

**NSLPP MEETING HELD ON 02/08/2023****Attachments:**

1. Architectural Plans
2. Clause 4.6 Statement (revised)
3. View Impact Assessment
4. Site Survey

ADDRESS/WARD: 63 Victoria Street, McMahons Point**APPLICATION No:** DA 357/22**PROPOSAL:** Alterations and additions to an existing semi-detached dwelling.**PLANS REF:**

Plan No.	Rev No.	Description	Prepared by	Dated
DA02	D	Site Analysis	Archispectrum	16 June 2023
DA03	D	Existing and Demolition – Lower Ground Floor	Archispectrum	16 June 2023
DA04	D	Existing and Demolition – Ground Floor	Archispectrum	16 June 2023
DA05	D	Proposed Lower Ground Floor	Archispectrum	16 June 2023
DA06	D	Proposed Ground Floor	Archispectrum	16 June 2023
DA07	D	Proposed First Floor	Archispectrum	16 June 2023
DA08	D	Proposed Roof Terrace	Archispectrum	16 June 2023
DA09	D	Site and Roof Plan	Archispectrum	16 June 2023
DA10	D	North and South Elevation	Archispectrum	16 June 2023
DA11	D	North Elevation Option 2	Archispectrum	16 June 2023
DA12	D	East Elevation	Archispectrum	16 June 2023
DA13	D	West Elevation	Archispectrum	16 June 2023
DA14	D	Section A-A	Archispectrum	16 June 2023
DA25	D	External Finishes	Archispectrum	16 June 2023
DA26	D	Party Wall Detail 1	Archispectrum	16 June 2023
DA27	D	Party Wall Detail 2	Archispectrum	16 June 2023
DA28	D	Sight Line Diagram	Archispectrum	16 June 2023

OWNER: L Misener**APPLICANT:** A Machkevitch – Corona Projects Pty Ltd**AUTHOR:** Miguel Rivera, Senior Assessment Officer**DATE OF REPORT:** 18 July 2023**DATE LODGED:** 22 November 2022**RECOMMENDATION:** Refusal

EXECUTIVE SUMMARY

The application seeks development consent from the North Sydney Local Planning Panel (NSLPP) for alterations and additions to an existing 2 Storey semi-detached dwelling on land identified as No. 63 Victoria Street, McMahons Point.

The application is required to be reported to the NSLPP for determination, as directed by the Minister of Planning, as the development application involves a departure from a development standard that is greater than 10% and 10 or more unique submissions have been received objecting to the proposal.

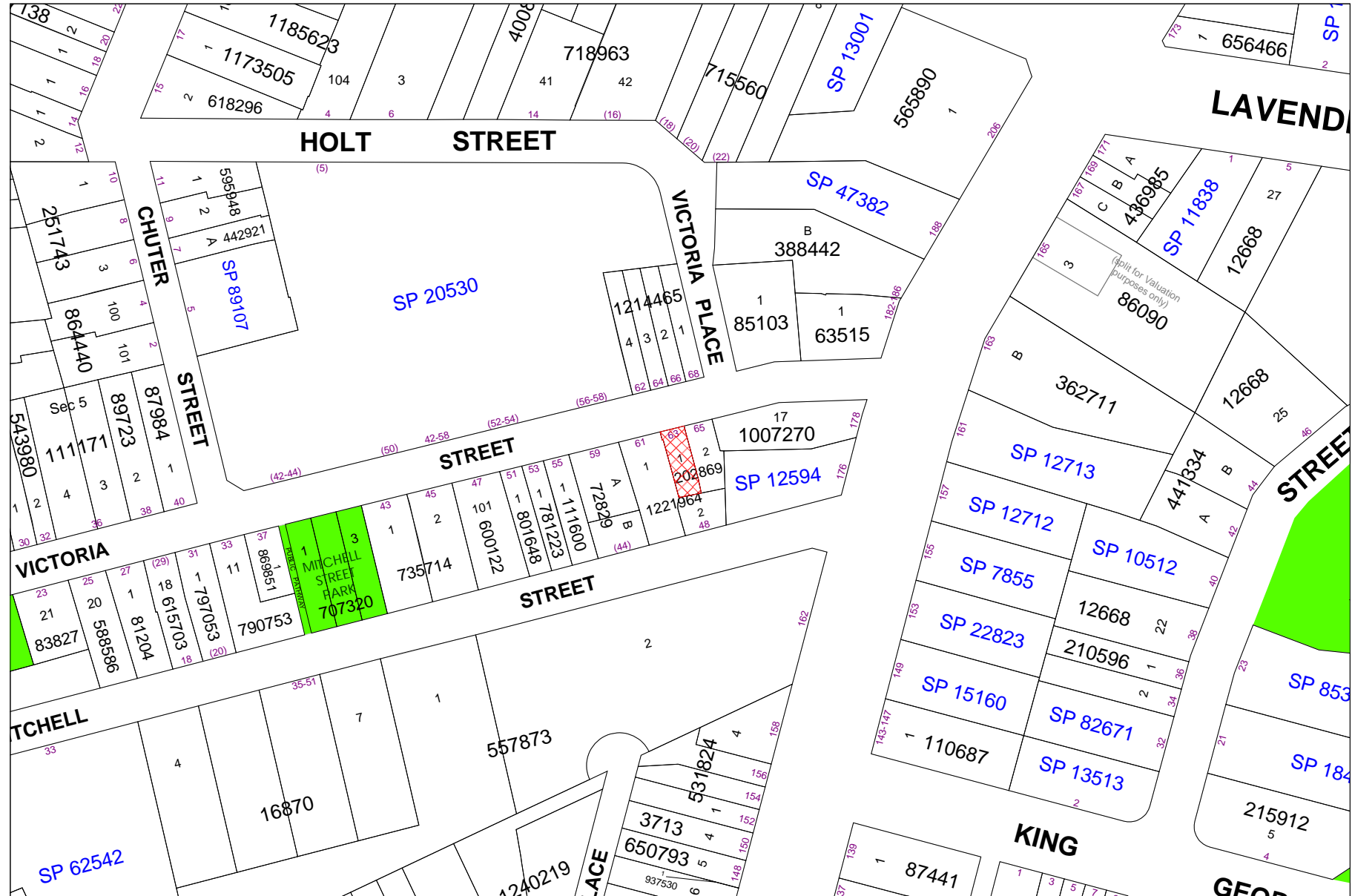
Council's notifications of the proposed development has attracted a total of 10 submissions from neighbouring properties and from the Edward and Union (Combined) Precincts Committee raising concerns and issues associated with proposal: bulk, scale, massing and density; excessive height; overdevelopment; impacts on party wall; visual privacy and amenity impacts; acoustic privacy impacts, visual impacts and design; overshadowing; view loss impacts and heritage. Following receipt of a revised scheme, the application was re-notified and a total of six (6) submissions were received. A similar set of issues were raised by these additional submissions.

The development application has been assessed against relevant State Planning Policies and Council policies including the North Sydney Local Environmental Plan 2013 (NSLEP 2013) and North Sydney Development Control Plan 2013 (NSDCP 2013). The proposed development is disproportionate to the undersized allotment (comprising a land size of only 74.5m²) and is not considered contextually appropriate nor acceptable in terms of design and the extent of impacts generated. The proposal is considered to be an overdevelopment of a constrained and does not achieve environmental planning controls. Of particular concern is the proposed roof terrace, which involves a substantial height breach of 1.48m or 17.4% and will have significant view loss and privacy impacts.

The application involves a non-compliance to the maximum height of buildings development standard (8.5m) under Clause 4.3 of NSLEP 2013 as the proposal features a building height of 8.8m (for the new roof) and 9.98m (for the glass balustrades on the roof terrace) above existing ground level. These maximum height represents a departure of 1.48m or 17.4% from the development standard. The Applicant has submitted a written request pursuant to Clause 4.6 of the NSLEP 2013, which seeks to justify the height breach. However, the Clause 4.6 statement is not well founded and insufficient planning grounds are provided. The Applicant has failed to demonstrate that compliance with this development standard is unreasonable or unnecessary in the circumstances.

Having regard to the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), the application is recommended for refusal given the proposal's failure to achieve compliance to and consistency with critical objectives, provisions and controls under Council policy.

LOCATION MAP



Property/Applicant ● Submitters - Properties Notified

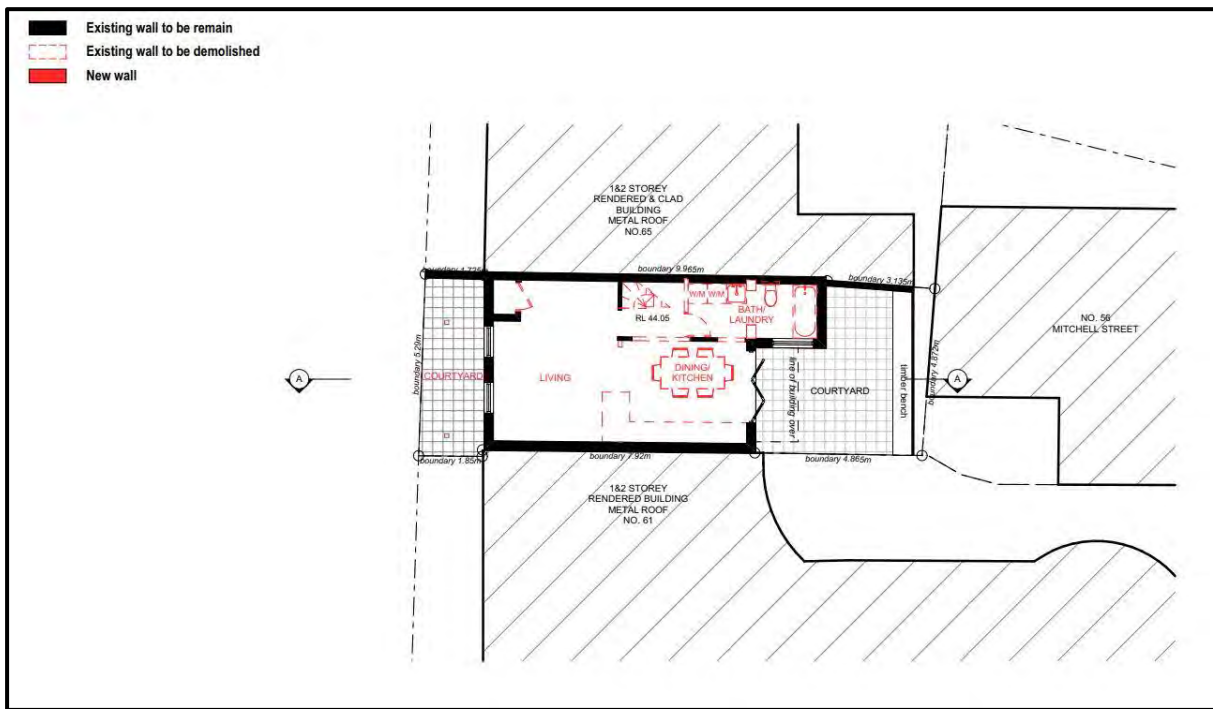


Figure 2: Demolition plan – lower ground floor

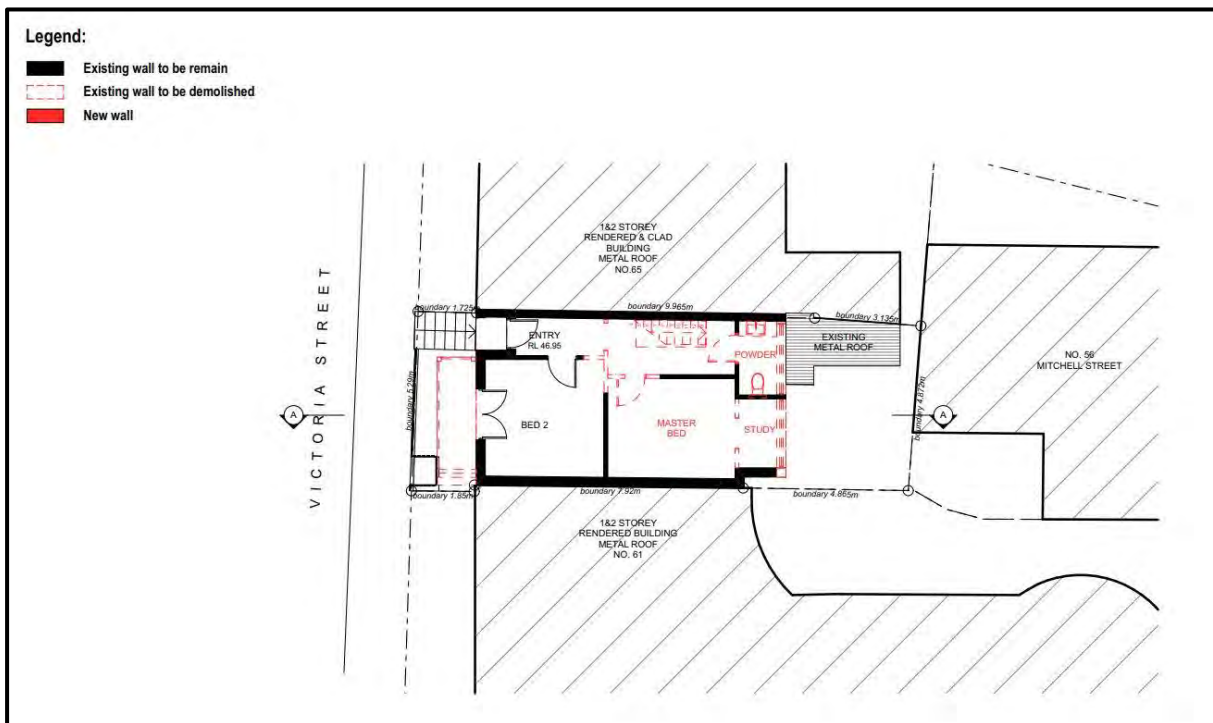


Figure 3: Demolition plan – ground floor

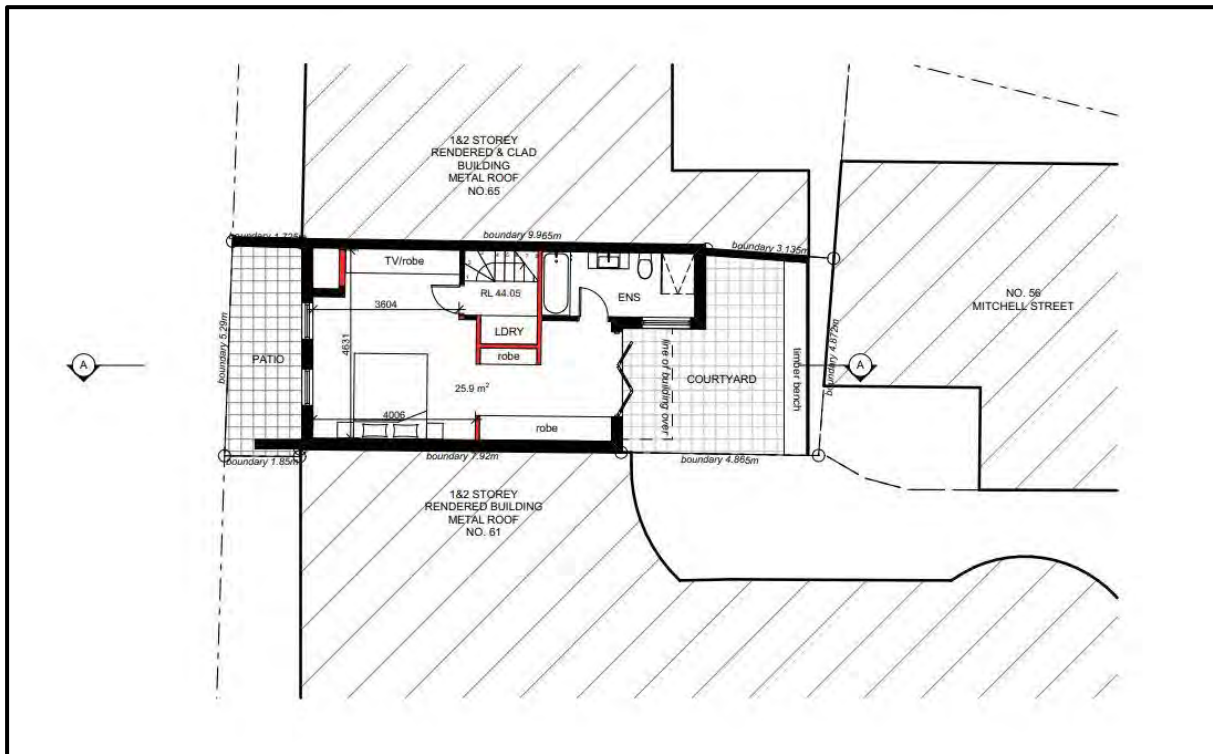


Figure 4: Proposed lower ground floor

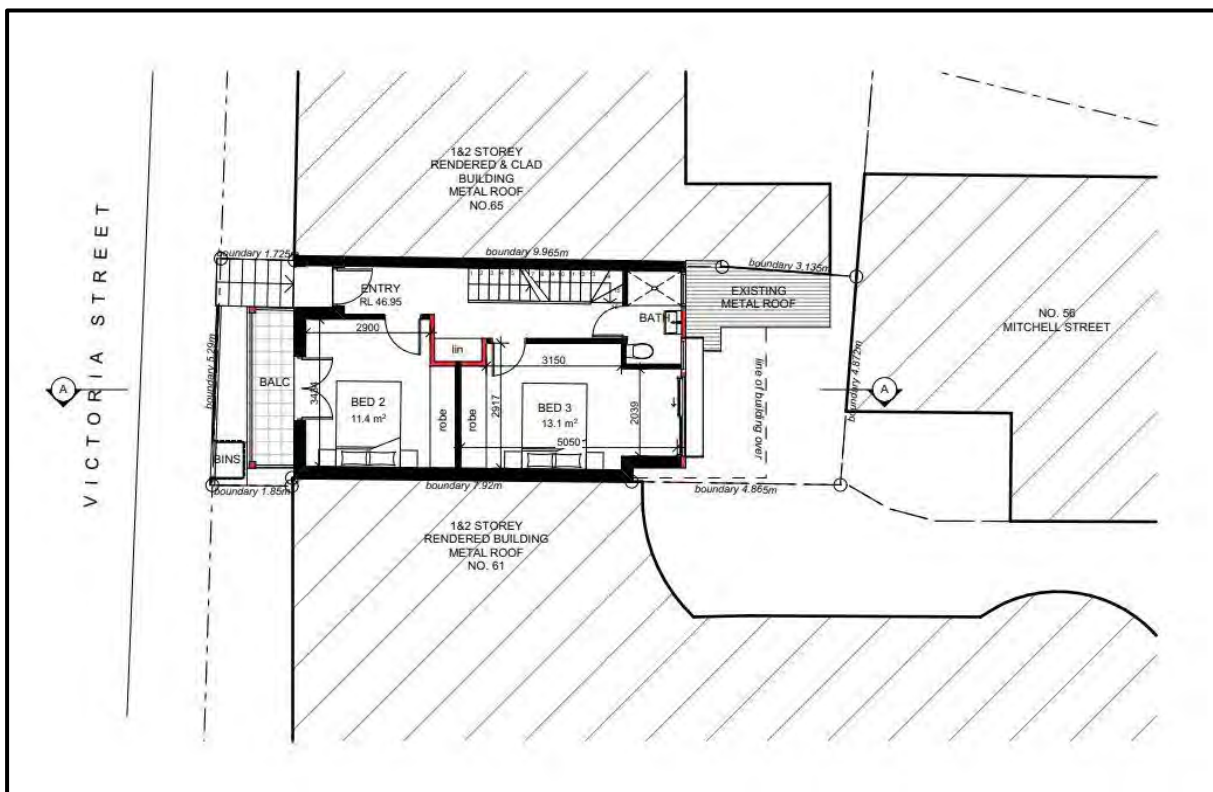


Figure 5: Proposed ground floor

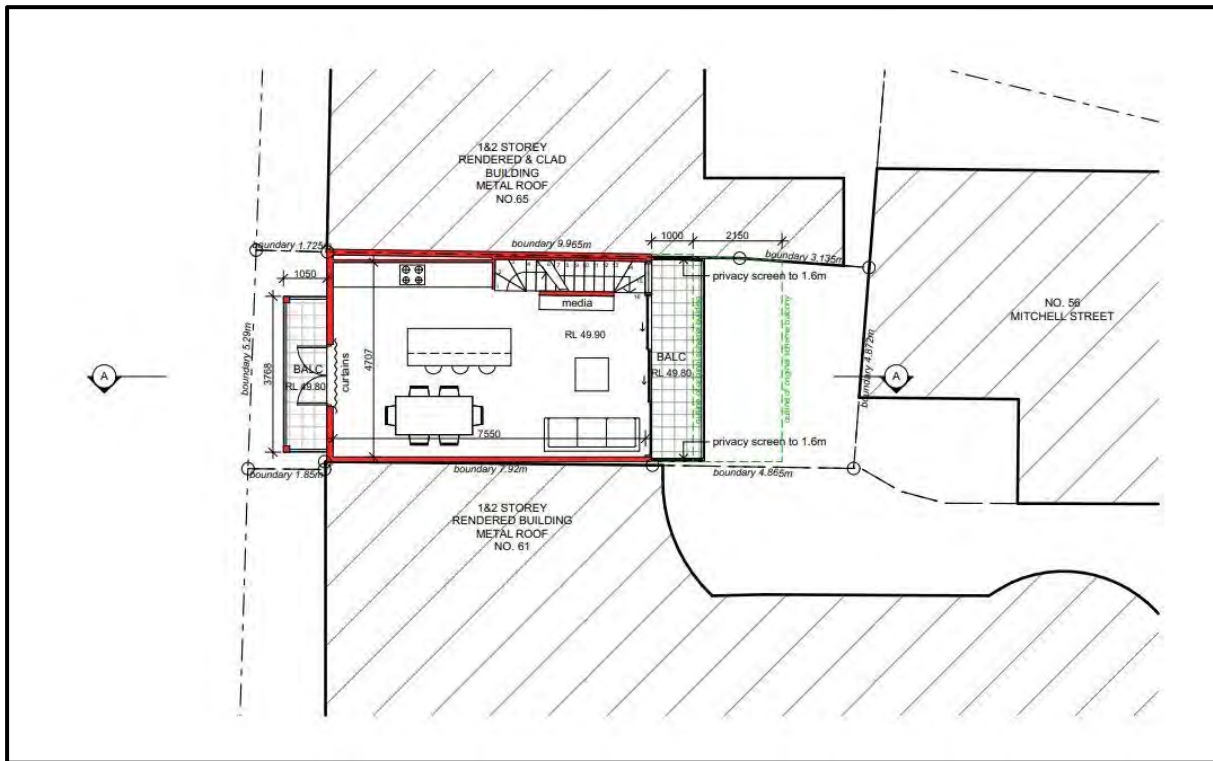


Figure 6: Proposed new first floor

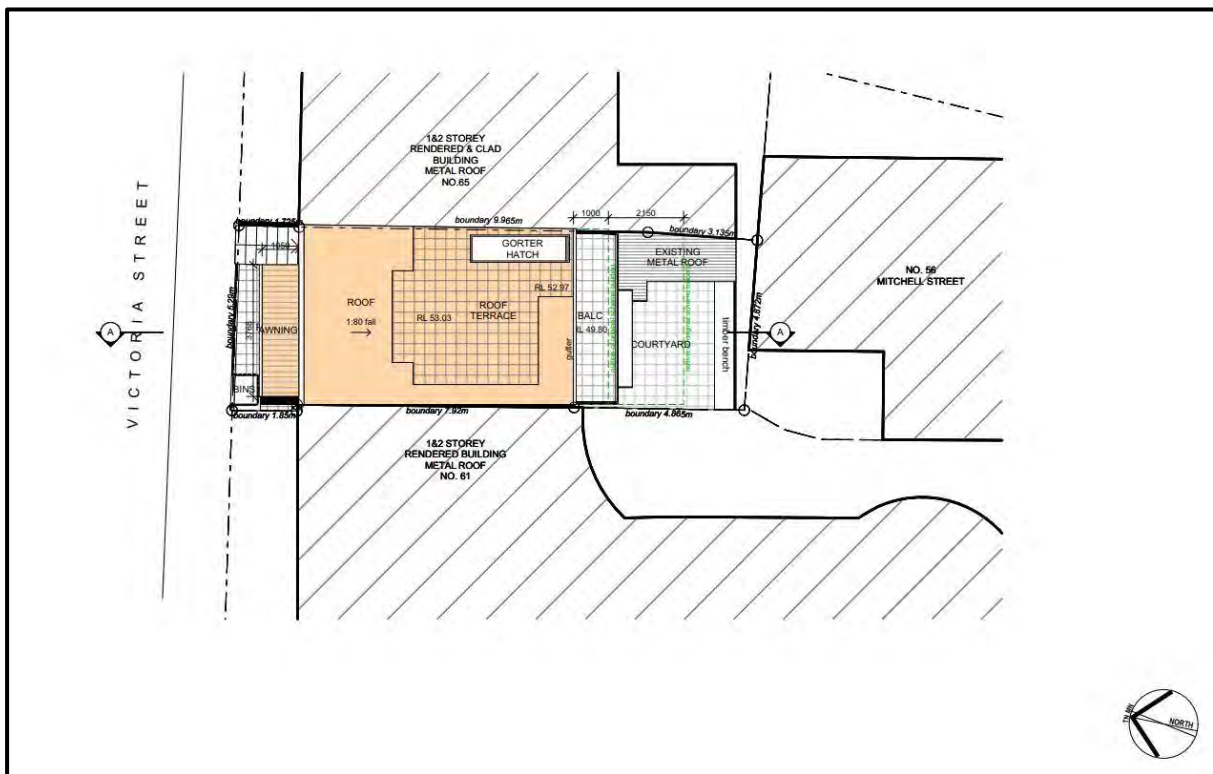


Figure 7: Site/roof plan showing new roof terrace

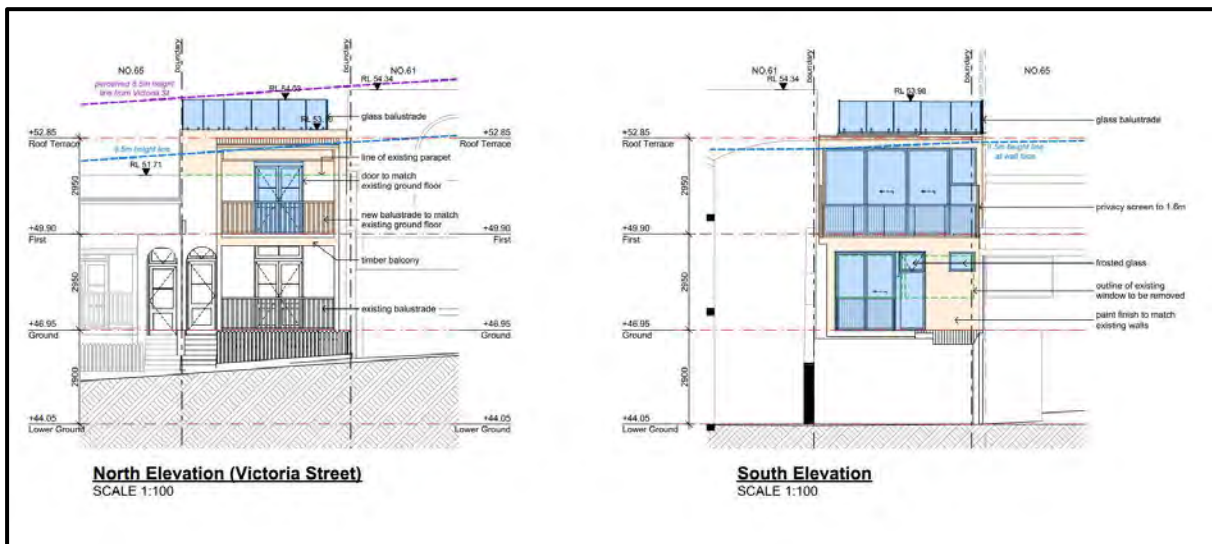


Figure 8: North and south elevations

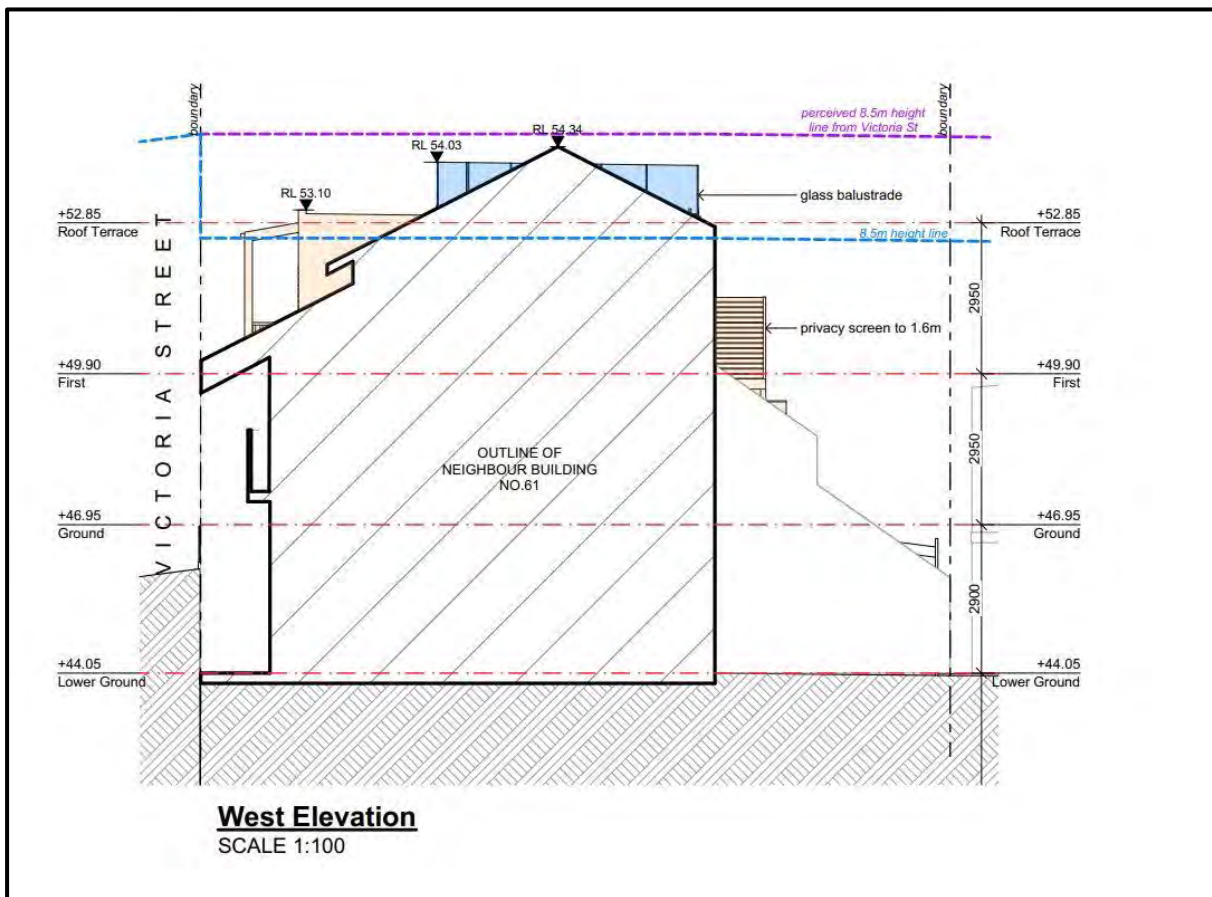


Figure 9: West elevation

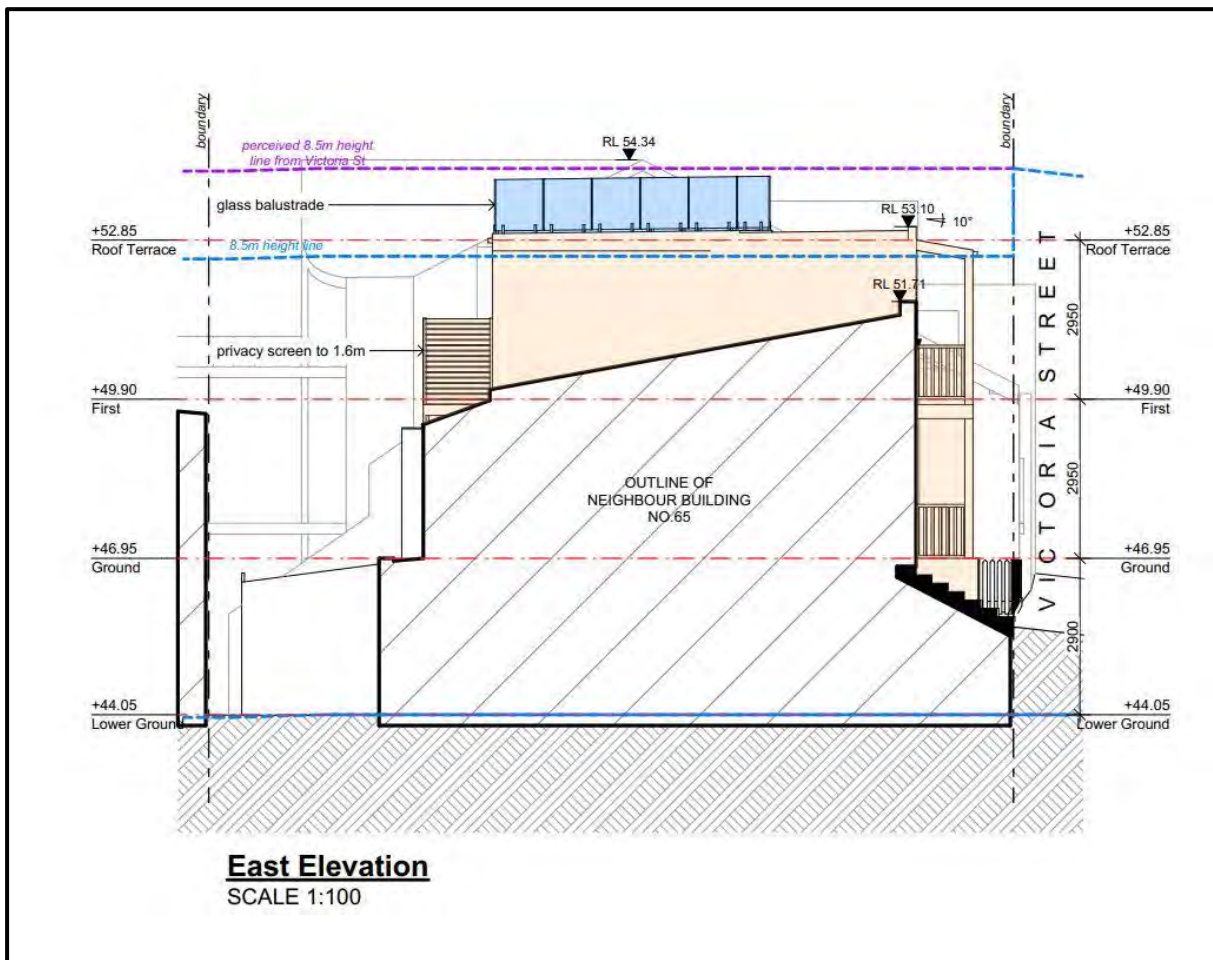


Figure 10: East elevation

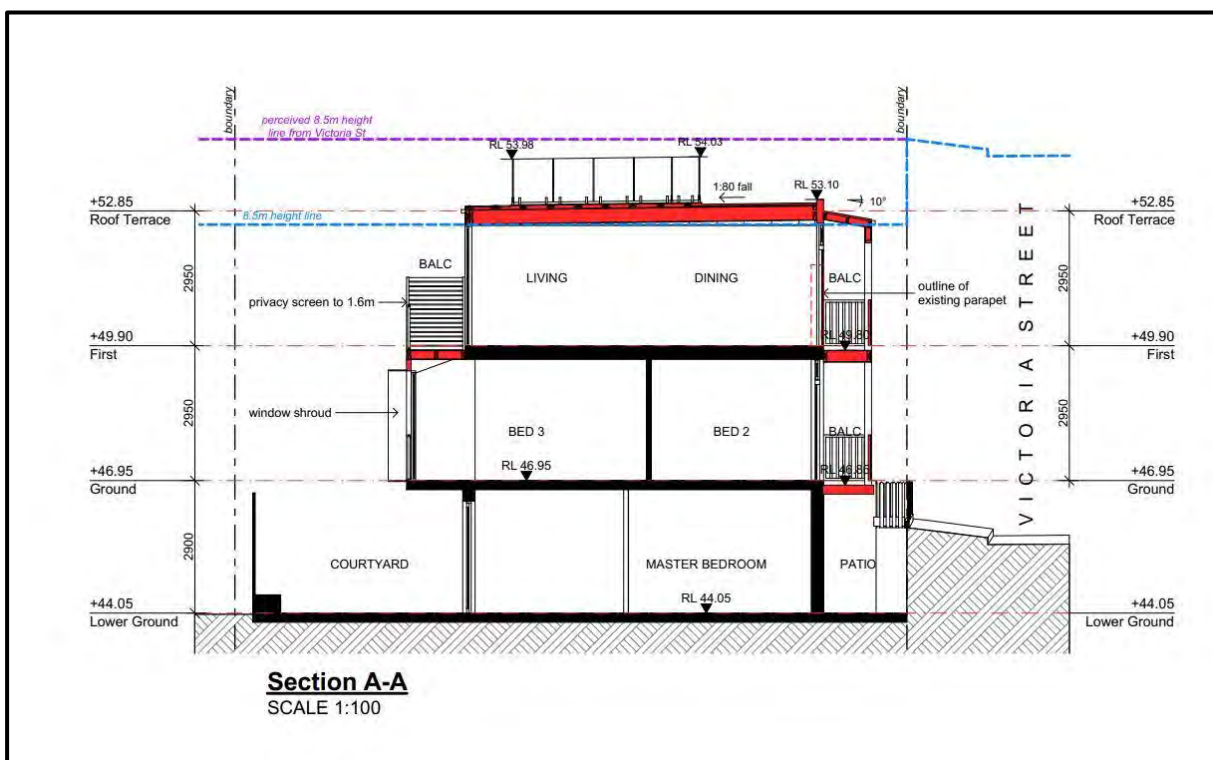


Figure 11: Long section

STATUTORY CONTROLS

Environmental Planning and Assessment Act 1979 (as amended)
Environmental Planning and Assessment Regulations 2021

North Sydney Local Environmental Plan 2013 (NSLEP 2013):

- Zoning – E3 – Productivity Support zone (refer to Figure 12)
- Clause 5.6 – Architectural roof features – Not applicable
- Clause 5.7 – development below high water mark – Not applicable
- Clause 5.10 – Heritage conservation:
 - Item of Heritage – No
 - In Vicinity of Item of Heritage – Yes, rear boundary of site adjoins heritage item I0480 (No. 48-50 Mitchell Street) and across the road from heritage items I0511, I0512, I0513 and I0514 (No.'s 62, 64, 6 and 68 Victoria Street) (refer to Figure 13).
 - Conservation Area – No
- Clause 6.9 – Limited development on foreshore area – Not applicable
- Clause 6.10 – Earthworks – No applicable
- Clause 6.12 – Residential flat buildings – Not applicable
- Clause 6.12A – Residential flat buildings in Zone B4 – Not applicable

State policies:

- SEPP (Biodiversity and Conservation) 2021
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Resilience and Hazards) 2021.

POLICY CONTROLS

North Sydney Local Infrastructure Contributions Plan 2020
North Sydney Development Control Plan 2013 (NSDCP 2013)

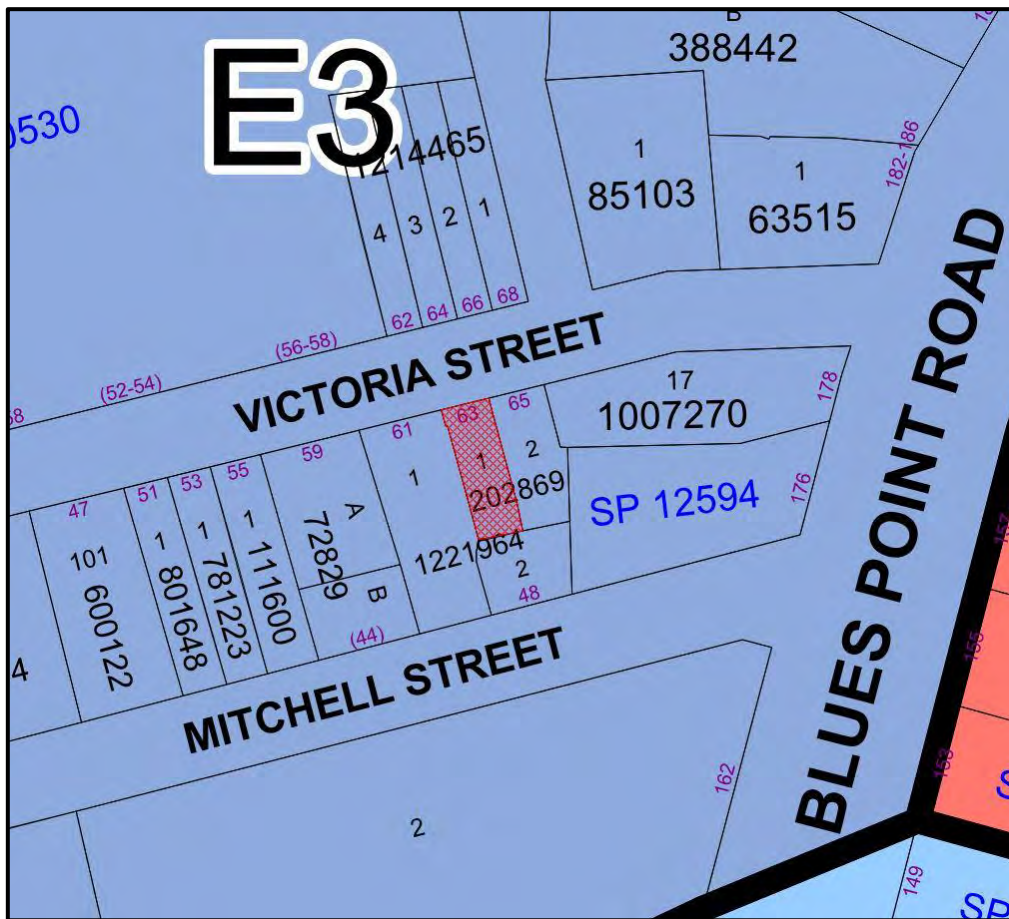


Figure 12: Zoning map showing subject site (cross-hatched in red) and respective land use zones

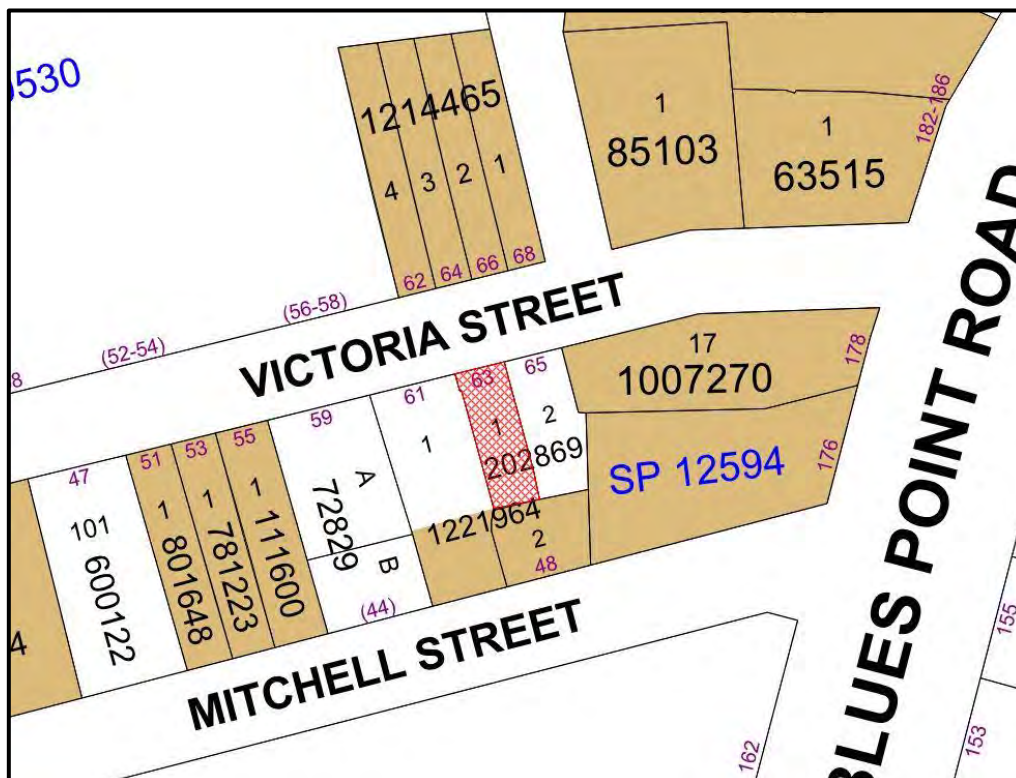


Figure 13: Heritage map showing subject site (cross-hatched in red) and surrounding/adjointing locally listed heritage items

DESCRIPTION OF LOCALITY

The subject site identified as No. 63 Victoria Street, McMahons Point, and is legally known as Lot 1 in DP 202869. The site is an irregular-shaped, undersized and constrained allotment that is located on the southern side of Vitoria Street (refer to Figure 14). It has a front boundary of 5.29m and a total area of 74.5m² The site has a 1.67m fall to the rear (southern) boundary and no vehicular access and parking.



**Figure 14: Aerial map showing subject site (outlined in yellow) and surrounding properties.
(Source: Council SIS Maps)**

The subject site is highly modified and built-up, with a 2-storey semi-detached dwelling occupying 54.5m² (or 73%) of the site and the remaining area containing no landscaped, deep soil zones (refer to Figures 15 to 22). The existing dwelling forms part of a pair of semi-detached dwellings within the site and the east-adjointing neighbour (No. 65 Victoria Street) (refer to Figure 15).

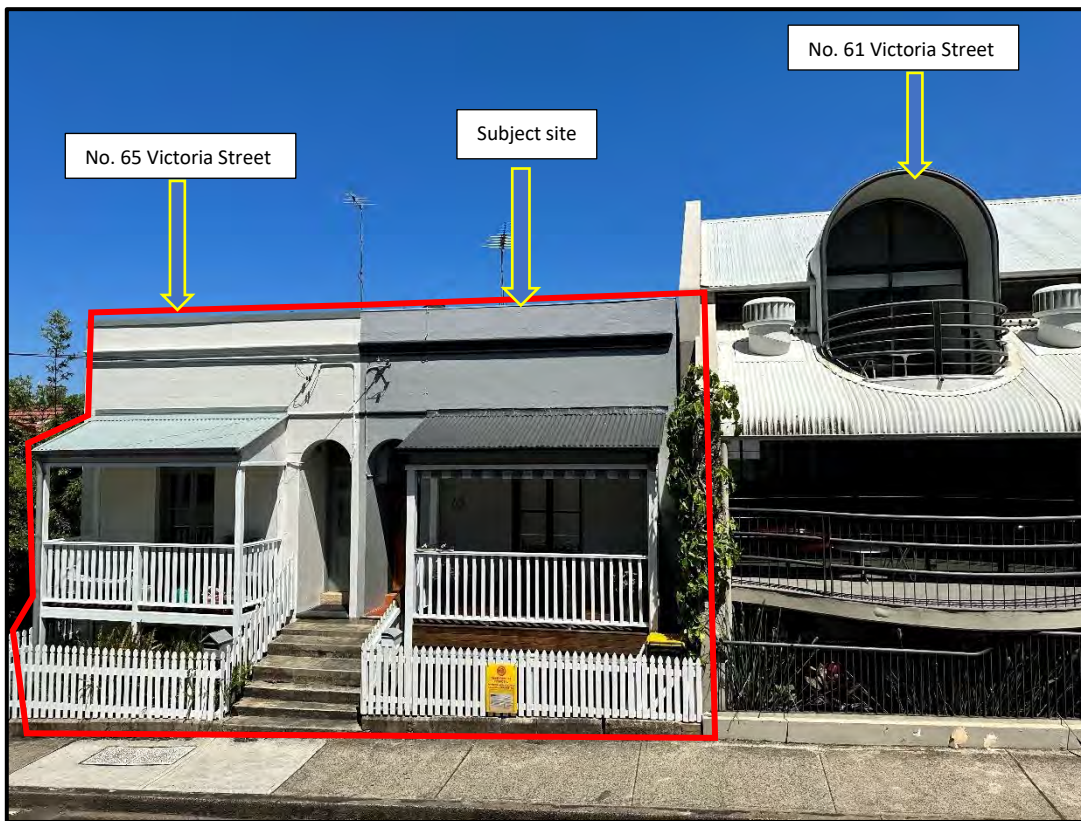


Figure 15: Front of subject site showing existing semi-detached residence and adjoining neighbours



Figure 16: Existing hallway on ground floor – view towards front door and 1st (front) bedroom (shaded in green)



Figure 16: Existing hallway on ground floor and stairs leading to lower ground floor – view towards rear boundary and 2nd bedroom (shaded in blue) and bathroom (shaded in orange)



Figure 17: Rear bathroom on ground floor – note view of wall and balcony No. 48-50 Mitchell Street



Figure 18: Existing combined laundry and bathroom on lower ground floor



Figure 19: Existing living room and kitchen area on lower ground floor – view towards Victoria Street



Figure 20: Existing kitchen and dining area on lower ground floor with access to rear courtyard



Figure 21: Open rear courtyard area with roofed clothes drying area and lower ground floor bathroom (shaded in pink)



Figure 22: Clothes drying area with metal roof above and lower ground floor bathroom shaded in pink



Figure 23: View from the rear courtyard of the 2nd bedroom and bathroom (on ground floor)

The immediate locality features a diverse range of land uses from light industrial, retail and commercial uses scattered amongst medium-high density residential properties (refer to Figures 15 and 24-30). The streetscape reflects a highly urbanised character with modern attached housing and low-rise Interwar residential flat buildings and some light industrial and commercial buildings, within narrow streets and limited street tree plantings. The surrounding locality has views to the water and foreshore (Balls Head Bay and Lavender Bay) and distant views of North Sydney and Sydney CBD's and Sydney Harbour (including the Sydney Harbour Bridge) – particularly along Mitchell Street and Victoria Street.

The urbanised and built-up character and medium-high density of the locality is reinforced by the irregular subdivision pattern, boundary-to-boundary (attached) nature of built forms, high (minimum 80%) site coverage and limited boundary setbacks (0-2m) of buildings. The subject site's setting is unique in that a number of residential properties along Mitchell Street and Victoria Street have been designed with elevated living areas or balconies or roof terraces or a combination of the three (3) components, to take advantage of the distant views and vistas situated to the south/south-east/south-west.

The site is surrounded and adjoined by the following residential properties:

- Front: No. 62, 64, 66, 68 Victoria Street (attached terrace dwellings) (refer to Figure 24).
- Rear: No. 48-50 Mitchell Street (dwelling house) (refer to Figure 25).
- East-adjointing: No. 65 Victoria Street (semi-detached dwelling) (refer to Figures 15, 26).
- West-adjointing: No. 61 Victoria Street (multi-storey commercial building) (refer to Figures 15, 27, 28).



Figure 24: Existing heritage items and attached dwellings at No. 62, 64, 66 and 68 Victoria Street



Figure 25: Existing heritage item and dwelling house at No.48-50 Mitchell Street



Figure 26: Semi-detached dwelling at No. 65 Victoria Street



Figure 27: Front of commercial building at No. 61 Victoria Street



Figure 28: Rear of commercial building at No. 61 Victoria Street (view from Mitchell Street)

RELEVANT HISTORY

Previous applications

**DA403/07 – No. 55 Victoria Street, McMahons Point
 (20m west of subject site)**

On 24 April 2008, Council granted consent to application DA403/07 under delegated authority. This application sought approval for the alterations and additions to an existing dwelling including internal reconfiguration, façade changes and extension at second floor level (refer to Figures 29 and 30).

Council records indicated that a construction certificate was received by Council on 17 September 2010, for works approved under DA403/07.

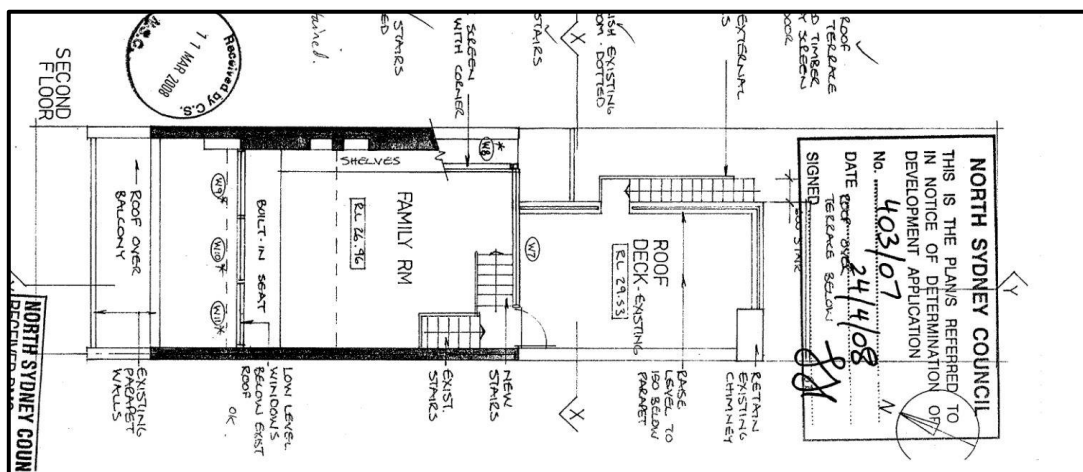


Figure 29: 2nd floor plan (showing roof terrace) of approved development

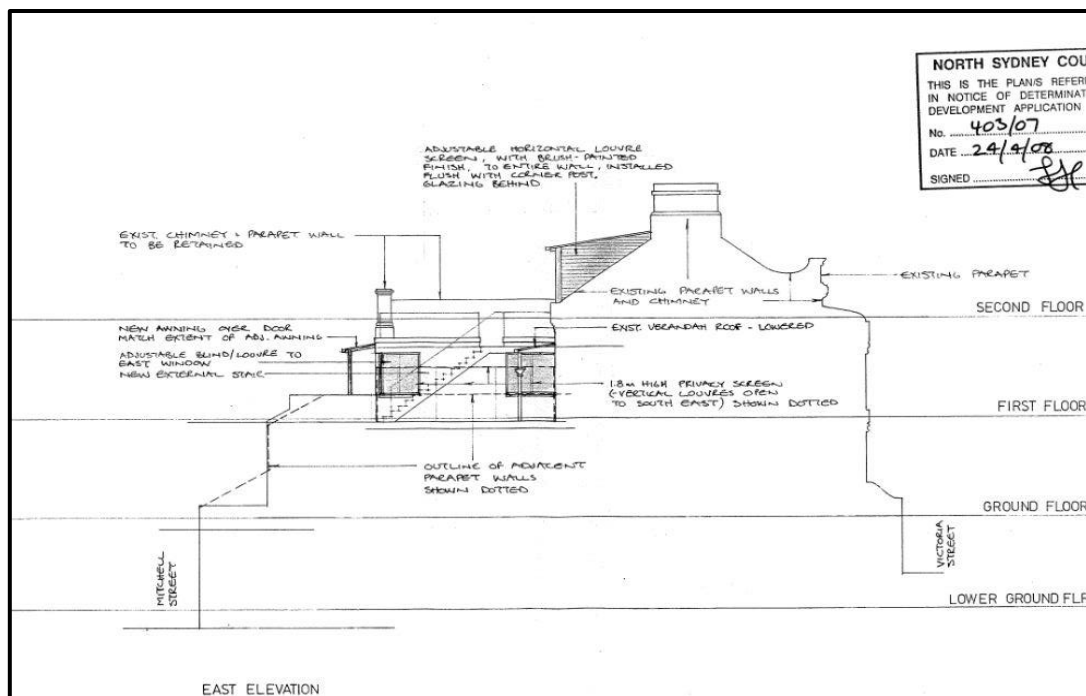


Figure 30: East elevation of approved development

DA142/11 and subsequent modifications – No. 47 Victoria Street, McMahons Point

(36m west of subject site)

On 17 October 2011, Council granted deferred commencement consent to application DA142/11 at its meeting. This application sought approval for the demolition of an existing commercial building and the construction of a 4-storey residential dwelling. The approved development involved a new roof terrace accessed off the 3rd storey.

On 25 June 2013, Council granted consent to modification application DA142/11/2 under delegation (refer to Figure 31). This application sought approval for modifying the approved 4-storey dwelling including deletion of the approved office component, changes to the internal layout, fenestration changes and the extension of the outdoor terrace on the second floor.

Council records indicate that final occupation certificate was received by Council on 12 October 2017, for works approved under DA142/11 and the subsequent modification.

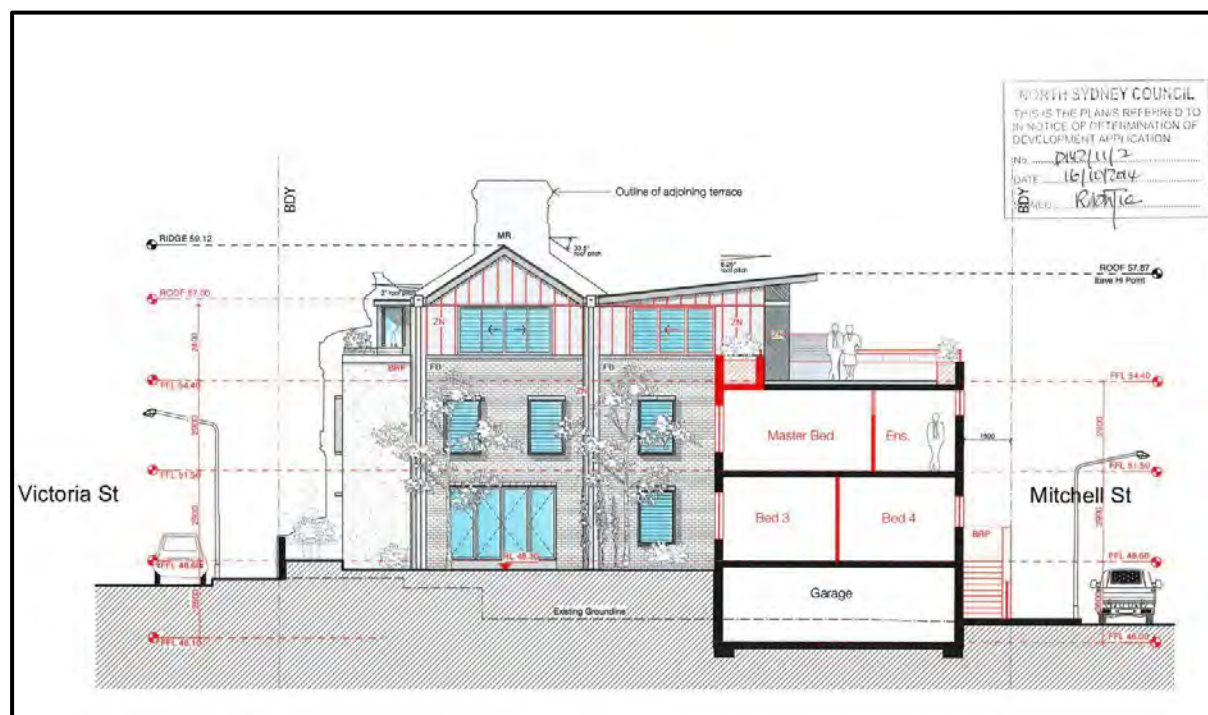


Figure 31: West elevation of approved development under DA142/11/2

DA433/12 and subsequent modifications – No.'s 62-68 Victoria Street, McMahons Point
(opposite the subject site)

On 19 August 2013, Council granted consent to application DA433/12 at its meeting. This application sought approval for alterations and additions to four (4) terraces and land subdivision into four (4) lots and included a rear 2-storey addition to each terrace, a roof deck over the front portion of each dwelling, a central courtyard within each dwelling and a single garage at the rear of each of the dwellings (refer to Figures 32 and 33).

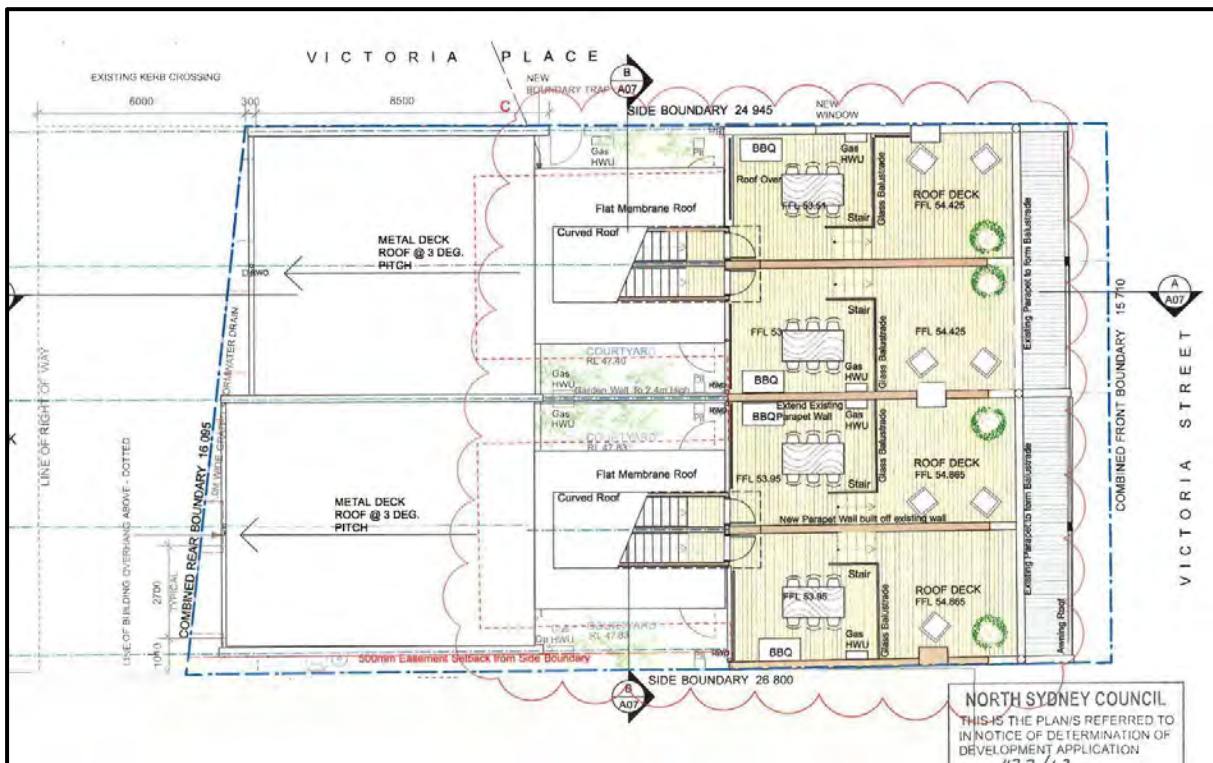


Figure 32: Approved roof and outdoor terrace (deck) level with dining and BBQ area for existing attached residences

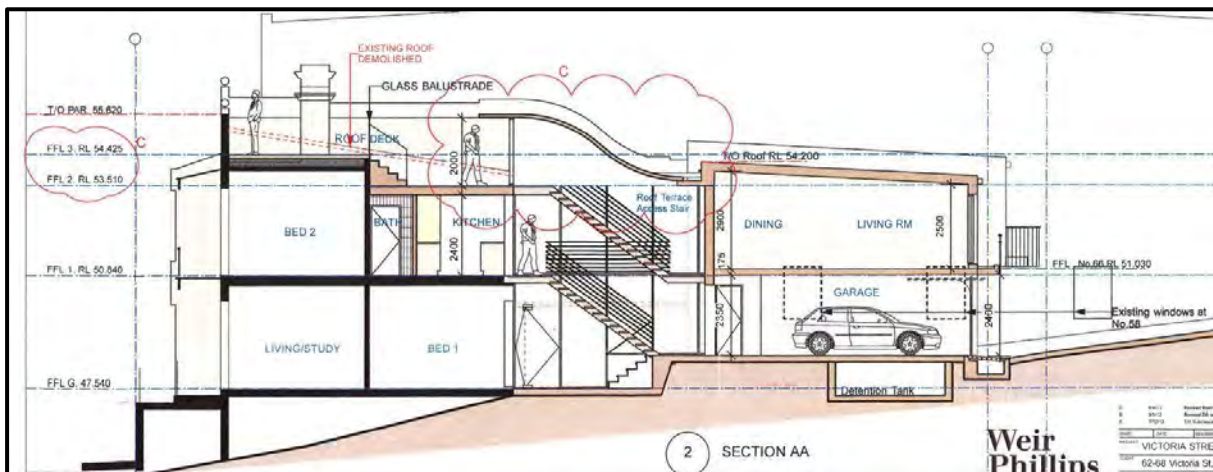


Figure 33: Long section of approved development

On 25 November 2014, Council received modification application DA433/12/2. This application was rejected due to insufficient information and inadequate plans.

On 31 July 2015, Council granted consent to modification application DA433/12/3 under delegated authority. This application sought approval to modify the approved alterations and additions including changes to kitchens, roofing, deletion of balconies and extension of study windows (refer to Figures 34 and 35).

On 22 October 2015, Council granted consent to modification application DA433/12/4 under delegated authority. This application sought approval to modify consent condition C24 (eastern stair enclosure height) and consent condition G6 (Height) to modify the approved roof height of the eastern stair enclosure to increase it by 130mm.

On 18 April 2016, Council granted consent to modification application DA433/12/5 under delegated authority. This application sought approval to modify consent conditions C7 and E8a to retain the existing vehicular crossing.

Council records indicate that a final occupation certificate was received by Council on 3 May 2016, for works approved under DA433/12 and subsequent modifications.

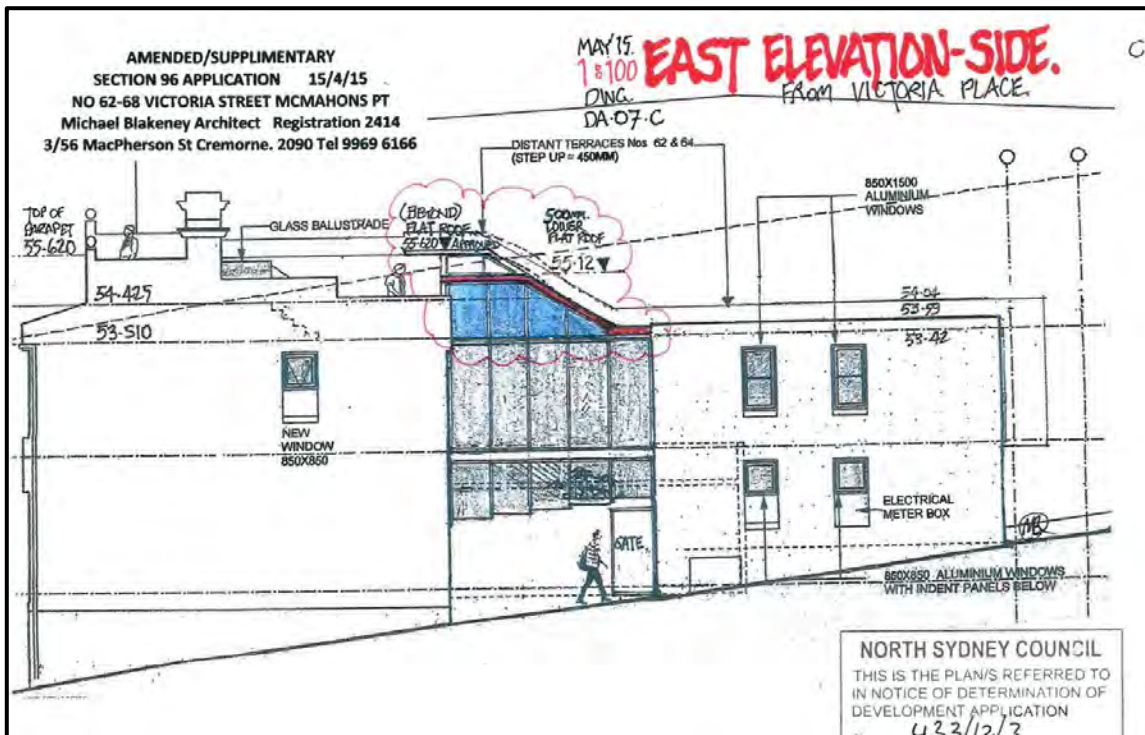


Figure 34: East elevation of approved modification

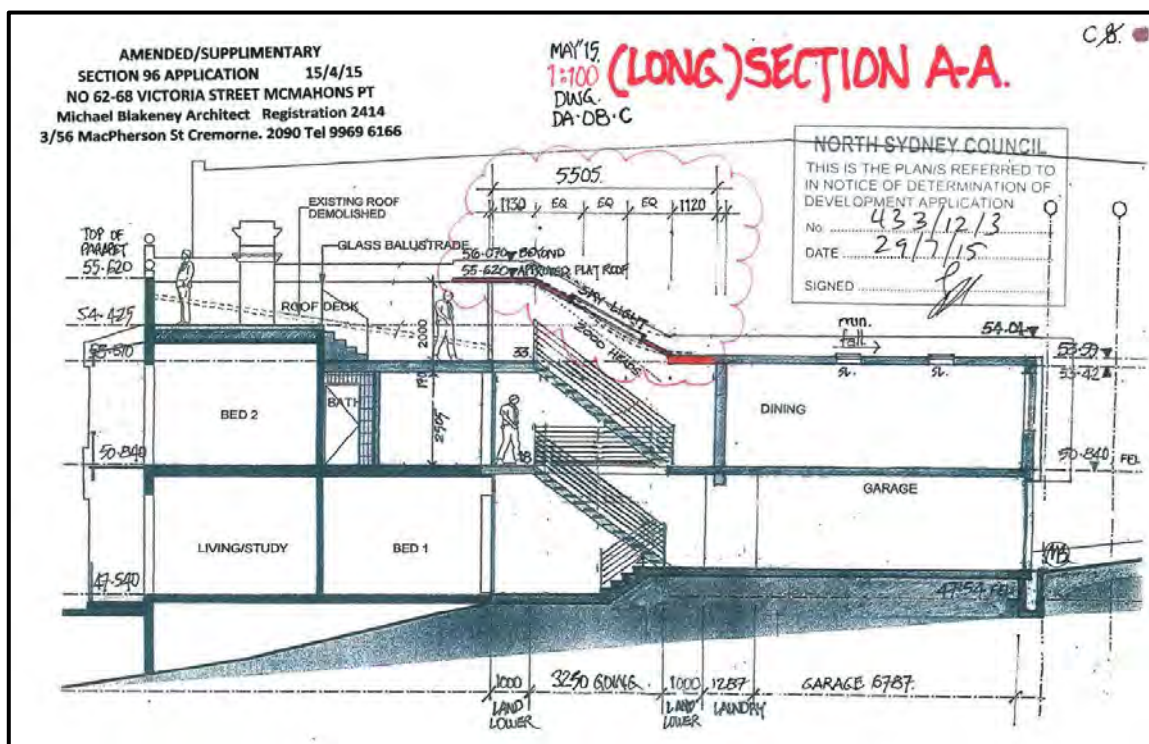


Figure 35: Long section of approved modification

**DA74/15 – No. 51 Victoria Street, McMahons Point
(31m west of the subject site)**

On 3 July 2015, the North Sydney Independent Planning Panel granted consent to application DA74/15 at its meeting. This application sought approval for alterations and additions to an existing terrace dwelling including a new roof terrace (refer to Figure 36).

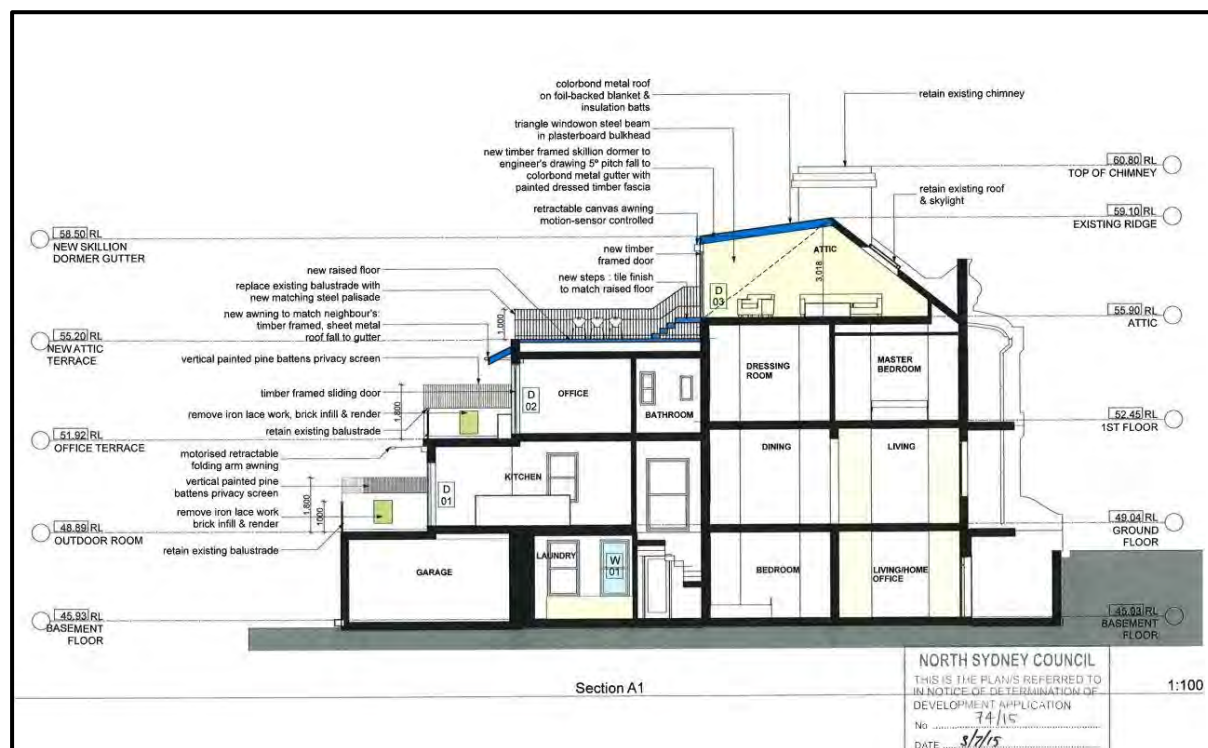


Figure 36: Long section of approved development

Council records indicated that a construction certificate was received by Council on 25 February 2016, for works approved under DA74/15.

Development Pattern and Site Context

As reflected in previous approvals and the existing built forms in the vicinity, the residential development within the McMahons Point Business Precinct – particularly along Victoria Street, feature two (2) to three (3) storeys with roof terraces situated at the rear and concealed behind parapets and primary roof ridges. It is noted that whilst a first floor addition and roof terrace reflect compatible outcomes for a site in this vicinity; the subject site is a highly constrained, undersized lot (only 74.5m²) and the abovementioned past approvals were on sites that were larger. Consequently, previously supported built forms reflect a more balanced, contextually appropriate outcome that are proportionate to the respective allotments and are responsive to the unique site constraints. The proposed built form, on the other hand, is considered excessive in scale and form and is considered a poor response to the site's constraints and limited dimensions. A more modest roof addition behind the existing parapet would represent a more appropriate scale and response to the site context and constraints. Further detail is contained in the 'Assessment' section below.

Current Application

Date	Action
22 November 2022	The subject application was lodged with Council.
7-8 December 2022	Two (2) submissions were received, which objected to the application.
9 December 2022	The application was notified to adjoining/surrounding properties and the Edward and Union (Combined) Precincts Committee in accordance with Council's Community Participation Plan for at least 14 days – ending on 18 January 2023. Seven (7) submissions were received during this period.
5 February 2023	A submission was received outside the notification period.
10 February 2023	Council staff conducted a site inspection at the subject site.
3 March 2023	Council staff conducted a site inspection at neighbouring property (at No. 65 Victoria Street).
8 March 2023	Council staff conducted a site inspections at neighbouring properties (at No.'s 62, 64 and 66 Victoria Street).
16 March 2023	A Withdraw/Refuse letter was sent to the Applicant via the Planning Portal, which detailed issues associated with the application, including built form, streetscape character, bulk and scale, roof terrace, privacy and amenity impacts, overshadowing, owner's consent, insufficient plans/documents and submissions. The Applicant was invited to withdraw the application due to the substantial issues identified in Council's preliminary assessment.
24 March 2023	The Applicant requested a four (4) week extension to submit additional information to address the issues mentioned in the Withdraw/Refuse letter.
5 May 2023	The Applicant submitted a revised scheme and new architectural plans. The final scheme involved a reduced rear-facing balcony on the first floor and deletion of the external spiral staircase to access the roof terrace, and retention of the roof terrace.
2 June 2023	A submission was received outside the notification period.
5 June 2023	Payment for re-notification of revised plans was received by Council.
9 June 2023	The revised plans were re-notified to adjoining/surrounding properties in accordance with Council's Community Participation Plan for at 14 days – ending on 23 June 2023. Five (5) submissions were received during this period.

INTERNAL REFERRALS

ENGINEERING

Council's Development Engineer reviewed the application and confirmed that no objections were raised with regard to the proposed stormwater management system, subject to the imposition of recommended conditions.

Planning comment: The above comments are noted and concurred with. Any recommended conditions will be included should consent be granted.

HERITAGE

Council's Conservation Planner assessed the application in relation to heritage matters and provided the following advice:

An assessment of the proposed alterations and additions at 63 Victoria Street has been undertaken in relation to NSLEP 2013 Clause 5.10 Heritage conservation, and the relevant provision of NSDCP 2013 Part B s13 Heritage and Conservation and Part C; Area Character Statements – Lavender Bay Planning Area.

63 Victoria Street is located on the southern side of Victoria Street where it sits below the Street in response to the topography of the site. It is part of a semi-detached pair with 65 Victoria Street to the east of it. The semi-detached pair maintain their symmetry and make a positive contribution to the Victoria Street streetscape and to the setting of the heritage items in its close proximity. The building form has a prominent parapet and its overall form, massing and scale complements the nearby terraces especially, 51-55 Victoria Street and 62-68 Victoria Street.

The proposed works are contrary to the area character statement provisions as per NDCP 2013 Part C: s9.2.3 Desired Built Form - P1 Form, massing scale because they distort the symmetrical façade and built form character of the semi-detached pair. The impact from the proposed works creates an adverse impact on the character of this part of Victoria Street streetscape and the setting of the heritage items in the vicinity of the site. As such, the proposed works are also contrary to the provisions set out in NDCP 2013 Part B:s13.4 Development in the vicinity of heritage items O1/ P1.

In conclusion, the proposal is NOT acceptable on heritage grounds for its adverse impact on the symmetry of the attached semi-detached dwelling, the knock-on impact of which impacts on the setting and heritage significance of the heritage items in the vicinity of the site as the overall character of the Victoria Street streetscape.

Conclusion and Recommendation

With reference to the above, the proposal as submitted does NOT meet the objectives and provisions contained in NDCP 2013 Part B: s13.4 Development in the vicinity O1/ P1 nor the provisions in the relevant area character statement in NDCP 2013 Part C: s9.2.3 Desired Built Form - P1 Form, massing scale. Therefore, the proposal does NOT satisfy the objectives in NSLEP 2013 Clause 5.10(a) and (b) Heritage conservation.

Planning comment: The above comments are considered and generally concurred with; however, it relates to the original design submitted in December 2022. The Applicant provided additional information including a revised design in May 2023. The revised design remains overscaled for the constrained site and an alternative semi-detached design should be pursued, which could be replicated for No. 65 Victoria Street. It is noted that the subject site is not within a conservation area and when tested against relevant heritage controls, the proposal will not likely result in detrimental impacts to any adjoining or surrounding heritage items.

SUBMISSIONS

Original Proposal

In accordance with Council's Community Participation Plan, Council notified the neighbouring and adjoining properties and the Edward and Union (Combined) Precinct Committee of the proposed development from 9 December 2022 to 18 January 2023. Council received a total of seven (7) submissions during this period, from the Edward and Union (Combined) Precinct Committee and from the following properties:

- No. 61 Victoria Street, McMahons Point
- No. 62 Victoria Street, McMahons Point
- No. 64 Victoria Street, McMahons Point
- No. 65 Victoria Street, McMahons Point – two (2) submissions
- No. 66 Victoria Street, McMahons Point

An additional three (3) submissions were received outside the notification period from:

- Unknown address
- No. 62 Victoria Street, McMahons Point
- No. 65 Victoria Street, McMahons Point

The matters raised in these submissions objecting to the proposed development are listed below:

- No party wall consent and impacts on party wall
- Submissions are locked and not visible on Council's website
- Bulk, scale, massing and density
- Excessive height
- Setbacks and building separation
- Overdevelopment
- Visual privacy and amenity impacts
- Acoustic privacy impacts
- Visual impacts and design
- Overshadowing
- View loss impacts
- Heritage

The above issues are summarised and addressed later in this report.

Amended Proposal – 5 May 2023

The Applicant submitted an amended design and additional information in response to the submissions and any correspondence from Council. It is noted that the amended proposal involved a reduced rear-facing balcony on the first floor and deletion of the external spiral staircase to access the roof terrace, which are considered improved changes to the design. However, the final scheme also involved retention of the roof terrace. The nature of the changes within the final scheme were such that it was determined that a re-notification of the revised design and associated plans was required as per Council's Community Participation Plan.

The amended plans were re-notified to adjoining properties and previous submitters for 14 days between 9 and 23 June 2023. Council received five (5) submissions during this period. An additional submission was received outside the notification period.

The matters raised in the submissions received in response to the amended proposal are listed below:

- Incorrect/inaccurate plans and lodgement of different plans in May and June
- Bulk, scale, massing and density
- Excessive height – particularly in relation to the roof terrace and glass balustrades
- Setbacks and building separation
- Overdevelopment
- Visual privacy and amenity impacts
- Acoustic privacy impacts
- Visual impacts and design
- View loss impacts
- Heritage
- Precedence

The issues raised in the submissions are summarised below and addressed later in this report.

Any original submissions may be viewed by way of DA tracking on Council's website 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 of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed under the following headings:

SEPP (Biodiversity and Conservation) 2021

The following sections apply to the proposed development and have been considered in the assessment:

Chapter 2 – Vegetation in non-rural areas

The proposed development does not involve the removal of any vegetation. There are no site trees and street trees impacted by the proposal. As such, the application satisfies the respective aims under Chapter 2 of this SEPP.

Chapter 6 – Water Catchments

The proposed development has been considered against the requirements of Chapter 6 of the SEPP. The proposal is not considered to be detrimental to Sydney Harbour and will not unduly impose upon the character of the foreshore given the site's location in the industrial/residential area of McMahons Point. As such, the proposed development is acceptable having regard to the provisions of the SEPP.

SEPP (Resilience and Hazards) 2021

The provisions of Chapter 4 of this SEPP require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The subject site has been used as a semi-detached dwelling since 1943 and as such is unlikely to contain any contamination. The nature and location of the proposed development (involving retention of the residential use and alterations and additions to a semi-detached residence) are such that any applicable requirements of this SEPP have been satisfactorily addressed.

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate has been submitted with the application to satisfy the aims of this SEPP.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

Aims of Plan

The development application has been assessed against the aims of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) and is not considered satisfactory with respect to the relevant aims of the Plan based on the following considerations:

- The proposal fails to promote development that is appropriate to its context and enhances the amenity of the North Sydney Community and environment. It involves introducing a built form that is not contextually appropriate, is excessive and disproportionate to the respective undersized allotment, and features a substantial height breach that will generate view loss and privacy impacts.
- The proposal fails to provide a compatible built form that is acceptable in terms of streetscape response, bulk, scale and appearance. The provision of a roof terrace is a key concern as it promotes a height breach that will result in view loss and amenity impacts.
- The proposal is unable to maintain and protect residential amenity due to the roof terrace generating view loss and privacy impacts.
- The proposal fails to not adversely affect residential amenity in terms of visual and acoustic privacy and view sharing.

Permissibility

The site is zoned E3 – Productivity Support under the provisions of the NSLEP 2013. Development for the purposes of a *semi-detached dwelling* is permissible with the consent of Council in the E3 – Productivity Support zone.

Objectives of the zone

The objectives of the E3 – Productivity Support zone are stated below:

- *To provide a range of facilities and services, light industries, warehouses and offices.*
- *To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.*
- *To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.*
- *To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.*
- *To provide opportunities for new and emerging light industries.*
- *To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.*
- *To encourage a mix of lower-scale housing types.*
- *To permit development that is compatible with the scale, intensity and character of the surrounding residential area.*

The current use of the site as a semi-detached dwelling will be retained. The provision of a new roof terrace will introduce a design outcome that is not compatible with the scale and character of the surrounding residential area as it will generate adverse view loss and amenity impacts. As such, the proposed development (as amended) will result in a built form and architectural design that are considered not acceptable and does not satisfy the relevant objectives of the E3 – Productivity Support zone.

Principal Development Standards

The proposal has been assessed against the principal development standards applicable to the development under NSLEP 2013 as follows:

Compliance Table

North Sydney Local Environmental Plan 2013			
Site Area – 74.5m ²	Proposed	Control	Complies
Clause 4.1 – Subdivision lot size	Not applicable	Min. 230m ²	N/A No subdivision is proposed.
Clause 4.3 – Height of buildings	Roof terrace balustrades: 9.98m	Max. 8.5m	No 1.48m (17.4%)
	New roof: 8.8m		No 0.3m (3.5%)

Height of Building

The proposed development involves a maximum height of 9.98m, which is attributed to the balustrades to the new roof terrace, a 1.48m or 17.4% variation to the maximum height of buildings development standard under Clause 4.3 of NSLEP 2013. It is noted that the roof of the first floor/finished floor level of the roof terrace and parapet would have a minor variation to the development standard of 0.3m (3.5%).

A detailed discussion regarding the proposed height breach and its assessment against Clause 4.6 of the NSLEP 2013 are contained below.

Clause 4.6 – Exceptions to development standards

The Applicant has provided a written request to vary the development standard under Clause 4.3 of NSLEP 2013 – maximum height of buildings.

Extent of the Variation

As described above, the proposed development involves a maximum height of 9.98m (for the glass balustrades on the roof terrace), which represents a 1.48m or 17.4% variation to the maximum height of buildings development standard. The roof of the first floor/finished floor level of the roof terrace has a minor variation to the development standard of 0.3m (3.5%). Under the NSLEP 2013, **building height (or height of building)** means—

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

It is noted that the existing semi-detached dwelling features a lower ground floor (RL 44.05) that is situated below the level of Victoria Street (RL 45.55). The lower ground floor level is situated 1.5m below the top of the Victoria Street kerb and 1.66m below the Victoria Street footpath. Due to the existence of the lower ground floor, the calculations of the building height of the proposed development are taken from this level.

Figure 37 illustrates the non-compliant components of the proposed development.

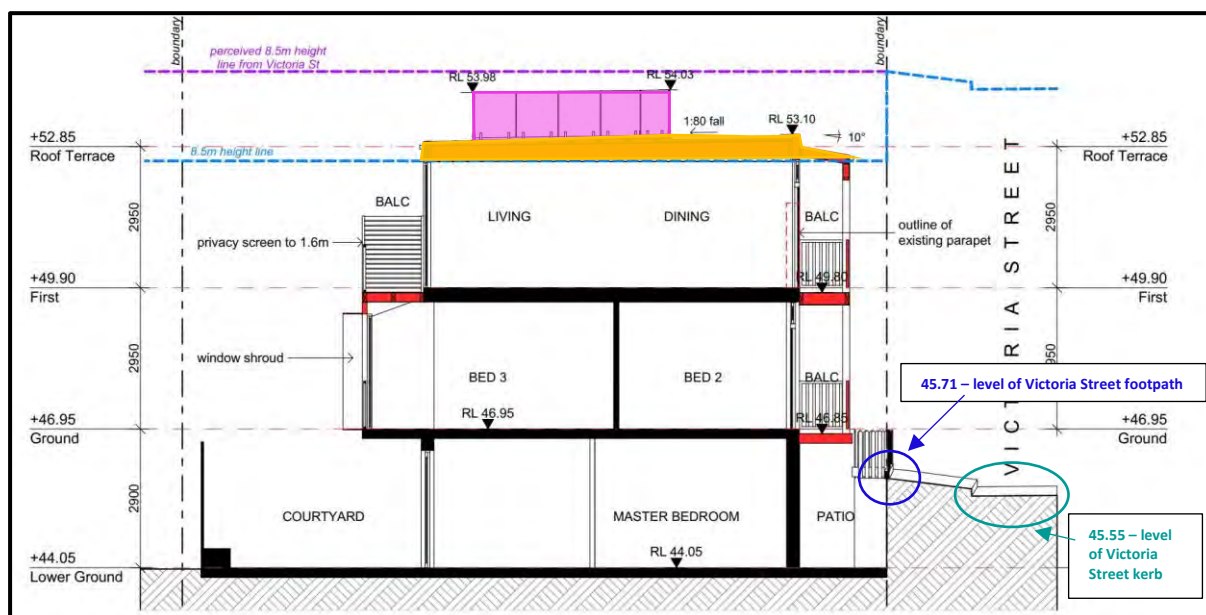


Figure 37: Height diagram showing non-compliant components – roof terrace balustrades (shaded in pink) and roof terrace/first floor roof (shaded in orange) and the existing lower ground floor level and existing residential levels' differences compared to Victoria Street

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

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

Clause 4.3 of the NSLEP 2013

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

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

The Applicant's written request is included as Attachment 2 of this report and relies upon Webhe Test 1 to demonstrate that compliance with the development standard is unreasonable and unnecessary.

The Applicant's written request has not demonstrated consistency with all objectives of the development standard and the relevant zone (E3). The Applicant's written request failed to demonstrate that compliance with the development standard is unreasonable or unnecessary and is unable to provide sufficient environmental planning grounds in support of the variation. Further, the application does not adequately substantiate the potential impacts of the non-compliance and therefore, support for the variation is not in the public interest. Given the above matters, the Applicant's written request fails to achieve the critical provisions under Clause 4.6 of the NSLEP 2013 and Council is unable to accept and support the non-compliance sought under this clause.

Council's evaluation and consideration of the proposed development, having regard to the objectives of the development standard, is summarised below.

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

The proposed development introduces a new first floor and roof terrace to the current semi-detached residence. The existing fall and change of levels (topography) throughout the site are generally respected as the proposal is situated within the building footprint and the existing levels are unchanged. The location and design of these components are such that the height variations will not be highly visible nor impactful when viewed from public domain. The proposed development satisfies this objective.

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

A detailed analysis of view loss is contained below (refer to DCP section). Any impacts on views relating solely on the components that exceed the height limit vary from negligible/minor to moderate-severe – depending on the location of views. In general, the majority of existing views and vistas of the North Sydney and Sydney CBD's, Sydney Harbour, the foreshore and beyond are distant and rely upon open outlooks, gaps and sloping topography and over multiple property boundaries. Whilst some of these views are considered iconic and important and from open living areas, the complete preservation and retention of these views are somewhat restricted due to the built-up setting and context of the immediate locality. Notwithstanding, the Applicant's statement that the view loss impacts are negligible or minor only is not accepted by Council. The view loss impacts associated with the front-facing balconies and bedrooms for the terraces at No. 62, 64, 66 and 68 Victoria Street are considered moderate-severe (refer to DCP section). Overall and on balance, these view loss impacts cannot be regarded as reasonable and acceptable given that the components that generate view loss are the roof terrace balustrades that have a height non-compliance of 17.4%. The removal of these balustrades would result in a more compliant built form and a significant improvement in terms of view impacts and view sharing – with all of the iconic and high quality views from assessed vantage points of the affected properties at 62-68 Victoria Street retained and preserved. As such, the proposal does not reasonably promote the retention and sharing of existing views as a compliant design would easily and reasonably achieve this. The proposed development (in its current form) fails to satisfy this objective.

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

A detailed analysis on overshadowing impacts is provided below (refer to DCP section). It has been demonstrated that the extent of overshadowing impacts on existing development, public reserves and streets, is reasonable and acceptable. The proposed development achieves this objective.

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

The unique context and heavily built-up urbanised setting of the subject site as well as the occurrence of commercial buildings, elevated living areas, balconies and roof terraces and established views throughout the vicinity are such that some privacy and overlooking impacts are to be anticipated. The design of most components featured in the proposed development generally maintains a reasonable level of privacy; however, the roof terrace, which is significantly elevated compared to adjoining residential neighbours, will have unreasonable privacy impacts. The proposed development fails to satisfy this objective.

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

This objective is not highly relevant as the subject site is not within a zone boundary. It is noted that compatibility has not been demonstrated due to the potential view loss and privacy impacts associated with the roof terrace and proposed variation. The proposed development fails to satisfy this objective.

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

The proposed development is of an appropriate scale, bulk and density that is compatible with and consistent to the development pattern of the locality and context of the site. The proposal will result in a built form that presents as a 2-storey terrace building with a lower ground floor when viewed from Victoria Street. This generally reflects the current development pattern of residential properties along Victoria Street and Mitchell Street as well as previous development supported by Council. It is not envisaged that the proposed development will initiate an overscale in development pattern nor create an overdevelopment precedence to the immediate area. It is noted; however, that the roof terrace introduces an uncharacteristic component to the landscape that does not promote the character of the area. The proposed development fails to satisfy this objective.

(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

This objective does not apply to the proposed development as the subject site is within land zoned E3 – Productivity Support.

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

As discussed above, the written request provided by the Applicant fails to adequately address the matters required by subclause (3). The Applicant's written request failed to demonstrate that compliance with the development standard is unreasonable or unnecessary and is unable to provide sufficient environmental planning grounds. In addition, the information provided to Council does not adequately substantiate the potential impacts of the non-compliance and therefore, support for the variation is not in the public interest. As such, the provisions under Clause 4.6 of the NSLEP 2013 have not been satisfied and Council is unable to accept and support the non-compliance sought under this clause.

Part 5 – Miscellaneous Provisions

Clause 5.10 – Heritage Conservation

The subject site is within the vicinity of heritage items that are listed under Schedule 5 of the NSLEP 2013. The site's rear boundary adjoins heritage item I0480 (No. 48-50 Mitchell Street) and it is across the road from heritage items I0511, I0512, I0513 and I0514 (No.'s 62, 64, 6 and 68 Victoria Street) (refer to Figure 13)

The following planning objectives apply to the proposed development:

- (a) to conserve the environmental heritage of North Sydney,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The original scheme of the proposed development has been assessed by Council's Conservation Planner against the objectives under Clause 5.10. The final amended scheme has been tested against these objectives and any impacts on nearby heritage items are not considered detrimental or adverse. The proposed development satisfies the heritage conservation provisions under Clause 5.10.

Part 6 – Additional local Provisions

The proposed development does not trigger an assessment against provisions under Part 6 of the NSLEP 2013.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposed development has been assessed against the relevant objectives and controls under the NSDCP 2013. An assessment has been carried out below:

Part B, Section 1: Residential Development

Part B Section 1 – Residential Development		
Control	Compliance	Comments
1.2 Social amenity		
Maintaining residential Accommodation	Yes	The proposed development does not result in the loss of residential accommodation. It will maintain the existing use of the site as a semi-detached dwelling.
1.3 Environmental criteria		
Topography	Yes	The proposed development involves alterations and additions that are wholly contained within the existing footprint of the dwelling and do not alter the topography of the site.
Views	No – see view loss analysis below	The proposed development will result in some view loss impacts to the neighbouring terraced residences at No.'s 62, 64, 66 and 68 Victoria Street. The most prominent and existing views from these properties are wide and distant water/land, CBD and horizon-skyline views, some of which are of the North Sydney and Sydney CBD's, Sydney Harbour foreshore, Lavender Bay and Balls Head Bay. These views are generally taken over several property boundaries and exist due to the current open outlooks and gaps and sloping topography of the immediate locality.
		<p>The complete retention and sharing of all current views that primarily rely on open gaps and vistas created from less developed or underdeveloped properties over property boundaries is not considered feasible nor achievable in all circumstances. Notwithstanding, the proposed development exceeds the maximum building height limit under Clause 4.3 of the NSLEP 2013 and the components that result in adverse view loss involve a substantial height breach (17.4%). An assessment against the Tenacity test is provided below. The Applicant provided a thorough view loss analysis – which was reviewed and considered by Council in addition to undertaking an independent view loss assessment (see below). In light of the above and Council's assessment of the view loss impacts (as the detailed below), some of the view loss impacts are considered moderate-severe and regarded as unacceptable due to the height non-compliance of the offending elements.</p> <p>See below Council's detailed view loss assessment against the Tenacity test for affected properties.</p>

Context

The northern side of Victoria Street generally sits at a higher elevation than the southern side of this street. Conversely, Mitchell Street is lower than Victoria Street. The subject site is situated lower than the properties to the immediate north due to the sloping topography and staggered and built-up development pattern of the immediate locality (refer to Figure 38). The residential terraced housing at No.'s 62, 64, 66 and 68 Victoria Street has existing views over the subject site that will be impacted by the proposed introduction of a new first floor and roof terrace above the current 2-storey residence.

As mentioned, the immediate locality features a number of existing distant views and vistas of the North Sydney and Sydney CBD's, Sydney Harbour foreshore as well as Lavender Bay and Balls Head Bay. The subject site's setting and context are unique in that a number of residential properties along Mitchell Street and Victoria Street are designed with elevated living areas or balconies or roof terraces or a combination of the three (3) components, to take advantage of the distant views and vistas situated to the south/south-east/south-west (refer to Figures 38 to 40). It is noted that due to the elevated position of No.'s 62, 64, 66 and 68 Victoria Street (compared to the subject site), the views from the neighbours' respective roof terraces are negligibly affected by the proposal. As such, these high quality views are substantially retained and preserved. The only other high quality views affected by the proposal are associated with the first floor balconies and bedrooms that face Victoria Street. In general, these views are reliant on the retained gaps and form, bulk and scale of any redevelopment within the subject site and other sites below Victoria Street. The above context has been considered in detail as part of the view loss assessment.



Figure 38: South-east view and 3-D image of immediate locality showing subject site (shaded in yellow) and affected properties at No. 62-68 Victoria Street (shaded in purple). Source: Google Maps



Figure 39: Location map of subject site and surrounding area. The subject site and immediate vicinity are outlined in red. Primary views/vistas to Sydney Harbour, North Sydney and Sydney CBD's and Lavender Bay and Balls Head Bay are generally to the south/south-east/south-west. Source: Google maps

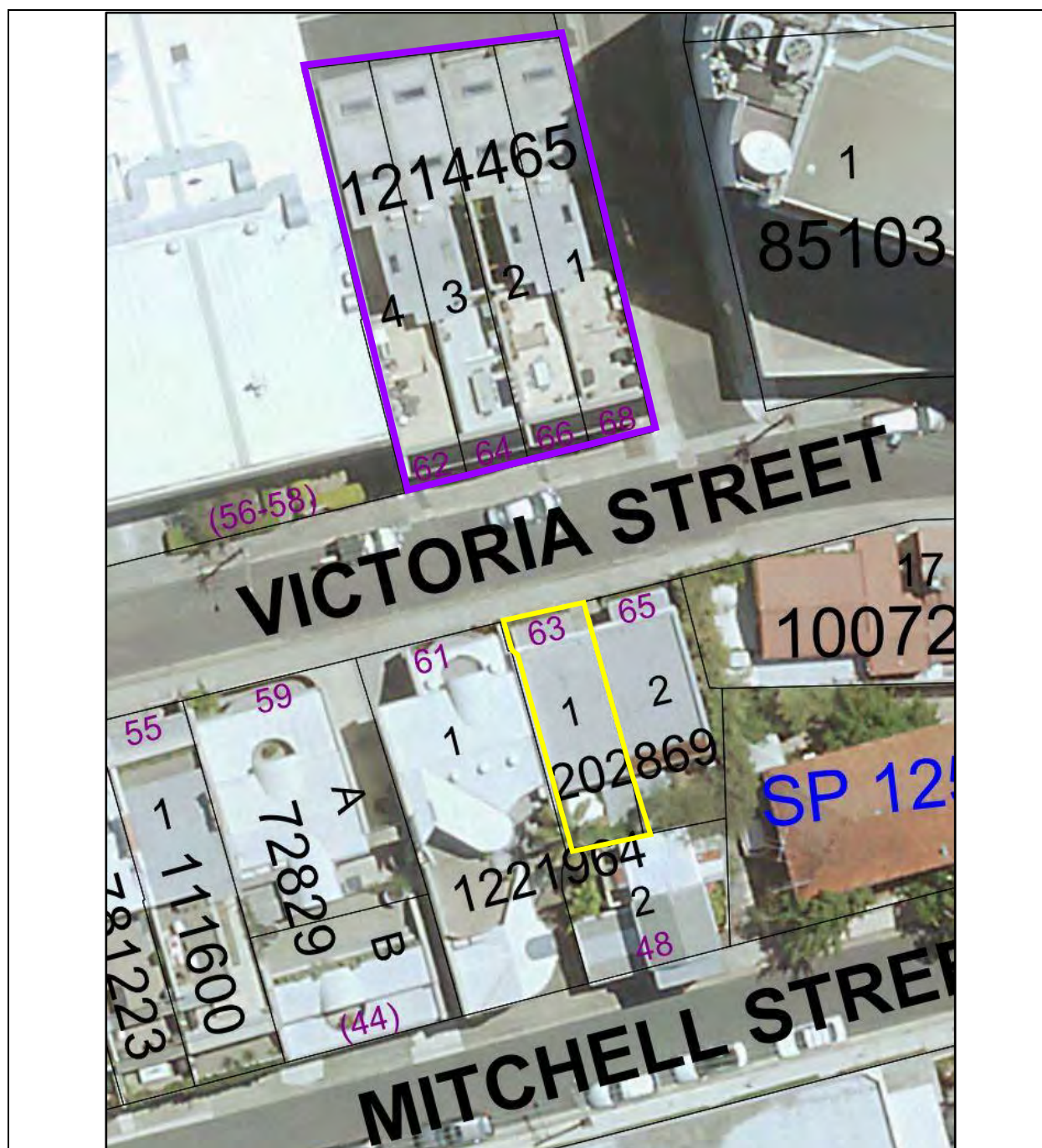


Figure 40: Map of subject site and immediate vicinity. Subject site outlined in yellow and neighbouring properties objecting due to view loss outlined in purple. Source: SIS Maps

Affected properties

The neighbouring properties that have objected to the proposal and have raised concern regarding view loss are indicated on Figure 40 and are as follows:

- No.'s 62, 64, 66 and 68 Victoria Street, McMahons Point

A view loss assessment against the Tenacity test is provided below.

View loss assessment

The Tenacity test requires an assessment of view loss to be undertaken in the following four (4) steps:

Step 1: Assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example, of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views. For example, a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Step 2: Consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic

Step 3: Assess the extent of impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Step 4: Assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the Applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The following is a view loss assessment against the Tenacity test.

Views from first floor bedroom and front-facing balcony (No. 62 Victoria Street) (refer to Figure 41)

Step 1: Wide and distant views of North Sydney and Sydney CBD's, and Sydney Harbour including iconic views of the Sydney Harbour Bridge. Views are generally partial, somewhat obstructed by existing built forms and trees.

Step 2: Views over property boundaries of the subject site and some properties along the southern side of Victoria Street. Views can be either standing or sitting – but typically, the optimal views are taken from standing positions.

Step 3: Severe-devastating impacts – the view will be adversely affected as more than 80% of current view of the bridge will be obscured by the proposed roof terrace balustrades.

Step 4: The impacts are not reasonable as the components affecting the view loss involve a significant height breach of 17.4%.

Assessment: The potential view loss impacts are considered unacceptable and unreasonable.



Figure 41: Standing view from front-facing balcony (off bedroom) of No. 62 Victoria Street – proposed built form shaded in green

Views from roof terrace (No. 62 Victoria Street) (refer to Figure 42)

Step 1: Wide and distant views of North Sydney and Sydney CBD's, and Sydney Harbour including iconic views of the Sydney Harbour Bridge. View are mostly whole views.

Step 2: Views over property boundaries of the subject site and some properties along the southern side of Victoria Street. Views can be either standing or sitting – but typically, the optimal views are taken from standing positions.

Step 3: Negligible impacts.

Step 4: There are no view loss impacts as the existing views of the CBD's and Sydney Harbour from the roof terrace are preserved.

Assessment: The potential view loss impacts are considered acceptable and reasonable.



Figure 42: Standing view from the roof terrace of No. 62 Victoria Street – proposed built form shaded in green

Views from first floor bedroom and front-facing balcony (No. 64 Victoria Street) (refer to Figure 43 and 44)

Step 1: Wide and distant views of North Sydney and Sydney CBD's, and Sydney Harbour including iconic views of the Sydney Harbour Bridge. Views are generally partial, somewhat obstructed by existing built forms and trees.

Step 2: Views over property boundaries of the subject site and some properties along the southern side of Victoria Street. Views can be either standing or sitting – but typically, the optimal views are taken from standing positions.

Step 3: Moderate impacts – the view will be adversely affected as about 50% of current view of the bridge and majority of the CBD view will be obscured by the proposed roof terrace balustrades.

Step 4: The impacts are not reasonable as the components affecting the view loss involve a significant height breach of 17.4%.

Assessment: The potential view loss impacts are considered unacceptable and unreasonable.



Figure 43: Standing view from front-facing balcony (off bedroom) of No. 64 Victoria Street – proposed built form shaded in green



Figure 44: Sitting view (zoomed in view) from front-facing balcony (off bedroom) of No. 64 Victoria Street – proposed built form shaded in green

Views from roof terrace (No. 64 Victoria Street) (refer to Figure 45)

Step 1: Wide and distant views of North Sydney and Sydney CBD's, and Sydney Harbour including iconic views of the Sydney Harbour Bridge. View are mostly whole views.

Step 2: Views over property boundaries of the subject site and some properties along the southern side of Victoria Street. Views can be either standing or sitting – but typically, the optimal views are taken from standing positions.

Step 3: Negligible impacts.

Step 4: There are no view loss impacts as the existing views of the CBD's and Sydney Harbour from the roof terrace are preserved.

Assessment: The potential view loss impacts are considered acceptable and reasonable.

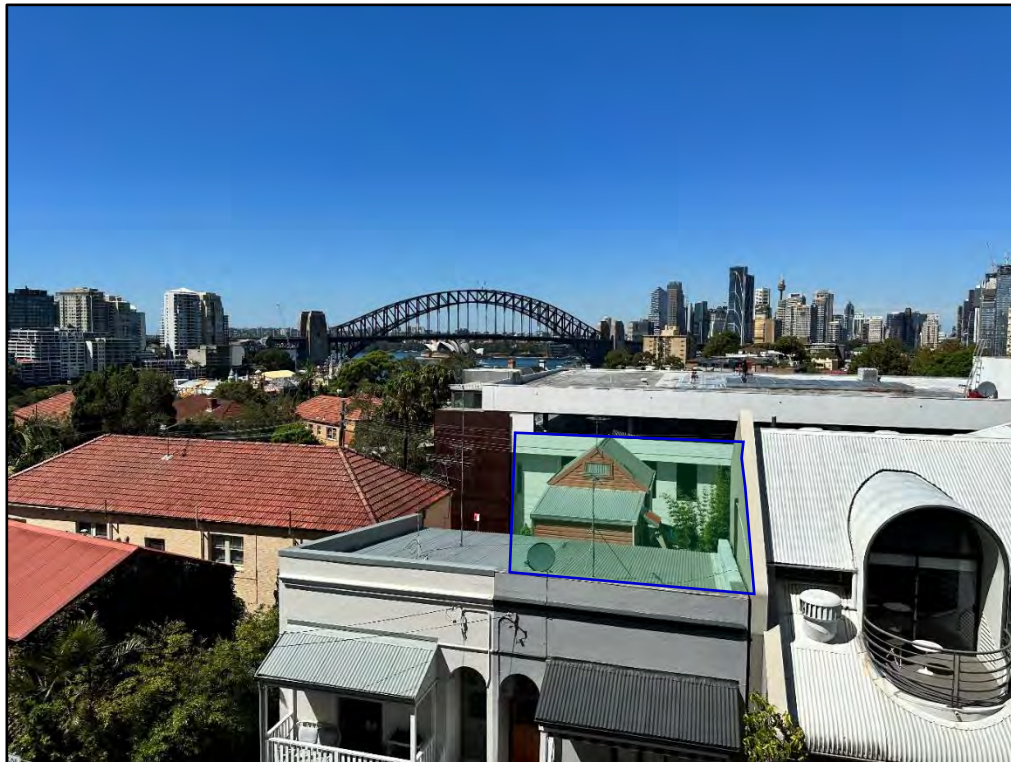


Figure 45: Standing view (zoomed in view) from the roof terrace of No. 62 Victoria Street – proposed built form shaded in green

Views from first floor bedroom and front-facing balcony (No. 66 Victoria Street) (refer to Figure 46)

Step 1: Wide and distant views of North Sydney and Sydney CBD's, and Sydney Harbour including iconic views of the Sydney Harbour Bridge. Views are generally partial, somewhat obstructed by existing built forms and trees.

Step 2: Views over property boundaries of the subject site and some properties along the southern side of Victoria Street. Views can be either standing or sitting – but typically, the optimal views are taken from standing positions.

Step 3: Minor-moderate impacts – most of the current view of the Sydney CBD will be obscured by the proposed roof terrace balustrades. It is noted that the current view of the Sydney Harbour Bridge is unaffected.

Step 4: The impacts are not reasonable as the components affecting the view loss involve a significant height breach of 17.4%.

Assessment: The potential view loss impacts are considered unacceptable and unreasonable.



Figure 46: Standing view from front-facing balcony (off bedroom) of No. 66 Victoria Street – proposed built form shaded in green

Views from roof terrace (No. 66 Victoria Street) (refer to Figure 47)

Step 1: Wide and distant views of North Sydney and Sydney CBD's, and Sydney Harbour including iconic views of the Sydney Harbour Bridge. View are mostly whole views.

Step 2: Views over property boundaries of the subject site and some properties along the southern side of Victoria Street. Views can be either standing or sitting – but typically, the optimal views are taken from standing positions.

Step 3: Negligible impacts.

Step 4: There are no view loss impacts as the existing views of the CBD's and Sydney Harbour from the roof terrace are preserved.

Assessment: The potential view loss impacts are considered acceptable and reasonable.



Figure 47: Standing view from the roof terrace of No. 66 Victoria Street – proposed built form shaded in green

Further assessment of view loss in relation to No. 68 Victoria Street was not considered required nor necessary as this property constitutes the easternmost terrace, is located away from the subject site, with views that are primarily over the property boundary of No. 65 Victoria Street (not the subject site). Notwithstanding, should a replication of the first floor and roof terrace as per the proposal be supported and endorsed for the adjoining site – a similar extent of view loss impacts (particularly from the first floor balcony/bedroom) will occur for No. 68 Victoria Street. Noting that future proposals cannot be highly considered in the assessment –an acceptable and symmetrical built form for the pair of semi-detached residences and the associated cumulative impacts and overall contribution to the development fabric has been regarded.

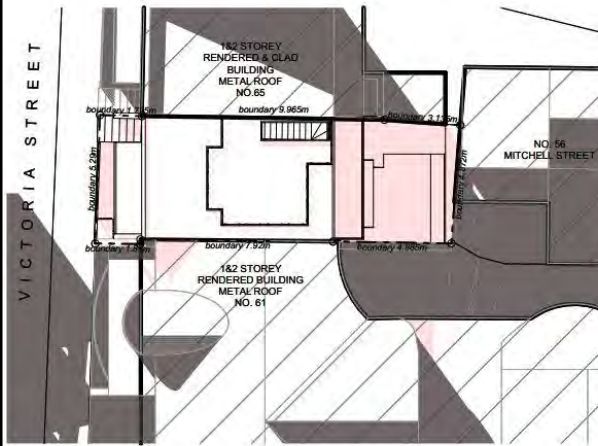
Conclusion

A substantial proportion of current views of the Sydney Harbour and North Sydney and Sydney CBD’s from No.’s 62, 64, 66 and 68 Victoria Street are unaffected. Overall and on balance, however; the moderate-severe view loss impacts cannot be regarded as reasonable and acceptable given that the components that generate view loss are the roof terrace balustrades that have a height non-compliance of 17.4%. The removal of these balustrades would result in a more compliant built form and a significant improvement in terms of view impacts and view sharing – with all of the iconic and high quality views from assessed vantage points of the affected properties at 62-68 Victoria Street retained and preserved.

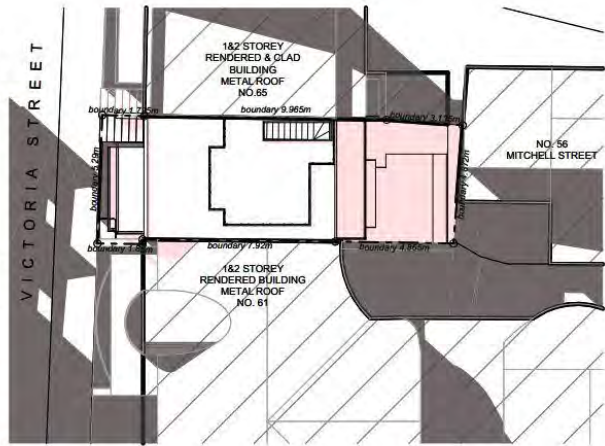
<p>Solar access</p>	<p>Yes – internal living space</p> <p>No, demonstrates merit – private open space</p> <p>Yes, only the side balcony will be affected</p>	<p><i>Future occupants</i></p> <p>The proposed development will result in sufficient solar access for future occupants within the internal living areas. Given the southern orientation of the private open space, this area will not receive sufficient solar access. The first floor addition and roof terrace contributes to further self-shading.</p> <p><i>Neighbouring properties</i></p> <p>The proposed development results in additional overshadowing of a blank wall and the side balcony of the dwelling at No. 48-50 Mitchell Street (refer to Figure 48). During mid-winter this balcony will be in shadow from 11am onwards. It is noted that</p>
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Legend:

-  Existing Shadow
-  Proposed Shadow

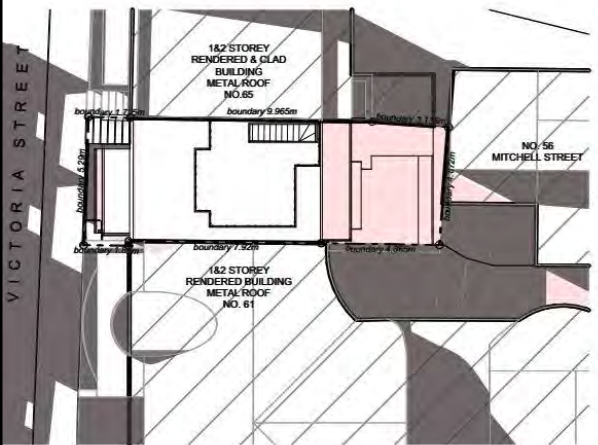


PROPOSED - 9.00 am

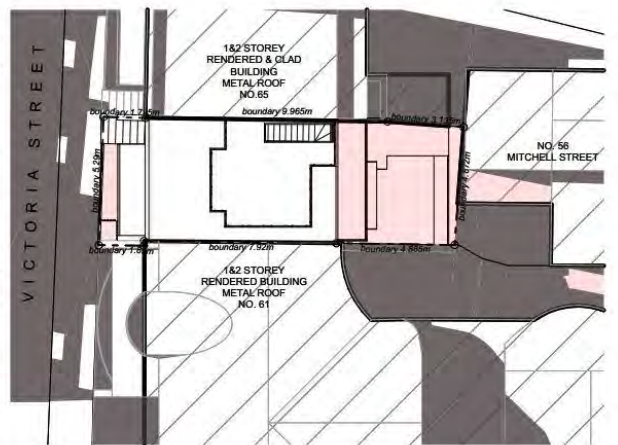


PROPOSED - 10.00 am

Shadow diagrams – 9-10am, mid-winter (21 June)

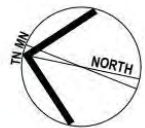


PROPOSED - 11.00 am



PROPOSED - 12.00 noon

Shadow diagrams – 11am-12pm mid-winter (21 June)



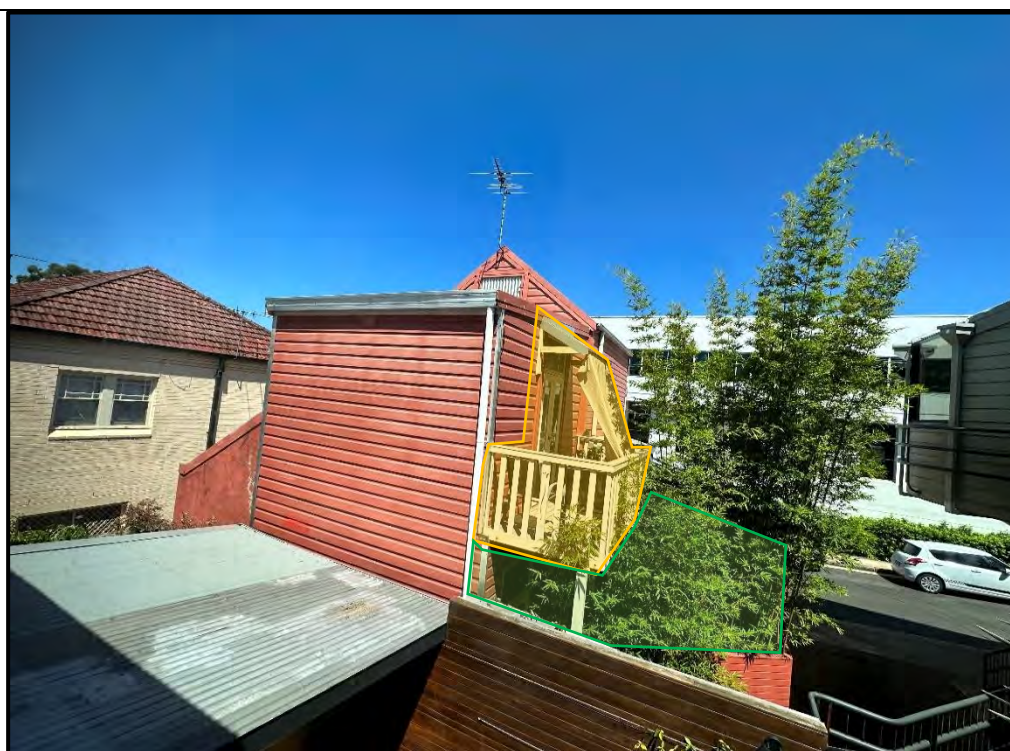


Figure 48: Affected spaces of No. 48-50 Mitchell Street – side balcony (shaded in orange). Note that solar access to the rear private open space below this balcony (shaded in green) is not affected by the proposal

Overshadowing impacts

During the winter solstice, the shadows created by the proposed development will primarily impact its private open space (self-shading) and the side balcony of the dwelling at No. 48-50 Mitchell Street. Minimal impacts are observed on the east-adjoining neighbour (No. 65 Victoria Street). Any additional shadows are attributed to the north-south orientation of the site and the orientation of affected properties. A review of these impacts indicated that any additional overshadowing created by the proposal is not considered significant and adverse. Accordingly, the proposed development demonstrates compliance with the relevant controls regarding solar access and passes the test for reasonableness in terms of overshadowing impacts. It is noted; however, that the removal of the roof terrace and balustrades would likely result in improved solar access and reduced impacts.

Acoustic privacy	No, demonstrates merit and consistency with the setting/context of the premises	The roof terrace and balcony (as amended) are considered acceptable in terms of acoustic privacy impacts – given the unique, urbanised and built-up context and setting of the site and surrounds and the occurrence of roof terraces/balconies/elevated living areas in the immediate locality.
Visual privacy	Yes	<i>Lower ground floor and rear courtyard</i> The proposed re-configuration of the lower ground floor will not result in substantial/adverse privacy impacts. This space will be converted to a bedroom with access to the current rear courtyard. This change is acceptable and any overlooking associated is reasonable.

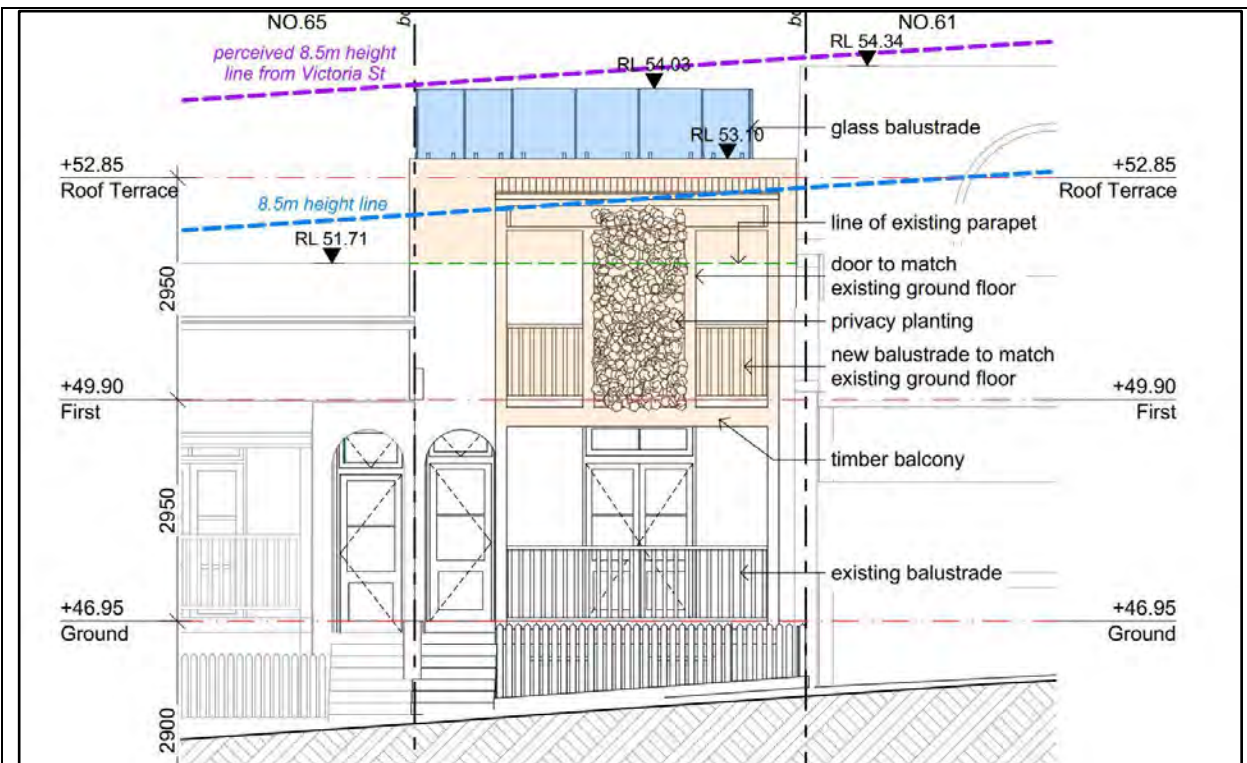


Figure 49: Option to provide vegetated screening centrally located, in front of the balcony

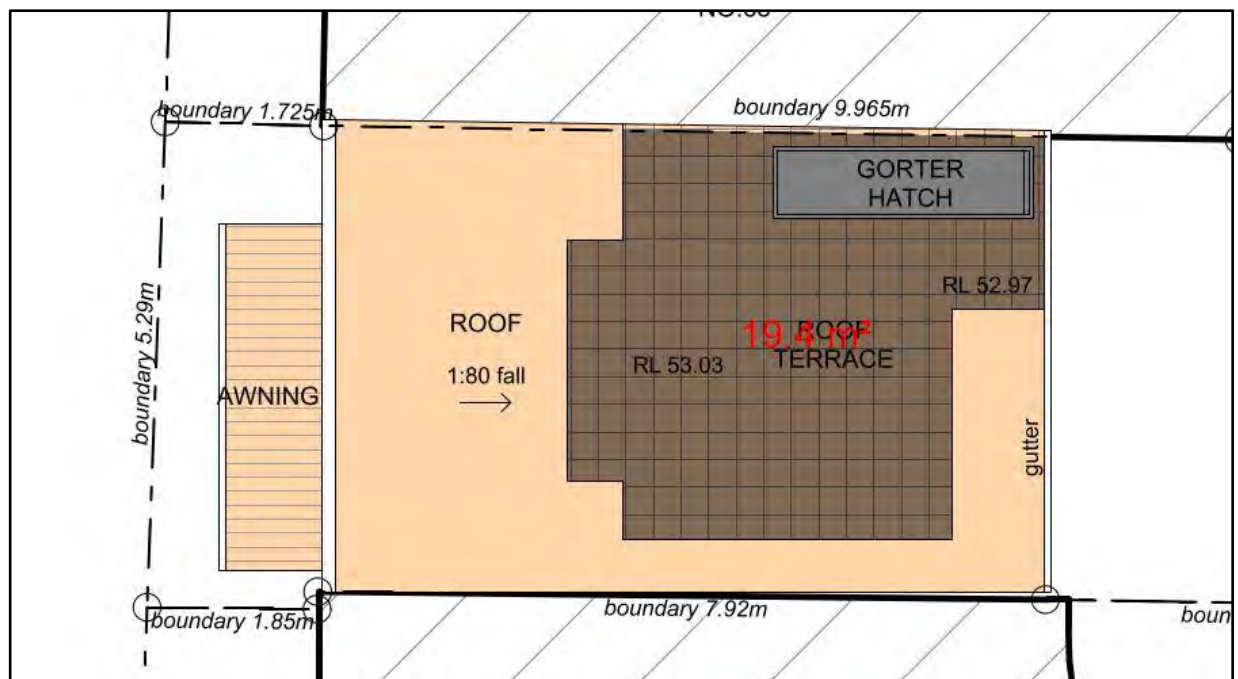


Figure 50: Proposed roof terrace – 19.4m² (>18m²)

1.4 Quality built form		
Context	No	The design, aesthetic, presentation and built form of the proposed development are not considered appropriate and in context with the surrounding area. The introduction of the roof terrace will disrupt the prevailing character of attached housing featured in the area as this terrace involves a height exceedance and is not hidden nor discretely formed and integrated as part of the semi-detached dwelling and its façade. The glass balustrades are considered inappropriate and inconsistent with the form and design of roof terraces occurring within the vicinity and previously supported by Council. A more modest roof addition behind the existing parapet would represent a more appropriate scale and response to the site constraints.
Setbacks (objectives)		
O1 To reinforce the characteristic pattern of setbacks and building orientation within the street.	Yes	Reinforces the development pattern and setbacks featured in the existing dwelling, and within Victoria Street.
O2 To control the bulk and scale of buildings.	Yes	Setbacks are generally appropriate in controlling bulk and scale of proposed buildings/structures.
O3 To provide separation between buildings.	Yes	Appropriate separation is achieved.
O4 To preserve the amenity of existing dwellings and provide amenity to new dwellings in terms of shadowing, privacy, views, ventilation and solar access.	Yes	Acceptable – as demonstrated above.
Setback – side 1st storey (up to 4m): 0.9m (min.) 2nd storey (up to 7m): 1.5m (min.)	Yes	The proposed side setbacks vary from the numerical controls – however, are characteristic of the residential housing within the area.
Setbacks – rear	Yes	The first floor and its rear-facing balcony has been revised to be appropriately aligned with the established rear building line.
Form, massing and scale	No	The proposed form, density and scale of the proposed development are reflective of the existing dwelling and comparable to surrounding properties and will therefore, not detract from prevailing architecture and streetscape character of the vicinity. Note that the roof terrace should be removed to ensure built form is acceptable.
Built form character	No	See above.
Dwelling Entry	Yes	Acceptable.
Roofs	No	Roof form is low pitched that is generally acceptable for the streetscape. The glass balustrades ensure that the roof will present as an uncharacteristic element.
Materials	No	Most of the new materials and finishes complement and demonstrate consistency with the existing dwelling – with the exception of the transparent glass balustrades, which are not acceptable.

1.5 Quality urban environment

Site Coverage

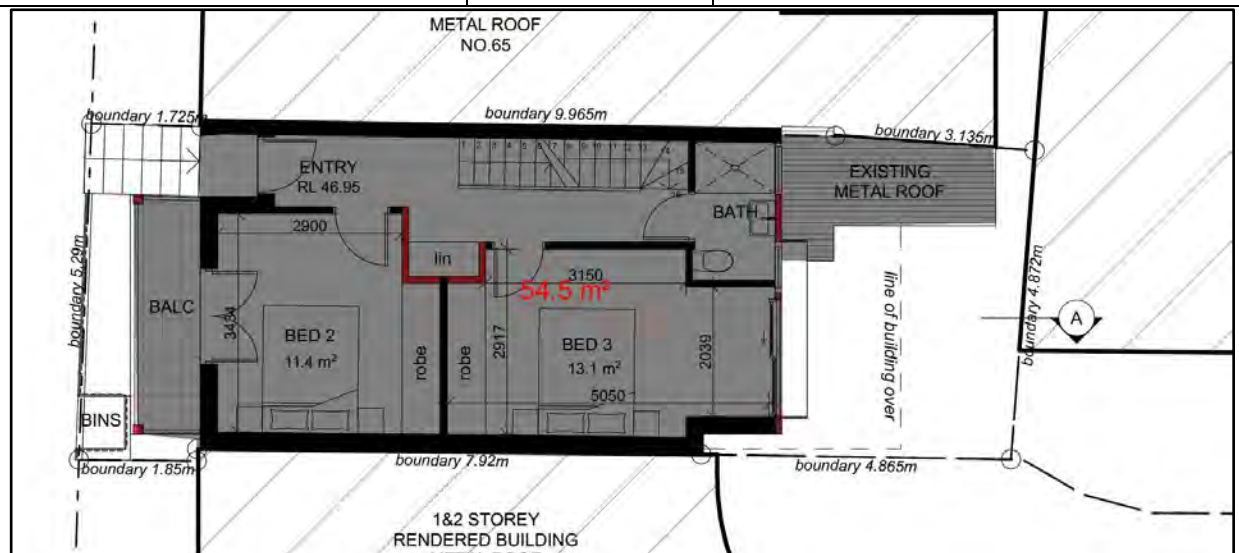
Site area: 74.5m²

Site coverage requirements for detached, attached or semi-detached dwellings:

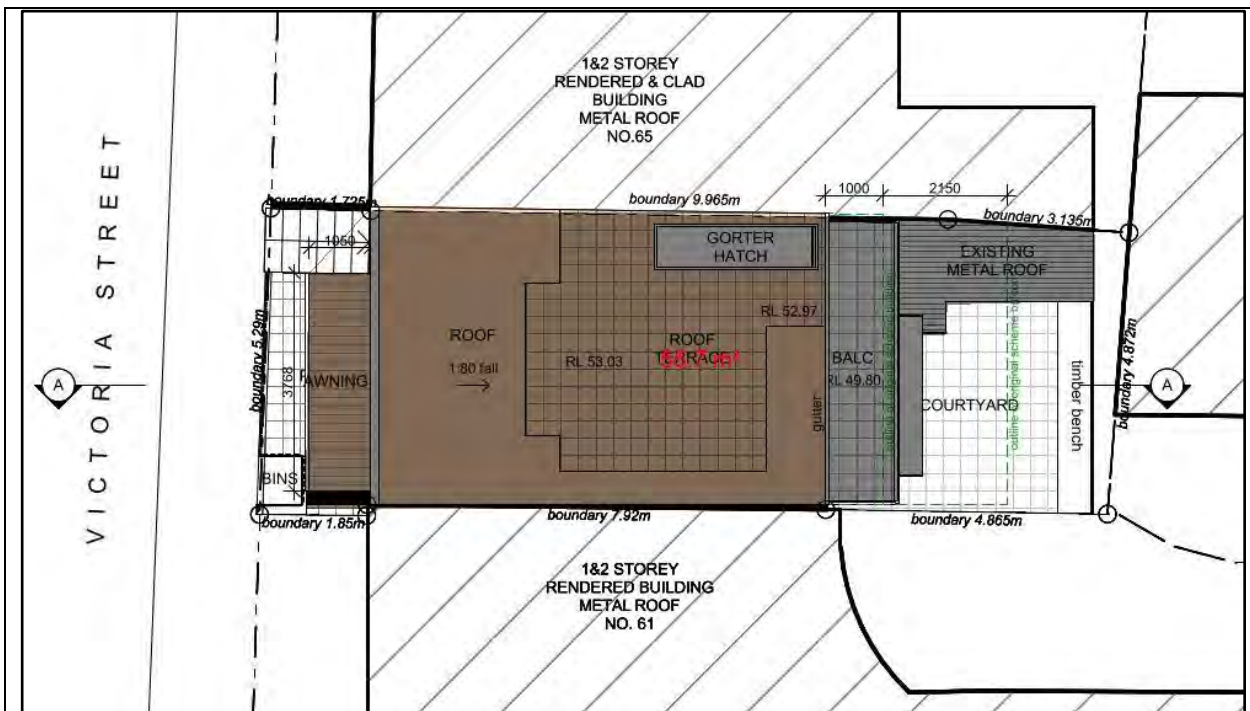
Lot Size (m ²)	Site Coverage (max.)
0-229	60%
230-499	50%
500-749	40%
750-999	35%
1000+	30%

No, demonstrates merit

A maximum of 60% site coverage (164.15m²) is allowed for dwellings on the subject site. The proposed building footprint is calculated to be 55.7m², which is 74.8% of the site area and therefore fails to demonstrate compliance. It is noted that the existing footprint of the residence is 54.5m² (73.2%) and also does not comply. The additional 1.2m² area gained by the proposal is minor and will not result any adverse impacts or significant massing. Further, Part C, Section 9.2 (Character Statement for McMahons Point Business Precinct) states that the immediate locality features site coverage of buildings on Mitchell and Victoria Streets to be more than 80% of the allotment. This reflects the highly urbanised and heavily built-up and dense forms and pattern of development characterising the area. As such, the proposed site coverage reflects this character, demonstrates merit and is considered an acceptable and reasonable outcome.



Existing site coverage (shaded in grey)



Compliance diagram – proposed site coverage (shaded in grey)

<p>Landscape Area</p> <p>Site area: 74.5m²</p> <p>Landscape area requirements for detached, attached and semi-detached dwellings:</p> <table border="1"> <thead> <tr> <th>Lot Size (m²)</th> <th>Landscaped area (min.)</th> </tr> </thead> <tbody> <tr> <td>0-229</td> <td>20%</td> </tr> <tr> <td>230-499</td> <td>30%</td> </tr> <tr> <td>500-749</td> <td>40%</td> </tr> <tr> <td>750-999</td> <td>45%</td> </tr> <tr> <td>1000+</td> <td>50%</td> </tr> </tbody> </table>	Lot Size (m ²)	Landscaped area (min.)	0-229	20%	230-499	30%	500-749	40%	750-999	45%	1000+	50%	<p>No, unchanged from existing</p>	<p>A minimum landscaped area of 20% (14.9m²) of the site area is required. There is no existing landscaped areas within the site. The proposed development involves no changes from the existing circumstance.</p>
Lot Size (m ²)	Landscaped area (min.)													
0-229	20%													
230-499	30%													
500-749	40%													
750-999	45%													
1000+	50%													
<p>Un-built upon area</p> <p>Site area: 74.5m²</p> <p>Un-built upon area requirements for detached, attached and semi-detached dwellings:</p> <table border="1"> <thead> <tr> <th>Lot Size (m²)</th> <th>Un-built upon area (max.)</th> </tr> </thead> <tbody> <tr> <td>0-229</td> <td>20%</td> </tr> <tr> <td>230-499</td> <td>20%</td> </tr> <tr> <td>500-749</td> <td>20%</td> </tr> <tr> <td>750-999</td> <td>25%</td> </tr> <tr> <td>1000+</td> <td>20%</td> </tr> </tbody> </table>	Lot Size (m ²)	Un-built upon area (max.)	0-229	20%	230-499	20%	500-749	20%	750-999	25%	1000+	20%	<p>No, reduced from existing</p>	<p>A maximum un-built upon area of 20% (14.9m²) of the site area is allowed. The total un-built upon area proposed is 18.8m² or 25.2% of the site area. The proposed development is non-compliant with this requirement. It is noted that the existing un-built upon area is slightly reduced (by 1.2m²) – resulting in improved compliance. This change is considered acceptable and the non-compliance is in-keeping with the site's setting and context, within a highly urbanised and built-up area.</p>
Lot Size (m ²)	Un-built upon area (max.)													
0-229	20%													
230-499	20%													
500-749	20%													
750-999	25%													
1000+	20%													
<p>Private and Communal Open Space</p> <p>Site area: 74.5m²</p> <p>Minimum area at ground level: 40m²</p>	<p>No, unchanged from existing</p>	<p>The existing private open space (within the rear courtyard – lower ground floor) comprises an area of 21m². The proposal does not alter this current arrangement. It is noted that additional open spaces are provided at the elevated balconies on the first floor and the roof terrace.</p>												

1.6 Efficient Use of Resources		
Energy Efficiency	Yes	The applicant has provided a BASIX Certificate in support of the development application which requires suite of energy efficiency measures such as: <ul style="list-style-type: none"> • Energy efficient internal appliances • Energy efficient lighting • Thermal insulation levels for glazing, walls and ceilings A condition can be imposed to ensure that the measures contained within the BASIX Certificate are undertaken at all stages of the development process.
Passive Solar Design	Yes	The development will perform adequately in this regard.
Natural Ventilation	Yes	The proposed development comprises an adequate number of openings that provide natural ventilation to all habitable rooms within the building.
Hot Water Systems	N/A	
Water Conservation	N/A	
Stormwater Management	Yes	Engineer's comments confirmed acceptance of the design.
Waste Management and Minimisation	Yes	A waste management plan is provided, which adequately details the management of waste generated from demolition and construction works.

CHARACTER STATEMENTS – PART C

Section 9 – Lavender Bay Planning Area

Section 9.2 – McMahons Point Business Precinct

The site is within the Lavender Bay Planning Area – specifically, the McMahons Point Business Precinct, to which, Part C, Section 9.2 of the DCP applies. A review against the relevant controls and provisions under this section confirms that the proposed development may be regarded as generally incongruence with the established and desired future character and built form of the area and is acceptable and responsive to the character statement. It is noted; however, that the proposed roof terrace component involves a significant height breach and is not sufficiently hidden nor discrete in its design and appropriately integrated into the roof fabric and façade of the dwelling. The majority of the roof terraces occurring within the area are discrete and obscured from views in the public domain and incorporate solid masonry roof parapets and architectural features and materials (as balustrades) that reflect the respective residential dwellings. The provision of glass balustrades is considered to be uncharacteristic and contrary to the character statement. As such, the proposed roof terrace fails to meet the relevant controls and provisions under Section 9.2.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to the payment of contributions towards the provision of local infrastructure. A Section 7.11 levy is not applicable as the proposed development does not result in an intensification of the current residential use. A Section 7.12 levy is applicable and has been calculated in accordance with the plan. The contribution payment has been calculated as follows:

Contribution amounts payable		
Applicable contribution type		
s7.12 contribution details	Development cost: \$599,000	Cost summary reports are needed for ALL applications EXCEPT solely residential accommodation (i.e. not mixed use) and that results in a net population increase (s7.11 applies).
(Payment amount subject to indexing at time of payment)	Contribution: \$5,900.00 (1% of development cost)	

Accordingly, should the application be supported, a condition can be imposed requiring the payment of the above contribution amount.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	YES
2. Policy Controls	YES
3. Design in relation to existing building and natural environment	YES
4. Landscaping/Open Space Provision	YES
5. Traffic generation and Carparking provision	YES
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	YES

- | | | |
|----|---|-----|
| 8. | Site Management Issues | YES |
| 9. | All relevant Section 4.15(1) considerations of
<i>Environmental Planning and Assessment Act 1979 (amended)</i> | YES |

PUBLIC INTEREST

The proposed development is considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposed development will be located on land zoned E3 – Productivity Support where alterations and additions to an existing *semi-detached dwelling* are permissible forms of development. Consequently, the proposed development is considered to be suitable for the site having regard to the merits of the proposal as described in this report.

SUBMITTERS CONCERNS

The application initially was notified to adjoining properties and the Edward and Union (Combined) Precinct Committee from 9 December 2022 to 18 January 2023. Council received a total of seven (7) submissions during this period, from Edward and Union (Combined) Precinct Committee and from the following properties:

- No. 61 Victoria Street, McMahons Point
- No. 62 Victoria Street, McMahons Point
- No. 64 Victoria Street, McMahons Point
- No. 65 Victoria Street, McMahons Point – two (2) submissions
- No. 66 Victoria Street, McMahons Point

An additional three (3) submissions were received outside the notification period from:

- Unknown address
- No. 62 Victoria Street, McMahons Point
- No. 65 Victoria Street, McMahons Point

The matters raised in these submissions objecting to the proposed development are listed below:

- No party wall consent and impacts on party wall
- Submissions are locked and not visible on Council's website
- Bulk, scale, massing and density
- Excessive height
- Setbacks and building separation
- Overdevelopment
- Visual privacy and amenity impacts
- Acoustic privacy impacts
- Visual impacts and design
- Overshadowing

- View loss impacts
- Heritage

The Applicant submitted an amended design and additional information in response to the submissions and any correspondence from Council. The amended plans were re-notified to adjoining properties and previous submitters for 14 days between 9 and 23 June 2023. Council received five (5) submissions during this period. An additional submission was received outside the notification period.

The matters raised in the submissions received in response to the amended proposal are listed below:

- Incorrect/inaccurate plans and lodgement of different plans in May and June
- Bulk, scale, massing and density
- Excessive height – particularly in relation to the roof terrace and glass balustrades
- Setbacks and building separation
- Overdevelopment
- Visual privacy and amenity impacts
- Acoustic privacy impacts
- Visual impacts and design
- View loss impacts
- Heritage
- Precedence

Council's responses to the matters and issues raised in all submissions from both notification periods are provided below.

- ***No party wall consent and impacts on party wall***

Response: This issue has been raised with the Applicant in the Withdraw/Refuse Letter (dated 16 March 2023). The original plans shows works over the property boundary including an extension of the centralised (property boundary) wall and intrusion into the common access stairs. The revised drawings has resolved some of these elements; however, some details appear to indicate that there will be new works over the property boundary (refer to Figure 51). Party wall consent was not obtained and provided to Council and this issue remains outstanding.

In order to address this issue, revised plans would need to be provided to Council to indicate that the proposal can be structurally supported and built without reliance on the party wall and impacts on the party wall. Council's Development Engineer provided conditions that can be imposed accordingly.

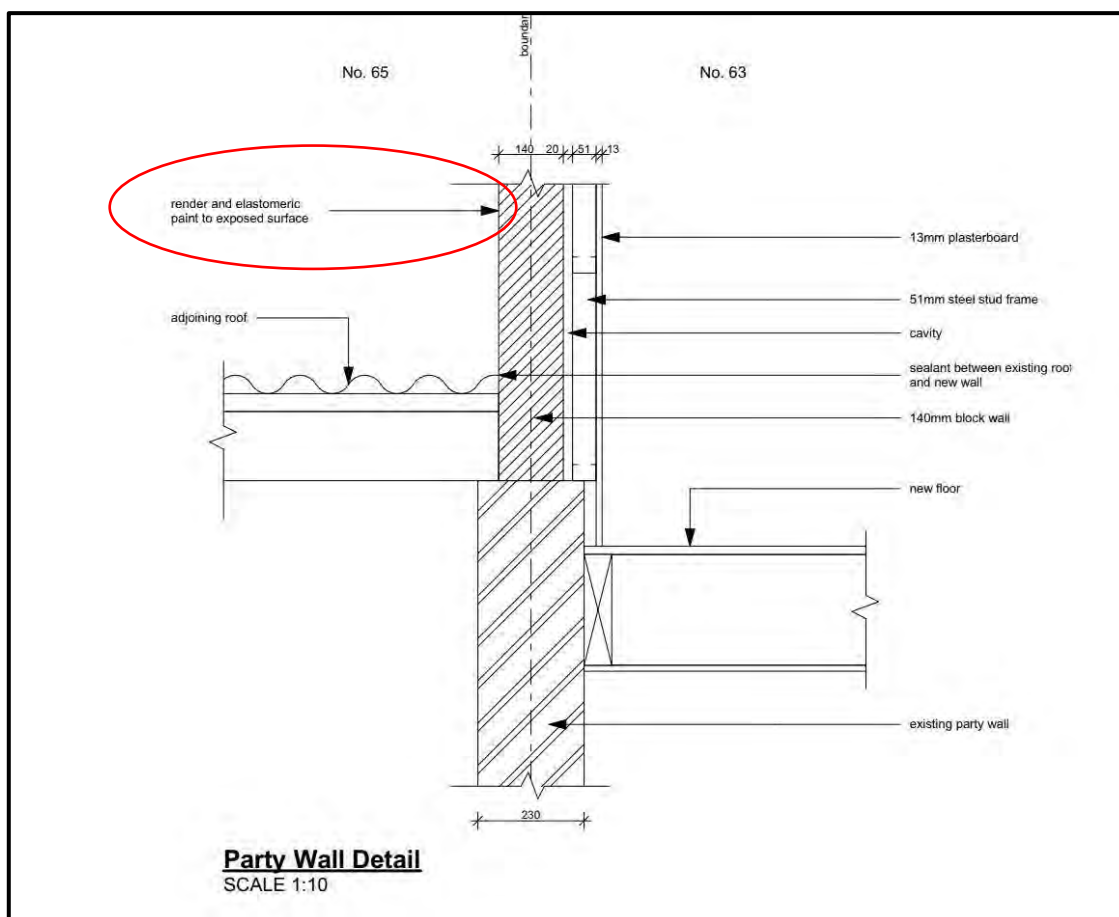


Figure 51: Party wall detail showing works over the property boundary (between No. 65 and 63 Victoria Street)

- ***Submissions are locked and not visible on Council's website***

Response: The submissions can be publicly accessible either via the website or via an application under the Government Information (Public Access) Act 2009 (GIPA Act) – for any submissions in which objectors have expressed for personal information to not be published.

- ***Incorrect/inaccurate plans and lodgement of different plans in May and June***

Response: The re-notified plans were from May 2023. The Applicant submitted a new set of plans on 16 June 2023. A review of the plans that were re-notified and the plans received in June 2023 indicated that the design of the proposal is unchanged and the primary differences between the two (2) sets are the inclusion of a perceived 8.5m height line and changes to the 8.5m height line. Council expressed that a re-notification of the plans received in June 2023 was not necessary given both sets are available on Council's website and feature minor differences.

Council also noted the error in both sets, which showed an incorrect building line depicting extension of the top floor over (refer to Figure 52). This appears to be a drafting error. Re-submission of plans that eliminate this error was not necessary – Council is able to assess and determine the application with the recent set of plans.

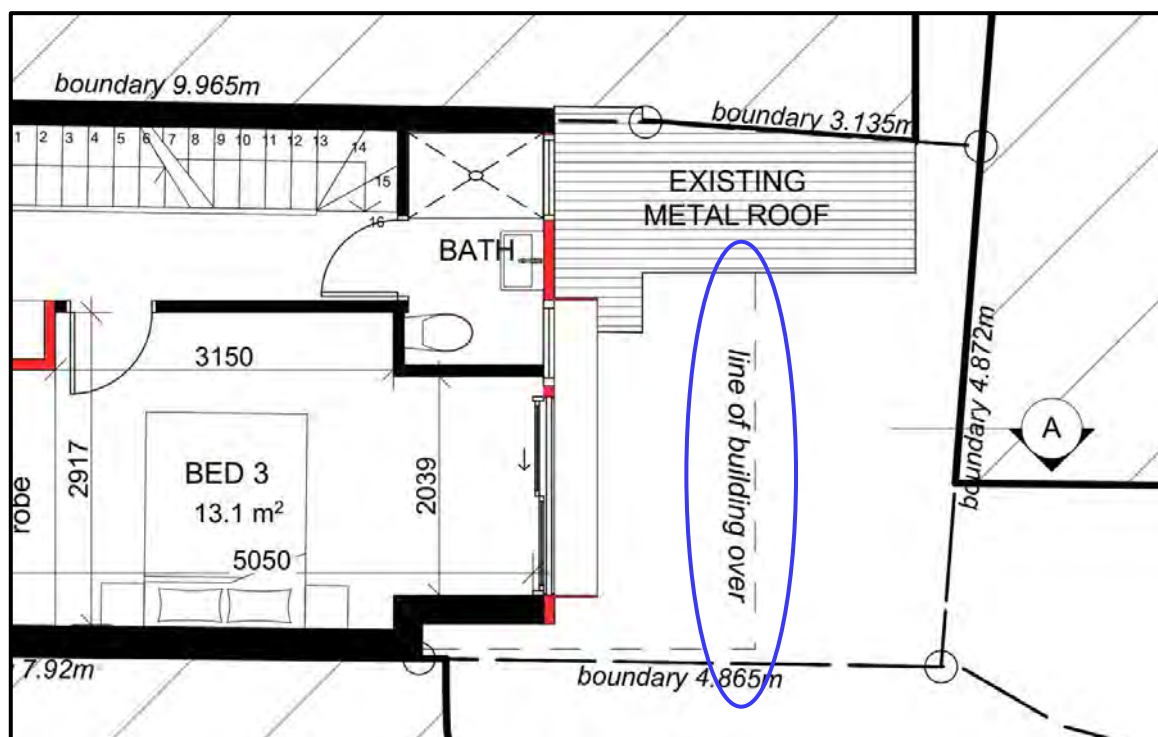


Figure 52: Error on floor plan

- **Bulk, scale, massing and density**

Response: This has been discussed and detailed in the Assessment section above. The bulk and scale pertaining to the roof terrace are not considered acceptable and reasonable and therefore, the overall built form of the proposal is not supported.

- **Excessive height**

Response: This has been discussed and detailed in the Assessment section above. As mentioned, the excess height associated with the roof terrace is not supported.

- **Setbacks and building separation**

Response: This has been discussed and detailed in the Assessment section above. The proposed setbacks have been revised to achieve compliance with the DCP controls and demonstrates consistency with the streetscape and development pattern of the locality.

- **Overdevelopment**

Response: In general, the majority of the proposal is not considered overdevelopment (in terms of density) – the site coverage and setbacks have been accepted. The primary issue is associated with the roof terrace, which features a height breach and generates potential adverse view loss and amenity impacts. The roof terrace is considered to result in a built form that is overscaled and excessive in height and disproportionate to the undersized allotment.

- ***Visual privacy and amenity impacts***

Response: This has been discussed and detailed in the Assessment section above.

- ***Acoustic privacy impacts***

Response: This has been discussed and detailed in the Assessment section above.

- ***Visual impacts and design***

Response: This has been discussed and detailed in the Assessment section above. The amended scheme is noted to be significantly improved and more contextually appropriate and responsive to site constraints compared to the initial design. The built form is generally acceptable except for the new roof terrace.

- ***Overshadowing***

Response: This has been discussed and detailed in the Assessment section above.

- ***View loss impacts***

Response: This has been discussed and detailed in the Assessment section above. This issue can be resolved by deletion of the new roof terrace.

- ***Heritage***

Response: This has been discussed and detailed in the Assessment section above.

- ***Precedence***

Response: It is unlikely that the support for the proposal will result in an undesirable precedence. The resultant built form will present as a 2-storey terrace residence with a lower ground floor (below street level) and a roof terrace. Such built forms occur along Victoria Street and Mitchell Street – some of which are evidenced in Council records.

CONCLUSION AND REASONS

The development application has been assessed against the North Sydney Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and is generally found to be not satisfactory. The proposed development fails to provide an appropriate, acceptable and reasonable design and planning outcome for the subject site that demonstrates appropriate consistency and adequate compatibility with the streetscape and character of the immediate locality and that will result in reasonable impacts on neighbouring properties and the environment.

The proposed roof terrace is of primary concern as it involves a substantial height breach of 17.4% (1.48m) and the Applicant has failed to demonstrate the sufficient environmental planning merits and grounds to justify contravening the development standard (Clause 4.3 – maximum building height). It is evident that the roof terrace will result in significant and detrimental view loss impacts and will introduce an uncharacteristic built form to the streetscape and locality, with the use of glass balustrades along its perimeter. On several occasions, the Applicant was invited to delete this component and declined to do so. In light of the above considerations and the remaining unresolved matters and issues identified, the proposed development is not considered to be satisfactory and is not supported by Council.

The proposed development involves an overscaled built form within an undersized allotment (comprising a site area of only 74.5m²) that fails to promote development that is appropriate to its context and enhances the amenity of the North Sydney Community and environment. The proposed development introduces a built form and roof terrace that feature a substantial height breach that will generate unacceptable and unreasonable view loss and privacy impacts. Given the site's limited area, unique constraints and setting, a more modest roof addition behind the existing parapet would represent a more appropriate scale and response to the site context and constraints.

Having regard to the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, the proposed development will result in significant, adverse material impacts to adjoining properties and on the environment, including those relating to view loss, amenity and privacy. As such, the application is recommended for **refusal**.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and relevant precinct committee, in accordance with Council's Community Participation Plan. Four (4) submissions were received during the notification period. Council responses to the matters raised in the submissions are provided above.

RECOMMENDATION

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

- A. In consideration of the written request made by the Applicant pursuant to Clause 4.6 of the North Sydney Local Environmental Plan 2013, the consent authority is not satisfied that compliance with the development standard contained in Clause 4.3 – Maximum Height of Buildings of NSLEP 2013 is well founded.

The consent authority has identified that there are no sufficient environmental planning grounds which have been identified which would justify contravening the development standard.

The consent authority has identified that the proposed development is not in the public interest as it fails to achieve consistency with the relevant objectives of Clause 4.3 – Maximum Height of Buildings and the E3 – Productivity Support zone under NSLEP 2013.

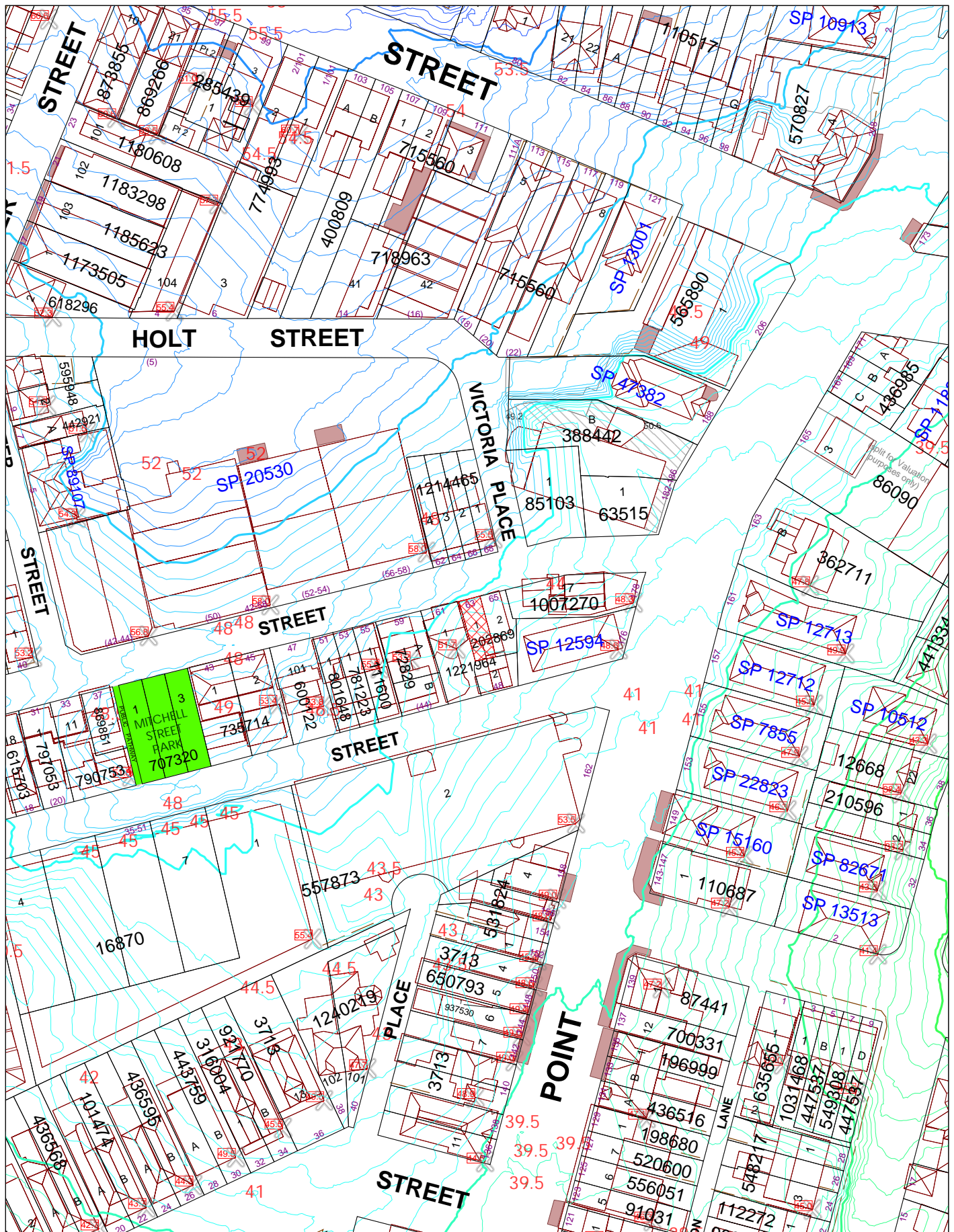
- B. **THAT** the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, resolve to refuse development consent to Development Application No. 357/22 for development involving alterations and additions to an existing semi-detached dwelling on land at No. 63 Victoria Street, McMahons Point (Lot 1 in DP 202869), as shown on Architectural Plans, prepared by Archispectrum and dated 16/06/23, for the following reasons:
1. Under Part 3, Section 24 (1)(b) of the EP&A Regulation, the development application fails to contain all the information and documents required by the approved form and as per the Act or Regulation in that the proposal indicated works within No. 65 Victoria Street, McMahons Point and owner's consent from this property was not obtained and provided to Council. As such, the consent authority is unable to grant consent for the respective works.
 2. Pursuant to Section 4.15 (1)(a) of the EP&A Act 1979, the proposed development does not comply with the following relevant environmental planning instruments and development controls as follows:
 - a. North Sydney Local Environmental Plan 2013 – Aims of the Plan – unable to satisfy the key aims (2)(a), (2)(b)(i) and (2)(c)ii).
 - i. The proposal fails to promote development that is appropriate to its context and enhances the amenity of the North Sydney Community and environment. It involves introducing a built form that is not contextually appropriate, is excessive and disproportionate to the respective undersized allotment, and features a substantial height breach that will generate view loss and privacy impacts.
 - ii. The proposal fails to provide a compatible built form that is acceptable in terms of streetscape response, bulk, scale and appearance. The provision of a roof terrace is a key concern as it promotes a height breach that will result in view loss and amenity impacts.
 - iii. The proposal is unable to maintain and protect residential amenity due to the roof terrace generating view loss and privacy impacts.
 - iv. The proposal fails to not adversely affect residential amenity in terms of visual and acoustic privacy and view sharing.
 - b. North Sydney Local Environmental Plan 2013 – objectives of E3 zone relating to permitting development that is compatible with the scale, intensity and character of the surrounding residential area.
 - c. North Sydney Local Environmental Plan 2013 – objectives of Clause 4.3 – unable to satisfy the objectives (1)(b), (1)(d), (1)(e) and (1)(f).
 - d. North Sydney Local Environmental Plan 2013 – Clause 4.6 – the consent authority is not satisfied as per provisions (3) and (4).

- e. North Sydney Development Control Plan 2013, Part B, Section 1 – Environmental Criteria (Section 1.3.6 and Section 1.3.10) – failure to meet objectives and controls with respect to Views and Visual Privacy.
 - f. North Sydney Development Control Plan 2013, Part B, Section 1 – Quality Built Form (Section 1.4) – failure to meet objectives and controls with respect to Form, Massing and Scale; Built Form Character; Roofs and Materials.
 - g. North Sydney Development Control Plan 2013, Part C, Section 9 – McMahons Point Business Precinct (Section 9.2) – failure to meet objectives and controls.
3. Pursuant to Section 4.15(1)(b) of the EP&A Act 1979, the proposed development is likely to have adverse impacts on the following aspects on the environment: view loss, privacy and amenity.
4. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979, the subject site is not suitable for the proposed development for the following reasons: excessive height and adverse impacts on neighbouring properties.
5. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent including poor design and planning response to the re-development of a substantially undersized and built-up allotment and endorsement of an unacceptable non-compliance to the maximum building height provision under Clause 4.3 and non-compliances with provisions and controls under Council policy.

MIGUEL RIVERA
SENIOR ASSESSMENT OFFICER

DAVID HOY
TEAM LEADER (ASSESSMENTS)

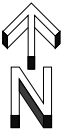
STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES



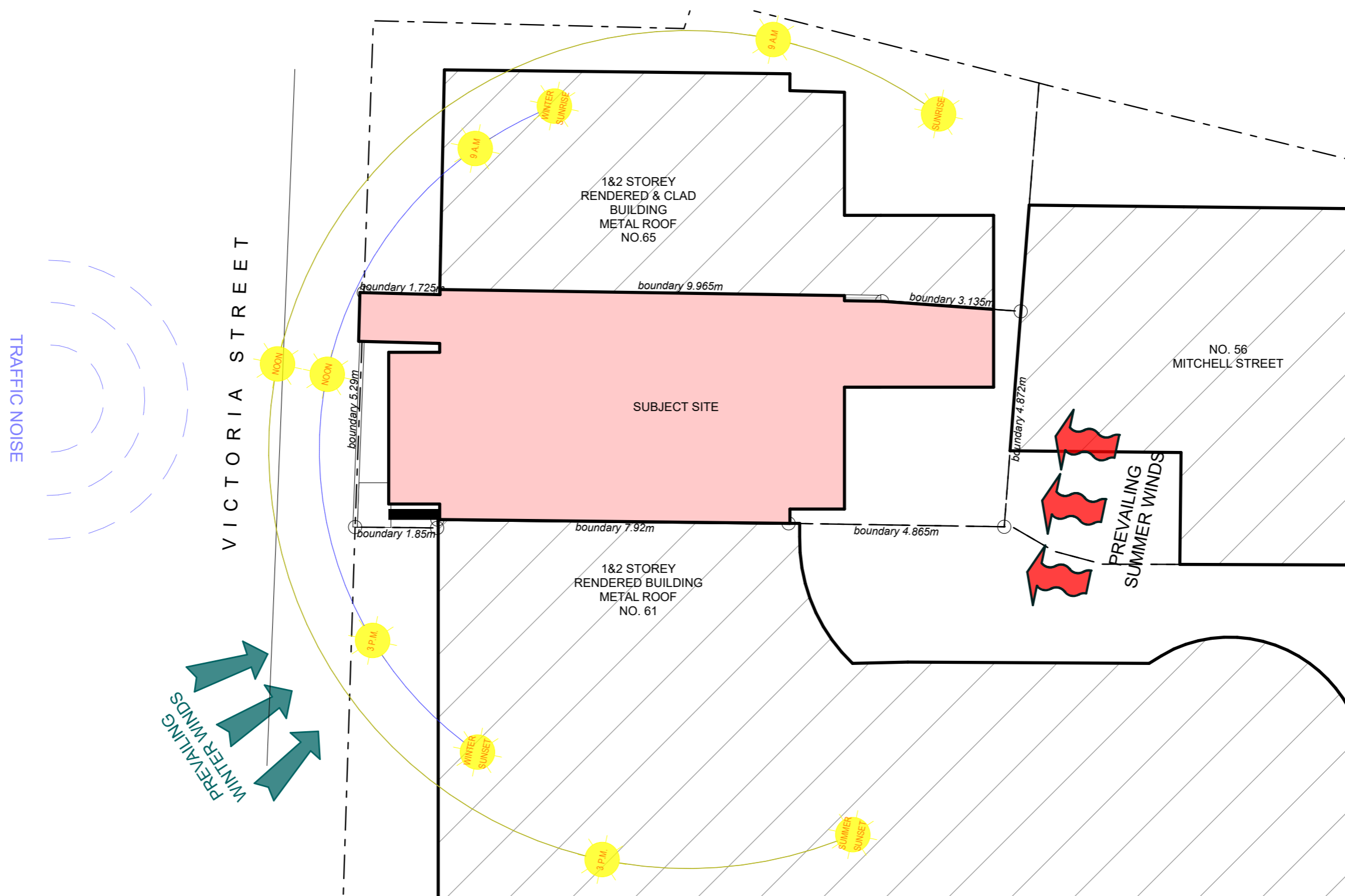
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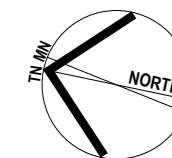
Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.



Scale: 1:1200 approx.



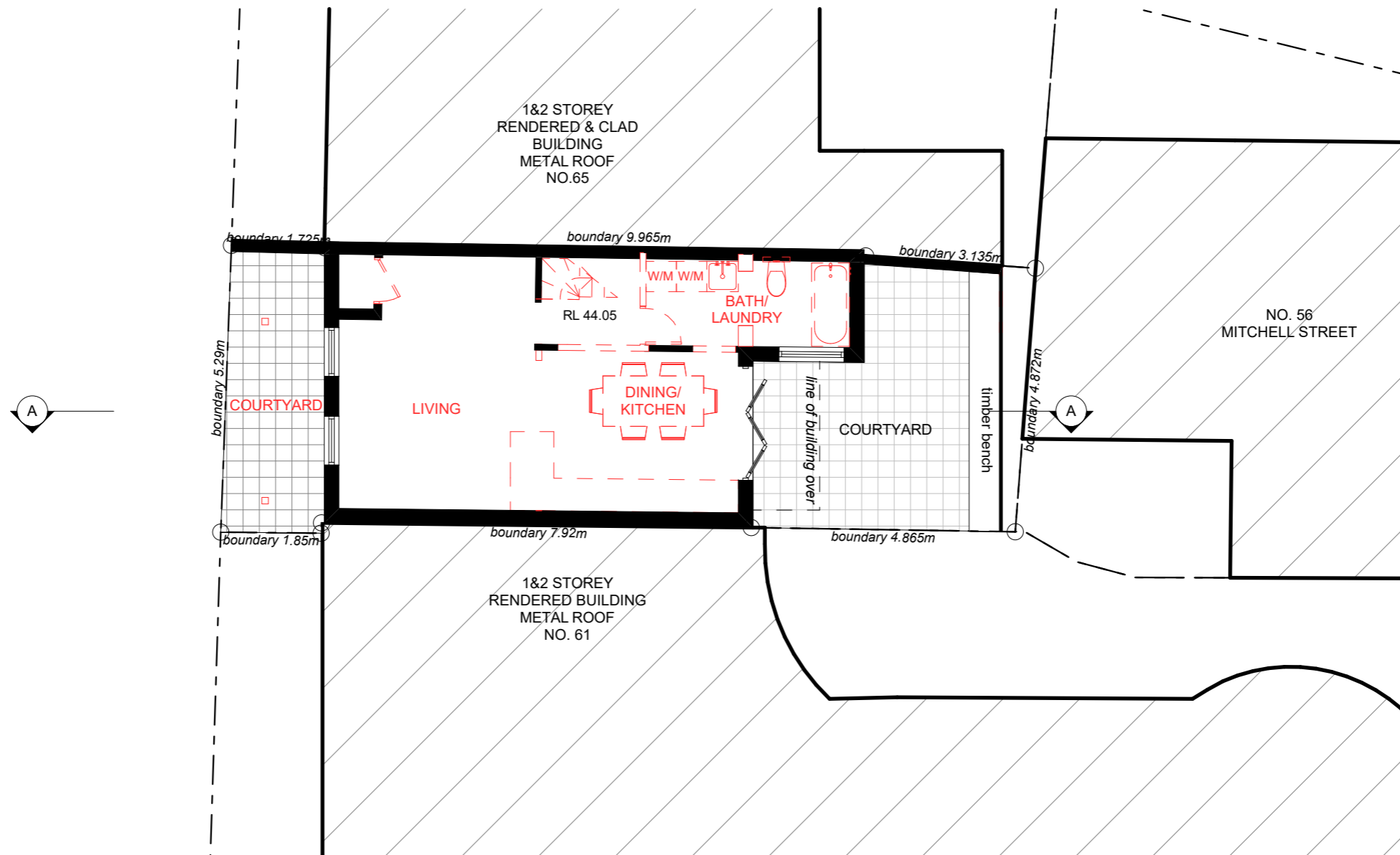
Site Analysis
SCALE 1:100



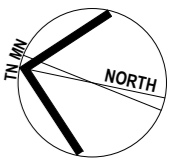
ISSUE	DATE	DESCRIPTION
A	14.09.2022	DA issue to council
B	14.11.2022	DA issue to council
C	04.05.2023	DA issue to council
D	16.06.2023	DA issue to council

Legend:

- Existing wall to be remain
- Existing wall to be demolished
- New wall



Existing & Demolition Lower Ground Floor Plan
SCALE 1:100



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PROJECT:
Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

SHEET TITLE:
Existing & Demolition Lower Ground Floor Plan

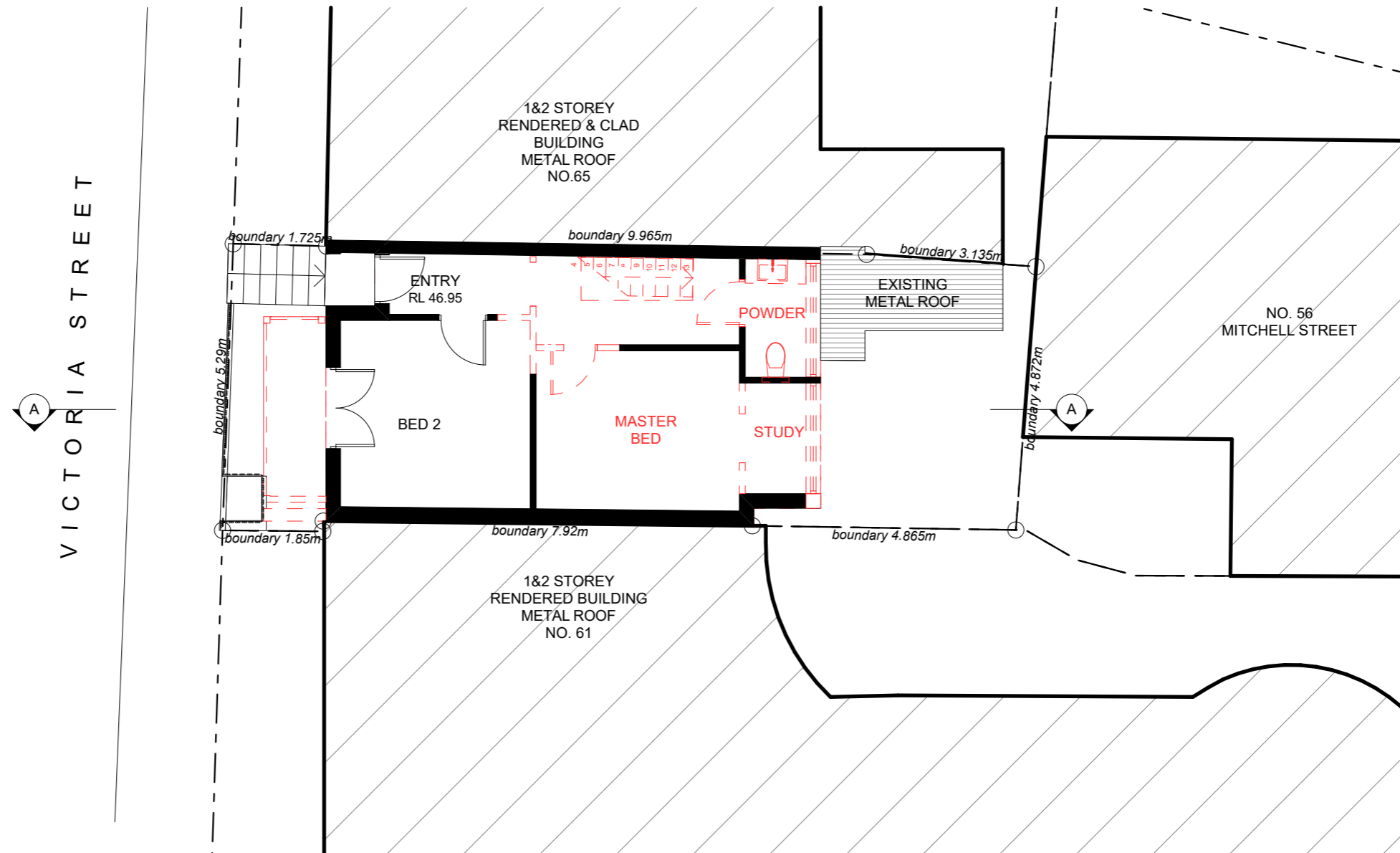
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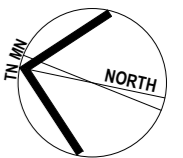
A3 DA03 d

Legend:

- Existing wall to be remain
- Existing wall to be demolished
- New wall



Existing & Demolition Ground Floor Plan
SCALE 1:100



ISSUE	DATE	DESCRIPTION
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Alterations & Additions
63 Victoria Street, McMahon's Point

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Leanne Misener
63 Victoria Street, McMahon's Point

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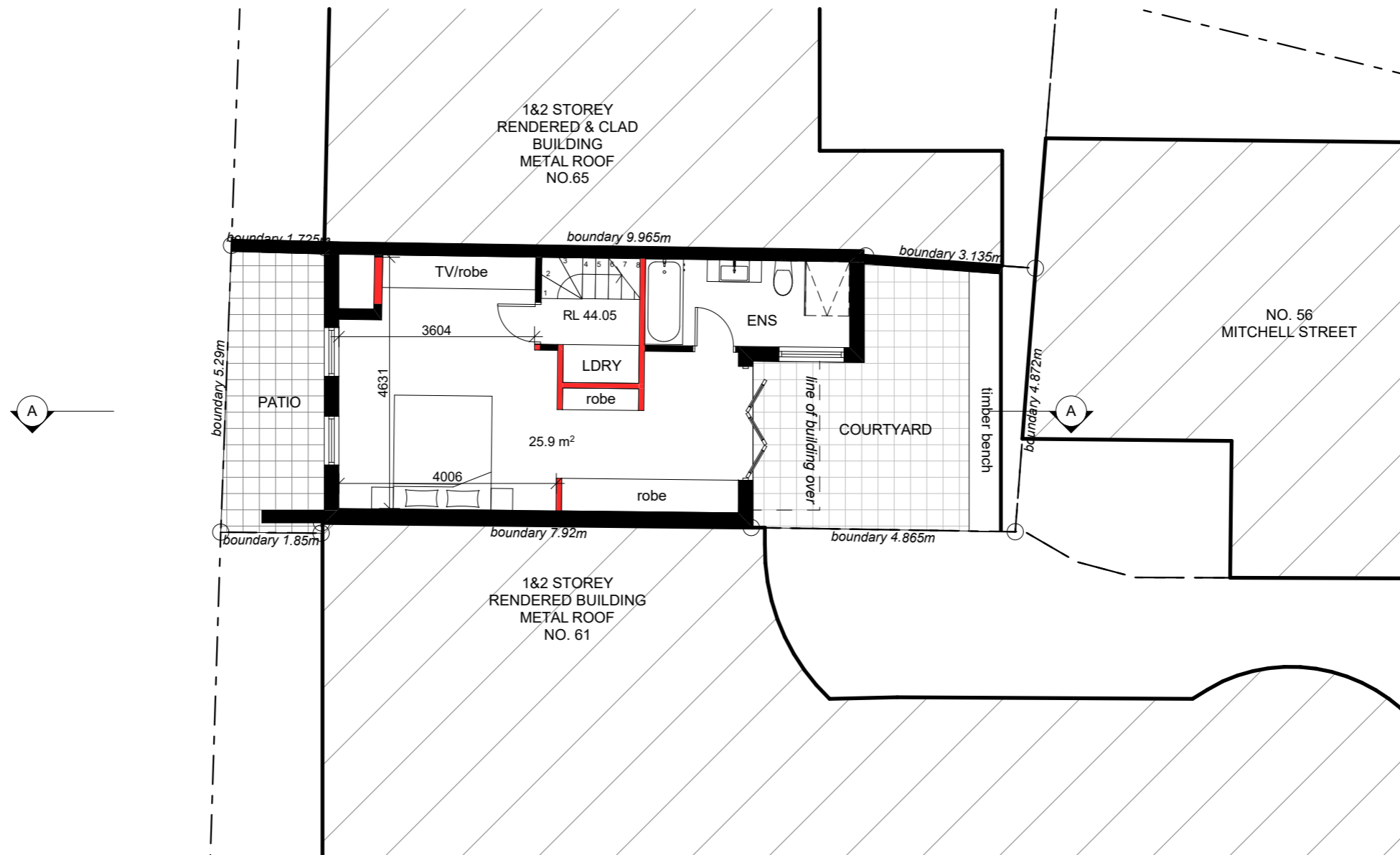
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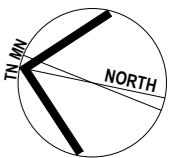
A3 DA04 d

Legend:

- Existing wall to be remain
- Existing wall to be demolished
- New wall



Proposed Lower Ground Floor Plan
SCALE 1:100



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Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

SHEET TITLE:
Proposed Lower Ground Floor

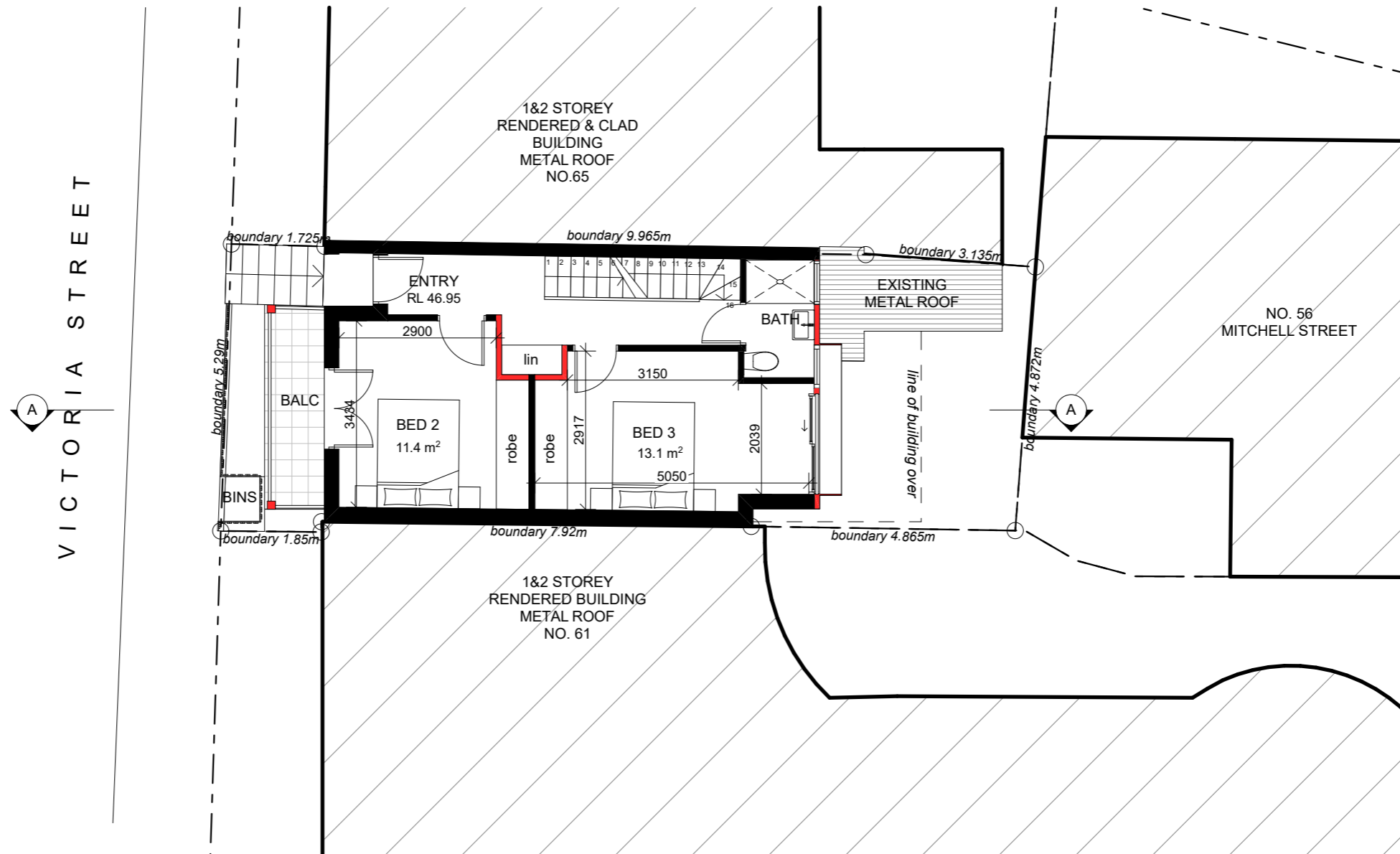
SCALE: 1:100 @ A3
DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA05 d

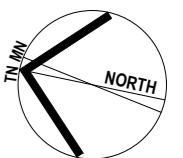
Nominated Architect: Martin Bednarczyk | NSW ARB #8912
Suite C5, 8 Allen St, Waterloo NSW 2017 | A.B.N. 40 966 067 144
m: 0419 670 108 | ph: (02) 8399 2807 | e: office@archispectrum.com.au

Legend:

- Existing wall to be remain
- Existing wall to be demolished
- New wall



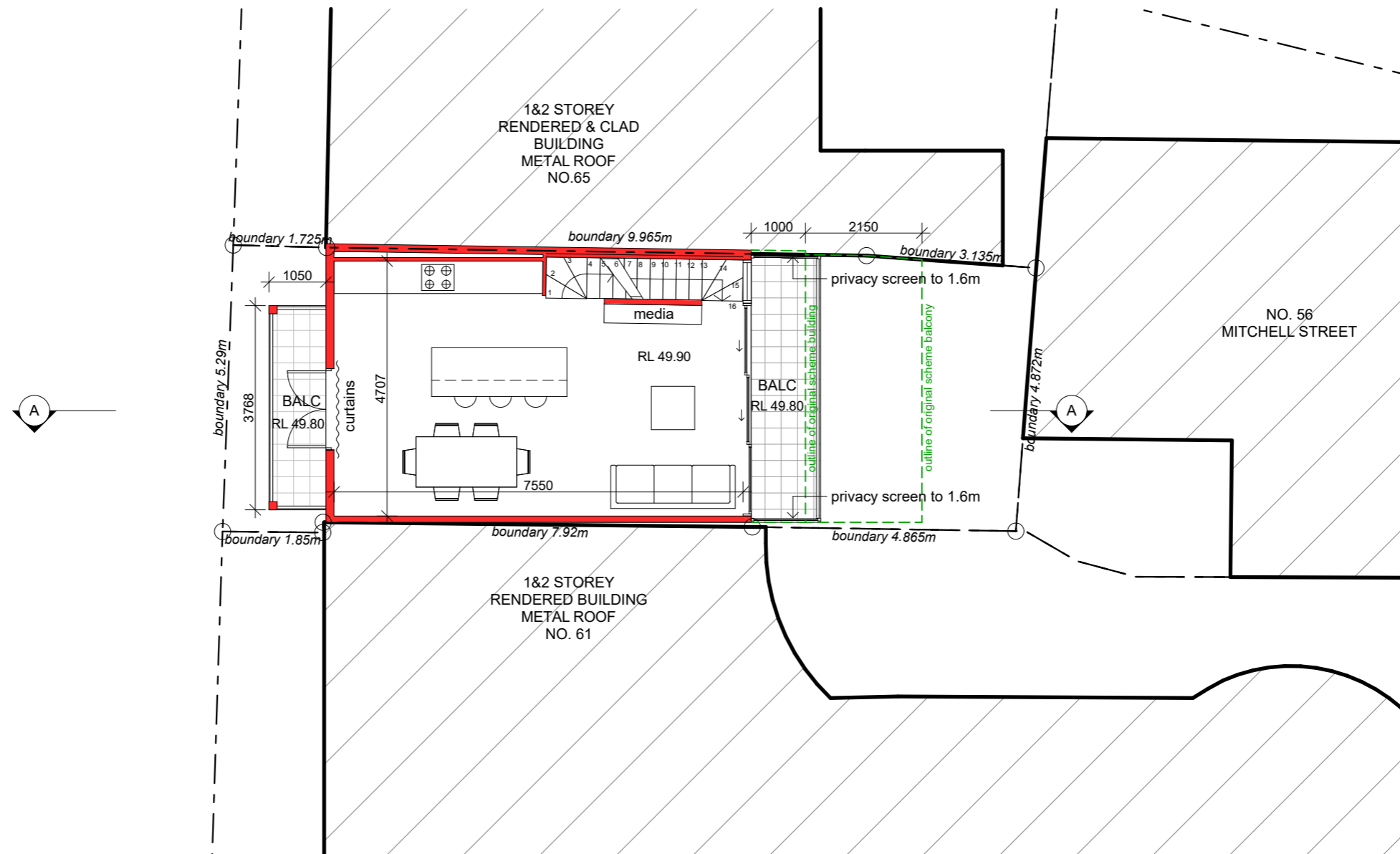
Proposed Ground Floor Plan
SCALE 1:100



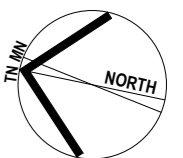
ISSUE	DATE	DESCRIPTION
A	14.09.2022	DA issue to council
B	14.11.2022	DA issue to council
C	04.05.2023	DA issue to council
D	16.06.2023	DA issue to council

Legend:

- Existing wall to be remain
- Existing wall to be demolished
- New wall



Proposed First Floor Plan
SCALE 1:100



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D	16.06.2023	DA issue to council

PROJECT:
Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

SHEET TITLE:
Proposed First Floor Plan

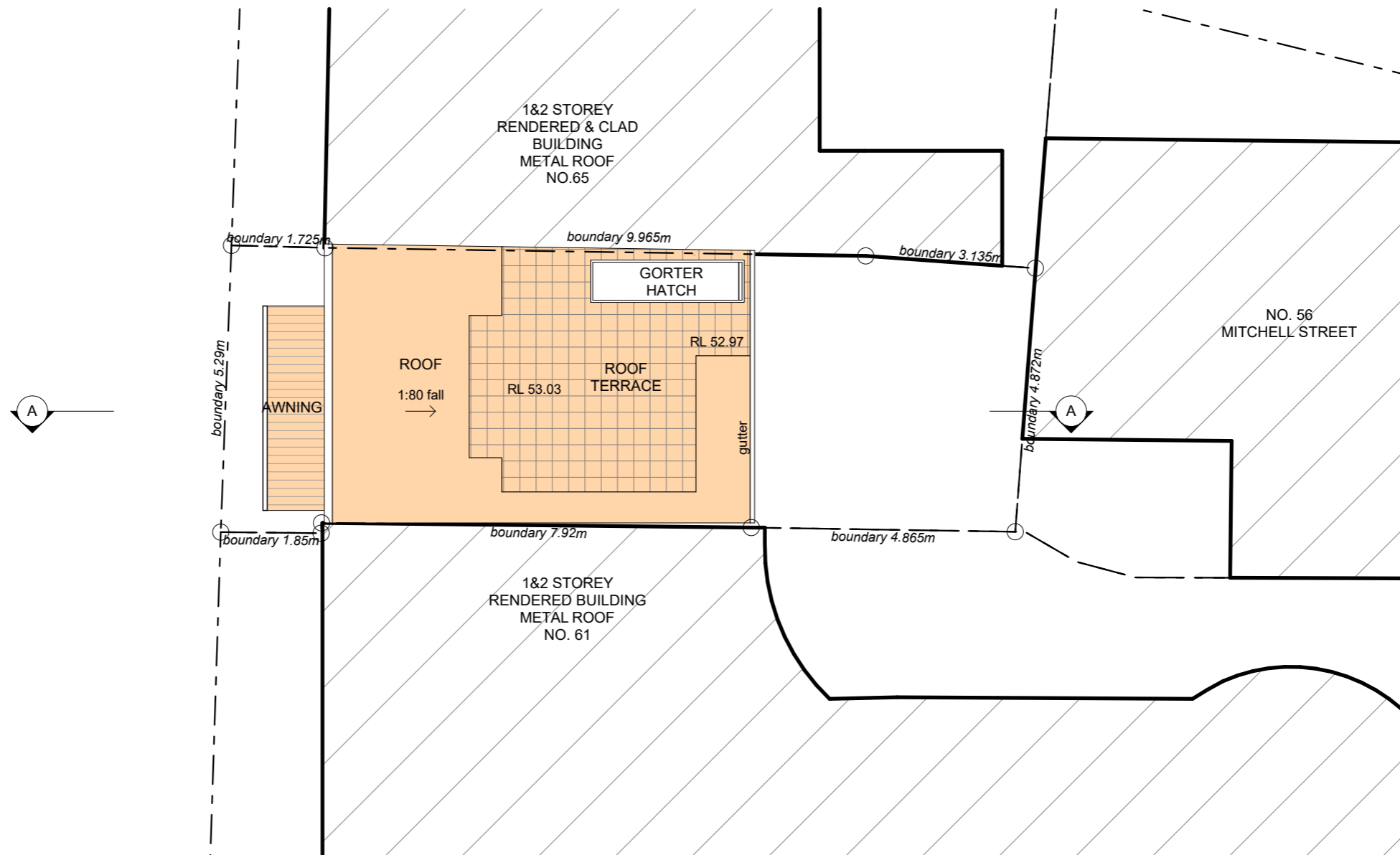
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DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
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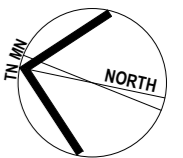
Nominated Architect: Martin Bednarczyk | NSW ARB #8912
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m: 0419 670 108 | ph: (02) 8399 2807 | e: office@archispectrum.com.au

Legend:

- Existing wall to be remain
- Existing wall to be demolished
- New wall



Proposed Roof Terrace Floor Plan
SCALE 1:100



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D	16.06.2023	DA issue to council

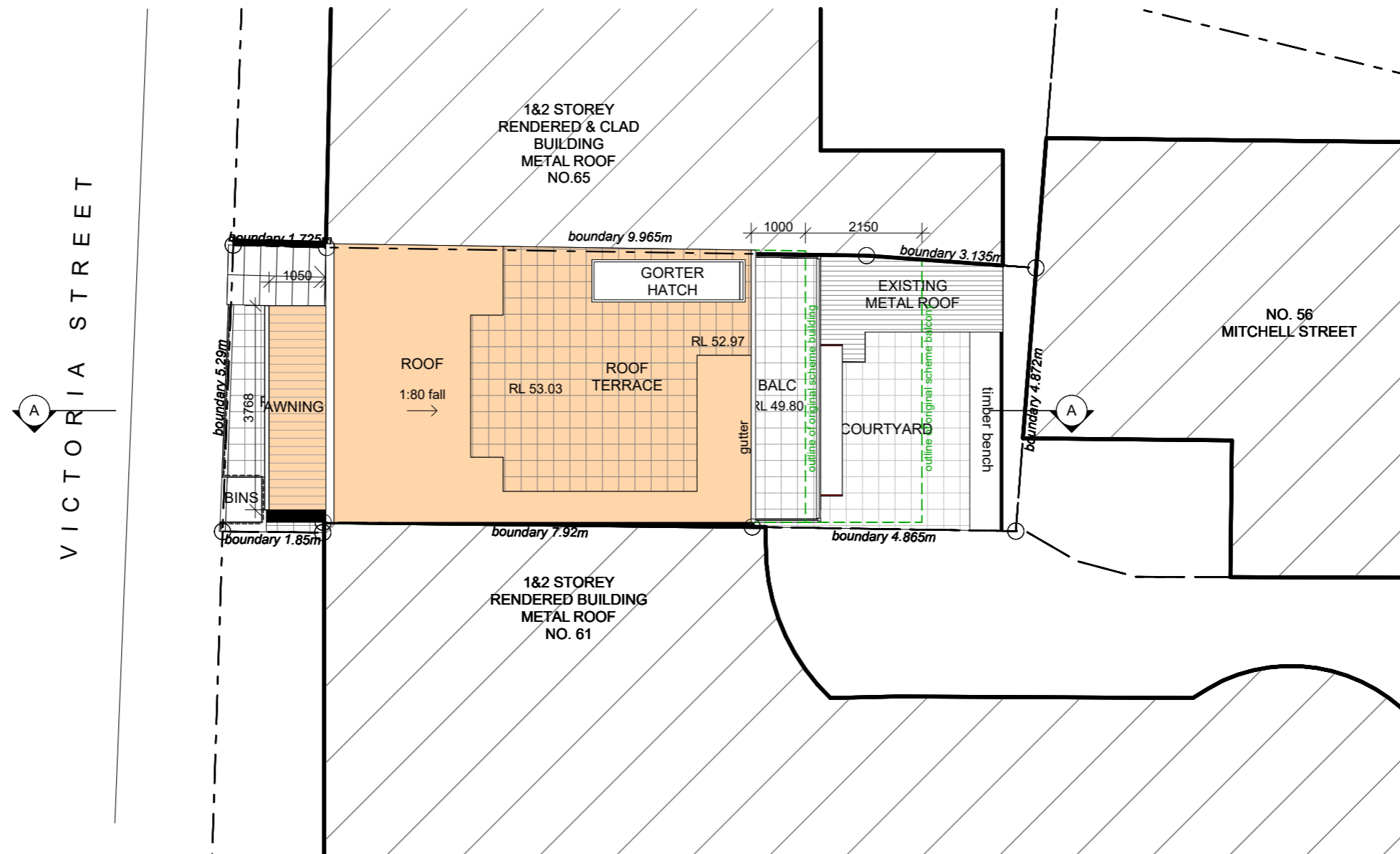
PROJECT:
Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

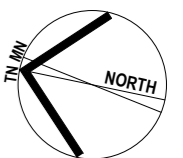
SHEET TITLE:
Proposed Roof Terrace

SCALE: 1:100 @ A3
DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA08 d



Site & Roof Plan
SCALE 1:100



ISSUE	DATE	DESCRIPTION
A	14.09.2022	DA issue to council
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D	16.06.2023	DA issue to council

PROJECT:
Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
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63 Victoria Street, McMahon's Point

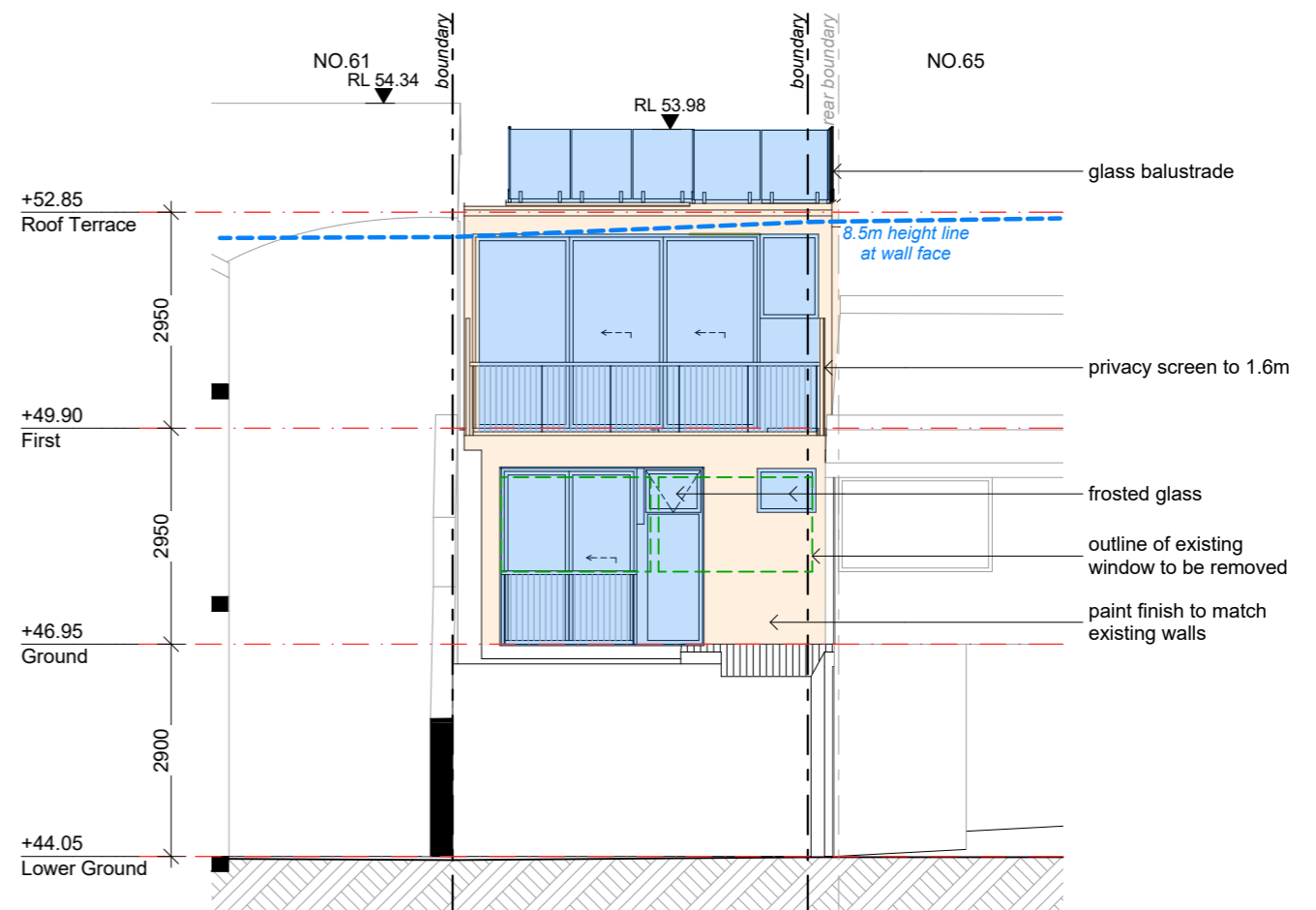
SHEET TITLE:
Site & Roof Plan

SCALE: 1:100 @ A3
DRAWN: AndrewW

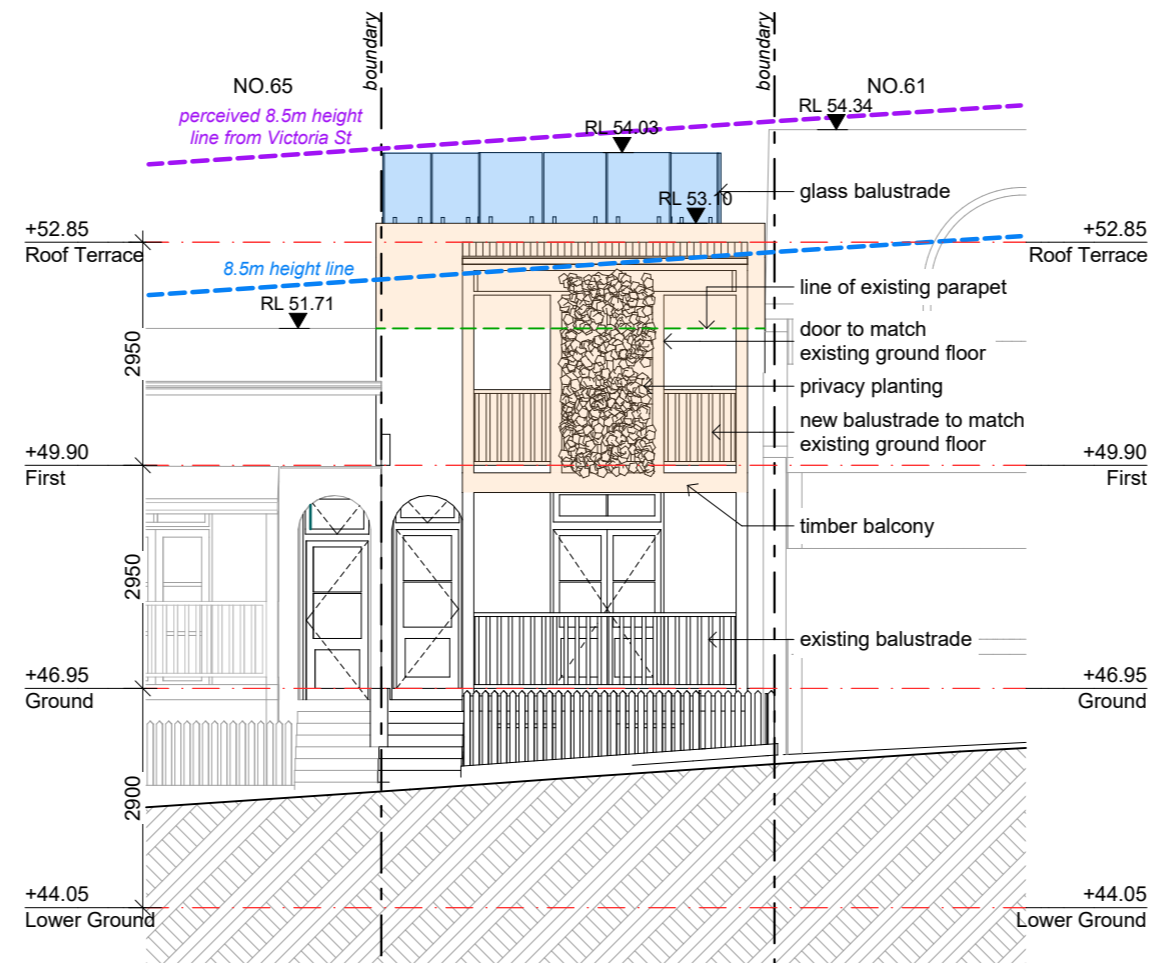
SHEET SIZE: DWG NO: REVISION:
A3 DA09 d



North Elevation (Victoria Street)
SCALE 1:100



South Elevation
SCALE 1:100



North Elevation (Victoria Street) - Option 2
SCALE 1:100



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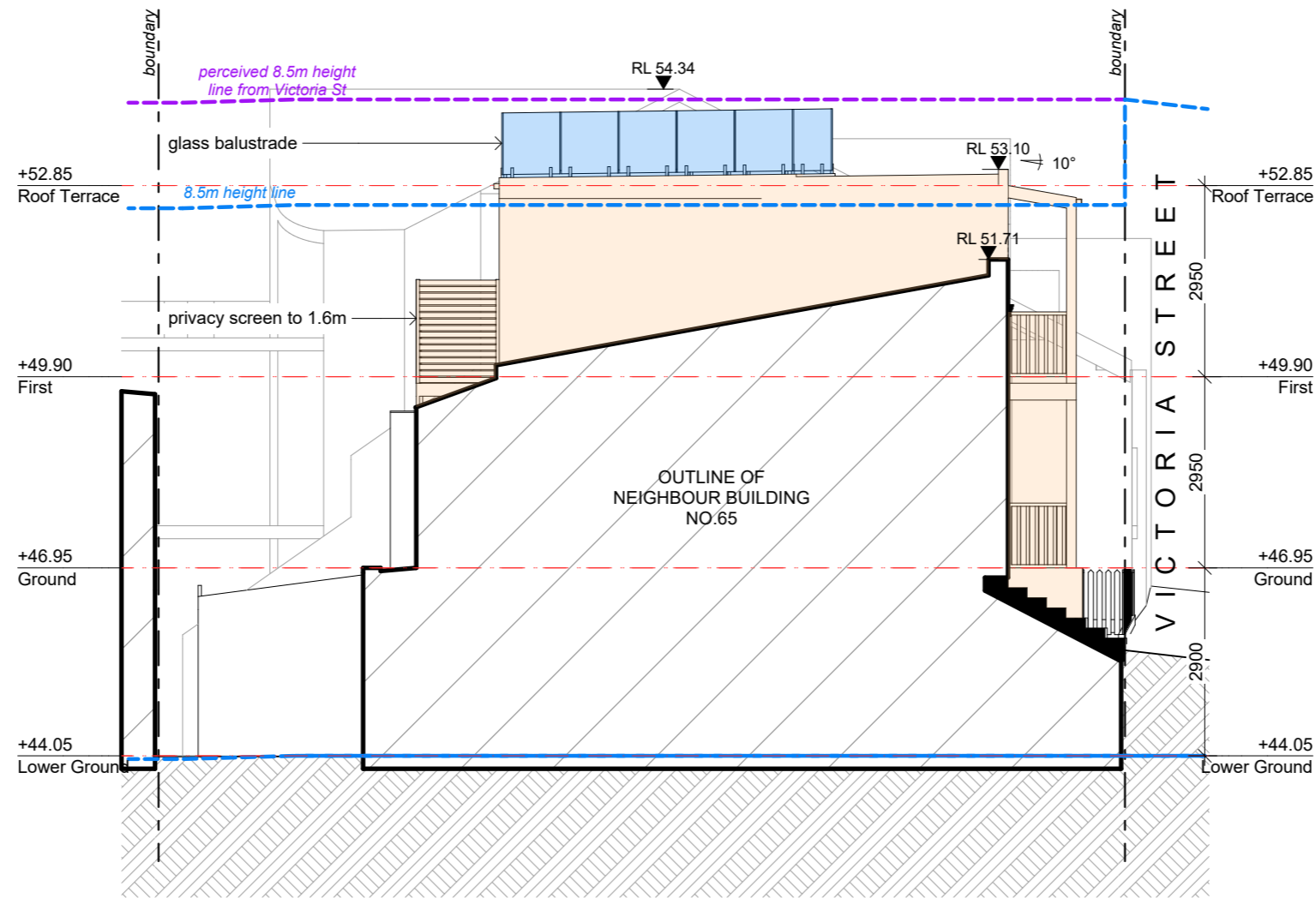
PROJECT:
Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

SHEET TITLE:
North Elevation Option 2

SCALE: 1:100 @ A3
DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA11 d



East Elevation
SCALE 1:100

ISSUE	DATE	DESCRIPTION
A	14.09.2022	DA issue to council
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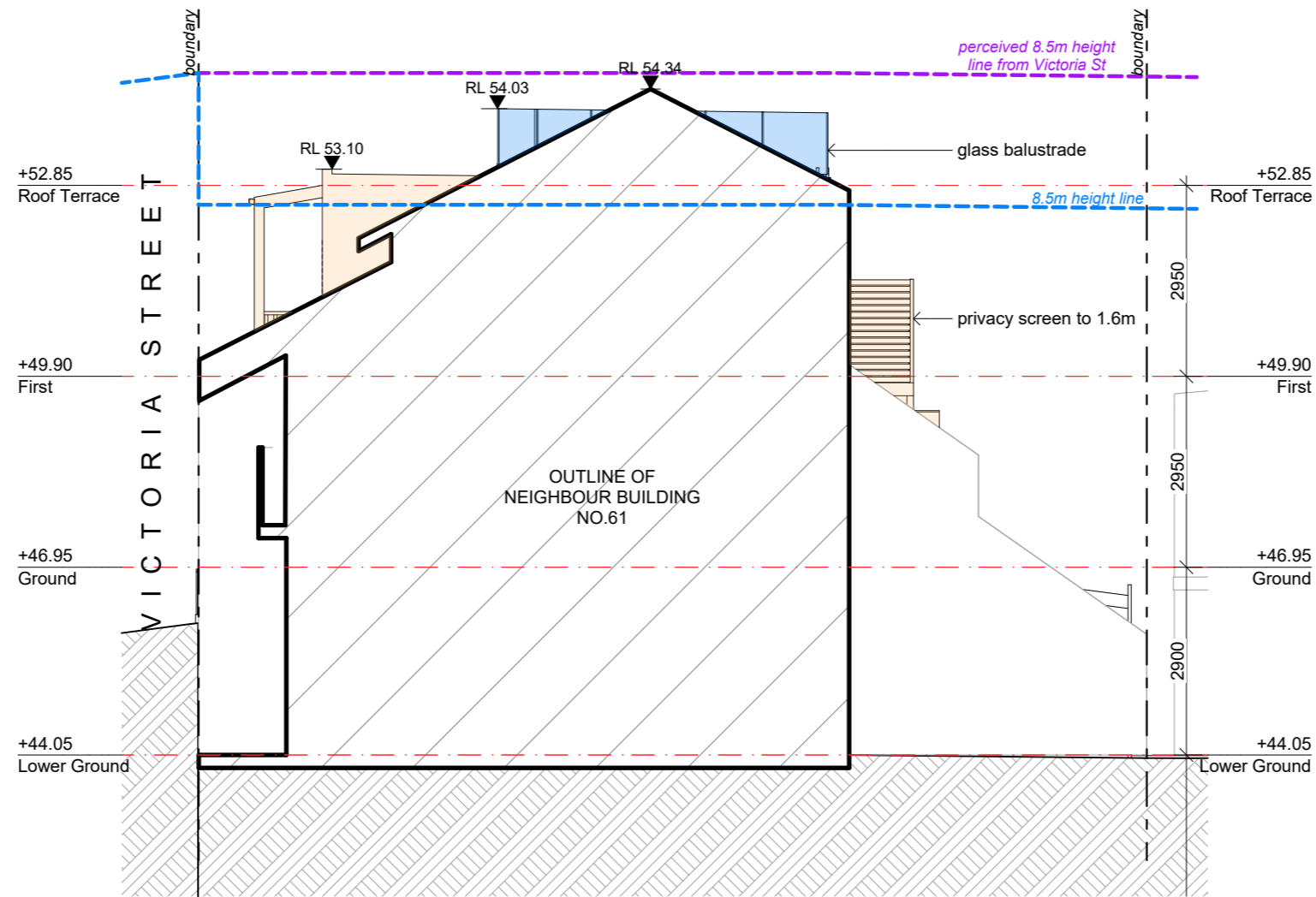
PROJECT:
Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

SHEET TITLE:
East Elevation

SCALE: 1:100 @ A3
DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA12 d



West Elevation
SCALE 1:100

ISSUE	DATE	DESCRIPTION
A	14.09.2022	DA issue to council
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PROJECT:
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CLIENT:
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63 Victoria Street, McMahon's Point

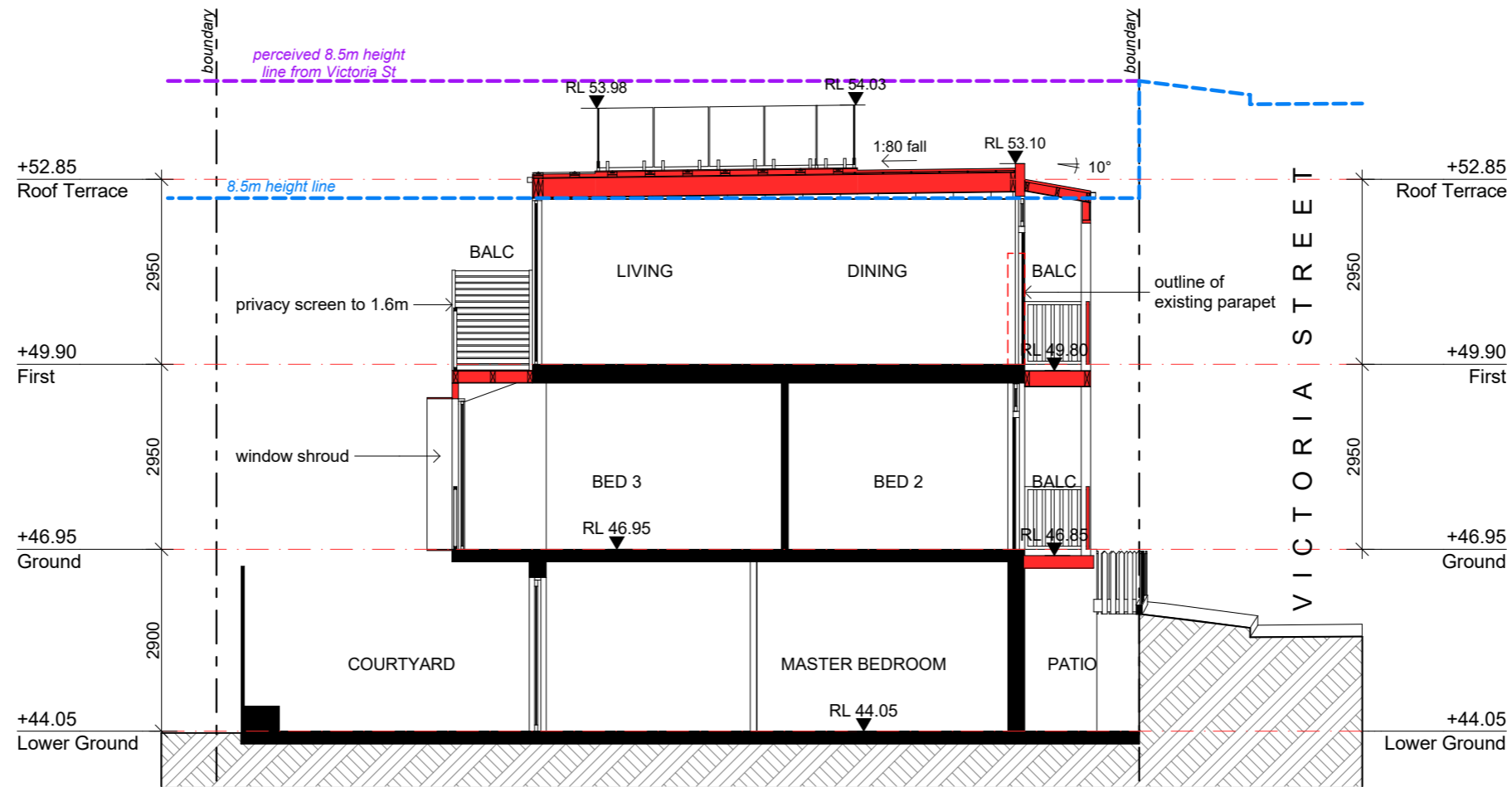
SHEET TITLE:
West Elevation

SCALE: 1:100 @ A3
DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA13 d

Legend:

- Existing wall to be remain
- Existing wall to be demolished
- New wall



Section A-A
SCALE 1:100



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63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

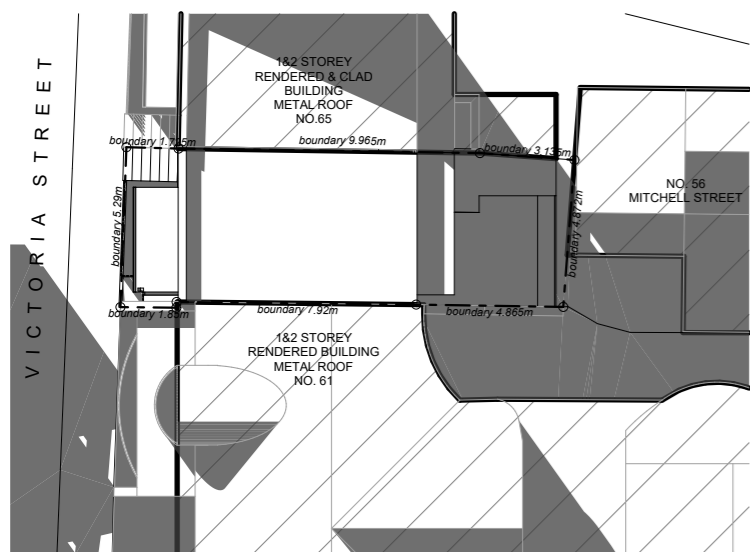
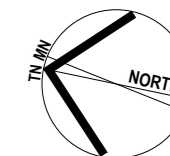
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Section A-A

SCALE: 1:100 @ A3
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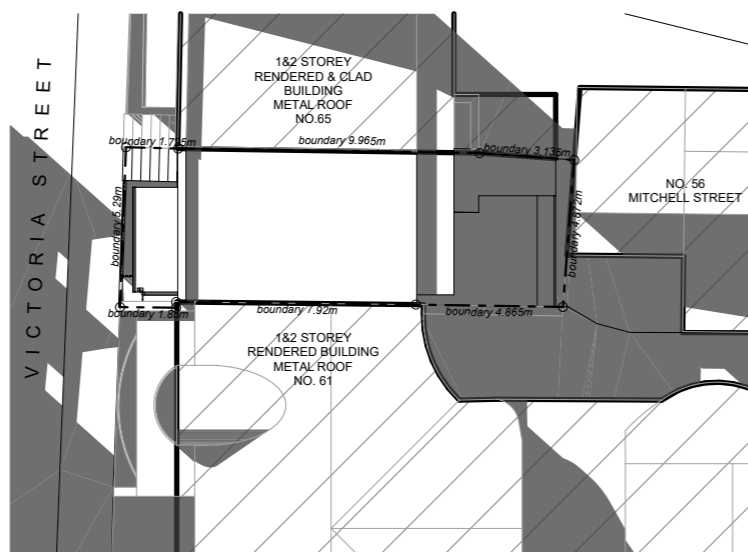
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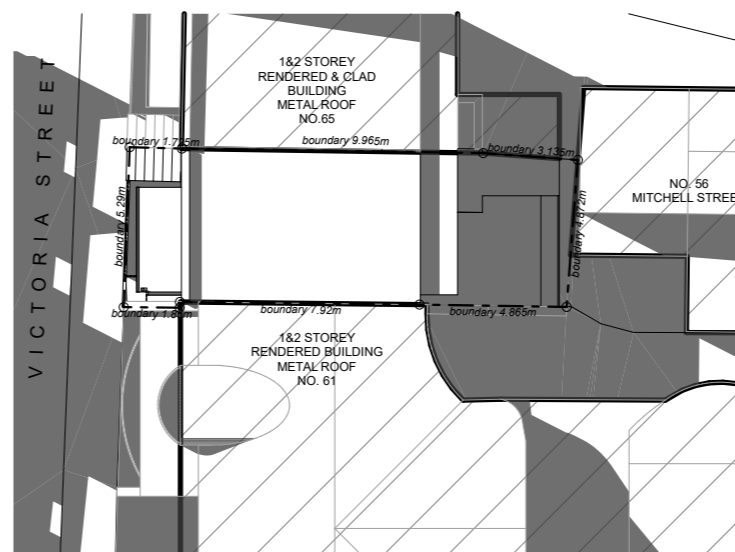
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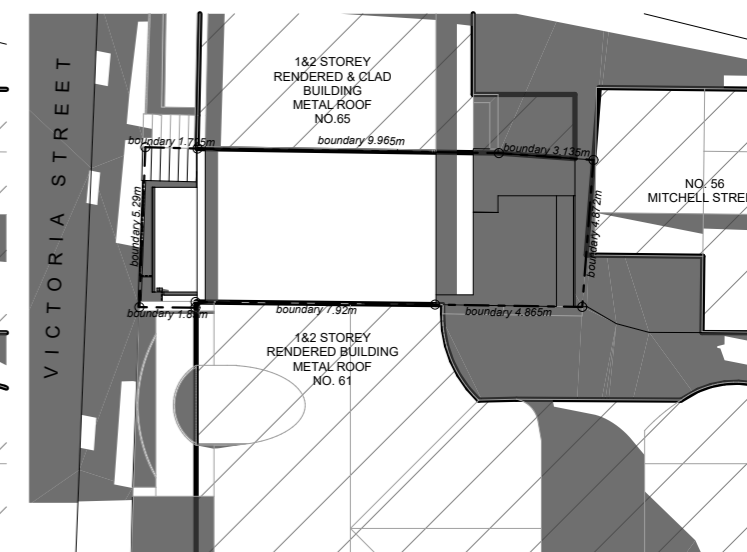
EXISTING - 9.00 am



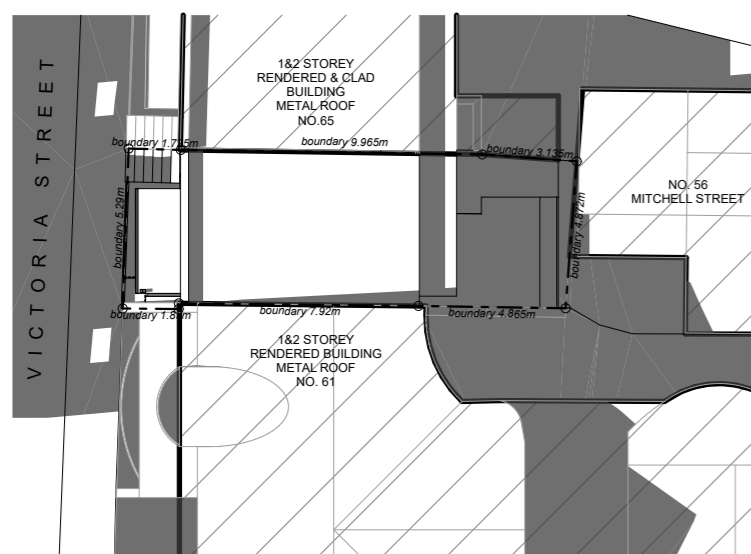
EXISTING - 10.00 am



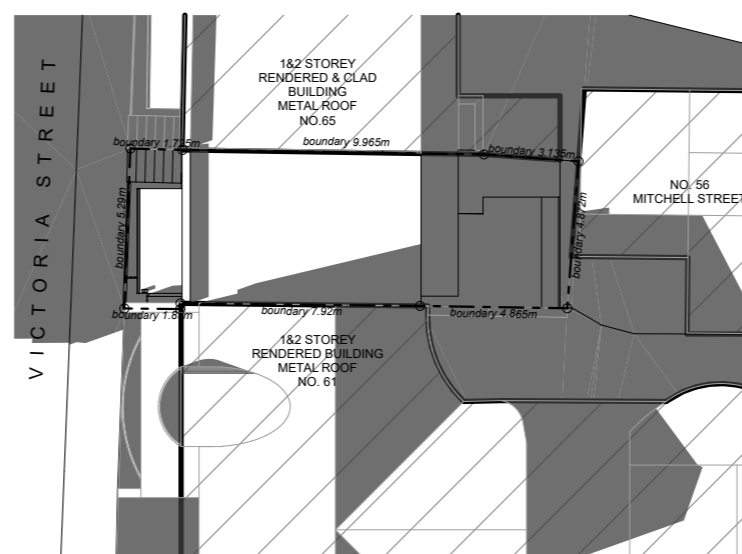
EXISTING - 11.00 am



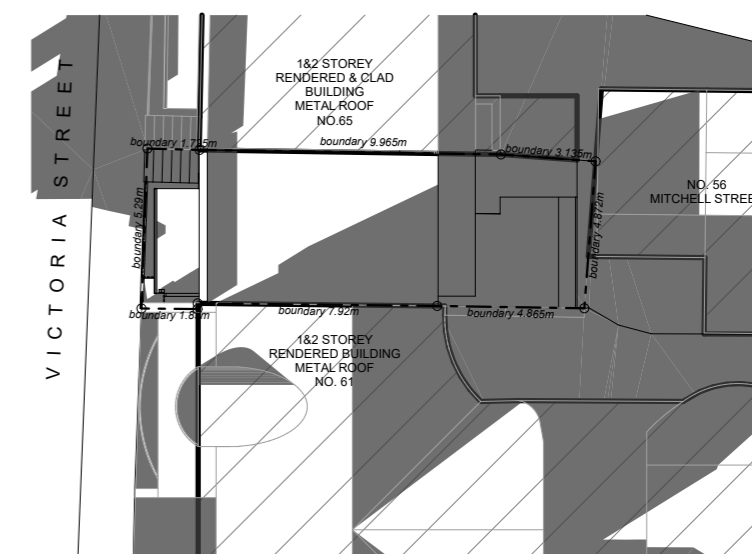
EXISTING - 12.00 noon



EXISTING - 1.00 pm



EXISTING - 2.00 pm



EXISTING - 3.00 pm



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Alterations & Additions
63 Victoria Street, McMahons Point

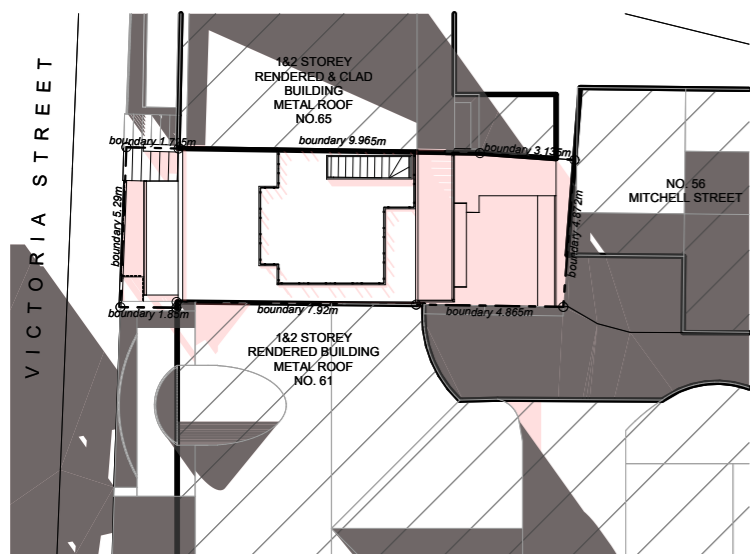
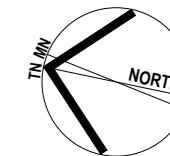
CLIENT:
Leanne Misener
63 Victoria Street, McMahons Point

SHEET TITLE:
Existing Shadow Diagram - Winter Solstice

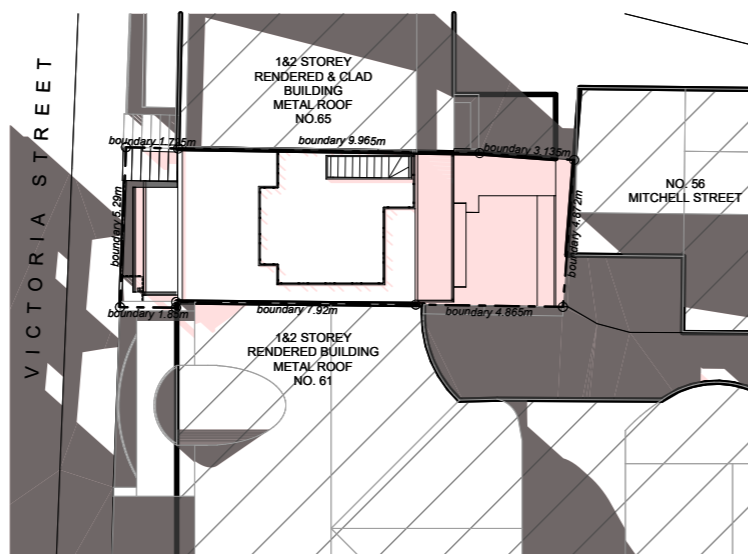
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DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA15 d

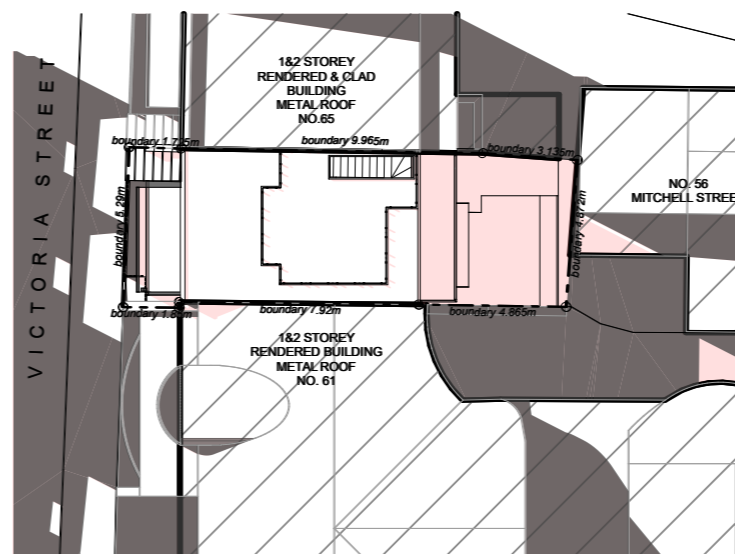
Legend:



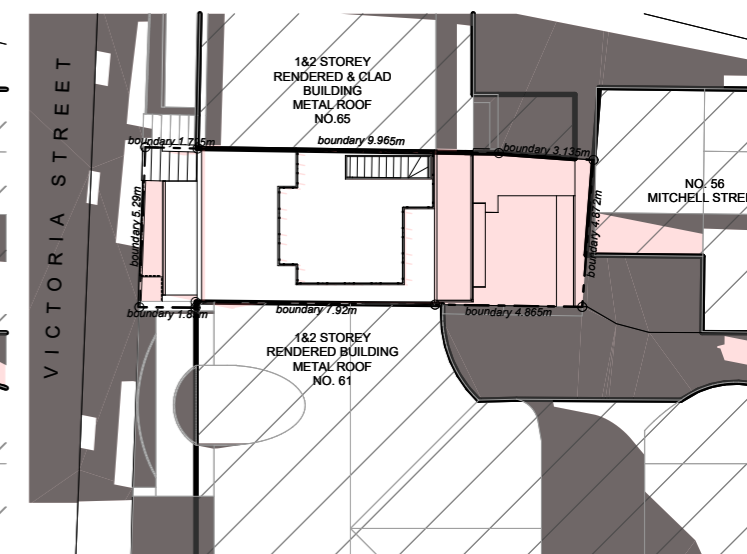
PROPOSED - 9.00 am



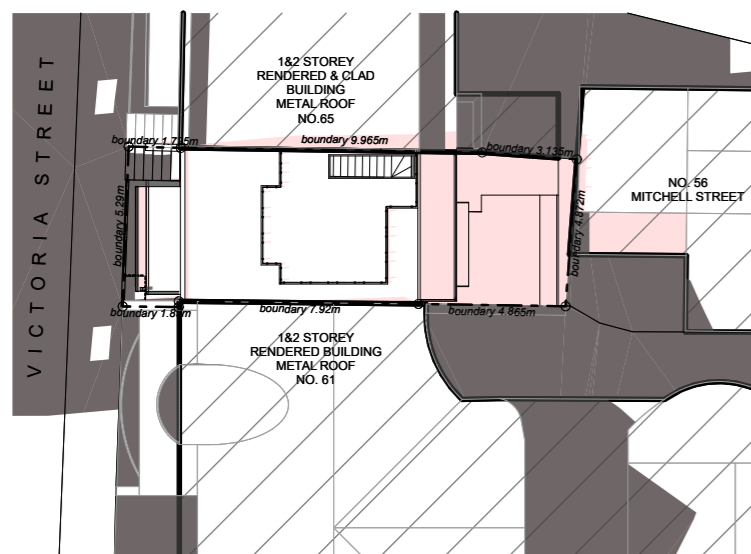
PROPOSED - 10.00 am



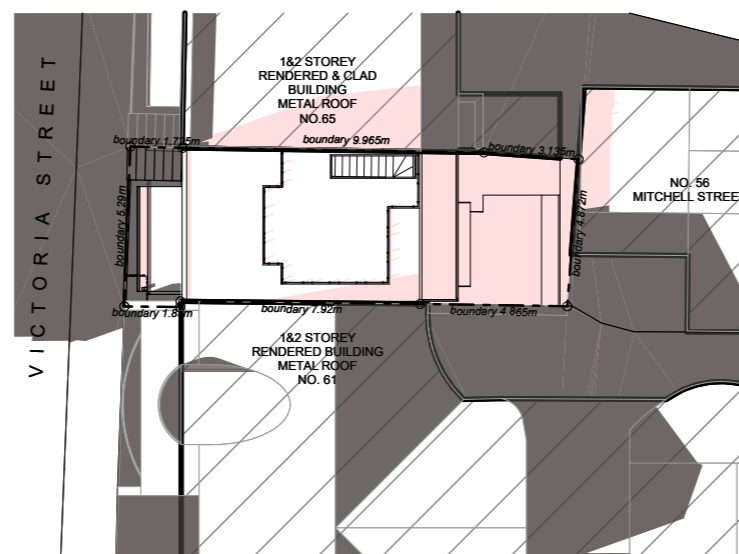
PROPOSED - 11.00 am



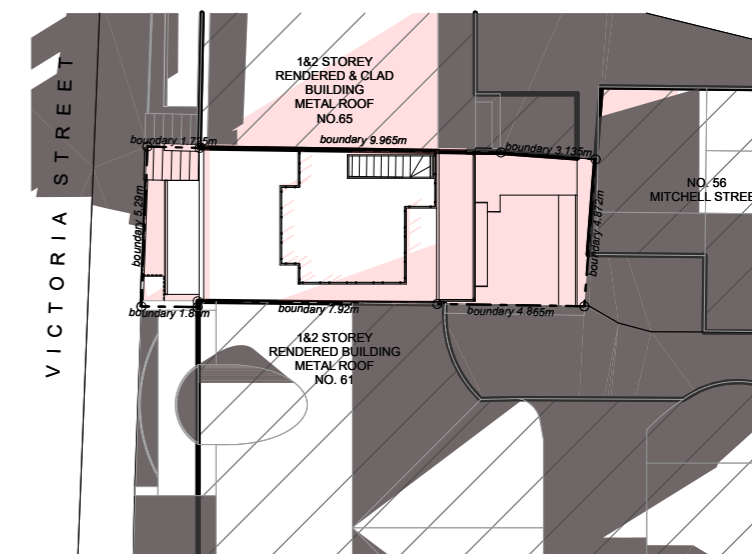
PROPOSED - 12.00 noon



Proposed - 1.00 pm



Proposed - 2.00 pm



PROPOSED - 3.00 pm



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Alterations & Additions
63 Victoria Street, McMahons Point

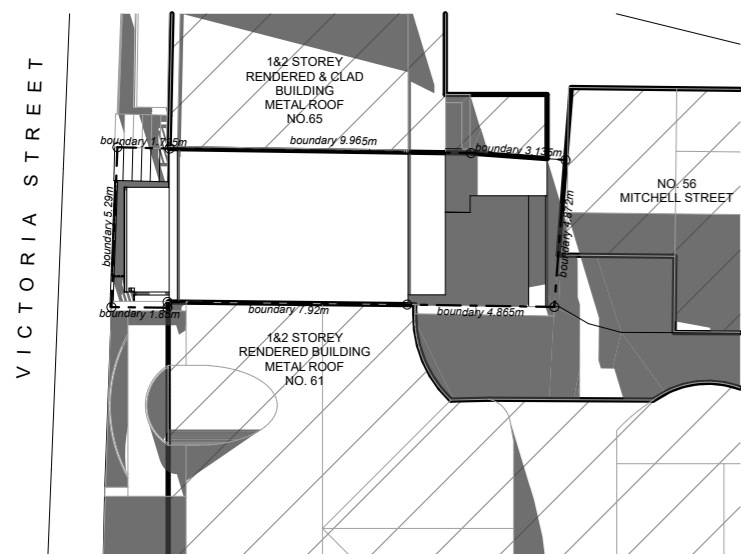
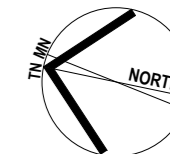
CLIENT:
Leanne Misener
63 Victoria Street, McMahons Point

SHEET TITLE:
Proposed Shadow Diagram - Winter Solstice

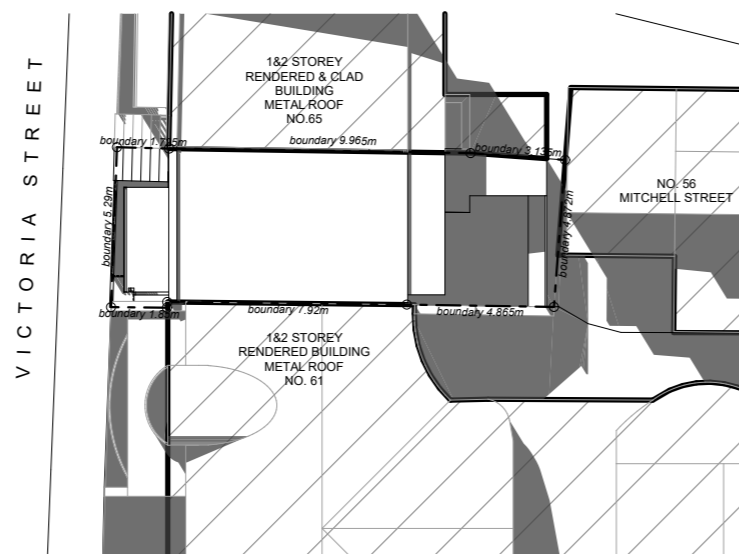
SCALE: 1:250 @ A3
DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA16 d

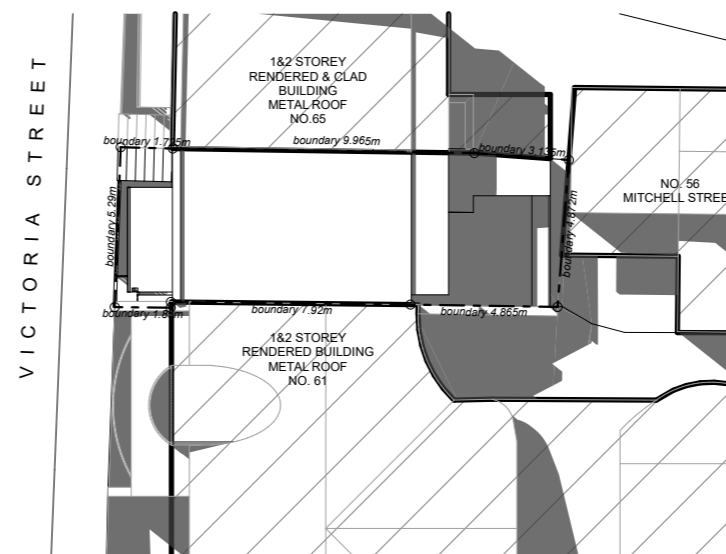
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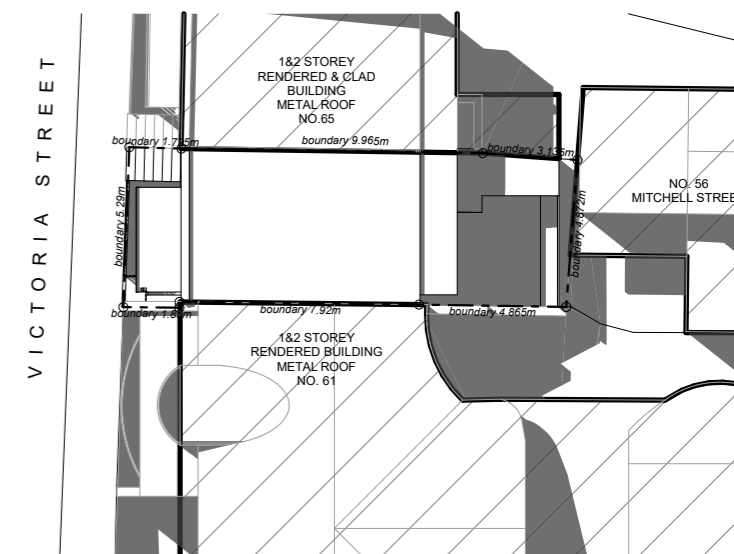
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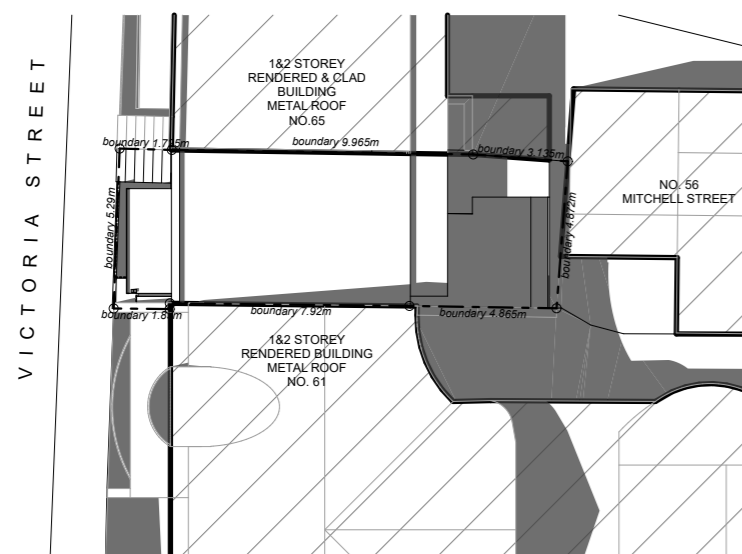
EXISTING - 10.00 am



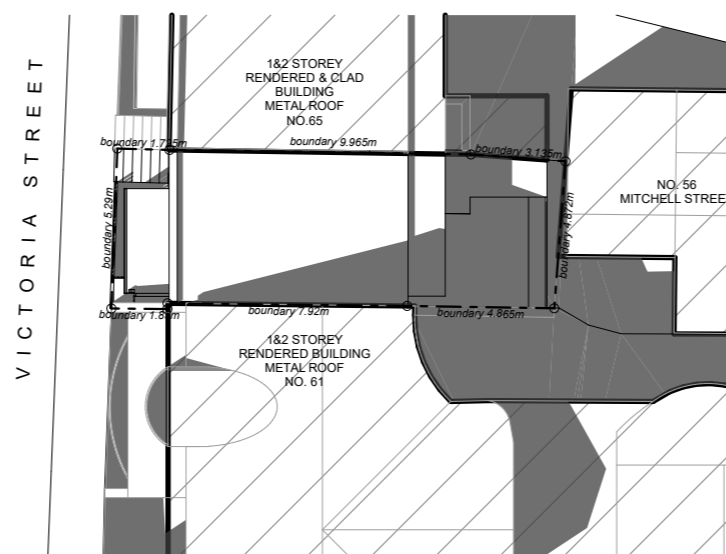
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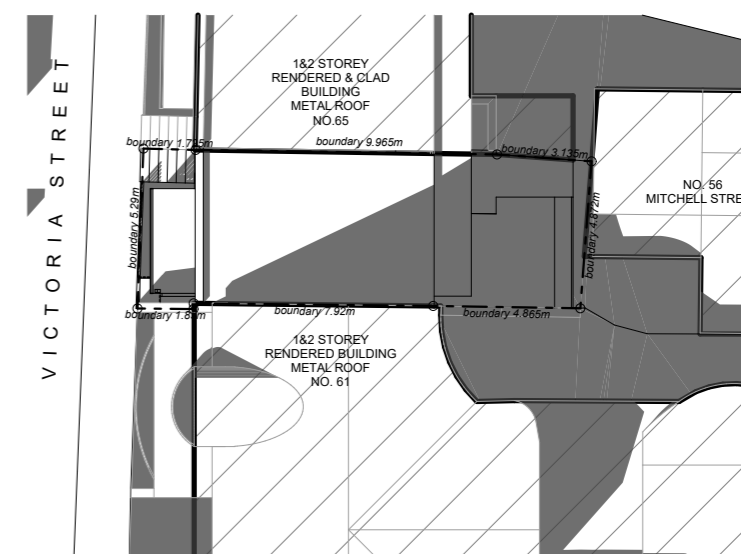
EXISTING - 12.00 noon



EXISTING - 1.00 pm



EXISTING - 2.00 pm



EXISTING - 3.00 pm



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Alterations & Additions
63 Victoria Street, McMahon's Point

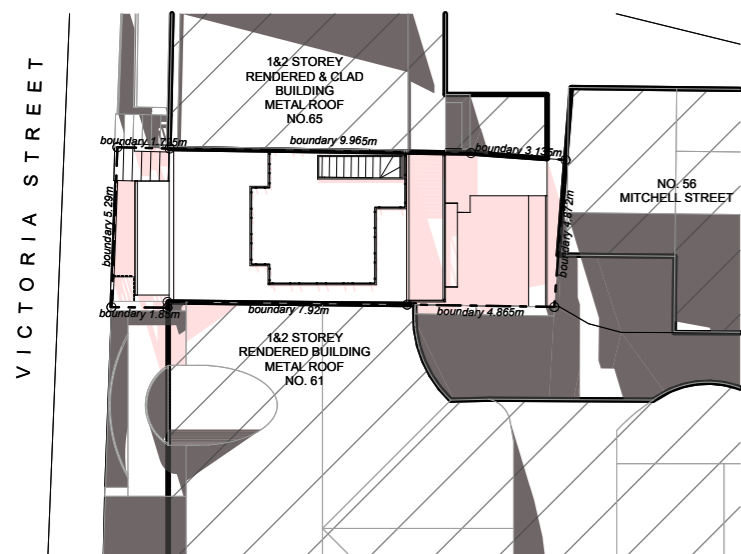
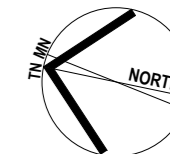
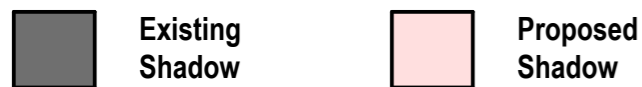
CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

SHEET TITLE:
Existing Shadow Diagram - Equinox

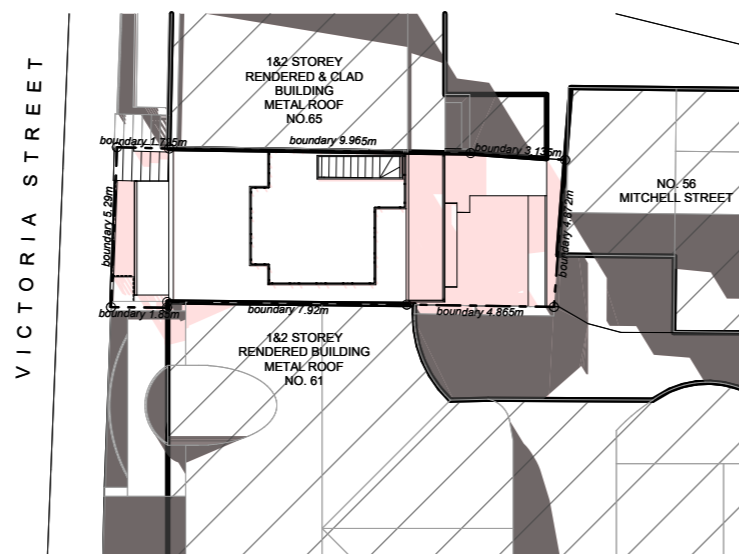
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DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA17 d

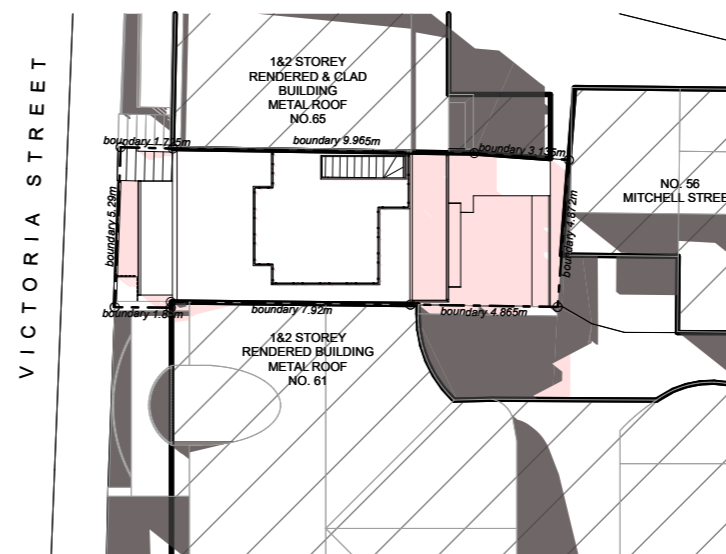
Legend:



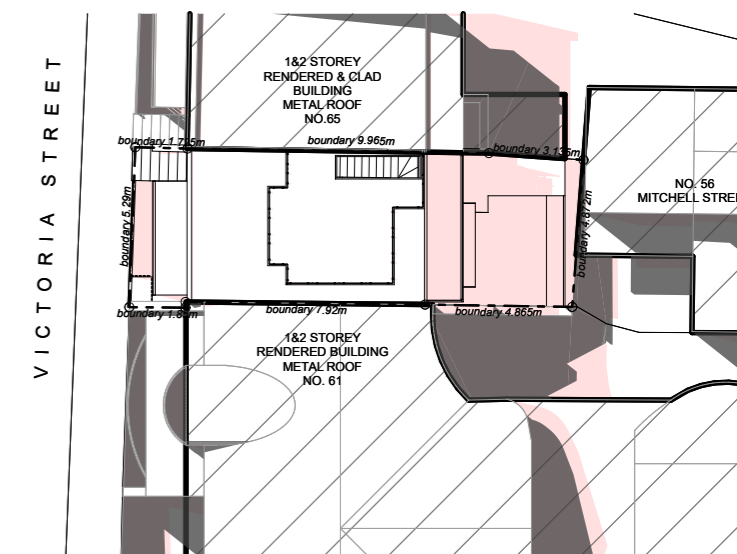
PROPOSED - 9.00 am



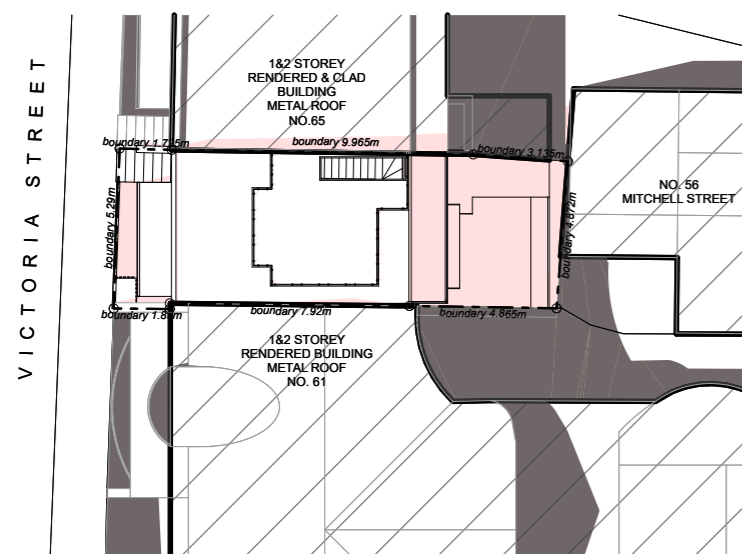
PROPOSED - 10.00 am



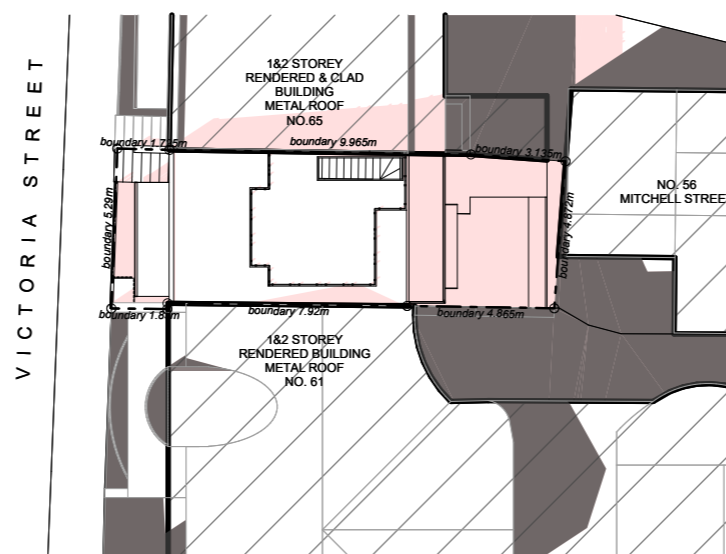
PROPOSED - 11.00 am



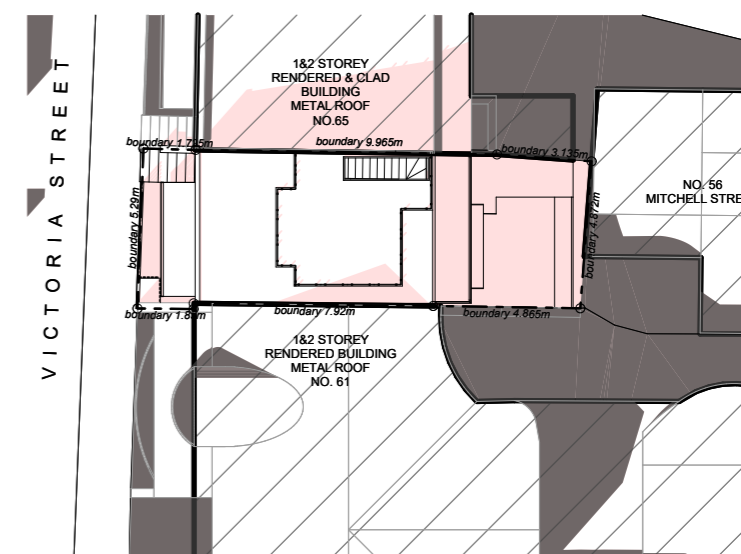
PROPOSED - 12.00 noon



Proposed - 1.00 pm



Proposed - 2.00 pm



PROPOSED - 3.00 pm



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PROJECT:
Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

SHEET TITLE:
Proposed Shadow Diagram - Equinox

SCALE: 1:250 @ A3
DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:

A3 DA18 d



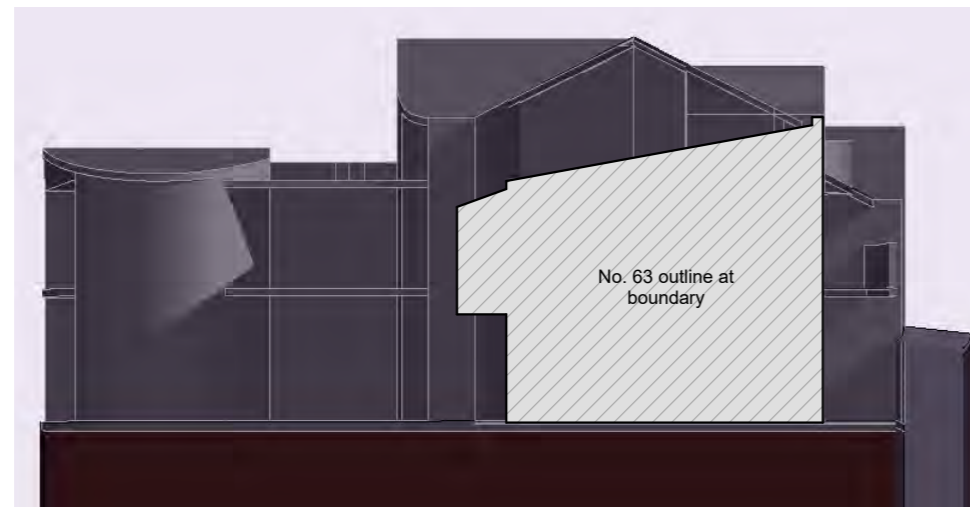
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EXISTING - 10.00 am



EXISTING - 11.00 am



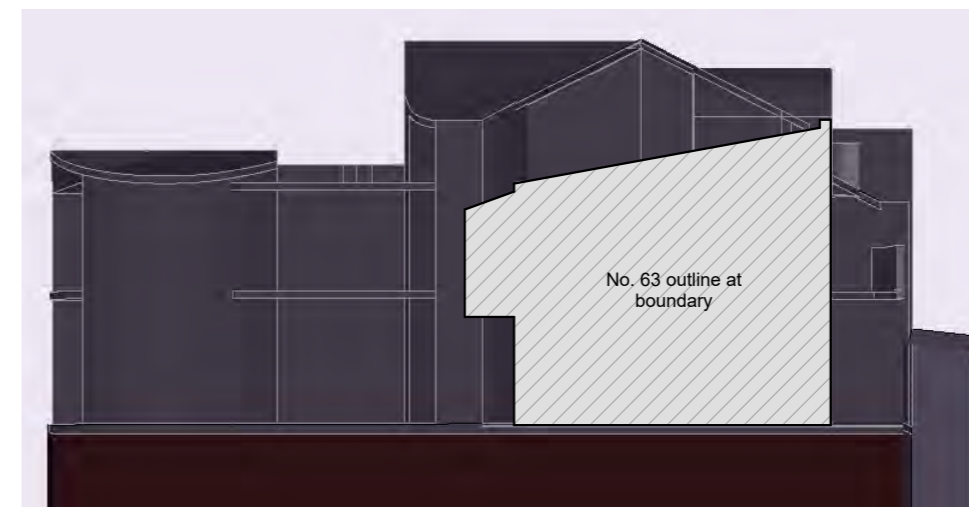
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EXISTING - 1.00 pm



EXISTING - 2.00 pm



EXISTING - 3.00 pm

ISSUE	DATE	DESCRIPTION
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B	14.11.2022	DA issue to council
C	04.05.2023	DA issue to council
D	16.06.2023	DA issue to council

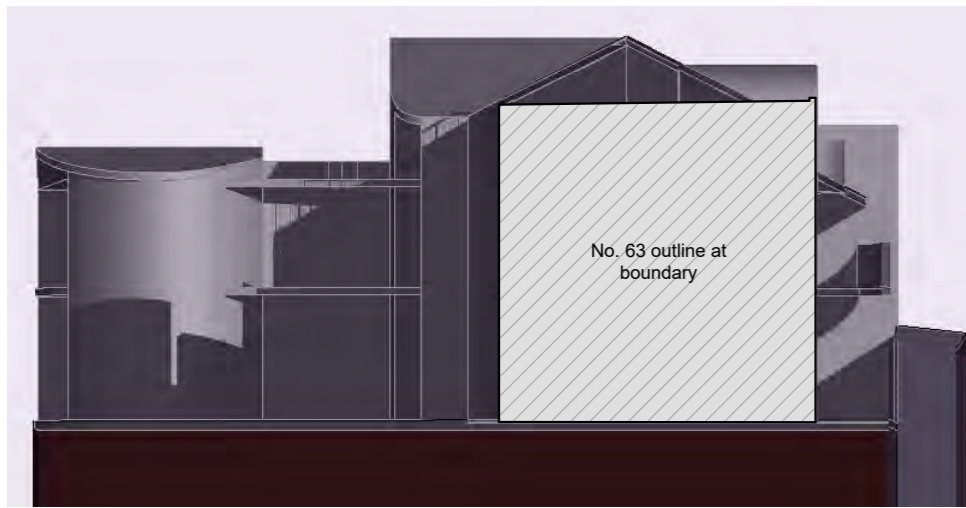
PROJECT:
Alterations & Additions
 63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
 63 Victoria Street, McMahon's Point

SHEET TITLE:
Existing Elevational Shadow - Winter
Soltice No. 61

SCALE: @ A3
 DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA19 d



PROPOSED - 9.00 am



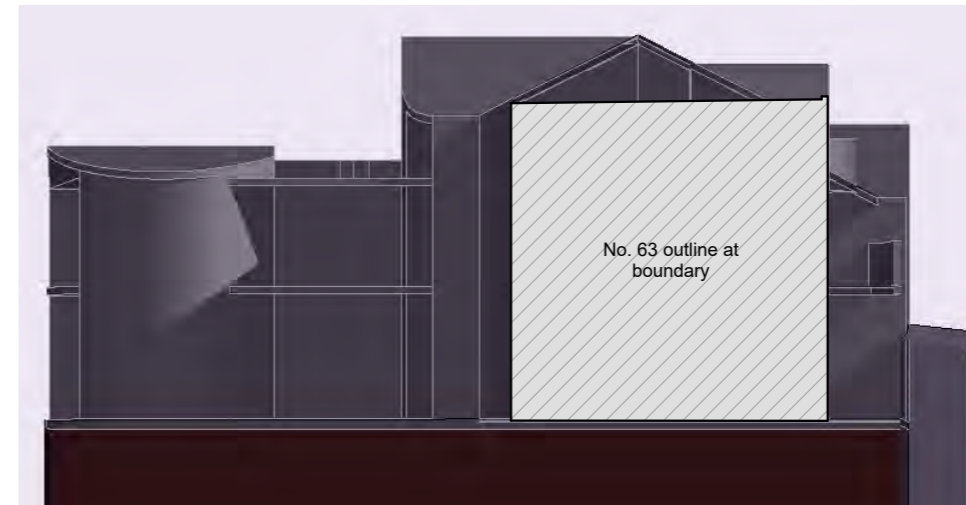
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PROPOSED - 11.00 am



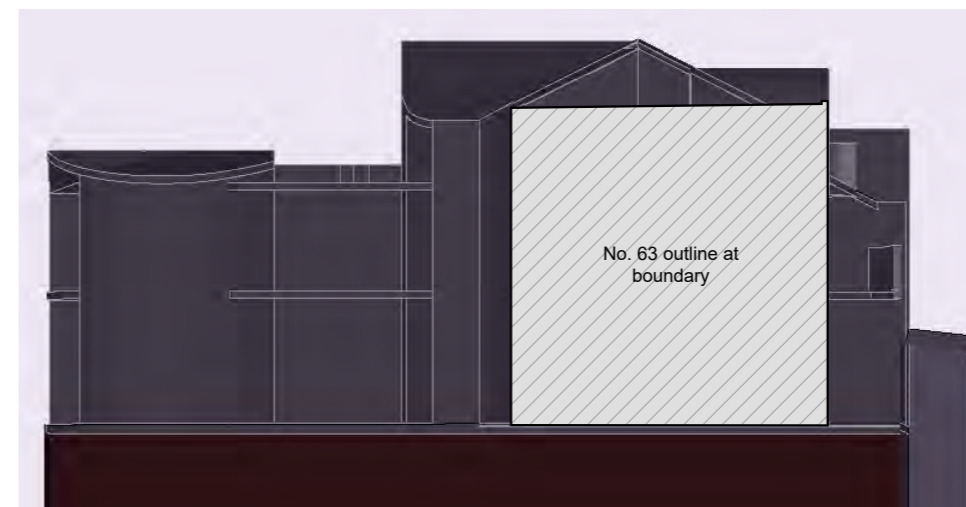
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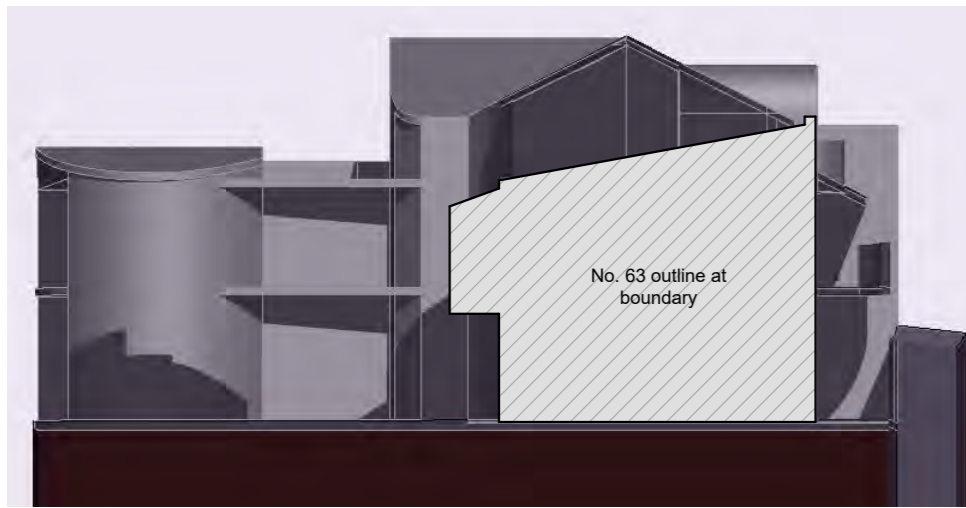
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PROPOSED - 2.00 pm



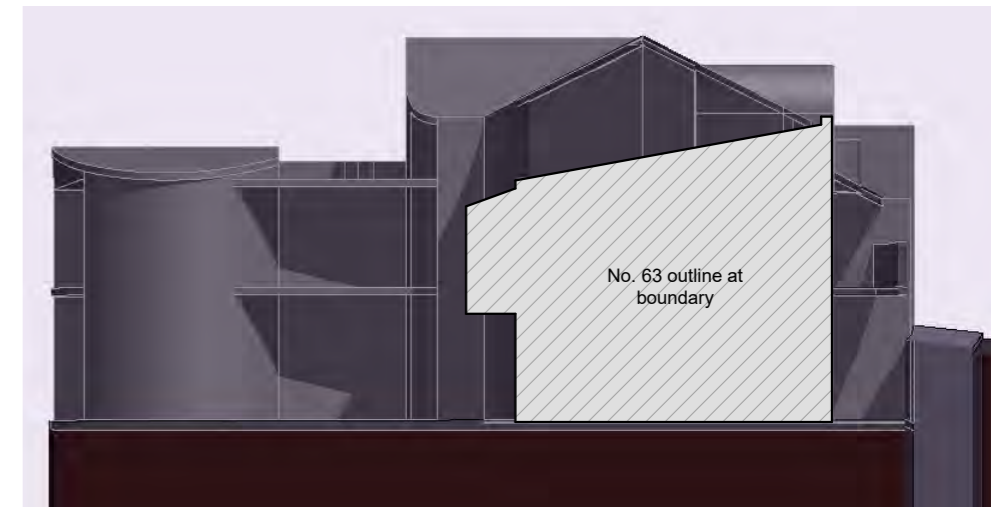
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EXISTING - 9.00 am



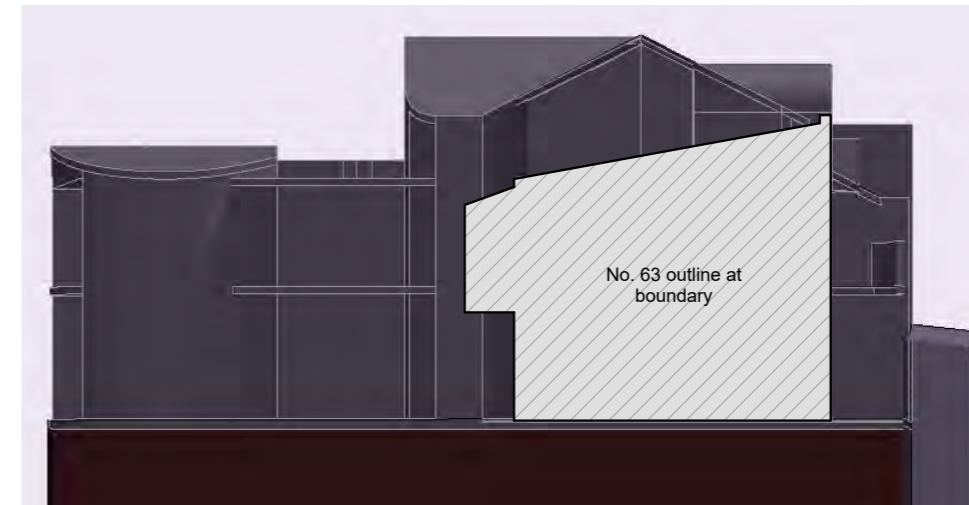
EXISTING - 10.00 am



EXISTING - 11.00 am



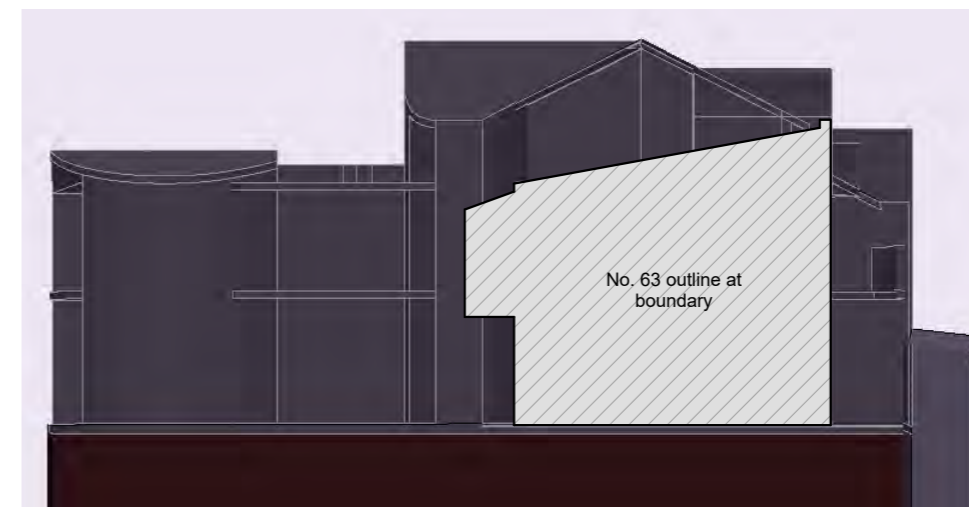
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EXISTING - 2.00 pm



EXISTING - 3.00 pm

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A	14.09.2022	DA issue to council
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D	16.06.2023	DA issue to council

PROJECT:
Alterations & Additions
 63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
 63 Victoria Street, McMahon's Point

SHEET TITLE:
Existing Elevational Shadow - Equinox
No. 61

SCALE: @ A3
 DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA21 d



PROPOSED - 9.00 am



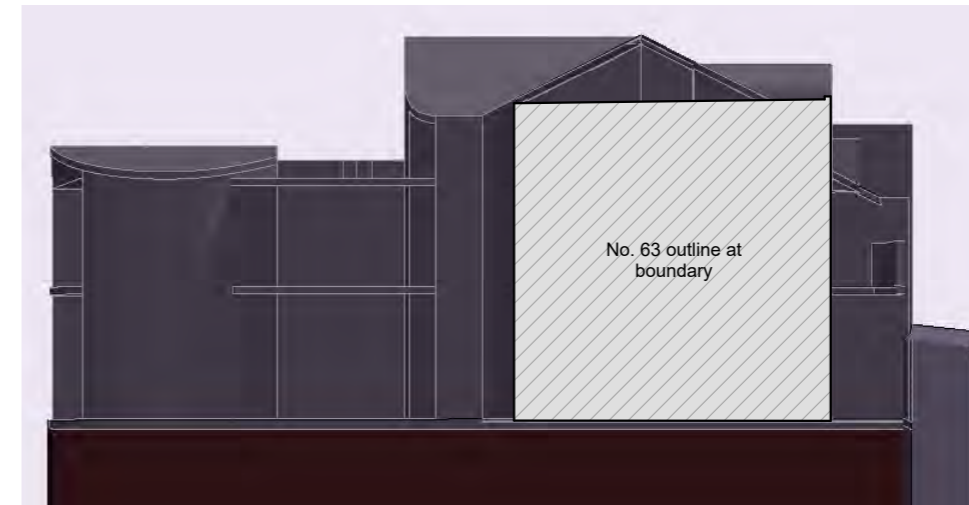
PROPOSED - 10.00 am



PROPOSED - 11.00 am



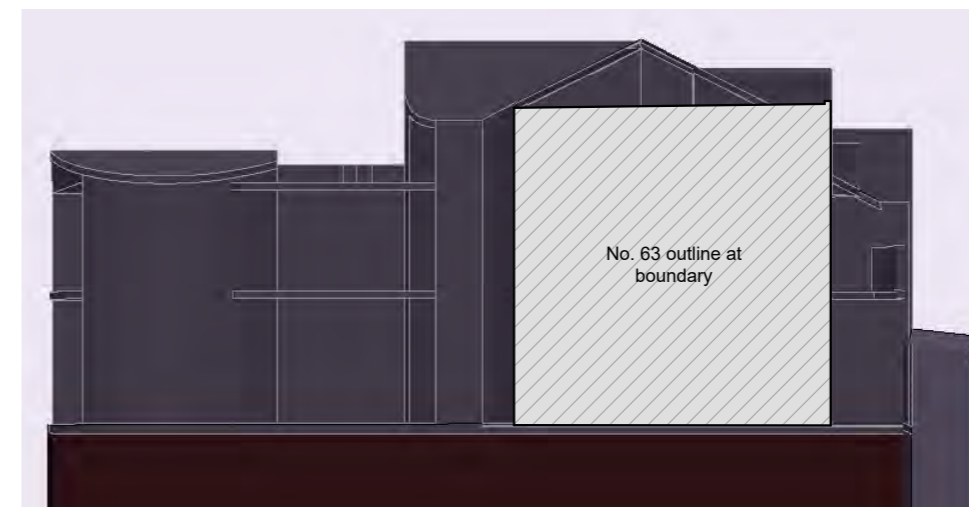
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PROPOSED - 1.00 pm



PROPOSED - 2.00 pm



PROPOSED - 3.00 pm

ISSUE	DATE	DESCRIPTION
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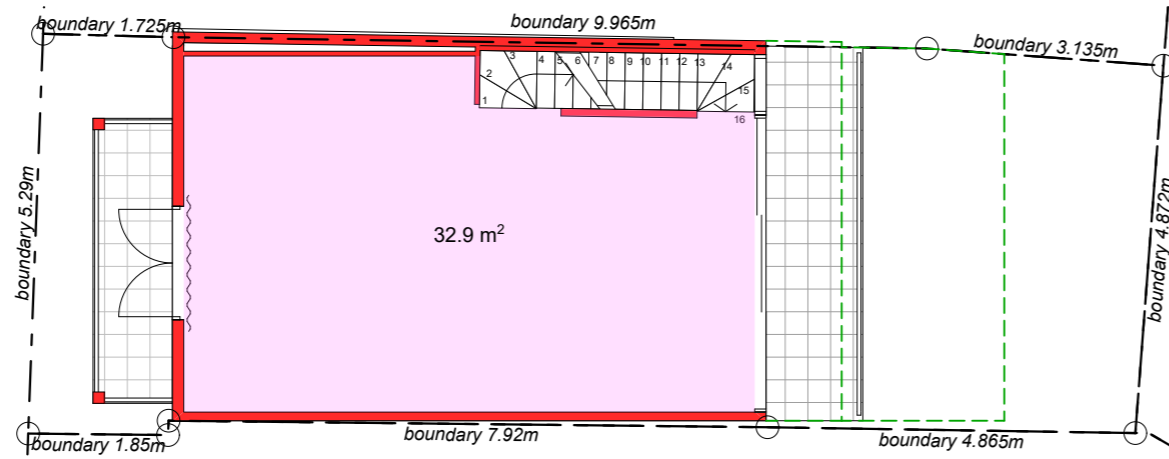
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Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

SHEET TITLE:
Proposed Elevational Shadow - Equinox
No. 61

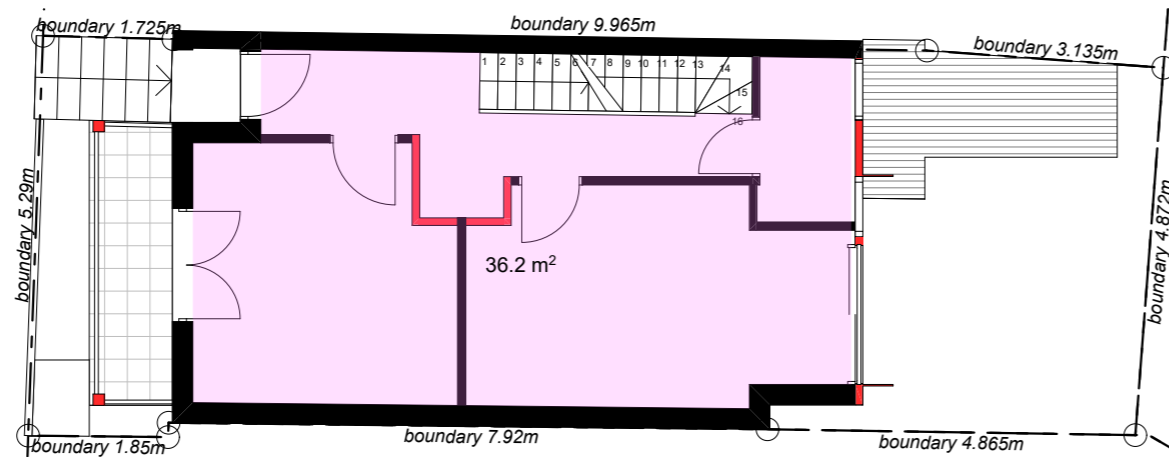
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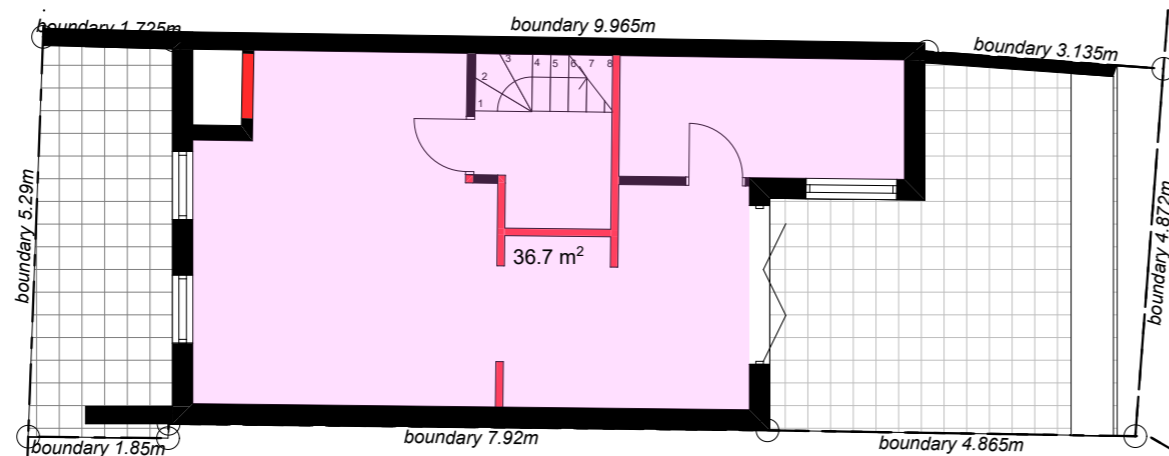
Areas - First Floor

SCALE 1:100



Areas - Ground Floor

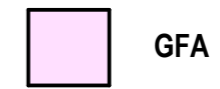
SCALE 1:100



Areas - Lower Ground Floor

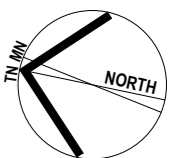
SCALE 1:100

Legend:



Area Calculation

Site Area	74.5m ²
Lower Ground	36.7m ²
Ground	36.2m ²
First	32.9m ²
Total	105.8m²
Proposed FSR	1.42:1



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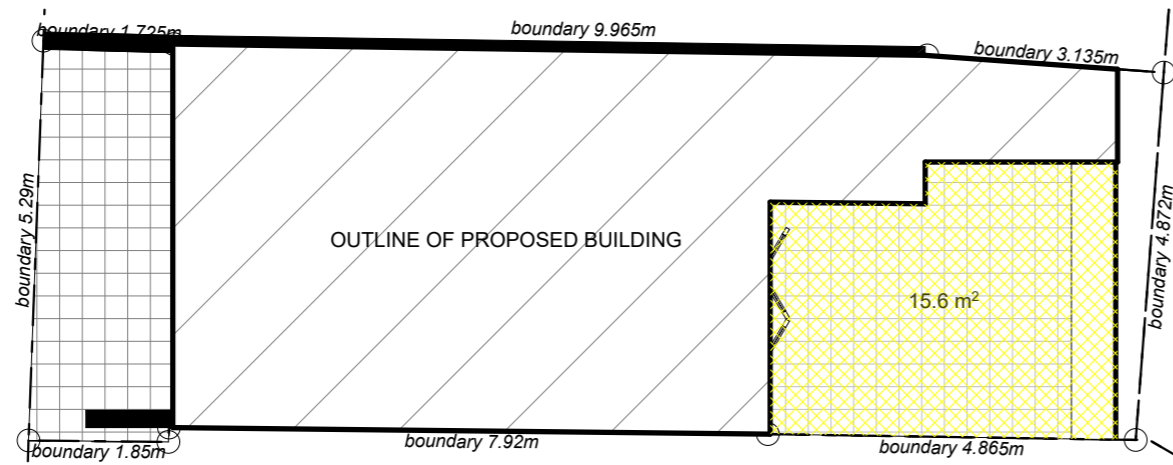
MAINTENANCE

Maintenance applies to all landscape materials installed by landscape contractor. Maintain area for 120 days, unless stated otherwise by council.

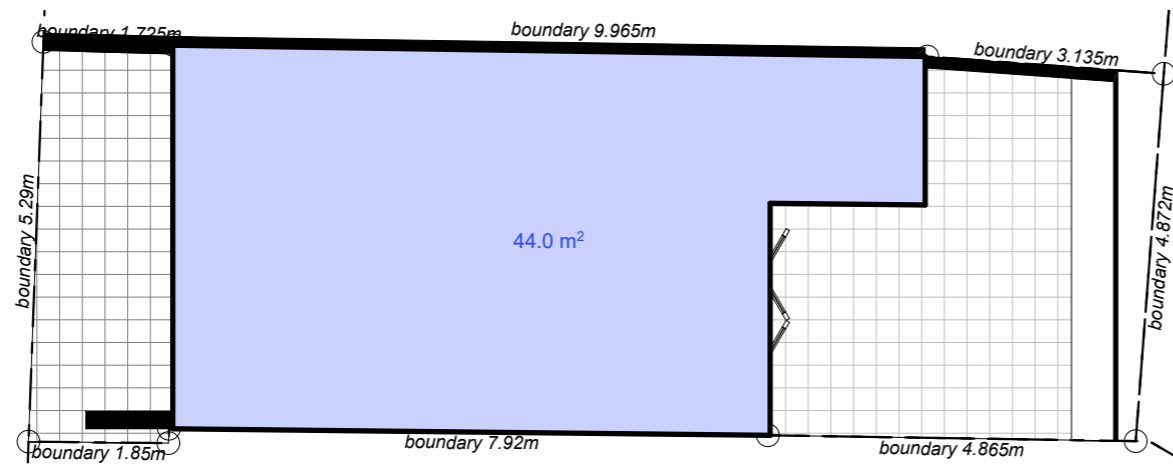
- water all garden areas, twice weekly
- remove all weeds
- replace plants which fail to establish with plants of similar size & quantity
- prune & shape plants where necessary
- make good any erosion
- make good defects which may occur
- remove rubbish weekly or as required
- lawn areas are to be mowed once grass has reached a height of 75mm

TREE PROTECTION

- a protection zone is to be established around tree(s) to be protected
- chain link (or similar) fencing to be installed around protection zone as far from the tree's base as the site allows
- protection zone shall be cleared of weed species and competitive vegetation
- protection zone is to be sign posted
- provide a permanent source of water to the tree
- mulch (75-100mm thick) to be placed on ground within fenced area.
- temporary irrigation to be provided within enclosure to enable water to be applied to the tree without entering the enclosure
- the tree to be watered twice weekly for 3 hours (unless weather conditions warrant variation)


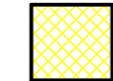


P.O.S Plan
SCALE 1:100



Site Coverage Plan
SCALE 1:100

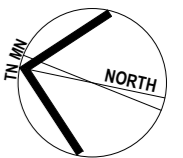
Legend:

 **Site Coverage**
 **P.O.S**

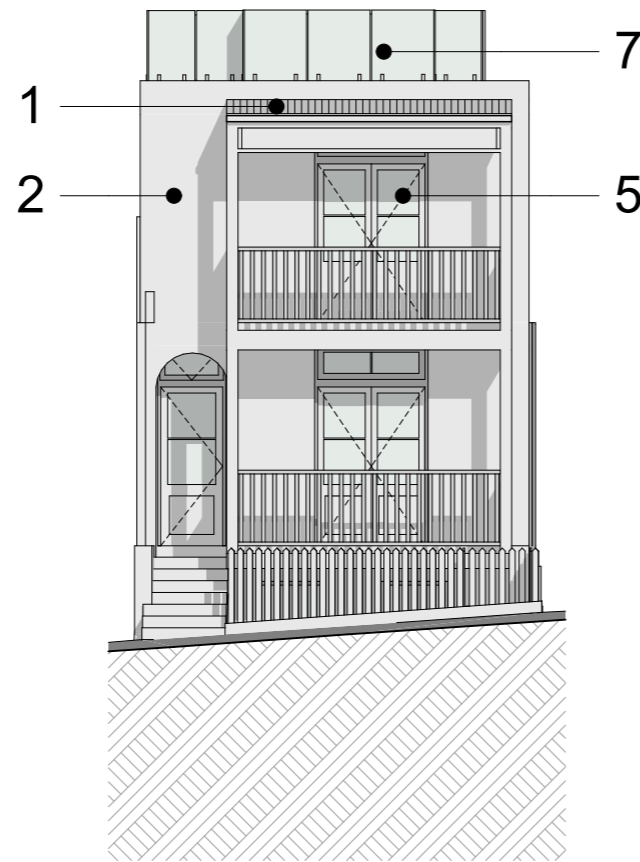
Site Area 74.5m²

Site Coverage
Proposed 44.0m²
% 59.1%

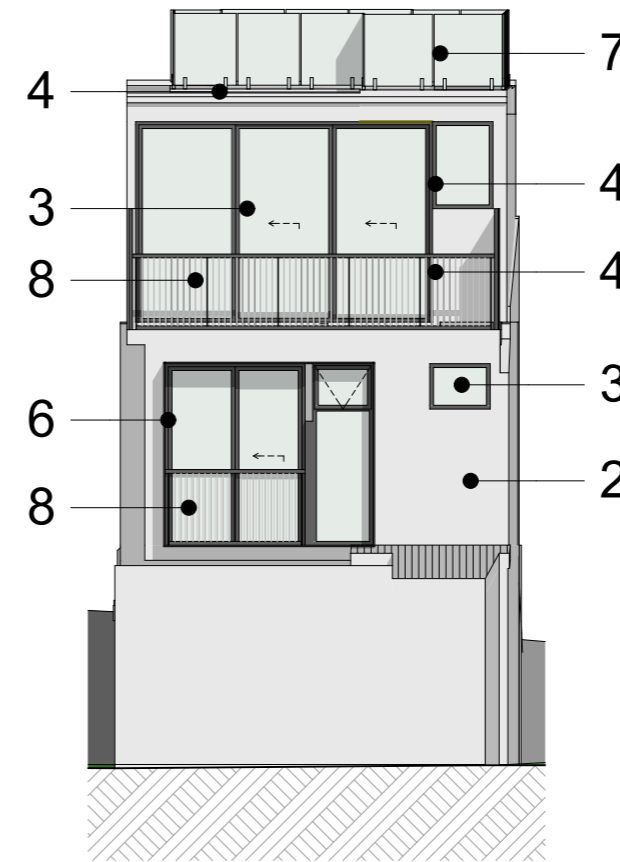
P.O.S
Proposed 15.6m²
% 20.9%



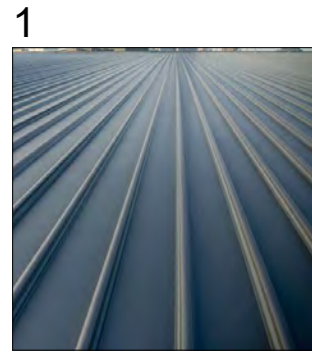
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North Elevation
SCALE 1:100



South Elevation
SCALE 1:100



1
metal deck roof sheeting



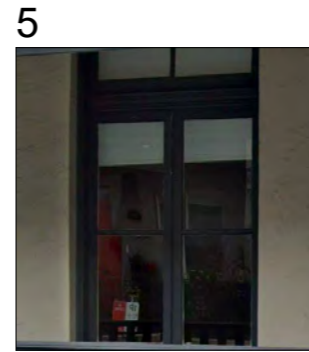
2
Paint finish
Dulux: Surfmist



3
Aluminium framed glazing



4
Dulux Monument



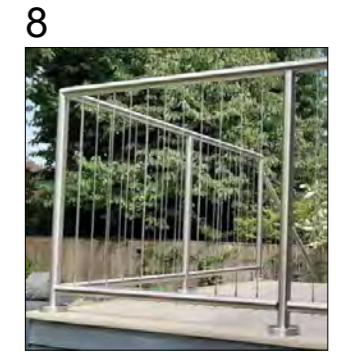
5
Timber framed glazing to match existing



6
Aluminium window surround to Dulux Monument



7
Frameless glass balustrade



8
Vertical steel wire balustrade



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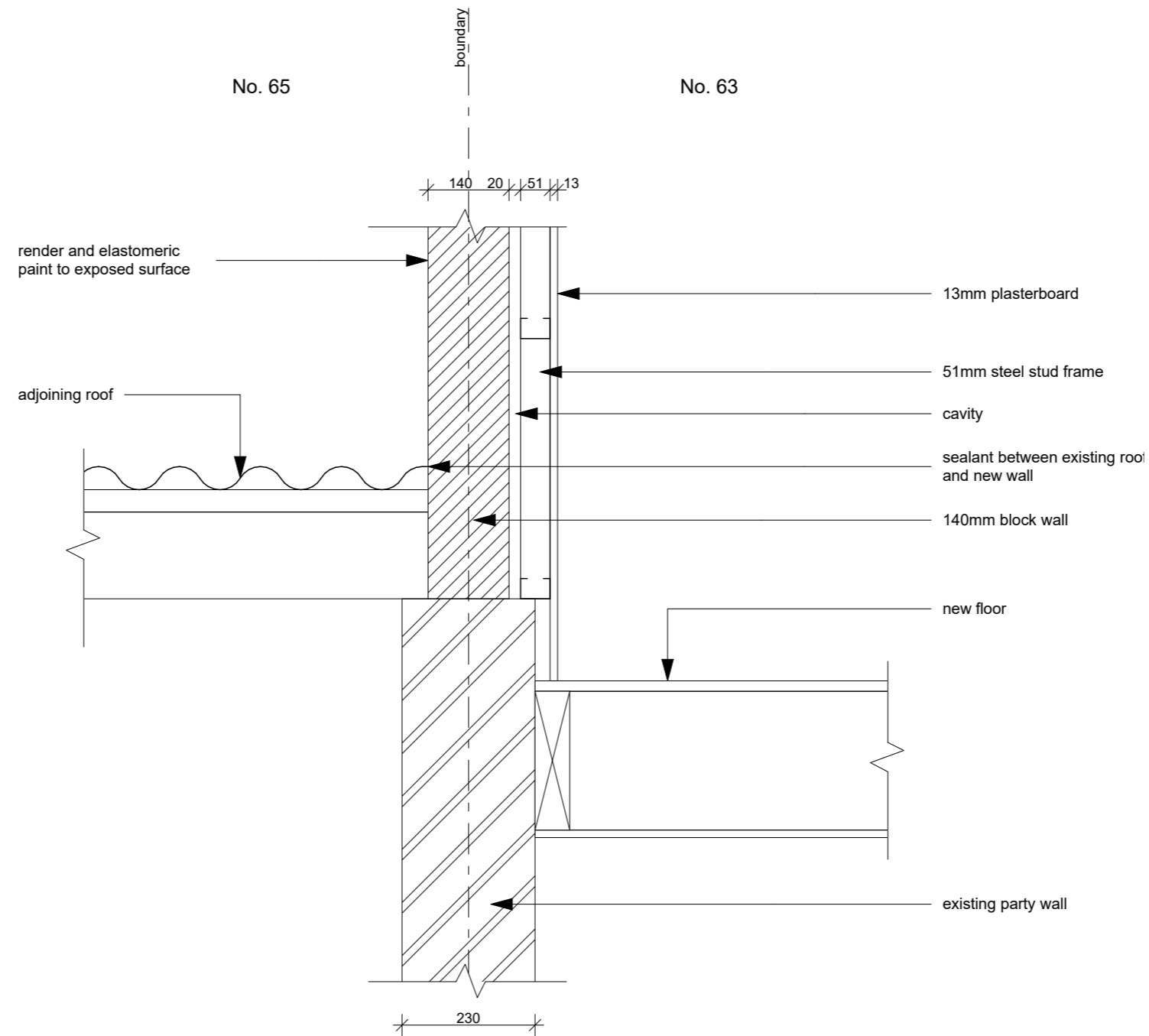
PROJECT:
Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

SHEET TITLE:
External Finishes

SCALE: 1:100 @ A3
DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA25 d



Party Wall Detail
SCALE 1:10

ISSUE	DATE	DESCRIPTION
A	14.09.2022	DA issue to council
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Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

SHEET TITLE:
Party Wall Detail 1

SCALE: 1:10 @ A3
DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA26 d



Party Wall Detail
SCALE 1:10

ISSUE	DATE	DESCRIPTION
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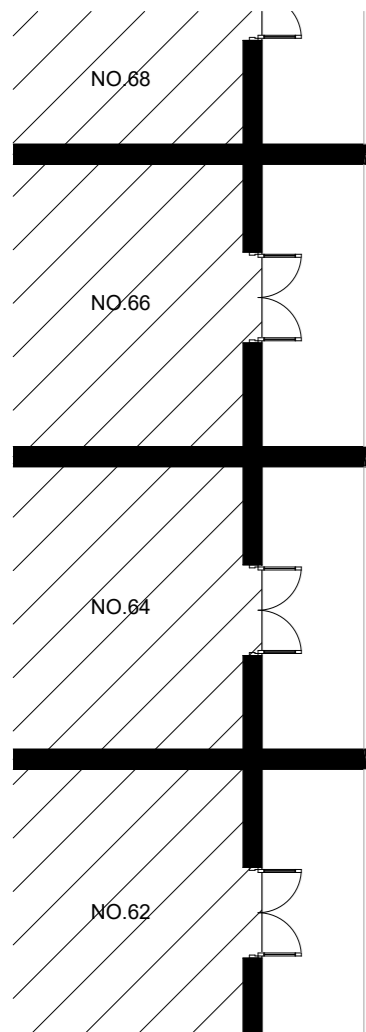
PROJECT:
Alterations & Additions
63 Victoria Street, McMahon's Point

CLIENT:
Leanne Misener
63 Victoria Street, McMahon's Point

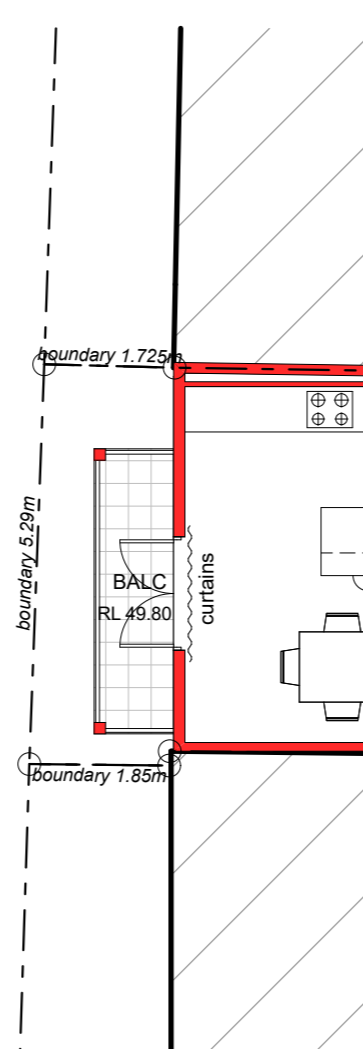
SHEET TITLE:
Party Wall Detail 2

SCALE: 1:10 @ A3
DRAWN: AndrewW

SHEET SIZE: DWG NO: REVISION:
A3 DA27 d



Sight Line Plan
SCALE 1:100



Sight Line Section
SCALE 1:100

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Clause 4.6 Report

Height of Building

63 Victoria Street, McMahons Point

Prepared by Barr Planning

for Leanne Misener

June 2023





Document Control

Title:	Clause 4.6 Variation Report
Address:	63 Victoria Street, McMahons Point
Job No.	22SYD0006
Client:	Leanne Misener

Document Issue

Issue	Date	Prepared by	Reviewed by
Draft 1	1/06/2023	Jack Varka	Samuel Liu
Draft 2	6/06/2023	Samuel Liu	Stephen Barr
Client Issue	8/06/2023		

Signed

A handwritten signature in grey ink, appearing to read 'sliu'.

Samuel Liu
Senior Planner
 BComm, MPlanning, MPIA

A handwritten signature in grey ink, appearing to read 'S Barr'.

Stephen Barr
Director
 BSurv (Hons), MPlan, MBus, PIA (Reg. Planner)

For queries about this report please contact

Samuel Liu
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 0402 768 552

V3.1

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 BARRPLANNING.COM.AU



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1 Introduction

1.1 Purpose

This Clause 4.6 Report has been prepared to support a proposed development for alternations and additions to an existing dwelling at 63 Victoria Street, McMahons Point. The report has been submitted to support the proposed non-compliance with the height of building development standard pursuant to the North Sydney Local Environmental Plan 2013 (NSLEP 2013).

The height of building for the subject site shown on the relevant NSLEP 2013 Map HOB_002 is 8.5 metres. The proposed height of the building is 9.98 metres which includes a 1 metre high transparent glass balustrade resulting in a 17% exceedance. Excluding the glass balustrade, the height of the building is 8.98 metres which results in a height exceedance of 0.48 metres or less than 6%.

Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant. The request must justify the contravention of the development standard by demonstrating under NSLEP 2013, Clause 4.6(3) that:

- a) *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) *That there are sufficient environmental planning grounds to justify contravening the development standard.*

An assessment of Clause 4.6 of NSLEP 2013 is provided in the following sections of this report. This Clause 4.6 Report should be read in conjunction with the following documentation:

- Architectural Plans prepared by Archispectrum
- Statement of Environmental Effects prepared by Corona Projects
- View Impact Assessment prepared by Barr Planning

2 Site Description

2.1 The Site

The site is located at 63 Victoria Street, McMahon's Point, and is legally described as Lot 1 in Deposited Plan 202869. The site is located on the southern side of Victoria Street, between Blues Point Road and Thomas Street.

The site is rectangular with a total area of 74.5m², with a 5.29 metres street frontage to Victoria Street. The site falls from Victoria Street towards Mitchell Street by approximately 1.7 metres. The site currently contains a two-storey rendered and clad building with a metal roof. The rear of the site is a paved courtyard. Vehicular access is not available to the site.

The site adjoins a two-storey residential building to the east at 65 Victoria Street and a three-storey building containing a mortgage advisor office to the west at 61 Victoria Street. The rear of the site is adjoined by a two-storey residential building at 50 Mitchell Street. Dwellings at 62-68 Victoria Street located opposite the site and the commercial office building at 61 Victoria Street adjoining the site to the west feature rooftop terraces, similar to what is proposed under this application.

The land is zoned E3 Productivity Support under the provisions of North Sydney Local Environmental Plan 2013 (NSLEP 2013). The site is not identified as a Heritage Item, nor is it located within a Heritage Conservation Area (HCA).



Figure 1 Locality Plan. Source: Nearmap 2023

3 Proposed Development and Compliance with North Sydney Local Environmental Plan 2013

The development application proposes alternations and additions to an existing residential dwelling. Specifically, the proposed development comprises partial internal demolition works, internal reconfigurations and the addition of a first floor and rooftop terrace to the existing building.

3.1 Zone Objectives

The site is zoned E3 Productivity Support zone under the NSLEP 2013 as shown in the figure below.

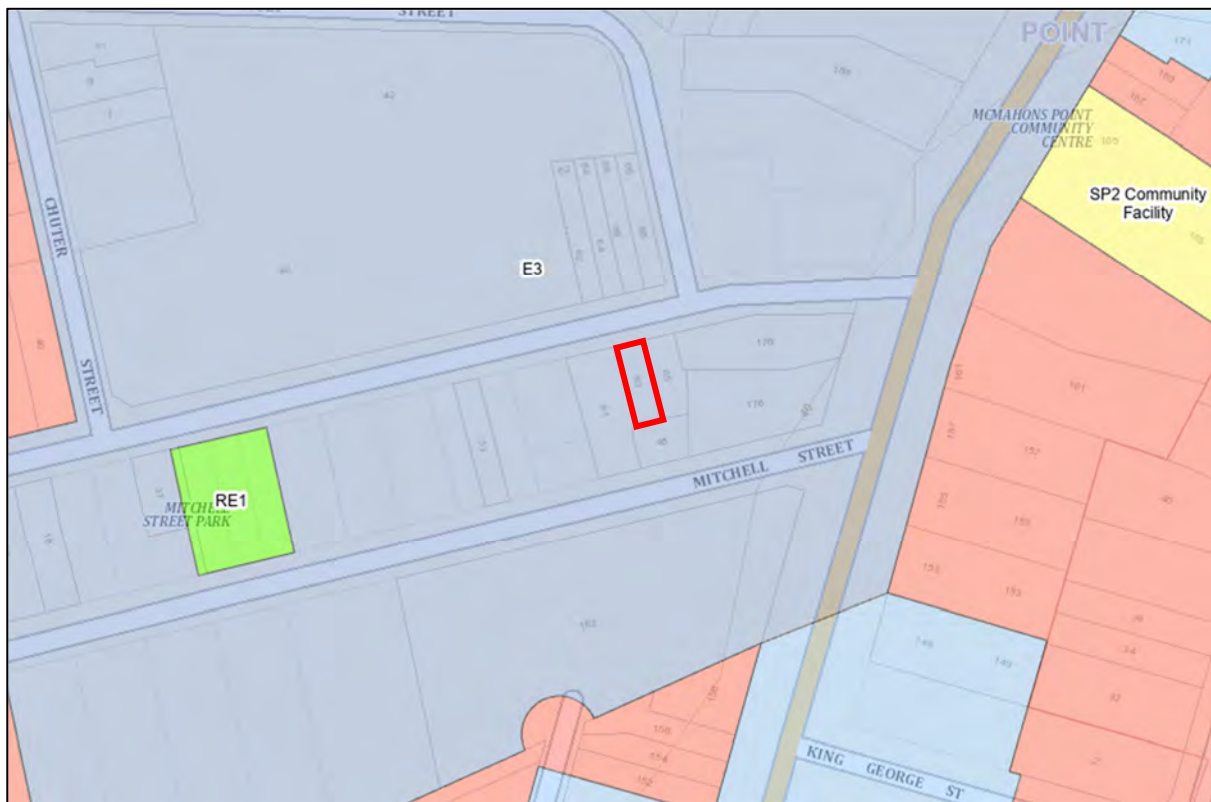


Figure 2 Land Zoning Map. Source: ePlanning Spatial Viewer 2023

The objectives of the E3 zone are stated below and have been assessed with respect to the proposed development. It is noted that objectives related to employment generating land uses are not relevant to the proposed development which relates to an existing residential use.

- *To provide a range of facilities and services, light industries, warehouses, and offices.*

The stated objective is not applicable to the proposed development which relates to alterations to an existing residential dwelling.



- *To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.*

The proposed development relates to alterations to an existing residential dwelling which supports the housing needs within McMahons Point locality. The proposal does not compete with land uses in the surrounding local or commercial centre.

- *To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.*

The stated objective is not applicable to the proposed development which relates to alterations to an existing residential dwelling.

- *To provide for land uses that meet the needs of the community, businesses, and industries but that are not suited to locations in other employment zones.*

The proposed development relates to alterations to an existing residential dwelling which supports the housing needs of the community within McMahons Point locality. It is noted that the proposal does not relate to employment uses.

- *To provide opportunities for new and emerging light industries.*

The stated objective is not applicable to the proposed development which relates to alterations to an existing residential dwelling.

- *To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight, or quantity or to sell goods manufactured on-site.*

The stated objective is not applicable to the proposed development which relates to alterations to an existing residential dwelling.

- *To encourage a mix of lower-scale housing types.*

The proposed development relates to alterations to an existing residential dwelling comprising a semi-detached dwelling which is considered to be a lower-scale housing type. The proposal is consistent with the intent to encourage lower-scale housing types within the zone.

- *To permit development that is compatible with the scale, intensity, and character of the surrounding residential area.*

The proposed development results in an additional floor and rooftop terrace to an existing residential dwelling at 63 Victoria Street. The development will present to Victoria Street as a two-storey

dwelling, noting that the existing lower ground floor is located at a lower level than the Victoria Street frontage and road reserve. Consequently, the development will be visually congruent with the scale and intensity of existing two-storey residential development located at 62-68 Victoria on the opposite side of street.

The external façade design of the additional floor will complement the character and built form of the existing dwelling and adjoining dwelling at 65 Victoria Street with a single centralised opening and symmetric terrace presentation with retention of the minor articulation zone on the Victoria Street frontage. The proposed introduction of a rooftop terrace is consistent with the character of the surrounding area, noting that rooftop terraces are characteristic of the area and are present at development located at 61 Victoria Street as well as 62-68 Victoria Street.

Based on the above, the development is consistent with the objectives of the zone.

3.2 Maximum Height Imposed by Clause 4.3 of NSLEP 2013

NSLEP 2013 Map HOB_002 map identifies the site as having a maximum height of 8.5 metres as shown in Figure 3 below.



Figure 3 Height of Building Map HOB_002. Source: NSLEP 2013

Clause 4.3(2) of the NSLEP 2013 states that:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.



The proposed height of the building is 9.98 metres which includes a 1 metre high transparent glass balustrade resulting in a 17% exceedance. Excluding the glass balustrade, the height of the building is 8.98 metres which results in a height exceedance of 0.48 metres or less than 6%.

3.3 Objectives of the Development Standards

Under the Environmental Planning and Assessment Act, 1979 (the EP&A Act) a development standard is defined as:

“provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being the provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development”.

The EP&A Act defines a development standard to include height of building. In this respect, the height of building specified in NSLEP 2013 is considered a development standard.

Consistency of the proposed development with the development standard and associated objectives of Clause 4.3 are a key consideration in determining whether to grant consent to a contravention of the development standard. The objectives of Clause 4.3 are outlined in sub clause (1):

- a) *To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- b) *To promote the retention and, if appropriate, sharing of existing views,*
- c) *To maintain solar access to existing dwellings, public reserves, and streets, and to promote solar access for future development,*
- d) *To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- e) *To ensure compatibility between development, particularly at zone boundaries,*
- f) *To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- g) *To maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.*

Notwithstanding the noncompliance of the development with the development standard, the development is considered to meet the objectives of Clause 4.3. An assessment of this is set out within Section 4 of this report.



4 Clause 4.6 – Exceptions of Development Standards

4.1 Objectives of Clause 4.6

Clause 4.6 of the LEP states the following:

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

Clause 4.3 is the development standard that relates to the height a development can be built to. Clause 4.6 provides flexibility in the application of this development standard, allowing for improved and consistent development outcomes.

The proposed development will enable the attainment of the relevant objects of the EPA Act, which are:

- (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.*

This development is most relevant to and consistent with the aims of objects ©, and (g) of the EP&A Act.



Regarding object (c), the proposed development promotes the orderly and economic use and development of land by facilitating alterations and additions to an existing residential dwelling which is a permitted use within the E3 zone. The development promotes development of land in a manner consistent with the zone objectives and objectives of the height of building development standard. Assessment of the proposed development against the zone objectives has been provided above. Assessment of the proposed development against the objectives of the development standard are provided in Section 4.3 of the report below.

Regarding object (g), the proposed development promotes good design and amenity of the built environment through the use of carefully considered architectural design which is sympathetic to the existing and surrounding streetscape. The proposal includes the use of a flat pitched roof design to minimise building height to an appropriate scale. The opaque built form elements of the proposed development have been designed to align with the height and built form elements of the commercial office building to the south of the site located at 162 Blues Point Road, McMahons Point to minimise additional view impacts within the view corridor.

The rooftop terrace has been designed to be centrally located within the roof area to minimise bulk and scale and reduce overshadowing and privacy impacts on adjoining properties. The development promotes the amenity of the built environment through considered material and finishes selection. The use of a transparent glass balustrade maintains the significant views to Sydney Harbour Bridge and the city skyline, minimises the impact on the surrounding views and reduces the impact on the solar access of adjoining residential development.

4.2 Applicability of Clause 4.6

The development standard in Clause 4.3 is not expressly excluded from the operation of Clause 4.6. Clause 4.6(2), therefore, grants the consent authority the discretion to consent to the proposed development despite the contravention of this development standard.

4.3 Considerations under Clause 4.6

The consent authority's consideration in determining whether to grant consent for development that varies a development standard are outlined in Clause 4.6(3) and 4.6(4) of the LEP. These considerations are addressed below:

Clause 4.6(3)(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Having regard for the guidance provided by Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), *Wehbe Method 1* has been here utilised to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances because the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.

The objectives of Clause 4.3 Maximum Height of Buildings are listed below along with an assessment against the objective.

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

The natural landform and gradient slopes downwards from the west to the east and to the south of the subject site. It is noted that the natural gradient and landform beneath the existing dwelling has been altered by prior development on the subject site. The site currently features a heavily excavated lower ground FFL (44.05m AHD) which is approximately 1.7 metres below the natural ground level of the Victoria Street road reserve.

When viewed from Victoria Street, the height of the rooftop glass balustrade is approximately 8.3m above the street level, which is below the perceived 8.5m height line shown in Figure 4 below. It is important to note that whilst the elevation shows the balustrade, the balustrade is setback on the roof, and is unlikely to be seen from the street. As such, the perceived height of the development when viewed from Victoria Street will be reduced, approximately 7.35 metres above street level to the top of the first floor parapet (53.10m AHD).

When considering the downward slope of the natural landform along the north-south axis of the site, the proposed development is sited in a manner which steps down in accordance with the natural gradient due to prior onsite excavation. Notwithstanding the height exceedance, the perceived height from the Victoria Street including the low likelihood of visibility of the rooftop balustrade demonstrates that the development responds to and reflects the natural landforms by stepping down to Mitchell Street on its southern elevation.

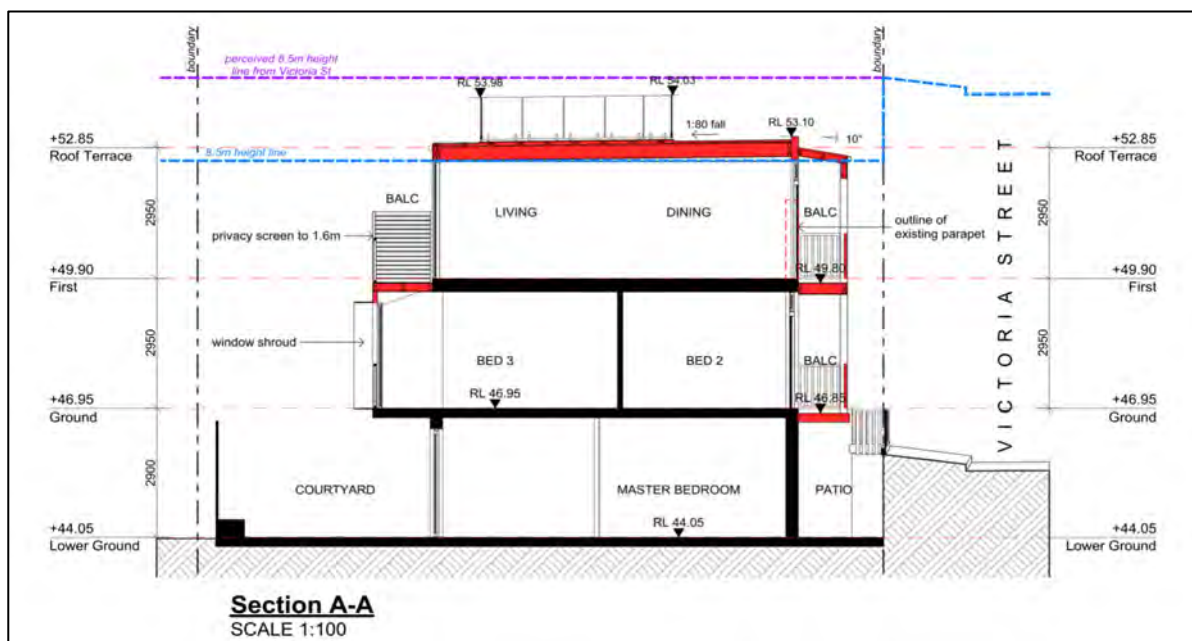


Figure 4 Section Plan with Perceived Height of Development from Victoria Street. Source: Archispectrum

The height of the proposed development also supports a stepped built form along Victoria Street on the east-west axis. The proposed development's building height steps down from 61 Victoria Street to 65 Victoria Street in accordance with the natural gradient as shown in Figure 5 below, demonstrating a stepped building height of 54.34m AHD, 54.03m AHD and 51.71m AHD respectively. The height of the proposed development from the Victoria Street is below the perceived 8.5m height line and is aligned with the building height development standard when the plane is overlaid in context with the Victoria Street landscape.



Figure 5 Perceived 8.5m Height on Northern Elevation. Source: Archispectrum

It is noted that there is a lack of continuity of height within the immediate vicinity of the proposed development. Development to the west of the subject site demonstrates inconsistency with stepped form with 47 Victoria Street being notably higher than 45 Victoria Street as shown in Figure 6 below. In contrast to this, the proposal will deliver a built form which steps in accordance with the natural gradient when viewed from the street level on Victoria Street as intended by the objective of the development standard.



Figure 6 Street View of 45 and 47 Victoria Street, McMahon's Point. Source: Author (July 2022)

b) To promote the retention and, if appropriate, sharing of existing views.

The proposed development's rooftop FFL has been carefully designed with a height which aligns with the roofline of the commercial building due south located at 162 Blues Point Road. Views towards the City skyline and Harbour Bridge will be preserved with visibility maintained through the proposed rooftop glass balustrade. A detailed View Impact Assessment (VIA) has been prepared by Barr Planning to assess the view impacts of the proposed development against the principles of *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. The VIA assessed the view impacts to residential properties located at 62-66 Victoria Street. The VIA concluded that impacts to rooftop terrace views will be negligible whilst impacts to first floor views will be minor. The proposed development hence promotes the retention or, and the equitable sharing of existing views. Refer to the View Impact Assessment prepared by Barr Planning for a detailed assessment of impacts to views.

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

The proposal includes the use of a flat pitched roof design to minimise the building height and has utilised a glass balustrade to minimise impacts on the solar access of adjoining development. Shadow diagrams have been included in the Architectural Plans prepared by Archispectrum to identify the impacts to solar access resulting from the proposed development. The shadow diagrams indicate the potential for solar access impacts to the residential dwelling located at Lot 2, DP1221964 to the south

of the site. Overshadowing will occur primarily to roof areas. No existing windows on the northern façade of the adjoining dwelling located at Lot 2, DP1221964 will be impacted by the proposed development.

The height of the proposed development is expected to impact solar access to the balcony of the dwelling located at Lot 2, DP1221964. This is identified to occur from 11:00AM onwards during the winter solstice. It is noted, however, that solar access to the dwelling's balcony is already significantly impacted due to being overshadowed by existing built form to the north and northwest of the site. The built form of the existing dwelling itself also obstructs the balcony's solar access from the east during the morning to midday hours. It is noted that the balcony comprises an area of approximately 5m², does not meet the private open space requirements under Council's DCP and comprises a narrow and small area with sub-optimal orientation for solar access. As such, the impact of the proposal on adjoining development is not considered to detract or adversely impact areas of solar access.

Having regard to the subject site, it is noted that the existing dwelling's kitchen and living area are located on lower ground floor, beneath the Victoria Street frontage and experience poor levels of solar access and amenity. The proposed development will promote improved solar access and amenity outcomes by relocating living and kitchen areas from the lower ground floor to the first floor of the dwelling. The proposed development will improve solar access to the internal living areas between the hours of 9am to 3pm to meet the solar access objectives of the DCP.

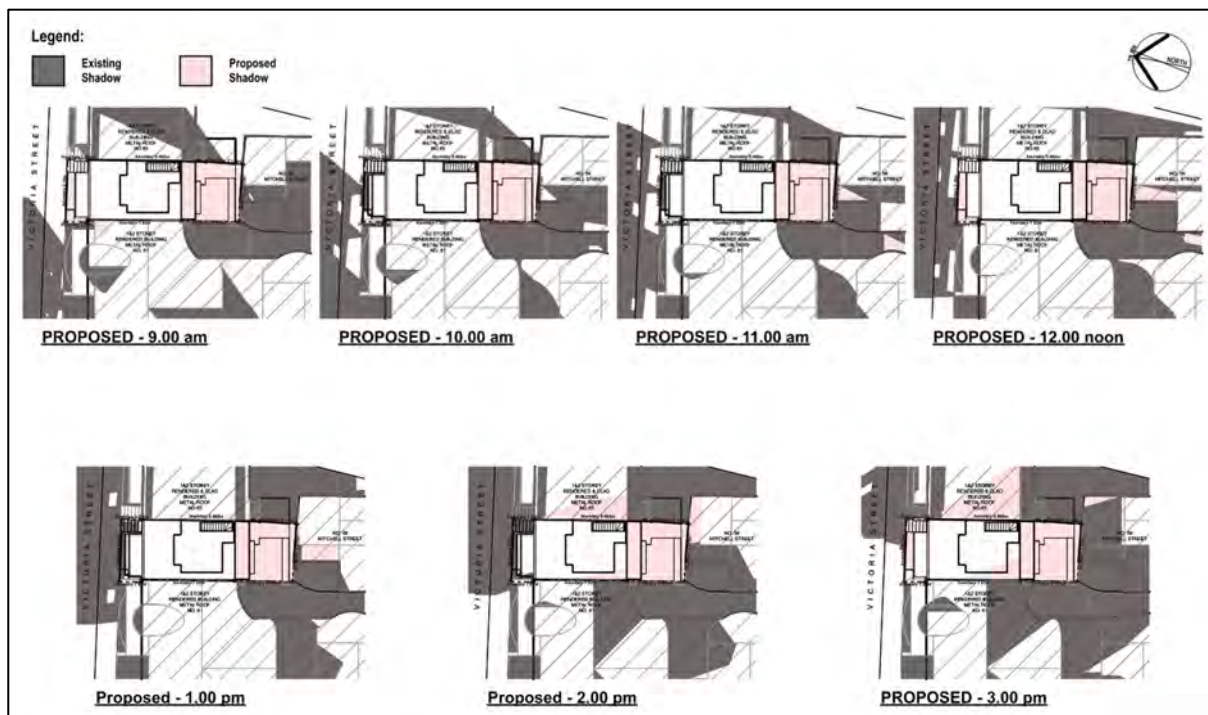


Figure 7 Proposed Development Shadow Diagram at Winter Solstice. Source: Archispectrum

- d) To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings.



The proposed rooftop terrace is centrally located on the roof area and is setback from the front boundary by approximately 4.5 metres and is setback from the rear boundary by approximately 5 metres. Setbacks will minimise overlooking and will maintain the privacy for residents of existing dwellings to the north and south of the site.

A lattice screen planting is proposed on the first floor front balcony to promote visual privacy of the development's first floor living room. The first floor rear balcony will implement privacy screens on the eastern and western elevations to support visual privacy of the proposed development from adjoining development. It is noted that the first floor rear balcony will be setback the same distance as the existing ground floor windows to the rear boundary and no additional privacy impacts are expected to occur to residential development to the south.

e) To ensure compatibility between development, particularly at zone boundaries.

It is noted that the proposed development is not located at a zone boundary. The proposed development will retain the existing use of the site as a residential dwelling and does not introduce any incompatibility of land use with adjoining development types.

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

The proposed development results in an increased scale and density on the subject site with the addition of a first floor and rooftop terrace to the existing residential dwelling. It is noted, however, that the development will present to the street as two storey dwelling, noting that the existing lower ground floor is located at a lower level than the Victoria Street frontage and road reserve. Consequently, the development will be visually congruent with the scale and density of existing two-storey residential development located at 62-68 Victoria on the opposite side of street.

When viewed from Victoria Street, the height of the rooftop glass balustrade is approximately 8.3m above the street level, which is below the perceived 8.5m height line shown in Figure 4 below. It is important to note that whilst the elevation shows the balustrade, the balustrade is setback on the roof, and is unlikely to be seen from the street. As such, the perceived height of the development when viewed from Victoria Street will be reduced, approximately 7.35 metres above street level to the top of the first floor parapet (53.10m AHD). The perceived height of the development from Victoria Street will be below the 8.5m height standard and will remain in character of the area.

It is noted that the proposed 17% variation from the maximum height is comparable to nearby sites. Both 40 Victoria Street, McMahons Point (DA350/21) and 23 Victoria Street, McMahons Point (DA230/20) demonstrate that properties along Victoria Street within the locality exceed their maximum building height by 11.88% and 20% respectively. This highlights that the proposal will not set an undesirable precedent within the locality as street is characterised by similar building heights to that of the proposal.



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

Whilst explicitly not applicable, the proposal will present to the street frontage as a two storey development which will remain consistent with the character of the neighbouring residential dwellings within the locality.

With respect to the above, notwithstanding the height exceedance, the proposed development satisfies the objectives of Clause 4.3 and as such compliance with the development standard is considered unreasonable or unnecessary.

Clause 4.6(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard

Relevant Local Environmental Plan

Guided by Section 4.15 of the EPA Act, the development is subject to consent in accordance with the NSLEP. The aims of the NSLEP include:

- 1) *This Plan aims to make local environmental planning provisions for land in North Sydney in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.*
- 2) *The particular aims of this Plan are as follows—*
 - a. *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
 - b. *to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment,*
 - c. *in relation to the character of North Sydney's neighbourhoods—*
 - i. *to ensure that new development is compatible with the desired future character of an area in terms of bulk, scale, and appearance, and*
 - ii. *to maintain a diversity of activities while protecting residential accommodation and local amenity, and*
 - iii. *to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries,*
 - d. *in relation to residential development—*
 - i. *to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access, and view sharing, and*
 - ii. *to maintain and provide for an increase in dwelling stock, where appropriate,*
 - e. *in relation to non-residential development—*
 - i. *to maintain a diversity of employment, services, cultural and recreational activities, and*



- ii. *to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and*
 - iii. *to maintain waterfront activities and ensure that those activities do not adversely affect local amenity and environmental quality,*
- f. *in relation to environmental quality—*
 - i. *to maintain and protect natural landscapes, topographic features, and existing ground levels, and*
 - ii. *to minimise stormwater run-off and its adverse effects and improve the quality of local waterways,*
- g. *to identify and protect the natural, archaeological, and built heritage of North Sydney and ensure that development does not adversely affect its significance,*
- h. *to provide for the growth of a permanent resident population and encourage the provision of a full range of housing, including affordable housing.*

The proposal is consistent with the aims of the NSLEP, in particular the following aims:

- *(b) to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment.*

The proposal promotes development that is appropriate for its context by providing a carefully considered and high quality architectural design which is responsive to its local and surrounding context. As aforementioned, the aligns the height of the development's rooftop FFL with the building height of the commercial office building to the south located at 162 Blues Point Road to ensure that no additional opaque built form elements obscure views to areas of significance and value. The visual amenity of adjoining residential development is also maintained through the considered use of materials and finishes, with a transparent glass balustrade maintaining views within the view corridor to areas of high significance including Sydney Harbour Bridge and the city skyline. The development presents as a two-storey development which is visually congruent within the streetscape and compatible with the character of the locality.

- *(d)(i) to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access, and view sharing.*

The proposed height exceedance does not adversely affect residential amenity in terms of visual or acoustic privacy. The rooftop terrace has been centrally located on the roof of the building with setbacks to the front and rear boundary which minimise overlooking and maintain the privacy of residential dwellings located to the north and south. First floor balconies have incorporated privacy screens, lattice screen plantings and adequate setbacks to maintain visual privacy to adjoining residential development.

The solar access impacts have been considered. It is noted that the proposal is expected to primarily overshadow existing roof areas and will not impact solar access of any existing windows of adjoining



residential development. The proposal has the potential to impact solar access of an existing balcony located at Lot 2, DP1221964, however this is noted to be already significantly impacted by overshadow due to existing built form and comprises a small area (5m²) with sub-optimal orientation for solar access. As such, the impact of the proposal on adjoining development is not considered to detract or adversely impact areas of solar access.

The impacts of the proposal relating to view sharing are considered negligible or minor and have been thoroughly assessed in the View Impact Assessment prepared by Barr Planning.

- *(h) to provide for the growth of a permanent resident population and encourage the provision of a full range of housing, including affordable housing.*

The proposed development will facilitate an additional bedroom to an existing residential dwelling and will support growth of the permanent residential population in McMahons Point.

With respect to the proposed development, it is considered that the proposal meets the relevant aims of the NSLEP.

Existing Onsite Excavation

As identified above, the proposal seeks to demonstrate that strict compliance with the development standard is unreasonable and unnecessary. The site demonstrates existing onsite excavation which provides basis for the proposed height exceedance. In the judgement of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, a similar variation to maximum building height was proposed that included pre-existing excavation. The case noted that:

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

It is considered that this application proposes a height variation under similar conditions, that is due to excavation within the footprint of the existing building. When considering the topography of the natural landform and an overlay of the plane of the building height development standard over the natural gradient, the perceived height of the building from Victoria Street is below the 8.5m height limit and should not be refused notwithstanding the height exceedance.

Other Environmental Planning Grounds

The Clause 4.6 Report has considered and assessed environmental planning grounds including view impacts, amenity, character, privacy and solar access to support the proposed height exceedance. It is considered that there are sufficient environmental planning grounds to support the proposed height exceedance as detailed in this report.



Clause 4.6(4)(a)(i) and (ii) The applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

Whether the proposal is in the public interest can be assessed by its compliance with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The assessment contained within Section 3 and 4 of this report has demonstrated that the proposal is consistent with both the objectives of the standard within Clause 4.3 of the NSLEP and the objectives for development within E3 Productivity Support zoning. Accordingly, the consent authority can be satisfied that the development is in the public’s interest.

Clause 4.6(4)(b) The concurrence of the Secretary has been obtained

Further to the considerations above, Clause 4.6(4)(b) states that the concurrence from the Secretary must be obtained for the contravention of this development standard.

In this case, concurrence from the Secretary is applicable according to the planning circular ‘Variations to development standards’ PS18-003 Issued 21st February 2018. The circular states that:

All consent authorities may assume the Secretary’s concurrence under:

- *Clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plans) Order 2006 or any other provision of an environmental planning instrument to the same effect, or*
- *State Environmental Planning Policy No 1 – Development Standards.*

The circular specifically states that:

The Secretary’s concurrence may not be assumed by a delegate of council if:

- *The development contravenes a numerical standard by greater than 10%; or*
- *The variation is to a non-numerical standard.*

The height of the proposed development at its highest point is 9.98 metres which exceeds the development standard of 8.5 metres by approximately 17%. Planning Secretary concurrence cannot be assumed.

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

There are no significant matters for State or regional environmental planning that will be affected by the contravention of this development standard for this development.

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

There is little to no public benefit from maintaining the development standard as it will prevent the orderly and economic use and development of land for alterations to an existing residential dwelling which has demonstrated compliance with the objectives of the development standards and demonstrated suitable environmental planning grounds for variation to the height control.

The development is permitted on the subject site under the NSLEP and is consistent with the E3 zone objectives. The proposed development is consistent with the character and the intended built form of the surrounding area.

Council has previously approved variations to the height of building development standard within the locality of the subject site including both 40 Victoria Street, McMahons Point (DA350/21) and 23 Victoria Street, McMahons Point (DA230/20) which exceeded their maximum building height by 11.88% and 20% respectively. The proposal does not set an undesirable precedent within the locality as the street is characterised by similar building heights to that of the proposal. Contravening the height of building development standard is not considered to have a detrimental impact on the development of the surrounding area or neighbouring sites, as assessed above. As such, it is concluded that there is little to no public benefit in maintaining the development standard.

5 Conclusion

The relevant considerations of Clause 4.6 have been discussed above and support the variation of the development standard in this instance. This report has systematically addressed the matters required to be demonstrated by Clause 4.6(3), and satisfied the considerations required to be made by Council under Clause 4.6(4)(a)(i). The deviation from the prescribed height is consistent with the zone objectives and the objectives of the development standard Clause 4.3, and North Sydney Council may be satisfied that it is in the public interest pursuant to Clause 4.6(4)(a)(ii).

In accordance with the requirements of sub-clause 4.6(4), development consent may be granted for the proposed development.



View Impact Assessment 63 Victoria Street, McMahon's Point

13 June 2023

North Sydney Council
200 Miller Street
North Sydney, NSW 2060

This letter has been prepared by Barr Planning of behalf of Ms Leanne Misener in support of Development Application DA357/22 lodged with North Sydney Council for alterations and additions to an existing residential dwelling. This letter should be read in conjunction with other documentation the subject of the DA including:

- Architectural Plans prepared by Archispectrum
- Statement of Environmental Effects prepared by Corona Projects
- Clause 4.6 Report prepared by Barr Planning

In the assessment of development applications relating to view impacts, the NSW Land and Environment Court rely on the principle of *Tenacity v Warringah Council (2004) NSWLEC 140* (Tenacity). The assessment of the proposal against this planning principle is provided below and responds to Part 1.3.6 Views, Section 1 Residential Development of the North Sydney Development Control Plan 2013.

The four steps in assessing view affectation are considered as follows:

- *Assessment of the Views Affected*
- *From What Part of the Property are the Views Obtained*
- *The Extent of the Impact*
- *The Reasonableness of the Proposal*

It is noted that we have not undertaken an inspection of nearby properties and our assessment has relied on an inspection of the subject site, aerial photography, and photographs. The properties affected by view impacts are specifically related to 62, 64, and 66 Victoria Street, McMahon's Point. North Sydney Council has provided photographs of the existing views captured from the front balconies and rooftop terraces of the affected properties which have been included in the assessment. The subject view consists of views onto the Sydney Harbour Bridge, Sydney Opera House and the city skyline.

1. Assessment of the Views Affected

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g., of the Opera House, the Harbour Bridge or North Head) are valued more highly than views

without icons. Whole views are valued more highly than partial views e.g., a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The subject site is located at Lot 1, DP202869 otherwise known as 63 Victoria Street, McMahons Point and is located within the local residential area of McMahons Point. The site is zoned E3 Productivity Support under North Sydney Local Environmental Plan 2013 and comprises a mix of medium density of commercial, retail and residential development with the various building's heights ranging from 2 to 8 storeys. Views across the immediate locality of the subject site are orientated east and south, towards Lavender Bay and Sydney Harbour. As the affected properties at 62-66 Victoria Street on the northern side of the street are topographically higher than the subject site, the view corridors are directly towards and over the subject site.

The properties at 62-66 Victoria Street, have three levels identified as ground and first floor and rooftop terrace. Each of these levels have been considered below.



Figure 1 View Corridor – 62-66 Victoria St. Source: Nearmap 2023

Rooftop Terrace Views

Views are attained from the rooftop terrace and First Floor bedrooms and balconies, however this section relates only to the roof top terrace. Figures 2, 3 and 4 below demonstrate the view from rooftop terraces of 62, 64, and 66 Victoria Street respectively, which are all largely the same view.

The view is dominated by:

- whole views of the Sydney Harbour Bridge
- partial views of Sydney Opera House
- whole views of city skyline

Both the Harbour Bridge and Opera House are centrally located within the view corridor and directly in line with the subject site and are considered iconic views.

Views to the cityscape including Sydney Eye Tower and Crown Resort Tower are also present with oblique corridors towards Darling Harbour. Towards the east, oblique angles towards residential and commercial towers at North Sydney and Milsons Point can be seen however these views are partially blocked by large vegetation and trees. Sydney Harbour is also partially in view however is obscured by rooftops and vegetation in the foreground.

According to Tenacity, the view from the rooftop terraces can be characterised as:

- whole Iconic Views of Sydney Harbour Bridge,
- partial Iconic Views of Sydney Opera House, and
- partial Land-Sea interface views of Sydney Harbour.

These views are considered highly valuable and of high significance.



Figure 2 Existing View Corridor from Rooftop Terrace (Standing) - 62 Victoria St. Source: North Sydney Council



Figure 3 Existing View Corridor from Rooftop Terrace (Standing) - 64 Victoria St. Source: North Sydney Council

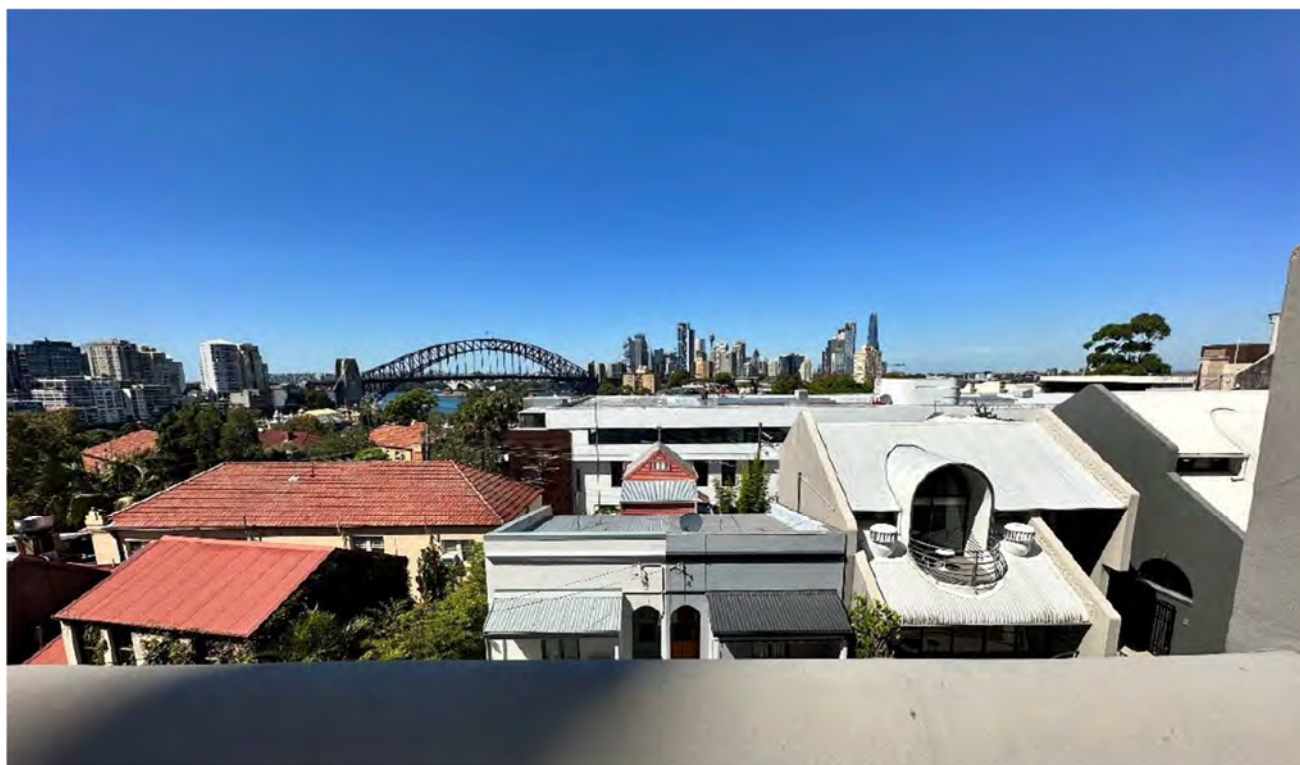


Figure 4 Existing View Corridor from Rooftop Terrace (Standing) - 66 Victoria St. Source: North Sydney Council

First Floor Views

First Floor views are observed from the bedroom and bedroom balcony of 62, 64, and 66 Victoria Street as shown in Figures 5, 6 and 7 respectively. Similar to that of the rooftop terrace perspective, First Floor views feature Sydney Harbour Bridge centrally within the view corridor. The view of the Harbour Bridge is considered a partial view, with only the northern pillar and north and upper portions of the arch visible.

The view is dominated by the dwellings on the southern side of the street, as shown in the image below, which are in the foreground of the image. The view of the Harbour Bridge and city skyline forms a narrow band through the centre of the image between the buildings in the foreground and the sky.

The Opera House is not visible from this perspective. Partial views of the Sydney City skyline are visible from 64 and 66 Victoria Street, however, are almost completely obstructed when viewed from 62 Victoria Street. Sydney Harbour is not visible as it is obscured by rooftops and vegetation in the foreground, and as such does not provide a Land-Sea interface view.

Towards the east, oblique angles towards the residential towers at Milsons Point can be seen however these views are partially blocked by large vegetation and trees. According to Tenacity, the view from the First Floor can be characterised as:

- partial Iconic Views of the Harbour Bridge only.

There is no Land-Sea interface visible from the First Floor. As per *Tenacity*, whole views are valued more highly than partial views and as a result. As such, the First Floor views are considered moderately significant.



Figure 5 Existing View Corridor from First Floor Level (Standing) – 62 Victoria St. Source: North Sydney Council



Figure 6 Existing View Corridor from First Floor Level (Standing) – 64 Victoria St. Source: North Sydney Council



Figure 7 Existing View Corridor from First Floor Level (Standing) – 66 Victoria St. Source: North Sydney Council



Figure 8 Existing View Corridor from Ground Floor Level (Standing) – 64 Victoria St. Source: North Sydney Council

Ground Floor Views

Ground Floor views look onto the existing residential properties fronting Victoria Street as shown in Figure 8 above. No views to Sydney Harbour Bridge, Sydney Opera House or the city skyline are visible and the views have no notable significance. No further consideration of Ground Floor views is provided in the following sections of this letter.

2. From What Part of the Property are the Views Obtained

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views from 62-66 Victoria Street are oriented towards the south and east and are observed from the front boundaries of the properties. Views from front boundaries are more reasonable to protect than views across side boundaries. Figures 2-7 provided by Council provide standing position views from First Floor balconies of the properties located at 62-66 Victoria Street. The views are not narrow or oblique in nature and are not the result of any unreasonable viewing positions. As established in Tenacity, standing views are considered easier to protect than sitting views.



Views from high traffic areas like living spaces, indoor and outdoor dining areas, and kitchens are considered more valuable than views observed from less trafficable rooms such as bedrooms, hallways, and bathrooms. The views gained from the affected properties are from First Floor bedrooms and adjoining balconies, and rooftop terraces. Whilst the views gained from the properties at 62-66 Victoria Street are considered standing views across the front boundary with moderate to high significance, they are observed from low traffic areas, being bedrooms. These are considered more difficult to protect in comparison to views gained from high traffic areas like a living area or kitchen.

The rooftop terrace area, based on aerial photographs appears to be outdoor open space which is accessible as a 2nd floor for the premises. While this area is to be considered a relatively low use area due to its exposed nature, it is recognised as an important part of the overall dwelling to provide private open space.

3. The Extent of the Impact

This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe, or devastating.

Rooftop Terrace View Impact

Rooftop terrace views obtained from 62-66 Victoria Street, as stated previously, represent highly valuable and significant views, which is characterised as an unobstructed Iconic Views of the Harbour Bridge, partial Iconic Views of the Opera House with partial Land-Sea interface views.

Due to the sloping topography of the locality, the affected properties are sited higher than that of the subject site. When viewed from the rooftop, the proposed development on the subject site will not pose any impact on views gained from the rooftop terrace, as seen in Figure 9 and 10 below.

The proposed development is located in the immediate foreground of the view corridor, however, due to the topography of the locality and the narrow scale of the proposed built form, the development will not impact on the view of the Harbour Bridge or Sydney Harbour. The proposal will impact views towards neighbouring properties and roofs in the foreground, which are not considered significant or valuable. The affected properties will maintain their existing Iconic and Land-Sea interface views and will maintain full viewing angle. As a result, the view impact of the proposed development on the rooftop terrace views is considered negligible.



Figure 9 Proposed View Corridor from Rooftop Terrace (Standing) – 64 Victoria St. Source: Photomontage Markey Group 2023



Figure 10 Proposed View Corridor from Rooftop Terrace (Standing) – 66 Victoria St. Source: Photomontage Markey Group 2023

First Floor View Impact – 62 and 64 Victoria Street

As identified above, First Floor views from 62 and 64 Victoria Street provide partial Iconic Views of the Harbour Bridge and City skyline. These views are considered valuable and of moderate significance.

The proposed development will result in the addition of a first floor and rooftop terrace to an existing residential dwelling. The proposed development rooftop FFL has been carefully designed to align with the roofline of the commercial building due south on Mitchell St and does not result any additional opaque built form elements obstructing First Floor views. The proposal includes a 1m high glass balustrade on the rooftop terrace, however, due to the transparent nature of the glass, the proposed impact on the established views is anticipated to be minimised. It should be noted that glass balustrades have been utilised to preserve views throughout the locality as shown in Figure 11.



Figure 11 Rooftop terrace with glass balustrade preserving views of the Harbour Bridge at 163 Blues Point Road. Source: Markey Group 2023

Views to the Harbour Bridge and skyline will be visible through the proposed glass balustrade and will result in minimal view impacts to First Floor properties at 62 and 64 Victoria Street. Refer to Figure 12 below for visual representation of view impacts. This consideration of views and the use of glass balustrade, as shown above is a proven response to managing view loss. This is clearly demonstrated in the image above.

The partial Iconic View, whilst valuable is noted to be observed from a bedroom and bedroom balcony, which are more difficult to protect compared to views from high traffic rooms. Partial Iconic Views also hold less value than views which are whole in nature. The partial Iconic View will be almost entirely maintained, with minor portions of the southern side of the Harbour Bridge arch to be visible through the proposed glass balustrade. The proposed First Floor view impacts to 64 and 62 Victoria Street are therefore considered minor.



Figure 12 Proposed View Corridor from First Floor Level (Standing) – 64 Victoria St. Source: Photomontage Markey Group 2023

First Floor View Impact – 66 Victoria Street

Like 62 and 64 Victoria Street, First Floor Level views at 66 Victoria Street present partial Iconic Views of the Harbour Bridge and city skyline including Sydney Eye Tower. These views are considered valuable and of moderate significance.

Due to the narrow and minor nature of the proposed development at the subject site, the increase in height will not affect the partial Iconic View enjoyed from 66 Victoria Street. First Floor standing views of the Harbour Bridge arch and City skyline will not be affected by opaque built form of the additional floor. Like 62 and 64 Victoria Street, views towards the City skyline will be visible through the proposed glass balustrade, with the increased height of opaque built form elements being carefully designed to align with existing roofline obstructions to the south within the McMahons Point foreground, as seen in Figure 13 below.

Due to the topography of the locality and the narrow scale of the proposed built form, the development will not impact on the view of the Harbour Bridge. The proposal will obstruct views towards neighbouring properties and roofs in the foreground, which are not considered significant or valuable. Partial views towards the City skyline will be largely maintained as existing, however will be viewed through the proposed glass balustrade. As the views impacted are not Iconic in nature, the proposed impact of the development to 66 Victoria Street is negligible.



Figure 13 Proposed View Corridor from First Floor Level (Standing) – 66 Victoria St. Source: Photomontage Markey Group 2023

In summary, the assessment of view impacts comes to the conclusion below.

62 Victoria Street

- Ground floor: negligible impact
- First Floor: minor impact
- Rooftop terrace: negligible impact

64 Victoria Street

- Ground floor: negligible impact
- First Floor: minor impact
- Rooftop terrace: negligible impact

66 Victoria Street

- Ground floor: negligible impact
- First Floor: negligible impact
- Rooftop terrace: negligible impact

4. The Reasonableness of the Proposal

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The proposed development results in a height exceedance to the 8.5 metre height of building development standard and a Clause 4.6 Variation Report prepared by Barr Planning has been separately prepared. The maximum height standard for the site is 8.5m, with the proposal exceeding the standard by 1.48m, representing approximately a 17% exceedance. It is noted that the height exceedance includes a 1m high transparent glass balustrade. Therefore, the height of the opaque proposed built form elements is limited to a 0.48m exceedance of the standard or just under 6%.

It should be noted that because of the local topography of the area, the lower ground FFL site is stepped approximately 1.7m below street level at Victoria Street. When viewed from Victoria Street, the perceived height of the proposal is 8.3m, which is below the 8.5m height standard as shown in Figure 14 below.

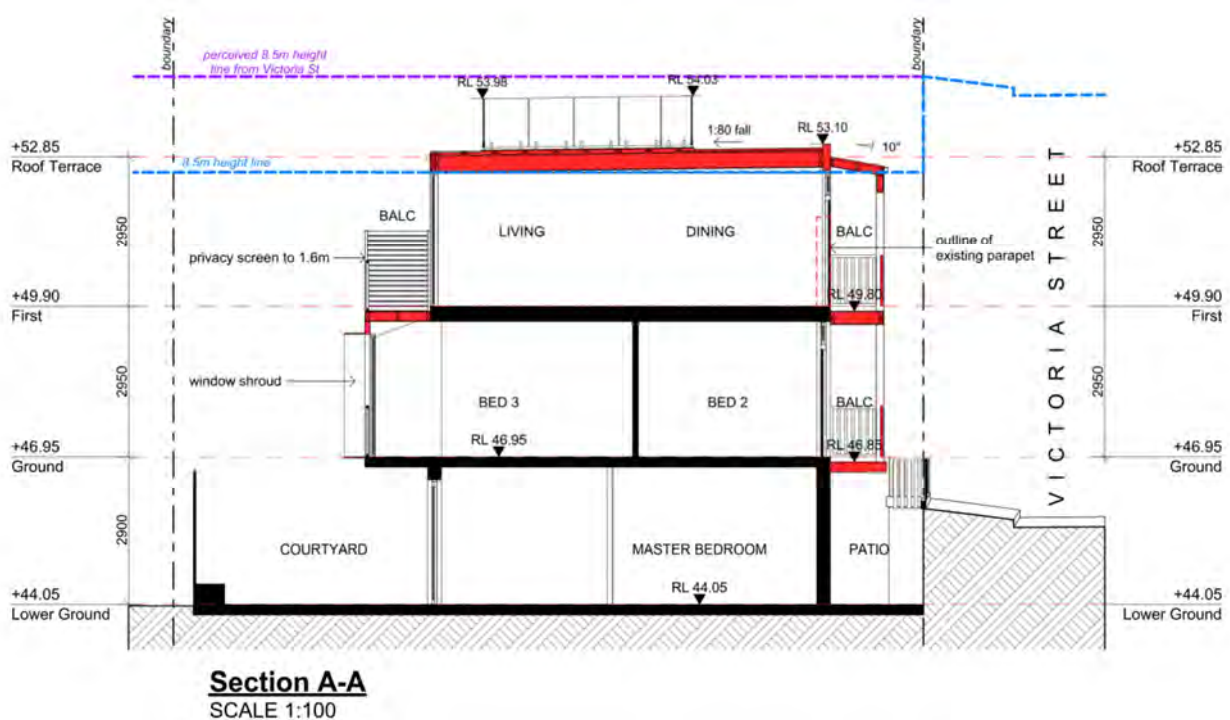


Figure 14 Section Plan with Perceived Height of Development from Victoria Street. Source: Archispectrum

In addition, it is important to note that the 8.5 metre height limit which is uniformly applied to Victoria Street under the LEP in the vicinity of the building and has been exceeded on many sites leaving heights of buildings



that are well above the 8.5 metre height limit and heights not being uniform in the locality. Two recent examples of this approved by Council are at 40 Victoria Street, McMahons Point (DA350/21) and 23 Victoria Street, McMahons Point (DA230/20) which exceed their maximum building height by 11.88% and 20% respectively.

As discussed in the previous section, the proposal has been carefully designed such that no opaque built form elements will pose any adverse impact on the existing views of the affected properties at 62-66 Victoria Street. Partial views towards the city skyline will be largely maintained as existing, and will be viewed through the proposed glass balustrade, for which there is precedent in the locality. The proposed development rooftop FFL has been carefully designed to align with the roofline of the commercial building due south on Mitchell Street and does not result any additional view impacts.

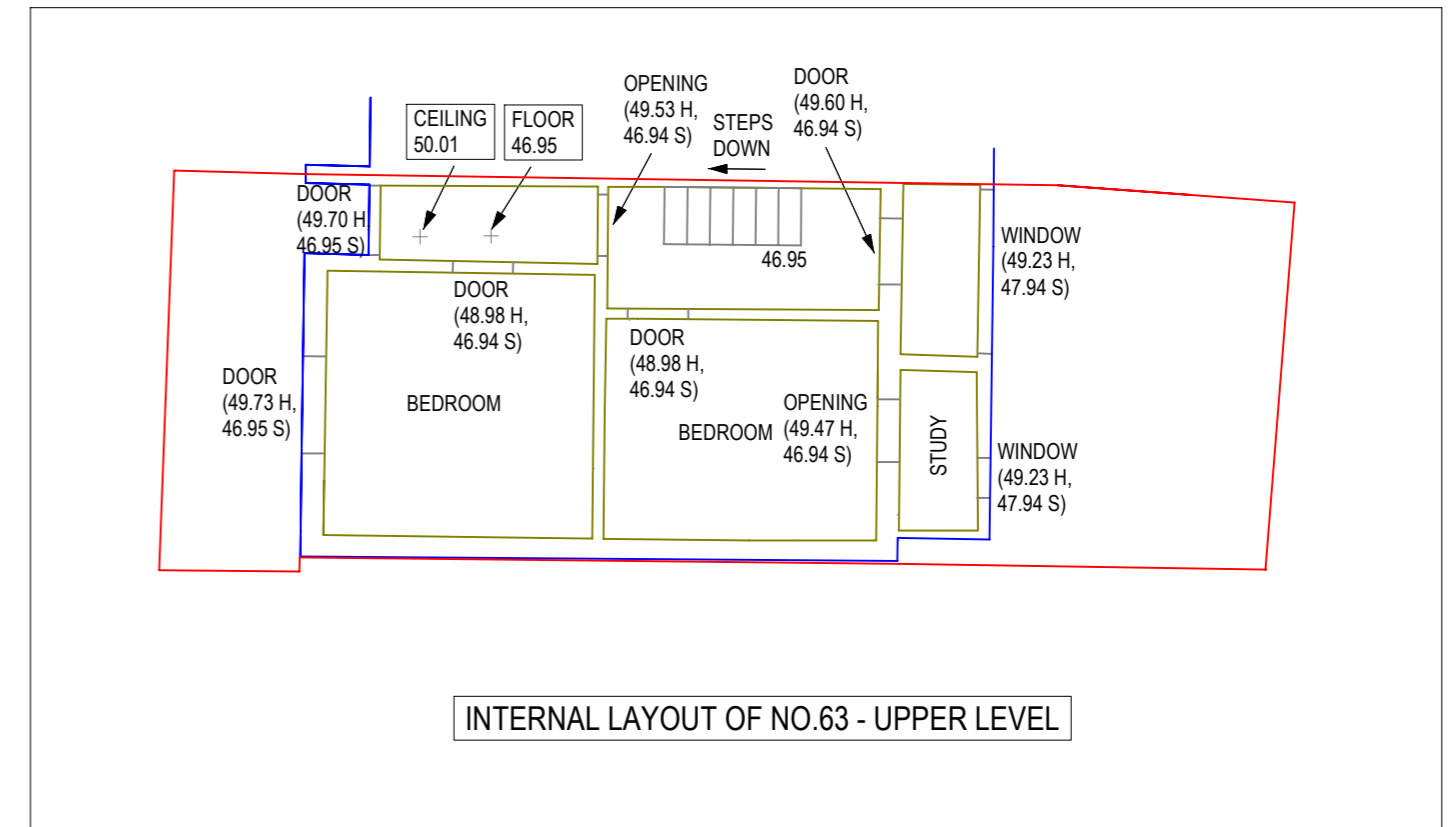
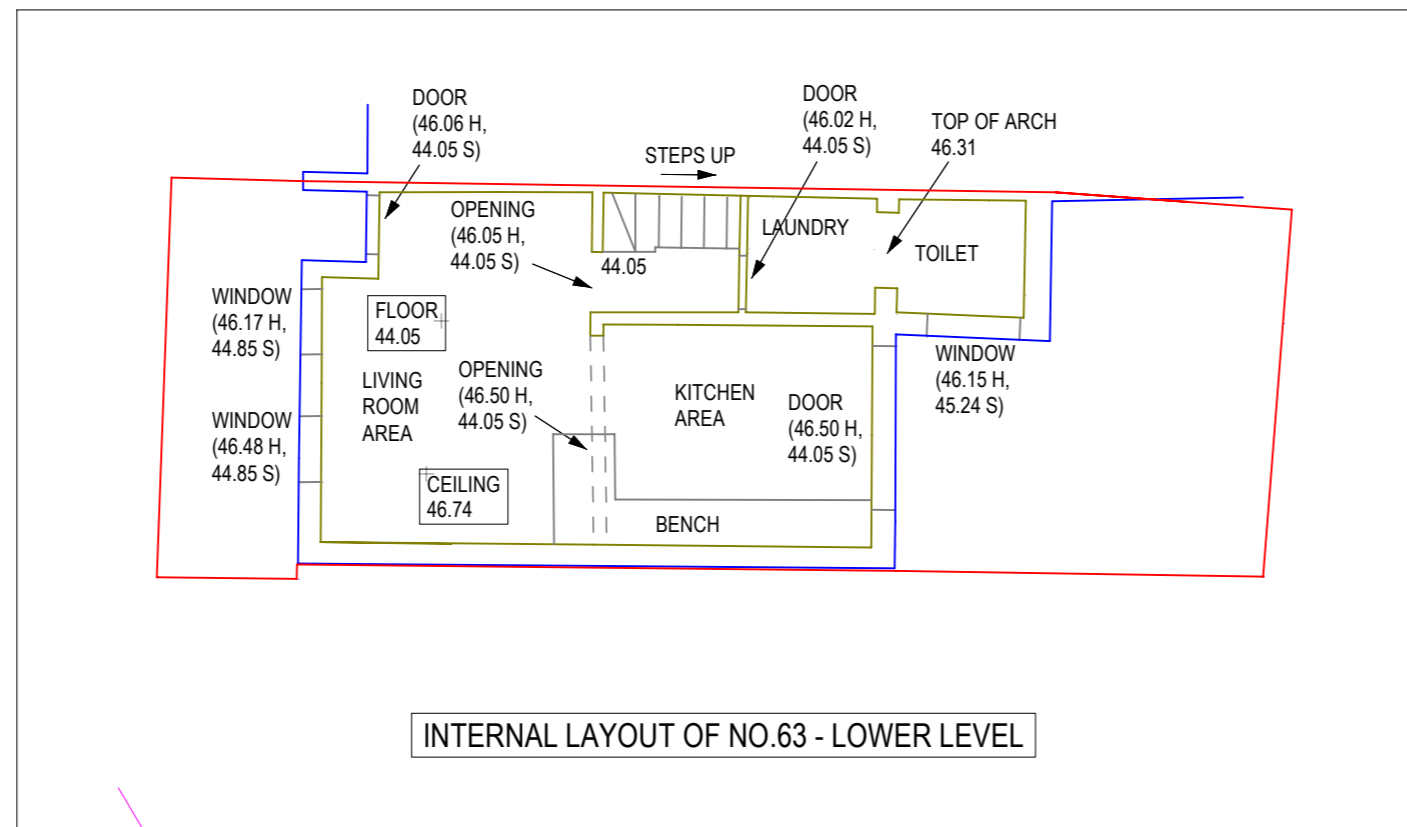
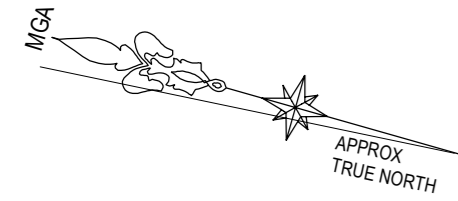
As concluded, the proposed impacts are considered negligible with regard to the rooftop terrace views, minor with regard to First Floor 62 and 64 Victoria Street views, and negligible with regard to First Floor 66 Victoria Street views. The proposed exceedance in height will not be perceived from the perspective of 62-66 Victoria Street, with existing views to be maintained as existing, however partially viewed through the glass balustrade. Therefore, it can be considered that the proposed development is considered reasonable notwithstanding the exceedance of the height standard.

If you have any queries regarding this information, please do not hesitate to contact Samuel Liu on 0402 768 552 or email sliu@barrplanning.com.au.

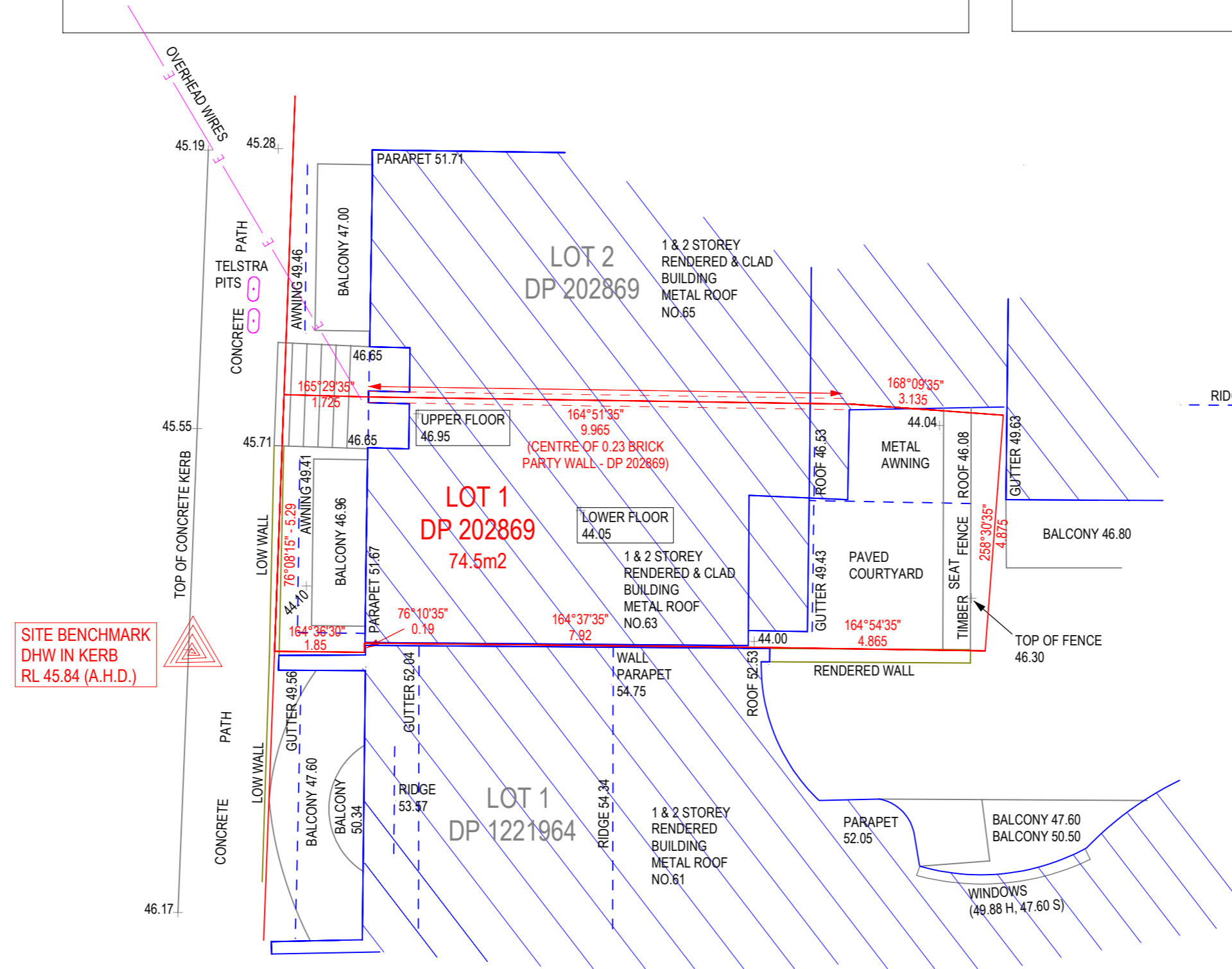
Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Barr', written over a light blue diagonal line that extends from the bottom left towards the top right of the page.

Stephen Barr
Director



VICTORIA STREET



- NOTES:
- LEVELS SHOWN ARE TO AUSTRALIAN HEIGHT DATUM. ORIGIN OF RL'S; PM 35766 - RL 42.078 (A.H.D.)
 - BEARINGS ARE ON MGA NORTH AS DERIVED BY DP 1221964
 - NO BOUNDARY SURVEY HAS BEEN COMPLETED. BEARINGS AND DISTANCES HAVE BEEN COMPILED FROM TITLE AND/OR DEED INFORMATION SUPPLIED BY DEPARTMENT OF LANDS NSW.
 - RELATIONSHIP OF IMPROVEMENTS AND DETAIL TO BOUNDARIES IS DIAGRAMMATIC ONLY AND SPECIFIC DETAILS, IF CRITICAL, WILL REQUIRE A FURTHER SURVEY - UNLESS OTHERWISE SHOWN.
 - WARNING: IF IS INTENDED TO ERECT ANY IMPROVEMENTS ALONG OR NEAR BOUNDARIES - EITHER FOR DESIGN OR BUILDING SET OUT - A SET OUT SURVEY SHOULD BE UNDERTAKEN.
 - NO SERVICES OR UNDERGROUND SERVICES SEARCH HAS BEEN UNDERTAKEN. SERVICES SHOWN ARE BASED ON VISIBLE SURFACE INDICATORS EVIDENT AT THE DATE OF SURVEY & ARE CHARTED AS A GUIDE TO THE POSITION & NATURE OF THE SERVICE. ALL SERVICE AUTHORITIES SHOULD BE CONTACTED PRIOR TO ANY DEVELOPMENT.
 - RIDGE, EAVE AND GUTTER HEIGHTS HAVE BEEN OBTAINED BY AN INDIRECT METHOD AND ARE ONLY ACCURATE FOR PLANNING PURPOSES ONLY.
 - ADJOINING BUILDINGS AND DWELLINGS HAVE BEEN PLOTTED FOR DIAGRAMMATIC PURPOSES ONLY AND SPECIFIC DETAILS, IF CRITICAL, WILL REQUIRE FURTHER SURVEY WORK.
 - THE DIAMETER, SPREAD AND HEIGHT OF EACH TREE IS INDICATIVE ONLY AND SPECIFIC DETAILS, IF CRITICAL, WITH REQUIRE FURTHER SURVEY WORK.
 - THIS DETAIL & LEVELS PLAN IS PROVIDED FOR THE PRIVATE & CONFIDENTIAL USE OF THE CLIENT MENTIONED ONLY AND CANNOT BE USED OR RELIED UPON BY ANOTHER PARTY.

NOTES ON SUBJECT TITLE (LOT 1 IN DP 202869)

- RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
 - BK 2579 NO 492 CROSS EASEMENTS (S.181B CONVEYANCING ACT, 1919)
 AFFECTING THE PARTY WALL ON THE COMMON BOUNDARY OF
 LOTS 1 AND 2 IN DP202869

THIS INFORMATION HAS NOT BEEN INVESTIGATED BY US
 BUT IS RECOMMENDED THAT IT BE CHECKED BY A SOLICITOR.

PROJECT : PLAN SHOWING DETAIL & LEVEL SURVEY
 OVER LOT 1 IN DP 202869
 AT NO.63 VICTORIA STREET,
 MCMAHONS POINT

CLIENT : LEANNE MISENER

DATUM : A.H.D. DATE : 24/12/2021

SHEET No. 1 OF 1 SHEETS

DRAWING No. : 21249

JOB REF : 21249 SCALE : 1:100

ALTITUDE SURVEYS
 PRECISION FROM THE GROUND UP

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IVAN BABIC
 NSW REGISTERED SURVEYOR
 REGISTRATION NUMBER - 1604