

**NSLPP MEETING HELD ON 06/07/2022****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement(Building Height)

ADDRESS/WARD: 18 Tobruk Avenue, Cremorne (S)**APPLICATION No:** DA 56/22**PROPOSAL:** Demolition of existing structures, retain and extend existing garage, construction of a dual occupancy (attached) and associated works.**PLANS REF:**

Plan No.	Rev.	Description	Prepared by	Dated	Received
DA.03	A	Site Analysis Plan	PA Studio	04/02/2022	21/02/2022
DA.04	A	Garage Floor Plan at Street Level	PA Studio	04/02/2022	21/02/2022
DA.05	A	Floor Plan: Level 4	PA Studio	04/02/2022	21/02/2022
DA.06	A	Floor Plan: Level 3	PA Studio	04/02/2022	21/02/2022
DA.07	A	Floor Plan: Level 2	PA Studio	04/02/2022	21/02/2022
DA.08	A	Floor Plan: Level 1	PA Studio	04/02/2022	21/02/2022
DA.09	A	Sections S-01 and S-02	PA Studio	04/02/2022	21/02/2022
DA.10	A	Sections S-03 and S-04	PA Studio	04/02/2022	21/02/2022
DA.11	A	South and East Elevations	PA Studio	04/02/2022	21/02/2022
DA.12	A	North and West Elevations	PA Studio	04/02/2022	21/02/2022
DA.13	A	List of Materials and Finishes	PA Studio	04/02/2022	21/02/2022
DA.27	A	Demolition Plan	PA Studio	16/03/2022	25/03/2022
L-01	B	Landscape Plan	Space Landscape Designs	11/02/2022	21/02/2022

OWNER: Gumtree Lane Australia Pty Ltd**APPLICANT:** Platino Properties**AUTHOR:** Andrew Beveridge, Assessment Officer**DATE OF REPORT:** 6 July 2022**DATE LODGED:** 21 February 2022**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

This development application seeks NSLPP approval for the demolition of the existing 1960-1961 three storey dwelling house and the majority of the existing detached garage, and the construction of a new attached dual occupancy comprising two 3-bedroom dwellings across four storeys.

This application is reported to North Sydney Local Planning Panel for determination because the proposed works breach the building height limit by greater than 10% and requires determination by the panel.

As the proposal involves the demolition of the existing residential dwelling (with an existing height of 11.8m or 3.3m/38% over the height limit) and the construction of a dual occupancy with a maximum height of 13.5m that is in exceedance of the maximum permitted height limit by 5m (58%), the applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013. The applicant's submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council [2007] NSWLEC 827* in order to justify the proposed variation. The applicant's Clause 4.6 is considered to be satisfactory given the site circumstances and on the basis that it will not have a significant impact upon the views or general amenity of adjoining properties.

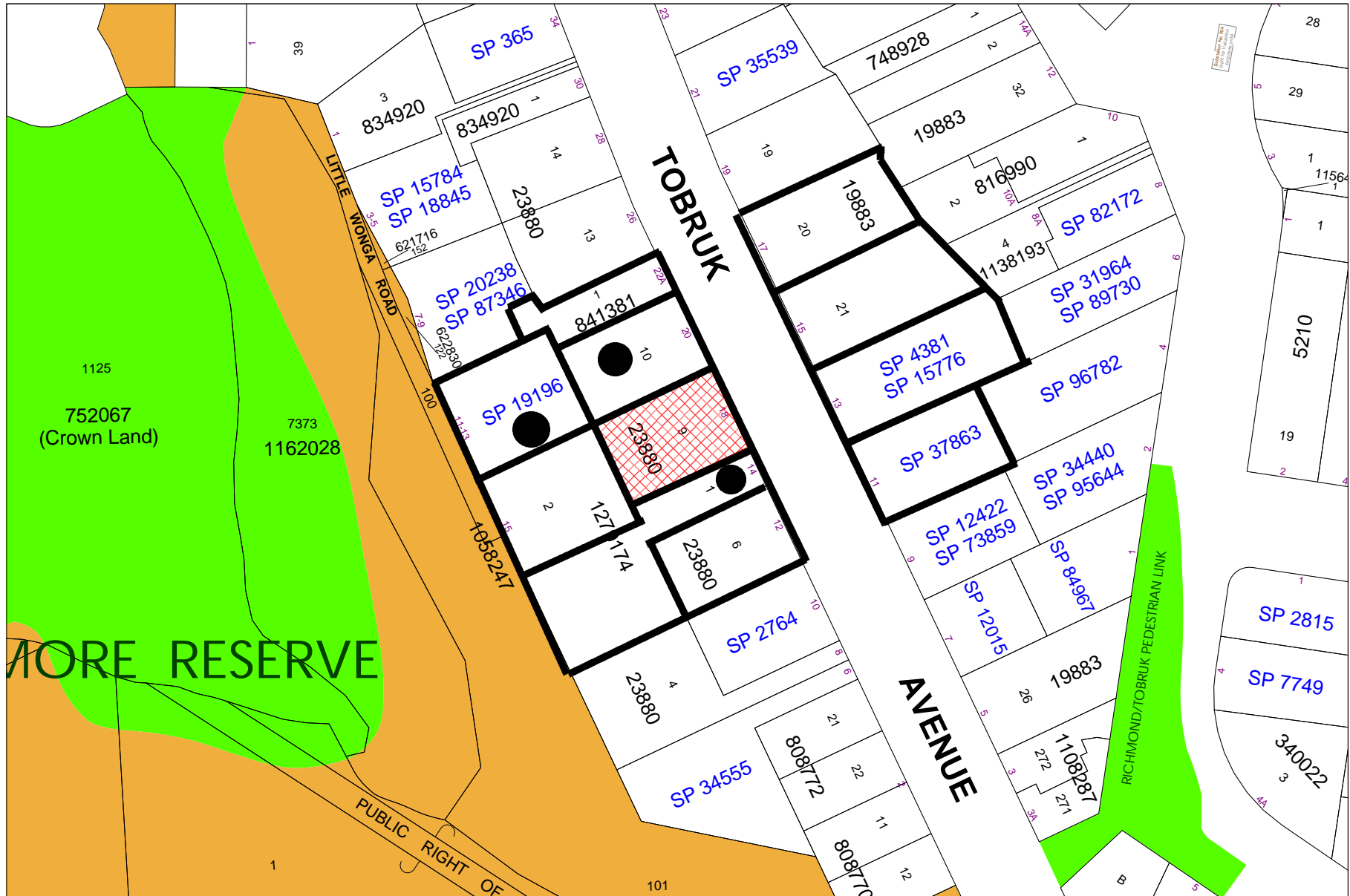
Notification of the proposal has attracted three submissions and the assessment has considered these as well as the performance of the application against Council's planning requirements. The amenity impacts upon adjoining properties in regard to views, solar access, privacy have been assessed and are considered to be minor and acceptable within the site circumstances.

The impacts of the overall development upon nearby bushland areas and significant trees have also been assessed and, subject to appropriate conditions, was found to be generally acceptable on the basis that the works will maintain a sympathetic scale with relatively minor excavation and will not result in any adverse impacts upon bushland areas.

Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in any significant adverse impacts upon the locality or adjoining properties, and the streetscape character will be maintained. The proposal will also not result in any unreasonable impacts on the amenity of adjoining properties such as impacts to views, overshadowing or loss of privacy.

Having regard for the potential impacts upon the amenity of adjoining properties and nearby bushland, subject to conditions, the development application is considered to be satisfactory and is recommended for **approval**.

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

The proposed works are for the demolition of the existing three storey dwelling house and the majority of the existing detached garage, and the construction of a new attached dual occupancy comprising two 3-bedroom dwellings across four storeys, as follows:

- Demolition of the existing dwelling, and the roof and southern, eastern, and western walls of the garage.
- The construction of a new four-storey dual occupancy (attached) comprising Dwelling 1 and Dwelling 2:
 - a) **Dwelling 1** occupies the upper levels with a total floor area of 192m² and comprises three bedrooms, media room, rumpus room, amenities, and a kitchen/dining/living area.
 - b) **Dwelling 2** occupies the lower levels with a total floor area of 207m² and comprises three bedrooms, media room, rumpus room, amenities, and a kitchen/dining/living area.
- Extension of the existing double garage to connect to the new development, including space for 4 cars in a 2x2 tandem parking format. Addition of a new elevator at the rear of the garage to connect both dwellings and all levels to the street level.
- New landscaping works to include: the removal of the existing two Cypress trees in the front setback, the addition of nine trees across the site, and new paving, paths, and stairs.

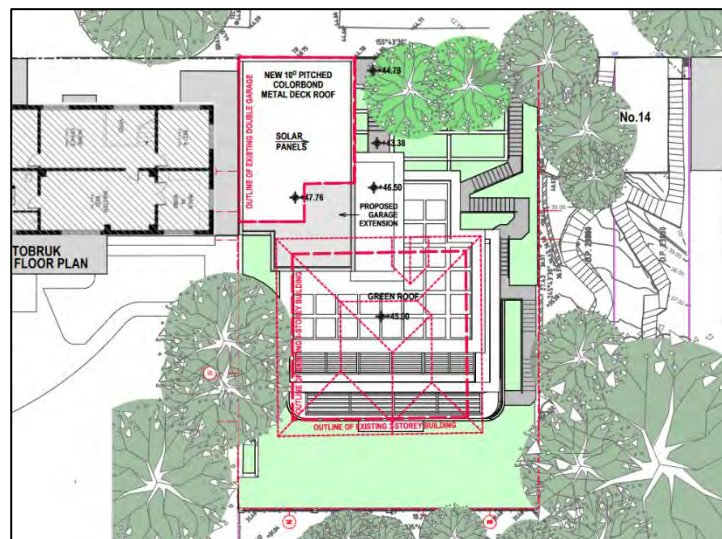


Figure 1. Site Plan.

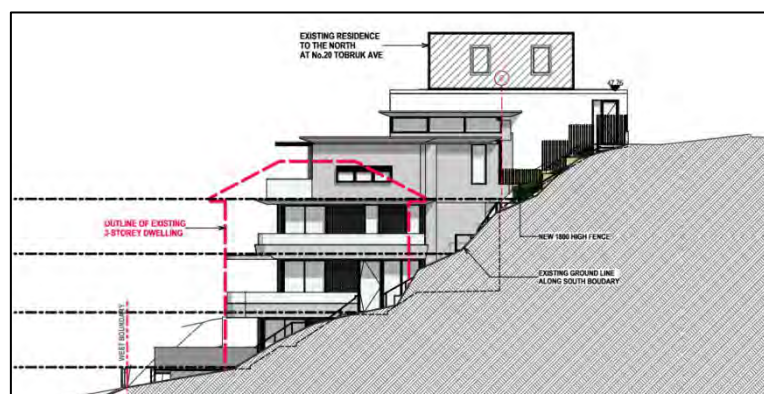


Figure 2. Southern side Elevation.

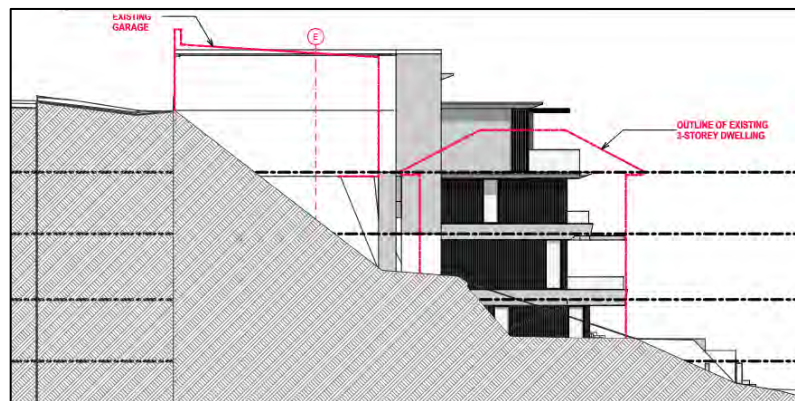


Figure 3. Northern side elevation.

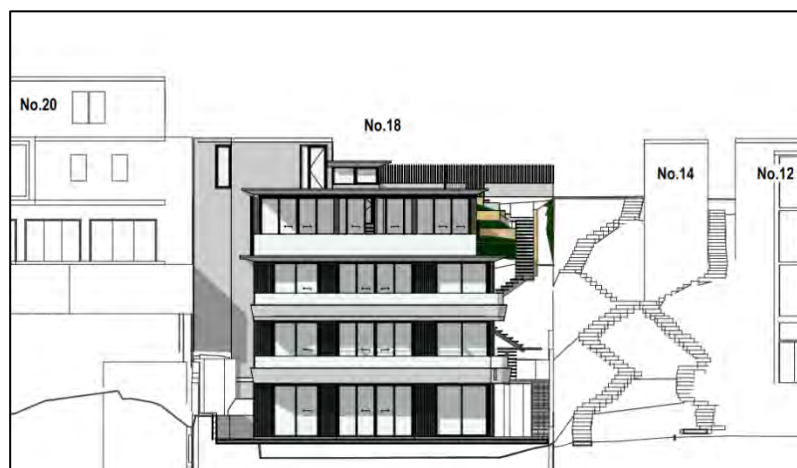


Figure 4. Western rear elevation.

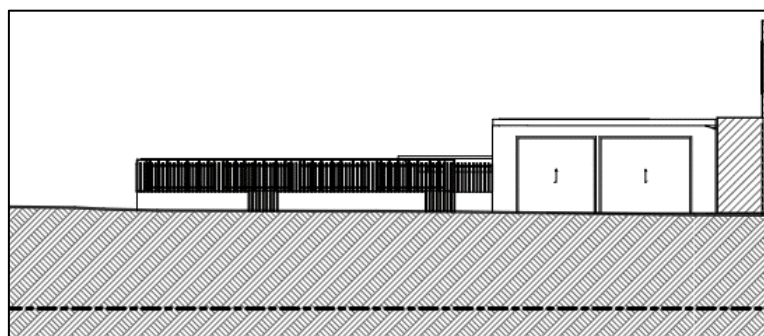


Figure 5. Eastern (Tobruk Avenue) front elevation.

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

- Zoning – R2 Low Density Residential
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No
- Foreshore Building Line – No

Environmental Planning & Assessment Act 1979

SEPP (Biodiversity and Conservation) 2021

- Chapter 2 – Vegetation in non-rural areas

- Chapter 10 – Sydney Harbour Catchment SEPP (Resilience and Hazards) 2021
 - Chapter 2 – Coastal Management (Coastal Use Area)
 - Chapter 4 – Remediation of Land
- SEPP (Building Sustainability Index – BASIX) 2004
Local Development

POLICY CONTROLS

North Sydney Development Control Plan 2013 (NSDCP 2013)

- Bushland Buffer – Buffer Area A (100m)

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site (Lot 9 DP 23880) is located on the western side of Tobruk Avenue between Benelong Road and Samora Avenue. Currently on site is a 3-storey, 4-bedroom, single dwelling built in 1960-1961, with a detached double garage in the north-eastern corner of the site.

The 501.7m² site is rectangular in shape and is adjoined to the south and west by No. 15 Little Wonga Road, with the site's topography steeply sloping down to the west towards the bushland of Brightmore Reserve (zoned E2 Environmental Conservation). The subject building has a primary frontage to Tobruk Avenue, but is not highly visible from the street due to the steep topography of the site.

Surrounding development is predominantly residential, with single-storey and two-storey detached dwellings being typical in the area, with some larger scale dwellings of multiple storeys present due to the steeply sloping topography of the area. Tobruk Avenue and the immediate neighbourhood is zoned R2 Low Density Residential under the provisions of the NSLEP 2013. Images of the site and local area are provided below.



Figure 6. Aerial photograph of subject site (outlined yellow).

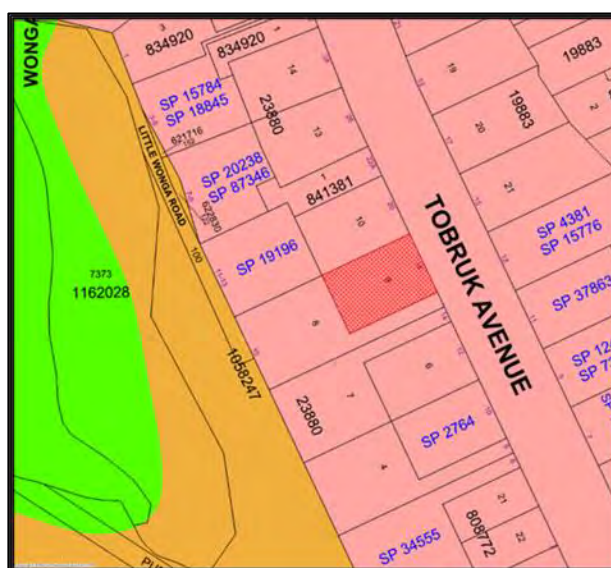


Figure 7. NSLEP Zoning Map with the subject hatched red in the R2 Zone.



Figure 8. View of the site from Tobruk Avenue.



Figure 9. View of the northern side setback with 20 Tobruk Avenue (left) towards the garage.



Figure 10. Western rear view of the existing building.



Figure 11. View looking west towards 14 Tobruk Avenue from the existing third (top) floor.

RELEVANT HISTORY

Building Application No. 212/60 (lodged 7 June 1960) for the construction of a residence and garage at the cost of £7,000 was approved by Council on 26 July 1960. Further amendments were approved on 12 December 1960 and 13 June 1961. William John and Douglas Reginald Wise, owners/builders.

Building Application No. 121/89 (lodged 14 February 1989) for the addition of a retaining wall on the northern elevation on the boundary with 20 Tobruk Avenue, was approved by Council on 7 April 1989.

Building Application No. 681/93 (lodged 28 October 1993) for the addition of a timber deck and pergola on the western elevation of the dwelling, was approved by Council on 22 February 1994. However, this was never built, and the approval lapsed in February 1999.

Building Application No. 175/95 (lodged 24 March 1995) for the addition of a new timber deck, gazebo and pergola on the southern side elevation, an extension of the existing single garage to a double garage, and a new front fence and gate, was approved by Council on 28 April 1995. Subsequent amendments to this approval, including simplifying the new garage with a single door, a more open fence design, and the deletion of the gazebo and pergola from the southern deck, was approved on 17 October 1995.

A Pre-lodgement meeting was held between Council Officers and the applicants on 1 November 2021. The result of the discussion was that Council raised concerns regarding several elements of the proposal including: the level of height breach and potential amenity, landscaping and character impacts, and further clarity and revision was required to produce a scheme that could be supported.

CURRENT HISTORY

Date	Action
21 February 2022	The application was lodged with Council
2 March 2022	The subject application was notified to adjoining properties and the Willoughby Bay Precinct Committee seeking comment between 11 March 2022 and 25 March 2022. Three (3) submissions were received by Council raising various concerns.
29 April 2022	A site inspection was undertaken by Council Officers.
11 May 2022	An additional site inspection was undertaken for the benefit of the Aboriginal Heritage Office.

REFERRALS

Aboriginal Heritage

The Aboriginal Heritage Office has assessed the proposed works and raised no objection, providing the following comments:

No sites are recorded in the current development area. An inspection of the property by the Aboriginal Heritage Office and Council (11/5/2022) did not identify any unrecorded sites and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.

Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.

Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, the Department of Planning and Environment (DPE) and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

The comments of the Aboriginal Heritage Office are noted and condition **E20** (Archaeological discovery during works) is recommended.

Building

The proposed works that are 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/BCA standards, a Section 4.55 application would be necessary.

Engineering

The proposal was referred to Council's Development Engineer, who raised no objection subject to the imposition of appropriate conditions (See Conditions **C1, C3, C4, C7, C8, C9, C22, D4, E1, E2, E3, E4, E5, E10, E21, G1, and G4**).

Landscaping

The proposal was referred to Council's Landscape Development Officer, who provided the following comments:

The Landscape Plan is considered to be generally acceptable subject to the following:

- *T3 & T15 - 2 x *Tristaniopsis laurina* planted in the council verge in front of 18 Tobruk Ave shall be protected in accordance with AS4970, 1.8m high steel mesh tree protection fencing shall be installed and a collective tree bond of \$20,000 shall be applied.*
- *T4-T14 shall be protected in accordance with AS4970, no canopy pruning shall be permitted, no roots greater than 40mm shall be cut.*
- *1 x additional *Tristaniopsis laurina* (100l) shall be planted in the council verge in front of 18 Tobruk Ave, to the south of the existing street tree.*
- *A qualified (AQ5) arborist shall be appointed as project arborist to oversee the demolition, excavation & construction process, in addition to tree protection.*
- *Sensitive construction techniques, such as hand excavation, pier and beam construction, and flexible location of piers and footings shall be used for all works within the TPZ of any protected tree.*
- *Design, excavation, and construction of the proposed brick wall along the street*

frontage shall be carried out under the supervision of the project arborist. Root mapping shall be carried out prior to determine location for piers and footings, and an alternative final design may be required in order to minimise any negative impacts upon T4 (Tristaniopsis laurina).

- *Paths and steps along the southern boundary of the subject site shall be suspended to minimise any impact to protected trees.*
- *All recommendations contained within the arborist report prepared by Naturally Trees dated 25/1/22 shall be strictly adhered to at all times.*
- *No objection is raised to the removal of T1&T2 subject to the additional replacement planting of 2 x *Ceratopetalum apetalum* (100l) along the southern boundary, 1 x *Buckinghamia celissima* (100l) and 2 x *Tristaniopsis laurina* (100l) within the rear setback. These 5 trees are in addition to the planting shown within the approved LS plan.*
- *No stormwater shall be routed through the TPZ of any protected tree.*
- *The landscape plan prepared by Space LS Design dated 11/2/22 shall be amended as follows:*
 - o *The 2 x *Elaeocarpus reticulatus* shall be 75-litre, not 45l as shown.*
 - o *The *Cyathea australis* shall be planted with trunk height of 800mm minimum (not the 200mm pot size shown)*

Consequently, several conditions have been recommended to ensure the landscaped setting of the subject site is maintained (see conditions **C10, C11, C12, C13, C24, D1, D2, D3, E12, E13, G6, G9, G10, G11, and I2**).

SUBMISSIONS

On 2 March 2022, the subject application was notified to adjoining properties and the Willoughby Bay Precinct Committee seeking comment between 11 March 2022 and 25 March 2022. Three (3) submissions were received by Council. The issues raised in the submissions having regard to the proposal are summarised below and addressed later in this report.

Basis of Submissions

- The proposal will result in an unsatisfactory scale and a built form that is unsuitable for the site and neighbouring residential development.
- The height and bulk of the development will result in unreasonable impacts upon the amenity of neighbouring properties with regard to visual dominance.
- The proposed development will result in unacceptable overlooking of the adjoining dwelling and associated private open space.
- the proposed landscaping is unable to achieve planting that can be established in the long term.
- Concern that the new 4 storey building will adversely impact privacy, overlooking the pool area of 14 Tobruk Avenue from the top balcony.
- Concern that the new development will overshadow adjoining properties, particularly from the fourth storey.
- The development will further increase overlooking to the rear, particularly from the green roof.
- The new height of the building is likely result in overshadowing to adjoining properties to the rear.

CONSIDERATION

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

SEPP (Biodiversity and Conservation) 2021 – Chapter 2 – Vegetation in non-rural areas

On 1 March 2022, the *SEPP (Biodiversity and Conservation) 2021* came into effect, consolidating several planning policies to form chapters within the new SEPP without significant amendment. Under Chapter 2 of this SEPP, which comprises the former *SEPP (Vegetation in Non-Rural Areas) 2017*, the proposed development would not require the removal of any significant vegetation defined under this SEPP or have a significant impact upon nearby bushland areas.

SEPP (Biodiversity and Conservation) 2021 – Chapter 10 – Sydney Harbour Catchment

Under Chapter 10 of this SEPP, which since 1 March 2022 comprises the former *SREP (Sydney Harbour Catchment) 2005*, the subject site is not highly visible from Sydney Harbour or its foreshores, and the proposed works will not adversely affect the existing landscaping or exterior of the dwelling. Subject to conditions, the proposal would not impact upon the scenic, ecological, or water quality of Sydney Harbour or its waterways and is considered acceptable with regard to the above SEPP.

SEPP (Resilience and Hazards) 2021 – Chapter 2 – Coastal Management

On 1 March 2022, the *SEPP (Resilience and Hazards) 2021* came into effect, consolidating several planning policies to form chapters within the new SEPP without significant amendment. Chapter 2 of this SEPP comprises the former *SEPP (Coastal Management) 2018*, and as set out in Clause 3 of the *Coastal Management Act 2016*, the proposed development is consistent with the objectives of the SEPP. The proposal will not result in any removal of public access, overshadowing or loss of views of the public foreshore, and, subject to conditions is sympathetic to nearby bushland areas.

SEPP (Resilience and Hazards) 2021 – Chapter 4 – Remediation of Land

On 1 March 2022, the *SEPP (Resilience and Hazards) 2021* came into effect, consolidating several planning policies to form chapters within the new SEPP without significant amendment. Chapter 4 of this SEPP comprises the former *SEPP 55 – Remediation of Land*, and requires Council to consider the likelihood of land contamination and any remediation necessary to rehabilitate the site. Council's records indicate that the site has previously been used for residential development since its original subdivision and as such is unlikely to contain any contamination. Therefore, the requirements of the above SEPP have been satisfactorily addressed.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has submitted a valid BASIX Certificate (1277484M_02, dated 17 June 2022) to satisfy the requirements of the above SEPP.

North Sydney Local Environmental Plan 2013

Permissibility

The subject site is zoned R2 Low Density Residential zone under the provisions of the NSLEP 2013. The proposal involves the demolition of the existing detached dwelling house and the construction of a dual occupancy (attached), which is a permissible form of development in the zone with consent from Council.

Objectives of the zone

The objectives of the Zone R2 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 the development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development is likely to achieve relevant objectives for the reasons stated throughout this report.

Clause 4.1 – Minimum lot size

The subject site has a lot size of 501.7m², which is above the 450m² minimum lot size control for this site. As this proposal does not seek any form of subdivision of the lot, the proposal is not subject to the minimum lot size control.

Clause 4.3 – Height

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 501.7m ²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	Existing: 11.8m (3.3m/38%) Proposed: 13.5m (5m/58%)	8.5m	No

Due to the steep natural fall of the site, a part of the western end of the garage at Street Level (FFL 44.81) and the majority of Level 4 below (FFL 41.80) are above the 8.5m high limit at 13.5m (Eastern end of garage, lift section at Street level – 5m or 58.8%) and 11.7m (Level 4 – 3.2m or 37.6%). Consequently, this requires a variation of the Development Standard in clause 4.3 in NSLEP 2013 (see discussion below).

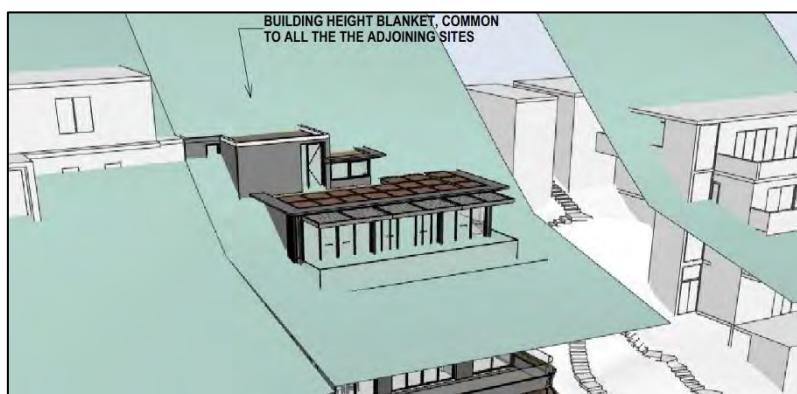


Figure 11. The building height blanket diagram.

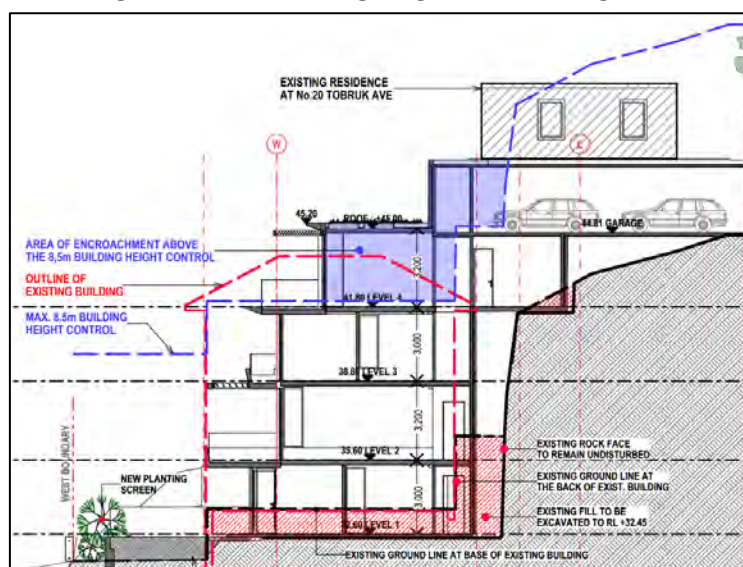


Figure 12. Section diagram looking north, with the areas above 8.5m shown in blue.

Clause 4.6 – Exceptions to development standards

The applicant has provided a written request to vary the development standard for height.

Extent of the Variation

The proposed works would exceed the maximum permitted height. The proposed height of the proposed first floor extension results in a maximum variation of 3.2m–5m or 37.6–58.8% from the development standard, as shown in the above table.

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

For reference the objectives of the development standard are as follows:

Clause 4.3(1) of North Sydney Local Environmental Plan 2013

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

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
- (b) to promote the retention and, if appropriate, sharing of existing views,

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

The Applicant's written request relies upon *Webhe Test 1* to demonstrate that compliance with the development standard is unreasonable and unnecessary in this instance as the objectives of the development standard would be achieved notwithstanding the non-compliance with the development standard. The development is considered below, having regard to the objectives of the development standard.

(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 attached dual occupancy has been designed in a manner that responds to the existing site conditions, with the development stepping down the site to the west to follow the natural topography, with each level setback behind each level below. The extension of the garage towards the west at street level also conforms to the topography in that it is set back behind the rear building line of level 4 below.

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

There would be no view loss for adjoining dwellings given that, like the existing building on the site, the proposed dual occupancy will be located significantly below the level of the street as a result of the natural topography of the site. As a consequence, there are no view corridors for adjoining properties across the subject site to the north, south or west that would be impacted by these works.

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

Due to the orientation, topography, and separation from adjoining buildings to the south and west, the proposed development will not result in significant overshadowing for adjoining properties. Some additional shadows will occur to the eastern elevation and setback of No. 16 Tobruk Avenue at 9am. However, these shadows will not adversely impact upon the main indoor and outdoor living spaces of this dwelling and the majority of shadows from this new extension will fall over existing shadows due to the topography of the area. As a consequence, the development will not affect the primary living areas and private open space for adjoining properties between 10.30am and 3.00pm in mid-winter.

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

South

The proposed dual occupancy is substantially separated from No. 12 Tobruk Avenue to the south by approximately 15m across the accessway strips of the lots of Nos. 14-16 Tobruk Avenue, which significantly reduces the potential for overlooking from the subject site. The southern side elevation at the street level and Level 4 above the height limit includes two windows, with the easternmost window being a media room and the westernmost window being a low kitchen back-splash style window with an approximate top height of 1.4m above the floor level. Neither of these windows are likely to result in significant overlooking to the south.

The west-facing rear balcony at Level 4 has the potential to result in additional overlooking to the south towards No 12 Tobruk Avenue and to the southwest towards No. 14 Tobruk Avenue. As a result, it is recommended that the southern side of this balcony include a privacy screen along its length with a minimum height of 1.8m to assist in this regard (see **Condition C19**).

North

The street level western garage extension and Level 4 below do not have any windows on the northern elevation facing No. 20 Tobruk Avenue above the 8.5m height limit that would result in any privacy impacts.

Similar to the southern elevation, the west-facing rear balcony at Level 4 has the potential to result in additional overlooking to the north towards No 20 Tobruk Avenue and its private open space and pool area. As a result, it is recommended that the northern side of this balcony include a privacy screen along its length with a minimum height of 1.8m to assist in this regard (see **Condition C19**).

West

The west-facing balcony at Level 4 will have a significant separation from No. 16 Tobruk Avenue, 14 Tobruk Avenue and No. 11-13 Little Wonga Road to the rear of approximately 13m, 14m, and 18m, respectively. As a result, and due to the significantly elevated position of Level 4 above the properties to the rear alongside dense vegetation and landscaped screening of these properties from the subject site, privacy impacts are considered to be relatively minor from the areas above the height limit to the west.

It is also noted that the green roof, which is not indicated for general use of residents, also has the potential to result in overlooking to the north, south and west. A condition has been recommended to ensure that the green roof space above Level 4 cannot be used as recreation space and should only be accessed for maintenance purposes only (see **Condition I1**).

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

The site is located within the R2 Low Density Residential zone and surrounded by buildings within this zone. The proposed works have a slightly larger footprint compared to the existing building, but it is nevertheless broadly similar to surrounding development, which have all been designed to follow the steep natural topography of the area and take advantage of views and outlooks to the north and west.

The western garage extension at street level to accommodate addition service areas, connection to the main dwelling and an elevator to the lower levels, has been designed to be sympathetic to the bulk and setback of the existing garage on site and the adjoining property at No. 20 Tobruk Avenue. As a result, it is considered that the proposed northern extension is unlikely to result in a development that is incompatible with the R2 zone.

(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 scale and density of the development is appropriate for the site and does not result in significant non-compliances with Council's controls. While the proposal will result in a non-compliance in building height, the overall development is compatible with the existing building and surrounding buildings which have been designed to maintain views to the west in line with the sloping topography.

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

Due to the steeply sloping topography of the neighbourhood, particularly along the western side of Tobruk Avenue, a built form of 1-2 storeys is not typical, with a built form of 3-4 storeys being more typical as a response to the sloping topography, as shown in the survey in **Figure 13** below. The existing building on site is a 3-storey dwelling (not including the detached garage), while adjoining buildings to the north and south with similar site conditions are 3-4 storeys in height. As a consequence, the proposed 4-5 storey (5 storeys at northern garage end only, 4 storeys for main building) built form is considered to be acceptable on the basis that this built form will not be highly visible from the public domain and will not result in significant impacts upon amenity or the character of the neighbourhood.



Figure 13. Aerial photograph showing the number of storeys for the subject site and surrounding developments.

Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation

The applicant has provided the following grounds:

The proposed numerical variation to the building height control is reasonable and appropriate in the particular circumstances on the basis that:

- *the building form has been carefully designed to negotiate the topographical conditions of the site;*
- *the building form steps down the site towards the rear, and does not extend beyond the rear (western) alignment of the existing dwelling;*
- *the proposed building remains below the height of the adjoining buildings to the north and south;*
- *the main roof level is located below the level of the carriageway of Tobruk Avenue, and the portion of the building visible from the Tobruk Avenue comfortably complies with the applicable building height control;*
- *strict compliance with the building height control would unnecessarily require the removal of portions of the upper levels of the building, and introduce a building form that is less compatible with the nature of surrounding development;*
- *the proposed development will promote good design and the amenity of the built environment which is a recently incorporated object of the Act: "(g) to promote good design and amenity of the built environment"*
- *the proposed development does not contribute to any significant or unreasonable impacts on the amenity of any surrounding land in terms of the key considerations of overshadowing, loss of privacy, and loss of views;*
- *the scale of the building when viewed from the public domain will not be antipathetic to the existing buildings in the locality, or visually jarring when viewed from either the public domain or the adjoining properties;*
- *the proposed development is consistent with, or not antipathetic to, the relevant objectives of the R2 – Low Density Residential zone; and*
- *the proposed development is generally consistent with, or not antipathetic to, the objectives of the building height control, notwithstanding the numerical variation.*

The proposed non-compliance with the height limit only relates to part of Level 4 and the western end of the street level extension of the garage and does not comprise the entirety of the proposed works. Furthermore, the amenity impacts of the development are considered to be acceptable and compliant or acceptable within the site circumstances with Council's other controls in Part B of NSDCP 2013. The proposed dual occupancy has been sympathetically designed to step down the sloping site topography in a manner that minimises any amenity impacts upon adjoining properties. The proposal is therefore considered to be acceptable within the site circumstances, with no excessive height, bulk, or scale, nor any significant adverse impacts to the amenity and privacy of neighbouring properties, and is considered to be a reasonable improvement to the site.

Clause 4.6(4)(a)(ii) Applicant's written request

The written request provided by the applicant adequately addresses the matters required by subclause (3) as discussed above.

Clause 4.6(4)(a)(ii) Public Interest

The proposed development would be in the public interest because it is consistent with the objectives of the development standard for height and the objectives of the zone as discussed above. It is also considered that the proposal does not result in any significant adverse impacts for the character of the surrounding area or the amenity of adjoining properties.

Conclusion

The applicant has submitted a written request pursuant to Clause 4.6 in NSLEP 2013. The written request has adequately addressed sub clause (3) and, subject to satisfying conditions, is considered to be in the public interest because it is consistent with the relevant development standard and the objectives of the zone.

Clause 5.10 – Heritage conservation

The site is not a heritage item, is not located within a conservation area, nor is it within the vicinity of any heritage item. Consequently, the proposal is acceptable in this regard.

Clause 6.6 – Dual occupancies

The subject site proposes an attached dual occupancy. Clause 6.6 contains requirements relating to the erection of a dual occupancy as detailed below:

- (1) *Development consent must not be granted for the erection of a dual occupancy unless:*
- (a) *the form of the building will appear as a dwelling house, and*

Due to its lower position compared to street level, the proposed dual-occupancy development would appear from the street as a single dwelling in a similar manner to the existing dwelling, with the majority of the built form not visible from the public domain. However, as there are separate pedestrian dwelling gates within the front fence, it is recommended that the entry gate to Dwelling 1 adjacent to the garage be set back by 300mm from the dwelling boundary and the line of the rest of the front fence and the Dwelling 2 Gate, in order to emphasise the appearance of this gate as the primary entrance to the site. It is also recommended that the proposed fence dividing the front setback of the site between the two dwellings is deleted, to maintain the appearance of a single landscaped area fronting the street (see **Condition C20**).

- (b) *the dwellings in the dual occupancy will be attached by at least 80% of the common wall or 80% of the common floor or ceiling, and*

The two dwellings will be attached along the ground floor plate of Dwelling 1 at Level 3 and the ceiling of the lower ground floor level of Dwelling 2 at Level 2.

- (c) *the area of the lot on which the dual occupancy is to be situated is at least 450 square metres.*

The subject site has a site area of 501.7m², which complies with the minimum lot size of 450m² required for the erection of a dual occupancy.

Clause 6.10 – Earthworks

The proposed works will entail earthworks to accommodate the increased building footprint and to create a consistent floor level at Level 1 where the building connects to the rear setback/garden. This will involve raising the rear setback paved area with fill by 820mm from RL31.63 up to RL32.45, and excavating the majority of Level 1 to a depth of 1m to RL32.45. The deepest excavation will be at a depth of 4m at the bottom of the steep slope at the eastern end of the footprint of the building. To assist in minimising any impact upon adjoining properties, this excavation will be set back from the northern boundary by 2.5m, from the nearest house to the south (No. 12 Tobruk Avenue) by 3.5m and by 6m from the Tobruk Avenue footpath to the east.

Furthermore, it is also noted that no excavation is proposed into the existing sandstone rock face along the eastern side and elevation of the new building, which will minimise the disruption to the topography of the site and natural features of the site. A condition is also recommended to maintain a high quality of the fill material for the rear garden (see **Condition E23**). Subject to conditions, this excavation is unlikely to negatively affect drainage patterns, soil stability, natural features, or the integrity of adjoining properties. The works are therefore considered compliant in this regard.

North Sydney Development Control Plan 2013

Part B Section 1 – Residential Development		
<i>Section</i>	<i>Complies</i>	<i>Comments</i>
1.2 Social Amenity		
Population Mix	Yes	The proposal will replace an existing 4-bedroom single dwelling with an attached dual occupancy consisting of two 3-bedroom dwellings, so there would be a substantial increase in accommodation provided at this site. The existing dwelling does not involve affordable housing.
Maintaining residential accommodation		
Affordable housing		
1.3 Environmental criteria		
Topography	Yes	The proposed works in this area will retain the majority of the existing front and rear setbacks for landscaping, and the most substantial excavation to accommodate the new Level 1 will have significant setbacks from each side boundary (2.5m from the northern boundary, 3.5m from the nearest house to the south (No. 12 Tobruk Avenue), 6m from the Tobruk Avenue footpath to the east). No excavation is proposed into the existing sandstone rock face along the eastern side and elevation of the new building, which will minimise the disruption to the topography of the site and natural features of the site. Subject to appropriate conditions, the works will not have an adverse impact upon significant trees, natural drainage patterns or the structural integrity of adjoining properties (see Conditions C2 , C3 , C4 and C8).
Properties adjoining bushland	Yes	The proposal is unlikely to have any effect upon nearby bushland within Brightmore Reserve to the west. Landscaping across the site will be maintained at a high level (44%), with new native trees and planting to complement the nearby bushland. Existing sandstone rock faces will also be retained as a feature of the development. The additional fill areas within the western rear setback will largely replace the existing paved area at the rear, which is already an area that has been in-filled to create the existing flat space. As a result, it is not considered that the modest additional fill in this location will have a significant impact upon nearby bushland, subject to appropriate conditions to manage stormwater runoff (see Condition C8).

Properties on Bush Fire Prone Land	N/A	The site is not classified as Bush Fire Prone Land.
Properties within a foreshore building line	N/A	The site does not include foreshore land.
Views	Yes	There would be no view loss for adjoining dwellings given that, like the existing building on the site, the proposed dual occupancy will be located significantly below the level of the street as a result of the natural topography of the site. As a consequence, there are no view corridors for adjoining properties across the subject site to the north, south or west that would be impacted by these works.
Solar access	Yes	<p>Due to the orientation, topography, and separation from adjoining buildings to the south and west, the proposed development will not result in significant overshadowing for adjoining properties. Some additional shadows will occur to the eastern elevation and setback of No. 16 Tobruk Avenue at 9am only.</p> <p>However, these shadows will not adversely impact upon the main indoor and outdoor living spaces of this dwelling and the majority of shadows from this new extension will fall over existing shadows due to the topography of the area. As a consequence, the development will not affect the primary living areas and private open space for adjoining properties between 10.30am and 3.00pm in mid-winter.</p> <p>In summary, the solar access impacts are considered to be relatively minor and acceptable within the site circumstances and the conditions of neighbouring properties.</p>
Acoustic and Visual privacy	Yes	<p><u>SOUTH</u></p> <p>The dual occupancy is substantially separated from No. 12 Tobruk Avenue to the south by approximately 15m across the access handles of the lots of Nos. 14-16 Tobruk Avenue, which significantly reduces the potential for overlooking from the subject site. The southern side elevation at the street level and Level 4 above the height limit includes two windows, with the easternmost window being a media room and the westernmost window being a low kitchen back-splash style window with an approximate top height of 1.4m above the floor level. Neither of these windows are likely to result in significant overlooking to the south.</p> <p>The west-facing rear balcony at Level 4 has the potential to result in additional overlooking to the south towards No 12 Tobruk Avenue and to the southwest towards No. 14 Tobruk Avenue. As a result, it is recommended that the southern side of this balcony include a privacy screen along its length with a minimum height of 1.8m to assist in this regard (see Condition C19).</p> <p>It is also noted that the green roof, which is not indicated for general use of residents, also has the potential to result in overlooking. Another condition has been recommended to ensure that the green roof space above Level 4 cannot be used as recreation space and should only be accessed for maintenance purposes only (see Condition I1).</p> <p><u>NORTH</u></p> <p>The street level western garage extension and Level 4 below do not have any windows on the northern elevation facing No. 20 Tobruk Avenue above the 8.5m height limit that would result in any privacy impacts. The remaining windows and balconies at Level 3, 2 and 1 on the northern elevation would not overlook the private indoor or primary outdoor spaces of No. 20 Tobruk Avenue. While some overlooking may result to the lower section of the adjoining site, this area is mostly inaccessible, with the pool level above being the primary private outdoor space, and the level of overlooking will be similar to the existing building on the site.</p>

		<p>Like on the southern elevation, the west-facing rear balcony at Level 4 has the potential to result in additional overlooking to the north towards No 20 Tobruk Avenue and its private open space and pool area. As a result, it is recommended that the northern side of this balcony include a privacy screen along its length with a minimum height of 1.8m to assist in this regard (see Condition C19).</p> <p>WEST</p> <p>The west-facing balconies of the dual occupancy will have a substantial separation from No. 16 Tobruk Avenue, 14 Tobruk Avenue and No. 11-13 Little Wonga Road to the rear of approximately 13m, 14m, and 18m, respectively. As a result, and due to the significantly elevated position of Level 4 above the properties to the rear, the retained rear setback of the development from the existing building, the existing dense vegetation and landscaped screening of these properties from the subject site, privacy impacts are considered to be relatively minor. The balconies at Level 2 and 3 will also be partially solid to the lower sections to minimise the amount of open glazing that would result in overlooking at the lower levels.</p> <p>It is also noted that the green roof, which is not indicated for general use of residents, also has the potential to result in overlooking to the north, south and west. Another condition has been recommended to ensure that the green roof space above Level 4 cannot be used as recreation space and should only be accessed for maintenance purposes only (see Condition I1).</p>
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1.4 Quality Built Form

<p>Context</p>	<p>Yes</p>	<p>The proposed dual occupancy, like the existing building on site, will be located below the existing Tobruk Avenue street level, so will not be highly visible from the public domain. Nor will it be visible from Little Wonga Road or Brightmore Reserve to the west, where only adjoining properties and substantial trees and vegetation will be visible. As a result, the most visible elements from the street will remain the garage and front fence. The garage will continue to appear as a relatively modest double garage, while the front fence will be a partially open style that is very similar to the existing front fence. With the proposed new trees and landscaping within the front setback it is considered that the context of the site from the street will continue to be sympathetic to the surrounding neighbourhood.</p> <div data-bbox="710 1467 1380 1960" data-label="Image"> </div> <p>Figure 14. View looking east towards the subject site from Little Wonga Road, showing that only 16 Tobruk Avenue and substantial vegetation are visible from this streetscape.</p>
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Streetscape	Yes	Several street trees have been recommended for protection alongside the addition of a new street tree (see Condition C10 , C24 and G10) A small bond is recommended to protect Council’s footpaths outside the site (see Condition C9).																							
Siting	Yes	The proposed dual occupancy will be positioned in the same east-west orientation as the existing building on site, which remains consistent and characteristic with the neighbourhood.																							
Setbacks	Yes (Acceptable on merit)	<table border="1" data-bbox="699 483 1428 1014"> <thead> <tr> <th data-bbox="699 483 837 517">Control</th> <th data-bbox="837 483 1045 517">Existing</th> <th data-bbox="1045 483 1236 517">Proposed</th> <th data-bbox="1236 483 1428 517">Complies</th> </tr> </thead> <tbody> <tr> <td data-bbox="699 517 837 584">Front</td> <td data-bbox="837 517 1045 584">0m (Garage) 12m (house)</td> <td data-bbox="1045 517 1236 584">0m (Garage) 6-10m (house)</td> <td data-bbox="1236 517 1428 584">Yes</td> </tr> <tr> <td data-bbox="699 584 837 987" rowspan="3">Side</td> <td data-bbox="837 584 1045 719">0m (N, Garage) 3.5m (N, house)</td> <td data-bbox="1045 584 1236 719">0m (N, Garage)</td> <td data-bbox="1236 584 1428 719">Unchanged (additional 800mm to west)</td> </tr> <tr> <td data-bbox="837 719 1045 819">4.5m (S, house)</td> <td data-bbox="1045 719 1236 819">2m (N, Lifts)</td> <td data-bbox="1236 719 1428 819">No</td> </tr> <tr> <td data-bbox="837 819 1045 987"></td> <td data-bbox="1045 819 1236 987">3m (N, house) 3m (S, house)</td> <td data-bbox="1236 819 1428 987">Yes Yes</td> </tr> <tr> <td data-bbox="699 987 837 1014">Rear</td> <td data-bbox="837 987 1045 1014">5.5m</td> <td data-bbox="1045 987 1236 1014">5.5m</td> <td data-bbox="1236 987 1428 1014">No</td> </tr> </tbody> </table> <p data-bbox="699 1043 1428 1256">The nil front setback for the garage to Tobruk Avenue is unchanged, and is consistent with other garages along the street including at Nos. 12-14 Tobruk Avenue. The front setback of 6-10m for the dual occupancy is acceptable as it retains the majority of the front garden and landscaped context of the site from the street. This front setback is also much greater than other nearby properties such as No. 20 Tobruk Avenue (0m-2.7m) and No. 12 Tobruk Avenue (0m-4.4m).</p> <p data-bbox="699 1290 1428 1525">The proposed rear setback of 5.5m is the same as the existing building on site, which is nevertheless not compliant with the characteristic rear setback of 10m as specified in the Character Statement of the Northern Foreshores Neighbourhood. Due to the subdivision pattern of the western side of Tobruk Avenue, the rear setback of nearby properties is highly variable (28 Tobruk: 6.8m; 26 Tobruk: 8m; 20 Tobruk: 15m; 12 Tobruk: 6.5m; 10 Tobruk: 14m). As this rear setback is not being further reduced, it is acceptable in this regard.</p> <p data-bbox="699 1559 1428 1861">The new lift extension from the garage level on Tobruk Avenue to Level 1 below will have a northern side setback of approximately 2m, 500mm short of compliance with the minimum 2.5m control. Nevertheless, this structure is unlikely to result in any amenity or visual impacts upon adjoining properties as it does not contain any openings to allow overlooking, will not be highly visible from the public domain, and will not impact on the solar access or site stability of adjoining properties. This section with the 2m side setback will also have a modest footprint, extending along the site by only 2.2m before the side setback of the remaining building increases to 3m.</p> <p data-bbox="699 1895 1428 2107">The proposed garage extension will continue the existing 0m side setback from the northern boundary with 20 Tobruk Avenue by an additional 800mm. Council may grant a nil setback to a side boundary subject to the satisfaction of the questions identified with the Land and Environment Court Planning Principle “building to the side boundary in residential areas” established in <i>Galea V Marrickville Council</i> [2003] NSWLEC 113 as follows:</p>		Control	Existing	Proposed	Complies	Front	0m (Garage) 12m (house)	0m (Garage) 6-10m (house)	Yes	Side	0m (N, Garage) 3.5m (N, house)	0m (N, Garage)	Unchanged (additional 800mm to west)	4.5m (S, house)	2m (N, Lifts)	No		3m (N, house) 3m (S, house)	Yes Yes	Rear	5.5m	5.5m	No
Control	Existing	Proposed	Complies																						
Front	0m (Garage) 12m (house)	0m (Garage) 6-10m (house)	Yes																						
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	4.5m (S, house)	2m (N, Lifts)	No																						
		3m (N, house) 3m (S, house)	Yes Yes																						
Rear	5.5m	5.5m	No																						

		<p>A) Is the street characterised by terrace housing? The street is characterised by detached single dwellings with some attached dual occupancies, however the nil side setback of the garage is an existing situation that has been in space for a significant period of time. The adjoining house at No 20 Tobruk Avenue has also been built onto the side boundary with the subject site, which minimises any amenity of visual impacts as a result of any additional extension of the existing garage to the rear. The extension of the nil garage setback to the side boundary by an additional 800mm will extend to the rear building line of No 20 Tobruk Avenue to the north, and subject to conditions, including dilapidation reports, will not have any visual or amenity impacts upon the adjoining property as a result.</p> <p>B) What is the height and length of the wall on the boundary? Due to the steep topography of the site, the height of the garage to the street of 3m will increase to approximately 10m where the 800mm-long western extension. However, this height will extend below the level of the garage and will match the rear building line of No. 20 Tobruk Avenue, which will minimise any visual bulk and scale. It is therefore considered that this height will not result in any adverse impacts upon adjoining properties.</p> <p>C) Has the applicant control over the adjoining sites(s) or the agreement of their owners? The garage is located within the northern side setback of the site and will be entirely located within the subject site.</p> <p>D) What are the impacts on the amenity and/or development potential of adjoining sites? The proposed garage extension is a minor addition to an existing structure that matches the existing rear building line of the adjoining property to the north, with no significant openings or additional bulk and scale that would result in any significant additional visual form, solar access, or privacy impacts for adjoining properties.</p> <p>E) Are there arrangements in place for the maintenance of the wall or gutters? The stormwater drainage from the new garage roof is proposed to be connected to a new system that connects to rainwaters tanks and then drains down the slope to the west. The additional length of the garage wall along this boundary will abut the adjoining southern wall of No. 20 Tobruk Avenue, so it is not considered any special arrangements would be required for maintenance in this regard.</p> <p>As a consequence of the above discussion, it is considered that the proposed extension of the existing garage nil side setback is acceptable on merit on the basis that it is a minor extension of an existing structure that will not have any adverse environmental impacts for adjoining properties or the streetscape.</p>
<p>Form, massing & scale</p>	<p>Yes</p>	<p>The proposed works are consistent with the built form, massing, and scale within the area, which allows for a stepped form of three storeys or more to follow the steep topography of the area that slopes towards Middle Harbour. While the footprint of the dual occupancy will be larger than the existing dwelling footprint, the new footprint areas will not further encroach upon the rear setback and will maintain sufficient landscaped setbacks and buffers from adjoining sites, while also retaining the majority of the natural sandstone rock faces on site.</p>

		<p>Due to the steeply sloping topography along the western side of Tobruk Avenue, a built form of 3-4 storeys is more typical for this neighbourhood, such as at No. 12 (4 storeys) and 20 Tobruk Avenue (3 storeys). It should be noted that like the subject site, this scale of building is not readily perceptible from the street as these developments are mostly below street level and are concealed to the west by adjoining properties and substantial mature vegetation on Little Wonga Road and the Brightmore Reserve, as shown in Figure 14 on page 22 of this report.</p> <p>The overall form of the development is contemporary but is sufficiently articulated, with a variety of materials and design features such as balcony planter boxes to ensure that the facades are not dominated by glass, and that the extended garage structure on Tobruk Avenue will continue to present to the street as a smaller ancillary structure that services the main building.</p>
Built form character	Yes	The proposed works are consistent with the existing character of the dwelling and the streetscape, with contemporary style developments stepping down the steep topography with a limited built form to street level. As noted above, the design does not comprise excessive amount of glazing, and the west-facing balconies are integrated within the stepped rear elevation.
Dwelling entry	Yes	A street level entry for each dwelling is proposed. Dwelling 2 is accessed via a pathway to the front fence and a gate on the boundary at the southern end of the frontage. The entry for Dwelling 1 is also via a path connecting to a street gate adjacent to the garage, with the front door orientated towards this entrance. A condition has been recommended to slightly recess the gate of dwelling 1 to create a clear difference between the two gates on the fence (see Condition C20).
Roofs	Yes	While the Character Statement of the Northern Foreshores Neighbourhood specifies low pitched roofs, there is the presence of a diversity of roof forms within this immediate neighbourhood, with flat roofs more common for developments on the lower western side of Tobruk Avenue. Flat roofs are present at Nos. 10, 12 and 20 Tobruk Avenue within the immediate vicinity. It can therefore be considered that flat roofs are a characteristic element present within the streetscape. It should also be noted that the proposed flat roof of the building at Level 4 will be a green roof, with landscaping to help soften the built form visible from the street, which is considered to be a positive addition. The flat roof of the garage and rear garage extension is also acceptable as it does not change from the existing flat roof of the garage and will minimise the built form and scale of this structure.
Colours and materials	Yes	The majority of proposed colours and materials are acceptable. However, it is recommended that the proposed 'Dulux Monument' colour for external walls is replaced by a more muted tone that is sympathetic to the neighbourhood and nearby bushland (see Condition A4). The used of masonry and metal in the design assists in breaking up the exterior of the development and ensures that glazing does not dominate the facades, particularly at the rear. The use of masonry to the lower section of the lower two balconies combined with planter boxes on the sides also reduces the amount of visible glazing.
Front fences	Yes	The proposed front fence will be a metal palisade structure up to 1.5m in height, with a solid masonry base. The partially open design will allow for filtered views from the street to the front garden and the building beyond.
1.5 Quality urban environment		
High quality residential accommodation	Yes	The proposed dual occupancy will provide a high standard of accommodation for both dwellings with generous open space area provided for both dwellings.

<p>Site coverage, Landscaped area and Un-Built Upon Area</p>	<p>Yes</p>	<p>The proposed and existing levels of site coverage, landscaped area and un-built upon area indicated in the table below:</p> <table border="1" data-bbox="766 331 1364 719"> <thead> <tr> <th data-bbox="766 331 1010 412">Site Area: 501.7m²</th> <th data-bbox="1010 331 1198 412">Proposed</th> <th data-bbox="1198 331 1364 412">Complies</th> </tr> </thead> <tbody> <tr> <td data-bbox="766 412 1010 533">Site Coverage 45% (max)</td> <td data-bbox="1010 412 1198 533">44.25% (222m²)</td> <td data-bbox="1198 412 1364 533">Yes</td> </tr> <tr> <td data-bbox="766 533 1010 654">Landscaped area 40% (min)</td> <td data-bbox="1010 533 1198 654">44.25% (222m²)</td> <td data-bbox="1198 533 1364 654">Yes</td> </tr> <tr> <td data-bbox="766 654 1010 719">Unbuilt-upon area 15% (max)</td> <td data-bbox="1010 654 1198 719">11.5% (58m²)</td> <td data-bbox="1198 654 1364 719">Yes</td> </tr> </tbody> </table>	Site Area: 501.7m ²	Proposed	Complies	Site Coverage 45% (max)	44.25% (222m ²)	Yes	Landscaped area 40% (min)	44.25% (222m ²)	Yes	Unbuilt-upon area 15% (max)	11.5% (58m ²)	Yes
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Site Coverage 45% (max)	44.25% (222m ²)	Yes												
Landscaped area 40% (min)	44.25% (222m ²)	Yes												
Unbuilt-upon area 15% (max)	11.5% (58m ²)	Yes												
<p>Safety and Security</p>	<p>Yes</p>	<p>Safety and security would not be compromised as a result of the subject development application. The proposal maintains the existing security and natural surveillance of the subject site to and from the street. The proposed front fence also provides a high level of natural surveillance to and from the street.</p>												
<p>Vehicle Access and Car parking</p>	<p>Yes</p>	<p>The existing double garage will be extended to the rear to accommodate two parking spaces (4 total) per dwelling in a tandem format. This amount of parking is compliant with the maximum rate of 2 spaces per dwelling of 3 or more bedrooms as specified in Part B Section 10 of NSDCP 2013. The existing driveway access and crossing over the road reserve is not changed.</p>												
<p>Landscaping and front gardens</p>	<p>Yes</p>	<p>The landscaping across the site will be enhanced by a new planting scheme which includes addition trees, with an emphasis on native species to complement nearby bushland areas. The landscaping at the rear western end of the site will have additional fill to increase ground levels consistent with the land level to the new dwelling but will replace an existing paved area with new landscaping, which is an acceptable outcome.</p> <p>Council's Landscape Development Officer has also recommended the planting of addition trees within the site and also on the street to further enhance the landscaped amenity of the site and the neighbourhood (see Condition C24). It is also recommended that the divided metal fence within the front setback is deleted to maintain the appearance of a single front garden from the street (see Condition C20).</p>												
<p>Private and Communal Open Space</p>	<p>No (Acceptable on merit)</p>	<p>The proposal includes a substantial area of private open space over 50m² for the primary use of Dwelling 2 at the rear western end of the site.</p> <p>However, Dwelling 1, which occupies the upper Levels 3-4, does not have access to any private open space areas at ground level. Nevertheless, this dwelling has been designed to include some substantial open space areas on the western elevation in the form of balconies (17m² on Level 3; 28m² on Level 4), which will maximise ventilation and solar access into the primary living areas on this elevation, including for the purpose of clothes drying. The enhanced landscaping across the site will also provide a greater amount of green space available overall, alongside the retention of the front garden and additional trees.</p>												
<p>Garbage Storage</p>	<p>Yes</p>	<p>Sufficient garbage storage is provided for each dwelling within the new garage arrangement.</p>												
<p>Site Facilities</p>	<p>Yes</p>	<p>Sufficient space is provided for clothes drying on the west-facing balconies for both dwellings. Dwelling 2 also has access to the rear setback garden areas for this purpose.</p>												

1.6 Efficient use of resources		
Energy efficiency	Yes	A valid BASIX Certificate has been lodged with this proposal.
Stormwater management	Yes	All stormwater pipes will connect to the new system, which includes rainwater tanks on site and drainage to the west via the existing arrangements.

North Cremorne Planning Area (Northern Foreshores Neighbourhood)

Consideration has been given to the Character Statement for the North Cremorne Planning Area in Part C of NSDCP 2013, particularly Section 5.4 (Northern Foreshores Neighbourhood) where this site is located. Subject to conditions, the proposal is acceptable as the proposed dual occupancy in its form, scale, colours, and materials, is broadly consistent with development in the surrounding area, and responds to the existing site topography and constraints without resulting in any significant loss of views, privacy, solar access, or amenity for adjoining properties.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

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

Population Increase

Development type	Existing	Proposed	Increase
Residential accommodation	1 (3 or more-bed)	2 (3 or more-bed)	2.6

Contribution amounts payable

Applicable contribution type	A	B
s7.11 contribution (Net population increase)	Open space and recreation facilities:	\$11,012.89
	Public domain:	\$6,130.55
	Active transport:	\$349.91
	Community facilities:	\$2,211.99
	Plan administration and management:	\$294.66
	Total:	\$20,000.00

A condition is recommended requiring payment prior to issue of any Construction Certificate (refer to **Condition C21**).

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S4.15 considerations of <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	Yes

SUITABILITY OF THE SITE (Section 4.15 of the EPAA 1979)

The proposal involves residential development in a residential zone, so the proposal is considered to be suitable for the subject site.

SUBMISSIONS (Section 4.15 of the EPAA 1979)

The subject application was notified to adjoining properties and the Willoughby Bay Precinct Committee seeking comment between 11 March 2022 and 25 March 2022. Three (3) submissions were received by Council raising concerns regarding the proposal. The issues raised in the submissions are summarised below and addressed with planning comments:

- ***The proposal will result in an unsatisfactory scale of built form that will be unsuitable to the site and neighbouring residential development.***
- ***The height and bulk of the development, including the proposed nil setback of the garage, will result in unreasonable impacts upon the amenity of neighbouring properties with regard to visual dominance.***

See the discussion earlier in this report regarding the form, massing, scale, context, and setbacks of this development, where it was considered that the proposal has been designed in a manner that responds to the existing site conditions, with articulations and variations in the design to minimise any amenity or visual impacts upon the neighbourhood and adjoining properties. The nil setback of the garage continues the existing situation, with a small extension of the garage to the west to include additional space and the connection to the dual occupancy, and will not significantly increase any adverse visual or amenity impacts upon adjoining properties.

- ***the proposed landscaping is unable to achieve planting that can be established in the long term.***

The proposed landscaping has been reviewed by Council's Landscape Development Officer who has raised no objection, subject to the planting of additional trees and other various minor amendments (see **Condition C24**). The proposal provides a substantial level of landscaping across the site with a new planting scheme that, subject to conditions, will provide a greatly improved landscaped context and amenity for the site.

- ***Concern that the new development will overshadow adjoining properties, particularly from the fourth storey.***
- ***The development's new height will likely result in overshadowing to the rear.***

See the comments on pages 14 and 19 of this report against Council's solar access controls, where it was noted that solar access may be impacted at 9-10am only, to the southwest. This impact is considered to be relatively minor and acceptable in the site circumstance when considering the orientation of the subject site to adjoining buildings and the context of the topography of the neighbourhood.

- ***The proposed development will result in unacceptable overlooking of the adjoining dwelling and associated private open space.***
- ***Concern that the new 4 storey building will adversely impact privacy, overlooking the pool area of 14 Tobruk Avenue from the top balcony.***
- ***The development will further increase overlooking to the rear, particularly from the green roof.***

See the comments on pages 14-15 and 19-20 of this report against Council's privacy controls, where it was found that the development, particularly at Level 4 above the height limit, would not result in significant overlooking for adjoining properties, and that the development would maintain a scale that is sympathetic to the sloping topography of the site, and when compared to adjoining buildings. Conditions are recommended to ensure that the green roof above level 4 is accessible only for maintenance purposes and that the northern and southern sides of the west-facing balcony at Level 4 are covered by privacy screens (see Conditions **C19** and **I1**)

PUBLIC INTEREST (Section 4.15 of the EPAA 1979)

The proposal would provide a high level of amenity for the residents without causing any unreasonable impacts to the area's character, the streetscape, and/or adjoining properties, so the proposal would not be contrary to the public interest, subject to conditions.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION

The subject application was notified to adjoining properties and the Willoughby Bay Precinct Committee seeking comment and three submissions were received raising concerns regarding amenity and visual impacts. As demonstrated in this report it is considered that the proposal will not have a significant impact upon the general amenity, privacy, views, stability, or solar access for adjoining properties, subject to appropriate conditions of consent to maintain residential amenity, ensure the works are safe for the community, and enhance the landscaped setting of the site within the locality.

CONCLUSION AND REASONS

The development application has been assessed against the relevant planning instruments and policies, in particular the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013, and generally found to be satisfactory.

The development is compliant with Council's built form character, site coverage, and landscaped area controls, and broadly complies with the objectives and provisions for height, setbacks, form massing and scale, and the Northern Foreshores Neighbourhood. While there will be a non-compliance with the rear and northern side setbacks, and involves a large non-compliance with the height level, this is considered to be acceptable on merit on the basis that the proposal would not have significant overall amenity impacts upon adjoining properties and the development has been designed in a manner that is sympathetic to the built form of the neighbourhood and the sloping topography of the site towards nearby bushland areas.

Subject to conditions, there would be no unreasonable overshadowing, view loss, privacy loss and/or excessive bulk and scale as a result of the proposal. Conditions are however recommended to further enhance the landscaped context of the site when viewed from the street as well as additional privacy measures. The proposal makes an acceptable streetscape contribution, with a highly contemporary architectural style, due to the particular site circumstances and the context of the immediate neighbourhood, the majority of the development will not be highly visible from the public domain and maintains an acceptable scale below the street level.

As a result, the proposed works as conditioned will provide a high level of resident amenity without significantly impacting upon adjoining dwellings or the character of the neighbourhood. The application is considered to be acceptable in the circumstances and it is recommended for **approval** subject to standard and site-specific conditions.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 and **grant consent** to Development Application No. 56/22 for the demolition of the existing single dwelling and construction of attached dual occupancy, on land at 18 Tobruk Avenue, Cremorne, subject to the attached site specific and standard conditions:-

ANDREW BEVERIDGE
ASSESSMENT OFFICER

ROBYN PEARSON
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
18 TOBRUK AVENUE, CREMORNE
DEVELOPMENT APPLICATION NO. 56/22

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.	Rev.	Description	Prepared by	Dated	Received
DA.03	A	Site Analysis Plan	PA Studio	04/02/2022	21/02/2022
DA.04	A	Garage Floor Plan at Street Level	PA Studio	04/02/2022	21/02/2022
DA.05	A	Floor Plan: Level 4	PA Studio	04/02/2022	21/02/2022
DA.06	A	Floor Plan: Level 3	PA Studio	04/02/2022	21/02/2022
DA.07	A	Floor Plan: Level 2	PA Studio	04/02/2022	21/02/2022
DA.08	A	Floor Plan: Level 1	PA Studio	04/02/2022	21/02/2022
DA.09	A	Sections S-01 and S-02	PA Studio	04/02/2022	21/02/2022
DA.10	A	Sections S-03 and S-04	PA Studio	04/02/2022	21/02/2022
DA.11	A	South and East Elevations	PA Studio	04/02/2022	21/02/2022
DA.12	A	North and West Elevations	PA Studio	04/02/2022	21/02/2022
DA.13	A	List of Materials and Finishes	PA Studio	04/02/2022	21/02/2022
DA.27	A	Demolition Plan	PA Studio	16/03/2022	25/03/2022
L-01	B	Landscape Plan	Space Landscape Designs	11/02/2022	21/02/2022

(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)

External Finishes and Materials

- A4. External finishes and materials must be in accordance with the submitted schedule numbered DA.13, dated 4 February 2022, prepared by PA Studio, and received by Council on 21 February 2022, unless otherwise modified by Council in writing. The proposed colour 'Dulux Monument' identified for external walls, is to be deleted from the plans and replaced with a more recessive, muted colour that is more in keeping with the surrounding neighbourhood and nearby bushland.

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

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)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C2. A photographic survey and dilapidation report of adjoining property No. 20 Tobruk detailing the physical condition of the property, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

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

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

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

(Reason: Proper management of records)

Geotechnical Report

- C3. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:
- a) The type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
 - b) The appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
 - c) The proposed method to support the excavation temporarily and permanently for the basement adjacent to adjoining property, structures, and road reserve if nearby (full support must be provided within the subject site);

- d) The existing groundwater levels in relation to the basement structure, where influenced;
- e) The drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilized in controlling groundwater. Where it is considered, there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilized; and
- f) Recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/ hydro geological engineer or suitable qualified expert with previous experience in such investigations and reporting. It is the responsibility of the consulting geotechnical/ hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate. The design principles for the geotechnical report are as follows:

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

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

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

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

Sediment Control

C4. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method. 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

C5. 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)

External Colours and Finishes

- C6. 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

- C7. 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. Work 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 Work 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

- C8. 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, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code.
 - b) Stormwater runoff and subsoil drainage generated by the approved dwellings must be conveyed in a controlled manner by gravity to the existing stormwater inter-allotment stormwater easement lines which exist on the neighbouring property (16 Tobruk Av.). Stormwater line within the easement must be fully operational and adequate in size, to convey any increase in stormwater runoff from 18 Tobruk Av. If proves that existing pipe within the easement is not sufficient in size, then it must be replaced with adequate pipe size on applicant's expense. Any disturbed land or building structure on neighbouring property must be restored to its previous condition also on applicant's expense.
 - c) All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit Details of all plans certified as being adequate for their intended purpose and complaint with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer, shall be submitted with the application for a Construction Certificate.
 - d) The design and installation of the Rainwater Tanks shall comply with Basix and **Sydney Water** requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system.

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

- C9. 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 six months 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 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 six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's 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;
- 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

- C10. Prior to the issue of any construction certificate, security in the sum of \$20,000.00 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.

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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 (Height)	Location	Bond
T3 <i>Tristaniopsis laurina</i> (6x3m)	Council verge in front of 18 Tobruk Avenue.	\$20,000.00
T15 <i>Tristaniopsis laurina</i> (9x7m)	Council verge in front of 20 Tobruk Avenue.	

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

Tree Protection Measures to be shown on Construction Drawings

C11. The tree protection measures contained in the arborist report prepared by Naturally Trees (Andrew Scales), dated 25 January 2022 and received by Council on 21 February 2022, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

To ensure the protection of all trees to be retained, the following measures are also to be undertaken:

- a) All documentation for the Construction Certificate application must show the site trees to be retained, with their positions and diameters of trunks and crowns (canopies) to be clearly and accurately shown in relation to all levels of the proposed development.
- b) Strict adherence to the tree protection and management requirements detailed in the arborist report prepared by prepared by Naturally Trees (Andrew Scales) dated 25 January 2022, and received by Council on 21 February 2022, shall be observed at all times.
- c) T3-T15 shall be protected in accordance with AS4970, no canopy pruning shall be permitted, no roots greater than 40mm shall be cut.
- d) A qualified (AQ5) arborist shall be appointed as project arborist to oversee the demolition, excavation and construction process.

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- e) The design, excavation, and construction of the proposed brick wall along the Tobruk Avenue street frontage shall be carried out under the supervision of the project arborist. Root mapping shall be carried out prior to determine location for piers and footings, and an alternative final design may be required in order not negatively impact T4 *Tristaniopsis laurina*.
- f) No stormwater shall be routed through the TPZ of any tree protected in **Condition C12** of this consent.
- g) Paths and steps along the southern boundary of the subject site shall be suspended to minimise impact to protected trees.
- h) Sensitive construction techniques, such as hand excavation, pier and beam construction, and flexible location of piers and footings shall be used for all works within the TPZ of any protected tree.

The Certifying Authority must ensure the construction plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the protection of significant trees, and that appropriate tree protection measures are shown on construction drawings)

Protection of Trees

- C12. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

Tree	Location	Height
T3 <i>Tristaniopsis laurina</i>	Council verge in front of 18 Tobruk Avenue.	6x3m
T4 <i>Tristaniopsis laurina</i>	Within the front setback (Tobruk Ave) of 16 Tobruk Avenue.	9x7m
T5 <i>Brachyciton acerifolius</i>		10x6m
T6 <i>Glochidion ferdinandi</i>		14x9m
T7 <i>Archontophoenix alexandrae</i>		14x3m
T8 <i>Archontophoenix alexandrae</i>	Within the site of 16 Tobruk Avenue adjacent to the western boundary of 18 Tobruk Avenue.	8x3m
T9 <i>Archontophoenix alexandrae</i>		8x3m
T10 <i>Archontophoenix alexandrae</i>		14x3m
T11 <i>Archontophoenix alexandrae</i>		14x3m
T12 <i>Angophora costata</i>	Within the rear setback of 20 Tobruk Avenue.	18x16m
T13 <i>Acer negundo</i>		10x5m
T14 <i>Syagrus romanzoffiana</i>		12x4m
T15 <i>Tristaniopsis laurina</i>	Council verge in front of 20 Tobruk Avenue.	9x7m

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.

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

(Reason: Protection of existing environmental and community assets)

Approval for removal of Trees

C13. The following tree(s) are approved for removal in accordance with the development consent:

Trees that are acceptable to remove	Location	Height
T1 <i>Chamaecyparis sp.</i>	Within the front setback of 18 Tobruk Avenue.	9x6m
T2 <i>Chamaecyparis sp.</i>		9x6m

Removal of any other tree on the site is not approved, excluding species exempt under Council's Tree Preservation Order. Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Garbage and Recycling Facilities

C14. Adequate provision must be made for the storage of waste and recyclable material generated by the premises. Plans and specifications which comply 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 provision of appropriate waste facilities and to ensure efficient collection of waste by collection contractors)

Asbestos Material Survey

C15. 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)

Location of Plant

C16. All plant and equipment (including but not limited to air conditioning equipment) is not to be located on balconies or the roof. 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: Minimise impact on surrounding properties, improved visual appearance and amenity for locality)

Noise from Plant and Equipment

C17. The use of all plant and equipment installed on the premises must not:

- (a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.
- (b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

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

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

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

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

Air Conditioners in Residential Premises

C18. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

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

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

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

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

(Reason: To maintain residential amenity)

Privacy

C19. The following must be applied to the proposed development to protect privacy for the adjoining properties:

- (a) Privacy screens with a minimum height of 1.8m must be applied to the northern and southern sides of the western rear balcony of Level 4; and

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

(Reason: To protect the privacy for the adjoining properties.)

Entry Gate to Dwelling 1 (Tobruk Avenue) and Dividing Fence

- C20. The Entry Gate for Dwelling 1 adjacent to the garage on the eastern boundary with Tobruk Avenue must be set back from the front fence and boundary line by a minimum of 300mm.

The fence dividing the front setback to Tobruk Avenue between the dwellings is also to be deleted from the plans to maintain the appearance of the front setback as a single undivided space.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, in order to fully satisfy the requirements of this condition.

(Reason: To ensure that the dwelling entry and front setback reflects the building's appearance from the street as a single dwelling)

Section 7.11 Development Contributions

- C21. A monetary contribution pursuant to the provisions of Section 7.11 of the *Environmental Planning and Assessment Act 1979*, in accordance with the North Sydney Council's Contribution Plan for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

A	B (\$)
Open space and recreation facilities	\$11,012.89
Public Domain	\$6,130.55
Active Transport	\$349.91
Community Facilities	\$2,211.99
Plan administration and management	\$294.66
The total contribution is	\$20,000.00

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. Deferred payments will not be accepted.

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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 Bond and Fee Schedule

C22. 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)	\$20,000.00
Footpath Damage Bond	\$3,500.00
TOTAL BONDS	\$23,500.00

Note: The following fees are applicable

Fees	Amount (\$)
Section 7.11 Development Contributions	\$20,000.00
TOTAL FEES	\$20,000.00

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

(Reason: Compliance with the development consent)

BASIX Certificate

C23. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1277484M_02, dated 17 June 2022 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)

Amendments to the Landscape Plan

C24. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- 1) 1 x additional *Tristanopsis laurina* (100-litre pot size) shall be planted in the Council verge in front of 18 Tobruk Avenue, to the south of T3 *Tristanopsis laurina*.
- 2) T1 and T2 (*Chamaecyparis sp.*) within the front setback are to be replaced with the additional planting of 2 x *Ceratopetalum apetalum* (100-litre pot size) along the southern boundary, 1 x *Buckinghamia celissima* (100-litre pot size) and 2 x *Tristanopsis laurina* (100-litre pot size) within the rear setback.
- 3) The 2 x *Elaeocarpus reticulatus* shall be 75 litres in pot size (not 45-litre as shown).
- 4) The *Cyathea australis* shall be planted with a trunk height of 800mm minimum (not the 200mm pot size shown).

An amended site plan and landscape plan 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 amended plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity and to demonstrate compliance with Council's controls)

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)

Protection of Public Trees

D2. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

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Tree	Location	Protection
T3 <i>Tristaniopsis laurina</i> (6x3m)	Council verge in front of 18 Tobruk Avenue.	Minimum 1.8m-high steel mesh tree protection fencing.
T15 <i>Tristaniopsis laurina</i> (9x7m)	Council verge in front of 20 Tobruk Avenue.	

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: Protection of existing environmental and community assets)

Temporary Fences and Tree Protection

- D3. All protected trees on-site that are specifically nominated as per Condition C12 to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builders' waste are to be stored in the vicinity of the nominated tree/trees at any time. No pruning shall be permitted to any protected tree and no roots greater than 40mm shall be cut.

The project arborist shall oversee the demolition, excavation & construction process. The design, excavation, and construction of the proposed brick wall along the Tobruk Avenue street frontage shall be carried out under the supervision of the project arborist.

Sensitive construction techniques, such as hand excavation, pier and beam construction, and flexible location of piers and footings shall be used for all works within the TPZ of any protected tree. Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works.

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

Public Liability Insurance - Works on Public Land

- D4. 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.

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)

Sydney Water Approvals

- D5. Prior to the commencement of any works, the approved plans must be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Certifying Authority must ensure that Sydney Water has appropriately stamped the plans before the commencement of building works.

Notes: **Sydney Water Building Plan Approvals** can be obtained from the Sydney Water Tap in™ online service. Building plans must be submitted to the Tap in™ to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. For further information visit <http://www.sydneywater.com.au/tapin/index.htm> or call 13 000 TAP IN (1300 082 746) for further information.

(Reason: To ensure compliance with Sydney Water requirements)

Commencement of Works' Notice

- D6. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two 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)

Service Adjustments

- E3. 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)

Temporary Disposal of Stormwater Runoff

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

(Reason: Stormwater control during construction)

Geotechnical Stability during Works

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

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

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

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

Removal of Extra Fabric

- E6. 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

- E7. The following must be complied with at all times:
- (a) Materials must not be burnt on the site.
 - (b) Vehicles entering and leaving the site with soil or fill material must be covered.
 - (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
 - (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

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

Noise and Vibration

- E8. 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

- E9. 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

- E10. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

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

Protection of Trees

- E11. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009.

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

Notes:

- 1) If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- 2) An application to modify this consent pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

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

Trees to be Removed

- E12. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

Trees that are acceptable to remove	Location	Height
T1 Chamaecyparis sp.	Within the front setback of 18 Tobruk Avenue.	9x6m
T2 Chamaecyparis sp.		9x6m

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

Special Permits

- E13. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

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

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

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

(Reason: Proper management of public land)

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

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

(Reason: Proper management of public land)

4) Kerbside restrictions, construction zones

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

(Reason: Proper management of public land)

Construction Hours

- E14. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Location	Standard Construction Hours	
	Day	Hours
All Other Zones	Monday - Friday	7.00 am - 5.00 pm
	Saturday	8.00 am - 1.00 pm
	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.

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 and 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

- E15. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

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

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

Sediment and Erosion Control Signage

- E16. 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

- E17. 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 workplace determines the type of amenities required.

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

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

Health and Safety

- E18. 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)

Archaeological Discovery During Works

E19. Should any historical or Aboriginal relic be discovered on the site during demolition, excavation or site preparatory works, all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW must be informed in accordance with the provisions of the Heritage Act 1977 and/or National Parks and Wildlife Act, 1974. Works must not recommence until such time as approval to recommence is given in writing by Council or a permit from the Director of the NPWS is issued.

(Reason: To prevent the unnecessary destruction or removal of unrecorded historical or Aboriginal relics)

Prohibition on Use of Pavements

E20. 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 and Equipment Kept Within Site

E21. 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)

Imported Fill Material

E22. The only waste derived fill material that may be received at the development site is:

- a) Virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997); and
- b) Any other waste-derived material the subject of a resource recovery exemption under cl. 51A of the Protection of the Environment Operations (Waste) Regulation 2005 that is permitted to be used as fill material.

Any waste-derived material the subject of a resource recovery exemption received at the development site, must be accompanied by documentation as the material's compliance with the exemption conditions and must be provided to the Certifying Authority on request.

(Reason: To ensure that imported fill is of an acceptable standard for environmental protection purposes)

Waste Disposal

E23. 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)

Asbestos Removal

E24. 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.
- 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)

Mandatory Critical Stage Inspections

- F6. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

Excavation/Demolition

- F7. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

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

Protection of Public Places

- F8. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

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

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

Site Sign

- F9. 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. 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)

Certification - Civil Works

- G2. An appropriately qualified and practicing Civil Engineer must certify to the Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council.

A copy of the certificate must be submitted to Council (if it is not the Certifying Authority), upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

Damage to Adjoining Properties

- G3. 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)

Utility Services

- G4. 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

- G5. 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.

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

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

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

Certification of Tree Condition

- G6. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below:

Tree	Location	Height
T3 <i>Tristaniopsis laurina</i>	Council verge in front of 18 Tobruk Avenue.	6x3m
T4 <i>Tristaniopsis laurina</i>	Within the front setback (Tobruk Ave) of 16 Tobruk Avenue.	9x7m
T5 <i>Brachyciton acerifolius</i>		10x6m
T6 <i>Glochidion ferdinandi</i>		14x9m
T7 <i>Archontophoenix alexandrae</i>		14x3m
T8 <i>Archontophoenix alexandrae</i>	Within the site of 16 Tobruk Avenue adjacent to the western boundary of 18 Tobruk Avenue.	8x3m
T9 <i>Archontophoenix alexandrae</i>		8x3m
T10 <i>Archontophoenix alexandrae</i>		14x3m
T11 <i>Archontophoenix alexandrae</i>		14x3m
T12 <i>Angophora costata</i>		Within the rear setback of 20 Tobruk Avenue.
T13 <i>Acer negundo</i>	10x5m	
T14 <i>Syagrus romanzoffiana</i>	12x4m	
T15 <i>Tristaniopsis laurina</i>	Council verge in front of 20 Tobruk Avenue.	9x7m

The report must detail the condition and health of the nominated trees upon completion of the works and shall certify that the trees has/have not been significantly damaged during the works on the site and have reasonable prospects for survival.

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

Sydney Water

- G7. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The final Section 73 Certificate must be submitted to the Certifying Authority prior to release of any linen plan for subdivision or prior to occupation of the development, whichever is the earlier.

Notes: Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site www.sydneywater.com.au/customer/urban/index, or telephone 13 20 92.

**18 TOBRUK AVENUE, CREMORNE
DEVELOPMENT APPLICATION NO.56/22**

Page 32 of 33

Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with the statutory requirements of Sydney Water)

House Numbering (Dwellings)

- G8. Prior to any Occupation Certificate being issued an application must be made to North Sydney Council for written confirmation, or allocation, of the street address(es) or apartment number(s) for the completed project in accordance with Council's Property Addressing Policy. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2011.

Note: If apartments are to be sold off the plan, the applicant must have written confirmation from Council of the address and apartment numbering if the apartment number is to be identified on the contract.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties.)

Landscaping

- G9. The landscaping shown in the approved landscape plan, the landscape plan numbered L-01, prepared by Space Landscape Designs, dated 11 February 2022 (Revision B), and as amended by Condition C24 of this consent, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Required Tree Planting

- G10. On completion of works and prior to the issue of an Occupation Certificate trees in accordance with the schedule hereunder must be planted in Council's nature strip/footpath:

Schedule

Tree Species	Location	Pot Size
1 x <i>Tristaniopsis laurina</i>	Council verge in front of 18 Tobruk Avenue, to the south of T3 <i>Tristaniopsis laurina</i> .	100-litre

The installation of this tree, its current health, and prospects for future survival, must be certified upon completion by an appropriately qualified horticulturalist.

**18 TOBRUK AVENUE, CREMORNE
DEVELOPMENT APPLICATION NO.56/22**

Page 33 of 33

Upon completion of installation and prior to the issue of an Occupation Certificate an appropriately qualified horticulturalist must certify that any trees planted in accordance with this condition are healthy and have good prospects of future survival. The certification must be submitted with any application for an Occupation Certificate.

(Reason: To ensure that replacement plantings are provided to enhance community landscaped amenity and cultural assets)

Unpaved Verge

G11. The unpaved verge area must be constructed/reconstructed with an appropriate species of grass prior to completion of the works at no cost to Council.

(Reason: To ensure that community assets are presented in accordance with reasonable community expectations)

Compliance with Certain conditions

G12. Prior to the issue of any Occupation Certificate, Conditions C12 and C24 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)

I. Ongoing/Operational Conditions

Green Roof area must be non-trafficable

I1. The Green roof top area above Level 4 must not be used as an outdoor recreation area, and must remain non-trafficable at all times only to be used for maintenance of the roof and garden areas.

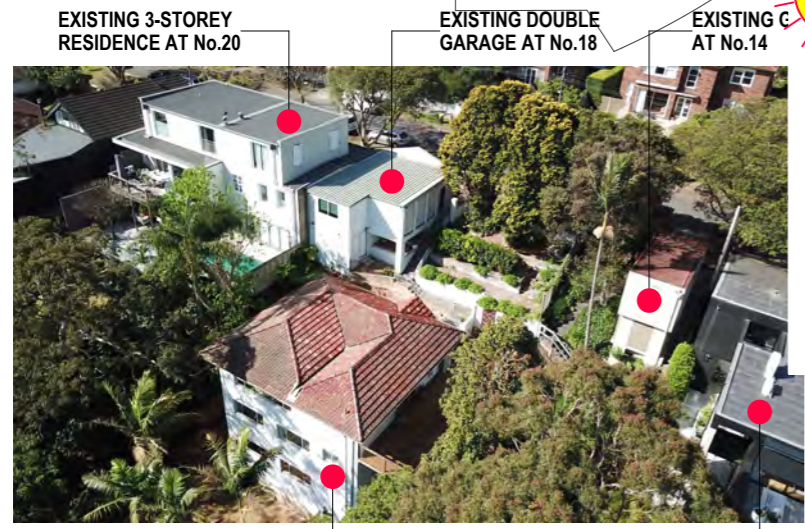
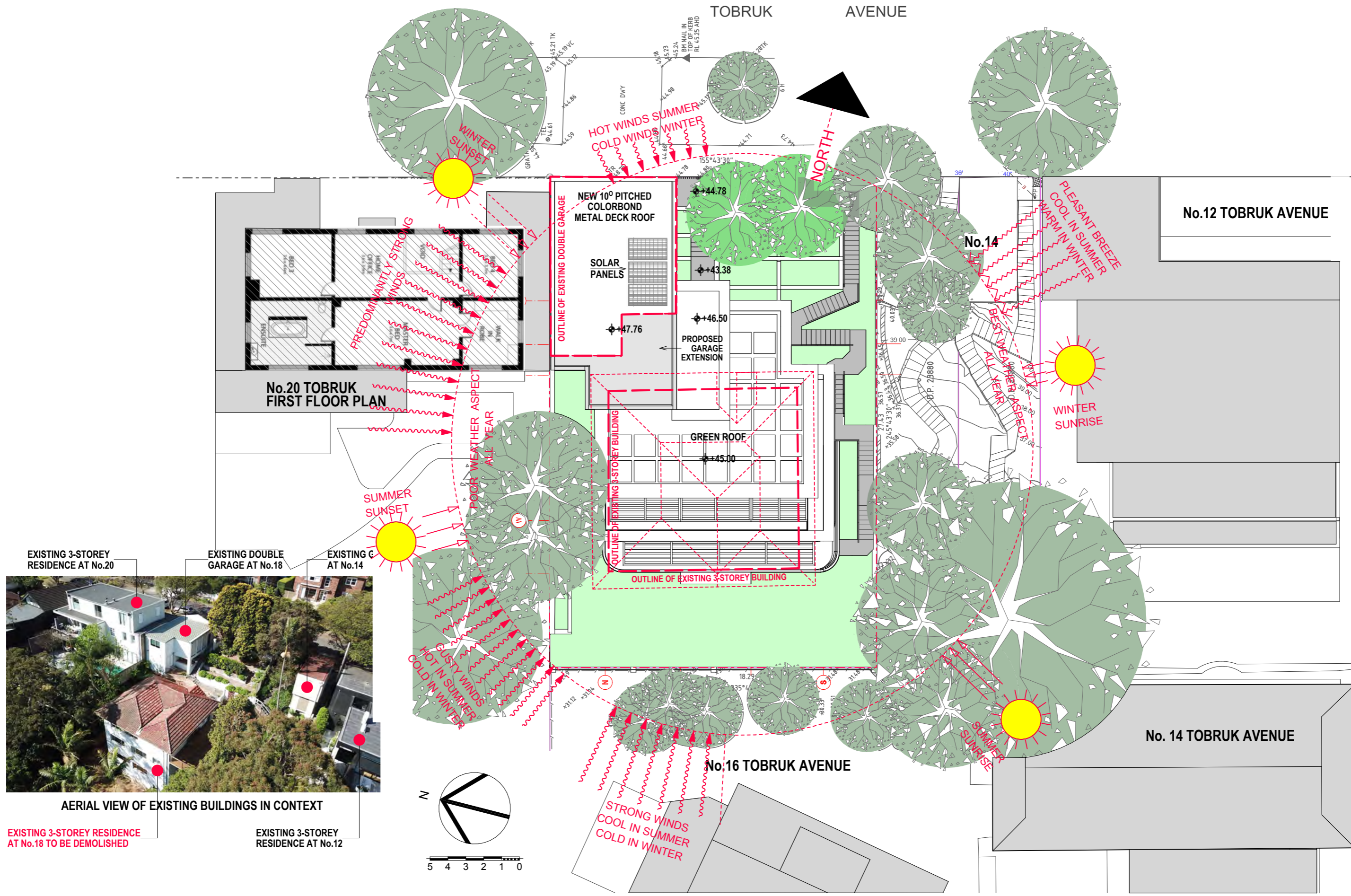
(Reason: To maintain residential amenity)

Maintenance of Approved Landscaping

I2. The owner of the premises at 18 Tobruk Avenue is to maintain the landscaping approved by this consent generally in accordance with the landscape plan numbered L-01, prepared by Space Landscape Designs, dated 11 February 2022 (Revision B), and as modified by Condition C24 of this consent.

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

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



AERIAL VIEW OF EXISTING BUILDINGS IN CONTEXT
 EXISTING 3-STOREY RESIDENCE AT No.18 TO BE DEMOLISHED
 EXISTING 3-STOREY RESIDENCE AT No.12

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FILE PATH: BIMcloud - BIMcloud Basic for ARCHICAD 24/TOB18 DA(C)

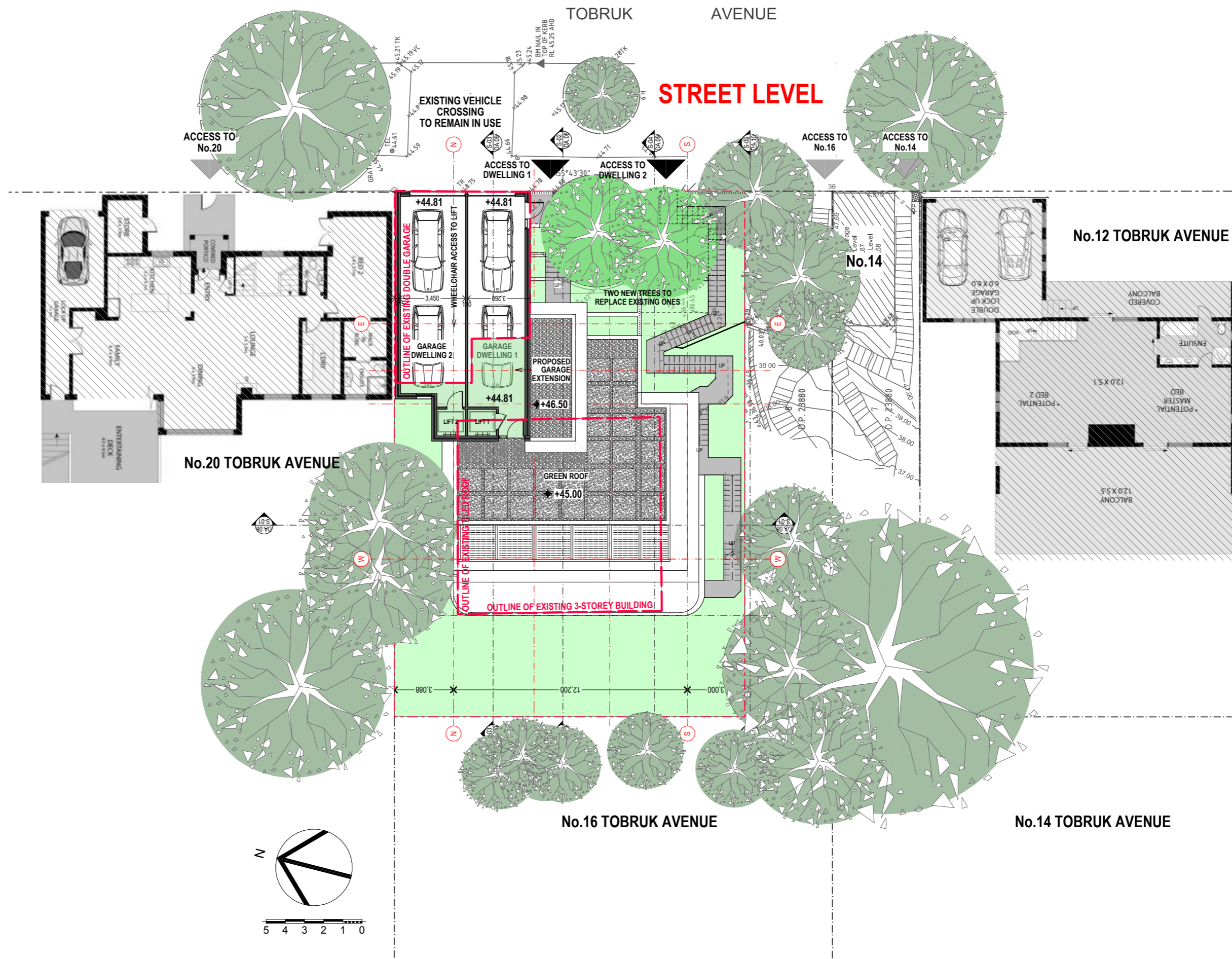
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ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				A	ORIGINAL ISSUE		04.02.22

PROJECT:
DUAL OCCUPANCY DWELLINGS
 18 TOBRUK AVENUE CREMORNE NSW 2090
 LOT 9 IN 23880

SITE ANALYSIS PLAN
 SCALE: AS SHOWN
P A STUDIO
 NOMINATED ARCHITECT: GEORGE REWAY REG # 3954
 LEVEL 2, 20 YOUNG ST, NEUTRAL BAY, NSW 2089
 TEL: 8968 1900 FAX: 8968 1999 A.C.N. 603 389 268

DRAWING SET ID:		ISSUE
SUBSET: DA Architectural		
DRAWN BY: WH/SU/FC	DA.03	A
FILE: TOB18 DA(C)		



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PROJECT:
DUAL OCCUPANCY DWELLINGS
 18 TOBRUK AVENUE CREMORNE NSW 2090
 LOT 9 IN 23880

GARAGE FLOOR PLAN AT STREET LEVEL

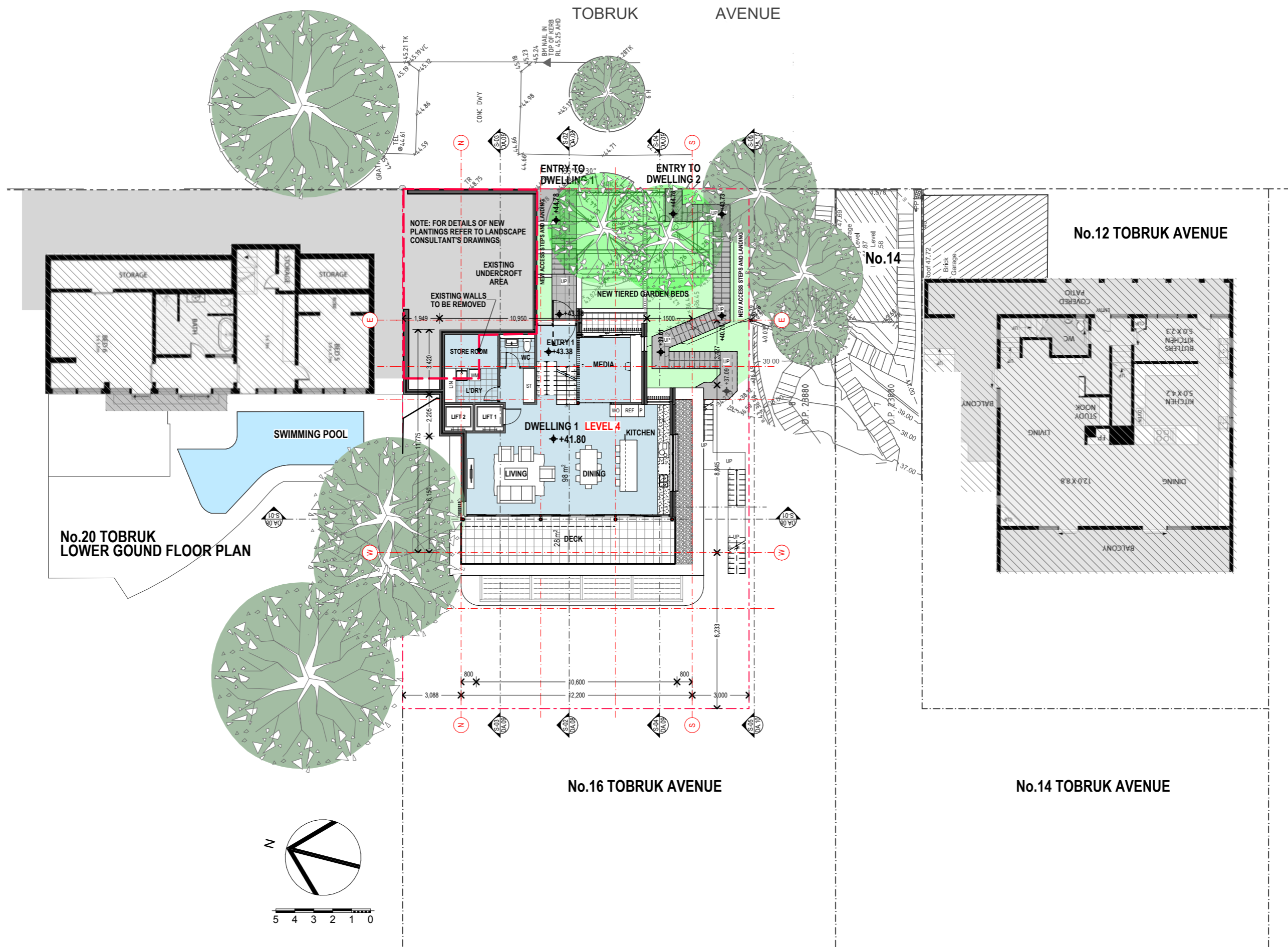
SCALE:
 AS SHOWN

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 TEL: 8968 1900 FAX: 8968 1999 A.C.N. 603 389 268

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 SUBSET: DA Architectural
 DRAWN BY: WH/SU/FC
 FILE: T0B18 DA(C)

DA.04

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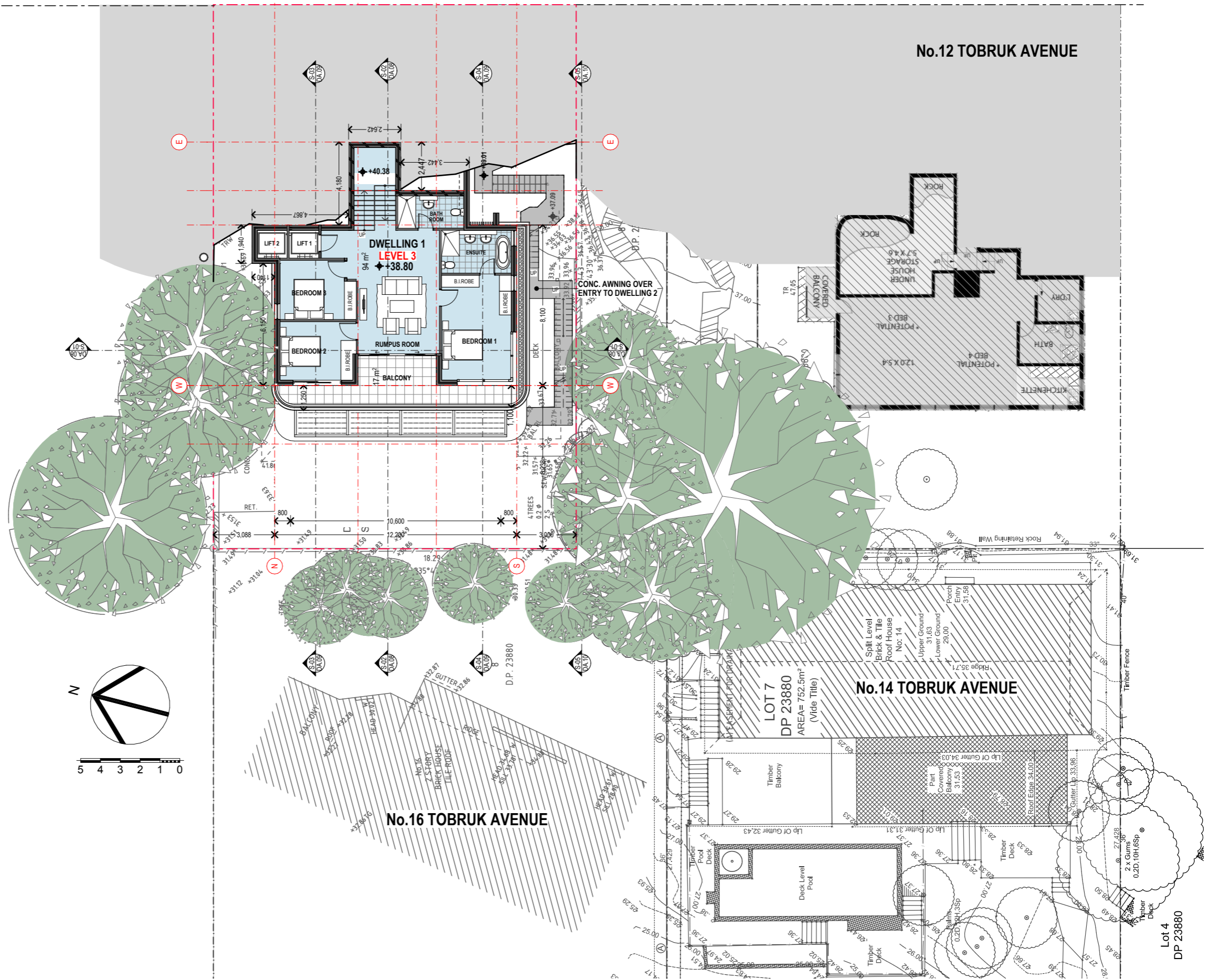
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PROJECT:
DUAL OCCUPANCY DWELLINGS
 18 TOBRUK AVENUE CREMORNE NSW 2090
 LOT 9 IN 23880

FLOOR PLAN: LEVEL 4		DRAWING SET ID:	ISSUE
SCALE:	P A STUDIO	SUBSET: DA Architectural	
AS SHOWN	NOMINATED ARCHITECT: GEORGE REVAY REG # 3954 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8988 1900 FAX: 8988 1999 A.C.N. 603 389 268	DRAWN BY: WH/SU/FC	
		FILE: T0B18 DA(C)	DA.05



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PROJECT:
DUAL OCCUPANCY DWELLINGS
 18 TOBRUK AVENUE CREMORNE NSW 2090
 LOT 9 IN 23880

FLOOR PLAN: LEVEL 3

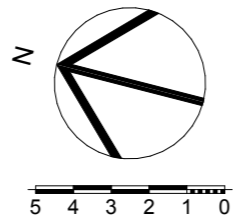
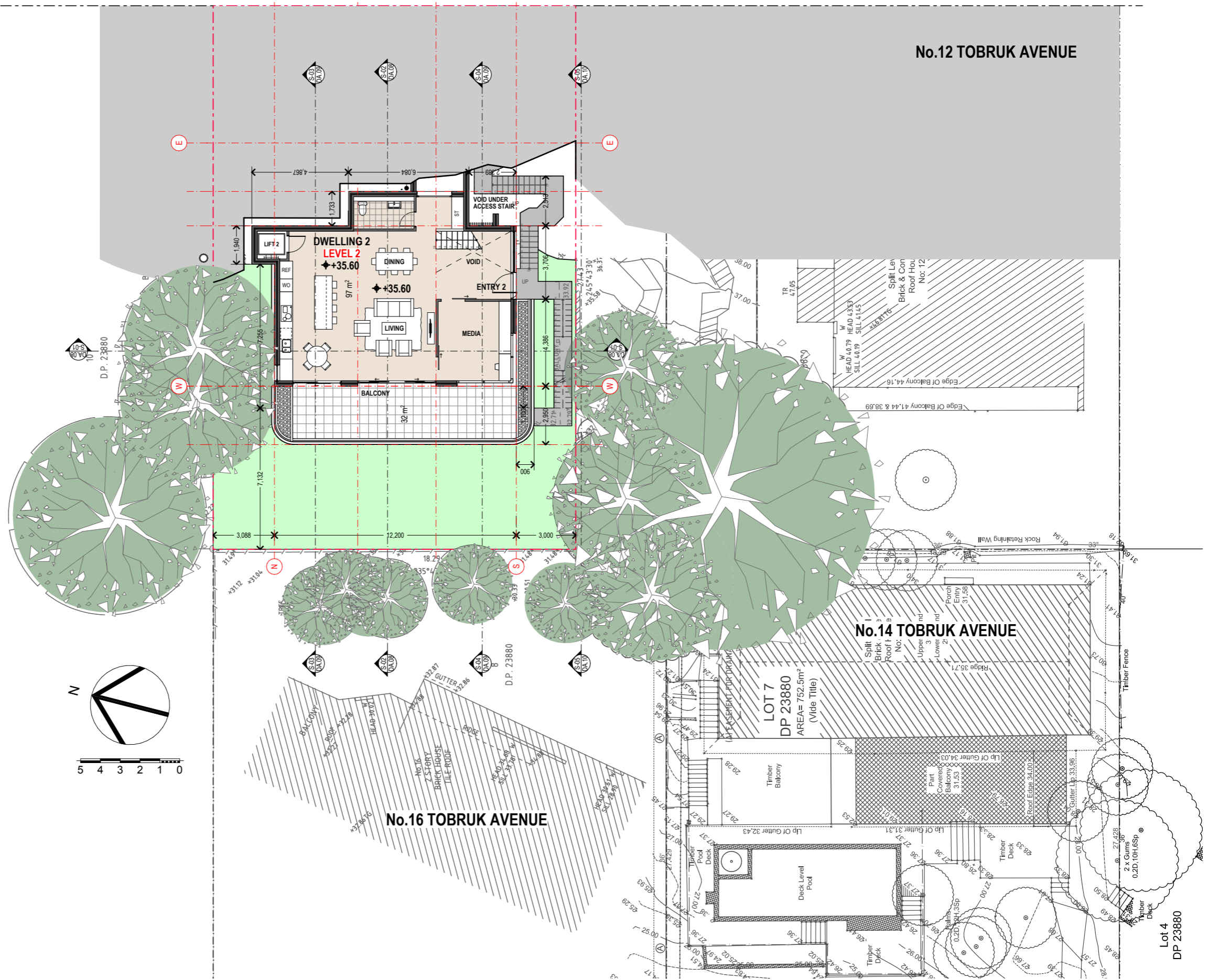
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P A STUDIO
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 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW, 2089
 TEL: 8988 1900 FAX: 8988 1999 A.C.N. 603 389 288

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 FILE: T0B18 DA(C)

DA.06

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PROJECT:
DUAL OCCUPANCY DWELLINGS
 18 TOBRUK AVENUE CREMORNE NSW 2090
 LOT 9 IN 23880

FLOOR PLAN: LEVEL 2

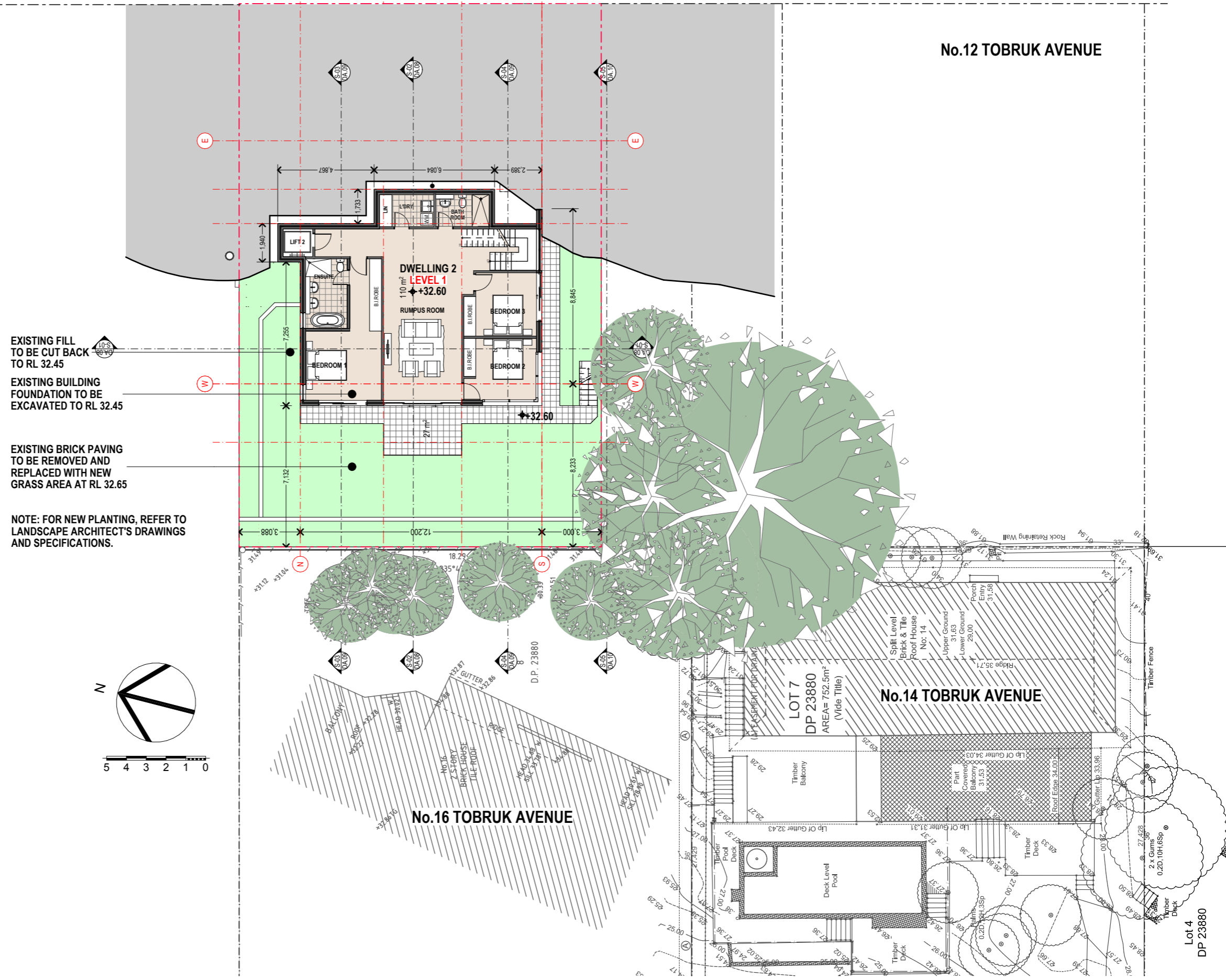
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DA.07

ISSUE
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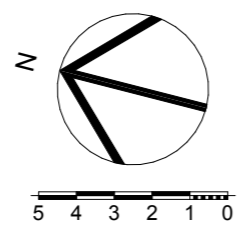


EXISTING FILL TO BE CUT BACK TO RL 32.45

EXISTING BUILDING FOUNDATION TO BE EXCAVATED TO RL 32.45

EXISTING BRICK PAVING TO BE REMOVED AND REPLACED WITH NEW GRASS AREA AT RL 32.65

NOTE: FOR NEW PLANTING, REFER TO LANDSCAPE ARCHITECT'S DRAWINGS AND SPECIFICATIONS.



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PROJECT:
DUAL OCCUPANCY DWELLINGS
 18 TOBRUK AVENUE CREMORNE NSW 2090

LOT 9 IN 23880

FLOOR PLAN: LEVEL 1

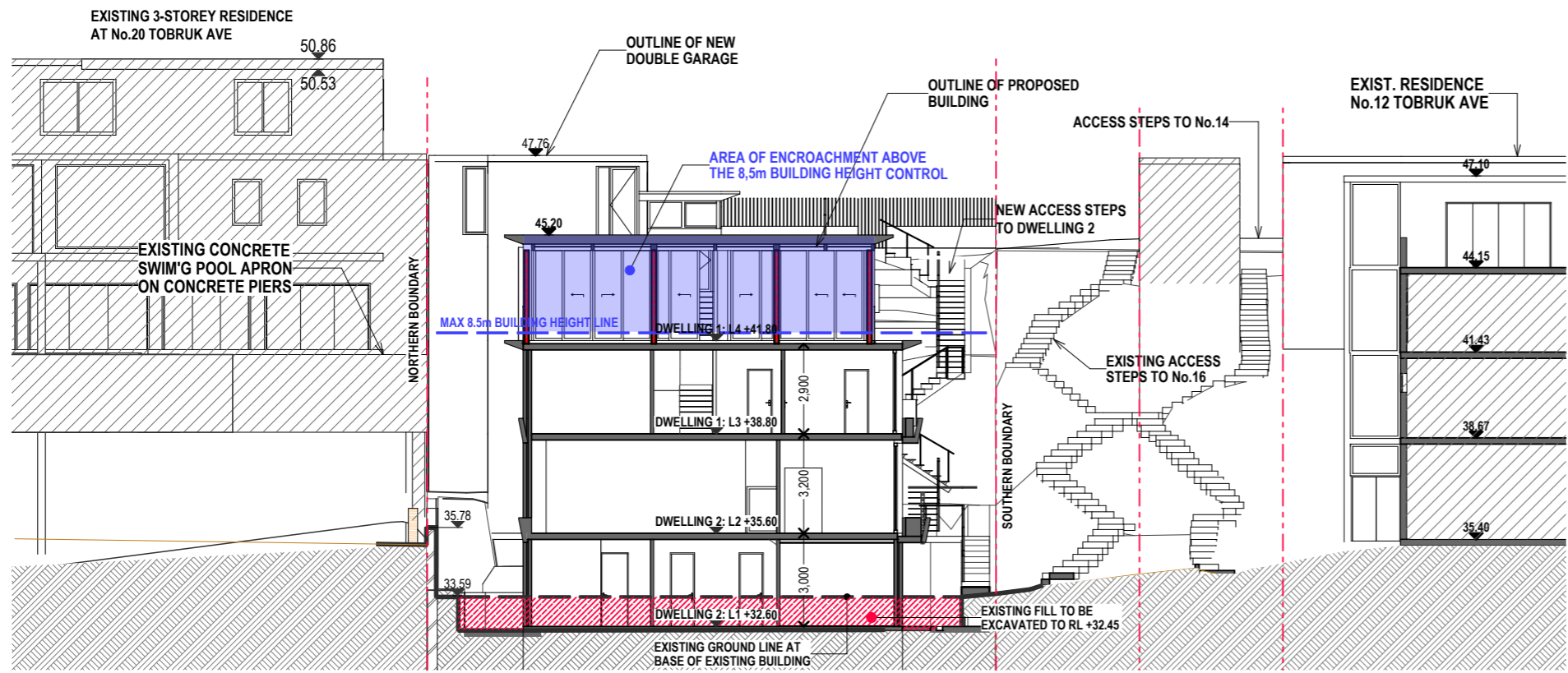
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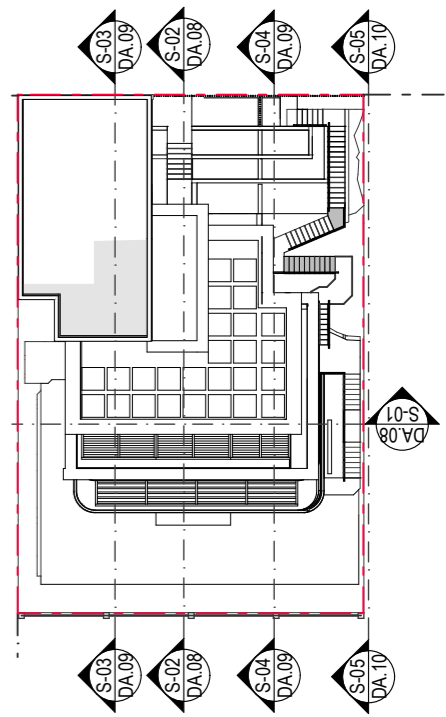
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 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
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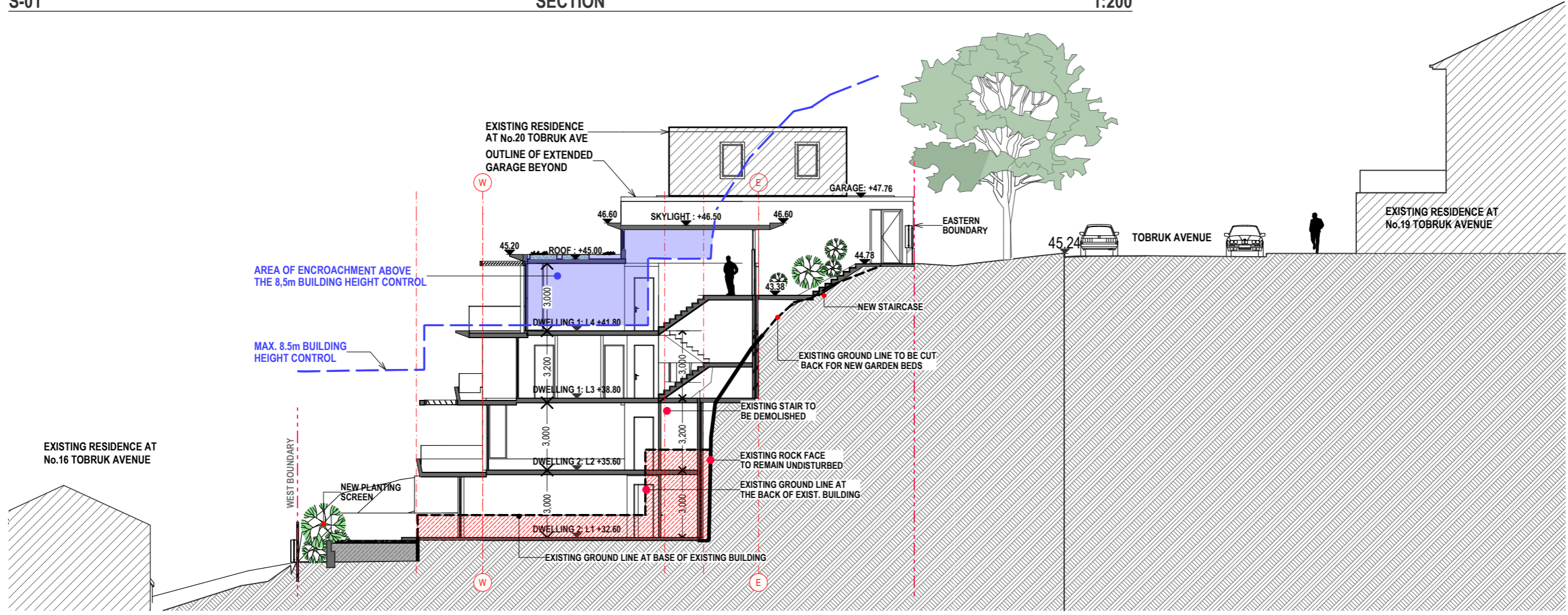
ISSUE
DA.08
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S-01 SECTION 1:200



KEY TO SECTIONS



S-02 SECTION 1:200

General Notes:
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PROJECT:
DUAL OCCUPANCY DWELLINGS
18 TOBRUK AVENUE CREMORNE NSW 2090

LOT 9 IN 23880

SECTIONS S-01 AND S-02

SCALE:

P A STUDIO

AS SHOWN

NOMINATED ARCHITECT: GEORGE REVAY REG # 3954
LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
TEL: 8988 1900 FAX: 8988 1999 ACN: 603 389 288

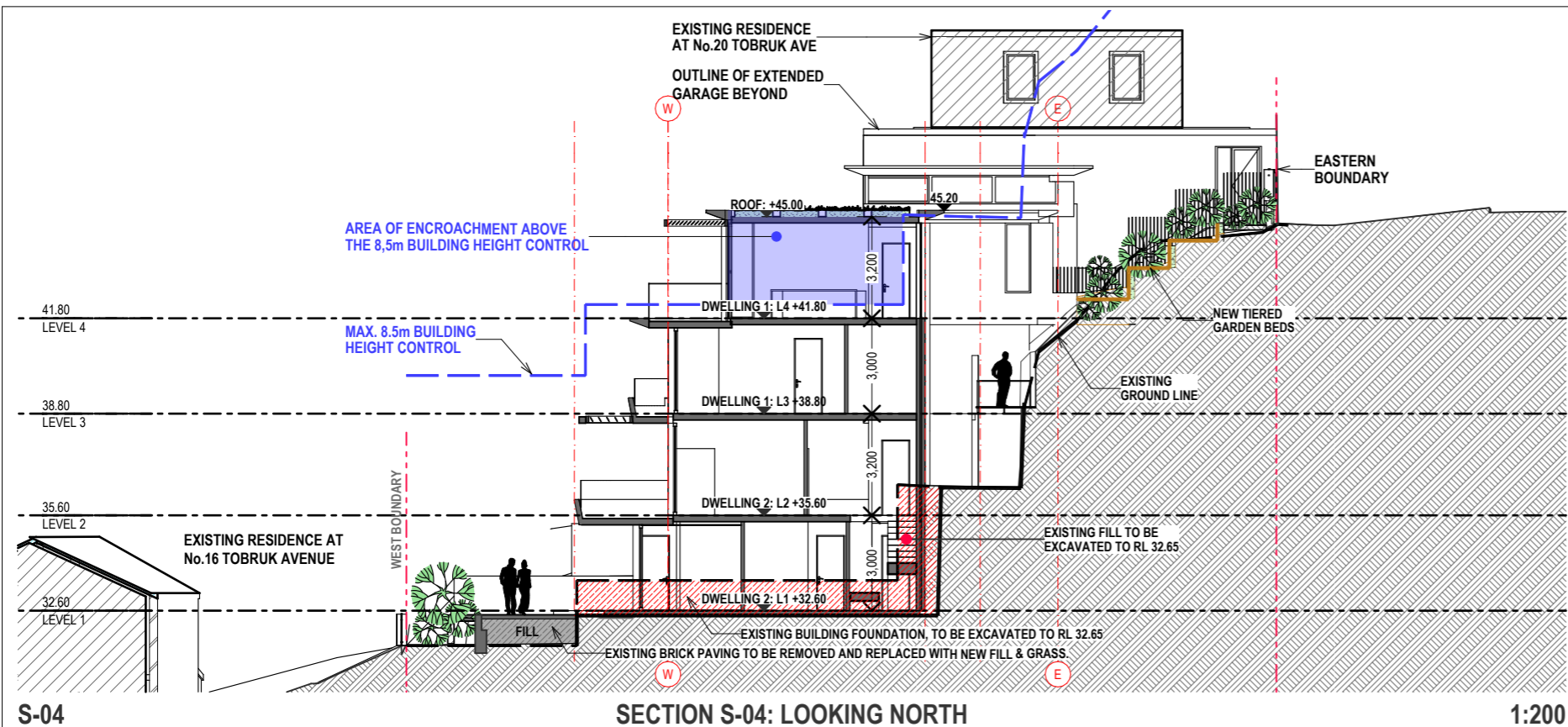
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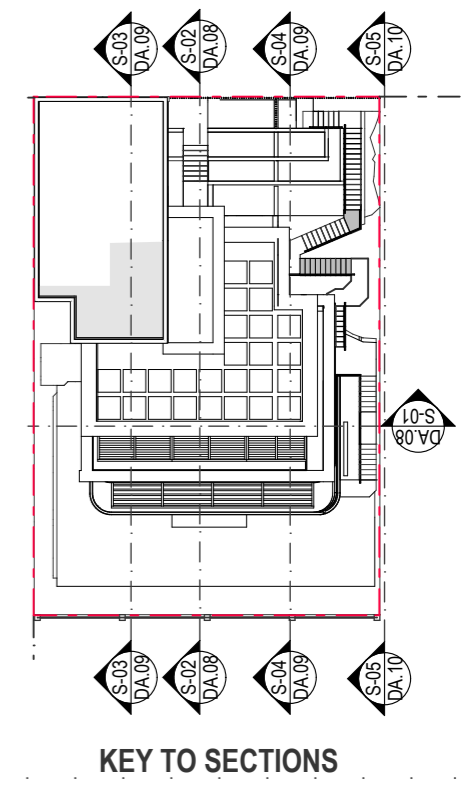
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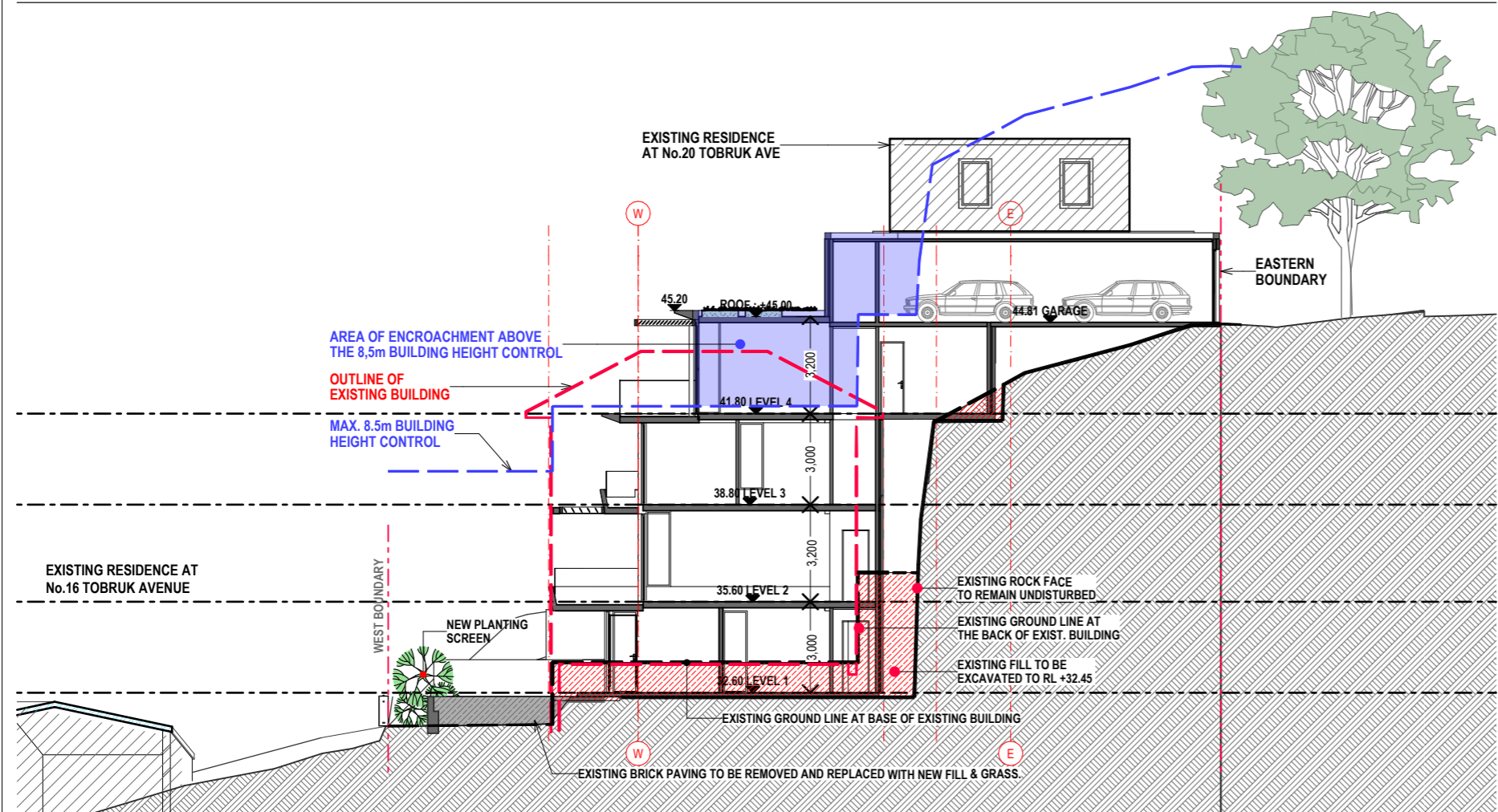
ISSUE
DA.09
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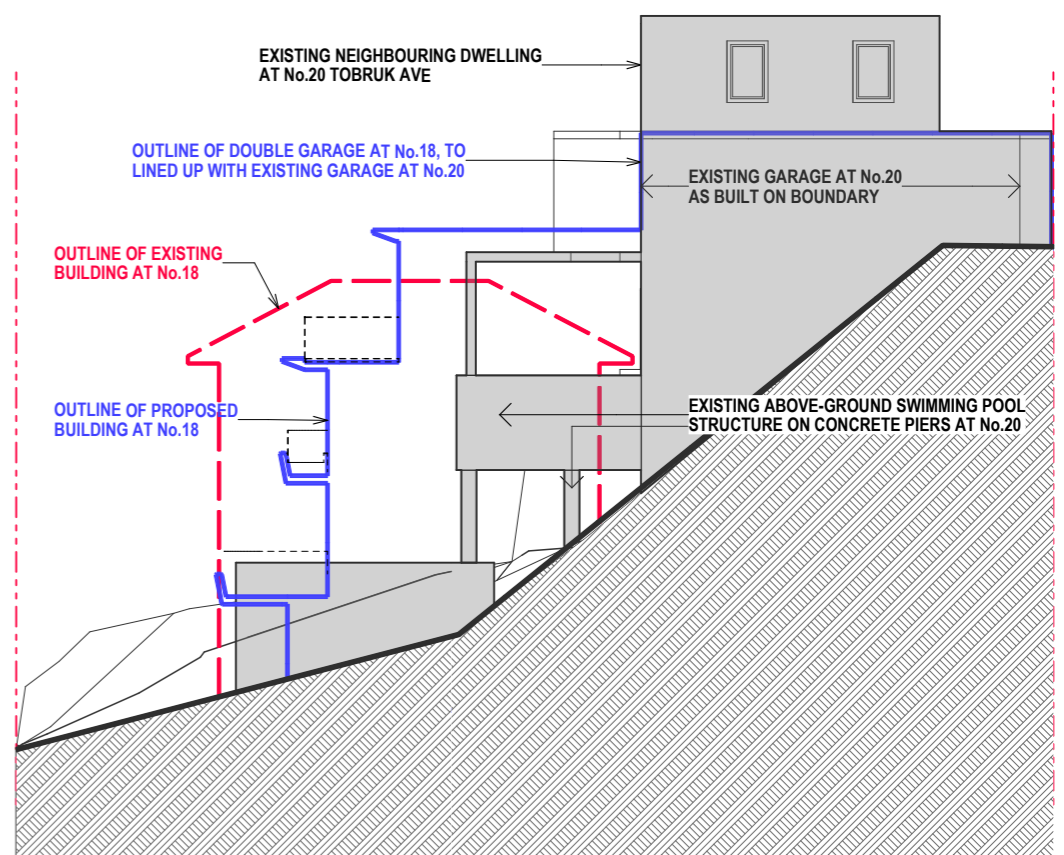
S-04 SECTION S-04: LOOKING NORTH 1:200



KEY TO SECTIONS



S-03 SECTION S-03: LOOKING NORTH 1:200



EXISTING SOUTH ELEVATION OF No.20 1:200

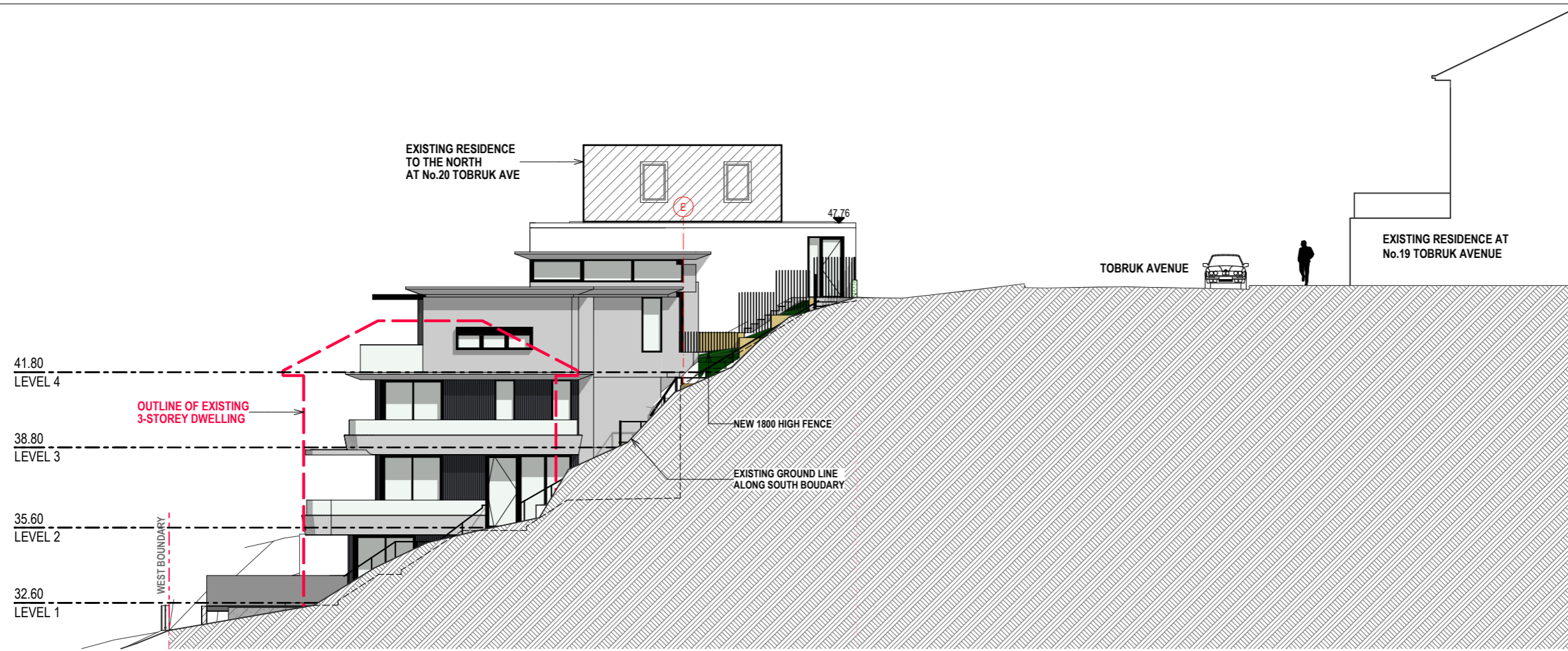
General Notes:
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PROJECT:
DUAL OCCUPANCY DWELLINGS
 18 TOBRUK AVENUE CREMORNE NSW 2090
 LOT 9 IN 23880

SECTIONS S-03 AND S-04
 SCALE: AS SHOWN
P A STUDIO
 NOMINATED ARCHITECT: GEORGE REVAY REG # 3954
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DRAWN BY: WH/SU/FC	DA.10
FILE: T0B18 DA(C)	A



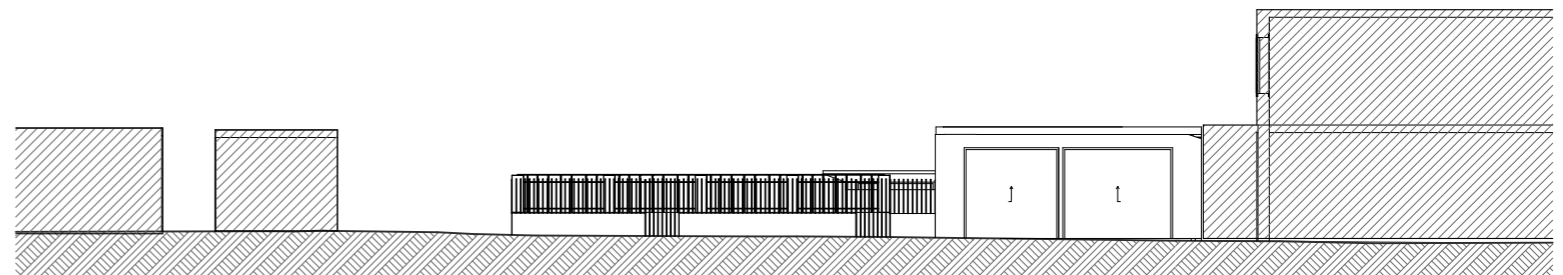
SECTION S-05 - SOUTH ELEVATION

1:200



EAST ELEVATION & SECTION THROUGH GARAGES

1:200



EAST ELEVATION, AS VIEWED FROM TOBRUK AVENUE

1:200

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PROJECT:
DUAL OCCUPANCY DWELLINGS
18 TOBRUK AVENUE CREMORNE NSW 2090

LOT 9 IN 23880

SOUTH AND EAST ELEVATIONS

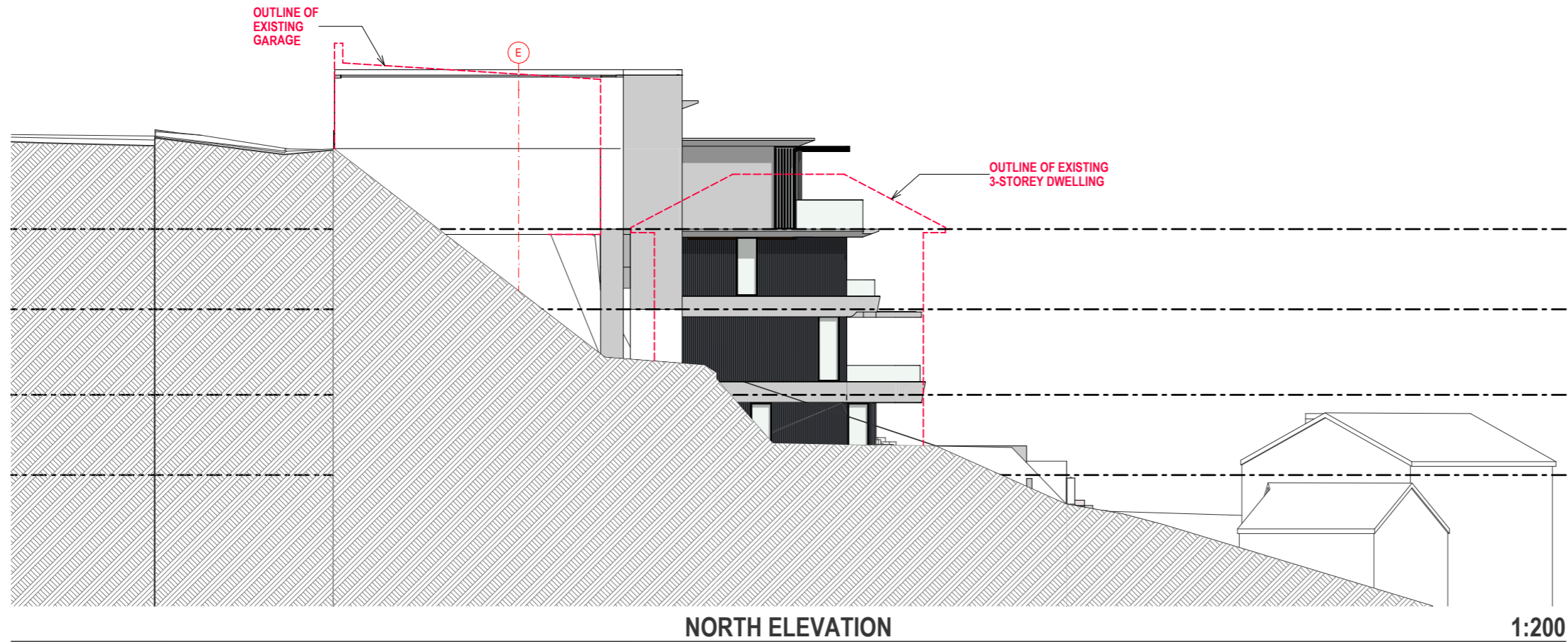
SCALE:
AS SHOWN

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NOMINATED ARCHITECT: GEORGE REVAY REG # 3954
LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
TEL: 8988 1900 FAX: 8988 1999 A.C.N. 603 389 288

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DRAWN BY: WH/SU/FC
FILE: T0B18 DA(C)

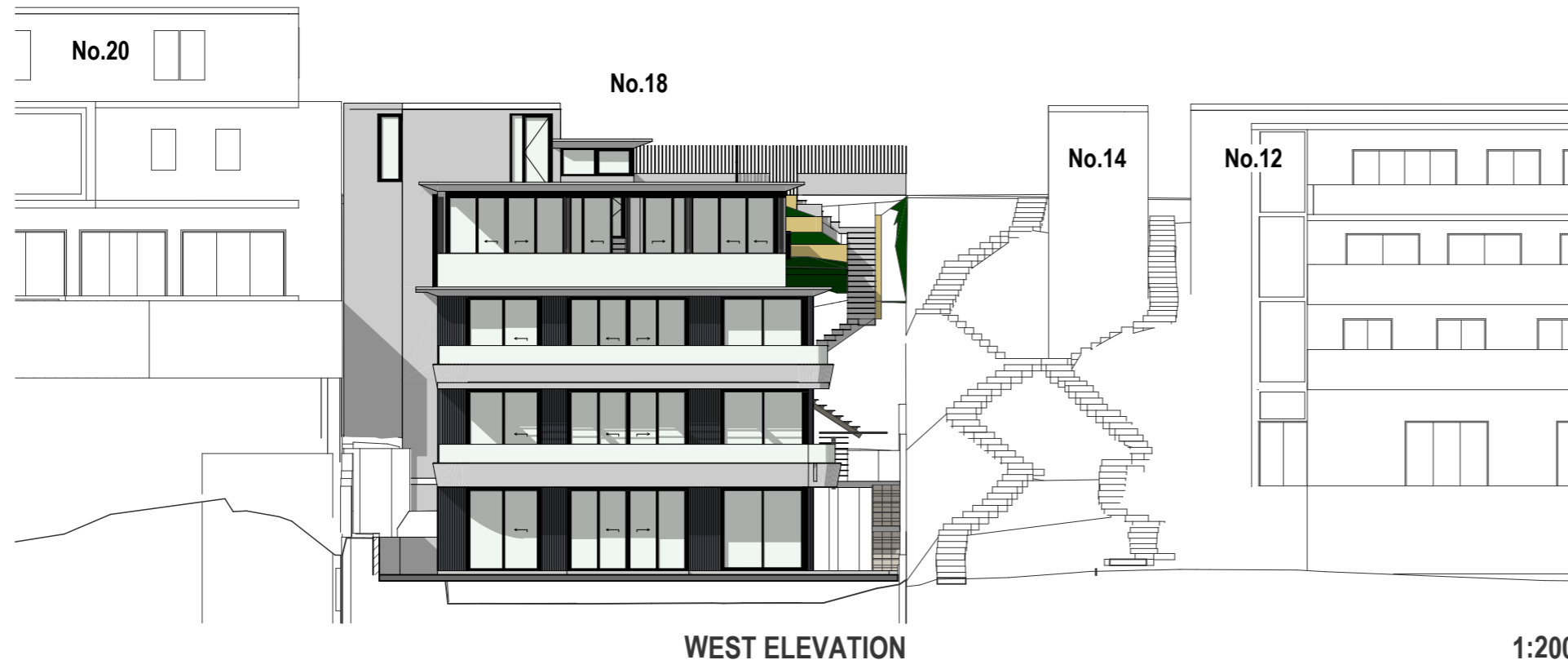
DA.11

ISSUE
A



NORTH ELEVATION

1:200



WEST ELEVATION

1:200

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PROJECT:
DUAL OCCUPANCY DWELLINGS
 18 TOBRUK AVENUE CREMORNE NSW 2090
 LOT 9 IN 23880






NORTH AND WEST ELEVATIONS

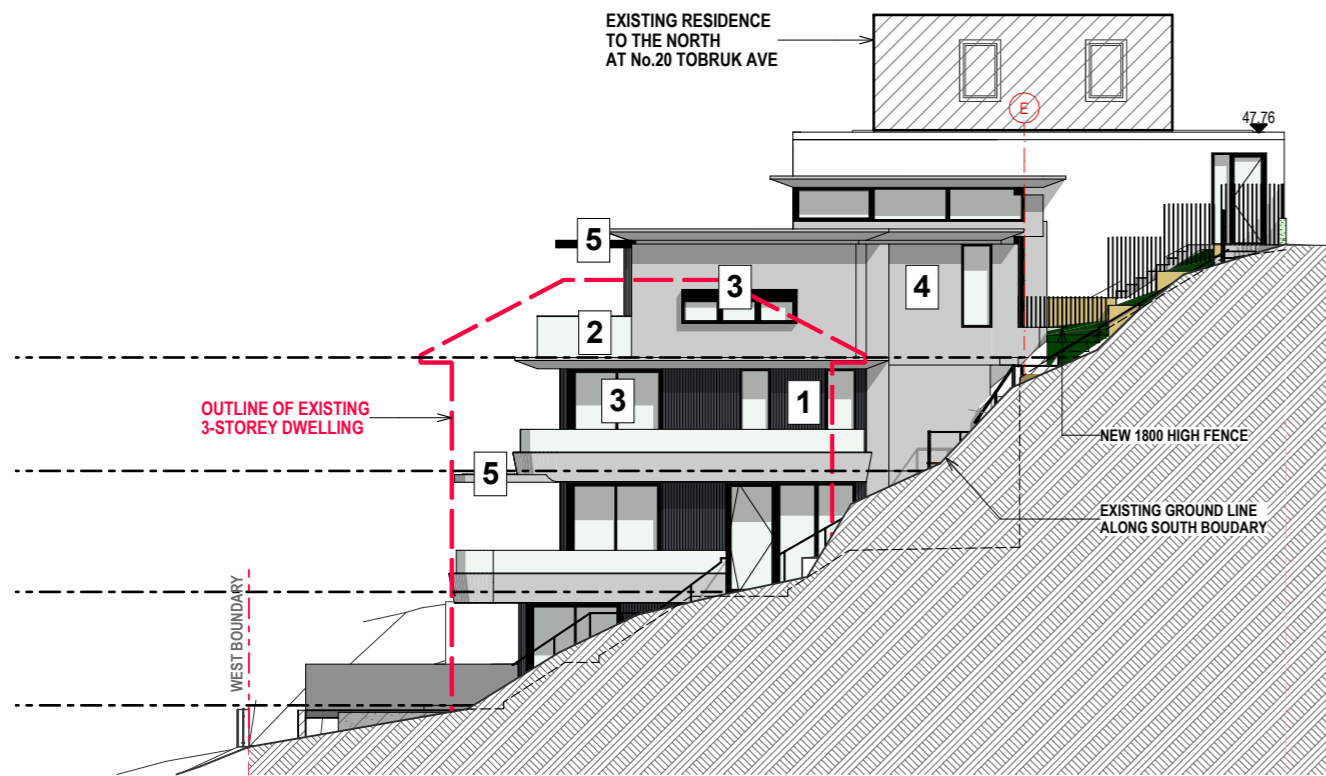
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P A STUDIO
 NOMINATED ARCHITECT: GEORGE REVAY REG # 3954
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DRAWING SET ID:
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 FILE: T0B18 DA(C)

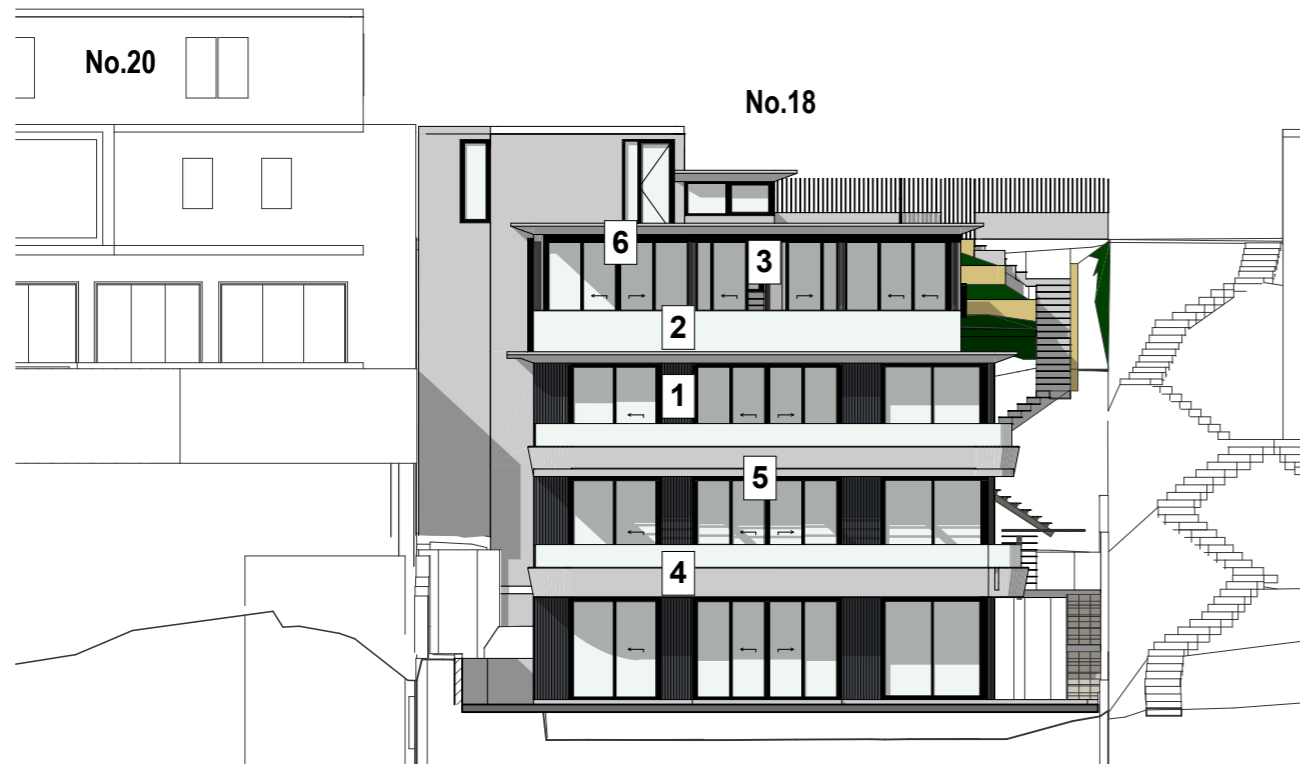
DA.12

ISSUE
 A

CODE	LOCATION	TYPE	SAMPLE
1	External Wall	Aluminium and Fibre Cement - Monument	
2	Balustrades	Clear glass	
3	Aluminium Window Frames & Joinery	Powdercoated aluminium Dulux MONUMENT	
4	External walls and balconies	Concrete formwork timber patterns	
5	Pergola	Powdercoated aluminium Dulux DUNE	



SECTION S-05 - SOUTH ELEVATION 1:200



WEST ELEVATION 1:200

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PROJECT:
DUAL OCCUPANCY DWELLINGS
 18 TOBRUK AVENUE CREMORNE NSW 2090
 LOT 9 IN 23880

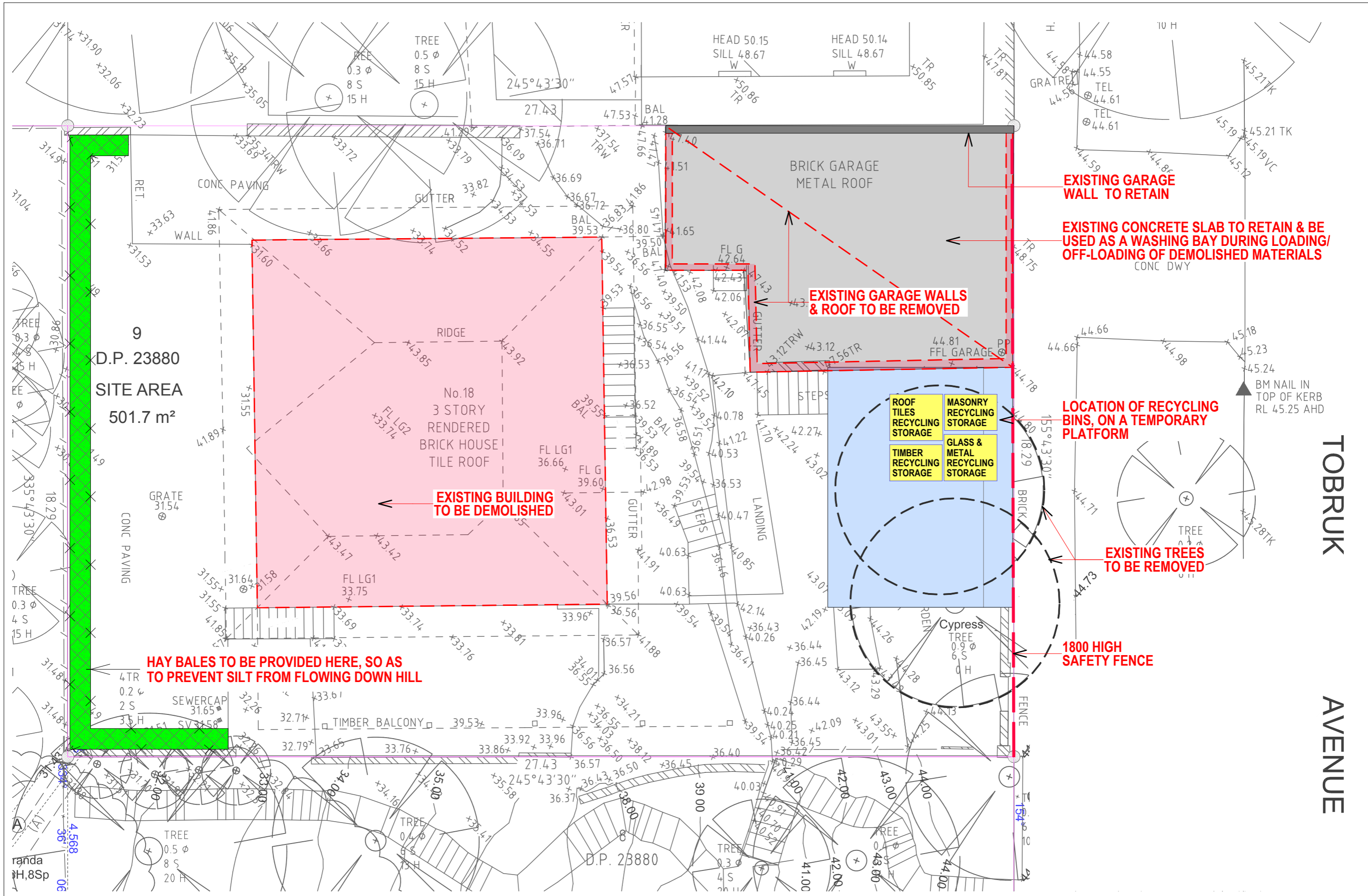
LIST OF MATERIALS AND FINISHES

SCALE: AS SHOWN
P A S T U D I O
 NOMINATED ARCHITECT: GEORGE REVAY REG # 3954
 LEVEL 2, 20 YOUNG ST, NEUTRAL BAY, NSW 2089
 TEL: 8988 1900 FAX: 8988 1999 A.C.N. 603 389 288

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DA.13

ISSUE
 A



TOBRUK AVENUE

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			A	ORIGINAL ISSUE	16.03.22

PROJECT:
DUAL OCCUPANCY DWELLINGS
 18 TOBRUK AVENUE CREMORNE NSW 2090
 LOT 9 IN 23880

DEMOLITION PLAN

SCALE: AS SHOWN
P A STUDIO
 NOMINATED ARCHITECT: GEORGE REWAY REG # 3954
 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
 TEL: 8988 1500 FAX: 8988 1999 A.C.N. 603 389 288

DRAWING SET ID:
 SUBSET: DA Architectural
 DRAWN BY: WH/SU/FC
 FILE: TOB18 DA(C)

DA.27

ISSUE
A

LEGEND

- BOUNDARY
- SEWER
- EXISTING CONTOURS
- ALUMINIUM EDGE
- PROPOSED PAVING
- TURF
- PROPOSED LEVELS
- EXISTING TREE TO BE RETAINED
- TREE TO BE REMOVED

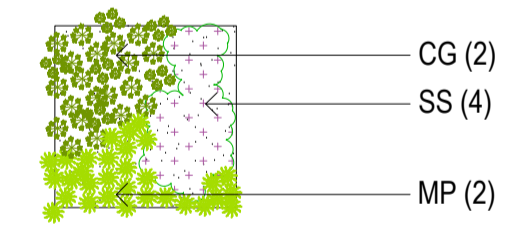
EXISTING TREE SCHEDULE

KEY	BOTANICAL NAME	DBH (mm)	Height (m)	Canopy Spread Radius (m)	Status
1	CHAMAECYPARIS SP	500	9	6	REMOVE
2	CHAMAECYPARIS SP	500	9	6	REMOVE
3	TRISTANIOPSIS LAURINA	150	6	3	RETAIN
4	TRISTANIOPSIS LAURINA	350	9	7	RETAIN
5	BRACHYCTON ACERIFOLIUS	350	10	6	RETAIN
6	GLOCHIDION FERDINANDI	450	14	9	RETAIN
7	ARCHONTOPHOENIX ALEXANDRAE	250	14	3	RETAIN
8	ARCHONTOPHOENIX ALEXANDRAE	200	8	3	RETAIN
9	ARCHONTOPHOENIX ALEXANDRAE	200	8	3	RETAIN
10	ARCHONTOPHOENIX ALEXANDRAE	250	14	3	RETAIN
11	ARCHONTOPHOENIX ALEXANDRAE	250	14	3	RETAIN
12	ANGOPHORA COSTATA	600	18	16	RETAIN
13	ACER NEGUNDO	400	10	5	RETAIN
14	SYAGRUS ROMANZOFFIANA	250	12	4	RETAIN
15	TRISTANIOPSIS LAURINA	350	9	7	RETAIN

PROPOSED PLANT SCHEDULE

KEY	BOTANICAL NAME	COMMON NAME	QTY	MATURE HGT	POT SIZE
TREES					
ER	ELAEOCARPUS RETICULATUS	BLUEBERRY ASH	2	8m	45Lr
CA	CYATHEA AUSTRALIS	ROUGH TREE FERN	3	4m	250mm
SHRUBS					
BE	BANKSIA ERICIFOLIA	HEATH BANKSIA	7	2m	250mm
CR	CORREA REFLEXA	CORREA	6	1.1m	200mm
DT	DODONAEA TRIQUETRA	HOP BUSH	3	3m	250mm
GB	GREVILLEA BUXIFOLIA	GREY SPIDER FLOWER	4	1.1m	200mm
GL	GREVILLEA LINEARIFOLIA	WHITE SPIDER FLOWER	7	2m	200mm
LT	LEPTOSPERMUM TRINERVIUM	SHRUB TEA-TREE	3	4m	250mm
PG	PITTOSPORUM 'GOLF BALL'	GOLF BALL PITTOSPORUM	9	0.6m	200mm
XM	XANTHORHOEA MEDIA	FOREST GRASS TREE	1	1.5m	250mm
GRASSES / GROUND COVERS					
AC	ALPINA CAERULEA	NATIVE GINGER	14	1.5m	200mm
AI	ALCANTAREA IMPERIALIS 'RUBRA'	GIANT BROMELIAD	6	1.2m	200mm
AM	ARTHROPODIUM 'MATAPOURI BAY'	RENGA RENGALILY	28	0.7m	200mm
DA	DOODIA ASPERA	RASP FERN	31	0.3m	140mm
DC	DIANELLA CAERULEA	FLAX LILY	41	0.5m	140mm
DR	DICHONDRA REPENS	KIDNEY WEED	8	0.1m	140mm
GH	GERANIUM HOMEANUM	NATIVE GERANIUM	7	0.3m	140mm
HV	HARDENBERGIA VIOLACEA	PURPLE CORAL PEA	4	0.2m	200mm
LL	LOMANDRA LONGIFOLIA	SPINY-HEADED MAT-RUSH	5	1m	200mm
VH	VIOLA HEDERACEA	NATIVE VIOLET	42	0.1m	140mm

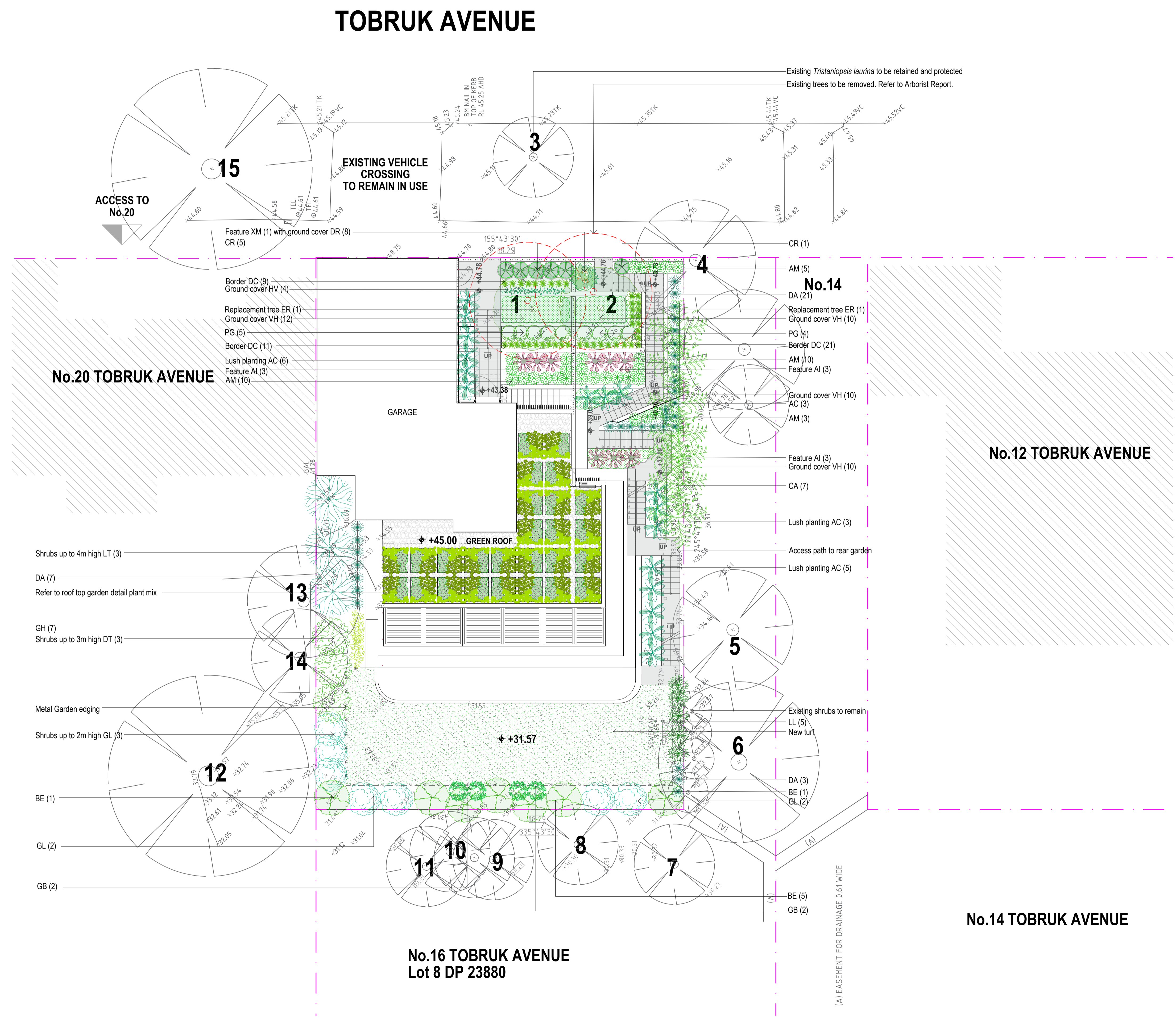
A DENOTES PLANTS SELECTED FROM MIDDLE HARBOUR PLANT SPECIES LIST
A TOTAL OF 80% OF LOCALLY OCCURRING SPECIES



ROOF TOP GARDEN DETAIL PLANT MIX
SCALE 1:50.

PROPOSED PLANT SCHEDULE - ROOF TOP GARDEN

KEY	BOTANICAL NAME	COMMON NAME	QTY	MATURE HGT	POT SIZE
CG	CARPOBROTUS GLAUDESCENS 'AUSSIE RAMBLER'	AUSSIE RAMBLER	52	0.2m	80mm
MP	MYOPORUM PARVIFOLIUM 'YAREENA'	YAREENA	78	0.1m	80mm
SS	SEDUM SPURIMUM 'DRAGON'S BLOOD'	SEDUM DRAGONS BLOOD	52	0.1m	80mm



No.16 TOBRUK AVENUE
Lot 8 DP 23880

No.14 TOBRUK AVENUE

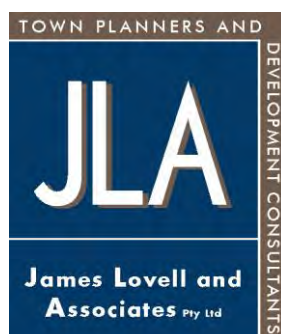
Construction of Dual Occupancy (Attached)

18 Tobruk Avenue, Cremorne

Statement of Environmental Effects

18 February 2022

Ref: 21180



ATTACHMENT A

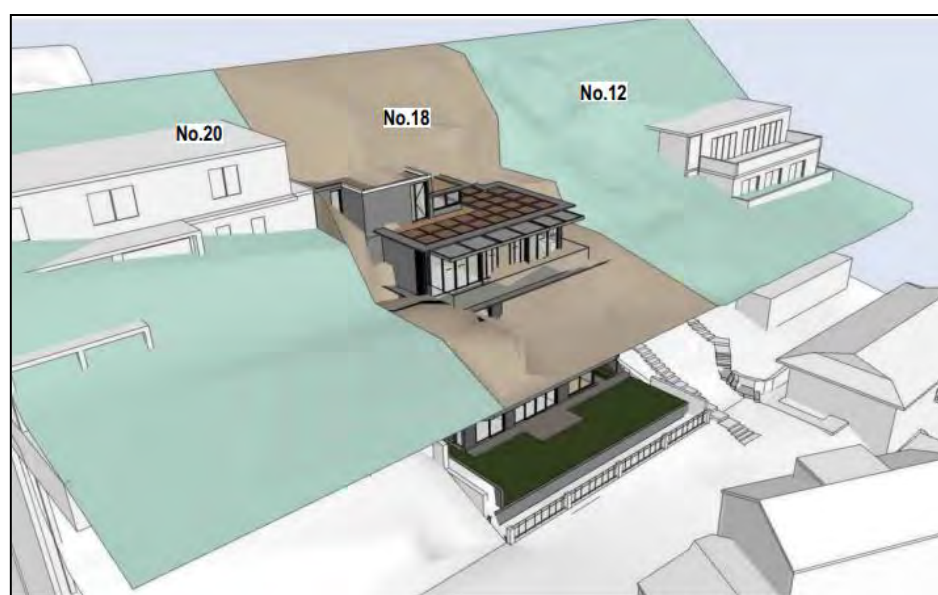
Request to Vary the Building Height Control

INTRODUCTION

Clause 4.3 of the North Sydney Local Environmental Plan (LEP) 2013 specifies a maximum building height of 8.5 metres.

The proposed building extends to a maximum height of approximately 13.5 metres. The portion of the building that extends above the building height control generally comprises the western portion of the upper level.

The proposed building remains below the height of the adjoining buildings to the north and south. Further, the main roof level is located below the level of the carriageway of Tobruk Avenue, and the portion of the building visible from the Tobruk Avenue comfortably complies with the applicable building height control.



In the circumstances, this “*written request*” to vary the building height control pursuant to Clause 4.6 of the LEP has been prepared in relation to the portion of the proposed building that extends above the 8.5 metre building height control.

The building height control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

CLAUSE 4.6 OF THE NORTH SYDNEY LEP 2013

Clause 4.6(1) is facultative and is intended to allow flexibility in applying development standards in appropriate circumstances.

Clause 4.6 does not directly or indirectly establish a test that non-compliance with a development standard should have a neutral or beneficial effect relative to a complying development (Initial at 87).

Clause 4.6(2) of the LEP specifies that *“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”*.

Clause 4.6(3) specifies that 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.*

The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard (Initial at 88).

Clause 4.6(4) specifies that 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 Secretary has been obtained.*

Clause 4.6(5) specifies that in deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.*

CONTEXT AND FORMAT

This “*written request*” has been prepared having regard to “*Varying development standards: A Guide*” (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Moskovich v Waverley Council [2016] NSWLEC 1015;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118; and*
- *Hansimikali v Bayside Council [2019] NSWLEC 1353.*

“*Varying development standards: A Guide*” (August 2011) outlines the matters that need to be considered in DA’s involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ, in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the

extent that there are effectively five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary as follows:

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

As Preston CJ, stated in *Wehbe*, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked 'way' to do this is to show that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The Applicant relies upon ground 1 in *Wehbe* to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.

In that regard, Preston CJ, in *Wehbe* states that "... *development standards are not ends in themselves but means of achieving ends*". Preston CJ, goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve.

The above notion relating to 'numerical limits' is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that:

As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.

It is important to emphasise that in properly reading *Wehbe*, an objection submitted does not necessarily need to satisfy all of the tests numbered 1 to 5, and referred to above. This is a common misconception. If the objection satisfies one of the tests, then it may be upheld by a Council, or the Court standing in its shoes. Irrespective, an objection can also satisfy a number of the referable tests.

In *Wehbe*, Preston CJ, states that there are three (3) matters that must be addressed before a consent authority (Council or the Court) can uphold an objection to a development standard as follows:

1. The consent authority needs to be satisfied the objection is well founded;
2. The consent authority needs to be satisfied that granting consent to the DA is consistent with the aims of the Policy; and
3. The consent authority needs to be satisfied as to further matters, including non-compliance in respect of significance for State and regional planning and the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Further, it is noted that the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter).

The decision of Pain J, in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* suggests that demonstrating that a development satisfies the objectives of the development standard is not necessarily sufficient,

of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

Further, Commissioner Tuor, in *Moskovich v Waverley Council [2016] NSWLEC 1015*, considered a DA which involved a relatively substantial variation to the FSR (65%) control. Some of the factors which convinced the Commissioner to uphold the Clause 4.6 variation request were the lack of environmental impact of the proposal, the characteristics of the site such as its steeply sloping topography and size, and its context which included existing adjacent buildings of greater height and bulk than the proposal.

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because it is "consistent with" the objectives of the development standard and the zone, is not a requirement to "achieve" those objectives. It is a requirement that the development be 'compatible' with them or 'capable of existing together in harmony'. It means "something less onerous than 'achievement'".

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a "better environmental planning outcome for the site" relative to a development that complies with the development standard.

Finally, in *Hansimikali v Bayside Council [2019] NSWLEC 1353*, Commissioner O'Neill found that it is not necessary for the environmental planning grounds relied upon by the Applicant to be unique to the site.

ASSESSMENT

Is the requirement a development standard?

The building height control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

What is the underlying object or purpose of the standard?

The objectives of the building height control are expressed as follows:

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

In relation to objective (a), the building form has been carefully designed to negotiate the topographical conditions of the site. The proposed garage is located at street level, and the main pedestrian entry is located slightly below street level. The building form steps down the site towards the rear, and does not extend beyond the rear (western) alignment of the existing dwelling.

The proposed building adopts similar floor levels to the existing building, with the removal of some existing fill at the rear of the existing rock face. Further, the lower ground floor level has been slightly lowered to provide a more direct link between the habitable floor space and the rear yard.

In relation to objective (b), the topographical conditions of the locality are such that the existing buildings on the opposite side of Tobruk Avenue are generally elevated above the level of the road carriageway.

Further, the proposed building remains below the height of the adjoining buildings to the north and south. The main roof level is located below the level of the carriageway of Tobruk Avenue, and the portion of the

building visible from the Tobruk Avenue comfortably complies with the applicable building height control.

In the circumstances, the proposed development will have no significant or unreasonable impact on any existing public or private views.

In relation to objective (c), the DA is accompanied by shadow diagrams which demonstrate the proposed development will not overshadow any adjoining property for a period of more than approximately 1.5 hours during the morning period in mid-winter. That is, the surrounding properties will be unaffected between approximately 10.30am and 3.00pm in mid-winter.

In relation to objective (d), the adjoining dwelling to the north is located towards the Tobruk Avenue frontage, and the site is adjoined to the south by a 9.13 metre wide access handle.

Further, the potential overlooking of the adjoining properties has been minimised by limiting the window openings along the side elevations, and providing non-trafficable elements along the outer edges of some of the balconies.

In relation to objective (e), the proposed development introduces a building form that is compatible with the variable nature of surrounding development, and the site is not located at a zone boundary.

Further, to "*ensure compatibility*" with other development does not mean that any new development needs to be the same as existing development. Rather, it means that new development should be capable of existing together in harmony with existing development.

In relation to objective (f), the site is located within an established residential precinct characterised by a predominance of detached dwelling houses, interspersed with a scattering of semi-detached dwellings, dual occupancies and older style residential flat buildings.

The proposed development achieves an appropriate height, bulk and scale for the site, and the proposed development complies with the applicable planning controls relating to site coverage, landscaped area and un-built upon area.

In relation to objective (g), the existing building on the site provides 3-storeys, and the adjoining buildings to the north provide 3 – 4 storeys. Further, the locality is not characterised by 1 – 2 storeys, primarily as a consequence of the topographical conditions, and the design objective to provide stepped building forms in response to the sloping topography.

Finally, the roof form above the main entrance has been reduced in height to minimise the variation to the building height control. The proposed building remains below the height of the adjoining buildings to the north and south.

Further, the main roof level is located below the level of the carriageway of Tobruk Avenue, and the portion of the building visible from the Tobruk Avenue comfortably complies with the applicable building height control.

In summary, the proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The Department of Planning published “*Varying development standards: A Guide*” (August 2011), to outline the matters that need to be considered in Development Applications involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary.

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The objectives and purpose of the building height control remain relevant, and the proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

Further, strict compliance with the building height control would unnecessarily require the removal of portions of the upper levels of the building, and introduce a building form that is less compatible with the nature of surrounding development.

4. *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

The building height control has not specifically been abandoned or destroyed by the Council's actions. Irrespective, the Council has consistently adopted an orderly but flexible approach to the implementation of development standards (including the building height control) in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations.

The proposed building remains below the height of the adjoining buildings to the north and south. The main roof level is located below the level of the carriageway of Tobruk Avenue, and the portion of the building visible from the Tobruk Avenue comfortably complies with the applicable building height control.

Further, the objectives of Clause 4.6 of the LEP includes to provide "*an appropriate degree of flexibility in applying certain development standards to particular development*".

5. *Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental*

character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The zoning of the land remains relevant and appropriate. Irrespective, strict compliance with the building height control would unnecessarily require the removal of portions of the upper levels of the building, and introduce a building form that is less compatible with the nature of surrounding development.

Further, the proposed development will materially improve the amenity of the existing accommodation provided on the site, without imposing any significant or unreasonable impacts on the amenity of any surrounding land.

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

The proposed numerical variation to the building height control is reasonable and appropriate in the particular circumstances on the basis that:

- the building form has been carefully designed to negotiate the topographical conditions of the site;
- the building form steps down the site towards the rear, and does not extend beyond the rear (western) alignment of the existing dwelling;
- the proposed building remains below the height of the adjoining buildings to the north and south;
- the main roof level is located below the level of the carriageway of Tobruk Avenue, and the portion of the building visible from the Tobruk Avenue comfortably complies with the applicable building height control;
- strict compliance with the building height control would unnecessarily require the removal of portions of the upper levels of the building, and introduce a building form that is less compatible with the nature of surrounding development;
- the proposed development will promote good design and the amenity of the built environment which is a recently incorporated object of the Act: *"(g) to promote good design and amenity of the built environment"*

- the proposed development does not contribute to any significant or unreasonable impacts on the amenity of any surrounding land in terms of the key considerations of overshadowing, loss of privacy, and loss of views;
- the scale of the building when viewed from the public domain will not be antipathetic to the existing buildings in the locality, or visually jarring when viewed from either the public domain or the adjoining properties;
- the proposed development is consistent with, or not antipathetic to, the relevant objectives of the R2 – Low Density Residential zone; and
- the proposed development is generally consistent with, or not antipathetic to, the objectives of the building height control, notwithstanding the numerical variation.

Are there any matters of State or regional significance?

The proposed numerical variation to the building height control does not raise any matters of State or regional significance.

What is the public benefit of maintaining the standard?

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

In the circumstances, the proposed development does not affect the public benefit of maintaining compliance with the building height control in other instances.

In that regard, the objectives of Clause 4.6 of the LEP includes to provide *"an appropriate degree of flexibility in applying certain development standards to particular development"*.

Any other matters?

There are no further matters of relevance to the proposed variation to the building height control.

Zone Objectives and Public Interest

The site is zoned R2 – Low Density Residential pursuant to the North Sydney LEP 2013. The objectives of the zone relating to residential development are expressed as follows:

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

The proposed development is generally consistent with (or not antipathetic to) the objectives of the zone on the basis that the proposed development will provide high quality residential accommodation within an established residential precinct.

The proposed development is generally consistent with (or not antipathetic to) the objectives of the zone on the basis that the proposed development will provide high quality residential accommodation within an established residential precinct.

The proposed development serves the public interest by materially improving the quality of the existing accommodation provided on the site, without imposing any significant or unreasonable impacts on the amenity of surrounding land.

CONCLUSION

The purpose of this submission is to formally request a variation in relation to the building height control in Clause 4.3 of the North Sydney LEP 2013.

In general terms, strict compliance with the building height control is unreasonable and unnecessary in the particular circumstances, and there are sufficient environmental planning grounds to justify the numerical variation.