

**NSLPP MEETING HELD ON 06/07/2022****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Height of Buildings

**ADDRESS/WARD:** 22 Premier Street, Cremorne**APPLICATION No:** DA 457/21**PROPOSAL:** Alterations and additions to an existing semi-detached dwelling**PLANS REF:**

Plan Nos.	Issue	Description	Prepared by	Dated
DA003	B	Site Plan	Stephanie Brancatisano Architect	30/11/2021
DA201	B	Demolition Lower Ground Floor Plan		30/11/2021
DA202	B	Demolition Ground Floor Plan		30/11/2021
DA203	C	Demolition Roof Plan		24/06/2022
DA300	B	Basement Plan		30/11/2021
DA301	B	Lower Ground Floor Plan		30/11/2021
DA302	C	Ground Floor Plan		02/05/2022
DA303	E	First Floor Plan		24/06/2022
DA304	D	Roof Plan		24/06/2022
DA500	E	Section 01		24/06/2022
DA501	F	Section 02		24/06/2022
DA700	E	North Elevation		24/06/2022
DA701	E	East Elevation		24/06/2022
DA702	F	South Elevation		24/06/2022
DA703	E	West Elevation		24/06/2022

**OWNER:** Timothy Cummins & Rebecca Smith**APPLICANT:** Stephanie Brancatisano Architect**AUTHOR:** Michael Stephens, Senior Assessment Officer**DATE OF REPORT:** 27 June 2022**DATE LODGED:** 24 December 2021**SUBMISSIONS:** One (1) in support of the application**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing semi-detached dwelling including a first floor addition and a two storey addition to the rear on land at 22 Premier Street, Neutral Bay.

**The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to a development standard by more than 10%. In accordance with the Ministers direction of 1 August 2020 a public determination meeting is not required because no submissions by way of objection were received.**

The subject site is zoned R2 Low Density Residential where development for the purpose of semi-detached dwellings is a permitted use.

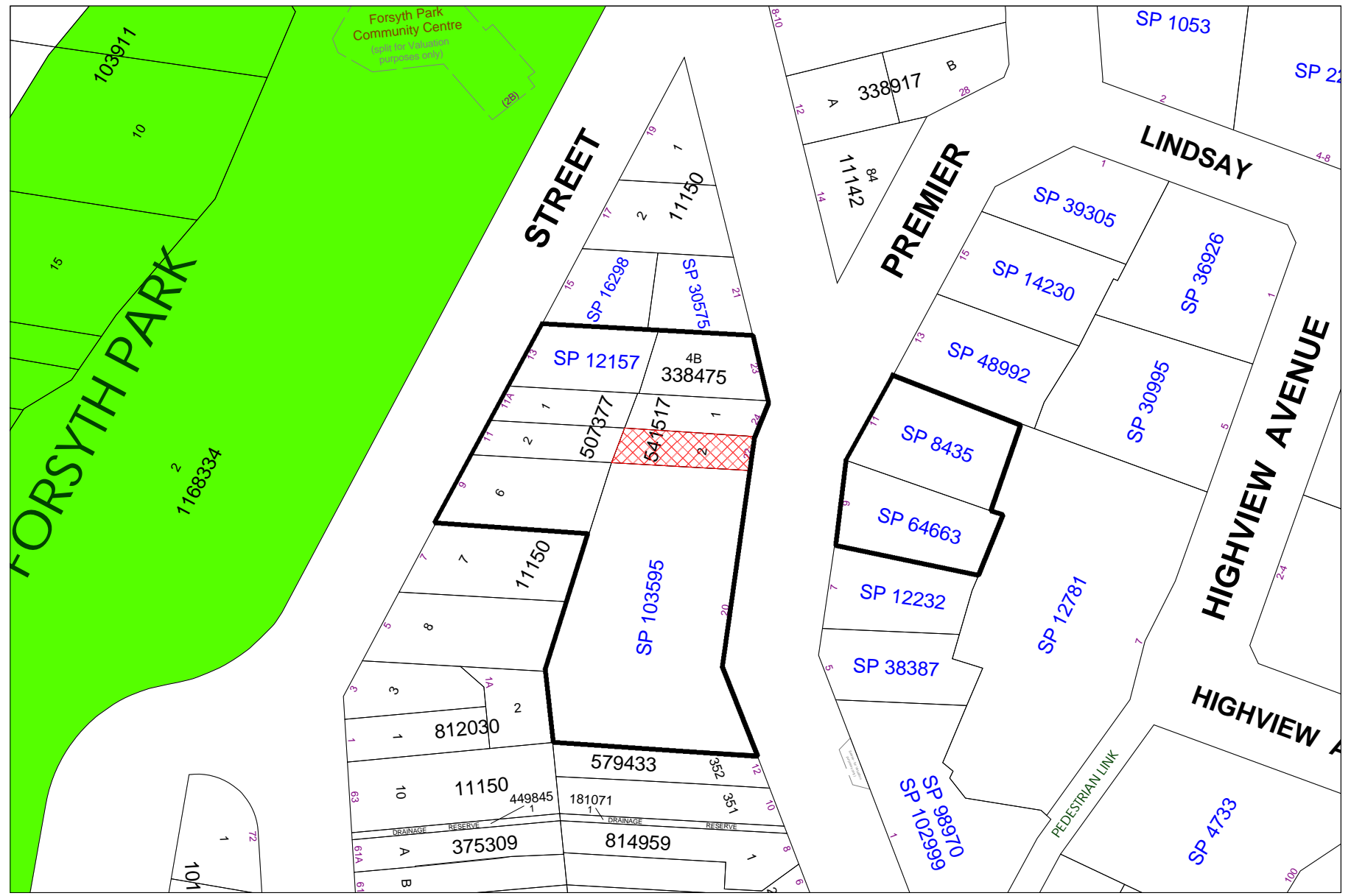
The proposed development breaches the maximum permitted building height of 8.5m by up to 1.55m, equating to a variation of 18.2%. The proposed variation relates to rear end of the proposed first floor addition and is reflective of the significant fall of the land towards the rear of the site. The applicant has submitted a written request to vary the development standard pursuant to clause 4.6 in NSLEP 2013 which satisfactorily demonstrates that compliance with the development standard is both unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify the variation. The proposed development would be in the public interest. The submitted written request is considered to be well founded and worthy of support.

The proposed development would improve the amenity of the existing dwelling by increasing the size of the existing dwelling and providing a more modern layout. The rear additions would align with the recent additions to the adjoining semi-detached dwelling to the north. The proposed first floor addition is set back predominantly behind the existing roof form to retain the existing built form character of the pair of semi-detached dwellings which positively contribute to the street scape. The addition has a sloping roof on the southern side to further minimise its visibility from the street and is clad with timber cladding to break down the visual massing of the addition.

The original plans and the amended application were notified in accordance with Council's Community Engagement Protocol and one submission in support of the application was received.

On balance, the proposed development is considered reasonable and is recommended for approval subject to various site specific and standard conditions.

LOCATION MAP



□ Property/Applicant    ● Submitters - Properties Notified

## DESCRIPTION OF PROPOSAL

The development application seeks consent for alterations and additions to an existing semi-detached dwelling including a first floor level addition and a two storey addition towards the rear of the dwelling where the land falls away.

The proposed works include:

### First Floor Level - RL 56.60

Construction of a first floor level addition including:

- A bedroom and ensuite; and
- A rear balcony measuring 1.2m x 3m.

### Ground Floor Level - RL 53.60

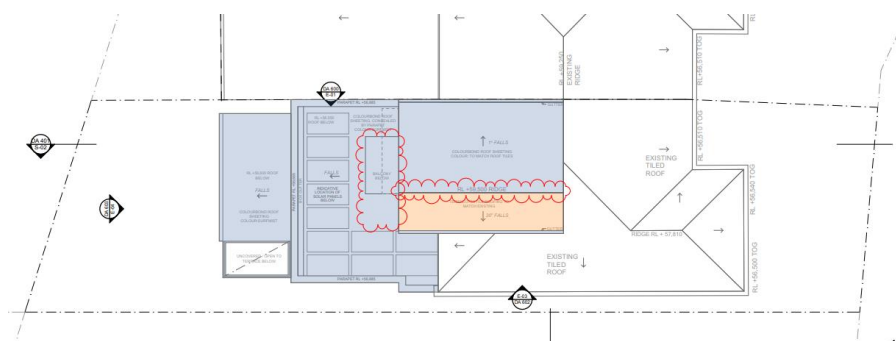
Alterations to the existing ground floor including:

- Constitution of a rear addition containing an open plan kitchen, dining and living area;
- Construction of a rear elevated deck measuring 2.5m x 6m with privacy screens along each side edge;
- Construction of a new bathroom and laundry;
- Retention of the existing side dwelling entry; and
- Retention of the two original bedrooms at the front of the dwelling.

### Lower Ground Floor Level - RL 50.30

Repurposing of the lower ground subfloor storage area as a lower ground floor level requiring additional excavation below the dwelling including:

- Construction of a rear addition containing two bedrooms with a rear deck measuring 1.3m x 6m;
- Installation of rainwater reuse tanks within the subfloor; and
- Construction of a bathroom and rumpus room within the existing subfloor.



**Figure 1. Proposed Site Plan**

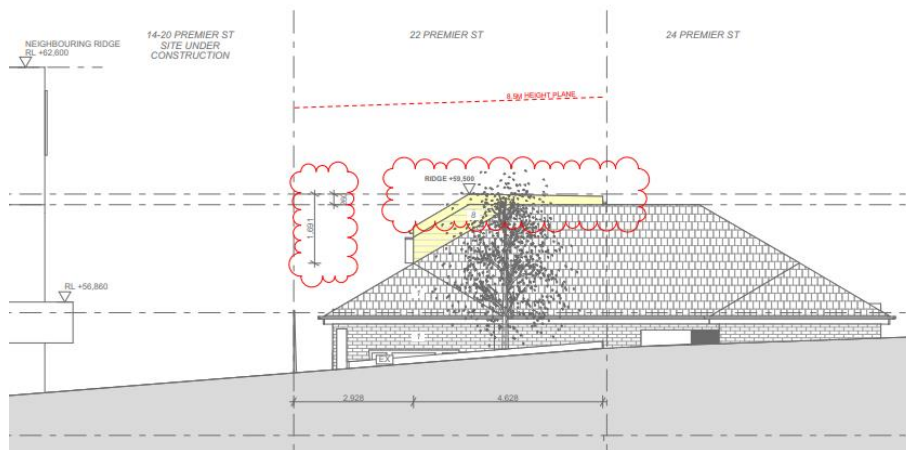


Figure 2. Proposed Eastern Elevation

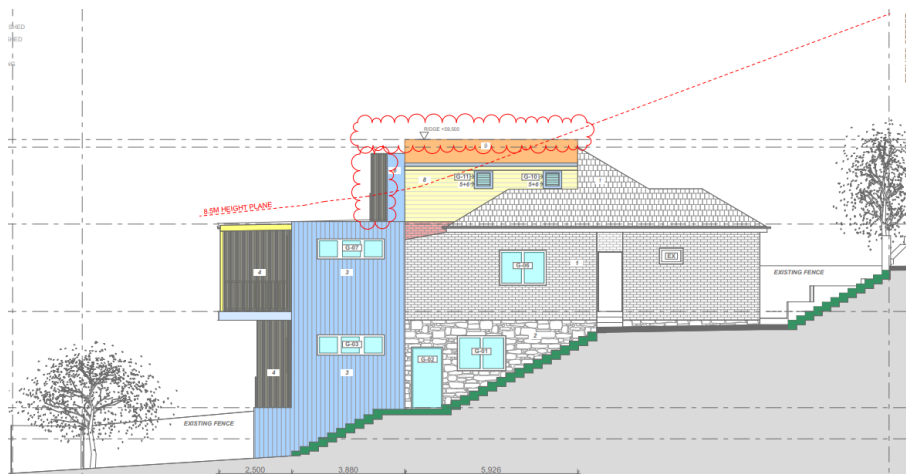


Figure 3. Proposed Southern Elevations

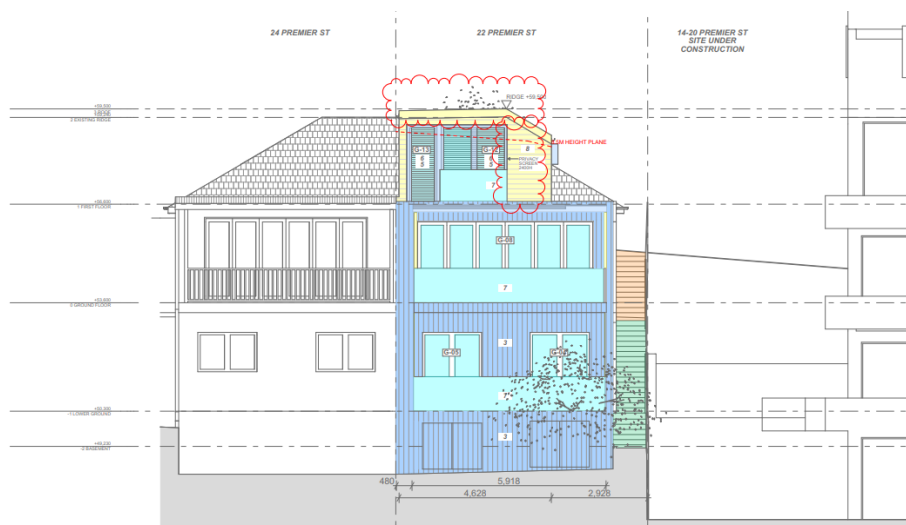
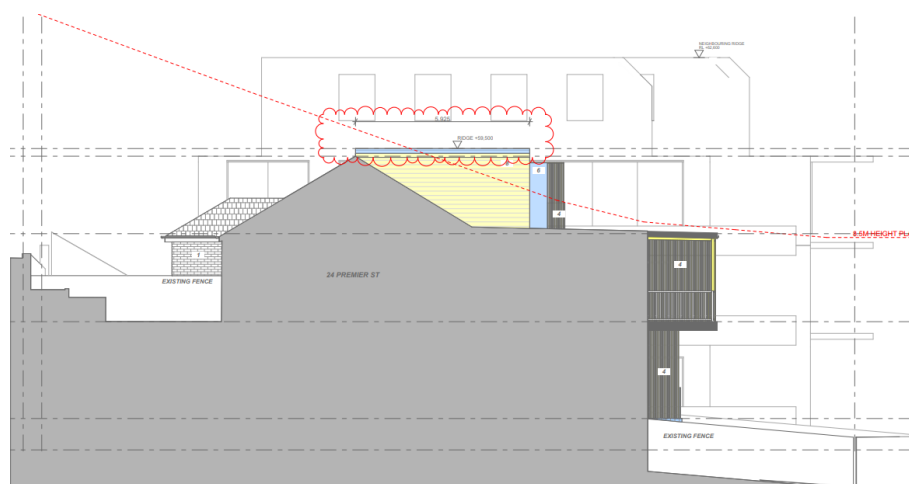


Figure 4. Proposed Western Elevation



**Figure 5. Proposed Northern Elevation**

### **Party Wall Consent**

The applicant submitted written owner's consent from the adjoining property owner (No. 24 Premier Street) for the use of and alterations to the existing common party wall that separates the pair of existing semi-detached dwellings.

### **STATUTORY CONTROLS**

North Sydney Local Environmental Plan 2013

- Zoning – R2 Low Density Residential zone
- Item of Heritage - No
- In Vicinity of Item of Heritage – No
- Conservation Area – No

Environmental Planning and Assessment Act 1979

- Section 7.11/12 Infrastructure Contributions

SEPP (Biodiversity and Conservation) 2021

SEPP (Resilience and Hazards) 2021

SEPP (Planning Systems) 2021

### **POLICY CONTROLS**

North Sydney Development Control Plan 2013

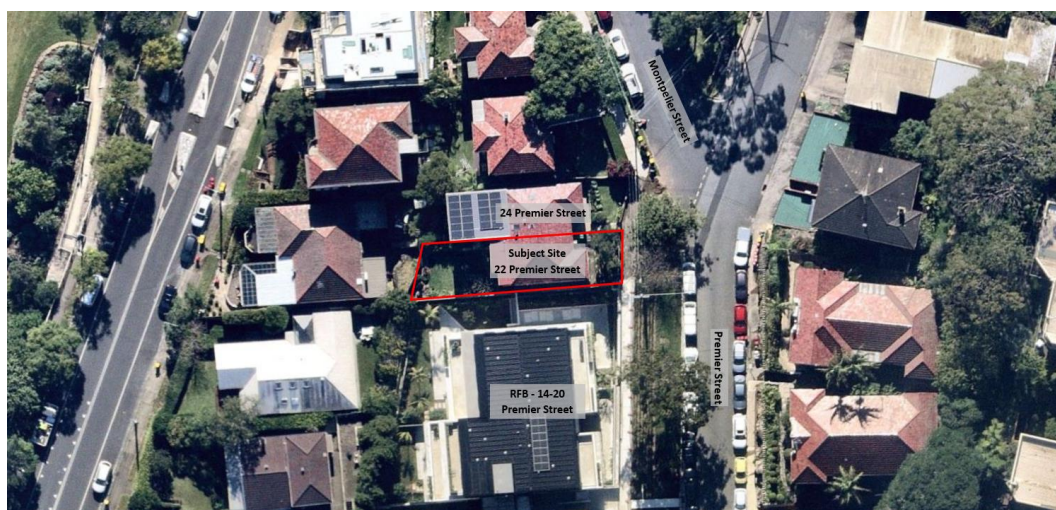
North Sydney Local Infrastructure Contributions Plan 2020

### **DESCRIPTION OF LOCALITY**

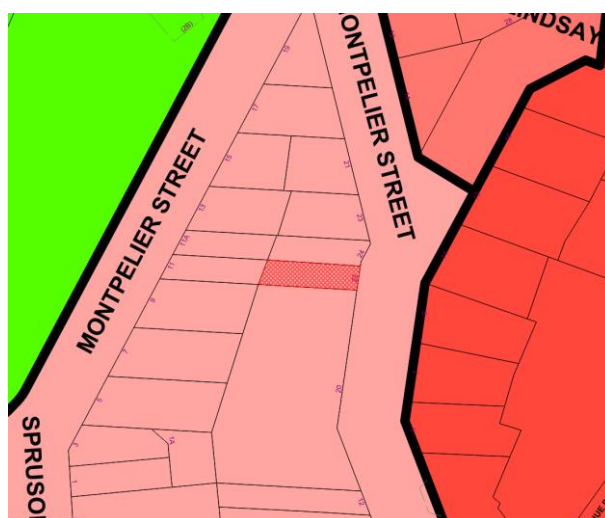
The subject site is legally described as Lot 2 in DP 541517 and is known as 22 Premier Street, Neutral Bay. The site is located on the western (low) side of Premier Street near the intersection of Montpelier Street to the north. The site is generally rectangular in shape and has a width of 7.4m and an average depth of approximately 29.9m, equating to a site area of 221.3sqm. The land falls steeply from the eastern front boundary to the western rear boundary by approximately 6-7m.

The site is zoned R2 Low Density Residential and contains an existing single storey semi-detached dwelling with a lower ground subfloor storage and laundry area to the rear. The dwelling contains two bedrooms and has no onsite parking. The pair of semi-detached dwellings have a projecting bay at the front on each side with a symmetrical hip and valley roof form. The dwellings are constructed of brick with timber framed doors and windows and have a terracotta tiled roof. The adjoining semi-detached dwelling (No. 24 Premier Street) has a rear addition under DA400/2015 which includes a two storey addition to the rear. The adjoining property to the south contains a part 4, part 5 storey residential flat building constructed under DA54/2018 subject to the existing use rights provisions of the Act. The properties located towards the north and west generally comprise low density residential development whilst the properties located opposite the subject site to the east contain residential flat buildings and are zoned R4 High Density Residential.

The subject site has a stormwater easement that traverses the rear of the site. There is an existing street tree within the front verge in front of the pair of semi-detached dwellings.



**Figure 7. Aerial Image of the subject site and surrounds (Nearmap: Captured 17 May 2022)**



**Figure 8. NSLEP 2013 Land use zoning map with the subject site shown crosshatched**

Additional photos of the subject site and surrounding area are provided below.



**Figure 9. Site photo of pair of existing semi-detached dwellings.**



**Figure 10. Site photo of existing front setback area**



**Figure 11. Site photo of existing dwelling from the south east**

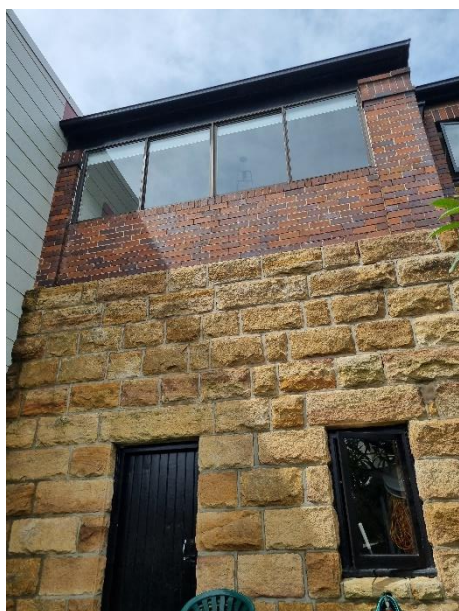


**Figure 12. Site photo of rear addition of No. 24 Premier Street**



**Figure 13. Site photo of rear of the RFB at No. 20 Premier Street**





**Figure 14. Site photo of the existing rear of the subject site**



**Figure 15. Site Photo of No. 20 Premier Street and the Subject Site**



**Figure 16. Site photo of adjoining properties to the rear (Montpelier Street)**



**Figure 17. Site photo of adjoining properties to the rear (Montpelier Street)**

## RELEVANT DEVELOPMENT HISTORY

### Subject Site

Development Application **DA386/2014** for alterations and additions to an existing semi-detached dwelling including a first floor addition was withdrawn 10 February 2015.

### No. 20 Premier Street

Development Application **DA54/2018** for the construction of a residential flat building was granted consent by the NSW Land and Environment Court on 21 December 2018.

### No. 24 Premier Street

Development Application **DA400/2015** for alterations and additions to an existing semi-detached dwelling including a two storey addition to the rear was approved subject to a deferred commencement condition on 3 February 2016.

## RELEVANT APPLICATION HISTORY

Date	Assessment
24 December 2021	The application was lodged with Council via the NSW Planning Portal.
13 January 2022	The application was notified in accordance with Council's Community Engagement Protocol from 21 January 2022 until 4 February 2022
7 March 2022	A site inspection was undertaken by Council assessment staff.
9 March 2022	Council wrote to the applicant to outline the preliminary assessment of the application raising issues regarding bulk and scale and the retention of the existing built form character.
25 April 2022	A meeting was held with the applicant and owners to discuss potential design amendments to resolve the issues raised in Council's letter
19 May 2022	Amended plans were lodged on 19 May 2022 via the NSW Planning Portal.
25 May 2022	The amended application was notified in accordance with Council's Community Engagement Protocol from 21 January 2022 until 4 February 2022
24 June 2022	Further amended plans were submitted reducing the height of the first floor addition by 300mm.

## REFERRALS

### Engineering

The application was referred to Council's Development Engineers who raised no objection to the proposed development. Standard engineering conditions were recommended.

## SUBMISSIONS

The development application was notified in accordance with Council's Community Engagement Protocol from 21 January 2022 until 4 February 2022 and one submission of support was received.

The amended plans lodged on 19 May 2022 were renotified in accordance with Council's Community Engagement Protocol from 3 June 2022 until 17 June 2022. No submissions were received.

The applicant lodged further amended plans on 24 June 2022 that did not require renotification as the amendments sought to reduce the overall height of the addition by 300mm would subsequently reduce any impacts in comparison to the previously notified plans.

The original submission may be viewed by way of DA tracking on Council's website [https://www.northsydney.nsw.gov.au/Building\\_Development/Current\\_DAs](https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs) and are available for review by NSLPP members.

## CONSIDERATION

The relevant matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979, are assessed under the following headings:

### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

A valid separate dwelling house BASIX Certificate has been provided with the amended plans which meets the requirements of this policy.

### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The proposed development does not require the removal of or impact to any protected trees on the subject site or within the vicinity of the site. The proposed development is consistent with the objectives of Chapter 2 *Vegetation in non-rural areas* of the Policy.

The subject site is not visible from Sydney Harbour or its foreshores given the distance to water. The proposal therefore would not impact upon the scenic quality of Sydney Harbour or its waterways and is considered acceptable with regard to the Chapter 10 *Sydney Harbour Catchment* of the Policy.

### **State Environmental Planning Policy (Resilience and Hazards) 2021**

The provisions of Chapter 4 *Remediation of Land* in the Policy have been considered. The subject site has historically been used for residential development and therefore is unlikely to be contaminated. The requirements in clause 4.6 of the Policy are therefore considered to be satisfied.

### **North Sydney Local Environmental Plan 2013**

#### **Permissibility**

The subject site is zoned R2 Low Density Residential under North Sydney Local Environment Plan 2013. The proposed development seeks consent for alterations and additions to an existing semi-detached dwelling which is a permitted use within the R2 Low Density Residential zone.



**Figure 18. NSLEP 2013 Land use zoning map with the subject site shown crosshatched.**

#### **Objectives of the zone**

R2 Low Density Residential zone:

- *To provide for the housing needs of the community within a low density residential environment.*

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

The proposed development would provide for the housing needs of the community within a low density residential environment by improving the amenity of the existing dwelling.

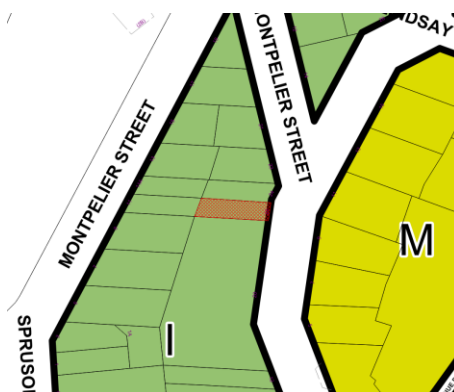
The proposed works would not compromise the amenity of the surrounding area as the proposed rear additions align with the addition at the rear of the adjoining semi-detached dwelling to the north. The proposed first floor addition would result in some additional overshadowing to the adjoining residential flat building to the south, however, the overshadowing effects only portions of the north facing windows for short periods of the day whilst uninterrupted solar access is retained to the living areas and balconies at the rear given the favourable north western aspect of the apartments. The overshadowing is minimised by the increased side setback on the upper level and sloping roof form towards the southern side of the building.

The proposed works would not compromise the natural or cultural heritage of the area given the proposed development would not impact existing areas of landscaping or natural areas and is not a heritage item or located within a conservation area.

The proposed development would achieve a high level of residential amenity for the existing dwelling and would reasonably maintain the amenity of surrounding dwellings.

### **Clause 4.3 - Height of buildings**

The subject site has a maximum permitted building height of 8.5 m pursuant to clause 4.3(2) in NSLEP 2013. The existing building has a maximum height of 6.7m measured from existing ground level. The proposed first floor addition has a maximum height of 10.05m, exceeding the height of buildings development standard by 1.55m or 18.2%.



**Figure 19. NSLEP 2013 Height of Buildings Map with the subject site shown crosshatched**



**Figure 20. Height of buildings measurement along the long section**

#### **Clause 4.6 - Contravention of a Development Standard**

A written request to contravene the development standard for height has been submitted and has been considered below.

#### **Clause 4.6(3)(a)**

- (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 accordance with Test 1 outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] (*‘Wehbe’*) a common method to demonstrate whether compliance is unreasonable or unnecessary by demonstrating that the objective of objectives of the development standard are achieved notwithstanding noncompliance with the development standard.

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

The subject site falls steeply from the eastern (front) boundary to the eastern (rear) boundary by approximately 6-7m.

The written request demonstrates that the proposed development conforms with the existing development on the site as it maintains and extends the ground floor level and does not impact upon the reflection of the natural ground levels. The first floor addition is located behind the existing roof ridgeline and maintains a compliant height as viewed from the street although results in a breach to the height of building development standard towards the rear. The written request also references other developments along Premier Street where development has resulted in a variation towards the rear as a result of the similar slope of the land. The proposed additions steps back down to two storeys at the rear and complies with the height of buildings development standard at the rear of the building.

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

The written request has identified that there are no significant views that would be impacted. The proposed addition raises the height of the building by only 260mm above the existing ridgeline which would ensure that views straight over the building are retained. The development located opposite the subject site (Nos. 9, 11 & 13 Premier Street) are located at a higher level than the subject site and would retain views over the proposed development towards the North Sydney CBD Skyline.

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

The written request has identified any potential overshadowing caused by the proposed non-comply elements to the adjoining property to the south which contains a part 4, part 5 residential flat building. The residential flat building has apartments along the northern side with bedrooms located towards the front (east) of the building and living areas and balconies orientated towards the rear (west) of the building.

The northern elevation of the apartments includes significant areas of glazing as evident in the site photo below. The written request has identified the overshadowing caused by the non-compliant element throughout the day between 9:00am and 3:00pm in midwinter concludes that the overshadowing would not result in any significant overshadowing to any window for an extended period of time through the day and that compliant solar access is maintained for the affected dwellings with uninterrupted solar access gained to the rear elevations of the living rooms and balconies from the west from noon onwards.



***Figure 21. Northern elevation of adjoining residential flat building (No. 20 Premier Street)***

**Planners note:** Further assessment of the potential overshadowing has also been provided in more detail in the DCP compliance table below that confirms the conclusion within the written request. The potential overshadowing, including the portion caused by the noncompliant element is considered acceptable in the circumstances and would not materially impact the amenity of the adjoining dwellings which would maintain solar access throughout the day in mid winter.

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

The written request has demonstrated that the proposed variation would not result in any unreasonable privacy impacts as the upper floor level addition contains a bedroom and is orientated towards the rear. The rear balcony has a maximum depth of 1.2m that is in part solid, and part open with a privacy screen to the southern side to prevent overlooking to the adjoining residential flat building to the south (No. 24 Premier Street).

Views down to the properties located to the rear of the subject site would be obscured by the projecting roof over the ground floor level towards the rear of the site. The windows within the southern side elevation comply with the height of buildings development standard.

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

The written request has described the proposed development as being consistent with the scale of the existing and surrounding development and notes that the scale of the proposed development is significantly less than residential flat building to the south which benefits from existing use rights.

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

The written request has described the proposed development as being compatible with the scale and complements the character of development within the Neutral Bay area.

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

The written request has described the scale of the subject building which would retain a generally single storey appearance when viewed from Premier Street because the proposed first floor addition is largely obscured behind the existing roof line. The building would, in part, be three storeys given that part of the proposed first floor addition would overlap the lower ground floor level which is in part a basement, however, would present as two storeys when viewed from the street along the southern side boundary. The building would therefore generally retain a single storey appearance with some two storey elements in accordance with the objective.

**Clause 4.6(3)(b)**

*(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—*

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

The environmental planning grounds advanced in the written request are considered to be sufficient to justify the contravention of the development standard in the circumstances of the case. The applicant has provided a detailed list of environmental planning grounds on pages 11-14 (Att\_3) of the written request that relate specifically to the variation and are in part based around the objectives in section 1.3 of the Act. The grounds relate to:

- *Details of the variation including the limited extent and the implications of the sloping topography of the site.*
- *Absence of impacts to neighbouring amenity through the effective management of the bulk and massing including the siting of the addition, retention of privacy, views and solar access.*
- *The site specific constraints and design response particularly in relation of the topography of the site and the siting of the existing dwelling.*
- *The design of the additions including the retention of the character of the existing dwelling and character of the streetscape by setting the addition further to the rear.*
- *Consistency with the objectives of the zone.*
- *Environmentally sustainable development and absence of impacts to the natural environment.*

The submitted justifications are generally concurred with. The proposed development seeks to manage the bulk and scale of the development to retain the existing character of the pair of semi-detached dwellings whilst providing for additional development potential without adversely impacting the amenity of surrounding dwellings.

#### **Clause 4.6(4)**

Clause 4.6(4) states:

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

*(a) the consent authority is satisfied that—*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

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

#### **Clause 4.6(4)(a)(i)**

It is considered that the consent authority can be satisfied that the applicant's written request adequately addresses the matters required to be demonstrated by subclause (3) as discussed in detail above.



#### **Clause 4.6(4)(a)(ii)**

It is considered that the consent authority can be satisfied that 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.

#### **Objectives of the standard**

It is considered that the consent authority can be satisfied that the proposed development is consistent with the objectives of the height of building development standard.

It is useful to consider the interpretation that the test of “consistency” is less onerous than that of “achievement” as outlined in *Moskovich v Waverley Council* [2016] NSWLEC 1015 [53] (“*Moskovich*”).

The applicant’s written request assessed above relied on *Wehbe* Test 1 to demonstrate that compliance is unreasonable or unnecessary by demonstrating that the objectives of the development standard are **achieved** notwithstanding noncompliance with the development standard. Consistent with *Moskovich*, should it be found that the written request is acceptable then the proposed development would also be consistent with the objectives of the standard.

Notwithstanding this comparison, the proposed development is considered to be consistent with the objectives of the standard. The proposed development reasonably responds to the steeply sloping topography of the site having regard to the existing siting of the pair of semi-detached dwellings which are proposed to be retained. The proposed additions would not detrimentally impact the character of the pair of semi-detached dwellings which are part of a uniform group of buildings that contribute positively to the streetscape.

The proposed development promotes the retention of views, maintains solar access with reasonable levels of privacy to surrounding properties and the public domain. The proposal would be compatible with surrounding development having an appropriate bulk and scale consistent with the character of the area.

#### **Objectives of the zone**

It is considered that the consent authority can be satisfied that the proposed development is consistent with the objectives of the zone as discussed above.


#### **Clause 4.6(4)(b)**

In accordance with the *Planning Circular PS20-002* dated 5 May 2020, concurrence may be assumed under clause 4.6 in NSLPP 2013 but not by a delegate because the numerical variation (maximum 18.2%) is greater than 10%. Concurrence may only be assumed by the Council’s independent assessment panel (also referred to local planning panel) to ensure a greater level of public scrutiny.

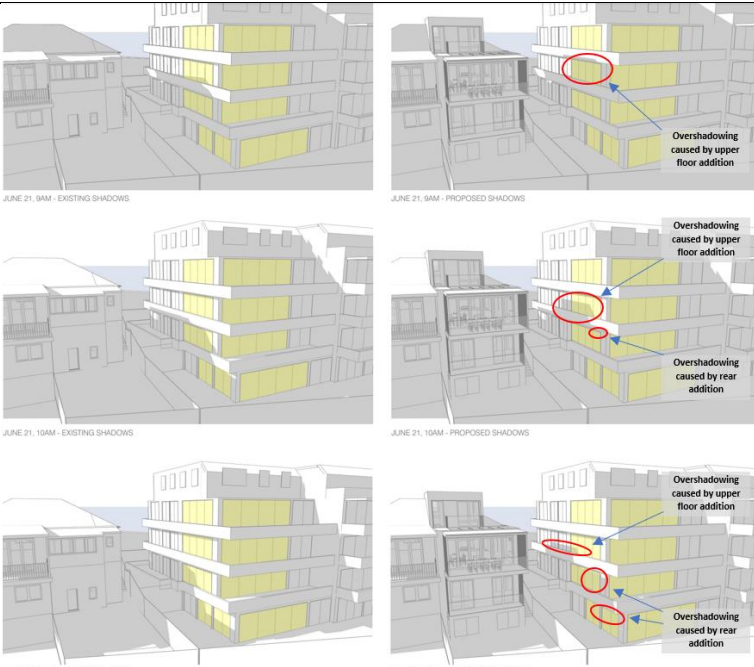
The application is referred to the North Sydney Local Planning Panel for determination as the application meets the referral criteria listed in schedule 1 of the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents* dated 30 June 2020 being that the application involves a contravention to a development standard by greater than 10%.

**POLICY CONTROLS**

**North Sydney Development Control Plan 2013**

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013 PART B - SECTION 1 - Residential Development		
	Complies	Comments
<b>1.2 Function</b>		
Maintaining affordable housing	Yes	In accordance with SEPP (Housing) 2021, Part 3 in Chapter 2 <i>Retention of existing affordable rental housing</i> now applies to dwelling houses whereas the previous policy did not, however, as the dwelling is owner-occupied it is considered that the proposed additions would not have any impact on the availability of low-cost rental housing within the locality.
<b>1.3 Environmental criteria</b>		
Topography	Yes	<p>The land falls steeply from the eastern front boundary to the western rear boundary by approximately 6-7m. The existing ground level of the building relates to the level of the land towards the front of the site. The existing building footprint is elevated towards the rear of the site, with a large subfloor storage and laundry area below the rear of the dwelling. The proposed lower ground floor level is located within the existing subfloor space and requires some excavation within the building footprint to level the existing earth floor. Conditions (C6 and E4) are recommended requiring geo-technical advice to be implemented to undertake the excavation without impacting the stability of the existing dwelling or the adjoining semi-detached dwelling to the north (No. 24 Premier Street).</p> <div style="text-align: center;">  </div> <p><b>Figure 22. Existing subfloor area</b></p>

		<p>The lower ground floor level is elevated a maximum of 1.4m above the rear setback area and generally relates to the ground levels as the land slopes steeply to the rear through the building footprint and the lower ground floor steps down accordingly. The proposed rear subfloor area is proposed to be utilised for rainwater reuse tanks. The floor levels would also match those of the adjoining semi-detached dwelling to the north (No. 24 Premier Street).</p>
<b>Land in vicinity of Bushland</b>	Yes	<p>The subject site is located in Bushland Buffer zone B as it is between 100-300m from nearby C2 Environmental Conservation zoned land. However, the proposed development does not require the removal of any significant vegetation and would not detract from the environmental or scenic qualities of the bushland buffer area.</p>
<b>Views</b>	Consistent with View Sharing Principles	<p>Views are gained from properties within the area towards the west of the North Sydney CBD Skyline, with some properties also having views towards the south of the Sydney CBD and Harbour landmarks.</p> <p>The properties located opposite the subject site to the (Nos. 9, 11 &amp; 13 Premier Street) are significantly elevated above the subject site and would retain views over the subject site towards the North Sydney CBD Skyline.</p> <p>The adjoining semi-detached dwelling to the north (No. 24 Premier Street) would retain views towards the west and south west as the proposed rear addition does not extend beyond the established rear building line of the adjoining semi-detached dwelling.</p> <p>The adjoining residential flat building to the south (No. 20 Premier Street) would retain views to the west and south west as it is located to the south of the proposed development and has balconies and living areas to the rear (west) that extend further beyond the proposed rear building line.</p>
<b>Solar access</b>	Yes	<p>The proposed development would result in some additional overshadowing to the apartments located along the northern side of the residential flat building located to the south of the subject site (No. 20 Premier Street). The adjoining residential flat building is part four, part five storeys. The apartments located on each level along the northern side have bedrooms located towards the east (street) and living areas and balconies to the west (rear).</p> <p>The existing dwelling somewhat overshadows the northern side windows of the living areas of the ground floor and first floor levels during the morning hours. The proposed upper floor addition would result in additional overshadowing of part of the first floor level and most of the second floor level northern side windows of the living areas during 9am and 10am, largely alleviating by 11am for the second floor level apartment and persisting for the first floor level apartment as the overshadowing is caused by the proposed rear addition continues to impact this apartment.</p> <p>The overshadowing is caused in part by the upper floor level additions which exceeds the height of buildings development standard by up to 1.55m (18.2%) although the upper storey is setback from the southern side boundary with a hipped roof from sloping downwards towards the southern side boundary to minimise the extent of the overshadowing to the south. The overshadowing caused by the height variation is assessed above regarding the submitted clause 4.6 and was considered reasonable in the circumstances.</p> <p>The proposed rear addition would also cause some additional overshadowing to the northern side windows of the ground floor and first floor level apartments of the adjoining residential flat building (No. 20 Premier Street) from 11am until 1pm, largely alleviating by 2pm. The overshadowing is to a portion of the windows and would not result in a loss of solar access to the living areas as solar access is maintained from the rear west facing windows at the same time.</p>

		 <p><b>Figure 23. Existing and Proposed Overshadowing 9am, 10am and 11am in Midwinter</b></p> <p>Despite the aforementioned additional overshadowing in the morning hours through to noon, and the less significant overshadowing in the early afternoon, the affected apartments within the adjoining residential flat building (No. 20 Premier Street) would maintain uninterrupted solar access to the living rooms and rear private open space of each apartment for at least three hours from noon onwards in mid-winter. The overshadowing during the morning hours would affect a portion of the windows for varying periods of time, however, does not cause unreasonable overshadowing throughout the day as ample uninterrupted solar access is retained at other times.</p>
<p><b>Acoustic privacy</b></p>	<p>Yes</p>	<p>The layout of the proposed alterations and additions is generally consistent with the existing layout of the dwelling with living areas located on the ground floor level albeit elevated towards the rear. The proposed layout is also similar to the adjoining semi-detached dwelling to the north (No. 24 Premier Street) which is two storeys to the rear with the upper level (elevated ground floor) containing living areas with a large elevated rear deck. Any acoustic impacts would be comparable with the existing situation.</p> <p>The layout of the proposed alterations and additions would not be inconsistent with the adjoining residential flat building to the south, which is part 4, part 5 storeys with living areas to the west (rear) with balconies on each level. Consequently, there would be no discernible impact to these apartments, given that any acoustic impact would be commensurate with the adjoining dwellings.</p> <p>The proposed first floor level rear balcony is not dissimilar to the rear balconies of the apartments adjoining the subject site to the south (No. 20 Premier Street) which is part 4, part 5 storeys. The proposed balcony has a maximum depth of 1.2m located off a proposed bedroom having limited usage as compared to living areas. The adjoining semi-detached dwelling to the north (No. 24 Premier Street) does not have an upper level so the proposed balcony would not adjoin any nearby habitable rooms.</p>
<p><b>Visual privacy</b></p>	<p>Acceptable</p>	<p>The outlook from the proposed alterations and additions is generally orientated to the rear and overlooks the roofs of the adjoining dwellings to the west that face Montpelier Street that are located at a significantly lower level and do not have any significant windows that face the subject site.</p>

**Northern Side Boundary**

There would be no overlooking to the adjoining semi-detached dwelling to the north (No. 24 Premier Street) as the length of the rear addition aligns with the adjoining addition and includes privacy screening along the edge of the rear ground floor (elevated) balcony as the adjoining balcony does not have its own side wall or privacy screen. The lower ground floor level rear windows and balcony may result in some overlooking at an angle of the rear setback area of the adjoining semi-detached dwelling to the north (No. 24 Premier Street), however, this is proposed to be mitigated through the retention of the existing (currently juvenile) hedging along the northern side boundary.



**Figure 24. Existing northern side boundary adjoining rear setback area of No. 24 Premier Street.**

**Southern Side Boundary**

There is one new proposed window within the southern elevation within the proposed living area that is unlikely to overlook the adjoining residential flat building to the south (No. 14 -20 Premier Street) as this window is specified as a highlight window with a raised sill. The existing window within the southern elevation for the existing kitchen is proposed to be replaced with a larger window in what would be a hallway and is approximately in the same location as show in figure 25. below.



**Figure 25. Northern elevation of adjoining residential flat building**

		<p>Given that the window is for a hallway and not a primary living area or kitchen area that is used for extended periods of time, the additional overlooking would not be unreasonable. Given the scale of the adjoining development and the extent of untreated glazing adjoining the subject site it would be difficult to avoid any additional overlooking from the proposed additions. It is therefore considered unreasonable to impose conditions requiring additional privacy measures in the circumstances.</p> <p>The proposed upper level rear balcony is accessed from a bedroom. The balcony has a maximum depth of 1.2m and incorporates a part solid, part open privacy screen along the southern edge to prevent overlooking to the adjoining residential flat building to the south (No. 20 Premier Street). In summary, there would be no unreasonable privacy impacts arising from the proposal.</p>																												
<b>1.4 Quality Built Form</b>																														
<b>Siting</b>	Yes	There is no change proposed to the existing building footprint at the front or sides of the existing semi-detached dwelling. The proposed two storey addition towards the rear aligns with the addition at the rear of the adjoining semi-detached dwelling to the north (No. 24 Premier Street). The rear of the building is also sited clear of the existing stormwater easement that traverses the rear of the property.																												
<b>Front Setback</b>	Yes	There are no changes proposed to the existing front setback.																												
<b>Setbacks (Side and Rear)</b>	Yes	<p>The existing and proposed side setbacks are assessed in the table below. It is noted that the building appears single storey when viewed from the street and part two, part three storeys when viewed from the west given the fall of the land towards the rear.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Control (wall height)</th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td colspan="4"><b>Southern Side</b></td> </tr> <tr> <td>Ground Floor (0-4m) 0.9m</td> <td>1.05m</td> <td>1.05m</td> <td>Yes</td> </tr> <tr> <td>First Floor (4-7m) 1.5m</td> <td>1.05m</td> <td>1.05-1.2m (*max wall height 7.8m)</td> <td>No</td> </tr> <tr> <td>Second Floor (7m+) 2.5m</td> <td></td> <td>2.95m</td> <td>Yes</td> </tr> <tr> <td colspan="4"><b>Northern Side</b></td> </tr> <tr> <td>Each level</td> <td></td> <td>0m</td> <td>Yes,</td> </tr> </tbody> </table> <p><b>Southern Side Setback</b></p> <p>The proposed southern side setbacks of the rear additions are largely a continuation of the existing side setbacks of the existing part one, part two storey dwelling. The first floor level (being ground floor when viewed from the street) is setback 1.05m from the southern side boundary and the proposed rear balcony is stepped in by a further 190mm to 1.24m from the side boundary.</p> <p>The continuation of the existing side setback is generally acceptable having regard to the proposed layout of the rear alterations and additions. Despite the non-compliance the proposed setback would not have any material impact on the amenity of the adjoining residential flat building constructed under existing use rights of the adjoining property to the south.</p> <p>The additional overshadowing to the northern elevation of the adjoining residential flat building is considered reasonable as discussed above and would not be materially reduced should a strictly compliant side setback of 1.5m be provided. The amenity of the adjoining apartments would be reasonably maintained notwithstanding the relatively minor new non-compliance that presents towards the rear of the rear additions.</p> <p>The proposed side setback of the upper level addition complies with the third storey setback requirement in accordance with the DCP.</p>	Control (wall height)	Existing	Proposed	Compliance	<b>Southern Side</b>				Ground Floor (0-4m) 0.9m	1.05m	1.05m	Yes	First Floor (4-7m) 1.5m	1.05m	1.05-1.2m (*max wall height 7.8m)	No	Second Floor (7m+) 2.5m		2.95m	Yes	<b>Northern Side</b>				Each level		0m	Yes,
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Each level		0m	Yes,																											

		<p><b>Northern Side Setback</b></p> <p>The proposed northern side setback maintains the existing nil setback given that the building is a pair of semi-detached dwellings. The proposed alteration and additions require the extension of the common party wall which is assessed below having regard to the Planning Principle established in Galea v Marrickville Council [2003] NSWLEC 113 as required by Provision P3 of Section 1.4.6 of Part B in NSDCP 2013:</p> <p><i>a) Is the street characterised by terrace housing?</i></p> <p>The subject site and adjoining properties are semi-detached dwellings with an existing common party wall along the northern side boundary of the subject site.</p> <p><i>b) What is the height and length of the wall on the boundary?</i></p> <p>The existing common party wall is proposed to be extended by 3.8m towards the rear to a height of 7.8m to align with the existing rear addition of the adjoining property to the north (No. 24 Premier Street). The proposed first floor addition also requires the common party wall to be extended by up to 2.9m for a length of 6m behind the existing cross ridgeline.</p> <p><i>c) Has the applicant control over the adjoining site(s) or the agreement of their owners?</i></p> <p>The applicant submitted owner's consent from the adjoining property owner for use of an alterations to the existing common party wall.</p> <p><i>d) What are the impacts on the amenity and/or development potential of adjoining sites?</i></p> <p>The proposed rear building line aligns with the rear additions of the adjoining semi-detached dwelling to the north and would not have any impacts on the amenity of the adjoining property.</p> <p><i>e) Are there arrangements in place for the maintenance of the wall or gutters?</i></p> <p>The proposed structures can be reasonably maintained from within the subject site.</p> <p>On balance the proposed setbacks are considered reasonable as the existing form of the dwelling is largely retained and the proposed rear addition aligns with the adjoining semi-detached dwelling.</p>
<p><b>Front fences</b></p>	<p>Yes</p>	<p>There are no changes proposed to the existing front fencing.</p>
<p><b>Form, massing and scale</b></p>	<p>Yes</p>	<p>The proposed development would largely maintain the single storey form of the existing pair of semi-detached dwellings when viewed from the street. The proposed first floor addition is largely obscured behind the existing roof form. Whilst the height of the addition exceeds the existing cross ridge by only 260mm, the massing is set back towards the rear. The bulk and massing of the proposed addition, and consequently its visibility, is reduced through the increased side setback of the upper level and use of the hipped roof on the southern side sloping towards the boundary to reflect the primary roof form.</p> <p>The internal floor to ceiling height of the upper level addition generally meets the minimum requirement of 2.4m, however, the reduced head height section on the southern side where the roof slopes ceiling towards the side boundary is permitted under the NCC as it impacts less than one third of the total floor area of each room.</p> <p>The form, massing and scale of the rear additions replicate the existing rear addition of the adjoining semi-detached dwelling to the north (No. 24 Premier Street).</p>

<p><b>Built form character</b></p>	<p>Yes</p>	<p>The subject site is considered to be one part of a uniform group (pair) of dwellings. The existing pair of semis have an intact front elevation with projecting bays on each side, timber framed windows and a symmetrical tiled hipped and valley roof form above.</p> <p>Provision 1 of Section 1.4.8 of Part B in NSDCP 2013 requires additions to building that are a part of a group of a uniform group of buildings of similar character to be located towards the rear and not be visible from the street and that Council may permit additions, but only where those additions contribute to, or are sympathetic to the character of those buildings. The existing pair of semi-detached dwellings and other dwelling to the north are considered to be similar in character, particularly regarding their consistent scale, materiality and roof forms.</p>  <p><i>Figure 26. Site photo of pair of semi-detached dwellings.</i></p> <p>The proposed first floor addition is set back behind the existing primary cross ridgeline and straddles the existing roof form, however, does not disrupt the symmetrical hipped and valley roof form as viewed from the street. The small portion of the addition that would be visible from the street is proposed to be clad with horizontally orientated timber cladding to minimise its visual impact and is set back towards the rear of the building to reduce its visibility.</p>  <p><i>Figure 27. Site photo from the south east</i></p>
<p><b>Dwelling entry</b></p>	<p>Yes</p>	<p>There are no changes proposed to the existing dwelling entry which is located along the southern side of the dwelling. The entry path is visible from the street and provides a sense of address with the dwelling entry being located towards the front of the dwelling.</p>



<b>Roofs</b>	Yes	<p>The proposed rear addition has a flat roof located behind the existing pitched roof and is equal in height to the adjoining semi-detached dwelling to the north (No. 24 Premier Street). The flat roof is proposed to be utilised for a solar panel array and steps down towards the rear in comparison to the existing roof form.</p> <p>The roof over the proposed first floor addition is also flat to reduce its massing with a hipped sloping section on the southern side reducing the visibility of the addition when viewed along the southern side setback area and reflecting the slope of the primary roof form below.</p>																									
<b>Colours and materials</b>	Yes	<p>The building is proposed to be finished to match the existing external finishes and utilises primarily timber framing for the proposed windows that are visible from the street and timber cladding for the rear addition. The existing characteristic face brick is to be retained at the front of the dwelling.</p> <p>The proposed works are contemporary in nature and introduce some new elements such as the upper level roof form behind the existing cross ridge and expressed vertical timber cladding to the rear, however, generally maintains the existing built form character of the building when viewed from the street and adjoining dwellings.</p>																									
<b>1.5 Quality urban environment</b>																											
<b>Safety and security</b>	Yes	The proposed development would not detract from the existing levels of safety and security within a low density residential area.																									
<b>Car parking rates - Section 10.2.1</b>	Yes	The existing dwelling does not have any on-site parking as the site is located substantially below the road carriage. There is no requirement to provide onsite car parking for a dwelling as the carparking rates in Section 10 of Part B in NSDCP 2013 are set as a maximum only.																									
<b>Location of car parking and Vehicle Access</b>	Yes																										
<b>Site Coverage, Unbuilt Area and Landscaped Area</b>	Yes	<p>The site has an area of 221.3sqm. The relevant site coverage, unbuilt upon area and landscape area provisions for a semi-detached dwelling in the R2 Low Density Residential zone are assessed in the table below.</p> <table border="1" data-bbox="774 1187 1356 1377"> <thead> <tr> <th></th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td><b>Site Coverage</b></td> <td>88.4sqm</td> <td>129.8sqm</td> <td rowspan="2">Yes</td> </tr> <tr> <td>%</td> <td>39.9%</td> <td>58.7%</td> </tr> <tr> <td><b>Unbuilt-upon Area</b></td> <td>19.3sqm</td> <td>17.2sqm</td> <td rowspan="2">Yes</td> </tr> <tr> <td>%</td> <td>8.7%</td> <td>7.7%</td> </tr> <tr> <td><b>Landscape Area</b></td> <td>110.1sqm</td> <td>71.4sqm</td> <td rowspan="2">Yes</td> </tr> <tr> <td>%</td> <td>49.4%</td> <td>32.2%</td> </tr> </tbody> </table> <p>The proposed development complies with the relevant site coverage, unbuilt upon area and landscaped area provisions.</p>		Existing	Proposed	Compliance	<b>Site Coverage</b>	88.4sqm	129.8sqm	Yes	%	39.9%	58.7%	<b>Unbuilt-upon Area</b>	19.3sqm	17.2sqm	Yes	%	8.7%	7.7%	<b>Landscape Area</b>	110.1sqm	71.4sqm	Yes	%	49.4%	32.2%
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<b>Front gardens</b>	Yes	There are no changes proposed to the existing front garden of the site which is in part landscaped.																									
<b>Garbage storage</b>	Yes	There are no changes proposed to the existing garbage bin storage arrangements. There is an area located within the side setback of the building which is not overly visible from the public domain.																									
<b>1.6 Efficient use of resources</b>																											
<b>BASIX</b>	Yes	A valid BASIX Certificate have been provided.																									

### Part C - Section

The subject site is located in the **Forsyth Neighbourhood** of the **Neutral Bay Planning Area**.

### Section 7.1.3 Desired Built Form

#### Form, scale and massing

*P1 Buildings to step down in height in accordance with the terrain.*

The proposed development steps down towards the rear when viewed from the street and generally complies with the height of building development standard with the exception of a portion of the first floor level addition towards the rear. However, the building would maintain a single storey appearance from the street with a room in the roof style addition set back behind the existing cross ridgeline which is reflective of the surrounding low density residential development.

### **SECTION 7.11/12 CONTRIBUTIONS**

The proposed development would not increase the number of residents within the locality as the number of dwellings on the site remains unchanged and therefore a contribution levied under section 7.11 of the Act is not required. The proposed cost of works is identified as \$1,098,000.00 requiring a contribution to be levied under section 7.12 of the Act. The levy is calculated at 1% of the cost of works, requiring a levy of \$10,980 (**Refer to condition C17**).

### **ALL LIKELY IMPACTS OF THE DEVELOPMENT**

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

<b>ENVIRONMENTAL APPRAISAL</b>	<b>CONSIDERED</b>
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant s4.15(1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

### **SUBMITTERS CONCERNS**

The development application was notified in accordance with Council's Community Engagement Protocol from 21 January 2022 until 4 February 2022 where one submission of support was received.

The amended plans lodged 19 May 2022 were renotified in accordance with Council's Community Engagement Protocol from 3 June 2022 until 17 June 2022. No submissions were received.

## **SITE SUITABILITY**

The subject site involves alterations and additions to an existing semi detached dwelling that is permissible on the subject site so the proposal is considered to be suitable for the subject site.

## **PUBLIC INTEREST**

There are no matters raised in which approval of the application would not be in the public interest.

## **HOW THE COMMUNITY VIEWS WERE TAKEN INTO CONSIDERATION**

The development application was notified in accordance with Council's Community Engagement Protocol from 21 January 2022 until 4 February 2022 and the amended plans from 3 June 2022 until 17 June 2022. No objections were received, nevertheless, the potential impact of the proposed development on the amenity of surrounding properties has been considered, additionally conditions of consent have been recommended to minimise potential construction impacts.

## **CONCLUSION + REASONS**

After a detailed assessment of the application, it was found that the matters for consideration as outlined in section 4.15(1) of the Act have been satisfied.

The proposed development exceeds the maximum permitted building height development standard by 1.55m or 18.2% and is supported by a written request to contravene the development standard pursuant to clause 4.6 in NSLEP 2013. The written request demonstrates that strict compliance with the development standard is both unreasonable and unnecessary because the proposed development would be consistent with the objectives of the height of buildings development standard, and there are sufficient environmental planning grounds to justify the variation in the circumstances. The proposed development would be in the public interest because it is consistent with the objectives of the zone and the standard to be varied.

The proposed development would improve the amenity of the existing dwelling by increasing the size of the existing dwelling and providing a modern layout. The rear additions align with the recent additions to the rear of the adjoining semi-detached dwelling to the north. The proposed first floor addition is set back predominantly behind the existing roof form to retain the existing built form character of the pair of semi-detached dwellings which contribute positively to the street scape. The addition has a sloping roof on the southern side to further minimise its visibility from the street and is clad with timber cladding to break down the visual massing of the addition.

The proposed development would not have an unreasonable impact on the amenity of the surrounding properties with regards to the retention of views, privacy and solar access.

On balance, the application is considered reasonable and is recommended for approval.

**RECOMMENDATION**

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

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, as the consent authority, assume the concurrence of the Secretary, Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 of NSLEP 2013 and grant consent to Development Application No. 457/2021 for alterations and additions to an existing semi-detached dwelling on land at No 22 Premier Street, Neutral Bay.

**MICHAEL STEPHENS**  
**SENIOR ASSESSMENT OFFICER**

**ROBYN PEARSON**  
**TEAM LEADER (ASSESSMENTS)**

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

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**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**22 PREMIER STREET, NEUTRAL BAY**  
**DEVELOPMENT APPLICATION NO. 457/21**

**A. Conditions that Identify Approved Plans**

**Development in Accordance with Plans/Documentation**

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

Plan Nos.	Issue	Description	Prepared by	Dated
DA003	B	Site Plan	Stephanie Brancatisano Architect	30/11/2021
DA201	B	Demolition Lower Ground Floor Plan		30/11/2021
DA202	B	Demolition Ground Floor Plan		30/11/2021
DA203	C	Demolition Roof Plan		24/06/2022
DA300	B	Basement Plan		30/11/2021
DA301	B	Lower Ground Floor Plan		30/11/2021
DA302	C	Ground Floor Plan		02/05/2022
DA303	E	First Floor Plan		24/06/2022
DA304	D	Roof Plan		24/06/2022
DA500	E	Section 01		24/06/2022
DA501	F	Section 02		24/06/2022
DA700	E	North Elevation		24/06/2022
DA701	E	East Elevation		24/06/2022
DA702	F	South Elevation		24/06/2022
DA703	E	West Elevation		24/06/2022

(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)

**22 PREMIER STREET, NEUTRAL BAY  
DEVELOPMENT APPLICATION NO. 457/21**

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**No Demolition of Extra Fabric**

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

(Reason: To ensure compliance with the approved development)

**External Finishes and Materials**

- A4. External finishes and materials must be in accordance with the submitted schedule DA700, DA702, DA703, drawn by Stephanie Brancastisano Architect, dated 24 June 2022 and received by Council unless otherwise modified by Council in writing.

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

**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 for consideration by the North Sydney Traffic Committee and approved in writing by North Sydney Council's Traffic Division 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.

**22 PREMIER STREET, NEUTRAL BAY  
DEVELOPMENT APPLICATION NO. 457/21**

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- 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.
- 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 Council's 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. A certificate of compliance with this condition must be obtained from Council's development engineers. The certificate and 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.

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- 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' assessment period** is required, including referral 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)

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

**Dilapidation Report Damage to Public Infrastructure**

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

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

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

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

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



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

- C2. A photographic survey and dilapidation report of adjoining property No. 24 Premier Street detailing the physical condition of the property, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

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

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

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

(Reason: Proper management of records)

**Shoring for Adjoining Property**

- C3. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.

*Note: Approval of engineering drawings for shoring works to be located on adjoining property by the Certifying Authority does not authorise a trespass on private or public land. All relevant permissions/legal rights must be obtained to undertake any works on adjoining land.*

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

**Structural Adequacy of Adjoining Properties - Excavation Works**

- C4. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining property No. 24 Premier Street, which certifies the ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties 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.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works)

**Structural Adequacy of Existing Building**

- C5. 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)

**Geotechnical Report**

- C6. A report prepared by an appropriately qualified Geotechnical Engineer certifying that the existing rock formations and substrate on the site is capable of:
- a) withstanding the proposed loads to be imposed;
  - b) withstanding the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
  - c) providing protection and support of adjoining properties; and
  - d) the provision of appropriate subsoil drainage during and upon completion of construction works

must be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate.

Recommendations made in the certified report must be complied with at all times.

Building plans and specifications submitted for approval with any construction certificate application must comply with (a), (b), (c) and (d) above and the certified report, including any recommendations made in the said certified report.

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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 the structural integrity of the subject site and adjoining sites during the excavation process)

**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 and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

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

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

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

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

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

**Waste Management Plan**

- C8. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
  - b) The design of the on-site waste storage and recycling area; and
  - c) Administrative arrangements for waste and recycling management during the construction process.

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

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

**External Colours and Finishes**

- C9. The external colours and finishes shall match those as existing and/or be compatible with surrounding development. A schedule of external colours and finishes must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

**Roofing Materials - Reflectivity**

- C10. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

**Work Zone**

- C11. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

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

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

(Reason: Amenity and convenience during construction)

**Stormwater Management and Disposal Design Plan - Construction Issue Detail**

- C12. Prior to issue of any Construction Certificate, the applicant shall have a site drainage management plan prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:
- a) Compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code.
  - b) Stormwater runoff and subsoil drainage generated by the approved dwellings must be conveyed in a controlled manner by gravity via existing stormwater lines to the existing stormwater inter-allotment stormwater easement lines. Stormwater line within the easement must be fully operational and adequate in size, to convey any increase in stormwater runoff from 22 Premier Street. If it proves that existing conduit within the easement is not sufficient in size, then it must be replaced with adequate conduit size on applicant's expense. Any disturbed land or building structure on neighbouring property must be restored to its previous condition also on applicant's expense.
  - c) All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer, shall be submitted with the application for a Construction Certificate.

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- 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.
- e) Prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.

Details demonstrating compliance are to be submitted with the Construction Certificate.

The Certifying Authority issuing the Construction Certificate must ensure that the approved drainage plan and specifications, satisfying the requirements of this condition, is referenced on and accompanies the Construction Certificate.

(Reason To ensure controlled stormwater management and disposal without nuisance)

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

C13. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$3,500.00 to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
- c) remedying any defects in any such public work that arise within six months after the work is completed.

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

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

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

- where the damage constitutes a hazard in which case Council may make use of the security immediately;

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

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

**Tree Bond for Public Trees**

- C14. Prior to the issue of any construction certificate, security in the sum of \$3,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

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

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

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

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

**SCHEDULE**

Street tree in verge in front of No's. 22 and 24 Premier Street, Neutral Bay

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

**Tree Protection Measures to be shown on Construction Drawings**

- C15. All tree(s) on the subject site are required to be protected and retained (or transplanted) as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites.

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 that appropriate tree protection measures are shown on construction drawings)

### **Asbestos Material Survey**

C16. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

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

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

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

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

### **Section 7.12 Contributions**

C17. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is **\$10,980.00**.



### **Indexation**

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

### **Timing of Payment**

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

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

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

### **Security Deposit/Guarantee Schedule**

C18. 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:

<b>Security Deposit/Guarantee</b>	<b>Amount (\$)</b>
Street Tree Bond (on Council Property)	\$3,000.00
Footpath Damage Bond	\$3,500.00
<b>TOTAL BONDS</b>	<b>\$6,500.00</b>

Note: The following fees applicable

<b>Fees</b>	
Section 7.12 Contribution	\$10,980.00
<b>TOTAL FEES</b>	<b>\$10,980.00</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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**BASIX Certificate**

C19. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A441658\_02, dated 10 May 2022 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

**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)

**Asbestos Material Survey**

D2. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

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

a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;

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

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

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

**Commencement of Works' Notice**

- D3. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

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

**Parking Restrictions**

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

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

**Road Reserve Safety**

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

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

(Reason: Public Safety)

**Temporary Disposal of Stormwater Runoff**

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

(Reason: Stormwater control during construction)

**Geotechnical Stability during Works**

- E4. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the report prepared under condition C6 and all subsequent geotechnical inspections carried out during the excavation and construction phase.

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Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed below adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

**Removal of Extra Fabric**

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

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

**Dust Emission and Air Quality**

E6. The following must be complied with at all times:

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

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

**Noise and Vibration**

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)

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**No Work on Public Open Space**

- E8. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

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

**Applicant's Cost of Work on Council Property**

- E9. The Applicant must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

**No Removal of Trees on Public Property**

- E10. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

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

**Protection of Trees**

- E11. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009.

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

**Notes:**

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

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

**Special Permits**

- E12. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

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

1) **On-street mobile plant**

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

(Reason: Proper management of public land)

2) **Hoardings**

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

(Reason: Proper management of public land)

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

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

(Reason: Proper management of public land)

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**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)

**Construction Hours**

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

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

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

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

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

**Installation and Maintenance of Sediment Control**

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

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

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



**Sediment and Erosion Control Signage**

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

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

**Site Amenities and Facilities**

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

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**

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

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

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

**Prohibition on Use of Pavements**

- E18. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

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

**Plant and Equipment Kept Within Site**

- E19. 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)

**Waste Disposal**

- E20. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

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

**Asbestos Removal**

- E21. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

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

**Service Adjustments**

- E22. Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the person acting on the consent and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the Applicants fully responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services at the appropriate stage of the development (including water, phone, gas and the like). Council accepts no responsibility whatsoever for any matter arising from its approval of this application involving any influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

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

**National Construction Code**

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

(Reason: Prescribed - Statutory)

**Home Building Act**

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

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

- i) the name and licence number of the principal contractor, and
- ii) the name of the insurer by which the work is insured under Part 6 of that Act, or

(b) in the case of work to be done by an owner-builder:

- (i) the name of the owner-builder, and
- (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

(Reason: Prescribed - Statutory)

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

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

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

**Construction Certificate**

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

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

**Occupation Certificate**

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

(Reason: Statutory)

**Mandatory Critical Stage Inspections**

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

(Reason: Statutory)

**Excavation/Demolition**

- F7. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

**22 PREMIER STREET, NEUTRAL BAY  
DEVELOPMENT APPLICATION NO. 457/21**

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- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

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

**Protection of Public Places**

- F8. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

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

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

**Site Sign**

- F9. 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.

**22 PREMIER STREET, NEUTRAL BAY  
DEVELOPMENT APPLICATION NO. 457/21**

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- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

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

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:

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

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

(Reason: Maintain quality of public assets)

**Damage to Adjoining Properties**

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

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

**Utility Services**

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

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

**Asbestos Clearance Certificate**

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

**22 PREMIER STREET, NEUTRAL BAY  
DEVELOPMENT APPLICATION NO. 457/21**Page 27 of 27

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

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

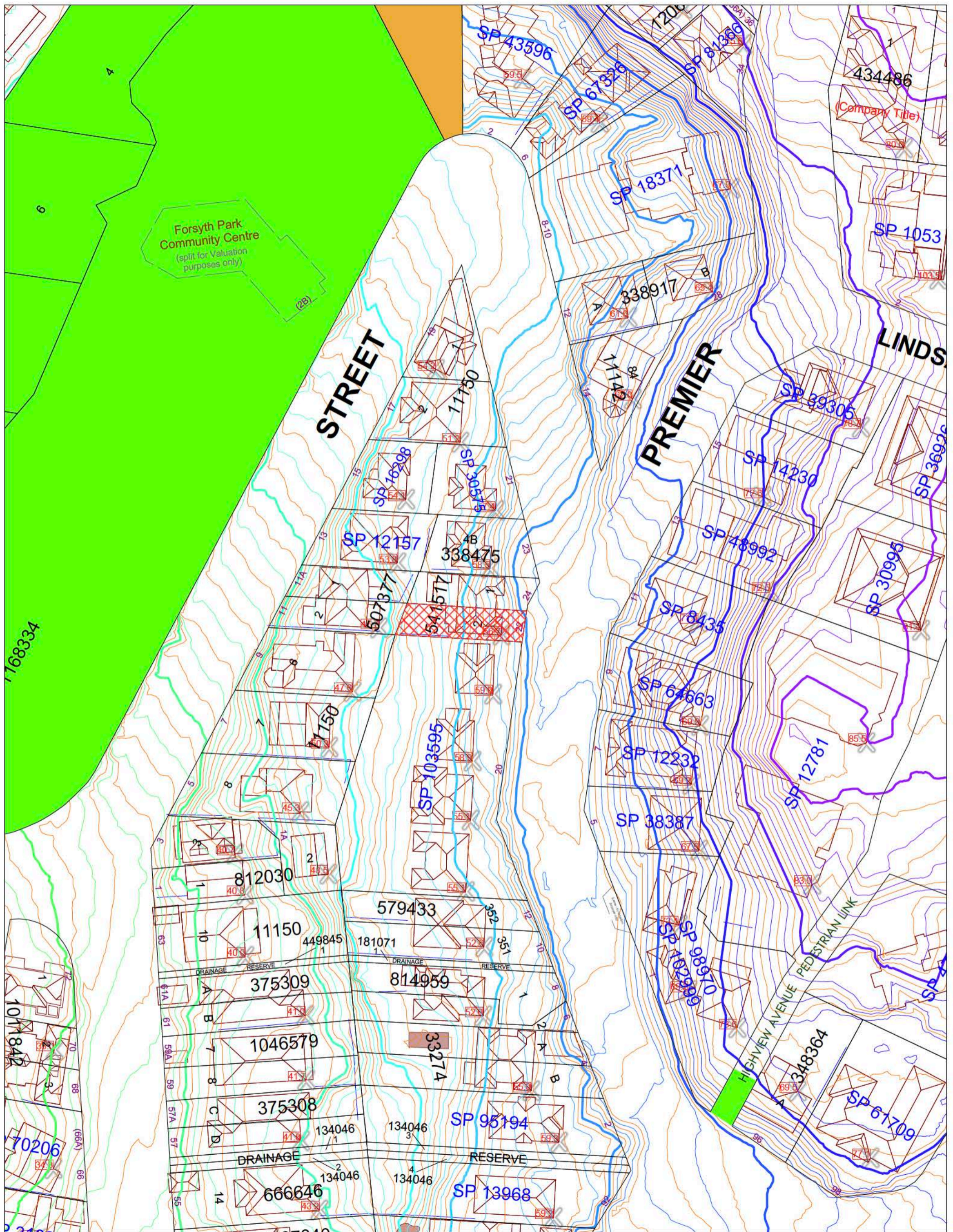
Note: Further details of licensed asbestos waste disposal facilities can be obtained from [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au).

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

**BASIX Completion Certificate**

- G5. In accordance with Clause 154C of the Environmental Planning and Assessment Regulation 2000, prior to issuing a final occupation certificate the Certifying Authority must apply to the Director-General for a BASIX completion receipt.

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

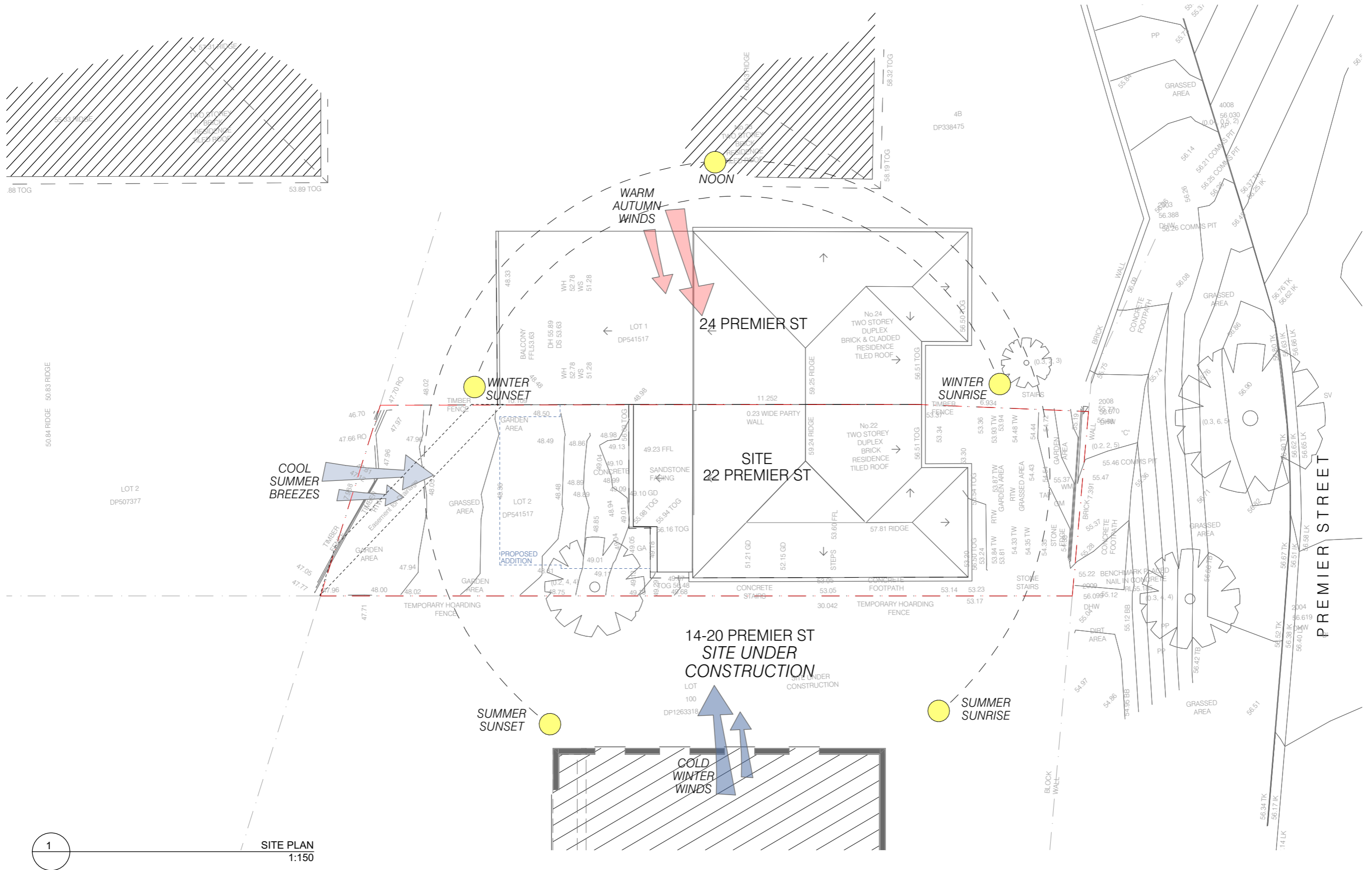


**North Sydney Council**

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





1 SITE PLAN 1:150

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REV	DATE	ISSUE
A	09/11/21	ISSUE FOR COORDINATION
B	30/11/21	ISSUE FOR DA

**DEVELOPMENT APPLICATION**

FOR INFORMATION ONLY  
NOT FOR CONSTRUCTION



**Stephanie Brancatisano Architect Pty Ltd**

Nominated Architect S Brancatisano NSW ARB Reg #10667  
Email stephanie@brancatisano.com  
Phone 0436 002 716  
ABN 95 632 485 959

Drawn Plot Date Project No Project Status

SB 30/11/2021 2102 Development Application

Client Site

Rebecca Smith and Tim Cummins  
22 Premier St, Neutral Bay NSW, 2089

DRAWING TITLE :  
**SITE PLAN**

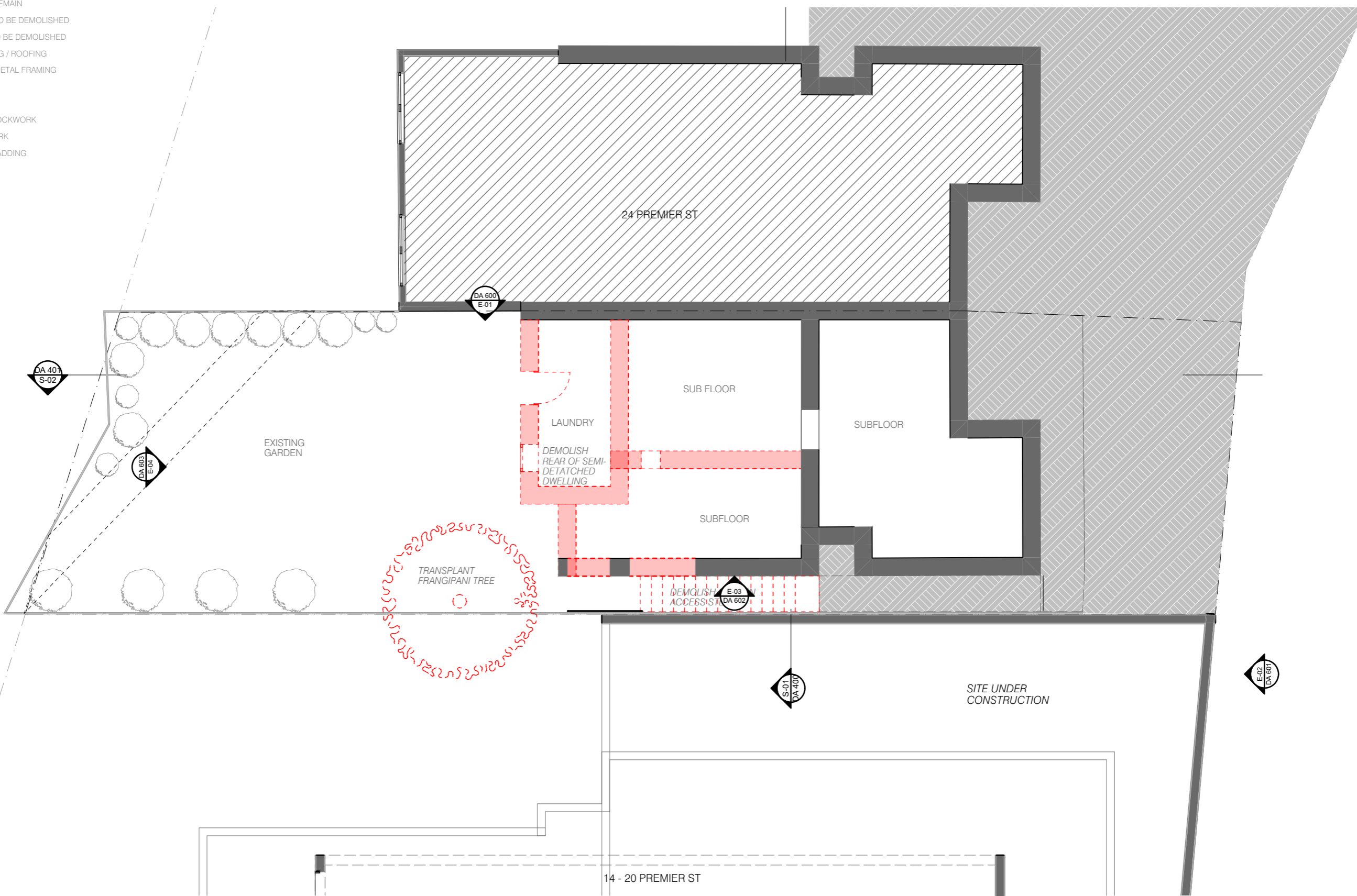
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**B**

DRAWING NO.  
**DA 003**

LEGEND

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
- NEW WORKS - STEEL
- NEW WORKS - TIMBER
- NEW WORKS - CONCRETE / BLOCKWORK
- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING



1 LOWER GROUND - DEMOLITION 1:100

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Drawn Plot Date Project No Project Status  
 SB 30/11/2021 2102 Development Application

Client Site  
 Rebecca Smith and Tim Cummins  
 22 Premier St, Neutral Bay  
 NSW, 2089

DRAWING TITLE :  
**DEMOLITION LOWER GROUND FLOOR PLAN**

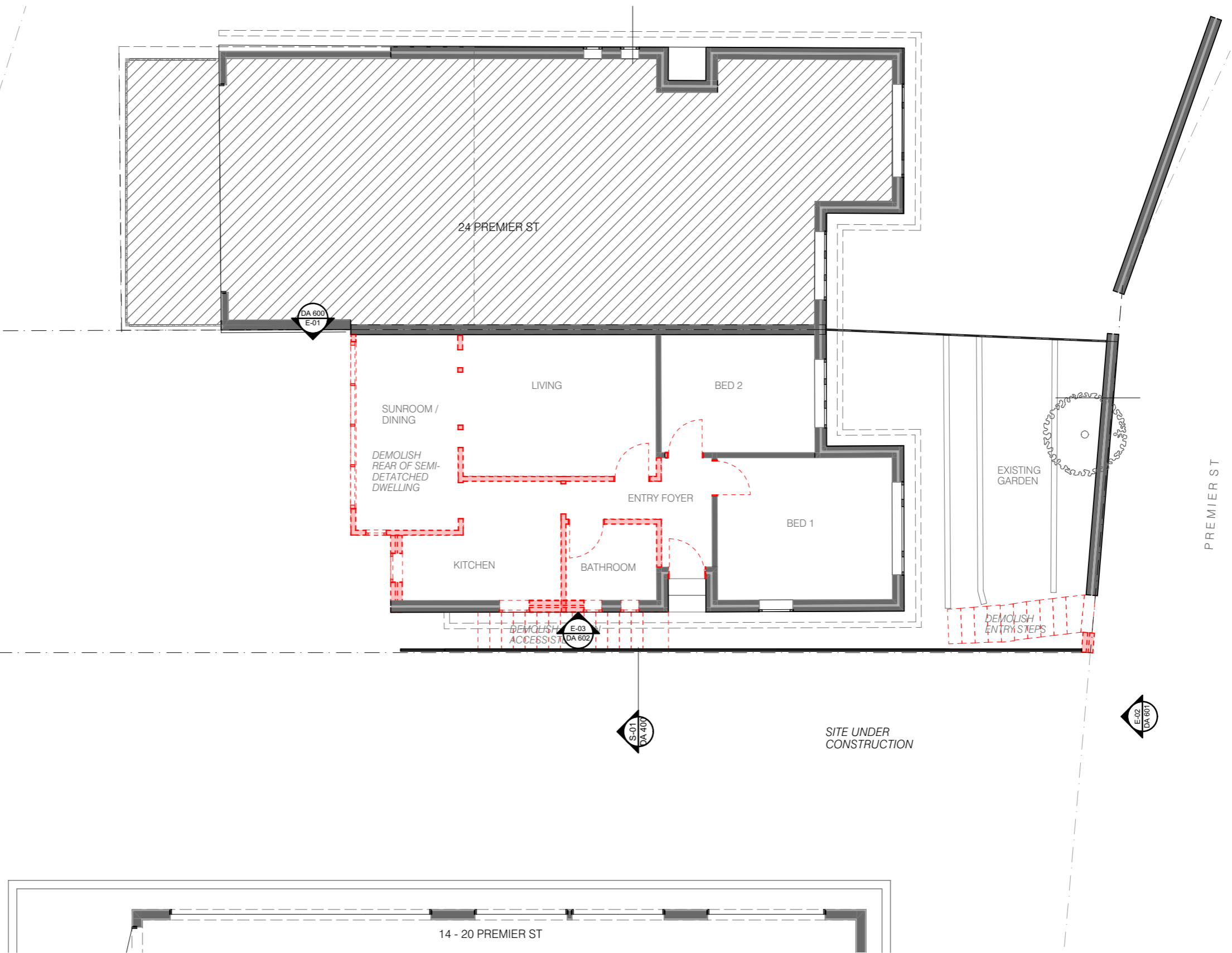
PROJECT NAME :  
 22 Premier St, Neutral Bay

REVISION NO.  
**B**

DRAWING NO.  
**DA 201**

LEGEND

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
- NEW WORKS - STEEL
- NEW WORKS - TIMBER
- NEW WORKS - CONCRETE / BLOCKWORK
- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING



1 GROUND FLOOR - DEMOLITION 1:100

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**DEVELOPMENT APPLICATION**  
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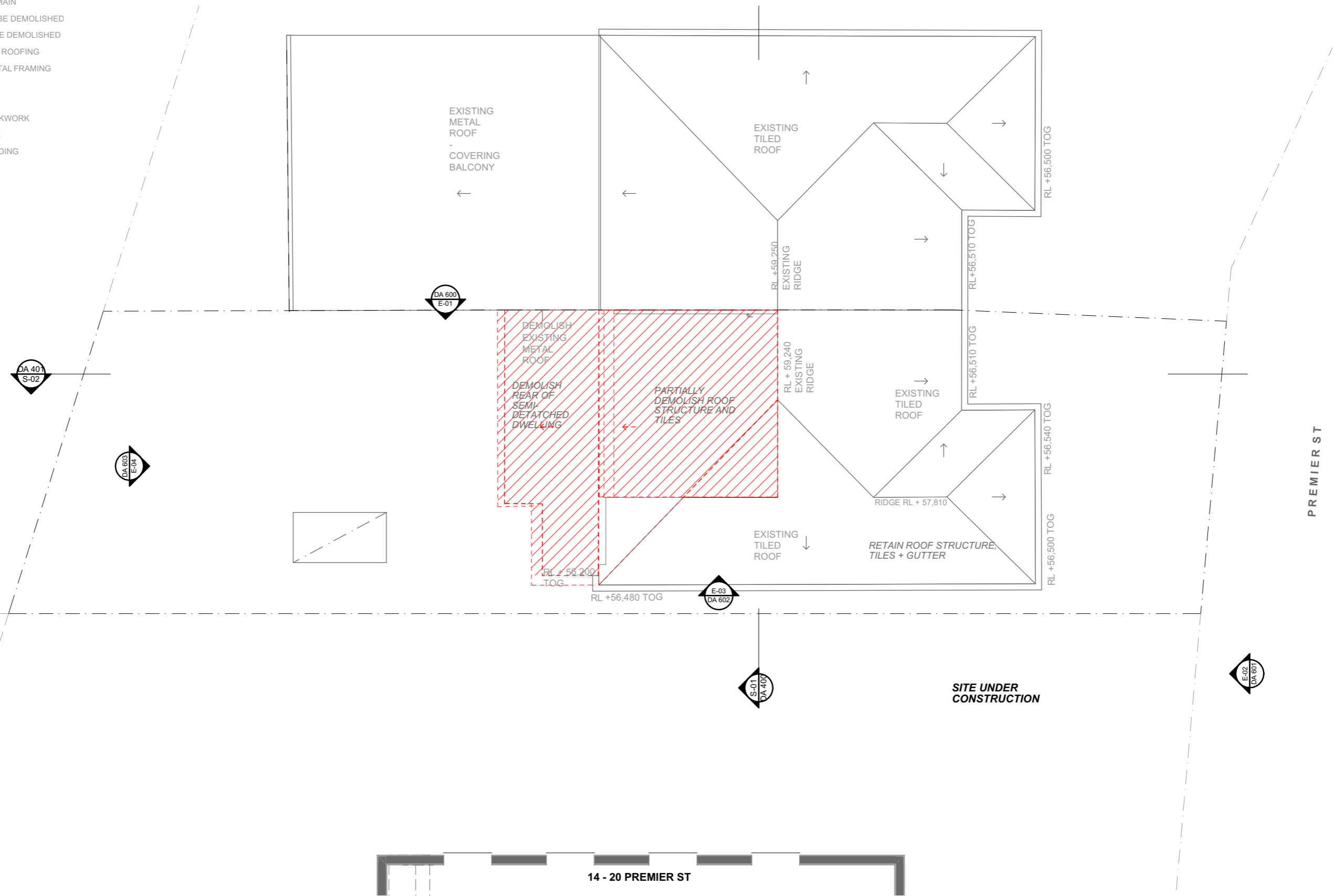
Drawn Plot Date Project No Project Status Client Site  
 SB 30/11/2021 2102 Development Application  
 Rebecca Smith and Tim Cummins  
 22 Premier St, Neutral Bay  
 NSW, 2089

DRAWING TITLE :  
**DEMOLITION GROUND FLOOR PLAN**  
 PROJECT NAME :  
 22 Premier St, Neutral Bay

REVISION NO.  
**B**  
 DRAWING NO.  
**DA 202**

**LEGEND**

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
- NEW WORKS - STEEL
- NEW WORKS - TIMBER
- NEW WORKS - CONCRETE / BLOCKWORK
- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING
- NEW WORKS - ROOF TILES



1 ROOF - DEMOLITION  
1:100

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A	09.11.21	ISSUE FOR COORDINATION
B	30.11.21	ISSUE FOR DA
C	24.06.22	ISSUE FOR DA - AMENDED

**DEVELOPMENT APPLICATION**

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Drawn Plot Date Project No Project Status  
SB 02/05/2022 2102 Development Application

Client Site  
Rebecca Smith and Tim Cummins  
22 Premier St, Neutral Bay  
NSW, 2089

DRAWING TITLE :  
**DEMOLITION ROOF PLAN**

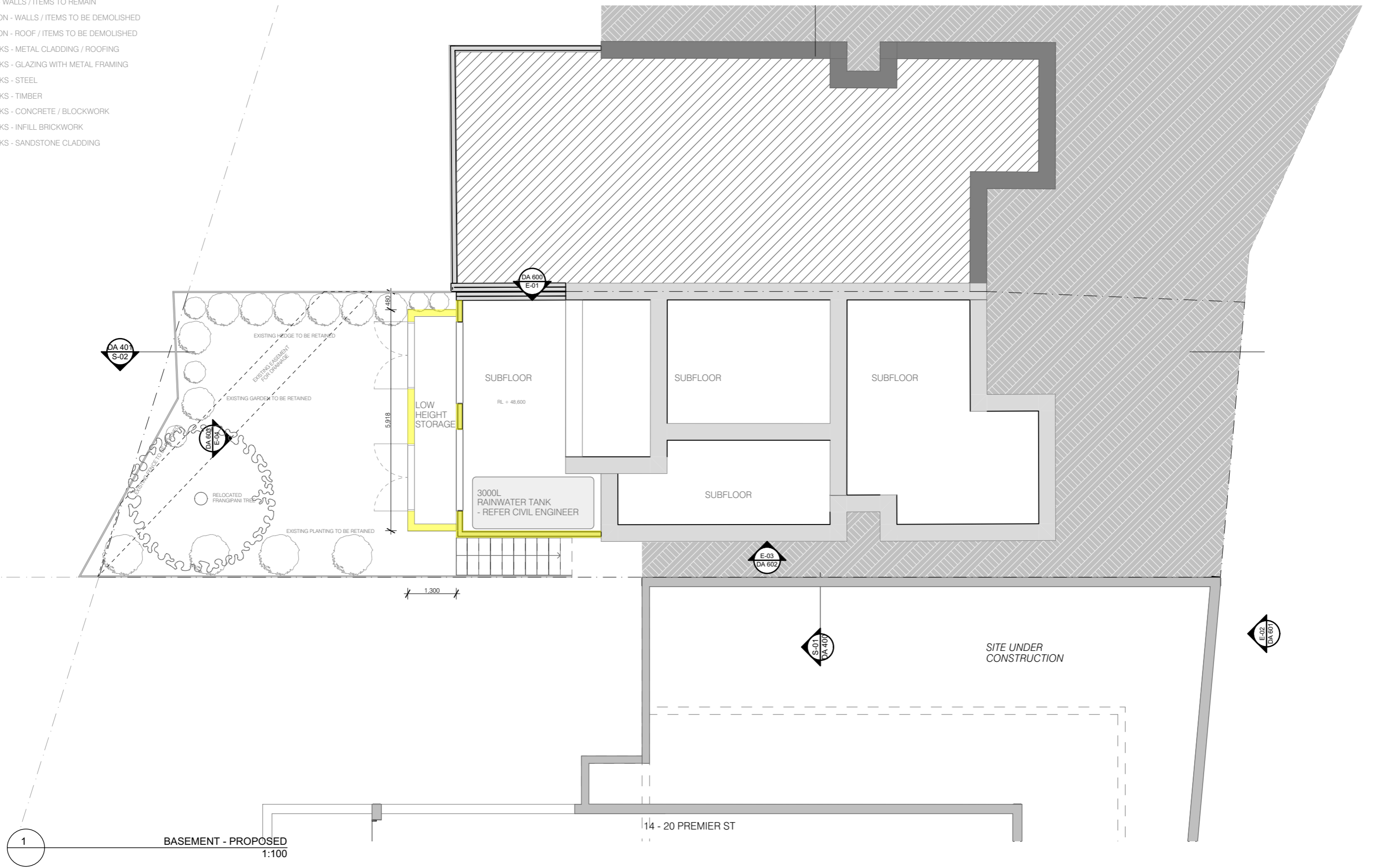
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**C**

DRAWING NO.  
**DA 203**

LEGEND

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
- NEW WORKS - STEEL
- NEW WORKS - TIMBER
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- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING



1 BASEMENT - PROPOSED  
1:100

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**DEVELOPMENT APPLICATION**  
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ABN 95 632 485 959

Drawn Plot Date Project No Project Status  
SB 30/11/2021 2102 Development Application

Client Site  
Rebecca Smith and Tim Cummins  
22 Premier St, Neutral Bay  
NSW, 2089

DRAWING TITLE :  
**PROPOSED BASEMENT FLOOR PLAN**

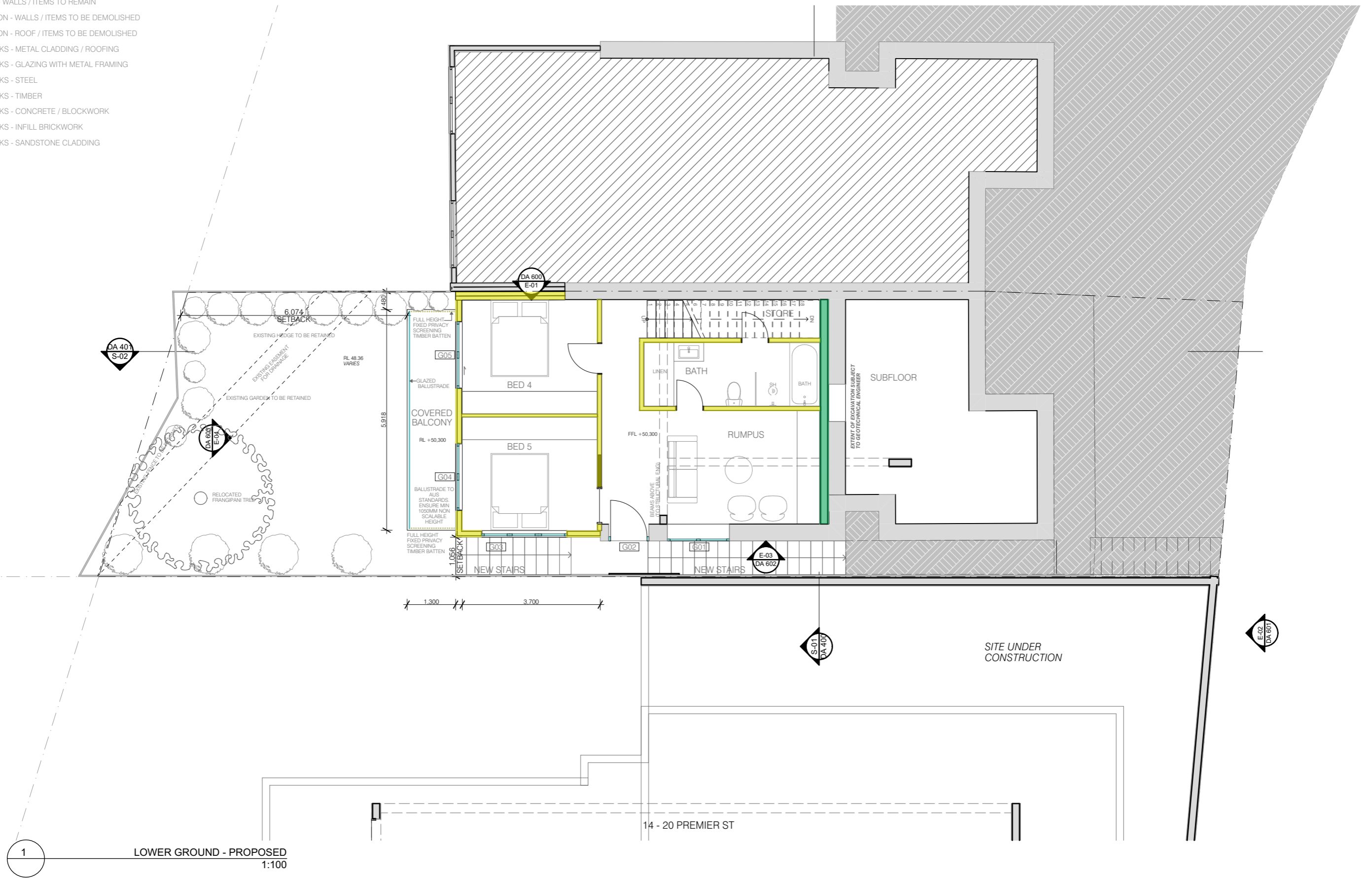
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**B**

DRAWING NO.  
**DA 300**

LEGEND

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
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A	09/11/21	ISSUE FOR COORDINATION
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**DEVELOPMENT APPLICATION**

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 Phone 0436 002 716  
 ABN 95 632 485 959

Drawn Plot Date Project No Project Status Client Site

SB 30/11/2021 2102 Development Application  
 Rebecca Smith and Tim Cummins  
 22 Premier St, Neutral Bay NSW, 2089

DRAWING TITLE :  
**PROPOSED LOWER GROUND FLOOR PLAN**

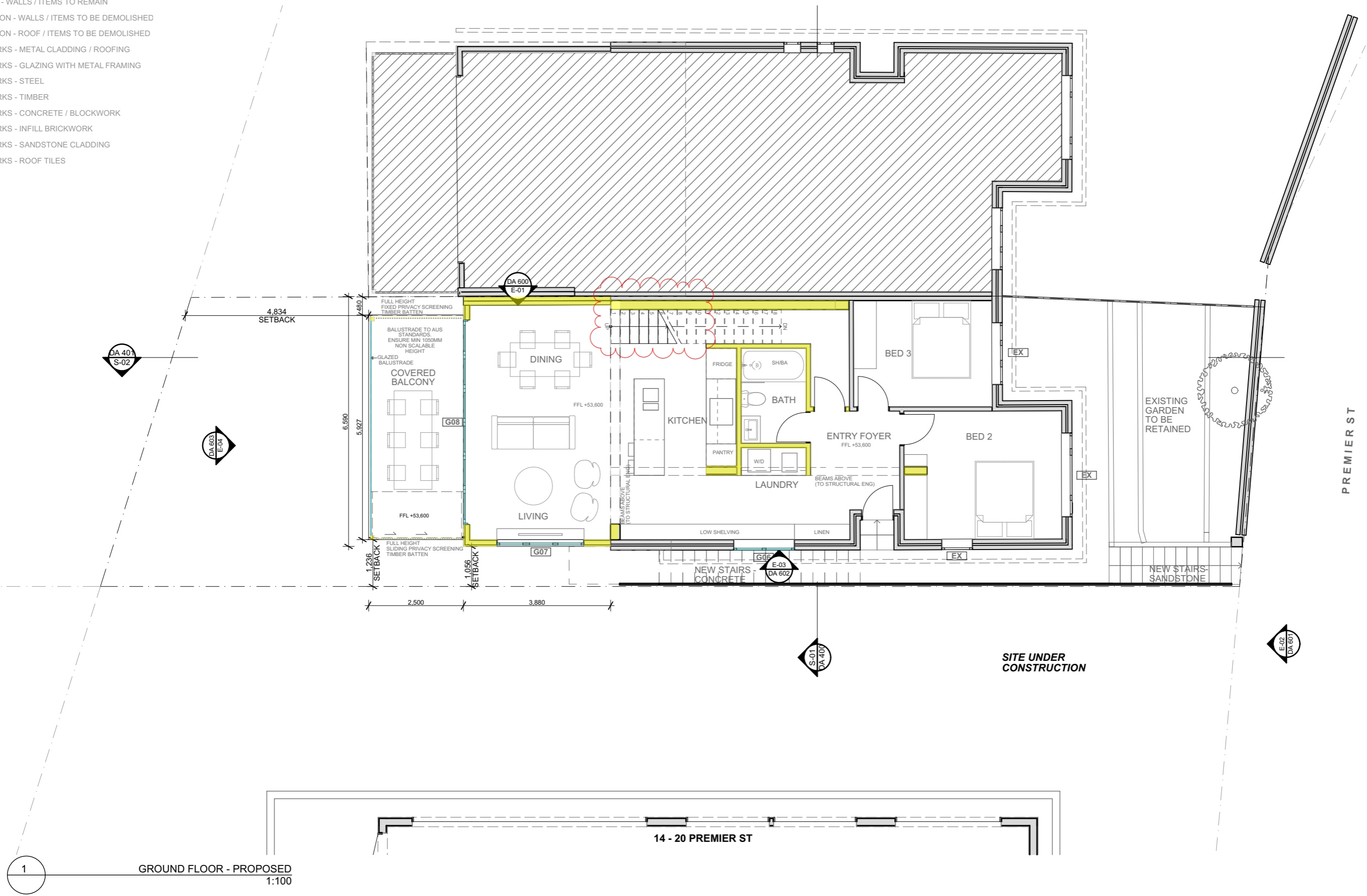
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**B**

DRAWING NO.  
**DA 301**

**LEGEND**

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
- NEW WORKS - STEEL
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- NEW WORKS - SANDSTONE CLADDING
- NEW WORKS - ROOF TILES



1 GROUND FLOOR - PROPOSED  
1:100

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REVISIONS		
REV	DATE	ISSUE
A	09.11.21	ISSUE FOR COORDINATION
B	30.11.21	ISSUE FOR DA
C	02.05.22	ISSUE FOR DA - AMENDED

**DEVELOPMENT APPLICATION**

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Drawn Plot Date Project No Project Status  
SB 02/05/2022 2102 Development Application

Client Site  
Rebecca Smith and Tim Cummins  
22 Premier St, Neutral Bay NSW, 2089

DRAWING TITLE :  
**PROPOSED GROUND FLOOR PLAN**

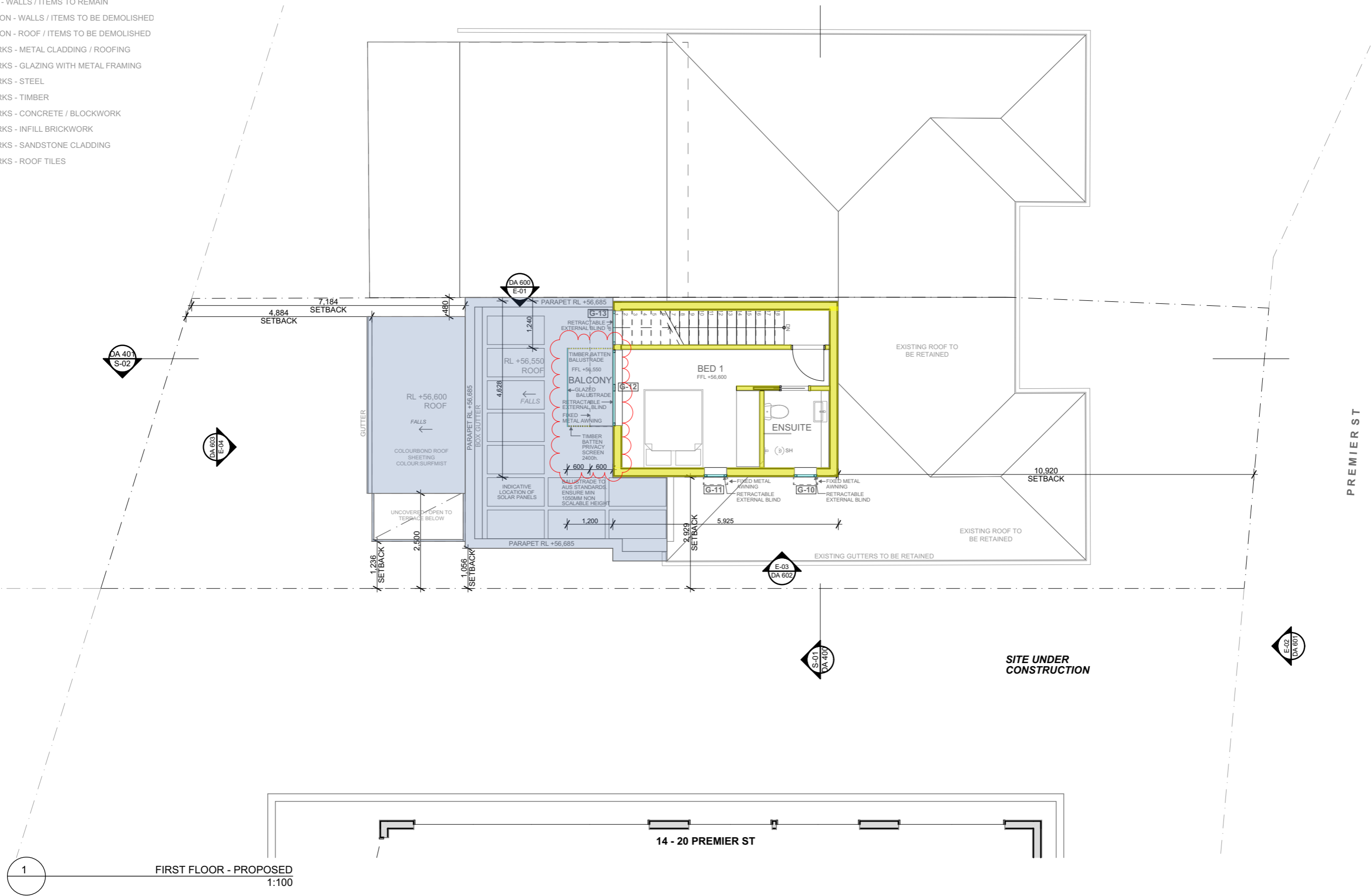
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**C**

DRAWING NO.  
**DA 302**

**LEGEND**

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
- NEW WORKS - STEEL
- NEW WORKS - TIMBER
- NEW WORKS - CONCRETE / BLOCKWORK
- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING
- NEW WORKS - ROOF TILES



1 FIRST FLOOR - PROPOSED  
1:100

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REV	DATE	ISSUE
A	09.11.21	ISSUE FOR COORDINATION
B	16.11.21	ISSUE FOR COORDINATION
C	30.11.21	ISSUE FOR DA
D	02.05.22	ISSUE FOR DA - AMENDED
E	24.06.22	ISSUE FOR DA - AMENDED

**DEVELOPMENT APPLICATION**  
FOR INFORMATION ONLY  
NOT FOR CONSTRUCTION



**Stephanie Brancatisano Architect Pty Ltd**  
Nominated Architect S Brancatisano NSW ARB Reg #10667  
Email stephanie@brancatisano.com  
Phone 0436 002 716  
ABN 95 632 485 959

Drawn Plot Date Project No Project Status  
SB 02/05/2022 2102 Development Application

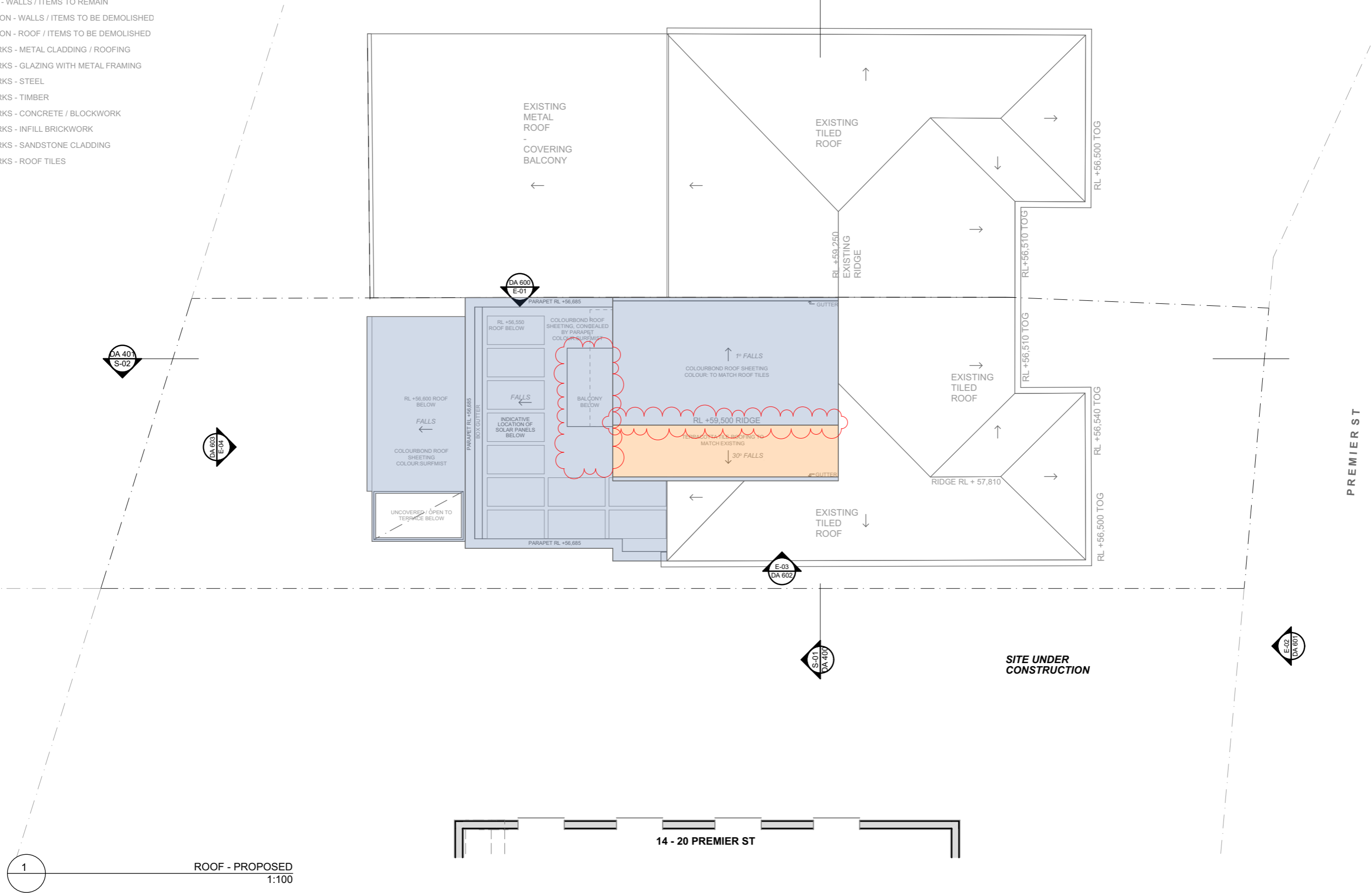
DRAWING TITLE :  
**PROPOSED FIRST FLOOR PLAN**  
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**E**  
DRAWING NO.  
**DA 303**



**LEGEND**

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
- NEW WORKS - STEEL
- NEW WORKS - TIMBER
- NEW WORKS - CONCRETE / BLOCKWORK
- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING
- NEW WORKS - ROOF TILES



**SITE UNDER CONSTRUCTION**

**14 - 20 PREMIER ST**

**1** ROOF - PROPOSED  
1:100

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Phone 0436 002 716  
ABN 95 632 485 959

Drawn Plot Date Project No Project Status  
SB 02/05/2022 2102 Development Application

Client Site  
Rebecca Smith and Tim Cummins  
22 Premier St, Neutral Bay  
NSW, 2089

DRAWING TITLE :  
**PROPOSED ROOF PLAN**

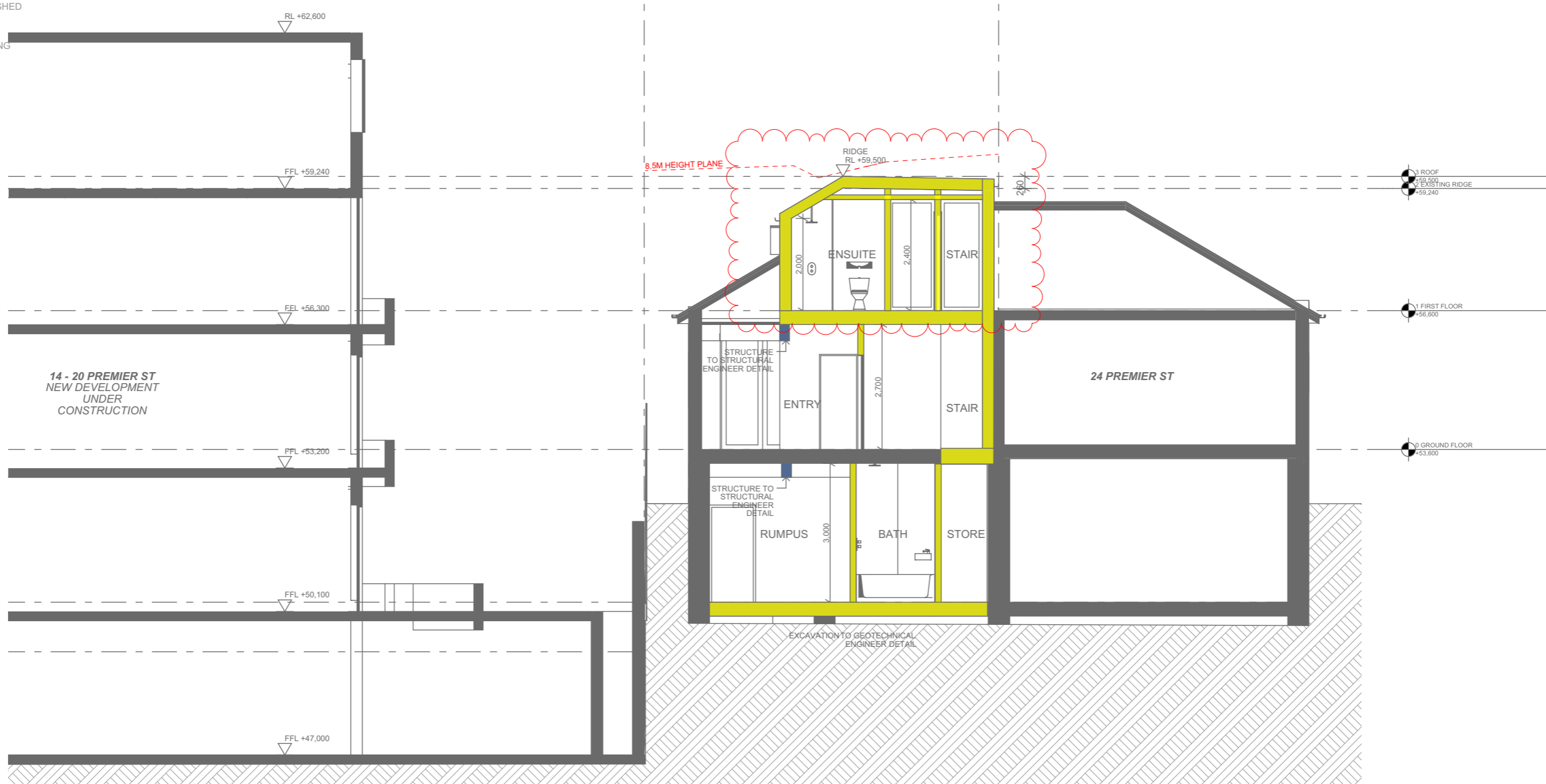
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**D**

DRAWING NO.  
**DA 304**

**LEGEND**

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
- NEW WORKS - STEEL
- NEW WORKS - TIMBER
- NEW WORKS - CONCRETE / BLOCKWORK
- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING
- NEW WORKS - ROOF TILES



**S-01** SECTION 01 - PROPOSED  
1:100

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ABN 95 632 485 959

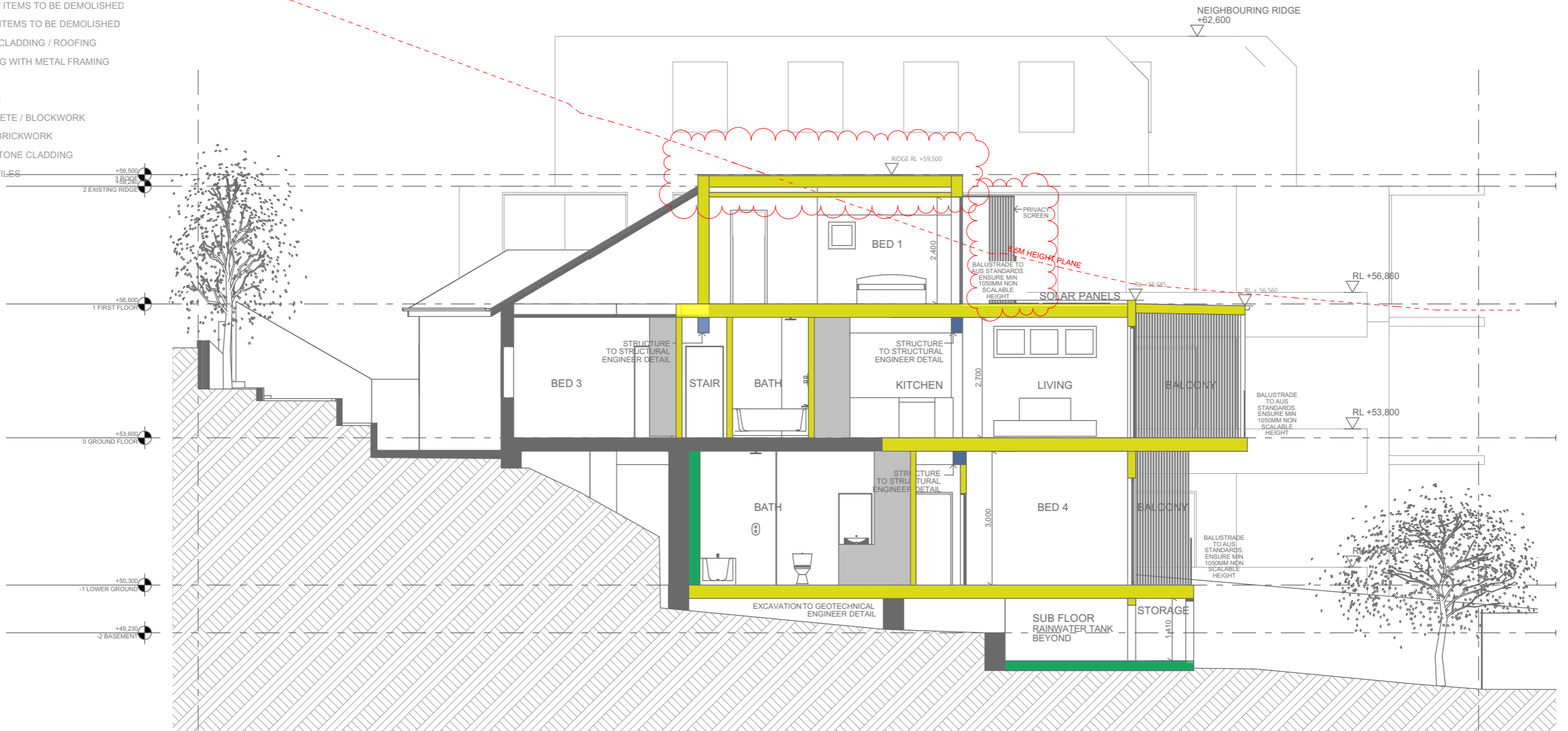
Drawn Plot Date Project No Project Status  
SB 02/05/2022 2102 Development Application  
Client Site  
Rebecca Smith and Tim Cummins  
22 Premier St, Neutral Bay  
NSW, 2089

DRAWING TITLE :  
**S-01 SECTION PROPOSED**  
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**E**  
DRAWING NO.  
**DA 500**

LEGEND

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
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- NEW WORKS - TIMBER
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- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING
- NEW WORKS - ROOF TILES



S-02 SECTION 02 - PROPOSED  
1:100

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Phone 0436 002 716  
ABN 95 632 485 959

Drawn Plot Date Project No Project Status  
SB 02/05/2022 2102 Development Application

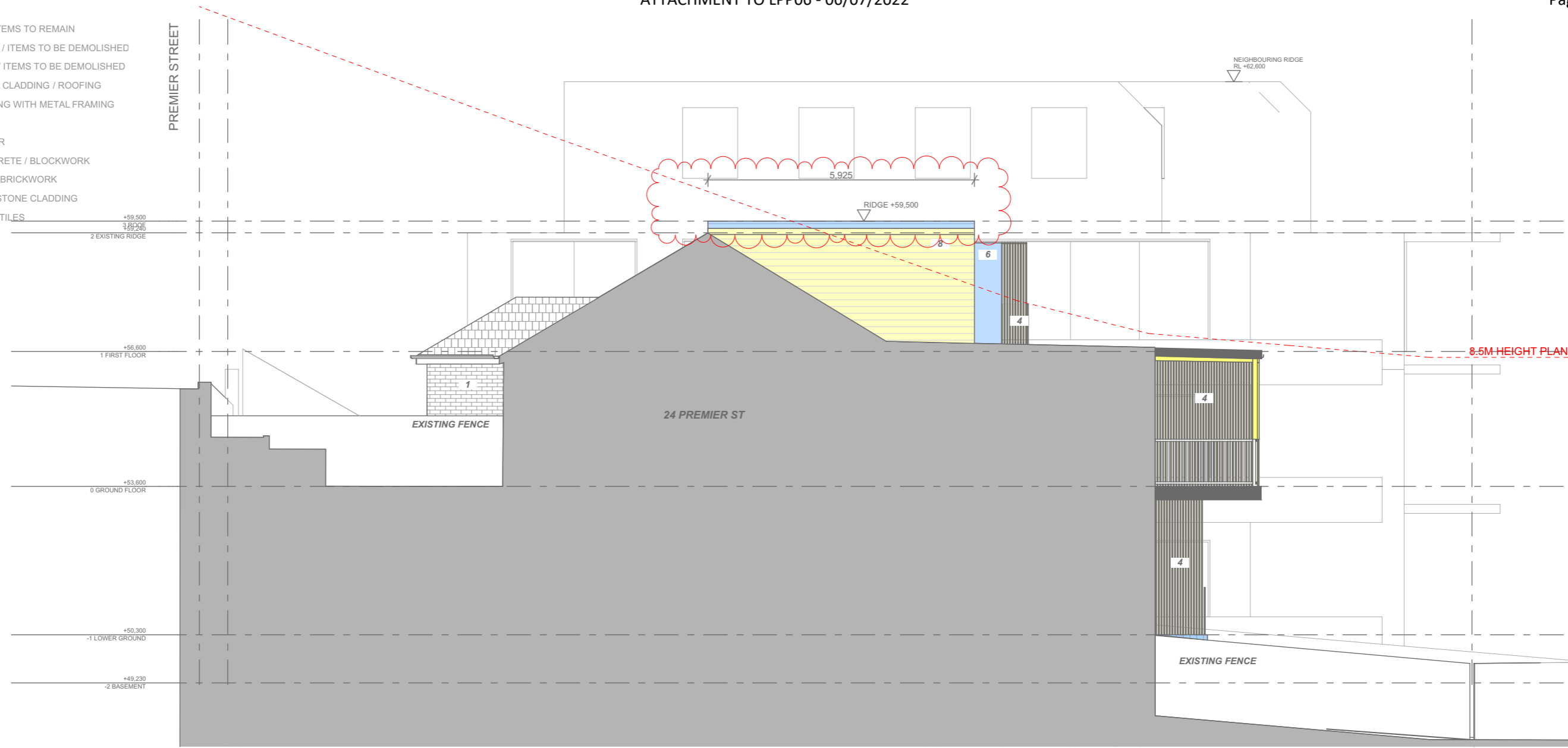
Client Site  
Rebecca Smith and Tim Cummins  
22 Premier St, Neutral Bay NSW, 2089

DRAWING TITLE :  
**S-02 SECTION PROPOSED**  
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**F**  
DRAWING NO.  
**DA 501**

LEGEND

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
- NEW WORKS - STEEL
- NEW WORKS - TIMBER
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- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING
- NEW WORKS - ROOF TILES



E-01 NORTH ELEVATION - PROPOSED 1:100

MATERIALS SCHEDULE



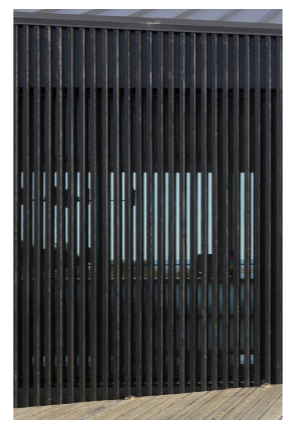
1 EXISTING BRICKWORK AND TERRACOTTA ROOF



2 EXISTING SANDSTONE



3 METAL CLADDING - CHARCOAL



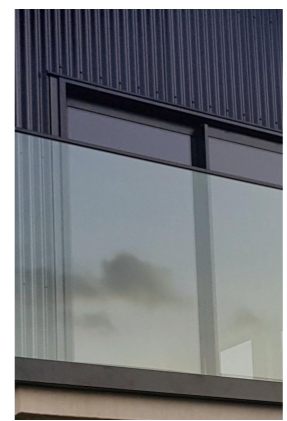
4 TIMBER BATTEN PRIVACY SCREEN - CHARCOAL



5 RETRACTABLE EXTERNAL SCREEN - CHARCOAL



6 WINDOW BOX + FRAMES - CHARCOAL



7 GLASS BALUSTRADE



8 WEATHERBOARD CLADDING HORIZONTAL - CHARCOAL



9 TERRACOTTA TILED ROOF

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Nominated Architect S Brancatisano NSW ARB Reg #10667  
Email stephanie@brancatisano.com  
Phone 0436 002 716  
ABN 95 632 485 959

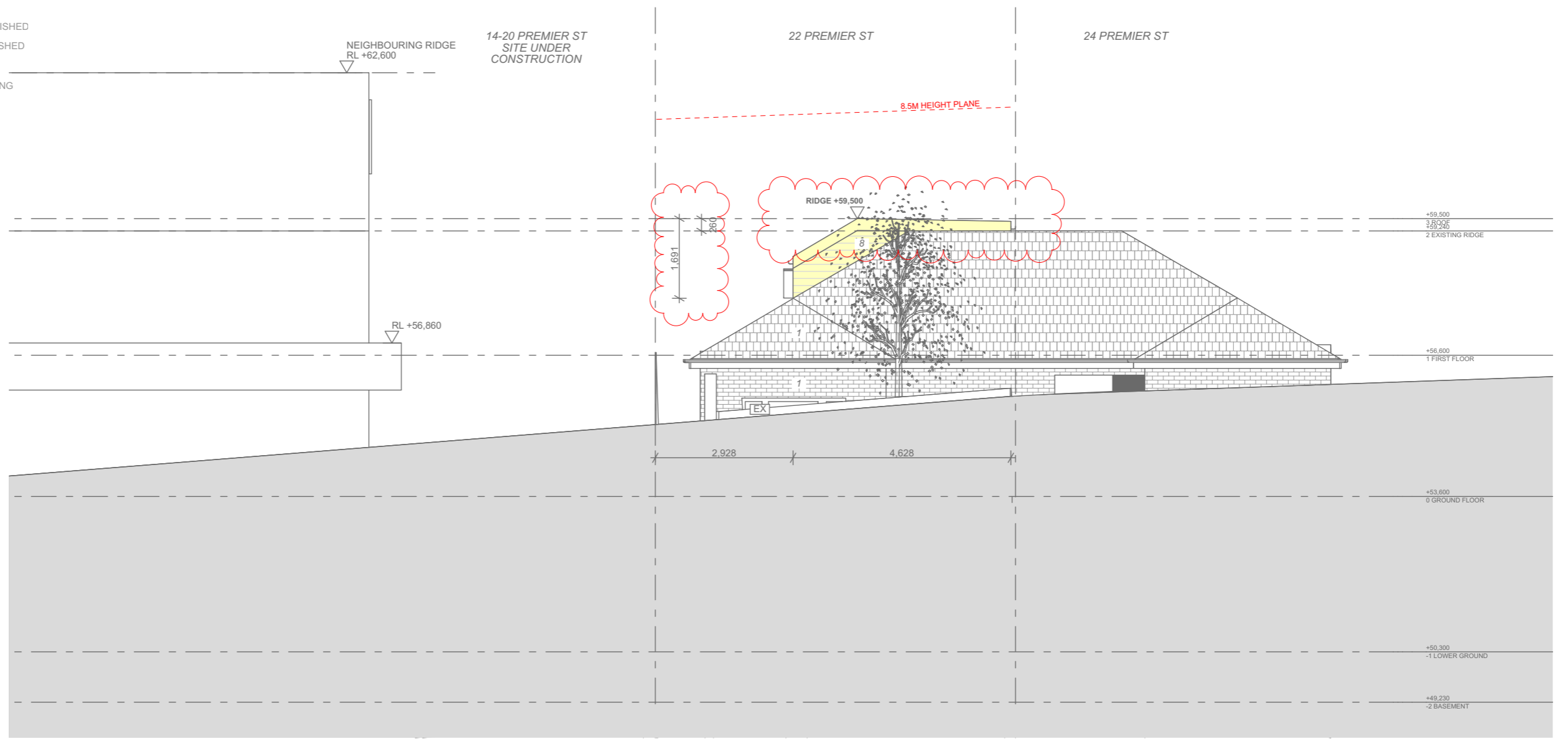
Drawn Plot Date Project No Project Status  
SB 02/05/2022 2102 Development Application  
Client Site  
Rebecca Smith and Tim Cummins  
22 Premier St, Neutral Bay  
NSW, 2089

DRAWING TITLE :  
**PROPOSED NORTH ELEVATION**  
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**E**  
DRAWING NO.  
**DA 700**

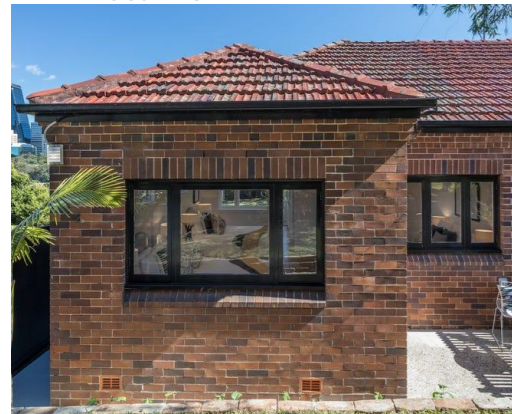
LEGEND

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
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- NEW WORKS - TIMBER
- NEW WORKS - CONCRETE / BLOCKWORK
- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING
- NEW WORKS - ROOF TILES



**E-02** EAST ELEVATION - PROPOSED  
1:100

MATERIALS SCHEDULE



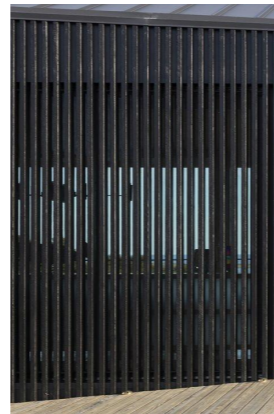
1 EXISTING BRICKWORK AND TERRACOTTA ROOF



2 EXISTING SANDSTONE



3 METAL CLADDING - CHARCOAL



4 TIMBER BATTEN PRIVACY SCREEN - CHARCOAL



5 RETRACTABLE EXTERNAL SCREEN - CHARCOAL



6 WINDOW BOX + FRAMES - CHARCOAL



7 GLASS BALUSTRADE



8 WEATHERBOARD CLADDING HORIZONTAL - CHARCOAL



9 TERRACOTTA TILED ROOF

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E	23.06.22	ISSUE FOR DA - AMENDED

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Nominated Architect S Brancatisano NSW ARB Reg #10667  
Email stephanie@brancatisano.com  
Phone 0436 002 716  
ABN 95 632 485 959

Drawn Plot Date Project No Project Status Client Site  
SB 02/05/2022 2102 Development Application  
Rebecca Smith and Tim Cummins  
22 Premier St, Neutral Bay NSW, 2089

DRAWING TITLE :  
**PROPOSED EAST ELEVATION**  
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**E**  
DRAWING NO.  
**DA 701**

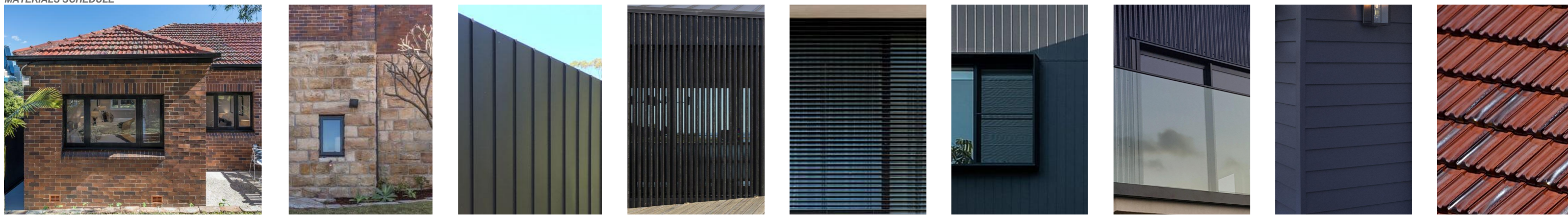
LEGEND

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
- NEW WORKS - METAL CLADDING / ROOFING
- NEW WORKS - GLAZING WITH METAL FRAMING
- NEW WORKS - STEEL
- NEW WORKS - TIMBER
- NEW WORKS - CONCRETE / BLOCKWORK
- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING
- NEW WORKS - ROOF TILES



**E-03** SOUTH ELEVATION - PROPOSED  
1:100

MATERIALS SCHEDULE



**1** EXISTING BRICKWORK AND TERRACOTTA ROOF      **2** EXISTING SANDSTONE      **3** METAL CLADDING - CHARCOAL      **4** TIMBER BATTEN PRIVACY SCREEN - CHARCOAL      **5** RETRACTABLE EXTERNAL SCREEN - CHARCOAL      **6** WINDOW BOX + FRAMES - CHARCOAL      **7** GLASS BALUSTRADE      **8** WEATHERBOARD CLADDING HORIZONTAL - CHARCOAL      **9** TERRACOTTA TILED ROOF

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F	24.06.22	ISSUE FOR DA - AMENDED

**DEVELOPMENT APPLICATION**  
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Nominated Architect S Brancatisano NSW ARB Reg #10667  
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Phone 0436 002 716  
ABN 95 632 485 959

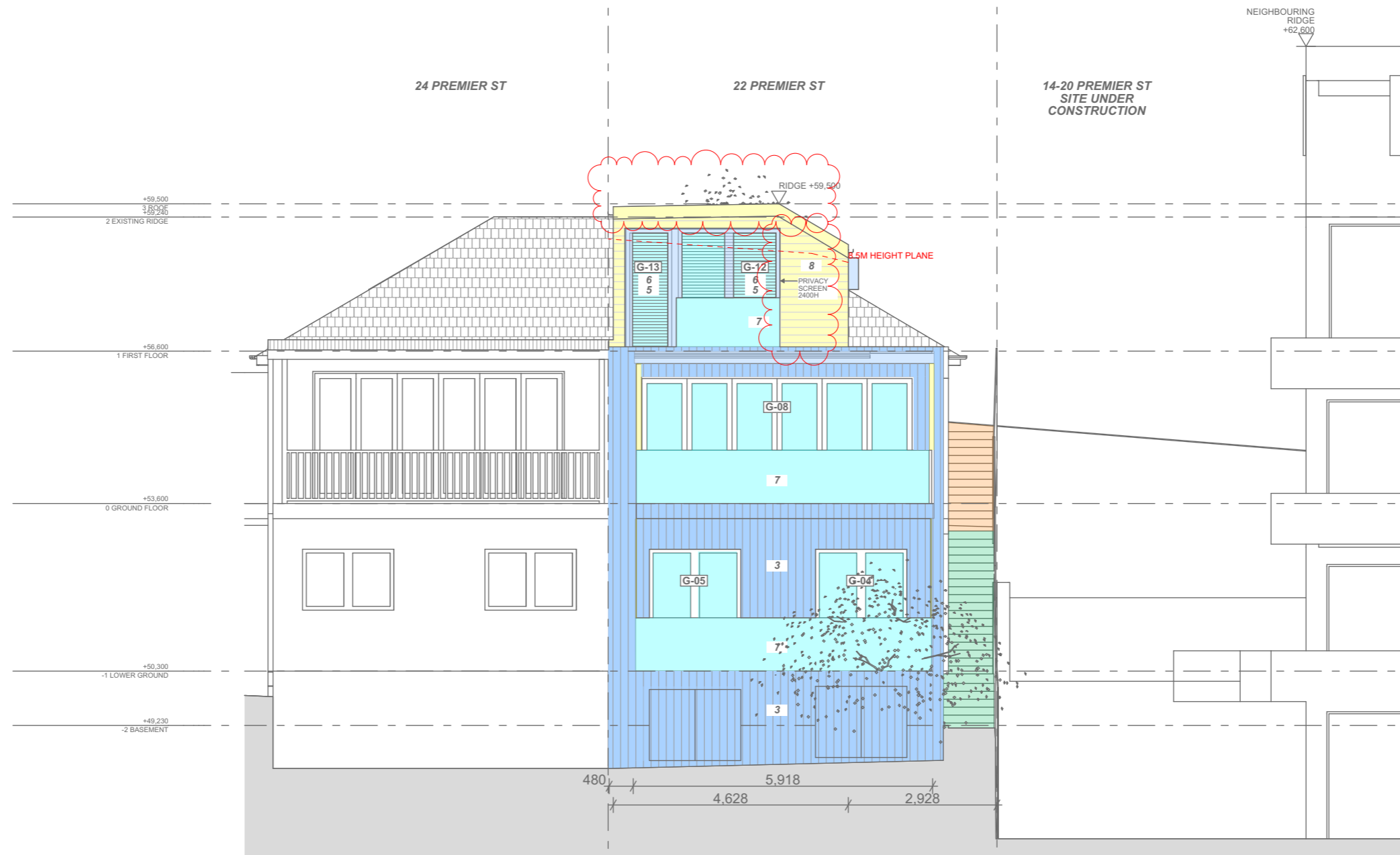
Drawn Plot Date Project No Project Status Client Site  
SB 02/05/2022 2102 Development Application  
Rebecca Smith and Tim Cummins  
22 Premier St, Neutral Bay NSW, 2089

DRAWING TITLE : **PROPOSED SOUTH ELEVATION**  
PROJECT NAME : **22 Premier St, Neutral Bay**

REVISION NO. **F**  
DRAWING NO. **DA 702**

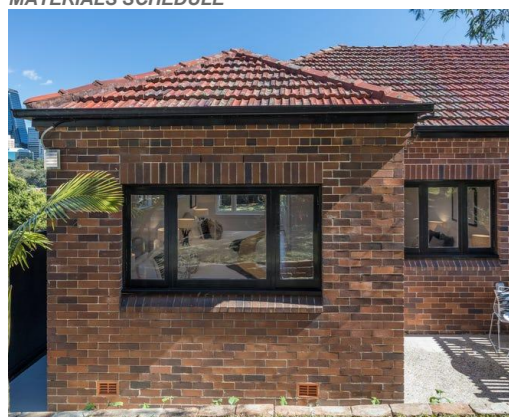
**LEGEND**

- EXISTING - WALLS / ITEMS TO REMAIN
- DEMOLITION - WALLS / ITEMS TO BE DEMOLISHED
- DEMOLITION - ROOF / ITEMS TO BE DEMOLISHED
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- NEW WORKS - TIMBER
- NEW WORKS - CONCRETE / BLOCKWORK
- NEW WORKS - INFILL BRICKWORK
- NEW WORKS - SANDSTONE CLADDING
- NEW WORKS - ROOF TILES



**E-04** WEST ELEVATION - PROPOSED  
1:100

**MATERIALS SCHEDULE**



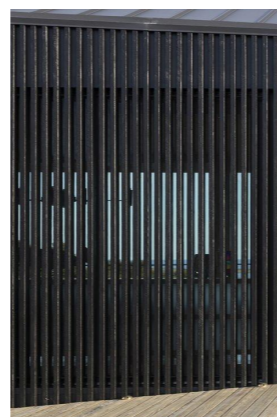
**1** EXISTING BRICKWORK AND TERRACOTTA ROOF



**2** EXISTING SANDSTONE



**3** METAL CLADDING - CHARCOAL



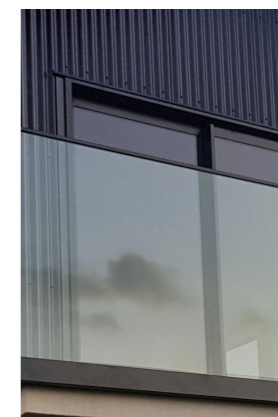
**4** TIMBER BATTEN PRIVACY SCREEN - CHARCOAL



**5** RETRACTABLE EXTERNAL SCREEN - CHARCOAL



**6** WINDOW BOX + FRAMES - CHARCOAL



**7** GLASS BALUSTRADE



**8** WEATHERBOARD CLADDING HORIZONTAL - CHARCOAL



**9** TERRACOTTA TILED ROOF

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Nominated Architect S Brancatisano NSW ARB Reg #10667  
Email stephanie@brancatisano.com  
Phone 0436 002 716  
ABN 95 632 485 959

Drawn Plot Date Project No Project Status Client Site  
SB 02/05/2022 2102 Development Application Rebecca Smith and Tim Cummins 22 Premier St, Neutral Bay NSW, 2089

DRAWING TITLE :  
**PROPOSED WEST ELEVATION**  
PROJECT NAME :  
**22 Premier St, Neutral Bay**

REVISION NO.  
**E**  
DRAWING NO.  
**DA 703**

## Clause 4.6 Exceptions to Development Standards

### Height of Buildings

#### 22 Premier Street, Neutral Bay

### 1. Introduction

Clause 4.6 of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The aims and objectives of North Sydney LEP 2013 Clause 4.6 are as follows:





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

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

Under Clause 4.6(3) and (4) of the NSLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

*(4)(a)(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,*

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

## **2. Environmental Planning Instrument Details (North Sydney LEP 2013)**

### **2.1 What is the name of the environmental planning instrument that applies to the land?**

North Sydney Local Environmental Plan 2013

### **2.2 What is the zoning of the land?**

R2 Low Density Residential

### **2.3 What are the objectives of the zone?**

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

### **2.4 What is the development standard being varied?**



Cl 4.3 - Height of Buildings

**2.5 Under what clause is the development standard listed in the environmental planning instrument?**

Cl 4.3 of the North Sydney Local Environmental Plan 2013

**2.6 What are the objectives of the development standard?**

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

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

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

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

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

The development proposes a maximum height of 10.05 metres.

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

The percentage variation between the proposal and the environmental planning instrument is 18.23% or 1.55 metres.



### 3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

#### 3.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

#### 3.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under



Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each, but it is not essential.

### **3.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7**

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

### **3.4 Zhang v City of Ryde**

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application,



subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

### **3.5 Action Pty Ltd v Woollahra Municipal Council [2018]**

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

## **4. Consideration**

The following section addresses the provisions of clause 4.6 of the NSLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

**Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?**

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

#### **4.1 Five (5) Part Test - Wehbe v Pittwater**

- 1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

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

Comment

The variation is largely the result of the slope of the site and a need to construct within the constraints of the existing dwelling, and the adjoining dwellings. The vast majority of the building complies with the maximum height control. The resulting dwelling is of a lesser scale than the neighbouring dwellings and presents as a compliant residence to Premier Street.

The small breach allows for the creation of an upper-level bedroom within and extending the existing roof form, with a raked ceiling allowing for a minimised height for this new component.

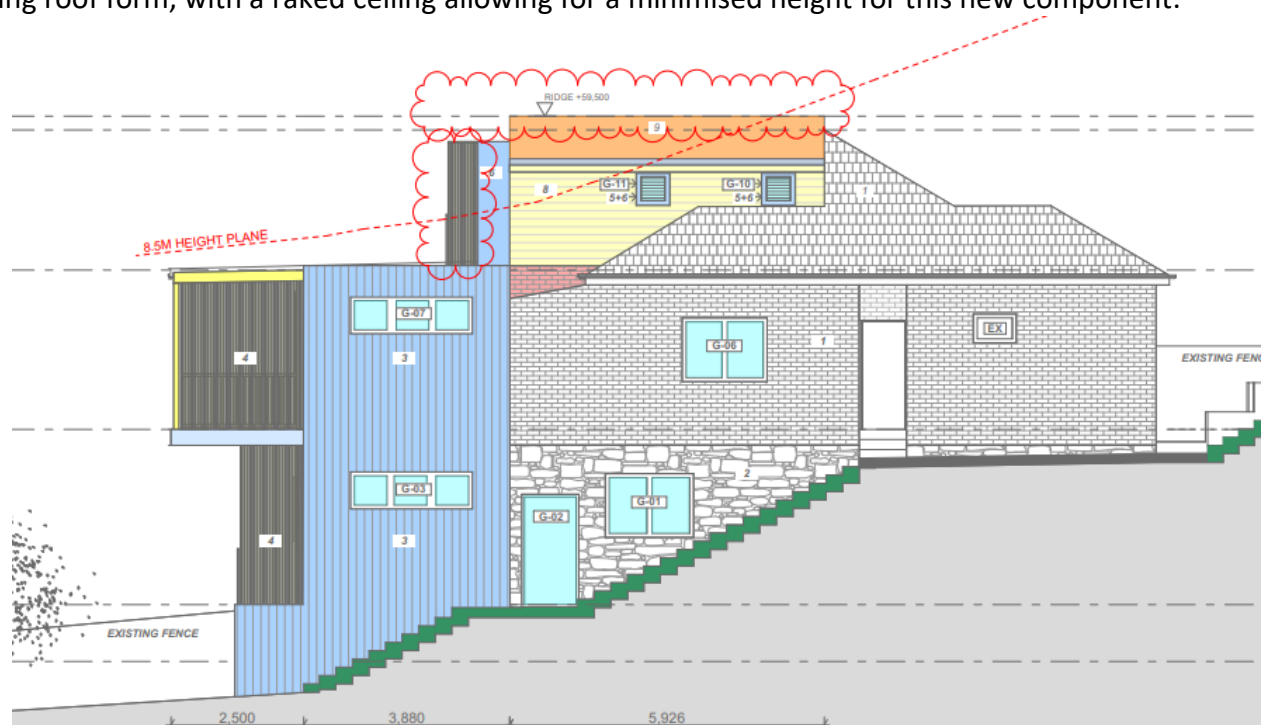


Figure 1. Extent of breach to building height in comparison to the existing dwelling

As the site slopes, at the rear most point is where the breach occurs due to the site topography, with the majority of the upper-floor length being well under the height limit. The new bedroom is intentionally placed at the rear of the site, to ensure that the impact from the streetscape is negligible and the character of the semi-detached dwelling is maintained.

The proposed variation remains compatible, if not lesser than, with the prevailing height of buildings, and streetscape character within the locality.

In particular reference is made to the 2 neighbouring developments.

#### **14-20 Premier Street, Neutral Bay**

This development is currently under construction and has an approved height of 12.5 metres over 6 levels to RL62.600. While it is acknowledged that this was built under existing use rights provisions, it has created a context for the streetscape where it is reasonable to allow for some



variation to the height limit. This structure is immediately adjacent the proposed site and dwarves the proposed development in its height, bulk and scale.

### ***12 Premier Street, Neutral Bay***

This development sits to the south of 14 – 20 Premier Street and has an approved height of 9.7 metres to RL57.150. This development is of a similar nature to the proposed development being a semi-detached dwelling. The departure from the maximum building height further precedence along the streetscape being approved after the development at 14 – 20 Premier Street.

Consideration of the heights of neighbouring dwellings clearly demonstrates higher roof forms consistently in the area.

The dwelling design steps with the site and the variation results where the site drops away.

The variation is consistent with surrounding development, a result of the site topography and limited to a small form where impacts are negligible. It is considered this objective is met, despite the numerical variation.

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

#### Comment

While no views are considered to be lost, we also note that the variation is at the rear of the site and results in only a 260mm increase above the existing roof from. There is no view loss as a result of the proposed variation.

It is considered this objective is met, despite the numerical variation.

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

#### Comment

The proposed variation to height does not result in any unreasonable solar access impacts to adjoining dwellings. In particular the impacts to the neighbouring residential flat building to the south are addressed below.

**9am** – The development will result in some minimal additional overshadowing northern elevation first floor windows for adjoining property to the south. This would occur Between 9am and 10am.

There is a minimal additional shadow at 10am and 11am to the ground floor northern windows for adjoining property to the south.



**12pm** – There is a minimal additional shadow at midday and 1pm to the ground floor and lower ground floor northern windows for adjoining property to the south.

At 2pm there is a minimal additional shadow at midday to the lower ground floor northern windows for adjoining property to the south.

**3pm** – The development will result in minimal overshadowing to the front ground floor and yard of the subject and adjoining property to the south.

The small variations to solar access are compliant with key living areas having additional solar access from the rear windows which are unaffected by this proposal. Additionally, no windows will lose significant areas of solar access and it can be conclusively stated that the height variation does not result in unreasonable solar access impacts for the southern neighbour.

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

Comment

The small height variation does not result in any unreasonable loss of privacy for neighbouring sites, with layout of lots and topography resulting in differing floor levels and natural screening through privacy measures. Additionally, the use of the variation is for a bedroom, which does not typically result in overlooking issues.

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

Comment

The proposed development is consistent in scale, if not lesser than neighbours.

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

Comment

The proposed variation to height results in a dwelling which is of compatible scale and well suits and complements the character of the Neutral Bay locality. It is particularly well located given the scale of the existing use right development immediately adjacent, which dwarves this proposal in comparison.

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





## Comment

The number of storeys steps with the site and will not appear greater in scale to neighbouring structures with the new level located within the area which is currently roof form. The development retains a split level form and highly consistent with its immediate setting.

**2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

**3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason.

**4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

It is considered that development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable in particular reference is made to the 2 neighbouring developments.

### **14-20 Premier Street, Neutral Bay**

This development is currently under construction and has an approved height of 12.5 metres over 6 levels to RL62.600. While it is acknowledged that this was built under existing use rights provisions, it has created a context for the streetscape where it is reasonable to allow for some variation to the height limit.

### **12 Premier Street, Neutral Bay**

This development sits to the south of 14 – 20 Premier Street and has an approved height of 9.7 metres to RL57.150. This development is of a similar nature to the proposed development being a semi-detached dwelling. The departure from the maximum building height further precedence along the streetscape being approved after the development at 14 – 20 Premier Street.

**5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is,***



***the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

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

There are sufficient environmental planning grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*.

In particular:

##### **Detail of Variation**

- The proposed variation between the proposal and the building height control is 18.23% or 1.55 metres. It is for a limited area, at the rear of the dwelling, where it is not easily visible from the street or side neighbours. The apparent bulk through the variation is reasonable given its siting and surrounds and not to the detriment of the apparent scale of the dwelling from any point satisfying Cl1.3(g).
- The variation to the height occurs at the rear and allows for the dwelling to step comfortably with the site and maintain compliant floor to ceiling height within a raked roof form. The impact of this keeps the dwelling consistent whilst reducing the overall scale satisfying Cl1.3(g).

As the site slopes, at the rear most point of the upper level the breach occurs, but for the majority of the development, the height is well under the height limit. This design allows for the amenity in the dwelling house to be achieved, providing liveable accommodation. A design option could have allowed for this bulk to be closer to the front of the site and be fully compliant, however, the amenity and streetscape impacts are considered more favourable as proposed in this design. The breach is required in



this instance to achieve amenity and compliance with the development standard would be unreasonable.

### **Neighbour Amenity**

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The variation is located centrally within the dwelling and well setback from the rear of the site. The development remains consistent with the setback of the adjoining semi-detached dwelling and recently constructed Residential Flat Building ensuring the impact on the rear neighbours is of nil consequence with regard to the apparent bulk. The dwelling sits below the street level with the adjacent dwellings above the street level. The justifiable height variation will have no impact the neighbours to the front or rear. Compliance with the development standard would be unreasonable.
- Compliance with the height control for bedroom 1 would not result in a building which has a significantly lesser bulk as the pitched roof form and bedroom level is minor in its overall extent and contribution to the dwelling. The impact to neighbours of compliance would be not vastly different to the side neighbours who are of far greater scale. Accordingly, compliance with the development standard in this instance is unreasonable.
- The pitched traditional roof form is limited in scale and allows for an outlook over the existing dwelling, with limited impacts for neighbours across Premier Street and on either side of the site. The bulk of the structure remains consistent with surrounds and in character with the immediate neighbours due to the inclusion of this design element, which forms a small component of the breach.
- Solar access impacts as a result of the small height variation are negligible. Solar access on the neighbouring sites is compliant as the development is proposed as is detailed in the accompanying solar access diagrams. Accordingly, compliance with the development standard based on this would be unreasonable.
- The retention of the central variation has no impact on privacy for neighbours, being confined to the rear upper floor bedroom for which the main glazing faces the rear of the site and not the neighbours to the side. Accordingly, the variation is reasonable in the circumstances of the case.



### **Site Constraints**

- The design with a variation to the height, is a result building within an existing built form within the constraints of the existing site slope and it would be unreasonable to require compliance with the development standard, when the variation result allows for the orderly and economic use of the site and allows for an ecologically sustainable development revitalising an existing underdeveloped site satisfying Cl1.3(g) and (f).

### **Design and Streetscape Appeal**

- Strict numerical compliance with the height control would not result in a better urban design outcome. The roof form and scale of the dwelling is consistent with the architectural character of the locality and will complete a very appealing design. Compliance with the development standard based on this would be unreasonable.
- The pitched roof form proposed marries with the pitch of the existing roof, matches the existing roof materiality, and allows the cross ridge of the 2 semi-detached houses to be prominent from the street. These factors result in a positive contribution to the streetscape satisfying Cl1.3(g).
- The proposed development will not present with excessive bulk from the public domain with the sloping topography of the site resulting in the rear being hidden from view from Premier Street satisfying Cl1.3(g). The streetscape appeal is unaffected by the variation to the height standard, and it would be unreasonable to require compliance with development standard based on this.

### **Consistent with Zone Objectives**

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone ensuring that appropriate and reasonable housing suitable for the local community is proposed. Compliance with the development standard based on this would be unreasonable.

### **Natural Environment**

- The height variation has no impact on the natural environment. The variation sits above ground level and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the varied height satisfying Cl1.3(b). The natural environment is unaffected by the departure to the



development standard and it would be unreasonable for the development to be refused on this basis.

### **Environmentally Sustainable Development**

- The proposal represents an environmentally sustainable design allowing for extension of the life of an existing dwelling satisfying Cl1.3(f). Compliance with the development standard based on this would be unreasonable.

### **Social and economic welfare**

- The variation to the height as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.
- The variation to the height as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

### **Appropriate Environmental Planning Outcome**

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.
- The variation does not result in a roof form or height beyond that which is found in the immediate context, including the immediately neighbouring sites. The maximum RL of the varied portion of the roof sits well below the immediate neighbours. The variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.
- Removal of the non-compliance would not greatly alter the perceived bulk and scale due to the nature, siting and topography.

The variation confined to the rear and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and retention of amenity. These are not simply benefits of the development as a whole, but are a direct result of the breach of the maximum height control.



The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

**4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.**

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

**Zone – R2 Low Density Residential**

**Objectives of zone**

- *To provide for the housing needs of the community within a low density residential environment.*

Consistent. The proposal is for alterations and additions to an existing dwelling and will provide an additional bedroom for the residents.

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

Consistent. The proposal is for alterations and additions to an existing dwelling.

- *To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*

Consistent. The proposal is for alterations and additions to an existing dwelling and will not compromise the amenity of the surrounding area being compliant with measures such as site coverage, landscaping, unbuilt area and solar access.

- *To ensure that a high level of residential amenity is achieved and maintained.*

Consistent. The development provides improved amenity for the site whilst also be appropriate with regard to impact on neighbouring sites with regard to views, privacy, solar access and general amenity.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it is confined to the rear, and is consistent with, and lesser than some neighbouring and surrounding development.



The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

**Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,**

The non-compliance will not raise any matter of State or Regional Significance.

**Clause 4.6(5)(b) the public benefit of maintaining the development standard,**

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard. The variation is reasonable, with the vast majority of the development easily complying and small component where the variation is sought being not easily visible from any viewpoint.

**Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**

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

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*



*(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

*(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

*(j) to provide increased opportunity for community participation in environmental planning and assessment.*

As proposed the development allows for all of the above objects to be achieved. In particular it is noted that there is no social or economic impact other than the benefit of a small amount of employment through the works which will be undertaken.

The upgrade and redevelopment of an existing dwelling to an improved standard is a positive environmentally sustainable result.

The development proposed a good design which is achieved partly through the development standard variation.

Strict compliance with the 8.5 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

## **Conclusion**

The proposed development is for alterations and additions to an existing residential dwelling on land zoned R2 – Low Density Residential.

The new ridgeline of the addition at RL59.5 is only 260mm above the ridgeline of the existing semi-detached dwell at RL59.240. The additional bulk of the addition when viewed from the streetscape/ eastern elevation is 260mm and thus appears of negligible significance.

As stated above the proposed non-compliance is 18.23% or 1.55 metres. The variation does not result in any unreasonable impacts and is largely the result of the slope of the site and working within the constraints of adding to an existing dwelling. It is of a very limited area and located centrally within the footprint resulting in it not being easily visible from any location and appearing appropriate and consistent from those areas where it may be viewed.

The proposed development presents with a compliant height to Premier Street and does not present with excessive bulk in comparison to surrounding properties with the pitched roof form





marrying in with the pitch of the existing roof. There will not be any view loss and solar access is fully compliant with Council controls. Amenity is retained for all neighbours.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.