



NSLPP MEETING HELD ON 04/06/2025

Attachments:

1. Site Plan
2. Architectural Plans dated 4/4/2025
3. View Analysis within SEE dated July 2024
4. Response to RFI dated 4/4/2025
4. Clause 4.6
5. Statement of Environmental Effects

ADDRESS/WARD: 20 Bay View Street, Lavender Bay

APPLICATION No: DA 275/24

PROPOSAL: Demolition of an existing dwelling and construction of a new dwelling

PLANS REF: Refer to Condition A1

OWNER: Ya Li Huang & Ming Hao Wu

APPLICANT: Ming Hao Wu

AUTHOR: Rachel Wu, Assessment Officer

DATE OF REPORT: 5 May 2025

DATE LODGED: 24 October 2024

AMENDED: 4 April 2025

RECOMMENDATION: Approval, subject to conditions

EXECUTIVE SUMMARY

This development application seeks consent for the demolition of an existing dwelling and the construction of a new dwelling at 20 Bay View Street, Lavender Bay.

The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to a development standard by more than 10% and attracted more than 10 submissions by way of objection.

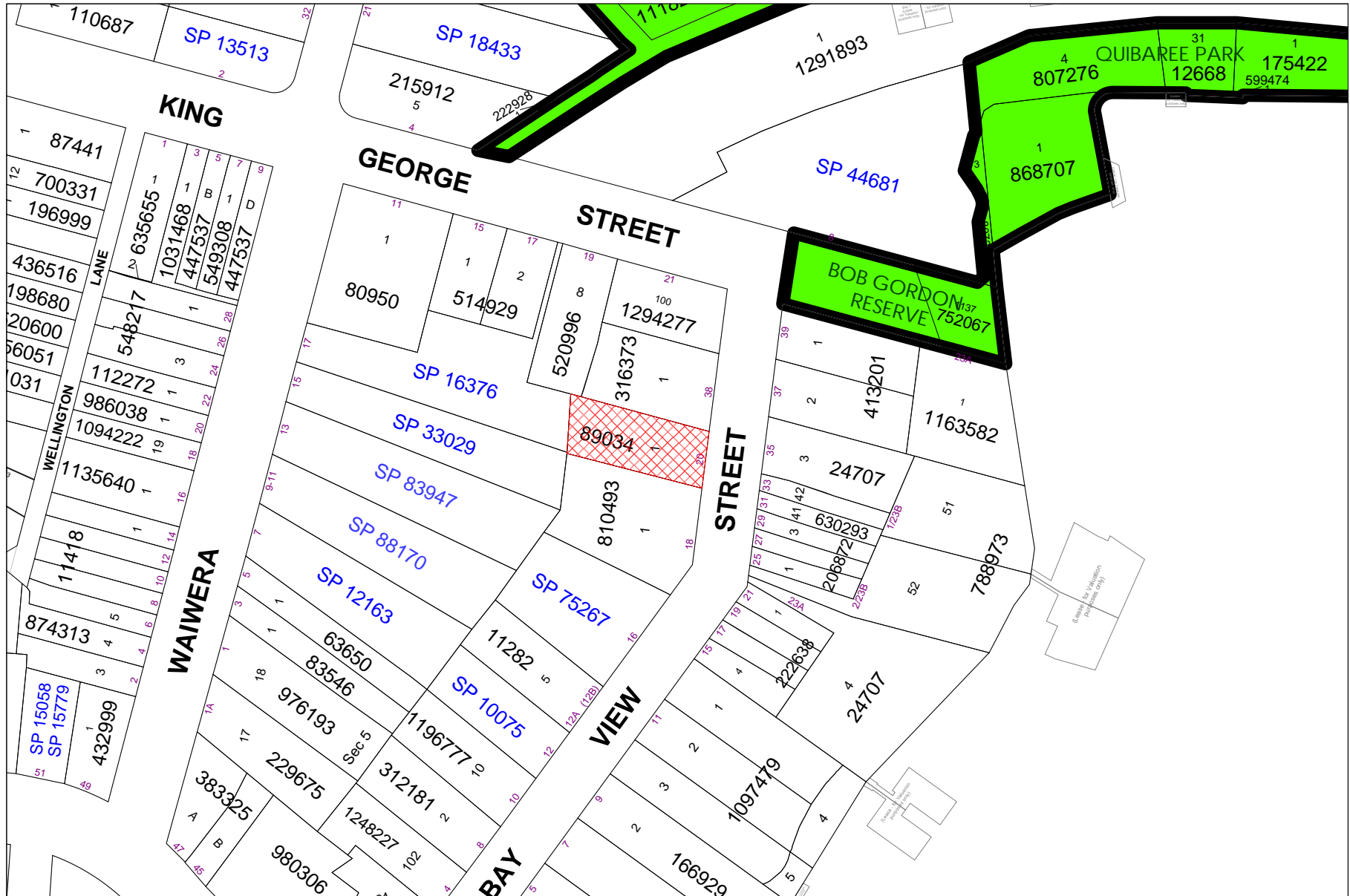
Development for the purpose of a detached dwelling is permitted within the R3 Medium Density Residential zone.

The proposed building results in a non-compliance with the height of buildings development standard in Clause 4.3 of the *North Sydney Local Environmental Plan 2013*. The proposed development results in a maximum building height of 10m at the northeastern corner of the new dwelling which represents a height exceedance of 15% above the maximum 8.5m height control. A written request has been submitted pursuant to clause 4.6 in *NSLEP 2013* which demonstrates that compliance with the development standard is unreasonable and unnecessary as the objectives of the standard are achieved notwithstanding the variation, and that there are sufficient environmental planning grounds to justify the variation in the circumstances of the case including consistency with the objectives of the standard and the objectives of the R3 Medium Density Residential zone.

Notification of the proposal has attracted seventeen (17) submissions raising particular concerns about height non-compliance, solar access, visual privacy, view loss and uncharacteristic development. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

Following this assessment the development application is considered to be reasonable in the circumstances and is recommended for **approval** subject to conditions.

LOCATION MAP



DESCRIPTION OF PROPOSAL

The development application seeks the demolition of an existing dwelling and the construction of a new detached dwelling.

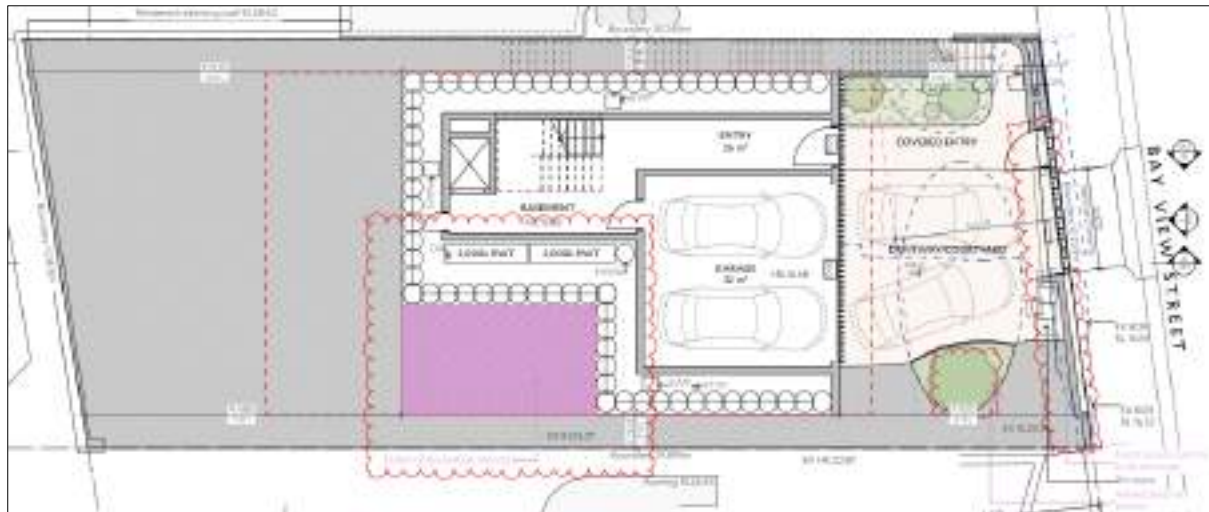


Figure 1: Proposed Basement Level

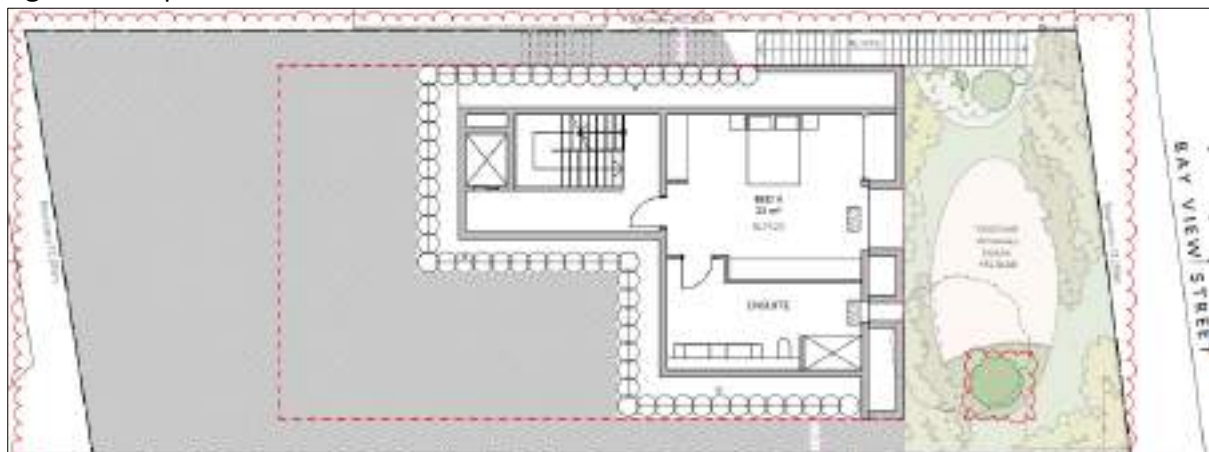


Figure 2: Proposed Basement 2 Level

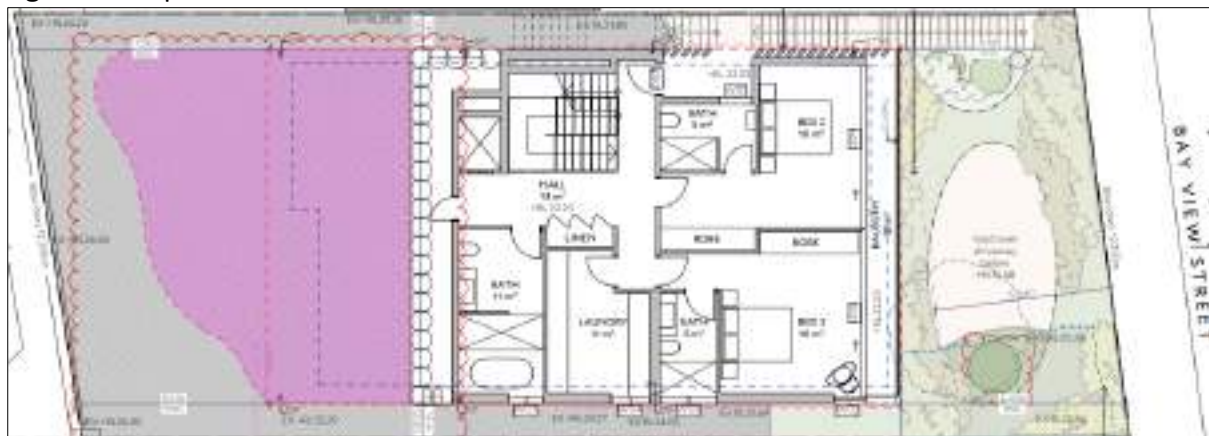


Figure 3: Proposed Bedroom Level

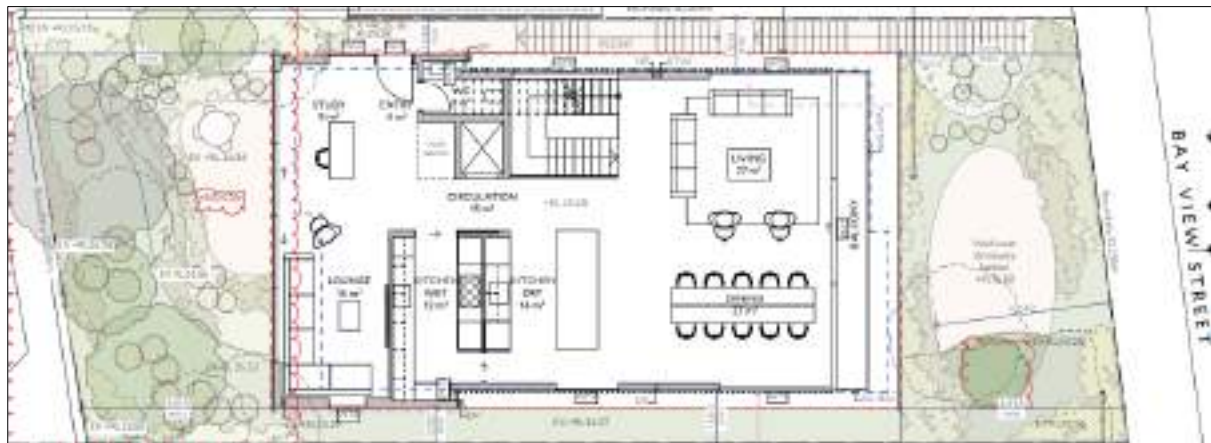


Figure 4: Proposed Living Level



Figure 5: Proposed Master Level



Figure 6: Proposed Roof Plan



Figure 7: Proposed Eastern Elevation (front)



Figure 8: Proposed Long Section (East-West)



Figure 8A: Proposed photomontage of original proposal prior to amendment incorporating changes to sandstone wall frontage and windows to Basement 2 Level

STATUTORY CONTROLS

Environmental Planning & Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

SEPP (Precincts – Eastern Harbour City) 2021 – Sydney Opera House Buffer Zone - No

SEPP (Biodiversity and Conservation) 2021 – Sydney Harbour Catchment

SEPP (Housing) 2021

SEPP (Resilience and Hazards) 2021

SEPP (Transport & Infrastructure) 2021

SEPP (Sustainable Buildings) 2022

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

- Zoning – R3 Medium Density Residential
- Clause 4.3 Height of Building – 8.5m maximum
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes, I0322, I0354 (15 Waiwera Street), I0317 - I0321 (25-33 Bay View Street)
- Conservation Area - No
- Foreshore Building Line (FSBL) - No

Local Development

POLICY CONTROLS

Housing Productivity Contribution

The Ministerial Order for Housing Productivity Contribution came to effect on 1 July 2024. The order applies to land that includes the Greater Sydney Region in which North Sydney Council is located. The proposal does not involve the creation of a new dwelling lot. Therefore, the application is not subject to a contribution in accordance with Clause 7 of the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*.

North Sydney Development Control Plan 2013 (NSDCP 2013)

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site is legally identified as Lot 1 within DP89034, commonly known as 20 Bay View Street, Lavender Bay. The site has an area of 365.6m² and consists of a trapezoidal shape with a frontage of 12.255m to Bay View Street and side boundaries of approximately 30m.

The site rises approximately 10.5m from its northeastern corner at Bay View Street to the southeastern corner (RL17-RL27.5). Existing on site is a two-storey brick residence and a brick garage fronting Bay View Street. Pedestrian access into the site is located on the northeastern corner of the lot.

The site adjoins 38 Bay View Street to the north, 18 Bay View Street to the south, and the rear boundaries of lots on the eastern side of Waiwera Street. The subject site has expansive views to the Sydney Harbour Bridge, Opera House, Luna Park, Milsons Point Town Centre, Sydney Tower Eye and Lavender Bay to its south and southeast, and North Sydney District Views to its north.

Numerous construction works are currently ongoing within the vicinity including No.19 and 21 King George Street, No.9, 35 and 37 Bay View Street.



Figure 9: Subject site (outlined in yellow) within the Sydney Harbour Catchment but outside of Foreshores and Waterways Area (brown line east of the subject site) and outside of the Foreshore Building Line Map (shaded pink). (Source: *Eplanning spatial Viewer 2025*)



Figure 10: Subject site (shaded yellow) outside of the Sydney Opera House Buffer Zone (hatched blue). (Source: *Department of Planning & Environment 2025*)



Figure 11: Subject site fronting Bay View Street



Figure 12: View to the east displaying Lavender Bay and Milsons Point Town Centre from the existing Master Level



Figure 13: Harbour Bridge and Sydney Opera House view to the southwest. Viewed from non-trafficable rooftop area east of Master Level. (Source: North Sydney Council).

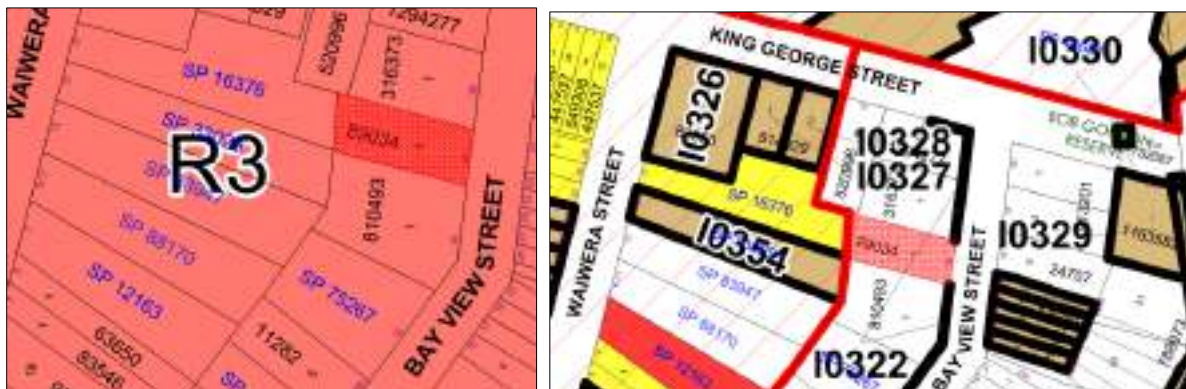


Figure 14 (left): Subject site (hatched) in R3 zone; **Figure 15 (right):** Subject site in vicinity of heritage items but not within conservation area. (Source: North Sydney Council).

RELEVANT HISTORY

Previous Applications (Subject Site)

Complying Development Certificate (State reference: CR-2021-29814/External Reference: CDC 2021/855) granted Certifier approval on 17 May 2021 by Certbuild (Sydney Building Certification Pty Ltd) for a 'first floor addition to a single dwelling'. The Occupation Certificate OC2021/855CDC was approved on 2 November 2021 by Certbuild.

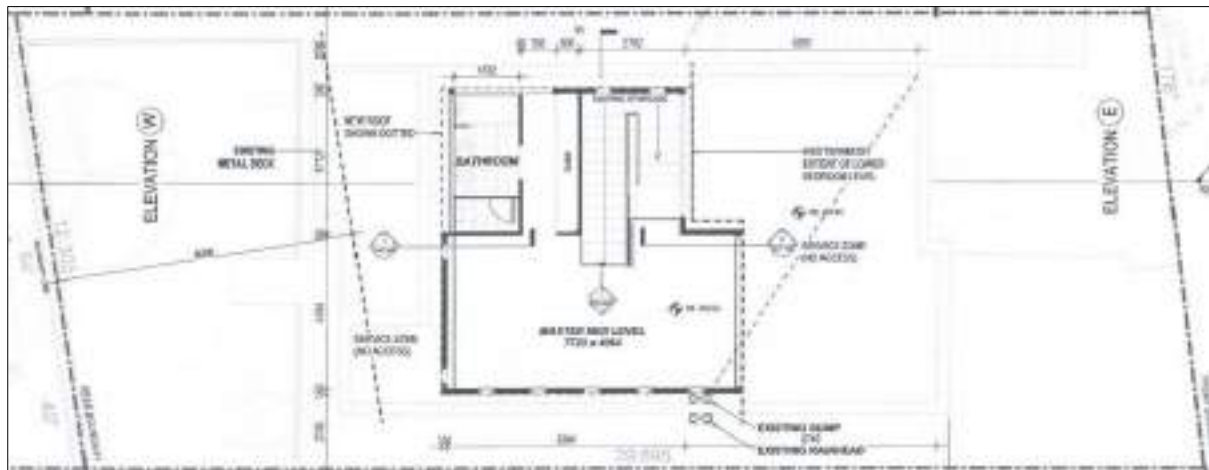


Figure 16: Approved Master Bedroom Level Plan

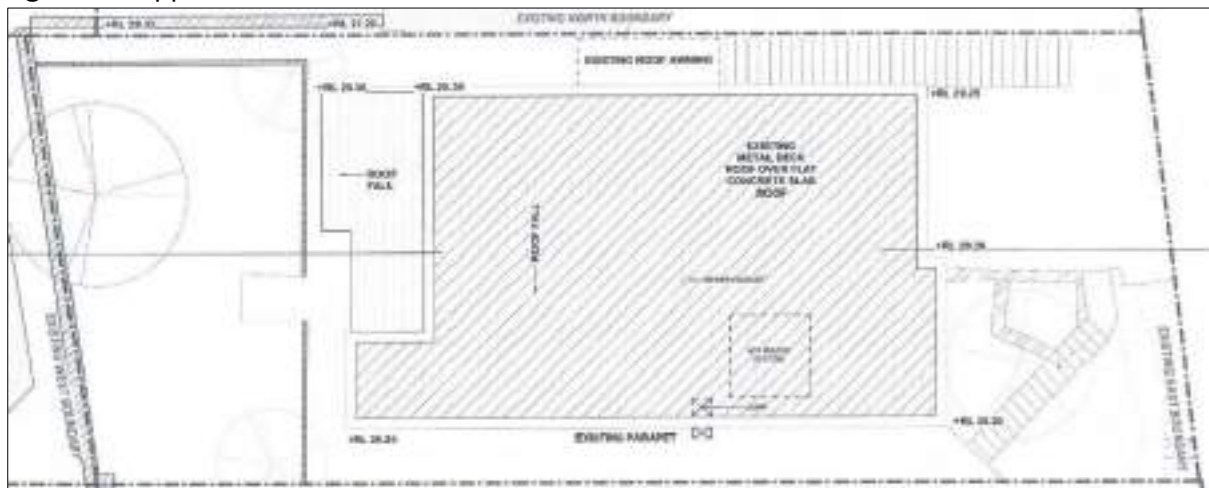


Figure 17: Approved Roof Demolition Plan



Figure 18: Approved Long Section in CDC

Current Application

Date	Action
8/10/2024	Lodged with Council.
15/11/2024	Development Application notified to adjoining properties and the Lavender Precinct for 14 days, finishing on the 29 November 2024.
5/12/2024	Site inspection conducted by Assessment Officer.
13/12/2024	Development Application renotified to adjoining properties and the Lavender Precinct for 14 days, finishing on the 17 January 2025. The application was renotified as the architectural plans were not available on Council's website and therefore cannot be accessed digitally.
18/2/2025	RFI/Amended Plans Letter issued to Applicant for: <ul style="list-style-type: none"> - Revised Landscape Plan and Arborist Report - Preservation of Natural Landform - Uncharacteristic Built Form Character - Non-compliant front and side setbacks - Non-compliant site coverage and landscaped area - Non-compliant private open space - View impact to <ul style="list-style-type: none"> o 17 King George Street to Sydney Harbour, particularly the iconic view to the Opera House o 19 King George Street to Sydney Harbour, particularly the iconic view to the Sydney Harbour Bridge o 17 Waiwera Street to Sydney Harbour, particularly the iconic view to the Sydney Harbour Bridge - Ensuring consistency with Area Character Statement for a continuous and characteristic sandstone retaining walls fronting Bay View Street - Amended and Additional Solar Access/Overshadowing Diagrams - Additional Drawings/Sections Required
20/2/2025	Site inspection conducted for Unit 3 and 4 of 17 Waiwera Street.
25/2/2025	Online meeting with Applicants regarding the RFI/Amended Plans Letter. The Applicant was advised to: <ul style="list-style-type: none"> - lessen the excavation in the basement levels - remove the proposed Bed 4 on the Bedroom Level and relocate to the northernly aspect on the Basement 2 Level due to lack of solar access and amenity. - delete the proposed excavation to the rear garden due to proposed non-compliant solar access and open up the Living Level to the rear garden. - maintain consistency in the sandstone façade on Bay View Street - reduce the height or otherwise provide view impact assessment that justifies lack of view impact to vicinity dwellings - provide improved side setbacks.
27/2/2025	Site inspection conducted for 17 King George Street.
4/4/2025	Amended Plans and Response to RFI submitted on Planning Portal. Under Clause 38 of the <i>Environmental Planning and Assessment Regulation 2021</i> , the amendment was accepted by Council and therefore the DA was taken to be lodged on the date of the amendment.
9/5/2025	Revised Arborist report received from Applicant dated 24 June 2024.

INTERNAL REFERRALS

BUILDING

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. 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.

ENGINEERING/TRAFFIC

The application has been referred to Council's Development Engineer who raised no objections to the proposal and recommended conditions to be imposed under the grant of consent.

LANDSCAPING

The application has been referred to Council's Landscape Development Officer who provided the following comments:

'No objection is raised to the general concept of the proposal, but the successful retention of T4 Persea americana (8x6m, SRZ 2.4m, TPZ6m), the only site tree not proposed for removal, is questioned based on information provided. The arborist report prepared by Botanics Tree Wise People dated 12/6/24 stated that the tree is outside the construction footprint but the 4m deep excavation & building work for rear courtyard appear to be within the SRZ/TPZ of this tree. ("A semi mature example of the species located outside the construction footprint. Retain and Protect"-Appendix 4).

This fails to demonstrate that the proposed works will allow for its successful retention. The Applicant is requested to also provide a plan of the proposed works with trees and SRZs/TPZs overlaid within the report to support the proposal as it provides only a copy of the existing survey with tree locations.

The arborist report also includes information that appears incorrect and which was transposed into the SEE prepared by AK Planning dated July 2024.

"4.5 A total of seven (7) trees have been assessed for the purpose of this report. Existing trees documented on and adjacent to the site comprise a range of both native and exotic species. The most significant of these are the Canary Island Date Palms and Brush Box trees located on the sites front verge. The remainder of the trees documented are part of the sites more recent plantings and have not been considered as a material constraint to the proposed development. All trees on site have been recommended for removal".

There are in fact no Canary Island Date Palms and Brush Box trees (or any other trees) located on the sites front verge. And not all 7 trees are shown for removal, with T4 being shown for retention.

Confirmation may be required that Landscaped Area compliance has not been satisfied as the landscaped area are above the structures which do not fit into the description of landscaped area under NSDCP 2013.

The Landscape Plan prepared by Collins & Turner dated 17/7/24 requires minor amendments –

- *BG Bambusa textilis 'Gracilis' is shown in plant schedule but not depicted on drawings, CA is used to depict both Cupaniopsis anacardioides & Casuarina 'Cousin It' and abbreviations should be amended to avoid confusion. Pot sizes for all plants shall be required to be shown, with Cercis canadensis & Cupaniopsis anacardioides both to be 100L (minimum).*

Amended documentation addressing all of the above issues shall be required before further assessment can be undertaken. Levels shall be clearly shown on all drawings, particularly with regards to level changes and landscaping to rear setback, and transition from existing to excavated courtyard 4m below.'

Planning comments: The Applicant has provided a response to the landscape referral comments in the form of amended architectural plans, landscape plan and amended Arborist report. The response is considered satisfactory and appropriate standard conditions are recommended at the end of the report.

SUBMISSIONS

Original proposal

On 15 November 2024 – 29 November 2024 and 13 December 2024 - 17 January 2025, Council notified to adjoining properties and the Lavender Precinct. Council received seventeen (17) submissions. The matters raised in the submissions are listed below:

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.

Basis of Submissions

- Height Exceedance
- Oversized five-level development
- Extent of excavation up to 8.5m and impact on heritage sandstone wall
- Geotechnical impacts
- Contravention with objectives of the R3 zone
- Uncharacteristic development
- Streetscape impact from inconsistent sandstone façade
- Non-compliant landscaped area and site coverage
- Visual privacy and acoustic privacy impact
- Form, massing, scale and bulk
- Non-compliant setbacks
- Solar Access/Overshadowing
- View loss by proposed built form

- View loss by proposed plant species that can grow to 35 metres e.g. the *syzygium australe*, or other species on the middle and upper floors that can grow to 12 metres or more e.g. the *cupaniopsis* which can grow to 12-15 metres
- View impact from eastern side of Lavender Bay and Sydney Opera House to the dwelling
- CDC approval in 2020 obstructed iconic view
- Not in Public interest and contravenes SREP (Sydney Harbour Catchment) 2005 Part 1 Section 2(b)
- Extensive glazing
- Glare and light spillage impact
- Impact during construction
- Request for dilapidation report prior to construction
- Non-compliant northern wall height exceeding 7m
- Roof terrace inconsistent with prior decisions determined by Council if approved
- Insufficient information on material and inconsistent with locality

Amended Proposal

The applicant submitted amended plans on 4 April 2025 that did not require notification in accordance with the Community Engagement Protocol due to the same if not lesser environmental and residential amenity impact.

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:

Environmental Planning and Assessment Act 1979 (as amended) ***Environmental Planning and Assessment Regulation 2021***

SEPP (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in Non-Rural Areas

The proposal meets the objectives of the SEPP because there would be no clearance of native vegetation or any materials impacts on bushland (if any) in the vicinity of the subject site. All 8 of the tree species on site are exotic species as indicated in the arborist report. With the exception of T4 tree proposed for retention, all other trees are identified as either an environmental weed, toxic species, or recent planting with low retention value. In addition, as a result of the amended plans (removal of rear sunken courtyard), T4 *Persea americana* can be retained, now being outside of the construction zone. An amended landscape plan consistent with the Arborist report and architectural plans has been submitted. All trees proposed are at a pot size of 100L minimum at installation. Appropriate conditions are recommended at the end of the report.

Chapter 6 – Water Catchments

The provisions of Chapter 6 Water Catchments apply to the subject site which is located within the Sydney Harbour Catchment. The subject site is not located within a foreshore waterways area and standard conditions are recommended by Council's Development Engineer and therefore the proposal is unlikely to adversely affect the quality of water by the development.

SEPP (Resilience and Hazards) 2021

The provisions of *SEPP (Resilience and Hazards) 2021* require 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; however, standard conditions for asbestos survey and asbestos clearance are recommended at the end of the report. Further consideration of the SEPP is not deemed necessary.

SEPP (Sustainable Buildings) 2022

A valid BASIX Certificate (*No.1757453S, dated 26 July 2024*) for a single dwelling has been submitted with the application to satisfy the Aims of the SEPP. Due to the amended plans, a condition is recommended at the end of the report for the BASIX Certificate to be updated in accordance with the stamped plans under the grant of consent.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Aims of Plan

Clause 1.2 Aims of Plan within NSLEP states the following:

- “(2) The particular aims of this Plan are as follows—*
- (a) to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment...*
 - (c) in relation to residential development—*
 - (i) to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing...”*

The proposal impacts on the existing views of 19 King George Street and conditions are recommended including the reduction in half of the width of the WIR on the Master Bedroom Level from the southern boundary to retain the important element of Harbour Bridge Deck as part of the Harbour Bridge composition. Detailed view impact assessment is provided later in the report.

2. Permissibility

The proposed works can be defined as demolition and construction of a detached dwelling and are permissible in the R3 Medium Density zone with development consent.

3. Objectives of the zone

The objectives for an R3 Medium Density Residential zone are stated below:

- “• To provide for the housing needs of the community within a medium density residential environment.*
- To provide a variety of housing types within a medium density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

- *To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.”*

Subject to the recommended conditions for mitigating view loss, the proposal can be considered consistent with the relevant objectives of the R3 Medium Density Residential zone. The proposal is consistent with other dwellings on Bay View Street and in a medium density residential zone with a garage level and two levels of presentation to the streetscape with lesser visibility of the Master Bedroom Level due to its front elevation set back 12m from the street frontage. The proposal provides for the housing needs within a medium density residential zone by the excavation for lift space, stairs, parking and ancillary uses within the garage level. The proposal maintains a high level of residential amenity for the subject site and surrounding dwellings.

Part 4 – Principal Development Standards

Principal Development Standards North Sydney Local Environmental Plan 2013			
Site Area – 365.6m ²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	10m* (measured from existing ground level at the location of the proposed Bedroom Level to the roof of the proposed Master Bedroom)	8.5m	NO Variation 1.5m or 18.75%

**Clause 4.6 statement submitted*

4. Height of Building

The following objectives for the permissible height limit 8.5m pursuant to clause 4.3 in NSLEP 2013 are stated below:

- “(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.”*

The maximum height of 8.5m is allowed for dwellings on the subject site. The proposed dwelling would have a height of 10m (1.5m or 17.6% variation) measured from the ground level within the existing Bedroom Level to the roof of the proposed Master Bedroom.

The proposal also exceeds the height of building control by proposing 8.8m height measured from the ground level of the existing garage floor to the extended concrete roof slab above the proposed Bed 2. The height exceedances are limited to the northeastern corner of the proposed development.

The proposal is consistent with other dwellings on Bay View Street and in a medium density residential zone with a garage level and two levels of presentation to the streetscape above. As the front elevation of the Master Bed Level is set back 12m from the street frontage and the site has a steep topography down to Bay View Street of about 10m, the Master Level will have minimal visibility to pedestrians on street level and appears as an architectural roof form.



Figure 8A (previously shown above): Proposed photomontage of original proposal prior to amendment incorporating changes to sandstone wall frontage and windows to Basement 2 Level with planter boxes fronting the streetscape.

Clause 4.6 Variation

A written request provided by AK Planning on 26 August 2024 was submitted as part of the application. The written request acknowledges the departure from the development standard of 1.5m (17.6%).

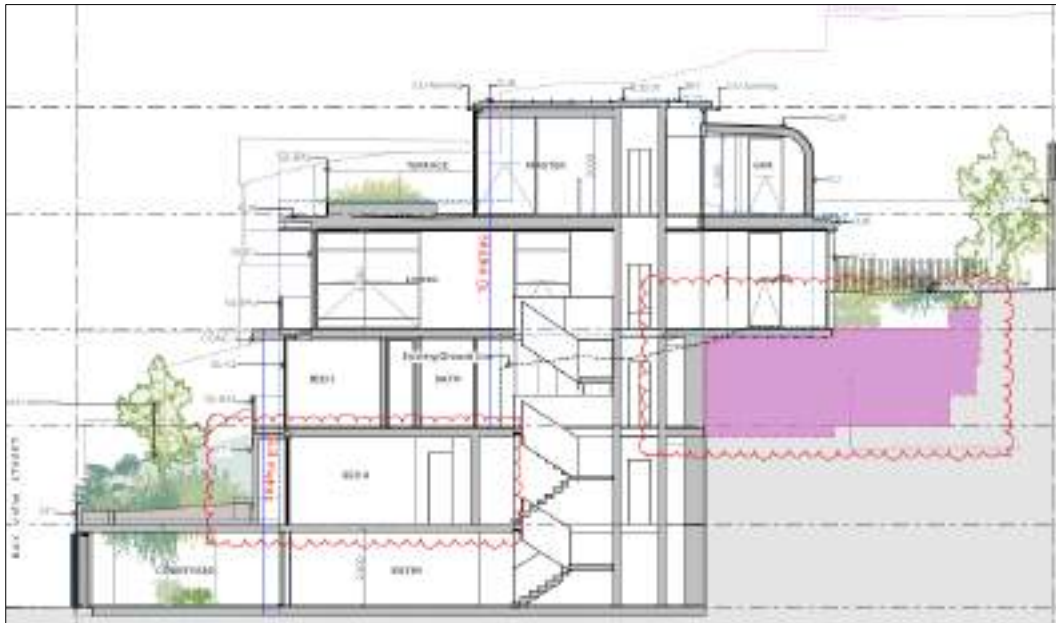


Figure 19: Extract of proposed Long Section containing height measurements

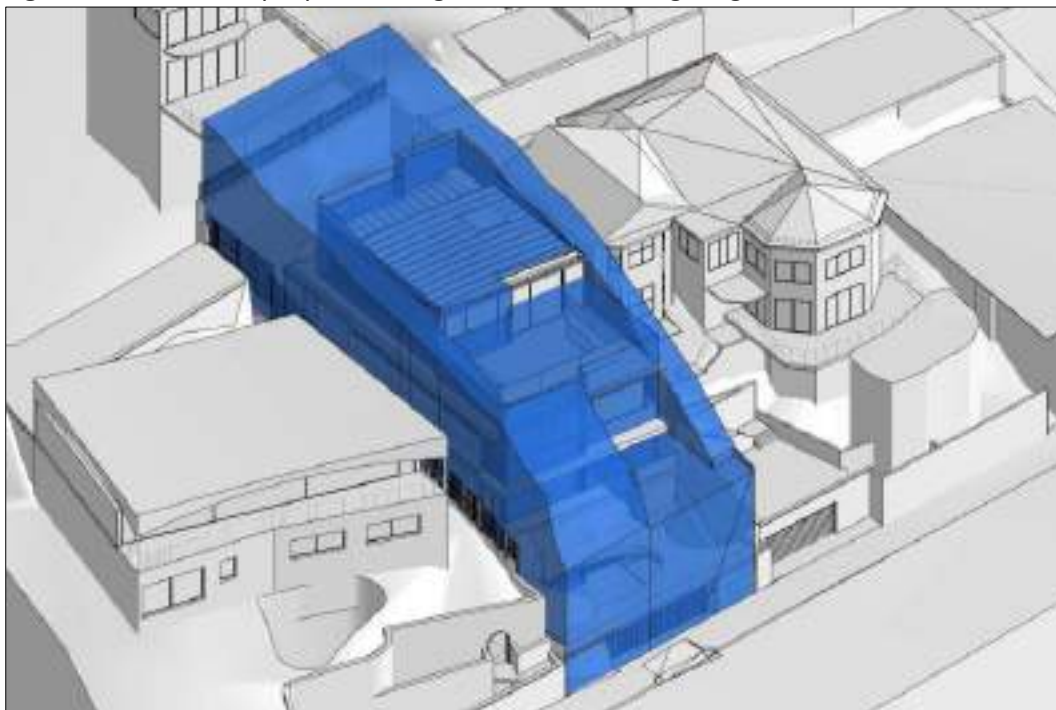


Figure 20: Building height plane in accordance with Merman. White area demonstrates area of proposal exceeding the maximum height of building control. (Source: Applicant's Clause 4.6)

Request to breach the maximum building height standard

The Applicant's Clause 4.6 justification for the breach of the maximum building height standard states that compliance with the Clause 4.3 development standard is unreasonable or unnecessary as it satisfies the objectives of the LEP height of building Clause 4.3 notwithstanding the exceedance of the development standard, because: -

- *“The topography of the site...step down by approximately 10.2m. The proposed development has been designed to generally align with the footprint of the existing dwelling in order to minimise disturbance across the remainder of the site. The proposal...creates a stepped building mass which reduces its visible massing as seen from the public domain. Accordingly, the proposal notwithstanding the height variations, reflects the natural landform by stepping down the site.*
- *The upper floor of the proposed development has been sited to maximise views across the site from upslope properties...the proposed development results in a built form which could be reasonably anticipated by the controls, allowing for reasonable sharing of views.*
- *The height non-compliance does not give rise to any unreasonable impacts upon solar access of adjoining properties...*
- *The portions of the proposed development which contravene the height of buildings development standard do not cause any unacceptable privacy impacts to residents of existing dwellings or potential future development.*
- *The proposal is consistent with the character, scale and form of surrounding buildings having similar contemporary massing and scale.*
- *Although the built form exceeds two storeys in part, the proposed built form in the R3 Zone is in harmony with the buildings around it, notwithstanding the proposed height variation...The visual massing is consistent with the existing streetscape and the built form within the R3 medium density residential zone in general.”*

The Applicant states that there are sufficient environmental planning grounds to justify the contravention of the development standard as:

- *“The steep topography of the site in part contributes to the proposed height variation. The site slopes approximately 10.2m down to the street. The proposed excavation seeks to generally maintain the step down across the site while also accommodating basement parking below. The built form has been designed to step down across the site responding to the topography;*
- *The proposal would comply if the interpretation of height under Bettar is applied (extrapolation method) compared with the existing excavated ground in accordance with Merman. This interpretation distorts the height of the building when compared to the surrounding topography and is planning grounds for varying the development standard;*
- *The historical excavation within the footprint of the existing dwelling distorts the proposed height of building;*
- *The proposed massing and scale are consistent with existing surrounding buildings and moreover does not detract from the existing streetscape character;*
- *The proposal facilitates the orderly and economic development of the site and in particular in the R3 zoned part of the site the variation promotes objective 1.3 (c) of the EP&A Act;*
- *The proposed development is compatible with adjoining residential development, is articulated and features a mix of materials, colours and landscaping which make it visually sympathetic to neighbouring buildings. Importantly, the variation to the height of building development standard does not result in any unreasonable impacts to residential amenity, solar access, views or privacy. Accordingly, the proposal achieves objective 1.3 (g) of the EP&A Act, “to promote good design and amenity in the built environment”; and*
- *there is an absence of environmental harm associated with the non-compliance with the development standard.”*

As detailed earlier within this report, the proposal is considered to achieve the objectives of the R3 Medium Density Residential Zone subject to the recommended conditions on the basis that the proposal improves amenity for the occupants of the dwelling while not adversely impacting view, solar access or privacy for surrounding properties.

In conclusion, the amended written request seeking a variation to the building height control is considered to be well founded as it has demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of the case. The breach to the building height standard while exceeding the 10% variation, is consistent with the objectives of the building height control and the R3 Medium Density Residential zone. The application is referred to the Local Planning Panel for determination as it exceeds the 10% variation to development standard.

5. Earthworks

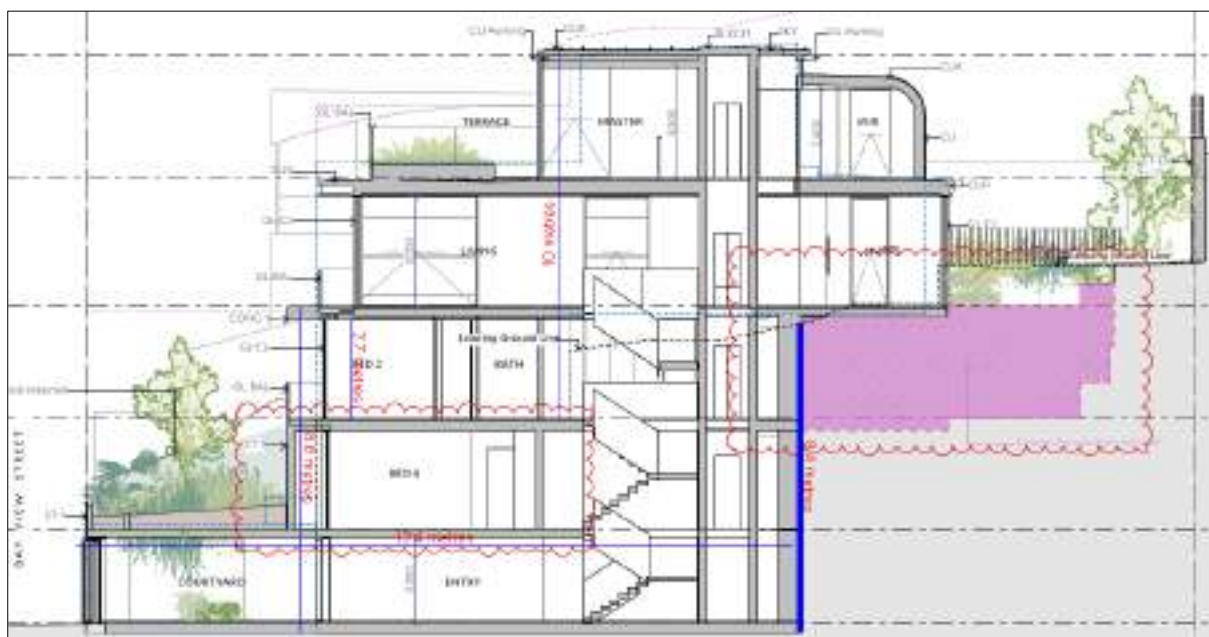


Figure 21: Maximum excavation proposed on site is 8.4m (marked as blue line) for the lift and vapour cavity

Excavation up to 8.4m is proposed to accommodate for the lift and facilities within the proposed Basement Level (Refer to Figure 21). Excavation is not uncommon for properties on the high side of Bay View Street to create basement/garages and lifts under and through dwellings due to the steep topography.

The amended proposal deleted considerable amount of excavation originally proposed (compare Figure 22 and 23). The amended proposal removed the rear sunken courtyard and relocated Bedroom 4 towards the street (eastern elevation) to an upper basement level.

The Applicant has submitted a Geotechnical Report prepared by JK Geotechnics, dated 26 March 2024 for the original proposal which states “that the existing rock formations and substrate on the site is capable of:

- a) *withstanding the proposed loads to be imposed;”*
- b) *withstanding the extent of the proposed excavation;”*
- c) *providing protection and support of adjoining properties;” and*
- d) *the provision of appropriate subsoil drainage during and upon completion of construction works.”*

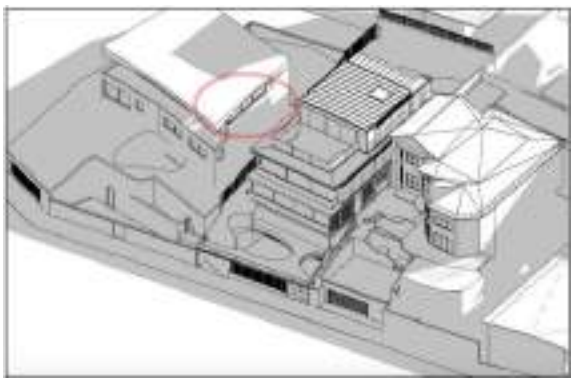
Figure 22: Original proposed design (Section A)

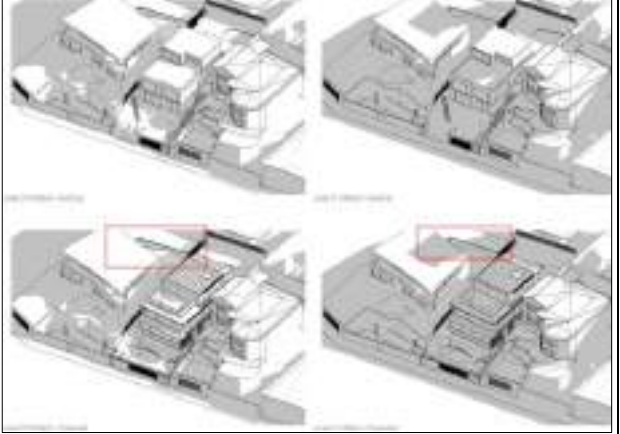


Figure 23: Amended design (Section A). Purple area shows reduced excavation.

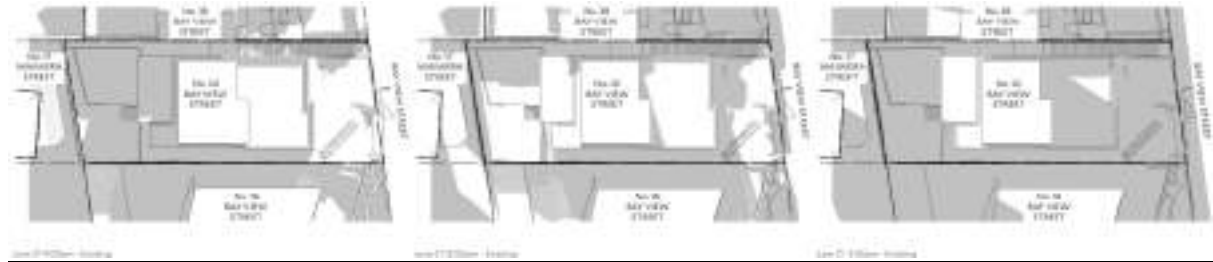
NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

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

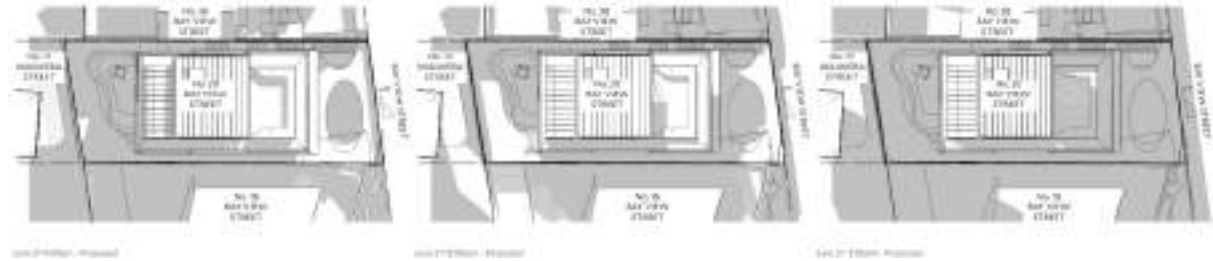
DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.1 Population Mix	Yes	
1.3 Environmental Criteria		
1.3.1 Topography	No Merit	The amount of excavation towards the rear has been reduced significantly in the amended proposal to minimise site disturbance and better preserve the natural landform. Subject to the recommended conditions by Council's Development Engineer and the recommendations within the submitted Geotechnical Report, the proposal is considered to achieve the objectives of this section.
1.3.6 Views	Yes	Please refer to view assessment below the DCP table.
1.3.7 Solar Access	Yes	<p><u>Subject site</u></p> <p>Existing shadows will be impacted between 12-3pm. Despite this, a minimum of 3 hours of solar access is still provided to the rear garden on the subject site at winter solstice between 12-3pm.</p> <p><u>18 Bay View Street - Northern elevation</u></p> <p>The proposed shadows to 18 Bay View Street to the south of the subject site remains similar to what is existing with improvement to the northern elevation windows of Level 2 at 3pm midwinter due to the increase in the proposed side setback on the subject site as well as the lowering of the rear roof on the subject site.</p>  <p>Figure 23A: 100% solar access compared to approximately 50% of solar access currently at 3pm midwinter.</p> <p>The solar access to the northern elevation windows of Level 2 at 18 Bay View Street is greater through the proposal as compared to existing (see Figures 30-36 below). The window to Level 1 at 18 Bay View Street northern elevation remains unchanged in terms of solar access.</p>

	<p>Rear Private Open Space</p> <p>The solar access to the rear garden also remains generally the same as existing as the proposed shadows generally fall within the shadows created by the existing boundary fence. At 12-3pm (refer to Figure 23B below), 18 Bay View Street. Due to the orientation of the lots on the west side of Bay View Street being an east-west orientation of a skewed alignment, the sites are highly vulnerable to solar access impact by the direct properties to the north. Despite this, the proposal is compliant with the building height control to the rear portion of the subject site that is generating shadows to the rear private open space of 18 Bay View Street, satisfies the southern side setback control of 2.5m. The proposal is considered to provide a reasonable level of solar access to 18 Bay View Street.</p>  <p>Figure 23B: Existing and proposed solar access to rear garden of 18 Bay View Street at 12pm and 3pm. Proposed solar access to rear yard highlighted in pink similar/same as existing.</p> <p>Front garden/terrace</p> <p>No additional overshadowing is generated by the proposal to the front yard of 18 Bay View Street.</p> <p>Solar access – Conclusion</p> <p>The proposed development maintains reasonable and improved solar access compared to the existing dwelling to the adjoining dwelling directly south at No.18 Bay View Street. By setting the rear portion of the proposed Master Level roof lower than the existing roof and increasing the southern setback on the Master Level by approximately 500mm to provide a setback of 2.5m, the proposal provides for a minimum of three hours of solar access to the windows of main internal living spaces located on Level 2 of 18 Bay View Street while improving on the level of solar access received at 3pm on winter solstice to the northern elevation windows. The proposal also provides reasonable solar access to the rear private open space of a minimum of 3 hours between the hours 12-3pm at winter solstice. The proposal is satisfactory in this regard.</p>
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Figures 24-26: Existing shadows at winter solstice 21st June 9-3pm



Figures 27-29: Proposed shadows at winter solstice 21st June 9-3pm



Figures 30-36: Existing and Proposed shadows at winter solstice 9am-3pm (Axonometric view)

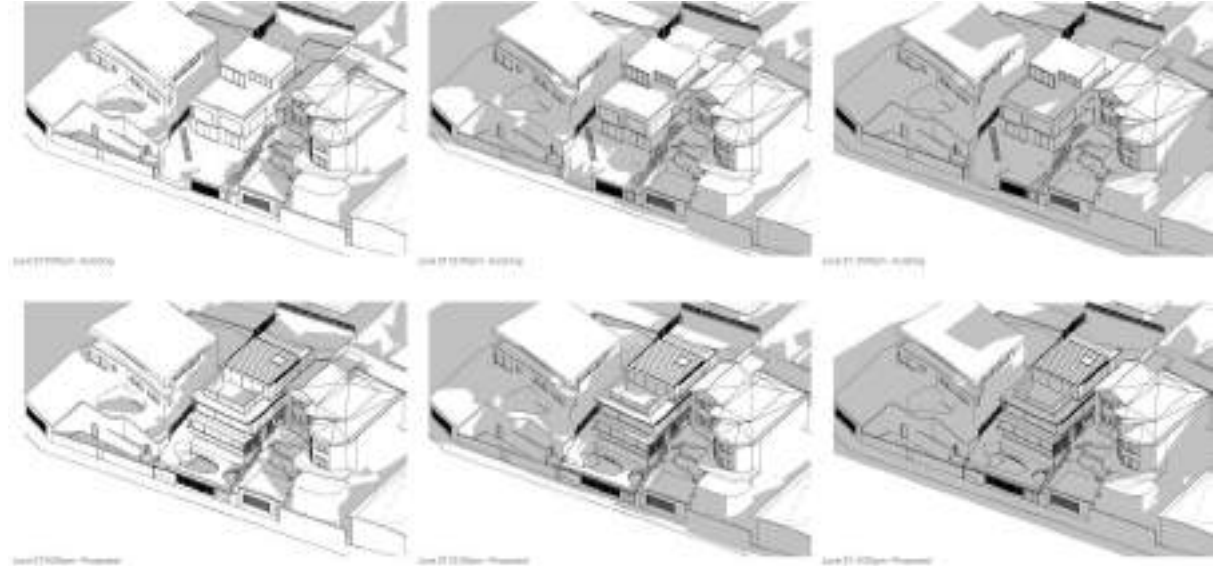


Figure 37: Approved North Elevation of 18 Bay View Street (DA409/16/4)




Figure 38: Approved Level 2 Plan of 18 Bay View Street with main living spaces (DA409/16/4)



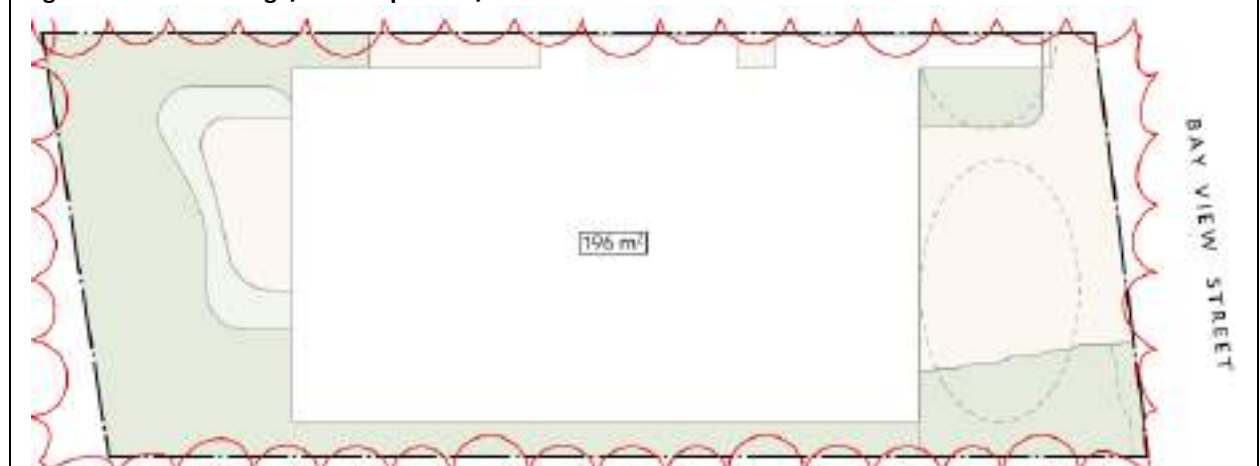
1.3.8	Acoustic Privacy	Yes	
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1,3,10	Visual Privacy	Yes	The proposal includes fixed privacy louvres to windows to minimise the opportunity for direct overlooking. Windows that support visual privacy includes highlight windows or strategically placed windows to temporary spaces such as stairway, bathroom or corner of WIR that are satisfactory. Minimum side setbacks of 2.5m are provided for the Master Level terrace off a proposed Bedroom. The landscape elements proposed for the proposed terrace would also assist with setting users further away from the edge of the terrace and thereby providing sufficient visual privacy.																							
1.4 Quality built form																										
1.4.1	Context	Yes																								
1.4.3	Streetscape	Yes																								
1.4.5	Siting	Yes																								
1.4.6	Setback – Side	No Merit	<table><tr><th>Control</th><th>Existing</th><th>Proposed</th><th>Compliance</th></tr><tr><td colspan="4">Zone R3 (Medium Density Residential)</td></tr><tr><td>1st storey (Up to 4m) 900mm (Basement - Bedroom Level due to stepped topography and view from the street)</td><td>North: 1m South: 1m</td><td>North: 1m South: 1m</td><td>Yes Yes</td></tr><tr><td>2nd storey (up to 7m) 1.5m (Living Level)</td><td>North: 1m South: 1m</td><td>North: 1m-1.5m South: 1m-1.5m</td><td>No Merit No Merit</td></tr><tr><td>3rd storey (Greater than 7m) 2.5m (Master Level)</td><td>North: 2m South: 2m</td><td>North: 1.5m-2.6m South: 2.5m</td><td>No Merit Yes</td></tr></table> The proposal is non-compliant with both side setback requirements on the Living Level (1.5m minimum) and the northern elevation of the Master Level (2.5m minimum). The non-compliant side setbacks on the Living Level are located in the rear portion of the dwelling whereas the front portion of the dwelling complies with the minimum 1.5m side setbacks. Therefore it is considered that the proposal controls the bulk and scale of the dwelling as viewed from the streetscape while also achieving other objectives of the side setback control including preservation of residential amenity and is satisfactory in this regard.				Control	Existing	Proposed	Compliance	Zone R3 (Medium Density Residential)				1st storey (Up to 4m) 900mm (Basement - Bedroom Level due to stepped topography and view from the street)	North: 1m South: 1m	North: 1m South: 1m	Yes Yes	2nd storey (up to 7m) 1.5m (Living Level)	North: 1m South: 1m	North: 1m-1.5m South: 1m-1.5m	No Merit No Merit	3rd storey (Greater than 7m) 2.5m (Master Level)	North: 2m South: 2m	North: 1.5m-2.6m South: 2.5m	No Merit Yes
Control	Existing	Proposed	Compliance																							
Zone R3 (Medium Density Residential)																										
1st storey (Up to 4m) 900mm (Basement - Bedroom Level due to stepped topography and view from the street)	North: 1m South: 1m	North: 1m South: 1m	Yes Yes																							
2nd storey (up to 7m) 1.5m (Living Level)	North: 1m South: 1m	North: 1m-1.5m South: 1m-1.5m	No Merit No Merit																							
3rd storey (Greater than 7m) 2.5m (Master Level)	North: 2m South: 2m	North: 1.5m-2.6m South: 2.5m	No Merit Yes																							

<p>P1 Front setback</p> <ul style="list-style-type: none"> To match adjoining properties. 	<p>Yes</p>	<p><u>Front setbacks</u> 38 Bay View Street: 0m to garage, 3.85m (average setback of front deck) 18 Bay View Street: 0m to garage, 6.4m to dwelling Average setback: 5.1m</p> <p>Proposed front setback of subject site: Basement / Garage = 6m Bedroom level = 5.1m Living level = 6m Terrace on bedroom level = 7.7m</p> <p>The proposal is consistent with the average setback of 5.1m by proposing a minimum front setback of 5.1m by the proposed Bedroom Level.</p>
<p>P5 Rear Setback – Rear</p> <ul style="list-style-type: none"> To match adjoining properties. 	<p>Yes</p>	<p>The proposal retains a similar rear setback with the existing dwelling at 5.425m – 7.04m. The proposal has a consistent rear setback to the developments on the west side of Bay View Street considering its skewed lot subdivisions and inconsistent building alignments. The proposal is satisfactory in this regard.</p>  <p>Figure 39: Rear Setback of developments on the western side of Bay View Street (Source: Applicant's SEE)</p>
<p>1.4.7 Form Massing Scale</p> <ul style="list-style-type: none"> Floor to ceiling height 2.7m <p>1.4.8 Built Form Character</p>	<p>Yes</p>	<p>Properties on the western side of Bay View Street contains a mix of contemporary and older style developments. Contemporary forms of development includes:</p> <ul style="list-style-type: none"> No.2-8 Bay View Street 16 Bay View Street 18 Bay View Street <p>The proposal is consistent with developments in Bay View Street and the locality and is not significantly larger than characteristic buildings as per the objectives of this section and therefore satisfactory.</p>
<p>1.4.9 Dwelling Entry</p>	<p>Yes</p>	
<p>1.4.10 Roofs</p>	<p>Yes</p>	<p>The Area Character Statement does not identify specific roof typology as characteristic in the McMahon Point Neighbourhood. The locality comprises a mix of pitched, curved and flat roof forms and the flat and curved design proposed are satisfactory in this regard.</p>

1.4.12 Materials	Yes	Natural stone external cladding, concrete walls, copper toned metal visual privacy screens, and glazing are proposed. The proposal is compatible with the Area Character Statement.																		
1.5 Quality Urban Environment																				
1.5.4 Vehicle Access and Parking <ul style="list-style-type: none">Part B – Section 10 – Car parking	Yes	The amended proposal seeks a vehicular crossing of 3m width that is compatible with the streetscape.																		
1.5.5 Site Coverage	No Merit	The proposal exceeds the maximum site coverage control of 50% by 3.6% or 13.2sqm. Despite this, the proposal achieves the objectives of the site coverage control by limiting the building footprint and promotes the existing or desired future character of the neighbourhood. <table><tr><td>Control Area: 365.6sqm</td><td>Proposed</td><td colspan="2">Compliance</td></tr><tr><td>Site coverage (182.8sqm or 50% max.)</td><td>196 sqm (53.6%)</td><td colspan="2">No, variation 13.2sqm (3.6%)</td></tr><tr><td>Landscaped area (109.7sqm or 30% min.)</td><td>110 sqm (30%)</td><td colspan="2">Yes</td></tr><tr><td>Unbuilt-upon area (73.1sqm or 20% max)</td><td>59 sqm (16.1%)</td><td colspan="2">Yes</td></tr></table>			Control Area: 365.6sqm	Proposed	Compliance		Site coverage (182.8sqm or 50% max.)	196 sqm (53.6%)	No, variation 13.2sqm (3.6%)		Landscaped area (109.7sqm or 30% min.)	110 sqm (30%)	Yes		Unbuilt-upon area (73.1sqm or 20% max)	59 sqm (16.1%)	Yes	
Control Area: 365.6sqm	Proposed	Compliance																		
Site coverage (182.8sqm or 50% max.)	196 sqm (53.6%)	No, variation 13.2sqm (3.6%)																		
Landscaped area (109.7sqm or 30% min.)	110 sqm (30%)	Yes																		
Unbuilt-upon area (73.1sqm or 20% max)	59 sqm (16.1%)	Yes																		
1.5.6 Landscape Area	Yes	Complies. <table><tr><td colspan="4">Table B-1.7: Minimum Landscaped Area & UBA Requirements</td></tr><tr><td>Residential development type</td><td>Lot size</td><td>Landscaped Area (min.)</td><td colspan="2">Un-built upon Area (max.)</td></tr><tr><td>Detached dwelling (365.6sqm)</td><td>230-499</td><td>30%</td><td colspan="2">20%</td></tr></table>			Table B-1.7: Minimum Landscaped Area & UBA Requirements				Residential development type	Lot size	Landscaped Area (min.)	Un-built upon Area (max.)		Detached dwelling (365.6sqm)	230-499	30%	20%			
Table B-1.7: Minimum Landscaped Area & UBA Requirements																				
Residential development type	Lot size	Landscaped Area (min.)	Un-built upon Area (max.)																	
Detached dwelling (365.6sqm)	230-499	30%	20%																	

Figure 40: Site Coverage/Landscape Area/UBA Calculation:



1.5.7 Excavation	No Merit	Excavation do not occur within 1m of side and rear boundaries. Excavation to a depth of 8.4m for the proposed lift and BASIX required rainwater tanks is proposed. The amount of excavation at 8.4m is extensive however the site has a stepped form and topography of 10.2m. The excavation is largely within the building footprint will not alter the natural features or vegetation on the site along the common boundaries. The Applicant has submitted a geotechnical report with recommendations that along with the standard and site-specific conditions recommended by Council's Development Engineer are considered to be satisfactory in maintaining residential amenity and impacts during construction. The proposal is set back from the side boundaries by 1m for the two proposed basement levels and the Bedroom Level. Subject to the recommended conditions from Council's Development Engineer, the proposal achieves the objectives of Clause 6.10 of NSLEP 2013 and will not create a detrimental impact on the environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.
1.5.9 Front Gardens	Yes	
1.5.10 Private and Communal Open Space <ul style="list-style-type: none"> Private open space at ground level – 4m min dimension & 2m above ground level Must be provided off living areas 	Yes	A minimum private open space area of 40sqm is required for the subject site as per this section of the DCP. The amended proposal provides a minimum of 67sqm of private open space in the rear yard off the main internal living spaces that satisfies this control.
1.6 Efficient Use of Resources		
1.6 Efficient Use of Resources	Yes	A valid BASIX Certificate was submitted with the original design. A condition is recommended at the end of the report for this to be updated in accordance with the approved plans.

View Impact Assessment

The Area Character Statement for the locality within NSDCP 2013 requires district views from most properties to Sydney Harbour and beyond to be preserved and where possible enhanced. Identified sites through submissions received and Council assessment that may be impacted by the proposal are listed below:

- 17 King George Street to Sydney Harbour, particularly the iconic view to the Opera House
- 19 King George Street to Sydney Harbour, particularly the iconic view to the Sydney Harbour Bridge
- Units 3 & 4 at 17 Waiwera Street to Sydney Harbour, particularly the iconic view to the Sydney Harbour Bridge

The Applicant has provided a view impact assessment to support the proposal.

A view impact assessment against the Land and Environment Court principles on sharing of views in ***Tenacity Consulting v Warringah [2004] NSWLEC 140*** for each of the sites mentioned above have been undertaken below.

17 King George Street

Step 1: *"The first step is the assessment of views to be affected"*

Existing views are to the Sydney Harbour Bridge and the Opera House, both of which are considered iconic views.

The existing view to the Opera House is partially obstructed by the built form of the master level in the existing dwelling on the subject site and existing vegetation located on the land of other dwellings. Only the sails to the Opera House are visible. The existing views to the Harbour Bridge are views of the Bridge deck and top half of a Bridge pylon.



Figure 41: Taken from a height of approximately 160cm from the deck floor level, Opera House base obstructed and water view heavily screened by existing tree impacted.



Figure 42: Photo taken at the height of approximately 220cm from the floor level on external deck level at No.17 King George Street.

Step 2: *"The second step is to consider from what part of the property the views are obtained"*

The iconic views are taken from the first-floor external deck off the Master Bedroom of 17 King George Street. This is the primary view of the Opera House within the dwelling. The view which may be affected are taken from a standing position (eye level 1.6m) across multiple side boundaries including 17 Waiwera Street and 19 King George Street, 20 Bay View Street and 18 Bay View Street, across the lots of 11-19 Bay View Street.

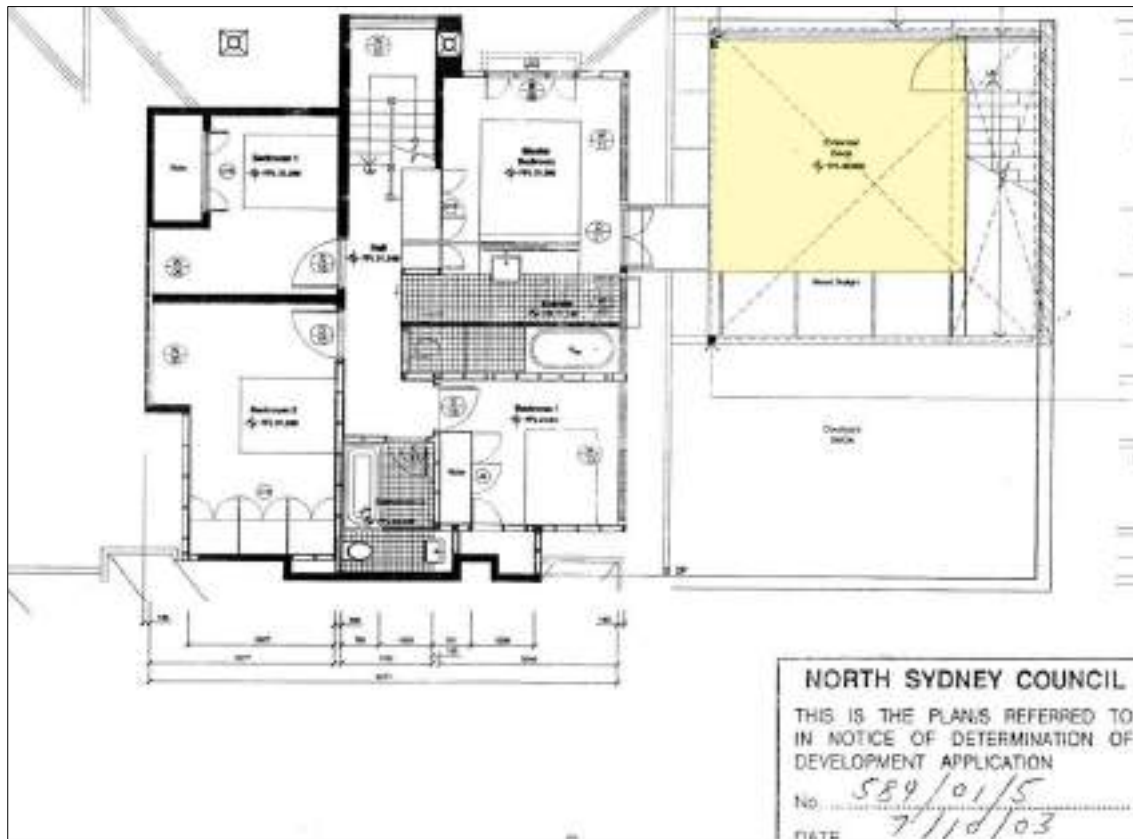


Figure 43: External deck off Master Bedroom at No.17 King George Street highlighted in yellow.



Figures 44/45: View from external deck at No.17 King George Street to the Opera House
Step 3: "The third step is to assess the extent of the impact"

The proposed flat roof (RL32.35) will marginally improve on the obstruction to the Opera House by the existing roof that tilts up slightly towards the west above the master bedroom (RL32.42 and RL32.43). The area of non-compliance is located in the front portion of the Master Level Bedroom which does not impact on the views of No.17 King George Street to the Opera House.

The protrusion of the proposed roof form to the rear by 0.5m from the existing built form will extend marginally the built form over the land and water interface below the Opera House structure.



Figure 46: Existing view from First Floor Bedroom External Deck at 1.6m eye level height.
(Source: Applicant RFI Response prepared by AK Planning dated 4 April 2025)



Figure 47: Proposed view from First Floor Bedroom External Deck at 1.6m eye level height.

(Source: Applicant RFI Response prepared by AK Planning dated 4 April 2025)

Step 4: “The fourth step is to assess the reasonableness of the proposal that is causing the impact”

Non-compliance with the maximum height of building development standard is limited to the northeastern corner of the development in the location of Bed 1 on the Master Level. Where the views are obtained from No.17 King George Street (from the western half of Bed 1 on the Master Level to the west), the built form proposed are compliant with the 8.5m height limit. The proposed development utilises a flat roof, 2.5m southern setback compliance, and lowers the WIR on the western side of the proposed Master Bedroom Level to mitigate view loss to adjoining properties from what they currently enjoy.

While the proposed built form extends by 0.5m beyond the existing dwelling and thereby reduces a portion of the land and water interface to the Opera House, the majority of the Opera House ‘composition’ including the sails and base of the Opera House is visible and the viewer through the proposal with the flat roof of a lower RL has an improved ability to perceive and appreciate the Opera House in its setting, notwithstanding losing a minor portion of the land and water interface by the 0.5m roof protrusion from the existing built form from the Master Bed Level.

Council’s NSDCP 2013, Part B, s1.3.6 *Views* states that there is a need to strike a balance between facilitating new development while **preserving**, as far as practicable, access to views from surrounding properties. The objectives of this section are detailed below:

“Objectives

- O1 To protect and enhance opportunities for vistas and views from streets and other public places.*
- O2 To encourage view sharing as a means of ensuring equitable access to views from dwellings, whilst recognising development may take place in accordance with the other provisions of this DCP and the LEP.”*

The proposal enhances the existing view to the Opera House accessed by No.17 King George Street and satisfies the objective O2 in Council’s DCP.

19 King George Street, Lavender Bay

No submission was submitted by 19 King George Street and no site inspection was requested.

Step 1: “The first step is the assessment of views to be affected”

The existing views visible from 19 King George Street are views to the Sydney Harbour and the Harbour Bridge. Based on photos advertised in Realestate.com website in 2013, no Opera House view is presented and it can be deduced that 19 King George Street does not have views to the Opera House from main internal living spaces.



Figure 48: Advertised photograph from Realestate.com for 19 King George Street in 2013

Step 2: *“The second step is to consider from what part of the property the views are obtained”*

The views are obtained from the First-Floor main internal living spaces (Kitchen and Dining) and rear outdoor terrace (as approved DA300/19 and amended DA300/19/2) in a standing position. There is a privacy screen approved under DA300/19 located on the eastern elevation of the rear terrace. The views to the Harbour Bridge are taken diagonally across the rear yard of the subject site.



Figure 49: View taken from eastern boundary of 17 King George Street with 19 King George Street on the left of the photo. Photo taken by Council Officer.



Figure 50: Approved First Floor Plan DA300/19/2 of 19 King George Street.



Figure 51: Approved privacy screen on the Eastern Elevation within original application DA300/19 for 19 King George Street.

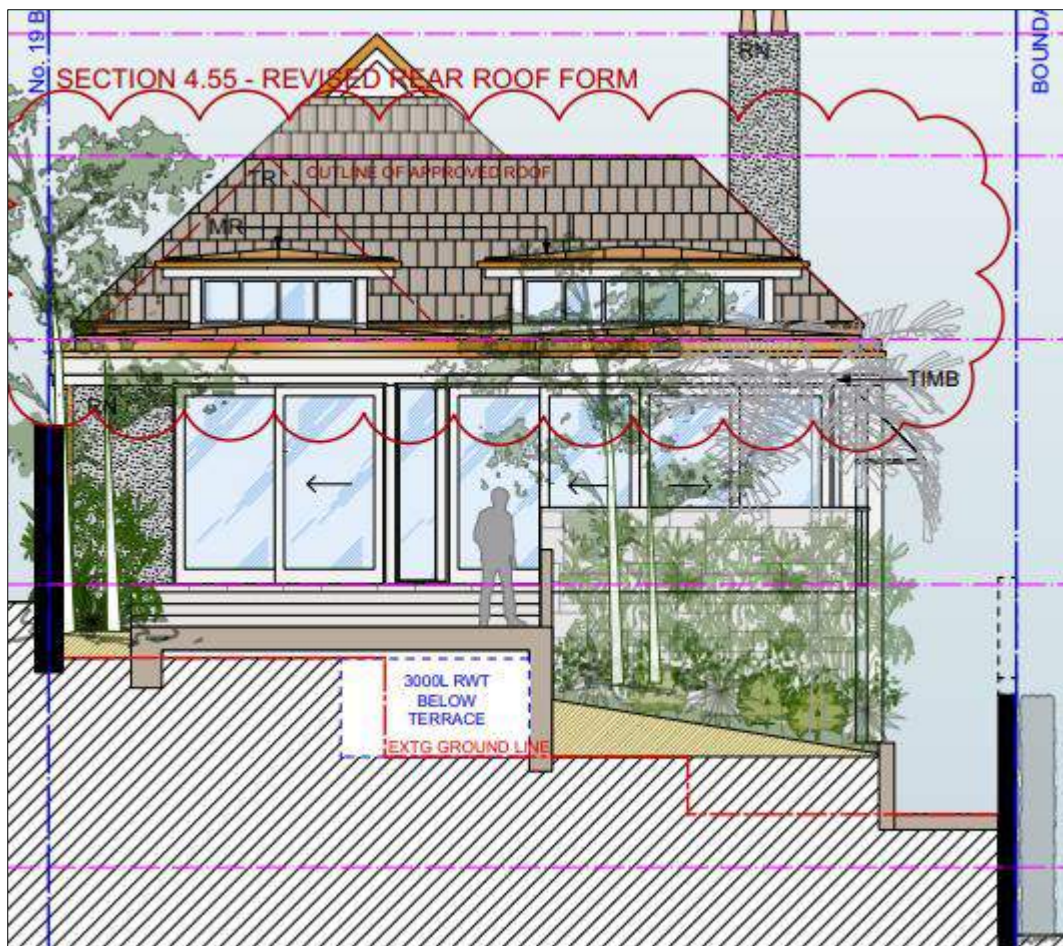


Figure 52: Approved Southern (rear) Elevation DA300/19/2 of 19 King George Street.

Step 3: “The third step is to assess the extent of the impact”

The Applicant has undertaken CGI view analysis to demonstrate the view impact below:

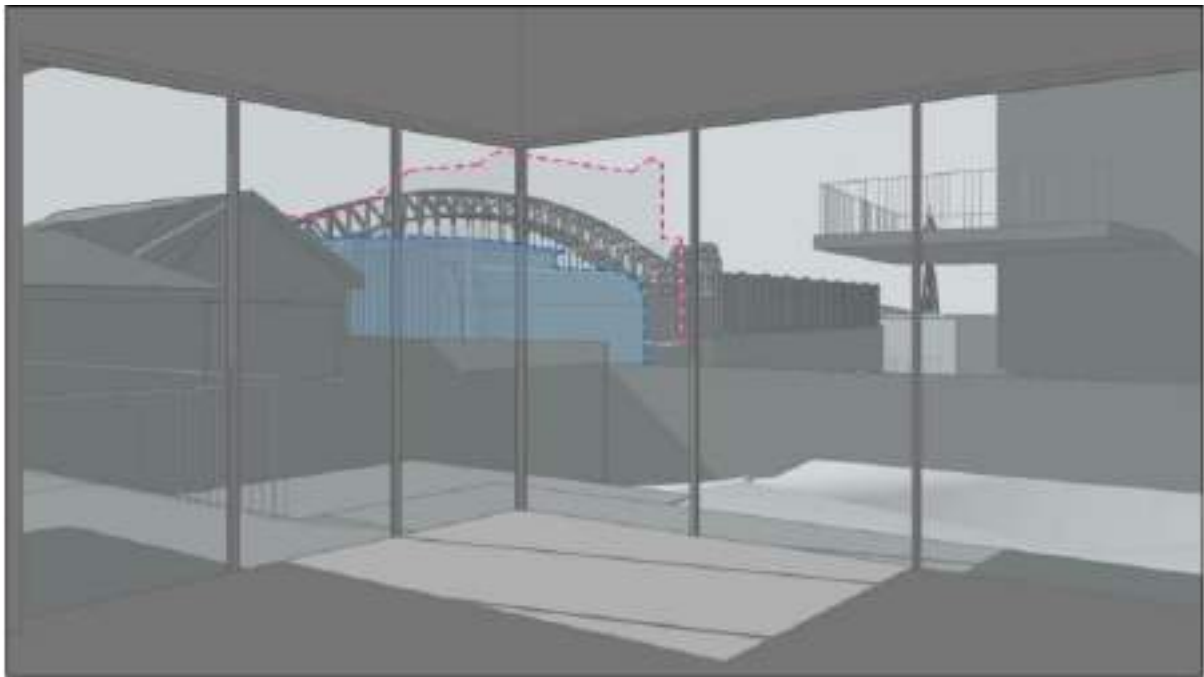


Figure 52: Proposed view from First Floor Kitchen/Dining Room (Source: Applicant's SEE)

Based on the CGI above, the proposed WIR obstructs the deck of the Harbour Bridge where it would not have as existing. The proposed WIR roof ridge has an RL31.6 sloping down while the existing roof at this location is approximately RL25.21-25.28. The deck is one of the key elements of the Sydney Harbour Bridge and the obstruction of the connection at the corner of the arch and the deck highlighted in yellow (Figure 52A below) is significant in the composition and presence of the iconic view in a visual setting.

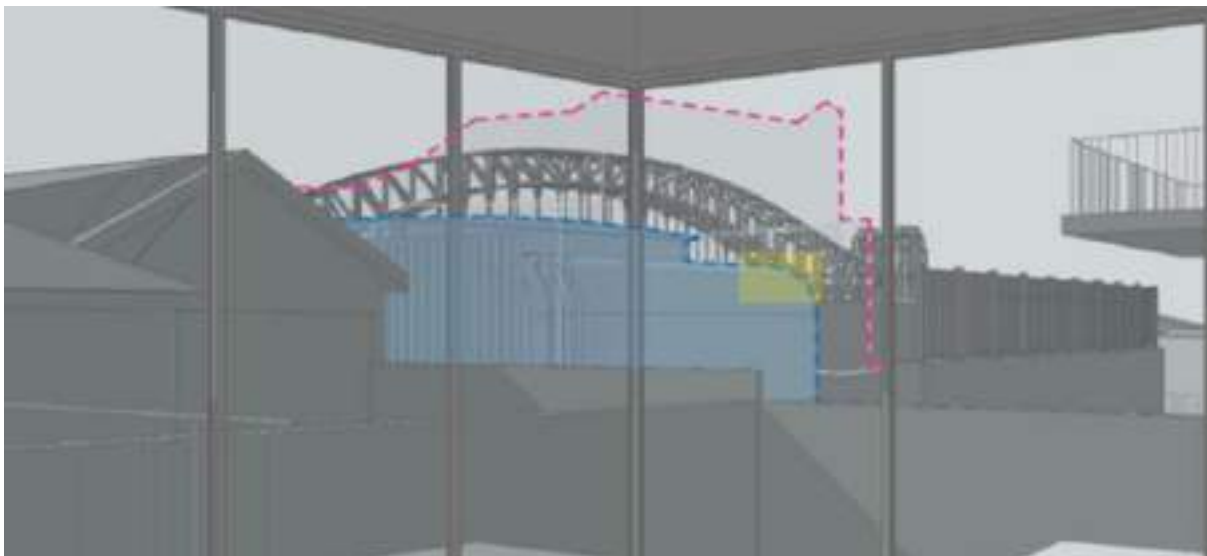


Figure 52A: Proposed development as viewed from 19 King George Street obstructing view of Harbour Bridge deck.

Furlong v Northern Beaches Council [2022] NSWLEC 1208 (Furlong) refines the view loss planning principle in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140 (Tenacity)* by placing greater emphasis on the perceived value of the view.

Furlong suggests that for side boundary views which are of a high value and not replicated in other areas of the property, it is appropriate to protect those views and refuse the proposed development.

No.19 King George Street has existing views to the Sydney Harbour Bridge including part of the existing deck from the first-floor eastern elevation of the dwelling (front portion) as shown on realestate.com in a 2013 photo. Based on this photo and the approved plans in DA300/19 whereby the front eastern portion of the dwelling is altered for a balcony off a Living area, it is considered that the approved eastern elevation balcony and Living space at No.19 King George Street is likely to have better views of the Sydney Harbour Bridge and Luna Park than the existing rear views of No.17 King George Street. Consequently, it is considered that the impact is moderate when taking into consideration the extent of the view impact on the whole of the property.



Figure 53/54: Harbour Bridge and Opera House view from close up of attic level skylight

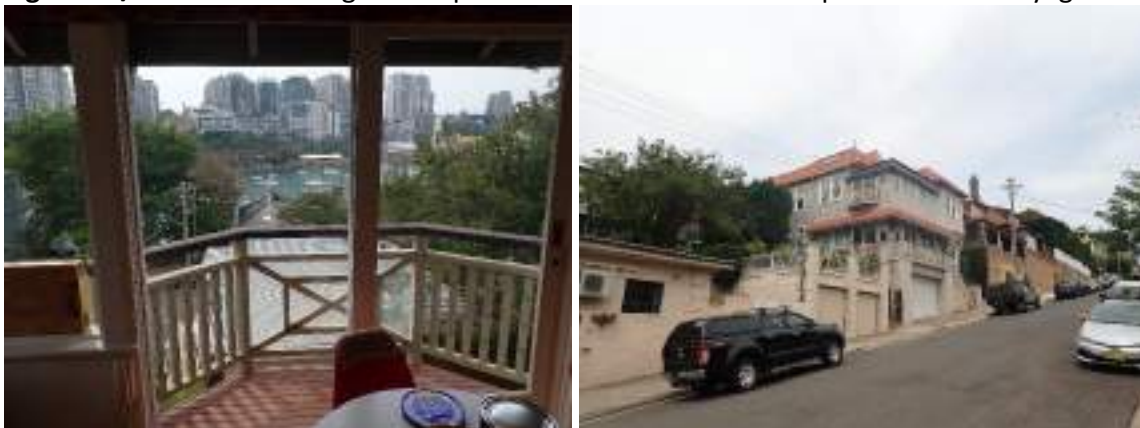


Figure 55 (left): Original front Eastern elevation of No.19 King George Street with balcony approved for removal in DA300/19.

Figure 56 (right): View to Sydney Harbour Bridge visible from the eastern elevation balcony which was approved for alteration into window of Living Room and larger balcony (refer Figure 57)

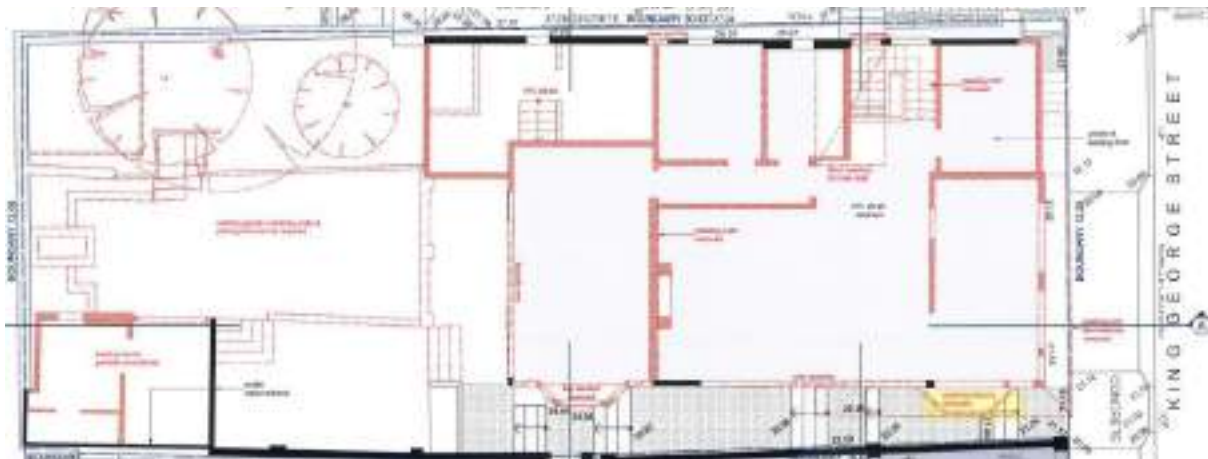


Figure 56: Approved First Floor demolition plan including the existing balcony (highlighted yellow) DA300/19

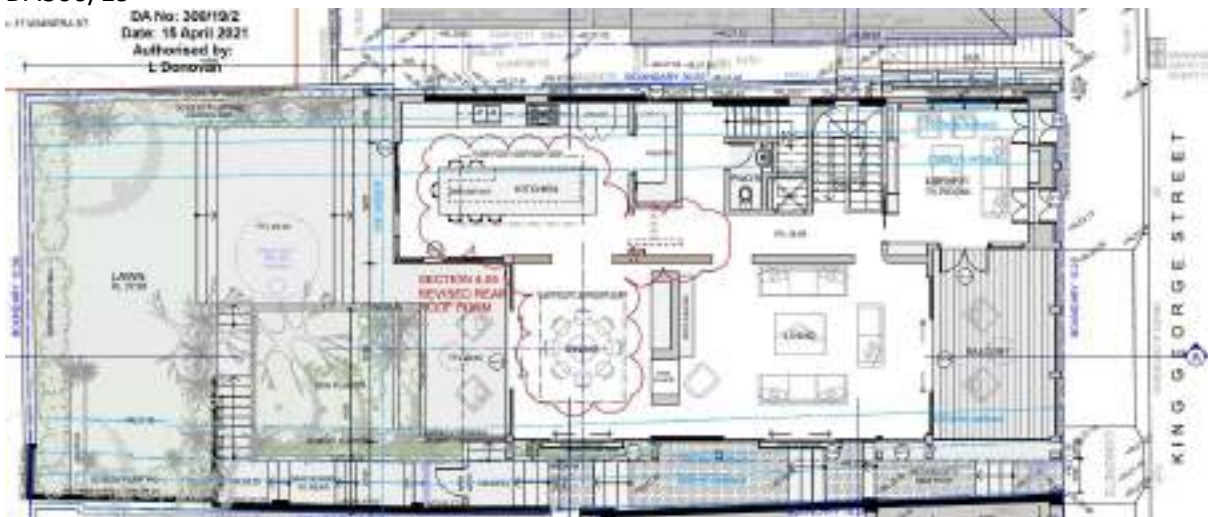


Figure 57: Approved First Floor Plan in DA300/19/2

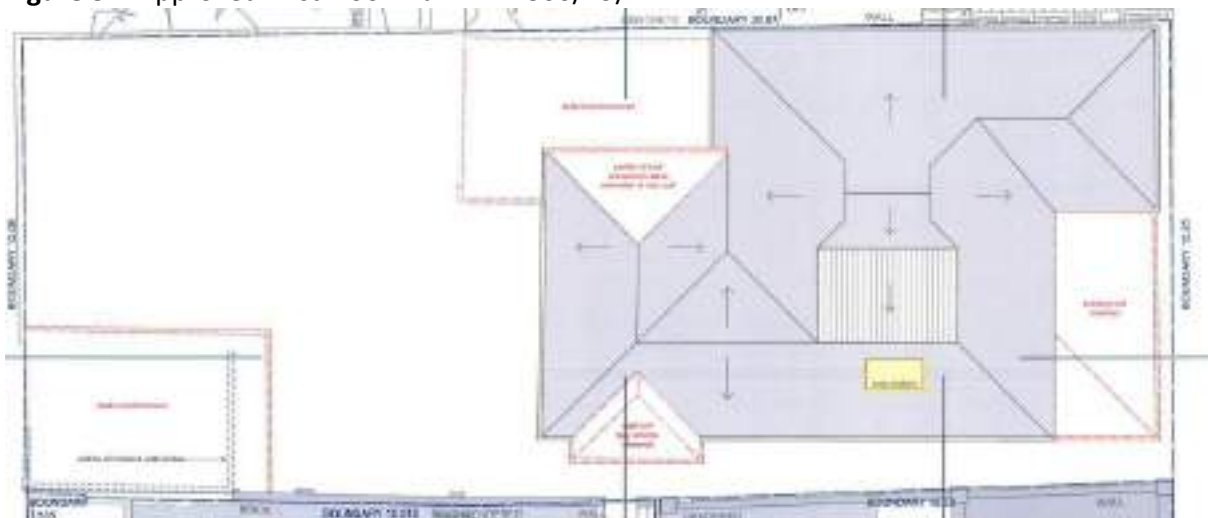


Figure 58: Approved Roof Plan demolition in DA300/19. Retained skylight highlighted yellow.

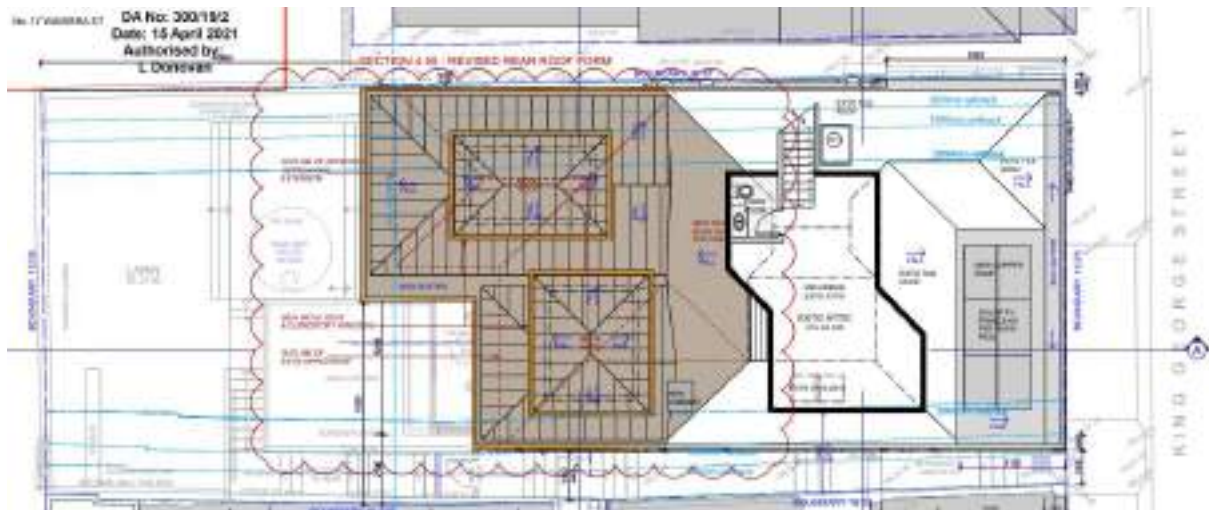


Figure 59: Approved Roof Plan in DA300/19/2 showing skylight retained.

Step 4: “The fourth step is to assess the reasonableness of the proposal that is causing the impact”

Where the proposal impacts as well as differs from the existing dwelling is the slightly lowered but curved roof, and the bulk extension of the rear WIR. These areas are compliant with the maximum height of building development standard, being well under the 8.5m height plane.

Despite the lowering of the WIR at the rear whereby the WIR creates a view impact that is considered moderate, the size of spaces within the Master Bedroom Level is considered capable of allowing for a reconfiguration to delete the unnecessary view impact to No.19 King George Street. A condition is recommended for the WIR to be halved in size to facilitate view sharing to the Sydney Harbour Bridge.

Unit 3, 17 Waiwera Street, Lavender Bay

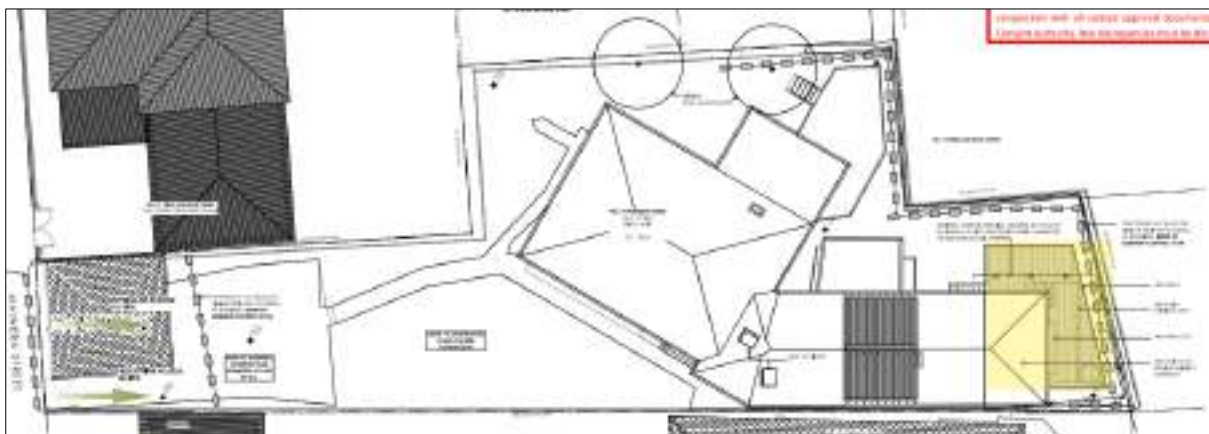


Figure 60: CC plans of 3/17 Waiwera Street (west of subject site). Outdoor deck of 3/17 Waiwera Street highlighted yellow.



Figure 61/62: Existing view to Harbour Bridge and Opera House from the two western corners of the external deck at Unit 3/17 Waiwera Street. Subject site highlighted yellow.



Figure 63: View from outdoor deck at 3/17 Waiwera Street to Luna Park, Harbour Bridge and Opera House

Due to the elevated nature and location of Unit 3/17 Waiwera Street directly to the rear of the subject site, the proposal is unlikely to create an adverse impact on the iconic views especially due to the increased southern boundary setback of the proposed Master Bedroom level and the design of a flat roof than a tilted roof as per the existing dwelling.

Unit 4, 17 Waiwera Street, Lavender Bay

Unit 4, 17 Waiwera Street is located on the level above Unit 3/17 Waiwera Street. Due to the steep gradient and higher elevation of Unit 4 than either Unit 3 and the subject site, the subject proposal which marginally decreases in height for the dwelling is unlikely to create view loss to Unit 4 at 17 Waiwera Street.



Figure 64 (left): 4/17 Waiwera Street looking down to 3/17 Waiwera Street and subject site

Figure 65 (right): View to Sydney Harbour Bridge and Opera House from 4/17 Waiwera Street balcony.

Relevant Planning Area– Part C of NSDCP 2013

Section 9 – Lavender Bay Planning Area

Section 9.6 – McMahon's Point Neighbourhood

The proposal is consistent with the Area Character Statement of the McMahon's Point Neighbourhood. The proposed amended sandstone wall on the street frontage is consistent with the streetscape character on the western side of Bay View Street which generally consist of sandstone retaining walls to the high side of Bay View Street interrupted by garages built to the boundary. The colour and materials for the proposed building are consistent with the Area Character Statement for masonry and sandstone.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. The contributions payable have been calculated in accordance with Council's Contributions Plan as follows:

Applicable Contribution Type		
S7.12 contribution detail	Development cost:	\$ 4,448,187.00
(payment amount subject to indexing at time of payment)	Contribution:	\$ 44,482.00

Conditions requiring the payment of contributions at the appropriate time are included in the attached conditions.

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	YES
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 <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	YES

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Lavender Precinct. Council received seventeen (17) submissions where the following matters were raised:-

- ***Height Exceedance***

Response: The written request made pursuant to Clause 4.6 *Departure to development standards* in *NSLEP 2013* demonstrates that compliance with the development standard is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation.

- ***Oversized five-level development***

Response: The proposal is consistent with other dwellings on Bay View Street and in a medium density residential zone with a garage level and two levels of presentation to the streetscape with lesser visibility of the Master Bedroom Level due to its front elevation set back 12m from the street frontage. The Basement 2 Level consists of landscaping elements within the front setback that will lessen visibility to the glazing of the two openings. The proposal retains generally the same height and building footprint as the existing building.

- ***Extent of excavation up to 8.5m and impact on heritage sandstone wall***

Response: Appropriate conditions are recommended by Council's Development Engineer and the recommendations in the submitted Geotechnical report are also included at the end of the report.

In the Land and Environment Court judgement *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the Court is satisfied that the prior excavation of the site and the consequent distortion of the height of buildings plane over the site, when compared to the steep topography, is an environmental planning ground sufficient to justify contravening the development standard. The Court is satisfied that the proposal is consistent with the objectives for earthworks because the proposal is designed and sited to relate to the topography, by being stepped and terraced down the steeply sloping site, and the volume of excavation proposed is required to provide the maximum parking rate in a basement car park on the site.

For the subject site, the volume and extent of excavation is to provide for lift access and stairs from the Basement garage level over a steep topography. The subject site is designed and sited in a stepped and terraced manner over a steep topography which contains prior excavation that distorts the height of buildings plane over the site. The excavation for accessibility is not dissimilar to parking accessibility within the Court judgement and is not for habitable rooms and therefore the extent of excavation in the proposal is satisfactory in this regard.

- ***Geotechnical impacts***

Response: Appropriate conditions are recommended by Council's Development Engineer and the recommendations in the submitted Geotechnical report are also included at the end of the report.

- ***Contravention with objectives of the R3 zone***

Response: Subject to the recommended conditions for mitigating view loss, the proposal is consistent with the relevant objectives of the R3 Medium Density Residential zone. The proposal is consistent with other dwellings on Bay View Street and in a medium density residential zone with a garage level and two levels of presentation to the streetscape with lesser visibility of the Master Bedroom Level due to its front elevation set back 12m from the street frontage. The proposal provides for the housing needs within a medium density residential zone by the excavation for lift space for improved accessibility within the dwelling, stairs, parking and ancillary uses within the garage level. The proposal maintains a high level of residential amenity for the subject site and surrounding dwellings.

- ***Uncharacteristic development***

Response: The proposal is consistent with the Area Character Statement of the McMahons Point Neighbourhood. The amended design of the sandstone wall on the street frontage is consistent with the streetscape character on the western side of Bay View Street which generally consist of sandstone retaining walls to the high side of Bay View Street interrupted by garages built to the boundary. The colour and materials for the proposed building are consistent with the Area Character Statement for masonry and sandstone.

The proposed Master Bed Level has a front elevation set back from the street and will have minimal visibility due to the steep topography of 10.5m across the height of the site. The proposed Master Bed Level will appear as a roof feature on the top of the building as viewed from the streetscape.

- ***Streetscape impact from inconsistent sandstone façade***

Response: The amended design of the sandstone wall on the street frontage is consistent with the streetscape character on the western side of Bay View Street. The amended design removes the natural sandstone on the southeastern corner of the site for a sandstone façade that is consistent with other dwellings on the western side of Bay View Street.

- ***Non-compliant landscaped area and site coverage***

Response: The proposal is compliant with landscaped area but not compliant with site coverage (maximum 50% of site) by 13.2sqm (3.6%). Despite this, the proposal retains the existing building footprint and generally achieves the existing and desired future character of the neighbourhood as outlined in Part C Area Character Statement.

- ***Visual privacy and acoustic privacy impact***

Response: Appropriate visual privacy screening for the proposed development is provided to adjoining properties. A condition is recommended for the WIR window W26 to be obscure glazing only. The Master Bed Level terrace is off a bedroom space and is likely to generate noise compatible with the residential environment. The terrace is also set back from either side boundaries by 2.5m.

- ***Form, massing, scale and bulk***

Response: Properties on the western side of Bay View Street contains a mix of contemporary and older style developments. Contemporary forms of development include:

- Dwellings on No.2 – No.8 Bay View Street
- 16 Bay View Street
- 18 Bay View Street

The proposal is consistent with developments in Bay View Street and the locality and is not significantly larger than characteristic buildings as per the objectives of this section and therefore satisfactory.

- ***Non-compliant setbacks***

Response: The proposal is non-compliant with both side setback requirements on the Living Level (1.5m minimum) and the northern elevation of the Master Level (2.5m minimum). The non-compliant side setbacks on the Living Level are located in the rear portion of the dwelling whereas the front portion of the dwelling complies with the minimum 1.5m side setbacks. Therefore it is considered that the proposal controls the bulk and scale of the dwelling as viewed from the streetscape while also achieving other objectives of the side setback control including preservation of residential amenity and is satisfactory in this regard.

- ***Solar Access/Overshadowing***

Response: The proposed development maintains reasonable and improved solar access compared to the existing dwelling for the adjoining dwelling directly south at No.18 Bay View Street. By setting the rear portion of the proposed Master Level roof lower than the existing roof and increasing the southern side setback on the Master Level by approximately 500mm to provide a setback of 2.5m, the proposal provides for a minimum of three hours of solar access to the windows of main internal living spaces located on Level 2 of 18 Bay View Street while improving on the level of solar access received at 3pm on winter solstice to the northern elevation windows. The proposal also provides reasonable solar access to the rear private open space of a minimum of 3 hours between the hours 12-3pm at winter solstice. The proposal is satisfactory against the DCP controls in this regard.

- ***View loss by proposed built form***

Response: A detailed view loss assessment is provided within the report above of the proposal's impact on adjoining properties. A condition is recommended to reduce the width of the proposed WIR on the Master Bed Level to mitigate view loss to No.19 King George Street.

- ***View loss by proposed plant species that can grow to 35 metres e.g. the *syzgium australe*, or other species on the middle and upper floors that can grow to 12 metres or more e.g. the *cupaniopsis* which can grow to 12-15 metres***

Response: The mature height of the plant species proposed in the landscape plan all indicate a height of 8m or less. Council seeks to increase tree canopy cover across the North Sydney Council LGA.

- ***View impact from eastern side of Lavender Bay and Sydney Opera House to the dwelling***

Response: The proposed development is not uncharacteristic to the dwellings on the western side of Bay View Street and within the locality. The subject site is not located within the Opera House Buffer Zone.

- ***CDC approval in 2020 obstructed iconic view***

Response: The CDC approval for a Master Bed Level by a private certifier in May 2021 cannot be reversed. The subject application considers what is proposed and its compliance with statutory and non-statutory controls on its own merits.

- ***Not in Public interest and contravenes SREP (Sydney Harbour Catchment) 2005 Part 1 Section 2(b)***

Response: SREP (Sydney Harbour Catchment) 2005 Part 1 Section 2(b) is superceded by *SEPP (Biodiversity and Conservation) 2021*.

The provisions of *SEPP (Biodiversity and Conservation) 2021*, Chapter 6 Water Catchments apply to the subject site which is located within the Sydney Harbour Catchment. The subject site is not located within the area classified as a foreshore waterways area. Standard conditions are recommended by Council's Development Engineer to mitigate impacts from construction and the proposed development is unlikely to adversely affect the quality of water.

- ***Extensive glazing***

Response: The extensive glazing is not dissimilar to other dwellings approved on the western side of Bay View Street. It should be noted that the proposed Master Bed Level is set back by 12m from Bay View Street and combined with the steep topography of the subject site will minimise its visibility from the streetscape and lesser the level of glazing visible by pedestrians on Bay View Street.

- ***Glare and light spillage impact***

Response: The extensive glazing is not dissimilar to other dwellings approved on the western side of Bay View Street. Any light spillage from a residential property is what can be expected in a residential zone.

- ***Impact during construction***

Response: Standard conditions on Work Zone, construction hours and noise are recommended at the end of the report.

- ***Request for dilapidation report prior to construction***

Response: A condition is recommended for this to be included in the determination under the grant of consent.

- ***Non-compliant northern wall height exceeding 7m***

Response: Due to the steep and stepped topography of the site spanning over 10.2m, the proposal sustains wall heights exceeding 7m to the rear side elevations. Despite this, the proposal does not create adverse amenity impacts subject to the recommended conditions and provides sufficient articulation via the use of different materials and is considered satisfactory in this regard.

- ***Roof terrace inconsistent with prior decisions determined by Council if approved***

Response: The proposed roof terrace achieves the objective of Visual Privacy in s1.3.10 of NSDCP 2013 by ensuring that existing and future residents are provided with a reasonable level of visual privacy. The space is designed such that there is no potential for direct overlooking of adjoining spaces as it is set back behind the existing terrace at No 18 Bay View Street and is accessed off the proposed master bedroom and not a living space. The proposed terrace thereby is more likely to be a passive recreation use that is unlikely to create adverse noise and visual privacy impacts. The proposed terrace is setback 2.5m from either side boundaries and at least 1m from the extent of the enclosing walls on the level below and does not exceed 18sqm as stipulated within NSDCP 2013; and planter boxes are located on the edges of the terrace to create further separation from side boundaries. Accordingly, the proposal achieves the Visual Privacy objective under s1.3.10 of NSDCP 2013 with appropriate mitigation measures and is satisfactory in this regard.

- ***Insufficient information on material and inconsistent with locality***

Response: A material schedule is provided with the application that is considered to be sufficient and consistent with the locality. Natural stone external cladding, concrete walls, copper toned metal visual privacy screens, and glazing are proposed. The proposed materials are compatible with the Area Character Statement.

PUBLIC INTEREST

The proposal is considered to be in the public interest for the reasons stated throughout this report subject to the recommended conditions.

SUITABILITY OF THE SITE

The proposal would be located in an R3 Medium Density Residential zone where the construction of a detached dwelling house are a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Lavender Precinct where a number of issues were raised that have been addressed in this report where appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties and the character of the streetscape in the locality.

CONCLUSION

The matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of *NSLEP 2013* subject to the written request to vary a development standard made pursuant to Clause 4.6 *Height of buildings* of *NSLEP 2013*.

The written request made pursuant to Clause 4.6 *Departure to development standards* in *NSLEP 2013* demonstrates that compliance with the development standard is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation. Approval of the variation would be in the public interest.

A total of seventeen (17) unique submissions were received raising objections regarding issues including the proposed height variation, impacts to heritage and neighbourhood character, amenity impacts, tree removal, traffic congestion and construction impacts including excavation and construction traffic congestion. The amended plans were developed in response, in part, to the submissions and sought to reduce the potential impact of the development.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate standard and site specific conditions for the reasons provided below.

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, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to the non-compliance with Clause 4.3 Height of Buildings and grant consent to Development Application No.275/24 for the construction of a detached dwelling on land at 20 Bay View Street, Lavender Bay, subject to the following site specific and standard conditions:-

Proposed Master Bed Level WIR Reduced from the south

A5. The setback of the WIR on the master bed level is to be increased by 3.5m along both the southern and western elevations as identified in **Figure 1** below. The grey area in Figure 1 is to be deleted and must not be reconfigured or converted into usable GFA due to the view corridor.

(Reason: To ensure the composition of iconic view of the Sydney Harbour Bridge is protected for 19 King George Street; To ensure view sharing in accordance with *NSLEP 2013* and *NSDCP 2013*)

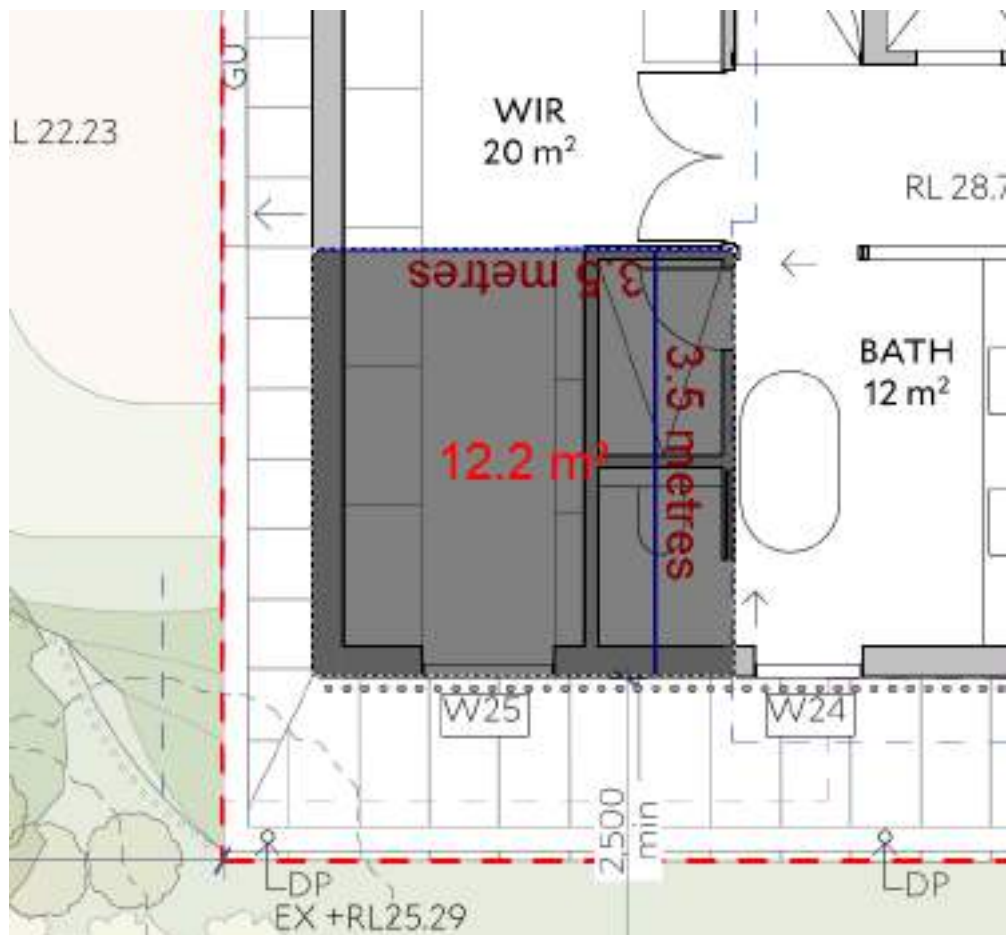


Figure 1: Delete portion of WIR and bathroom as shaded in grey

Obscure Glazing W26

A6. The window W26 on the rear elevation of the Walk-in-Robe is utilise obscure glazing only.

(Reason: To ensure appropriate visual privacy for subject site and 17 Waiwera Street)

BASIX Certificate

C26. The original BASIX Certificate No. **1757453S**, dated **26 July 2024** is required to be updated in accordance with the stamped plans and conditions of consent.

Under section 75 of the *Environmental Planning and Assessment Regulation 2021*, it is a condition of this development consent that all the commitments listed in updated BASIX Certificate for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Height

- G6. Upon completion of the works and prior to the issue of any Occupation Certificate, the RL of the development measured at 32.35 must be surveyed and certified by an appropriately qualified and practising surveyor as compliant with the maximum approved levels in accordance with the approved plans. This survey and certification must be submitted to the Principal Certifier with the application for an Occupation Certificate and a copy provided to Council (if it is not the Principal Certifier).

(Reason: To ensure compliance with the terms of this development consent)

RACHEL WU
ASSESSMENT OFFICER

ISOBELLA LUCIC
TEAM LEADER (ASSESSMENTS)

Dated 11/5/2025

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
20 BAY VIEW STREET, LAVENDER BAY
DEVELOPMENT APPLICATION NO. 275/24

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

A1.

Plan No.	Rev	Description	Prepared by	Dated
DA010	2	Title Sheet	Collins and Turner	4/4/2025
DA113	2	Landscape Plan	Collins and Turner	4/4/2025
DA141	2	Basement Level	Collins and Turner	4/4/2025
DA142	2	Basement 2 Level	Collins and Turner	4/4/2025
DA143	2	Bedroom Level	Collins and Turner	4/4/2025
DA144	2	Living Level	Collins and Turner	4/4/2025
DA145	2	Master Level	Collins and Turner	4/4/2025
DA146	2	Roof & Drainage Plan	Collins and Turner	4/4/2025
DA201	2	South Elevation	Collins and Turner	4/4/2025
DA202	2	North Elevation	Collins and Turner	4/4/2025
DA203	2	East Elevation (Streetscape)	Collins and Turner	4/4/2025
DA204	2	West Elevation	Collins and Turner	4/4/2025
DA310	2	Section A	Collins and Turner	4/4/2025
DA311	2	Sections	Collins and Turner	4/4/2025
DA312	2	Section B	Collins and Turner	4/4/2025
Ref: 2514		Arboricultural Impact Assessment and Management Plan	Botanics Tree Wise People Pty Ltd	24/6/2024, received by Council on 9 May 2025

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Plans on Site

- A2. A copy of all plans endorsed with Council's approval stamp, specifications and documents (including the plans, specifications and documents submitted and approved with all Construction Certificates) must be always kept on site and be readily available for perusal by an officer of Council or the Principal Certifier.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the Principal Certifier upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

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No Demolition of Extra Fabric

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

External Finishes and Materials

- A4. External finishes and materials must be in accordance with the submitted schedule prepared by *Collins and Turner*, drawing number 353_DA_521, Revision Number 4, dated 19 July 2024, unless otherwise modified by Council in writing. Substitution of materials must not be undertaken, except where otherwise approved in writing by Council.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Proposed Master Bed Level WIR Reduced from the south

- A5. The setback of the WIR on the master bed level is to be increased by 3.5m along both the southern and western elevations as identified in **Figure 1** below. The grey area in Figure 1 is to be deleted and must not be reconfigured or converted into usable GFA due to the view corridor.

(Reason: To ensure the composition of iconic view of the Sydney Harbour Bridge is protected for 19 King George Street; To ensure view sharing in accordance with *NSLEP 2013* and *NSDCP 2013*)

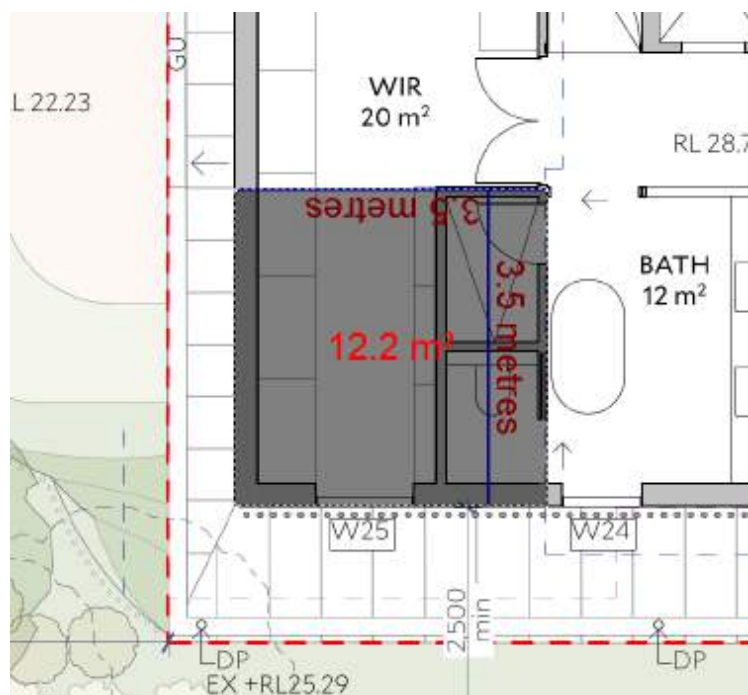


Figure 1: Delete portion of WIR and bathroom as shaded in grey

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Obscure Glazing W26

- A6. The window W26 on the rear elevation of the Walk-in-Robe is to utilise obscure glazing only.

(Reason: To ensure appropriate visual privacy for subject site and 17 Waiwera Street)

B. Matters to be Completed before the lodgement of an Application for a Construction Certificate

Construction and Traffic Management Plan (Major DAs and Sites with Difficult Access)

- B1. Prior to issue of any Construction Certificate, a Construction and Traffic Management Plan must be prepared. The following matters must be specifically addressed in this Plan:
- a. A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
 - i. Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways;
 - ii. Signage type and location to manage pedestrians in the vicinity;
 - iii. The locations of any proposed Work Zones in the frontage roadways;
 - iv. Locations and type of any hoardings proposed;
 - v. Area of site sheds and the like;
 - vi. Location of any proposed crane standing areas;
 - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
 - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
 - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
 - b. A Traffic Control Plan(s) for the site incorporating the following:
 - i. Traffic control measures proposed in the road reserve that are in accordance with the RMS publication "Traffic Control Worksite Manual" and designed by a person licensed to do so (minimum RMS 'red card' qualification).
 - ii. The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each.
 - c. A detailed description and map of the proposed route for vehicles involved in spoil removal, material delivery and machine floatage must be provided detailing light traffic roads and those subject to a load or height limit must be avoided at all times.

A copy of this route is to be made available to all contractors and must be clearly depicted at a location within the site.

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- d. A Waste Management Plan in accordance with the provisions of Part B Section 19 of the North Sydney DCP 2013 must be provided. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process;
- e. Evidence of RMS concurrence where construction access is provided directly or within 20m of an Arterial and/or Classified Road;
- f. A schedule of site inductions to be held on regular occasions and as determined necessary to ensure all new employees are aware of the construction management obligations. These must specify that construction-related vehicles to comply with the approved requirements; and
- g. For those construction personnel that drive to the site, the Site Manager shall attempt to provide on-site parking so that their personnel's vehicles do not impact on the current parking demand in the area.

A suitably qualified and experienced traffic engineer or consultant must prepare the Construction and Traffic Management Plan.

As this plan has a direct impact on the local road network, it must be submitted to and reviewed by Council prior to the issue of any Construction Certificate. A certificate of compliance with this condition from the Council's Traffic and Transport Engineers as to the result of this review must be obtained and must be submitted as part of the supporting documentation lodged with the Principal Certifier for approval of the application for a Construction Certificate.

The construction management measures contained in the approved Construction and Traffic Management Plan must be implemented prior to the commencement of, and during, works on-site.

All works must be undertaken in accordance with the approved Construction and Traffic Management Plan.

A copy of the approved Construction and Traffic Management Plan must be kept on the site at all times and be made available to any officer of the Council on request.

Notes:

- 1) To apply for certification under this condition, an 'Application to satisfy development consent' must be prepared and lodged with North Sydney Council. North Sydney Council's adopted fee for certification of compliance with this condition must be paid upon lodgement.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.

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- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction and Traffic Management Plan be lodged with Council as early as possible.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed in the condition above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition and construction process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)***Dilapidation Report Damage to Public Infrastructure**

- C1. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the predeveloped condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Principal Certifier with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

Dilapidation Report Private Property (Excavation)

- C2. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

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The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer and a copy to be given to the owner of any affected adjoining property.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by the developer or affected property owners to assist in any action required to resolve dispute(s) over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: To record the condition of property/ies prior to the commencement of construction)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C3. A photographic survey and dilapidation report of adjoining properties No. 18 Bay View Street and 38 Bay View Street detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, MUST BE submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

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Shoring for Adjoining Property

- C4. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.

Note: Approval of engineering drawings for shoring works to be located on adjoining property by the Principal Certifier does not authorise a trespass on private or public land. All relevant permissions/ legal rights must be obtained to undertake any works on adjoining land.

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

Structural Adequacy of Adjoining Properties - Excavation Works

- C5. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties No. 18 Bay View Street and 38 Bay View Street, which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works)

Geotechnical Report

- C6. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:
- a. the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;

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- b. the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
- c. the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
- d. the existing groundwater levels in relation to the basement structure, where influenced;
- e. the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a “dam” for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
- f. recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/ hydrogeological engineer with previous experience in such investigations and reporting.

It is the responsibility of the consulting geotechnical/ hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a. no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;

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- b. no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c. no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d. vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e. appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f. an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

Sediment Control

- C7. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th Edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

An Erosion and Sediment Control Plan must be prepared and submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Erosion and Sediment Control Plan must be consistent with the Blue Book and disclose:

- a. All details of drainage to protect and drain the site during the construction processes;
- b. All sediment control devices, barriers and the like;
- c. Sedimentation tanks, ponds or the like;
- d. Covering materials and methods; and

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- e. A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f. Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Waste Management Plan

- C8. A Waste Management Plan prepared in accordance with the provisions of Part B Section 19 of the *North Sydney DCP 2013*, must be submitted for approval by the Principal Certifier prior to the issue of the relevant Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
 - b) The design of the on-site waste storage and recycling area; and
 - c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

Skylight(s)

- C9. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To minimise the visual impact of the skylight(s) on the roof plane)

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Work Zone

- C10. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of any Construction Certificate.

Note: For major development an application for work zone permit must be considered by the North Sydney Local Traffic Committee.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Works Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Works Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Principal Certifier to enable issue of the Construction Certificate.

Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

Maintain Property Boundary Alignment Levels

- C11. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition. All details of drainage to protect and drain the site during the construction processes;

(Reason: To ensure interface between property and public land remains uniform)

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Basement Car Park to Comply with Relevant Standards

- C12. The basement layout must comply with all requirements of Australian Standard AS2890.1. Certification from a suitably qualified and practicing Civil Engineer that the basement design will comply with the requirements of the Australian Standard must be provided to the Principal Certifier for approval prior to issue of any Construction Certificate.

(Reason: To ensure the basement layout complies with relevant standards)

Required Infrastructure Works - Roads Act 1993

- C13. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development.

Note: Application for approval of Infrastructure Works under this condition must be submitted to Council using the 'Application to satisfy development consent' form accompanied by payment of the adopted assessment/inspection fees.

Road Works

- a. Construction of a new concrete footpath is required across the entire site frontage in Bayview Street. The footpath pavement must be placed on a single straight grade of 3.0% rising from the top of kerb, towards the property boundary, without dipping or rising, including at building entrances. The footpath pavement must be constructed for the full width, using the construction required for Local / Residential Areas, as specified in North Sydney Council's Public Domain Style Manual and Design Codes. A longitudinal section is required along the footpath property boundary at a scale of 1:50 extending 5m past the property boundary line.
- b. Half road reconstruction for full property frontage is required in Bayview Street (AC-10, 50 mm thick). This requirement may be extended to include road carriageway areas that are damaged, due to the course of demolition and construction works.
- c. Construction of a new kerb and gutter is required across the entire site frontage (excluding the location of vehicular access) in Bayview Street. A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.
- d. Cross sections at a scale of 1:50 along the centre-line of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the National Construction Code (NCC), including disability requirements. The Council approved footpath levels must be accommodated at the building entry points.

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- e. The proposed vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification as specified in Public Domain Style Manual and Design Codes for Local / Residential Areas and designed to comply with AS 2890.1 to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback or vehicular crossing.

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 - 1996 - Field Guide for Traffic Control at Works on Roads - Part 1 and RMS Traffic Control at Work Sites (1998). **Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**

Note: A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

Obtain Driveway Crossing Permit under S.138 Roads Act 1993

- C14. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable issue of the permit. The requirements of the permit must be complied with at all times.

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The civil design drawings must include the following at a minimum:

- a. the vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor;
- b. the redundant layback crossing must be reinstated as upright kerb gutter and footpath;
- c. the width of the vehicular layback must be 3.9 m (including the wings);
- d. the right wing of the driveway must be at least 500 mm away from the power pole.
- e. the vehicular layback must be set square to the kerb;
- f. the crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback;
- g. the gutter levels and boundary footpath levels must match the existing levels and shall not be altered;
- h. any twisting of driveway access must occur entirely within the subject property;
- i. all inspection openings, utility services must be adjusted to match the proposed driveway levels;
- j. sections along centre-line and extremities are required at a scale of 1:50 to be taken from the centre-line of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed;
- k. a longitudinal section along the gutter line at a scale of 1:50 showing how it is intended to blend the vehicular crossing with the existing kerb and gutter;
- l. a longitudinal section along the footpath property boundary at a scale of 1:50 is required;
- m. the sections must show the calculated clearance to the underside of any overhead structure;
- n. a swept path analysis is required demonstrating that an 85th percentile vehicle can manoeuvre in and out of the garage spaces in accordance with AS 2890.1 2004 "Off Street Parking".

The permit must be granted by Council prior to the issue of any Construction Certificate. All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified. The Principal Certifier issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

Stormwater Disposal - Drainage Plan

- C15. Prior to the issue of any Construction Certificate, site drainage plans must be prepared by a licensed plumber or drainage engineer. The site drainage plans must be designed in accordance with the following criteria:

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- a. Compliance with NCC drainage requirements and current Australian Standards and guidelines;
- b. Stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to kerb outlet in Bayview Street.
- c. New pipelines within council land shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres;
- d. The design and installation of the Rainwater Tanks shall comply with BASIX and Sydney Water requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system; and
- e. Prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.

Drainage plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Proper disposal of stormwater)

Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

C16. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of **\$ 12,000.00** to be held by Council for the payment of cost for any/all of the following:

- a. Making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates.
- b. Completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
- c. Remedying any defects in any such public work that arise within 6 months after the work is completed.
- d. Council reserves the right to retain all bonds on infrastructure works relating to the completion of required Infrastructure work for a 12-month defect liability period. Council may elect to provide a lesser period for minor residential work.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

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The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Development Engineers or Manager of Development Services.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Principal Certifier must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

Tree Protection Measures to be shown on Construction Drawings

C17. The tree protection measures contained in the arborist report prepared by *Botanics Tree Wise People Pty Ltd*, dated 24 June 2024, and received by Council on 9 May 2025, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

Protection of Trees

C18. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

SCHEDULE

#	Species	Height	Location
T4.	Persia americana (Avocado)	8 x 6m	Rear setback

Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Approval for Removal of Trees

- C19. The following trees are approved for removal in accordance with the development consent:

SCHEDULE

#	Species	Height	Location
T1.	<i>Plumeria acutifolia</i> (Frangipani)	5x4m	Front Setback
T2.	<i>Duranta erecta</i> (Duranta)	3x2m	Front Setback
T3.	<i>Duranta erecta</i> (Duranta)	3x2m	Rear Setback
T5.	<i>Duranta erecta</i> (Duranta)	3x2m	Rear Setback
T6.	<i>Brugmansia</i> (Angels trumpet)	4x3m	Rear Setback
T7.	<i>Citrus</i>	2x2m	Rear Setback
T8	<i>Plumeria acutifolia</i> (Frangipani)	4x2m	Rear Setback

Removal or pruning of any other tree on the site is not approved, excluding species exempt under Section 16 of the North Sydney DCP 2013.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Asbestos and Hazardous Material Survey

- C20. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a SafeWork NSW licensed contractor;

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- b) all removal must be in strict accordance with the requirements of the SafeWork NSW in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Principal Certifier as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

Location of Plant

- C21. All plant and equipment (including, but not limited to air conditioning equipment) is to be located within the basement of the building and is not to be located on balconies or the roof. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: Minimise impact on surrounding properties, improve visual appearance)

Noise from Plant and Equipment

- C22. The use of all plant and equipment installed on the premises must not:

- a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in **Fact Sheet C** of the *NSW Environment Protection Authority Noise Policy for Industry 2017* shall be applied.
- b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and parks and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Noise Policy for Industry published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

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Air Conditioners in Residential Premises

C23. The use of any air conditioner installed on the premises must comply with the requirements of *the Protection of the Environment Operations (Noise Control) Regulations 2017* and *State Environmental Planning Policy (Transport and Infrastructure) 2021* and must not:

- a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - i. before 8.00am and after 10.00pm on any Saturday, Sunday or Public Holiday; or
 - ii. before 7.00am or after 10.00pm on any other day
- a) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of *the Environment Protection Authority Noise Policy for Industry 2017* will be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Noise Policy for Industry published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

Local Infrastructure Contributions

C24. A monetary contribution pursuant to the provisions of section 7.12 of *the Environmental Planning and Assessment Act 1979* is to be paid to Council, in accordance with the North Sydney Council’s Local Infrastructure Contributions Plan, to provide for local infrastructure improvements.

Based on the net increase in demand for infrastructure at the date of determination, the total contribution payable to Council is **\$44,482.00**.

Indexation

The monetary contribution required under this consent will be indexed between the date of the grant of the consent and the date on which the contribution is paid the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

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Timing of Payment

The contribution must be paid to Council prior to issue of the relevant Construction Certificate for any work approved by this consent.

A copy of the *North Sydney Local Infrastructure Contribution Plan 2020* can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, NORTH SYDNEY, or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To provide for local infrastructure identified in the *North Sydney Council Local Infrastructure Contributions Plan 2020*)

Security Deposit/Guarantee Schedule

- C25. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit / Guarantee	Amount (\$)
Infrastructure/Footpath Construction Bond	\$12,000.00
TOTAL BONDS	\$12,000.00

Note: The following fees applicable

Fees	Amount (\$)
Local Infrastructure Contributions	\$44,482.00
TOTAL FEES	\$44,482.00

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

BASIX Certificate

- C26. The original BASIX Certificate No. **1757453S**, dated **26 July 2024** is required to be updated in accordance with the stamped plans and conditions of consent.

Under section 75 of the *Environmental Planning and Assessment Regulation 2021*, it is a condition of this development consent that all the commitments listed in updated BASIX Certificate for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

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Arborist to be Commissioned

- C27. An experienced consulting arborist with minimum qualification of AQF Level 5 must be commissioned to assist the design development and contract documentation for the approved development. The commissioned arborist must oversee construction works on the site for their duration, must ensure all tree protection measures are implemented and maintained at all times during demolition and construction and must undertake regular inspections of works in progress and provide advice to the developer in relation to tree matters.

Written details of the engagement of the experienced arborist must be submitted to the Principal Certifier prior to the issue of any Construction Certificate.

Note: This condition, and any advice given by the consulting arborist, should not be construed as authorising the carrying of development with/otherwise than in accordance with the development consent.

(Reason: To ensure that all matters relating to trees are resolved and recorded using best practice)

D. Prior to the Commencement of any Works (and continuing where indicated)**Protection of Trees**

- D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation, and construction on the site, in accordance with AS4970-2009 (Protection of trees on development sites).

The tree protection measures detailed in the approved Tree Protection and Management Plan, and as directed by the project arboriculturist must be established before work commences and be maintained at all times during construction activity.

Sensitive construction techniques including hand excavation, pier and beam construction, and flexible location of piers/footings shall be used within the TPZ of any protected tree. No roots greater than 40mm shall be cut. No stormwater or any underground services shall be directed through the TPZ of any protected tree.

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

Temporary Fences and Tree Protection

- D2. All protected trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time.

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Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the Principal Certifier prior to demolition or commencement of any works and must be maintained for the duration of the works: -

Schedule

Description of Tree

Location

T4 Persia americana (Avocado) 8 x 6m

Rear Setback of site

Trunk protection to be installed by first wrapping the stem of the tree in hessian or like material then strapping timber battens over the top. It is recommended that timber battens with the dimensions of length 2000mm, width 75mm and depth 50mm are used. The battens are not to be directly screwed or nailed into the tree.

(Reason: To protect the trees to be retained on the site during construction works)

Asbestos Material Survey

- D3. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination, and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a SafeWork NSW licensed contractor;
- b) all removal must be in strict accordance with the requirements of the SafeWork NSW in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Principal Certifier as proof of correct disposal of asbestos-laden waste.

Commencement of Works' Notice

- D4. Works in accordance with this development consent must not be commenced until the Applicant has given at least two days' notice to North Sydney Council of the person's intention to commence works in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

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E. During Demolition and Building Work**Reuse of Sandstone**

- E1. Sandstone blocks (if any) removed from the site are to be either stored for re-use on site or offered to Council in the first instance.

Note: The provisions of the Heritage Act may also apply to altering any sandstone elements on any site.

(Reason: To allow for preservation of cultural resources within the North Sydney Council area)

Parking Restrictions

- E2. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

Road Reserve Safety

- E3. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads." **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

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Temporary Disposal of Stormwater Runoff

- E4. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Principal Certifier.

(Reason: Stormwater control during construction)

Geotechnical Stability during Works

- E5. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the Geotechnical Engineer and all subsequent geotechnical inspections carried out during the excavation and construction phase.

Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed below adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

Council Inspection of Public Infrastructure Works

- E6. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points:

- a. Formwork for layback, kerb/gutter, footpaths;

All works must proceed in accordance with Roads Act 1993 approvals or other permits relating to roads issued by Council. A minimum of 48 hours' notice must be given to Council to book an inspection. Work must not proceed until the works or activity covered by the inspection is approved.

(Reason: To ensure quality of construction joints and connections in the drainage system)

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Progress Survey

- E7. In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height Datum, must be prepared by a Registered Surveyor showing the following:
- a) at the completion of excavation, prior to the placement of any footings, showing the completed level of the excavation and its relationship to the boundaries;
 - b) prior to placement of concrete at the ground floor level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;
 - c) prior to placement of concrete at each floor level above ground floor showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
 - d) prior to roofing, or completion of the highest point of the building showing the anticipated level of the completed work and its relationship to the boundary; and
 - e) at completion, works showing the relationship of the building to the boundary and showing the maximum height of the overall works and the height of the principal roof elements.

Progress certification in response to points (a) through to (e) must be provided to the Principal Certifier for approval at the time of carrying out relevant progress inspections. In the event that such survey information is not provided or reveals discrepancies between the approved plans and the proposed works, all works, save for works necessary to bring the development into compliance with the approved plans, must cease. Works may only continue upon notification by the Principal Certifier to the Applicant that survey information (included updated survey information following the carrying out of works to comply with the approved plans) complies with this condition.

(Reason: To ensure compliance with approved plans)

Removal of Extra Fabric

- E8. Should any portion of the existing building, trees, or curtilage of the site, which is indicated on the approved plans to be retained, be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

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Dust Emission and Air Quality

E9. The following must be complied with at all times:

- a) Materials must not be burnt on the site.
- b) Vehicles entering and leaving the site with soil or fill material must be covered.
- c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with *the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction*.
- d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Noise and Vibration

E10. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Compliance with Construction Noise Management Plan

E11. All works conducted on site which form part of this development must be carried out in accordance with the submitted Construction Noise Management Plan submitted with the relevant Construction Certificate and all conditions of consent.

(Reason: To ensure noise generating activities are appropriately managed and nearby sensitive receivers protected)

No Work on Public Open Space

E12. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land and to ensure public safety and proper management of public land)

Applicant's Cost of Work on Council Property

E13. The applicant or the person, company or other entity that is acting upon this consent, must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

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No Removal of Trees on Public Property

- E14. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

Protection of Trees

- E15. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by *Botanics Tree Wise People Pty Ltd*, dated 24 June 2024, and received by Council on 9 May 2025 must be implemented for the duration of the works.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- 1) If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- 2) An application to modify this consent pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

Trees to be Removed

- E16. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

#	Species	Height	Location
T1.	<i>Plumeria acutifolia (Frangipani)</i>	5x4m	Front Setback
T2.	<i>Duranta erecta (Duranta)</i>	3x2m	Front Setback
T3.	<i>Duranta erecta (Duranta)</i>	3x2m	Rear Setback
T5.	<i>Duranta erecta (Duranta)</i>	3x2m	Rear Setback
T6.	<i>Brugmansia (Angels trumpet)</i>	4x3m	Rear Setback
T7.	<i>Citrus</i>	2x2m	Rear Setback
T8.	<i>Plumeria acutifolia (Frangipani)</i>	4x2m	Rear Setback

(Reason: To ensure compliance with the terms of this development consent)

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Benchmarks

E17. All permanent survey markers must be retained, undamaged, and not relocated.

(Reason: Protection of existing environmental infrastructure and community assets)

Special Permits

E18. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) On-street mobile plant

e.g., cranes, concrete pumps, cherry-pickers, etc., restrictions apply to the hours of operation, the area of operation, etc.

Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

2) Hoardings

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

3) Storage of building materials and building waste containers (skips) on Council's property

Permits to utilize Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

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4) Kerbside restrictions, construction zones

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

Construction Hours (All Other Zones)

- E19. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

Standard Construction Hours	
Day	Hours
Monday - Friday	7.00am - 5.00pm
Saturday	8.00am - 1.00pm
Sunday Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above, *the EPA Noise Policy for Industry 2017* and any Construction Noise Management Plan required under this consent. In the event of breach to the approved hours of construction, Council take may take enforcement action under Part 9 of *the Environmental Planning and Assessment Act 1979* and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Out-of-hours' Work Permits

- E20. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued, the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is not at risk**. Applications which seek a variation to construction hours solely to benefit the Applicant will require the lodgement and favourable determination of a modification application pursuant to the provisions of section 4.55 of *the Environmental Planning and Assessment Act 1979*.

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Note:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on-the-spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out-of-hours' work cease, without prior warning.
- 2) Applications for out-of-hours' works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
 - the erection of awnings,
 - footpath, road, and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
 - the erection and removal of hoardings and site cranes, and
 - craneage of materials which cannot be done for public convenience reasons within normal working hours.
- 4) Examples of activities for which permits WILL NOT be granted include:
 - extended concrete pours
 - works which are solely to convenience the Applicant or client, and
 - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at www.northsydney.nsw.gov.au.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Installation and Maintenance of Sediment Control

- E21. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

Erosion and sediment measures must be maintained in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th Edition, Landcom, 2004), commonly referred to as the "Blue Book" and can only be removed when development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

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Sediment and Erosion Control Signage

- E22. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Site Amenities and Facilities

- E23. Where work involved in the erection and/or demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any SafeWork NSW requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at www.workcover.nsw.gov.au

(Reason: To ensure the health and safety of the community and workers on the site)

Health and Safety

- E24. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any SafeWork NSW requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.safework.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Prohibition on Use of Pavements

- E25. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

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Plant and Equipment Kept Within Site

- E26. All plant and equipment used in the undertaking of the development/works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc., must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

Waste Disposal

- E27. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environment Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

Asbestos Removal

- E28. All demolition works involving the removal and disposal of asbestos must only be undertaken by contractors who hold a current SafeWork NSW Asbestos or "Demolition Licence," and a current SafeWork NSW "Class 2 (Restricted) Asbestos Licence" (or equivalent). Removal must be carried out in accordance with National Occupational Health and Safety Commission requirements.

(Reason: To ensure works are carried out in accordance with relevant SafeWork NSW requirements)

Service Adjustments

- E29. The adjustment or inclusion of any new utility service or facilities must be carried out by an appropriately qualified contractor in accordance with the requirements of the relevant utility authority.

These works shall be at no cost to Council. It is the Applicant's responsibility to contact the relevant utility authorities to ascertain the impacts of the proposal upon utility services prior to the commencement of any work, including demolition (including water, phone, gas and the like).

The Council accepts no responsibility for any impact on, or influence upon, utility services provided by another authority.

(Reason: To ensure the service requirements are met)

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F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation

National Construction Code

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in *the Home Building Act 1989*) for which *the Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifier for the development to which the work relates, has given North Sydney Council written notice of the contract of insurance being issued, and of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
 - b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this condition is out of date, work must cease, and no further work may be carried out unless the Principal Certifier for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of *the Home Building Act 1989* that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this condition, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

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Appointment of a Principal Certifier

- F3. Building or excavation works in accordance with the development consent must not be commenced until the Applicant has appointed a Principal Certifier for the building work in accordance with the provisions of *the Environmental Planning and Assessment Act 1979* and its Regulation.

(Reason: Statutory, to ensure appropriate safeguarding measures are in place prior to the commencement of any building or excavation works)

Construction Certificate

- F4. Building or excavation works in accordance with the development consent must not be commenced until the Construction Certificate for the relevant part of the work has been issued.

Note: For clarity, this condition does not apply to demolition of whole buildings and works. A Construction Certificate is not required for these works. Demolition is controlled by AS 2601-2001 - Demolition of Structures. This Australian Standard requires safeguards to be in place before demolition commences, including traffic control and management, which may form part of the Construction Traffic Management Plan. Vegetation may also be removed or cleared unless the development consent requires that specified vegetation must not be removed.

(Reason: Statutory, to ensure appropriate safeguards are in place prior to the commencement of any works)

Occupation Certificates

- F5. A person must not commence occupation or use of the whole or any part of a new building (new building includes an altered portion of, or an extension to, an existing building) unless the relevant Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifier appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory compliance)

Critical Stage Inspections

- F6. Building work must be inspected by the Principal Certifier at the critical stages prescribed by *the Environmental Planning and Assessment Act 1979* and *the Environmental Planning and Assessment Regulation 2021*, and as directed by the appointed Principal Certifier.

(Reason: Statutory)

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Commencement of Works

- F7. Works in accordance with this development consent must not be commenced until the Applicant has given at least two days' notice to North Sydney Council of the intention to commence those works.

(Reason: Statutory, to ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Excavation/Demolition

F8.

- 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601-Demolition of Structures. The report must detail the condition and health of the nominated tree(s) upon completion of the works and shall certify that the tree(s) has/have not been significantly damaged during the works on the site and has/have reasonable prospects for survival.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

Protection of Public Places

F9.

- 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

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Site Sign

- F10. 1) A sign must be erected in a prominent position on the site:
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifier for the work.
- 2) Any such sign must be maintained while building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate**Infrastructure Repair and Completion of Works**

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. In the road reserve must be fully completed; and
 - b. To repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council. Council's development engineer must be contacted to arrange inspections of the completed works in the Public Domain.

(Reason: Maintain quality of Public assets)

Damage to Adjoining Properties

- G2. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

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Utility Services

- G3. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of the relevant Occupation Certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

Asbestos Clearance Certificate

- G4. For building works where asbestos-based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Principal Certifier (and a copy forwarded to Council if it is not the Principal Certifier) for the building work prior to the issue of the relevant Occupation Certificate. The asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos; or
- b) the building/land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from www.epa.nsw.gov.au.

(Reason: To ensure that building works involving asbestos-based products are safe for occupation and will pose no health risks to occupants)

Certification of Tree Condition

- G5. Prior to the issue of the relevant Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Principal Certifier, describing the health of the tree(s) specifically nominated to be protected and retained within this consent.

The report must provide written detail of the condition, health, vigour & longevity of all nominated tree(s) prior to first occupation of the building.

(Reason: To ensure compliance with the terms of this consent)

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Height

- G6. Upon completion of the works and prior to the issue of any Occupation Certificate, the RL of the development measured at 32.35 must be surveyed and certified by an appropriately qualified and practising surveyor as compliant with the maximum approved levels in accordance with the approved plans. This survey and certification must be submitted to the Principal Certifier with the application for an Occupation Certificate and a copy provided to Council (if it is not the Principal Certifier).

(Reason: To ensure compliance with the terms of this development consent)

BASIX Completion Certificate

- G7. In accordance with section 45 *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, prior to issuing the relevant Occupation Certificate the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

Landscaping

- G8. The landscaping shown in the approved landscape plan numbered *DA113, Rev 2, Landscape Plan*, prepared by *Collins and Turner*, dated *4 April 2025*, received by Council on 4 April 2025 must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

I. Ongoing/Operational Conditions**Single Occupancy**

- I1. Nothing in this consent authorises the use of the premises other than for a single occupancy.

(Reason: To ensure compliance with the terms of this consent)

Loading Within Site

- I2. All loading and unloading operations must be carried out wholly within the confines of the site, at all times and must not obstruct other properties or the public way.

(Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian amenity)

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Minimum Headroom for Car Parking

13. Minimum headroom of 2.2m must be provided over all car-parking areas.

(Reason: To ensure compliance with relevant standards and provide appropriate headroom)

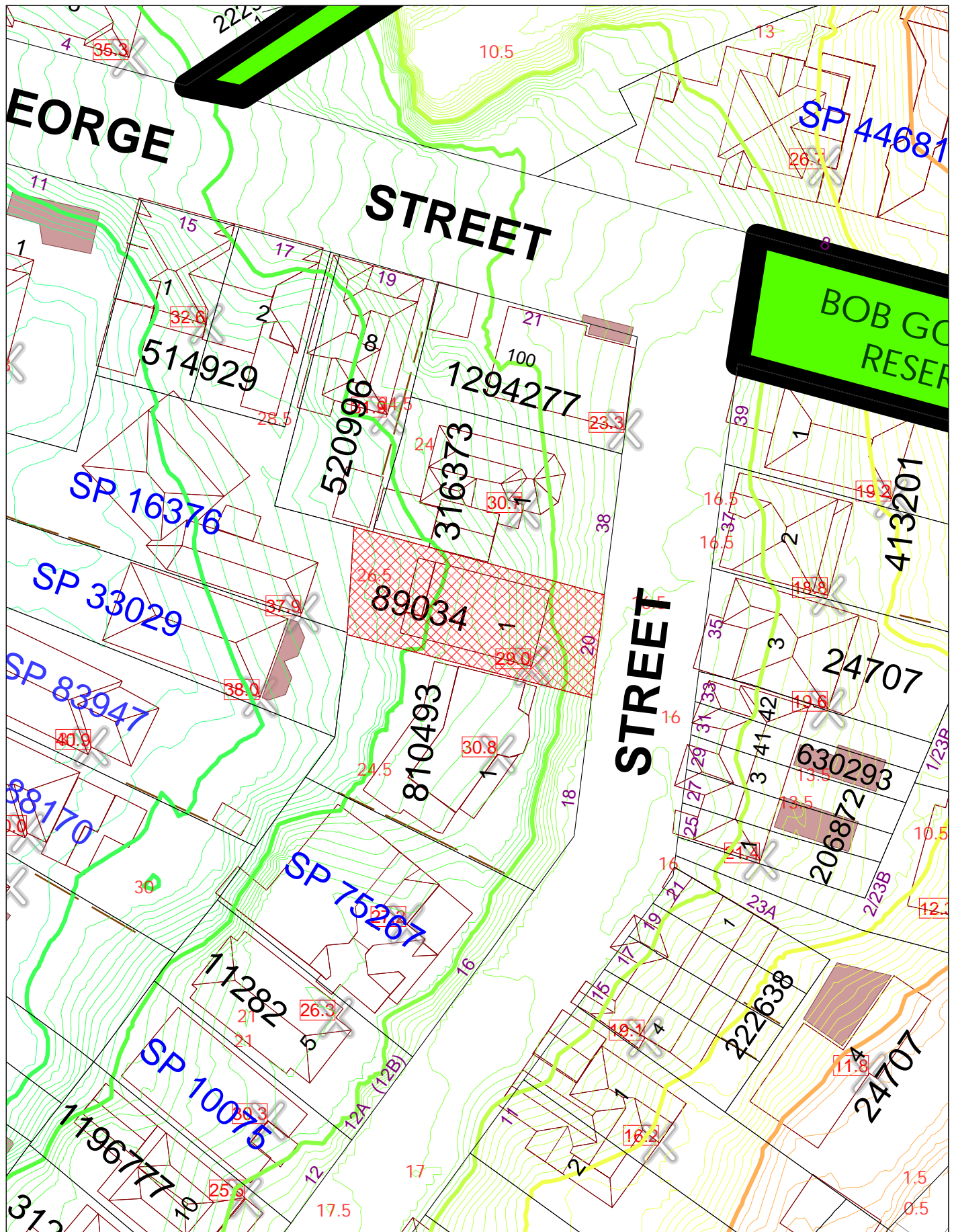
Maintenance of Approved Landscaping

14. The owner of the premises is to maintain the landscaping approved by this consent generally in accordance with the approved landscape plan numbered *DA113, Rev 2, Landscape Plan*, prepared by *Collins and Turner*, dated 4 April 2025.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non-flowering, native for exotic, deciduous for nondeciduous or the reverse of any these), a modification to this consent will be required.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)



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: 1:600 approx.



Location Plan



Location 20 Bay View Street Lavender Bay NSW 2060
Lot Lot 1 DP 89034

Proposed Work New dwelling and associated external works

Applicant Tina Huang and Jimmy Wu

Surveyor Damon Roach
CMS Surveyors
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Town Planner Annelize Kaalsen
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BASIX Consultant Peter Waller
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Drawings

General	010	Title Sheet	N/A
	011	Basix Commitments	N/A
Site Plans	111	Site Plan	1:100
	112	Site Analysis Plan	1:200
	113	Landscape Plan	1:200
Existing Plans	121	Existing Basement Level	1:100
	122	Existing Bedroom Level	1:100
	123	Existing Living Level	1:100
	124	Existing Master Level	1:100
	125	Existing Roof Plan	1:100
GA Plans	141	Basement Level	1:100
	142	Basement 2 Level	1:100
	143	Bedroom Level	1:100
	144	Living Level	1:100
	145	Master Level	1:100
	146	Roof & Drainage Plan	1:100
Elevations	201	South Elevation	1:100
	202	North Elevation	1:100
	203	East Elevation (Streetscape)	1:100
	204	West Elevation	1:100
Sections	310	Section A	1:100
	311	Sections	1:100
	312	Section B	1:100
Area & Control Diagrams	411	Site Area Calculations	1:200
	412	Height Plane Diagrams	NTS
	413	Side Setback Diagram	NTS
Shadow Diagrams	421	Shadow Diagrams - Jun 21	1:100
	422	Shadow Diagrams - Mar 21	1:100
	423	Shadow Diagrams - Sep 21	1:100
	424	Shadow Diagrams	NTS
Notification Plans	511	Notification Plan	1:200
Materials	521	External Materials and Finishes Schedule	N/A
3D Views	611	View Analysis	NTS
	612	View Analysis	NTS
	613	View Analysis	NTS

Legend

BAL	Balustrade
BOR	Bottom of rock
CONC-1	Concrete
CU	Copper toned metal
CUR	Copper toned roof
D	Door
DP	Downpipe
EX	Existing
FG	Fixed glazing
GL-CL	Glass - clear
GL-TR	Glass - translucent
GM	Gas meter
GND	Ground
GU	Gutter
HWS	Hot water system
MDR	Metal deck roof
MIN	Minimum
NGL	Natural ground level
NTS	Not to scale
RWT	Rainwater tank
SCR-CONC	Privacy screen concrete
SCR-CU	Privacy screen copper
SKY	Skylight
ST-1	Stone
ST-EX	Existing Stone

BASIX Water Commitments

Fixtures
Install showerheads minimum rating of 4 star (>6 and <= 7.5 L/min plus spray force and/or coverage tests) in all showers
Install toilet flushing system with a minimum rating of 4 stars in each toilet
Install tap with minimum rating of 3 stars in the kitchen
Install basin taps with minimum rating of 5 stars in each bathroom

Alternative Water
Install rainwater tank, minimum 5,100L capacity collected from min.
Configure the rainwater tank to collect rain runoff from at least 150m2 of the roof area.
Tank connected to – at least one outdoor tap, laundry and toilets

BASIX Energy Commitments

Hot water system
Gas instantaneous with a performance of 4 stars

Cooling System
3-phase air conditioning to living areas and bedrooms: EER <2.5

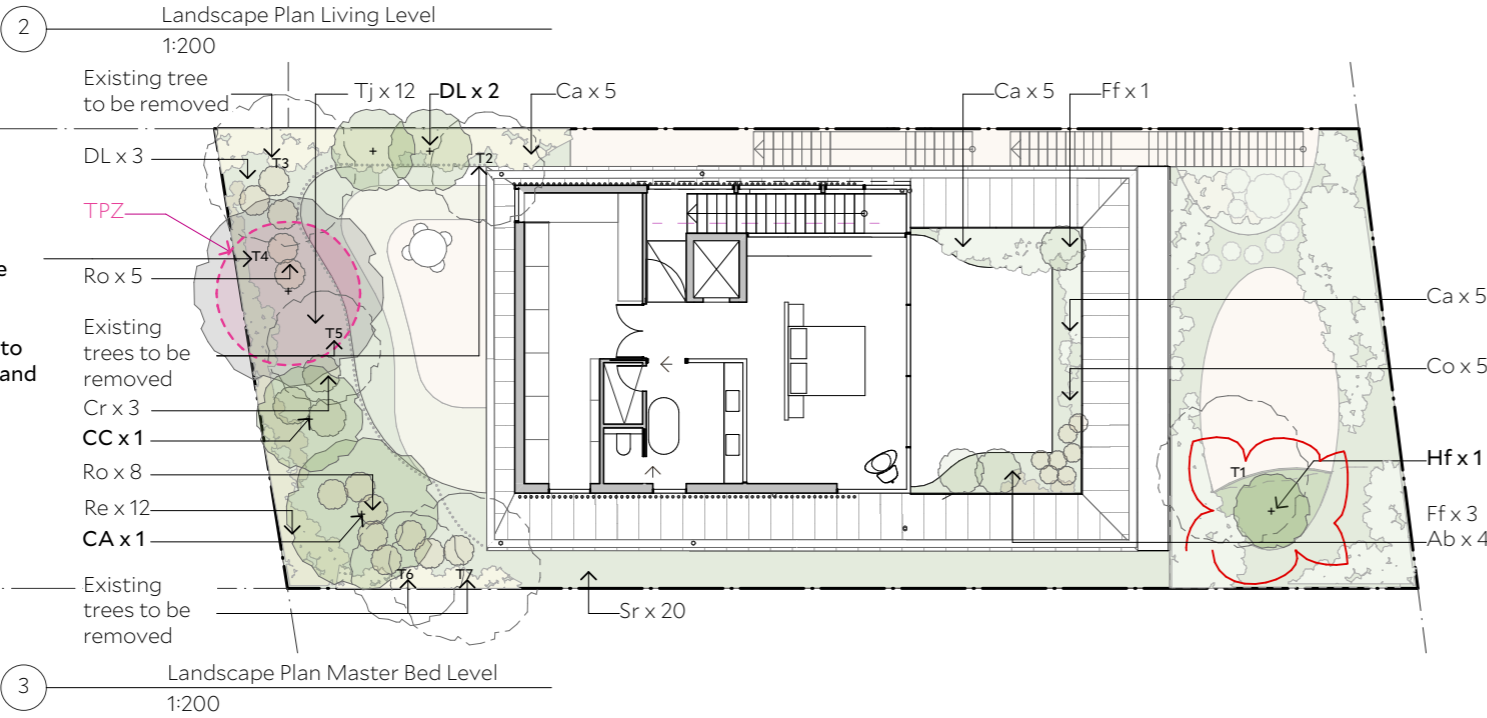
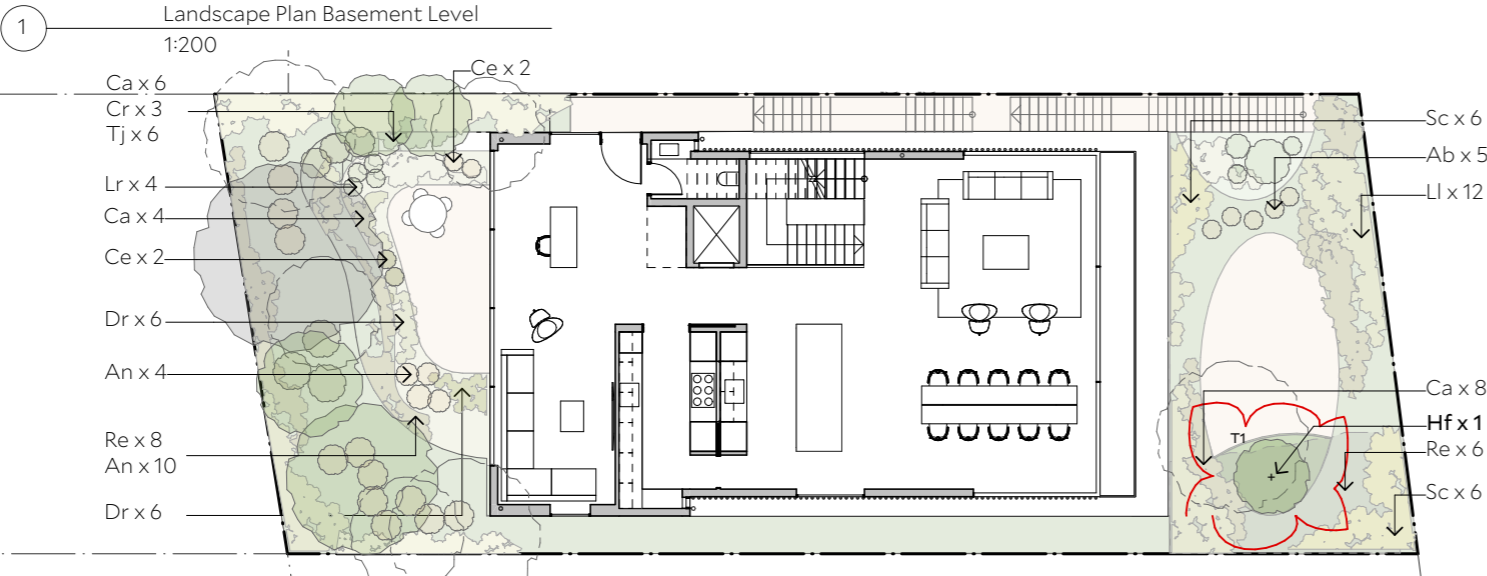
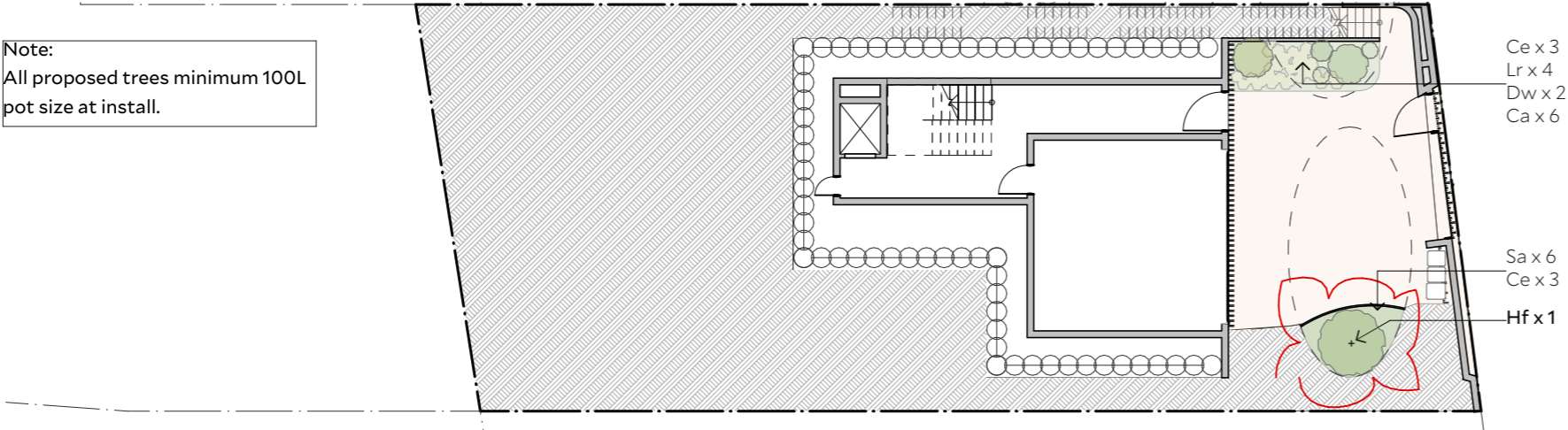
Heating System
Heat pump hydronic system to living areas and bedrooms

Ventilation
Kitchen – Individual fan, externally ducted to roof or façade, manual on/off switch
Bathrooms – Individual fan, externally ducted to roof or façade, manual on/off switch
Laundry – Individual fan, externally ducted to roof or façade, manual on/off switch

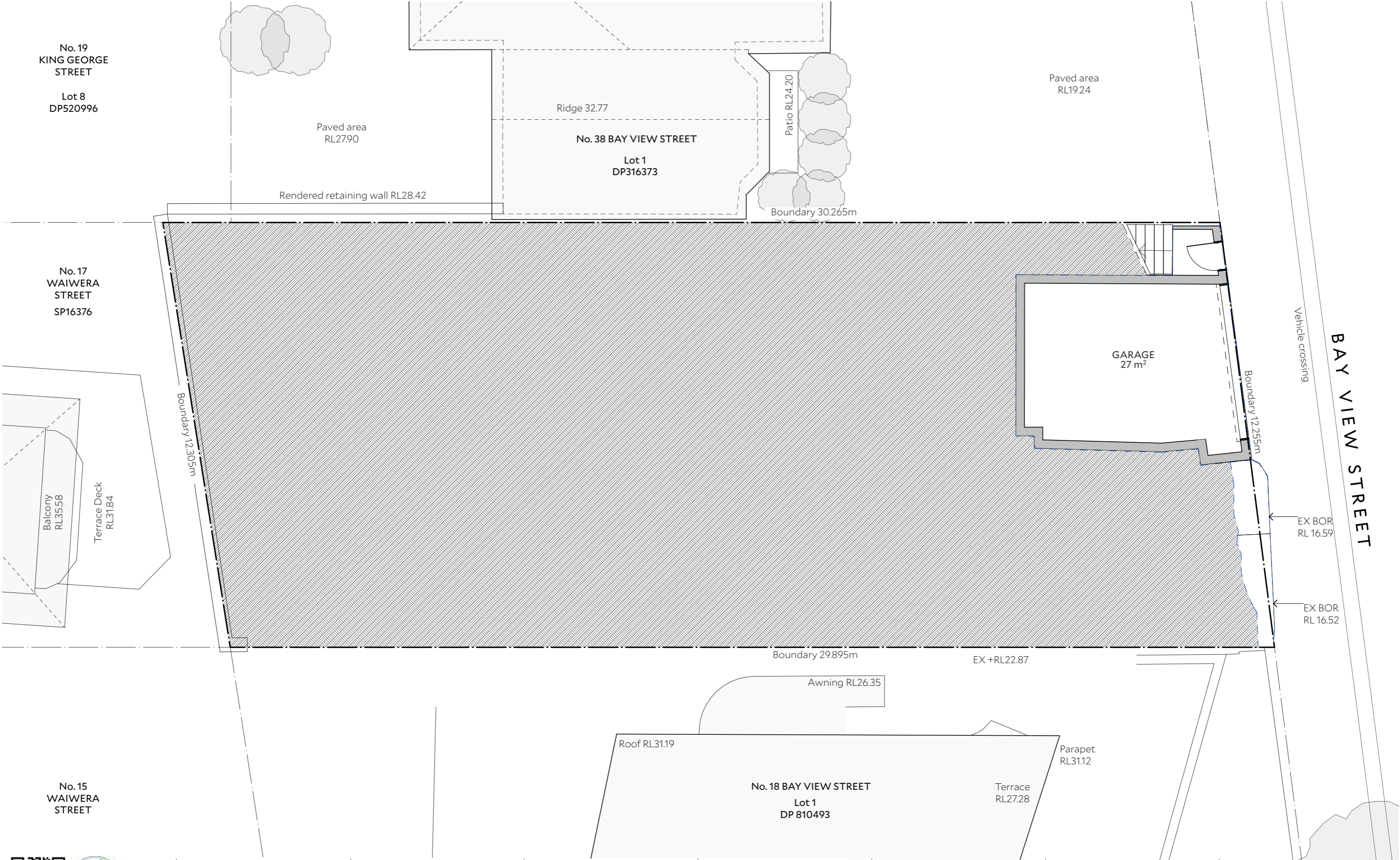
Alternative Energy
Solar Photovoltaic system - capacity to generate at least 1 peak kilowatts of electricity, installed at an angle between 0 and 10 degrees to the horizontal facing north

20 BAY VIEW STREET
LAVENDER BAY NSW
DEVELOPMENT
APPLICATION

Note:
All proposed trees minimum 100L
pot size at install.



CODE	BOTANIC NAME	COMMON NAME	MATURE HEIGHT
CC	Cercis Canadensis	Eastern Redbud	8m
CA	Cupaniopsis Anacardioides	Tuckeroo	8m
BG	Bambusa textilis 'Gracilis'	Slender Weavers	6m
DL	Dypsis lutescens	Areca Palm	5m
RE	Rhapix excelsa	Lady Palm	4m
Cr	Cycas revoluta	King Sago Palm	1m
Ff	Furcraea foetida	Giant Cabuya	1m
Re	Russelia equisetiformis	Firecracker	0.6m
Ro	Raphiolepis indica 'Oriental Pearl'	Indian Hawthorn	0.6m
Sr	Syzygium australe 'Resilience'	Lilly Pilly 'Resilience'	3m
An	Alpinia nutans	Dwarf Cardamom	0.6m
Ce	Colocasia esculenta	Taro	1m
Li	Lomandra little pal	Lomandra	0.4m
Lr	Ligularia reniformis	Tractor Seat Plant	0.4m
Ca	Casuarina cousin it	Cousin It	Ground cover
Dr	Dichondra repens	Kidney Weed	Ground cover
Sa	Sedum acre	Goldmoss Stonecrop	Ground cover
Tj	Trachelospermum jasminoides	Star Jasmine	0.4m
Aa	Agave attenuata	Foxtail Agave	0.6m
Ab	Aloe hybrid	Aloe 'Bush Baby Yellow'	0.6m
Co	Crassula ovata 'Max Cook'	Crassula 'Max Cook'	Ground cover
Dw	Dasylirion wheeleri	Desert Spoon	0.6m
Sc	Senecio cylindricus	Narrow Chalksticks	Ground cover
Hf	Hymenosporum Flavum	Native Frangipani	8m





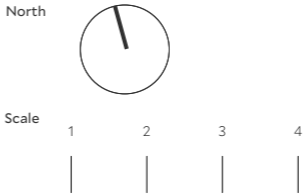
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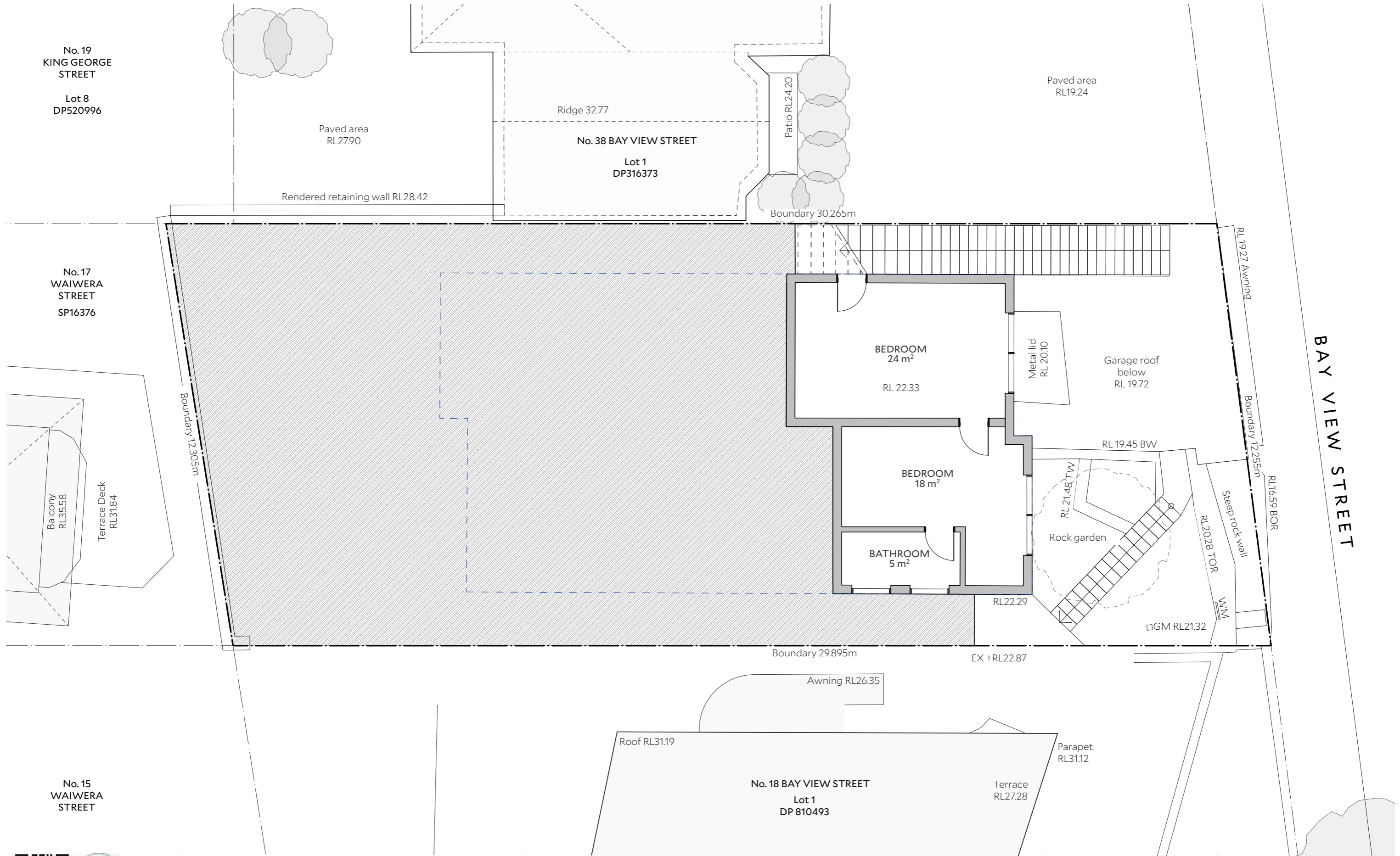
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04	17/7/2024		For Review
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Legend



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Drawing title	Existing Basement Level
Scale	1:100 @ A3
Date	19/01/24
Drawn by	MR
Drawing Number+ Revision	353_DA_121
	05



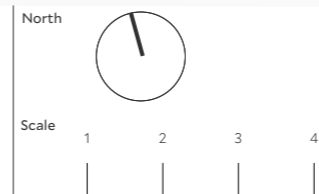
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Legend



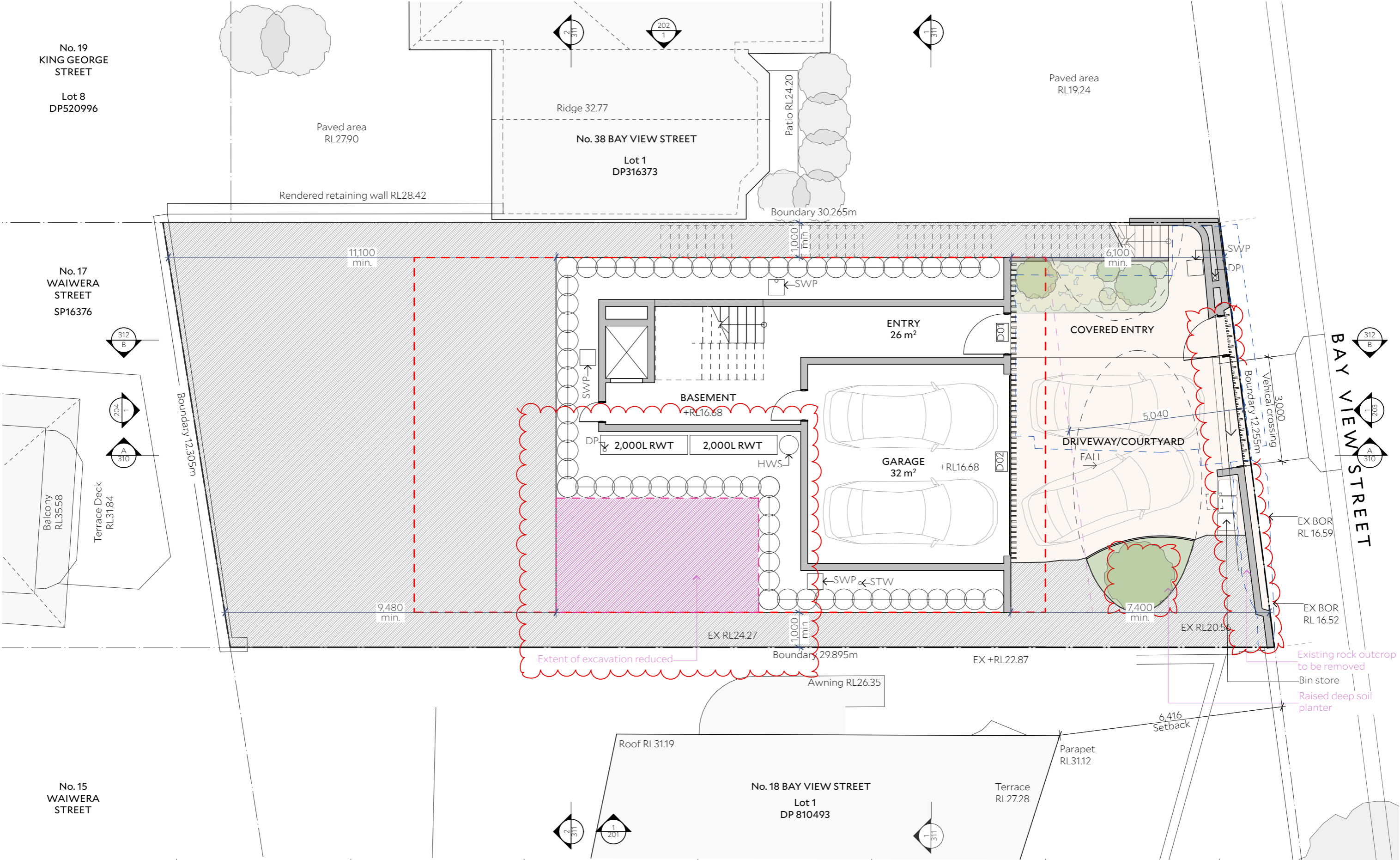
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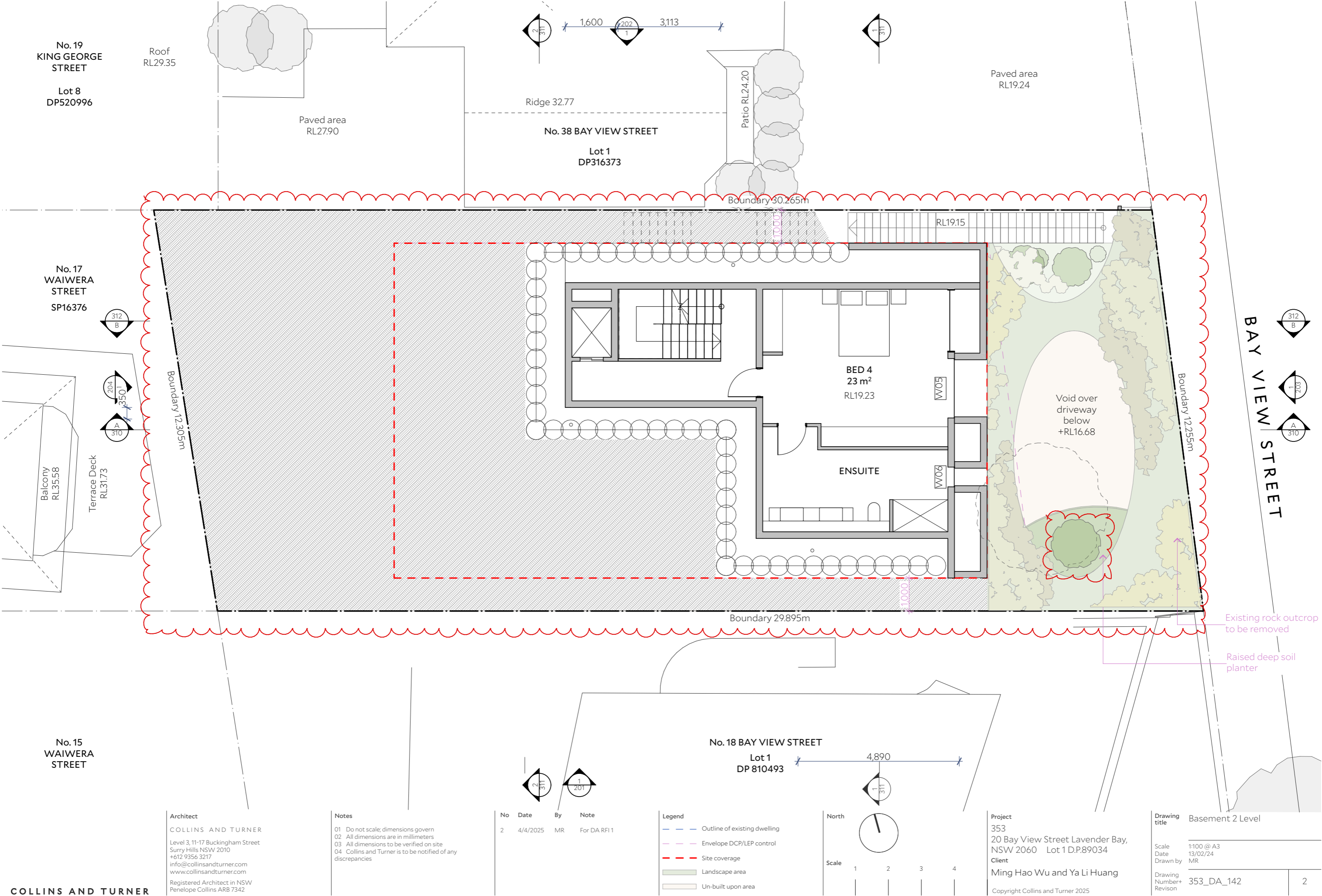
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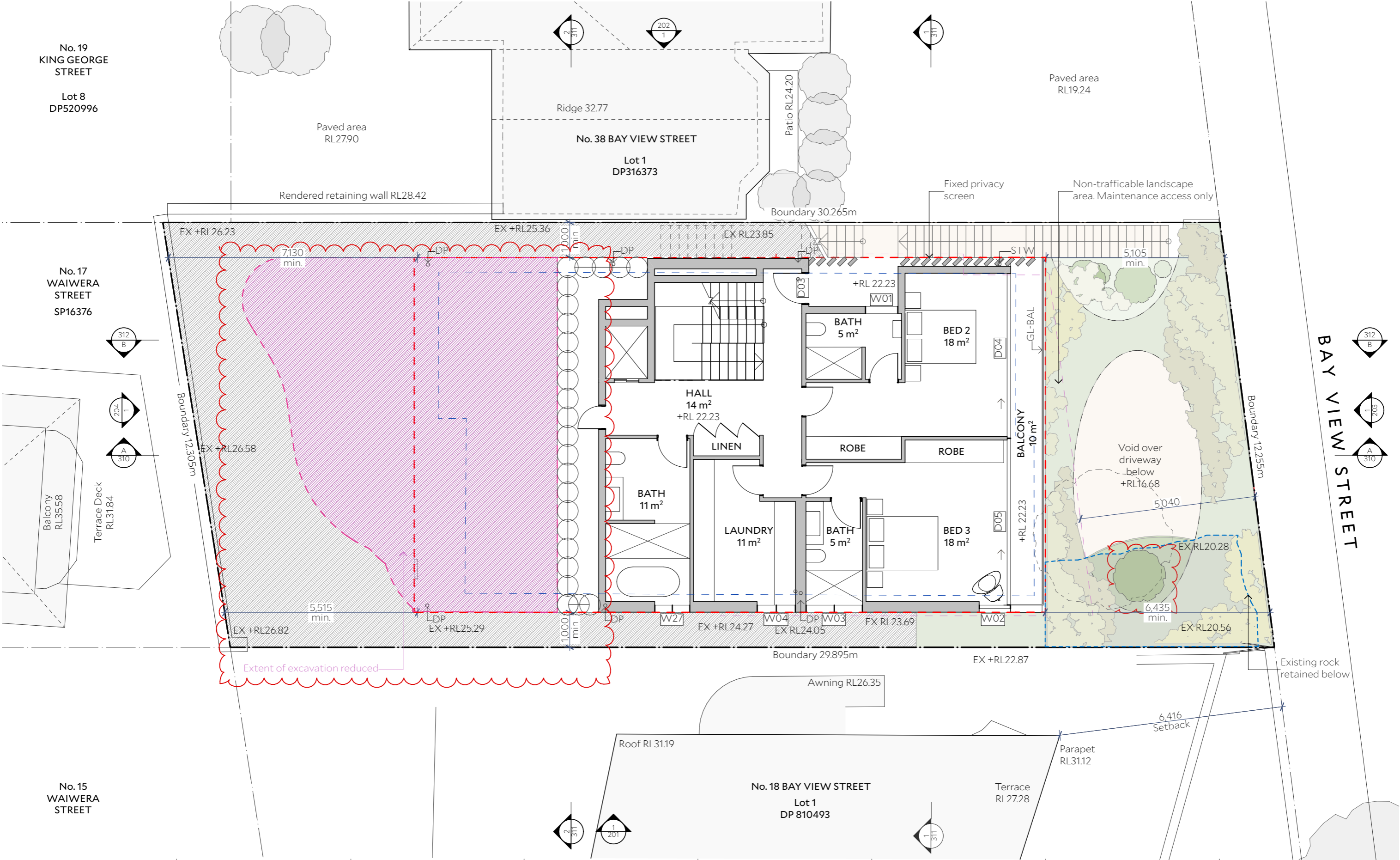












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No	Date	By	Note
2	4/4/2025	MR	For DA RFI 1

Legend

- Outline of existing dwelling
- Envelope DCP/LEP control
- Site coverage
- Landscape area
- Un-built upon area

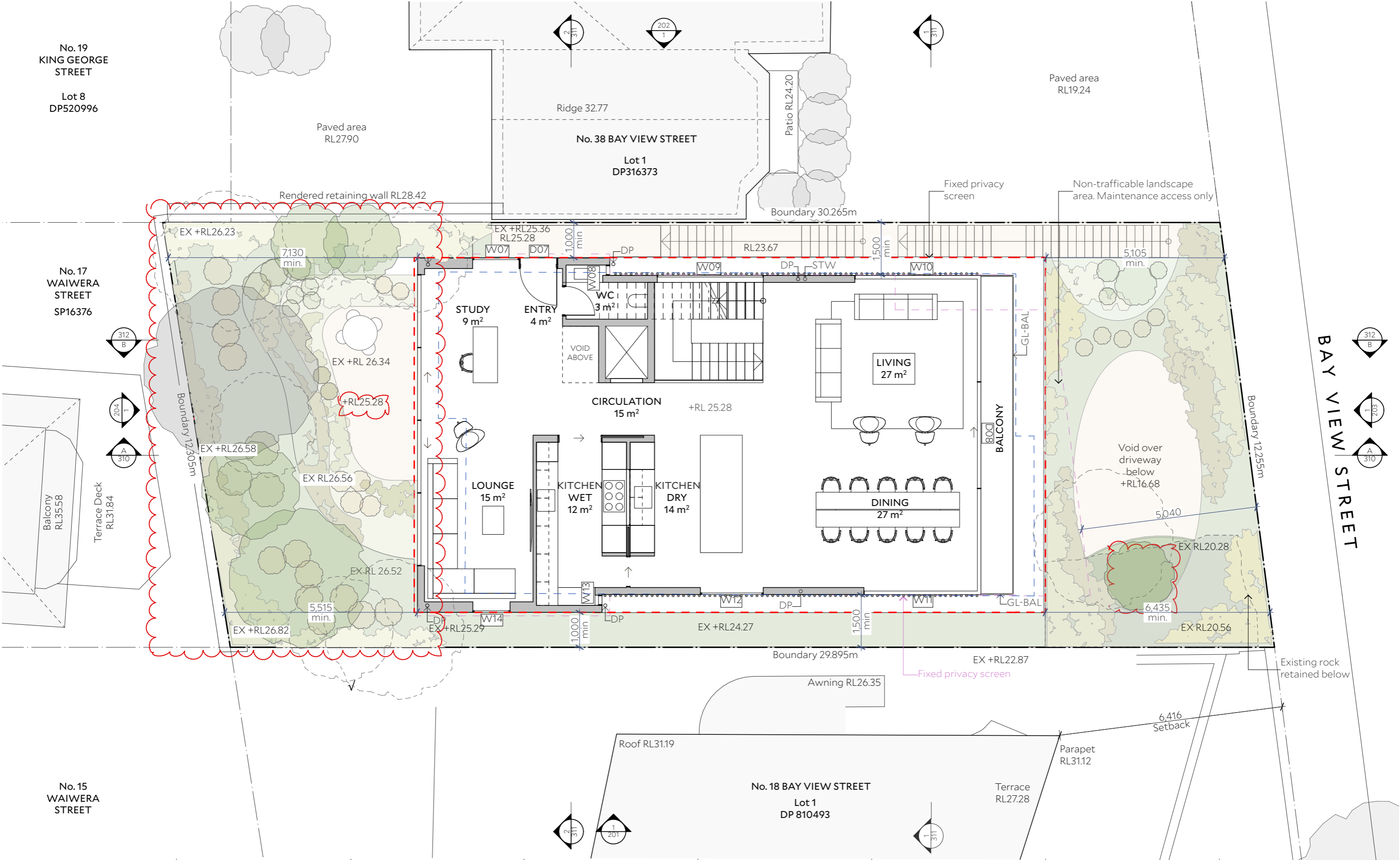
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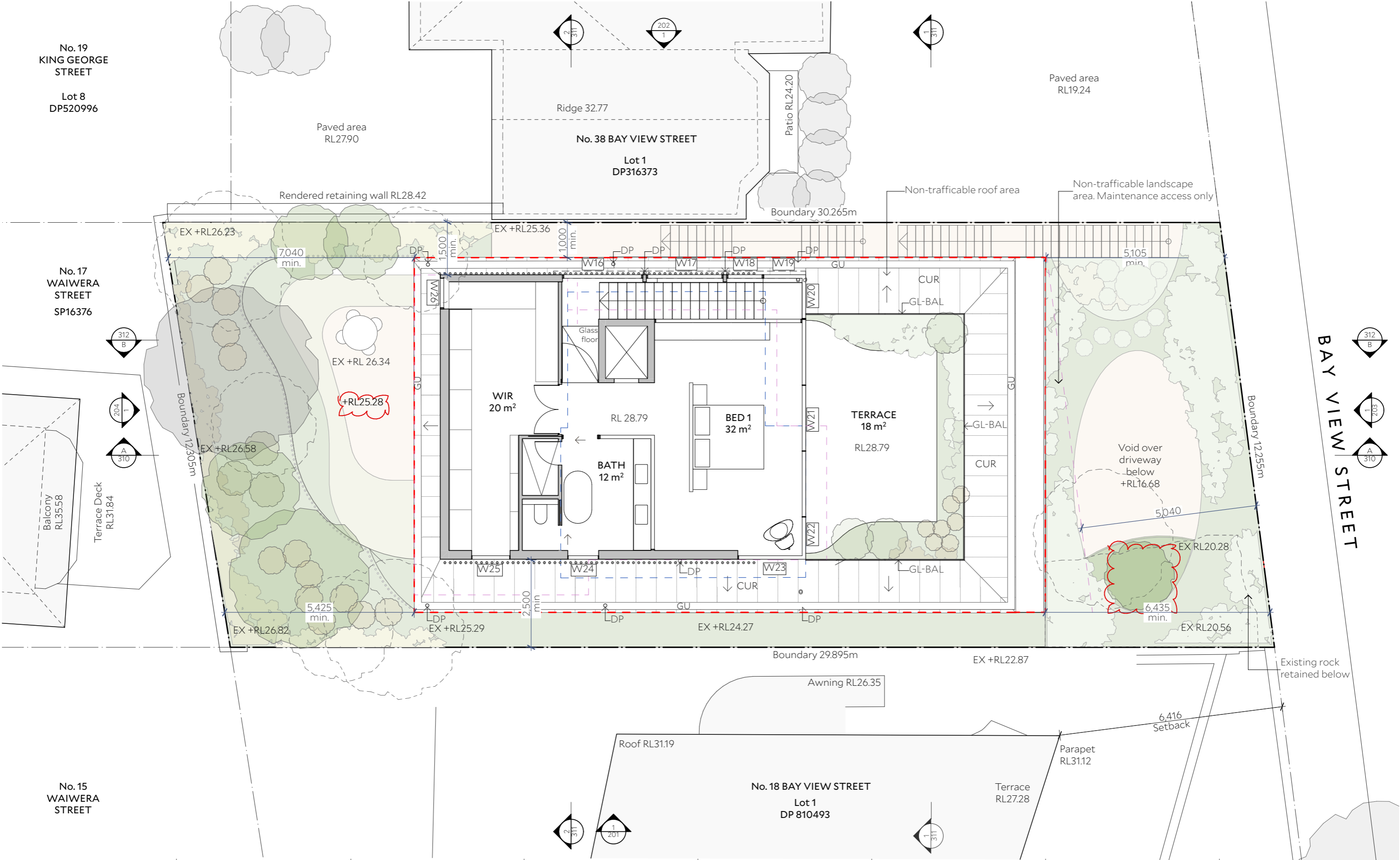
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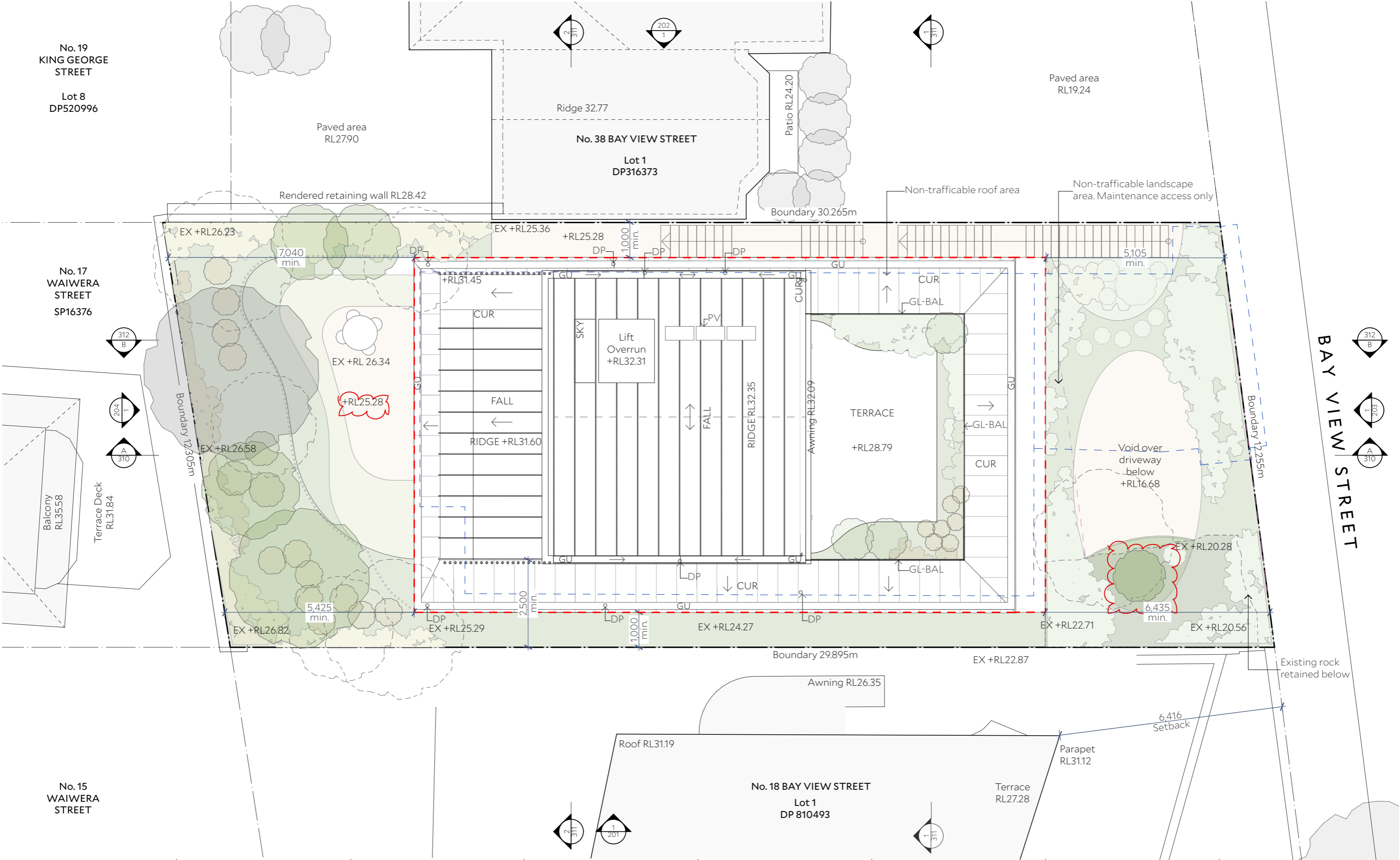
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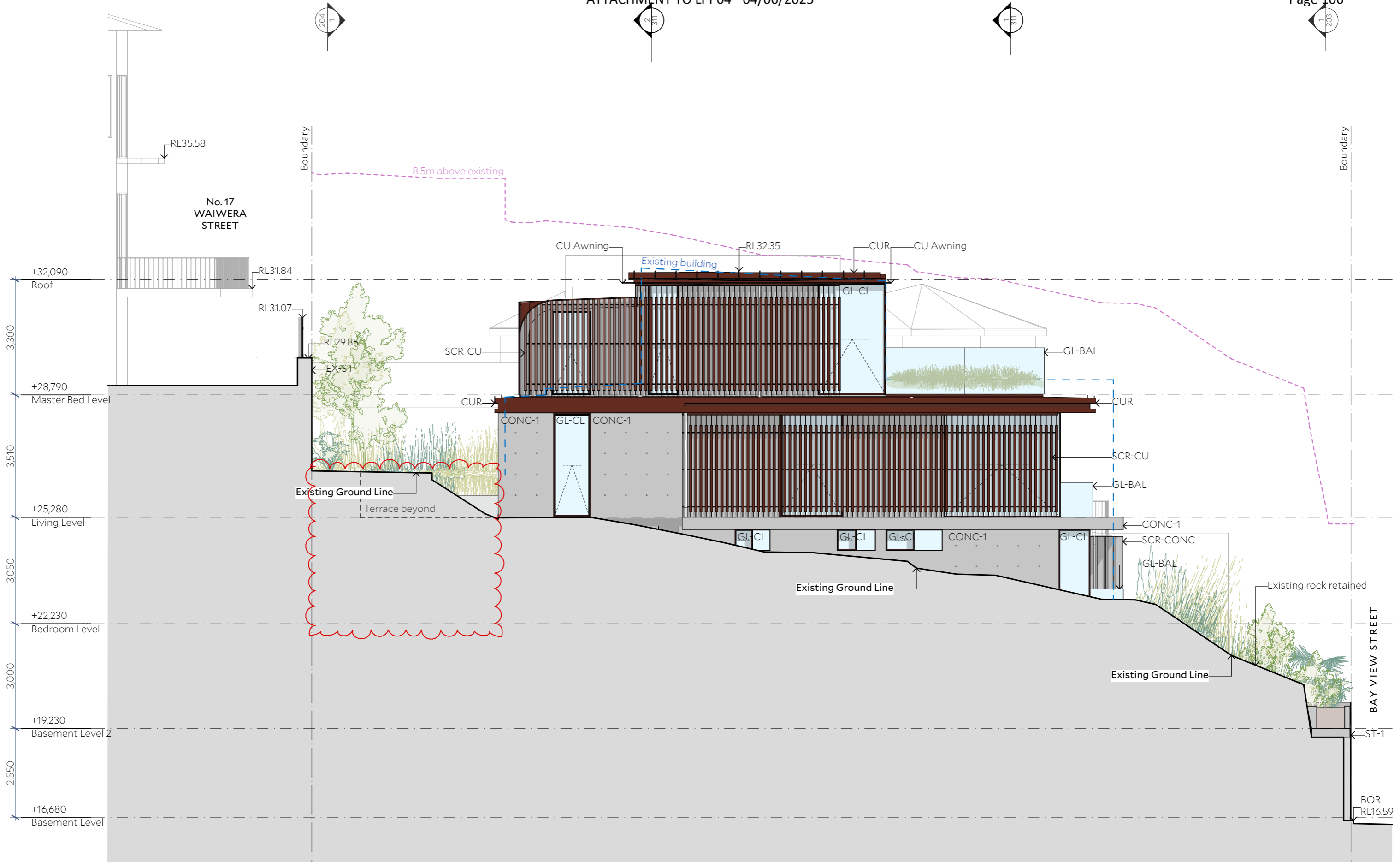
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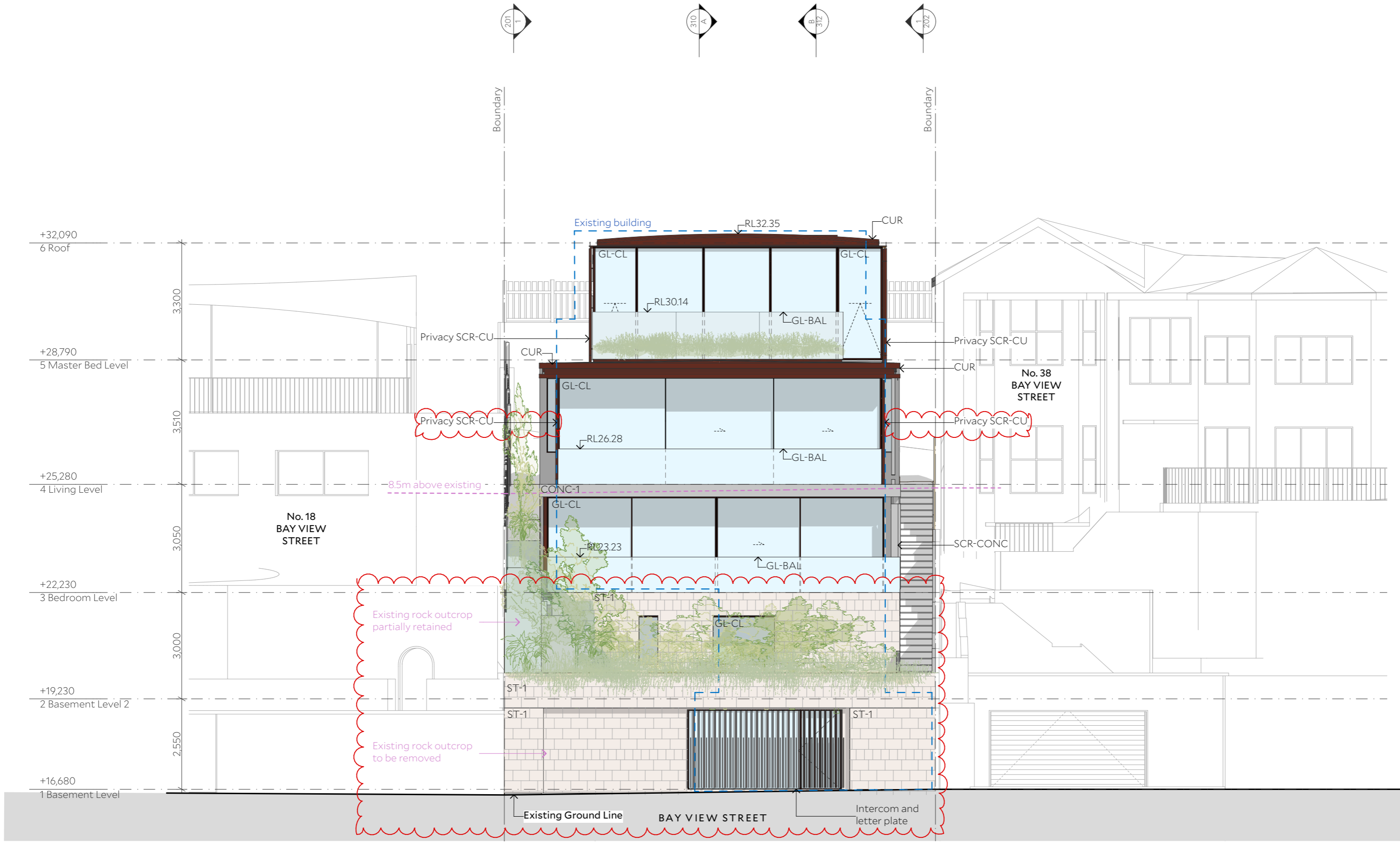


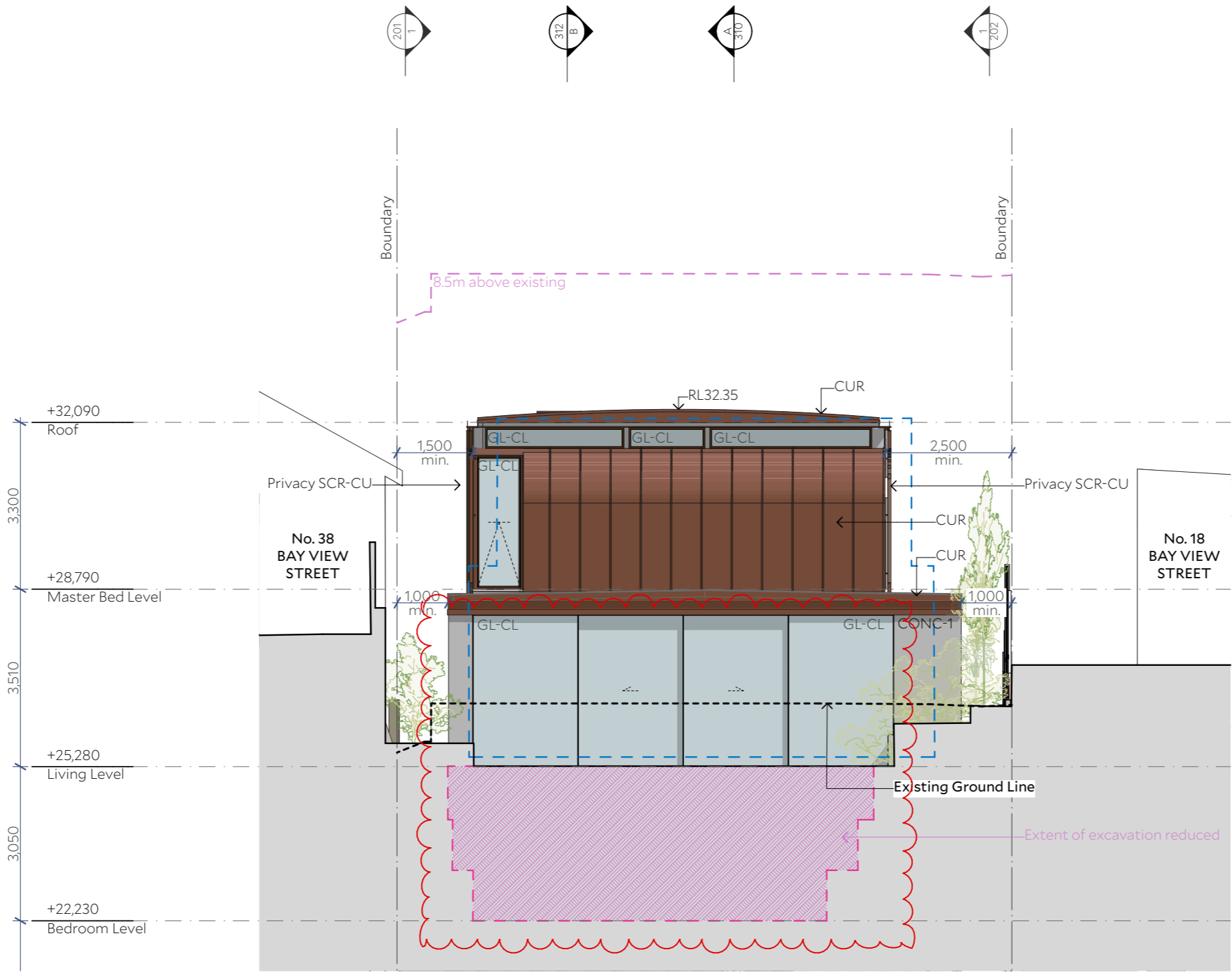


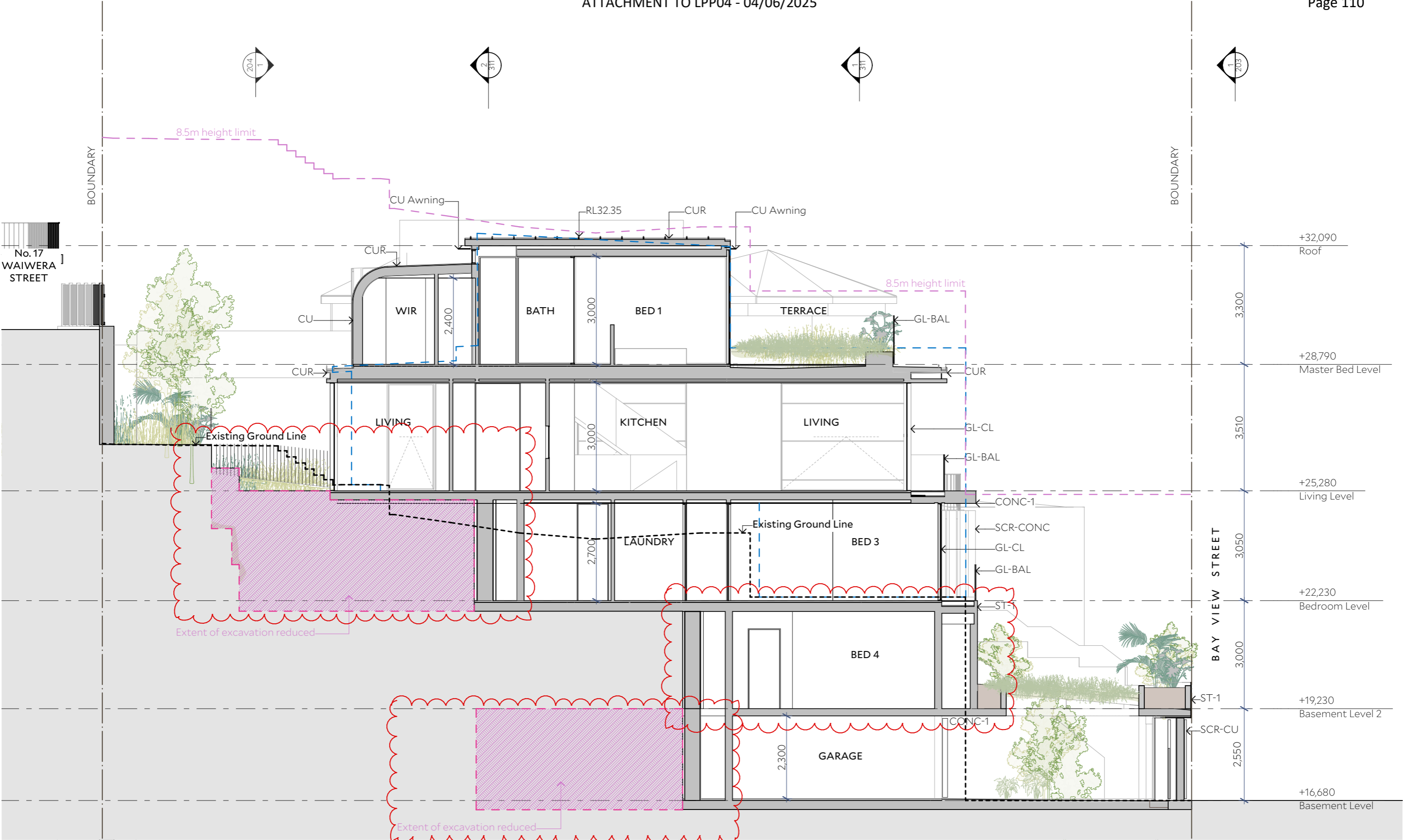


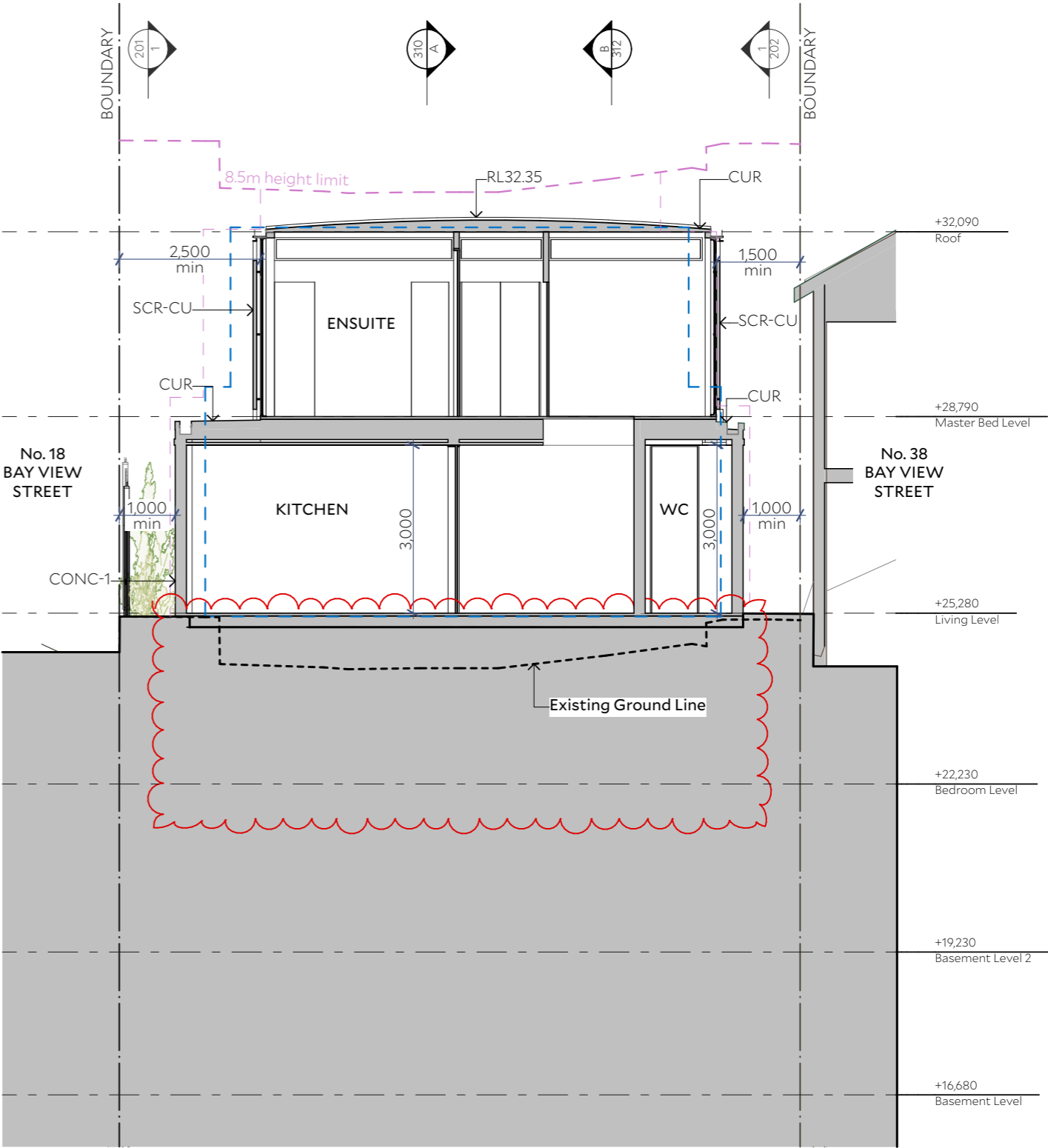
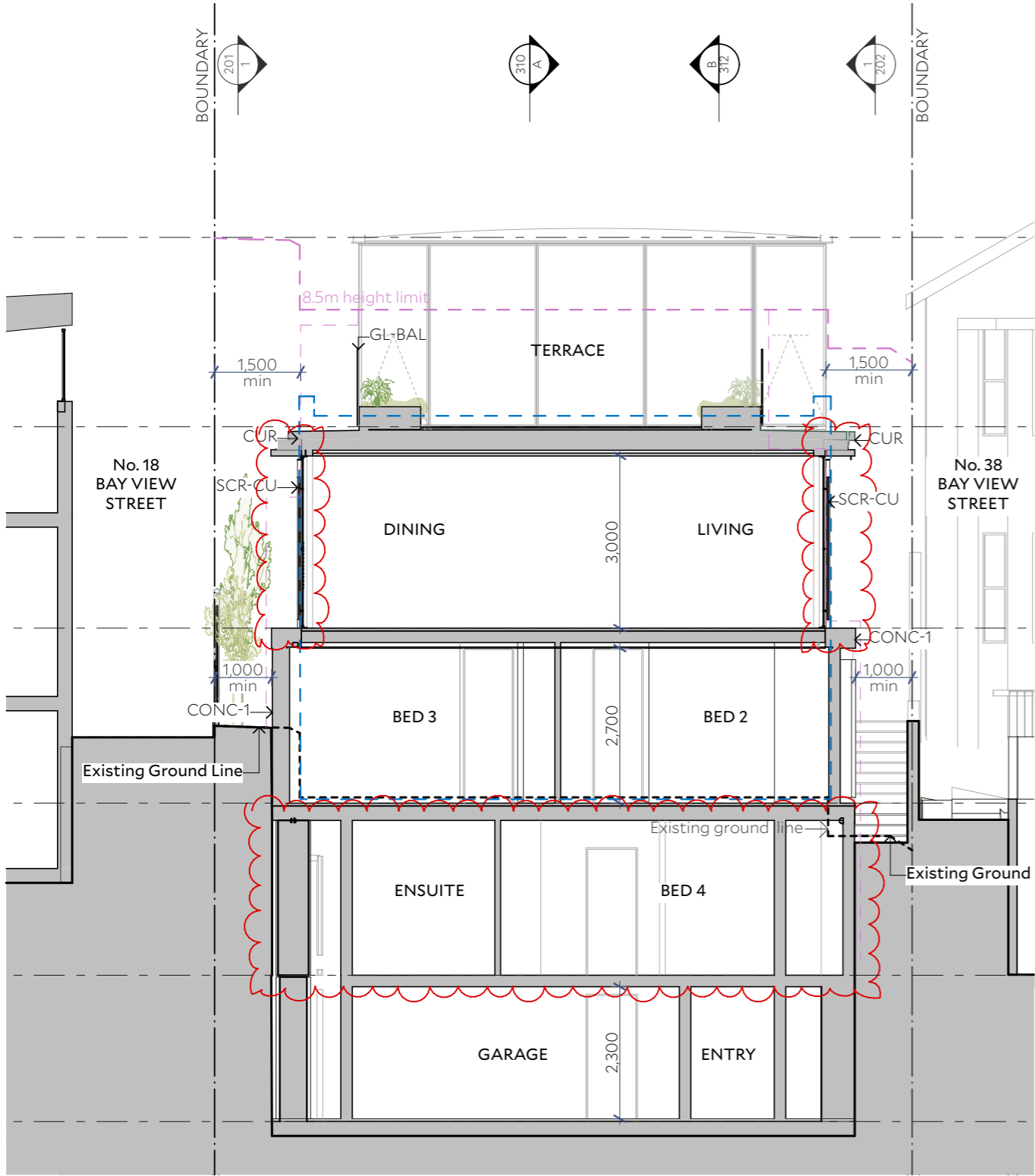






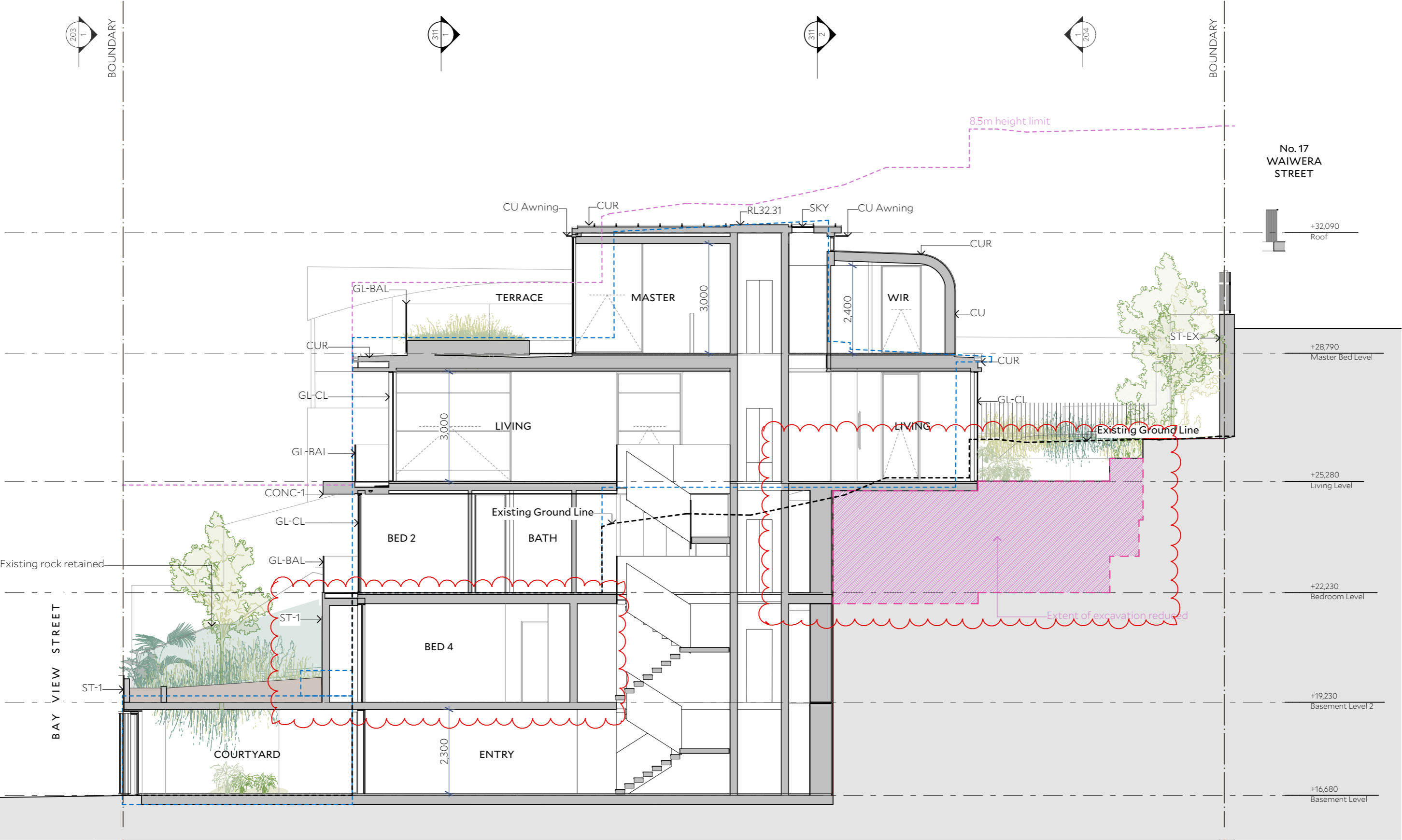






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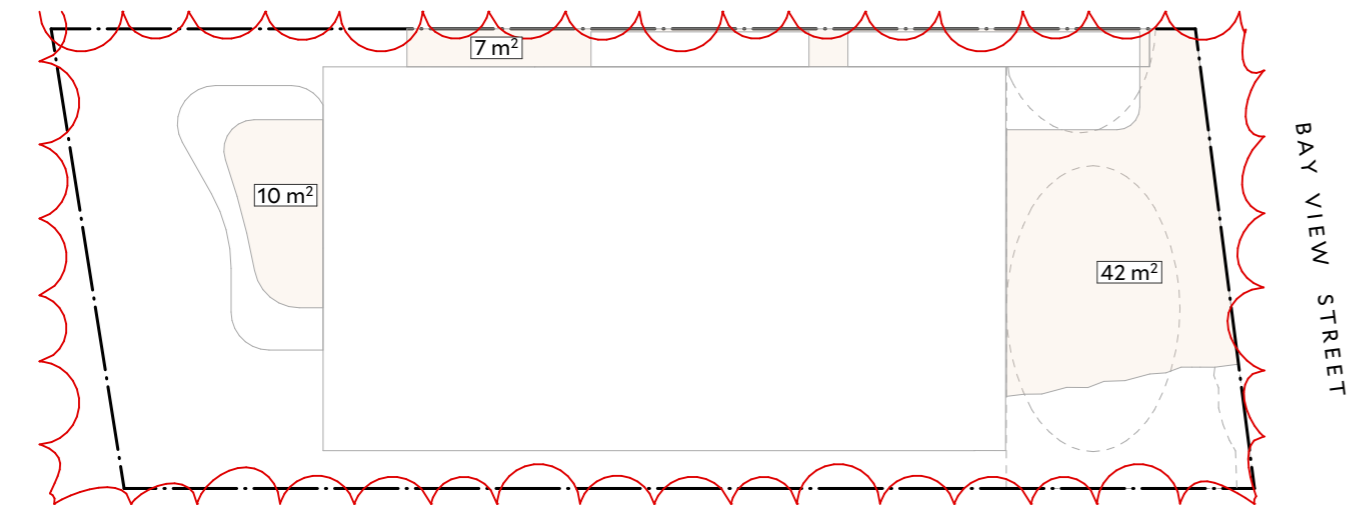
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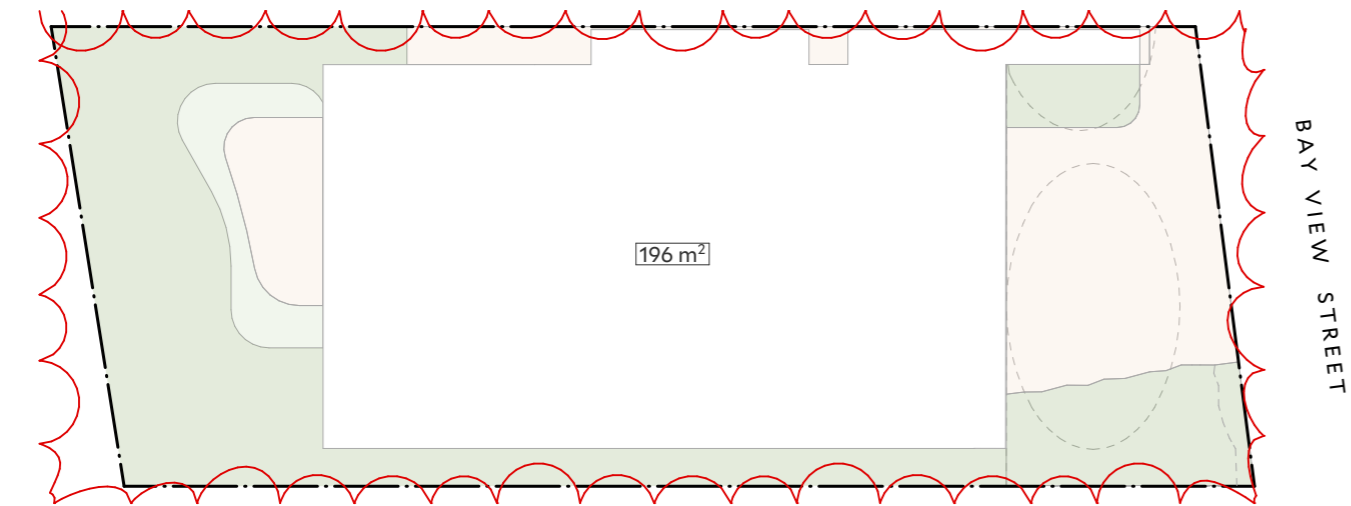
1 Landscape Area
1:200

LANDSCAPE AREA CALCULATIONS	
Site Area:	365.6 sqm
Proposed landscape area:	110 sqm
Required min. landscape area:	109.68 sqm (30%)



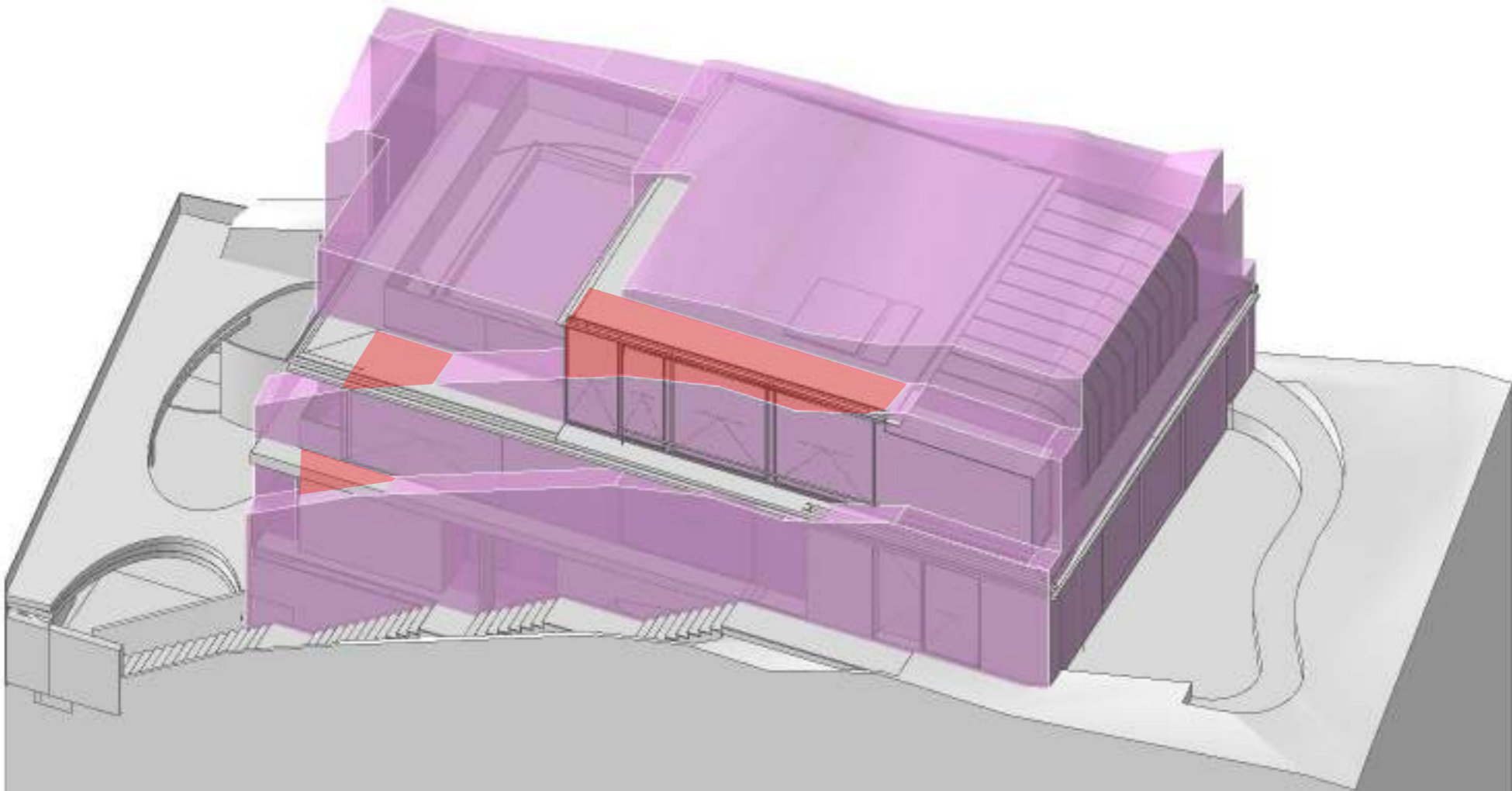
2 Un-built Upon Area
1:200

UN-BUILT UPON AREA CALCULATIONS	
Site Area:	365.6 sqm
Proposed un-built upon area:	59 sqm
Required max. un-built upon area:	73.12 sqm (20%)

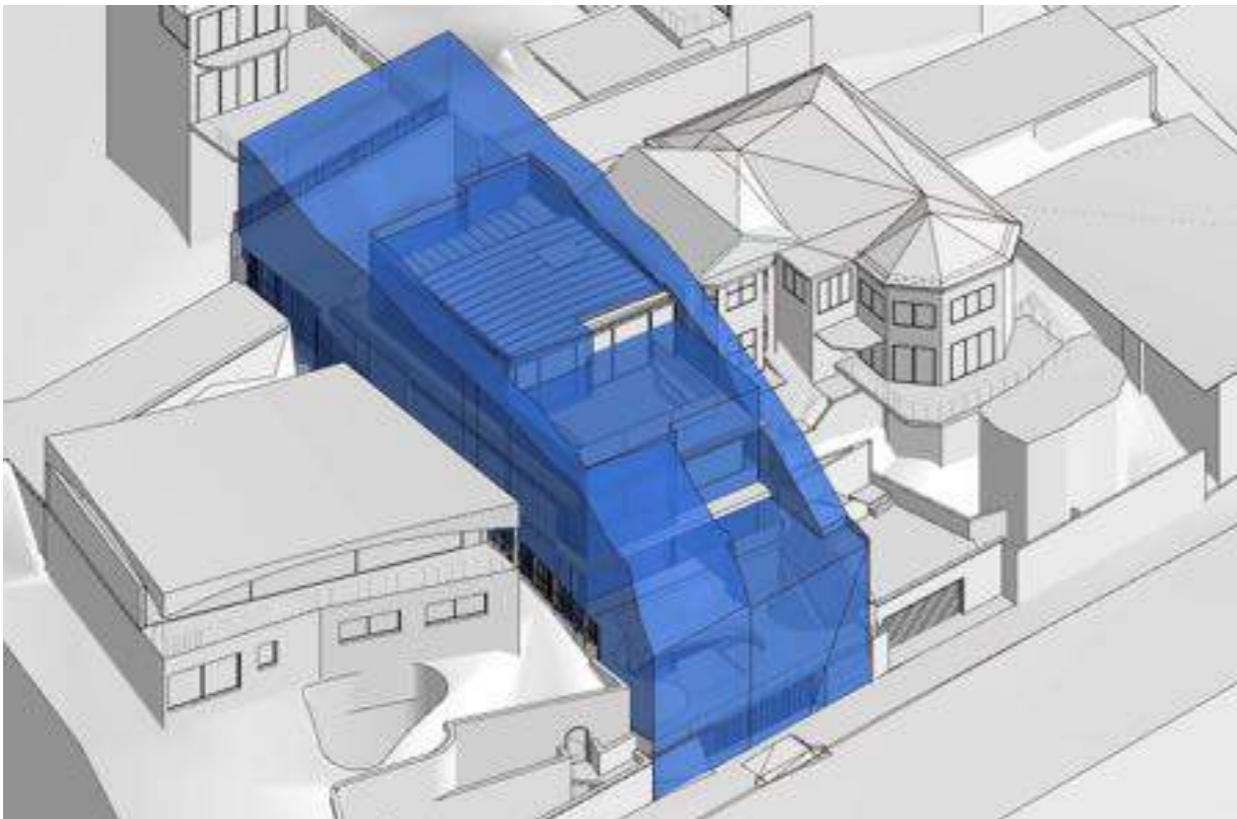


3 Site Coverage Area
1:200

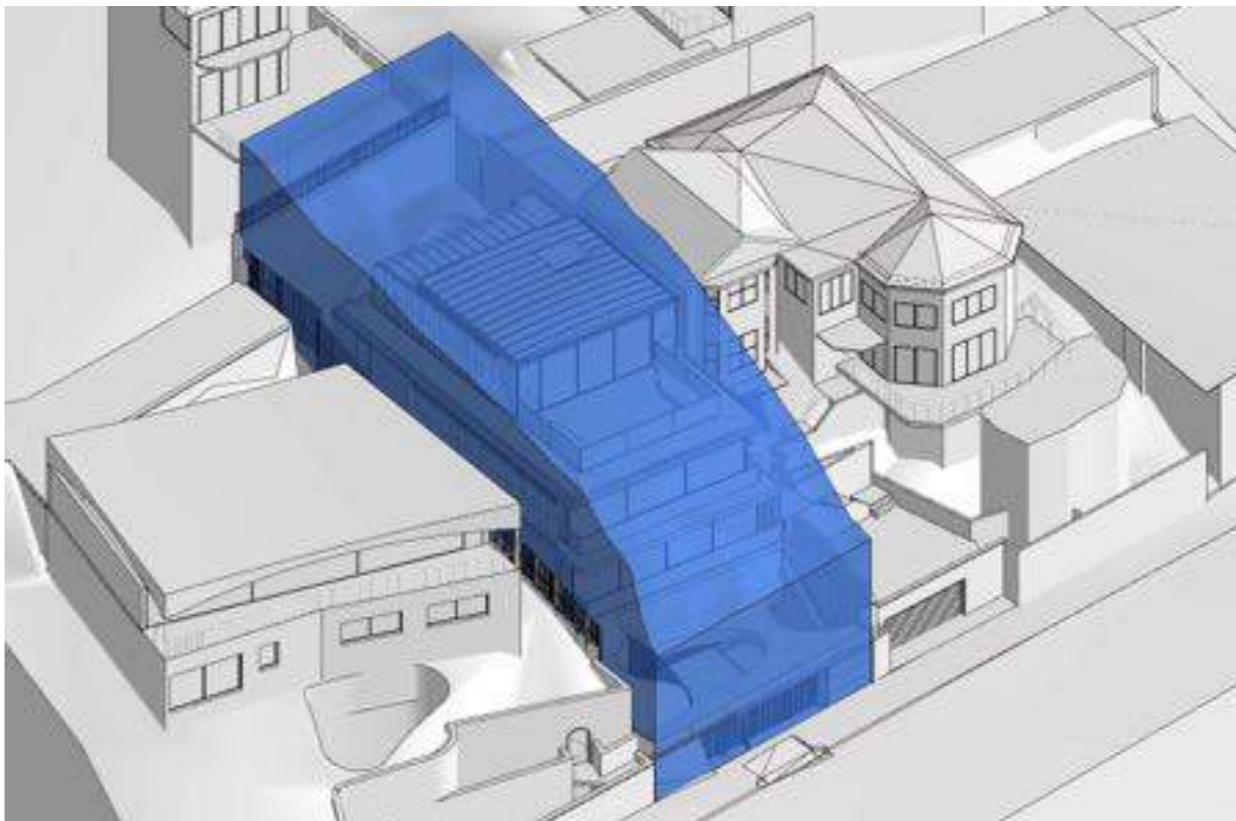
SITE COVERAGE AREA CALCULATIONS	
Site Area:	365.6 sqm
Existing site coverage area:	150.58 sqm
Proposed site coverage area:	196 sqm
Required site coverage area:	182.8 sqm (50%)



1 Side Setback Diagram



1 8.5m Merman Height Plane - Proposed Diagram



2 8.5m Bettar Height Plane - Proposed Diagram



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05	17/7/2024		For Review
06	19/7/2024		For Review

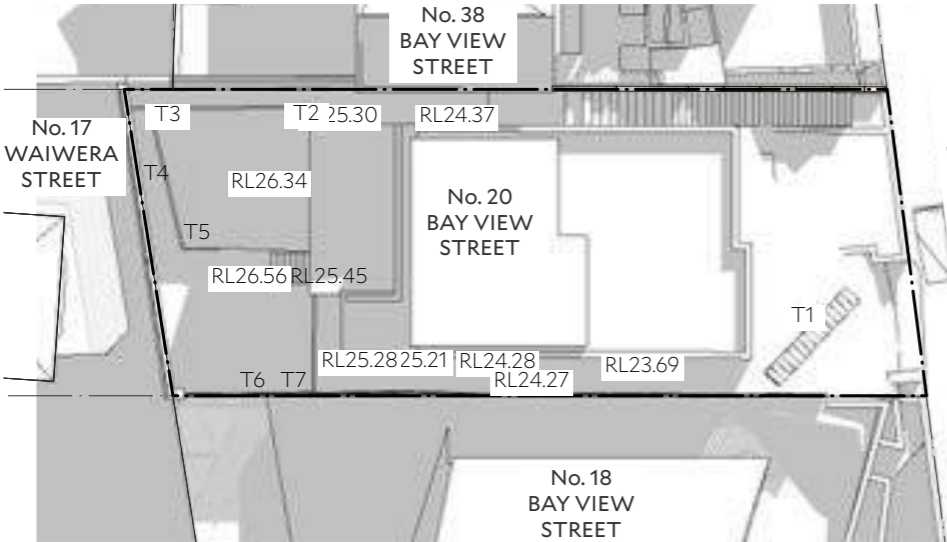
Legend
8.5m Height Plane

North

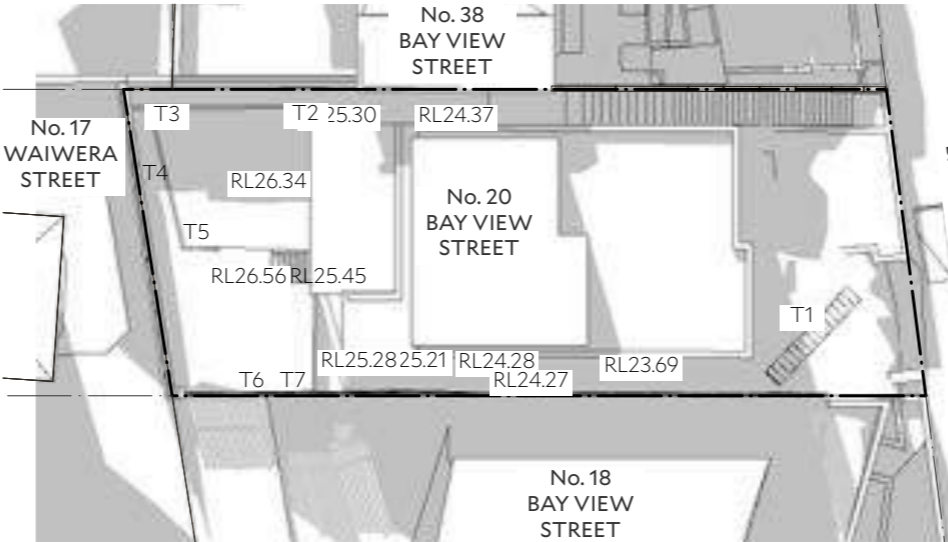
Scale

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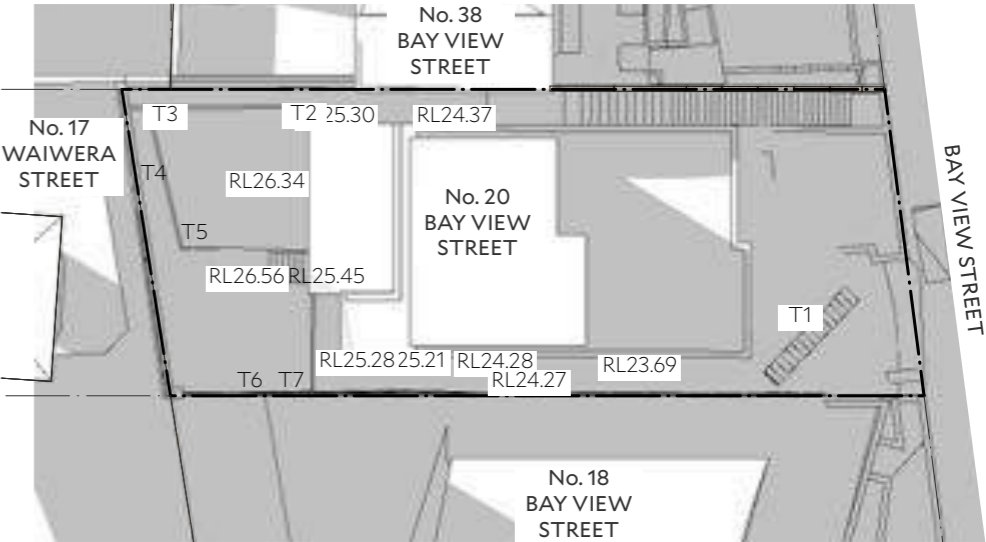
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Scale NTS @ A3
Date 13/02/24
Drawn by MR
Drawing Number+ Revision 353_DA_412
06



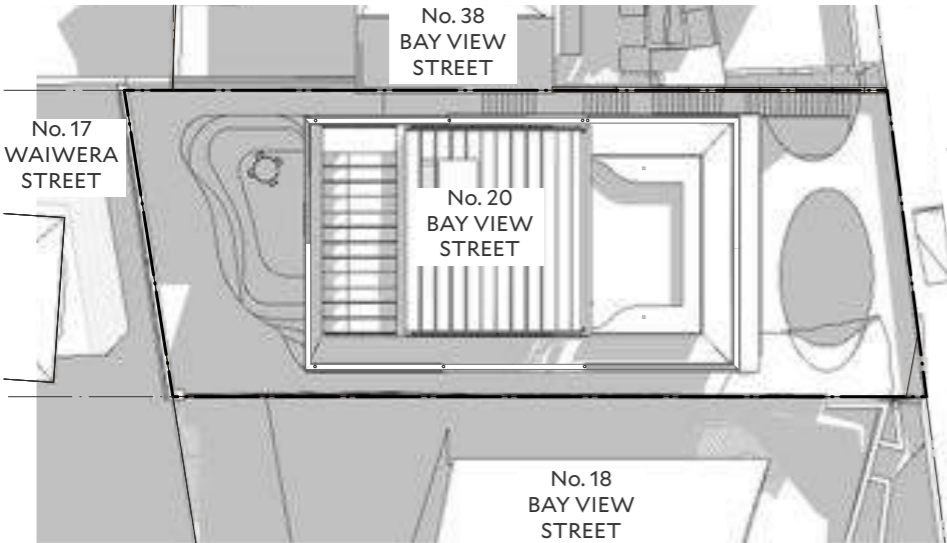
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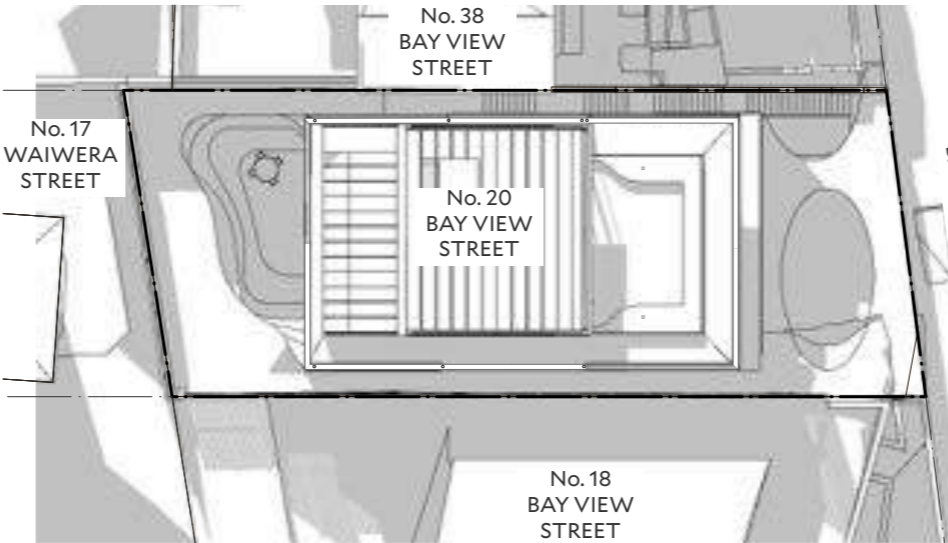
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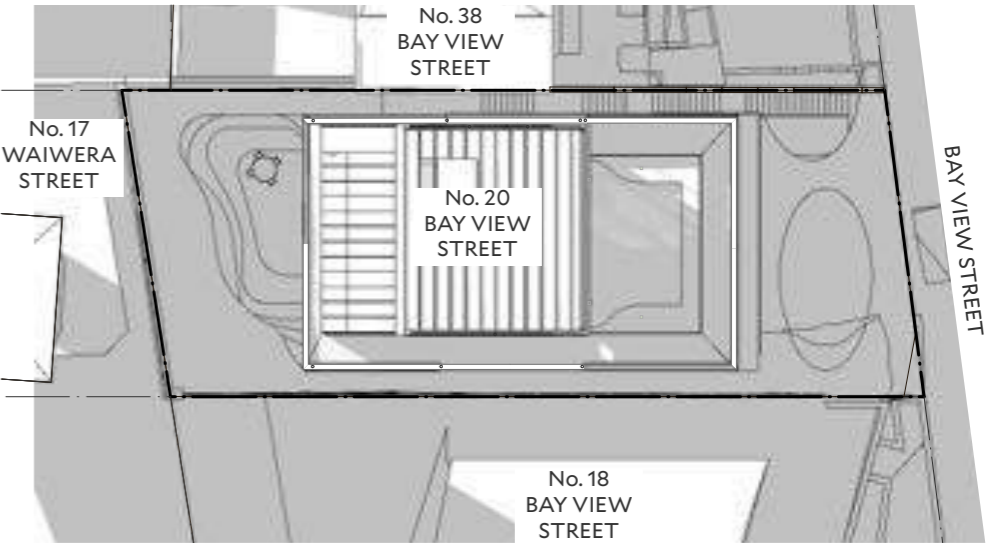
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June 21 9:00am - Proposed



June 21 12:00pm - Proposed



June 21 3:00pm - Proposed



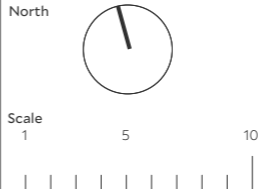
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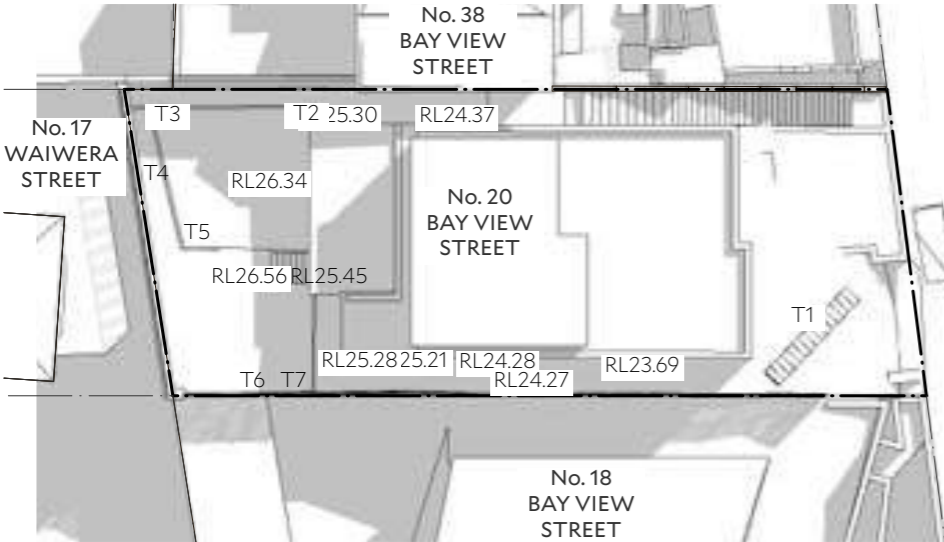
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Legend

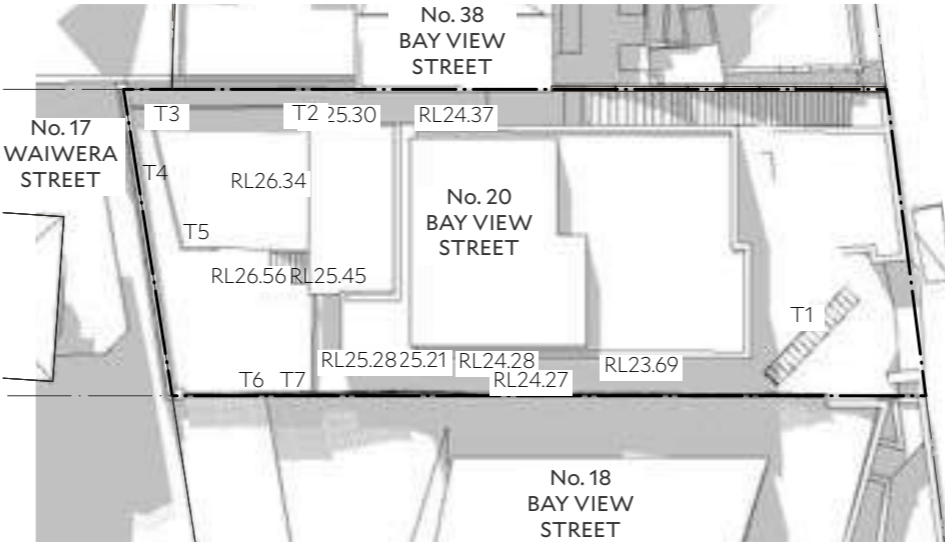


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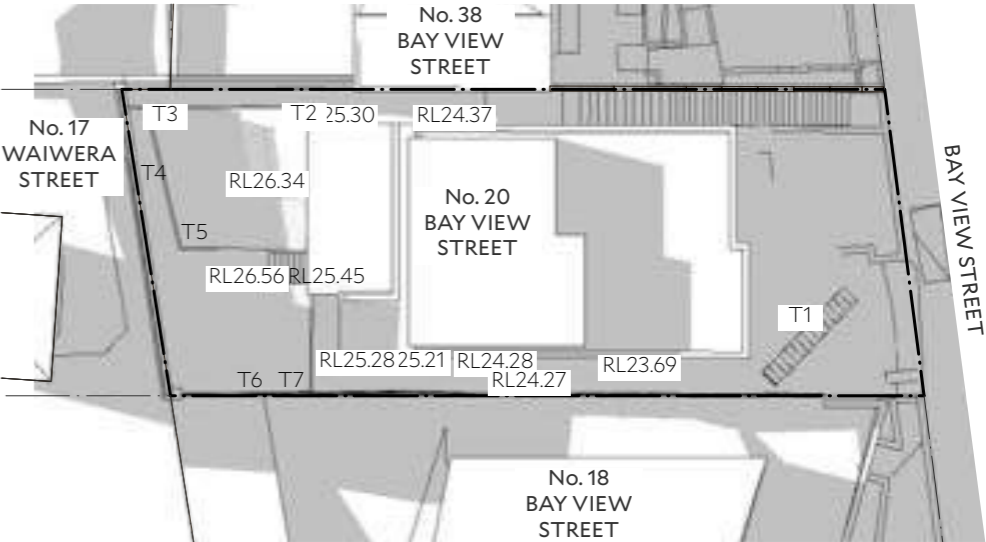
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Date	16/02/24
Drawn by	MR
Drawing Number+ Revision	353_DA_421
	04



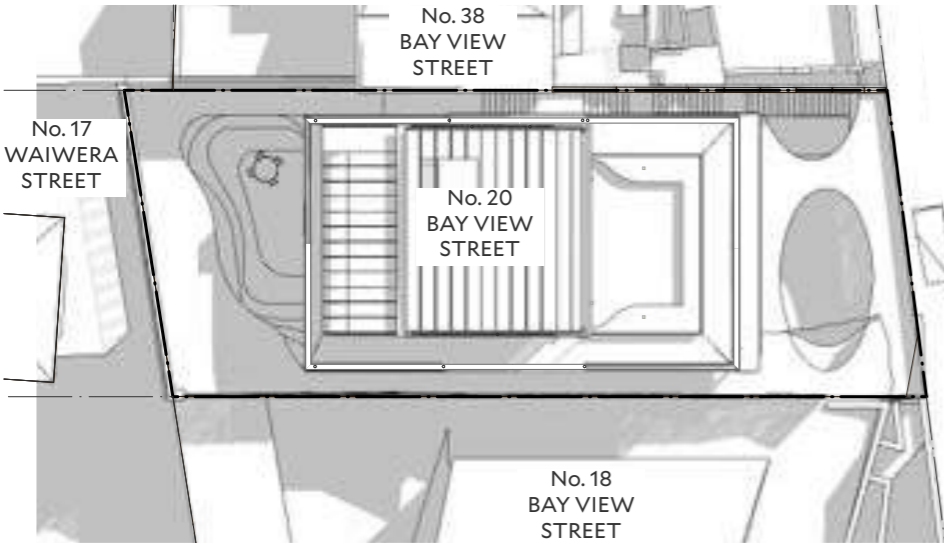
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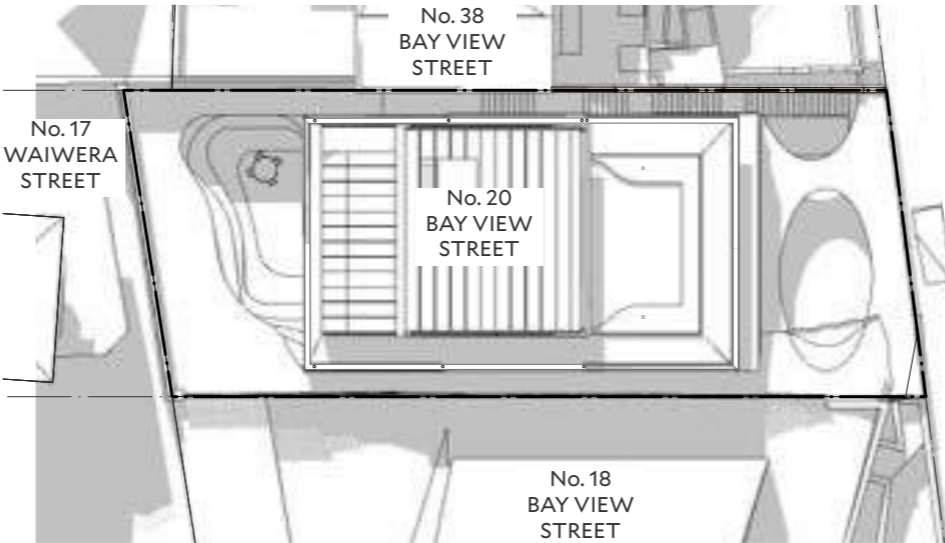
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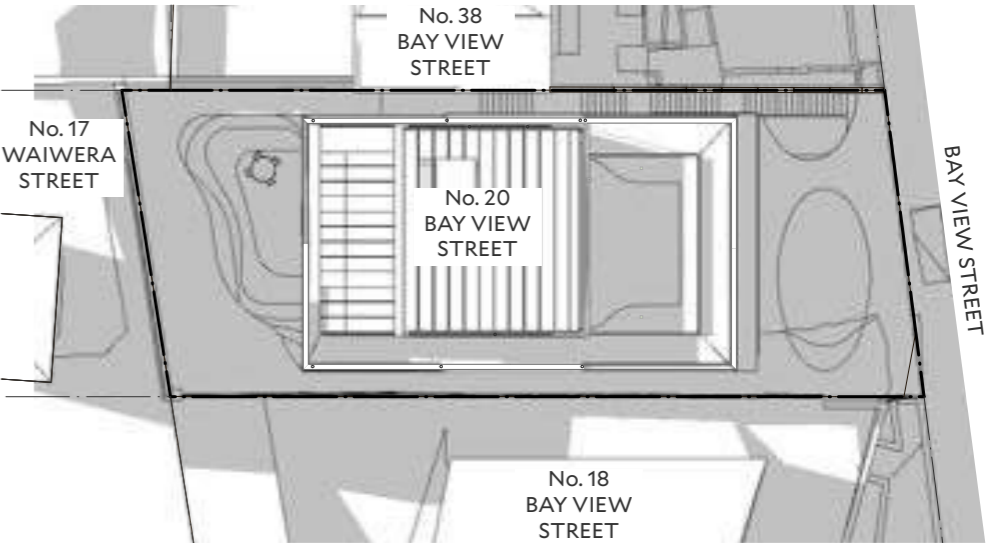
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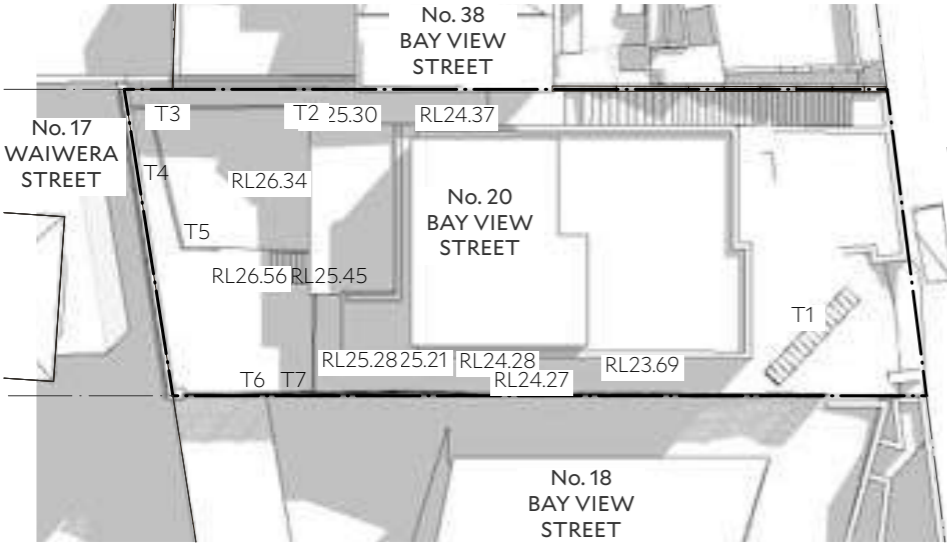
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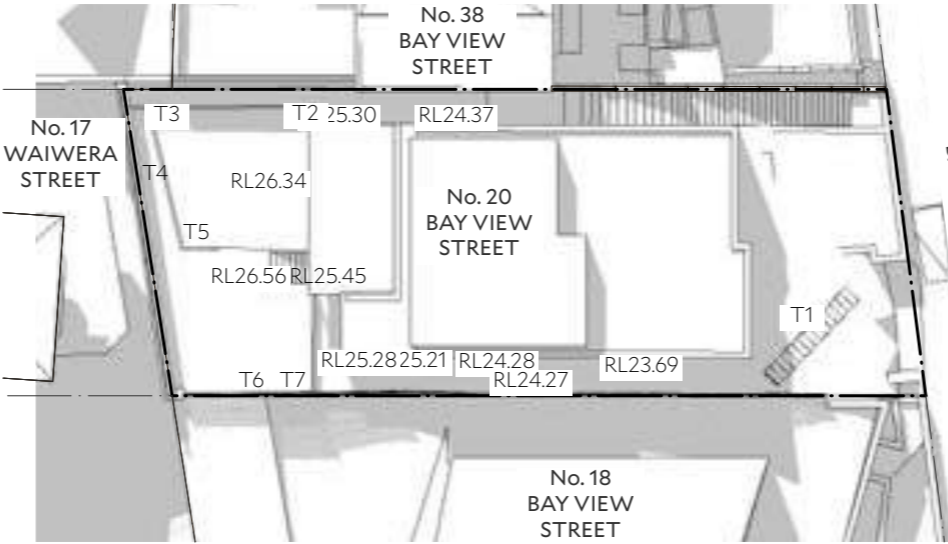
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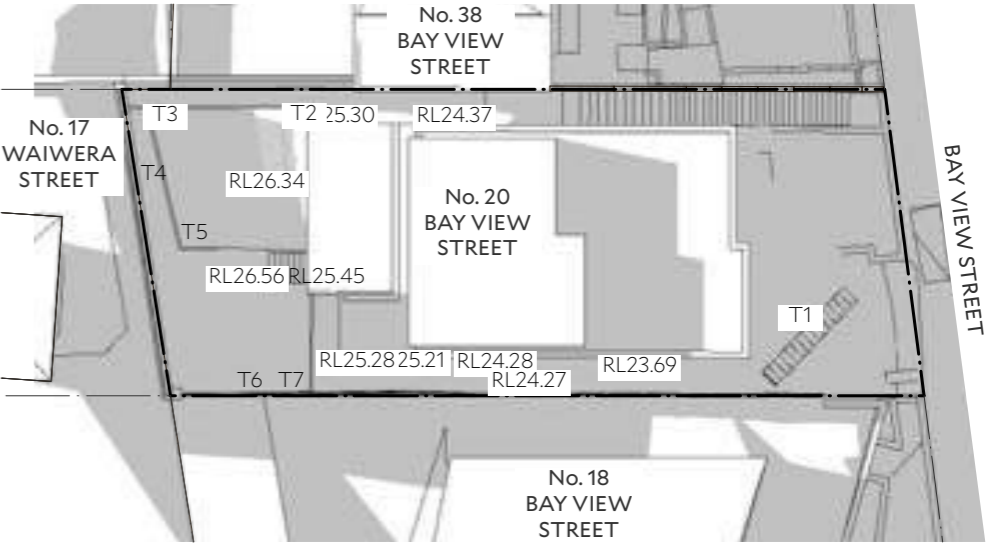
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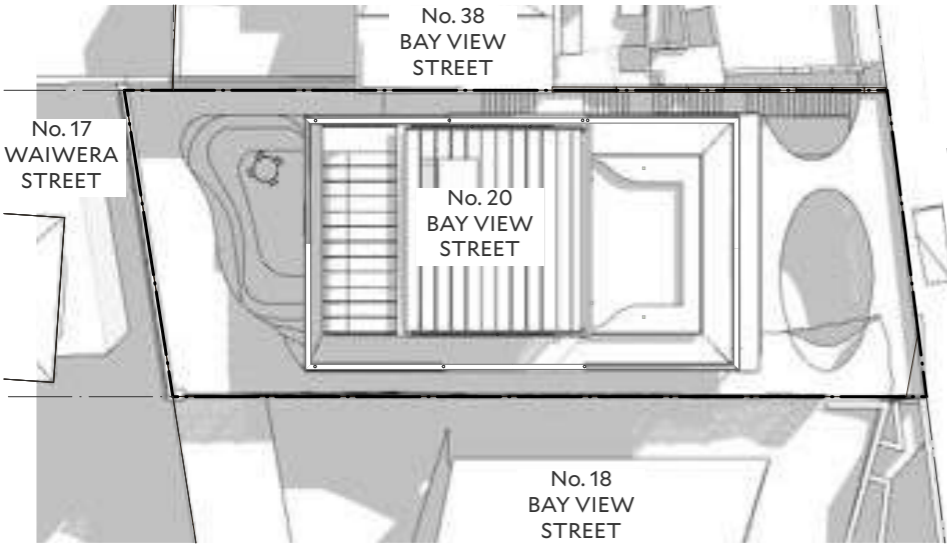
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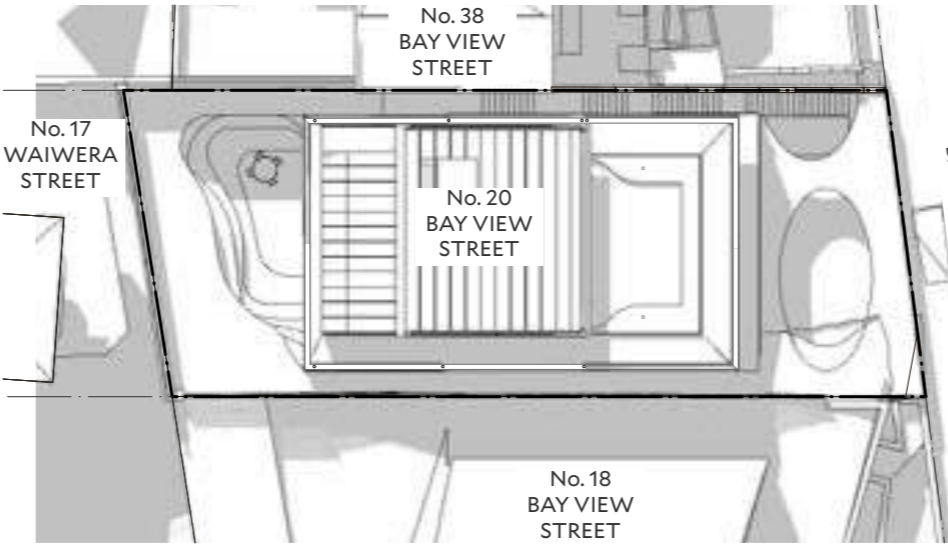
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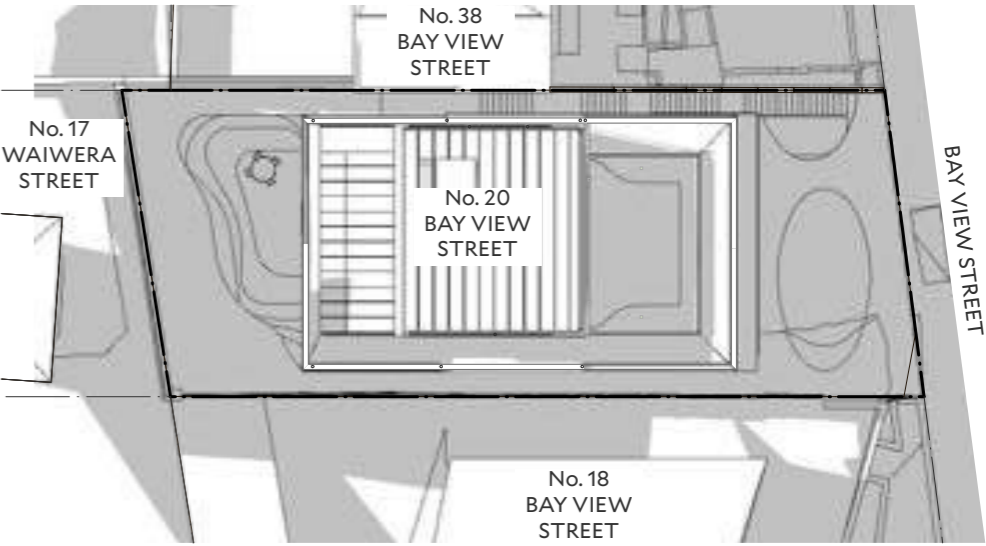
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September 21 12:00pm - Proposed



September 21 3:00pm - Proposed



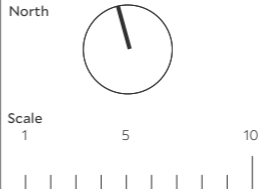
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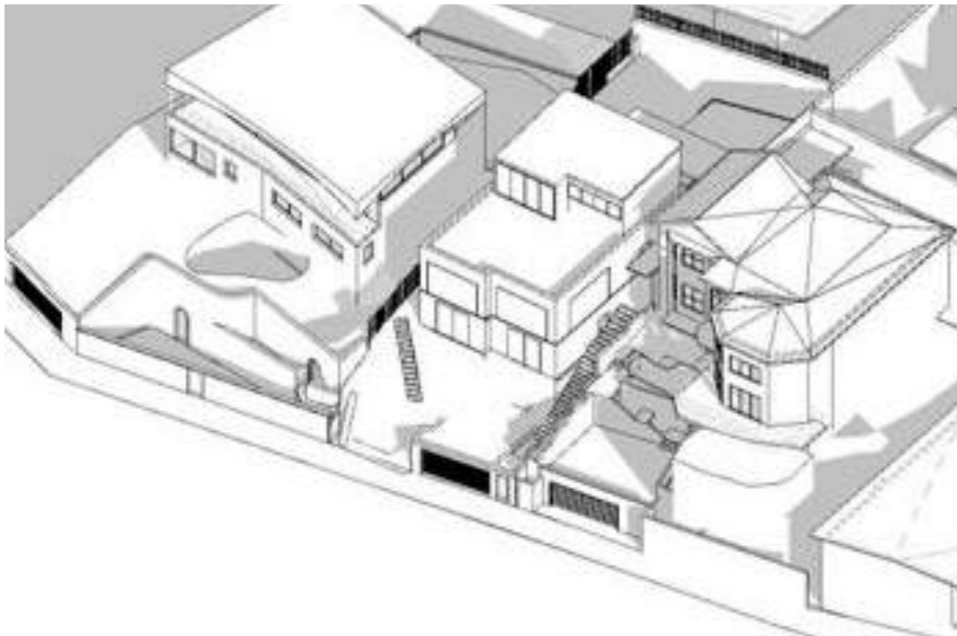
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Legend

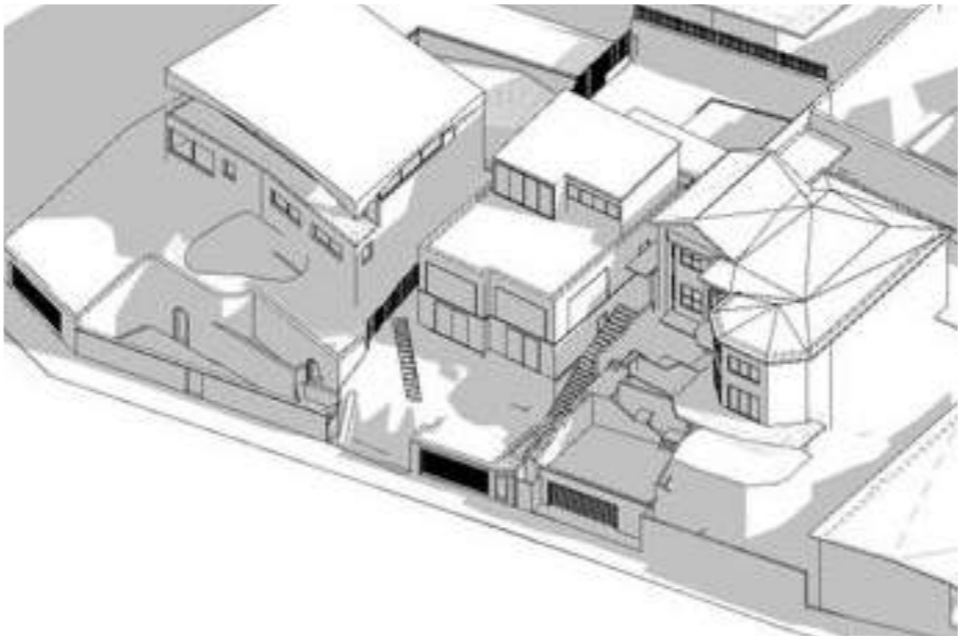


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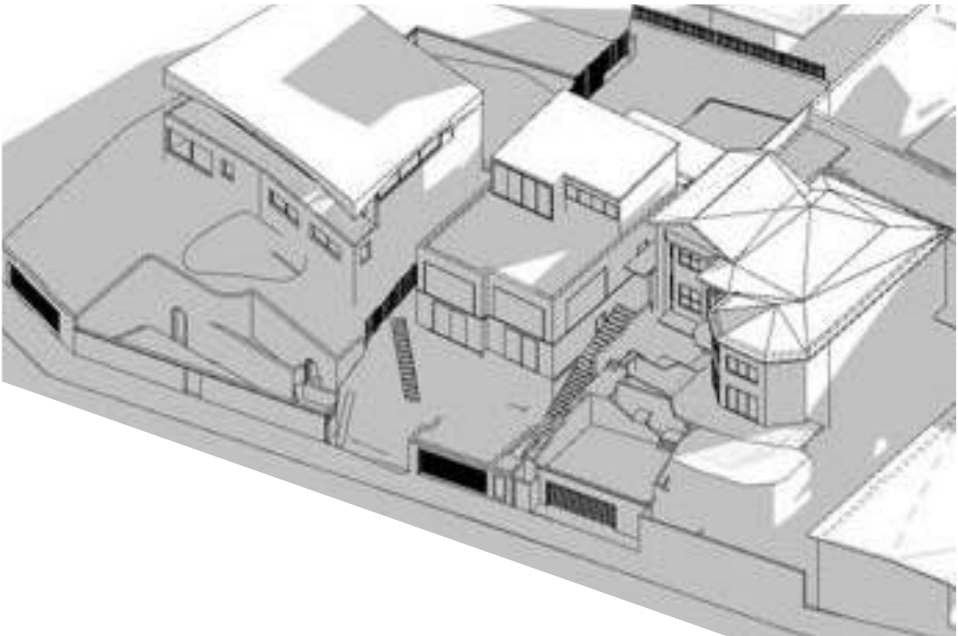
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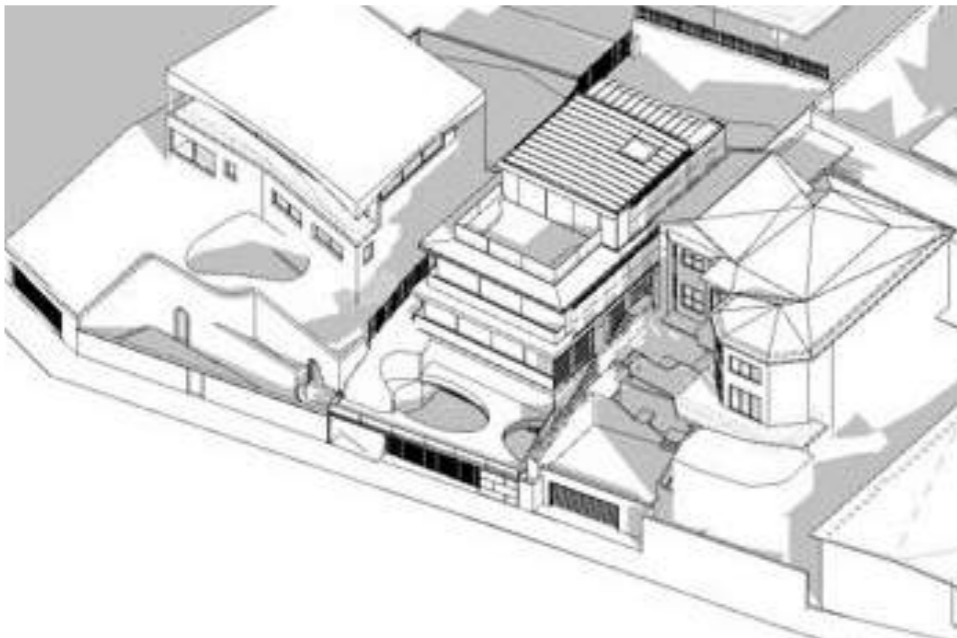
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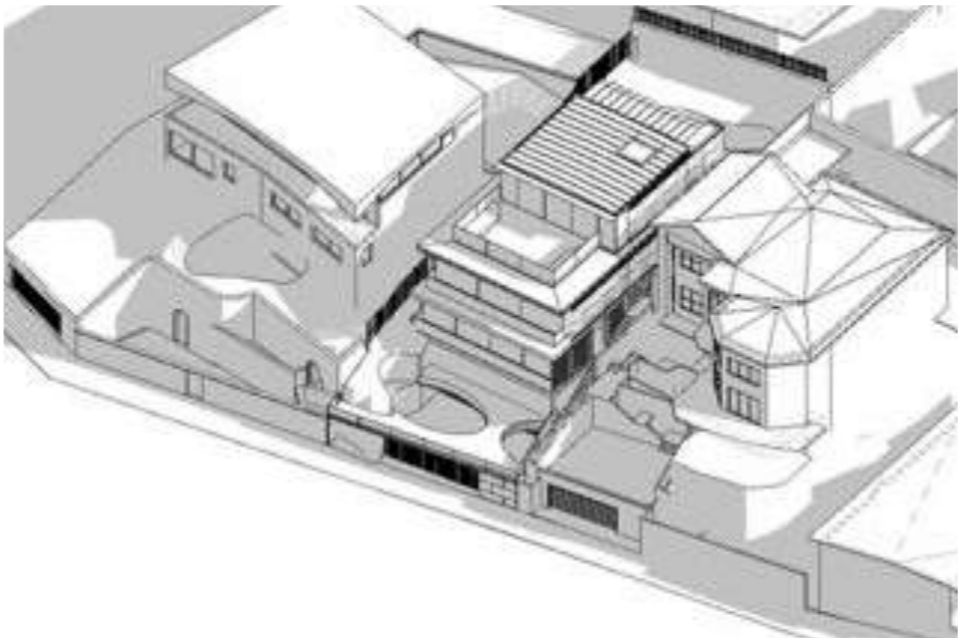
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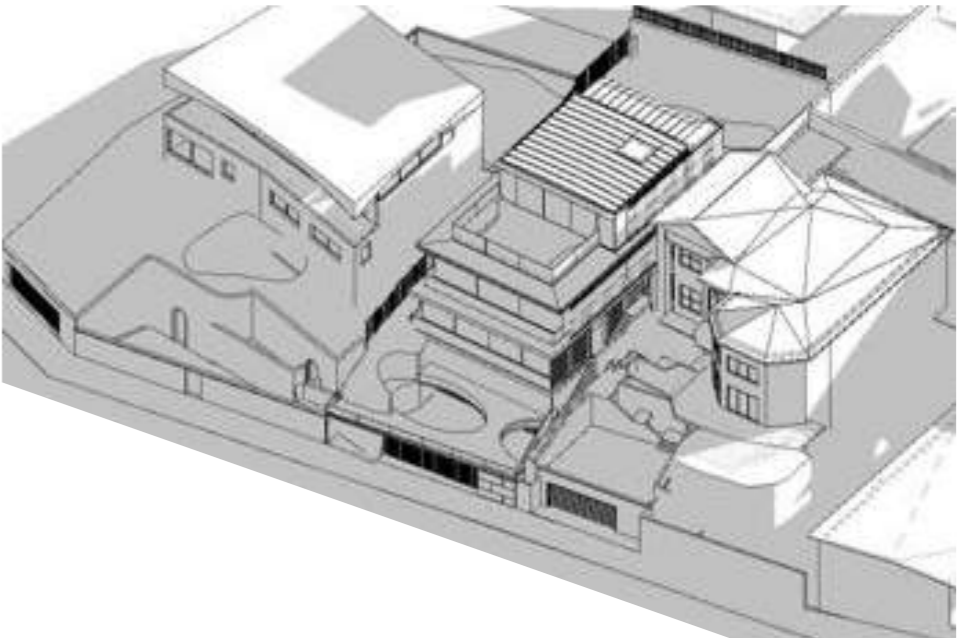
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June 21 9:00am - Proposed



June 21 12:00pm - Proposed



June 21 3:00pm - Proposed



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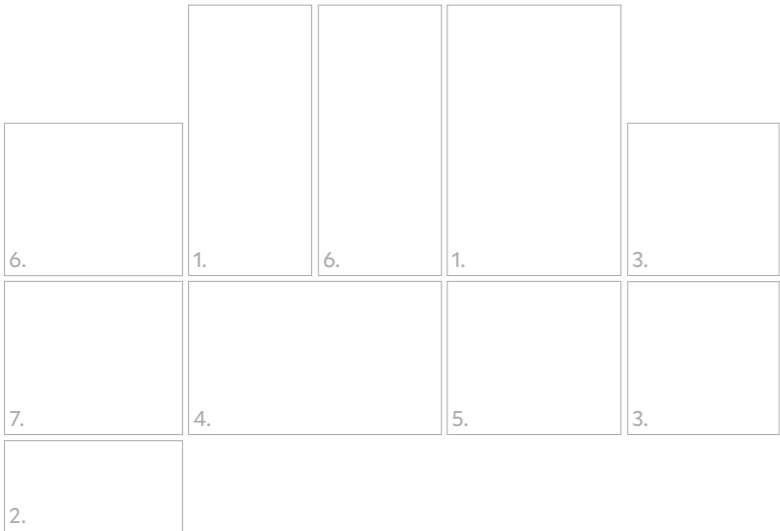
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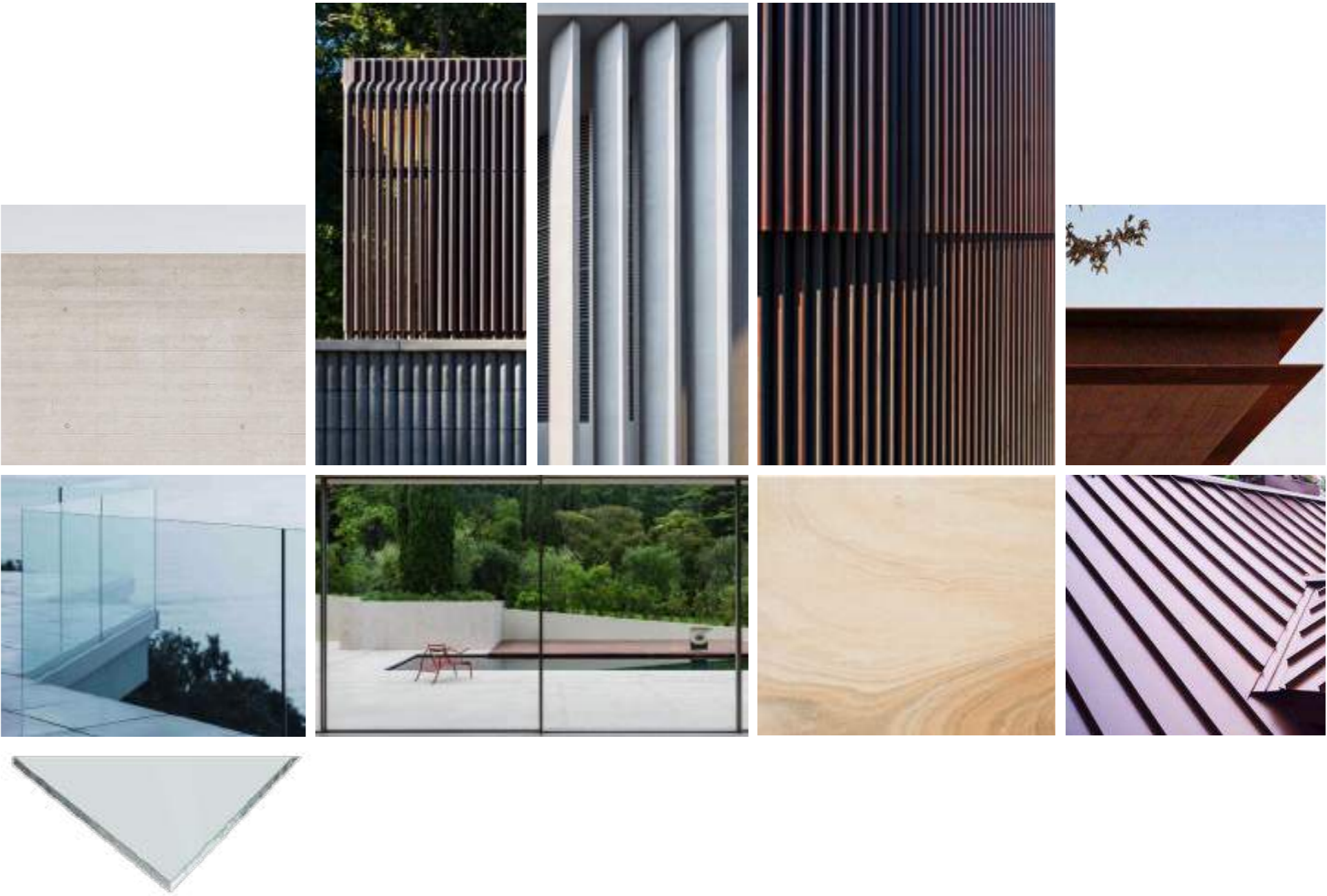
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Project
353
20 Bay View Street Lavender Bay,
NSW 2060 Lot 1 D.P.89034
Client
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Drawing title
Shadow Diagrams
Scale
Date
Drawn by
Drawing Number+ Revision
NTS @ A3
16/02/24
MR
353_DA_424



- | | | |
|----|-----------------------------------------------------------------------|--------|
| 1. | External Metal Screening
- Copper toned screen | SCR-CU |
| 2. | Glazing
- Window and door glazing
- Clear finish | GL-CL |
| 3. | Standing Seam Roof & Awning
- Copper toned finish | CUR |
| 4. | Aluminium window & door frames
- Dark bronze metallic toned finish | AL |
| 5. | External Cladding
- Natural stone | ST-1 |
| 6. | External walls & screen
- Concrete | CONC-1 |
| 7. | Balustrade
- Frameless glass
- Clear finish | GL-BAL |



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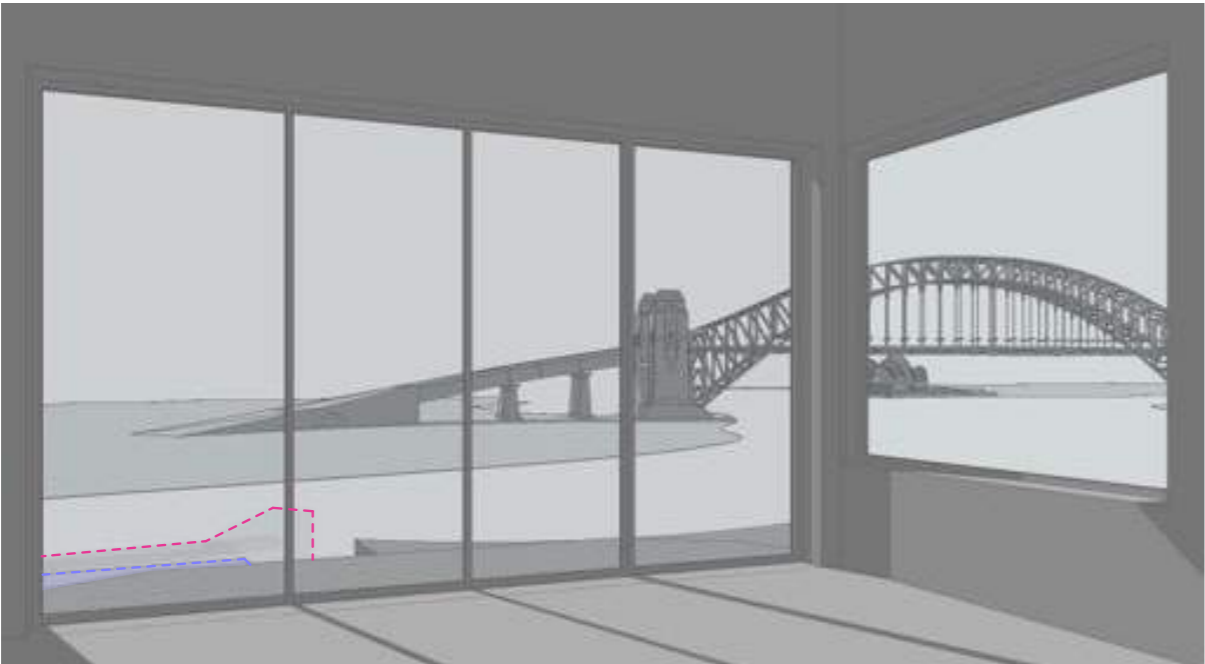
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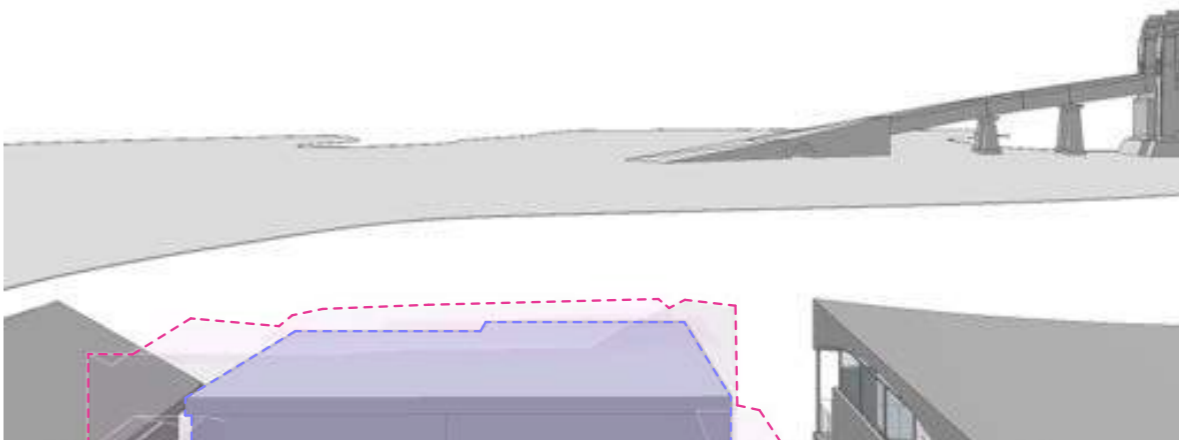
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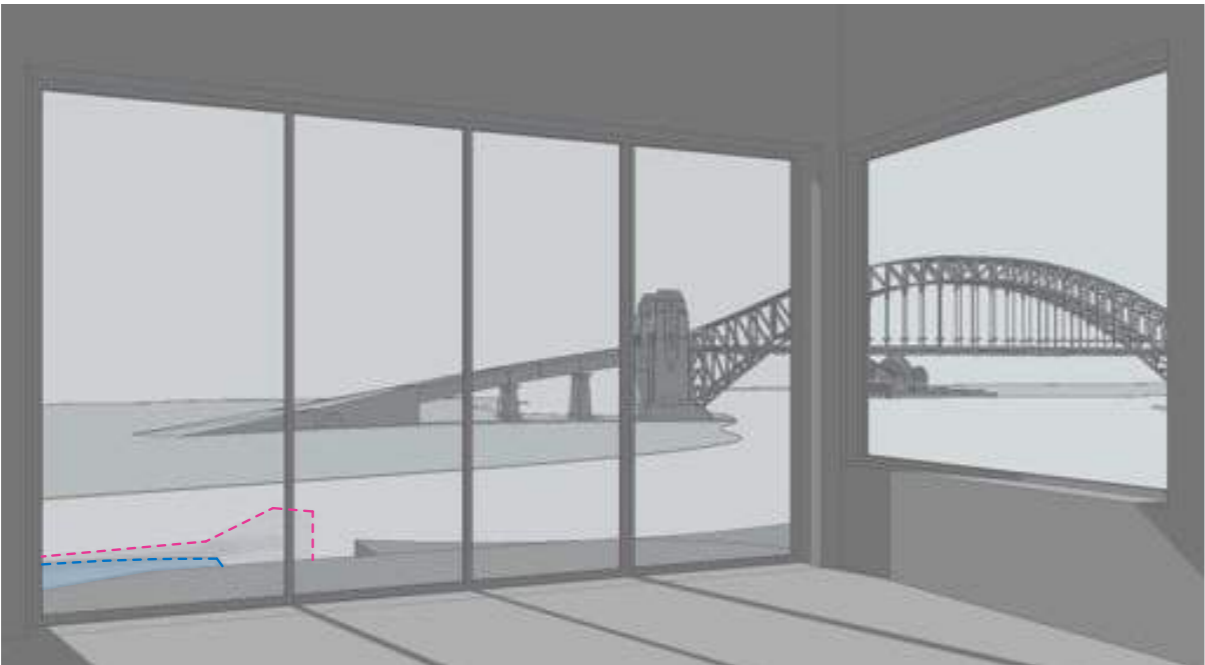
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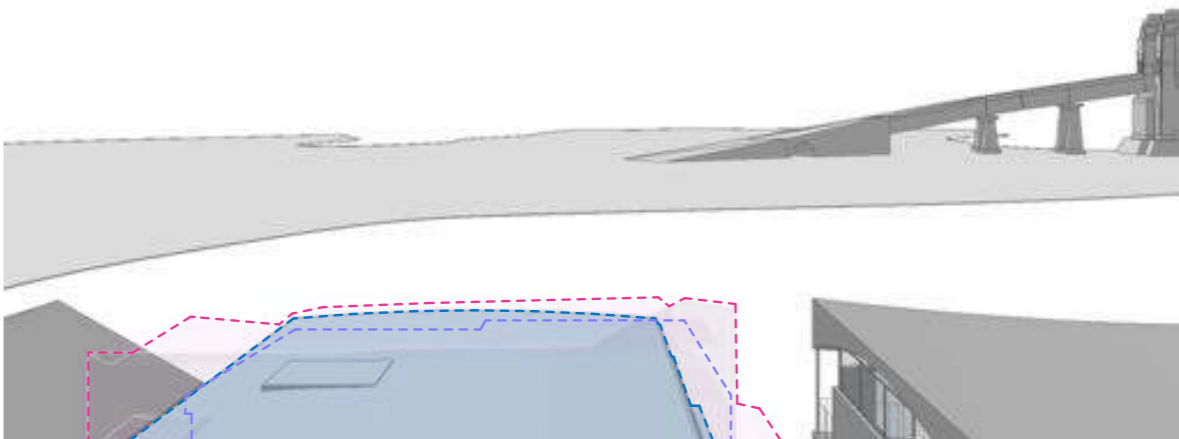
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Living RL 35.58 - Existing



Living RL 35.58 - Proposed



Living RL 35.58 - Proposed



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Legend
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--- Proposed built form
--- Existing built form

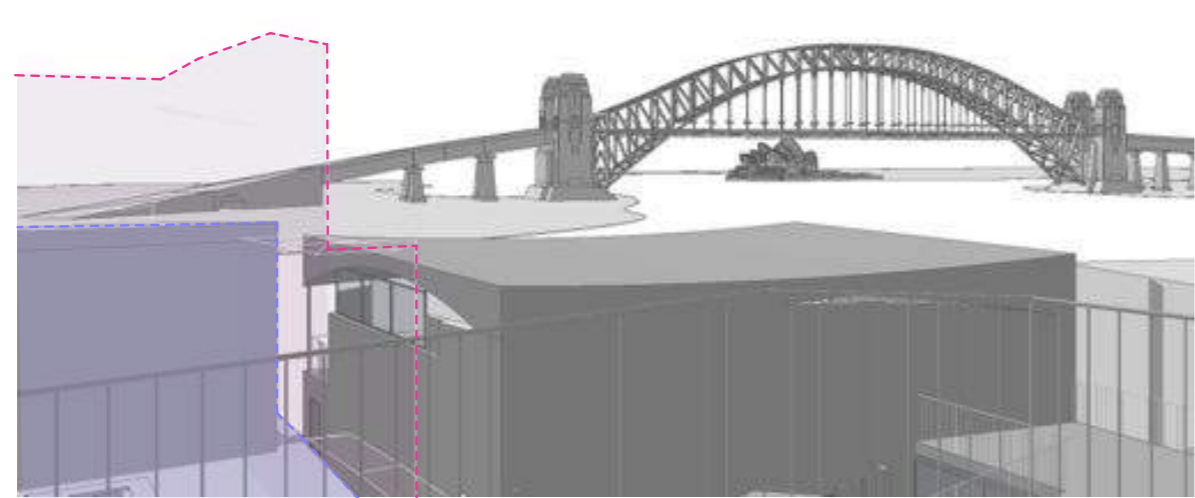
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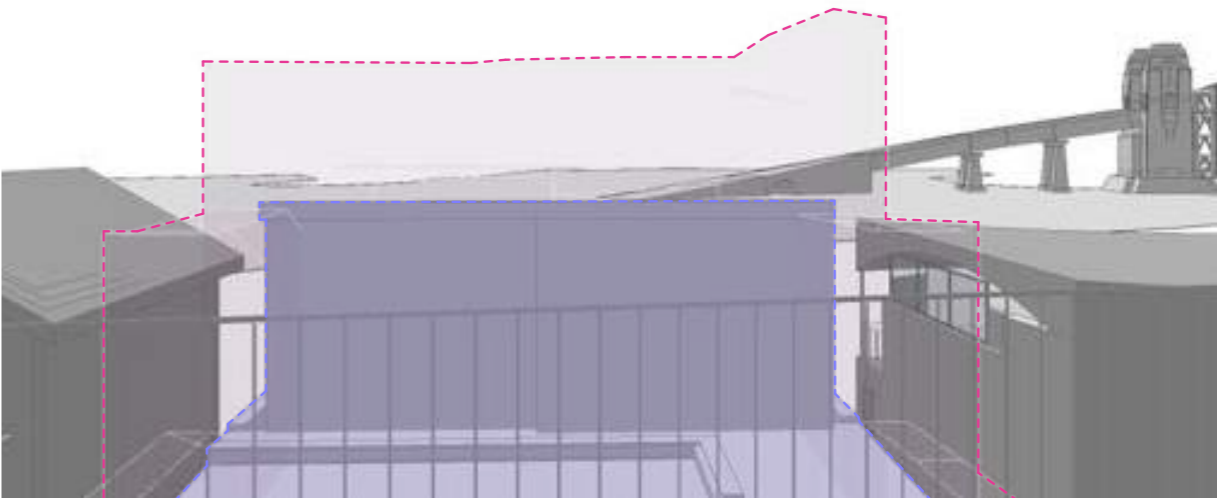
Project
353
20 Bay View Street Lavender Bay,
NSW 2060 Lot 1 D.P.89034
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Drawn by	MR
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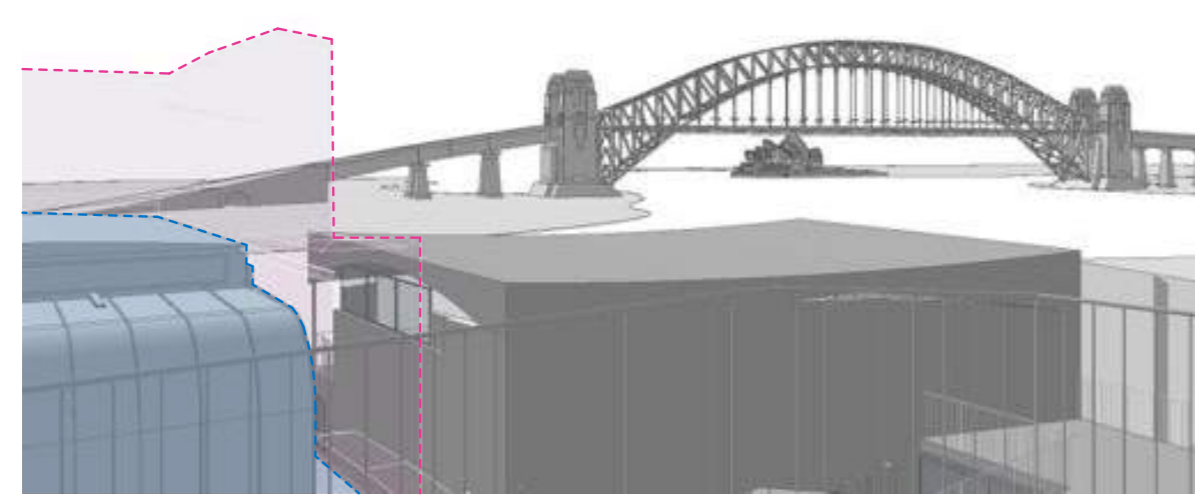
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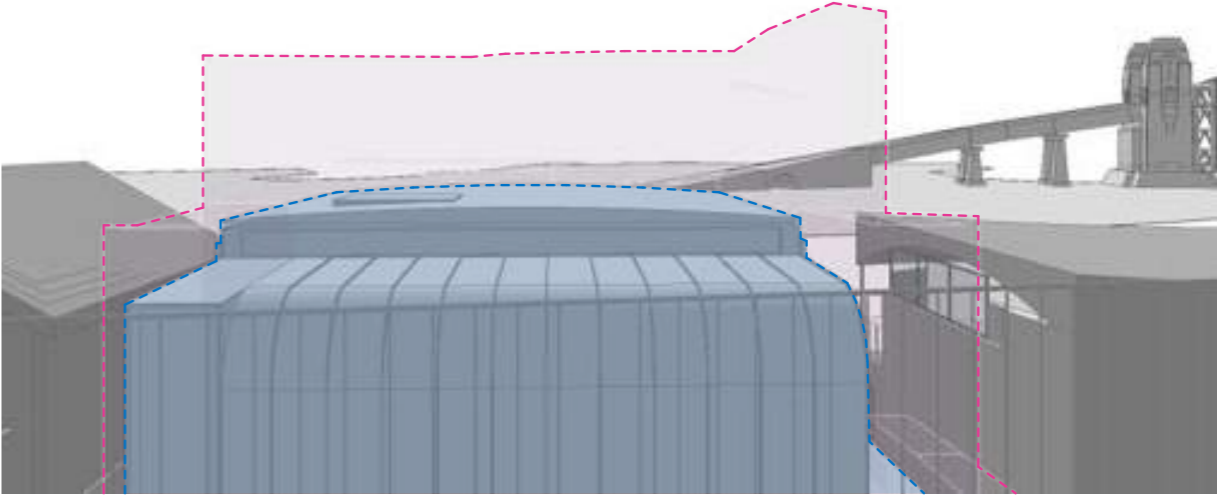
Terrace RL 31.84 - Existing



Terrace RL 31.84 - Existing



Terrace RL 31.84 - Proposed



Terrace RL 31.84 - Proposed



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--- Existing built form

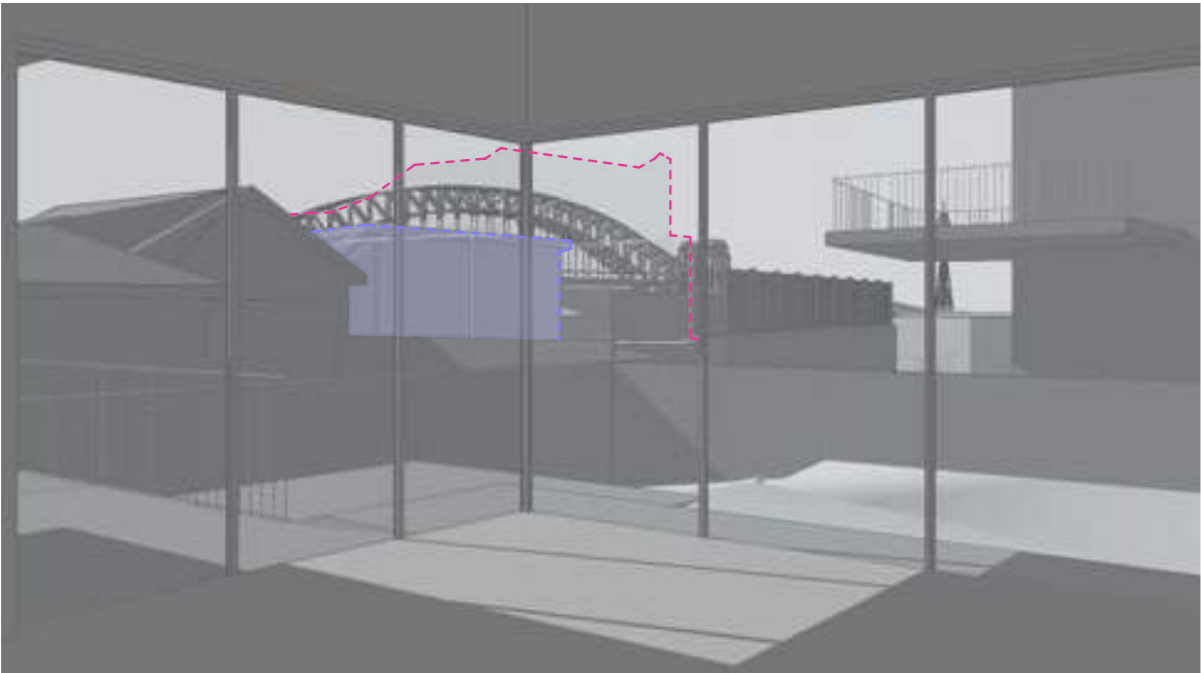
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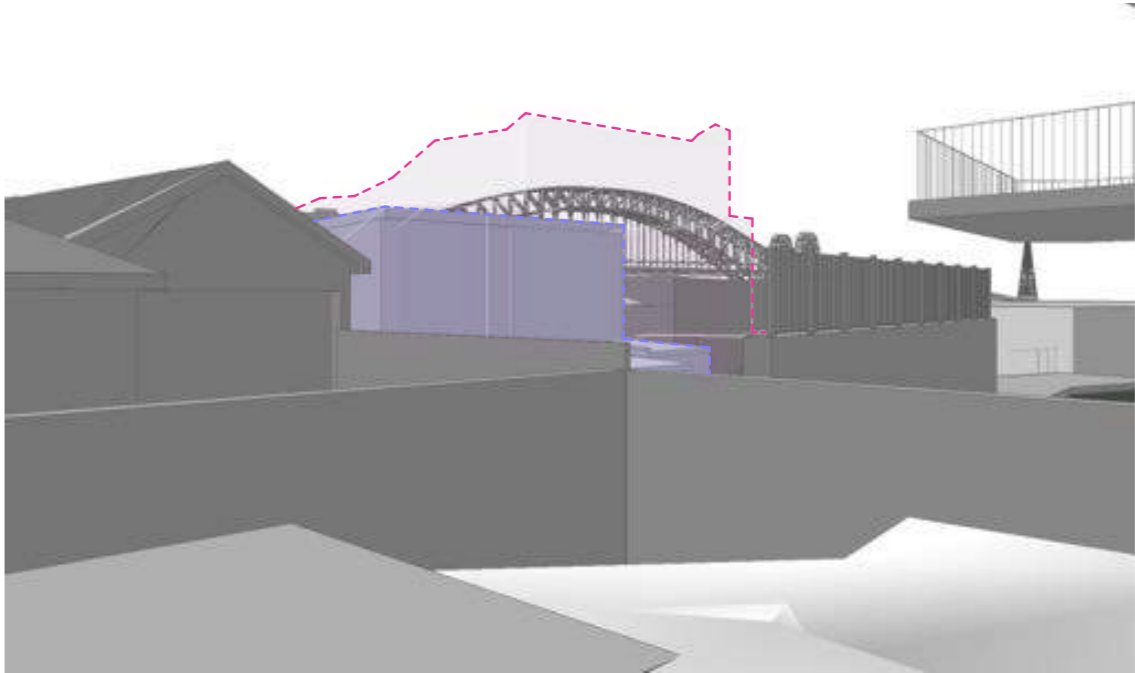
Project
353
20 Bay View Street Lavender Bay,
NSW 2060 Lot 1 D.P.89034
Client
Tina Huang and Jimmy Wu
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Drawing title	View Analysis
Scale Date Drawn by	NTS @ A3 27/03/24 MR
Drawing Number+ Revision	353_DA_612
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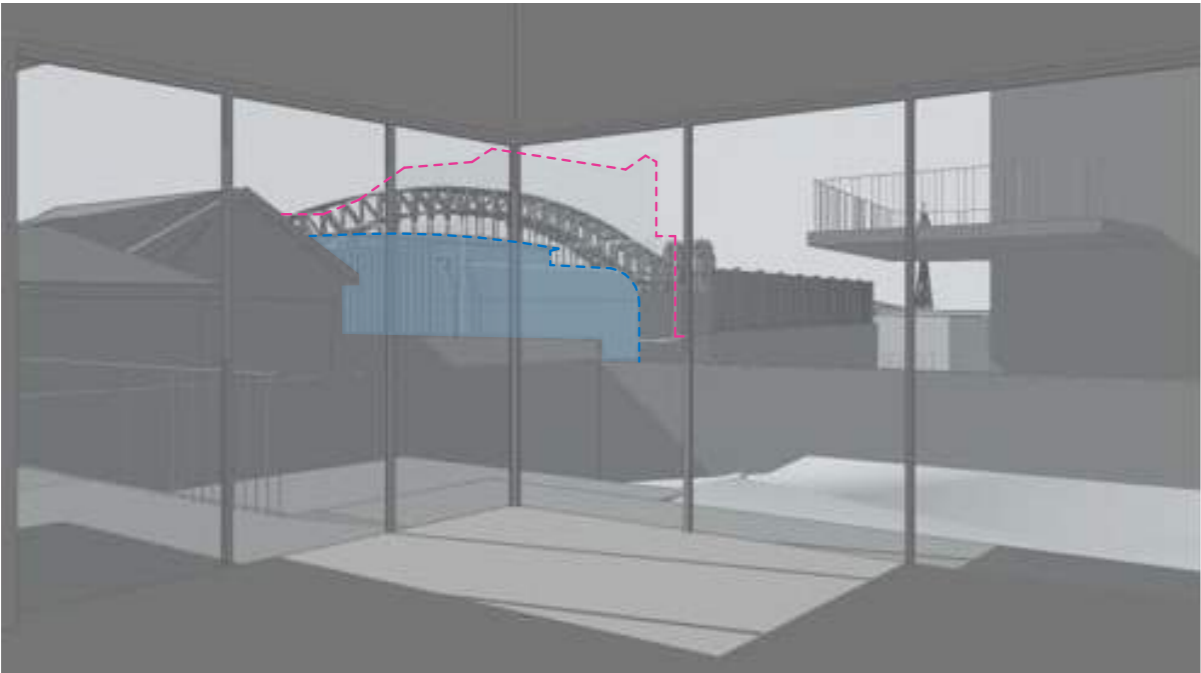
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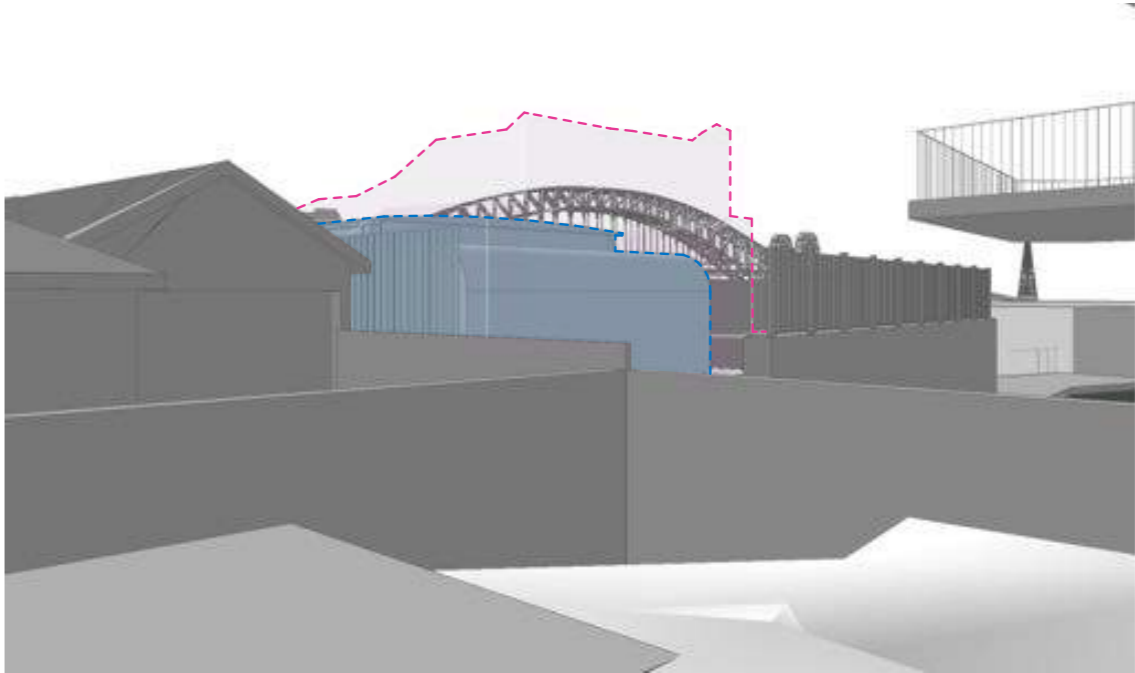
Kitchen RL28.95 - Existing House



Terrace RL28.85 - Existing House



Kitchen RL28.95 - Proposed



Terrace RL28.85 - Proposed



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Legend
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--- Existing built form

North

Scale

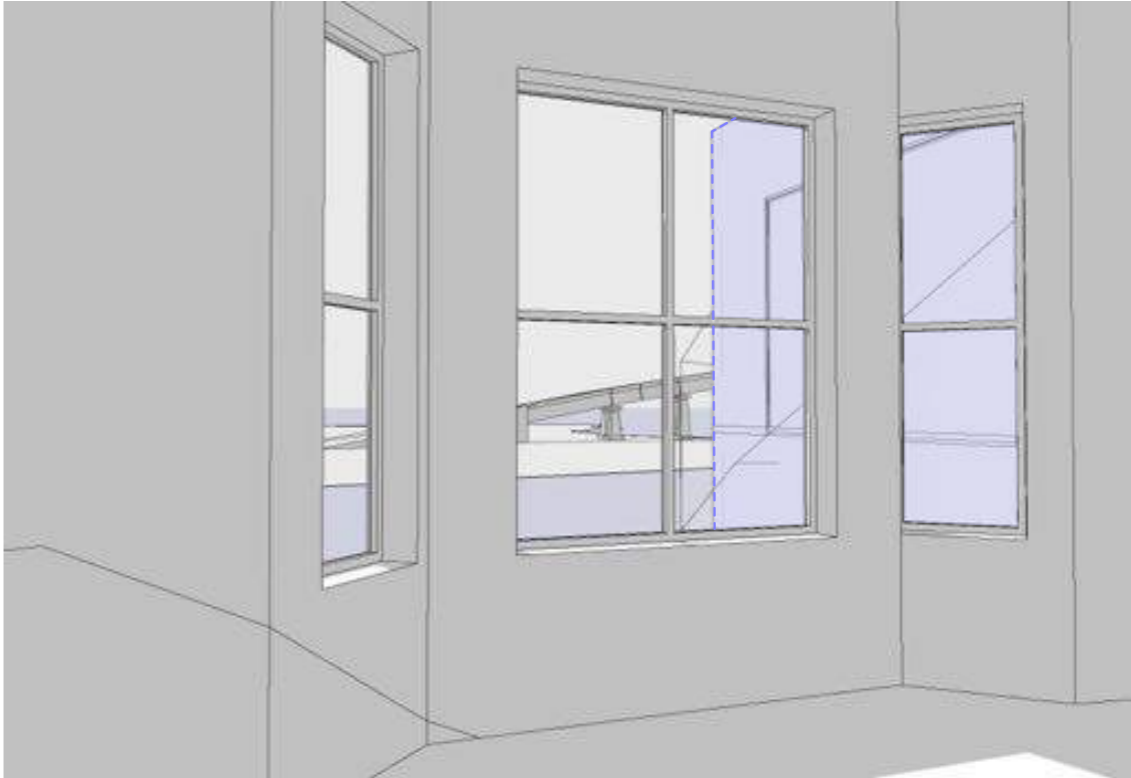
Project
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Drawing title	View Analysis
Scale Date Drawn by	NTS @ A3 27/03/24 MR
Drawing Number+ Revision	353_DA_613
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38 Bay View Street Lavender Bay



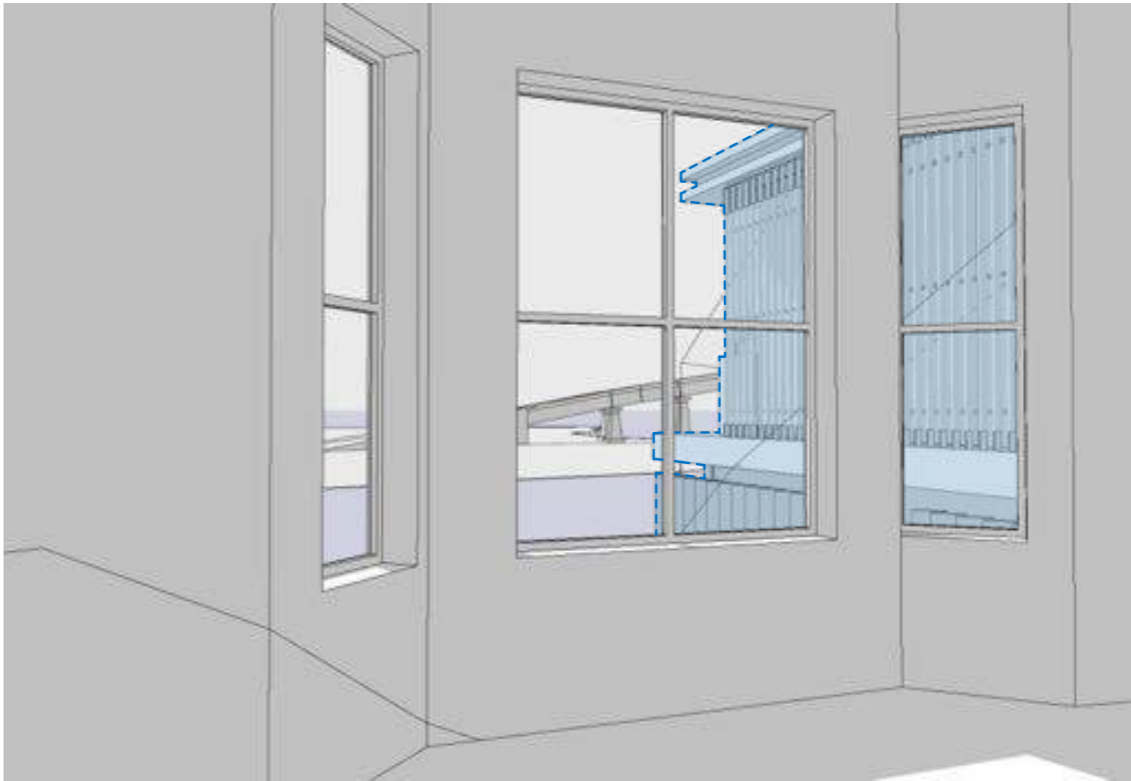
Dining Room RL24.33 - Existing



Living Room RL24.33 - Existing



Dining Room RL24.33 - Proposed



Living Room RL24.33 - Proposed



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- Legend**
- DCP envelope control
 - - - Proposed built form
 - - - Existing built form

North

Scale

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Scale Date Drawn by	NTS @ A3 27/03/24 MR
Drawing Number+ Revision	353_DA_614
	05

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**Demolition of existing dwelling and
construction of a new dwelling at
No. 20 Bay View Street, Lavender Bay
Statement of Environmental Effects
July 2024**

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1 EXECUTIVE SUMMARY

This Statement of Environmental Effects (SEE) has been prepared for the owners of No. 20 Bay View Street, Lavender Bay by AK Planning to accompany a Development Application (DA) to North Sydney Council. The proposed development is located at **No. 20 Bay View Street, Lavender Bay** this being **Lot 1 in DP89034**. The site has a site area of **365.6m²** and is zoned **R3 Medium Density Residential** under North Sydney Local Environmental Plan 2013 (NSLEP 2013).

The Development Application seeks consent for demolition of the existing dwelling and the construction of a new dwelling including basement garage. A detailed description of the proposal is provided under **Section 3** of this SEE.

This SEE is submitted in accordance with Clause 24(1) of the Environmental Planning and Assessment Regulation 2021. The purpose of this Statement of Environmental Effects is to provide a description and general information about the site and the proposed development. Furthermore, this Statement of Environmental Effects provides the following information:-

- Description of the site, surrounding development and the wider locality;
- Description of the proposed development;
- Assessment of the proposed development in accordance with all statutory controls and Council's Development Control Plan (DCP);
- assess the degree of compliance; and
- examine the environmental effects of the development when measured against the Evaluation Criteria prescribed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

The SEE concludes that the proposed development is considered to be of an appropriate scale without adversely impacting on the amenity of adjoining land by way of loss of views; overshadowing or overlooking. Accordingly, it is considered that the proposal will deliver a suitable and appropriate development within North Sydney LGA and is worthy of approval.

2 THE SITE AND CONTEXT

2.1 The Site

The site is located at No. 20 Bay View Street, Lavender Bay and has a legal description of **Lot 1 in DP89034**. The site has an area of **365.6sqm**. The site has an irregular rectangular shape (refer to **Figure 1 & 2**) and contains a part two, part three-storey dwelling with double garage at the street boundary see **Photos 1 & 2**.



Figure 1 – Site location plan

Source: SIX Maps



Figure 2: Aerial View of site

Source: SIX Maps

The site has a significant fall from the west / rear towards the street (some 10m) as well as a cross fall from south to north.



Photo 1: Front of existing dwelling



Photo 2: Rear of existing dwelling

2.2 Surrounding Development

The locality is characterised by mixed residential development including attached dwellings, detached dwellings and residential flat buildings of varying heights and architectural styles.

Immediately adjoining the subject site to the north is No. 38 Bay View Street, a two-storey dwelling with double basement garage on the street boundary (see **photo 3**). To the south of the subject site is No. 18 Bay View Street a part two, part three-storey dwelling with basement garage on the street boundary (see **photo 4**). To the rear of the subject site is No. 17 Waiwera Street a two-storey apartment building.



Photo 3: View of No. 38 Bay View Street



Photo 4: View of No. 18 Bay View Street

3 DESCRIPTION OF THE DEVELOPMENT

3.1 General description

The proposed works seek demolition of the existing dwelling and associated structures and the construction of a new dwelling including basement car parking. In more detail the works include the following:-

Basement Level (RL16.68)

- Excavation to allow for two car spaces
- New separate pedestrian entry, new lift and stairs
- Storage and 2 x 5000l rainwater tanks
- New vehicle crossing
- New driveway and turntable

Level 1 (Bedroom Level) (RL22.33)

- Two bedrooms with en-suite each
- Study
- Bedroom 3
- Bathroom
- Laundry
- Stairs and Lift

Level 2 (Living Level) (RL25.47)

- Living & dining room
- Kitchen
- TV / rumpus room
- Powder room
- Stairs and Lift

Level 3 (Master Level) (RL28.47)

- Master bedroom
- Ensuite
- Walk in robe
- Roof terrace
- Stairs and lift

Other

- removal of five (5) trees
- skylight over new WIR
- associated landscaping work including two (2) new trees



Figure 3: Photomontage of proposed development

3.2 Demolition

The proposal includes the demolition as demonstrated on the architectural plans. All demolition works will be undertaken in accordance with AS 2601 - 1991: The Demolition of Structures.

4 STATUTORY PLANNING CONSIDERATIONS

4.1 Environmental Planning and Assessment Act 1979

The Act is the principle planning and development legislation in New South Wales. In accordance with Section 1.3, the relevant objectives of the Act in relation to the proposed development are:-

- “(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the **orderly and economic use** and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote **good design and amenity** of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment”.

The proposal is consistent with the objects of the Act as:-

- The proposal will result in the orderly and economic use and development of land as the site is of an appropriate size, location and land use zoning to enable the proposed development;
- Good design outcome consistent with the surrounding built form;
- Appropriate utility services are available; and
- There will be no unreasonable adverse amenity impacts on the environment.

The relevant matters for consideration under Part 4 Section 4.15 of the Environmental Planning and Assessment Act, 1979, have been addressed in table 2 below:

Table 2: Part 4 Section 4.15 consideration

“MATTERS FOR CONSIDERATION”	COMMENTS
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	The subject development is lodged pursuant to NSLEP 2013 and is located within the North Sydney LGA. See discussions under Section 4.3 of this report.
Section 4.15 (1) (a)(ii) – Provisions	None

"MATTERS FOR CONSIDERATION"	COMMENTS
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	<p>See discussion on Development Control Plans at Section 5.1 within this report below.</p> <p>The amendments to the Environmental Planning and Assessment Act 1979 clarified the purpose, status and content of development control plans (DCPs), and how they are to be considered during the development assessment process.</p> <p>The Amendment Act makes it clear that the principal purpose of a DCP is to provide guidance to a consent authority on land to which the DCP applies.</p> <p>The Amendment Act reinforces that the provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Furthermore, it should be noted that the weight a consent authority gives to a DCP in assessing a development application will depend on a number of factors, including whether the DCP provides a sensible planning outcome.</p> <p>The Amendment Act confirms that if a development application does not comply with provisions in a DCP, a consent authority must be flexible in the way it applies the controls and also allow for reasonable alternative solutions to achieve the objectives of those standards.</p>
Section 4.15 (1) (a) (iiia) - Any planning agreement that has been entered into under Section 7.4	<p>None applicable to this proposal.</p>
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p>All demolition work will be undertaken in accordance with Clause 61 of the EPA Regulations 2021 requiring the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>.</p> <p>All building work will be carried out in accordance with Clause 69 of the EPA Regulations 2021 which requires the consent authority to consider the provisions of the Building Code of Australia. A condition of a development consent for building work to be carried out in accordance with the requirements of the <i>Building Code of Australia</i>. Is appropriate.</p> <p>Clause 62 of the EPA Regulation 2021 requires a certifying authority to have regard to fire safety measures. This matter can be addressed by introducing smoke alarms as a condition of consent prior to the issue of a construction certificate.</p>
Section 4.15 (1) (a)(v) – Provisions of any coastal zone management plan	<p>None</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	<p>Public Domain</p> <p>The proposal will not impact on existing and future opportunities for public recreation or use of public open spaces within the locality. There is no public access across the site.</p>

"MATTERS FOR CONSIDERATION"	COMMENTS
impacts on the natural and built environment and social and economic impacts in the locality	<p>Utilities and Services Existing utility services will adequately service the proposal.</p> <p>Other land resources The proposal will not impact on other land resources such as productive agricultural land, mineral and extractive resources or water supply catchments.</p> <p>Water Management The proposed development will not impact on conservation of water resources. Existing utility services will adequately service the development. A Stormwater Management Plan accompanies the application.</p> <p>Waste It is considered that normal domestic waste collection would apply to this development.</p> <p>Noise & vibration It is anticipated that there would be no more noise than that generally anticipated by the use of a residential premises.</p> <p>Natural hazards The subject is not affected by any known hazards.</p> <p>Construction Construction works will be required as a consequence of the proposed development. Appropriate conditions of consent may be incorporated should the application be considered worthy of approval which ensures the management of the site during construction works as well as the site safety for both the general public and anyone working on the subject site.</p> <p>Environmental Impact The environmental impacts of the proposed development on the natural and built environment, are addressed in detail within the North Sydney DCP section at Section 5.1.</p> <p>Social Impact The proposed dwelling will not have a detrimental social impact in the locality considering the consistency in built form character of the proposal to the existing urban environment.</p> <p>Economic Impact The proposal will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use (being retained as low-density residential).</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>Location – there are no prohibitive constraints on the site. The site is considered to be suitably located with regard to public transport and utility services.</p> <p>Physical - The proposal is compatible with conserving the existing development form in the area.</p> <p>Natural – the site is not affected by any natural constraints. The subject site is not flood affected or subject to acid sulfate soils.</p>

"MATTERS FOR CONSIDERATION"	COMMENTS
Section 4.15 (1) (d) – any submissions made in accordance with the Act or Regs	It is envisaged that any resident concerns raised can be addressed where relevant.
Section 4.15 (1) (e) – the public interest	<p>Pursuant to case law of <i>Ex Gratia P/L v Dungog Council</i> (NSWLEC 148), the question that needs to be answered is "<i>Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development</i>".</p> <p>There are no unreasonable impacts that will result from the proposed development; therefore, the benefits outweigh any disadvantage and as such the proposed development will have an overall public benefit.</p>

4.2 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

This chapter applies to land located within the Coastal Environment Area. The site is not located within a Coastal Environment Area and accordingly this Chapter does not apply.

Chapter 4 – Remediation of Land

Chapter 4 of this SEPP– Remediation of Land and requires a consent authority must not grant consent to a development if it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

The subject site has only previously been used for residential purposes, there is no evidence to suggest that the site is contaminated and as such is unlikely to contain any contamination; therefore, the requirements of Chapter 4 of the SEPP (Resilience and Hazards) have been satisfactorily addressed.

4.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in non-rural areas

Under Chapter 2 of this SEPP, which comprises the former SEPP (Vegetation in Non-Rural Areas) 2017, the proposed development meets the aims and objectives of the SEPP because the application does not involve clearance of existing native vegetation and would have no materials impacts on vegetation in the vicinity of the subject site.

Part 2.3 of the SEPP allows DCP to make a declaration in any manner relating to species, size, location, and presence of vegetation. The proposed application seek to remove five (5) trees on site – refer to Arborist report. The landscape plans include new planting including two (2) new trees – refer to landscape plan.

Chapter 6: Water Catchments

Chapter 6 to this SEPP applies to land mapped as Foreshores and Waterways. The site is not located within the mapped Foreshores and Waterways Area, and as such this chapter do not apply.

The subject site would not form any material part of the backdrop for the Sydney Opera House when viewed from the City foreshore and Opera House forecourt area and is not located within the identified Sydney Opera House Visual Buffer Area. It is noted, however, that the proposed development has been designed to avoid replicating the architecture of the building and/or using white tones to ensure that the visual dominance of the Opera House is not diminished.

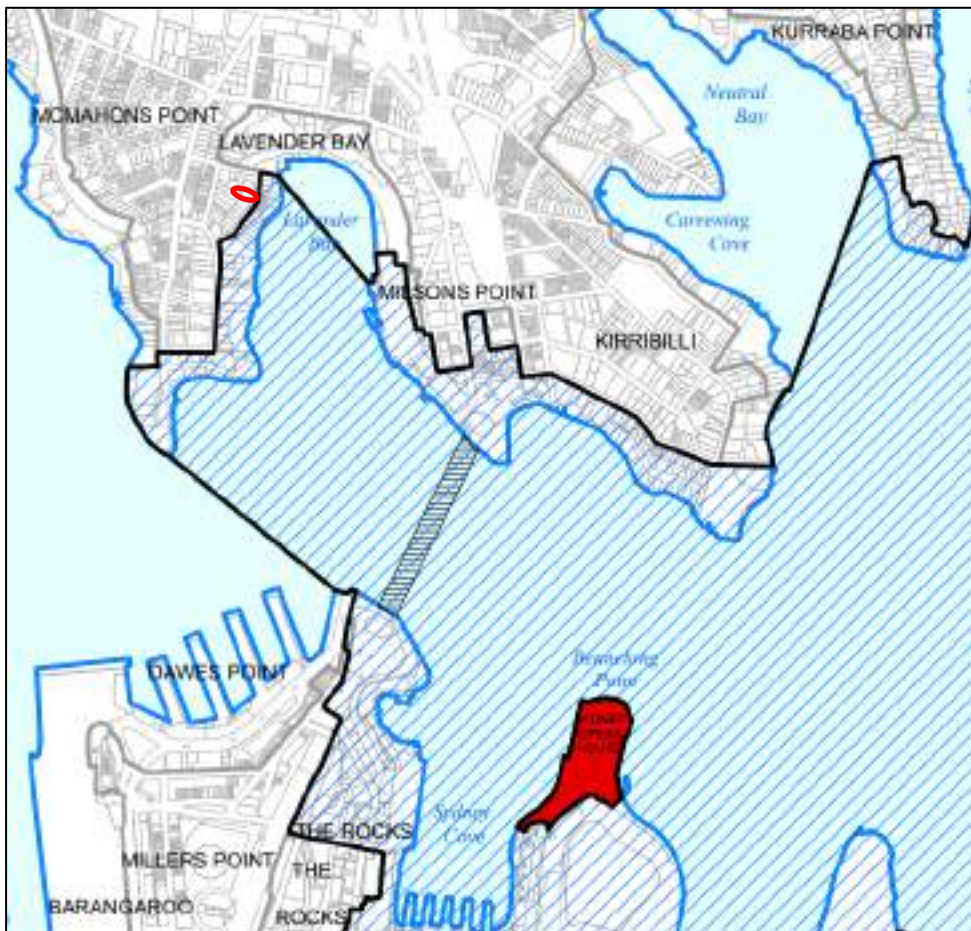


Figure 4: Extract from Sydney Opera House Buffer Zone Map (Amendment 2016). Site outlined in red

4.4 State Environmental Planning Policy (Sustainable Buildings) 2022

Chapter 2 Standards for residential development BASIX

The proposal includes a new dwelling, as such a BASIX certificate is required detailing energy efficiency commitments to be undertaken with the proposed works. A BASIX certificate is submitted with the application and commitments where relevant have been reflected on the plans as submitted.

4.5 North Sydney Local Environmental Plan 2013

North Sydney LEP 2013 defines the zoning regime, objectives and provisions to be considered in the assessment of any application for development.

4.5.1 Permissibility and Zone Objectives

The subject site is zoned **R3 Medium Density Residential** under the provisions of the North Sydney LEP 2013 (NSLEP 2013) see **Figure 5**. Development for the purposes of a dwelling house is permissible with the consent of Council.

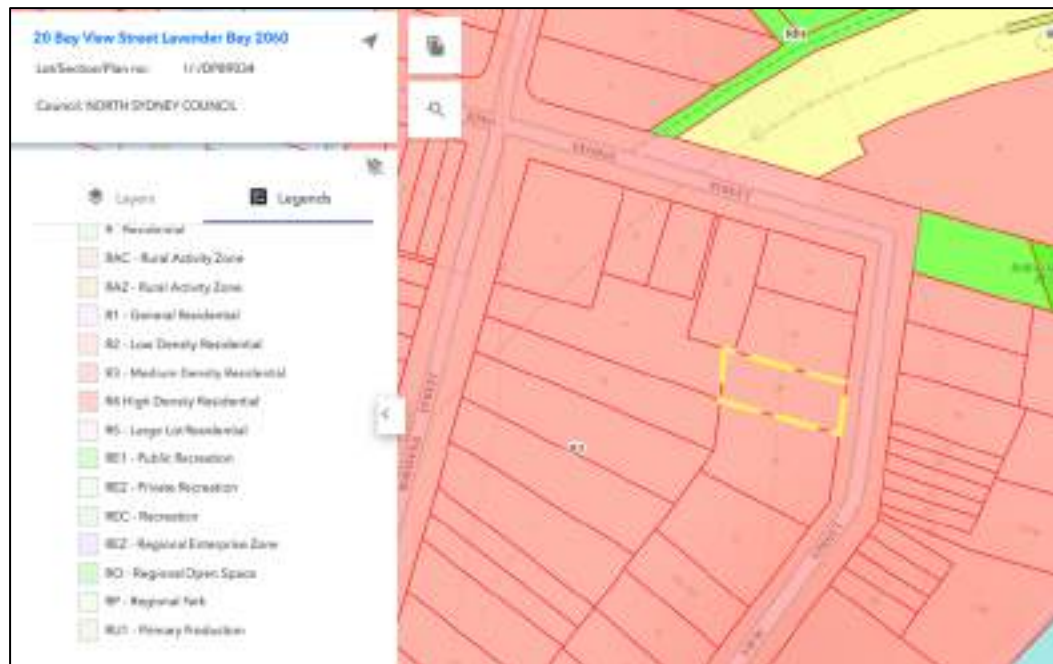


Figure 5: Zoning R3 Medium Density

Clause 2.3 specifies the following objectives for the zone:-

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

The proposed development is considered consistent with the zone objectives for the following reasons:-

- The proposal retains the low density residential zoning;
- The proposal maintains a compatible bulk and scale with surrounding residential premises within the medium density zone;
- Allows for a high level of residential amenity to occupants; and
- The proposal result in no adverse amenity impacts on surrounding properties.

4.5.2 Development Controls

Table 3 below identifies the relevant NSLEP 2013 controls.

Table 3: Compliance with NSLEP 2013

CLAUSE	COMMENT	Comply
Clause 4.3: Height of Buildings 8.5m	Proposed = 10m Refer to Clause 4.6 submitted with the application.	On merit
Clause 4.4 FSR	N/A	N/A
Clause 4.6	See Clause 4.6 variation attached at to this application	On merit
Clause 5.9 Preservation of trees or vegetation	<p>An arborist report accompanies the application. A total of seven (7) trees have been assessed including trees located on and adjacent to the subject site. The sites most significant of these are the Canary Island Date Palms and Brush Box trees located on the sites front verge.</p> <p>The summary of development impact on trees are as follows (as per Section 5 of the arborist report):-</p> <ol style="list-style-type: none"> 1. <i>Tree 1 is a semi mature Plumeria acutifolia, or Frangipani located within the sites front garden. This is a common tree species that has grown to less than 5m in height and is supported on a trunk of less than 20cm in diameter. Part of the sites more recent plantings. Low Value. Remove.</i> 2. <i>Trees 2,3 and 5 are all small Duranta erecta, or Duranta. This is a well-recognised invasive weed species throughout NSW. Low Value. Remove.</i> 3. <i>Tree 4 is a semi mature Persia americana, or Avocado tree located adjacent to the sites rear boundary. This tree has grown to approximately 8m in height and is supported on a trunk of 32cm in diameter. Although outside its preferred climatic range the tree is in both good health and condition. Low to Moderate Value. Consider for retention. Retain.</i> 4. <i>Tree 6 is a small Brugmansia, or Angels trumpet tree. This is a toxic tree species that has been linked to countless poisoning events. Remove irrespective.</i> 5. <i>The final tree, Tree 7, documented is another Plumeria acutifolia, or Frangipani located within the rear garden. This tree has grown to approximately 4m in height and is supported on a trunk of less than 20cm in diameter. Low Value. Remove.</i> <p>The arborist report recommends the removal of six trees (T1; T2; T3; T5; T6 & T7) and the retention of T4 (avocado tree).</p> <p>The landscape response for the site does not seek to remove all the recommended trees. It seeks to retain T1 and T4 and includes proposed new plantings as well as two new trees in the backyard.</p>	Yes
Clause 5.10 Heritage conservation	<p>The subject site is not heritage listed nor is located a Heritage Conservation Area – refer to Figure 6.</p> <p>However, it is in the vicinity of several heritage items being No. 15 Waiwera Street, located to the south west of the subject site and Nos. 25-33 Bay View Street which are located to the south east, on the opposite, eastern side of the street.</p>	Yes

The stone wall extending along the street frontages on the western side of the street and to the south and north of the site has also been listed.

The application seeks to retain the existing sandstone rock adjoining No. 18 as well as reinstating new sandstone blockwork adjoining No. 38 in an attempt to fill in the gap tooth within the heritage sandstone streetscape.

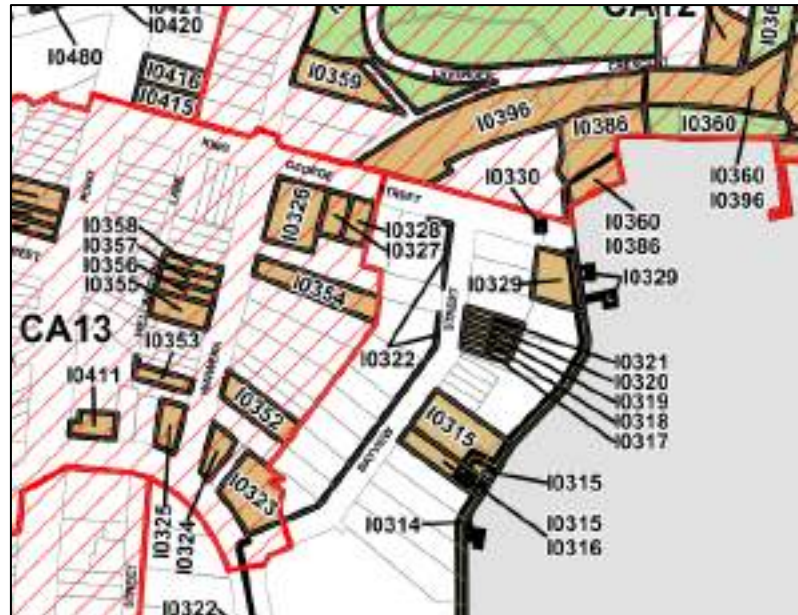


Figure 6: Heritage Map

The application is accompanied by a Heritage Impact Statement. Refer to discussion within the Heritage Impact Statement for compliance.

The HIS concludes as follows:-

"The significance of adjacent area and nearby items relates to their historic associations, landscape and streetscape elements and aesthetic and architectural character of the listed items and their setting.

The proposed demolition of the existing buildings and site elements and proposed new dwelling and garage at No. 20 Bay View Street are considered acceptable from a heritage point of view and will have no adverse impact on the identified values or primary character and presentation of the nearby area or items.

The proposed works are confined to the subject site and elements that relate to and contribute to the significance of the nearby items and area including the stone walls along Bay View Street frontages of Nos. 2-18 and No. 38 and the high stone retaining wall along the rear, western site boundary will be retained.

The proposed works will have no impact on the existing subdivision pattern. A consistent and allowable building height is proposed and front, side and rear setbacks with a landscaped setting have been retained.

	<i>The proposed demolition of the existing house, garage and associated elements will have no adverse impact on the nearby area or items in the vicinity”.</i>	
Clause 6.10 Earthworks	<p>Earthworks or excavation is proposed for the new basement parking, and bedroom level.</p> <p>The proposed excavation/earthworks will not cause disruption or detrimental impacts on drainage patterns, soil stability or cause a change to the natural features or vegetation within the subject site. The excavation is largely within the building footprint will not alter the natural features or vegetation on the site along the common boundaries. The proposed works will not place any restriction on the current or potential future use of the site for residential purposes. While some disruption may occur during the course of works, these are to be managed via appropriate conditions and are not considered to detrimentally effect the likely future use or redevelopment of this land. The proposed excavation will have no adverse amenity impact on adjoining properties in the long term. Appropriate conditions of consent can be imposed allowing appropriate measures to minimise or mitigate the impacts of the excavation during the construction stage typically relating to construction hours, air quality, noise/vibration as well as health and safety.</p> <p>A Geo-Technical report is attached and notes as follows:- <i>“The 1:100,000 Geological Map of Sydney indicates that the site is underlain by Hawkesbury Sandstone. The boreholes disclosed a generalised subsurface profile comprising a variable thickness of fill, overlying a limited and intermittent thickness of residual sands with sandstone bedrock inferred at shallow depth and exposed over areas of the site. No discernible groundwater seepage was encountered in the boreholes but minor seepage was observed in the garage excavation”.</i></p> <p>The Geo-tech report includes recommendations for dilapidation surveys; demolition and excavation methods; potential vibration and ground surface movement risk; seepage as well as temporary excavation support and retention measures.</p> <p>The Geo-Tech concludes as follows:- <i>“Provided the design and construction of the proposed building is prepared in accordance with the intent of the geotechnical advice presented in this report we consider “that the existing rock formations and substrate on the site is capable of:”</i> a) <i>“withstanding the proposed loads to be imposed;”</i> b) <i>“withstanding the extent of the proposed excavation;”</i> c) <i>“providing protection and support of adjoining properties;”</i> and d) <i>“the provision of appropriate subsoil drainage during and upon completion of construction works.”</i></p> <p>In addition, conditions of consent which requires that an appropriate expert certify the structural adequacy of the property and its ability to withstand additional and altered structural loads during all stages of construction, with the Construction Management Plan is also possible.</p>	Yes

5 NON-STATUTORY CONSIDERATION

5.1 North Sydney Development Control Plan 2013

The application has been assessed against the NSDCP 2013 as detailed in the table below:

Table 4: Consistency with DCP

CLAUSE	COMMENT	COMPLY
5. SITE ANALYSIS		
Clause 5.1: Site Analysis		
A site analysis is submitted with any development application.	A site analysis has been submitted with this development application, which details the characteristics of the site and its surrounds as required under this section of the DCP – refer to Architectural plans for detail.	Yes
PART B DEVELOPMENT CONTROLS		
Section 1 Residential Development		
1.2 Social Amenity		
1.2.1 Population mix	Residential accommodation within the locality will be maintained. The proposed development will have no impact in terms of maintaining affordable housing.	Yes
1.2.3 Maintain residential accommodation		
1.2.4 Affordable housing		
1.3 Environmental Criteria		
1.3.1 Topography	<p>Provision 3 of Section 1.3.1 of the NSDCP 2013 requires that excavation should be no greater than 500mm from the finished ground floor.</p> <p>The proposed works seek to excavate 4.5m at its highest point from the ground level (existing) to accommodate the rear courtyard and 8m under the proposed building to allow for the circulation/ stairs and lift access from the basement.</p> <p>Provision 4 of Section 1.3.1 of the NSDCP 2013 requires excavation not to occur 1m of any property boundary. The proposed excavation is located within the centre of the subject site being setback a minimum of 1m from the side boundaries and 2.2m for the rear boundary.</p> <p>Whilst the excavation is below 500mm of the existing ground level the excavation does not cause undue impact on the natural drainage patterns or land stability of adjoining land.</p> <p>A geo-technical report accompanies the application which concludes that subject to the recommendations provided within the report that the site is capable of withstanding the proposed loads; extent of proposed excavation; providing protection and support to adjoining properties as well as provide for appropriate subsoil draining during and upon completion of construction works.</p> <p>Excavation is also common for properties on the high side of Bay View Street to take advantage the change in topography to create basement/garages under dwellings.</p> <p>The proposed development is considered to generally respect the natural landform of the site and are considered to be acceptable in the site circumstances for the following reasons:</p>	Yes

	<ul style="list-style-type: none"> The proposed excavation is greater than 1m from the side and rear boundaries; The proposed excavation is largely contained within the footprint of the dwelling above; The proposed excavation will not compromise the landscaping on site as the proposal will still comply with landscape area; The excavation still allows for appropriate infiltration for stormwater purposes The proposed excavation will not impact on the existing drainage. 	
1.3.5 Visual Impact - Access	The site is not visible from the Harbour.	N/A
1.3.6 Views	Refer to view analysis below	Yes

View Analysis

In order to establish the reasonableness of the potential view loss from No. 17 Waiwera Street and No. 19 King George Street, an assessment against the Land Environment Court planning principles on sharing of views in **Tenacity Consulting v Warringah [2004] NSWLEC 140**, has been undertaken.

The test is applied below.

Step 1 – “The first step is the assessment of views to be affected”

Water views are valued more highly than land views; iconic views are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured. The Harbour Bridge and Opera House are considered iconic views.

The existing views from No. 17 Waiwera Street are towards Milsons Point as well as towards Sydney Harbour and include views of the Sydney Harbour Bridge and Sydney Opera House (see **Photo 5 and Figure 7** below).

The existing views from No. 19 King George Street are towards Sydney Harbour and include views of the Sydney Harbour Bridge (see **Figure 8** below).



Photo 5: View from living room of No. 3/17 Waiwera Street

Source: Realestate.com



Figure 7: Photomontage of existing view from balcony of No. 3/17 Waiwera Street
Source: Collins & Turner Architects

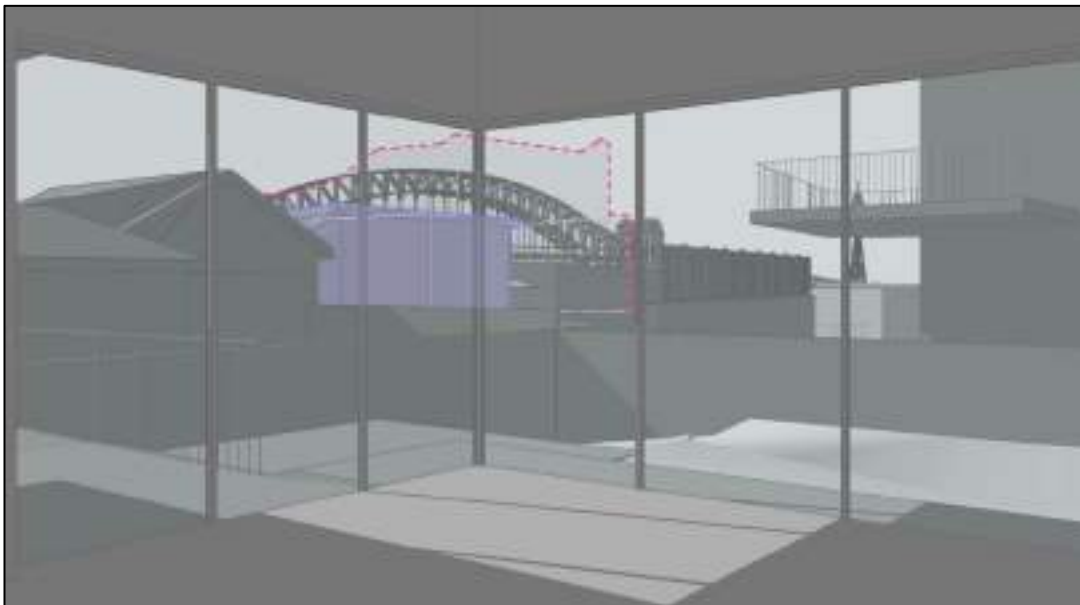


Figure 8: Existing view from kitchen/dining of No. 19 King George Street
Source: Collins & Turner Architects

Step 2: “The second step is to consider from what part of the property the views are obtained”

No 17 Waiwera St

The views which may be affected by the proposed development, are obtained from a standing position (eye level) from the ground floor dining/living room windows and terrace of No. 3/17 Waiwera Street (see **Figure 9 & 10**). The views are obtained directly across the subject site towards the east and south (see **Figure 11**).



Figure 9: Floor plan of No. 3/17 Waiwera Street
Red arrow indicating direction of views across subject site

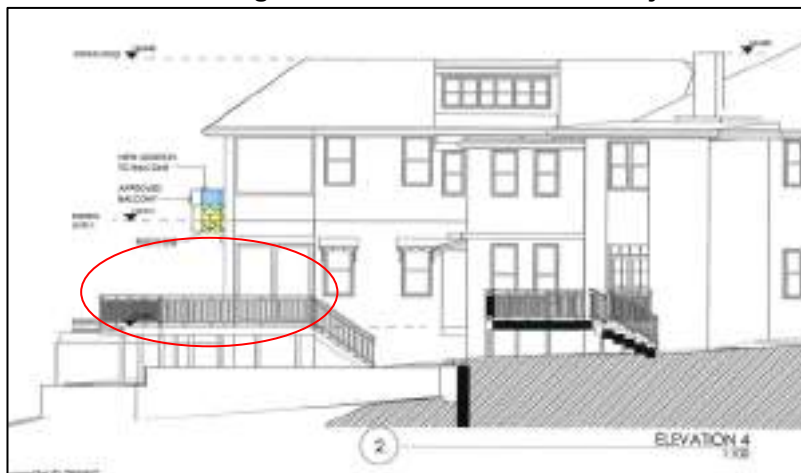


Figure 10: Elevation of No. 17 Waiwera Street
Red outline indicating from where the views are obtained



Figure 11: Direction of views from No. 17 Waiwera Street and No 19 King Georges Street
across subject site

No 19 King George Street

The views which may be affected by the proposed development, are obtained from a standing position (eye level) from the first-floor open plan kitchen & dining room and rear terrace (as approved under DA300/19) of No. 19 King George Street (see **Figure 12 & 13**). The views are obtained diagonally across the rear yard of the subject site towards the south.



Figure 12: First Floor plan of No. 19 King George Street
Red arrow indicating direction of views across subject site



Figure 13: Section of No 19 King George Street
Red outline indicating from where the views are obtained

Step 3: *“The third step is to assess the extent of the impact”*

The applicant has undertaken CGI view analysis which demonstrate the extent of the view impact as reproduced in the figures below – refer to Architectural plans for detail.

No. 17 Waiwera Street

Figure 10 below demonstrates that the development will not impact on any existing views to the Sydney Harbour Bridge. The proposal will impact on views of the apartment buildings within Milsons Point only with no land-water interface or icon being affected (refer to **Figure 14**). Moreover, the existing view is obscured by existing vegetation (see **Photo 6**) which will remain. Accordingly, the view loss is considered minor.



Photo 6: Existing view from terrace
Source RealEstate.com

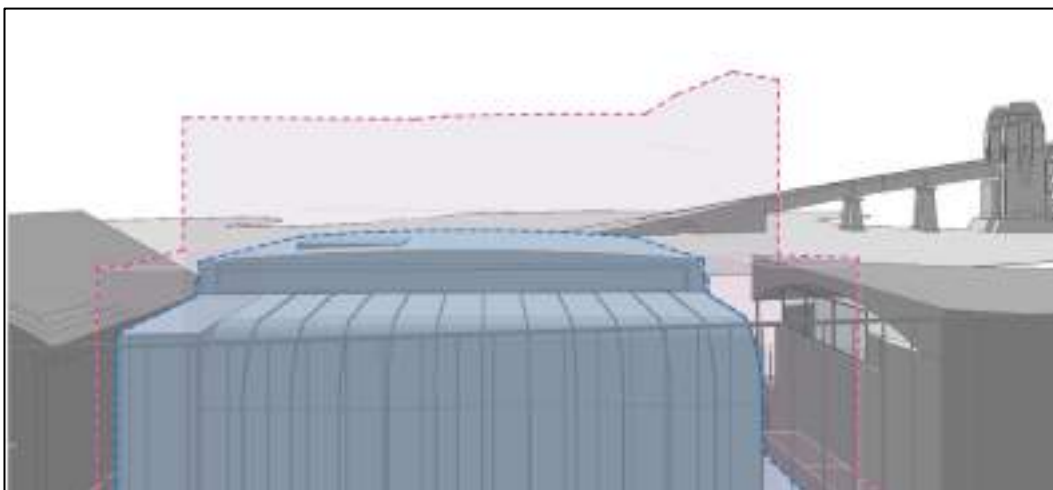


Figure 14: Proposed view from terrace

No. 19 King Georges Street

Figure 15 below demonstrates that the proposed development will impact on existing views to the Sydney Harbour Bridge. The proposal removes views of some of the main roadway (Bradfield Highway) however, it will retain the arch and the pylons of the Sydney Harbour Bridge.

Currently the view includes the presence of part of an icon in a visual setting. The composition requires there to be a combination of features to establish a visual curtilage or setting. The existing composition of the view includes the arch; pylons and the main roadway but no water interface.

The proposal retains the majority of this “composition”, including the arch the pylons and even some of the main roadway as visual markers, in order to confirm the icon’s presence and location. The viewer still has the ability to perceive, cognitively interpret and appreciate the Sydney Harbour Bridge in its setting, notwithstanding losing some of the elements.

Accordingly, the loss of the some of the iconic view is considered moderate.

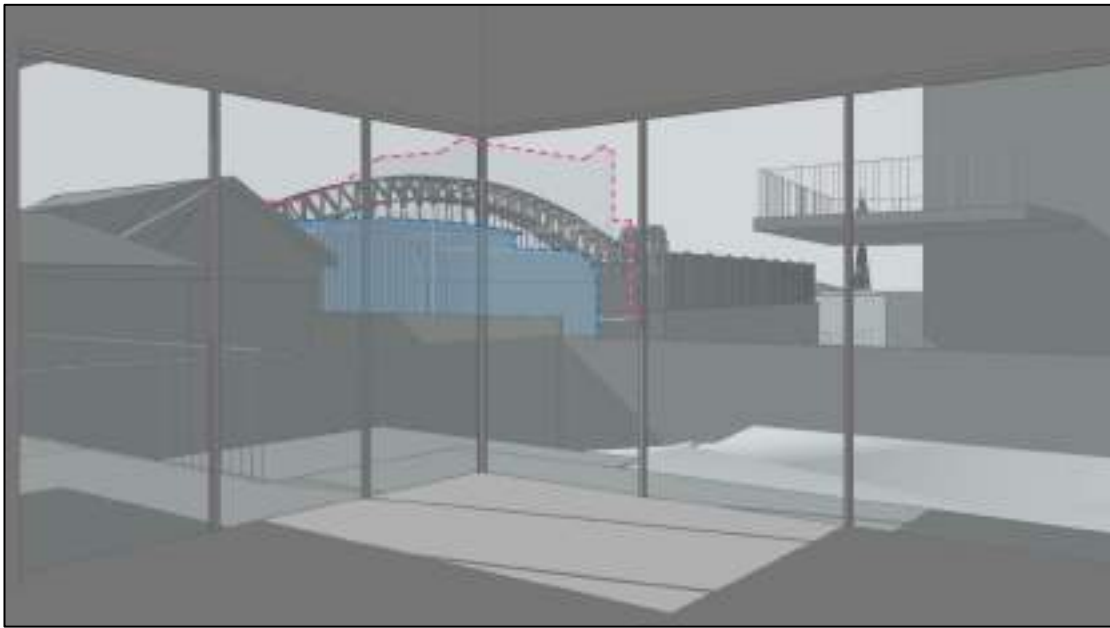


Figure 15: Proposed view from first floor kitchen/dining room

Step 4: “The fourth step is to assess the reasonableness of the proposal that is causing the impact”

The proposal does not comply with the maximum building height due to the steep topography and the method applied when measuring maximum building height established under “**Merman**”. However, at the rear of the site where most of the views are obtained across, the proposal complies with and is set well below the maximum building height.

However, even with a complying development application, the question should be asked whether a more skilful design or location of structures, could provide the same development potential and reduce the impact on the views of neighbours. It becomes less a question of how much views are lost but rather is the view loss reasonable?

A proposed development will only meet the reasonableness test when the proposed built form is consistent with what could be reasonably anticipated by the controls. In this regard the building envelope has been sighted in order to allow greater side setbacks towards the south in order to retain solar access to No. 18 Bay View Street as well as the views along the side boundary as viewed from No. 17 Waiwera Street. In addition, the proposal complies with the landscape area and site coverage controls which in the absence of FSR controls, manages floor space, density and landscape response within North Sydney LGA.

The rear setback / building alignment of the master bedroom level has been setback from the living level below, whilst the roof over the WIR has been set down in order to minimise impact within the view corridor from No. 19 King George Street.

Accordingly, the proposal has been skilfully located, having regard for the controls in order to allow for a reasonable sharing of views.

In summary the proposal is considered to allow for reasonable view sharing, being consistent with O2 and P2 & P4 of Section 1.3.6 of the NSDCP.

1.3.7 Access	Solar	Refer to discussion below and shadow diagrams.	Yes
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In order to demonstrate no adverse impact by way of overshadowing to the main living area and principle private open space of No. 18 Bay View Street an assessment of the proposal was undertaken having regard for the planning principles adopted by Senior Commissioner Moore of the NSW Land and Environment Court in relation to ***The Benevolent Society v Waverley Council [2010] NSWLEC 1082***:

1st Principle: “The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are **highly vulnerable to being overshadowed**.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.”

The subject site and the adjoining properties are zoned R3 Medium Density Residential. The existing structures are free standing dwellings with east-west orientation. Even at low densities these sites and buildings are *highly vulnerable to being overshadowed* due to its orientation.

Accordingly, having an expectation to retain 3 hours of sun during the mid-winter period is unreasonable.

2nd Principle: “The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained”

The shadow diagrams demonstrate the extent of shadowing onto the adjoining property to the south (No. 18 Bay View Street) during the mid-winter (21 June 21) period. Below follows a summary of the analysis.

The ground floor northern elevation of No 18 Bay View contain a window towards the street and side pedestrian access door, whilst the first floor contains high sill windows to the kitchen and dining room and a terrace towards the street (see and **Figure 16**).



Figure 16: Windows within northern elevation of No 18 Bay View Street

Impact on Northern elevation at 9am

The proposal results in no additional overshadowing to the ground or first floor windows at the 9am mid-winter period.

Impact on Northern elevation at 12noon

Additional shadow occurs to the ground floor window only with most of the shadow falling within the existing overshadowing – refer to **Figure 17**. The first floor living area windows do not receive additional shadow. There is no additional shadow to the front terrace.

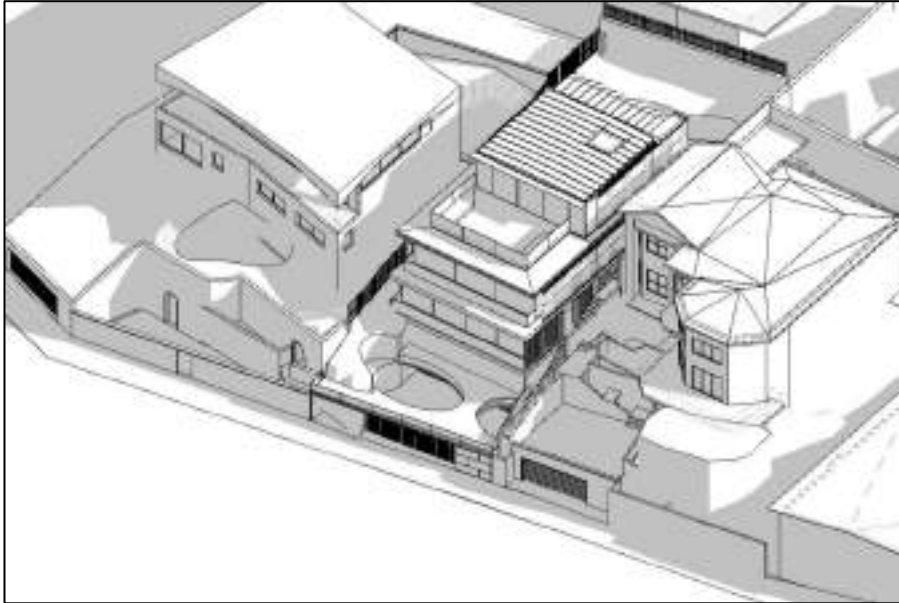


Figure 17: Proposed shadow at 12 noon mid-winter

Impact on Northern elevation at 3pm

Currently the ground floor window is in shade during the 3pm mid-winter period.

The proposed shadow allows for greater solar access to the first-floor windows within the northern elevation with 100% of the glazed area now receiving solar access due to the increase in the proposed side setback compared to the existing situation as well as the lowering of the rear roof – refer to **Figure 18**.

The front terrace is currently in shadow and any additional shadow falls within existing during the 3pm mid-winter period.



Figure 18: Proposed shadow at 3pm mid-winter

Impact on rear private open space

9am additional overshadowing largely over the existing roof form of the pergola and BBQ structure within the rear yard of No. 18 and also within the existing fence shadow.

At **12noon** additional overshadowing largely occurs within the existing fence shadow with the private open space retaining solar access to 50% of the rear yard for this period.

3pm

No additional overshadowing occurs, all being within existing shadows.

3rd Principle: *“Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal’s design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.”*

The proposed built form elements adjoining the common side boundary with No. 18 Bay View Street complies with the building height and side setback controls. Furthermore, the rear-built form is well below the maximum 8.5m building height at 6.5m. Moreover, the proposal complies with the site coverage and landscape are controls which are the main massing controls for North Sydney.

It is noted that the proposed first-floor has been setback 600mm from the rear façade of the immediate floor level below. Setting the rear roof down (over the WIR) as well as increasing the side setback along the southern elevation and stepping of the rear façade allows a recessive design whilst improving solar access to No. 18 Bay View Street, especially during the 3pm afternoon period.

Allowing the massing to sit closer to No. 38 Bay View Street allows greater solar access towards the south. The proposal is consistent with existing characteristic developments within the street allowing for a sensitive design response and a reasonable outcome.

4th Principle:- *“For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.”*

The LEC principal state that solar amenity may be achieved even if the sun falls on only a modest portion of the glazed area. In other words, the north facing windows do not necessarily need to be in “full” sun to be regarded as achieving appropriate solar amenity.

The first-floor high sill windows to the main living areas within the northern elevation of No 18 Bay View Street, can be read as a single glazed area. Notwithstanding it remains in sun with no additional overshadowing. In fact, the proposal improves solar access to these windows during the 3pm mid-winter period.

5th Principle: *“For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.”*

By virtue of the siting of the development, the proposal would maintain a reasonable level of sunlight to private open space of No. 18 Bay View Street.

6th Principle:- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

The shadow diagrams also demonstrate shadows casted by existing structures such as fencing and awnings and other adjoining buildings.

7th Principle:- *“In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.”*

The streetscape is characterised by several new contemporary larger dwellings, especially on the high side of Bay View Street. The area is not undergoing significant change remaining as a medium density residential area with free standing larger residential dwellings along Bay View Street.

No. 18 Bay View Street is the subject of DA409/16/4 which was completed late 2020 and it is unlikely that further significant changes will occur.

In conclusion, the proposed duration and quality of the sunlight received to the living room windows is reasonable having regard for the nature of the immediate area being *highly vulnerable to being overshadowed* due to its orientation. Having regard for the 7 principles above, it is considered that the proposal would not unreasonably diminish the sunlight to the windows of the main internal living area or private open space of No.18 Bay View Street.

Accordingly, the proposal will maintain reasonable access to sunlight to the ground floor living room windows of No. 18 Bay View Street consistent with O1 “solar access” in Part B Section 1.3.7 and O4 “general objectives” in Part B Section 1.1.1 of the NSDCP 2013.

1.3.8	Acoustic Privacy	The proposed development will maintain acoustic privacy both within the subject dwelling and adjoining properties due to the continued use of the dwelling for residential purposes.	Yes
1.3.10	Visual Privacy	<p>Northern Elevation:</p> <p>Bedroom level The proposal includes fixed privacy louvres to all windows in order to minimise the opportunity for direct overlooking. The new entry door is at existing ground level and will not be above the adjoining fence line with no opportunity for direct overlooking.</p> <p>Living level The proposal includes fixed privacy louvres to all windows in order to minimise the opportunity for direct overlooking. The new entry door is at existing ground level and will not be above the adjoining fence line with no opportunity for direct overlooking.</p> <p>Master bedroom level The proposal includes fixed privacy louvres to windows to minimise the opportunity for direct overlooking. The window within the northeastern corner is above the new void space / stairs. There is no opportunity to stand in, or close to this window. Moreover, this window has been offset from existing windows within the southern elevation of No. 38 Bay View allowing for no direct overlooking. The FFL at RL28.79 is well above the FFL of the patio of No. 38 at RL24.20. Accordingly looking over and not directly into the patio.</p> <p>Southern Elevation:</p> <p>Bedroom level</p>	Yes

	<p>The proposal includes high sill windows to the laundry and bathroom located close to the existing ground level with no opportunity for direct overlooking. Bedroom 3 window is at existing ground level and will not be above the adjoining fence line with no opportunity for direct overlooking.</p> <p>Living level The proposal includes fixed privacy louvres to all windows to minimise the opportunity for direct overlooking. The new lounge window is at existing ground level and will not be above the adjoining fence line with no opportunity for direct overlooking.</p> <p>Master bedroom level The proposal includes fixed privacy louvres to windows to minimise the opportunity for direct overlooking. The window within the southeastern corner is setback 5m from the adjoining high sill window within the northern elevation of No 18 Bay View Street. Due to the nature and separation distance of the existing adjoining high sill windows, there is no opportunity for direct overlooking into the habitable space of the adjoining dwelling.</p> <p>Balconies & Terrace The high side of Bay View Street is characterized by balconies or terraces fronting the street. There is a reasonable expectation for reduced privacy over the front yards due to the desire to retain views. Consistent with P6 the depth of all the balconies fronting the street has been limited to max 1m. Limiting the depth of the balconies reduces the ability for this space to be used for active recreational purposes. In effect creating a passive open space reducing the opportunity for direct overlooking.</p> <p>P7 do not permit private open spaces such as terraces, on rooftops or garage roofs. However consistent with P8 private open spaces on roofs may be considered appropriate as proposed in that:-</p> <ol style="list-style-type: none"> the space is designed such that there is no potential for direct overlooking of adjoining spaces, being setback behind the existing terrace at No 18; and located 9m from the balcony to the front of No 38. The terrace is accessed from a master bedroom and not a living space. Accordingly, the indented use is passive and not active recreation with a low frequency of use and subsequent low noise and privacy issues; the terrace is setback 2.5m from both common side boundaries; the terrace is setback at least 1m from the extent of the external enclosing walls to the floor level below; the terrace measures 18sqm in usable area consistent with P8(c); and include planter boxes on the edges to soften the visual appearance but also create further separation from adjoining spaces. <p>Accordingly, the proposal includes appropriate mitigation measures to maintain a reasonable level of visual privacy to adjoining spaces consistent with Objective 1 of Section 1.3.10 of the NSDCP.</p>	
1.4 Quality Built Form		
1.4.1 Context	<p>The context of the area is quite varied, with several new contemporary dwellings located on the western (high) side of Bay View Street.</p> <p>Having regard for the existing built form and the fact that the site is not located within a heritage conservation area, a contemporary built form is considered reasonable in the location.</p> <p>Refer to the site analysis included within the Architectural plan set as well as Section 1.4.8 Built Form Character below for more detail.</p>	Yes


1.4.2 Subdivision pattern	No change to the existing lot size.	N/A
1.4.3 Streetscape	The proposal is consistent with the existing streetscape character. No street trees are proposed to be removed. Improve streetscape outcome with retention of existing sandstone rock and reinstating of sandstone wall.	Yes
1.4.5 Sitting	The proposed development would not change the characteristic subdivision pattern and building orientation within the locality.	Yes
1.4.6 Setbacks Front setback must match alignment of primary façade of adjoining properties	<p>Because the adjoining properties within Bay View Street allows for varied front setbacks, the average of the setbacks of those primary facades is to be used see Figure 19.</p>  <p>Figure 19: Existing building alignments / setbacks</p> <p>Setbacks based on survey plans:- No. 38 = 0m to garage and 3.6m to dwelling No 18 = 0m to garage and 6.4m to dwelling Required Average = 5m</p> <p>Proposed: Basement / Garage = 6m Bedroom level = 5m Living level = 6m Terrace on bedroom level = 7.1m</p>	Yes
Rear Match those on adjoining properties Side 1 storey = 900mm 2 nd storey = 1.5m 3 rd storey (>7m wall height) = 2.5m	Rear The area is characterised by an inconsistent subdivision pattern with lots not having a consistent rear building alignment – refer to Figure 20 . Accordingly, the proposed rear setback cannot technically 'match' the adjoining properties, due to the subdivision pattern.	On merit



Figure 20: Existing rear building alignment

Notwithstanding, it is considered to achieve the setback control objectives in Part B, Section 1.4.6 in NSDCP 2013 as detailed below:

- The proposal retains an area at the rear of the dwelling for turf, screen planting and existing and new trees which will assist in maintaining the landscaped character of the locality;
- The proposal complies with site coverage and landscape area provisions;
- The proposed rear setback is considered to be appropriate to maintain reasonable solar access for adjoining properties;
- The bulk and scale of the development is considered not to dominate surrounding spaces.

Side Setbacks

Control / Required	Proposed	
	Northern elevation	Southern elevation
Basement = 1m	1m	1m
1 st storey (up to 4m) = 900mm	Bedroom level = 1m Living level at rear = 1m at rear (single storey)	Bedroom level = 1m Living level at rear = 1m at rear (single storey)
2 nd storey (up to 7m)= 1.5m	Living level = 1.5m at front (2 storeys) Master bedroom level = 1.5m (2 storeys)	Living level = 1.5m at front (2 storeys) Master bedroom level = 2.5m
3 rd storey (greater than 7m) = 2.5m	Master bedroom level = 1.5m (2 storeys)	Master bedroom level = 2.5m

Parts of the built form results in wall heights greater than 7m along the northern elevation due to the topography falling steeply towards the street. Accordingly, a 2.5m setbacks applies depending on the wall height above ground level – see **Figure 21** below.



	 <p>Figure 21: 7m wall height</p> <p>Notwithstanding the numerical non-compliance the application achieves the objectives in Part B, Section 1.4.6 in NSDCP 2013 as detailed below:-</p> <ul style="list-style-type: none"> • The non-compliance is limited to the top half of the rooms only, with most of the floor complying; • The massing was purposefully shifted towards the north in order to minimise impact on solar access to the south; • The proposed massing is articulated and does not creating a continues or unrelieved wall effect; • The bulk and scale are further mitigated through the use of material selection. 	
<p>1.4.7 Form, massing and scale</p> <p>1.4.8 Built form character</p>	<p>The context of the area is quite varied, with several new contemporary dwellings located on Bay View Street. The photos below illustrate the emerging contemporary nature of built forms predominately along the western side of Bay View Street.</p>  <p>Photo 7: No 2-8 Bay View Street</p>	



Photo 8: No 16 Bay View Street



Photo 9: No. 18 Bay View



Photo 10: No 38 Bay View Street

Having regard for the existing built form and emerging character, a contemporary built form is considered reasonable in the location, as it positively contributes to the character of the immediate locality – refer to **Figure 22**.

Yes



Photo 11: Existing built form / streetscape




Figure 22: Photomontage of proposed streetscape / built form

The proposed massing and scale are consistent with existing surrounding buildings and moreover does not detract from the existing streetscape character.

Accordingly, the proposal will be different to the current street view however it is considered to reflect and is complementary to, the existing character of the locality.

1.4.9 Dwelling entry	<p>The dwelling entry remains in the relative same location along the northern boundary.</p> <p>The dwelling entry is clearly identifiable from the street, have adequate lighting and have direct access from the street frontage.</p> <p>The street numbering will be clearly visible from the primary street frontage.</p>	Yes
1.4.10 Roofs	<p>P1 of Section 1.4.10 of the NSDCP 2013 stipulate that buildings should incorporate a pitched roof, except where another roof form is identified in the applicable area character statement, or a roof form identified as being compatible with the characteristic roof forms for the neighbourhood.</p> <p>Part C of the NSDCP 2013 does not identify a characteristic roof typology for the McMahon Point Neighbourhood. This is reflected by the existing residential development that is located within this particular neighbourhood, which comprises a mix of roof types that includes pitched, flat and curved roof forms.</p> <p>The proposed roof form, is compatible with the new emerging characteristic roof form within Bay View Street, having architectural merit and it does not result in significant amenity impacts to adjoining properties.</p>	Yes

1.4.12 Colours and materials	<p>The proposed colours and materials used for the proposal are outlined in the Figure 23 below (extract from External finishes):</p> <div></div> <p>Figure 23: Proposed external finishes Extract from Architectural plans – Materials Elevation</p> <p>The proposed colours and materials are considered consistent with the surrounding character.</p>	Yes								
1.4.14 Front Fences	<p>The existing rock face on the street boundary is being retained whilst the existing garage doors are replaced with new sliding gates.</p> <p>The front fence/gates contribute to the characteristic pattern of solid and semi-open fences and garages doors on the street boundary.</p> <p>The open nature of the sliding gate allows casual surveillance whilst contributing to the setting.</p>	Yes								
1.5 Quality Urban Environment										
1.5.3 Safety and security	<p>The proposal contribute to the casual surveillance of the street whilst clearly distinguishing between public and private space.</p>	Yes								
1.5.4 Vehicular Access & Carparking	<p>The proposal seeks to provide underground car parking in the form of a new basement. The proposed basement is considered to be consistent with the objectives of Section 1.5.4 of the NSDCP 2013 for the following reasons:-</p> <ul style="list-style-type: none">• The basement allows for adequate on-site car parking;• The basement is contained within the proposed building envelope above;• The proposed basement maintains the garden setting and does not result in additional visual impacts to the streetscape being consistent with the established built form character along Bay View Street. <p>As such the proposed basement carparking is consistent with Provision 3 of Section 1.5.4 of the NSDCP 2013 as the site conditions and existing built forms along Bay View Street dictate it as an appropriate solution for parking provision.</p>	Yes								
1.5.5 Site Coverage Max. 40%	<p>A table is provided below demonstrating the DA's response to the provisions in NSDCP 2013 for site coverage, landscaped area and unbuilt upon areas:-</p> <table><tr><th>Site Area 365.6sqm</th><th>Proposed</th></tr><tr><td>Site Coverage Max. of 50%</td><td>183sqm 50%</td></tr><tr><td>Landscape Area Min. of 30%</td><td>110sqm 30.0%</td></tr><tr><td>Un-built upon area Max of 20%</td><td>72sqm 19.69%</td></tr></table>	Site Area 365.6sqm	Proposed	Site Coverage Max. of 50%	183sqm 50%	Landscape Area Min. of 30%	110sqm 30.0%	Un-built upon area Max of 20%	72sqm 19.69%	Yes
Site Area 365.6sqm	Proposed									
Site Coverage Max. of 50%	183sqm 50%									
Landscape Area Min. of 30%	110sqm 30.0%									
Un-built upon area Max of 20%	72sqm 19.69%									
1.5.6 Landscape area										
un-built upon area										
1.5.7 Landscaping	<p>Proposed new landscaping and planting satisfies minimum performance standards and is sustainable and appropriate for the site.</p>									

1.5.8 Front gardens	The proposal significantly improves the existing front garden conditions introducing new plantings in front of the proposed dwelling spilling over the existing sandstone wall, softening the built form, compared with the existing situation. The proposed front garden will soften and complement the view from the street and surrounding properties. Refer to landscape plans for detail.	Yes
1.5.9 Private and Communal Open Space	The site retains a large area 96sqm at the rear for private recreational use. The balconies/terrace towards the street allows for additional above ground private open spaces.	Yes
1.5.12 Garbage storage & 1.5.13 Site Facilities	Bin storage is within the new basement with easy access to Bay View Street for collection. No change to existing site facilities.	Yes
1.6 Efficient Use of Resources		
Energy Efficiency	As part of the development application documentation, a valid BASIX Certification has been submitted for the dwelling.	Yes
Passive solar design		
Thermal Mass and Insulation		
Natural Ventilation		
Building design		
Colours and Materials		
Hotwater systems		
Water conservation		
1.6.8 Stormwater Management	Refer to detail on the Stormwater Management Plans. The proposed includes a 600mm wide cavity drainage system around the basement wall. A mass concrete dish drain is proposed in the basement which falls towards proposed new stormwater pits. The proposal includes 2 x 5000l each rainwater tanks within the basement with the overflow connecting to the existing Council stormwater infrastructure within Bay View Street. The new downpipes and stormwater pits are also proposed to connect the existing Council stormwater infrastructure within Bay View Street.	Yes
SECTION 10 CARPARKING AND TRANSPORT		
10.1 Parking Provision Max 2 spaces per dwelling	The proposal allows for two (2) car spaces which is consistent with the Provision 1 of Section 10.2.1 of the NSDCP 2013.	Yes
Design and Layout	A new driveway crossing is proposed – refer to engineering detail. A turn table is proposed within the new driveway area accessing the basement allowing cars to enter and exit in a forward direction. The proposal is consistent with the provisions and objectives outlined in Section 10.3 of the NSDCP 2013.	Yes
SECTION 13 HERITAGE AND CONSRVATION		
13.4 Development in the vicinity of heritage items	Refer to HIS for detail. In summary the HIS concludes:- <i>“...The proposed demolition of the existing dwelling, garage and associated details is considered acceptable given their limited significance.</i> <i>The proposed new dwelling has been restricted and responds to the form and topography of the site. Front, side and rear setbacks have been retained. The form, scale and height is consistent with the existing dwelling on the site and neighbouring dwellings on the western side of the street.</i>	Yes

	<p>Some excavation is proposed, however, the slope and significant elements, the stone outcrop on the street frontage and south eastern corner of the site and stone retaining wall extending along the western site boundary have been retained and will remain visible features. The listed dwellings on the opposite, eastern side of Bay View Street will also remain highly visible and able to be interpreted as part of the early development in the area.</p> <p>The proposed works will have no adverse impact on the significant stone walls extending along the western side Bay View Street. The existing rock outcrop will be retained and the and proposed new garage and pedestrian entry and stone wall will improve the street frontage and will enhance and connect to the northern section (front of NO. 38 Bay View Street)"</p>	
SECTION 14 CONTAMINATION AND HAZARDOUS BUILDING MATERIAL		
	Given the historical use of the site as residential, it is not considered likely that the site is contaminated. Refer to Section 4.2 of this report for more detail.	Yes
SECTION 17 EROSION AND SEDIMENT CONTROL		
	A sediment and erosion control plan accompanies the application.	Yes
SECTION 18 STORMWATER DRAINAGE		
	Refer to detail on the Stormwater Management Plans.	Yes
19. WASTE MANAGEMENT		
Clause 19.1 Demolition Waste		
Project management Maximise reuse and recycling of demolition materials.	Demolition works will be required as a consequence of the proposed development. Appropriate conditions of consent may be incorporated should the application be considered worthy of approval.	Yes
Clause 19.2 Construction Waste		
Waste generation is minimised and reuse and recycling of construction materials is maximised in construction projects	Appropriate conditions of consent can adequately address these requirements if required.	Yes
Waste management plan Waste management plan submitted with development application		

Table 4: Consistency with Area Character Statement

CLAUSE	COMMENT	COMPLY
AREA CHARACTER STATEMENTS Part C Lavender Bay Planning Area		
Section 9.6 McMahon's Point Neighbourhood		
Significant elements		
Topography	Although excavation is proposed for the new basement carparking this does not alter the existing landform or overall topography of the site. The changes to the land form rather occurs towards the rear / back yard to accommodate the courtyard.	Yes

	There is no visible changes to the landform from the public domain.	
Views	The proposal will not adversely affect any public or private views.	Yes
Subdivision	N/A	
Streetscape	The proposal is consistent with adjoining and surrounding developments and retains the existing sandstone rock and reintroduce new sandstone block wall.	Yes
Characteristic built elements		
Form massing and scale	The proposed massing and scale is compatible with existing/recent surrounding buildings and moreover does not detract from the existing streetscape character. Refer to Section 1.4.7 & 1.4.8 of the DCP above.	Yes
Setback	N/A	N/A
Materials, colours	Refer to Section 1.5. of the DCP above.	Yes

6 CONCLUSION

The proposed alterations and additions at **No. 20 Bay View Street, Lavender Bay** is considered to:

- relate to the site conditions;
- is consistent with the existing and desired future character of the area with respect to established built form character;
- allow for all the necessary services and facilities;
- be a suitable and desirable use for the site and meets the relevant heads of consideration under **Section 4.15** of the Act;
- be in accordance with the aims, objectives and provisions of the relevant statutory and non-statutory planning instruments;
- be consistent with the existing built form within the streetscape; and
- not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing.

Based on the above assessment, is it recommended to the Council that consent be granted to the application.

AK Planning

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4 April 2025

North Sydney Council
PO Box 12
North Sydney, NSW 2059

Att: Ms Rachel Wu
Senior assessment officer

Via email: Rachel Wu <rachel.wu@northsydney.nsw.gov.au>

RE: RESPONSE TO REQUEST FOR FURTHER INFORMATION ON DA275/24 AT NO. 20 BAY VIEW STREET, LAVENDER BAY

I refer to Council's letter dated 18 February 2025, which requests additional information to assist with the development application process and the meeting of 25 February 2025. I have responded to each matter below. Also attached and uploaded to the planning portal is the following documents:-

- Amended architectural plans
- View loss analysis from No. 17 King Georges
- Revised landscape plan
- Revised arborist report

1. Revised Landscape Plan and Arborist Report

Please find the amended landscape plan and arborist report attached.

In this regard the arborist report has been updated to refer to the correct tree numbers and naming. In addition, as a result of the amended plans (removal or rear sunken courtyard) *T4 Persea americana* can be retained, now being outside of the construction zone.

The arborist reports at Section 4 notes as follows: -

- 4.1. *Tree 1 is a semi mature Plumeria acutifolia, or Frangipani located within the sites front garden. This is a common tree species that has grown to less than 5m in height and is supported on a trunk of less than 20cm in diameter. Part of the sites more recent plantings. Low Value. Remove.*
- 4.2. *Trees 2,3 and 5 are all small Duranta erecta, or Duranta. This is a well-recognised invasive weed species throughout NSW. Low Value. Remove.*
- 4.3. *Tree 4 is a semi mature Persia americana, or Avocado tree located adjacent to the sites rear boundary. This tree has grown to approximately 8m in height and is supported on a trunk of 32cm in diameter. Although outside its preferred climatic range the tree is in both good health and condition. Low to Moderate Value. Consider for retention. Retain.*
- 4.4. *Tree 6 is a small Brugmansia, or Angels trumpet tree. This is a toxic tree species that has been linked to countless poisoning events. Remove irrespective.*

- 4.5. *The final tree documented is another Plumeria acutifolia, or Frangipani located within the rear garden. This tree has grown to approximately 4m in height and is supported on a trunk of less than 20cm in diameter. Low Value. Remove.*

The landscape plan has been updated to reflect the arborist report and amended architectural plans.

2. Planning comments

a. Preservation of Natural Landform

Following the meeting with Council staff, the application was amended by removing the rear sunken courtyard and relocating bedroom 4 and the study towards the street to an upper basement level. In addition the location of the vehicular parking within the basement is being retained whilst the rainwater tanks were amended to two slimline tanks in the basement. This allows a single driveway crossing to be maintained with no impact to the on-street parking spaces. The amended design is consistent with the existing streetscape and the area character statement of the McMahons Point Neighbourhood which describes the streetscape as characterised by sandstone retaining walls to the high side of the street interrupted by garages built to the lot boundary.

The amount of excavation towards the rear has been reduced significantly and the application is consistent with P10(a) of Part B, s1.3.1 *Topography*, where a minimum of 50% of unexcavated area is located within the rear setback area.

In addition, a single vehicular entry / driveway crossing is retained, with carparking within the proposed basement whilst the extent of excavation was reduced, and site disturbance was minimised. Accordingly, the amended application is considered to preserve the natural landform and reduce excavation as per Clause 6.10 of NSLEP 2013,

b. Uncharacteristic Built Form Character

For any new development to be considered visually compatible with its context it should respond to the essential elements that make up the character of the surrounding urban environment or context.

The context of the area is quite varied, with several new contemporary dwellings located on Bay View Street. Noting that this emerging character is generally contained within Bay View Street. Whilst the dwellings west of the subject site, is located within a heritage conservation area and have a more traditional character, and many of the dwellings on the low side of Bay View Street are heritage listed.

The **photos 1- 4** below illustrate the emerging contemporary nature of built forms predominately along the western side of Bay View Street. Note the sandstone walls with garages on street as well as the large expanses of glazing to all levels to capture the views.



Photo 1: No. 2-8 Bay View Street



Photo 2: No 16 Bay View Street



Photo 3: No. 18 Bay View



Photo 4: No. 38 Bay View Street

There are many dictionary definitions of *compatible with* or *complementary to*. The LEC most appropriate meaning in an urban design context, is capable of existing together in harmony. Compatibility is different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance.

The Planning Principles in relation to the compatibility between a building and its surroundings were established in ***Project Ventures Developments v Pittwater Council [2005] NSWLEC 191***. In particular, it is appropriate to consider:

1. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
2. Is the proposals appearance in harmony with the buildings around it and the character of the street?

The physical impacts (overshadowing and views are discussed in the SEE and in more detail in the letter below). It is concluded that the proposal results in no adverse impact to adjoining properties. Moreover, any potential impacts do not cause physical constraints to the development potential of the surrounding properties.

The urban environment consists of multi-level contemporary dwellings with garaging to the street and large extent of glazing fronting the east. Having regard for the existing built form and emerging character, a contemporary built form is considered reasonable in the location, as it positively contributes to the transitioning character of the immediate locality. The built form is in harmony with the buildings around it and the character of the street.

In addition the built elements or desirable elements contributing to the character of area is contained in the area character statement under Section 9.6 of Part C of the NSDCP 2013, noting the characteristic built elements as, form massing and scale, setback and materials, colours.

The design is consistent with the form and scale of the surrounding urban environment, allowing the design to follow the natural topography stepping up the slope achieving a three storey form with recessed basement/garage structures and sandstone wall on the street boundary. The design allows for a strong sandstone base with substantial landscaping elements that reduces the presentation to the street. The upper levels have been stepped back from the street, complying with the front setback control. Moreover, the material selection and colours as well as architectural detailing creates visual interest and reduces the visual impact to the street. The proposed built form does not dominate the surrounding precinct and is visually compatible with its urban context.

c. Front setback

Because the adjoining properties within Bay View Street allows for varied front setbacks, the average of the setbacks of those primary façades is to be used as per P1 of Section 1.4.6 of the NSDCP 2013.

Existing setbacks as measured from survey plans are as follows:-

- No. 21 King George = 0m to garage and 2.35m to primary façade on NE corner and 4.21m to SE corner
- No. 38 Bay View = 0m to garage and 3.6m to balcony and 5.4m to primary dwelling facade
- No. 18 Bay View = 0m to garage and 6.41m to the primary dwelling facade

Accordingly, the average primary façade setback is 5.9m having regard for the immediate two adjoining and 5.34m when including No. 21 King George Street.

Proposed front setback:

Level	Primary facade	Balcony/terrace
Basement / Garage	0m	
Basement 2	6.1m	
Bedroom level	6.1m	5.1m to balcony
Living level	6.43m	5.1m to shading structure and 6m to balcony
Terrace on Bedroom Level	8.5m	7.5m to terrace

The proposed development complies with the front setback provision.

d. Side setback

Control / Required	Proposed	
	Northern elevation	Southern elevation
Basement = 1m	1m	1m
1 st storey (up to 4m) = 900mm	Bedroom level = 1m Living level at rear = 1m at rear (single storey)	Bedroom level = 1m Living level at rear = 1m at rear (single storey)
2 nd storey (up to 7m) = 1.5m	Living level = 1.5m at front (2 storeys) Master bedroom level = 1.5m (2 storeys)	Living level = 1.5m at front (2 storeys) Master bedroom level = 2.5m
3 rd storey (greater than 7m) = 2.5m	Master bedroom level = 1.5m (2 storeys)	Master bedroom level = 2.5m

Parts of the built form results in wall heights greater than 7m along the northern elevation due to the topography falling steeply towards the street. Accordingly, a 2.5m setbacks applies to the front portion of the building depending on the wall height above ground level – see **Figure 1** below. The rear portion of the dwelling fully complies with side setbacks on both the northern and southern boundaries. It is noted that the privacy screens were recessed to the window line, now also complying with the side setbacks.

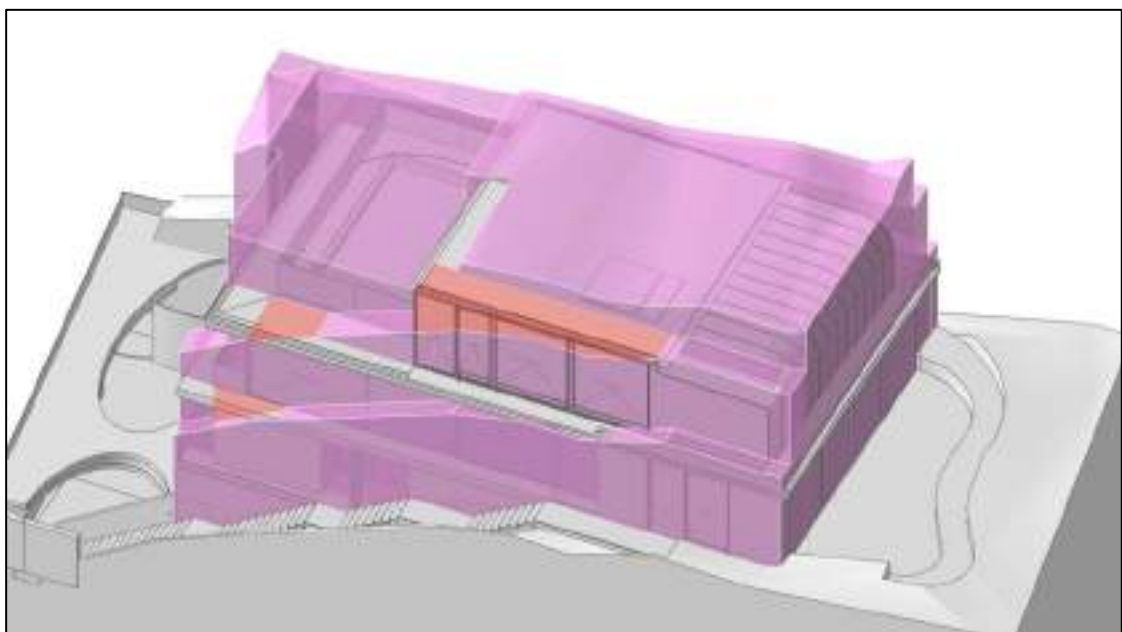


Figure 1: Side setback non-compliance (outlined in red) in 3D model

Setbacks are measured to the primary building line or facade and excludes such elements which are open to the elements like eaves or roof overhangs. In this regard, the floor plates and roof have purposefully been designed as an overhang in order to allow for shading required under BASIX as opposed to a flat roof with parapets which would have created additional massing.

The non-compliance with the side setback limited to the northern elevation has been addressed in the SEE and is reiterated below.

Notwithstanding the numerical non-compliance the application achieves the objectives in Part B, Section 1.4.6 in NSDCP 2013 as detailed below:-

- The non-compliance is limited to the top half of the rooms only, with most of the floor complying;
- The massing was purposefully shifted towards the north in order to minimise impact on solar access to the south;
- The proposed massing is articulated and does not creating a continues or unrelieved wall effect;
- The bulk and scale are further mitigated through the use of material selection;
- The roof overhangs do not add to the massing; and
- The privacy screen on the bedroom level is open in nature and do not materially add to the massing of the building.

Accordingly, the application is consistent with Section 1.4.6 in NSDCP 2013

e. Site coverage / landscape area non-compliance

The amended plans allow for a site cover of 196sqm or 53.6% which is 13sqm or 3.6% over the required 50% maximum. Notwithstanding the numerical non-compliance the application is consistent with the objectives of the control in that: -

- The external stair along the northern boundary allows for pedestrian access to the dwelling. It is not dissimilar to stairs within a landscape setting where there are significant level changes. In the context of site cover external stairs would more appropriately refer to stairs which gives direct access to an outside patio or terrace which would form part of the building envelope or footprint. In this instance the stairs are external to the building footprint and do not materially add to the envelope of the dwelling;
- the building form is consistent with the existing precedent in the street whilst the planting above softening the appearance from the street;
- The proposal is in keeping with the optimum capacity of the site consistent with existing and recently approved developments. Most of the dwellings on the high side of Bay View Street already exceeds the site coverage, setting a clear precedent;
- The proposal promotes the existing and desired future character of the neighbourhood, being consistent with surrounding developments in scale and massing;
- The proposal achieves an area for functional enjoyment and adequate private open space; and
- The proposed application complies with the minimum landscape area allowing for 110sqm or 30%.

f. Private open space

The amended plans remove the rear sunken courtyard and allows for the secondary living space / lounge to have direct access to the rear outdoor space. The total rear yard area of 67.65smq is well in excess of the required 40sqm at ground level.

The primary living spaces are orientated towards the views towards the east, which is consistent with all the dwellings on the western side of Bay View Street.

g. Views

In the absence of having internal access to adjoining properties the application relied on the following methodology in determining view loss.

A 3D ArchiCAD model of existing buildings at No. 17 Waiwera Street and No 19 King George Street, were created based on survey plans as well as approved plans under DA300/19 for No 19 King George Street and DA58/16/2 for No 17 Waiwera Street. Survey details site boundaries, location of buildings on the site, roof and gutter RL, Floor and Wall RL's, window and door locations with header and sill RL's were all incorporated into the 3D model.

A camera 3D view was placed in the ArchiCAD model. The Camera was positioned in the 3D model at 1.6m height from FFL, and 1m directly behind the applicable window/balustrade. A trace overlay of the 3D ArchiCAD model view over the images obtained from realestate.com illustrates the relative accuracy between the two.

A single submission raised concern regarding views loss from No. 17 King George Street. The view analysis below relies on the photographs supplied by Council staff following the site visits and applies the same methodology to the view analysis as described above. It is noted that the photographs include existing scaffolding which significantly obscures the views. The use of geo-location and CGI imaging accurately illustrates the existing and proposed situation, more so than superimposing images onto a photograph.

View Analysis

In order to establish the reasonableness of the potential view loss from No. 17 King George Street, an assessment against the Land Environment Court planning principles on sharing of views in **Tenacity Consulting v Warringah [2004] NSWLEC 140**, has been undertaken.

The test is applied below.

Step 1 – “The first step is the assessment of views to be affected”

Water views are valued more highly than land views; iconic views are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured. The Harbour Bridge and Opera House are considered iconic views.

The existing views from No. 17 Waiwera Street are towards Sydney Harbour and include views of the Sydney Harbour Bridge and the Sydney Opera House (see **Photo 5 & 6 and Figure 2** below).



Photo 5: View from bedroom terrace of No. 17 King George Street at 1.6m from FFL



Photo 6: View from bedroom terrace of No. 17 King George Street at 2.2m from FFL – notably a higher degree of downward angle

Step 2: “The second step is to consider from what part of the property the views are obtained”

The views are obtained across the rear yards of No 19 King George Street; No 17 Waivera and No 38 Bay View street as well as and the rear yard of the subject site towards the east (see **Figure 2**). The views which may be affected by the proposed development, are obtained from a standing position (eye level 1.6m) from the first floor terrace off the master bedroom of No. 17 King George Street – see **Figure 3 and Photo 7**



Figure 2: Direction of views from No. 17 King Georges Street across subject site



Figure 3: Floor plan of No. 19 King George Street
Red outline indicating where the views are obtained from



Photo 7: RealEstate photo as listed August 2021 from the subject terrace without the scaffolding at No. 19 King George Street

Step 3: “The third step is to assess the extent of the impact”

A view analysis which demonstrates the extent of the view impact were undertaken as reproduced in the **Figures 4 & 5** below – refer to Architectural plans for detail.



Figure 4: Existing view from terrace at 1.6m high



Figure 5: Proposed view from terrace at 1.6m high

Figure 4 & 5 above demonstrates that the proposed development will improve on existing views to the Sydney Opera House. The proposal removes the existing flat roof and associated parapets which creates higher wall heights. The proposed curved roof form lowers wall heights and allows for improved views towards the Sydney Opera House as well as views of the land water interface.

The composition of the view or the icon in a visual setting is improved. Accordingly, the loss of the some of the iconic view is considered minor.

Step 4: “The fourth step is to assess the reasonableness of the proposal that is causing the impact”

The proposal does not comply with the maximum building height due to the steep topography and the method applied when measuring maximum building height established under “Merman”. However, the non-compliance is limited to the norther-eastern corner of the proposed dwelling, whilst at the rear of the site, where the views are obtained, the proposal complies with and is set well below the maximum building height at 6m (WIR) and 8m (ridge).

However, even with a complying development application, the question should be asked whether a more skilful design or location of structures, could provide the same development potential and reduce the impact on the views of neighbours. It becomes less a question of how much views are lost but rather is the view loss reasonable?

A proposed development will only meet the reasonableness test when the proposed built form is consistent with what could be reasonably anticipated by the controls. In this regard the building envelope has been sighted in order to allow greater side setbacks towards the south in order to retain solar access to No. 18 Bay View Street as well as the views along the side boundary as viewed from No. 17 Waiwera Street. In addition, the proposal complies with the landscape area.

The rear setback / building alignment of the master bedroom level has been setback from the living level below, whilst the roof over the WIR has been set down in order to minimise impact within the view corridor from No. 19 King George Street.

Accordingly, the proposal has been skilfully located, having regard for the controls in order to allow for a reasonable sharing of views.

It is noted that Councils controls do not seek to recover or enhance private views rather the NSDCP seeks the preserving as far as possible access to existing views and O2 encourages view sharing and equitable access to exiting views from dwellings whilst recognising development may take place in accordance with the other provisions of the DCP and the NSLEP. In addition, Clause 1.2(2)(c)(i) aims of the NSLEP 2013, seeks new development to not adversely affect residential amenity in terms of view sharing.

In summary the proposal is considered to allow for reasonable view sharing, being consistent with O2 and P2 & P4 of Section 1.3.6 of the NSDCP.

h. Consistency with Area Character Statement

The amended plans allow for the continuation of the sandstone wall at street level, with a single vehicular access point on the street boundary. This allows the application to be more consistent with the existing streetscape character and the area character statement, of the McMahons Point Neighbourhood which describes the streetscape as characterised by sandstone retaining walls to the high side of the street interrupted by garages built to the lot boundary.

3. Amended and Additional solar access/overshadowing diagrams

The shadow diagrams submitted with the application have purposefully not shown the existing and proposed situation on the same drawing. Rather the existing and proposed situation is depicted on a separate images so as not to confuse the situation. Moreover, elevational shadows are included which clearly demonstrate the existing and proposed situation on separate images— refer to **Figures 6-8**.

The request from Council to include different colors for the existing and proposed situations are purely a different graphical depiction with no change to the impact as demonstrated on the originally submitted documentation.

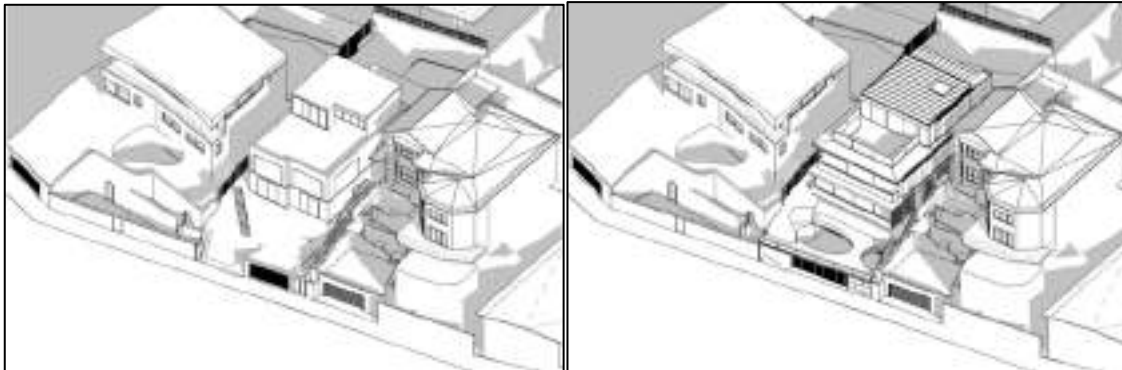


Figure 6: Existing and proposed shadow at 9am mid-winter

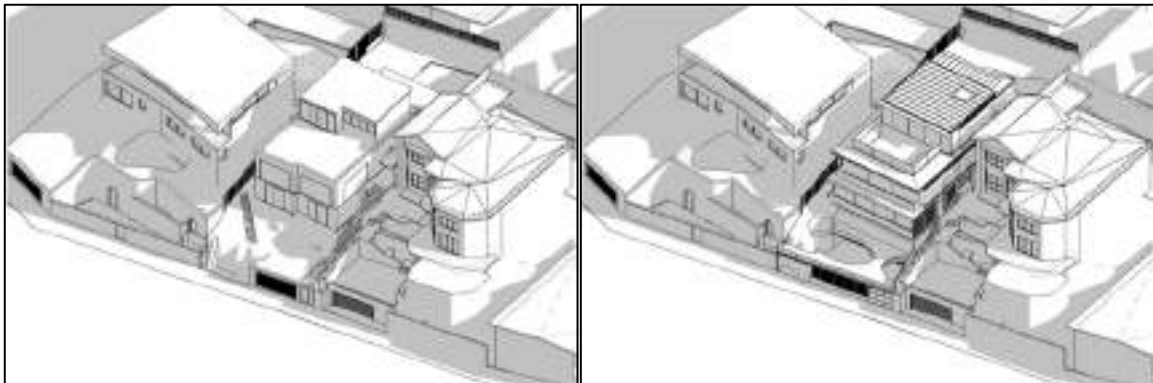


Figure 7: Existing & Proposed shadow at 12 noon

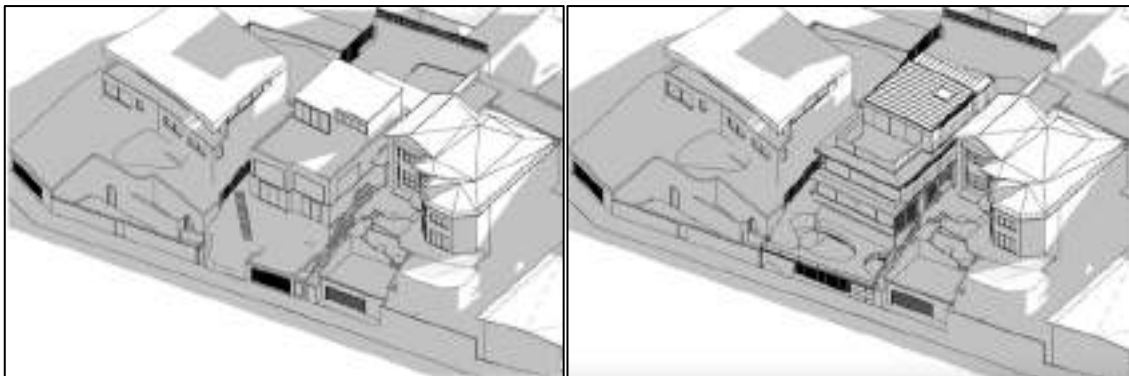


Figure 8: Existing and Proposed shadow at 3pm

In order to demonstrate no adverse impact by way of overshadowing to the main living area and principle private open space of No. 18 Bay View Street an assessment of the proposal was undertaken in the SEE submitted with the application, having regard for the planning principles adopted by Senior Commissioner Moore of the NSW Land and Environment Court in relation to ***The Benevolent Society v Waverley Council [2010] NSWLEC 1082***.

It is reproduced below

1st Principle: *"The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and*

buildings that are **highly vulnerable to being overshadowed.**) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.”

The subject site and the adjoining properties are zoned R3 Medium Density Residential. The existing structures are free standing dwellings with east-west orientation. Even at low densities these sites and buildings are *highly vulnerable to being overshadowed* due to its orientation.

Accordingly, having an expectation to retain 3 hours of sun during the mid-winter period is unreasonable.

2nd Principle: “The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained”

The shadow diagrams demonstrate the extent of shadowing onto the adjoining property to the south (No. 18 Bay View Street) during the mid-winter (21 June 21) period. Below follows a summary of the analysis.

The ground floor northern elevation of No 18 Bay View contains a window towards the street and side pedestrian access door, whilst the first floor contains high sill windows to the kitchen & dining room (main living spaces) and a terrace towards the street (see and **Figure 9**). A large circular window is located within the western / rear elevation. This window is a secondary light source to the living areas which has its main window to the east and north.



Figure 9: Windows within northern elevation of No 18 Bay View Street

Impact on Northern elevation at 9am

The proposal results in no additional overshadowing to the ground or first floor windows at the 9am mid-winter period.

Impact on Northern elevation at 12noon

Additional shadow occurs to the ground floor window only with most of the shadow falling within the existing overshadowing – refer to **Figure 8**. The first floor living area windows do not receive additional shadow. There is no additional shadow to the front terrace.

Impact on Northern elevation at 3pm

Currently the ground floor window is in shade during the 3pm mid-winter period.

The proposed shadow allows for greater solar access to the first-floor windows within the northern elevation with 100% of the glazed area now receiving solar access due to the increase in the proposed side setback compared to the existing situation as well as the lowering of the rear roof – refer to **Figure 8**.

The front terrace is currently in shadow and any additional shadow falls within existing during the 3pm mid-winter period.

Impact to west / rear facing window

It is noted that this window adjoins a staircase and is not the main source of natural light to the living spaces of No. 18 Bay View Street. This window serves as a secondary light source. **Figures 10-12** below demonstrate solar access to the west/rear facing window as well as the rear open space of No 18. Bay View Street.

In summary, at 9am there is no additional shadow to this window and any shadow is within the existing. At 12noon there is some additional shadow to the window, however a large proportion of the glazed area (approx.80%) remains in sun, consistent with the planning principle. At 3pm the proposal does not result in any additional shadow to this rear window, any shadow is within existing.

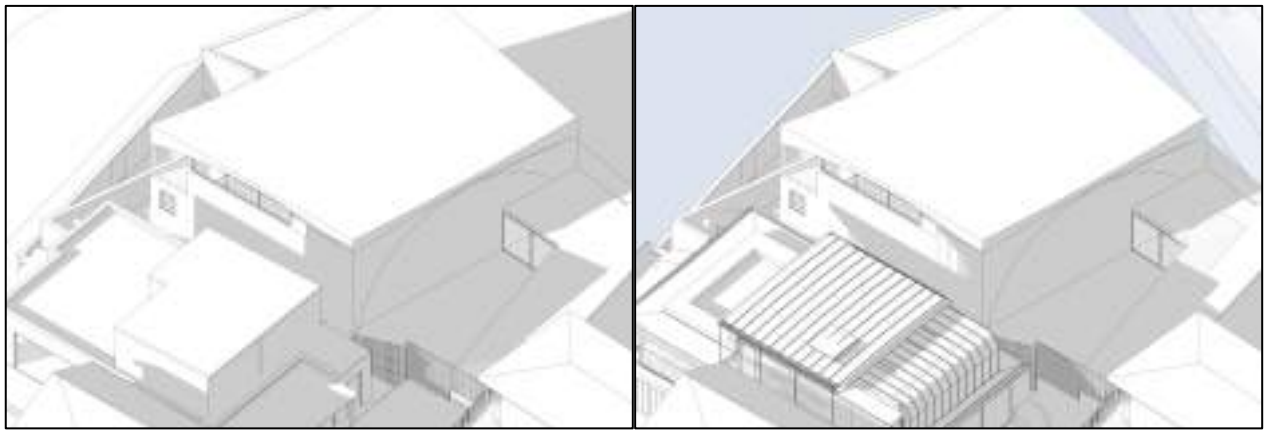


Figure 10: Existing and proposed 9am mid-winter

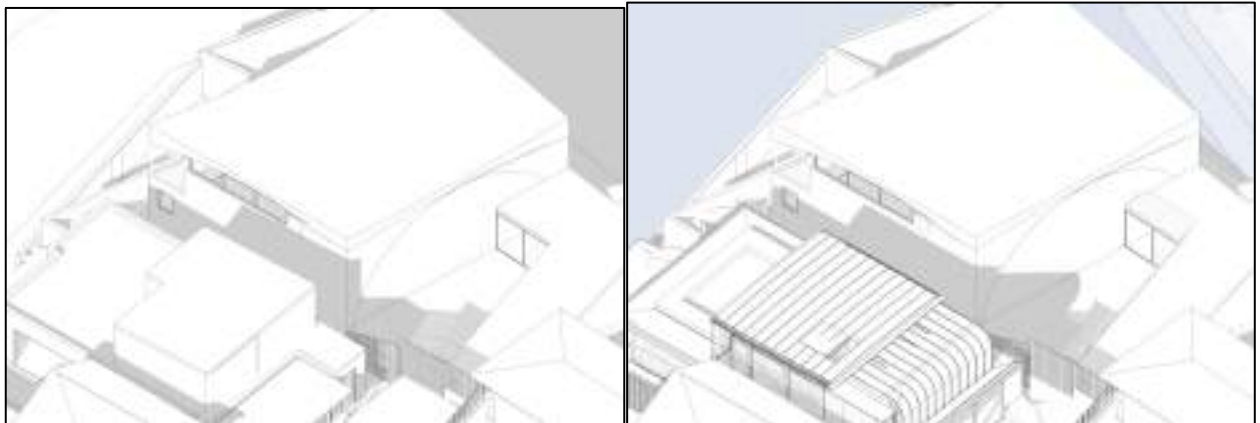


Figure 11: Existing and proposed 12noon mid-winter

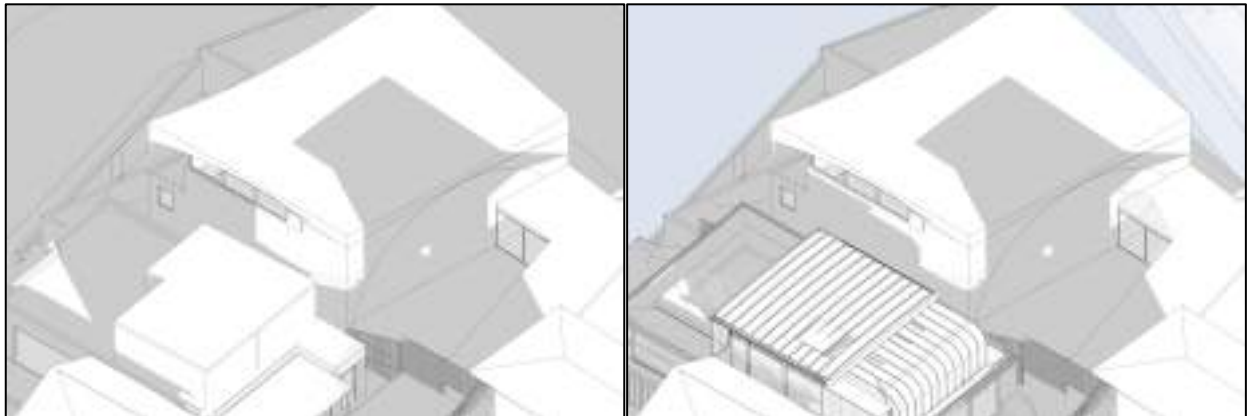


Figure 12: Existing and proposed 3pm mid-winter

Impact on rear private open space

9am additional overshadowing is within the existing shadow.

At **12noon** additional overshadowing retaining solar access to more than 50% of the rear yard for this period.

3pm

No additional overshadowing occurs, all being within existing shadows.

It is noted that most of the dwellings on the high side of Bay View Street have their principal private open space towards the east towards the views. The subject application does not impact on the front balcony.

3rd Principle: *“Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.”*

The proposed built form elements adjoining the common side boundary with No. 18 Bay View Street complies with the building height and side setback controls. Furthermore, the rear-built form is well below the maximum 8.5m building height at 6m.

It is noted that the proposed first floor has been setback 600mm from the rear façade of the immediate floor level below. Setting the rear roof down (over the WIR) as well as increasing the side setback along the southern elevation and stepping of the rear façade allows a recessive design whilst improving solar access to No. 18 Bay View Street, especially during the 3pm afternoon period.

Allowing the massing to sit closer to No. 38 Bay View Street allows greater solar access towards the south. The proposal is consistent with existing characteristic developments within the street allowing for a sensitive design response and a reasonable outcome.

4th Principle:- *“For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.”*

The LEC principal state that solar amenity may be achieved even if the sun falls on only a modest portion of the glazed area. In other words, the north facing windows do not necessarily need to be in “full” sun to be regarded as achieving appropriate solar amenity.

The first-floor high sill windows to the main living areas within the northern elevation of No 18 Bay View Street, can be read as a single glazed area. Notwithstanding it remains in sun with no additional overshadowing. In fact, the proposal improves solar access to these windows during the 3pm mid-winter period.

5th Principle: *“For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.”*

By virtue of the sitting of the development, the proposal would maintain a reasonable level of sunlight to private open space of No. 18 Bay View Street.

6th Principle:- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

The shadow diagrams also demonstrate shadows casted by existing structures such as fencing and awnings and other adjoining buildings.

7th Principle:- *“In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.”*

The streetscape is characterised by several new contemporary larger dwellings, especially on the high side of Bay View Street. The area is not undergoing significant change remaining as a medium density residential area with free standing larger residential dwellings along Bay View Street.

No. 18 Bay View Street is the subject of DA409/16/4 which was completed late 2020 and it is unlikely that further significant changes will occur.

In conclusion, the proposed duration and quality of the sunlight received to the living room windows is reasonable having regard for the nature of the immediate area being *highly vulnerable to being overshadowed* due to its orientation. Having regard for the 7 principles above, it is considered that the proposal would not unreasonably diminish the sunlight to the windows of the main internal living area or private open space of No.18 Bay View Street.

Accordingly, the proposal will maintain 3hours of sunlight to the main living room windows and principal private open space areas of No. 18 Bay View Street consistent with O1 “solar access” in Part B Section 1.3.7 and O4 “general objectives” in Part B Section 1.1.1 of the NSDCP 2013.

4. Additional drawings /sections required

a. Revised sections showing ground level (existing)

Both Section A and Section B includes black dotted lines demonstrating existing excavated ground line consistent with the LEC interpretation under ***Merman Investments Pty Ltd v Woollahra Municipal Council***. The amended plans continue to demonstrate the existing excavated ground line on the plans – reproduced in **Figure 13** below.

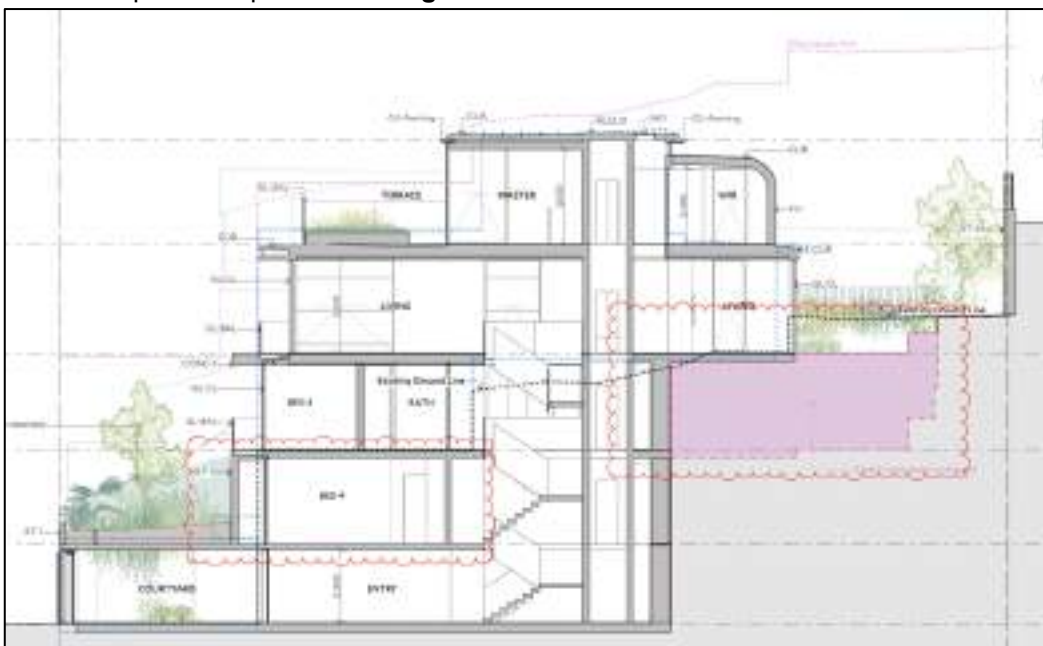


Figure 13: Section A showing existing excavated ground line

b. Proposed floor plan for basement level (RL19,230)

The amended plans remove the rear sunken courtyard and relocates bedroom 4 and associated en-suite towards the east within basement level RL19.23. An updated floor plan and sections accompanies the response.

5. Additional notification Fees

The Environmental Planning and Assessment Regulation 2021 under Part 3, Division 1 Clause 24, requires certain applications for development to be in an approved form. The approved form is defined in Schedule 7 of that Regulation as a form approved by the Planning Secretary and published on the NSW Planning Portal.

In this regard the applicant has submitted sufficient information to enable a reasonable assessment under the applicable legislation. The plans and documentation submitted with the application provides all the information required to fully indicate the impact of the proposal.

Moreover the application has already been notified twice due to a Council error, and it is onerous to notify the application a 3rd time, especially when there is no material change to the built form. Moreover, the amended plans result in no worse impact than originally submitted and does not warrant re-notification.

Kind regards



Annelize Kaalsen

**CLAUSE 4.6 VARIATION
(Maximum Height of Buildings) PURSUANT TO
CLAUSE 4.3 of the NSLEP 2013**

**To Accompany a
Development Application for
Demolition of existing dwelling and construction
of new dwelling
at
No. 20 Bay View Street, Lavender Bay**

1 INTRODUCTION

Clause 4.6 requires that a consent authority be satisfied of two matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]:-

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)];

2 STANDARD TO BE VARIED

Clause 4.3(2) the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map being **8.5m** as measured from existing ground level.

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 interpretation of ground level (existing) as that established in the matter of ***Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582** where at paragraphs 73 and 74 O’Neill C found:

*73. The existing level of the site at a point beneath the existing building is the level of the land at that point. I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant **excavated ground level on the site** and the proposal exceeds the height of locations where the vertical distance, measured from the excavated ground level within the footprint of the existing building, to the highest point of the proposal directly above, is greater than 10.5m. The maximum exceedance is 2.01m at the north-eastern corner of the Level 3 balcony awning.*

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

3 EXTENT OF VARIATION

The proposed development results in a maximum building height of **10m** limited to the north eastern corner of the new dwelling as measured from the existing excavated ground level– refer to **Figure 1** below.

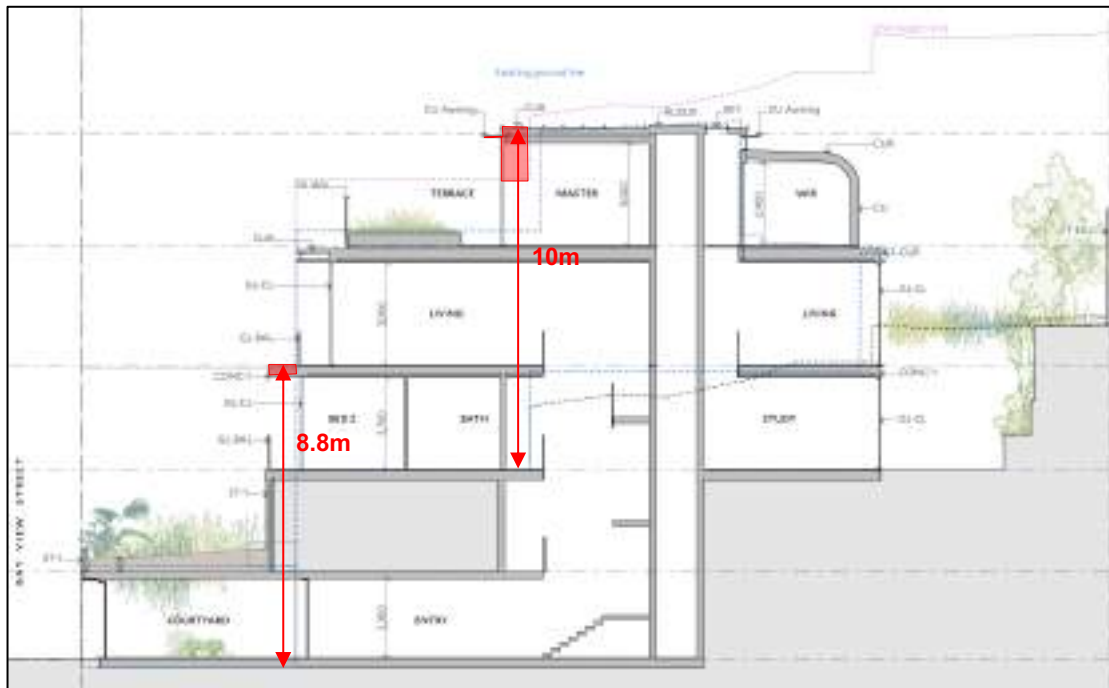


Figure 1: Building height non-compliance

4 CLAUSE 4.6(3)(a) - UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

This section demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the NSLEP 2013.

The Court held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary – refer to **Wehbe v Pittwater Council [2007] NSWLEC 827**.

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate.

It is sufficient to demonstrate **only one** of these ways to satisfy **clause 4.6(3)(a)** (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

Notwithstanding, consideration of each of the 5 ways follows below:-

4.1 Consistency with objectives of the building height standard

This approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Clause 4.3(1) specifies the objectives as follows:-

(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

Comment:

The topography of the site is steep, starting from RL26.58 at the rear boundary and stepping down to the street at RL16.38. This represents a step down by approximately 10.2m.

The proposed development has been designed to generally align with the footprint of the existing dwelling in order to minimise disturbance across the remainder of the site. Whilst excavation is proposed, the extent of excavation is not unreasonable or excessive in the context of this application. The proposed built form has been designed in response to the natural slope of the site, and reintroduces landscaping around the perimeter of the dwelling to more closely resemble the natural topography of the land.

The proposal, results in 2 and 3 storeys above the existing ground level with the upper level (3rd storey) setback from all the building edges but especially towards the east / street. This creates a stepped building mass which reduces its visible massing as seen from the public domain. Accordingly, the proposal notwithstanding the height variations, reflects the natural landform by stepping down the site.

(b) to promote the retention and, if appropriate, sharing of existing views,

Comment:

The upper floor of the proposed development has been sited to maximise views across the site from upslope properties. As demonstrated in the View Analysis prepared to support the application (DA611 & DA614), a suitable view sharing arrangement is achieved for No. 3/17 Waiwera Street and No. 19 King George Street.

Of particular importance, the View Analysis confirms that the portions of the proposed development that protrude above the maximum height do not attribute to the likely loss of views currently enjoyed from both No. 17 Waiwera Street and No 19 King George Street.

The water view being affected from No 17 Waiwera Street is along a side boundary with the rear portion of the proposal well below the maximum building height at 6.5m and complying with the side setbacks. Moreover, the existing view is obscured by existing vegetation which will remain. The proposed development will not impact on any existing views to the Sydney Harbour Bridge from No. 17 Waiwera Street – refer to **Figure 2**.

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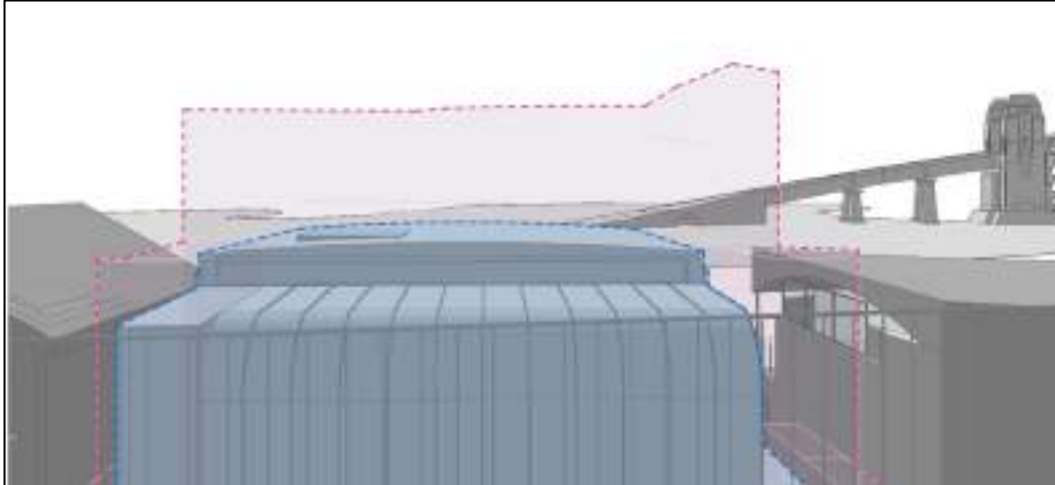


Figure 2: Proposed view from terrace of No 17 Waiwera Street

The views being affected from No 19 King George is over a building height of 6.5m well below the maximum of 8.5m. The rear setback / building alignment of the master bedroom level has been setback from the living level below, whilst the roof over the WIR has been set down in order to minimise impact within the view corridor from No. 19 King George Street.

The proposal retains the majority of the Sydney Harbour Bridge “composition”, including the arch the pilons and even some of the main roadway as visual markers. The viewer still has the ability to perceive, cognitively interpret and appreciate the Sydney Harbour Bridge in its setting, notwithstanding losing some of the elements – refer to **Figure 3**.

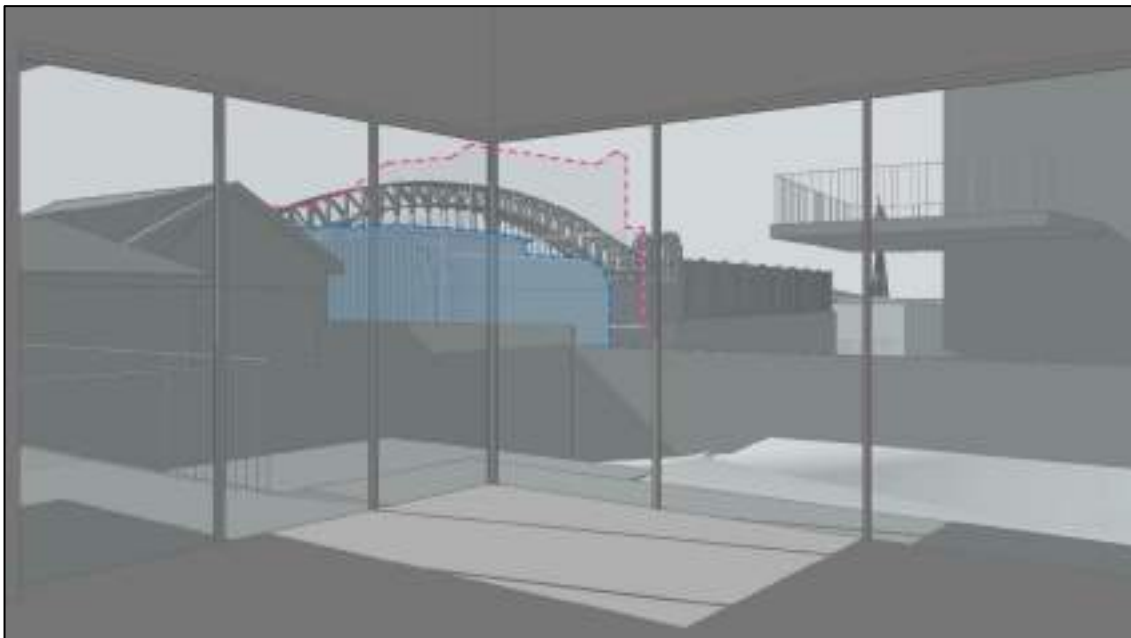


Figure 3: View from first floor kitchen/dining room from No 19 King George Street

Accordingly, the proposed development results in a built form which could be reasonably anticipated by the controls, allowing for reasonable sharing of views.

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

Comment:

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The height non-compliance does not give rise to any unreasonable impacts upon solar access of adjoining properties, as highlighted in the solar access diagrams accompanying the application and discussed in detail within the SEE. The height non-compliance is limited to the north-eastern part of the dwelling and does not contribute to overshadowing of adjoining spaces.

The proposed built form elements adjoining the common side boundary with No. 18 Bay View Street complies with the building height and side setback controls. Furthermore, the rear-built form is well below the maximum 8.5m building height at 6.5m. Moreover, the proposal complies with the site coverage and landscape area controls which are the main massing controls for North Sydney. Allowing the massing to sit closer to No. 38 Bay View Street allows greater solar access towards the south.

The proposal will maintain reasonable access to sunlight to the living room windows of No. 18 Bay View Street consistent with O1 "solar access" in Part B Section 1.3.7 and O4 "general objectives" in Part B Section 1.1.1 of the NSDCP 2013.

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The proposed development seeks to maximise visual privacy within the site and externally to neighbouring developments. This has been achieved through the provision of setbacks that generally comply with the DCP. The side elevations demonstrate the inclusion of fixed privacy screening to minimised direct overlooking of neighbouring properties.

The portions of the proposed development which contravene the height of buildings development standard do not cause any unacceptable privacy impacts to residents of existing dwellings or potential future development.

The proposal includes appropriate mitigation measures to maintain a reasonable level of visual privacy to adjoining spaces consistent with Objective 1 of Section 1.3.10 of the NSDCP.

(e) to ensure compatibility between development, particularly at zone boundaries,

N/A

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

The context of the area is quite varied, with several new contemporary dwellings located on the western (high) side of Bay View Street. Having regard for the existing built form and the fact that the site is not located within a heritage conservation area, a contemporary built form is considered reasonable in the location.

The proposed built form is compatible with the size of the land complying with the site coverage and landscape area controls. Compliance with the built form controls demonstrates that the development enables a form that is compatible with the size of the land notwithstanding the building height non-compliance.

The proposal is consistent with the character, scale and form of surrounding buildings having similar contemporary massing and scale. Having regard for the existing built form and emerging character, a contemporary built form is considered reasonable in the location, as it positively contributes to the character of the immediate locality.

(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.

The proposed development results in part 2 and part 3 storeys due to the steep topography. Although the built form exceeds two storeys in part, the proposed built form in the R3 Zone is in harmony with the buildings around it, notwithstanding the proposed height variation. Further, the existing dwelling located on the site is also a two to three storey dwelling.

The 3rd storey has been setback from the building edges of the storey immediately below as well as being setback 11.9m from the front boundary, minimising the visual massing as seen from the street. The visual massing is consistent with the existing streetscape and the built form within the R3 medium density residential zone in general.

4.2 *The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

The underlying objective or purpose is relevant to the development and therefore this reason is not relied upon.

4.3 *The objective would be defeated or thwarted if compliance was required with the consequent that compliance is unreasonable.*

The objective would not be defeated or thwarted if compliance was required. This reason is not relied upon.

4.4 *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.*

The standard has not been abandoned by Council actions in this case and so this reason is not relied upon.

4.5 *The zoning of the land is unreasonable or inappropriate.*

The zoning of the land is reasonable and appropriate and therefore is not relied upon.

5 CLAUSE 4.6(3(b)) - SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118*, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, Plain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

As discussed in **Section 4**, the non-compliant portions of the development do not result in any meaningful additional adverse environmental impact and instead continues to provide a built form that is compatible with the existing and desired future character of the area.

There has been caselaw for sites occupied by a basement under *Bettar v Council of City of Sydney [2014] NSWLEC 1070 at [39]-[41]*. This caselaw was typically applied when there was no existing ground level around the existing building for example within the inner city. In Bettar the footpath level was used to determine the existing ground because the existing building occupied the whole of the site and accordingly there was no ground adjoining or under the building, from which the existing ground level could be determined by a survey plan. However, Bettar was superseded

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by the NSW LEC judgement in ***Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582***.

The Merman Court decision held that:

- the existing level of the site at a point beneath the existing building is the level of the land at that point; and
- the 'ground level (existing)' within the footprint of the existing building is the existing excavated ground level on the site.

The Court found that the maximum building height standard is measured from the **excavated ground level** (within the footprint of the existing building) to the highest point of the proposal directly above. Compared with the old version of an extrapolated ground line under the building based on levels around the footprint of the existing building.

In Merman the judgment at Par.74 acknowledges that this interpretation will distort the height of buildings when compared to the surrounding topography. Commissioner O'Neill noted that this is described as "*an environmental planning ground*" for a clause 4.6 variation to the building height standard.

The images below demonstrate both methods of measuring building height.

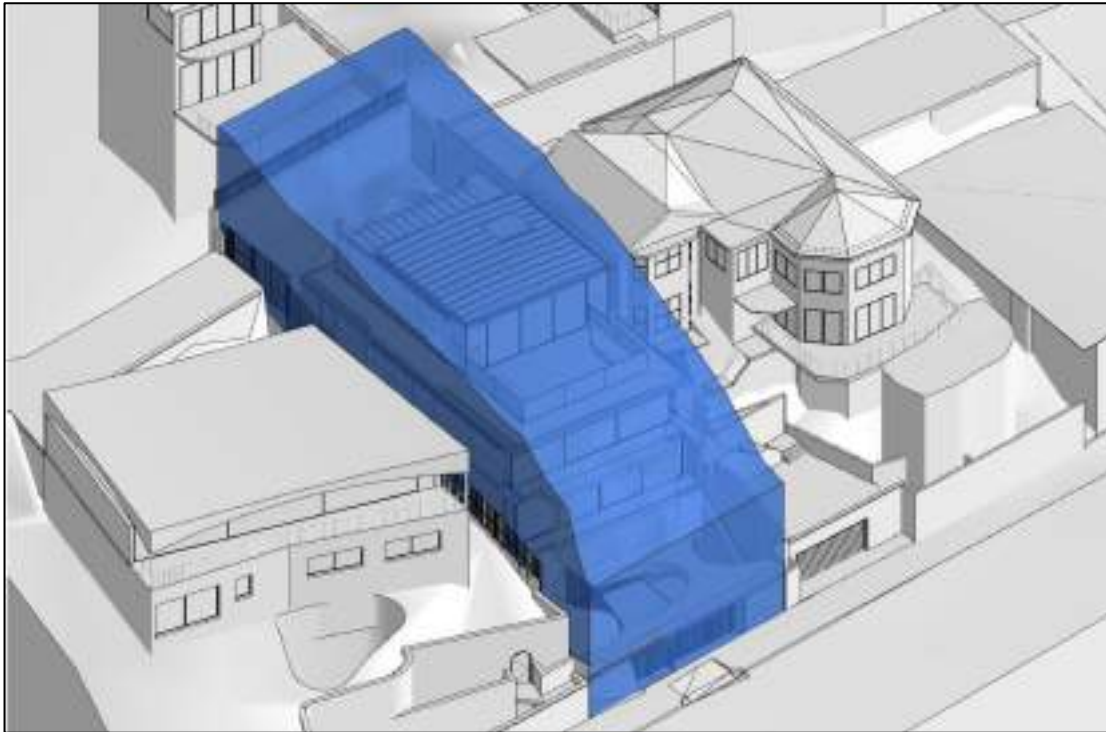


Figure 2: Building height plane in accordance with Better

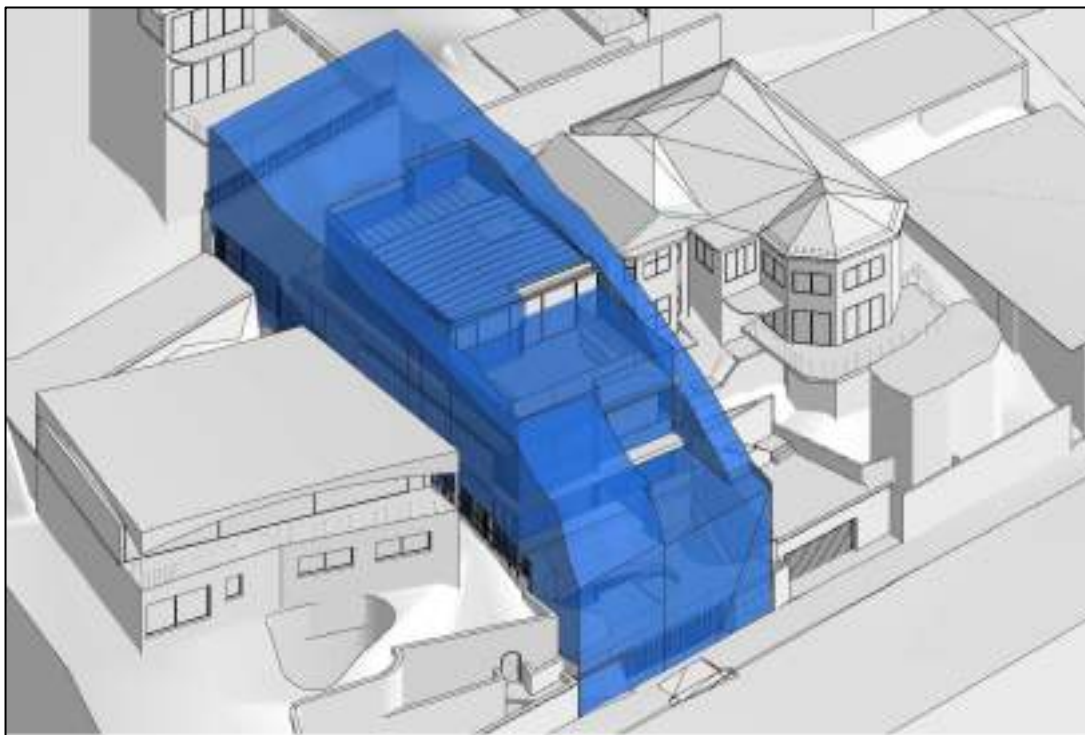


Figure 3: Building height in plane accordance with Merman

The historical excavation of the site, within the footprint of the existing building, significantly distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill – See **Figure 2**.

The building height plane was able to be overlaid on the plans to determine the height of the development relative to undisturbed levels being the levels of the land prior to excavation occurring to accommodate the existing dwelling house, consistent with Bettar (see **Figure 2**), demonstrating full compliance with the 8.5m

It is considered that sufficient planning grounds exist to justify contravening the maximum height of buildings standard having regard for the following:-

- The steep topography of the site in part contributes to the proposed height variation. The site slopes approximately 10.2m down to the street. The proposed excavation seeks to generally maintain the step down across the site while also accommodating basement parking below. The built form has been designed to step down across the site responding to the topography;
- The proposal would comply if the interpretation of height under Bettar is applied (extrapolation method) compared with the existing excavated ground in accordance with Merman. This interpretation distorts the height of the building when compared to the surrounding topography and is planning grounds for varying the development standard;
- The historical excavation within the footprint of the existing dwelling distorts the proposed height of building;
- The proposed massing and scale are consistent with existing surrounding buildings and moreover does not detract from the existing streetscape character;
- The proposal facilitates the orderly and economic development of the site and in particular in the R3 zoned part of the site the variation promotes objective 1.3 (c) of the EP&A Act;
- The proposed development is compatible with adjoining residential development, is articulated and features a mix of materials, colours and landscaping which make it visually sympathetic to neighbouring buildings. Importantly, the variation to the height of building

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development standard does not result in any unreasonable impacts to residential amenity, solar access, views or privacy. Accordingly, the proposal achieves objective 1.3 (g) of the EP&A Act, “to promote good design and amenity in the built environment”; and

- there is an absence of environmental harm associated with the non-compliance with the development standard.

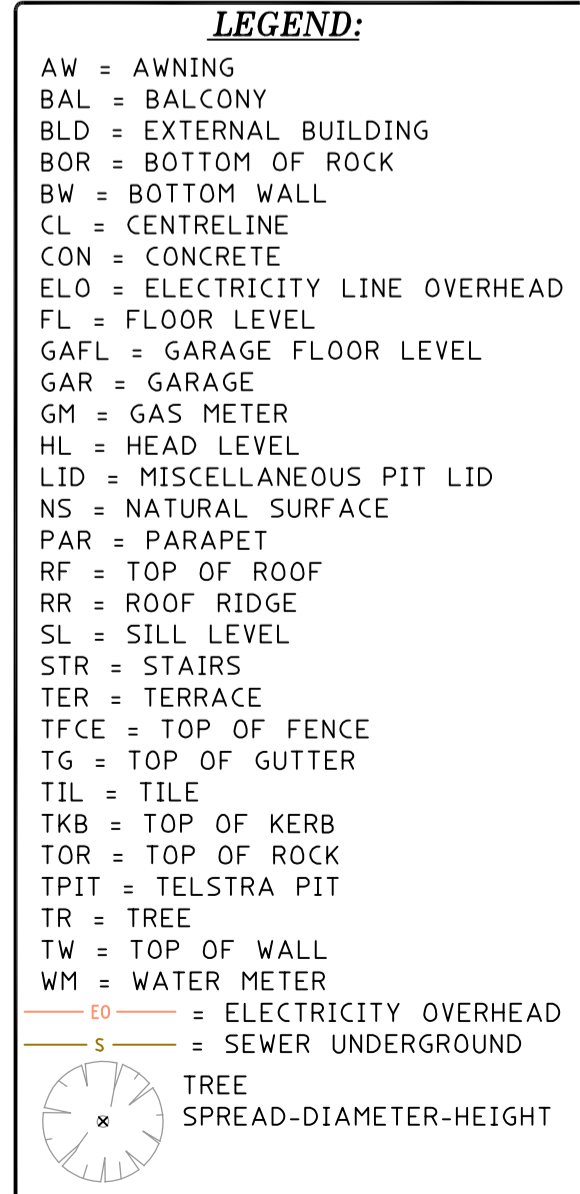
Finally, it is noted that the size of the variation (maximum 17.6%) is not in itself, a material consideration as to whether the variation should be allowed. There is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6: **GM Architects Pty Ltd v Strathfield Council [2016] NSWLEC 1216 at [85]**. As such there are sound planning grounds to vary the standard.

6 CONCLUSION

Pursuant to clause 4.6(4)(a) of NSLEP 2013, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a maximum building height variation in this instance.



A horizontal scale bar with a black and white checkerboard pattern. It is divided into 10 equal segments by vertical tick marks. Above the bar, the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 are placed at regular intervals. Below the bar, the text 'SCALE 1:100' is centered.

- **BOUNDARIES HAVE NOT BEEN DEFINED – BOUNDARY DEFINITION IS REQUIRED TO FURTHER SURVEY.**
- **A BASIC BOUNDARY SURVEY HAS BEEN UNDERTAKEN SUITABLE FOR COUNCIL DA SUBMISSION (TITLE DIMENSIONS ONLY).**
- **IF CONSTRUCTION ON OR NEAR BOUNDARIES IS REQUIRED IT IS RECOMMENDED THAT THE BOUNDARIES OF THE LAND BE MARKED.**
- **AREA IS APPROXIMATE ONLY AND HAS BEEN CALCULATED BY TITLE DIMENSIONS. ALL TITLE DIMENSIONS OF THE LAND HAVE NOT BEEN CONFIRMED BY SURVEY. IF AREAS ARE CRITICAL, WE RECOMMEND A BOUNDARY SURVEY FOR PUBLIC RECORD.**
- **TREE SIZES ARE ESTIMATES ONLY.**
- **THIS PLAN HAS BEEN PREPARED FOR THE EXCLUSIVE USE OF MATTHEW WILLIAMS ARCHITECTS.**
- **RELATIONSHIP OF IMPROVEMENTS TO BOUNDARIES IS DIAGRAMMATIC ONLY. WHERE OFFSETS ARE CRITICAL THEY SHOULD BE CONFIRMED BY FURTHER SURVEY.**
- **EXCEPT WHERE SHOWN BY DIMENSION LOCATION OF DETAIL WITH RESPECT TO BOUNDARIES IS INDICATIVE ONLY.**
- **ONLY VISIBLE SERVICES HAVE BEEN LOCATED. UNDERGROUND SERVICES HAVE NOT BEEN LOCATED. DIAL BEFORE YOU DIG SERVICES (p1100) SHOULD BE USED AND A FULL UTILITY INVESTIGATION, INCLUDING UTILITY LOCATION SURVEY, SHOULD BE UNDERTAKEN BEFORE CARRYING OUT ANY CONSTRUCTION ACTIVITY IN OR NEAR THE SURVEYED AREA.**
- **SEWER MAIN PLOTTED FROM SONEY WATER SEWER DIAGRAM. LOCATION SHOULD BE MARKED ON SITE IF CRITICAL.**
- **CRITICAL SPOT LEVELS SHOULD BE CONFIRMED WITH SURVEYOR.**
- **THIS PLAN IS ONLY TO BE USED FOR THE PURPOSE OF DESIGNING NEW CONSTRUCTIONS.**
- **CONTOURS SHOWN DEPICT THE TOPOGRAPHY. THEY DO NOT REPRESENT THE EXACT LEVEL AT ANY PARTICULAR POINT. ONLY SPOT LEVELS SHOULD BE USED FOR CALCULATIONS OF QUANTITIES WITH CAUTION.**
- **CONTOUR INTERVAL - 0.5 metre. - SPOT LEVELS SHOULD BE ADOPTEED.**
- **POSITION OF RIDGE LINES ARE DIAGRAMMATIC ONLY (NOT TO SCALE).**
- **THE INFORMATION IS ONLY TO BE USED AT A SCALE ACCURACY OF 1:100.**
- **DO NOT SCALE OFF THIS PLAN / FIGURED DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED READINGS.**
- **THIS PLAN HAS BEEN PREPARED UNDER THE SUPERVISION OF A REGISTERED SURVEYOR, S B McVEOY, BOSSI NUMBER 265.**
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- **THIS NOTICE MUST NOT BE ERASED.**

HORIZONTAL DATUM:
CO-ORDINATE SYSTEM: ASSUMED
MARKS ADOPTED: N/A

VERTICAL DATUM:
 DATUM: AUSTRALIAN HEIGHT DATUM (AHD)
 B.M. ADOPTED: PM 3575I
 R.L. 15.89 (ORDER 4)
 SOURCE: S.C.I.M.S. (04/12/19)

I	DETAIL UPDATED	23/07/20
I	FIRST ISSUE	13/12/19

CLIENT:
MATTHEW WILLIAMS ARCHITECTS
19 DUMBARTON STREET
MCMAHONS POINT NSW 2060

**SURVEY PLAN
SHOWING DETAIL & LEVELS
OVER LOT 1 IN D.P.89034
20 BAY VIEW STREET
LAVENDER BAY NSW 2060**

 C.M.S. Surveyors
Pty Limited

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LGA: NORTH SYDNEY

SHEET | OF |

SURVEYED M.E./B.S.	DRAWN R.N.	CHECKED M.E./B.S.	APPROVED AF
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SURVEY INSTRUCTION	SCALE	DATE OF SURVEY
19013A	1:100 <input checked="" type="radio"/> A1 1:200 <input type="radio"/> A2	05/12/19, 15/07/20

DRAWING NAME 19013Adetail	ISSUE 2
CAD FILE 19013Adetail 2.dwg	