



NSLPP MEETING HELD ON 02/02/22

Attachments:

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement (Building Height)

ADDRESS/WARD: 54 Benelong Road, Cremorne (S)

APPLICATION No: DA 292/21

PROPOSAL: Demolition of existing rear balconies to an existing residential flat building and construction of new rear balconies with privacy screens and balustrades, and a new common paved area at ground level.

PLANS REF:

Plan No.	Description	Prepared by	Dated	Received
DA02A	Proposed Site/Roof Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA03A	Ground Floor Demolition Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA04A	First Floor Demolition Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA05A	Basement Demolition Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA07A	Proposed Ground Floor Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA08A	Proposed First Floor Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA09A	Proposed Basement Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA11A	N & S Elevation – Proposed	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA13A	East Elevation – Proposed	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA15A	West Elevation – Proposed	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA16A	Section AA	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA17A	Section BB	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021

OWNER: Owners of Strata Plan 43235

APPLICANT: Graham Hunt, Delisle Hunt Wood Pty Ltd

AUTHOR: Andrew Beveridge, Assessment Officer

DATE OF REPORT: 2 February 2022

DATE LODGED: 27 September 2021

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This development application seeks NSLPP approval for alterations and additions of the existing 2-3 storey residential flat building at 54 Benelong Road, Cremorne, including a large new rear balcony and deck structure.

This application is reported to North Sydney Local Planning Panel for determination because the proposed works breach the building height limit by greater than 10% and requires determination by the panel.

As the proposal involves works to the existing residential dwelling that are in exceedance of the maximum permitted height limit by 1.44m (16.9%), the applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013. The applicant's submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council [2007] NSWLEC 827* in order to justify the proposed variation. The applicant's Clause 4.6 is considered to be satisfactory given the site circumstances and on the basis that it will not have a significant impact upon the views or general amenity of adjoining properties.

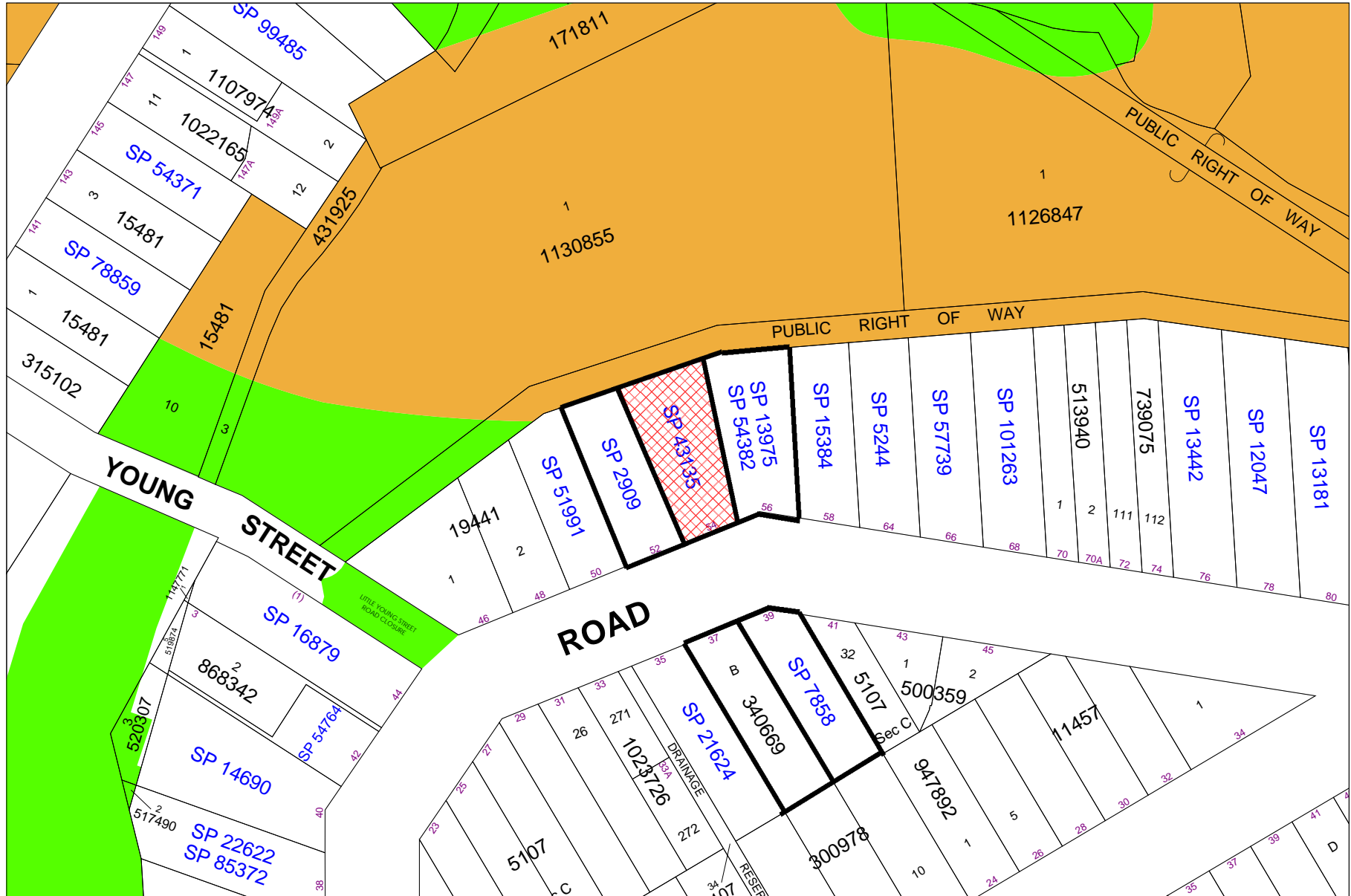
Notification of the proposal has attracted no submissions and the assessment has considered the performance of the application against Council's planning requirements. The view impacts resulting from the northern extension have been assessed with regard to the Tenacity planning principle, where the impacts are considered to be minor and acceptable within the site circumstances.

The impacts of the overall development upon adjoining bushland areas to the north within the Brightmore Reserve, have also been assessed and, subject to satisfying recommended conditions, was found to be generally acceptable on the basis that the works will maintain a sympathetic scale in relation to the existing building and will not result in any adverse impacts upon bushland areas.

Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in any significant adverse impacts upon the locality or adjoining properties, and the streetscape character will be maintained. The proposal will also not result in any unreasonable impacts on the amenity of adjoining properties such as impacts to views, overshadowing or loss of privacy.

Having regard for the potential impacts upon the amenity of adjoining properties and nearby bushland, subject to conditions, the development application is considered to be satisfactory and is recommended for **approval**.

LOCATION MAP



Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The proposed works involve alterations and additions to an existing 2-3 storey residential flat building at 54 Benelong Road, Cremorne, as shown below:

- Demolition of the existing rear timber balconies. Removal of existing rear stairwell window.
- Construction of a new two-level rear metal roofed balcony structure divided into quarters for each of the four units.
- Construction of new common terrace at ground level off the basement level.

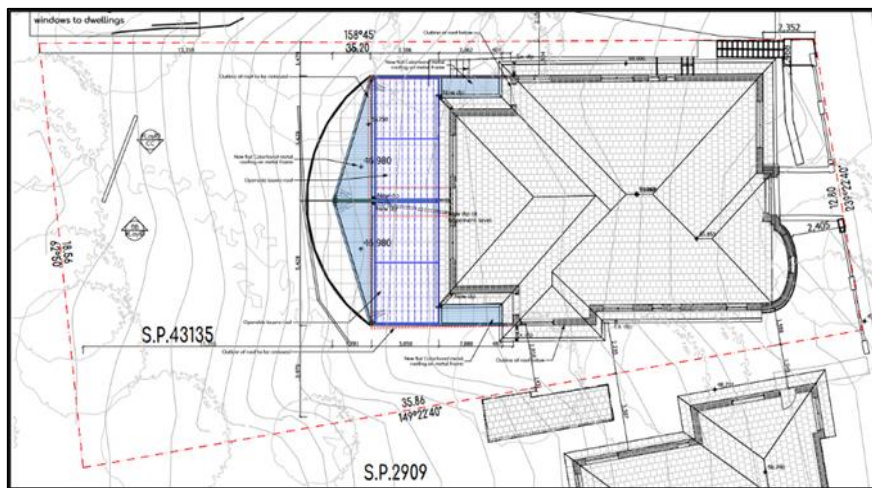


Figure 1. Site plan of the proposed works.

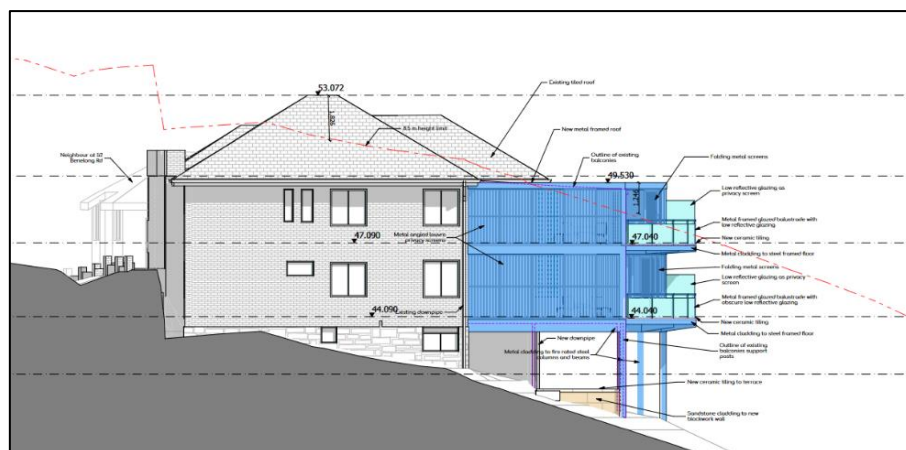


Figure 2: Proposed eastern (side) elevation

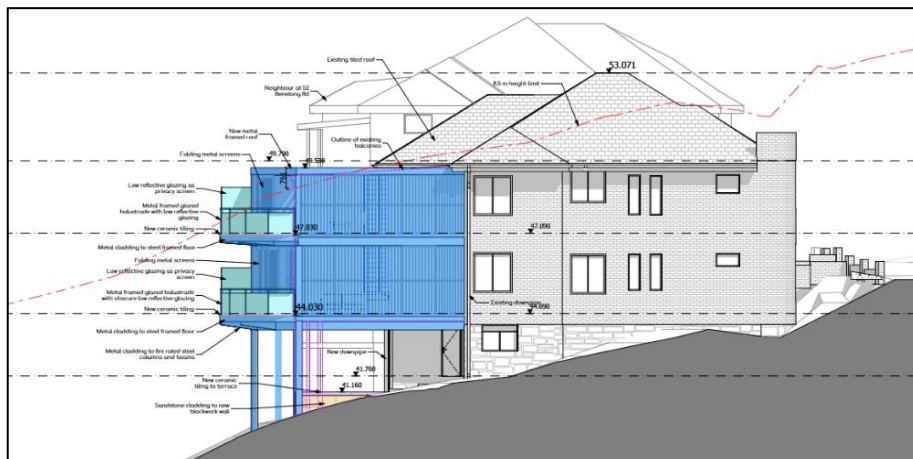


Figure 3: Proposed western (side) elevation.



Figure 4. Proposed northern (rear; top) and southern (front; bottom) elevations.

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

- Zoning – R2 Low Density Residential
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No
- Foreshore Building Line – No

Environmental Planning & Assessment Act 1979

SREP (Sydney Harbour Catchment) 2005

SEPP No. 55 – Remediation of Land & Draft SEPP

SEPP (Building Sustainability Index – BASIX) 2004

DRAFT Environment SEPP 2017

SEPP No. 65 – Design Quality of Residential Flat Development & Apartment Design Guide

SEPP (Coastal Management) 2018

- Coastal Use Area

SEPP No. 19 – Bushland in Urban Areas

SEPP (Vegetation in Non-Rural Areas) 2017

Local Development

POLICY CONTROLS

North Sydney Development Control Plan 2013 (NSDCP 2013)

- Bushland Buffer – Buffer Area A (100m)

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site (Strata Plan 43135) is located on the northern side of Benelong Road between Little Young Street and Brightmore Street. The building is a 3-storey 1941 Inter-war Art Deco style brick apartment building with 4 units. The 554m² site is generally rectangular in shape and backs directly onto a public right of way and the bushland of the Brightmore Reserve to the north. The subject apartment building has a primary frontage to Benelong Road, with the site sloping down to the north towards Willoughby Bay, and is adjoined on the western and eastern sides by residential flat buildings. The site does not have any parking or vehicular access.

The site is bounded by Inter-War residential flat buildings to the east and west. As such, surrounding development is a mix of multi-storey residential development, detached dwelling houses, and multi-dwelling housing. The site and all adjoining properties are Zoned R2 Low Density Residential under the provisions of the NSLEP 2013, and the subject site operates under existing use rights pursuant to s4.65 of the Environmental Planning and Assessment Act 1979. Images of the site and surrounding properties are provided below.

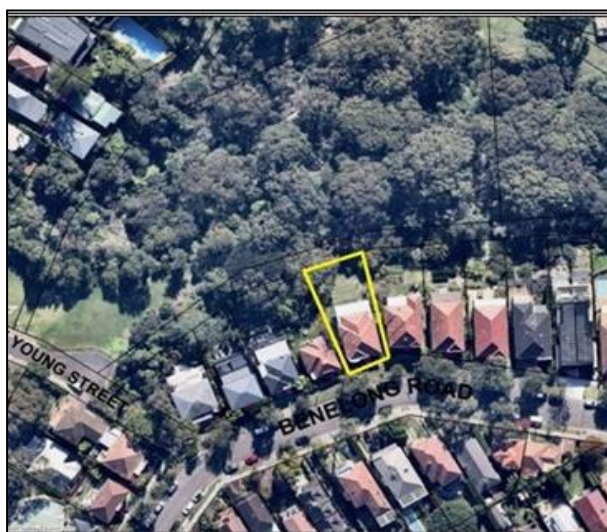


Figure 5. Aerial photograph of subject site (outlined yellow) and surrounding development

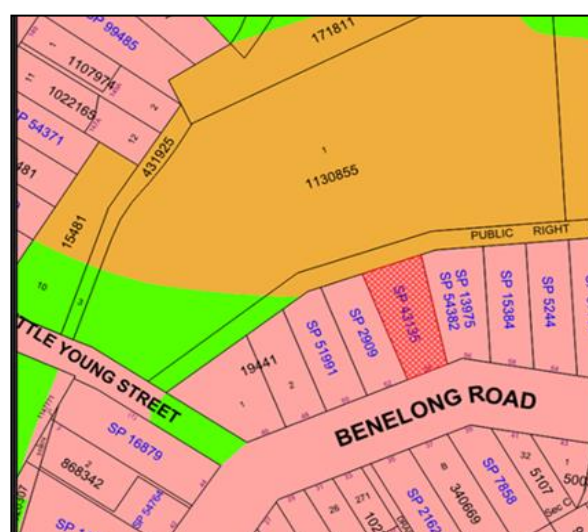


Figure 6. NSLEP Zoning map with the subject site hatched red in the R2 Zone



Figure 7. View of the subject site from Benelong Road.



Figure 8. View of the rear of the subject site, showing the existing balcony structure.



Figure 9. View of the western side setback between Nos. 52-54 Benelong Road.



Figure 10. View looking north from the basement level underneath the existing balconies.

RELEVANT HISTORY

Building Application No. 309/41 (lodged 25 June 1941) for the construction of a block of four flats was approved by Council on 2 July 1941. C. A. Baker, owner and builder. Cost of works £2,200.

Originally Torrens title subdivided as Lot 5 within Deposited Plan No. 19441 on 21 July 1941, the Strata subdivision of the building as Strata Plan 1032 was approved by Council on 12 May 1978.

Development Application No. 1093/81 and Building Application No. 101/81 (lodged 20 February 1981) for the construction of decks at the rear, the provision of laundry and store rooms in the basement level, and other internal alterations, were approved on 15 May 1981. A further amendment to the balconies to create an extension on two floors along the eastern side with a new window was approved on 19 May 1982.

Development Application No. 1315/93 (lodged on 4 August 1993) for the construction of four balconies at the rear of the existing flat building to replace the existing balconies, was approved by Council on 2 December 1993. Building works were subsequently approved under **Building Application No. 819/93** (lodged 24 December 1993) on 13 March 1994.

Development Application No. 1403/97 (lodged 31 July 1997) to amend the Strata Plan to include the new rear balconies to each of the four lots, and to convert the basement storeroom into common property, was approved by Council on 19 September 1997. Strata Plan 43135 was approved by Council on 18 November 1997

Current Application History

A brief history of the current application is summarised below: -

Date	Action
27 September 2021	The application was lodged with Council.
29 September 2021	The subject application was notified to adjoining properties and the Brightmore Precinct Committee seeking comment between 8 October 2021 and 22 October 2021. No submissions were received.
2 November 2021	A site inspection was undertaken by Council Officers.

INTERNAL REFERRALS

Aboriginal Heritage

The Aboriginal Heritage Office has assessed the proposed works and raised no objection, providing the following comments:

There are known Aboriginal sites in the area although no sites are recorded in the current lot. One area of potential was identified in the mid to rear of the property, a sandstone outcrop. Provided that this area is not impacted then the Aboriginal Heritage Office would not foresee any further Aboriginal heritage issues on the proposal. If the area would be impacted, then the Aboriginal Heritage Office would recommend further investigation ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional prior to any development.

Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act, should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

The comments from the Aboriginal Heritage Office are supported, and it is noted that the sandstone outcrop mentioned is within the rear setback of the adjoining site at No. 52 Benelong Road and not within the subject site, and is unlikely to be affected by the works. Appropriate conditions have been recommended to ensure any archaeological potential is protected (see **Condition E18**).

Building

The proposed works have been reviewed by Council's Building Surveyor, who raised no objection subject to standard **Condition F1**, and provided the following comments:

The Premises is currently undergoing fire safety upgrade works as required by Council's Development Control Order – Fire Safety Order dated 17 April 2019 (DCO). One item which was included within the DCO was the requirement for the owners to undertake works to the existing balconies to ensure that a suitable fire resistance level was achieved.

Rather than undertake the upgrade works to the balconies, the owners seek to replace the balconies in their entirety. Subsequently, the development application seeks to completely remove and re-construct the balconies. If approved, the balconies would be subject to a full National Construction Code – Building Code of Australia (BCA) assessment during the Construction Certificate Application, by an appropriately registered building surveyor, which would ensure compliance with the BCA. This process will ensure the intended outcomes of Council's DCO are achieved.

From the plans provided the proposed works appear to be able to achieve compliance with the BCA/NCC.

Bushland

As the subject site is located within close proximity to a bushland reserve, the proposal was referred to Council's Bushland Management Co-ordinator, who provided the following comments:

Overall, the proposal appears to be a relatively minor renovation with minimal potential impact for trees on the property and adjoining bushland. The proposed stormwater treatment should be adequate. No comment is made on the size of each "natural outlet structure" and if they are adequate/comparable to the increased roof space being drained.

There is no detail provided regarding the proposed species for planting in the "natural outlet structure". A condition is recommended requiring these species to be local native only – in keeping with the provisions outlined in the NSDCP Bushland chapter. Appropriate species may be selected from the lists found on the NSC website for: - Angophora Foreshore Forest - Blackbutt Gully Forest - Sandstone Gallery Rainforest

The comments and recommended conditions from Council's Bushland Management Co-ordinator are supported and conditions have been recommended to ensure the maintenance of an appropriate landscaped context of the site (see **Condition C17**).

Engineering

The proposal was referred to Council's Development Engineer, who raised no objection nor recommended any special conditions on the basis that there is only a minor stormwater runoff contribution and the proposed stormwater management plan with scour pads (gabions) presents an improvement on the existing drainage situation.

Landscape

The proposed works have been reviewed by Council's Landscape Development Officer, who has provided the following comments:

No objections are raised to this proposal, subject to the following conditions:

- 1. T6 Agonis flexuosa (8m) located in the council verge in front of 54 Benelong Rd shall be protected in accordance with AS4970, have 1.8m high tree protection fencing installed around the perimeter of its TPZ for the duration of works, and shall have a tree bond of \$7,000 applied.*
- 2. 1 x newly planted Callistemon viminalis (1.2 m) located in the council verge in front of 54 Benelong Rd shall be protected in accordance with AS4970, have 1.8m high tree protection fencing installed around the perimeter of its TPZ for the duration of works, and shall have a tree bond of \$1,000 applied.*
- 3. 1 x Callistemon viminalis (5m) located in the council verge in front of 56 Benelong Rd shall be protected in accordance with AS4970, have 1.8m high tree protection fencing installed around the perimeter of its TPZ for the duration of works, but no tree bond will be required.*
- 4. All the recommendations contained within the Arborist Report prepared by Advanced Arborist Reporting dated 1/9/21 shall be strictly adhered to. It should be noted that T9 referred to as "Fraxinus sp." in this report is actually Melia azederach, and T10 "unidentified" is an Acer palmatum.*
- 5. All existing site and neighbouring trees and vegetation, including but not limited to T1-T11, 2 x Acer palmatum & 2 x standard Ficus within the front setback of 54 Benelong Rd shall be protected in accordance with AS4970 -all works within the TPZ of any protected tree shall be carried out using sensitive construction techniques including hand excavation, pier and beam construction, and flexible location of piers/footings. No roots greater than 30mm shall be cut.*
- 6. No more than 5% canopy pruning shall be permitted to any protected tree. Any canopy pruning shall be carried out by a qualified (AQ3) arborist in accordance with AS4373.*

The comments and recommended conditions from Council's Landscape Development Officer are supported and appropriate conditions have been recommended to ensure the maintenance of an appropriate landscaped context of the site and to protect significant trees (see Conditions **C10, C11, C12, D1, D2, D3, E10, G5, and G8**).

SUBMISSIONS

On 29 September 2021, the subject application was notified to adjoining properties and the Brightmore Precinct Committee seeking comment between 8 October 2021 and 22 October 2021. No submissions were received.

CONSIDERATION

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

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

1. Permissibility – Existing use rights

The subject site is zoned R2 Low Density Residential in accordance with the NSLEP 2013. In accordance with the dictionary for NSLEP 2013, the subject building can be defined as a residential flat building because it contains three or more dwellings. Residential flat buildings, however, are not a permissible form of development in an R2 Low Density Zone. However, the subject site operates under existing use rights pursuant to sections 4.65-4.70 of the *Environmental Planning and Assessment Act 1979* (EPAA 1979).

Council granted consent for the construction of the existing flat building under Building Application No. 309/41 on 2 July 1941. Council has also approved previous alterations and additions to the subject residential flat building in 1981, 1982 and 1993, and approved Strata subdivisions in 1978 and 1997. Having regard to previous approvals where the proposals were permissible forms of development but now prohibited under NSLEP 2013, and the fact that the subject site has been lawfully occupied as flats since at least 1941, it can be concluded that the site benefits from “Existing Use Rights” under the EPAA 1979 (as amended).

The subject application is therefore assessed under the relevant clauses in the EPAA 1979 below:

4.66 *Continuance of and limitations on existing use*

- 1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- 2) *Nothing in subsection (1) authorises:*
 - (a) *any alteration or extension to or rebuilding of a building or work, or*
 - (b) *any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) *without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - (d) *the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A (1) (b), or*
 - (e) *the continuance of the use therein mentioned where that use is abandoned.*
- 3) *Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually soused for a continuous period of 12 months.*

A search of Council’s records has revealed that the subject residential flat building has been in continuous use for this purpose since 1941 and has not been abandoned for any length of time.

Clauses 41-43 of the EP & A Regulations 2000 are relevant to the proposed development because they set out how development is allowed under Clause 41 (Existing Uses). The matters for consideration for enlargement, expansion or intensification of existing uses and the consent requirements for alteration and additions to an existing use are considered below.

Clause 41 - Certain development allowed (EP&A Regulations 2000)

- (1) An existing use may, subject to this Division:**
- (a) be enlarged, expanded or intensified, or**
 - (b) be altered or extended, or**
 - (c) be rebuilt, or**
 - (d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or**

Comment:

The proposal involves alterations and additions to an existing residential flat building that is permitted by Clause 41(1) of the EP&A Regulations 2000 for the reasons stated throughout this report.

Clause 42(2) - Enlargement, Expansion and Intensification (EP&A Regulations 2000)

- (2) The enlargement, expansion or intensification:**
- (a) must be for the existing use and for no other use, and**
 - (b) must be carried out only on the land on which the existing use was carried out immediately before the relevant date.**

Comment:

With regard to Clause 42(2) the proposal for alterations and additions to the existing residential flat building satisfies the requirements for this clause because the proposal would be carried out on the land to which the existing use was carried out and no new uses would be introduced within the land affected by the proposal.

Clause 43 - Development consent required for alteration or extension of buildings and works

- (1) Development consent is required for any alteration or extension of a building or work used for an existing use.**
- (2) The alteration or extension:**
- (a) must be for the existing use of the building or work and for no other use, and**
 - (b) must be carried out must be erected or carried out only on the land on which the building or work was erected or carried out immediately before the [relevant date](#).**

Comment: The proposed works would be for the existing residential use of the building and there would no other uses incorporated in the building.

Land and Environment Court Planning Principles - Existing Use Assessments

An assessment has been carried out in accordance with the NSW Land and Environment Court planning principles in relation to the assessment of development applications based on existing use rights planning principles formulated by Senior Commissioner Roseth in *Fodor Investments v Hornsby Shire Council* (2005).

a) *Principle 1 - How does the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?*

Whilst the existing building is higher than the permissible height limit, this building operates under existing use rights and none of the proposed works will alter the existing ridge height of the current building. The building works would be similar in bulk and scale to the existing rear decks with the existing minor breach in height slightly increased at the northern end of the deck structure (1.44m or 16.9%). The deck structure is also consistent with the rear setbacks of properties along the northern side of Benelong Road, which is nevertheless varied due to the sloping topography of the area to the north and west and the curve of the street. Accordingly, the proposal is considered to be acceptable in this respect.

b) *Principle 2 - What is the relevance of the building in which the existing use takes place?*

The proposed development would continue the residential use of the flat building in a residential zone that is likely to achieve the planning objectives for a residential zone without any significant additional impacts for adjoining properties and/or the streetscape, subject to conditions.

c) *Principle 3 - What are the impacts on adjoining land?*

Consideration has been given to the potential impacts of the proposed development on adjoining land:

Privacy

The level of privacy provided by the rear decks and balconies to and from adjoining properties at Nos. 52 and 56 Benelong Road will be enhanced by the proposal. The new decks will have full height angled privacy louvres/screens along the entire eastern and western sides of the decks where covered. The projecting curved northern balcony area will also have low reflectivity obscured glazed balustrades to further limit any overlooking.

View loss

There would be no view loss for adjoining dwellings given that the proposed would be mostly contained within the existing footprint and to the rear of the residential building and there would be no significant additional height to the building. The new balconies and deck are proposed to be built primarily on the same footprint and to a similar bulk and scale as the existing structure except being slightly higher and extending further to the north in the middle of the site. Due to the substantial landscape elements and trees present within the Brightmore Reserve to the north, it is considered unlikely that there would be any significant water views or otherwise lost to the east or west across the site as a result of the new height and length of the balconies and deck structure.

Noise

The relatively minor nature of the works involving new balconies for a residential flat building would not generate any unreasonable additional noise nuisance in a residential zone. The screened and covered nature of the rear decks through the addition of privacy screens will further reduce any noise impacts from these outdoor spaces for adjoining buildings.

d) Principle 4 - What is the internal amenity?

The proposal would significantly improve the amenity of the four subject units for the enjoyment of the residents through the reconfiguration of internal spaces and new outdoor living areas to the rear.

Concluding Remarks – Existing Use Right Planning Principles Assessment

The proposal has been assessed against the four planning principles established by the NSW Land and Environment Court in relation to existing use rights and generally found to be satisfactory. The proposal is unlikely to have a significant additional adverse impact upon adjoining properties for the reasons stated earlier in this report.

Prescriptive requirements

In accordance with the decision in *Fodor Investments v Hornsby Shire Council (2005)*, the prescriptive requirements of planning instruments and development control plans cannot be applied to the assessment of the application as they would detract from the applicant's existing use rights. Nevertheless, the controls that would normally apply to residential development in an R2 Zone are applied below as a guide to the performance of the building.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 & Draft Environment SEPP

Having regard to the SREP (Sydney Harbour Catchment) 2005 and the Sydney Harbour Foreshores and Waterways Area DCP 2005, 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 location in Cremorne. As such, the development is acceptable having regard to the provisions contained within SREP 2005 and the Sydney Harbour Foreshores and Waterways DCP 2005.

SEPP 55 – Remediation of Land & Draft SEPP

The provisions of SEPP 55 require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The subject site has only previously been used for residential purposes since its original subdivision and construction of the first residential building on the site in 1941, and as such is unlikely to contain any contamination; therefore, the requirements of SEPP 55 have been satisfactorily addressed.

SEPP 65 – Design Quality of Residential Apartment Development

The above SEPP applies to development applications that involve significant alterations and additions to a residential flat building. The subject proposal, however, involves relatively minor alterations and additions to a four-unit residential flat building, and minor changes to the landscaped areas. Consequently, SEPP 65 does not strictly apply to the subject application.

SEPP (Coastal Management) 2018

The proposed development is consistent with the objectives of the SEPP, as set out in Clause 3 of the Coastal Management Act 2016. The proposal will not result in any removal of public access, overshadowing or loss of views of the public foreshore, and is sympathetic to the character of the area.

SEPP (Building Sustainability Index: BASIX) 2004

Valid BASIX Certificates for each of the four strata lots within the development have been submitted (Lot 1: A427322; Lot 2: A427327; Lot 3: A427331; Lot 4: A427333) to satisfy the requirements of the above SEPP.

SEPP 19 – Bushland in Urban Areas

The provisions of SEPP 19 require Council to assess the protection and preservation of bushland within urban areas. While some small areas of landscaping will be altered and removed by the proposal, no bushland areas will be affected by the proposed modifications and Council's Bushland Management Co-ordinator has raised no objection, subject to a condition on the species around the new stormwater outlets (see Condition **C17**).

SEPP (Vegetation in Non-Rural Areas) 2017

The *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP) works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW.

The SEPP will ensure the biodiversity offset scheme (established under the Land Management and Biodiversity reforms) will apply to all clearing of native vegetation that exceeds the offset thresholds in urban areas and environmental conservation zones that does not require development consent. The proposal meets the objectives of the SEPP because there would be no clearance of native vegetation, or any material impacts on bushland in the vicinity of the subject site.

2. Objectives of the zone

The objectives of the Zone R2 are stated below:

- *To provide for the housing needs of the community within a low-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 low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.
- To ensure that a high level of residential amenity is achieved and maintained.

The proposed development is likely to achieve the above objectives for the reasons stated throughout this report.

Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 460.7m ²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	10.46m (Existing – Roof Ridge) 9.47m (Existing – rear deck and balconies) 10.46m (Roof Ridge - unchanged) 9.94m (New rear deck and balconies)	8.5m	No

3. Height of Buildings

The building has an existing roof ridge height of 10.46m (23%) that fails to comply with the permissible height limit of 8.5m in accordance with clause 4.3 in NSLEP 2013, however this will be unchanged by this proposal. Due to the steep natural fall of the site, the existing rear deck and balconies at the northern end of the building also have an existing non-compliant height of 9.47m (11.4%). The proposed new deck and balcony structure to replace the existing structure will result in a maximum height of 9.94m, representing a variance of 1.44m (16.9%), and consequently requires a variation of the Development Standard in clause 4.3 in NSLEP 2013 (see discussion below).

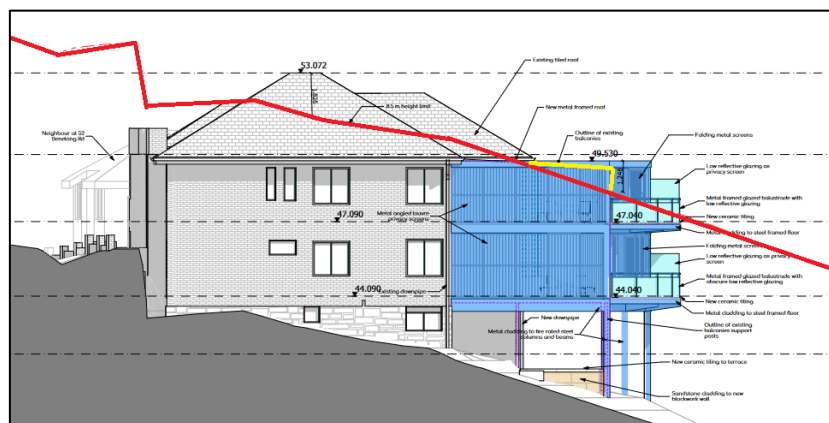


Figure 11. The proposed eastern side elevation, showing the 8.5m height limit in red, and the height of the existing rear deck in yellow.

Clause 4.6 – Exceptions to development standards

The applicant has provided a written request to vary the development standard for height. (Attachment 2).

Extent of the Variation

The proposed works would exceed the maximum permitted height. The proposed height of the new rear deck and balconies (in part) results in a variation of 1.44m (16.9%) from the development standard, as shown in the above table. The maximum height of the existing building, which is not being altered, is approximately 10.46m, with a variation of 1.96m or 23%.

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

For reference the objectives of the development standard are as follows:

Clause 4.3(1) of North Sydney Local Environmental Plan 2013

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

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

The Applicant’s written request relies upon *Webhe Test 1* to demonstrate that compliance with the development standard is unreasonable and unnecessary in this instance as the objectives of the development standard would be achieved notwithstanding the non-compliance with the development standard. The development is considered below, having regard to the objectives of the development standard.

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

The majority of the proposed works to the dwelling are contained within the existing building and rear deck footprint and would not alter the development’s overall relationship to the topography. The proposed rear balcony and deck structure will extend further north by a maximum of 3m at the central point, which reduces to the sides on account of the curved design. This new footprint will be a projecting element outside of the existing building footprint and will not significantly impact upon the natural fall of the site or on any significant natural landforms. The new structure maintains a lower ridge height than the existing building and being a submissive structure as compared to the larger main building by stepping the height down to follow the slope to the north.

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

There would be no view loss for adjoining dwellings given that the proposal would be mostly contained within the existing footprint and to the rear of the residential building and there would be no significant additional height to the building. The new balconies and deck are proposed to be built primarily within the same footprint and to a similar bulk and scale as the existing structure except being slightly higher and extending further north in the middle of the site. Due to the substantial landscape elements and trees present within the Brightmore Reserve to the north, it is unlikely that there would be any significant water views or otherwise lost to the east or west across the site as a result of the new height and length of the balconies.

The structure will be contained at the rear of the site with a height that is lower than the existing roof ridge of the building, as will have no impact upon any views from Benelong Road.

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

Current levels of solar access will not substantially change as a result of the proposal given the northerly aspect of the subject site and adjoining properties, with the properties to the south being highly elevated above the ridge height of the subject dwelling. As a consequence, and as a result of the retained side setbacks, the primary living areas and private open space for adjoining properties will continue to receive at minimum 3 hours of solar access.

For No. 52 Benelong Road to the west, the north facing windows and balcony are currently overshadowed until 10:00am in mid-winter and retain full sun from 10:00am. The east-facing windows of No. 52 Benelong Road are already overshadowed from 12:30pm in mid-winter with only partial solar access between 9am and 12:30pm. Therefore, the proposed northern decks and minor extension outside the existing footprint are unlikely to cause increased overshadowing.

For No. 56 Benelong Road to the east, the north facing windows and balconies would experience no overshadowing from the existing building or the proposed new works. For the east facing windows within No. 56 Benelong Road, they would continue to receive mid-winter sun from 12:30 pm onwards but with some lower level and rear windows partially overshadowed at 3pm. The proposed northern decks and minor extension outside the existing footprint would not significantly increase this overshadowing, except for the full overshadowing of some ground floor bathroom windows at 3pm, with the two upper floors unaffected. As these windows are not for primary living areas, it is not considered to be a significant impact.

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

The level of privacy provided by the rear decks and balconies to and from the adjoining properties at Nos. 52 and 56 Benelong Road will be enhanced by the proposal. The new decks will have full height angled louvre privacy screens along the entire eastern and western sides of the decks. The projecting curved northern balcony area will also have low reflectivity obscured glazed balustrades to further limit any overlooking. The relatively minor nature of the works for the existing residential flat building would not generate any unreasonable additional noise nuisance in a residential zone, with the increased level of enclosure for the rear decks through the addition of privacy screens likely to further reduce any noise impacts from these outdoor spaces for adjoining buildings.

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

The site is located within the R2 Low Density Residential zone and is surrounded by buildings within the R2 zone on three sides, with the exception of the northern rear boundary which directly adjoins the bushland of the Brightmore Reserve (zoned C2 Environmental Conservation). The new northern extension has been designed to be submissive in scale to the existing building, and includes a muted palette of colours and materials to be sympathetic with the nearby bushland, including through the use of low reflectivity obscured glazed balustrades. Subject to the satisfaction of relevant conditions, it is considered that the proposed northern extension is unlikely to result in a development that is incompatible with the R2 and C2 zones.

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

The proposed scale and density of the development is appropriate for the site and does not result in significant non-compliances with Council's controls, subject to conditions. While the proposal will result in some non-compliance in building height, the overall development is compatible with the existing building and surrounding buildings which have been designed to maintain views to the north in line with the sloping topography. The 3-storey northern elevation is consistent with the facades of other buildings that follow the natural topography of south-north sloping sites.

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

The applicant has provided the following grounds:

- *The balconies need to be rebuilt or significantly modified in order to ensure the fire safety of the building. It has been decided that it would be more beneficial for the long-term durability of the building and the amenity of the occupants to rebuild the balconies to a new design which provide more outdoor living area for all of the apartments. If the balconies were rebuilt in their current form, then they would still exceed the height limit. The increase in exceeding the height limit is not significant when compared to the extent of the main roof of this building and neighbouring buildings also exceed the height limit. Other benefits of re-building the apartments to a new design are:*

- *new privacy screen to the sides of all balconies will improve privacy for neighbours and the occupants.*
- *provision of the privacy screens and folding screens provide much more climate control for occupants - for these to work well the additional height is required.*
- *the new roof over the top floor balconies will provide a little more clear head height for occupants but also much more climate control with operable roofs.*

The 8.5m height limit for this site is variable in levels given the existing natural fall and topography of the site. As a result, the proposed non-compliance with the height limit only relates to the top of the northern section of the first-floor level and does not comprise the entirety of the proposed works. Furthermore, on merit the amenity impacts of the development are considered to be acceptable and is compliant with Council's other controls in Part B of NSDCP 2013. The proposed new balcony structure has been designed to be sympathetic to the existing building and nearby bushland through the use of a submissive scale and a muted palette of colours and materials. The proposal is therefore considered to be acceptable on merit within the site circumstances, with no significant adverse impacts to the amenity and privacy of neighbouring properties, or upon adjoining bushland, and is considered a reasonable improvement to the existing building.

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

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

Clause 4.6(4)(a)(ii) Public Interest

The proposed development would be in the public interest because it is consistent with the objectives of the development standard for height and the objectives of the zone as discussed above. It is also considered that the proposal does not result in any significant adverse impacts for the character of the surrounding area.

Conclusion

The applicant has submitted a written request pursuant to Clause 4.6 in NSLEP 2013. The written request has adequately addressed sub clause (3) and, subject to satisfying conditions, is considered to be in the public interest because it is consistent with the relevant development standard and the objectives of the zone.

4. Heritage Conservation

The subject site is not a heritage item, is not within a conservation area, and is not within the vicinity of any heritage item. Therefore, the proposal is not subject to Council's heritage controls.

Division 2 – General Provisions

5. Earthworks

The application involves some minor excavation to allow for new footings for the new balcony structure and the new common patio area at the existing lower ground level underneath the structure. The proposed excavation will mostly affect the existing footprint of the building and rear balconies, but will not have a significant impact upon any nearby trees or significant landscaping. Subject to appropriate conditions (see Conditions **C12** and **C17**) the proposed excavation is unlikely to negatively affect drainage patterns, soil stability, natural features, or adjoining properties. The works are therefore considered compliant in this regard.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal was found to be satisfactory having regard to the requirements of NSDCP 2013 for the reasons stated earlier where the proposal was considered under the Land and Environmental Court Planning Principles concerned with “Existing Use Rights”. Nevertheless, a compliance table has been included below to demonstrate indicative compliance with the controls under Part B Section 1 of NSDCP 2013:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.1 Population Mix	Yes	The proposed works will not alter the existing function of the four dwellings on the site within the existing residential flat building. The proposal does not involve affordable housing or senior/disability housing.
1.2.2 Maintaining Residential Accommodation		
1.2.3 Affordable Housing		
1.2.4 Housing for Seniors/Persons with disability		
1.3 Environmental Criteria		
1.3.1 Topography	Yes	The proposed excavation will be minor to accommodate the footings and patio underneath the new balcony structure, and will not impact upon any significant trees, landscaping, or natural features of the site. The natural topography, drainage patterns and landform will be retained.
1.3.2 Bushland	Yes	The site directly adjoins bushland to the north within Brightmore Reserve. The proposed works will not have a significant impact upon nearby bushland and will retain all significant site trees.
1.3.3 Bush Fire Prone Land	N/A	The subject site is not identified as Bush Fire Prone Land.
1.3.4 Foreshore Frontage	N/A	The subject site does not include foreshore land.
1.3.6 Views	Yes	View loss has been discussed on page 16 of this report, where it was considered that the new northern additions will not have any impact upon view sharing for adjoining properties.
1.3.7 Solar Access	Yes	Solar access has been discussed on page 16 of this report, where it was considered that the new northern additions will not have a significant impact upon the solar access of the primary indoor and outdoor living areas of adjoining properties.

		Current levels of solar access will not substantially change as a result of the proposal given the northerly aspect of the subject site and adjoining properties, with the properties to the south highly elevated above the southern building line of the dwelling. As a consequence, and as a result of retained side setbacks, the north-facing primary living areas and private open space for adjoining properties will continue to receive 3 hours of solar access.															
1.3.8 Acoustic Privacy 1.3.10 Visual Privacy	Yes	Privacy has been discussed on pages 16-17 of this report, where it was considered that the new northern additions will not have a significant impact upon the existing levels of privacy of the primary indoor and outdoor living areas of adjoining properties. The addition of new privacy screens and balustrades fitted with obscured glazing will further enhance privacy levels to and from adjoining properties.															
1.4 Quality built form																	
1.4.1 Context	Yes	<p>The existing context of the subject site as visible from Benelong Road will not be altered as a result of the proposed works.</p> <p>While the context of the site from the Brightmore Reserve will be altered as a result of the new contemporary style balcony addition, the structure is broadly consistent with adjoining properties which all have open and enclosed decks and balconies facing north towards the bushland and Middle Harbour. The proposed structure has been designed to sit lower than the existing building and has a muted palette of materials and colours so as not to detract from the nearby bushland.</p>															
1.4.3 Streetscape	Yes	No changes are proposed to existing streetscape elements. The existing street trees and Council infrastructure have been recommended to be protected with bonds.															
1.4.4 Laneways	N/A	The subject site does not adjoin a laneway.															
1.4.5 Siting	Yes	The new rear addition is aligned with the orientation and siting of the existing building on the subject site that has external walls parallel to the side boundaries. Consequently, the proposed works will not affect the characteristic siting of the dwelling from the street.															
1.4.6 Setbacks	Yes	<table border="1"> <thead> <tr> <th>Control</th> <th>Proposed</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>Front (maintain alignment of adjoining)</td> <td>2.4m (unchanged)</td> <td>Yes</td> </tr> <tr> <td>Side (1.5m for second storey up to 7m)</td> <td>1.5m (East) 1.5-2.8m (West)</td> <td>Yes</td> </tr> <tr> <td></td> <td>Unchanged</td> <td></td> </tr> <tr> <td>Rear (10m)</td> <td>11.3m</td> <td>Yes</td> </tr> </tbody> </table>	Control	Proposed	Complies	Front (maintain alignment of adjoining)	2.4m (unchanged)	Yes	Side (1.5m for second storey up to 7m)	1.5m (East) 1.5-2.8m (West)	Yes		Unchanged		Rear (10m)	11.3m	Yes
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Rear (10m)	11.3m	Yes															

<p>1.4.7 Form Massing Scale</p>	<p>Yes</p>	<p>Whilst the proposal involves a breach of the height limit, this breach is not higher than the existing breach, and the new balcony structure at the rear will maintain a submissive height and scale to the existing building in a manner that is similar to the existing balcony structure.</p> <p>The proposed rear deck will extend further to the north by a maximum of 3m at the central point, which reduces to the sides on account of the curved design. This new footprint will be outside the existing building footprint but unlikely to cause a significant impact upon the natural fall of the site or on any significant natural landforms as a result.</p>
<p>1.4.8 Built Form Character</p>	<p>Yes</p>	<p>The majority of the proposed works to the dwelling are contained within the existing building footprint and maintain a lower ridge height than the existing building. As a result, the proposed new balcony structure would be a submissive structure that will not be visible from Benelong Road. Its modest form and detail has been sympathetically designed to complement the original built form of the building and the curved element at the northern end of the balconies is evocative of the Inter-war Art Deco style of the original building.</p> <p>As the new northern extension has been designed to be submissive in scale to the existing building, including the use of a muted palette of colours and materials, the proposal will be sympathetic to the nearby bushland to the north within Brightmore Reserve.</p>
<p>1.4.9 Dwelling Entry</p>	<p>Yes</p>	<p>The existing common dwelling entry from Benelong Road will be maintained.</p>
<p>1.4.10 Roofs</p>	<p>Yes</p>	<p>The proposed flat roof of the rear balcony structure is consistent with the flat roof of the existing structure. The flat roof is acceptable as it is entirely contained within the rear of the site and allows the new structure to be submissive to the larger building and its hipped tiled roof.</p>
<p>1.4.12 Materials</p>	<p>Yes</p>	<p>The proposed new balcony structure includes muted coloured metal to the structural frames, louvres screens and railings. The glazed balustrades will use low reflective obscure glass. The support walls for the new ground floor patio will comprise sandstone faced blockwork to match the existing basement walls. As a result, the use of muted colours and materials will minimise any visual impact upon adjoining bushland.</p>

1.4.13 Balconies – Apartments	Yes	The balconies provided for each of the four units are greater than 8m ² and wider than 2m. The proposed balcony structure has been designed in a manner similar to the existing structure, with a submissive scale similar to the existing building with a design that is integrated into the design of the original building with a modest form and the curved style at the northern end being evocative of the Inter-war Art Deco style of the original building.																			
1.4.14 Front Fences	N/A	No change is proposed.																			
1.5 Quality Urban Environment																					
1.5.1 High Quality Residential Accommodation	Yes	The proposed works would provide additional amenity for residents by creating expanded outdoor living areas.																			
1.5.3 Safety and Security	Yes	Safety and security would not be compromised as a result of the subject development application. The new balconies will continue to provide a high level of surveillance towards the rear of the site and the reserve, while additional lighting to the ground level patio area will enhance safety and security at this level.																			
1.5.5 Site Coverage 1.5.6 Landscape Area	Yes	<table border="1"> <thead> <tr> <th data-bbox="865 949 1021 987">Site Area: 554m²</th> <th data-bbox="1027 949 1166 987">Existing</th> <th data-bbox="1166 949 1305 987">Proposed</th> <th data-bbox="1305 949 1445 987">Complies</th> </tr> </thead> <tbody> <tr> <td data-bbox="865 987 1021 1099">Site Coverage (45% max)</td> <td data-bbox="1027 987 1166 1099">35% (194.17m²)</td> <td data-bbox="1166 987 1305 1099">36.7% (203.2m²)</td> <td data-bbox="1305 987 1445 1099">Yes</td> </tr> <tr> <td data-bbox="865 1099 1021 1211">Landscaped area (40% min)</td> <td data-bbox="1027 1099 1166 1211">59.1% (327.84m²)</td> <td data-bbox="1166 1099 1305 1211">55.08% (305.17m²)</td> <td data-bbox="1305 1099 1445 1211">Yes</td> </tr> <tr> <td data-bbox="865 1211 1021 1279">Unbuilt-upon area (15% max)</td> <td data-bbox="1027 1211 1166 1279">5.7% (31.99m²)</td> <td data-bbox="1166 1211 1305 1279">8.23% (45.62m²)</td> <td data-bbox="1305 1211 1445 1279">Yes</td> </tr> </tbody> </table>	Site Area: 554m ²	Existing	Proposed	Complies	Site Coverage (45% max)	35% (194.17m ²)	36.7% (203.2m ²)	Yes	Landscaped area (40% min)	59.1% (327.84m ²)	55.08% (305.17m ²)	Yes	Unbuilt-upon area (15% max)	5.7% (31.99m ²)	8.23% (45.62m ²)	Yes			
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Unbuilt-upon area (15% max)	5.7% (31.99m ²)	8.23% (45.62m ²)	Yes																		
1.5.8 Landscaping	Yes (Conditioned)	All existing garden areas are proposed to be retained, with the loss of landscaped area represented by lawn only. No significant trees are proposed for removal and a condition is recommended for sympathetic planting around the new stormwater outlets (see Condition C17).																			
1.5.9 Front Gardens	N/A	The existing front garden will be unchanged by this proposal.																			
1.5.10 Private and Communal Open Space	Yes	<p>A substantial amount of common private open space will continue to be provided at ground level. The new ground level patio will add a new communal area for residents.</p> <p>The proposed new balconies will provide over 12m² of private open space per unit.</p>																			
1.5.13 Garbage Storage	N/A	The existing garbage storage area on the eastern side of the building at ground level will be retained.																			

1.6 Efficient Use of Resources		
1.6.1 Energy Efficiency	Yes (Conditioned)	Four valid BASIX Certificates were provided with the application, one for each unit in the development. The design of the new balconies will allow for maximum solar access on the northern elevation while also minimising exposure during times of excessive heat and sun. The use of louvered privacy screens will allow for cross ventilation of the balconies.
1.6.2 Passive Solar Design		
1.6.4 Natural ventilation		
1.6.5 Colours and materials	Yes	The use of muted colours and materials in the new structure will allow for heat absorption to be minimised, particularly on the exposed northern elevation.
1.6.8 Stormwater Management	Yes (Conditioned)	The new balcony structure will connect to the existing stormwater system on the eastern and western sides of the site. The addition of new scour-pad outlets within the rear garden will assist in dispersing stormwater in an even manner. Council's Bushland Management Coordinator has recommended these outlets be sympathetically planted with a suitable native species (see Condition C17).

North Cremorne Planning Area (Benelong Neighbourhood) – Part C of NSDCP 2013

Consideration has been given to the Character Statement for the North Cremorne Planning Area in Part C of NSDCP 2013, particularly Section 5.4 (Benelong and Northern Foreshores Neighbourhood) where this site is located. The proposal is acceptable as the materials and overall appearance of the works are compatible with existing building, surrounding development in the neighbourhood, and the development conforms to the relevant provisions in Part B in NSDCP 2013.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal, which involves development where the cost of the proposed development is more than \$100,000, is classified under the North Sydney Local Infrastructure Contributions Plan 2020 as a 'Type (c) development' that triggers a Section 7.12 contribution of **\$3,731.00**, for the purposes of the local infrastructure provision.

Contribution amounts payable

Applicable contribution type		
s7.12 contribution details	Development cost:	\$373,053.13
<i>(Payment amount subject to indexing at time of payment)</i>	Contribution:	\$3,731.00

A condition is recommended requiring payment prior to issue of any Construction Certificate (refer to **Condition C14**).

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	N/A
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 the Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMISSIONS

The original and amended applications were notified to adjoining properties and the Brightmore Precinct Committee. No submissions were received.

PUBLIC INTEREST

Subject to the satisfaction of conditions, the proposal would provide improved amenity for the residents without causing any unreasonable impacts to the streetscape, adjoining bushland and/or adjoining properties. Therefore, the proposal would not be contrary to the public interest.

SUITABILITY OF THE SITE

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

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Brightmore Precinct Committee seeking comment and no submissions were received. Despite this, a review of potential amenity impacts was undertaken, and these impacts were found to be acceptable. Nevertheless, appropriate conditions are recommended to maintain residential amenity and the integrity of adjoining bushland and significant trees.

CONCLUSION AND REASONS

The proposal was considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and generally found to be satisfactory, subject to the satisfaction of recommended conditions of consent.

As the proposal involves works to the existing residential dwelling that are in exceedance of the maximum permitted height limit, the applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013. The applicant's submission has been considered with reference to the relevant planning principle in order to justify the proposed variation. The applicant's Clause 4.6 is considered to be satisfactory given the site circumstances and on the basis that it will not have a significant impact upon the general amenity of adjoining properties in terms of views, solar access, or privacy.

Notification of the proposal has attracted no submissions and the assessment has considered the performance of the application against Council's planning requirements.

The impacts of the overall development upon the character of the original 1941 building, the immediate neighbourhood, and adjoining bushland to the north have also been assessed and, subject to satisfying recommended conditions, was found to be generally acceptable on the basis that the majority of the works will be contained within the existing footprint of the existing balcony structure and will maintain a sympathetic scale and appearance in relation to the existing building.

Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in any significant adverse impacts upon the locality or adjoining properties, and the character of the site and streetscape will be maintained. The proposal will also not result in any unreasonable impacts to the amenity of adjoining properties or upon adjoining bushland within the Brightmore Reserve.

Having regard for the potential impacts upon the amenity of adjoining properties and the character of the surrounding area and bushland, the development application is considered to be satisfactory and is recommended for approval.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 and **grant consent** to Development Application No. 292/21 for the demolition of the existing rear balconies to a residential flat building and construction of new rear balconies with privacy screens and balustrades, and a new common paved area at ground level, on land at 54 Benelong Road, Cremorne, subject to the attached site specific and standard conditions

ANDREW BEVERIDGE
ASSESSMENT OFFICER

ROBYN PEARSON
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
54 BENELONG ROAD, CREMORNE
DEVELOPMENT APPLICATION NO. 292/21

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Description	Prepared by	Dated	Received
DA02A	Proposed Site/Roof Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA03A	Ground Floor Demolition Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA04A	First Floor Demolition Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA05A	Basement Demolition Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA07A	Proposed Ground Floor Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA08A	Proposed First Floor Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA09A	Proposed Basement Plan	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA11A	N & S Elevation – Proposed	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA13A	East Elevation – Proposed	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA15A	West Elevation – Proposed	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA16A	Section AA	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021
DA17A	Section BB	Delisle Hunt Wood Pty Ltd	20/09/2021	27/09/2021

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

Plans on Site

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

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

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

No Demolition of Extra Fabric

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

(Reason: To ensure compliance with the approved development)

External Finishes and Materials

- A4. External finishes and materials must be in accordance with the approved plans within Condition A1 of this consent, unless otherwise modified by Council in writing.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

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

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

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

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

**54 BENELONG ROAD, CREMORNE
DEVELOPMENT APPLICATION NO. 292/21**

Page 3 of 26

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

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

Dilapidation Report Private Property (Excavation)

- C2. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer agreed to by both the applicant and the owner of any affected adjoining property.

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

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

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

(Reason: To record the condition of property/i.e., prior to the commencement of construction)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C3. A photographic survey and dilapidation report of adjoining properties Nos. 52 and 56 Benelong Road detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

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

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

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

(Reason: Proper management of records)

Sediment Control

- C4. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A Sediment Control Plan must be prepared and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan.

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The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Waste Management Plan

C5. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:

- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
- b) The design of the on-site waste storage and recycling area; and
- c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

External Colours and Finishes

C6. The external colours and finishes shall match those as existing and/or be compatible with surrounding development. A schedule of external colours and finishes must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that the completed colours and finishes of the works are compatible with surrounding development)

Roofing and Façade Materials - Reflectivity

C7. Roofing and Façade materials must be factory pre-finished with low glare and reflectivity. Properties to be compatible with the colours of neighbouring buildings and the adjoining bushland reserve. The selected roofing and glazing materials must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties.

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Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

Work Zone

- C8. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

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

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

(Reason: Amenity and convenience during construction)

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

- C9. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$2,500.00 to be held by Council for the payment of cost for any/all of the following:
- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
 - b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.

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- c) remedying any defects in any such public work that arise within six months after the work is completed.

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

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

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

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

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

Tree Bond for Public Trees

- C10. Prior to the issue of any construction certificate, security in the sum of \$8,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

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

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.

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If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

SCHEDULE

Tree Species	Location	Bond
T6 <i>Agonis flexuosa</i> (8x10m)	The Council verge in front of 54 Benelong Road.	\$7,000
1 x <i>Callistemon viminalis</i> (1.2x1m)	The Council verge in front of 54 Benelong Road.	\$1,000

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

Tree Protection Measures to be shown on Construction Drawings

- C11. The tree protection measures contained in the arborist report prepared by Advanced Arborist Reporting, dated 1 September 2021, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. It should be noted that T9 referred to as *Fraxinus sp* in this report is actually *Melia azedarach* and T10 (unidentified) is an *Acer palmatum*.

The Certifying Authority must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

Protection of Trees

- C12. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

Tree	Location	Height
T1 <i>Morus alba</i>	The rear setback of 54 Benelong Road.	5x3m
T2 <i>Plumeria rubra</i>	The rear setback of 56 Benelong Road.	6x5m
T3 <i>Fraxinus sp.</i>	The side setback between 54-56 Benelong Road.	8x1m
T4 <i>Cyathea australis</i>	The side setback between 54-56 Benelong Road.	2x1m
T5 <i>Cyathea australis</i>	The side setback between 54-56 Benelong Road.	2x1m
T6 <i>Agonis flexuosa</i>	The Council verge in front of 54 Benelong Road.	8x10m

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T7 <i>Grevillea sp.</i>	Within the eastern side setback of 52 Benelong Road.	5x2m
T8 <i>Grevillea sp.</i>	Within the eastern side setback of 52 Benelong Road.	5x2m
T9 <i>Melia azedarach</i>	The side setback between 52-54 Benelong Road.	8x5m
T10 <i>Acer palmatum</i>	The side setback between 52-54 Benelong Road.	-
T11 <i>Angophora costata</i>	The rear setback of 54 Benelong Road.	16x12m
1 x <i>Callistemon viminalis</i>	The Council verge in front of 54 Benelong Road.	1.2x1m
1 x <i>Callistemon viminalis</i>	The Council verge in front of 56 Benelong Road.	5x5m
2 x <i>Acer palmatum</i>	The front setback of 54 Benelong Road.	-
2 x <i>Ficus benjamina</i>	The front setback of 54 Benelong Road.	2x1.5m

All works within the TPZ of any protected tree shall be carried out using sensitive construction techniques including hand excavation, pier and beam construction, and flexible location of piers/footings. No roots greater than 30mm shall be cut.

No more than 5% canopy pruning shall be permitted to any protected tree. Any canopy pruning shall be carried out by a qualified (AQ3) arborist in accordance with AS4373.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Protection of existing environmental and community assets)

Asbestos Material Survey

- C13. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

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

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

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The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Section 7.12 Contributions

- C14. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan. Based on the cost of development a total contribution of \$3,731.00 is to be paid to Council to provide for additional local infrastructure improvements.

The contribution MUST BE paid prior to the issue of any Construction Certificate. The above amount will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

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

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

Security Deposit/Guarantee Schedule

- C15. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Street Tree Bond (on Council Property)	\$8,000.00
Footpath Damage Bond	\$2,500.00
TOTAL BONDS	\$10,500.00

Note: The following fees applicable

Fees	
Section 7.12 Development Contributions	\$3,731.00
TOTAL FEES	\$3,731.00

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

(Reason: Compliance with the development consent)

BASIX Certificate

C16. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A427331 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Planting near the "Natural Outlet Structure"

C17. The plant species to be added in and around the two 'Natural Outlet Structure' identified within the Stormwater Concept Plans are to be locally occurring native species only. Appropriate species may be selected from the lists found on the North Sydney Council website for: - Angophora Foreshore Forest - Blackbutt Gully Forest - Sandstone Gallery Rainforest: https://www.northsydney.nsw.gov.au/Waste_Environment/Bushland_Wild_life/Biodiversity/Natural_Area_Survey

Details of the proposed species must be provided to the Certifying Authority to fully satisfy the requirements of this condition.

(Reason: To ensure the proposed works are sympathetic to nearby bushland and to demonstrate compliance with Council's controls)

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

Protection of Public Trees

D1. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Protection
T6 <i>Agonis flexuosa</i> (8x10m)	The Council verge in front of 54 Benelong Road.	1.8m-high steel mesh tree protection fencing of TPZ.
1 x <i>Callistemon viminalis</i>	The Council verge in front	1.8m-high steel mesh tree

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(1.2x1m)	of 54 Benelong Road.	protection fencing of TPZ.
1 x <i>Callistemon viminalis</i> (5x5m)	The Council verge in front of 56 Benelong Road.	1.8m-high steel mesh tree protection fencing of TPZ.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Protection of existing environmental and community assets)

Protection of Trees

- D2. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites). A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Certifying Authority for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

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

Temporary Fences and Tree Protection

- D3. All protected trees on-site that are specifically nominated as per Condition C12 to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builders' waste are to be stored in the vicinity of the nominated tree/trees at any time.

All works within the TPZ of any protected tree shall be carried out using sensitive construction techniques including hand excavation, pier and beam construction, and flexible location of piers/footings. No roots greater than 30mm shall be cut.

No more than 5% canopy pruning shall be permitted to any protected tree. Any canopy pruning shall be carried out by a qualified (AQ3) arborist in accordance with AS4373.

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Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works.

(Reason: To protect the trees to be retained on the site during construction works)

Public Liability Insurance - Works on Public Land

- D4. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

Commencement of Works' Notice

- D5. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

E. *During Demolition and Building Work*

Parking Restrictions

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

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

Road Reserve Safety

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

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

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

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

(Reason: Stormwater control during construction)

Removal of Extra Fabric

- E4. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

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

Dust Emission and Air Quality

- E5. The following must be complied with at all times:

(a) Materials must not be burnt on the site.

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- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Noise and Vibration

- E6. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

No Work on Public Open Space

- E7. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

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

Developer's Cost of Work on Council Property

- E8. The developer must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

No Removal of Trees on Public Property

- E9. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

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

Protection of Trees

- E10. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by Advanced Arborist Reporting dated 1 September 2021, must be implemented for the duration of the works.

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

Notes:

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

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

Special Permits

- E11. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

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

1) **On-street mobile plant**

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

(Reason: Proper management of public land)

2) Hoardings

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

(Reason: Proper management of public land)

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

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

(Reason: Proper management of public land)

4) Kerbside restrictions, construction zones

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

(Reason: Proper management of public land)

Noxious Plants

E12. All lantana, privet, rubber trees, asthma weed, and other declared noxious plants on the site, must be eradicated before the commencement of landscape works.

(Reason: To ensure that plants identified as weed species are not allowed to proliferate or interfere with a quality landscaping outcome)

Construction Hours

E13. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

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

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

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

Installation and Maintenance of Sediment Control

- E14. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

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

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

Sediment and Erosion Control Signage

- E15. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

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

Site Amenities and Facilities

- E16. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

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Further information and details can be obtained from the Internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Health and Safety

- E17. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Archaeological Discovery During Works

- E18. Should any historical or Aboriginal relic be discovered on the site during demolition, excavation or site preparatory works, all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW must be informed in accordance with the provisions of the Heritage Act 1977 and/or National Parks and Wildlife Act, 1974. Works must not recommence until such time as approval to recommence is given in writing by Council or a permit from the Director of the NPWS is issued.

(Reason: To prevent the unnecessary destruction or removal of unrecorded historical or Aboriginal relics)

Prohibition on Use of Pavements

- E19. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

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

Plant and Equipment Kept Within Site

- E20. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

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

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

Waste Disposal

E21. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

Asbestos Removal

E22. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

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

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

National Construction Code

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

(Reason: Prescribed - Statutory)

Home Building Act

F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:

a) in the case of work for which a principal contractor is required to be appointed:

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DEVELOPMENT APPLICATION NO. 292/21**

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- i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
- (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

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

Construction Certificate

- F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

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

Occupation Certificate

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

(Reason: Statutory)

Critical Stage Inspections

- F6. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

Commencement of Works

- F7. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two (2) days' notice to North Sydney Council of the person's intention to commence the erection of the building.

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

Excavation/Demolition

- F8. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

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

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Protection of Public Places

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

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

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

Site Sign

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

(Reason: Prescribed - Statutory)

G. *Prior to the Issue of an Occupation Certificate***Infrastructure Repair and Completion of Works**

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

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)

Damage to Adjoining Properties

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

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

Utility Services

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

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

Asbestos Clearance Certificate

- G4. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following:
- a) the building/land is free of asbestos; or
 - b) the building/land has asbestos that is presently deemed safe.

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

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

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

Certification of Tree Condition

- G5. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below:

Tree	Location	Height
T1 <i>Morus alba</i>	The rear setback of 54 Benelong Road.	5x3m
T2 <i>Plumeria rubra</i>	The rear setback of 56 Benelong Road.	6x5m
T3 <i>Fraxinus sp.</i>	The side setback between 54-56 Benelong Road.	8x1m
T4 <i>Cyathea australis</i>	The side setback between 54-56 Benelong Road.	2x1m
T5 <i>Cyathea australis</i>	The side setback between 54-56 Benelong Road.	2x1m
T6 <i>Agonis flexuosa</i>	The Council verge in front of 54 Benelong Road.	8x10m
T7 <i>Grevillea sp.</i>	Within the eastern side setback of 52 Benelong Road.	5x2m
T8 <i>Grevillea sp.</i>	Within the eastern side setback of 52 Benelong Road.	5x2m
T9 <i>Melia azedarach</i>	The side setback between 52-54 Benelong Road.	8x5m
T10 <i>Acer palmatum</i>	The side setback between 52-54 Benelong Road.	-
T11 <i>Angophora costata</i>	The rear setback of 54 Benelong Road.	16x12m
1 x <i>Callistemon viminalis</i>	The Council verge in front of 54 Benelong Road.	1.2x1m
1 x <i>Callistemon viminalis</i>	The Council verge in front of 56 Benelong Road.	5x5m
2 x <i>Acer palmatum</i>	The front setback of 54 Benelong Road.	-
2 x <i>Ficus benjamina</i>	The front setback of 54 Benelong Road.	2x1.5m

The report must detail the condition and health of the nominated trees upon completion of the works and shall certify that the trees have not been significantly damaged during the works on the site and have reasonable prospects for survival.

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

Disposal Information

- G6. Upon completion of works and prior to occupation, a report including the following information must be provided to Council's Open Space and Environmental Services Department:

**54 BENELONG ROAD, CREMORNE
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- (a) the total tonnage of all waste and excavated material disposed of from the site (including any tipping docket); and
- (b) the disposal points and methods used.

(Reason: To ensure appropriate disposal methods are undertaken for auditing and inspection purposes)

BASIX Completion Certificate

- G7. In accordance with Clause 154C of the Environmental Planning and Assessment Regulation 2000, prior to issuing a final occupation certificate the Certifying Authority must apply to the Director-General for a BASIX completion receipt.

(Reason: To ensure compliance with the specified BASIX Certificate)

Unpaved Verge

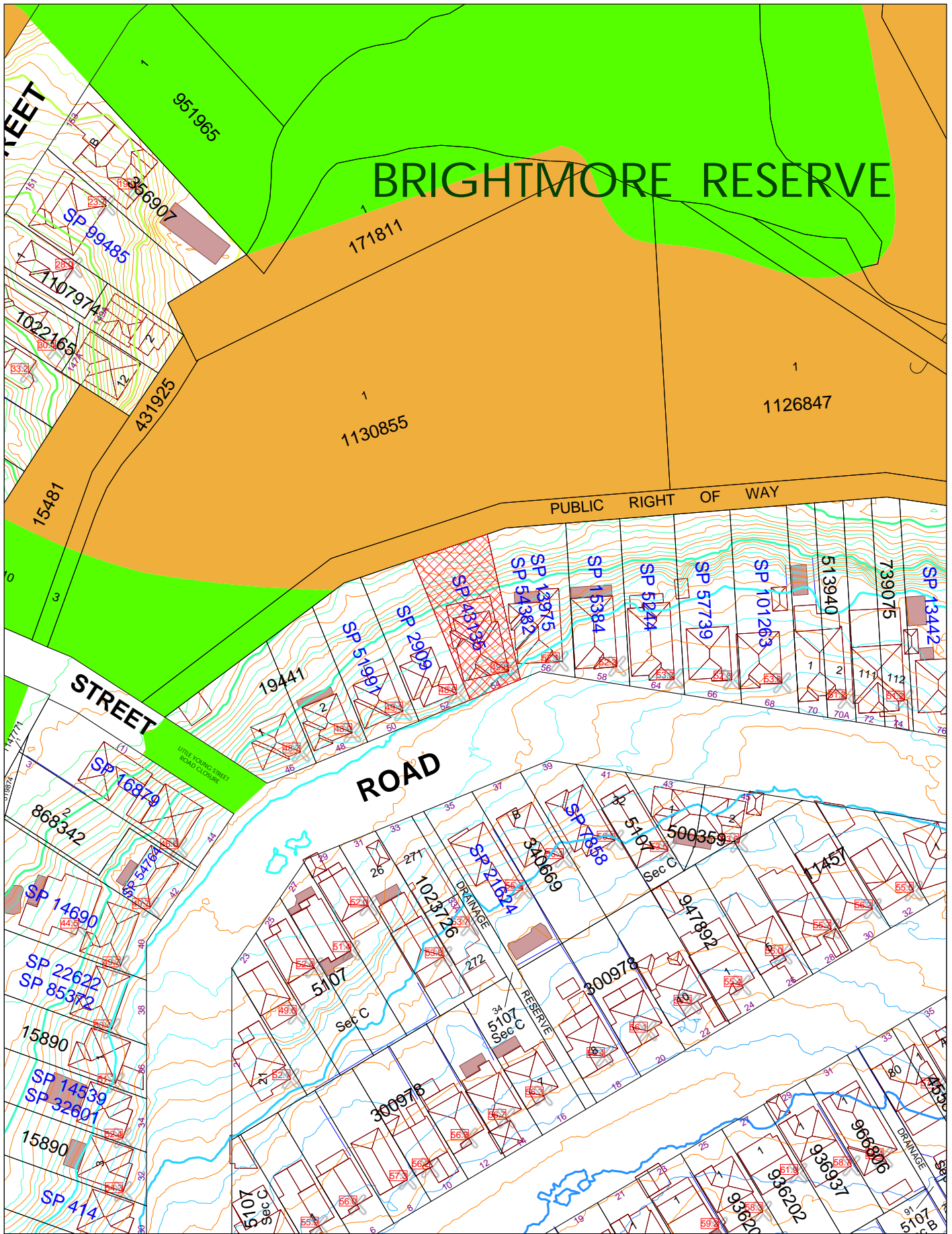
- G8. The unpaved verge area must be constructed/reconstructed with an appropriate species of grass prior to completion of the works at no cost to Council.

(Reason: To ensure that community assets are presented in accordance with reasonable community expectations)

Compliance with Certain conditions

- G9. Prior to the issue of any Occupation Certificate, Condition C17 Planting of Stormwater Outlet must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)



North Sydney Council

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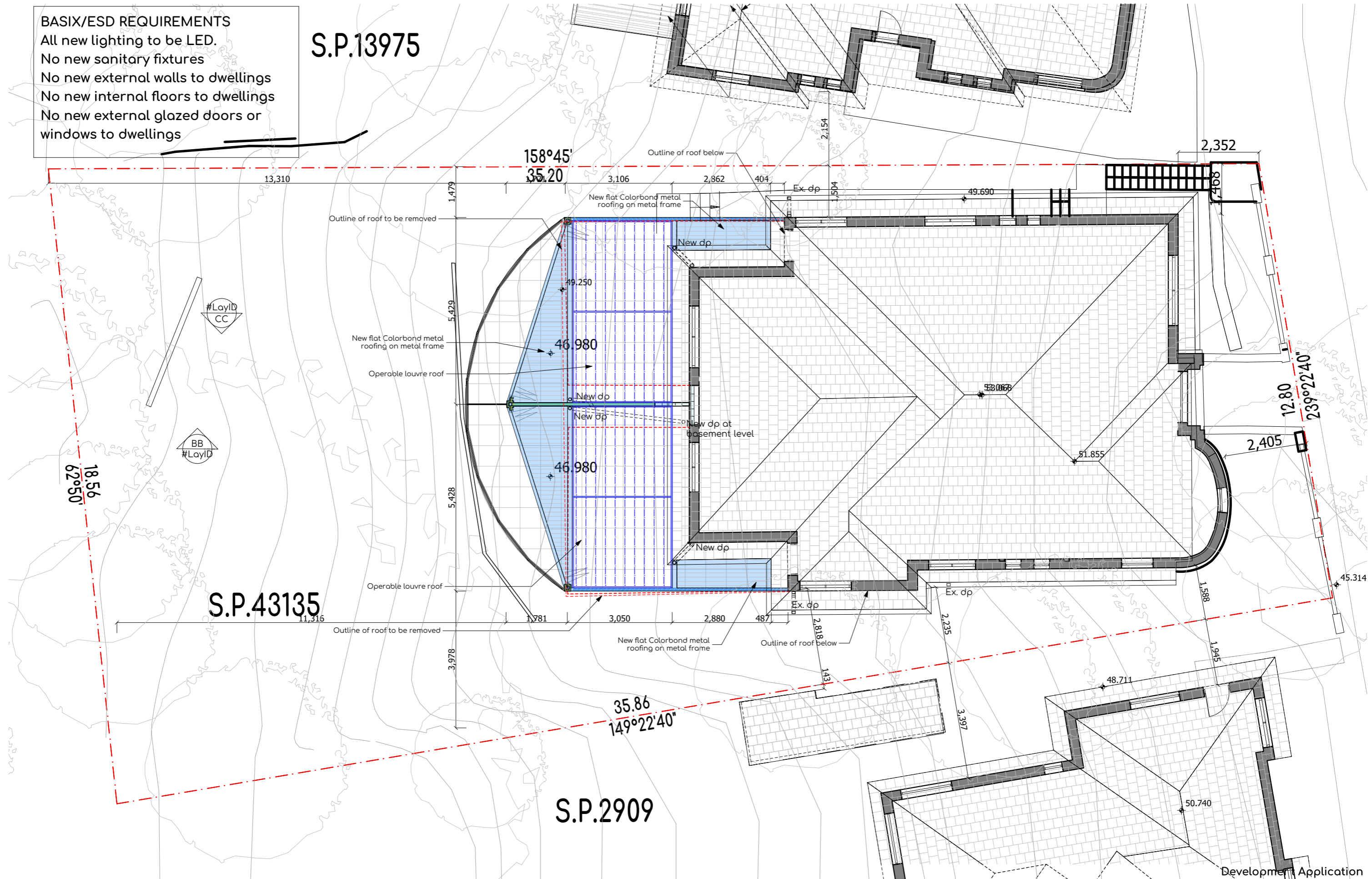
Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.

BASIX/ESD REQUIREMENTS
 All new lighting to be LED.
 No new sanitary fixtures
 No new external walls to dwellings
 No new internal floors to dwellings
 No new external glazed doors or windows to dwellings

S.P.13975

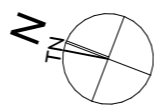
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S.P.2909



PROPOSED ALTERATIONS & ADDITIONS
 at 54 BENELONG RD CREMORNE
 SP43135

REV	DATE	NOTES
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B	2021.09.20	DA Issue



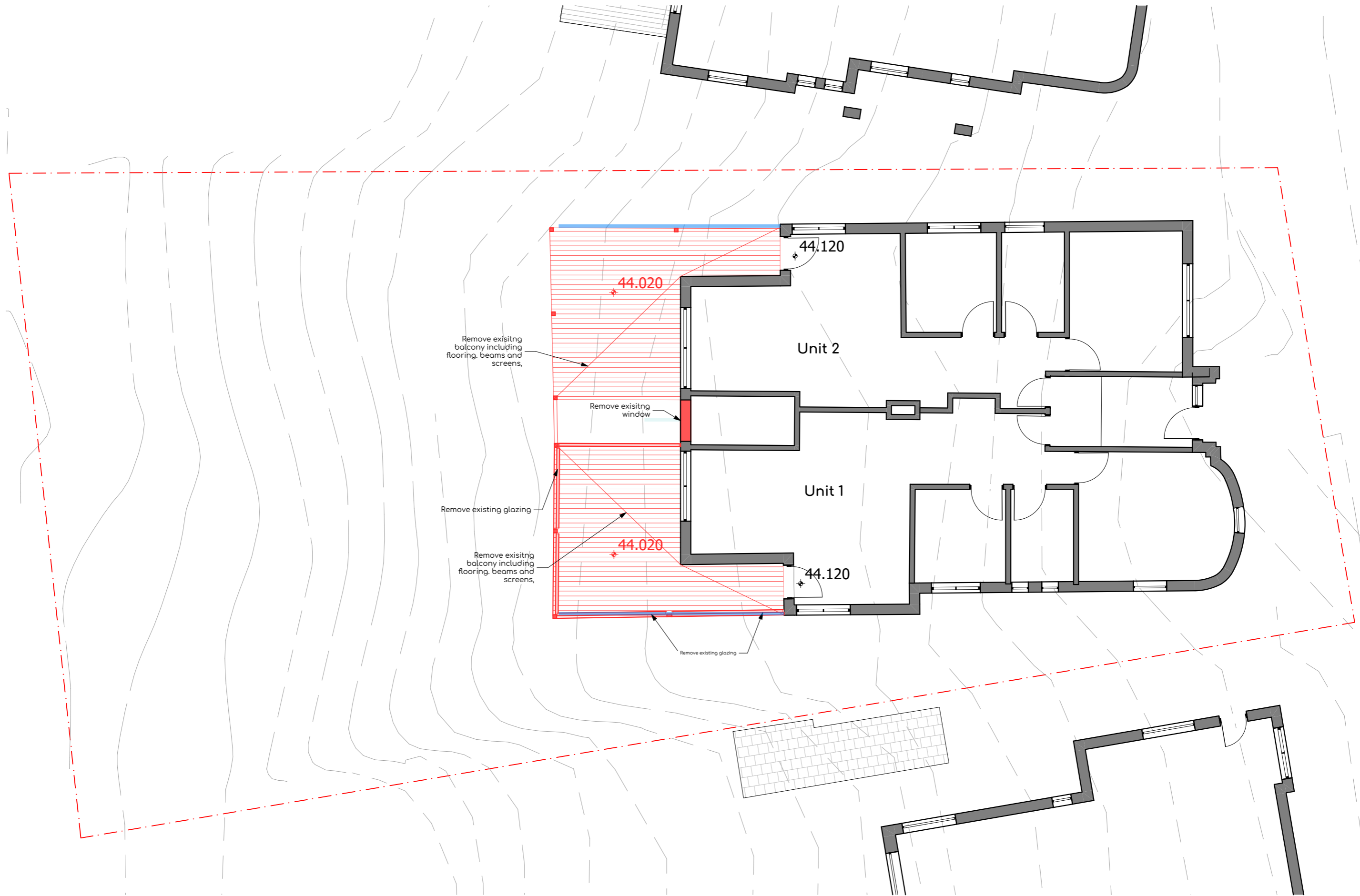
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SCALE 1:100 @ A3
 DATE 20/09/2021

DA02A

**PROPOSED
 SITE/ROOF PLAN**

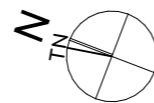
Development Application



Development Application

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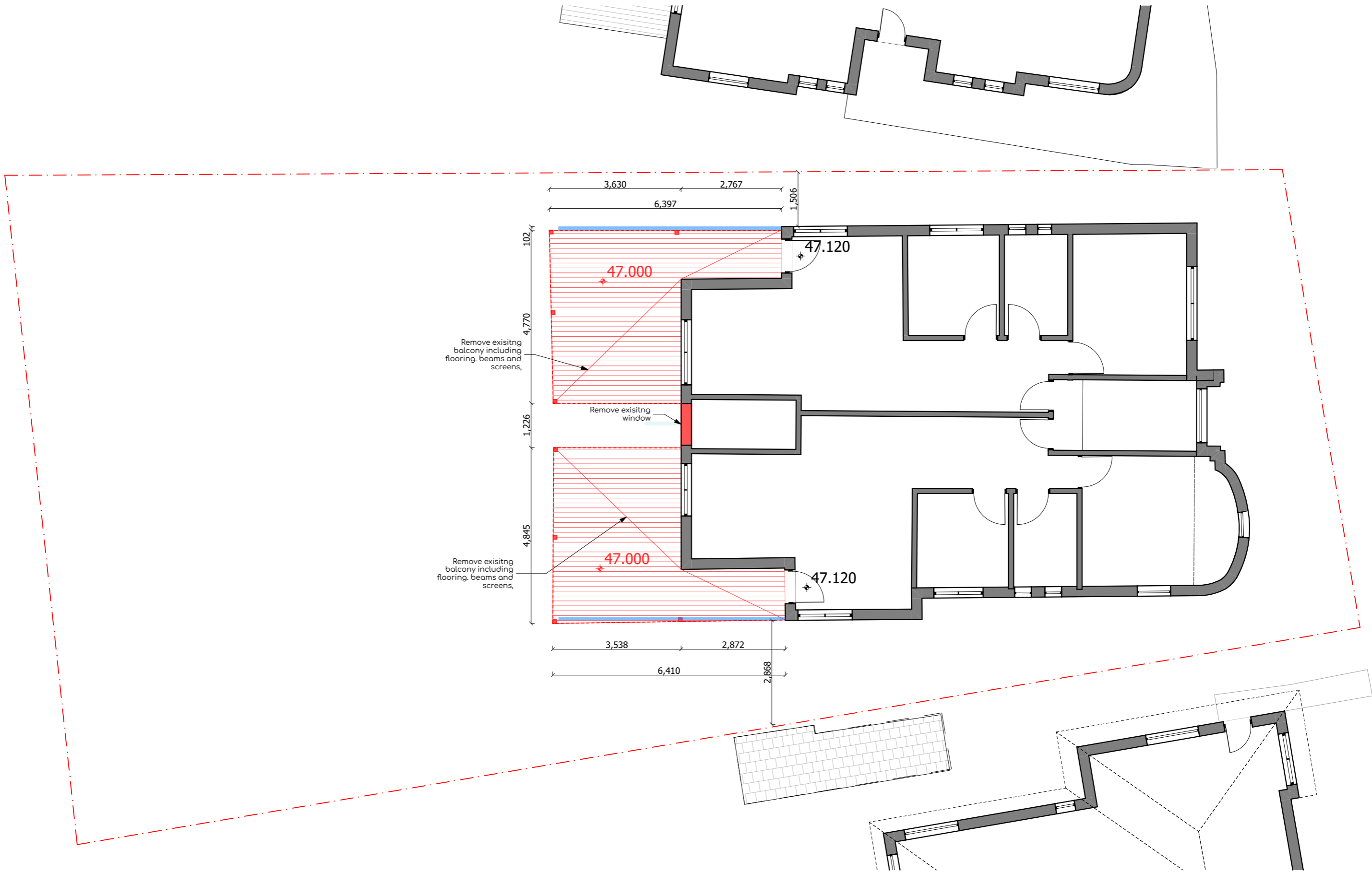


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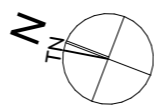
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GROUND FLOOR
DEMOLITION PLAN



PROPOSED ALTERATIONS & ADDITIONS
 at 54 BENELONG RD CREMORNE
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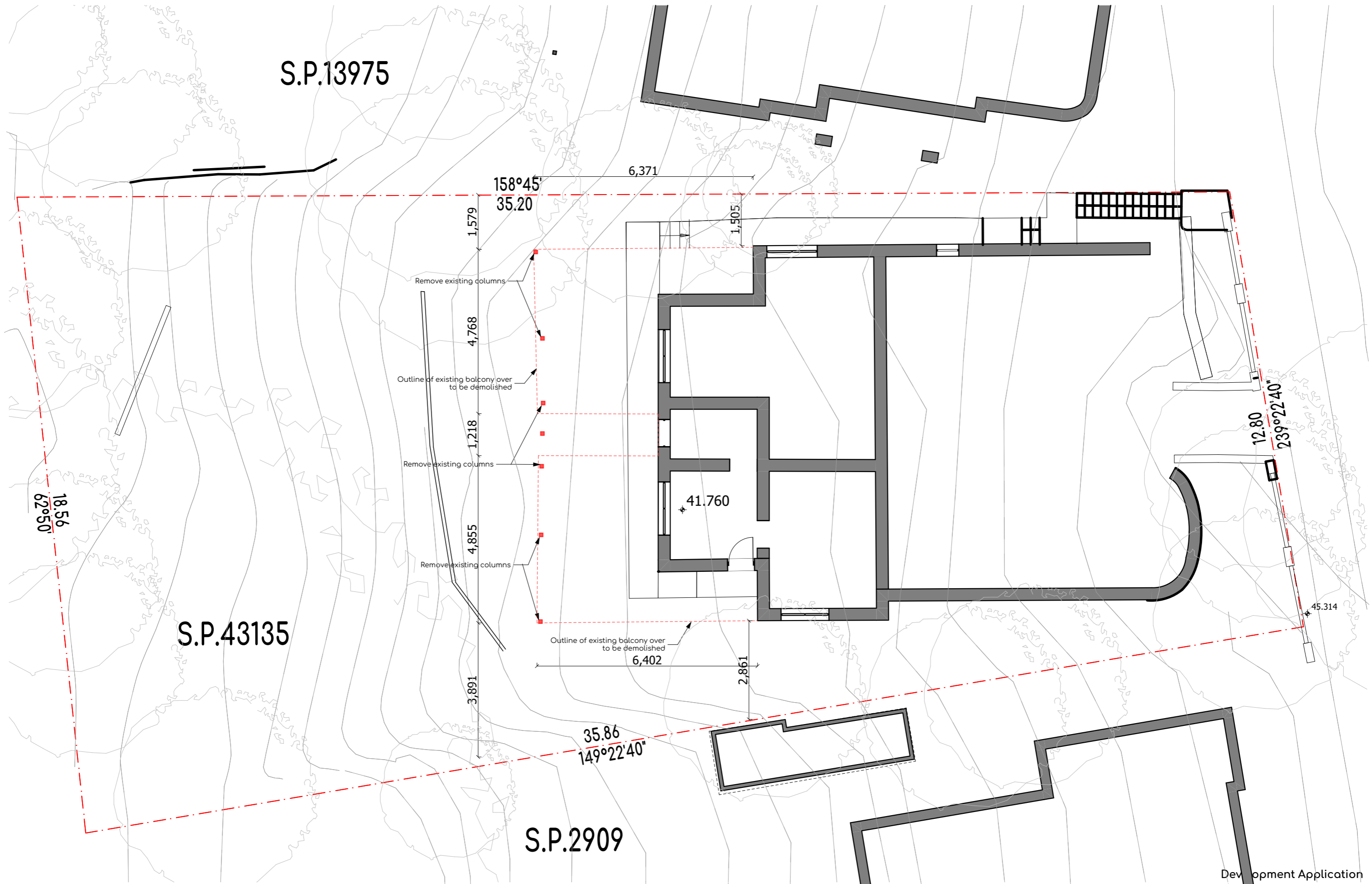
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Development Application
FIRST FLOOR
DEMOLITION PLAN



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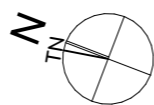
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Development Application

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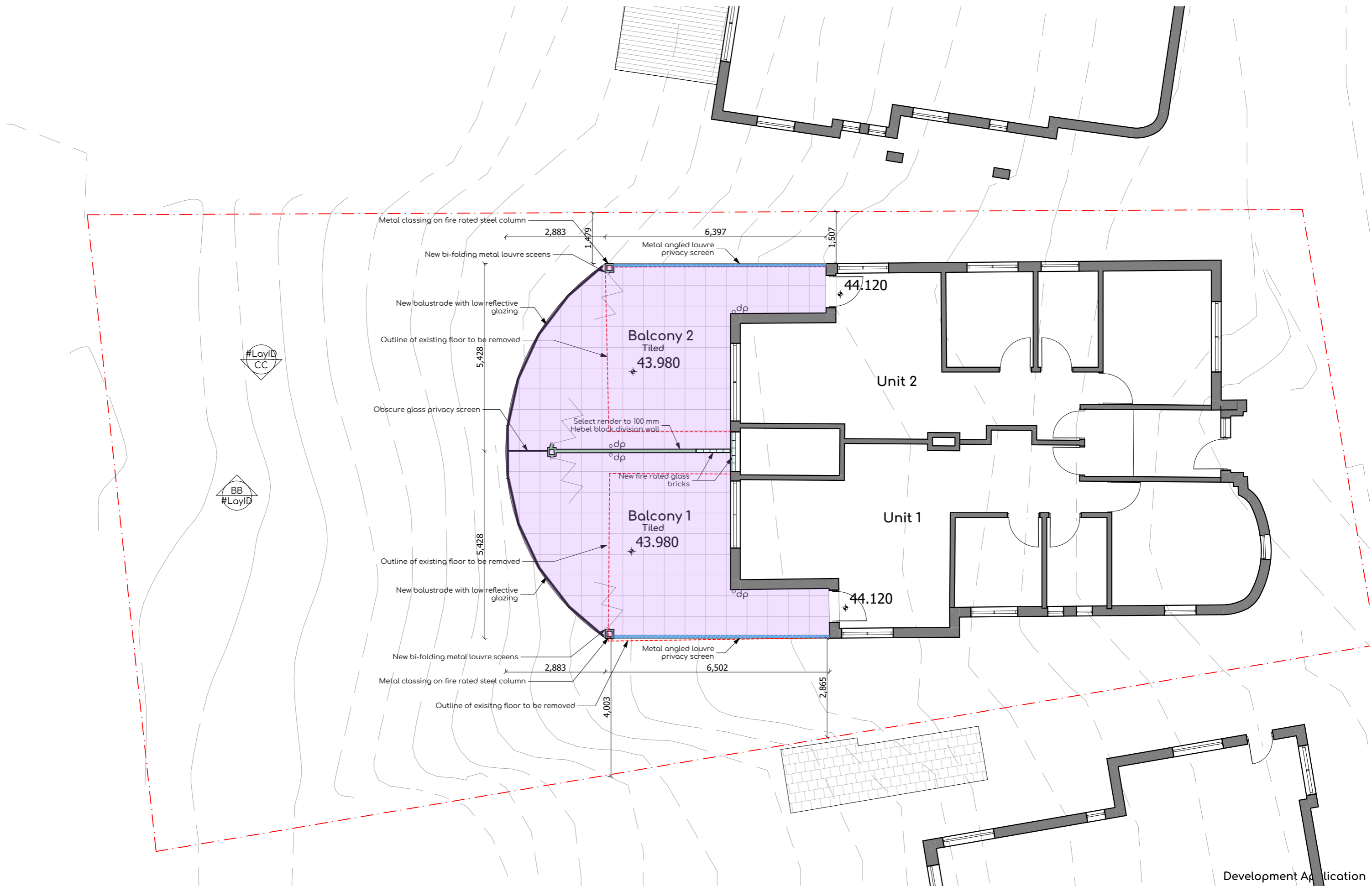


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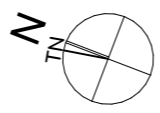
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**BASEMENT
DEMOLITION PLAN**



PROPOSED ALTERATIONS & ADDITIONS
 at 54 BENELONG RD CREMORNE
 SP43135

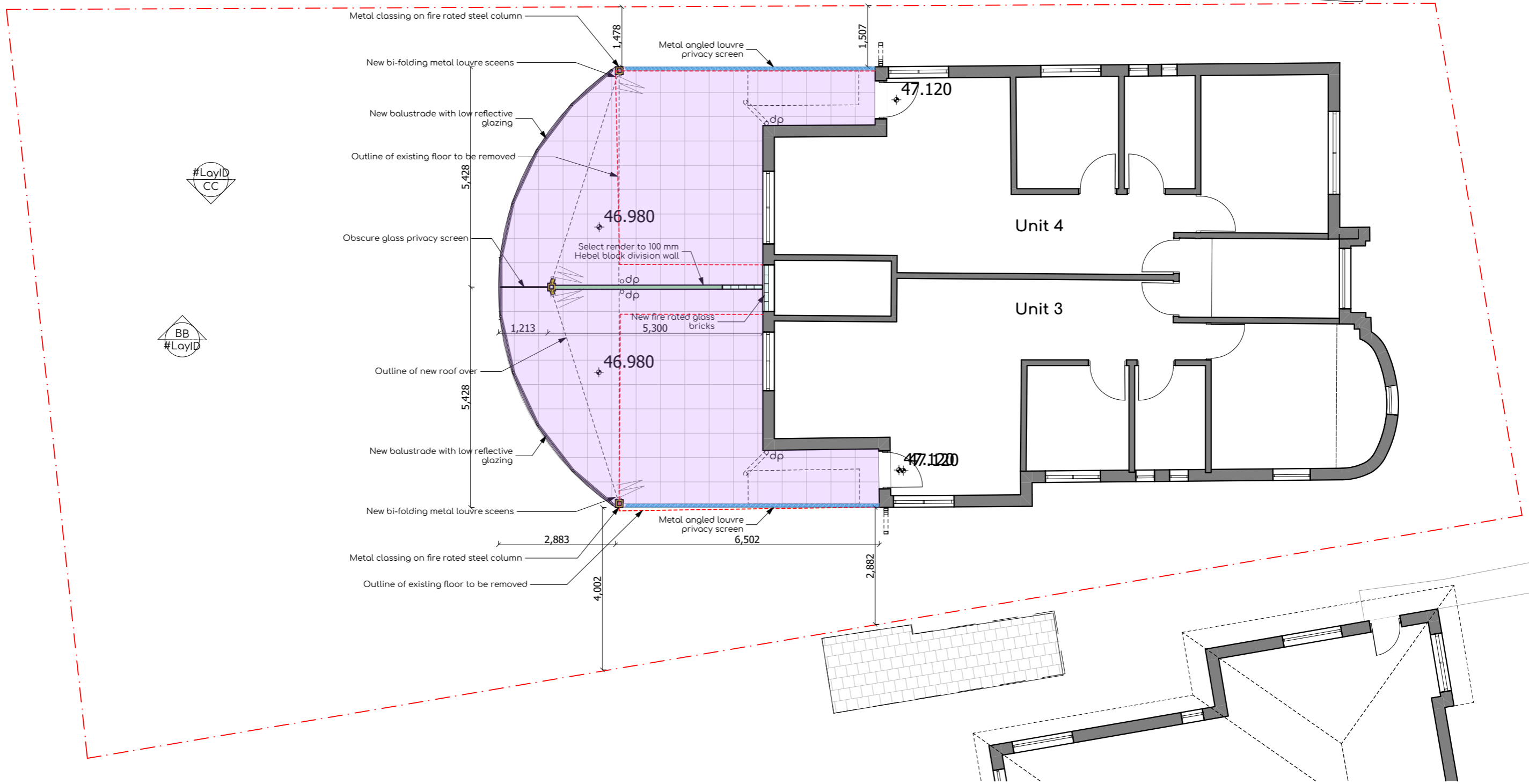
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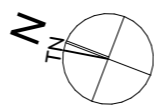
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Development Application
PROPOSED GROUND FLOOR PLAN



PROPOSED ALTERATIONS & ADDITIONS
 at 54 BENELONG RD CREMORNE
 SP43135

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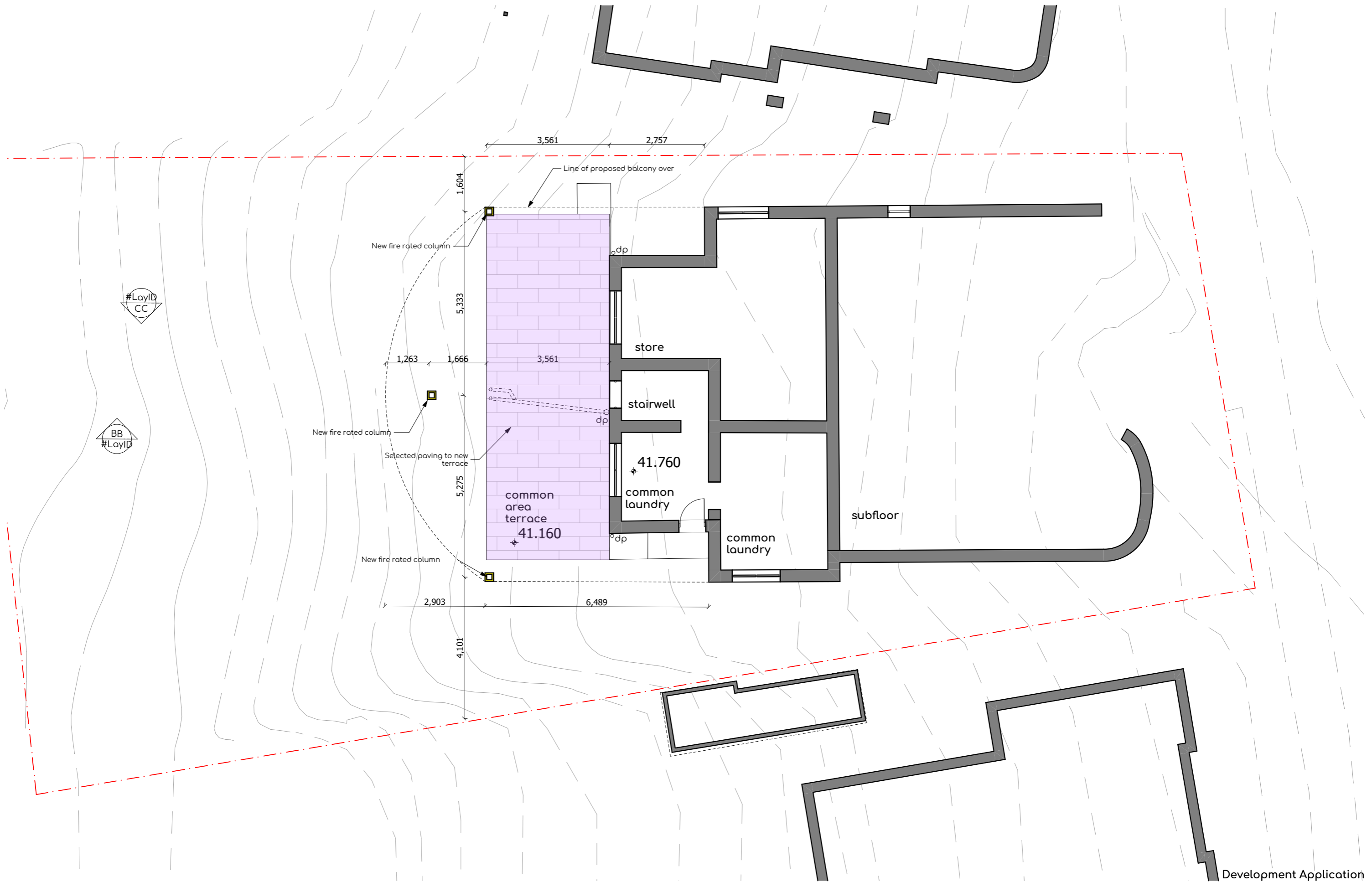
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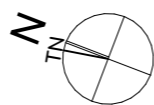
PROPOSED FIRST FLOOR PLAN

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PROPOSED ALTERATIONS & ADDITIONS
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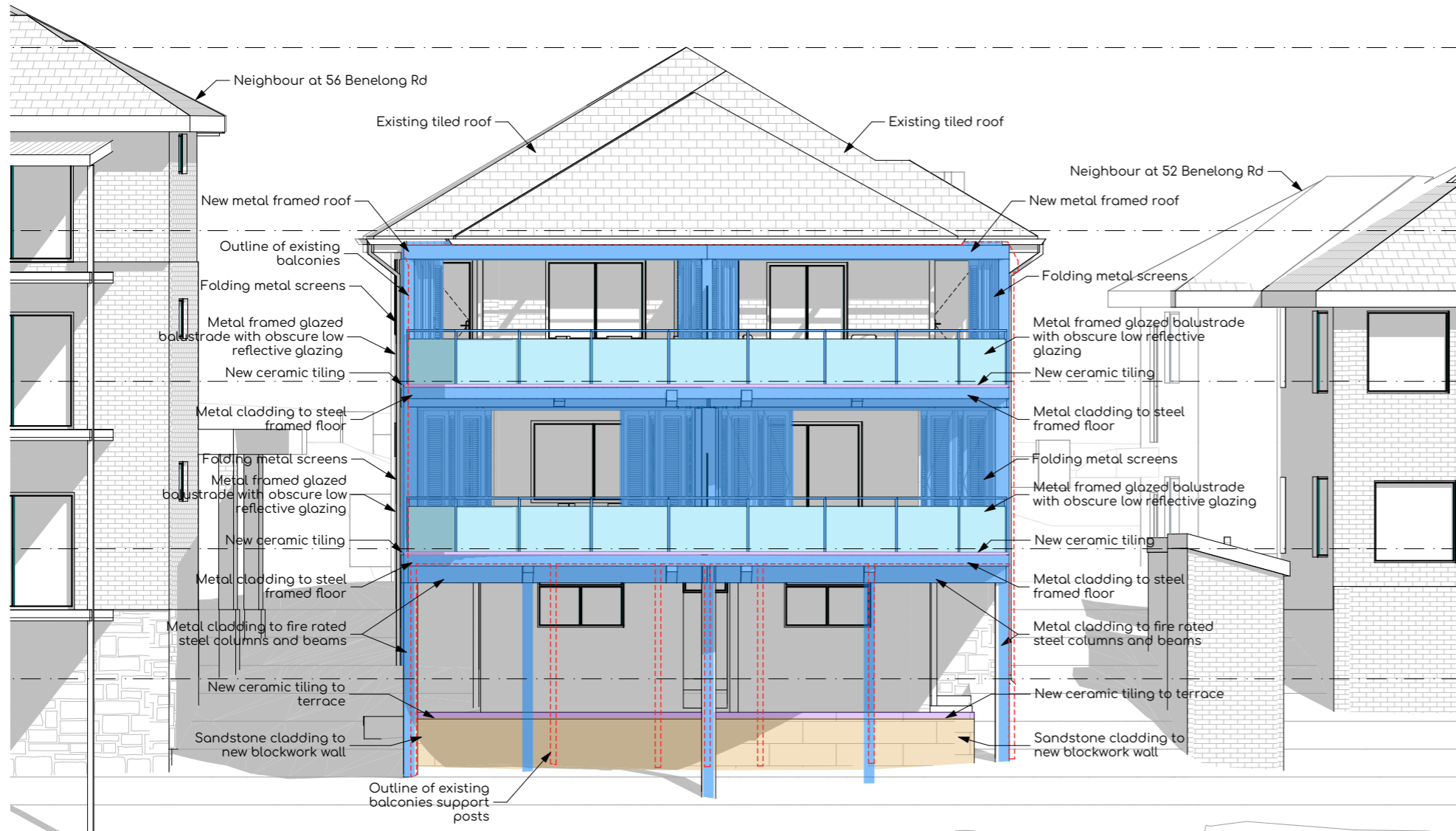


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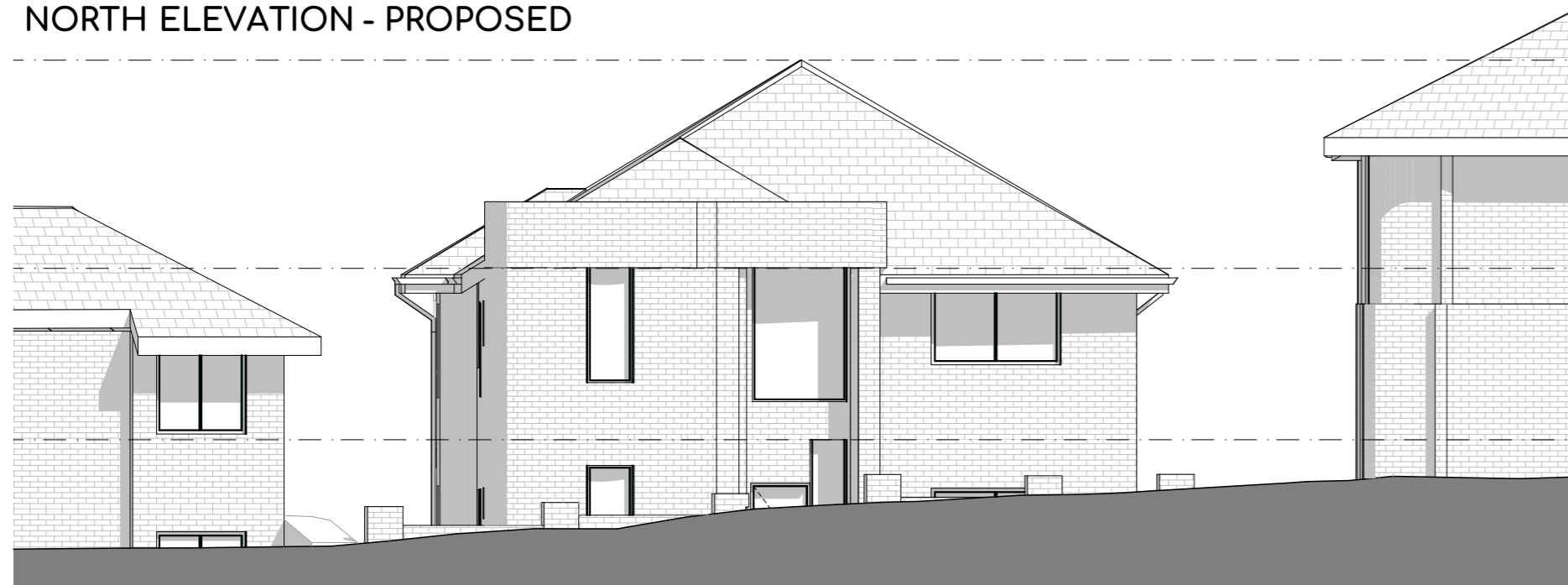
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**PROPOSED
 BASEMENT PLAN**

Development Application



NORTH ELEVATION - PROPOSED



SOUTH ELEVATION - PROPOSED

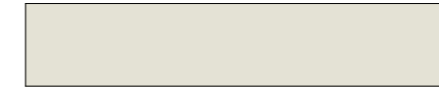
FINISHES SCHEDULE



New metal roof to balconies
Colorbond - 'Shale Grey'



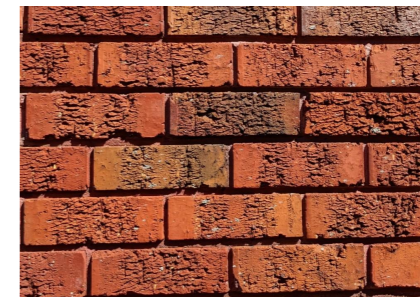
New fascia and structural frame and railings to new balcony
Colorbond - 'Shale Grey'



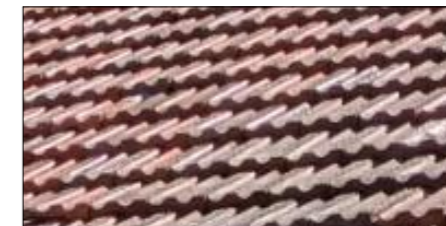
New louvre screens
Colorbond - 'Surfmist'



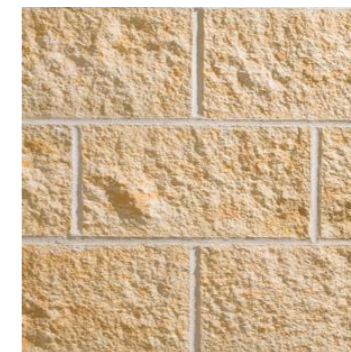
New louvre screens
Colorbond - 'Surfmist'



Existing brickwork



Existing roof tiles



Blockwork walls to new common terrace - Austral'Dune Sandblend' blockwork

PROPOSED ALTERATIONS & ADDITIONS
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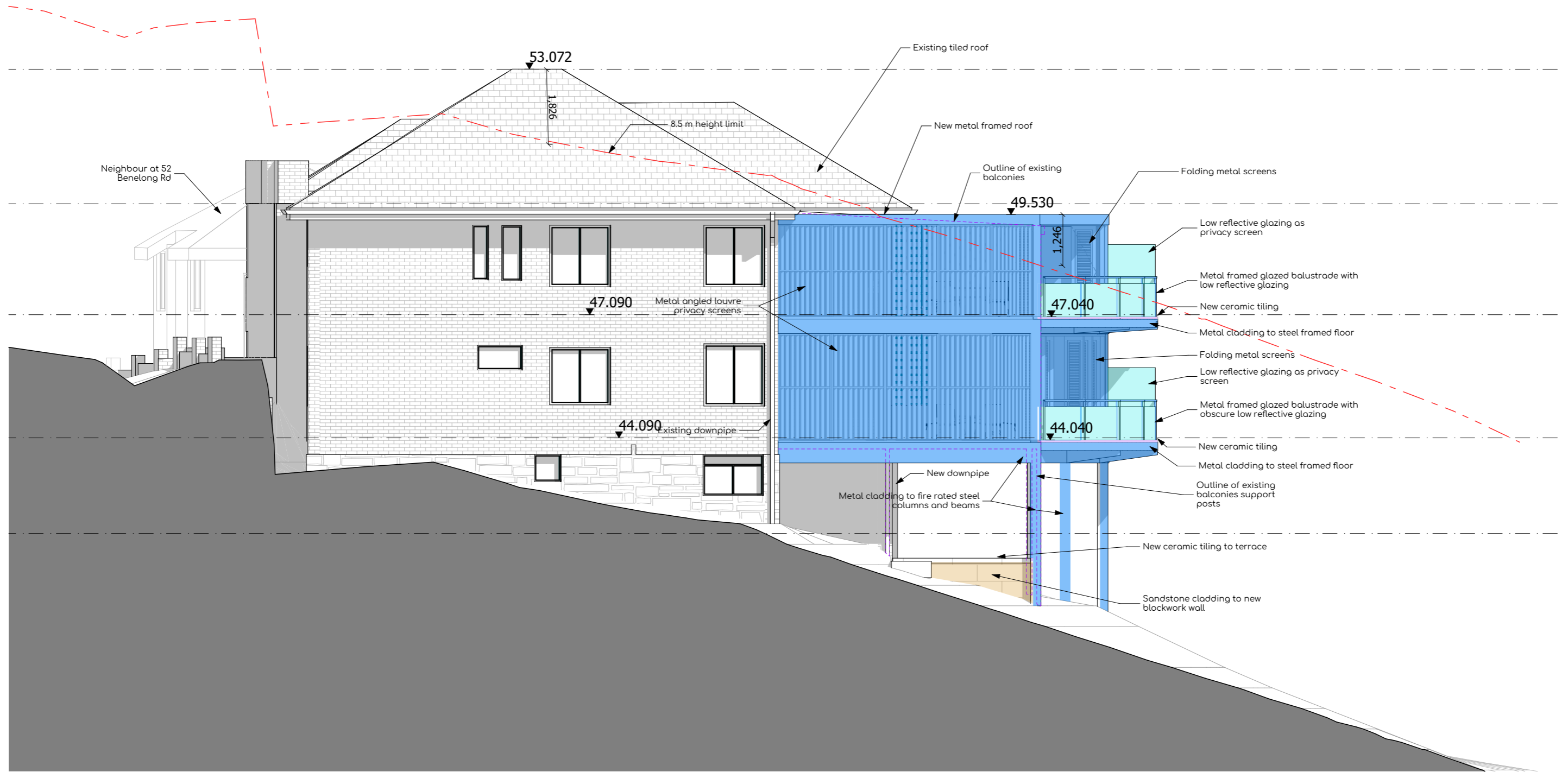


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Development Application

N & S ELEVATION -
PROPOSED



EAST ELEVATION

Development Application

PROPOSED ALTERATIONS & ADDITIONS
at 54 BENELONG RD CREMORNE
SP43135

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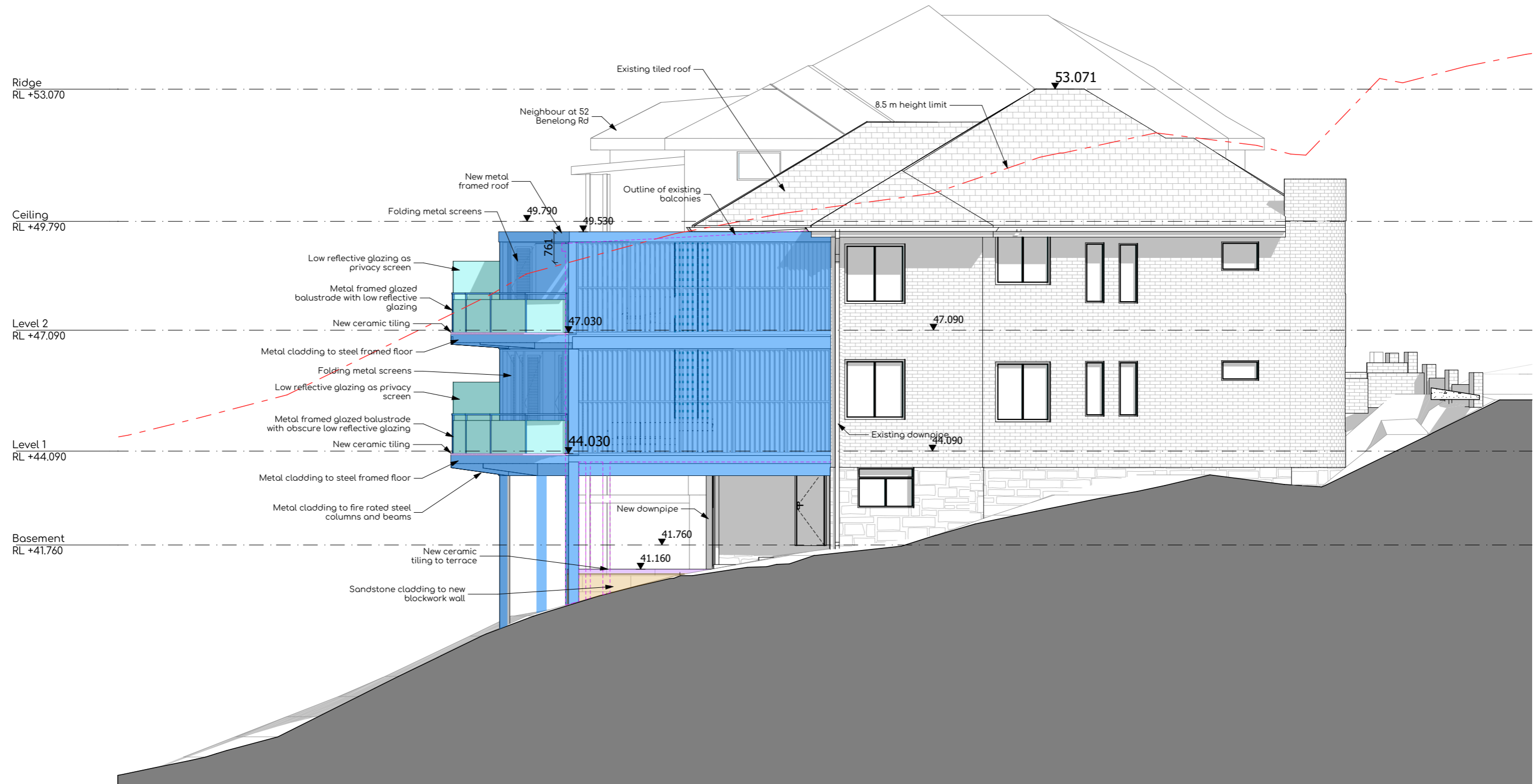


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EAST ELEVATION -
Proposed



WEST ELEVATION - PROPOSED

Development Application

PROPOSED ALTERATIONS & ADDITIONS
at 54 BENELONG RD CREMORNE
SP43135

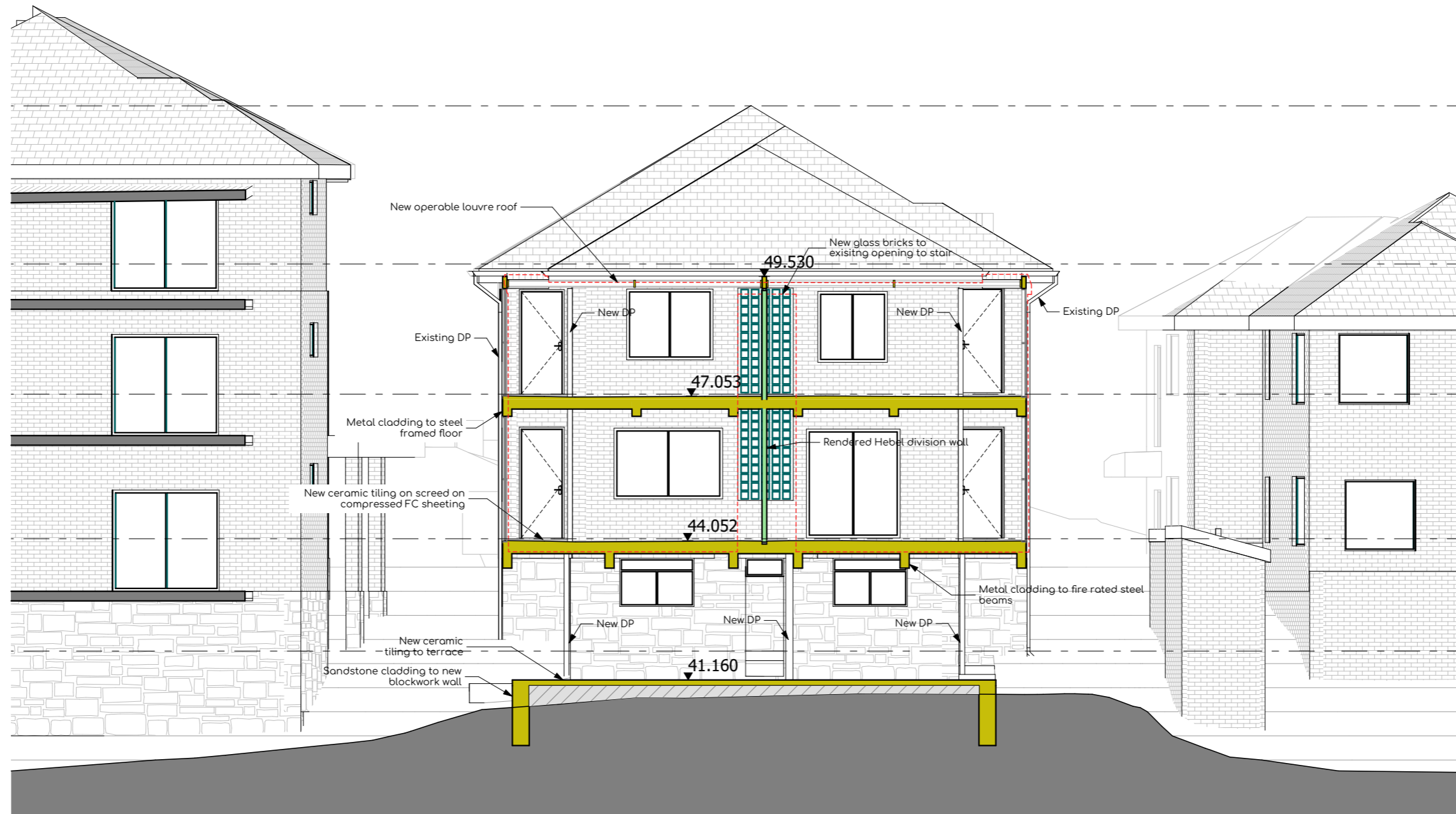
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WEST ELEVATION - Proposed



SECTION AA

Development Application

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SP43135

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A	2021.08.16	Draft DA Issue
B	2021.09.20	DA Issue

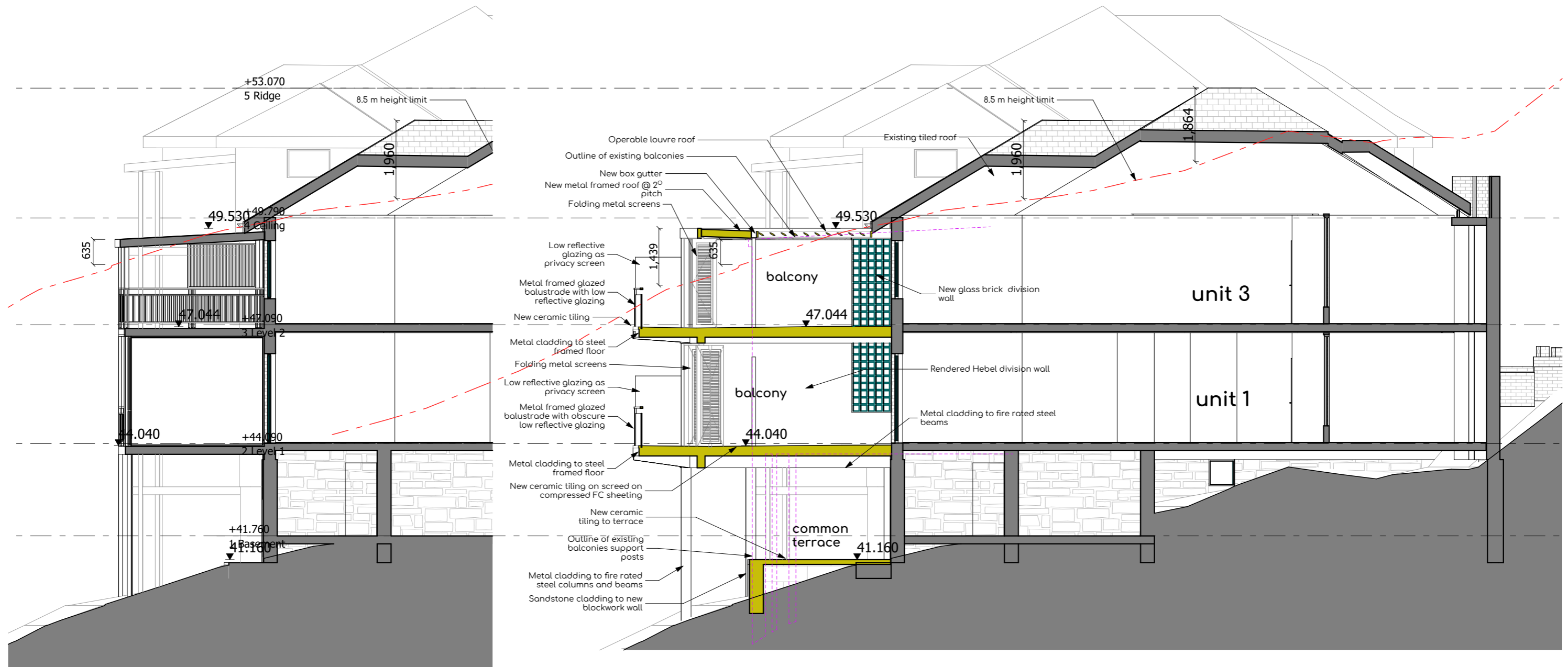


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SCALE	1:100 @ A3
DATE	20/09/2021

DA16A

SECTION AA



SECTION BB -Existing

SECTION BB -Proposed

PROPOSED ALTERATIONS & ADDITIONS
 at 54 BENELONG RD CREMORNE
 SP43135

REV	DATE	NOTES
A	2021.08.16	Draft DA Issue
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DA17A

SECTION BB

Development Application



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4.6 Application Form to Vary a Development Standard

Written application providing grounds for variation to a development standard

1. What is the name of the environmental planning instrument that applies to the land?

North Sydney Local Environment Plan (NSLEP) 2013

2. What is the zoning of the land?

R2 - Low Density Residential

3. What are the objectives of the zone?

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.
- To ensure that a high level of residential amenity is achieved and maintained.

4. What is the development standard being varied?

Height

5. Under what clause is the development standard listed in in NSLEP 2013?

4.3

6. What are the objectives of the development standard in NSLEP 2013?

The objectives of this clause are as follows—

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

- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
- (e) to ensure compatibility between development, particularly at zone boundaries,
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.

7. What is the numerical value of the development standard in NSLEP 2013?

8.5 m

8. What is the numerical value of the development standard in the development application?

Existing - 10.46 m Proposed new portion - 9.94 m

9. What is the percentage difference (between the proposal and NSLEP 2013)

Existing - 23% Proposed new portion - 17%

10. How is strict compliance with the development standard unreasonable or unnecessary in this case?

No. 54 Benelong Rd Cremorne is an existing small apartment building of four apartments over two storeys at the front of the site and due to the fall of the land to the rear is three storey at the rear with common laundry and storage area at the lower level. The building is around 80 years old and has always been an apartment building. The rear balconies were added in 1993 and approved by Council. The application for rebuilding the balconies is being sought under existing use rights as the current zoning does not allow for residential flat buildings.

No. 54 Benelong Rd is part of a group of similar apartment buildings of the same vintage and scale from No. 52 through to No. 60 Benelong Rd. They were all built and have been occupied on an ongoing basis for many years before NSLEP 2013 was gazetted. The height controls for R2 zoning in NSLEP 2013 has been geared more to dwelling houses and dual occupancies. As a result most of these existing buildings already well exceed the 8.5 m height limit - some by well over 4.0 m. All the sites slope steeply to the rear which makes any modification or improvement of these buildings at the rear very difficult, if the height limit is strictly applied.

The proposed development is to demolish and rebuild existing rear balconies to No. 54 Benelong Rd. The balconies do not meet current fire protection measures and the cost of retro-fitting them to meet current standards is prohibitive and so the Body corporate of SP43135 have decided it made more sense to rebuild the rather

dated structure to current standards and in the same time improve the amenity of the balconies for both themselves as well as for adjacent neighbours.

In order to make the balconies more amenable they have been made slightly larger in plan to provide more outdoor living space for the occupants. The new roofs over the upper balconies are slightly higher than the existing balcony roofs as the existing roofs are very low - down to 2.1 m clearance at the lower end. Although these aspects of the proposed design mean that the new balconies roof structure will extend a maximum of 1.44 above the 8.5 m limit, the current balcony roof already exceeds the height limit by 0.64 m and the main tile roof of the building exceeds the limit by nearly 2.0 m.

The existing site slopes steeply to the rear. The new balconies are constrained by having to work with the existing floor levels of the apartments. However this also means that the impact is not significant and the exceeding of the height limit is at the rear of the building. The existing main tiled roof of the building is bulkier and dominates the view from the street and exceeds the height limit to a greater level.

11. Are there sufficient environmental grounds for justifying contravening the development standard?

The balconies need to be rebuilt or significantly modified in order to ensure the fire safety of the building. It has been decided that it would be more beneficial for the long term durability of the building and the amenity of the occupants to rebuild the balconies to a new design which provide more outdoor living area for all of the apartments. If the balconies were rebuilt in their current form then they would still exceed the height limit. The increase in exceeding the height limit is not significant when compared to the extent the main roof of this building and neighbouring buildings exceed the height limit.

Other benefits of re-building the apartments to a new design are:

- new privacy screen to the sides of all balconies will improve privacy for neighbours and the occupants
- provision of the privacy screens and folding screens provide much more climate control for occupants - for these to work well the additional height is required
- the new roof over the top floor balconies will provide a little more clear head height for occupants but also much more climate control with operable roofs

12. How will the proposed development be in the public interest in regards to meeting the objectives of the particular standard?

The proposed balconies meet the objectives of the height standard as follows:

- (a) the design reflects the natural landforms, by stepping development on sloping land to follow the natural gradient. The roof of the balconies is lower than the main roof and then the roof forms stops short of the edge of the balconies so that the outer edge which is further down the slope is lower again.

(b) the proposed design aids the retention and sharing of existing views. The side length of the new balconies are the same as the existing balconies and then the front form of the new balconies is curved so the view angle from neighbouring properties are not impacted. views from both No. 52 & No. 56 across Brightmore Reserve and to Primrose Park and Willoughby creek are not impacted. A separate view analysis has been included in the Statement of Environmental Effects submitted with the application.

(c) the proposed design maintains solar access to the existing apartments of No. 54 Benelong Rd and in fact by adding operable roofs provides better control of solar access to the upper floor apartments. Solar access to dwelling on neighbouring properties are maintained. Shadow diagrams confirming this have been submitted with the application. There will be no additional overshadowing of public reserves or streets as a result of the proposed development. Additional overshadowing is minimal and will not affect any potential future developments to the rear of either No. 52 or No. 56 Benelong Rd.

(d) the provision of new privacy screens along the eastern and western sides of the new balconies will improve privacy not only for the occupants of dwelling on neighbouring properties but also for the occupants of No. 54 itself.

(e) the proposed development ensures compatibility between development. The adjoining properties are also older apartment buildings of a similar scale. The proposed balconies demonstrate how the rear of these older buildings could be revitalised, improving amenity for occupants whilst respecting the outlook and privacy of adjoining properties.

(f) the proposed development is of an appropriate scale and density of development that is in accordance with, and promotes the character of, an area. The character statement from NSDCP makes the following statements about the character of the Benelong and Northern Foreshores Neighbourhood:

- Primarily residential accommodation with passive and active recreation areas.
- Generally falling north and northwest to the shores of Willoughby Bay
- natural feature of remnant bushland to Brightmore Reserve
- district views to middle harbour to some buildings to be preserved
- irregular grid pattern subdivision informed by the irregular topography of the area.

It also states that the desired future character should:

- minimise the building footprint to preserve natural features
- building should provide adequate separation to bushland and foreshore areas.

- densities should not be increased in areas of steep terrain. Development on sloping lands should be designed to follow the slope of the land.
- development should maintain low pitched roofs
- buildings should not obstruct vistas from public places to the waterway or adversely affect views from neighbouring properties

The proposed development address all of these issues as follows:

- it is existing residential accommodation
- it will have no impact on adjacent public recreation areas and the proposal maintains the rear yard for recreational use as well as adding a common terrace area.
- works with the existing topography by minimising ground support and by stepping down the site.
- the development is set well back from the natural feature of remnant bushland to Brightmore Reserve
- maintains district views to middle harbour from the No. 54 Benelong Rd as well as neighbouring properties.
- will have no impact on the subdivision pattern
- minimise the building footprint remains very close to the original
- the density of the site is not being increased but maintained
- the proposed new roof over the upper balconies is minimal pitch
- as the development is at the rear of the property it will not obstruct vistas from public places to the waterway and will not adversely affect views from neighbouring properties

13. How will the proposed development be in the public interest in regards to meeting the objectives of the zone in which the proposal occurs?

The proposed development meets the objectives of the R2 Low Density residential zoning as follows:

- provides for the housing needs of the existing occupants for improving amenity and fire safety whilst maintaining the existing low density
- as it is an existing residential development, it is not possible to meet the objective to enable other land uses that provide facilities or services to meet the day to day needs of residents but it does not preclude this happening elsewhere.
- the proposed development will not compromise the amenity of the surrounding area or the natural or cultural heritage of the area as it is very similar in scale, bulk and impact as the existing development.
- the proposed development aims to improve the residential amenity and to give the existing building a new lease of life as well as improving fire safety, privacy and comfort.

14. Identify whether contravention of the development standard will raise any matter of significance for state or regional planning?

The contravention of the height limit is rather minor on a local scale, is not on a site of state or regional significance and will not raise any matter of significance for either state or regional planning

15. Detail why there is no public benefit in maintaining the standard?

If the height standard was maintained then even the existing balconies which are showing signs of deterioration could not be re-built in their current form. The balconies could be rebuilt but the roofs to the upper level could not and this would limit the use of the upper balconies as no sun protection could be provided. It would also limit the height of privacy screens and balustrades that could be built. Combined this would limit the usability of the upper balconies to the point that the owners would think it not worthwhile to pursue the development.