



**SUPPLEMENTARY REPORT  
NSLPP MEETING HELD ON 21/02/2025**

**Attachments:**

1. Amended Architectural Plans & Landscape Plans
2. Updated Clause 4.6 Height of Buildings
3. Update Geotechnical Report
4. Link to Report NSLPP dated 4 December 2024

**ADDRESS:** 1 Warung Street, McMahons Point

**APPLICATION NO:** DA 85/2024

**PROPOSAL:** Demolition of existing structures and erection of a new residential flat building and ancillary works

**PLANS REF:**

Plan No.	Rev	Title	Drawn by	Dated
DA-001	E	Cover Sheet	Squillace	19.12.2024
DA-011	E	Site Plan	Squillace	19.12.2024
DA-012	E	Site Analysis Plan	Squillace	19.12.2024
DA-020	E	Demolition Plan	Squillace	19.12.2024
DA-099	E	Basement Level Plan	Squillace	19.12.2024
DA-100	E	Ground Level Plan	Squillace	19.12.2024
DA-101	E	Level 1 Plan	Squillace	19.12.2024
DA-102	E	Level 2 Plan	Squillace	19.12.2024
DA-103	E	Level 3 Plan	Squillace	19.12.2024
DA-104	E	Roof Plan	Squillace	19.12.2024
DA-205	E	North Elevation	Squillace	19.12.2024
DA-206	E	East Elevation	Squillace	19.12.2024
DA-207	F	West Elevation	Squillace	19.12.2024
DA-208	E	South Elevation	Squillace	19.12.2024
DA-301	E	DA Section 01	Squillace	19.12.2024
DA-531	E	Landscape Coverage & Excavation Plan	Squillace	19.12.2024
DA-541	E	Adaptable Unit Layout	Squillace	19.12.2024
DA-800	E	Basement Entry Drawing	Squillace	19.12.2024

**OWNER:** Highbury Warung Pty Ltd

**APPLICANT:** Highbury Warung Pty Ltd

**AUTHOR:** Report of Thomas Holman, Senior Assessment Officer

**DATE OF REPORT:** 4 February 2025

**DATE LODGED:** 17 April 2024

**DATE AMENDED:** 19 September 2024; 17 December 2024

**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

The application is an amended application which seeks development consent from the North Sydney Local Planning Panel (NSLPP) for demolition of an existing residential flat building, construction of a new residential flat building, excavation and construction of basement, new basement entry from Henry Lawson Avenue and new landscaping on land identified as No 1 Warung Street, McMahons Point.

The application was previously considered by the North Sydney Local Planning Panel (NSLPP) at its meeting held on 4 December 2024. The Panel considered the report and representations of the applicant and resolved to defer the application for amended plans and additional information to be provided addressing *Building Design and Privacy; Site Coverage and Landscaping*; and for an *Updated Geotechnical Report*.

Amended plans and information addressing the Panel's decision were submitted to Council on 17 December 2024 and have been notified to previous submitters to the application for fourteen days.

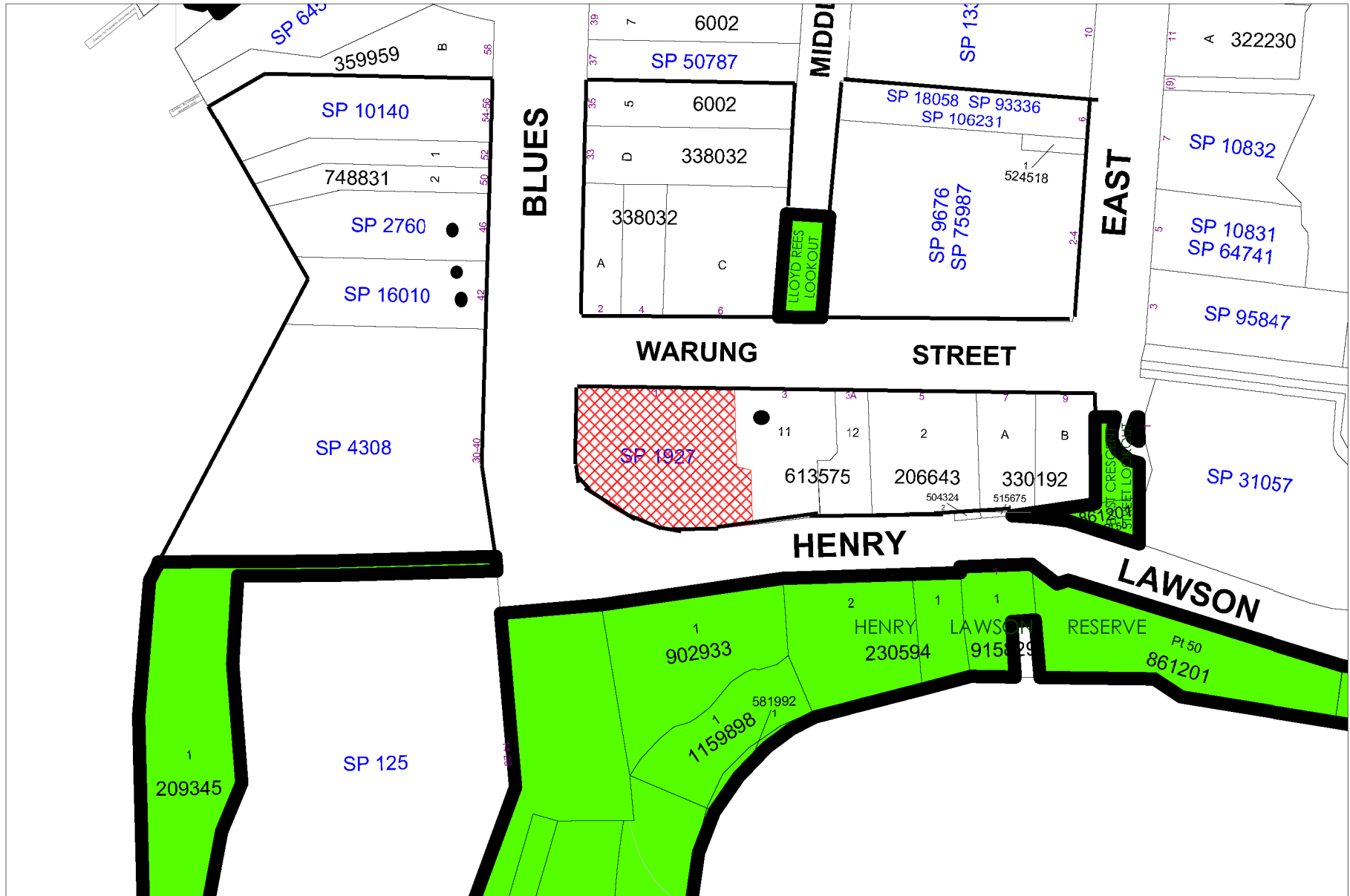
**The application is required to be reported to the NSLPP for determination, as directed by the Minister of Planning, as the development application has attracted 10 or more unique submissions by way of objection; involves a departure from a development standard that is greater than 10%; and is considered sensitive development which State Environmental Planning Policy Housing 2021 – Chapter 4 Design of Residential Apartment Development applies.**

The amended application was notified to previous submitters in accordance with Council's Community Consultation Plan. The notification was between 17 January and 31 January 2025 and a total four (4) further submissions were received in addition to the previous twenty (20) submissions received to the original proposal.

This supplementary report considers the performance of the amended application against applicable planning requirements and has had regard for the Panel's previous decision and the further submissions received.

Following this assessment and having regard to the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), the application is recommended for approval subject to conditions.

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

## DESCRIPTION OF PROPOSAL

The proposal before the Panel is for demolition of an existing residential flat building, excavation and construction of a basement, new basement entry from Henry Lawson Avenue and construction of a new residential flat building. The new residential flat building will comprise of seven (7) residential units, which is reduced from the current yield of twelve (12) units.

### LPP MEETING – 4 December 2024

The development application was previously considered by the North Sydney Local Planning Panel (NSLPP) at its meeting held on 4 December 2024.

The Panel considered the proposal and representations of the applicant and resolved to defer the determination to allow the opportunity to submit amended plans and additional information addressing the following matters:

1. **Building Design and Privacy.** *The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.*
2. **Site Coverage and Landscaping.** *The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.*
3. **Updated Geotechnical Report.** *Provision of an updated geotechnical report based on the plans as revised, these should include but not be limited to, a more detailed response to the matters raised in Council's assessment report.*

Amended plans and information addressing the above were submitted to Council on 17 December and notified to previous submitters between 17 January and 31 January 2025.

### APPEAL LODGED

An appeal against Council's deemed refusal of this application was lodged with the Land and Environment Court on 2 December 2024. NSLPP still retains its power to determine this application despite the appeal. It is anticipated that the appeal will be discontinued if consent is granted.

### AMENDED PROPOSAL

In response to the Panel determination amended plans have been submitted incorporating design changes to the balconies, setbacks to the basement and a supplementary geotechnical report have been provided with regard to the neighbouring property at No. 3 Warung Street and in response to matters stipulated in Clause 6.10(3) of NSLEP 2013.

### Building Design and Privacy

The amended plans include amended balconies for Levels 1, 2 and 3, with the previous splayed balcony to be realigned to the eastern wall of the northern portion of the residential flat building and achieving a rectilinear form. The balconies have been redesigned so as not to project further than the furthest point in the current design (Issue C). The following comparison diagrams are extracts from the original and amended building:



**Figure 1 & 2 – Level 1 Plan, DA-101 Issue C (left) and Level 1, DA-101 Issue E (right)**



**Figure 3 & 4 – Level 2 Plan, DA-102 Issue C (left) and Level 2, DA-102 Issue E (right)**



**Figure 5 & 6 – Level 3 Plan, DA-103 Issue C (left) and Level 3, DA-103 Issue E (right)**

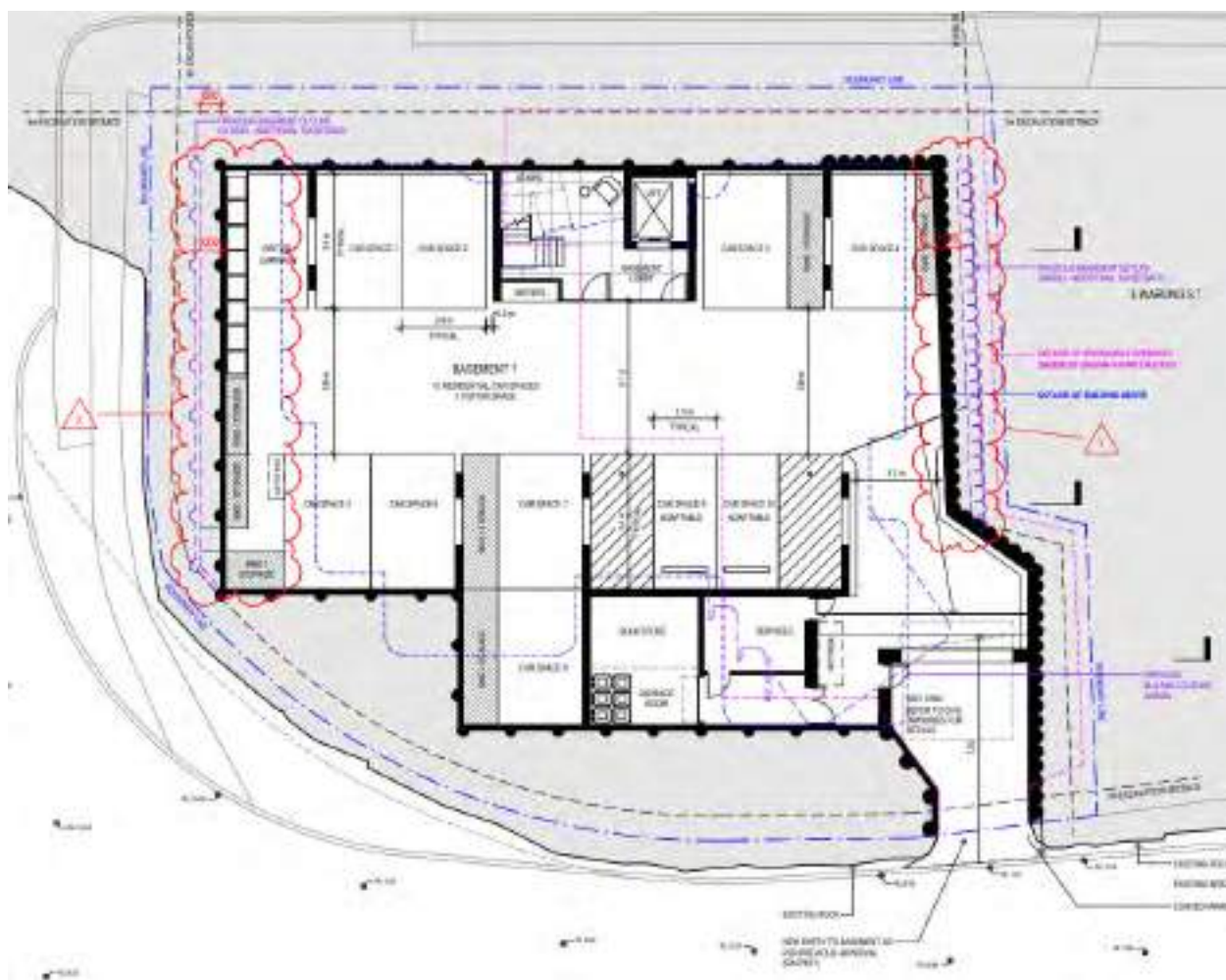
### Site Coverage and Landscaping

The amended basement plan includes a 1 metre increase in setbacks to the western and eastern boundary. There is no further increase in the basement footprint to compensate for the additional 1 metre offset satisfying the requirements of the Panel design amendment.

Below are comparisons between the current architectural package assessed by Council and reviewed by the December Panel and the amended plans addressing the NSLPP Site Coverage and Landscaping requirements.



**Figure 7 – Basement Level Plan, DA-099 Issue C**



**Figure 8 – Amended Basement Level Plan, DA-099 Issue E**

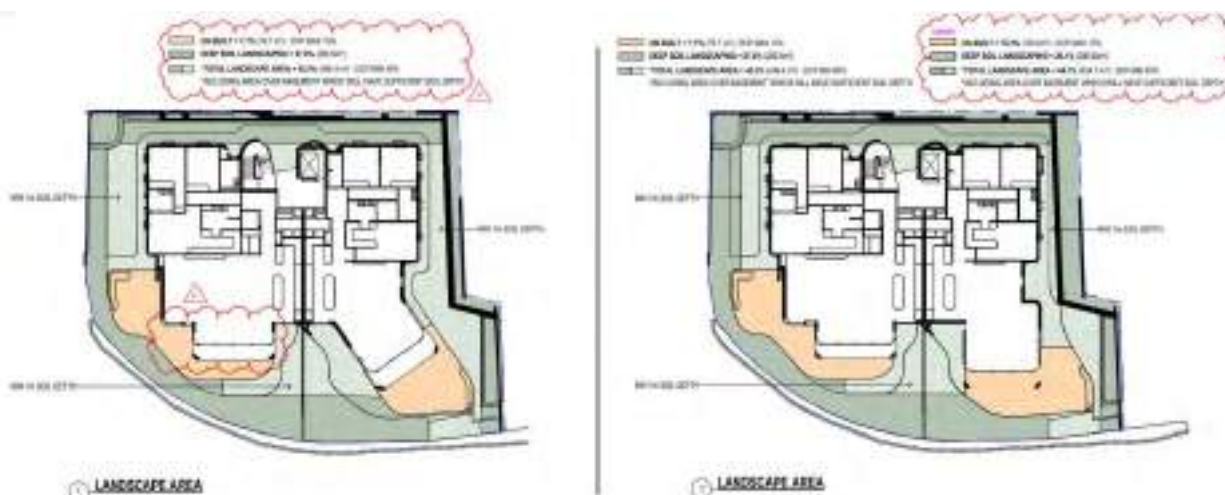
The amended plans provide updated compliance diagrams to confirm site coverage, landscaped area and un-built upon areas. The building as amended has resulted in a minor increased site coverage of 6.97m<sup>2</sup> or 0.6%, proposing a total of 450.4m<sup>2</sup> (45.6%). This represents a small exceedance contrary to the site coverage requirements in Table B-1.6, Provision P1, s1.5.5 of NSDCP 2013. However, it is noted there is a corresponding increase in landscaped area of 20.15m<sup>2</sup> due to the reduction in the size of the basement.

Below is a table detailing the proposed site coverage, landscaped area and un-built upon area in the architectural set (Rev C) reviewed by the Panel in December and the current proposed site coverage, landscaped and un-built upon areas under the architectural set (Issue E).

Control	Requirement	Proposed (Rev C)	Proposed (Rev E)	Compliance
<b>Site coverage</b> <b>Max 45%</b>	443.43m <sup>2</sup> (45%)	443.43m <sup>2</sup> (45%)	450.4m <sup>2</sup> (45.6%)	No
<b>Landscaped area</b> <b>Min 40%</b>	394.16m <sup>2</sup> (40%)	266.5m <sup>2</sup> (27%)	286.65m <sup>2</sup> (29.1%)	No
<b>Unbuilt-upon area</b> <b>Max 15%</b>	147.81m <sup>2</sup> (15%)	275.47m <sup>2</sup> (28%)	248.35m <sup>2</sup> (25.3%)	No



**Figures 9 & 10 – Site Coverage Proposed (DA-531 Rev C) & Site Coverage Proposed (DA-531 Rev E)**



**Figures 11 & 12 – Landscaped Area/ Un-built upon area Proposed (DA-531 Rev C) & Landscaped Area/ Un-built upon area Proposed (DA-531 Rev E)**

The site coverage exceedance of 6.97m<sup>2</sup> or 0.6% is supportable being a minor variation and not considered to be inconsistent with the Panel recommendation.

### Updated Geotechnical Report

A supplementary Geotechnical Report has been prepared by Douglas Partners. Douglas Partners provided further comments on geotechnically related issues regarding the neighbouring property at 3 Warung Street and further assessment is provided against the provisions of Clause 6.10(3) of NSLEP 2013.

Douglas Partners affirm that both the methodology of excavation and shoring stipulated in the original Geotechnical Report and supplementary report are sufficient with no geotechnical restrictions to the granting of development consent subject to detailed engineering design at CC stage and property construction techniques and inspection.

Conditions of consent as stipulated by Council Development Engineer will be included in the consent to ensure the structural integrity of the site and adjoining properties.



## **CONSIDERATION**

The performance of the amended application is generally in accordance with the preceding assessment provided to the Planning Panel in Council's Assessment Report of 4 December 2024. Where further consideration has been required, the following assessment should be noted:

### **NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)**

#### **1. Objectives of the zone**

The objectives for a R3 Medium Density Residential Zone are stated below (*in italics*):

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

The amended plans have amended the balconies for Levels 1, 2 and 3 with the building form realigned to match the alignment of the eastern wall of the northern portion of the building. The resulting form achieves a rectilinear form in accordance with the directions in the Panel December determination. By amending the balconies there is a side setback to the eastern side boundary of approximately 7.4m compared to the side setback of 5.565m due to the skewed orientation of the previously proposed balconies. The increased side setback for the balconies is a positive outcome to the amenity (visual privacy) of No. 3 Warung Street ensuring a greater level of residential amenity.

**Part 4 – Principal Development Standards**

<b>COMPLIANCE TABLE Principal Development Standards North Sydney Local Environmental Plan 2013</b>			
<b>Site Area – 985.4m<sup>2</sup></b>	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
Clause 4.1 – Subdivision lot size	N/A	230m <sup>2</sup>	N/A No subdivision proposed
Clause 4.3 – Heights of Building	Lift Overrun RL 25.170 or 10.54m 24% exceedance  Roof RL 24.420 or 10.92m 28% exceedance  Roof Parapet (SW corner) RL 24.570 or 11.07m 30% exceedance	8.5m	No  <b>Note:</b> there is no additional height exceedance proposed under the latest amended plans (Rev E).

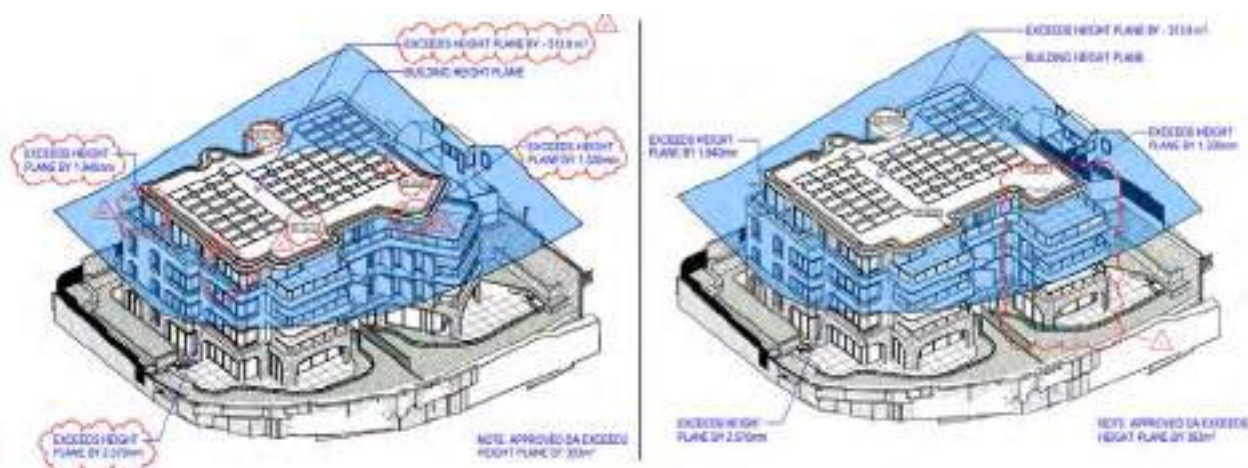
\* Refer Clause 4.6 consideration below

**2. Height of Building**

The following objectives for the permissible height limit 8.5m pursuant to clause 4.3 in NSLEP 2013 are stated below:

- (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 C4 Environmental Living.*

The proposed development involves a maximum height of 11.07m, which is attributed to the south western corner of the building which is an exceedance of 30% or 2.57m. Other notable exceedances include the roof (RL 24.420) and the lift overrun which is RL 25.170m or 10.54m. These built elements remain as per that assessed by the December Panel with amendments primarily to the south eastern corner of the building to replace the skewed form of the building to be more rectilinear.



**Figures 13 & 14 – Proposed Building Height Plane Diagram, DA-552 Rev C dated 03.09.2024 (left) & Proposed Building Height Plane Diagram, DA-552 Issue E dated 19.12.2024 (right)**

#### **Clause 4.6 – Exceptions to development standards**

The Applicant has provided a revised written request based on the amendments in Architectural Set Rev E which addresses the amended design to vary the development standard under Clause 4.3 of NSLEP 2013 – maximum height of buildings.

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

The Applicant's written request relies upon Wehbe Test 1 to demonstrate that compliance with the development standard is unreasonable and unnecessary. This has sought to demonstrate that the development achieves the objectives for height. In response to Clause 4.6, the following excerpts are relevant and contained within the Applicant's written request:

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

*The site has a crossfall from the north-eastern corner on Warung Street to its Henry Lawson frontage, noting that Henry Lawson Avenue slopes from Blues Point Road towards McMahons Point in the east. The pavement on Henry Lawson Avenue is 3.5m-5.7m lower than the subject site. Below is the Survey Plan detailing an RL of approximately 18m with a fall of 13m to the south western corner of the site.*

*The proposal remains unchanged seeking to excavate the entire site and provide a flat topography at RL 11.820 which will require a varying excavation between 2m in the south eastern to up to 7m in the north eastern corner.*

*The Panel was previously satisfied that proposal development would satisfy the intent of this objective subject to improvement to the landscape presentation of the development to Blues Point Road and the reduction in the basement footprint.*

The amended appropriately addresses this objective.

***Objective (b) is to promote the retention and, if appropriate, sharing of existing views. The proposal does not adversely impact views of adjoining or adjacent properties.***

*This objective is achieved as deliberated in detail in the original assessment report (refer to Attachment 4). The amendment to the south eastern corner of the building to revert to a rectilinear form rather than a skewed form would not have view loss implications for adjoining properties and does not increase the overall height of the building.*

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

*The amended proposal presents minor additional overshadowing impact to the western elevation of No. 3 Warung Street casting some additional shadow to various windows. However, the effect of shadowing does not arise from non-complying building elements. Accordingly, the breach to the standard does not result in excessive shadowing. Shadow impacts arising from the amended proposal largely reflect the required building setbacks and the height standard.*

This objective is therefore achieved.

***Objective (d) is to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings.***

*Greater privacy measures are recommended for Panel consideration to address impacts arising from the balcony and window arrangements to the eastern elevation of the building. However, these elements largely comply with the height standard as well as ADG separation requirements.*

*Accordingly, the objective must be said to be achieved for the purposes of the height standard. It is however recommended that improved privacy measures be considered by the Panel to address neighbour concerns.*

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

*Refer detailed consideration of existing use right provisions outlined in the preceding report. The objectives are assessed as being achieved in the context of the existing development and site constraints.*

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

*The subject site is located on a corner block with three street frontages and is opposite Henry Lawson Reserve. The three streets that surround the subject site vary in topography and character. The site is zoned R3 Medium Density Residential and the development is subject to existing use rights.*

*The existing building is a 1960's red brick flat building with at-grade parking with access off Warung Street. It is situated amongst an eclectic mix of building types, including detached older dwellings (some heritage listed), modern infill developments and residential flat buildings (both medium and high density). The development approved proposed additions primarily to the north western corner of the site.*

*The floor plans including roof plan outlined the building footprint of the proposed RFB compared to that approved as well as the existing. It is noted the building is sited further forward within the lot and relies on excavation to provide an additional level replacing the level currently reserved for on grade parking.*

*The Panel previously considered the proposal and agreed that the amended design would adequately response to this objective.*

**Objective (g) is to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.**

*This objective is not applicable to the existing or proposed residential flat building in this case. The existing building is three storeys over at-grade parking. The approved development retains the three habitable floor levels (four to the rear) with a new basement below. The development seeks to retain the same number of levels albeit provide more habitable floor space subject to excavation facing Warung Street (below street level).*

The Applicant's written request nominates "environmental planning grounds" which should be considered to justify the variation. These are summarised as follows:

- 1. Achieves the NSLEP building height objectives.*
- 2. The building height does not appear to be inconsistent with the height of surrounding development.*
- 3. In June 2023, in Highbury Warung Pty Ltd v North Sydney Council [2023] NSWLEC 1329, the NSW LEC approved a residential flat building with a height variation.*
- 4. The DA does not materially impact views of nearby properties.*
- 5. The new building will replace an existing uncharacteristic building within the conservation area.*
- 6. The lift overrun is lower than that of the LEC approved lift overrun.*
- 7. Compliance with the 8.5m height limit would necessitate the loss of a floor and is unviable not promoting orderly and economic development of the land.*

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

The Applicant's written request provides sufficient justification to justify contravention of the development standard in part 5.4 of the amended Clause 4.6 Variation (Attachment 3). Critically, the Applicant's written request addresses the benefits to the altered skewed to rectilinear south eastern corner deleting an uncharacteristic and dominant presentation of the built form to the street and providing a built form more compatible with the surrounding conservation area and appropriately and sympathetically responding to the site's constraints and setting.

The RFB as amended provides an improved residential amenity outcome for occupants of the adjoining site to the eastern boundary increasing the side setback to the eastern boundary. The proposed development as amended will deliver a supportable planning and design outcome for the site and locality and there is sufficient environmental planning grounds detailed within the Clause 4.6 to justify contravening the maximum building height development standard under Clause 4.3.

## **Conclusion**

The Applicant's written request pursuant to Clause 4.6 of NSLEP 2013 to the amended proposal has been reviewed and given the existing context of the site, the substantial amendments provided by the amended application, the compliance with the standard should be considered to be unreasonable and unnecessary in the circumstances of the case. Sufficient environmental planning grounds have been identified to support the variation to the standard.

## **Part 6 – Additional local Provisions**

### **3. Earthworks**

The proposed development involves a significant amount of excavation to accommodate the basement and lower ground level. The extent of excavation is outlined in paragraph 9.1.1 'Excavation' of the Geotechnical Investigation Report prepared by Douglas Partners to be about RL 8.15 m, requiring bulk excavation to about 5 m below the existing level at the south-eastern end of the site, to about 10 m below the existing levels at the north-eastern end.

The amended application is supported by a supplementary geotechnical report by Douglas Partners dated 13 December 2024 and an updated assessment has been carried out below having regard to Clause 6.10 in NSLEP 2013 specifically subclauses (a) and (d) of Clause 6.10(3) in NSLEP 2013.

- (3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:**
- (a) the likely disruption of, or any detrimental effect on:**
    - (i) drainage patterns and soil stability in the locality of the development, and**
    - (ii) natural features of, and vegetation on, the site and adjoining land,**
  - (d) the effect of the development on the existing and likely amenity of adjoining properties,**

As an alternative to rock anchors Douglas Partners propose that a structurally braced/propped system is used in combination with short rock bolts, bonded in the medium strength sandstone (not extending beyond the boundary). Douglas Partners provide further detail for the excavation support and shoring system within the supplementary report.

Douglas Partners affirm in the concluding comments that the site is similar to many other development sites in Sydney and that it should be possible to develop the site without adversely affecting the adjacent No 3 Warung Street property or the Henry Lawson frontage, provided that all work is carried out in accordance with sound design using suitable construction techniques, with all critical elements inspected and approved by the geotechnical engineer and structural engineer.

Conditions of consent as recommended by Council's Development Engineer will be included within the consent if supported by the Panel concerning dilapidation reports, structural and geotechnical reports and erosion and sediment control.

In accordance with the provisions of Clause 6.10(3) this assessment has considered the impact of the proposed excavation within the site and to surrounding properties and found that the proposed earthworks are acceptable for the reasons as outlined above and subject to suitable excavation and shoring techniques determined by the development project geotechnical and structural engineers. Accordingly, the proposed development is not supportable in this regard.

### SUBMITTERS CONCERNS

The amended application received in response to the deferral by the December 2024 Panel was notified to previous submitters. The notification was between 17 January and 31 January 2025 and Council received in total four (4) submissions where the following matters were raised (*in italics*):-

- *Various height exceedances noted including height plane exceedance of 1.2m, height exceedance of 1.94m for north west corner, height is now higher at 2.579m from 2.515m for the south west corner affecting views from west end to east of the Bridge.*

**Comment:** In Figures 13 and 14 of this report are the Building Height Plane Diagram (Issue C) for determination in December 2024 versus the current height plane diagram (Issue E) subject to the Panel deferred determination.

There has been no change to the overall height of the building as a result of deleting the splayed design of the south eastern corner and the height exceedances remain with minor change arising from the re-configuration of the building parapet to the south. It should be noted in the original Panel report the height exceedances including view loss were considered in detail and the primary concerns were regarding privacy to No. 3 Warung Street and the large skewed south eastern balconies. The Panel considered the preceding assessment and generally accepted the exceedance of the height standard.

- *Portions of the proposed south-eastern balconies at Levels 1 and 2 extend closer to the boundary fronting Henry Lawson Drive and a large portion of the proposed south eastern balcony on Level 3 extends close to Henry Lawson Drive compared to the Court approved development.*

*The proposed extended south eastern balconies are more visually imposing than the Court approved balconies and generate significantly increased overlooking impact to No. 3 Warung Street.*

*If NSLPP be of a mind to approve the Amended Plans, NSLPP should impose a Condition of Consent requiring the south-eastern balconies at Levels 1, 2 and 3 to not project beyond the red lines indicated. Furthermore, a condition of consent is requested that the eastern edge of the south eastern balconies is fixed with 1.6m high privacy screens.*

**Comment:** the amended architectural plans respond appropriately to the design directions stipulated by the December 2024 Panel by deleting the splayed balcony design, realigning the balconies with the eastern wall of the northern portion of the residential flat building and achieving a rectilinear form. The balcony also does not project further toward Henry Lawson Drive than the furthest point shown in the current design.

It is noted the submission contends the outcome of the alternative balcony designs generates significant increased overlooking to No. 3 Warung Street. If the Panel agree with concerns raised by the submitter suggestions are made to reduce the projection of the balconies and the provision of privacy screens. During deliberation of the amended plans against the requirements of Panel Design Amendment 1 (Building Design and Privacy) neighbouring privacy was noted in the Assessment Supplementary Planning Report. Although the amended design addresses the requirements of Design Amendments 1 (Building Design and Privacy) additional conditions of consent concerning privacy are deliberated in the Supplementary Planning Report and suggested conditions if warranted are provided by the Assessment Officer to assist the Panel in their determination.

- *The proposed balconies in the south-eastern corner generate significant overlooking impact from the eastern edge of the proposed balconies into the Heritage Item (No. 3 Warung Street) and its private open space.*

Concern raised by submitters in response to the original and amended proposal included concerns regarding privacy impacts from the proposed eastern balcony design. The amended proposal has changed the arrangement of windows to the building's eastern elevation to provide a new living room window on Level 2 which provides an additional direct outlook to the private open space of No. 3 Warung Street.

Consideration has been given to the proposed Level 2 and 3 living room windows on the eastern elevation (outlined in green in Figure 4). Should the Panel be minded to approve the application it is recommended that privacy measures be considered such as either windows with a high sill above floor level or comprise of privacy louvres.

Conditions are provided for Panel consideration requiring design amendments to the Level 2 & 3 balconies to ensure the balcony setback to Henry Lawson Avenue aligns with the western balcony of Unit 301 and to address impact to No. 3 Warung Street.

### **Privacy**

C41. The following privacy amendments are to be provided:

- a) The windows on the eastern elevation that serve Level 2 living room clouded in red on Dwg No. DA-102 Issue D and DA-206 Issue D Fixed should have attached bronze restricted louvres or the windows should be amended to have a minimum sill height of 1.6m above the Level 2 finished floor level.
- b) A planter with screen planting or privacy louvres are to be sited on the eastern side of the Level 3 balcony. The location of the screen planting or privacy screen is clouded in red on the Level 3 Floor Plan, DA-103 Issue E.

Screen planting must consist of suitable screening species capable of attaining a mature height of 2.0 metres above finished floor levels. Details of the screen planting required by this condition must be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate.



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

(Reason: To ensure an adequate level of privacy is provided to adjoining property located at 3 Warung Street)

An alternative/additional condition for Panel consideration to address privacy from direct views between the balcony of Level 3 and 3 Warung Street is via the below Design Change condition of consent.

### **Level 3 Balcony Design Amendment**

C42. The following design amendments are required to the Level 3 balcony:

- a) The Level 3 balcony is to be amended to reduce the depth of the balcony to Henry Lawson Avenue. The eastern balcony is to be realigned to match that of the Level 3 western balcony. This design change does not permit a further increase in the size of the balcony to compensate for the amendments to the eastern Level 3 balcony. The part of the balcony subject to this condition is clouded in red on the Level 3 Floor Plan, DA-103 Issue E.

Plans and specifications complying with this condition must be submitted for the written approval of Council's Manager of Development Services prior to the issue of any Construction Certificate.

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

(Reason: To ensure an adequate level of privacy is provided to adjoining property located at 3 Warung Street)

- *It is requested that a Condition of Consent be imposed requiring obscure glazing be installed to the entirety of the proposed windows on the proposed western elevation to a minimum height of 1.6m above the respective floor levels.*

**Comment:** it is notable the Panel reasons for deferral and matters to be addressed did not include privacy measures to the windows on the eastern elevation of the residential flat building. Privacy measures for windows can be deliberated and if required appropriate conditions of consent applied concerning privacy.

- *The area highlighted in green in drawing 'H' should be setback an additional 1m.*



**Figure 15 – Annotated Basement Level Plan, DA-099 Issue E dated 19.12.2024**

**Comment:** the submitted amended architectural plans (Issue E) is considered to satisfactorily address the requirements of Design Condition 2 (Site Coverage and Landscaping) addressing the bulk of the eastern basement setback. It is noted the amended basement ensures the eastern basement would generally have a 2m side setback.

Amendments to the vehicular entry to Henry Lawson Drive with any additional side setback is also likely to require substantial amendments and potentially a change in the location of the vehicular entry point. The current Development Application No. 85/24 maintains the same vehicular entry/exit point as per the previous Land and Environment Court Approval (LEC File Number 2022/157325) and it is noted this was a core issue of contention. Any amendments to the vehicular entry/exit point are not recommended given the current entry point was supported by the LEC as a discreet design solution that minimises the extent of intervention to the sandstone wall facing Henry Lawson Avenue.

- *No Consultant of the Applicant has ever requested access to my Client's property to inspect the foundations/footings of the Heritage Item at No. 3 Warung Street. Until an inspection is carried out by a qualified Geotechnical Engineer and Structural Engineer or the existing foundations/footings of No. 3 Warung Street, one cannot be confident that the Heritage Item will not suffer damage. The following condition of consent is recommended:*

*“Prior to issuing of a Construction Certificate, qualified Geotechnical and Structural Engineers shall inspect the foundations/footings of the adjoining Heritage Item at 3 Warung Street and then prepare a Geotechnical/Structural Report proposing a range of protection measures to ensure that the approved construction works will not damage the adjoining Heritage Item. This required Geotechnical/Structural Report shall be submitted to Council and obtain the approval of Council prior to issuing of the Construction Certificate. The Geotechnical/Structural Report shall be provided to the Owners of 3 Warung Street in order that the Engineering Consultant for 3 Warung Street can provide comments before Council makes a decision as to whether the report is approved. If Council decides that the Geotechnical/Structural Report is satisfactory, following consideration of the comments of the Engineering Consultant for 3 Warung Street, Council will advise the Private Certifier. The recommendations contained within the Geotechnical/Structural Report (as approved by Council) shall be strictly complied with during the full construction of the proposed development.”*

**Comment:** Conditions are recommended in accordance with the directions of the Development Engineer the following applicable structural and geotechnical conditions. These conditions are worded in full within the recommended conditions of consent if the Panel approve the development as amended.

- Dilapidation Report Private Property (Excavation)
  - Dilapidation Survey Private Property (Neighbouring Buildings)
  - Shoring for Adjoining Property
  - Structural Adequacy of Adjoining Properties – Excavation Works
  - Geotechnical Report
  - Geotechnical Stability during Works
- *The number of units proposed under the current DA will be less than the existing building which reduces housing stock. Given Clause 1.2.3 of the NSDCP 2013 and the fact that the Loss of Housing Stock was fundamental in the recent Court decision of “Billyard Avenue Developments Pty Limited ATF Billyard Avenue Development Trust v The Council of the City of Sydney [2024] NSWLEC 1825” (Billyard Avenue) consideration is required to the subject site and development.*

**Comment:** the original assessment report prepared for review by the December 2024 Panel included a merit assessment for the loss of housing noting the development providing larger apartments serves a differing housing market providing dwelling style accommodation compatible with medium density residential surrounds. It is also noted that in the deferral determination housing mix or number of units was not adopted as a matter for the Applicant to amend or resolve.

In addressing the particular concerns about reduction of dwellings it should be noted that the site retains an underlying zoning of R3 Medium Density and there remains substantial housing choice within the locality to sufficiently maintain affordability within McMahons Point and the North Sydney LGA more broadly.

#### **ALL LIKELY IMPACTS OF THE DEVELOPMENT**

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

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<b>ENVIRONMENTAL APPRAISAL</b>	<b>CONSIDERED</b>
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 Environmental Planning and Assessment (Amendment) Act 1979	Yes

#### **PUBLIC INTEREST**

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

#### **SUITABILITY OF THE SITE**

The proposed development is not considered to be suitable for the site having regard to the merits of the proposal as described in this report.

#### **HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?**

The amended application was notified to previous submitters for 14 days where a number of issues were raised including privacy loss, height of building, excavation/earthworks and view loss. These concerns and issues have been discussed in this supplementary report and where relevant conditions are recommended to address specific concerns.

#### **CONCLUSION**

The proposal involves reconstruction of a residential flat building which benefits from Existing Use Rights provisions under Div 4.11 of the EP & A Act 1979 and the incorporated provisions at s163 to 167 of the EP & A regulations 2021. The development application has been assessed against relevant State Planning Policies including Chapter 4 of the Housing SEPP, as well as Council policies including the North Sydney Local Environmental Plan 2013 (NSLEP 2013) and North Sydney Development Control Plan 2013 (NSDCP 2013).

Amendments to the building design removes the splayed balconies and achieves a rectilinear form. The basement has been amended with a further 1 metre setback to the western and eastern side setback. Furthermore, a more detailed and specific response is provided to the matters raised in the Council assessment report and matters for consideration in Cl. 6.10 of NSLEP 2013.

Amendments to the eastern elevation and the south eastern balconies are subject to Panel consideration as to whether sufficient privacy measures are required for the adjoining 3 Warung Street. Suggested conditions of consent are provided for Panel consideration if additional privacy mitigation measures are required noting the submissions received following notification of the amended architectural plans.

This supplementary report has considered the performance of the amended application performance against applicable planning requirements and has had regard for the Panel's previous decision and the further submissions received.

The amended proposal and additional information have addressed the concerns previously raised by the Planning Panel and consideration has been given the remaining to relevant matters outlined in this supplementary report.

Following this assessment and having regard to the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), the application is recommended for approval subject to conditions.

## **RECOMMENDATION**

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

**THAT** the North Sydney Local Planning Panel, as the consent authority, assume the concurrence of the Secretary of The Department of Planning, Housing and Infrastructure and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 – maximum building height and grant consent to development consent to Development Application No. 379/21 for demolition of existing structures and erection of a new residential flat building and ancillary works, on land at No. 1 Warung Street, McMahons Point subject to the attached Standard conditions and following site specific conditions:

### **SITE SPECIFIC CONDITIONS**

#### **Privacy**

C41. The following privacy amendments are to be provided:

- a) The windows on the eastern elevation that serve Level 2 living room clouded in red on Dwg No. DA-102 Issue D and DA-206 Issue D Fixed should have attached bronze restricted louvres or the windows should be amended to have a minimum sill height of 1.6m above the Level 2 finished floor level.
- b) A planter with screen planting or privacy louvres are to be sited on the eastern side of the Level 3 balcony. The location of the screen planting or privacy screen is clouded in red on the Level 3 Floor Plan, DA-103 Issue E.

Screen planting must consist of suitable screening species capable of attaining a mature height of 2.0 metres above finished floor levels. Details of the screen planting required by this condition must be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate.

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

(Reason: To ensure an adequate level of privacy is provided to adjoining property located at 3 Warung Street)

### **Level 3 Balcony Design Amendment**

C42. The following design amendments are required to the Level 3 balcony:

- a) The Level 3 balcony is to be amended to reduce the depth of the balcony to Henry Lawson Avenue. The eastern balcony is to be realigned to match that of the Level 3 western balcony. This design change does not permit a further increase in the size of the balcony to compensate for the amendments to the eastern Level 3 balcony. The part of the balcony subject to this condition is clouded in red on the Level 3 Floor Plan, DA-103 Issue E.

Plans and specifications complying with this condition must be submitted for the written approval of Council's Manager of Development Services prior to the issue of any Construction Certificate.

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

(Reason: To ensure an adequate level of privacy is provided to adjoining property located at 3 Warung Street)

**THOMAS HOLMAN**  
**SENIOR ASSESSMENT OFFICER**

**DAVID HOY**  
**TEAM LEADER ASSESSMENTS**

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**STEPHEN BEATTIE**  
**MANAGER DEVELOPMENT SERVICES**

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**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**1 WARUNG STREET, MCMAHONS POINT**  
**DEVELOPMENT APPLICATION NO. 85/24**

**A. Conditions that Identify Approved Plans**

**Development in Accordance with Plans/Documentation**

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

Plan No.	Rev	Title	Drawn by	Dated
DA-001	E	Cover Sheet	Squillace	19.12.2024
DA-011	E	Site Plan	Squillace	19.12.2024
DA-012	E	Site Analysis Plan	Squillace	19.12.2024
DA-020	E	Demolition Plan	Squillace	19.12.2024
DA-099	E	Basement Level Plan	Squillace	19.12.2024
DA-100	E	Ground Level Plan	Squillace	19.12.2024
DA-101	E	Level 1 Plan	Squillace	19.12.2024
DA-102	E	Level 2 Plan	Squillace	19.12.2024
DA-103	E	Level 3 Plan	Squillace	19.12.2024
DA-104	E	Roof Plan	Squillace	19.12.2024
DA-205	E	North Elevation	Squillace	19.12.2024
DA-206	E	East Elevation	Squillace	19.12.2024
DA-207	F	West Elevation	Squillace	19.12.2024
DA-208	E	South Elevation	Squillace	19.12.2024
DA-301	E	DA Section 01	Squillace	19.12.2024
DA-531	E	Landscape Coverage & Excavation Plan	Squillace	19.12.2024
DA-541	E	Adaptable Unit Layout	Squillace	19.12.2024
DA-800	E	Basement Entry Drawing	Squillace	19.12.2024
DA-000	D	Cover Page & Drawing List	Secret Gardens	06.09.2024
DA-101	D	Tree Protection & Removal Plan	Secret Gardens	06.09.2024
DA-201	D	Proposed Landscape Plan – Ground Floor	Secret Gardens	06.09.2024
DA-202	D	Proposed Planting Plan – Ground Floor	Secret Gardens	06.09.2024
DA-211	D	Proposed Landscape Plan – Level 1	Secret Gardens	06.09.2024
DA-221	D	Proposed Landscape Plan- Level 2	Secret Gardens	06.09.2024
DA-231	D	Proposed Landscape Plan – Level 3	Secret Gardens	06.09.2024
DA-401	D	Plant Palette	Secret Gardens	06.09.2024
DA-402	D	Plant Palette & Schedule	Secret Gardens	06.09.2024
DA-403	D	Notes	Secret Gardens	06.09.2024

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

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**Plans on Site**

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

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

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

**No Demolition of Extra Fabric**

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

(Reason: To ensure compliance with the approved development)

**External Finishes and Materials**

- A4. External finishes and materials must be in accordance with the submitted schedule shown on the Proposed Elevations DA-205 - DA-208 Issue E dated 19/12/2024, prepared by Squillace unless otherwise modified by Council in writing. Substitution of materials must not be undertaken, except where otherwise approved in writing by Council.

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

**B. *Matters to be Completed before the lodgement of an Application for a Construction Certificate*****Construction and Traffic Management Plan**

- B1. A Construction Traffic Management Plan must be prepared by a suitably qualified and experienced traffic consultant and submitted to and approved by the relevant North Sydney Transport Engineer.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition and construction process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)



**C. Prior to the Issue of a Construction Certificate (and ongoing, where indicated)****Prior to issue of a Construction Certificate – Sydney Metro Requirements****C1. Engineering**

All excavation and construction works are to be undertaken in accordance with the details, methodology, advice, undertakings, measures and recommendations detailed in the following documents:

- (a) Survey Plan Showing Detail & Level, Drawing 19099A detail, Issue 7, Sheet 1 of 2, prepared by C.M.S Surveyors Pty Limited, dated 18 September 2024
- (b) Survey Plan Showing Detail & Level, Drawing 19099A detail, Issue 7, Sheet 2 of 2, prepared by C.M.S Surveyors Pty Limited, dated 18 September 2024
- (c) Report on Geotechnical Investigation, Project no. 203182.01, Revision 3, prepared by Douglas Partners, dated 31 May 2024
- (d) Report on Geotechnical Numerical Modelling (Sydney Metro), Project no. 20318201, Revision 1, prepared by Douglas Partners, dated 31 May 2024
- (e) Electrolysis Risk Report, Revision A, prepared by Performance Electric Pty Limited, dated 5 June 2024
- (f) Response to Sydney Metro RFI, Ref SY240001, by van der Meer Consulting, dated 24 September 2024
- (g) DA Acoustic Assessment, Ref 20231333.1/2902A/R2/RL, prepared by Acoustic Logic, dated 29 February 2024.
- (h) Demolition Plan, Drawing no. DA-020, Issue C, prepared by Squillace Architecture /Interiors, dated 03 September 2024
- (i) Basement Level Plan, Drawing no. DA-099, Issue C, prepared by Squillace Architecture /Interiors, dated 03 September 2024
- (j) Ground Level Plan, Drawing no. DA-100, Issue C, prepared by Squillace Architecture /Interiors, dated 03 September 2024
- (k) Level 1 Plan, Drawing no. DA-101, Issue C, prepared by Squillace Architecture /Interiors, dated 03 September 2024
- (l) Level 2 Plan, Drawing no. DA-102, Issue C, prepared by Squillace Architecture /Interiors, dated 03 September 2024
- (m) Level 3 Plan, Drawing no. DA-103, Issue C, prepared by Squillace Architecture /Interiors, dated 03 September 2024

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- (n) Sections Sheet 1, Drawing no. DA-301, Issue C, prepared by Squillace Architecture /Interiors, dated 03 September 2024

subject to any amendments to those documents required by Sydney Metro in accordance with this consent. The Certifier must not issue a Construction Certificate for the development until the Certifier has confirmed which documents (including the versions of those documents) apply to the development and the Certifier has confirmed in writing to Sydney Metro that the construction drawings and specifications comply with those documents. The Certifier must not issue a Construction Certificate for the development until written confirmation has been received from Sydney Metro that this condition has been satisfied.

The Certifier must not issue a Construction Certificate for the development unless the Applicant has submitted to Sydney Metro and Sydney Metro has provided written approval of the following items:

- (a) Final structural design documentation for the Construction Certificate;
- (b) Section 6.6 of DA Acoustic Assessment, Ref 20231333.1/2902A/R2/RL, prepared by Acoustic Logic, dated 29 February 2024, to be updated to show development will meet GBN criteria with the reduced distance to tunnel following excavation of basement;
- (c) Construction noise and vibration management plan to be submitted to Sydney Metro which includes proposed excavation equipment and shows compliance with vibration criteria for Sydney Metro assets listed in Sydney Metro Underground Corridor Protection Technical Guidelines. Details of any proposed vibration monitoring should also be submitted to Sydney Metro for review.

Prior to the commencement of works, the Certifier must provide written verification to Sydney Metro that this condition has been complied with.

#### Rail Corridor

All structures must be designed, constructed and maintained so as to allow for the future operation and demolition of any part of the development without damaging or otherwise interfering with the Sydney Metro City & Southwest rail corridor or rail operations. Where any part of the development is to be retained because its demolition would damage or otherwise interfere with the Sydney Metro City & Southwest rail corridor or rail operations, that part of the development must have a minimum design life of 100 years.

#### Survey and services

Prior to the issue of a Construction Certificate:

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- (a) the Applicant must provide Sydney Metro with an accurate survey of the development and its location relative to the rail corridor boundary and any rail infrastructure. The survey is to be undertaken by a registered surveyor, to the satisfaction of Sydney Metro; and
- (b) a registered surveyor shall peg-out the common property boundary between the development site and the rail corridor and any Sydney Metro easements to ensure that there is no encroachment by the development. A copy of the survey report indicating the location of pegs must be provided to Sydney Metro prior to the commencement of works.

Prior to the issue of a Construction Certificate, the Applicant must undertake a services search to establish the existence and location of any rail services and provide the results of the search to Sydney Metro. A services search must be based on current and not expired information and include information obtained through the Dial Before You Dig service. Persons performing the service search shall use equipment that will not have any impact on rail services and signalling. Should rail services be identified within the development site, the Applicant must discuss with Sydney Metro whether the services are to be relocated or incorporated within the development site.

Noise & Vibration

The development must:

- (a) comply with State Environmental Planning Policy (Transport and Infrastructure) 2021 and the NSW Department of Planning & Environment's document titled "Development Near Rail Corridors and Busy Roads - Interim Guideline" (2008) and the Sydney Metro Underground Corridor Protection Guidelines (available from [www.sydneymetro.info](http://www.sydneymetro.info));
- (b) be designed, constructed and maintained so as to avoid damage or other interference which may occur as a result of air-borne noise, ground-borne noise and vibration effects that may emanate from the rail corridor during rail construction and operations; and
- (c) not have any noise or vibration impacts on the rail corridor or rail infrastructure.

The Applicant must:

- (a) prepare an acoustic assessment report which confirms compliance with each of the matters outlined in condition [1.6]; and
- (b) incorporate as part of the development all the measures recommended in the acoustic assessment report; and
- (c) not have any noise or vibration impacts on the rail corridor or rail infrastructure.

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The Applicant must incorporate as part of the development all the measures recommended in the acoustic assessment report DA Acoustic Assessment, Ref 20231333.1/2902A/R2/RL, prepared by Acoustic Logic, dated 29 February 2024. A copy of the acoustic assessment report is to be provided to the Certifier and Council prior to a Construction Certificate being issued by the Certifier. The Certifier must ensure that the recommendations of the acoustic assessment report are incorporated in the construction drawings and documentation prior to issuing a Construction Certificate for the development.

Construction

No work is permitted within the rail corridor, or any easements which benefit Sydney Metro, at any time, unless the prior approval of, or an Agreement with, Sydney Metro has been obtained by the Applicant. The Certifier must not issue a Construction Certificate for the development until written confirmation has been received from Sydney Metro that this condition has been satisfied.

No rock anchors, rock bolts, ground anchors or rock ties, piles, foundations, rock pillars, transfer structures, basement walls, slabs, columns, beams, cut rock faces, are to be installed in the rail corridor, Sydney Metro property or easements, unless the Applicant has obtained prior written consent from Sydney Metro for any proposed use of rock anchors. The Certifier must not issue a Construction Certificate for the development until it has received written confirmation from Sydney Metro that this condition has been satisfied.

Prior to the issuing of a Construction Certificate, the following information must be submitted to Sydney Metro for review and endorsement:

- (a) Machinery to be used during excavation/construction;
- (b) Demolition, excavation and construction methodology and staging;

The Certifier must not issue a Construction Certificate for the development until it has received written confirmation from Sydney Metro that this condition has been satisfied.

If required by Sydney Metro, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements for the proposed works are to be submitted to Sydney Metro for review and endorsement regarding impacts on the rail corridor. The Certifier must not issue a Construction Certificate for the development until written confirmation has been received from Sydney Metro that this condition has been satisfied.

If required by Sydney Metro, a tunnel monitoring plan (including instrumentation and the monitoring regime during excavation and construction phases) is to be submitted to Sydney Metro for review and endorsement prior to the issuing of a Construction Certificate. The Certifier must not issue a Construction Certificate until written confirmation has been received from Sydney Metro that this condition has been satisfied.

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If required by Sydney Metro, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Metro's Corridor Protection Team to determine the need for public liability insurance cover and the level of insurance required. If insurance cover is deemed necessary, the Applicant must obtain insurance for the sum determined by Sydney Metro and such insurance shall not contain any exclusion in relation to works on or near the rail corridor or rail infrastructure and must be maintained for the period specified by Sydney Metro. Prior to issuing a Construction Certificate for the development, the Certifier must witness written proof of any insurance required by Sydney Metro in accordance with this condition, including the written advice of Sydney Metro to the Applicant regarding the level of insurance required.

(Reason: construction of the proposed development presents a risk of potential damage to the Sydney Metro City & Southwest rail corridor which is not in the public interest. This risk of damage to public infrastructure must be appropriately managed and mitigated)

If required by Sydney Metro, prior to the issue of a Construction Certificate the Applicant must contact the Sydney Metro Corridor Protection Team to determine the need for the lodgement of a bond or bank guarantee for the duration of the works and the sum of any required bond or bank guarantee. Prior to issuing a Construction Certificate for the development, the Certifier must witness written confirmation from Sydney Metro that the Applicant has lodged any bond or bank guarantee required by this condition.

(Reason: construction of the proposed development presents a risk of potential damage to the Sydney Metro City & Southwest rail corridor which is not in the public interest. This risk of damage to public infrastructure must be appropriately managed and mitigated)

Documentation

Copies of any certificates, drawings, approvals or documents endorsed by, given to or issued by Sydney Metro must be submitted to Council for its records prior to the issue of any Construction Certificate.

Other

Any conditions or other requirements imposed by Sydney Metro part of its approval/endorsement of any documents provided by the Applicant to Sydney Metro in accordance with these conditions of consent must also be complied with by the Applicant when implementing any approved/endorsed documents, plans, reports during the construction and operation of the development (as applicable).

Where a condition of consent requires Sydney Metro endorsement or approval, the Certifier must not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from those entities that the particular condition has been complied with. The issuing of staged Construction Certificates by the Certifier dealing with specific works and compliance conditions can only occur subject to written confirmation from Sydney Metro.

All reasonable Sydney Metro costs associated with review of plans, designs and legal must be borne by the applicant.

(Reason: Sydney Metro Requirement).

### **Ausgrid**

**C2. The applicant/developer shall note the following comments below regarding any proposal within the proximity of existing electrical network assets**

Special care should be taken to ensure that driveways and any other construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways.

It is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Information regarding the position of cables along footpaths and roadways can be obtained by contacting Before You Dig Australia (BYDA). In addition to BYDA the proponent should refer to the following documents to support safety in design and construction:

SafeWork Australia – Excavation Code of Practice.

Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables.

The following points should also be taken into consideration.

Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.

Should ground levels change above Ausgrid's underground cables in areas such as footpaths and driveways, Ausgrid must be notified, and written approval provided prior to the works commencing.

Should ground anchors be required in the vicinity of Ausgrid underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

**The applicant/developer shall note the following comments below regarding any proposal within the proximity of existing Ausgrid Overhead Powerlines**

The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.

Consideration should be given to the positioning and operating of cranes, scaffolding, and

sufficient clearances from all types of vehicles that are expected be entering and leaving the site.

The "as constructed" minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website at [www.ausgrid.com.au](http://www.ausgrid.com.au).

It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer's cost.

**The applicant/developer shall note the following comments below regarding any proposal for a new driveway within the proximity of existing Ausgrid Poles**

Ausgrid Network standard NS167 requests that proposed driveways should be located to maintain a minimum clearance of 1.5 m from the nearest face of the pole to any part of the driveway, including the layback, to allow room for future pole replacements. Ausgrid should be further consulted for any deviation to this norm.

**The applicant/developer shall note the following comments below regarding any new or modified connection**

To apply to connect or modify a connection for a residential or commercial premises. Ausgrid recommends the proponent to engage an Accredited Service Provider and submit a connection application to Ausgrid as soon as practicable. Visit the Ausgrid website for further details; <https://www.ausgrid.com.au/Connections/Get-connected>

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can be found by visiting the following Ausgrid website: [www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries](http://www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries)

(Reason: Ausgrid condition concerning existing electrical assets)

**Dilapidation Report Damage to Public Infrastructure**

- C3. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

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

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

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

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

**Dilapidation Survey Private Property (Neighbouring Buildings)**

- C4. A photographic survey and dilapidation report of adjoining property No. 3 Warung Street, detailing the physical condition of those property, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, MUST BE submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.

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

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

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

(Reason: Proper management of records)

**Shoring for Adjoining Property**

- C5. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.



***Note: Approval of engineering drawings for shoring works to be located on adjoining property by the Principal Certifier does not authorise a trespass on private or public land. All relevant permissions/ legal rights must be obtained to undertake any works on adjoining land.***

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

### **Structural Adequacy of Adjoining Properties - Excavation Works**

C6. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining property No. 3 Warung Street, which certifies its ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works)

### **Geotechnical Report**

C7. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:

- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
- b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
- c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
- d) the existing groundwater levels in relation to the basement structure, where influenced;
- e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for

natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and

- f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/ hydrogeological engineer with previous experience in such investigations and reporting.

It is the responsibility of the consulting geotechnical/ hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

### **Sediment Control**

- C8. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th Edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

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

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

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

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

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

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**Waste Management Plan**

- C9. A Waste Management Plan is to be submitted for approval by the Principal Certifier prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
  - b) The design of the on-site waste storage and recycling area; and
  - c) Administrative arrangements for waste and recycling management during the construction process.

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

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

**Colours, Finishes and Materials (Conservation Areas)**

- C10. The finishes, materials and exterior colours shall be complementary to the architectural style of the original building and sympathetic to the character of the Conservation Area. A schedule of finishes, materials and external colours shall be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

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

**Sandstone Repointing**

- C11. Any repointing works to the existing rock wall/outcrop addressing the public domain within Henry Lawson Avenue must be undertaken using traditional lime mortar by a qualified stonemason. Written details of the engagement of a qualified stonemason must be submitted to the Principal Certifier prior to the issue of any Construction Certificate.

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

Note: The provisions of the Heritage Act may also apply to altering any sandstone elements on any site.

(Reason: To allow for preservation of cultural resources within the North Sydney Council area)

**Heritage Architect to be Commissioned**

- C12. An appropriately qualified and experienced heritage architect must be commissioned to assist the design development, contract documentation and overseeing of construction works on the site for their duration by undertaking regular inspections of the works in progress and providing advice in relation to heritage matters.

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

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

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

**Roofing Materials – Reflectivity**

- C13. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

**No External Service Ducts**

- C14. Service ducts must be provided within the building to keep external walls free of plumbing, drainage or any other utility installations. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure quality built form of the development)

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**Work Zone**

- C15. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of any Construction Certificate.

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

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

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

(Reason: Amenity and convenience during construction)

**Maintain Property Boundary Alignment Levels**

- C16. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

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

(Reason: To ensure interface between property and public land remains uniform)

**Bicycle Storage and Parking**

- C17. The bicycle storage area within the basement level must accommodate a total of eight (8) bicycles, including one (1) visitor bicycle. Any bicycle storage areas/lockers and bicycle rail shall be designed in accordance with the applicable Australian Standards. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To promote and provide facilities for alternative forms of transport)

**Accessible Parking Spaces to be Provided**

- C18. A total of two (2) x accessible parking spaces shall be provided as part of the total car-parking requirements. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpath and roads. All details shall be prepared in consideration of, and construction completed in accordance with applicable Australian Standards to achieve compliance with the Disability Discrimination Act. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

(Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation)

**Basement Car Park to Comply with Relevant Standards**

- C19. The basement layout must comply with all requirements of Australian Standard AS2890.1. Certification from a suitably qualified and practicing Civil Engineer that the basement design will comply with the requirements of the Australian Standard must be provided to the Principal Certifier for approval prior to issue of any Construction Certificate.

(Reason: To ensure the basement layout complies with relevant standards)

**Required Infrastructure Works - Roads Act 1993**

- C20. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development.

**Note:** Application for approval of Infrastructure Works under this condition must be submitted to Council using the '*Application to satisfy development consent*' form accompanied by payment of the adopted assessment/inspection fees.

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Road Works

- a) Construction of a new replacement concrete footpath, kerb & gutter and grass verge (as applicable) is required on all 3 site frontages in Warung Street, Blues Point Road and Henry Lawson Avenue. A longitudinal section is required along the footpath property boundary and along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line. The footpath shall be designed (at a single straight grade of 3% falling to top of kerb) so that it is uniform without showing signs of dipping or rising particularly at entrances.
- b) Reconstruction of the carriageway shoulder will be required, extending out a minimum of 1200mm from the gutter lip in AC10 – 50mm thick, adjacent to all new gutter works.
- c) Construction of footpath widening and traffic calming devices is required and the design of the proposed footpath widening and traffic calming devices shall be submitted to Council for approval to Council for approval by Council's Traffic and Transport Engineers, prior to issue of any Construction Certificate.
- d) cross sections at a scale of 1:50 along the centre-line of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the National Construction Code (NCC), including disability requirements. The Council approved footpath levels must be accommodated at the building entry points.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RMS Traffic Control at Work Sites (1998). **Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**



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**Note:** *A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.*

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

**Splay Corners**

C21. For the purposes of improving sight distance, the vehicular access must have minimum sight lines for pedestrian safety as per Figure 3.2 of AS 2890.1 at the intersection of the vehicular access with the property boundary. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Public amenity and safety and appropriate sight distance)

**Obtain Driveway Crossing Permit under S.138 Roads Act 1993**

C22. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable issue of the permit. The requirements of the permit must be complied with at all times.

The civil design drawings must include the following at a minimum:

- a) the vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor;
- b) all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.
- c) accommodate all bicycle parking and storage facilities in the basement parking area;

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- d) all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6;
- e) the redundant vehicular access off Warung Street is to be reinstated as kerb/gutter, grass verge and footpath;
- f) the width of the vehicular layback must be a maximum 4.5 metres (including the wings);
- g) the vehicular crossing must be set square to the kerb;
- h) the crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback;
- i) all kerb & gutter, layback, crossover and footpaths shall be constructed from concrete;
- j) all kerb/gutter and layback works shall be steel trowel smooth finish and all other concrete on Council land must be wood float cove finish;
- k) the gutter levels in the location of the new layback must match the existing levels and shall not be altered;
- l) transitioning works of one footpath panel on both sides of the driveway crossing are required to ensure uniformity in the footpath;
- m) the works will require reconstruction of the carriageway shoulder extending out a minimum 1200mm from the gutter lip in AC10 - 50mm thick, adjacent to all new gutter works;
- n) any twisting of driveway access must occur entirely within the subject property;
- o) all inspection openings, utility services must be adjusted to match the proposed driveway levels;
- p) sections along centre-line and extremities are required at a scale of 1:50 to be taken from the centre-line of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed;
- q) a longitudinal section along the gutter line at a scale of 1:50 showing how it is intended to blend the vehicular crossing with the existing kerb and gutter;
- r) a longitudinal section along the footpath property boundary at a scale of 1:50 is required;
- s) the sections must show the calculated clearance to the underside of any overhead structure;

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- t) a swept path analysis is required demonstrating that an 85th percentile vehicle can manoeuvre in and out of the garage spaces in accordance with AS 2890.1 2004 "Off Street Parking".

The permit must be granted by Council prior to the issue of any Construction Certificate. All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified. The Principal Certifier issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

**Stormwater Management and Disposal Design Plan - Construction Issue Detail**

C23. Prior to issue of any Construction Certificate, a site drainage management plan must be prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:

- a) compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code,
- b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to the kerb & gutter in Henry Lawson Avenue,
- c) the stormwater drainage system shall be designed for an average recurrence interval (A.R.I) of 1 in 20 years,
- d) all redundant stormwater pipelines within the footpath area shall be removed and footpath and kerb shall be reinstated,
- e) pipelines within the footpath area shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres,
- f) the design and installation of the rainwater tank(s) must comply with BASIX and Sydney Water requirements. Overflow from the tank(s) shall be connected by gravity to the stormwater disposal system,
- g) any proposed fence/building structure is to be constructed so as not to impede the natural overland flow, and
- h) provision is to be made for the collection and disposal in an approved manner of any overland flow entering the subject property or concentrated as a result of the proposed works,

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- i) surface inlet pits shall be located to catch surface flows and shall be provided at all pipe junctions, changes in pipe direction exceeding 45 degrees, prior to connection to the public drainage system and shall be of sufficient size to accept the flow,
- j) all sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer shall be submitted with the application for a Construction Certificate,
- k) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception,
- l) provide subsoil drainage to all necessary areas with pump out facilities as required.

A site drainage management plan which complies with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

**On-site Stormwater Detention**

- C24. On site detention must be provided to ensure that the maximum discharge of stormwater collected from the undeveloped site, which would occur during a 1 in 5- year storm of 1-hour duration is not exceeded. All other stormwater run-off from the site for all storms up to a 1 in 20-year storm event is to be retained on the site for gradual release to the kerb and gutter or piped drainage system. Provision is to be made for satisfactory overland flow should a storm in excess of the above parameters occur.

For small areas up to 0.5 hectares, determination of the require cumulative storage may be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Runoff Volume 1, 1987 Edition.

Engineering calculations, design and certification complying with this condition must be provided by an appropriately qualified and practising Civil Engineer and submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

(Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that public infrastructure in Council's care and control is not overloaded)

**Pump-out System Design for Stormwater Disposal**

- C25. The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria: -
- a) the pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the 1 in 20-year storm,
  - b) the pump system shall be regularly maintained and serviced, every six (6) months, and
  - c) any drainage disposal to the street gutter from a pump system, must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

Engineering details demonstrating compliance with these criteria and certified by an appropriately qualified and practising civil engineer shall be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To ensure adequate provision is made for the discharge of sub-surface stormwater from the excavated parts of the site)

**On-Site Rainwater System**

- C26. On site rainwater retention must be provided, water is to be re-used for laundry washing, toilet flushing, irrigation or similar. Any overflow is to be directed into existing stormwater drainage system. The completed works shall be certified as compliant with Australian Standard 3500.3.2, National Plumbing and Drainage Code and Sydney Water regulations upon completion.

(Reason: To ensure appropriate provision is made for the management of stormwater generated by the development, and to ensure that public infrastructure in Council's care and control is not overloaded)

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

- C27. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$75,000.00 to be held by Council for the payment of cost for any/all of the following:
- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,

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- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and [environmental controls](#)) required in connection with this consent
- c) remedying any defects in any such public work that arise within 6 months after the work is completed.

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

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

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

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

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

**Tree Bond for Public Trees**

- C28. Prior to the issue of any construction certificate, security in the sum of \$43,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

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

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

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

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

**SCHEDULE**

Tree	Location	Tree Bond
T1 Jacaranda mimosifolia (10m)	Council verge in front of 3 Warung Street	\$8,000.00
T2 Jacaranda mimosifolia (4m)	Council verge in front of 1 Warung Street	\$4,000.00
T3 Jacaranda mimosifolia (9m)	Council verge in front of 1 Warung Street	\$10,000.00
T4 Jacaranda mimosifolia (7m)	Council verge in front of 1 Warung Street	\$6,000.00
T5 Jacaranda mimosifolia (12m)	Council verge in front of 1 Warung Street	\$15,000.00

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

**Tree Protection Measures to be shown on Construction Drawings**

C29. The tree protection measures contained in the arborist report prepared by Advanced Treescapes Consulting dated 23/2/24, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

**Protection of Trees**

C30. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree No /Species	Location	Height (m)
T1 Jacaranda mimosifolia (10m)	Council verge in front of 3 Warung Street	10 x 6m
T2 Jacaranda mimosifolia (4m)	Council verge in front of 1 Warung Street	4 x 5m
T3 Jacaranda mimosifolia (9m)	Council verge in front of 1 Warung Street	9 x 7m

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T4 Jacaranda mimosifolia (7m)	Council verge in front of 1 Warung Street	7 x 4m
T5 Jacaranda mimosifolia (12m)	Council verge in front of 1 Warung Street	12 x 12m
T6 Plumeria sp.	Raised planter – NW corner – 1 Warung Street	4 x 4m

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

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

(Reason: Protection of existing environmental and community assets)

**Approval for Removal of Trees**

C31. The following tree(s) are approved for removal in accordance with the development consent:

Tree No /Species	Location	Height (m)
T7 Plumeria sp.	Northern setback – 1 Warung Street	4 x 4m
T8 Lagerstroemia indica	Northern setback – 1 Warung Street	6 x 4m
T9 Cotoneaster glaucophyllus	Northern setback – 1 Warung Street	5 x 5m
T10 Pittosporum undulatum	Northern setback – 1 Warung Street	6 x 6m
T11 Olea europaea var Africana	Northern setback – 1 Warung Street	6 x 7m
T12 Morus sp.	Eastern setback – 1 Warung Street	6 x 7m
T13 Washingtonia robusta	Eastern setback – 1 Warung Street	10 x 4m
1 x Stenocarpus sinuatus	Council verge between the power pole & post box (Blues Point Road frontage) – 1 Warung Street	3m

Removal or pruning of any other tree on the site is not approved, excluding species exempt under Section 16 of the North Sydney DCP 2013.

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

(Reason: Protection of existing environmental and community assets)



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**Pruning of Trees**

- C32. All pruning works shall to the following tree(s) shall be undertaken under the guidance of an appropriately qualified arborist/tree surgeon in accordance with Australian Standard AS 4373-2007 - Pruning of Amenity Trees:

Tree No /Species	Location	Height (m)
T3 Jacaranda mimosifolia (9m)	Council verge in front of 1 Warung Street	9 x 7m
T4 Jacaranda mimosifolia (7m)	Council verge in front of 1 Warung Street	7 x 4m
T5 Jacaranda mimosifolia (12m)	Council verge in front of 1 Warung Street	12 x 12m
T6 Plumeria sp.	Raised planter – NW corner – 1 Warung Street	4 x 4m

Scaffolding/hoarding shall be designed to minimise the need for any canopy pruning.

Marked-up pics detailing exactly what pruning is required shall be provided to council for approval by LDO prior to any pruning being permitted.

Minor pruning only shall be permitted, no more than 10% canopy shall be removed. A report detailing the measures to be employed during construction shall be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

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

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

**Garbage and Recycling Facilities**

- C33. An appropriate area must be provided within the premises for the storage of garbage bins and recycling containers and all waste and recyclable material generated by this premises. The following requirements must be met:

- a) all internal walls of the storage area must be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained with a tap in close proximity to facilitate cleaning;
- b) provision for the separation and storage in appropriate categories of material suitable for recycling;
- c) the storage area must be adequately screened from the street, with the entrance to the enclosures no more than 2m from the street boundary of the property;
- d) if a storage facility is to be provided at another suitable location within the building, a complementary garbage bin holding bay must be provided no more than 2m from the street boundary of the property;
- e) garbage enclosures serving residential units are not to be located within areas designated for non-residential uses; and

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- f) garbage enclosures serving non-residential uses are not to be located within areas designated for dining purposes.

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

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

Note: The applicant may wish to discuss bin storage requirements and location with Council's Environmental Services prior to finalisation of the required detail, and a copy of Council's Waste Handling Guide should be obtained for reference purposes before the design is finalised.

(Reason: To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste by collection contractors)

**Asbestos and Hazardous Material Survey**

- C34. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

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

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

The report must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

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

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**Location of Plant**

C35. All plant and equipment (excluding solar panels) is to be located within the basement of the building and is not to be located on balconies or the roof. Plans and specifications complying with this condition must be submitted to the Principal Certifier for Approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Minimise impact on surrounding properties, improved visual appearance and amenity for locality)

**Noise from Plant and Equipment**

C36. The use of all plant and equipment installed on the premises must not:

(a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Noise Policy for Industry 2017 shall be applied.

(b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and parks and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected receiver.

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

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

**Air Conditioners in Residential Premises**

C37. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2017 and State Environmental Planning Policy (Transport and Infrastructure) 2021 and must not:

(a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);

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- (i) before 8.00am and after 10.00pm on any Saturday, Sunday or Public Holiday; or
  - (ii) before 7.00am or after 10.00pm on any other day
- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Noise Policy for Industry 2017 will be applied.

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

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

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

(Reason: To maintain residential amenity)

**Acoustic Privacy (Residential Apartments)**

- C38. Noise levels in sole occupancy units of residential apartments must not exceed the following:

<b>Location</b>	<b>Maximum</b>
Habitable Rooms other than Sleeping Areas	40 LAeq (1hr)
Sleeping Areas	35 LAeq (1hr)

The “Maximum” limits are to apply in any hour of a 24-hour period with the windows of the sole occupancy unit closed.

“habitable room” has the same meaning as in the National Construction Code.

A floor separating sole occupancy units shall have a weighted standardised impact sound pressure level  $L'_{nT,w}$  not more than 55dB when measured in-situ in accordance with AS ISO 140.7-2006 “Field measurements of impact sound insulation of floors” and rated to AS ISO 717.2-2004 “Rating of sound insulation in buildings and of building elements. Part 2: Impact sound insulation.” This clause shall not apply to the floor of a kitchen, bathroom, toilet or laundry in a residential sole occupancy unit.

Mechanical equipment such as lift plant, air conditioning plant servicing the building and pumps shall not be located immediately adjacent bedrooms.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined above have been satisfied, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

(Reason: To comply with best practice standards for residential acoustic amenity)

### **Construction Noise Management Plan**

C39. A Construction Noise Management Plan must be prepared by an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, and must include the following:

- (a) Identification of noise affected receivers near to the site.
- (b) A prediction as to the level of noise impact at noise affected receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite.
- (c) Details of work schedules for all construction phases.
- (d) A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the Environment Protection Authority's Construction Noise Guideline.
- (e) Representative background noise levels should be submitted in accordance with the ICNG.
- (f) Confirmation of the level of community consultation that is to be undertaken by occupants at noise affected receivers likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.
- (g) Confirmation of noise monitoring methodology that is to be undertaken during the noise intensive stages of work including details of monitoring to be undertaken at the boundary of any noise affected receiver.
- (h) What course of action will be undertaken following receipt of a complaint concerning offensive noise.
- (i) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupants at noise affected receivers.
- (j) Details of selection criteria for any plant or equipment that is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on occupants at noise affected receivers and other less intrusive technologies available; and

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- (k) Details of site induction to be carried out for all employees and contractors undertaking work at the site.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

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

The Construction Noise Management Plan must be submitted to the Principal Certifier and a copy provided to Council prior to the issue of the Construction Certificate.

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

**Provision of Accessible Paths of Travel**

- C40. The building must be designed and constructed to provide access and facilities in accordance with the National Construction Code and Disability (Access to Premises – Buildings) Standards 2010. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Notes:

1. If, in complying with this condition, amendments to the development are required, the design changes must be submitted for the approval of Council prior to a Construction Certificate being issued. Approval of a modification application may be required.
2. It is not within Council’s power to set aside National legislation which requires the upgrade of buildings to meet modern access standards. Such decisions remain the jurisdiction of the Building Professionals Board Access Advisory Committee who may grant an exemption in certain exceptional circumstances.
3. Information on making an application for an “unjustifiable hardship exemption” under the accessibility standards can be found on the website of the NSW Building Professional Boards at [http://www.bpb.nsw.gov.au/page/premises-standards\\_](http://www.bpb.nsw.gov.au/page/premises-standards_)

- (Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards)

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**Privacy**

C41. The following privacy amendments are to be provided:

- a) The windows on the eastern elevation that serve Level 2 living room clouded in red on Dwg No. DA-102 Issue E and DA-206 Issue E should have attached bronze restricted louvres or the windows should be amended to have a minimum sill height of 1.6m above the Level 2 finished floor level.
- b) A planter with screen planting or privacy louvres are to be sited on the eastern side of the Level 3 balcony. The location of the screen planting or privacy screen is clouded in red on the Level 3 Floor Plan, DA-103 Issue E.

Screen planting must consist of suitable screening species capable of attaining a mature height of 2.0 metres above finished floor levels. Details of the screen planting required by this condition must be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate.

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

(Reason: To ensure an adequate level of privacy is provided to adjoining property located at 3 Warung Street)

**Level 3 Balcony Design Amendment**

C42. The following design amendments are required to the Level 3 balcony:

- a) The Level 3 balcony is to be amended to reduce the depth of the balcony to Henry Lawson Avenue. The eastern balcony is to be realigned to match that of the Level 3 western balcony. This design change does not permit a further increase in the size of the balcony to compensate for the amendments to the eastern Level 3 balcony. The part of the balcony subject to this condition is clouded in red on the Level 3 Floor Plan, DA-103 Issue E.

Plans and specifications complying with this condition must be submitted for the written approval of Council's Manager of Development Services prior to the issue of any Construction Certificate.

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

(Reason: To ensure an adequate level of privacy is provided to adjoining property located at 3 Warung Street)

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**Adaptable Housing**

- C43. The following nominated apartments are to be designed in accordance with the standard adaptable housing AS4299 - 1995.

**Schedule of adaptable units**

Unit 102 – Level 1

Unit 202 – Level 2

A report prepared by a suitably qualified consultant must be obtained that demonstrates, to the certifier's satisfaction, that any adaptable dwellings specified in this condition and the approved plans or documents comply with the provisions of AS 4299 Adaptable Housing Standards.

(Reason: To ensure equity of access and availability of accommodation in the future for an ageing population)

**Section 7.12 Contributions**

- C44. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is \$168,654.00.

**Indexation**

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

**Timing of payment**

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

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au)

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



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**Security Deposit/Guarantee Schedule**

- C45. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

<b>Security Deposit/Guarantee</b>	<b>Amount (\$)</b>
Street Tree Bond (on Council Property)	\$43,000.00
Infrastructure Damage Bond	\$25,000.00
Engineering Construction Bond	\$50,000.00
<b>TOTAL BONDS</b>	<b>\$118,000.00</b>

Note: The following fees applicable

<b>Fees</b>	
Local Infrastructure Contributions	\$168,654.00
<b>TOTAL FEES</b>	<b>\$168,654.00</b>

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

(Reason: Compliance with the development consent)

**BASIX Certificate**

- C46. The BASIX Certificate shall be amended to reflect the approved residential building and Dwellings therein. The final BASIX certificate must be checked and confirmed by the Certifying Authority to ensure there is consistency between the certificate and approved design.

Under clause 75 of the Environmental Planning & Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in the BASIX Certificate for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

**Outdoor Lighting**

- C47. All outdoor lighting must comply with, where relevant AS/NZ1158.3: 1999 Pedestrian Area (Category P) Lighting and AS4282:1997 Control of the Obtrusive Effects of Outdoor lighting. Details demonstrating compliance with these requirements must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To maintain the amenity of adjoining land uses)

**Amendments to the Landscape Plan**

- C48. The landscape plans prepared by Secret Gardens (Rev D) dated 06/09/2024 must be amended to reflect the amended building footprint/balcony design as detailed in the Ground Level Plan (DA-100 Issue E), Level 1 Plan (DA-101 Issue E), Level 2 Plan (DA-102 Issue E) and DA-103 Issue E. The overall scale and type of planting shall remain and not be reduced and the plant schedule shall remain as per that stipulated in Plant Palette & Schedule DA-402, Rev D.

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

(Reason: To ensure residential amenity)

**Noise Management Plan - Construction Sites**

- C49. A noise management plan prepared by an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The plan must include, but not be limited to, the following:

- a) identify sensitive locations near the site;
- b) identify potential impacts (i.e., exceedence of the goals at the identified locations);
- c) identify mitigation measures to control noise and vibration from the site, the reduction in noise and vibration likely and the feasibility and reasonableness of these measures;
- d) selection criteria for plant and equipment;
- e) community consultation;
- f) details of work schedules for all construction phases;
- g) selection of traffic routes to minimise residential noise intrusion;
- h) schedule of plant and equipment use and maintenance programs;
- i) noise monitoring techniques and method of reporting results;

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- j) the methodology to be employed for handling and investigating any complaints should they arise;
- k) site induction details for employees and contractors; and
- l) a declaration of available technologies and the reason for the selection of the preferred technology from a noise generating perspective should be included.

The approved plan must be complied with at all times.

(Reason: To maintain appropriate amenity to nearby occupants)

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

**Photographic Survey (Rock Wall within Road Reserve/Outcrop)**

- D1. Prior to any works commencing a photographic survey recording for the existing rock wall/outcrop situated along the perimeter of the site and addressing Henry Lawson Avenue, Blues Point Road and Warung Street, in accordance with the NSW Heritage Office Guidelines "Photographic recording of Heritage Items using file or digital capture", is to be prepared to the satisfaction of Council's Historian and Conservation Planner. Two (2) copies of the photographic survey must be provided to Council.

(Reason: Heritage record keeping)

**Protection of Trees**

- D2. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites).

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

**Temporary Fences and Tree Protection**

- D3. All protected trees on-site that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time.

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

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

**Public Liability Insurance - Works on Public Land**

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

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

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

**Notification of New Addresses**

- D5. Prior to the commencement of any building works, an application must be made and written confirmation received from North Sydney Council of the allocated street address (house number) and/ or unit numbers of the completed project.

A plan for the proposed dwelling and unit numbering must be submitted to Council for approval with the application for new addresses. Applications for numbering will be considered in accordance with the *NSW Geographical Names Board* requirements outlined in the document titled '*NSW Addressing User Manual*'.

The approved numbering will be recorded in Council's Land & Property Information database and must be clearly displayed at the property at all times. Council will also notify relevant public authorities and some service providers of the approved addresses (including Australia Post). A list of current authorities and service providers notified by Council will be included in the address approval notice.

These details will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard relating to rural and urban addressing. A copy of the allocation confirmation must be submitted to the Principal Certifier with the application for a Construction Certificate.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of the NSW Geographical Names Board and Council's *Property Addressing Policy*)

### **Sydney Water Approvals**

- D6. Prior to the commencement of any works, the approved plans must be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Principal Certifier must ensure that Sydney Water has appropriately stamped the plans before the commencement of building works.

Notes:

- **Sydney Water Building Plan Approvals** can be obtained from the Sydney Water Tap in™ online service. Building plans must be submitted to the Tap in™ to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. For further information visit <http://www.sydneywater.com.au/tapin/index.htm> or call 13 000 TAP IN (1300 082 746) for further information.

(Reason: To ensure compliance with Sydney Water requirements)

### **Commencement of Works' Notice**

- D7. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least 2 days notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

### ***E. During Demolition and Building Work***

#### **General Requirements from Transport for NSW – Sydney Metro**

##### **During Construction**

##### **E1. Supervision**

Unless advised by Sydney Metro in writing, all excavation, shoring and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects and who holds current professional indemnity insurance.

##### **Consultation**

The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Metro in writing), who:

- (a) oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Metro;

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- (b) acts as the authorised representative of the Applicant; and
- (c) is available (or has a delegate notified in writing to Sydney Metro that is available) on a 7 day a week basis to liaise with the representative of Sydney Metro as notified to the Applicant.

Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Metro in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Metro in relation to the works.

Where a condition of consent requires consultation with Sydney Metro, the Applicant shall forward all requests and/or documentation to the relevant Sydney Metro interface team.

#### Drainage

The Applicant must ensure that all existing and future drainage works on the development site will be directed into the appropriate local council or approved drainage system.

The Applicant must ensure that during works no water collects on or near the railway corridor. Should water be allowed to pond adjacent to rail infrastructure facilities and service is interrupted, the Applicant shall be liable for any Sydney Metro expenditure involved with restoring or maintaining alternative services.

#### Inspections

At any time during the construction of the development, Sydney Metro and persons authorised by those entities may give reasonable notice to the Applicant or the Applicant's principal contractor that Sydney Metro or persons authorised by that entity seek to:

- (d) inspect the development site and all works and structures that may impact on the rail corridor, including at specified "hold points" in the construction of the development; and
- (e) attend on-site meetings with the Applicant and its contractors,

to enable Sydney Metro to determine whether the development has been or is being constructed and maintained in accordance with all approved plans and this development consent.

(Reason: Sydney Metro Requirement)

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**Parking Restrictions**

- E2. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

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

**Road Reserve Safety**

- E3. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

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

(Reason: Public Safety)

**Temporary Disposal of Stormwater Runoff**

- E4. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Principal Certifier.

(Reason: Stormwater control during construction)

**Geotechnical Stability during Works**

- E5. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the Geotechnical Report and Supplementary Report prepared by **Douglas Partners**, dated 31 May 2024 and 13 December and all subsequent geotechnical inspections carried out during the excavation and construction phase.

Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed below adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

**Council Inspection of Public Infrastructure Works**

- E6. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points:

- a) Formwork for layback, kerb/gutter, footpath, etc.

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

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

**Progress Survey**

- E7. In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height Datum, must be prepared by a Registered Surveyor showing the following: -

- a) at the completion of excavation, prior to the placement of any footings, showing the completed level of the excavation and its relationship to the boundaries;
- b) prior to placement of concrete at the ground floor level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;



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- c) prior to placement of concrete at each floor level above ground floor showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
- d) prior to roofing, or completion of the highest point of the building showing the anticipated level of the completed work and its relationship to the boundary; and
- e) at completion, works showing the relationship of the building to the boundary and showing the maximum height of the overall works and the height of the principal roof elements.

Progress certifications in response to points (a) through to (e) must be provided to the Principal Certifier for approval at the time of carrying out relevant progress inspections. In the event that such survey information is not provided or reveals discrepancies between the approved plans and the proposed works, all works, save for works necessary to bring the development into compliance with the approved plans, must cease. Works may only continue upon notification by the Principal Certifier to the Applicant that survey information (included updated survey information following the carrying out of works to comply with the approved plans) complies with this condition.

(Reason: To ensure compliance with approved plans)

**Removal of Extra Fabric**

- E8. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

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

**Dust Emission and Air Quality**

- E9. The following must be complied with at all times:
- (a) Materials must not be burnt on the site.
  - (b) Vehicles entering and leaving the site with soil or fill material must be covered.
  - (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.

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- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

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

**Noise and Vibration**

- E10. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

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

**Compliance with Construction Noise Management Plan**

- E11. All works conducted on site which form part of this development must be carried out in accordance with the submitted Construction Noise Management Plan submitted with the Construction Certificate and all conditions of consent.

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

**No Work on Public Open Space**

- E12. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

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

**Developer's Cost of Work on Council Property**

- E13. The Developer or the person, company or other entity that is acting upon this consent, must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

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**No Removal of Trees on Public Property**

E14. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

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

**Protection of Trees**

E15. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009.

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

Notes:

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

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

**Trees to be Removed**

E16. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

Tree No /Species	Location	Height (m)
T7 <i>Plumeria sp.</i>	Northern setback – 1 Warung Street	4 x 4m
T8 <i>Lagerstroemia indica</i>	Northern setback – 1 Warung Street	6 x 4m
T9 <i>Cotoneaster glaucophyllus</i>	Northern setback – 1 Warung Street	5 x 5m
T10 <i>Pittosporum undulatum</i>	Northern setback – 1 Warung Street	6 x 6m
T11 <i>Olea europaea var Africana</i>	Northern setback – 1 Warung Street	6 x 7m
T12 <i>Morus sp.</i>	Eastern setback – 1 Warung Street	6 x 7m
T13 <i>Washingtonia robusta</i>	Eastern setback – 1 Warung Street	10 x 4m
1 x <i>Stenocarpus sinuatus</i>	Council verge between the power pole & post box (Blues Point Road frontage) – 1 Warung Street	3m

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

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**Special Permits**

- E17. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

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

1) **On-street mobile plant**

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

(Reason: Proper management of public land)

2) **Hoardings**

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

(Reason: Proper management of public land)

**Construction Hours (All Zones)**

- E18. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

<b>Standard Construction Hours</b>		
<b>Location</b>	<b>Day</b>	<b>Hours</b>
<b>All zones</b>	Monday - Friday	7.00am - 5.00pm
	Saturday	8.00am - 1.00pm
	Sunday Public holiday	No work permitted

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

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

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

**Installation and Maintenance of Sediment Control**

- E19. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

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

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

**Sediment and Erosion Control Signage**

- E20. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

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

**Site Amenities and Facilities**

- E21. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any SafeWork NSW requirements, must be provided and maintained at all times. The type of work-place determines the type of amenities required.

Further information and details can be obtained from the Internet at [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)

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

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**Health and Safety**

- E22. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any SafeWork NSW requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)

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

**Community Information**

- E23. Reasonable measures must be undertaken at all times to keep nearby residents informed about the proposed work, such as by way of signs, leaflets, public meetings and telephone contact numbers, to ensure that adjoining residents are aware of the likely duration of the construction works on the site.

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

**Archaeological Discovery During Works**

- E24. Should any historical or Aboriginal relic be discovered on the site during demolition, excavation or site preparatory works, all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW must be informed in accordance with the provisions of the Heritage Act 1977 and/or National Parks and Wildlife Act, 1974. Works must not recommence until such time as approval to recommence is given in writing by Council or a permit from the Director of the NPWS is issued.

(Reason: To prevent the unnecessary destruction or removal of unrecorded historical or Aboriginal relics)

**Prohibition on Use of Pavements**

- E25. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

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

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**Plant and Equipment Kept Within Site**

- E26. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

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

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

**Imported Fill Material**

- E27. The only waste derived fill material that may be received at the development site is:
- a) Virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997); and
  - b) Any other waste-derived material the subject of a resource recovery exemption under section 92 of the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material.

Any waste-derived material the subject of a resource recovery exemption received at the development site, must be accompanied by documentation as the material's compliance with the exemption conditions and must be provided to the Principal Certifier on request.

(Reason: To ensure that imported fill is of an acceptable standard for environmental protection purposes)

**Waste Disposal**

- E28. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

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

**Asbestos Removal**

- E29. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current SafeWork NSW Asbestos or "Demolition Licence" and a current SafeWork NSW "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

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

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

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

(Reason: Prescribed - Statutory)

**Home Building Act**

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifier for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
    - i) the name and licence number of the principal contractor, and
    - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.



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

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

(Reason: Prescribed - Statutory)

**Appointment of a Principal Certifier (PC)**

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

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

**Construction Certificate**

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

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

**Occupation Certificate**

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

(Reason: Statutory)

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**Critical Stage Inspections**

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

(Reason: Statutory)

**Excavation/Demolition**

F7. Excavation and demolition shall be carried out as follows:

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

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

**Protection of Public Places**

- F8.
- 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
  - 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
  - 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
  - 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
  - 5) No access across public reserves or parks is permitted.

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

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

**Site Sign**

- F9. 1) A sign must be erected in a prominent position on the site:
- a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
  - c) showing the name, address and telephone number of the Principal Certifier for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

**G. *Prior to the Issue of an Occupation Certificate***

**Requirements from Transport for NSW – Sydney Metro**

**Noise and Vibration**

- G1. Prior to the issue of an Occupation Certificate, an acoustic assessment report must be prepared and submitted to the Certifying Authority, Council and Sydney Metro certifying that the completed development meets the requirements of:
- (a) State Environmental Planning Policy (Transport and Infrastructure) 2021;
  - (b) the Department of Planning, Infrastructure and Environment's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines"; and
  - (c) any other noise and vibration requirements imposed by this consent.

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The acoustic report must demonstrate testing of external and internal noise levels for the completed development and ensure that external noise levels are representative of the typical maximum levels that may occur at the development and internal noise levels meet the required dB(A) levels. Where it is found that internal noise levels are greater than the required dB(A) level, necessary corrective measures must be carried out to ensure that internal noise levels are compliant with the requirements of this consent.

Documentation

Prior to the issue of an Occupation Certificate, the Applicant is to submit as-built drawings to Sydney Metro and Council. The as-built drawings are to be endorsed by a registered surveyor confirming that there has been no encroachment into the rail corridor or Sydney Metro easements, unless agreed to by Sydney Metro in writing. The Certifier must not issue an Occupation Certificate until written confirmation has been received from Sydney Metro that this condition has been satisfied.

Copies of any certificates, drawings, approvals or documents endorsed by, given to or issued by Sydney Metro must be submitted to Council for its records prior to the issue of any Occupation Certificate.

Inspections

If required by Sydney Metro, prior to the issue of an Occupation Certificate, a joint inspection of the rail infrastructure and property in the vicinity of the development is to be carried out by representatives from Sydney Metro and the Applicant and a dilapidation survey prepared. The dilapidation survey will establish the extent of any existing damage and enable any deterioration during operation of the development to be observed. The Certifier is not to issue an Occupation Certificate for the development until written confirmation has been received from Sydney Metro that this condition has been satisfied.

(Reason: Sydney Metro Requirement)

**Infrastructure Repair and Completion of Works**

- G2. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
  - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council. Council's development engineer must be contacted to arrange inspections of the completed works in the Public Domain.

(Reason: Maintain quality of Public assets)

**Certification - Civil Works**

- G3. a) An appropriately qualified and practising Civil Engineer must certify to the Principal Certifier that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Principal Certifier) upon completion of the development works and prior to the issue of an Occupation Certificate.
- b) An appropriately qualified and practicing Civil Engineer must certify to the Principal Certifier that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Principal Certifier), upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

**Works as Executed Drawings and Video**

- G4. A works-as-executed survey drawing (W.A.E.) of the completed stormwater drainage system must be obtained. The W.A.E. survey drawing must show the alignment, depth and grade of the stormwater drainage pipelines, pits and ancillary plumbing. The W.A.E. survey drawing must be reviewed by a qualified and practising civil engineer and certification provided to the Principal Certifier that the as-built system achieves the design intent of the plans approved with the Construction Certificate. Certification must be provided with the W.A.E. survey drawing to the Principal Certifier prior to the issue of an Occupation Certificate.

A copy of the WAE survey drawing and certification must be submitted to the Council if it is not the Principal Certifier.

(Reason: Compliance with the Consent)

**Damage to Adjoining Properties**

- G5. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

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

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**Utility Services**

G6. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

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

**Covenant and Restriction (Stormwater Control Systems)**

G7. An Instrument pursuant to Sections 88B and 88E of the *Conveyancing Act* 1919 and one copy must be submitted to Council in registrable form, providing for:

- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council burdening 1 Warung Street, McMahons Point requiring the ongoing retention, maintenance and operation of the stormwater facility (on-site detention, pump-out, charged lines);
- b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;
- c. the wording on the Instrument making reference to the Council file/s which hold:
  - (a) the Construction plans; and
  - (b) the "Work-as-Executed" (as built) plans;

The terms of the Instrument must be executed by an authorised delegate of North Sydney Council prior to submission to the NSW Land Registry Services for registration.

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier. Typical wording for the Instrument can be sourced from Council's "Specification for the Management of Stormwater".

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

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**Basement Pump-out Maintenance**

- G8. Prior to issue of an Occupation Certificate a Maintenance Regime must be prepared for the basement stormwater pump-out system and submitted to the Principal Certifier for approval with the Occupation Certificate documentation. The regime must specify that the system is to be regularly inspected and checked by qualified practitioners.

The basement stormwater pump-out system must be maintained in accordance with the approved Maintenance Regime at all times.

(Reason: To ensure future provision for maintenance of the drainage system)

**Notification of New Address Developments**

- G9. Prior to any Occupation Certificate being issued, the person acting upon this consent must comply with the following: -

- (a) Notify Australia Post of the address(es) as issued by Council and the location in plan form of any secondary, internal addresses, in relation to built public roads. Check Australia Post Website ([www.auspost.com.au](http://www.auspost.com.au)) to find your nearest Australia Post Delivery Facility.

(Reason: To ensure that Council records are accurate, that house numbering complies with the requirements of Council's House Numbering Policy and to assist emergency services.)

**Asbestos Clearance Certificate**

- G10. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Principal Certifier (and a copy forwarded to Council if it is not the Principal Certifier) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following: -

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

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

Note: Further details of licensed asbestos waste disposal facilities can be obtained from [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

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

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**Certification of Tree Condition**

- G11. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Principal Certifier, describing the health of the tree(s) specifically nominated below: -

Tree No /Species	Location	Height (m)
T1 Jacaranda mimosifolia (10m)	Council verge in front of 3 Warung Street	10 x 6m
T2 Jacaranda mimosifolia (4m)	Council verge in front of 1 Warung Street	4 x 5m
T3 Jacaranda mimosifolia (9m)	Council verge in front of 1 Warung Street	9 x 7m
T4 Jacaranda mimosifolia (7m)	Council verge in front of 1 Warung Street	7 x 4m
T5 Jacaranda mimosifolia (12m)	Council verge in front of 1 Warung Street	12 x 12m
T6 Plumeria sp.	Raised planter – NW corner – 1 Warung Street	4 x 4m
6 x Tristaniopsis laurina	Western and Eastern setbacks	100Ltr
1 x Melaleuca linarifolia	Tree in Council verge between power pole & post box (Blues Point Road frontage)	75l
3 x Lagerstroemia indica	Tree in western side setback	45l

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

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

**Vehicle Egress Signs**

- G12. Prior to the issue of an Occupation Certificate, appropriate sign(s) must be provided and maintained within the site at the point(s) of vehicular egress to ensure all vehicles stop before proceeding onto the public way.

(Reason: To ensure pedestrian safety)

**Height**

- G13. Upon completion of the works and prior to the issue of any Occupation Certificate the RL's of the development measured for the roof ridges, lift overrun and all other components within the rooftop level must be surveyed and certified by an appropriately qualified and practising surveyor as compliant with the maximum approved levels in accordance with the approved plans showing heights. This survey and certification must be submitted to the Principal Certifier with the application for an Occupation Certificate and a copy provided to Council (if it is not the Principal Certifier).

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



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**Sydney Water**

- G14. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The Section 73 Certificate must be submitted to the Principal Certifier prior to the issue of the Strata Certificate.

**Notes:**

Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site [www.sydneywater.com.au/customer/urban/index](http://www.sydneywater.com.au/customer/urban/index), or telephone 13 20 92.

Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with the statutory requirements of Sydney Water)

**BASIX Completion Certificate**

- G15. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

**House Numbering (Dwellings)**

- G16. Prior to any Occupation Certificate being issued an application must be made to North Sydney Council for written confirmation, or allocation, of the street address(es) or apartment number(s) for the completed project in accordance with Council's Property Addressing Policy. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2011.

Note: If apartments are to be sold off the plan, the applicant must have written confirmation from Council of the address and apartment numbering if the apartment number is to be identified on the contract.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties.)

**1 WARUNG STREET, MCMAHONS POINT  
DEVELOPMENT APPLICATION NO. 85/24**

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**Landscaping**

G17. The landscaping shown in the approved landscape plans as amended by **Condition C48** Amendments to the Landscape Plan must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

**Damage to Adjoining Properties**

G18. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Principal Certifier (and a copy to Council if it is not the Principal Certifier) certifying:

- a) whether any damage to adjoining properties has occurred as a result of the development;
- b) the nature and extent of any damage caused to the adjoining property as a result of the development;
- c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
- e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation survey and reports required to be provided to the Principal Certifier in accordance with this consent.

A copy of the report and certification required by this condition must be submitted to Council with the Final Occupation Certificate. All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To record the condition of adjoining properties prior to completion of the development and to facilitate claims against damage)

**Verification Statement (External Finishes and Materials)**

G19. Prior to the issue of any Occupation Certificate, a verification statement from a qualified designer or architect (preferably the original designer), must be submitted to Council and the Principal Certifier certifying that the external finishes and materials are in accordance with the approved schedule of finishes and materials identified in this consent.

*“qualified designer”* means a person registered as an architect in accordance with the Architects Act 2003.

(Reason: To ensure the design quality and finishes for residential flat development)

**1 WARUNG STREET, MCMAHONS POINT  
DEVELOPMENT APPLICATION NO. 85/24**

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**Required Tree Planting**

- G20. On completion of works and prior to the issue of the Occupation Certificate for the whole of the building, trees in accordance with the schedule hereunder must be planted in Council's nature strip/footpath: -

**Schedule**

Tree Species	Location	Pot Size
1 x Melaleuca linarifolia	Council verge between power pole & post box (Blues Point Road frontage)	75l

The installation of such trees, their current health and their prospects for future survival must be certified upon completion by an appropriately qualified horticulturalist.

Upon completion of installation and prior to the issue of an Occupation Certificate an appropriately qualified horticulturalist must certify that any trees planted in accordance with this condition are healthy and have good prospects of future survival. The certification must be submitted with any application for an Occupation Certificate.

(Reason: To ensure that replacement plantings are provided to enhance community landscaped amenity and cultural assets)

**Unpaved Verge**

- G21. The unpaved verge area must be constructed or reconstructed and planted with an appropriate species of grass prior to completion of the works at no cost to Council.

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

**Intercom**

- G22. An intercom system must be provided in a convenient location adjacent to the visitor parking entry to enable easier and safe access to visitor parking prior to issue of any occupation Certificate.

(Reason: To ensure convenient access is available for visitors to the building)

**Allocation of Spaces**

- G23. Car parking spaces must be provided and maintained at all times on the subject site. The spaces must be allocated to uses within the building in accordance the following table:

8	Residential
1	Residential – Visitors
2	Accessible

**1 WARUNG STREET, MCMAHONS POINT  
DEVELOPMENT APPLICATION NO. 85/24**

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The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lots' unit entitlement.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation for use by building visitors.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

***I. Ongoing/Operational Conditions*****Loading within Site**

11. All loading and unloading operations must be carried out wholly within the confines of the site, at all times and must not obstruct other properties or the public way.

(Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian amenity)

**Minimum Headroom for Car Parking**

12. Minimum headroom of 2.2m must be provided over all car-parking areas.

(Reason: To ensure compliance with relevant standards and provide appropriate headroom)

**Maintenance of Approved Landscaping**

13. The owner/s (or Strata) of the premises at No. 1 Warung Street, is to maintain the landscaping approved by this consent generally in accordance with the approved landscape plans.

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

**1 WARUNG STREET, MCMAHONS POINT  
DEVELOPMENT APPLICATION NO. 85/24**

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

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

**K. Prior to the Issue of any Strata Certificate**

**Registered Plans (Strata)**

K1. The Applicant must submit to Council documentary evidence that the Strata Plan has been registered and the lot(s) exist.

(Reason: To ensure the accuracy of Council's Property and Land Information system)

**Strata Subdivision**

K2. A Strata Certificate pursuant to the *Strata Schemes (Freehold Development) Act 1973*, that authorises registration of the strata plan, strata plan of subdivision or notice of conversion at NSW Land Registry Services must be obtained. If the Strata Certificate is obtained from an Accredited Certifier, other than the Council, the certifier is to provide Council with a copy of the endorsed Strata Certificate within 7 days of issuing the same, pursuant to the *Strata Schemes (Freehold Development) Regulation 2002*.

**NOTES:** For approval of the Strata Certificate by North Sydney Council, the following must be submitted to Council:

- a) the original strata plans or strata plans of subdivision and administration sheets plus two (2) copies of each, and any original Instrument (including but not limited to any section 88B or 88E instruments) to be endorsed, all **enclosed in a protective cardboard tube** (to prevent damage during transfer);
- b) 2 additional copies of the strata plans or strata plans of subdivision and any relevant Instrument for submission to Council Customer Services and records department for electronic database scanning and copying;
- c) a completed *Subdivision or Strata Certificate Application* form together with payment of fee current at lodgement;
- d) written evidence that all applicable conditions of consent required to be satisfied, prior to issue of the Strata Certificate, have been satisfied. Council will check the consent conditions on the relevant consent(s). Failure to submit the required information will delay endorsement of the Strata Certificate, and may require payment of rechecking fees;

**1 WARUNG STREET, MCMAHONS POINT  
DEVELOPMENT APPLICATION NO. 85/24**

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- e) **plans of subdivision and copies must not be folded; and**
- f) **council will not accept bonds in lieu of completing subdivision works.**

(Reason: To ensure compliance with relevant legislative requirements and maintenance of up-to-date Council records)

**Sydney Water**

K3. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The Section 73 Certificate must be submitted to the Principal Certifier or North Sydney Council with the documentation to enable the issue of the Strata Certificate.

Notes:

1. Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92.
2. Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with Sydney Water requirements)

**Release of Strata Certificate**

K4. The Strata Certificate that authorises registration of the Strata Plan, Strata Plan of Subdivision or Notice of Conversion at NSW Land Registry Services shall not be issued until bounding walls, floors and ceilings between proposed strata lots have been constructed in accordance with the approved plans identified in Condition A1 of this Consent.

(Reason: To ensure that the registered strata plan relates to approved development)

**Allocation of Parking and Visitor Parking**

K5. Car-parking provided must only be used in conjunction with the units and tenancies contained within the development. Any carparking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lot's unit entitlement.

The allocation of spaces must be maintained in accordance with the following table:

**1 WARUNG STREET, MCMAHONS POINT  
DEVELOPMENT APPLICATION NO. 85/24**

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8	Residential
1	Residential – Visitors
2	Accessible

The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Carparking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any carparking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lot's unit entitlement.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation for use by building visitors.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

**Building and Unit Numbering (Strata Subdivisions)**

K6. Prior to issue of the Strata Certificate, the person acting upon this consent must apply to North Sydney Council and receive written confirmation of the allocated street address and unit numbers for the building and the approved strata allotments within the completed project. These are the property addresses that will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard (AS/NZS 4819:2011).

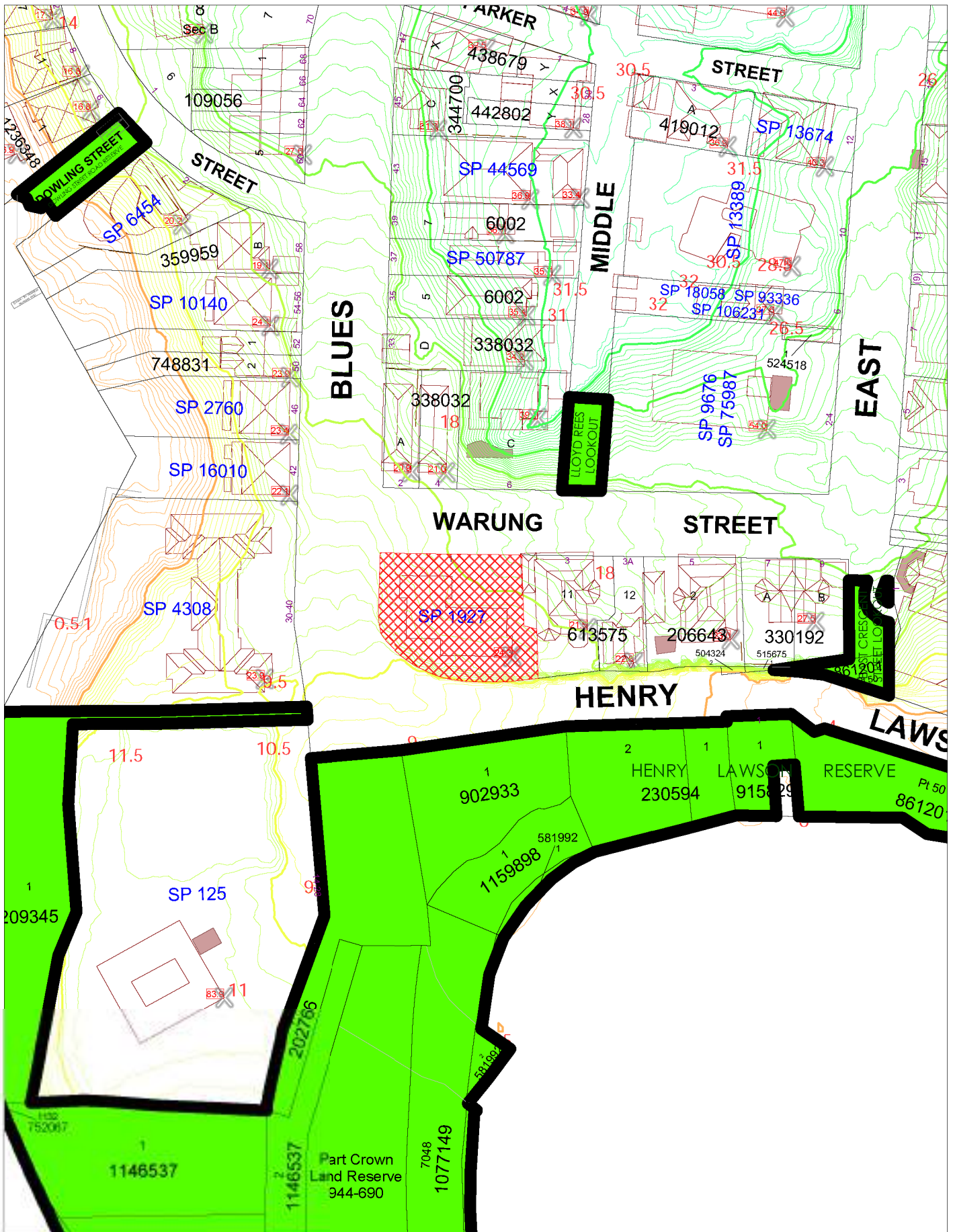
To assist Council, a draft proposal for numbering within the strata scheme or street should be submitted for concurrence to Council, as these numbers will be used to maintain Council's property and mapping database.

(Reason: To ensure that Council records are accurate, and that building and unit numbering complies with the requirements of Council's Property Addressing Policy. Proper building and unit numbering also assists emergency services in readily locating properties)

**Services within Lots**

K7. A report must be provided by a Registered Surveyor certifying that all services (including but not limited to stormwater drainage, gas, electricity, telephone cable) as constructed or to be constructed are/will be contained within each lot or within the necessary easements to accommodate such services. The report must be submitted to the Principal Certifier for approval prior to the issue of any Subdivision Certificate.

(Reason: To ensure adequate servicing of the development)



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For more information, please contact the Council on 9438 8888 or visit [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au)

Scale: 1:1200 approx.





# 1 Warung Street McMahons Point NSW

## Development Application

### SITE DETAILS

Address: 1 Warung St McMahons Point NSW  
 Property: CP/-/SP1927  
 Site area: 985.4 m<sup>2</sup>

Architect: Squillace  
 1/80 Albion Street, Surry Hills NSW 2010  
 +61 2 8354 1300

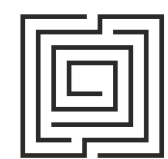
Arborist: Advanced Treescape Consulting  
 PO Box 7192 Kariang NSW 2250  
 +61 2 4340 2964

BASIX: Certificate number 0006179370  
 Assessor number 10194

Hydraulic Engineer: ACOR Consultants  
 Suite 2, Level 1, 33 Herbert Street  
 St Leonards NSW 2065  
 +61 2 9438 5098

### DRAWING LIST

Drawing No.	Drawing Name	Scale	Size
<b>Plans</b>			
DA-000	Cover Page & Drawing List	N/A	A2
DA-101	Tree Protection & Removal Plan	1:100	A2
DA-201	Proposed Landscape Plan - Ground Floor	1:100	A2
DA-202	Proposed Planting Plan - Ground Floor	1:100	A2
DA-211	Proposed Landscape Plan - Level 1	1:100	A2
DA-221	Proposed Landscape Plan - Level 2	1:100	A2
DA-231	Proposed Landscape Plan - Level 3	1:100	A2
DA-401	Plant Palette	N/A	A2
DA-402	Plant Palette & Schedule	N/A	A2
DA-403	Notes	N/A	A2



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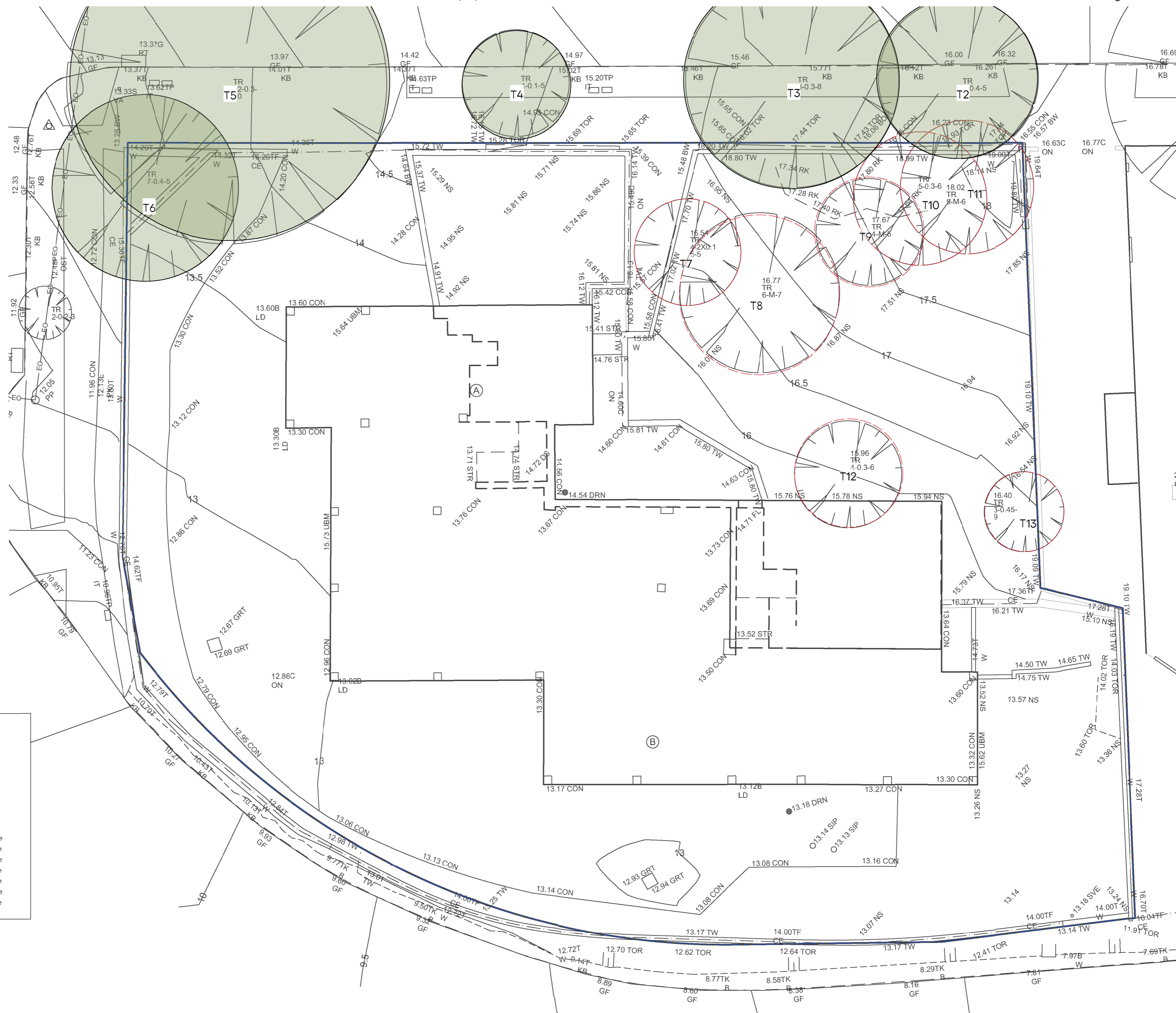
Rev	Amendment	Date	By	ADDRESS
B	Council RFI	29/07/24	MK	1 Warung Street, McMahons Point
C	Council RFI	28/08/24	MK	SCALE
D	Council RFI	6/09/24	MK	N/A

DATE  
6/09/2024

DRAWN  
MK

PROJECT  
Highbury Warung  
 DWG. TITLE  
Cover Page & Drawing List

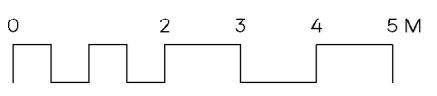
DA-000



- KEY**
- Site boundary
  - Existing tree to be removed
  - Existing tree to be retained

**Existing Trees**  
Refer to Arboricultural Impact Assessment prepared by Advanced Treescape consulting (AQF5 Arboriculturist) on 27/08/2021

1 <i>Jacaranda mimosifolia</i> (Jacaranda)	Retain
2 <i>Jacaranda mimosifolia</i> (Jacaranda)	Retain
3 <i>Jacaranda mimosifolia</i> (Jacaranda)	Retain
4 <i>Jacaranda mimosifolia</i> (Jacaranda)	Retain
5 <i>Jacaranda mimosifolia</i> (Jacaranda)	Retain
6 <i>Plumeria</i> (Frangipani)	Retain
7 <i>Plumeria</i> (Frangipani)	Remove
8 <i>Lagerstroemia indica</i> (Crepe Myrtle)	Remove
9 <i>Cotoneaster glaucophyllus</i> (Grey-leaved Cotoneaster)	Remove
10 <i>Pittosporum undulatum</i> (Native Daphne)	Remove
11 <i>Olea europaea Africana</i> (African Olive)	Remove
12 <i>Morus</i> sp (Mulberry)	Remove
13 <i>Washingtonia robusta</i>	Remove



Rev	Amendment	Date	By	ADDRESS	PROJECT
B	Council RFI	29/07/24	MK	1 Warung Street, McMahons Point	Highbury Warung
C	Council RFI	28/08/24	MK		DWG. TITLE
D	Council RFI	6/09/24	MK	1:100@A2	6/09/2024

SCALE	DATE	DRAWN	PROJECT
1:100@A2	6/09/2024	MK	Highbury Warung

DA-101





Existing Frangipani to be retained

Wall with fence to architects detail  
1 x Melaleuca linariifolia to replace existing Stenocarpus sinuatus  
2 x proposed Tristaniopsis laurina

3 x Lagerstroemia 'Natchez'

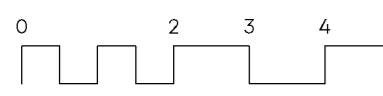
Proposed natural stone steppers through planting

Proposed BBQ bench top

Proposed 700mm high rendered masonry retaining wall with top rail to achieve overall height of 1000mm to comply with BCA standard

Proposed sandstone wall along boundary. Finish to match existing

- KEY**
- Proposed stepping stone
  - Proposed garden bed
  - Site boundary
  - Basement extent
  - Existing levels
  - Proposed levels
  - Existing tree to be removed
  - Existing tree to be retained



Refer to Tree Protection & Removal Plan for details

Proposed natural stone steppers through planting

Proposed natural stone steppers through planting

Refer to plans prepared by Squillace for Architectural details

Magenta line indicates basement extent below

Proposed tiled surface

4 x proposed Tristaniopsis laurina

Proposed 1800mm high louvred fence with painted finish

Proposed BBQ bench top

Proposed 700mm high rendered masonry retaining wall with top rail to achieve a total height of 1000mm to comply with BCA standard

Refer to section prepared by Squillace for detail above driveway.

Proposed block wall above driveway constructed with excavated sandstone. Finish to blend with rock face.

Proposed 700mm high rendered masonry retaining wall with top rail to achieve a total height of 1000mm to comply with BCA standard

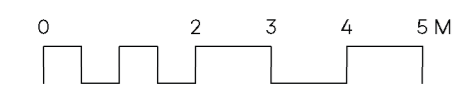
Existing planting outside of boundary to be removed and replaced with new.

Rev	Amendment	Date	By	ADDRESS
B	Council RFI	29/07/24	MK	1 Warung Street, McMahons Point
C	Council RFI	28/08/24	MK	
D	Council RFI	6/09/24	MK	

SCALE: 1:100@A2      DATE: 6/09/2024      DRAWN: MK



ATTACHMENT TO LPP01 - 21/02/2025



Rev	Amendment	Date	By	ADDRESS
B	Council RFI	29/07/24	MK	1 Warung Street, McMahon's Point
C	Council RFI	28/08/24	MK	SCALE
D	Council RFI	6/09/24	MK	DATE

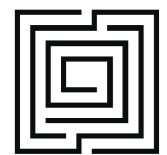
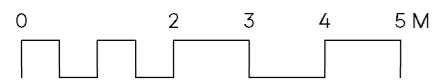
PROJECT	DWG. TITLE
Highbury Warung	Proposed Planting Plan - Ground Floor







- KEY**
- Proposed stepping stone
  - Proposed garden bed
  - Site boundary
  - Basement extent
  - +EXT Existing levels
  - +RL Proposed levels
  - Existing tree to be removed
  - Existing tree to be retained



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D	Council RFI	6/09/24	MK	

SCALE: 1:100@A2  
 DATE: 6/09/2024

DRAWN: MK

PROJECT: Highbury Warung  
 DWG. TITLE: Proposed Landscape Plan - Level 2

DA-221





Proposed planting to trail over planter edge:  
13-Rosmarinus officinalis 'Prostratus'

Proposed planting to trail over planter edge:  
3-Rosmarinus officinalis 'Prostratus'  
4-Aloe 'Fairy Pink'

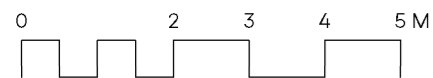
Refer to plans prepared by Squillace for Architectural details

RL 21.270

Proposed planting to trail over planter edge:  
4-Philodendron Xanadu  
4-Trachelospermum asiaticum

Proposed planting in planter:  
6-Philodendron Xanadu

- KEY
- Proposed stepping stone
  - Proposed garden bed
  - Site boundary
  - Basement extent
  - +EXT Existing levels
  - +RL Proposed levels
  - Existing tree to be removed
  - Existing tree to be retained



Rev	Amendment	Date	By	ADDRESS
B	Council RFI	29/07/24	MK	1 Warung Street, McMahon's Point
C	Council RFI	28/08/24	MK	
D	Council RFI	6/09/24	MK	

SCALE	DATE	DRAWN	PROJECT
1:100@A2	6/09/2024	MK	Highbury Warung
			DWG. TITLE
			Proposed Landscape Plan - Level 3



Southern Waterfront Planting



Level 1 & Level 3 Balcony



East side Passage



Rev	Amendment	Date	By	ADDRESS	SCALE	DATE	DRAWN
B	Council RFI	29/07/24	MK	1 Warung Street, McMahon's Point			
C	Council RFI	28/08/24	MK				
D	Council RFI	6/09/24	MK		N/A	6/09/2024	MK

PROJECT	DWG. TITLE
Highbury Warung	Plant Palette



West side Passage



★ Indicates Indigenous or Low Water Use Species by North Sydney Council

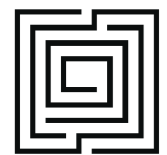
Note: Areas of indigenous or low water use species: 135.2m²

South-Eastern Buffer Planting



★ Indicates native plant

ID	Qty	Botanical Name	Common Name	Scheduled Size	Mature Height	Mature Spread
Aci	110	Arthropodium cirratum	Renga Lily	200 mm	0.75 - 0.9m	0.6 - 0.9m
Ae	35	Aspidistra elatior	Cast Iron Plant	200 mm	1.5m	1.5m
Afp	4	Aloe 'Fairy Pink'	Aloe 'Fairy Pink'	200 mm	0.75 - 0.9m	0.6 - 0.9m
★ Alb-2	23	Alocasia brisbanensis	Spoon Lily	200 mm	0.75 - 0.9m	0.6 - 0.9m
★ As-2	62	Adiantum spp	Maidenhair Fern	140mm	0.5m	0.5m
★ Az	12	Alpinia caerulea	Native Ginger	200 mm	1.5 - 3m	1.2 - 2.0m
★ Bl	1	Melaleuca linariifolia	Snow in Summer	75 Ltr	5 - 10m	3.5 - 6m
Bm	15	Buxus microphylla japonica	Japanese Box	140 mm	0.5-1m	0.5-1m
★ Ca	15	Cissus antarctica	Kangaroo vine	140mm		
Cds	69	Carissa 'Desert Star'	Dwarf Natal Plum	200 mm	1-2m	1-2m
★ Cgoi-2	159	Casuarina glauca 'Cousin It'	Prostrate Swamp Oak	140 mm	0.1-0.15m	1m
★ CoSt	13	Cordyline stricta	Narrow-leaved Palm Lily	200 mm	3 - 5m	0.6 - 0.9m
★ Cr	17	Cycas revoluta	Dwarf Sago Palm, Fossil Cycad.	500 mm	3 - 5m	1.2 - 2.0m
★ DiCa	19	Dianella caerulea	Blue Flax-lily	140mm	0.45 - 0.6m	0.3 - 0.6m
★ Doa-2	38	Doodia aspera	Prickly Rasp Fern	200mm	0.4m	0.6m
Dr	167	Dichondra repens	Kidney Weed	100 mm	0.0 - 0.3m	0.9 - 1.2m
Fp	48	Ficus pumila	Creeping fig	140mm	6m	6m
★ Hsc	3	Hibbertia scandens	Golden Guinea Flower, Snake Vi	140mm	0.0 - 0.3m	3.5 - 6m
Lin	3	Lagerstroemia indica 'Nanchez'	Crepe Myrtle	45 Ltr	5 - 10m	6 - 10m
Lir-2	77	Ligularia reniformis	Ligularis	200 mm	0.8m	0.8m
Mod	24	Fatsia japonica	Fatsia	200 mm	4m	2m
Prc	8	Philodendron var 'Rojo Congo'	Philodendron	200mm	1.5m	0.7m
Px	85	Philodendron 'Xanadu'	Philodendron	200 mm	1.5m	1.5m
Ro	18	Rosmarinus officinalis 'Prostratus'	Rosemary	200 mm	0.3-0.6m	0.6-0.9m
Rop	26	Raphiolepis indica 'Oriental Pearl'	Indian Hawthorn	200mm	0.8-1m	1m
★ Syr	46	Syzygium australe 'Resilience'	Lillypilly	75 Lt	3 - 5m	3.5 - 6m
Ta	7	Trachelospermum asiaticum	Japanese star jasmine	200 mm	0.15-0.3m	4.5 - 6m
Tj	8	Trachelospermum jasminoides	Chinese Star Jasmine	200 mm	1.5 - 3m	3.5 - 6m
★ Tll	6	Tristaniopsis laurina 'Luscious'	Water Gum	100 Ltr	12-15m	4-6m
★ Vh	339	Viola hederacea	Native Violet	100mm	0.0 - 0.3m	1.2 - 2.0m
★ Wfg	65	Westringia fruticosa	Coastal rosemary	300 mm	2m	2m



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Rev	Amendment	Date	By	ADDRESS
B	Council RFI	29/07/24	MK	1 Warung Street, McMahon's Point
C	Council RFI	28/08/24	MK	SCALE
D	Council RFI	6/09/24	MK	N/A

DATE	DRAWN	PROJECT
6/09/2024	MK	Highbury Warung
		DWG. TITLE
		Plant Palette & Schedule

DA-402

**GENERAL PLANTING NOTES:**

**NOTE:** IT IS RECOMMENDED THAT ALL PLANTS USED BE SUBJECT TO AN ESTABLISHMENT PERIOD. DURING THIS PERIOD MAINTENANCE WORK CARRIED OUT WILL INCLUDE; WATERING, MOWING, WEEDING, FERTILISING, PEST AND DISEASE CONTROL, RESEEDING, RETURFING, STAKING AND TYING, REPLANTING, CULTIVATING, PRUNING, HEDGE CLIPPING, AERATING, REINSTATEMENT OF MULCH, TOP DRESSING AND KEEPING THE SITE NEAT AND TIDY.

**NOTE:** THE ESTABLISHMENT PERIOD IS A CRITICAL TIME IN THE DEVELOPMENT OF A NEW LANDSCAPE. NEW PLANTINGS NEED TO BE WATERED, FERTILISED, AND PRUNED TO SHAPE UNTIL THEY HAVE BECOME HARDY ENOUGH TO SURVIVE WITHOUT HELP FROM PEOPLE. SOME PLANTS WILL ALWAYS NEED SOME EXTRA CARE TO SURVIVE.

**NOTE:** PLANTS SHALL BE VIGOROUS, WELL ESTABLISHED, OF GOOD FORM CONSISTENT WITH SPECIES OR VARIETY, NOT SOFT OR FORCED, FREE FROM DISEASE AND INSECT PESTS, WITH LARGE HEALTHY ROOT SYSTEMS AND NO EVIDENCE OF HAVING BEEN RESTRICTED IN GROWTH OR DAMAGED. ROOT SYSTEM SHALL BE WELL BALANCED IN RELATION TO THE SIZE OF THE PLANT.

**NOTE:** HAND WATER ON DESIGNATED DAYS TO PROTECTED TREES THROUGHOUT DURATION OF THE PROJECT

**NOTE:** WEED CONTROL SHALL BE BY HAND PULLING ONLY.

**PLANTING NOTES**

**GRAPHIC ILLUSTRATION**

Please note that the plant graphics are indicative sizes only and not an accurate representation at time of purchase

**SITE PREPARATION**

All existing plants marked for retention shall be protected for the duration of works. Remove from site all perennial weeds and rubbish before commencing landscape works.

**SOILWORKS**

Thoroughly cultivate the subsoil to a depth of 200mm. Supply and install to a depth of 300mm quality garden soil mix to all planting beds and 150mm turf underlay to lawn areas.

**MULCH**

Supply and install a 75mm layer of hardwood horticultural grade mulch to all planting beds set down 25mm from adjacent paving or garden edge.

**MAINTENANCE**

All failed or defective plant species to be replaced by landscaper for a 3 months period following completion of work. Further maintenance during and after this period should include watering, weeding, fertilising, pest and disease control, pruning and hedging, reinstatement of mulch and keeping the site neat and tidy.

**GENERAL NOTES: WASTE MANAGEMENT**

**NOTE:** ALL DEMOLITION MATERIALS AND WASTE MATERIALS MUST BE DISPOSED OF AT A WASTE MANAGEMENT FACILITY. SORT WASTE MATERIALS & WHERE PRACTICAL RECYCLE ON SITE TAKE TO COUNCIL RECYCLE CENTER.

**NOTE:** IF REQUIRED WASTE BINS LOCATED ON ROADWAY IS SUBJECT TO COUNCIL APPROVAL.

**NOTE:** BUILDING MATERIALS AND EQUIPMENT MUST BE STORED WHOLLY WITHIN THE WORK SITE UNLESS AN APPROVAL TO STORE THEM ELSEWHERE IS HELD

**NOTE:** THE WORK SITE MUST BE LEFT CLEAR OF WASTE AND DEBRIS AT THE COMPLETION OF WORKS.

**GENERAL DRAINAGE & WASTE MANAGEMENT NOTES:**

**NOTE:** ACCESS TO BE USED ONLY FOR DELIVERY OF MATERIALS OR DURING EXCAVATION, ALL SEDIMENT CONTROL MEASURES ARE TO REMAIN IN PLACE WHEN ACCESS NOT IN USE

**NOTE:** DURING CONSTRUCTION OF DRAINAGE ALL PITS TO HAVE GEOFABRIC WRAPPING OVER GRATING UNTIL SEDIMENT LOADINGS ARE MINIMISED.

**NOTE:** CLOUDY WATER IS CONTAMINATED & MUST BE SETTLED & TREATED WITH GYPSUM UNTIL CLEAR, FOR QUANTITIES REFER TO EPS, 'BLUE BOOK'

**NOTE:** EXCAVATION OF THE SITE SHALL BE LIMITED TO THE IMMEDIATE CONSTRUCTION AREA.

**NOTE:** ANY TOPSOIL STRIPPED FROM THE SITE SHALL BE STOCKPILED AT THE SITE FOR RE-USE. THE STOCKPILE SHALL BE LOCATED AWAY FROM ANY STORMWATER FLOWPATH AND PROTECTED AS SHOWN ON PLAN.

**NOTE:** WASTE (INCLUDING SKIP BINS) AND CONSTRUCTION MATERIALS, EQUIPMENT AND SEDIMENT BARRIERS SHALL AT NO TIME BE PLACED IN PUBLIC WALKWAYS, VERGES, COUNCIL ROADS OR ROAD RESERVES UNLESS A PERMIT HAS BEEN OBTAINED FROM COUNCIL.

**NOTE:** ALL SEDIMENT CONTROL STRUCTURES TO BE INSPECTED AFTER EACH RAINFALL EVENT FOR STRUCTURAL DAMAGE AND ALL TRAPPED SEDIMENT TO BE REMOVED TO A NOMINATED STOCKPILE SITE. ANY SEDIMENT SPILLED WITHIN THE PROPERTY OR ONTO ROADWAYS SHALL BE COLLECTED AND REMOVED WITH A SPADE AND DRY BROOM (WITHOUT WATER) AND DISPOSED OF AS TO PREVENT FURTHER EROSION AND POLLUTION OF WATERWAYS.

**NOTE:** DURING DRY WEATHER, WHERE THERE IS POTENTIAL OF DUST MOVEMENT, A LIGHT SPRAY OF WATER SHALL BE APPLIED TO THE SITE AT REGULAR INTERVALS (WITHOUT CREATING RUNOFF) TO MINIMISE AIRBORNE TRANSFER OF SEDIMENT.

**NOTE:** THE SUB-SURFACE COMPONENTS OF THE SITE DRAINAGE SYSTEM SHALL BE INSTALLED TO WORKING ORDER PRIOR TO CONSTRUCTION OF ANY BUILDING.

**SURFACE WATER / STORMWATER DRAINAGE NOTES:**

**NOTE:** SURFACE WATER / STORMWATER MUST BE DRAINED AND DISCHARGED TO THE STREET GUTTER OR SUITABLY DESIGNED ABSORPTION PIT, TO THE SATISFACTION OF THE CERTIFYING AUTHORITY.

**NOTE:** ABSORPTION PITS MUST BE LOCATED NOT LESS THAN 3M FROM ANY ADJOINING PREMISES AND THE STORMWATER MUST NOT BE DIRECTED OR FLOW ONTO ANY ADJOINING PREMISES OR CAUSE A NUISANCE.

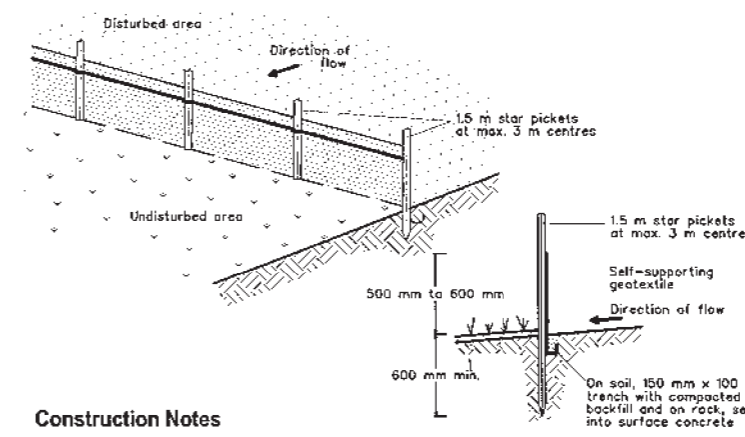
**NOTE:** EXTERNAL PATHS AND GROUND SURFACES ARE TO BE CONSTRUCTED AT APPROPRIATE LEVELS AND TO BE GRADED AND DRAINED AWAY FROM THE BUILDING AND ADJOINING PREMISES, SO AS NOT TO RESULT IN THE ENTRY OF WATER INTO THE BUILDING, OR CAUSE A NUISANCE OR DAMAGE TO ADJOINING PREMISES.

**NOTE:** DURING CONSTRUCTION STAGES, SEDIMENT LADEN STORMWATER RUN-OFF SHALL BE CONTROLLED USING THE SEDIMENT CONTROL MEASURES OUTLINED IN THE MANUAL FOR MANAGING URBAN STORMWATER - SOILS AND CONSTRUCTION, PUBLISHED BY THE NSW DEPARTMENT OF HOUSING.

**Existing Trees**

Refer to Arboricultural Impact Assessment prepared by Advanced Treescape consulting (AQF5 Arboriculturist) on 27/08/2021

1 <i>Jacaranda mimosifolia</i> (Jacaranda)	Retain
2 <i>Jacaranda mimosifolia</i> (Jacaranda)	Retain
3 <i>Jacaranda mimosifolia</i> (Jacaranda)	Retain
4 <i>Jacaranda mimosifolia</i> (Jacaranda)	Retain
5 <i>Jacaranda mimosifolia</i> (Jacaranda)	Retain
6 <i>Plumeria</i> (Frangipani)	Remove
7 <i>Plumeria</i> (Frangipani)	Remove
8 <i>Lagerstroemia indica</i> (Crepe Myrtle)	Remove
9 <i>Cotoneaster glaucophyllus</i> (Grey-leaved Cotoneaster)	Remove
10 <i>Pittosporum undulatum</i> (Native Daphne)	Remove
11 <i>Olea europaea Africana</i> (African Olive)	Remove
12 <i>Morus</i> sp (Mulberry)	Remove
13 <i>Washingtonia robusta</i>	Remove

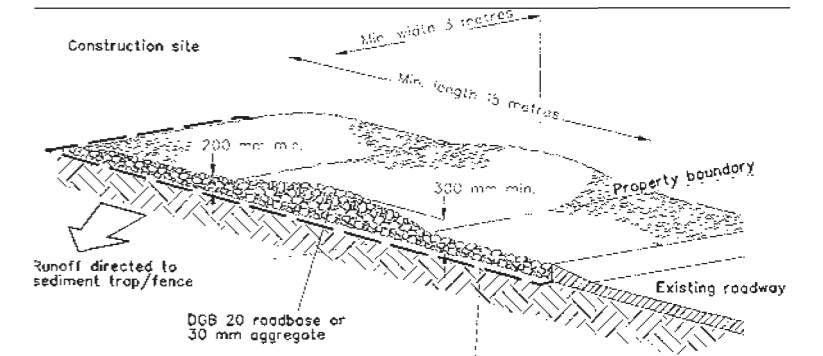


**Construction Notes**

1. Construct sediment fence as close as possible to parallel to the contours of the site.
2. Drive 1.5 metre long star pickets into ground, 2.5 metres apart (max.).
3. Dig a 150 mm deep trench along the upslope line of the fence for the bottom of the fabric to be entrenched.
4. Fix self-supporting geotextile to upslope side of posts with wire ties or as recommended by geotextile manufacturer.
5. Join sections of fabric at a support post with a 150 mm overlap.
6. Backfill the trench over the base of the fabric and compact it thoroughly over the geotextile

**SEDIMENT FENCE**

SD 6-8

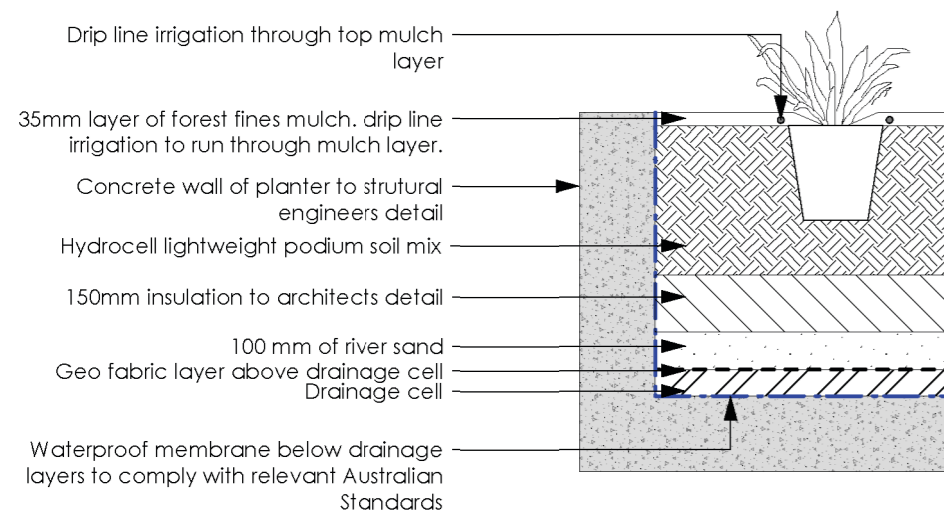


**Construction Notes**

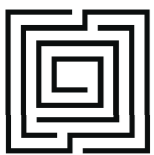
1. Strip topsoil and level site.
2. Compact subgrade.
3. Cover area with needle-punched geotextile.
4. Construct 200 mm thick pad over geotextile using roadbase or 30 mm aggregate. Minimum length 15 metres or to building alignment. Minimum width 3 metres.
5. Construct hump immediately within boundary to divert water to a sediment fence or other sediment trap.

**STABILISED SITE ACCESS**

SD 6-14



1 **Typical Planting Detail On Slab**  
Scale: 1:20



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C	Council RFI	28/08/24	MK	
D	Council RFI	6/09/24	MK	N/A

PROJECT	DWG. TITLE
Highbury Warung	Notes

DA-403

# WARUNG STREET APARTMENTS

1 WARUNG STREET, McMAHONS POINT

## DEVELOPMENT APPLICATION

### DA DRAWING LIST

NUMBER	NAME	CURRENT REVISION	ISSUED
DA-001	COVER SHEET	E	19.12.2024
DA-011	SITE PLAN	E	19.12.2024
DA-012	SITE ANALYSIS PLAN	E	19.12.2024
DA-020	DEMOLITION PLAN	E	19.12.2024
DA-099	BASEMENT LEVEL PLAN	E	19.12.2024
DA-100	GROUND LEVEL PLAN	E	19.12.2024
DA-101	LEVEL 1 PLAN	E	19.12.2024
DA-102	LEVEL 2 PLAN	E	19.12.2024
DA-103	LEVEL 3 PLAN	E	19.12.2024
DA-104	ROOF PLAN	E	19.12.2024
DA-205	NORTH ELEVATION - PROPOSED	E	19.12.2024
DA-206	EAST ELEVATION - PROPOSED	E	19.12.2024
DA-207	WEST ELEVATION - PROPOSED	E	19.12.2024
DA-208	SOUTH ELEVATION - PROPOSED	E	19.12.2024
DA-301	SECTIONS SHEET 1	E	19.12.2024
DA-531	LANDSCAPE COVERAGE & EXCAVATION PLAN	E	19.12.2024
DA-541	ADAPTABLE UNIT LAYOUT	E	19.12.2024
DA-551	BUILDING ENVELOPE	E	19.12.2024
DA-552	BUILDING HEIGHT PLANE	E	19.12.2024
DA-701	PHOTOMONTAGE 1	E	19.12.2024
DA-800	BASEMENT ENTRY DRAWING	E	19.12.2024

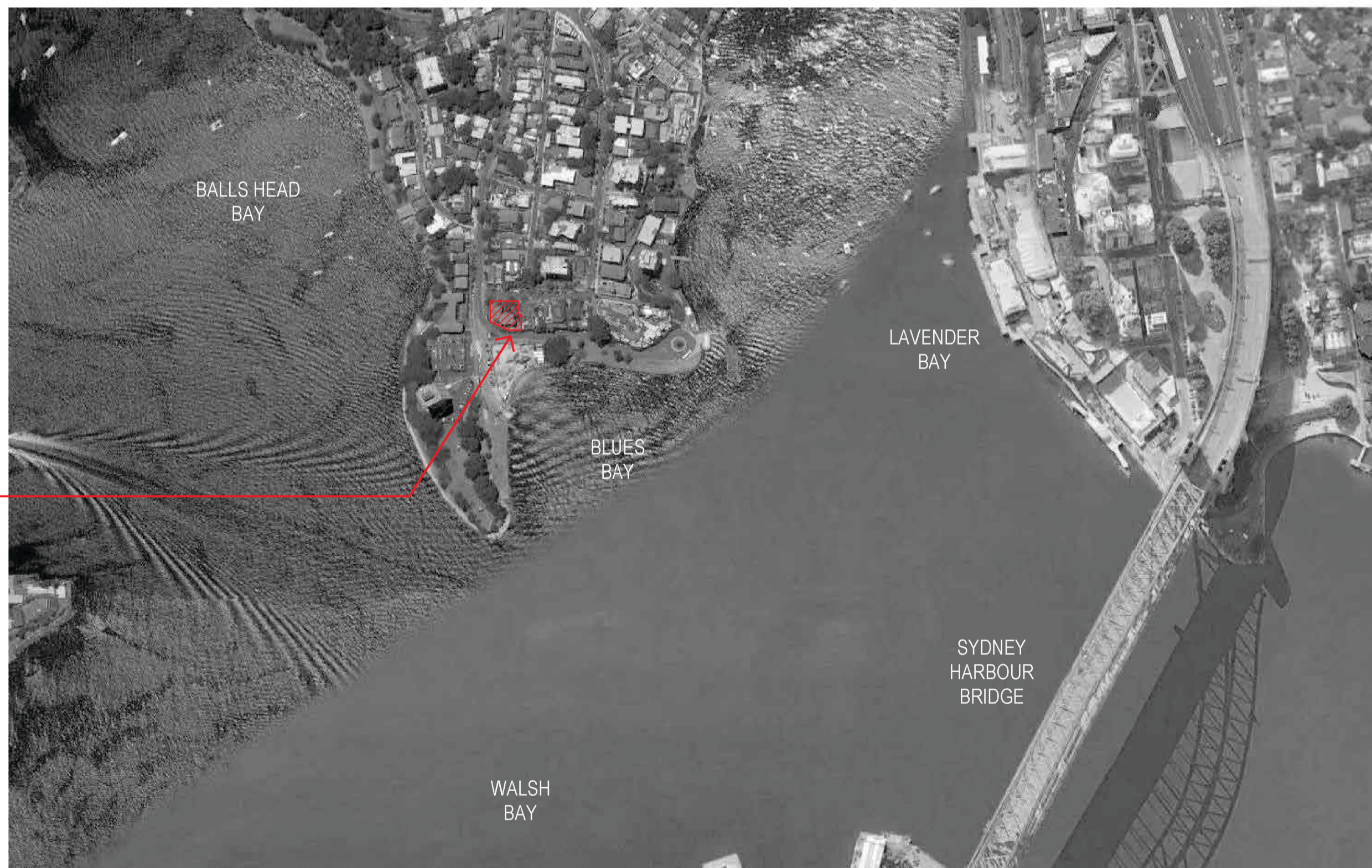
### LPP UPDATED ITEMS

#### 1. **Building Design and Privacy:**

The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

#### 2. **Site Coverage and Landscaping:**

The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.



**SUBJECT SITE**

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### STATUS

## DEVELOPMENT APPLICATION

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### GRAPHIC SCALE

NOT TO SCALE

### DRAWING NOTES

ISS	DATE	PURPOSE OF ISSUE
E	19.12.2024	LPP PACKAGE
D	-	-
C	03.09.2024	ISSUE FOR DA
B	-	-
A	29.02.2024	ISSUE FOR DA

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Highbury Warung Pty Ltd

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ABN: 24 132 554 753

NOMINATED ARCHITECT  
Vince Squillace Reg No. 6468 (NSW),  
17219 (VIC), 3677 (QLD), AR1173 (NT)

PROJECT  
Warung Street Apartments

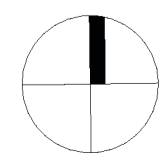
1 Warung Street, McMahons Point NSW

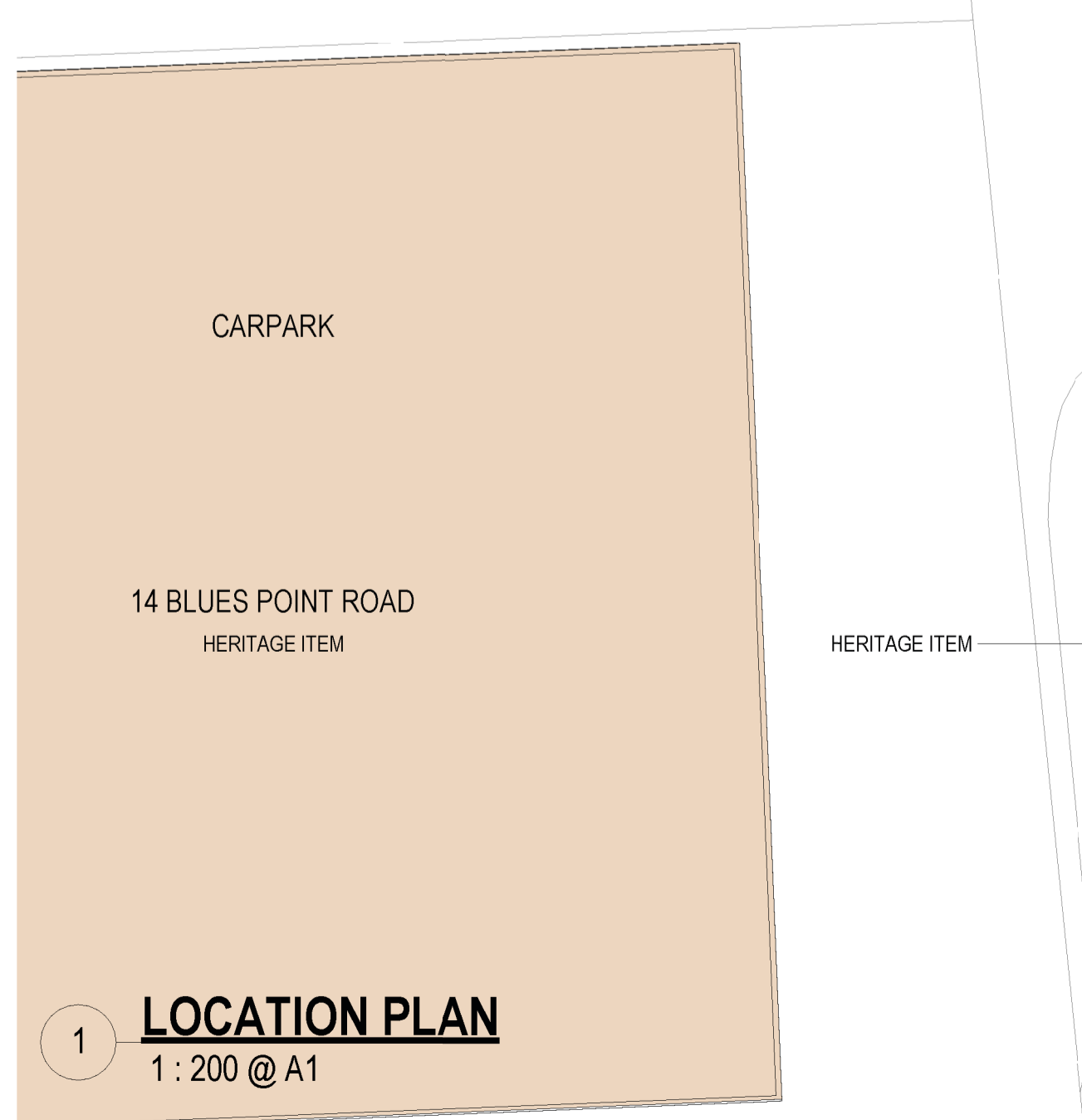
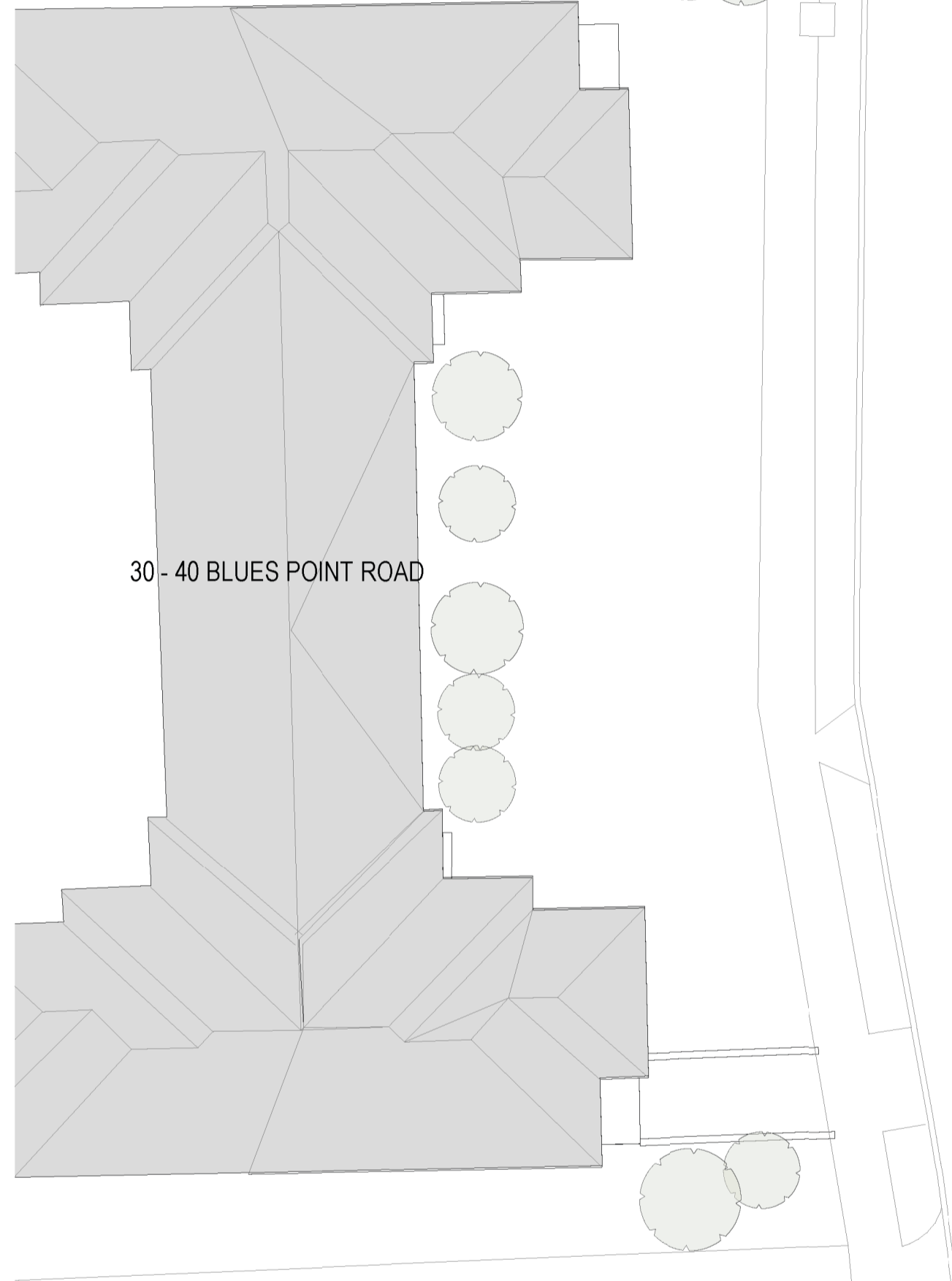
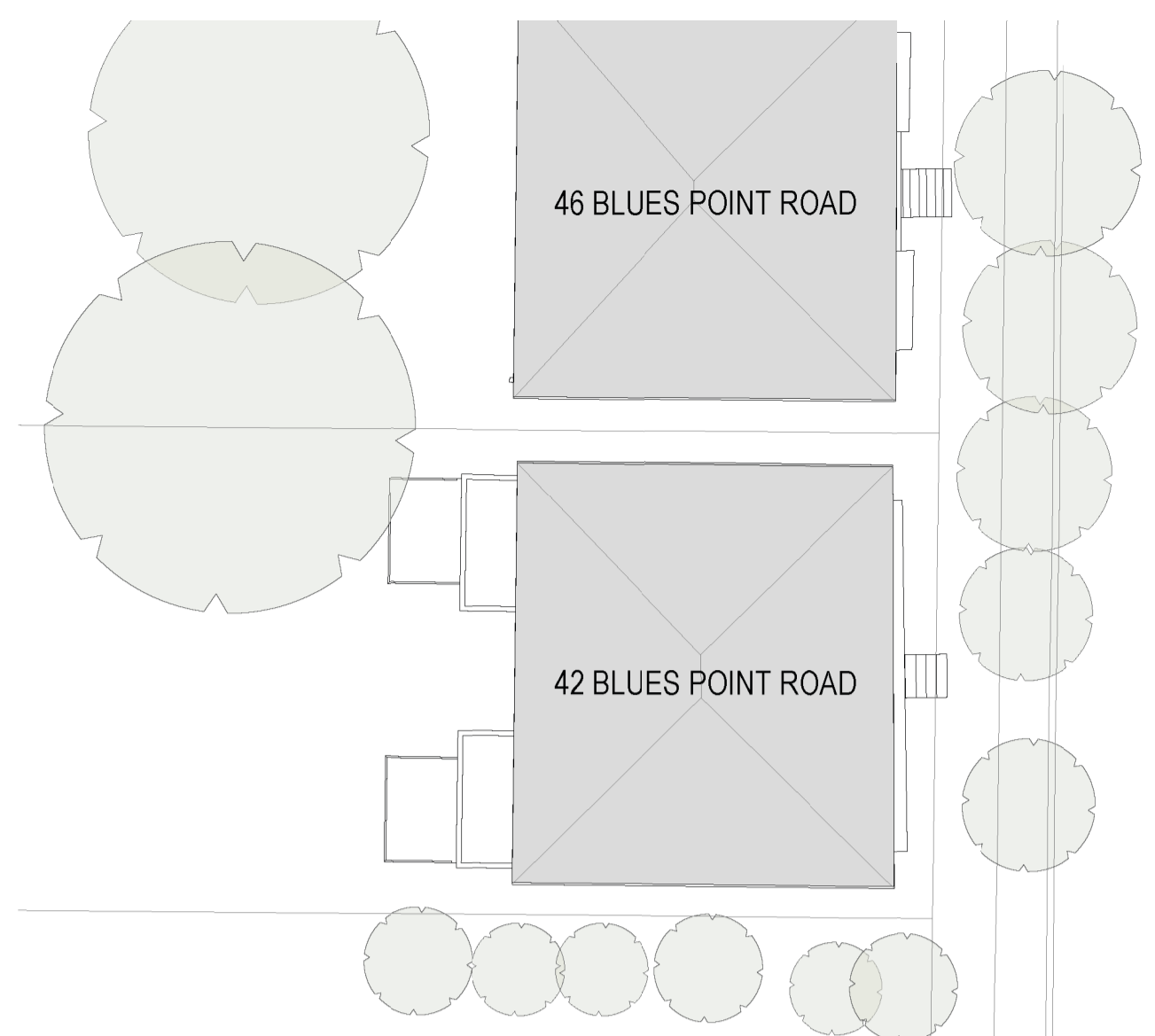
DRAWING NO. **DA-001** ISSUE **E**

JOB NO. HIG2307 SCALE **N.T.S.** DATE 19.12.2024

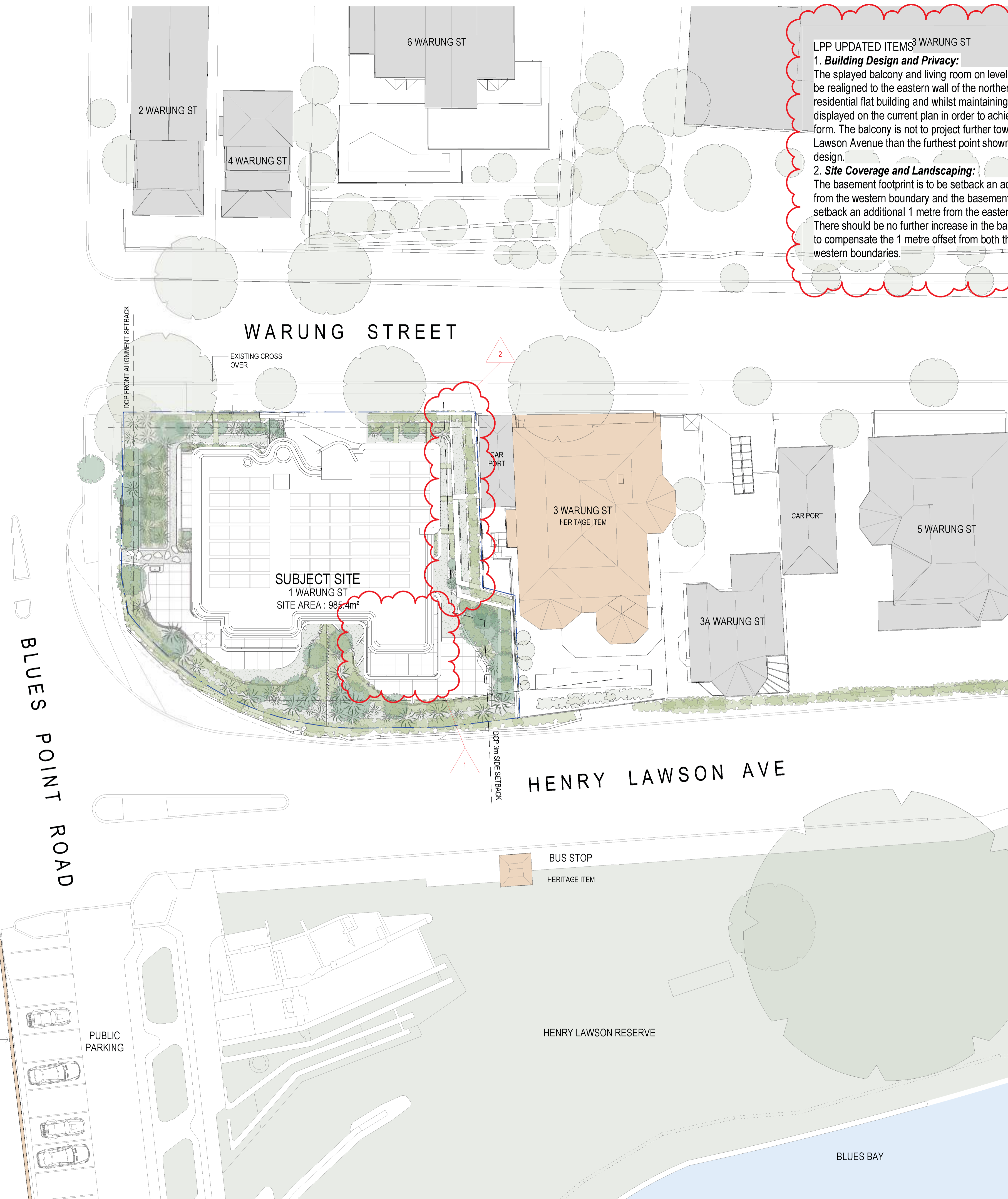
DRAWING TITLE  
COVER SHEET

DRAWN BY MS CHECKED BY MS





1 **LOCATION PLAN**  
1:200 @ A1



**LPP UPDATED ITEMS**  
**1. Building Design and Privacy:**  
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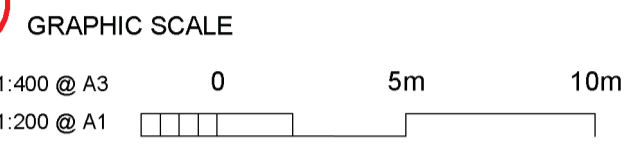
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**DRAWING NOTES**

- LEGEND**  
 HERITAGE ITEM

ISS	DATE	PURPOSE OF ISSUE
E	19.12.2024	LPP PACKAGE
D	16.12.2024	LPP AMENDMENTS
C	03.09.2024	ISSUE FOR DA
B	-	-
A	29.02.2024	ISSUE FOR DA

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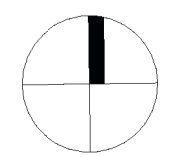
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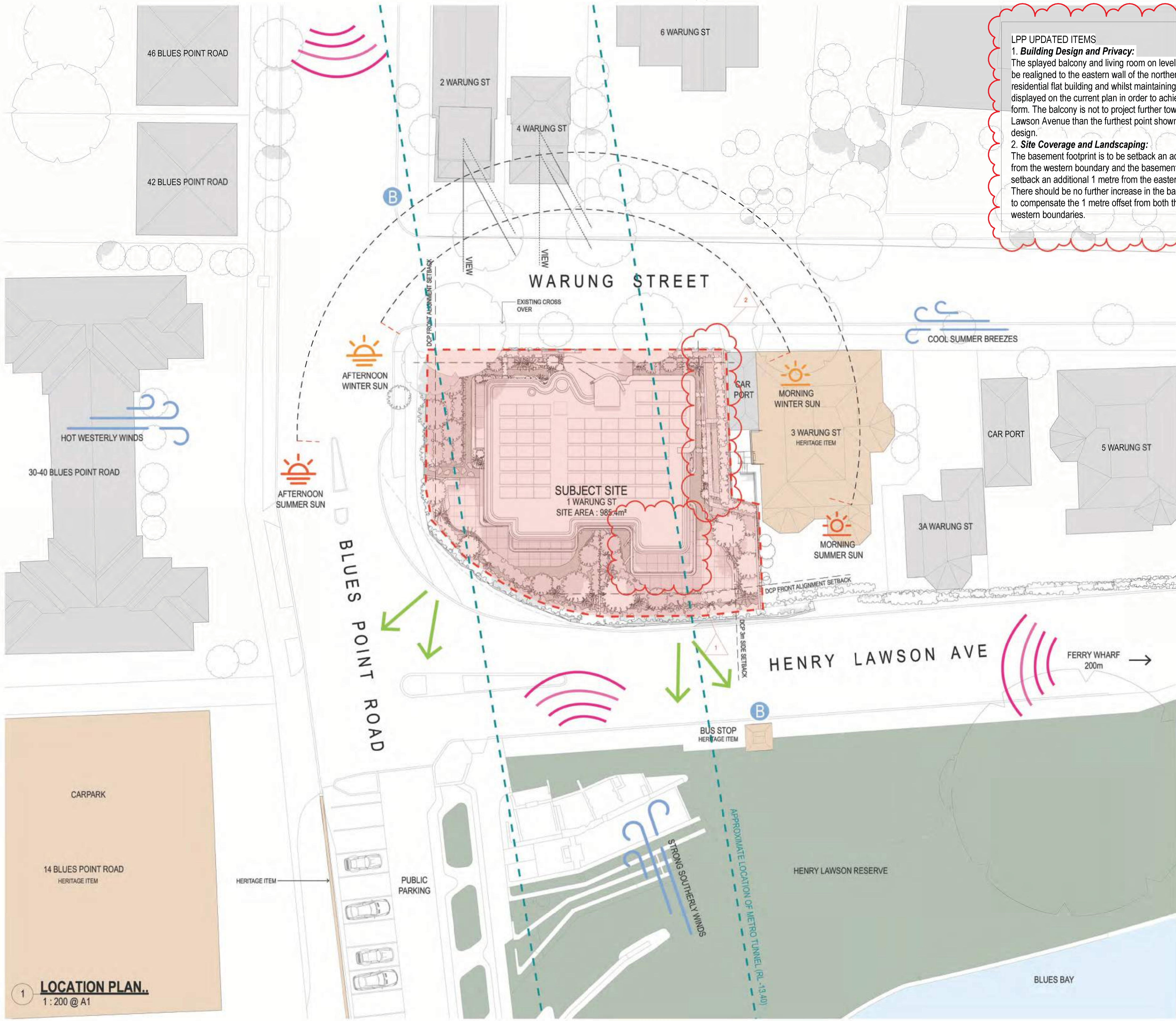
**NOMINATED ARCHITECT**  
 Vince Squillace Reg No. 6468 (NSW),  
 17219 (VIC), 3677 (QLD), AR1173 (NT)

**PROJECT**  
 Warung Street Apartments  
 1 Warung Street, McMahons Point NSW

**DRAWING NO.** DA-011  
**ISSUE** E  
**JOB NO.** HIG2307  
**SCALE** As indicated@  
**DATE** 19.12.2024  
**DRAWING TITLE** A1  
**SITE PLAN**

**DRAWN BY** MS  
**CHECKED BY** MS





**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**  
The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

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- DRAWING NOTES**
- LEGEND**
- HERITAGE ITEM
  - SUBJECT SITE
  - DOMINANT WIND SOURCES
  - NOISE
  - BUS STOPS
  - SIGNIFICANT VIEWS FROM SITE

ISS	DATE	PURPOSE OF ISSUE
E	19.12.2024	LPP PACKAGE
D	-	-
C	03.09.2024	ISSUE FOR DA
B	-	-
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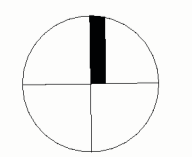
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17219 (VIC), 3677 (QLD), AR1173 (NT)

**PROJECT**  
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1 Warung Street, McMahons Point NSW

**DRAWING NO.** DA-012  
**ISSUE** E  
**JOB NO.** HIG2307  
**SCALE** AS SHOWN  
**DATE** 19.12.2024

**DRAWING TITLE**  
SITE ANALYSIS PLAN

**DRAWN BY** MS  
**CHECKED BY** MS



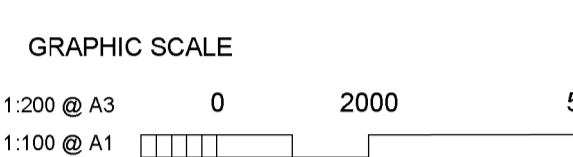
**1 LOCATION PLAN..**  
1:200 @ A1

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**DEVELOPMENT APPLICATION**  
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DRAWING NOTES  
**LEGEND**  
■ EXISTING WALLS  
■ EX. WALLS TO BE DEMOLISHED  
■ EX. SLABS & TREES TO BE DEMOLISHED  
■ EXCAVATION EXTENT

ISS	DATE	PURPOSE OF ISSUE
E	19.12.2024	LPP PACKAGE
D	-	-
C	03.09.2024	ISSUE FOR DA
B	-	-
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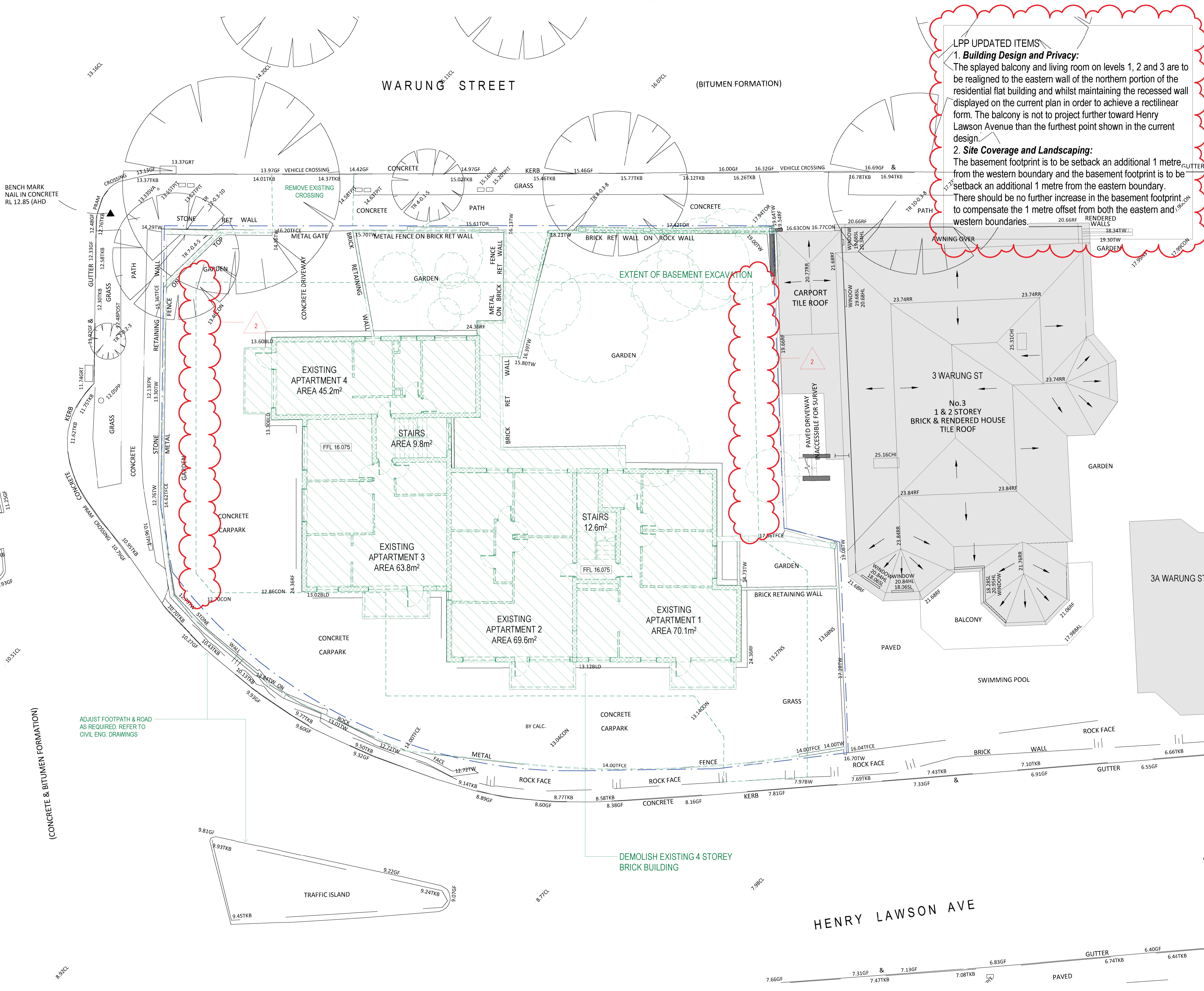
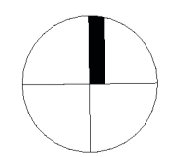
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17219 (VIC), 3677 (QLD), AR1173 (NT)

PROJECT  
Warung Street Apartments  
1 Warung Street, McMahons Point NSW

DRAWING NO. DA-020 E  
JOB NO. HIG2307  
SCALE 1:100 @ A1  
DATE 19.12.2024

DRAWING TITLE  
DEMOLITION PLAN

DRAWN BY MS  
CHECKED BY MS



**LPP UPDATED ITEMS**  
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**1 DEMOLITION PLAN**  
1:100 @ A1

**LPP UPDATED ITEMS**

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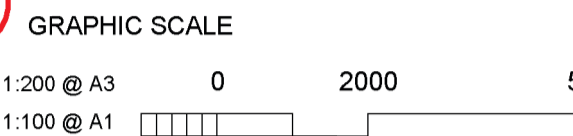
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**DEVELOPMENT APPLICATION**

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NOMINATED ARCHITECT  
Vince Squillace Reg No. 6468 (NSW),  
17219 (VIC), 3677 (QLD), AR1173 (NT)

PROJECT  
Warung Street Apartments

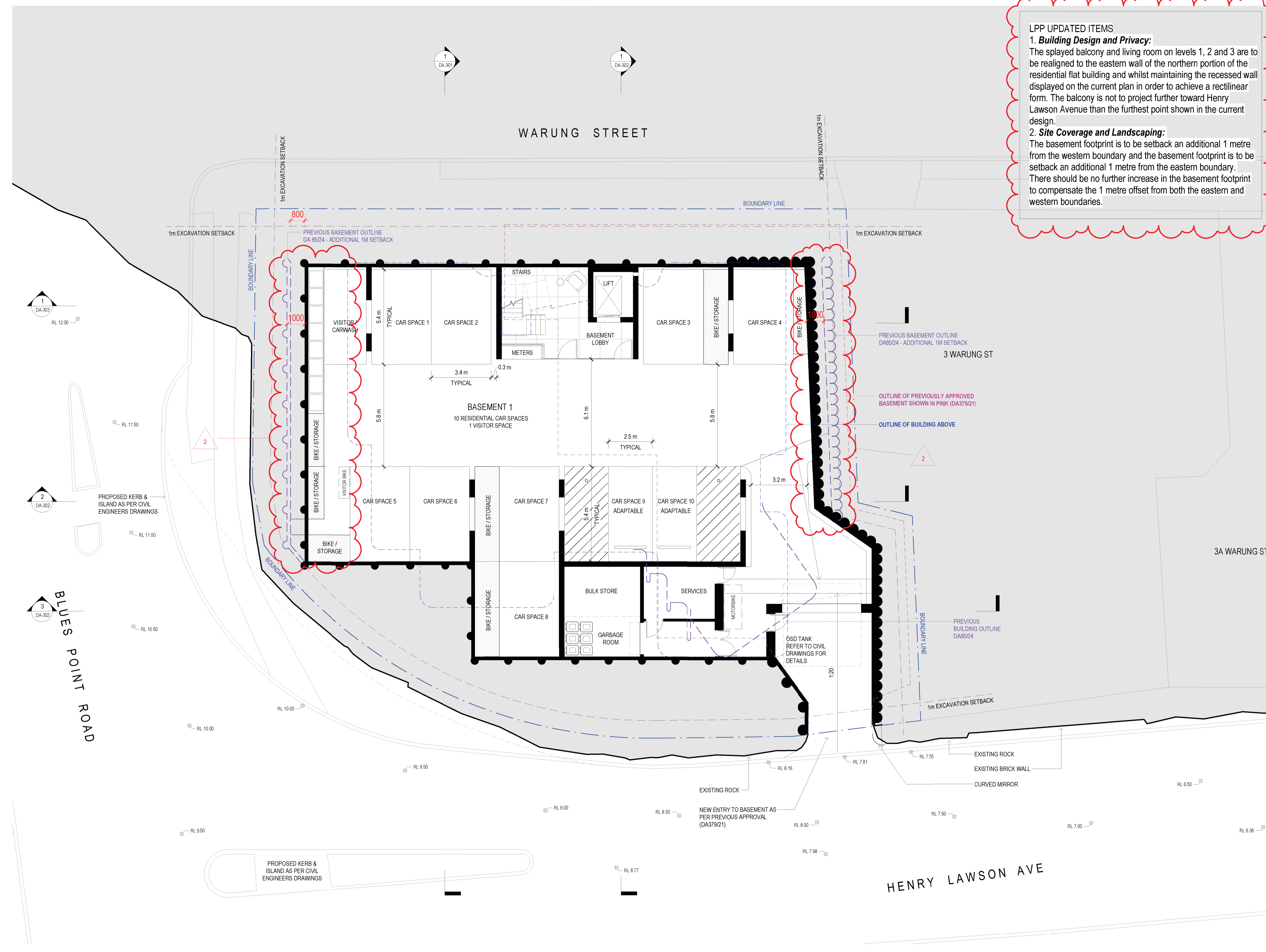
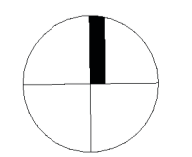
1 Warung Street, McMahon's Point NSW

DRAWING NO. DA-099 E

JOB NO. HIG2307 SCALE 1:100@A1 DATE 19.12.2024

DRAWING TITLE  
BASEMENT LEVEL PLAN

DRAWN BY MS CHECKED BY MS



**1 BASEMENT FLOOR PLAN**  
1:100 @ A1

**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**  
The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

**2. Site Coverage and Landscaping:**  
The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

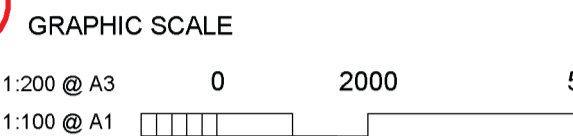
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**NOMINATED ARCHITECT**  
Vince Squillace Reg No. 6468 (NSW), 17219 (VIC), 3677 (QLD), AR1173 (NT)

**PROJECT**  
Warung Street Apartments

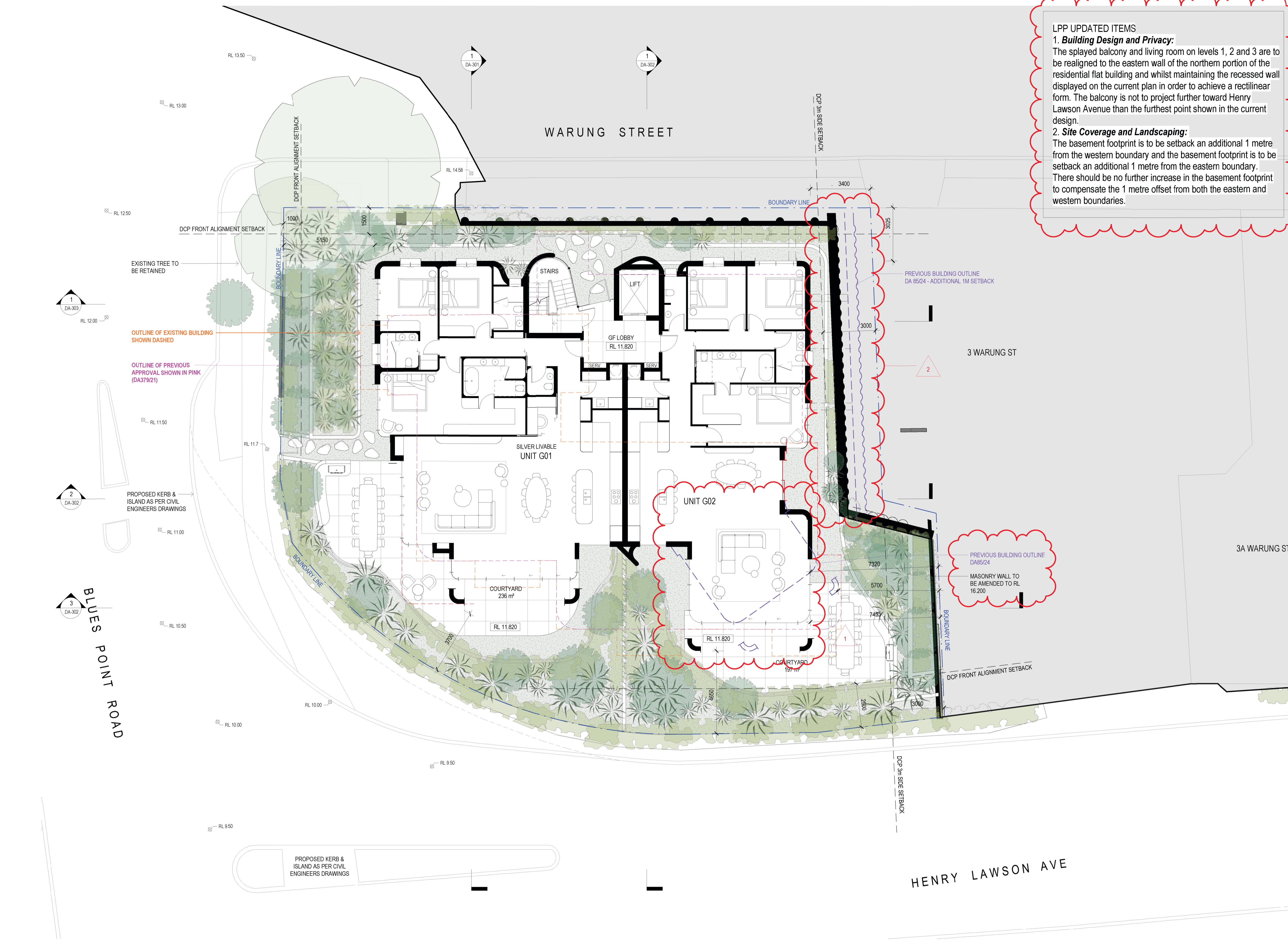
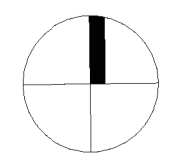
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**DRAWING NO.** DA-100 **ISSUE** E

**JOB NO.** HIG2307 **SCALE** 1:100@A1 **DATE** 19.12.2024

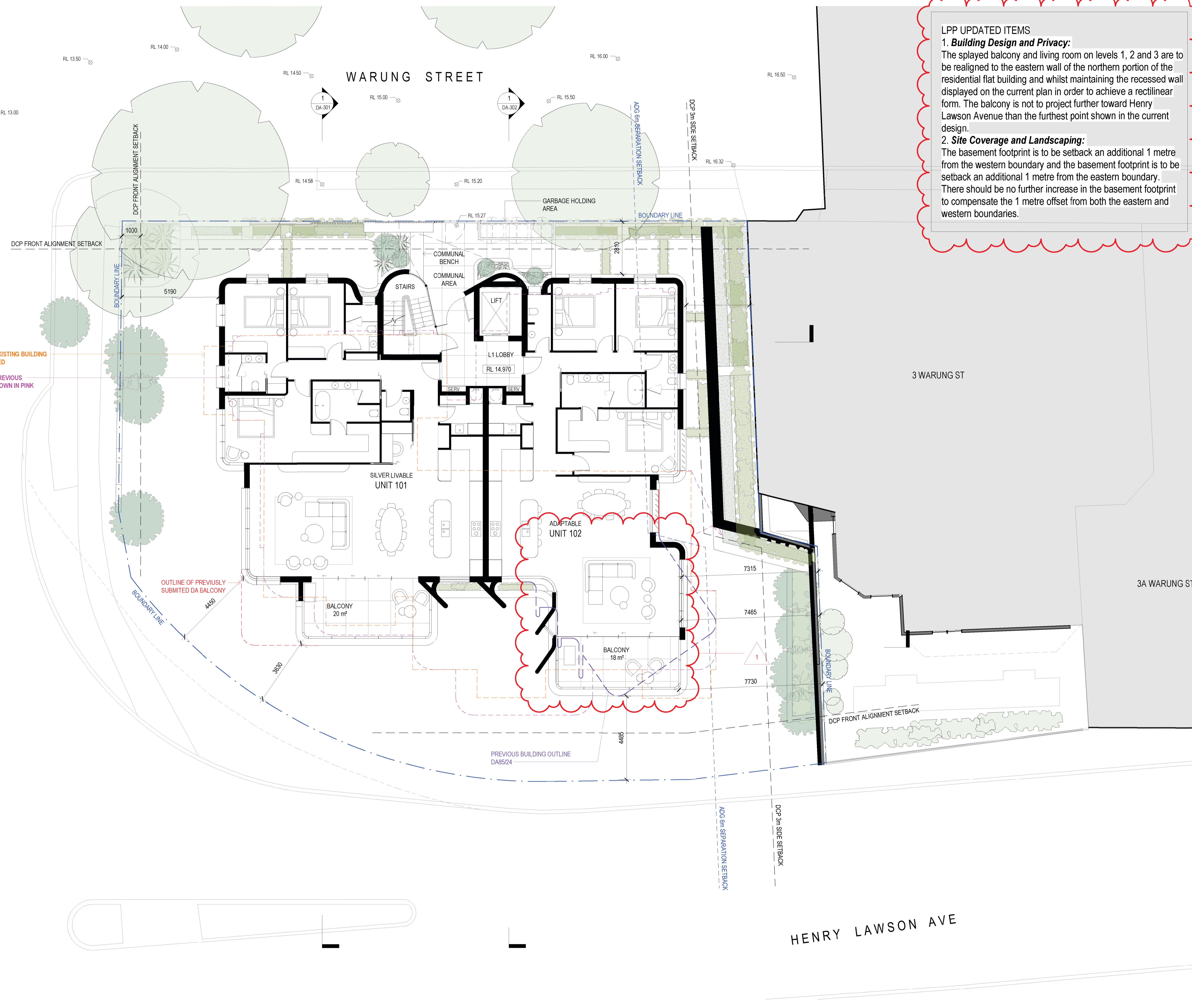
**DRAWING TITLE**  
GROUND LEVEL PLAN

**DRAWN BY** MS **CHECKED BY** MS



**1 GROUND LEVEL FLOOR PLAN**  
1:100 @A1





**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**  
 The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

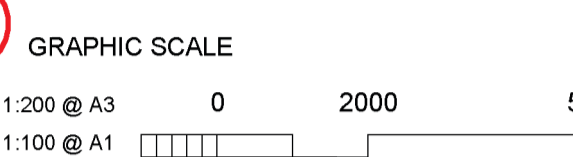
**2. Site Coverage and Landscaping:**  
 The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

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**NOMINATED ARCHITECT**  
 Vince Squillace Reg No. 6468 (NSW),  
 17219 (VIC), 3677 (QLD), AR1173 (NT)

**PROJECT**  
 Warung Street Apartments

1 Warung Street, McMahons Point NSW

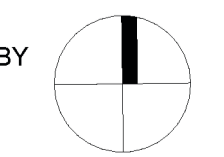
**DRAWING NO.**  
**DA-101**

**ISSUE**  
**E**

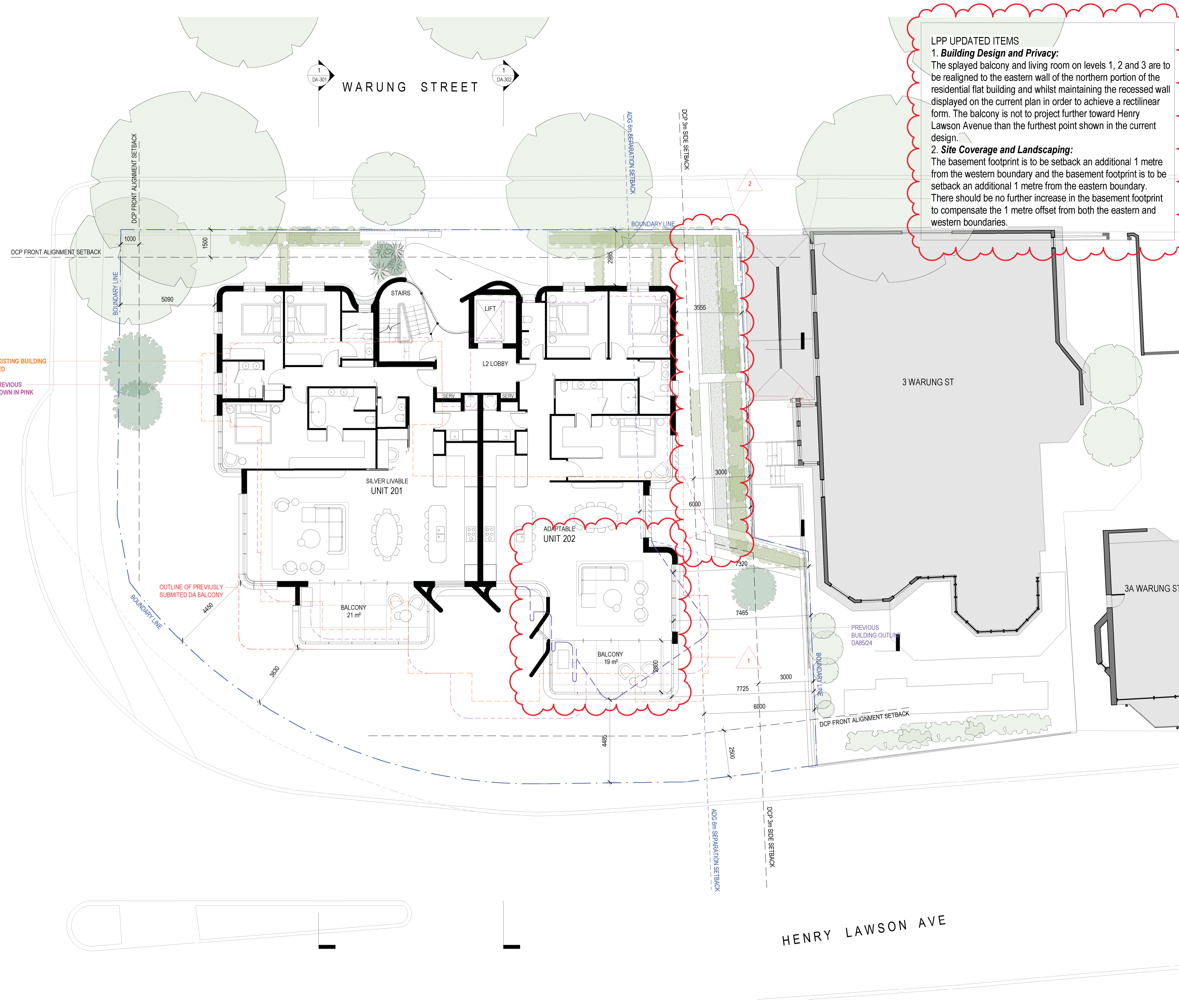
**JOB NO.** HIG2307  
**SCALE** 1:100@A1  
**DATE** 19.12.2024

**DRAWING TITLE**  
 LEVEL 1 PLAN

**DRAWN BY** MS  
**CHECKED BY** MS



**1 LEVEL 1 FLOOR PLAN**  
 1:100@A1



**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**  
The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

**2. Site Coverage and Landscaping:**  
The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

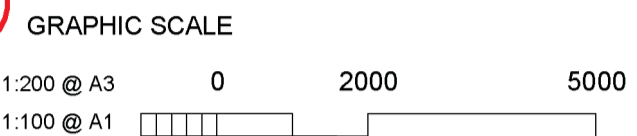
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NOMINATED ARCHITECT  
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17219 (VIC), 3677 (QLD), AR1173 (NT)

PROJECT  
Warung Street Apartments

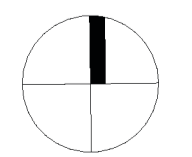
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DRAWING NO. DA-102  
ISSUE E

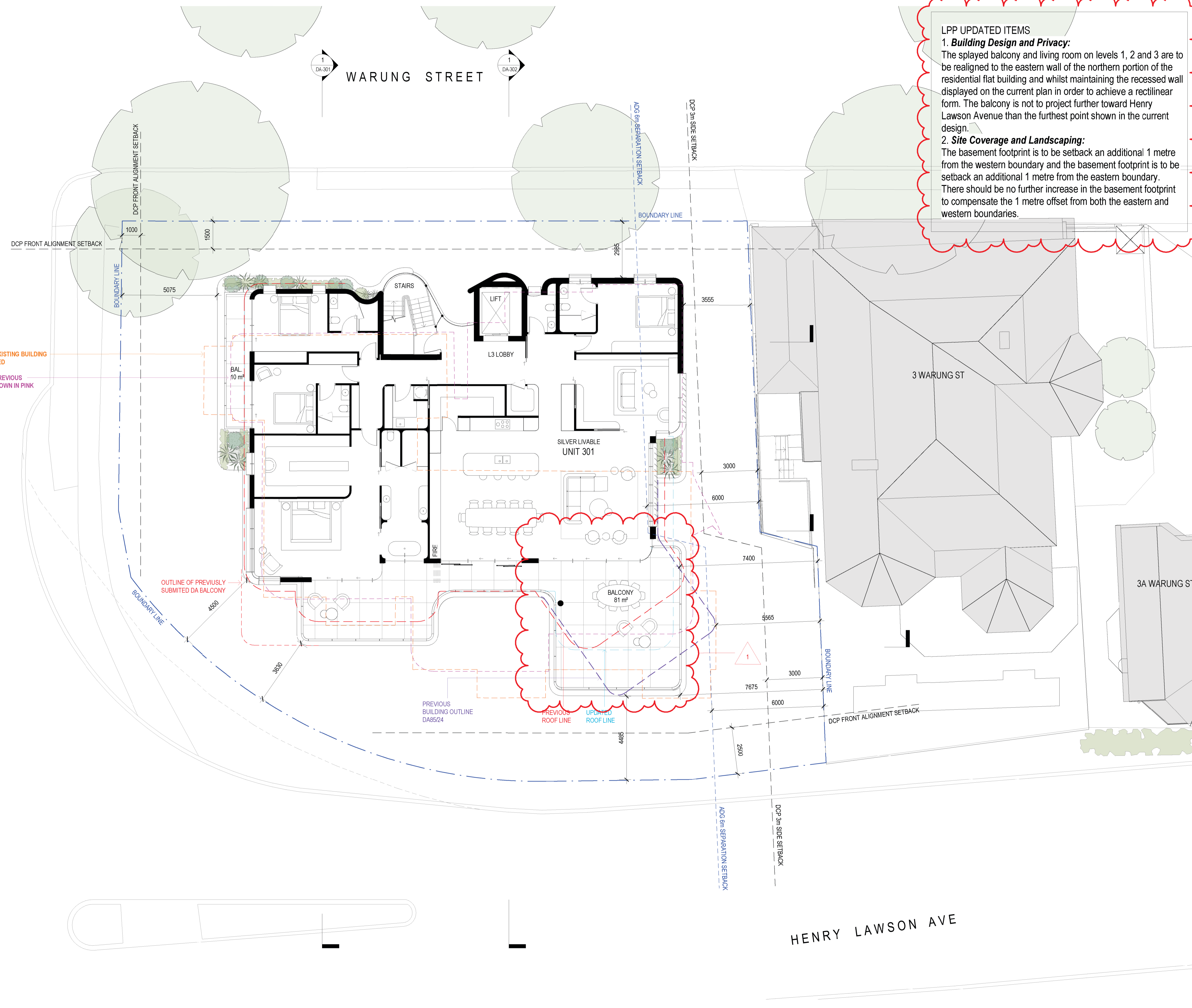
JOB NO. HIG2307 SCALE 1:100@A1 DATE 19.12.2024

DRAWING TITLE  
LEVEL 2 PLAN

DRAWN BY MS CHECKED BY MS



**1 LEVEL 2 FLOOR PLAN**  
1:100 @ A1



**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**  
The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

**2. Site Coverage and Landscaping:**  
The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

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**GRAPHIC SCALE**  
1:200 @ A3  
1:100 @ A1

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**NOMINATED ARCHITECT**  
Vince Squillace Reg No. 6468 (NSW),  
17219 (VIC), 3677 (QLD), AR1173 (NT)

**PROJECT**  
Warung Street Apartments  
1 Warung Street, McMahons Point NSW

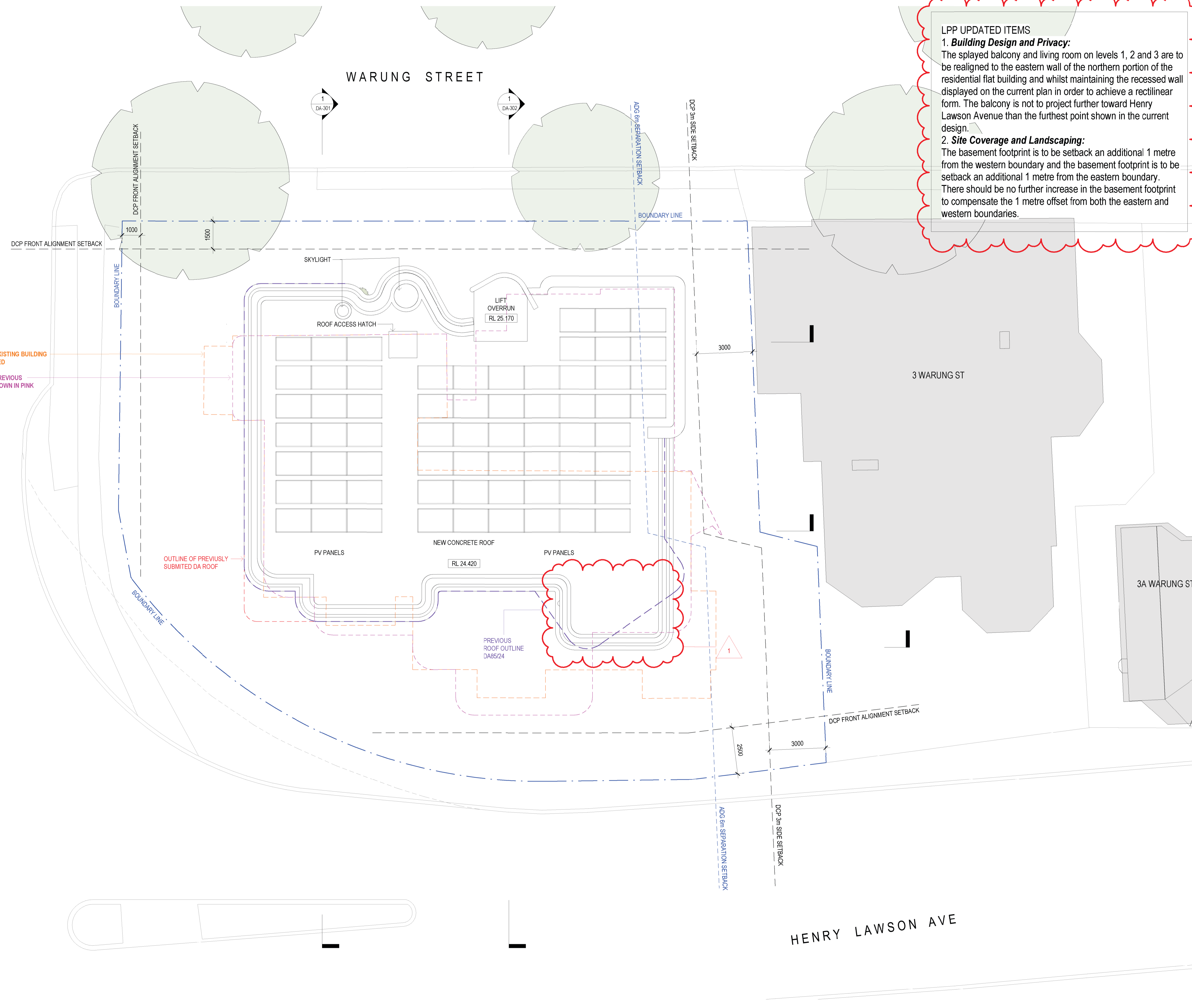
**DRAWING NO.** DA-103  
**ISSUE** E

**JOB NO.** HIG2307  
**SCALE** 1:100@A1  
**DATE** 19.12.2024

**DRAWING TITLE**  
LEVEL 3 PLAN

**DRAWN BY** MS  
**CHECKED BY** MS

**1 LEVEL 3 FLOOR PLAN**  
1:100 @A1



**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**  
The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

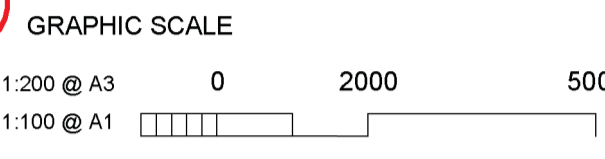
**2. Site Coverage and Landscaping:**  
The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

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**NOMINATED ARCHITECT**  
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**PROJECT**  
Warung Street Apartments

1 Warung Street, McMahons Point NSW

**DRAWING NO.** DA-104  
**ISSUE** E  
**JOB NO.** HIG2307  
**SCALE** 1:100@A1  
**DATE** 19.12.2024

**DRAWING TITLE**  
ROOF PLAN

**DRAWN BY** MS  
**CHECKED BY** MS

**1 ROOF FLOOR PLAN**  
1:100 @ A1



1. SANDSTONE (ROUGH)      2. SANDSTONE (SMOOTH)      3. MOSAIC IRREGULAR WHITE TILE      4. PIGMENTED TEXTURED RENDER  
NOTE: TO MATCH APPROVED      5. BRONZE CLADDING      6. BRONZE METAL WORKS      7. BRONZE RESTRICTED LOUVRES      8. CLEAR GLASS

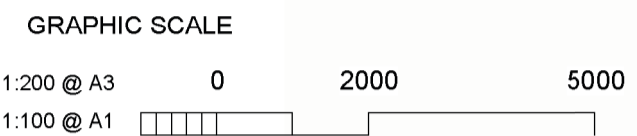
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PROJECT  
Warung Street Apartments

1 Warung Street, McMahons Point NSW

DRAWING NO.      ISSUE  
**DA-205      E**  
JOB NO.      SCALE      DATE  
HIG2307      1 : 100@ A1      19.12.2024

DRAWING TITLE  
NORTH ELEVATION - PROPOSED

DRAWN BY      CHECKED BY  
MS      MS

**LPP UPDATED ITEMS**  
**1. Building Design and Privacy:**  
The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.  
**2. Site Coverage and Landscaping:**  
The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

**1 NORTH ELEVATION - PROPOSED**  
1 : 100 @ A1



1. SANDSTONE (ROUGH)



2. SANDSTONE (SMOOTH)



3. MOSAIC IRREGULAR WHITE TILE



4. PIGMENTED TEXTURED RENDER  
NOTE: TO MATCH APPROVED



5. BRONZE CLADDING



6. BRONZE METAL WORKS



7. BRONZE RESTRICTED LOUVRES



8. CLEAR GLASS

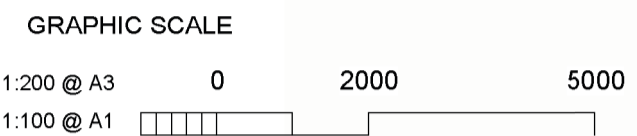
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NOMINATED ARCHITECT  
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17219 (VIC), 3677 (QLD), AR1173 (NT)

PROJECT  
Warung Street Apartments

1 Warung Street, McMahons Point NSW

DRAWING NO. ISSUE  
**DA-206 E**  
JOB NO. SCALE DATE  
HIG2307 1 : 100@ A1 19.12.2024

DRAWING TITLE  
EAST ELEVATION - PROPOSED

DRAWN BY CHECKED BY  
MS MS

**LPP UPDATED ITEMS**  
**1. Building Design and Privacy:**  
 The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.  
**2. Site Coverage and Landscaping:**  
 The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

**1 EAST ELEVATION - PROPOSED**  
1 : 100 @ A1



1. SANDSTONE (ROUGH)



2. SANDSTONE (SMOOTH)



3. MOSAIC IRREGULAR WHITE TILE



4. PIGMENTED TEXTURED RENDER  
NOTE: TO MATCH APPROVED



5. BRONZE CLADDING



6. BRONZE METAL WORKS



7. BRONZE RESTRICTED LOUVRES



8. CLEAR GLASS

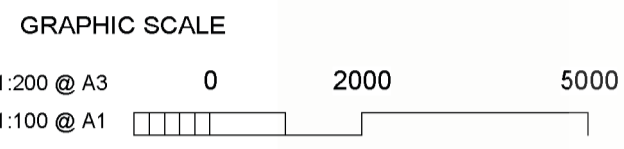
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NOMINATED ARCHITECT  
Vince Squillace Reg No. 6468 (NSW),  
17219 (VIC), 3677 (QLD), AR1173 (NT)

PROJECT  
Warung Street Apartments

1 Warung Street, McMahons Point NSW

DRAWING NO. ISSUE  
**DA-207 F**

JOB NO. SCALE DATE  
HIG2307 1 : 100 @ A1 19.12.2024

DRAWING TITLE  
WEST ELEVATION - PROPOSED

DRAWN BY CHECKED BY  
MS MS



**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**  
The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

**2. Site Coverage and Landscaping:**  
The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

**1 WEST ELEVATION - PROPOSED**  
1 : 100 @ A1



1. SANDSTONE (ROUGH)



2. SANDSTONE (SMOOTH)



3. MOSAIC IRREGULAR WHITE TILE



4. PIGMENTED TEXTURED RENDER  
NOTE: TO MATCH APPROVED



5. BRONZE CLADDING



6. BRONZE METAL WORKS



7. BRONZE RESTRICTED LOUVRES



8. CLEAR GLASS

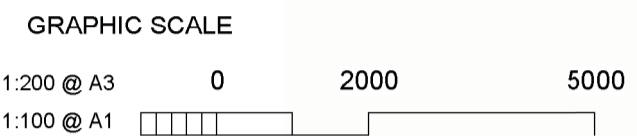
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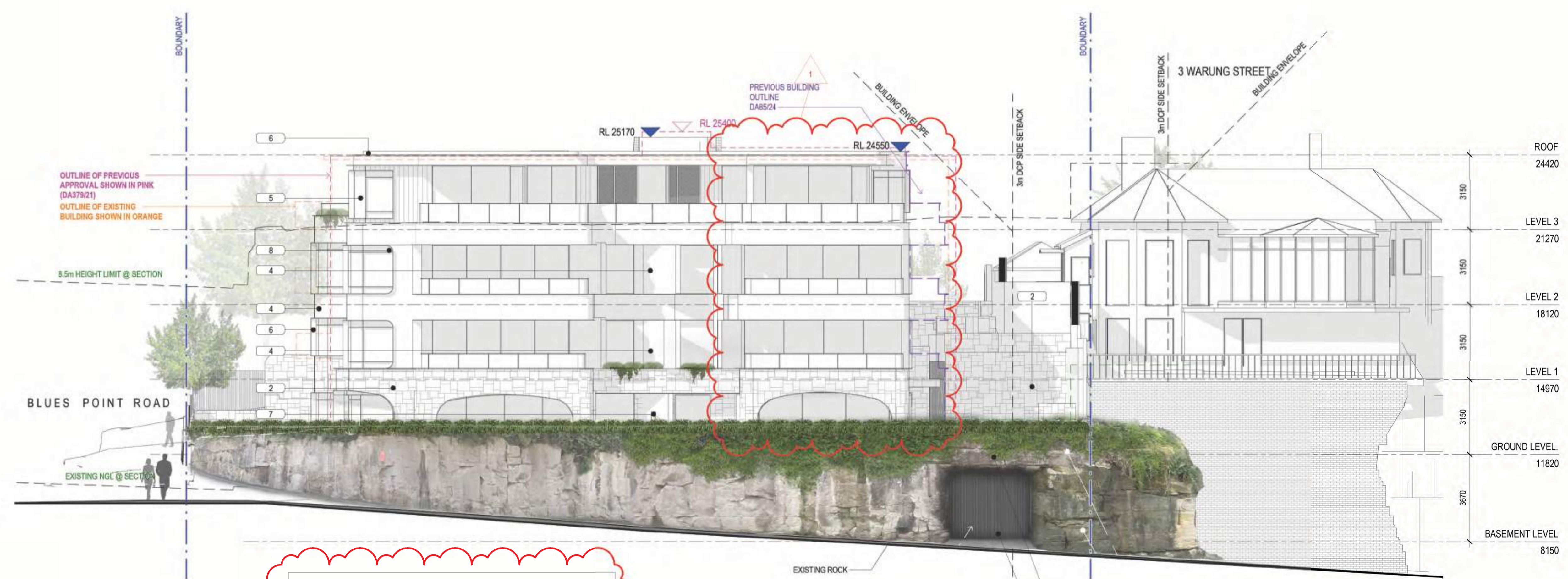


STATUS  
**DEVELOPMENT APPLICATION**

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DRAWING NOTES



ISS	DATE	PURPOSE OF ISSUE
E	19.12.2024	LPP PACKAGE
D	16.12.2024	LPP AMENDMENTS
C	03.09.2024	ISSUE FOR DA
B	-	-
A	29.02.2024	ISSUE FOR DA

CLIENT  
Highbury Warung Pty Ltd

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1/80 Albion Street, Surry Hills, NSW 2010  
Ph: +61 2 8354 1300  
ABN: 24 132 554 753

NOMINATED ARCHITECT  
Vince Squillace Reg No. 6468 (NSW),  
17219 (VIC), 3677 (QLD), AR1173 (NT)

PROJECT  
Warung Street Apartments

1 Warung Street, McMahons Point NSW

DRAWING NO. ISSUE  
**DA-208 E**  
JOB NO. SCALE DATE  
HIG2307 1 : 100 @ A1 19.12.2024

DRAWING TITLE  
SOUTH ELEVATION - PROPOSED

DRAWN BY CHECKED BY  
MS MS

LPP UPDATED ITEMS  
**1. Building Design and Privacy:**  
The played balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.  
**2. Site Coverage and Landscaping:**  
The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

1 **SOUTH ELEVATION - PROPOSED**  
1 : 100 @ A1



**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**  
The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

**2. Site Coverage and Landscaping:**  
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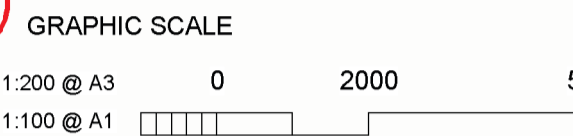
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STATUS  
**DEVELOPMENT APPLICATION**

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CLIENT  
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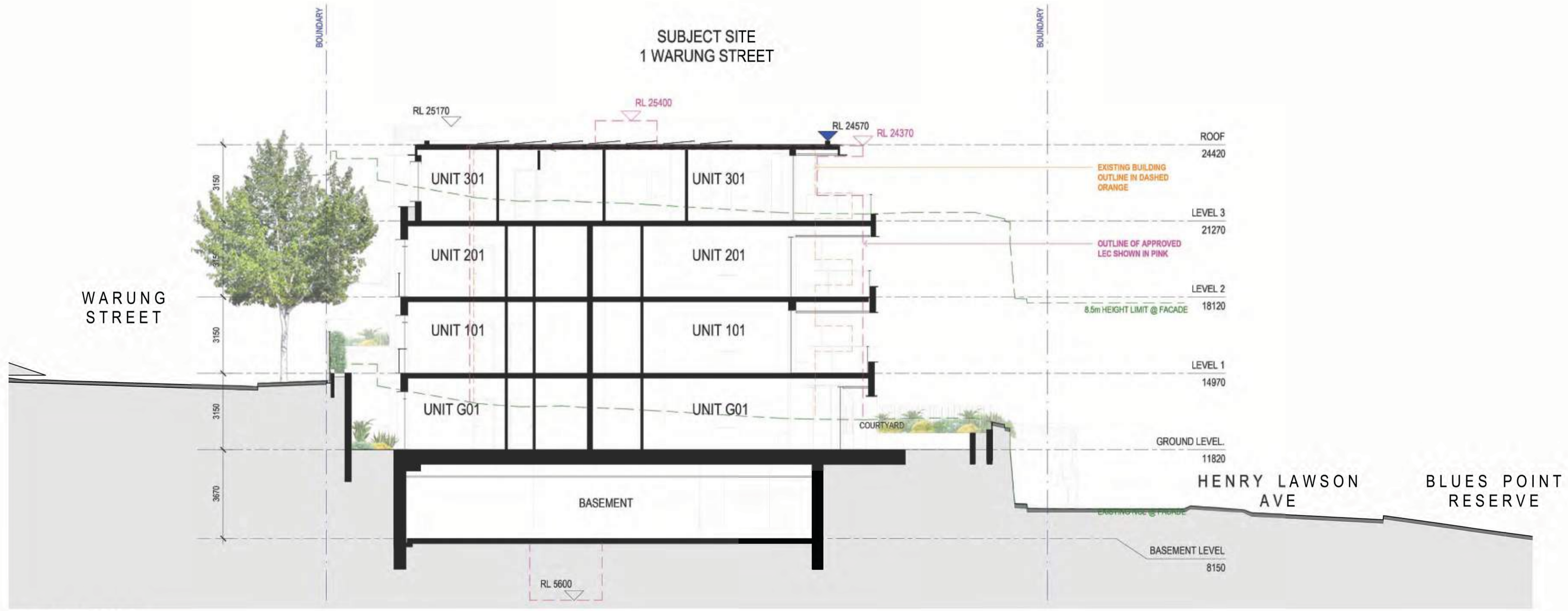
PROJECT  
Warung Street Apartments

1 Warung Street, McMahons Point NSW

DRAWING NO. **DA-301** ISSUE **E**  
JOB NO. HIG2307 SCALE 1:100@A1 DATE 19.12.2024

DRAWING TITLE  
SECTIONS SHEET 1

DRAWN BY MS CHECKED BY MS



**1 DA SECTION 01**  
1:100 @ A1

UN-BUILT = 7.7% (76.7 m<sup>2</sup>) - DCP MAX 15%  
 DEEP SOIL LANDSCAPING = 27.0% (266.5m<sup>2</sup>)  
 \*TOTAL LANDSCAPE AREA = 45.3% (446.4 m<sup>2</sup>) - DCP MIN 40%  
 \*INCLUDING AREA OVER BASEMENT WHICH WILL HAVE SUFFICIENT SOIL DEPTH

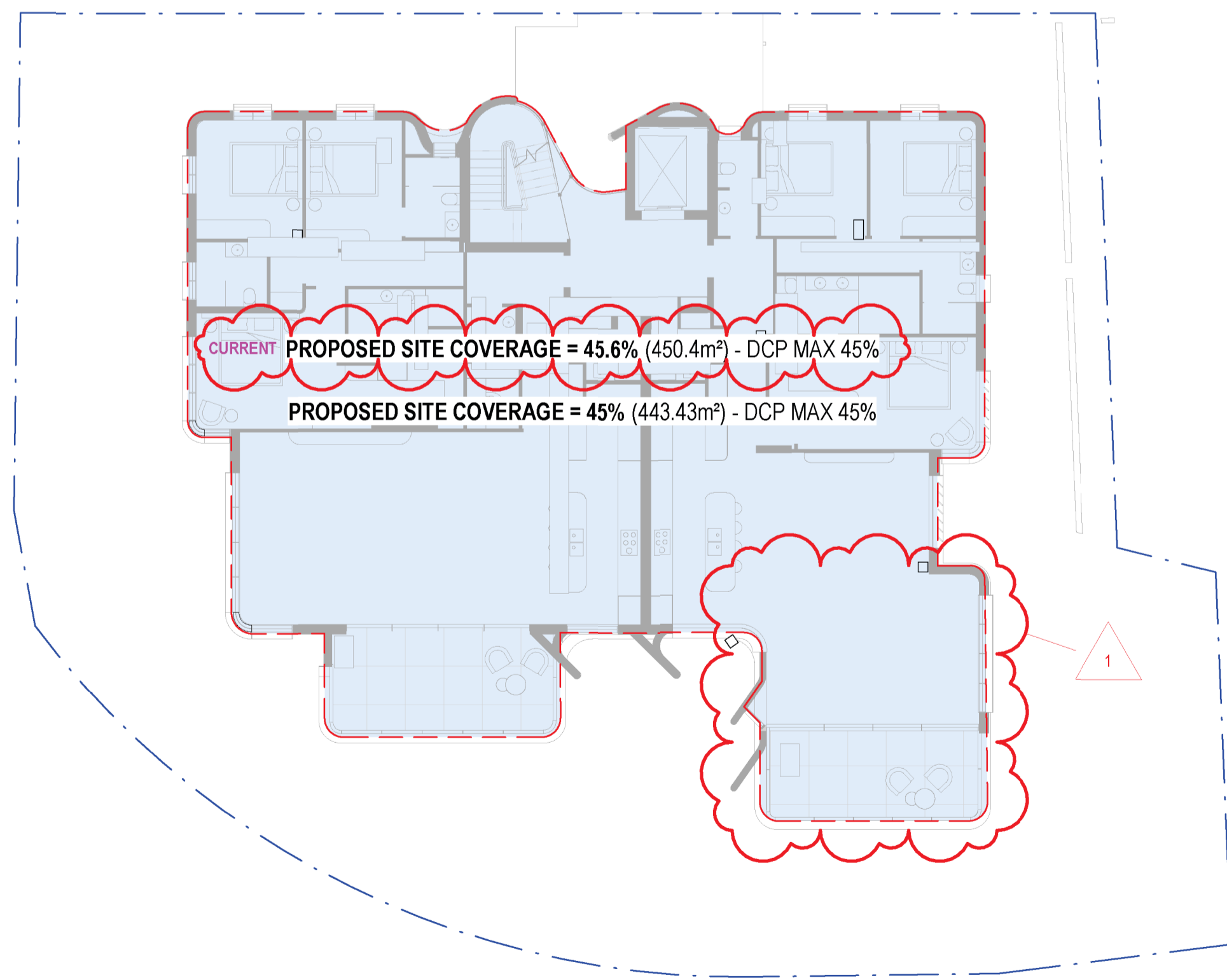
**CURRENT**  
 UN-BUILT = 10.3% (102.4m<sup>2</sup>) - DCP MAX 15%  
 DEEP SOIL LANDSCAPING = 29.1% (286.65m<sup>2</sup>)  
 \*TOTAL LANDSCAPE AREA = 44.1% (434.7 m<sup>2</sup>) - DCP MIN 40%  
 \*INCLUDING AREA OVER BASEMENT WHICH WILL HAVE SUFFICIENT SOIL DEPTH



1 **LANDSCAPE AREA**



2 **EXCAVATION PLAN.**



3 **SITE COVERAGE - PROPOSED**

**SITE AREA : 985.4m<sup>2</sup>**

**DCP CONTROLS**

Landscape area = Min 40% **(COMPLIES)**

Un-built Upon = Max 15% **(COMPLIES)**

Excavation = Max 70% **(COMPLIES)**

Site coverage = Max 45% **(MINOR NON COMPLIANCE - 0.7%)**

ADG DEEP SOIL = Max 7% **(COMPLIES)**

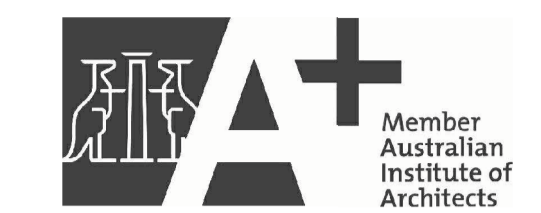
**LPP UPDATED ITEMS**

1. **Building Design and Privacy:**  
 The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

2. **Site Coverage and Landscaping:**  
 The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

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GRAPHIC SCALE

NOT TO SCALE

DRAWING NOTES

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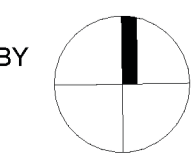
PROJECT  
 Warung Street Apartments

1 Warung Street, McMahons Point NSW

DRAWING NO. **DA-531** ISSUE **E**  
 JOB NO. HIG2307 SCALE N.T.S. DATE 19.12.2024

DRAWING TITLE  
 LANDSCAPE COVERAGE & EXCAVATION PLAN

DRAWN BY MS CHECKED BY MS



**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**

The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

**2. Site Coverage and Landscaping:**

The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

All units must be designed to at least Silver Level Livable Housing

**LHA Silver Level Requirements**

Seven core livable housing design elements

**Dwelling Access**

Please Note: For Class 2 buildings, the Commonwealth Disability (Access to Premises-Buildings) Standards 2010 require a safe and continuous pathway from the pedestrian entrance to at least one floor containing sole occupancy units and to the entrance of units located on that level. The requirements detailed below therefore do not apply to Class 2 buildings.

**Internal doors and corridors**

1. Doorways to rooms on the entry level used for living, dining, bedroom, bathroom, kitchen, laundry and sanitary compartment purposes should provide:
  - i. a minimum clear opening width of 820mm (see Figure 2(a)); and ii. a level transition and threshold (maximum vertical tolerance of 5mm between abutting surfaces is allowable provided the lip is rounded or beveled).
2. Internal corridors/passageways to the doorways referred to in (a) should provide a minimum clear width of 1000mm.

**Toilet**

- a. Dwellings should have a toilet on the ground (or entry) level that provides:
  - i. a minimum clear width of 900mm between the walls of the bathroom if located in a separate room; and
  - ii. a minimum 1200mm clear circulation space forward of the toilet pan exclusive of the swing of the door in accordance with Figure 3(a).
  - iii. The toilet pan should be located in the corner of the room to enable installation of grabrails at a future date. Reinforcement guidelines for walls in bathrooms and toilets are found in element 6.

**Shower**

1. One bathroom should feature a slip resistant, hobless shower recess. Shower screens are permitted provided they can be easily removed at a later date.
2. The shower recess should be located in the corner of the room to enable the installation of grabrails at a future date. For hobless specification please see Australian Standard AS3740-3.6. Reinforcement guidelines for walls in bathrooms and toilets are found in element 6.

**Reinforcement of Bathroom and Toilet Walls**

1. Except for walls constructed of solid masonry or concrete, the walls around the shower, bath (if provided) and toilet should be reinforced to provide a fixing surface for the safe installation of grabrails.
2. The walls around the toilet are to be reinforced by installing:
  - i. noggings with a thickness of at least 25mm in accordance with Figure 6(a); or
  - ii. sheeting with a thickness of at least 12mm in accordance with Figure 6(b).
3. The walls around the bath are to be reinforced by installing:
  - i. noggings with a thickness of at least 25mm in accordance with Figure 7(a); or
  - ii. sheeting with a thickness of at least 12mm in accordance with Figure 7(b).
4. The walls around the hobless shower recess are to be reinforced by installing:
  - i. noggings with a thickness of at least 25mm in accordance with Figure 8(a); or
  - ii. sheeting with a thickness of at least 12mm in accordance with Figure 8(b).

**Internal Stairways**

- a. Stairways in dwellings must feature:
  - i. a continuous handrail on one side of the stairway where there is a rise of more than 1m.

**Kitchen** - No requirements

**Laundry** - No requirements

**Ground or Entry Level Bedroom Space** - No Requirements

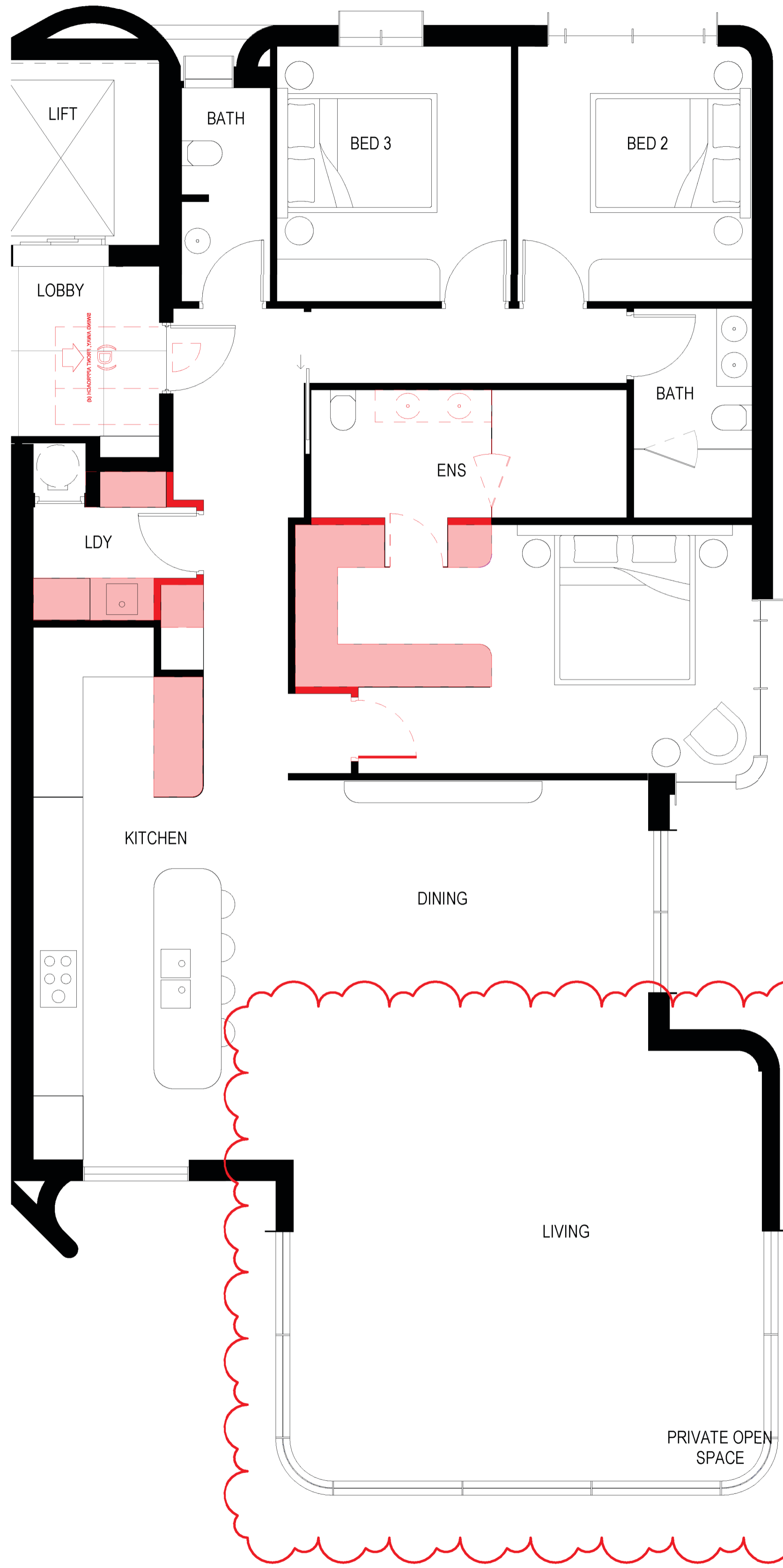
**Switches and Power Points** - No requirements

**Door and Tap Hardware** - No requirements

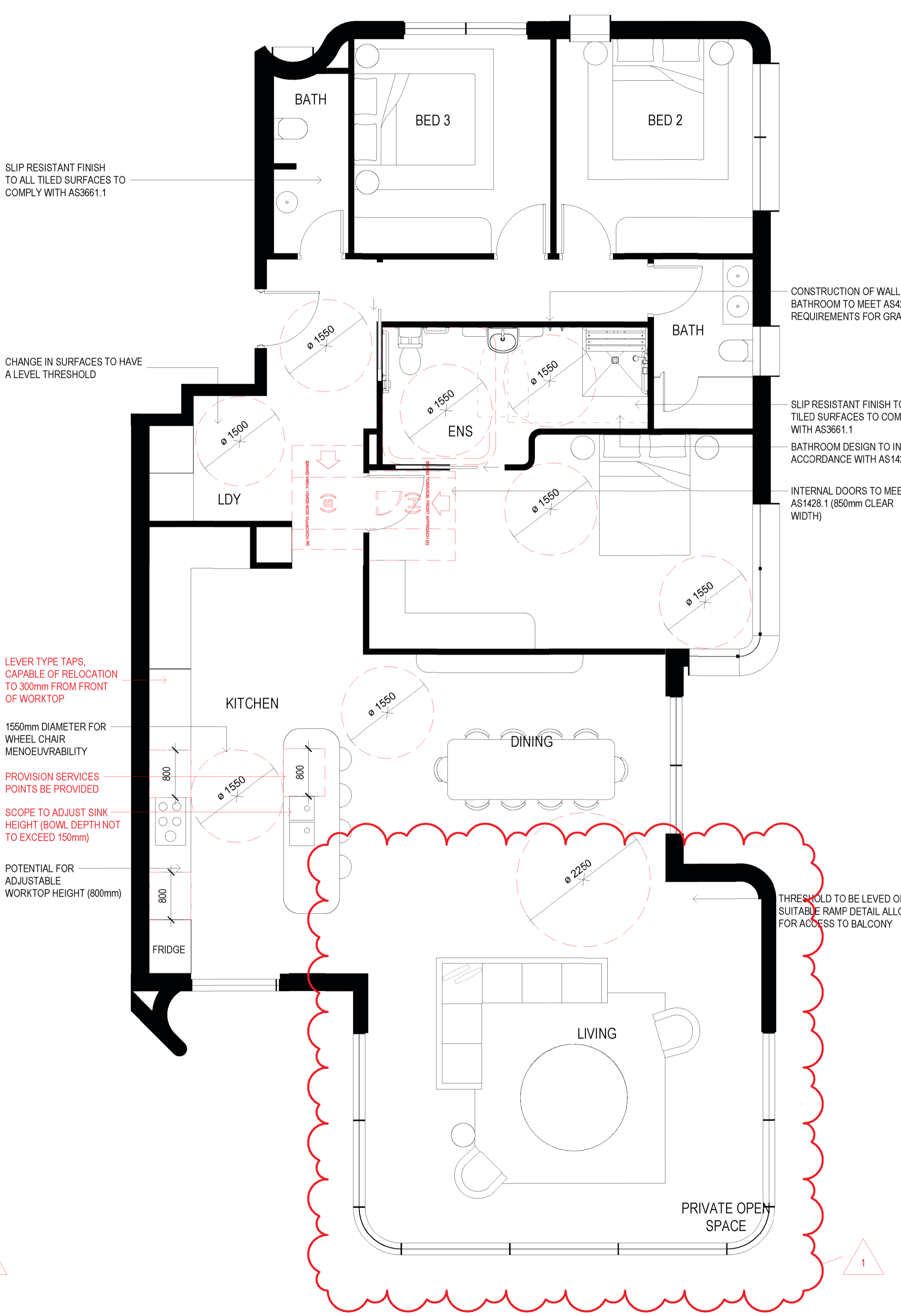
**Family/Living Room Space** - No requirements

**Window Sills** - No Requirements

**Flooring** - No requirements



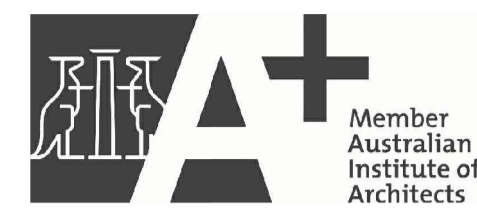
1 **UNIT 102 & 202 (PRE-ADAPTED)**  
1 : 50 @ A1



2 **UNIT 102 & 202 (POST-ADAPTED)**  
1 : 50 @ A1

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**STATUS**

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**GRAPHIC SCALE**



**DRAWING NOTES**

CONSTRUCTION OF WALLS IN BATHROOM TO MEET AS4299 REQUIREMENTS FOR GRABRAILS ETC.

SLIP RESISTANT FINISH TO ALL TILED SURFACES TO COMPLY WITH AS3661.1

BATHROOM DESIGN TO IN ACCORDANCE WITH AS1428.1

INTERNAL DOORS TO MEET AS1428.1 (850mm CLEAR WIDTH)

THRESHOLD TO BE LEVED OR SUITABLE RAMP DETAIL ALLOW FOR ACCESS TO BALCONY

ISS	DATE	PURPOSE OF ISSUE
E	19.12.2024	LPP PACKAGE
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Highbury Warung Pty Ltd

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**SYDNEY**

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ABN: 24 132 554 753

**NOMINATED ARCHITECT**

Vinco Squillace Reg No. 6468 (NSW),  
17219 (VIC), 3677 (QLD), AR1173 (NT)

**PROJECT**

Warung Street Apartments

1 Warung Street, McMahons Point NSW

**DRAWING NO.**

DA-541 E

**JOB NO.**

HIG2307

**SCALE**

As indicated@

**DATE**

19.12.2024

**DRAWING TITLE**

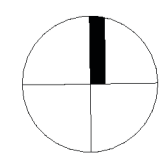
ADAPTABLE UNIT LAYOUT

**DRAWN BY**

MS

**CHECKED BY**

MS



**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**  
The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

**2. Site Coverage and Landscaping:**  
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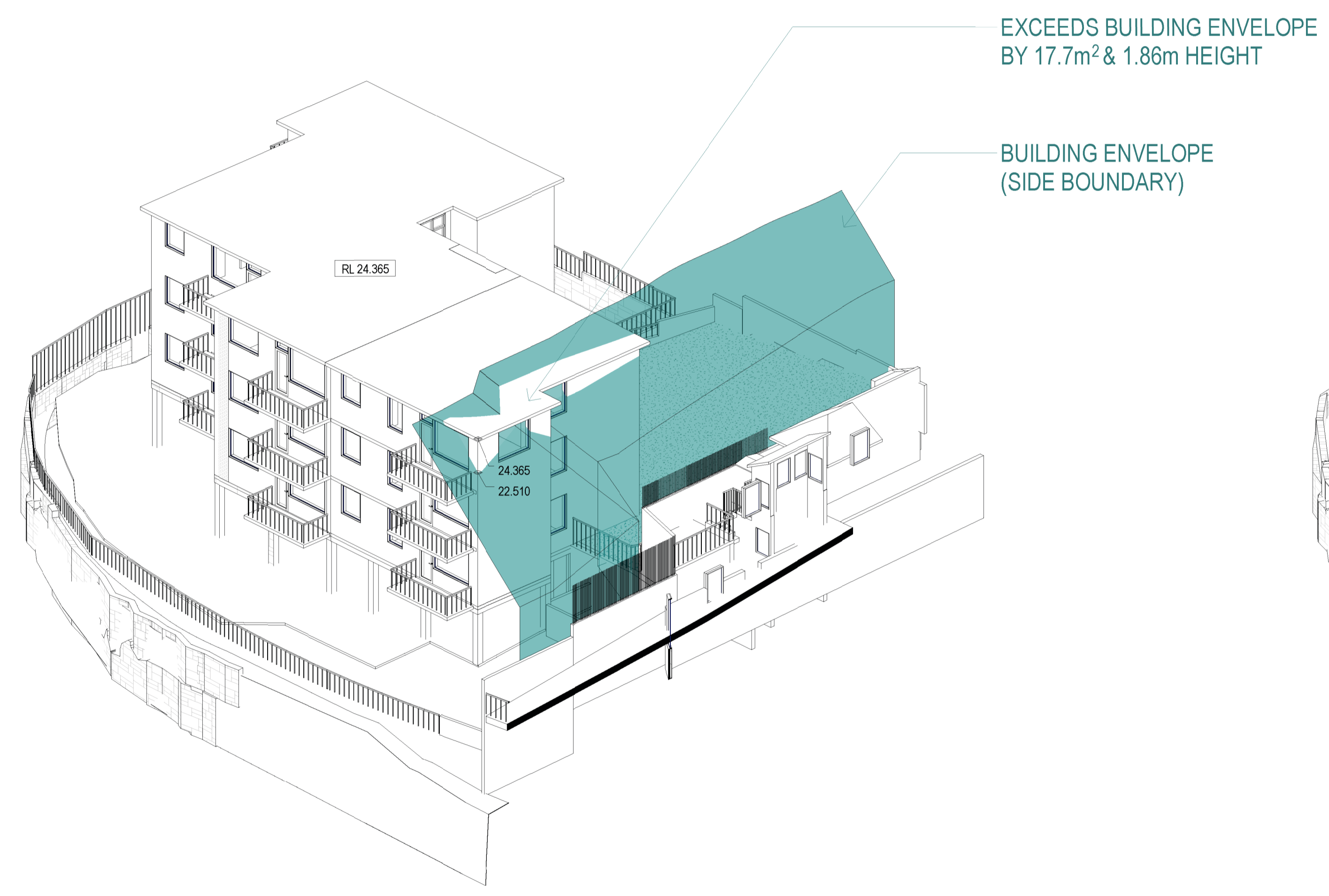
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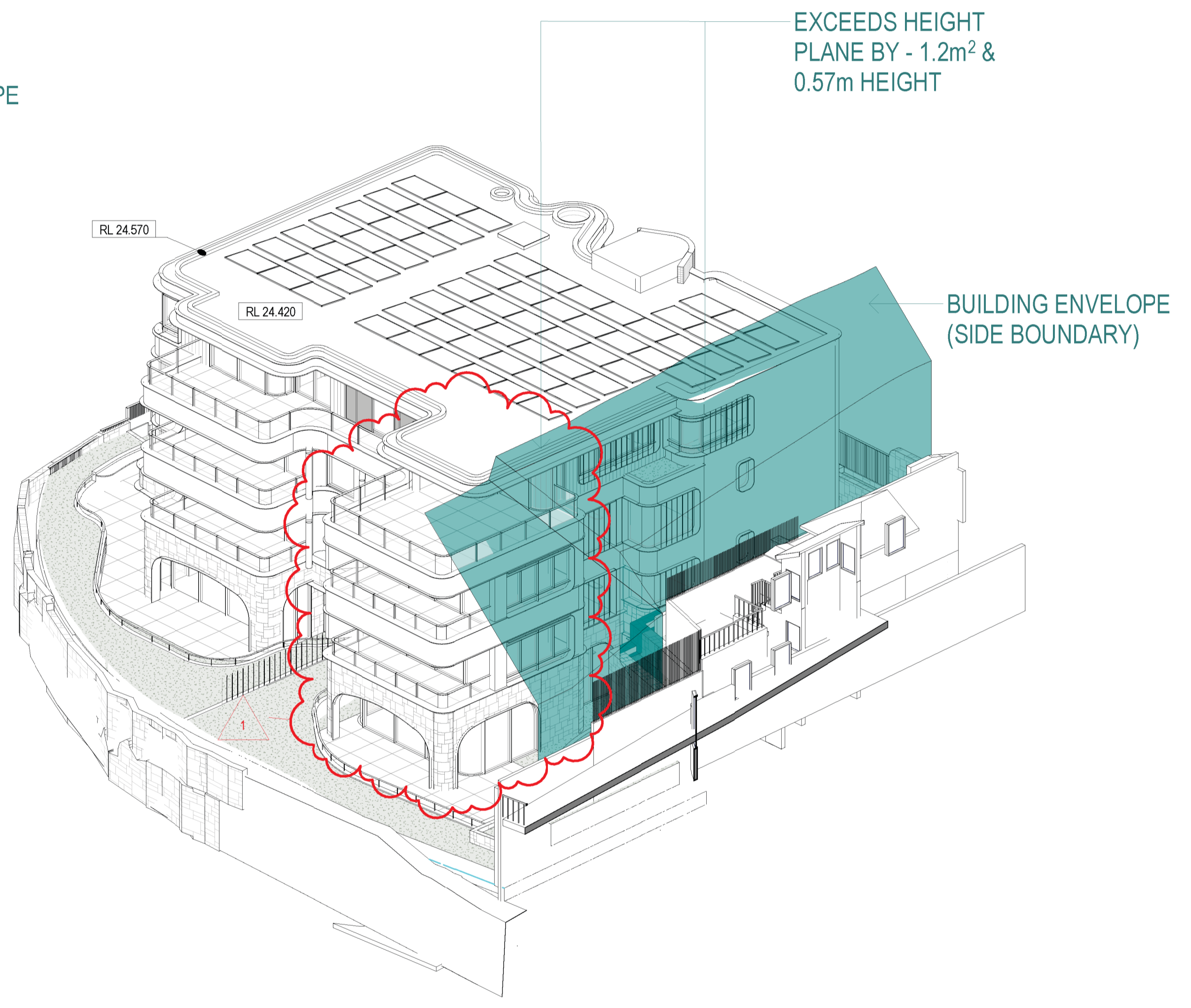
GRAPHIC SCALE

NOT TO SCALE

DRAWING NOTES



**1 BUILDING ENVELOPE - EXISTING @ A1**



**2 BUILDING ENVELOPE - PROPOSAL**

ISS	DATE	PURPOSE OF ISSUE
E	19.12.2024	LPP PACKAGE
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17219 (VIC), 3677 (QLD), AR1173 (NT)

PROJECT  
Warung Street Apartments

1 Warung Street, McMahons Point NSW

DRAWING NO. **DA-551** ISSUE **E**  
JOB NO. HIG2307 SCALE **N.T.S.** DATE **19.12.2024**

DRAWING TITLE  
**BUILDING ENVELOPE**

DRAWN BY **MS** CHECKED BY **MS**

**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**  
The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

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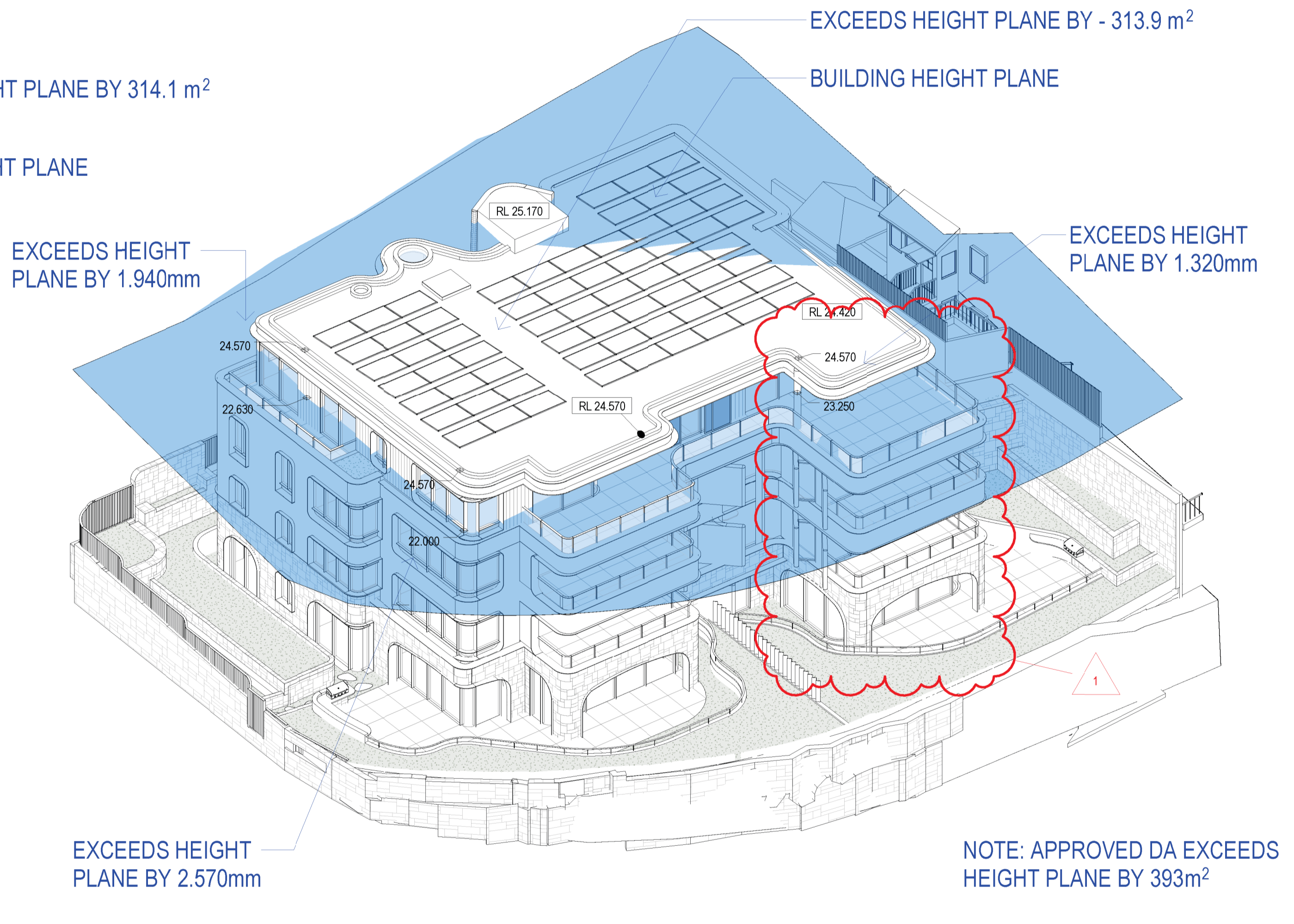
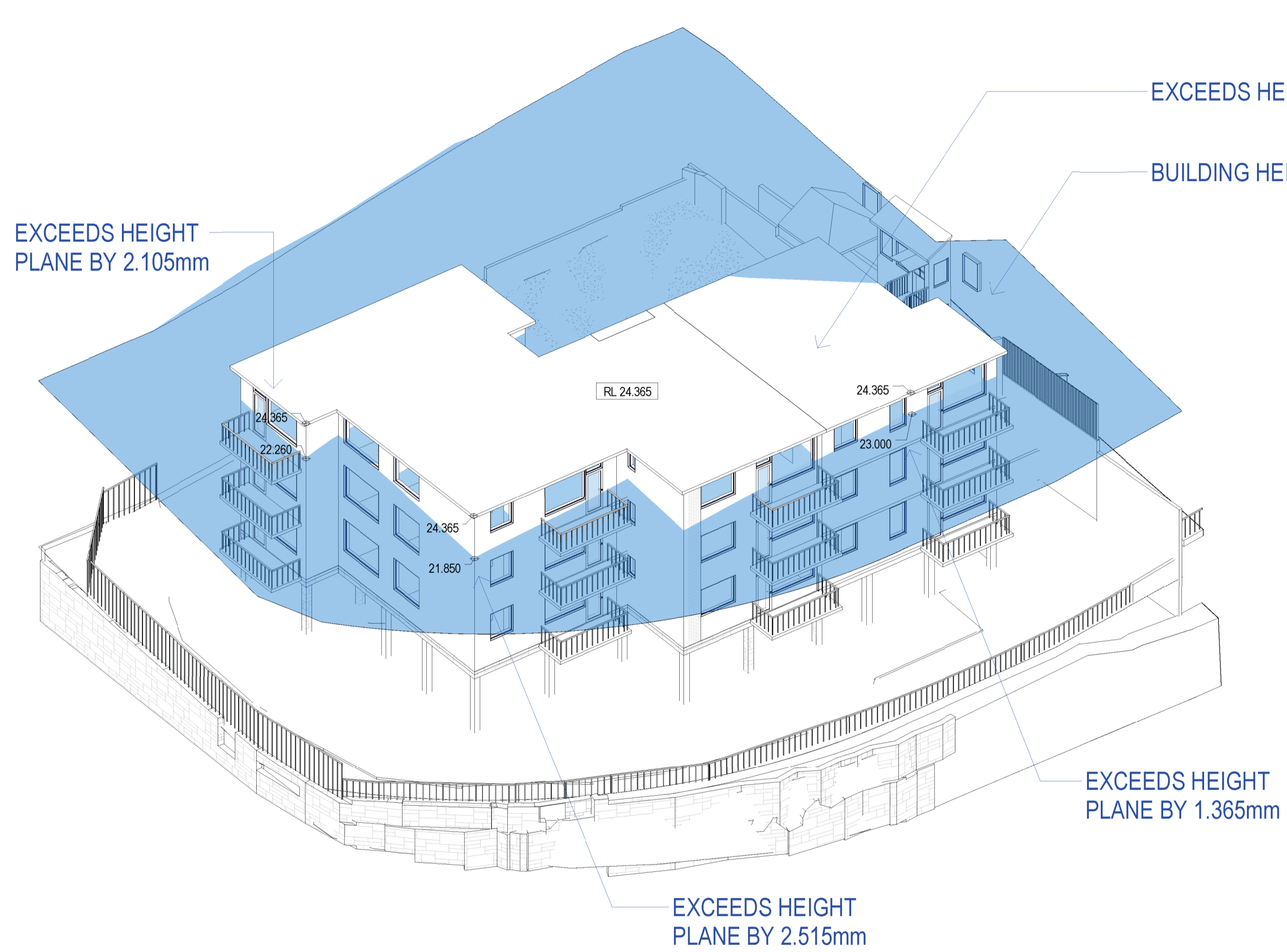
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GRAPHIC SCALE

NOT TO SCALE

DRAWING NOTES



1 **BUILDING HEIGHT PLANE - EXISTING**  
@ A1

2 **BUILDING HEIGHT PLANE - PROPOSAL**  
@ A1

ISS	DATE	PURPOSE OF ISSUE
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PROJECT  
Warung Street Apartments

1 Warung Street, McMahons Point NSW

DRAWING NO. **DA-552** ISSUE **E**  
JOB NO. HIG2307 SCALE **N.T.S.** DATE **19.12.2024**

DRAWING TITLE  
BUILDING HEIGHT PLANE

DRAWN BY **MS** CHECKED BY **MS**



EXISTING VIEW FROM BLUES POINT ROAD

*BASEMENT ENTRY AS PER APPROVED DA379/21*



PROPOSED VIEW FROM BLUES POINT ROAD

*EXISTING DEVELOPMENT SHOWN AS DASHED*

*BASEMENT ENTRY AS PER APPROVED DA379/21*

**LPP UPDATED ITEMS**

**1. Building Design and Privacy:**

The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.

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PROJECT  
Warung Street Apartments

1 Warung Street, McMahons Point NSW

DRAWING NO.	ISSUE
<b>DA-701</b>	<b>E</b>
JOB NO. HIG2307	SCALE N.T.S.
	DATE 19.12.2024

DRAWING TITLE  
PHOTOMONTAGE 1

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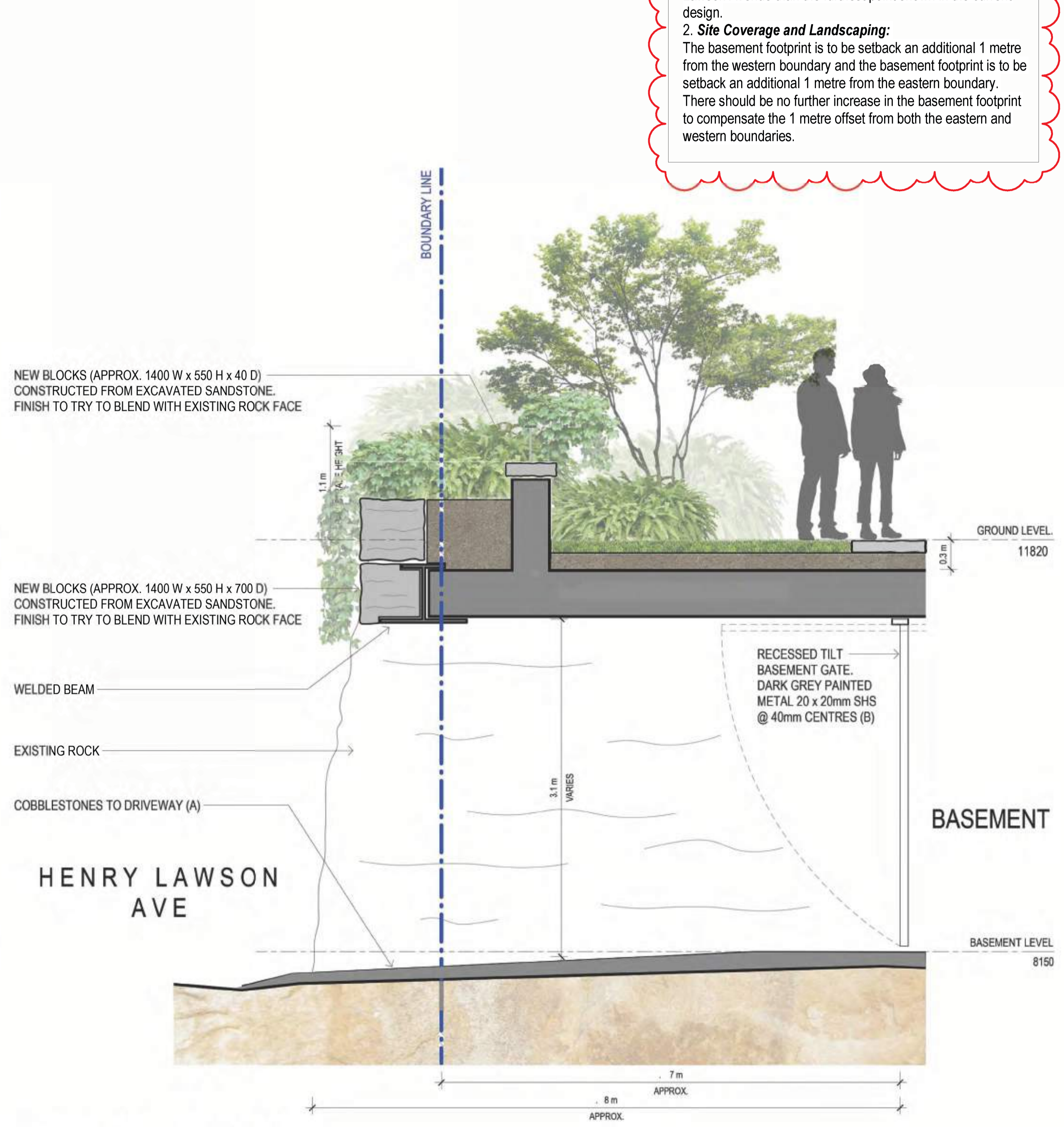
A. COBBLESTONE TILES TO BASEMENT DRIVEWAY



B. BASEMENT GATE. DARK WEATHERED BRONZE FINISH METAL 20 x 20mm SHS @ 40mm CENTRES



1 DA BASEMENT ENTRY ELEVATION  
1:25 @ A1



2 DA BASEMENT ENTRY SECTION  
1:25 @ A1

LPP UPDATED ITEMS

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AMENDMENTS TO ARCHITECTURAL DRAWINGS  
24. BUILDING SET DOWN 150MM

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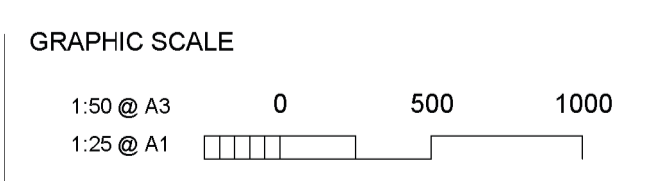
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STATUS  
**DEVELOPMENT APPLICATION**

Do not scale drawing. Verify all dimensions on site. Report any discrepancies in documentation to architect. This drawing is for the purpose of council approval and as such, is not suitable for construction.

ISS	DATE	PURPOSE OF ISSUE
E	19.12.2024	LPP PACKAGE
D	-	-
C	03.09.2024	ISSUE FOR DA
B	-	-
A	29.02.2024	ISSUE FOR DA



DRAWING NOTES

PROJECT  
Warung Street Apartments  
1 Warung Street, McMahons Point NSW

CLIENT  
Highbury Warung Pty Ltd

**squillace**

ARCHITECTURE / INTERIORS

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NOMINATED ARCHITECT  
Vince Squillace Reg No. 6468 (NSW), 17219 (VIC), 3677 (QLD), AR1173 (NT)

DRAWING NO. DA-800  
ISSUE E  
JOB NO. HIG2307

DRAWN BY MS  
CHECKED BY MS  
SCALE AS SHOWN  
DATE 19.12.2024

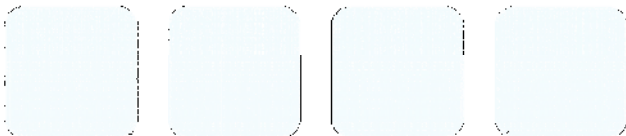
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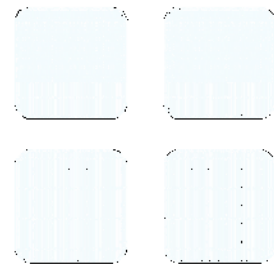
## Clause 4.6 Variation Request to the Height of Buildings Development Standard under Clause 4.3 of North Sydney LEP 2013

### Demolition of existing building, construction of new residential flat building

#### 1 Warung Street, McMahons Point



12 March, 2024 (Revised 5 February, 2025)





# 1 Introduction

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## 1.1 Commission

*JVUrban Pty Ltd* has been commissioned by the Applicant to prepare a written request ('Variation Request') pursuant to cl4.6 of *North Sydney Local Environmental Plan 2013* (the LEP) in respect of a proposed residential flat building development, at 1 Warung Street, McMahons Point (the Site).

The Proposal is described in detail in Section 3 of the Statement of Environmental Effects (SEE) prepared by *JVUrban Pty Ltd* and generally comprises the demolition of the existing building and construction of new residential building containing 7 units over a single level basement.

The Proposal exceeds the 8.5m maximum Height of Buildings (HOB) development standard under cl4.3 of the NSLEP having a maximum building height of RL 25170 or 10.54m (top of lift overrun). This is a variation of 2.04m. This is a reduction from the submitted DA plans with an overall height (lift overrun) of RL25870 or 10.77m. The changes are shown in Figure 2 below.

The variation from the NSLEP development standard is therefore 2.04m or 24%.

As above, the overall roof height has been lowered by 150mm and lift overrun height minimised from that proposed when DA85/24 was lodged with North Sydney Council. In general terms the change from the height of the existing will not be discernible to the general observer from either close up or distant views. On this basis the HOB variation is a function of the modification of the existing site (for construction of the existing building); slope of the land and locational context of the site in terms of the nature, height and built form of surrounding development and promotion of good design.

Notwithstanding the contravention of the development standard, the development is considered to be consistent with the objectives of the development standard. There are sufficient environmental planning grounds to justify the contravention in this instance including the historical development of the site, the lack of adverse amenity impacts and positive social and economic considerations as a result of the development.

# 1 Introduction

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the HOB development standard.

The Variation request amendment of the 5 February, 2025 simply updated the referenced plans and supersedes the images to reflect the current version of the plans incorporating amendments as required by the NSLPP resolution of its meeting 4 December, 2024.

## 1.2 Material Relied Upon

This Variation Request has been prepared based on the Architectural Drawings prepared by Squillace Architecture/Interiors, Project No. HIG2009.

Drawing No.	Title	Prepared By	Date
DA-001/ E	Cover Sheet	Squillace Architecture	03.09.24
DA-011/ E	Site Plan	Squillace Architecture	03.09.24
DA-012/ E	Site Analysis Plan	Squillace Architecture	03.09.24
DA-020/ E	Demolition Plan	Squillace Architecture	03.09.24
DA-099/ E	Basement Level Plan	Squillace Architecture	03.09.24
DA-100/ E	Ground Level Plan	Squillace Architecture	03.09.24
DA-101/ E	Level 1 Plan	Squillace Architecture	03.09.24
DA-102/ E	Level 2 Plan	Squillace Architecture	03.09.24
DA-103/ E	Level 3 Plan	Squillace Architecture	03.09.24
DA-104/ E	Roof Plan	Squillace Architecture	03.09.24
DA-205/ E	North Elevation - Proposed	Squillace Architecture	03.09.24
DA-206/ E	East Elevation - Proposed	Squillace Architecture	03.09.24
DA-207/ E	West Elevation - Proposed	Squillace Architecture	03.09.24
DA-208/ E	South Elevation - Proposed	Squillace Architecture	03.09.24
DA-301/ E	Sections Sheet 1	Squillace Architecture	03.09.24
DA-401/ E	Shadow Study – Winter Solstice – Sheet 1	Squillace Architecture	03.09.24
DA-402/ E	Shadow Study – Winter Solstice – Sheet 2	Squillace Architecture	03.09.24
DA-403/ E	Shadow Study – Winter Solstice – Sheet 3	Squillace Architecture	03.09.24
DA-404/ E	Shadow Study – Equinox Sheet 1	Squillace Architecture	03.09.24
DA-406/ E	Shadow Study – Equinox Sheet 2	Squillace Architecture	03.09.24
DA-402/ E	Shadow Study – Equinox Sheet 3	Squillace Architecture	03.09.24
DA-431/ E	Sun's Eye View - Winter	Squillace Architecture	03.09.24

# 1 Introduction

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	Solstice		
DA-432/ E	Sun's Eye View – Equinox	Squillace Architecture	03.09.24
DA-450/ E	3 Warung St – shadow study @ winter solstice	Squillace Architecture	03.09.24
DA-531/ E	Landscape Coverage & Excavation Plan	Squillace Architecture	03.09.24
DA-541/ E	Adaptable Unit Layout	Squillace Architecture	03.09.24
DA-551/ E	Building Envelope	Squillace Architecture	03.09.24
DA-552/ E	Building Height Plane	Squillace Architecture	03.09.24
DA-601/ E	Solar Access & Cross Flow Ventilation	Squillace Architecture	03.09.24
DA-603/ E	Storage, POS and COS	Squillace Architecture	03.09.24
DA-701/ E	Photomontage	Squillace Architecture	03.09.24
DA-800/ E	Basement Entry Drawing	Squillace Architecture	03.09.24

This Variation Request should be read in conjunction with the detailed environmental planning assessments contained in the DA documentation submitted with the DA and documents appended thereto.

## 2 The Relevant LEP Provisions

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### 2.1 North Sydney Local Environmental Plan 2013

#### 2.1.1 Clauses 2.2-2.3 – Zoning and Permissibility

Clause 2.2 and the Land Zoning Map of the LEP provide that the entire Site is zoned R3 Medium Density Residential Zone. A residential flat building is a prohibited landuse in the R3 zone.

Notwithstanding the landuse prohibition, the existing residential flat building is a longstanding landuse (since the 1960's) and it has been accepted, by Council, that the site benefits from existing use rights in this case. Legal Advice regarding the existing use rights for the site is provided in Appendix 4 of the SEE.

#### 2.1.2 Clause 4.3 – Height of Buildings (HOB)

*Clause 4.3 of the NSLEP 2013 sets out the HOB development standard as follows:*

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

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

The Height of Buildings Map designates a maximum 8.5m height limit for the Site (see Figure 1).

## 2 The Relevant LEP Provisions



Figure 1: Extract of NSLEP 2013 Map (HOB\_002) – “1” = 8.5m

The NSLEP Dictionary contains the following definitions:

**Height of Buildings Map** means the North Sydney Local Environmental Plan 2013 Height of Buildings Map.

**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.

### 2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (“Initial Action”) (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives for the consent authority to be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

## 2 The Relevant LEP Provisions

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Accordingly, the remaining subclauses of cl4.6 provide the operable provisions and preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument.

Clause 4.6(2) provides that:

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

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

The proposed development does not comply with the HOB development standard pursuant to cl4.3 of the NSLEP 2013. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed in Section 5.2.

In addition, there are considered to be sufficient environmental planning grounds to justify contravening the development standard as detailed in Section 5.4.

Clause 4.6(4) is administrative, as follows:

- (4) The consent authority must keep a record of its assessment carried out under subclause (3).*

Clauses 4.6(5) & (7) & (8A) are repealed.

## 2 The Relevant LEP Provisions

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Clause 4.6(6) applies to certain zones, as:

*(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

*(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

*(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

The site is zoned R3 Medium Density Residential. This clause is not applicable to the proposal.

Clause 4.6(8) applies to certain clauses of the LEP, as:

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following—*

*(a) a development standard for complying development,*

*(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

*(c) clause 5.4,*

*(caa) clause 5.5,*

*(ca) clause 4.3 in relation to land identified as “Area 1” on the Special Provisions Area Map, other than subject land within the meaning of clause 6.19C,*

*(cab) clause 4.4, 5.6 or 6.19C in relation to land identified as “Area 1” on the Special Provisions Area Map,*

*(cb) clause 6.3(2)(a) and (b),*

*(cba) clause 6.19A.*

*(cc) (Repealed)*

The development standard is contained in clause 4.3 of the NSLEP 2013 and the site is not located within “Area 1”. It is therefore not excluded from the application of Clause 4.6.

### 3 The Nature of the Variation

The proposal seeks a variation to the 8.5m maximum permissible height limit. In this case there are two possible methods to calculate and define the height of the building given the circumstances of the site, the proposal and the merit assessment of the proposed building height. In this regard, the site contains an existing residential flat building which is a longstanding landuse and part of the McMahon Point built form fabric. The site was modified due to its slope and the need to provide access to undercroft parking area via hardstand driveways and turning areas off Warung Street.

The first building height method is based on the on the RL's of the existing lowest floor levels (as built); the second method is extrapolated across the site based on the natural ground level at the boundaries of the site (refer *Bettar v Sydney City Council*). For completeness a diagrammatic assessment against both methods is provided in Figure 2.

The following show the two building height limits against the backdrop of the proposed building envelope. The blue areas are the existing condition (from slab and hardstand areas); the green areas are the extrapolated areas (assumed ground levels).



**Figure 2: Existing -v- extrapolated height limit lines across the proposed building envelope**

The difference between the two methods varies across the building envelope, with some areas showing up to 1200mm increase, when the extrapolated height is applied. If this method was adopted, the building would not fully comply but the requested variation would be reduced by up to 1200mm in some areas.

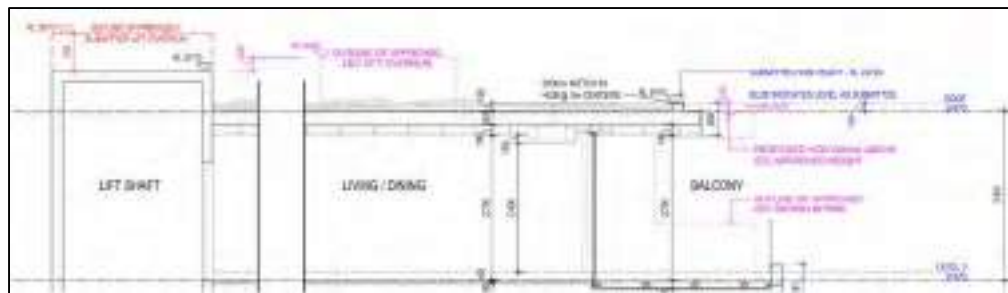


### 3 The Nature of the Variation

Figure 3 below shows the building heights to the top of the roof and lift overrun using the first method of assessment – the existing site modification and slab RL's.

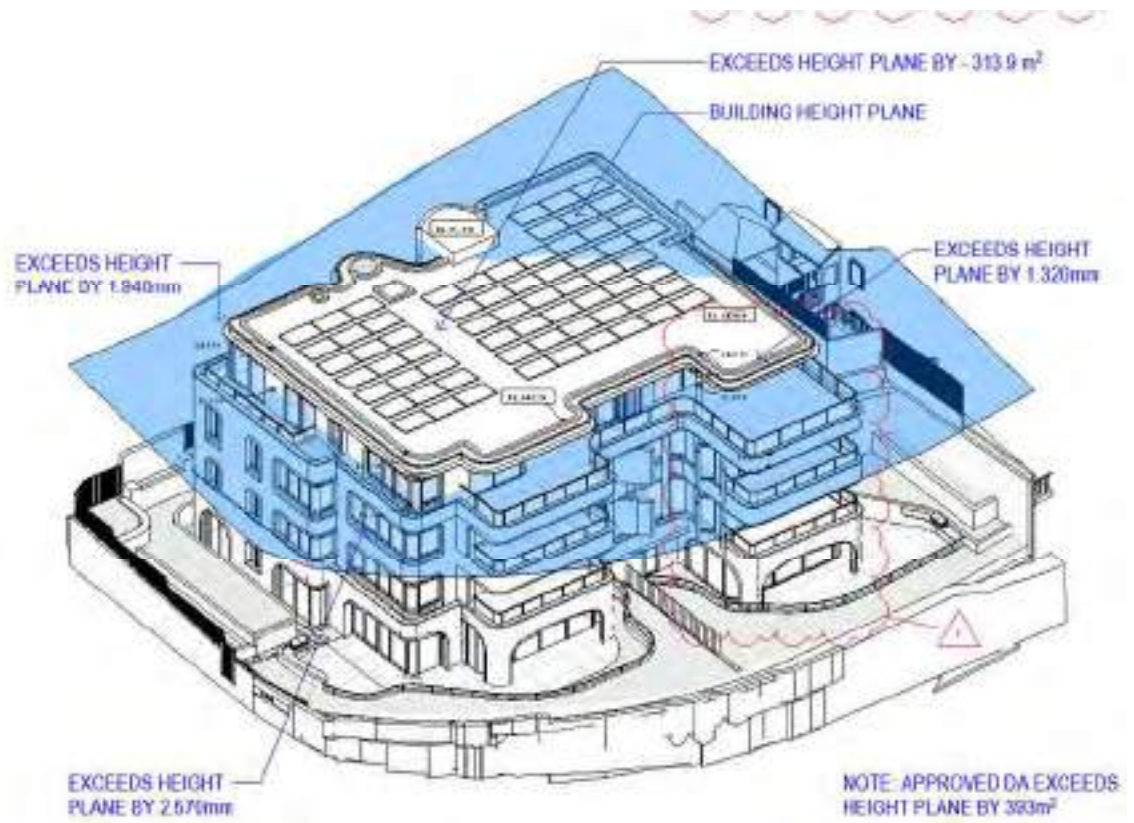
The proposed residential flat building development will result in a maximum height (to the top of the lift overrun) of RL25170 or 10.54m, constituting a non-compliance of 2.04m. This is a reduction from the submitted DA plans with an overall height (lift overrun) of RL25870 or 10.77m. The roof height has also been lowered by 150mm (from RL24720 to RL24370). The changes are shown in Figure 2 below.

The variation from the NSLEP development standard is therefore 2.04m or 24%.



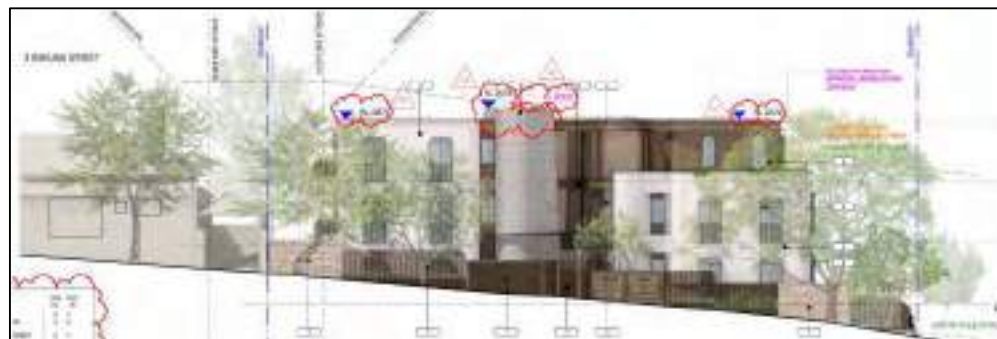
**Figure 3: Upper section plan showing new roof height (150mm lower than submitted plans) and lower lift overrun than submitted (reduced 700mm) to RL25.17m**

### 3 The Nature of the Variation



**Figure 3: Extract of height plane diagram notating the heights of the building at various points across the building envelope (Source: Squillace, Sept 2024)**

The following Figure 4, Figure 5, Figure 6, Figure 7 and Figure 8 show the 8.5m LEP height line across the section plans of the building and the view of the building from the primary corner location.



**Figure 4: Extract of north elevation (Warung St) showing LEP 8.5m height line (Source: Squillace Architecture, Project No. HIG2307, Sept 2024)**

### 3 The Nature of the Variation



Figure 5: Extract of south elevation (Warung St frontage) showing LEP 8.5m height line (Source: Squillace Architecture, Project No. HIG2307, Sept 2024)



Figure 6: Extract of east elevation (from No. 3 Warung St) showing LEP 8.5m height line (Source: Squillace Architecture, Project No. HIG2307, Sept 2024)



Figure 7: Extract of west elevation (Blues Point Road) showing LEP 8.5m height line (Source: Squillace Architecture, Project No. HIG2307, Sept 2024)

### 3 The Nature of the Variation

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PROPOSED VIEW FROM BLUES POINT ROAD

**Figure : Comparison of existing building, NSWLEC approved building, as lodged and proposed amendment (RFI response)**

## 4 Case Law

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### 4.1 Introduction

The proposed variation to the development standard has been considered in light of the evolving methodology and “tests” established by the NSW Land & Environment Court (the Court) and the following subsections provide a brief summary of key Judgments in regard to variations under the former SEPP 1 and cl4.6 of the SILEP.

### 4.2 *Winten Developments Pty Ltd v North Sydney Council [2001]*

Through the Judgment in *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46* (“Winten”) the Court established a ‘5-part test’ for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. The elements of this test can be summarised as:

- Is the planning control a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?
- Is the objection well founded?

The 1<sup>st</sup> ‘test’ continues to be relevant and is a precondition for the application of cl4.6. It is addressed in Section 5.1.

The 2<sup>nd</sup> ‘test’ is demonstrated in Section 5.3.

The 3<sup>rd</sup> ‘test’ was specific to cl3 of SEPP 1 and has not been transferred to cl4.6 of the SILEP. Notwithstanding, in Initial Action (see below), Preston CJ indicated that it is reasonable to infer that “environmental planning grounds” as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EP&A Act – see Section 5.4.

The 4<sup>th</sup> ‘test’ is required to be demonstrated under cl4.6(3)(a) - see Section 5.1.

The 5<sup>th</sup> ‘test’ is demonstrated in Section 5.5.

## 4 Case Law

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### 4.3 **Wehbe v Pittwater Council [2007]**

The 5-part test under Winten was later supplemented by the Judgment in *Wehbe v Pittwater Council [2007] LEC 827* (“Wehbe”) where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of SEPP 1. These included:

1. Notwithstanding the non-compliance, is the proposal consistent with the relevant environmental or planning objectives?
2. Is the underlying objective or purpose of the development standard not relevant to the development with the consequence that compliance is unnecessary?
3. Would the underlying objective or purpose of the development standard be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?
4. Has the development standard been virtually abandoned or destroyed by the consent authority’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?
5. Is the zoning of the particular land unreasonable or inappropriate such that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and therefore, compliance with the standard would be unreasonable or unnecessary?

### 4.4 **Four2Five Pty Ltd v Ashfield Council [2015]**

In the Judgment of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (“Four2Five”) Pearson C expanded on the earlier Judgments of Winten and Wehbe, indicating that whilst consistency with zoning and standard objectives of the development standard is addressed specifically in cl4.6(4)(a)(ii), there remains an onus of also demonstrating that there are “*sufficient environmental planning grounds*” such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

## 4 Case Law

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The environmental planning grounds that support the proposed variation to the HOB development standard in this circumstance are detailed in Section 5.2 of this variation request.

### 4.5 **Moskovich v Waverley Council [2016]**

Providing further guidance on the interpretation of cl4.6 compared to its predecessor SEPP 1, the Judgment in *Moskovich v Waverley Council [2016] NSWLEC 1015* ('Moskovich') outlines that cl4.6(3)(a) is similar to cl 6 of SEPP 1 and the ways of establishing that contravention of a development standard is well founded expressed in *Wehbe* (e.g. "achieving" the objectives of the development standard) are equally appropriate for the consideration of cl4.6(3)(a).

However, cl4.6(4)(a)(ii) has different wording to SEPP 1 and requires the consent authority to be satisfied that the proposed development is in the public interest because it is "consistent" with objectives of the development standard and objectives for the zone rather than "achieving" the objectives. Consequently, the considerations of cl4.6(3)(a) and cl4.6(4)(a)(ii) are different with the achievement test being more onerous and requiring justification in 'ways' such as those expressed in *Wehbe*.

Accordingly, whilst the Judgments in *Winten* and *Wehbe* related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to cl 4.6 with minor areas of differing interpretation.

### 4.6 **Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118**

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and of the standard.

## 4 Case Law

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In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a “test” that a development which contravenes a development standard result in a “*better environmental planning outcome*” relative to a development that complies with the development standard. In fact, there is no provision in SILEP that gives substantive effect to the objectives of cl4.6 stated in cl4.6(1)(a) and (b). That is to say, neither cl4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “*achieve better outcomes for and from development*”.

Further, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.



## 5 Assessment of Variation

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### 5.1 Is the planning control a development standard?

Clause 4.3 provides inter-alia that (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

‘Development Standards’ has the following meaning ascribed to it under Section 4(1) of the *Environmental Planning and Assessment Act, 1979*:

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

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point;*
- (b) the proportion or percentage of the area of a site which a building or work may occupy;*
- (c) the character, location, siting, bulk, scale, size, **height**, density, design or external appearance of a building or work;*
- (d) the cubic content or floor space of a building;*
- (e) the intensity or density of the land, building or work, the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles;*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment;*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles;*
- (h) the volume, nature and type of traffic generated by the development;*
- (i) road patterns;*
- (j) drainage;*
- (k) the carrying out of earthworks;*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows;*
- (m) the provisions of services, facilities and amenities demanded by development;*
- (n) the emission of pollution and means for its prevention or control or mitigation; and*
- (o) such other matters as may be prescribed;”*

## 5 Assessment of Variation

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The Clause relevant in this instance is:

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

On this basis, it is my opinion that Clause 4.3 of the North Sydney LEP 2013, although referred to as a local standard is a development standard and not a “prohibition” in respect of development, and one amenable to an objection under Clause 4.6. This would be consistent with Council’s intention.

### 5.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007), sets out 5 ways of establishing that compliance is unreasonable or unnecessary as follows:

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

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

*A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.....*

*A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.....*

*A fourth way is to 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.....*

*A fifth way is to 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.....”*

## 5 Assessment of Variation

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*However, care needs to be taken not to expand this fifth way of establishing that compliance is unreasonable or unnecessary beyond its limits. It is focused on “particular land” and the circumstances of the case. Compliance with the development standard is unreasonable or unnecessary not because the standard is inappropriate to the zoning, but rather because the zoning of the particular land is found to be unreasonable or inappropriate. If the particular land should not have been included in the particular zone, the standard would not have applied, and the proposed development would not have had to comply with that standard. To require compliance with the standard in these circumstances would be unreasonable or unnecessary.*

*50 However, so expressed, this way is limited. It does not permit of a general inquiry into the appropriateness of the development standard for the zoning. An objection would not be well-founded by an opinion that the development standard is inappropriate in respect of a particular zoning (the consent authority must assume the standard has a purpose).....*

*The requirement that the consent authority form the opinion that granting consent to the development application is consistent with the aims of SEPP 1 as set out in clause 3 (one of which is the promotion and coordination of the orderly and economic use and development of land) makes it relevant “to consider whether consent to the particular development application encourages what may be summarised as considered and planned development” or conversely may hinder a strategic approach to planning and development.”*

Set out below is an analysis of the standard, having regard to the principles enunciated in both the *Winten* and *Wehbe* judgements as applicable:

- The historic use of the site for a residential flat building containing 12 apartments demonstrates that the site is capable of having a new residential flat building, substantially within the same building envelope and general development standards on the site.
- The existing building was not stepped down the site, rather it was constructed with ground level parking, accessed off Warung Street, with three habitable levels above. The parking areas utilises the slope of the land, not the habitable floor levels.
- The DA plans submitted as part of the Development Application demonstrate that a residential flat building is capable of being constructed on the land, generally in accordance with the Local and State Government strategic and statutory planning provisions.
- The variation to the NSLEP 2013 Height of Buildings development standard is not applicable to the whole footprint of the building. The north-eastern section of the new building is fully compliant with the 8.5m height limit for the site. To raise the building higher at the north east so as to further emphasise stepping would however result in view loss impacts on properties across the road.

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- The proposal does not adversely impact views of adjoining or adjacent properties. The properties to the north of the site are either high set or already impacted by the existing building envelope. As the height and eastern extent of the new building is compliant, views from the north are not unreasonably impacted.
- The lift overrun (the highest part of the building) has been revised in the amended RFI response plan set. It is low-set and not wide. The broad water views from the north remain either side of the structure with specific views to the Sydney Harbour Bridge to the south-east and majority of the city skyline retained.
- The area subject to the variation has been significantly reduced by revision of the proposal as part of the RFI response (LEC approved HOB variation area is 393m<sup>2</sup> of the roof area; amended plans is reduced to 313.9m<sup>2</sup>. Refer to Figure 3 above).
- The amended proposal has reduced the height and envelope of the lift overrun to its minimum; the solar panels are low profile and do not protrude above the parapet; the roof has been lowered by 150mm (optimised while retaining internal living area minimum and residential amenity).

### 5.3 Is the proposal consistent with the objectives of the standard?

The Land and Environments Court's recent position in considering consistency with objectives, is the adoption of Pearlman J in *Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21* where, Her Honor expresses the following opinion [at 27]:

"The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, not even that it is compatible."

#### The objectives of the Maximum Height of Buildings standard are:

- (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

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*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.*

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

The site has a crossfall from the north-eastern corner on Warung Street to its Henry Lawson frontage, noting that Henry Lawson Avenue slopes from Blues Point Road towards McMahons Point in the east. The pavement on Henry Lawson Avenue is 3.5m-5.7m lower than the subject site.

The existing building was not stepped down the site, rather it was constructed with ground level parking, accessed off Warung Street, with three habitable levels above. The parking areas utilises the slope of the land, not the habitable floor levels.

The proposal achieves this objective as far as is practical in the circumstances with the ultimate development comprising only 3 storeys at the front and 4 storeys at the rear with the upper level setback so as to give the effect of a stepped building with minimal disruption to the landform. The new building has been reimaged to provide a horizontal stratification and layering of the habitable floor levels when viewed from vantage points in the public realm and from the water. To raise the building higher at the north east so as to further emphasise stepping would however result in view loss impacts on properties across the road.

Overall, the proposal is considered to achieve this objective.

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

The proposal does not adversely impact views of adjoining or adjacent properties. As shown in Figure 10 below, the properties to the north of the site are either high set or already impacted by the existing building envelope. As the height and eastern extent of the new building is compliant, views from the north are not unreasonably impacted. The lift overrun is low-set and not wide. The broad water views from the north remain either side of the structure with specific views to the Sydney Harbour Bridge to the south-east and majority of the city skyline retained.

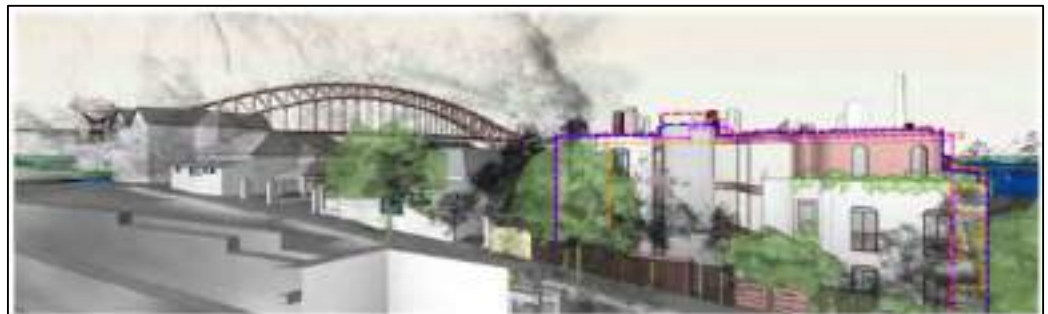
Appended is a view impact assessment, dated September 2024 which is to be read in support of satisfaction of this objective.

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The non-complying element of the new building does not create unreasonable view impacts, with the north east section of the building being below the height limit. Increasing the height at this part of the building, up to the height limit would have greater potential for view impacts. The roof of the new building is only 200mm higher than the existing building, a minor increase.



Level 1/2 Warung St view analysis (orange = existing envelope; pink = LEC approved; blue = amended proposed)



Level 1 4 Warung Street view analysis (orange = existing envelope; pink = LEC approved; blue = amended proposed)

### ***Figure 10: View sharing analysis from Level 1 of No. 2 and No. 4 Warung Street***

Properties to the north along Blues Point Road are not unduly impacted by the western façade of the new building. Figure 11 is the existing façade, Figure 12 is the new building (with the outlines of the existing façade in orange). There are improved views past the new building than either the existing or approved building. Similarly views down Blues Point Road (Figure 13) towards the Harbour are not adversely impacted on the western façade.

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*Figure 11: Existing western façade*



*Figure 12: Proposed western façade*



*Figure 13: Proposed view from U5/42 Blues Point Road across western façade of building (purple is approved envelope; blue is amended RFI response envelope)*

The following Figure 14 shows view lines from a unit within No. 30-40 Blues Point Road. This view is not impacted by the building envelope of the new building and the iconic view of the Sydney Harbour Bridge and Sydney Cityscape is across the public carpark and reserve area.



*Figure 14: View from No. 30-40 Blues Point Road*

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Overall, the height of the new building remains generally within the parameters of the existing building. The new roof is only 200mm higher than the existing building and the only protrusion above that is the lift overrun. This is centrally located (east-west) and approximately 3m wide.

As views are shared, having regard to the siting of development and hierarchical expectation of views to the front row, this objective is satisfied

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

The site has a north-south orientation with road reserves on the northern, western and southern sides of the property. Additional shadows from the proposal have been tracked and shadow diagrams submitted with the DA package. These demonstrate that only very minor increases occur as a result of the new development and these predominantly fall over the road reserve areas only, there is also a reduction in the amount of overshadow cast over the Henry Lawson Reserve during winter when comparing the current proposal to the LEC approved DA. Solar access to adjoining properties is reasonably maintained and the breaching height does not create any material impact on the adjoining property. Solar access is maintained, it has not resulted in any part of the usable open space or habitable rooms of the adjoining building no longer receiving sunlight. This objective is achieved.

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

The layout and orientation of the apartments is improved by the opportunities presented to redevelop the whole of the site, rather than additions and alterations to the existing building. The layout of the apartments takes into account the location of window openings, particularly in relation to No. 3 Warung Street (being the only property adjoining the site). These have revised further in the amended RFI response plan set to address concerns raised by the owners of No. 3. Low traffic bedrooms are located in the north-eastern section of the building, to be fitted with privacy screens where they face towards the dividing boundary (above fence height). Where living areas are proposed in the south-section of the building off-privacy screens are to be installed to address any potential overlooking to the east. Figure 15 below shows the small window openings towards Warung Street and screens on each of the upper levels. No unreasonable privacy impacts occur with overlooking potential appropriately mitigated by screens, strategic siting of windows and physical separation. The elements exceeding the height control do not create any privacy impacts.



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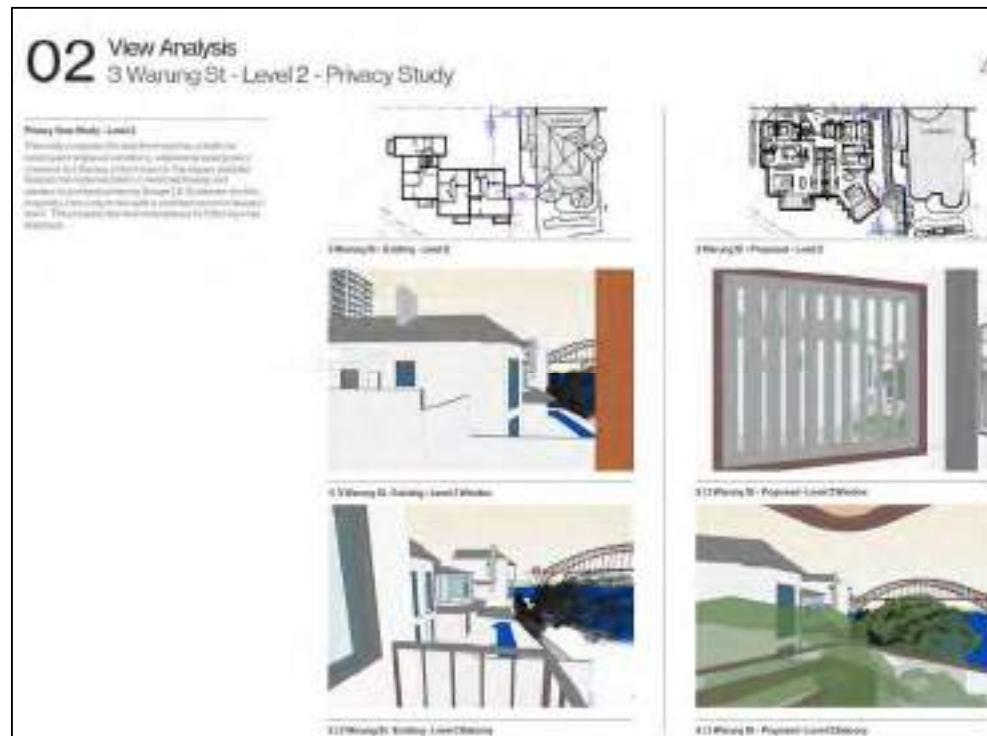


Figure 15: No. 3 View analysis based on as submitted plans (Source: Squillace, Sept 2024)

The western balconies on the existing building are not repeated in the new building with only low traffic bedrooms facing Blues Point Road. The living areas are focused to the south – towards the Harbour and city skyline views.

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

The development site is not located at a zone boundary and is an existing use right in the R3 zone.

This section of McMahons Point and Blues Point contains an eclectic mix of low, medium and high-density development. The existing development is a longstanding flat building, built in the 1960's after the Warung Street heritage listed residences, No. 30-40 Blues Point Road (constructed prior to 1955) and the Blues Point Tower (built around 1962) were constructed. The building's height, bulk and building mass lies between the large, low-density residences and the multistorey, high-density tower buildings.

The proposal does not seek to substantially alter the built form or volume of the existing development. In heritage terms the existing building has been categorised as 'uncharacteristic'. The proposed modern building of the site by the proposal provides a link between the past and present, providing a recategorisation of the building as

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'neutral' within the McMahon Point South Heritage Conservation Area landscape. Given this in addition to the retention of the overall urban morphology of the area, the new development, in my opinion, is compatible with the height and urban morphology of adjoining and adjacent development. This objective is achieved.

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

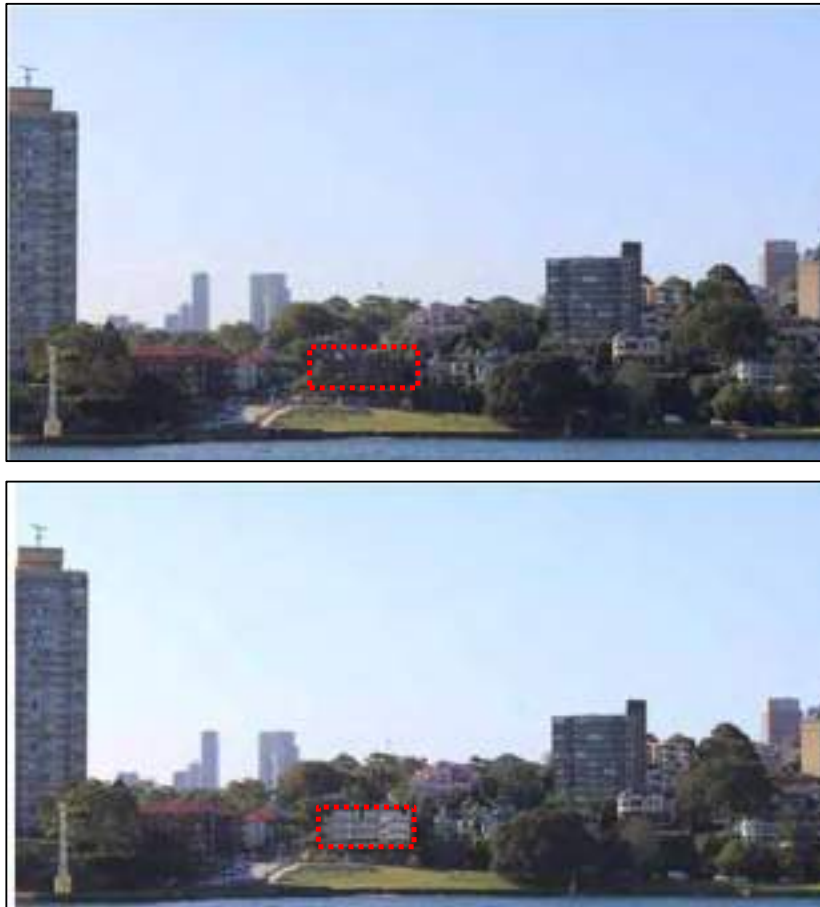
The subject site is located on a corner block with three street frontages and is opposite Henry Lawson Reserve. The three streets that surround the subject site vary in topography and character. The site is zoned R3 Medium Density Residential and the proposed development is permissible, via existing use rights, with Council's consent.

As stated above the existing building is a 1960's red brick flat building with at-grade parking with access off Warung Street. It is situated amongst an eclectic mix of building types, including detached older dwellings (some heritage listed), modern infill developments and residential flat buildings (both medium and high density).

In relation to the scale of the proposal, including overall height the following comparison provides an overview of how the new building fits and complements the existing character of the McMahons Point area.



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*Figure 17: Existing and proposed building – visual fit with character of area*

In terms of heritage, the site is not a listed heritage item, rather Council's DCP (Appendix) lists the site as 'uncharacteristic'. The proposal is deemed to be a visual fit of the development, recategorising the new development as 'neutral'. The existing setting is generally only changed in a positive manner and the building is compatible with the character of the area by way of a building that represents modern architecture and the evolution of development in the locality which respects the existing traditional built form whilst appreciating its context and external amenity. This objective is achieved.

**Objective (g)** is to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living

This objective cannot be achieved as the existing built form and surrounding already is inconsistent with the one-two storey forms which are referenced.

The existing building is three storeys over at-grade parking with adjoining and adjacent

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buildings ranging in age, height and scale between 3-4 storeys and many much higher examples within the visual catchment that create and define the character of the locality particularly when viewed in round from public places. Figure 17 above shows the general view of site and adjoining buildings, demonstrating that the proposal, being substantially the same as the existing building, is not dissimilar or a poor fit with the urban morphology of the immediate area.

### 5.4 Are there sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the NSLEP 2013 requires the departure from the development standard to be justified by demonstrating:

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

There are sufficient environmental planning grounds to justify a flexible approach to the application of the Height of Buildings control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site.

The applicable circumstances that relate to the site are discussed below:

- The proposal achieves the NSLEP building height objectives. It achieves view sharing, solar access, privacy, scale, density, compatibility and character objectives as outlined in this submission. The impacts on amenity from the variation are negligible to minimal. The proposal complies with other envelope controls.
- The height and scale of the building is compatible with the surrounding development which demonstrates significant variation, most of which are well in excess of the height limit and which define the existing and desired future character.
- In the round, the building height does not appear to be inconsistent with the height of surrounding development, including the lower density dwellings, and does not appear to be “standing out above the crowd”.
- The requested variation is based on the topography of the land together with the

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historical development of the site and more broadly the height, form and function of development in the immediate area, addressed below.

- The original flat building was built in the 1960's. It did not step down the site. Rather it was built over at-grade parking which altered the original topography and lowered the base ground level. The parking utilised the slope of the land, not the habitable floor levels above. Hence the upper floor level of the existing building varies from Council's adopted height limit.
- In June 2023, in *Highbury Warung Pty Ltd v North Sydney Council [2023] NSWLEC 1329*, the NSW LEC approved a residential flat building that varied the height limit for the site by 3.15m (37%); to a maximum height of 11.65m. It has already established a height variation as acceptable in the circumstances, the envelope approved has established an acceptable baseline and the built form and massing in fact reduced in critical areas particularly to the south.
- In considering the clause 4.6 submission, Acting Commissioner Pullinger, at paragraph [98] was satisfied that the written request was justified for the following reasons:
  - (1) *The DA exceeds the 8.5m height of buildings development standard, proposing a maximum height of 11.65m, which is 3.15m greater than the development standard, or a variation of approximately 37%.*
  - (2) *Of relevance, the maximum height of building is attributable to a proposed lift overrun generally situated towards the centre of the site. The remaining upper- most roof level - given the site's sloping topography - is situated at a height of approximately 11.5m along the southern facade line and approximately 8.3m towards the north-east corner of the site along Warung Street.*
  - (3) *Aside from the proposed new lift overrun, the typical height of the roof is not proposed to increase from that currently evident on the site today - acknowledging that the extent of this existing roof is proposed to increase as a consequence of the proposed alterations and additions and will result in new building form situated in the north-eastern corner of the site in a location where it is otherwise generally consistent with the 8.5m height*

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*control.*

- (4) The DA does not materially impact views of nearby properties. Affected properties to the north of the subject site have views already determined by the height of the existing building. As the extent of the existing roof extends to the north-east, I accept that views to the north will not be unreasonably impacted, while views toward the harbour bridge, its pylons and the city skyline will be generally retained with some relatively minor impact.*
- (5) The protrusion above the existing roof height attributable to the lift overrun has been limited to 360mm, is situated towards the centre of the building and minimises the extent of any view impact.*
- (6) The proposed height exceedance does not result in unreasonable overshadowing impacts off site, with any additional shadowing falling primarily on Henry Lawson Avenue and Henry Lawson Reserve. Minor additional overshadowing affects the neighbouring property at 3 Warung Street from 2pm on the winter solstice and affects a small number of windows addressing the common boundary and improves solar access to the private open space at 3 Warung st during the Equinox when compared to the previous approval.*
- (7) The works associated with the DA will improve the presentation of the existing uncharacteristic building and result in a building which is agreed to be at least neutral in its contribution to the local area.*
- The existing building and the site have not been substantially changed since its original construction. The quantitative value of the proposed variation is therefore substantially the same as the existing development and the development approved by the NSW LEC in DA379/2021. The proposal, including the lift overrun, is amended to be lower than the height of the approved LEC lift overrun (RL25400). and does not seek to significantly increase the overall height of the building from the original building or that approved in June 2023.
  - The proposal seeks to utilise substantially the same building envelope as the existing building, particularly in terms of height which established the available views and built form and volume.

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- The existing building is listed in Council's DCP as 'uncharacteristic' in heritage terms. The replacement of this building, as proposed, will improve the form and function of the site within the setting of the McMahons Point South HCA by providing new, high quality living standards to the area without substantially altering the built form or locational context of the HCA. The proposal results in a site-specific uplift from 'uncharacteristic' to 'neutral' within the HCA.
- The north-eastern section of the building is height compliant; the eastern façade setback is increased and overall interrelationship of the proposed development and the heritage item immediately east of the property (No. 3 Warung St) is substantially improved in the new building.
- The consequence of strict compliance with the 8.5m height limit would necessitate the loss of an entire floor of the new building. This is economically unviable, not desirable and would be contrary to the Object of the Act at s1.3 which seeks to promote the orderly and economic development of the land.
- The overall height of the building when viewed from the street is entirely consistent with (and in many cases, subservient to) the predominant scale of buildings in the immediate area particularly Warung Street and lower end of Blues Point Road.
- To step the building would create a foreign and undesirable built form inconsistent with the traditional built form which characterises the local historic context and locality and in fact exacerbate the visual impact and layering of the built form when viewed from the south.
- Arguably, the height standard applicable is grossly out of alignment with both the existing and likely future scale and character of the locality, and the proposed height better reflects and is complimentary to and compatible with the height and scale of development in the locality. In this regard, a two-storey building would appear squat and uncharacteristic in terms of its proportions and result in a poor urban design outcome particularly within this denser urban environment.
- The non compliance allows for orderly and economic development of the land for the use of a residential flat building contributing to increased housing stock.

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Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the Height of Building variation.

Notwithstanding the contravention of the development standard, the proposed residential flat building development will not result in significant adverse environmental harm in that the environmental amenity of neighbouring properties will be preserved and any perceived adverse impacts on the amenity of the locality are minimised through good design solutions and/or retention of the existing urban morphology of the existing development.

There are direct social and economic benefits for the property owner and the local residents with the modification of the facades of the building, maintenance of the character of the area by sympathetic new development and enhanced residential amenity for occupants.

The proposal will allow the building to be recategorised, in heritage terms, from 'uncharacteristic' to 'neutral' within its locational context without compromising the thematic reading of nearby heritage items or significantly altering the interrelationship of the site to its immediate, high-profile environs.

In addition, this written request outlines, in Section 5.2, sufficient environmental planning grounds to justify the contravention of the Height of Building development standard.

Accordingly, this written request can be relied upon by the consent authority in accordance with cl4.6(3) of the LEP.

### 5.5 Clause 1.3 Objects of the EP&A Act 1979

In explaining the sufficient environmental planning grounds referred to in cl 4.6 Preston CJ in 'Initial Action' considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 when considering a Clause 4.6 variation. Clause 1.3 of the EP&A Act 1979 relevantly provides:

#### **1.3 Objects of Act**

*The objects of this Act are as follows:*



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- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,***
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,***
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)*

The proposal, accepting the height variation described above, reasonably satisfies the objectives of under s1.3 EP&A Act 1979. The DA plan set satisfy the objectives in bold (as above) given that:

- The built form and building envelope have been developed to optimise the available development volume for the site.
- The proposal makes best use of land currently serviced by existing infrastructure, within an area identified by Council and the historical development pattern and built forms as a reasonable fit in this case;
- The proposed variations are permissible, subject to clause 4.6 of the NSLEP 2013;
- The proposal represents an economically viable development of the site, that is both capable and suitable for the site, when assessed on a merit based assessment under the s4.15 heads of the consideration of the EP&A Act 1979;
- Redevelopment to a compliant height and FSR would necessitate removal of at least one storey of the building. This would impact significantly the viability of the site redevelopment;
- The urban design outcomes, incorporating the proposed building, which includes the proposed height variation is not antipathetic to the likely future character of the McMahons Point area, particularly as the area is experiencing demand for high

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quality apartments in accessible areas of urban centres.

Notwithstanding the above Preston CJ clarified in *Micaul* and *Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. In this case, these include:

- The additional height is created from a combination of site characteristics, historical development and design considerations that present a high quality design for the site that is demonstrated to be an acceptable fit within the McMahons Point area.
- The additional height does not result in any undue adverse impacts on the site, its surrounds or any neighbouring property.
- The variation is very site specific and does not create any precedence in the application of the height limits in the area.

## 6 Conclusion

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The proposed development contravenes Clause 4.3 of the NSLEP 2013 being a *development standard* and height is not excluded from the application of clause 4.6 of NSLEP 2013.

This written request to vary the development standard has been prepared in accordance with cl4.6 of the NSLEP 2013 and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the reasons outlined in this submission.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the development standard.

Accordingly, the consent authority can exercise its power pursuant to cl4.6(2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.



GROUNDED  
EXPERTISE

Highbury Warung Pty Ltd  
C/ Squillace Architects Pty Ltd  
1/80 Albion Street  
Surry Hills, NSW 2010

Project 203182.01  
13 December 2024  
R.004.Rev0  
CSM:gl

Attention: Joe Dusevic  
Email: joe@highburygroup.com.au

## Comments on Council Conditions for 1 Warung Street, McMahons Point

### Alternative Shoring Systems and Materials Handling

As requested, Douglas Partners (DP) has prepared this letter to provide comment on geotechnically related issues regarding the neighbouring property at 3 Warung Street, McMahons Point. With regard to the neighbouring land, it is understood that Council requires consideration of the following (extract from council assessment report below):

*The Geotechnical Investigation Report raises several concerns regarding the potential stability of both the adjoining No. 3 Warung Street and Henry Lawson Avenue. The information contained within the Geotechnical Investigation fails to give any certainty that the bulk excavation required will not adversely affect the soil stability and amenity of the adjoining property at No. 3 Warung Street. The bulk earthworks will be reliant on accurate information on the foundations and condition of the adjacent neighbouring building which have not been obtained. The use of anchors required to extend into the neighbouring property at No. 3 Warung Street is not considered an acceptable solution and would require consent from the respective owner/s. As such, the above matter is unresolved and the development does not satisfactorily confirm earthworks will not have a detrimental impact on features on surrounding land.*

#### Part 6- Additional local Provisions

##### 4. Earthworks

*The proposed development involves a significant amount of excavation to accommodate the basement and lower ground level. An assessment has been carried out below having regard to Clause 6.10 in NSLEP 2013. As per the provisions of Clause 6.10(3), the following matters are required to consider before consent can be issued.*

*(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—*

- a) the likely disruption of, or any detrimental effect on—*
  - i. drainage patterns and soil stability in the locality of the development, and*
  - ii. natural features of, and vegetation on, the site and adjoining land,*
- b) the effect of the development on the likely future use or redevelopment of the land,*

- c) *the quality of the fill or the soil to be excavated, or both,*
- d) *the effect of the development on the existing and likely amenity of adjoining properties,*
- e) *the source of any fill material and the destination of any excavated material,*
- f) *the likelihood of disturbing Aboriginal objects or relics,*
- g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- h) *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

DP further understand the following:

- The current basement is close to the eastern boundary. It is now, however, proposed to increase the setback of the basement from the eastern boundary by a further 1.0 m (north of the eastern boundary splay), such that the setback will be at least 2.0 m, measured from the back of the capping beam.
- As anchors projecting beyond this boundary are not allowed, an alternative shoring solution is required.

**In response to item a, of Clause 6.10(3):**

It should be possible to adequately shore the excavation faces, properly sequenced in a timely manner to ensure that stability of the excavation is maintained at all times. As an alternative to anchors, we propose that a structurally braced/propped system is used in combination with short rock bolts, bonded in the medium strength sandstone (not extending beyond the boundary).

This proposed shoring will require installation of contiguous piles and capping beam, with excavation carried out in controlled drops to allow the systematic installation of rock bolts and props, as the excavation is progressed. The shoring system will need to be designed to act as a cantilevered system during excavation of the soil and weathered rock, leaving a rock bench to maintain stability in the temporary case. After the bulk of the soil and weathered rock has been removed, a combination of rockbolts and props, designed by the geotechnical and structural engineers at CC stage, will need to be installed. Slots may have to be cut into the bench to allow the installation of the props. The final rock bench can only be removed once all the rockbolts and props are in place. Similarly, the props can only be removed once the new building, designed to support the boundary loads, has been completed.

Detailed design and drawings will be required at CC stage, and be approved by the geotechnical and structural engineers, prior to proceeding with the work. It will also be necessary to prepare an excavation and shoring method statement that details the sequence of the works. The method statement should include monitoring of the shoring wall.

**In response to items b & d, of Clause 6.10(3):**

The proposed earthworks are considered substantially more than previously consented and have the potential to affect land stability of the adjoining property of No. 3 Warung Street. The No. 3 Warung Street boundary, however, can be appropriately shored using a robust retention system such as a braced contiguous pile retaining wall (no anchors across the boundary) as described in the response to item a above..

**In response to items c & e, of Clause 6.10(3):**

Given the residential history of the site, it is not anticipated that the site has been significantly contaminated, to the extent that would give rise for concern relating to the quality of material won from site, to be utilised as fill, or of any existing material that will be disturbed.

If the proposed development is supported, conditions can be imposed to ensure fill material is adequate and fit for purpose and any waste material from excavation is exported and disposed of appropriately.

Testing of all material brought on to the site, won from site for fill or removed from the site should be carried out in accordance with section 9.1.2 of the geotechnical report. It is DP's view that a properly designed and constructed retention system together with appropriate materials handling is expected to adequately reduce the earthworks / geotechnical risks in clause 6.10 listed above.

**In response to item f, of Clause 6.10(3):**

Not geotechnical (archaeological input required).

**In response to item g, of Clause 6.10(3):**

If the proposed development is supported, appropriate sediment and erosion control measures will need to be implemented to prevent sediment movement into adjoining properties, the roads and surrounding amenities. Appropriate sediment/control measures are to be coordinated and designed at CC stage with Geotechnical/Civil/Structural/Hydraulic Engineers design input.

**In response to item h, of Clause 6.10(3):**

As mentioned in our geotechnical report, vibration and noise monitoring is to be undertaken during the duration of the excavation and construction process in conjunction with deflection monitoring.

In conclusion, the site is similar to many other sites developed in Sydney. It should be possible to develop the site without adversely affecting the adjacent No 3 Warung Street property or the Henry Lawson frontage, provided that all work is carried out in accordance with sound design using suitable construction techniques, with all critical elements inspected and approved by the geotechnical engineer and structural engineer.

In our opinion, having regard to the above and the recommendations in our Geotechnical report, DP are not aware of any other geotechnical restrictions to the granting of development consent,

subject to detailed engineering design at CC stage and proper construction techniques and inspection.

We trust that the above adequately explains the proposed shoring and materials handling on site. Please call us should you required further assistance.

Yours faithfully

**Douglas Partners Pty Ltd**



**Charles Marais**  
Principal

Reviewed by



**Hugh Burbidge**  
Principal



**Peter Hunt**  
Senior Associate  
PRE0000448

**Attachments:** About this Report

## About this Report



October 2024

### Introduction

These notes have been provided to amplify Douglas' report in regard to classification methods, field procedures and the comments section. Not all are necessarily relevant to all reports.

Douglas' reports are based on information gained from limited subsurface excavations and sampling, supplemented by knowledge of local geology and experience. For this reason, they must be regarded as interpretive rather than factual documents, limited to some extent by the scope of information on which they rely.

### Copyright

This report is the property of Douglas Partners Pty Ltd. The report may only be used for the purpose for which it was commissioned and in accordance with the Engagement Terms for the commission supplied at the time of proposal. Unauthorised use of this report in any form whatsoever is prohibited.

### Borehole and Test Pit Logs

The borehole and test pit logs presented in this report are an engineering and/or geological interpretation of the subsurface conditions, and their reliability will depend to some extent on frequency of sampling and the method of drilling or excavation. Ideally, continuous undisturbed sampling or core drilling will provide the most reliable assessment, but this is not always practicable or possible to justify on economic grounds. In any case the boreholes and test pits represent only a very small sample of the total subsurface profile.

Interpretation of the information and its application to design and construction should therefore take into account the spacing of boreholes or pits, the frequency of sampling, and the possibility of other than 'straight line' variations between the test locations.

### Groundwater

Where groundwater levels are measured in boreholes there are several potential problems, namely:

- In low permeability soils groundwater may enter the hole very slowly or perhaps not at all during the time the hole is left open;
- A localised, perched water table may lead to an erroneous indication of the true water table;
- Water table levels will vary from time to time with seasons or recent weather

changes. They may not be the same at the time of construction as are indicated in the report; and

- The use of water or mud as a drilling fluid will mask any groundwater inflow. Water has to be blown out of the hole and drilling mud must first be washed out of the hole if water measurements are to be made.

More reliable measurements can be made by installing standpipes which are read at intervals over several days, or perhaps weeks for low permeability soils. Piezometers, sealed in a particular stratum, may be advisable in low permeability soils or where there may be interference from a perched water table.

### Reports

The report has been prepared by qualified personnel, is based on the information obtained from field and laboratory testing, and has been undertaken to current engineering standards of interpretation and analysis. Where the report has been prepared for a specific design proposal, the information and interpretation may not be relevant if the design proposal is changed. If this happens, Douglas will be pleased to review the report and the sufficiency of the investigation work.

Every care is taken with the report as it relates to interpretation of subsurface conditions, discussion of geotechnical and environmental aspects, and recommendations or suggestions for design and construction. However, Douglas cannot always anticipate or assume responsibility for:

- Unexpected variations in ground conditions. The potential for this will depend partly on borehole or pit spacing and sampling frequency;
- Changes in policy or interpretations of policy by statutory authorities; or
- The actions of contractors responding to commercial pressures.

If these occur, Douglas will be pleased to assist with investigations or advice to resolve the matter.



## About this Report

### Site Anomalies

In the event that conditions encountered on site during construction appear to vary from those which were expected from the information contained in the report, Douglas requests that it be immediately notified. Most problems are much more readily resolved when conditions are exposed rather than at some later stage, well after the event.

### Information for Contractual Purposes

Where information obtained from this report is provided for tendering purposes, it is recommended that all information, including the written report and discussion, be made available. In circumstances where the discussion or comments section is not relevant to the contractual situation, it may be appropriate to prepare a specially edited document. Douglas would be pleased to assist in this regard and/or to make additional report copies available for contract purposes at a nominal charge.

### Site Inspection

The company will always be pleased to provide engineering inspection services for geotechnical and environmental aspects of work to which this report is related. This could range from a site visit to confirm that conditions exposed are as expected, to full time engineering presence on site.

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<p><b>DECISION OF</b></p> <p><b>NORTH SYDNEY LOCAL PLANNING PANEL</b></p> <p><b>MEETING HELD ON 4 DECEMBER 2024</b></p>
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**ITEM 6**

<b>DA No:</b>	85/24
<b>ADDRESS:</b>	1 Warung Street, McMahons Point
<b>PROPOSAL:</b>	Demolition of existing structures and erection of a new residential flat building and ancillary works.
<b>REPORT BY NAME:</b>	Thomas Holman, Senior Assessment Officer
<b>APPLICANT:</b>	Theo Paradisis

**1 Written Submission****Registered to Speak**

<b>Submitter</b>	<b>Applicant/Representative</b>
Tony Moody – Representing 3 Warung Street	Joe Vescio - Planning Consultant
David Uther - Resident at 3 Warung Street	Vince Squillace - Architect
Jo Gilmour- neighbour at 42 Blues Point	

**Panel Determination**

The Panel members have undertaken a site inspection prior to the meeting and considered the submissions both written and oral.

The Council Officer's Report and Recommendations have been noted by the Panel, however the Panel considered that the applicant could be provided further opportunity to address the reasons for refusal.

**Panel Reason:**

The Panel considers that the application should be deferred to allow the applicant the opportunity to submit amended plans and additional information addressing the following matters:

- 1. *Building Design and Privacy:*** The splayed balcony and living room on levels 1, 2 and 3 are to be realigned to the eastern wall of the northern portion of the residential flat building and whilst maintaining the recessed wall displayed on the current plan in order to achieve a rectilinear form. The balcony is not to project further toward Henry Lawson Avenue than the furthest point shown in the current design.
- 2. *Site Coverage and Landscaping:*** The basement footprint is to be setback an additional 1 metre from the western boundary and the basement footprint is to be setback an additional 1 metre from the eastern boundary. There should be no further increase in the basement footprint to compensate the 1 metre offset from both the eastern and western boundaries.

**NORTH SYDNEY LOCAL PLANNING PANEL – 04/12/2024****Page No 2**

3. **Updated Geotechnical report:** Provision of an updated geotechnical report based on the plans as revised, these should include but not be limited to, a more detailed response to the matters raised in Council's assessment report.

That plans and information addressing the above be submitted to Council within 30 days from date of publication of the Meeting minutes. A supplementary report is to be prepared by Council addressing the above changes and providing draft conditions of consent facilitating approval of the development.

The matter is to be returned to the panel for determination by electronic means.

Should amended plans not be provided addressing the above, the recommendation for Refusal is to be confirmed.

Voting was as follows:

<b>Panel Member</b>	<b>Yes</b>	<b>No</b>	<b>Community Representative</b>	<b>Yes</b>	<b>No</b>
Rob Stokes	Y		Meredith Trevallyn-Jones	Y	
Kara Krason	Y				
Greg Woodhams	Y				