



NSLPP MEETING HELD ON 06/11/2024

Attachments:

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

ADDRESS: 246-254 Military Road, Neutral Bay

APPLICATION NO: DA 282/2023

PROPOSAL: The demolition of existing structures and construction of a six-storey mixed-use development comprising a retail/commercial use at basement/ground floor and boarding house accommodation, with roof-top communal living spaces, and associated works.

PLANS REF:

Plan No.	Rev	Description	Prepared by	Dated
A-1100	DA01	Site Plan	Scanlan Architects	3 March 2023
A-1300	DA01	Shadow Diagrams Sheet 1	Scanlan Architects	3 March 2023
A-1301	DA01	Shadow Diagrams Sheet 2	Scanlan Architects	3 March 2023
A-1302	DA01	Shadow Diagrams Sheet 3	Scanlan Architects	3 March 2023
A-1303	DA01	Shadow Diagrams Sheet 4	Scanlan Architects	3 March 2023
A-1400	DA01	GFA Diagrams	Scanlan Architects	26 May 2023
A-2000	DA01	Demolition Plan	Scanlan Architects	3 March 2023
A-2100	DA01	Basement and Ground Floor Plans	Scanlan Architects	3 March 2023
A-2101	DA01	Level 1 and Level 2 Plans	Scanlan Architects	3 March 2023
A-2102	DA01	Level 3 and Level 4 Plans	Scanlan Architects	3 March 2023
A-2103	DA01	Level 5 and Roof Plans	Scanlan Architects	3 March 2023
A-3100	DA02	South Elevations	Scanlan Architects	26 May 2023
A-3101	DA02	West Elevation	Scanlan Architects	26 May 2023
A-3102	DA02	North Elevation	Scanlan Architects	26 May 2023
A-3103	DA02	East Elevation	Scanlan Architects	26 May 2023
AR-4100	DA01	Sections A and B	Scanlan Architects	3 March 2023
A-6600	DA01	Level 1 and Level 4 Landscape Plans	Scanlan Architects	3 March 2023
A-6601	DA01	Level 5 Landscape Plan	Scanlan Architects	3 March 2023
SW-02	1	Stormwater Basement and Ground Floor	Horizon Engineers	30 August 2021
SW-03	1	Stormwater Level 1 and 2	Horizon Engineers	30 August 2021
SW-04	1	Stormwater Level 3 and 4	Horizon Engineers	30 August 2021
SW-05	1	Stormwater Level 5 and Roof Plan	Horizon Engineers	30 August 2021
SW-06	1	Stormwater Detail Sheet	Horizon Engineers	30 August 2021
SW-07	1	Stormwater OSD Plan	Horizon Engineers	30 August 2021
SW-08	1	Stormwater OSD Section	Horizon Engineers	30 August 2021
SW-09	1	Stormwater Erosion and Sediment Control Plan	Horizon Engineers	30 August 2021
SW-10	1	Stormwater Catchment Plan Sheet	Horizon Engineers	30 August 2021

OWNERS: Strata Plan No. 50672, Village Well Corporation Pty Ltd, Botany 809 Pty Ltd

APPLICANT: Mod Urban Pty Ltd

AUTHOR: Report of Damon Kenny, Executive Assessment Planner

DATE OF REPORT: 18 October 2023

DATE LODGED: 11 September 2023

RECOMMENDATION: Refusal

EXECUTIVE SUMMARY

This development application seeks consent for the demolition of existing structures and the construction of a six-storey mixed-use development comprising a retail/commercial use at basement/ground floor and boarding house accommodation, with roof-top communal living spaces, and associated works at 246 Military Road, Neutral Bay.

The application is reported to the North Sydney Local Planning Panel for determination as the proposal seeks a contravention to a development standard by more than 10%.

The proposed building results in a non-compliance with the height of buildings development standard in clause 4.3 of the *North Sydney Local Environmental Plan (NSLEP) 2013*. The maximum height standard is 16m while the proposal demonstrates a maximum building height of 20.56m. A written request has been submitted pursuant to Clause 4.6 in *NSLEP 2013* however, it fails to demonstrate that compliance with Clause 4.3 would be both unreasonable and unnecessary in the given circumstances and that there are sufficient environmental planning grounds to justify the variation. Further the proposal does not comply with clause 4.4A Non-residential floor space ratios of *NSLEP 2013*, a clause 4.6 has not been submitted to support the contravention.

The development application has been assessed against the *NSLEP 2013*, North Sydney Development Control Plan (NSDCP) 2013 and the relevant State Planning Policies and found to be unsatisfactory.

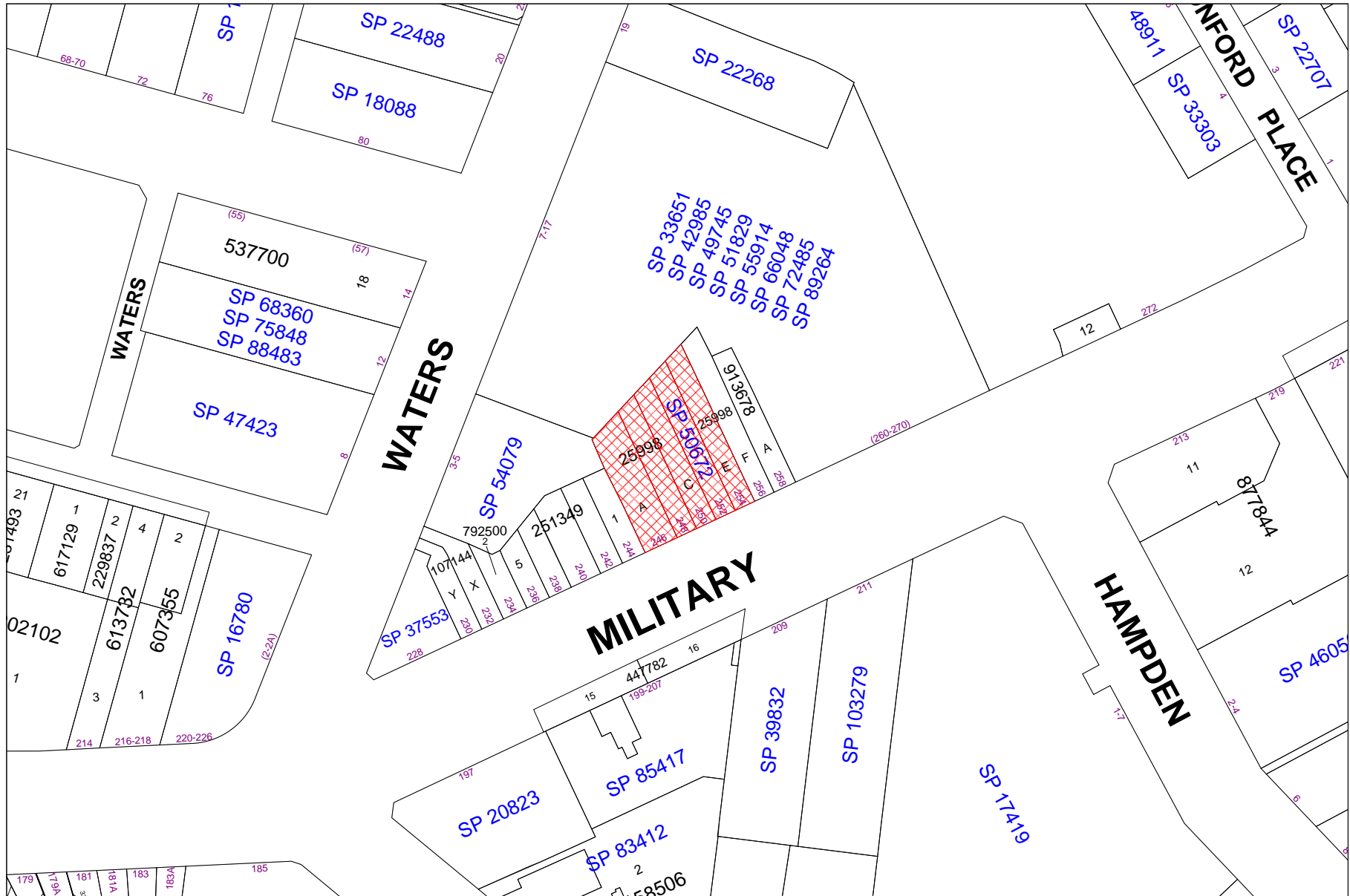
The proposed development is also inconsistent and unsatisfactory with its attempts to adhere to the building separation objectives of the Apartment Design Guide.

The proposed development is considered to be uncharacteristic when compared to the established and desired built form and character of the locality. As a result, the proposal would have adverse impacts on the established streetscape and would not guarantee that the amenity levels of neighbouring dwellings would be maintained.

The notification period of the proposal commenced on 20 October 2023 and concluded on 3 November 2023. During that period, the proposal attracted eight (8) unique submissions raising particular concerns regarding the proposed height, existing easements, invasion of privacy and uncharacteristic aesthetics. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

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

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The application seeks development consent for the following works:

- Complete demolition of the existing buildings of 246-254 Military Road.
- Construction of new building, including:
 - Basement with car and bicycle parking, plants and services and functions/event area which would be connected to the ground floor commercial tenancies through a staircase.
 - Ground floor with commercial tenancies, laundromat and lobby which would connect to the boarding house accommodation, carparking, services and loading.
 - Five levels of boarding house accommodation, including:
 - 78 boarding rooms, which vary in area.
 - All rooms are to have a kitchen and bathroom.
 - Some rooms are to have balcony access.
 - Roof top which includes communal outdoor space, multiple internal communal areas and communal laundries.
 - Lift services, connecting all floors of the building.

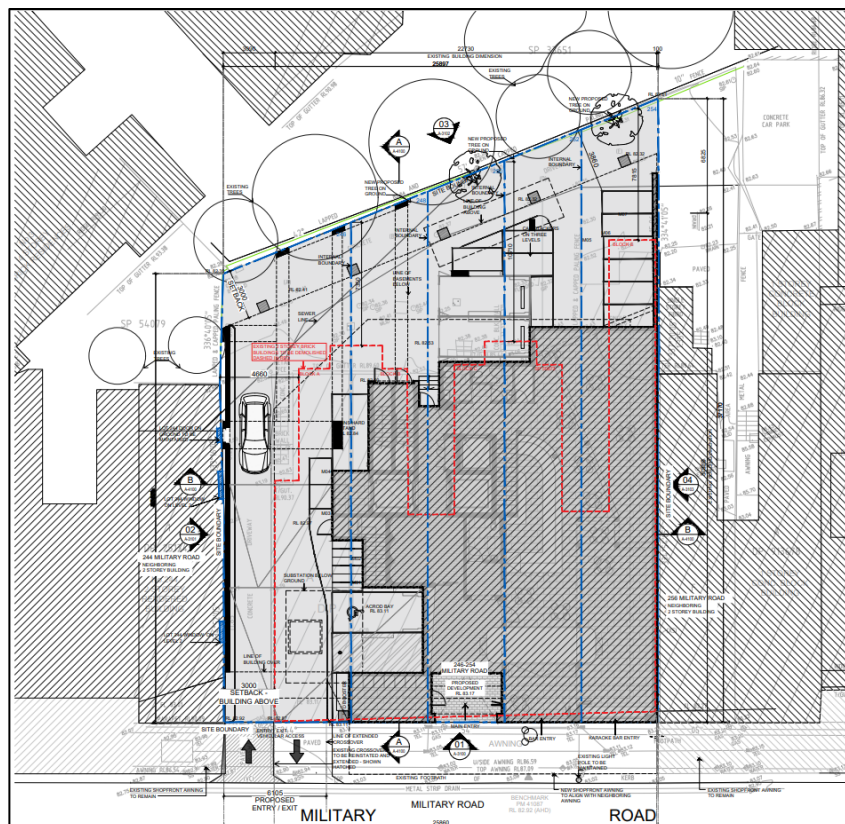


Figure 1: Site Plan

STATUTORY CONTROLS

North Sydney Local Environmental Plan (NSLEP) 2013

- Zoning – MU1 Mixed Use
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No
- FSBL – No

Environmental Planning & Assessment Act 1979

SEPP (Biodiversity and Conservation) 2021

- Chapter 6 – Water Catchments

SEPP (Resilience and Hazards) 2021

- Chapter 4 – Remediation of Land

SEPP (Transport & Infrastructure) 2021

- Chapter 2 – Infrastructure

SEPP (Housing) 2021

- Chapter 2 – Affordable Housing

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

POLICY CONTROLS

North Sydney Development Control Plan (NSDCP) 2013

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The proposed subject site, legally described as Lots A, B, C and E in DP 25998 incorporates 246-254 Military Road, Neutral Bay. The existing buildings can be classified as Class 6 two-storey retail buildings but comprise of various uses ranging from restaurants, locksmiths and bars. The subject site is irregular in shape and has an area of 828.8m² and has its primary frontage along Military Road, which is a SP2 Classified Road.

The existing buildings each share a similar front façade, with painted brick and curved windows above the awning that hangs over the existing pedestrian path. Underneath the awning, the façades of buildings have incorporated face brick and tiled construction. The existing buildings reflect the established desired future character and built form along Military Road as seen with the continuous awnings, variety of usages that won't impact the efficiency of Military Road and appropriate scaling and density.

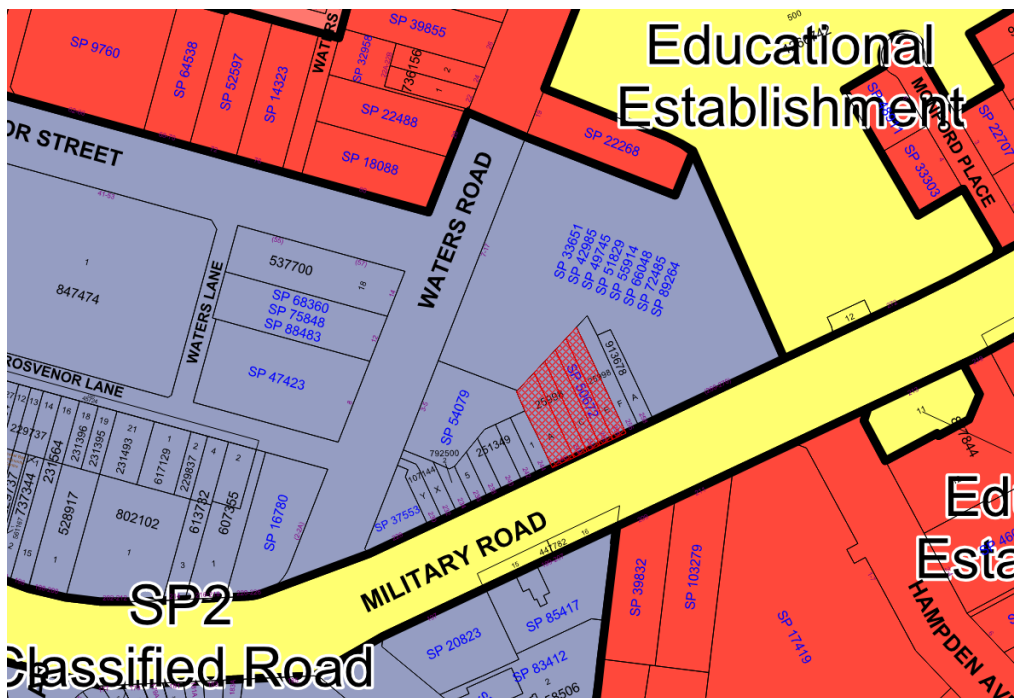
To the left of 246 Military Road is an easement in the form of a carriageway that provides a road connection to the rear of the buildings of 246-258 Military Road.

The northern boundary of the buildings is shared with 7-17 Waters Road, which contains multiple apartments blocks at varying densities.

To the south-east is a continuation of other commercial and retail buildings, ending at the intersection of Military Road, Waters Road and Rangers Road. To the north-west is also a continuation of commercial and retail buildings which is adjacent to the service road for the Redlands School.



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



**Figure 3: Zoning plan, with subject site outlined in the red hatching
 (Source: SISMaps)**

RELEVANT HISTORY

Previous Applications

246 Military Road:

DA 618/2006

- Lodged to Council on 5 December 2006
- Development application for change of use and fit out of existing two storey office into Japanese restaurant at ground level and office at first floor.
- Application approved by Council on 21 December 2006.

DA 586/2007

- Application lodged to Council on 20 December 2007.
- Development application for internal fit out of existing restaurant.
- Application approved by Council on 21 February 2008.

DA 185/2013

- Lodged to Council on 13 June 2013.
- Development application for new staircase on south-western side of existing building.
- Application approved by Council on 27 September 2013.

DA 128/2023

- Application submitted to NSW Planning Portal on 26 April 2023.
- Development application seeking consent for the exact proposals as this DA.
- Application rejected by Council on 3 May 2023.
 - Lack of BCA compliance report, access report and owner's consent.
 - Lack of floor space ratio and maximum building height on plans.
 - Provided documentation reflected outdated employment zones.

DA 224/2023

- Application lodged to Council on 31 July 2023.
- Development application seeking consent for the exact proposals as this DA.
- Application rejected by Council on 3 August 2023.
 - Unclear development application.
 - Incorrect Clause 4.6 request.

DA 254/2023

- Application submitted to NSW Planning Portal on 17 August 2023.
- Development application seeking consent for the exact proposals as this DA.
- Application returned to applicants on 25 August 2023.
 - No response to lodgement fee request received within nominated timeframe.

250 Military Road

DA 488/2005

- Application lodged to Council on 27 October 2005.
- Minimal information is available regarding this DA.

DA 384/2006

- Application lodged to Council on 16 August 2006.
- Development application for the expansion of existing restaurant into adjacent tenancy, new stairs and new bathroom.
- Application approved by Council on 12 February 2006.

DA 384/2006/2

- Application lodged to Council on 15 April 2015.
- Section 96 application for the modification of parent DA, including the deletion of all proposed works except for the stairs to the street.
- Request for further information made by Council.
 - Lack of owner's consent.
 - Revised Statement of Environmental Effects.
 - Unauthorised works undertaken, resulting in a requested Building Certificate.
- Application withdrawn on 21 August 2015.

DA 372/2015

- Application lodged to Council on 12 October 2015.
- Development application for the conversion of the existing ground floor to allow for commercial tenants.
- Application approved by Council on 18 December 2015.

Current Application

Date	Action
11 September 2023	Application lodged to Council.
20 October 2023	Commencement of notification period.
3 November 2023	Conclusion of notification period. Eight (8) unique submissions were received.
28 February 2024	Request for further information made by Council
17 May 2024	Applicants submitted conceptual 'change of direction'. Subsequent discussions we carried out with regard to the conceptual plans.
5 July 2024	Request from applicant seeking 2 additional months to allow for revision of plans. Responsible assessing officer responded on the same day, indicating that an adequate amount of time (4 months) has already been granted.
8 July 2024	Another request made from applicant, seeking an additional 6-8 weeks to allow for revision of plans.
9 July 2024	Responsible assessing officer indicated that another extension of time cannot be granted due to time constraints.

No further request for extension of time or amended plans have been received to date.

EXTERNAL REFERRALS

TRANSPORT FOR NSW

The application was referred to Transport for NSW in accordance with Clause 2.119 of the *State Environment Planning Policy (Transport and Infrastructure) 2021*. TfNSW provided concurrence to the applications subject to conditions of consent.

INTERNAL REFERRALS

BUILDING

The application was referred to Senior Building Surveyor who raised no objection to the proposal and provided conditions of consent.

HEALTH

The application was referred to Council's Environmental Health Team who raised no objection to the proposal and provided conditions of consent.

ENGINEERING

The application was referred to Council's Development Engineer who raised no objection to the proposal and provided conditions of consent.

WASTE

The application was referred to Council's Waste Officer who provided the following comments:

The proposal must be designed to facilitate Council garbage collection. The waste management plan and facilities in this proposal are not acceptable for Council's requirements for the following reasons.

- 1. The residential waste bins need a temporary bin holding area for collection off the street and within 2 meters of the street alignment. The holding bay must be large enough to fit 52 x 240L bins (39 x 240Ls with waste compacted)*
- 2. No onsite collection, bin holding bay must be accessible from the kerb.*
- 3. Properties with a lift must have a garbage chute and recycling bin on each level*
- 4. E-diverter chutes are not permitted*
- 5. There needs to be functional bulky waste storage area to hold household clean up material. This should be separate from the garbage room.*
- 6. Council does not provide 660L/1100L bins*
- 7. Commercial bins must not be presented kerbside and must have a bin holding bay for collection.*

The proposed development must adhere to the NSC DCP 2013 Section 19 - Waste Minimisation and Management and Part B: Section 2 - Commercial and Mixed Use Development requirements.

A temporary holding bay for collections must be provided of sufficient size to accommodate the required garbage and recycling bins as well as bulky waste material and located within 2 meters from the street boundary.

Residential and Commercial garbage storage and chutes must be kept separate. Key access should be used for the garbage storage areas.

The following standard conditions will apply to this proposed development: Condition C11 Condition C51 Condition I29. Some other mixed use development conditions may apply.

Planner's Comment

Correspondence was issued to the applicant to address the above, no response was received.

DESIGN EXCELLENCE PANEL

Set out below are excerpts from the panel's report, germane to this assessment.

Principle 1: Context and neighbourhood character

- a) The proposal is generally consistent with the urban context and emerging character of Neutral Bay town centre.*

Principle 2: Built form and scale

a) Height, bulk and scale

The height and scale of the proposed development is not supported due to the extent of the height variation, being a complete storey above the maximum permissible height.

b) Street, side and rear setbacks

The setbacks proposed to the street are generally supported, however in accordance with SEPP Housing the development needs to demonstrate compliance with the ADG. For example the ADG objectives of building separation, (12 m up to 4 storeys and 18m setback to additional storeys) should be addressed, in relation to the rear boundary.

Principle 3: Density

- a) The development capitalises on and supports the advantages of its location, however some exceedance in appropriate setback controls may have led to an over intensification on the site.*

Principle 4: Sustainability

- a) Not discussed*

Principle 5: Landscape

- a) The provision of additional landscaping should be considered and orientated to the north.*

Principle 6: Building configuration, planning, and amenity

a) Configuration and planning

Site Isolation

The development appears to be compromised as a result of the isolation of the eastern adjoining site, and residual two terraces in the original row. Attempts should be made to acquire these sites, and/or provide documentation that they can be independently developed to their maximum potential.

Unit sizes

All units must comply with minimum and maximum sizes for boarding houses – excepting the care takers

Ground Floor

The ground floor amenity is compromised as a result of the significant undercroft area, widening of car access from Military Road, parking arrangements and building services.

b) Visual and acoustic privacy

Further analysis is required to demonstrate that a reasonable level of privacy will be maintained between the common spaces and private rooms.

There is constant road noise from Military Road, to which any habitable room facing this Road would be fully exposed. The balconies fronting Military Road have the potential to be developed further to provide an improved acoustic buffer, but this can only partially ameliorate the problem. It would be highly desirable to explore an alternative plan with these rooms facing towards an internal courtyard.

c) Common space

The common internal spaces on each floor should not rely on unit access space (corridors) to make up required areas, and visually protect internal private spaces. Further consideration is to be given to the design of the common spaces and the reshaping and increase of the shared open space. This might lead to reduction in the total amount of rooms, but substantive increase in amenity; allowing for additional north facing rooms, and improved natural ventilation to all units

d) Solar access

A significant number of rooms will not receive suitable solar access. The option of facing the southern rooms to an internal courtyard should be explored. to improve solar access.

e) Cross ventilation

Natural cross ventilation is to be improved with consideration given to road noise, privacy, and security issues. An acoustic engineer should be consulted to develop appropriate natural ventilation solutions that mitigate traffic noise.

Consideration should be given to the natural ventilation of corridors and common areas surrounding the courtyard, to enable the possible cross ventilation of rooms.

Principle 7: Safety

- a) *The proposal needs to consider the principals of CPTED for example ground floor undercroft and Level 4 terraces that are located around a blind corner.*

Principle 8: Housing diversity and social interaction

- a) *The proposed mix of single and double occupancy rooms is supported.*

Principle 9: Aesthetics

- a) *The five archway solution illustrated in the 3D visualisations presents a stronger facade to the street (than the 4 archways) by better respecting the existing facades and street wall and the remnant 2 terraces that will remain, extends the amenity and sound management to Military Road facing units. Reducing the driveway crossover width should also be explored to mitigate impacts on pedestrians.*
- b) *The components behind the front façade appear to detract from the appearance, these should be reconsidered to improve the relationship.*

Recommendations to Achieve Design Excellence

The Panel does not support the proposed development in its current form. An amended proposal should be prepared, satisfactorily addressing the issues identified in this report.

Planner's Comment

The application has not been amended therefore the DEP comments and advice have not been adopted.

SUBMISSIONS

On 12 October 2023, Council notified adjoining properties and the Brightmore/Harrison-Bennett Precinct of the proposed development seeking comment between 20 October and 3 November 2023. Council received eight (8) submissions.

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.

Basis of Submissions

- Dust, debris and traffic generated from the construction will pollute the air around Neutral Bay.
- Construction noise would impact the existing living conditions.
- Volume of people traffic along Military Road and Waters Road would increase.
- Proposed building height is uncharacteristic for the locality.

- Would impact the existing use of the easements that provide connection from Military Road to the rear of the existing properties.
- Proposal would result in increased traffic volume along Military Road.
- Shared easements to the rear of existing properties would be blocked during construction.
- Adjacent buildings may be susceptible to damage during construction.
- Overshadowing concerns, mainly loss of light for residents in adjacent properties.
- Privacy concerns for residents in adjacent properties.
- Excessive noise as a result of construction.
- Any future development for adjacent properties would be limited and would create an eyesore within the locality.
- Would impact the existing historical and cultural characteristics of Neutral Bay.
- Proposed building height is uncharacteristic for the locality.
- Proposed setbacks to the rear and common boundaries are insufficient and would result in privacy concerns for residents in adjacent properties.
- Reduction of solar access and overshadowing over properties and open spaces along Waters Road.
- Building separation distance is inadequate and would impact on existing amenity levels of adjacent properties.
- Proposed landscaping to rear is insufficient and no landscaping plans are proposed along common boundary with 3-5 Waters Road, which would have no positive impact on reducing potential privacy concerns for residents in adjacent properties.
- Concern for overland flow of stormwater into adjacent properties.
- Insufficient details on submitted plans.
- Proposed building height is uncharacteristic for the locality.
- Proposed use of the development is uncharacteristic for the locality.
- Proposed aesthetics for primary façade is uncharacteristic for the locality.
- Proposal would lower home-apartment prices in locality.
- Support for proposed usage for boarding house and affordable living.
- Proposed building height is uncharacteristic for the locality.
- Proposed aesthetics for primary façade is uncharacteristic for the locality.

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)

SEPP (Biodiversity and Conservation) 2021

- **Chapter 6 – Water catchments**

Having regard to Chapter 6 of the *SEPP (Biodiversity and Conservation) 2021*, the subject site is located within the Sydney Harbour Catchment Area. However, due to the inland location of the subject site, it can be deemed that the proposal will have no detrimental impacts on the surrounding waterways and its quality and quantity, what could occur during the events of a flood, aquatic ecology, recreational areas, public access and the characteristic of the foreshore. The application satisfies the requirements of this Policy.

SEPP (Resilience and Hazards) 2021

- **Chapter 4 – Remediation of Land**

Council records indicate that the locality has been primarily used for residential accommodation and commercial activities, and that activities that are considered to be contaminating have not occurred on the land of and near the subject site. As a result, the remediation of land is not necessary for this proposed development and the application satisfies the requirements of this Policy.

SEPP (Housing) 2021

- **Chapter 2 – Affordable Housing (ask about setback, zoned under MU1 and mentions nothing in SEPP)**

The State Environmental Planning Policy – Housing (2021) (Housing SEPP) serves as the main environmental planning instrument (EPI) governing boarding houses in NSW. A comprehensive assessment of the proposal in relation to the provisions of the Housing SEPP is outlined below.

Sub-clause	Control	Compliance
Clause 23 Boarding houses permitted with consent		
(2) Zoning	(1) Development for the purposes of boarding houses may be carried out with consent on land on which development for the purposes of boarding houses is permitted with consent under another environmental planning instrument. (2) Development for the purposes of a boarding house must not be carried out on land in Zone R2 Low Density Residential or an equivalent land use zone unless— (a) for land in the Greater Sydney region—the land is within an accessible area, or (b) otherwise—all or part of the boarding house is within 400m walking distance of land in Zone B2 Local Centre or Zone B4 Mixed Use, or an equivalent land use zone.	Complies. The site is zoned MU1 Mixed Use and Boarding Houses are permitted with development consent in the zone.

24 Non-discretionary development standards—the Act, s 4.15		
2 Solar Access	(e) at least 3 hours of direct solar access provided between 9am and 3pm at mid-winter in at least 1 communal living area,	Complies. The main communal living area is provided at the rooftop level, which achieves compliant solar access.
2 Communal Living Areas and Open Space	(f) for a boarding house containing 6 boarding rooms— (i) a total of at least 30m ² of communal living area, and (ii) minimum dimensions of 3m for each communal living area, (g) for a boarding house containing more than 6 boarding rooms— (i) a total of at least 30m ² of communal living area plus at least a further 2m ² for each boarding room in excess of 6 boarding rooms, and (ii) minimum dimensions of 3m for each communal living area, (h) communal open spaces— (i) with a total area of at least 20% of the site area, and (ii) each with minimum dimensions of 3m,	Insufficient information has been provided to demonstrate the proposal complies.
2 Parking	If: (i) if a relevant planning instrument does not specify a requirement for a lower number of parking spaces—at least the following number of parking spaces— (ii) for development on land within an accessible area— 0.2 parking spaces for each boarding room, (i) otherwise—0.5 parking spaces for each boarding room, (j) if a relevant planning instrument specifies a requirement for a lower number of parking spaces—the lower number specified in the relevant planning instrument.	Merit. The proposal includes a total of three car parking spaces, assessed in accordance with the North Sydney DCP 2013. The DCP sets lower parking rates as the maximum allowable provision, aligning with the objective of discouraging private vehicle use and encouraging alternative modes of transport. The provision of three car spaces complies with the DCP’s maximum parking requirements and is deemed satisfactory. Given the site’s close proximity to the commercial centre, entertainment venues, and frequent bus services, it is well-suited for reduced on-site parking in line with Council’s objectives.

Control	Compliance
Clause 25 – Sub Clause 1	
(a) no boarding room will have a gross floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, of more than 25m ² , and	Does not comply. Several boarding rooms exceed 25m ² (excluding kitchen and bathroom facilities).
(b) no boarding room will be occupied by more than 2 adult residents, and	Complies. The proposed boarding rooms will be single or dual-occupancy.
(c) adequate bathroom, kitchen and laundry facilities will be available within the boarding house for the use of each resident, and	Complies. Adequate kitchen and laundry facilities are provided.
(e) for a boarding house on land in a business zone—no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and	Complies.
(f) for a boarding house containing at least 6 boarding rooms—the boarding house will have at least 1 communal living area, and	Complies. Communal living areas are provided on Levels 1 -5.
(g) the minimum lot size for the boarding house is not less than— (i) for development on land in Zone R2 Low Density Residential—600m ² , or (ii) for development on other land—800m ² . (iii) (Repealed)	Complies The site has a total area of 828.8m ² .
(h) each boarding room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, of at least the following— (i) for a boarding room intended to be used by a single resident—12m ² , (ii) otherwise—16m ² , and	Insufficient information has been provided to demonstrate the proposal complies.
(i) the boarding house will include adequate bicycle and motorcycle parking spaces.	Complies. The application provides 48 bicycle spaces and 11 motorbike spaces. The number of spaces has been reviewed by Councils Development Engineer who raised no objection to the number of spaces provided.

Sub Clause (2) Development consent must not be granted under this Division unless the consent authority considers whether	
<p>(a) the design of the boarding house will be compatible with—</p> <ul style="list-style-type: none"> (i) the desirable elements of the character of the local area, or (ii) for precincts undergoing transition—the desired future character of the precinct, and 	<p>Does not comply</p> <p>The proposed development is not considered to be in keeping with the established and desired future character of the area and will result in adverse impacts on the streetscape. The proposal is not supported in this regard. The proposal fails to allow for a height, bulk and scale which is compatible with the existing and desired future character of the area.</p>
<p>(c) if the boarding house has at least 3 storeys— the building will comply with the minimum building separation distances specified in the Apartment Design Guide.</p>	<p>Does not comply.</p> <p>The Apartment Design Guide specifies minimum separation distances for buildings:</p> <p>Up to four storeys (approximately 12m):</p> <ul style="list-style-type: none"> • 12m between habitable rooms/balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p>Five to eight storeys (approximately 25m):</p> <ul style="list-style-type: none"> • 18m between habitable rooms/balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms <p>The proposed development is setback 3m from the rear property boundary. Further, insufficient information has been provided to enable proper assessment of the above.</p> <p>The side setbacks are considered to be satisfactory as they align with the NSDCP 2013.</p>
<p>Clause 26</p>	
<p>(1) Development consent must not be granted under this Division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity—</p> <ul style="list-style-type: none"> (a) the boarding house will be used for affordable housing, and (b) the boarding house will be managed by a registered community housing provider. 	<p>Should the application be supported this would be dealt with by conditions of consent.</p>

Clause 27	
Development consent must not be granted for the subdivision of a boarding house.	Subdivision is not proposed

SEPP (Transport & Infrastructure) 2021

- **Chapter 2 – Infrastructure**

Clause 2.118 of SEPP (Transport and Infrastructure) 2021 relates to development on land with a frontage to a classified road and requires the consent authority to consider whether access is provided by a road other than the classified road, and whether the safety, efficiency and ongoing operation of the classified road will be adversely affected by the proposed development.

The site has a frontage to Military Road proposing to utilise the existing crossover. The application was referred to TfNSW who raised no objection to the proposal subject to conditions of consent.

SEPP (Building Sustainability Index: BASIX) 2004

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

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP) 2013

1. Aims of

Clause 1.2 Aims of North Sydney LEP 2013 reads as follows:-

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

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

The proposed development is not considered to be in keeping with the established and desired future character of the area and will result in adverse impacts on the streetscape. The proposal is not supported in this regard. The proposal fails to allow for a height, bulk and scale which is compatible with the existing and desired future character of the area being inconsistent with **Clause 1.2(2)(b)(i)** and fails to ensure that new development does not adversely affect residential amenity in terms of visual privacy in accordance with **Clause 1.2.(2)(c)(i)**.

2. Permissibility

The proposed development for the purpose of demolition of existing structures and construction of a boarding house and commercial premises/food and drink premises, which are permissible uses in the zone, with development consent.

3. Objectives of the Zone

The objectives for a MU1 Mixed Use zone are stated below:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.*

The proposal would promote a diversity of business and retail tenancies along the Military Road corridor and would attract pedestrian traffic, resulting in the promotion of active and vibrant public and pedestrian spaces along Military Road. Through this, it would allow for the integration of residential accommodation in the form of boarding houses above the commercial and retail tenancies. The proposal is consistent with the relevant objectives of the zone.

Part 4 – Principal Development Standards

COMPLIANCE TABLE Principal Development Standards <i>North Sydney Local Environmental Plan 2013</i>			
	Proposed	Control	Complies
Clause 4.3 – Height of Building	20.56m	16m	NO
Clause 4.4A – Non-residential floor space ratios	0.45:1(373.1m ²)	0.5:1 (414.4m ²)	NO – no cl.4.6 provided

4.3. Height of Building

The zoning allows a maximum permitted height of 16m. The roof would have a height of 19.5m, while the lift overruns would increase the height to 20.56m. thus exceeding the maximum permitted building height, in accordance with Clause 4.3 of the *NSLEP 2013*.



Figure 4: North elevation (Source: Scanlan Architects).

Criteria for approval under Clause 4.6

It is noted that Clause 4.6 was amended by the Standard Instrument (Local Environmental Plans) Amendment (Exceptions to Development Standards) Order 2023 on 1 November 2023. However, the current Development Application was lodged before this date, so (in accordance with clause 8(1) of the Standard Instrument (Local Environmental Plans) Order 2006 the former terms of clause 4.6 still apply.

The applicant has submitted a written request pursuant to Clause 4.6 of NSLEP 2013 (Attachment 3). The written request has not adequately addressed cl 4.6(3), for these reasons:

- The written request does not adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- That there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(3)A Compliance is unreasonable or unnecessary

Clause 4.6(3)(a) requires that this Variation Request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In *Wehbe v Pittwater Council [2007] NSWLEC 827* Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation. In applying the tests of *Wehbe v Pittwater Council [2007] NSWLEC 827*, only one of the rationales is required to be established. The applicant relies upon the first rationale to demonstrate compliance with the development standard is unreasonable or unnecessary

1. *Establish that compliance with the development standard is unreasonable or unnecessary because **the objectives of the development standard are achieved notwithstanding non-compliance with the standard.***

The applicant submits:

CLAUSE 4.6(4)(A)(II) – WILL THE PROPOSED DEVELOPMENT BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD AND OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE IN WHICH THE DEVELOPMENT IS PROPOSED TO BE CARRIED OUT?

The objectives of Clause 4.3 are as follows:

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

Notwithstanding the proposed variation to the standard, the proposed development is nevertheless consistent with these objectives:

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- The proposed development is on relatively flat land and the proposed development conforms to natural landscape.
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- There are no existing views enjoyed by the adjoining properties to the rear and side of the site that are worthy of retention.
 - Properties on the southern side of Military Road do not have any existing views across the site.
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- The portion of development which protrudes beyond the prescribed height limit comprises the upper floor and lift overrun. The non-complaint element is located to the south of residential dwellings on adjacent properties to the rear, and there will be no overshadowing to surrounding residential dwellings to the north from the proposed non-compliance.
 - The proposed development will result in some additional overshadowing to the neighbouring residential properties to the west and south at mid-winter. This includes some additional overshadowing to windows at the rear of 3 Waters Road.

This overshadowing is considered acceptable as follows:

- > The proposed upper floor and lift overrun element which breaches the 16m maximum height of building requirement does not wholly contribute to the non-compliant overshadowing impact, as demonstrated by the solar access diagrams.
 - > A compliant development will have the same overshadowing impact, and the impact is proportionate to the development which is permissible on the Site.
 - > The overshadowing impact does not arise from poor design of the development, and an alternative design would not have a more superior outcome.
 - > There is no reasonable or practical solution to minimising additional overshadowing impacts to these properties given the Site context, east-west orientation, narrow lot constraints, permissible development of the Site and orientation of development to the south.
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- The portion of development which protrudes beyond the prescribed height limit comprises the upper floor and the lift overrun.
 - No loss of privacy will occur from the proposed non compliance, and windows to the rear of the site are capable of being fitted with privacy screens to ensure no overlooking can occur to surrounding properties that would compromise their privacy.

- The communal areas at the roof level are orientated away from the northern boundary. Accordingly, there are no privacy impacts on adjoining residential development to the north resulting from this communal space.
- Adequate separation is provided between buildings, to the rear located on Waters Road and the setback and orientation of development beyond.
- This provides an adequate separation between northern boundary of the development Site and residential dwellings to the north of between 6m to 10m, from its closest point.
- To ensure appropriate privacy measures where Council's deems it necessary the applicant would be satisfied with the imposition of screening measures by way of a condition of consent.

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

- The proposed development is compatible with the built form and density of surrounding developments. It has been designed to incorporate a setback to the upper levels to ensure it integrates with the scale and bulk of surrounding developments.
- The top level which comprises the non compliant element will not be readily discernible from the street by virtue of its setback from the front at Military Road.

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

- The proposed development is predominantly five storeys with a smaller sixth level accommodating the accommodation, communal living and communal terrace, which will not be discernible from the public domain (i.e from Military Road).
- Fundamentally, the development will maintain the five storey average height along this part of Military Road which largely complies with the 16m maximum height standard, with the exception of the top floor of the building and the lift overruns.
- The Level 5 storey is setback from Military Road to minimise visibility from the street and impacts on neighbouring properties, and the development maintains the streetscape character and prevailing pattern of the area.
- In addition, the levels of the building above ground level are also setback from the front boundary and include articulation to the building including recessed balconies to minimise the visual scale and massing of the building to the streetscape.
- The top level which comprises the non compliant element will not be readily discernible from the street by virtue of its setback from the front at Military Road.
- The proposed development will be viewed as a five storey development from Military Road.
- The overall scale is appropriate for the area, and is characteristic of buildings in the locality.

(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.*

- Not applicable

The Proposal Achieves the Objectives of the Zone

The site is currently zoned MU1 Mixed Use under the North Sydney LEP 2013. The proposed new development is consistent with the MU1 zone objectives in that:

To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

- The proposal gives provision of food and drink premises and laundromat that will both promote employment. The boarding house will also promote employment through a caretaker role and cleaning and maintenance roles.

To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

- The commercial premises will add to an active street frontage at ground floor level. This will in turn attract pedestrian traffic.
- The proposed front balconies will activate the street frontage and also provide natural surveillance to the public domain to the benefit of public safety.

To minimise conflict between land uses within this zone and land uses within adjoining zones.

- No land use conflicts are to occur from the proposal.

To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

- The ground floor is made up of business/retail uses with the exception of the boarding house lobby.
- This mix of uses is consistent with the current uses for the site and the surrounding streetscape.

To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.

- The ground floor retail/commercial premises provide floor to ceiling glazing which enables both an active street frontage and casual surveillance, improving vibrancy and community safety. The proposed design is of a high quality including highly articulation on the building façade to create an interesting development that is sympathetic to the streetscape.

To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.

- The proposed development includes a mix of residential and commercial. The commercial is provided on the ground floor of the building. The residential boarding house accommodation is predominantly provided on the upper levels

CLAUSE 4.6(3)(B) – ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

The proposed development demonstrates that there are sufficient environmental planning grounds in support of the contravention for the following reasons:

- The proposed development is predominantly five storeys with a smaller sixth level accommodating the accommodation, communal living and communal terrace, which will not be discernible from the public domain (i.e from Military Road).
- Fundamentally, the development will maintain the five storey average height along this part of Military Road which largely complies with the 16m maximum height standard, with the exception of the top floor of the building and the lift overruns.
- The Level 5 storey is setback from Military Road to minimise visibility from the street and impacts on neighbouring properties, and the development maintains the streetscape character and prevailing pattern of the area.
- In addition, the levels of the building above ground level are also setback from the front boundary and include articulation to the building including recessed balconies to minimise the visual scale and massing of the building to the streetscape.
- The top level which comprises the non compliant element will not be readily discernible from the street by virtue of its setback from the front at Military Road.
- The proposed development will be viewed as a five storey development from Military Road.
- The overall scale is appropriate for the area, and is characteristic of buildings in the locality.
- The non-complaint element is located to the south of residential dwellings on adjacent properties to the rear, and there will be no overshadowing to surrounding residential dwellings to the north from the proposed non-compliance.
- The proposed development will result in some additional overshadowing to the neighbouring residential properties to the west and south at mid-winter. This includes some additional overshadowing to windows at the rear of 3 Waters Road.
- This overshadowing is considered acceptable as follows:
 - > The proposed upper floor and lift overrun element which breaches the 16m maximum height of building requirement does not wholly contribute to the non-compliant overshadowing impact, as demonstrated by the solar access diagrams.
 - > A compliant development will have the same overshadowing impact, and the impact is proportionate to the development which is permissible on the Site.
 - > The overshadowing impact does not arise from poor design of the development, and an alternative design would not have a more superior outcome.
 - > There is no reasonable or practical solution to minimising additional overshadowing impacts to these properties given the Site context, east-west orientation, narrow lot constraints, permissible development of the Site and orientation of development to the south.
- There are no existing views enjoyed by the adjoining properties to the rear and side of the site that are worthy of retention.
- No loss of privacy will occur from the proposed non compliance, and windows to the rear of the site are capable of being fitted with privacy screens to ensure no overlooking can occur to surrounding properties that would compromise their privacy.

- The communal areas at the roof level are orientated away from the northern boundary. Accordingly, there are no privacy impacts on adjoining residential development to the north resulting from this communal space.
- Adequate separation is provided between buildings, to the rear located on Waters Road and the setback and orientation of development beyond.
- This provides an adequate separation between northern boundary of the development Site and residential dwellings to the north of between 6m to 10m, from its closest point.
- To ensure appropriate privacy measures where Council's deems it necessary the applicant would be satisfied with the imposition of screening measures by way of a condition of consent.
- In light of the proposal's contribution to achieving the desired future character of the area, a reduction of height would serve no material planning purpose, other than numerical compliance with a generic Council control.
- The proposal will add to delivering a mix of well-designed low cost housing that meets the needs of Sydney's growing population and to meet the changing population needs.
- The proposed development will not significantly impact on the amenity of adjoining occupiers.
- The proposal results in the delivery of residential accommodation within easy access of the public transport, employment and services.

Planner's comment:

The request to vary development standard cannot be supported for the following reasons:

- The request advances consistency with context and desired future character as an environmental planning ground, stating that the building will present a similar bulk and scale to its surrounds, and a six-storey development is consistent with the context

However, in the circumstances of the proposed development, this environmental planning ground is not sufficient to justify the exceedance of the height development standard. There is no six-storey buildings on the northern and southern side of Willoughby Road within this block with which the proposed development could be said to be consistent. The request does not provide any analysis of how the sixth storey (the additional height) is justified in order to achieve consistency in its context.

- Again, in the context of this site, in which there is no six-storey buildings on the northern and southern side of Military Road within this block and where the request does not define the "neighbourhood" with which the proposed development is seeking to be consistent, It is not consider that consistency with the desired future character in the broad undefined area of the "neighbourhood" is sufficient to justify the contravention of the height development standard on this site.
- The lateral extent of the breach is for the entire sixth storey, and the vertical extent of the breach is up to 4.56m. The full height of the building is highly visible when viewed from the public domain in context with the adjoining character buildings.
- The written request fails to demonstrate that reasonable levels of privacy would be maintained for existing residents of the surrounding buildings.

- The written request fails to demonstrate that the additional height would not have an adverse impact on solar access to development to the south.
- reasonable levels of privacy would be maintained for existing residents of the surrounding buildings.
- The written request fails to demonstrate that the proposed development would be compatible with the surrounding development and the proposed building would fit comfortably within its context. The proposed development is not consistent with the desired future character of the North Cremorne Planning Area.
- The written request fails to demonstrate that the proposed development would have an appropriate scale and density, having regard to the character of the surrounding area. The 16m height control anticipates a five storey building. The proposed development, including the non-complying elements is six storeys.
- While the height for this site may change following the completion of a strategic planning review being undertaken at this time, any such amendment to controls is in their infancy and could not be relied upon as justification for a height exceedance at this time.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN (NSDCP) 2013

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

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development		
	<i>complies</i>	<i>Comments</i>
2.2 Function		
2.2.1 Diversity of Activities	Yes	The proposed development delivers a retail and commercial spaces at ground level, capable of accommodating businesses such as a café, bar, laundromat, or similar operations. Additionally, the development ensures that communal areas within the building are easily accessible. It integrates the commercial spaces across the basement and ground levels, with a well-designed, street-level entrance to enhance accessibility and encourage pedestrian flow.
2.2.2 Maximise Use of Public Transport	Yes	The proposal does not provide any non-residential parking on site. Bike parking facilities comply with the provisions of the DCP. The site's proximity to public transport options, including frequent bus services and convenient connections to the North Sydney Train Station via pedestrian and bus links, along with its accessibility to services, education, and employment opportunities, supports a shift towards public and active transport.

2.3 Environmental Criteria		
2.3.2 Noise	Yes	The proposed development is unlikely to generate excessive noise. The application is supported by an Acoustic Report (undertaken by Building Services Engineers), which concludes the proposal is capable of complying.
2.3.4 Reflectivity	Yes	The proposed development has reduced the use of glazing and incorporated a mix of solid materials and screening elements to mitigate the impact of reflected light.
2.3.5 Artificial Illumination	Yes	The proposal is capable of complying. Should the application be supported conditions would be imposed.
2.3.6 Awnings	Yes	A new awning is proposed to extend over the ground floor frontage along Military Road, offering weather protection in line with the existing awning and maintaining the current site arrangement.
2.3.7 Solar Access	No	The communal living areas of the proposed development will receive at least three hours of solar access between 9 am and 3 pm during mid-winter, as illustrated in the Solar Access Diagrams. The development will, however, create some additional overshadowing of neighbouring residential properties to the west and south during mid-winter, including partial overshadowing of windows at 3 Waters Road. The height non-compliance contributes to the overshadowing.
2.3.8 Views	Yes	The proposal development will not obscure any significant or iconic views from adjoining properties or the public domain.
2.3.9 Acoustic Privacy	Yes	There being adjacent residential development, conditions are recommended, should the proposal be supported to manage potentially unacceptable sounds levels being emitted from the development.
2.3.11 Visual Privacy	No	The reduced rear setback to the adjoining residential development and lack of privacy mitigation measures will result in unacceptable privacy impacts.
2.4 Quality built form		
2.4.1 Context	No	The proposal fails to ensure that the site layout and building design responds to the existing characteristics, opportunities and constraints of the site and within its wider context
2.4.3 Setback	Yes	The ground level features a zero setback along Military Road, preserving the streetscape's continuity and reflecting the original building's massing and architectural character, ensuring seamless integration with the urban fabric. No setbacks from heritage items are required. The proposed setbacks comply with the standards outlined for the Cremorne North Planning Area. As the site does not adjoin designated residentially zoned land, the building height plane controls specified under this provision are not applicable to the development.
2.4.5 Building Design	Yes	The proposal complies with the minimum floor to ceiling requirements.
2.4.10 Streetscape	Yes	The application proposes active uses at ground level providing an active street frontage.

2.4.11 Entrances and Exits	No	Separate pedestrian entrances are not provided to the residential accommodation and non-residential development.
2.4.12 Nighttime appearance	Yes	The proposal incorporates the use of large windows to enable internal illumination to spill onto public footpaths and public areas.
2.5 Quality Urban Environment		
2.5.1 Accessibility	Yes	The development is accessible.
2.5.2 Safety and Security	Yes	The design of the proposal has considered personal safety and security and is deemed acceptable.
2.5.3 Illumination	Yes	Should the application be supported condition would be imposed to ensure compliance.
2.5.7 Vehicular Access	Yes	Vehicle access to the site will continue to be provided via Military Road. Should the application be supported conditions would be provided to ensure compliance with relevant Australian Standards.
2.5.8 Car Parking	Yes	Subject to conditions of consent, the proposal complies with relevant DCP provisions for car, bicycle and motorcycle parking.
2.5.9 Garbage Storage	No	The proposal fails to provide adequate garbage storage.
2.5.10 Site Facilities	Yes	The proposal includes mailboxes and intercom at the main entry on the southern elevation accessed from Military Rod. The proposed boarding rooms are able to accommodate 4sqm of ancillary storage.
2.6 Efficient Use of Resources		
2.6.1 Energy Efficiency	Yes	The application is accompanied by a current and valid BASIX Certificate which details compliance with the relevant energy efficiency requirements.
2.6.7 Stormwater Management	Yes	Council's Development Engineer has raised no objection to the proposal subject to the imposition appropriate conditions for stormwater management.

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 4- Boarding Houses		
	<i>complies</i>	<i>Comments</i>
4.2 Internal Building Design		
4.2.2 Communal living areas	Yes	Each residential level includes a single communal living room, with all communal spaces exceeding the minimum size requirements, as indicated on the plans. The communal living area on the top floor is strategically positioned adjacent to the shared outdoor space, promoting seamless indoor-outdoor connectivity. The primary combined indoor and outdoor communal area will receive at least three hours of solar access between 9 am and 3 pm during mid-winter, as demonstrated in the solar access diagrams.
4.2.2 Boarding rooms	No	As mentioned above Insufficient information has been provided to demonstrate the proposal complies.
4.2.2 Shared facilities	Yes	The shared kitchen and dining area comply, with each room also featuring its own kitchen facilities. The shared kitchen will be accessible 24/7, as outlined in the Plan of Management. Washing machine and dryer combinations are provided on each floor, complemented by a commercial

		laundromat on the ground floor, ensuring adequate laundry facilities for all residents.
4.2.2 Internal circulation	Yes	The stairway is located centrally next to the lift this allows for less than 8 boarding rooms on corridor either side.
4.2.2 Management office design	Yes	Boarding house manager accommodation is provided at Level 5, adjacent and clearly visible to the communal rooftop area. The Manger's desk is located in the entry way for high visibility and convenience of occupants
4.2.2 Personal Security	Yes	Entrances are highly visible.
4.2.2 Fire safety	Yes	The proposal is capable of complying.
4.2.2 Accessibility	Yes	The is addressed above.
4.4 Management and Registration		
4.2.2 Management	Yes	The application is accompanied by a Plan of Management that comprehensively addresses the operational criteria outlined in the relevant provisions of the North Sydney DCP 2013.
4.2.2 Registration	Yes	The proposal is capable of complying. Should the application be supported condition would be imposed to ensure compliance.

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 7- Late Night Trading Hours

7.2 Matters for Consideration

7.3 Trading Hours	No	A plan of management has not been provided for the bar.
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Section 5 North Cremorne Planning Area– Part C of NSDCP 2013

5.3 Waters Neighbourhood

The proposal is not consistent with the existing and desired character for North Cremorne, as expressed by the DCP. The design of the proposed building is inconsistent with the desired built form in terms of bulk/scale, setbacks, and height.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

As the application is not supported an assessment against the North Sydney Local Infrastructure Contribution Plan 2020 has not been undertaken.

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	Yes
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 <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	Yes

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Brightmore/Harrison-Bennet Precinct. Council received eight (8) submissions. Many of the issues raised have been considered in other parts of this report and where relevant are summaries and addressed further below.

- *Impact of demolition, excavation, and construction*

Should the application be supported condition of consent would be imposed to ensure there is no adverse impact during demolition, excavation, and construction.

- *Building height and character*

This is addressed above in this report.

- *Building character and compatibly with the area.*

This is addressed above in this report.

- *Use of development*

The proposed uses are permissible within the zone subject to development consent.

- *Privacy, overshadowing and building setbacks*

This is addressed above in this report.

- *impact the existing use of the easements*

Further information was requested; however, no response was received. This has formed a reason for refusal.

- *Damage to adjoining properties during construction*

Should the application be supported condition of consent would be imposed requiring dilapidation reports for the adjoining properties.

- *Insufficient provision of landscaping*

The site is not subject to the provision of landscaped area under the NSLEP 2013 and NSDCP 2013.

- *Increased traffic volume*

The proposed development complies with the maximum permitted parking rates in Section 10.2 of Part B in NSDCP 2013. The proposal is unlikely to give rise to and significant additional congestion.

- *Reduction in property prices*

No evidence was submitted to substantiate this claim.

- *Insufficient details on the submitted plans*

The plans submitted did not contain sufficient detail to enable a proper and complete assessment of the application, this forms a reason for refusal.

- *Overland flow of stormwater*

The application was assessed by Council's Engineer who raised no concern regarding stormwater and overland flow, subject to conditions of consent.

- *Any future development for adjacent properties would be limited and would create an eyesore within the locality.*

Any future development of adjoining sites would be assessed when an application is lodged.

PUBLIC INTEREST

The proposal is not considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal would be located in a MU1 Mixed Use zone where boarding houses and commercial premises/food and drink premises are a permissible form of development. For the reasons as described above in this report, the proposal is not considered to be suitable for the site.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Brightmore/Harrison-Bennet Precinct for 14 days where a number of issues were raised that have been addressed in this report where appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties and/or the character of the streetscape/conservation area.

CONCLUSION

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

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

Further the proposal fails to comply with Clause 4.4A Nonresidential floor space ratios and no Clause 4.6 has been submitted therefore consent cannot be granted.

A total of eight (8) unique submissions were received raising objections regarding issues including the proposed height variation, impacts to neighbourhood character, amenity impacts, traffic congestion and construction impacts. These matters have been addressed within this report.

Having regard to the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, the proposed development is recommended for **refusal** for the reasons provided below.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel exercising the functions of Council as the consent authority, resolve to **refuse** Development Application No. 282/23 for the demolition of existing structures and construction of a six-storey mixed-use development comprising a retail/commercial use at basement/ground floor and boarding house accommodation, with roof-top communal living spaces, and associated works, for the following reasons:-

1. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is contrary to the objectives of the aims of plan of North Sydney Local Environmental Plan 2013 pursuant to Clause 1.2 in that the proposal is inconsistent with:

- a) The proposal does not provide development that is appropriate to its context and is does not enhance the amenity of the North Sydney community and environment (Clause 1.2(2)(a));
 - b) The proposal is not compatible with the desired future character in terms of its height, bulk and scale (Clause 1.2(2)(b)(i));
 - c) The proposal adversely affects the residential amenity of adjoining properties in terms of visual privacy and solar access (Clause 1.2(2)(c)(i)).
2. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the variation to the building height development standard pursuant to Clause 4.3(2) of North Sydney Local Environmental Plan 2013 lodged pursuant to Clause 4.6(3) has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to justify the contravention of the development standard. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed development as a whole does not ensure that a high level of amenity is achieved and maintained. The Clause 4.6 Statement in respect to the non-compliance with Clause 4.3 Height of Building standard is not considered to be well founded or in the public interest.
3. The proposed development cannot be supported pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal fails to comply with Clause 4.4A Non-residential floor space ratios of North Sydney Local Environmental Plan 2013. The applicant has not provided a Clause 4.6 written request requesting a contravention to the development standard. As no Clause 4.6 request has been provided in relation to non-residential floor space ratios, the North Sydney Local Planning Panel does not have jurisdiction to grant consent.
4. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 when evaluated against the non-discretionary development standards (clause 24) and standards for boarding houses (clause 25) the *State Environmental Planning Policy (Housing) 2021*. In particular, the proposal is inconsistent with the following:
- a) Insufficient information has been provided conduct a proper assessment of the application to determine compliance with clause 24(2)(g).
 - b) The proposal fails to comply with clause 25(1)(a) as some of the boarding rooms exceed 25m².
 - c) The proposal fails to comply with clause 25(1)(h) as some of the boarding rooms do not meet the minimum area requirements specified.
 - d) The proposed development is not compatible with the character of the local area contrary to clause 25(2)(a)(i).
 - e) The proposed rear setback fails to comply with the minimum building separation distances specified in the Apartment Design Guide, contrary to clause (25)(2)(c).
5. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with various parts of Part B of the North Sydney Development Control Plan 2013 in that:

- a) The proposed development does not satisfactorily respond to Part B Section 2.1.1 General Objectives of Section 3 - O8 as it does not provide an acceptable level of amenity to adjoining properties.
 - b) The proposed development fails to maintain solar access to surrounding residential developments contrary to the objectives and controls of clause 2.3.7, Part B, Section 3.
 - c) The proposed development fails to ensure reasonable levels of privacy are maintained contrary to the objectives and controls of clause 2.3.11, Part B, Section 3.
 - d) The proposal fails to ensure the site layout and building design responds to the existing characteristics, opportunities and constraints of the site and within its wider context contrary to the objectives and controls of 2.4.1, Part B Section 3.
 - e) The proposal fails to provide separate pedestrian entrances to the residential accommodation and non-residential development contrary to the objectives and controls of 2.4.11, Part B Section 3.
 - f) The proposed boarding room sizes fail to comply with P6 of 4.2.2 of Part B, Section 4.
 - g) The proposed development does not satisfactorily respond to Part B Section 2.4.1 in that the proposed developments height, bulk and scale is not in context with the surrounding development.
6. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the waste management objectives and requirements of Part B, Section 19 Waste Minimisation and Management of the North Sydney Development Control Plan 2013.
7. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the built environment with respect to the impact upon the streetscape and amenity to adjoining properties.
8. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 in that the proposed development in its current form is not suitable for the site.
9. Insufficient information

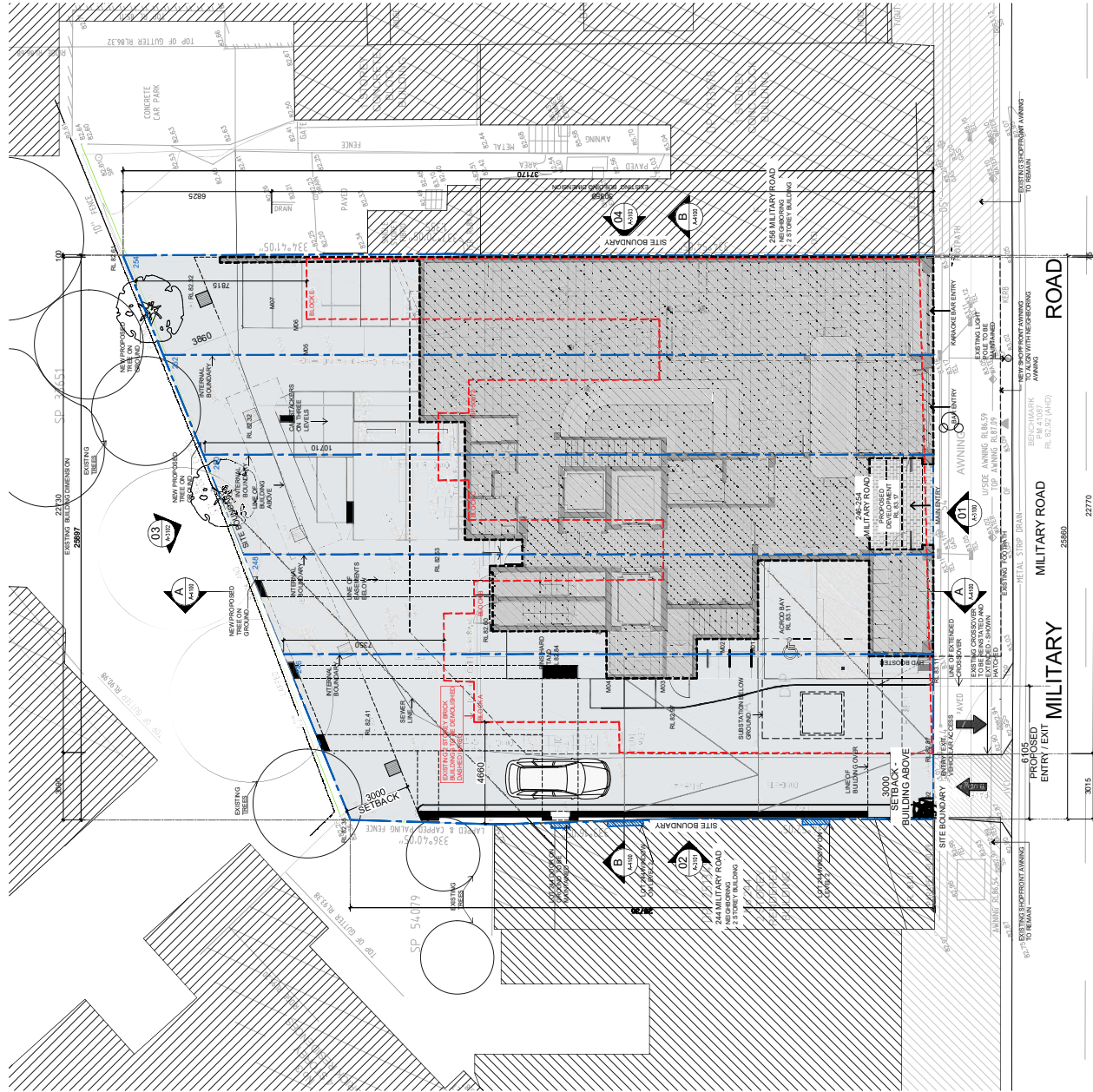
Insufficient information has been provided to allow for the robust and thorough assessment of the application in accordance with Section 4.15 of the EP&A Act, 1979, as follows:

- a) No survey Plan has been provided.
- b) A plan of management for the bar and laundromat has not been provided.
- c) Details on exhaust or ventilation for café have not been provided.
- d) Fully dimensioned plans have not been provided
- e) Site context and analysis plan showing setback of the northern adjoining property has not been provided.
- f) Plans and details showing the easement and compliance with the terms and restrictions.

10. The proposed development is considered unacceptable pursuant to the provisions of Section 4.15(1) (e) of the Environmental Planning and Assessment Act 1979 as the proposal in its current form given its height, bulk and scale and massing, is not in the public interest as it is inconsistent with the relevant planning controls in relation to the adverse impacts on the streetscape and amenity of immediately adjoining properties. The proposal also lacks good urban design and will negatively affect the character and nature of the neighbourhood. It is considered to be an inappropriate outcome for the site and will establish an undesirable precedent in the area which will not be in the public interest.

DAMON KENNY
EXECUTIVE ASSESSMENT PLANNER

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES



GENERAL NOTES:
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 ARCHITECTURAL DRAWINGS TO BE READ IN CONJUNCTION WITH RELEVANT ENGINEERS, ARCHITECTS, STRUCTURAL ENGINEERS, LANDSCAPE ARCHITECTS, CIVIL ENGINEERS, WORK DRAWINGS.
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DATE	2005	DRAWING NO.	3
ISSUED FOR	ISSUED FOR DEVELOPMENT APPLICATION	LABOR	A-1700
SCALE	1:100 (B1)	DATE	10/01/2024
CREATED BY	WA	REVISION	RS
REVISION	RS	DATE	06/11/2024



SITE PLAN

PROPOSED SHORT STAY ACCOMMODATION
 246-254 MILITARY ROAD, NEUTRAL BAY NSW

LAUNDRY PARTNERS PTY. LTD.

ISSUE	DATE	REVISION
DA01	03/03/2022	ISSUED FOR DEVELOPMENT APPLICATION

SCANLAN
 ARCHITECTS

PROPOSED SHORT STAY ACCOMMODATION

246 - 254 MILITARY ROAD, NEUTRAL BAY NSW

2005 - ARCHITECTURAL SET

DRAWING LIST

A-0000	TITLE SHEET
A-1001	FEATURE SURVEY
A-1100	SITE PLAN
A-1300	SHADOW DIAGRAMS SHEET 1
A-1301	SHADOW DIAGRAMS SHEET 2
A-1302	SHADOW DIAGRAMS SHEET 3
A-1303	SHADOW DIAGRAMS SHEET 4
A-2000	DEMOLITION PLAN
A-2100	BASEMENT AND GROUND FLOOR PLANS
A-2101	LEVEL 1 AND LEVEL 2 PLANS
A-2102	LEVEL 3 AND LEVEL 4 PLANS
A-2103	LEVEL 5 AND ROOF PLANS
A-3100	SOUTH ELEVATIONS
A-3101	WEST ELEVATION
A-3102	NORTH ELEVATION
A-3103	EAST ELEVATION
A-4100	SECTIONS A AND B
A-6600	LEVEL 1 AND LEVEL 4 LANDSCAPE PLANS
A-6601	LEVEL 5 LANDSCAPE PLAN
A-6700	IMAGES

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SCANLAN
ARCHITECTS

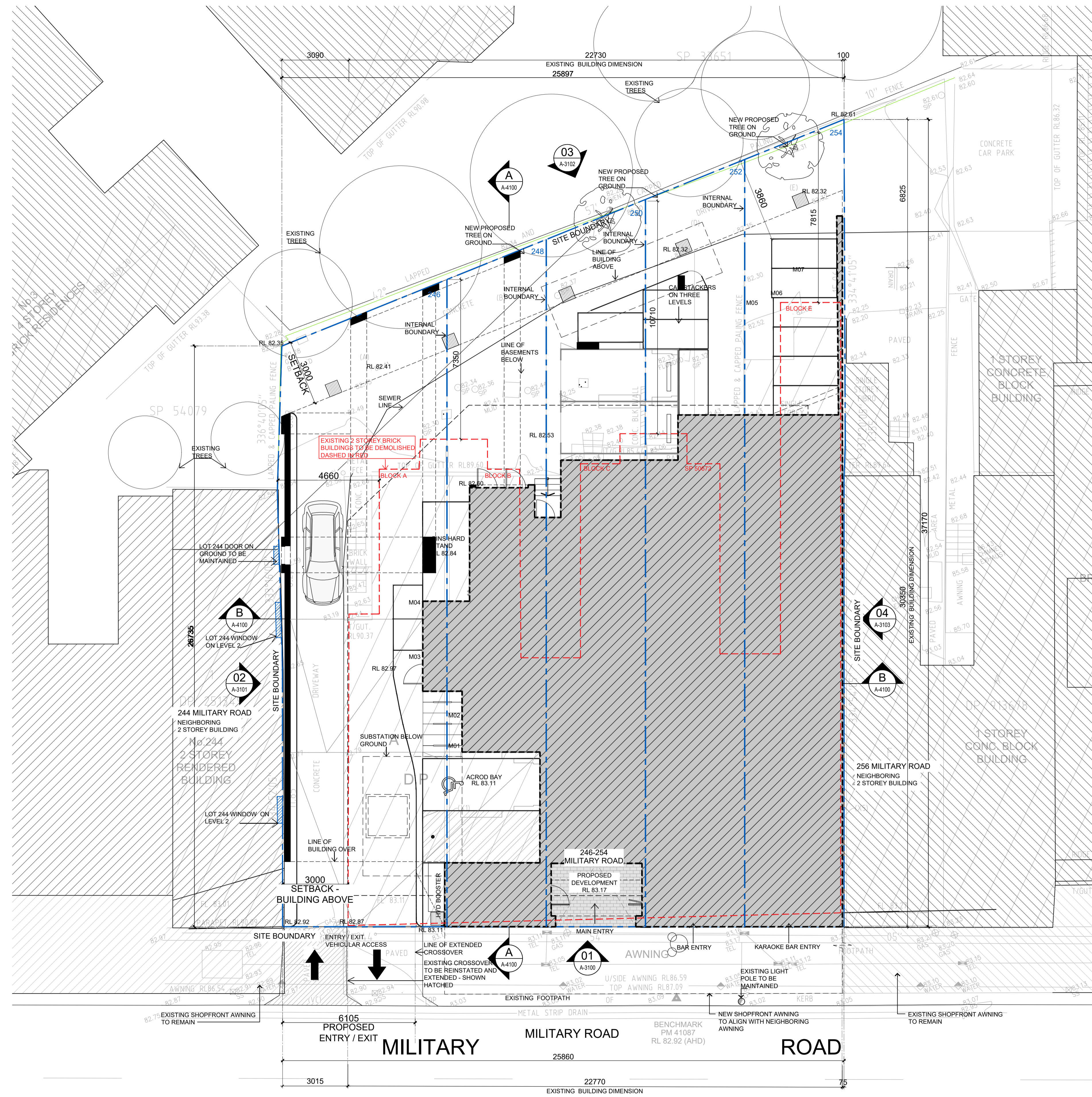
ISSUE	DATE	REVISION
DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION

CLIENT
**LAUNDRY PARTNERS
PTY. LTD.**

PROJECT
**PROPOSED SHORT STAY
ACCOMMODATION**
246 - 254 MILITARY ROAD, NEUTRAL BAY
NSW

TITLE
TITLE SHEET

PROJECT NORTH	JOB No	2005	DRAWING NO
	DATE	MARCH 2023	A-0000
	SCALE	1:100 @ A1 1:200 @ A3	ISSUED FOR DEVELOPMENT APPLICATION
	CREATED BY:	CB	
	REVIEWED BY:	RS	ISSUE DA01



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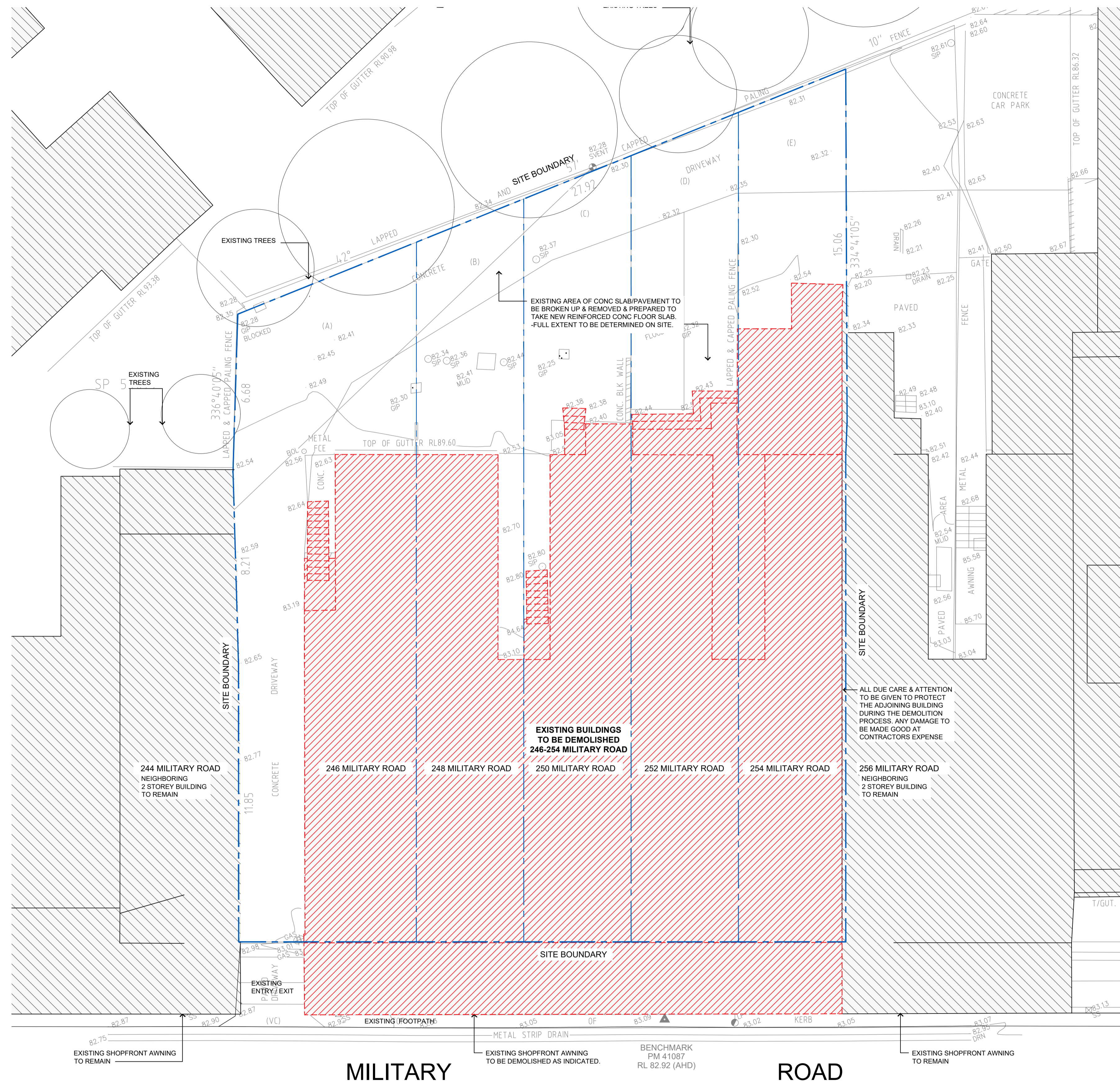
ISSUE	DATE	REVISION
DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION

CLIENT
LAUNDRY PARTNERS PTY. LTD.

PROJECT
PROPOSED SHORT STAY ACCOMMODATION
246 - 254 MILITARY ROAD, NEUTRAL BAY NSW

TITLE
SITE PLAN

PROJECT NORTH	JOB No 2005	DRAWING No
	DATE MARCH 2023	A-1100
SCALE 1:100 @ A1 1:200 @ A3	CREATED BY: MA	ISSUED FOR DEVELOPMENT APPLICATION
REVIEWED BY: RS	ISSUE	DA01



LEGEND

- SITE BOUNDARY
- BUILDING TO BE DEMOLISHED
- EXISTING NEIGHBOURING BUILDING
- EXISTING TREES

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DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION

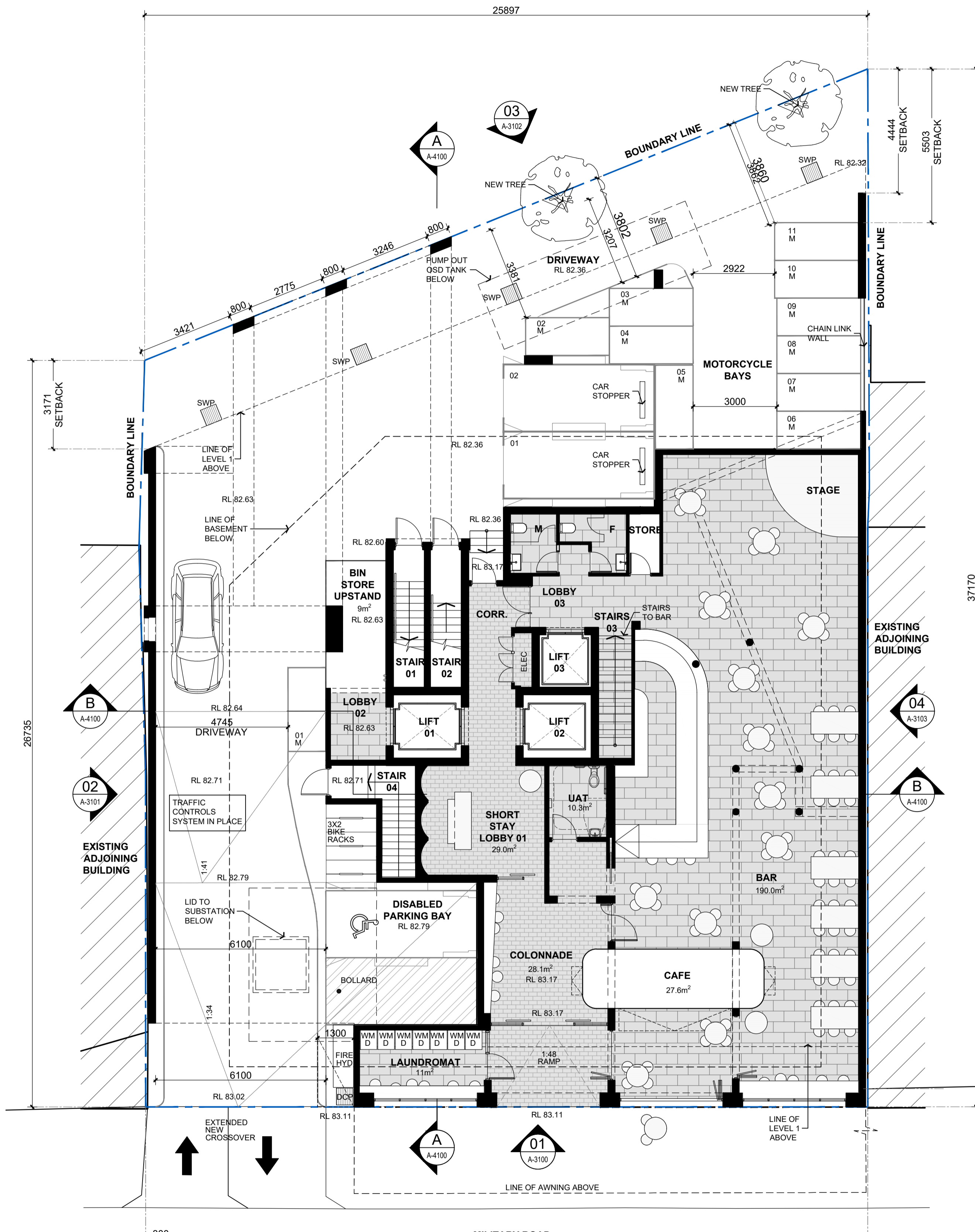
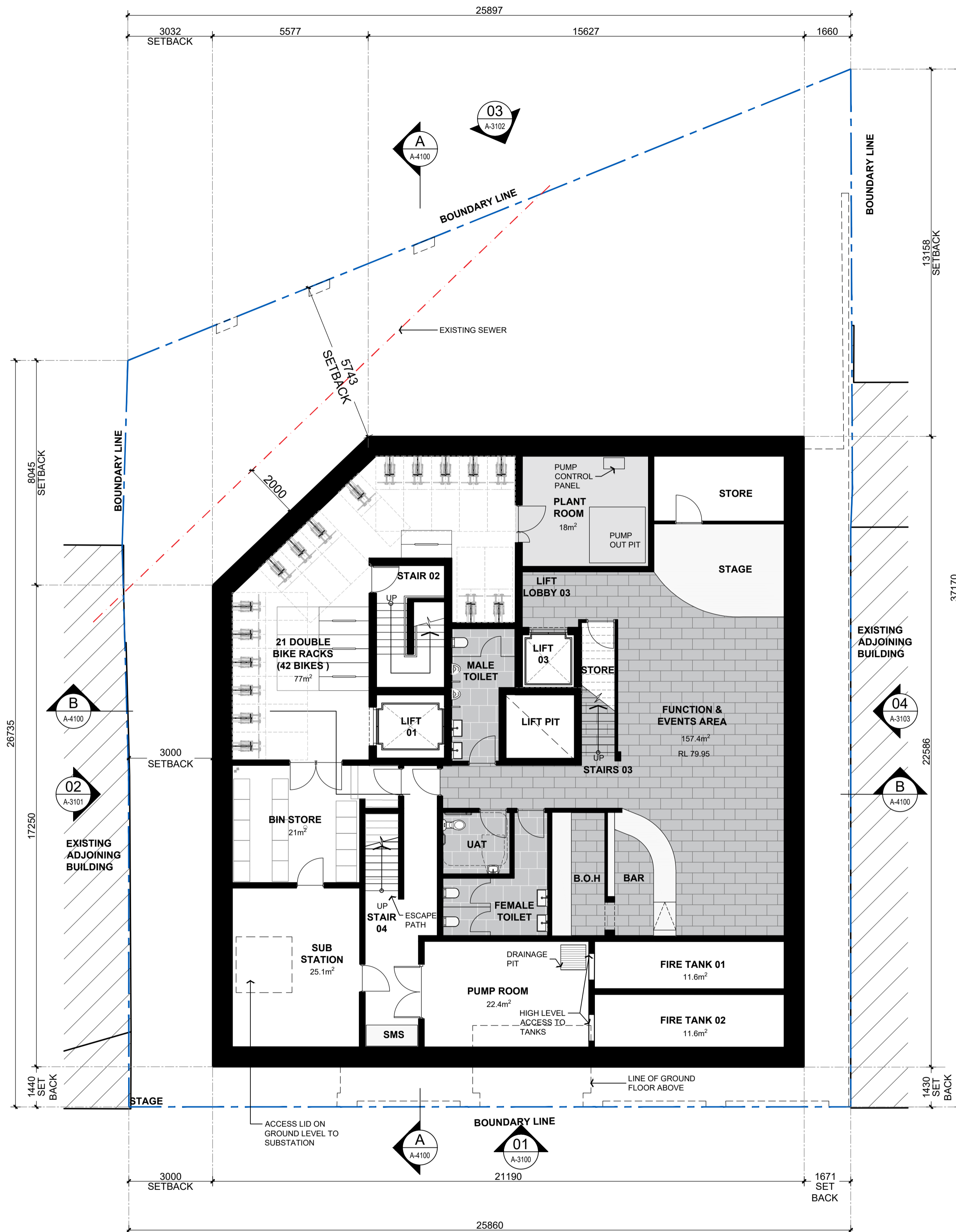
CLIENT
LAUNDRY PARTNERS PTY. LTD.

PROJECT
PROPOSED SHORT STAY ACCOMMODATION
246 - 254 MILITARY ROAD, NEUTRAL BAY NSW

TITLE
DEMOLITION PLAN

PROJECT NORTH

JOB No	2005	DRAWING NO	A-2000
DATE	MARCH 2023	ISSUED FOR DEVELOPMENT APPLICATION	
SCALE	1:100 @ A1 1:200 @ A3		
CREATED BY:	MA		
REVIEWED BY:	RS	ISSUE	DA01



LEGEND

- SITE BOUNDARY
- EXISTING NEIGHBOURING BUILDING

FLOOR FINISHES

- TIMBER LOOK VINYL TILE
- PORCELAIN TILE (INTERNAL)
- PORCELAIN TILE (EXTERNAL)
- CARPET TILE
- CONCRETE

NOTE: FINISH ARE REPRESENTATION OF THE COLOUR PALLET ONLY. PLEASE NOTE THIS IS AN ARTISTIC IMPRESSION AND VARIATIONS MAY OCCUR ACCORDING TO MATERIAL SELECTIONS.

ABBREVIATIONS

- BAL BALUSTRADE
- BSMT BASEMENT
- BOH BACK OF HOUSE
- D DRYER
- ELEC ELECTRICAL
- GF GROUND FLOOR
- GRD GROUND
- HYB HYDRAULIC BOOSTER
- K KITCHEN
- MK MICRO KITCHEN
- T.O.W TOP OF WALL
- WM WASHING MACHINE
- MURPHY SOFA/FOLD-DOWN BED
- BED

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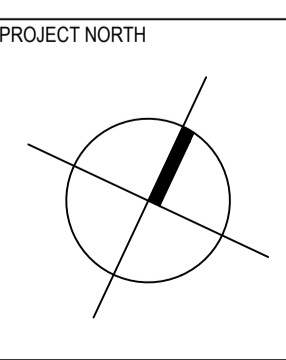


ISSUE	DATE	REVISION
DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION

CLIENT
LAUNDRY PARTNERS PTY. LTD.

PROJECT
PROPOSED SHORT STAY ACCOMMODATION
246 - 254 MILITARY ROAD, NEUTRAL BAY NSW

TITLE
BASEMENT and GROUND FLOOR PLANS



JOB No	2005	DRAWING No	A-2100
DATE	MARCH 2023	ISSUED FOR DEVELOPMENT APPLICATION	
SCALE	1:100 @ A1 1:200 @ A3		
CREATED BY:	AA / CL		
REVIEWED BY:	RS	ISSUE	DA01



01 LEVEL 01
GA PLAN 1:100



02 LEVEL 02
GA PLAN 1:100

LEGEND

- SITE BOUNDARY
- EXISTING NEIGHBOURING BUILDING

FLOOR FINISHES

- TIMBER LOOK VINYL TILE
- PORCELAIN TILE (INTERNAL)
- PORCELAIN TILE (INTERNAL)
- PORCELAIN TILE (EXTERNAL)
- CARPET TILE
- CONCRETE

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ABBREVIATIONS

- BAL BALUSTRADE
- BSMT BASEMENT
- BOH BACK OF HOUSE
- D DRYER
- ELEC ELECTRICAL
- GF GROUND FLOOR
- GRD GROUND
- HYB HYDRAULIC BOOSTER
- K KITCHEN
- MK MICRO KITCHEN
- T.O.W. TOP OF WALL
- WM WASHING MACHINE
- MURPHY SOFA/FOLD-DOWN BED

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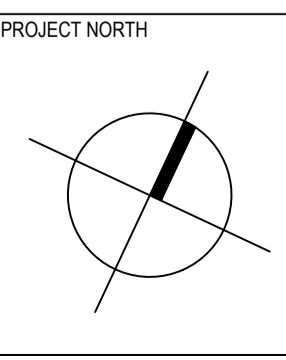


ISSUE	DATE	REVISION
DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION

CLIENT
LAUNDRY PARTNERS PTY. LTD.

PROJECT
PROPOSED SHORT STAY ACCOMMODATION
246 - 254 MILITARY ROAD, NEUTRAL BAY NSW

TITLE
LEVEL 1 and LEVEL 2 PLANS



JOB No	DATE	SCALE	CREATED BY	REVIEWED BY	JOB No	DATE	SCALE	CREATED BY	REVIEWED BY
2005	MARCH 2023	1:100 @ A1 1:200 @ A3	AA/CL	RS	2005	MARCH 2023	1:100 @ A1 1:200 @ A3	AA/CL	RS

DRAWING No
A-2101
ISSUED FOR DEVELOPMENT APPLICATION



01 LEVEL 03
GA PLAN 1:100



02 LEVEL 04
GA PLAN 1:100

LEGEND

- SITE BOUNDARY
- EXISTING NEIGHBOURING BUILDING

FLOOR FINISHES

- TIMBER LOOK VINYL TILE
- PORCELAIN TILE (INTERNAL)
- PORCELAIN TILE (EXTERNAL)
- CARPET TILE
- CONCRETE

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ABBREVIATIONS

- BAL BALUSTRADE
- BSMT BASEMENT
- BOH BACK OF HOUSE
- D DRYER
- ELEC ELECTRICAL
- GF GROUND FLOOR
- GRD GROUND
- HYB HYDRAULIC BOOSTER
- K KITCHEN
- MK MICRO KITCHEN
- T.O.W. TOP OF WALL
- WM WASHING MACHINE
- MURPHY SOFA/FOLD-DOWN BED

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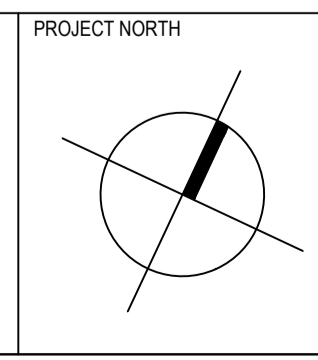


ISSUE	DATE	REVISION
DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION

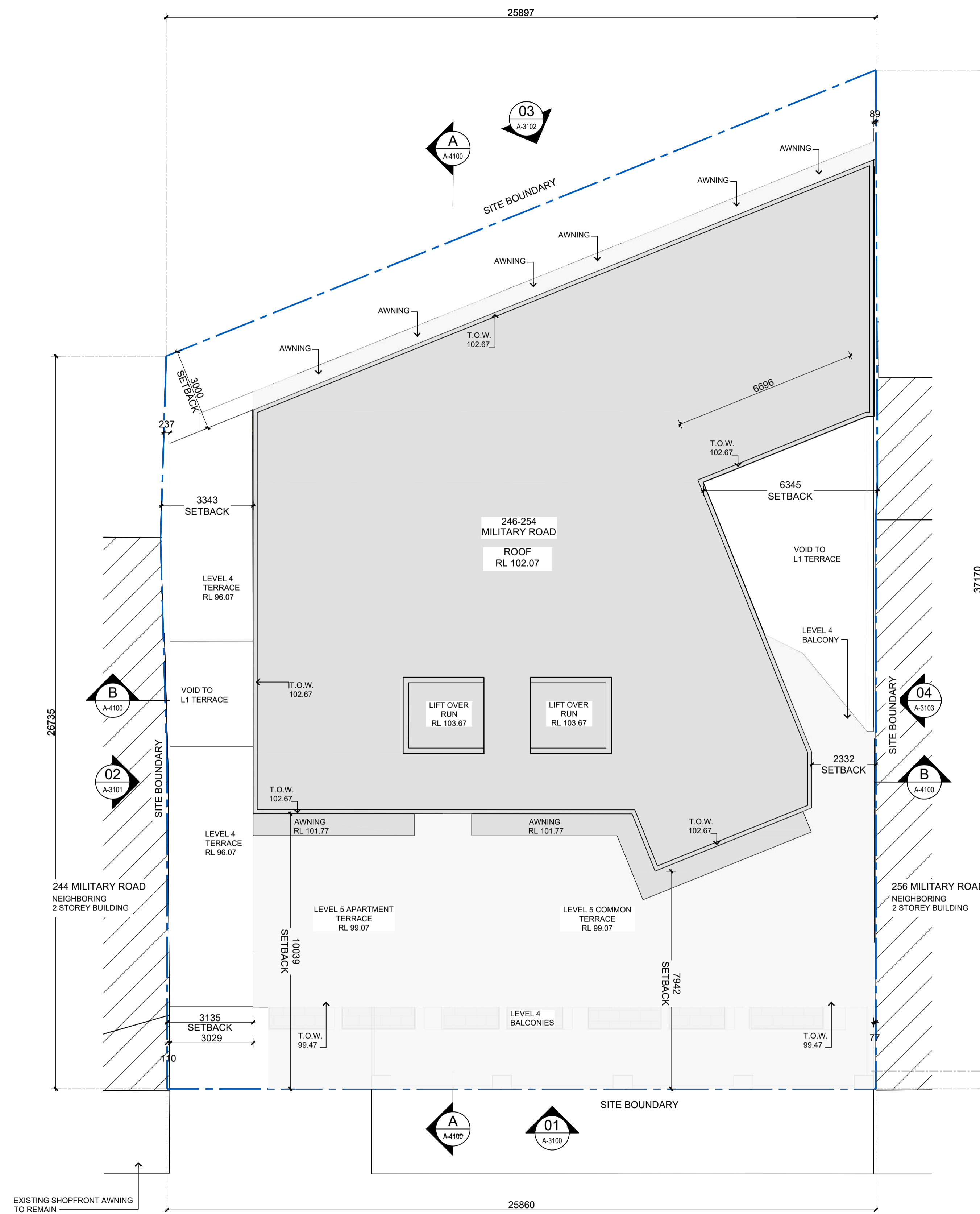
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LAUNDRY PARTNERS PTY. LTD.

PROJECT
PROPOSED SHORT STAY ACCOMMODATION
246 - 254 MILITARY ROAD, NEUTRAL BAY NSW

TITLE
LEVEL 3 and LEVEL 4 PLANS



JOB No	DATE	SCALE	CREATED BY	REVIEWED BY	DRAWING No	ISSUE
2005	MARCH 2023	1:100 @ A1 1:200 @ A3	AA/CL	RS	A-2102	ISSUED FOR DEVELOPMENT APPLICATION
						DA01



LEGEND

- SITE BOUNDARY
- EXISTING NEIGHBOURING BUILDING

FLOOR FINISHES

- TIMBER LOOK VINYL TILE
- PORCELAIN TILE (INTERNAL)
- PORCELAIN TILE (EXTERNAL)
- CARPET TILE
- CONCRETE

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ABBREVIATIONS

- BAL BALUSTRADE
- BSMT BASEMENT
- BOH BACK OF HOUSE
- D DRIVER
- ELEC ELECTRICAL
- GF GROUND FLOOR
- GRD GROUND
- HYS HYDRAULIC BOOSTER
- K KITCHEN
- MK MICRO KITCHEN
- T.O.W. TOP OF WALL
- WM WASHING MACHINE
- MURPHY SOFA/FOLD-DOWN BED

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ISSUE	DATE	REVISION
DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION

CLIENT
LAUNDRY PARTNERS PTY. LTD.

PROJECT
PROPOSED SHORT STAY ACCOMMODATION
246 - 254 MILITARY ROAD, NEUTRAL BAY NSW

TITLE
LEVEL 5 and ROOF PLANS

PROJECT NORTH	JOB No 2005	DRAWING No
	DATE MARCH 2023	A-2103
	SCALE 1:100 @ A1 1:200 @ A3	ISSUED FOR DEVELOPMENT APPLICATION
	CREATED BY: AA / CL	APPLICATION
	REVIEWED BY: RS	ISSUE DA01

EXTERNAL WALL FINISHES

B1	BRICK	M1	METAL FRAME
B2	BRICK	M2	METAL MESH - WHITE
C1	CONCRETE	M3	METAL FRAME - WHITE
G1	GLASS	M4	METAL FRAME - CHARCOAL
G2	GLASS	M5	METAL - CHARCOAL
G3	GLASS	M6	METAL MESH - CHARCOAL
P1	PAINTED WALL - CHARCOAL		

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01 SOUTH ELEVATION 1:100



02 SOUTH - BEHIND FACADE ELEVATION 1:100

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ISSUE	DATE	REVISION
DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION
DA02	26/05/2023	ISSUED FOR DEVELOPMENT APPLICATION

CLIENT
LAUNDRY PARTNERS PTY. LTD.

PROJECT
PROPOSED SHORT STAY ACCOMMODATION
246 - 254 MILITARY ROAD, NEUTRAL BAY NSW

TITLE
SOUTH ELEVATIONS

PROJECT NORTH	JOB No 2005	DRAWING NO
	DATE MARCH 2023	A-3100
	SCALE 1:100 @ A1 1:200 @ A3	ISSUED FOR DEVELOPMENT APPLICATION
	CREATED BY MA / CL	
	REVIEWED BY RS	ISSUE DA02

EXTERNAL WALL FINISHES

B1	BRICK	M1	METAL FRAME
B2	BRICK	M2	METAL MESH - WHITE
C1	CONCRETE	M3	METAL FRAME - WHITE
G1	GLASS	M4	METAL FRAME - CHARCOAL
G2	GLASS	M5	METAL - CHARCOAL
G3	GLASS	M6	METAL MESH - CHARCOAL
P1	PAINTED WALL - CHARCOAL		

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02 WEST ELEVATION 1:100

GENERAL NOTES:

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











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	ISSUE	DATE	REVISION	CLIENT LAUNDRY PARTNERS PTY. LTD.	PROJECT PROPOSED SHORT STAY ACCOMMODATION 246 - 254 MILITARY ROAD, NEUTRAL BAY NSW	TITLE WEST ELEVATION	PROJECT NORTH	JOB No	2005	DRAWING NO	A-3101	
	DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION					DATE	MARCH 2023	SCALE	1:100 @ A1 1:200 @ A3	ISSUED FOR DEVELOPMENT APPLICATION
	DA02	26/05/2023	ISSUED FOR DEVELOPMENT APPLICATION					CREATED BY:	MA / CL	REVIEWED BY:	RS	

EXTERNAL WALL FINISHES

	B1 BRICK		M1 METAL FRAME
	B2 BRICK		M2 METAL MESH - WHITE
	C1 CONCRETE		M3 METAL FRAME - WHITE
	G1 GLASS		M4 METAL FRAME - CHARCOAL
	G2 GLASS		M5 METAL - CHARCOAL
	G3 GLASS		M6 METAL MESH - CHARCOAL
	P1 PAINTED WALL - CHARCOAL		

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03 NORTH
ELEVATION 1:100


GENERAL NOTES:

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











DIMENSIONS ARE IN MILLIMETRES AND LEVELS ARE IN METRES

ARCHITECTURAL DRAWINGS TO BE READ IN CONJUNCTION WITH RELEVANT ENGINEERS, ENERGY EFFICIENCY REPORT, SHOP AND BUILDERS WORK DRAWINGS.

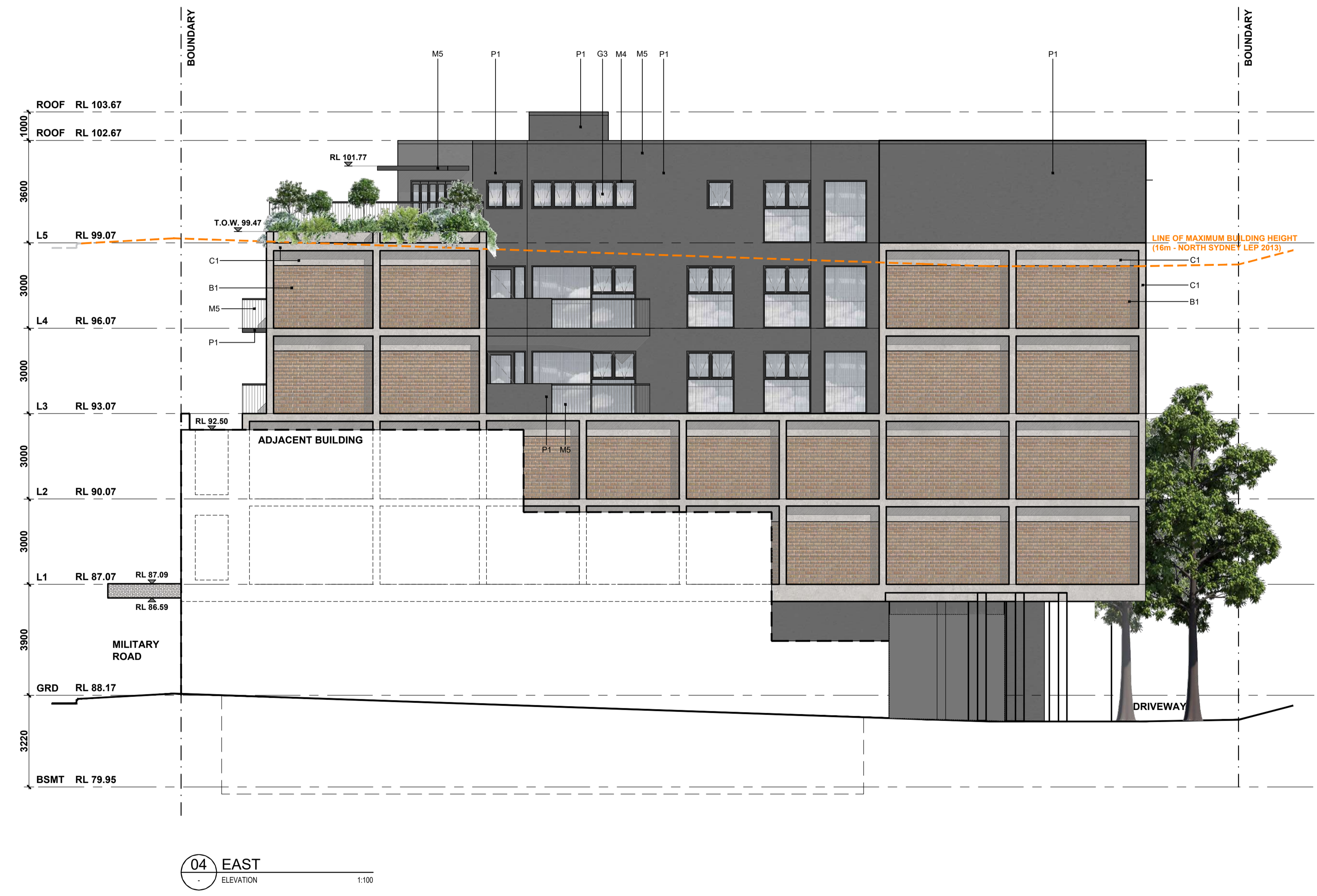
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	ISSUE	DATE	REVISION	CLIENT LAUNDRY PARTNERS PTY. LTD.	PROJECT PROPOSED SHORT STAY ACCOMMODATION 246 - 254 MILITARY ROAD, NEUTRAL BAY NSW	TITLE NORTH ELEVATION	PROJECT NORTH	JOB No	2005	DRAWING NO	A-3102
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				CREATED BY:	MA / CL	REVIEWED BY:	RS	ISSUE	DA02		

EXTERNAL WALL FINISHES

 B1 BRICK	 M1 METAL FRAME
 B2 BRICK	 M2 METAL MESH - WHITE
 C1 CONCRETE	 M3 METAL FRAME - WHITE
 G1 GLASS	 M4 METAL FRAME - CHARCOAL
 G2 GLASS	 M5 METAL - CHARCOAL
 G3 GLASS	 M6 METAL MESH - CHARCOAL
 P1 PAINTED WALL - CHARCOAL	

NOTE: FINISH ARE REPRESENTATION OF THE COLOUR PALLET ONLY. PLEASE NOTE THIS IS AN ARTISTIC IMPRESSION AND VARIATIONS MAY OCCUR ACCORDING TO MATERIAL SELECTIONS.




GENERAL NOTES:

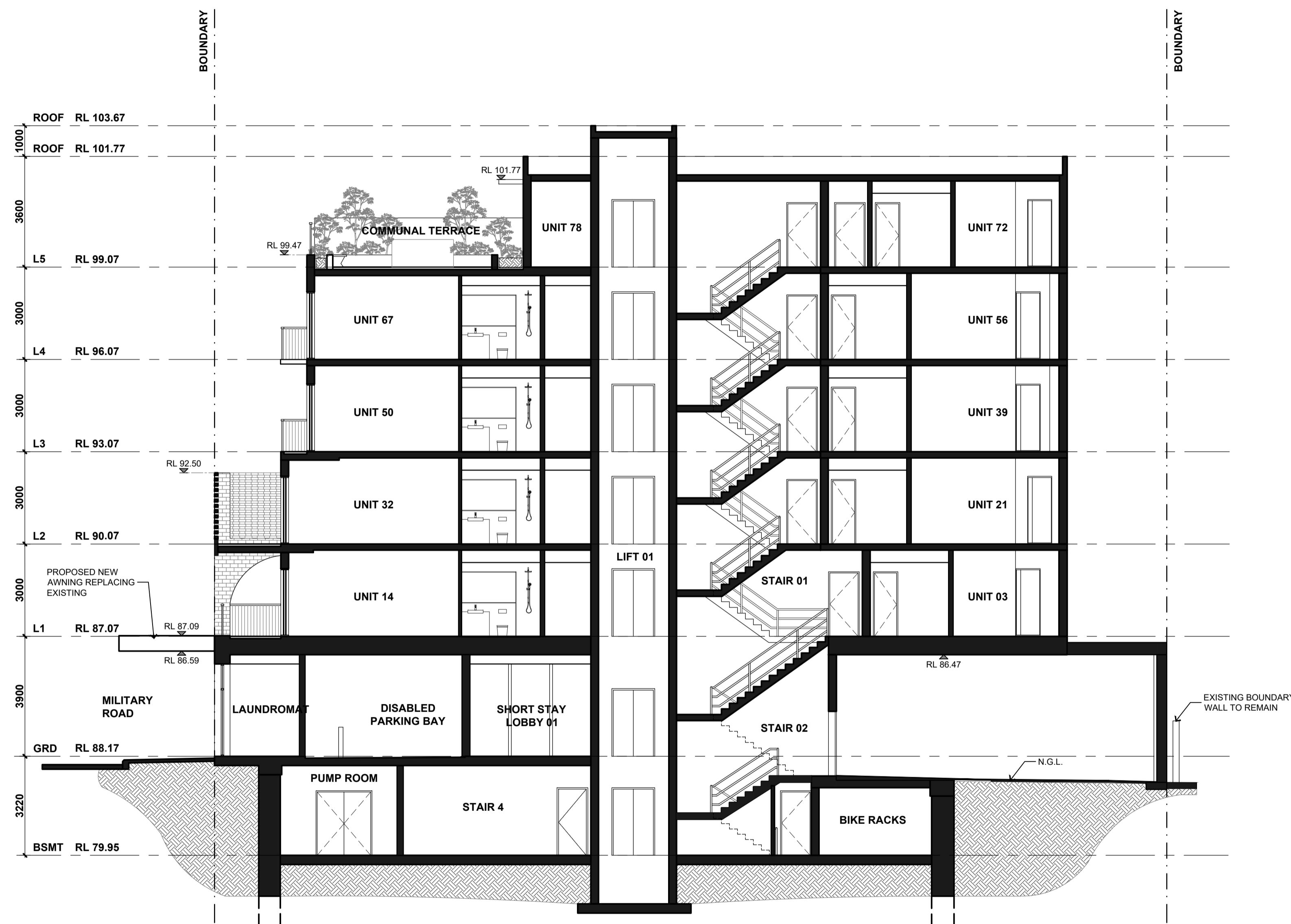
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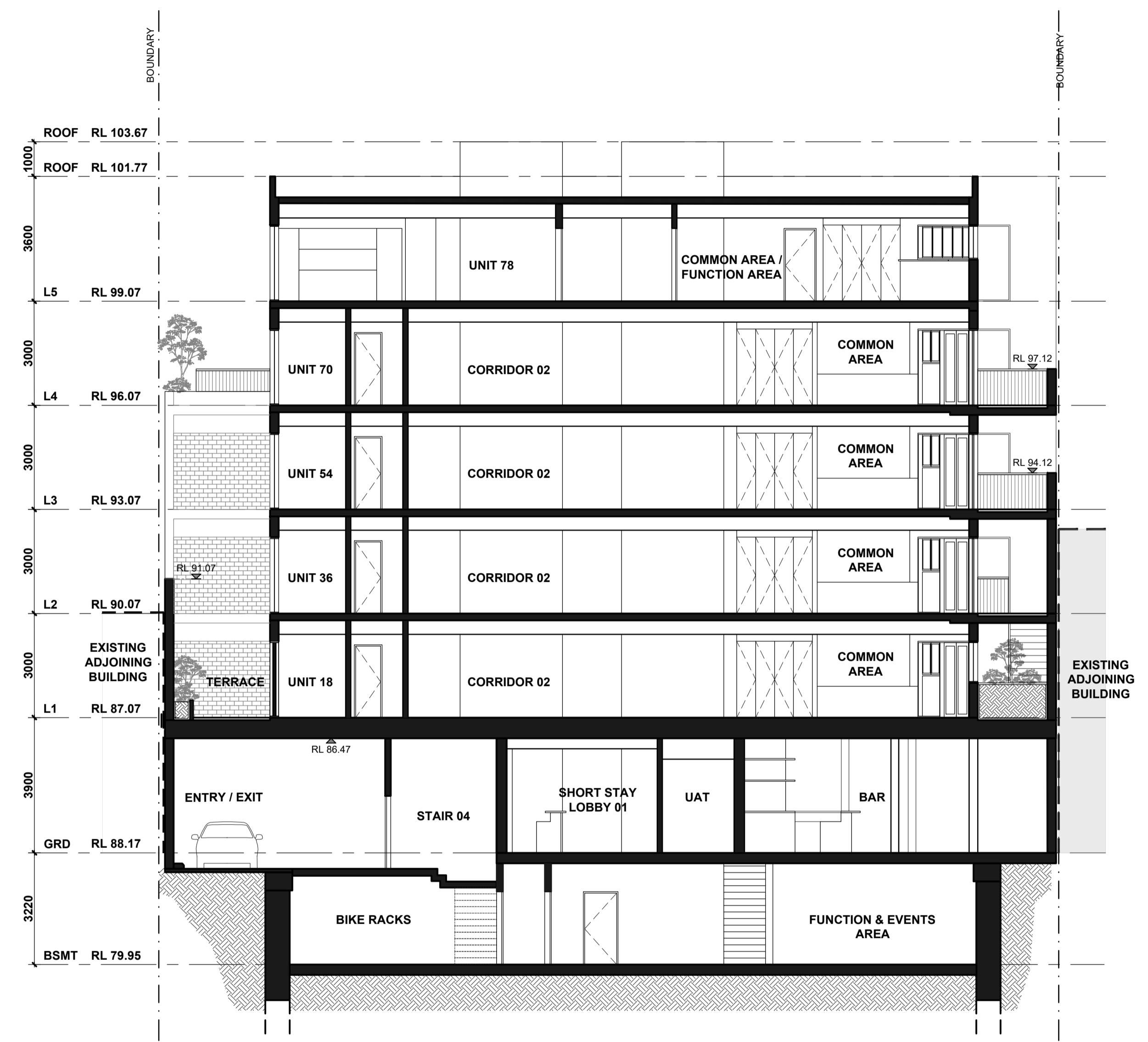
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							DATE	MARCH 2023						
							SCALE	1:100 @ A1 1:200 @ A3	ISSUED FOR DEVELOPMENT APPLICATION					
							CREATED BY:	MA / CL						
							REVIEWED BY:	RS	ISSUE					
									DA02					



01 SECTION A
SECTION 1:100



02 SECTION B
SECTION 1:100

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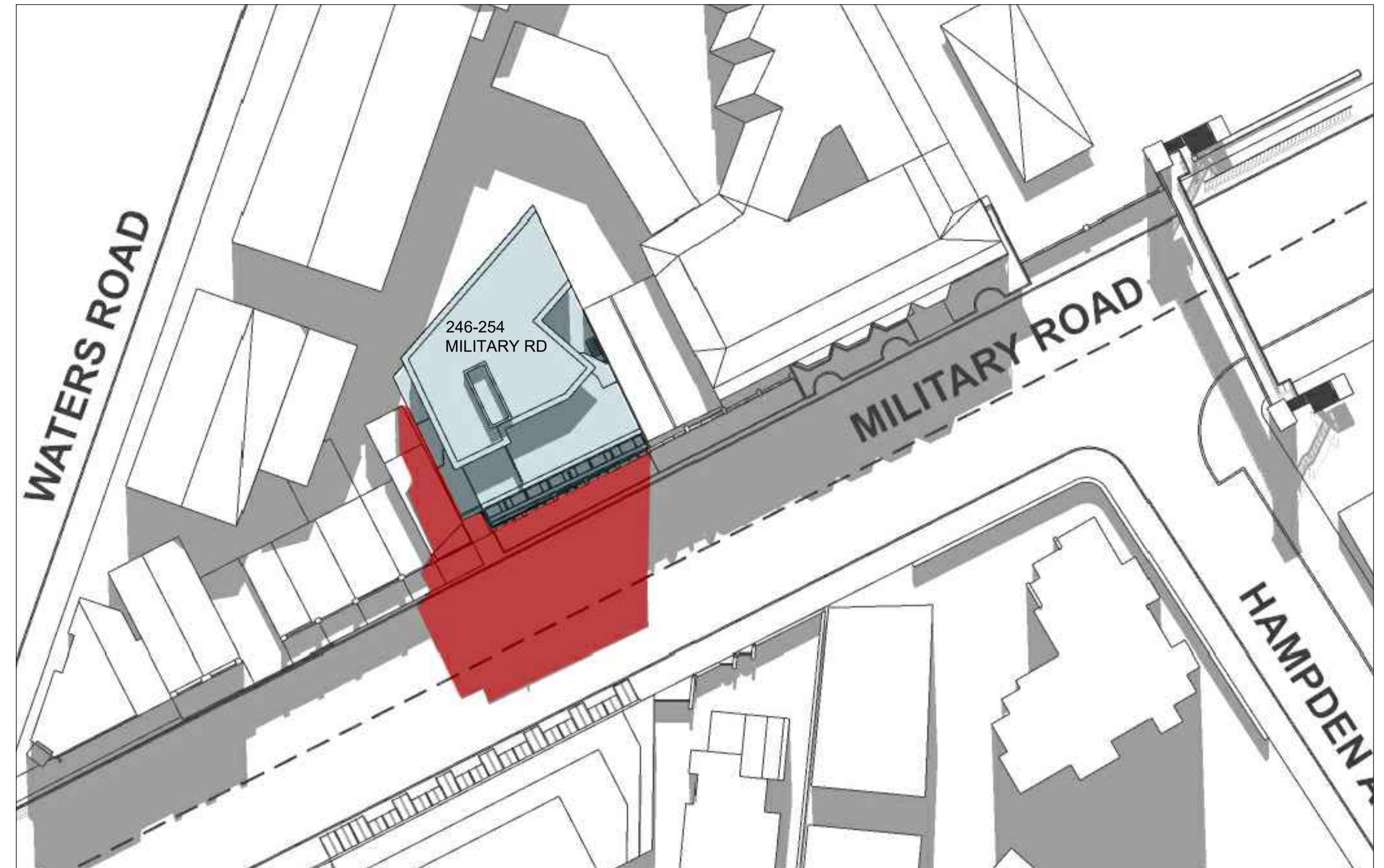
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**PROPOSED SHORT STAY
ACCOMMODATION**
246 - 254 MILITARY ROAD, NEUTRAL BAY
NSW

TITLE
SECTIONS A and B

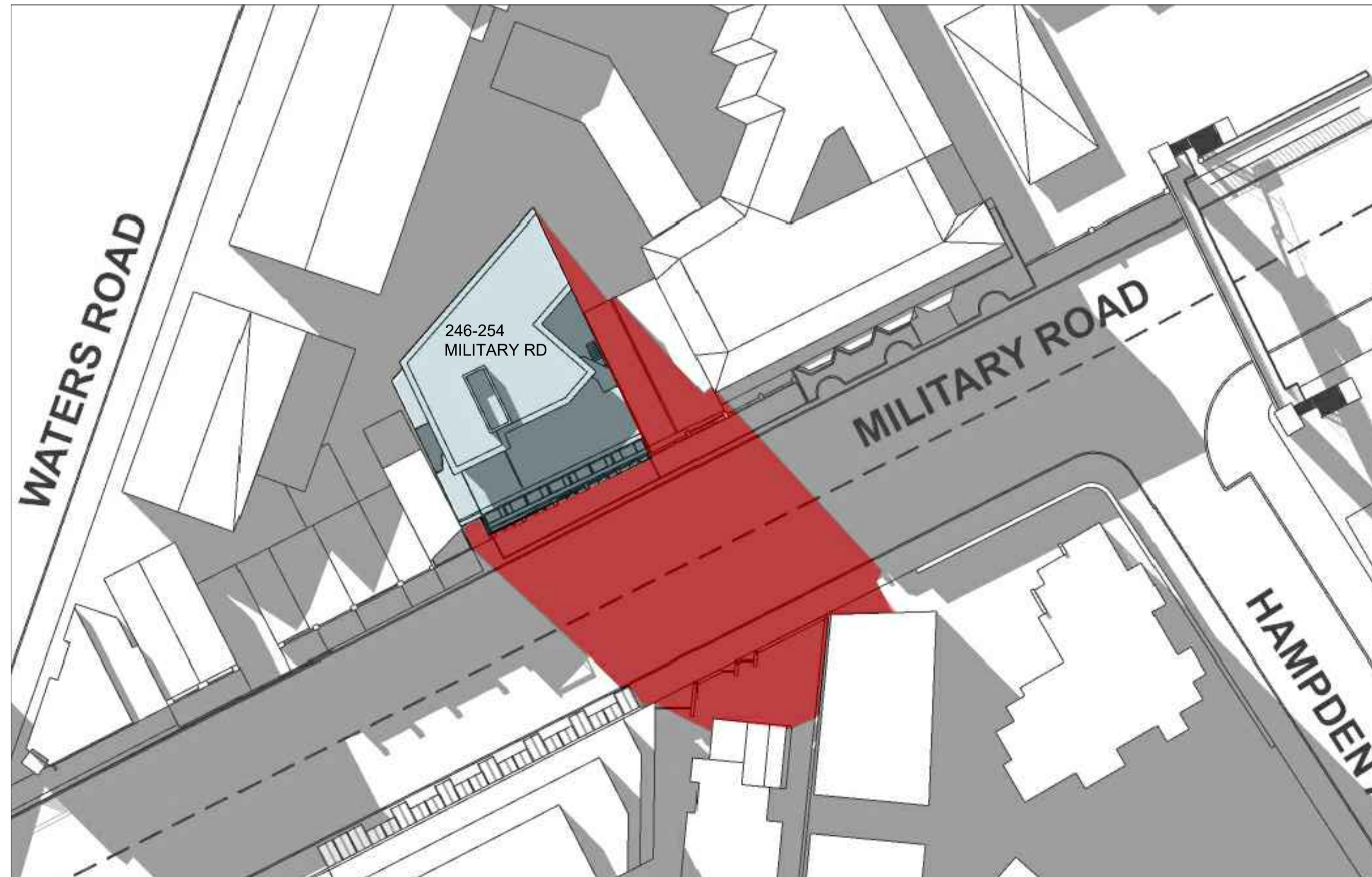
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ISSUED FOR DEVELOPMENT APPLICATION					DA01



PROPOSED SHADOW PLAN
WINTER SOLSTICE - JUNE 21 9:00am



PROPOSED SHADOW PLAN
WINTER SOLSTICE - JUNE 21 12:00pm



PROPOSED SHADOW PLAN
WINTER SOLSTICE - JUNE 21 3:00pm

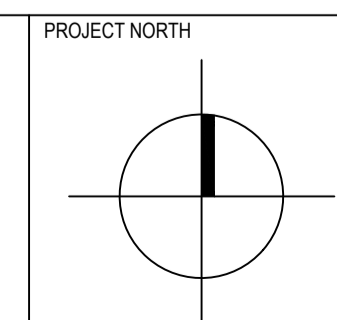
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- PROPOSED DEVELOPMENT CAST SHADOW

ISSUE	DATE	REVISION
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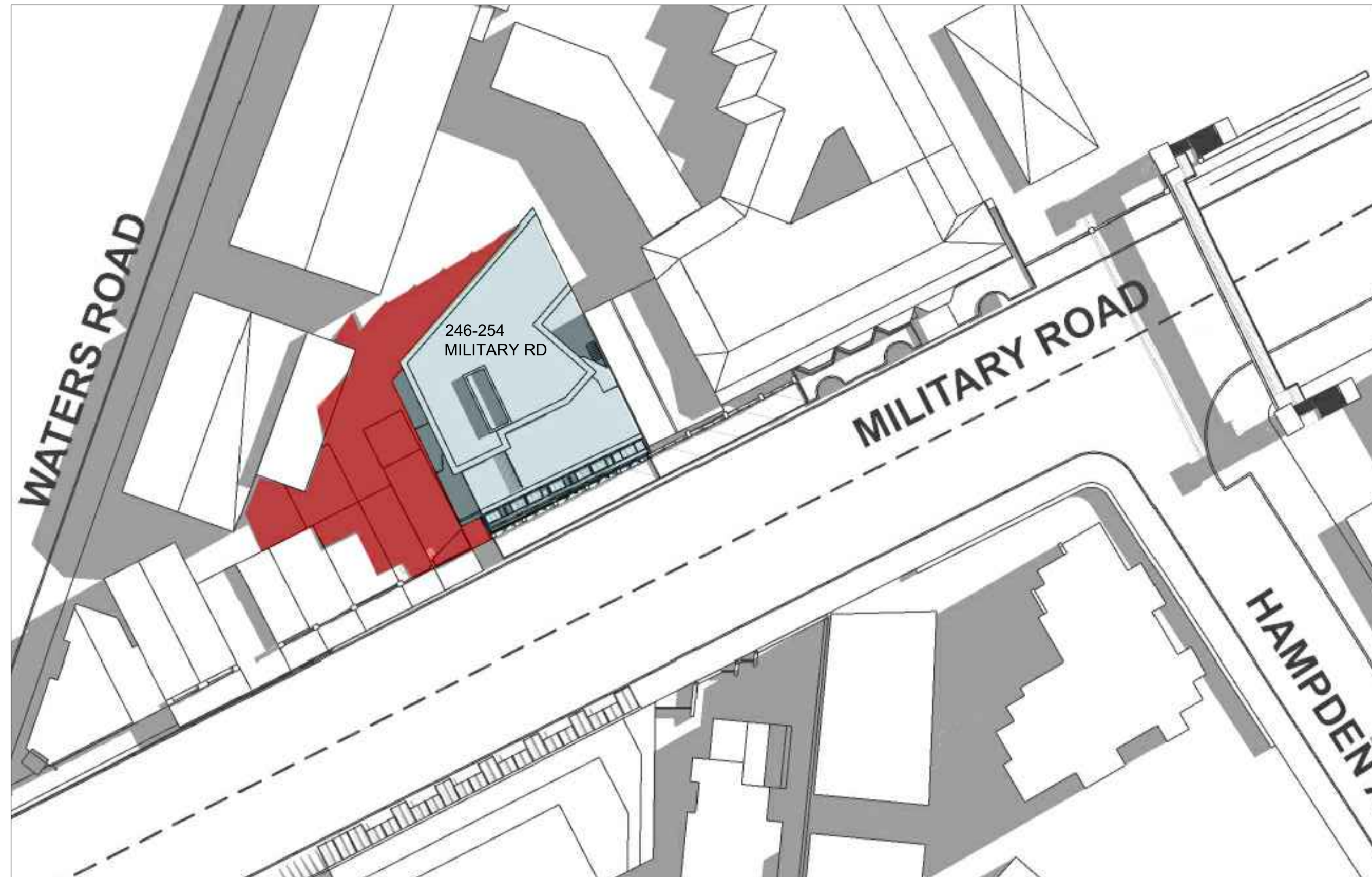
CLIENT
**LAUNDRY PARTNERS
PTY. LTD.**

PROJECT
**PROPOSED SHORT STAY
ACCOMMODATION**
246 - 254 MILITARY ROAD, NEUTRAL BAY
NSW

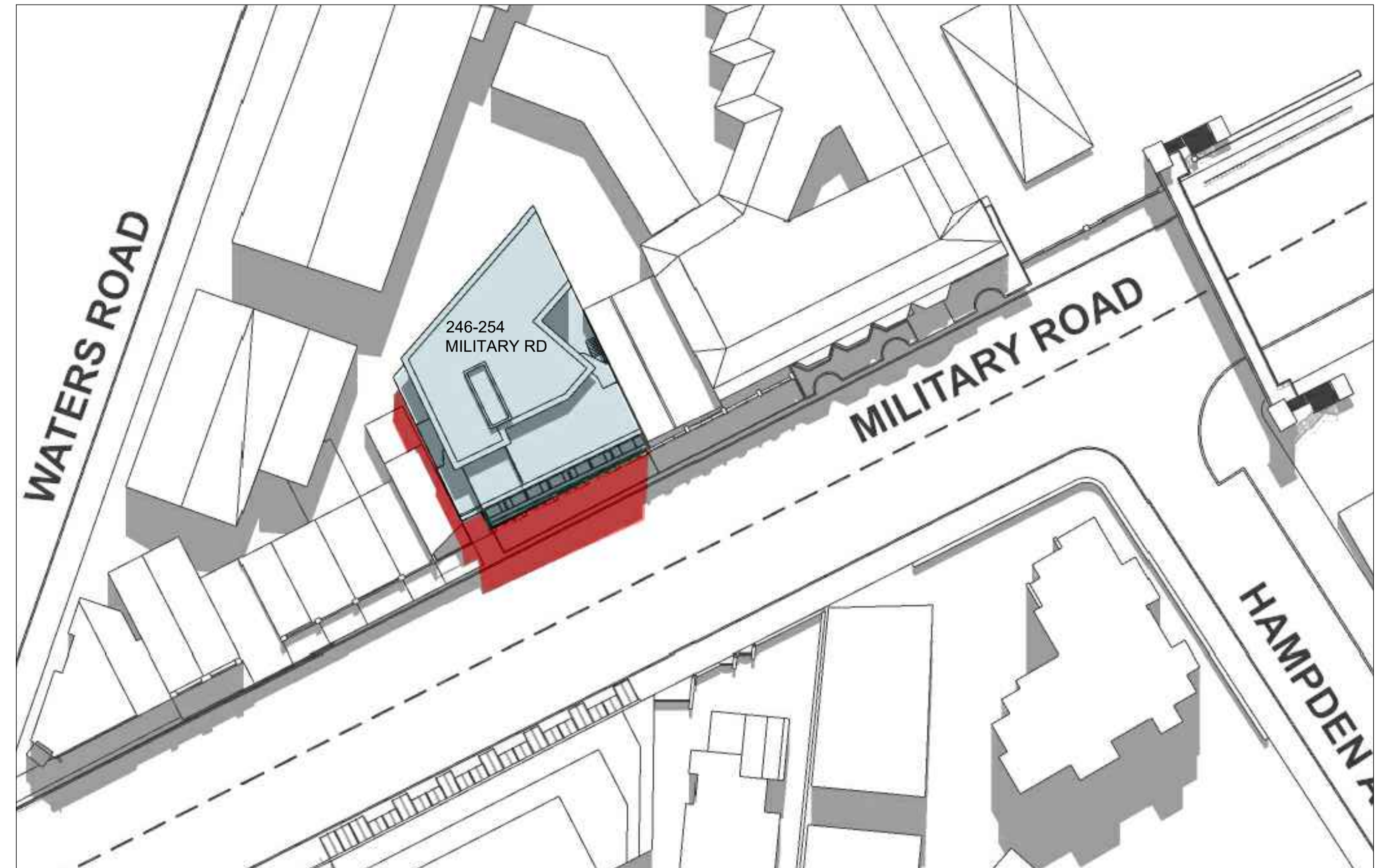
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SHEET 1**



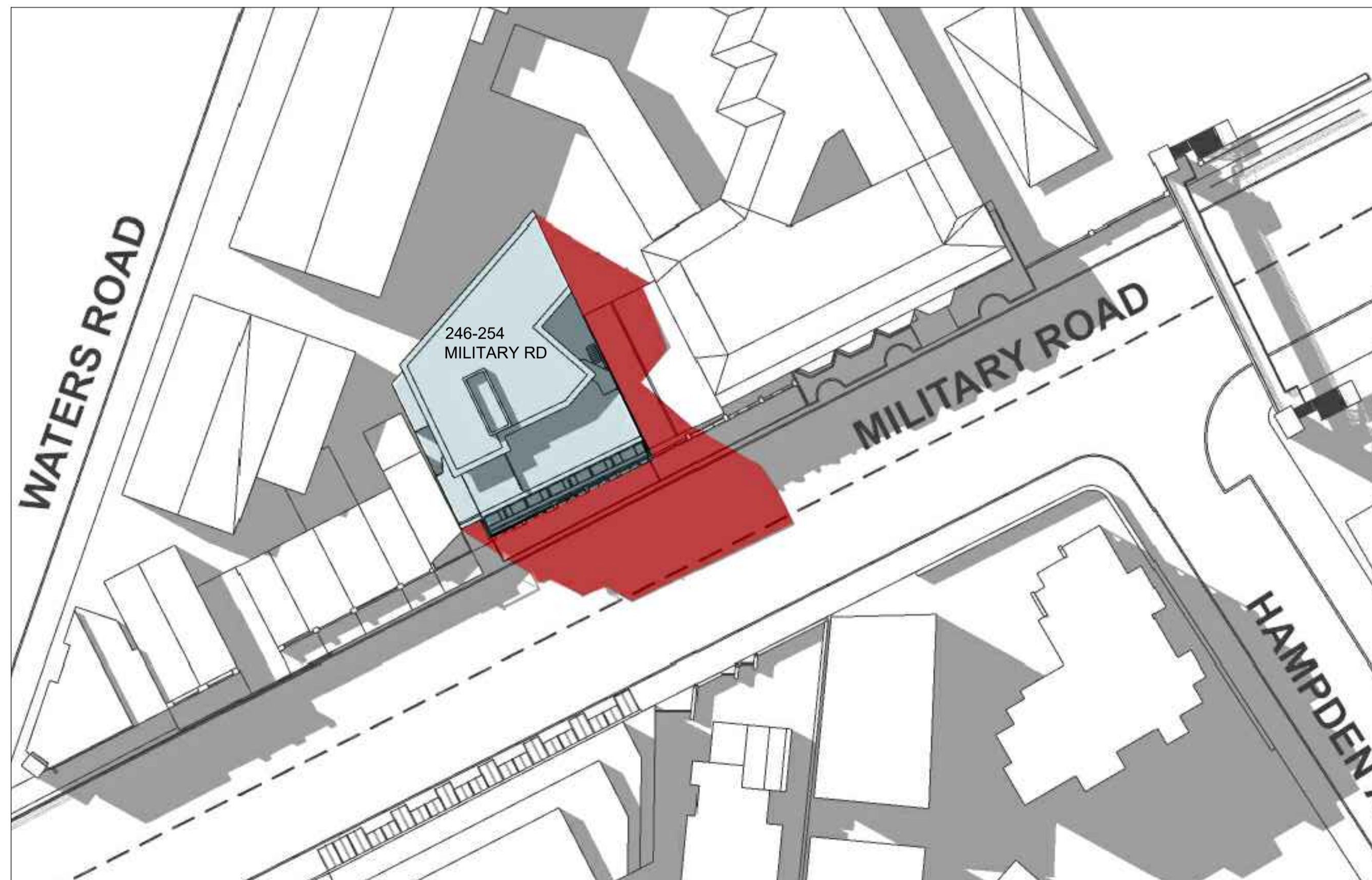
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DATE	MARCH 2023	ISSUED FOR	DEVELOPMENT APPLICATION
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CREATED BY:	MA		
REVIEWED BY:	RS		



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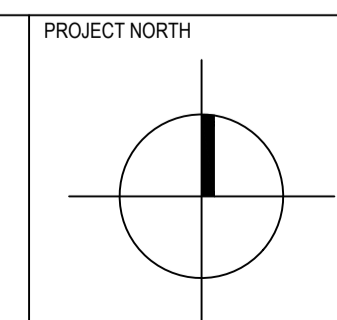
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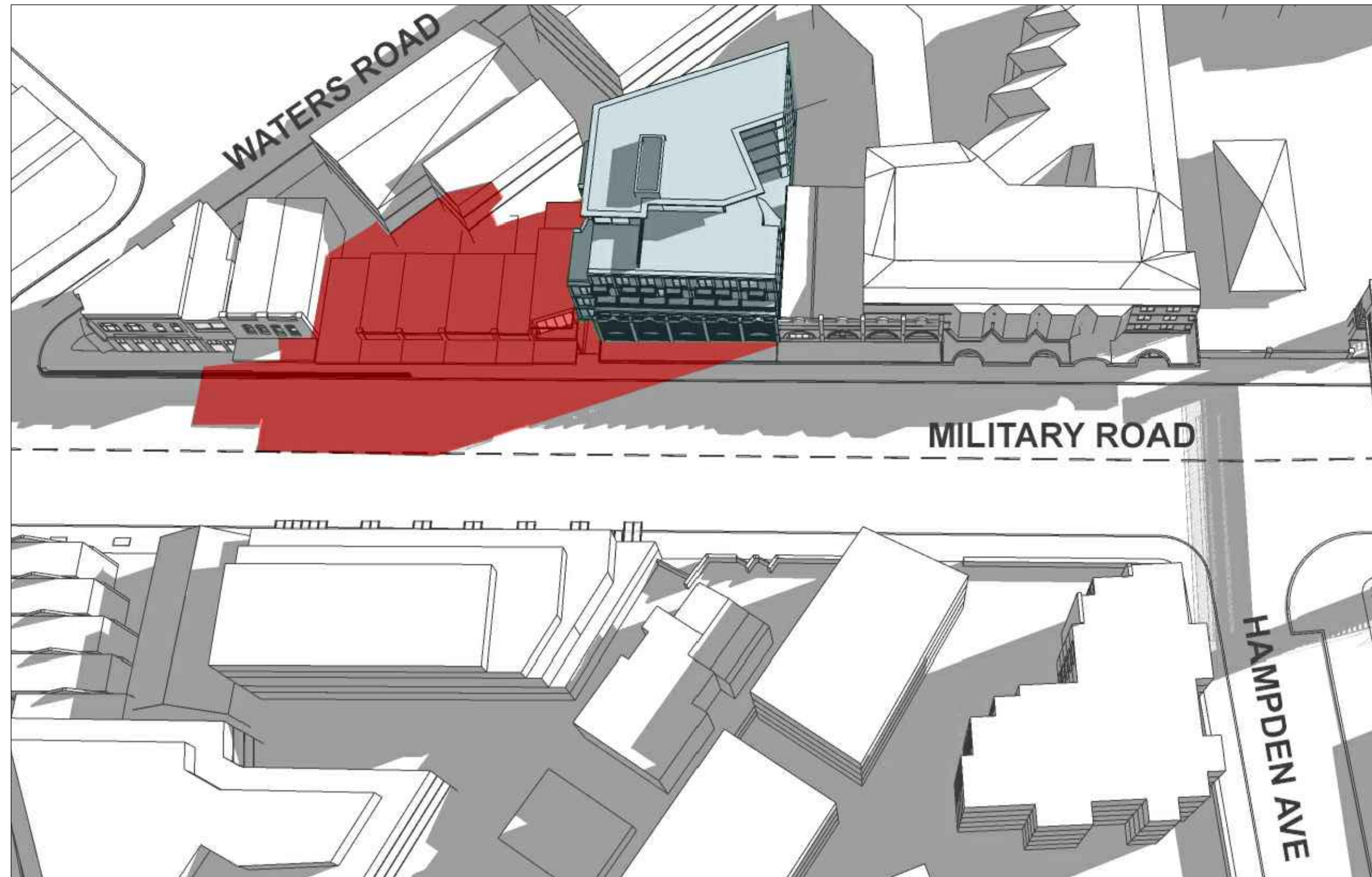
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EQUINOX - MARCH / SEPT 21 3:00pm

- PROPOSED DEVELOPMENT
- PROPOSED DEVELOPMENT CAST SHADOW

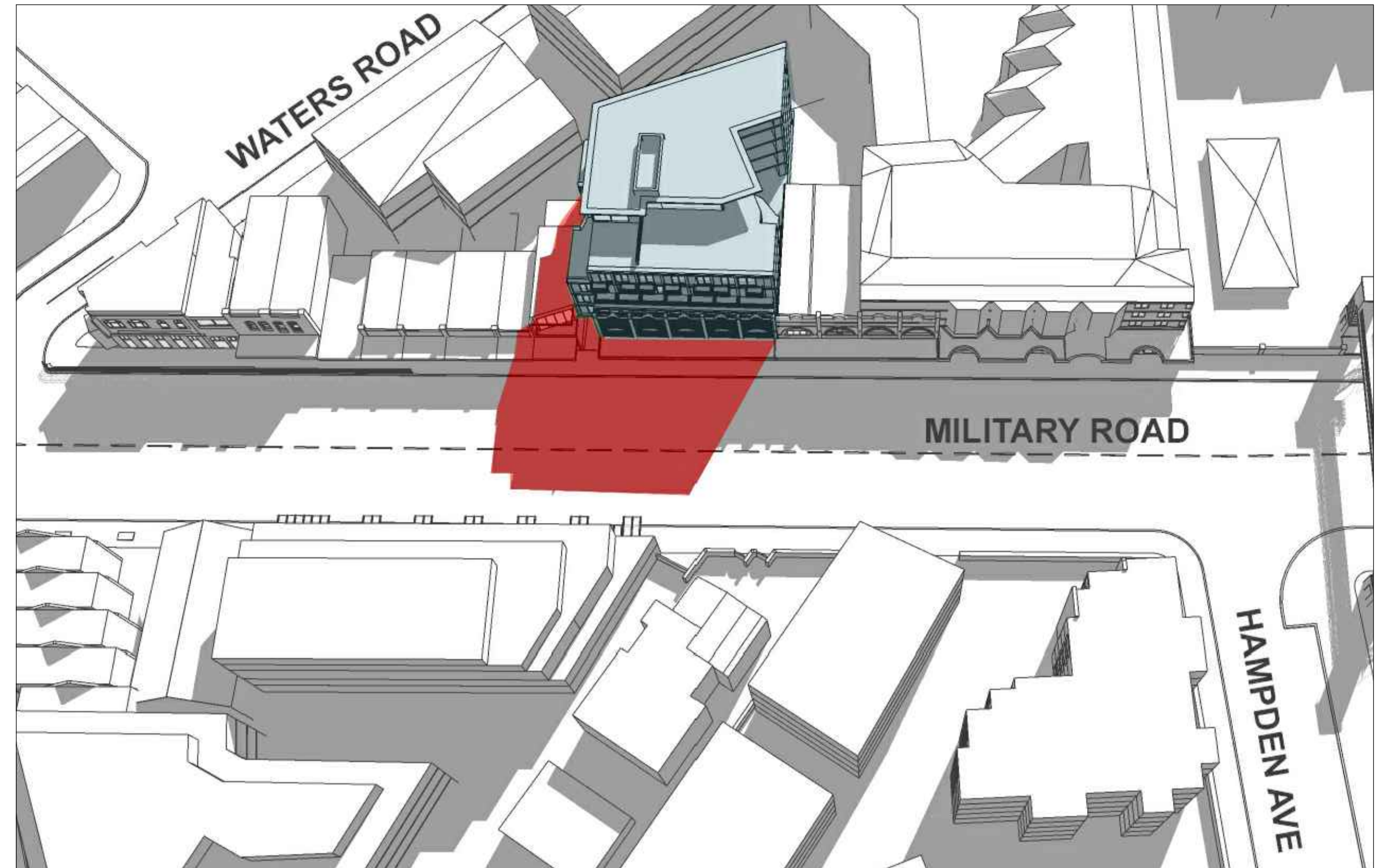
ISSUE	DATE	REVISION
DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION



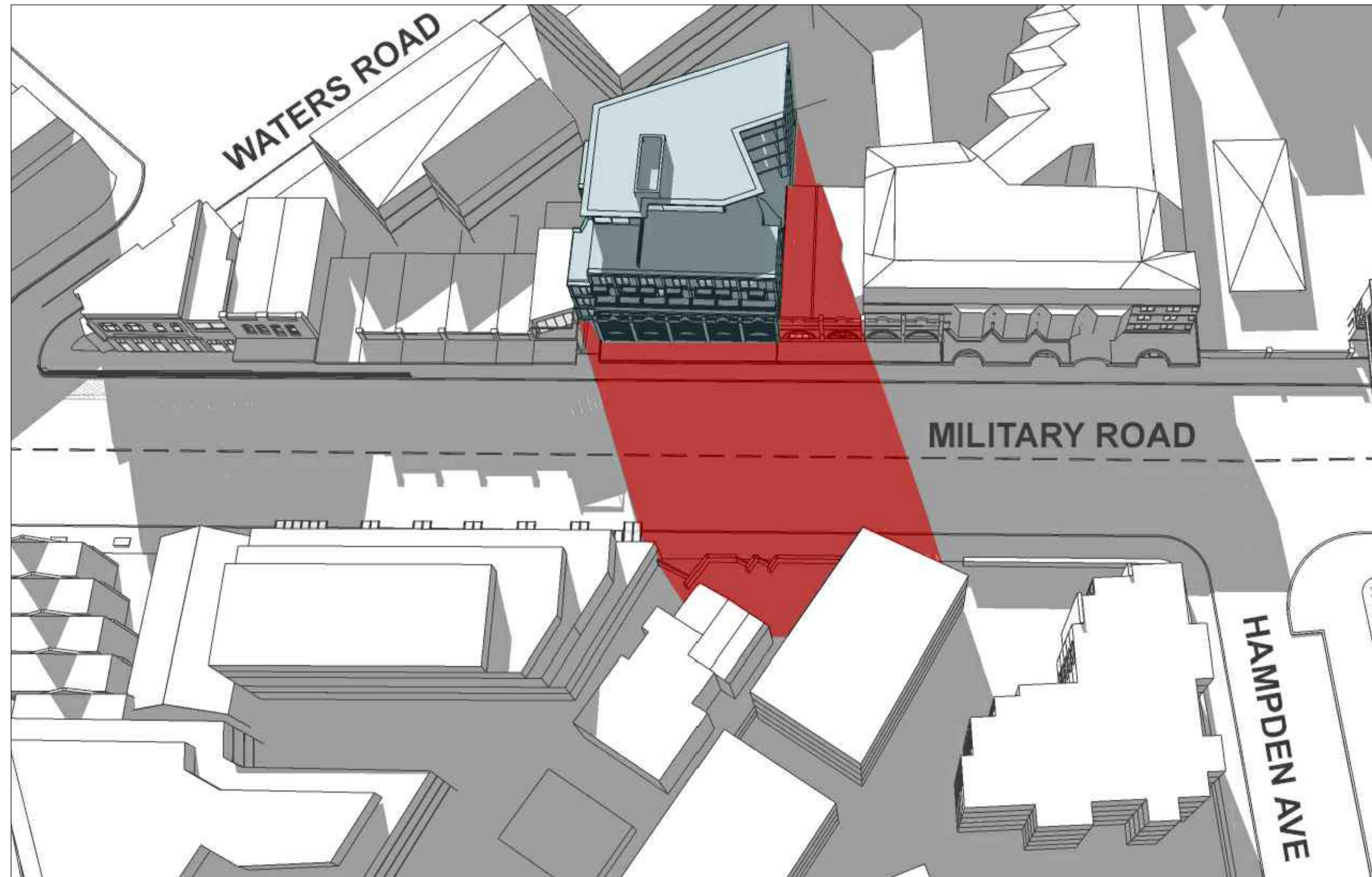
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PROPOSED SHADOW - ISOMETRIC VIEW
WINTER SOLSTICE - JUNE 21 9:00am



PROPOSED SHADOW - ISOMETRIC VIEW
WINTER SOLSTICE - JUNE 21 12:00pm



PROPOSED SHADOW - ISOMETRIC VIEW
WINTER SOLSTICE - JUNE 21 3:00pm

- PROPOSED DEVELOPMENT
- PROPOSED DEVELOPMENT CAST SHADOW

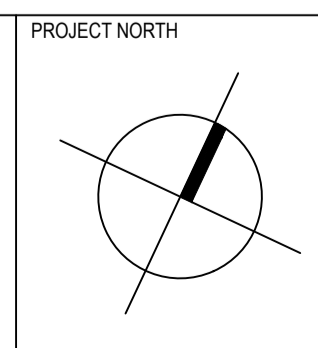
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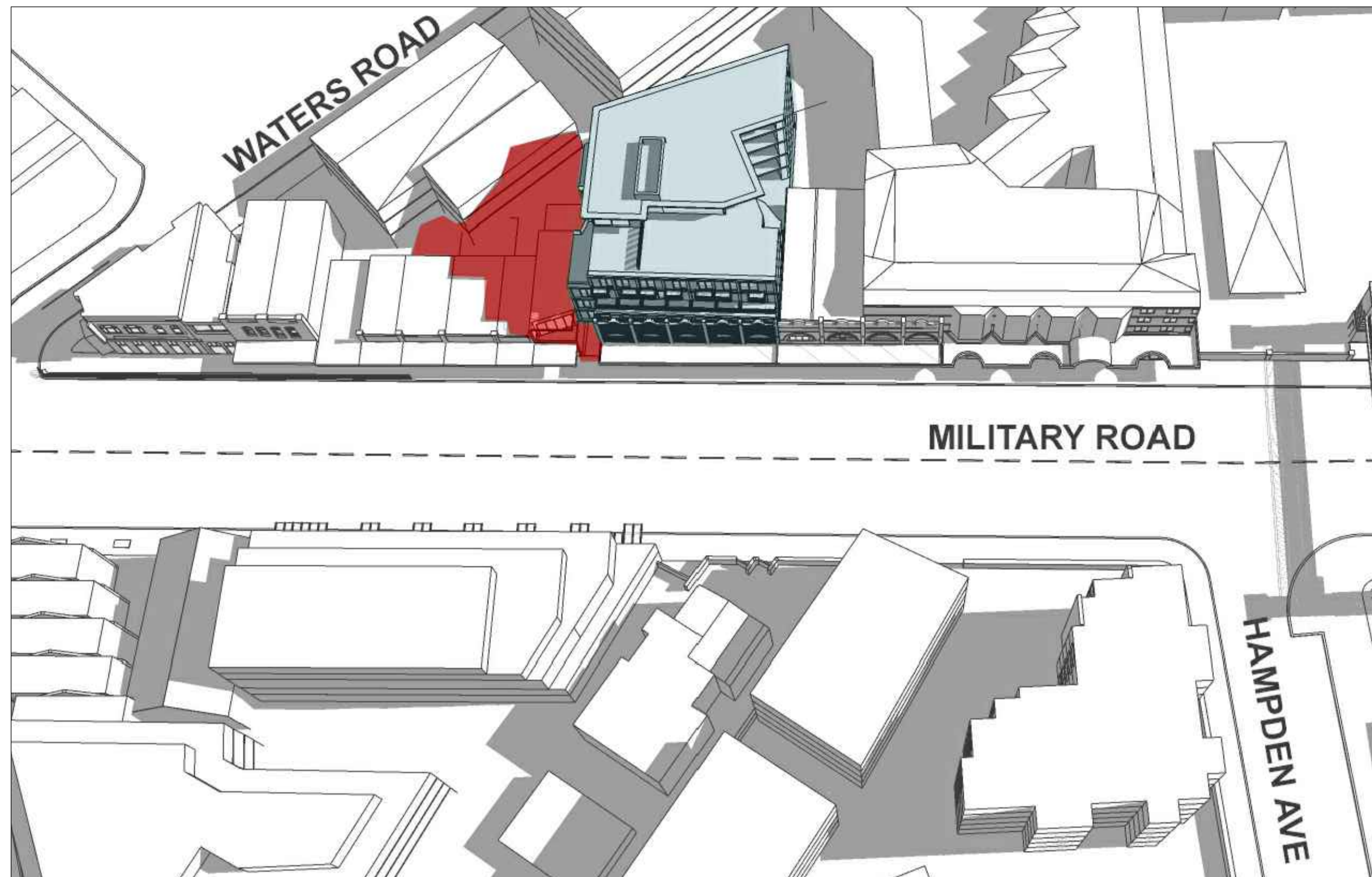
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PROJECT
**PROPOSED SHORT STAY
ACCOMMODATION**
246 - 254 MILITARY ROAD, NEUTRAL BAY
NSW

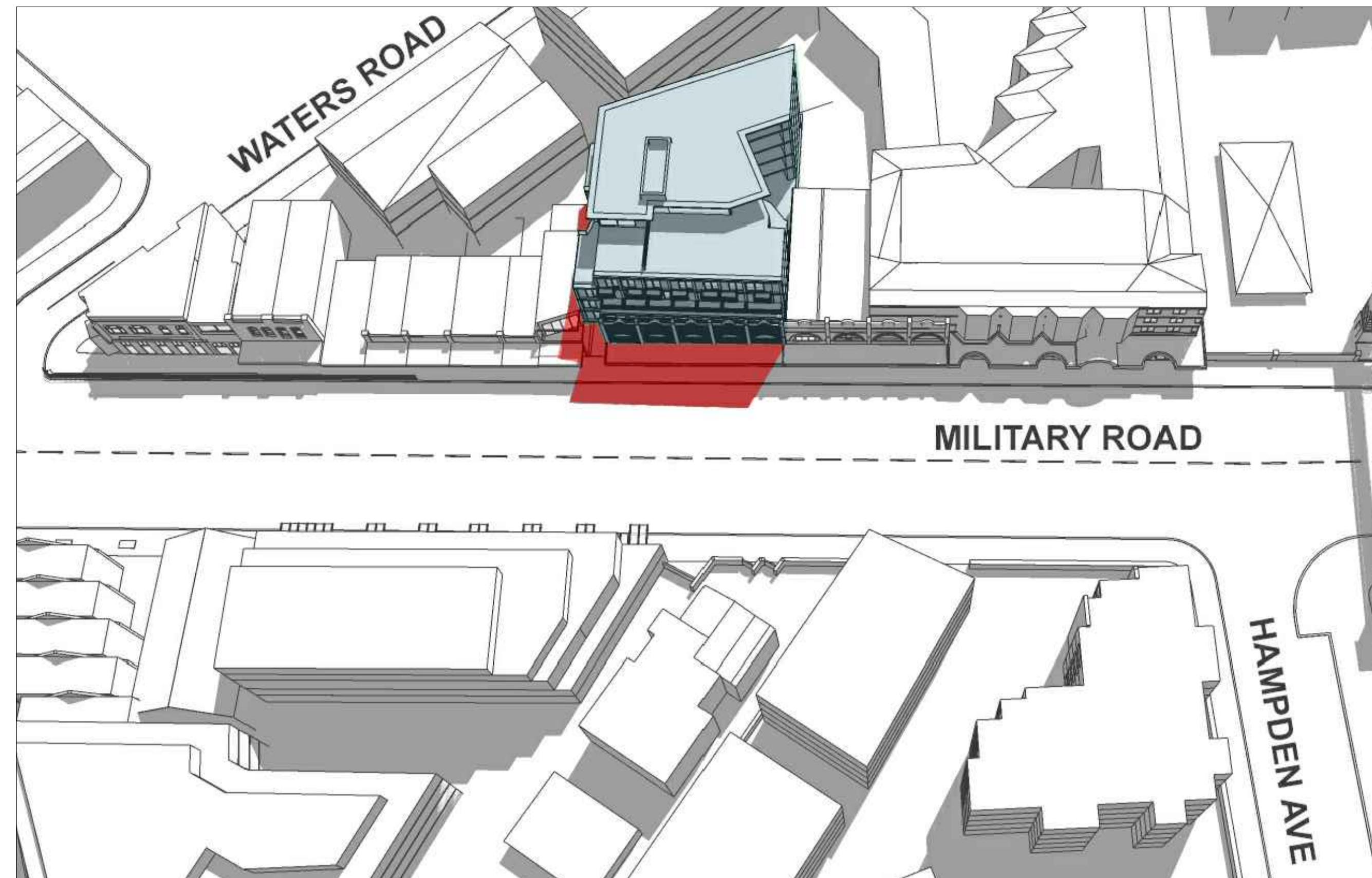
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SHEET 3**



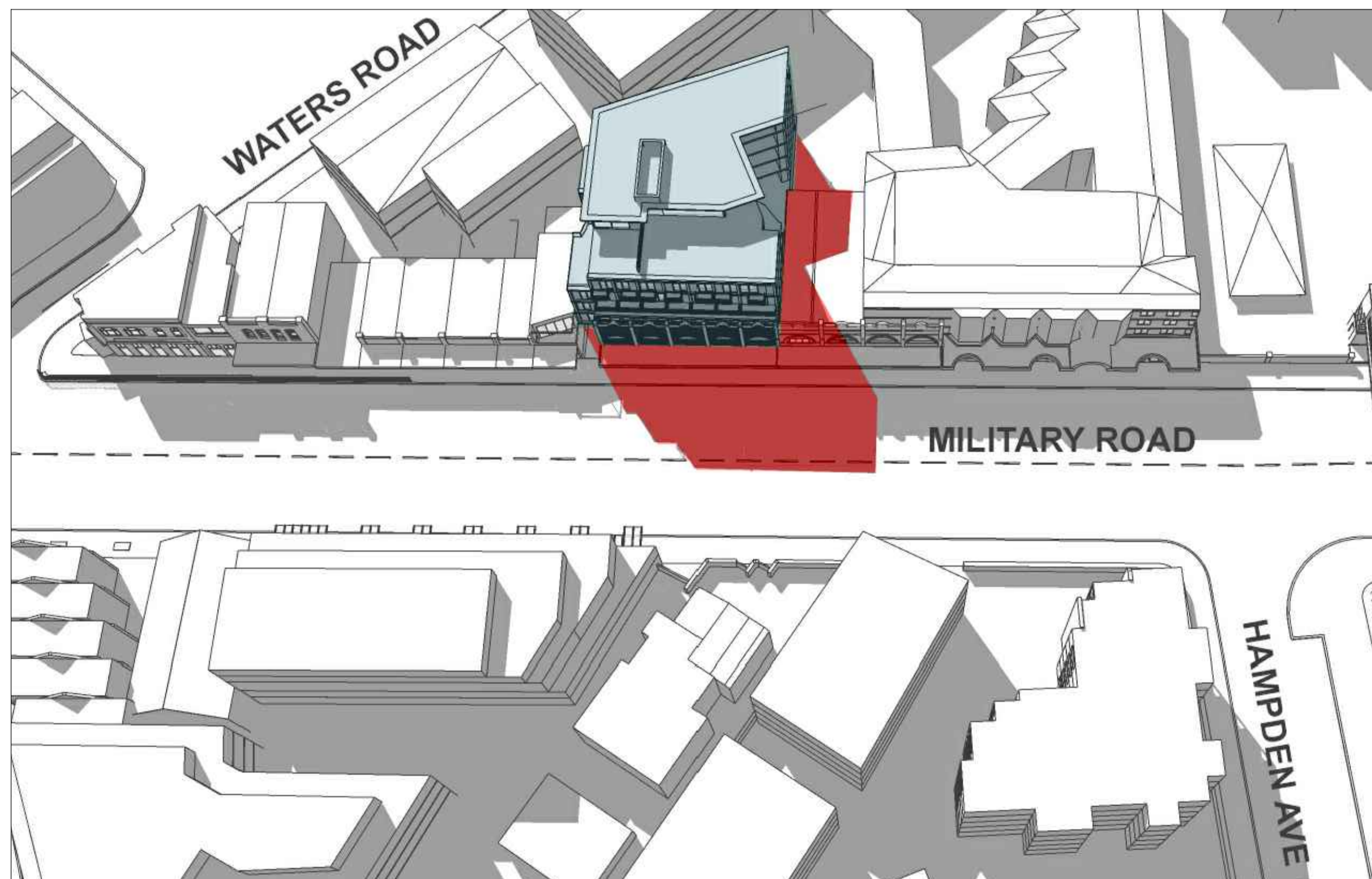
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DATE	MARCH 2023	ISSUED FOR DEVELOPMENT APPLICATION	
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REVIEWED BY:	RS	ISSUE	DA01



PROPOSED SHADOW - ISOMETRIC VIEW
EQUINOX - MARCH / SEPT 21 9:00am



PROPOSED SHADOW - ISOMETRIC VIEW
EQUINOX - MARCH / SEPT 21 12:00pm



PROPOSED SHADOW - ISOMETRIC VIEW
EQUINOX - MARCH / SEPT 21 3:00pm

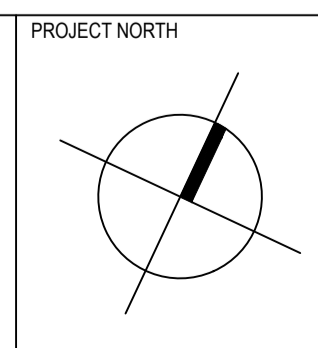
- PROPOSED DEVELOPMENT
- PROPOSED DEVELOPMENT CAST SHADOW

ISSUE	DATE	REVISION
DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION

CLIENT
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PTY. LTD.**

PROJECT
**PROPOSED SHORT STAY
ACCOMMODATION**
246 - 254 MILITARY ROAD, NEUTRAL BAY
NSW

TITLE
**SHADOW DIAGRAMS
SHEET 4**



JOB No	2005	DRAWING NO	A-1303
DATE	MARCH 2023	ISSUED FOR DEVELOPMENT APPLICATION	
SCALE	1:500 @ A1 1:1000 @ A3		
CREATED BY:	MA		
REVIEWED BY:	RS	ISSUE	DA01



VIEW TO MILITARY ROAD FACADE



VIEW FROM MILITARY ROAD TO NORTH-EAST

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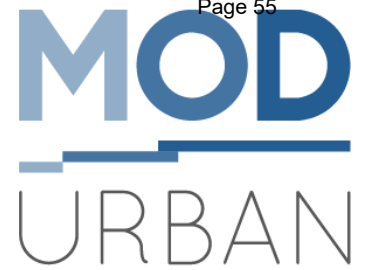
ISSUE	DATE	REVISION
DA01	03/03/2023	ISSUED FOR DEVELOPMENT APPLICATION

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PTY. LTD.**

PROJECT
**PROPOSED SHORT STAY
ACCOMMODATION**
246 - 254 MILITARY ROAD, NEUTRAL BAY
NSW

TITLE
IMAGES

PROJECT NORTH		JOB No	DRAWING NO
		2005	A-6700
		DATE	MARCH 2023
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		CREATED BY:	ZW
		REVIEWED BY:	AA
		ISSUE	DA01



246-254 Military Road, Neutral Bay –

Clause 4.6 Variation Statement – July 2023

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INTRODUCTION

Overview

This Clause 4.6 Variation request has been prepared pursuant to Clause 4.6 of North Sydney Local Environmental Plan 2013 (**NSLEP 2013**) in support of the development application for the new mixed use building containing ground floor commercial and upper floors boarding house accommodation at 246-254 Military Road, Neutral Bay (**the site**).

This Clause 4.6 Variation has been submitted in conjunction with the Statement of Environmental Effects (SEE) that assessed the proposed works as described above. The request for variation of the development standard has been prepared in accordance with the requirements of Clause 4.6 of the North Sydney LEP 2013 (NSLEP 2013) which has the following aims and objectives:

- 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.*

The proposed variations to development standards for the proposed development are in relation to Clause 4.3 Height of Buildings of the NSLEP 2013. In summary the following variations are proposed:

North Sydney LEP 2013 Clause	NSLEP 2013 Development Standard	Proposed Development Non-Compliance	% of Variation
Clause 4.3 Height of Buildings	Maximum 16m	20.56m	28.5%

In accordance with Clause 4.6 of the NSLEP 2013 Council is required to consider the following:

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.*

This Clause 4.6 Variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards.

This variation request demonstrates that:

- The variation to the development standard is in the public interest because it is consistent with the objectives for the zone and the development standard itself.
- Compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.

RELEVANT ASSESSMENT FRAMEWORK

This section of the report outlines the environmental planning instruments relevant to the proposed development, including the aims and objectives, maximum building height control and the assessment framework for seeking a variation to a development standard.

Some relevant planning principles and judgements issued by the Land and Environment Court regarding the assessment of developments seeking exceptions to development standards are also provided.

North Sydney Local Environmental Plan 2013

Clause 4.6 of NSLEP 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are listed within the LEP as:

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

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

Clause 4.6 provides flexibility in the application of planning provisions by allowing the Consent Authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would satisfy the requirements of clause 4.6.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6 requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- There are sufficient environmental planning grounds to justify contravening the development standard.

Furthermore, the Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone, and the concurrence of the Secretary has been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

1. Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
2. The public benefit of maintaining the development standard, and
3. Any other matters required to be taken into consideration by the Secretary before granting concurrence.

[Note: Concurrence is to be assumed as per the applicable planning circular, discussed further below.]

This document forms a Clause 4.6 written request to justify the contravention of the Building Height development standard in Clause 4.3. Also forming part of this request are the architectural drawings that have been submitted in connection with the amended development application. The assessment of the proposed variations has been undertaken in accordance with the requirements of the NSLEP 2013, Clause 4.6 Exceptions to Development Standards.

NSW Land and Environment Court: Case Law (Tests)

The following sections of the report provide an assessment of the request to vary the development standards relating to the maximum building height in accordance with Clause 4.6 of NSLEP 2013. Consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court. The *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 court judgement is the most relevant of recent case law. Justice Preston confirmed (in this judgement):
 - The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests:

"that the applicant's written request ... has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ... and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard ..." [15]

- On the grounds for a finding that the strict application of a standard is 'unreasonable or unnecessary' established under *Wehbe v Pittwater Council* [2007] NSWLEC 827:

"The five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way..." [22]

- That, in establishing 'sufficient environmental planning grounds', the focus must be on the contravention and not the development as a whole:

"The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole" [26]

- That clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

"Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard will have a better environmental planning outcome than a development that complies with the development standard." [88]

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

THE EXTENT OF VARIATION

Relevant Development Standards

The development standards being requested to be varied are Clause 4.3 Height of Buildings of the NSLEP 2013.

1.1 The Height Standard

Clause 4.3 (2) of the NSLEP 2013 states:

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

The Height of Building Map sets a height standard of 16m for the site. The 16m building height standard has been measured in accordance with the NSLEP 2013 definition:

building height (or height of building) means:

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

1.2 Proposed Variation to Standards

The proposed variations to development standards for the proposed development are in relation to Clause 4.3 Building Height of the NSLEP 2013. In summary the following variations to development standards are proposed:

North Sydney LEP 2013 Clause	NSLEP 2013 Development Standard	Proposed Development Non Compliance	% of Variation
Clause 4.3 Height of Buildings	Maximum 16m	20.56m	28.5%

CLAUSE 4.6(4)(A)(II) – WILL THE PROPOSED DEVELOPMENT BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD AND OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE IN WHICH THE DEVELOPMENT IS PROPOSED TO BE CARRIED OUT?

2. Overview

The proposed development will be in the public interest because it is consistent with the objectives of the height control standard and the zone objectives.

2.1 The Proposal Achieves the Objectives of the Height Standard

The objectives of the building height control as listed within Clause 4.3 of the NSLEP 2013 have been achieved as demonstrated below.

The objectives of Clause 4.3 are as follows:

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

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

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

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

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

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

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

Notwithstanding the proposed variation to the standard, the proposed development is nevertheless consistent with these objectives:

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

- The proposed development is on relatively flat land and the proposed development conforms to natural landscape.

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

- There are no existing views enjoyed by the adjoining properties to the rear and side of the site that are worthy of retention.
- Properties on the southern side of Military Road do not have any existing views across the site.

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

- The portion of development which protrudes beyond the prescribed height limit comprises the upper floor and lift overrun. The non-complaint element is located to the south of residential dwellings on adjacent properties to the rear, and there will be no overshadowing to surrounding residential dwellings to the north from the proposed non-compliance.
- The proposed development will result in some additional overshadowing to the neighbouring residential properties to the west and south at mid-winter. This includes some additional overshadowing to windows at the rear of 3 Waters Road.

This overshadowing is considered acceptable as follows:

- > The proposed upper floor and lift overrun element which breaches the 16m maximum height of building requirement does not wholly contribute to the non-compliant overshadowing impact, as demonstrated by the solar access diagrams.
- > A compliant development will have the same overshadowing impact, and the impact is proportionate to the development which is permissible on the Site.
- > The overshadowing impact does not arise from poor design of the development, and an alternative design would not have a more superior outcome.
- > There is no reasonable or practical solution to minimising additional overshadowing impacts to these properties given the Site context, east-west orientation, narrow lot constraints, permissible development of the Site and orientation of development to the south.

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

- The portion of development which protrudes beyond the prescribed height limit comprises the upper floor and the lift overrun.
- No loss of privacy will occur from the proposed non compliance, and windows to the rear of the site are capable of being fitted with privacy screens to ensure no overlooking can occur to surrounding properties that would compromise their privacy.
- The communal areas at the roof level are orientated away from the northern boundary. Accordingly, there are no privacy impacts on adjoining residential development to the north resulting from this communal space.
- Adequate separation is provided between buildings, to the rear located on Waters Road and the setback and orientation of development beyond.
- This provides an adequate separation between northern boundary of the development Site and residential dwellings to the north of between 6m to 10m, from its closest point.
- To ensure appropriate privacy measures where Council's deems it necessary the applicant would be satisfied with the imposition of screening measures by way of a condition of consent.

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

- The proposed development is compatible with the built form and density of surrounding developments. It has been designed to incorporate a setback to the upper levels to ensure it integrates with the scale and bulk of surrounding developments.
- The top level which comprises the non compliant element will not be readily discernible from the street by virtue of its setback from the front at Military Road.

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

- The proposed development is predominantly five storeys with a smaller sixth level accommodating the accommodation, communal living and communal terrace, which will not be discernible from the public domain (i.e from Military Road).
- Fundamentally, the development will maintain the five storey average height along this part of Military Road which largely complies with the 16m maximum height standard, with the exception of the top floor of the building and the lift overruns.
- The Level 5 storey is setback from Military Road to minimise visibility from the street and impacts on neighbouring properties, and the development maintains the streetscape character and prevailing pattern of the area.
- In addition, the levels of the building above ground level are also setback from the front boundary and include articulation to the building including recessed balconies to minimise the visual scale and massing of the building to the streetscape.
- The top level which comprises the non compliant element will not be readily discernible from the street by virtue of its setback from the front at Military Road.
- The proposed development will be viewed as a five storey development from Military Road.
- The overall scale is appropriate for the area, and is characteristic of buildings in the locality.

(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.*

- Not applicable

2.2 The Proposal Achieves the Objectives of the Zone

The site is currently zoned MU1 Mixed Use under the North Sydney LEP 2013.

The proposed new development is consistent with the MU1 zone objectives in that:

To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

- The proposal gives provision of food and drink premises and laundromat that will both promote employment. The boarding house will also promote employment through a caretaker role and cleaning and maintenance roles.

To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

- The commercial premises will add to an active street frontage at ground floor level. This will in turn attract pedestrian traffic.
- The proposed front balconies will activate the street frontage and also provide natural surveillance to the public domain to the benefit of public safety.

To minimise conflict between land uses within this zone and land uses within adjoining zones.

- No land use conflicts are to occur from the proposal.

To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

- The ground floor is made up of business/retail uses with the exception of the boarding house lobby.
- This mix of uses is consistent with the current uses for the site and the surrounding streetscape.

To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.

- The ground floor retail/commercial premises provide floor to ceiling glazing which enables both an active street frontage and casual surveillance, improving vibrancy and community safety. The proposed design is of a high quality including highly articulation on the building façade to create an interesting development that is sympathetic to the streetscape.

To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.

- The proposed development includes a mix of residential and commercial. The commercial is provided on the ground floor of the building. The residential boarding house accommodation is predominantly provided on the upper levels

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

Compliance with the development standard **is** unreasonable or unnecessary in the circumstances of the case.

Clause 4.6(3)(a) requires that this Variation Request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Such compliance is unreasonable or unnecessary in the circumstances of the case.

In *Wehbe v Pittwater Council [2007] NSWLEC 827* Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

1. *Establish that compliance with the development standard is unreasonable or unnecessary because **the objectives of the development standard are achieved notwithstanding non-compliance with the standard.***
2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

In applying the tests of **Wehbe v Pittwater Council [2007] NSWLEC 827**, only one of the above rationales is required to be established. Notwithstanding the proposed variation, as demonstrated in Sections 2.1 and 2.2, the proposed development is consistent with the underlying objectives of the standard for Building Height and the MU1 zone of NSLEP 2013.

As addressed previously the proposal has demonstrated compliance with the relevant objectives of Clause 4.3 of the North Sydney LEP 2013.

Undermining objectives of the EP&A Act

Section 1.3(g) of the Environmental Planning and Assessment Act 1979 (the EP&A Act) says that it is an objective of the legislation:

to promote the orderly and economic use and development of land

Requiring strict compliance with the height control would undermine the achievement of this objective of the legislation. This is because orderly and economic use and development of land is encouraged/supported by permitting development in accordance with the relevant development standards.

This is sufficient, by itself, to establish that requiring strict compliance is unreasonable or unnecessary in the circumstances of the case.

Disproportionate burden on the community

The severity of the burden placed on members of the community (by requiring strict compliance) would be disproportionate to the consequences attributable to the proposed non-compliant development (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 (at [15])).

The adverse consequences by requiring strict compliance have already been outlined. In brief terms, they are:

- an unnecessary reduction in housing supply and housing choice.

It is unreasonable to expect the community to bear these adverse consequences in circumstances where there are no significant adverse impacts from allowing the height contravention.

This is sufficient, by itself, to establish that requiring strict compliance is unreasonable or unnecessary in the circumstances of the case.

CLAUSE 4.6(3)(B) – ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

The proposed development demonstrates that there are sufficient environmental planning grounds in support of the contravention for the following reasons:

- The proposed development is predominantly five storeys with a smaller sixth level accommodating the accommodation, communal living and communal terrace, which will not be discernible from the public domain (i.e from Military Road).
- Fundamentally, the development will maintain the five storey average height along this part of Military Road which largely complies with the 16m maximum height standard, with the exception of the top floor of the building and the lift overruns.
- The Level 5 storey is setback from Military Road to minimise visibility from the street and impacts on neighbouring properties, and the development maintains the streetscape character and prevailing pattern of the area.
- In addition, the levels of the building above ground level are also setback from the front boundary and include articulation to the building including recessed balconies to minimise the visual scale and massing of the building to the streetscape.
- The top level which comprises the non compliant element will not be readily discernible from the street by virtue of its setback from the front at Military Road.
- The proposed development will be viewed as a five storey development from Military Road.
- The overall scale is appropriate for the area, and is characteristic of buildings in the locality.
- The non-complaint element is located to the south of residential dwellings on adjacent properties to the rear, and there will be no overshadowing to surrounding residential dwellings to the north from the proposed non-compliance.
- The proposed development will result in some additional overshadowing to the neighbouring residential properties to the west and south at mid-winter. This includes some additional overshadowing to windows at the rear of 3 Waters Road.
- This overshadowing is considered acceptable as follows:
 - > The proposed upper floor and lift overrun element which breaches the 16m maximum height of building requirement does not wholly contribute to the non-compliant overshadowing impact, as demonstrated by the solar access diagrams.
 - > A compliant development will have the same overshadowing impact, and the impact is proportionate to the development which is permissible on the Site.
 - > The overshadowing impact does not arise from poor design of the development, and an alternative design would not have a more superior outcome.
 - > There is no reasonable or practical solution to minimising additional overshadowing impacts to these properties given the Site context, east-west orientation, narrow lot constraints, permissible development of the Site and orientation of development to the south.
- There are no existing views enjoyed by the adjoining properties to the rear and side of the site that are worthy of retention.

- No loss of privacy will occur from the proposed non compliance, and windows to the rear of the site are capable of being fitted with privacy screens to ensure no overlooking can occur to surrounding properties that would compromise their privacy.
- The communal areas at the roof level are orientated away from the northern boundary. Accordingly, there are no privacy impacts on adjoining residential development to the north resulting from this communal space.
- Adequate separation is provided between buildings, to the rear located on Waters Road and the setback and orientation of development beyond.
- This provides an adequate separation between northern boundary of the development Site and residential dwellings to the north of between 6m to 10m, from its closest point.
- To ensure appropriate privacy measures where Council's deems it necessary the applicant would be satisfied with the imposition of screening measures by way of a condition of consent.
- In light of the proposal's contribution to achieving the desired future character of the area, a reduction of height would serve no material planning purpose, other than numerical compliance with a generic Council control.
- The proposal will add to delivering a mix of well-designed low cost housing that meets the needs of Sydney's growing population and to meet the changing population needs.
- The proposed development will not significantly impact on the amenity of adjoining occupiers.
- The proposal results in the delivery of residential accommodation within easy access of the public transport, employment and services.

CLAUSE 4.6(5)(A) – WOULD NON-COMPLIANCE RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING?

The proposed non-compliance with the maximum height of building development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

CLAUSE 4.6(5)(B) – IS THERE A PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD?

Overall it is considered that the strict maintenance of the standard in this instance is not in the public interest as the current proposal will result in the delivery of a high-quality residential development and housing stock which achieves the strategic objectives of Council.

CLAUSE 4.6(5)(C) – ARE THERE ANY OTHER MATTERS REQUIRED TO BE TAKEN INTO CONSIDERATION BY THE SECRETARY BEFORE GRANTING CONCURRENCE?

The Planning Circular PS 20-002, issued on 5 May 2020 (Planning Circular), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The NSLEP is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

We note that under the Planning Circular this assumed concurrence is subject to some conditions - where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council.

CONCLUSION

It is requested that council supports the proposed variation to Clause 4.3 of the NSLEP 2013 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- The proposed variation allows for the provision of improved residential accommodation, for family housing.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public benefit in maintaining strict compliance with the standards.