

**NSLPP MEETING HELD ON 01/05/24****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement

ADDRESS/WARD: Unit 9 and 9A, 50 Milson Road, Cremorne Point**APPLICATION NO:** DA353/23**PROPOSAL:** Consolidation of two units, alterations and additions including internal demolition and reconfiguration, landscaping and addition of pergola on existing roof terrace.**PLANS REF:**

Plan No.	Description	Prepared by	Dated
A200 Issue E	Level 9 Floor Plan	Walter Barda Design	15.12.23
A201 Issue E	Level 10 Floor Plan	Walter Barda Design	15.12.23
A202 Issue E	Roof Plan and Sections	Walter Barda Design	15.12.23
A301 Issue G	Elevations	Walter Barda Design	27.03.24
A302 Issue G	Elevations	Walter Barda Design	27.03.24

OWNER: Robyn Mary Assunta Denholm**APPLICANT:** Robert Furey C/O Walter Barda Design**AUTHOR:** Report of Robin Tse, Senior Assessment Officer**DATE OF REPORT:** 22 April 2024**DATE LODGED:** 15 December 2023**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

This development application seeks consent for of two units, alterations and additions including internal demolition and reconfiguration, landscaping and addition of pergola on existing roof terrace on the top levels of an apartment building at Units 9 and 9A, 50 Milson Road, Cremorne Point.

The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to a development standard by more than 10% in accordance with the Minister's Direction.

Notification of the proposal has attracted a total of seven (7) submissions, including two (2) submissions from a single submitter, raising particular concerns about impacts on significant views as seen from nearby properties, non-compliance with the LEP building height standard, impacts during construction, structural adequacy of the existing building and inconsistencies shown on submitted drawings. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

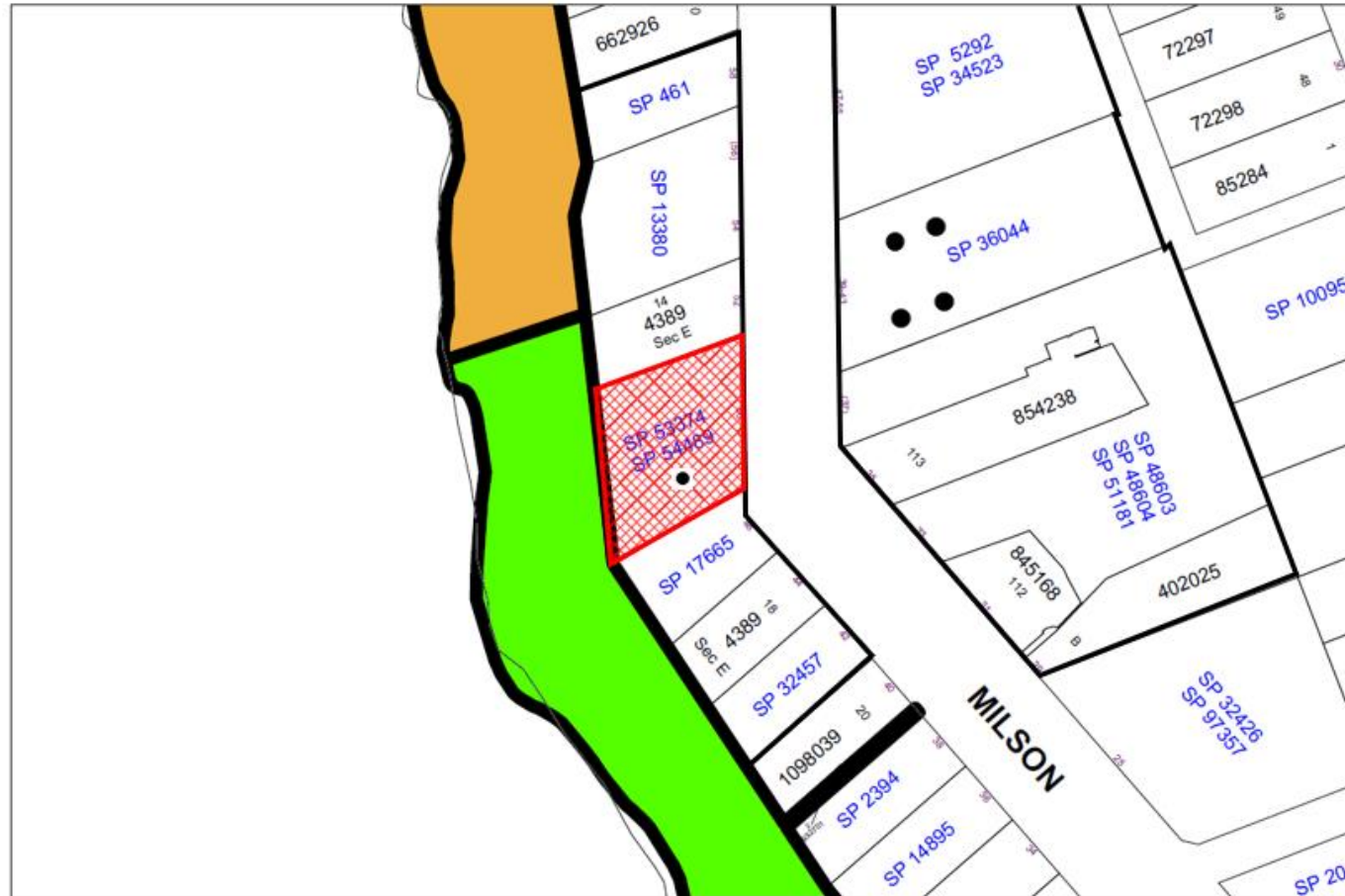
The subject site is located on land zoned R2 (Low Density Residential) where residential flat building is a form of development prohibited within the zone. However, the subject site benefits from existing use rights because the circumstances of the subject site and the proposed development are generally consistent with Sections 4.65 - 4.70 of the *EP&A Act 1979* and Sections 162 -167 in Part 7 of *EP&A Regulations 2021*.

Consideration has been given to the relevant planning controls and the submission seeking a variation to the LEP maximum building height control for the proposed works. It is concluded that the proposal is unlikely to give rise to material amenity impacts, including significant views as seen from the adjoining properties subject to the imposition of a condition requiring design modifications to the proposed pergola. The design, height, bulk and scale of the proposed development, as amended by conditions, are considered to be acceptable and is reasonably consistent with potential outcomes anticipated by the relevant controls.

Council's Conservation Planner has raised no in-principle objection to the proposed development given that there would be no material impact on the significance of the subject residential flat building and the Cremorne Conservation Area subject to the imposition of appropriate conditions of consent.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate site specific and standard conditions.

LOCATION MAP



 Property/Applicant ● Submitters - Properties Notified 

DESCRIPTION OF PROPOSAL

The application is seeking development consent for the consolidation of two apartments, alterations and additions including internal demolition and reconfiguration, landscaping and addition of pergola on existing roof terrace.

The proposed works are summarised as follows:

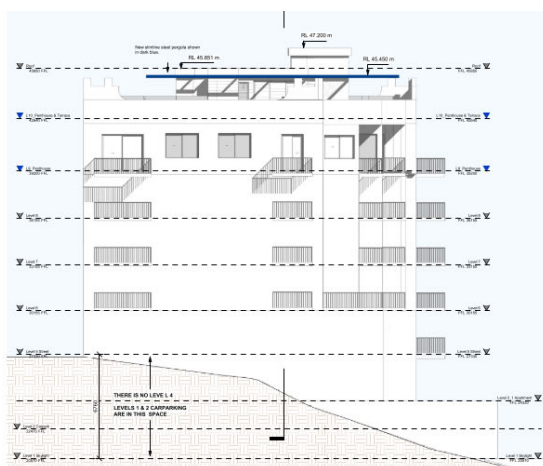
Level 9:

- Alterations to the internal layout of the apartments on Level 9 including demolition of internal partitioning walls to provide an open plan living/dining/kitchen, a home office, a master bedroom with ensuite bathroom and walk-in-robe, a guest bedroom with ensuite bathroom, a bathroom, a powder room and a cellar.

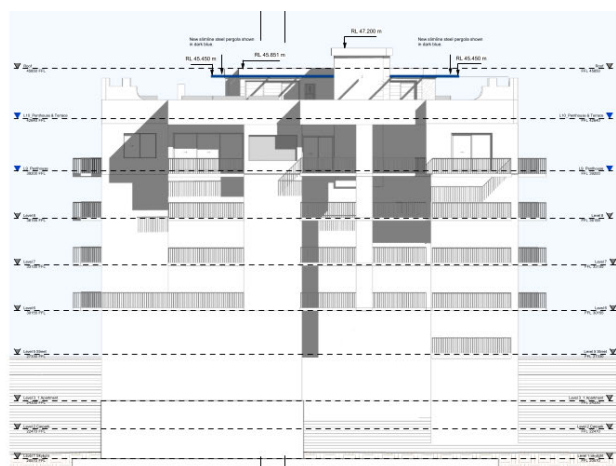
The applicant has proposed no changes to the existing fenestration and balconies/terraces on this level.

Roof Level (Level 10):

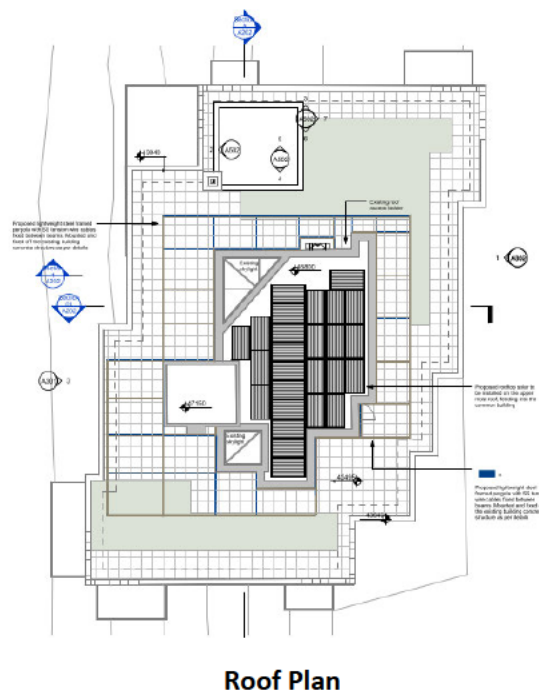
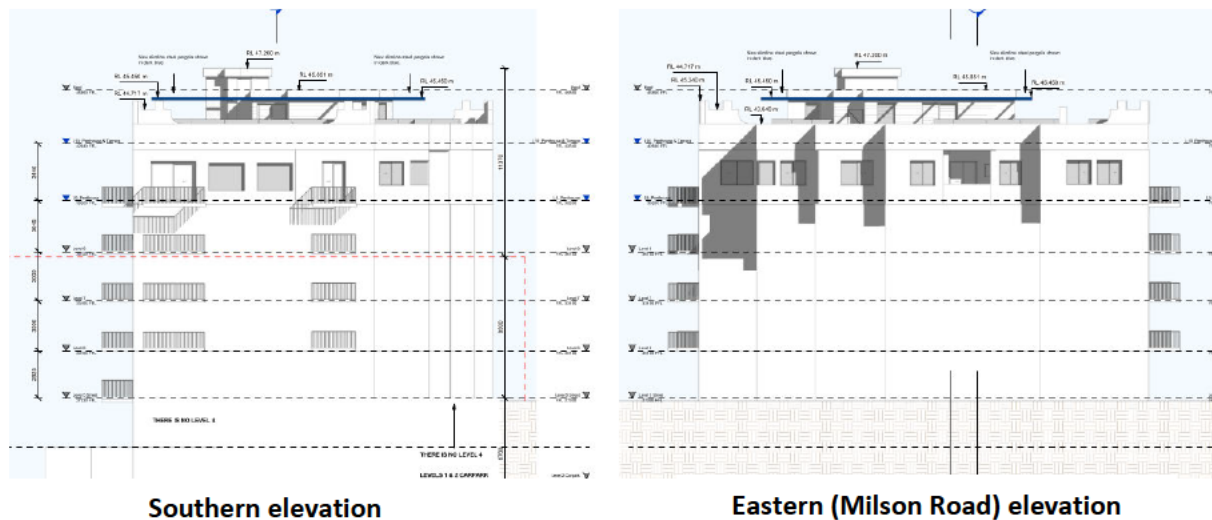
- Alterations and additions to the existing structures on Level 10 to provide a conservatory and the refurbishment of the existing facilitates including kitchen, bathroom, laundry and W.C.;
- External works including installation of planters along the perimeter of the parapet walls, a BBQ area with seating, installation of artificial lawn on the northern and southern sides of the roof terrace;
- Installation of lightweight steel framed pergola along the perimeter of the roof top structure;
- Installation of solar panels on the roof of the roof top structure; and
- Removal of an existing flagpole mounted on the roof of the lift overrun.



Northern elevation



Western (Shell Cove) elevation



Figures 1 – 5: Proposed development

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R2 (Low Density Residential)
- Item of Heritage – No (Neutral Item)
- In Vicinity of Item of Heritage – Yes (Nos. 33 & 37 Milson Road)
- Conservation Area – Yes (Cremorne Point Conservation Area)
- FSBL - No

Environmental Planning & Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

SEPP (Housing) 2021

SEPP (Resilience and Hazards) 2021
SEPP (Sustainable Buildings) 2022
Local Development

POLICY CONTROLS

NORTH SYDNEY DCP 2013
Apartment Design Guidelines (ADG)
North Sydney Local Infrastructure Contributions Plan 2020
Sydney Harbour Foreshores & Waterways Area DCP 2005

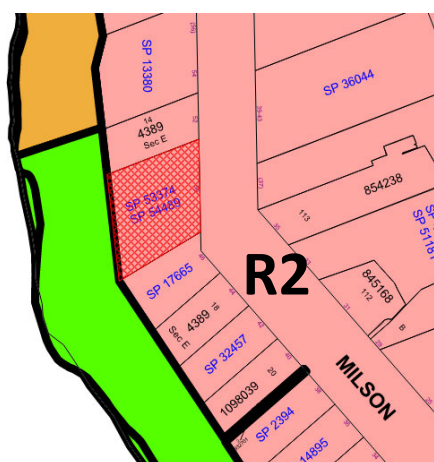


Figure 6: Zoning

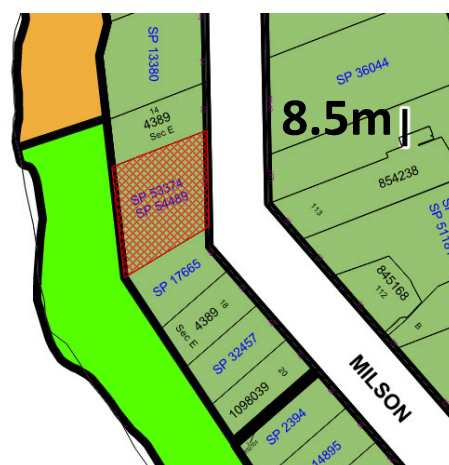


Figure 7: Maximum building height

DESCRIPTION OF LOCALITY

The site is legally identified as Strata Plan 53374 and is commonly referred to as 50 Milson Road, Cremorne or “The Ritz”. The site is slightly irregular in shape, with a 32.44 wide frontage to Milson Road to the east, a 33.69m wide northern side boundary, a 32.295m wide southern side boundary, a 36.895m wide rear boundary to the west, and a total area of 1065m².

Currently occupying the subject site is a multi-storey residential flat building that was used as a boarding house before its conversion in the 1990’s. The proposed works the subject of this application are limited to Units 9 and 9A, being Lots 9 and 10, on Levels 9 and 10 of the existing building. The site is a neutral item located within the Cremorne Point Conservation Area.

The site adjoins Cremorne Reserve to the rear/west and is in close proximity to Shell Cove. Surrounding development comprises residential development of varying density, age, scale and character. To the north of the subject site is a detached dwelling at No.52 Milson Road. The property to the south of the site is a three storey apartment building at No.46 Milson Road.

The properties to the east of the subject site across Milson Road contain apartment/multi dwellings developments at Nos 33-37 Milson Road and Nos 39-43 Milson Road as well as a detached dwelling at No. 35 Milson Road.



Figures 8 - 10: Subject Site (as seen from Milson Road)



Figure 11: The locality

RELEVANT HISTORY

Previous applications

- **17 March 1988** – The NSW Land and Environment Court upheld an appeal against the refusal of a DA (1270/88) and granted consent for alterations and refurbishment of a boarding house to provide 10 x 3 bedroom apartments.

- **3 May 1990** – Approval was granted for a Building Application (**BA628/89**) for the approved development.
- **24 January 1997** – Approval was granted for an application for strata subdivision of the subject apartment building into 10 lots.

Current Application

- **15 December 2023** – The subject development application (**D353/23**) for consolidation of two apartments, alterations and additions including internal demolition and reconfiguration, landscaping and addition of pergola on existing roof terrace was lodged with Council.
- **19 January to 2 February 2024** – Notification of the subject application to adjoining property owners and the Cremorne Point Precinct. The notification attracted a total of seven (7) submissions including two submissions from the same submitter.
- **21 February 2024** – A site inspection was conducted by Council Officers. The applicant was requested to provide information about the layout of the existing apartments and the scope of the proposed works in relation to the current strata plan.
- **26 February 2024** – The applicant submitted additional information including the latest By-Law that covers the scope of works to be carried out within the subject apartments.
- **25 March 2024** – Inspections were carried out at two neighbouring properties.
- **26 March 2024** – The applicant was requested to submit updated elevations to rectify minor drafting errors.
- **27 March 2024** – The applicant submitted the requested elevations.
- **2 April 2024** – The applicant confirmed the inclusion of the removal of an existing flagpole mounted above the roof of the lift overrun as part of the current application.

INTERNAL REFERRALS

BUILDING

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. This would need to be undertaken prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a Section 4.55 application would be necessary.

HERITAGE

The application has been referred to Council's Conservation Planner who provided the following comments:

An assessment of the application has been undertaken in relation to Clause 5.10 Heritage conservation of NSLEP 2013, and Section 13 Heritage and Conservation of NSDCP 2013.

S13.4 Development in the vicinity of heritage items

13.6.1 General objectives

13.6.2 Form, massing and scale

There are no heritage impacts arising from the proposed internal works.

The proposed pergola structures on the roof terrace are minimalist in their scope and are proposed to be of a lightweight structure and without posts. They will service the perimeter of the roof top level and are set in from the parapet and will be largely 'hidden'.

However, they will be visible from the nearby heritage item and from the terraces orientated towards the harbour on the eastern side of Cremorne Road - any trailing plants will create a potential impact on views. The potential revision of the number of proposed structures can reduce this impact.

Whilst the potential loss of views is a planning issue, a reduced form of the pergola will also in itself have a nominal impact on visible appearance in terms of views from the nearby heritage item.

The proposal is supported in principle and is assessed to have minimal heritage impact on the character and significance of the heritage item in the vicinity of the site.

It is recommended that appropriate standard conditions be imposed to maintain the character of the existing building and the character and significance of the Cremorne Point Conservation Area.

LANDSCAPING

The application has been referred to Council's Landscape Development Officer who raised no in-principle objection to the proposal subject to the imposition of appropriate landscaping conditions including the submission of a landscape plan and a height limit of planting on the roof terrace to be maintained at a height no higher than the height of the existing parapet walls on the roof level (**Condition C1**).

SUBMISSIONS

On 19 January 2024, Council notified adjoining properties and the Cremorne Point Precinct Committee of the proposed development seeking comment between 19 January and 2 February 2024. Council received a total of seven (7) submissions including two (2) submissions from one submitter. The matters raised in the submissions are listed below:

Basis of Submission

- Concerns raised about the likely adverse impacts on significant views as seen from a neighbouring property to the east.
- The likelihood of any plant growth on the proposed pergola would result in further view impacts.
- The proposal does not comply with the LEP maximum height limit.
- Concerns raised about the height of planting on the proposed planters/pots on the roof terrace resulting further view loss.

- The heights of the pergola shown in the submitted drawings are not consistent.
- Insufficient information on the plant species to be planted on the planter along the perimeter of the roof parapet.
- Non-compliance with the LEP maximum building height limit.
- The proposed pergola is likely to cause impacts on views as seen from a neighbouring property to the east.

- Concerns raised about the impacts from materials and colours used for the proposed pergola and external materials.
- Clarification sought on the scope of works relating to the existing flagpole.
- Concerns raised about the inconsistencies between the approved development for the conversion of the boarding house to the existing apartment building and the as built apartment building including additional structures above the approved building height. The absence of records about the additional structures.
- The proposal does not comply with the LEP maximum height limit.
- Adverse heritage impacts resulting from the proposed dark colour to be applied to the pergola; alterations to the massing of the building and excessive scale of the pergola.
- Adverse impacts on views, views from public domain, streetscape and the conservation area.
- The timing of the lodgement of the application during the Christmas/New year period would minimise notice from the nearby residents.
- Concerns about noise and disruption affecting residents living in the apartments below during demolition and construction period.
- Potential loss of tenants and rental income and compensation requested.
- The proposed pergola and planting would result in obstruction of significant view of the Sydney Harbour Bridge as seen from a neighbouring property.
- Concern about structural integrity and associated safety of the proposed pergola under extreme weather conditions.
- Consideration should be given to reduce the number of planters and the scale of the pergola.
- Concerns raised about the likely view impacts resulting from the proposed pergola.
- Concerns raised about the planting to be added to the pergola.
- The proposal does not comply with the LEP maximum height limit.

The issues raised in the submissions are summarised below and addressed later in this report. The original submissions may be viewed by way of DA tracking on Council's website https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs and are available for review by NSLPP members.

CONSIDERATION

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

Environmental Planning and Assessment Act 1979 (as amended)

Existing Use Rights (Sections 4.65 - 4.70)

The subject site is zoned R2 (Low Density Residential) and development for the purpose of a residential flat building is prohibited within the zone.

Notwithstanding such prohibition, if 'existing use' rights can be satisfactorily established for the land affected by the proposed development, then the consent authority may approve a development application (subject to meeting the relevant requirements applying to existing uses under Sections 4.65 - 4.70 of the *EP & A Act 1979*, the Regulation under the Act, and considering the impacts of the proposal).

Comment:

The subject building was previously used as a boarding house and development approval was granted for conversion to an apartment building in the 1990s. As indicated earlier in this report, development consent (**1270/88**) was granted by the NSW Land and Environment Court for the conversion of the boarding house to an apartment building with a building approval (**BA628/89**) issued in May 1990. The strata plan for the subject apartment building was registered in September 1996.

Furthermore, the subject building has continuously been used as an apartment building.

In light of the above, it is considered that the existing development satisfies the definition and the relevant provisions relating to an existing use under Sections 4.65-4.70 of the *EP&A Act 1979*.

Environmental Planning and Assessment Regulations 2021

The proposed development would not offend the relevant provisions/requirements under Sections 162 - 167 of the *EP&A Regulations 2021* in relation to existing use rights. In particular the proposal does not seek significant alterations and enlargement of the existing building nor changing the use of the existing building as an apartment building.

It is concluded that the subject site benefits existing use rights because the circumstances of the subject site and the proposed development are generally consistent with Cl. 13. ss 4.65 - 4.70 of the *EP&A Act 1979* and ss 162-167 in Part 7 of *EP&A Regulations 2021*.

Section 4.15 Considerations

The decision of Chief Judge Preston in *Saffioti v Kiama Council* [2018] NSWLEC 57 outlined that the development standards would not derogate from the incorporated provisions of existing use rights and therefore would not prevent their operation.

On this basis, the proposed development should comply with any development standard or be subject to a written request to vary the development standard pursuant to clause 4.6 in *NSLEP 2013*. In addition, it also concluded that the proposed development should be assessed against the relevant DCP provisions as a DCP is not an environmental planning instrument and therefore could not derogate from the incorporated provisions.

Therefore, any future development on the subject site must have regard to the relevant development standards and controls as contained in the relevant EPIs, LEP and DCP which are assessed below.

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

SEPP (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in Non-Rural Areas

The proposal generally meets the objectives of the *SEPP* because the current application does not involve further clearance of native vegetation or any materials impacts on bushland in the vicinity of the subject site.

Chapter 6 - Sydney Harbour Catchment

Having regard to the provisions of Chapter 6 of the *SEPP* and the Sydney Harbour Foreshores and Waterways Area DCP 2005, the proposed development would be visible from Shell Cove, it is not considered to be detrimental to general scenic quality and the ecology of the Harbour and will not unduly impose upon the overall character of the foreshore given that the external changes primarily relate to the proposed pergola and no changes to the overall scale, massing and the design of the existing apartment building. Furthermore, the proposal would not adversely affect the environmental processes, including in relation to water quality and biodiversity.

As such, the development is generally acceptable having regard to the provisions contained within Chapter 6 of the above *SEPP* and the Sydney Harbour Foreshores and Waterways DCP 2005.

State Environmental Planning Policy (Resilience and Hazards) 2021

Section 4.6 of the *SEPP* requires the consent authority to consider whether the land is contaminated, and if so whether the land is suitable for the intended use or any remediations measures required. Council's records indicate that the site has historically been used for residential development and as such is unlikely to contain any contamination. The subject site is therefore considered suitable for the proposed use given that contamination is unlikely.

State Environmental Planning Policy (Sustainable Buildings) 2022

On 1 October 2023, the *SEPP (Sustainable Buildings) 2022* came into effect, which repealed the *SEPP (Building Sustainability Index: BASIX) 2004*. The applicant has provided a valid BASIX certificate to meet the new BASIX standards as outlined in the *SEPP*.

SEPP (Housing) 2021

State Environmental Planning Policy (Housing) 2021

Chapter 4 - Design Quality of Residential Apartment Development

On 14 December 2023, amendments to *SEPP (Housing) 2021* came to effect, which repealed *SEPP 65 (Design Quality of Residential Apartment Development)*. Consideration has been given to the relevant provisions as contained in Chapter 4 (Design of Residential Apartment Development) of the *SEPP*.

The proposal involves consolidation of two units, alterations and additions including internal demolition and reconfiguration, landscaping and addition of pergola on existing roof terrace on Levels 9 and 10 of the subject apartment building. The proposed works would be primarily internal and affecting the top two levels only and no significant changes to the overall building height, the building envelope, bulk and scale of the existing apartment building.

It is therefore considered that the provisions/requirements of *SEPP (Housing) 2021* do not apply because the proposal does not involve "substantial redevelopment or substantial refurbishment of an existing building" in accordance with Clause 144(3)(a)(ii) of the *SEPP*.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

Residential Zone Objectives

The proposal is generally consistent with the objectives for the R2 (Low Density Residential) zone noting that the existing development benefits from existing use rights.

Height of Building

The existing apartment building has a maximum height of 29.63 m and breaches the LEP's 8.5 m maximum building height limit for the subject site by 21.03 m (247%). The proposed works for the proposed pergola would reach a maximum height of 27.88 m resulting a breach of the LEP maximum height limit by 19.38 m (Figure 11).

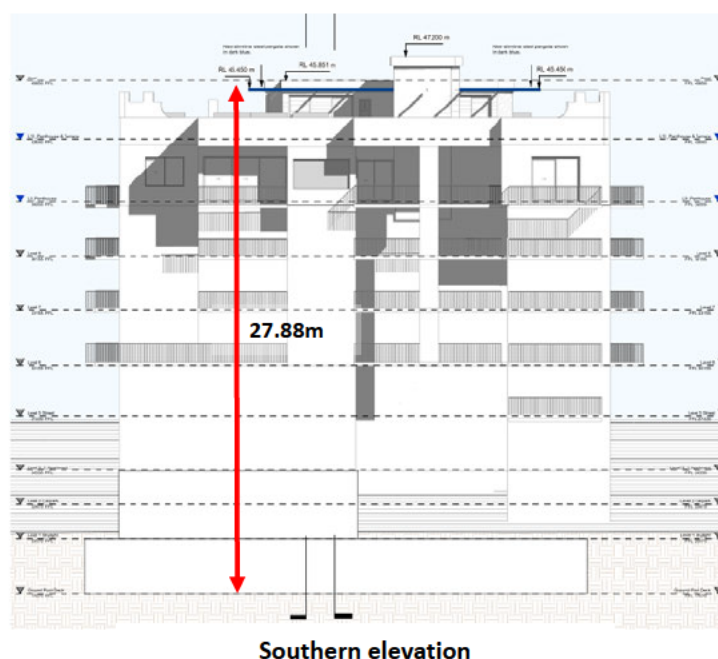


Figure 11: Building height

The applicant has submitted a written request to justify the proposed variation to the building height control. The proposed breach has been assessed in accordance with the requirements of Clause 4.6 (3) and (4), the objectives of the control and the zone. These matters have been considered below:

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

The proposal would not materially change the overall building height, the built form and envelope of the existing apartment building.

- (b) *To promote the retention and, if appropriate, sharing of existing views,*

The proposal would result in the installation of a pergola along the perimeter of the roof top structure.

The installation of the pergola would have no view impacts for the adjoining properties to the north and south of the subject site, including Nos 46, 52 and 54 Milson Road, because the existing apartment building on the subject site is taller than the buildings occupying these adjoining/nearby properties.

Consideration has also been given to the likely view impacts for two (2) units (being Unit 2 and Unit 3) located within a multi-dwelling development at Nos. 37 – 43 Milson Road.

Unit 2, 37-43 Milson Road:

The view as seen from the terrace off the main living room of this unit consist of the iconic views of the Sydney Opera House, Sydney Harbour Bridge and the Sydney CBD skyline as well as district views of nearby buildings.

The proposed pergola would not impact on the iconic views as seen from the living room terrace and inside the living room in standing and seating positions respectively (Figures 12 & 13).

It is also noted that the removal of the flagpole would improve the view of the Sydney Harbour Bridge as seen from this unit.

The impact on views resulting from the proposed development for this unit is considered to be negligible.



**Figure 12: View from the living room terrace (standing position)
at Unit 2, 37-43 Milson Road**



**Figure 13: View from inside the living room (sitting position)
at Unit 2, 37-43 Milson Road**

Unit 3, 37-43 Milson Road:

The views as seen from the bedroom balcony within this unit consist of the iconic views of the Sydney Harbour Bridge and the Sydney CBD skyline as well as nearby buildings (Figure 14). The proposed pergola would partially obstruct the main deck of the Sydney Harbour Bridge as seen from a close up of the same photograph (Figure 15).



Figure 14: View from inside the bedroom of Unit 3, 37-43 Milson Road



Figure 15: A close up view from inside the bedroom of Unit 3, 37-43 Milson Road

It is considered that the deletion of a section of the pergola proposed on the southern side of the roof top structure would minimise the view impacts as seen from this location.

In addition, the proposed removal of the flagpole would provide an improved view and preserve the visual integrity of the Sydney Harbour Bridge as seen from this unit. A condition is recommended requiring the deletion of the proposed pergola on the southern side of the roof top structure (**Condition C2**).

The impact on views resulting from the proposed development for this unit is considered to be minor subject to the imposition of **Condition C2** requiring design modifications to the proposed pergola.

Other Properties/Public Domain:

The proposal would have no material impacts on the significant views as seen from other adjoining properties or the public domain.

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

The proposed pergola would not significantly change the building height and envelope of the existing apartment building. Furthermore, any additional shadows from the pergola would primarily fall on the roof terrace of the subject apartment building during mid-winter. Therefore, the proposed variation to the LEP maximum building height limit would have no material shadowing impacts onto the adjoining/nearby properties.

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

The proposed development should provide better amenity for the roof terrace with more landscaping and would encourage the use of this area. It is however considered that the proposal would have no material privacy impacts on the neighbouring because the installation of planter along the perimeter of the roof parapet would reduce overlooking onto the properties to the north and south at Nos. 46, 52 and 54 Milson Road.

Furthermore, the visual privacy and noise impacts on the properties on the eastern side of Milson Road are also considered to be acceptable because the subject roof terrace would be in excess of 30m from the apartment buildings/multi-dwelling developments on the opposite (eastern) side of Milson Road.

**(e) To ensure compatibility between development, particularly at zone boundaries,
(f) To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of an area**

The proposed works would not materially change the built form and character of the existing apartment building. There would be no change to the density of the existing development as a result of the proposed works.

The proposed materials and colours are considered to be acceptable having regard to those used on the existing building and within the conservation area.

The building elements in breach of the LEP building height limit would not cause any material loss of solar access, adverse privacy loss and/or view loss subject to the imposition of conditions as detailed throughout this report. Consequently, the variation to the LEP maximum building height limit is supported given that it would be unreasonable for Council to insist upon strict compliance when the objectives of the development standard are satisfied by the proposal.

That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Strict compliance with the building height control is considered to be unreasonable and unnecessary as the elements in breach of the height control will not have a material impact upon the character of the locality and/or the amenity of adjoining properties.

The building elements above the LEP height limit would not result in any unacceptable loss of significant views, overshadowing or privacy impacts.

The built form of the existing apartment building would be maintained, and the proposed works are considered to be acceptable having regard to the relevant heritage provisions that apply to the locality/conservation area.

That there are sufficient environmental planning grounds to justify contravening the development standard.

The proposal relates to external works would result in no material changes to the building height, built form and building envelope of the existing apartment building. Furthermore, the non-complying building elements are unlikely to cause material impacts on the amenity of the adjoining properties subject to the imposition of conditions requiring design modifications as discussed throughout this report.

Conclusion

The proposed variation to Clause 4.3(2) in NSLEP 2013 is considered to be acceptable in the site circumstances. Compliance with the maximum building height control is therefore considered to be unreasonable and unnecessary in the circumstances, as the objectives of the zone and the control are achieved despite the non-compliance subject to the imposition of appropriate conditions of consent.

Heritage Conservation

The proposal generally satisfies Clause 5.10 of North Sydney LEP 2013 for the reasons as detailed in Council Conservation Planner's comment earlier in this report including the imposition of appropriate standard conditions.

Earthworks

The proposal does not involve earthworks given that all works are to be carried out on Levels 9 and 10 of the apartment building.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal has been assessment under the following heading within NSDCP 2013:

DEVELOPMENT CONTROL PLAN 2013 - Part B Section 1- Residential Development		
	<i>Complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.1 Population Mix 1.2.2 Maintaining Residential Accommodation	Yes	The proposal would reduce the number of apartments within the existing development by one unit. The proposal is unlikely to result a material change to the overall population mix, the supply of residential accommodation within the locality given the minor nature of proposal affecting two apartments.
1.2.3 Affordable Housing 1.2.4 Housing for Seniors/Persons with disability	No change	the proposal would not change the supply of affordable housing and housing for seniors/people with disabilities, within the locality given that affected apartments have not been used as affordable housing or housing for seniors/persons with disabilities.
1.3 Environmental Criteria		
1.3.1 Topography	No change	The proposal would not alter the existing landform of the subject site.
1.3.6 Views 1.3.7 Solar Access	Yes	As mentioned earlier in this report, the proposed façade upgrade would not materially change the building height nor the building envelope of the existing apartment building, therefore, the proposal is unlikely to have material impacts on significant views as seen from surrounding properties and additional shadowing impacts on the adjoining properties.

<p>1.3.8 Acoustic Privacy 1.3.10 Visual Privacy</p>	<p>Yes</p>	<p>The proposal would have no material privacy impacts on the neighbouring because the installation of planters along the perimeter of the roof parapet would reduce overlooking onto the properties to the north and south at Nos. 46, 52 and 54 Milson Road.</p> <p>Furthermore, the visual privacy and noise impacts on the properties on the eastern side of Milson Road are also considered to be acceptable because the subject roof terrace would be in excess of 30m from the apartment buildings/multi-dwelling developments on the opposite (eastern) side of Milson Road.</p> <p>Furthermore, the proposal does not involve new internal floor space and new outdoor areas that would intensify the use of the existing premises.</p>
<p>1.4 Quality built form</p>		
<p>1.4.1 Context</p>	<p>Yes</p>	<p>The proposal is considered to have no material impacts on the context and the setting within the locality given that the proposed works would not materially change the building height, envelope and/or the general appearance of the existing apartment building.</p>
<p>1.4.2 Subdivision Pattern 1.4.5 Siting</p>	<p>No change</p>	<p>The proposal would not change the size, shape and configuration of the subject site nor this would this change the siting of the existing apartment building or the subdivision pattern within the locality.</p>
<p>1.4.6 Setbacks - Front, Side & Rear</p>	<p>Yes</p>	<p>The proposed pergola and planters on the roof terrace would be located wholly within the perimeter of the roof parapet.</p> <p>The proposed works would not change the overall building setbacks from all property boundaries for the subject apartment building.</p>
<p>1.4.7 Form Massing Scale 1.4.8 Built Form Character</p>	<p>Yes</p>	<p>As mentioned earlier in this report, the proposal would not materially change the building height, built form, massing, bulk and scale of the existing apartment building.</p> <p>The character and built form character of the subject apartment building would generally be maintained.</p>
<p>1.4.10 Roofs</p>	<p>Yes</p>	<p>The proposal would not change the flat roof form of the subject apartment building. The proposal for the removal of the flagpole should reduce the visual clutter on the roof top as seen from surrounding properties.</p> <p>A condition is recommended requiring solar panels are to be laid flat on the roof plane to minimise any visual impacts arising from the installation of the panels (Condition C9).</p>
<p>1.4.12 Materials</p>	<p>Yes (via condition)</p>	<p>A standard condition is recommended by Council's Conservation Planner to ensure that the materials featured in the proposed development would be compatible with those used within the locality (Condition C7).</p>
<p>1.5 Quality Urban Environment</p>		
<p>1.5.4 Vehicle Access and Parking</p>	<p>No change</p>	<p>The proposal does not involve any changes to the existing parking arrangements and the number of on site parking within the subject site.</p> <p>The proposal would reduce the total number of apartments by one (1) space and would technically reduce the DCP parking requirement by 1.5 cars. However, adequate parking spaces have already been allocated to all units within the existing apartment building and the application does not request further changes to the car parking layout within the basement and vehicular access and on-street parking arrangement of Milson Road. Therefore, the proposal is considered to be acceptable having regard to the site circumstances.</p>
<p>1.5.5 Site Coverage 1.5.6 Landscape Area</p>	<p>No change</p>	<p>The proposed works would be carried out on the top two levels of an existing apartment building and would not alter the footprint of the building.</p>

		Therefore, the proposal involves new landscaping on the Level 10 roof terrace only and no change to the landscaping on the ground level within the subject site.
1.5.7 Excavation	No change	The proposal does not involve any earthworks within the subject site.
1.5.8 Landscaping	Yes (via condition)	The proposal for new planters along the perimeter of the roof parapet is generally supported as this would improve the amenity of this outdoor space. A condition is recommended requiring the submission of a landscaped plan as well as restrictions to the height of planting to ensure the landscaping quality and the protection of amenity for the adjoining properties (Condition C1).
1.6 Efficient Use of Resources		
1.6.1 Energy Efficiency	Yes	The applicant has lodged valid BASIX Certificates for the affected apartments to demonstrate the efficient use of resources.

CHARACTER STATEMENTS - PART C

South Cremorne Planning Area (Cremorne Point conservation Area)

The proposal is generally consistent with the relevant provisions as contained in Section 6 of the Character Statement for the South Cremorne Planning Area and Section 6.4 for Cremorne Point Conservation Area in Part C of North Sydney DCP 2013.

The proposed development would be generally consistent with the built characteristic building elements within the locality.

NORTH SYDNEY LOCAL INFRASTRUCTURE CONTRIBUTION PLAN 2020

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. The contributions payable have been calculated in accordance with Council's Contributions Plan as follows:

Contribution amounts payable

Applicable contribution type		
s7.12 contribution details	Development cost:	\$2,090,000.00
<i>(payment amount subject to indexing at time of payment)</i>	Contribution: (1% of the development cost)	\$20,900.00

Accordingly, a condition requiring the payment of contributions at the appropriate time is recommended (**Condition C16**).

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 S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

PUBLIC INTEREST

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

SUITABILITY OF THE SITE

Whilst development for a residential flat building is prohibited on land zoned R2 (Low Density Residential), the existing apartment development benefits from existing use rights. The proposal has been assessed against the relevant planning instrument including the LEP and DCP.

The proposal is considered to be satisfactory subject to the imposition of appropriate conditions. Consequently, 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 subject application was notified to adjoining properties and Cremorne Point Precinct inviting comment between 19 January and 2 February 2024. The notification has attracted a total of seven (7) submissions including two (2) submissions from one submitter.

The issue relating to view impacts and the details/height of planting on the roof terrace have been addressed via the imposition of conditions requiring the deletion of the southern side of the pergola and the limitations on the height of planting on the roof top in order to minimise obstruction of views as seen from the surrounding properties (**Conditions C1 and C2**).

The other matters raised in the submissions are listed below:

- ***Non-compliance with the LEP maximum building height limit.***

Comment:

The subject site is zoned R2 (Low Density Residential) with a maximum building height limit of 8.5m. It is however that the existing apartment building benefits from existing use rights.

The existing apartment building exceeds the LEP maximum building height limit and the proposed pergola would not change the overall building height of the subject building.

An assessment of the proposal, including the variation to the LEP maximum building height limit has been carried out against the relevant Land and Environment Court planning principles and the Clause 4.6 written submission from the applicant and is considered to be satisfactory.

- ***Adverse heritage impacts resulting from the proposed dark colour to be applied to the pergola; alterations to the massing of the building and excessive scale of the pergola.***
- ***Concerns raised about the impacts from materials and colours used for the proposed pergola and external materials.***

Comment:

The proposal was referred to Council's Conservation Planner who raised no in-principle objection to the proposal on heritage grounds subject to the imposition of appropriate conditions including a standard condition requiring the submission of a schedule of materials/finishes/colours to ensure that the materials featured in the proposed development would be compatible with those used within the locality (**Condition C7**).

- ***Concern about structural integrity and associated safety of the proposed pergola under extreme weather conditions.***

Comment:

A condition requiring compliance with the relevant building codes and National Construction Code is recommended to ensure the proposal complies with the relevant building requirements. A further condition is recommended that the existing building would be structurally adequate for the proposed development (**Condition C4**).

- ***Concerns about noise and disruption affecting residents living in the apartments below during demolition and construction period.***

Comment:

Appropriate construction management conditions, including a condition relating to noise and vibration during the construction period (**Condition E6**), are recommended to minimise impacts on the amenity of the neighbouring properties during the construction phase of the development.

- ***The heights of the pergola shown in the submitted drawings are not consistent.***
- ***Clarification sought on the scope of works relating to the existing flagpole.***

Comment:

The applicant has submitted updated architectural drawings rectifying a drafting error on the heights of the pergola as shown on earlier drawings.

The applicant has confirmed that the proposal involves the removal of the flagpole. A condition is imposed specifying this aspect of the proposal to ensure clarity and certainty (**Condition C2.**)

- ***Concerns raised about the inconsistencies between the approved development for the conversion of the boarding house to the existing apartment building and the as-built apartment building including additional structures above the approved building height. The absence of records about the additional structures.***

Comment:

It is noted that the height of the lift overrun at RL47.2 is 250mm higher than the height (RL46.95) as shown on the plans for BA628/89 approved on 3 May 1990. Similar discrepancies have also been observed on several floor levels.

Whilst the inconsistencies are noted, there is no evidence that the current proposal seeks approval for works outside the existing building envelope other than the proposed pergola and planters along the perimeter of the roof parapet.

Furthermore, building application (**BA628/89**) relates to the conversion of the entire building previously used as a boarding house to an apartment building and this approval was issued 34 years ago. The scope of the subject application is limited to the apartments on the top two levels of existing apartment building and no works to the remainder of the building. In addition, the proposal is considered to be acceptable subject to the imposition of conditions requiring design modifications. It is therefore considered that the assessment and determination of this application is not contingent to the inconsistencies found on historical architectural drawings.

- ***The timing of the lodgement of the application during the Christmas/New year period would minimise notice from the nearby residents.***

Comment:

The application was notified after the close of the Christmas/New Year notification exclusion period to ensure that the notification period for the subject application, being 19 January and 12 February 2024, would fall outside the main Christmas/New Year holiday period.

CONCLUSION + REASONS

The proposal was considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and general found to be generally satisfactory.

The subject site is located on land zoned R2 (Low Density Residential) where residential flat building is a form of development prohibited within the zone. However, the subject site benefits from existing use rights because the circumstances of the subject site and the proposed development are generally consistent with Sections 4.65 - 4.70 of the *EP&A Act 1979* and Sections 162 -167 in Part 7 of *EP&A Regulations 2021*.

Consideration has been given to the relevant planning controls and the submission seeking a variation to the LEP maximum building height control for the proposed works. It is concluded that the proposal is unlikely to give rise to material amenity impacts, including significant views as seen for the neighbouring properties subject to the imposition of a condition requiring design modifications to the proposed pergola. The design, height, bulk and scale of the proposed development, as amended by conditions, are considered to be acceptable and is reasonably consistent with potential outcomes anticipated by the relevant controls.

Council's Conservation Planner has raised no in-principle objection to the proposed development given that the proposed development would have no material impacts on the significance of the subject residential flat building and the Cremorne Conservation Area subject to the imposition of appropriate conditions of consent.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate site specific and standard conditions.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and Cremorne Point Precinct inviting comment between 19 January and 2 February 2024. The notification has attracted a total of seven (7) submissions including two (2) submissions from one submitter. The matters raised in the submission have been addressed throughout the report.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Housing and Infrastructure and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to the non-compliance with Clause 4.3 – maximum building height and grant consent to Development Application No. 353/23 on land at Units 9 and 9A, 50 Milson Road, Cremorne Point subject to the following site specific and standard conditions

Landscaping

- C1 A landscape plan, based on drawing numbered A201 Issue E and dated 15.12.23, showing the landscape treatments on roof terrace shall be prepared with details on species names, number and pot sizes of all plantings.

The planting on the roof terrace must be maintained to a height not higher than the height of the roof parapet to minimise any impacts on views as seen from neighbouring properties.

The landscape plan, prepared by a qualified horticulturalist, complying with this condition must be submitted for the written approval of Council's Team Leader Assessment.

The approval letter and the landscaped plan must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure landscape quality of the locality and to protect amenity from neighbouring properties)

Design Modifications

C2 The following design modifications shall be applied to the proposed development:

- (a) The proposed pergola to the south of the southern building line of the roof level (Level 10) structure containing conservatory/kitchen/bathroom shall be deleted and form no part of this consent to minimise any impacts on significant views as seen from the neighbouring properties; and
- (b) The existing flagpole on top of the Level 10 structure shall be removed.

Revised architectural drawings, demonstrating compliance with this condition, must be submitted for the written approval of Council's Team Leader Assessment.

The approval letter and the revised architectural drawings must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the architectural plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To protect amenity from neighbouring properties)

ROBIN TSE
SENIOR ASSESSMENT OFFICER

ISOBELLA LUCIC
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23

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.	Description	Prepared by	Dated
A200 Issue E	Level 9 Floor Plan	Walter Barda Design	15.12.23
A201 Issue E	Level 10 Floor Plan	Walter Barda Design	15.12.23
A202 Issue E	Roof Plan and Sections	Walter Barda Design	15.12.23
A301 Issue G	Elevations	Walter Barda Design	27.03.24
A302 Issue G	Elevations	Walter Barda Design	27.03.24

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

Plans on Site

- A2. A copy of all 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)

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 2 of 24

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

- C1. A landscape plan, based on drawing numbered A201 Issue E and dated 15.12.23, showing the landscape treatments on roof terrace shall be prepared with details on species names, number and pot sizes of all plantings.

The planting on the roof terrace must be maintained to a height not higher than the height of the roof parapet to minimise any impacts on views as seen from neighbouring properties.

The landscape plan, prepared by a qualified horticulturalist, complying with this condition must be submitted for the written approval of Council's Team Leader Assessment.

The approval letter and the landscaped plan must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure landscape quality of the locality and to protect amenity from neighbouring properties.)

Design Modifications

- C2. The following design modifications shall be applied to the proposed development:
- (a) The proposed pergola to the south of the southern building line of the roof level (Level 10) structure containing the conservatory/kitchen/bathroom shall be deleted and form no part of this consent to minimise any impacts on significant views as seen from the neighbouring properties; and
 - (b) The existing flagpole on top of the Level 10 structure shall be removed.

Revised architectural drawings, demonstrating compliance with this condition, must be submitted for the written approval of Council's Team Leader Assessment.

The approval letter and the revised architectural drawings must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the architectural plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To protect amenity from neighbouring properties.)

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 3 of 24

Dilapidation Report Damage to Public Infrastructure

- C3. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the predeveloped 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.

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)

Structural Adequacy of Existing Building

- C4. 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

- C5. 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.

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 4 of 24

An 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)

Waste Management Plan

C6. 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)

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 5 of 24

Colours, Finishes and Materials (Conservation Areas)

- C7. 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.)

Roofing Materials - Reflectivity

- C8. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply with this condition must be submitted to the 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 excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

Solar Panels

- C9. All solar panel must be laid flat on the roof plane of the Level 10 structure to minimise any visual/view impacts associated with the installation of solar panels.

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 amenity of the neighbouring properties)

Work Zone

- C10. 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.

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 6 of 24

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

C11. Stormwater runoff generated by the approved development must be conveyed by gravity to the existing site stormwater drainage disposal system. A licensed tradesman shall install plumbing components to achieve this requirement in accordance with the NCC and current plumbing standards and guidelines. 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: To ensure appropriate provision for disposal and stormwater management arising from the development)

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

C12. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$3,000.00 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

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 7 of 24

- 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.

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

- C13. Prior to the issue of any construction certificate, security in the sum of \$25,000.00 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.

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 8 of 24

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

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

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

SCHEDULE

Tree Species	Location	Bond
5 x <i>Jacaranda mimosifolia</i> (7m)	Council verge in front of 50 Milson Road	\$25,000

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

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
5 x <i>Jacaranda mimosifolia</i>	Council verge in front of 50 Milson Road	Up to 7m
All existing trees & vegetation	Common areas within 50 Milson Road	Variable

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.

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)

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 9 of 24

Air Conditioners in Residential Premises

C15. 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
- (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.
- (c) “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

C16. 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 \$20,900.00.

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.

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 10 of 24

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)

Security Deposit/Guarantee Schedule

C17. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Street Tree Bond (on Council Property)	\$25,000.00
Footpath Damage Bond	\$3,000.00
TOTAL BONDS	\$28,000.00

Note: The following fees applicable

Fees	
Section 7.12 Development Contributions:	\$20,900.00
TOTAL FEES	\$20,900.00

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

C18. Under clause 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A1374379 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)

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 11 of 24

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).

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

Protection of Public Trees

- D2. 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
5 x <i>Jacaranda mimosifolia</i> (7m)	Council verge in front of 50 Milson Road	1.8m high steel mesh tree protection fencing.

Trunk protection shall be installed by first wrapping the stem of the tree in hessian or like material then strapping timber battens over the top. Timber battens with the dimensions of length 2000mm, width 75mm and depth 50mm are to be used. The battens are not to be directly screwed or nailed into the tree.

1.8m high steel mesh tree protection fencing shall be erected such that any unprotected section of council verge within TPZ of protected trees shall be completely enclosed.

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)

Temporary Fences and Tree Protection

- D3. All protected trees that are specifically nominated as per Condition C14 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.

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 12 of 24

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the 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

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

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

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

Commencement of Works' Notice

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

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

E. *During Demolition and Building Work*

Parking Restrictions

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

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

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 13 of 24

Road Reserve Safety

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

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

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

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

(Reason: Stormwater control during construction)

Removal of Extra Fabric

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

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

Dust Emission and Air Quality

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

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

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 14 of 24

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

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

Noise and Vibration

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

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

No Work on Public Open Space

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

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

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)

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 15 of 24

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.

Access for the proposed works shall be via internal access through garage & lifts, and that no scaffolding, rubbish chutes, cranes or other lifting devices that may impact existing trees or landscaping shall be utilised.

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

Notes:

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

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

Special Permits

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

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

1) **On-street mobile plant**

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

(Reason: Proper management of public land)

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 16 of 24

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

E12. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

Location	Standard Construction Hours	
	Day	Hours
All zones (Excl. E2 Commercial Centre MU1 Mixed-use)	Monday - Friday	7.00 am - 5.00 pm
	Saturday	8.00 am - 1.00 pm
	Sunday, Public holiday	No work permitted

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

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 17 of 24

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

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

Installation and Maintenance of Sediment Control

- E13. 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

- E14. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

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

Site Amenities and Facilities

- E15. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of work-place determines the type of amenities required.

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

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

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 18 of 24

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)

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 19 of 24

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)

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:

- (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.

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 20 of 24

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)

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)

Demolition

F6. 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)

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 21 of 24

Protection of Public Places

- F7. 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

- F8. 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)

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 22 of 24

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)

Certification of Tree Condition

G4. 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
5 x <i>Jacaranda mimosifolia</i>	Council verge in front of 50 Milson Rd	Up to 7m

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**

Page 23 of 24

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)

Disposal Information

G5. Upon completion of works and prior to occupation, a report including the following information must be provided to Council's Open Space and Environmental Services Department:

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

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

BASIX Completion 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)

Landscaping

G7. The landscaping shown in the approved landscape plan as required by Condition C1 of this consent 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)

**UNIT 9 AND 9A, 50 MILSON ROAD, CREMORNE POINT
DEVELOPMENT APPLICATION NO. 353/23**Page 24 of 24

Compliance with Certain Conditions

- G9. Prior to the issue of any Occupation Certificate, Condition C2 must be certified as having been implemented on site and complied with.

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

I. Ongoing/Operational Conditions**Level 10 Roof Terrace**

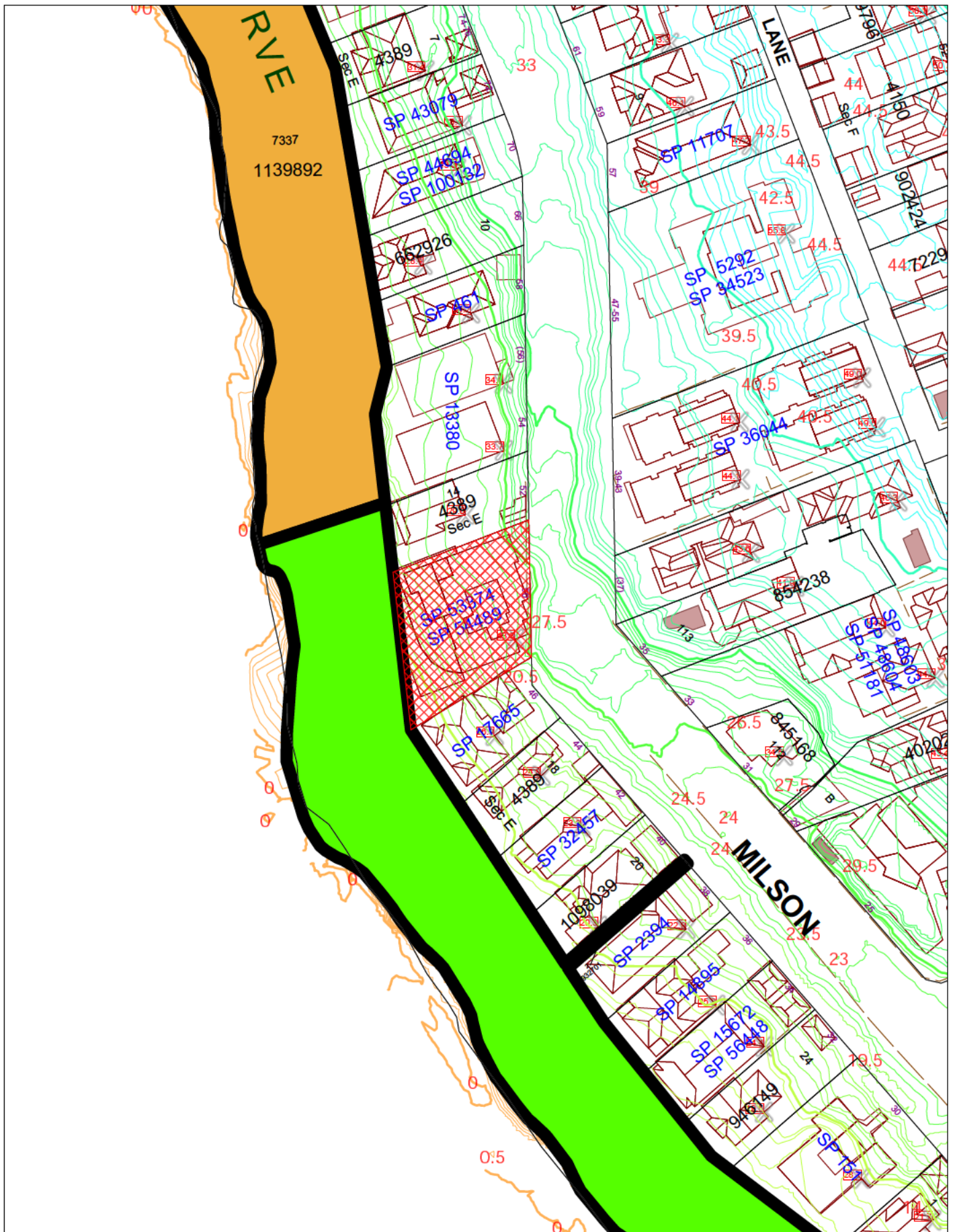
11. The owner of the premises at Units 9 and 9A, 50 Milson Road, Cremorne Point is to maintain the landscaping on the Level 10 roof terrace approved by this consent generally in accordance with approved plans as modified by Conditions C1.

All planting on the Level 10 rooftop terrace shall be maintained at a height not higher than the roof parapet walls.

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.

No umbrellas and/or shade structures are to be located on the Level 10 roof terrace to the south of the southern building line of the roof level (Level 10) structure containing the conservatory/kitchen/bathroom to ensure that any visual impacts for the neighbouring properties are minimised.

(Reason: To ensure maintenance of landscape quality on the roof terrace and protection of amenity for the neighbouring properties.)



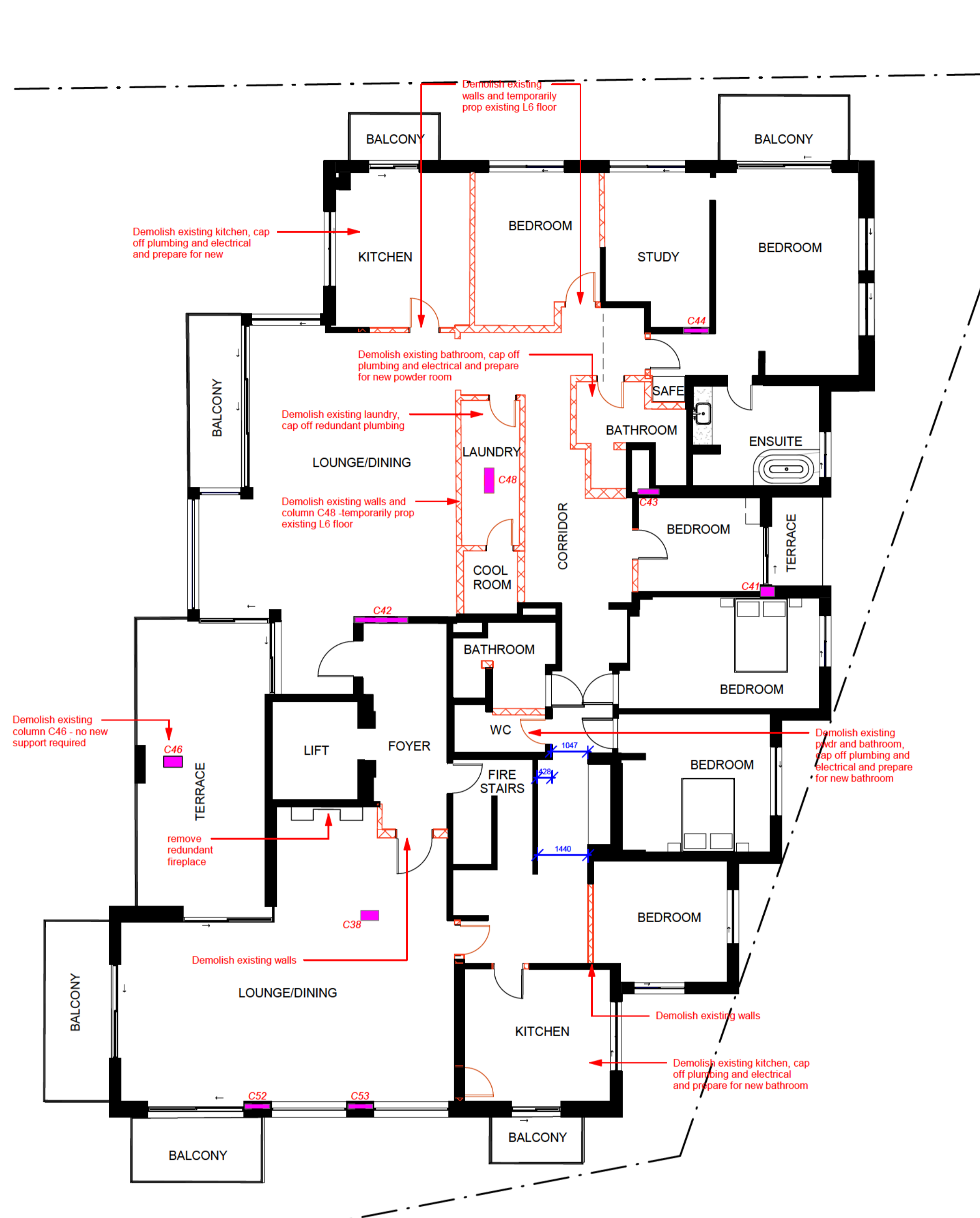
North Sydney Council

Copyright © North Sydney Council - No part of this map may be reproduced without permission. Commercial decisions should not be made based on information contained in this map without first checking details held by the responsible Government authority.

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

Scale: 1:1200 approx.



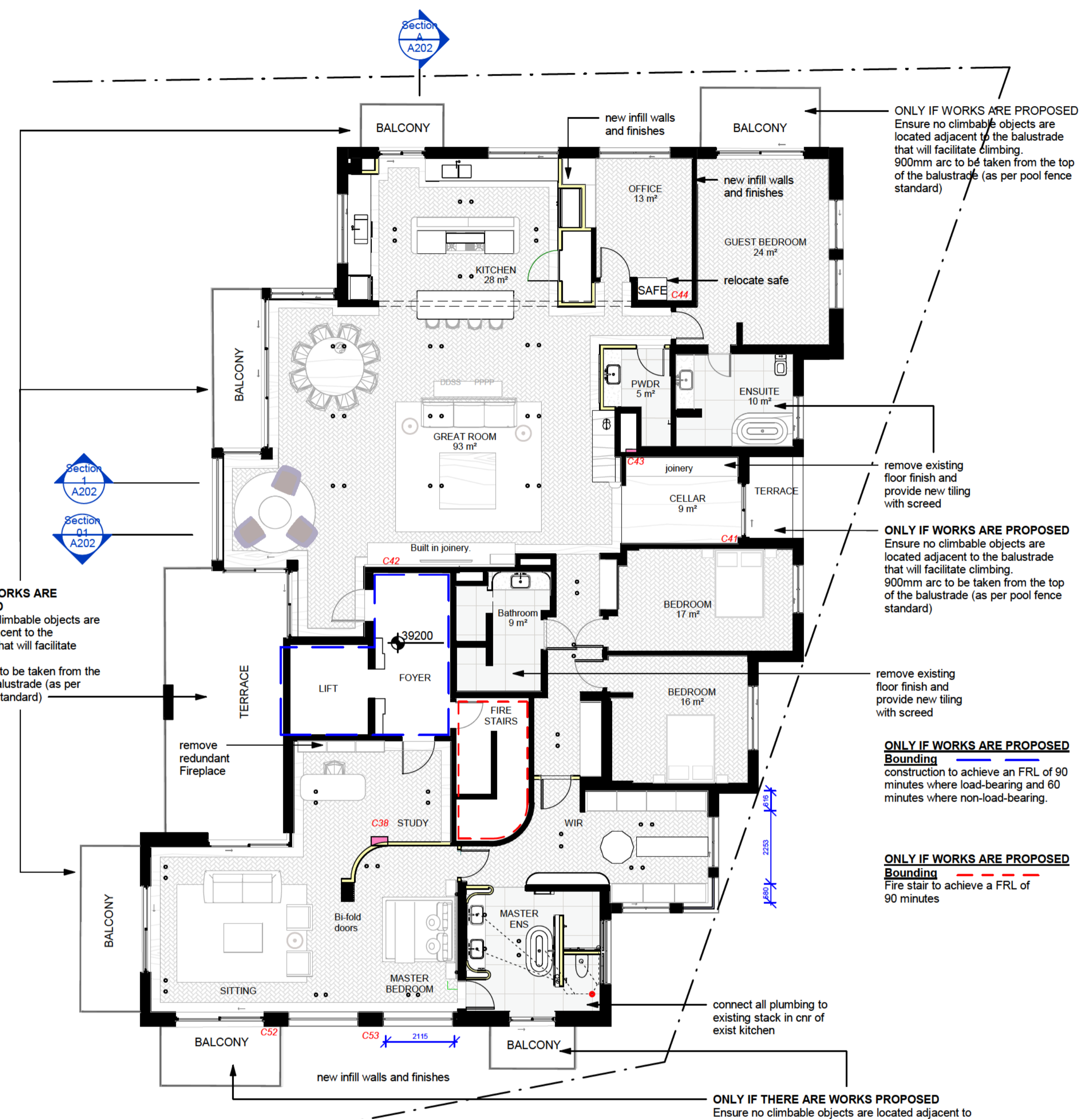


1 L9 Penthouse Existing & Demo
1:100

Colour	Description
Yellow	Timber
Grey	Concrete
Black	Existing Walls
Red Dashed	Existing Demolished
Blue	Steel
Light Blue	Glazing
Light Grey	Sandstone
White	Render
Dark Grey	Tile

DA Colour Legend

REGULATED DESIGN RECORD				
Project Address: 9 / 50 Milson Road, Cremorne NSW				
Project Title: Denholm Taylor Cremorne				
Consent No:		Body Corporate Reg No:		
Drawing Title: Sections & Details		Drawing No:		
Rev.	Date dd.mm.yy	Description	DP Full Name	Reg No



2 L9 Penthouse Proposed
1:100



Schedule of Materials & Finishes
1:1

Walter Barda Design
architecture
landscape
interiors
Nominated Architect: Adrian Ball 7745
2,04 13-15 Wentworth Avenue Sydney NSW 2000
www.walterbardadesign.com ABN: 48 072 136 513
Office: 02 9264 4240

BASIX Certificate
Building Sustainability Index www.basix.nsw.gov.au
Alterations and Additions
Certificate number: A1374379

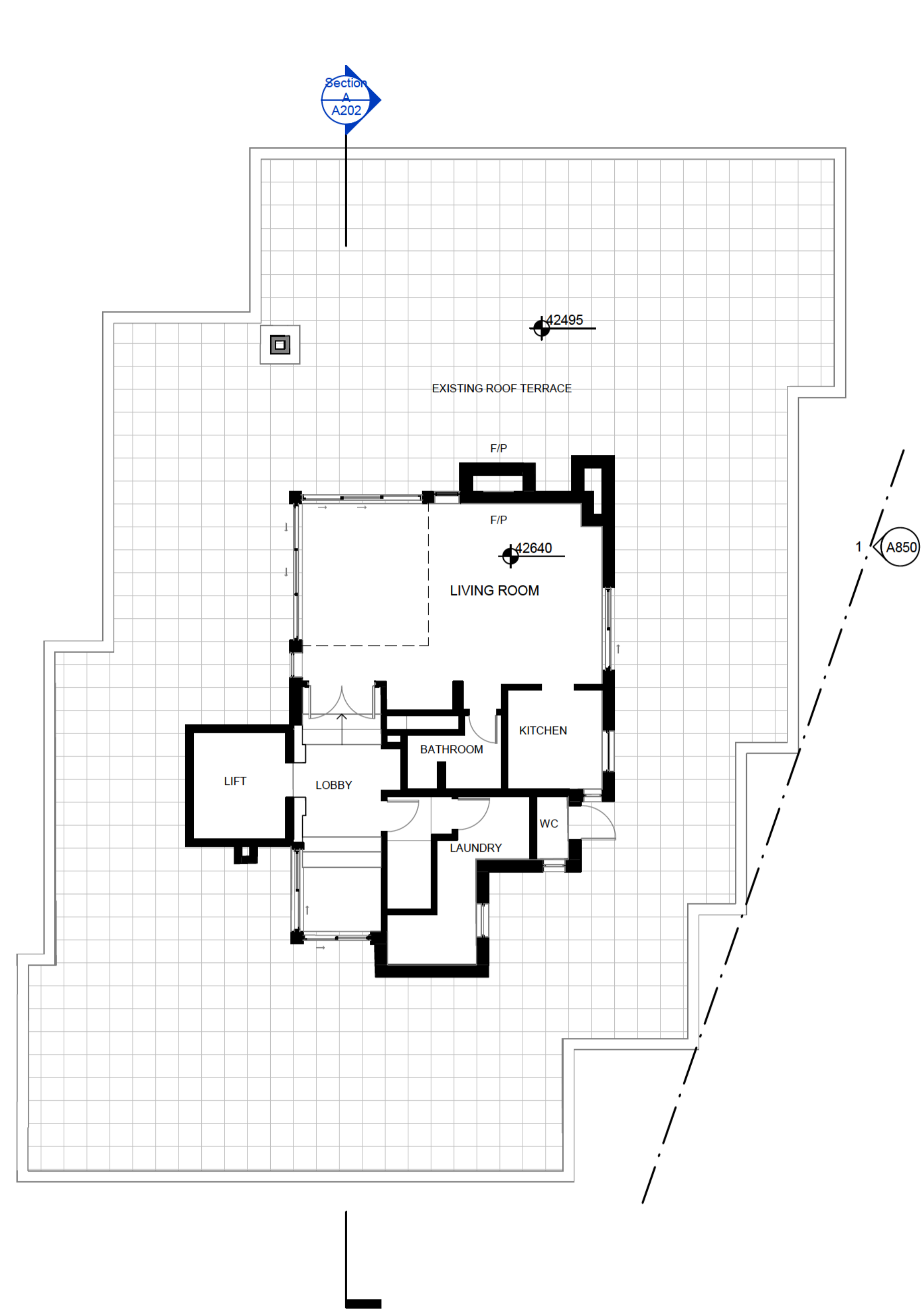


Revisions		
No.	Description	Date
1	SKETCH ISSUE	24.03.2023
2	FOR COMMITTEE MEETING	13.06.2023
A	FOR STRATA BY-LAW ISSUE	19.07.2023
B	Design Practitioner Review	19.09.23
C	Consultant Review	04.10.23
D	DA Issue Council	31.10.23
E	DA Issue with Reports	15.12.23

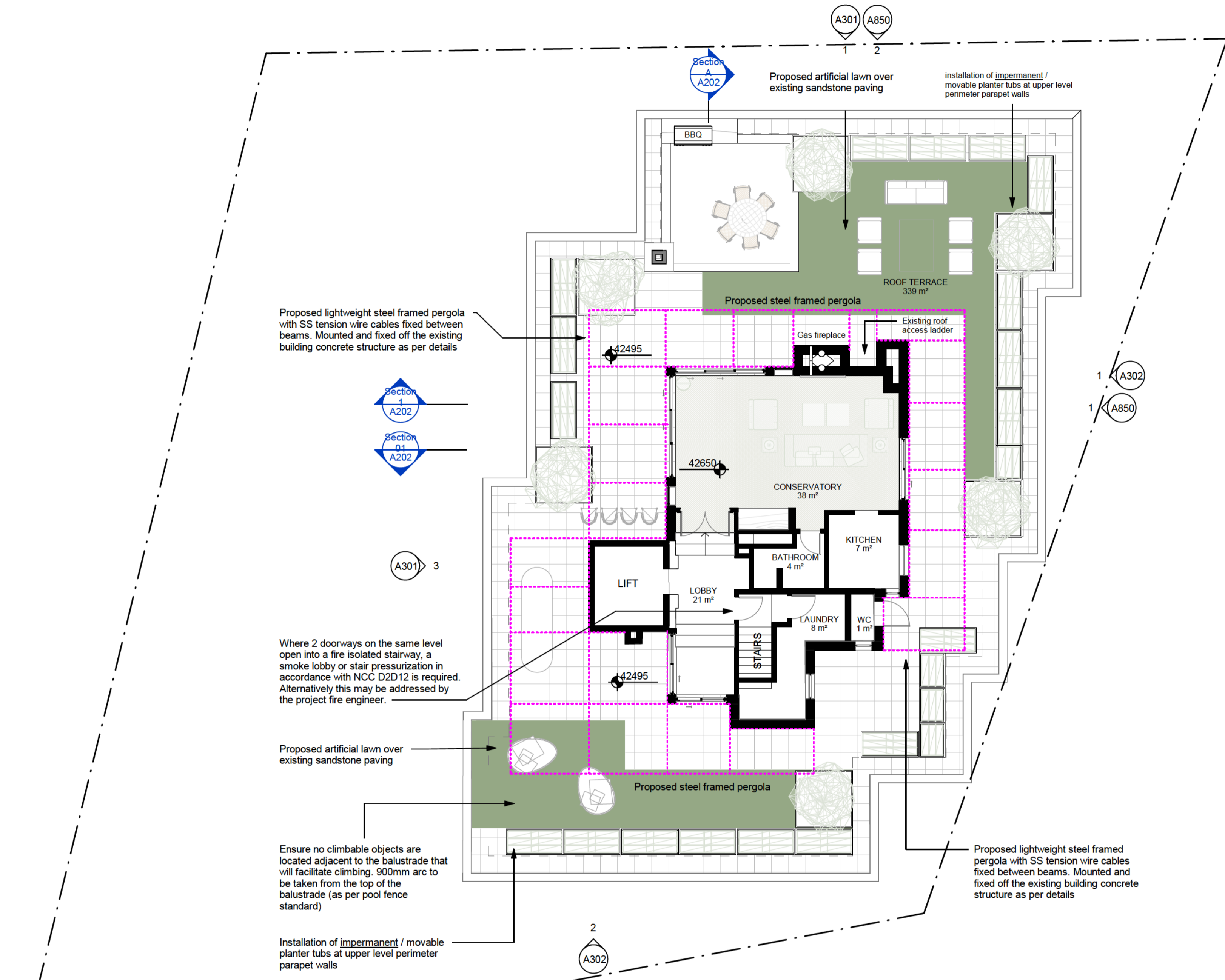
RITZ PENTHOUSE CREMORNE
Denholm Taylor
This Drawing must not be used for Construction unless signed as Approved
© Copyright - This document is and shall remain the property of Walter Barda Design Pty Ltd.
Walter Barda Design Conditions of Use: This Document may only be used for the purpose for which it was commissioned and in accordance with the terms of engagement for the commission.

Project Number	2022_24	9-10/50 Milson Rd Cremorne NSW
Project Status	DA	
Sheet	Level 9 Floor Plan	

Print Date & Time	15/12/2023 3:43:58 PM		
File Path	Z:\022_24_Denholm Taylor Penthouse\02 - Architectural Plans\02 DA - Proposed Alterations\1 - 50 Milson Rd Penthouse.rvt		
Drawn By	RF	Checked By	WB
		Approved By	WBD
Scale @ A1 As indicated			
Drawing Number	A200	Issue	E



1 L10 Penthouse Roof Existing & Demo
1:100



2 L10 Penthouse Roof Proposed
1:100

Colour	Description
Yellow	Timber
Grey	Concrete
Black	Existing Walls
Red dashed	Existing Demolished
Blue	Steel
Light Blue	Glazing
Light Green	Sandstone
Light Grey	Render
Dark Grey	Tile

DA Colour Legend

REGULATED DESIGN RECORD				
Project Address: 9 / 50 Milson Road, Cremorne NSW				
Project Title: Denholm Taylor Cremorne				
Consent No:		Body Corporate Reg No:		
Drawing Title: Sections & Details		Drawing No:		
Rev.	Date dd.mm.yy	Description	DP Full Name	Reg No



Schedule of Materials & Finishes
1:1

Walter Barda Design
architecture
landscape
interiors
Nominated Architect: Adrian Ball 7745
2,04 13-15 Wentworth Avenue Sydney NSW 2000
www.walterbardadesign.com ABN: 48 072 136 513
Office: 02 9264 4240

BASIX Certificate
Building Sustainability Index www.basix.nsw.gov.au
Alterations and Additions
Certificate number: A1374379



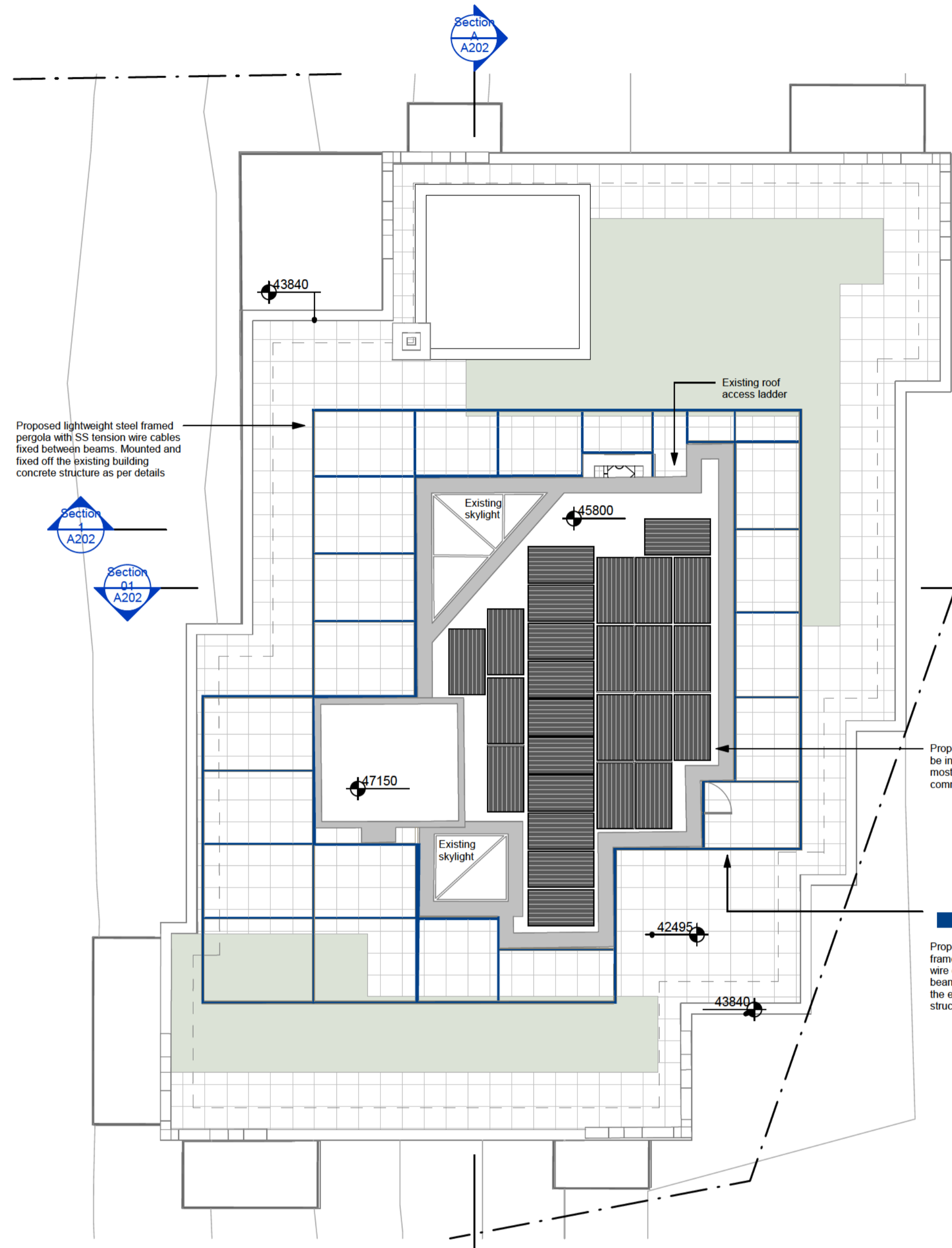
Revisions		
No.	Description	Date
1	SKETCH ISSUE	24.03.2023
2	FOR COMMITTEE MEETING	13.06.2023
A	FOR STRATA BY-LAW ISSUE	19.07.2023
B	Design Practitioner Review	19.09.23
C	Consultant Review	04.10.23
D	DA Issue Council	31.10.23
E	DA Issue with Reports	15.12.23

RITZ PENTHOUSE CREMORNE
Denholm Taylor
This Drawing must not be used for Construction unless signed as Approved
© Copyright - This document is and shall remain the property of Walter Barda Design Pty Ltd.
Walter Barda Design Conditions of Use: This Document may only be used for the purpose for which it was commissioned and in accordance with the terms of engagement for the commission.

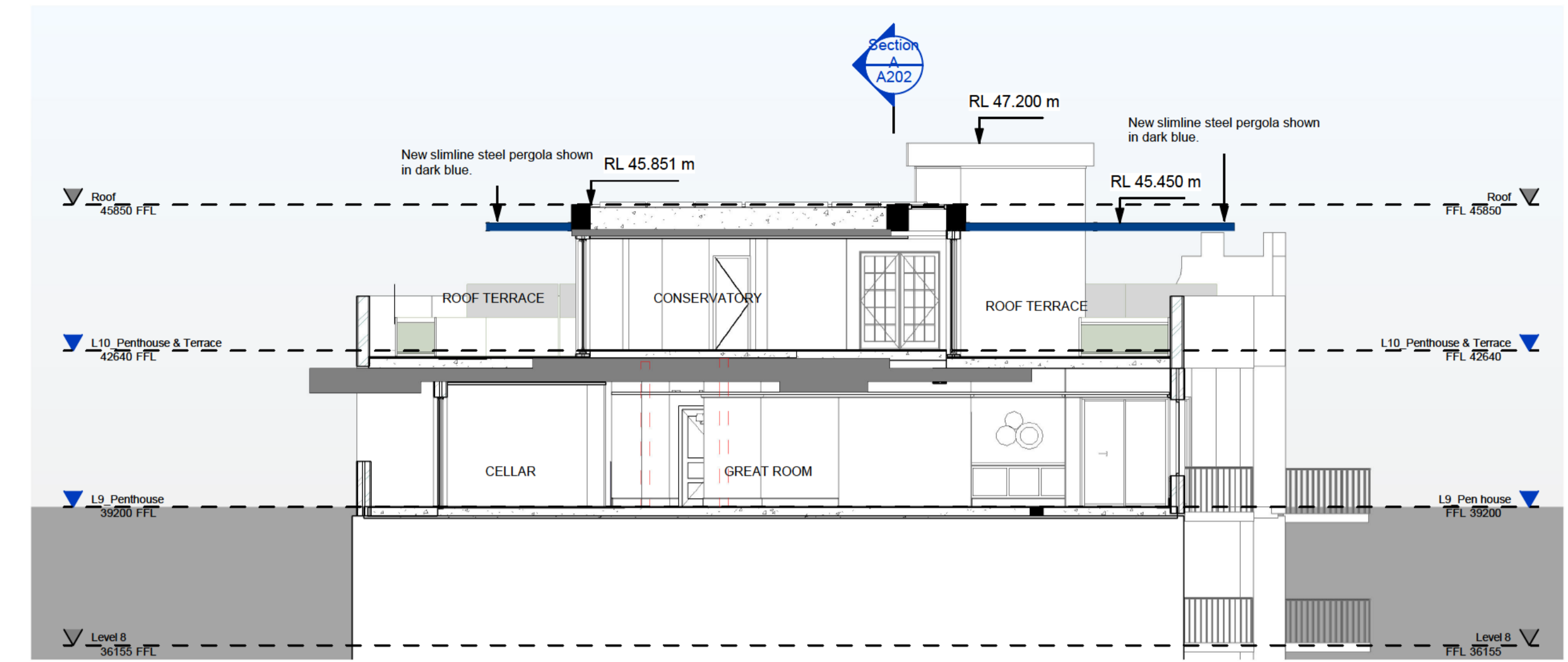
Project Number: 2022_24
Project Status: DA
Sheet: Level 10 Floor Plan

Print Date & Time: 15/12/2023 3:44:22 PM
File Path: Z:\0202_24_Denholm Taylor Penthouse\02 - Architectural Plans\02 DA - Proposed Alterations\13 - Milson Rd Penthouse.rvt
Drawn By: RF
Checked By: WB
Approved By: WBD
Scale @ A1 As indicated
Drawing Number: A201
Issue: E

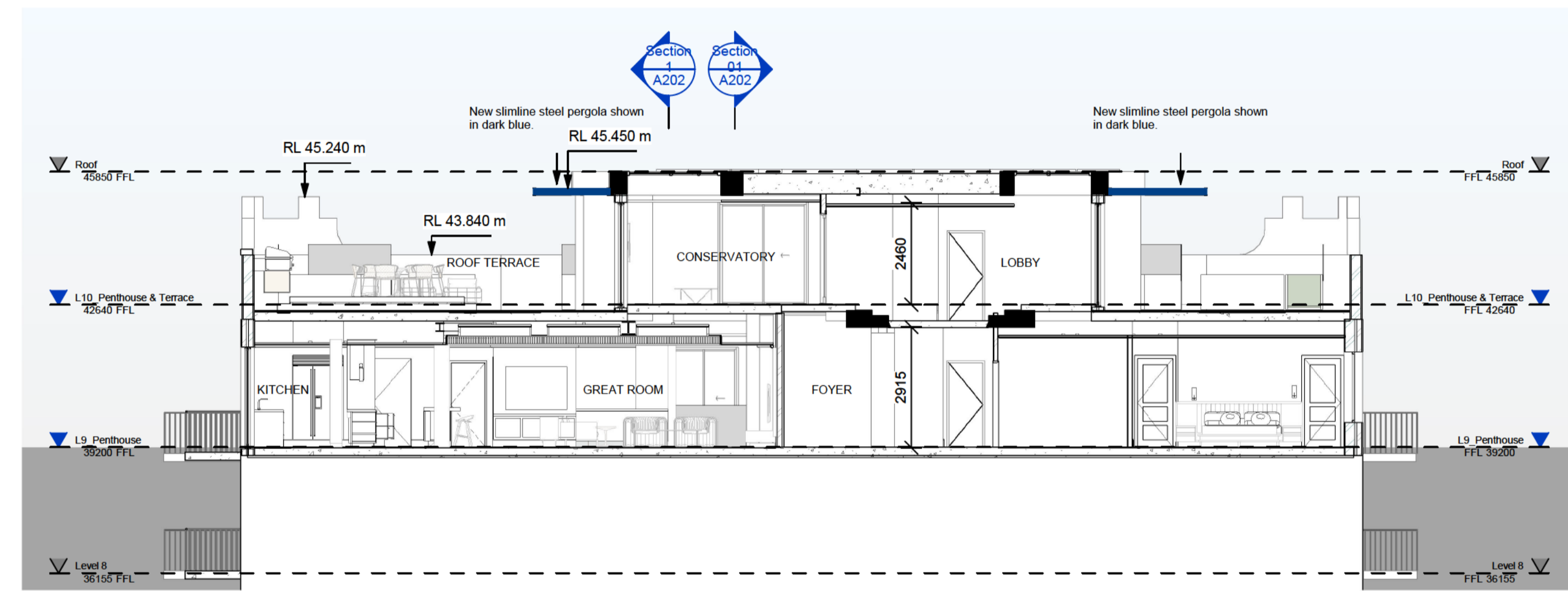
REGULATED DESIGN RECORD				
Project Address: 9 / 50 Milson Road, Cremorne NSW				
Project Title: Denholm Taylor Cremorne				
Consent No:		Body Corporate Reg No:		
Drawing Title: Sections & Details		Drawing No:		
Rev.	Date dd.mm.yy	Description	DP Full Name	Reg No



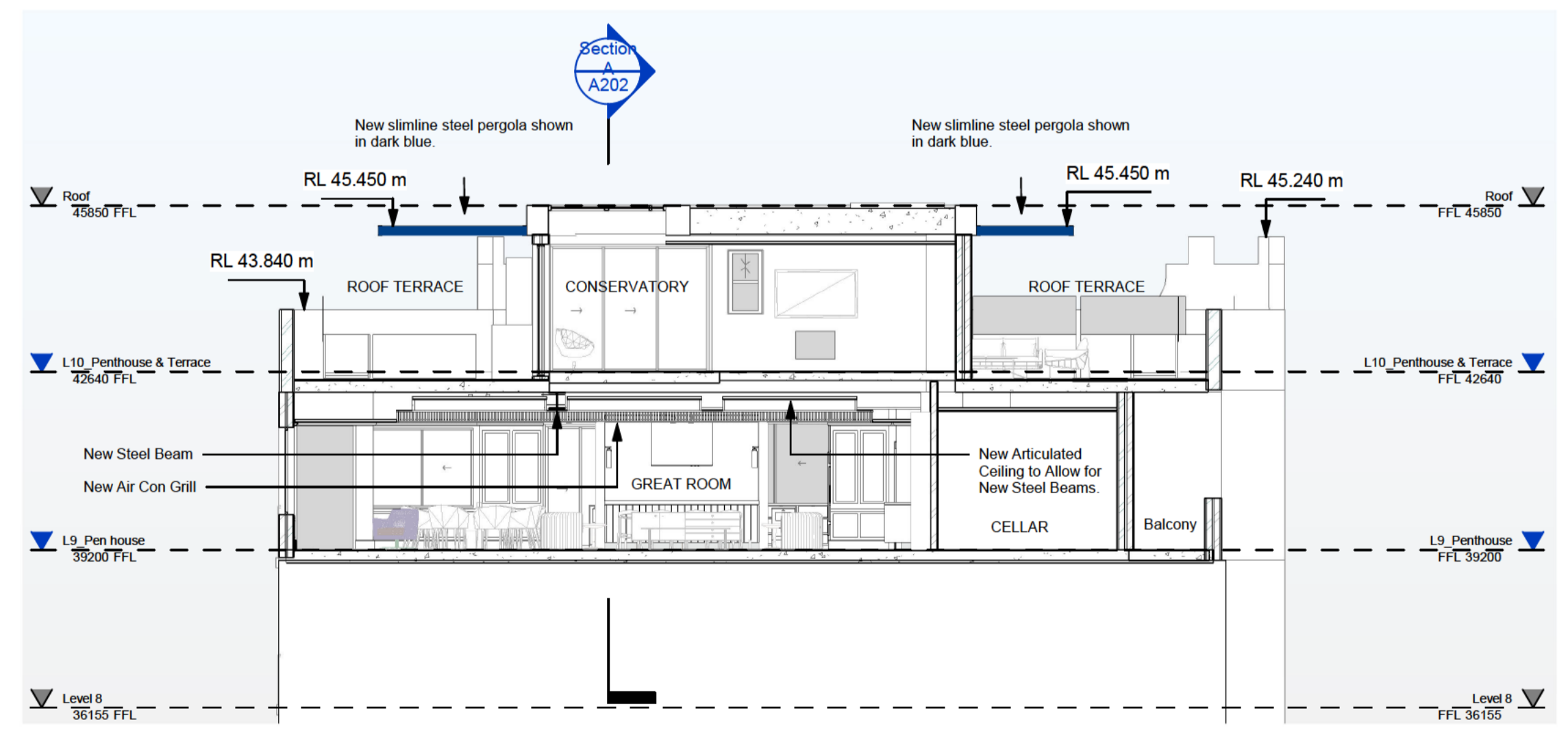
1 Roof Plan
1:100



3 Section 01
1:100



2 Section A
1:100



4 Section 1
1:100



1:1 Schedule of Materials & Finishes

Colour	Description
Green	Timber
Grey	Concrete
Black	Existing Walls
Red	Existing Demolished
Blue	Steel
Light Blue	Glazing
Light Grey	Sandstone
White	Render
Dark Grey	Tile

1:1 DA Colour Legend

Walter Barda Design
architecture
landscape
interiors
Nominated Architect: Adrian Ball 7745
2,04 13-15 Wentworth Avenue Sydney NSW 2000
www.walterbardadesign.com ABN: 48 072 136 513
Office: 02 9264 4240

BASIX Certificate
Building Sustainability Index www.basix.nsw.gov.au
Alterations and Additions
Certificate number: A1374379

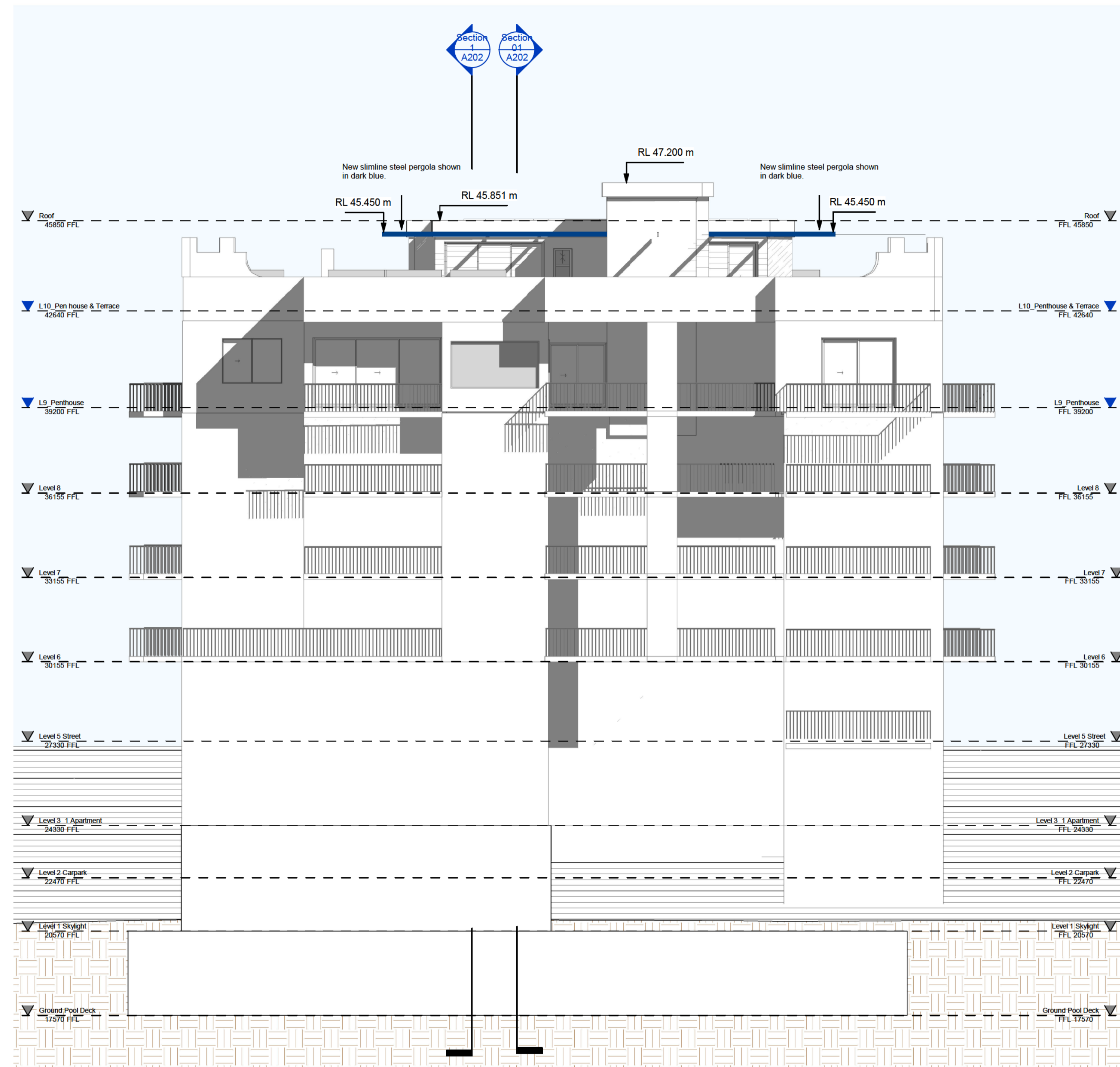
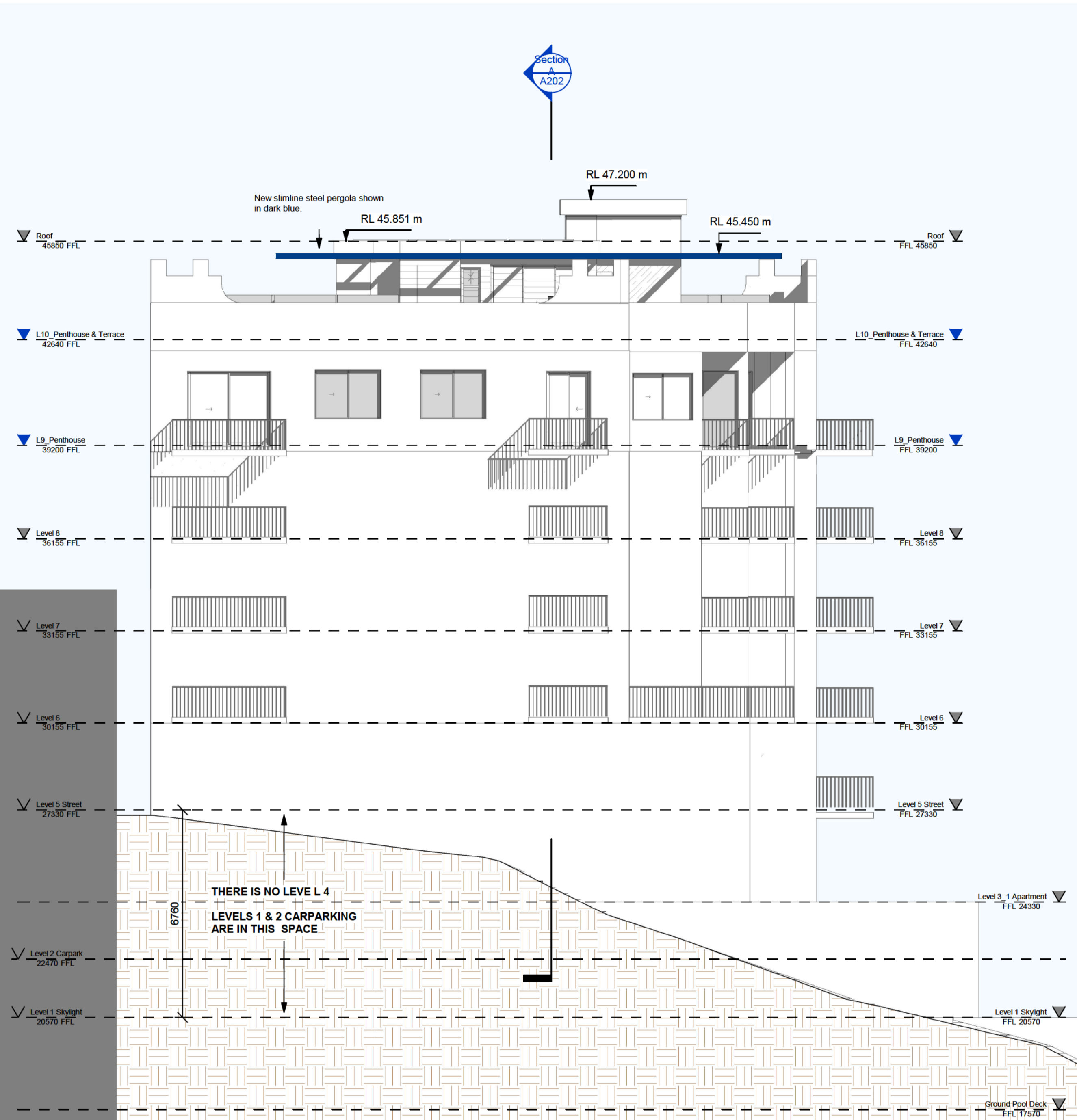


Revisions		
No.	Description	Date
A	FOR STRATA BY LAW ISSUE	19.07.2023
B	Design Practitioner Review	19.09.23
C	Consultant Review	04.10.23
D	DA Issue Council	31.10.23
E	DA Issue with Reports	15.12.23

RITZ PENTHOUSE CREMORNE
Denholm Taylor
This Drawing must not be used for Construction unless signed as Approved
© Copyright - This document is and shall remain the property of Walter Barda Design Pty Ltd.
Walter Barda Design Conditions of Use: This Document may only be used for the purpose for which it was commissioned and in accordance with the terms of engagement for the commission.

Project Number: 2022_24
Project Status: DA
Sheet: **Roof Plan & Sections**

Print Date & Time: 15/12/2023 3:44:42 PM
File Path: Z:\0202_24_Denholm Taylor Penthouse\02 - Architectural Plans\02 DA - Detailed\Appendix 1 - 50 Milson Rd Penthouse.rvt
Drawn By: RF
Checked By: WB
Approved By: WBD
Scale @ A1 As indicated
Drawing Number: **A202**
Issue: **E**



REGULATED DESIGN RECORD				
Project Address: 9 / 50 Milson Road, Cremorne NSW				
Project Title: Denholm Taylor Cremorne				
Consent No:		Body Corporate Reg No:		
Drawing Title: Sections & Details		Drawing No:		
Rev.	Date dd.mm.yy	Description	DP Full Name	Reg No

3 West / Water
1:100

Colour	Description
Light Green	Timber
Grey	Concrete
Black	Existing Walls
Red	Existing Demolished
Blue	Steel
Light Blue	Glazing
Light Brown	Sandstone
White	Render
Dark Blue	Tile

DA Colour Legend
nts

Proposed Steel Pergola	Artificial Grass	Timber Floors
		

Schedule of Materials & Finishes
1:1

Walter Barda Design
architecture
landscape
interiors
Nominated Architect: Adrian Ball 7745
2,04 13-15 Wentworth Avenue Sydney NSW 2000
www.walterbardadesign.com ABN: 48 072 136 513
Office: 02 9264 4240

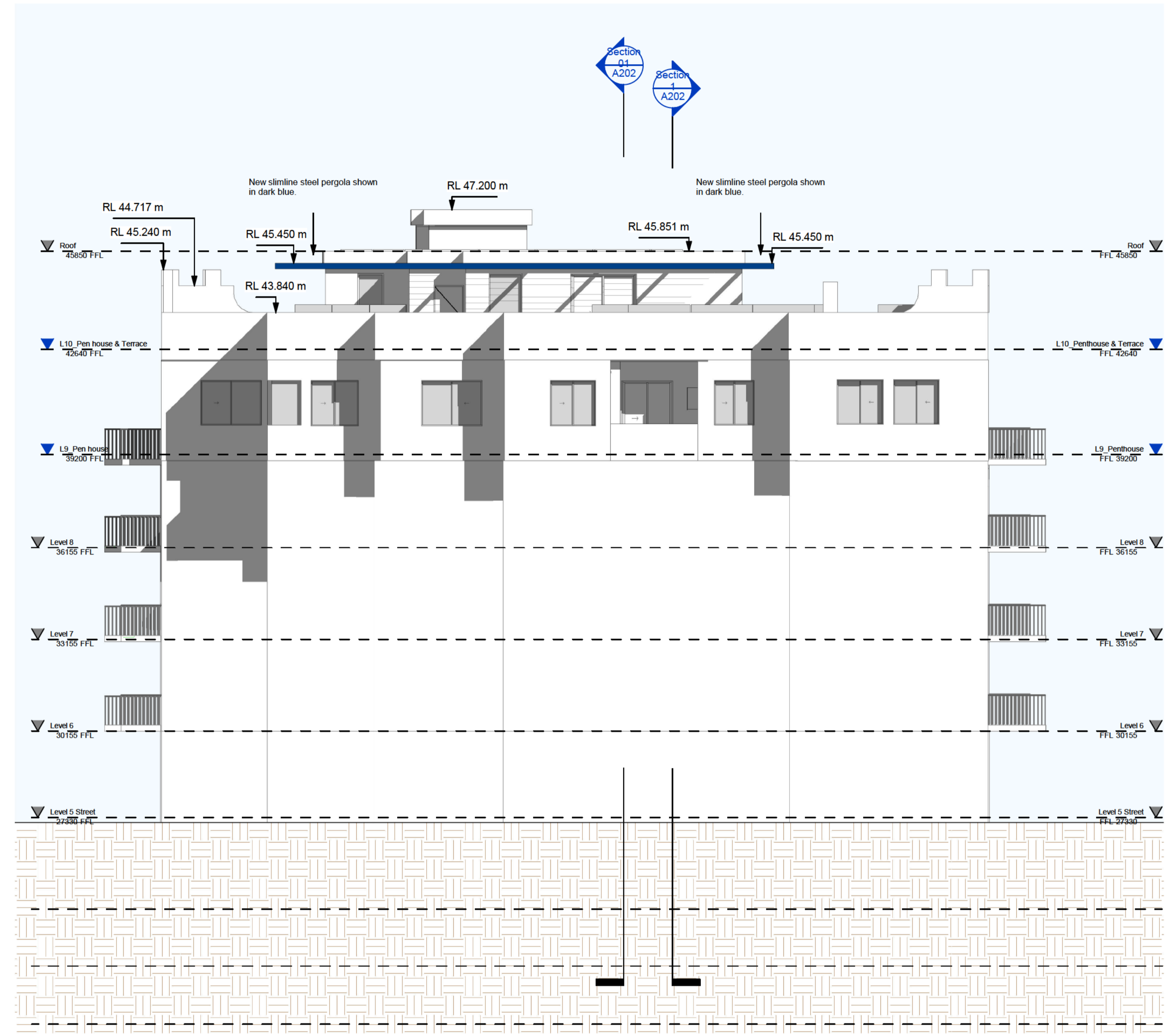
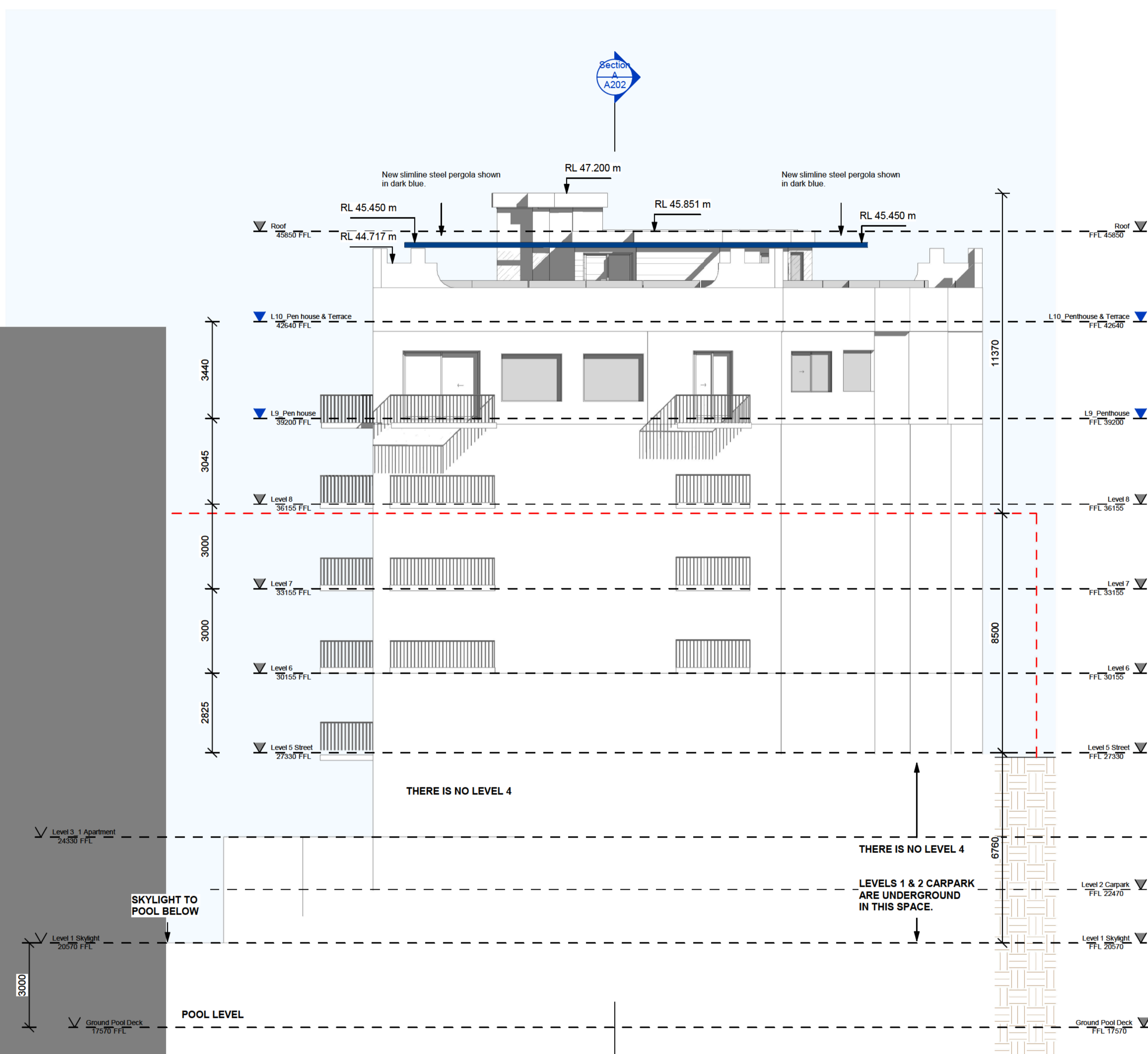
BASIX Certificate
Building Sustainability Index www.basix.nsw.gov.au
Alterations and Additions
Certificate number: A1374379

Revisions		
No.	Description	Date
A	Design Practitioner Review	19.09.23
B	Consultant Review	04.10.23
C	DA Issue Council	31.10.23
D	Planner Issue	30.11.23
E	DA Issue with Reports	15.12.23
F	Bulkier 1st Review	16.02.24
G	RL Correction Council	27.03.24

RITZ PENTHOUSE CREMORNE
Denholm Taylor
This Drawing must not be used for Construction unless signed as Approved
© Copyright - This document is and shall remain the property of Walter Barda Design Pty Ltd.
Walter Barda Design Conditions of Use: This Document may only be used for the purpose for which it was commissioned and in accordance with the terms of engagement for the commission.

Project Number	2022_24	9-10/50 Milson Rd Cremorne NSW
Project Status	DA	
Sheet	Elevations	

Print Date & Time	27/03/2024 3:38:37 PM		
File Path	Z:\022_24_Denholm Taylor Penthouse\02 - Architectural Plans\02 DA - Development Application\1.50 Milson Rd Penthouse.rvt		
Drawn By	RF	Checked By	WB
		Approved By	WBD
Scale @ A1 As indicated			
Drawing Number	A301		Issue
			G



2 South
1:100

1 East / Street
1:100



Schedule of Materials & Finishes
1:1

Colour	Description
[Yellow]	Timber
[Grey]	Concrete
[Black]	Existing Walls
[Red]	Existing Demolished
[Blue]	Steel
[Light Blue]	Glazing
[Light Green]	Sandstone
[Light Grey]	Render
[Dark Grey]	Tile

DA Colour Legend
nts

REGULATED DESIGN RECORD				
Project Address: 9 / 50 Milson Road, Cremorne NSW				
Project Title: Denholm Taylor Cremorne				
Consent No:		Body Corporate Reg No:		
Drawing Title: Sections & Details		Drawing No:		
Rev.	Date dd.mm.yy	Description	DP Full Name	Reg No

Walter Barda Design
architecture
landscape
interiors
Nominated Architect: Adrian Ball 7745
2,04 13-15 Wentworth Avenue Sydney NSW 2000
www.walterbardadesign.com ABN: 48 072 136 513
Office: 02 9264 4240

BASIX Certificate
Building Sustainability Index www.basix.nsw.gov.au
Alterations and Additions
Certificate number: A1374379

Revisions		
No.	Description	Date
A	Design Practitioner Review	19.09.23
B	Consultant Review	04.10.23
C	DA Issue Council	31.10.23
D	Planner Issue	30.11.23
E	DA Issue with Reports	15.12.23
F	Bulkier 1st Review	16.02.24
G	RL Correction Council	27.03.24

RITZ PENTHOUSE CREMORNE
Denholm Taylor
This Drawing must not be used for Construction unless signed as Approved
© Copyright - This document is and shall remain the property of Walter Barda Design Pty Ltd.
Walter Barda Design Conditions of Use: This Document may only be used for the purpose for which it was commissioned and in accordance with the terms of engagement for the commission.

Project Number	2022_24	9-10/50 Milson Rd Cremorne NSW	Print Date & Time 27/03/2024 3:39:05 PM
Project Status	DA	Scale @ A1 As indicated	File Path Z:\022_24_Denholm Taylor Penthouse\02 - Architectural Plans\02 DA - Drawings\02_Architectural Plans\02_Denholm Taylor Penthouse.rvt
Sheet	Elevations		Drawn By RF
			Checked By WB
			Approved By WBD
			Drawing Number A302
			Issue G



*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD

50 MILSON ROAD
CREMORNE POINT NSW 2090

December 2023

Prepared by Rebecca Englund
B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning

Phone: 0472 65 74 74

Web: www.northernbeachesplanning.com.au

Email: rebecca@northernbeachesplanning.com.au



Disclaimer

This report has been prepared on the basis of information available at the date of publication. Whilst attempts have been made to ensure the accuracy of the information in this document, Northern Beaches Planning accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance on information in this publication or referenced in this publication. Reproduction of this report (or part thereof) is not permitted without prior permission from Northern Beaches Planning.

northern beaches planning

introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of Robyn Denholm and David Taylor in relation to a development application for alterations and additions to the existing residential flat building and the consolidation of two units into one unit at 50 Milson Road, Cremorne Point (**site**). This request is made pursuant to clause 4.6 of North Sydney Local Environmental Plan 2013 (**NSLEP 2013**) and with regard to relevant case law.

standard to be varied

With a maximum building height of 27.88m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of NSLEP 2013. The maximum building height is a development standard, as defined by the EP&A Act:

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...*

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...

Accordingly, the provisions of clause 4.6 of NSLEP 2013 can be applied.

Pursuant to clause 4.6(2) of NSLEP 2013, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the building height development standard of clause 4.3 of NSLEP 2013 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

extent of the proposed breach

The proposed development reaches a maximum height of 27.88m, representative of a 19.38m or 228% variation to the 8.5m maximum building height development standard. The height non-compliance is limited to new pergola to be installed over the upper level terrace, with the existing maximum height of the development remaining unchanged at 29.63m to the lift overrun and 28.281m to the upper roof.

The non-compliant elements in relation to the existing building are highlighted in the extract of the South Elevation (Figure 1) on the following page.

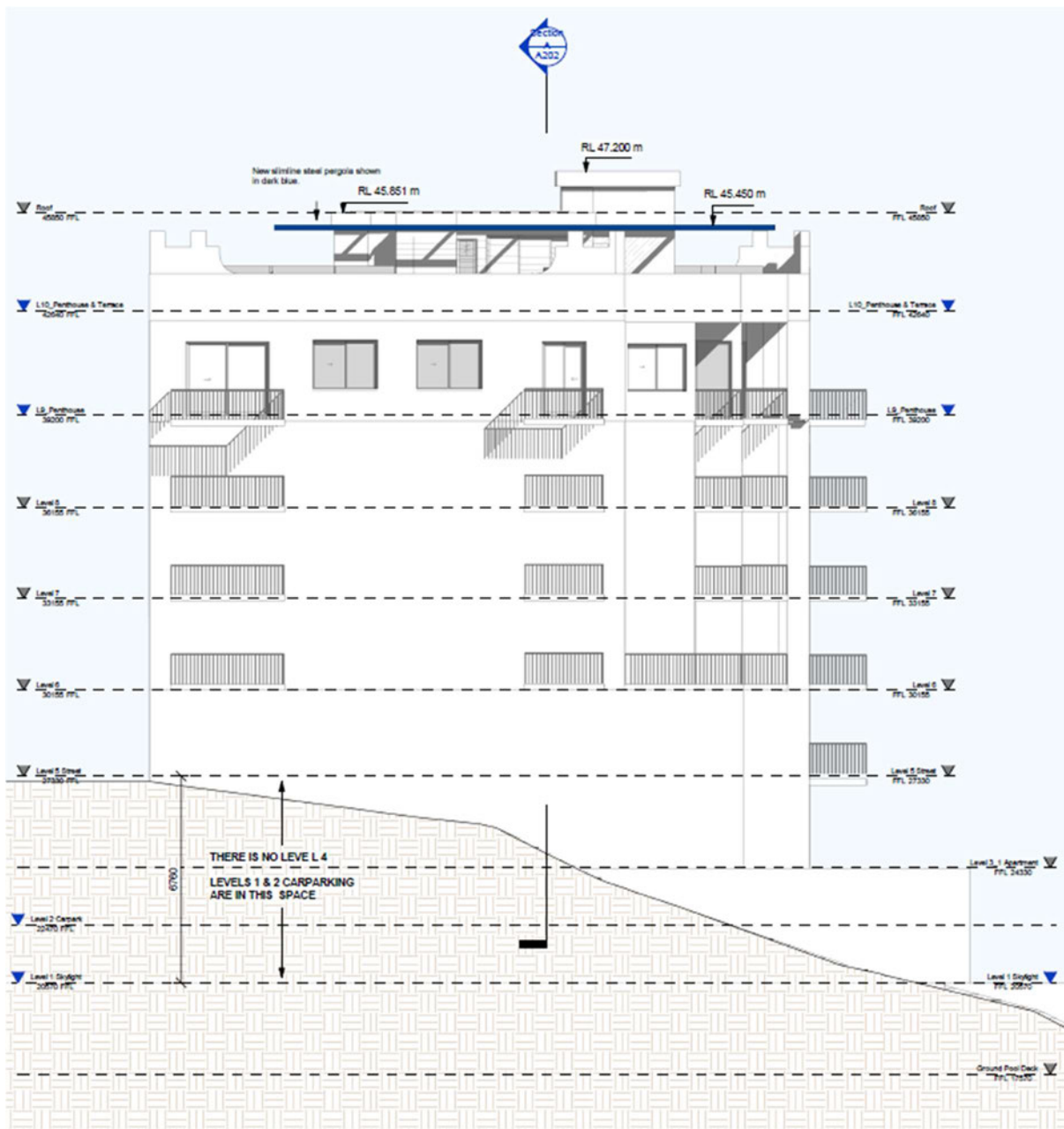


Figure 1 –North Elevation, with the new awnings highlighted in blue
 Source: Walter Barda Design

unreasonable or unnecessary

Pursuant to clause 4.6(4) of NSLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of NSLEP 2013. Clause 4.6(3)(a) of NSLEP 2013 requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 and as confirmed in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the relevant objectives of the building height development standard, as prescribed by clause 4.3(1) of NSLEP 2013, as follows:

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

Comment: The new pergola is to be installed over the existing upper level terrace, setback from the enclosing parapet of the building and below the roof over the central floor space and lift overrun. Consideration of the natural slope of the land is not considered to be relevant in the circumstances of this particular site.

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

Comment: The new pergola is to be finished in a dark colour and is to be cantilevered from the central external walls. The proposal does not seek to fill in any of the upper terrace, with no new vertical structures or walls proposed. As demonstrated in the accompanying Statement of Environmental Effects, the proposed pergola is maintained within the volume of the existing roof terrace and will not result in any adverse impacts upon existing views.

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

Comment: The shadows cast by the proposed pergola are wholly maintained within the area of the upper level terrace and do not extend onto adjoining land.

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

Comment: The proposed development, in particular the non-compliant pergola, does not result in any adverse impact upon the privacy of adjoining properties, with appropriate levels of privacy retained.

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

Comment: The proposed pergola does not alter the use of the upper level terrace or the perceived height and bulk of the existing building. The minor additional height breach does not detract from consistency with this objective.

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

Comment: As demonstrated by the photomontage by Walter Barda Design (**Figure 2**), the proposed pergola does not alter the scale of the existing building and does not detract from the character of the area.



Figure 2 – Photomontage of the resultant development as seen from Milson Road
Source: Walter Barda Design

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

Comment: The proposed development does not alter the number of storeys of the building, with the non-compliance arising due to the existing height of the building. The minor height additional breach does not detract from consistency with this objective.

As such, strict compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this case.

sufficient environmental planning grounds

Clause 4.6(3)(b) of NSLEP 2013 requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the height standard are as follows:

1. Existing development

Consistent with the decision of the Justice Duggan of the NSW LEC in the matter of *Landcorp Australia Pty Ltd v The Council of the City of Sydney* [2020] NSWLEC 174 (**Landcorp Australia**), the proposed development does not contribute to or alter the height of the building. It is, as it presently exists, at a height of 29.63m and that remains unchanged as a consequence of the proposed development.

At paragraph 59 of *Landcorp Australia*, Justice Duggan states:

Further, I accept the Applicant's submission that the definitions of words must be read subject to the context in which they are used. In this clause the reference to a building is not a reference to anything that may fall within that defined term but to a thing so defined that has the consequence of the building, objectively measured, exceeding the maximum height. In the circumstances of this case, it does not matter if the sign can be defined as a "building"; the sign does not have the consequence of the breach of the Height Control – the existing building upon which the sign is to be affixed already breaches it, such that the clause does not apply to the elements affixed to the existing built form.

These findings are considered to be relevantly applied in relation to the proposed works, where the non-compliance does not arise from the proposed works, but rather as a consequence of new elements being affixed to existing built form.

2. Sustainability

At present, there are no shade structures on the upper level terrace, with no eaves or awnings over the full floor-to-ceiling windows and doors of the upper level floor space. The Applicant seeks to erect the proposed pergola to grown vines, which will provide shade in the summer months and maintain sunlight throughout the winter.

The proposed design is entirely in keeping with the provisions of Part 1.6 of North Sydney Development Control Plan 2013 (**NSDCP**) which promotes passive solar design. In particular, the proposed pergola is consistent with clause 1.6.2 of NSDCP, which states:

Provide shading devices on north facing walls to completely shade glazing from October to late February.

Consideration should be given to using north facing pergolas to shade walls and windows (deciduous vines can be trained over the pergola to provide effective cooling in warm weather).

3. Amenity

In addition to the sustainability benefits, the proposed pergola will also enhance the amenity of the upper-level terrace, providing a more usable and pleasant environment for occupants of the development. At present, the large terrace lacks any shade structures and is hot and glary in the summer months. The proposal seeks to address this issue and will provide much needed shade to usable areas of the terrace.

4. Lack of impact

The proposed pergola is a minor addition to the existing building, that will not be readily perceived from most vantage points. As demonstrated in the accompanying Statement of Environmental Effects, the dark coloured horizontal structures will disappear into the background, without resulting in any adverse impacts upon views from upslope properties. Further, any shadows cast by the proposal are wholly maintained within the footprint of the existing building, such that Council can be satisfied that the non-compliant elements do not result in adverse overshadowing of adjoining land.

Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSWLEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSWLEC 1242, the absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

Allowing for the development to appropriately respond to the individual context of the site, including the levels of the existing building promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objectives (g) and (h) of the EP&A Act.

Furthermore, allowing for a variation to the height plane inconsideration of the existing building promotes the orderly and economic development of the land, consistent with objective (c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the maximum height development standard.

conclusion

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of NSLEP 2013 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the building height development standard.

Rebecca Englund

B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning