

Clause 4.6 Variation to Development Standard – Height of Buildings

61 North Steyne, Manly
Manly Property Developments Pty Ltd



'Gura Bulga'

Liz Belanjee Cameron



'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

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1.0 Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of Manly Property Developments Pty Ltd (the Applicant). It is submitted to Northern Beaches Council (Council) in support of a development application (DA) for a residential flat building at 61 North Steyne, Manly (the site).

Clause 4.6 of the *Manly Local Environmental Plan 2013* (Manly LEP) enables Northern Beaches Council to grant consent for development even though the development contravenes the development standard Height of Buildings. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6(3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard. These three matters are detailed below:

- that the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

1.1 Summary of reasoning

- Compliance with the control is unreasonable in the context of the site, immediately adjacent a 5 storey building to its south and 15 storey building immediately to its north. **The proposed development infills an existing anomalous, underdeveloped site in the streetscape.** The North Steyne streetscape is varied, and a compliant building height would be out of context; not embrace its prominent corner position and fail to provide for the orderly and economic development of the site.
- Compliance with the LEP controls would result in the mere replacement of development yield at the site, which is unreasonable in the context of the LGA delivering additional dwellings to its growing population. The updating of the dwellings at the site to contemporary, fit for purpose and BCA / DDA compliant dwellings is an environmental planning benefit afforded by the additional yield delivered at the site.
- The land is zoned for medium density residential uses, the objectives for which are met in the proposed residential flat building. The land is currently occupied by an aging flat building comprising 4 apartments that do not meet the current standards for resident amenity. The development does not exhibit design excellence or best practice sustainability. Strict compliance with the mapped maximum building height would result in a development that does not meet the LEP Height of Buildings Objective (a): *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.* A compliant height on the site would be out of character (a 'broken tooth' in the streetscape) given the immediate context north and south of the site addressing North Steyne. Development that complies with the 13 metre building height (and limited to 3 storeys as prescribed in the Manly DCP 4.1.2.2) would be inconsistent with the prevailing building height and counter to the objectives of the standard. Below is an illustration of the North Steyne street elevation. The proposal with a variation to the mapped maximum building height is a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of land. To enforce the control strictly would be unreasonable when considered against the objects of the Act in terms of orderly and economic use of land.
- A comprehensive overshadowing, privacy and view loss analysis has been included as part of this assessment. This assessment also includes comparison with a compliant envelope. **There is no amenity loss to either 1 Denison or 59 North Steyne** that results in contravention of a DCP or ADG provision relating to visual privacy, solar access or views.
 - **Visual privacy** is retained through screening, planting and wall protrusions to the proposed south and west facades. Specifically, the proposed apartments do not face 59 North Steyne, and side viewing is obscured by wall protrusions. Windows facing 1 Denison are provided with screening and planting, and are setback from the common boundary to meet DCP provisions.
 - **Solar access** is retained to the 1 Denison sunrooms (off the bedrooms, the rooms that currently receive direct solar) which continue to enjoy ocean views. ADG compliant solar access is retained to all 13 apartments at 59

North Steyne. One apartment experiences a reduction to solar access as a result of the additional height to its front rooms (living and bedroom) and adjoining terraces, however this reduction does not fall below the ADG minimum period, and does not affect direct solar from the apartment's primary outlook (the east – ocean view).

- **Specialist view photomontages** have been commissioned to analyse viewing from neighbouring apartments in the direction of the proposed. These demonstrate that:
 - The proposal **does not reduce the current extent of viewing** from the 1 Denison Street apartments.
 - The proposal includes a boundary wall that has been skilfully pulled into the site from the front boundary to **preserve the peripheral north-easterly viewing from the adjacent apartments** at 59 North Steyne from ground level to the third floor.
 - **The proposal does not affect easterly viewing from the two-storey upper apartment at 59 North Steyne** (view east to ocean). View loss to the north is mitigated by additional setback to the proposed top floor, resulting in loss of viewing of distant built form. Distant beach viewing (downward viewing) is compromised by both the compliant and proposed envelopes. **Importantly the key view directly east to the ocean is unimpeded.**
- The additional height does not result in a proposal that contravenes DCP controls for setbacks, open space or internal and external spaces of apartments. The upper floor is further setback to minimise its visual presence at street level and to improve the amenity outcome to the southern neighbour. **Additional setback to the upper floor, and reduction to the upper floor terrace areas has been provided as an adoption of a DSAP recommendation.**
- Whilst recognising that these units are unlikely to result in providing affordable dwelling price points, they will however offer the potential for **downsizers or smaller household types to relocate and free up dwelling stock** elsewhere across the LGA.
- The additional yield on the site allows the proposal to deliver far **greater sustainability measures across the whole building** than would otherwise be delivered by a compliant proposal. For example, every apartment achieves a 7.2 star NatHERS rating.

1.2 Legal guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Section 2.0**);
- identifies the variation sought (**Section 3.0**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**);
- demonstrates that the proposed variation is in the public interest (**Section 6.0**); and
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Section 7.0**).

Therefore, the DA may be approved with the variation proposed in accordance with the flexibility allowed under Clause 4.6 of the Manly LEP 2013.

2.0 Development standard to be varied

2.1 Clause 4.3 Height of Buildings

Clause 4.3 states as follows:

(1) The objectives of this clause are as follows—

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
- (b) to control the bulk and scale of buildings,
- (c) to minimise disruption to the following—
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
 - (iii) views between public spaces (including the harbour and foreshores),
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

(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.

As illustrated in the extract at **Figure 1** below, the site is mapped with a maximum building height of 13m.

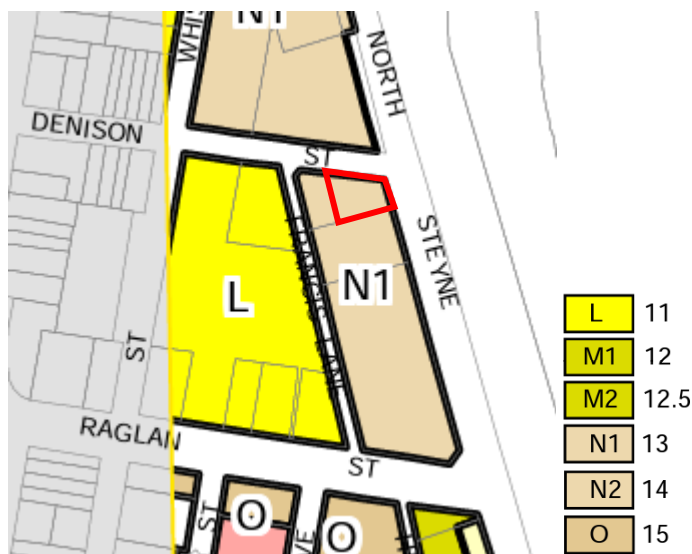


Figure 1 Extract of Height of buildings map (site in red)

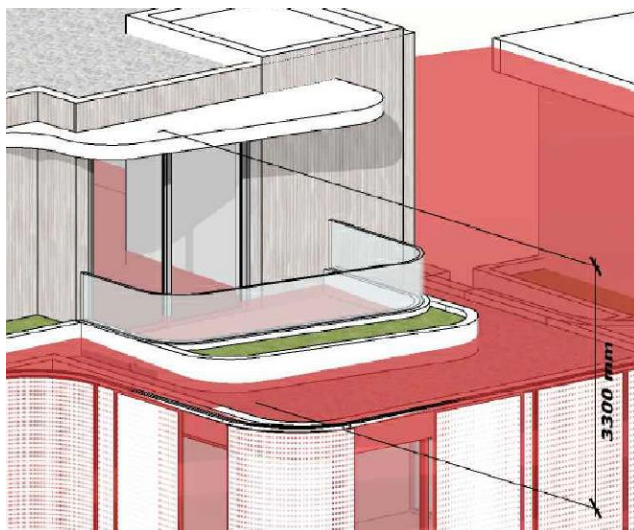
Source: Manly LEP 2013 with additions

3.0 Nature of the variation sought

3.1 Height

As detailed in **Section 2.0** above, the site is mapped with a maximum building height of 13 metres. The proposed development seeks a maximum building height of 16.3 metres, or 3.3 metres (25%) higher than the development standard at its worst point. The following height breakdown details the proposed envelope at key points (refer also **Figure 2** for heights and **Figure 3** for area extent):

- **Top of parapet to Level 4:** 16.3m maximum (3.3m (25%) above development standard). The Level 4 parapet / roof slab extent represents approximately 61% of the proposed envelope. At an approximate minimum, the roof slab is 15.7m above natural ground, or 2.7m (21%) above the development standard.
- **Top of lift overrun:** Maximum 16.25m (3.25m (25%) above development standard). The lift overrun represents a small proportion (3%) of the proposed envelope.
- **Top of parapet to Level 3:** 13.35m maximum (0.35m (3%) above the development standard). At an approximate minimum, the roof slab is 12.775m above natural ground, or 0.225m below the development standard. The parapet / roof slab represents approximately 36% of the proposed envelope, approximately 20% is above the 13m height plane and 16% below.



Level 3 parapet and Level 4 parapet



Lift overrun

Figure 2 Maximum height above height plane to the lift overrun, the Level 4 parapet and the Level 3 parapet

Source: Platform Architects

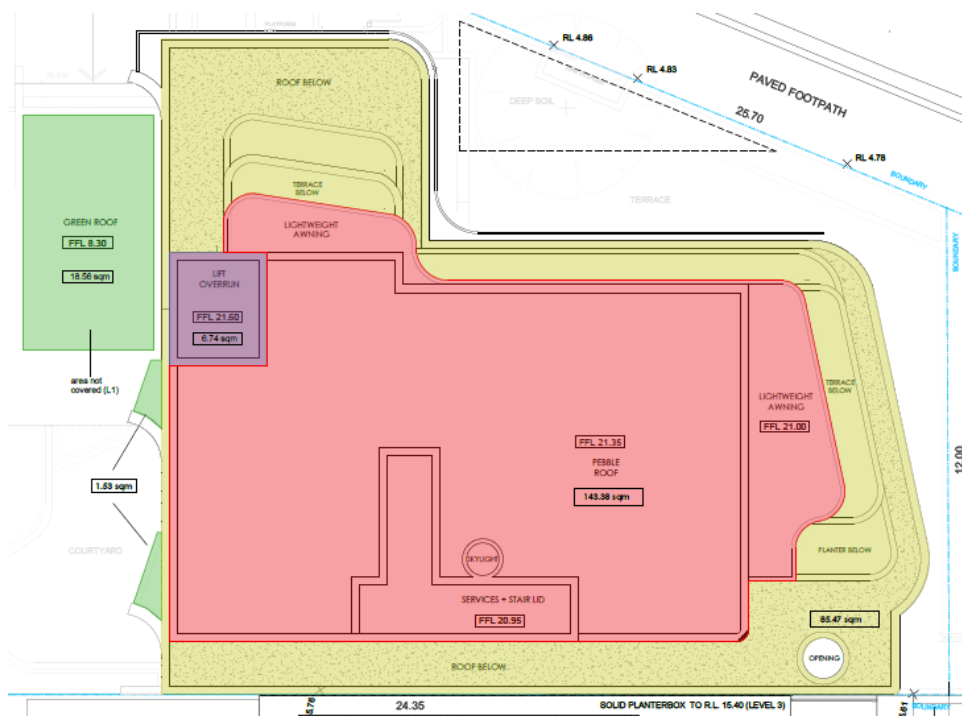


Figure 3 Area of envelope for each upper element

Source: Platform Architects



Figure 4 East Elevation (fronting North Steyne)

Source: Platform Architects

4.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis may be of assistance in applying Clause 4.6 given that subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]; *Initial Action* at [16]).

The five methods outlined in *Wehbe* were:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
4. 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 (**Fourth Method**).
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Regarding the variation to building height, in this instance, the **First Method** is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

4.1 Height of buildings

4.1.1 The underlying objectives or purposes of the development standard

The objectives of the development standard contained in Clause 4.3 of the Manly LEP are:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

4.1.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

The proposal is assessed against the objectives for the Height of Buildings development standard below.

Objective (a): to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality

The height of built form on North Steyne is highly varied and reflective of the changes to development controls guiding development over time. The site is contained within the North Steyne frontage between Raglan Street and Denison Street. In this block:

- The Manly Pacific development at the corner of Raglan Street consists of 8 storeys and communal rooftop space.
- 60 North Steyne, to the immediate south of the site, consists of 5 storeys with top of building at RL 21.

To the north of the site is the block bound by Denison Street and Steinton Street. In this block:

- 52-65 North Steyne (at the corner of Denison Street) is a 15 storey residential tower.
- 66-68 North Steyne is a 9 storey residential tower.
- The residential tower at the corner of Steinton Street is 8 storeys.

Given the immediate context north and south of the site addressing North Steyne, development that complies with the 13 metre building height (and limited to 3 storeys as prescribed in the Manly DCP 4.1.2.2) would in fact be inconsistent with the prevailing building height and counter to the objectives of the standard. **Figure 2** provides an illustration of the North Steyne street elevation.

The existing development on the site is a remnant of the past character of North Steyne, being a detached two-storey residential flat building (not meeting the current level of amenity required for apartment housing). The North Steyne streetscape has emerged to reflect the significance of Manly as a Strategic Centre. Manly is identified as being a key contributor to meeting the needs of additional housing in Council's Local Strategic Planning Statement and Local Housing Strategy, being a highly accessible and well-serviced precinct. Underutilised sites on North Steyne, near to the Manly centre, are well-positioned to contribute to the need for additional housing.

North Steyne is characterised by pedestrian activity, outdoor dining south of the subject site, and a mix of residential and tourist accommodation premises. The existing and emerging character of North Steyne includes dense housing typologies. 89-90 North Steyne is a recent example of development on the street that is representative of the contemporary character of North Steyne. This development (with roof terrace) has a maximum height of 14.76 metres, or 1.76 metres above the height plane.

The flat building adjoining the site (1 Denison Street) to the south is similarly representative of the past character of the area. This site, being within the same densely developed block and facing the 15 storey residential tower across Denison Street, presents opportunity for redevelopment in a manner consistent with the proposed development.

Further south, across Francis Lane, is the heritage listed St Mary's Catholic School. The accompanying Heritage Impact Statement at **Appendix Q** concludes that the scale of the proposed development does not impose unreasonable impact to the heritage values of the school, stating:

"The site is separated from the rear of the 1918 school building by approximately 48m, from the rear of the Church by approximately 60m; and from the rear of the 1927-8 school building by approximately 78m. These distances, the fact that the site lies to the rear of these buildings and that it will be partially screened by intervening buildings mitigates the impact ... views east across the Church site already include five to eight storey buildings fronting North Steyne. The proposed buildings will fit comfortably within this established backdrop."

Further to the above-mentioned heritage item, the Heritage Impact Statement assesses the impact of the proposal on other listed items in the vicinity, including the Beach Reserve and Public Shelter east of the site and the Pittwater Road Conservation Area and notes:

"Whilst above the height limit and FSR set out by the LEP 2013, the proposed building is of a similar massing, scale and height as the buildings to the immediate south on this side of North Steyne. As a corner site, it

anchors and completes the block. A building lower in height would be an anomaly within the block, particularly given its corner location and the 15 storey building that anchors the north western corner of North Steyne and Denison Street. The proposed building will not have undue prominence within the setting of these items arising out of its height."

The proposed development consists of 5 storeys to a parapet height of RL21.5 and a lift overrun of RL21.6. The number of storeys is consistent with the southern neighbour (and 0.6 metres higher than its top of building RL), and less than the average height of development from Raglan to Steinton Streets fronting North Steyne (as per **Figure 2**). The upper floor has been designed to minimise its visual perception when viewed from the public domain at ground level. Further, the upper floor is designed to transition to the lower scale development to the west. This is achieved through provision of unenclosed roof area to the built form that projects out to Denison Street. This arrangement is an adoption of the Northern Beaches Design and Sustainability Advisory Panel (DSAP) recommendation. Further, the curved slab edge to the upper floor, fronting North Steyne, has been recessed to reduce the visual weight of the upper level. This revision is also made in response to a DSAP recommendation.

The development is consistent with the contemporary character of increasing residential density along North Steyne that provides additional housing in Manly, removing the existing two-storey anomaly.



Figure 5 Street elevation of North Steyne illustrating prevailing building height

Source: Platform Architects

Objective (b): to control the bulk and scale of buildings

The proposed development presents 4 storeys and a further setback fifth storey in a landscaped setting. The previous section demonstrates the scale of the development as being appropriate within its locality.

Additionally, the massing of the proposed envelope is compliant with the following envelope controls and development provisions set by the Manly DCP:

4.1.1.1 Residential Density and Dwelling Size (d)	The site relates to D1 in Figure 24 and as such the minimum residential density is 50 sqm of site area per dwelling. This limits residential development of the site to 8 dwellings. The proposed development comprises less than the maximum at 5 dwellings and is thus compliant and well below this control.
4.1.1.1 Residential Density and Dwelling Size (d)	The following minimum apartment areas are prescribed: 75 sqm for 2 bedroom dwellings with 2 baths and 95sqm for 3 bedroom dwellings with 2 baths. The proposed apartments exceed these minimums as detailed in Platform Architect’s SEPP65 Statement included at Appendix B . The 3 bedroom apartments vary from 140.2m2 to 163.5m² and the 2 bedroom apartment is 103m².

4.1.4.1 Street Front setbacks	<p><u>To the North Steyne street frontage</u></p> <p>The prevailing building line in the Raglan Street to Denison Street block comprises development built to the boundary. The proposed setback to North Steyne is greater than the prevailing building line. The minimum setback proposed is 200mm at the face of the curved Level 3 parapet. This setback increases to 1880mm where the curve recedes away from the boundary. This additional setback provides greater privacy for residents and improves presentation to the street by reducing moderating the volume. Greater setback is provided to the recessed top floor. The additional Height and FSR therefore does not adversely affect bulk and scale.</p>
4.1.4.2 Side setbacks and secondary street frontages (a)	<p><u>To the boundary shared with 1 Denison Street</u></p> <p>The setback is in excess of the 1/3 wall height control. The height of the proposed wall facing the boundary to 1 Denison Street ranges from 12.85 metres to 13.58 metres (there is a slight slope in the natural ground level from the north west to the south west corner). One-third of this height is the range from 4.28 to 4.4 metres. The setback provided ranges from 4.560 metres at the north west and 4.915 metres setback at the south west (the boundary is not parallel to the proposed building alignment). Greater setback is provided to the recessed top floor.</p> <p><u>To the boundary shared with 59-60 North Steyne</u></p> <p>The development at 59 North Steyne has been built to boundary, consistent with the continuous street wall addressing North Steyne. The proposal includes a wall at the site boundary (nil setback), meeting the neighbouring built form and consistent with the continuous street wall.</p>
4.1.4.2 Side setbacks and secondary street frontages (c) windows from habitable dwellings	<p>The windows to habitable rooms that face the boundary to 1 Denison Street are setback from that boundary at a distance greater than 3 metres (setback minimum 4.56 metres) and are therefore compliant with this control. Greater setback is provided to the recessed top floor.</p>
4.1.4.2 Side setbacks and secondary street frontages (d) secondary street frontages	<p>The proposed envelope is compliant with the DCP control to be consistent with the prevailing building line. The existing built form on the subject site is an L-shape. The ends of the existing form are close to both the Denison and North Steyne site boundaries. At the closest point, the existing built form is approximately 800mm to the Denison Street boundary. This is similar to the closet point of the neighbouring 1 Denison Street, at approximately 1 metre from the Denison boundary (refer survey at Appendix D). The proposed built form is also an L-shape. The closest point of the proposed built form to the Denison boundary is 1.445 metres. The remainder of the proposed built form is greater than this, ranging up to 5.580 metres to the typical floor. Greater setback is provided to the recessed top floor.</p>
4.1.5.1 Minimum Residential Total Open Space Requirements	<p>The site relates to Area OS1 in Figure 34 of the DCP. The proposed development exceeds this control with greater than 45% of the site area provided as open space (66% provided) and greater than 25% of the open space being landscaped area (46% provided). Landscaping has been provided to all available area and to each floor above ground, softening the built form. At Level 4, a landscaped perimeter is provided as this floor is set inwards from the floors below. Refer Architectural Documentation at Appendix A.</p>
4.1.5.3 Private Open Space	<p>A principal private open space has been provided to each apartment of greater than 12sqm. The additional FSR therefore does not constrain the provision of private open space. The typical level apartments have 23sqm, the ground floor 55sqm and the top floor 22sqm. Refer Architectural Documentation at Appendix A.</p>

Further to compliance with the above, the development proposes the following mitigation measures to provide additional mitigation to bulk and scale:

- Landscaping to the ground floor as a buffer between the development and the public domain. This includes additional landscaping proposed to a portion of road reserve fronting the site (historically contained within the subject lot).
- Screening to the Denison Street façade, providing additional articulation and a finer scale to the façade. The screening accentuates the curved corners to the built form, softening the edge as it transitions from North Steyne to the narrower Denison Street.
- Planters on each floor further soften the façade. A planter wraps the perimeter of the Level 3 parapet offering additional visual amenity and reducing the scale and presence of the upper floor.
- Level 4 is set back from the floors below on all sides. The visual appearance of this floor from the street is thus restricted and reduces the extent of envelope that extends above the 13 metre height plane by 30%.



Figure 6 *Photomontage of the proposed development from North Steyne*

Source: Estudio Nod



Figure 7 Photomontage of the proposed development from North Steyne (view toward northwest)

Source: Estudio Nod

Objective (c): to minimise disruption to the following—

- (i) views to nearby residential development from public spaces (including the harbour and foreshores)
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores)

The proposed development does not unreasonably obstruct views from adjacent residential development to the Manly foreshore. The two adjacent residential properties are 59 North Steyne and 1 Denison Street. The following view impact analysis considers views from these properties in the direction of the proposed development and towards the Manly foreshore (this concurrently considers views from the foreshore to the residential properties). The images have been produced by Virtual Ideas, a visualisation consultant with expertise in imagery suitable for view impact analysis. The consultant has provided images for three viewing states: the existing view, the proposed view and a view with a compliant envelope on site (that is, an envelope that does not exceed the floor space ratio or height of building development standards). The report by Virtual Ideas included at **Attachment 1** to this 4.6 Variation Request provides further detail on photomontage composition and larger images.

1 Denison Street

The majority of windows in the eastern façade of this flat building do not have visibility of the foreshore, being obscured by the existing development on the subject site. However, there is a window to the ground and first floor apartments at the northern end of the eastern façade that has visibility of the foreshore, given the angle of Denison Street to North Steyne. This window is to a sunroom off the bedroom – refer **Figure 8** below.



Figure 8 The window at 1 Denison Street with foreshore visibility (ground floor pictured, first floor the same)

Source: Domain.com.au

The following images at **Figure 9** illustrate the existing and proposed view from the first floor window. A third image representing a compliant envelope (compliant with FSR and height development standards) is also provided.



Existing view



Proposed view



View with compliant envelope

Figure 9 The existing view, proposed view and view with compliant envelope from the first floor window

Source: Virtual Ideas

As the above image set demonstrates, the proposed development does not present additional obstruction to the existing viewing extent of the ground and first floor apartments at 1 Denison Street. The existing development on the site is at a consistent setback to the upper floors of the proposed development, and thus the viewing extent is not changed.

59 North Steyne

The 13 apartments at 59 North Steyne have living areas and balconies with primary viewing towards the foreshore and ocean to the east. The building does not have a setback to the side boundaries. Of the 13 apartments, there are 4 that adjoin the boundary adjacent the proposed development.

The apartments on the ground, first and second floors have primary views to the east. However, there is a return of the glazed balustrade to the corner of the balconies to levels 1 and 2 (on ground, the open corner is consistent with above, but does not include a balustrade). This return widens the extent of viewing towards the north east (refer **Figure 10**). In response to this, the proposal's boundary wall does not extend to the front boundary (refer plan excerpt in **Figure 11**). This gesture preserves viewing from the neighbouring balcony's glazed return corner.



Figure 10 Glazed return to the balcony balustrade at arrow (apartment 8 pictured)

Source: Realestate.com.au

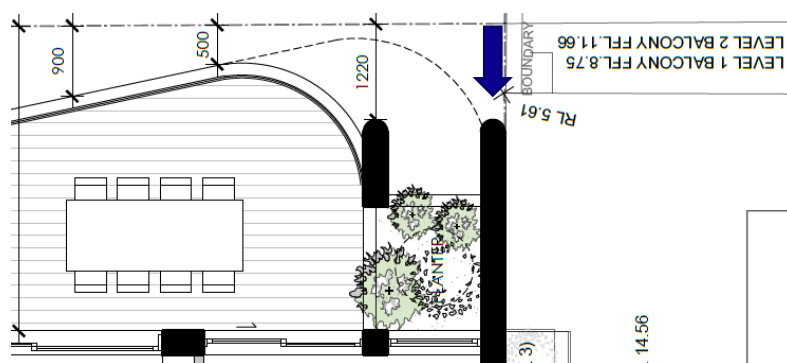


Figure 11 Extent of proposed wall on boundary to retain the neighbour's north westerly peripheral view

Source: Platform Architects

The fourth apartment adjoining the common boundary is identified as Unit K on the plan excerpt at **Figure 12**, located on the fourth and fifth floors. The lower floor consists of the main living space and corner balcony and the upper floor contains the main bedroom with corner balcony (the corner balcony on the upper level is set back from the common boundary).

Photomontages have been commissioned to assess the impact to the views from this apartment, refer **Figure 13** to **Figure 16**. In addition to the existing and proposed views, a separate compliant envelope view illustrates the extent of view loss that results from an envelope that meets the height and FSR development standards.

As illustrated in **Figure 12**, the primary outlook from this apartment is east to the Pacific Ocean. The secondary outlook is to the northeast. The primary outlook remains unobstructed by the proposed development. The secondary outlook is obstructed as illustrated in **Figure 13** to **Figure 16**. The living area and associated balcony on the fourth floor is considered to be utilised more often than the main bedroom and associated balcony on the top floor (it is noted that the ADG refers to the balcony off a living room as the primary balcony: *Primary open space and balconies should be located adjacent to the living room, dining room or kitchen to extend the living space*). Both the proposed and compliant envelopes present the same occlusion of the fourth floor's secondary viewing extent (from both the balcony and living room viewpoints illustrated).

The upper floor of the proposed envelope is set back from both the common side boundary and the front boundary to reduce the occlusion of viewing from Unit K. The proposed level 3 parapet and planter, as well as the top surface of the compliant envelope, approximately equates to the height of the neighbouring balustrade as illustrated in **Figure 16**.

To retain privacy between the existing and proposed private open spaces at the neighbouring top floors, the proposed balustrade is adjoined by a planter. Following Council consultation, the design has been revised to further set back the top floor terrace from the side boundary, increasing the distance from the neighbouring terrace, improving privacy protection and reducing the extent of view loss. Further to this, the area of the North Steyne facing terrace has been reduced.

The proposed top floor envelope occludes an extent of north easterly viewing. The proposed additional setback limits this occlusion to primarily built elements to the north, retaining part water views to the distant northeast. The compliant envelope occludes viewing of the north eastern coastal edge, retaining viewing of northerly built form only.

Of the 13 apartments at 59 North Steyne, the visual impact is limited to one apartment at the upper north-eastern corner. A compliant envelope presents a consistent occlusion with the proposed development up to the fourth floor. The fifth floor envelope is provided with additional setback to reduce view loss, which is limited to the secondary (northern) viewing outlook only.

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the DCP provision, and the view sharing principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140.

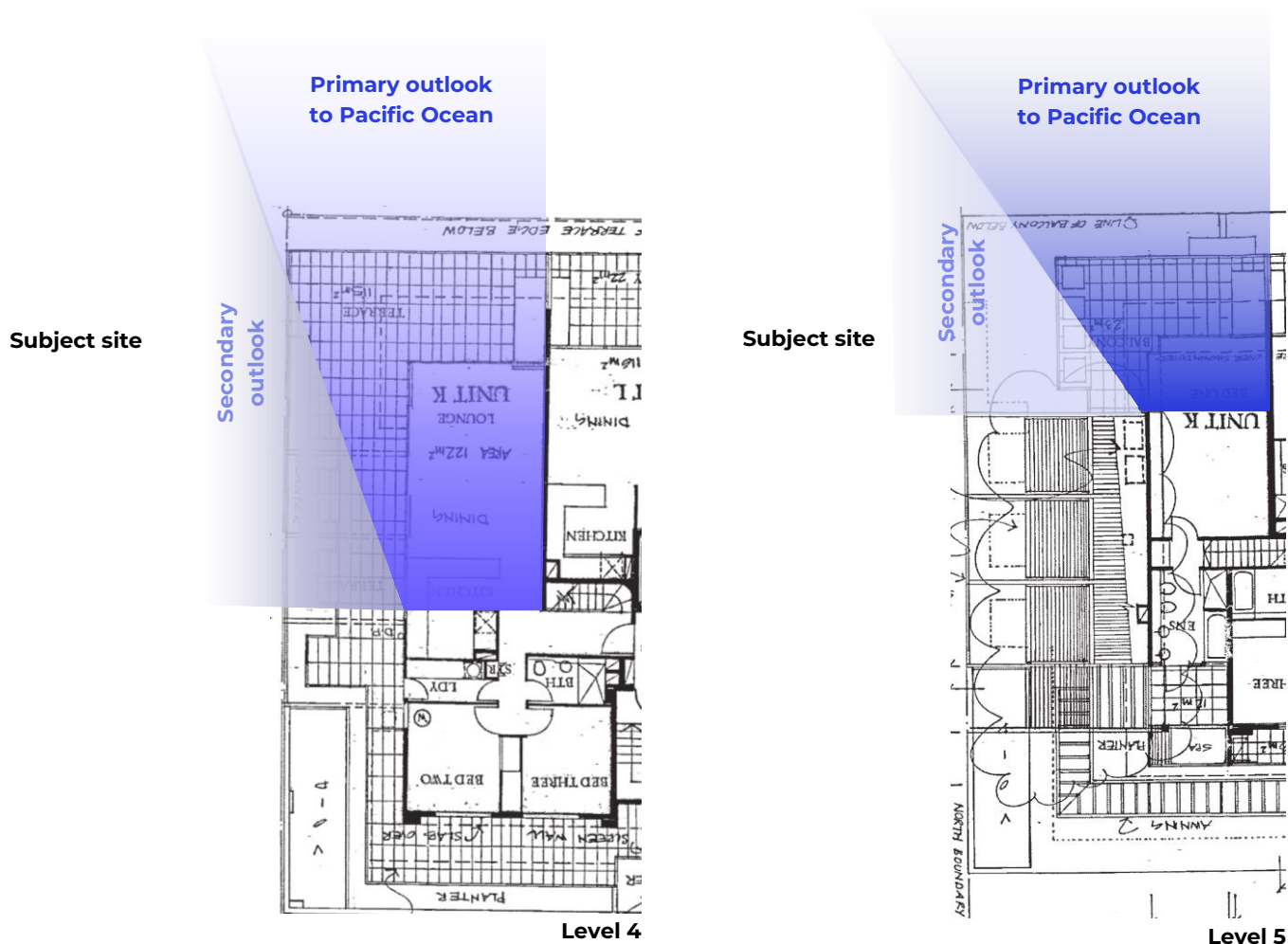


Figure 12 Floor plan of Unit K on levels 4 and 5 of 59 North Steyne

Source: DEM Design, Ethos Urban



Existing



Proposed



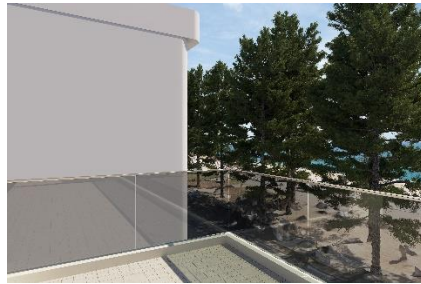
Compliant envelope

Figure 13 Northeast view from the living room of Unit K at Level 4 of 59 North Steyne towards the proposal

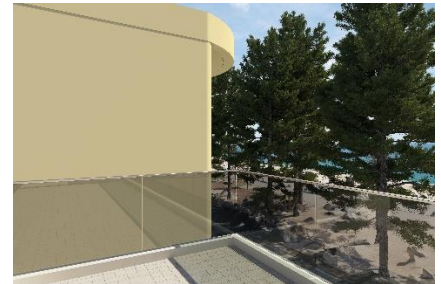
Source: Virtual Ideas



Existing



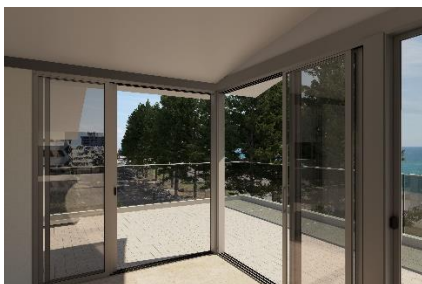
Proposed



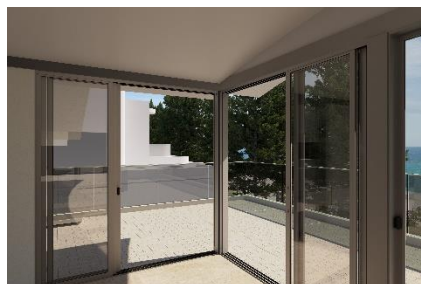
Compliant envelope

Figure 14 Northeast view from the balcony of Unit K at Level 4 of 59 North Steyne towards the proposal

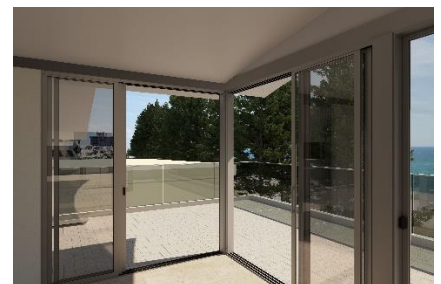
Source: Virtual Ideas



Existing



Proposed



Compliant envelope

Figure 15 Northeast view from the main bedroom of Unit K at Level 5 of 59 North Steyne towards the proposal

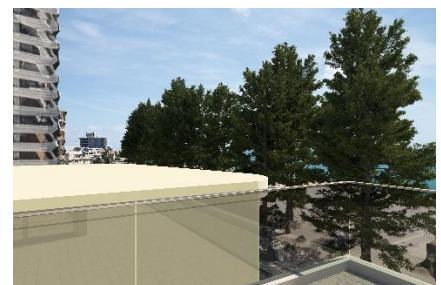
Source: Virtual Ideas



Existing



Proposed



Compliant envelope

Figure 16 Northeast view from the balcony of Unit K at Level 5 of 59 North Steyne towards the proposal

Source: Virtual Ideas

(iii) views between public spaces (including the harbour and foreshores)

The subject lot is not located between public open spaces. The lot fronts the Manly foreshore and there are views from the public domain of Denison Street to the ocean. The proposed development is contained within the boundaries of the lot and does not obstruct the existing views from Denison Street to the foreshore.

Objective (d): to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings

Public Open Space

The architect has produced a set of shadow diagrams for the hours from 9am to 3pm to illustrate the additional overshadowing from the proposed development, refer **Figure 17**. The public domain opposite North Steyne includes a paved open space and turfed areas fronting the beach. The proposed development does not present additional overshadowing to the paved area across North Steyne. The existing overshadowing produced by the tower to the north of the site extends past the proposed development's shadow.

For reference, the architect has included the overshadowing produced by a compliant scheme. The full set of shadow diagrams is included at **Appendix A**. The proposal maintains adequate solar access to public spaces and is therefore considered compliant with this objective.

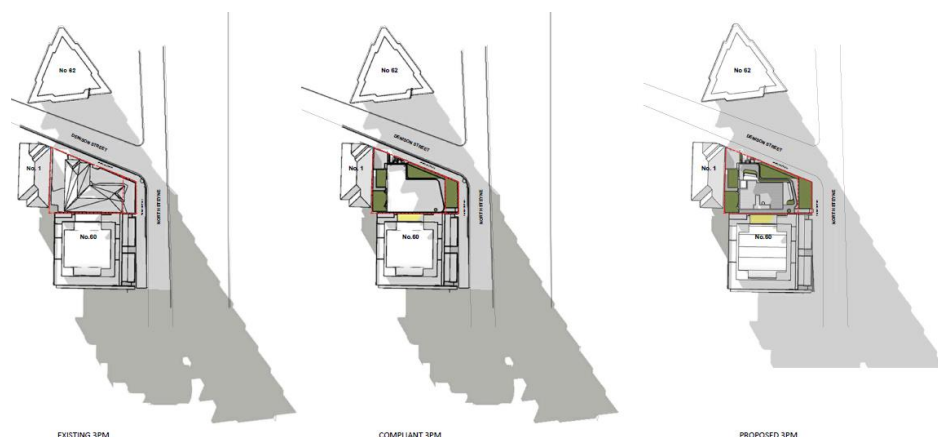


Figure 17 No additional overshadowing to North Steyne produced by the proposed development (3pm)

Source: Platform Architects

Private open spaces and habitable rooms of adjacent dwellings

1 Denison Street

1 Denison Street does not include private open spaces (balconies) to dwellings; however, each apartment includes a sunroom at the Denison Street frontage with an east facing window, with views to the ocean. This sunroom is an extension of a bedroom (refer **Figure 8** and plan at **Figure 18**). Although not strictly a 'living room', the sunroom of each apartment at 1 Denison Street is the only room with ocean views and is thus considered to be a highly desirable place for the resident to spend time in. An overshadowing analysis for 1 Denison Street has been provided by the architect (refer **Figure 19**) and SLR Consulting at **Appendix J**.

There are two windows to the living room, facing east, for both the ground floor and first floor apartments. The following is a summary of the SLR analysis:

Living rooms:

- Current condition: the ground floor living room windows receive 0.75 hours of direct sunlight (largely overshadowed by the existing development). The first floor living room windows receive 1.75 hours of direct solar.
- Compliant condition: Solar access to the ground floor living room windows is not affected, the first floor living room windows have their solar access period reduced to 0.75 hours.
- Proposed condition: Solar access to the ground floor living room windows is not affected, the first floor living room windows have their solar access period reduced to 0.75 hours (consistent with compliant condition).

Sunrooms:

- Current condition: Both levels receive 5.5 hours direct solar between 9am and 3pm.
- Compliant condition: No reduction to solar access.
- Proposed condition: No reduction to solar access.

Although there is a reduction to the direct solar period to the first floor living room windows (consistent for both the compliant and proposed schemes), these overlook the existing pitched roof on the subject site. The sunrooms on both levels, with ocean views, continue to receive the same period of direct solar access with the proposed (and compliant) development on the site. Retention of solar access to the sunrooms is considered to be of greater importance to the neighbouring residents, given the ocean views and current extent of solar access.



Figure 18 Plan of Unit 1 at 1 Denison Street

Source: Domain.com.au

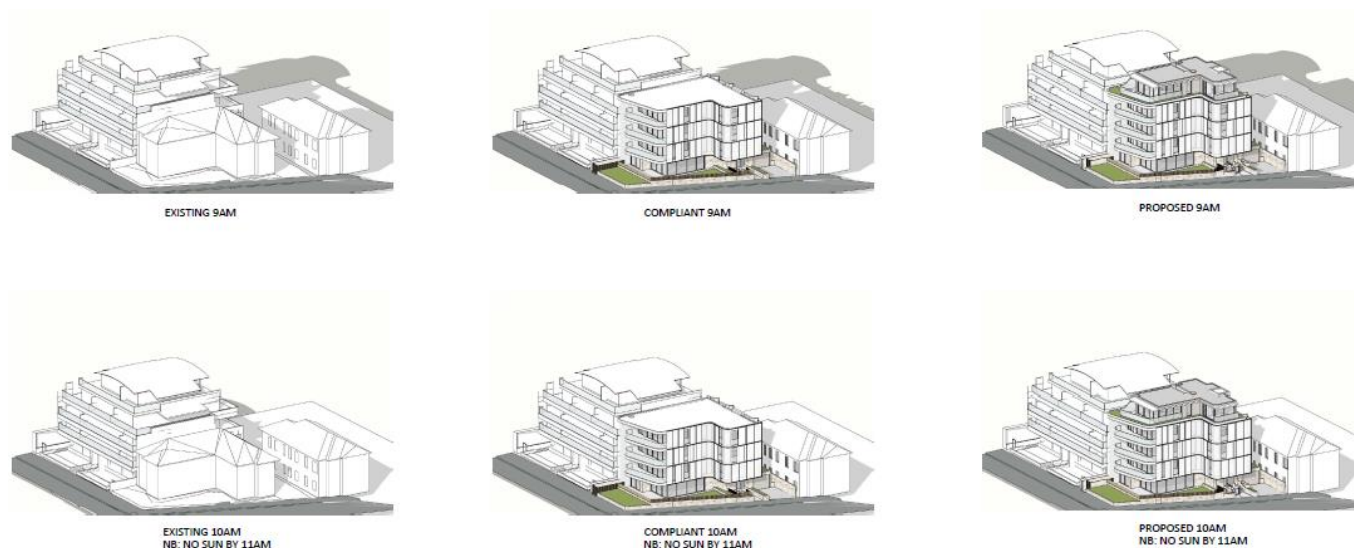


Figure 19 Overshadowing analysis of 1 Denison Street

Source: Platform Architects

59-60 North Steyne

An overshadowing analysis for 59-60 North Steyne has been provided by the architect (refer **Figure 20**) and separately reviewed by SLR Consulting (refer SEE **Appendix J**). SLR Consulting notes that the proposed development:

...will have negligible impact on the sites capacity to achieve solar access to apartments. The 13 apartments all have east facing balconies backed by single aspect glazing to living rooms. It was found that the proposed development will not impact solar access to these living rooms or balconies.

This is confirmed by the architect's detailed study. Of the 13 apartments at 59-60 North Steyne, 1 apartment at the northeast corner (refer Unit K at **Figure 12**) has reduced direct solar access.

The living room and primary private open space of Unit K is located on the fourth floor. The east facing glazing to the living room and adjoining eastern balcony area receive direct solar from 9am to midday, exceeding the 2-hour ADG minimum for solar access – this is not affected by the proposed development.

The main bedroom and adjoining private open space of Unit K is located on the fifth floor. The east facing glazing to the bedroom and adjoining eastern balcony area receive direct solar from 9am to midday, exceeding the 2-hour ADG minimum for solar access – this is not affected by the proposed development. It is noted that the ADG requires direct solar access to be provided to the living room and primary balcony. The solar access at this upper level is therefore additional to the minimum ADG requirement.

The compliant envelope and the proposed envelope both reduce the extent of direct solar access to the north facing glazing at both levels of this apartment, as well as to the north facing extent of balcony on each level. It is noted however that this is a lower order outlook, the ocean being to the east. The complaint envelope presents overshadowing through the 9am to 3pm period. The additional overshadowing produced by the proposed envelope is more apparent in the later morning and afternoon hours.

Given the retention of ADG compliant solar access to the apartments at 59-60 North Steyne, and the reduction to the north facing solar access to one apartment's glazing only (retaining the existing east facing, ADG exceeding, solar access to this apartment), it is considered that the overshadowing impact is reasonable and consistent with the development of an underutilised neighbouring site.

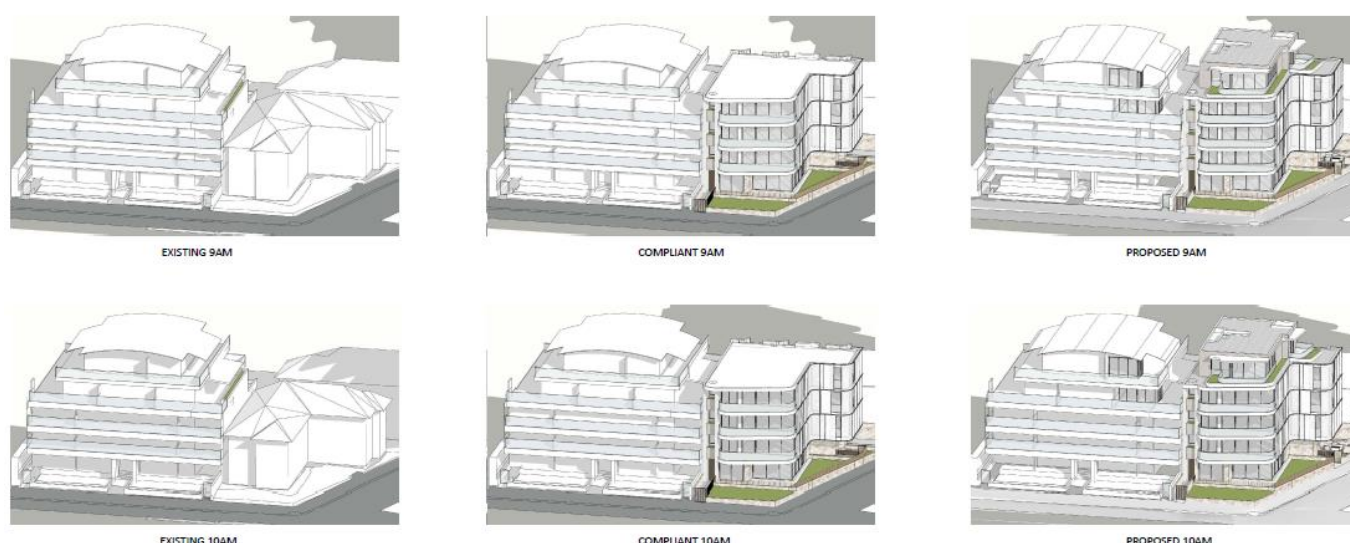


Figure 20 Extract of overshadowing analysis of 59-60 North Steyne

Source: Platform Architects

Objective (e): to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses

The site is not located within a recreation or environmental protection zone, as such the proposal is not inconsistent with this objective.

5.0 Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Manly LEP requires the consent authority to be satisfied that the Applicant's written request has adequately addressed this clause 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.

5.1 Consistency with the Objects of the Environmental Planning and Assessment Act 1979

In *Initial Action*, the Court stated that the phrase “*environmental planning grounds*” is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in Section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **Table 1** we consider how the proposed development is consistent with each object, notwithstanding the proposed variation of the Height of Buildings development standard.

Table 1 Assessment of proposed development against the Objects of the EP&A Act

Object	Comment
<i>(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</i>	<p>The proposed height variation will promote the economic and social welfare of the community by enabling the highest and best use of the land which currently contains aging residential housing stock. The existing housing stock does not meet the current standard of design excellence, resident amenity and best practice sustainability.</p> <p>Further, the proposed variation facilitates additional housing in line with the strategic growth of Manly. Enabling this variation supports high amenity residential design, attracting new residents to the area to support the on-going prosperity of Manly and more broadly the Northern Beaches.</p>
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment</i>	<p>Enabling variation ensures the site is regenerated in accordance with current ESD standards not currently presented in the existing development on site. The development exceeds BASIX and ADG provisions for comfort and amenity.</p> <p>For a comprehensive outline of the ESD initiatives included in the proposed development, please refer to the Energy Efficiency and ESD Statement at Appendix I.</p> <p>The additional building height has no unreasonable impact on environmental and social considerations and afford additional housing in the community.</p>
<i>c) to promote the orderly and economic use and development of land</i>	<p>The land is zoned for medium density residential uses, the objectives for which are met in the proposed residential flat building. The land is currently occupied by an aging flat building comprising 4 apartments that do not meet the current standards for resident amenity. The development does not exhibit design excellence or best practice sustainability.</p> <p>Strict compliance with the mapped maximum building height would result in a development that does not meet the LEP Height of Buildings Objective (a): <i>to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality</i>. A compliant height on the site would be out of character (a 'broken tooth' in the streetscape) given the immediate context north and south of the site addressing North Steyne. Development that complies with the 13 metre building height (and limited to 3 storeys as prescribed in the Manly DCP 4.1.2.2) would be inconsistent with the prevailing building height and counter to the objectives of the standard. Below is an illustration of the North Steyne street elevation.</p>

Object	Comment
<p>Proposed height that meets the LEP Height of Building Objective (a)</p> <p>LEP height that is inconsistent with the prevailing street height.</p>	
	<p>Further to the above and additional justification provided to each of the Height of Building objectives in Section 4.1, the heritage specialist provides the following additional statement in their impact assessment:</p> <p><i>"Whilst above the height limit and FSR set out by the LEP 2013, the proposed building is of a similar massing, scale and height as the buildings to the immediate south on this side of North Steyne. As a corner site, it anchors and completes the block. A building lower in height would be an anomaly within the block, particularly given its corner location and the 15 storey building that anchors the north western corner of North Steyne and Denison Street. The proposed building will not have undue prominence within the setting of these items arising out of its height."</i></p> <p>The proposal with a variation to the mapped maximum building height is a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of land. To enforce the control strictly would be unreasonable when considered against the objects of the Act in terms of orderly and economic use of land.</p>
<p>(d) to promote the delivery and maintenance of affordable housing,</p>	<p>The proposal does not contain affordable housing and thus this objective is not applicable.</p>
<p>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</p>	<p>The proposed development including the height variation will have no impact on threatened species or ecological communities.</p>
<p>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</p>	<p>The site does not contain buildings or elements of historic or cultural significance. A Statement of Heritage Impact has been provided (SEE Appendix Q), demonstrating that the proposed development does not pose impact to items of heritage significance in the vicinity. The author concludes that:</p> <p><i>The proposed works will be visible within view corridors towards these items and form part of their setting. The impact is minimal and acceptable because the proposed building is consistent in massing and scale with the buildings to its south fronting North Steyne and smaller in massing and scale than buildings to the north. There is nothing in the form, articulation, materials and finishes that will give the proposed building undue prominence within what is already a well-established setting of five plus storey buildings.</i></p>
<p>(g) to promote good design and amenity of the built environment,</p>	<p>The proposal has been designed by local Manly-based firm Platform Architects and has been reviewed by Council's Design and Sustainability Advisory Panel. During Council's assessment, the design has been modified to adopt recommendations made by the panel. The proposal is consciously good design in this regard.</p> <p>The development has been designed to capitalise on the direct frontage to Manly Beach, and appropriately address its corner position. The architect notes:</p> <p><i>The building presents with curved balcony forms to the North Steyne frontage. These curves flow around the corner and are then dressed with a feature screen, which wraps the façade along its northern edge, providing privacy and solar control as well as a stunning architectural feature.</i></p>

Object	Comment
	<p>The proposed variation to the mapped maximum building height standard facilitates an architecturally resolved design that does not compromise amenity of the built environment, achieved by retention of views, solar access or privacy to neighbouring properties.</p> <p>The proposed development consists of 5 storeys to a parapet height of RL21.5 and a lift overrun of RL21.6. The number of storeys is consistent with the southern neighbour (and 0.6 metres higher than its top of building RL), and less than the average height of development from Raglan to Steinton Streets fronting North Steyne. A compliant height would therefore be uncharacteristic and compliance unreasonable in the context of the site.</p> <p>The upper floor has been designed to minimise its visual perception when viewed from the public domain at ground level. Further, the upper floor is designed to transition to the lower scale development to the west. This is achieved through provision of unenclosed roof area to the built form that projects out to Denison Street. This arrangement is an adoption of the Northern Beaches Design and Sustainability Advisory Panel (DSAP) recommendation. Further, the curved slab edge to the upper floor, fronting North Steyne, has been recessed to reduce the visual weight of the upper level. This revision is also made in response to a DSAP recommendation.</p> <p>A comprehensive overshadowing, privacy and view loss analysis has been included as part of this assessment. This assessment also includes comparison with a compliant envelope. There is no amenity loss to either 1 Denison or 59 North Steyne that results in contravention of a DCP or ADG provision relating to visual privacy, solar access or views.</p> <ul style="list-style-type: none"> Visual privacy is retained through screening, planting and wall protrusions to the proposed south and west facades. Specifically, the proposed apartments do not face 59 North Steyne, and side viewing is obscured by wall protrusions. Windows facing 1 Denison are provided with screening and planting, and are setback from the common boundary to meet DCP provisions. Solar access is retained to the 1 Denison sunrooms (off the bedrooms, the rooms that currently receive direct solar) which continue to enjoy ocean views. ADG compliant solar access is retained to all 13 apartments at 59 North Steyne. One apartment experiences a reduction to solar access as a result of the additional height to its front rooms (living and bedroom) and adjoining terraces, however this reduction does not fall below the ADG minimum period, and does not affect direct solar from the apartment's primary outlook (the east – ocean view). Specialist view photomontages have been commissioned to analyse viewing from neighbouring apartments in the direction of the proposed. These demonstrate that: <ul style="list-style-type: none"> The proposal does not reduce the current extent of viewing from the 1 Denison Street apartments. The proposal includes a boundary wall that has been skilfully pulled into the site from the front boundary to preserve the peripheral north-easterly viewing from the adjacent apartments at 59 North Steyne from ground level to the third floor. The proposal does not affect easterly viewing from the two-storey upper apartment at 59 North Steyne (view east to ocean). View loss to the north is mitigated by additional setback to the proposed top floor, resulting in loss of viewing of distant built form. Distant beach viewing (downward viewing) is compromised by both the compliant and proposed envelopes. Importantly the key view directly east to the ocean is unimpeded.
<i>h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	This proposed variation to the mapped maximum building height does not preclude the development from complying with all relevant BCA codes and will promote the health and safety of occupants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	This object is not relevant to this proposed development.

Object	Comment
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The proposed development including this Clause 4.6 Variation Request will be publicly notified in accordance with Council's requirements.

6.0 Clause 4.6(4)(a)(ii): The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

In *Initial Action* it is established that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. Accordingly, it is demonstrated throughout this Clause 4.6 that the proposal is in the public interest as it is entirely consistent with the objectives of the development standard and the objectives of the zone.

6.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the Height of Building development standard, for the reasons discussed in **Section 4.0** of this report.

6.2 Consistency with objectives of the zone

The proposal is assessed against the objectives of the R3 – Medium Density Residential Zone below.

To provide for the housing needs of the community within a medium density residential environment.

The proposed development contributes to the provision of housing close to the Manly centre. Manly is identified as being a key contributor to the provision of additional housing in Council's Local Strategic Planning Statement and Local Housing Strategy, being a highly accessible and well-serviced precinct.

The proposed development increases the provision of dwellings on the site from 4 to 5 dwellings. It is noted that the existing dwellings fall short of current amenity provisions for apartments (for example, the dwellings do not include balconies) and the proposed new dwellings exceed the minimum requirements for apartment amenity as guided by SEPP65's Apartment Design Guide.

The proposed variation does not present a proposal that is inconsistent with the scale and character of other residential developments in the area. The regeneration of this site will improve the North Steyne streetscape and lift the quality of residential development in the area.

To provide a variety of housing types within a medium density residential environment.

The proposed development provides both two and three bedroom apartments (including one adaptable apartment). The residential flat building accommodation type is appropriate in a medium density residential environment and is consistent with the existing provision of this typology in the North Steyne precinct.

The broader local residential catchment contains a mix of residential housing typologies, including free standing single dwellings, attached dwellings and residential apartment buildings at varying stages of their life cycle. The proposal contributes to the diversity of housing in the area, providing a residential product that is suitable to the Manly foreshore.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed development includes facilities on site to support the needs of residents, including bicycle and car parking and equitable access and movement from street to the dwelling entry on each floor. The increased resident population on the site supports the growth of facilities and services in the wider area, including places to shop, work and recreate.

To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.

The proposed development contributes to the revitalisation of the Manly precinct. The existing flat building does not meet current amenity, DDA and BCA standards. The site is on a prominent corner position, highly visible from the Manly foreshore. The proposed development presents an architecturally refined approach to the site, with suitable address to both street frontages and apartments that exceed amenity provisions.

As detailed in **Section 4.0**, the suitability of the redevelopment is demonstrated in that it does not impose unreasonable impact to the views, solar amenity and privacy of neighbouring residents, nor does it pose impact to the public domain. The proposal includes design measures to mitigate environmental impact, including the recessing of the upper floor on all sides, planting provided to all levels and setbacks that are DCP compliant and consistent with the prevailing setbacks of both North Steyne and Denison Street. Additionally, the proposal includes landscaping to a portion of the road reserve fronting the site, offering an amenity on public land that provides buffering to the development.

To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.

The proposed development does not include tourist accommodation and as such this objective does not relate to the proposal. However, by contributing to the revitalisation of Manly by presenting an architecturally refined and environmentally suitable development, the development enhances Manly as an attractive destination.

7.0 Other Matters for Consideration

Under Clause 4.6(5) of the Manly LEP the Secretary's concurrence is required prior to any variation being granted. Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. We note that none of the conditions in the table apply to the DA, therefore the Secretary's concurrence is assumed. Nevertheless, the following section provides a response to those matters set out in Clause 4.6(5) of the Manly LEP which must be considered by the Secretary.

7.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the height of buildings development standard does not raise any matter of significance for State or regional planning. The variation to the maximum building height development standard will not contravene any overarching State or regional objectives or standards or have any effect outside the site's immediate area.

7.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

There is no public benefit in maintaining the development standard in terms of State and regional planning objectives. As noted in the preceding sections, the additional height proposed generally reflects the height of development envisaged by the Manly LEP, as the proposal presents four storeys that approximate 13 metres to the street front, with a recessed fifth storey that does not present as uncharacteristic to the prevailing streetscape. If the additional height cannot be delivered, this will be a lost opportunity to enable a proposal that provides additional housing on the site, with no significant impact to neighbouring amenity.

An LEP compliant development on the site (particularly if also compliant with the DCP's envisaged 3 storeys) is highly uncharacteristic to the prevailing North Steyne built form in the vicinity. It is not considered that there would be any public benefit resulting from a reduction to the height proposed, particularly where key planning issues such as privacy and overshadowing, have been resolved through architectural design.

7.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

We are not aware of any other matters that the Secretary (or the consent authority, under delegation) is required to consider before granting concurrence.

8.0 Conclusion

The assessment above demonstrates that compliance with the height of buildings development standard contained in Clause 4.3 of the Manly LEP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

Clause 4.3 of the Manly LEP applies a maximum 13m height development standard to the site. The maximum extent of variation applies to the Level 4 parapet, at 3.3 metres (25%) above the development standard. The lift overrun has a maximum height above the height plane of 3.25 metres, and the Level 3 parapet has a maximum height of 0.35 metres above the height plane, with approximately one third of the Level 3 parapet being below the height plane.

The fifth floor is recessed on all sides from the floors below. The height is characteristic of the locality, with a five floor development to the south of the site and dense, taller developments further south and north along North Steyne. The highly articulated form architecturally responds to its prominent corner location with Denison Street, offering a curved and screened form to moderate the mass and provide visual privacy to residents.

A comprehensive overshadowing, privacy and view loss analysis has been included as part of this assessment. This assessment also includes comparison with a compliant envelope. There is no unreasonable loss of amenity to either 1 Denison or 59 North Steyne.

- Visual privacy is retained through screening, planting and wall protrusions to the proposed south and west facades.
- Solar access is retained to the 1 Denison sunrooms which continue to enjoy ocean views.
- ADG compliant solar access is retained to all 13 apartments at 59 North Steyne. One apartment experiences a reduction to solar access, however this reduction does not fall below the ADG minimum period, and does not affect direct solar from the apartment's primary outlook direction (the east – ocean view).
- Specialist view photomontages have been commissioned to analyse viewing from neighbouring apartments in the direction of the proposed.
 - The proposal does not reduce the current extent of viewing from the 1 Denison Street apartments.
 - The proposal includes a boundary wall that has been skilfully pulled into the site from the front boundary to preserve the peripheral north-easterly viewing from the adjacent apartments at 59 North Steyne from ground level to the third floor.
 - The proposal does not affect easterly viewing from the two-storey upper apartment at 59 North Steyne (view east to ocean). View loss to the north is mitigated by additional setback to the proposed top floor, resulting in loss of viewing of distant built form. Distant beach viewing (downward viewing) is compromised by both the compliant and proposed envelopes.

This request to vary the maximum building height development standard applicable to the site and contained within the Manly LEP demonstrates that Council can be satisfied that:

- The proposed non-compliance with the maximum building height development standard will result in a built form that is consistent with the existing pattern of (highly varied) development in the locality, as well as the desired future character of the locality;
- Compliance with the development standard is unreasonable or unnecessary in the circumstances as the proposed design solution represents an appropriate design outcome that has minimal to negligible impacts on the amenity of the surrounding area;
- There are sufficient environmental planning grounds to justify contravening the development standard as the building represents a high quality outcome, provides an appropriate response to its site specific context and will maintain a high level of the amenity for surrounding and future residents.
- A considered architectural design has been proposed to the volume, which has been restricted to comply with the DCP setback controls and the prevailing building line to both North Steyne and Denison Street, as applicable. Additional setback has been provided to both street frontages where the volume and balconies curve away from the boundaries. The additional height does not result in compromised setbacks or open space and internal and external spaces of each apartment that is less than the development controls. The upper floor is further setback to minimise its visual presence at street level and to improve the amenity outcome to the southern neighbour. [Additional setback to the upper floor, and reduction to the upper floor terrace areas has been provided as an adoption of a DSAP recommendation.](#) This is further enhanced by perimeter landscaping at this floor.

In light of the above, the proposed variation to the maximum building height development standard is considered acceptable and does not inhibit the ability for Council to favourably consider the subject DA. Therefore, the DA may be approved with the variation proposed in accordance with the flexibility allowed under Clause 4.6 of the Manly LEP.

A.1 Attachment 1: Visual Impact Images and Methodology Report

Author: Virtual Ideas

61 NORTH STEYNE, MANLY

Visual impact and methodology report

19th April 2023

VIRTUAL IDEAS

1. INTRODUCTION

This document was prepared by Virtual Ideas to demonstrate the visual impact of the proposed developments at 61 North Steyne, Manly with respect to the existing built form and existing site conditions.

2. OUR EXPERTISE

Virtual Ideas is an architectural visualisation company that has over 15 years experience in preparing visual impact assessment content and reports on projects of major significance that meet the requirements for relevant local and state planning authorities.

Our reports have been submitted as evidence in proceedings in both the Land and Environment Court and the Supreme Court of NSW. Our director, Grant Kolln, has been an expert witness in the field of visual impact assessment in the Supreme Court of NSW.

Virtual Ideas' methodologies and outcomes have been inspected by various court appointed experts in relation to previous visual impact assessment submissions, and have always been found to be accurate and acceptable.

3. METHODOLOGY

The following describes the process that we undertake to create the renderings that form the basis of this report.

3.1 DIGITAL 3D SCENE CREATION

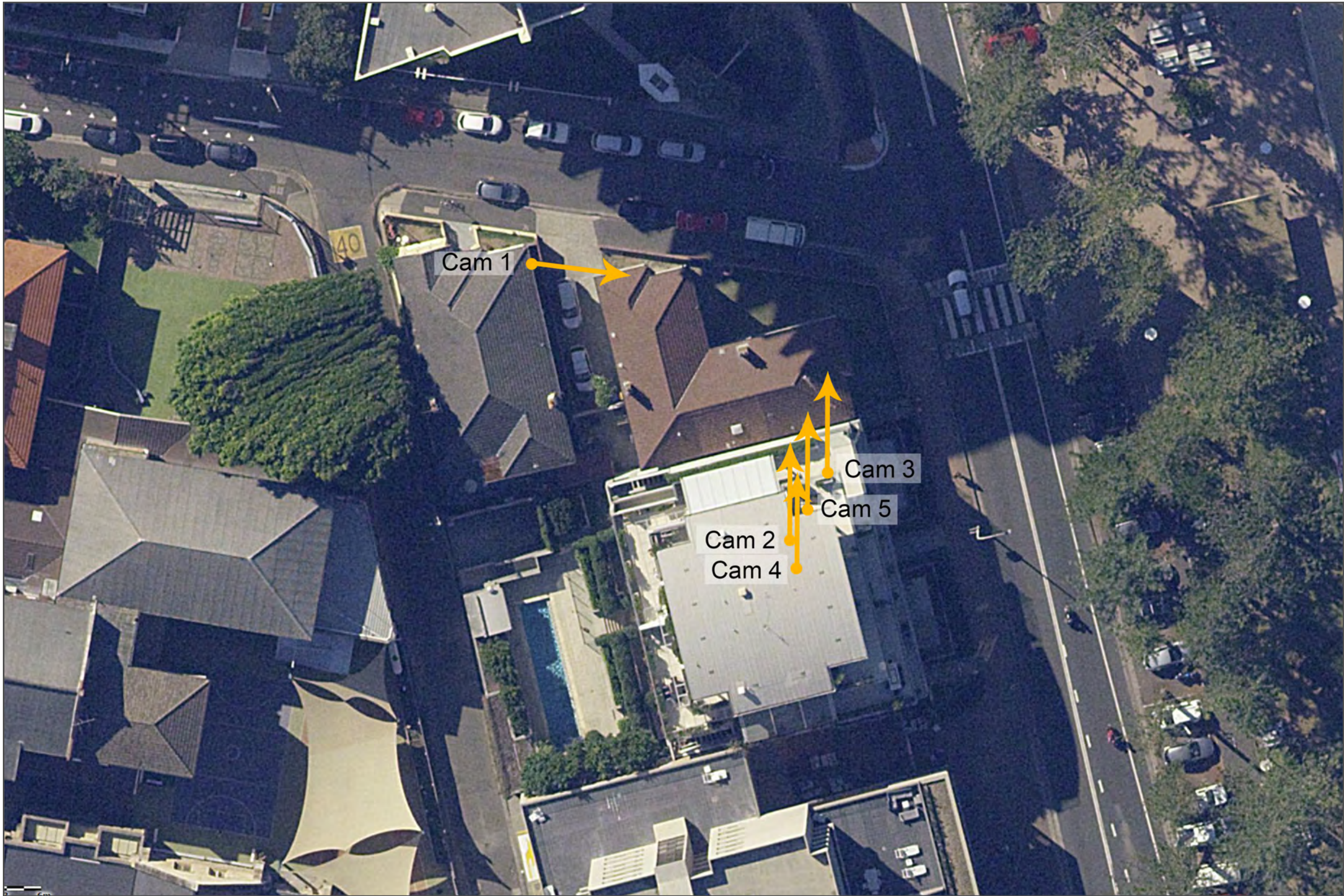
The first step in our process was the creation of an accurate, real world scale digital 3D scene that is positioned at a common reference point using MGA-56 (GDA 2020) coordinates system.

We used a variety of data from various sources to create the 3D scene, including survey data from registered surveyors Craig and Rhodes, a 3D photogrammetric model of the surrounding area and building 3D models supplied by Platform Architects. For this view study, trees from the photogrammetric model were replaced by more detailed tree models for greater clarity. A detailed description of the various data sources used in this report can be found in Appendix A.

All data is imported into the 3D scene at real world scale and positioned to a common reference point. This common reference point is established by using the MGA-56 (GDA 2020) coordinates system. When we receive data sources that are not positioned to MGA-56 (GDA 2020) coordinates we use common points in the data sources that can be aligned to points in other data sources that are positioned at MGA-56 (GDA 2020). This can be data such as site boundaries and building outlines. Descriptions of how we have aligned each data source can also be found in Appendix A.

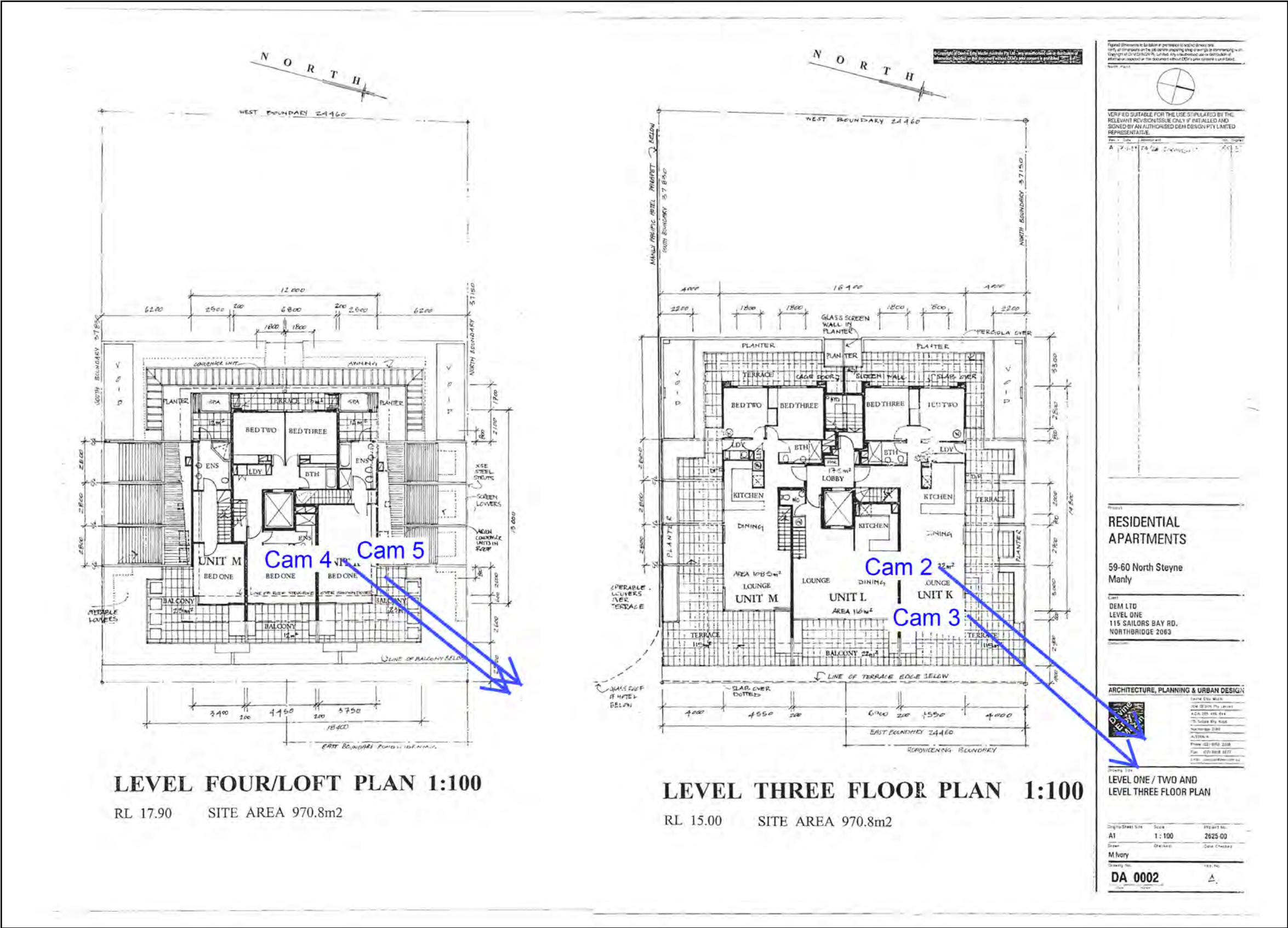
Once the various data sources have been imported and positioned with reference to each other, we then create digital 3D cameras in the 3D scene. The camera locations selected for the five views in this report, have been recommended by Lindsay Bennelong, taking into consideration the future built form and existing properties adjacent to the site. These positions have been approved by our client and the planner.

4.1 MAP OF PHOTOGRAPHY LOCATIONS



- Cam 1** - 1 Denison Street, Level 1, Sunroom
- Cam 2** - 59 North Steyne, Level 3, Loungeroom
- Cam 3** - 59 North Steyne, Level 3, Terrace
- Cam 4** - 59 North Steyne, Level 4, Bedroom
- Cam 5** - 59 North Steyne, Level 4, Terrace

4.2 MAP OF PHOTOGRAPHY LOCATIONS FROM LEVELS 3/4 OF 59 NORTH STEYNE



Cam 2 - 59 North Steyne, Level 3, Loungeroom

Cam 3 - 59 North Steyne, Level 3, Terrace

Cam 4 - 59 North Steyne, Level 4, Bedroom

Cam 5 - 59 North Steyne, Level 4, Terrace

5.1 CAMERA POSITION 1 - 1 DENISON STREET (24mm lens)

EXISTING



PROPOSED



COMPLIANT



CAMERA LOCATION



5.2 CAMERA POSITION 1 - 1 DENISON STREET (24mm lens)

EXISTING



5.3 CAMERA POSITION 1 - 1 DENISON STREET (24mm lens)

PROPOSED



5.4 CAMERA POSITION 1 - 1 DENISON STREET (24mm lens)

COMPLIANT



5.5 CAMERA POSITION 2 - 59 NORTH STEYNE, LEVEL 3, LOUNGE ROOM (24mm lens)

EXISTING



PROPOSED



COMPLIANT



CAMERA LOCATION



5.6 CAMERA POSITION 2 - 59 NORTH STEYNE, LEVEL 3, LOUNGE ROOM (24mm lens)

EXISTING



5.7 CAMERA POSITION 2 - 59 NORTH STEYNE, LEVEL 3, LOUNGE ROOM (24mm lens)

PROPOSED



5.8 CAMERA POSITION 2 - 59 NORTH STEYNE, LEVEL 3, LOUNGE ROOM (24mm lens)

COMPLIANT



5.9 CAMERA POSITION 3 - 59 NORTH STEYNE, LEVEL 3, TERRACE (24mm lens)

EXISTING



PROPOSED



COMPLIANT



CAMERA LOCATION



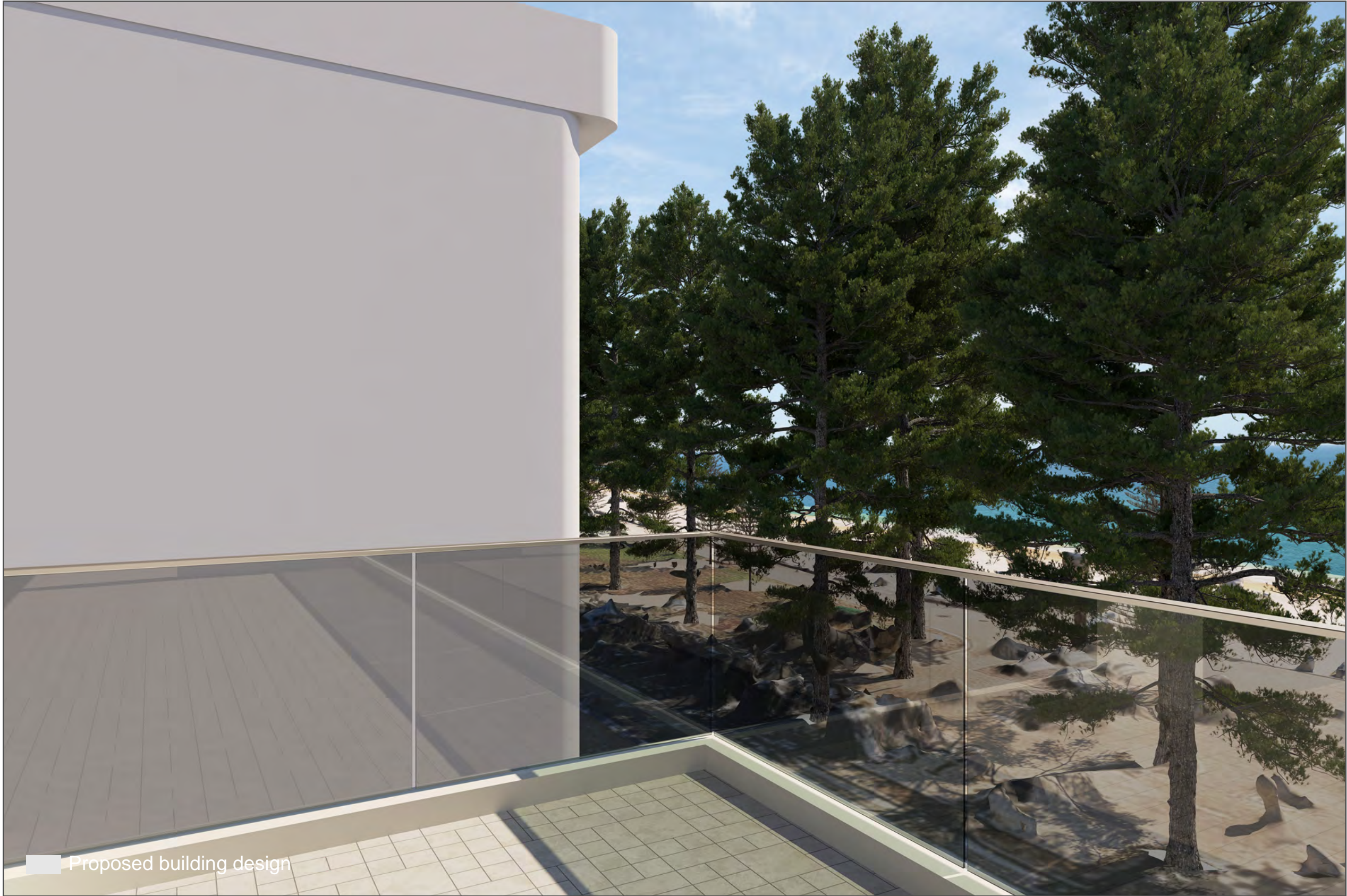
5.10 CAMERA POSITION 3 - 59 NORTH STEYNE, LEVEL 3, TERRACE (24mm lens)

EXISTING



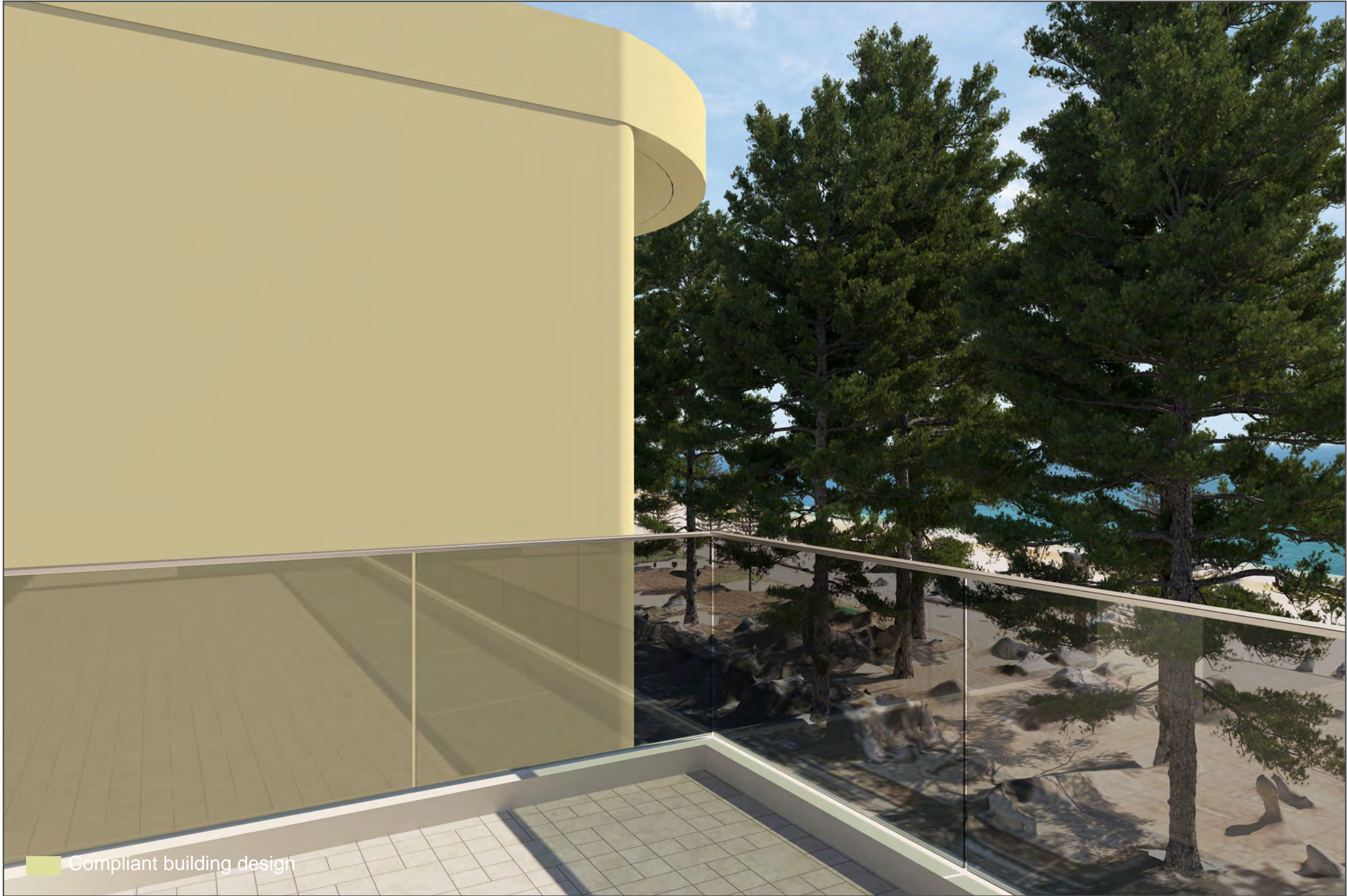
5.11 CAMERA POSITION 3 - 59 NORTH STEYNE, LEVEL 3, LOUNGE ROOM (24mm lens)

PROPOSED



5.12 CAMERA POSITION 3 - 59 NORTH STEYNE, LEVEL 3, LOUNGE ROOM (24mm lens)

COMPLIANT



5.13 CAMERA POSITION 4 - 59 NORTH STEYNE, LEVEL 4, BEDROOM (24mm lens)

EXISTING



PROPOSED



COMPLIANT



CAMERA LOCATION



5.14 CAMERA POSITION 4 - 59 NORTH STEYNE, LEVEL 4, BEDROOM (24mm lens)

EXISTING



5.15 CAMERA POSITION 4 - 59 NORTH STEYNE, LEVEL 4, BEDROOM (24mm lens)

PROPOSED



5.16 CAMERA POSITION 4 - 59 NORTH STEYNE, LEVEL 4, BEDROOM (24mm lens)

COMPLIANT



5.17 CAMERA POSITION 5 - 59 NORTH STEYNE, LEVEL 4, TERRACE (24mm lens)

EXISTING



PROPOSED



COMPLIANT



CAMERA LOCATION



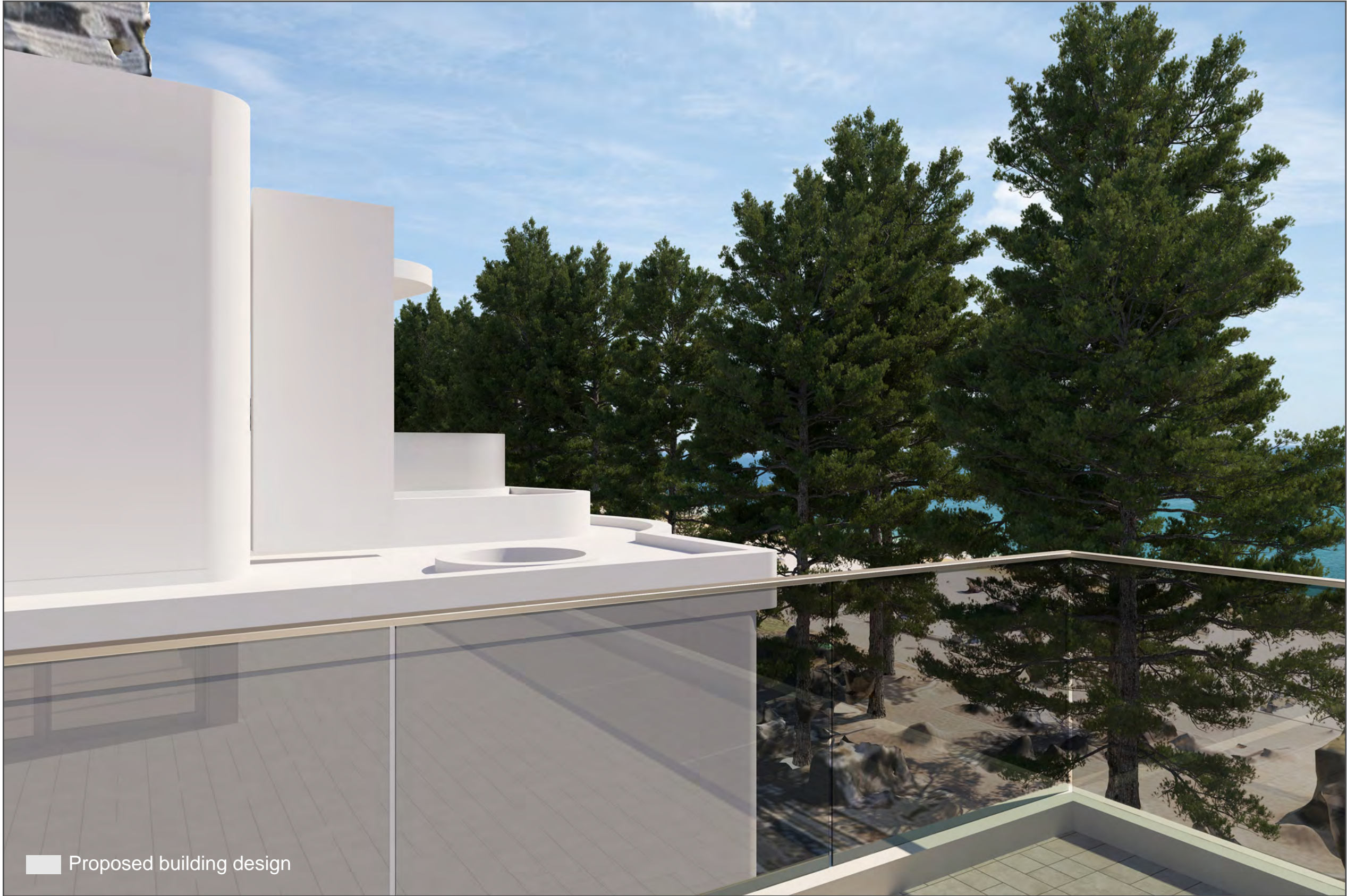
5.18 CAMERA POSITION 5 - 59 NORTH STEYNE, LEVEL 4, TERRACE (24mm lens)

EXISTING



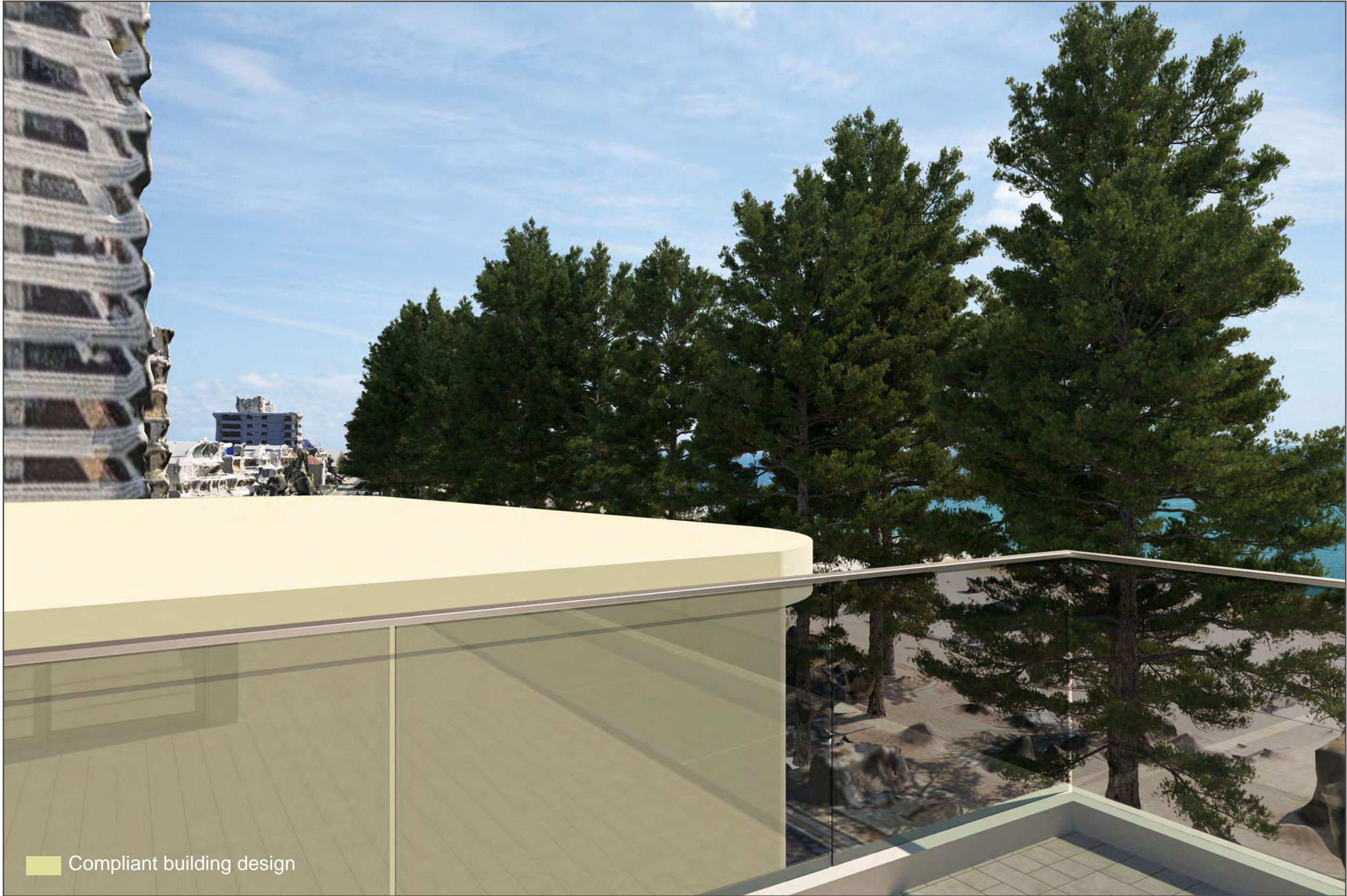
5.19 CAMERA POSITION 5 - 59 NORTH STEYNE, LEVEL 4, TERRACE (24mm lens)

PROPOSED



5.20 CAMERA POSITION 5 - 59 NORTH STEYNE, LEVEL 4, TERRACE (24mm lens)

COMPLIANT



APPENDIX A: 3D SCENE DATA SOURCES

A.1 - 3D Model of proposed building design

Author: Platform Architects
Format: Sketchup files
Alignment: Site boundary positioned to MGA 56 (GDA 2020)

A.2 - 3D Model of 59/60 North Steyne

Author: Platform Architects and Virtual Ideas
Format: Sketchup/3DS Max files
Alignment: Site boundary positioned to MGA 56 (GDA 2020)

A.3 - 3D Model of Existing 61 North Steyne

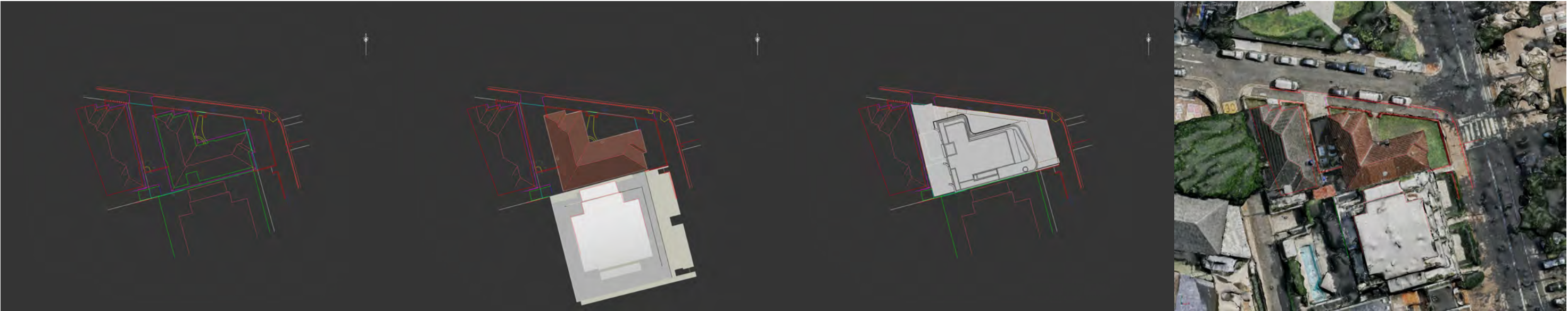
Author: Virtual Ideas
Format: 3DS Max
Alignment: Site boundary positioned to MGA 56 (GDA 2020)

A.4 - Photogrammetric Manly model

Author: AAM
Format: obj files
Alignment: Supplied referenced to MGA 56 (GDA 2020)

A.5 - Existing Site Survey

Author: Craig and Rhodes
Format: Autocad
Alignment: Supplied referenced to MGA 56 (GDA 2020)



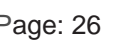
Site survey

Buildings existing

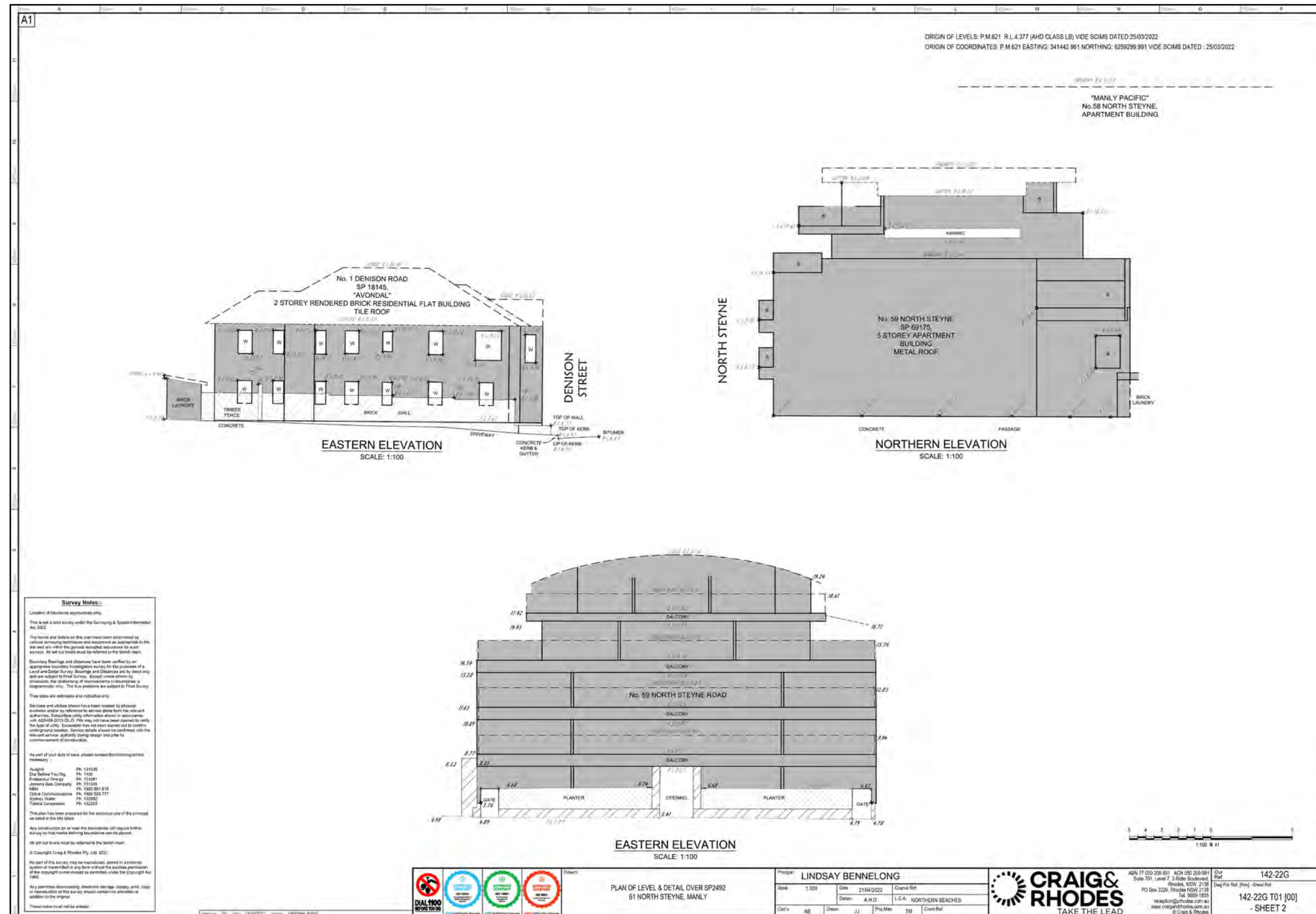
Building proposed

AAM photogrammetric model

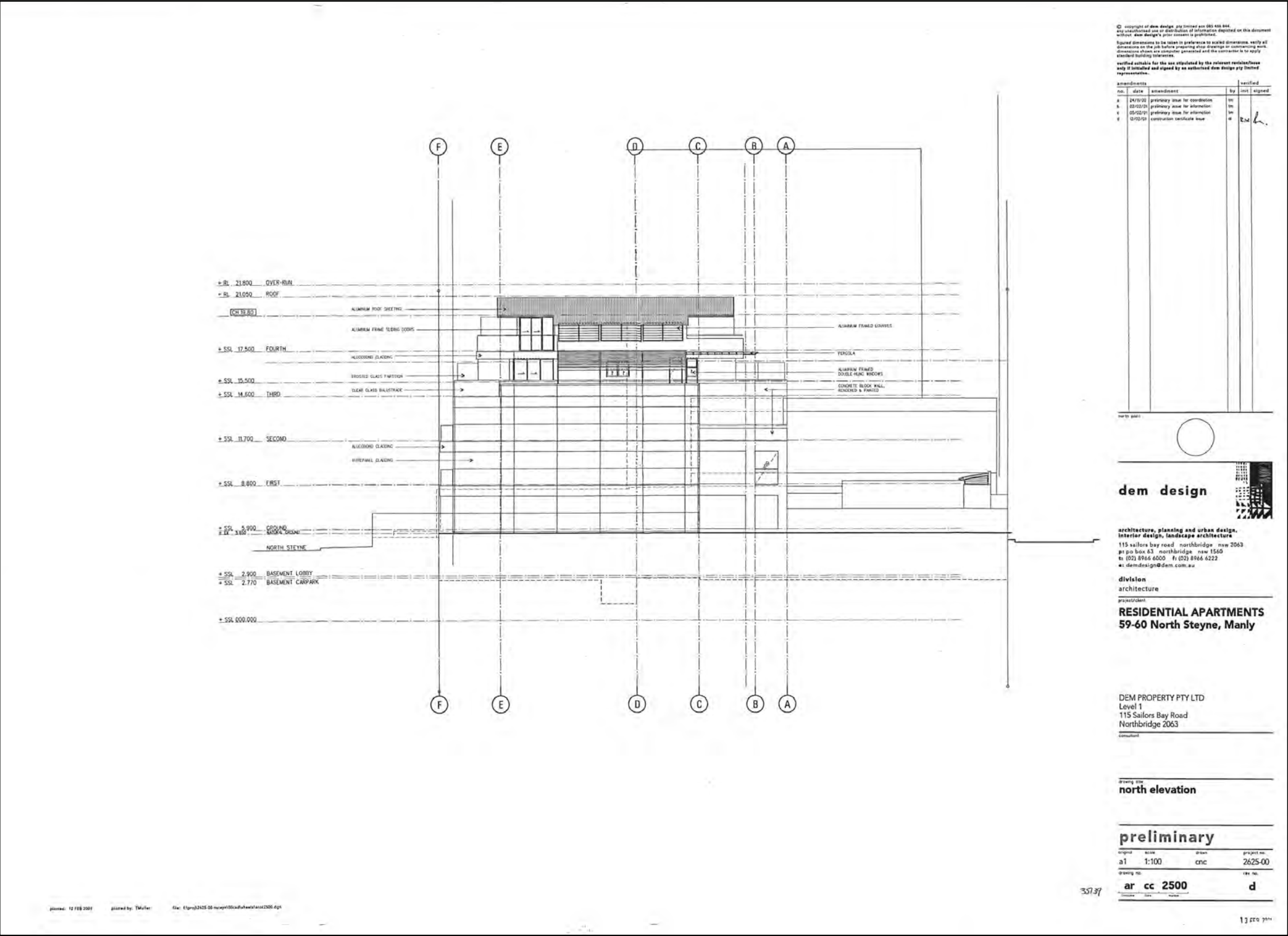
61 North Steyne, Manly - Visual impact and methodology report - 19th April 2022



APPENDIX B: SITE SURVEY



APPENDIX C: 59/60 NORTH STEYNE, NORTH ELEVATION



APPENDIX C: 59/60 NORTH STEYNE, EAST ELEVATION

