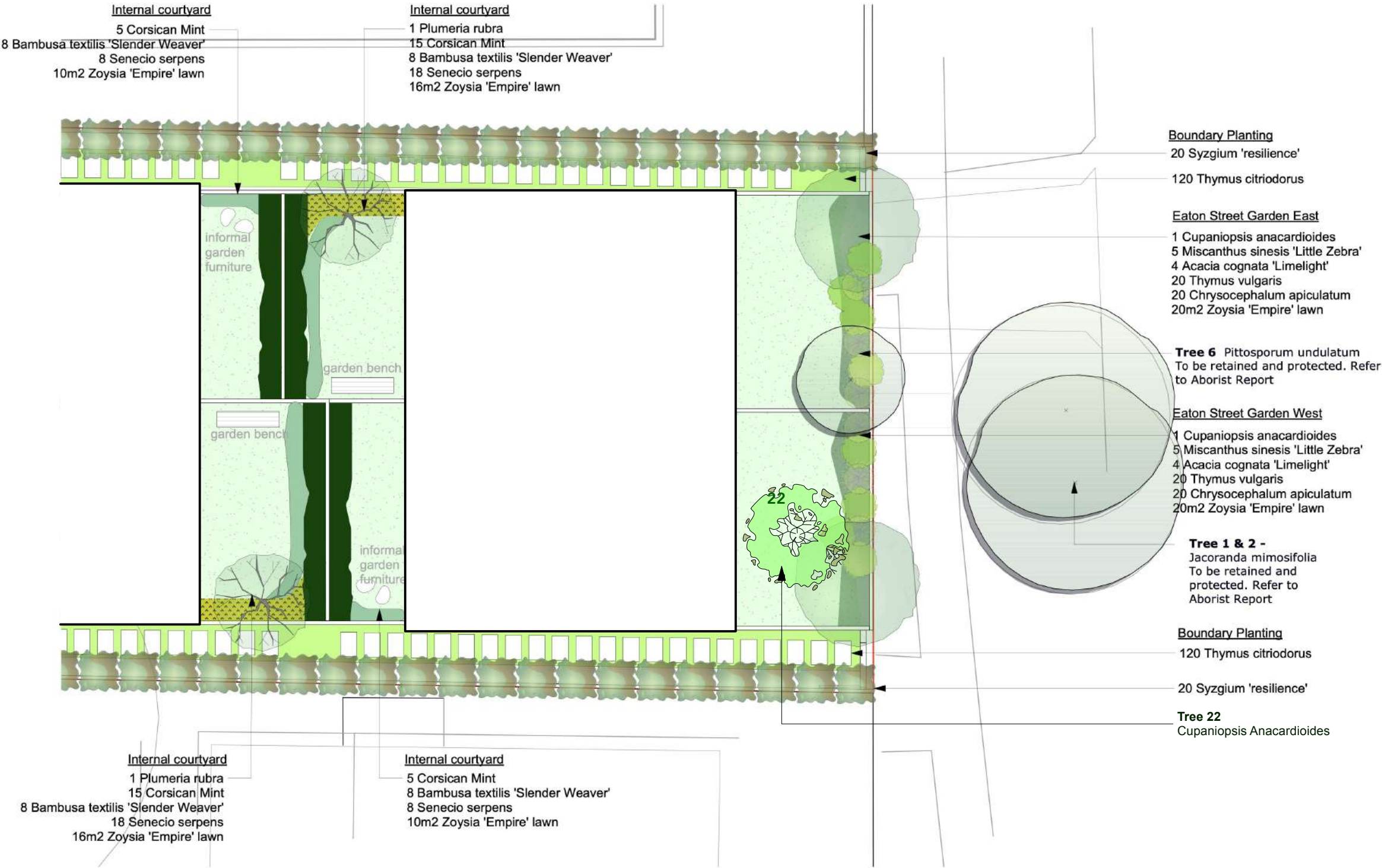
Scale
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North


Drawing
Landscape Plan 1/3

Project No.
23005

Sheet No.
DA-114



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Date	Rev.	Description
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Project
New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

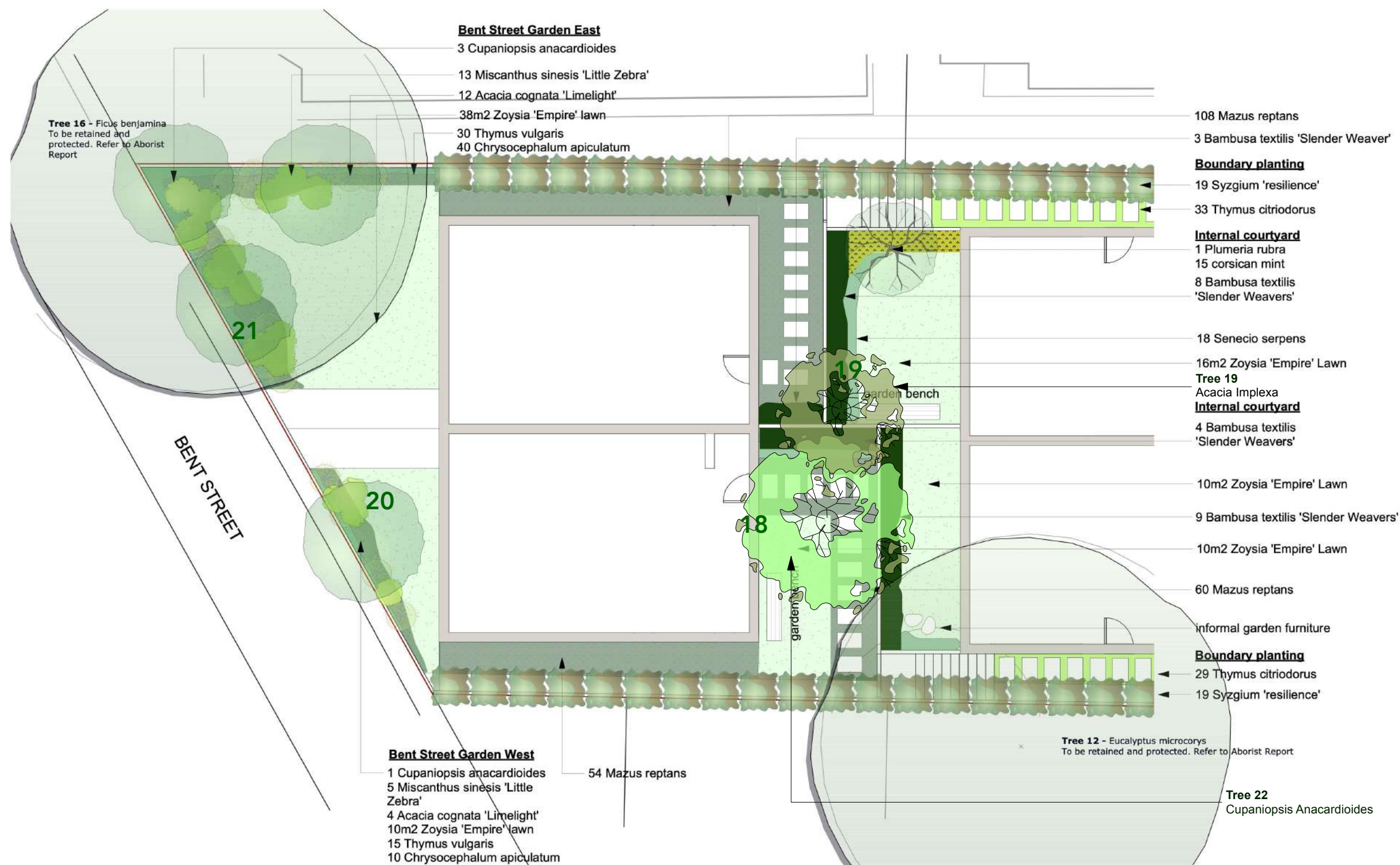
Client
Mohammad Helou

Status
Development Application (DA)
Not For Construction

North

Drawing
Landscape Plan 2/3

Project No. 23005
Sheet No. DA-115



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Location

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Nominated Architect

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Legend

Existing Wall

To be demolished

New Construction / Timber

New Construction / Masonry

New Construction / Concrete

Metal

Glass

Finished floor / relative level

Downpipe

[illegible]

Project

New Multi-Residential Development
8 Eaton Street, Neutral Bay, 2089

Client

Mohammad Helou

Status

Development Application (DA)
Not For Construction

Drawing

Landscape Plan 3/3

Project No.

23005

North



Sheet No.

DA-116

Suite 1 No.9 Narabang Way Belrose NSW 2085 • acn 121 577 768
t (02) 9986 2535 • f (02) 99863050 • www.bbfplanners.com.au

BostonBlythFleming
Town Planners

18th June 2025

The General Manager
North Sydney Council
PO Box 12
North Sydney, NSW 2059

Dear Madam,

**Clause 4.6 variation –Height of buildings (clause 4.3 NSLEP 2013)
Demolition and construction of a 6 unit, multi dwelling housing
development, basement parking and associated works
8 Eaton Street, Neutral Bay**

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 North Sydney Local Environmental Plan 2013

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of North Sydney Local Environmental Plan 2013 (NSLEP) the height of a building on the subject land is not to exceed the height shown on the height of buildings map. In the case of the subject land, the height shown on the map is 8.5 metres.

The objectives of this standard 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 E4 Environmental Living.*

Building height is defined as follows:

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

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

I note that Council has adopted the interpretation of ground level (existing) as that established in the matter of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 where at paragraphs 73 and 74 O'Neill C found:

73. *The existing level of the site at a point beneath the existing building is the level of the land at that point. I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant excavated ground level on the site and the proposal exceeds the height of buildings development standard in those locations where the vertical distance, measured from the excavated ground level within the footprint of the existing building, to the highest point of the proposal directly above, is greater than 10.5m. The maximum exceedance is 2.01m at the north-eastern corner of the Level 3 balcony awning.*

74. *The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.*

The proposed development breaches the building height standard in various locations to a variable extent as depicted in the height blanket diagram extract below.

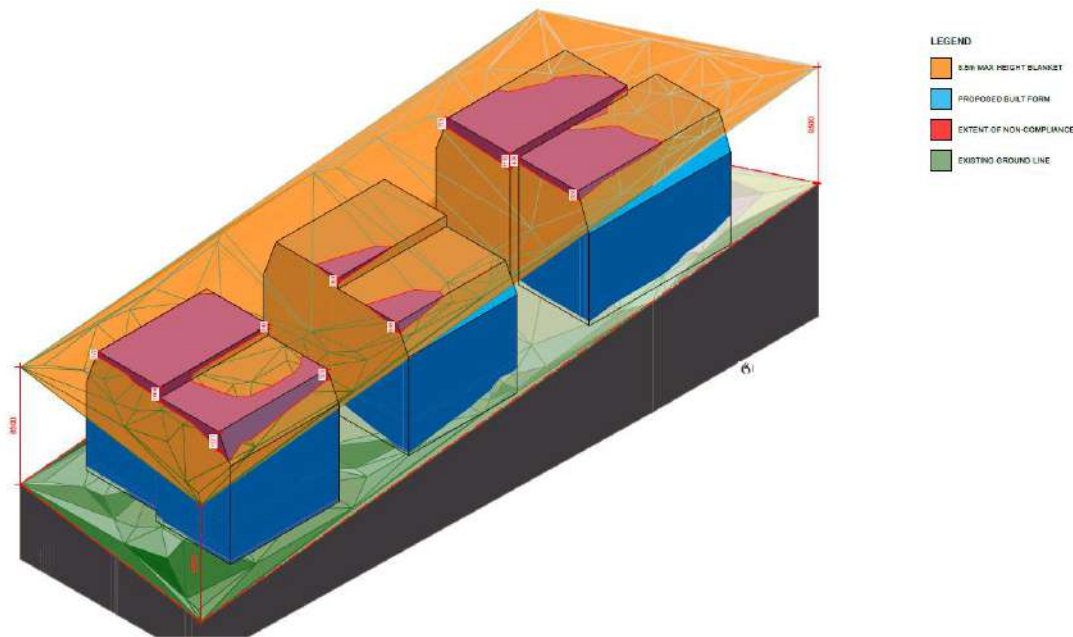


Figure 1 - Building height blanket diagram depicting building height breaching elements in red.

This diagram confirms that the Bent Street facing pavilion breaches the height standard by between 435mm (5.1%) and 1.115 metres (13.1%) and that the central pavilion breaches the standard by between 364mm (4.2%) and 588mm (6.9%). The Eaton Street facing pavilion breaches the standard by between 348mm (4%) and 1.377 metres (16.2%).

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of NSLEP provides:

- (1) *The objectives of this clause are:*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of NSLEP provides:

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

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) of NSLEP provides:

- (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.*

The proposed development does not comply with the height of buildings provision at 4.3 of NSLEP which specifies a maximum building height however strict compliance is considered to be both unreasonable and unnecessary in the circumstances of this case. There are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant analysis is set out later in this written request.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
- 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
- 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51].*

The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

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 of 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.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of NSLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard

4.0 Request for variation

4.1 Is clause 4.3 of NSLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 prescribes height provisions that relate to certain development. Accordingly, clause 4.3 is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first way, which has been adopted in relation to all objectives, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment: The land upon which the development is proposed falls approximately 4.5 metres across its surface towards Eaton Street. The development presents as 2 storeys as viewed from Bent Street before stepping down the site in a series of building pavilions in response to the natural topography of the land consistent with that anticipated by this objective.

In this regard, I am satisfied that the development conforms to/ relates to and reflects natural landforms/ ground levels and to that extent satisfies this objective notwithstanding the building height breaching elements proposed.

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

Comment: For the purpose of this objective, I have carried out an assessment of potential view loss associated with the non-compliant elements of the development from both the public and private domains.

In relation to public views, I confirm that I have walked the surrounding streets to identify existing view lines over and across the development site. This includes walking approximately 100m along the street frontage in both directions from the subject site.

During such inspection I was unable to identify any public views which would be affected by the non-compliant building height breaching elements of the proposed development.

In relation to private views, I am also satisfied that the building height breaching elements will not impact views currently available from surrounding residential properties and accordingly a view sharing scenario is maintained between adjoining properties in accordance with the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140.

Notwithstanding the non-compliant building height elements, I am satisfied that the proposal provides for the retention and sharing of both public and private views and to that extent this objective is satisfied.

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

Comment: The accompanying shadow diagrams demonstrate that whilst the proposal will result in some additional shadowing impact to the adjoining dwelling houses that at least 3 hours of solar access will be maintained to the north facing living room windows and northern private open space areas between 9am and 12 noon on 21st June. Accordingly, a compliant quantum of solar access is maintained to the adjoining properties in strict accordance with the control.

Notwithstanding the building height breaching elements, the proposal maintains reasonable solar access to existing dwellings, maintains solar access to public reserves and streets, and promotes solar access for future development. Accordingly, the proposal complies with this objective.

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

Comment: Having reviewed the plans in the context of the juxtaposition of adjoining residential development I am satisfied that the building height breaching element will not give rise to adverse visual or aural privacy impacts to any surrounding residential property nor compromise the privacy of future occupants of the proposed development.

Notwithstanding the building height breaching elements the proposal is consistent with this objective.

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

Comment: The subject property is not at a zone boundary.

Assistance as to building compatibility in a broader urban context is obtained from the planning principle established by the Land and Environment Court in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191.

In this judgement Senior Commissioner Roseth indicated:

22. *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though the difference in these attributes increases, harmony is harder to achieve.*
24. *Where compatibility between a building and its surroundings is desirable, its 2 major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.*
 - *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
 - *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*
25. *The physical impacts, such as noise, overlooking, overshadowing and the constraining development potential, can be assessed with relative objectivity. In contrast, to decide whether or not a new building appears to be in harmony with its surroundings is a more subjective task. Analysing the existing context and then testing the proposal against it, however, reduced the degree of subjectivity.*
26. *For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. In some areas, planning instruments or urban design studies have already described the urban character. In others (the majority of cases), the character needs to be defined as part of a proposal's assessment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping. In special areas, such as conservation areas, architectural style materials are also contributors to character.*

27. *Buildings do not have to be the same height to be compatible. Where there are significant differences in height it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape.*

In this regard, I have formed the opinion that the elements of the development that breach the building height standard will not give rise to unacceptable physical impacts on surrounding development in relation to views, privacy, overshadowing or development potential. Further, most observers would not find the building height proposed, in particular the non-compliant building height element, offensive, jarring or unsympathetic in a streetscape context or incompatible with the built form characteristics of development within the site's visual catchment.

Accordingly, it can be reasonably concluded that notwithstanding the building height breaching elements that the proposal is able to co-exist in harmony with surrounding development, will not give rise to any adverse streetscape or residential amenity impacts and accordingly is compatible with its surroundings.

The development, notwithstanding the building height breaching elements, ensures compatibility between development and accordingly satisfies this subjective.

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

Comment: The subject site is located within the Forsyth Neighbourhood of the Neutral Bay Planning Area. I have formed the opinion that the proposal, notwithstanding the minor building height breaching elements, is consistent with the desired future character for the Forsyth Neighbourhood in terms of dwelling density and form.

I have also formed the considered opinion that the height, form, massing and setbacks of the proposed development are complimentary and compatible with the existing character of development established on the site and within the site's visual catchment. The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

- (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.*

Comment: The proposal is predominantly 3 storeys in height consistent with other residential development located along both Eaton Steet and Bent Street within proximity of the site where the sites are steeply sloping and development steps up or down the site in response to topography. Although not mainly 1 or 2 storeys in height, it is considered that the proposal is not antipathetic to this objective as reasonably applied to a sloping site.

Having regard to the above, the non-compliant building height components of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.2B Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient Environmental Planning Grounds

In my opinion, there are sufficient environmental planning grounds to justify the building height variation as outlined below.

Ground 1 – Topography of the land

The land upon which the development is proposed falls approximately 4.5 metres across its surface towards Eaton Street. The development presents as 2 storeys as viewed from Bent Street before stepping down the site in a series of building pavilions in response to the natural topography of the land. The topography of the land contributes to the extent of building height breach making strict compliance more difficult to achieve whilst realising the orderly and economic use and development of land.

Ground 2 - Objectives of the Act

Objective (c) to promote the orderly and economic use and development of land

Strict compliance would require additional excavation to enable the buildings to be lowered or a reduction in ceiling heights and in doing so compromise the design quality and overall amenity of the dwellings in circumstances where the building height breaching element does not give rise to adverse streetscape or residential amenity impacts. Approval of the building height variation will achieve this objective.

Objective (g) to promote good design and amenity of the built environment

For the reasons outlined in this submission, approval of the variations to the building height standard will promote good contextually appropriate design and facilitate enhanced design quality and amenity outcomes for the development consistent with that established within the site's visual catchment. It is apparent that Council has applied the building height standard with a degree of flexibility along both streets and on sloping sites throughout the LGA.

There are sufficient environmental planning grounds to justify contravening the development standard.

5.0 Conclusion

Pursuant to clause 4.6(4)(a) of NSLEP, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the opinion that there is no statutory or environmental planning impediment to the granting of a building height variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA
Director