

Relevant Information for Local Planning Panel

FILE: D/2023/727 **DATE:** 10 April 2025

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager Planning and Development

SUBJECT: Information Relevant To Item 3 – Development Application: 21C Billyard Avenue, Elizabeth Bay – D/2023/727

For Noting

That the Local Planning Panel note the information contained in this memorandum.

Background

This memorandum relates to the provision of additional information only. No amendments have been made to the proposal and no amendments have been made to the recommendation or the recommended conditions of consent.

Supplementary Expert's Joint Report

On 28 October 2024, consent orders were filed with the Court ahead of the hearing held on 5 and 6 November.

Expert evidence was prepared by the Applicant's town planner, architect and view sharing expert and the Respondent's (Council's) town planner and urban designer for the hearing in November 2024. The Expert's Joint Report can be found at Attachments G and H to Item 3.

A Supplementary Expert's Joint Report was later prepared to address public submissions received post the completion of the Expert's Joint Report. Specifically, the report addressed a numerical error identified in a public submission relating to survey points used to calculate the LEP height plane. The Supplementary Expert's Joint Report can be found at Attachment A to this memorandum.

The Supplementary Expert's Joint Report was considered by Commissioner Walsh as part of the hearing in November 2024. It is noted that in his 19 December 2024 judgement Commissioner Walsh accepted the position of the experts regarding the calculation of height.

NatHERSs Stamped Drawings

Three drawings within Attachment B1 are replaced with drawings that include the NatHERS (Nationwide House Energy Rating Scheme) stamp.

The amendments to the drawings are limited to the inclusion of the NatHERS stamp only. No changes to the proposal have been made and the revision numbers and dates remain the same as those listed in Attachment A Recommended Conditions of Consent and Attachment B1 Selected Drawings.

The replacement drawings are:

- DA450 Rev J, Sect A, 01/11/2024
- DA451 Rev J, Sect B, 01/11/2024
- DA460 Rev G, Sect H and I, 01/11/2024

The replacement drawings can be found at Attachment B to this memorandum.

Prepared by: Natasha Ridler, Area Planning Manager

Attachments

Attachment A. Supplementary Expert's Joint Report

Attachment B. Replacement Drawings – NatHERS Stamp

Approved



ANDREW THOMAS

Executive Manager Planning and
Development

Attachment A

Supplementary Expert's Joint Report
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Land and Environment Court of NSW

Proceeding No. 2023/0040488

**BILLYARD AVE DEVELOPMENTS PTY LTD ATF BILLYARD AVENUE DEVELOPMENT TRUST V
CITY OF SYDNEY COUNCIL**

21C Billyard Avenue, ELIZABETH BAY

**SUPPLEMENTARY JOINT EXPERT REPORT ADDRESSING HEIGHT OF BUILDINGS
CALCULATION**

November 2024

PREPARED BY:

For the Applicant

William Smart (Architect and urban design expert)

Andrew Harvey (Planning expert)

Jane Maze-Riley (View loss expert)

For the Respondent

Julia Pressick (Urban design expert)

Julia Errington (Planning expert)

Introduction

1. This supplementary Joint Expert Report (dated 27 September 2024) follows a review of additional public submissions received post the completion of the Joint Expert Report.
2. Specifically, this follows a numerical error identified in a recently received public submission. The error related to survey points used in the height plane plan DA006 Rev E and associated LEP height plane. Further explanation is provided at paragraph 1 below.
3. A further joint conference was conducted by teleconference and email between the planning, urban design and visual expert on 31 October 2024 to provide evidence to the court on this error and clarify expert opinion resulting from corrected drawings.

Uniform Civil Procedure Rules and the Expert Witness Code of Conduct

4. This supplementary joint report has been prepared in accordance with Division 2 of Pt 31 of the Uniform Civil Procedure Rules (UCPR) and the Expert Witness Code of Conduct in Schedule 7 of the UCPR. We have read the Court's Conference of Expert Witness Policy and Joint Expert Report Policy (both commencing on 12 June 2015) and agree to be bound by them. We confirm that the experts' conference has been carried out in accordance with the Code of Conduct and the requirements of Division 2 of Part 31 of the UCPR.

Attachments

5. The following appended documents correct this error and depict an amended LEP height plane using accurate RLs.
 - **Appendix A** Amended Architectural drawings – DA Issue 09A
 - **Appendix B** Smart Design Studio explanation of height plane amendment
 - **Appendix C** View sharing addendum – Amended Bettar Height Plane
 - **Appendix D** Amended Clause 4.6 Variation

Correction of surveying error

6. The applicant's architect and urban design expert (William Smart) has reviewed the 'Submission of Olivia Ross' in relation to the survey points to the east and west of the subject site, highlighted in red on page 4 of the Submission.
7. WS notes that in relation to the western side, the minor differences between the survey and height plane extrapolation related to differences between the 2D survey and the 3D model. These differences are extremely minor (between 2cm and 4cm) and do not have any impact on the height plane.
8. WS notes that in relation to the eastern side, the review revealed there was an error in two survey points being RL15.08m and RL13.53m, highlighted in red in the Submission. These points were part of the survey data used to develop and extrapolate the 3D height plane. Additional survey information was later requested by Council during the Without Prejudice process. In this updated 2D survey (Ref F dated 05.07.24), these two survey

points (RL15.08m and RL13.53m) were deleted, and a new point RL11.82m was added. This correction to the survey was not clouded nor communicated to the project team and consequently not updated in the 3D height plane extrapolation currently before the Court.

9. The surveyor has confirmed that those two points were originally incorrectly surveyed and were identified as such when they returned to provide further survey data in July 2024. This is why they were deleted from the survey and new point added. The revised height plane has all levels checked and corrected.

Commentary

10. The experts note the following as a result of the above:
 - a) The amended architectural plans (DA issue 09A) attached to this supplementary joint report show that while the building envelope and form has not changed, the proportion of the building that exceeds the newly established LEP height limit has increased in the on the northern façade and the north-eastern corner of the Onslow Avenue building.
 - b) The experts confirm that as the building envelope has not changed, the environmental impacts such as overshadowing and view loss are unchanged.
 - c) The experts confirm in relation to view loss, all view impacts are still minor or less, reasonable and acceptable.
 - d) The experts agree that in relation to solar access, the overshadowing to neighbouring properties still complies with the requirements of the Sydney DCP 2012 and ADG as set out in the table in response to Contention 14 (E) on page 25.
 - e) The experts can also confirm that there is no change to our evidence relating to Clause 6.21D Design Competition and Site specific DCP paragraph 20 on page 20 of the Joint Report.
 - f) Setting aside the numerical error, the experts still agree that the methodology used for determining existing ground level is a contextually appropriate methodology. This methodology was established based on Bettar but was slightly modified due to:
 - i. The depth of the site and the sloping topography between the two footpath levels
 - ii. The built-out nature of the site.
 - g) It was agreed that utilising footpath levels only to establish the height plane would result in an uncharacteristically elevated ground plane.
 - h) This method established RLs close to the side boundary on the neighbouring sites and extrapolated these to create a ground plane for the subject site that more closely reflected that of the neighbours.
 - i) However, for completeness, the applicant has also modelled the 'Merman Method' which assumes that the ground level (existing) is measured to the artificially excavated underside of the existing building slabs – and also examined the impacts of this if that was determined to be the preferred way to calculate the building height. This is

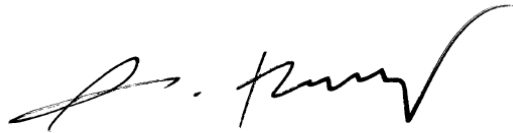
documented in the Clause 4.6 variation, and also modelled in relation to view sharing impacts.

- j) In summary, the applicant has examined and provided detail of both potential height calculations. While the height planes between Merman and Bettar do obviously differ, the experts agree that the exceedance from either methodology does not give rise to unreasonable overshadowing and view loss as a result of the breach.
- 11. The experts confirm that in their opinion, the proposal as described in the amended architectural drawings – DA Issue 09A is consistent with the relevant objectives of the height of building standard in Clause 4.3 of SLEP 2012, and their previous evidence in relation to consistency with the height objectives can be relied upon (beginning page 17 of the September 2024 Joint Report).
- 12. In relation to views, notwithstanding numerical errors, the proposed building envelope has not changed, and the extent of view loss and view impacts for dwellings remains as previously assessed, the applicant has updated 3 photomontages to assist the Court in understanding the visual effects of the adjusted Bettar Height Plane.
- 13. In this regard, views from the closest and / or those at a corresponding RL to the adjusted height plane were selected for modelling. This includes unit 12, 12 Onslow Avenue (Darnley Hall) and unit 8, 13 Onslow Avenue (Meudon).
- 14. The photomontages prepared on the 31st October 2024 by Urbis, identify the location and extent of the ‘adjusted’ Bettar LEP height control, as a light purple translucent overlay.
- 15. The adjusted LEP height plane at the western boundary creates a negligible effect in easterly views from 13 Onslow Avenue (Meudon), to an extent that view impacts already determined and agreed by the experts as reasonable and acceptable, do not change.
- 16. In two views from 12/12 Darnley Hall, attic second study (view 5) and main balcony (view 6) the adjusted Bettar height plane exceedance in purple, creates no additional effects to those already determined and agreed by the experts as reasonable and acceptable.

Signatures



William Smart (Urban design expert, on behalf of the Applicant)



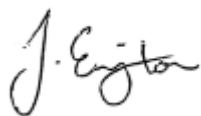
Andrew Harvey (Planning expert, on behalf of the Applicant)



Jane Maze-Riley (View loss expert, on behalf of the Applicant)



Julia Pressick (Urban design expert, on behalf of the Respondent)



Julia Errington (Planning expert, on behalf of the Respondent)

4 November 2024

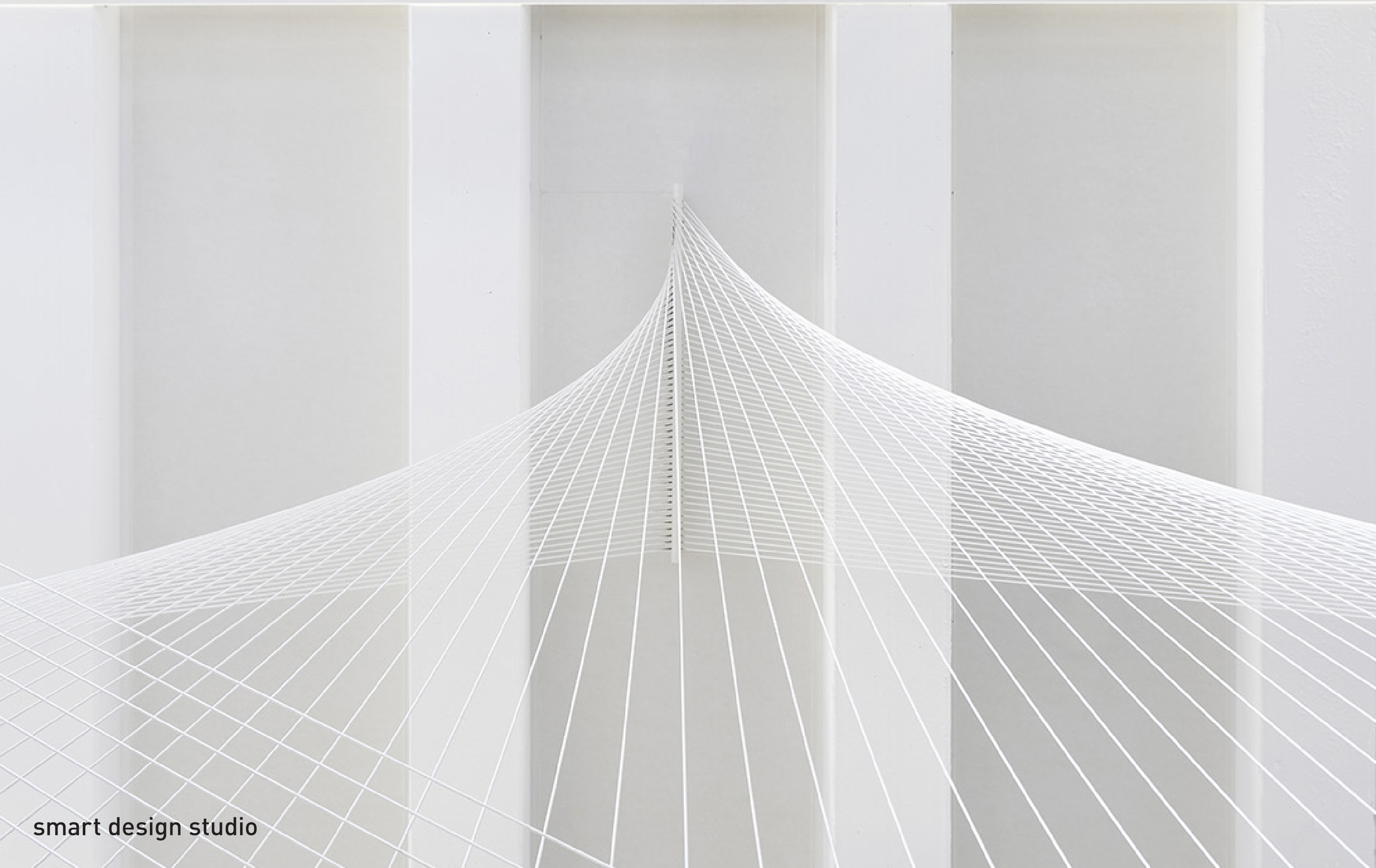
Supplementary Joint Report Attachments

- **Appendix A** Amended Architectural drawings – **See LPP Attachment B1**
- **Appendix B** Smart Design Studio explanation of height plane amendment – **Below**
- **Appendix C** View sharing addendum – **See LPP Attachment D4**
- **Appendix D** Amended Clause 4.6 Variation – **See LPP Attachment C**

Appendix B**Smart Design Studio explanation of height plane amendment**

21C/BILLYARD AVE & 10 ONSLOW AVE
ELIZABETH BAY

Supplementary Joint Expert Report
Appendix B: Height Plane Amendment



smart design studio

Supplementary Joint Expert Report

Appendix B: Height Plane Amendment

21C Billyard Avenue & 10 Onslow Avenue Elizabeth Bay

Prepared for Fortis

Issue 01 - 01 November 2024

Prepared by Marlena Prost

Approved by William Smart

Background to Amendment

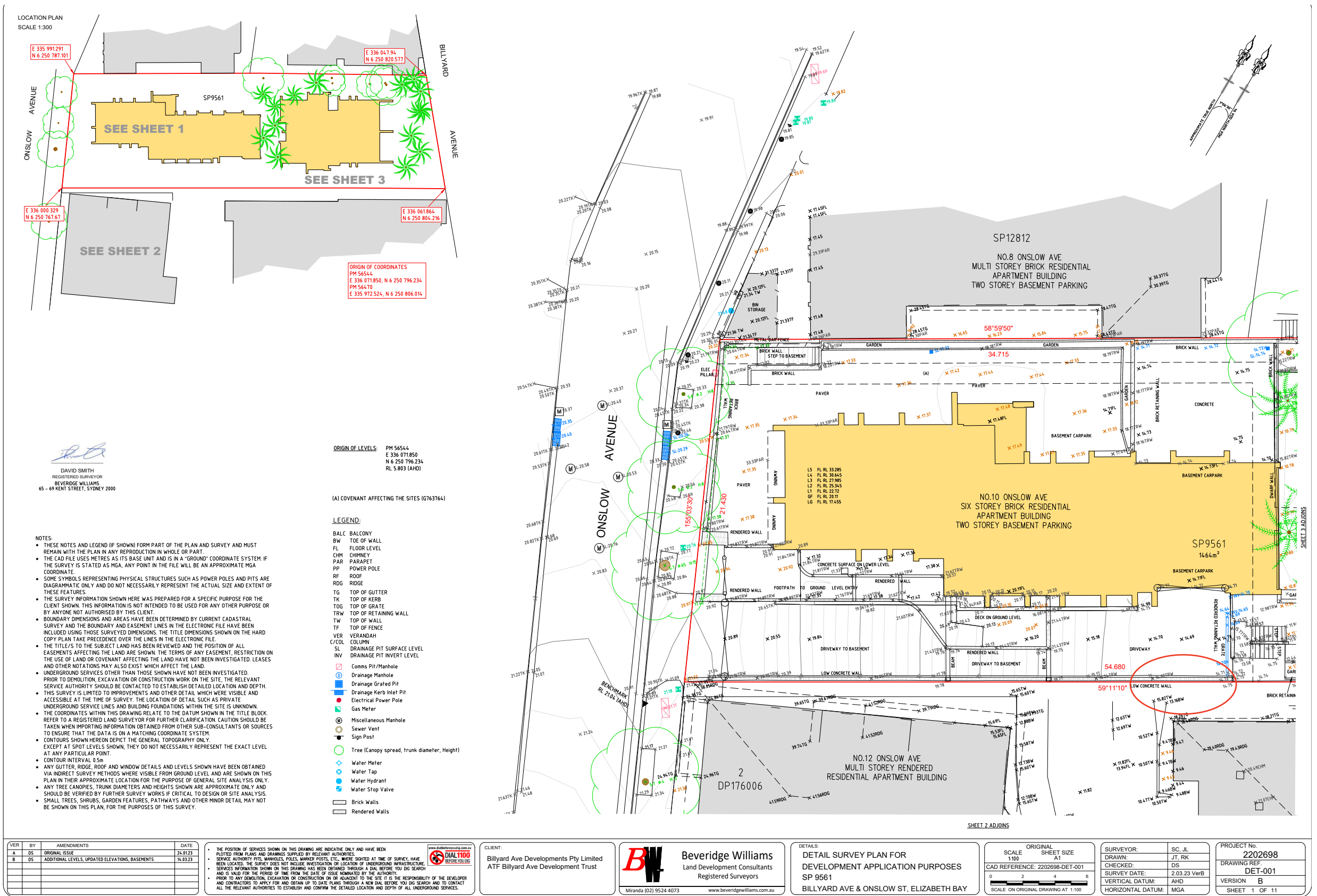
The Applicant and Applicant's team reviewed the 'Submission of Olivia Ross' in relation to the survey points to the east and west of the subject site, highlighted in red on page 4 of the Submission.

This review revealed an error in two RL's on the survey which were used to develop and extrapolate the current 3D height plane.

The following pages outline the details of these two survey points, together with the amended height plane.

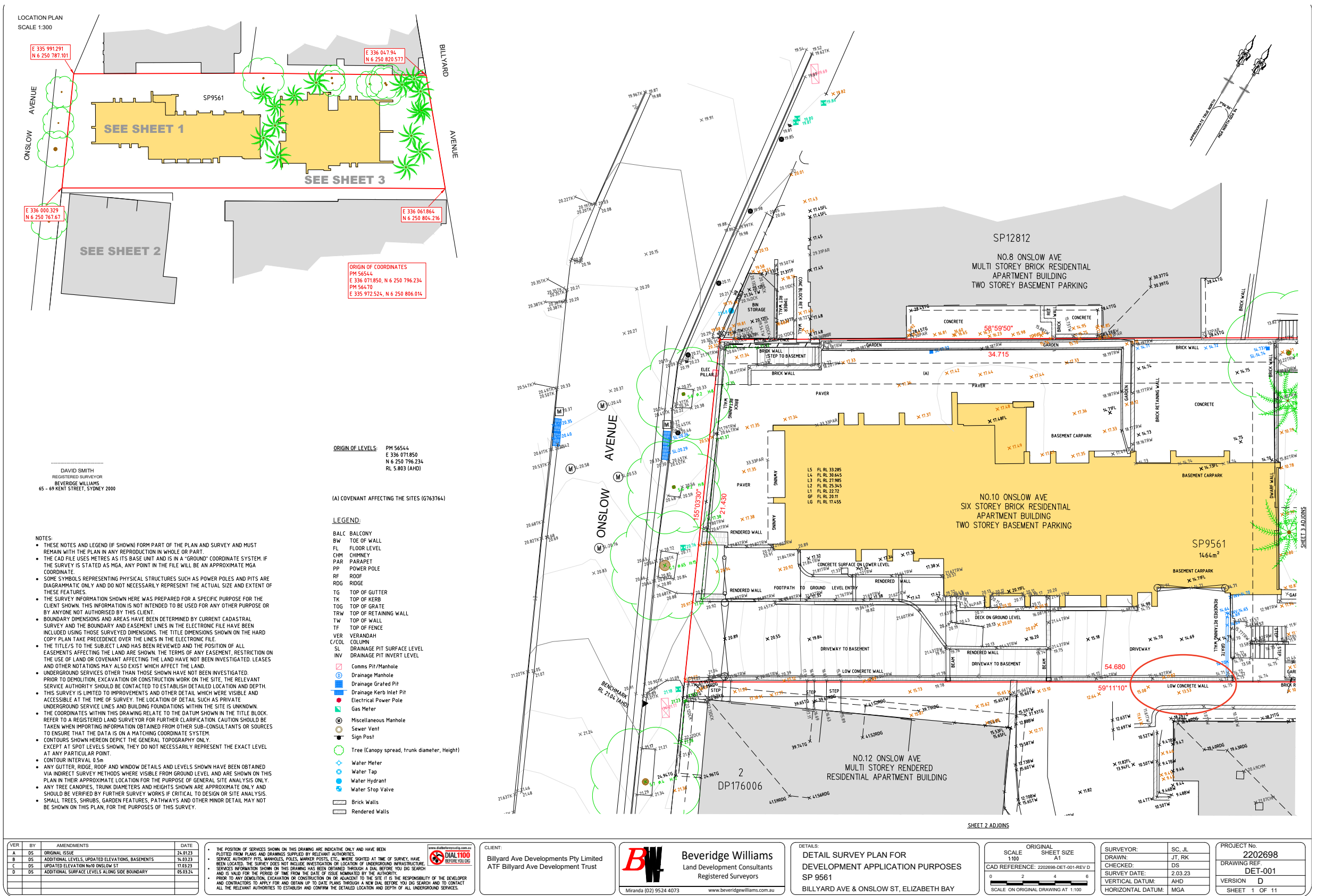
Summary of Site Surveys

Site Survey Rev B dated 14.03.23 submitted with original DA Submission dated 21.07.23



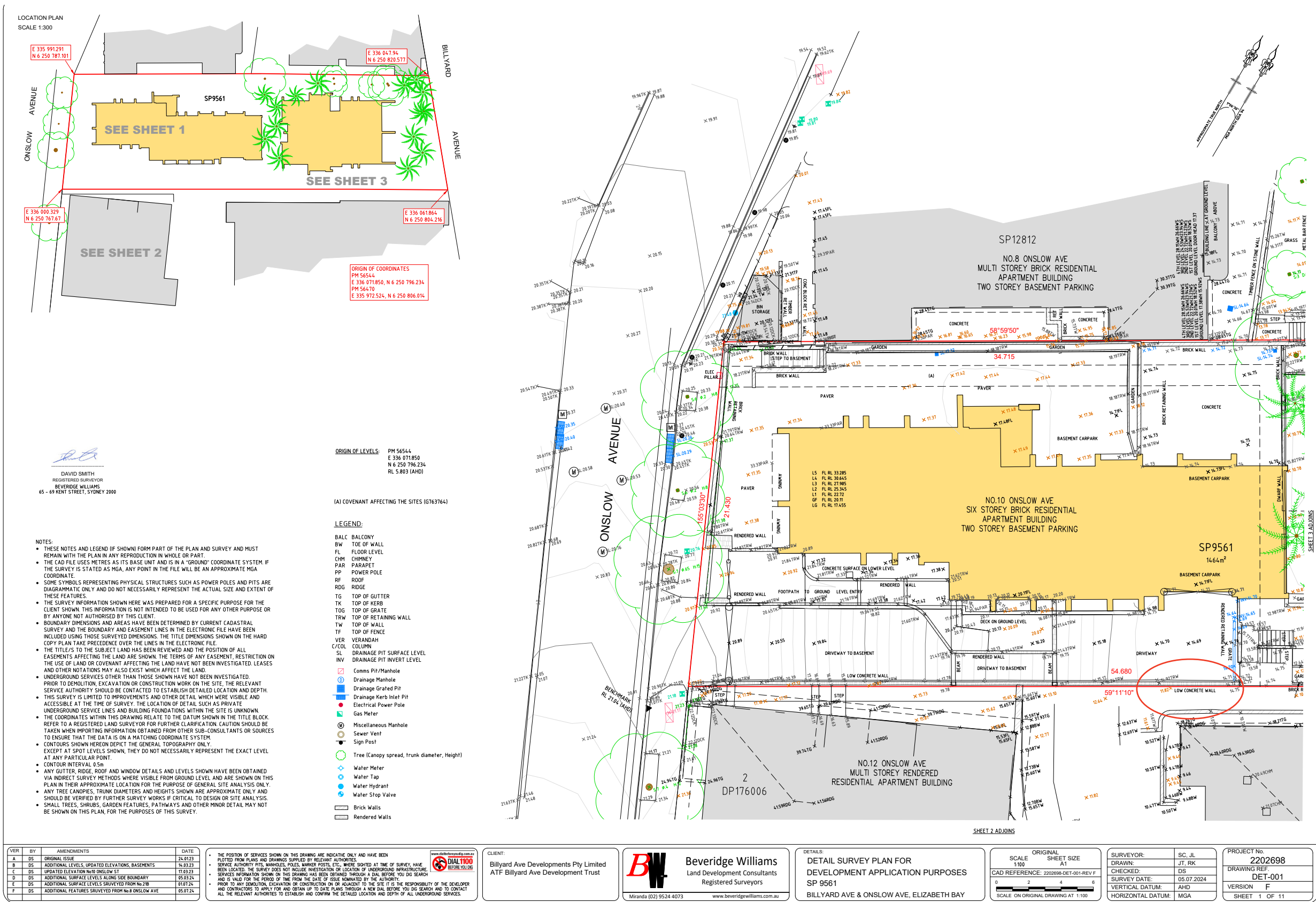
Summary of Site Surveys

Amended Site Survey **Rev D** dated **05.03.24** provided during 'Without Prejudice' Conferencing with Council



Summary of Site Surveys

Amended Site Survey **Rev F** dated **05.07.24** submitted with DA Re-Submission dated 19.07.24



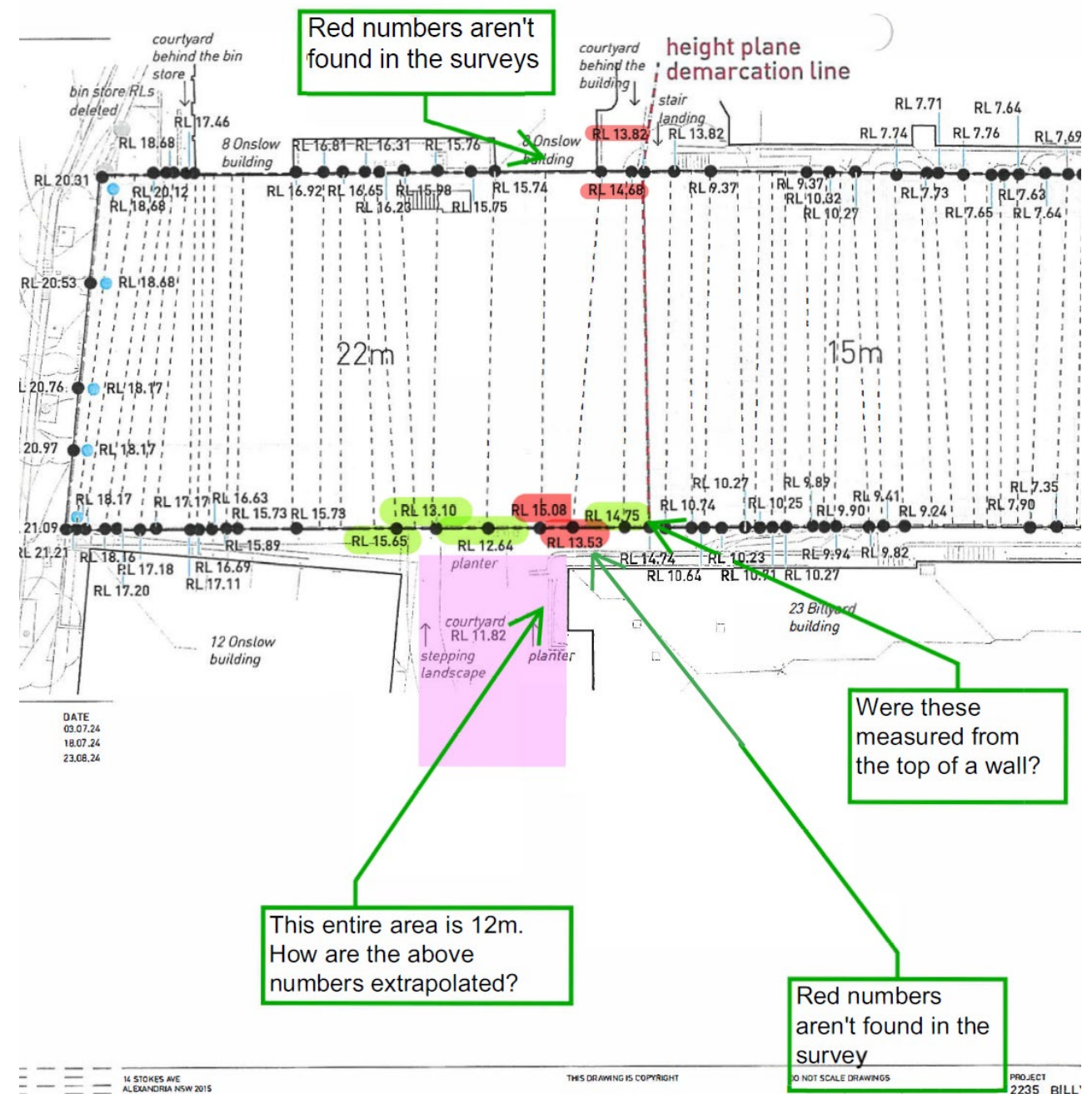
Olivia Ross' Objections

Wrong Precedent Still Technically Wrong?

Even when using the wrong precedent, Bettar, they have made confusing assertions.

The measurements they have provided for the site extrapolation do not make sense.

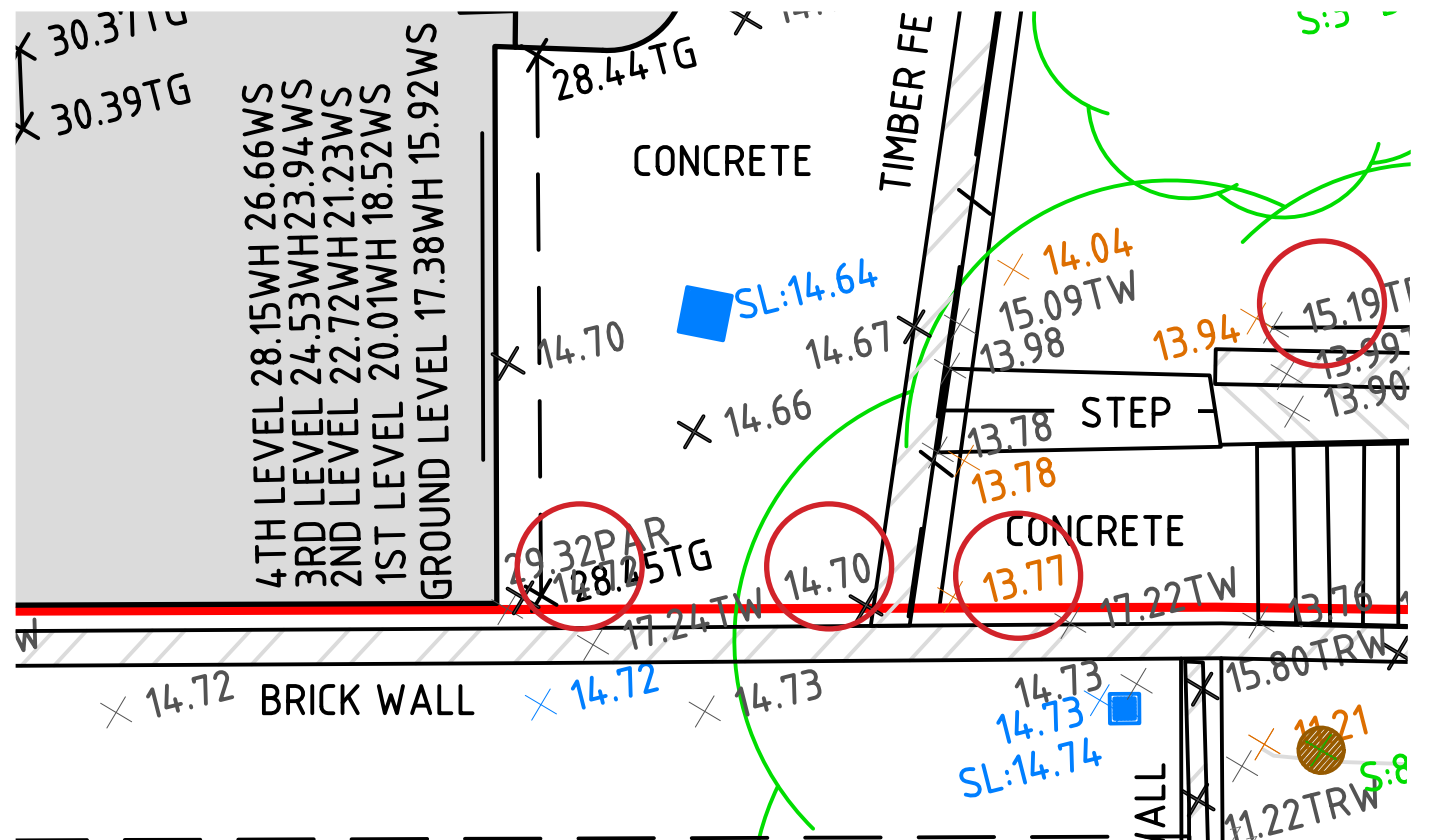
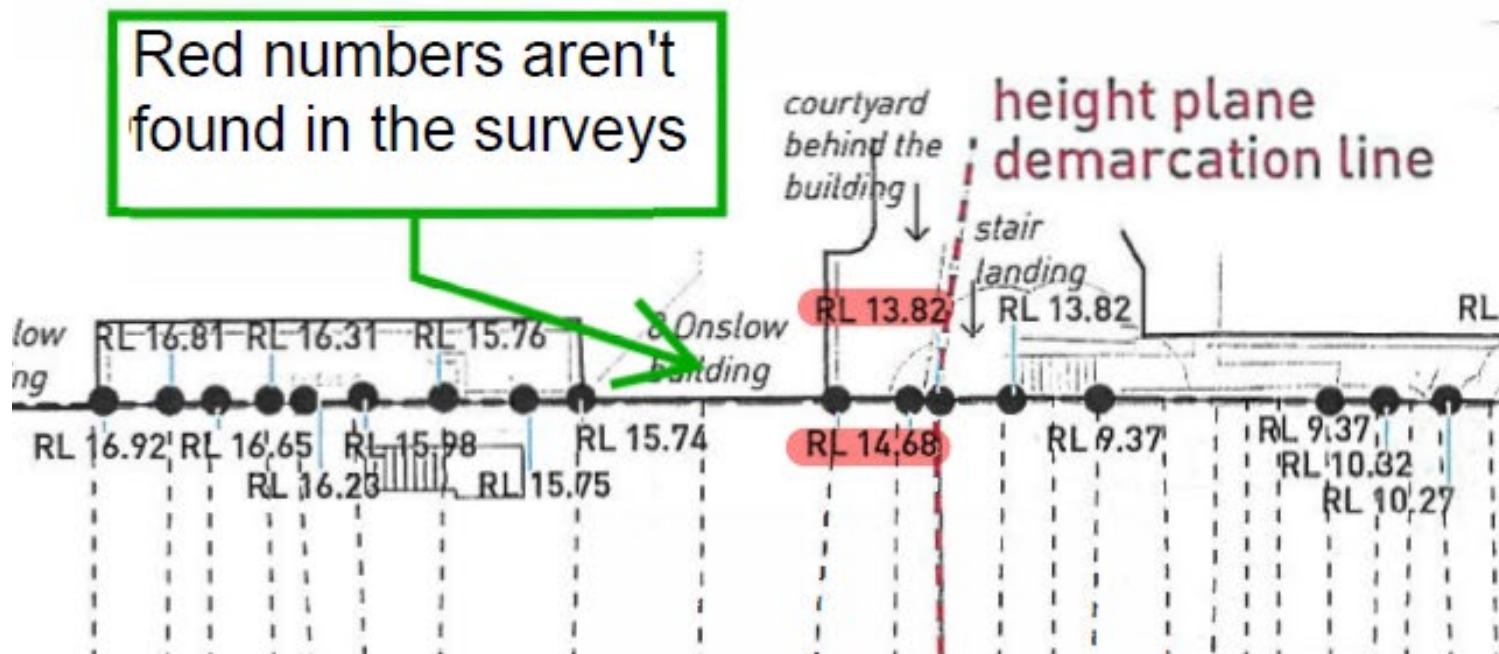
- The extrapolation is supposed to be representative of the conditions on the ground and either side. So why do some measurements appear to be taken from the tops of walls? Instead of the *ground*.
- Why do some measurements quoted not even exist in the survey at all? (red)



Survey - West Boundary

Minor differences between the survey and height plane extrapolation related to differences between the 2D survey and the 3D model.

These differences are extremely minor (between 2cm and 4cm) and do not have any impact on the height plane.



Excerpt from Olivia Ross' Submission

smart design studio

Amended Site Survey Rev F dated 05.07.24

21C Billyard & 10 Onslow

Survey - East Boundary

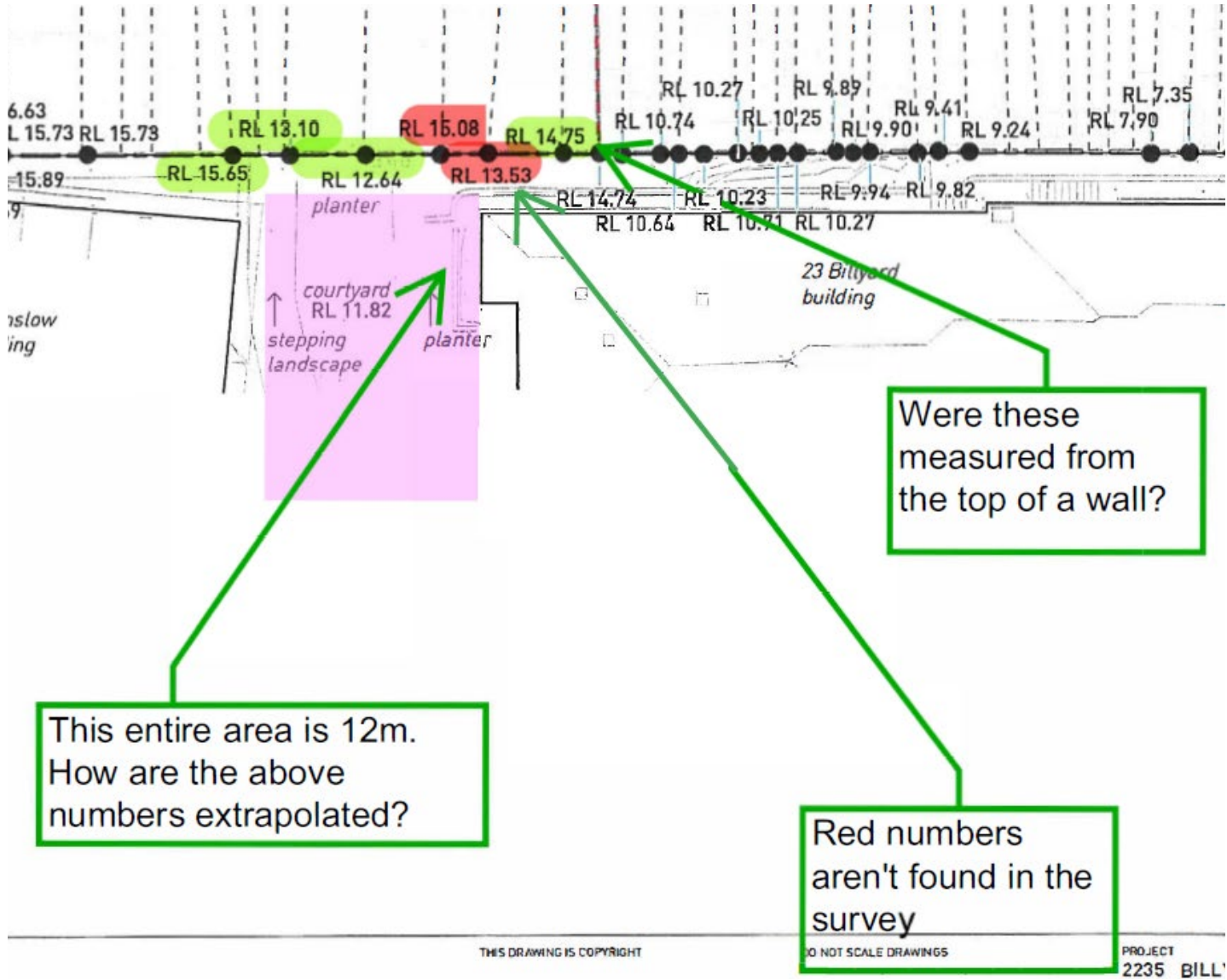
There was an error in two survey points being RL15.08m and RL13.53m, highlighted in red in the Submission.

These points were part of the survey data used to develop and extrapolate the 3D height plane. This was from additional survey information later requested by Council during the Without Prejudice conferencing.

In the updated 2D survey (Ref F dated 05.07.24), these two survey points (RL15.08m and RL13.53m) were deleted, and a new point RL11.82m was added.

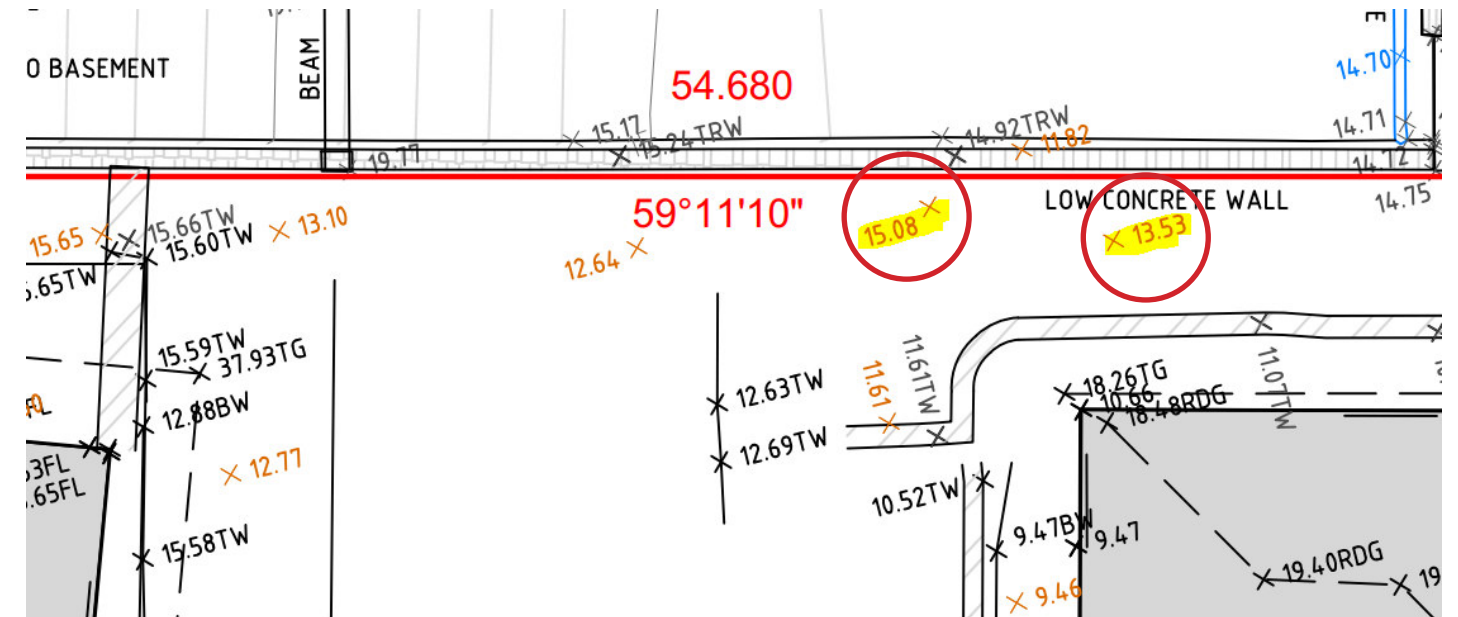
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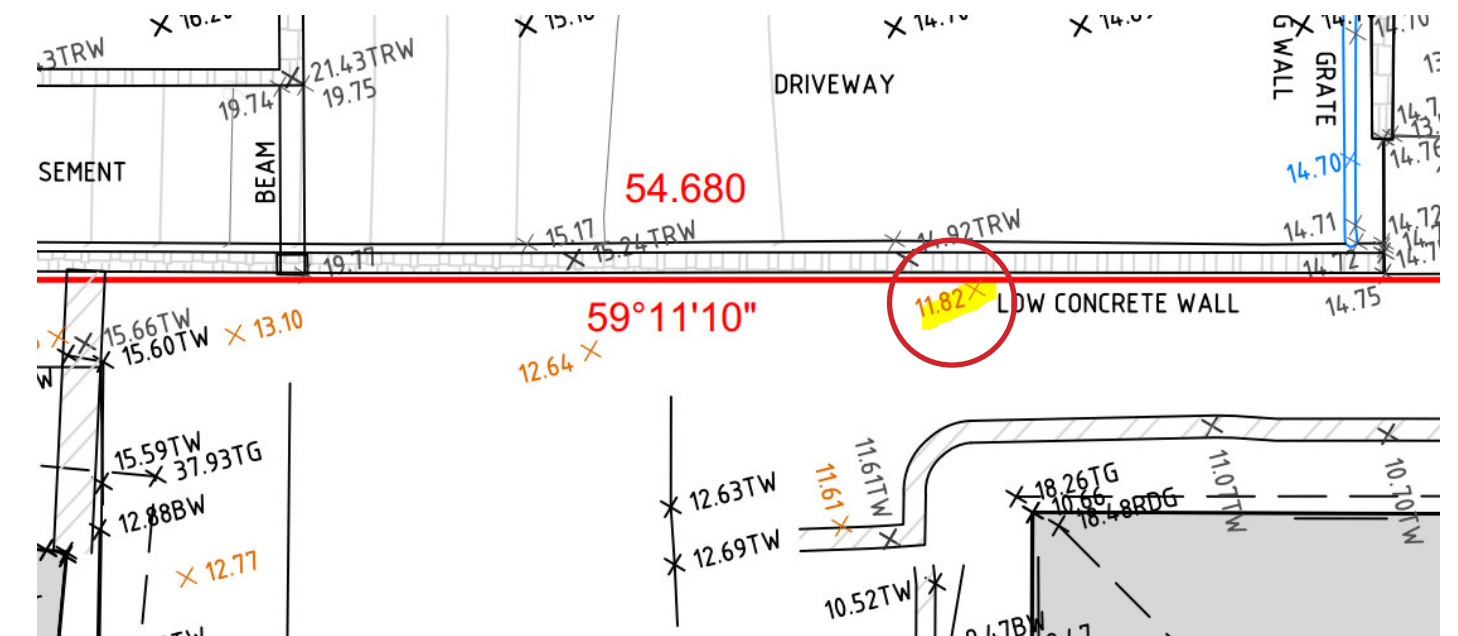


Excerpt from Olivia Ross' Submission

Survey - East Boundary



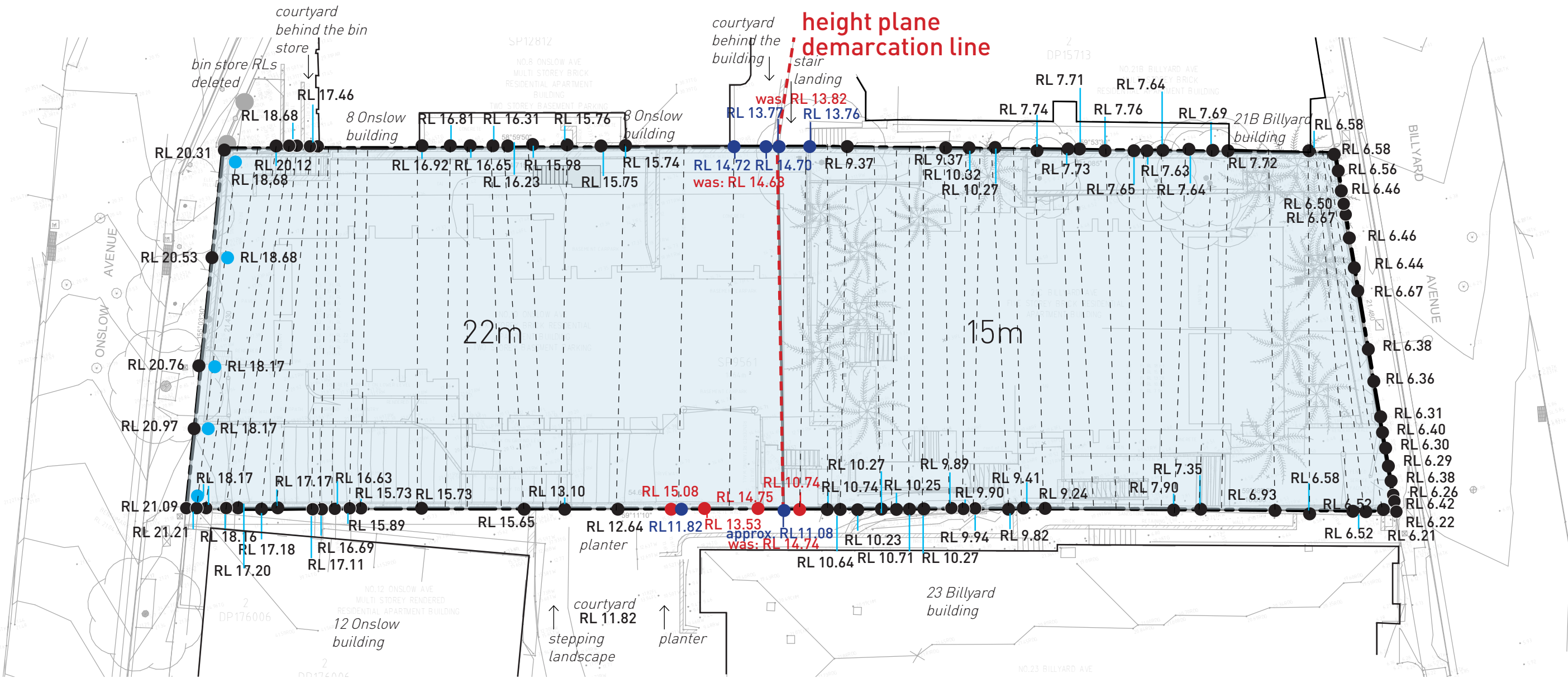
Excerpt from Survey Rev D dated 05.03.24



Excerpt from Survey Rev F dated 05.07.24

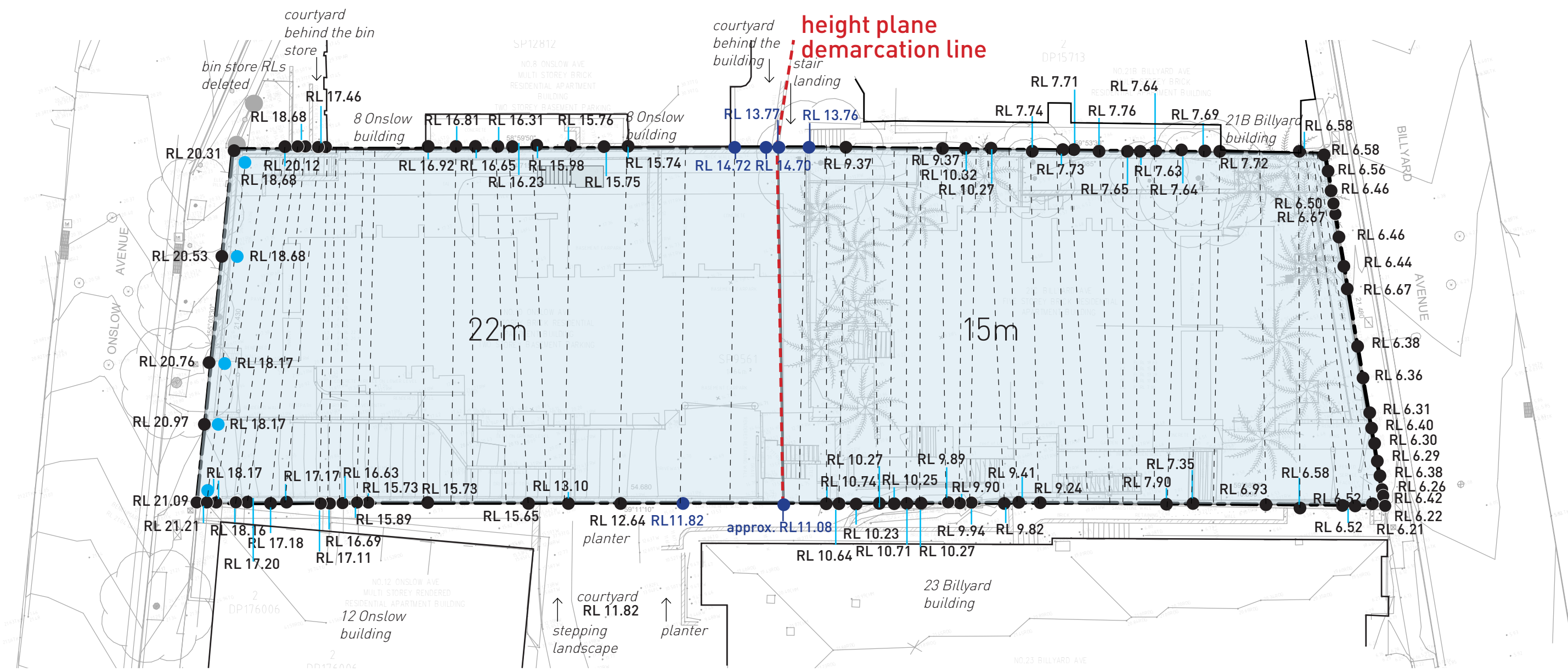
Bettar Height Plane - Amended Plan

- Removed Points
- Amended Points



Bettar Height Plane - Amended Plan

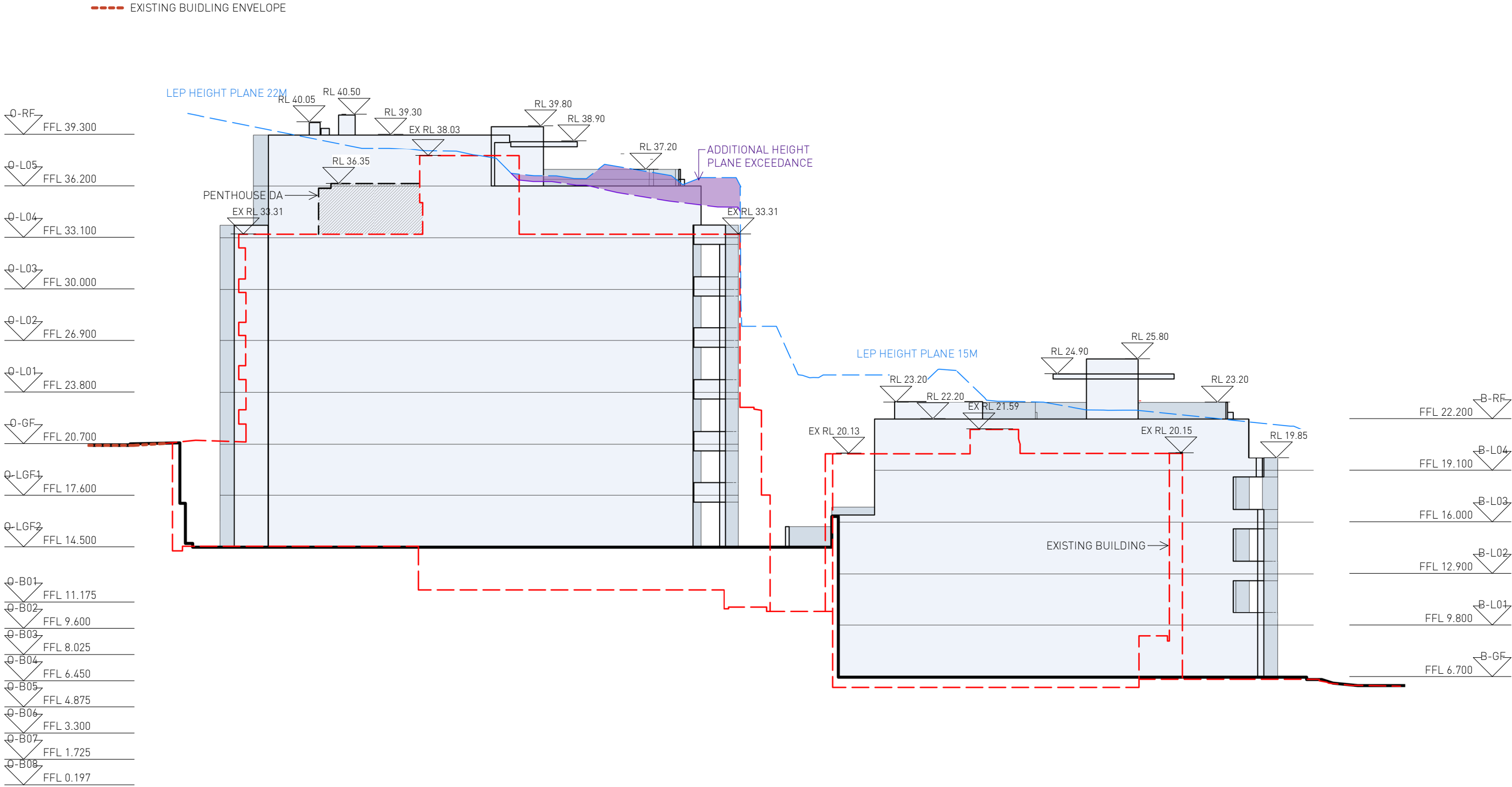
● Amended Points

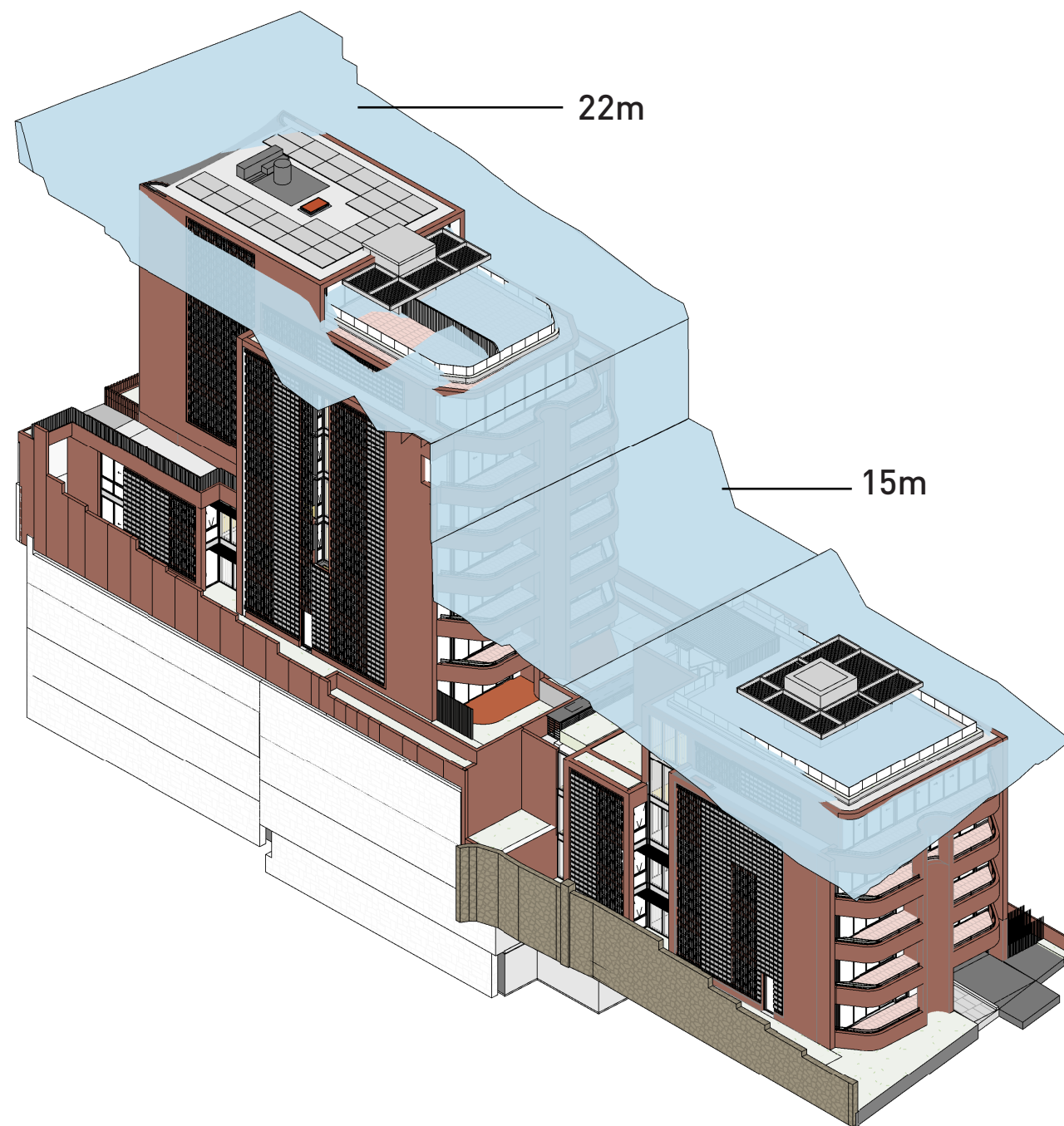


Amended Height Plane - Section Diagram (DA010 F)

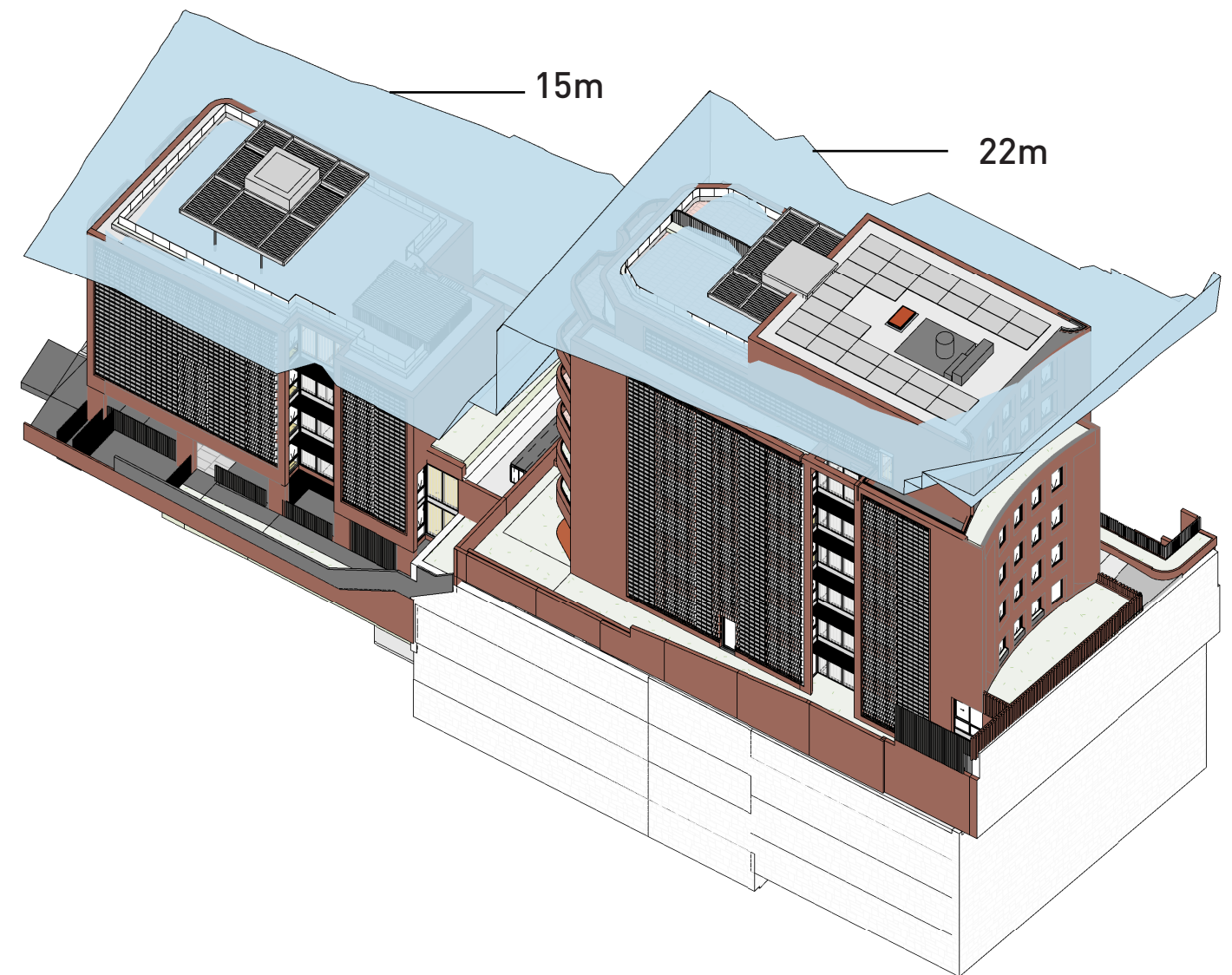
Current: DA Issue 09

Amended



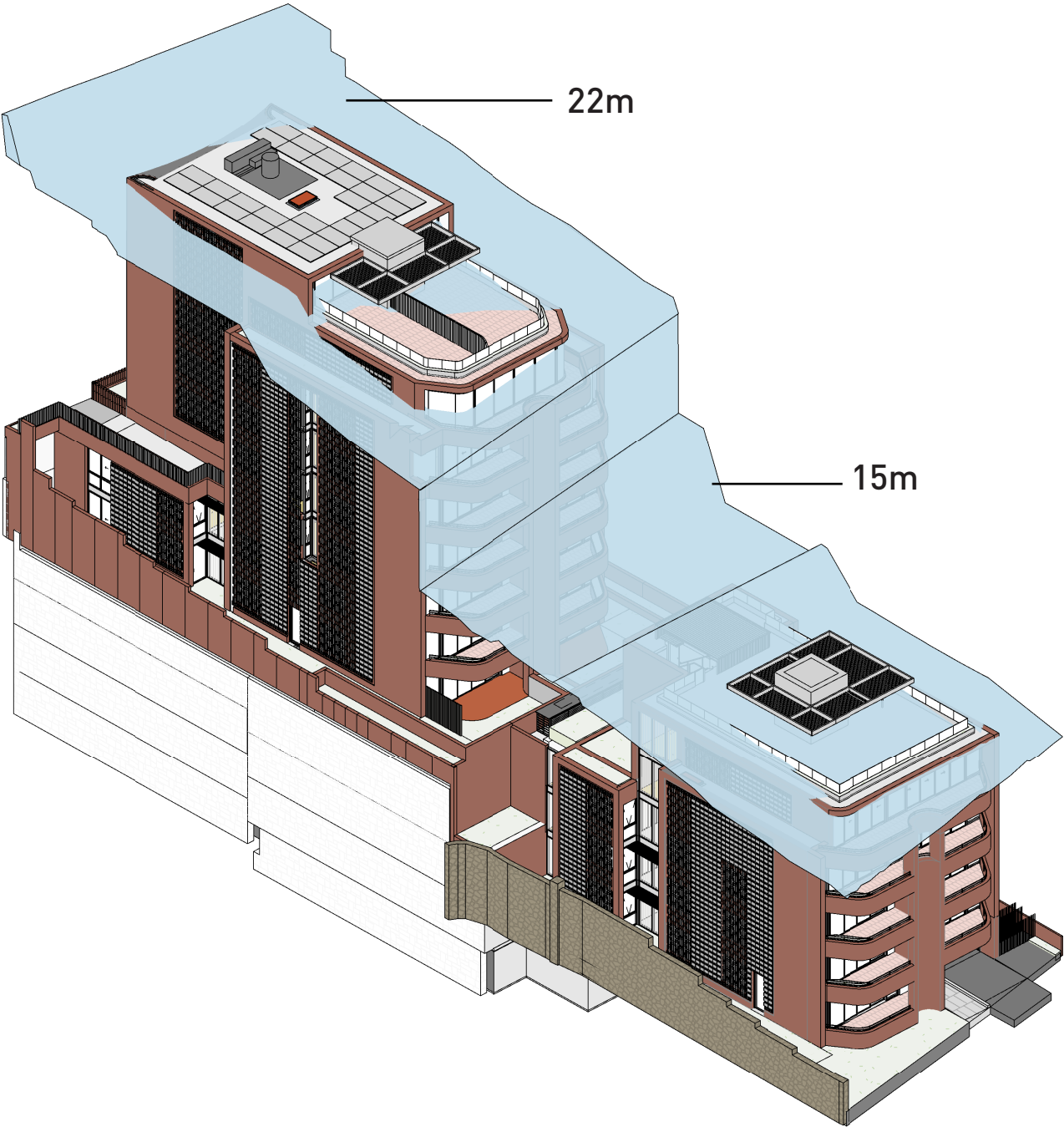


Billyard Ave

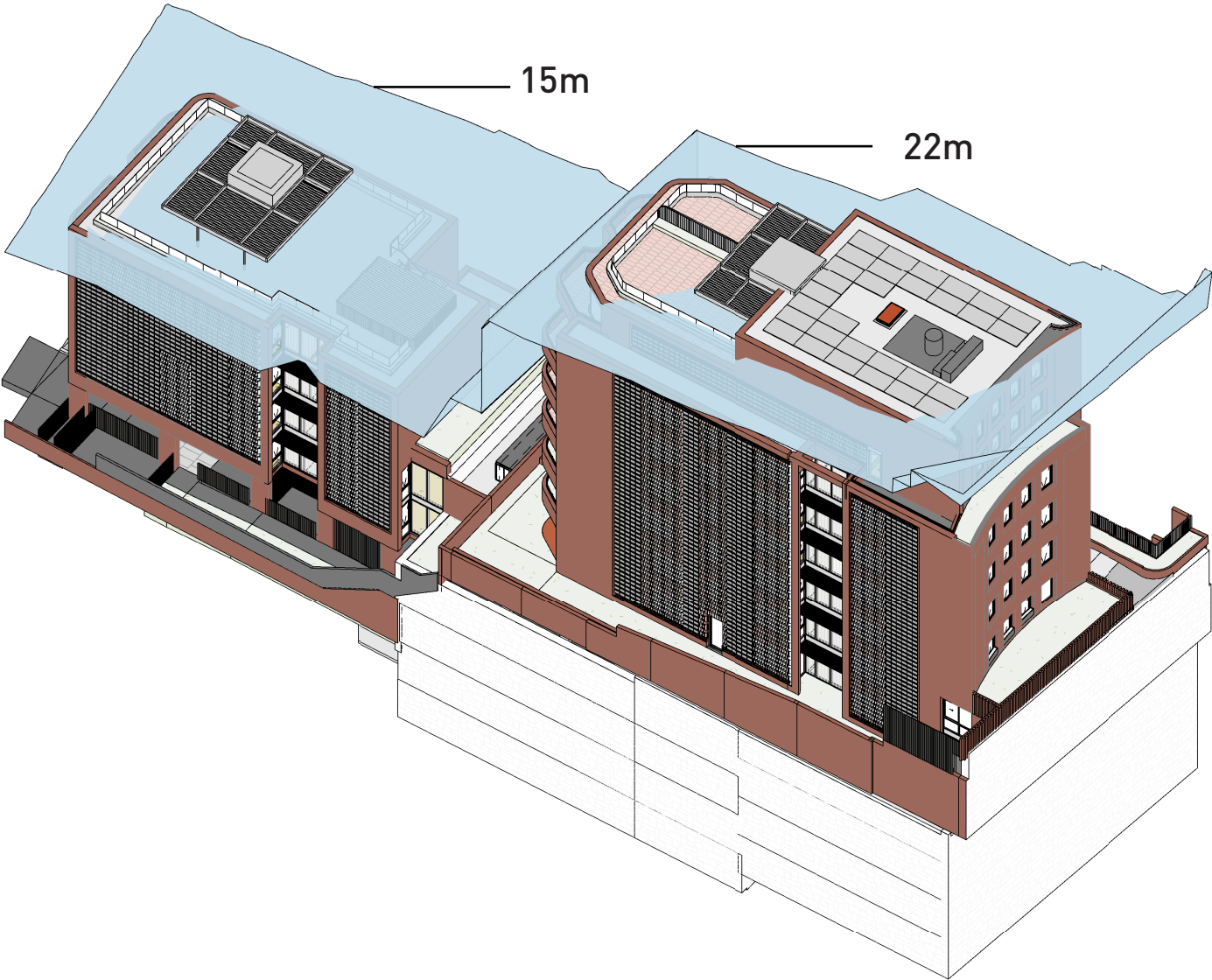


Onslow Ave

Bettar Height Plane - Amended



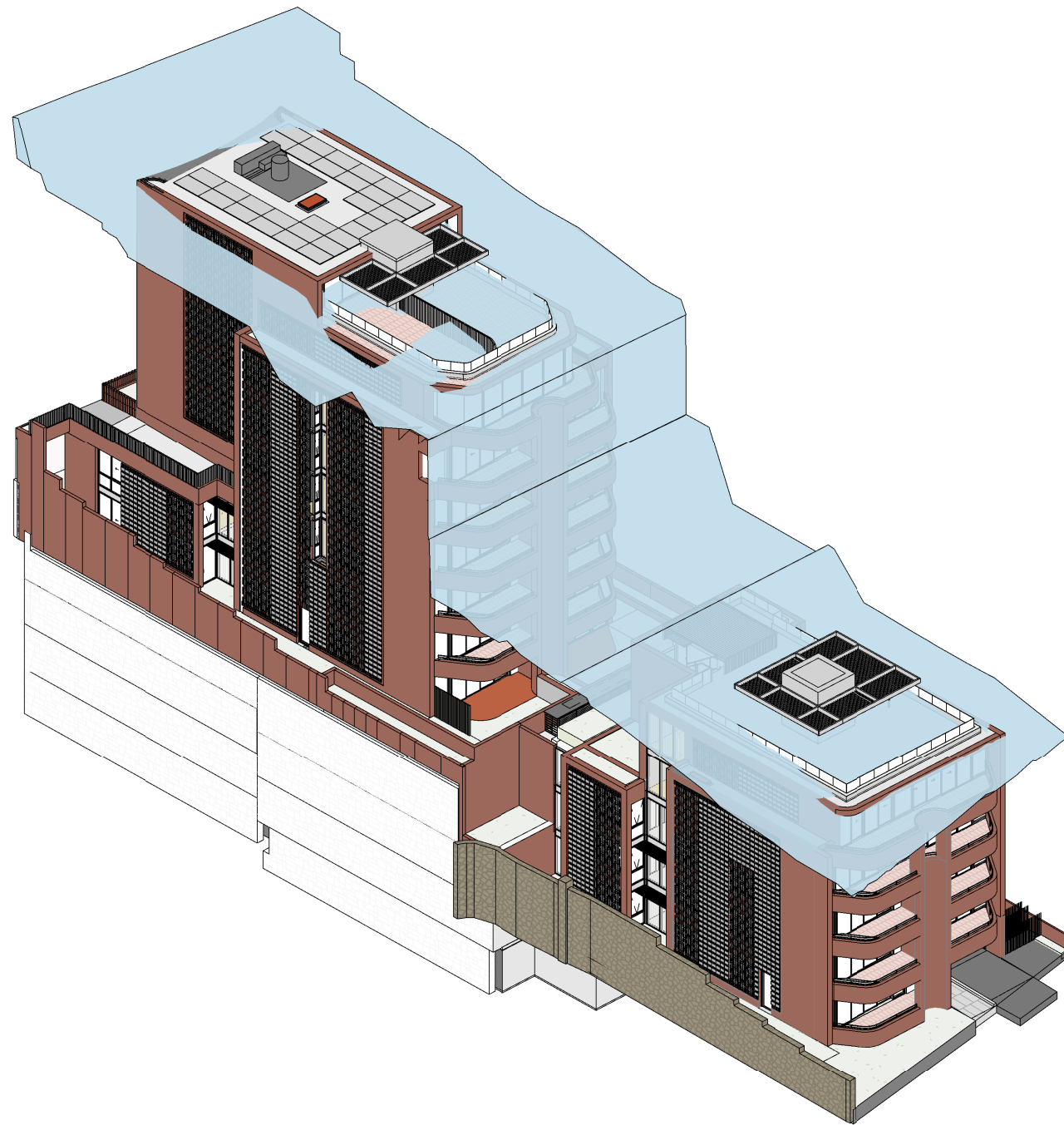
Billyard Ave



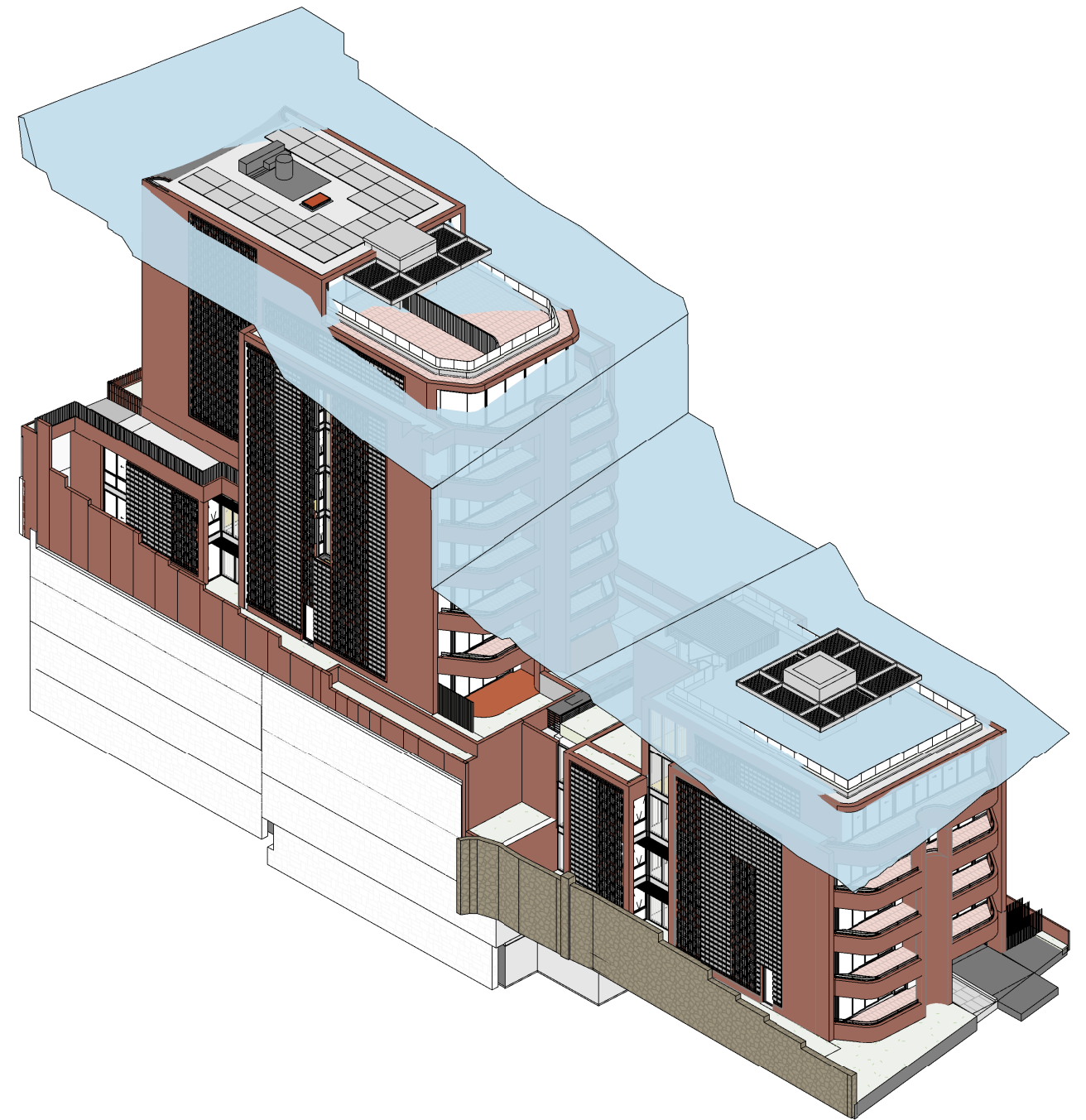
Onslow Ave

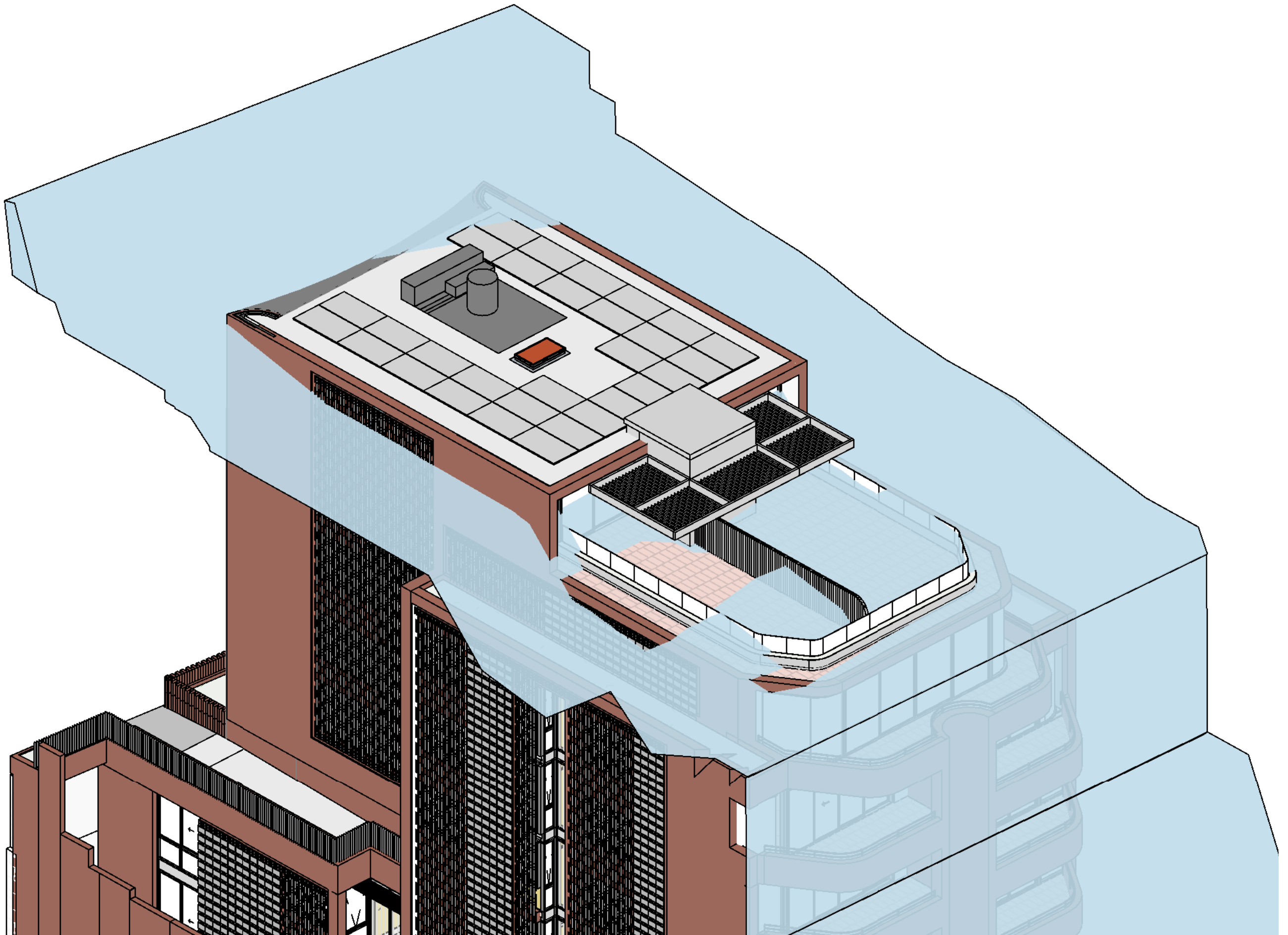
Bettar Height Plane - Comparison

Current: DA Issue 09

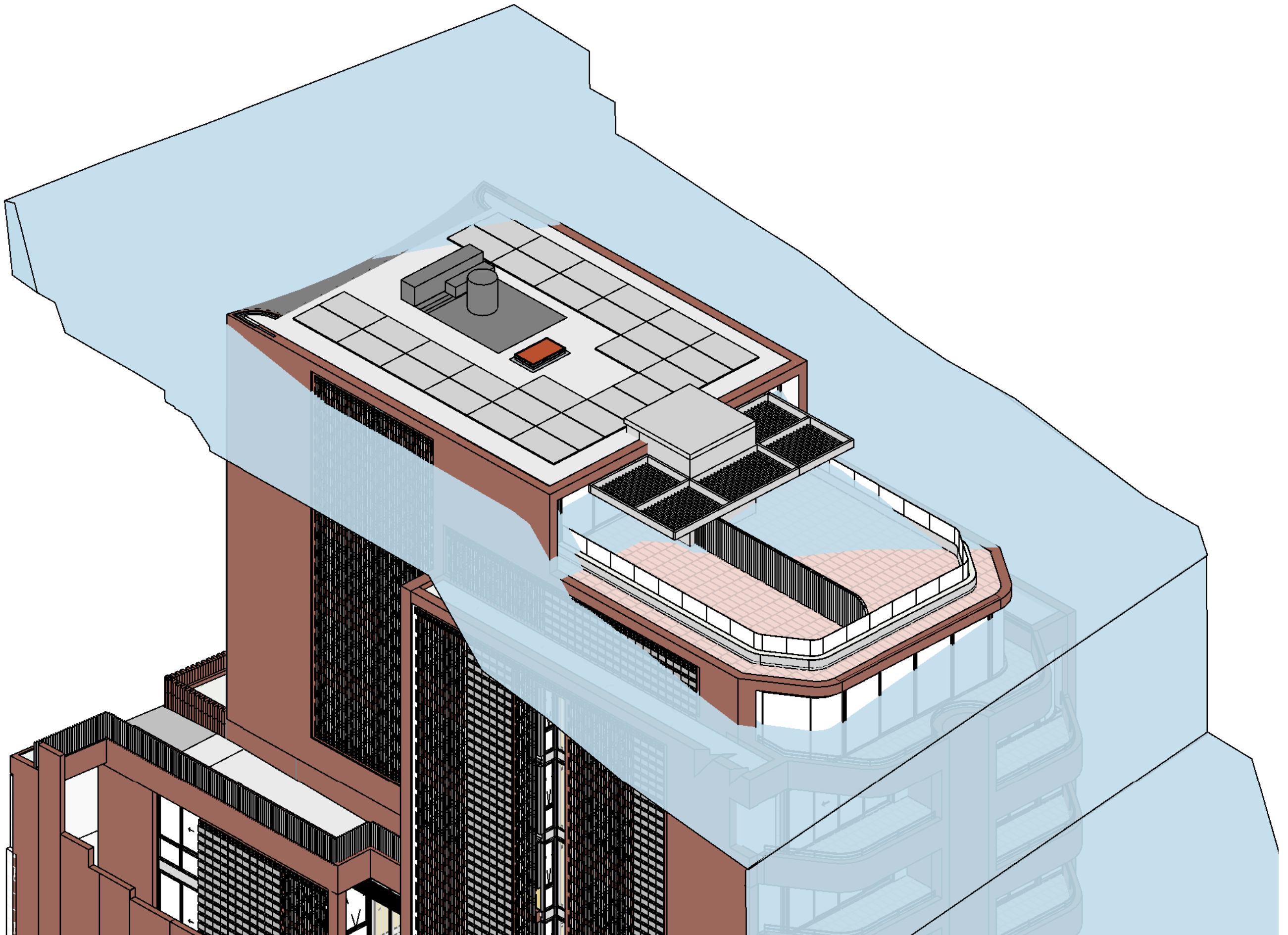


Amended

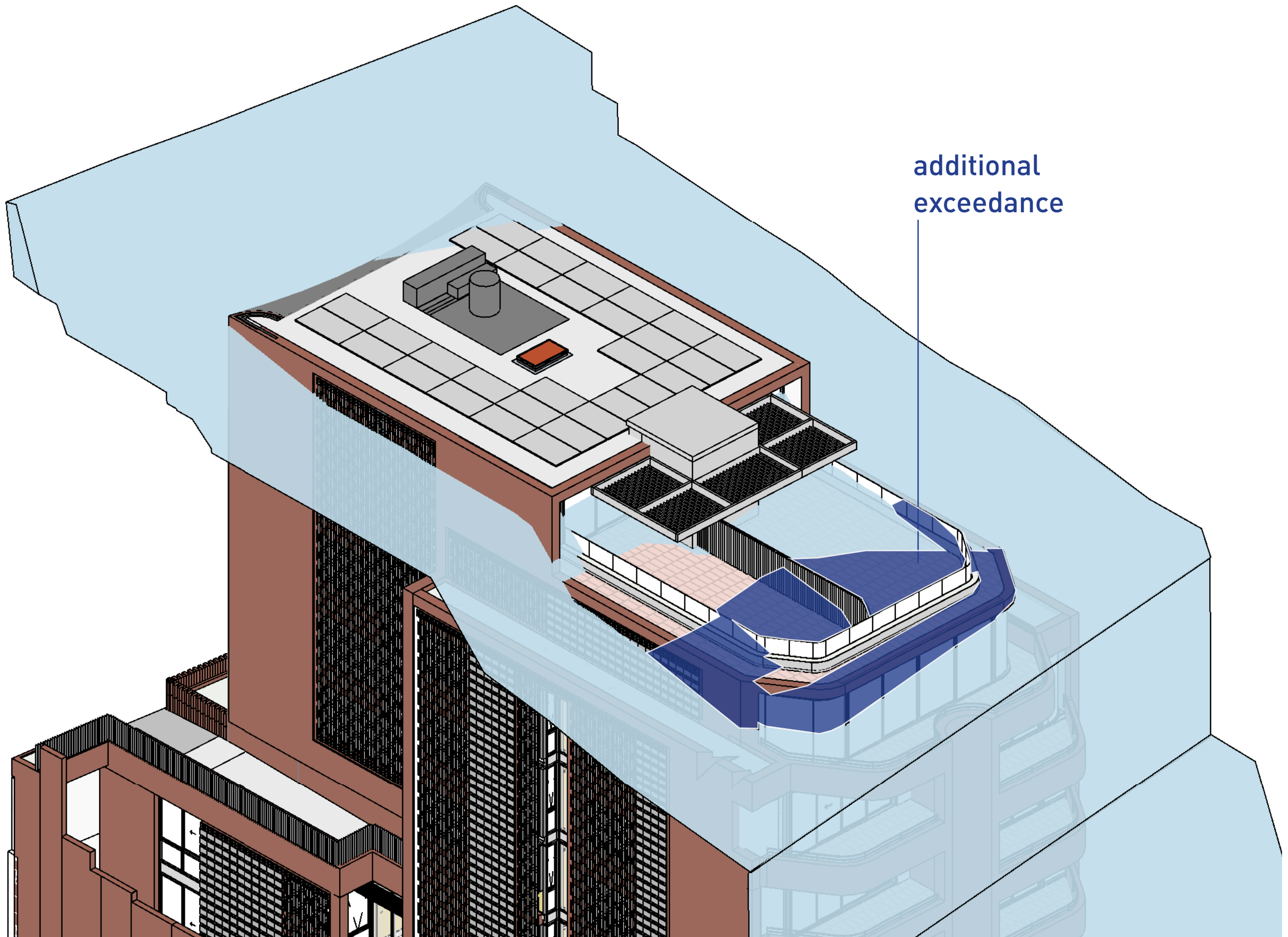


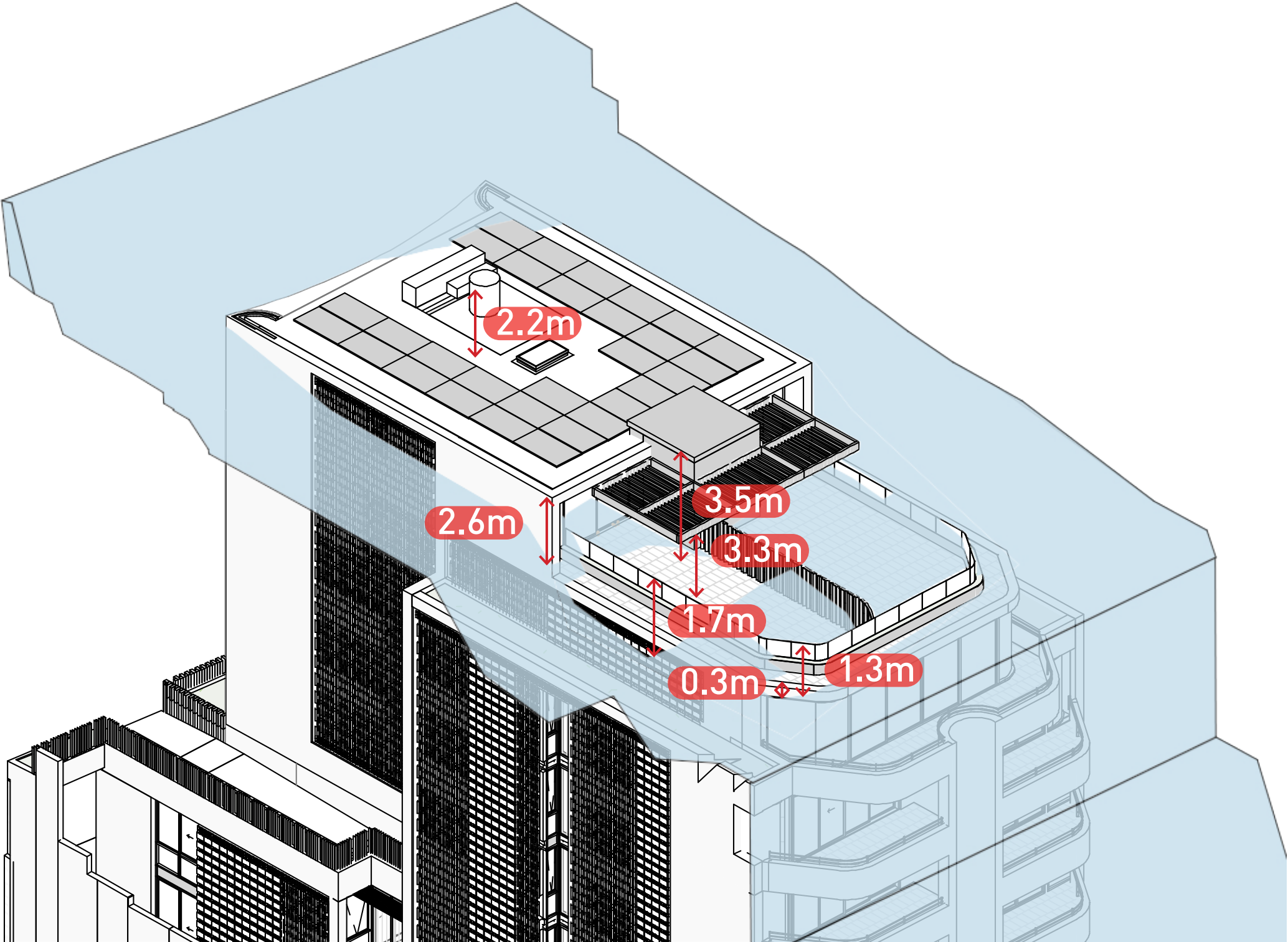
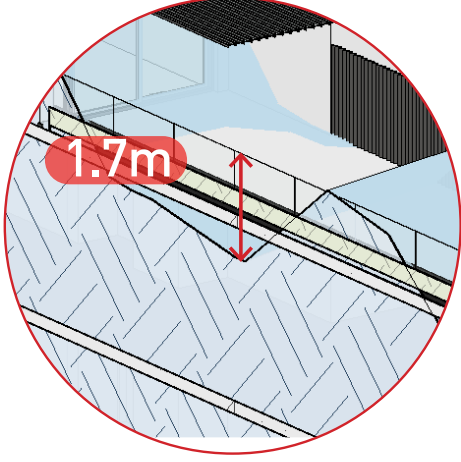
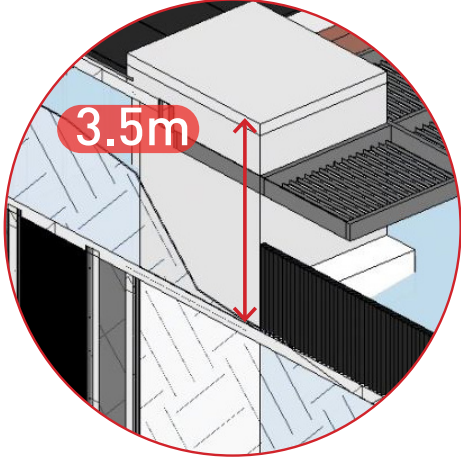
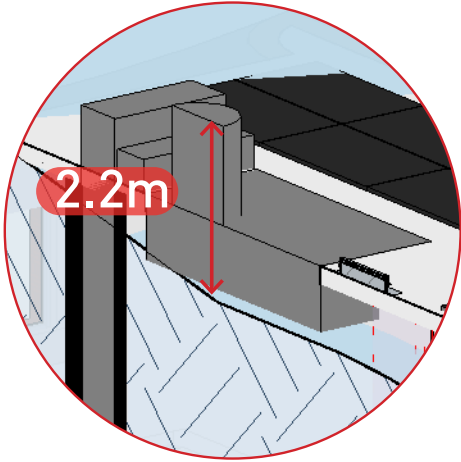
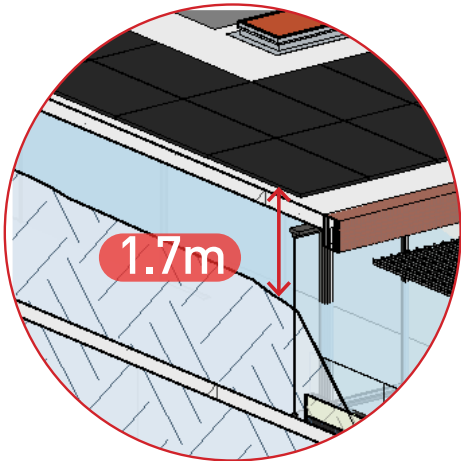


Bettar Height Plane - Amended

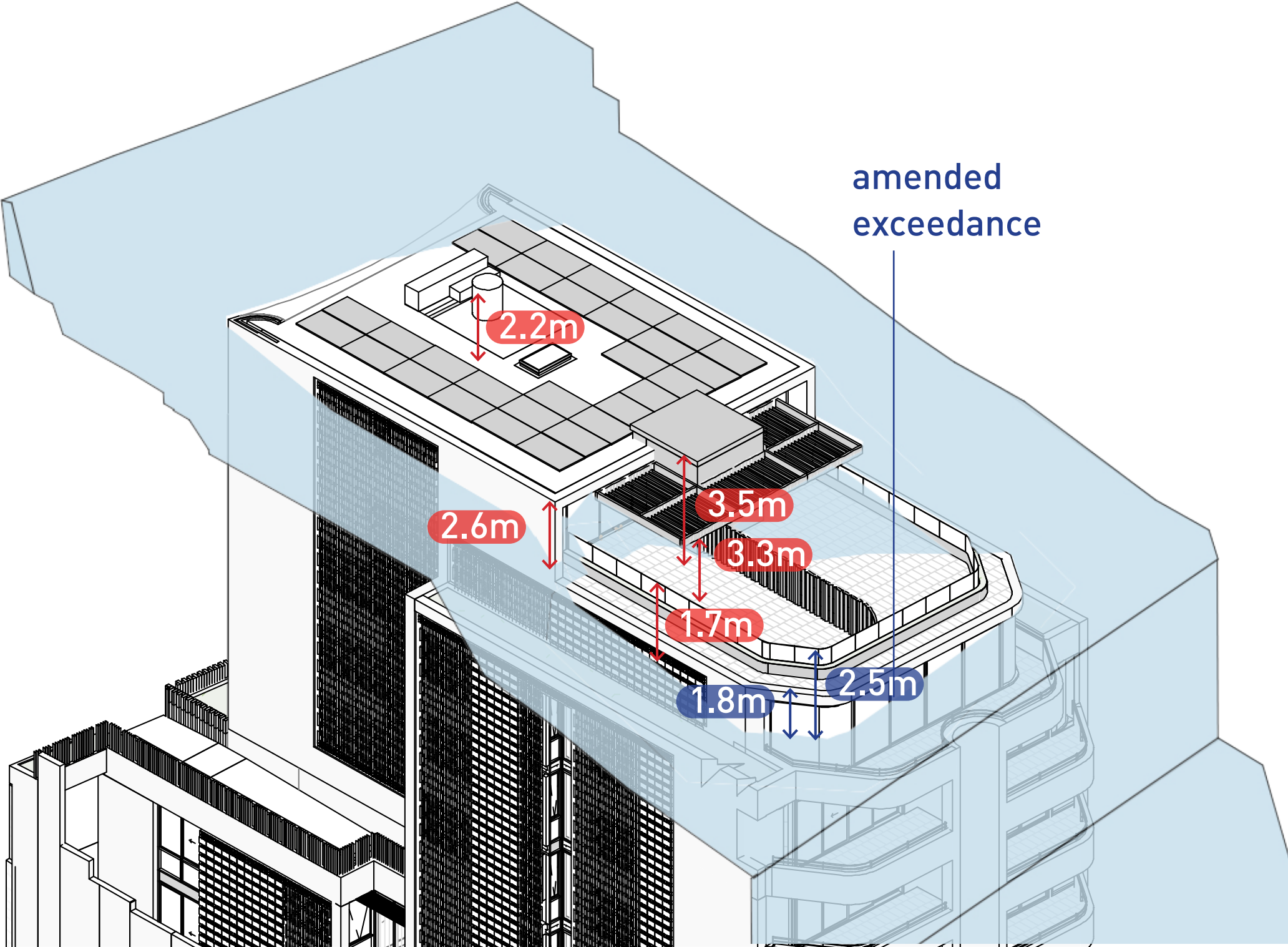
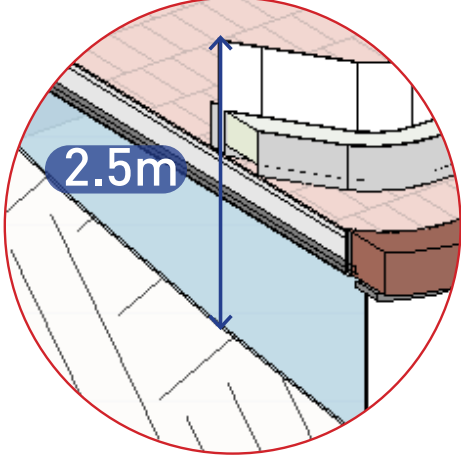
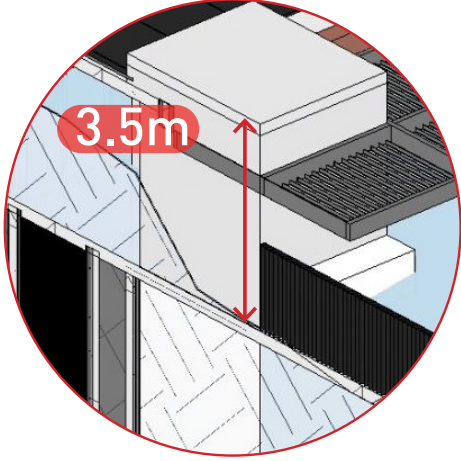
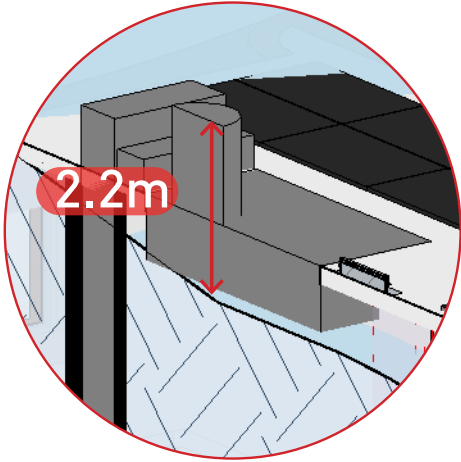
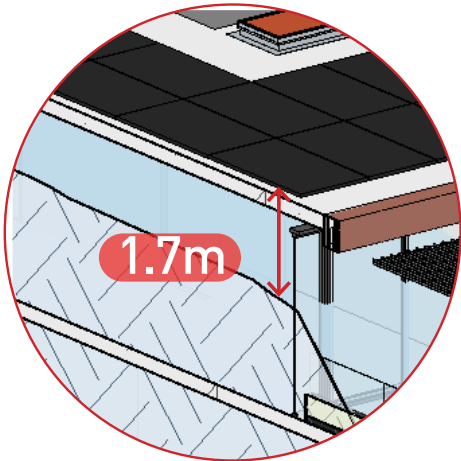


Bettar Height Plane - Additional Exceedance





Bettar Height Plane Exceedance - Amended



Conclusion

Whilst the building envelope and form has not changed in this amendment, the proportion of the building that exceeds the newly established LEP height limit has increased in the north-eastern corner of the Onslow Avenue building.

The building envelope has not changed, the environmental impacts such as overshadowing and view loss are unchanged.

In relation to view loss, all view impacts are still minor or less, reasonable and acceptable.

In relation to solar access, the overshadowing to neighbouring properties still complies with the requirements of the Sydney DCP 2012 and ADG

The experts agree that the resultant impacts between the two does not give rise to any unreasonable resultant impacts such as overshadowing and view sharing as a result of the breach.

Attachment B

Replacement Drawings – NatHERS Stamp

- DA ISSUE 07:**
10. Further cut backs to Onslow for solar compliance to 12 Onslow.
 11. Onslow Penthouse splayed and curved for solar compliance to 12 Onslow.
 12. Back of Billyard pushed down for solar compliance to 23 Billyard.

DA ISSUE 09A:
14. Height Plane Amendment



DWG TITLE
SECT A

DWG NO
DA450

REV
J

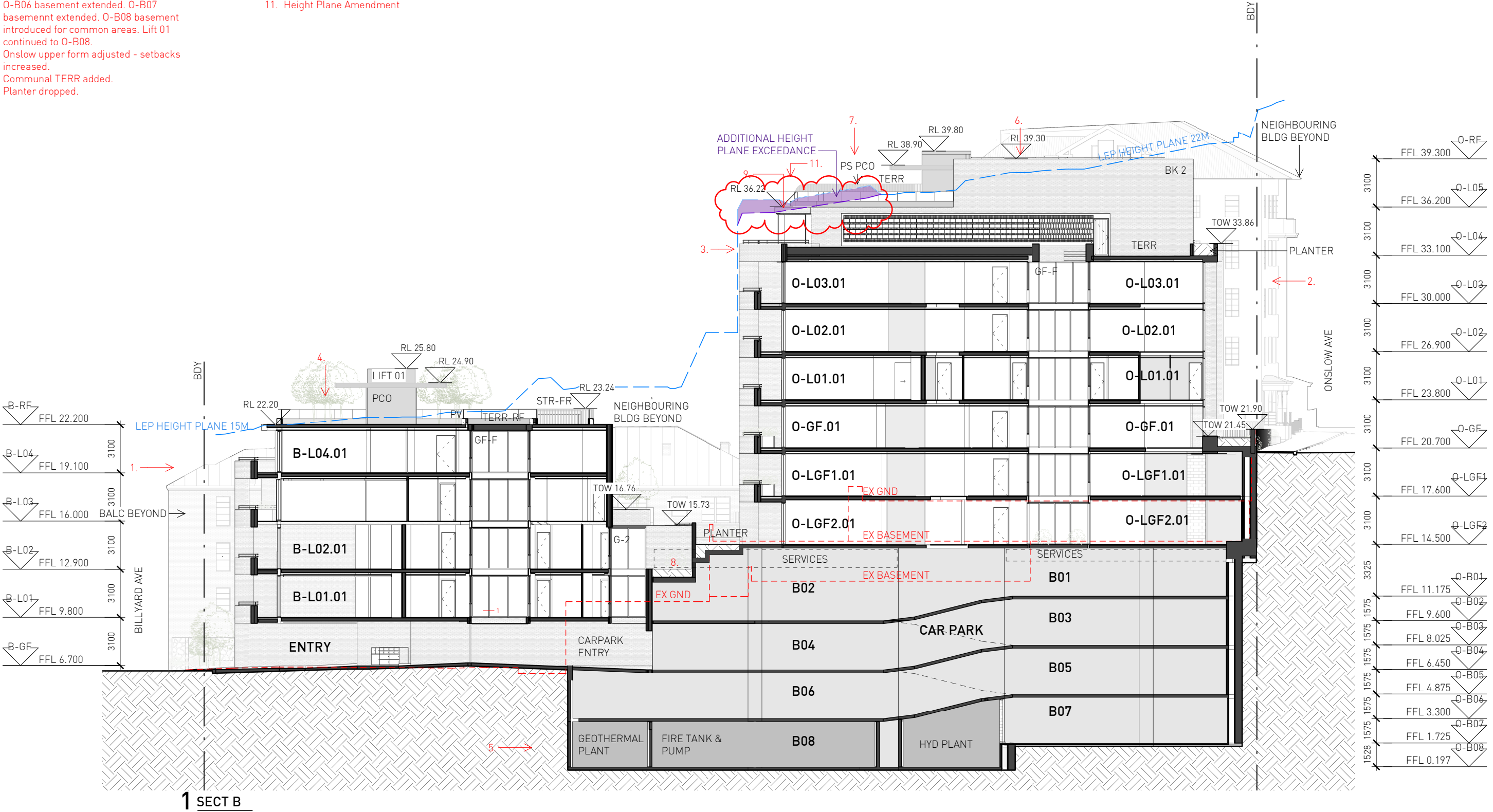


PROJECT
2235 BILLYARD 21C
DRAWN SENIOR QA APP'D
CL CM WS

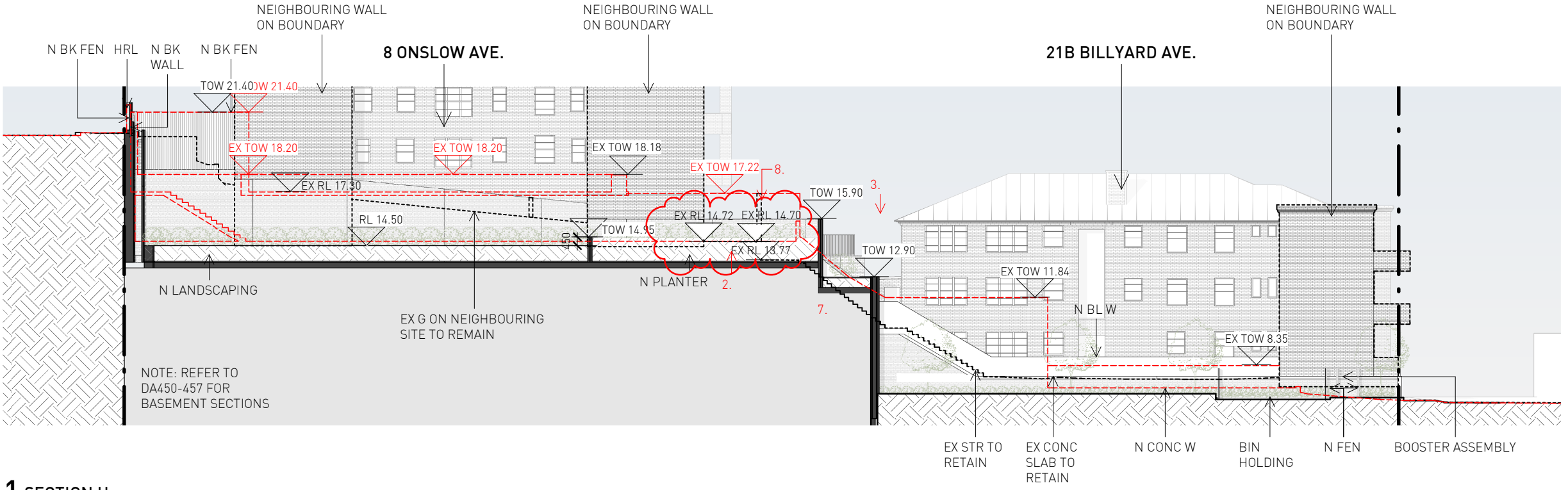
SCALE
1:250 @ A3 UNO

- 1. Billyard street setback increased by 1m.
- 2. Onslow street setback increased by 1.8m.
- 3. Height Plane & demarcation line adjusted.
- 4. Billyard Rooftop area allocated to communal open space. Private Penthouse Terrace removed.
- 5. O-B06 basement extended. O-B07 basement extended. O-B08 basement introduced for common areas. Lift 01 continued to O-B08.
- 6. Onslow upper form adjusted - setbacks increased.
- 7. Communal TERR added.
- 8. Planter dropped.

- DA ISSUE 07:
- 9. Onslow Penthouse splayed and curved for solar compliance to 12 Onslow.
- DA ISSUE 09:
- 10. Detailing of walls & facade elements shown.
- DA ISSUE 09A:
- 11. Height Plane Amendment



- LEGEND**
- EXISTING LEVELS/ STRUCTURES ON SUBJECT SITE TO BE REMOVED
 - EXISTING LEVELS/ STRUCTURES ON NEIGHBOURING SIDE TO REMAIN



1 SECTION H

ISSUE	REASON	DATE
A	DA ISSUE 05	03.07.24
B	DA ISSUE 05	09.07.24
C	DA ISSUE 06	18.07.24
D	DA ISSUE 07	23.08.24
E	DA ISSUE 08	26.09.24
F	DA ISSUE 09	23.10.24
G	DA ISSUE 09A	01.11.24

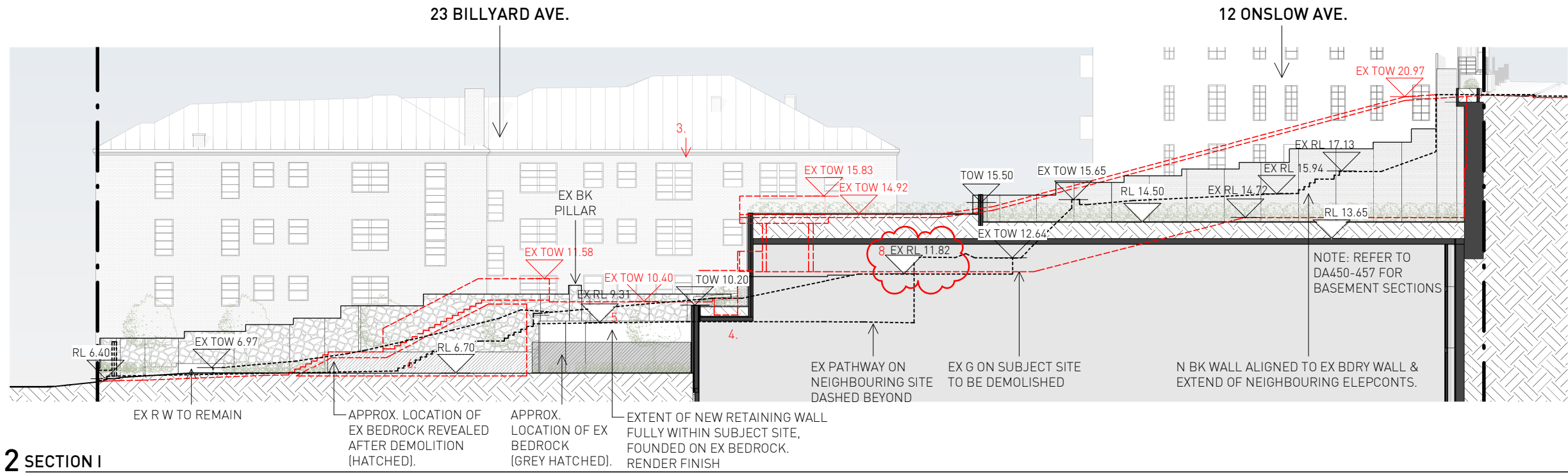
1. New drawings added.
2. 8 Onslow Courtyard level updated.
3. Planters level dropped.

DA ISSUE 07:
4. Planter dropped.

DA ISSUE 08:
5. New retaining wall added and deep soil adjusted.
6. Further description of bedrock provided.

DA ISSUE 09:
7. Graphical error corrected.

DA ISSUE 09A:
8. Existing RLs amended.



2 SECTION I