

MICHAEL ROBILLIARD AND ASSOCIATES PTY LTD

REQUEST FOR A VARIATION TO DEVELOPMENT STANDARD CLAUSE 4.3 MAXIMUM BUILDING HEIGHT PURSUANT TO CLAUSE 4.6 OF NORTHERN BEACHES COUNCIL PLEP (2014)

1. Introduction

Clause 4.6 of NORTHERN BEACHES COUNCIL PLEP(2014) allows for flexibility in the application of certain development standards to achieve “better outcomes for and from development by allowing flexibility in particular circumstances.”

The proponent seeks approval for alterations and additions to an existing dwelling which is proposed in part, to extend above the maximum permitted building height of 8.5m .

The top of the proposed lift will be 8.71 m above the existing ground (210mm above the limit

The numerical variation to the height which is sought is reflects that the original site was excavated by approximately 2541mm in this location.

As part of the design process, the lift has been carefully placed on the building to reduce any perceived impact of the height of the building. The lift is well below the existing roof

As detailed in this clause 4.6 submission, strict numerical compliance with the clause 4.3 and the maximum 8.5m building height prescribed in PLEP 2014 is unreasonable and unnecessary in the circumstances and a better planning outcome is achieved, by supporting the requested variation. Notwithstanding the height encroachment, the proposal achieves the objectives of the building height control applying to the site and the C4 Environmental Living Zone objectives, without impacting on neighbour amenity, the environment or streetscape.

2. The relevant development standards

Clause 4.3 of PLEP 2014 sets out requirements in relation to height of buildings and prescribes a maximum building height of 8.5m for the subject land. Building height is measured as height above existing ground level, to the highest point of the building.

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3. Requested variation to the standard

The proponent does not seek an increase in maximum building height

The proposed variation is due to the 2.54m of excavation that the 'existing ground level is well below height limit measured against the 'original' or 'natural' ground level for the top of the roof forms at RL101075 to exceed the maximum height control by 221mm (or 2.6%). The height has been measured from the skillion roof above the lift to the underside of the slab below it. It is relevant to note that the existing maximum roof height is 2.85 metres above the proposed roof and this higher roof will not change

4. Requirements of clause 4.6 – Exceptions to development standards

The objectives of clause 4.6 are as follows:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”

Clause 4.6(3) requires that a request to contravene the control, to demonstrate:

- “(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.”

In considering whether to grant consent for a development that contravenes a development standard, a consent authority must be satisfied that:

- “(i) the applicant’s request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out, and
- (iii) the concurrence of the Secretary has been obtained.

These matters are addressed below in Sections 5 and 6.

5. Compliance with the development standard is unreasonable or unnecessary

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons.

The proposal achieves the objectives of the maximum building height control.

The objectives of the building height control are noted and commented upon in the following assessment.

The objectives for the height control are as follows:

NORTHERN BEACHES COUNCIL PLEP(2014)

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

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The amenity of neighbouring properties will be maintained. As demonstrated in the submitted documentation and within the SEE, the buildings to the north and south will not be detrimentally affected by shadow cast by the new addition. Shadow diagrams form part of the submission.

The views from the adjacent neighbours have been assessed in a view study made by Michael Robillard and Associates. This indicates that there will be no loss of views or view impact, the principle of view sharing has been achieved. None of the views affected change the compilation of the view. This has been achieved by:

- Maintaining the existing view corridors which run beside the dwelling on each side within the established side setbacks. In this regard the dwelling as proposed is adequately spatially separated from its neighbours by side setbacks more than minimum

requirements. In particular, the spatial separation to the north is maintained by the driveway and ROW.

- The proposed lift is below the roof line and, almost buried into the building

- The remainder of the building complying with the maximum building height when it was built.

to ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality and positively complement and contribute to the physical definition of the street network and public space.

The proposed dwelling is located on Whale beach road within a variety of built forms and is

Building bulk, scale and height is similar to the existing established built form on the eastern and western sides of the street. Therefore, the dwelling will not be visually obtrusive in the streetscape, or as viewed from the east (ocean), which is not a widely held view of the site due to the inability to access this view except from nearby developments and from the water.

The proposed dwelling is compatible with both the existing and desired future character of the area, including building height and roof form. Building heights range from 2 to 4 storeys. Traditional and more contemporary pitched roof forms are predominate.

The proposal achieves the objectives of the C4 Environmental Living Residential Zone

The zone objectives of the C4 Environmental Living are noted and commented upon below:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To maximise public transport patronage and encourage walking and cycling.

The proposal achieves the zone objectives as detailed in the following assessment.

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

The proposal is for a single dwelling house within a residential environment and meets the housing needs of the community by providing a contemporary dwelling which provides a higher level of occupant amenity, commensurate with expectations for coastal living.

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

The proposal is for a single dwelling and therefore this dwelling will contribute to the range of housing needs in this area,

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

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The proposal is for a single detached dwelling. This zone objective is not applicable.

To maximise public transport patronage and encourage walking and cycling.

The site's location will continue to provide excellent access to transport options and given the location, encourage walking and cycling.

Compliance would result in a poorer planning outcome

One of the objectives of Clause 4.6 is to allow better planning outcomes to be achieved. In this case a substantially better planning outcome is achieved by allowing for some flexibility in relation to the building height control.

The non compliance is not detrimental to views from the public or private domain. The non compliance will not impact upon solar access or privacy are not detrimentally affected by the small area of non compliance with minimal gain in terms of building bulk and scale and poor design outcome.

The proposed alterations and additions to the existing building to install a new lift into the existing building will not impact Whale Beach road streetscape.

Lack of impact

As noted in the above discussion and in the Statement of Environmental Effects, despite the numerical building height non-compliance, the environmental and visual qualities of the locality, streetscape and amenity of surrounding properties will be maintained to substantially the same extent, as a development that is of a numerically compliant building height.

6. There are sufficient environmental planning grounds to justify contravening the development standard

The planning objectives of the subject development standard seeks to achieve predominantly two storey built forms. The proposal achieves the objectives of the development standard in the context of a site which is surrounded by much taller buildings including buildings to the north which are all four storeys in height.

Strict application of the maximum building height standard would be unreasonable as the proposed lift has no impact and is below the existing building height. A positive planning

outcome is achieved in this instance by not strictly complying with the building height and wall height standards, as demonstrated in this clause 4.6 submission.

Supporting a building design that suitably responds to site constraints and context, without adversely impact on the environment, character or amenity of the locality is appropriate and by also providing for a better planning outcome, justifies contravening the subject development standards.

Council must also be satisfied that the proposal meets the objectives of the standards and the objectives of the subject zone. The proposal meets the objectives of the maximum building height standard, as discussed above and as detailed in the SEE and also meets the objectives of the R3 Medium Density Residential Zone.

Also in acting in the Secretary's concurrence role, Council must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

In relation to (a), the proposed height variation is minor and is not of any State or regional significance.

In relation to (b), there is no public benefit from maintaining the standard as there is no adverse impact on the public domain or neighbour amenity, the proposal is generally consistent with other relevant planning controls and a better planning outcome is achieved. The building height standard should be applied with some degree of flexibility on sites within neighbourhoods which have been developed with taller buildings than envisaged by the current planning controls. In this instance, the PLEP is a 2014 planning instrument while the vast majority of the buildings within the visual catchment of this site are well in excess of this standard. This is very unlikely to change and therefore in order that new development sits comfortably within the existing context, Council must exercise flexibility within such neighbourhoods and precincts. We note that Council has supported other Clause 4.6 variations for buildings to exceed the height limit within this precinct for variations in excess of the requested variation.

As noted above enforcement of the control would result in a poorer planning outcome, which is not in the public interest.

In relation to (c), there are no other matters that require consideration.

7. Conclusion

The proposed building form and height is generally consistent with the established 2 storey building scale in the locality and is compatible with the existing and desired future character and streetscape, as envisaged in the planning controls for the C4 Environmental Living Residential Zone.

The development, in the form proposed, responds to existing built form on the site, site topography and conditions and the siting of neighbouring buildings. It provides for an appropriate building typology, density, scale and height, with no material environmental,

streetscape or amenity impacts. The proposal is consistent with the objects of the EP&A Act. Requiring 100% compliance is unreasonable and unnecessary in this case, as it would not result in any material benefit and in relation to urban design or amenity. As demonstrated in this submission, requiring strict numerical compliance would create a less desirable planning outcome.

Some flexibility with respect to the application of the building height control is appropriate on a site where alterations and additions are proposed to an existing building and where development context, such as the height and form of the established built form suggests a more considered application of development standards. The additional building height, above the nominated standard is modest in extent. The only material height encroachment relates to the top of the pitched roof forms which are well considered in regard to their contribution to the existing streetscape of Brighton Boulevard.

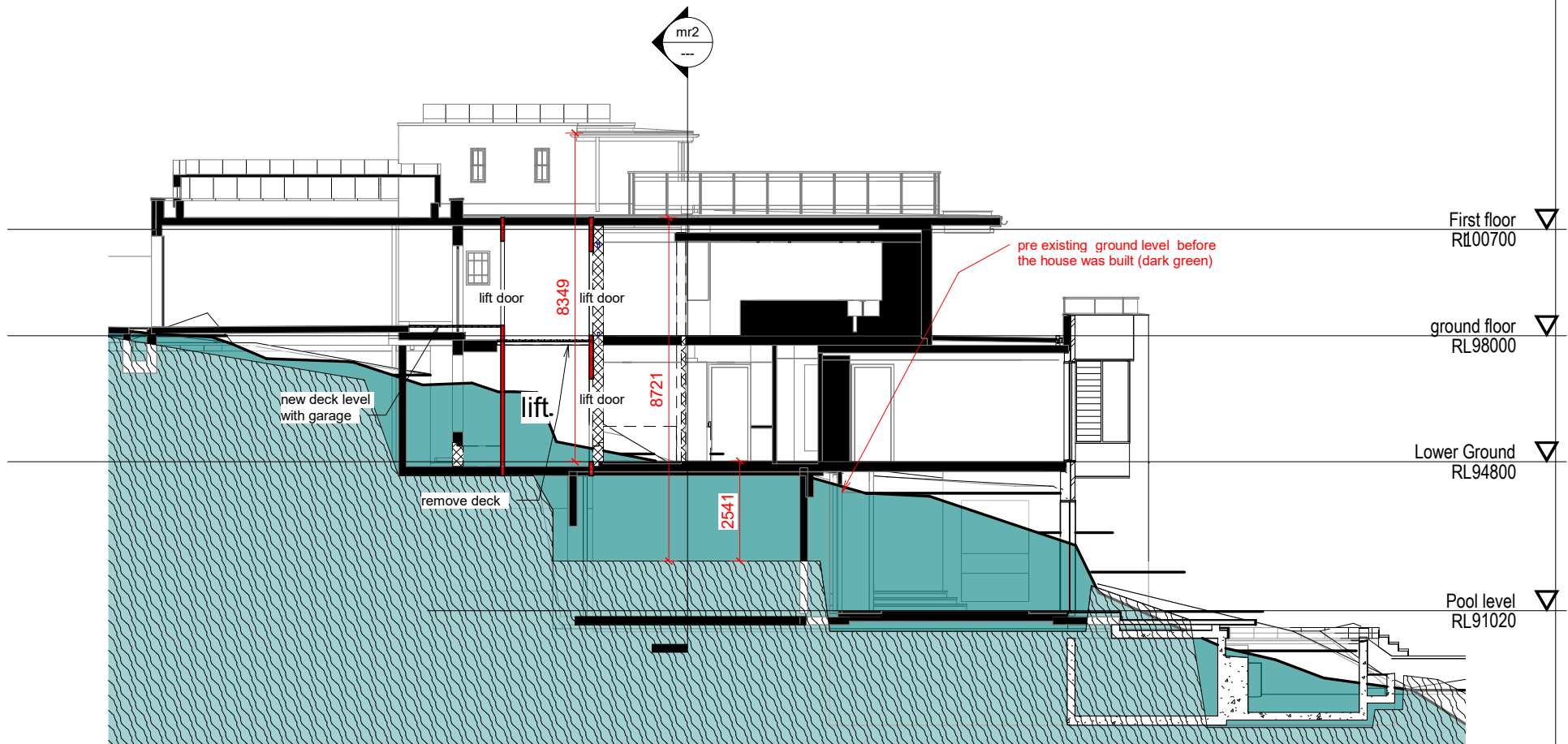
In addition to the arguments provided in the body of this statement, the following should also be considered:

- The proposal is for alterations and additions to an existing building and the intent is to retain as much of the existing building as possible to avoid waste
- The breach in the height limits occur on the southern side of the side or the existing house below the roofline and will not increase shadows
- Solar access at 235 (a 2 storey building) to the south, enjoys and will continue to enjoy unchanged solar,
- View impact is nil

The additional building height has no material effect on perceived building bulk and scale, the desired future character of the area, the streetscape, or the residential amenity of neighbouring properties. The proposed building height encroachment has no material impact on neighbour amenity, or public and private views, as demonstrated in this clause 4.6 submission and the Statement of Environmental Effects submitted with the development application. The DA submission includes a view analysis prepared by the architect which shows the existing and proposed building as viewed from several vantage points.

The proposal achieves the objectives of the R3 Medium Density Residential Zone and the building height standard, despite the minor numerical non-compliances. The requested variation to the 9.5m maximum building height standard is appropriate and worthy of support.

Michael Robilliard Architect

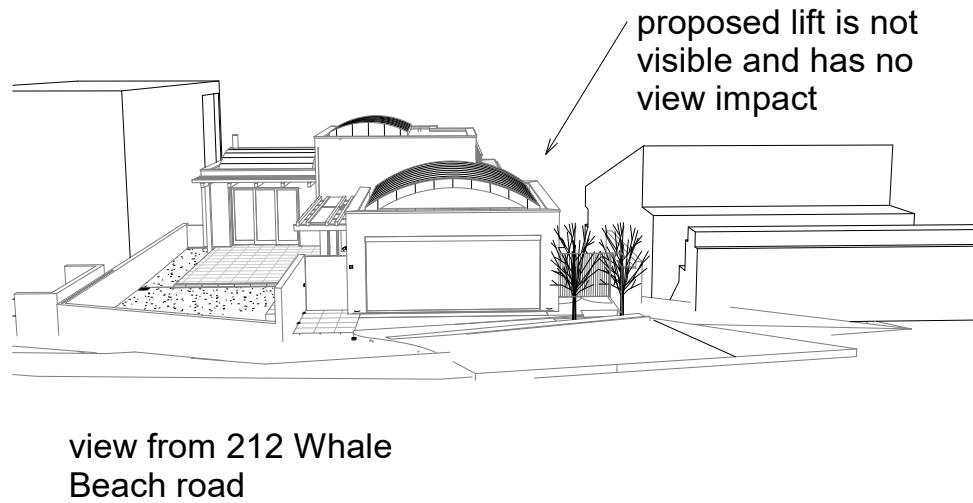
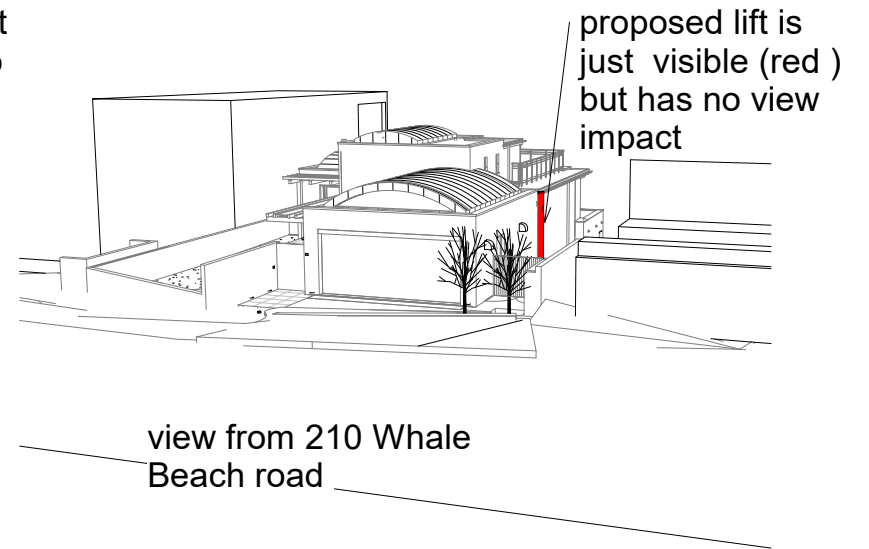
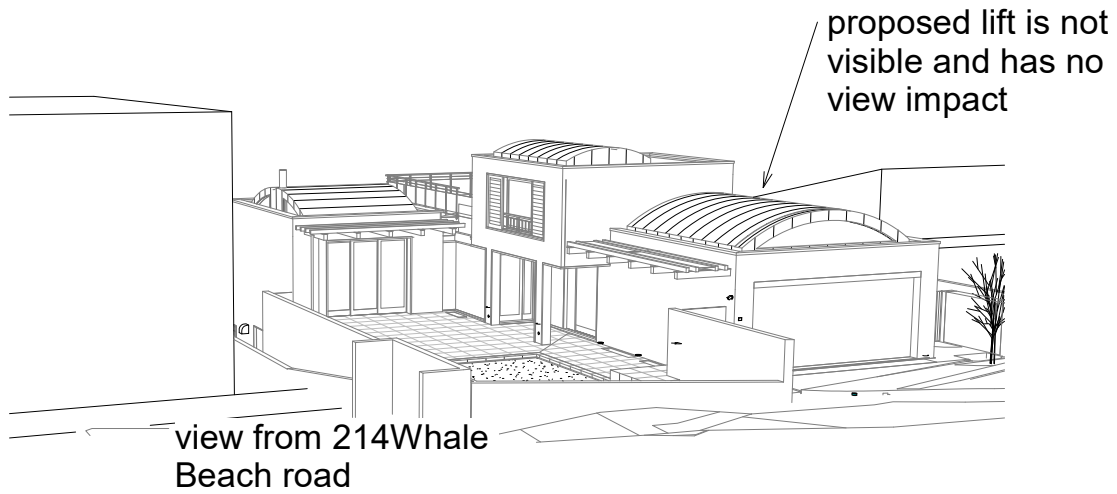


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| Section | 457 WD |
| Grant House Lift | -08 |
| 237 WHALE BEACH ROAD WHALE BEACH NSW | November 2021 |

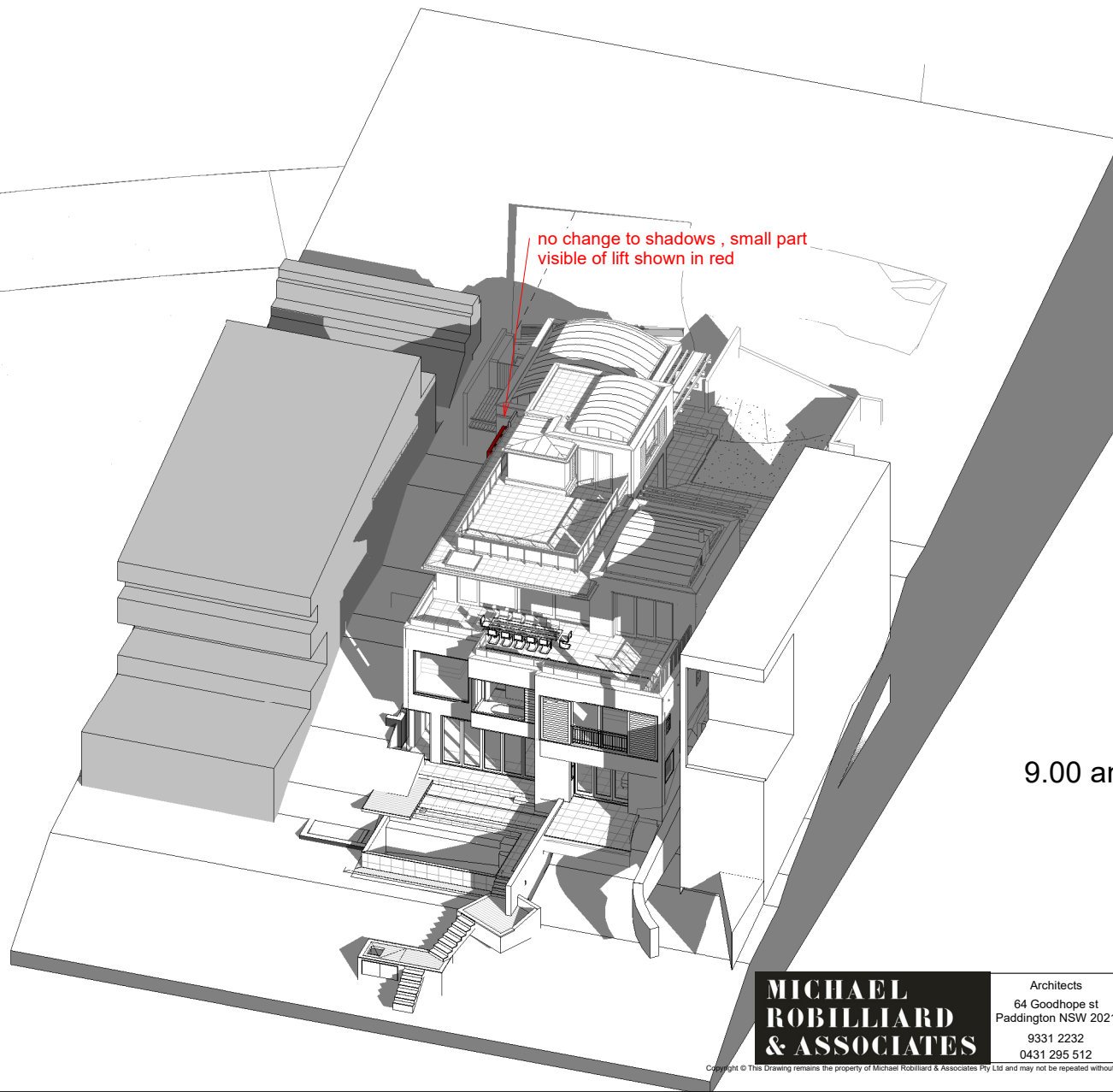
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| View study | 457 WD |
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no change to shadows, small part visible of lift shown in red

9.00 am Mid winter shadows

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| Shadows 9.00 am | 457 WD |
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no change to shadows , small part
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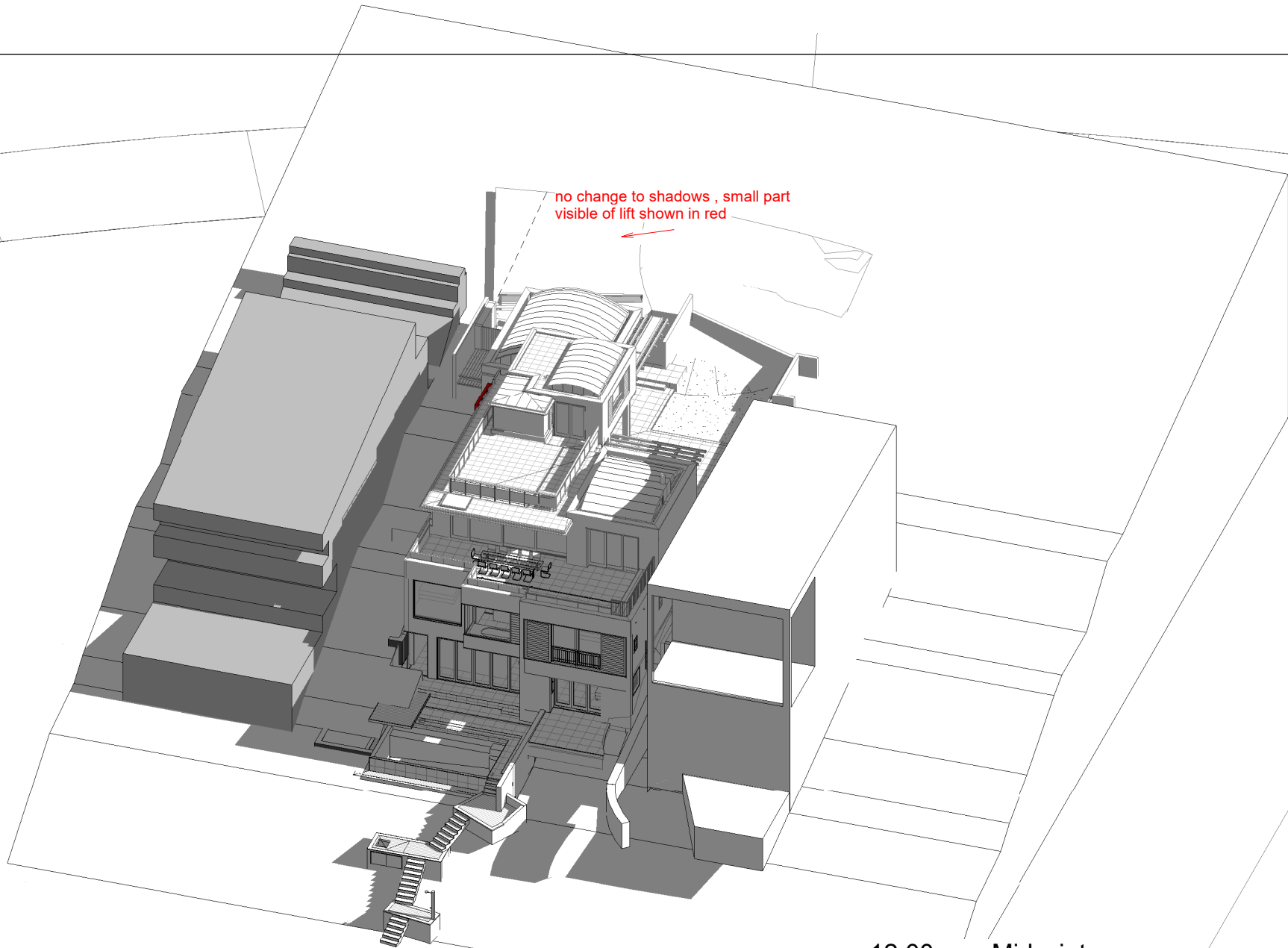
3.00 PM Mid winter shadows

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| Shadows 3.0 pm | 457 WD |
| Grant House Lift | -14 |
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no change to shadows, small part visible of lift shown in red

12.00 pm Mid winter shadows

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| Shadows 12.00 pm | 457 WD |
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