

**NSLPP MEETING HELD ON 05/03/2025****Attachments:**

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

ADDRESS/WARD: 26 Milson Road, Cremorne Point**APPLICATION NO:** DA177/24 (PAN-453797)

PROPOSAL: Alterations and additions for change of use from a dual occupancy to a detached dwelling including internal and external re-configuration, installation of lift and associated site works.

PLANS REF:

Plan No.	Date:	Description	Prepared by
DA-A-010 Issue 0	02/12/2024	Site Plan	Smith & Tzannes
DA-A-020 Issue 0	02/12/2024	Existing GA/Demolition – L0	Smith & Tzannes
DA-A-021 Issue 0	02/12/2024	Existing GA/Demolition – L1	Smith & Tzannes
DA-A-022 Issue 0	02/12/2024	Existing GA/Demolition – L2	Smith & Tzannes
DA-A-023 Issue 0	02/12/2024	Existing GA/Demolition – L3	Smith & Tzannes
DA-A-024 Issue 0	02/12/2024	Existing GA/Demolition – Roof	Smith & Tzannes
DA-A-0100 Issue 0	02/12/2024	Proposed GA – L0	Smith & Tzannes
DA-A-0101 Issue 0	02/12/2024	Proposed GA – L1	Smith & Tzannes
DA-A-0102 Issue 0	02/12/2024	Proposed GA – L2	Smith & Tzannes
DA-A-0103 Issue 0	02/12/2024	Proposed GA – L3	Smith & Tzannes
DA-A-0104 Issue 0	06/12/2024	Proposed GA – Roof	Smith & Tzannes
DA-A-0200 Issue 0	02/12/2024	Section A	Smith & Tzannes
DA-A-0201 Issue 0	06/12/2024	North Western Elevation	Smith & Tzannes
DA-A-0202 Issue 0	06/12/2024	South Eastern Elevation	Smith & Tzannes
DA-A-0203 Issue 0	06/12/2024	South Western Elevation	Smith & Tzannes
DA-A-0204 Issue 0	06/12/2024	North Eastern Elevation	Smith & Tzannes
DA-A-0204 Issue 0	09/12/2024	Section B & C	Smith & Tzannes

OWNERS: Linksquare Enterprises Pty Ltd**APPLICANT:** Vigor Master Pty Ltd**AUTHOR:** Report of Robin Tse, Senior Assessment Officer**DATE OF REPORT:** 19 March 2025**DATE LODGED:** 13 August 2024**DATE AMENDED:** 11 December 2024**RECOMMENDATION:** Refusal

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions for change of use from a dual occupancy to a detached dwelling including internal and external re-configuration, installation of lift and associated site works at No. 26 Milson Road, Cremorne Point.

The application is reported to the North Sydney Local Planning Panel for determination as the application involves a variation to the LEP maximum building height development standard by more than 10%. Therefore, the application is referred to the Local Planning Panel for determination in accordance with the Ministers Direction.

The notification of the original and amended proposal has attracted two (2) submissions raising concern about the impact of the proposed development on the adjoining properties including impacts of excavation/construction works, construction management/traffic/parking issues, privacy impacts on the adjoining properties and request for access/examination of certain documents from the applicant/developer. The issues raised in the submissions received have been addressed in this report.

The development application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013 and was found to be unsatisfactory.

Consideration has also been given to the Clause 4.6 request for a variation to the LEP's building height development standard as submitted by the applicant.

The variation to the building height development standard is not supported because the uncharacteristic design of the building elements, including those above the LEP maximum building height limit, that would result in a further erosion of the character of the subject Contributory item. Furthermore, the uncharacteristic nature of the proposal and its impacts on the conservation area do not demonstrate public benefit. Therefore, a variation to the LEP building height control is not considered to be well-founded and strict compliance with the standards is necessary.

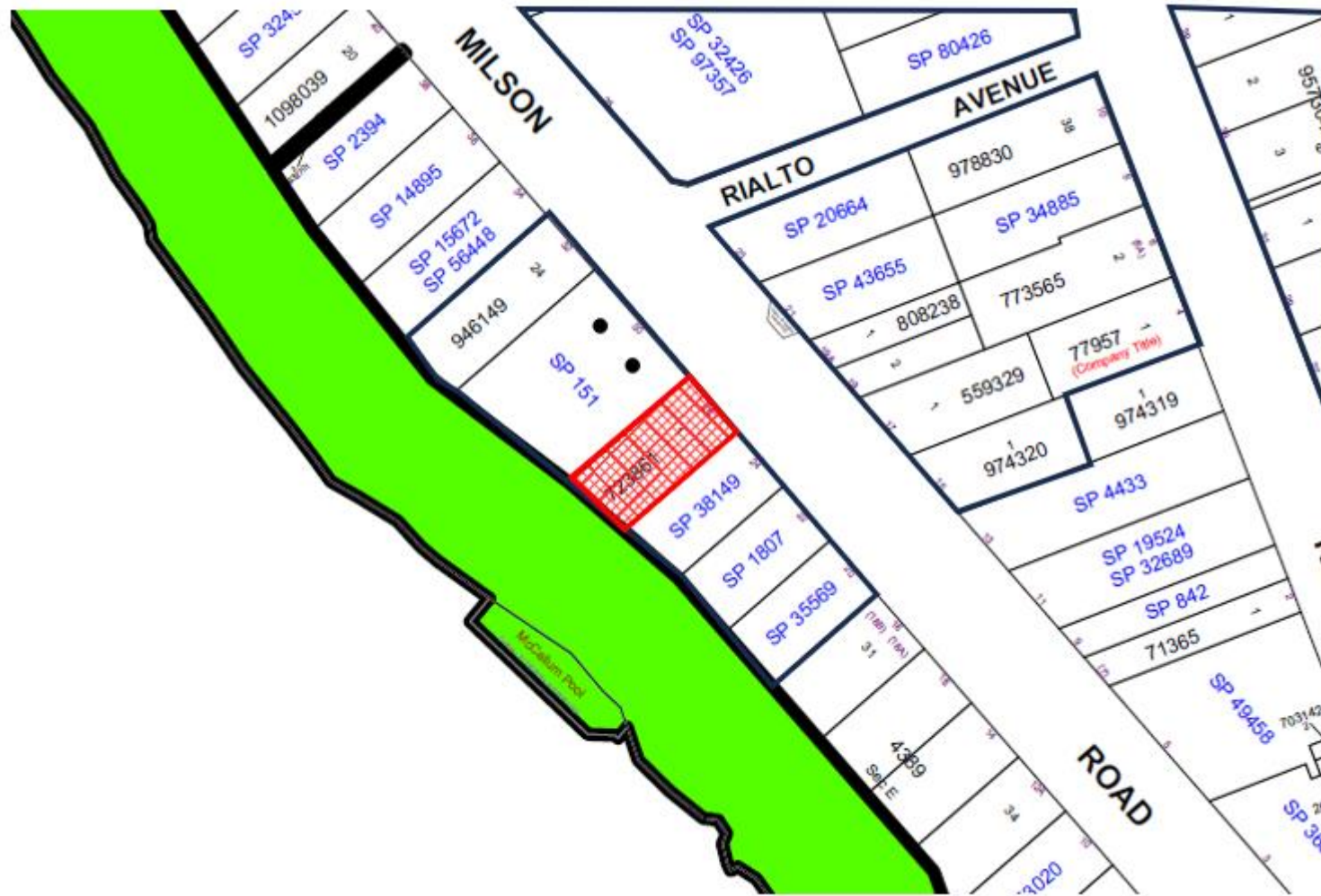
The proposed development is contrary to the objective of the R2 (Low Density Residential) zone because the proposal would detract from the significance of the conservation area.

The proposal does not comply with DCP's maximum site coverage requirement, nor it is consistent with the DCP site coverage objectives.

The application was referred to Council's Conservation Planner who considered the proposal unsatisfactory because of the characteristic nature of the proposal and the adverse impacts on the significance of the subject Contributory item.

Accordingly, the proposed development is recommended for **refusal**.

LOCATION MAP



Property/Applicant



Submitters

- Properties Notified



DESCRIPTION OF PROPOSAL

The applicant seeks approval for alteration and additions for change of use from a dual occupancy to a detached dwelling including internal and external re-configuration, installation of lift and associated site works.

The proposed works are summarised as follows:

Level 0 (RL 11.300):

- Internal reconfiguration to accommodate two (2) bedrooms each with ensuite bathroom.
- A new laundry at the rear
- Demolition of paved area along southeast boundary to accommodate additional landscaped area.

Level 1 (RL 13.760 (Garage Building) RL 14.110 (Main Dwelling)) :

- Internal reconfiguration of walls and doors within the main building to provide an open plan living/dining/kitchen, a guest bedroom with ensuite bathroom and a bathroom;
- Excavation towards the street boundary of the site to accommodate a new bedroom with walk-in-rob and ensuite bathroom with a new patio;
- Construction of a new patio off the bedroom;
- Construction of a new link structure to accommodate a lift shaft and internal stairs connecting L1 to L3.
- Demolition of external steps along southeast side boundary.

Level 2 (RL 16.860 (Garage Building) RL 17.630 (Main Dwelling)):

- Remove internal walls within the main dwelling to provide an open planned formal living and formal dining areas with a new study nook;
- Remove internal walls within an existing studio, a bathroom and a laundry under the existing double garages and excavation works to provide a guest bedroom with ensuite bathroom, a rumpus/media area and a bar with an outdoor patio;
- Construction of a new link structure to accommodate a lift shaft and internal stairs connecting L1 to L3.

Level 3 (RL 19.790 (Garage Building) RL 20.510 (Main Dwelling))

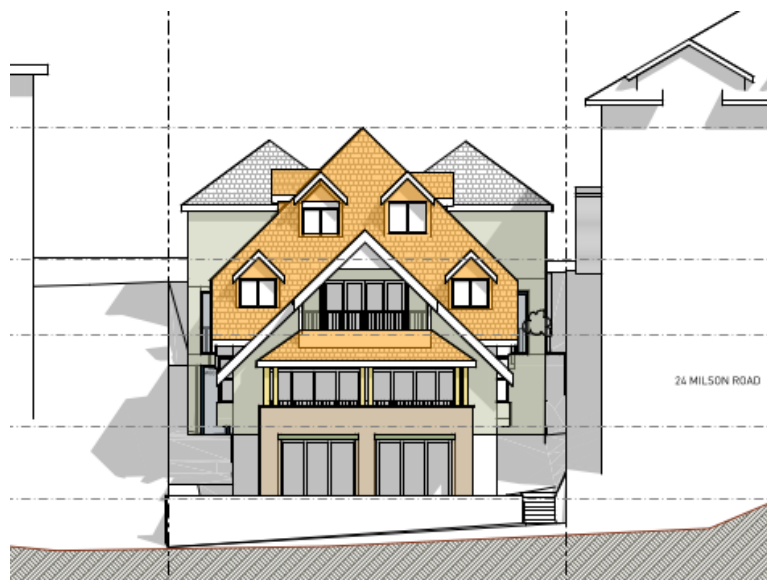
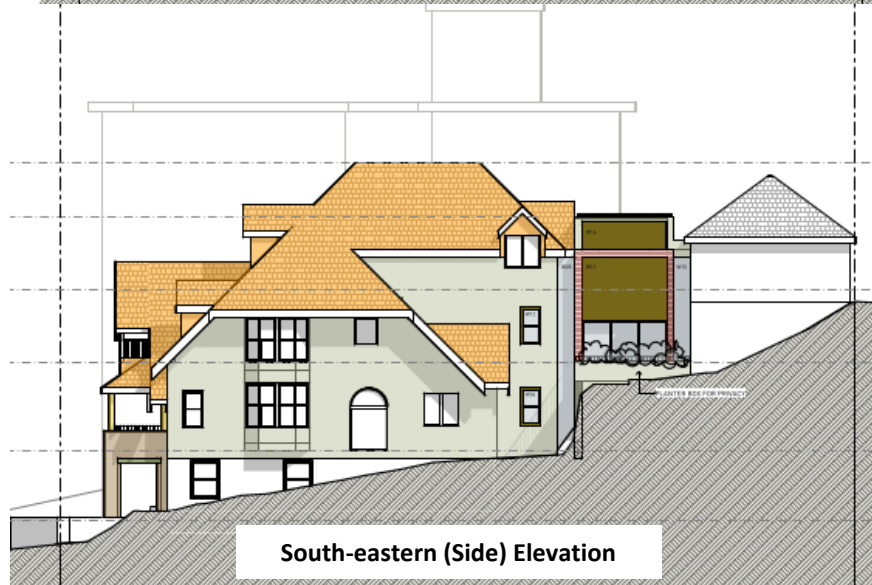
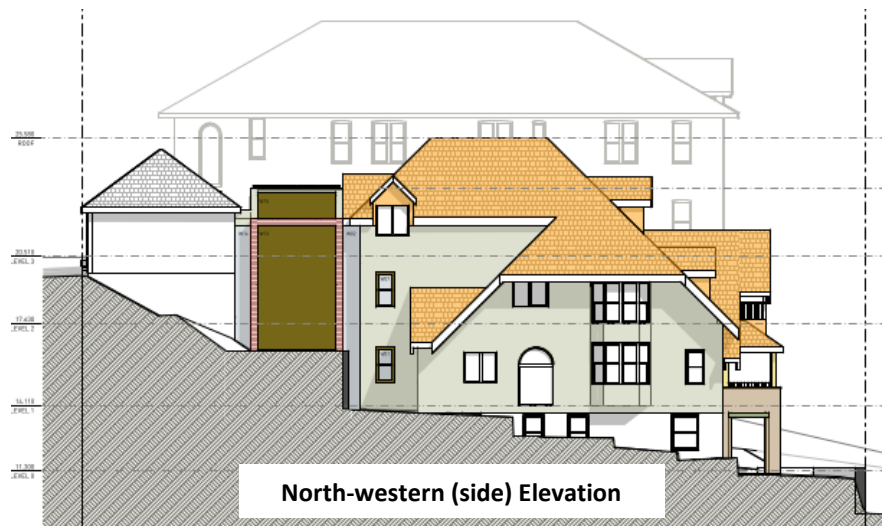
- Remove internal walls to create master bedroom with ensuite bathroom
- Construction of a new link structure to accommodate a lift shaft and internal stairs connecting L1 to L3.
- Construction of a direct pedestrian entry off Milson Road to the link structure.

Roof (RL 23.430 (New Link Structure) RL 25.580 (Main Dwelling))

- New roof above stair and lift including relocation of solar arrays to the roof of the link structure.

Landscaping/External Works:

- New landscaping and associated site works.





Figures 1 – 4: Proposed Development



Figure 5: Montage

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R2 (Low Density Residential)
- Item of Heritage – No (Contributory Item)
- In Vicinity of Item of Heritage – No
- Conservation Area – Cremorne Point Conservation Area
- FSBL - No

Environmental Planning & Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

SEPP (Resilience and Hazards) 2021

SEPP (Sustainability Building Index: BASIX) 2022
Local Development

POLICY CONTROLS

NORTH SYDNEY DCP 2013
North Sydney Local Infrastructure Contributions Plan 2020
Sydney Harbour Foreshores & Waterways Area DCP 2005

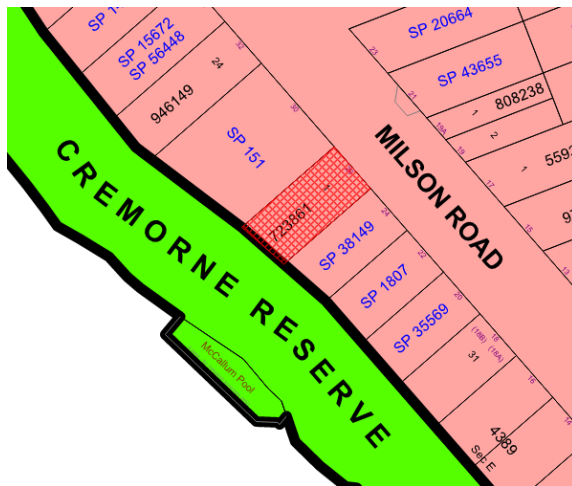


Figure 7: Zoning

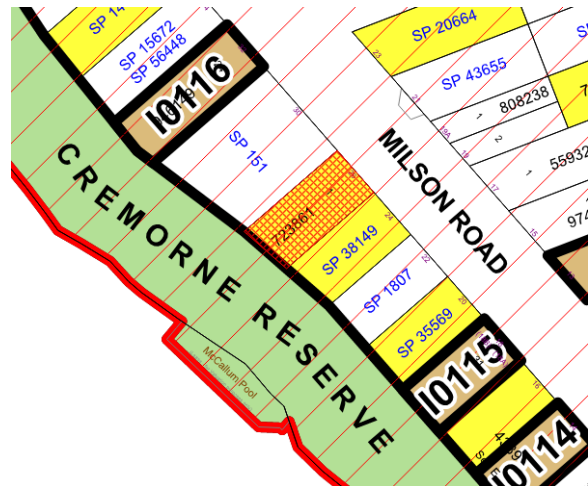


Figure 8: Heritage

DESCRIPTION OF LOCALITY

The site (Lot 1 DP723861) is located on the eastern side of Milson Road with a total site area of 498m². The site has a frontage to both Milson Road to the north-east and the Cremorne Foreshore Reserve at the southwestern end. The site contains a part 3/4 storey Arts and Crafts style dwelling originally built in 1916.

The original dwelling has had various alterations over the years. The buildings fronting the foreshore reserve along Milson Road are generally a mix of large detached two storey dwellings and apartment buildings.

Vehicular access is provided for the subject site via a slip road off the main Milson Road carriageway. The existing development has a pair of double garages on the Milson Road frontage.

To the south-east of the site is a four (4) storey apartment building, known as Lieno, at No.24 Milson Road. A six storey apartment building, known as Seaway, occupies the adjoining property to the north-west at No.30 Milson Road.

To the north-east of the site is Milson Road and a dual occupancy across the road carriageway at No. 21 Milson Road. The subject site fronts Council's Cremorne Reserve to the south-west.



Figure 9: Cremorne Reserve Elevation – Existing dwelling



Figure 10: Milson Road (Street) Elevation – Existing dwelling



Figure 11: The Locality

RELEVANT HISTORY

Previous Applications

- **15 April 2002** – Development consent (**DA786/01**) was granted by Council for the construction of a new balcony off the existing living room at ground level of the building. The area of the approved works present itself to the Cremorne Reserve as the second storey of the dwelling on the site. In order to accommodate to proposed balcony, it the existing roof will extend approximately 2.0m to cover the proposed balcony.

- **7 October 2004** – A Section 96 application (**D786/01/2**) seeking modifications to the original DA was approved under delegated authority for modifying the design of the approved balcony with an increased depth to 1.2m.

Current Application:

- **13 August 2024** - The subject development application (**D177/24**) was lodged with Council via the Planning Portal
- **13 to 27 September 2024** - The subject application was notified to surrounding properties and the Cremorne Point Precinct Committee. One (1) submission was received.
- **18 September 2024** - A site inspection was undertaken by Council Officers.
- **3 October 2024** - Council requested additional information from the applicant seeking clarification/information/responses on the use of the building, heritage impacts of various building elements, site coverage and a reduction car parking.
- **21 October 2024** – A teleconference was held with the applicant to discuss the issues raised by Council Officers.
- **25 November 2024** – Comments provided to the applicant in relation to certain draft design amendments including use of the building, heritage, site coverage and the number of garages for a single dwelling/streetscape.
- **11 December 2024** – The applicant submitted amended plans via the Planning Portal.
- **9 to 21 January 2025** – The amended plans were notified to the surrounding properties and the Cremorne Point Precinct Committee. Two submission (2) were received.

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. This would need to be undertaken prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a Section 4.55 application would be necessary.

HERITAGE

The proposal, including the amended plans, has been referred to Council's Conservation Planner who provided the following comments:

Heritage Status and Significance

The subject property is a contributory item located within the Cremorne Point Conservation Area. The 1916 Arts and Crafts style dwelling was constructed during the core period of development of Cremorne Point and contributes to the group of Federation style dwellings visible from Cremorne Reserve on the Bondi to Manly Walk. The primary façade addresses the harbour. It originally had a side entry.

The dwelling has significance with its association with eminent architect Edwin Orchard (1891-1963), noted in North Sydney and Mosman LGAs for dwellings designed with an informal domestic quality with picturesque English vernacular origins including heavy roof forms, prominent eaves, roughcast render, leadlight windows and timber shingle finishes set above rusticated sandstone sub-floors.

This dwelling was unsympathetically modified in 1988-9 (Figures 12 to 15) with an extension to the primary roof plane to accommodate two new levels 'piggy-backed' onto the street side plus a two level balcony addition on its primary façade (harbourside) with extensive glazing and four dormers. Two double garages with accommodation below were constructed on the eastern boundary that detract from the character of the streetscape. The property is currently used as two dwellings.



Figure 12: West Elevation 2024



Figure 13. West Elevation c. 1921

<http://nla.gov.au/nla.obj-162273190>



Figure 14: Street Elevation 2024 showing the extent of the 'piggy-backed' additions.



Figure 15: Street Elevation 1983 showing the 1930s balcony addition

(Source: North Shore Advocate 18 May 1983)

Heritage Impact Assessment

a) North Sydney LEP 2013 Clause 5.10

The proposal does not satisfy this clause in that the new works will further detract from the remnant aesthetic significance of the dwelling when viewed from Cremorne Reserve, Milson Road and the lower slip road. The new works will accumulatively result in a development that is longer than the original dwelling and will also result in more bulk above the original roof ridge line. There will be an additional loss of open space between the dwelling and street which is typically a garden setting in this conservation area. The improvements to the waterfront (primary façade) do not justify the additional detracting works. There are no proposed streetscape improvements.

b) North Sydney DCP 2013

An assessment of the proposal, with reference to Part B Section 13 of the North Sydney DCP 2013 has been made with the following elements of the DCP being of note:

13.4 Development in the Vicinity of Heritage Items - *The proposed works will have an acceptable level of impact upon the nearby heritage items located at Nos. 13, 14, 18 and 32 Milson Road.*

13.6.1 General Objectives O1 Ensure that new development is designed to retain and complement the character and significance of the conservation area - *The new development does not complement the character of the conservation area as defined in the Area Character Statement as a result of the scale and length of additions (Part C Section 6.4.6 P2 and 6.4.7 Uncharacteristic Elements), the retention of the two double garages (Part C Section 6.4.7 of the DCP) and lack of garden setting on the eastern side of the dwelling (Part C Section 6.4.6).*

13.6.1 General Objective O2 Ensure that contributory items are retained and where practical improved, with a focus to locate new work to the rear or away from publicly visible elevations of the building - *The harbourside façade will be improved by the recreation of a new façade that will have a solid sandstone sub-base and a more sympathetic balcony design with no glazed balustrades.*

The streetscape character will remain largely unchanged however, the proposed new infill link addition to the streetside of the dwelling will be highly visible when viewed obliquely across the driveway of 30 Milson Road (adjacent). It will further detract from the streetscape character of the dwelling.

Insufficient information has been provided regarding the retention of original details on the side elevations including the leadlight windows. This may be resolved by the application of conditions.

13.6.2 Form, Massing and Scale - Objective O1 To ensure new development has a compatible and complimentary building form and scale to that which characterises the conservation area - *The proposed development will result in a building form that is inconsistent with other contributory single dwellings within the Cremorne Point Conservation Area.*

The proposed link addition will contribute accumulative bulk to the existing additions that already overwhelm the scale and massing of the original Arts and Crafts style dwelling. The proposed new link addition will also result in the accumulative length of the additions being greater than the length of the original dwelling.

The original dwelling will therefore become completely subservient to additions.

P9 New work may adopt a contemporary character, provided the development is not likely to have a detrimental impact on the characteristic built form of the area, particularly in terms of bulk, scale, height, form or materials - The contemporary character of the link section between the garages and dwelling will only be visible from an oblique view across the driveway of 30 Milson Road. Should one double garage be deleted from the proposal, this new addition will be highly visible and will not be acceptable as it will introduce a new architectural character to the conservation area.

13.6.3 Roofs - Objective O1 To maintain the characteristic roof profiles and roofing materials within a heritage conservation area - The flat roof of the proposed new building addition that links the garages to the dwelling is acceptable only if the garages are retained. (This however, is not supported).

13.6.5 Internal Layouts – Objective O1- To ensure that significant interiors are retained - The interiors have been previously highly modified and only the primary room on Level 1 retains original features. No objection is raised to additional changes.

13.9.1 Skylights, Solar Panels and Satellite Dishes – Objective O1 To ensure that skylights, solar panels and satellite dishes do not detrimentally impact upon the significance of heritage items and heritage conservation areas - No objection is raised to the installation of solar panels on the link addition, if the two double garages are retained. This may need reconsideration should a garage be deleted.

13.9.2 Dormers – Provision P2 – New dormer windows are to secondary in scale to the roof and setback from the eaves and ridge line - The existing four harbourside dormers are retained. Their removal would be supported.

13.9.3 Verandahs and Balconies - Objective O2 To encourage the retention and reinstatement of original verandahs and balconies, especially where they are significant or contributory to an individual, row or group of buildings - The original curved balcony on Level 2 (harbourside) within the gable end was demolished as a result of the 1980's balcony additions. It is considered too onerous for the property owner to remove the balcony additions and to re-instate the original balconies. The revised harbourside balcony design is considered an improved heritage outcome.

13.9.4 Materials - Objective O1 To ensure that materials and finishes are consistent with the characteristic elements of the heritage item or heritage conservation areas - The submitted materials schedule is generally acceptable however, there is not enough clarity as to the retention of existing heritage detailing on the original building.

13.9.5 Garages and Carports - Objective O1 To ensure that vehicular accommodation does not detrimentally impact upon the significance of the heritage item or heritage conservation area - The existing two double garages detract from the streetscape setting of the dwelling. The use of glazed garage doors will not assist in improving the character of the street due to the garages being on the front boundary and having significant bulk. It is recommended that one double garage be demolished and the rooftop of the habitable rooms below be reconstructed as a roof garden.

13.9.7 Objectives O1 To ensure that significant landscape features and trees are retained and reflected in new development. Provisions P1 Retain garden settings and any horticultural features which relate to the heritage significance of the heritage item or conservation area. P2 Do not develop front garden areas for carparking or pave extensively - There will also be very little open space and landscape setting addressing the street as the double garages are to be retained and the space between the dwelling and garages will be partially infilled by the link addition.

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 - As discussed above, the 1980's and proposed additions do not comply.

Conclusion

The proposal is considered to be **unsatisfactory** in its current form due to further loss of aesthetic heritage significance to the dwelling. The existing 1980s additions and two double garages already overwhelm the existing dwelling. The proposed works, if constructed, will result in the dwelling having further reduced aesthetic significance. This is a poor heritage outcome for the dwelling that was designed by eminent architect Edwin Orchard on a site that fronts Cremorne Reserve on the Bondi to Maly Walk.

The proposal will result in further bulk that is higher than the roof ridge of the original 1916 Arts and Crafts style dwelling and there will be additional built elements located where there would typically be a rear (streetside) garden. There are no proposed improvements to the streetscape character as the two double garages are to be retained and the contemporary styled link addition will be visible from an oblique view across the driveway of 30 Milson Road. The extent of garaging is considered to be excessive for a single dwelling.

The following amendments are sought, if the proposal for a single dwelling is be considered:

- Deletion of the northern double garage and a roof garden constructed on the studio space.
- The link addition deleted and replaced with soft landscaping. A narrow open pedestrian walkway may be supportable subject to the provision of streetscape and character improvements.
- The streetscape character to be improved such that it is consistent with the Area Character Statement.
- The drawings are to indicate the retention of original exterior finishes including but not limited to: the mouldings, original rough cast render and leadlight windows.
- Deletion of the four existing harbourside dormers would be supported.

Comment:

The comments and recommendations of Council's Conservation Planner are noted and generally concurred with.

Whilst recommendations have been made for significant design modifications to various building elements of the proposed development, it is considered that the recommended design changes would result in a development substantially different from the current proposal and should be considered/assessed as a new DA.

Therefore, it is considered appropriate that the current application be recommended for refusal.

ENGINEERING

The application has been referred to Council's Development Engineer who raised no in-principle objection to the proposal subject to the imposition of appropriate engineering conditions should approval is granted to this application.

LANDSCAPING

The application has been referred to Council's Landscape Development Officer who raised no in-principle objection to the proposal subject to the imposition of appropriate landscaping conditions should approval is granted for this application.

SUBMISSIONS

Original proposal

The subject application was notified to surrounding properties and the Cremorne Point Precinct Committee between 13 and 27 September 2024. One (1) submission was received. The matters raised in the submissions are listed below:

Basis of Submission

- Concerns raised about damage to adjoining properties, including the driveway to No.30 Milson Road, during excavation/construction works.
- Request for a dilapidation report.
- Overlooking from the glazed wall of the proposed link structure to the adjoining apartment building at No.30 Milson Road.
- Noise nuisance from any air conditioners.
- Concerns raised about traffic management during construction.
- The inappropriate use of adjoining private properties for parking of construction vehicles.
- Adverse impacts on parking along Milson Road.

Amended Proposal

The applicant submitted amended plans that were renotified to the adjoining properties for 14 days between 9 and 21 January 2025. Council received two (2) submissions including a submission that is identical to the one received in the previous round of notification from the same submitter. The matters raised in the other submission are listed below:

Basis of Submission

- Concerns raised about the likely damages to the adjoining apartment building due to excavation.
- Request elevation of technical reports by the body corporate of the adjoining property.
- Request proper records of the adjoining property before and after the proposed excavation works.
- Request the adjoining property to provide insurance policies in relation damages caused by the proposed development.
- The proposed development will cause significant nuisance to the adjoining properties in terms traffic and noise.
- Concerns raised about construction traffic and the possible use of the adjoining private property for parking of construction vehicles.
- The loss of on-street parking during construction works.
- The submitter should entitle to financial compensation due to financial loss resulting from the proposed development.

The issues raised in the submissions are summarised below and addressed later in this report. The original submissions may be viewed by way of DA tracking on Council's website https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs and are available for review by NSLPP members.

CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed under the following headings:

SEPP (Biodiversity and Conservation) 2021

- Chapter 2 Vegetation in non-rural areas

The proposed development meets the aims outlined in Chapter 2 of this *SEPP (Vegetation in Non-Rural Areas)* with works involving works to the existing main dwelling, the construction of a new link addition and additional residential use under the existing garages.

The proposal does not involve removal of significant native vegetation within the subject site and is considered to be consistent with the relevant aims, objectives and provisions of the *SEPP*.

SEPP (Biodiversity & Conservation) 2021

- Chapter 6 Water Catchments

Consideration has been given to Chapter 6 of the *SEPP* and the Sydney Harbour Foreshores and Waterways Area DCP 2005. The proposed development would be visible from Shell Cove, however, the proposal would not significantly change the overall appearance of the existing dwelling and the uncharacteristic new link addition behind the main dwelling would not be highly discernible from Shell Cove with the screen from established vegetation along Cremorne Reserve. Therefore, it is not considered to be detrimental to general scenic quality and the ecology of the Harbour and will not unduly impose upon the overall character of the foreshore given that the scale and the localised nature of the proposed development. Furthermore, the proposal would not adversely affect the environmental processes, including in relation to water quality and biodiversity.

As such, the development is generally acceptable having regard to the provisions contained within Chapter 6 of the above *SEPP* and the Sydney Harbour Foreshores and Waterways DCP 2005.

SEPP (Resilience and Hazards) 2021

- Chapter 4 Remediation of Land

Chapter 4 of this *SEPP* requires Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The subject site has only previously been used for residential purposes and as such is unlikely to contain any contamination; therefore, the requirements stipulated in Chapter 4 of this *SEPP* have been satisfactorily addressed.

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate: A1737695_02 for the proposal has been submitted with the application to satisfy the Aims of the *SEPP*.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The proposed development for alterations and additions for change of use from a dual occupancy to a detached dwelling is permissible in R2 (Low Density Residential) zone with development consent from Council.

It is noted from the submitted floor plans that the proposed detached dwelling contains multiple living areas and very generously sized ensuite bedrooms. A condition restricting the use of the dwelling for single occupancy is recommended should approval be granted for the subject application.

Aims of the LEP

In addition to the objectives of the R2 (Low Density Residential) zone, consideration has been given Clause 1.2 (2)(a) of North Sydney LEP 2013 relating to the following:

(2)(a) to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment

The proposal is inconsistent with the character and context of Cremorne Point Conservation Area because the proposed works would result in the loss of the character of the subject contributory item and the conservation area, the introduction of uncharacteristic building elements. Therefore, the proposed development does not enhance the amenity of the North Sydney community and the environment.

2(b)(i) to ensure the new development is compatible with the desired future character of an area in terms of bulk, scale and appearance,

The contemporary character of the link section between the garages and dwelling will only be visible from an oblique view across the driveway of 30 Milson Road. Should one double garage be deleted from the proposal, this new element will be highly visible and will not be acceptable as it will introduce a new architectural character to the conservation area.

The proposed link addition will contribute accumulative bulk to the existing additions that already overwhelm the scale and massing of the original Arts and Crafts style dwelling. The proposed new link addition will also result in the accumulative length of the additions being greater than the length of the original dwelling.

The original dwelling will therefore become completely subservient to the new additions.

2(f) to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance

As detailed in the heritage discussion above, the proposed works would detract from the significance of Cremorne Point Conservation Area.

In summary, the proposal is inconsistent with the above aims of the LEP.

2. Objectives of the zone

The objective of the R2 (Low Density Residential) zone relevant to the proposed development is as follows:

- *To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development does not promote or reinforce the character of the subject dwelling and the character of the conservation area. The proposed development would result in an uncharacteristic building within Cremorne Point Conservation Area as detailed in the comments from Council's Conservation Planner.

Furthermore, the proposal would have adverse impacts on the residential amenity of the locality due to the non-compliance with DCP's site coverage, unbuilt upon area and landscaped area requirements as detailed later in this report.

The proposal is therefore contrary to the above zone objectives.

Part 4 – Principal Development Standards

COMPLIANCE TABLE Principal Development Standards North Sydney Local Environmental Plan 2013				
Site Area – 498m ²	Existing	Proposed	Control	Complies
Clause 4.3 – Heights of Building	14.28m	9.22m (new link addition)	8.5m	NO (Clause 4.6 variation received)

3. Height of Building

The maximum height of the new link addition at 9.22m would breach the 8.5m LEP building height control by up to 720mm. It is also noted that the existing building has a maximum building height at 14.28m. Whilst new works have been proposed internally over the LEP maximum building height limit, the proposal would maintain the building envelope and fenestration of the existing main building above the LEP maximum building height limit.



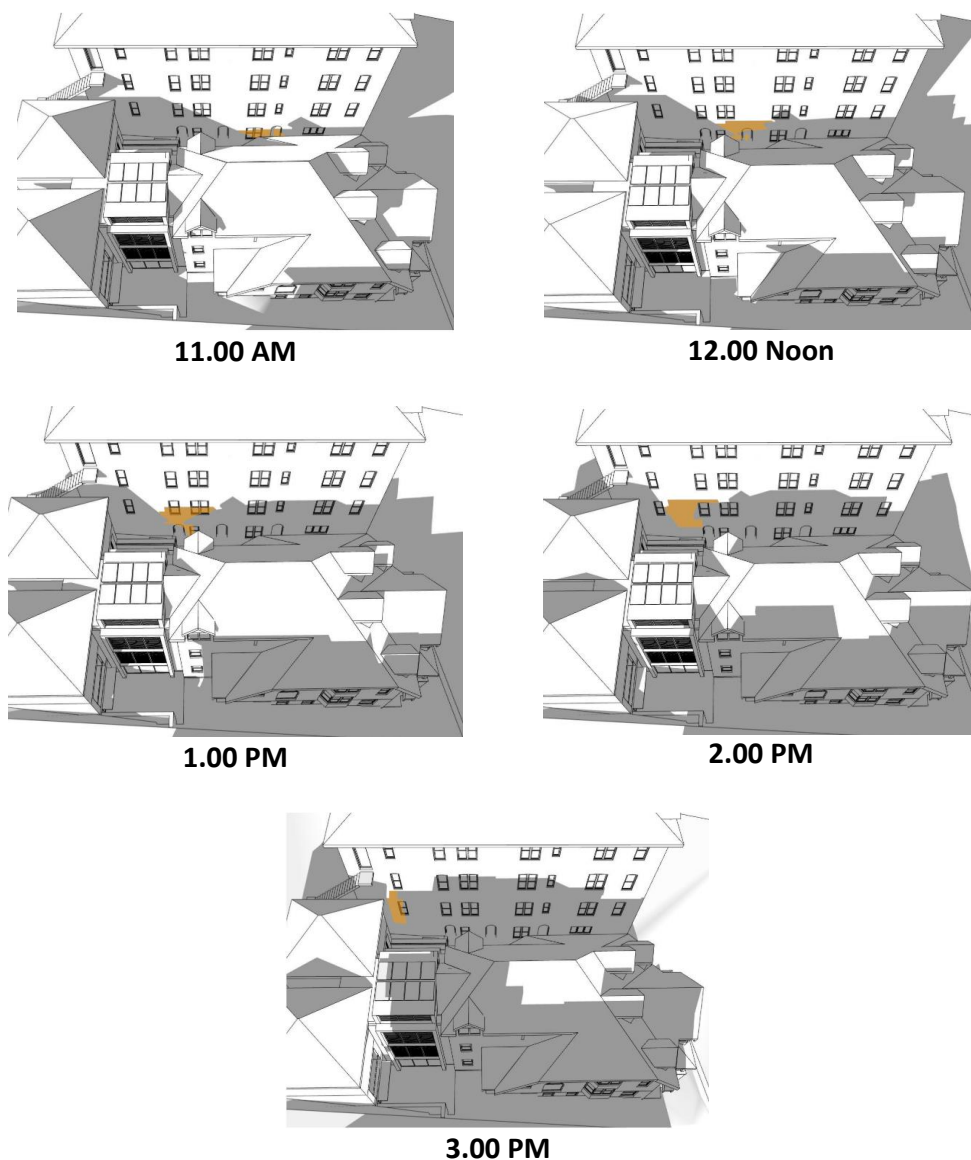
Figure 16: Proposed development and LEP height limit

The applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013.

4. Clause 4.6 Exceptions to Development Standards

The proposed breach has been assessed against the requirements of Clause 4.6 of NSLEP 2013 and the objectives of the building height control. These matters have been considered below: -

- (1)(a) To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient** – The design of the proposed works generally respects the overall form of the existing building and the sloping landform of the subject site.
- (1)(b) To promote the retention and, if appropriate, sharing of existing views** - The new works that are in breach of the LEP building height limit would be located on the upper section of the new link structure behind the roof of the taller existing main building. Therefore, there would be no material impacts on the significant water/district views towards Shell Cove as seen from the adjoining properties at Nos. 24 and 30 Milson Road as well as the public domain.
- (1)(c) To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access to future development** – The proposed link addition between the main building and the garages would cause some additional shadows on the apartment building on No. 24 Milson Road during mid winter from 11am onwards, however, it is noted that solar access to the majority of the windows on the north-western (side) elevation of No. 24 Milson Road would generally be retained (**Figures 17-21**).



Figures 17-21: Elevational mid-winter shadow diagrams for the north-western (side) elevation of the apartment building at No. 24 Milson Road

- (1)(d) To maintain privacy for residents of existing dwelling and to promote privacy for residents of new buildings** – The applicant has proposed privacy louvres to the windows on the side elevations of the proposed link addition to minimise visual privacy impacts on the adjoining properties. Therefore, there would be no material privacy impacts associated with the works above the LEP building height limit.
- (1)(e) To ensure compatibility between development, particularly at zone boundaries**
- (1)(f) To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of the area**

The new development does not complement the character of the conservation area as defined in the Area Character Statement as a result of the excessive scale/length and the contemporary design of the new additions.

Council's Conservation Planner has raised objection to the proposal on heritage grounds because the proposed works, if constructed, will result in the dwelling having further reduced aesthetic significance.

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

The proposal does not seek significant changes to the overall built form of original main dwelling and the overall appearance of the development as seen from Milson Road and Cremorne Reserve.

Whether there are sufficient environmental planning grounds to justify contravening the development standard?

It is concluded that the proposed link addition above the LEP building height limit would have a material impact on the locality in terms of uncharacteristic built forms and having a detrimental impact on the significance of the subject contributory item, and the conservation area and the amenity of the nearby residential properties. There are insufficient environmental planning grounds to justify contravening the building height control.

Whether the proposed development will be in the public interest?

The proposed development is considered to be unreasonable in terms of the adverse impacts on the heritage significance of the subject property. The proposal does not demonstrate any public benefits and is therefore likely to offend the public interest.

Conclusion

It is concluded that the proposal would detract from the significance of the subject contributory item and the conservation area in terms of the uncharacteristic built forms.

Having regard to the above, the request under Clause 4.6 of NSLEP 2013 seeking a variation to the LEP building height control is not considered to be well-founded and strict compliance with the standards is necessary.

5. Heritage Conservation

The subject site is located in a Conservation Area and consideration has been given to Clause 5.10 of the North Sydney LEP 2013.

The proposal does not satisfy this clause in that the new works will further detract from the remnant aesthetic significance of the dwelling when viewed from Cremorne Reserve, Milson Road and the lower slip road.

The new works will accumulatively result in a development that is longer than the original dwelling and will also result in more bulk above the original roof ridge line.

There will be an additional loss of open space between the dwelling and street which is typically a garden setting in this conservation area. The improvements to the waterfront (primary façade) do not justify the additional detracting works. There are no proposed streetscape improvements.

6. Earthworks

The proposal would involve excavation of up to 3.18m towards the street boundary of the site under the existing garages to accommodate a new Level 1 bedroom with walk-in-rob and ensuite bathroom.

Consideration has been given to the LEP's objectives for earthworks as contained in Clause 6.10(3) of NSLEP 2013. Council's Development Engineer has recommended the imposition of the requirement for the submission of a full comprehensive geotechnical report should approval be granted for the proposed development.

In addition, further conditions requiring dilapidation survey for the adjoining properties and structure adequacy of the adjoining properties can be imposed to record the conditions of properties and to ensure structural integrity of the neighbouring properties prior to the commencement of works should consent be granted to the subject application.

Other conditions of consent relating to construction hours, air quality, noise/vibration, health and safety can be imposed to minimise the impacts on the amenity of the adjoining properties during the construction phase of the development if the application warrants approval.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal has been assessment under the following heading within NSDCP 2013:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development			
		<i>complies</i>	<i>Comments</i>
1.2	Social Amenity		
1.2.1	Population Mix	No	Whilst the proposal would not significantly change the population mix, the supply of residential accommodation, affordable housing and housing for senior/persons with disabilities within the locality, the conversion of the subject property from a dual occupancy to single dwelling would result in net reduction of housing stock by one (1) unit.
1.2.2	Maintaining Residential Accommodation		
1.2.3	Affordable Housing		
1.2.4	Housing for Seniors/Persons with disability		
1.3	Environmental Criteria		
1.3.1	Topography	No	Whilst the proposed development generally respects the existing sloping landform of the subject site, it is however noted that the new Level 1 bedroom under the existing garages would be up to 3m below the existing ground level. The amenity of the new Level 1 bedroom would be adversely affected by the subterranean nature of this aspect of the proposal.
1.3.2	Bushland	N/A	The subject site is not in close proximity to bushland or natural reserves.
1.3.3	Bush Fire Prone Land	N/A	The subject site is not affected by any bushfire prone land as identified in Bushfire Prone Land map for the North Sydney LGA.
1.3.6	Views	Yes	As indicated earlier in the report, the proposed development would have no material impacts on significant views as seen from the adjoining properties.

1.3.7 Solar Access	Yes	<p>The proposal would cause some additional shadowing on the adjoining property to the east at No.24 Milson Road during mid winter.</p> <p>In particular, the proposed link addition between the main building and the garages would cause some additional shadows on the apartment building on No. 24 Milson Road during mid winter from 11am onwards, however, it is noted that solar access to the majority of the windows on the north-western (side) elevation of No. 24 Milson Road would generally be retained</p> <p>Furthermore, solar access to the adjoining property at No.30 Milson Road during mid winter should not be materially affected given the general northerly aspect of this adjoining property.</p> <p>It is therefore considered that the proposal is acceptable having regard to solar access.</p>
1.3.8 Acoustic Privacy	Yes	<p>The proposal is unlikely to cause unreasonable noise nuisance for the adjoining properties because the proposal involves the change of the use from an attached dual occupancy to a single dwelling.</p> <p>It is also noted that noise from the new patios on Level 1 and Level 2 would be screened by retaining walls and planters respectively. These patios are likely to be used for passive recreation that is unlikely to generate excessive noise.</p> <p>There would be minimal changes to the use and locations of existing balconies/windows on the southern (Cremorne Reserve) and side elevations of the existing main building.</p> <p>Appropriate conditions can be imposed in relation to the operation of air conditioners for residential premises to minimise nuisance to the neighbouring properties should approval be granted for this application.</p> <p>It is considered that the proposal is acceptable having regard to acoustic privacy.</p>
1.3.10 Visual Privacy	Yes (via condition)	<p>As indicated earlier in this report, there would be minimal changes to the use and locations of windows/balconies on the side and Cremorne Reserve elevations of the main building.</p> <p>The applicant has proposed privacy louvers on the side elevations of the proposed link building between the main dwelling building and the garage building to Milson Road to minimise visual privacy impacts on the adjoining properties.</p> <p>In addition, new planters and retaining wall along the side property boundaries would provide visual privacy protection for the adjoining property from the windows/patios on Levels 1 and 2 under the garages.</p> <p>It is therefore considered the proposal is acceptable in terms of visual privacy.</p>
1.4 Quality built form		
1.4.1 Context	No	<p>The new development does not complement the character of the conservation area as defined in the Area Character Statement as a result of the excessive scale/length and the contemporary design of the new additions.</p> <p>Council's Conservation Planner has raised objection to the proposal on heritage grounds because the uncharacteristic nature of the proposed works, if constructed, will result in the dwelling having further reduced aesthetic significance and the property and the conservation area as a whole.</p>

1.4.2 Subdivision Pattern	No Change	The proposal would not change the subdivision pattern of the subject site and the siting/orientation of the subject building.				
1.4.5 Siting						
1.4.6 Setback – Side	No	A compliance table relating to side boundary setbacks is provided below:				
		Elevation	Existing	Proposed	Control	Complies
		Main Dwelling:				
		Level 0:				
		- NW Elevation (No.30)	1.3m	1.3m	900mm	Yes
		- SE Elevation (No.24)	1.3m	1.3m	900mm	Yes
		Level 1:				
		- NW Elevation (No.30)	1.8m	1.8m	900mm	Yes
		- SE Elevation (No.24)	2.1m	2.1m	1.5m*	Yes
		Level 2:				
		- NW Elevation (No.30)	1.8m	1.8m	1.5m	Yes/No
		- SE Elevation (No.24)	2.1m	2.1m	2.5m*	Yes/No
		Level 3:				
		- NW Elevation (No.30)	4.2m	4.2m	2.5m	Yes
		- SE Elevation (No.24)	4.5m	4.5m	2.5m	Yes
		Link Addition:				
		All Levels				
		- NW Elevation (No.30)	N/A	4.3m	900mm	Yes
		- SE Elevation (No.24)	N/A	4.8m	2.5m*	Yes
		Garage Building:				
		All Levels				
		- NW Elevation (No.30)	700mm	700mm	900mm	No
		- SE Elevation (No.24)	700mm	700mm	900mm	No
		* Variable setback due to sloping landform				
		The proposed works associated with the main dwelling do not result in new non-compliances with DCP's side boundary setback controls.				
		The proposed link addition complies with the DCP side boundary setback controls.				

		<p>The proposed works associated with the garage building and the new residential accommodation on Level 1 would maintain the existing side boundary setbacks of 700mm.</p> <p>It is considered that existing garages on Milson Road frontage are for the existing dual occupancy and would be excessive for a single dwelling. Council's Conservation Planner's recommendation for the deletion of a double garage would improve compliance with the side boundary setback with an improved streetscape outcome.</p>
<p>Front and Rear Property Boundaries</p> <p>P1 Front setback</p> <p>P5 Rear Setback – Rear</p>	<p>Yes</p> <p>See discussion</p>	<p>It is noted that the applicant refers the Milson Road as the front property boundary. However, Council's Conservation Planner considers that the dwellings/buildings along Cremorne Reserve are orientated towards the harbour side, therefore the property boundary fronting Cremorne Reserve is referred in this report as the front boundary whilst the Milson Road boundary is the rear property boundary.</p> <p>The proposed works would not change the overall building setback from the front (Cremorne Reserve) property boundary.</p> <p>The rear property boundary setback for the proposed garages above the rear addition, at 200mm, is generally consistent with those of the existing garages along Milson Road. However, Council's Conservation Planner's recommendation for the deletion of a double garage would improve compliance with the side boundary setback with an improved streetscape outcome.</p>
<p>1.4.7 Form Massing Scale 1.4.8 Built Form Character</p>	Yes	<p>As indicated in Council's Conservation Planner's comments earlier in this report, the new development does not complement the character of the conservation area as defined in the Area Character Statement as a result of the scale and length of additions, the retention of the uncharacteristic two double garages and lack of garden setting on the eastern (Milson Road) side of the dwelling.</p> <p>The proposed development will result in a building form that is inconsistent with other contributory single dwellings within the Cremorne Point Conservation Area.</p> <p>The proposed link addition will contribute accumulative bulk to the existing additions that already overwhelm the scale and massing of the original Arts and Crafts style dwelling. The proposed new link addition will also result in the accumulative length of the additions being greater than the length of the original dwelling.</p> <p>The retention of the 2 x double garages would contribute to the bulk and scale of the proposed development.</p> <p>The original dwelling will therefore become completely subservient to the new addition and the retention of the garages.</p>
1.4.10 Roofs	No	<p>The flat roof of the proposed new building addition that links the garages to the dwelling is acceptable only if the garages are retained. However, the retention of all existing garages is not supported by Council's Conservation Planner.</p>
1.4.9 Dwelling Entry	Yes	<p>A new entrance is proposed off Milson Road at the middle of the street frontage conveys a sense of address of the subject site.</p>
1.4.12 Materials	Yes	<p>The proposed colours and materials for the proposed development are considered to be generally acceptable however, there is not enough clarity as to the retention of existing heritage detailing on the original building. This can be addressed by the imposition of further condition requiring the submission of a schedule of materials, colours and finishes for approval should consent be granted for this application.</p>

1.5 Quality Urban Environment																								
1.5.4 Vehicular Access and Parking	No	<p>The proposal is for a change of use from a dual occupancy to a single dwelling. The existing double garages would provide a total of four (4) car spaces that is non-compliant with the DCP maximum parking requirement for two (2) car parking space for a single dwelling with 3 or more bedrooms.</p> <p>The removal of an existing double garage would provide new landscaping opportunities on the street level and would enhance the streetscape along the slip road off Milson Road.</p>																						
1.5.5 Site Coverage 1.5.6 Landscape Area	No	<p>A table is provided below showing the level of compliance with DCP’s site coverage, unbuilt upon area and landscaped area requirements.</p> <table><tr><th>Site Area : 498sqm</th><th>Existing</th><th>Proposed</th><th>Control</th><th>Compliance</th></tr><tr><td>Site coverage</td><td>289sqm (58%)</td><td>288.5sqm (57.9%)</td><td>50%</td><td>No</td></tr><tr><td>Unbuilt-upon area</td><td>121.9sqm (24.5%)</td><td>60.1sqm (12.1%)</td><td>20%</td><td>Yes</td></tr><tr><td>Landscaped area</td><td>87.2sqm (17.5%)</td><td>149.1sqm (29.9%)</td><td>30%</td><td>No</td></tr></table> <p>The proposed development does not comply with the DCP site coverage requirements. It is however noted that the proposal complies with DCP requirements for unbuilt upon and close to compliance with the DCP minimum requirement for landscaped area.</p> <p>Whilst the proposal generally maintains a site coverage neutral outcome, this is achieved by the removal of ground level elements such as an external staircase and replace with the new link addition.</p> <p>It is considered that the proposal is inconsistent with the DCP site coverage objectives:</p> <ul style="list-style-type: none">(a) The proposal, with the additional new building elements, is not in keeping with the capacity of the site and is considered to be an overdevelopment (Objective 01);(b) The proposal, particularly with the uncharacteristic link addition, does not promote the desired future character of the neighbourhood/conservation area (Objective 02);(c) The proposal with the new additions is not considered to be a good outcome for controlling site density (Objective 03); and(d) The proposal contains new additions and represents an increase in the existing building footprint (Objective 04). <p>Despite the numerical site coverage neutral calculation, it is considered that the proposal is inconsistent with the DCP site coverage objectives.</p>			Site Area : 498sqm	Existing	Proposed	Control	Compliance	Site coverage	289sqm (58%)	288.5sqm (57.9%)	50%	No	Unbuilt-upon area	121.9sqm (24.5%)	60.1sqm (12.1%)	20%	Yes	Landscaped area	87.2sqm (17.5%)	149.1sqm (29.9%)	30%	No
Site Area : 498sqm	Existing	Proposed	Control	Compliance																				
Site coverage	289sqm (58%)	288.5sqm (57.9%)	50%	No																				
Unbuilt-upon area	121.9sqm (24.5%)	60.1sqm (12.1%)	20%	Yes																				
Landscaped area	87.2sqm (17.5%)	149.1sqm (29.9%)	30%	No																				
1.5.8 Landscaping	Yes (via Condition)	Council’s Landscape Development Officer has reviewed the submitted landscape plan and was found generally satisfactory subject to imposition of appropriate conditions should approval be granted for the subject application.																						
1.5.13 Garbage Storage	Yes (via condition)	A standard condition requiring the provision of adequate storage for general waste and recyclable materials can be imposed should approval be granted for the proposed development.																						
1.6 Efficient Use of Resources																								
1.6.1 Energy Efficiency	Yes	The applicant has submitted a valid BASIX certificate.																						

South Cremorne Planning Area - Part C of NSDCP 2013 Cremorne Point Conservation Area

The proposal, as amended by the applicant, is generally consistent with Part C of North Sydney DCP 2013 in particular Section 6 of the Character Statement for South Cremorne Planning Area and Section 6.4 for Cremorne Point Conservation Area.

The new development does not complement the character of the conservation area as defined in the Area Character Statement as a result of the scale and length of additions (Part C Section 6.3.6 P2 and 6.3.7 Uncharacteristic Elements), the retention of the two double garages (Part C Section 6.3.7 of the DCP) and lack of garden setting on the eastern side of the dwelling (Part C Section 6.3.6).

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal is subject to Local Infrastructure Contributions in accordance with the North Sydney Local Infrastructure Contributions Plan 2020.

It is noted that the proposed development does not involve an increase in population, therefore the proposal is subject to a \$7.12 levy in accordance with Sections 1.3.3 and 1.4 of North Sydney Local Infrastructure Contribution Plan 2020 because the cost of the development is over \$100,000.00.

The applicant has indicated in the application form that the cost of the proposed development at \$350,000.00 and is not supported by further cost verification. It is considered that the cost of proposed works quoted in the DA submission is likely to be under-estimated.

The required contribution has been calculated, based on the value as shown on the submitted DA, in accordance with the applicable contribution rates as follows:

Applicable Contribution Type		
S7.12 contribution detail	Development cost:	\$ 350,00.00
(payment amount subject to indexing at time of payment)	Contribution:	\$3,500.00

Conditions requiring payment of contributions, based on an updated cost of proposed works, can be imposed should approval be granted for the proposed development.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL 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 S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

The original proposal was notified to surrounding properties and the Cremorne Point Precinct Committee between 13 and 27 September 2024. One (1) submission was received.

The applicant submitted amended plans that were renotified to the adjoining properties for 14 days between 9 and 21 January 2025. Council received two (2) submissions including a submission that is identical to the one received in the previous round of notification from the same submitter.

The concerns raised in relation to visual privacy/overlooking and noise impacts have been addressed earlier in this report.

The other matters raised in submissions are addressed below:

- ***Issues during construction phase of the development***
- ***Excavation works/geotechnical issues/dilapidation report for neighbouring properties***
- ***Traffic Management/Parking during construction***
- ***Potential impacts on the private parking spaces to the north.***

Comment:

The application has been referred to Council's Development Engineer who raised no in-principle objection to the proposed development subject to the imposition of appropriate engineering conditions should approval be granted for this application. The conditions would include the requirement for the submission of geotechnical report and dilapidation report to ensure the structural integrity of the subject site and adjoining properties as well as the recording of property conditions before the commencement of works.

In addition, the proposed development, if approved, would be subject to the requirement for the submission of a construction traffic and management plan to ensure proper management of construction traffic and to minimise the impacts on the local road networks including parking restrictions for construction related vehicles along public road and private properties

- ***Request from the provision of various documents/reports to the body corporate of an adjoining property for elevation***

Comment:

Council noted the requests made by the submitter and a copy of the submission has been provided to the applicant for information/consideration. It is considered that this is a civil matter between the applicant and the body corporate of the adjoining property to work out the arrangements (if any) in response to the requests made.

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 is considered to be unsuitable for the subject site because of the uncharacteristic design of the proposal that would further detract from the significance of the subject property. Furthermore, the proposal does not comply with the LEP maximum building height development standard given that the design of the proposed addition does not promote the character of the subject building and that of Cremorne Point Conservation Area.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The original proposal was notified to surrounding properties and the Cremorne Point Precinct Committee between 13 and 27 September 2024. One (1) submission was received.

The amended plans that were renotified to the adjoining properties for 14 days between 9 and 21 January 2025. Council received two (2) submissions including a submission that is identical to the one received in the previous round of notification from the same submitter.

The issues/concerns raised in the submissions have been considered/addressed throughout this assessment report.

CONCLUSION + REASONS

The development application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013 and was found to be unsatisfactory.

Consideration has also been given to the Clause 4.6 request for a variation to the LEP's building height development standard as submitted by the applicant.

The variation to the building height development standard is not supported because the uncharacteristic design of the building elements, including those above the LEP maximum building height limit, that would result in a further erosion of the character of the subject Contributory item. Furthermore, the uncharacteristic nature of the proposal and its impacts on the conservation area do not demonstrate public benefit. Therefore, a variation to the LEP building height control is not considered to be well-founded and strict compliance with the standards is necessary.

The proposed development is contrary to the objective of the R2 (Low Density Residential) zone because the proposal would detract from the significance of the conservation area.

The proposal does not comply with DCP's maximum site coverage requirement, nor it is consistent with the DCP site coverage objectives.

The application was referred to Council's Conservation Planner who considered the proposal unsatisfactory because of the characteristic nature of the proposal and the adverse impacts on the significance of the subject Contributory item.

The issues raised in the submissions received have been addressed in this report.

Accordingly, the proposed development is recommended for **refusal**.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel, exercising the functions of Council, resolve to refuse development consent to Development Application D177/24 for alterations and additions for change of use from a dual occupancy to a detached dwelling at No.26 Milson Road, Cremorne Point for the following reasons:-

1. The written request pursuant to clause 4.6 of NSLEP is not supported

The written request pursuant to clause 4.6 of NSLEP seeking a variation to the height of building development standard in clause 4.3 of NSLEP is not considered to be well founded.

Particulars:

- (i) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development breaches the 8.5m maximum height of building development standard specified in clause 4.3(2) in NSLEP 2013.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the written request submitted with the application seeking a variation to the maximum height of building development standard has inadequately addressed the matters required to be addressed in subclause (3) in clause 4.6 in NSLEP 2013.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the written request has failed to adequately demonstrate that compliance is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the height of building development standard.

- (iv) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a) of the Environmental Planning and Assessment Act 1979 in that the proposed development is not considered to be in the public interest as the development is not consistent with the objectives of the height of building standard in clause 4.3(1) in NSLEP 2013 and the objectives of the R2 (Low Density Residential) zone (dot point 4) under NSLEP 2013.

2. Unacceptable Heritage Impacts

The proposed development is unacceptable because of the adverse impacts on the subject dwelling and the conservation area.

- (i) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposed development does not satisfy Clause 5.10(1)(a), Clause 5.10(1)(b) and Clause 5.10(4) in Part 5 of NSLEP 2013 because the bulk, scale, character of the new works and the loss of open space to the street will further detract from the significance of the subject contributory item.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal does not satisfy the aims of North Sydney Local Environmental Plan 2013 (NSLEP 2013) as listed in Clauses 1.2 (2)(a), (2)(b)(i), and (2)(f) in Part 1 of NSLEP 2013.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that The proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the adverse impacts of the proposed development on the significance of the conservation area, particularly dot point 3.
- (iv) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development does not satisfy the Area Character Statement for South Cremorne Planning Area in Section 6.0 in Part C of North Sydney DCP 2013 (NSDCP 2013) given that the proposal does not promote the character within the conservation area because the design of the proposal fails to reflect and reinforce the characteristic built form as identified in the Area Character Statement.
- (v) The application fails to satisfy the development controls for the following sections in Part B of the NSDCP 2013 and is therefore considered unacceptable:
 - a. Part B - Section 13.6.1 – General Objectives
 - b. Part B – Section 13.6.2 – Form Massing and Scale
 - c. Part B – Section 13.6.3 – Roofs
 - d. Part B – Section 13.9.4 – Materials
 - e. Part B – Section 13.9.5 – Garages and Carports
 - f. Part B – Section 13.9.6 – Fences
 - g. Part B – Section 13.9.7 – Gardens
 - h. Part B – Section 13.10.4 – Two Storey Detached and Attached Dwellings
 - i. Part C – Section 6.4.6 – Characteristic Built Elements
 - j. Part C – Section 6.4.7 – Uncharacteristic Elements

3. Inappropriate context, excessive height, bulk and scale and built form

The proposed development is unacceptable because of the proposed works will result in an appropriate built form within the locality.

Particulars

- (i) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979 in that the proposed development is inappropriate to its context being a dwelling within a conservation area with uncharacteristic building elements which is contrary to aim 1.2 (2)(a) in NSLEP 2013 as well as section 1.4.1 in Part B of NSDCP 2013.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 in that the proposed development is contrary to Section 1.4.5 in Part B of NSDCP 2013 because the uncharacteristic siting of a pair of double garages and the loss of a garden setting along the road frontage.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 in that the proposed development is contrary to Section 1.4.7 and 1.4.8 in Part B of NSDCP 2013 because the proposed link addition will further increase the bulk and scale of the existing building with an uncharacteristic built form.
- (iv) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 in that the proposed development is contrary to Sections 1.4.10 in Part B of NSDCP 2013 because of the inappropriate roof form of the proposed link addition.

4. Overdevelopment

The proposed development is an overdevelopment of the subject site because of the non-compliance with site coverage requirements.

Particulars

- (i) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development is an overdevelopment of the subject site and is contrary to aim 1.2 (2)(a) in NSLEP 2013 as well as sections 1.5.5 in Part B of NSDCP 2013.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979 in that The proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the proposed development with a non-complying site coverage does not promote a high level of residential amenity.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 in that the proposed development is contrary to Section 1.5.4 in Part B of NSDCP 2013 because the proposal does not comply with the maximum parking rate requirement and does not maintain a garden setting for the subject property.

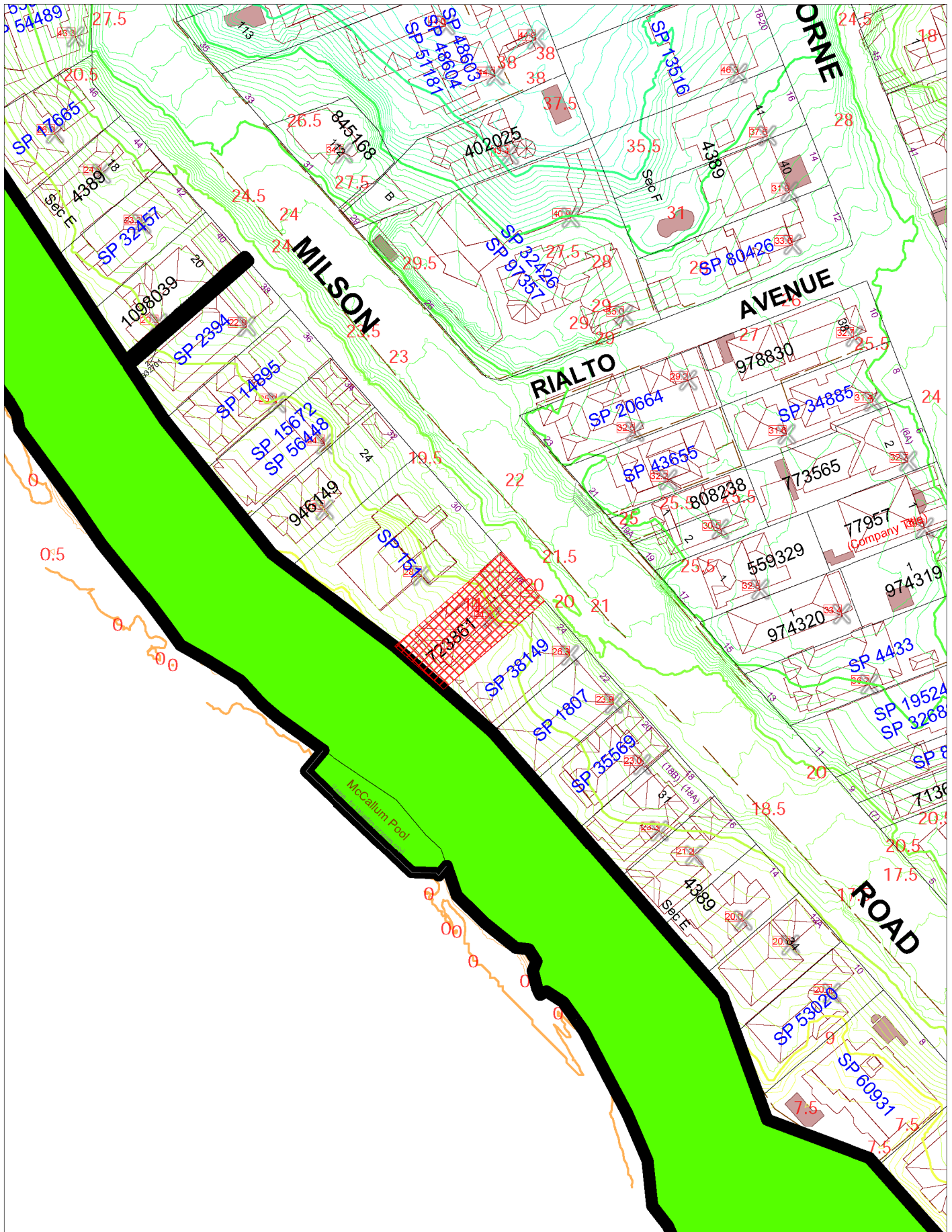
- (iv) The application is considered to be unacceptable pursuant to the provisions of s.4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 in that the proposed development is contrary to Section 1.5.5 in Part B of NSDCP 2013 because the proposal is not consistent with the objectives of site coverage and does not comply with the maximum site coverage requirements.

5. Public Interest

The proposed development is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that the approval of the proposed development is not in public interest because of the adverse impacts on the significance of the subject contributory item/conservation area and the adverse impacts on the residential amenity of the locality.

ROBIN TSE
A/TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES



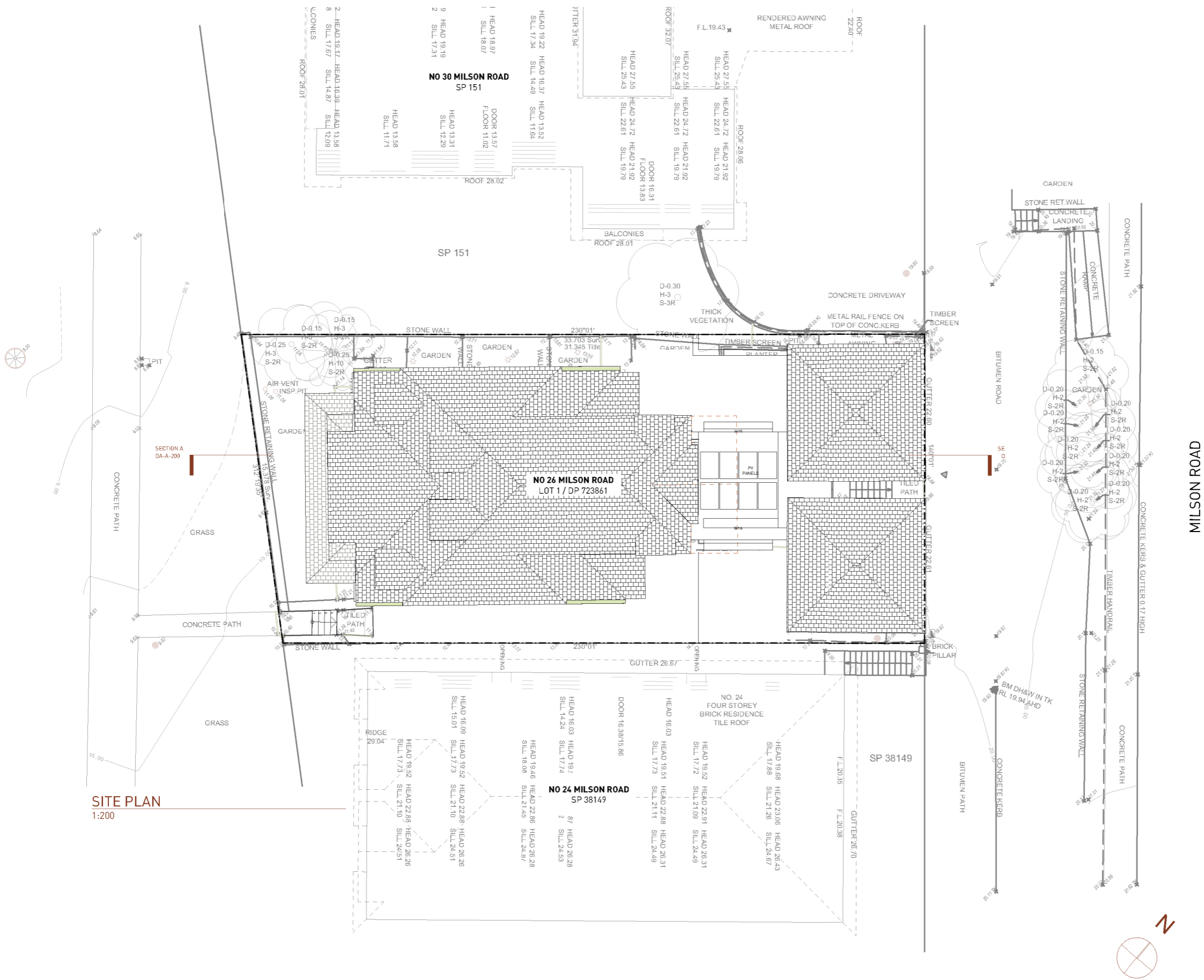
North Sydney Council

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Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.

Scale: 1:1200 approx.





SITE PLAN
1:200

VERSION
FOR LODGEMENT

REV 02/12/2024

DOCUMENT
SITE PLAN

STAGE
DEVELOPMENT APPLICATION

PROJECT
26 MILSON ROAD
Cremorne, NSW

NOTES

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LEGEND

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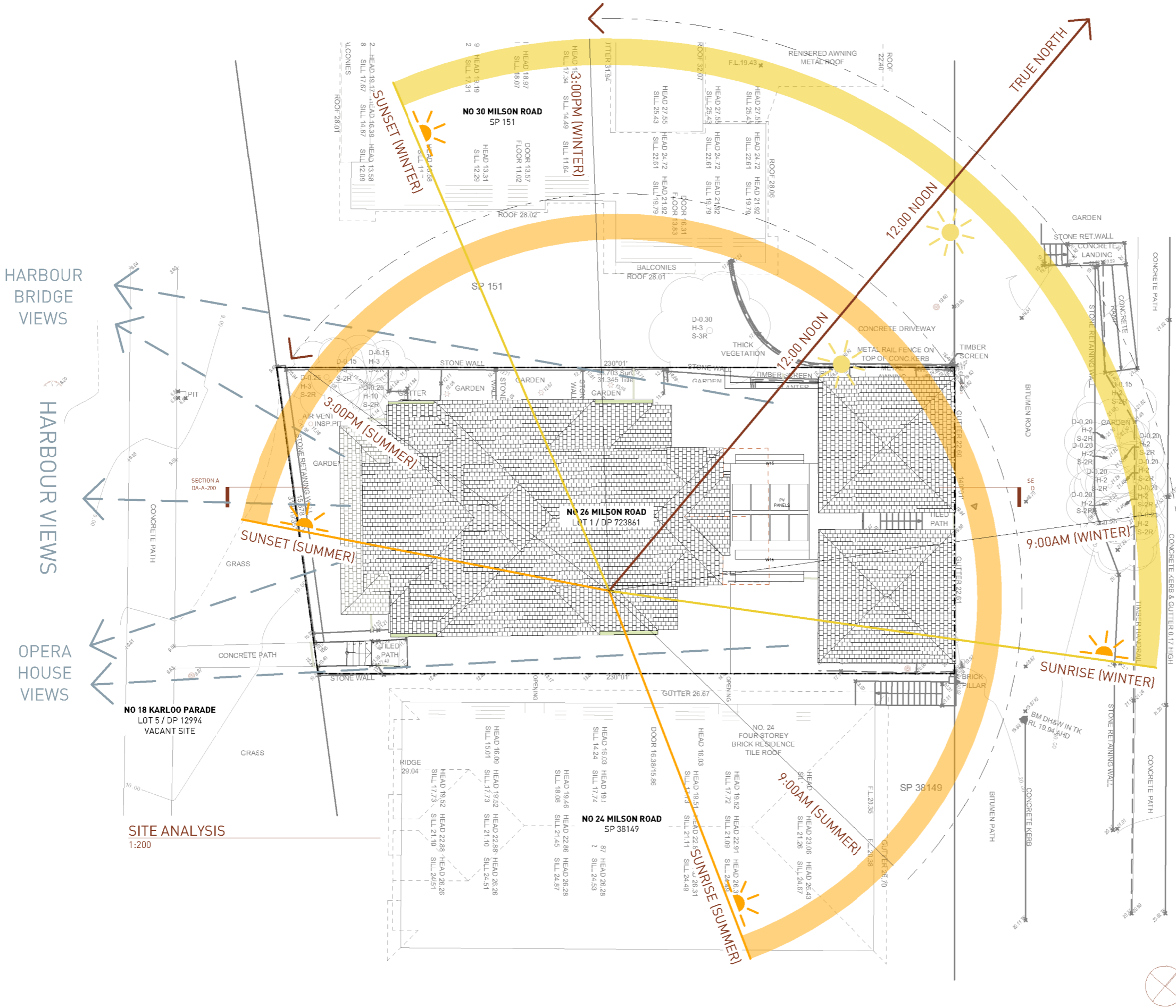
© SMITH & TZANNES PTY LTD

0	10m - 1:200
	5.0m - 1:100
	2.5m - 1:50
	1.25m - 1:25

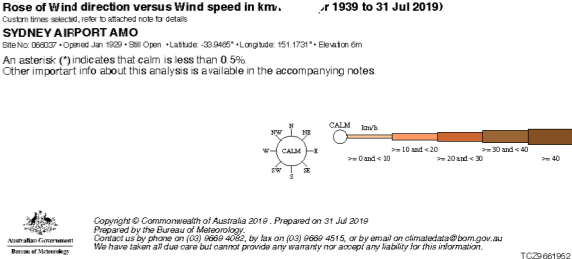
ARCHITECTURE URBAN PLANNING
M1/147 McEvoy Street Alexandria NSW 2015
P 02 9516 2022 E email@smithtzannes.com.au
smithtzannes.com.au
Nominated Architect: Peter Smith (Reg 7024)



23_017DA-A-010



MILSON ROAD



VERSION
FOR LODGEMENT

REV 02/12/2024

DOCUMENT
SITE ANALYSIS

STAGE
DEVELOPMENT APPLICATION

PROJECT
26 MILSON ROAD
Cremorne, NSW

23_017DA-A-011

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0	10m - 1:200
	5.0m - 1:100
	2.5m - 1:50
	1.25m - 1:25

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LEGEND

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M1/147 McEvoy Street Alexandria NSW 2015
P 02 9516 2022 E email@smithtzannes.com.au
smithtzannes.com.au
Nominated Architect: Peter Smith (Reg 7024)





23 017 DA-A-020

0			
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VERSION
FOR LODGEMENT

REV 02/12/2024

DOCUMENT
EXISTING GA / DEMOLITION - L1

STAGE
DEVELOPMENT APPLICATION

PROJECT
26 MILSON ROAD
Cremorne, NSW

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SMITH & TZANNES

23_017DA-A-021



VERSION
FOR LODGEMENT

REV 02/12/2024

DOCUMENT
EXISTING GA / DEMOLITION - L2

STAGE
DEVELOPMENT APPLICATION

PROJECT
26 MILSON ROAD
Cremorne, NSW

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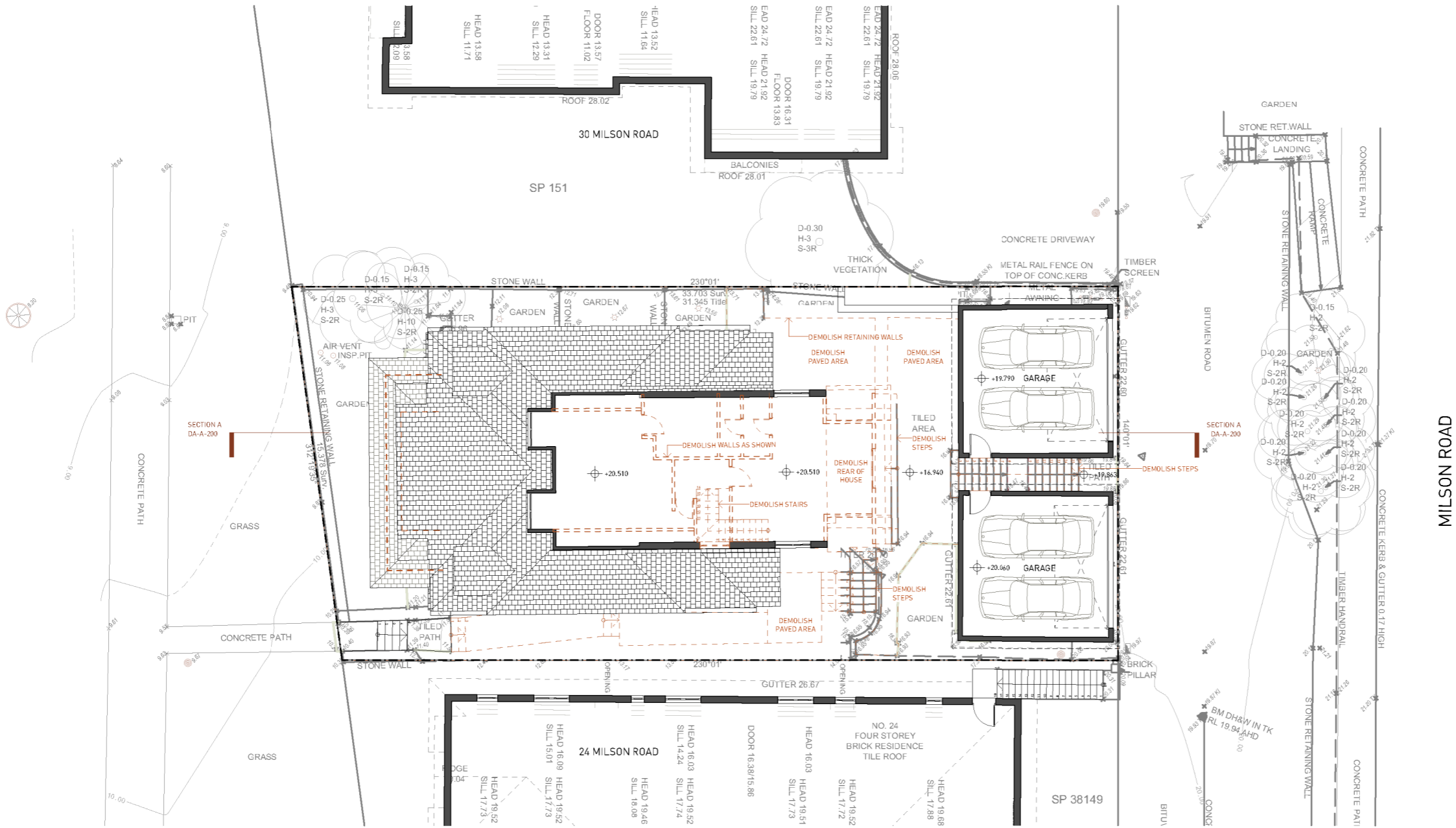
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23_017DA-A-022



LEVEL 3 - EXISTING/DEMOLITION
1:200

VERSION
FOR LODGEMENT

REV 02/12/2024

DOCUMENT
EXISTING GA / DEMOLITION - L3

STAGE
DEVELOPMENT APPLICATION

PROJECT
26 MILSON ROAD
Cremorne, NSW



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0	10m - 1:200
	5.0m - 1:100
	2.5m - 1:50
	1.25m - 1:25

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ARCHITECTURE URBAN PLANNING
M1/147 McEvoy Street Alexandria NSW 2015
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smithtzannes.com.au
Nominated Architect: Peter Smith (Reg 7024)



23_017DA-A-023



VERSION
FOR LODGEMENT

REV 02/12/2024

DOCUMENT
EXISTING GA / DEMOLITION - ROOF

STAGE
DEVELOPMENT APPLICATION

PROJECT
26 MILSON ROAD
Cremorne, NSW

0					10m - 1:200
					5.0m - 1:100
					2.5m - 1:50
					1.25m - 1:25

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23_017DA-A-024



PROJECT
26 MILSON ROAD
Cremorne, NSW



SMITH & TZANNES

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10m - 1:200
5.0m - 1:100
2.5m - 1:50
1.25m - 1:25

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PROJECT
26 MILSON ROAD
Cremorne, NSW

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10m - 1:200
5.0m - 1:100
2.5m - 1:50
1.25m - 1:25

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M1/147 McEvoy Street Alexandria NSW 2015
P 02 9516 2022 **E** email@smithzannes.com.au
smithzannes.com.au
Nominated Architect: Peter Smith [Reg 7024]



23_017DA-A-101



PROJECT
26 MILSON ROAD
Cremorne, NSW



SMITH & TZANNES

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10m - 1:200
5.0m - 1:100
2.5m - 1:50
1.25m - 1:25

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PROJECT
26 MILSON ROAD
Cremorne, NSW



SMITH & TZANNES

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10m - 1:200
5.0m - 1:100
2.5m - 1:50
1.25m - 1:25

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VERSION
FOR LODGEMENT

REV 06/12/2024

DOCUMENT
PROPOSED GA - ROOF

STAGE
DEVELOPMENT APPLICATION

PROJECT
26 MILSON ROAD
Cremorne, NSW

0					10m - 1:200
					5.0m - 1:100
					2.5m - 1:50
					1.25m - 1:25

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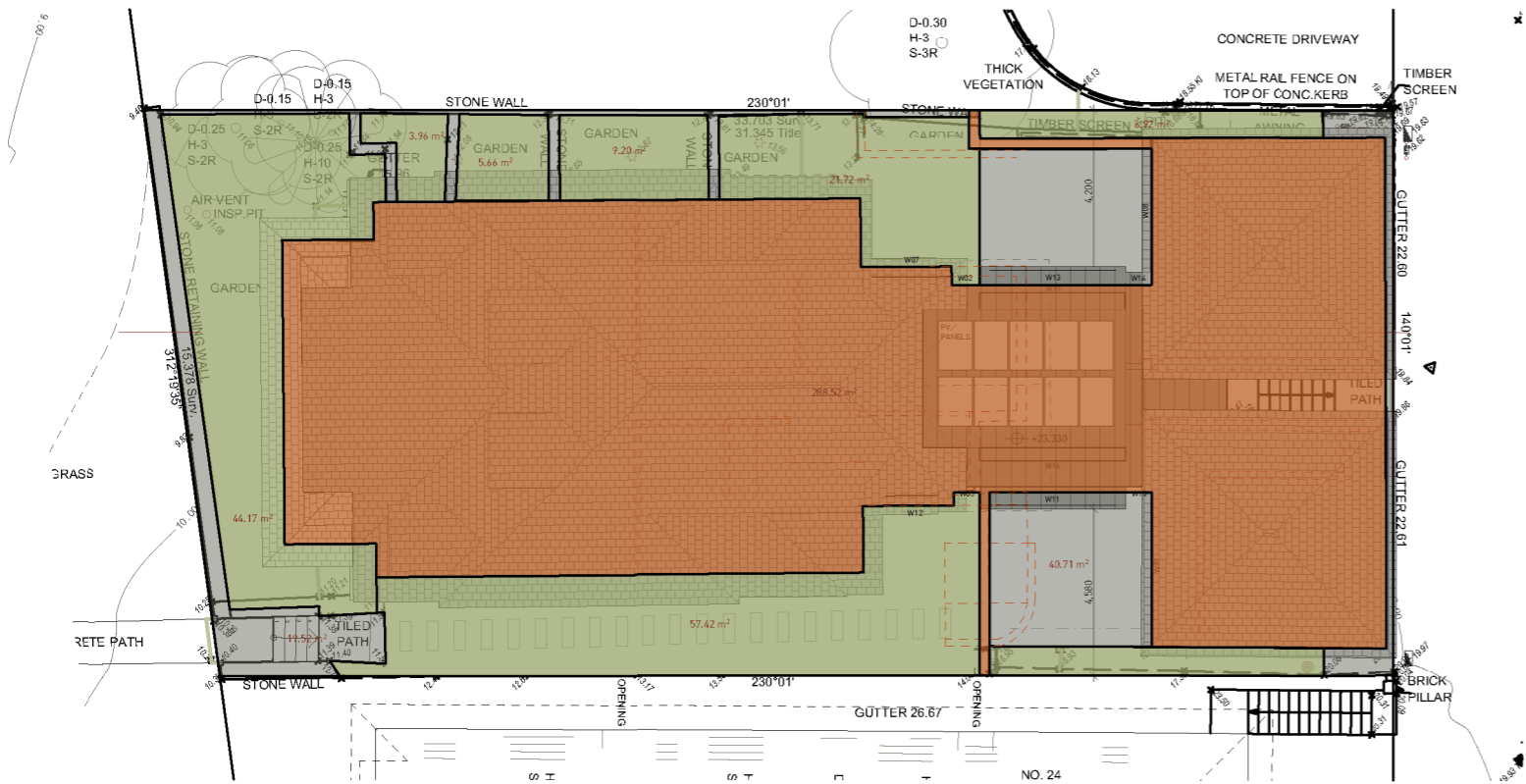
ARCHITECTURE URBAN PLANNING
M1/147 McEvoy Street Alexandria NSW 2015
P 02 9516 2022 **E** email@smithzannes.com.au
smithzannes.com.au
Nominated Architect: Peter Smith (Reg 7024)



23_017DA-A-104



EXISTING COMPLIANCE
1:200



PROPOSED COMPLIANCE
1:200

LEGEND

- SITE COVERAGE
- UN-BUILT UPON AREA
- LANDSCAPING

SITE INFORMATION

SITE AREA BY SURVEY	498 M ²
(AREA BY TITLE - NOT USED)	471 M ²
ZONE	R2
HEIGHT LIMIT	8.5 M

SITE COVERAGE

SITE AREA (SURVEY)	498.0 M ²
MAX SITE COVERAGE	249.0 M ² 50.0%
EXISTING SITE COVERAGE	289.0 M ² 58.0%
PROPOSED SITE COVERAGE	288.5 M ² 57.9%
PROPOSED CHANGE	-0.5 M ² -0.2%

UN-BUILT UPON AREA

SITE AREA (SURVEY)	498.0 M ²
MAX UN-BUILT UPON AREA	99.6 M ² 20.0%
EXISTING UN-BUILT UPON	121.9 M ² 24.5%
PROPOSED UN-BUILT UPON	60.2 M ² 12.1%
PROPOSED CHANGE	-61.7 M ² -50.6%

LANDSCAPED AREA

SITE AREA (SURVEY)	498.0 M ²
MIN LANDSCAPING	149.4 M ² 30.0%
EXISTING LANDSCAPING	87.2 M ² 17.5%
PROPOSED LANDSCAPING	149.1 M ² 29.9%
PROPOSED CHANGE	+61.9 M ² +71.0%



NOTES

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LEGEND

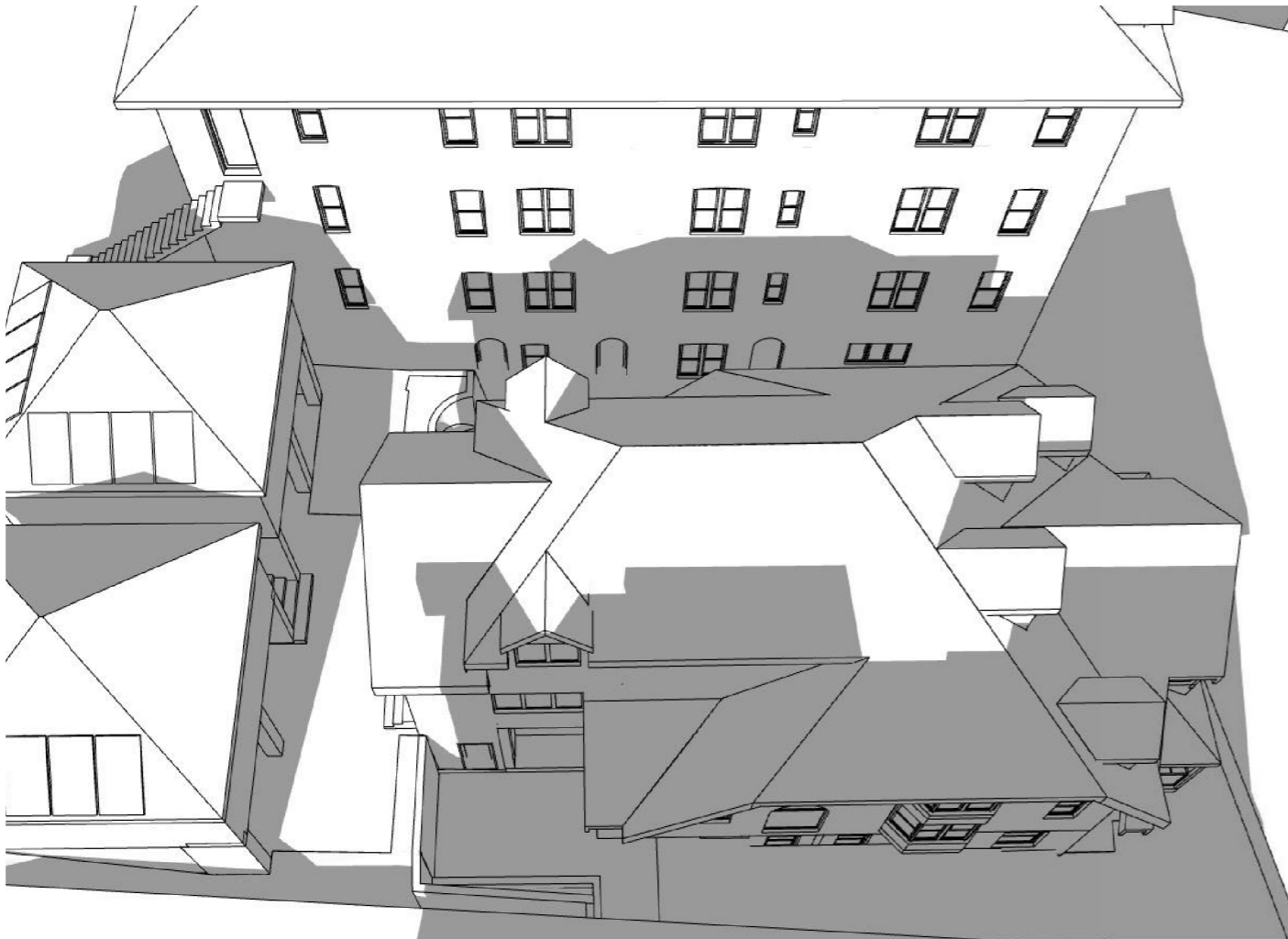
Refer to the notes page for a legend that includes further notes and an explanation of abbreviations.

VERSION	FOR LODGEMENT
REV	06/12/2024
DOCUMENT	AREA CALCULATIONS
STAGE	DEVELOPMENT APPLICATION
PROJECT	26 MILSON ROAD Cremorne, NSW

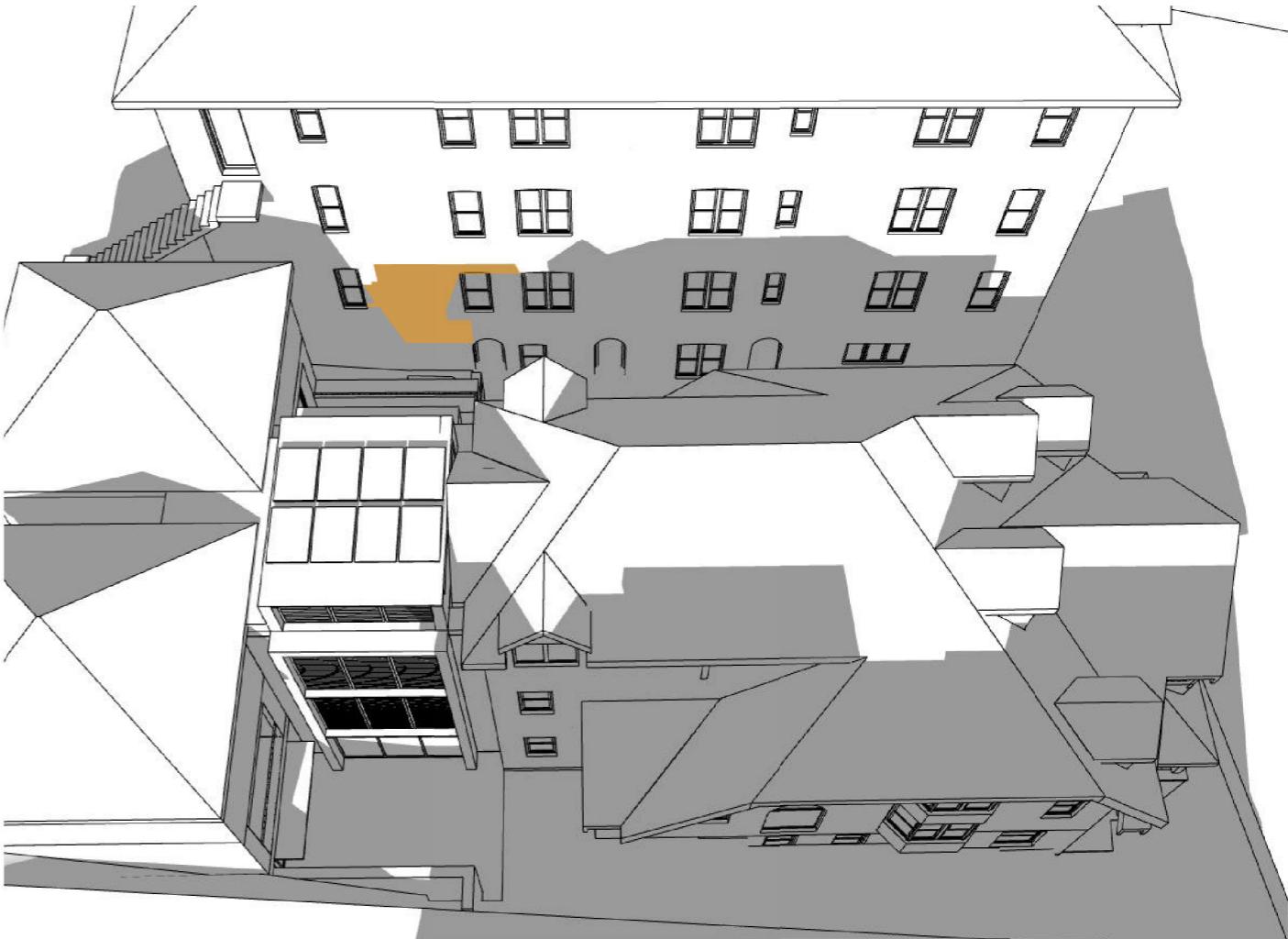
ARCHITECTURE URBAN PLANNING
M1/147 McEvoy Street Alexandria NSW 2015
P 02 9516 2022 E email@smithtzannes.com.au
smithtzannes.com.au
Nominated Architect: Peter Smith (Reg 7024)

ST
SMITH & TZANNES

23_017DA-A-800



EXISTING 2PM
1:227.47



PROPOSED 2PM
1:227.47

ADDITIONAL OVERSHADOWING

VERSION	FOR LODGEMENT
REV 02/12/2024	
DOCUMENT	2PM SHADOWS
STAGE	DEVELOPMENT APPLICATION
PROJECT	26 MILSON ROAD Cremorne, NSW

0	10m - 1:200
	5.0m - 1:100
	2.5m - 1:50
	1.25m - 1:25

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ARCHITECTURE URBAN PLANNING
M1/147 McEvoy Street Alexandria NSW 2015
P 02 9516 2022 E email@smithtzannes.com.au
smithtzannes.com.au
Nominated Architect: Peter Smith (Reg 7024)





PROJECT
26 MILSON ROAD
Cremorne, NSW

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10m - 1:200
5.0m - 1:100
2.5m - 1:50
1.25m - 1:25

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P 02 9516 2022 **E** email@smithtzannes.com.au
smithtzannes.com.au
Nominated Architect: Peter Smith (Reg 7024)



23_017DA-A-901



PROJECT
26 MILSON ROAD
Cremorne, NSW

0					10m - 1:200
					5.0m - 1:100
					2.5m - 1:50
					1.25m - 1:25

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P 02 9516 2022 **E** email@smithtzannes.com.au
smithtzannes.com.au
Nominated Architect: Peter Smith (Reg 7024)



23_017DA-A-903



VERSION
FOR LODGEMENT
REV 02/12/2024
DOCUMENT
SOUTHERN VIEW
STAGE
DEVELOPMENT APPLICATION
PROJECT
26 MILSON ROAD
Cremorne, NSW

23_017 DA-A-904



PROJECT
26 MILSON ROAD
Cremorne, NSW

0					10m - 1:200
					5.0m - 1:100
					2.5m - 1:50
					1.25m - 1:25

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M1/147 McEvoy Street Alexandria NSW 2015
P 02 9516 2022 **E** email@smithtzannes.com.au
smithtzannes.com.au
Nominated Architect: Peter Smith (Reg 7024)



23_017DA-A-905



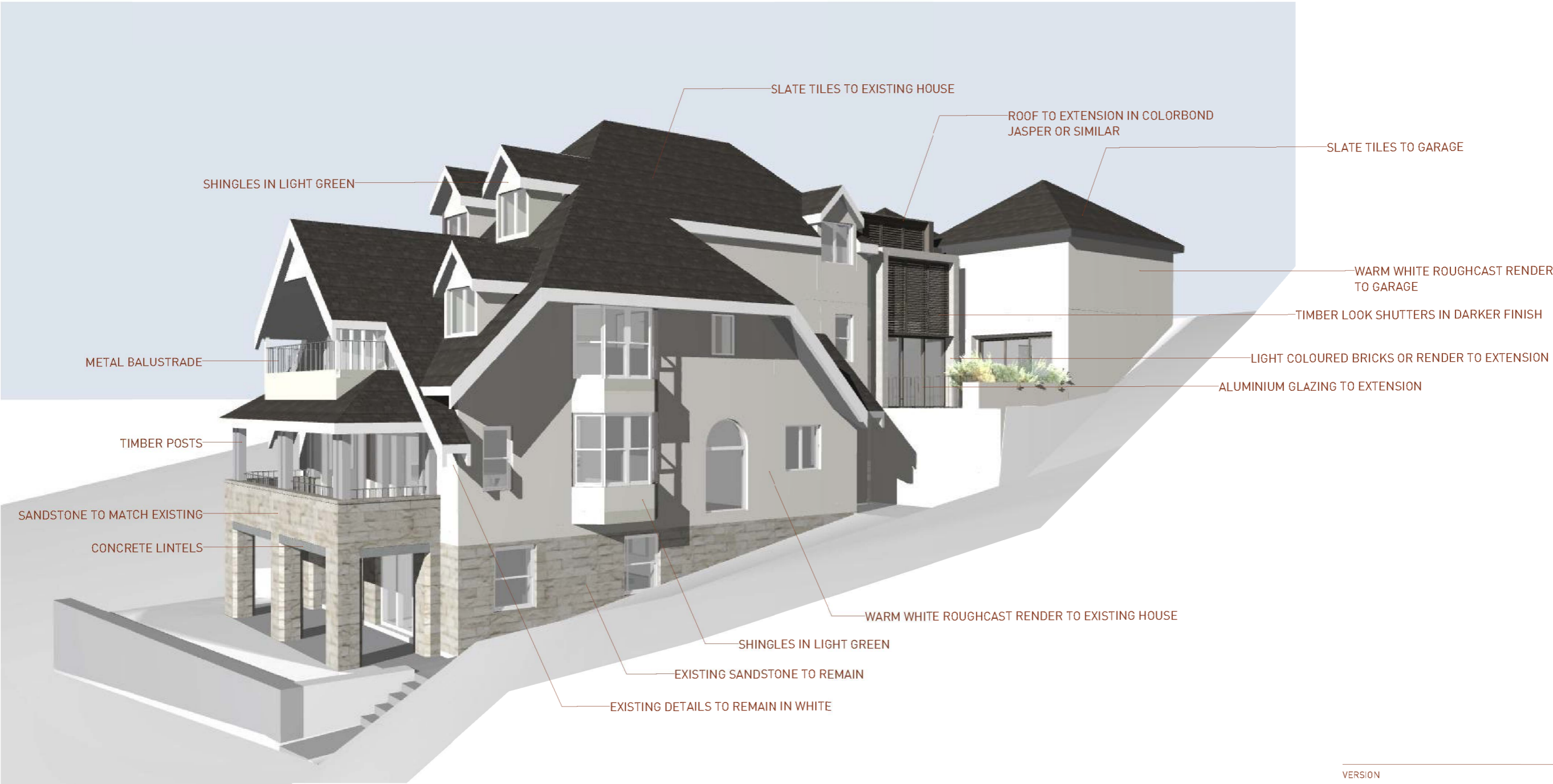
VERSION
FOR LODGEMENT
REV 02/12/2024
DOCUMENT
SOUTH EASTERN VIEW
STAGE
DEVELOPMENT APPLICATION
PROJECT
26 MILSON ROAD
Cremorne, NSW

23_017DA-A-906



VERSION
FOR LODGEMENT
REV 02/12/2024
DOCUMENT
NORTH WESTERN VIEW
STAGE
DEVELOPMENT APPLICATION
PROJECT
26 MILSON ROAD
Cremorne, NSW

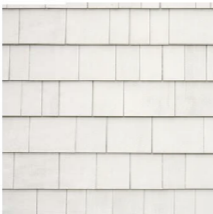
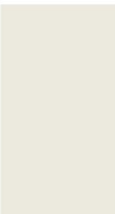
23_017 DA-A-907



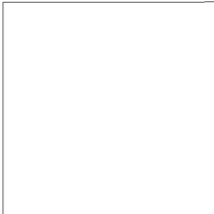
SANDSTONE



ROUGHCAST RENDER IN WARM WHITE
DULUX STOWE WHITE OR SIMILAR



TIMBER SHINGLES IN LIGHT GREEN
DULUX LAMB'S EAR HALF OR SIMILAR



TIMBER WINDOW /
DETAILS IN WHITE



ROOF SLATE TILE IN
GREY



EXTENSION ROOF AND TIMBER
SHUTTERS IN DARKER FINISH



VERSION
FOR LODGEMENT

REV 02/12/2024

DOCUMENT
MATERIALS AND FINISHES

STAGE
DEVELOPMENT APPLICATION

PROJECT
26 MILSON ROAD
Cremorne, NSW

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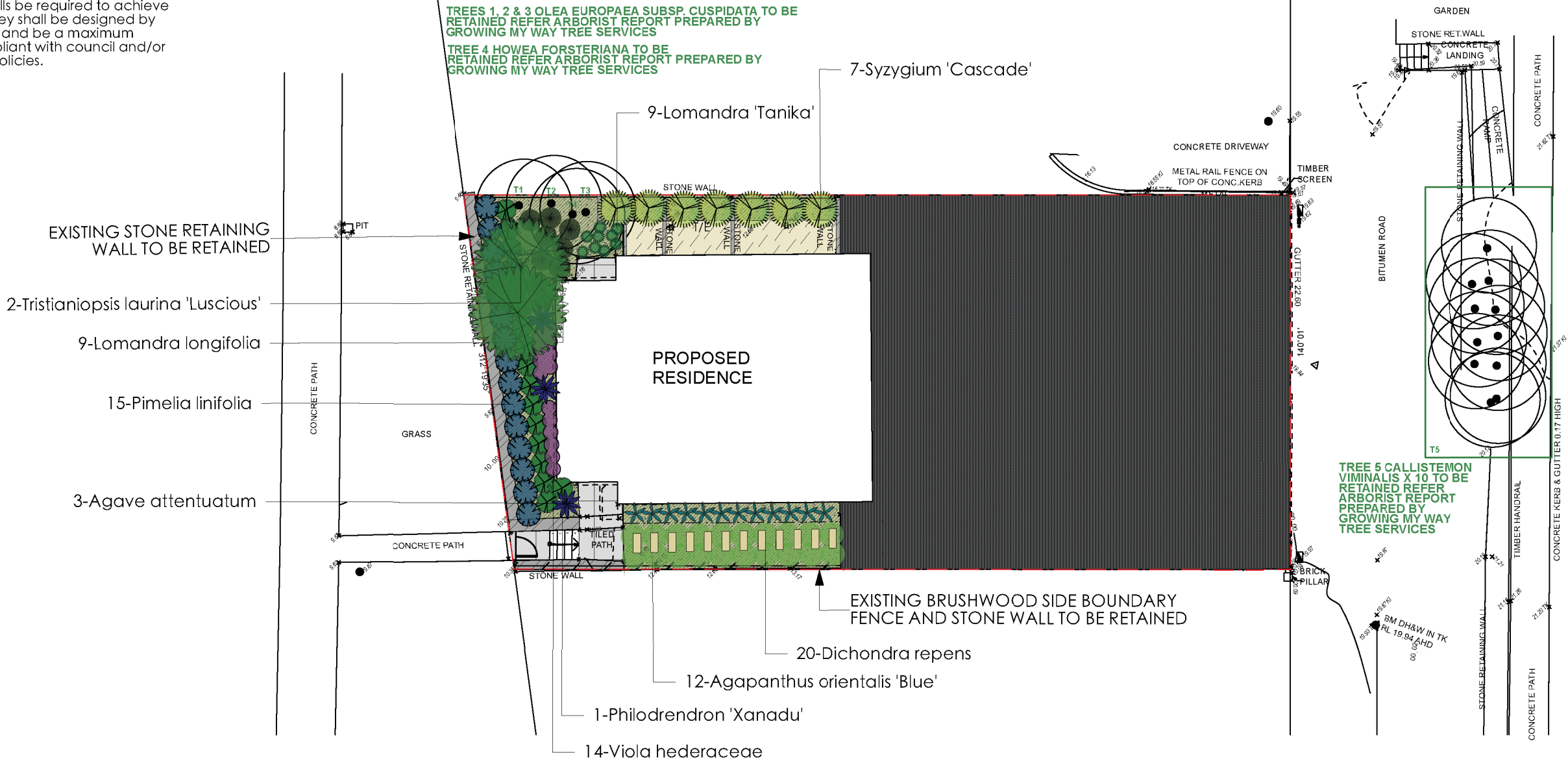
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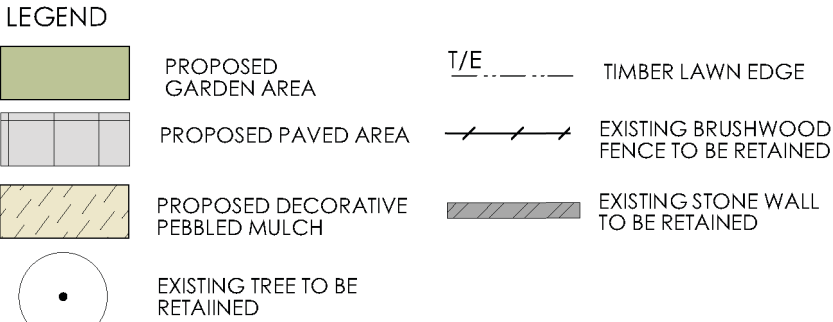
Refer to the notes page for a legend that includes further notes and an explanation of abbreviations.



Note:
Landscape Contractor shall undertake minor earthworks after handover by builder as required to achieve maximum gradient to all lawn and mulched areas of 1:50, and 1:4 to all garden areas. Should retaining walls be required to achieve these falls they shall be designed by an engineer and be a maximum height compliant with council and/or developer policies.



REFER PLANTING SCHEDULE L/02



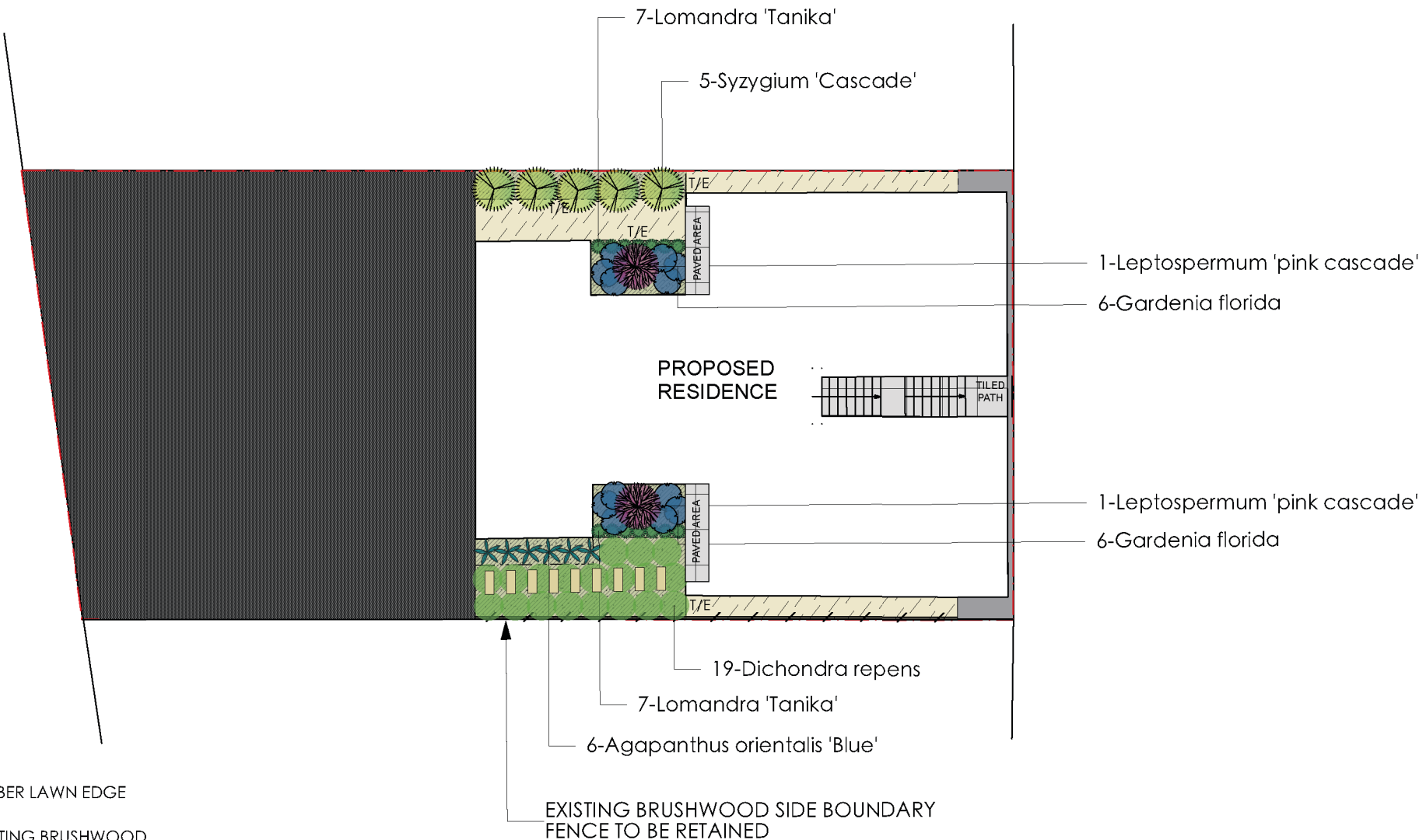
Notes:
1. All dimensions and levels shall be verified by Contractor on site prior to commencement of work.
2. All detailing of drainage to paved areas shall be by others.
3. All levels shall be determined by others and approved on site by client.
4. Extent, height and position of all retaining walls shall be determined by others and approved on site by client, to Structural Engineers detail.
5. Do not scale from drawings.
6. If in doubt contact the Landscape Architect.
7. All boundaries shall be surveyed prior to commencement of construction works.
8. This plan is for DA purposes only. It has not been detailed for construction.
9. All dimensions, levels and boundaries are nominal only.
10. This design shall not be copied, utilised or reproduced in any way without prior written permission of A Total Concept Landscape Architects.

DATE		REVISION	
DRAWING		PROPOSED LANDSCAPE PLAN - L0	
ADDRESS		26 MILSON ROAD, CREMORNE POINT	
CLIENT		DATE #	3/5/24
		SCALE @ A3	1:200
		DRAWN	AW
		CHKD	JS
		PROJECT #	VIGOR MASTER
		DWG #	L/01
		REVISION	


A Total Concept Landscape Architects & Swimming Pool Designers
65 West Street, North Sydney NSW 2060
Tel: (02) 9957 5122


atc
a total concept
landscape architects & swimming pool designers

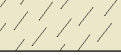
Note:
Landscape Contractor shall undertake minor earthworks after handover by builder as required to achieve maximum gradient to all lawn and mulched areas of 1:50, and 1:4 to all garden areas. Should retaining walls be required to achieve these falls they shall be designed by an engineer and be a maximum height compliant with council and/or developer policies.





LEGEND

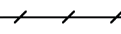
 PROPOSED GARDEN AREA


 PROPOSED PAVED AREA


 PROPOSED DECORATIVE PEBBLED MULCH

 EXISTING TREE TO BE RETAINED

 T/E

 EXISTING BRUSHWOOD FENCE TO BE RETAINED

 EXISTING STONE WALL TO BE RETAINED


 TIMBER LAWN EDGE

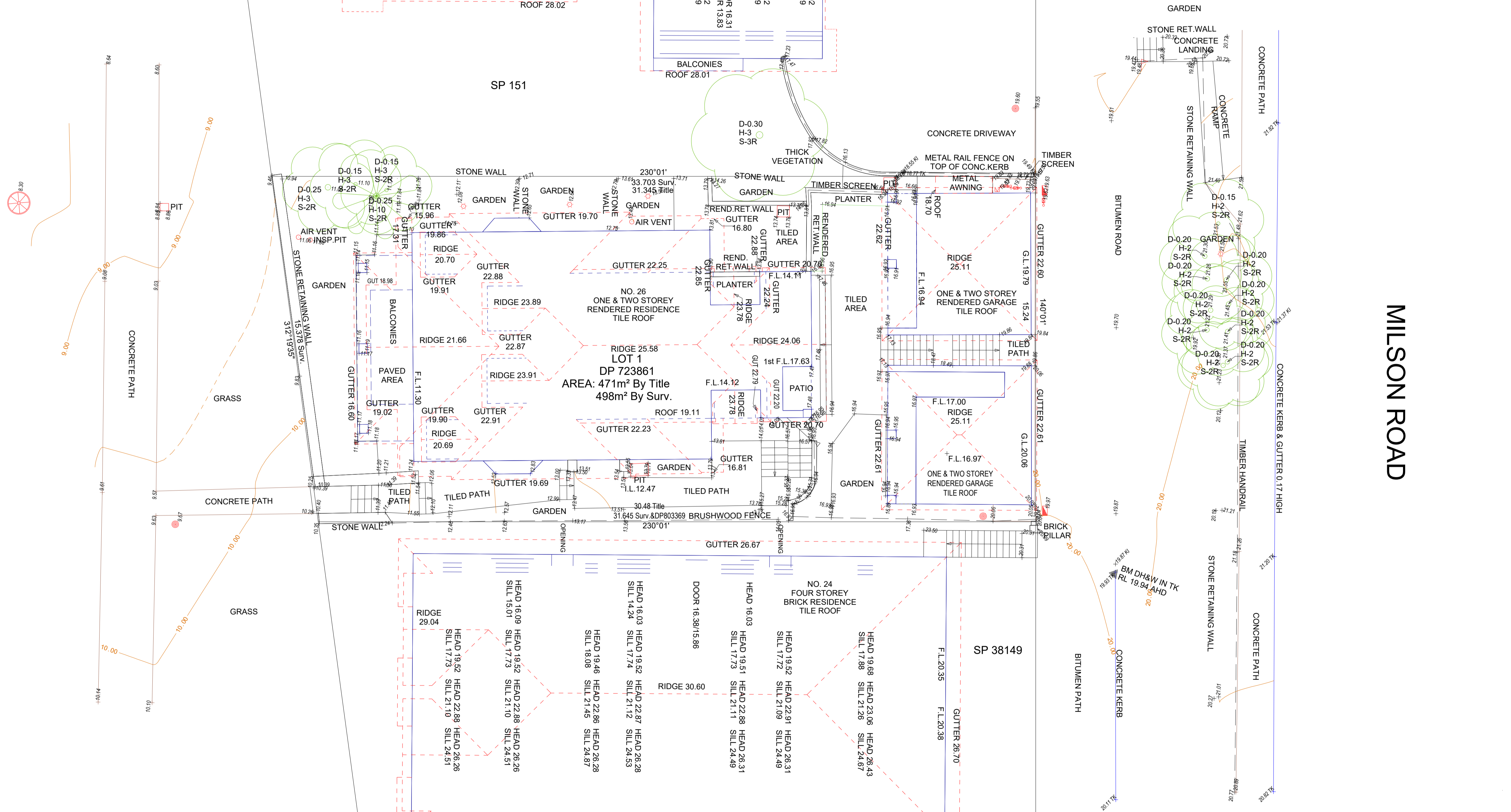
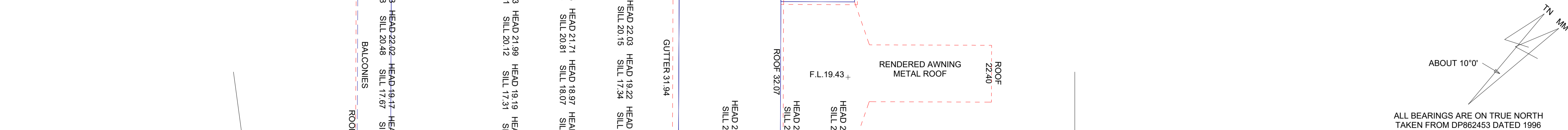
PLANTING SCHEDULE











Latin Name	Common Name	Quantity	Scheduled Size	Spread	Height
Agapanthus orientalis 'Blue'	Blue Nile Lily	18	2.5lt	900	600
Agave attenuatum	Agave	3	25lt	1200	1000
Dichondra repens	Kidney Weed	39	Tube stock	1000	100
Gardenia florida	Gardenia	12	200mm	1000	1200
Leptospermum 'pink cascade'	Tea Tree	2	25lt	1600	1000
Lomandra 'Tanika'	Dwarf Lomandra	23	Tube stock	500	500
Lomandra longifolia	Native Grass	9	Tube stock	900	900
Philodendron 'Xanadu'	Dwarf Philodendron	17	200mm	900	1000
Pimelia linifolia	Rice Flower	15	200mm	1000	1000
Syzygium 'Cascade'	Dwarf Weeping Lillypilly	12	200mm	1500	3000
Tristaniaopsis laurina 'Luscious'	Water Gum	2	75lt	4000	7000
Viola hederaceae	Native Violets	14	Tube stock	600	300

Notes:
1. All dimensions and levels shall be verified by Contractor on site prior to commencement of work.
2. All detailing of drainage to paved areas shall be by others.
3. All levels shall be determined by others and approved on site by client.
4. Extent, height and position of all retaining walls shall be determined by others and approved on site by client, to Structural Engineers detail.
5. Do not scale from drawings.
6. If in doubt contact the Landscape Architect.
7. All boundaries shall be surveyed prior to commencement of construction works.
8. This plan is for DA purposes only. It has not been detailed for construction.
9. All dimensions, levels and boundaries are nominal only.
10. This design shall not be copied, utilised or reproduced in any way without prior written permission of A Total Concept Landscape Architects.

DATE	REVISION	
DRAWING	PROPOSED LANDSCAPE PLAN - L1	
ADDRESS	26 MILSON ROAD, CREMORNE POINT	PROJECT # VIGOR MASTER
CLIENT	DATE # 3/5/24	DWG # L/02
A Total Concept Landscape Architects & Swimming Pool Designers 65 West Street, North Sydney NSW 2060 Tel: (02) 9957 5122		SCALE @ A3 1:200
CHKD JS		REVISION


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landscape architects & swimming pool designers



NOTE: NO BOUNDARY SURVEY HAS BEEN CARRIED OUT IMPROVEMENTS ON OR NEAR THE BOUNDARIES ARE SHOWN DIAGRAMMATICALLY ONLY THE EXACT LOCATION OF UNDERGROUND SERVICES ARE UNKNOWN	SHEET 01 OF 01		REF: 16955/1A	PLAN SHOWING DETAIL AND LEVELS AT 26 MILSON ROAD, CREMORNE POINT LOT 1 IN D.P. 723861
			SCALE: 1:100 @A1	
			GRID:	
			DATUM: AHD	
 BENCH MARK  TREES	 TELSTRA PIT  HYDRANT		 WATER METER  GAS METER	 SEWER MANHOLE  POWER POLE
	 STOP VALVE  DRAIN / GRATE			
REGISTERED SURVEYOR			DATE: 13/10/2021	



ANNEXURE C

Clause 4.6 Variation - Building Height



Clause 4.6 variation request statement – Maximum Height (clause 4.3 of NSLEP 2013)

1. The Site

This variation request applies to the proposed additions and alterations to the existing dual occupancy at No.26 Milson Road, Cremorne. The site is legally identified as Lot 1 in DP723861.

2. Height of Buildings Development Standard

Clause 4.3 of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) relates to the maximum building height and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum building height of 8.5m. Building Height is defined as follows:

“building height (or height of building) means the vertical distance between ground level (existing) and 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.”

The relevant map indicates that the maximum building height permitted at the subject site is 8.5m.

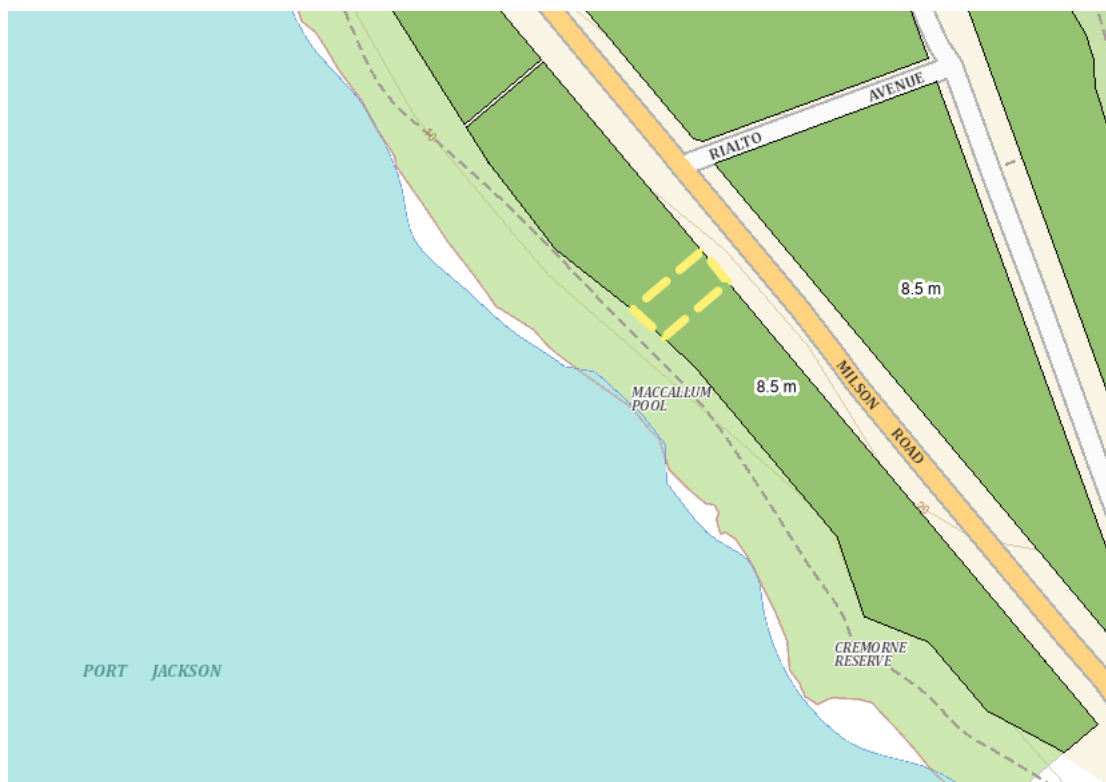


Figure 26 Extract from the Height of Buildings Map with site outlined dashed yellow (NSW Planning Portal Spatial Viewer)

3. Proposed variation to Height of Buildings Development Standard

Building height is defined in NSLEP 2013 as follows:

“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."

The existing built form on site has a maximum building height of 14.28m when measured in accordance with the definition above. This exceeds the maximum building height by 5.78m and results in an existing variation to the development standard of 68%.

The proposed alterations and additions are located well below the maximum height of the existing building and will not be readily discernible from Milson Road or the public foreshore reserve adjoining the site. The proposed development does include works to a maximum height of 9.22m which results in a variation to the control of 0.72m or 8.5%. Refer to Figure 27 below which indicates the maximum height of the alterations and additions highlighted yellow and the existing maximum building height highlighted green.



PROPOSED SECTION A
1:200

Figure 27 Section diagram extracted from architectural plans prepared by Smith and Tzannes Architects Project No.23_017DA dated 28 February 2024. Yellow highlight is the tallest section of the proposed alterations and additions and green highlight is the tallest section of the existing dwelling.

4. Clause 4.6 to NSLEP 2013

The maximum height control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP. The objectives and provisions of clause 4.6 of NSLEP 2013 are as follows:

"4.6 Exceptions to development standards

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (caa) clause 5.5,
- (ca) clause 4.3 in relation to land identified as “Area 1” on the Special Provisions Area Map, other than subject land within the meaning of clause 6.19C,
- (cab) clause 4.4, 5.6 or 6.19C in relation to land identified as “Area 1” on the Special Provisions Area Map,
 - (cb) clause 6.3(2)(a) and (b),
- (cba) clause 6.19A.
- (cc) (Repealed)
- (8A) (Repealed)

The development standard in clause 4.3 is not “expressly excluded” from the operation of clause 4.6 in NSLEP 2013. This submission will address the requirements of subclause 4.6(3) in order to demonstrate that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is

therefore consistent with objective 1(a) of Clause 4.6. In this regard, it is noted that the extent of the discretion afforded by subclause 4.6(2) is not numerically limited or prescribed under other planning provisions.

5. Justification for the Variation to the Development Standard for maximum building height

Of relevance to Clause 4.6(3)(a), in *Wehbe v Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary in this case because the objectives of the development standard for building height are achieved and the development is consistent with the objectives for Zone R2 Low Density Residential for the reasons identified below. For the same reasons, this objection is considered to be well-founded as per the first method underlined above.

Objectives of Development Standard for Maximum Building Height

The objectives of clause 4.3 of NSLEP 2013 are as follows:

“(1) The objectives of this clause are as follows:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.”*

In order to address the requirements of subclause 4.6(3)(a), each of the relevant objectives of Clause 4.3 are addressed in turn below.

Objective (a) seeks to promote development that confirms to and reflects natural landform through stepping development on sloping land to follow the natural gradient.

The existing building and the proposed alterations and additions step down the sloping site as shown in Figure 28 and Figure 29. The roof form is broken into multiple components which also step with the main slope and step inwards from the side boundaries to reduce bulk and scale as viewed from Milson Road, from the foreshore public reserve and from neighbouring properties. Figure 29 also shows the stepping in form displayed by the proposal in comparison to the unmodulated bulky form of the neighbouring residential flat building to the south east.



Figure 28 Section diagrams comparing the stepped built form which currently exists (left) and the proposed stepped form (right)



Figure 29 3D diagram of the proposed development (left) and the unmodulated exterior of the neighbouring residential flat building (right)

The proposed works are integrated with the existing built form to largely preserve the existing 3D building envelope and maintain floor, ceiling and roof height consistency. Excavation is proposed to create additional floor space that minimises additional building bulk and scale. These design considerations minimise overshadowing and maintain existing high value views for neighbouring dwellings despite exceeding the building height numeric control.

The proposal satisfies objective (a).

Objective (b) seeks to promote retention and sharing of existing views.

The proposed works retain existing views for neighbouring properties.

The proposed alterations and additions mostly retain the existing building envelope with the exception of the infill stair and lift well between the garages and the main building. This section of new built form does not obstruct existing lines of sight from neighbouring properties to significant views and vistas and as shown in Figure 30, views from neighbouring apartments rely on the shared side setback areas which have lines of sight that project further westward than the new roofline.



Figure 30 Streetscape view across the subject site and adjoining neighbouring buildings in the direction of significant harbour views and vistas

Neighbouring properties on the opposite side of Milson Road include No.19, No.19A and No.21 Milson Road which are shown on the right side of the photo in Figure 31. Dwellings on the opposite side of Milson Road are well elevated above the level of the road pavement and views of the harbour are obtained over and across the roof on the subject site (see Figures 31 to 34).



Figure 31 Streetview incorporating the road reserve of Milson Road and the dwellings on the opposite side of the road which are well elevated above the subject site and achieve views across the roof of the site towards the harbour.

No.19 Milson Road

No.19 Milson Road contains a two storey semi detached dwelling with basement parking as shown in Figure 32.

Figures 33 and 34 show the view from No. 19 Milson Road looking directly over the top of the subject site at No. 26 Milson Road. Existing views from the first floor balcony attached to the living room at No.19 will not be obstructed, given the proposal does not raise the roof profile at No.26 above the height of the existing building on site. The red outlines on Figure 33 and Figure 34 illustrate the approximate extent of the new roof form, which sits against the backdrop of existing built form and will therefore have no impact on view lines and extent from No.19 Milson Road. Significant views from No.19 Milson Road to the Sydney Harbour Bridge, Opera House and Sydney CBD will not be adversely impacted as a result of the proposed works at No. 26 Milson Road.



Figure 32 View of front façade of No.19 Milson Road which is oriented towards Milson Road and to the harbour beyond



Figure 33 View from front balcony at No. 19 Milson Road. Approximate extend of new roof form shown in red



Figure 34 View from No. 19 Milson Road from the front balcony with approximate outline of new roof shown in red outline

No.19A Milson Road

No.19A Milson Road contains a two storey semi-detached dwelling with basement car park. There are no recent photos of No.19A Milson Road available on the public record. However, it is similar to No.19 Milson road being the mirror reverse semi-detached dwelling. Views and outlooks from No.19A are expected to be similar to those from 19 Milson Road and similarly minimally impacted by the proposal.

No.21 Milson Road

No.21 Milson Road contains a dual occupancy with Unit 1 having basement car parking and a ground floor dwelling. Unit 2 is a two storey unit with basement parking (see Figure 35).

No photos are available on the public record to interpret views from Unit 1. However, this ground floor unit is elevated above the level of the public road reserve and the line of sight to the harbour is likely to achieve complete and continuous views of the harbour waterway, the Opera House and the Sydney Harbour bridge across the roofline of No.26 Milson Road.

Views from the balcony, living room and master bedroom from Unit 2/21 Milson Road are shown in Figures 36, 37 and 38. These photos show the views towards the harbour and views of the Opera House and Sydney Harbour Bridge from 2/21 Milson Road will not be obstructed by the proposal.



Figure 35 Front façade of Unit 2 No.21 Milson Road (unit 1 is the ground floor level behind the sandstone wall)



Figure 36 View from the front balcony accessible from the main living room of 2/21 Milson Road with the rear peak of the roof to No.26 Milson Road indicated by the red arrow



Figure 37 View from the living room of 2/21 Milson Road



Figure 38 View from the master bedroom - 2/21 Milson Road, Cremorne point

existing views and will maintain sharing of views, despite the numeric height breach of the existing building and proposed new roof. Those parts of the new work which exceed the height control do not obstruct views and do not prevent view sharing.

The proposal satisfies objective (b).

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

Sun eye diagrams submitted with the DA demonstrate there will be no additional shadow to the adjoining public foreshore reserve and no additional shadow to Milson Road.

The sun eye diagrams specific to the design show no change in shadow impacts to the north west neighbour and minimal increase in shadow to the south east neighbour. Those shadow impacts to the south east neighbour occur after 10am midwinter with minimal increases in overshadowing between 11am and 3pm on 21 June as shown in Figures 39 to 43. The additional shadow will not impact solar panels, principal open space areas or communal open space areas. The additional shadow does not equate to a loss of 3 hours of solar access to the living room windows of neighbouring apartments.

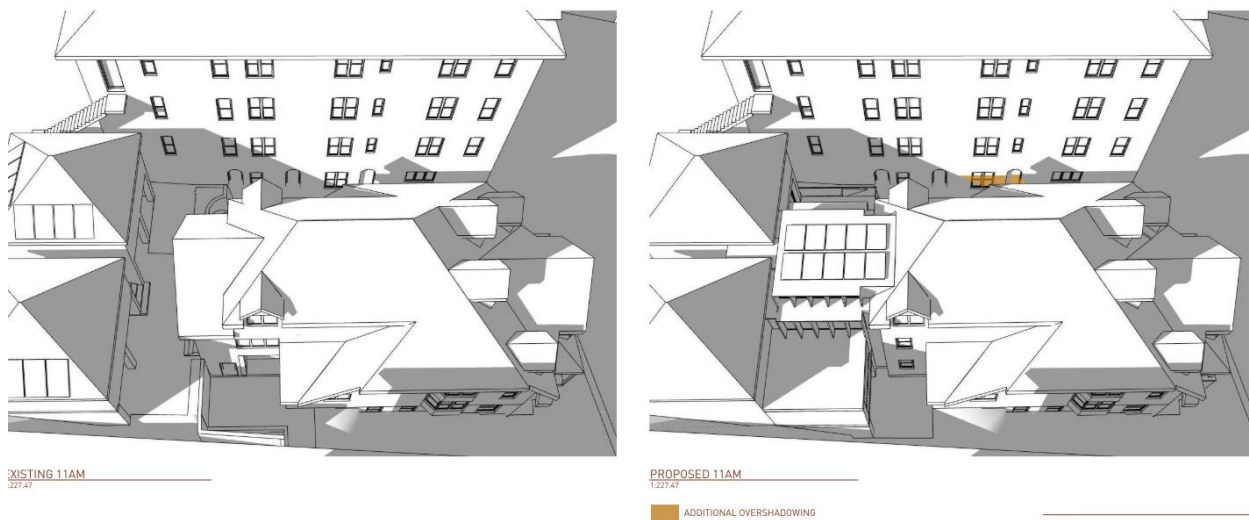


Figure 39 Increased shadow at 11am midwinter

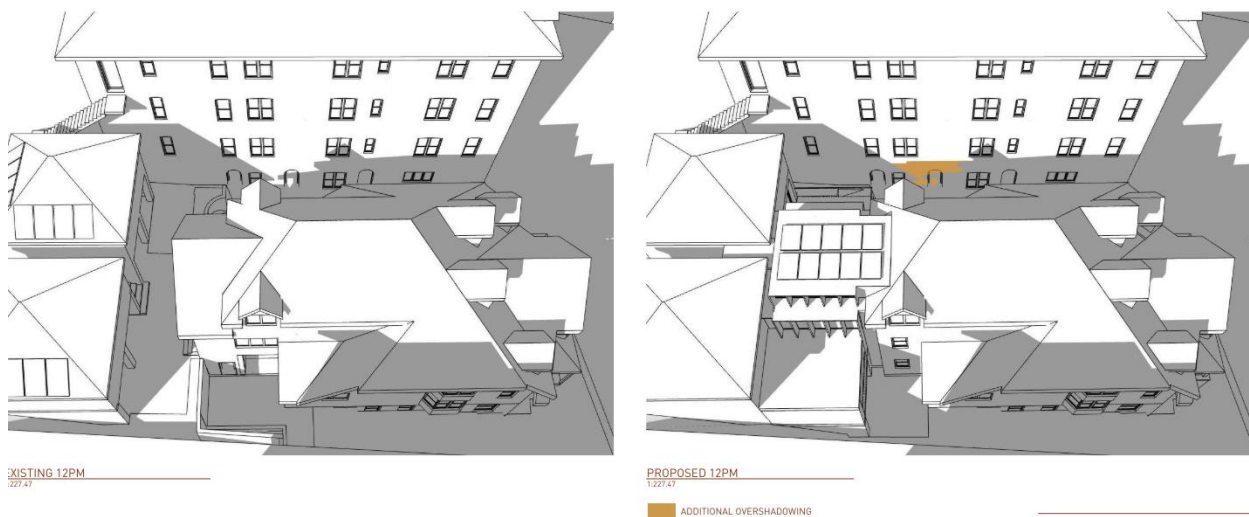


Figure 40 Increased shadow at midday midwinter

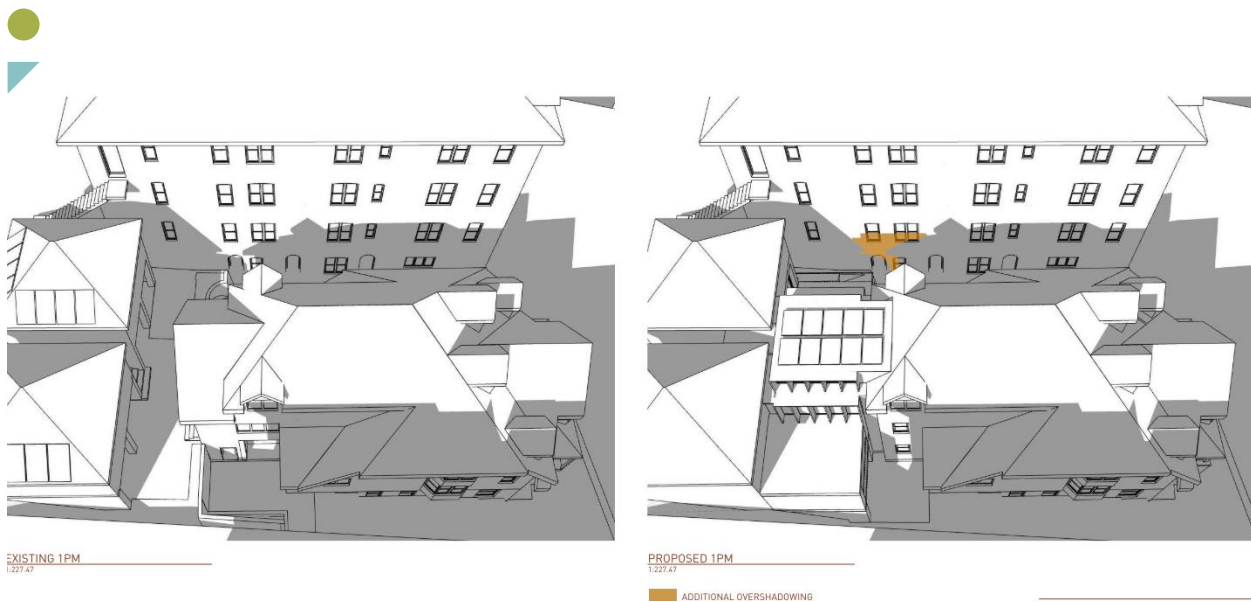


Figure 41 Additional shadow at 1pm midwinter

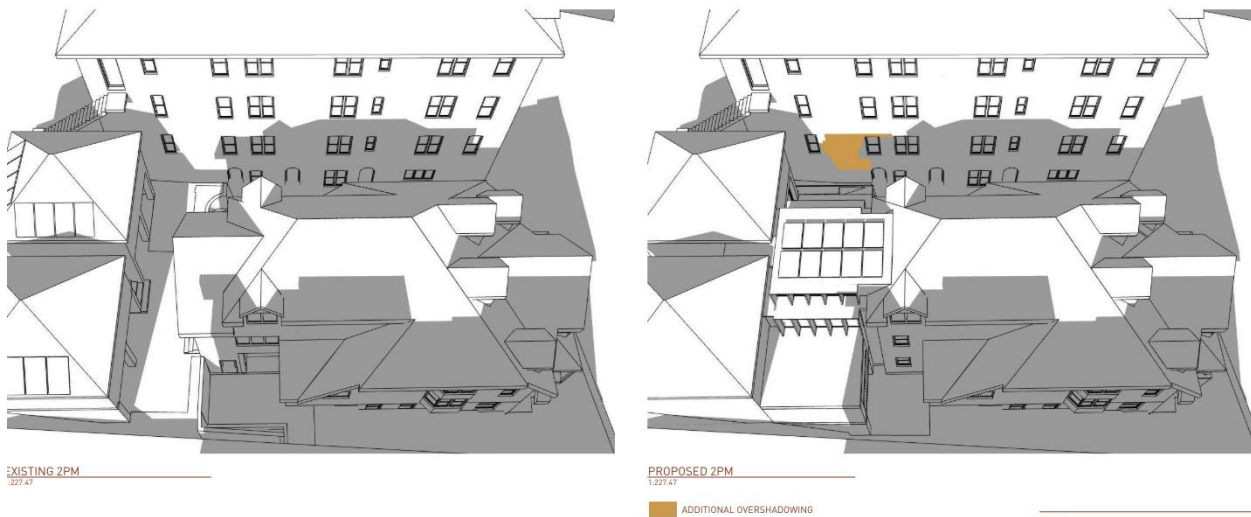


Figure 42 Additional shadow at 2pm midwinter



Figure 43 Additional shadow at 3pm midwinter

The additional shadow is the result of part of the alterations and additions that exceed the height of buildings control. However, the proposal satisfies objective (c).

Objective (d) seeks to maintain and promote privacy.

The proposed alterations and additions will not significantly alter the existing privacy relationship with adjoining properties. Setbacks to neighbouring buildings are entirely consistent with the character of surrounding development in the locality and the streetscape. New windows oriented to neighbouring properties are limited to the glazing of the new lift and stairwell which is a space with transient use and not habitable rooms. These windows are setback 4.2m from the north west side boundary and 4.58m from the south east side boundary which exceeds the minimum setback requirement. The use of this lift and stairwell space and the outlook from the new windows will not be detrimental to neighbour privacy.

All other new windows are oriented towards the rear boundary and the foreshore public reserve and are not positioned to overlook neighbouring property.

The proposal will have no impact on aural privacy to neighbouring dwellings. The low density residential use will be maintained and potential noise generation is anticipated to be compatible with the setting and context. Existing primary private open space areas are retained and the new terrace space adjacent to the guest bedroom is fitted with a wide planter box on the outside edge as to ensure high levels of privacy to the adjoining property.

The proposed development will, as far as practicable, minimise the impacts of visual and acoustic privacy on adjoining properties. Those portions of the new works that exceed the height control include sections of the lift and stair well which is enclosed by glazing and fin blades. The use of this non-habitable space will be transient and will not result in the generation of noise or overlooking.

The proposal satisfies objective (d).

Objective (e) seeks to ensure compatibility between development, in particular at zone boundaries.

The proposed works, despite minorly breaching the height limit, are totally compatible with the form, scale, and height of surrounding development. The additions will breach the 8.5m height limit by 0.72m, however this will still sit significantly below the existing building height. It can be noted that adjoining sites, Nos. 24 and 30 Milson Road are both significantly in breach of the 8.5m height limit and share similar topographies to the subject site. The proposal will provide additional works beyond the maximum height limit but will not breach the existing dwelling height and will maintain compatibility with surrounding development. Therefore, the breach of the height of building development standard can be considered as representing a desired future character of the locality. The proposal satisfies objective (e).

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

The proposal is designed to be integrated with the scale and density of the existing building. The parts of the alterations and additions that exceed the height control are Level 3 and the roof of the stair and lift well. This work includes the removal of a section of pitched roof which exceeds the height control and is higher than the proposed new flat roof.

The Statement of Heritage Impact (SOHI) prepared by Weir Phillips Heritage and Planning dated May 2024 concludes as follows:

"The proposed works have been designed to improve the contribution of dwelling to the HCA by reinstating more sympathetic balcony profile, new slate roofing and more sympathetic colour scheme. The proposed additions have been designed in a contemporary style to be recessive to the principal building form, sitting below the principal roofline and set behind the side setbacks of the building."

The proposed works will have a positive heritage impact on the Cremorne Point HCA and complies with the heritage provisions in the North Sydney LEP and DCP."

The SOHI demonstrates the alterations and additions are compatible with, and improve the contribution of the building to, the character of the area and therefore proposal satisfies objective (f)

Objective (g) seeks to maintain a 1-2 storey built form within the zone.

The proposal does not change the number of storeys of the existing building.

Figure 44 shows that Objective (g) is not an objective maintained and demonstrated by the established residential buildings in the locality. Compliance with Objective (g) is unreasonable in this case.



Figure 44 Oblique view of the site (circled yellow) and surrounds

As demonstrated above, the proposal and in particular the parts of the alterations and additions that exceed the height of buildings development standard are consistent with the objectives of clause 4.3 in NSLEP 2013 with the exception of objective (g) which is not relevant to this case given the multi-storey character of the majority of surrounding residential buildings.

The purpose of the objectives would be defeated by insisting on strict numeric compliance because the alterations and additions have been designed with skill and purpose to be subservient in scale, height and bulk to the existing building envelope which exceeds the building height standard by a greater degree than the proposed works.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the variation to the development standard for building height. Clause 4.6(3)(b) is addressed in Section 6.

6. Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the recent decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson. The following environmental planning grounds are submitted to justify contravening the maximum building height:

1. The parts of the proposed works which exceed the 8.5m height limit are the lift and stair well at Level 3 and the roof which infills the current built upon space at the rear of the garages. The scale and the visual impact of the additions are designed to be subservient in scale and height to the existing building envelope which exceeds the height control to a greater extent than the proposal at a maximum 14.28m.
2. Design effort has focussed on creating additional floor space through excavation and extending the footprint at lower levels working with the slope of the site to reduce additional bulk and scale. This effort results in minimal additional shadow and no obstruction to high value views for all neighbours.
3. The variation to the height limit is minor (0.72m) and the section of the additions that exceed the height control will not be discernible from the public domain or surrounding properties
4. The proposed height of the additions is significantly lower in the general built form landscape than the height of neighbouring buildings and the existing building on the site and will not be readily apparent to the casual observer as a non-compliant built form.
5. It is considered that there is an absence of any significant material impacts attributed to the section of the additions that breach building height on the amenity or the environmental values of surrounding properties and on the character of the locality. Specifically:
 - The height breach does not result in any adverse additional privacy impacts. The non-compliant elements are limited to non-habitable spaces being stairs and a lift; and
 - The height breach will not result in any view obstruction or loss. Surrounding properties maintain a clear outlook over the site to the Harbour which is facilitated by the steep local topography and building design.
 - The additions focus on excavation to accommodate additional floor space which in turn limits the building footprint and facilitates an increase of 64m² in landscaped area within the site.
6. The locality is not characterised by height compliant development due largely to local topography and site constraints which existing in the immediate locality and the many residential buildings which were constructed prior to the application of the building height development standard. The proposal does not add to the existing non-compliant building height. This ensures that the relationship between the existing built form and surrounding development when viewed from the public domain will be mostly unchanged. There are no works

above the 8.5m height limit which will be perceptible or visually jarring from the public domain and surrounding area.

7. The proposed additions have been designed to integrate with the existing building so as not to create any adverse visual impacts. The design and changes to materials are compatible with the colours, materials and finishes, form and proportionality of the existing dwelling and other residential buildings in the locality. The proposed variation will not detract from the character of the streetscape, the public domain, the Harbour foreshore or the heritage values of the Heritage Conservation Area.
8. The proposed development meets the objectives of the development standard that are relevant and meets the objectives of Zone R2 Low Density Residential.
9. The proposed development achieves the objectives in Section 1.3 of the EPA Act. Specifically:
 - a. The proposal promotes the orderly and economic use and development of land through the conversion of an existing dual occupancy to a detached dwelling (1.3(c)); and
 - b. The proposed development promotes good design and amenity of the built environment through a well-considered contemporary design which is responsive to its setting and context, providing a high-quality family home at an appropriate location and increases the landscaped area by 64m² (1.3(g)).

The above environmental planning grounds are not general propositions. They are circumstances specific to the proposed development. Furthermore, the proposed section of the additions which exceed the height control will not be readily discernible from the public domain and will not have any significant adverse impacts on the amenity of adjoining properties.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).



7. Conclusion

This written request has been prepared in relation to the proposed variation to the height of buildings development standard contained in NSLEP 2013.

Despite the numeric non-compliance with the height of buildings development standard, the proposed built form is compatible with the features of the existing building, increases landscaped area, will make an improved contribution to the heritage character of the HCA and will not be detrimental to the amenity of surrounding properties and the adjoining foreshore public reserve.

The request explains that the proposed variation satisfies the objectives of the standard and the objectives of Zone R2. It further explains why it is therefore unreasonable and unnecessary to require strict numeric compliance with the height of buildings development standard in this specific case. In addition, this request demonstrates that there are sufficient site-specific environmental planning grounds to justify the variation in this case.