



### NSLPP MEETING HELD ON 03/03/21

**Attachments:**

1. Site Plan
2. Plans and Elevations
3. Solar Access Diagrams
4. View Sharing Diagrams
5. Clause 4.6 Request for variation to the Building Height Development Standard

**ADDRESS/WARD:** 4 Holt Street, McMahons Point (V)

**APPLICATION No:** DA 302/20

**PROPOSAL:** Part demolition of existing building and construction of new three storey office premises.

**PLANS REF:**

Plan No.	Dated	Issue	Title	Drawn by	Received
DA00	26 October 2020	A	Cover Sheet	O2 Architecture Pty Ltd	30 November 2020
DA01			Site Plan and Site Analysis Plan		
DA02			Demolition Plan		
DA03			Ground Floor Plan		
DA04			Level 1 Plan		
DA05			Level 2 Plan		
DA06			Roof Level		
DA07			Elevations		
DA08			Elevations		
DA09			Elevations		
DA10			Section A		
DA11	Section B				

**OWNER:** [REDACTED]

**APPLICANT:** O2 Architecture Pty Ltd

**AUTHOR:** Kim Rothe, Senior Assessment Officer

**DATE OF REPORT:** 23 February 2021

**DATE LODGED:** 30 November 2020

**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

This development application seeks North Sydney Local Planning Panel (NSLPP) approval for partial demolition and substantial alterations and additions to an existing industrial building currently occupied by a commercial offices and the proposed additions principally comprising an additional two levels to the existing single storey building

**The application is reported to NSLPP for determination due to the level of breach proposed to Clause 4.3(2) Building Height control of NSLEP 2013 with exceeds 10% variation and the level of public interest expressed, with greater than 10 unique submissions being received objecting to the application.**

Council's notification of the proposal attracted **Eleven (11) submissions** raising particular concerns about height, bulk, scale and character, amenity, overshadowing, privacy, and car parking availability.

The proposed additions to the building exceed the 8.5 m maximum height limit applicable to the site as set out under Clause 4.3 Building Height of NSLEP 2013. The applicants Clause 4.6 written request for variation is considered to be well founded and the height variation to the maximum height standard is assessed as acceptable on the basis, the perceived bulk and scale of the additions will be commensurate with the adjoining three storey building to the immediate east of the subject site.

The proposed height, bulk and scale of the additions is considered to be sufficiently in keeping with the established character of the *Union, Bank and Thomas Street, Conservation Area* of the immediate locality in Holt Street.

A detailed view assessment has been completed and it is agreed that impacts to views are acceptable in the circumstances. A height compliant proposal would not provide for provide further material improvements to any potential adverse impact particularly with regard to view impacts.

The assessment of the proposal has considered the concerns raised in the submissions as well as the performance of the application against Council's planning requirements. Following this assessment and having regard to the provisions of Section 4.15 of the Environmental Planning & Assessment Act 1979 (as amended), the application recommended for **approval**. The consistent with the objectives and controls within the North Sydney Local Environmental Plan and Development Control Plan 2013.



## **DESCRIPTION OF PROPOSAL**

This application seeks development consent for the following works to involve part demolition and alterations and additions to the existing building, to result in provision of a three (3) level building for future office use at 4 Holt Street McMahons Point. The building takes the appearance of an older industrial building however the existing occupation as a commercial operation.

The proposed design seeks to largely maintain the front façade at ground level but requires some alteration to make the pedestrian entry building code compliant.

The existing gable roof will be demolished to below the level of the existing front façade to allow for the new primary addition.

The existing garage space will be reduced in width to allow for parking for four cars, a new separate pedestrian foyer. The stairs will service all three office levels in addition to the ground floor garage.

The development works in detail will involve the following:

### Demolition work

- Demolition of the existing office area concrete slab and associated internal walls; and
- Removal of existing roof; and
- Removal of existing stairs; and
- Existing external walls and car parking slab are to be retained

### **New Construction works**

#### Ground floor internal:

- Alteration to existing pedestrian door in Holt Street façade and widen entrance and installation of a new door further behind existing façade; and
- four (4) car parking spaces one motor cycle space within the car parking area; and
- New plant/meters area; and
- New bin storage location; and
- staircase to proposed upper levels; and
- Wheelchair accessible ramp; and
- Provision of a disabled toilet with shower; and
- lockable bicycle storage area for 4 bicycles, within the car parking area; and
- Provision of a visitor's cycle storage area within the car parking area.

#### Level 1 internal:

- staircase; and
- new external garden terrace area at front of this level which is to be non-accessible; and
- Terrace (3m width) at rear of building with skylight provided in terrace slab to provide natural light into ground floor area; and
- male and female toilet; and
- 2000litre rainwater tank on the terrace area.



Level 2 Internal:

- staircase; and
- male and female toilet.

Holt Street façade works

- Retention of the existing front brick industrial façade; and
- Removal of existing roller shutter door and replace with ventilated roller shutter door; and
- Removal of existing glazed door, opening enlarged and new door installed behind the Holt Street façade with new lintel provided to existing opening; and
- new front wall to proposed to create levels 1 & 2 that is to commence 4.0m from the Holt Street front boundary.

Rear Elevation

- Retention of rear existing masonry wall on boundary; and
- New proposed upper levels 1 & 2 side walls will commence 2.4m from rear boundary and
- New rear walls to levels 1 & 2 to commence 3 metres from rear boundary, with this elevation to be provided with openable and fixed glazed windows to level 2 with fixed louvres provided in front of windows as privacy screening; and
- Roof to commence 2.4m from rear boundary.

Side Elevations

- Existing masonry side walls on boundaries to be retained; and
- New proposed side walls for upper levels 1 & 2 to commenced inside existing retained walls as shown.

Future use of the building is intended to be extension of the existing commercial operation. Note that an *office premises* is a form of permissible development in the IN2 Light industrial zone however inspection of Council's records does not indicate any recent approvals for such an operation on site.

**STATUTORY CONTROLS**

North Sydney LEP 2013

- Zoning - IN2 Light Industrial
- Item of Heritage - No
- In Vicinity of Item of Heritage - Yes (Multiple heritage items)
- Conservation Area - Yes (Union, Bank, Thomas Street, Conservation Area)

Environmental Planning & Assessment Act 1979, as amended

SEPP 55 - Contaminated Lands

SREP (Sydney Harbour Catchment) 2005

Local Development

North Sydney Local Infrastructure Contributions Plan 2020

## POLICY CONTROLS

### DCP 2013

- *Part B Section 2 Commercial and Mixed-Use Development*
- *Part B, Section 10 Car Parking and Transport*
- *Part C, Section 9 Character area - Lavender Bay Planning Area (Section 9.10 Union, Bank, Thomas Street Conservation Area)*

## DESCRIPTION OF LOCALITY

The subject site is known as Lot 104, DP 1185623, 4 Holt Street, McMahons Point 2060 (Figures 1 and 2). The site has an area of approximately 313 m<sup>2</sup>, and currently contains a split level 1960's style industrial building. The building currently has car parking for 6 stacked vehicles at ground level.

It is bound by Holt Street on the southern frontage, 15-19 Chuter Street on the western side, 23 Chuter to the north, 6 Holt to the east and a small area of private car park fronting Holt Street on the south west (Figure 2). A large at-grade carpark is located directly opposite the site in Holt Street which services the light industrial/commercial uses at 50 Victoria Street, McMahons Point.

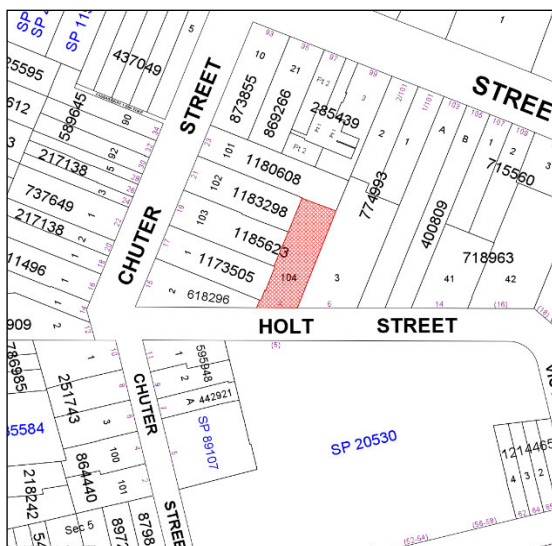


Figure 1: Cadastral Location map

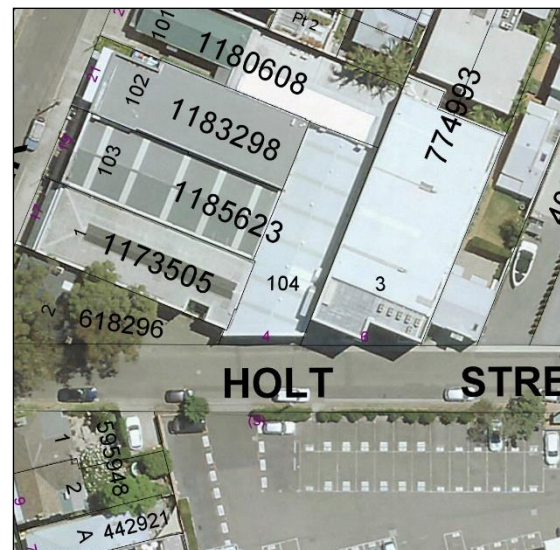


Figure 2: Aerial photo of the site

The existing building is one a single storey building with Holt Street. The frontage is dominated by an existing roller shutter door with a smaller separate pedestrian entry door. The front façade consists of a glass front door, to access the garage and stairs, and a large industrial garage door. The façade is double brick painted white. The building is approximately 10m wide and 31.2m long with a gross floor area of approximately 266m<sup>2</sup>.

Inside the building it is a split-level open plan industrial building with the southern section comprising of street level car. The floor to ceiling height in the car port garage is 6.70m, and the building houses 6 stacked vehicles. The northern section comprises an office tenancy area. The office tenancy area sits 1.7m above street level and is accessed via an internal flight of stairs on the western side of the building. Internally, the building has a cathedral ceiling extending from 5m above ground level at the edges of the building to 5.8m in the centre of the building. The building has a high open gable roof running north/south with a parapet wall on the east side. The parapet extends approximately 400 mm above the box gutter.

The building is set back approximately 1.2 m from the front boundary, consistent with the adjoining development, and is joined to the multiple premises on the west (17-21 Chuter Street) via a party wall, and to the north and east via a boundary wall.



Figure 3: 3D render - source: google

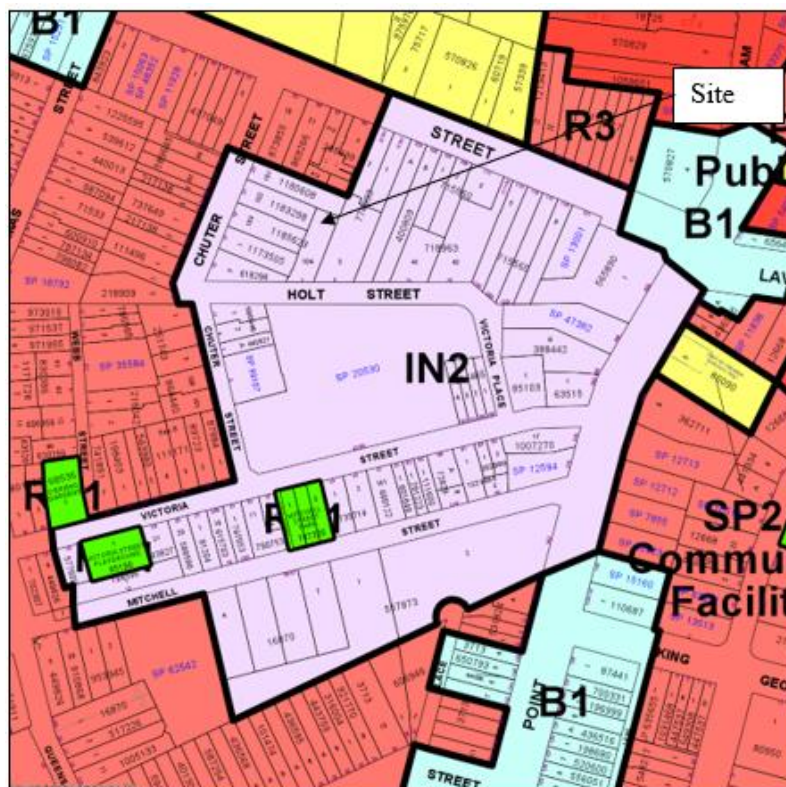
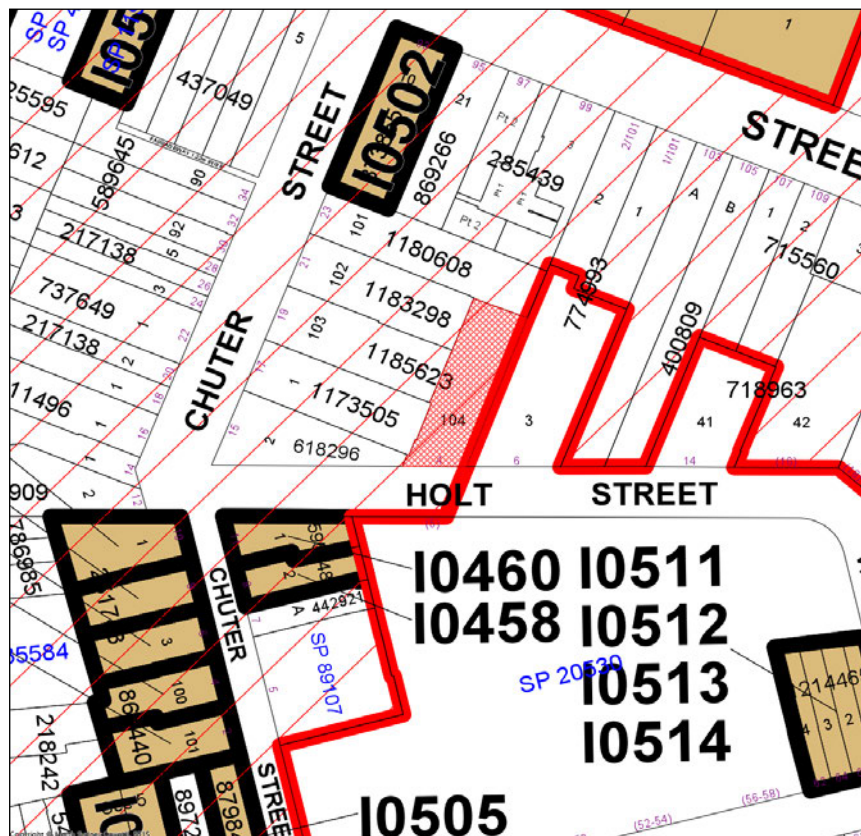


Figure 4: Zoning map extract depicting the IN2 zoned area in McMahons Point





*Figure 5: Heritage map extract showing site lies in the Union, Bank, Thomas Street Conservation Area*

Surrounding land uses consist of:

- Predominantly residential development in both single dwellings and flat buildings to the west.
- Two to three-storey residential dwellings to the north with frontage to Union Street. Some other buildings in Union Street have commercial operations within them.
- Two and Three-storey commercial development to the east in Holt Street, and
- A large outdoor carpark to the south, associated with the commercial offices at 50 Victoria Street, McMahons Point.

## **RELEVANT HISTORY**

### Subject Site

There is relevant history associated with the regarding the construction of the original building or recent use applications noted in Council's records.

### Previous application

DA 107/19 proposed *'partial demolition and substantial alterations and additions to an existing industrial styled building currently occupied by an office operation. The proposed additions principally comprise two additional levels to the existing split level single storey building at 4 Holt Street McMahons Point.*

The application was considered at the meeting of the North Sydney Local Planning Panel (NSLPP) on 6 November 2019. At the meeting, the Panel resolved to refuse the application for the following reasons:

**1. Overdevelopment of the Site**

*Particulars:*

*The proposed development due to the Building Height breach is considered to be an overdevelopment of the site.*

- i. The Clause 4.6 Request to Vary the Development Standard is not considered to be well founded*
- ii. Aims of NSLEP 2013, specifically (2)(a), (2)(b)(i) and (2)(d)(ii);*
- iii. Objectives of the IN2 Light Industrial Zone of NSLEP 2013.*
- iv. Clause 4.3 Building Height of NSLEP 2013*
- v. Clause 5.10 Heritage Conservation of NSLEP 2013*
- vi. Objective O1 and O13 in Part B, Section 2.1.1 General Objectives in NSDCP 2013;*
- vii. Part B Section 2.3.8 Views in NSDCP 2013;*
- viii. Part B Section 2.4.1 Context of NSDCP 2013*
- ix. Part B Section 2.4.6 Skyline of NSDCP 2013*

**2. View Loss resulting from the non-complying elements of the development and Building Height**

*Particulars:*

- a) The Building Height exceeds the Height control applicable to the site resulting in unacceptable impacts to views afforded from surrounding premises and fails to promote the principles of view sharing. The development is contrary to the following:*
  - i. The Clause 4.6 Request to Vary the Development Standard statement is not considered to be well founded*
  - ii. Aims of NSLEP 2013, specifically (2)(a), (2)(b)(i) and (2)(d)(ii);*
  - iii. Clause 4.3 Building Height of NSLEP 2013*
  - iv. Part B Section 2.3.8 Views in NSDCP 2013;*
  - v. Part B Section 2.4.6 Skyline of NSDCP 2013*

**3. The Building Height of the development is not appropriate for a Building located in the Union Bank and Thomas Street Conservation Area**

*Particulars:*

- a) The Building Height exceeds the Height control applicable to the site and is not appropriate in the context of the Union, Bank and Thomas Street Conservation Area. The development is contrary to the following:*
  - i. Clause 4.3 Building Height of NSLEP 2013*
  - ii. Clause 5.10 Heritage Conservation of NSLEP 2013*
  - iii. Part B Section 2.4.1 Context of NSDCP 2013*
  - iv. Part B Section 2.4.6 Skyline of NSDCP 2013*
  - v. Part C Section 9.10 Union Bank and Thomas Street Conservation Area.*
  - vi. Part B Section 13.8 Demolition of Neutral Items*

**4. The stacked Parking arrangement is not suitable for the scale of development**

*Particulars:*

*The stacked parking arrangement is not suitable for the form and scale of the development and the proposal fails to provide for dedicated loading facilities. The parking arrangement will not support the long term flexible use of the site. The proposal is contrary to the following:*

- i. Part B Section 2.5.8 Carparking of NSDCP 2013*
- ii. Part B Section 10 Car Parking of NSDCP 2013*

**5. Not considered to be in the public interest**

*The proposed development would set an undesirable precedent for the subject site and conservation area and is not in the public interest.*

*Particulars:*

- a) The proposal will result in adverse local amenity impacts to surrounding properties.*
- b) A substantial number (26) of public submissions were received against the application raising particular concerns about the excessive bulk, scale and density of the development, uncharacteristic built form, view, privacy, parking traffic and solar access impacts. The proposal is not considered to be in the public interest contrary to Section 4.15(e) of the Environmental Planning and Assessment Act 1979 (as amended).*

## **INTERNAL REFERRALS**

### **Building**

The proposal has been reviewed by Council's Building Surveyor. The following comments and recommendations were made regarding the proposal.

*The development application seeks approval for part demolition of and alterations and additions to an existing industrial building to create a 3 storey office building.*

*The building is classified by the NCC BCA 2019 as a class 5 building of Type B construction.*

*The application is supported by an Access Report No. 20259 prepared by Vista Access Architects which concludes that the proposed design of the building is capable of compliance with the BCA and Disability (Access to Premises – Buildings) Standards 2010 in a combination with the access related Deemed-to-Satisfy provisions of the BCA and BCA Performance Requirements.*

*Given the change in building classification and use and also the scale of the proposed building works upgrade of the buildings fire safety measures is required pursuant to Clause 94 of the Environmental Planning & Assessment Regulations 2000.*



*A detailed assessment of compliance with the Building Code of Australia 2019 will be undertaken by an appropriately accredited certifier at the Construction Certificate Stage of the proposed development. Additionally, a Fire Safety Schedule is to be prepared by the certifier and accompany the Construction Certificate.*

*Generally, the proposed building works can comply with the NCC BCA 2019, Volume 1.*

*Given the above, the following Standard Conditions are recommended:*

*Standard Condition “F1”.*

*Building Code of Australia F1*

*All building work must be carried out in accordance with the provisions of the Building Code of Australia.*

*(Reason: Prescribed - Statutory)*

*Standard Condition “C72”.*

*Provision of Accessible Paths of Travel C72*

*C.72 Access from the pedestrian entry to the premises and access throughout the building be designed and constructed to provide access and facilities in accordance with the Building Code of Australia and Disability (Access to Premises – Buildings) Standards 2010. 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.*

*Notes:*

- 1. If, in complying with this condition, amendments to the development are required, the design changes must be submitted for the approval of Council prior to a Construction Certificate being issued. Approval of a modification application may be required.*
- 2. It is not within Council’s power to set aside National legislation which requires the upgrade of buildings to meet modern access standards. Such decisions remain the jurisdiction of the Building Professionals Board Access Advisory Committee who may grant an exemption in certain exceptional circumstances.*
- 3. Information on making an application for an “unjustifiable hardship exemption” under the accessibility standards can be found in the website of the NSW Building Professional Boards at <http://www.bpb.nsw.gov.au/page/premises-standards>*

*(Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards)*

***Standard Condition “C42”.***

***Upgrade of existing building – Fire Spread and Safe Egress***

*Pursuant to clause 94 of the EP&A Regulation 2000, aspects of the existing building must be brought into conformity with the Building Code of Australia (BCA).*

*Work must be carried out as part of the development so as to upgrade the building to bring it into compliance with Sections C, D & E of the NCC BCA 2019, Volume 1.*

*Plans and specifications showing the upgrading works which must be carried out under this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.*

*Notes:*

*1) The Certifying Authority must be satisfied that the plans and specifications submitted prior to the issue of any Construction Certificate comply with the requirements of this condition.*

*2) The Certifying Authority issuing the Construction Certificate has no power to remove the requirements to upgrade the existing building as required by this condition.*

*3) Where this condition specifies compliance with the performance requirements of the BCA, the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters.*

*(Reason: Application of Regulations relating to Fire and Life Safety)*

***Planning Comments:*** The referral recommendations are noted, and the conditions have been included in the recommended conditions of development consent (Recommended conditions C10 and C11).

## **Heritage Planner**

Due to the building on site being in close proximity to a number of heritage items and being located in the *Union, Bank and Thomas Street Conservation Area*, referral was made to Council’s Heritage Officer who made the following comments regarding the proposal:

***“1. Heritage Status and Significance***

- The subject property is a neutral item and is located within the Union, Bank, Thomas Street Conservation Area. The Lavender Bay Area Character Statement in NDCP 2013 (Part C Section 9.0) identifies the eclectic character of the area that includes a variety of land uses from low/medium/high density residential, commercial premises, industrial, education establishments, places of worship and recreational facilities. The key period of development for the conservation area is the Victorian period however, the subject building does not date from this time, but is a much later development from the Inter-war period (Reference Graham Hall, Heritage Impact Statement).*

- *The building is located in a streetscape with no Victorian buildings except for the side elevation of 62 Victoria Street. The subject site is located opposite a very large two storey commercial building with a visually detracting car park and adjacent to other light industrial and commercial buildings.*
- *The warehouse building, with its simple painted and parapeted brick façade and Colorbond roof, provides a tangible link to the working history of the area. Its significance relates to its former industrial use, its distinctive industrial form, the parapeted front façade and the internal large open spaces.*
- *The building retains its original form but has been modified by the addition of a late twentieth century vehicular tilting door, infill of part of the pedestrian entry, the replacement of the roof structure with contemporary composite trusses (not timber), contemporary Colorbond roofing and contemporary interior works including glass partition walls.*

## **2. Heritage Impact Assessment**

### **a) North Sydney LEP 2013 Clause 5.10**

*An assessment of the proposed works at 4 Holt Street have been undertaken in relation to Clause 5.10 Heritage conservation of NSLEP 2013. It is considered that the proposed works do not satisfy this clause in that the new works do not positively contribute to the character of the conservation area. The extensive use of glazing on the new First Level will not contribute to the character of the conservation area. Whilst it is noted that the proposal complies with Policy 22.2 of the Burra Charter:*

*New work should be readily identifiable as such, but must respect and have minimal impact on the cultural significance of the place,*

*The proposal is considered to not comply with the Area Character Statement that describes over-scaled additions as uncharacteristic (meaning undesirable), nor does it comply with the accepted palette of materials which includes stone, brick and rendered walls. As characteristic buildings in the conservation area and the subject building have high proportions of solid material versus glazing, it is recommended that the proposal be amended as below.*

### **b) North Sydney DCP 2013**

*An assessment of the proposal, with reference to Part B Section 13 of the North Sydney DCP 2013 has been made with the following elements of the DCP being of note:*

**13.4 Development in the Vicinity of Heritage Items-** *The proposed works will have only low impact upon the nearby residential heritage items located at 9 and 11 Chuter Street, as these have lot boundary curtilage and their primary facades face Chuter Street not Holt Street.*

**13.6.1 General Objectives O1** *Ensure that new development is designed to retain and complement the character and significance of the conservation area- The proposed development does not comply as it does not retain or enhance the character of the conservation area but instead introduces a new contemporary minimalist façade that will dilute the significance of the original warehouse façade.*

**13.6.1 General Objective O1-** *Ensure that new development is designed to retain and complement the character and significance of the conservation area – The proposal introduces a new urban form and character and is not compliant.*

**13.6.2 General Objectives- Objective O2** *To maintain and enhance streetscape character – The proposal does not comply as it does not introduce any visual interest or character but introduces a bland glazed wall.*

**13.6.2 P7 Respond to characteristic building alignments** – *No objection is raised to the proposed setback of the First Level as it responds to the alignment of the adjacent buildings.*

**13.6.2 Form, Massing and Scale - Objective O1** *To ensure new development has a compatible and complimentary building form and scale to that which characterises the conservation area- The proposed form of the new addition is considered to be generally acceptable as it responds to the front façade.*

*P9 New work may adopt a contemporary character, provided the development is not likely to have a detrimental impact on the characteristic built form of the area, particularly in terms of bulk, scale, height, form or materials. Objection is raised to the minimalistic character of the proposed new front elevation in that it will not contribute visually to the existing urban character and it uses extensive glazing.*

**13.6.3 Roofs - Objective O1** *To maintain the characteristic roof profiles and roofing materials within a heritage conservation area- No objection is raised to the proposed roof form. The metal roof sheeting needs to be specified.*

**13.6.4 Additional Storey and Levels- Objective O1** *To ensure that the streetscape and context of the heritage conservation area are respected- The additional storey is considered to be acceptable in this instance as the development is located in the context of two storey buildings and within a highly varied streetscape where many of the properties have the rear of the building addressing Holt Street.*

**13.6.4 Provision P1** *Additional storeys or upper level additions are not supported in heritage conservation areas- No objection is made with regard to this specific application in that the warehouse building is not a characteristic residential development and is not from the core Victorian period of development. The proposed two storey scale will also be consistent with nearby buildings in Holt Street.*

**13.9.1 Skylights, Solar Panels and Satellite Dishes – Objective O1** *To ensure that skylights, solar panels and satellite dishes do not detrimentally impact upon the significance of heritage items and heritage conservation areas- No objection is raised to the proposed 12 skylights as they are on side roof planes and will not be easily seen from the public domain.*

**13.9.4 Materials - Objective O1** *To ensure that materials and finishes are consistent with the characteristic elements of the heritage item or heritage conservation areas and Provision P8 Ensure materials and finishes and colours are compatible with the characteristic built elements of the heritage conservation area as described in the relevant Area Character Statement- As noted above, the proposed new addition introduces a new urban character because of the extensive use of glazing. As it is not clear what the original format for the front door was, it is recommended that it be reconstructed appropriate to the character of the Inter-war façade.*

**13.9.5 Garages and Carports- Objective O1** *To ensure that vehicular accommodation does not detrimentally impact upon the significance of the heritage item or heritage conservation area- The garage door and associated parking is existing. No objection is raised to the proposed internalised parking. Additional information is required for the garage door proposal.*

**13.11.5 Warehouses and Industrial Buildings- Objective O1** *Ensure changes are sympathetic to significant fabric and building elements, and do not compromise heritage significance- The proposal is compliant in that the changes do not compromise the significance of the building.*

### **3. Conclusion**

*The proposal is considered to be unsupportable in its current form. The application should either be withdrawn or the following amendments and additional information is required:*

- The streetscape presentation of the proposal should be modified to contribute visually and aesthetically to the varied and detailed character of the conservation area. The minimalistic glazed wall introduces an uncharacteristic element and is not supported as it dilutes the character of the Union Bank Thomas Streets Conservation Area.*
- An amended Schedule of Finishes, Colours and Materials is required that uses materials typical of the palette described in the Union Bank Thomas Conservation Area Character Statement, noting specifically the uncharacteristic extensive use of glazing, metal wall cladding. The exterior colour scheme is to be provided.*
- Details are to be provided as to the proposed ventilated roller shutter garage door. Consideration should be given to contributing character to the conservation area and not introducing visually demanding contemporary elements as Council's heritage controls require new works to be visually submissive to original heritage fabric. As the door is located on the primary façade, consideration should be given to replacement with a traditional door as conservation works are usually the only works approved to primary facades within a conservation area.*
- The pedestrian entry on the primary façade to be re-detailed as appropriate to an Inter-war building. To conserve the front façade rather than make it more contemporary in character."*

**Planner's Comment:** Detailed comments regarding the property and the desired future character are provided later in the report under the *Union, Bank and Thomas Street Conservation Area*. However, for the purposes of this assessment, the conclusions of the Heritage Planner are not agreed in full on the basis that the development provides for an contemporary warehouse appropriate transitional form between the existing three story built forms to the east of the site and single storey warehouse buildings to the west of the site.

It is considered that the contemporary metal clad A frame roof with concealed gutter form is acceptable in this location because it facilitates good design features such as the pitched roof form with deep returns to Holt Street; cathedral ceiling, reduced floor to ceiling heights, setbacks from existing Holt St parapet and rear boundary; utilises the southern and northern elevations for daylighting the interiors and proposes contemporary materials and colours in a way that would enable appropriate future development of ordinary land and would not detract from the conservation area. Metal roofs are characteristic of industrial buildings of any period.

The proposed glazing to Holt street and lower pitching point is exemplary of contemporary development which does not detract from any building from the significant era. The development is also separated from the more established character on Chuter Street or Union Streets, which should be considered to be more important streets with regards to the character of the *Union, Bank and Thomas Street Conservation Area*.

The proposed contemporary office building represents the introduction of a well-designed and reasonable contemporary built form that protects the conservation context of the site, being the extreme periphery of the Union, Bank & Thomas Streets Conservation area. The existing warehouse form will be interpretable through retention of the existing warehouse parapet and the set back of the southern façade.

The proposal is consistent with the planning controls for contemporary infill development expressed in Section 13.6.2 and 13.6.6 of the North Sydney DCP 2013 which permits infill development which is in keeping with the conservation context.

### **Development Engineer/Stormwater/Vehicular Crossing**

The plans were referred to Council's Development Engineer who has recommended that specific conditions be imposed to require compliance with appropriate engineering standards and Council's specifications for vehicle access, footpath crossings and driveway construction. Subject to certification of compliance with the relevant engineering standards the proposed development is considered capable of complying with Council's Engineering requirements.

### **EXTERNAL REFERRALS**

#### **Sydney Trains/TfNSW**

Due to the sites proximity to Sydney Trains infrastructure, the development application was referred to Sydney Metro for comment. The following comments were received from TfNSW:

*Sydney Metro is acting as the delegated "rail authority" from Transport for NSW under the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) for Sydney Metro corridors.*



*Sydney Metro engineers have reviewed the proposed development application which is located in the Sydney Metro City and Southwest corridor. There is no excavation proposed and the slight increase in loading is likely to have a negligible effect on the Sydney Metro tunnels. Therefore, Sydney Metro considers that concurrence under Clause 86 of ISEPP for the Sydney Metro City and Southwest corridor is not required.*

*Clause 85 of ISEPP has also been considered and does not apply for the Sydney Metro City and Southwest corridor.*

## **SUBMISSIONS**

The owners of adjoining properties and the **Union Precinct** were notified of the proposed development for a 14-day period, between **11 December 2020 and 18 January 2021**, in accordance with section A4 of NSDCP 2013. The notification of the application resulted in a total of **eleven (11) submissions** being received during the course of the assessment of the proposal. The issues as raised are summarised as follows:

- *Exceeds mandated height limits*
- *The density of the proposal is excessive*
- *Concerns overview loss from the proposal particularly from the massing of the building*
- *The proposal is too big and bulky and not in keeping with the character of the local Conservation area.*
- *The proposal will have a significant detrimental impact to the availability of parking in the area. Object to the loss of parking*
- *Concerns over loss of privacy to their properties*
- *Significant Loss of Views from their properties*
- *Increase vehicular traffic and pollution and pressure on parking, particularly on Chuter Street.*
- *Increasing risk to pedestrian safety. Holt Street does not have an accessible footpath and project should not be approved until Council provides a foot path on Holt Street*

The submissions in full will be available for the panel's review at the determination meeting of 03 March 2021

## **CONSIDERATION**

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

The application has been assessed against the relevant numeric controls in NSLEP 2013 and DCP 2013 as indicated in the following compliance tables. More detailed comments with regard to the major issues raised are provided later in this report.

### **NORTH SYDNEY LEP 2013**

#### **Permissibility within the zone:**

The site is zoned *IN2 Light Industrial* under the North Sydney Local Environmental Plan 2013. Development for the purpose of alterations and additions to an existing "*Office premises*" and "*Light industrial*" development is permissible with consent in the zone. Demolition is permissible with consent pursuant to clause 2.7 of the LEP.

## Zone Objectives

The specific objectives of the *IN2 Light Industrial* zone are as follows:

### *Zone IN2 Light Industrial*

#### **1 Objectives of zone**

- *To provide a wide range of light industrial, warehouse and related land uses.*
- *To encourage employment opportunities and to support the viability of centres.*
- *To minimise any adverse effect of industry on other land uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To support and protect industrial land for industrial uses.*
- *To encourage a mix of lower scale housing types.*
- *To permit development that is compatible with the scale and character of the surrounding residential area.*

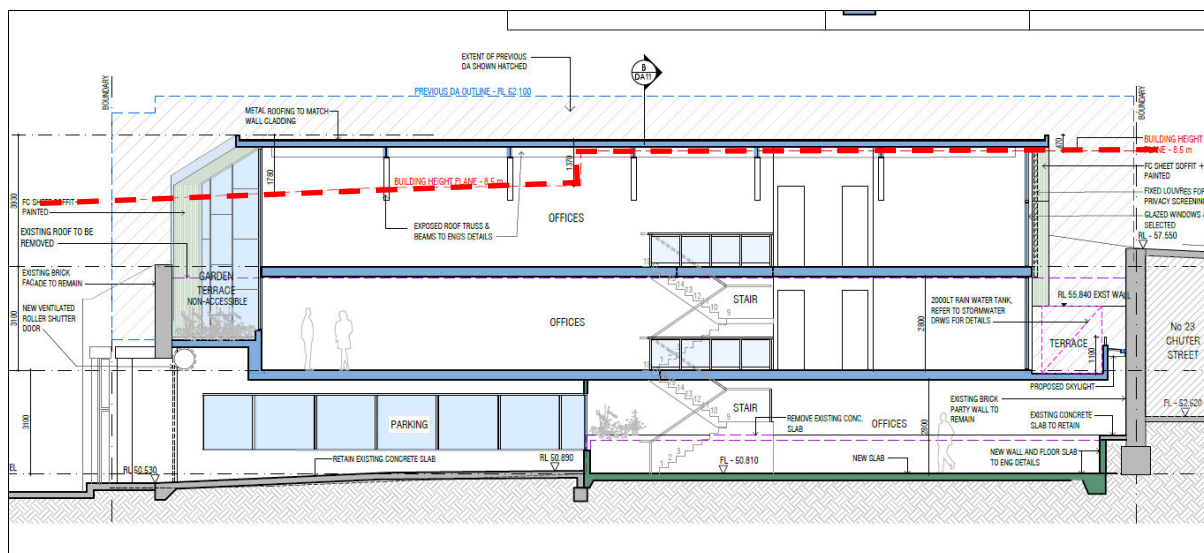
The proposal is generally considered to be in accordance with the objectives of the zone as it will expand upon the functionality of an existing industrial/commercial premises. It will not unreasonably compromise the amenity of the surrounding area as it is of a height, scale and density that are envisaged by the planning controls. The proposal will also have an acceptable impact to surrounding residential properties including identified heritage items in the context of the Thomas, Bank and Union Street Conservation Area.

#### **NSLEP 2013 Compliance Table**

<b>STATUTORY CONTROL - North Sydney Local Environmental Plan 2013</b>				
<b>Site Area - 4000 +m<sup>2</sup></b>	<b>Existing</b>	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
<b>Building Height</b> (cl.4.3(2))	6.6 m	<b>Variable 8.97 m (rear) to 10.455 m at Holt Street elevation</b>	<b>8.5 (max)</b>	NO

#### **Building Heights**

The maximum building height for the site is 8.5 m pursuant to clause 4.3(2) of NSLEP 2013. The proposed building height to the main roof level is variable from 10.455 m at Holt Street to 8.97 at the rear of the site. The Height of Building line is noted on the plan but is highlighted for clarity.



**Figure 6: Section through the building. This corresponds with Plan DA10 provided in the attached plan suite. Horizontal red line is the height of building limit line.**

The applicant has submitted a written request seeking to vary the development standard, pursuant to clause 4.6 of NSLEP 2013. The proposed variation has been assessed in accordance with the requirements outlined in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 in relation to clause 4.6 requests, as against the requirements of clause 4.6 and the **objectives of the building height control**, discussed as follows:

- (a) ***To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient.*** There is no retained natural topography on site however the existing building does have a step located within its mid point which separates the existing parking and office level. The new additions include removal of this step in the middle of the building therefore assisting in removing height within the building. Given the lack of this step having any visible external exposure, no objection is raised to the removal in the circumstances.
- (b) ***To promote the retention and, if appropriate, sharing of existing views.*** The proposal will result in some view impact to the Sydney skyline from adjoining sites, particularly from the mid floors of the residential buildings located to the north of the site on Union Street.

The premises at Number 93, 95, 97 and 99 Union Street, McMahons Point have been inspected to establish the level of impact occurring from the proposal due to the significant outlook these dwellings enjoy over their rear boundaries. Views available and impacts are comparable across all four dwellings. The impacts to Number 95 and 99 Union Street, McMahons Point are discussed in detail. The applicant for the subject application has submitted a detailed analysis of the view impacts based on the information and photos provided. The revised view impacts are discussed as follows:

The impact to the views has been assessed against Council’s controls and the principles of the Land and Environment Courts Planning Principle established in *Tenacity Consulting V Warringah Council* (2004) as follows:

95 Union Street, McMahons Point

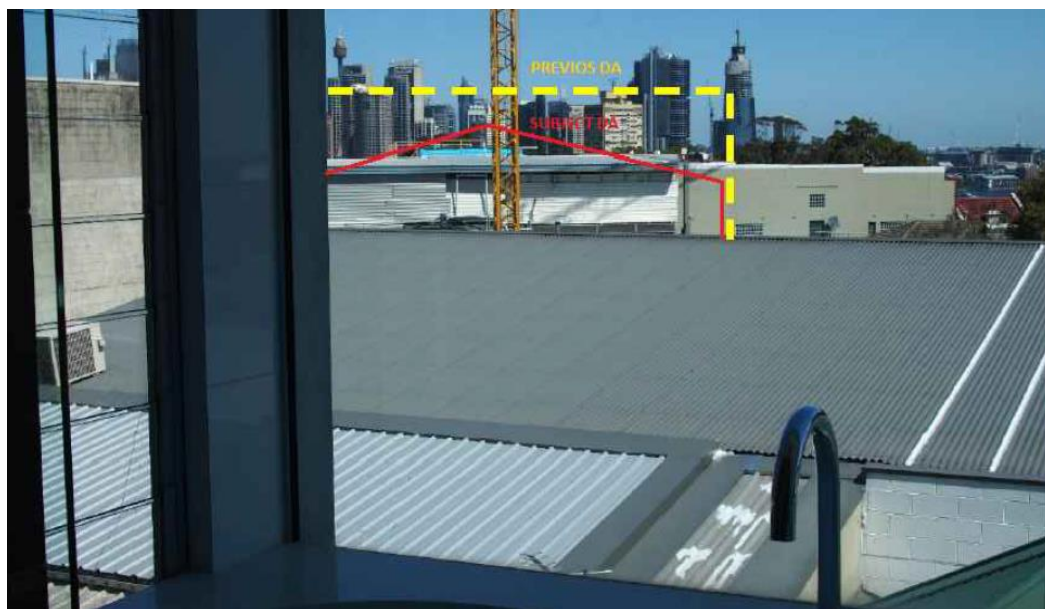
This site is occupied by a building which is single storey at Union Street elevation but increases to a three storey building over basement at the rear of the site. Site inspection photos taken of the site as below feature views of the main city skyline and water glimpses. The Harbour Bridge also features but is to the extreme east of the site and generally not impacted by the works at 4 Holt Street

**Figure 7** below depicts the view available from the rear third storey open terrace at the site. This terrace is used for a vegetable garden and general sitting and viewing.



**Figure 7: View from third level upper open terrace. Line of subject proposal is extrapolated in red. The previous application is in yellow.**

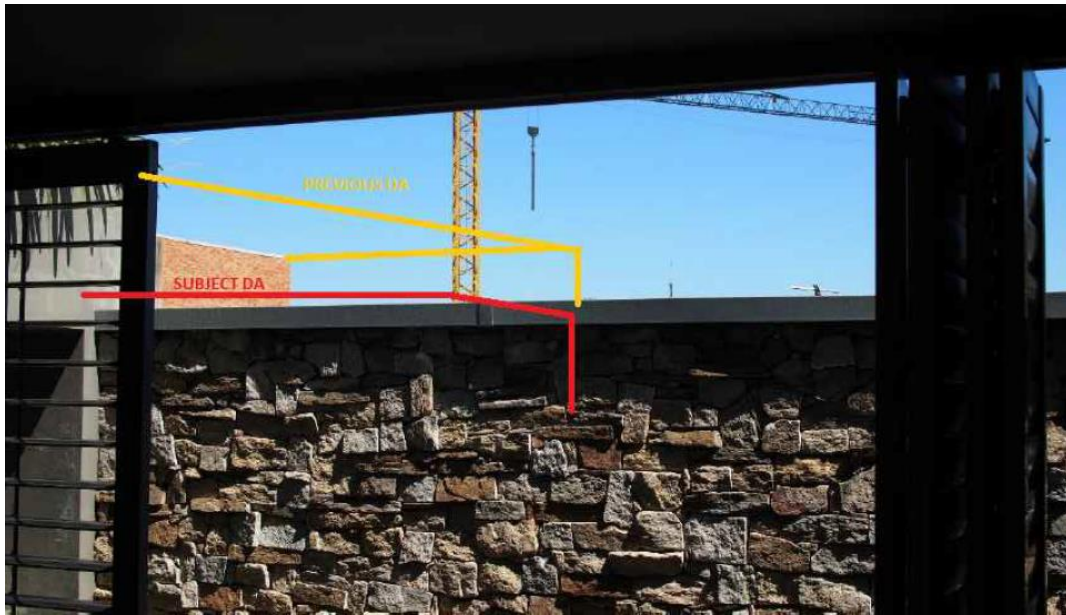
Views impacted in this location comprise views to the adjoining buildings at 50 Victoria Street and a sliver of the existing city scape. Impact from this location is *not material* to *negligible*



**Figure 8: View from mid level rear bedroom of 95 Union Street, McMahons Point**



**Figure 8** is a photo taken from the rear master bedroom suite of 95 Union Street, McMahons Point. A portion of the city scape would be lost as a result of the additions. The revised impact at this level is described as *negligible*. Further reductions of the building to a strictly complaint level would not result in a material improvement to the level of impact.



**Figure 9: View from ground level within 95 Union Street, McMahons Point (Living Room)**

At 95 Union Street, McMahons Point lowest habitable level, only views to the sky are afforded from this level. This impact is described as *minor*. Generally, light and outlook is proposed at this point.

#### 99 Union Street, McMahons Point

This site is occupied by a residential building which is two storey at Union Street elevation but increases to a three story building at the rear of the site. Site inspection photos taken of the site as below feature direct southern views of the main city skyline and water glimpses. There are a number of existing palms trees in the way of the view as existing The Harbour Bridge also features but is to the extreme east of the site and shielded by the existing building at 6 Holt Street and generally not impacted by the works at 4 Holt Street

**Figure 10** below depicts the view available from the rear third storey open terrace attached to an attic living room at the site.



**Figure 10:** View from third level upper open terrace adjoining at attic living room. Line of revised proposal is extrapolated in red and height compliance line is depicted in green. The palm trees are located in the rear yard of No. 99 Union Street.

Views impacted in this location comprise views to city scape and water. Impact from this location is *minor* assuming the view was unimpeded by the existing trees with views preserved to the cityscape and some water glimpses.



**Figure 11:** View from mid level rear bedroom of 99 Union Street, McMahons Point

**Figure 11** is a photos taken from the rear study / living room of 99 Union Street, McMahons Point. The view impact become significantly more pronounced with a substantial portion of the city scape and water being lost as a result of the additions. The impact at this level is described as *moderate*, however, even if the building height reduced to complaint building Height, the impact would be comparable.

Below this level there is no readily available view afforded from any lower level.



### **View Impact Conclusion**

The view impact described to the Union Street dwellings affects only of two of the four adjoining dwellings. Impacts are assessed as similar across all four dwellings with the greatest impact to the study in 99 Union Street arising from compliant elements. A height compliant proposal would not provide for provide further material improvements to view impacts. Impacts to views are concluded to be acceptable in the circumstances.

- (c) ***To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development.*** Will extend existing morning shadow of existing building at 6 Holt Street, McMahons Point however this shadow principally falls over Holt Street. There is a dwelling at 15 Chuter Street, McMahons Point which would experience some additional ambient overshadowing from the subject proposal if it were to be constructed however this dwelling and its rear yard outdoor space is already overshadowed by the existing commercial building at 17 Chuter Street, McMahons Point.
- (d) ***To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings.*** The development will not generally give rise to any adverse visual or acoustic privacy impacts by virtue of any breach of the height control and is acceptable in this regard.
- (e) ***To ensure compatibility between development, particularly at zone boundaries.*** The building lies at the transition point from the Union Bank and Thomas Street Conservation Area to the industrial buildings to the east and south. Whilst not a zone boundary, the subject proposal is considered to be appropriate in the context of the Conservation Area to the adjoining existing built forms.
- (f) ***To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*** The proposal is considered to be of an appropriate density in the circumstances.

The applicant has submitted a Clause 4.6 Request for Variation to a Development Standard and a copy of the full variation request statement is provided as an attachment to this report.

The concluding remarks of the Statement however are as follows:

- *The same streetscape outcome on the Holt Street property boundary will result as the height non-compliance is located approximately 4 metres from Holt Street property boundary; and on the opposite side of the site (adjoins the southern boundary); and*
- *The slight exceedance of the height standard on the rear elevation is for a very small portion of the roof with most of the roof area well below the 8.5m height standard; and*
- *The exceedance of the height standard is required to ensure that the minimum 2.4m floor to ceiling requirement is provided; and*
- *The exceedance of the height standard is required to enable incorporation of some of the building elements from the existing building as requested on Page 9 of the Pre-Lodgement Meeting Minutes; and*
- *Non-compliance exceedance is only 23% at the Holt Street elevation and 5.5% for the rear elevation; and*

- *A flat roof design could be utilised however such a design would reduce the view corridors provided across the pitched roof and therefore impact on the views made that are made available through this roof design even though not height compliant and as such this design is more adjoining neighbour view friendly than a flat compliant roof design; and*
- *That the overshadowing will not be substantially reduced if the building is made height compliant at the rear of the site faces north and therefore all shadowing will fall over Holt Street; and*
- *Strict compliance will restrict the opportunity to provide reuse of existing building elements such as the existing roof trusses to be reused on Level 2; and*
- *Strict compliance with height will reduce internal ceiling height for Level 2 and as such the minimum 2.4m requirement under the National Code of Construction will be unachievable.*

The applicants statement submits the non-compliant elements of the development will not give rise to any material or adverse impacts with regard to the objectives of Clause 4.3 Building Height of NSLEP 2013.

This assessment also concludes that the non-compliant elements of the development will not give rise to any material or adverse impacts with regard to the objectives of Clause 4.3 Building Height of NSLEP 2013 or objectives of the IN2 Light Industrial Zone and surrounding R3 Medium Density Residential Zone. A compliant proposal would not provide for provide further material improvements to any potential adverse impact particularly with regard to views or general bulk and scale impacts. On this basis, the request for variation is considered to be well founded and reflect an appropriate scale of development in the circumstances.

#### **Floor Space Ratio (Clause 4.4)**

There are no Floor Space Ratio limits set out for the site under the provisions of the LEP 2013.

#### **Heritage Conservation (Clause 5.10)**

Detailed comments are provided under the Heritage referral heading on page 9 of this report.

Whilst the concerns of the heritage planner are noted, it is the conclusion of this assessment report that the proposed additions to the building in their current form will not cause detrimental impact upon the conservation area due to the reasonable bulk and scale and appropriate transitional form between the Conservation Area boundary to the commercial buildings to the east to the residential buildings to the west. The existing building form makes little in the way of meaningful contribution to the established character of the Conservation Area.

The additions will successfully integrate within the existing local street context nor accord with the intended desired future character of the area or promote the significance of the *Union, Bank, Thomas Street Conservation Area*. Accordingly, the additions are not considered to satisfy the objectives and standards in Clause 5.10(1) of NSLEP 2013.

### **SEPP 55 and Contaminated Land Management Issues**

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 light industrial use has been in operation for a considerable period and given the lack of any specific existing or adjoining sensitive land uses, it is considered unlikely to be any issues of soil contamination that would require remediation.

Clause 7 of SEPP 55 requires Council to consider whether the land is suitable for its intended use. The proposed use for offices is consistent with the current use and the proposed work is unlikely to increase contamination exposure to any known contamination present. The proposal is satisfactory under Clause 7 of the SEPP.

There will be no excavation of significance and the site. Concerns relating to the use of asbestos and lead based paint/materials etc can be managed via the imposition of standard conditions of development consent. The development is acceptable in this regard.

### **SREP (Sydney Harbour Catchment) 2005**

The site falls within the Sydney Harbour Catchment Area and is subject to the provisions of the Policy. Clause 25 of the SREP outlines matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways.

The site does not have any primary views from the Harbour, and the proposed development within the established commercial/industrial setting will not be readily discernible from the Harbour. Accordingly, the proposed development is considered satisfactory with regards to the provisions contained within this policy.

### **DEVELOPMENT CONTROL PLAN 2013**

The proposal has been assessed against the following relevant sections of NSDCP 2013

- *Part B Section 2 Commercial and Mixed Use Development*
- *Part B, Section 10 Car Parking and Transport*
- *Part C, Section 9 Character area - Lavender Bay Planning Area (Section 9.10 Union, Bank, Thomas Street Conservation Area)*

Development for non-residential purposes in the IN2 Zone is required to be assessed against the provisions of *Part B Section 2 Commercial and Mixed Use Development*

<b>DEVELOPMENT CONTROL PLAN 2002</b>		
	<i>Complies</i>	<i>Comments</i>
<b>Section 2 Commercial and Mixed-Use Development</b>		
<b>2.1.1 General Objectives</b>	Yes	The proposal is considered to be acceptable with regard to the objectives of NSDCP 2013 for the reasons as detailed throughout this report
<b>2.2 Function</b>		
<b>2.2.1 Diversity of Activities, facilities, opportunities and services</b>	Yes	The proposal can result in the promotion of the local diversity of activities, employment and services available in the area. The development is acceptable in this regard.

<b>DEVELOPMENT CONTROL PLAN 2002</b>		
	<i>Complies</i>	<i>Comments</i>
<b>2.2.2 Maximize use of public transport</b>	Yes	There is a general scarcity of parking in the local road network. The development will cater to the local workforce in which a significant portion would be required to utilize public transport due to the lack of parking on site. The site enjoys good public transport linkages with North Sydney Station and multiple bus services all in close proximity to the site.
<b>2.2.3 Mixed Residential Population</b>	N/A	Proposal is not a mixed-use development.
<b>2.2.4 Hotel Design and 2.2.5 Hotel Management</b>	N/A	The development is not a Hotel proposal. This section is not applicable to the development.
<b>2.3 Environmental Criteria</b>		
<b>2.3.1 Clean Air</b>	Yes	The development in itself is not considered to result in any adverse impact to local air conditions, Current commercial use intended would be expanded if approval is granted.
<b>2.3.2 Noise</b>	Yes	The development would not be considered to give rise to any unreasonable noise impacts. No new plant indicated on roof. Being a commercial use, the proposal is unlikely to result in adverse impacts to key residential amenity time periods
<b>2.3.3 Wind Speed</b>	N/A	The development will not in itself give rise to any adverse wind impact.
<b>2.3.4 Reflectivity</b>	Yes	New façade treatments can be conditioned as appropriate; the development can be considered acceptable in this regard.
<b>2.3.5 Artificial Illumination</b>	Yes	There is no proposed external floodlighting of the works.
<b>2.3.6 Awning</b>	N/A	There is no awning at this point on Holt Street. Requiring one could have impacts to traffic flow. The non-provision of an awning in the circumstances is acceptable.
<b>2.3.7 Solar Access</b>	No (existing)	Due to the presence of the existing three storey building at 6 Holt Street, there is already considerable solar overshadowing occurring. The shadow however principally falls over Holt Street and the rear of 15 Chuter Street. The subject building does not result in any new material impact from this existing overshadowing. It is on the basis of the lack of new material impact to any surrounding residential premises that no objection is raised to the proposal in this regard.
<b>2.3.8 Views</b>	Yes	It is concluded that the development will not materially impact to existing high amenity views particularly from portions of the proposal in non-conformance with the Height control for the site. The proposal will promote the principle of view sharing and utilizes design to make adequate preservation of views in the circumstances. A further reduction in height to complaint levels would not result in further preservation of the views potentially lost. View impact is supportable in the circumstances.
<b>2.3.9 Acoustic Privacy 2.3.11 Visual Privacy</b>	No	Generally, the proposal would not be considered to give rise to adverse visual or acoustical privacy impacts except in the region of the rear balconies which may afford opportunities for overlooking into the dwelling at 99 Union Street, McMahons Point. The impacts however can be partially alleviated via treatments to the windows and general limitation from the hours of potential uses. Refer to Condition C1.

<b>DEVELOPMENT CONTROL PLAN 2002</b>		
	<i>Complies</i>	<i>Comments</i>
<b>2.3.10 Vibration</b>	N/A	Beyond any acceptable construction level vibration impact the proposal is not considered to give rise to any ongoing unacceptable vibration impact.
<b>2.4 Quality Built Form</b>		
<b>2.4.1 Context</b>	Yes	The site lies in the industrial portion of the Union, Bank and Thomas Street Conservation Area. The subject proposal is considered to provide an adequate contextual response in the circumstances which transitions from the existing three storey building at 6 Holt Street to the single storey building on the corner of Holt and Chuter Street.
<b>2.4.2 Site Consolidation</b>	N/A	No consolidation is proposed. A larger site would not diminish the issues as raised with the overall bulk and scale being inappropriate in that location.
<b>2.4.3 Setback</b>	Yes	There will be no alteration to the existing ground floor external setbacks of the existing building and all additions are located over the existing building. Upper floor street and rear setbacks are considered to be an appropriate response in the circumstances.
<b>2.4.4 Podium</b>	N/A	The buildings in this location do not have distinct podiums nor is the building of sufficient height to require a podium.
<b>2.4.5 Building Design</b>  <b>Floor to ceiling Heights should be provided in accordance with P1</b>	Yes	The general bulk and scale is considered to be appropriate in the circumstances and resided roof form is an appropriate transitional form in the circumstances.
<b>2.4.6 Skyline</b>	Yes	The roof design and overall height in considered to accord with Control P2 to form an appropriate transitional form from the adjacent building in the McMahons Point Business Precinct to the Union Bank and Thomas Street Conservation Area and accordingly is an appropriate transitional form in the circumstances.
<b>2.4.9 Through-site pedestrian links</b>	N/A	The building as existing occupies the entire ground area and there is no opportunity to incorporate a new through site link.
<b>2.4.10 Streetscape</b>	Yes	The Holt Street streetscape of the existing building is intended to be altered to improve upon the pedestrian entry and visual permeability of the building. Whilst, garages to front facades are generally not supported, this is an existing arrangement and accordingly acceptable in this instance.
<b>2.4.11 Entries and Exits</b>	Yes	Existing entries and exits to the building will be maintained but enhanced via the proposal.
<b>2.4.12 Nighttime appearance</b>	Yes	Building is considered to be sufficiently internally illuminated and the alterations will not adversely the buildings nighttime appearance.
<b>2.5 Quality Urban Environment</b>		
<b>2.5.1 Accessibility</b>	Yes	Refer to Building Comments and access report considerations.
<b>2.5.2 Safety and Security</b>	Yes	The proposal will improve the sites passive surveillance to Holt Street.
<b>2.5.3 Illumination</b>	Yes	The proposal does not require any further specific illumination.
<b>2.5.4 High Quality Residential Accommodation</b>	N/A	There is no residential component proposed to the building.
<b>2.5.5 Light wells and Ventilation</b>	Yes	The façade improvements and proposed rear courtyard will improve upon the solar penetration into the building.
<b>2.5.7 Vehicular Access</b>	Yes	Based on the floor areas proposed (547 m <sup>2</sup> / 100 m <sup>2</sup> ) the



<b>DEVELOPMENT CONTROL PLAN 2002</b>		
	<i>Complies</i>	<i>Comments</i>
<b>2.5.8 Car Parking</b>  <b>Section 10 Table B-10.2 IN2</b> <b>Light industrial zoned land</b> <b>rate = 1 space per 100 m<sup>2</sup></b> <b>non residential GFA</b>	Yes	proposal would require a maximum of 5 spaces. The revised parking layout purposes four spaces in stacked arrangement.  The applicant submits the following concluding remarks regarding parking and traffic in the traffic report: <ul style="list-style-type: none"> <li>○ <i>The proposed retention of the existing site access arrangements, in conjunction with the proposed reduced on-site vehicular parking capacity, are projected to result in motorists continuing to be capable of entering and exiting the subject site in a safe and efficient manner;</i></li> <li>○ <i>The proposed off-street vehicular parking provision is considered to be satisfactory given the extensive public transport options within the immediate vicinity, the proposed provision of end of trip facilities for other sustainable modes of travel and the compliance with the maximum provision controls of DCP 2013;</i></li> <li>○ <i>The proposed motorcycle and bicycle parking provisions comply with the numerical requirements of DCP 2013;</i></li> <li>○ <i>The provision of vehicular parking spaces in a stacked arrangement is considered to be satisfactorily compliant with the relevant controls of DCP 2013 in light of the proposed development being offered as a single tenancy;</i></li> <li>○ <i>The internal passenger vehicle circulation arrangements are capable of providing for safe and efficient internal manoeuvring;</i></li> <li>○ <i>The surrounding road network operates with a reasonable level of service during peak periods;</i></li> <li>○ <i>The subject development has been projected to generate up to five and four additional vehicle trips during weekday morning and evening commuter peak hours, respectively, over and above that capable of being generated by the existing site development; and</i></li> <li>○ <i>The low traffic generating potential of the development is not envisaged to result in any unreasonable impacts on the adjoining public road network.</i></li> </ul> The proposal is considered to be acceptable in the circumstances principally on the basis that the new development remains a single tenancy, the parking supply can be adequately managed and a singular occupant maximizes uptake of alternative means of transportation to access the site. A condition is recommended to ensure the building is operated as a single tenancy.
<b>2.5.9 Garbage Storage</b>	Yes	The premises has its own the existing garbage facilities. The operation, being suited to commercial operation is able to manage its own waste with disposal via private contractors from the Holt Street.
<b>2.5.10 Site Facilities</b>	Yes	The proposal would improve on the site facilities and commercial activity.
<b>2.5.11 Temporary Structures</b>	N/A	There are no temporary structures proposed.
<b>10.0 Car parking</b>		
<b>10.2 Car parking (max.)</b>	No	Refer to Section 2.5.8 discussion above. Proposal is supported in this regard subject to the building being operated as a single tenancy..
<b>10.4 Loading and Servicing</b>	No	



## DEVELOPMENT CONTROL PLAN 2013 AREA CHARACTER STATEMENT

### *Relevant Planning Area (Lavender Bay -Union, Thomas and Bank Street Conservation Area.)*

The application has been assessed against the relevant controls in Part C Section 9 Lavender Bay Planning Area - Union Thomas and Bank Street Conservation Area throughout the table above. The building is considered to be an appropriately scaled form between the adjoining character area of McMahons Point Business Precinct and the subject Conservation Area.

## LOCAL INFRASTRUCTURE CONTRIBUTIONS

### North Sydney Local Infrastructure Contributions Plan 2020

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. Both Section 7.11 and 7.12 applicable levies are calculated and the higher amount is levied in accordance with the plan. The contributions payable have been calculated in accordance with Council's Contributions Plan as follows:

Contribution amounts payable		
<b>Applicable contribution type</b>		
<b>s7.11 contribution</b>		
<i>(Net population increase)</i>	Open space and recreation facilities:	\$7,966.04
	Public domain:	\$22,160.39
	Active transport:	\$1,264.59
	Community facilities:	\$1,600.09
	Plan administration and management:	\$498.95
	<b>Total:</b>	<b>\$33,490.06</b>

The Section 7.11 contribution is the higher amount and will be the total contribution applied in the circumstances. According, a condition is to be imposed requiring the payment of \$33,490.06 is included in the recommended conditions.

## APPLICABLE REGULATIONS

Clause 92(1)(b) of the EPA Regulation 2000 require that council take into consideration *Australian Standard AS 2601-1991: The Demolition of Structures*, as in force at 1 July 1993. As demolition is proposed, suitable conditions can be included for any approval recommendation.

## ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

## ENVIRONMENTAL APPRAISAL

## CONSIDERED

1.	Statutory Controls	Yes
2.	Policy Controls	Yes
3.	Design in relation to existing building and natural environment	Yes
4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Car parking provision	Yes
6.	Loading and Servicing facilities	NA
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant 4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

## SUBMITTERS CONCERNS

The following are issues raised in submissions received:

- ***Bulk and scale, Character of the Area, Overdevelopment of the site, Excessive Height, Incorrect Building Envelope***

As detailed within this report, the non-compliances identified with the proposed Building Height, Local Context, Character and Refer to assessment comments provided under the Heritage Referral, Building Height Control (Clause 4.3 of NSLEP 2013) and DCP 2013 section of the report. The report concludes that the development will be acceptable in the circumstances and will be in keeping with the established or future character for this site.

- ***Loss of views, privacy,***

As detailed within this report, the proposed development is an acceptable level of impact with regard to privacy and view loss to certain adjoining properties. Whilst the principle building envelope exceeds the height control on the site and the design cannot be reasonably altered to the extent that the anticipated impacts could be further reduced to the primarily affected properties.

- ***Traffic and parking impacts***
- ***Lack of car parking***
- ***Risk to pedestrians***

Council's is of the view that the proposed development will have acceptable traffic implications in terms of road network capacity. The proposed number of on-site stacked parking spaces can be successfully managed for a singular occupancy development upon the site. The site has excellent public transport links to alleviate parking concerns in the circumstances.

- *Noise during construction and ongoing*
- *Construction impacts*
- *Noise from the car stacker*

These matters could be resolved through conditions of consent if the Panel were of a mind to approve the application.

- *The proposed development is out of character with the streetscape.*
- *Heritage impacts*

Whilst the existing building is not heritage listed the building is located within a heritage conservation area. In the circumstances, the building is considered to provide for an appropriate transitional form between the existing three storey buildings in Holt Street to the east of the site and the lower scale buildings which transition to residential premises to the west of the site

- *Ongoing Noise impacts*

The proposed development is unlikely to result in unreasonable noise impacts for adjoining residential properties given it would likely be a commercial use.

## **PUBLIC INTEREST**

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

## **HOW HAVE THE COMMUNITY VIEWS BEEN TAKEN INTO ACCOUNT**

The concerns as raised in the submissions have been considered throughout the scope of this report.

## **CONCLUSION**

This development application seeks Council's approval for partial demolition and substantial alterations and additions proposing to two additional floors to an existing building into commercial office space on the subject allotment.

**The application is reported to NSLPP for determination due to the breach proposed to the statutory Clause 4.3(2) Building Height control of NSLEP 2013 and public interest in the proposed development.**

Council's notification of the proposal attracted **Eleven (11) submissions** raising particular concerns about height, bulk, scale and character, amenity, overshadowing, privacy, and car parking availability.

The proposed additions to the building exceed the 8.5 m maximum height limit applicable to the site as set out under Clause 4.3 Building Height of NSLEP 2013. Generally, however, the perceived bulk and scale of the additions will be commensurate with the adjoin existing three storey buildings to the east and west of the subject site. The proposed height, bulk and scale of the additions is considered to be sufficiently in keeping with the established character of the *Union, Bank and Thomas Street, Conservation Area* of the immediate locality in Holt Street.

The assessment of the proposal has considered the concerns raised in the submissions as well as the performance of the application against Council's planning requirements. Following this assessment, and having regard to the provisions of Section 4.15 of the Environmental Planning & Assessment Act 1979 (as amended), the application recommended for **approval** given the consistency to the objectives and controls within the North Sydney Local Environmental Plan and Development Control Plan 2013, and lack of material adverse impacts on the redevelopment of the adjoining properties.

### **RECOMMENDATION**

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

**THAT** the North Sydney Independent Planning Panel, assume the concurrence of the Director General of the Department of Planning and invoke the provisions of Clause 4.6 with regard to the exception to the development standard for Building Height, grant consent to Development Application No. 302/20 for demolition, new first and second floor addition to existing commercial industrial building for commercial purposes at land known as 4 Holt Street, McMahons Point subject to the following conditions:

**Kim Rothe**  
**SENIOR ASSESSMENT OFFICER**

**David Hoy**  
**TEAM LEADER ASSESSMENTS**

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**STEPHEN BEATTIE**  
**MANAGER DEVELOPMENT SERVICES**

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**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**4 HOLT STREET, MCMAHONS POINT**  
**DEVELOPMENT APPLICATION NO. 302/20**

**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.	Dated	Issue	Title	Drawn by	Received
DA00	26 October 2020	A	Cover Sheet	O2 Architecture Pty Ltd	30 November 2020
DA01			Site Plan and Site Analysis Plan		
DA02			Demolition Plan		
DA03			Ground Floor Plan		
DA04			Level 1 Plan		
DA05			Level 2 Plan		
DA06			Roof Level		
DA07			Elevations		
DA08			Elevations		
DA09			Elevations		
DA10			Section A		
DA11			Section B		

(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)

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**B. *Matters to be Completed before the lodgement of an Application for a Construction Certificate*****Construction Management Program – Local Traffic Committee Approval**

- B1. A Construction Management Program prepared by a suitably qualified and experienced traffic consultant must be submitted and approved in writing by North Sydney Traffic Committee PRIOR TO THE ISSUE OF ANY Construction Certificate. Any use of Council property will require appropriate approvals prior to any work commencing. At a minimum, the Construction Management Program must specifically address the following matters:
- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
    - i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
    - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
    - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
    - iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
    - v. Locations of hoardings proposed;
    - vi. Location of any proposed crane standing areas;
    - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
    - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
    - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
  - b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
  - c) The proposed phases of works on the site, and the expected duration of each phase.
  - d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
  - e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.

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- f) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer and must not involve any permanent or temporary encroachment onto Councils property.
- g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
- h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

All traffic control work and excavation, demolition and construction activities must be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved Program. The approved Construction Management Program must be submitted as part of the documentation lodged with the application for approval of a construction certificate. A copy of the approved Construction Management Program and any conditions imposed on that Program, must be kept on the site at all times and made available to any officer of Council upon request.

## Notes:

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction Management Plan be lodged with Council as early as possible, as a minimum six (6) weeks notice is required to refer items to the Traffic Committee.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

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**C. Prior to the Issue of a Construction Certificate (and ongoing, where indicated).**

**Privacy**

C1. The following privacy devices are to be provided:

- a) Fixed timber louvre/lightweight/lattice privacy screens shall be attached the new northern elevation windows as depicted in Drawing DA07 dated 26 October 2020 and drawn by O2 Architecture Pty Ltd

The louvers are to be fixed and angled so they allow outlook to the sky but not directly to the north toward the Union Street dwellings.

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 an adequate level of privacy is provided to adjoining property located at 93-99 Union Street, McMahons Point)

**Dilapidation Report Damage to Public Infrastructure**

C2. 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.

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)



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**Structural Adequacy of Building to be retained**

- C3. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Certifying Authority for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

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

**Dilapidation Survey Private Property (Neighbouring Buildings)**

- C4. A photographic survey and dilapidation report of adjoining properties No's. 6 Holt Street and 15, 17, 19, 21 & 23 Chuter Street 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 is 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)

**Structural Adequacy Neighbouring Buildings)**

- C5. A report from an appropriately qualified and practising structural engineer, certifying the structural adequacy of the adjoining properties No's. 6 Holt Street and 15, 17, 19, 21 & 23 Chuter Street which certifies their ability to withstand the proposed works and outlines any measures required to be implemented to ensure that no damage will occur to adjoining premises during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

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

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

**Waste Management Plan**

C6. 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)

**Sediment Control**

C7. 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 & 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.

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- 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.

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)

**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. Works Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Works 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)

**Maintain Property Boundary Alignment Levels**

- C9. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

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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 ensure interface between property and public land remains uniform)

**Provision of Accessible Paths of Travel C72**

- C10. Access from the pedestrian entry to the premises and access throughout the building be designed and constructed to provide access and facilities in accordance with the Building Code of Australia and Disability (Access to Premises – Buildings) Standards 2010. 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.

Notes:

1. If, in complying with this condition, amendments to the development are required, the design changes must be submitted for the approval of Council prior to a Construction Certificate being issued. Approval of a modification application may be required.
2. It is not within Council's power to set aside National legislation which requires the upgrade of buildings to meet modern access standards. Such decisions remain the jurisdiction of the Building Professionals Board Access Advisory Committee who may grant an exemption in certain exceptional circumstances.
3. Information on making an application for an "unjustifiable hardship exemption" under the accessibility standards can be found in the website of the NSW Building Professional Boards at <http://www.bpb.nsw.gov.au/page/premises-standards>

(Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards)

**Upgrade of existing building – Fire Spread and Safe Egress**

- C11. Pursuant to clause 94 of the EP&A Regulation 2000, aspects of the existing building must be brought into conformity with the Building Code of Australia (BCA).

Work must be carried out as part of the development so as to upgrade the building to bring it into compliance with Sections C, D & E of the NCC BCA 2019, Volume 1.

Plans and specifications showing the upgrading works which must be carried out under this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

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Notes:

- 1) The Certifying Authority must be satisfied that the plans and specifications submitted prior to the issue of any Construction Certificate comply with the requirements of this condition.
- 2) The Certifying Authority issuing the Construction Certificate has no power to remove the requirements to upgrade the existing building as required by this condition.
- 3) Where this condition specifies compliance with the performance requirements of the BCA, the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters.

(Reason: Application of Regulations relating to Fire and Life Safety)

**Required Infrastructure Works –Roads Act 1993**

C12. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. An application must be made to Council on the “To Satisfy DA Consent Condition” application form with payment of the adopted assessment/inspection fees. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development:

Road Works

- a) Full frontage footpath and kerb/gutter are required (except in the location of the new layback)
- b) transitioning works of one footpath panel beyond both side boundaries is required to ensure uniformity in the footpath;
- c) the works will require reconstruction of the carriageway shoulder extending out 600mm from the gutter lip in AC10 - 50mm thick, adjacent to all new gutter works;

Drainage Works

Connection of the site stormwater system must be made directly to a newly constructed grated gully pit (with lintel), to front the site on Holt Street. To accommodate this requirement, the following drainage infrastructure works must be carried out on Council property at the Applicants expense: -

- a) construction of a standard grated gully pit with extended kerb inlet (1.8m lintel) in the kerb fronting the subject site in Holt Street. The pit must be constructed in accordance with Councils “Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works”.



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- b) construction of a new in-ground drainage line under the kerb and gutter at standard depth. The line must connect the new gully pit to the existing Council pit located downstream of the site on Holt Street. The pipes within the road reserve are to be reinforced concrete class 2 with a minimum 375mm diameter and have bedding in accordance with Australian Standard AS 3725 – (Loads on buried concrete pipes). The developer shall be responsible for carrying out any service investigations to allow a gravity connection.

NOTE: Should the integrity of the existing Council pit located downstream of the site on Holt Street be compromised as a result of the new pipe connection, the pit must be reconstructed to the satisfaction of Council's Development Engineers.

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.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RMS Traffic Control at Work Sites (1998). **Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**

*Note: A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.*

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

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**Obtain Driveway Crossing Permit under S.138 Roads Act 1993**

C13. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable issue of the permit. The requirements of the permit must be complied with at all times.

The civil design drawings must include the following at a minimum: -

- a) the vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor;
- b) the width of the vehicular layback must be approximately 9 metres (including the wings);
- c) the crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback;
- d) the gutter levels and boundary levels must match the existing levels and shall not be altered;
- e) the works will require reconstruction of the carriageway shoulder extending out 600mm from the gutter lip in AC10 - 50mm thick, adjacent to all new gutter works;
- f) any twisting of driveway access must occur entirely within the subject property;
- g) all inspection openings, utility services must be adjusted to match the proposed driveway levels;
- h) sections along centre-line and extremities are required at a scale of 1:50 to be taken from the centre-line of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed;
- i) a longitudinal section along the gutter line at a scale of 1:50 showing how it is intended to blend the vehicular crossing with the existing kerb and gutter;
- j) a longitudinal section along the property boundary at a scale of 1:50 is required;
- k) the sections must show the calculated clearance to the underside of any overhead structure;

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The permit must be granted by Council prior to the issue of any Construction Certificate.

All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

**Stormwater Disposal – Drainage Plan**

C14. Prior to the issue of any Construction Certificate, site drainage plans must be prepared by a licensed plumber or drainage engineer. The site drainage plans must –be designed in accordance with the following criteria:

- a) compliance with BCA drainage requirements and current Australian Standards and guidelines;
- b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to an existing stormwater drainage system (in Holt Street);
- c) new pipelines within council land (between the property boundary and the newly constructed standard grated gully pit fronting the subject site in Holt Street) shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres;
- d) the design and installation of the Rainwater Tanks shall comply with BASIX and Sydney Water requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system; and
- e) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.

Drainage 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: Proper disposal of stormwater)

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

C15. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$30,000.00 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
- c) remedying any defects in any such public work that arise within 6 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 6 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)

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**Section 7.11 Contributions**

- C16. A monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council Section 7.11 Contribution Plan for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

A	B (\$)
Open space and recreation facilities:	\$7,966.04
Public domain:	\$22,160.39
Active transport:	\$1,264.59
Community facilities:	\$1,600.09
Plan administration and management:	\$498.95
<b>Total:</b>	<b>\$33,490.06</b>

The contribution **MUST BE** paid prior 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 Section 7.11 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](http://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**

- C17. 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 (\$)
Infrastructure Damage Bond	\$10,000.00
Drainage Construction Bond	\$20,000.00
<b>TOTAL BONDS</b>	<b>\$30,000.00</b>

Note: The following fees applicable

Fees	
Contribution Payments	\$33,490.06
<b>TOTAL FEES</b>	<b>\$33,490.06</b>

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)



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***D. Prior to the Commencement of any Works (and continuing where indicated)*****Public Liability Insurance – Works on Public Land**

- D1. 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**

- D2. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least 2 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)

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#### **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)

#### **Council Inspection of Public Infrastructure Works**

- E4. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points: -
- a) All formwork for footpath, layback & kerb/gutter;
  - b) All formwork for in-situ stormwater pits; and
  - c) Pipelines prior to covering.

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

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

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**Installation and Maintenance of Sediment Control**

- E5. 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 & 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**

- E6. 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)

**Noise and Vibration**

- E7. 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)

**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)

**Special Permits**

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

The 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

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DEVELOPMENT APPLICATION NO. 302/20**

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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**

Eg. 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)

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**Construction Hours**

E10. Building construction and works must be restricted to within the hours of 7.00 am to 5.00 pm Monday to Friday and on Saturday to within the hours of 8.00 am to 1.00 pm inclusive, with no work on Sundays and Public Holidays.

Demolition and excavation works must be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only. For the purposes of this condition:

- a) "Building construction" means any physical activity on the site involved in the erection of a structure, cladding, external finish, formwork, fixture, fitting of service installation and the unloading of plant, machinery, materials or the like.
- b) "Demolition works" means any physical activity to tear down or break up a structure (or part thereof) or surface, or the like, and includes the loading of demolition waste and the unloading of plant or machinery.
- c) "Excavation work" means the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders, or the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site and includes the unloading of plant or machinery associated with excavation work.

All builders, excavators must display, on-site, their twenty-four (24) hour contact telephone number, which is to be clearly visible and legible from any public place adjoining the site.

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

**Out of Hours Work Permits**

E11. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is at risk**. Applications which seek a variation to construction hours solely to benefit the developer will require the lodgement and favourable determination of a modification application pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act 1979.

Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.
- 2) Applications for out of hour's works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.



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- 3) Examples of activities for which permits may be granted include:
- the erection of awnings,
  - footpath, road and other infrastructure works which can not be carried out for public convenience reasons within normal hours,
  - the erection and removal of hoardings and site cranes, and
  - craneage of materials which cannot be done for public convenience reasons within normal working hours.
- 4) Examples of activities for which permits WILL NOT be granted include;
- extended concrete pours
  - works which are solely to convenience the developer or client, and
  - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

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

**Site Amenities and Facilities**

- E12. 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 work place determines the type of amenities required.

Further information and details can be obtained from the Internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

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

**Health and Safety**

- E13. 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](http://www.workcover.nsw.gov.au)

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

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DEVELOPMENT APPLICATION NO. 302/20**

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**Prohibition on Use of Pavements**

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

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

**Plant & Equipment Kept Within Site**

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

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

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

***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)

**Appointment of a Principal Certifying Authority (PCA)**

- F2. 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**

- F3. 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.

#### **4 HOLT STREET MCMAHONS POINT DEVELOPMENT APPLICATION NO. 302/20**

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

#### **Occupation Certificate**

F4. 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**

F5. 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**

F6. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least 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)

#### **Site Sign**

F7. 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)

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**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)

**Certification- Civil Works**

G2. a) An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

**Works as Executed Drawings and Video (Modified to include CCTV specifications)**

G3. A works-as-executed survey drawing (W.A.E.) of the completed stormwater drainage system must be obtained. The W.A.E. survey drawing must show the alignment, depth and grade of the stormwater drainage pipelines, pits and ancillary plumbing. The W.A.E survey drawing must be reviewed by a qualified and practising civil engineer and certification provided to the Certifying Authority that the as-built system achieves the design intent of the plans approved with the Construction Certificate. Certification must be provided with the W.A.E survey drawing to the Certifying Authority prior to the issue of an Occupation Certificate.

CCTV inspection of conduits shall be conducted in accordance with the Conduit Inspection Reporting Code of Australia WAS 05-2013.

The camera, transportation unit, distance measuring devices, illumination systems and ancillary equipment shall be used suitable for the conduit size, material and conditions under which the inspection is undertaken.

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The camera shall be steerable and be able to negotiate bends within the drainage pipe. The use of a pushrod camera may only be acceptable for pipe diameters less than 150mm or where a steerable camera cannot navigate.

A colour camera shall be used which has remotely operated automatic and/or manual adjustment of the focus and iris to allow optimum picture quality to be achieved.

The camera lens shall be capable of viewing the extremities of the conduit and panning and or tilting to view the lateral connections and defects or features at and position around the conduit regardless of the direction of travel of the camera in the main conduit.

The adjustment of focus and iris shall provide a focal range from 15 mm to infinity. The distance along the conduit in focus from the initial point of observation shall be a minimum of four times the vertical height of the conduit.

Where required, specialised instruments, apparatus and/or software shall be used to facilitate measurement of parameters to determine acceptance. Hardware and software used in measuring the parameters shall be correctly calibrated for each application using the manufacturer's methods.

For circular or regular shaped conduits, the camera shall be positioned centrally,  $\pm 10\%$  of the vertical and horizontal diameter, within the conduit.

A copy of the WAE survey drawing, certification and CCTV inspection footage must be submitted to the Council if it is not the Certifying Authority.

(Reason: Compliance with the Consent)

**Damage to Adjoining Properties**

G4. 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**

G5. 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)

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**Damage to Adjoining Properties**

- G6. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying:
- a) whether any damage to adjoining properties has occurred as a result of the development;
  - b) the nature and extent of any damage caused to the adjoining property as a result of the development;
  - c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
  - d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
  - e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation survey and reports required to be provided to the Certifying Authority in accordance with this consent.

Where works required to rectify any damage caused to adjoining property as a result of the development identified in the report and certification have not been carried out, a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible prior to the issue of an Occupation Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To ensure adjoining owner's property rights are protected in so far as possible)

***I. On-Going / Operational Conditions*****Noise & Vibration**

- II. Use of premises must not create offensive noise within the meaning of the Protection of the Environment Operations Act, 1997.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)



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DEVELOPMENT APPLICATION NO. 302/20**Page 26 of 26

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**Noise and Vibration Impact**

- I2. The on-going use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

**Minimum Headroom for Car Parking**

- I3. Minimum headroom of 2.2m must be provided over all car-parking areas.

(Reason: To ensure compliance with relevant standards and provide appropriate headroom)







## SCHEDULE OF DRAWINGS

ARCHITECTURAL	SCALE
DA00 COVER	N/A
DA01 SITE ANALYSIS	1:200 @A3
DA02 DEMOLITION PLAN	1:100 @A3
DA03 GROUND FLOOR PLAN	1:100 @A3
DA04 LEVEL 1 PLAN	1:100 @A3
DA05 LEVEL 2 PLAN	1:100 @A3
DA06 ROOF PLAN	1:100 @A3
DA07 ELEVATIONS	1:100 @A3
DA08 ELEVATION	1:100 @A3
DA09 ELEVATION	1:100 @A3
DA10 SECTION A	1:100 @A3
DA11 SECTION B	1:100 @A3
DA12-14 SHADOW DIAGRAMS	1:500 @A3
DA15 VIEW SHARING DIAGRAMS	NTS @A3

## CONSULTANTS

PLANNING	GM PLANNING
HERITAGE	GRAHAM HALL & PARTNERS
TRAFFIC	STANBURY TRAFFIC PLANNING
STORMWATER	QUANTAM ENGINEERS
ACCESS	VISTA ACCESS ARCHITECTS

# PROPOSED ALTERATIONS & ADDITIONS TO AN EXISTING BUILDING

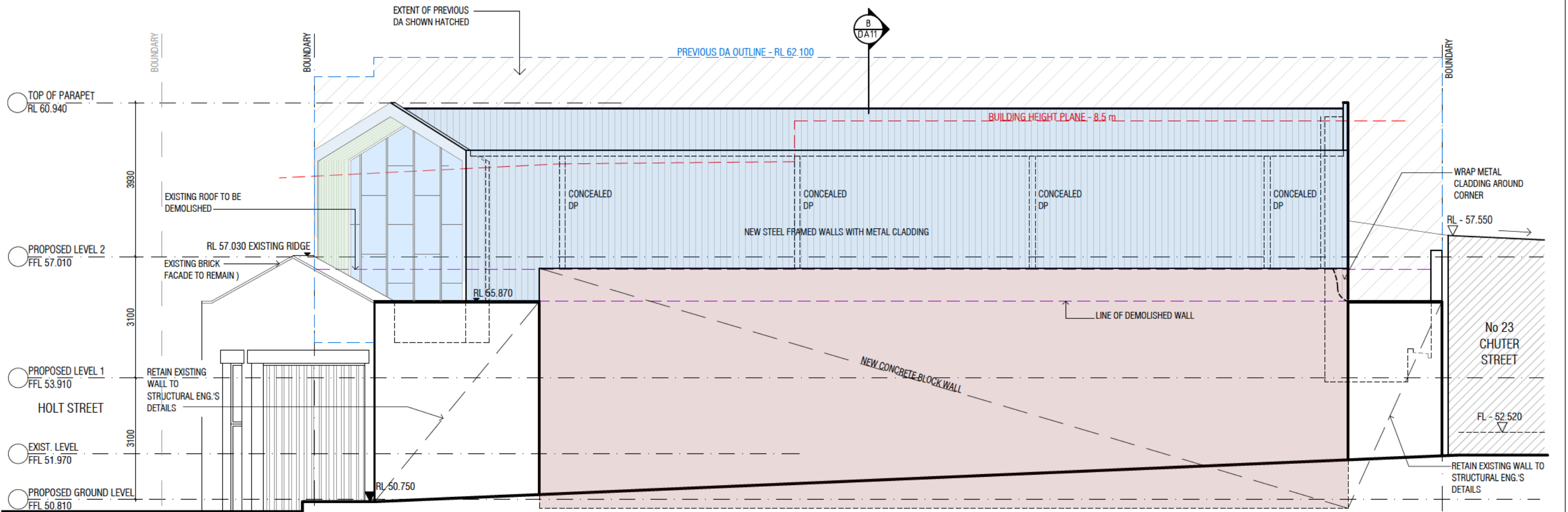
ADDRESS:  
4 HOLT STREET  
MCMAHONS POINT, NSW 2060  
LOT 104, DP 1185623

DEVELOPMENT APPLICATION

FOR: AL RASO PTY LTD  
NOVEMBER 2020

**o2 architecture**

EXTERNAL FINISHES SCHEDULE		PROPOSED WORKS - COLOUR LEGEND <small>(AS PER COUNCIL COLOURS)</small>		LEGEND	
	METAL CLADDING		BRICK		EXISTING STRUCTURE TO REMAIN
	ROOF SHEETING - TO MATCH WALLS		CONCRETE / CONCRETE BLOCK		EXISTING STRUCTURE TO BE REMOVED
	ALUMINIUM WINDOW FRAMES - SHALE GREY		TILE		EXTENT OF PREVIOUS DA
	ALUMINIUM LOUVRES - SHALE GREY		FC SHEET / CEMENT RENDER		
	PERFORATED GARAGE DOOR - SURFMIST		GLASS		
	ALUMINIUM WINDOW FRAMES - MONUMENT		TIMBER		
			STEEL & GALV. IRON		



**EAST ELEVATION**  
1:100 @ A3

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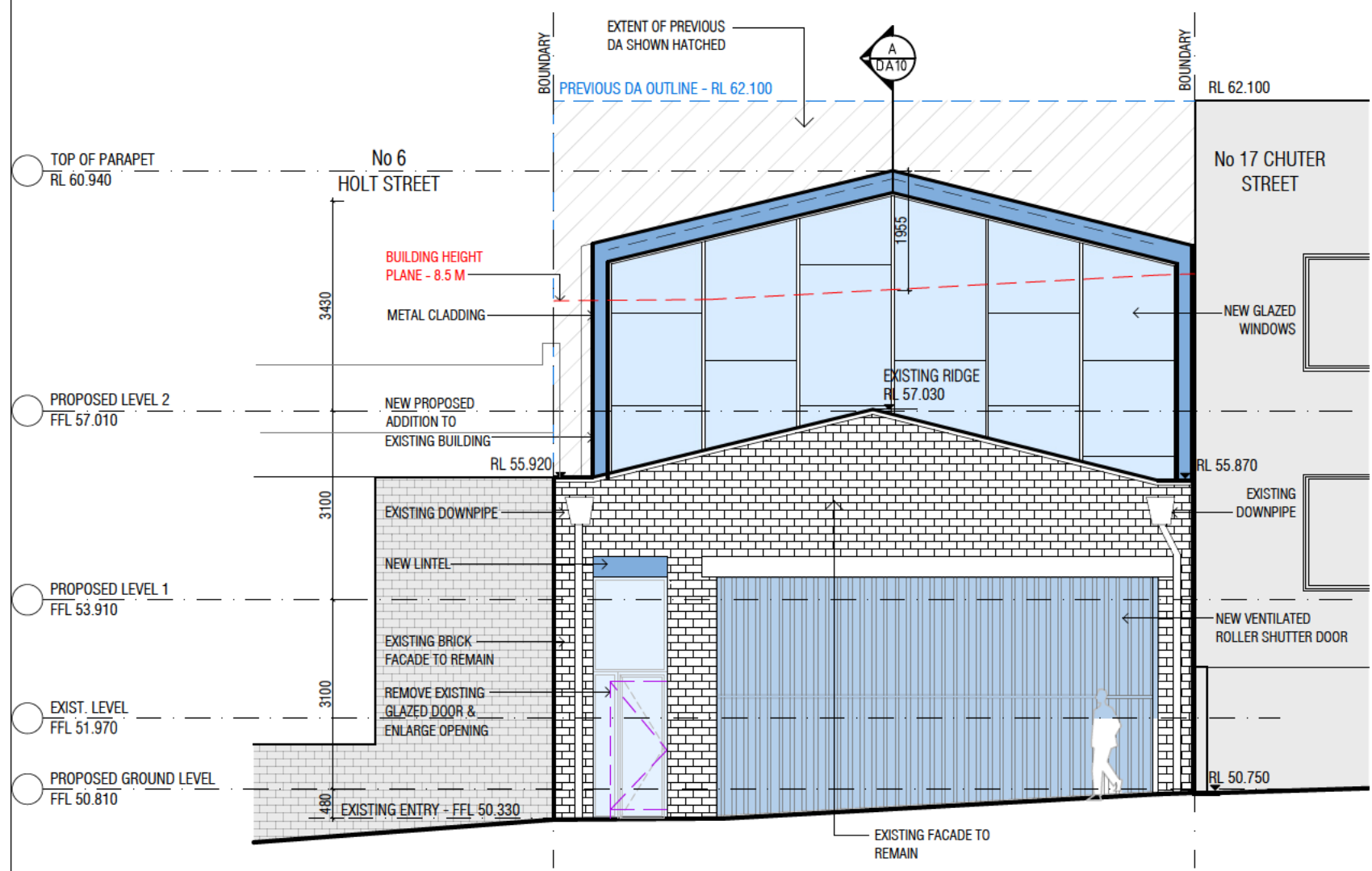
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project management  
masterplanning

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nominated architect: stefan lombardo nsw reg no.8715

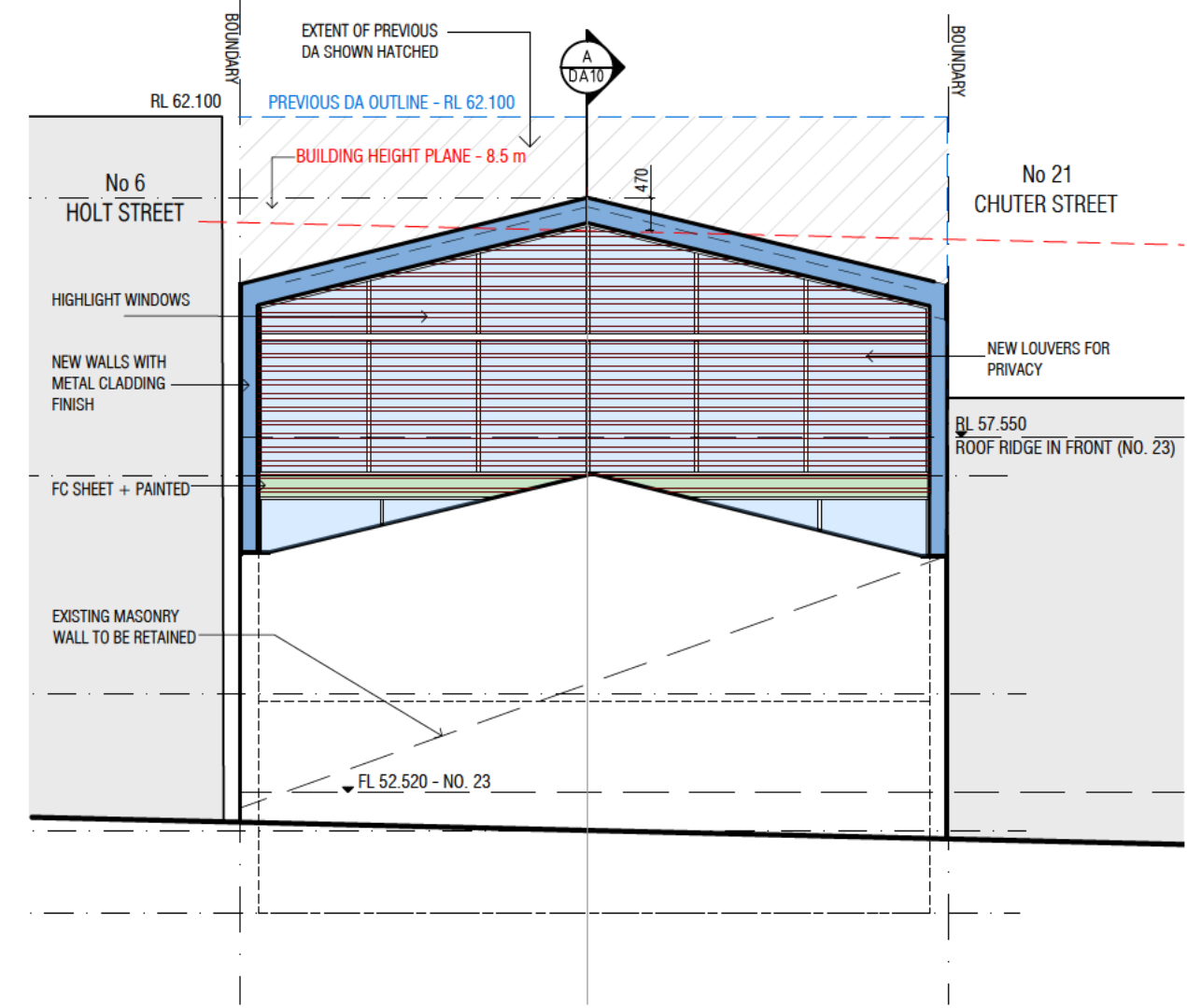
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DRAWING TITLE		
EAST ELEVATION		
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EXTERNAL FINISHES SCHEDULE		PROPOSED WORKS - COLOUR LEGEND <small>(AS PER COUNCIL COLOURS)</small>		LEGEND	
	METAL CLADDING		BRICK		EXISTING STRUCTURE TO REMAIN
	ALUMINIUM WINDOW FRAMES - SHALE GREY		CONCRETE / CONCRETE BLOCK		EXISTING STRUCTURE TO BE REMOVED
	PERFORATED GARAGE DOOR - SURFMIST		TILE		EXTENT OF PREVIOUS DA
	ROOF SHEETING - TO MATCH WALLS		FC SHEET / CEMENT RENDER		
	ALUMINIUM LOUVRES - SHALE GREY		GLASS		
	ALUMINIUM WINDOW FRAMES - MONUMENT		TIMBER		
			STEEL & GALV. IRON		



**SOUTH ELEVATION - FRONT ENTRY**  
1:100 @ A3



**NORTH ELEVATION - REAR**  
1:100 @ A3

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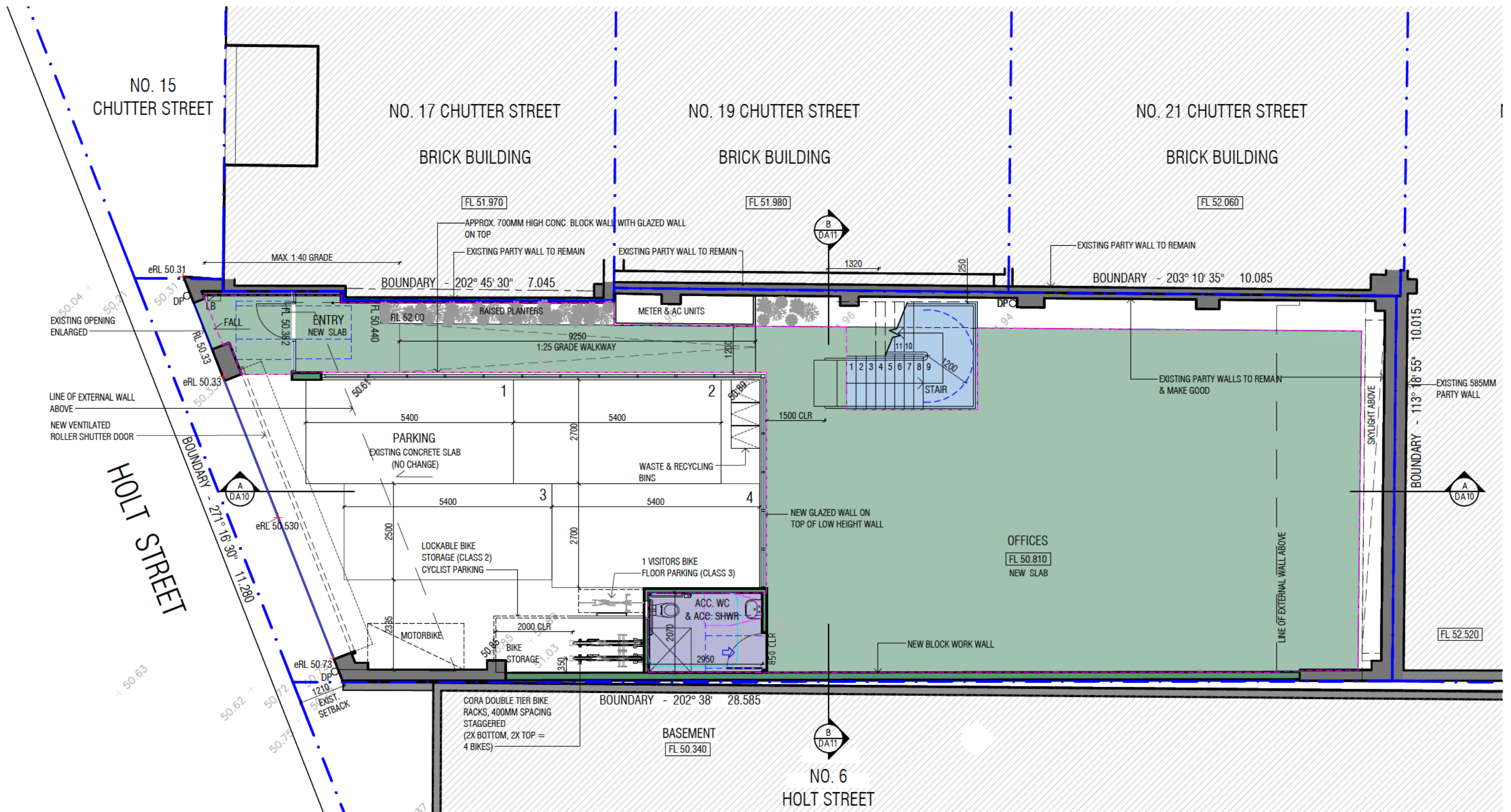
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nominated architect: stefan lombardo nsw reg no.8715

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**PROPOSED GROUND FLOOR PLAN**  
1:100 @ A3

PROPOSED WORKS - COLOUR LEGEND <small>(AS PER COUNCIL COLOURS)</small>		LEGEND	
	BRICK		EXISTING STRUCTURE TO REMAIN
	CONCRETE / CONCRETE BLOCK		EXISTING STRUCTURE TO BE REMOVED
	GLASS		PREVIOUS DA OUTLINE
	TILE		
	CEMENT RENDER		
	TIMBER		
	STEEL & GALV. IRON		

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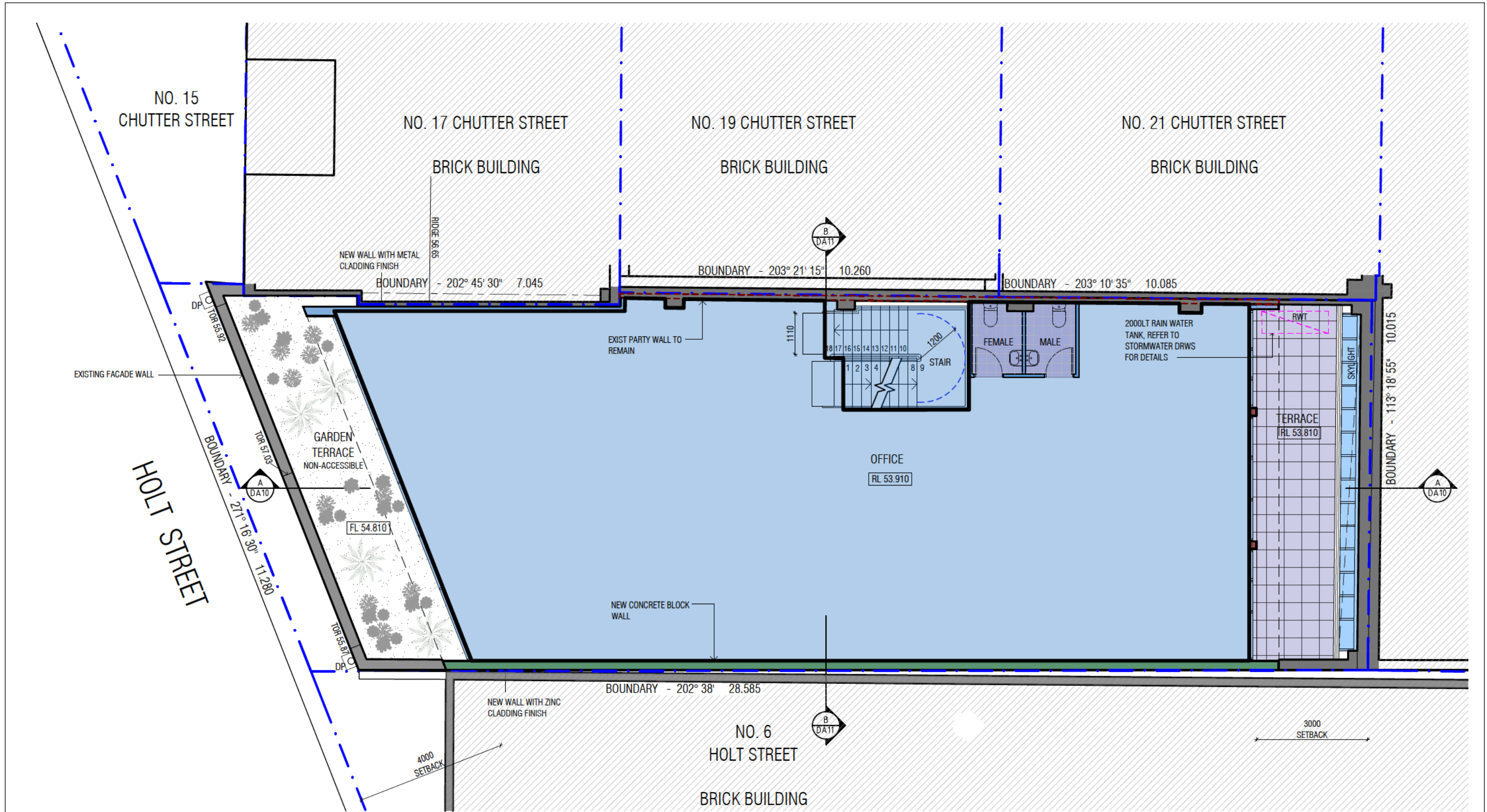
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nominated architect: stefan lombardo nsw reg no.8715

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PROPOSED GROUND FLOOR PLAN			
DATE	SCALE	DRAWN I.V.G.U.	REV
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JOB NO.	DRW NO.		
2001	DA03		A





**PROPOSED LEVEL 1 PLAN**  
1:100 @ A3

PROPOSED WORKS - COLOUR LEGEND (AS PER COUNCIL COLOURS)		LEGEND	
	BRICK		EXISTING STRUCTURE TO REMAIN
	CONCRETE / CONCRETE BLOCK		EXISTING STRUCTURE TO BE REMOVED
	TILE		PREVIOUS DA OUTLINE
	CEMENT RENDER		
	GLASS		
	TIMBER		
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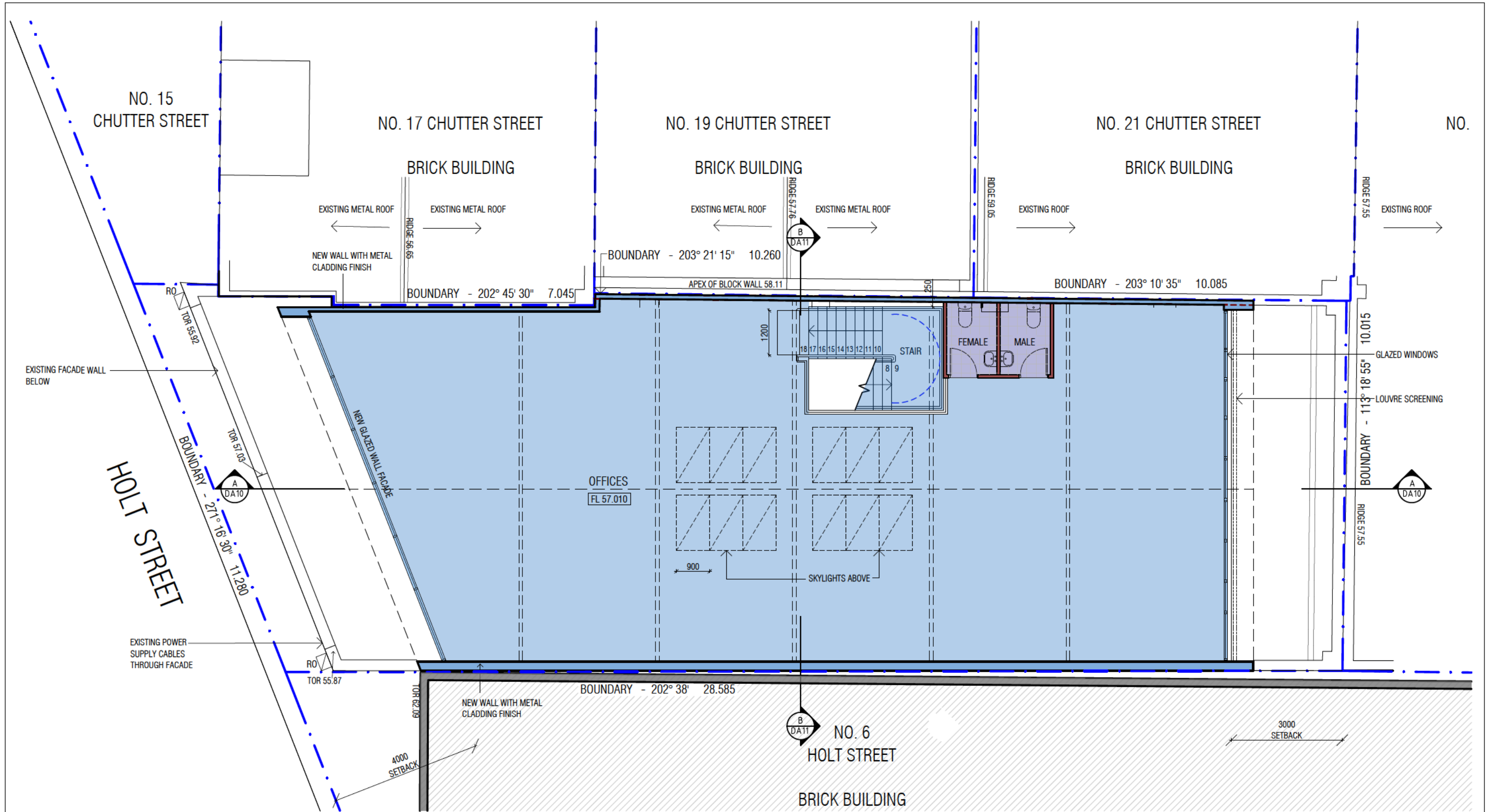
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PROPOSED LEVEL 1 PLAN			
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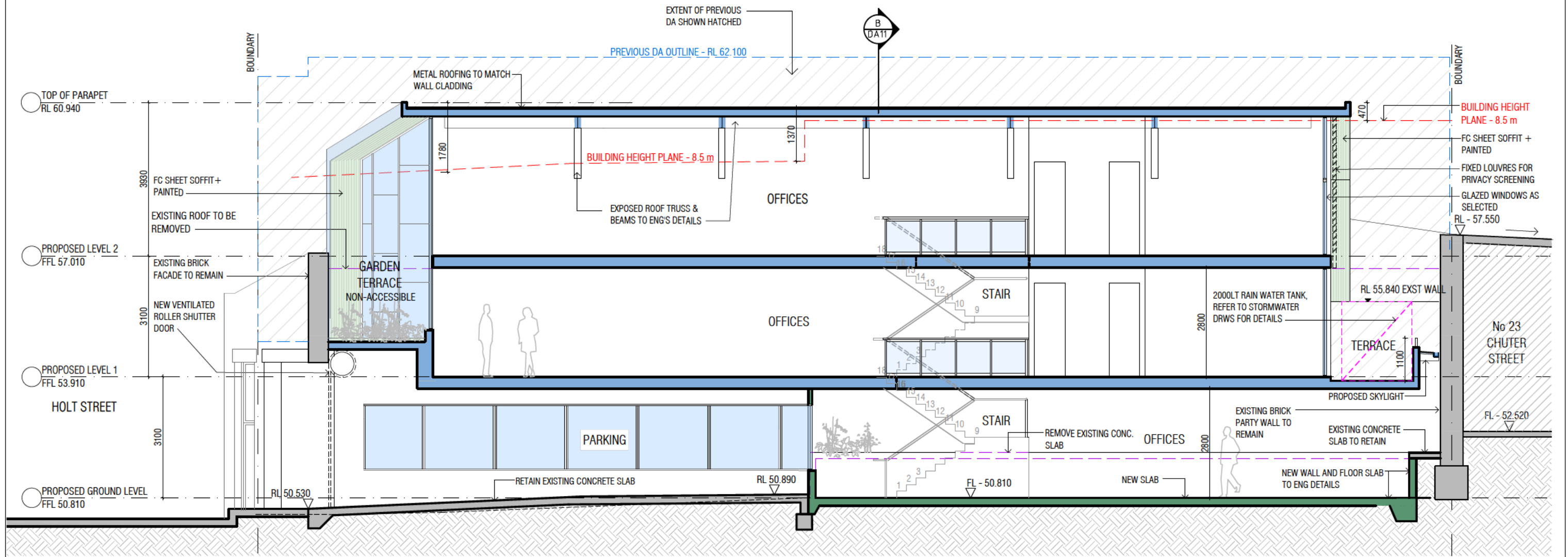


**PROPOSED LEVEL 2 PLAN**  
1:100 @ A3

PROPOSED WORKS - COLOUR LEGEND <small>(AS PER COUNCIL COLOURS)</small>		LEGEND	
	BRICK		EXISTING STRUCTURE TO REMAIN
	CONCRETE / CONCRETE BLOCK		EXISTING STRUCTURE TO BE REMOVED
	TILE		PREVIOUS DA OUTLINE
	CEMENT RENDER		
	GLASS		
	TIMBER		
	STEEL & GALV. IRON		

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	ROOF SHEETING - TO MATCH WALLS		CONCRETE / CONCRETE BLOCK		EXISTING STRUCTURE TO BE REMOVED
	ALUMINIUM WINDOW FRAMES - SHALE GREY		TILE		EXTENT OF PREVIOUS DA
	ALUMINIUM LOUVRES - SHALE GREY		FC SHEET / CEMENT RENDER		
	PERFORATED GARAGE DOOR - SURFMIST		GLASS		
	ALUMINIUM WINDOW FRAMES - MONUMENT		TIMBER		
			STEEL & GALV. IRON		



**SECTION A**  
1:100 @ A3

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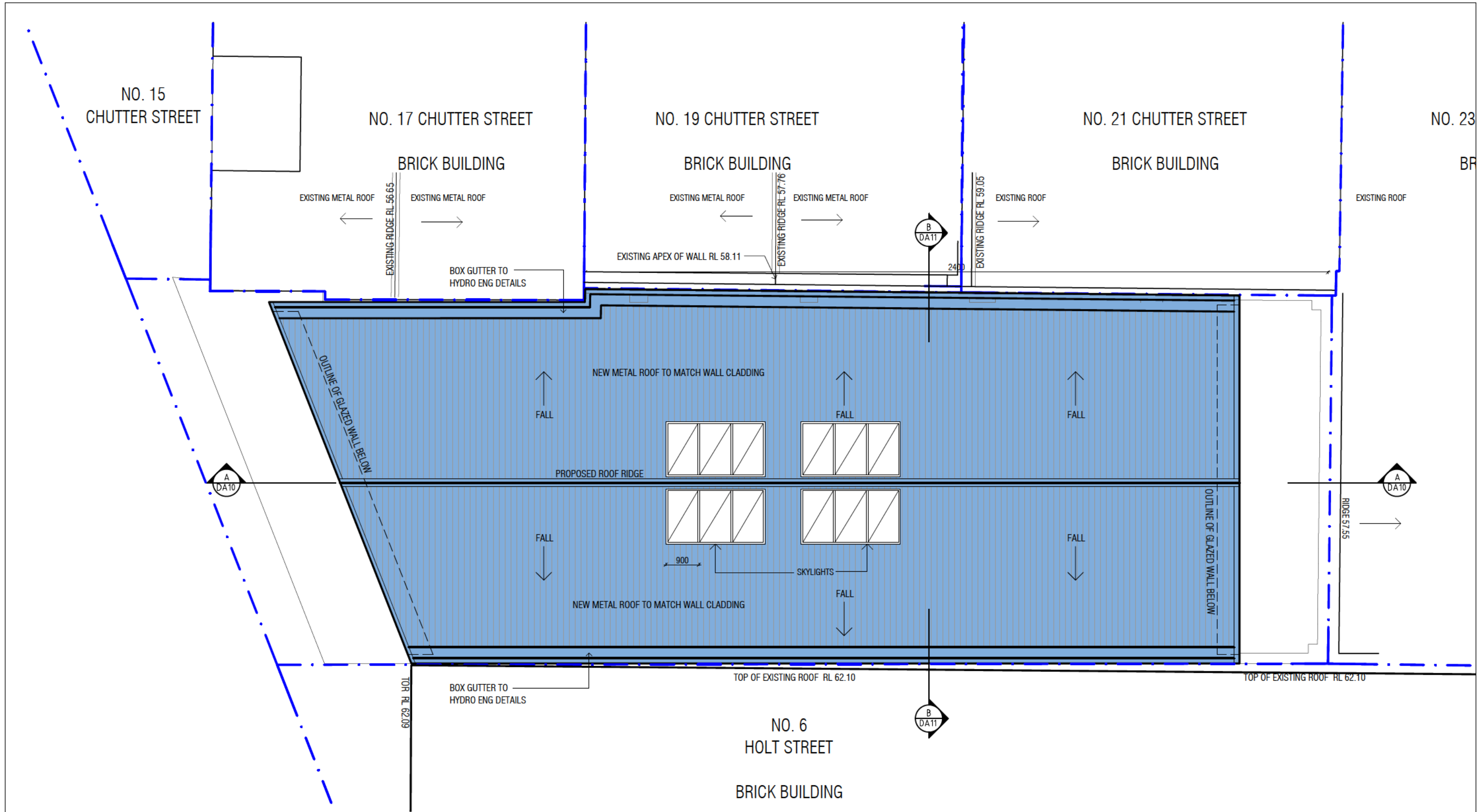
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LONGITUDINAL SECTION A		
DATE	SCALE	DRAWN IV/GU
JULY 2020	1:100 @ A3	
JOB NO.	DRW NO.	REV
2001	DA10	A





**PROPOSED ROOF PLAN**  
1:100 @ A3

<b>PROPOSED WORKS - COLOUR LEGEND</b> <i>(AS PER COUNCIL COLOURS)</i>		<b>LEGEND</b>	
	BRICK		CEMENT RENDER
	CONCRETE / CONCRETE BLOCK		GLASS
	TILE		TIMBER
	STEEL & GALV. IRON		EXISTING STRUCTURE TO REMAIN
			EXISTING STRUCTURE TO BE REMOVED
			PREVIOUS DA OUTLINE

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DRAWING TITLE <b>ROOF PLAN</b>		
DATE JULY 2020	SCALE 1:100 @ A3	DRAWN GU
JOB NO. <b>2001</b>	DRW NO. <b>DA06</b>	REV <b>A</b>

EXTERNAL FINISHES SCHEDULE

	METAL CLADDING		ROOF SHEETING - TO MATCH WALLS
	ALUMINIUM WINDOW FRAMES - SHALE GREY		ALUMINIUM LOUVRES - SHALE GREY
	PERFORATED GARAGE DOOR - SURFMIST		ALUMINIUM WINDOW FRAMES - MONUMENT

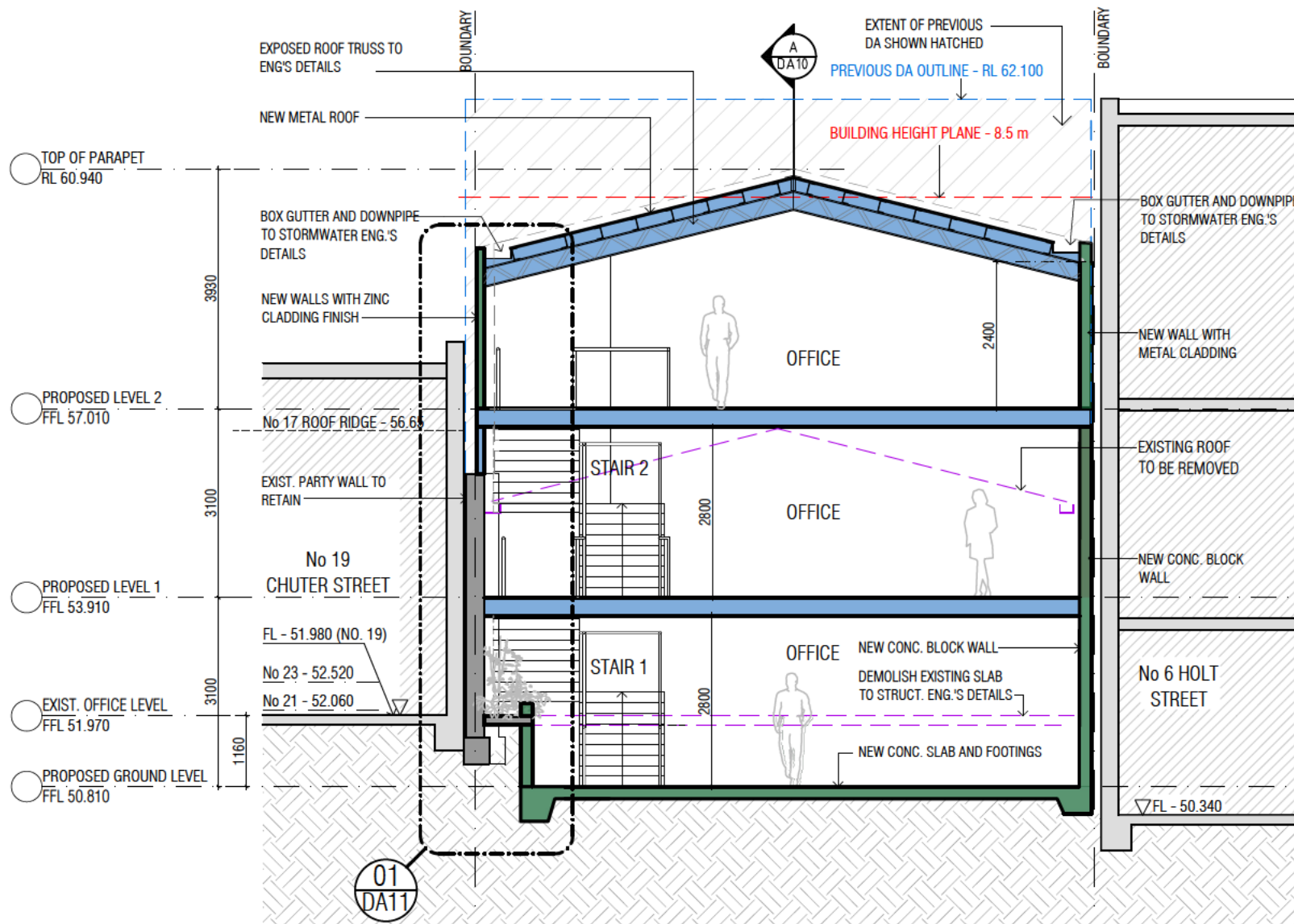
PROPOSED WORKS - COLOUR LEGEND

(AS PER COUNCIL COLOURS)

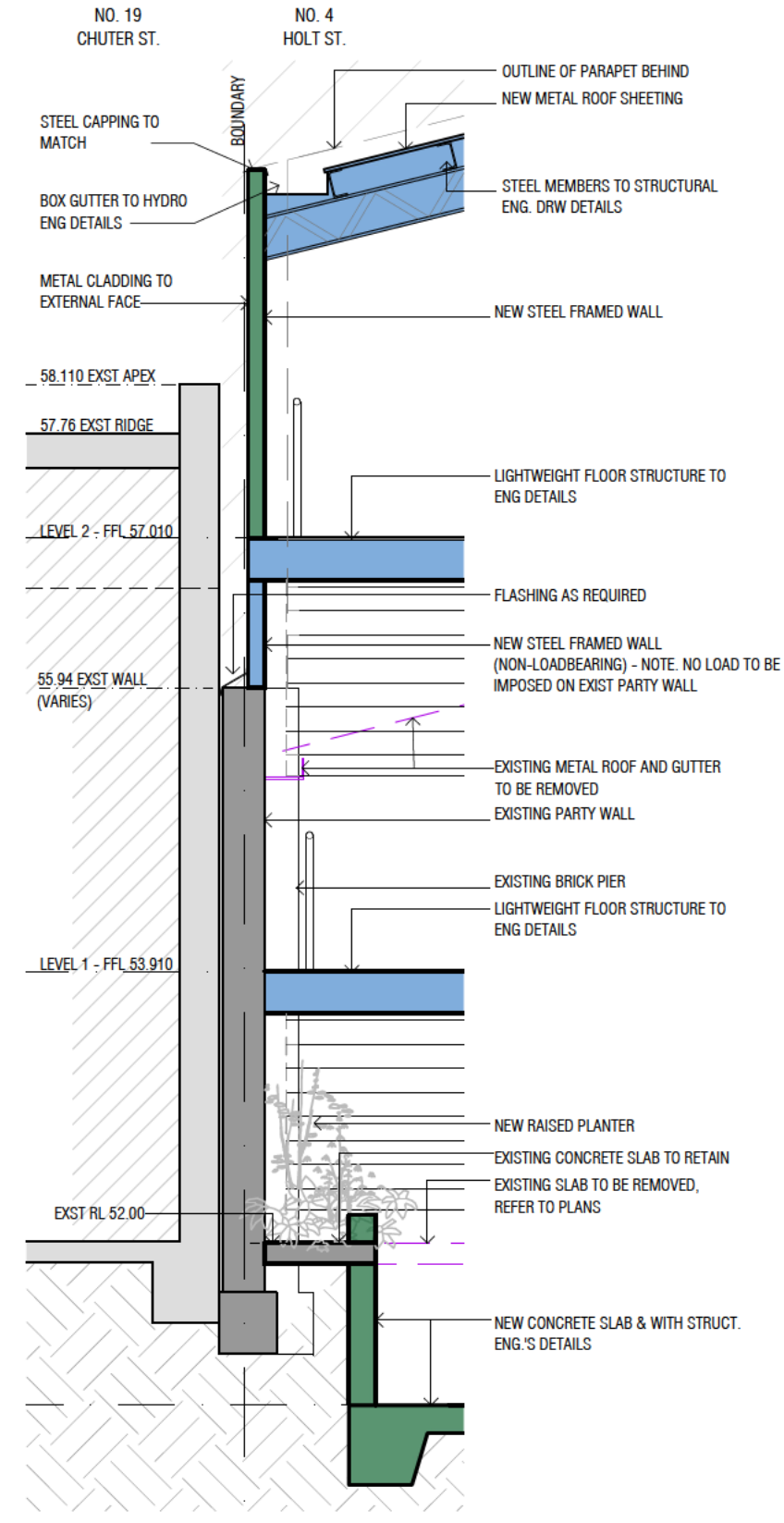
	BRICK
	CONCRETE / CONCRETE BLOCK
	TILE
	FC SHEET / CEMENT RENDER
	GLASS
	TIMBER
	STEEL & GALV. IRON

LEGEND

	EXISTING STRUCTURE TO REMAIN
	EXISTING STRUCTURE TO BE REMOVED
	EXTENT OF PREVIOUS DA



SECTION B  
1:100 @ A3



SECTION CALLOUT 01  
1:50 @ A3

NOTE:  
NO NEW LOADS TO BE APPLIED TO EXISTING PARTY WALLS.

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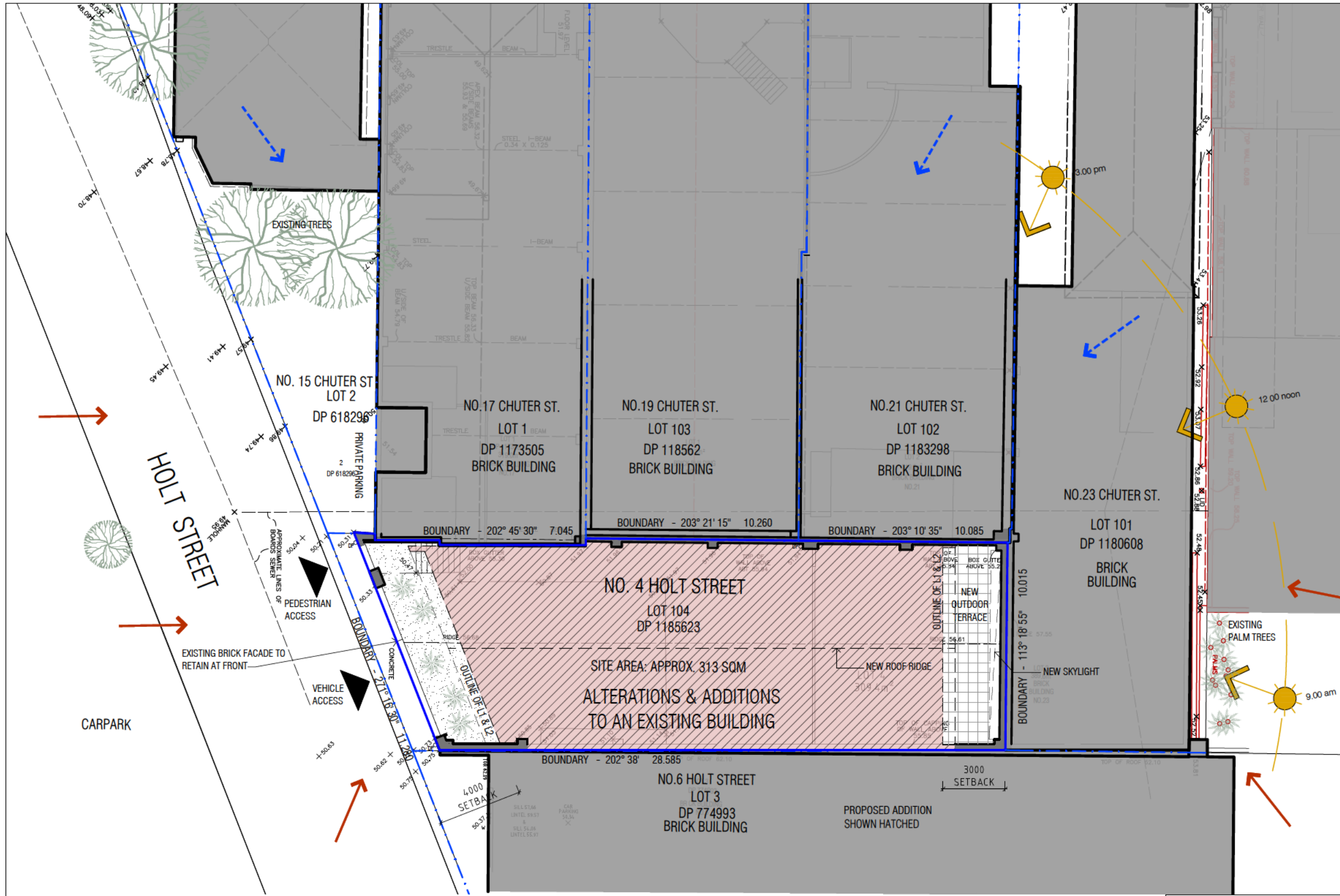
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SECTION B			
DATE	SCALE	DRAWN	REV
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2001	DA11	A	





**LEGEND**

- EXISTING BUILDINGS
- NEW PROPOSED WORKS
- SITE BOUNDARY

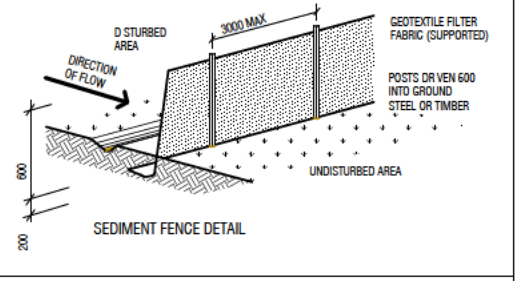


**01 LOCATION PLAN**  
NTS

- NOTES**
- STORMWATER NOT SHOWN ON THIS PLAN. REFER TO STORMWATER ENGINEER'S DRAWINGS FOR ALL STORMWATER DESIGN.
  - REFER TO GROUND FLOOR PLAN FOR ON SITE PARKING LAYOUT.
  - REFER TO DEMOLITION PLAN FOR DEMOLITION DETAILS.

- KEY**
- SITE ENTRY
  - PREVAILING SUMMER WINDS
  - PREVAILING WINTER WINDS
  - SUN DIRECTION - 21st JUNE
  - NOISE SOURCE
  - EXISTING SURVEY LEVEL
  - EXISTING TREES TO REMAIN

**SEDIMENT CONTROL**  
INSTALL SEDIMENT CONTROL STRUCTURES IN LOCATIONS INDICATED ON THIS DRAWING AND AS OTHERWISE REQUIRED TO CONTROL SEDIMENT DURING ALL EXCAVATIONS AND WHICH EVER AREAS OF THE SITE ARE EXPOSED TO EROSION. CONTROL STRUCTURES TO BE AS DETAILED OR AS OTHERWISE REQUIRED. REVIEW CONTROL MEASURES AND MAINTAIN STRUCTURES DURING CONSTRUCTION. IF ADDITIONAL MEASURES ARE REQUIRED FOR EROSION CONTROL OR BY COUNCIL REQUIREMENTS REFER TO 'URBAN EROSION AND SEDIMENT CONTROL' GUIDELINES PREPARED BY DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT.



**SITE ANALYSIS**  
1:200 @ A3

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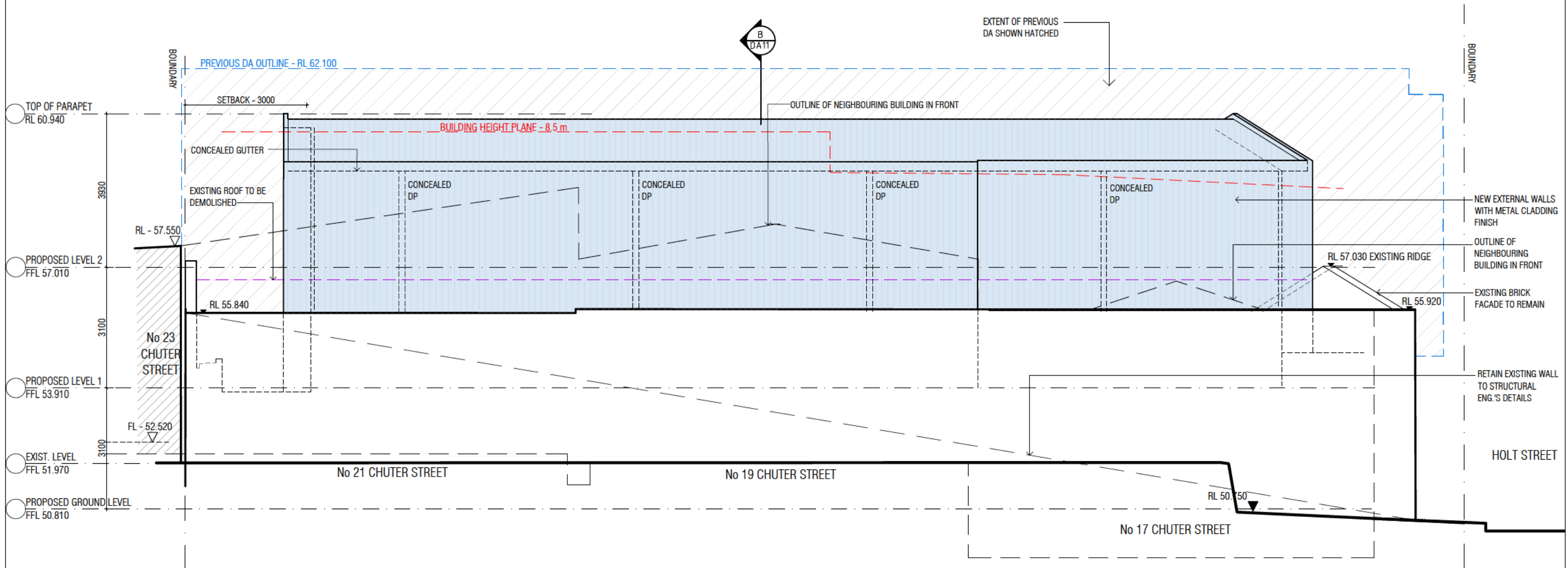
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DRAWING TITLE  
**SITE PLAN & SITE ANALYSIS PLAN**

DATE	JUNE 2020	SCALE	1:200 @ A3	DRAWN IV / GU
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	ALUMINIUM WINDOW FRAMES - MONUMENT		TIMBER		
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WEST ELEVATION  
1:100 @ A3

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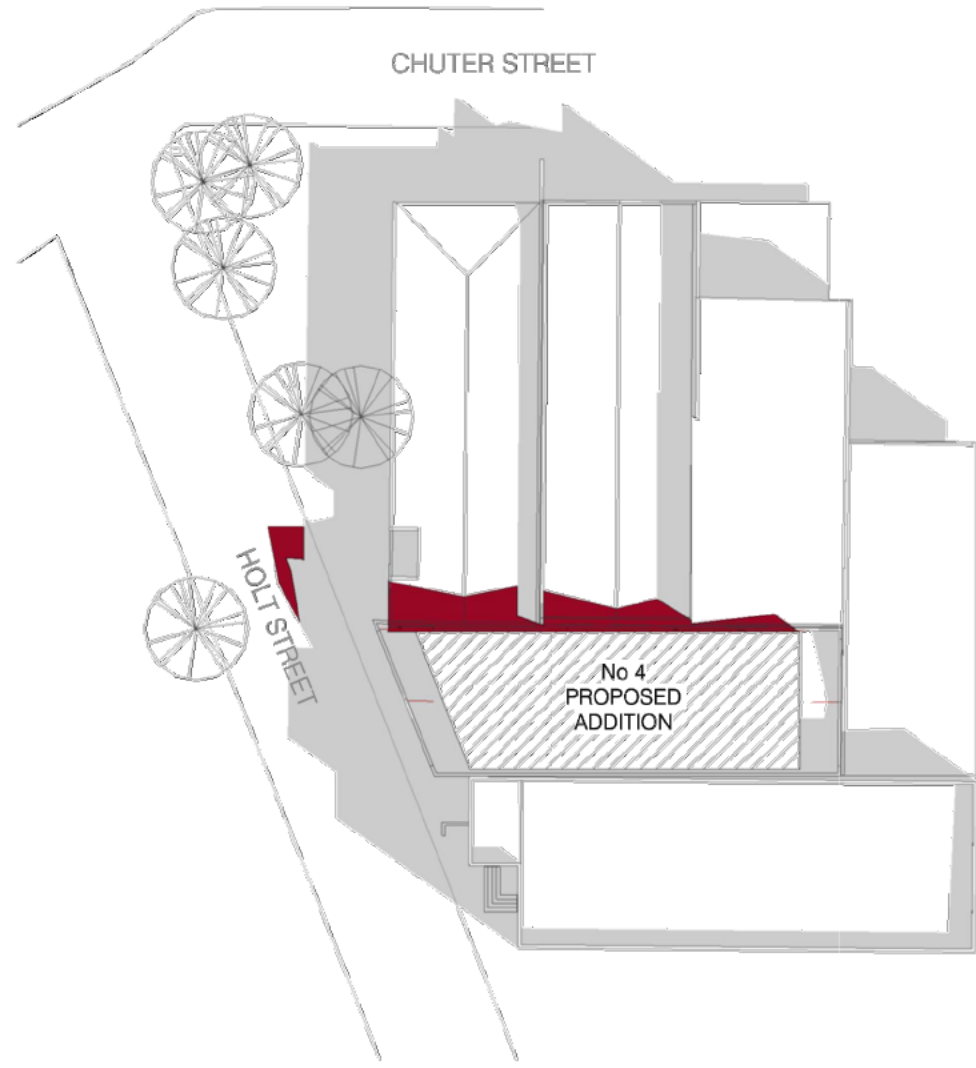
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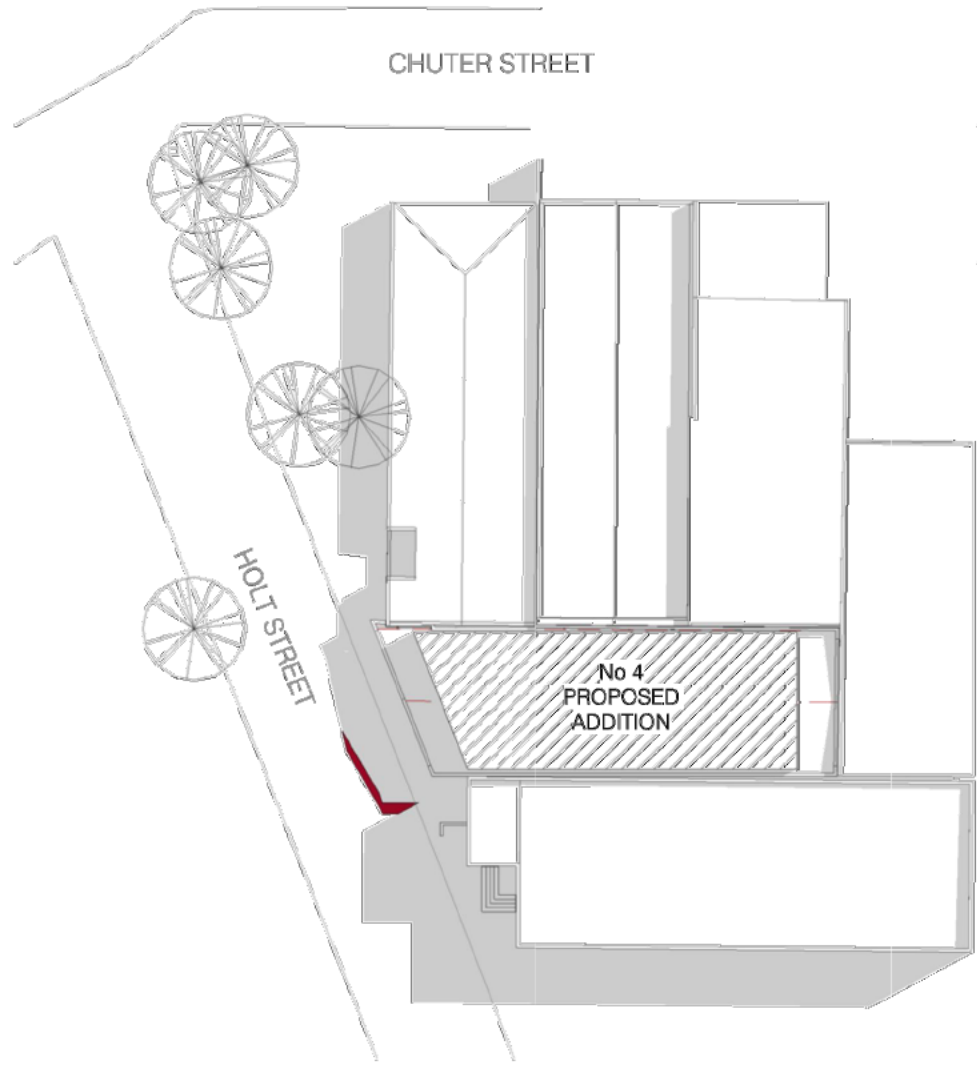
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DRAWING TITLE			
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DATE	SCALE	DRAWN	REV
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JOB NO.	DRW NO.		
2001	DA09		A

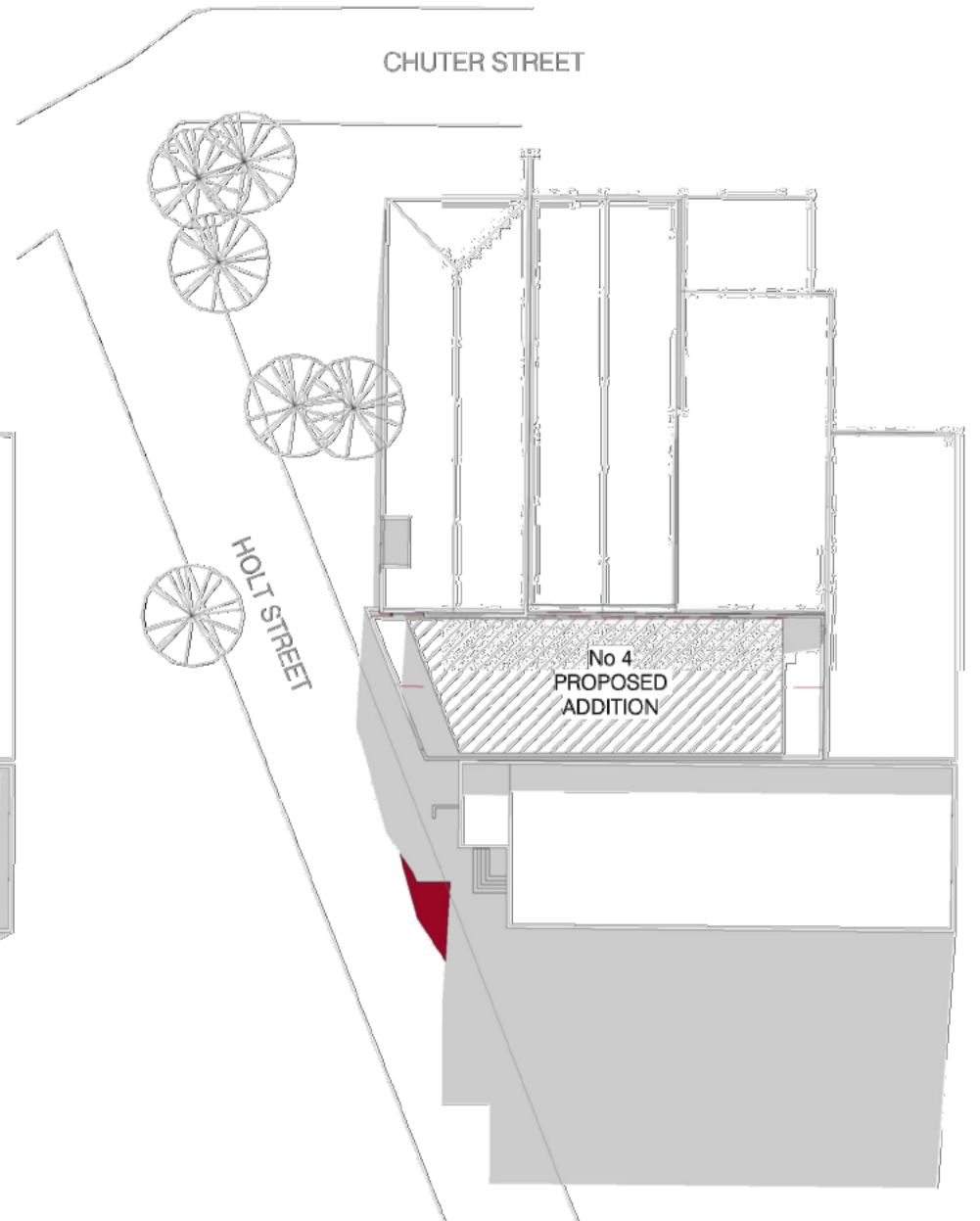




SHADOWS - SEPTEMBER & MARCH 21 9am  
1:500 @ A3



SHADOWS - SEPTEMBER & MARCH 21 12pm  
1:500 @ A3



SHADOWS - SEPTEMBER & MARCH 21 3pm  
1:500 @ A3

- EXISTING SHADOWS
- ADDITIONAL SHADOW IMPACT

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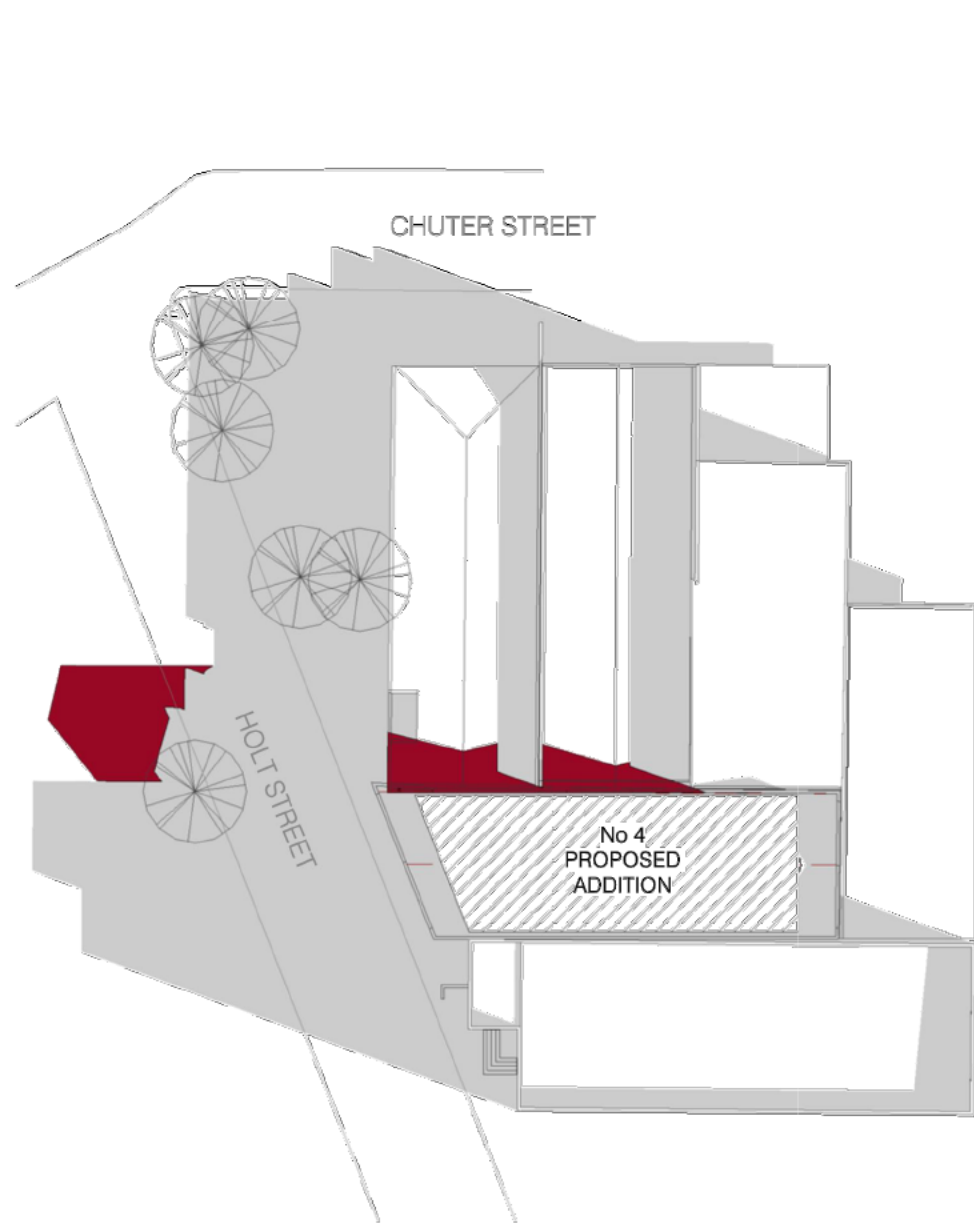
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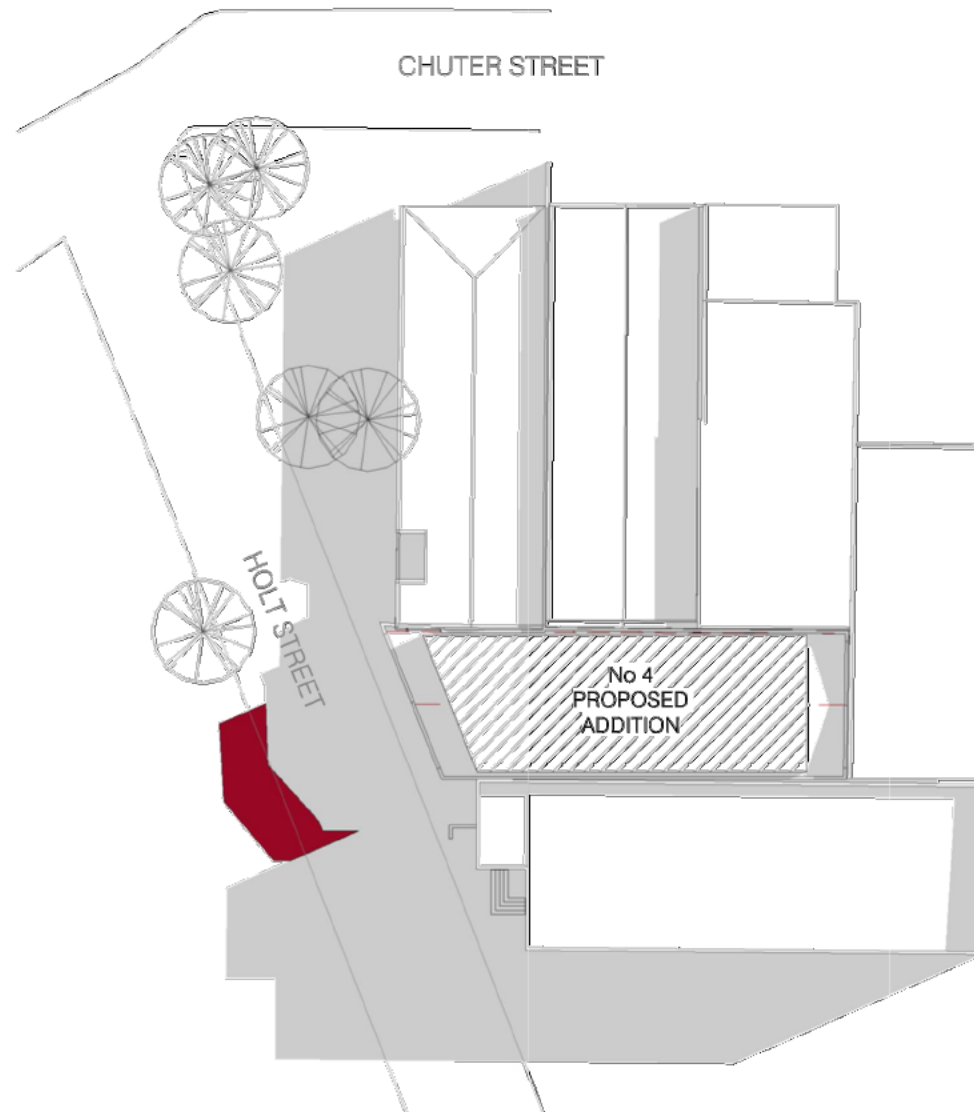


DRAWING TITLE  
SHADOWS - SPRING & AUTUMN EQUINOX

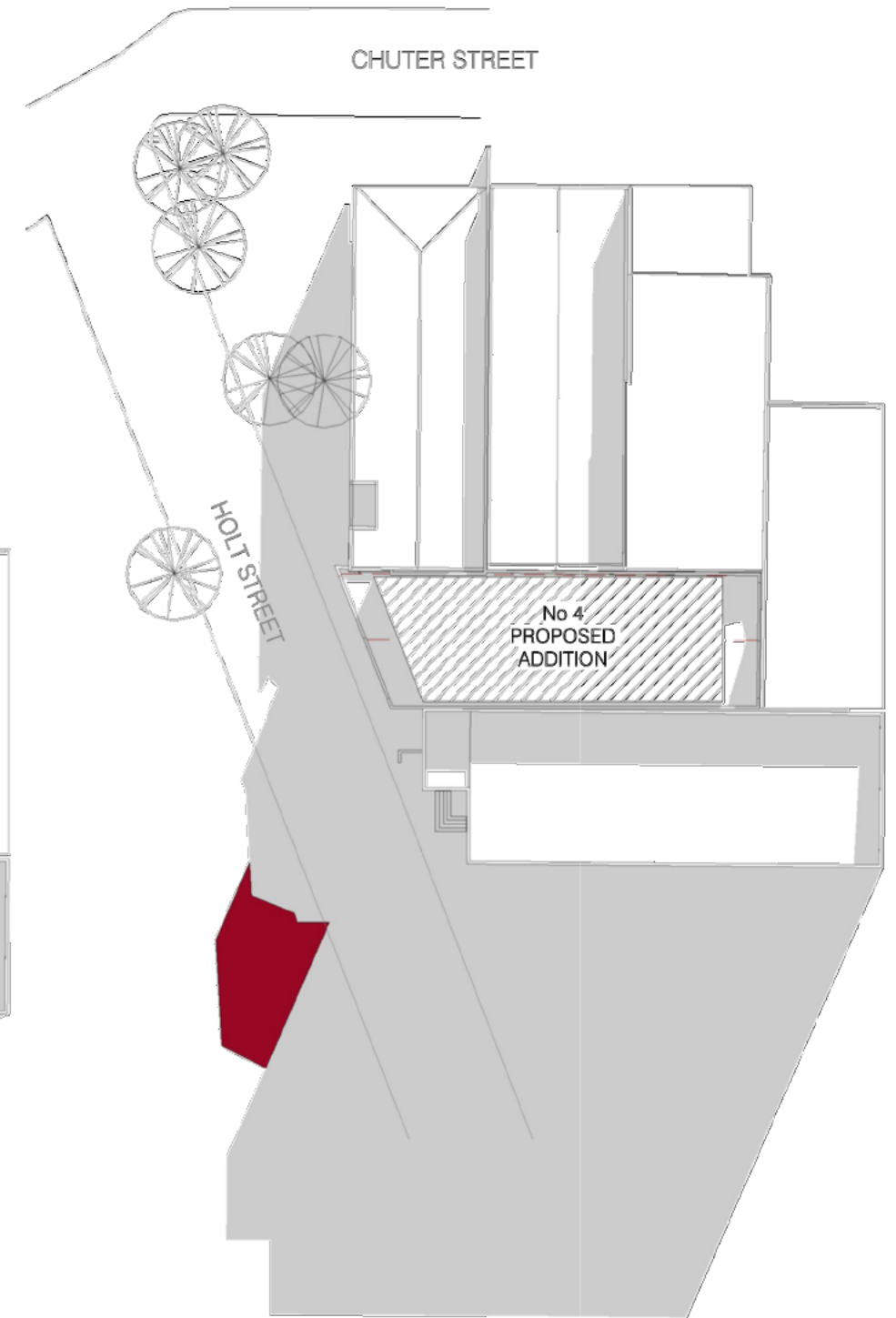
DATE	NOV 2020	SCALE	1:500 @ A3	DRAWN GM
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SHADOWS - JUNE 21 9am  
1:500 @ A3



SHADOWS - JUNE 21 12pm  
1:500 @ A3



SHADOWS - JUNE 21 3pm  
1:500 @ A3

- EXISTING SHADOWS
- ADDITIONAL SHADOW IMPACT

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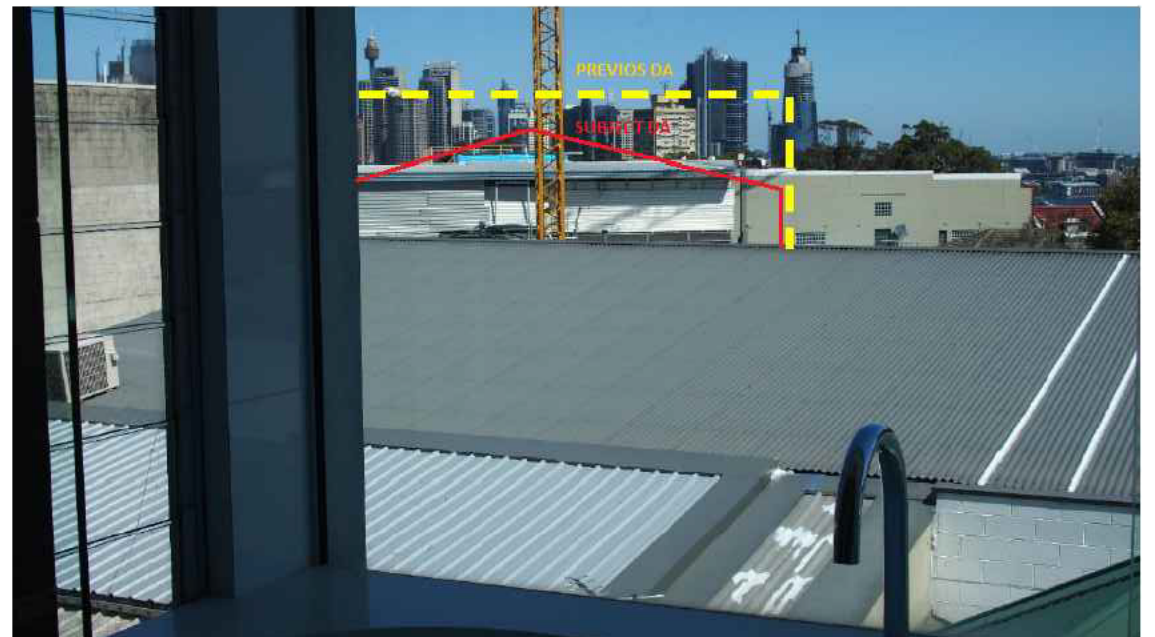
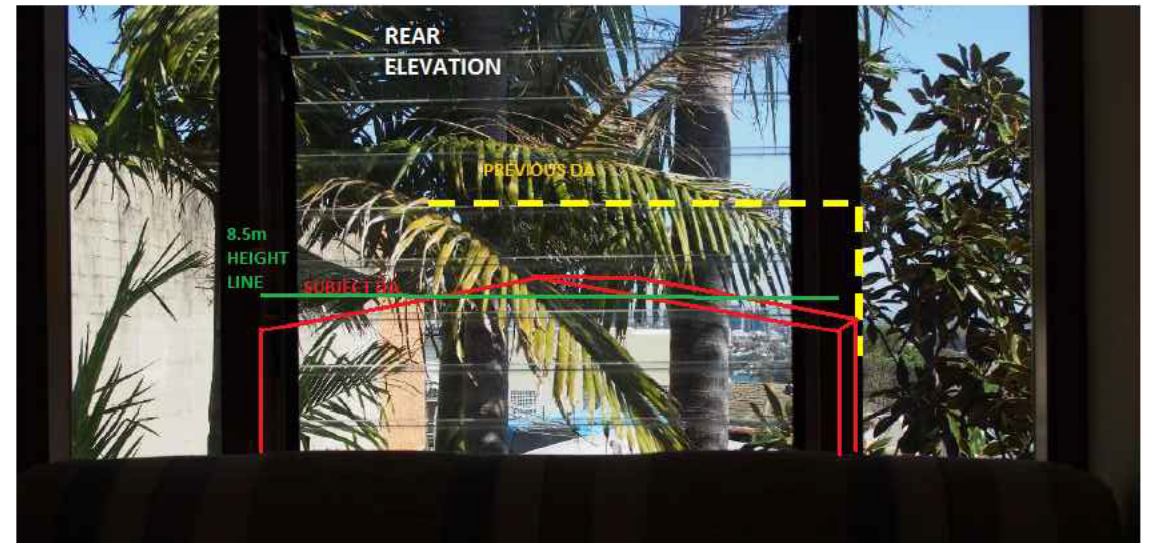
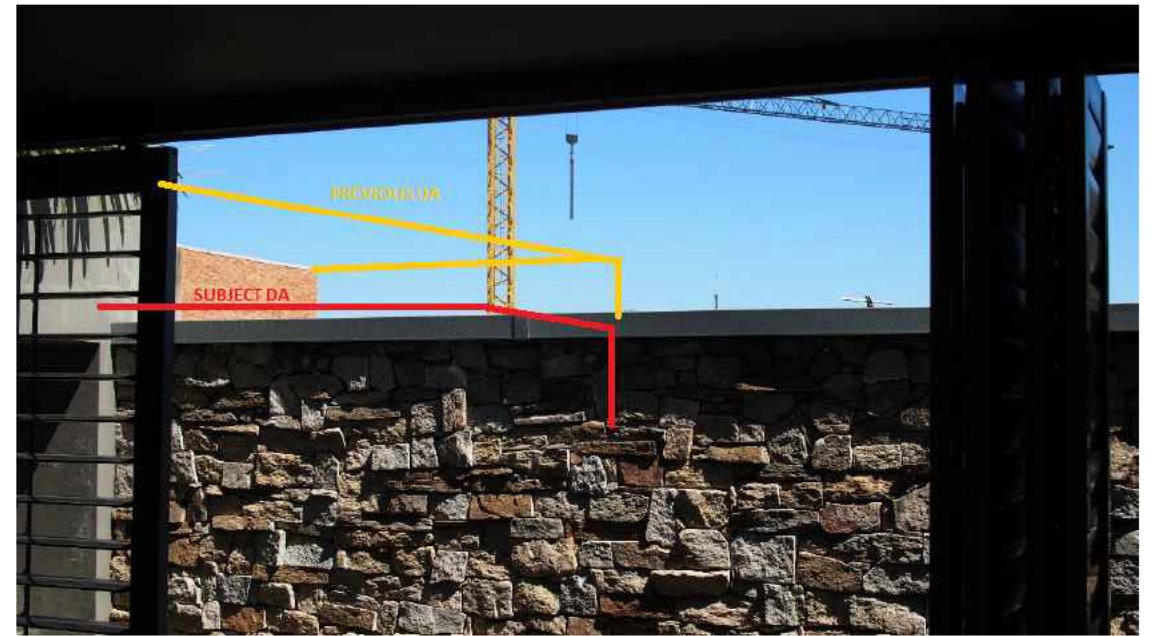
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DRAWING TITLE  
SHADOWS - WINTER SOLSTICE

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DRAWING TITLE  
 VIEW SHARING DIAGRAMS

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Statement of Environmental Effects for part demolition and alterations and additions to the existing building to provide a three (3) level building for future office use at 4 Holt Street McMahons Point.

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11/2020

**CLAUSE 4.6 WRITTEN REQUEST TO CLAUSE  
4.3 HEIGHT OF BUILDINGS AT 4 HOLT STREET  
MCMAHONS POINT**

Statement of Environmental Effects for part demolition and alterations and additions to the existing building to provide a three (3) level building for future office use at 4 Holt Street McMahons Point.

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### **Clause 4.3 Height of Buildings 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.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2A)–(2C) (Repealed)

The questions contained in the DP&I's Guide are addressed below.

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

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

**2. What is the zoning of the land?**

The zoning of the land is IN2 Light Industrial.

**3. What are the objectives of the zone?**

**Zone IN2 Light Industrial**

**1 Objectives of zone**

- To provide a wide range of light industrial, warehouse and related land uses.
- To encourage employment opportunities and to support the viability of centres.
- To minimise any adverse effect of industry on other land uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To support and protect industrial land for industrial uses.
- To encourage a mix of lower scale housing types.
- To permit development that is compatible with the scale and character of the surrounding residential area.

**4. What is the development standard being varied?**

The development standard sought to be varied is the maximum allowable height standard of 8.5m as the site is located within Area I (Map 2A)

Statement of Environmental Effects for part demolition and alterations and additions to the existing building to provide a three (3) level building for future office use at 4 Holt Street McMahons Point.

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**5. Under what Clause is the development standard listed in the environmental planning instrument?**

The development standard is listed under Clause 4.3 Height of Buildings of North Sydney Local Environmental Plan 2013.

**6. What are the objectives of the development standard?**

Clause 4.3 of NSLEP 2013 objectives are as follows:

- (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.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
- (2A)–(2C) *(Repealed)*

**7. What is the numeric value of the development standard in the environmental planning instrument?**

The site is located within Area I (Map 2A) on the Height of Building and the numeric value of the development standard specifies a maximum height permissible of 8.5metres.

**8. What is the proposed numeric value of the development standard in your development application?**

The definition of building height in the Definition section of the NSLEP states as follows:

- building height (or height of building) means—*
- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
  - (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

Utilising this definition, the numerical value of the proposed height exceedance by the building addition will be as follows:

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GM Planning Services

Statement of Environmental Effects for part demolition and alterations and additions to the existing building to provide a three (3) level building for future office use at 4 Holt Street McMahons Point.

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- The front or Holt Street elevation will exceed the height at the roof ridge by 1.955m(1955mm) therefore, to be 10.455m instead of the required 8.5m height development standard.
- The rear elevation will exceed the height at the roof ridge by 0.47m (470mm) therefore, to be being 8.97m instead of the required 8.5m height development standard.

**9. What is the percentage variation (between your proposal and the environmental planning instrument)?**

- The percentage variation for Holt Street will be 23%.
- The percentage variation for the rear elevation will be 5.5%

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

Clause 4.3 objectives of the development standard state:

- (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.

One method to assess whether strict compliance with the development standard is unreasonable or unnecessary in this particular case, the proposal is now considered against the five ways of demonstrating that compliance with a development standard is unreasonable or unnecessary, as set out by Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

These five ways have recently been re-emphasised by Chief Judge Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. It is noted that each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance. All tests are separate and not all tests may be applicable in each case. Therefore, not all tests need to be met.

**1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:**

Drawing No DA10 provides a cross section of the site which reveals that the manmade topography of the site possesses a fall from the rear boundary to Holt Street.



Statement of Environmental Effects for part demolition and alterations and additions to the existing building to provide a three (3) level building for future office use at 4 Holt Street McMahons Point.

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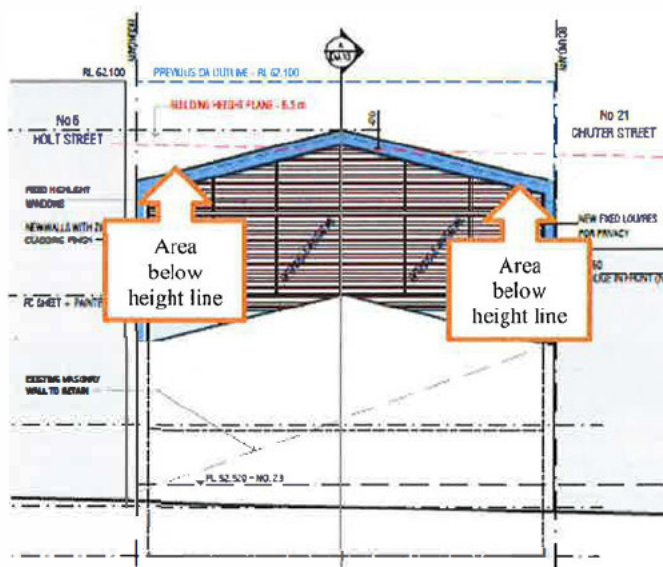
Also as shown on this drawing, a substantial excavation has been undertaken at the front area of the site to provide the at grade car parking area which is to be retained. This drawing also indicates that due to this substantial excavation, the 8.5 metre height line takes a substantial step down to reflect the manmade ground level change due to this excavation.

This manmade ground level change, results in a much larger exceedance of non-compliance with the 8.5m height plane of 1.955m, when compared to the rear part of the building exceedance of 0.47m that is reflective of the natural untouched ground level. If the excavation in the car park area were to be undertaken now as part of this application there would be little height exceedance and would therefore be an acceptable visual outcome to Holt Street, especially given the retention of the Holt Street industrial façade.

Also, the exceedance of height in this location, is required to achieve both compliance with Council's requirement for the Pre-Lodgement Meeting minutes which requires the existing ground floor roof trusses be incorporated into this building. This outcome will be achieved on Level 2.

Also, to achieve compliance with the minimum internal NCC floor to ceiling standard of 2.4m, requires an exceedance of the height plane at the front of the site.

In relation to the rear height exceedance of 0.47m, the exceedance is considered minimal, when the north elevation extract provided below, from drawing no DA07 Issue A is examined. Especially, when consideration is given to the comparison of the amount of roof above and below the height line, due to the pitched roof form proposed.



Statement of Environmental Effects for part demolition and alterations and additions to the existing building to provide a three (3) level building for future office use at 4 Holt Street McMahan's Point.

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Another issue to be taken into account in relation to the height exceedance is this design proposes a pitched roof not a flat complying roof. As such, the pitched roof design provides areas below the height as illustrated above. If the design proposed a flat roof on the 8.5 height plane, then the visual outcome would be a greater visual mass and bulk and wall surface to the rear neighbouring properties.

The pitched roof design also provides superior view retention through the parts below the height plane for the rear neighbouring properties to the above suggested flat roof design even given the slight height exceedance as illustrated in the photographs below.

This pitched roof design was chosen to provide a more traditional roof design which will reflect the surrounding traditional residential housing, especially as this site is located in a conservation area. Also, this roof design was chosen to a flat roof proposal, as the result, would provide view corridors over the pitched roof for the rear neighbouring properties and therefore reduce view loss and also provide as minimal vertical wall surface, as possible.

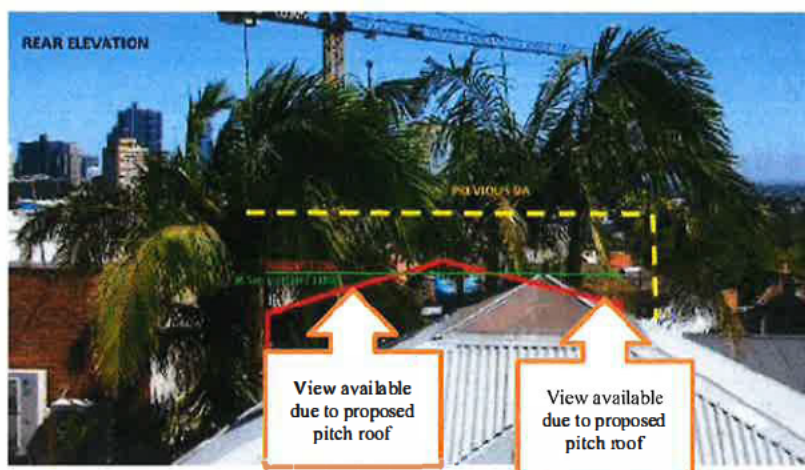
The following photographs extracts from drawing no. DA 15, indicates eventhough the height of the roof at the rear will exceed the 8.5m height standard. The iconic views available of the Sydney CBD skyline be still be available for the rear neighbouring properties.



View from third level upper level terrace of 95 Union Street. Photo from Council planner's report on DA107/19 refused. Red outline building form proposed under this application with yellow dotted line building form of refused application DA 107/19.

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View from third level upper level terrace adjoining an attic living room of 99 Union Street. Photo from Council planner's report on DA107/19 refused. Red outline building form proposed under this application with yellow dotted line building form of refused application DA 107/19. Green line reflects 8.5m height plane under Clause 4.3 of LEP. As it apparent from examination only small section of roof ridge exceeds height standard.

Further, this roof design would allow the incorporation of the existing ground floor roof trusses, as required by Council at page 9 of the Pre-Lodgement Meeting minutes on Level 2. Also, to achieve this compliance and minimum internal height of 2.4m allowable, this slight height exceedance for the roof at the rear, is required.

Therefore, requirement for reduction in height to be compliant with the maximum 8.5 height limit, will produce the inability to produce the above outcomes.

Accordingly, in relation to the above scenario, it is considered it is relevant to apply the flexibility granted to Council under clause 4.6, to vary the standard.

It would be unwarranted, unreasonable and unnecessary to require height compliance, when a superior outcome is achieved with the slightly non-compliant pitched roof as proposed. Further it will be shown that the minor non-compliance with the height standard will not prohibit the zone objectives being achieved as well as the application would still be consistent with the underlying objectives of the development standard as will demonstrated later in 3 and as follows.

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The other method is to assess how this application even though not numerical compliant with the development standard will still satisfy the objectives of the development standard.

An assessment against these objectives is provided as follows:

- *To provide a wide range of light industrial, warehouse and related land uses.*  
This application will provide a permitted use being the future use of the building for office purposes that is a related land use.
- *To encourage employment opportunities and to support the viability of centres.*  
The future use of the building for office use will provide and encourage employment opportunities in this location. Also, the proposed future office usage will provide potential uses of local provided facilities that will result in the continued viability of surrounding centres.
- *To minimise any adverse effect of industry on other land uses.*  
The building and the future use should have no adverse effect on any surrounding industrial activity.
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*  
Use of this building for office use in the future will not prohibit other land uses to provide facilities or services to meet the day to day needs of workers in the area.
- *To support and protect industrial land for industrial uses.*  
N/A
- *To encourage a mix of lower scale housing types.*  
N/A
- *To permit development that is compatible with the scale and character of the surrounding residential area.*  
Fundamental design feature of this application is the retention of the Holt Street industrial façade as well as all the other existing walls.

Also this application due to the height non-compliance be able to reuse the existing ground floor roof trusses to comply with Council's requirement at page 9 of the Pre-Lodgement meeting minutes that some elements of the existing building be incorporated into the new building. The roof trusses are to be reused in Level 2.

The conclusion of the Statement of Heritage Impact is as follows:

*"The proposal will have a no impact on the heritage significance of the Union, Bank and Thomas Streets Heritage Conservation Area or any individually listed items."*



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All the above information provided demonstrates that compliance with Clause 4.3 minimum height standard of 8.5m is unwarranted, unreasonable and unnecessary due to the circumstances of this case.

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

The non-compliance with the height standard will not undermine the intention of the standard. This situation arises as described in 1 above is due to site topography that was created due to prior excavation undertaken, as well as to meet Council requirements and provide a roof design that does not impact on neighbouring views..

It is considered, in light of the above circumstances, it has been demonstrated that there are sufficient planning grounds to justify support for the contravening the maximum height development standard in this case.

**3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):**

This has been provided above in Points 1 and 2 above and Point 4 below.

**4. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out:**

The zone objectives for the IN2 Light Industrial zone under the NSLEP 2013 are:

**Zone IN2 Light Industrial**

1 Objectives of zone

- To provide a wide range of light industrial, warehouse and related land uses.
- To encourage employment opportunities and to support the viability of centres.
- To minimise any adverse effect of industry on other land uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To support and protect industrial land for industrial uses.
- To encourage a mix of lower scale housing types.
- To permit development that is compatible with the scale and character of the surrounding residential area.

The proposal will comply with the above zone objectives of the NSLEP 2013 as the proposal will:

- Provide a related land use through the future use of the site for office purposes; and

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- Encourage employment opportunities through the future use of the site for office purposes: and
- Provide a development that will be compatible with the scale and character of the surrounding conservation area given that the Holt Street industrial elevation is to be retained and the additional levels are to commence approximately 4 metres behind this elevation.

As the zone and clause objectives are still achieved even though the proposal will not be Height compliant. It is considered that there is sufficient information provided to demonstrate that this proposal will still be in the public's interest.

**5. Establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary:**

The zoning is IN2 Light Industrial which is not unreasonable or inappropriate for the site given the existing building form on the site. This zoning does permit with Council consent other development uses other than Industry only.

**11. How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?**

Compliance with the standard would hinder the attainment of the objects of section 1.3 of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land and to promote the delivery and maintenance of affordable housing.

The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

The proposed development is consistent with the provisions of orderly and economic development of land, in that it proposes to improve the existing employment in the area as well as provide economic stimulus and coordination of the orderly use and development of land.

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**12. Is the development standard a performance based control? Give Details.**

The Height of Building development standard is a performance based control as the control contains objectives to which compliance with the standard is targeted to achieve.

**13. Assessment of non-compliance under Clause 4.6 standard**

**4.6 Exceptions to development standards**

*(1) The objectives of this clause are as follows—*

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

The response provided later at 4.6(3) demonstrates that it will be appropriate to provide a degree of flexibility to the strict compliance of the Clause 4.3 Height development standard.

As such this application meets the objective of this clause.

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

The responses provided in this written request show that there will be no detrimental outcome but the same outcome will be achieved by utilising the flexibility available to Council through Clause 4.6.

As such it is considered that this application meets the outcome of this objective.

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

Clause 4.3 has been identified as a development standard that this clause applies too.

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

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

In the circumstances of the case, the provision of strict numerical compliance would be unreasonable for the reasons advanced above.

Further strict compliance with Clause 4.3 development standard, will result not be able to meet the Council requirement of reuse of some of the existing building elements and in this case the reuse of the roof trusses in Level 2 as well as enabling this level to

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be height compliant with the National Code of Construction internal room height standard of 2.4m.

It is considered that the above reasons demonstrate that the strict compliance with the Clause 4.3 ,8.5m development standard is unreasonable and unnecessary in the circumstances of the case.

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

It is the reasons provided in (a) above is considered to demonstrate that there will be sufficient environmental planning grounds to justify contravening the development standard being:

- The same streetscape outcome on the Holt Street property boundary will result as the height non-compliance is located approximately 4 metres from Holt Street property boundary; and on the opposite side of the site (adjoins the southern boundary); and
- The slight exceedance of the height standard on the rear elevation is for a very small portion of the roof with most of the roof area well below the 8.5m height standard; and
- The exceedance of the height standard is required to ensure that the minimum 2.4m floor to ceiling requirement is provided; and
- The exceedance of the height standard is required to enable incorporation of some of the building elements from the existing building as requested on Page 9 of the Pre-Lodgement Meeting Minutes; and
- Non-compliance exceedance is only 23% at the Holt Street elevation and 5.5% for the rear elevation; and
- A flat roof design could be utilised however such a design would reduce the view corridors provided across the pitched roof and therefore impact on the views made that are made available through this roof design even though not height compliant and as such this design is more adjoining neighbour view friendly that a flat compliant roof design; and
- That the overshadowing will not be substantially reduced if the building is made height compliant at the rear of the site faces north and therefore all shadowing will fall over Holt Street; and
- Strict compliance will restrict the opportunity to provide reuse of existing building elements such as the existing roof trusses to be reused on Level 2; and
- Strict compliance with height will reduce internal ceiling height for Level 2 and as such the minimum 2.4m requirement under the National Code of Construction will be unachievable.

It is considered that the above reasons demonstrate that there are sufficient environmental planning grounds to justify contravening Clause 4.3 Height of Buildings development standard in the circumstances of this case.

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

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- (a) *the consent authority is satisfied that—*  
 (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

It is considered that the information provided in (3) above adequately addresses the matters listed and therefore addresses the requirement of (4).

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

It is considered that it has been demonstrated that strict compliance with the particular development standard being Clause 4.3 Height of Buildings development standard is unreasonable and unnecessary in this instance. This conclusion is reached even though the proposal is height non-compliant that the proposal will still achieve the zone and Clause 4.3 objectives. As well it is demonstrated there are sufficient environmental planning grounds provided to justify the support of the non-compliance.

Accordingly, it is considered that this information demonstrates the proposal will be in the public interest.

- (b) *the concurrence of the Planning Secretary has been obtained.*

In ***Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*** Chief Judge Preston at 28 provided the following advice:

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

Due to the above advice provided which indicates given the Secretary's written notice on 21 February 2018 to consent authorities that the consent authority the Planning Secretary's concurrence may be assumed, North Sydney Council has the necessary concurrence of the Planning Secretary to deal with this written request under Clause 4.6 of the NSLEP 2013.

- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*  
 (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

Support of the non-compliance will not contravene any State or regional environmental planning instrument or standard

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

Refer to 4(a)(ii) above that demonstrates support of the non-compliance will be in the public's interest.

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

There are no matters to be taken into account.

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

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

N/A

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

N/A

*Note.*

*When this Plan was made it did not include all of these zones.*

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

Council issue

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

*(a) a development standard for complying development,*

N/A

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

N/A

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(c) clause 5.4,

N/A

(ca) in relation to land identified as "Land in St Leonards" on the Exceptions to Development Standards Map—clause 4.3 (2) by more than 3 metres (excluding plant rooms and similar structures),

N/A

(cb) clause 6.3 (2) (a) and (b),

N/A

(cc) clause 6.20.

(8A) Subclause (8) (ca) ceases to apply on 31 December 2015.

N/A

**14. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?**

As discussed above, it has been demonstrated that strict compliance, in this particular case, would result in an inflexible application of policy, given the capacity of the site to meet the zone objective of encouragement of additional employment, support the viability of centres as well minimise any adverse effect of industry on other land uses. Whilst still providing an architectural benefit to the existing streetscape character and conservation area, through the retention of the Holt Street industrial façade as well as satisfy Council's request for reuse of existing building elements (roof trusses) and still meet the NCC 2.4m floor to ceiling standard. Also with this design as illustrated within the Statement of Environmental Effects, there will be no loss of iconic views of the Sydney CBD skyline from the main areas of view from 95 & 99 Union Street due to the pitched roof form proposed even though not height compliant. Accordingly, given these reasons and due to the above information, it is considered unwarranted, unreasonable & unnecessary for strict compliance.

Furthermore, strict compliance, in this particular case, does not serve any purpose that should outweigh the positive outcomes of the development with respect to zone objective.

The proposed development is consistent with the provisions of orderly and economic development.

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**15. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details:**

In the circumstances of the case, the provision of strict numerical compliance would be unreasonable for the reasons advanced above.

The proposal can be achieved without loss of Sydney CBD skyline iconic views. Accordingly, it is considered it has been demonstrated the development as proposed fits contextually with the site and streetscape especially given the information provided in the Statement of Heritage Impact and previously provided information. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard.

The above is considered to represent sufficient environmental planning grounds to justify contravening the development standard and as such compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. The resultant development will therefore be in the public interest.

When considered alongside the lack of adverse environmental impacts arising from the non-compliance, overall a variation to the control would result in a better outcome in accordance with Clause 4.6(b) of the LEP.

As such the proposal meets the assessment criteria set out in Clause 4.6(3) (a) and (b) and (4)(a)(ii)

**Conclusion**

Pursuant to clause 4.6(2), Council has the power to permit a variation to the Height of Building standard provided that:

1. Council has considered a written request that demonstrates that:
  - 1.1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a));
  - 1.2. There are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)).
2. Council is satisfied that the written request has adequately addressed those matters (cl 4.6(4)(a)(i)).
3. Council is satisfied that the proposed development will be in the public interest because it is consistent with:
  - 3.1 The objectives of the standard in question; and
  - 3.2 The objectives of the zone (cl 4.6(4)(a)(ii)).
4. The Council may assume the required Director-General's concurrence (cl 4.6(4)(b)) provided that the Council has considered: