

GENERAL / SPECIFIC NOTES

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THIS PLAN HAS BEEN PREPARED FOR FEATURE & LEVEL PURPOSE ONLY OVER THE SUBJECT SURVEY AREA, ONLY FOR BRIGHTMORE RESIDENCE PTY LTD & ASSOCIATED TEAM.

LEVELS ARE BASED ON AUSTRALIAN HEIGHT DATUM 71 (AHD), THE ORIGIN OF WHICH IS PM 39026 RL 4.836 AHD. (SOURCE: SCIMS 30-07-2021).

THE BOUNDARIES HAVE BEEN IDENTIFIED FROM SURVEY MEASUREMENTS TO MARKS & MONUMENTS RECORDED ON EXISTING REGISTERED SURVEY PLANS OF THE SUBJECT & ADJOINING LANDS & REPRESENT TITLE DIMENSIONS.

ANY CONSTRUCTIONS OR WORKS RELYING ON CRITICAL SETBACKS FROM BOUNDARIES WILL REQUIRE ADDITIONAL BOUNDARY SURVEY & PLACEMENT OF BOUNDARY / SETOUT MARKS PRIOR TO COMMENCEMENT OF ANY WORKS. ROSEVILLE SURVEYORS WILL NOT BE HELD RESPONSIBLE FOR ANY ISSUES RESULTING FROM NON COMPLIANCE WITH THIS ADVICE.

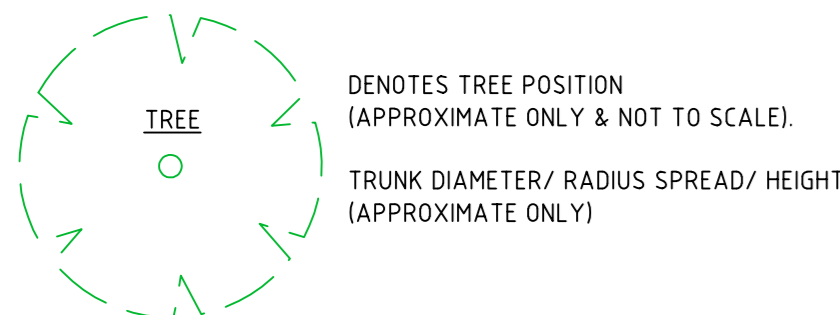
THE LOCATION & LEVELS OF BUILDING RIDGES AND ROOF FEATURES HAVE BEEN DETERMINED BY INDIRECT METHODS (WHERE VISIBLE) & ACCURATE TO APPROXIMATELY +/- 0.025m.

THE RECORDS OF THE SERVICE AUTHORITIES HAVE NOT BEEN INVESTIGATED. ONLY THOSE SERVICES VISIBLE / APPARENT AT THE TIME OF SURVEY HAVE BEEN SHOWN.

CONTOURS HAVE BEEN INTERPOLATED FROM SPOT HEIGHTS TAKEN AND ARE AN APPROXIMATION ONLY.

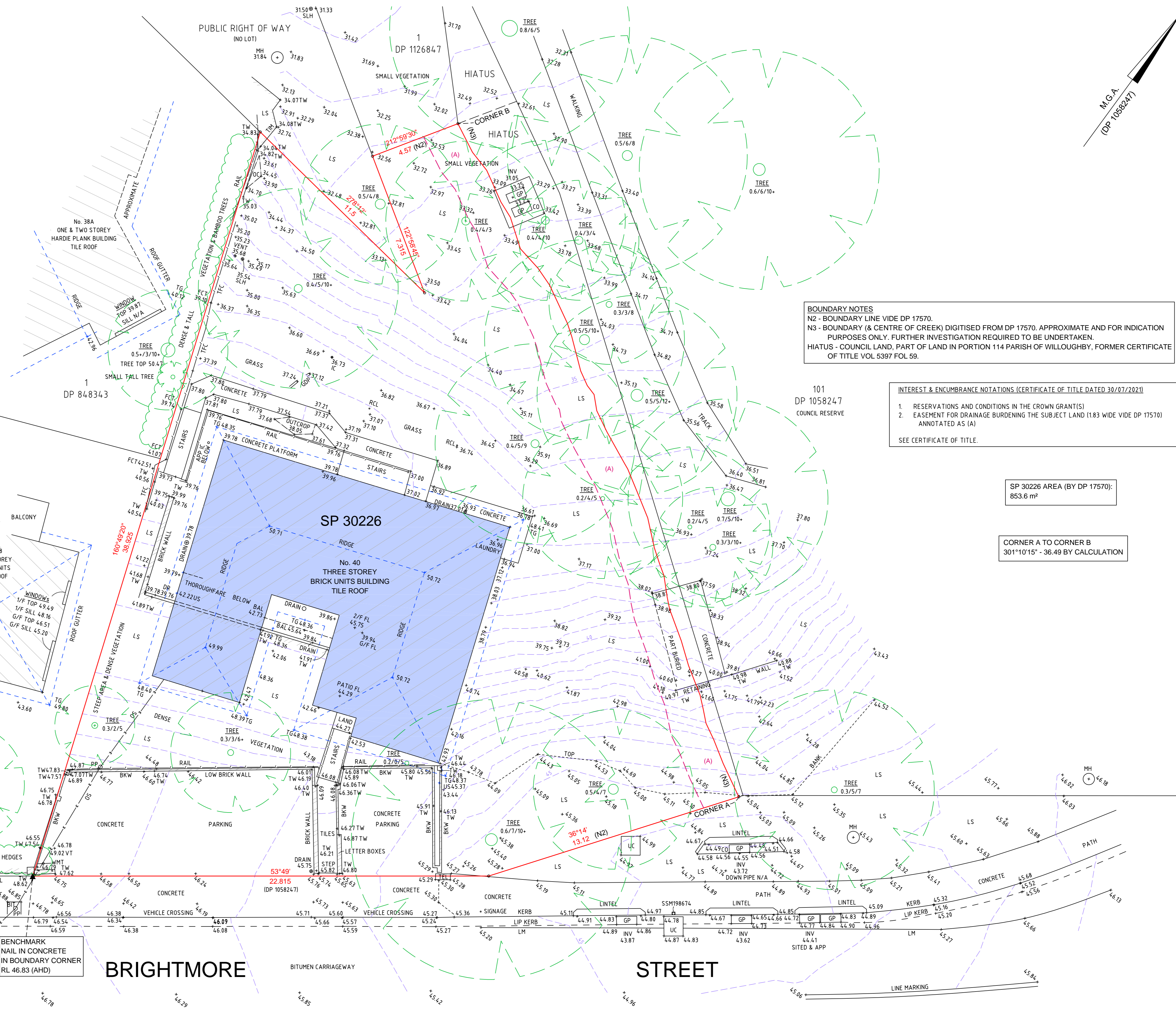
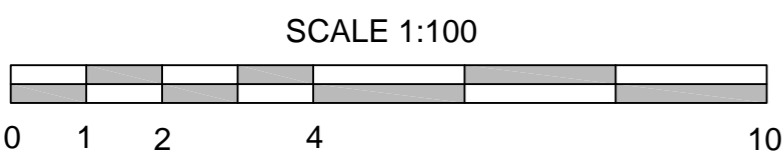
ALL DIMENSIONS ARE IN METRES.

SURVEY UNDERTAKEN 30/07/2021, DRAWN & PREPARED BY REGISTERED SURVEYOR ROGER LUNG.



SCHEDULE OF ABBREVIATIONS

- APP - APPROXIMATE
- BAL - BALCONY
- BIT - BITUMEN
- BKW - BRICK WALL
- CO - CONCRETE
- DR - DRAIN
- FCT - FENCE TOP
- FL - FLOOR LEVEL
- FLT - FLOOR LEVEL THRESHOLD
- GDP - GROUND PIPE
- GP - GROUND LEVEL
- GR - GRATED PIT
- IC - INSPECTION PIT
- INV - PIT INVERT LEVEL (APPROXIMATE)
- LAND - LANDING
- LM - LINE MAKING (APPROXIMATE)
- LS - LANDSCAPE
- MH - MANHOLE
- N/A - NOT ACCESSIBLE / NOT SURVEYED
- OC - OUTCROP
- OS - OVERHEAD SERVICE (APPROXIMATE)
- PP - POWER POLE
- RCL - ROTARY CLOTHESLINE
- SLH - SEWER LAMP HOLE
- TEL - TELSTRA SERVICE
- TFC - TIMBER FENCE
- TG - TOP ROOF GUTTER
- TIM - TIMBER RETAINING WALL
- TW - TOP WALL
- UC - UNCLASSIFIED SERVICE
- US - UNDERSIDE STRUCTURE
- VT - VEGETATION TOP
- WMT - WATER METER
- 1/F - FIRST LEVEL
- 2/F - SECOND LEVEL



BOUNDARY NOTES
 N2 - BOUNDARY LINE VIDE DP 17570.
 N3 - BOUNDARY (& CENTRE OF CREEK) DIGITISED FROM DP 17570. APPROXIMATE AND FOR INDICATION PURPOSES ONLY. FURTHER INVESTIGATION REQUIRED TO BE UNDERTAKEN.
 HIATUS - COUNCIL LAND, PART OF LAND IN PORTION 114 PARISH OF WILLOUGHBY, FORMER CERTIFICATE OF TITLE VOL. 5397 FOL. 59.

INTEREST & ENCUMBRANCE NOTATIONS (CERTIFICATE OF TITLE DATED 30/07/2021)
 1. RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
 2. EASEMENT FOR DRAINAGE BURDENING THE SUBJECT LAND (1.83 WIDE VIDE DP 17570) ANNOTATED AS (A)
 SEE CERTIFICATE OF TITLE.

SP 30226 AREA (BY DP 17570):
853.6 m²

CORNER A TO CORNER B
301°10'15" - 36.49 BY CALCULATION

DESCRIPTION:
PLAN SHOWING SELECT FEATURE & LEVEL SURVEY
 WHOLE OF SP 30226, OVER LOT 4 DP 17570
 BEING No. 40 BRIGHTMORE STREET, CREMORNE, NSW, 2090

DATE	REV.	COMMENTS

PLAN PREPARED FOR:
BRIGHTMORE RESIDENCE PTY LTD

DATUM : A.H.D.	SCALE : 1:100 @ A1	DATE : 30-07-2021
ORIGIN OF LEVELS : PM 39026	LOCALITY : NORTH SYDNEY	SURVEY : RL
CONTOUR INTERVAL : 0.5 m	L.G.A. : NORTH SYDNEY	DRAWN : RL
SHEET No. 1 OF 1	REF : 6348	CHECKED : DL

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UPDATED CLAUSE 4.6 TO CLAUSE 4.3 OF NORTH SYDNEY LEP 2013
EXCEPTIONS TO DEVELOPMENT STANDARDS – **BUILDING HEIGHT VARIATION**

*Demolition of the existing residential flat building and construction of a replacement
residential flat building with basement car parking*

At

40 BRIGHTMORE STREET, CREMORNE

SUBMITTED TO
NORTH SYDNEY COUNCIL

PREPARED BY
ABC PLANNING PTY LTD

SEPTEMBER 2023

NORTH SYDNEY LEP 2013 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 submission has been prepared to accompany the amended plans, dated September 21 2023, for the proposed demolition of the residential flat building on the site and construction of a replacement residential flat building with basement car parking at 40 Brightmore Street, Cremorne.

Clause 4.6 of the North Sydney LEP 2013 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement in *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734*, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*, and more recently the decision of *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112*.

It is noted in particular that in the SJD decision, the Court at [73] held that “*it should be noted cl 4.6 of [LEP] is as much a part of [LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.*”

Clause 4.6 is reproduced in full immediately below, and each aspect of the clause is addressed in this written request.

Clause 4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within clause 4.3 of the North Sydney LEP 2013 - a maximum building height of 8.5m.

The proposal will result in a maximum building height of 13.76m, representing a 5.26m variation to the building height control. It is noted that the existing building height is 13.82m. Therefore, the proposed maximum height is slightly lower (6cm) than the existing maximum height. These aspects are illustrated on the height plane diagram and western elevation below:

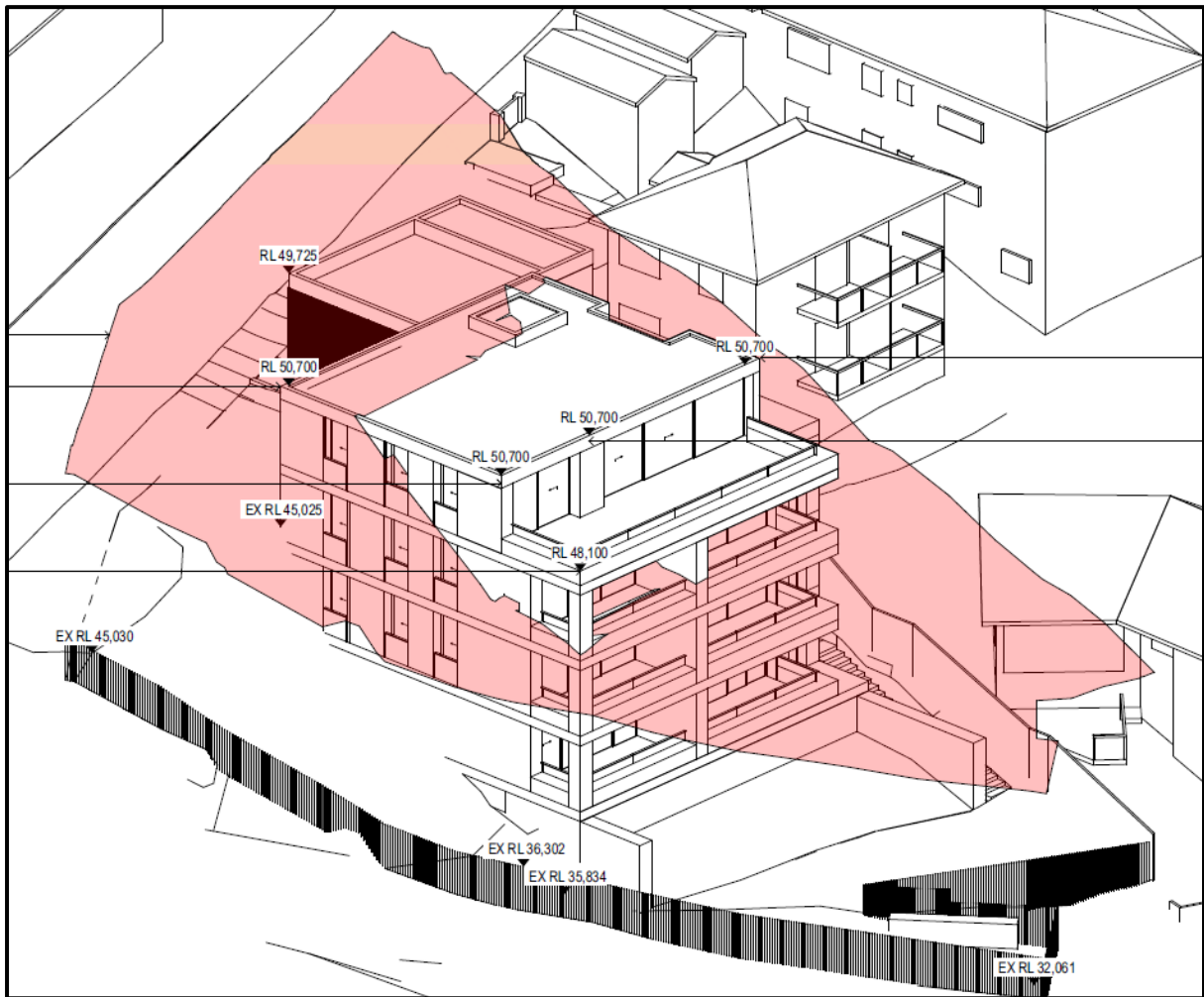


Figure 1: Height plane diagram, which shows that the portions of the built form over the height limit are mainly on the uppermost level and are recessed from the levels below whilst also responding to the sloping nature of the site

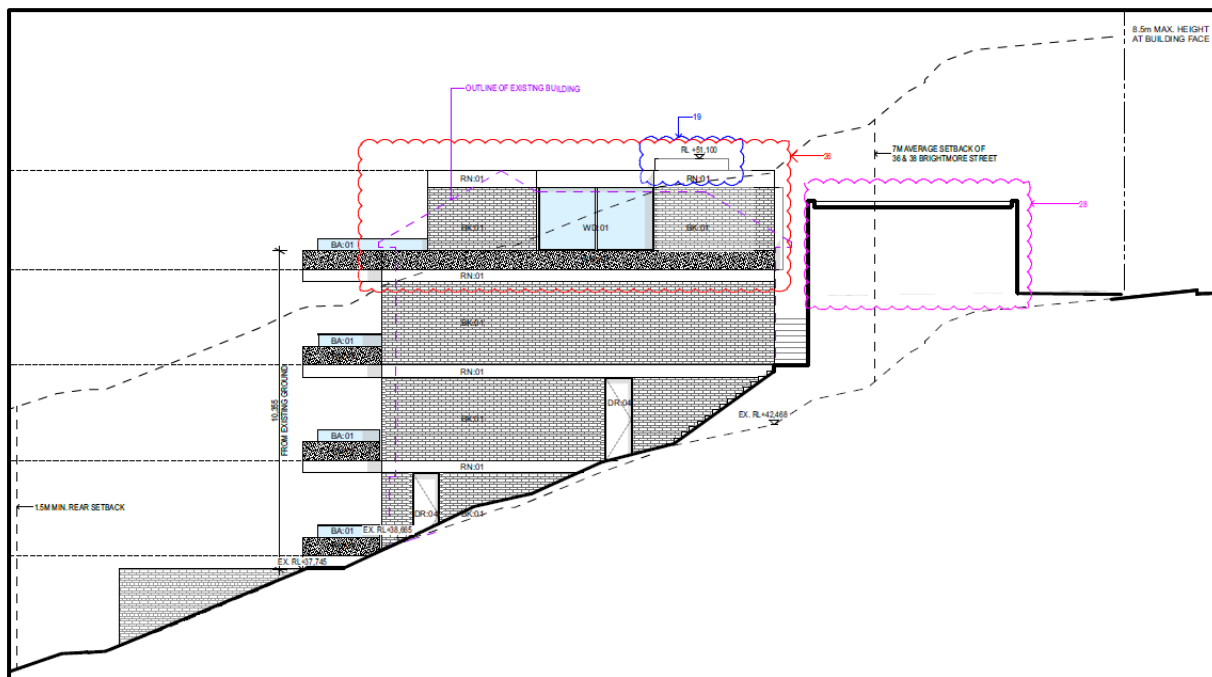


Figure 2: Western elevation showing the proposed building height, existing building height and consistency with the height of the existing residential flat building. It is also evident from the above that the front portion of the building facing the street is below the height limit and that it is predominantly the uppermost level that breaches the height limit.

Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

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

Assessment: It is considered that strict compliance with the development standard for building height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposal complies with the objectives of the development standard and the R2 Low-Density Residential zone, notwithstanding that the existing and proposed replacement flat building is a non-conforming use in the R2 Low-Density Residential zone.
- Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest given it is consistent with the objectives for the development within the zone, noting it replaces an outdated residential flat building with a high-quality replacement residential flat building with a basement parking.

- **Streetscape-**

The proposal provides for a modest streetscape presentation, as shown in the photomontage of the proposed development below:

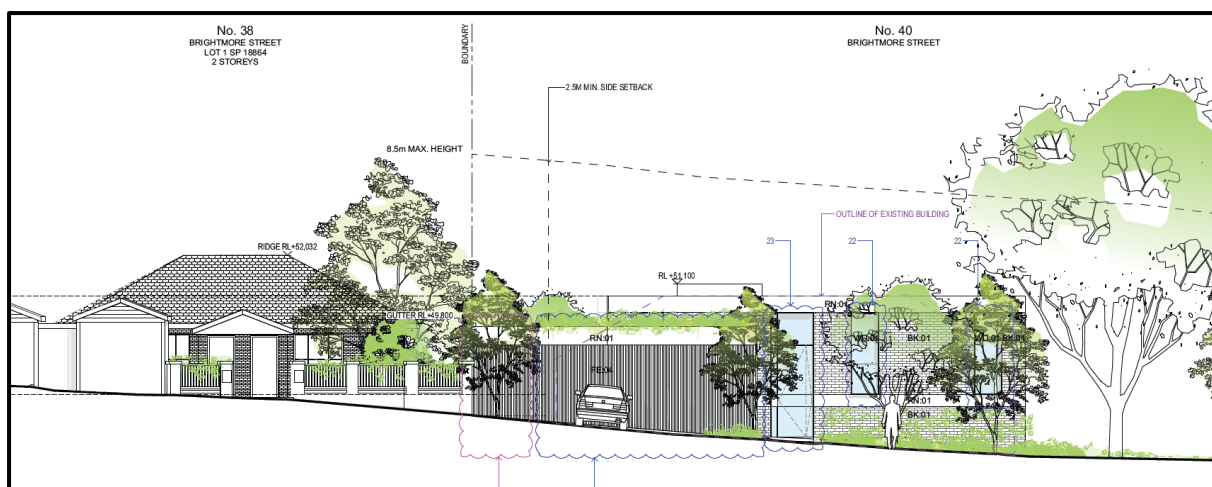


Figure 3: Excerpt of streetscape elevation of the proposed development as viewed from Brightmore Street

The photomontage shows that the replacement building will present as having a 2-storey scale to Brightmore Street, which is considered to be consistent with the scale of development anticipated by the height standard of 8.5m.

The proposed scale of development as it presents to Brightmore Street is also consistent with numerous 2-3 storey dwelling houses in the vicinity of the site whilst also being compatible with the numerous residential flat buildings in the vicinity of the site. The portion of the built form that breaches the height limit is located to the rear of the site when viewed from Brightmore Street. On this basis, the additional height beyond the 8.5m height standard would not be perceptible when viewed from the public domain/Brightmore Street when viewed straight-on. The additional height will be visible when viewed further east along Brightmore Street, but such height will be screened by established vegetation in the reserve to the east of the site whilst the upper level associated with the height variation is recessed from the level below and consistent with the existing building height. Therefore, the height variation is not considered to generate any adverse or incompatible streetscape impacts.

It is also considered that the proposed replacement building (including the proposed height variation) will generate an improved streetscape outcome as it replaces the outdated residential flat building, which has hardstand parking in the foreground, with an attractively designed contemporary residential flat building. The proposed car lift is suitably integrated into the design of the residential flat building, whereby the car lift doors are designed with high-quality materials that complement the design of the built form. Landscaping atop the car lift component also assists in softening the presentation of the car lift doors whilst also allowing for the 1st floor to be slightly recessed in the streetscape.

The proposed streetscape outcome is also compatible with a recently approved dual occupancy, which is under construction 150m to the west at 68 Benelong Rd, as shown in the photograph below:



Figure 4: 2-storey form above the street frontage of Benelong Crescent to the west of the site (DA287/2017)

Visual bulk

The proposed height variation will not generate unreasonable or incompatible visual bulk impacts to surrounding properties or the public domain, including the adjoining bushland reserve. The following aerial photo shows that the site only has two adjoining residential neighbours, the residential flat building to the west at 38 Brightmore Street and a dwelling house to the northwest at 38a Brightmore Street. Brightmore Reserve adjoins the site to the east and north. The primary orientation from these properties is to the north, not east or south-east towards the subject site/proposed built form:



Figure 5: Aerial photo showing the relationship of the subject site with the adjoining properties to the west and the reserve to the east and north

Visual bulk assessment of 38 Brightmore Street (residential flat building) to the west of the site

The neighbouring residential flat building to the west at 38 Brightmore Street has its primary orientation to the north towards the bushland reserve and the street frontage to the south. Its east-facing windows towards the subject site are limited to 2 windows, being kitchen and bathroom windows (as depicted in the following floor plan excerpt with an overlay of the existing building):

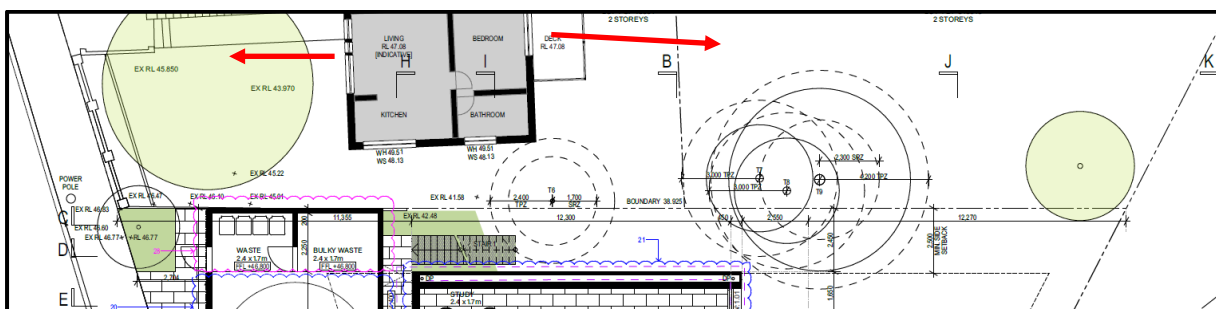


Figure 6: Excerpt of a floor plan of the adjoining property to the west, which shows its primary north-south orientation



Figure 7: Rear of RFB at 38 Brightmore Street, where private open space is oriented to the north and set in from the main built form, away from the eastern boundary. Privacy screens are also located on the eastern side of the POS.

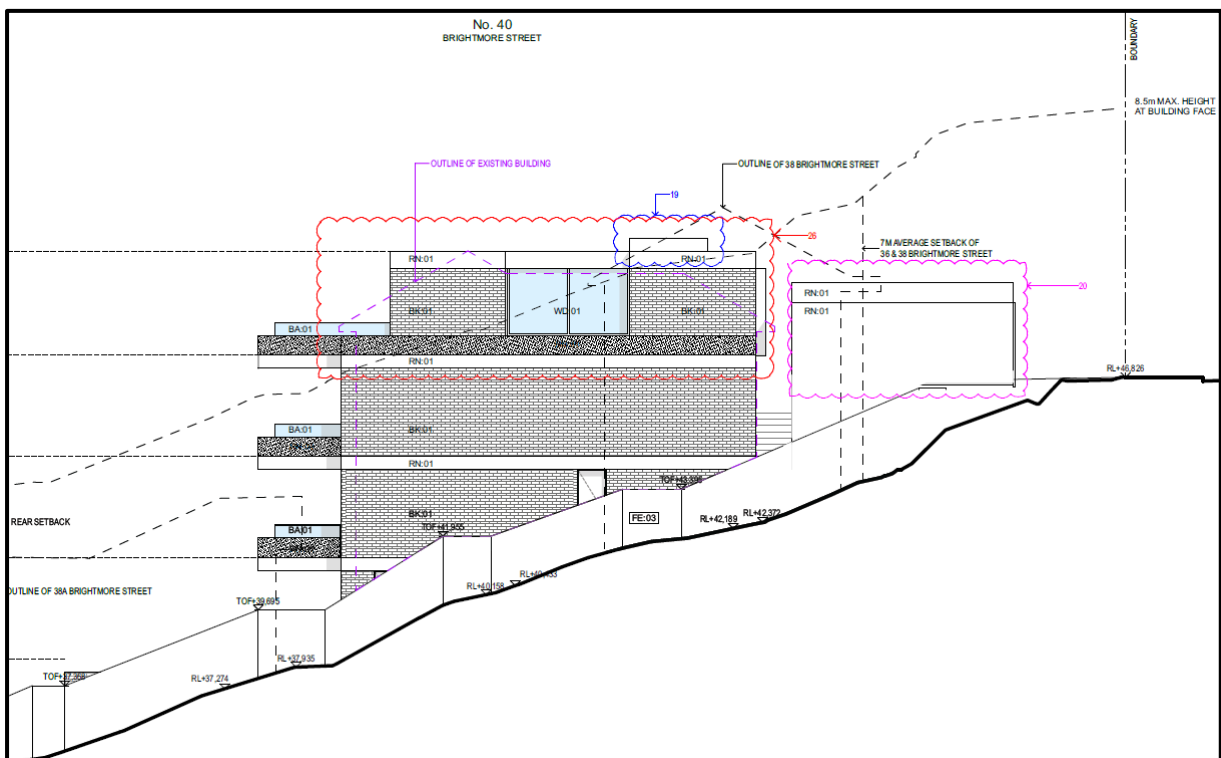


Figure 8: View of the proposed building from the western neighbouring flat building, which shows that the recessed nature of the upper level mitigates the visual impact of the components over the height limit

The portion of the building over the height limit is essentially limited to the uppermost level. This portion has a limited aspect as it is reiterated that the adjoining units have a primary

orientation to the north and south, with only a kitchen and bathroom window facing the proposed built form.

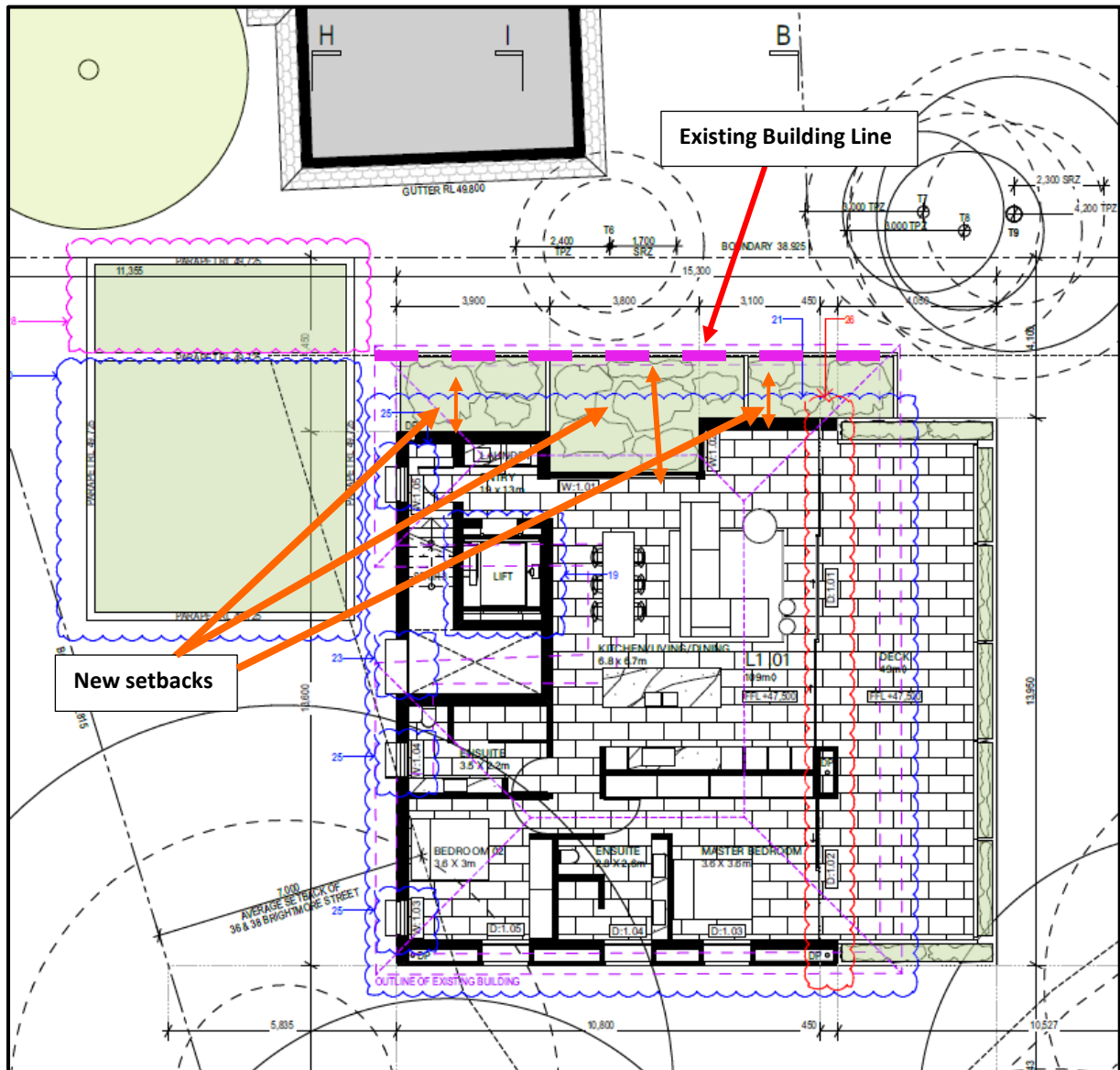


Figure 9: Excerpt of the upper level, which is setback further than the existing roof form of the existing building and which is also softened by landscaping

As shown above, the uppermost level is setback a minimum of 4.1 metres, which is greater than the existing building on the site. The stepped form of the building along the western side on the uppermost level increases the setback to 4.1-5.5m. Such setbacks represent a significant improvement from that which exists on the site and are well beyond what would be required under the ADG (3m for a building with no windows). Landscaping is also provided along the western side of the recessed upper level, mitigating the upper level's visual bulk associated with the height variation.

The component of the building sited above the height limit, as viewed from the western neighbouring flat building, is also justified on the basis that it is stepped-in built form, has no

windows oriented towards the flat building and improves solar access to the east-facing kitchen, windows from that currently received.

It is considered that the proposed replacement building and the associated height variation facilitate an improved visual aspect for the western neighbours as it replaces the hardstand accessway and stairs with deep soil planting within the enlarged western side setback.

The proposed height variation also does not affect the vegetated outlook of the bushland reserve from their north-facing windows and balconies.

The combination of these factors is considered to demonstrate that the proposed height variation would not generate any unreasonable visual bulk impacts to the units within the adjoining development at 38 Brightmore Street.

Visual bulk assessment to 38a Brightmore Street to the northwest of the site

The proposed height variation will not be responsible for any unreasonable visual bulk impacts to the dwelling at 38a Brightmore Street as it is sited to the northwest of the subject building whilst also having its primary aspect to the north and north-east, not south-east towards the proposed built form, as shown in the plan excerpt below:

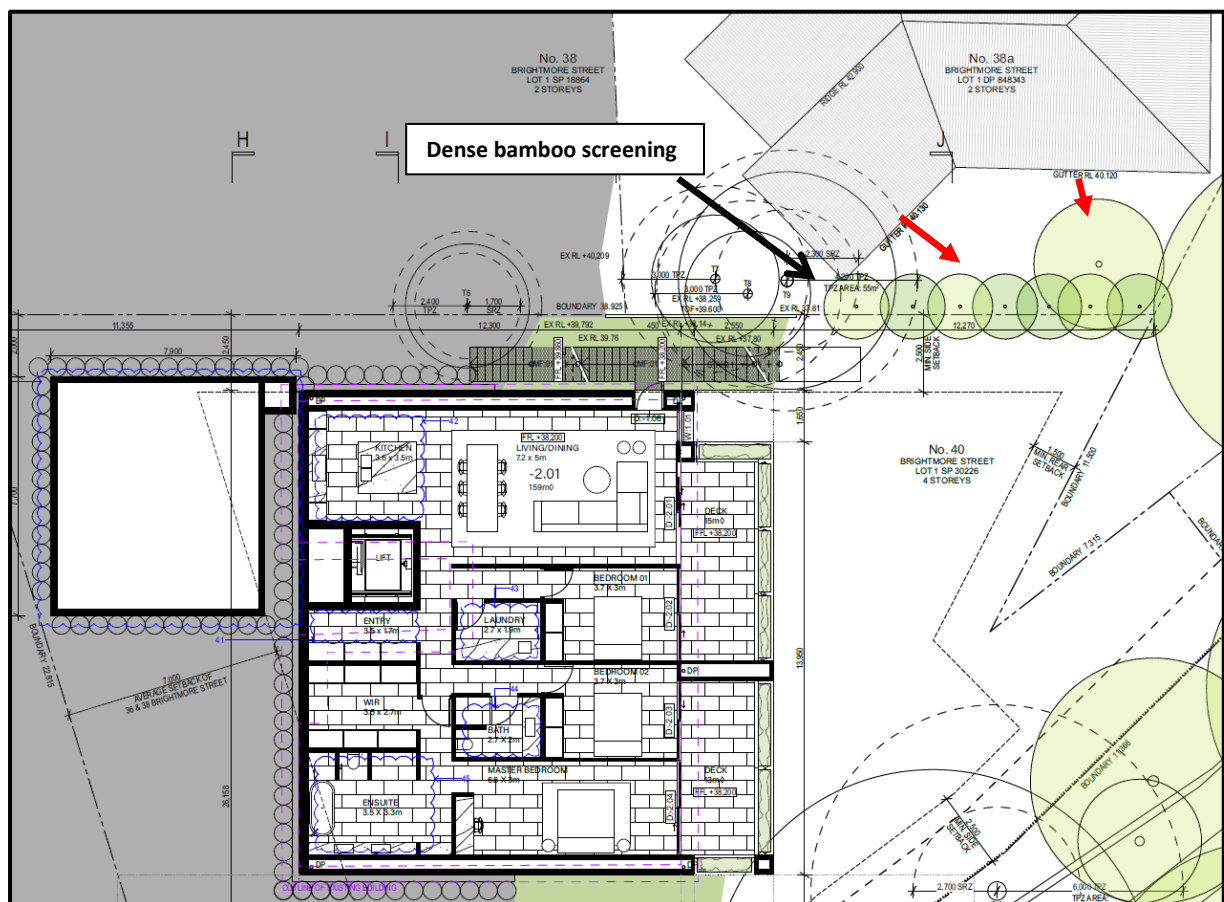


Figure 10: Plan excerpt showing the north-western neighbour is sited north of the proposed built form and has its primary openings facing north towards the bushland reserve (as indicated by the red arrows)

The plan shows that the primary aspect of the neighbouring dwelling house is to the north and northeast of the reserve. Its southeast-facing window towards the subject site and the replacement building is screened by dense bamboo screening within the adjoining site. Retaining existing vegetation within the subject site's rear yard also minimises potential visual bulk impacts.



Figure 11: Dwelling house at 38A Brightmore Street as viewed from Brightmore Reserve, noting its primary aspect to the north of the reserve



Figure 12: Dense bamboo screen planting, which prevents a south-eastern view from the adjoining dwelling

It is acknowledged that the proposed replacement building is sited closer to the adjoining dwelling house at 38a Brightmore Street than the existing building. However, such siting does not generate any unreasonable visual bulk impacts as the built form is not within its primary orientation from No. 38a Brightmore Street. The portions extending closer are predominantly below the height limit, whilst the proposal is well below the site cover control that applies to flat buildings and is well above the landscaped requirement. On this basis, the proposed height variation does not generate any adverse or unreasonable visual bulk impacts from the adjoining dwelling house.

Assessment of visual bulk from adjoining bushland reserve (Brightmore Reserve) to the east and north

Public access is available from Brightmore Street (50m to the east of the site) down through a series of stairs and pathways through the reserve along the northern side of the site. The existing flat building is visible from the reserve. It presents as an unrelieved/outdated residential flat building with 4-5 storeys in scale at the rear and is substantially beyond the 8.5m height limit. Any visual impact assessment is limited to a transitional experience as the reserve is limited to the pathway and established vegetation. The reserve has no seating or recreational facilities (e.g. picnic tables, BBQ, play equipment). Vegetation within the reserve and the subject site limits the extent of the built form visible from the pathway.



Figure 13: Views from the reserve towards the existing building, noting that the trees in the foreground will be retained

The proposed replacement flat building will have an overall height consistent with that which exists on the site when viewed from the reserve. Such height is not considered to generate any unreasonable or adverse visual bulk impacts as the height at the upper level is recessed from the levels below. Such additional height is not considered to generate any adverse or unreasonable impacts given the retention of vegetation within the site and within the reserve, which softens the appearance of the replacement built form.

The replacement building associated with the height variation incorporates substantially greater articulation, including indentations and balconies. On this basis, the replacement flat building compares favourably to the existing residential flat building, which is considered to be relevant, given the site enjoys the benefit of existing use rights.

Furthermore, retaining existing vegetation within the eastern and rear setbacks and within the reserve reasonably softens the additional height's visual impact. The transitional nature of the reserve (i.e. walking path only) is also considered to diminish the effect of the visual bulk associated with the height variation.

Photos taken from the reserve further to the north confirm that the proposed built form and the associated height variation would not be evident:



Figure 14: Brightmore Reserve as viewed from Wonga Road to the northwest of the subject site. The subject site is located behind the trees and bushland in the background and is not visible from this part of Brightmore Reserve.



Figure 15: Photo taken from the walking track from Folly Point to Primrose Park, which confirms that the proposed built form would not be evident from distant foreshore/bushland areas, noting that there is no aspect towards the site from Folly Point

- **Overshadowing**

The additional height beyond the 8.5m height limit does not generate any adverse overshadowing impacts, given that the neighbouring units at 38 Brightmore Street will receive greater solar access than currently received. The following 3D view from the sun diagrams confirms that the east-facing kitchen windows will receive more solar access than the existing ones. The northern façades of the residential flat building at No. 38 and the dwelling house at 38a are unaffected. These positive outcomes are demonstrated in the following solar analysis below:

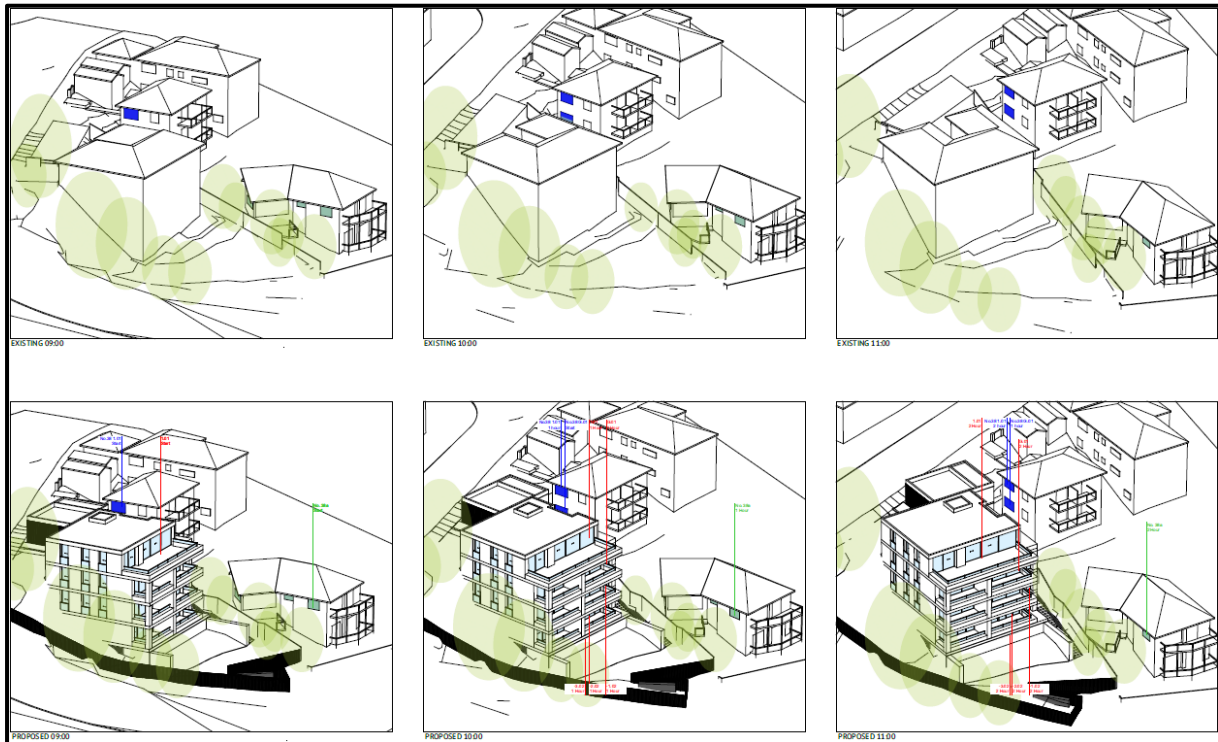


Figure 16: June 21, views from the sun - Existing (top) vs. Proposed (bottom) 9:00 am, 10:00 am and 12:00 am (left to right)



Figure 17: June 21, views from the sun - Existing (top) vs. Proposed (bottom) 12:00 pm, 1:00 pm and 2:00 pm (left to right)

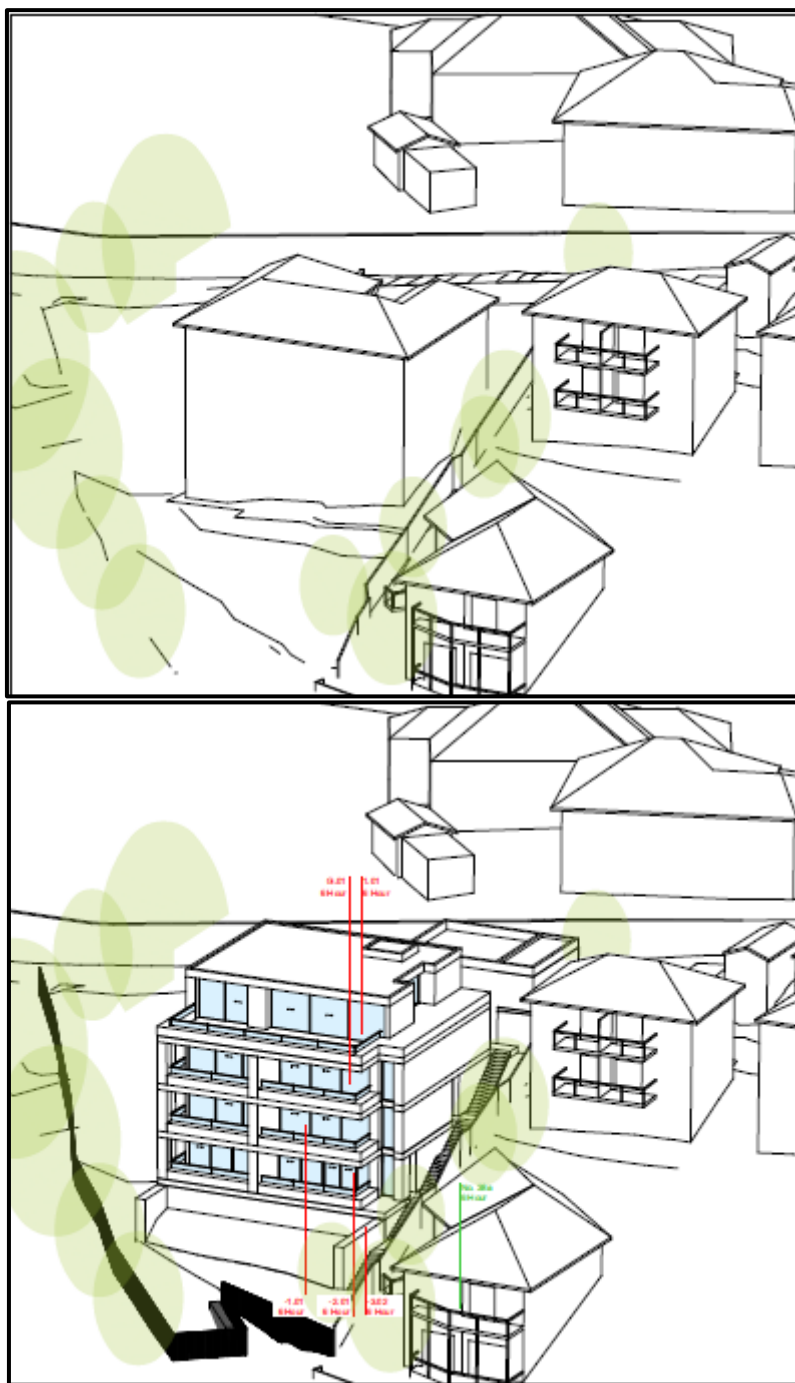


Figure 18: June 21, views from the sun at 3:00 pm - Existing (top) vs. Proposed (bottom)

40 BRIGHTMORE STREET SOLAR ACCESS_JUNE 21ST								
SOLAR	09:00AM	10:00AM	11:00AM	12:00PM	13:00PM	14:00PM	15:00PM	TOTAL
1.01	Start	1 hour	2 hour	3 hour	4 hour	5 hour	6 hour	6 hour
G.01	Start	1 hour	2 hour	3 hour	4 hour	5 hour	6 hour	6 hour
-1.01	Start	1 hour	2 hour	3 hour	4 hour	5 hour	6 hour	6 hour
-2.01	Start	1 hour	2 hour	3 hour	4 hour	5 hour	6 hour	6 hour
-3.01	Start	1 hour	2 hour	3 hour	4 hour	5 hour	6 hour	6 hour

38A BRIGHTMORE STREET SOLAR ACCESS_JUNE 21ST								
SOLAR	09:00AM	10:00AM	11:00AM	12:00PM	13:00PM	14:00PM	15:00PM	TOTAL
LIVING ROOM	Start	1 hour	2 hour	3 hour	4 hour	5 hour	6 hour	6 hour

38 BRIGHTMORE STREET SOLAR ACCESS TO DINING ROOM WINDOW_JUNE 21ST								
SOLAR	09:00AM	10:00AM	11:00AM	12:00PM	13:00PM	14:00PM	15:00PM	TOTAL
LEVEL 01 UNIT	Start	1 hour	2 hour	3 hour				3 hour
GROUND UNIT		Start	1 hour	2 hour				2 hour

Figure 19: Table for solar access to 40 Brightmore St (top), 38A Brightmore St (middle) and 38 Brightmore St (bottom)

The proposed height will also not generate any adverse shadow impacts to the public domain along Brightmore Street nor to the bushland within the reserve, noting that the building generally lies to the south of the reserve.

On this basis, the additional height is not considered to generate any unreasonable shadow impacts, but rather, the additional height is associated with a development that improves solar access. This is considered to be a better outcome associated with the height variation.

- **Privacy**

The additional height is not considered to generate any unreasonable privacy impacts given that the western elevation, which adjoins the only adjoining residential neighbours at 38 and 38a Brightmore Street, has no windows that would generate any privacy impacts. Such a relationship represents an improved relationship when compared with the existing flat building, as shown in the comparison between the existing and proposed floor plans with the adjoining properties. In this regard, the existing flat building has unscreened west-facing living room windows opposite the east-facing kitchen windows of the residential flat building at 38 Brightmore Street.

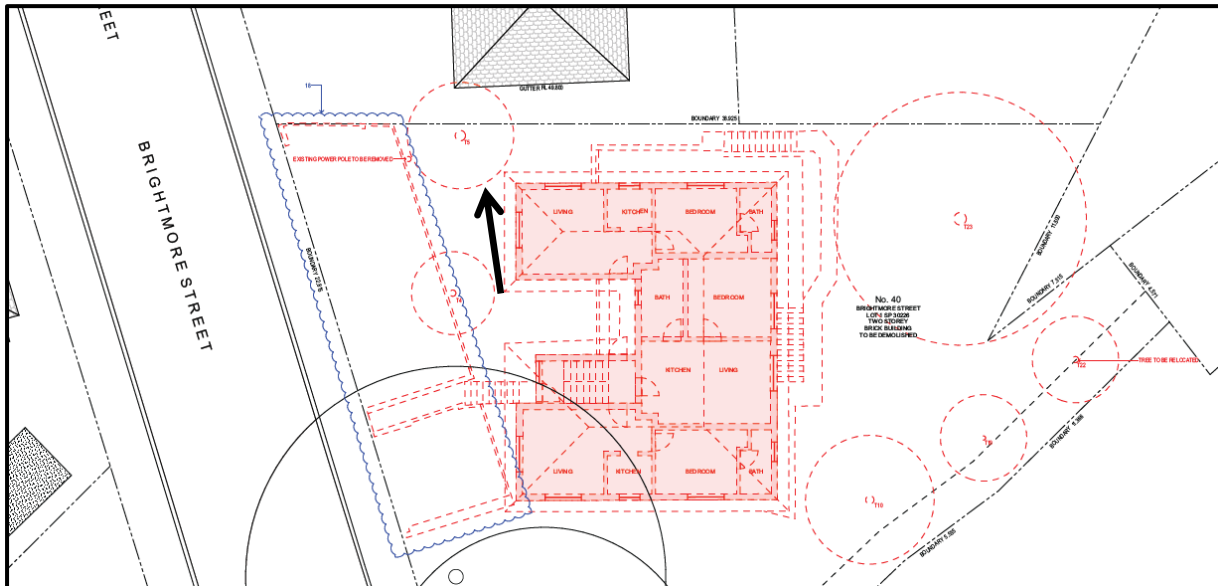


Figure 20: Plan excerpt of the existing floor plan on the site, which shows that there are living room windows directly opposite the kitchen window of 38 Brightmore St. to the west (as indicated by the arrow)

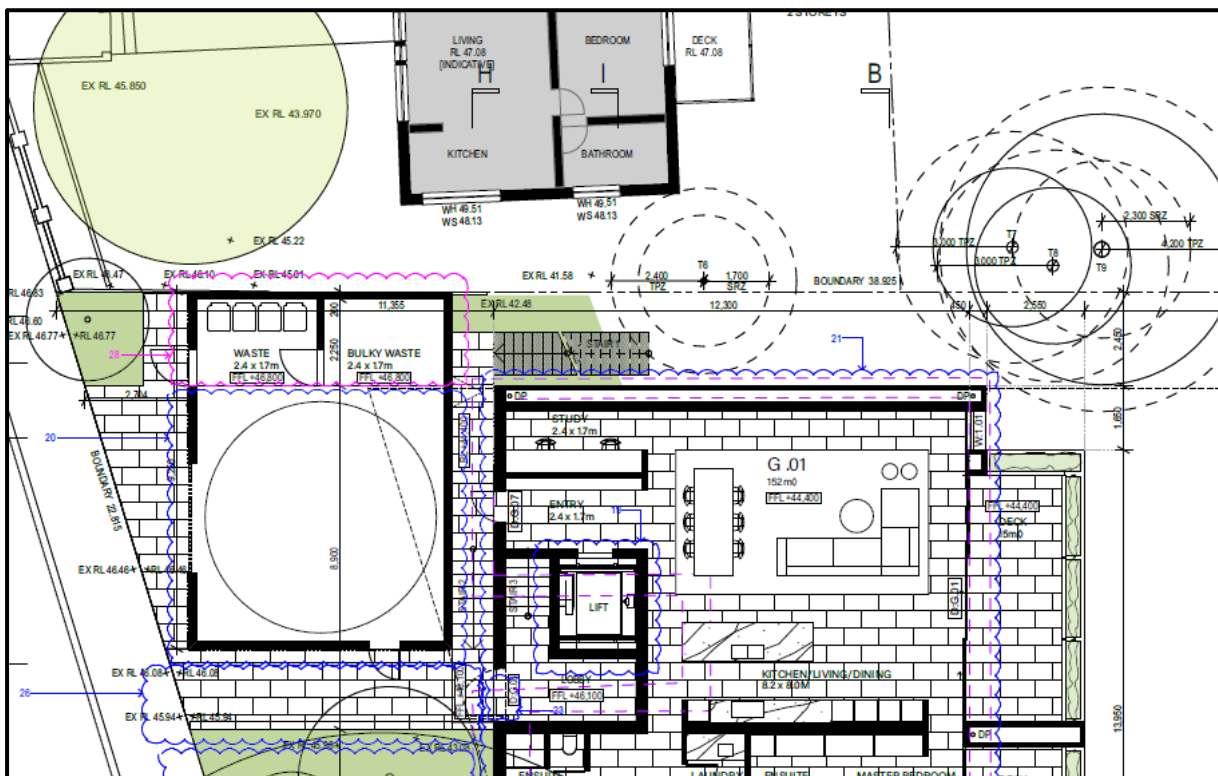


Figure 21: Proposed floor plan (typical), which shows that the replacement building has no windows capable of overlooking the flat building to the west at 38 Brightmore Street

The height variation is associated with a replacement flat building, improving the visual privacy relationship with the western neighbouring residential flat building. The absence of impact also demonstrates that the additional height does not generate unreasonable visual privacy impacts.

The rear balconies are also not responsible for any unreasonable privacy impacts given that they are located on the northern side of the units, whilst the openings on the rear elevation

most adjacent to the western neighbours are north-facing bedroom windows. The upper-level balcony is significantly above the adjoining flat building at 38 Brightmore Street and the dwelling at 38a Brightmore Street. It has its aspect to the reserve, not downwards to the adjoining residence.

On this basis, the additional height is not considered to generate any unreasonable privacy impacts, but rather, the additional height is associated with a development that improves privacy. This is considered to be a better outcome associated with the height variation.

- **Views**

The proposed height variation is not responsible for any view loss from surrounding properties or the public domain.

- **Heritage**

The existing residential flat building to be demolished is not heritage listed, is not in a conservation area and is not adjacent to any heritage items. Therefore, the proposed height variation has no heritage impacts.


- **Site Cover/Landscaping**


The proposed site cover of 28% is below that permitted for residential flat buildings (45%), whilst the proposed landscaped area of 56% is significantly beyond the 40% DCP requirement. The limited extent of site coverage allows for abundant landscaped areas (both existing and proposed), as shown on the site coverage and landscape diagrams below. Such extent of landscaping assists in softening the presentation of the built form, particularly when viewed from the west, east and north.

Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:


Table 1: Assessment against the Objectives of the Development Standard and Land Use Zone

Consistency with the objectives of the building height standard in the LEP	
Objectives	Assessment
(a) <i>to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,</i>	<p>The existing site has been significantly altered to allow for the erection of the existing residential flat building on the site. The replacement building adopts a similar/compliant building footprint, which generally limits the extent of additional excavation to that of the existing residential building.</p> <p>The proposed built form/height steps down the sloping nature of the site from the south down to the north, as shown by the elevations and sections. The portions of the built form over the height limit are recessed to create the steps in the form, which is responsive to the slope of the site whilst also reducing the visual bulk of the height variation as viewed from the public domain and private properties.</p> <p>The limited footprint (28% versus the 45% DCP requirement) allows for retaining the existing landform on the site, particularly along the sloping eastern side.</p> <p>On this basis, the proposed height variation does not preclude the achievement of this objective.</p>

<p>(b) to promote the retention and, if appropriate, sharing of existing views,</p>	<p>No views are affected by the proposed height/height variation.</p> <p>On this basis, the proposed height variation does not preclude the achievement of this objective.</p>
<p>(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,</p>	<p>Solar access is maintained to existing dwellings, reserves and streets, as demonstrated by the accompanying solar analysis. It is reiterated that the proposal improves solar access to the east-facing windows of 38 Brightmore Street whilst having no impact on the north-facing windows and balconies of both properties at 38 and 38a Brightmore Street.</p> <p>The site lies south and west of the bushland reserve, ensuring that the additional height will not overshadow the reserve.</p> <p>The limited height of the building towards the street frontage also ensures that there will be no adverse shadow impacts on the public domain, including the footpath along Brightmore Street.</p> <p>The proposal would also not preclude solar access to potential new development to the west of the site. It is presumed that any redevelopment of the adjoining sites to the west would be oriented to the north to capture the desirable bushland views and optimal solar access from the north.</p>  <p>Figure 22: Aerial photo showing the main outlook of the neighbouring properties to the rear/north and not to the east across the subject site</p> <p>On this basis, the proposed height variation does not preclude the achievement of this objective.</p>
<p>(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,</p>	<p>As outlined above, the proposed height (inclusive of the variation) improves privacy for existing units to the west whilst also improving privacy for the dwellings on the subject site.</p> <p>The proposal replaces the existing series of windows along the western side of the existing flat building with north-facing windows that are oriented to the reserve. Blade walls and the northern orientation of the proposed rear-facing balconies also ensure that the proposal (inclusive of the height variation) will not be responsible for any adverse privacy impacts.</p>

	<p>On this basis, the proposed height variation does not preclude the achievement of this objective.</p>
<p>(e) to ensure compatibility between development, particularly at zone boundaries,</p>	<p>The site is located adjacent to the bushland reserve (Brightmore Reserve), which is zoned E2 Environmental Conservation.</p> <p>The stepped nature of the built form away from the reserve (where it is above the height limit) also contributes to the achievement of a built form that is compatible with the zone boundary interface. It is also reiterated that the overall height is consistent with the height of the existing flat building on the site.</p> <p>It is considered that the combination of landscaped setbacks to the north and east of the built form, combined with a compliant site cover, allows for a compatible relationship between the subject site and the E2 zone to the north and east within Brightmore Reserve. It is reiterated that additional landscaping on the site, retention of landscaping, and retaining vegetation within the reserve achieve a compatible visual relationship. It is also reiterated that the proposed height (including height variation) has no adverse shadow impacts on the reserve.</p> <p>The appearance of the contemporary built form is also considered to be an improvement from the existing unrelieved residential flat building when viewed from the walkways within the reserve.</p> <p>On this basis, the proposed height variation does not preclude the achievement of this objective.</p>
<p>(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.</p>	<p>It is noted that the low-density zone includes numerous residential flat buildings from the subject site to the west along Brightmore Street and further along Benelong Rd.</p>  <p>Figure 23: Aerial photo showing development to the west of the subject site is characterised by residential flat development at the Brightmore Street frontage and some dwelling houses to the rear (north)</p> <p>These flat buildings contribute to the mixed character of the area, which includes a variety of residential flat buildings and dwelling houses. The proposed height, bulk and scale of the development will sit comfortably within the mixed character of the area for reasons outlined above and below.</p>

	<p>This objective should be considered in the context that the site contains an existing residential flat building that offers a poor level of amenity. The lack of amenity associated with the existing residential flat building includes:</p> <ul style="list-style-type: none"> - Undersized unit sizes - Absence of private open space - Lack of solar access - Lack of accessibility - Lack of connection with landscaped areas - Inadequate ceiling heights - BCA non-compliances - Unsecure access lobbies <p>The proposed redevelopment of the subject site facilitates the removal of the outdated apartment building and allows for an attractive contemporary flat building that provides excellent amenity.</p> <p>The siting, bulk and scale are compatible in its context, as confirmed by the modest streetscape presentation, improved visual privacy relationship with neighbours, increased landscaped buffer to residential properties to the west, retention of solar access and reasonable visual bulk outcomes, as viewed from private and public vantage points.</p> <p>The ability to provide safer parking and traffic movements, along with the improved amenity outcomes and compatible built-form relationship, confirms that the proposed density and scale are appropriate despite being located in the R2 Low-Density Residential zone.</p> <p>The proposed built form (unlike the existing building) also provides for compliant parking for the proposed units. In this regard, the existing parking arrangement includes only six hardstand spaces within the existing front setback. Such arrangement also involves either reverse out or reverse in movements from or to Brightmore Street. This section of Brightmore Street is close to a curved hillside to the east near the intersection with Tobruk Avenue and the sloping nature of Brightmore Street to the west. Such circumstances are considered to generate unsafe manoeuvring conditions. In contrast, the proposed extent of excavation and change to the topography allows for a more orderly traffic and parking outcome. In this regard, all parking will be concealed, providing safe and secure access to the units and allowing forward ingress and egress.</p> <p>On this basis, the proposed height variation does not preclude the achievement of this objective.</p>
Consistency with the objectives of the R2 Low-Density Residential zone	
Objectives	
<ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a low density residential environment.</i> • <i>To enable other land uses that provide facilities or</i> 	<p>Given that the proposal involves replacing an outdated residential flat building with a new residential one under the existing use provisions, the 1st objective is considered to be of limited relevance.</p> <p>Furthermore, given that the surrounding residential environment includes numerous flat buildings (as shown below), the proposal is not within a traditional low-density residential environment characterised by predominantly dwelling houses/dual occupancies.</p>

<p>services to meet the day to day needs of residents.</p> <ul style="list-style-type: none"> To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area. To ensure that a high level of residential amenity is achieved and maintained. 	 <p>Figure 15: Aerial photo showing development to the west of the subject site is characterised by residential flat development at the Brightmore Street frontage and some dwelling houses to the rear (north)</p> <p>Nevertheless, the proposal provides for the community's housing needs as it provides five high-quality residences that outperform the amenity principles of the ADG (unit size, private open space, solar access, cross ventilation, storage, etc.).</p> <p>The proposed setbacks and retention and embellishment of landscaping ensure that the proposal does not compromise the amenity of the surrounding area, including the reserve.</p> <p>Achievement of a high level of amenity to the proposed units and retention of outlook, privacy and solar access also ensures that a high level of residential amenity is maintained.</p> <p>On this basis, the proposed height variation does not preclude the achievement of the zone objectives.</p>
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Based on the above assessment, it is considered that strict compliance with the LEP building height standard is **unreasonable and unnecessary** in this instance.

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

Assessment: It is considered that there are sufficient environmental planning grounds to justify varying the building height development standard, which includes:

- The proposal suitably achieves the objectives of the development standard and has suitable regard for the R2 Low-Density Residential zone, as indicated in the assessment in **Table 1** above. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest, given it is consistent with the objectives for the development within the zone and replaces an outdated residential flat building with a high-quality residential flat building. The replacement building now has a height which is 6cm below the overall height of the existing building.

- As outlined above, the assessment of streetscape, visual bulk, relationship with the reserve, internal and external amenity outcomes, and absence of heritage impacts also apply to the demonstration that there are sufficient environmental grounds to support the height variation in this instance.
- Sufficient environmental grounds also include the site's specific circumstances and context, including replacing the outdated non-conforming residential flat building, which is significantly over the height standard, with a replacement building of a slightly lower height that maintains amenity to surrounding properties. The additional height above the standard, albeit consistent with the existing residential flat building, constitutes a particular site circumstance.
- The sloping nature of the site and the benefits of providing single-level/accessible apartments is another environmental ground particular to this site. The replacement built form suitably steps down the sloping hillside yet provides for five residential apartments exhibiting a high level of amenity.
- The context of the area, which includes other residential flat buildings that are also above the 8.5m height limit, is another circumstance relevant to the assessment of sufficient environmental grounds.
- In terms of view impacts, the proposed height will not adversely affect views from private or public land.
- The proposed height non-compliance will not result in adverse privacy impacts. The proposed development has been designed and sited to ensure adequate visual and acoustic privacy between the subject development and the adjoining properties.
- The design and height of the proposed development ensure that the proposal is compatible with the existing and anticipated future character of the area and provides for excellent internal amenity whilst reasonably preserving external amenity to surrounding properties reasonably.
- The additional building height sought by the proposal will not be indiscernible from the streetscape when viewed straight-on.
- The additional building height does not prevent the proposal from achieving the objectives of the building height standard and that of the R2 Low-Density Residential zone.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the building height variation in this instance.

Other Matters for Consideration

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

Assessment: The above assessment demonstrates that the proposed height satisfies the objectives of the building height standard and the R2 Low-Density Residential zone, notwithstanding the height variation and that the proposed replacement residential flat building is a non-conforming use.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the minor height variation.

The development is in the public interest, given that the proposal replaces an outdated residential flat building on the subject site with a high-quality residential flat building. The proposed development would not impact the environmental amenity and enjoyment of the adjoining properties concerning privacy and solar access.

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

Assessment: The proposed building height variation allows for the orderly and economical use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*, including the relevant provisions that relate to properties that enjoy existing use rights.

Therefore, the proposed building height is consistent with the State and Regional Policies, particularly urban consolidation principles, which seek to provide additional densities near transport and established services.

Concurrence

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the Council by written notice dated February 21 2018, attached to the Planning Circular PS 18-003 issued on February 21 2018. The Court may also assume that concurrence pursuant to s39(6) of the Land and Environment Court Act.

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the building height standard given the limited amenity impacts associated with the development and the positive streetscape and amenity outcomes that would arise from the redevelopment of the subject site.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: There are not considered to be any additional matters to consider beyond those discussed above.

Generally as to concurrence, for the reasons outlined above – and particularly having regard to the site-specific nature of this clause 4.6 variation request – there is nothing about this proposed height variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development standard on this site. No other relevant matters are requested to be considered before granting concurrence.

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 40 Brightmore Street, Cremorne and is requested to be looked upon favourably.