

**NSLPP MEETING HELD ON 02/06/2021**

Attachments:

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

ADDRESS/WARD: 12 Fernhurst Avenue, Cremorne (V)**APPLICATION No:** DA 84/21**PROPOSAL:** Alterations and additions including first floor addition**PLANS REF:**

Plan No.	Rev No.	Description	Prepared by	Dated
EX200	A	Existing North Elevation	Group Architects	17/11/2020
DA100	B	Site Analysis Plan	Group Architects	22/01/2021
DA201	B	East Elevation	Group Architects	22/01/2021
EX201	A	Existing East Elevation	Group Architects	17/11/2020
EX100	A	Existing Site + Ground Floor Plan	Group Architects	17/11/2020
EX202	A	Existing South Elevation	Group Architects	17/11/2020
EX203	A	Existing West Elevation	Group Architects	17/11/2020
DA102	B	Garage, First Floor + Roof Plans	Group Architects	22/01/2021
DA200	B	North Elevation	Group Architects	22/01/2021
DA300	B	Sections A-A + B-B	Group Architects	22/01/2021
DA101	B	Site + Ground Floor Plan	Group Architects	22/01/2021
DA202	B	South Elevation	Group Architects	22/01/2021
DA203	B	West Elevation	Group Architects	22/01/2021
EX101	A	Existing Garage, First Floor + Roof Plans	Group Architects	17/11/2020

OWNER: Peter James Kennedy & Myrna Kennedy
12 Fernhurst Avenue
CREMORNE NSW 2090

APPLICANT: Group Architects Pty Ltd
3.09, 55 Miller Street
PYRMONT NSW 2009

AUTHOR: Thomas Holman, Assessment Officer**DATE OF REPORT:** 23 April 2021**DATE LODGED:** 31 March 2021**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

This development application seeks approval for alterations and additions comprising a first floor addition to an existing detached dwelling house and is reported to North Sydney Local Planning Panel for determination because the variation sought to the building height development standard is greater than 10% which requires determination of the application by the Panel in accordance with the directions from the Secretary of Planning, Industry and Environment.

The proposal is consistent with the relevant objectives of the zone providing development to serve the housing needs of the occupiers at 12 Fernhurst Avenue whilst not significantly adding to the bulk and scale of the dwelling.

The proposed works would have a height of 10.73m that fails to comply with the permissible height limit of 8.5m outlined within clause 4.3 in NSLEP 2013. The height of the first floor addition varies from the maximum height limit by 2.23m (26.24%). The written request to vary the development standard provided by the applicant is considered well founded demonstrating that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the variation. Assessment of the proposed addition against the objectives of the development standard Cl. 4.3 'Height of Buildings' of the North Sydney Local Environmental Plan 2013 confirmed the proposal meets the underlying objectives of the development standard most notably promoting the sharing of views, maintaining solar access and improving the privacy for residents of adjoining properties.

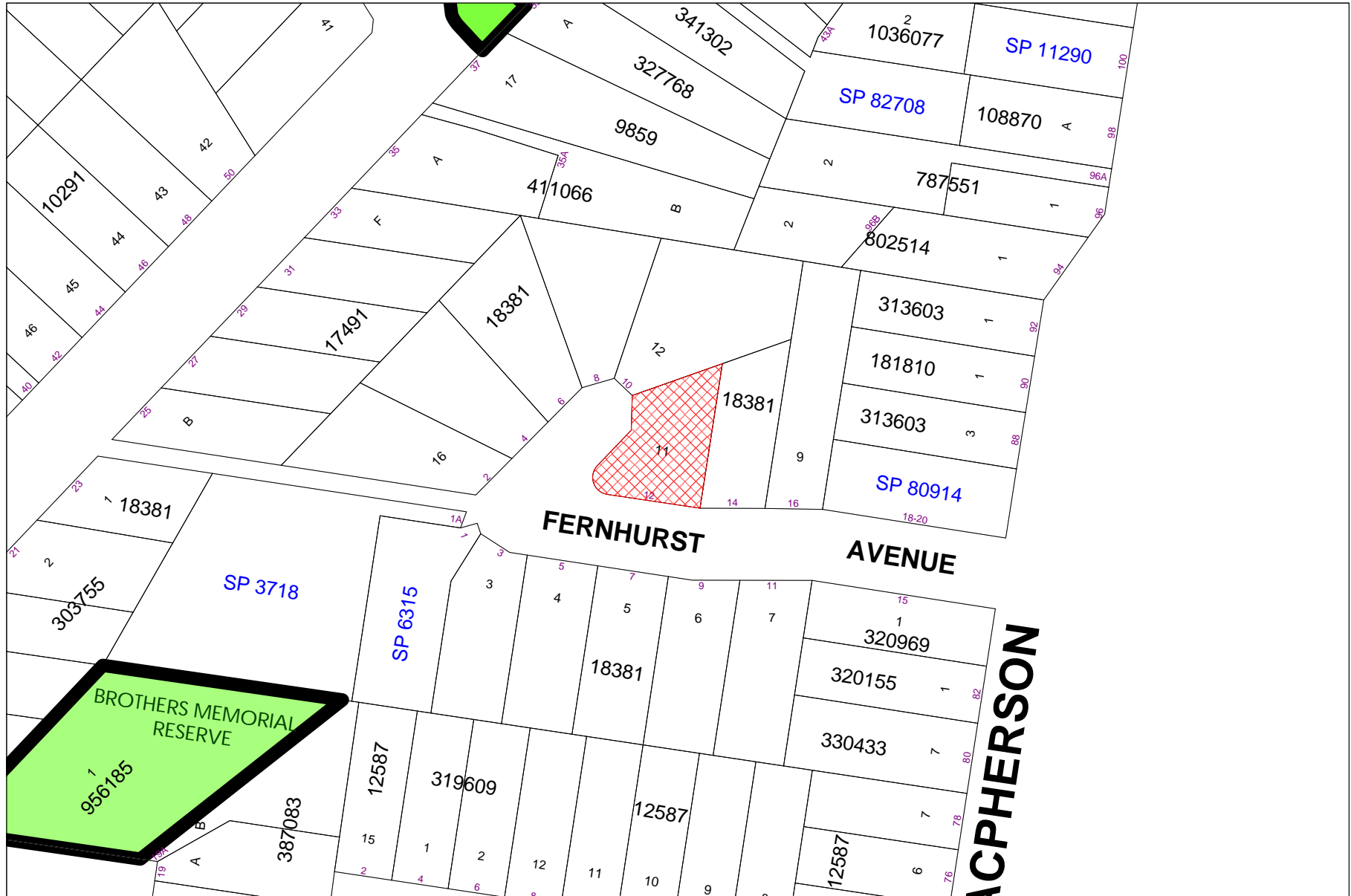
The proposed addition retains a compliant site coverage and has no impact on existing landscaping within the site. The proposed first floor addition form sympathetically matches the character of the existing dwelling comprising a hipped roof profile to match materials and finishes to match the existing dwelling.

The addition does not compromise the amenity of adjoining properties with sufficient setbacks to adjoining properties and the additional shadow cast predominantly falling within the subject site or streetscape. The development would not adversely restrict views from neighbouring properties only impacting on side views from a dormer window of 14 Fernhurst Avenue. The first floor addition would retain water views and views towards Middle Harbour from the dormer window of 14 Fernhurst Avenue.

Notification of the proposal has attracted no submissions. Nevertheless, the assessment has considered the potential adverse impact to neighbouring properties including privacy, overshadowing and access to views. The assessment has considered the amenity of adjoining properties against Council's planning requirements and where appropriate conditions of consent have been recommended to maintain residential amenity.

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

LOCATION MAP



Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The proposal consists of alterations and additions to a dwelling house consisting of the following:

- Construction of a first floor addition over an existing terrace.
- The first floor addition will provide a master bedroom, ensuite and walk in robe.
- The existing bedroom 2 doors are to be bricked up and made good.
- Access to the master bedroom will be via a new opening from the existing first floor hallway.
- The first floor addition elevations will comprise brick to match the existing dwelling and a new tiled hipped roof to match existing roof.
- Window openings for the addition include a 2.75m² north facing window, 1.54m² west facing window and a 0.54m² east facing window.

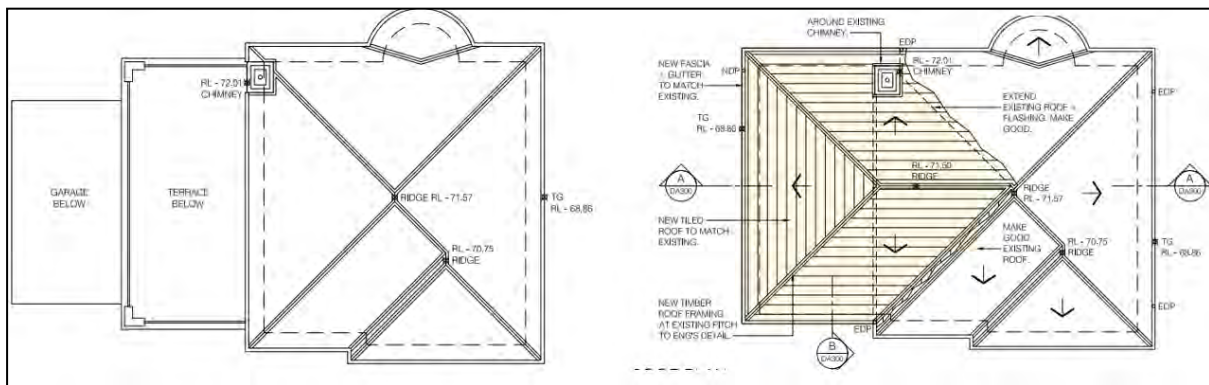


Figure 1 – Existing Roof Plan – EX101 A (left) and Proposed Roof Plan – DA102 B (right)

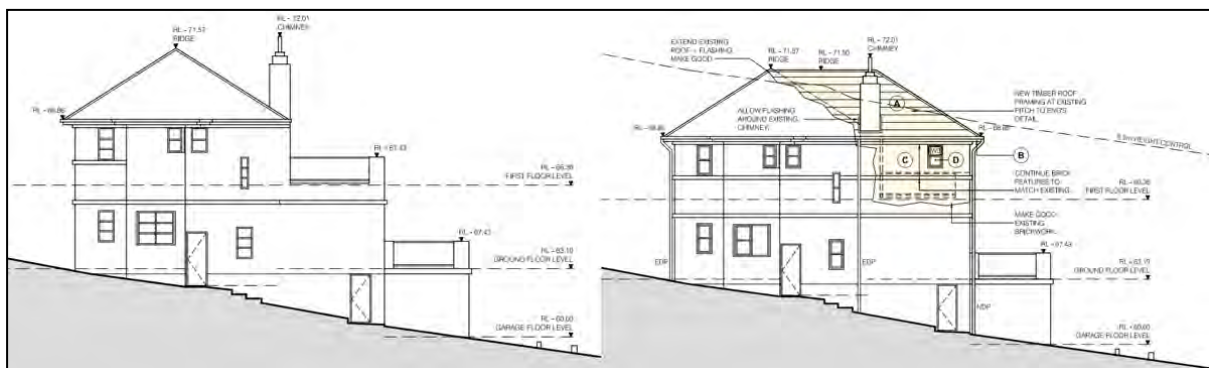


Figure 2 – Existing East Elevation – EX201 A (left) and Proposed East Elevation – DA201 B (right)

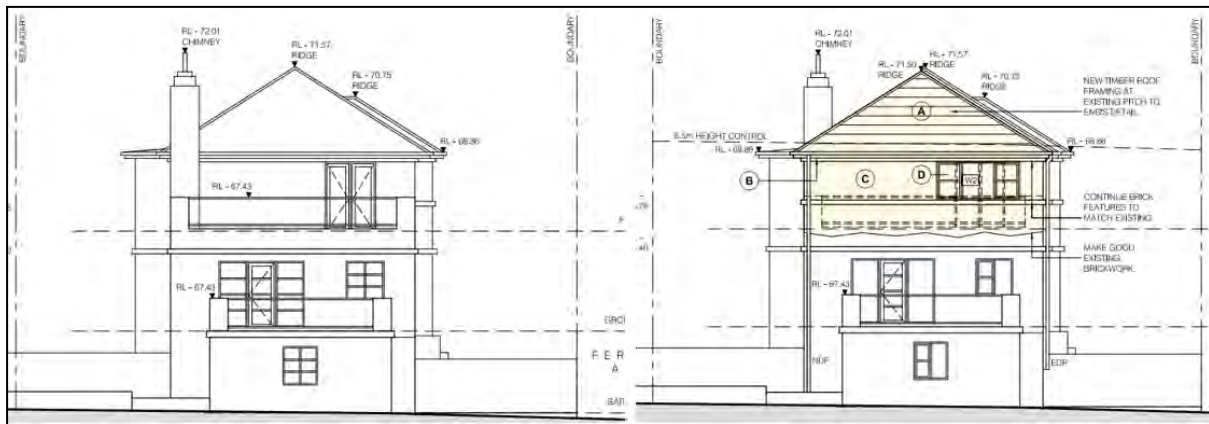


Figure 3 – Existing North Elevation – EX200 A (left) and Proposed North Elevation – DA200 B (right)

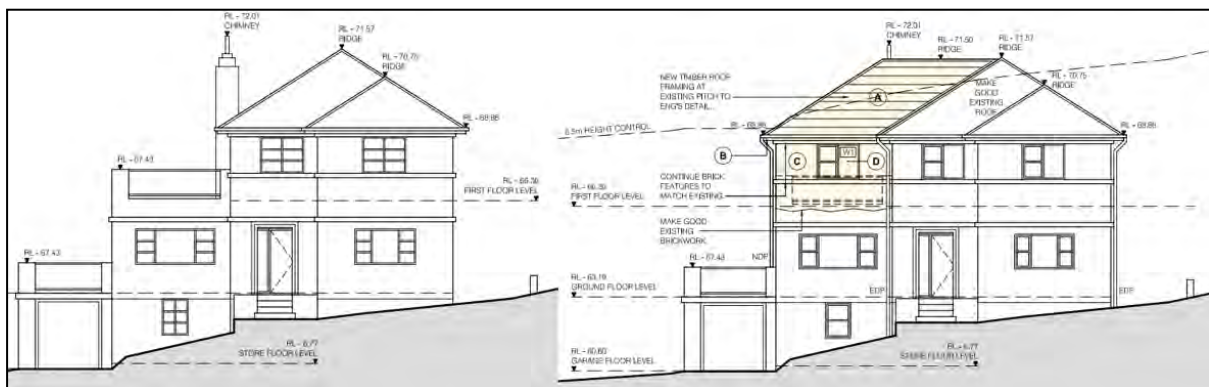


Figure 4 – Existing West Elevation – EX203 A (left) and Proposed West Elevation – DA203 B (right)

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R2 Low Density Residential
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- Conservation Area - No
- North Sydney Local Infrastructure Contributions Plan 2020
- Environmental Planning & Assessment Act 1979 (As amended)
- Environmental Planning & Assessment Regulations 1996
- SREP (Sydney Harbour Catchment) 2005
- SEPP 55 – Remediation of Land & Draft SEPP
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Vegetation in Non-Rural Areas) 2017
- Draft SEPP Environment 2017
- Local Development

POLICY CONTROLS

DCP 2013
NS LOCAL INFRASTRUCTURE PLAN 2020

DESCRIPTION OF LOCALITY

The site legal description is Lot 11, DP 18381 known as 12 Fernhurst Avenue, Cremorne. The site is an irregular shaped lot with an area of 521.2m² located within a residential cul de sac. The site contains a two storey detached dwelling centrally located in the site and surrounded by landscaping including lawns and hedging for the boundaries of the site.

The dwelling was built in 1939 for Mrs Marjorie Edna Perrier and the value of the lot was valued at £18 referring to a search of North Sydney Council's rates and valuations records. The building was designed by John R Brogan.

The dwelling has brick elevations painted light grey and a hipped tile roof. The core of the dwelling is two storeys with a single storey element and attached garage with roof terraces on the northern side of the dwelling.



Figure 5 – Photo of the principal elevation (top left), photo of side elevation subject to first floor addition (top right), photo of dwelling from Fernhurst Avenue (bottom left & right)

Fernhurst Avenue is characterised by predominantly two storey detached dwellings, with dwellings on the northern side of Fernhurst Avenue afforded views to Willoughby and Long Bay. The site is not a heritage item, not in proximity to a heritage item and not within a Conservation Area.

The subject site has wide ranging views from the northern rooms and terraces as shown below.



Figure 6 – Western views from terrace over Primrose Park and distant views to St Leonards



Figure 7 – Northern water views towards Long Bay from terrace subject to first floor addition



Figure 8 – Eastern outlook to neighbouring property and private open space of 14 Fernhurst Avenue

RELEVANT HISTORY

Previous applications

A search of Council records confirms there has been no development applications lodged with Council since the property was built in 1939. The owner confirmed that the property has not been subject to any development applications and evidence was provided during the site visit dated 23 April 2021. Below are photos taken during the site visit of the original architectural plans designed by John R Brogan confirming the property, including single storey and garage northern elements are original features of the dwelling.



Figure 9 – Original Architectural Plans framed and located within the ground floor of the property (Photo taken 23 April 2021)

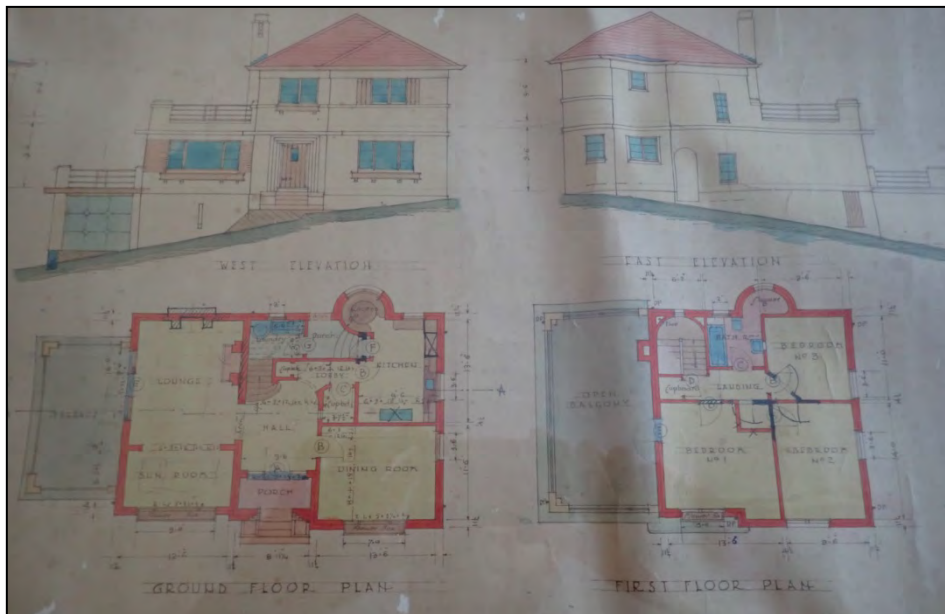


Figure 10 – Floor Plans and Elevations designed by John R Brogan (Photo taken 23 April 2021)



Figure 11 – Plans confirming the architect and client associated with the original plans for the dwelling (Photo taken 23 April 2021)

Current Application

<i>Date</i>	<i>Action</i>
31/03/2021	Development application for alterations and additions lodged with Council on 31 March 2021.
07/04/2021	A compliance diagram (site coverage, landscaped, unbuilt upon area) was requested following review of the development application by Council's Development Review Panel (DRP). The compliance diagram was received by Council dated 04 May 2021 confirming the development complies with Council's site coverage, landscaped and unbuilt upon area requirements.
16/04/2021	Advertising notification between 16/04/2021 – 30/04/2021.
23/04/2021	A site visit was completed on 23 April 2021.
05/05/2021	Following receipt of comments from Council's Development Engineer the applicant was requested to provide a Stormwater Concept Plan to clarify whether stormwater from the addition can be conveyed in a controlled manner by gravity to Council's stormwater drainage system. The applicant provided a Stormwater Drainage Plan (SW01 Rev A) and a Soil and Water Management Sediment Control Plan (SE01 Rev A) on 17 May 2021.

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

Council's Development Engineer has reviewed the proposed plans including Stormwater and Sediment Control Plan raising no objections subject to recommended appropriate engineering conditions of consent.

SUBMISSIONS

Original proposal

On 7 April 2021, Council notified adjoining properties and the Willoughby Bay Precinct of the proposed development seeking comment between 16/04/2021 – 30/04/2021. Council received no submissions following notification of the development.

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 2000 SREP – (Sydney Harbour Catchment) 2005

Having regard to the SREP (Sydney Harbour Catchment) 2005 and the Sydney Harbour Foreshores and Waterways Area DCP 2005, the proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given the site's inland location a significant distance from the Sydney Harbour foreshore. As such, the development is acceptable having regard to the provisions contained within SREP 2005 and the Sydney Harbour Foreshores and Waterways DCP 2005.

SEPP 55 – Remediation of Land & Draft

The provisions of SEPP 55 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; therefore, the requirements of SEPP 55 and the Draft SEPP have been satisfactorily addressed.

SEPP – (Vegetation in Non-Urban Areas) 2017

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) works together with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

The SEPP will ensure the biodiversity offset scheme (established under the Land Management and Biodiversity reforms) will apply to all clearing of native vegetation that exceeds the offset thresholds in urban areas and environmental conservation zones that does not require development consent. The proposal meets the objectives of the SEPP because there would be no clearance of native vegetation or any materials impacts on bushland in the vicinity of the subject site.

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate (*No. A404342 dated 22 January 2021*) for alterations and additions to a dwelling house has been submitted with the application to satisfy the Aims of the SEPP. (See Condition No. C14, G5)

Draft SEPP Environment 2017

This draft SEPP proposes to integrate the provisions of seven (7) SEPPs/SREPs including SREP (Sydney Harbour Catchment) 2005. The majority of the current provisions of SREP (Sydney Harbour Catchment) 2005 would be transferred to the draft SEPP with necessary updates and some amendments. The proposal would not offend the relevant provisions of the draft SEPP due to the nature of the proposed development as a dwelling not highly visible from the harbour and negligible impacts on the scenic quality and the ecology of Sydney Harbour and its foreshores.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The proposed works can be defined as alterations and additions to a dwelling house and are permissible in the zone subject to development consent.

2. Objectives of the zone

The objectives for a R2 Low Density Residential Zone are stated below:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposal is consistent with the relevant objectives of the zone providing development to serve the housing needs of the occupiers at 12 Fernhurst Avenue whilst not significantly adding to the bulk and scale of the dwelling or increasing the built site coverage therefore ensuring the dwelling is representative of a low density development. The addition is to be wholly constructed over an existing terrace with no works to existing landscaping within the site therefore not compromising natural features within the site. The addition is appropriately sited not compromising the amenity of adjoining properties with sufficient setbacks to adjoining properties and the additional shadow cast predominantly falling within the subject site or streetscape.

Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 521.2m²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	10.73m	8.5m	No (variation of 2.23m or 26.24%)

3. Height of Building

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

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

The proposed works would have a height of 10.73m that fails to comply with the permissible height limit of 8.5m outlined within clause 4.3 in NSLEP 2013. The height of the first floor addition varies from the maximum height limit by 2.23m (26.24%).

Clause 4.6 – Exceptions to Development Standards.

A written request to contravene the development standard for height has been submitted justifying the height breach complies with the underlying objectives of the applicable development standard cl. 4.3 'Height of Buildings'. The Land and Environment Court Decision in *Wehbe v Pittwater Council* (2007) detailed five ways of establishing that compliance with a development standard is unreasonable or unnecessary. One way is to establish that compliance with a development standard may be unnecessary or unreasonable is if notwithstanding a numerical non-compliance the underlying objectives of the relevant development standard is met.

The supporting Clause 4.6 – Exception to Development Standard prepared by Longitude Planning Pty Ltd considers the above approach therefore an assessment of the proposed development against the objectives of cl. 4.3 Height of Buildings are duly considered.

Clause 4.6(3)(a) Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?

Clause 4.3 Height of Buildings Objectives -

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

The proposed first floor addition would be constructed on an existing terrace not affecting the natural gradient of the site. The existing single storey garage and sloping topography of the site would remain. No additional step in the built form is required with the first floor addition complementing the style and character of the dwelling.

(1)(b) to promote the retention and, if appropriate, sharing of existing views,

The proposed development is a detached dwelling located centrally within the site. The low density character of Fernhurst Avenue assists in accommodating alterations and additions without adverse view loss to neighbouring dwellings. The existing dwelling has large setbacks to the boundaries of the site aiding the opportunity for alterations and additions whilst retaining existing views.

The most affected property from the first floor addition is 14 Fernhurst Avenue. This property would retain northern water views with only a side dormer window partially affected.

A detailed assessment pursuant to view sharing principles established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC confirms the development would not have an unacceptable view impact to 14 Fernhurst Avenue. Below is consideration of the development against the four steps established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC.

First step – What are the views affected? Water views are more valued than land views

- The first floor addition would remove existing land views, not water views from the first floor dormer of 14 Fernhurst Avenue. Water views are valued more highly than land views pursuant to view sharing principles established in Tenacity Consulting v Warringah Council [2004] NSWLEC. Below are photos taken looking across the existing terrace from the neighbouring dormer confirming the extent of land views lost and existing water views retained.



Figure 12 – Photos confirming existing view from the dormer of 14 Fernhurst Avenue lost by the addition (left) and waterviews retained (right) - Photos taken 23 April 2021

The first floor addition would not remove views fully from the side facing dormer window of 14 Fernhurst Avenue with views retained at an approximate 45% angle to Long Bay as per the below image above annotated clarified by the sightlines below.



Figure 13 – Annotated aerial maps confirming the 45 degree angle water views not interrupted by the proposed first floor addition

Views at an approximate 45% from 14 Fernhurst Avenue would be retained encompassing water views as evidenced by the above figures.

Second Step – What part of the property are views obtained?

The second step in the LEC judgement of *Tenacity Consulting v Warringah Council* [2004] is to deduce what part of the property the views are obtained. The views affected from the first floor addition to 14 Fernhurst Avenue are side views. The protection of views across side boundaries is more difficult to protect than views from the front or rear of a property.

Third Step – What is the extent of the view loss on the property?

The third step requires consideration of the impact to the whole property and the type of habitable space affected. The first floor addition would impact one window only, a roof dormer not serving living areas such as kitchen areas which are more valued than bedrooms or service areas. The impact of the first floor addition affects one window of 14 Fernhurst Avenue only retaining existing views from other habitable living areas including from the rear of the property.

Fourth Step – Reasonableness of the proposal causing the impact?

To deduce the reasonableness of the proposal a development is considered more reasonable if it complies with all planning controls than one that breaches them. The first floor addition does breach the development standard relating to 'Height of Building' however the impact on loss of views does not arise from the exceedance in height.

The exceedance in height is restricted to parts of the first floor addition roof which causes no additional loss of views from the side facing dormer of 14 Fernhurst Avenue.

To conclude, the first floor addition is considered reasonable and concordant with considerations in *Tenacity Consulting v Warringah Council* [2004] NSWLEC due to the impact restricted to one side facing window of an adjoining property and views would predominantly be retained including water views from the side facing window therefore the impact is not considered excessive to warrant amendments to the siting, form, massing and scale of the first floor addition.

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

Shadow diagrams prepared by Group Architects assess the extent of shadow from the proposed development on 21st June (mid-winter) when the potential for shadows are at their greatest in the year. The shadow diagrams confirm the proposed first floor addition would have a marginal increase in shadow cast at 9am within the subject site and the footpath within Fernhurst Avenue. At midday minimal additional shadow will be cast from the first floor addition due to its siting concealed on the northern elevation of the dwelling not protruding beyond the dwelling roof ridge or elevations. At 3pm additional shadows cast would not result in a loss of solar access to habitable windows of the adjoining property 14 Fernhurst Avenue therefore having a nil impact on the adjoining property. Elevation shadow diagrams confirm the additional shadow at 3pm (mid-winter) would be cast over the existing elevation of 14 Fernhurst Avenue but not affecting windows of the property (Figure 12).

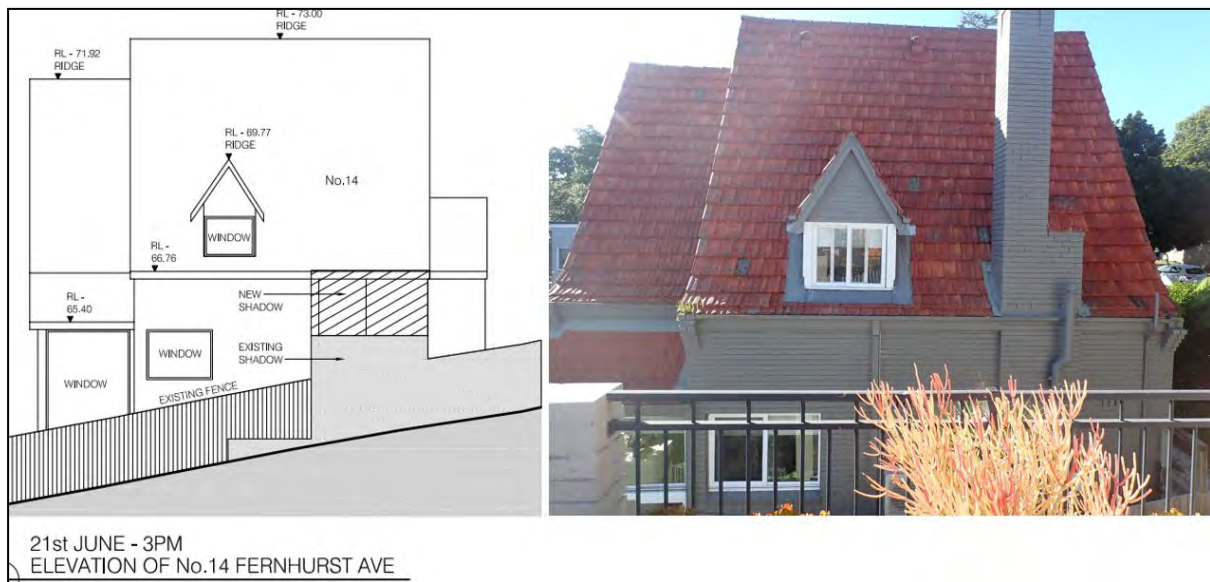


Figure 12 – Elevation Shadow Diagram at 3pm on 21 June (left) and photo of the existing elevation of 14 Fernhurst Avenue (right)

Overall, the first floor addition in the morning and afternoon at mid-winter would have a minimal impact to surrounding properties and streets and no impact at midday to the streetscape or adjoining properties.

(1)(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The existing terrace subject to an addition affords considerable views of the locality including views to neighbouring properties and their private open space. Below are images of the existing views from the terrace to neighbouring properties. Construction of a first floor addition to replace the existing terrace would therefore reduce the potential for overlooking and improve the privacy of adjoining properties particularly the privacy of occupants at 14 Fernhurst Avenue, Cremorne.



Figure 13 – Views from first floor terrace to dormer window and private open space of 14 Fernhurst Avenue (left) and views of neighbouring property to the north – 10 Fernhurst Avenue

(1)(e) to ensure compatibility between development, particularly at zone boundaries,

The proposed development is compatible with the surrounding development retaining the existing residential use of the site, maintaining existing setbacks to adjoining neighbouring sites and designing an addition that sympathetically matches the form and character of the existing dwelling. The subject site does not share a zone boundary.

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

The proposed first floor addition is contained wholly within the footprint of the existing first floor terrace therefore not increasing the existing site coverage of the dwelling ensuring the scale and density of the development would remain consistent with the existing development and adjoining properties.

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

It is considered that there are sufficient environmental planning grounds in the circumstances of the case that justify the contravention of the development standard as the proposed first floor addition is a sympathetic addition with an architectural form that matches the character of the existing dwelling. The first floor addition would not result in any additional amenity impacts such as overshadowing and would improve the privacy to adjoining properties especially 14 Fernhurst Avenue.

Whether the proposed development will be in the public interest?

The proposed development is considered to be in the public interest as it is consistent with the objectives of the zone and the objectives of the development standard as discussed above.

Concluding Remarks

The written request to vary the development standard provided by the applicant is considered well founded. The written request demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the variation. The proposed development is considered to be in the public interest. It is recommended that the variation be supported in these circumstances.

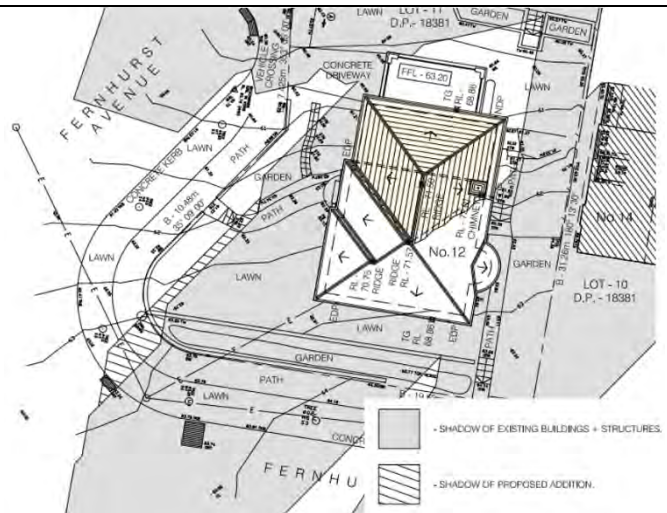
4. Earthworks

The proposal does not involve any earthworks given that the proposal would be contained within the existing building envelope. Consequently, there would be minimal detrimental impact on environmental features, neighbouring land uses, cultural items or natural features within the surrounding land in accordance with the objectives of Clause 6.10 in NSLEP 2013

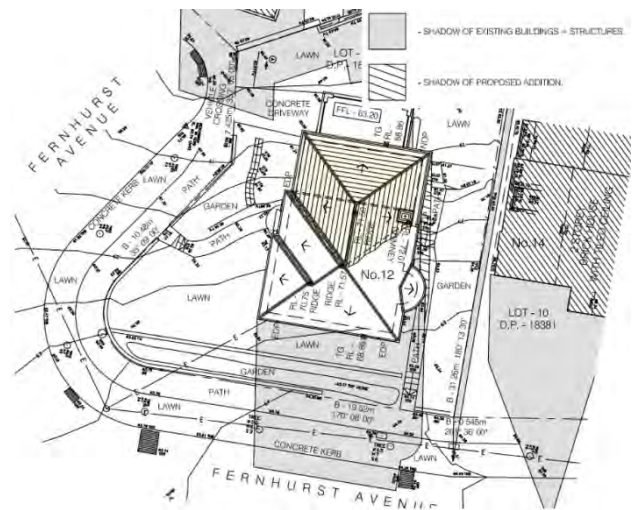
NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

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

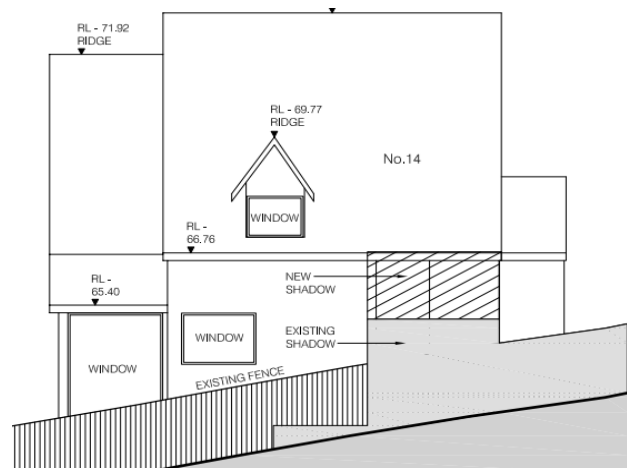
DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.3 Environmental Criteria		
1.3.1 Topography	Yes	The works entail internal alterations and a first floor addition over an existing terrace not requiring excavation or alterations to the existing topography of the site.
1.3.2 Bushland	N/A	The site is not in proximity to bushland and not identified within a bushland buffer area pursuant to Appendix 4 of the NSDCP 2013 therefore assessment against the requirements of Part B: Section 15 – Bushland is not required.
1.3.3 Bush Fire Prone Land	N/A	The site is not located on Bush Fire Prone Land.
1.3.4 Foreshore Frontage	N/A	The site is not on land adjacent to the foreshore.
1.3.6 Views	Yes	<p>The dwelling has a predominant southern orientation to Fernhurst Avenue and the proposed first floor addition would be located on the northern side of the dwelling therefore the proposal therefore does not unreasonably obstruct views from Fernhurst Avenue compliant with Provision P1, s1.3.6 ‘Views’ of the NSDCP 2013.</p> <p>The proposal would have no impact on neighbouring properties views apart from the side dormer window of 14 Fernhurst Avenue. Consideration to the LEC Planning Principle for view sharing established in Tenacity Consulting v Warringah Council [2004] NSWLEC confirmed an equitable access to views can be maintained to the adjoining property.</p> <p>The proposed first floor addition is supportable and not likely to adversely affect views from 14 Fernhurst Avenue for the following reasons:</p> <ul style="list-style-type: none"> • The first floor addition would remove existing land views but retain water views to Long Bay from the first floor dormer of 14 Fernhurst Avenue. • The proposed development would affect side views from a dormer of 14 Fernhurst Avenue. The Planning Principle Tenacity Consulting v Warringah Council acknowledges views across side boundaries are more difficult to protect than views from the front and rear boundaries of the site. • The extent of impact to 14 Fernhurst Avenue is limited to one dormer window only. The dormer window does not serve the kitchen/living area with these habitable spaces located on the ground floor of 14 Fernhurst Avenue. • The first floor addition is reasonable comprising a sympathetic form complementing the form and the character of the existing dwelling. The first floor addition does breach the development standard relating to ‘Height of Building’ however the impact on loss of views does not arise from the exceedance in height. The exceedance in height is restricted to parts of the first floor additions roof which causes no additional loss of views from the side facing dormer of 14 Fernhurst Avenue.
1.3.7 Solar Access	Yes	The shadow diagrams prepared by Group Architects confirm the proposed first floor addition would have marginal increases in shadow cast at 9am predominantly contained within the subject site and footpath of Fernhurst Avenue.




At midday no additional shadow will be cast from the first floor addition due to its siting concealed on the northern elevation of the dwelling not protruding beyond the dwelling roof ridge or elevations.



At 3pm additional shadows cast over the adjoining 14 Fernhurst Avenue would not result in a loss of solar access to habitable windows of the adjoining property therefore having a no impact on the adjoining property access to sunlight.



		Overall, the first floor addition at mid-winter would have a minimal impact throughout the day on surrounding properties and streets and no impact at midday.
1.3.8 Acoustic Privacy	Yes	The alterations and additions are likely to improve the level of acoustic privacy in accordance with s1.3.8 of the NSDCP 2013 by removing the existing first floor terrace. The existing first floor terrace is a large outdoor space with the potential for noise to travel and cause disturbance to surrounding neighbouring properties.
1.3.9 Vibration	N/A	The development is not on or within 60m of a railway corridor or adjacent to a road corridor with an annual daily traffic volume of more than 40,000 vehicles therefore consideration of Cl. 87 and Cl. 102 of the Infrastructure SEPP is not required.
1.3.10 Visual Privacy	Yes	<p>The proposed first floor addition improves the visual privacy of adjoining properties replacing the existing large first floor terrace which affords views to adjoining properties and their private open space. Below is a photo taken during the site visit from the existing first floor terrace which affords close views to the private open space of 14 Fernhurst Avenue, an example of the current privacy loss experienced by the adjoining property.</p>  <p>The windows proposed for the first floor addition are acceptable maintaining a reasonable level of visual privacy to adjoining properties. A window is proposed to serve the bathroom of the ensuite location on the eastern façade facing the dormer window of 14 Fernhurst Avenue. To mitigate against loss of privacy and due to the intimacy of the use that the window serves a condition is recommended requiring the window to be obscure glazed and fixed shut (see condition C11 – Privacy).</p>
1.4 Quality built form		
1.4.1 Context	Yes	The Site Analysis Plan (DA100 Issue B) confirms that the development responds to the site opportunities to enclose an existing terrace with a northern orientation and the site constraints including limitations on an increase in the site coverage, retention of existing vegetation including trees within the site and adjoining the site.
1.4.2 Subdivision Pattern	Yes	The proposed works would not alter the existing site lot size, shape and orientation.

<p>1.4.3 Streetscape</p>	<p>Yes</p>	<p>No works are proposed within the road reserve with works solely within the boundaries of the site. However, there is potential for damage to public infrastructure in the course of construction therefore appropriate conditions of consent are applicable including preparation of a dilapidation report to public infrastructure (see condition C1 – Dilapidation Report Damage to Public Infrastructure) and a corresponding bond for damage and completion of infrastructure works (see condition C8 – Bond for Damage and Completion of Infrastructure Works).</p> <p>There are a number of street trees located on the grass verge within Fernhurst Avenue and adjacent the site. To ensure protection of the tree during construction works an appropriate condition of consent will be applied (see condition E9 – No Removal of Trees on Public Property).</p> <p>It is recommended that a condition of consent for a Tree Bond for Public Trees is applied to ensure protection of the street tree (see condition C9 – Tree Bond for Public Trees).</p>																
<p>1.4.4 Laneways</p>	<p>N/A</p>	<p>The site has frontages to Fernhurst Avenue with no frontage to a laneway.</p>																
<p>1.4.5 Siting</p>	<p>Yes</p>	<p>The detached dwelling would continue to address the street and external walls would remain parallel to corresponding boundaries.</p>																
<p>1.4.6 Setback Front</p>	<p>N/A</p>	<p>The site is located on the corner of Fernhurst Avenue not sharing a characteristic front setback with adjoining properties. However, the first floor addition will be constructed within the existing building footprint not altering the existing building setbacks.</p>																
<p>1.4.6 Setback Side</p>	<p>Yes</p>	<table border="1" data-bbox="831 1167 1422 1420"> <thead> <tr> <th>Control</th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td colspan="4">Zone R2 (Low Density Residential)</td> </tr> <tr> <td>R2 -1st storey (Up to 4m) 900mm</td> <td>7 - 11.5m (N)</td> <td>7 – 11.5m (N)</td> <td>Yes (No change)</td> </tr> <tr> <td>R2 - 2nd storey (up to 7m) 1.5m</td> <td>10 - 15m (N)</td> <td>7 – 11.5m (N)</td> <td>Yes</td> </tr> </tbody> </table> <p>Due to the central location of the dwelling within the site, the property has existing and proposed northern side setbacks in excess of the minimum requirements of Table B-1.5 of the NSDCP 2013.</p>	Control	Existing	Proposed	Compliance	Zone R2 (Low Density Residential)				R2 -1 st storey (Up to 4m) 900mm	7 - 11.5m (N)	7 – 11.5m (N)	Yes (No change)	R2 - 2 nd storey (up to 7m) 1.5m	10 - 15m (N)	7 – 11.5m (N)	Yes
Control	Existing	Proposed	Compliance															
Zone R2 (Low Density Residential)																		
R2 -1 st storey (Up to 4m) 900mm	7 - 11.5m (N)	7 – 11.5m (N)	Yes (No change)															
R2 - 2 nd storey (up to 7m) 1.5m	10 - 15m (N)	7 – 11.5m (N)	Yes															
<p>P5 Rear Setback – Rear</p>	<p>N/A</p>	<p>The site has a principle frontage facing the western boundary of Fernhurst Avenue therefore has a rear eastern setback to 14 Fernhurst Avenue. The existing rear setback of 4.8m would remain with the addition constructed wholly within the building footprint. It is noted that the site has an irregular shaped lot on the corner of Fernhurst Avenue not sharing a characteristic rear setback with adjoining properties. The proposed addition nevertheless maintains the existing site setbacks and separation to adjoining buildings therefore compliant with relevant objectives of s1.4.6 ‘Setbacks’ of the NSDCP 2013.</p>																
<p>1.4.7 Form Massing Scale</p>	<p>On Merit</p>	<p>The proposed works would have a height of 10.73m that fails to comply with the permissible height limit of 8.5m outlined within clause 4.3 in NSLEP 2013. The height of the first floor addition varies from the maximum height limit by 2.23m (26.24%).</p> <p>The supporting Clause 4.6 – Exception to Development Standard has duly been considered and is considered well</p>																

		founded and there are sufficient planning grounds to justify the variation.
1.4.8 Built Form Character	Yes	<p>Fernhurst Avenue properties consists of detached residential properties with varying architectural styles, materials and finishes.</p> <p>Despite the variety in character of built form in Fernhurst Avenue the first floor addition is the most appropriate location to enlarge the dwelling and is located on the northern façade predominantly obscured from Fernhurst Avenue located south of the subject site.</p> <p>The north facing first floor addition obscured behind the existing dwelling (refer to South Elevation – DA202 B) is therefore considered to have a minimal impact on the street.</p>
1.4.9 Dwelling Entry	Yes	The dwelling would retain the existing entry on the west elevation identifiable from Fernhurst Avenue. It is noted no works are proposed to the existing dwelling entry. Window openings would remain with orientation to Fernhurst Avenue.
1.4.10 Roofs	Yes	<p>The first floor addition would continue the hipped roof profile of the dwelling maintaining the characteristic roof typology for the site.</p> <p>The architectural plans propose to match the tiles of the first floor addition with those of the existing dwelling.</p> <p>It is recommended a condition of consent is applied requiring a schedule of external colours and finishes matching/compatible with the existing dwelling is prepared for approval by the Certifying Authority prior to Construction Certificate. (see condition C5 – External Colours and Finishes).</p>
1.4.12 Colours and Materials	Yes	<p>The proposed materials and finishes are to match the existing materials and finishes of the existing dwelling pursuant to the external finishes key in the proposed elevations.</p> <p>A condition is recommended requiring a schedule of external colours and finishes as detailed above (see condition C5 – External Colours and Finishes).</p> <p>The first floor addition comprises predominantly masonry elevations with no extensive use of glass, metal or plastics. The windows of the addition are to be timber framed.</p>
1.4.14 Front Fences	Yes	The existing stone boundary wall less than 1m in height would remain with works reserved to the first floor addition only.
1.5 Quality Urban Environment		
1.5.4 Vehicle Access and Parking	Yes	<p>The existing site encompasses a concrete driveway with access off Fernhurst Avenue which serves a single attached garage.</p> <p>The existing vehicular car parking for the site is not subject to any changes.</p> <p>A separate pedestrian entry/exit is provided via a stone path off Fernhurst Avenue.</p>

1.5.5 Site Coverage Lot Size 500 – 749m² Maximum Site Coverage 40%	Yes	The site has an area of 521.2m ² therefore subject to a maximum site coverage of 40%. The existing site coverage which remains at 114.7m ² (22%) complying with requirements of Table B-1.6 in s1.5.5 of the NSDCP 2013.																
1.5.6 Landscape Area Minimum Landscaped Area 40% Maximum Un-built Upon Area 20%	Yes	<table border="1" data-bbox="831 436 1423 638"> <thead> <tr> <th>Control</th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site coverage</td> <td>114.7m² 22%</td> <td>114.7m² 22%</td> <td>Yes</td> </tr> <tr> <td>Landscaped area</td> <td>326.0m² 62.5%</td> <td>326.0m² 62.5%</td> <td>Yes</td> </tr> <tr> <td>Unbuilt-upon area</td> <td>80.5m² 15.5%</td> <td>80.5m² 15.5%</td> <td>Yes</td> </tr> </tbody> </table> <p>The works proposed encompass a first floor addition only not altering the existing compliant site coverage, landscaped area or unbuilt upon area in accordance with Table B-1.7 in s1.5.6 of the NSDCP 2013.</p>	Control	Existing	Proposed	Compliance	Site coverage	114.7m ² 22%	114.7m ² 22%	Yes	Landscaped area	326.0m ² 62.5%	326.0m ² 62.5%	Yes	Unbuilt-upon area	80.5m ² 15.5%	80.5m ² 15.5%	Yes
Control	Existing	Proposed	Compliance															
Site coverage	114.7m ² 22%	114.7m ² 22%	Yes															
Landscaped area	326.0m ² 62.5%	326.0m ² 62.5%	Yes															
Unbuilt-upon area	80.5m ² 15.5%	80.5m ² 15.5%	Yes															
1.5.7 Landscaping	Yes	The first floor addition would retain existing trees and landscaping within and adjoining the site including the site ground levels.																
1.5.8 Front Gardens	Yes	The setbacks fronting Fernhurst Avenue would remain as landscaped lawns coupled with boundary hedging.																
1.5.9 Private and Communal Open Space	Yes	<table border="1" data-bbox="839 943 1415 1032"> <thead> <tr> <th>Control – lot size</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Dwellings</td> <td></td> <td></td> </tr> <tr> <td>500m² - 749m²</td> <td>326m²</td> <td>Yes</td> </tr> </tbody> </table> <p>The site comprises a centrally sited dwelling with private open space within all setbacks of the site including northern parts of the site. A private open space with a minimum 4m dimension is achievable within the site.</p>	Control – lot size	Proposed	Compliance	Dwellings			500m ² - 749m ²	326m ²	Yes							
Control – lot size	Proposed	Compliance																
Dwellings																		
500m ² - 749m ²	326m ²	Yes																
1.5.12 Garbage Storage	Yes	The proposed development involves alterations and additions therefore existing bin provisions for the dwelling would remain.																
1.6 Efficient Use of Resources																		
1.6.1 Energy Efficiency	Yes	A BASIX Certificate (<i>No. A404342 dated 22 January 2021</i>) for alterations and additions has been submitted.																

North Cremorne Planning Area Benelong and Northern Foreshore Neighbourhoods – Part C of NSDCP 2013

The application has been assessed against the relevant controls in the Character Statements in Part C in NSDCP 2013 below:

5.4.2 Desired Future Character

Diversity

P1 Primarily low density residential accommodation, generally comprising dwelling houses, semi-detached houses, and dual occupancies.

The subject site would remain as residential consisting of a detached dwelling. The site including proposed works would remain low density indicative by the compliant site coverage of 22% not exceeding the maximum 40% required in s1.5.5 of the NSDCP 2013.

5.4.3 Desired Built Form

Form, massing and scale

P2 Minimise the building footprint to preserve natural features, native vegetation and rock outcrops, particularly on land adjoining or near foreshores.

The first floor addition encloses an existing first floor terrace area therefore not increasing the building footprint therefore preserving natural features of the site.

Roofs

P5 Development should maintain low pitched roofs.

The extension encompasses a hipped low pitched roof to match the existing dwelling roof form.

Views

P8 Development should not adversely restrict views from neighbouring properties. This is especially important in foreshore areas or sites that enjoy water views.

The first floor addition would have an impact on existing views from an upper level side dormer window of the adjoining property 14 Fernhurst Avenue. However, the views would not detract fully, retaining water views in the direction of Middle Harbour as detailed above in consideration of s1.3.6 'Views' of the NSDCP 2013.

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 plan applies a mix of s7.11 contributions for new residential development that has an increased demand, and a 0.5% s7.12 levy for all other development (including alterations and additions) with a cost more than \$100,000 and up to \$200,000.

A s7.12 levy is applicable because the works encompass alterations and additions between \$100,000 and \$200,000. The levy based on 0.5% of the estimated cost of work (\$167,750.00) is \$839.00.

A s7.11 contribution is applicable for residential development which would result in a net increase of residents. The existing dwelling is capable of accommodating 3 bedrooms as shown on the existing first floor plan (EX101 Rev A) and the proposed alterations and additions increases the potential for 4 bedrooms (3 existing beds on first floor plus master bedroom extension over terrace). A s7.11 contribution is not applicable because there is no occupancy rate applied to existing 3 bed dwellings that are subject to an increase in residents with the provision of more bedrooms.

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	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	N/A
9. All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Willoughby Bay Precinct between 16/04/2021 and 30/04/2021. Council received no submissions.

PUBLIC INTEREST

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

SUITABILITY OF THE SITE

The proposal would be located in a R2 Low Density Residential Zone where dwelling houses 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.

CONCLUSION + REASONS

The proposal was considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and in general found to be satisfactory.

The application proposes alterations and additions to a dwelling house that is a permissible form of development in the R2 Low Density Residential Zone.

The proposal is consistent with the relevant objectives of the zone providing development to serve the housing needs of the occupiers at 12 Fernhurst Avenue whilst not significantly adding to the bulk and scale of the dwelling.

The built site coverage therefore ensuring the dwelling is representative of a low density development. The addition is to be wholly constructed over an existing terrace therefore not increasing the site coverage and retaining existing landscaping within the site.

The proposed first floor addition sympathetically matches the form and character of the existing dwelling comprising a hipped roof profile to match the existing dwelling and proposing materials and finishes to match the existing dwelling.

The addition is appropriately sited not compromising the amenity of adjoining properties with sufficient setbacks to adjoining properties and the additional shadow cast predominantly falling within the subject site or streetscape.

The development would not adversely restrict views from neighbouring properties only impacting on side views from a dormer window of 14 Fernhurst Avenue. The first floor addition would retain water views and views towards Middle Harbour from the dormer window of 14 Fernhurst Avenue.

The written request to vary the development standard provided by the applicant is considered well founded. The written request demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the variation. The proposed development is considered to be in the public interest.

Council received no submissions following notification of the development application.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate standard conditions of consent.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Willoughby Bay Precinct for 14 days between 16/04/2021 and 30/04/2021. Council received no submissions, nevertheless, conditions of consent have been recommended to maintain residential amenity.

RECOMMENDATION

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

- A. **THAT** the North Sydney Local Planning Panel exercising the functions of Council as the consent authority, assume the concurrence of the Secretary, 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 of NSLEP 2013 and grant consent to Development Application No. 84/21 for alterations and additions to a detached dwelling house on land at 12 Fernhurst Avenue, Cremorne subject to the attached standard conditions:-

THOMAS HOLMAN
ASSESSMENT OFFICER

ROBYN PEARSON
TEAM LEADER ASSESSMENTS

GAVIN MCCONNELL
A/MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
12 FERNHURST AVENUE, CREMORNE
DEVELOPMENT APPLICATION NO. 84/21

A. *Conditions that Identify Approved Plans*

Development in Accordance with Plans/documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Issue	Title	Drawn by	Received
DA101	B	Site + Ground Floor Plan	Group Architects	31/03/21
DA102	B	Garage, First Floor + Roof Plans	Group Architects	31/03/21
DA200	B	North Elevation	Group Architects	31/03/21
DA201	B	East Elevation	Group Architects	31/03/21
DA202	B	South Elevation	Group Architects	31/03/21
DA203	B	West Elevation	Group Architects	31/03/21
DA300	B	Sections A-A + B-B	Group Architects	31/03/21

(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 stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority 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)

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)

**12 FERNHURST AVENUE, CREMORNE
DEVELOPMENT APPLICATION NO. 84/21**

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 pre-developed 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 Certifying Authority 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 Certifying Authority with submission of the Construction Certificate documentation.

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

Structural Adequacy of Existing Building

- C2. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Certifying Authority for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

Sediment Control

- C3. 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 & Construction (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

**12 FERNHURST AVENUE, CREMORNE
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A Sediment Control Plan must be prepared and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate and prior to any works commencing. The 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
- 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 Certifying Authority 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

C4. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any 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)

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External Colours and Finishes

- C5. The external colours and finishes shall match those as existing and/ or be compatible with surrounding development. A schedule of external colours and finishes must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority 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 ensure that the completed colours and finishes of the works are compatible with surrounding development)

Work Zone

- C6. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

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 Certifying Authority 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)

Stormwater Management and Disposal Design Plan – Construction Issue Detail

- C7. Prior to issue of any Construction Certificate, the applicant shall have a site drainage management plan prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:
- a) compliance with BCA drainage requirements, Council's Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code;

**12 FERNHURST AVENUE, CREMORNE
DEVELOPMENT APPLICATION NO. 84/21**

- b) stormwater runoff and subsoil drainage generated by the approved dwellings must be conveyed in a controlled manner via existing stormwater lines by gravity to the existing stormwater connections to Council's street stormwater system.

Details demonstrating compliance are to be submitted with the Construction Certificate.

The Certifying Authority issuing the Construction Certificate must ensure that the approved drainage plan and specifications, satisfying the requirements of this condition, is referenced on and accompanies the Construction Certificate

(Reason: To ensure controlled stormwater management and disposal without nuisance)

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

C8. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$3,500.00 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 1 year for stormwater and 6 months for major road works and 2 months for vehicular crossing & small associated footpath works, after the work is completed.

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 a guarantee satisfactory to Council (such as a bank guarantee).

The security will be refundable following the expiration of defect risk period for the particular type of work as specified above (under c)), 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 Engineers.

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;

**12 FERNHURST AVENUE, CREMORNE
DEVELOPMENT APPLICATION NO. 84/21**

- 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 Certifying Authority 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 Bond for Public Trees

- C9. Prior to the issue of any construction certificate, security in the sum of \$5,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

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.

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.

If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

SCHEDULE

Tree Species	Location	Bond
Syzygium smithii (4x4m)	Council verge adjacent driveway crossing of 12 Fernhurst Avenue	\$5,000

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

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Asbestos Material Survey

- C10. 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 WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority 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 Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Privacy

- C11. The following privacy devices are to be provided:

- a) Window serving the master bedroom ensuite bathroom of the first floor addition (W3 shown on the East Elevation – DA201, Rev B) is to be fixed shut and comprising obscure or frosted glass up to a minimum height of 1.5m measured from finished floor level.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority 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 ensure an adequate level of privacy is provided to adjoining property located a 14 Fernhurst Avenue, Cremorne)

**12 FERNHURST AVENUE, CREMORNE
DEVELOPMENT APPLICATION NO. 84/21**

Section 7.12 Contributions

- C12. 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 Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is \$839.00.

Indexation

The monetary contribution required under this consent will be indexed at 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.

Timing of Payment

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

A copy of the North Sydney Contribution Plan 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 Contributions Plan 2020)

Security Deposit/ Guarantee Schedule

- C13. 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 (\$)
Street Tree Bond (on Council Property)	\$5,000.00
Footpath Damage Bond	\$3,500.00
TOTAL BONDS	\$8,500.00

Note: The following fees applicable

Fees	
Section 7.12 Contributions	\$839.00
TOTAL FEES	\$839.00

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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

C14. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A404342 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority 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 ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

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). A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Certifying Authority for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

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

Public Liability Insurance – Works on Public Land

D2. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note, and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

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(Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.)

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

Commencement of Works Notice

D3. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least 2 days notice to North Sydney Council of the person's intention to commence building work, demolition or excavation 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)

E. During Demolition and Building Work

Parking Restrictions

E1. 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

E2. 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

- E3. 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 Certifying Authority.

(Reason: Stormwater control during construction)

Service Adjustments

- E4. Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the person acting on the consent and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the Applicant's full responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services at the appropriate stage of the development (including water, phone, gas and the like). Council accepts no responsibility whatsoever for any matter arising from its approval of this application involving any influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

Removal of Extra Fabric

- E5. 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)

Dust Emission and Air Quality

- E6. 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.
-

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- (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

- E7. 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)

Developer's Cost of Work on Council Property

- E8. The developer 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)

No Removal of Trees on Public Property

- E9. 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)

Construction Hours

- E10. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
All other zones	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 and any Construction Noise Management Plan required under this consent.

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In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP & A Act 1979 and in accordance with Council's adopted Compliance & Enforcement Policy.

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

Installation and Maintenance of Sediment Control

E11. 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 & 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)

Sediment and Erosion Control Signage

E12. 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

E13. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of work place 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)

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Health and Safety

- E14. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority 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.workcover.nsw.gov.au

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

Prohibition on Use of Pavements

- E15. 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)

Plant & Equipment Kept Within Site

- E16. 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

- E17. 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 Environmental Protection Authority.

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

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Asbestos Removal

E18. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or “Demolition Licence” and a current WorkCover “Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

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

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 Certifying Authority 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 conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.
-
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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 clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

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

Construction Certificate

F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

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

Occupation Certificate

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 an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Demolition

F6. Demolition work must be undertaken in accordance with the provisions of AS2601-Demolition of Structures.

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

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Site Sign

- F7. 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 Certifying Authority for the work.
- 2) Any such sign must be maintained while to 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.

(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 an 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 Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any 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)

BASIX Completion Certificate

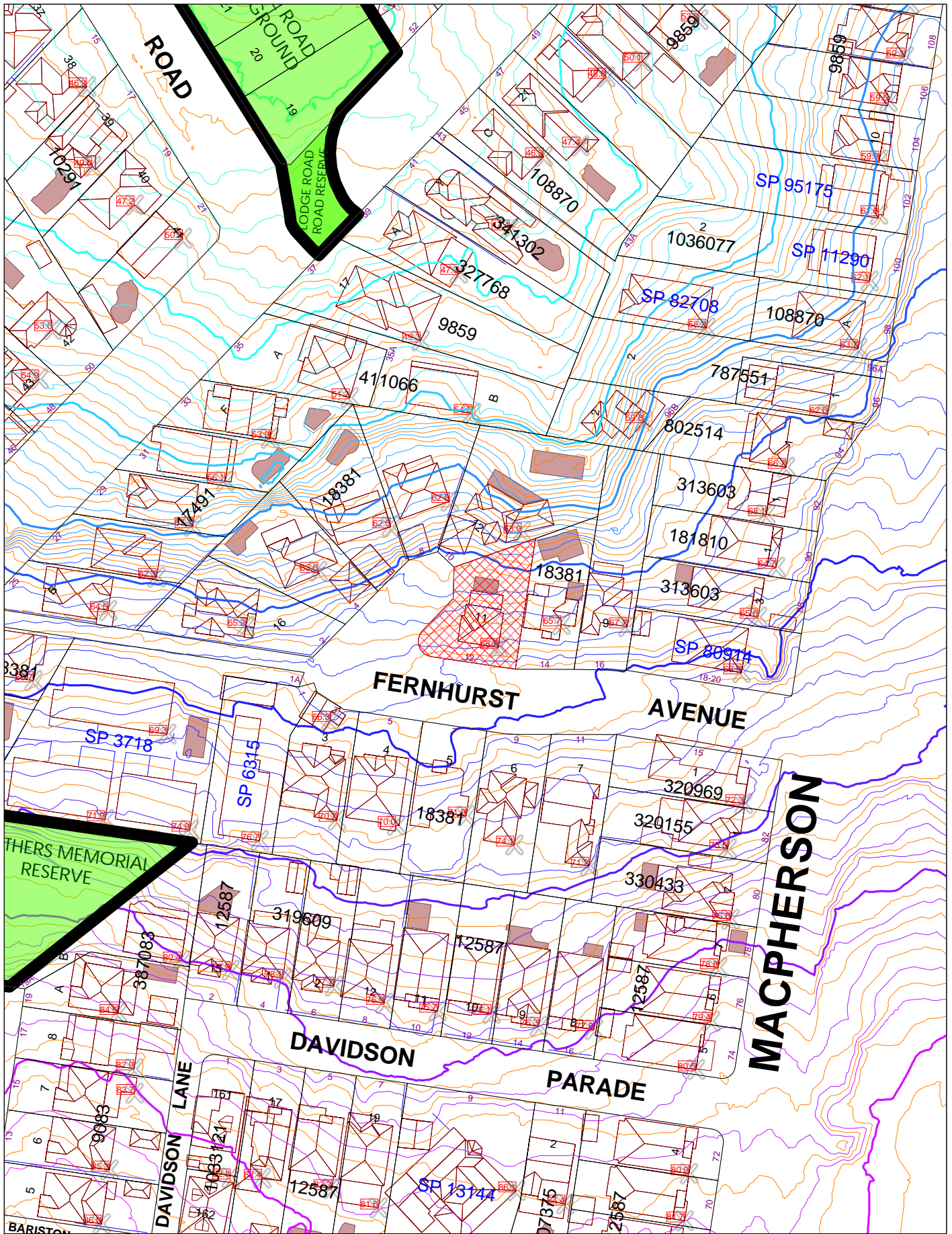
G5. In accordance with Clause 154C of the Environmental Planning and Assessment Regulation 2000, prior to issuing a final occupation certificate the Certifying Authority must apply to the Director-General for a BASIX completion receipt.

(Reason: To ensure compliance with the specified BASIX Certificate)

Compliance with Certain conditions

G6. Prior to the issue of any Occupation Certificate, Condition C11 must be certified as having been implemented on site and complied with.

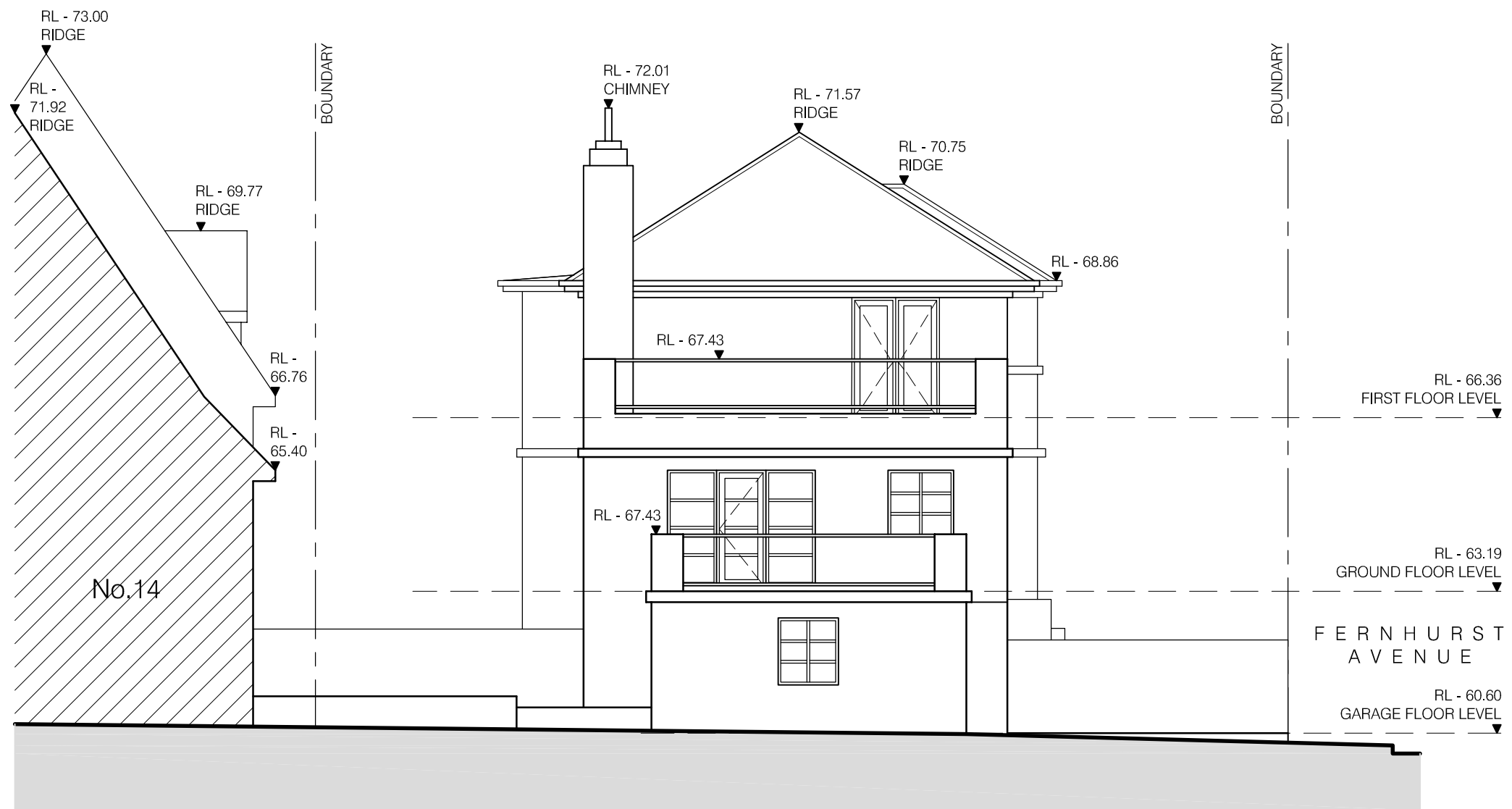
(Reason: To ensure the development is completed in accordance with the requirements of this consent)



North Sydney Council

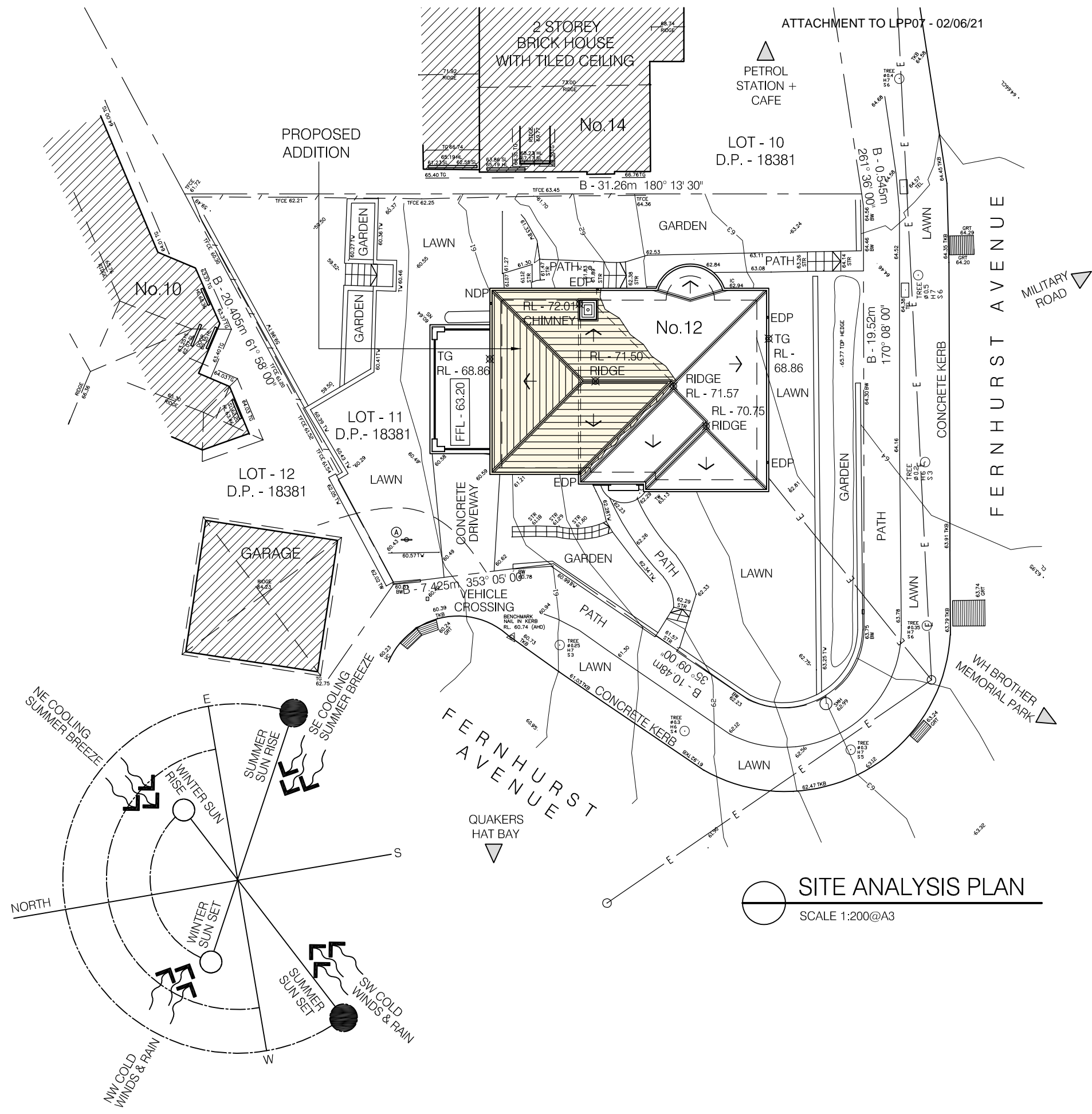
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Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.



 **EXISTING NORTH ELEVATION**
SCALE 1:100@A3

<p>ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING. IF IN DOUBT, ASK!</p> <p>Document Set ID: 8464353</p> <p>Version: 1, Version Date: 01/04/2021</p>	<table border="1"> <thead> <tr> <th>Issue</th> <th>Amendment</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>PRELIMINARY ISSUE</td> <td>17.11.2020</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Issue	Amendment	Date	A	PRELIMINARY ISSUE	17.11.2020													 <p>GROUP ARCHITECTS Formerly Brenchley Architects and Hosking Munro Nominated Architect Julian Brenchley 6246 Group Architects Pty Limited ABN 82 600 366 069 Suite 3.09/55 Miller Street Pyrmont nsw 2009 T: +612 9660 1055 E: info@grouparchitects.com.au</p>	<table border="1"> <tr> <td colspan="2">project</td> </tr> <tr> <td colspan="2">No.12 FERNHURST AVENUE CREMORNE NSW 2090</td> </tr> <tr> <td>drawing</td> <td>date: NOV 2020</td> </tr> <tr> <td>EXISTING NORTH ELEVATION</td> <td>scale: 1:100@A3</td> </tr> <tr> <td>DWG No.: GA2020-066 EX200</td> <td>issue: 'A'</td> </tr> </table>	project		No.12 FERNHURST AVENUE CREMORNE NSW 2090		drawing	date: NOV 2020	EXISTING NORTH ELEVATION	scale: 1:100@A3	DWG No.: GA2020-066 EX200	issue: 'A'
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ATTACHMENT TO LPP07 - 02/06/21

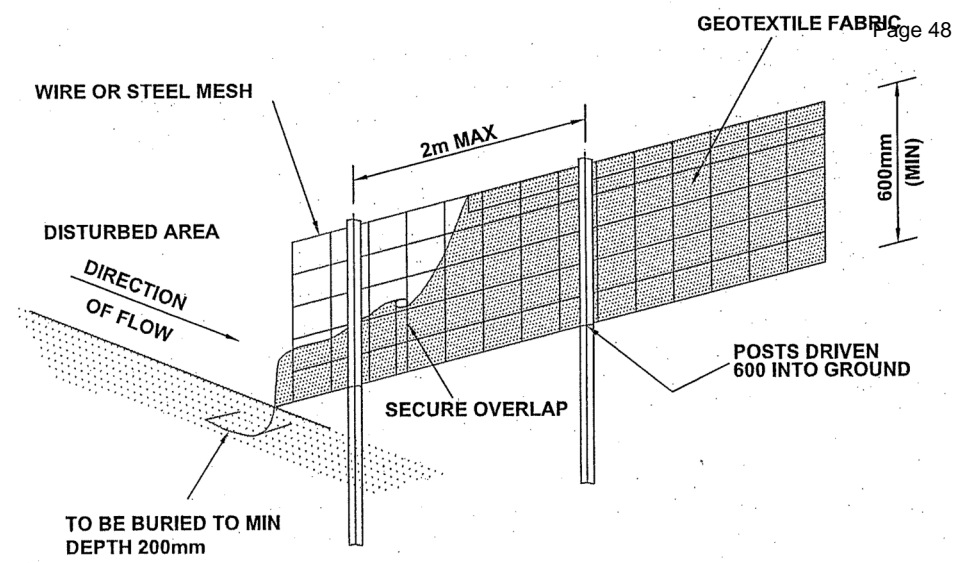
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D.P. - 18381

LOT - 11
D.P. - 18381

LOT - 12
D.P. - 18381

SITE ANALYSIS PLAN

SCALE 1:200@A3



DETAIL OF SEDIMENT CONTROL FENCE

NOT TO SCALE

NOTES FOR SEDIMENT + EROSION CONTROL

1. ACCUMULATED SILT TO BE REMOVED AT REGULAR INTERVALS AND AFTER RAIN EVENTS.
2. CONTROLS TO BE IN PLACE BEFORE STARTING WORK AND ARE TO BE MAINTAINED UNTIL CONSTRUCTION COMPLETED.
3. SOIL HEAPS TO BE NO MORE THAN 1 METRE HIGH.
4. UTILISE EXISTING DRIVEWAY CROSSING UNTIL WORK COMPLETE.
5. ANY SPILLAGE OF MATERIALS ON ROADWAY TO BE CLEANED UP IMMEDIATELY.
6. GEOTEXTILE FABRIC TO BE LAID UNDER STORMWATER INLET GRATES UNTIL WORKS COMPLETED.

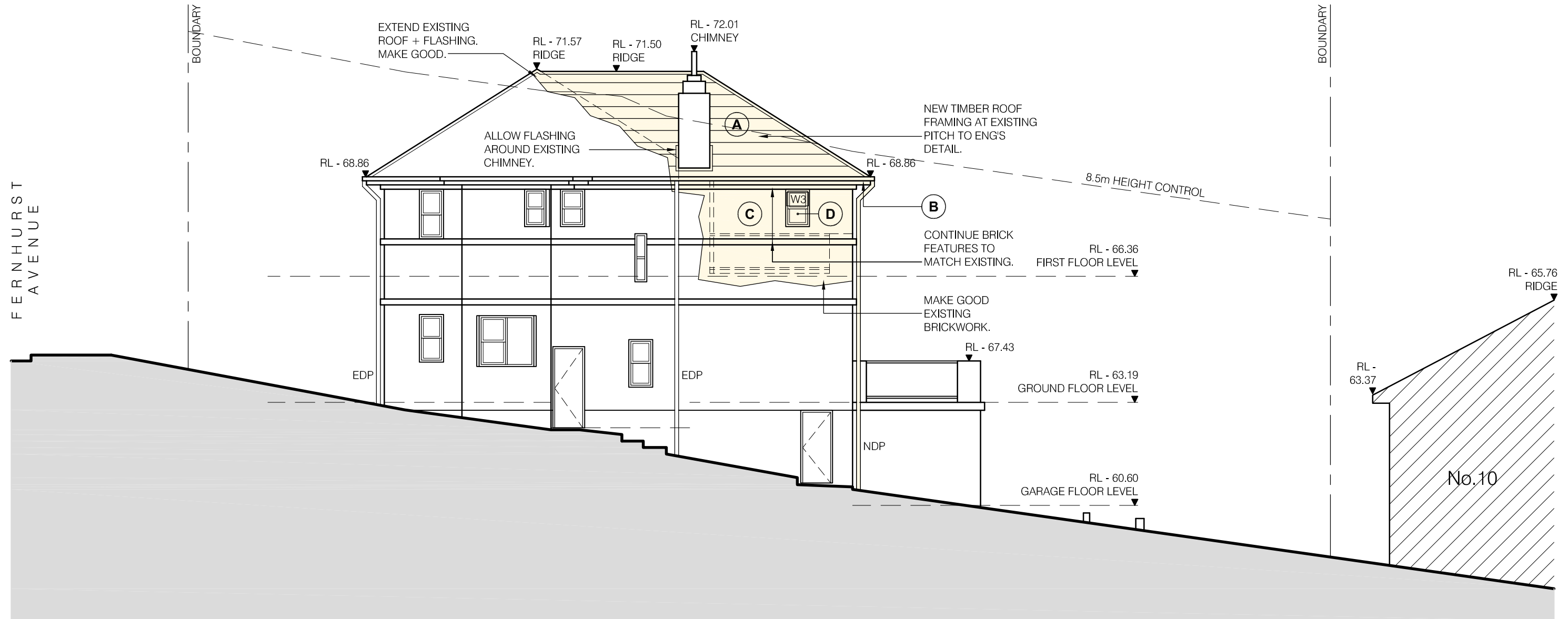
AREAS

SITE AREA	- 521.2m ²	PROPOSED FIRST FLOOR	- 79.5m ² (+28.7m ²)
GFA		PROPOSED TOTAL	- 204.3m ²
EXISTING GARAGE + STORE	- 44.7m ²	FSR	
EXISTING GROUND FLOOR	- 80.1m ²	EXISTING	- 0.33 : 1 (33.7%)
EXISTING FIRST FLOOR	- 50.8m ²	PROPOSED	- 0.39 : 1 (39.2%)
EXISTING TOTAL	- 175.6m ²		
SITE COVERAGE	- 114.7m ² (22.0%)		
LANDSCAPE AREA	- 326.0m ² (62.5%)		

ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING. IF IN DOUBT, ASK!	Issue	Amendment	Date
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Version: 1, Version Date: 01/04/2021	B	DA ISSUE	22.01.2021

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project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: JAN 2021
SITE ANALYSIS PLAN + SEDIMENT + EROSION CONTROL PLAN	
DWG No.: GA2020-066 DA100	scale: 1:200@A3
issue: 'B'	



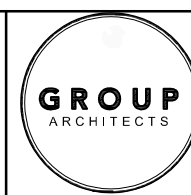
EAST ELEVATION
SCALE 1:100@A3

EXTERNAL FINISHES - KEY

- (A)** - NEW ROOF TILES TO MATCH EXISTING.
- (B)** - NEW FASCIA + GUTTER TO MATCH EXISTING. PAINTED
- (C)** - NEW EXTERNAL MASONRY WALLS TO MATCH EXISTING.
- (D)** - NEW TIMBER FRAMED WINDOWS. PAINTED
- (E)** - NEW COLORBOND DOWNPIPES TO MATCH EXISTING.

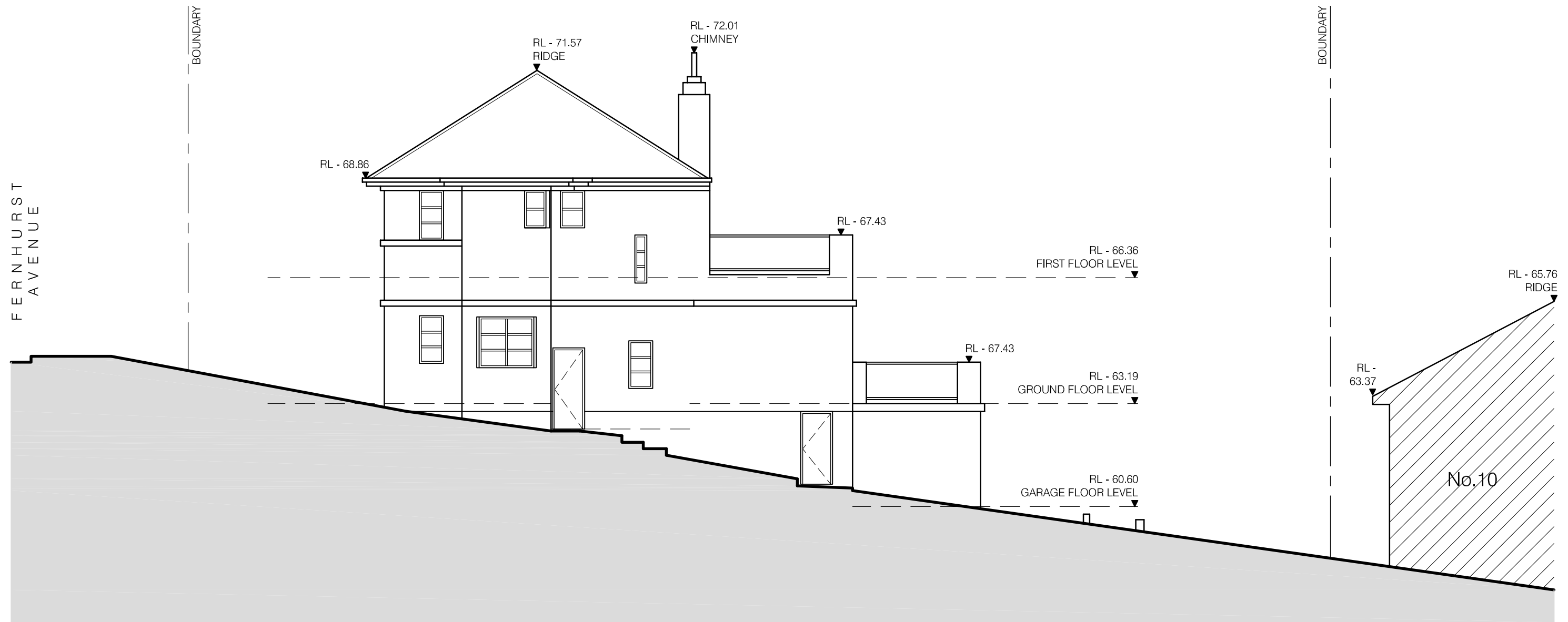
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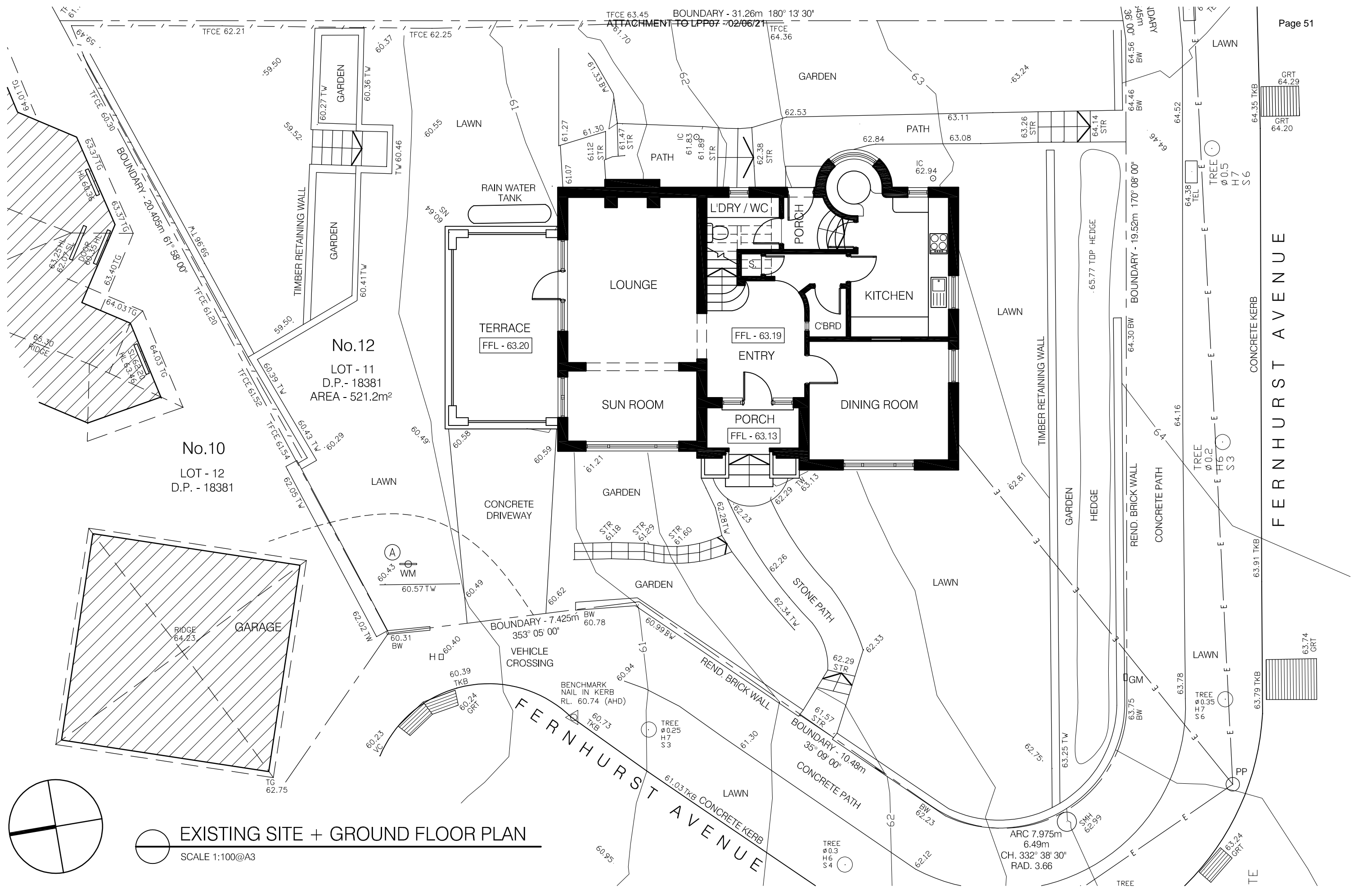
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EXISTING EAST ELEVATION
SCALE 1:100@A3

<p>ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING. IF IN DOUBT, ASK!</p> <p>Document Set ID: 8464353</p> <p>Version: 1, Version Date: 01/04/2021</p>	<table border="1"> <thead> <tr> <th>Issue</th> <th>Amendment</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>PRELIMINARY ISSUE</td> <td>17.11.2020</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Issue	Amendment	Date	A	PRELIMINARY ISSUE	17.11.2020										 <p>GROUP ARCHITECTS Formerly Brenchley Architects and Hosking Munro Nominated Architect Julian Brenchley 6246 Group Architects Pty Limited ABN 82 600 366 069 Suite 3.09/55 Miller Street Pyrmont nsw 2009 T: +612 9660 1055 E: info@grouparchitects.com.au</p>	<table border="1"> <tr> <td colspan="2">project</td> </tr> <tr> <td colspan="2">No.12 FERNHURST AVENUE CREMORNE NSW 2090</td> </tr> <tr> <td>drawing</td> <td>date: NOV 2020</td> </tr> <tr> <td>EXISTING EAST ELEVATION</td> <td>scale: 1:100@A3</td> </tr> <tr> <td>DWG No.: GA2020-066 EX201</td> <td>issue: 'A'</td> </tr> </table>	project		No.12 FERNHURST AVENUE CREMORNE NSW 2090		drawing	date: NOV 2020	EXISTING EAST ELEVATION	scale: 1:100@A3	DWG No.: GA2020-066 EX201	issue: 'A'
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	A	PRELIMINARY ISSUE	17.11.2020																									
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drawing	date: NOV 2020																											
EXISTING EAST ELEVATION	scale: 1:100@A3																											
DWG No.: GA2020-066 EX201	issue: 'A'																											



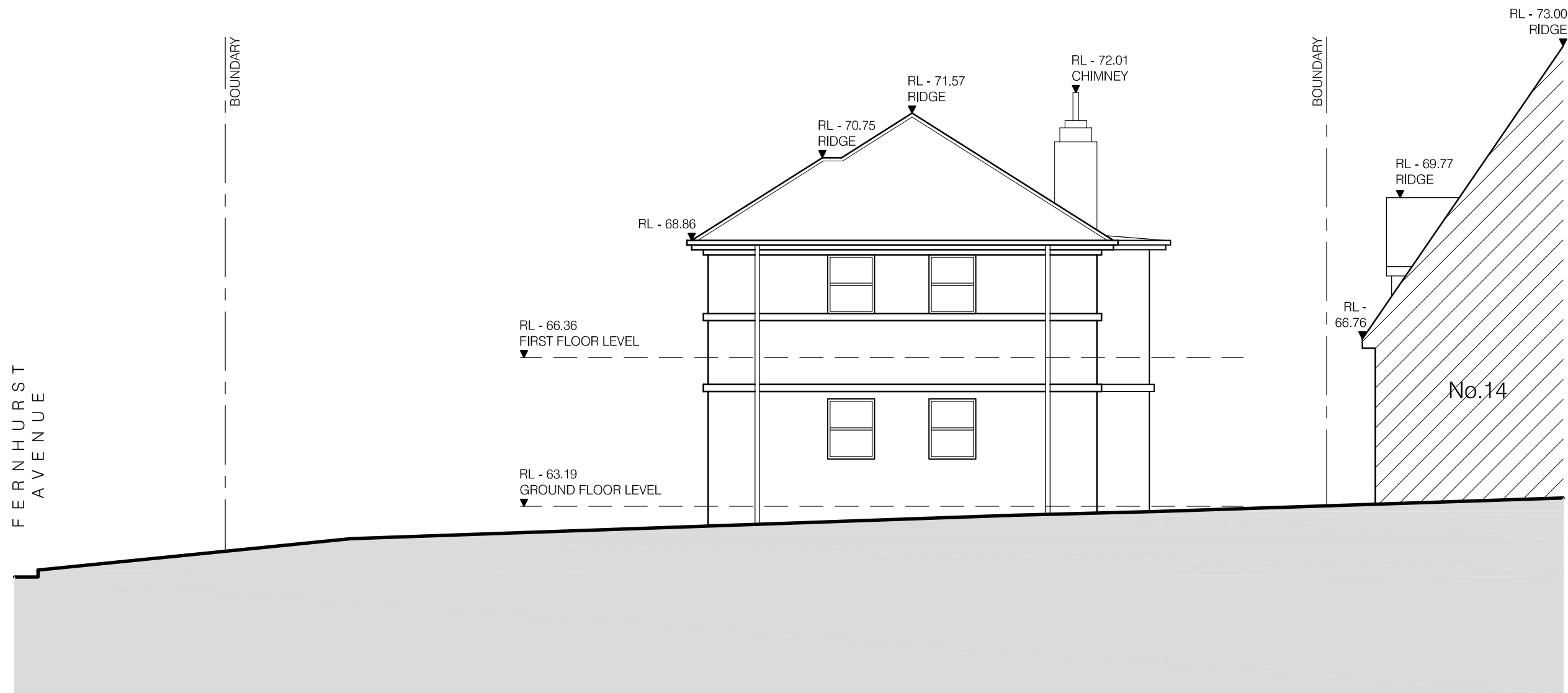
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Document Set ID: 8464353
Version: 1, Version Date: 01/04/2021

Issue	Amendment	Date
A	PRELIMINARY ISSUE	17.11.2020



project	No. 12 FERNHURST AVENUE CREMORNE NSW 2090
drawing	EXISTING SITE + GROUND FLOOR PLAN
date:	NOV 2020
scale:	1:100@A3
DWG No.:	GA2020-066 EX100
issue:	'A'



EXISTING SOUTH ELEVATION
SCALE 1:100@A3

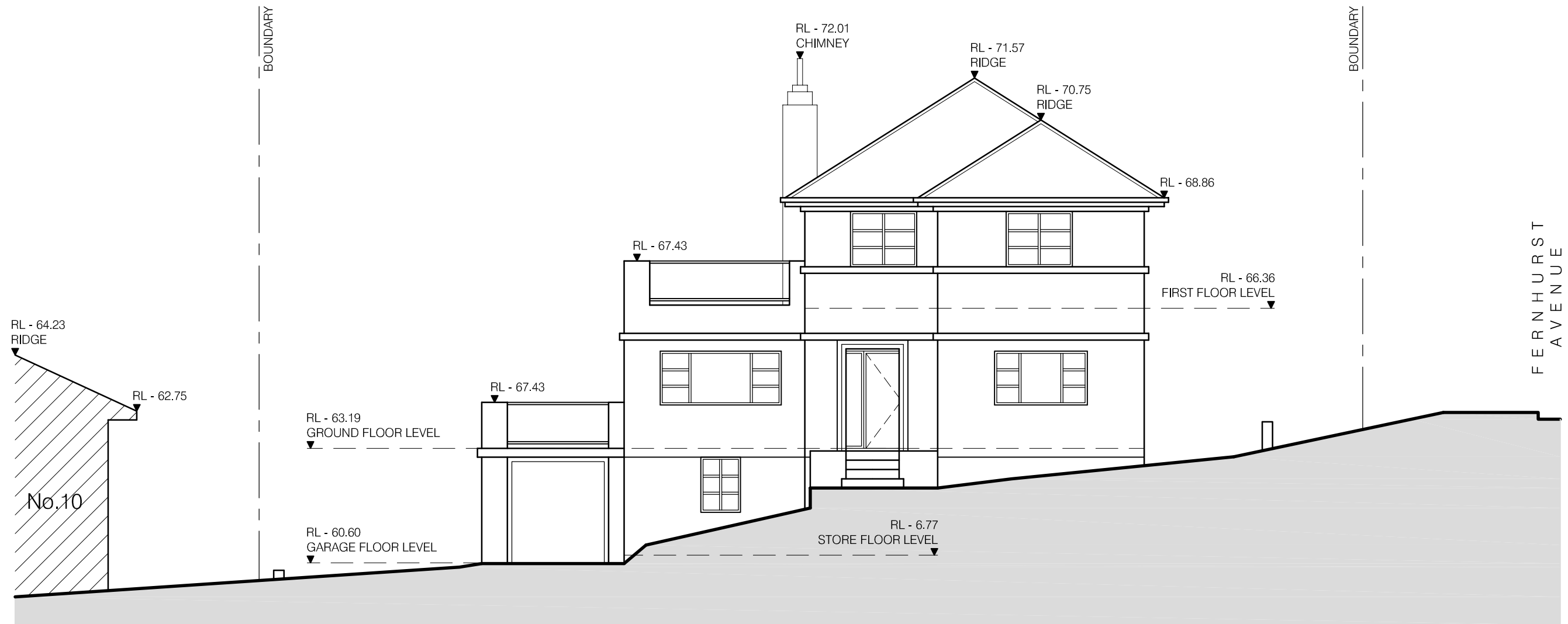
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Document Set ID: 8464353

Issue	Amendment	Date
A	PRELIMINARY ISSUE	17.11.2020



GROUP ARCHITECTS
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project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: NOV 2020
EXISTING SOUTH ELEVATION	scale: 1:100@A3
DWG No.: GA2020-066 EX202	issue: 'A'



EXISTING WEST ELEVATION
SCALE 1:100@A3

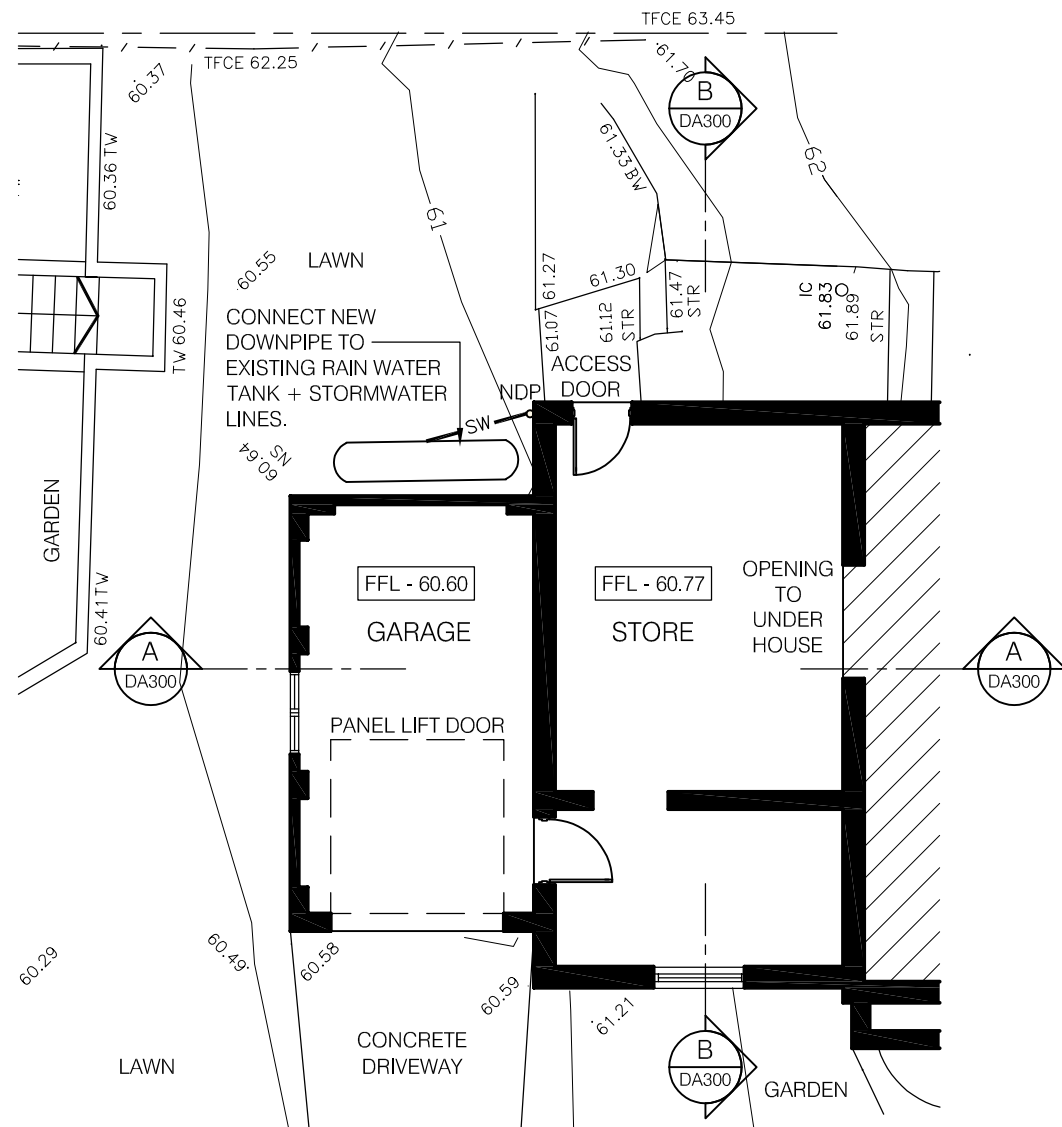
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Issue	Amendment	Date
A	PRELIMINARY ISSUE	17.11.2020



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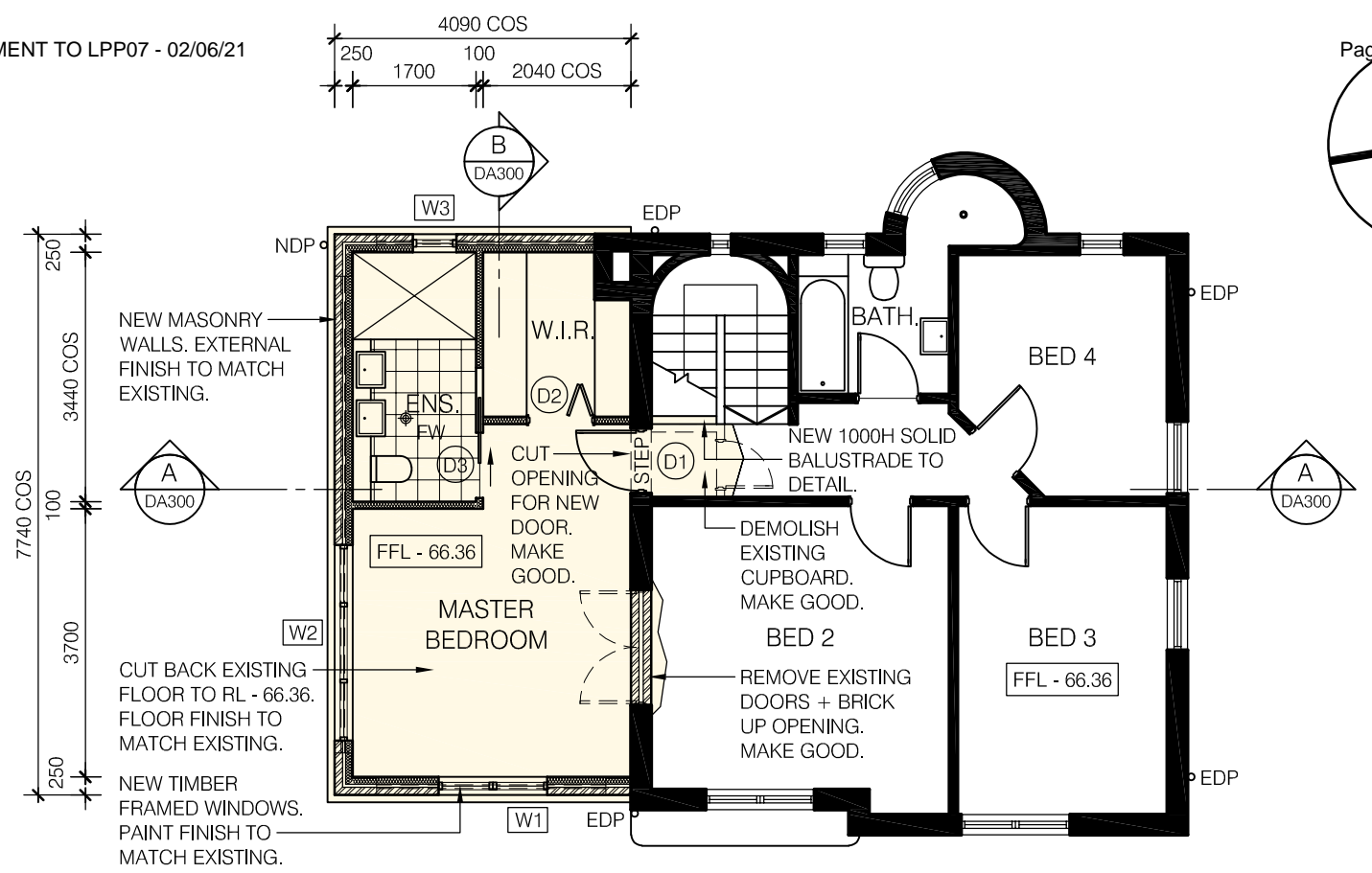
project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: NOV 2020
EXISTING WEST ELEVATION	scale: 1:100@A3
DWG No.: GA2020-066 EX203	issue: 'A'



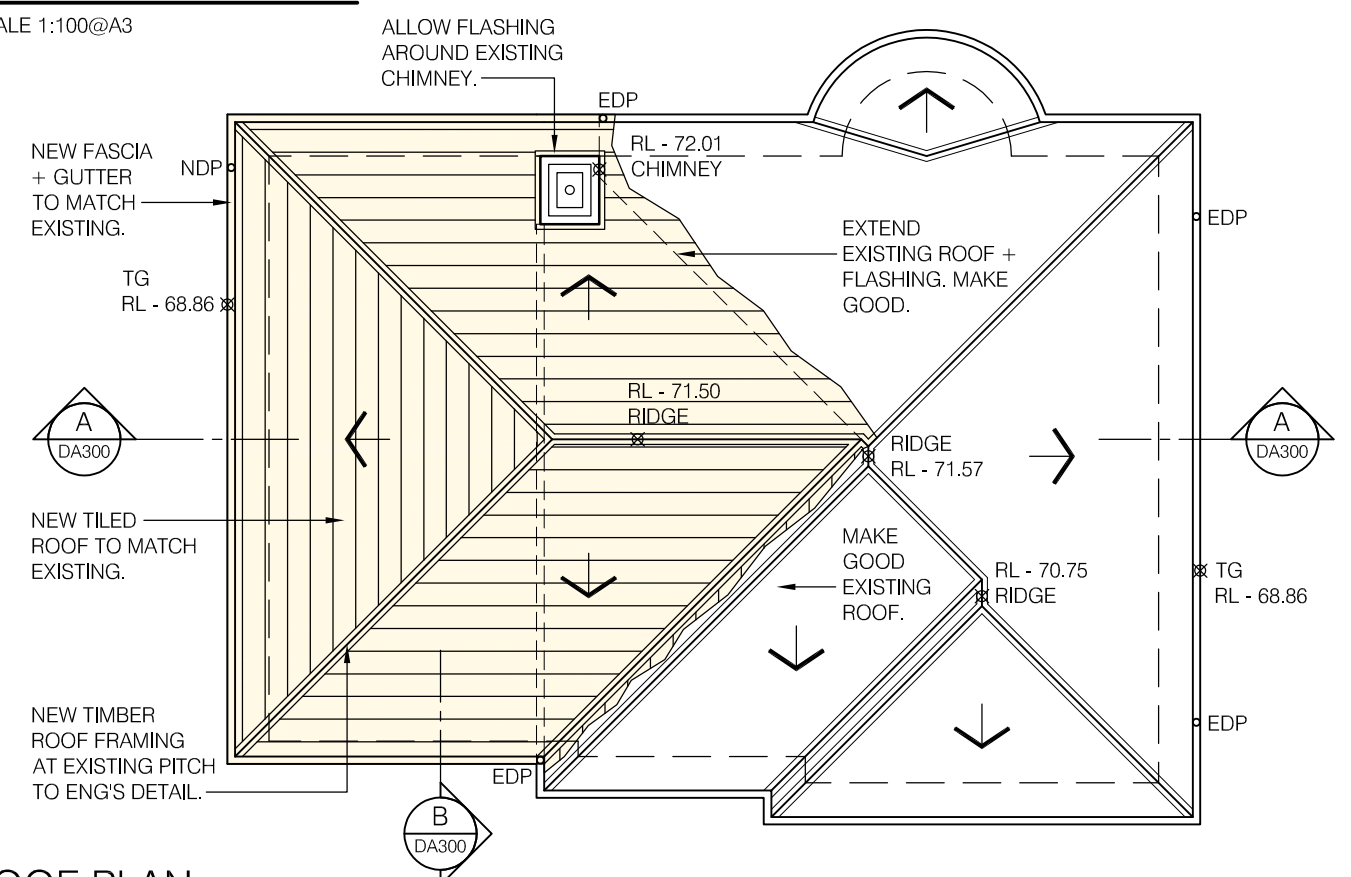
GARAGE PLAN
SCALE 1:100@A3

LEGEND

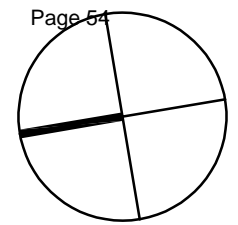
- NEW WORKS
- EXISTING WALLS TO BE RETAINED.
- EXISTING WALLS TO BE DEMOLISHED.
- NEW BRICK VENEER WALLS.
- NEW TIMBER STUD WALLS.
- RL - 66.43 - FLOOR LEVELS.
- 18.79 - EXISTING LEVELS.
- EDP - EXISTING DOWNPIPE.
- NDP - NEW OR RELOCATED DOWNPIPE.
- ESW — EXISTING STORMWATER LINES.
- SW — NEW STORMWATER LINES.



FIRST FLOOR PLAN
SCALE 1:100@A3



ROOF PLAN
SCALE 1:100@A3



Issue	Amendment	Date
A	PRELIMINARY DA ISSUE	19.01.2021
B	DA ISSUE	22.01.2021

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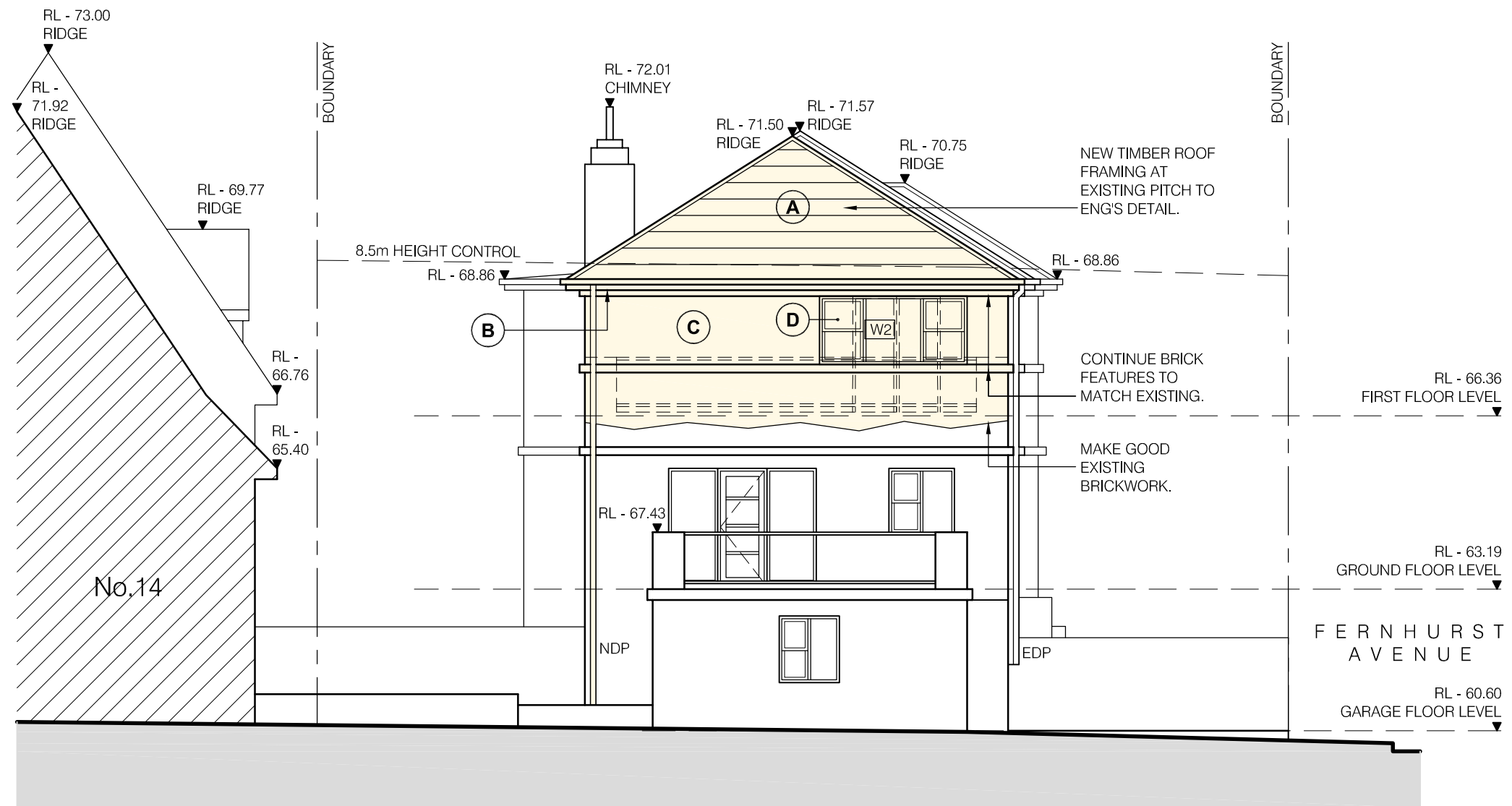
Document Set ID: 8464353
Version: 1, Version Date: 01/04/2021

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project
No.12 FERNHURST AVENUE CREMORNE NSW 2090

drawing	date: JAN 2021
GARAGE, FIRST FLOOR + ROOF PLANS	scale: 1:100@A3
DWG No.: GA2020-066 DA102	issue: 'B'



 **NORTH ELEVATION**
SCALE 1:100@A3

EXTERNAL FINISHES - KEY

- (A)** - NEW ROOF TILES TO MATCH EXISTING.
- (B)** - NEW FASCIA + GUTTER TO MATCH EXISTING. PAINTED
- (C)** - NEW EXTERNAL MASONRY WALLS TO MATCH EXISTING.
- (D)** - NEW TIMBER FRAMED WINDOWS. PAINTED
- (E)** - NEW COLORBOND DOWNPIPES TO MATCH EXISTING.

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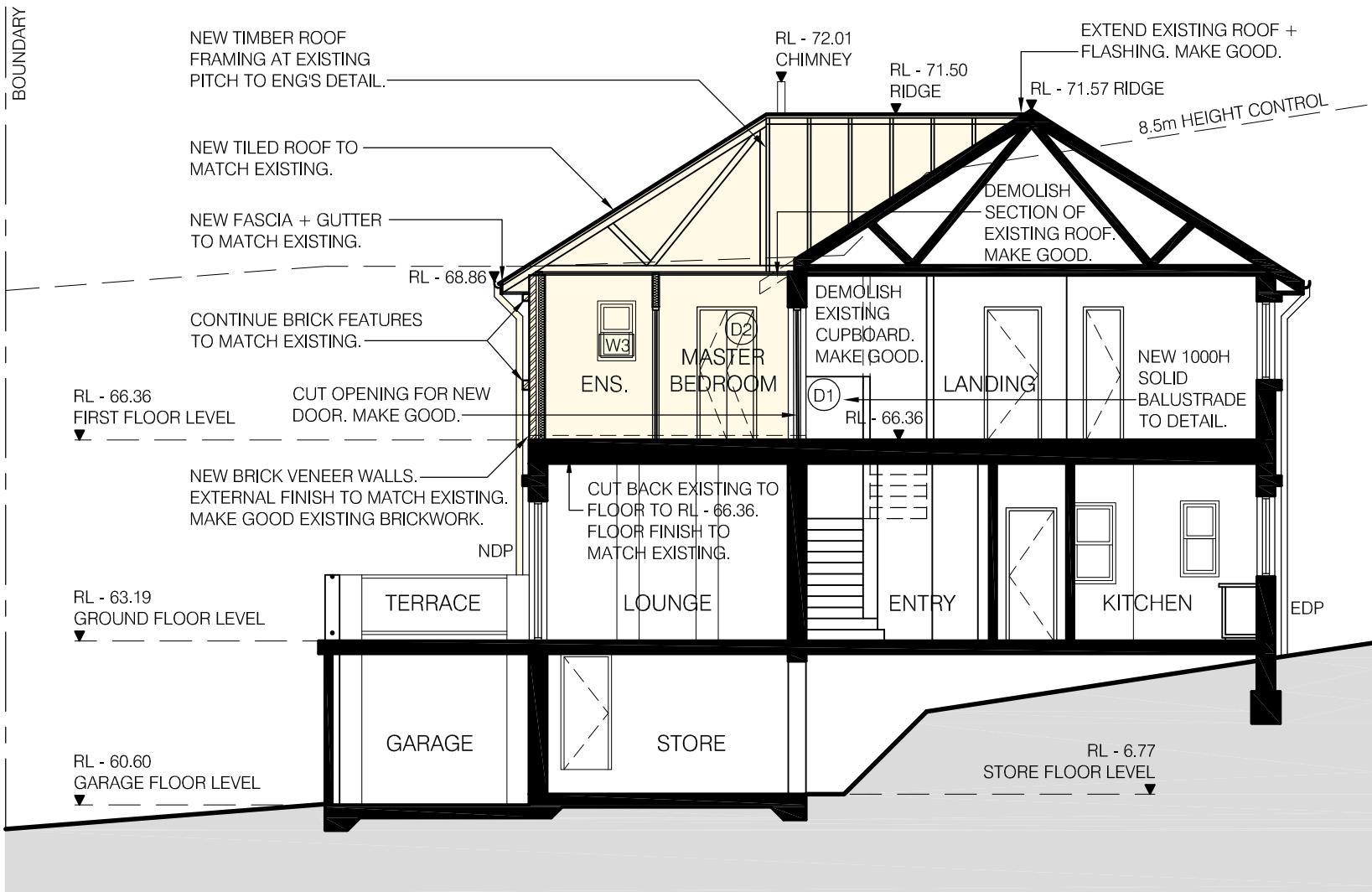
Document Set ID: 8464353
Version: 1, Version Date: 01/04/2021

Issue	Amendment	Date
A	PRELIMINARY DA ISSUE	19.01.2021
B	DA ISSUE	22.01.2021

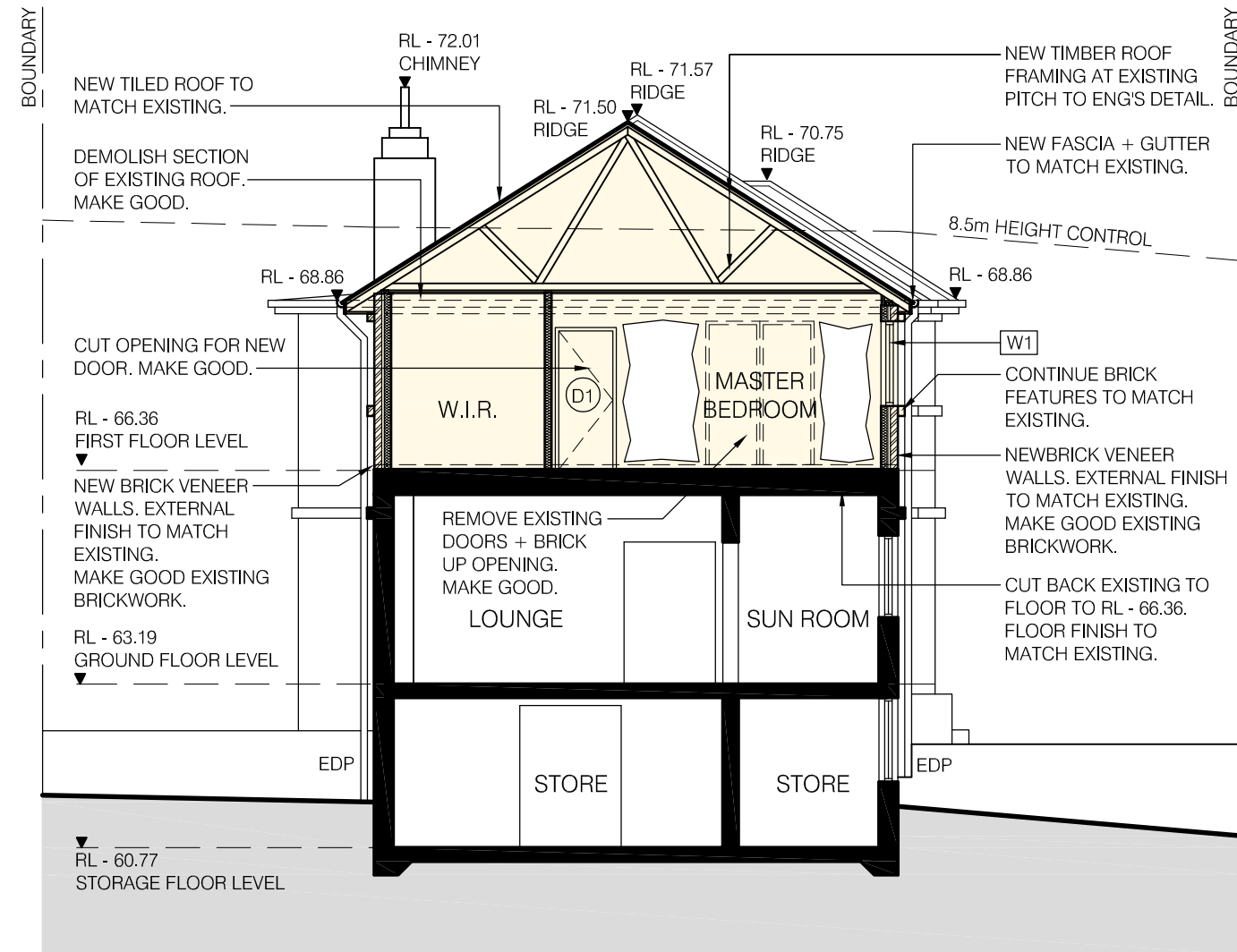


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project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: JAN 2021
NORTH ELEVATION	scale: 1:100@A3
DWG No.: GA2020-066 DA200	issue: 'B'



SECTION A-A
SCALE 1:100@A3



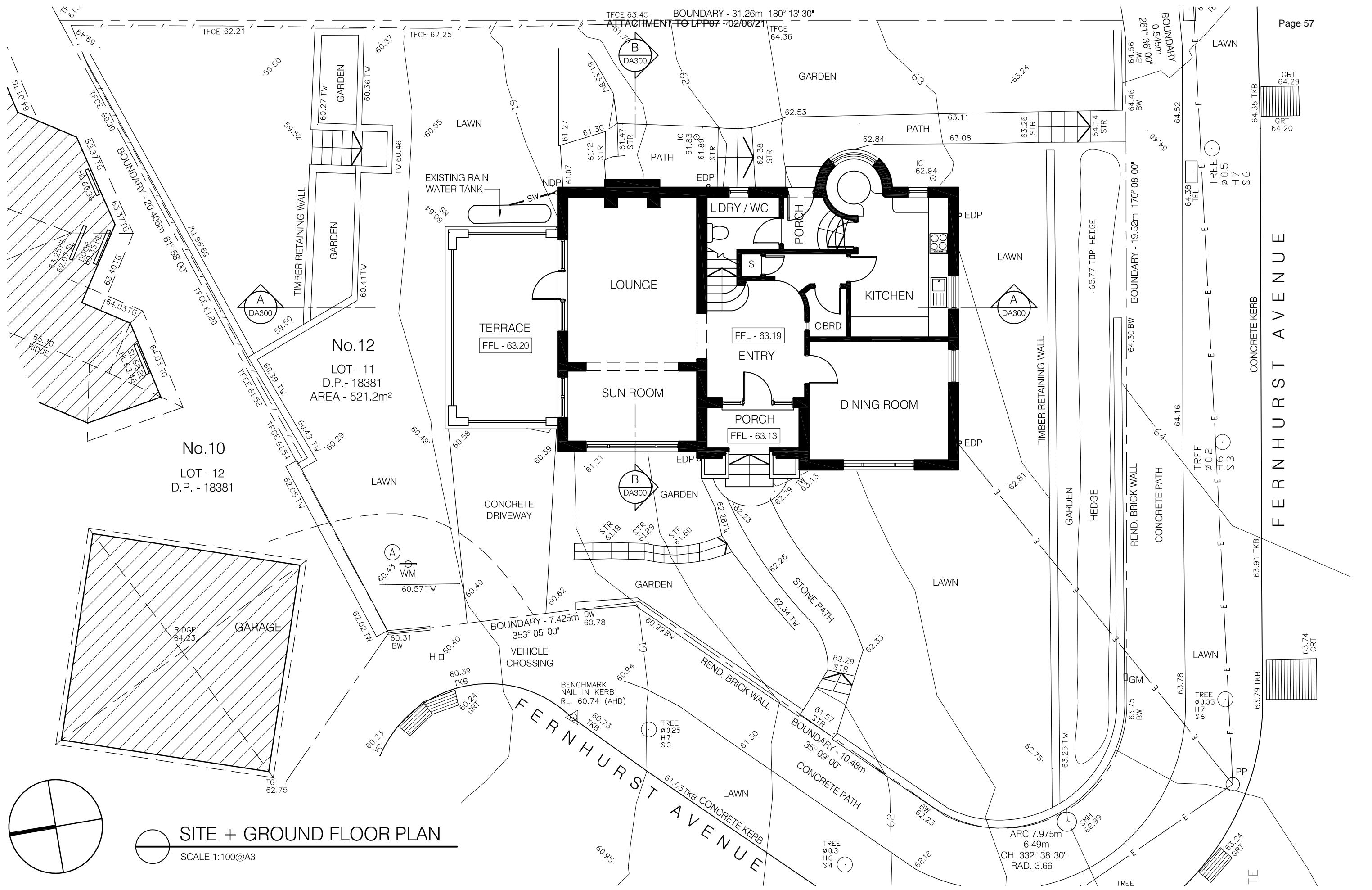
SECTION B-B
SCALE 1:100@A3

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Issue	Amendment	Date
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project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: JAN 2021
SECTIONS A-A + B-B	scale: 1:100@A3
DWG No.: GA2020-066 DA300	issue: 'B'



SITE + GROUND FLOOR PLAN

SCALE 1:100@A3

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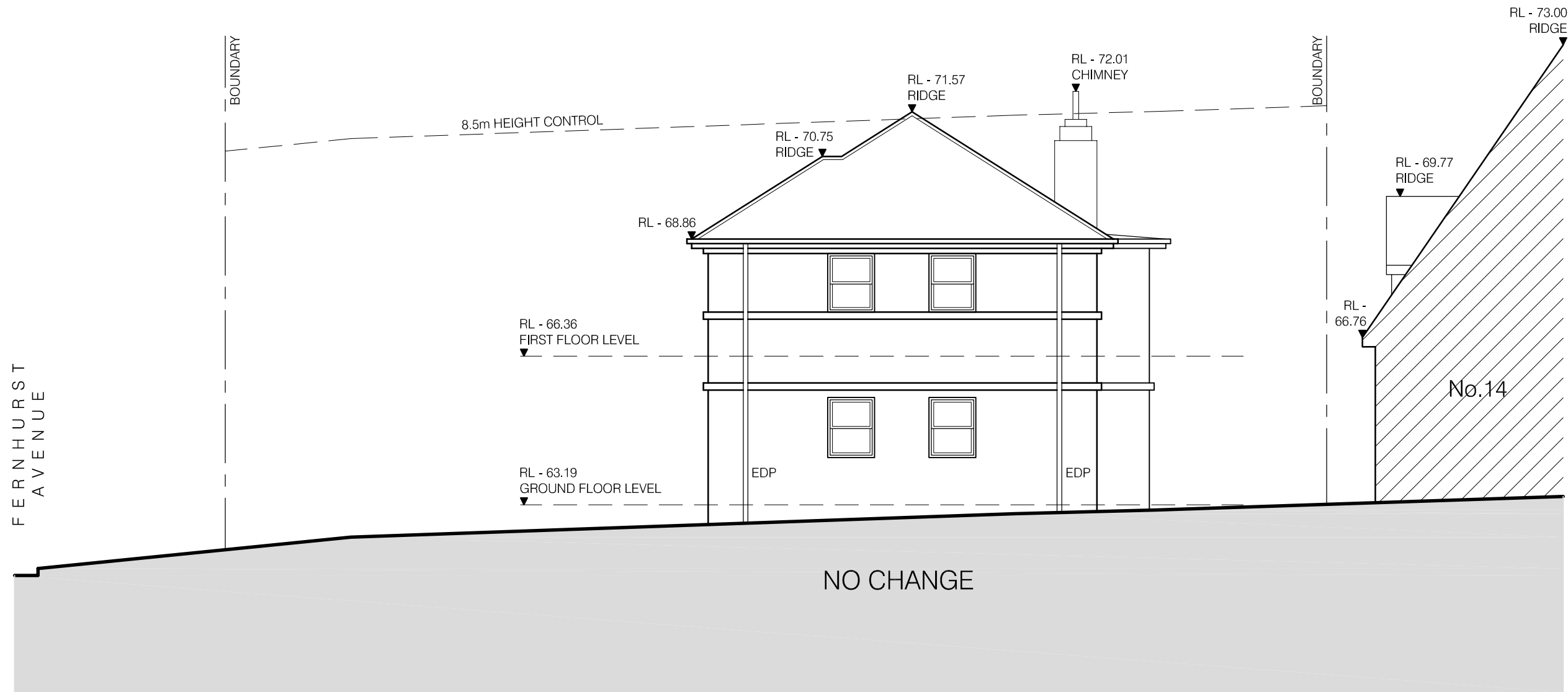
Document Set ID: 8464353
Version: 1, Version Date: 01/04/2021

Issue	Amendment	Date
A	PRELIMINARY DA ISSUE	19.01.2021
B	DA ISSUE	22.01.2021



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project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: JAN 2021
SITE + GROUND FLOOR PLAN	scale: 1:100@A3
DWG No.: GA2020-066 DA101	issue: 'B'



 SOUTH ELEVATION
SCALE 1:100@A3

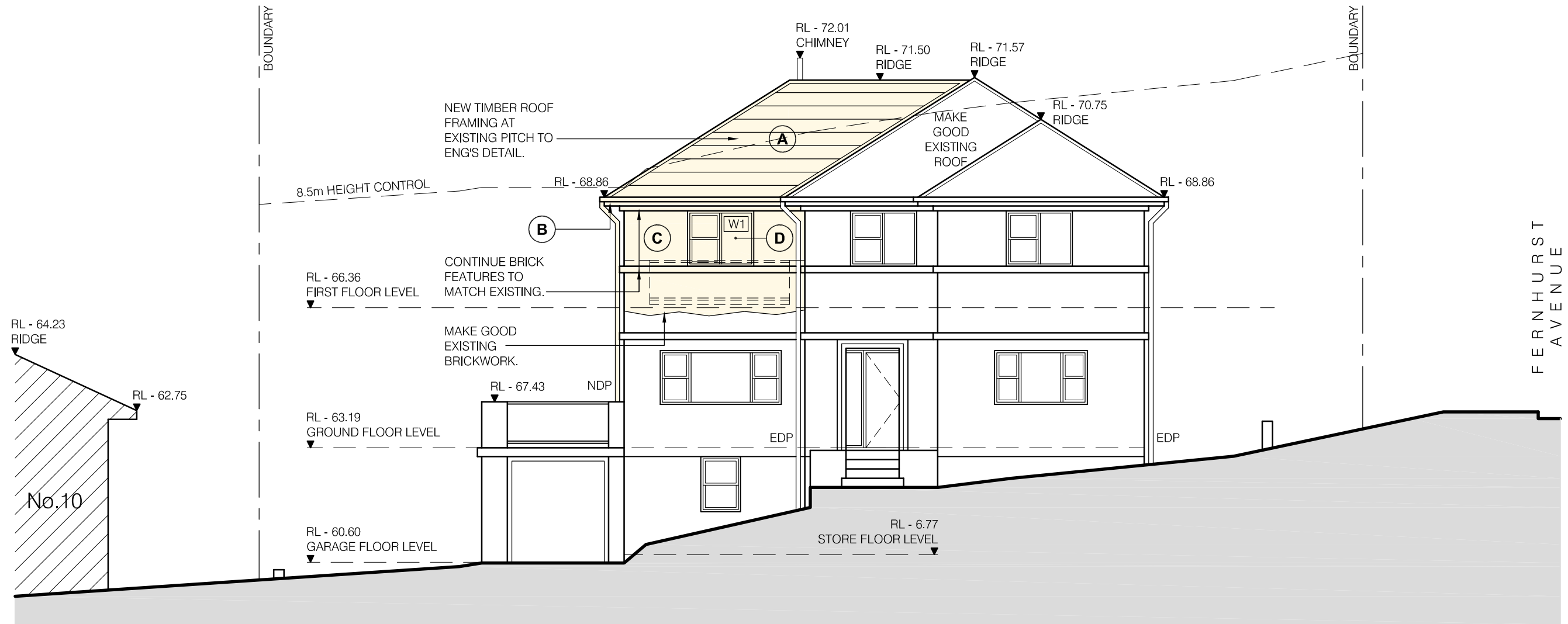
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Issue	Amendment	Date
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B	DA ISSUE	22.01.2021



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project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: JAN 2021
SOUTH ELEVATION	scale: 1:100@A3
DWG No.: GA2020-066 DA202	issue: 'B'



WEST ELEVATION
SCALE 1:100@A3

EXTERNAL FINISHES - KEY

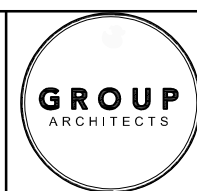
- (A)** - NEW ROOF TILES TO MATCH EXISTING.
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- (D)** - NEW TIMBER FRAMED WINDOWS. PAINTED
- (E)** - NEW COLORBOND DOWNPIPES TO MATCH EXISTING.

Issue	Amendment	Date
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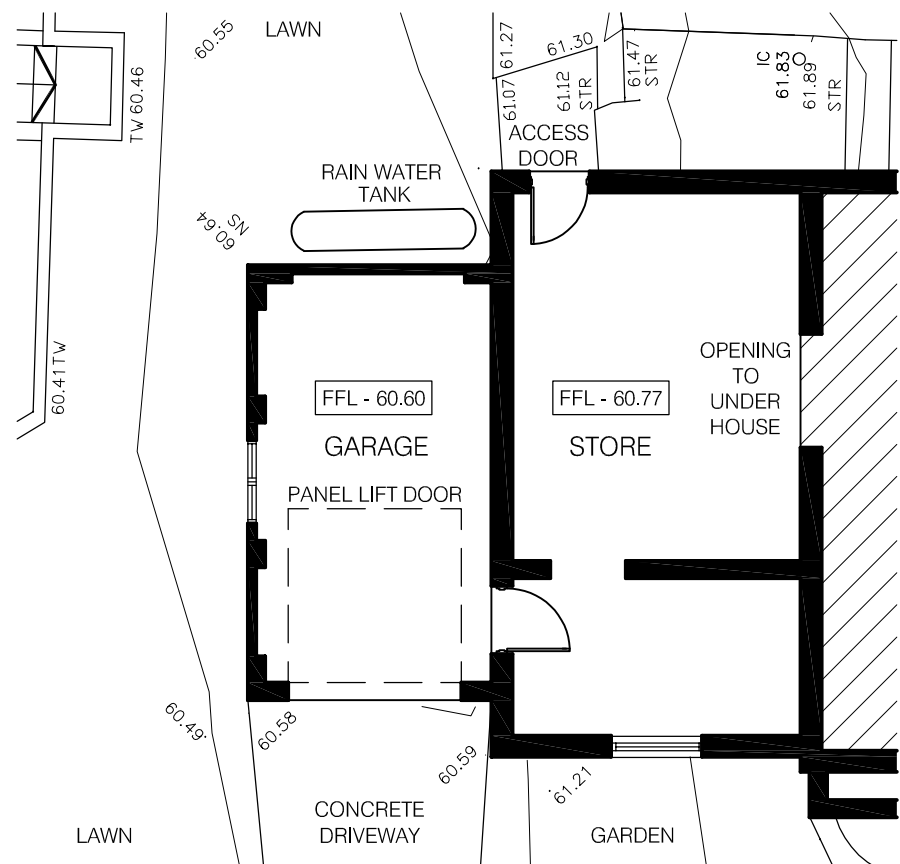
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Version: 1, Version Date: 01/04/2021

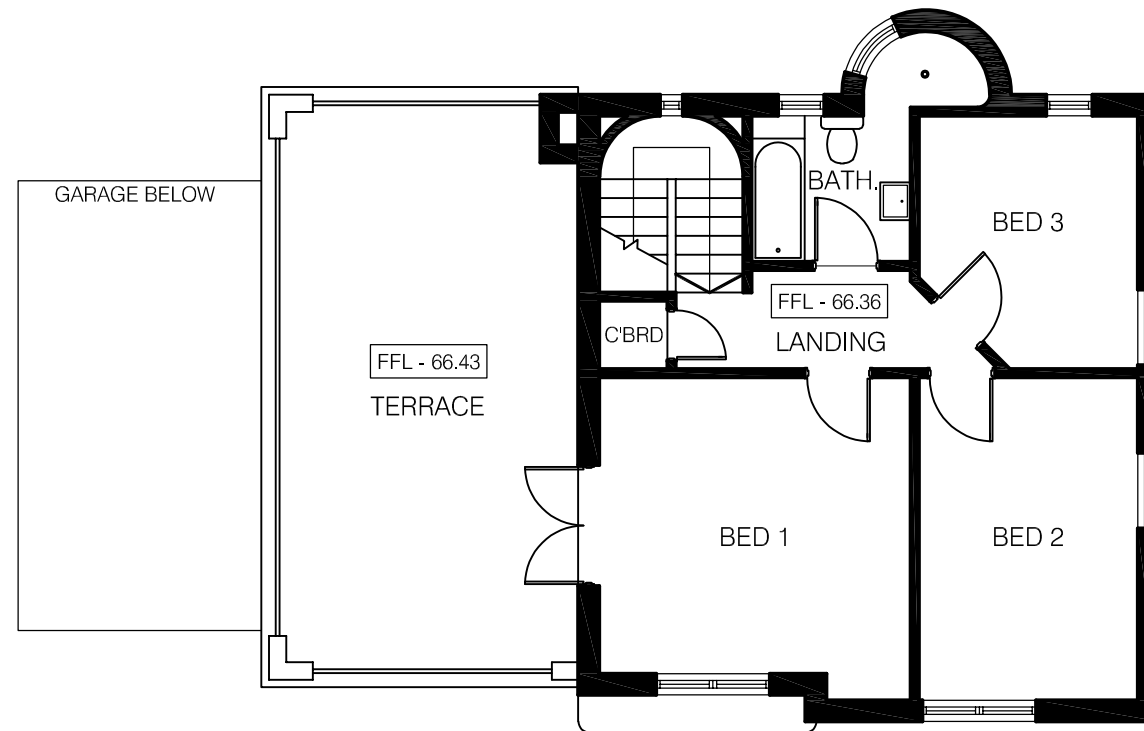


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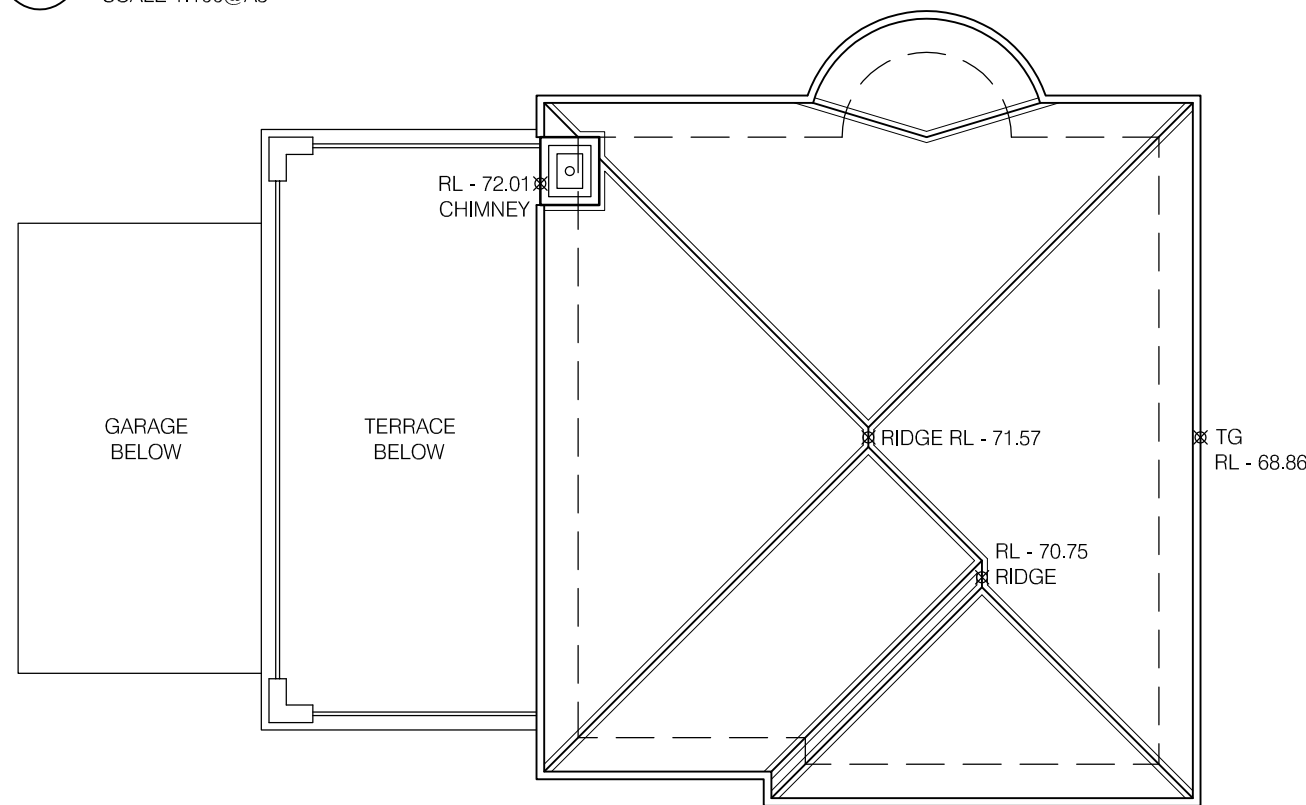
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No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: JAN 2021
WEST ELEVATION	scale: 1:100@A3
DWG No.: GA2020-066 DA203	issue: 'B'



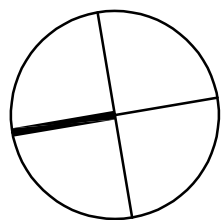
EXISTING GARAGE PLAN
SCALE 1:100@A3



EXISTING FIRST FLOOR PLAN
SCALE 1:100@A3



EXISTING ROOF PLAN
SCALE 1:100@A3



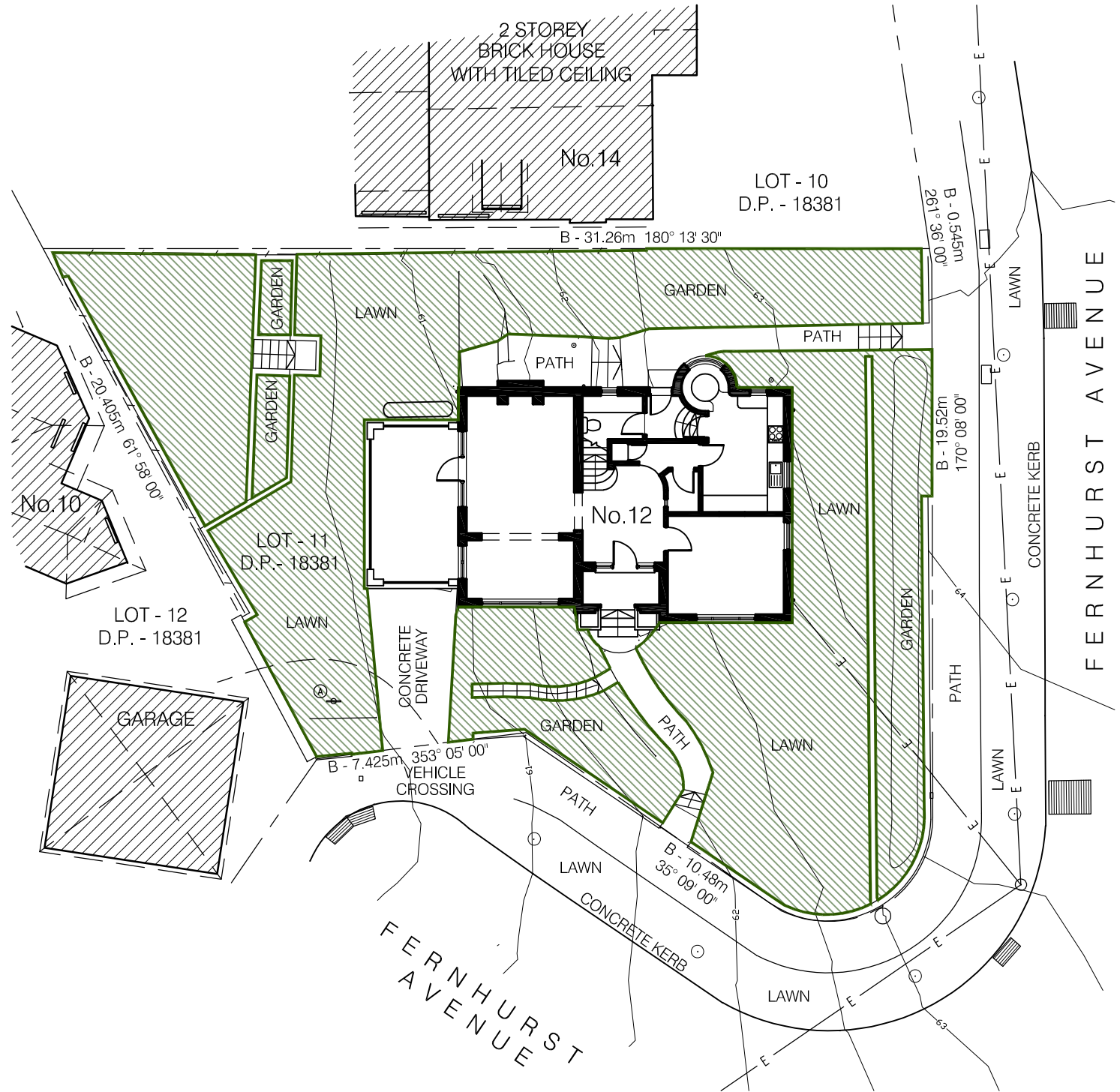
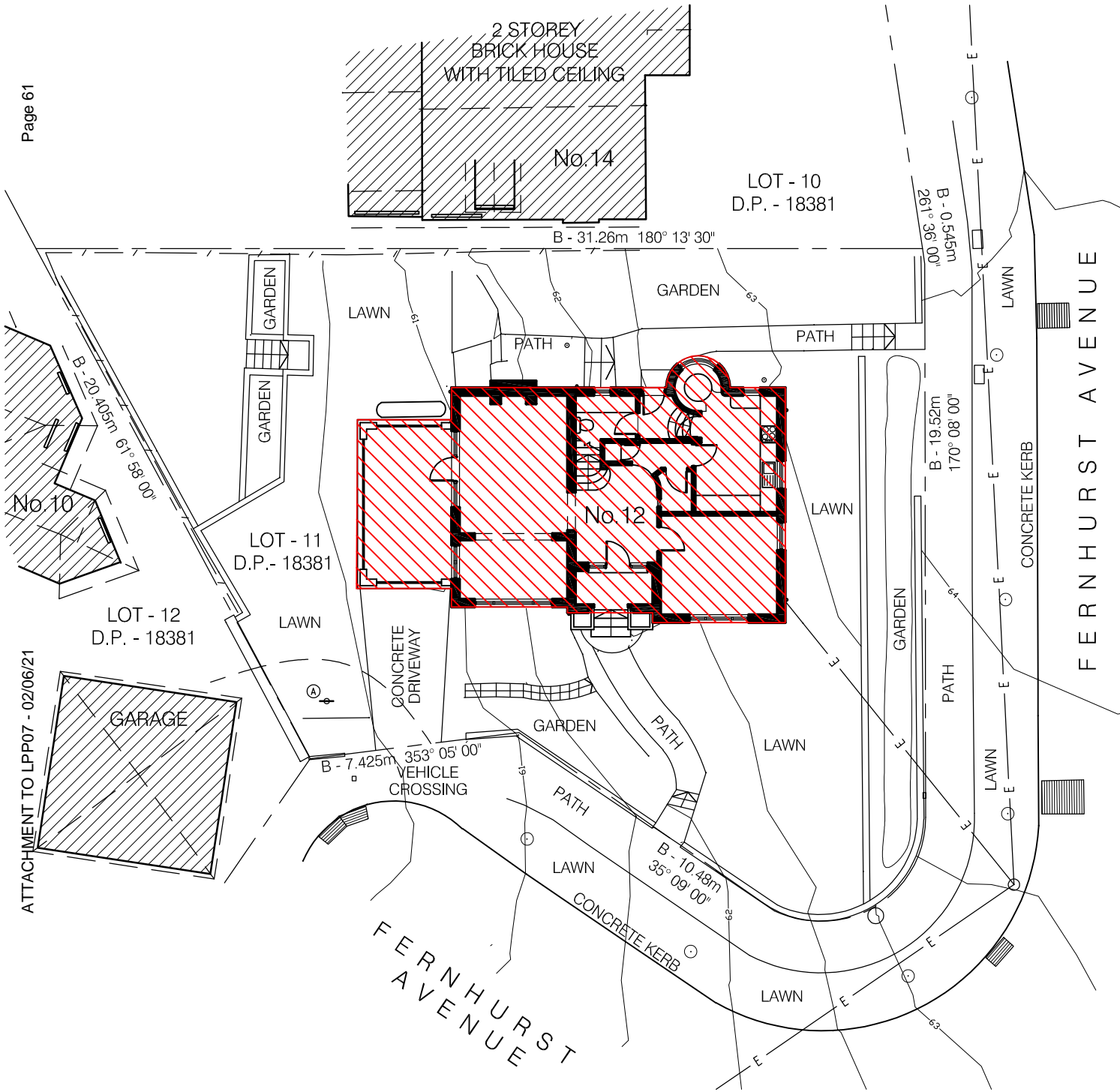
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Issue	Amendment	Date
A	PRELIMINARY ISSUE	17.11.2020



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project	
No. 12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: NOV 2020
EXISTING GARAGE, FIRST FLOOR + ROOF PLANS	scale: 1:100@A3
DWG No.: GA2020-066 EX101	issue: 'A'



SITE COVERAGE PLAN

SCALE 1:200@A3

LANDSCAPED AREA PLAN

SCALE 1:200@A3

LEGEND

- CALCULATED SITE COVERAGE
114.7m² (22.0%)
- CALCULATED LANDSCAPED AREA
326.0m² (62.5%)

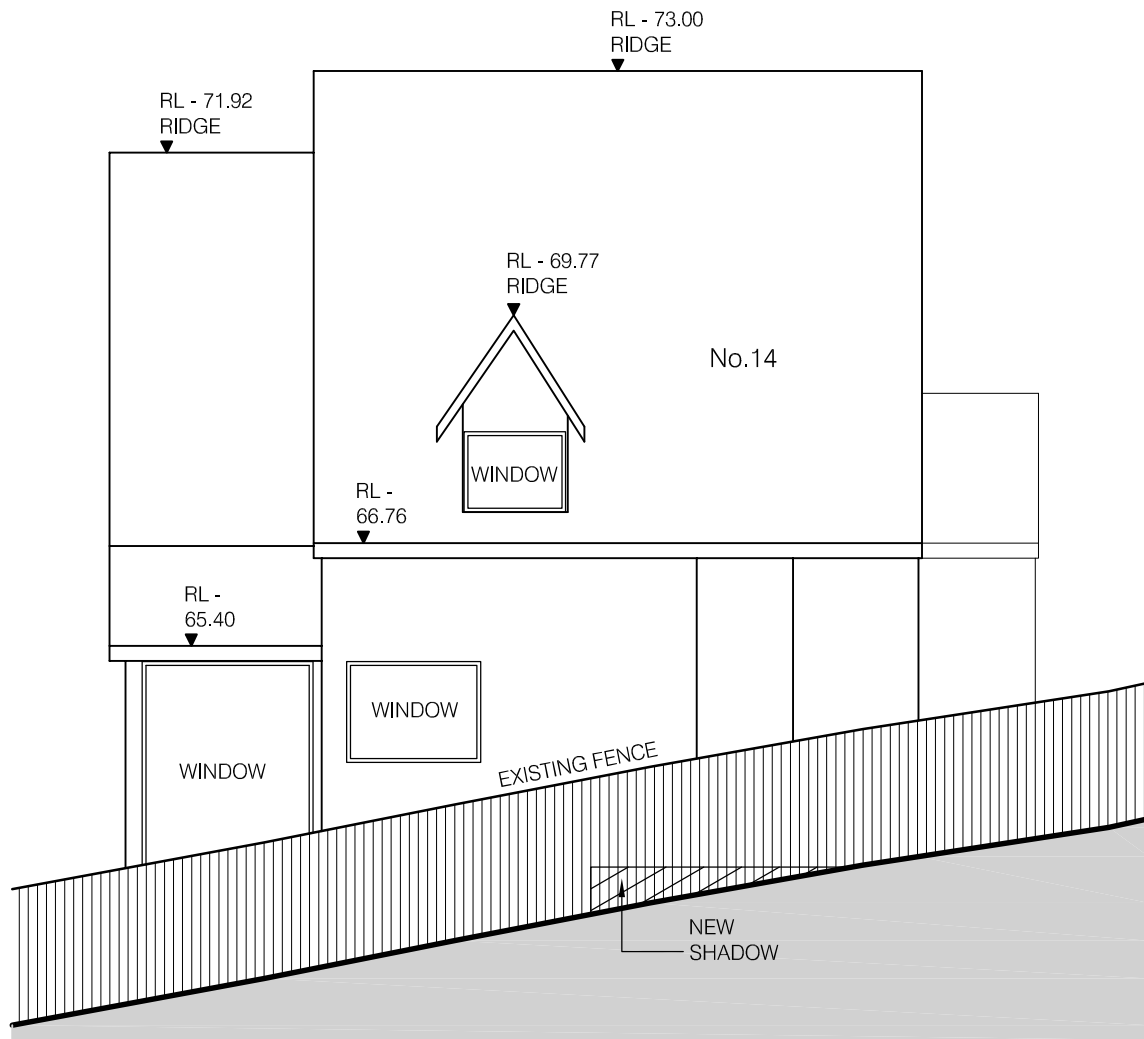
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Issue	Amendment	Date
A	DA ISSUE	13.04.2021

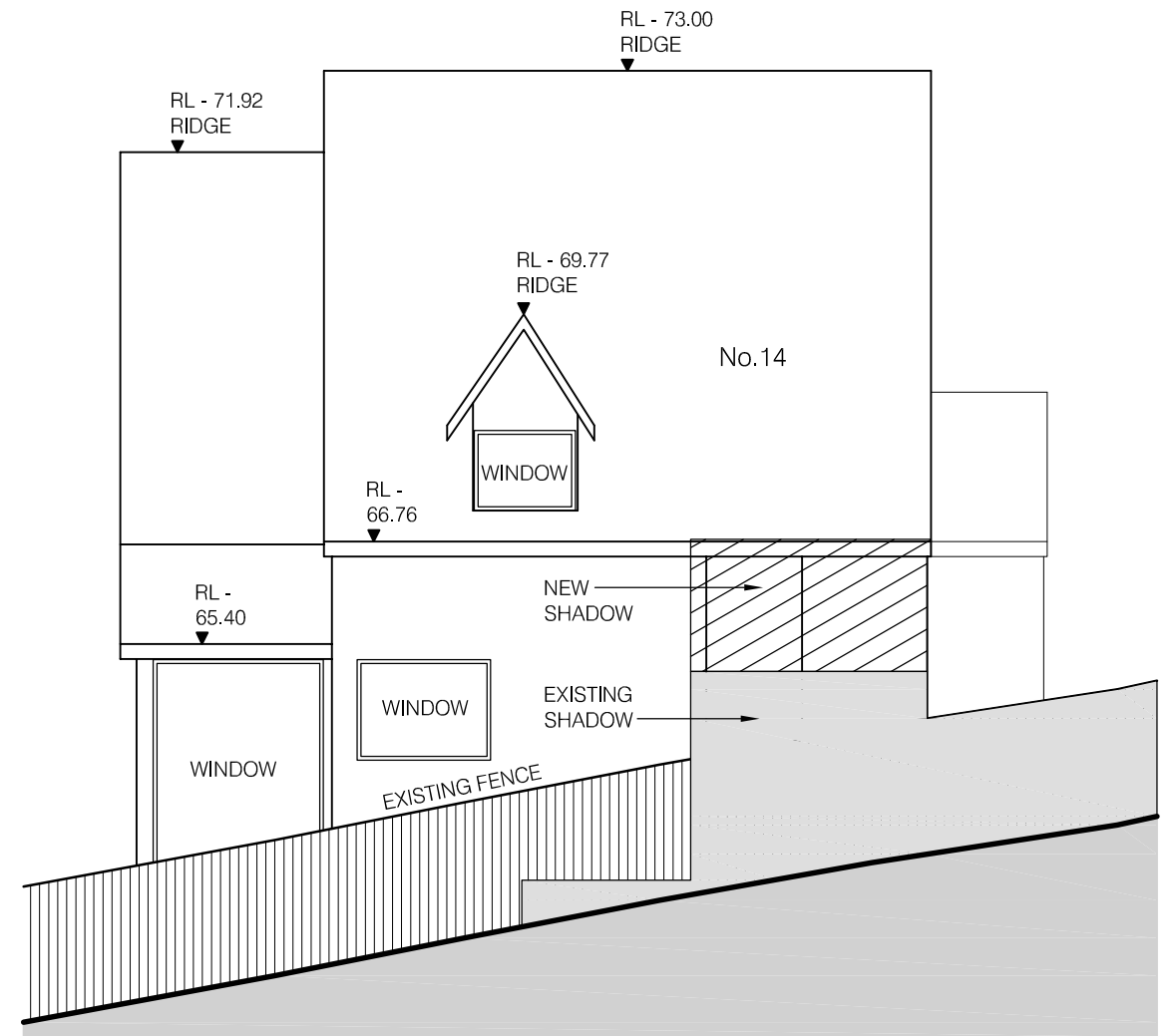


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project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: MAR 2021
SITE COVERAGE + LANDSCAPED AREA PLAN	scale: 1:100@A3
DWG No.: GA2020-066 DA103	issue: 'A'



21st MARCH + SEPTEMBER - 3PM
ELEVATION OF No.14 FERNHURST AVE



21st JUNE - 3PM
ELEVATION OF No.14 FERNHURST AVE

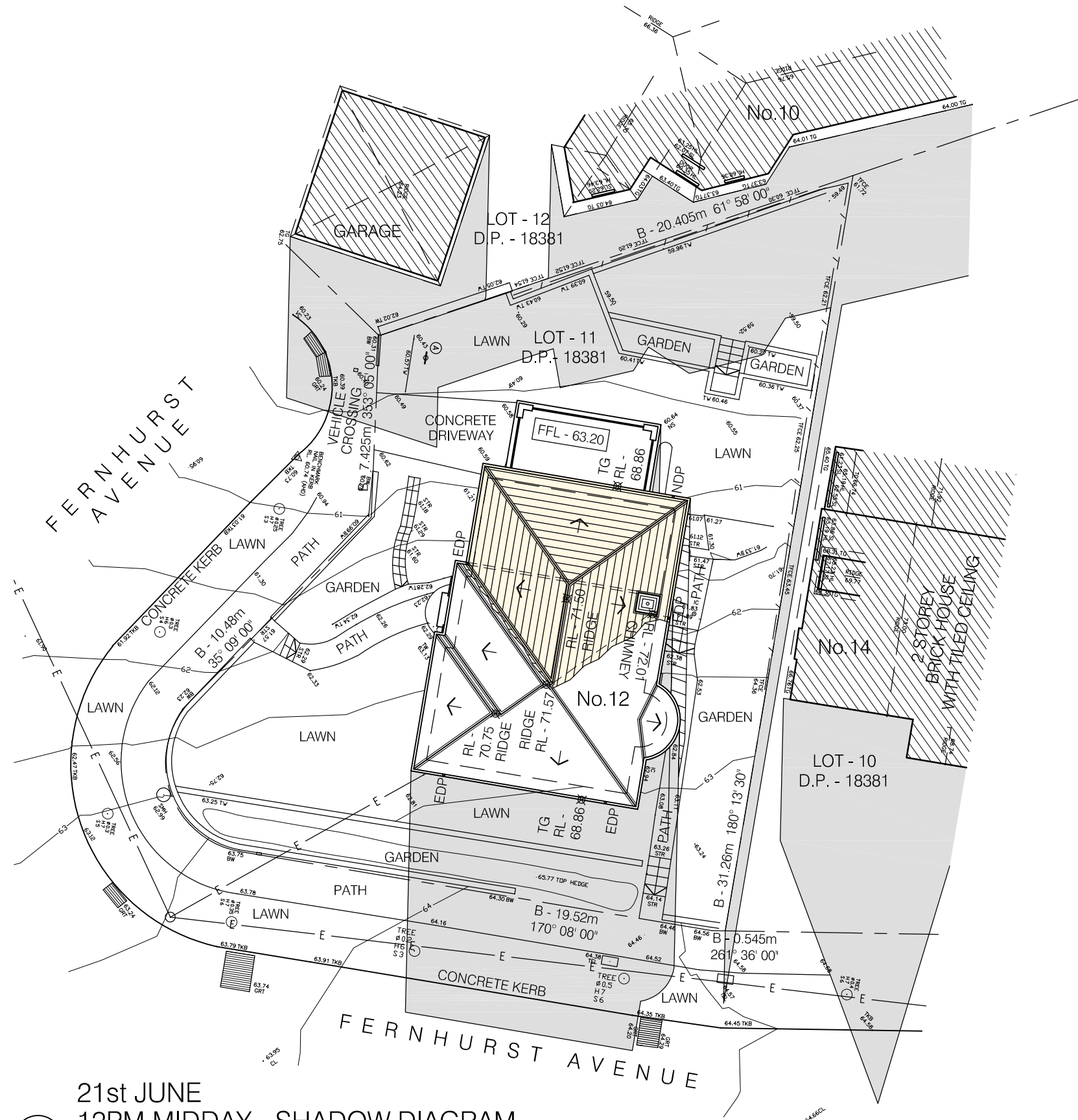


LEGEND:

- SHADOW OF EXISTING BUILDINGS + STRUCTURES.
- SHADOW OF PROPOSED ADDITION.

NOTE: SHADOWS ARE BASED ON STANDARD HOURS NOT DAYLIGHT SAVING TIMES FOR NSW.

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LEGEND:

- SHADOW OF EXISTING BUILDINGS + STRUCTURES.
- SHADOW OF PROPOSED ADDITION.

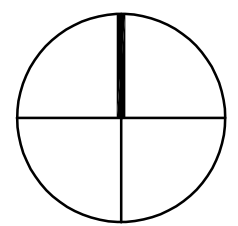
21st JUNE - 12PM MIDDAY

SUN DIAGRAM HAS BEEN PREPARED BY COMPUTER PROGRAM AND HAS BEEN COMPLETED ACCORDING TO THE FOLLOWING INFORMATION:

SUN ANGLE AZIMUTH = 1°19'22"
 ALTITUDE = 31°21'27"

INFORMATION HAS BEEN SUPPLIED FROM THE BUREAU OF METEOROLOGY.

21st JUNE
 12PM MIDDAY - SHADOW DIAGRAM
 SCALE 1:200@A3



Issue	Amendment	Date
A	PRELIMINARY DA ISSUE	19.01.2021
B	DA ISSUE	22.01.2021

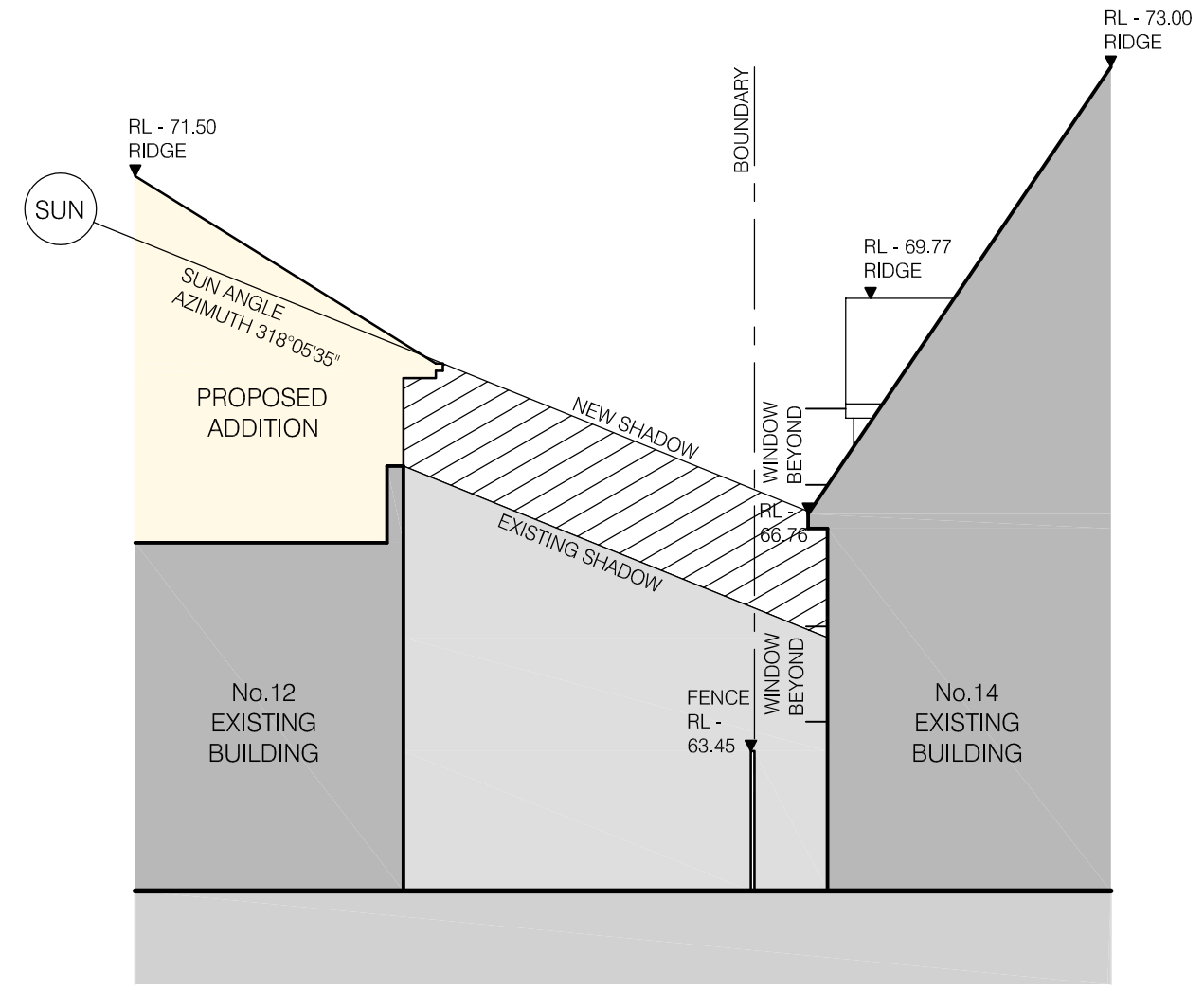
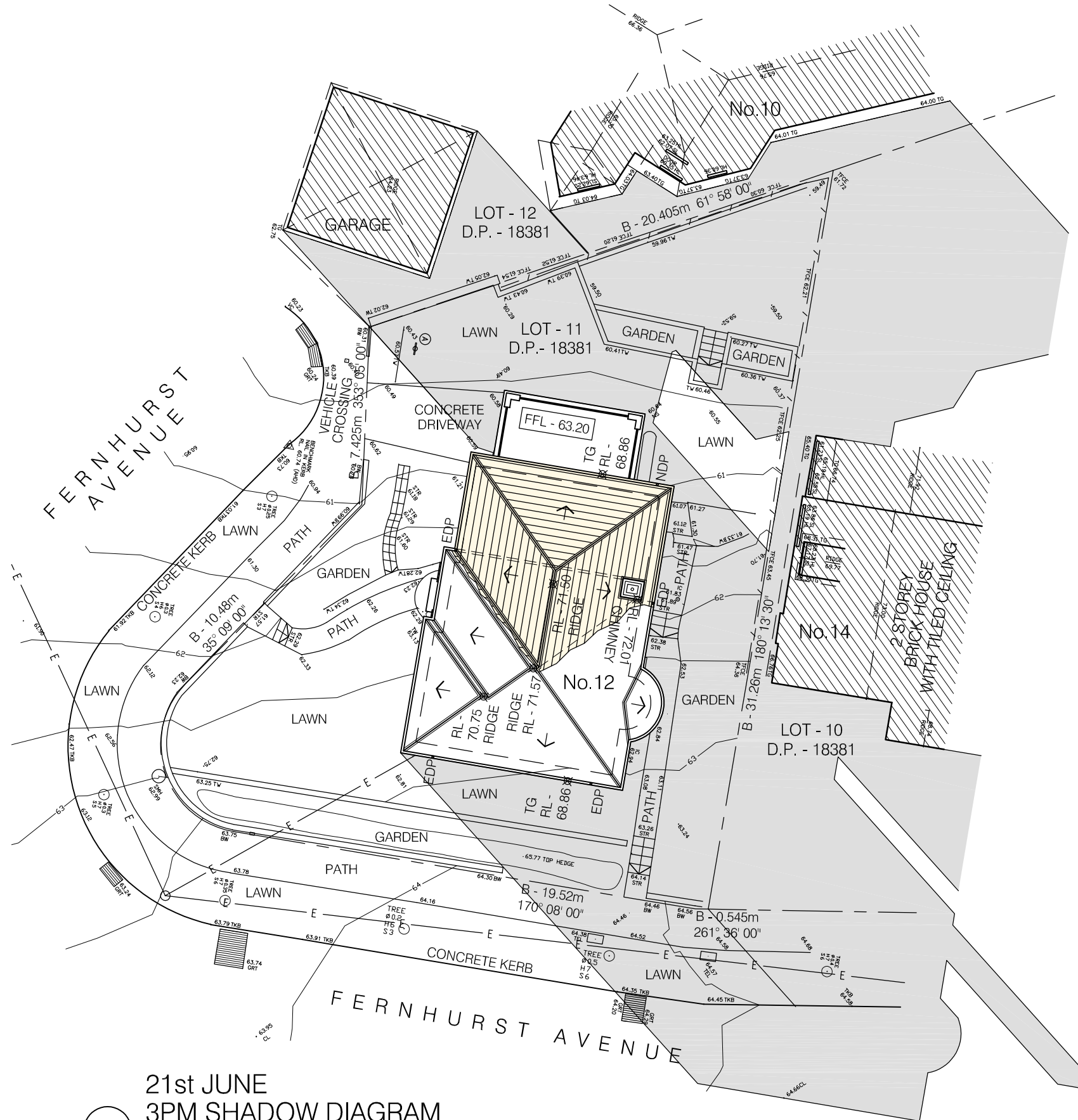
Document Set ID: 8464350
 Version: 1, Version Date: 01/04/2021

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project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: JAN 2021
21st JUNE - 12PM MIDDAY SHADOW DIAGRAM	scale: 1:200@A3
DWG No.: GA2020-066 DA904	issue: 'B'



LEGEND:

- SHADOW OF EXISTING BUILDINGS + STRUCTURES.
- SHADOW OF PROPOSED ADDITION.

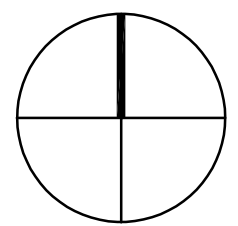
21st JUNE - 3PM

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SUN ANGLE AZIMUTH = 318°05'35"
 ALTITUDE = 18°13'29"

INFORMATION HAS BEEN SUPPLIED FROM THE BUREAU OF METEOROLOGY.

NOTE: SHADOWS ARE BASED ON STANDARD HOURS NOT DAYLIGHT SAVING TIMES FOR NSW.



21st JUNE
 3PM SHADOW DIAGRAM
 SCALE 1:200@A3

Issue	Amendment	Date
A	PRELIMINARY DA ISSUE	19.01.2021
B	DA ISSUE	15.03.2021

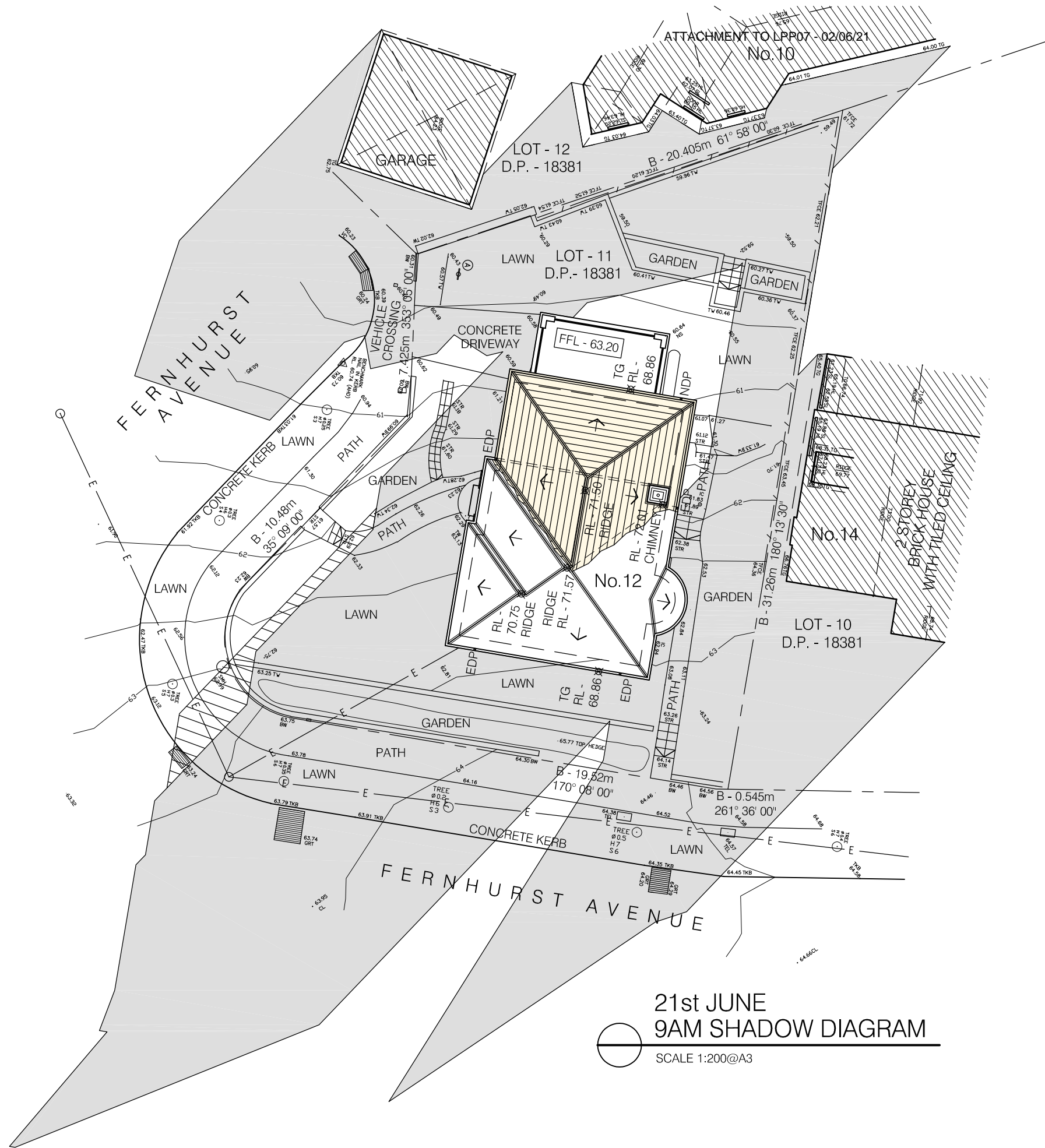
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


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project	
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drawing	date: MAR 2021
21st JUNE - 3PM SHADOW DIAGRAM	scale: 1:200@A3
DWG No.: GA2020-066 DA905	issue: 'B'



LEGEND:

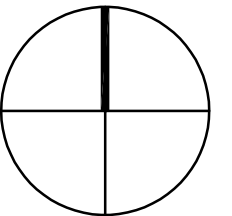
-  - SHADOW OF EXISTING BUILDINGS + STRUCTURES.
-  - SHADOW OF PROPOSED ADDITION.

21st JUNE - 9AM

SUN DIAGRAM HAS BEEN PREPARED BY COMPUTER PROGRAM AND HAS BEEN COMPLETED ACCORDING TO THE FOLLOWING INFORMATION:


SUN ANGLE AZIMUTH = 43°47'34"
 ALTITUDE = 16°51'41"

INFORMATION HAS BEEN SUPPLIED FROM THE BUREAU OF METEOROLOGY.



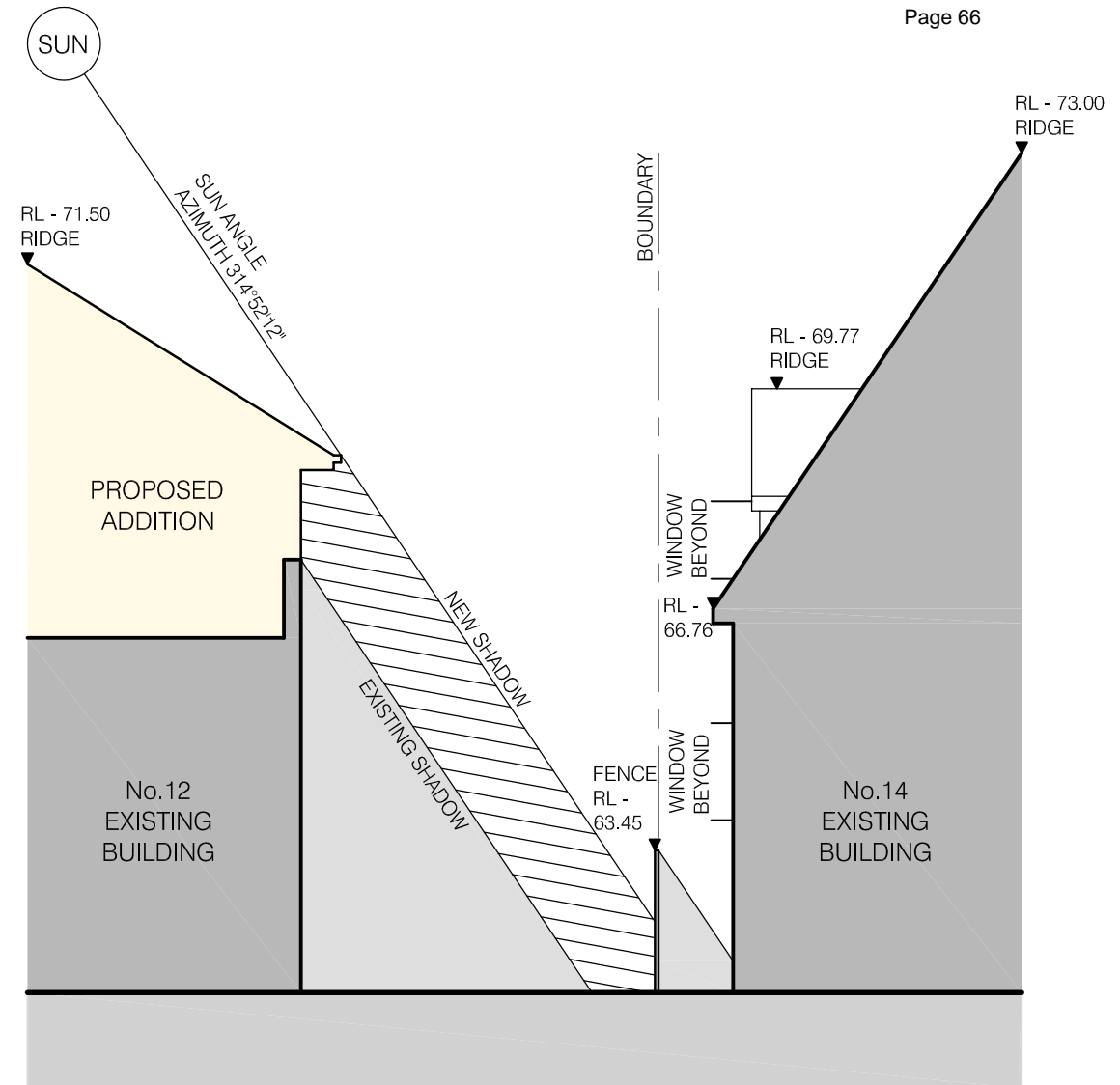
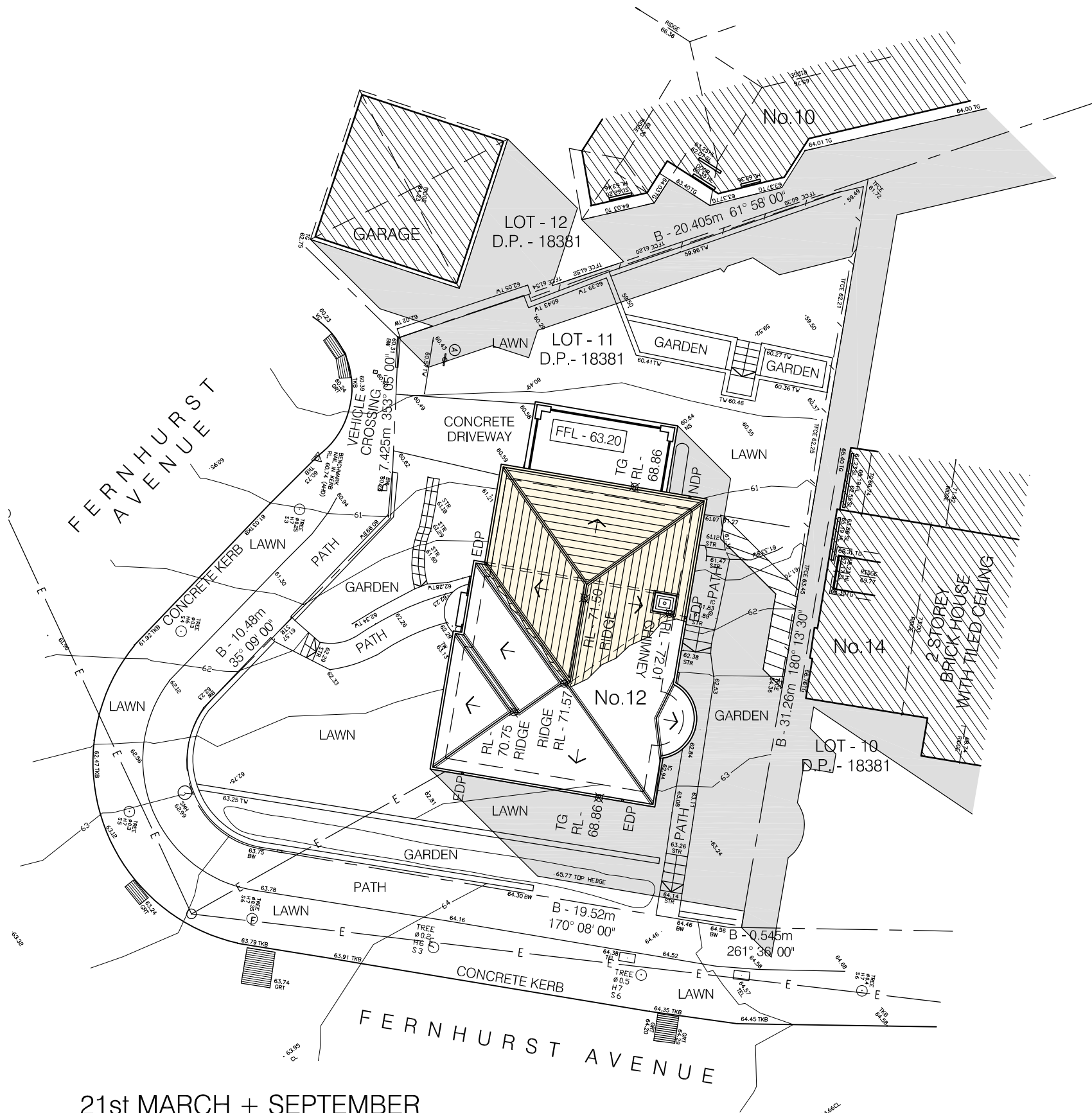
ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING. IF IN DOUBT, ASK!
 Document Set ID: 8464350
 Version: 1, Version Date: 01/04/2021

Issue	Amendment	Date
A	PRELIMINARY DA ISSUE	19.01.2021
B	DA ISSUE	22.01.2021



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project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: JAN 2021
21st JUNE - 9AM SHADOW DIAGRAM	scale: 1:200@A3
DWG No.: GA2020-066 DA903	issue: 'B'



LEGEND:

- SHADOW OF EXISTING BUILDINGS + STRUCTURES.
- SHADOW OF PROPOSED ADDITION.

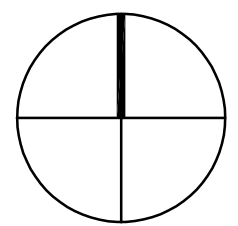
21st MARCH + SEPTEMBER - 3PM

SUN DIAGRAM HAS BEEN PREPARED BY COMPUTER PROGRAM AND HAS BEEN COMPLETED ACCORDING TO THE FOLLOWING INFORMATION:

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INFORMATION HAS BEEN SUPPLIED FROM THE BUREAU OF METEOROLOGY.

NOTE: SHADOWS ARE BASED ON STANDARD HOURS NOT DAYLIGHT SAVING TIMES FOR NSW.



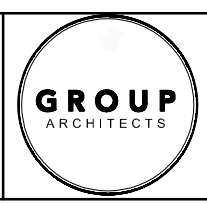
21st MARCH + SEPTEMBER
 3PM SHADOW DIAGRAM

SCALE 1:200@A3

Issue	Amendment	Date
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B	DA ISSUE	15.03.2021

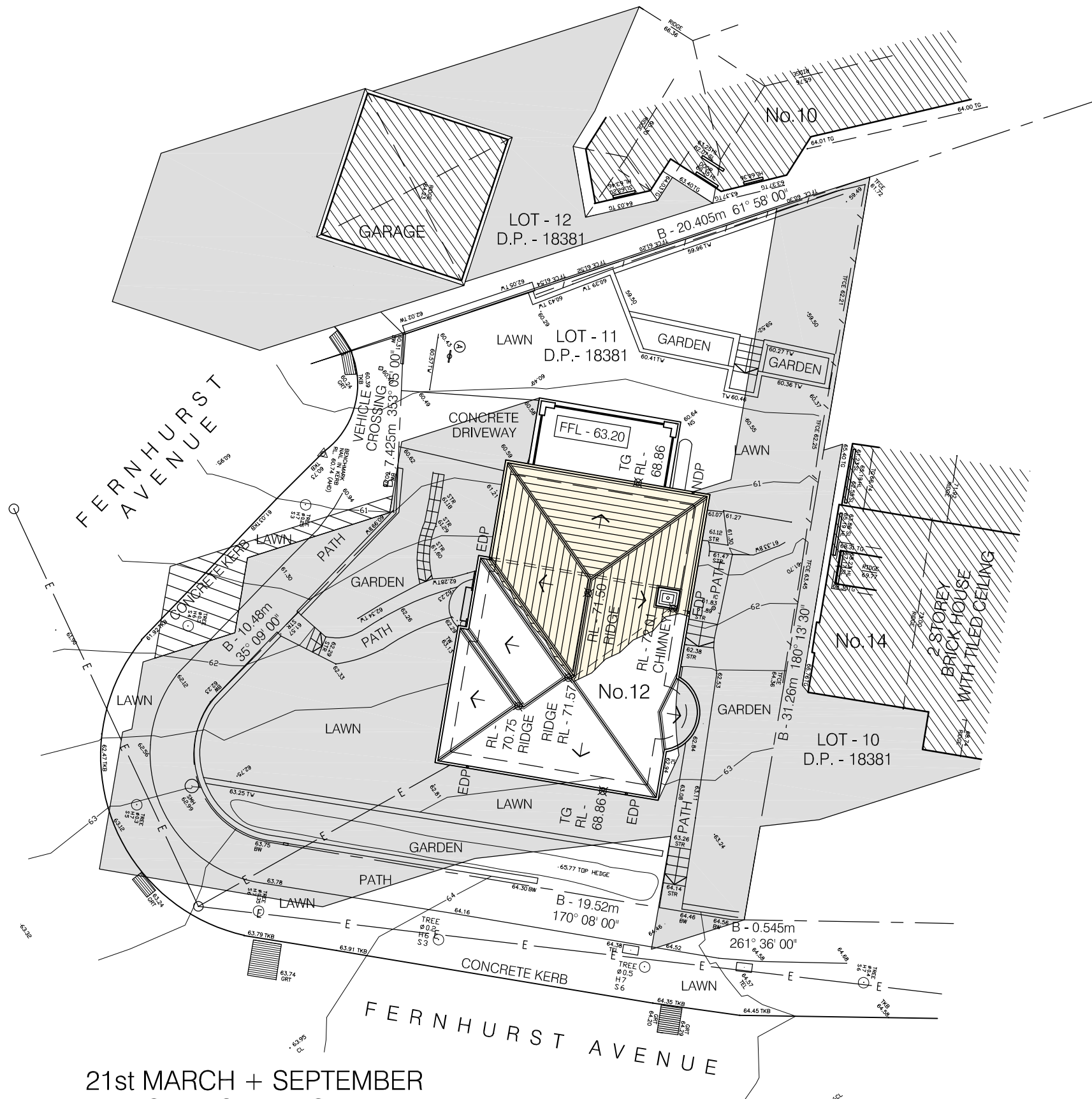
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Document Set ID: 8464350
 Version: 1, Version Date: 01/04/2021





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project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: MAR 2021
21st MARCH + SEPTEMBER 3PM SHADOW DIAGRAM	scale: 1:200@A3
DWG No.: GA2020-066 DA902	issue: 'B'



LEGEND:

-  - SHADOW OF EXISTING BUILDINGS + STRUCTURES.
-  - SHADOW OF PROPOSED ADDITION.

21st MARCH + SEPTEMBER - 9AM

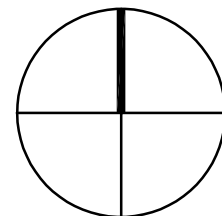
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 ALTITUDE = 23°59'24"

INFORMATION HAS BEEN SUPPLIED FROM THE BUREAU OF METEOROLOGY.


21st MARCH + SEPTEMBER
 9AM SHADOW DIAGRAM

SCALE 1:200@A3



Issue	Amendment	Date
A	PRELIMINARY DA ISSUE	19.01.2021
B	DA ISSUE	22.01.2021

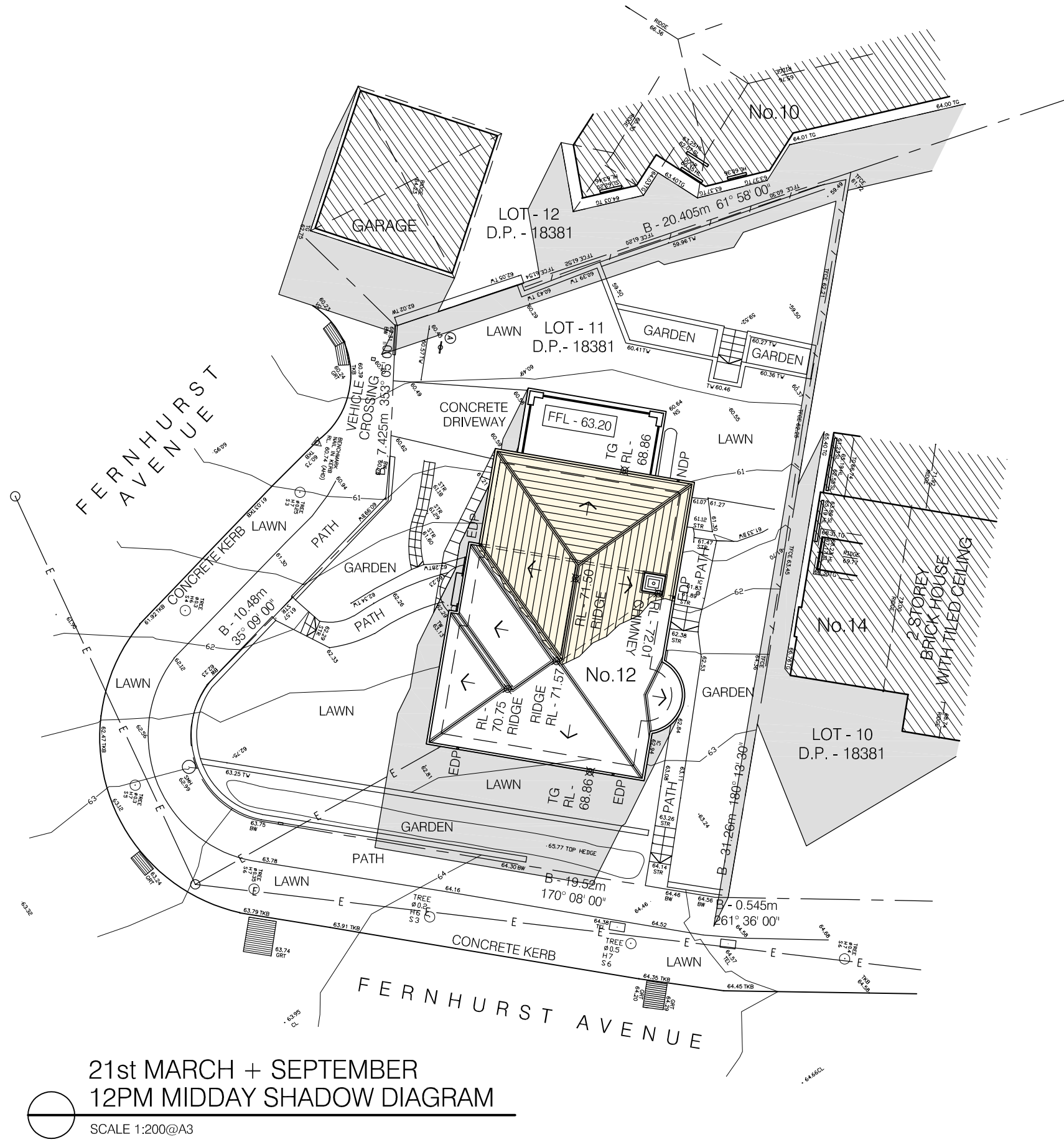
Document Set ID: 8464350
 Version: 1, Version Date: 01/04/2021



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project	
No.12 FERNHURST AVENUE CREMORNE NSW 2090	
drawing	date: JAN 2021
21st MARCH + SEPTEMBER 9AM SHADOW DIAGRAM	scale: 1:200@A3
DWG No.: GA2020-066 DA900	issue: 'B'



LEGEND:

- SHADOW OF EXISTING BUILDINGS + STRUCTURES.
- SHADOW OF PROPOSED ADDITION.

21st MARCH + SEPTEMBER - 12PM MIDDAY

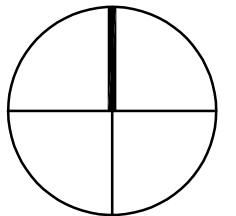
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INFORMATION HAS BEEN SUPPLIED FROM THE BUREAU OF METEOROLOGY.

**21st MARCH + SEPTEMBER
 12PM MIDDAY SHADOW DIAGRAM**

SCALE 1:200@A3



ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING. IF IN DOUBT, ASK! Document Set ID: 8464350 Version: 1, Version Date: 01/04/2021	<table border="1"> <thead> <tr> <th>Issue</th> <th>Amendment</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>PRELIMINARY DA ISSUE</td> <td>19.01.2021</td> </tr> <tr> <td>B</td> <td>DA ISSUE</td> <td>22.01.2021</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Issue	Amendment	Date	A	PRELIMINARY DA ISSUE	19.01.2021	B	DA ISSUE	22.01.2021							<p>ARCHITECTS Formerly Branchley Architects and Hosking Munro Nominated Architect Julian Branchley 6246 Group Architects Pty Limited ABN 82 600 366 069 Suite 3.09/55 Miller Street Pyrmont nsw 2009 T: +612 9660 1055 E: info@grouparchitects.com.au</p>	<table border="1"> <tr> <td colspan="2">project</td> </tr> <tr> <td colspan="2">No. 12 FERNHURST AVENUE CREMORNE NSW 2090</td> </tr> <tr> <td>drawing</td> <td>date: JAN 2021</td> </tr> <tr> <td colspan="2">21st MARCH + SEPTEMBER 12PM MIDDAY SHADOW DIAGRAM</td> </tr> <tr> <td>DWG No.: GA2020-066 DA901</td> <td>scale: 1:200@A3</td> </tr> <tr> <td> </td> <td>issue: 'B'</td> </tr> </table>	project		No. 12 FERNHURST AVENUE CREMORNE NSW 2090		drawing	date: JAN 2021	21st MARCH + SEPTEMBER 12PM MIDDAY SHADOW DIAGRAM		DWG No.: GA2020-066 DA901	scale: 1:200@A3		issue: 'B'
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Clause 4.6 – Exception to a Development Standard in relation to Clause 4.3(2) Height of buildings standard of the North Sydney Local Environmental Plan 2013.

1. Introduction.

This written request is made pursuant to the provisions of Clause 4.6 of the North Sydney Local Environmental Plan 2013 (the LEP). A variation is sought in relation to the height of buildings development standard of Clause 4.3(2) of the LEP, in relation to alterations and additions to the existing dwelling house, at 12 Fernhurst Avenue, Cremorne.

This exception statement has also been prepared having regard to the Land and Environment Court judgments in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, *Brigham v Canterbury Bankstown Council* [2018] NSWLEC 1406 and *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards

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

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

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (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.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest*

because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General must consider:

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

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

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

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

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

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

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
 - (ca) in relation to land identified as "Land in St Leonards" on the Exceptions to Development Standards Map—clause 4.3 (2) by more than 3 metres (excluding plant rooms and similar structures),*
 - (cb) clause 6.3 (2) (a) and (b).*

(8A) Subclause (8) (ca) ceases to apply on 11 March 2014.

An exception to a development standard is required because the height of the extended roof of the first floor addition will exceed the maximum 8.5m height of buildings standard of Clause 4.3(2) of the LEP.

Clause 4.6(1) provides:

(1) The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

In *Initial Action* Justice Preston considered the proper interpretation of clause 4.6 and found that:

- Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial effect relative to a compliant development (at [87]);
- There is no requirement for a clause 4.6 request to show that the proposed development would have a ‘better environmental planning outcome for the site’ relative to a development that complies with the standard (at [88]); and
- One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [95(c)]). That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) provides:

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

This clause applies to clause 4.3(2) Height of buildings development standard of the North Sydney LEP.

2. Is the provision a development standard? If so, is the operation of the flexibility provision excluded in the LEP?

Clause 4.3 of the North Sydney LEP sits within Part 4, which is titled 'Principal Development Standards'. Clause 4.3(2) is a development standard in relation to building height and the relevant standard is as follows:

Clause 4.3 Height of buildings

(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.

The site is in located area "I" on the Height of Buildings Map. A maximum building height of 8.5m applies to land in area "I".

Also of relevance are the following standard definitions:

building height (or **height of building**) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

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

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

Clause 4.6(8) sets out circumstances in which exceptions to development standards cannot be made. Clause 4.3(2) relating to building height is not expressly excluded from the operation of clause 4.6 of the North Sydney LEP and so a clause 4.6 request can be made and granted in relation to a non-compliance with the height of buildings standard of Clause 4.3(2) of the North Sydney LEP.

Details of the non-compliance with the standard

The highest part of the proposed additions is the ridge of the extended pitched roof to the main bedroom. It will be 10.73m in height measured from the existing ground level in the storeroom at RL60.77 to the ridge of the extended roof at RL71.50, and therefore exceeds the 8.5m height of buildings standard. The eave gutter will be 7.09m in height at RL68.86 above the existing ground level at RL60.77.

The height of the ridge of the existing roof at RL71.57 is slightly higher, and is 10.80m in height above the ground level of the lower ground level storeroom.

The following extract from the western elevation shows the 8.5m height line plotted relative to the existing ground level along the face of the elevation.

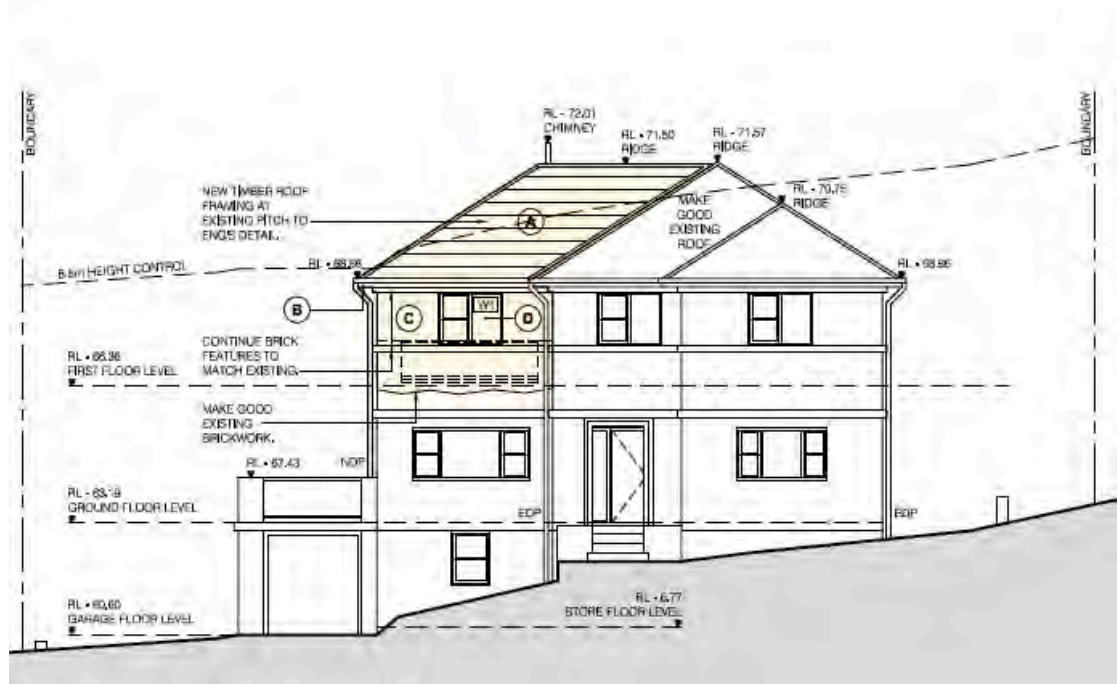


Figure 1: Extract from Drawing DA203 West Elevation shows the 8.5m height line plotted relative to the existing ground level relative to the western wall. The breach of the height standard by the existing roof and the new extended roof is slightly greater where the extended ridge sits directly above the storeroom floor level, also shown dotted.

3. Is compliance with the development standard unreasonable or unnecessary?

Clause 4.6(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (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.*

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The submission and consideration of Objections under State Environmental Planning Policy No. 1 and the issue of compliance being “unreasonable or unnecessary” was summarised in the Land and Environment Court judgment *Wehbe v Pittwater Council* [2007] NSWLEC 827. While that judgment applied to SEPP 1 Objections and not Clause 4.6 variation requests, the approach in that case has been accepted in subsequent court cases related to Clause 4.6 variation requests.

In Initial Action the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply.

The onus lies upon the applicant to demonstrate this in a written request that requiring compliance with the particular standard would be unreasonable or unnecessary. In this regard, the Wehbe case outlined 5 possible ways to demonstrate whether compliance would be unnecessary or unreasonable, by establishing:

- i. Compliance with the underlying objectives of the standard being breached, notwithstanding the numerical non-compliance; or*
- ii. That the objectives of the standard are not relevant to the proposal; or*
- or*
- iii. Requiring compliance with the development standard would "thwart" the achievement of the objectives of that standard; or*
- iv. The development standard in question has been "virtually abandoned" by the Council; or*
- v. The zoning of the land is not appropriate for the site and therefore the associated standards are not appropriate (with some qualifications).*

This written request does not rely on pathways ii, iii, iv and v above.

Point i. is of primary relevance in this case, that is, that the objectives of the standard are achieved, notwithstanding the non-compliance and there would be no purpose served by requiring compliance with the standard.

The objectives of the height of buildings standard are listed in Clause 4.3(1).

Clause 4.3(1) The objectives of this clause are as follows:

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

Objectives of the standard

The proposed alterations and additions to the existing dwelling house involving an extension at the rear of the existing first floor level and an extended pitched roof will be in the public interest because it is consistent with the objectives of the height of buildings standard for the following reasons:

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

The land slopes from the front to the rear but the proposal does not involve any changes to existing ground levels or the landform generally.

(b) to promote the retention and, if appropriate, sharing of existing views,

The proposed addition at the rear of the existing first floor level will not impact on the existing views and outlook from adjoining properties or properties on the opposite side of Fernhurst Avenue.

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

Solar access will be maintained to the adjoining properties to an acceptable degree considering the wide setback to the east and separation between houses.

The part of the roof on the north side of the existing first floor level that exceeds 8.5m in height will not involve an impact on solar access to the adjoining property to the east at 14 Fernhurst Avenue.

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

Acoustic privacy will be maintained to an acceptable degree considering the separation between buildings particularly at the rear and on the eastern side. The removal of the existing terrace and replacement with a main bedroom suite will actually improve visual and acoustic privacy for neighbouring properties.

(e) to ensure compatibility between development, particularly at zone boundaries,

The proposed additions to the existing dwelling house and integrated pitched roof to match the existing roof, will maintain compatibility with the height, scale, and character of residential development in the area, that comprises mostly two storey dwelling houses with pitched tile roofs.

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

The proposed alterations and additions will be an appropriate scale and density and compatible with the character of the existing dwelling houses in the immediate area, in particular the proposed pitched roof that is an important and identifiable character element and will be visible as an integral part of the roof of the house, due to the corner location and visibility from the street.

The proposal achieves an acceptable outcome and an appropriate level of consistency with the objectives of the standard, particularly in relation to compatibility with the local area character, and minimising the effects of bulk

and scale, and maintaining local amenity in particular views and view sharing and solar access and privacy.

Compliance with the standard is achievable with a flat roof, but it would be unreasonable and unnecessary and there would be no purpose served by requiring strict compliance with the standard.

Objectives of the Zone

The objectives of the R2 Low Density Residential Zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

Consistency with the individual objectives of the R2 Low Density Residential zone are addressed as follows:

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

The R2 Low Density Residential Zone allows for a range of residential uses on the land. The housing needs of the community are provided for by retaining the existing dwelling house on the land and alterations and additions, which are envisaged by the planning controls for this low density residential zone.

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

This objective is not relevant to the proposal.

To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.

The proposed alterations and additions to the existing dwelling house will not compromise the amenity of the surrounding area or the natural heritage or cultural heritage of the area.

To ensure that a high level of residential amenity is achieved and maintained.

The bedroom addition will face north and will achieve a high level of residential amenity for residents and will also maintain the amenity of residents of the surrounding properties.

This proposal and the variation to the 8.5m height of buildings standard that is sought would be in the public interest because the proposal achieves an acceptable outcome and an appropriate level of consistency with the objectives of the zone, particularly in relation to compatibility with the neighbourhood character and maintaining the amenity of the surrounding properties and is a scale and density that is appropriate in this low density residential area.

No adverse impact

The proposed alterations and additions will be consistent with the objectives of the development standard and there will be no adverse impacts or environmental harm due to the non-compliance relating to the extended pitched roof at the rear of the existing first floor level.

Solar access is maintained in accordance with the criteria of the DCP and the visual and acoustic privacy of neighbours will actually be improved and views and vistas will also be unaffected by the proposal.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard?

Of relevance is the judgment in the Land and Environment Court of NSW, *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009, NSWLEC 90, NSWLEC 248*, which raised the issue that the grounds should relate to a site specific proposal, rather than generic reasons.

The case *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* highlighted that:

1. The term "environmental planning grounds" is not defined and would include the objects of the EPA Act (Section 1.3);
2. The grounds must relate to the contravention of the development standard in question, not the whole development; and
3. The consent authority must indirectly be satisfied the applicant's written request provides sufficient environmental planning grounds, not directly form an opinion about there being sufficient environmental planning grounds to justify the contravention.

Also, given the term "environmental planning grounds" is wide in its nature, context and understanding, and given the Objects of the EPA Act 1979 give effect to all other planning instruments, DCPs and wide assessment criteria, a wide appreciation of the term is warranted.

In this context, the following environmental planning grounds are given to justify the proposed contravention of the height of buildings development standard, on this particular site and for this particular development for alterations and additions at the rear of an existing dwelling house.

The design and height of the additions is influenced by extending at the rear of the existing first floor level and the partial demolition and rebuilding and extending the existing pitched roof. The design and appearance of the roof is important in this case because the site is a corner lot and the rear and western side of the house is open to the street and the addition will therefore be more prominent and visible, but will not be excessive in height and scale or jarring

in the streetscape or from adjoining properties. The integrated hipped roof form over the rear bedroom addition will also be compatible with the existing pitched roof and characteristic pitched roofs in the locality.

In this regard, even though the proposal will exceed the 8.5m height of buildings standard in part, the proposal represents a reasonable and appropriate environmental planning outcome for this corner site and consistency with the objectives of the height standard, compared to a different (sloping or flat roof) design that strictly complied with the numerical height standard across all parts of the site.

As outlined, the site is essentially a corner lot and the rear and side of the house is visible from the secondary frontage to Fernhurst Avenue. It is reasonable to have an integrated pitched roof rather than a flat roof as the house and the existing roof is visible from both the front and western side from Fernhurst Avenue. The proposal for a pitched roof, even though it exceeds the height of buildings standard, achieves a more resolved and compatible roof design.

The proposal will be consistent with the aims and objectives of the North Sydney LEP, the objectives of the height of buildings standard and the objectives of the R2 Low Density Residential Zone. It will also comply with the site coverage control and the landscaped area controls of the North Sydney DCP.

The absence or lack of environmental harm in this case, with specific reference to the adjoining properties and more generally the locality, is also an appropriate environmental planning ground to justify contravening the development standard.

The contention that an environmental planning ground could include establishing a lack of environmental harm was supported in a recent case in the Land and Environment Court of NSW in *Initial Action v Woollahra Council (2018) NSWLEC 118*.

This was also an appeal against a Commissioner's decision on questions of law. This case related to the Commissioner's refusal to grant development consent for a residential flat building that contravened the height of buildings development standard of the Woollahra LEP 2014, and the Commissioner was not satisfied that contravention of the development standard was justified in the Clause 4.6 exception to a development standard.

In his Principal judgment Preston CJ made a similar finding as he did in *Randwick City Council v Micaul Holdings Pty Ltd at [34]*, in relation to consistency of a development with the objectives of a development standard and consideration that a lack of adverse amenity impacts on adjoining properties is a sufficient ground justifying a development contravening the development standard.

In this case there will be no adverse impacts of the amenity of the surrounding development or the locality by virtue of the breach of the height standard as outlined. The proposed additions are also consistent with the objectives of the R2 Low Density Residential zone, as outlined in Part 4 of this statement.

For the reasons outlined, there are sufficient environmental planning grounds particular to the circumstances of the site and the design of the proposed additions including an integrated pitched tile roof, to justify the departure from the height of buildings standard.

In terms of the Objects of the EPA Act, the proposal is consistent with the Objects of the Act, particularly in relation to ecologically sustainable development, the orderly and economic use and development of the land, sustainable management of built and cultural heritage and good design and amenity of the built environment.

4. Is the proposed development in the public interest because it is consistent with the underlying purpose or object of the standard and the objectives for development in the zone in which it is proposed to be carried out?

In accordance with Clause 4.6(4)(a), development consent must not be granted to a development that contravenes a development standard unless Council is satisfied in relation to certain matters as follows:

Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) the concurrence of the Director-General has been obtained.

These are matters for the consent authority to be satisfied (as opposed to the applicant justifying as in Clause 4.6(3)). Clause 4.6(4)(a)(i) has been addressed in the previous section of this written request. The objectives of the standard (Clause 4.6(4)(a)(ii)) as well as the objectives of the R2 Low Density Residential Zone have been addressed previously and are adopted for the purposes of this section of the written request. The proposal for a development comprising a dwelling house and alterations and additions is permissible in the zone with development consent. The requirement in Clause 4.6(4)(b) is also met, as outlined as follows in relation to the concurrence of the Director-General.

Clause 4.6(4)(b) Concurrence of the Director-General

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice. The concurrence of the Director-General is therefore assumed.

5. Conclusion

This proposal is for alterations and additions to the existing two storey and part three storey dwelling house, including an addition at the rear of the existing first floor and an extended pitched and hipped roof. The departure from the 8.5m height of buildings standard relates to the extended pitched roof of the addition.

For the reasons outlined in this statement, the objectives of the height of buildings standard and the objectives of the R2 Low Density Residential Zone will be met.

This exception to the height of buildings standard is considered to be well founded and Council as the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the height of buildings standard and the objectives of the R2 Low Density Residential Zone.



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