

**NSLPP MEETING HELD ON 06/03/24****Attachments:**

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

ADDRESS/WARD: 19 Walker Street, Lavender Bay**APPLICATION No:** DA 300/22**PROPOSAL:** Alterations and additions to existing dwelling house and removal of identified trees, including rear extension, internal reconfigurations, and alterations to garage rooftop.**PLANS REF:**

Plan No.	Rev No.	Description	Prepared by	Dated
DA100.1	B	Site Plan	Blake Letnic Architects	27/10/2023
DA101.1	A	Existing Lower Ground Plan	Blake Letnic Architects	29/06/2022
DA101.2	A	Existing Ground Plan	Blake Letnic Architects	29/06/2022
DA101.3	A	Existing First Plan	Blake Letnic Architects	29/06/2022
DA101.4	A	Existing Roof Plan	Blake Letnic Architects	29/06/2022
DA102.1	B	Proposed Lower Ground Plan	Blake Letnic Architects	27/10/2023
DA102.2	B	Proposed Ground Plan	Blake Letnic Architects	27/10/2023
DA102.3	B	Proposed First Plan	Blake Letnic Architects	27/10/2023
DA102.4	B	Proposed Roof Plan	Blake Letnic Architects	27/10/2023
DA103.1	B	Southern Elevation	Blake Letnic Architects	27/10/2023
DA103.2	B	Eastern Elevation	Blake Letnic Architects	27/10/2023
DA103.3	B	Northern Elevation	Blake Letnic Architects	20/02/2024
DA103.4	B	Western Elevation	Blake Letnic Architects	20/02/2024
DA104.1	B	Section AA	Blake Letnic Architects	20/02/2024
DA104.2	B	Section BB	Blake Letnic Architects	20/02/2024
DA104.3	B	Section CC + DD	Blake Letnic Architects	20/02/2024
DA106.1	C	Material Schedule	Blake Letnic Architects	20/02/2024
HDA01	P2	Site Plan & Legend	Inline Hydraulic Services	15/08/2022
HDA02	P2	Lower Ground Floor Plan	Inline Hydraulic Services	15/08/2022
HDA03	P2	Ground Floor Plan	Inline Hydraulic Services	15/08/2022
HDA04	P2	First Floor Plan	Inline Hydraulic Services	15/08/2022
HDA05	P2	Roof Plan	Inline Hydraulic Services	15/08/2022
HDA06	P2	Sediment & Erosion Control Plan	Inline Hydraulic Services	15/08/2022

OWNER: John Luchetti**APPLICANT:** Blake Letnic**AUTHOR:** Damon Kenny, Executive Assessment Planner**DATE OF REPORT:** 21 February 2024**DATE LODGED:** 5 October 2022**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

This development application seeks approval for Alterations and additions to existing dwelling house and removal of identified trees, including rear extension, internal reconfigurations and alterations to garage rooftop.

The application is reported to the North Sydney Local Planning Panel for determination as the applicant makes a request to contravene the building height development standard of 8.5m, prescribed by cl. 4.3 North Sydney Local Environmental Plan 2013 (the LEP) by more than 10%.

The request to breach the prescribed height maximum is examined by this report. The maximum height standard is 8.5m and the greatest degree of the breach 10.33m. The written request made pursuant to Clause 4.6 Exemptions to development standards in NSLEP 2013 demonstrates that compliance with the development standard is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation.

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

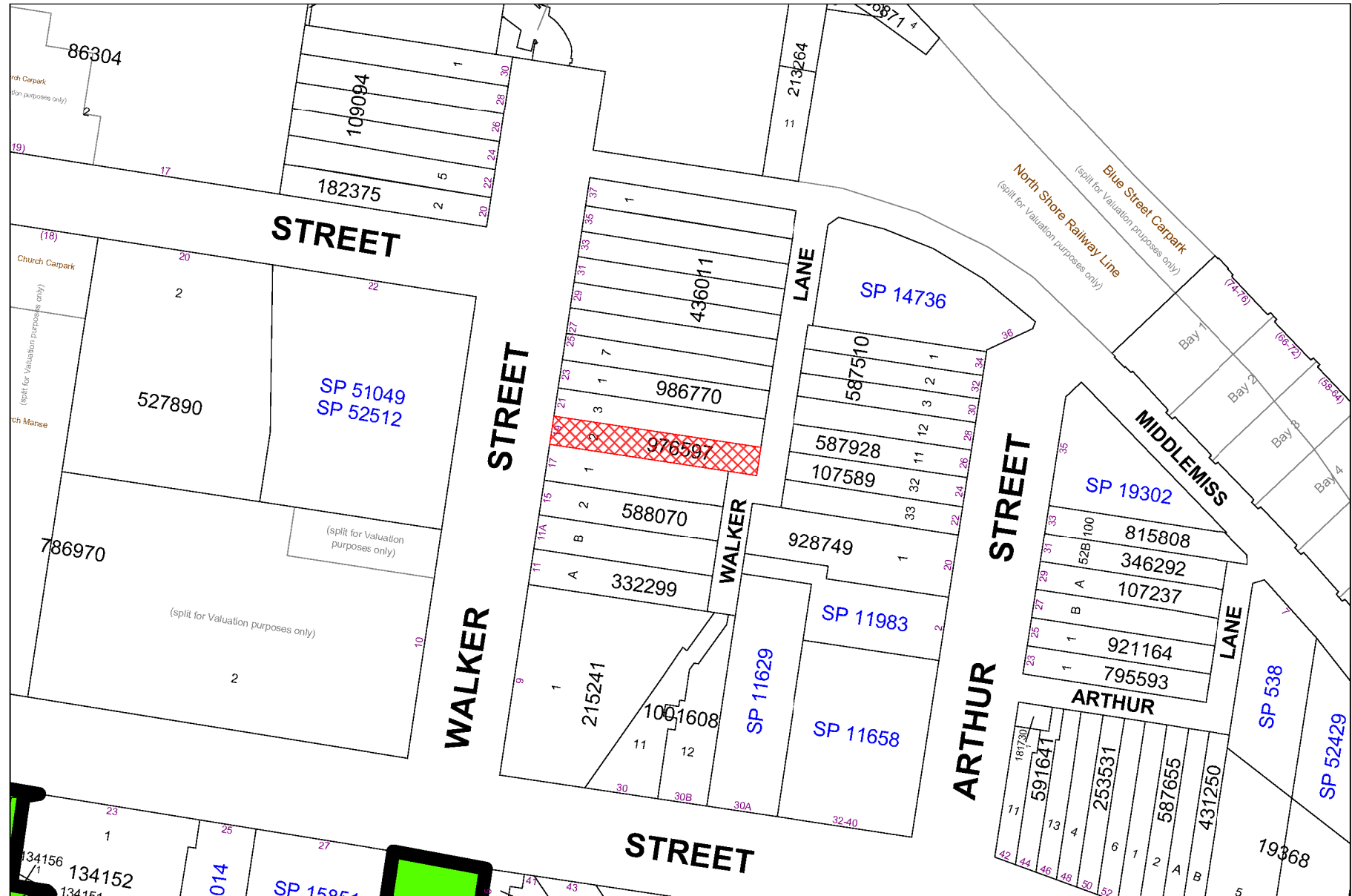
Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in any significant adverse impacts upon the locality or surrounding properties, and the significance of the respective heritage conservation area and the quality of the streetscape are maintained. The proposed development will also not result in any unreasonable impacts to the amenity of adjoining properties including impacts to views, overshadowing or loss of privacy.

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

The application was notified in accordance with the Community Engagement Protocol. Council received six (6) submissions.

Following this assessment and having regard to the provisions of S4.15(1) of the Environmental Planning & Assessment Act 1979, the application is recommended for approval for the reasons as set out in this report.

LOCATION MAP



Property/Applicant
 ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The application seeks consent for alterations and additions to existing dwelling house and removal of identified trees, including rear extension, internal reconfigurations, and alterations to garage rooftop. The proposed works are outlined below:

Garage

- External walls to be demolished and rebuilt.
- Existing garage door to be replaced with new metal door.
- Existing concrete roof to be demolished and a new finished floor.

Lower Ground floor

- Existing spiral stair to be demolished.
- Existing window to be replaced with new door.
- Pavers to be removed.
- Existing tree to be removed with a second tree to be lifted/transplanted on site.
- Existing brick steps to be removed.
- New external brick wall within rumpus room whilst within the addition the also the installation of a new glass block wall.
- New planter retaining wall.
- New paved and ramp providing access from garage to lower ground entry.
- New metal mesh garage door.

Ground floor

- External walls to be demolished and rebuilt.
- Existing garage door to be replaced with new metal door.
- Existing ground floor to be demolished with new floor to be rebuilt (FL to increase by 190mm) to align with the FL in the front of the dwelling.
- Existing windows and wall within the kitchen/dining to be replaced with door to service deck.
- Within the new addition, fire rated windows to be provided that will be obscure glazing.
- New glass block wall in accordance with BCA fire safety standards on the southern elevation of the ground floor addition.
- Identified internal walls to be demolished to open up corridor for linear circulation to living area.
- Existing floor void from demolished stairs to be replaced with new floor.
- Existing door leaf to be replaced with window sash to match existing condition.
- Skylight over dining area.
- Existing balcony and stairs to be demolished and replaced with new floor to connect main dwelling to garage rooftop including a new bridge.
- Existing tree to lifted/transplanted on site.
- Planter walls with boundary fence to match existing and additional planter within the boundary edge of the garage.

First floor

- New glass window to existing wall recess.
- New glass windows on the western elevation of the first floor balcony.
- New roof hatch and ceiling.
- Existing windows to be replaced to match existing windows.
- Existing storage room converted to master ensure with new skylight above.

- Sunroom walls and windows to be demolished.
- Existing Skylight to be removed.
- Glass floor/internal skylight to dining room below.
- New 3300mm floor structure at existing floor
- New balcony with steel balustrading
- New brick wall to boundary

Roof

- New roof with maintenance access from first level. Balcony through new access hatch.
- New roof extension to match existing roof pitch angle of 9.6 degrees.
- New parapets to align with existing façade parapet.
- New skylight to ensuite below and new skylight to master suite and living level below.
- Existing roof at the front of the building is to be demolished and rebuilt.
- Existing roof to the rear of the building to be demolished.

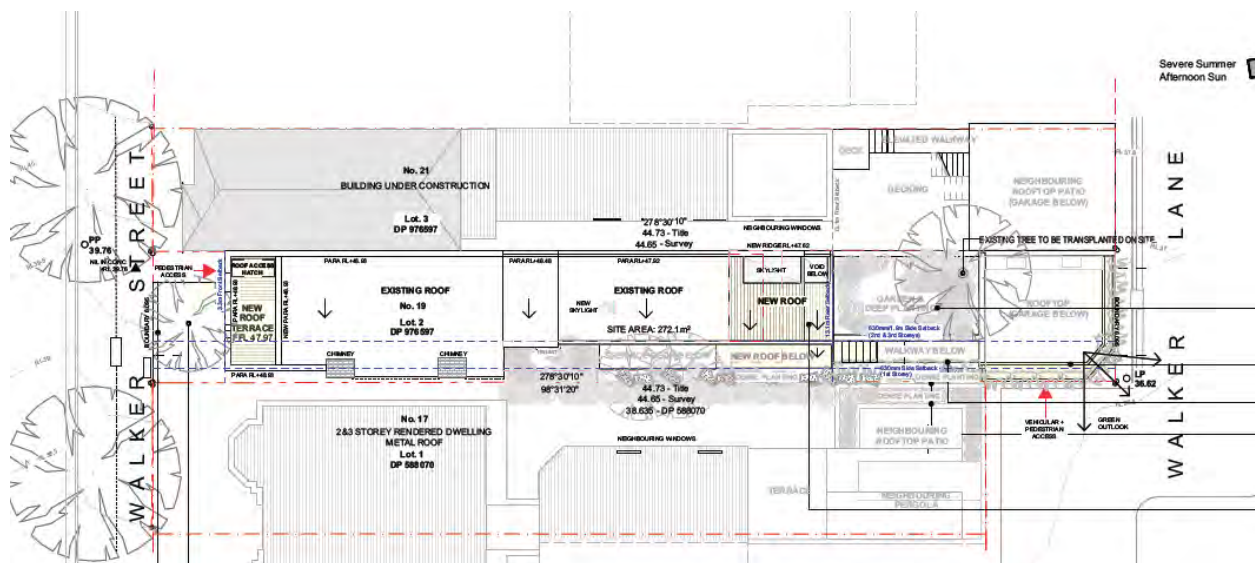


Figure 1: Site Plan (Blake Letnic Architects)

STATUTORY CONTROLS

North Sydney LEP 2013 (the LEP)

- Zoning – R3 Medium Density Residential
- Item of Heritage – Yes
- In Vicinity of Item of Heritage – Yes
- Conservation Area – Lavender Bay Conservation Area
- SEPP (Biodiversity and Conservation) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP (Building Sustainability Index: BASIX) 2004

POLICY CONTROLS

- North Sydney Development Control Plan (the DCP)
- North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF SITE & LOCALITY

The subject site 19 Walker Street, Lavender Bay (lot 2 in DP 976597) is located on the eastern side of Walker Street approximately 25m south from the intersection from Walker Street and MacKenzie Street, North Sydney

The site is a narrow regular shaped east-west oriented mid- block land parcel with a frontage of 6.095m to both Walker Street and Walker Lane, site depth of 44.73m resulting in a total site area of 272.1m².

On-site is a 2 storey dwelling house with lower ground floor to the rear. There is a small garden located within the front setback behind the iron palisade fence. To the rear there is a small courtyard/rear yard and a garage with an accessible rooftop situated along the eastern boundary. The garage is accessible from Walker Lane.

The primary elevation (western elevation) is characterised by a projecting tower bay on the northern side. The rear elevation has opening at first floor, ground floor and lower ground floor. A timber structure protrudes off the masonry building at first floor level. At ground floor level the rear veranda connects to a timber stairs down to lower ground level where the rear yard / courtyard is located.

The garage is located at the rear boundary along Walker Lane with a rooftop terrace above.

To the north of the subject site lies No. 21 Walker Street with a dwelling house. Continuing north, there are rows of historic and contemporary terrace style dwellings on either side of the street, however at the end of the street there is a tall hotel building and adjacent car park located at the intersection between Walker Street and Middlemiss Street.

To the south of the site lies No. 17 Walker Street, a Victorian Italianate terrace. The dwelling lies close to its common boundary with the site. The Western elevation to Walker Street, present as being three storeys in height and is highly intact with decorative features and details. To the west of the subject site lies a row of contemporary terrace style dwellings. This is illustrated by an aerial map of the immediate locality overleaf.

The dwellings along Walker Street are similar in massing, scale, style and date. Most dwellings are constructed on long narrow allotments, producing a pattern of closely spaced buildings.

The site is within walking distance to North Sydney City Centre, places of public worship, child care facilities and local parks/reserves. The locality is also well serviced by public transportation with North Sydney Train Station and bus stops with services to Lane Cove, Terry Hills, Lindfield, Northbridge, East Willoughby, Milsons Point with a 200m walking radius.



Figure 2: Site location (hatched in red)(IFM).

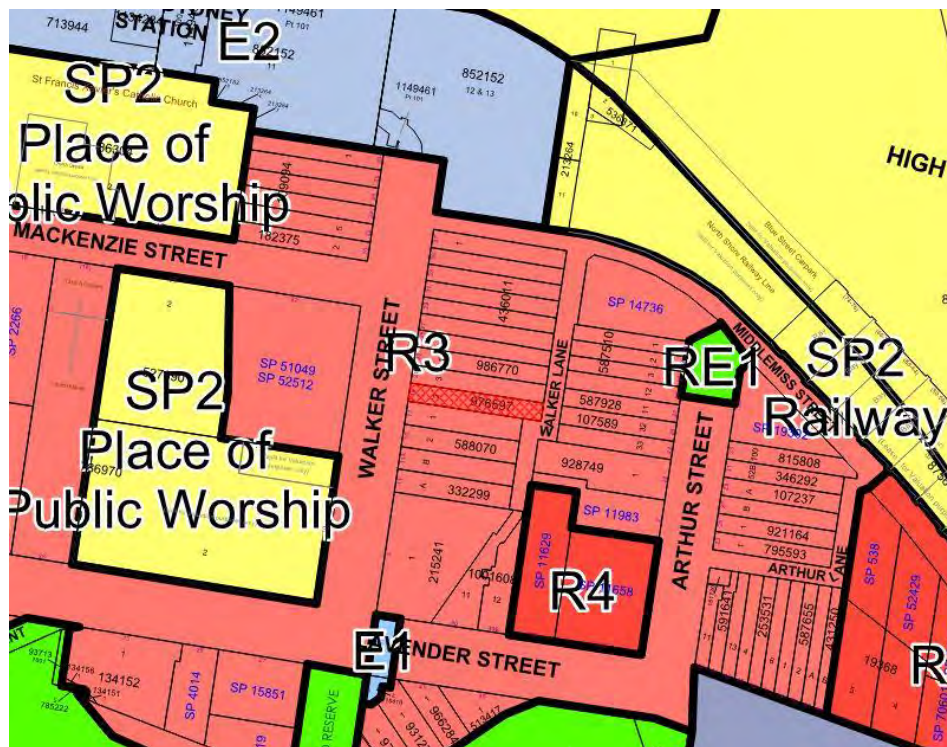


Figure 3. NSLEP Site (hatched in red) is zoned R3 Medium Density Residential(IFM).

RELEVANT HISTORY

Current Application

Date	Action
5 October 2022	Development Application lodged
19 October 2022	DA notified, for 14 days (until 11/11/22)
22 May 2023	Request for information sent to applicant
21 July 2023	Applicant response to request for information
15 August 2023	Further request for information sent to applicant seeking further amendments to address heritage matters
10 November 2023	Applicant response to request for information
30 January 2024	Further request for information sent to applicant seeking further details on the screening of the southern elevation
14 February 2024	Applicant response to request for information

INTERNAL REFERRALS

LANDSCAPE

The proposed development was referred to Council's Landscape Development Officer who provided the following comments:

- *No objection is raised to the removal of T3 Lagerstroemia indica subject to the replacement planting of a canopy tree (45l) capable of attaining a mature height of 6m min. within the front setback of 19 Walker St*
- *1 x replacement Lagerstroemia indica (75l) shall be planted within the rear setback of 19 Walker St*
- *Suitable mature planting to provide screening and privacy shall be planted and maintained as shown as "DENSE PLANTING ON BOTH SIDES OF BOUNDARY" – between the rear setbacks of 19 & 17 Walker streets*
- *A detailed Landscape Plan showing the above, and including plant species, number and pot size, shall be provided to council for approval prior to CC.*

Planner's Comment

Conditions of consent have been provided to address the above matters.

HERITAGE

The proposed development was referred to Council's Conservation Planner who after reviewing the amended proposal raised no objection subject to conditions of consent. Further, Councils Conservation Planner provided the following comments on the heritage status and significance.

19 Walker Street is identified as a scheduled heritage item and is set within a highly significant heritage Context [I 0369]. The site itself is part of a group of heritage listed Victorian Italianate terraces at 11-23 Walker Street.

As per the NSW State Heritage Inventory, the subject site is significant as a Victorian Italianate dwelling. Its interior and front garden setting also contribute to its significance. The item is assessed historically and socially representative locally and aesthetically representative regionally. The building is described as a two storey rendered brick house with heavily moulded details to the façade. The frontage has two bays, an entrance bay with semi-circular arched opening to the ground floor with rectangular opening above to the first floor and a triangular pediment to the parapet which has a central circular decorative moulding. The adjacent verandah bay has rectangular engaged piers framing verandahs to both levels, the first floor verandah appearing beneath a segmental arch and with a timber balustrade. Piers, impost, cornices, voussoirs and archivols are all heavily moulded.

The dwelling is located within the Lavender Bay conservation area (CA12). It is significant:

- a) As a late 19th Century residential area with rare groupings of high quality, stepped terrace style housing on the slopes above Lavender Bay overlaid on religious and Victorian Mansion estates.*
- b) For the quality and collective significance of the buildings within the area.*
- c) For the natural topography of rock escarpments modified with steep pathways and sandstone retaining walls and the remnant Victorian plantings*

The subject site is in the immediate vicinity of the following heritage items on the same side of the street:

- *Brenda”- 11 Walker Street*
- *“Glenlewis”- 11A Walker Street*
- *“Merryula”*
- *15 Walker Street - “Kiengal”*
- *17 Walker Street – House - 20 Walker Street*
- *House - 21 Walker Street*

To the rear, the subject site backs onto the rear of the heritage items at 24-36 Arthur Street.

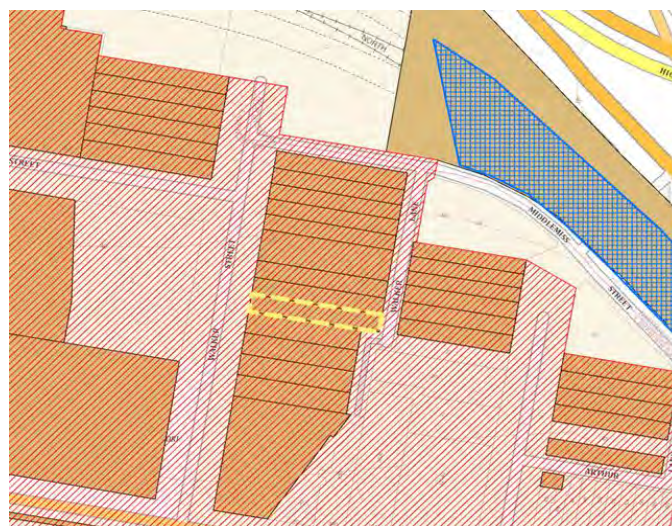


Figure 4: Map of heritage items and conservation area

DEVELOPMENT ENGINEERING

No objection was raised by Council's Development Engineers and conditions are recommended in the event the application is approved.

SUBMISSIONS

Original proposal

On 19 October 2022, Council notified adjoining properties and the Lavender Bay Precinct of the proposed development seeking comment between 28 October 2022 and 11 November 2022. Council received six (6) submissions.

Amended Proposal

Being of a similar scope and smaller scale to the original proposal, renotification was considered unnecessary in accordance with the provisions of Council's Community Engagement Protocol.

CONSIDERATION

Relevant matters of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended) are considered below.

SEPP (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in non-rural areas

The application identifies that 2 existing Council street trees are to be retained with 4 trees identified to be removed, 2 trees to be retained and an existing tree to be transplanted with a further 4 exempt trees to be removed. Conditions of consent are proposed to ensure suitable replacement species are provided. As such, the proposed development is acceptable having regard to the provisions of the SEPP.

Chapter 6 Water catchments

Part 6.2 Development in regulated catchments

The SEPP defines the Sydney Harbour Catchment as a "regulated catchment", meaning relevant provisions of Chapter 6 apply to land and development in the catchment. 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 residential area of Lavender Bay. As such, the proposed development is acceptable having regard to the provisions of the SEPP.

Water quality and quantity

The proposed development will have acceptable impacts on water quality and quantity in the catchment, provided suitable regimes are adopted for water management during construction and operation of the development, as proposed and required by recommended conditions.

SEPP (Resilience and Hazards) 2021

The provisions of this policy require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The site is currently used for residential purposes, and evidently has not been zoned or used for industrial, agricultural or defense purposes at any times in the lands recent history. In the circumstances, there is no evidence to suggest that the land is likely to be contaminated to the extent that would render it unsuitable for continued residential use. Council can be satisfied the policy can be complied with subject to conditions and consent accordingly granted.

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)

1. Aims of Plan

The development application has been assessed against the aims of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) and is considered to be satisfactory with respect to the relevant aims of the Plan.

2. Permissibility

The site is zoned R3 – Medium Density Residential under the provisions of the NSLEP 2013. Development for the purposes of *a alterations and additions to a dwelling house* is permissible with the consent of Council in the R3 – Medium Density Residential zone.

2. Objectives of the zone

Clause 2.3 of NSLEP 2013 specifies that the consent authority must have regard to the objectives for the development in a zone when determining a development application.

The objectives of the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development involves alterations and additions to the existing dwelling. The proposal maintains the medium-density residential character and provides improvements to the accommodation on site. The proposed development will continue to maintain a high level of residential amenity and will not compromise the natural or cultural heritage values of the area. The proposed development is considered acceptable with regard to achieving the objectives of the R3 – Medium Density Residential zone.

Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area - #m ²	Proposed	Control	Complies
Clause 2.7 – Demolition Requires Consent	Consent is sought for the demolition works	Demolition Requires Consent	Yes
Clause 4.3 – Heights of Building	10.33m	8.5m	NO – a request to contravene the standard was submitted (refer below)

3. Height of Building

The proposed works have an assessed height of 10.33m that fails to comply with the permissible height limit of 8.5m in accordance with clause 4.3 in NSLEP 2013.



Figure 5: Section Plan



Figure 6: Height of Building Map

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.

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 submits:

The existing building height is compatible with the character of the locality, for the following reasons:

- *The building height is appropriate for the site given the height of the existing building on the land, noting that the proposed works rear addition will not encroach the height established by the existing 3 storey dwelling and within a flat roof form which is set below the original parapet roof height.*
- *The development does not increase the bulk and scale of the existing building in any meaningful way as the additions is limited to the rear of the building and below the height of the existing building and not visible from Walker Street.*
- *The proposal has been carefully designed to respect the character of the site and locality in the context of the HCA.*
- *The proposal has not impact on view sharing as per the Heritage Impact Statement.*
- *The minor works proposed to the site do not result in a reduction of views from either the public domain or nearby private properties, noting that the Heritage Impact Statement which accompanies this application has found that the proposed works have been assessed as not blocking view corridors towards nearby heritage items or conservation area.*
- *The proposal will not result in any additional unacceptable overshadowing impacts to adjoining properties.*
- *Due to the minor nature of the variation, it will not have any adverse amenity impacts. In this regard, it is noted:*
 - *The variation will not lead to the reduction in solar penetration on site or to adjoining properties nor will it lead to excessive sunlight loss or overshadowing;*
 - *The proposed variation will not lead to view loss or interrupt on views to and from the site; and*
 - *The proposed variation will not lead to a reduction in privacy afforded to surrounding properties or future residents of the proposal.*

Clause 4.6(3)(B): sufficient environmental planning grounds to justify the contravention of the development standard

The applicant submits:

The following factors demonstrate that sufficient environmental planning grounds exist to justify the proposed variation to the maximum building height standard in Clause 4.3. It is reminded at the outset that as confirmed by Preston CJ in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [24], the focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds:

- *The existing building breaches the height limit and the additional height is not greater than the existing maximum building height and the additional height associated with the proposed addition is located behind the existing building and will not encroach the height established by the existing 3 storey dwelling and within a flat roof form which is set below the original parapet roof height.*
- *The variation to the maximum building height standard enables the 'Objects' of the EP&A Act to be achieved, specifically:*
 - (c) to promote the orderly and economic use and development of land,*
 - (d) to promote the delivery and maintenance of affordable housing,*
- *The absence of adverse environmental, social or economic impacts*

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances.

The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control. This also satisfies Wehbe Test 1.

Comment:

The environmental planning grounds advanced in the written request are considered to be sufficient to justify the contravention of the development standard in the circumstances of the case.

The proposal aligns with the zoning objectives by enhancing the amenity for current residents without adversely affecting the integrity of nearby heritage items or the conservation area of Lavender Bay. It will not negatively influence the setting of adjacent heritage items and the conservation zone. Additionally, alterations and additions will not compromise the neighboring properties' amenity concerning privacy, noise, and shadow casting.

The building height is suitable for the site, considering the height of the building currently on the property. The proposed rear addition will adhere to the height limits of the existing three-story structure, with a roof design that remains below the original roof height.

The development's design minimises any significant increase in the building's bulk and scale, with extensions confined to the building's rear, below the existing structure's height, and concealed from view from Walker Street.

The design approach of the proposal has been thoughtfully executed to respect the character of the site and its surroundings, particularly within the heritage conservation area.

The proposal will not cause unreasonable overshadowing issues that could negatively affect neighbouring properties.

Although the existing structure exceeds the height limit, the additional height from the proposed works do not surpass the existing maximum and is positioned behind the existing building, ensuring it does not exceed the height of the current three-story dwelling. The addition will be lower than the original roof height.

The written request demonstrates that the proposed development would be compatible with the surrounding development as the proposed building would fit comfortably within its context.

The written request to vary the development standard provided by the applicant is considered well founded. The written request demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the variation. It is recommended that the variation be supported in these circumstances.

4. Heritage Conservation

The subject site is identified as containing a heritage item whilst also residing within the Lavender Bay Conservation Area. The site also bounds local heritage items whilst also local heritage items are within close proximity to the development site.

The proposed work are designed to minimally influence the historical importance of both the conservation area and the surrounding heritage items. This is attributed to the fact that the planned modifications and expansions are primarily focused on the rear extension and interior adjustments to the main edifice. Consequently, the project is not expected to modify or negatively impact the conservation area's character.

5. Earthworks

This application seeks Council consent for the excavation of the site as per the attached plans. It is considered that the proposed excavation, will have minimal adverse environmental or amenity impact.

The proposal results in an appropriate outcome when considering the nature of the development, the unique characteristics of the site and compliance with relevant Council controls.

The proposal will not adversely affect or disrupt drainage and flood patterns, flood storage or soil stability in the area.

The proposed excavation is consistent with the current and future use of the land and will develop the site into context with its surrounds and in accordance with Councils current and proposed planning strategies.

It is considered unlikely due to the location of the site as well as previous development that excavation will lead to the disturbance of relics.

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		
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 dwelling house.
1.3 Environmental criteria		
Topography	Yes	The development proposes minimal excavation, and the development does not involve extensive retaining walls and finished ground levels are not altered.
Views	Yes – see view loss analysis below	<p>The proposed development will result in minor view loss impacts to the neighbouring dwelling at No. 21 Walker Street.</p> <p>The most prominent and existing views from this property are of the Sydney Harbour Bridge. 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> <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.</p> <p>An assessment against the Tenacity test is provided below.</p>
<p><u>View loss assessment</u></p> <p>The Tenacity test requires an assessment of view loss to be undertaken in the following four (4) steps:</p> <p>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.</p> <p>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</p> <p>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.</p> <p>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.</p> <p>The following is a view loss assessment against the Tenacity test.</p>		

Views from first floor bedroom and bathroom (No. 21 Walker Street)

Step 1: Distant 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 properties to the south east. Views can be either standing or sitting – but typically, the optimal views are taken from standing positions.

Step 3: Negligible impacts. The bathroom is a non-habitable room and It should also be noted that these view impacts are across a side boundary which, within the view sharing principles of *Warringah vs. Tenacity*, are regarded as being harder to protect.



Figure 7: Standing view from first floor bedroom of No. 21 Walker Street – proposed built form shaded in red



Figure 8: Standing view from first bathroom of No. 21 Walker Street – proposed built form shaded in red

Step 4: The potential view loss impacts are considered acceptable and reasonable.

Views from garage roof terrace (No. 21 Walker Street)

Step 1: Distant 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 properties to the south east. Views can be either standing or sitting.

Step 3: Negligible impacts.



Figure 9: Standing view from first bathroom of No. 21 Walker Street

Step 4: There are no view loss impacts as the existing views of Sydney Harbour Bridge from the garage roof terrace are preserved.

Views from roof terrace (No. 21 Walker Street)

Note: access could not be obtained to the roof top terrace and the below assessment is theorised.

Step 1: Distant 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 properties to the south east. Views can be either standing or sitting.

Step 3: Negligible impacts. The approved height of the balustrade is RL47.70 of No. 21 Walker Street, the proposed ridge height is RL47.62.

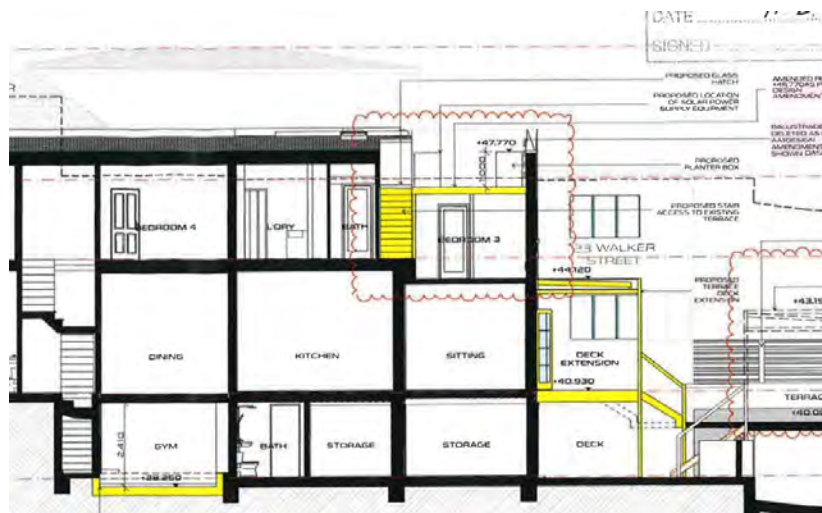


Figure 9: DA299/19 approved plan of No. 21 Walker Street

Step 4: There are no view loss impacts as the existing views of Sydney Harbour Bridge from the garage roof terrace are preserved.

<p>Solar access</p>	<p>Yes – on merit</p>	<p>The alterations and additions do not unacceptably overshadow adjoining properties.</p> <p>The courtyard to the rear of the dwelling will receive adequate solar penetration to allow residents to enjoy the winter sun and the provision of skylights and the internal courtyard ensures adequate light penetration to the dwelling will continue to be received.</p> <p>As shown on Drawing DA105.3 the adjoining property maintains solar access to the upper level windows, and the ground floor POS between 9am and approximately 11:15am which enables sufficient solar access at mid- winter given the lot orientation, and permitted building height and existing building setbacks. The retention of close to 3 hours of solar access is suitable to the adjoining property to the south having regard to the orientation of properties. As per <i>Benevolent Society v Waverley Council</i> there must be recognition that ‘even at low densities there are sites and buildings that are highly vulnerable to being overshadowed’. This is the case with the orientation of the site that means that solar access is difficult to maintain to the adjoining property to the south and the extent of solar access maintained is suitable.</p>
<p>Acoustic privacy</p>	<p>Yes</p>	<p>The site is not located adjacent to a rail corridor, busy road, or any significant noise-generating source. The proposal is for additions/alterations primarily located to the rear of an existing house.</p> <p>Due to the location of the proposed development the acoustic privacy of the surrounding residents will not be adversely affected.</p>
<p>Visual Privacy</p>	<p>Yes</p>	<p>The development has taken into consideration the privacy of adjoining properties.</p> <p>Two of the three bedroom face the street or rear lane with the one side facing bedroom window provided with an integrated ‘vertical louver’ system at the upper level on the southern elevation that is operable to an angle that captures the view from the master bedroom whilst mitigating cross-viewing and this is reflected in DA102.3 and DA103.1.</p> <p>The lower 2 levels on the southern elevation also feature glass blocks that are obscure that mitigates privacy impacts.</p> <p>In terms of the bridge linkage to the garage roof courtyard space this area is elevated however:</p> <ul style="list-style-type: none"> - This area is focused to the rear of the dwelling in proximity to the lane and the raised rooftop garage element is existing and will be improved by this scheme and this will not generate major privacy impacts to adjoining properties beyond those already observed.

		<ul style="list-style-type: none"> - There is already a neighbouring rooftop patio on the adjoining site that features dense planting along that edge and additional landscaping is provided; - There is precedent on the adjoining site to the south and then other sites at the rear- i.e. raised rooftop elements above garages and courtyards that do generate potential privacy impacts and the proposed arrangement is comparable and compatible with what is observed in the locality.
1.4 Quality built form		
Context	Yes	<p>The development responds to its context with the proposal retaining the front facade.</p> <p>The proposed alteration works are predominantly internal in nature with the addition to be contained within the rear of the building, which is common and consistent with addition works of adjoining dwellings. It is also noted that the proposed works to the primary façade will not impact on the original fabric as they are limited to areas that have been modified with contemporary alterations and additions, including the window at the first floor level which is an unsympathetic element that is to be replaced with a frameless window. As such, the façade integrity of the existing building will be maintained and considering that the proposal will not increase the height of the existing dwelling, the existing level of streetscape presentation to Walker Street will be retained and subsequently will not alter or adversely affect the character of the conservation area.</p> <p>The development takes advantage of its secondary frontage to Walker Lane to undertake appropriate addition works that will permit the narrow lot in increasing internal space which will contribute towards improving the amenity, useability and functionality for existing residents, noting that the proposed changes to the rear of the building will not remove or alter any significant heritage fabric, therefore will have no impact on the heritage significance of the heritage item.</p>
Laneways	Yes	<p>The height of the garage is increased by 600mm, however it remains a single storey structure. Noting that the development proposes to enhance the existing private open space area on top of the garage, which is a common practice within properties with secondary frontages to Walker Lane. This improves the existing area on the site.</p>

Setbacks	Yes – on merit	<p>No changes are proposed to the existing front setback of the dwelling.</p> <p>The northern wall of the dwelling currently has a nil setback, and this is retained.</p> <p>No change to the setback to the southern side boundary as established by the existing dwelling, with the proposed addition to follow the established built form. The only exception is the southern side setback where a stair is introduced up to the ground floor which is suitable as it is not a significant structure, and it improves the connectivity of the dwelling without any unreasonable impacts to the adjoining property.</p> <p>A nil setback continues to be provided to the site's northern wall with the development to continue to provide a nil setback that then is setback 1.9m to the second and third storeys.</p> <p>Where a nil setback is not provided a setback of 1.9m is provided. The minor departure will not be discernible, and the development has been designed to avoid opportunities for overlooking from the first floor with appropriate window placements privacy elements. It is appropriate to maintain the existing 0m setback to side boundaries as currently established by the subject dwelling and neighboring properties.</p> <p>Therefore, on merit the setbacks are appropriate in this context and can be considered characteristic of the locality.</p> <p>The wall is 3 storey to both the northern and southern elevation and as illustrated on the architectural plans adjoins another 2 storey wall and accordingly there is no meaningful additional impact in terms of overshadowing and visual privacy.</p> <p>The northern addition is built to boundary with a 1.9m setback to the site's southern boundary. The addition is limited to a length of approximately 5m and has no impact privacy and does not have an unacceptable impact on overshadowing.</p> <p>Given the nil setback to the adjoining properties as well an agreement is not warranted.</p> <p>As illustrated on the architectural plans there are no adverse amenity impacts from the increased nil setbacks proposed.</p> <p>Given the location of adjoining properties an agreement is not warranted. Gutters are able to be accessed from within the property.</p> <p>The proposed side setbacks match those on nearby dwellings in the precinct.</p>
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		The rear setback is consistent with the existing setback of the dwelling and those of the immediately adjoining properties										
Form, massing and scale	Yes	<p>No change to the height of the existing dwelling, noting that the proposed rear addition will not encroach the height established by the existing 3 storey dwelling and within a flat roof form which is set below the original parapet roof height.</p> <p>No change to the existing number of storeys of the existing dwelling, noting that the proposed addition is limited to the rear of the dwelling, which is common practice within properties with secondary frontages to Walker Lane.</p> <p>Finished floor level of the ground floor level will not exceed 1m above natural ground level - with minimal cut proposed.</p> <p>DCP stipulates that the minimum finished floor to ceiling height is 2.7m. For the new components of the dwelling the development provides a minimum finished floor to ceiling height of 2.7m.</p> <p>The proposed works to the primary façade will not impact on the original fabric as they are limited to areas that have been modified with contemporary alterations and additions, including the window at the first floor level which is an unsympathetic element that is to be replaced with a frameless window. As such, the façade integrity of the existing building will be maintained. The built form is considered characteristic of the locality.</p>										
Built form character	Yes	See above.										
Dwelling Entry	Yes	No changes are proposed to the dwelling entry.										
Roofs	Yes	The primary roof is to be maintained with the new roof extension to match existing roof pitch angel of 9.6 degrees, which will not be visible from the street.										
Materials	Yes	The proposed materials and colours are consistent with that of adjoining properties within the conservation area.										
Front Fences	Yes	The front fence is to be repaired to match existing.										
1.3 Environmental criteria												
<p>Site Coverage</p> <p>Site area: 272.1m2</p> <p>Site coverage requirements for detached, attached or semi-detached dwellings:</p> <table border="1"> <tr> <td></td> <td></td> </tr> <tr> <td>230-499</td> <td>50%</td> </tr> <tr> <td>500-749</td> <td>40%</td> </tr> <tr> <td>750-999</td> <td>35%</td> </tr> <tr> <td>1000+</td> <td>30%</td> </tr> </table>			230-499	50%	500-749	40%	750-999	35%	1000+	30%	Yes – on merit	<p>The DCP stipulates that the maximum site coverage for lots with sizes of between 230m2 – 499m2 is allowed a maximum site coverage of 50%.</p> <p>The site has an area of 272.1m2 and therefore is allowed a site coverage of 136.05m2.</p> <p>The current site coverage is 165.6m2, however will be reduced to 154.1m2 or 56.6% after the proposed works.</p> <p>The site coverage is a result of historical redevelopment of the site and of neighboring properties, which also have similar site coverage percentages.</p>
230-499	50%											
500-749	40%											
750-999	35%											
1000+	30%											

		As such considering the historical development of the site and that the current proposal will actually reduce the overall site coverage, the site coverage is considered appropriate and compatible.
Landscaped area and unbuilt upon area	Yes – on merit	<p>The DCP stipulates that the minimum landscape area for dwellings with a lot with size of between 230m²– 499m² is 30% and the maximum un-built upon area is 20%.</p> <p>The development has a landscape area of 70m² (+ 4m² planter on ground level) which is 25.7% of the site area and un-built upon area of 20.0% of the site area.</p> <p>The minor non-compliance will be visually indistinguishable from a compliant scheme and facilitates appropriate landscaping for the residential dwelling that is comparable to the existing extent of landscaping across the site.</p> <p>The proposal avoids creating landscaped areas that are broken into a series of small fragmented unusable areas.</p> <p>Appropriate planting is proposed which will provide a garden setting.</p>
Front Gardens	Yes	<p>Minor change to the front garden is proposed as an existing tree is to be removed to re-align a heritage listed front fence.</p> <p>It is noted that with the exclusion of the trees that is to be removed and re-align of a new front fence, the development will have no impact on the existing front garden arrangement to Walker Street</p>
Private and Communal Open Space	Yes	<p>The DCP requires a minimum private open space of 40m² per dwelling.</p> <p>The dwelling is provided with 60.3m² of POS, including with the garage rooftop. he proposed private open space is located towards the rear portion of the site and maximises privacy and receives adequate solar access. The conversion of the rooftop to introduce additional private open space will be appropriate screened via planter boxes.</p>
1.6 Efficient Use of Resources		
Energy Efficiency	Yes	<p>The applicant has provided a BASIX Certificate in support of the development application.</p> <p>The exiting dwelling and addition will adopt passive solar design principles through the maximisation of light penetration through the provision of new skylights and voids</p>
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.
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 9.9 – Lavender Bay Conservation Area

The proposal is generally consistent with the desired character for the Lavender Bay Conservation area given the design, nature and siting of the proposed development and the retained use of the site as a dwelling house, the proposed development will not be contrary to the requirements under Section 9.9.

Further, no change to the form, height, massing and scale of the exiting building with the works to be largely contained within the rear of the dwelling, which is common and consistent with adjoining dwellings. The primary roof is to be maintained with the new roof extension to match existing roof pitch angel of 9.6 degrees, which will not be visible from the street.

The proposed limited works to the primary façade including the window at the first floor level which is an unsympathetic element that is to be replaced with a frameless window. As such, the façade integrity of the existing building will be maintained.

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:

Applicable contribution type		
s7.12 contribution details	Development cost:	\$1,205,427
	Contribution:	\$12,054

A condition is recommended requiring payment prior to issue of any Construction Certificate

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 s. 4.15 (1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	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 proposal involves residential development in a residential zone; the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Lavender Bay Precinct of the proposed development seeking comment between 28 October 2022 and 11 November 2022. Council received a total of seven (7) submissions during this period, from Edward and Union (Combined) Precinct Committee and from the following properties:

Many of the issues raised have been considered in other parts of this report and where relevant are addressed below.

- **Overshadowing**

The rear additions of the properties to the north (No. 21 and No. 23) have historically limited sunlight reaching the interior, landscaped areas, and private outdoor spaces of No. 19. Consequently, the rear extension for No. 19 represents a balanced approach to enhancing sunlight access, living quality, and opportunities for view sharing, especially considering the descending gradient of Walker Street from north to south and the alignment of the proposed rear wall with that of neighbouring No. 21.

As for any concerns regarding the impact on the amenity of No. 11A, the rear extensions planned for No. 19 will not further diminish sunlight access.

The proposed development will not significantly affect the sunlight received by the private outdoor space of No. 17. The shadow studies provided demonstrate that No. 17 will continue to enjoy sunlight to its upper-level windows and ground floor outdoor space from 9 am to approximately 11:15 am at mid-winter. This duration of sunlight, nearly three hours, is deemed acceptable for the property to the south, taking into account the lot's orientation, allowable building heights, and the positioning of existing structures. This complies with the understanding, as outlined in the case of *Benevolent Society v. Waverley Council*, that certain locations and structures are inherently susceptible to shadowing due to their configuration. The site's orientation challenges in maintaining sunlight access to the southern neighbouring property are acknowledged, and the level of sunlight preservation is considered adequate.

- **Privacy**

Several developments along Walker Lane, including rear extensions that connect living spaces with garage rooftop terraces, have set a precedent for potential privacy concerns. The design proposed development aligns with and is suitable for the existing patterns observed in the area.

Given the slope of Walker Street from north to south, steps have been undertaken to reduce the possibility of direct lines of sight from the new elevated walkway. This includes lowering its height and introducing substantial greenery along the southern edge of No. 19, complemented by planters on No. 17's terrace. The design incorporates measures to prevent direct views into and out of neighboring properties, including the use of timber privacy screens on windows or the application of frosted glass in the rear extension across all floors, which are considered effective privacy solutions.

The proposal aims to preserve privacy for both the property in question and its surrounding neighbors through the following strategies:

- Introducing planters around the edge of the garage rooftop.
- Maintaining existing privacy barriers along the northern boundary.
- Installing opaque glass elements on the southern façade at the lower ground and ground floors.
- Equipping the first-floor extension on the southern façade with adjustable louver screens that can be angled to direct views away from neighboring properties and towards more open vistas, thereby reducing the potential for oversight.

- **Loss of outlook from kitchen on the ground floor and the bedroom at the back of the house (No. 21 Walker Street) onto trees and sky**

Whilst it is acknowledged there will be some loss of outlook to the south east as a result of the proposed development, No. 21 will still benefit from the outlook to the east where windows and door are located off these rooms.

- **Raised bridge**

The introduction of a direct pathway linking the living space to the private outdoor space on the garage rooftop at No. 19 aligns with similar features found in rear additions within the terrace row, making it a harmonious addition to the existing urban fabric of the site.

Given the descending terrain of Walker Street from north to south, strategic measures have been implemented to reduce potential overlooking from the newly proposed elevated pathway. This has been achieved by lowering the pathway's elevation and incorporating extensive planting along the southern edge of No. 19, complemented by the privacy-enhancing planters on No. 17's terrace.

The use of the walkway is intended for brief transitions, minimizing any chance of sustained privacy or noise disturbances to neighboring properties.

- **Roof access**

A new roof with maintenance access is proposed above the front first level balcony. The FFL of this roof is +47.97. The existing parapets to the south, west and north of the new roof have an RL of +48.98. A new parapet to the east of the roof is to align with the heights of the existing parapets and will not be visible from Walker Street.

- **Garage**

The existing garage is inadequate in terms of height to function as required. The height of the garage will be increased by 600mm, however it remains a single storey structure with an existing rooftop terrace which is evidently characteristic of the locality. The level follows the descending slope of the rooftop terraces from the north to south (being lower than the garage roof/terrace at No. 21 and higher than that of No. 17).

CONCLUSION + REASONS

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

The written requests made pursuant to Clause 4.6 *Exemptions to development standards* in NSLEP 2013 demonstrates that compliance with the development standard is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation.

Notification of the proposal has attracted six (6) submissions, and the assessment of the proposal has considered the performance of the application against Council's planning requirements. Any substantive points raised by the submissions have been addressed/clarified in the section above (refer to Submitters Concerns).

Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in any significant adverse impacts upon the locality or surrounding properties, and the significance of the respective heritage conservation area and the quality of the streetscape are maintained. The proposed development will also not result in any unreasonable impacts to the amenity of adjoining properties including impacts to views, overshadowing or loss of privacy.

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

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

RECOMMENDATION

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 and grant consent to Development Application No. 300/22 for the alterations and additions to existing dwelling house and removal of identified trees, including rear extension, internal reconfigurations, and alterations to garage rooftop. on Land at 19 Walker Street, Lavender Bay, subject to the conditions attached to this report:

DAMON KENNY
EXECUTIVE ASSESSMENT PLANNER

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
19 WALKER STREET, LAVENDER BAY
DEVELOPMENT APPLICATION NO. 300/22

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings endorsed with Council's approval stamp and other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

Plan No.	Rev No.	Description	Prepared by	Dated
DA100.1	B	Site Plan	Blake Letnic Architects	27/10/2023
DA101.1	A	Existing Lower Ground Plan	Blake Letnic Architects	29/06/2022
DA101.2	A	Existing Ground Plan	Blake Letnic Architects	29/06/2022
DA101.3	A	Existing First Plan	Blake Letnic Architects	29/06/2022
DA101.4	A	Existing Roof Plan	Blake Letnic Architects	29/06/2022
DA102.1	B	Proposed Lower Ground Plan	Blake Letnic Architects	27/10/2023
DA102.2	B	Proposed Ground Plan	Blake Letnic Architects	27/10/2023
DA102.3	B	Proposed First Plan	Blake Letnic Architects	27/10/2023
DA102.4	B	Proposed Roof Plan	Blake Letnic Architects	27/10/2023
DA103.1	B	Southern Elevation	Blake Letnic Architects	27/10/2023
DA103.2	B	Eastern Elevation	Blake Letnic Architects	27/10/2023
DA103.3	B	Northern Elevation	Blake Letnic Architects	20/02/2024
DA103.4	B	Western Elevation	Blake Letnic Architects	20/02/2024
DA104.1	B	Section AA	Blake Letnic Architects	20/02/2024
DA104.2	B	Section BB	Blake Letnic Architects	20/02/2024
DA104.3	B	Section CC + DD	Blake Letnic Architects	20/02/2024
DA106.1	C	Material Schedule	Blake Letnic Architects	20/02/2024
HDA01	P2	Site Plan & Legend	Inline Hydraulic Services	15/08/2022
HDA02	P2	Lower Ground Floor Plan	Inline Hydraulic Services	15/08/2022
HDA03	P2	Ground Floor Plan	Inline Hydraulic Services	15/08/2022
HDA04	P2	First Floor Plan	Inline Hydraulic Services	15/08/2022
HDA05	P2	Roof Plan	Inline Hydraulic Services	15/08/2022
HDA06	P2	Sediment & Erosion Control Plan	Inline Hydraulic Services	15/08/2022

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

**19 WALKER STREET, LAVENDER BAY
DEVELOPMENT APPLICATION NO. 300/22**

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Plans on Site

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

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

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

No Demolition of Extra Fabric

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

(Reason: To ensure compliance with the approved development)

External Finishes and Materials

- A4. External finishes and materials must be in accordance with the submitted schedule dated 20/02/2024, prepared by Blake Letnic Architects unless otherwise modified by Council in writing. Substitution of materials must not be undertaken, except where otherwise approved in writing by Council.

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

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

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

**19 WALKER STREET, LAVENDER BAY
DEVELOPMENT APPLICATION NO. 300/22**

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

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

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

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

Dilapidation Survey Private Property (Neighbouring Buildings)

- C2. A photographic survey and dilapidation report of adjoining properties No's. 17 and 21 Walker Street, Lavender Bay detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, MUST BE submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.

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

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

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

(Reason: Proper management of records)

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Structural Adequacy of Existing Building

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

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

Sediment Control

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

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

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

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

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

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

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DEVELOPMENT APPLICATION NO. 300/22**

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Waste Management Plan

- C5. A Waste Management Plan is to be submitted for approval by the Principal Certifier prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
 - b) The design of the on-site waste storage and recycling area; and
 - c) Administrative arrangements for waste and recycling management during the construction process.

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

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

Colours, Finishes and Materials (Conservation Areas)

- C6. The finishes, materials and exterior colours shall be complementary to the architectural style of the original building and sympathetic to the character of the Conservation Area. A schedule of finishes, materials and external colours shall be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition prior to the release of the Construction Certificate.

(Reason: To ensure that the completed colours, finishes and materials are complementary to the Conservation Area.)

Heritage Architect to be commissioned

- C7. An appropriately qualified and experienced heritage architect must be commissioned to assist the design development, contract documentation and overseeing of construction works on the site for their duration by undertaking regular inspections of the works in progress and providing advice in relation to heritage matters.

Written details of the engagement of the experienced heritage architect must be submitted to the Principal Certifier prior to the issue of any Construction Certificate.

Note: if advice provided by the heritage architect is to the effect that works requiring development consent be carried out, such works would require a Modification under s 4.55 of the *Environmental Planning and Assessment Act 1979* or further development application. This condition, and any advice given by the heritage architect, should not be construed as authorising the carrying of development with/ otherwise than in accordance with the development consent.

(Reason: To ensure that all matters relating to significant fabric and spaces are resolved and recorded using best practice for heritage conservation)

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External Colours and Finishes

- C8. The external colours and finishes shall match those as existing and/ or be compatible with surrounding development. A schedule of external colours and finishes must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Work Zone

- C9. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of any Construction Certificate.

Note: For major development an application for work zone permit must be considered by the North Sydney Local Traffic Committee.

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

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

(Reason: Amenity and convenience during construction)

Stormwater Disposal – Drainage Plan

- C10. Prior to the issue of any Construction Certificate, site drainage plans must be prepared by a licensed plumber or drainage engineer. The site drainage plans must –be designed in accordance with the following criteria:

- a) compliance with NCC drainage requirements and current Australian Standards and guidelines;

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- b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to the existing kerb inlet pit at Walker Lane;
- c) new pipelines within council land shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres if a minimum of 400-millimetre top cover cannot be achieved for other types of pipes;
- d) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception;
- e) Any footpath panel disturbed for the stormwater connection must be replaced as a whole panel;
- f) All redundant stormwater pipelines within the footpath area shall be removed and the footpath and kerb shall be reinstated,

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

(Reason: Proper disposal of stormwater)

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

- C11. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$10,000.00 to be held by Council for the payment of cost for any/all of the following:
- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
 - b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and [environmental controls](#)) required in connection with this consent
 - c) remedying any defects in any such public work that arise within 6 months after the work is completed.
 - d) Council reserves the right to retain all bonds on infrastructure works relating to the completion of required Infrastructure work for a 12-month defect liability period. Council may elect to provide a lesser period for minor residential work.

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

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

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

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

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

Tree Bond for Public Trees

- C12. Prior to the issue of any construction certificate, security in the sum of \$14,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

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

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

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

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

SCHEDULE

Tree Species	Location	Bond
T1 & T2 <i>Lagerstroemia indica</i>	The council verge approximately in front of 19 Walker St	\$14,000

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

Tree Protection Measures to be shown on Construction Drawings

C13. The tree protection measures contained in the arborist report prepared by Jacksons Nature Works dated 6/7/22, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Protection of Trees

C14. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Height
T1 & T2 <i>Lagerstroemia indica</i>	The council verge approx. in front of 19 Walker St	4m&7m
T4 & T5 <i>Howea forsteriana</i>	Southern setback -19 Walker St	8m&7mm
T7 <i>Acer palmatum</i> - (to be transplanted)	rear setback -19 Walker St	6m
Tree No /Species	Location	Height (m)

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

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Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Approval for Removal of Trees

- C15. All pruning works shall to the following tree(s) shall be undertaken under the guidance of an appropriately qualified arborist/tree surgeon in accordance with Australian Standard AS 4373-2007 - Pruning of Amenity Trees:

Trees that may Require Pruning	Location	Height
<i>T7 Acer palmatum -(to be transplanted)</i>	rear setback -19 Walker St	6m

Minor pruning only, if any, shall be permitted, and only as required for the purposes and on Instruction of the qualified tree transplanters.

A report detailing the measures to be employed during construction shall be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

All measures required by the said report must be complied with at all times in the carrying out of the development.

(Reason: To ensure the protection and longevity of existing significant trees)

Pruning of Trees

- C16. All pruning works shall to the following tree(s) shall be undertaken under the guidance of an appropriately qualified arborist/tree surgeon in accordance with Australian Standard AS 4373-2007 - Pruning of Amenity Trees:

Trees that may Require Pruning	Location	Height
<i>T7 Acer palmatum -(to be transplanted)</i>	rear setback -19 Walker St	6m

Minor pruning only, if any, shall be permitted, and only as required for the purposes and on Instruction of the qualified tree transplanters.

A report detailing the measures to be employed during construction shall be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

All measures required by the said report must be complied with at all times in the carrying out of the development.

(Reason: To ensure the protection and longevity of existing significant trees)

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Asbestos Material Survey

- C17. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

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

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

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

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

Air Conditioners in Residential Premises

- C18. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2017 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - (i) before 8.00am and after 10.00pm on any Saturday, Sunday or Public Holiday; or
 - (ii) before 7.00am or after 10.00pm on any other day.

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- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Noise Policy for Industry 2017 will be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Noise Policy for Industry published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

Section 7.12 Development Contributions

- C19. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council’s Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is \$12,054.

Indexation

The monetary contribution required under this consent will be indexed between the date of the grant of the consent and the date on which the contribution is paid the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Timing of payment

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

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

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

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Security Deposit/Guarantee Schedule

C20. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Street Tree Bond (on Council Property)	\$14,000.00
Infrastructure Damage Bond	\$10,000.00
TOTAL BONDS	\$28,000.00

Fees	
Local Infrastructure Contributions	\$12,054.00
TOTAL FEES	\$12,054.00

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

(Reason: Compliance with the development consent)

BASIX Certificate

C21. Under clause 75 of the Environmental Planning & Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A455844 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Amendments to the Landscape Plan

C22. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- 1 x canopy tree (45l) capable of attaining a mature height of 6m min. shall be planted within the front setback of 19 Walker St
- 1 x replacement *Lagerstroemia indica* (75l) shall be planted within the rear setback of 19 Walker St

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- Suitable mature planting to provide screening and privacy shall be planted and maintained as shown as “DENSE PLANTING ON BOTH SIDES OF BOUNDARY” – between the rear setbacks of 19 & 17 Walker streets
- A detailed Landscape Plan showing the above, and including plant species, number, and pot size, shall be provided to council for approval prior to CC.

An amended landscape plan complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

Arborist to be commissioned

- C23. An experienced consulting arborist with minimum qualification of AQF Level 5 must be commissioned to assist the design development and contract documentation for the approved development. The commissioned arborist must oversee construction works on the site for their duration, must ensure all tree protection measures are implemented and maintained at all times during demolition and construction and must undertake regular inspections of works in progress and provide advice to the developer in relation to tree matters.

Written details of the engagement of the experienced arborist must be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Note: This condition, and any advice given by the consulting arborist, should not be construed as authorising the carrying of development with/ otherwise than in accordance with the development consent.

(Reason: To ensure that all matters relating to trees are resolved and recorded using best practice)

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

Protection of Trees

- D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites). A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Certifying Authority for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

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Sensitive construction techniques including hand excavation, pier & beam construction & flexible location of piers/footings shall be used within the TPZ of any protected tree. No roots greater than 40mm shall be cut. No new SW works shall be carried out within the TPZ of any protected tree.

The removal and transplanting of T7 *Acer palmatum* shall be carried out by a minimum AQ3 qualified arborist who specialises in transplanting advanced trees and shall be carried out under direct supervision of the project arborist. An establishment maintenance plan of minimum 12-month duration shall be provided and carried out by same, in order to guarantee the successful transplanting of this tree.

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

Temporary Fences and Tree Protection

- D2. All protected trees on-site that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), must be installed to the satisfaction of the Principal Certifier prior to demolition or commencement of any works and must be maintained for the duration of the works: -

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

Public Liability Insurance – Works on Public Land

- D3. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

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

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

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Asbestos Material Survey

- D4. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

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

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

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

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

Commencement of Works' Notice

- D5. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least 2 days notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

Tree Protection Measures

- D6. The tree protection measures detailed in the approved Tree Protection and Management Plan, and as directed by the project arboriculturist shall be established before work commences.

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T4 & T5 Howea forsteriana shall have their trunks wrapped in thick hessian or similar, of sufficient thickness to protect against any mechanical injury, fronds shall be tied back where required, no fronds shall be pruned.

(Reason: To ensure that the stability and ongoing viability of trees being retained are not compromised Tree protection measures)

Project Arborist to be Engaged

D7.

- The project arboriculturist shall inspect tree protection measures and certify in writing to the Principal Certifying Authority the measures comply with the approved Tree Protection Plan and as directed by the project arboriculturist before work commences.
- The project arboriculturist shall provide guidance and oversight of tree protection and management to ensure that the stability and ongoing viability of trees being retained is not compromised.
- The project arboriculturist must contact the tree pruning contractor and Council's Tree Management Officer (giving at least 2 working days' notice) to arrange a joint site meeting, prior to commencing any pruning, to determine the exact location and extent of pruning that is permissible, with the tree pruning contractor to comply with any instructions issued by Council, acting reasonably.
- Any pruning must be undertaken by a practicing arborist with a minimum Australian Qualification Framework Level 3 in arboriculture, in accordance with the principles of the Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and the NSW Work Cover Code of Practice for the Amenity Tree Industry (1998), as well as any instructions issued on site by Council, acting reasonably.
- The practicing arborist must keep a log of dates and times of when they attended the site, the type of works that were performed, and must form part of the certification required prior to Occupation.

(Reason: Tree protection measures)

Protection of Public Trees

D8. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Protection
T1 & T2 <i>Lagerstroemia indica</i>	The council verge approximately in front of 19 Walker St	1.8m high steel mesh tree protection fencing

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

(Reason: Protection of existing environmental and community assets)

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

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

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

Road Reserve Safety

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

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

(Reason: Public Safety)

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Temporary Disposal of Stormwater Runoff

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

(Reason: Stormwater control during construction)

Council Inspection of Public Infrastructure Works

- E4. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points: -

a) Formwork for layback. Kerb/gutter, footpath, etc.

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

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

Removal of Extra Fabric

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

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

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Compliance with Construction Noise Management Plan

- E6. All works conducted on site which form part of this development must be carried out in accordance with the submitted Construction Noise Management Plan submitted with the Construction Certificate and all conditions of consent.

(Reason: To ensure noise generating activities are appropriately managed and nearby sensitive receivers protected)

No Work on Public Open Space

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

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

Applicant's Cost of Work on Council Property

- E8. The applicant or the person, company or other entity that is acting upon this consent, must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

No Removal of Trees on Public Property

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

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

Protection of Trees

- E10. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by Jackson Nature Works dated 6/07/22 must be implemented for the duration of the works.

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

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Notes:

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

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

Trees to be Removed

- E11. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

Trees that are acceptable to remove	Location	Height
T3 <i>Lagerstroemia indica</i>	front setback -19 Walker St	8m
T6 <i>Lagerstroemia indica</i>	rear setback -19 Walker St	6m
T8 & T10 <i>Dicksonia antarctica</i>	rear setback -19 Walker St	2m
T9 <i>Cyathea australis</i>	rear setback -19 Walker St	7m
T11 <i>Callistemon viminalis</i>	rear setback -19 Walker St	5m
T12 & T13 <i>Hibiscus rosa-sinensis</i>	rear setback -19 Walker St	4m

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

Special Permits

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

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

**19 WALKER STREET, LAVENDER BAY
DEVELOPMENT APPLICATION NO. 300/22**

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1) On-street mobile plant

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

(Reason: Proper management of public land)

2) Hoardings

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

(Reason: Proper management of public land)

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

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

(Reason: Proper management of public land)

4) Kerbside restrictions, construction zones

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

(Reason: Proper management of public land)

Construction Hours

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

**19 WALKER STREET, LAVENDER BAY
DEVELOPMENT APPLICATION NO. 300/22**

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Standard Construction Hours		
Location	Day	Hours
All zones (Excl. B3 Commercial Core and B4 Mixed use zone)	Monday - Friday	7.00am - 5.00pm
	Saturday	8.00am - 1.00pm
	Sunday Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above, the EPA Noise Policy for Industry 2017 and any Construction Noise Management Plan required under this consent.

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

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

Installation and Maintenance of Sediment Control

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

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

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

Sediment and Erosion Control Signage

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

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

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Health and Safety

- E16. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

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

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

Community Information

- E17. Reasonable measures must be undertaken at all times to keep nearby residents informed about the proposed work, such as by way of signs, leaflets, public meetings and telephone contact numbers, to ensure that adjoining residents are aware of the likely duration of the construction works on the site

(Reason: To ensure that residents are kept informed of activities that may affect their amenity)

Prohibition on Use of Pavements

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

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

Plant and Equipment Kept Within Site

- E19. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

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

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

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Waste Disposal

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

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

Asbestos Removal

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

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

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

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

(Reason: Prescribed - Statutory)

Home Building Act

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

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

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

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

**19 WALKER STREET, LAVENDER BAY
DEVELOPMENT APPLICATION NO. 300/22**

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- (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this condition is out of date, work must cease, and no further work may be carried out unless the Principal Certifier for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

(Reason: Prescribed - Statutory)

Appointment of Principal Certifier (PC)

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

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

Construction Certificate

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

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

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DEVELOPMENT APPLICATION NO. 300/22**Page 27 of 31

Occupation Certificate

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

(Reason: Statutory)

Critical Stage Inspections

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

(Reason: Statutory)

Commencement of Works' Notice

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

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

Excavation/Demolition

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

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

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Protection of Public Places

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

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

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

Site Sign

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

(Reason: Prescribed - Statutory)

**19 WALKER STREET, LAVENDER BAY
DEVELOPMENT APPLICATION NO. 300/22**Page 29 of 31

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

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

- a. in the road reserve must be fully completed; and
- b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired; to the satisfaction of Council Engineers at no cost to Council. Council's development engineer must be contacted to arrange inspections of the completed works in the Public Domain.

(Reason: Maintain quality of Public assets)

Damage to Adjoining Properties

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

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

Utility Services

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

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

Asbestos Clearance Certificate

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

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

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DEVELOPMENT APPLICATION NO. 300/22**

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

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

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

Certification of Tree Condition

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

Tree	Location	Height
T1 & T2 <i>Lagerstroemia indica</i>	The council verge approx. in front of 19 Walker St	4m&7m
T4 & T5 <i>Howea forsteriana</i>	Southern setback -19 Walker St	8m&7m
T7 <i>Acer palmatum</i> - (to be transplanted)	rear setback -19 Walker St	6m
1 x canopy tree (45l) capable of attaining a mature height of 6m min		
1 x replacement <i>Lagerstroemia indica</i> (75l)		
Suitable mature planting to provide screening and privacy	where shown as "DENSE PLANTING ON BOTH SIDES OF BOUNDARY" - between the rear setbacks of 19 & 17 Walker streets	

The report must detail the condition and health of the nominated tree(s) upon completion of the works, and shall certify that the tree(s) has/have not been significantly damaged during the works on the site, and has/have reasonable prospects for survival.

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

BASIX Completion Receipt

- G6. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

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Landscaping

- G7. The landscaping shown in the approved landscape plan must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Unpaved Verge

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

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

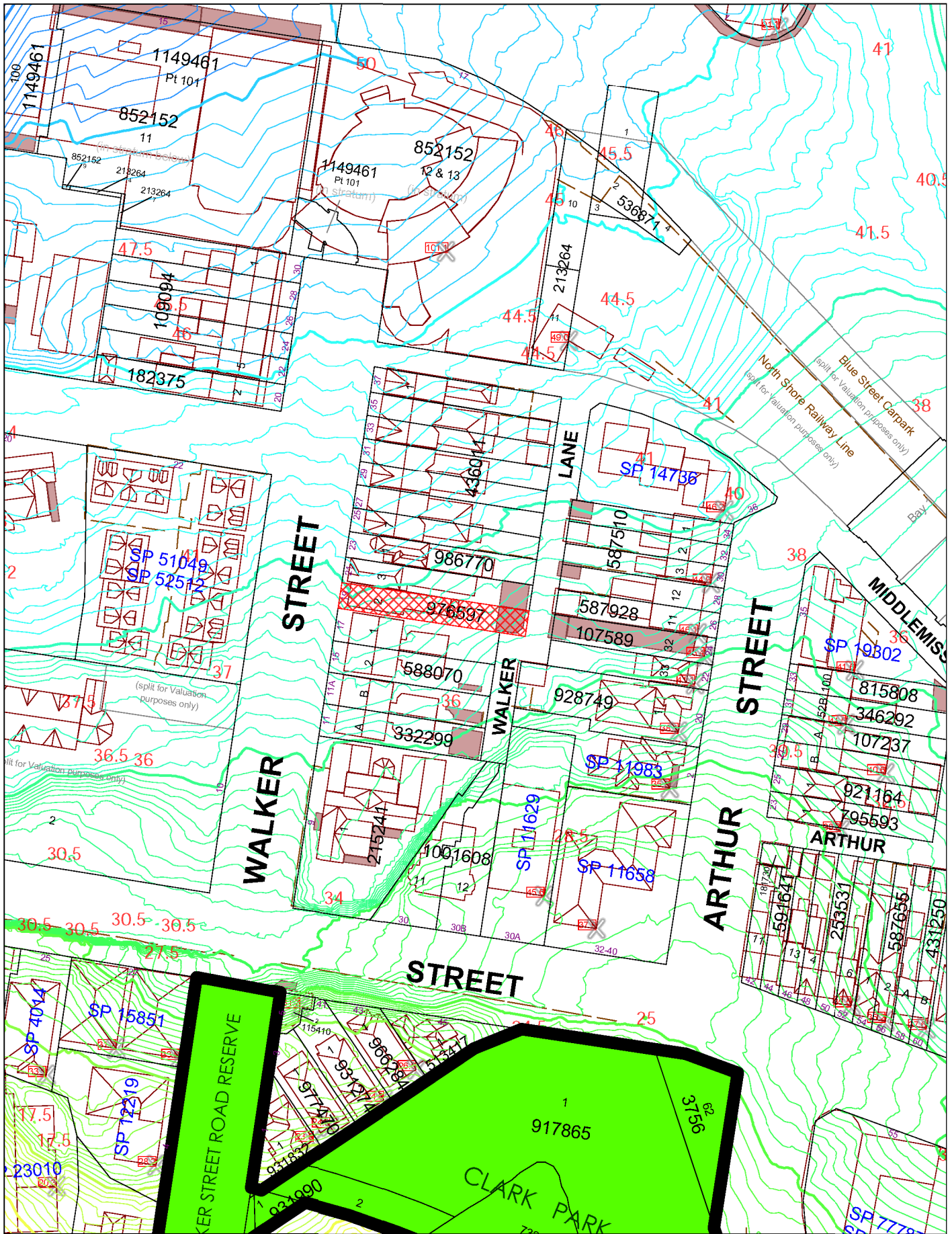
I. On-Going / Operational Conditions**Maintenance of Approved Landscaping**

- I1. The owner of the premises at 19 Walker Street is to maintain the landscaping approved by this consent.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

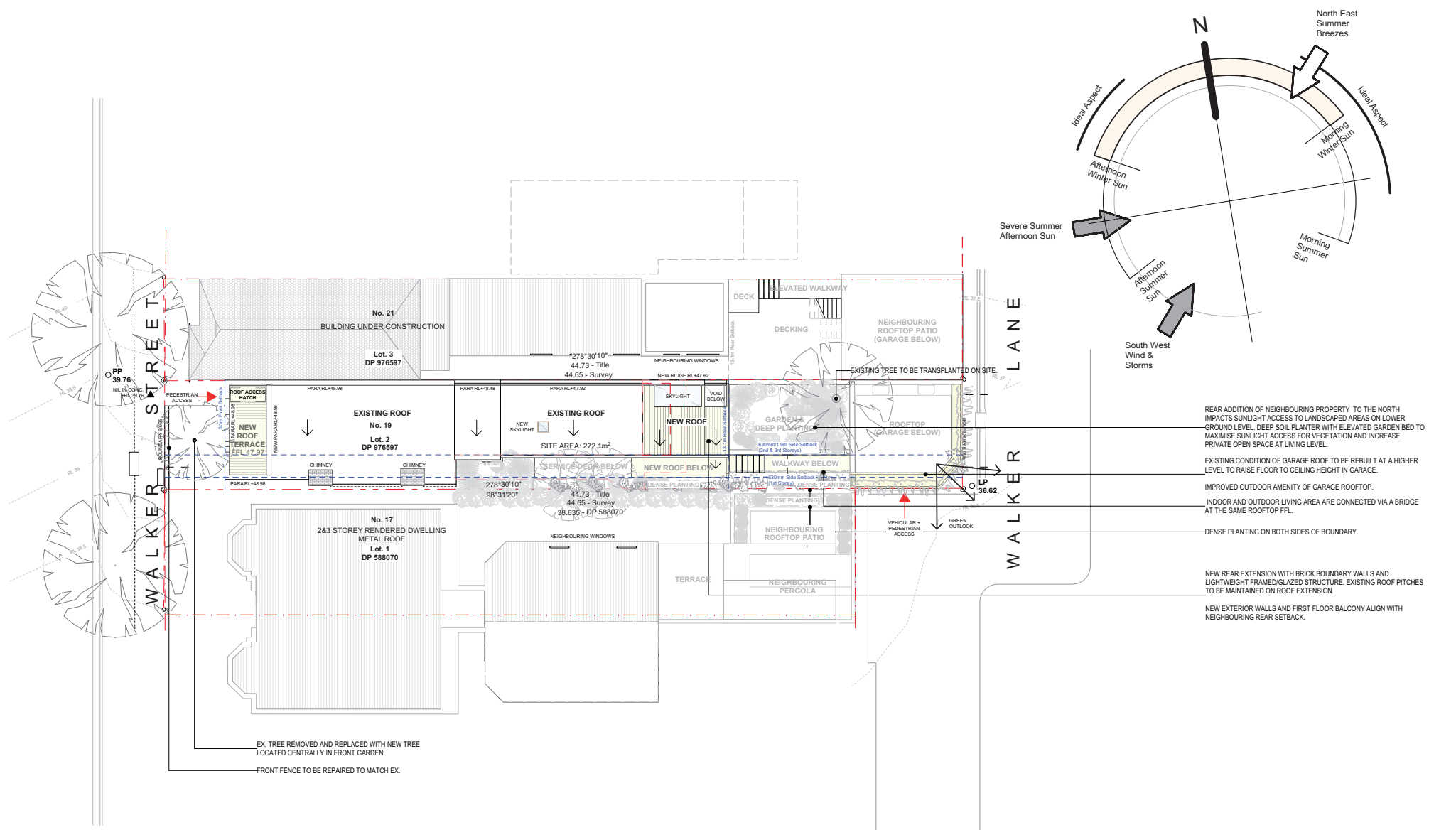
Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non-flowering, native for exotic, deciduous for non-deciduous or the reverse of any these) a modification to this consent will be required.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)



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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.



- REAR ADDITION OF NEIGHBOURING PROPERTY TO THE NORTH IMPACTS SUNLIGHT ACCESS TO LANDSCAPED AREAS ON LOWER GROUND LEVEL. DEEP SOIL PLANTER WITH ELEVATED GARDEN BED TO MAXIMISE SUNLIGHT ACCESS FOR VEGETATION AND INCREASE PRIVATE OPEN SPACE AT LIVING LEVEL.
- EXISTING CONDITION OF GARAGE ROOF TO BE REBUILT AT A HIGHER LEVEL TO RAISE FLOOR TO CEILING HEIGHT IN GARAGE.
- IMPROVED OUTDOOR AMENITY OF GARAGE ROOFTOP.
- INDOOR AND OUTDOOR LIVING AREA ARE CONNECTED VIA A BRIDGE AT THE SAME ROOFTOP FFL.
- DENSE PLANTING ON BOTH SIDES OF BOUNDARY.
- NEW REAR EXTENSION WITH BRICK BOUNDARY WALLS AND LIGHTWEIGHT FRAMED GLAZED STRUCTURE. EXISTING ROOF PITCHES TO BE MAINTAINED ON ROOF EXTENSION.
- NEW EXTERIOR WALLS AND FIRST FLOOR BALCONY ALIGN WITH NEIGHBOURING REAR SETBACK.

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Legend

	Existing walls
	To be demolished
	Proposed new walls
	New construction

Revision	Date	Transmittal Set Name
A	29/06/22	DA Issue to Council
B	27/10/2023	RFI Issue to Council

2101 Lavender Bay House
19 Walker Street, Lavender Bay, 2060

20/02/2024

Site Plan

DA100.1

1:200 @ A3 John & Jane Luchetti

NOT FOR CONSTRUCTION

Lavender Bay House

Development Application Drawings

prepared for
John & Jane Luchetti

2108 Lavender Bay House

19 Walker Street, Lavender Bay, 2060
Lot 2 DP 976597

Key Proposal Statistics

Council	North Sydney Council
Site Area:	272.1m ²
Frontage:	6.095m
No. of Stories:	3
GFA (Existing)	213.5m ²
GFA (Proposed)	270m ²
Peak Building Height:	48.97mAHD

Private Open Space Required:	33.6m ²
Proposed:	60.3m ²
Site Cover	181.8m ² (≤ 50 % of lot size)
Landscaped Area:	61m ² (≥ 30 % of lot size)
Unbuilt Upon Area:	18.5m ² (≤ 20 % of lot size)

On-Site Car Spaces	2
Vehicular Crossover Width:	5.7m

Drawing List

DA100	Site Information
DA101	Existing Drawings/Demolition Plans
DA102	Proposed Floor Plans
DA103	Proposed Elevations
DA104	Proposed Sections
DA105	Shadow Diagrams
DA106	Material Schedule

Material Key & Notes Legend

<input type="checkbox"/> SP	Stone Pavers	<input type="checkbox"/> DP	Down Pipe
<input type="checkbox"/> TMB	Timber Flooring	<input type="checkbox"/> EG	Eaves Gutter
<input type="checkbox"/> MD	Metal Door	<input type="checkbox"/> J	Joinery
<input type="checkbox"/> MR	Metal Roof	<input type="checkbox"/> ST	Stovetop
<input type="checkbox"/> GL	Glass	<input type="checkbox"/> S	Sink
<input type="checkbox"/> GB	Glass Blocks	<input type="checkbox"/> DW	Dishwasher
<input type="checkbox"/> TB	Painted Timber Battens	<input type="checkbox"/> F	Fridge
<input type="checkbox"/> BR	Painted Brick		
<input type="checkbox"/> ST	Painted Steel Framing		
<input type="checkbox"/> OFC	Off-Form Concrete		
<input type="checkbox"/> TD	Timber Decking		
<input type="checkbox"/> SB	Steel Balustrading		
<input type="checkbox"/> MB	Painted Steel Battens		



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Legend

Revision	Date	Transmittal Set Name
A	29/06/22	DA Issue to Council
B	20/02/24	RFI Issue to Council

2101 Lavender Bay House
19 Walker Street, Lavender Bay, 2060

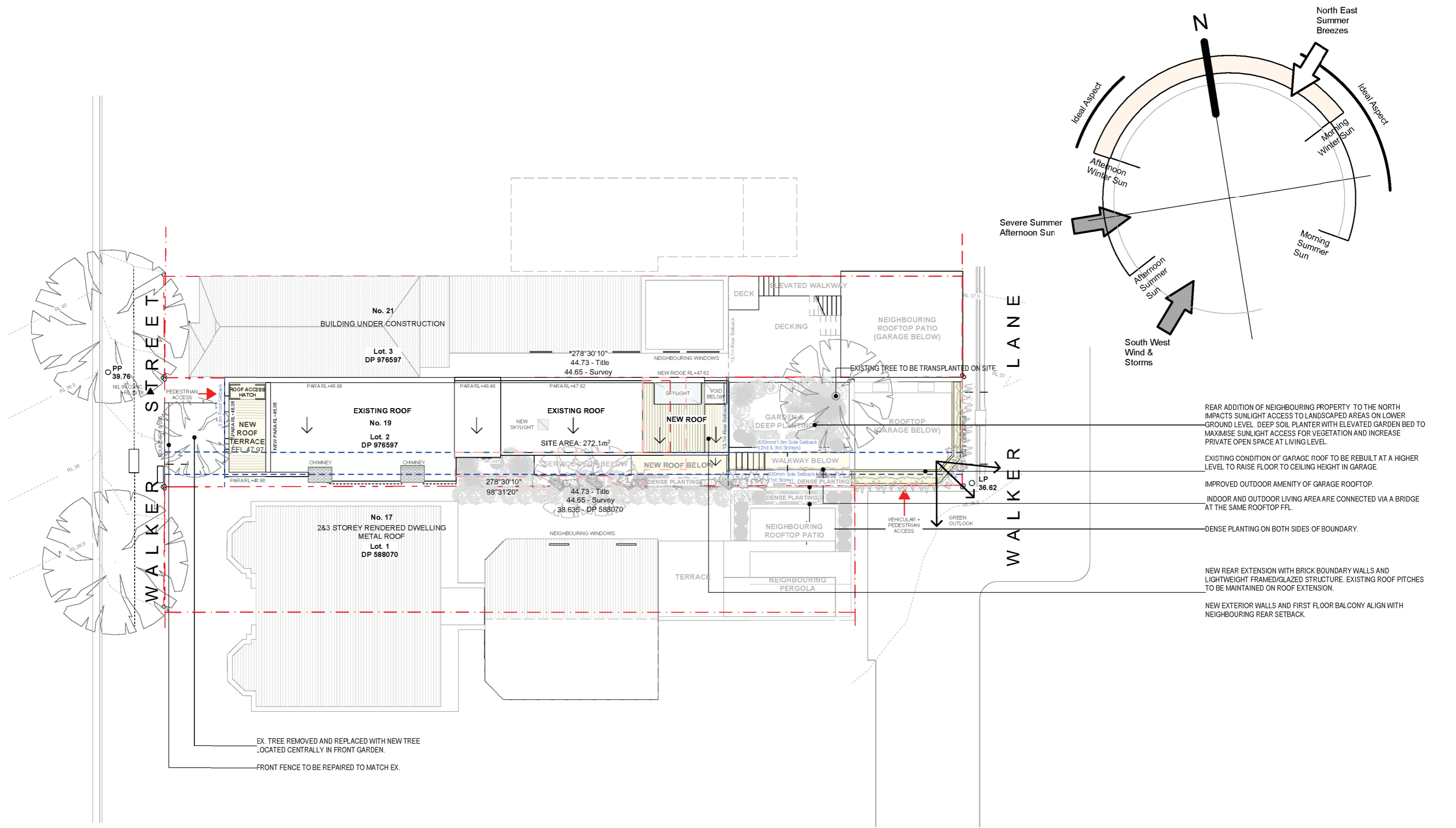
20/02/2024

DA Cover Sheet

DA 000

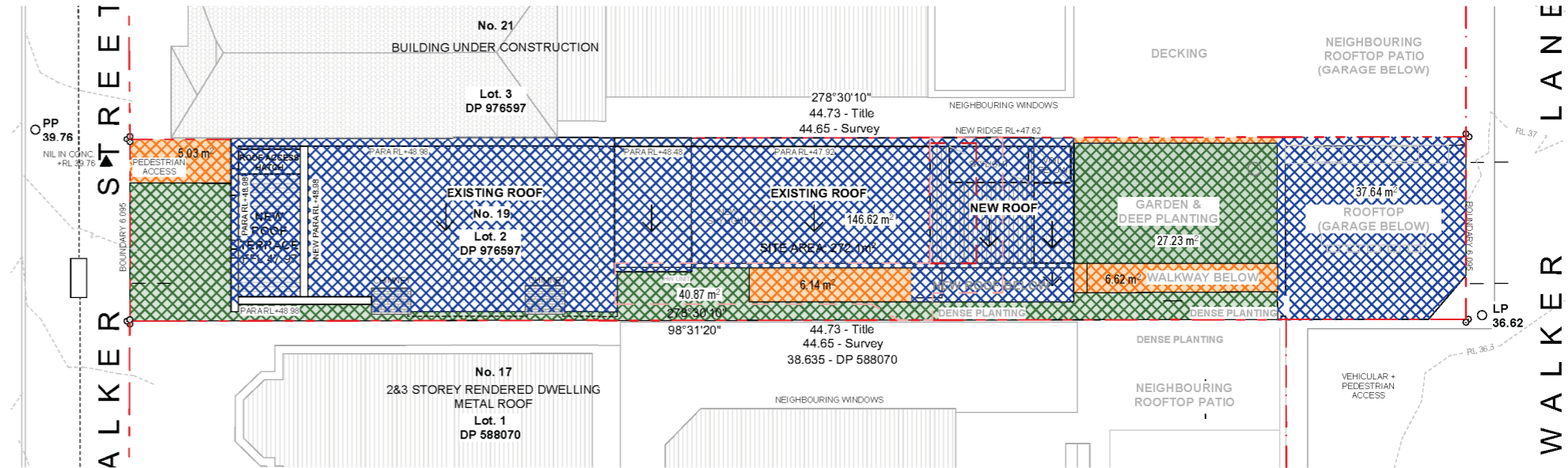
John & Jane Luchetti

B
NOT FOR CONSTRUCTION



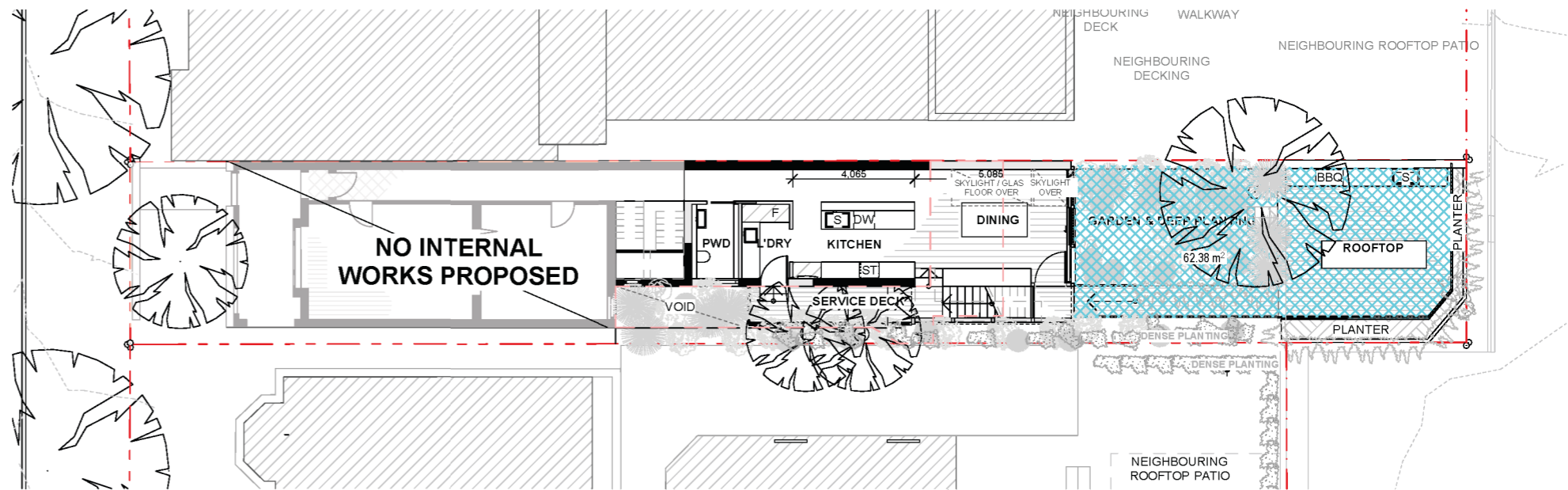
Site Area: 272.1m²

	North Sydney DCP Compliance	Existing	Proposed
Site Coverage	max 136.1m ² (≤ 50 % of lot size)	167m ²	184.3m ²
Un-Built Upon Area	max 54.4m ² (≤ 20 % of lot size)	48.9m ²	17.8m ²
Landscaped Area	min 81.6m ² (≥ 30 % of lot size)	55.7m ²	68.1 ² (+ 4m ² planter on ground level)

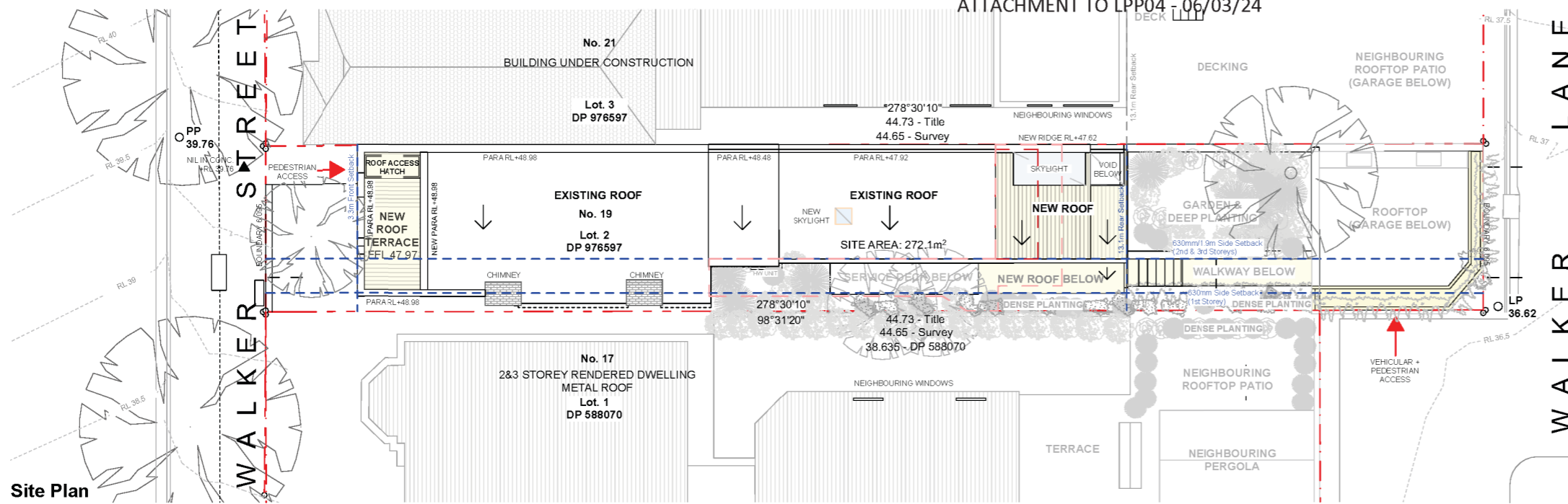


1 Site Coverage Plan - Proposed
Scale 1:200

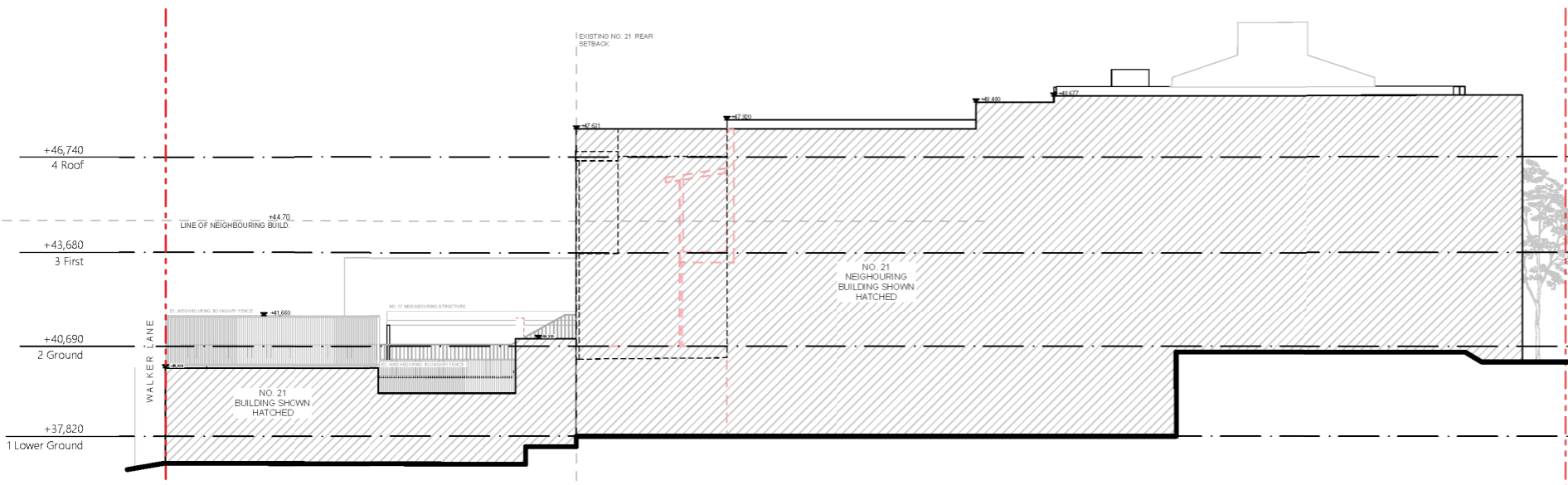
	North Sydney DCP Compliance	Existing	Proposed
Private Open Space on Ground Level	Min 40m ²	33.6m ²	62.4m ²



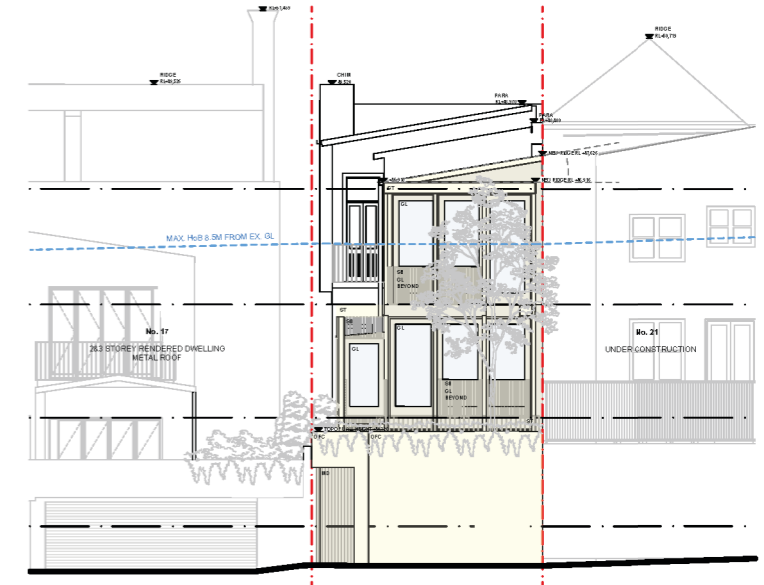
2 Private Open Space - Proposed
Scale 1:200



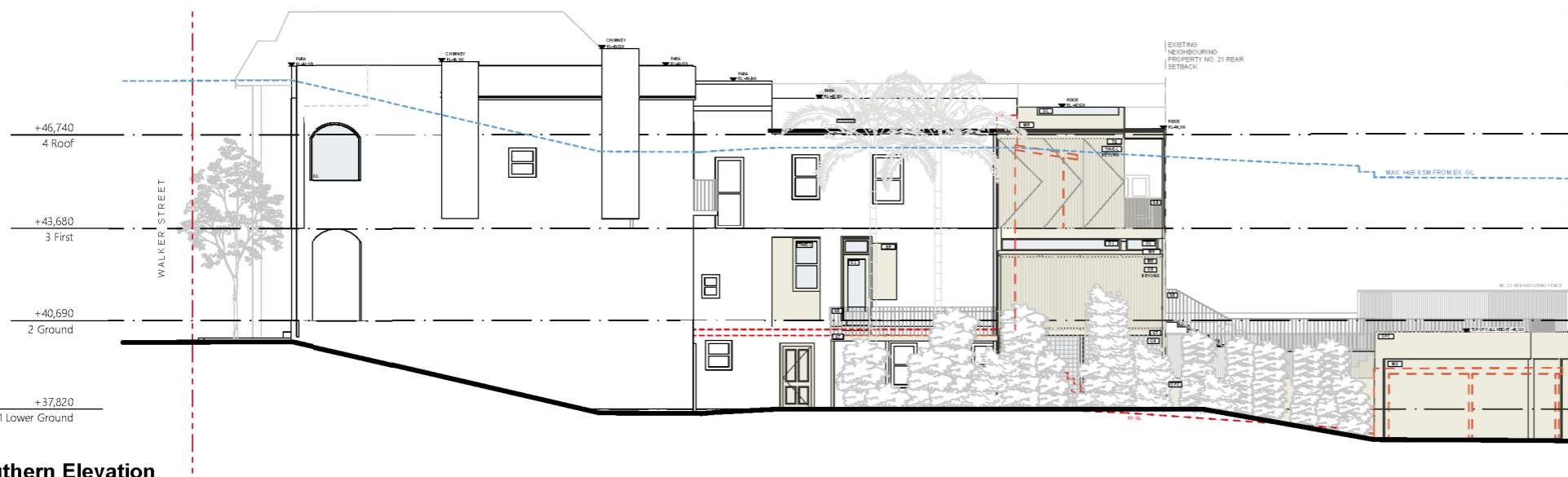
Site Plan



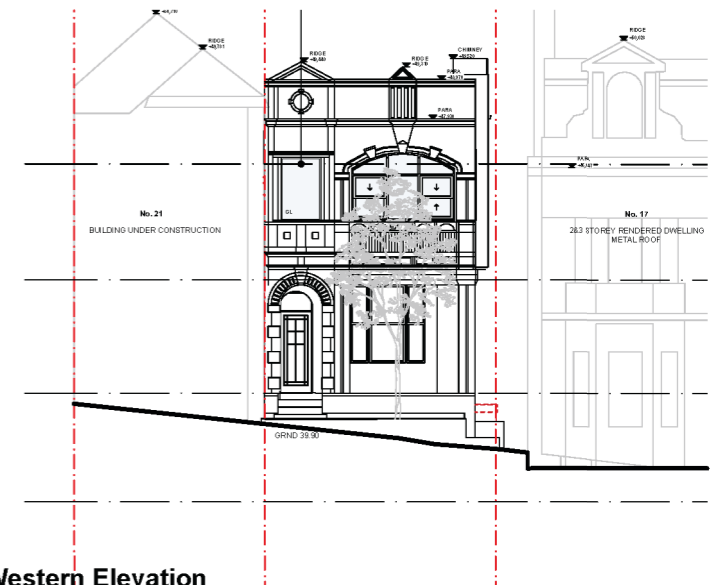
Northern Elevation



Eastern Elevation



Southern Elevation



Western Elevation

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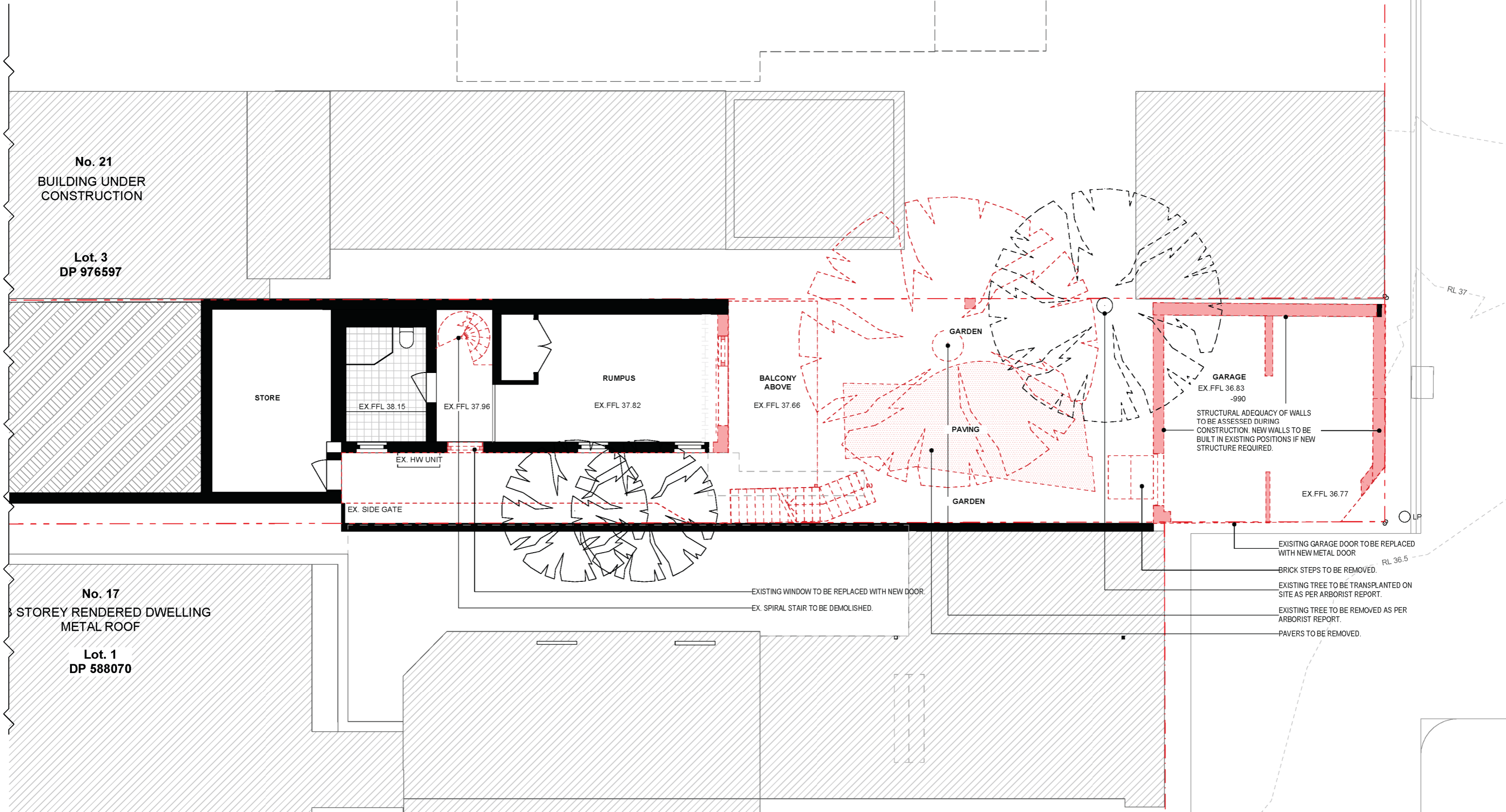
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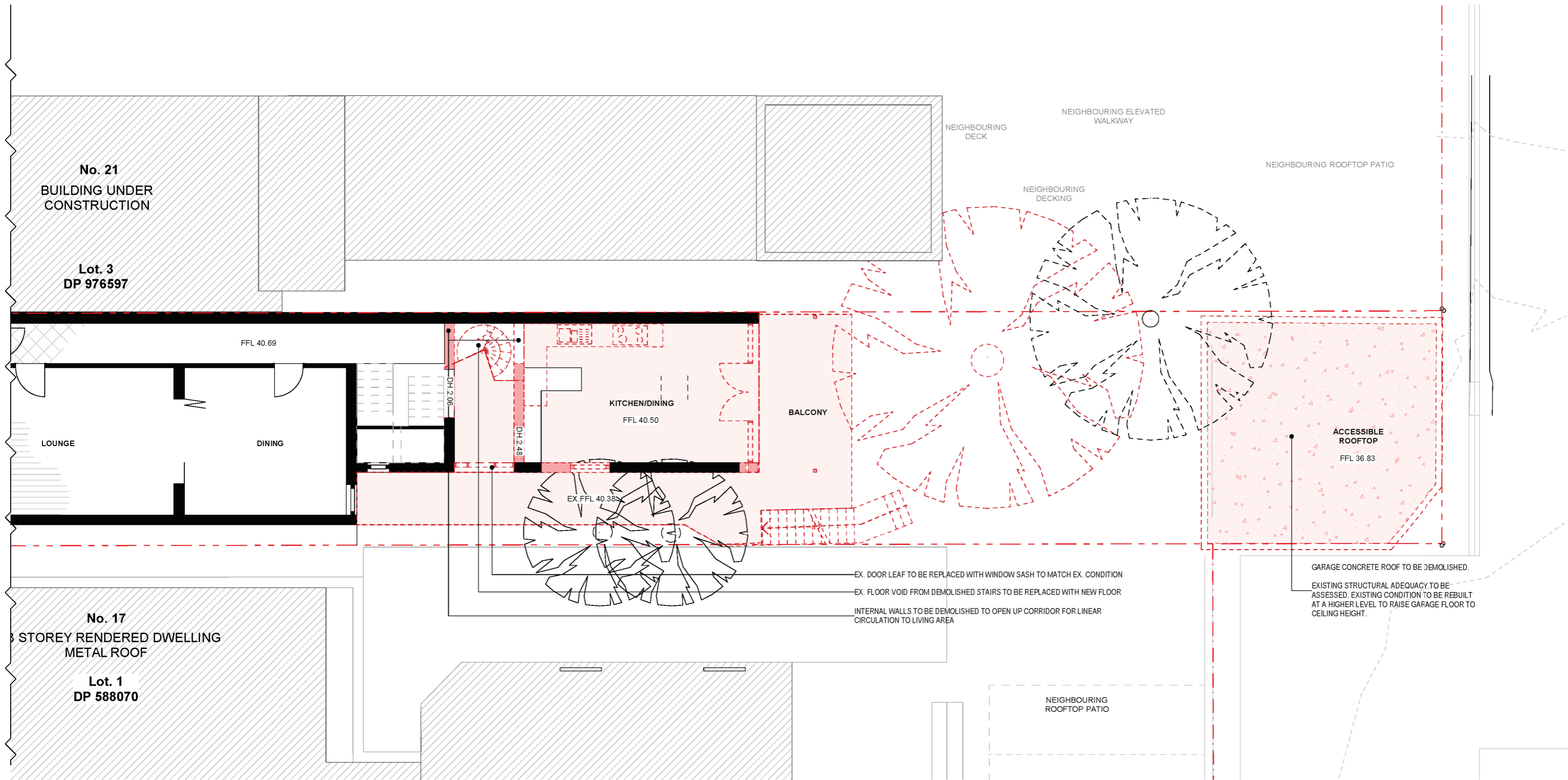
Legend

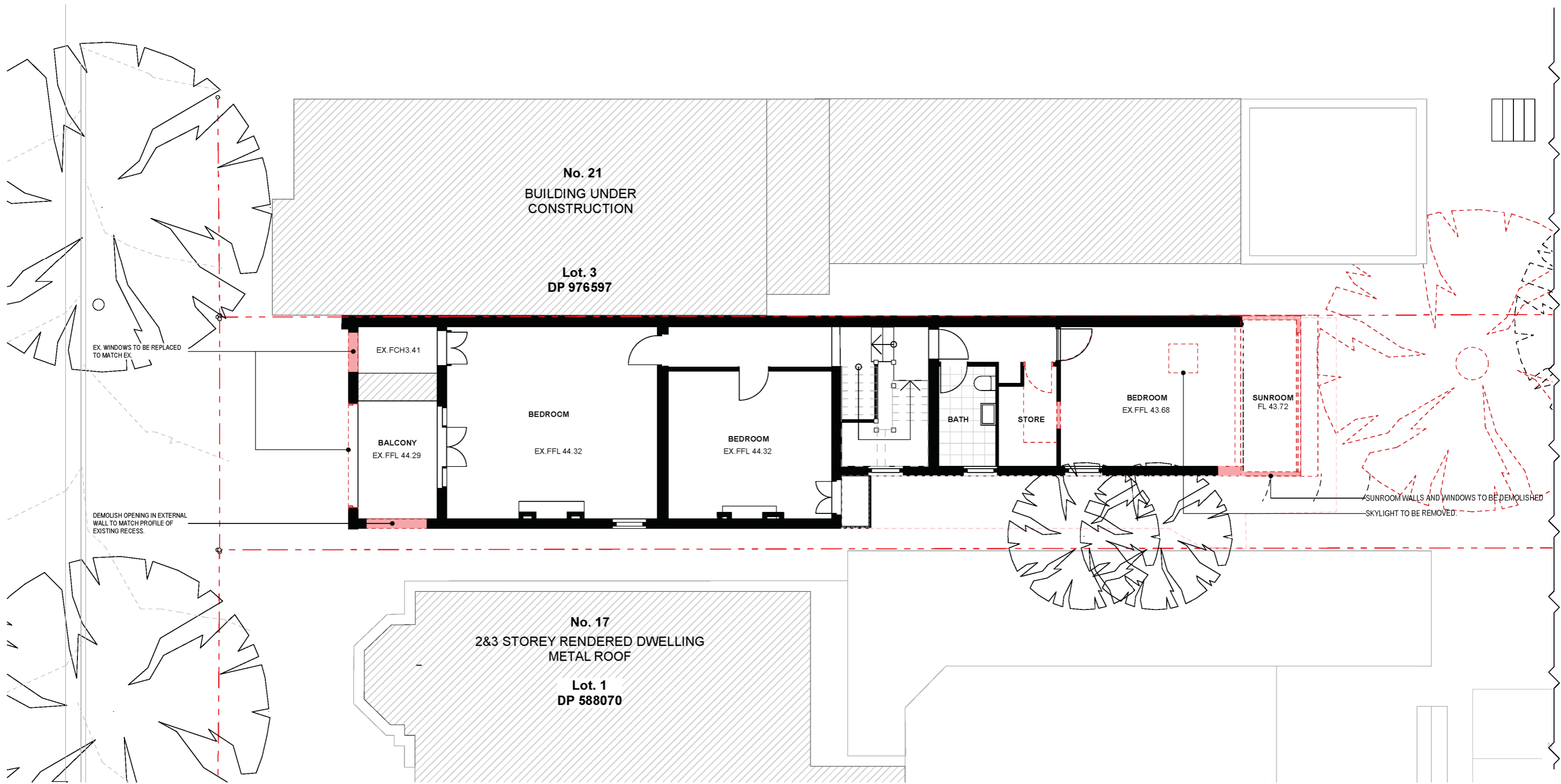
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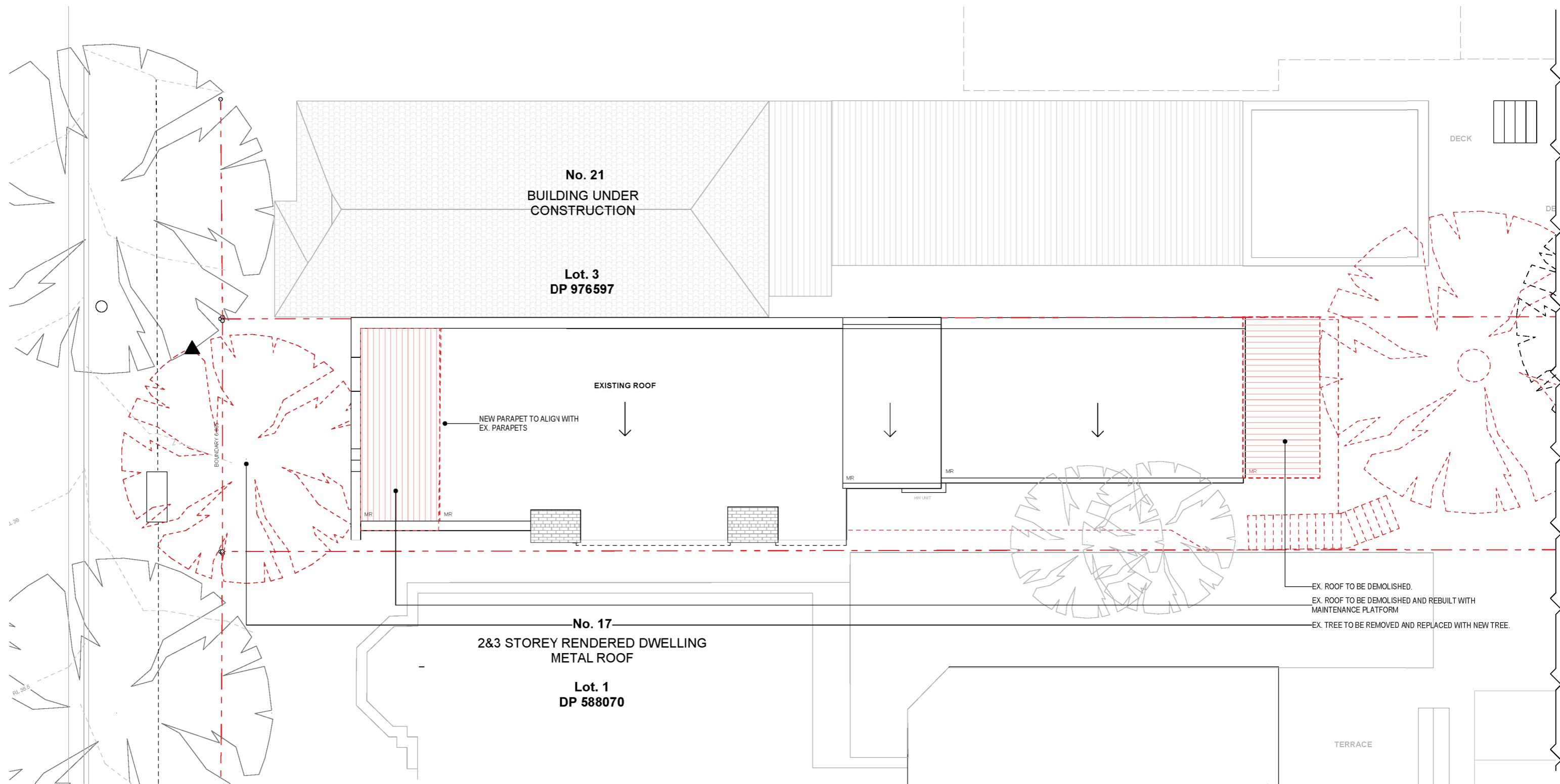
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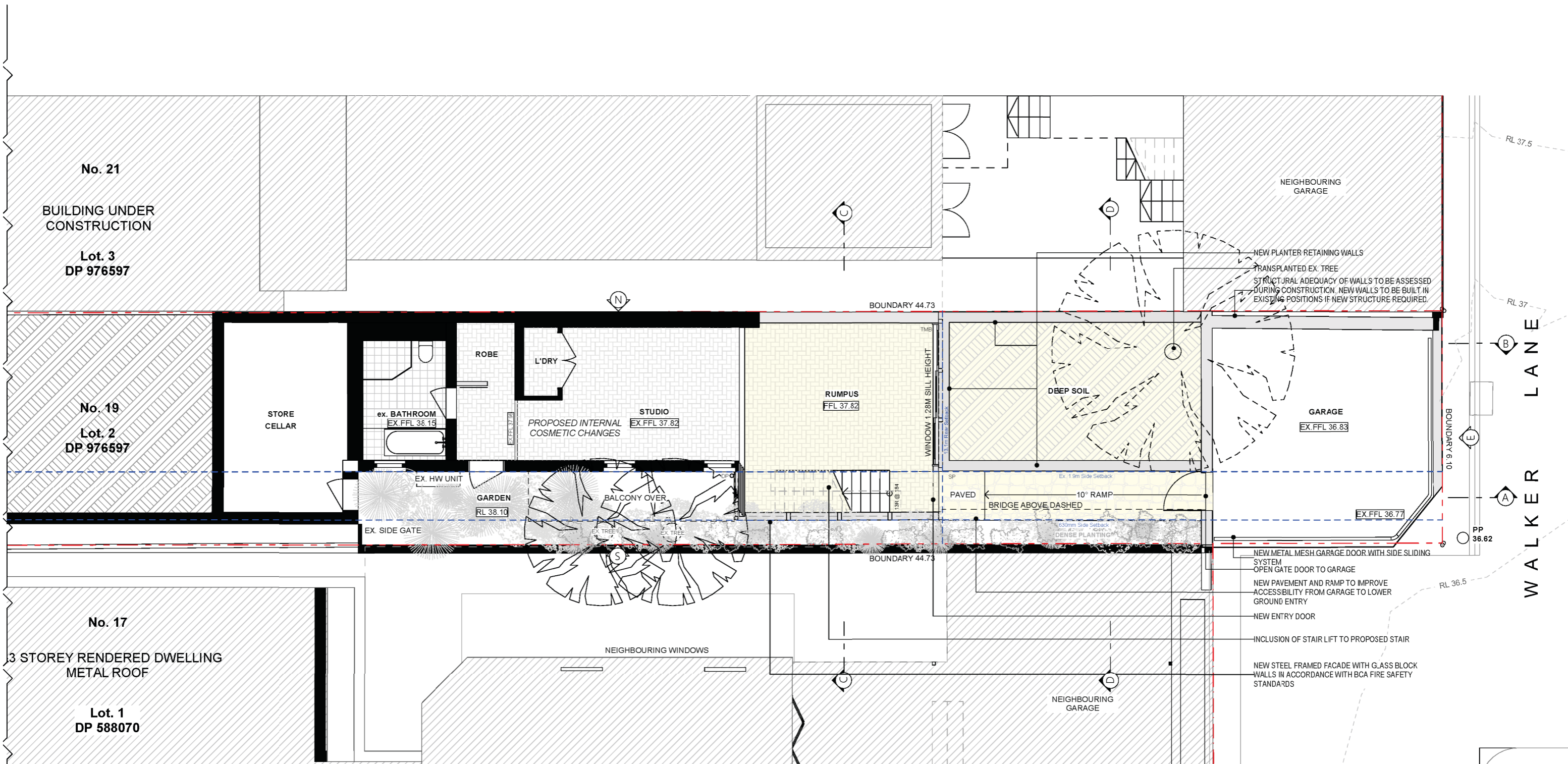
2101 Lavender Bay House
19 Walker Street, Lavender Bay, 2060
20/02/2024
Plan for Notification
DA100.3
John & Jane Luchetti
1:200 @ A3
NOT FOR CONSTRUCTION

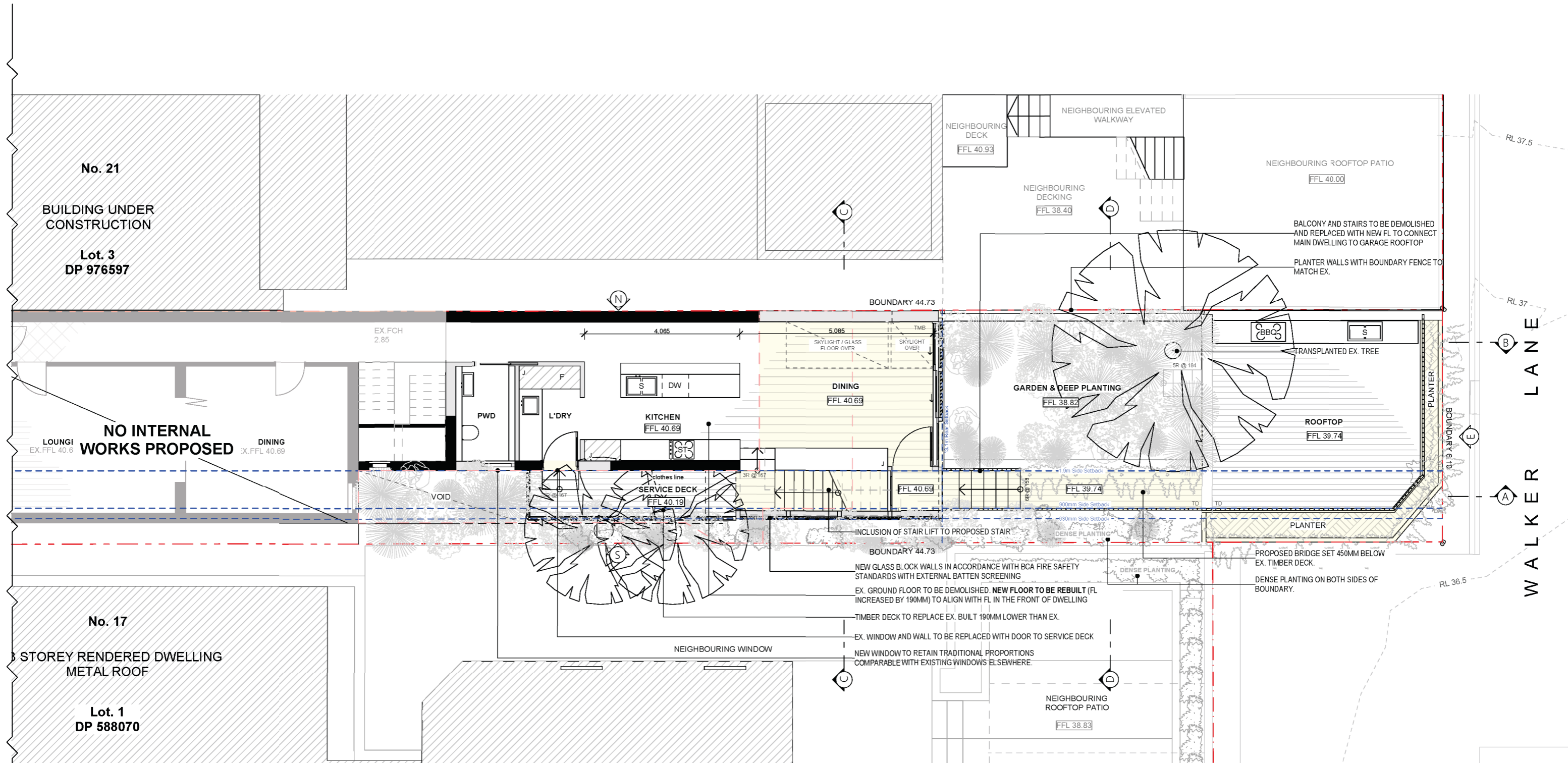


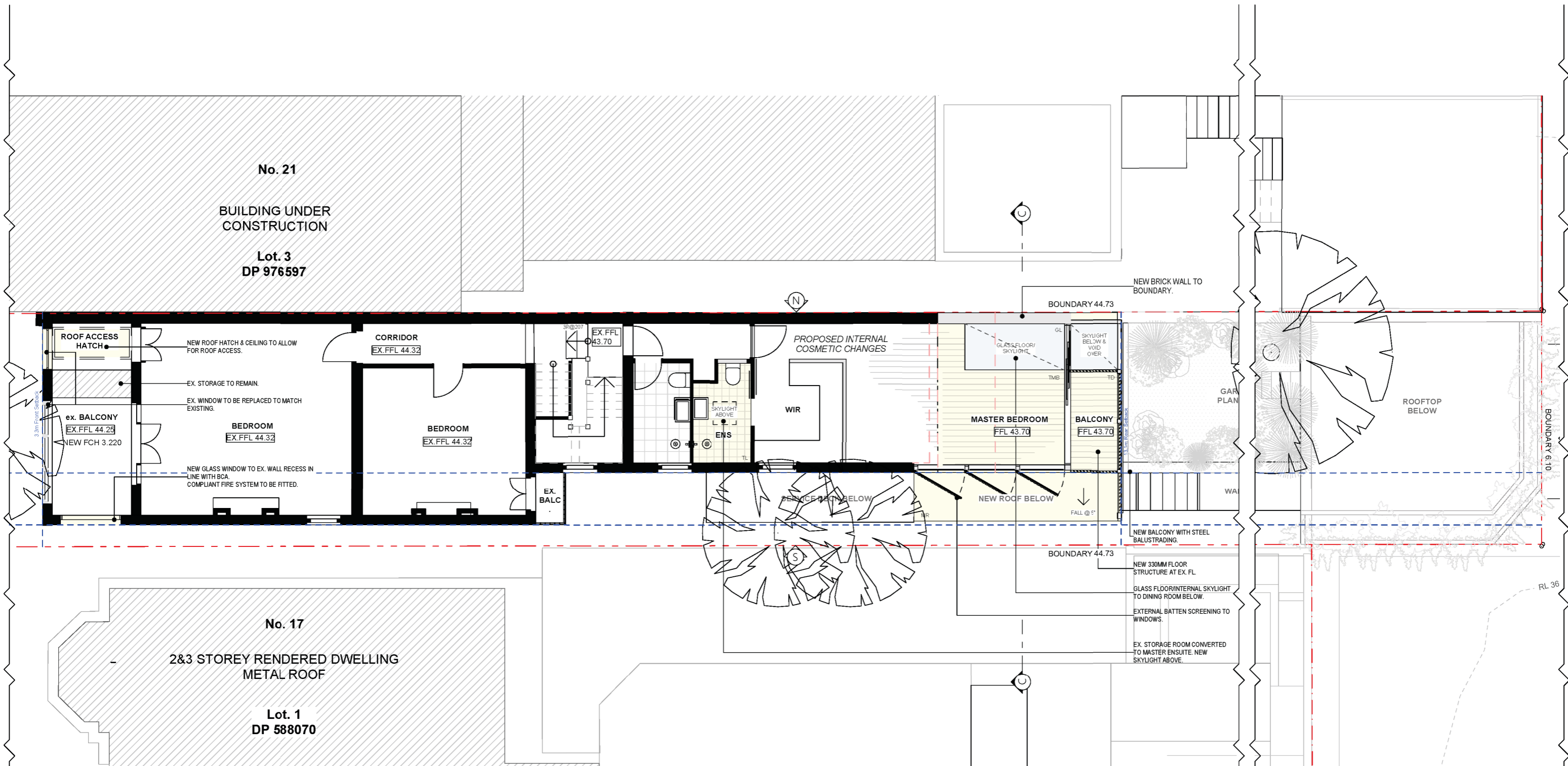


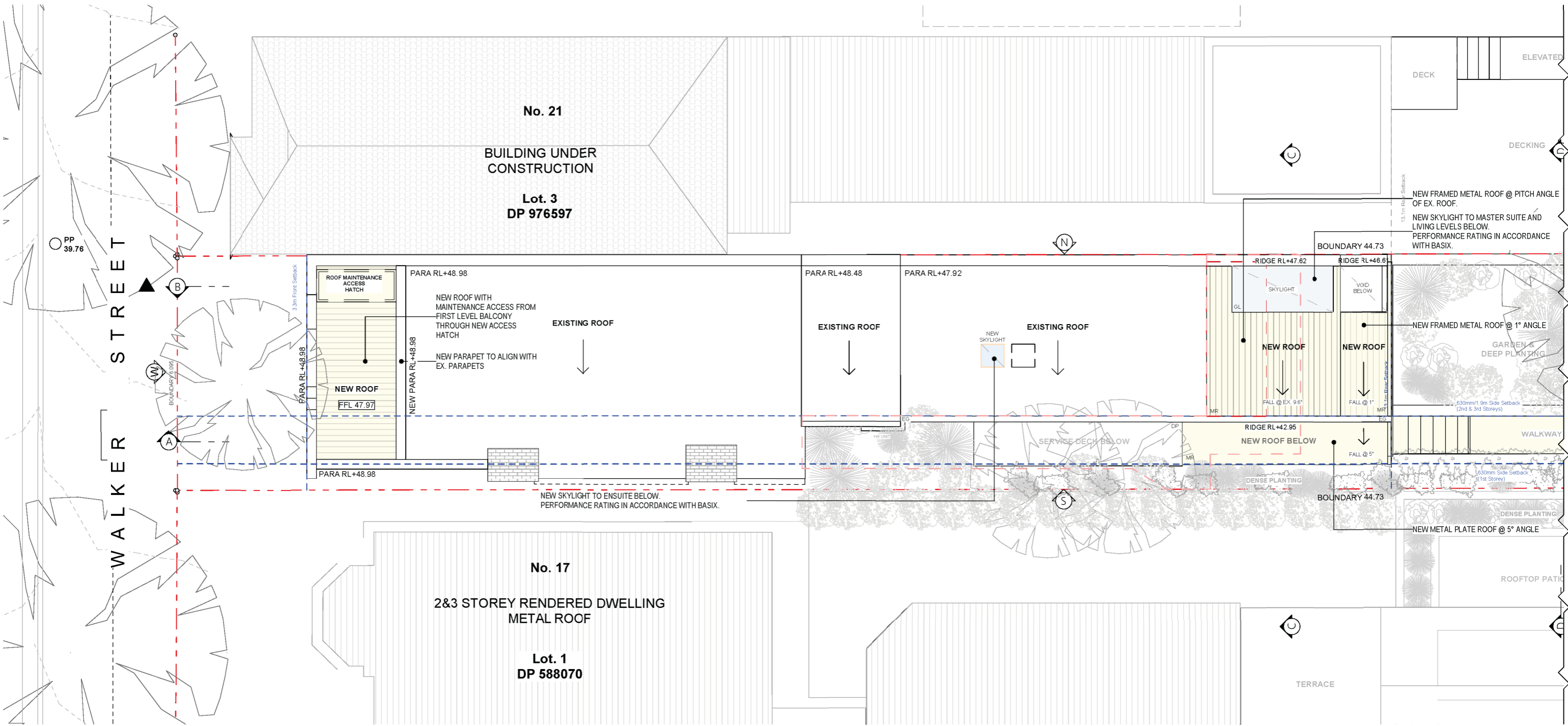










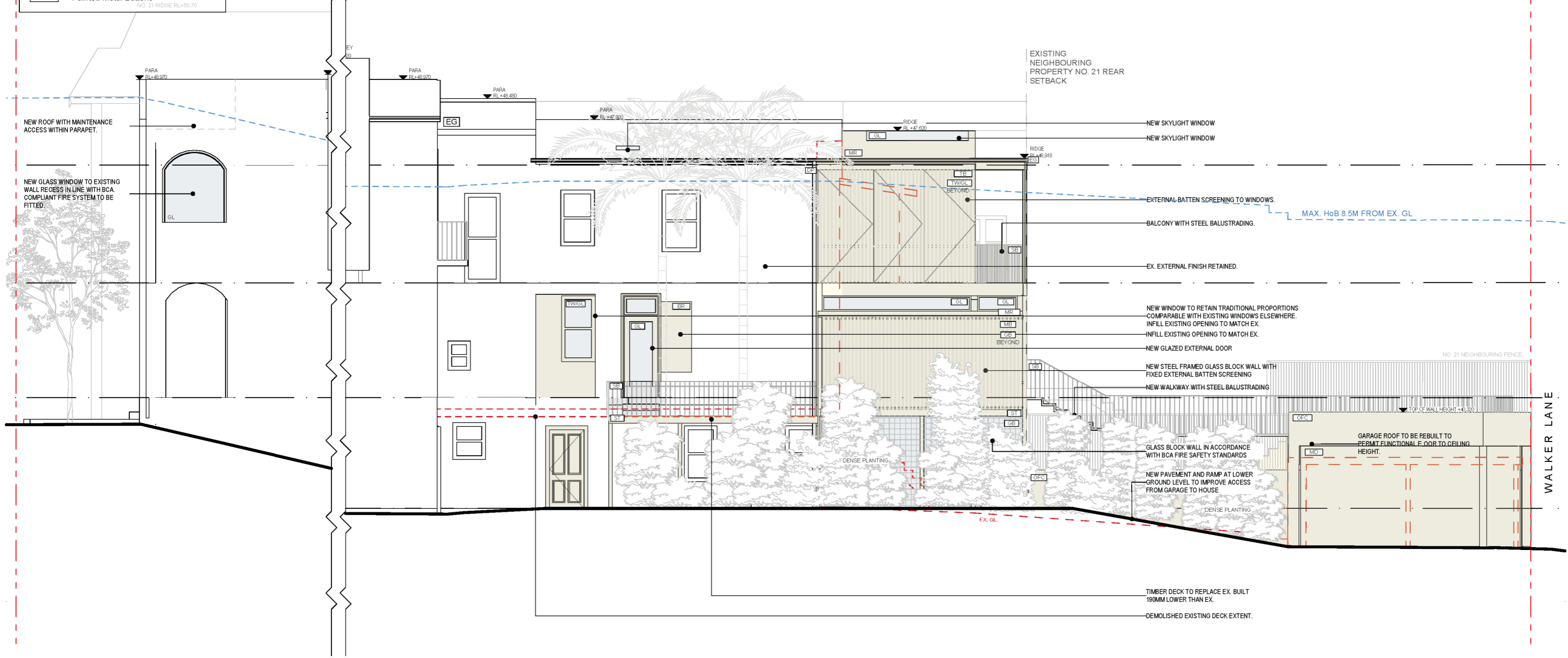


Material Key

SP	Stone Pavers
TMB	Timber Flooring
MD	Metal Door
MR	Metal Roof
GL	Glass
GB	Glass Blocks
TB	Painted Timber Battens
BR	Painted Brick
ST	Painted Steel Framing
OFC	Off-Form Concrete
TD	Timber Decking
SB	Steel Balustrading
MB	Painted Metal Battens

Notes Legend

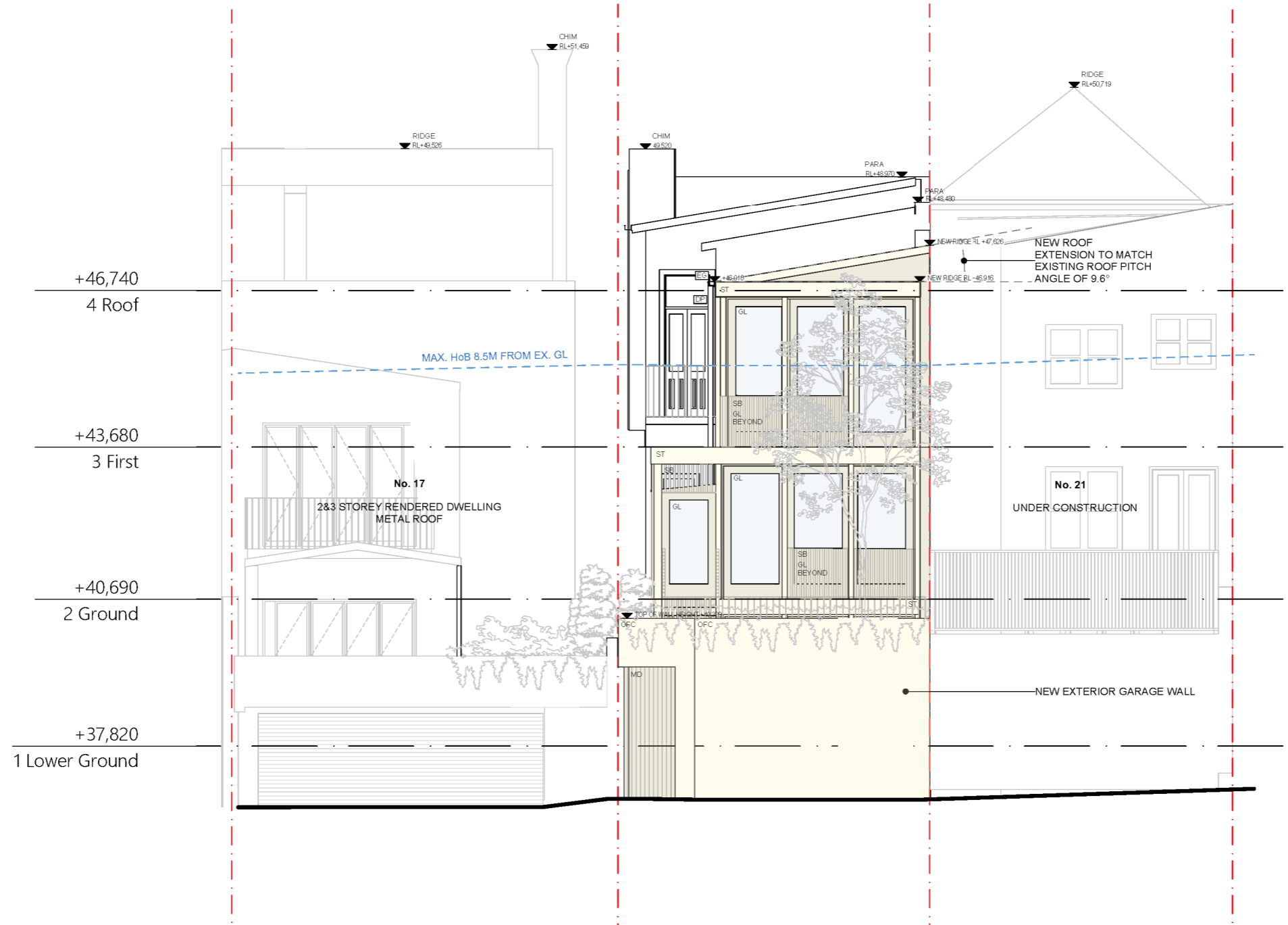
DP	Down Pipe
EG	Eaves Gutter



Revision	Date	Transmittal Set Name
A	29/06/22	DA Issue to Council
B	27/10/2023	RFI Issue to Council

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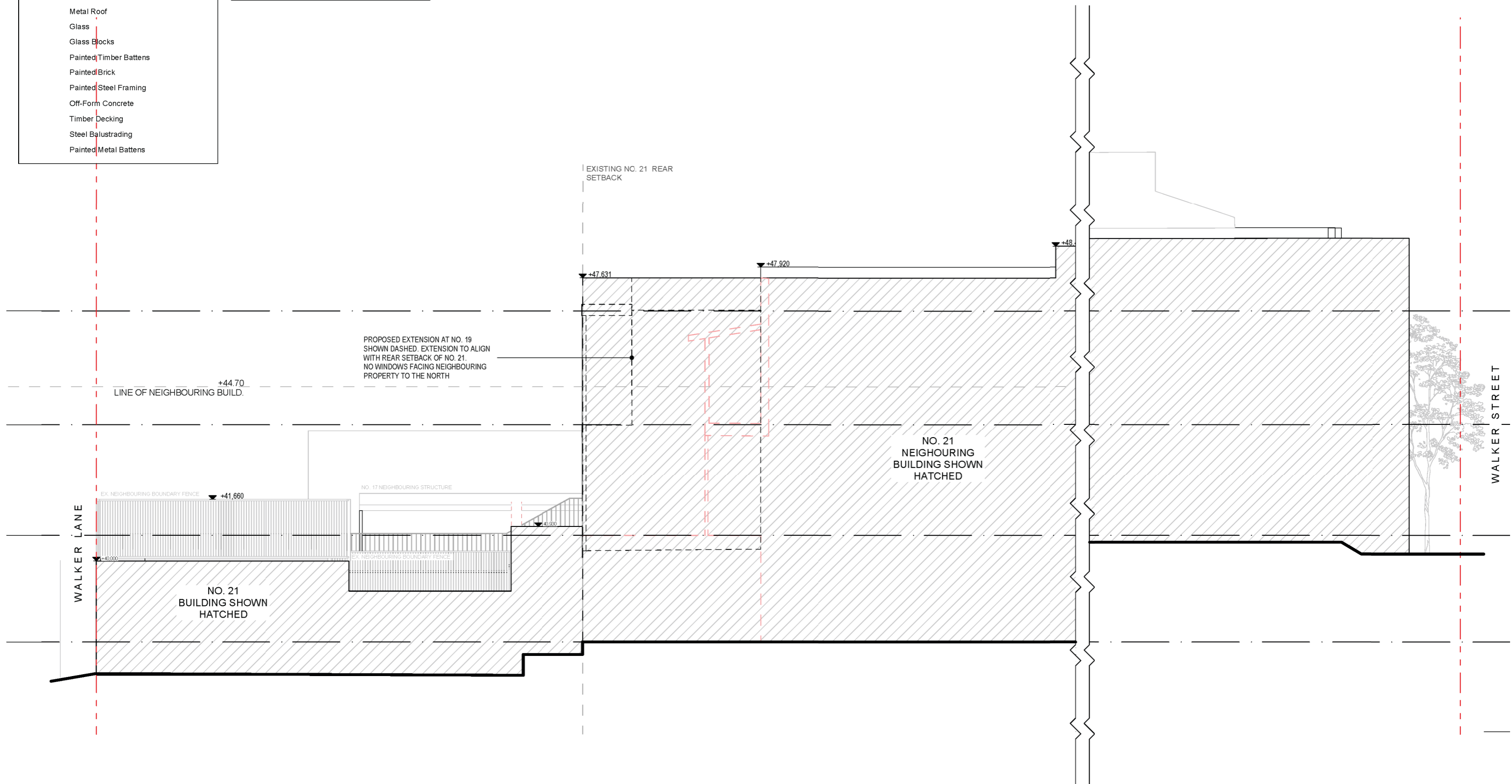
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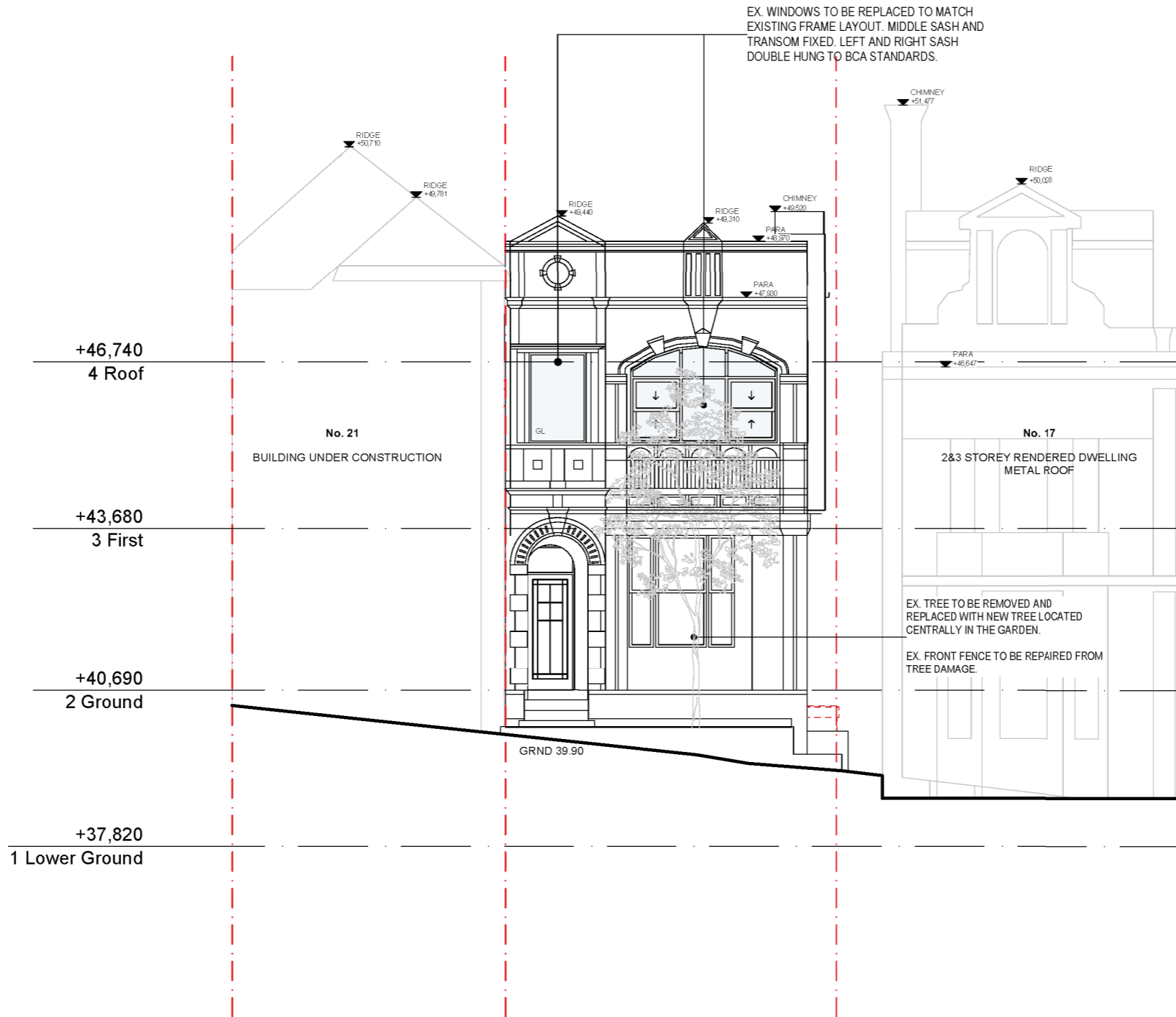
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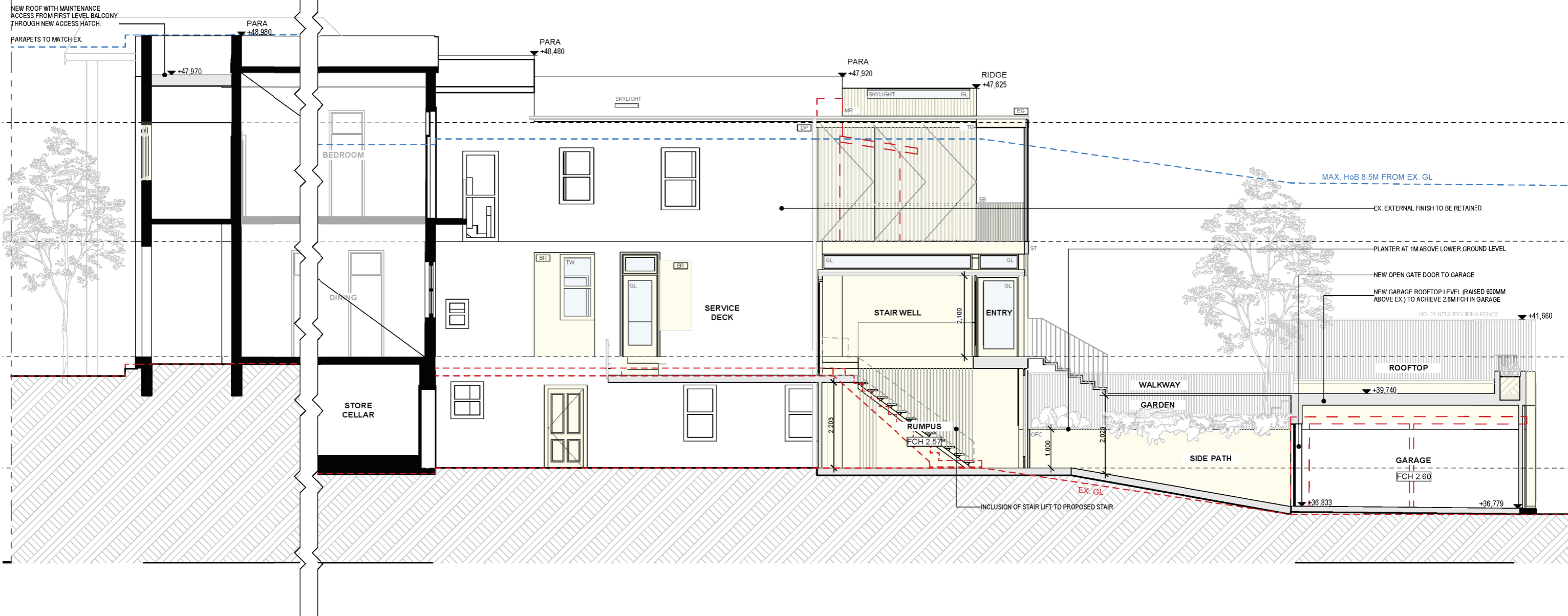
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- ### Material Key
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- ### Notes Legend
- Down Pipe
 - Eaves Gutter



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Surry Hills, Sydney NSW 2010

+61 2 8591 9364
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abn 7763585553
reg # 9445

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- ### Legend
- Existing walls
 - To be demolished
 - Proposed new walls
 - New construction

2101 Lavender Bay House
19 Walker Street, Lavender Bay, 2060

Section AA

John & Jane Luchetti

1:100 @ A3

20/02/2024

DA104.1

B

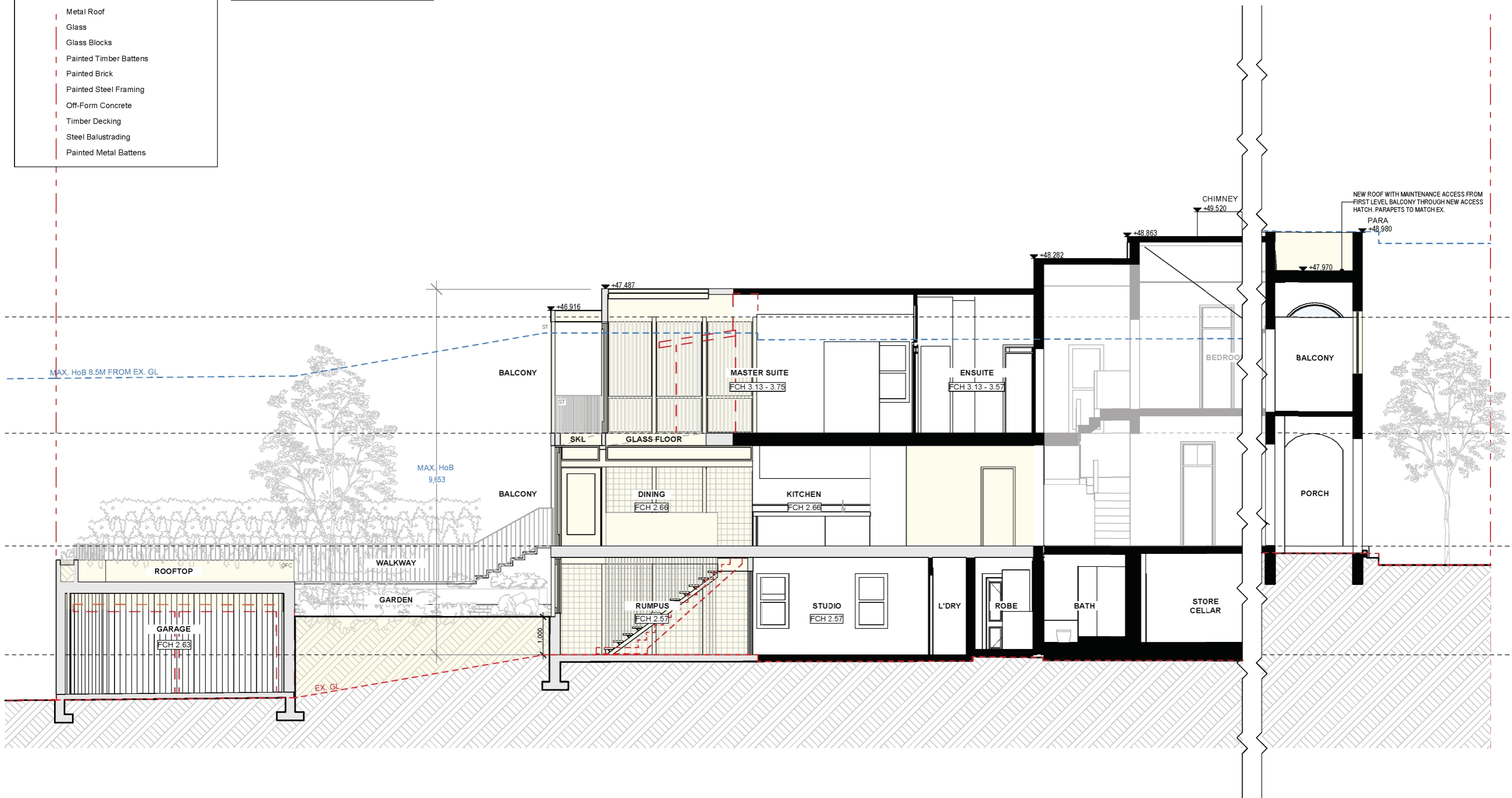
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Material Key

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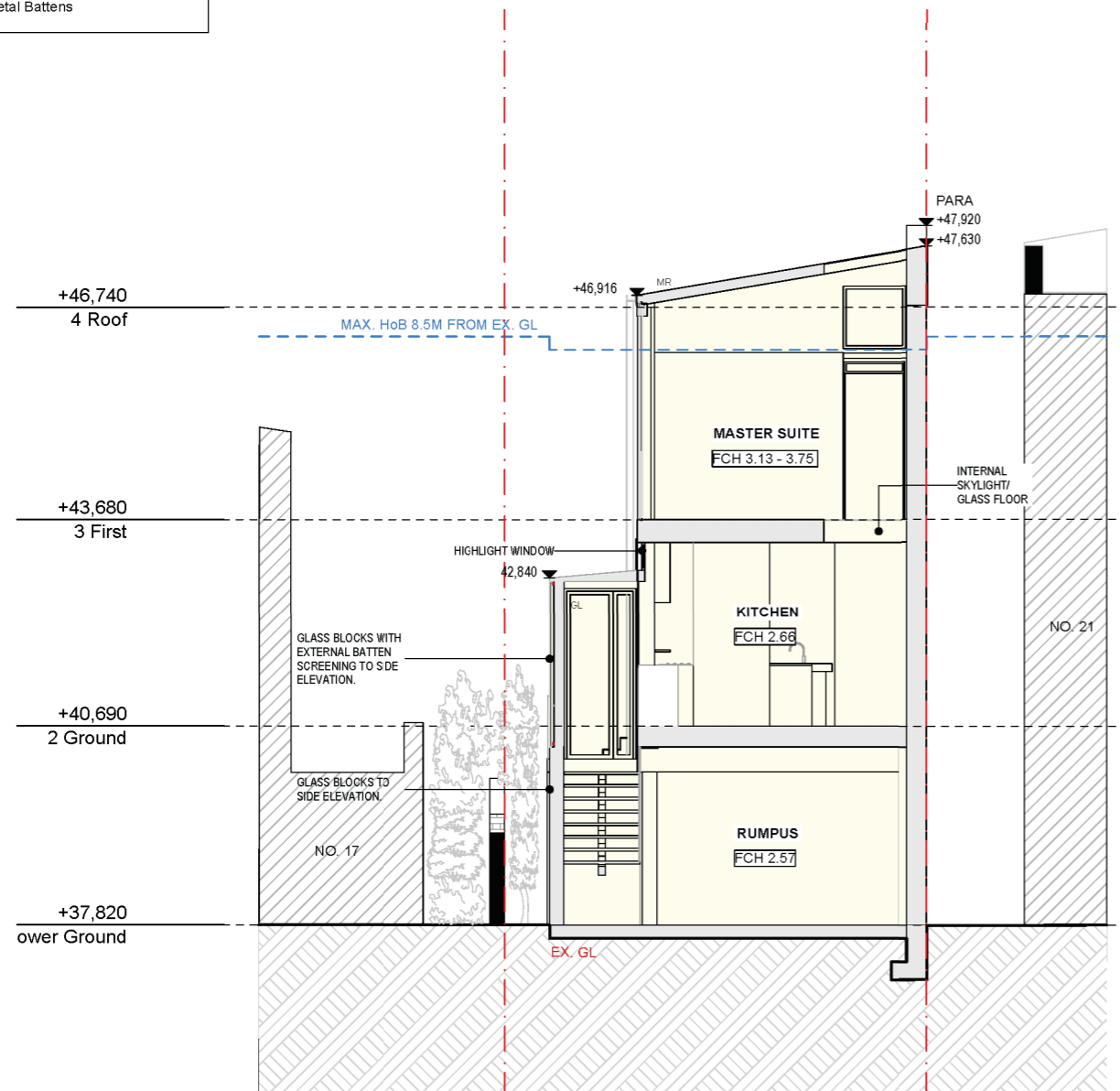
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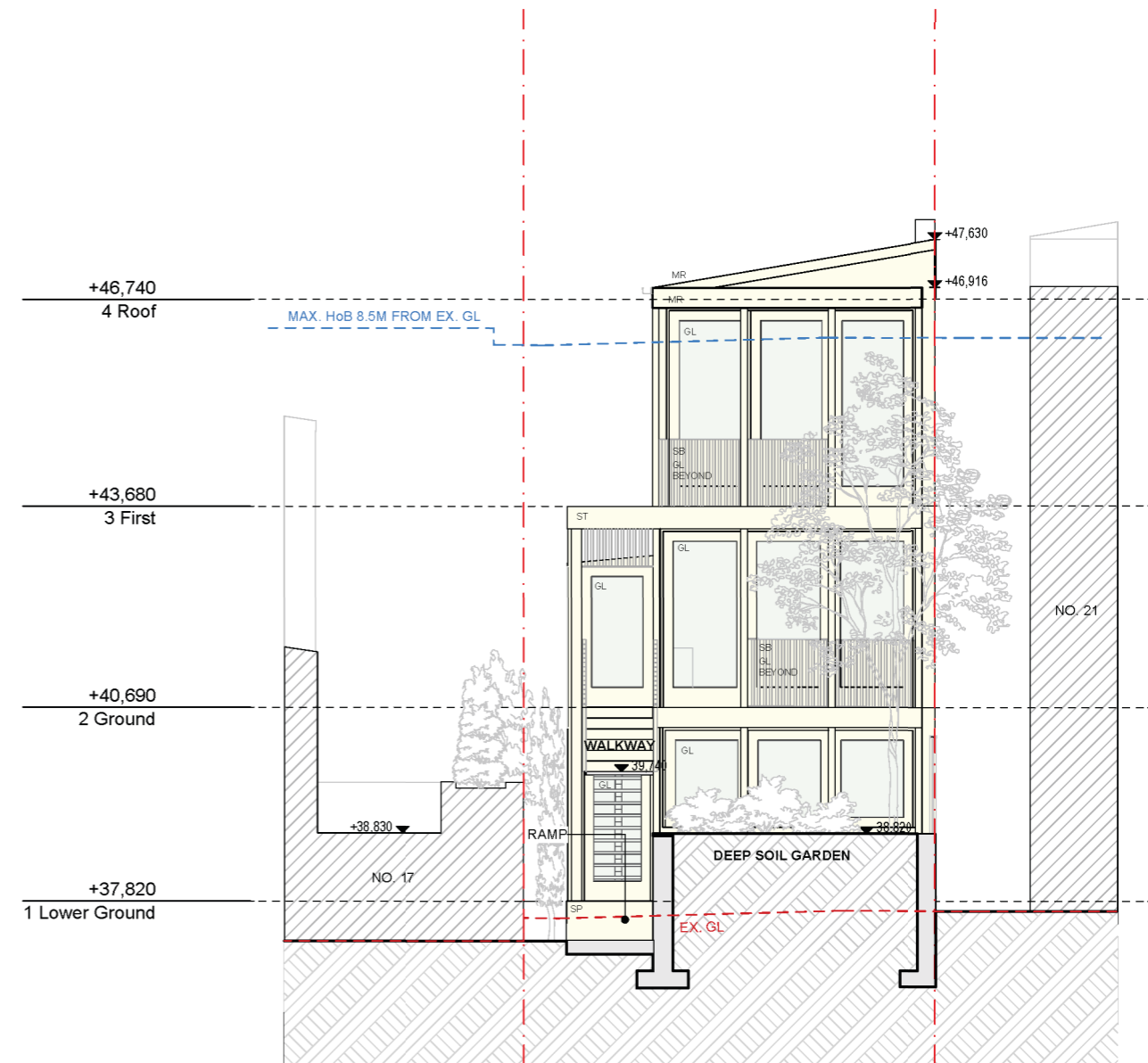


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Notes Legend	
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Eaves Gutter	



1 Section CC
Scale 1:100



2 Section DD
Scale 1:100

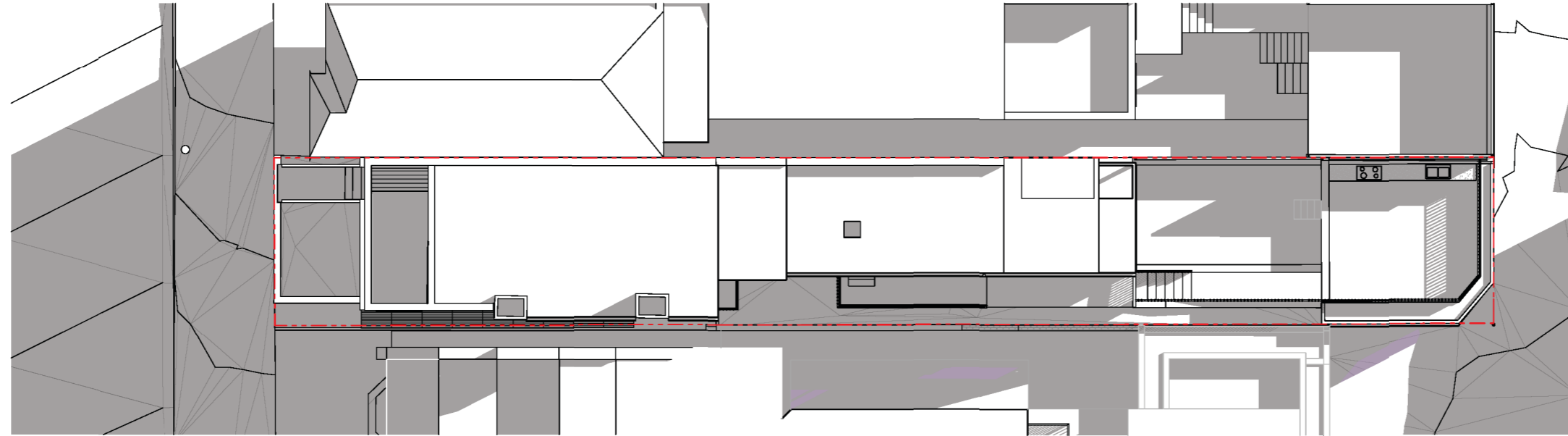
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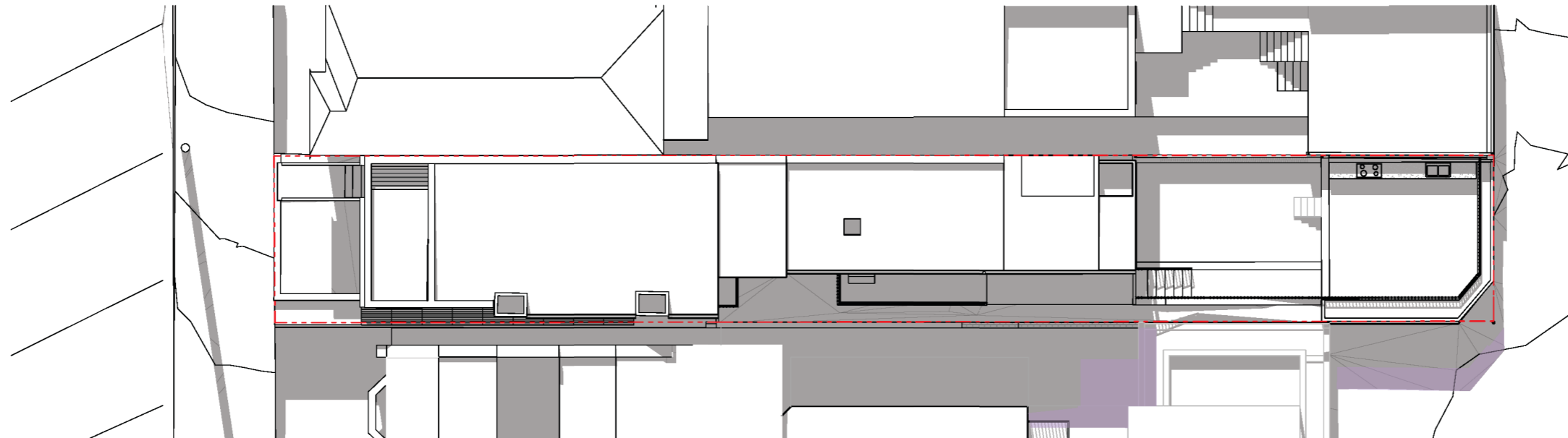
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- Existing walls
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- New construction

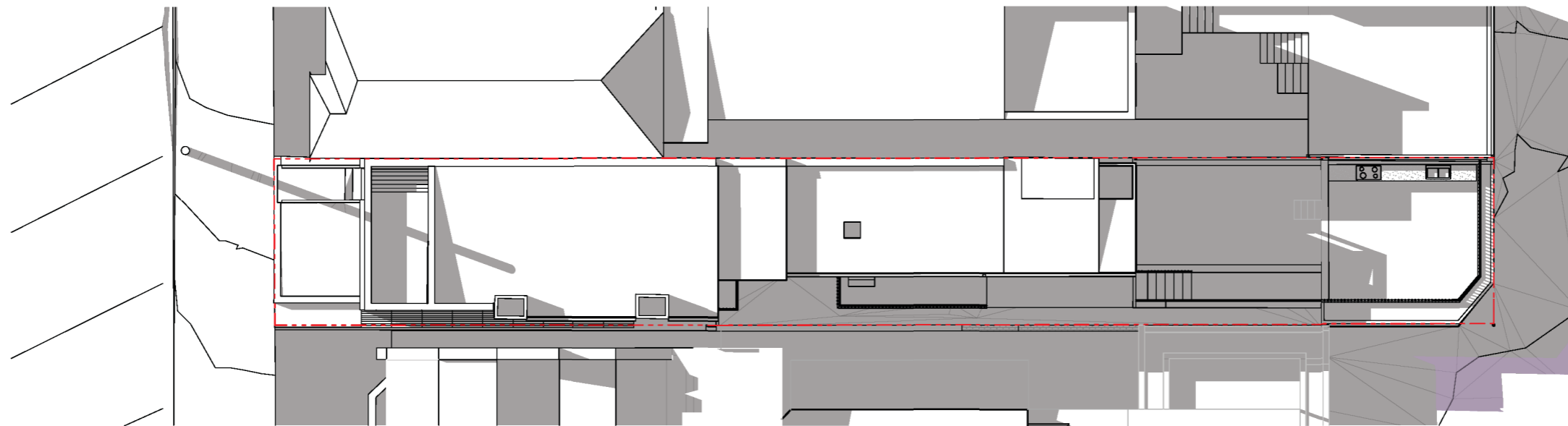
21 MARCH
9AM



21 MARCH
12PM



21 MARCH
3PM



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Legend

 Additional Shadow from Proposal

2101 Lavender Bay House
19 Walker Street, Lavender Bay, 2060

20/02/2024

Equinox Shadow Diagrams

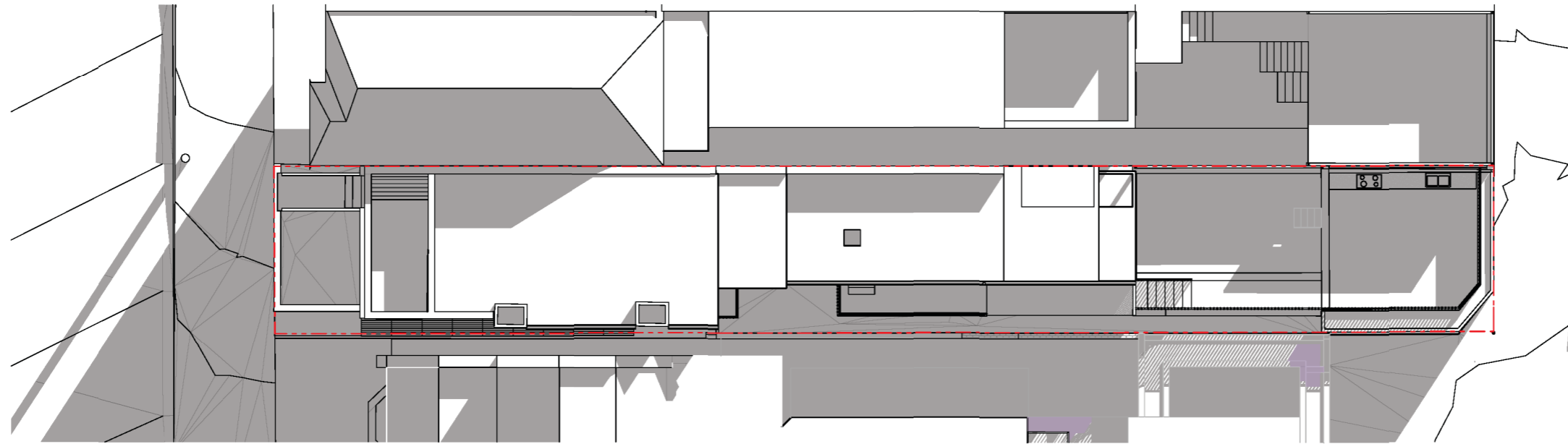
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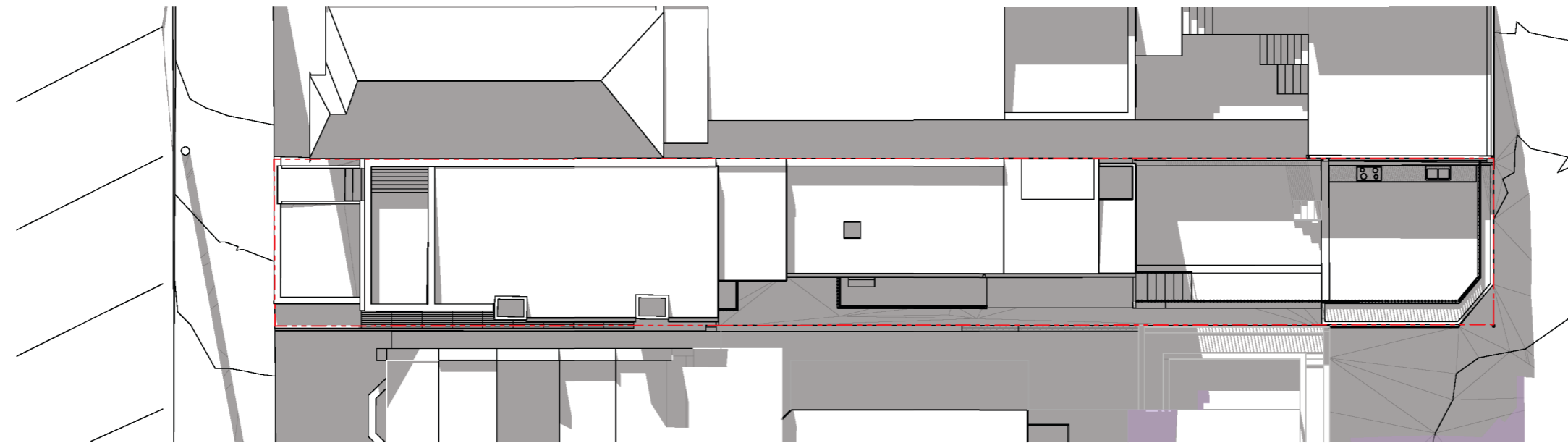
John & Jane Luchetti

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NOT FOR CONSTRUCTION

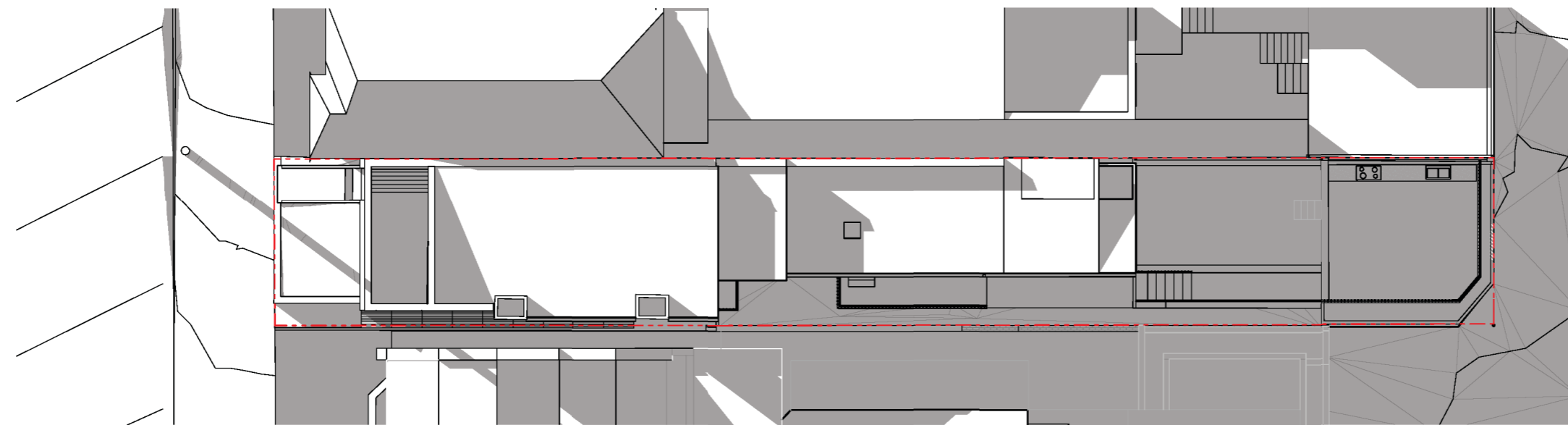
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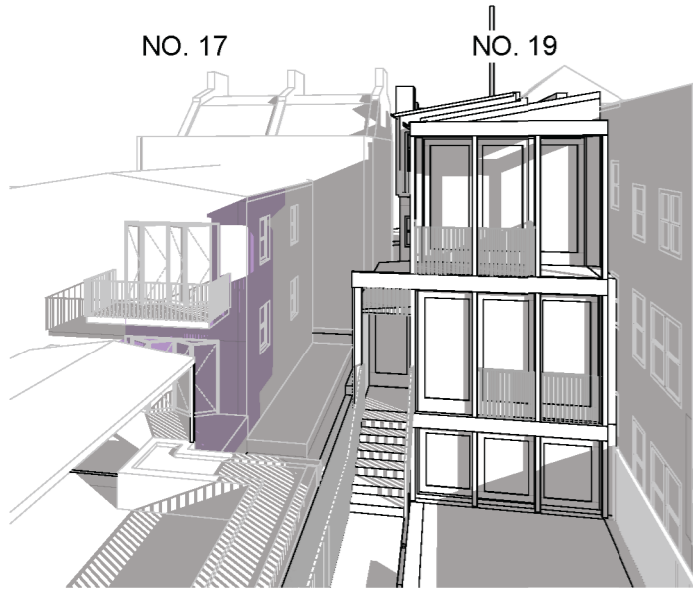


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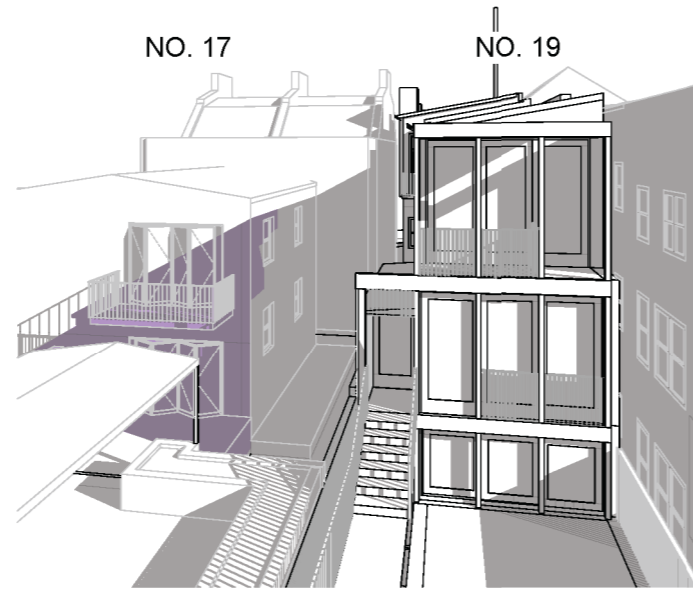
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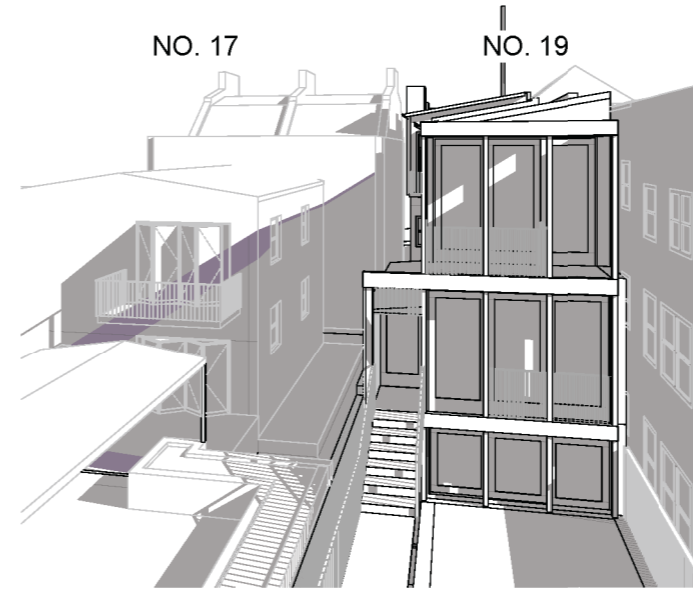
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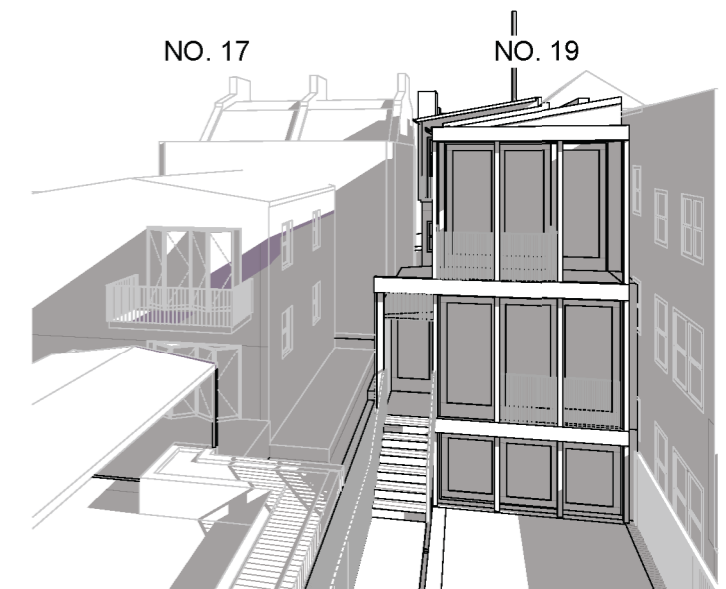
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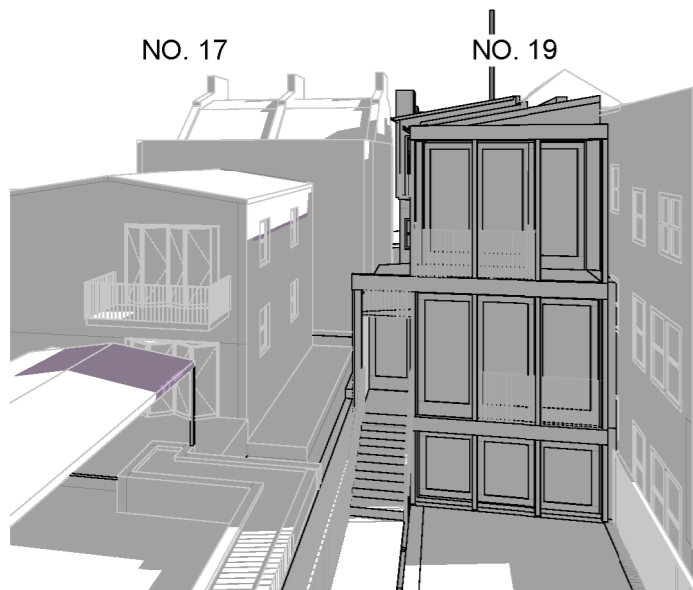
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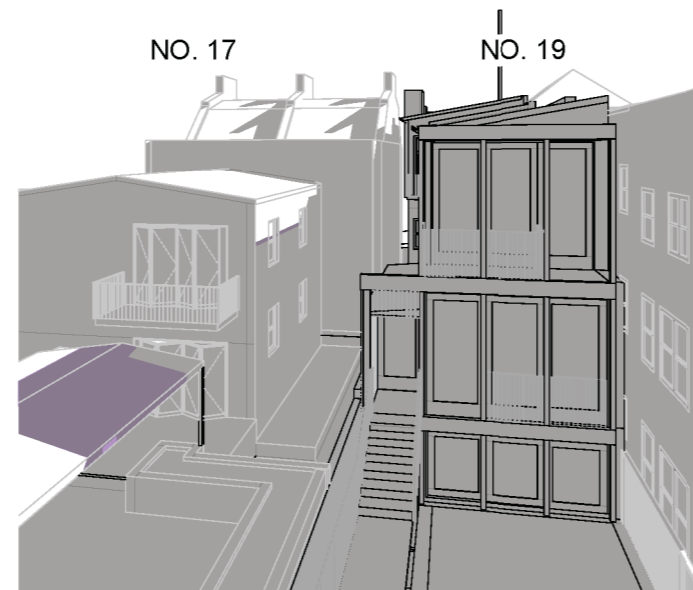
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4 Proposed - June 21 11:15am
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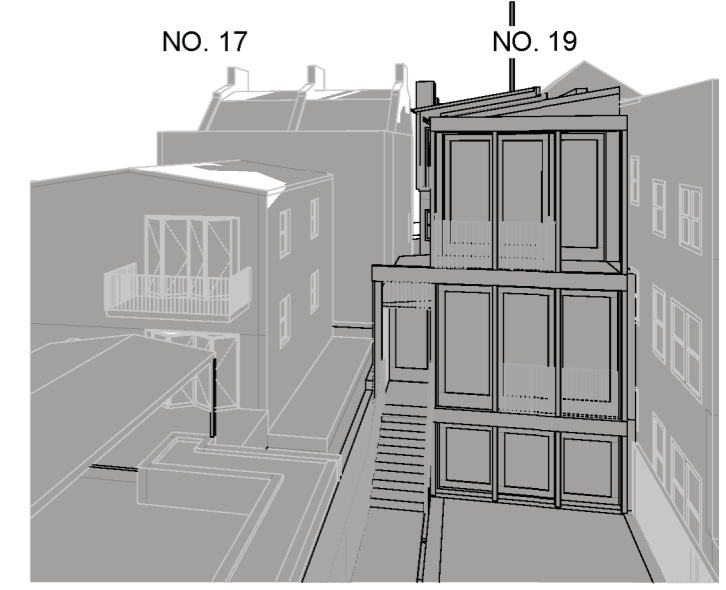
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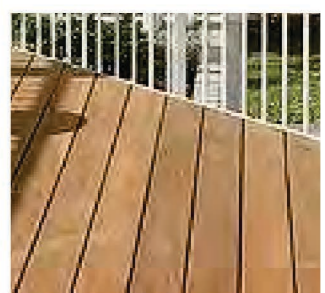
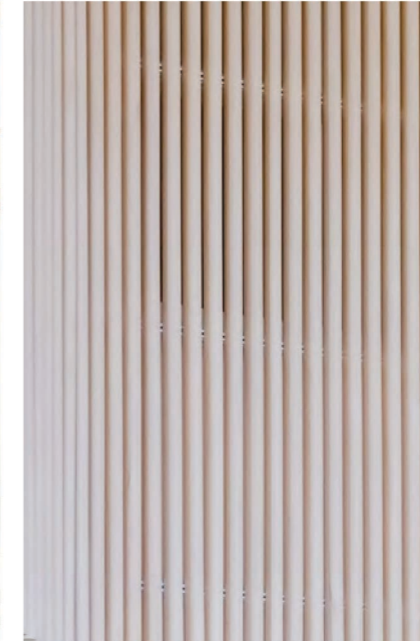
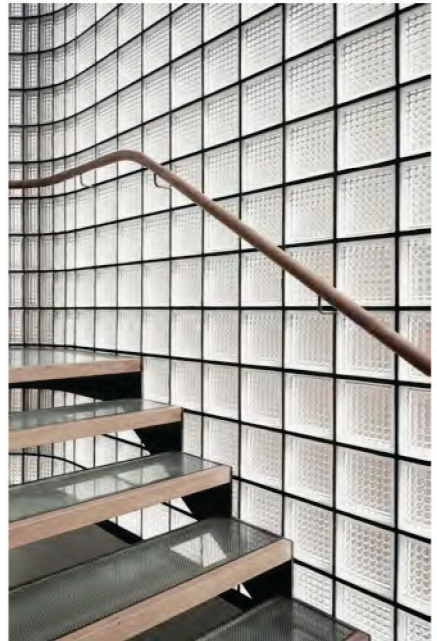
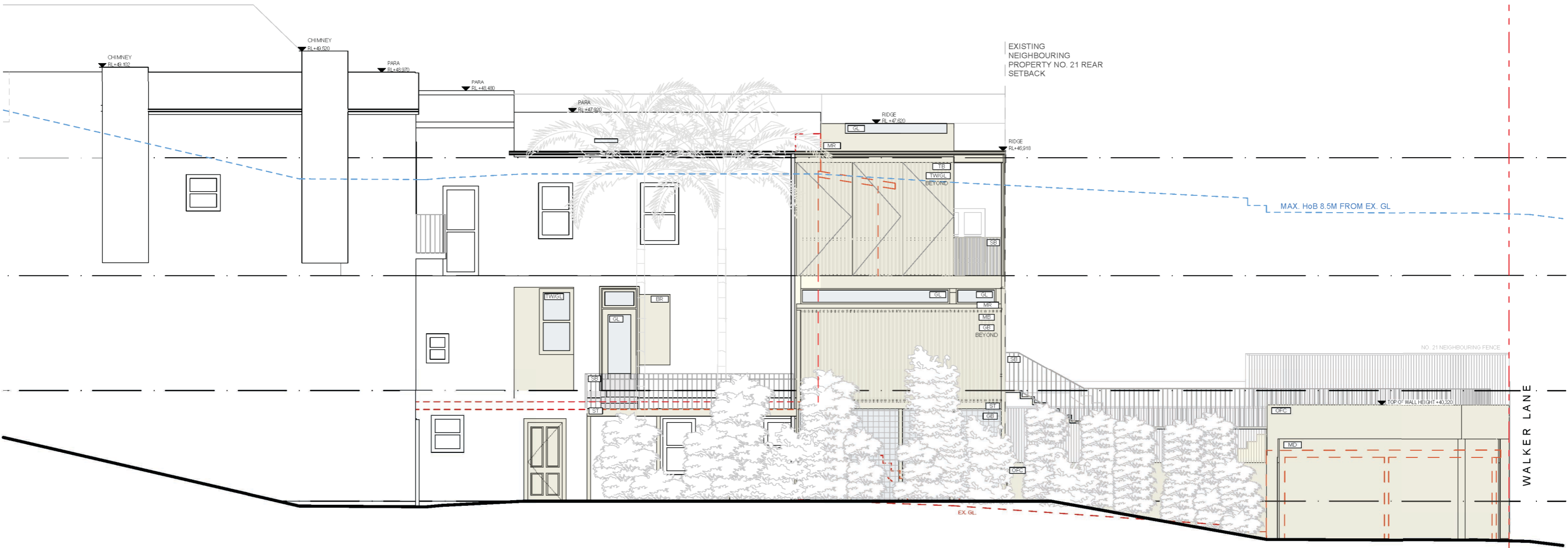
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ANNEXURE 1: CLAUSE 4.6 VARIATION BUILDING HEIGHT

Clause 4.3 of the North Sydney Local Environmental Plan 2013 stipulates a maximum building height of 8.5m, however the existing 3 storey house precedes the current height provision.

The existing building has a height of 10.6m to the highest point (ridge), 8.83m to the chimney and 8.28m to the highest parapet. The exceedance of the new portion of the building is 10.33m and exceeds the height limit by a total of 2.2m which equates to 25% but sits lower than the maximum height of the terrace and is limited to the small rear addition. It is also not visible from the primary street frontage and will appear lower than the rest of the building from adjoining properties and from Walker Lane.

An extract of the dwellings is provided below that shows the extent of the height breach.



Clause 4.6 of the North Sydney LEP 2013 provides that development consent may be granted for development even though the development would contravene a development standard provided the matters set out in Clause 4.6 are satisfied.

This Clause aims to provide an appropriate degree of flexibility in applying certain development standards to particular circumstances.



This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

The development standard in Clause 4.3(2) of the *North Sydney LEP 2013* is not “expressly excluded” from the operation of Clause 4.6.



RELEVANT CASE LAW

This statement has been prepared with regard to the latest decisions of the NSW Land and Environment Court in relation to Clause 4.6 and the proper approach to justifying a variation of a development standard, including:

- a) *Wehbe v Pittwater Council* [2007] 156 LGERA 446; [2007] NSWLEC 827;
- b) *Four2Five Pty Ltd v Ashfield Council* [2007] 156 LGERA 446; [2015] NSWLEC 90 ;
- c) *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118;
- d) *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130; and
- e) *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112.

There are also a number of other NSW Land and Environment Court cases that are relevant, including *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386 and *Moskovich v Waverley Council* [2016] NSWLEC 1015, as well as *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179.

Importantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ held at paragraphs [87] and [90]:

87. ...Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...

...

90. In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause.

These matters are discussed in the following sections



CLAUSE 4.6(3)(A): COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

In *Wehbe v Pittwater* [2007] NSWLEC 827 (*'Wehbe'*), Preston CJ identified a variety of ways in which it could be established demonstrated that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. This list is not exhaustive. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

While *Wehbe* related to objections made to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the reasoning can be similarly applied to variations made under Clause 4.6 of the standard instrument.

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are at least 5 different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy, as follows :

- The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and*



unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

It is sufficient to demonstrate **only one** of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22], *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

THE OBJECTIVES OF THE STANDARD ARE ACHIEVED NOTWITHSTANDING NON-COMPLIANCE WITH THE STANDARD

This Clause 4.6 variation statement establishes that compliance with the maximum building height development standard is considered unreasonable or unnecessary in the circumstances of the proposed development because the underlying objectives of the standard are achieved despite the non-compliance with the numerical standard.

The objectives of Clause 4.3 Height of Buildings pursuant to the *North Sydney 2013* are responded to as follows:

4.3 Height of buildings:

(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 existing building height compatible with the character of the locality, for the following reasons:

- The building height is appropriate for the site given the height of the existing building on the land, noting that the proposed works rear addition will not encroach the height established by the existing 3 storey dwelling and within a flat roof form which is set below the original parapet roof height.



- The development does not increase the bulk and scale of the existing building in any meaningful way as the additions is limited to the rear of the building and below the height of the existing building and not visible from Walker Street.
- The proposal has been carefully designed to respect the character of the site and locality in the context of the HCA.
- The proposal has not impact on view sharing as per the Heritage Impact Statement.
- The minor works proposed to the site do not result in a reduction of views from either the public domain or nearby private properties, noting that the Heritage Impact Statement which accompanies this application has found that the proposed works have been assessed as not blocking view corridors towards nearby heritage items or conservation area.
- The proposal will not result in any additional unacceptable overshadowing impacts to adjoining properties.
- Due to the minor nature of the variation, it will not have any adverse amenity impacts. In this regard, it is noted:
 - The variation will not lead to the reduction in solar penetration on site or to adjoining properties nor will it lead to excessive sunlight loss or overshadowing;
 - The proposed variation will not lead to view loss or interrupt on views to and from the site; and
 - The proposed variation will not lead to a reduction in privacy afforded to surrounding properties or future residents of the proposal.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances.

The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control. This also satisfies Wehbe Test 1.



CLAUSE 4.6(3)(B): SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

Clause 4.6(3)(b) of the *North Sydney LEP 2013* requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

The following factors demonstrate that sufficient environmental planning grounds exist to justify the proposed variation to the maximum building height standard in Clause 4.3. It is reminded at the outset that as confirmed by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [24], the focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds :

- The existing building breaches the height limit and the additional height is not greater than the existing maximum building height and the additional height associated with the proposed addition is located behind the existing building and will not encroach the height established by the existing 3 storey dwelling and within a flat roof form which is set below the original parapet roof height.
- The variation to the maximum building height standard enables the 'Objects' of the *EP&A Act* to be achieved, specifically:

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

(d) to promote the delivery and maintenance of affordable housing,

- The absence of adverse environmental, social or economic impacts

The above discussion demonstrates that there are sufficient environmental planning grounds to justify the proposed variation to the maximum building height standard.



CLAUSE 4.6(4)- PUBLIC INTEREST AND OBJECTIVES OF THE ZONE

The relevant objectives are prescribed as:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide for a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*
- *To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposal is consistent with the objectives of the zone, providing for increased amenity of existing residents without impacting on the fabric of nearby heritage items or the Lavender Bay conservation area and therefore will not result in having a negative impact on the setting of nearby heritage items and conservation area. Furthermore, the proposed addition and alteration works will also have no impact on the amenity of neighboring properties, in terms of privacy, acoustic and overshadowing.

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3). As addressed the proposed development is in the public interest as it remains consistent with the objectives of the building height control.



CLAUSE 4.6(5)

As addressed, it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal and minor nature of the variation;
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal as the proposal is consistent with the underlying objectives of the control and the fact that the minor non-compliance does not lead to excessive bulk and scale, and it will not set an undesirable precedent for future development within the locality.

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its particular circumstances.

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.