Item	LPP02	- REPORTS -	01/05/24
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# NORTH SYDNEY COUNCIL REPORTS

# **NSLPP MEETING HELD ON 01/05/24**

**Attachments:** 

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

ADDRESS/WARD: 1/19 Lavender Street Lavender Bay

**APPLICATION No**: 290/23

PROPOSAL: Alterations and additions to a dwelling in an attached dual

occupancy and associated works

## **PLANS REF:**

Plan No.	Rev No.	Description	Prepared by	Dated
A.02	Nil	Site Plan and 3D Images	McKendry Hunt Architects	05 06 2023
A.03	Nil	Existing Floor Plans	McKendry Hunt Architects	05 06 2023
A.04	Nil	Demolition Plan	McKendry Hunt Architects	05 06 2023
A.05	Nil	Proposed Additions Floor Plans	McKendry Hunt Architects	05 06 2023
A.06	Nil	Elevations	McKendry Hunt Architects	05 06 2023
A.07	Nil	Sections	McKendry Hunt Architects	05 06 2023
A.08	Nil	Window and door schedule	McKendry Hunt Architects	05 06 2023
A.09	Nil	Compliance Information	McKendry Hunt Architects	05 06 2023

**OWNER**: J G Shetty

**APPLICANT**: J G Shetty, C/- McKendry Hunt Architects

**AUTHOR**: Jim Davies, Executive Planner

**DATE OF REPORT**: 22 April 2024

**DATE LODGED**: 22 September 2023

**RECOMMENDATION**: Refusal

# **EXECUTIVE SUMMARY**

This development application seeks approval for alterations and additions to a dwelling in an attached dual occupancy and associated works. The site is a heritage item of the North Sydney Local Environmental Plan 2013.

The application is reported to North Sydney Local Planning Panel for determination as 10 submissions were received, and because the proposed development exceeds the maximum building height standard by more than 10%.

The original sandstone residence has 4 storeys including an attic, and a height of 13.33 (56.8% above the 8.5m height maximum). The house dates to the 19<sup>th</sup> century and has been altered and extended several times, the last being in the 1990s, a large extension to the south of the original building. This building and grounds have been strata subdivided to form an attached dual occupancy, lot 1 being the lot the subject of this application.

The proposed additions, to the west of the existing dwelling on lot 1, propose to link the residential building to an outbuilding which mainly accommodates car parking, located in the site's north western corner. The height of the additions is 10.6m, exceeding the 8.5m limit by 24%.

Consequently, a request to breach the height standard was submitted with the application.

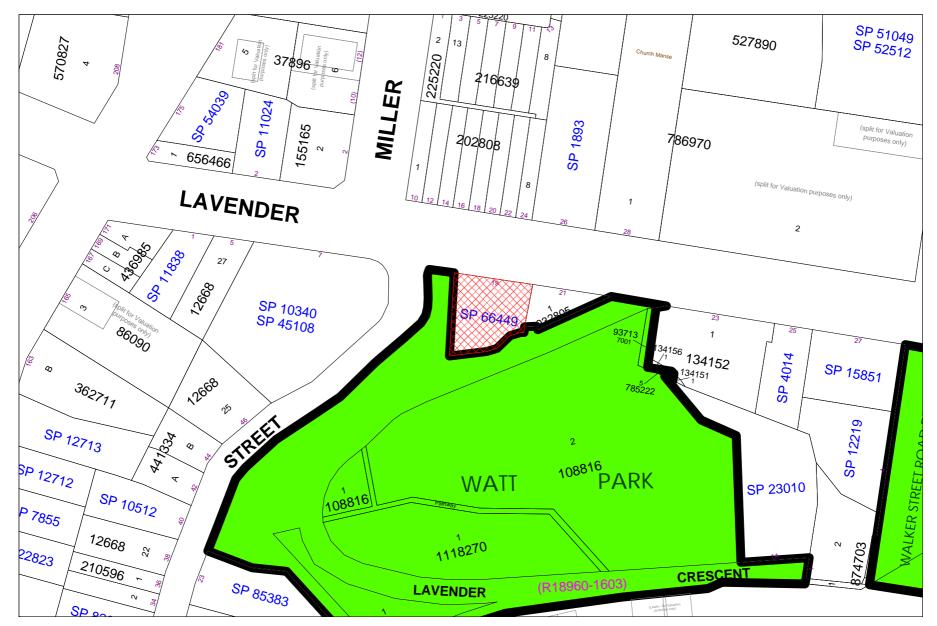
The application was notified in October 2023 for 14 days and 10 submissions were received, including a petition of 6 signatures. Key issues raised by submissions were:

- Breach of the building height development standard,
- Adverse impact on existing residential building on the site, a heritage item,
- Negative impact on the Heritage Conservation Area in which the site is situated,
- Incompatibility with local character,
- Negative impact on privacy of occupants of the neighbouring and the subject residences in the dual occupancy,
- Excessive bulk and scale,
- Adverse impact on views from nearby residents and from the public domain,
- Variations to setbacks, and
- Potential impact on trees on adjacent public land.

The applicant submitted amended plans which did not adequately respond to these to concerns, the plans were consequently rejected. Therefore, these plans did form part of the application and are not considered by this assessment.

In addition to the above issues, the assessment finds the request to contravene the height standard is not well founded and concludes that the application is unsatisfactory. Consequently, the application cannot be approved and refusal is recommended.

# **LOCATION MAP**



Property/Applicant 

Submitters - Properties Notified

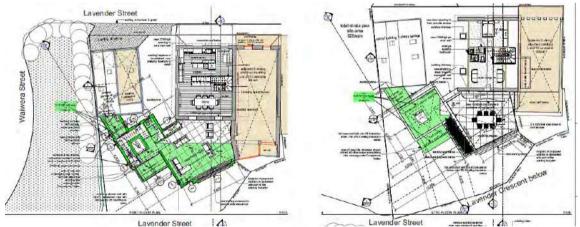
## **DESCRIPTION OF PROPOSAL**

# **Proposal**

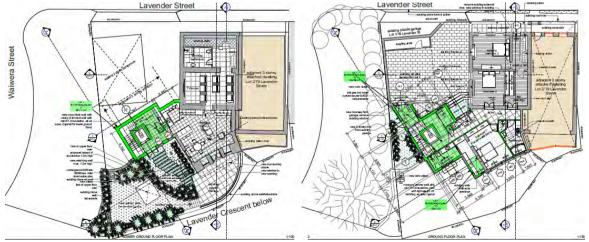
The application seeks consent for alteration and additions to the existing residence on lot 1 in a 2 lot strata subdivision of the residential building at 19 Lavender Street Lavender Bay, as illustrated below by extracts of the architectural drawings submitted. All images by McKendry Hunt Architects.

In summary, the proposed involves:

- An addition to the west of the existing dwelling, which is principally a stairwell and lift, which would provide access to lower ground, ground and first floor levels.
- Additionally, the extension and alterations to the extant building include:
  - o A laundry on the lower ground level
  - On the ground floor, an ensuite for a bedroom conversion of a living space, a built-in wardrobe, utility areas and a covered link to the garage,
  - Filling in an existing balcony on the southern side of the house to enlarge the floor area of this level, a new balcony on the extension, a WC and a link at this level in the same link to the garage building, and
  - At the attic/roof level, the addition provides a flat untrafficable roof space, and in the
    extant building, enlargement of the floor below enables the roof above to be
    proposed for use as an enlarged roof terrace.



Floor plans (additions in green) showing first floor (left) and roof/attic level (right). Beige-shaded areas form lot 2 in the strata plan.



Lower ground floor (partly underground) to the left and to the right is the ground floor.



Existing south elevation. The yard left of the residence is not fully paved as indicted. Lot 2 of the strata plan (not part of the DA) is outlined in red.



Proposed south elevation



View of the proposal from the south west.



View of the extension, from Waiwera Street, the two level section (dark grey) joining the garage (timber with metal roof) and the main extension (light grey) is visible. The shrubs and tree in the foreground and to the left are in a public reserve between the site and the Waiwera Street road reserve.



South easterly view of the site with proposal included, from Lavender Street.



Southerly view of the site with proposal included, from Lavender Street.

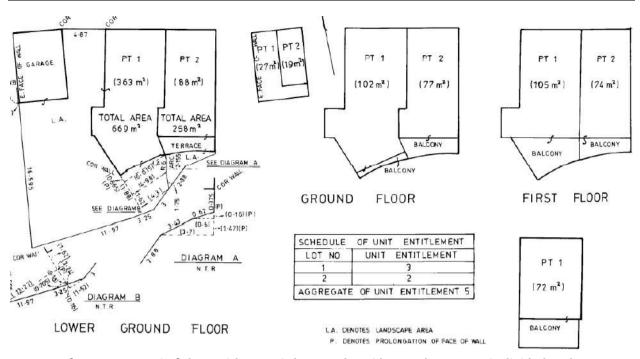
# Key findings of this assessment include:

- The addition linking two levels of the extant residence and the adjacent outbuilding which includes garaging for both lots in the strata plan, causes the development to extend across the entire western and southern facades to form a continuous wall of two to four levels, with substantial leisure facilities on the roof.
- The filling-in of the balcony on the first floor of the house adds considerable bulk to the southern façade of the building, as does the lift/stairwell extension.
- A large planter is also proposed on the western side of the expanded roof terrace, potentially exacerbating bulk and scale.
- In addition to extensive lateral expansion west and south, most of the lift/stair addition and the expanded roof terrace (resulting from enclosing level 1 below) exceed the heigh limit. the horizontal extent of the height contravention is considerable, in addition to being a significant 24% departure from the maximum allowed.
- Compared to these extensions, the existing heritage building's height breach, which takes the form of a steeply pitched gabled roof atop the part of the existing 'original' sandstone residence on lot 1 (the lot 2 part of the building to the east presently has a flat roof), is in keeping with and contributes to the heritage qualities of the building and the Lavender Bay Conservation Area.
- Despite returning presently some built-on area to landscaping, the proposed works exceed
  the applicable site coverage control by some 15%. The required landscape area minimum is
  not satisfied either and the landscaped are proposed is 15% less than the minimum required.
- From a landscape perspective, the site's immediate surrounds are well vegetated. Concerns have been expressed by Council's landscape development officer that vibrations from earthworks could damage the root systems of large fig trees growing immediately south and west of the site, and that the foliage of these and other trees will likely require pruning to enable construction and ongoing occupation of the proposed works. The application did not include an arborist's report to addresses these issues, or whether the extensions' increased shading of these trees, especially to the south during winter, would negatively effect the health of those trees.
- When the above issues are considered together, the main impacts of the development include:
  - o Reduction of views from the public domain and (possibly) nearby dwellings, of the harbour, the bridge and Milsons Point, and glimpses of the Opera House.
  - The heritage value of the site and the locality would be diminished, and
  - Potential damage to trees adjacent to the site could remove, partially or wholly, the screening on which the proposal effectively relies on. Without surrounding vegetation, negative effects of the development on built and natural environments would be significantly amplified.

Accordingly, as detailed by the remainder of this report, the proposed development will have and is likely to have unacceptable impacts, and refusal is recommended.

## Site

The site has an irregular shape being lot 1 in a 2-lot strata plan titled SP 66449, an extract is shown below. The size of the lot (lots 1 and 2 combined), as submitted, is 528m<sup>2</sup>. The frontage to Lavender Street is 24.535m, 27.03m to Waiwera Street, and 25.77m to Lavender Crescent to the south.



Extract of SP 66449, 60% of the entitlement is lot 1 and 40% lot 2. The garage is divided and access to the garage from both lots is via common property (not shown) on the north side of the upper line on Diagram B above. The vinculum joining Pt 1 and L.A. (landscaped area) in Diagram B indicates the open space is part of lot 1.

Pedestrian and vehicular access is from an access lane off Lavender Street in a cutting below this road's carriageway. Sloping southwards, the land has a moderate grade, it's southern boundary influenced by an escarpment that drops abruptly to Lavender Crescent and the public reserves that extend from this point to the shoreline of Lavender Bay, except for the rail viaduct, as shown in the aerial image below.



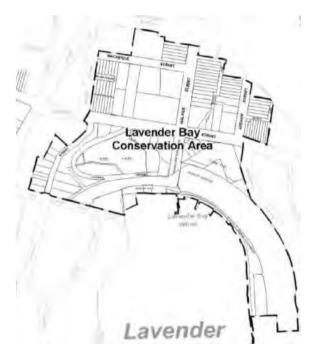
Site (blue marker) and locality. (Neap Map image 25 February 2024).

# Locality

The above image shows the site is embraced by vegetation, and is part of significant vistas from the public domain, from the north and north west in particular, from Lavender Steet and Miller Street. In typical North Sydney fashion, the landscape dominates (steep slopes to the harbour and vegetation in the public domain) with an eclectic mix of architectural ages and vernacular. The image indicates most of the site's open space is overgrown by large trees in the Lavender Crescent (south) and Waiwera Street (west) reserves.

The public open space south of the site to the harbour is a key feature of the area, as is Lavender Bay and its publicly accessible foreshores. Another, in the north east (top right) corner of the image is Christ Church Lavender Bay. The section of Lavender Street on which the site is located joins McMahons Point and Milsons Point and is part of a heritage walk (Milsons Point and Lavender Bay History Walk) frequented by tourists taking advantage of the area's heritage qualities and its views of Port Jackson and the City of Sydney beyond.

The site is in the Lavender Bay Conservation Area of the Lavender Bay Planning Area, per Part C Section 9 of the North Sydney Development Control Plan 2013, which provides a description, beneath a map of the area below, being one of the larger conservation areas in the North Sydney Council bounds.



Map of conservation area, North Sydney DCP 2013, Part C, section 9.

The Lavender Bay Conservation Area is bounded by the commercial development to the north, the Sydney Harbour Bridge approaches and Lavender Bay.

The landform is level to the north with a rock escarpment along Lavender Bay Road and a steep slope to the water. To the upper plateau the subdivision is determined by a grid pattern of wide streets and narrow rear lanes. Lot sizes vary and many are developed for attached dwellings. To the centre of the plateau are landscaped church sites. Below the escarpment the pattern is determined by the steep landform with its remaining Victorian estates overlaid with a network of steep, pedestrian steps and irregular cross paths.

The area is characterised by the Victorian development of Gothic and Romanesque churches and detached mansions down the centre of the area. There is an overlay of single, two and three storey attached dwellings to the upper level in the Victorian Free Classical, Victorian Italianate and Federation Arts and Crafts style. There are single storey cottages and Interwar, Spanish Mission style flats. The railway viaduct and boardwalk provide a strong edge to the water side reserve.

The elevated site (the conservation area) provides extensive views to the south over Sydney Harbour and there are views up and down the pedestrian steps.

Front gardens contribute to the landscaping of the street(s). Gardens follow the slope of the site with stone walls to the street. There are street trees and a band of remnant Victorian plantings to the parks and gardens across the centre of the site (conservation area).

#### STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013 (the LEP)

- Zoning R3 Medium Density Residential
- Item of Heritage Yes (detailed in conservation planner's assessment)
- In Vicinity of Items of Heritage Yes (detailed in conservation planner's assessment)
- Conservation Area Yes Lavender Bay Conservation Area
- Foreshore Building Line No

Environmental Planning & Assessment Act 1979 (the Act) - Local Development

SEPP (Resilience and Hazards) 2021

SEPP (Biodiversity and Conservation) 2021

SEPP (Building Sustainability Index: BASIX) 2004

## **POLICY CONTROLS**

North Sydney Development Control Plan 2013 (the DCP) North Sydney Local Infrastructure Contributions Plan 2020

#### **RELEVANT HISTORY**

## **Previous applications**

The site has been the subject of numerous applications and approvals since the 1990s, which have incrementally enabled alteration of the 'original' heritage building of the mid-19<sup>th</sup> Century.

## **Subject Application**

Date	Action
22 September 2023	Application lodged.
13 October 2023 –	Application notified for 14 days. 10 submissions received, including a 6 signature
27 October 2023	petition.
31 October 2023 &	Site inspected by author and conservation planner, from the public domain on the
13 November 2023	earlier date and on-site on the later date.
30 November 2023	Unsolicited additional information received from applicant – landscape plan,
	photomontages and colour and materials schedule.
05 March 2024	A formal request was made to the applicant to withdraw the application, for these
	reasons:

- 1. Height and bulk of the extension. The height breach and the width of the extension have impacts on views from the public domain, over the site in east and south easterly directions.
- The development also likely impacts views from dwellings north of Lavender Street.
- 3. Siting of the extension. The extension should have a greater setback to the Waiwera Street reserve. Any setback should be at least 2.5m from this boundary, assuming a development of compliant height. Increased height may require an increased setback.
- 4. Viewed from the south and west, noting that vegetation on adjacent public land is not everlasting, the development presents a solid wall of development which should be broken-up if this is possible however, a gap between the existing dwelling and outbuilding (garage) is necessary, to avoid unacceptable impacts on views across the site.
- 5. There is no transition in scale of the proposed built form toward the public reserves south (Watt Park & Lavender Bay Parklands) and west (Public Reserve and Waiwera Street) of the site.
- 6. Proposed site coverage and unbuilt upon area are unacceptable, and the landscaped area proposed is inadequate, despite the increase proposed when compared with the existing development. Council strictly enforces these DCP provisions, in the absence of a floor space ratio standard. While existing conditions have been considered, the degree of departure cannot be supported.
- A clause 4.6 submission must satisfy all requirements of that clause for consideration. The submitted request to vary the height standard does not satisfy the prerequisites of the clause for enabling the granting of development consent.
- 8. The proposal as submitted is not supported on heritage grounds for the adverse impact on the fabric of the house and its setting including views to and from the house and from the nearby heritage items.
- 9. Site limitations are such that the scope to accommodate another large addition to the heritage item is limited and the application of Article 22 of the Burra Charter is not relevant in this instance. Whilst the new work is clearly identifiable, the proposal:
  - a. is of a scale that is not subservient nor set to be obscured from public view as previous work has been,
  - b. will be built between the built form of the original dwelling and garage element that will adversely affect views from the public domain,
  - has a scale that is not compatible with the heritage item and the overall heritage context of the site creating a dominating impact that will distort the existing setting of the heritage item and gap views from between the historical stone dwelling and the garage element to the harbour and Harbour Bridge, and
  - d. will be highly visible and expressing an uncharacteristic dominant scale that will block off the gap views between the western stone wall of the original dwelling and the garage element as well as the views over the garage from the public domain and the heritage listed dwellings on the opposite northern side of Lavender Street to the harbour and the Harbour Bridge.
- 10. Likely impact on the canopy of trees on adjoining public land, in Waiwera Street and Watt Park south of the site, and potential for disturbance of these trees' roots, from site works. An arborist's report including a tree protection management plan was requested.

14 March 2024	Applicant responded to Council's previous request to withdraw the application, submitting that the application would not be withdrawn and requesting consideration of the following:  - The site is only visible from one location in Watt Park south of the site.  - That there are impacts on views from adjacent dwellings in Lavender Street requires confirmation and various vantage points over the site, from the public domain. Clarification of the extent of these impacts was requested.  - Amendment of western setback to 2.5m.
	<ul> <li>Preparedness to provide an arborist's report, although canopies of trees adjacent to the site are unlikely to be impacted by the development.</li> <li>Preparedness to examine means of reducing the bulk and scale of southern and western facades.</li> <li>The clause 4.6 request to breach the building height would be reviewed.</li> </ul>
	<ul> <li>Clarification of certain impacts identified by Council's conservation planner.</li> <li>Providing a descending transition toward Watt Park, to the south would be investigated.</li> </ul>
	<ul> <li>Reducing the scale of the addition to be subservient to the heritage building would be considered.</li> </ul>
	<ul> <li>Disagreement with Council's contention that the link to the garage impacts views from the public domain, although a more "transparent" connection would be considered.</li> </ul>
	- Disagreement that the additions would be "highly visible or have an uncharacteristic dominant scale."
	<ul> <li>That a structural engineer advised that the development would not require any 'invasive' foundations, suggesting that any excavation works would unlikely impact adjacent trees.</li> </ul>
	<ul> <li>Excavation would however be reduced on the western side of the lower ground level.</li> </ul>
	<ul> <li>There is little scope to reduce the overall height of the extension.</li> <li>Change in balustrade materials would be investigated.</li> </ul>
	- Impacts of the proposed roof terrace were disputed, given it would be 380mm lower than the existing terrace.
15 April 2024	The applicant submitted amended plans which were rejected by Council as they did not adequately resolve the issues raised above. This decision was taken following review by the author and the assessing conservation planner and discussion with the Manager Development Services.
	A revised clause 4.6 submission and arborist's report were not submitted, as the applicant had requested that the revised plans be considered before committing to providing these documents.
18 April 2024	Solicitors on behalf of the applicant requested Council reconsider rejection of amendments to the development application.
23 April 2024	Applicant's solicitors advised the rejection would not be reconsidered and the application would be tabled for determination at the meeting of the North Sydney Local Planning Panel on 1 May 2024.

# **INTERNAL REFERRALS**

# **Building**

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. A comprehensive assessment is required before a Construction Certificate is issued. Should significant changes be required to achieve compliance with NCC standards, a Section 4.55 application would be necessary.

## **HERITAGE**

The conservation planner's report is provided hereunder, in full.

# 1. Heritage status and significance

The dwelling at 1/19 Lavender Street, now one of two dwellings arising from the subdivision of 19 Lavender Street. It is identified as a scheduled heritage item [I 0336], designed in the Victorian Georgian Victorian Free Gothic Style and is located within Lavender Bay conservation area (CA 12). The recorded statement of significance as per the NSW Heritage Inventory Database is as follows: Interesting pair of mid-nineteenth

century stone houses. Relic of the original alignment of Lavender Street.

With reference to NDCP 2013 Part C: s9.9.3, the Lavender Bay conservation area is significant:

- a. As a late 19th Century residential area with rare groupings of high quality, stepped terrace style housing on the slopes above Lavender Bay overlaid on religious and Victorian Mansion estates.
- b. For the quality and collective significance of the buildings within the area.
- c. For the natural topography of rock escarpments modified with steep pathways and sandstone retaining walls and the remnant Victorian plantings.
- d. For the fine and extensive open space area along the foreshore of Lavender Bay which incorporates public walking paths around the waterfront and the railway viaduct constructions.
- e. For the impressive and important views to Sydney Harbour from Watt and Clark Parks.

19 Lavender Street is built on the alignment of Lavender Street and is immediately adjacent to the heritage item at 21 Lavender Street [I 0 338] which is set below the rock escarpment along Lavender Bay on the southern side of the Lavender Street. All the dwellings on the northern side of the street are also identified as scheduled heritage items and include no's 10-24, 26 [I 0331 / I 0332 / I 0333 / I 0334 / I 0335 / I 0337 / I 0339 / I 0341 / I 0342 ], 28 Lavender Street [I 0I 0343], 10 Walker Street [I 0364] as well as 23 Lavender Crescent [I 0) ] on the same side of the street and the Lavender Crescent stone wall [I 0347].

Inspections of the site were carried out in October and November 2023.

## 2. The Heritage Assessment and Recommendations

An assessment of the proposed development for alterations and additions to the existing dwelling involving the construction of a three storey contemporary infill building making provision for a new stair and lift to service the house and link it with the garage element and minor alterations within the original dwelling, has been undertaken in relation to NSLEP 2013 cl 5.10 Heritage conservation, and the relevant objectives and provisions of NSDCP 2013 Part B: s13 Heritage and Conservation as set out below.

# 13.4 Development in the Vicinity of Heritage Items-

The general context of the site is highly significant in and of itself and within its immediate site context being adjacent to the heritage item at 21 Lavender Street. The scale of the works impacts the setting of the subject heritage item as well as views to and from the heritage item and from the heritage group along Lavender Street, particularly the dwelling group at 10-26 Lavender Street. See comments below.

**13.5.1 Heritage Items – Objective O1** – Ensure changes to heritage items are based on an understanding of the heritage significance of the heritage item-/Provision P5 Locate change away from original areas of the heritage item that are intact-

**13.5.2 Form, Massing and Scale - Objective O1** To allow new alterations and additions to heritage items, where new work does not impact on the heritage significance of the heritage item.

Careful consideration of the proposed contemporary infill addition that will occupy the open vista between the garage element and the heritage dwelling has been given, noting also, that the Burra Charter (Article22) allows for a contemporary approach that is clearly recognisable as such. The proposed three storey addition is of a contemporary design that sits outside of the footprint of the existing built form and is readily identifiable as new work.

1/19 Lavender Street has evolved from the subdivision of the original building that has undergone modifications and the formal strata subdivision of 19 Lavender Street into two dwellings. The most recent historical context of the site relates to the approved substantial modern, 1990s three storey addition to the rear, southern elevation. It is connected with but sits to the outside of the stone building footprint providing additional floor area and terraces. Its glazed, curved curtain wall orientated to the harbour is not visible in the public domain. Subsequent works have been of a minor nature and set within these established building lines.





Concurrently to the approval of the larger rear addition, approval for a free-standing garage element referencing a typical 19<sup>th</sup> Century form with a gable and skillion form compatible with 19 Lavender Bay and the site context generally, was constructed to the western-most side of the site and nestled under the Morton Bay Fig tree to mitigate its visual impact on the heritage context of the site and its surrounds along Lavender Street.





The approach of both the rear addition and the garage has ensured the ongoing prominence of the original stone building and its continued positive contribution to the Lavender Street streetscape. The alterations have also retained the permeability of the site to the southward views through this portion of the site towards the harbour and Harbour Bridge. The Morton Bay Fig tree retains a visual link with Watt Park.

As summarized above, the works undertaken to date have been confined to the rear and out of direct views from the public domain, they have maintained a descending scale and have been set within the built side boundary such that the western sandstone elevation remains legible as a primary visual element and representative of the historic dwelling form of 19 Lavender Bay. The visual dominance of the new addition is a major concern of the proposal.

As such, the visual permeability of the site connecting to the Harbour and the Harbour Bridge as experienced in the public domain and in an area that has high pedestrian access is important as an historical interpretive tool. The ongoing function of the Morton Bay Fig tree, connecting with Watt Park beyond the site to the south also remains important.

In conclusion, it is assessed that the site limitations are such that the scope to accommodate another large addition to the heritage item is limited and the application of Article 22 of the Burra Charter is not relevant in this instance. Whilst the new work is clearly identifiable the proposal:

- is of a scale that is not subservient nor set to be obscured from public view as previous work has been.
- will be built between the built form of the original dwelling and garage element that will adversely affect views from the public domain
- has a scale that is not compatible with the heritage item and the overall heritage context of the site creating a dominating impact that will distort the existing setting of the heritage item and gap views from between the historical stone dwelling and the garage element to the harbour and Harbour Bridge

 will be highly visible and express an uncharacteristic dominant scale that will block off the gap views between the western stone wall of the original dwelling and the garage element as well as the views over the garage from the public domain and the heritage listed dwellings on the opposite northern side of Lavender Street to the harbour and the Harbour Bridge.



The existing building and garage to the right. At the rear of the existing building, the '90's vintage extension is visible, with a view between the buildings to the vegetation and harbour-scape beyond, the latter more visible form a higher elevation.



View of site's frontage from Lavender Street, showing the visual impact of the extension.



View of the proposal from Lavender Street towards the south east, showing another view of the extension's impact on the public domain and views from the public domain of celebrated landmarks.

s13.9 Controls for specific building elements – Part C: s9.9.4 Views – P10; s9.9.6 - P7; s9.9.7 – P1

13.5.3 Additional Storeys – Objective O1 To minimise the visual dominance of any new work from public places.

13.5.4 Roofs – Objective O1 To ensure that original roofs, their hierarchy and materials are maintained.

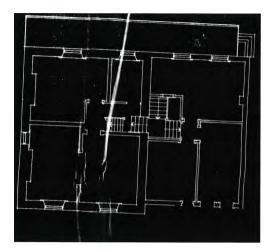
13.10.4 Two Storey Detached and Attached Dwellings - Provision P2 New additions should generally comply with the examples illustrated in Figures 13.47 to 13.49.

The scale of the new addition creates a dominating impact that distorts the existing setting of the heritage item and the group of which the site is collectively a part.

Views of Sydney Harbour and the Harbour Bridge from the public domain along Lavender Street will be affected. The subject building forms part of a strong skyline of simple pitched roofs and chimneys visible in the public domain. Within this context, the scale, form and character of the proposed development is uncharacteristic within this part of the Lavender Bay conservation area and for the adverse impacts on the setting, views and character of the heritage dwelling and its setting adjacent to and in the vicinity of numerous heritage items.

# 13.5.5 Interior Layouts – Objective O1 To ensure that significant interior elements are retained and preserved.

It is acknowledged that the dwelling has a history of adaptation. However, it has retained its important sandstone structure and form, both internally and externally. Significantly, internally is that the two front rooms of the house have retained their original layout intact and legible over the lower ground, ground and first floor levels.



In summary, the northern and western sandstones facades of the building remain prominent and continue to positively contribute to the Lavender Street streetscape and enhance the pedestrian environment of the locality.

# 3. Conclusions and Recommendations

With reference to the above, the proposal submitted is not supported on heritage grounds for the adverse impact on the fabric of the house and its setting including views to and from the house and from the nearby heritage items identified above.

The proposal in its current form is contrary to the following provisions of NDCP 2013 Part B:

- s13.1.1 Guiding Statement: in terms of managing North Sydney's heritage for present and future generations in accordance with the principles of intergenerational equity as per the Burra Charter;
- s13.1.2 General objectives O5
- s13.4 Development in the vicinity of heritage items O1/P1/P5;
- 13.5.1 Protecting heritage significance O1/O3/O5/P4/P5;
- s13.5.2 Form, massing and scale
- s13.5.3 Additional Storeys Objective O1
- s13.5.4 Roofs Objective O1
- s13.5. 5 Interior layouts O1/P1/P8
- s13.9 Controls for specific building elements Part C: s9.9.4 Views P10; s9.9.6
- P7; s9.9.7 P1

As such, the proposal does not meet the objectives of NLEP 2013 cl 5.10 Heritage conservation sub clause (1) (a) and (b), and the recommendation for refusal is endorsed.

## **ENGINEERING**

Council's development engineer has considered the application and has recommended conditions, should approval be granted, addressing construction traffic management, drainage, parking and access, sediment and erosion control, excavation and retaining walls.

## **LANDSCAPING**

Below is the assessment of Council's Landscape Development Officer.

While proposed works are unlikely to have major direct impact to Tree Protection Zone of protected trees, due to topography, retaining walls etc. there will be likely impact to the canopy of large Ficus sp. planted in the adjacent Council park to the west of subject site and the Ficus growing up from the Council land below the site to the south. In addition to the impact to canopy, there may be further risk that any excavation involving pile drivers/rock hammers or the like, may destabilase the adventitious roots of the Ficus below, causing detachment of these roots from adjacent rock shelf, leading to instability or failure of this tree.

An arborist's report assessing these issues and providing a detailed Tree Protection Management Plan is required before further assessment can be made. This report shall address design/use of scaffolding and any other associated works. The submitted Landscape Plan appears to suggest that the gardens contained within the adjacent reserve to the west of site are included in site landscaping, but these are in fact public gardens. It is understood that the Ficus in the reserve to west of site was planted as per council condition following removal of an extremely large heritage Fig located on the subject site, after it became unstable, about 20 years ago. Bonds shall be required for all public trees and gardens potentially impacted, and no access shall be permitted via park to the west of site (if the application were approved). Draft conditions, tree protection measures and tree-protection-bond amounts shall be provided in final assessment following receipt of and arborist's report (again, if approval were recommended).

#### **Questions & comments**

Are the levels of the proposed roof terrace and the neighbour's terrace at 2/19 the same?

Could floor to ceiling heights of the additions be lowered to comply with the height standard?

Replace glass balustrades with black palisade style or similar - glass reflects the surroundings and thus often appears to be solid - it is not transparent all the time.

The outward extent of the terrace could be reduced.

Could the 'pavilion' with the lift and stairs, and other utilities, be reduced in size and moved closer to the extant building?

Keeping the terrace is only being considered because the dwelling already has one, it would appear. Arguably it's size should not be increased, and the height standard should be maintained, when it is reducing local amenity, thus indicating the clause 4.6 fails.

## Planner's comment

The applicant was requested to respond to the above and declined, as the submitted changes to the design failed to address planning and heritage shortcomings. An application to amend the DA was rejected and the landscape development officer's concerns have not been addressed. It is unknown whether these issues could be addressed satisfactorily, without an arborist's report being submitted and evaluated.

# **EXTERNAL REFERRALS**

Basis of Submissions

None required.

# **SUBMISSIONS**

Council notified adjoining properties and the Lavender Precinct Committee of the proposed development, seeking comment between 13 October 2023 and 27 October 2023. Council received 10 submissions, including a petition with six signatories. The matters raised in the submissions are considered below:

The original submissions may be viewed by way of DA tracking on Council's website <a href="https://www.northsydney.nsw.gov.au/Building\_Development/Current\_DAs">https://www.northsydney.nsw.gov.au/Building\_Development/Current\_DAs</a> and are available for review by NSLPP members.

Consideration

Basis of Submissions	Consideration
The owner of lot 2 SP 66449, the other lot and dwelling in the dual occupancy on the site requests that certain matters be addressed regarding the need for approvals to carry out works the subject of a consent, observance of covenants and other dealings.  In detail the application proposes, in relation to the strata plan:  - "a substantial building at least 7 metres high into the common property above", which required owners corporation approval,  - "substantial changes to common property walls", also requiring approval of the owners corporation, and  - the landscaped areas are not to be used for any other purpose, and building works are proposed over these areas.	Matters between owners in a strata scheme and any requirements of other statutes are beyond the scope of this assessment.  Private covenants and other restrictions on the development of land do not apply for the purpose of enabling development, as allowed by clause 1.9A — Suspension of covenants, agreements and instruments, of North Sydney Local Environmental Plan 2013.
Enclosing the first floor balcony "will greatly reduce privacy of lot 2's occupants and increases building bulk."	Noted. Privacy and building bulk are addressed later in this report.
Council should be guided by an independent heritage planner and not the submitted heritage planner's report.  It appears the extension is over a sewer line.	Noted, the application has been assessed by one of Council's highly experienced conservation planners.  Such works must be carried out to the
Council had prevented the previous owner of lot 1 from removing a fig tree "by demanding they replace it."	satisfaction of the Sydney Water Corporation.  Noted, as commented in by Council's Landscape Development Officer.
A petition was received with six signatures, objecting that, on the basis the property is a heritage item, "that (the proposed development) damages or waters down the purposes of its (the site's) heritage listing", including:  - Removal of landscaping, surrounds and associated sandstone walls and embankments,  - Development that changes the look and nature of the buildings when viewed from the street, and	These matters are addressed in the conservation planner's assessment and later in this report.

Basis of Submissions	Consideration
- Development that obstructs or impedes views	
over the harbour from the public street.	
Several occupants and owners of residences on the	As above.
northern side of Lavender Street opposite the site	
objected on grounds their views of parkland	
vegetation and the harbour would be blocked.	
Past development (15 applications) since 1990 "has	Noted. The submitted heritage report
come with accompanying major and protracted	documented the resultant development from
disruption to access and quiet enjoyment and damage	several previous applications. The submission
of my property 21 Lavender Street."	from the neighbour (No 21) documented past
	applications and their results in detail.
Past consents had required replacement of two fig	Noted.
trees, which has not occurred.	
Additional paving and building area will reduce	Noted.
rainwater absorption, increasing pressure on existing	
systems and runoff over the cliff-face immediately	
south of the site.	
The application does not accurately reflect	Following development being carried out,
measurements relating to the existing strata	submitting amended strata and stratum plans
subdivision.	following construction is common. Relevant
	legislation would need to be complied with.
There has been no discussion between the applicant	Noted.
and the submitter (owner of No 21).	
The proposed form and materials are insensitive to,	Noted.
and incongruous with, the existing sandstone building	
and its neighbours. These proposed additions will	
erode the heritage values of this significant	
streetscape.  Then extension will appear "very large, visually	Noted.
obtrusive from Waiwera Street and from Lavender	Noted.
Street (and in particular from our property (No 21	
Lavender St)).	
Council should not have accepted the application	Solicitors on the applicant's behalf submitted
without special resolution of the strata scheme body	that under strata management laws, the
corporate.	proposed works could be approved and where
corporate.	approval (of the body corporate) is not
	forthcoming, then there are remedies
	available. This advice also opined that such
	matters are not relevant to consideration of
	the development application.
The application does not conform to either the North	Compliance with and departures from
Sydney Local Environmental Plan or the Development	statutory and non-statutory requisites are
Control Plan.	discussed later.
Specific grounds of objection include:	
- 24% departure from the height standard,	
- 21% departure from the site coverage control.	
- Inadequate setbacks from the western	
boundary,	
- Excavation greater (1.3m) than the 500mm max,	
- 2.6m floor to ceiling height is 100mm short,	

Basis of Submissions	Consideration
- Impacts on the heritage item and Lavender Bay	
Conservation Area, and	
- Unacceptable impacts on the character of the	
Lavender Bay Planning Area.	
"the main impact on the listed heritage item – the	Noted.
siting, height, bulk, massing, scale and cladding	
materials of the proposed addition dominate, demean	
and diminish the original sandstone dwelling Hillcrest,	
a landmark in Lavender Bay since the 1850s."	
"it is sufficient to say the proposed three-storey	Noted.
addition would be a prominent element in the	
streetscape and landscape setting of Lavender Bay.	
Discordant with respect to the original nineteenth	
century sandstone dwelling on the subject site (as	
stated above, a landmark of the district), it would be	
highly visible from the much-used public footpaths in	
and around the Miller Street/Lavender	
Street/Waiwera Street intersections of the Lavender	
Bay/McMahons Point neighbourhood."	
"the proposed three-storey addition would block	Noted.
existing views from Lavender Street through this gap	
and the botanically rich tree canopy of Watt Park to	
Sydney Harbour, Sydney Opera House and Sydney	
Harbour Bridge."	
The trees adjacent the site should be permanently	Noted.
protected with "some form of substantial bounty that	
no harm be done to the trees contiguous to the	
property."	
Lavender Bay is visited by people beyond the local	Noted.
area and it should be protected for all.	
The extension will overshadow the park, reducing the	Noted.
dappled light afforded by the trees' foliage.	

Where submissions have been "noted" they have been addressed as part of the considerations of this report.

# **CONSIDERATION**

The relevant matters for consideration under Section 4.15 (1) of the Environmental Planning and Assessment Act 1979 are assessed hereunder.

# SEPP (Biodiversity & Conservation) 2021

# Part 6.2 Development in regulated catchments

Sydney Harbour is defined as a regulated catchment for the purposes of the SEPP.

# Division 2 Controls on development generally

The following provisions apply and the proposed development is not inconsistent with those applicable to the site and the proposed development.

Re: 1/19 Lavender Street Lavender Bay

Provision	Consistency	
6.6 Water quality and	Erosion and stormwater controls are included for proposed works, and	
quantity	water quality and run-off would be unlikely to impact the harbour.	
6.7 Aquatic ecology	Aquatic flora and fauna are unlikely to be adversely affected.	
6.8 Flooding	The site is not flood prone.	
6.9 Recreation and public	Proposed development will not impact recreation and public access in the	
access	catchment.	
6.10 Total Catchment	This provision only relates to large-scaled development that could affect	
Management	a catchment, which requires consultation with other Councils in the same	
	catchment.	
6.11 Land within 100m of a	The site is about 135m from Lavender Bay.	
natural waterbody		

# Part 6.3 Foreshores and Waterways Area

Applicable provisions are considered below, as the site is in the Foreshores and Waterways Area.

# Division 3 Development in Foreshores and Waterways Area

Clause 6.28 (1) The following must be considered:

Prov	vision	Consideration	
(a)	whether the development is consistent with the	Proposed development would likely:	
	following principles—	- cause a minor reduction in the	
	(i) Sydney Harbour is a public resource, owned	harbour's value as a public resource,	
	by the public, to be protected for the public	- cause a minor adverse effect the on	
	good, (ii) the public good has precedence over the	the public good associated with the harbour, or	
	private good,	- not affect the harbour's natural assets,	
	(iii) the protection of the natural assets of Sydney	except that the qualities of its visual	
	Harbour has precedence over all other	catchment would be diminished.	
	interests,		
(b)	whether the development will promote the	The proposal would unlikely impact	
	equitable use of the Foreshores and Waterways	equitable use of the harbour and	
	Area, including use by passive recreation craft,	foreshores.	
(c)	whether the development will have an adverse	The visual and heritage values associated	
	impact on the Foreshores and Waterways Area,	with Lavender Bay would likely be adversely	
	including on commercial and recreational uses of	affected.	
(4)	the Foreshores and Waterways Area, whether the development promotes water-	N/A, proposed development does not	
(d)	dependent land uses over other land uses,	involve land use change.	
(e)	whether the development will minimise risk to the	N/A, the site is likely to be sufficiently	
(0)	development from rising sea levels or changing	elevated to avoid sea level rises.	
	flood patterns as a result of climate change,		
(f)	whether the development will protect or reinstate	The site is too far removed from foreshores	
	natural intertidal foreshore areas, natural	to impact aquatic ecology.	
	landforms and native vegetation,		
		However, local vegetation in adjacent public	
		reserves could be impacted and no	
		information was submitted to ascertain	
		potential effects of the development.	

(g)	whether the development protects or enhances	As above, for paragraph (f).
	terrestrial and aquatic species, populations and	
	ecological communities, including by avoiding	
	physical damage to or shading of aquatic	
	vegetation,	
(h)	whether the development will protect, maintain or	As above, for paragraph (f).
	rehabilitate watercourses, wetlands, riparian	
	lands, remnant vegetation and ecological	
	connectivity.	

(2) Consent must not be granted unless the consent authority is satisfied of the following:

Prov	vision	Satisfaction
(a)	having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,	The proposal does not affect the harbour's function and character as a working waterway.
(b)	if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,	N/A, the site is not adjacent to industrial or maritime activities.
(c)	if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,	N/A, the development is not for a maritime commercial or industrial purpose.
(d)	if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,	N/A, the development will unlikely impact traffic on the local road network.
(e)	the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—  (i) the Foreshores and Waterways Area, and  (ii) public places, landmarks and heritage items.	The proposed development may be partly visible from the harbour, and it is visible from public places and impacts views of the Harbour and the Harbour's catchment. The quality of these views and on other public places, landmarks and heritage items would likely be unsatisfactory.

# SEPP (Resilience and Hazards) 2021

Past use of the site for residential purposes is unlikely to have caused contamination to an extent that would require remediation. Neither is any change to the current use proposed, likely requiring further investigation or remediation. The application could be approved, as applicable requirements of the policy have been considered.

# SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate (No. A493343\_03, 30 August 2023) for an attached dwelling house has been submitted with the application to satisfy the SEPP.

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

# 1. Permissibility

The site is zoned R3 Medium Density Residential. Dwelling houses are permissible with consent in this zone, therefore alterations and additions thereto are likewise allowed.



Site (yellow edge) with zoning of site and surrounds, R3 Medium Density Residential (Pink), RE1 Public Recreation (Green), Business zone (blue), Special use zone (yellow) and heritage items (tan) and Heritage Conservation Area (red hatch) (eplanning spatial viewer).

# 2. Objectives of the zone

R3 zone objectives are:

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

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

The proposal is consistent with all relevant zone objectives, except the last. As reflected throughout the report, the proposal neither achieves or maintains a high level of residential amenity, as it is likely to adversely affects neighbours' amenity and enjoyment of their homes and use and enjoyment of the public domain by the community.

# **Principal Development Standards**

Principal Development Standards – North Sydney Local Environmental Plan 2013				
Site Area - 528m²	Existing building	Proposed addition	Standard	Complies
Clause 4.1 – Subdivision lot size				N/A
Clause 4.3 – Heights of Building	13.33m (56.8% over)	10.6m (24% over)	8.5m	No
Clause 4.4 – Floor Space Ratio				N/A
Clause 4.4a – Non-residential FSR				N/A
Clause 6.6 Dual Occupancy:				
Appearance as a dwelling house				Questoinable
Level of attachment to common wall (80%) or common floor to ceiling (80%)				Yes
Minimum lot size – 450m²				Yes

# Height of Building

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

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
- (b) to promote the retention and, if appropriate, sharing of existing views,
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
- (e) to ensure compatibility between development, particularly at zone boundaries,
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The height of the proposal measured in accordance with the building height definition of the LEP is 10.6m, which exceeds the development standard by 2.1m (24%).





These images show extant (left) and proposed (right) buildings and their protrusion beyond the maximum height plane. As mentioned in the executive summary, the horizontal extent of the breach exacerbates the disproportionate width and depth of the building overall. Considering the proposed bulk of the development in addition to the extant built form, the result is clearly beyond that intended by Council's planning framework. Also clear from comparing these images, is the loss of the gap between the garage and house, which allows a 'slot' view of the dense foliage growing adjacent the site and filtered views of the harbour and associated landmarks, from public and private domains.

In assessing the proposed development's consistency with the above objectives, as detailed hereunder, the proposed development is inconsistent with the height standard's objectives:

- a) The proposed development does not step with the landform. To achieve this, the building should be lower as it approaches the site's southwestern corner.
- b) As discussed later, it is arguable whether view sharing is achieved, sufficient information to demonstrate this has not been submitted by the applicant. A height compliant development would have a lesser impact.
- c) Solar access to other dwellings is reasonable, however the proposed addition will overshadow the vegetation on the reserves west and more-so, to the south of the site. This may affect the trees' health. An arborist's report has not been submitted to identify potential impacts on these trees.
- d) The privacy objective is capable of being complied with.
- e) This objective, to maintain compatibility of development particularly at zone boundaries, is severely compromised. The proposal's height breach, lack of compliant or appropriate setbacks, excessive site coverage and inadequate landscaped area result in a building which fails to provide an acceptable relationship with adjoining public reserves to the site's west and south.

Furthermore if the trees growing adjacent to the site are pruned or their health suffers as a result of the proposal, reduction in foliage may increase exposure of the excessively bulky development, to views from vantage points in an arc form east to south. Parts of the building would also be visible from the north and west.

The above images of the proposed development illustrates this, a continuous built form of 2 to 4 storeys in height from the northwestern to the south eastern corner of the site would result, were the development to proceed.

Such a large and bulky built form does not form an acceptable transition to the RE1 Public Recreation zoned land west and south of the site.

One may argue that a public reserve is not development. However, the definition of development in the EP&A Act includes the use of land, which in the case of these reserves, the land in them is used to primarily conserve and reinforce the heritage, scenic and recreational values of Lavender Bay, provide a substantial public space between urban development and the harbour, as well as being habitat and a vital green space in a densely populated part of Sydney. Sound planning principles encourage the bulk and scale of built form to reduce, not to increase, at the edge of such a significant public space.

In support of the proposal, the applicant submits that the development is screened. The screen is afforded by trees in public reserves, beyond the control of the applicant. Trees, being mortal organisms, may not remain in good health and will eventually die. The screen that the proposal relies on to hide its inordinate bulk and scale cannot be guaranteed.

f) For the reasons outlined above in respect of objective e) and elsewhere in this report (Heritage and DCP assessments), the proposed development fails to provide appropriate scale and density of development and to promote the character of the area.

# Written request to contravene a development standard

As enabled by clause 4.6, the applicant has made a request to exceed a development standard, being the maximum building height of 8.5m. The maximum degree of non-compliance with the standard of the proposed alterations and additions is 24%. The existing, original sandstone residence exceeds the standard with a maximum height of 13.33m, a departure of 4.83m or about 57%.

For consent to be granted, such a request must demonstrate that strict compliance with the standard would be unreasonable or unnecessary, and that environmental planning grounds are sufficient to warrant approval of the breach.

## The applicant's request to breach the height standard

The applicant's submission (attached) does not adequately demonstrate the proposed non-compliance is unnecessary or unreasonable in the circumstances of the case.

## *Is compliance unreasonable or unnecessary?*

In summary, the request states that compliance would be unnecessary, because:

- The extension is 4.83m lower than the existing building,
- The addition is massed to be subservient to the existing building,
- Scale and form of the development is appropriate to landscape and heritage contexts,
  - The development is consistent with the standard's objectives, as:
    - The levels of the addition correspond to the existing building,
    - The design is "contextually appropriate and compatible" with the heritage building,
    - No views, public or private, will be impacted due to the extension's siting,
    - The proposed works do not affect solar access to the subject building or the adjacent dwelling,
    - Privacy is reasonably maintained,
    - The development is compatible with the existing heritage item,
    - Scale and massing are appropriate,
    - The additions appear as two storeys when viewed from the street.

For reasons outlined above in the assessment of the proposal, in relation to the height standard's objectives, by the conservation planner's assessment and the forthcoming assessment against applicable DCP controls, the application fails to demonstrate the compliance is unreasonable or unnecessary.

# Are there sufficient environmental planning grounds?

To demonstrate sufficient environmental planning grounds to contravene the development standard, the applicant's request submits that:

- The height measurement is exaggerated due to the building height definition requiring measurement from the level of the site below the highest point of the development, which has been excavated. When measured in accordance with *Merman Investments v Woollahra Council* [2021] NSWLEC 1582, which allows height to be extrapolated from the public domain's level(s) as is (are) relevant to the development, the height is acceptable.
- The difference in levels south of the site mean the development's height breach is difficult to distinguish.
- There "is a lack of comparable" buildings that are within the height standard to relate to the proposed development.
- The height of the additions aligns with the attached dwelling (lot 2 in the strata plan).
- When viewed from the west, the development "reads" as being compliant with the height standard.
- The view of the proposal is also suitable from Lavender Street (north), in addition to Lavender Crescent (south) and Waiwera Street (west).
- The development has no material impacts on neighbours' amenity.

In considering the above key points made in the applicant's submission, these environmental planning grounds are insufficient to vindicate non-compliance with the height control.

# Would approval be in the public interest?

The applicant's submission, in addressing the public interest test, contends that the proposal is also consistent with zone objectives, in addition to satisfying those of the development standard.

In relation to zone objectives, as outlined above, this is concurred with, except that the proposal is inconsistent with the last zone objective, which requires achievement and maintenance of a high level of residential amenity.

Consequently, as approval of the proposal would not promote or sustain adequate amenity for the locality's residents, granting of consent would not be in the public interest. Further, due to section 4.15 (1) requiring the public interest to be considered in determining the development application, other matters prevent approval being in the public interest.

Negative impacts arising from the proposal's bulk and scale including the proposed height breach are unacceptable in terms of heritage of the site and the locality, public domain and streetscape qualities, and views from the public domain and potentially, adjacent private residences.

## Other matters to be considered

In addition to the above matters and before consent is granted, clause 4.6 requires the consent authority to:

- Consider whether variation of the standard raises planning issues of State or regional significance,

- Consider if there is any public benefit in maintaining the standard, and
- Consider any other relevant matters.

# In response:

- Variation of the standard would be of local import only, and would therefore not be of State or regional significance.
- In the circumstances described, there is public benefit in maintaining the standard.
- There are no other pertinent matters to consider.

# Does the written request satisfy clause 4.6 (3)?

In conclusion, the applicant's written request has not demonstrated compliance to be unnecessary or unreasonable, or that there are sufficient environmental planning grounds to justify non-compliance.

The deficiencies of the proposal, which weaken the written request and result in the request not being well-founded, are discussed in detail, in relation to heritage, in the conservation planner's assessment and in the forthcoming assessment of the proposed regarding the Residential Development Section of the North Sydney DCP 2013, in addition to the foregoing assessment of the proposal's performance against development standard and zone objectives.

In light of these analyses, key reasons the request fails are:

- The height breach has not been considered regarding other metrics designed to control bulk, scale and density setbacks, site coverage, unbuilt upon and landscape areas,
- There is no analysis and only reference to the submitted statement of environmental effects to support various contentions, such as view impacts, and
- Not having considered potential impacts of the proposal on large trees that help screen the site and the intended development, such as the need to prune them and excavation required for the development potentially damaging their roots, or potential health effects by the development increasing shadowing of those trees.
- The application would not have been made in the manner proposed if those trees did not exist. When the trees die, and if the development were approved, there is a risk that the loss of this vegetation would fully reveal a continuous built form of two to four storeys high, from the north western to the south eastern corners of the site. Combined, the southern and western boundaries between these points have a distance of about 50m.

## *Is the request supported and is consent able to be granted?*

The foregoing analysis submits that the written request to breach the building height standard should not be supported and consequently, should the Panel concur, consent is unable to be granted, as stipulated by clause 4.6 (3) of the LEP.

# **Heritage Conservation**

The subject site is a heritage item, is close to several other heritage items, and is in a conservation area listed in Schedule 5 of the LEP, and the following objectives apply to the site:

- (a) to conserve the environmental heritage of North Sydney,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,

(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Being in the vicinity of heritage items, cl. 5.10 (5) of the LEP requires consideration.

The heritage assessment provided in the above Referrals section of this report, concludes that the proposal is inconsistent with these provisions of the LEP.

# 3. Earthworks

Earthworks are proposed and a geotechnical report was submitted with the application.

The geotechnical report recommends that:

Where insufficient space exists for the batters, as per above, for boundaries, any existing footing or significant tree, then temporary or permanent retention measures should be designed and implemented prior to bulk excavation. The installation of which will require geotechnical inspection.

Without an arborist's report to assess whether such activities may damage trees near the site, the impact of such works has not been ascertained.

## **NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013**

The proposal has been assessed in accordance with applicable DCP provisions:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development					
	Complies	Comments			
1.2 Social Amenity					
1.2.1 Population Mix	Yes	The proposal alters and makes additions to an existing dwelling.			
1.2.2 Maintaining Residential Accommodation	Yes				
1.2.3 Affordable Housing	N/A				
1.2.4 Housing for Seniors/Persons	N/A				
with disability					
1.3 Environmental Criteria					
Topography	Yes	Excavation for the additions is proposed, although to a			
<ul> <li>Objectives seek to:         <ul> <li>Maintain natural topography and landform,</li> <li>Retain vegetation and trees,</li> <li>Minimise negative impact on neighbour amenity,</li> <li>Not disturb local geotechnical and hydrogeological characteristics, and</li> </ul> </li> <li>Minimise effects of adjoining transport infrastructure.</li> </ul>		degree that would not cause the development to be inconsistent with the controls' objectives, with the possible exception of the objective that seeks to retain vegetation and trees.			
1.3.2 Bushland	N/A				
1.3.3 Bush Fire Prone Land	N/A				
1.3.4 Foreshore Frontage	N/A				

1.3.7   Solar Access   Questionable   As discussed in relation to the height standard's objectives solar access is reasonably provided to the proposal and does not unreasonably impact objectives solar access is reasonably provided to the proposal and does not unreasonably impact neighbours. However, the proposal would likely increase overshadowing of the large scale vegetation in the public reserve to the site's south, noting that submittee shadow diagrams do not indicate overshadowing beyond the site's bounds. Whether this will harm the health of adjacent significant trees and other vegetation is unknown.	DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development							
a.3.7 Solar Access  Questionable As demonstrated.  Questionable As discussed in relation to the height standard's objectives solar access is reasonably provided to the proposal and does not unreasonably impact neighbours. However, the proposal would likely increase overshadowing of the large scale vegetation in the public reserve to the site's south, noting that submittee shadow diagrams do not indicate overshadowing beyond the site's bounds. Whether this will harm the health of adjacent significant trees and other vegetation is unknown.  1.3.8 Acoustic Privacy  Yes Proposed extensions to an existing dwelling in a residential setting are not expected to cause additiona noise compared with that reasonably expected from regular domestic activities.  1.3.9 Vibration  1.3.9 Vibration  1.3.9 Vibration  N/A  1.3.10 Visual Privacy  • Roof top terraces are only permitted under specific circumstances, and if appropriate,  • Must be the smaller of the lesser of either 50% of the floor area below or 18m².  1.4.0 Quality built form  1.4.1 Context  No  For the reasons detailed in the conservation planner's report, the proposal is incompatible with its context.  No  Jian Streetscape  No  As above, for clause 1.4.1.  1.4.3 Streetscape  No  As above, for clause 1.4.1.  1.4.4 Laneways  No  As above, for clause 1.4.1.  1.4.5 Sting  No  Discussed in relation to site coverage and setback only,  Discussed in relation to site coverage and setback only,  1.5 Storey  (Up to 4m)  2º storey  2º storey  3.6 Medium Density Residential)  Control Proposed  Compliance  (western side)  No, the height and (up to 7m)  2º storey  1.5 m  Connection  1.5 m			-	Comments				
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residential setting are not expected to cause additiona noise compared with that reasonably expected from regular domestic activities.  1.3.9 Vibration N/A  1.3.10 Visual Privacy • Roof top terraces are only permitted under specific circumstances, and if appropriate, • Must be the smaller of the lesser of either 50% of the floor area below or 18m².  1.4 Quality built form  1.4.1 Context No For the reasons detailed in the conservation planner's report, the proposal is incompatible with its context.  1.4.2 Subdivision Pattern N/A  1.4.3 Streetscape No As above, for clause 1.4.1.  1.4.4 Laneways N/A  1.4.5 Siting No Discussed in relation to site coverage and setback controls below.  1.4.6 Setback – Side No, western side setback only,  1.5 m Connection panner (western side)  1.7 storey (Up to 4m) 900mm  2 <sup>nd</sup> storey (Up to 4m) 900mm  2 <sup>nd</sup> storey (up to 7m) (variable) bulk are not required)  2.7 storey (arraigh) within proposed 900mm (setback extension not specified) of the boundary. Being so close amplifies this	1.3.7	Solar Access	Questionable	As discussed in relation to the height standard's objectives solar access is reasonably provided to the proposal and does not unreasonably impact neighbours.  However, the proposal would likely increase overshadowing of the large scale vegetation in the public reserve to the site's south, noting that submitted shadow diagrams do not indicate overshadowing beyond the site's bounds. Whether this will harm the health of adjacent significant trees and other				
1.3.10 Visual Privacy  • Roof top terraces are only permitted under specific circumstances, and if appropriate,  • Must be the smaller of the lesser of either 50% of the floor area below or 18m².  1.4.1 Context  No For the reasons detailed in the conservation planner's report, the proposal is incompatible with its context.  1.4.2 Subdivision Pattern N/A  1.4.3 Streetscape No As above, for clause 1.4.1.  1.4.4 Laneways No Discussed in relation to site coverage and setback controls below.  1.4.5 Siting No Discussed in relation to site coverage and setback controls below.  1.4.6 Setback – Side  No, western side setback only,  1.5m  No (variable) Domm    Setvention   Set	1.3.8	Acoustic Privacy	Yes	Proposed extensions to an existing dwelling in a residential setting are not expected to cause additional noise compared with that reasonably expected from regular domestic activities.				
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permitted under specific circumstances, and if appropriate,	1.3.10	Visual Privacy	Conditional	Privacy could be reasonably maintained by the proposal				
circumstances, and if appropriate,  • Must be the smaller of the lesser of either 50% of the floor area below or 18m².  1.4 Quality built form  1.4.1 Context  No  For the reasons detailed in the conservation planner's report, the proposal is incompatible with its context.  1.4.2 Subdivision Pattern  1.4.3 Streetscape  No  As above, for clause 1.4.1.  1.4.5 Siting  No  Discussed in relation to site coverage and setback controls below.  1.4.6 Setback – Side  No, western side setback only,  Set storey (Up to 4m) 900mm 2nd storey (Up to 4m) 900mm 2nd storey (up to 7m) 1.5m  No, the height and builk are not required) 1.5m  No, the height and port of the terrace on its edge with lot 2's terrace on the same (or similar) level.  Some R3 (Medium Density Residential)  No (existing, assessment not required) 1.5m  No, the height and builk are not effectively between ameliorated by garage and being within proposed extension not specified) of the boundary. Being so close amplifies this				•				
appropriate,  Must be the smaller of the lesser of either 50% of the floor area below or 18m².  1.4. Quality built form  1.4.1 Context  No For the reasons detailed in the conservation planner's report, the proposal is incompatible with its context.  1.4.2 Subdivision Pattern  No As above, for clause 1.4.1.  1.4.3 Streetscape No As above, for clause 1.4.1.  1.4.4 Laneways  No Discussed in relation to site coverage and setback controls below.  1.4.6 Setback – Side  No, western side setback only,  No Discussed in relation to site coverage and setback controls below.  1.4.6 Setback – Side  No, western side setback only,  1.5 Siting No Discussed in relation to site coverage and setback controls below.  1.5 Setback – Side  No, western side setback only,  1.5 Setback – Side  No, western side setback only,  1.5 Setback – Side  No, western side setback only,  1.5 Setback – Side  No, western side setback only,  1.5 Setback – Side  No, western side setback only,  2 Some R3 (Medium Density Residential)  Control Proposed (western side)  1.5 Setback – Side No, the height and bulk are not required)  1.5 Setback – Side No, the height and bulk are not setween garage and being within proposed extension not specified) of the boundary.  Being so close amplifies this								
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1.4.2   Subdivision Pattern   N/A     1.4.3   Streetscape   No   As above, for clause 1.4.1.     1.4.4   Laneways   N/A     1.4.5   Siting   No   Discussed in relation to site coverage and setback controls below.     1.4.6   Setback – Side   No, western side setback only,     1.4.6   Setback – Side   No, western side setback only,     1.5   Siting   No   Discussed in relation to site coverage and setback controls below.     2   Cone R3 (Medium Density Residential)     1.5   Control   Proposed (western side)     1.5   Storey (Up to 4m)   900mm   required)     2   2   2   3   3   3   3   3   3   3	1.4.1	Context		•				
1.4.4 Laneways  1.4.5 Siting  No  Discussed in relation to site coverage and setback controls below.  1.4.6 Setback – Side  No, western side setback only,  Setback – Side  No, western side setback only,  1st storey (Up to 4m) 900mm Rough (Up to 7m) (variable) bulk are not 1.5m (up to 7m) (variable) between ameliorated by garage and proposed extension (setback not specified) of the boundary. Being so close amplifies this	1.4.2	Subdivision Pattern	N/A					
1.4.6 Setback – Side  No, western side setback only,  No, western side setback only,  Setback – Side  Setback – Side  No, western side setback only,  Setback – Side  Setback – Side  No, western side setback only,  Setback – Side  Setback – Side  No, western side setback only,  Setback – Side  Setback – Side  No, western side setback only,  Setback – Side  Setback – Side  Setback – Side  No, western side setback only,  Setback – Side  Setback	1.4.3	Streetscape		As above, for clause 1.4.1.				
Controls below.   Setback - Side   No, western side setback only,   Control   Proposed (western side)   Compliance	1.4.4	Laneways	N/A					
side setback only,    Control   Proposed (western side)				Discussed in relation to site coverage and setback controls below.				
only,    1st storey (Up to 4m)	1.4.6	Setback – Side	=	Zone R3 (Medium Density Residential)				
1st storey (Up to 4m) 900mm Poomm Po				Control	-	Compliance		
(Up to 4m) 900mm  2nd storey (up to 7m) 1.5m  connection between garage and proposed extension  (Up to 4m) (variable) bulk are not effectively ameliorated by garage and proposed extension  not specified) of the boundary. Being so close amplifies this			only,	15t c+0 =0::	• •	No (ovisting		
(up to 7m) 1.5m  (variable) connection between garage and proposed extension  (variable) connection between garage and proposed extension  (variable) bulk are not effectively ameliorated by being within not specified) of the boundary. Being so close amplifies this				(Up to 4m) 900mm		assessment not required)		
1.5m connection between ameliorated by garage and proposed extension proposed extension being within proposed extension proposed extension proposed extension being within proposed extension proposed extension being bein				·		_		
between garage and being within proposed extension 900mm (setback not specified) of the boundary. Being so close amplifies this				' '				
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extension not specified) of the boundary. Being so close amplifies this					garage and	- I		
the boundary. Being so close amplifies this						,		
Being so close amplifies this					extension			
negative effect.						Being so close amplifies this		

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development						
		Complies	Comments			
		compiles	3 <sup>rd</sup> storey (Greater than 7m) 2.5m	< 2.5m (variable)	No. As above, the impact of the excessive height and lack of setback means the main extension (3 storeys) has the same effect as the link to the garage (2 storeys).	
				Eastern side Existing	Setbacks not being altered to the east, no assessment required.	
P1	Front setback  To match adjoining properties.	Front: Yes.	Front setback Existing setback remains, no assessment required.			
P5	Rear Setback – Rear  • To match adjoining properties.	<b>Rear:</b> No	Rear setback  The ground level rear setback is not changing however filling in the 1st floor balcony as proposed increases the bulk of the southern façade, exacerbated by the design not allowing for any break in built form on the southern and western sides. As mentioned, this results in a continuous built wall (albeit of varying heights from the south eastern corner of the building (unit 2) to the north western corner (the garage).  In combination with the inadequate westerly setback, increased bulk to the south and west, and the height breach, the combination of these factors fails to provide an acceptable result, in terms of setback objectives:  O2, to control bulk and scale, O3, to provide separation between buildings, and			
1.4.7	Form Massing Scale  Floor to ceiling height 2.7m	No.	Breaches of height, setbacks, site coverage and landscape area render the built form over-sized, inordinately over-massed and out of scale with its context. An overdevelopment of the site is proposed.			
1.4.8	Built Form Character	No.	As above.			
1.4.9	Dwelling Entry	N/A	No change.			
1.4.10 1.4.11	Roofs Dormers	Yes.	Considered i	•	e addition's roof is	
		, ,				
1.4.12	Materials	Yes	Materials are	of a contemporary	style and substance.	
1.4.13	Balconies – Apartments	N/A				
1.4.14	Front Fences	N/A	No change, as	sessment not requ	uired.	

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development						
		Complies	Comn	nents		
1.5	Quality Urban Environment	compiles	Comm	iciici		
1.5.1	High Quality Residential Accommodation	N/A				
1.5.2	Lightwells & Ventilation	N/A				
1.5.3	Safety and Security	N/A				
1.5.4	Vehicle Access and Parking	N/A	No change, ass	sessment no	t required.	
1.5.5	Site Coverage	No	See table belov	<i>N</i> .		
1.5.6	Landscape Area	No	Control	Required	Proposed*	Compliance
	·		Site coverage (max %)	45	60 (54 existing)	No
			Landscaped area (min %)	40	25 (13 existing)	No
			Unbuilt- upon area (max %)	15	15 (31 existing)	Yes
			*figures rounded to = 100%  Referring to earlier evaluation of building enveloped massing criteria, performance is equally poor expected with these key built-form density control.  In other words, the respective breaches of site coverand landscape area are reflected in the breaches of and rear setbacks, which contribute to extant proposed non-compliant development of the site.			
1.5.7	Landscaping	N/A	The landscape development officer has expressed concerns which have not been resolved, due to other matters of arguably greater significance in the assessment and an arborist's report not being submitted.			
1.5.8	Front Gardens	N/A	As above.			
1.5.9	Private and Communal Open Space	Yes	The space p acceptable.	rovided at	ground lev	vel would be
230m <sup>2</sup> ground	elling house on a lot between and 499m <sup>2</sup> requires a minimum d level open space of 40m <sup>2</sup> and a um dimension of 4.0m.					
1.5.10	Swimming Pools	N/A				
1.5.11	Tennis Courts	N/A				
	Garbage Storage	N/A	No change pro	posed.		
	Site Facilities	N/A				
1.5.14	Servicing of new lots	N/A				

**Stormwater Management** 

DEVELOPMENT CONTROL PLAN 2013 - Part B Section 1- Residential Development **Complies Comments** 1.6 **Efficient Use of Resources** 1.6.1 **Energy Efficiency** Yes As mentioned, a valid BASIX certificate has been 1.6.2 **Passive Solar Design** with the application and commitments included on the plans. These cover the 1.6.3 **Thermal Mass and Insulation** 1.6.4 **Natural Ventilation** applicable provisions of the DCP. 1.6.6 **Hot Water Systems** 1.6.7 **Water Conservation** 

# Views

1.6.8

Of concern are impacts on views from the public domain and potential views from private dwellings. The applicant has provided montages indicating impacts on views from the public domain and a selection of views from dwellings opposite the site.

The latter are limited in value as they are made from publicly available images only, and because they only depict a single view from these dwellings, which are oblique only. None are directly over the site, principally in a southerly direction, so they do not fully indicate the impact of the proposal.

While such images can be helpful, they are no substitute for seeing the potential impacts on views first-hand, by inspecting the site and vantage points from where views may be affected.

Below is a selection of images submitted on the applicant's behalf by McKendry Hunt Architects, and those taken by the author, as indicated. The caption of each image describes the view and the impact apparent or likely. Suffice to say the images available do not allow a comprehensive view analysis in accordance with the Land and Environment Court's view-sharing principles.

The following images indicate that public domain view quality will be adversely affected, and based on the albeit limited images available and (limited) site inspection, views from residences north of the site appear to be less seriously impacted.



Existing view over the site from the corner of Waiwera Street and Lavender Street (McKendry Hunt)



Same view with the proposed additions included (McKendry Hunt), indicating negative effects on the from the public domain and on the streetscape and the public domain in general.



Filtered view of Bridge and Opera House from Lavender Street (McKendry Hunt).



Same view with the development included. Some of the filtered view is obscured by the proposal, and this image also indicates the proposal has a deleterious impact on the streetscape (McKendry Hunt).



View from across Lavender St north of the site. It would appear from this image that the extension could require removal of some foliage from the tree to the right of the image, and the extension may block the filtered view and would certainly diminish the quality of the existing dwelling's setting and the public domain (Author).



A view to the south east over the site, from the corner of Lavender and Miller Streets. The view would be impacted as the extension would block out the view of the trees to the right of the existing addition, behind the garage. Although the bridge would still be visible, partial views of Luna Park would likely be impacted. The quality of the view and the public domain would be reduced (Author).



View from upper level of 16 Lavender Street, north of the site, the proposal will have little impact on this view (McKendry Hunt).



View from mid-level of No 10 Lavender Street, the extension proposed at No 19 would have little impact on this view (McKendry Hunt).

# Lavender Bay Planning Area - Part C of the DCP

The proposal is in the Lavender Bay Conservation Area, relevant provisions have been considered in the conservation planner's assessment.

# LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

In accordance with the North Sydney Local Infrastructure Contribution Plan 2020 payment of a contribution towards local infrastructure would be required in the event of development consent being granted. The contribution payable would be \$21,120.00, levied in accordance with \$7.12 of the Act.

As refusal is recommended, no condition requiring payment of the contribution is required.

# ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIF	CONMENTAL APPRAISAL	CONSIDERED
1.	Statutory Controls	Yes
2.	Policy Controls	Yes
3.	Design in relation to existing building and natural environment	Yes
4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	N/A
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant s 4.15 (1) considerations of the Act 1979	Yes

# **SUBMITTERS CONCERNS**

The application was notified for 14 days in October 2023. Council received 10 submissions and the matters raised by them have been considered earlier in this report.

# **PUBLIC INTEREST**

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

## **SUITABILITY OF THE SITE**

The proposal, alterations and additions to an attached dwelling in a dual occupancy, is a permissible form of development in the R3 Medium Density Residential zone.

However, for the reasons detailed in this report and summarised below, the proposed development is unsuitable for the site.

# **REQUEST FOR CONSIDERATION OF AMENDED PLANS**

The applicant through their solicitor has questioned Council's rejection of draft amended plans.

These plans were reviewed by the author and the Heritage Planner and considered not to have materially addressed the concerns raised in Councils communication of 5 March 2024. They remained unsupportable and were rejected on that basis.

The reporting of this matter to the panel gives opportunity for the determining body to review the application and consider what if any amendments are required prior to a favourable determination. It is then potentially open to the applicant to pursue these changes by a s8.2 review. Alternatively the Panel can defer the application stating clearly what changes in its view are required for a favourable determination.

# **CONCLUSION + REASONS**

The proposal has been considered under the relevant Environmental Planning Instruments and policies including the principal LEP and DCP for the North Sydney area and is found to be unsatisfactory, and refusal is recommended due to the proposed development's:

- 1. excessive height, width and depth, resulting in disproportionate and exaggerated massing and scale, which results in negative effects on the streetscape, public domain, public views and the physical relationship of development on the site and adjacent public reserves, streets, other heritage items in the Lavender Bay Conservation Area and nearby significant vegetation.
- 2. inadequate setbacks to the west and south, which contributes to continuous built form, from the south eastern corner to the north western corner of the site,
- 3. non-compliant site coverage and landscaped area, also contributing to the above effects and indicating the proposal, if approved, would represent an overdevelopment of the site,
- 4. impacts on the heritage and scenic values of the site and the locality,
- 5. incompatibility with local character and the streetscape,
- 6. impacts on neighbourhood amenity due to excessive bulk and scale,
- 7. impacts on adjacent trees not being considered by the application, and
- 8. diminution of views from the public domain, and the application not having adequately considered potential impacts on views from nearby residences.

Furthermore, the proposed breach of the building height development standard has not been supported by an adequate, well-founded request to vary the standard as required by clause 4.6 (3) of the North Sydney LEP 2013. Accordingly, consent must not be granted to this application.

Council received 10 submissions including a petition of six signatories that raised concerns which are reflected in the examination of the proposal presented by this report.

## HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Lavender Precinct Committee. This report outlines the concerns raised and how they have been considered.

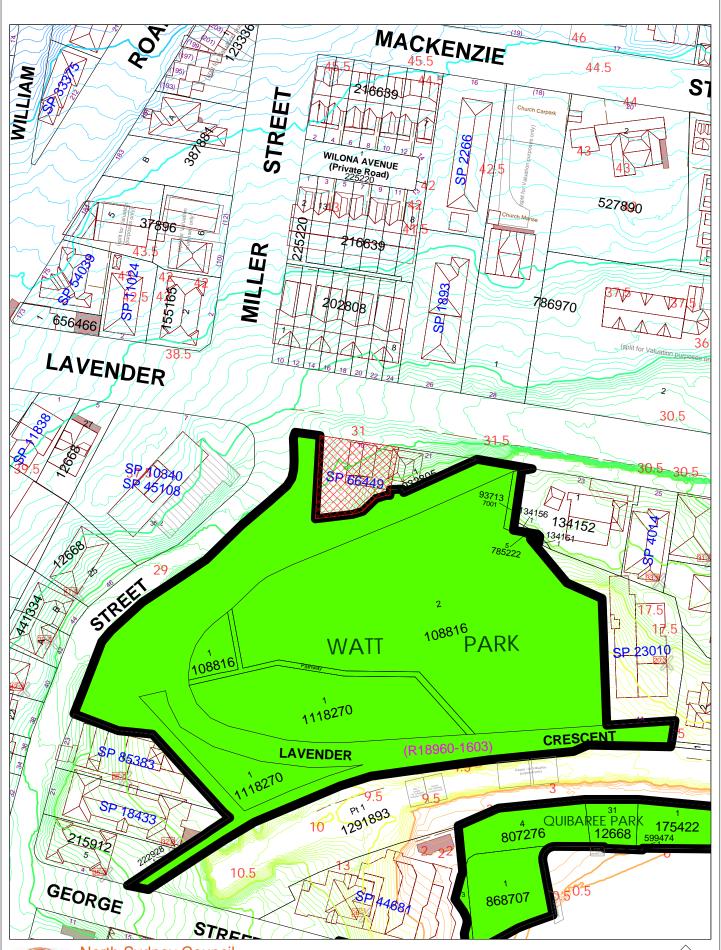
## **RECOMMENDATION**

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

**THAT** the North Sydney Local Planning Panel exercising the functions of Council as the consent authority refuse to grant consent to Development Application No. 290/23 for alterations and additions to a dwelling in an attached dual occupancy and associated works on land at 1/19 Lavender Street Lavender Bay, for the reasons set out below:-

- 1. The requirements of clause 4.6 (3) North Sydney Local Environmental Plan 2013 (the LEP) have not been satisfied. Consent must not be granted because the applicant's written request to vary the height of building development standard does not demonstrate that compliance would be unreasonable or unnecessary and neither does the request demonstrate that there are sufficient environmental planning grounds to justify contravening the standard.
- 2. The application is inconsistent with the following objective of the R3 Medium Density Housing zone:
  - To ensure that a high level of residential amenity is achieved and maintained.
- 3. The application is inconsistent with the objectives of the Building Height development standard of the LEP, clause 4.3 (1).
- 4. The application does not satisfy the objectives of the LEP, clause 5.10 Heritage conservation, subclause (1), paragraphs (a) and (b).
- 5. The application is inconsistent with the following provisions of North Sydney Development Control Plan 2013 (the DCP), Part B Development Controls, Section 1 Residential Development:
  - a) Clause 1.3.6 Views, the development has unacceptable impacts on views from the public domain and whether the development has acceptable impacts on views from private residences in proximity of the site has not been adequately demonstrated.
  - b) Clause 1.3.7 Solar access, it has not been adequately demonstrated that increased overshadowing of trees adjacent to the site will adversely impact the health of those trees.
  - c) Clause 1.4.1 Context, for the reasons provided by the Conservation Planner's assessment and reasons for refusal of paragraph 6 below, the proposed development is incompatible with its heritage context.

- d) Clause 1.4.3 Streetscape, the proposed development is inconsistent with the streetscape due to its height, bulk and scale, and potential impact on nearby significant vegetation.
- e) Clause 1.4.6 Side Setbacks, Provision P2, the proposed development does not provide compliant and adequate setbacks on the western side of the site.
- f) Clause 1.4.6 Rear Setback, Provision P5, the rear setback of the proposed additions is inconsistent with objectives O2, O3 and O4.
- g) Clause 1.4.7 Form, massing and scale, inconsistencies with requirements and objectives for height, setbacks, site coverage, and landscaped area result in the proposal having excessive form, massing and scale. These inconsistencies indicate that the proposed development is an overdevelopment of the site, as does the fact the proposed development forms, in conjunction with existing buildings on the site, a continuous wall of built form from the north western corner to the south eastern corner of the site.
- h) Clause 1.5.5 The development has excessive site coverage and is inconsistent with the provisions of this clause.
- i) Clause 1.5.6 The development has inadequate landscaped area and is inconsistent with the provisions of this clause.
- 6. The application is contrary to the following provisions of the DCP, Part B Development Controls, Section 13 Heritage Conservation:
  - clause 13.1.1 Guiding Statement: in terms of managing North Sydney's heritage for present and future generations in accordance with the principles of intergenerational equity as per the Burra Charter;
  - b) clause 3.1.2 General objectives Objective O5
  - c) clause 13.4 Development in the vicinity of heritage items O1/ P1/P5;
  - d) clause 13.5.1 Protecting heritage significance Objectives O1, O3 and O5 and Provisions P4 and P5;
  - e) clause 13.5.2 Form, massing and scale
  - f) clause 13.5.3 Additional Storeys Objective O1
  - g) clause 13.5.4 Roofs Objective O1
  - h) clause 13.5. 5 Interior layouts O1/P1/P8
  - i) clause 13.9 Controls for specific building elements –
  - j) Part C: clause 9.9.4 Views P10; s9.9.6 P7; s9.9.7 P1
- 7. The application is inconsistent with the following provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021:
  - a) Clause 6.28 (1), paragraphs a), c), f), g) and h), and
  - b) Clause 6.28 (2), paragraph e).
- 8. The site is unsuitable for the site, for reasons 1-7.
- 9. Approval of the application would not be in the public interest, for reasons 1-7.





North Sydney Council

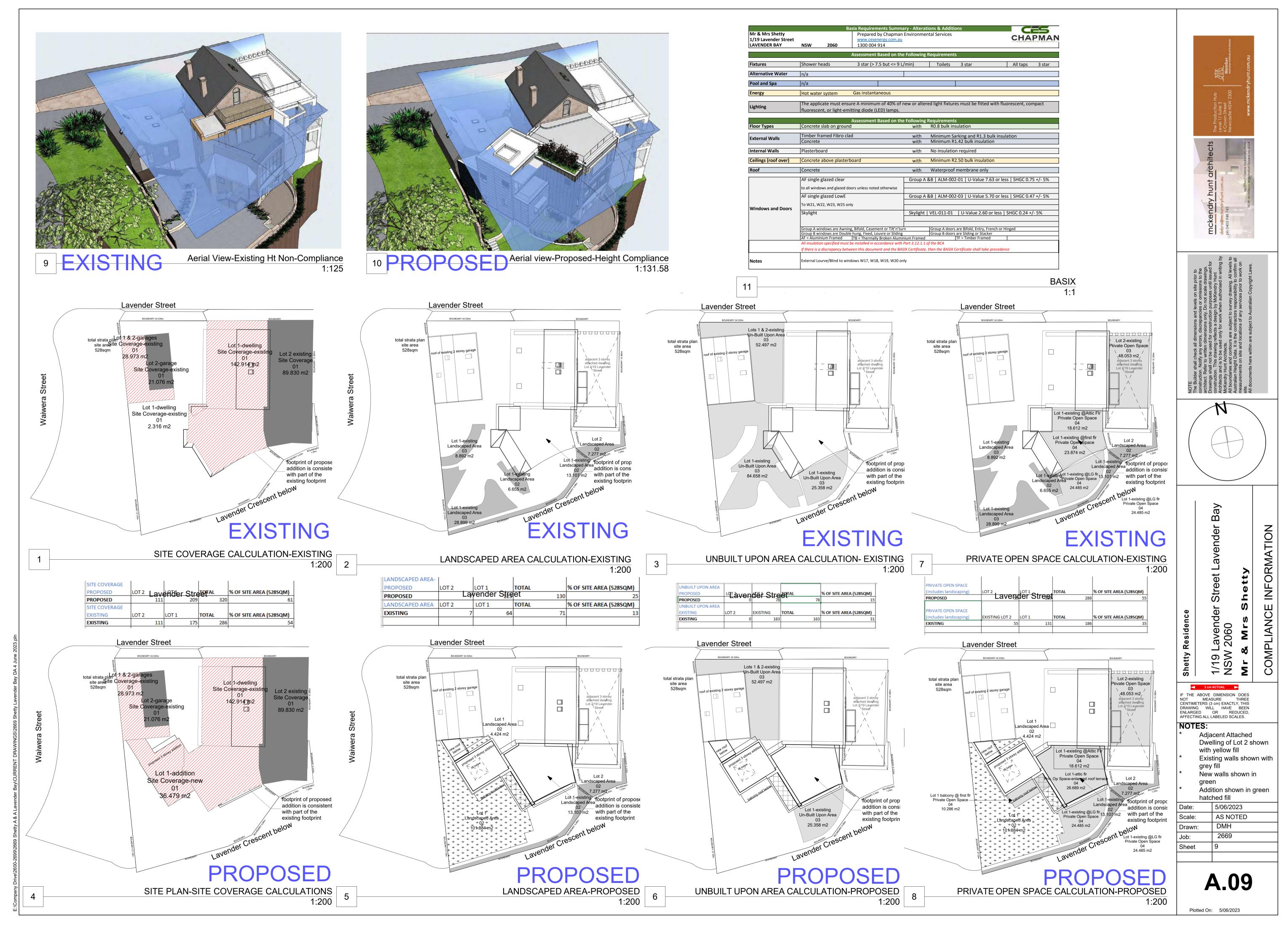
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Scale: 1:1200 approx.



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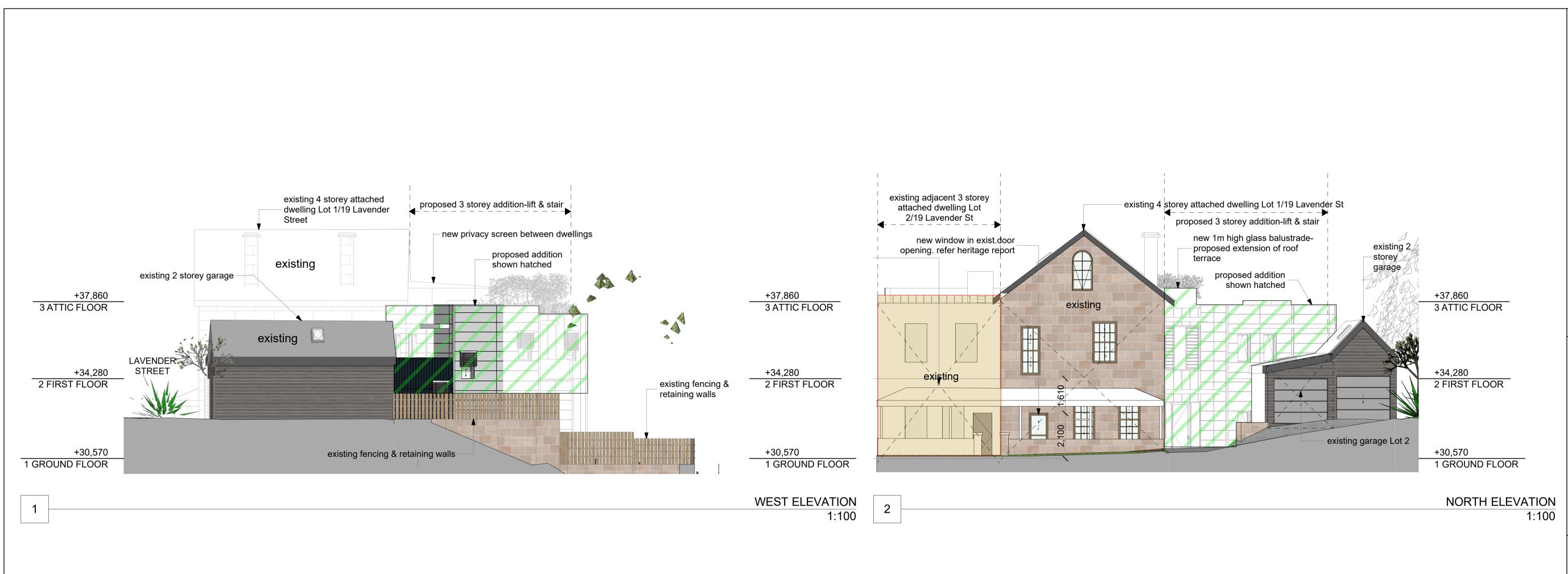


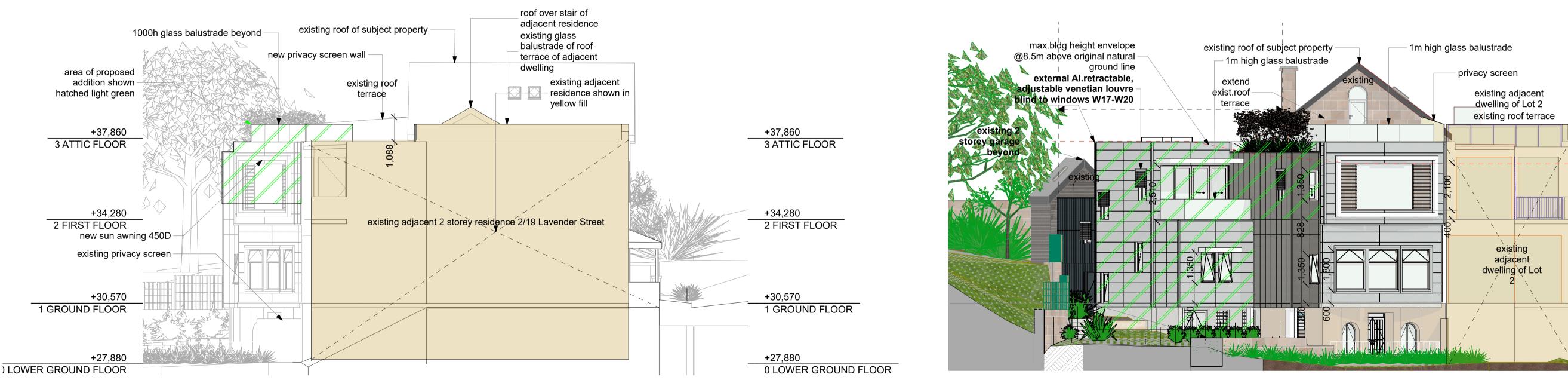
ATTACHMENT TO LPP02 - 01/05/24 Page 47



ATTACHMENT TO LPP02 - 01/05/24 Page 48







EAST ELEVATION

1:100

5

SOUTH ELEVATION 1:100



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NOTE  The Builder shall check all dimensions and levels on site prior to	construction. Notify any errors, discrepancies or omissions to the architect. Refer to written dimensions only. Do not scale drawings.	Drawings shall not be used for construction purposes until issued for construction. This drawing reflects a design by McKendry Hunt	Architects and is to be used only for work when authorised in writing by McKendry Hunt Architects.	All boundaries and contours are subject to survey drawing. All levels to Australian Height Data. It is the contractors responsibility to confirm all	measurements on site and locations of any services prior to work on site.	All documents here within are subject to Australian Copyright Laws.	
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Lavender Bay	

1/19 Lavender Street Lavender NSW 2060	Mr & Mrs Shetty	FI FVATIONS
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# NOTES:

Residence

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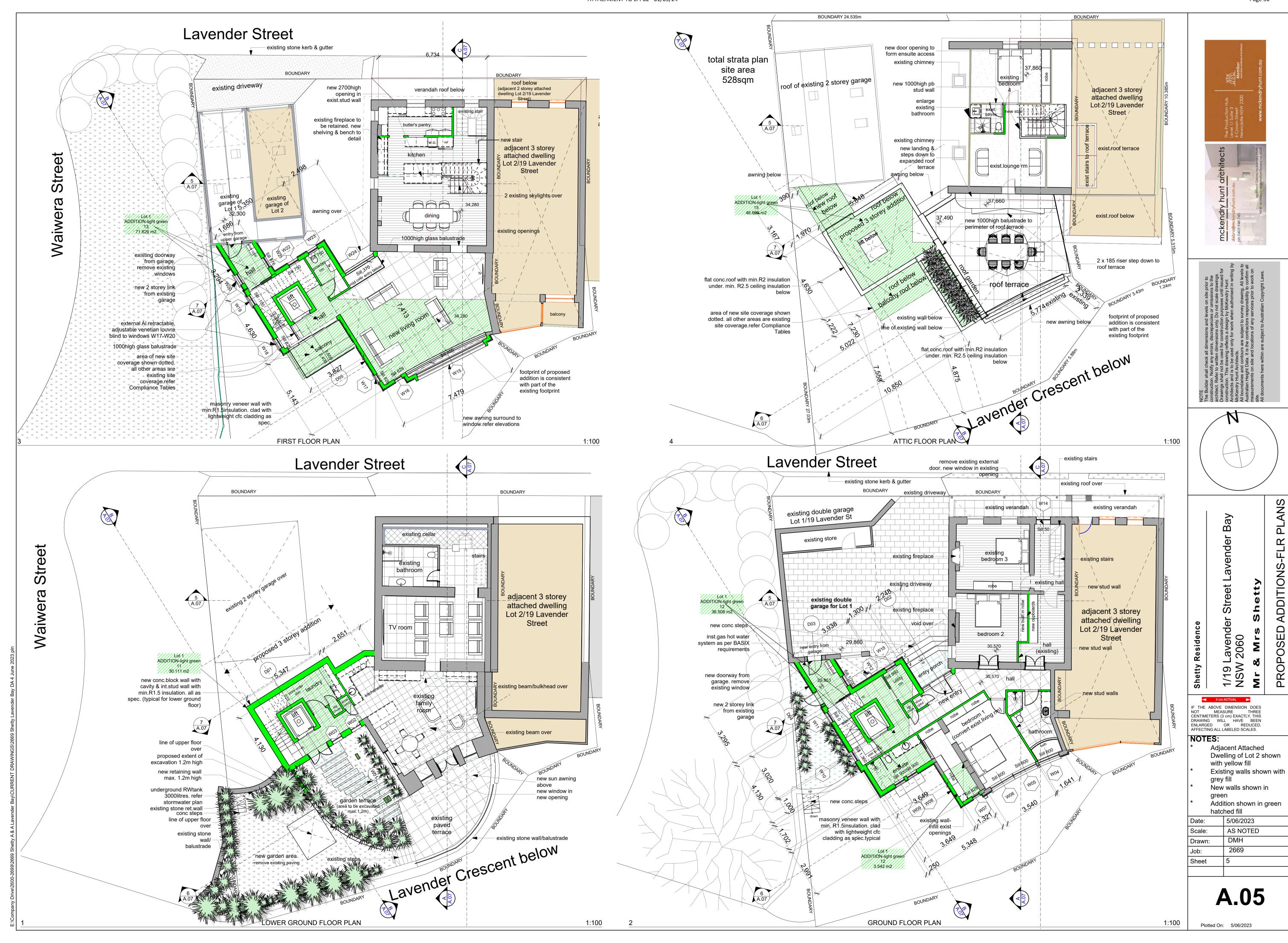
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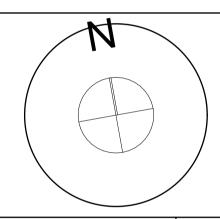
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ATTACHMENT TO LPP02 - 01/05/24 Page 50



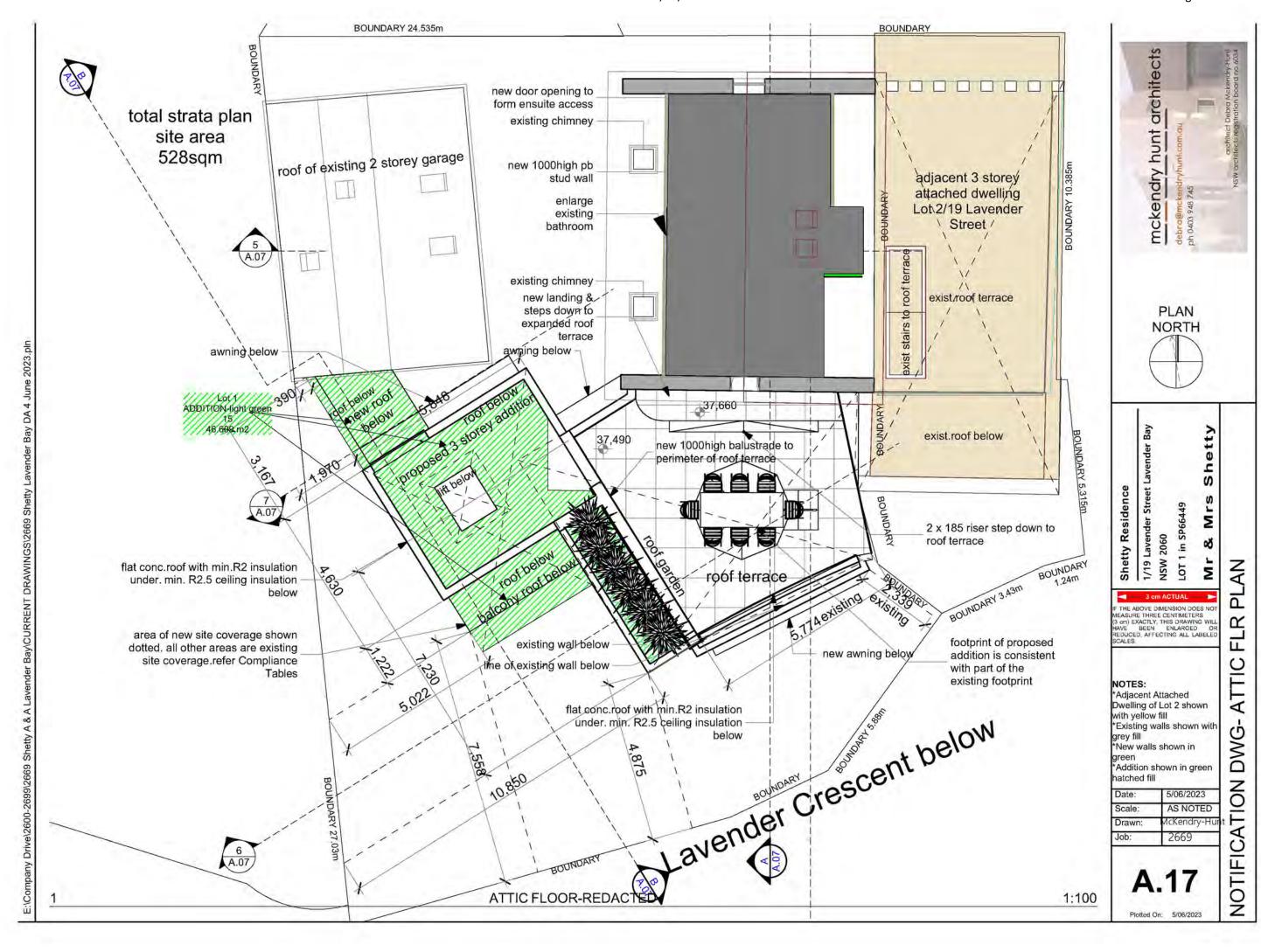
Page 51 ATTACHMENT TO LPP02 - 01/05/24





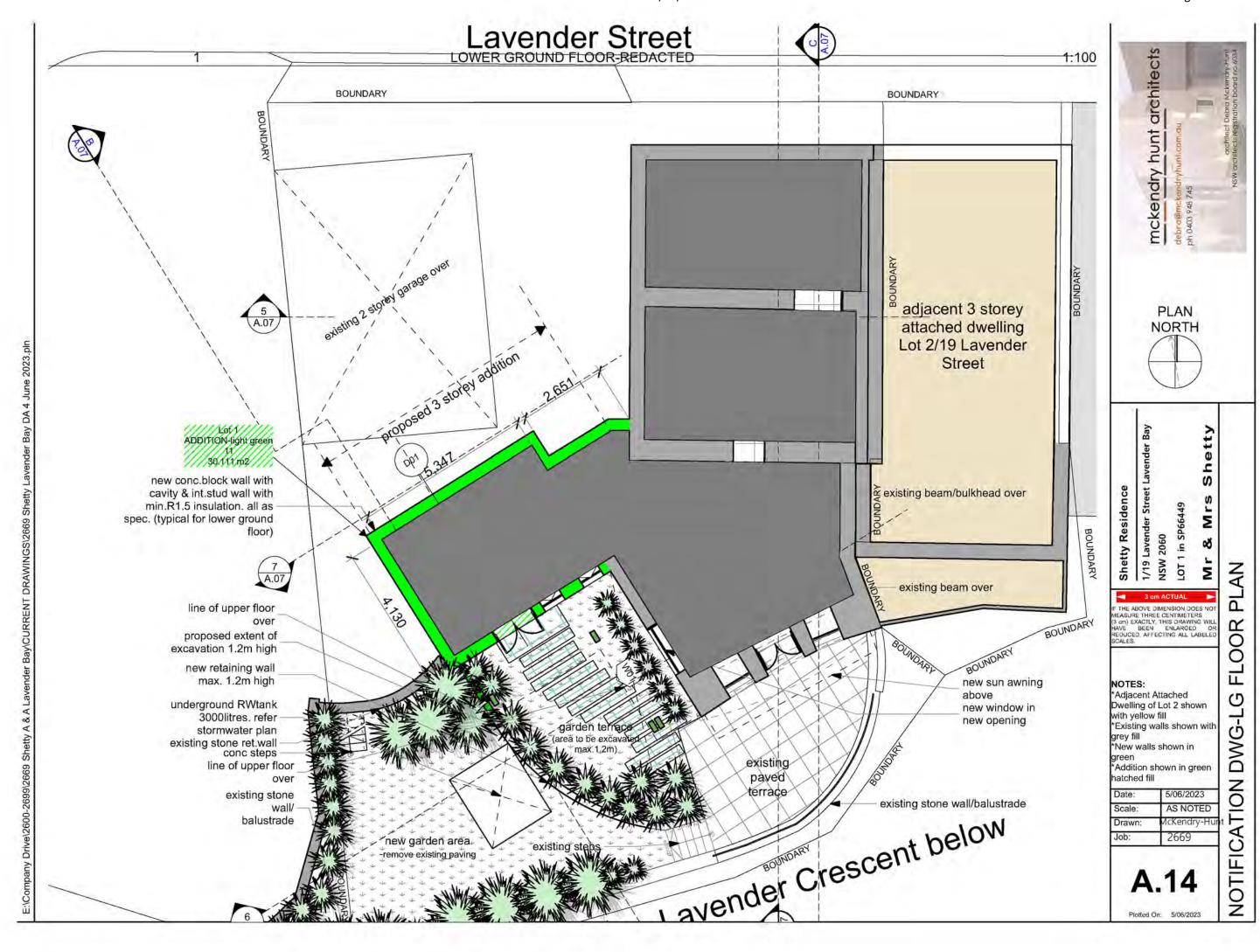
Addition shown in green

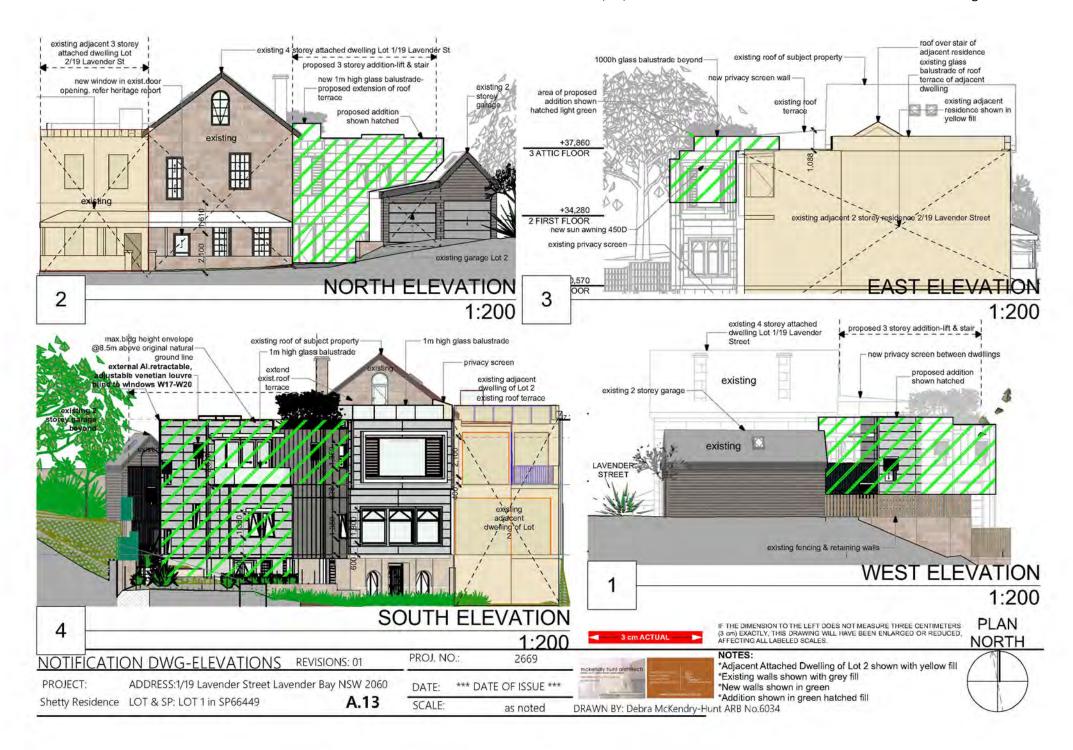












Page 58 ATTACHMENT TO LPP02 - 01/05/24





\_ adjacent attached dwelling Lot 2 outlined in red

View from South West 1:125

proposed 3 storey addition

\_ adjacent attached dwelling Lot 2 outlined in red

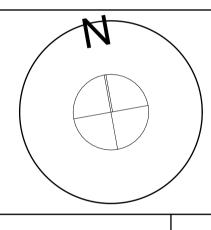
Street Corner (NW)-proposed 1:285.71

proposed 3 storey addition

View from elevated Lavender St-proposed 1:303.03



Rear View -Proposed 1:111.11



Street Lavender PLAN 1/19 L NSW

Shetty Residence IF THE ABOVE DIMENSION DOES NOT MEASURE THREE CENTIMETERS (3 cm) EXACTLY, THIS DRAWING WILL HAVE BEEN ENLARGED OR REDUCED, AFFECTING ALL LABELED SCALES.

NOTES:

Adjacent Attached Dwelling of Lot 2 shown with yellow fill

Existing walls shown with grey fill

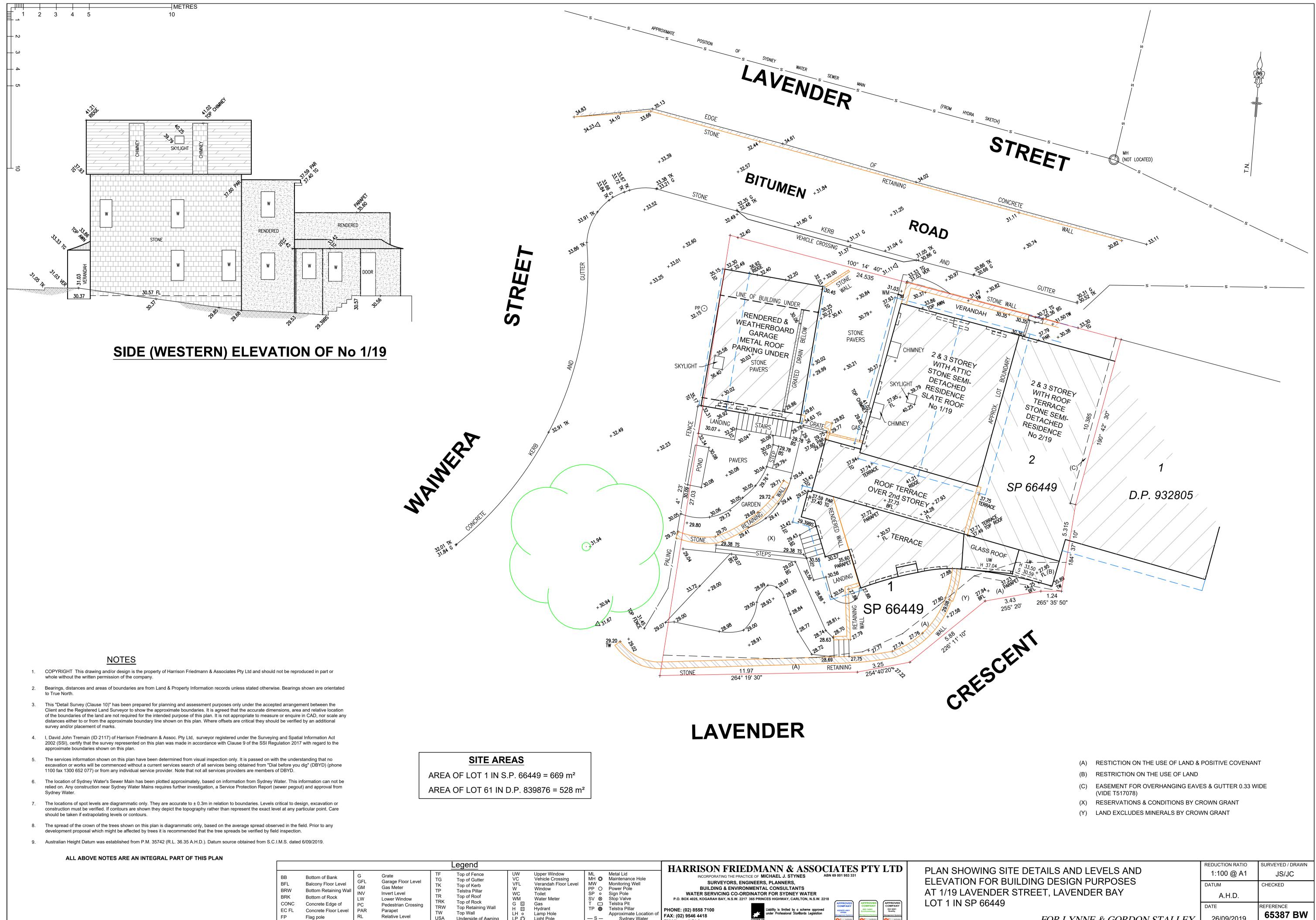
New walls shown in

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Date: 5/06/2023 Scale: AS NOTED Drawn: DMH 2669 Job: Sheet

**A.02** 

Plotted On: 5/06/2023



USA

Top of Bank

Underside of Awning

Light Pole Metal Lid

Sydney Water

EMAIL: mail@hfasurveyors.com.au

LP 🌣

FOR LYNNE & GORDON STALLEY

65387 BW 26/09/2019

# Proposed Alterations & Additions to 1/19 Lavender St, Lavender Bay

STREET



**LAVENDER** 

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SHEET I	NDEX	
A.01	SITE SURVEY & PHOTOS	18/11/2022 5: 01
A.02	SITE PLAN & 3D IMAGES	5/06/2023 4:0 09
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A.13	NOTIFICATION DWG-ELEVATIONS	5/06/2023 4:0 01
A.14	NOTIFICATION DWG-LG FLOOR PLAN	5/06/2023 4:0 01
A.15	NOTIFICATION DWG-GRND FLR PLAN	5/06/2023 4:0 01
A.16	NOTIFICATION DWG-FIRST FLR PLAN	5/06/2023 4:0 01
A.17	NOTIFICATION DWG- ATTIC FLR PLAN	5/06/2023 4:0 01

SURVEY PLAN

1:100



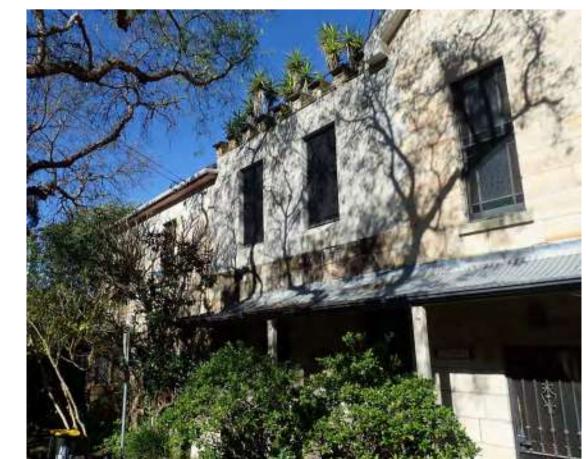
View from street corner (NW)





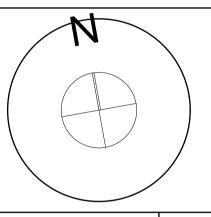


1:3.33



View along Lavender St





Shetty IF THE ABOVE DIMENSION DOES NOT MEASURE THREE CENTIMETERS (3 cm) EXACTLY, THIS DRAWING WILL HAVE BEEN ENLARGED OR REDUCED, AFFECTING ALL LABELED SCALES.

NOTES: Adjacent Attached Dwelling of Lot 2 shown

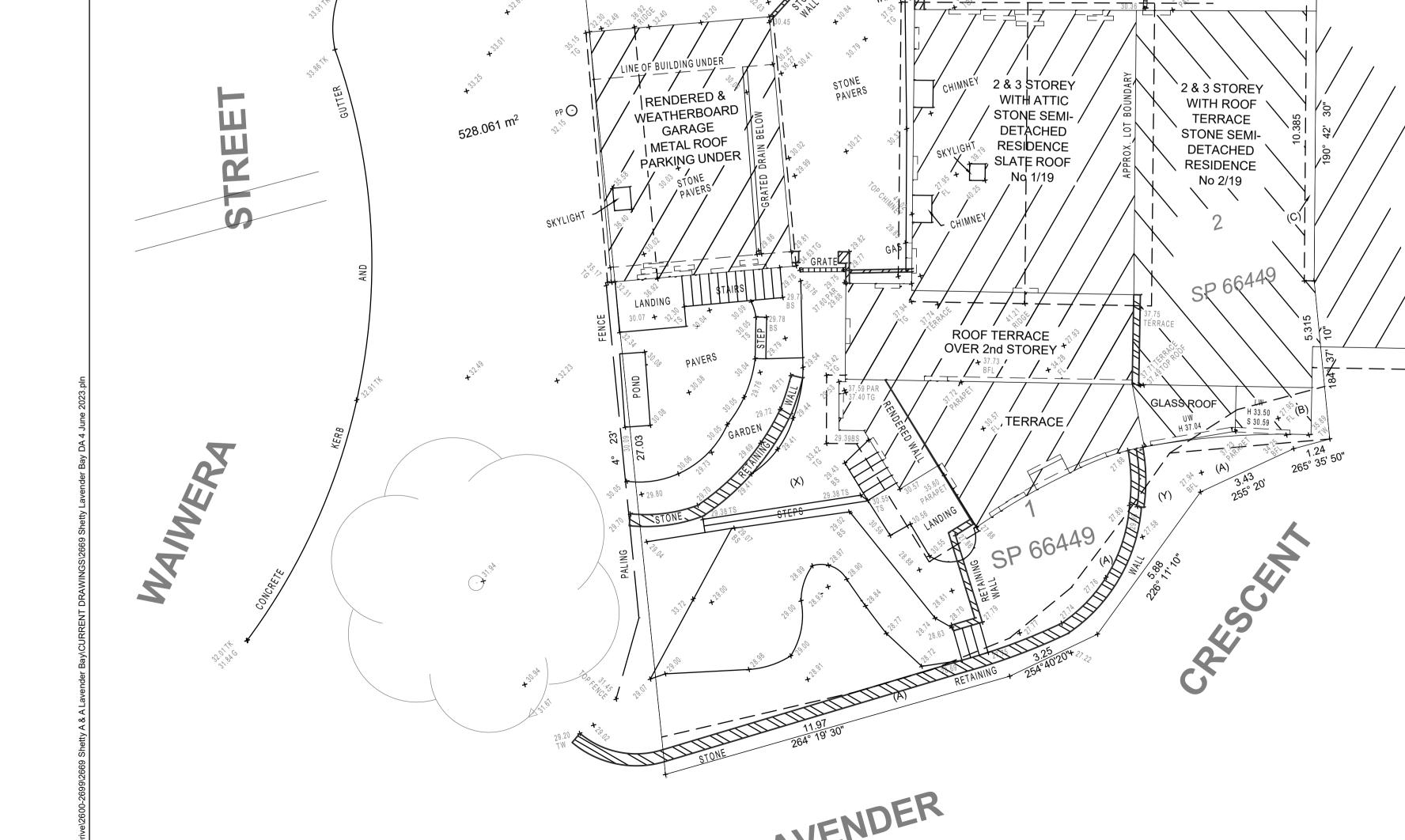
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Addition shown in green

hatched fill 5/06/2023

Scale: AS NOTED Drawn: DMH 2669 Sheet

Plotted On: 5/06/2023





# ANNEXURE A: CLAUSE 4.6 VARIATION - BUILDING HEIGHT

ADDRESS: 1 / 19 LAVENDER STREET, LAVENDER BAY

DATE: 16.05.2023

This Clause 4.6 Variation Request has been prepared to accompany a development application to North Sydney Council, seeking consent to construct alterations and additions to an existing heritage listed dwelling located at No. 1 / 19 Lavender Street, Lavender Bay. The extent of the proposed works and the details of the site and local context are outlined in the accompanying Statement of Environmental Effects.

This variation request relates to the proposed breach of the maximum building height requirement under NSLEP 2013 as part of the proposed alterations and additions to the existing heritage listed dwelling located at the site.

In summary, this Clause 4.6 variation request details that:

- The proposed alterations and additions include the retention of the original heritage listed dwelling that comprises a pitched roof form and detached garage. The proposal includes the construction of a southern and western addition that extends to a height of 10.6m and exceeds the maximum permitted building height of 8.5m at the site by 2.1m, resulting in a 24% departure from the standard;
- Despite the proposed height breach, the existing dwelling contains a three storey form and attic roof addition that projects to a height of RL41.21 as it sits above the existing lower ground floor level at RL27.88. Accordingly, the existing dwelling contains a building height of 13.33m above ground level (existing), representing a 4.83m departure and 56.8% variation to the standard;
- The proposed works are detailed to contain a parapet roof / balustrade to the upper level
  and is designed and massed to be subservient and recessive to the existing heritage listed
  dwelling. In doing so, the proposal represents a suitable design response to the mass and
  scale of the existing dwelling at the site which is contributory to the character of the area;
- The site is located within a unique context that comprises a single adjoining dwelling and is otherwise surrounded by street frontages and public bushland within a topographical setting that falls both gradually and dramatically in a southerly direction. Whilst the proposal exceeds the maximum building height limit, the scale and form of the proposal is appropriate to the unique context and existing heritage listed dwelling. Having regard to the context, existing building height and topography, strict application of the building height limit would have no material relationship to the existing context or provide any built form benefit at the site; and
- Finally, the proposed height exceedance is somewhat overstated by the existing altered natural topography at the ground floor level and the need to measure building height from the distorted ground levels in accordance with the definition of ground level (existing). As at Paragraph 74 of *Merman Investments v Woollahra Municipal Council [2021] NSWLEC 1582*, Commissioner O'Neill accepts that:

The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.



Having regard to the above, the proposed works relate to an existing heritage listed dwelling house that exceeds the maximum building height limit and contains a partially excavated and distorted ground level (existing). The proposal has been designed and massed in response to the existing significant building fabric and its contribution to the character and desirable elements of the local context. The existing dwelling is located well above the maximum building height limit and the proposed additions have been designed to achieve a height that appears as compliant from significant vantage points with the most significant variation being attributed to the distorted site levels above the existing lower ground floor level.

The remaining parts of this variation request identify the development standard and the extend of the proposed departure having regard to the statutory requirements of Clause 4.6 of NSLEP 2013. This variation request details that the application of flexibility to the development standard in this instance appropriate given the environmental planning grounds identified and noting that the proposal is consistent with the objectives of the standard and the zone within which it is located.

What is the name of the environmental planning instrument that applies to the land?
 North Sydney Local Environmental Plan 2013.

2. What is the zoning of the land and what are the objectives of the zone?

# Objectives of R3 – Medium Density Residential zone

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

# 3. Identify the Development Standard to which this Clause 4.6 Variation applies?

This variation request relates to Clause 4.3(2) of North Sydney LEP 2013 – Height of Buildings as determined by the height prescribed on the relevant map.

4. Is the standard expressly excluded from operation of Clause 4.6?

Clause 4.3(2) is not identified as being expressly excluded from operation of 4.6 as it is not identified at Clause 4.6(6) or (8) of the LEP.

# 5. What are the objectives of the Development Standard?

- (1) The objectives of this clause are as follows—
  - (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
  - (b) to promote the retention and, if appropriate, sharing of existing views,
  - (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,
  - (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,



- (e) to ensure compatibility between development, particularly at zone boundaries,
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.

# What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3(2) of the LEP prescribes a maximum building height of 8.5m as it applies to the subject site located on the relevant Maps.

The following LEP definitions are of relevance:

# building height (or height of building) means—

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

ground level (existing) means the existing level of a site at any point.

6. How do the existing and proposed numeric values relate to the development standard? What is the percentage variation (between the proposal and the environmental planning instrument)?

The existing dwelling is identified as a heritage listed dwelling house and is constructed over three levels in addition to an attic level above. The existing dwelling contains an original element that is located at the north and eastern portion of the site, connected to an attached dwelling by a party wall. A more contemporary addition was constructed in the 1990's which included the construction of a southern addition and a basement level below the original dwelling.

When measured from ground level (existing), the existing dwelling extends to a height of RL41.21, or 13.33m above ground level (existing) which is determined by measuring from the finished level of the existing lower ground floor level at RL27.88. As such, the existing dwelling includes a 4.83m or 56.8% departure to the standard as detailed Figure 1 below.

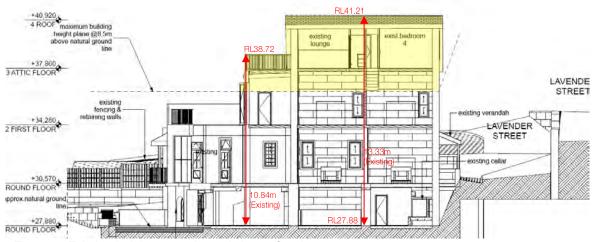


Figure 1: Existing height exceedance in Long Section



The projection of the existing dwelling above the 8.5m height limit is also detailed at Figure 2 in the form of a height blanket diagram which details that the original elements, the recently altered elements and the adjoining dwelling all project above the height limit.



Figure 2: Height blanket detailing existing building elements above the maximum building height

The proposed works will maintain the existing pitched roof form and original elements of the dwelling and seeks to extend the dwelling to the south and west. The proposed additions projects above the maximum building height limit to a maximum building height of 10.6m, resulting in a 2.1m departure and a 24% variation to the Standard. The extent of the proposed additions that project above the 8.5m building height limit at the site are highlighted in blue at Figure 3 below.

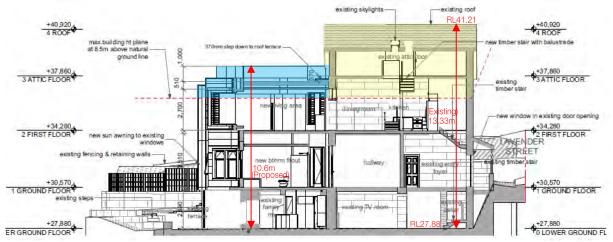


Figure 3: Proposed height exceedance shaded Blue in Long Section (yellow denotes existing)

The proposed additions as they extend above the maximum building height limit at the site are detailed on the height blanket diagram at Figure 4.





Figure 4: Height blanket diagram detailing proposed height (southern and western additions)

As detailed at Figures 3 and 4 above, the most significant height breach associated with the proposed additions relates to the area located above the existing excavated lower ground floor level that extends directly south of the existing pitched roof form. This area is largely obscured by the existing heritage listed building when viewed from the primary frontage at Lavender Street.

The western façade of the proposed additions, which is the more visually prominent from the Waiwera Street frontage, is designed to fit within what appears to be a compliant building height when viewed from the western aspect. The variations proposed for the new additions are therefore minor when compared to the height of the existing dwelling and are not readily discernible from a compliant building form having regard to the sloping nature of the site and prominent western aspect.

# 7. How is compliance with the Development Standard unreasonable or unnecessary in in the circumstances of this particular case?

The Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 provides the five part test to determine if compliance with a development standard is unreasonable or unnecessary with only one test needing to be satisfied.

**Note:** These five tests are not exhaustive of the ways in which you might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. You do not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, you can demonstrate that compliance is unreasonable or unnecessary in more than one way.

Test 1: In our view, the proposal satisfies the first test in Wehbe v Pittwater Council [2007] NSWLEC 827 as the objectives of the standard are achieved notwithstanding non-



compliance with the standard. Refer to discussion below relating to compliance with the objectives of the development standard.

8. Are there sufficient environmental planning grounds to justify contravening the development standard?

In considering whether there are sufficient environmental planning grounds to support the building height non-compliance, the following principles are relied on.

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ further clarified the correct approach in the consideration of clause 4.6 requests. This advice further confirms that the clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.

As held in Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at [39], Preston CJ confirmed (at[25]) that the test in 4.6 (4)(a)(i) does not require the consent authority to directly form the opinion of satisfaction regarding the matters specified. Rather, it needs to do so only indirectly in forming its opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated.

By contrast, the test in cl4.6(4)(a)(ii) requires that the consent authority must be directly satisfied about the matter in that clause (at[26]); namely that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Having regard to the above, it is considered that there are sufficient environmental planning grounds to support the proposed non-compliance for the following reasons:

- a. The site contains sloping topography and an excavated portion to accommodate the existing lower ground floor level. The excavated parts of the site are taken to be ground level (existing) despite being distorted ground level when comparted to what would have been the original slope in the land. The excavated portions of the site account for the most significant height breaches at the southern portion of the existing dwelling. These elements of the proposal are mostly obscured from the Lavender Street frontage by the existing pitched roof form of the heritage listed dwelling;
- b. From the southern aspect, the proposed additions are viewed from well below the level of the site at the Lavender Crescent frontage. From the lower vantage point, the perception of building height is difficult to distinguish and there is a distinct lack of comparable buildings that meet the maximum building height limit. The southern façade is designed to maintain existing ground levels and match the southern alignment of the roof of the adjoining semi-detached dwelling. As such, the height of the proposed addition within the southern aspect is responsive to the building height of the adjoining dwelling that shares a common party wall and has been designed to maintain and compliment the established scale and character of development from this vantage point;
- c. From the western aspect, where the proposed additions bridge the detached garage and the existing dwelling, the height of the parapet roof form has been designed to appear as being compliant with the 8.5m height limit. The compliant western alignment of the proposal is demonstrated in the height blanket diagram at Figure 4 above. Therefore, as the proposed western façade sits below the maximum height



blanket, this element reads as being complaint with the required height limit and represents a height and scale that is reasonably expected. Notably, whilst this element appears compliant from the western aspect, it appears as a modest form as the natural ground level below the addition is located lower below the visible natural ground level at the western boundary;

- d. As detailed above, the proposed additions are determined to provide a suitable presentation and scale when viewed from the northern (Lavender Street), southern (Lavender Crescent) and western (Wawera Streert) aspects having regard to the existing altered site levels, the original building form and site specific design response relating to the significant heritage features of the dwelling;
- e. The most significant height exceedance is detailed at the southern portion of the proposed addition as it sits above the excavated Lower Ground Floor level below. At this point of the building, the height exceedance is distorted by a modified ground level and the additions are indiscernible from a compliant building form if measured from the original ground levels. As at Paragraph 74 of *Merman Investments v Woollahra Municipal Council* [2021] NSWLEC 1582, Commissioner O'Neill accepts that:

The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

- f. The accompanying SEE details that the proposed alterations and additions will not give rise to any material impacts on the amenity of the adjoining neighbours in terms of privacy, overshadowing or view loss. Accordingly, the proposal will only serve to improve the amenity of the residents at the site without impacting on the amenity of the adjoining dwellings or detracting from the character of the area.
- g. The accompanying SEE also details that the proposed additions have been designed in conjunction with the project heritage architect with the design intent of providing improved access to each level within a suitable and subservient building form. The scale of the proposed additions are therefore representative of a suitable design response to the existing heritage listed dwelling and there is no clear planning purpose to be served by modifying the design to achieve strict compliant with the 8.5m height limit;
- h. The proposed development achieves the objects in Section 1.3 of the Environmental Planning & Assessment Act, 1979, specifically:
  - a. The proposal promotes the orderly and economic use and development of land through the alterations and additions to an existing dwelling to provide improved amenity and access within the multi-level dwelling to meet current living standards (objective 1.3c):
  - b. The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context, and will create improve the amenity for future residents whilst respecting the local built form character (objective 1.3(g).



In addition to the above, the proposal is in the public interest because it is consistent with the objectives of the standard and the zone in which the development is carried out. Provided below is an assessment of the proposal with respect to the objectives of the Building Height development standard and the R3 – Medium Residential zone.

The proposal is consistent with the <u>objectives Clause 4.3 Height of Buildings</u> and as detailed at Table 1 below.

Table 1: Compliance with the objectives of Clause 4.3 of North Sydney LEP 2013				
Objective	Response			
(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,	The proposed additions are designed to extend from and maintain the existing levels of the original dwelling at the site. The existing dwelling is located well above the maximum building height and the proposed additions have been designed to appear contextually appropriate and compatible with the contributory elements of the heritage listed dwelling when viewed from each street frontage as detailed above.			
(b) to promote the retention and, if appropriate, sharing of existing views,	The proposed additions will occupy the southern and western portion of the site and will not impact on any views captured from adjoining dwellings or significant public vantage points over the site.			
(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,	The submitted SEE details that the proposed works will not impact on the existing level of sunlight gained to north facing windows, the roof light and roof terrace area of the adjoining dwelling at 2/19 Lavender Street.			
(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings	The proposed additions maintain the southern alignment and primary aspect of the existing dwelling and in doing so will not give rise to overlooking of sensitive windows of 2/19 Lavender Street. In addition, the existing open space areas at the ground floor level and extended upper level terrace are designed to provide appropriate separation having regard to the alignment of adjoining open space and the proposed privacy screening.			
(e) to ensure compatibility between development, particularly at zone boundaries	The proposed additions are compatible with the character of the existing heritage listed dwelling at the site and on the adjoining property and is designed to be compatible with the visual catchment when viewed from each vantage point.			
(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,	The scale, massing and density of the proposal is appropriate the existing dwelling, adjoining dwelling and immediate visual catchment.			
(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.	The proposed additions are designed to appear as two storeys when viewed from the northern and western aspects and are compatible with and subservient to the existing heritage listed dwelling.			



Additionally, proposal is consistent with the <u>objectives of the R3 – Medium Density</u> <u>Residential zone</u> as detailed at Table 2 below.

Table 2: North Sydney LEP 2013 - Objectives of the R3 - Zone			
Objective	Proposal	Complies	
To provide for the housing needs of the community within a medium density residential environment.	The proposed alterations and additions are designed to improve accessibility to each level and from the garage to the existing multi-level and heritage listed dwelling. The alterations will provide contemporary and tailored design solutions that service the needs of the residents within the heritage listed dwelling.	Yes	
To provide a variety of housing types within a medium density residential environment.	The alterations and additions will offer a unique living environment and improved access and circulation within the existing semi-detached dwelling. The alterations are a suitable design response within the medium density locality.	Yes	
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	N/A – alterations to residential dwelling.	N/A	
To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.	N/A – the subject site is a heritage listed dwelling and any such redevelopment is to have regard to a suitable and complementary response to the existing contributory elements as proposed.	N/A	
To provide for a suitable visual transition between high density residential areas and lower density residential areas.	The existing dwelling and adjoining dwelling are located within a unique built form context and the proposed additions are suitable and subservient to the scale of the existing dwellings.	Yes	
To ensure that a high level of residential amenity is achieved and maintained.	The proposed additions will only serve to improve residential amenity within a building form that has been assessed in the accompanying SEE to have negligible impacts on the privacy, solar access and views of the adjoining dwellings.	Yes	

# 9. The concurrence of the Secretary has been obtained

Clause 4.6(4)(b) requires that a development consent cannot be granted to a development that contravenes a development standard unless the concurrence of the Secretary of the Department of Planning, Industry and the Environment (DPIE) has been obtained. As outlined in the DPIE's Planning Circular PS 20-002 dated 5 May 2020, the consent authority 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 attached to the Circular. The conditions are not applicable to the building height development standard and the Secretary's concurrence can therefore be assumed.



# 10. Matters of significance for State or Regional Environmental Planning.

The proposed variation to the building height development standard does not raise any matter of significance for State or regional environmental planning.

# 11. The public benefit of maintaining compliance with the Development Standard

This variation request demonstrates that the proposed variation is consistent with the relevant zone and standard objectives, and that insistence on strict compliance is unreasonable unnecessary in the circumstances. As also demonstrated in this variation request, there are no unreasonable impacts that will result from the contravention to the maximum building height standard and to the contrary, the proposed alterations and additions will allow for improved occupant amenity within a form and scale that directly responds to the desirable elements of the heritage listed dwelling at the site.

On this basis, there is no public benefit in maintaining strict compliance with the development standard. The proposal's consistency with the relevant zone objectives and development standard objectives deems that the subject application is in the public interests.

## 12. Conclusion

The proposal relates to the alterations and addition of an existing heritage listed dwelling. The existing site contains a slope to the south, distorted ground levels and an existing heritage listed dwelling. The existing dwelling exceeds the maximum height limit by 56.8% and the proposal, whilst exceeding the height limit, is lower and subservient to the original heritage listed form, resulting in a height exceedance that is appropriate when viewed from all public vantage points.

The height exceedance of 2.1m or 24% of the standard is acceptable having regard to the built form context, existing height exceedance, altered ground levels as well as the design and height of the proposed additions at each public vantage point.

Compliance with the development standard is unreasonable and unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the proposed variation. Despite the proposed height exceedance, the development is in the public interest as it remains consistent with the development standard and the zone within which is it being carried out.

In satisfaction of the statutory tests of Clause 4.6 of North Sydney LEP 2013 it is requested that Council support the variation as proposed.