

**NSLPP MEETING HELD ON 04/05/2022****Attachments:**

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

ADDRESS/WARD: 11 Bennett Street, Cremorne**APPLICATION No:** DA 353/21**PROPOSAL:** Demolition of existing structures and erection of an attached dual occupancy and associated works on each lot in an approved subdivision of the subject land into 2 lots (Consent DA 237/2018)**PLANS REF:**

Plan No.	Rev.	Description	Prepared by	Date
DA00	A	Cover Page – Location Plan	Mathieson Arch	17/9/21
DA03	A	Lower Ground Floor	Mathieson Arch	17/9/21
DA04	A	Ground Floor	Mathieson Arch	17/9/21
DA05	A	Level 1	Mathieson Arch	17/9/21
DA06	A	Level 2	Mathieson Arch	17/9/21
DA07	A	Roof Plan	Mathieson Arch	17/9/21
DA10	A	North (street) Elevation	Mathieson Arch	17/9/21
DA11	A	West Elevation	Mathieson Arch	17/9/21
DA12	A	South Elevation	Mathieson Arch	17/9/21
DA13	A	East Elevation	Mathieson Arch	17/9/21
DA14	A	Section AA	Mathieson Arch	17/9/21
DA15	A	Section BB	Mathieson Arch	17/9/21
DA16	A	1:20 Proposed Vehicle Crossing	Mathieson Arch	17/9/21
DA21	A	Future Lots	Mathieson Arch	17/9/21
DA22	A	Excavation	Mathieson Arch	17/9/21
DA23	A	Private Open Space W1 E1	Mathieson Arch	17/9/21
DA24	A	Private Open Space W2 E2	Mathieson Arch	17/9/21
DA25	A	Storage	Mathieson Arch	17/9/21
DA26	A	Site Setbacks	Mathieson Arch	17/9/21
DA31	A	Height Plane	Mathieson Arch	17/9/21
DA40	A	External Finishes	Mathieson Arch	17/9/21

OWNER: CMBR Marine Pty Ltd**APPLICANT:** CMBR Marine Pty Ltd**AUTHOR:** John McFadden, Consultant Planner**DATE OF REPORT:** 27 April 2022**DATE LODGED:** 29 October 2021**RECOMMENDATION:** Refusal

EXECUTIVE SUMMARY

This development application seeks approval for 'Demolition of existing structures and erection of an attached dual occupancy and associated works on each lot in an approved subdivision of the subject land into 2 lots (Consent DA 237/2018)'.

The application is reported to North Sydney Local Planning Panel (NSLPP) for determination as the proposal seeks a variation to the Height of Buildings Development Standard under clause 4.6 of the North Sydney Local Environmental Plan 2013 (NSLEP) and a significant number of objections have been received.

Notification of the proposal has attracted 30 submissions, 29 from adjoining property owners and the Harrison Precinct raising particular concerns about the height of the development and the precedent it will create, impacts on privacy, streetscape, views, shadowing, tree loss, impact on the adjoining Heritage items and Conservation Area. One letter of support for the proposal was also received. The assessment has considered these submissions as well as the performance of the application against Council's planning requirements and found that a significant number of the concerns raised in the submissions are valid.

A similar proposal (DA 308/20) to the current application has previously been considered by the North Sydney Local Planning Panel (NSLPP) at its meetings of 28 January 2021 and again on 27 May 2021, where the proposal was ultimately refused. The NSLPP suggested a number of changes for any amended proposal, but only some of these recommendations were incorporated in the current proposal.

The proposal exceeds the LEP maximum building height development standard which has enabled a 3rd storey of residential accommodation to be included to each pair of dual occupancies. The applicant has lodged a submission under clause 4.6 of the NSLEP seeking a variation to the height standard. However, the variation is unjustified and exacerbates a number of adverse impacts on the adjoining properties, which includes two heritage items. The submitted clause 4.6 statement has failed to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.


In addition, the proposed development does not comply with a number of key controls in the North Sydney DCP 2013 including site coverage and landscaping/open space requirements.

Council's Conservation Planner considered the current proposal inappropriate within the conservation area and recommended the building be redesigned to be reduced in height and the pair of dual occupancies be split to give the appearance of two separate and distinct buildings.

Council's Landscape Officer also found the proposed landscaping plans and supporting Arboricultural Impact Assessment unsatisfactory.

Accordingly, the application is recommended for **refusal**.

LOCATION MAP

 Property/Applicant ● Submitters - Properties Notified



DESCRIPTION OF PROPOSAL

Construction of part two and part three storey dual occupancy (in semi-detached arrangement) on each of the two approved (but not registered) allotments, an 'East lot' and 'West lot' (Lots 1 and 2).

It should be noted that the site also currently comprises two lots, however, they are unequal in size with Lot 1 DP 1110849 being 942.4m² and Lot B DP 350785 being 120m². A three storey dwelling house straddles both lots, but is yet to be demolished, although development consent for its demolition and the subsequent subdivision of the site into two lots of 530m² has been approved (DA237/18).

The current proposal involves a pair of dual occupancy, attached dwellings on each 'approved allotment' with a car lift providing access to a large basement car park for four (4) cars.

The proposed dual occupancy attached dwellings (being the East Building and the West Building) share a similar architectural design and level of accommodation as detailed below:

East Building (Dwellings E1 & E2):

- **Lower Ground Floor** - Basement parking for four (4) cars with a turntable and a car hoist providing access to Bennett Street, lift, part bin store and 'service zone' (Plant room);
- **Ground Floor** – Dwelling E1 - Open plan living/dining room with adjacent kitchen and wc, pantry, lift, stairs and bathroom, whilst towards the street, 3 bedrooms and an ensuite bathroom for the master bedroom. Bedrooms open to a sunken courtyard garden within the front setback facing the car hoist structure. To the rear, at this level, this dwelling has access to the rear garden;
- **Level 1 (First Floor)** – Dwelling E2 – Dining room, kitchen, with lift and semicircular staircase to level 2, media room, wc and laundry centrally located on the floorplan with two bedrooms and a master bedroom (Bedroom 1) with ensuite bathroom, two (2) bedrooms and a bathroom;
- **Level 2 (Second Floor)** - Master bedroom with walk in robe, ensuite and balcony facing rear of the site, small 'living' room facing the street with balcony, lift and semicircular stairs providing access to the level below.
- All levels of the proposed dwellings are accessible via a lift and for Dwelling E2, an internal staircase;
- Maximum height of the building - RL 75.60 (previous proposal 74.400).

West Building (Dwellings W1 & W2):

- **Lower Ground Floor** - Basement parking for four (4) cars with no access to street (except via a possible ROW over the adjoining lot), below floor pump out system, shared bin store and 'service zone' (plant room) with fire exit stairs to street (ground level);
- **Ground Floor** - Dwelling W1 - Open plan living/dining room with adjacent kitchen and wc, pantry, lift, stairs and bathroom, whilst towards the street, 3 bedrooms and an ensuite bathroom for the master bedroom. Bedrooms open to a sunken courtyard garden within the front setback facing retaining walls. To the rear, at this level, this dwelling has access to the rear garden;

- **Level 1 (First Floor)** - Dwelling W2 – Dining room, kitchen, with lift and semicircular staircase to level 2, media room, wc and laundry centrally located on the floorplan with two bedrooms and a master bedroom (Bedroom 1) with ensuite bathroom, two (2) bedrooms and a bathroom;
- **Level 2 (Second Floor)** - A master bedroom (Bedroom 1) with ensuite bathroom, two (2) bedrooms and a bathroom
- All levels of the proposed dwellings are accessible via an internal lift with dwelling W2 also having an internal staircase;
- Maximum height of the building – RL 75.60 (previous proposal RL 73.700)

As with the previous refused application (**DA 308/20**), demolition of the existing detached dwelling does not form part of the subject application as the applicant is relying on Development Consent (**D237/18**) for the demolition of the existing dwelling and consolidation of existing lots and creation of new subdivided allotments.

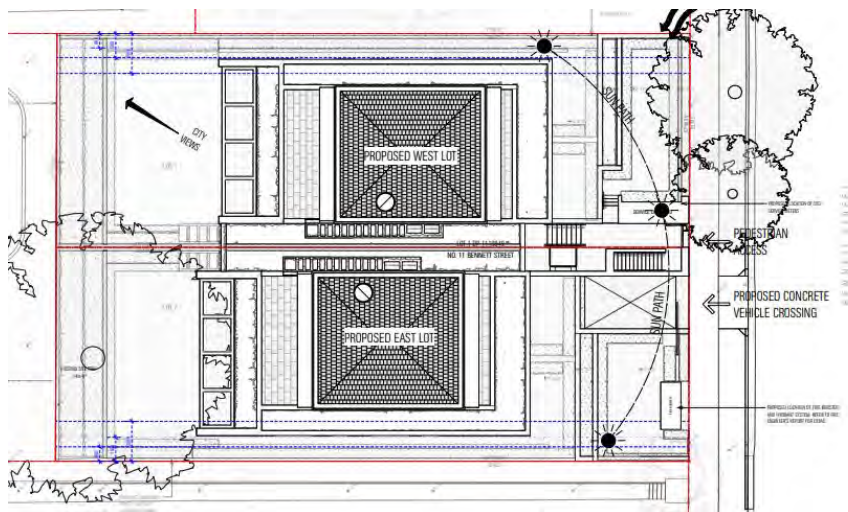


Figure 1: Excerpt of the Site Analysis Plan

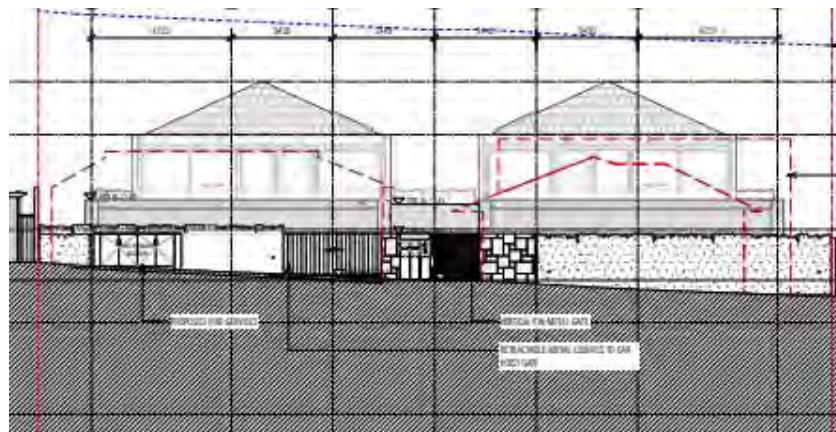


Figure 2: Proposed Northern (street) Elevation

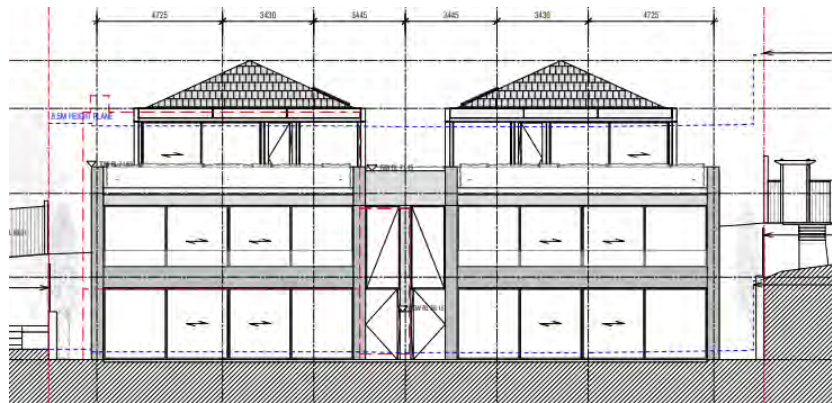


Figure 3: Proposed Southern (rear) Elevation

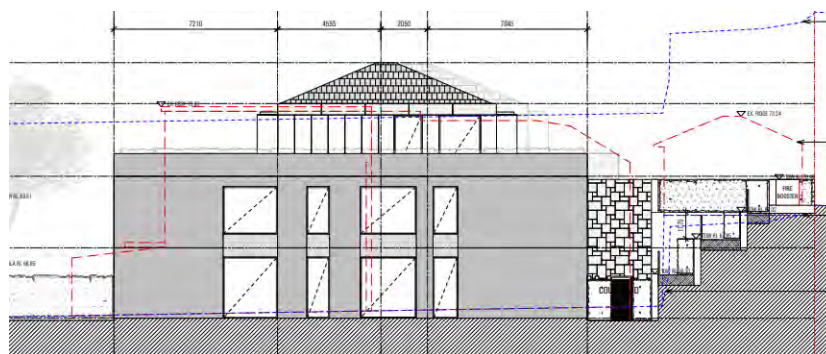


Figure 4: Proposed Eastern Elevation



Figure 5: Proposed Western Elevation

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning - R2 - Low Density Residential
- Item of Heritage – No
- In Vicinity of Item of Heritage - Yes (No.19 Bennett Street and No.4 Bertha Road)
- Conservation Area - Yes (Neutral Item within Cremorne Conservation Area)
- Foreshore Building Line – No

- Environmental Planning & Assessment Act 1979
- Environmental Planning & Assessment Regulation 2021)
- SEPP (Biodiversity and Conservation) 2021 – Chapters 2 & 10
- SEPP (Resilience and Hazards) 2021 – Chapter 4
- SEPP 65 – Design Quality of Residential Apartment Development
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Transport and Infrastructure) 2021

Note: A number of new SEPP's came into force on 1 March 2022. These largely comprise amalgamation of previous SEPP's/renamed SEPP's. For the purposes of this report, the underlying provisions remain largely the same.

POLICY CONTROLS

DCP 2013
Apartment Design Guidelines (ADG)

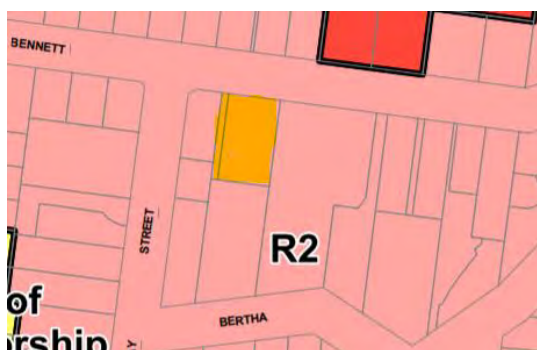


Figure 6: NSLEP Zoning Map



Figure 7: NSLEP Heritage Map

DESCRIPTION OF LOCALITY

The Site

The site of the proposed development, known as 11 Bennett Street, Cremorne, comprises two lots, Lot B in DP 350785 a narrow lot with a width of 3.05m, depth of 39.625m and area of 120m² and the larger Lot 1 in DP 1110849, with a width of 23.775m, depth of 39.625m and area of 942.4m². The two lots have a combined area 1062.6m² (see location plan).

The site is rectangular in shape with a north-south orientation.

Currently a three storey rendered brick and tile, detached dwelling is located on the western side of the site and straddles the two allotments. A triple car garage of rendered masonry and tile construction, matching the dwelling house, is located on the Bennett Street frontage and a tennis court, excavated into the ground is located on the eastern side of the site and behind the existing garage.

An easement for the drainage runs alongside the southern part of the eastern boundary of the site and then along the rear boundary.

The earlier application for approval to the subdivision (**DA237/18**) was accompanied by a letter from the owner of the adjoining property to the south at No. 4 Bertha Road, confirming an agreement to grant an easement to drain water from the new lots through existing pipes within the adjoining property.

The Locality

The locality contains a mix of residential types, from interwar bungalows to 3 storey walk-up residential flat buildings and substantial Federation era dwelling houses.



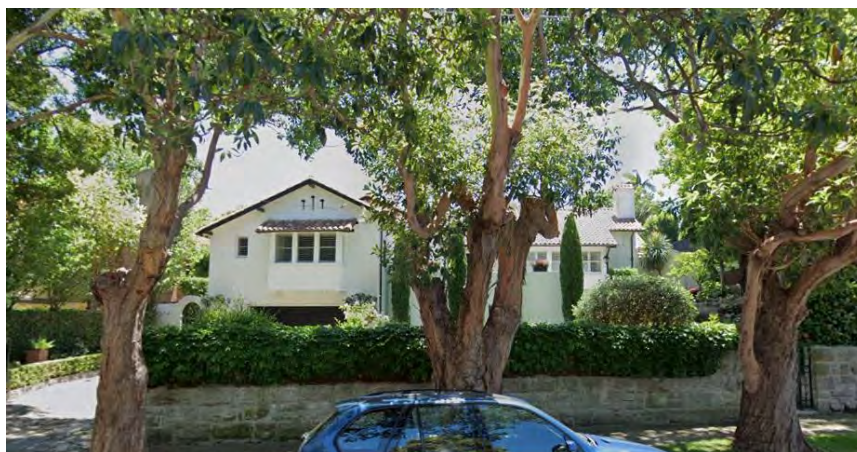
**Figure 8: Dwelling house to the west of the site, No.21 Burroway Street
(source Google maps)**

A bungalow with first floor addition, 21 Burroway Street, is located to the west of the subject site whilst a heritage item, “Ingleneuk” at 19A Bennett Street, and a Federation Queen Anne style dwelling, is found to the south east. To the rear and south, is a second heritage item at 4 Bertha Road, a large Inter-War Spanish Mission style dwelling. (see **Figures 8-10**). The site is located in the Cremorne ‘CA03 heritage conservation area, although the site itself, is not a listed “heritage item”.



**Figure 9: Rear buildings to heritage item to the east of the site, No.19 Bennett Street
(source Google maps)**

Most of the dwellings have established, existing gardens with some trees. Some properties, particularly on the high side of Bennett Street enjoy views of the harbour and the neighbouring suburbs of Neutral Bay.



**Figure 10: Heritage Item to the south of the site, No.4 Bertha Street
(source Google maps)**

RELEVANT HISTORY

Previous applications

Date	Action
13 Nov 2018	Development consent (D237/18) was granted under delegated authority for demolition of existing detached dwelling, outbuildings and tennis court, consolidation of two lots and re-subdivision to create two lots of equal size. The approval does not create additional lots.
14 Dec 2018	A Section 4.55 (1) application (D237/18/2) was granted under delegated authority for a correction to property title description on notice of determination.
31 August 2020	Development application (D72/20) for the construction of 2 x dual occupancy dwellings was withdrawn by the applicant.
30 November 2020	A Development Application (D308/20) for the construction of a part two storey and part 3 storey dual occupancy attached development in a semi-detached arrangement on each of two proposed (and 'approved') allotments and comprising existing allotments, Lot 1 in DP 1110849 and Lot B in DP 350785, was lodged with Council.
2 June 2021	Development Application (D308/20) was refused by North Sydney Local Planning Panel - See discussion below.

The most recent previous Development Application **D308/20**, was so similar to the current application it deserves close examination.

The application proposed a similar pair of attached, three storey dual occupancies although with a maximum ridge of RL 74.398 for the eastern building and RL73.70 for the western building. The heights proposed were 8.97m (East Building) and 10.21m (West Building).

The above RL's and heights are lower than currently proposed RL75.60 for both the east and west buildings.

The design of the previous development had a number of differences such as different overall heights and different streetscape appearance as the eastern building had a gable roof facing the street whilst the western dwelling had a hipped roof street presentation. The duplexes were also vertically not horizontally orientated.

The Council report dated 27 January 2021 recommended support for the proposal and clause 4.6 submission to a height variation on the basis that approval should not be granted until the existing building on site was demolished (due to a prohibition via clause 6.6(2)(a) of NSLEP).

North Sydney Local Planning Panel Meeting – Held on 3rd February 2021

The NSLPP considered the Council report of the 27 January 2021 and determined:-

'Panel Determination

The Panel members have undertaken independent site inspections prior to the meeting and considers the application would be worthy of approval on its merits. However, the Panel is without power to approve the application at this time because the structures on the land have not been demolished. It is noted that demolition was approved in a separate application (DA 237/18) but has not been acted upon. Demolition is necessary prior to the granting of consent to this application, however, the 60-day time limit stipulated for (the completion of demolition works) is deleted.

Following demolition the Panel would be satisfied Pursuant to the provisions of Clause 4.6 of the LEP, that the written request in relation to the contravention of the height of buildings development standard, in Clause 4.3 of the LEP, adequately addresses the required matters in clause 4.6 of the LEP. In the opinion of the Panel the written request demonstrates that compliance with the development standard is unnecessary in the circumstances of the case. Further, the Panel considers that the proposed development would be in the public interest because it is consistent with the objectives of the standard and zone objectives.

The Council Officer's Report and Recommendation is noted by the Panel and the Panel is in agreement with the merit assessment and the Clause 4.6 written request to vary the height.

In the circumstances, the Panel delegates to the Manager Development Services the power to determine the application following the demolition of all the existing structures onsite. In the event there is a change in circumstance then the matter is to be referred back to the Panel for an electronic determination.

Panel Reason:

The Panel is satisfied that the proposed built form would be appropriate for the site and adverse impacts have been mitigated. However, the Panel has no power to grant consent at this point in time and as such the recommendation is as above.'

8 February 2021 – Council issued a letter to the applicant advising of the resolution of the panel. The letter also emphasised that the demolition of the existing dwelling is to be carried out in a timely manner to provide certainty and clarity for the application.

14 April 2021 – Council received advice from the Applicant's planner that the subject site had been sold.

A letter was sent to the Applicant noting the sale of the subject site and requested the withdrawal of the application due to the lack of certainty as to whether the demolition of the existing dwelling would occur. **The Applicant was also advised that the application would be referred back to the NSLPP for consideration/determination.**

On 24 May 2021 – A Construction Certificate for the previous DA (D237/18) was issued by the Principal Certifier, however, demolition did not proceed at this time.

Council report of 25 May 2021 ('Addendum' to report of 27 Jan 2021)

Council officers prepared a report for the NSLPP reconsideration/determination of the proposal.

The report again raised the previous concerns of the previous NSLPP to the permissibility of the development in view of the proposed development being prohibited in accordance with Clause 6.6(2)(a) of NSLEP, because this clause only permits the construction of a dual occupancy within a conservation area if there is no building erected on site.

The report recommended the following:-

*'Given that the existing structures on site have not been demolished, it is considered that the proposed dual occupancy is prohibited in accordance with Clause 6.6(2)(a) of the North Sydney LEP 2013. **It is therefore recommended that the application be REFUSED.***

However, a second option was given, if the Panel were prepared to approve, or, grant a deferred commencement approval of the application:-

*'If the Panel were of the mind of an approval of the subject application (D308/20), or a deferral of determination of the application, it is recommended that a new condition **C23** be added requiring the submission of documentary evidence regarding the registration of the plan of subdivision for the creation of the two allotments within the subject site at the NSW Land and Property Information Office to ensure that the development for the proposed dual occupancies are to be carried out in a form (i.e. each allotment contains a dual occupancy development) that is permissible on land zoned R2 (Low Density Residential).'*

Council report of 1 June 2021 - 2nd Addendum to report 27 Jan 2021.

A further supplementary report was prepared following concern raised by residents to the notification process and some additional concerns they believed were not adequately addressed in the assessment process.

North Sydney Local Planning Panel Meeting – Held on 2 June 2021.

(NB: It should be noted that the NSLPP of 2 June 2021 comprised different panel members to the panel that originally considered the development proposal on 27 Jan 2021)

The NSLPP considered the original Council report of 27 January 2021 and supplementary reports (Addendum Reports 25 May 2021 and 1 June 2021) and determined:-

'Panel Determination

The Panel members have undertaken independent site inspections prior to the meeting.

*The Council Officer's Report and Recommendation is endorsed by the Panel with additional reasons for **refusal** being:*

1. The proposed dual occupancy is a form of development prohibited within a conservation area where existing structures on site have not been demolished pursuant to Clause 6.6(2)(a) in NSLEP

2. Unacceptable Form Bulk and Scale:

The proposed dual occupancy is unacceptable in terms of its form, bulk and scale and its relationship with the adjoining heritage items within the conservation area.

Particulars:

- a) *The proposed development does not satisfy the aims of North Sydney LEP 2013 including Clause (2)(a) because the proposal provides an inappropriate response to the context of the locality; Clause (2)(b)(i) because the form, bulk and scale of the proposed development is incompatible with the desired character of the area; and Clause (2)(f) due to the adverse effects on heritage significance within the area.*
- b) *The proposed development does not satisfy the planning objective (Dot Point 3) for the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of NSLEP because the form, bulk and scale of the proposal will have adverse impacts on the significance of the nearby heritage listed items and the Cremorne Conservation Area.*
- c) *The built form of the proposed development does not respond to the existing character and context of the adjoining heritage items and site context contrary to the planning objectives concerned with context in section 1.4.1 in Part B of NSDCP 2013.*

- d) *The proposed development does not reflect, re-inforce or complement the existing character of the locality and is contrary to the provisions in section 1.4.8 (Built Form Character) in Part B of NSDCP 2013.*
- e) *The proposed development is excessive in terms of bulk and scale because its design is contrary to the provisions in section 1.4.7 (Form, Bulk and Scale) in Part B of NSDCP 2013.*

3. Public Interest

Particulars:

- a) *The approval of the proposed development is not in the public interest because the development is prohibited in accordance with Clause 6.6(2)(a) in NSLEP; and the adverse impacts on the significance of the adjoining heritage items and the conservation area given the built form and the inappropriate bulk and scale of the proposal.*

Panel Reason:

The Panel considers the appropriate course of action to provide certainty is for the existing dwelling and ancillary structures to be demolished and the property subdivided in accordance with the current consent of DA 237/18. Following this, the applicant can then seek approval for development on each allotment.

The Panel notes that the site is now in different ownership and the new owner's representatives stated that demolition could commence in early June and be completed by mid-July, however, it is also noted that all the relevant dilapidation reports must be completed prior to the commencement of works on site. The Panel also urges the applicant to provide copies of the dilapidation reports to the owners of the adjoining heritage dwellings.

The Panel notes the original assessment report for the proposed development did not make reference to the heritage item at 4 Bertha Road. Given that a determination of the development application has not been made the Panel has decided the future built form must be more sympathetic to the existing heritage conservation items and context. With demolition yet to commence architectural design changes can be carried out during this stage.

The Panel urges the applicant to submit amended architectural plans via a section 8.2 review having regard to the heritage items and conservation area. These plans should include addressing the following issues:


- *The Panel has architectural concerns about the bulk and scale of the proposed development with the juxtaposition of the two heritage items on the southern and eastern boundaries.*
- *The upper level should read primarily as a strong pitched roof form that has the capacity to contain internal spaces. This in essence will require a reduction in floor area and replanning of the dwellings. Unification of the roof form for each building will provide a better street presentation and avoid a mirror image.*

- *Deletion of the rear external stairs.*
- *More skilful architectural design that reduces, and or mitigates, the intensity of development for the sites.'*

The applicant was advised by letter dated 7 June 2021 of the NSLPP decision to refuse the application.

Current Application

Date	Action
29 October 2021	The subject Development Application (DA353/21) for Demolition of existing structures and erection of an attached dual occupancy and associated works on each lot in an approved subdivision of the subject land into 2 lots (Consent DA 237/2018) was lodged with Council.
12 November 2021 - 26 November 2021	The adjoining properties and the Bennett Precinct were notified about the application. The notification of the application has attracted a total of thirty (30) submissions.
17 December 2021	The applicant submitted an updated arborist report following a request from Council's Landscape Officer.
17 March 2022	A letter was sent to the applicant outlining major issues arising from the proposed development including heritage, planning and landscaping concerns.
30 March 2022	A teleconference was held with the applicant and the project team to discuss the issues raised in Council's letter. The applicant indicated that a concept plan to be submitted within two weeks.
21 April 2022	The applicant submitted a montage of a concept design showing a modified podium and roof treatments. However, it appears that the concept design still retains many design features of the original proposal. Therefore, there are insufficient grounds for the concept design to be pursued further due to the lack of any significant changes to the original design of the project that was found to be incompatible with the conservation area.

	 <p data-bbox="624 741 1265 775">Figure 11: Montage of the Modified Concept Design</p>
<p data-bbox="204 819 376 853">26 April 2022</p>	<p data-bbox="496 819 1396 891">The applicant submitted additional information on various details for the concept design including the following key features:</p> <ul data-bbox="544 931 1396 1189" style="list-style-type: none"><li data-bbox="544 931 1396 1003">(a) Eastern duplex – reduce ridge height by 800mm, reduce L2 parapet height by 400mm and no change to floor levels;<li data-bbox="544 1003 1396 1111">(b) Western duplex – reduce ridge height by 1.1m, reduce L2 parapet height by 700mm and lowering of floor levels by 300mm;<li data-bbox="544 1111 1396 1149">(c) Basement – lowering of floor level by 300mm; and<li data-bbox="544 1149 1396 1189">(d) Setbacks – no change <p data-bbox="496 1229 1396 1487">Whilst the further details are noted, there are still insufficient information to provide certainty that the concept design would be able to address the key heritage and planning concerns raised in this assessment report. Therefore, the concept design does not form part of the assessment in this report. The determination of this application will give the applicant clear guidance as to what may find favourable consideration.</p>

INTERNAL REFERRALS

Building

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. This would need to be undertaken prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a Section 4.55 application would be necessary.

Planning Comment:

In circumstances presented where this application was approved by the NSLPP, matters relating to the NCC could be dealt with by conditions with details to be provided in the Construction Certificate.

HERITAGE

Council's Conservation Planner/Heritage Officer report - 24 February 2022

Council's Conservation Planner /Heritage Officer has provided a report on the proposal with the following assessment and recommendations:-

'2. Heritage Impact Assessment and Recommendations:

An assessment of the proposed demolition of the existing dwelling and subdivision of the site to make way for the construction of a dual occupancy has been undertaken in relation to NSLEP Clause 5.10 Heritage conservation and NSDCP 2013 Part B: Section 13 Heritage and Conservation.

The subject site is a mid-block site that sits below the street. The site is currently occupied by single storey detached dwelling and a tennis court. Demolition of these structures and subdivision of the site was approved under DA 237/18 on 16/11/2018. This consent is valid for 5 years.

DA 308/21 for the construction of a part two and part three storey dual occupancy in a semi-detached arrangement on each of the two lots, although supported, was refused on technical grounds relating to the demolition works not having been completed prior to change in ownership.

The subject application is generally similar to the earlier proposal in DA308/21. The proposed roof form and roof pitched remain sympathetic to the conservation area and the modifications relating to the side and rear elevations are acceptable. The changes to the Bennett Street elevation and the increase in height from the introduction of a shared podium for garaging are not supported as they add to the overall bulk and scale of the proposal within the Bennett Street streetscape.

The increase in height in a mid-block location and the impact from the first floor balconies are a detracting element affecting the fit of the new development within its site context. The retention of deep soil landscaping is important within the Cremorne conservation area and to support its garden setting character.

The two dual occupancy dwellings should remain independent of each other and in relation to which the shared garage podium is not supported. The ground floor and first floor resolution facing Bennett Street in the earlier scheme are a better resolution in the Bennett Street streetscape as compared with the current proposal.

The new balcony arrangement at first floor level competes with the property boundary fence and creates a detracting element. The 1.0m high garden fence is to remain the dominant element within the streetscape to promote and be consistent with the garden character of the conservation area.

3. Conclusion and Recommendations (emphasis added)

*With reference to the above, it is recommended that the proposed elevation to Bennett Street **be revised** to be generally in alignment with the previous scheme in terms of its overall height so that the bulk, scale, form and setbacks **generally present a single storey character to the street and continue to appear as a separate pair** without a podium linking structure and with a garden fence that is the dominant element with no more than a 1.0m height.'*

Planning comment:

The Heritage Officer's comments are noted, with the exception of the view that a 22.5 degree roof pitch is acceptable, as this is contrary to the Character Statement's preferred 30-45 degree roof pitch. Notwithstanding this, the main recommendations are supported that the proposal be revised to present '**a single storey character to the street**' and, appear as a '**separate pair without a podium...**', this will require significant redesign, essentially requiring a fresh application to be lodged.

ENGINEERING/TRAFFIC

Council's Engineer has commented on the proposal as follows:

Internal drainage details of stormwater works, demonstrating compliance are to be submitted with all other drainage details to PCA. We, as development engineers are interested in overall stormwater management such as amount of stormwater runoff they will be discharging into Council's system, overland flow, the way of connection to our system and its legality (stormwater easements etc.).

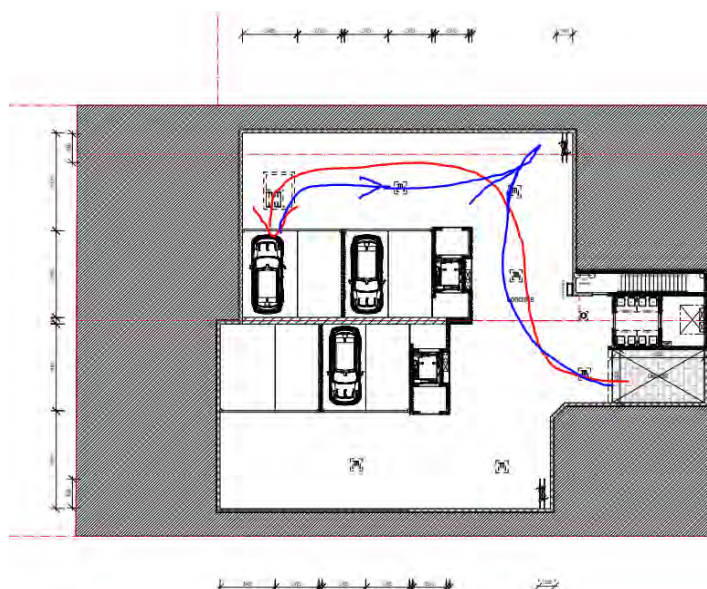
Therefore, we are not going into mechanical details of Car Hoist which may or may not include specification on sealing in between car lift platform and surrounding void walls. Nevertheless, it is noticed in stormwater plan C3.01 rev. B by Xavier Knight engineering. that it appears that they have proposed a carport roofing.

As it comes to the parking bays, as proposed on plan DA.03 A are in accordance with AS/NZS 2890.1:2004 where is required for car space to be 2.4x5.4m while aisle width is 5.8m. On plan DA.03 A, proposed car space is 2.7x5.4m while proposed aisle width is 6.1m. Car spots on the edges are proposed to be 3.4x5.4m.

Comment:

The proposal does not appear to include a carport.

If driving into the parking level in a forward direction, it would be necessary to reverse up to the wall and go back and forth in order to avoid contact with other vehicles. Alternatively, by reversing into the corner on hard lock, manoeuvrability could be achieved, but certainly not with ease.



ENGINEERING/STORMWATER DRAINAGE/GEOTECHNICAL

Council's Senior Development Engineer Report – 4 November 2021

Council's Senior Development Engineer has provided conditions of consent should the application be approved. No adverse comments were included.

LANDSCAPING

Council's Landscape Development Officer reported on 4 January 2022.

'This proposal cannot be supported in its current form. While this proposal would appear to be an improvement on the earlier DA72/20, the applicant has failed to adequately address a number of issues advised as being considered unacceptable and requiring amendment should any future DA be lodged.

- *T7 Magnolia grandiflora (assessed in the arborist report prepared by Complete Arborcare dated 23/10/20 to be 11m, but shown on the site survey prepared by Frank Mason & Co dated 2/10/19 to be 14m) has again been assessed in the above-mentioned arborist report as having a 40% TPZ encroachment under this proposal. Such a major incursion is unacceptable, as is the arborists suggestion that the plans may need to be amended following supervised excavation should roots greater than 40mm be discovered. Any amendments must be made prior to assessment and should include no level changes within the TPZ of this tree. The applicant was clearly advised of this requirement on numerous occasions during the submission of the earlier DA72/20.*
- *T5 & T6 Harpephyllum caffrum (assessed in the arborist report prepared by Complete Arborcare dated 23/10/20 to be 3m & 4.5m, but shown on the site survey prepared by Frank Mason & Co dated 2/10/19 to be 6m, with site photos taken by council's Landscape Development Officer in May 2020 supporting the surveyor's assessment) are required to be removed to allow for the proposed easement works.*

- *This proposal requires the removal of T9 – a mature Triadica sebifera street tree – part of an avenue planting within this street – such a tree removal would not normally be supported by Council.*
- *It is noted that the abovementioned arborist report quotes council's now superseded Tree and vegetation management policy – current controls can be found in Section 16 of NSDCP and would apply to this site.*

The Landscape Development Officer also provided recommendations should an amended plan be submitted, satisfactorily addressing the issues regarding T7, *Magnolia grandiflora*.

Supplementary Comments - 7 February 2022

The Landscape Development Officer provided further comments that the updated arborist report appeared to be inconsistent and the documentation was created from an amalgam of previous applications:- DA72/20, DA308/20 and the current DA353/21. *'It was considered impossible to provide a fair and accurate assessment of the proposal.'*

'It is considered that a carefully collated, edited and thoroughly checked set of complete and updated documents should be lodged in order to enable Council to make a considered appraisal of this proposal.'

- *The TPZ & SRZ Plan prepared by Complete Arborcare dated on 23/10/20, but lodged in support of DA353-21 on 22/12/21 appears to show the TPZ and SRZ overlaid on a previous DA – it cannot be used to assess the impact of the current DA*
- *It is unclear which DA the Arborist is assessing in the Arborist Report prepared by Complete Arborcare dated 16/12/21. In this report the arborist states that T9 Triadica sebiferum street tree requires removal due to the proposed driveway crossover, but current architectural plans would appear to show that the new crossover is likely to be outside the TPZ of this tree and its removal would not be necessary*
- *T1 Harpephyllum caffrum (11m) a large mature tree within the front setback of the subject site, highly visible from the street, was assessed in two earlier arborist reports by the same author as having <5% dead wood and no observed structural defects with a useful life expectancy and retention value of medium. The current assessment now asserts <5% dead wood, but notes a cut in the main trunk, and useful life expectancy and retention value of low. The attached photo (0500) taken by council's LDO on 6/5/20 clearly shows an old wound on the main trunk, yet the tree was considered in good health and vigour despite this, and other evidence of past (poor) pruning. If the trunk wound pictured is that referred to by the arborist, it raises the question why it wasn't previously assessed, if a new wound is present, it would suggest that an attempt at damaging the tree has occurred in the interim, and this should be referred to compliance for investigation.*
- *The root pruning (trenches 1 & 2) show that roots from T2 (a stand of neighbouring Cupressocyparis leylandii) are clearly within the subject site, and would be severed by proposed works. Its is considered likely that given the hardiness of this species, a proposal not exceeding existing building line in may be supportable subject to strict tree protection conditions, but an updated and corrected lodgement package as outlined above would be required before final assessment could be made.*

- *The root pruning (trench 3) clearly shows that the proposal would not allow the retention of this tree. A revised proposal allowing for its retention should be submitted.*
- *Pic 0504 taken by council's LDO on 6/5/20, would suggest that T6 Harpephyllum caffrum within the rear setback of the subject site would appear to call into question the 4.5m height as assessed in all 3 x arborist reports. If indeed it is found to be only 4.5m in height, compliance investigation into further non-permitted pruning may be warranted. There is clear evidence that T4-T6 have all been pruned in contravention of council's TPO, and not in accordance with AS4373 (see pic 0507) of T4.*
- *It is noted that the latest arborist report still references earlier superseded tree protection controls:*

"2.2 Northern Sydney Council (Council, 2010) Trees on Private Land, considers a tree to be: • Any tree or vegetation on public land, regardless of size. • Any vegetation more than 5m tall on the site of a heritage item. • Any other tree with a height of 10m, or a crown width of 10m, or a trunk circumference of 1.5m measured at 1m above ground level (existing)."

Current NSC tree controls as per NSCDCP section 16 are actually:

- ***'Any tree or vegetation with a height of 5m or more, or a crown width of 5m or more, or a trunk circumference of 500mm or more measured at ground level (existing).'*** (further details available as per NSC website).
- *T7 Magnolia grandiflora (11m) is a large established tree located in the SE corner of the subject site. It is considered to be of considerable amenity value, particularly given its proximity to the adjoining heritage item, and its removal or unsustainable negative impact cannot be supported. It is assessed in the arborist report as **"7 A TPZ/SRZ encroachment of approximately 40% will take place from the proposed reduced soil level. No canopy encroachment has been calculated to take place. Possible loss of both woody & non woody roots, impacting upon the tree's ability to uptake water."** – an encroachment of 10% I considered to be a major impact – an encroachment of 40% cannot be supported.*
- *Further inconsistencies are found in the Landscape Plan prepared by Edwina Stuart dated 16/9/21 – T9 Triadica sebiferum street tree, variously shown in lodged documents both for removal and retention, is shown in the LS plan as T10 (which is actually the street tree to the west), and T10 is shown as T11 which is actually one of a stand of palms on the NW corner of 19 Bennett St.*
- *The proposed planting of narrow perimeter beds of clipped hedges with minimal setback, minimal deep soil planting and only 1 x canopy tree is not considered to be acceptable.'*

Comment:

In view of the number of issues raised by the Landscape Development Officer, complexity of redesigning the development to retain the tree T7 and the number of other issues with the current proposal, any redesign would be so significant as to require a fresh development application.

EXTERNAL REFERRALS

N/A

SUBMISSIONS

Council notified adjoining properties and the Bennett Precinct of the proposed development seeking comment between 12 November 2021 and 26 November 2021. Council received 30 submissions, 29 were objections including one from the Harrison Precinct and one submission of support.

The matters raised in the submissions are listed below:

Basis of submissions of objection

- Proposal exceeds the 8.5m height limit Development Control in the LEP and seeks a waiver that would create a precedent for future developments;
- Proposal impacts privacy of adjoining properties, caused by substantial balcony spaces;
- Proposal fails to give due consideration to the heritage listed homes that neighbour this property.
- Proposal would create an unacceptable precedent within the conservation area.
- Design will not fit in with current aesthetics of the neighbourhood;
- Proposal is not in keeping with the area, being a vast overdevelopment of the site and is clearly driven by financial return;
- Visual impact of the development, too large in scale
- Car lift is unlikely to be used, additional 8 cars on the street.
- Impact from large glass areas of DA 353/2021 overlooking neighbours (similar to that of the new 8 Bertha Road);
- Further vehicles being added would only exacerbate parking issues for existing residents;
- North Sydney Council has already met their new dwelling targets provided by the State Government, so there is no outside pressure for further development or for requirements to be relaxed;
- Non-compliance with DCP Part B Section 13.4. The plans fail to give due consideration to the houses and grounds of the adjoining heritage listed properties;
- Non-compliance with LEP Clause 4.3 (2) – Height of Buildings. Both buildings exceed the 8.5 metre height restriction for R2 Low Density Residential;
- Non-compliance with LEP Clause 4.3 (1)(a)– Height of Buildings. The plans do not step development on sloping land to follow the natural gradient;
- Non-compliance with LEP Clause 4.3 (1)(d)– Height of Buildings. The plans do not maintain privacy for residents of existing dwellings;
- Non-compliance with DCP Part B Section 1.3.10. The plans do not provide a reasonable level of visual privacy – overlooking from elevated rear balconies;
- Non-compliance with DCP Part B Section 1.3.8 - Acoustic Privacy. The plans do not provide a reasonable level of acoustic privacy;
- Non-compliance with DCP Part B Section 1.3.7 - Solar Access. The development will impact the solar access of neighbouring properties;
- Non-compliance with LEP Clause 4.3 (1)(c) – Height of Buildings. The development will impact the solar access of neighbouring properties;
- Non-compliance with LEP Clause 4.3 (1)(f) – Height of Buildings. The development is an inappropriate scale and density;
- Non-compliance with LEP Clause 4.3 (1)(g) – Height of Buildings. The development is not 1 or 2 storeys;

- Non-compliance with DCP Part B Section 1.4.7 - Form, massing & scale. The proposed buildings are not consistent with surroundings;
- Non-compliance with DCP Part B Section 1.4.8 - Built form character. The proposed buildings are not complementary to the character of the locality;
- Inconsistent with DCP Part C Section 6 the South Cremorne Planning Area Character Statement. The proposed buildings are not consistent with the Character Statement;
- The development is likely to impact on established trees in the vicinity;
- The seeming lack of consideration of the feedback from the NSLPP;
- Non-compliance with DCP Part B Section 1.3.6 - Views. The plans will impact the views of neighbouring properties particularly those on the north side of Bennett Street;
- The design and quality of the plans are inconsistent with our heritage and conservation area;
- The development will not contribute to the supply of low-cost housing within the locality;
- It is incorrect to suggest that excavation at the southern end results in a lower 'existing ground level' for the site than from ... surrounding properties.";
- The size of the land allows for more than adequate development without the need to exceed the height controls. The minimum subdivision size is 450m². The blocks are each 531.3m²;
- There are no environmental planning grounds to justify the contravening of the development standard, there is significant public benefit to maintaining the development standard;
- The proposal creates visually very imposing and noisy buildings
- Concern about the internal and external lighting;
- Overlooking properties to southwest;
- Overshadowing property to south west;
- Impact on trees, particularly the row of pines that provide privacy;
- Impact on Tree (T7) Magnolia Grandiflora:
- Impact on Heritage Tennis courts – shadowing and visual impact;
- Allowing a modern development to take place will degrade the value of surrounding properties;
- Non-compliance with DCP Part B Section 1.3.6 - Views. The plans will impact the views of neighbouring properties particularly those on the north side of Bennett Street;
- The 3 habitable levels have 6 sets (approximately 60 lineal metres) of full-length glass doors to the south of the buildings. In addition, these adjoin 6 terraces / balconies totalling approximately 124m². The 4 balconies directly overlook the back living areas /gardens of 4 neighbours. This creates an unacceptable imposition on the privacy and the quite enjoyment of these properties;
- Same restrictions should apply to developers as existing buildings in the conservation area;
- Developer maximizing financial gain;
- Third attempt at a 3 storey development which does not comply with requirements, perhaps it is time to acknowledge that the ambitions are not achievable. It is suggested a 2-storey development would be appropriate.
- Devaluation of Heritage items.
- Approval would indicate heritage items not important, potential lifting of Heritage Status and redevelopment of 19 Bennett Street.

Basis of submission supporting the proposal

- The application meets all LEP requirements other than the height. The submitted design is reasonable given the contours of the site;
- The streetscape to Bennett Street shows a two storey format matching other dwellings in the street. There is no certainty regarding the existing ground level;
- The roof form is pitched as requested by North Sydney Council. There is no real requirement to pitch the roof as it is not a dominant element in the building elevations. If the roof is not a pitched form, the height standard, as defined by Council, has a less than 10% non-compliance to the LEP standard;

- The claim that this development will affect the adjacent heritage properties. It is noted that there are many Council approved developments next to heritage items with no detrimental effects. The setback to 4 Bertha Road to the south of the project is over 20 meters from the southern boundary. For 19 Bennett Street to the east, the project is adjacent to a tennis court. The house at 19 Bennett Street is setback 7 meters to the southerly part of this boundary.
- There has been an organised campaign of objection to this development. This campaign includes a lot of mis-information. It also called for groups of people who are in no way affected by the development to object. This organised attack is disruptive for the community. If there are non-compliance issues, it is the role of the Council to consider these matters.
- The development would enhance the area and would provide much needed accessible accommodation for the area. The use of available technology for traffic management and people access should be commended.

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

CONSIDERATION

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

On 1 March 2022, forty-five (45) State Environmental Planning Policies (SEPPs) were consolidated into one of the eleven (11) new SEPPs. These changes affect a number of SEPPs to be considered in this report.

It is however noted that the consolidation primarily involves the transfer of the repealed SEPPs to form new chapters within the new SEPPs without significant amendments (i.e. will only involve a change in clause numbers and consequential amendments such as removal of introductory/duplicated provisions). Consequently, there would be no material changes to the requirements between the repealed SEPPs and the new consolidated SEPPs.

- SEPP (Vegetation in Non-Rural Areas) 2017 - Chapter 2 in SEPP (Biodiversity and Conservation) 2021
- SREP (Sydney Harbour Catchment) 2005 - Chapter 10 in SEPP (Biodiversity and Conservation) 2021
- SEPP 55 (Remediation of Land) – Chapter 4 in SEPP (Resilience and Hazards) 2021

SEPP (Biodiversity and Conservation) 2021 - Chapter 2

SEPP (Vegetation in Non-Rural Area) 2017 has been consolidated into the new **SEPP (Biodiversity and Conservation) 2021** and the provisions of the former SEPP are contained under Chapter 2 of the new SEPP.

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

The SEPP will ensure the biodiversity offset scheme (established under the Land Management and Biodiversity reforms) will apply to all clearing of native vegetation that exceeds the offset thresholds in urban areas and environmental conservation zones that does not require development consent.

The proposal meets the objectives of the SEPP because there would be no clearance of significant native vegetation or any material impacts on bushland in the vicinity of the subject site.

SEPP (Biodiversity and Conservation) 2021 – Chapter 10

SREP (Sydney Harbour Catchment) 2005 has been consolidated into the new **SEPP (Biodiversity and Conservation) 2021** and the provisions of the former SREP are contained under Chapter 10 of the new SEPP.

This Policy applies to the subject property. SREP (Sydney Harbour Catchment) 2005 and the supporting Sydney Harbour Foreshores and Waterways Area DCP 2005 seek to ensure maintenance of a sustainable waterway and to provide recreational access to the foreshores of Sydney Harbour.

The proposed development will not be contrary to the aims of the Policy and will not unduly impact upon the character of the foreshore. In our view the development is acceptable having regard to the provisions contained within SREP 2005 and the Sydney Harbour Foreshores and Waterways DCP 2005.

SEPP (Resilience and Hazards) 2021 - Chapter 4

SEPP 55 (Remediation of Land) has been consolidated into the new **SEPP (Resilience and Hazards) 2021** and the provisions of the former SEPP are contained under Chapter 4 of the new SEPP.

The provisions of SEPP 55 require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The subject site appears to have previously only been used for residential purposes and as such is unlikely to contain any contamination; therefore, the requirements of SEPP 55 have been satisfactorily addressed.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Assessment prepared by 'Building Services Engineers' dated 29 September 2021 was submitted to Council with the DA in addition to 2 x Basix Certificates (Certificate numbers: 1242605M and 1241821M) for each Dual Occupancy, also dated 29 September 2021.

A condition would be required on any consent granted requiring that all the commitments listed in the BASIX Certificates for the development are fulfilled. Further, 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.

SEPP Housing 2021

This SEPP integrates the provisions of five (5) housing-related SEPP's, including the *SEPP (Affordable Rental Housing) 2009* (SEPP ARH), which contains provisions relating to 'secondary dwellings'. The current proposal is, however, for a pair of attached 'Dual Occupancies', a form of development which is permitted with consent.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The proposed development for a pair of dual occupancies (each on its own 'proposed' lot with one dwelling above the other) and is generally permissible in the zone with development consent, **however**, Clause 6.6(2)(a) states development for Dual Occupancies is only permissible in circumstances where 'there is no existing building erected on the land'.

(At the date of preparation of this report, the existing dwelling house, outbuilding (garage) and a tennis court, (if a tennis court is considered to be a building) still remain on the site.

A deferred commencement consent cannot be granted in our opinion, as clause 6.6(2)(a) of the NSLEP gives rise to a prohibition on development for the purpose of dual occupancy. See extract from NSLEP under:

6.6 Dual occupancies

- (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*
 - (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*
 - (c) *the area of the lot on which the dual occupancy is to be situated is at least 450 square metres.*
- (2) **A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless -**
 - (a) **there is no existing building erected on the land** [emphasis added in **bold**],
or
 - (b) *the dual occupancy—*
 - (i) *will be situated substantially within the fabric of an existing building, and*
 - (ii) *will conserve the appearance of the existing building, as visible from a public place, and*
 - (iii) *will conserve the majority of the significant fabric of the existing Building.*

The provision above is a 'prohibition', not a 'Development Standard', and for Council to grant a development consent, or deferred commencement consent in current circumstances where there are existing buildings on the land, it would be beyond the powers of the consent authority.

In the report to the North Sydney Local Planning Panel on 3 February 2021 for DA 308/20 (which was a similar proposal with regards to this issue) the report stated:-

'A cautious approach suggests that the Council should not issue any consent until the existing buildings on the land are demolished. Granting development consent this time is likely to be contrary to the clear intent of the legislative draftsman in this case. The site is located in a heritage conservation area. In the writer's opinion, the development is currently prohibited, and Council is not empowered to grant consent to this application until the buildings, as a matter of fact, are removed. The proposal is currently in breach of clause 6.6(2)(a) of the NSLEP.'

The above was unequivocally conveyed to the applicants in the first reason for refusal of DA 308/20, which stated:-

'The proposed dual occupancy is a form of development prohibited within a conservation area where existing structures on the site have not been demolished pursuant to Clause 6.6(2)(a) in NSLEP.'

Particulars:

- a) The proposed development is contrary to Clause 6.6(2)(a) in NSLEP.'

The applicants SEE only briefly refers to this crucial aspect of the proposal, stating that in relation to Clause 6.6 (2), the proposal is:-

'Able to comply, DA237/18 obtained consent for demolition of the existing building on site, which will occur prior to subject DA being determined. Construction Certificate has been obtained and demolition is able to occur when needed.'

The above does not adequately address the issue, the demolition of the building/s on the property has been able to be carried out since the Construction Certificate (associated with DA237/18) was issued on 24 May 2021 by the 'Principal Certifier'. **However, until the buildings are demolished, development for the purpose of Dual Occupancy/ies is prohibited.**

2. Objectives of the Zone

The objectives for development in the Low Density R2 zone are stated below:

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

In relation to the first aim, the proposal could be said to be ‘generally’ consistent with the housing needs of the wider community by providing greater housing choice and increased provision (an additional 3 dwellings). However, the ‘scale’ of the development, in the current design may not be seen to fully meet the objective of a ‘low density environment’, especially in the context of its sensitive location in a Heritage Conservation Area adjoining two heritage items.

The second aim is not relevant.

In regard to the third and fourth aims mentioned above, the proposed development, in its current form, will compromise the amenity of the surrounding area and its ‘cultural heritage’ due to the height, size, bulk, scale and form of the proposal on both the streetscape and adjoining dwellings, but, perhaps more importantly, on adjoining heritage items and Heritage Conservation Area in general.

The impact of the proposed development will be discussed at length further within this report.

Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Standard	Proposed	Control	Complies
Clause 4.1 – Subdivision lot size	Whilst the current DA does not propose subdivision, DA237/18, proposes 513.3m ² for each of proposed Lots 1 and Lot 2	Minimum lot size 450m ²	N/A – Can comply
Clause 4.3 – Heights of Building	10.9m (East building) 10.4m (West building)	8.5m	NO East Bldg 2.49m variation West Bldg 1.95m variation (Clause 4.6 variation received)
Clause 6.6 Dual Occupancy:			
Cl 6.61(a) Appearance as a dwelling house	Each Dual Occupancy appears as a large dwelling	Dual Occupancy dwellings to appear as dwelling houses	YES
Cl 6.6 1(b) Level of attachment to common wall (80%) or common floor to ceiling (80%)	Dual Occupancy configured as one dwelling over the other	Min 80% level of attachment	YES
Cl 6.6 1(c) Minimum lot size – 450m ²	‘Proposed’ 531.3m ² per lot	Min lot size for Dual Occupancies	YES
Cl 6.6 2 (a) Requirement for no existing buildings on land to which Dual Occupancy development is proposed, in heritage conservation areas	Existing building/s on site	Site in HCA to be vacant	NO

3. Minimum subdivision lot size

DA 237/18 involving subdivision of the land into two lots has been approved by Council. The proposed lot area of 513.3m² for each allotment complies with the minimum lot size requirement (450m²) as stipulated in NSLEP.

Although a Construction Certificate (CC) has been issued by a Certifier, the demolition has not proceeded.

4. Height of Building

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

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

Within the Dictionary section of the NSLEP the following definition is crucial to consideration of the development standard in the current development:-

'building height (or height of building) means—

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.'

The definition clearly states '*.....the vertical distance from ground level (existing) to the highest point of the building*', ground level **existing**, or, in other words '**existing ground level**'.

In the case of the proposed eastern Dual Occupancy, which will be built over the existing tennis court, the survey plan prepared by Frank M Mason & Co (surveyors) Plan 33267-12, indicates spot levels of the 'existing ground level' on the tennis court ranging from RL 64.89 towards the north (Bennett Street) to RL 64.53 to the south (rear), and in the central portion of the tennis court as RL64.61.

This latter RL would closely equate to the location of the roof ridge of the proposed building, which is indicated as RL 75.60. Therefore, **the eastern building will have an overall maximum height of approximately 10.9m** from the proposed ridge to the existing ground level of the tennis court below.

In the case of the proposed western Dual Occupancy, which will be substantially built over the location of the existing dwelling house, using the survey plan prepared by Frank M Mason & Co (surveyors) Plan 33267-12, is not as easy to determine 'ground level existing' due to existing building works. However, spot levels indicate RL65.16 - 65.19 in front of the Bennett Street entrance to the dwelling and RL 65.12 to the paved area to the west of the NW corner.

Further, the applicant's elevation and sections plans show 'existing ground shown dashed' in blue and RL 65.15 could be taken as a conservative estimate. This latter RL would closely equate to the location of the roof ridge of the proposed building, which is indicated as RL 75.60. Therefore the **western building will have an overall maximum height of around 10.4m** from the proposed ridge to the estimated 'ground level existing' below.

(It is of note that the previous development proposal (DA 308/20) and refused by the NSLPP in May 2021 proposed building roof ridge RL's of 74.4m (East Building) and 73.7m (West Building), respectively. These RL's are 1.2m and 1.9m respectively lower than currently proposed.)

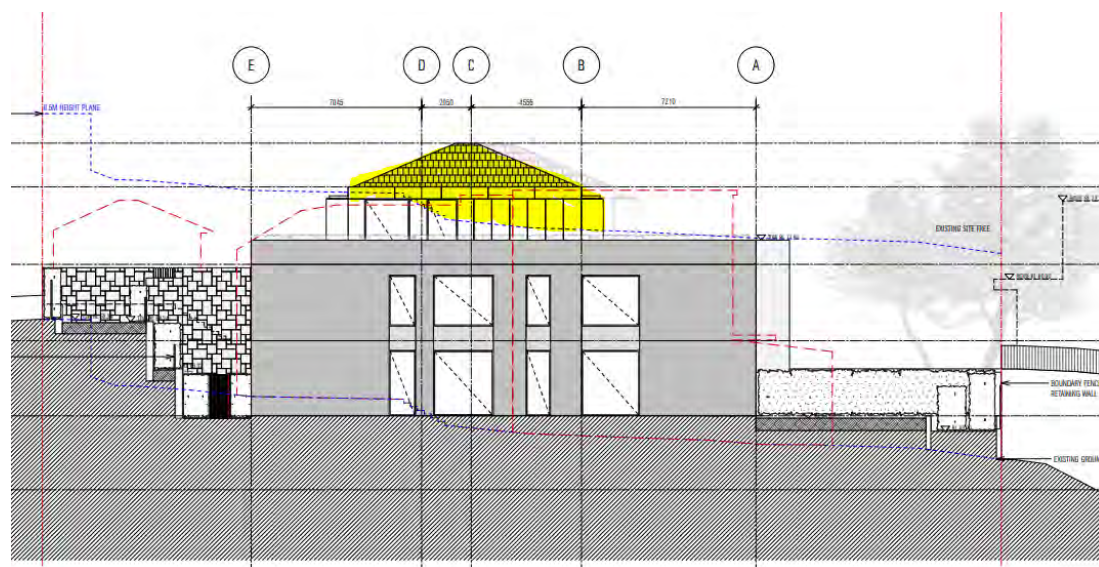


Figure 12: Western elevation of building W1/W2 - Plan DA11, showing blue dashed 8.5m height line and section of western building over the height limit, shaded yellow. (Mathieson Arch)

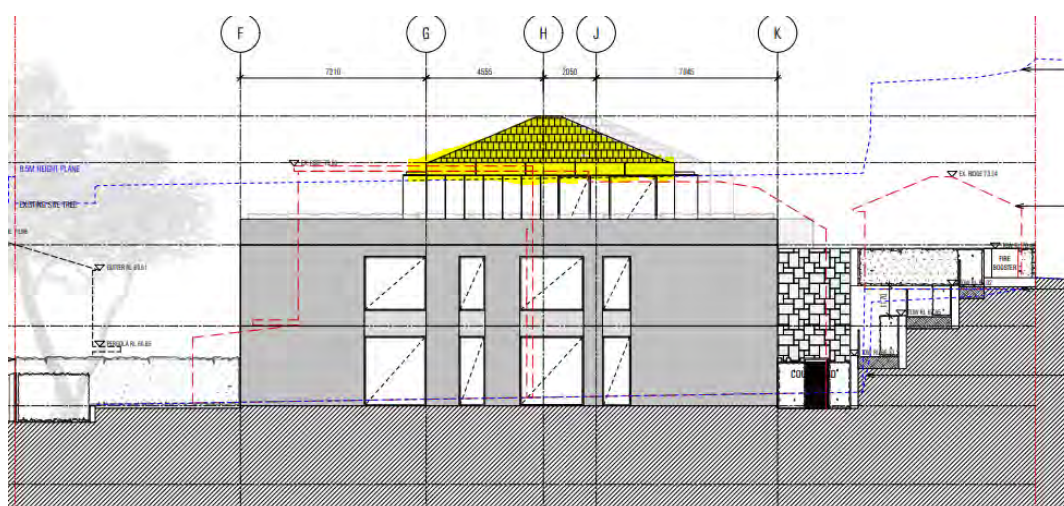


Figure 13: Eastern elevation of building E1/E2 - Plan DA13, showing blue dashed 8.5m height line and section of eastern building over the height limit, shaded yellow.(Mathieson Arch).

The building elements that exceed the LEP maximum building height are illustrated in **Figures 12 and 13** and described as follows:

- East Building – The roof of the building and top of the third floor.
- West Building – The roof of the building and upper section of the third (top) floor at the southern end of this level.

The proposed works would have a height of 10.9m (eastern building) and 10.4m (western building) that fails to comply with the permissible height limit of 8.5m in accordance with clause 4.3 in NSLEP.

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

Clause 4.6 Exceptions to Development Standards

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

Objectives of the 'Height of Buildings' 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,**

Comment:

On steeply sloping sites variations to the height development standard are often justifiable for minor projections to corners and roofs of buildings. However, in this case the topography has been already modified. Any breach to the development standard is not required to 'reflect the natural landform' or 'step' the development as the site has already been excavated for the tennis court and house. The breach to the development standard is merely to fit a third storey.

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

Comment:

The breach to the development standard will not promote the retention of view, or view sharing, in fact, the opposite. In the current proposal, the roof heights of both of the buildings is RL75.60, whereas, the previous, refused DA 308/20, proposed roof heights of RL74.4 (East Building) and RL 73.7 (West Building).

The current proposal is 1.2m and 1.9m respectively higher than the previous scheme (which attracted objections from neighbours on the northern side of Bennett Street relating to view loss). Similar objections have been received to the current proposal.

Figure 14 shows two of the properties whose views are impacted to various degrees by the current height of the proposal. **Figures 15 to 18** shows the views from No. 20 Bennett Street and although existing vegetation partially filters these views, the current proposal, being higher than the previous refused DA308/20, will impact views as a result of the increase in height variation proposed.



Figure 14: Nos. 14 and 20 Bennett Street. Residents of both properties have objected to the proposal on loss of views. No. 20 (building to right) has a balcony in particular which have views of the iconic CBD skyline and the upper sails of the Opera House.

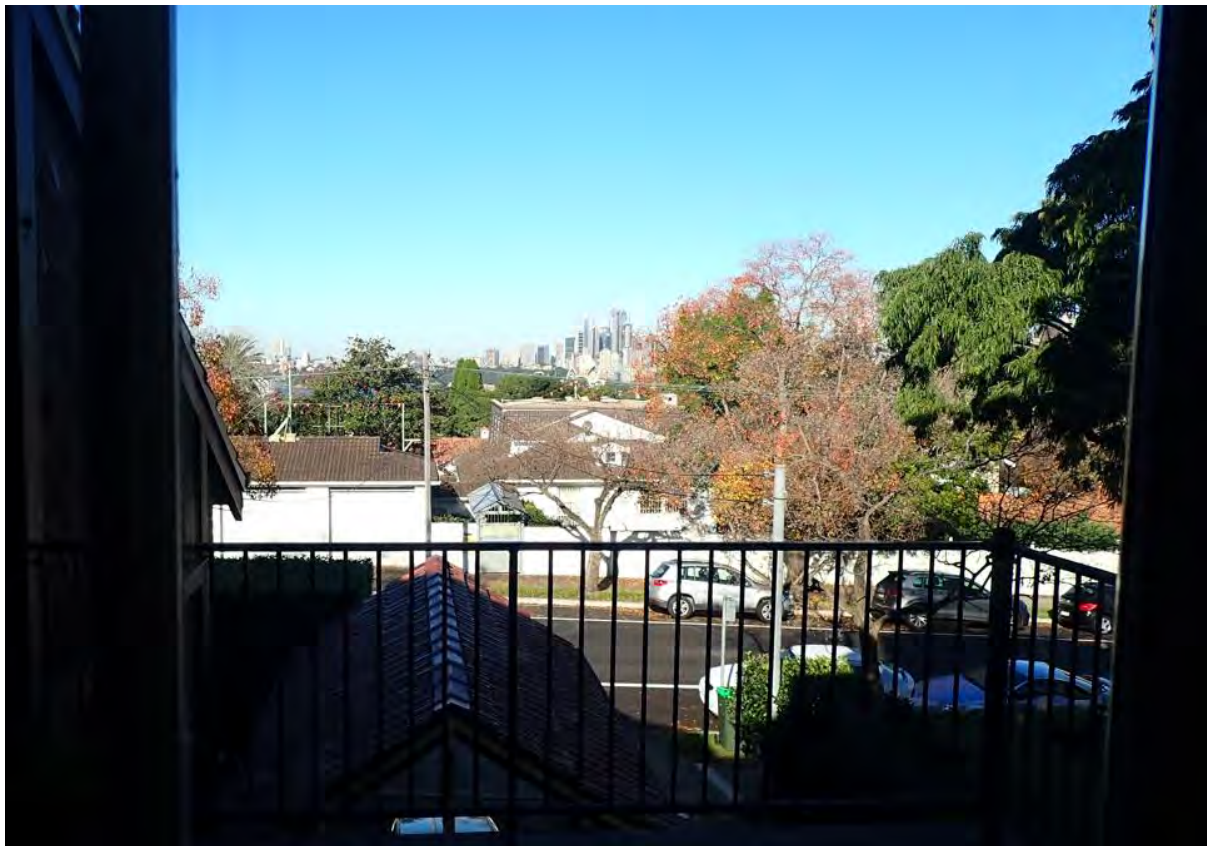


Figure 15: View from inside No. 20 Bennett kitchen/dining room towards CBD.

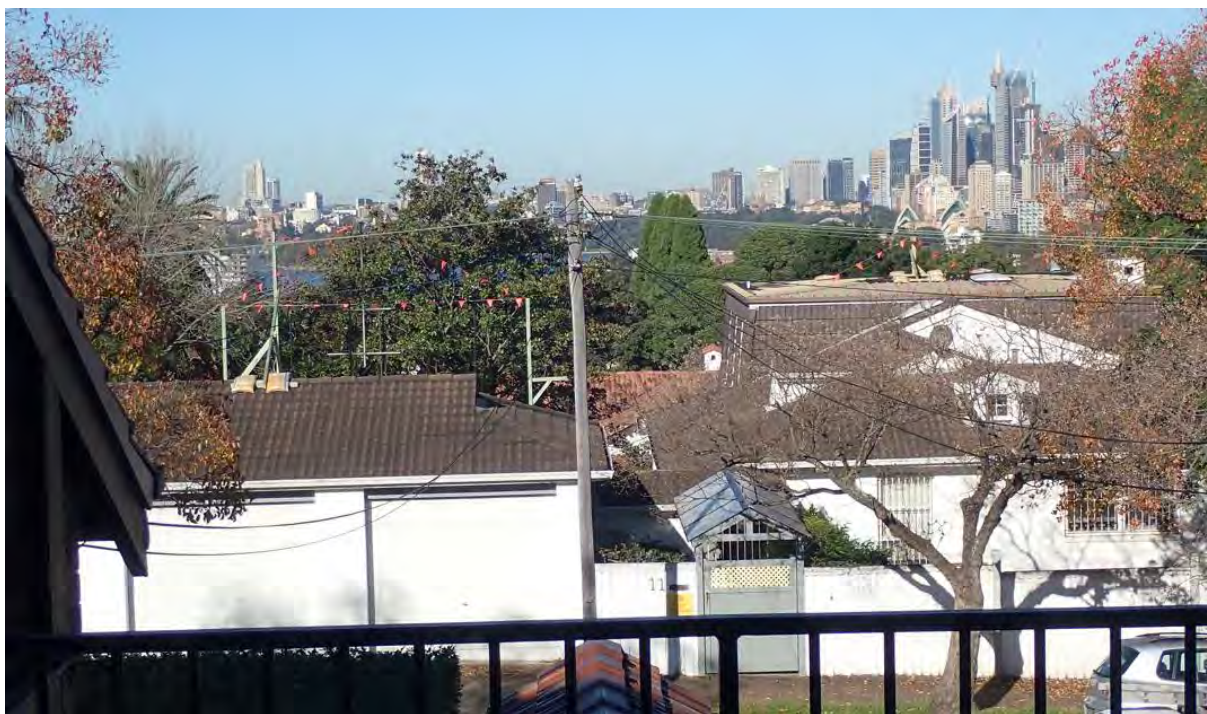


Figure 16: View from balcony of No. 20 Bennett towards CBD showing upper sails of the Opera House.



Figure 17: Photomontage of view from the balcony of No. 20 Bennett Street with dual occupancies from the previous, refused DA (DA308/20) superimposed. The buildings currently proposed will be (from left to right), 1.2m and 1.9m higher than that depicted in this photomontage.



Figure 18: View from living room of No. 20 Bennett towards CBD/harbour showing 'filtered' views.

No. 14 Bennett Street also has views towards the harbour and CBD. However, these are 'filtered' by vegetation on its own property and more importantly, street trees along the southern side of Bennett Street.

Paradoxically, if the application was approved in its current form, trees in the front setback and street verge would be lost, which would result in the opening up of views, only to be obscured again by the development's excessive height. **Figure 19** is a photograph taken for the assessment of the previous DA 308/20, which shows the existing trees and filtered harbour and CBD views as seen from 14 Bennett Street.



Figure 19: View from living room of No. 14 Bennett towards CBD/harbour showing 'filtered' views

When applying the four step assessment planning principle on view sharing established by **Tenacity Consulting v Warringah Council [2004] NSWLEC 140**, the impact on the views from 20 Bennett Street is assessed as follows:-

- 1) ***'The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.'***

Comment:

The views include the iconic views of the Sydney CBD and a part view of the sails of the Opera House. Further, partial albeit 'filtered', land/water interface views are affected.

- 2) ***The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.***

Comment:

The views in question are from the front of the house, from both sitting and standing and from high activity rooms and areas ie; kitchen, dining and its balcony and to a lesser extent, the lounge room (as this view is 'filtered').

- 3) ***The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them).***

The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

As mentioned, the views affected are from high activity areas and from viewing the photomontage in **Figure 17** it is estimated that the current proposal, being between 1.2 – 1.9m higher than the previous proposed design of DA 308/20, would obscure the part views of the Opera House sails, part land/water interface views of the harbour, and only the upper parts of the CBD skyline would remain. This could be classified as a moderate-to-severe view loss.

- 4) ***The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.***

With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

The views impacts are from a non-complying development (height) with a 'more skillfull design' able to reduce the impact. Thus the moderate/severe impact is considered 'unreasonable' when applying this planning principle to the proposal.

With regard to 14 Bennett Street, applying the four part assessment is more difficult as the views, whilst including iconic views, are substantially 'filtered' by existing trees and vegetation. It may be reasonable to classify the impact as 'minor' due to the substantially obscured nature of the views. However, it could be argued that even a minor impact on these filtered views is unreasonable as it would be caused by a non-complying development.

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

Comment:

The shadow diagrams submitted with the proposal indicate that morning midwinter overshadowing will occur to the dwelling houses to the west (Nos. 19 & 21 Burroway Street) and the rear garden of the adjoining Heritage Item to the south, No. 4 Bertha Road. At midday, the sun will be sufficiently high enough so that only minor shadowing to the rear garden of Bertha Road will occur. **(Figure 20)**

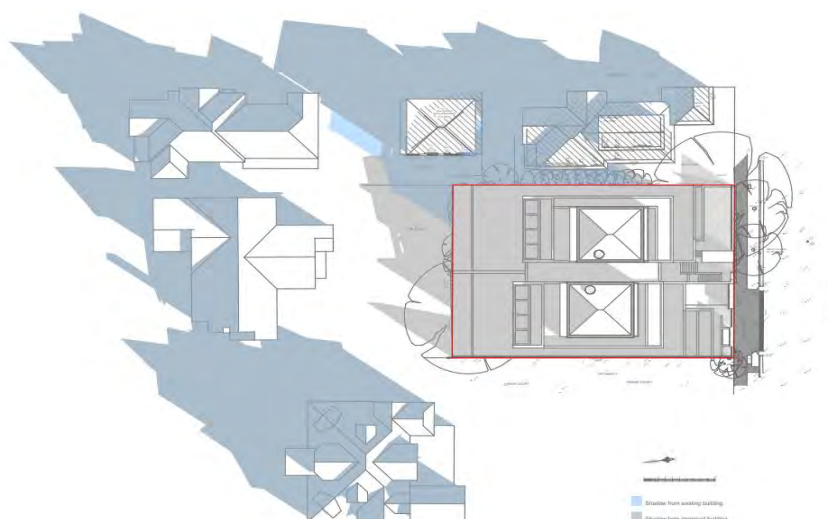


Figure 20: Existing and proposed shadows cast by the proposed development 9am June solstice.

In the afternoon however, the other adjoining Heritage Item 'Ingleneuk', at 19 Bennett Street will experience shadowing of the rear garden and tennis court with shadows extending up to the northwest corner of the house.

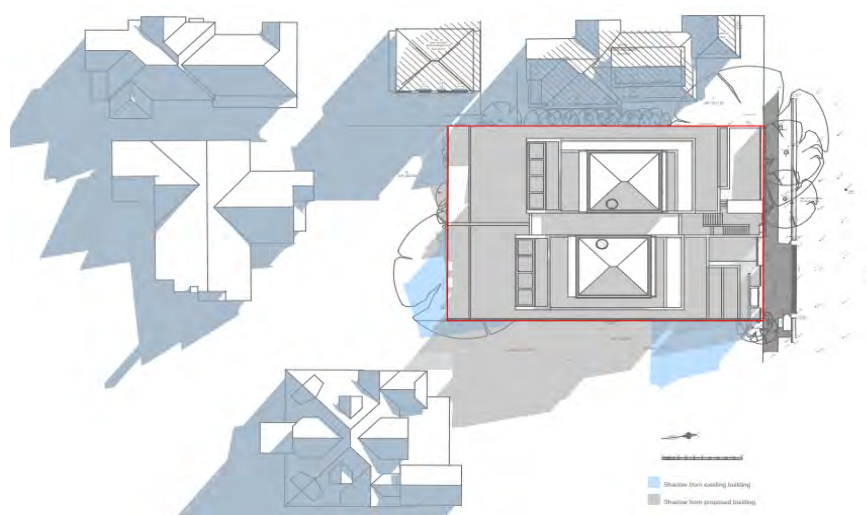


Figure 21: Existing and proposed shadows cast by the proposed development 3pm June solstice.

Whilst even 8.5m high complying two storey development would cast some additional, and perhaps unavoidable shadowing, the variations to the height development standard proposed by the 3 storey development unnecessarily exacerbates the impact of any overshadowing and reduces solar access to adjoining properties.

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

Comment:

The variation to the height control will permit a third storey to each of the dual occupancies with rear facing balconies. The uppermost level in particular will overlook the two properties to the rear, which are both heritage items, and the properties to the west and southwest.

Whilst, the landscape plans indicate planter areas along the perimeter of the balconies with plants species to 800mm, the sections are not clear indicating soil depth, so these planter areas may not be any higher than a balustrade. It would not be in the interest of the residents of the dual occupancies to have plantings that obscure the views towards the city and so overlooking of the adjoining properties is to be expected.

The existing vegetation at the rear of the site is to be removed and although the large Magnolia is listed for retention, Councils' Landscape Officer has reported that it would not survive the construction phase, so the current privacy afforded by vegetation will be lost.

It is considered the height variation proposed, which will allow the third storey, would not achieve the objective of maintaining privacy for residents of existing dwellings to the rear and side of the proposal.

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

N/A

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

Comment:

The variation to the 8.5m height limit will create a pair of three storey buildings in an area of predominantly two storey dwelling houses. Whilst this is not as noticeable from Bennett Street as the land falls away from Bennett Street, the bulk and scale of the development will be noticeable from the adjoining residential properties to the south, south west and west.

In this regard, the buildings will have an overbearing impact that is exacerbated by the loss of established vegetation. One of the recommendations of the Planning Panel for the previous application (DA 308/20) was that:-

- The upper level should read primarily as a strong pitched roof form that has the capacity to contain internal spaces. This in essence will require a reduction in floor area and replanning of the dwellings. Unification of the roof form for each building will provide a better street presentation and avoid a mirror image.

This was out of concern to the bulk and scale of a pair of three storey buildings and favoured two storey buildings with the possibility of 'rooms in the roof', using attic space. The current design has ignored these recommendations and as such, the scale, density and character objectives of the development standard are not met.

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

Comment:

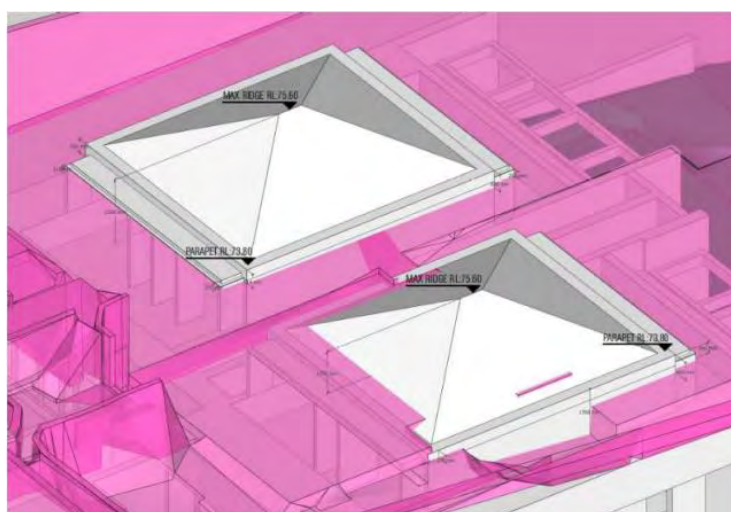
The proposed height variation will permit two 3 storey buildings which is clearly in contravention of the objective to maintain a 2 storey maximum built form. Whilst it is appreciated that the two buildings are sited on land previously excavated, they also adjoin 2 heritage items and so must be sensitive to this constraint.

Furthermore, the statutory 8.5m height limit further reinforces the 2 storey built form objective as although not explicit, an 8.5m height limit comfortably accommodates a two storey house with pitched roof, which would be characteristic within the conservation area. However, a 3 storey development with a pitched roof as proposed in the current application is uncharacteristic within the conservation and on land zoned R2 (Low Density Residential).

Assessment of the applicant's Clause 4.6 Variation Request – Height of Buildings

The applicant has submitted a report by The Planning Studio to justify the proposed variations to the Height of Buildings development control.

The submitted clause 4.6 report and plans illustrate the proposed non-compliances as follows (refer to Figure 22 below). (Figures 12 and 13, within this report give another, elevation view of the level of the height variations).



**Figure 22: Excerpt of isometric view of height variation from NW
(Plan DA 31 Mathieson Arch)**

Clause 4.6(3) North Sydney LEP 2013

‘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.”***

Furthermore, Council must be satisfied that:

- 4 (a) (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 Planning Secretary has been obtained.***

Firstly, clause 4.6(3)(a) requires that:-

- a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

The clause 4.6 submission lodged with the current proposal uses the *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 decision - in particular, to explore the question of the whether the development standards unreasonable and/or unnecessary with regard to ‘Wehbe Test 1’ – as the Objectives of the Standard are achieved in the reports view.

However, from the discussion in the section ‘*Clause 4.6 Exceptions to Development Standards*’ of this report, it is not considered any of the objectives of the standard are fully met, with the exception of 1(e) which is irrelevant to the current proposal.

Further, it is considered the following two (of the four) objectives of the R2 - Low Density Residential zone are compromised by the proposal:-

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

It is not agreed that the ‘Objectives of the Standard’ have been met (‘Wehbe Test 1’) and as such compliance with the development standard is not ‘unreasonable’ or ‘unnecessary’ in this case.

In addition to failing the requirements of the 'Wehbe Test' for 'unreasonableness', the applicant's report has failed to demonstrate any special 'circumstances of the case' that requires the height variations proposed. The land is not unduly steep, it has in fact been previously excavated for the existing house and tennis court. Apart from the perimeter trees, no trees restrict the reasonable siting of buildings on the site.

As the 8.5m development standard would appear to suggest a general 2 storey building height, and this is reinforced by objective 1(g) of the 'Height of Buildings' development standard **'to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential.....'** it is not considered the development has any particularly onerous site constraints in this case.

In summary, the applicant has failed to demonstrate any special 'circumstances of the case' that requires a height variation, except the desire to provide a third storey to each of the proposed Dual Occupancies.

Secondly, clause 4.6(3)(b):-

'(b) That there are sufficient environmental planning grounds to justify contravening the development standard.'

The Section 4.6 submission puts forward the following arguments and each is commented on:-

- 1) The subject site's 'existing ground level' is significantly lower compared to Bennett Street (approximately 4.5 down to 6.5m). This creates a situation where a building on site that complies with the 8.5m height control from the excavated 'existing ground level' would appear as an awkward built form that wouldn't be compatible with the surrounding conservation area.***

Comment:

The subject site was intentionally excavated to provide for a level tennis court and the adjacent house and was not a natural feature of the topography, the resultant existing house appears to be single storey from Bennett Street and the adjoining dwelling at 21 Burroway Street appears to be a single storey house with a roof addition.

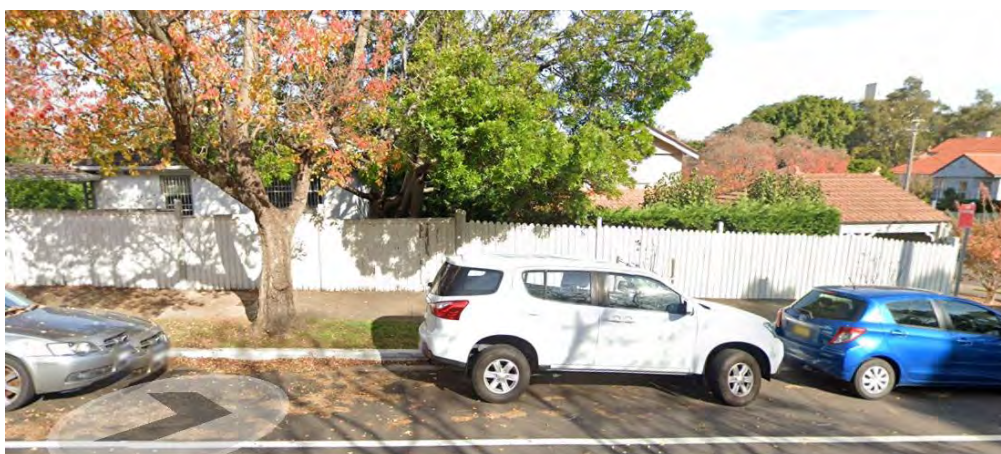


Figure 23: 11 Bennett Street and 21 Burroway Street, both dwellings present a low streetscape profile.

The nearest building to the east of the site, 19A Bennett Street is set down and appears single storey from the street



Figure 24: 19A Bennett Street also displays a low streetscape presentation.

Whilst there are other two storey dwellings in the vicinity, as well as older 2 and 3 storey residential flat buildings, there are also other examples of single storey dwellings in Bennett Street, such as 8 and 10 Bennett Street.

Further along the street, Nos. 21 and 27 Bennett Street (on the low side of the street) have the appearance of single storey residences from the street (additional floors are however present to the rear and downslope). (***Figures 23 -26***)



Figure 25: 8 Bennett Street and 10 Bennett Street (obscured by trees), are both single storey dwellings.



Figure 26: 21 Bennett Street also has the appearance of a single storey bungalow (although it has attic rooms not visible in the photograph).

In view of the examples of low rise dwellings in the vicinity, it is not considered a development complying with the height of buildings control on this site would look awkward if it appeared to be single storey when viewed from Bennett Street.

- 2) *In order to remove the breach of the height control, the built form would need to be amended to either remove (or significantly reduce) the pitched roof form, or present as a single half-storey dwelling from Bennett Street, which is not a good heritage or design outcome.***

Comment:

This second argument is similar to the first 'environmental planning ground' and as found above, examples of low rise dwellings are plentiful in the street and conservation area.

A two storey development with pitched roof complying with the height limit could accommodate some rooms in the roof (dormers), this was recommended by the Planning Panel in their recommendations for the previous refused application. It is not considered this, or the previous argument is an adequate environment planning ground for the height variation

- 3) *Any alternate solution would require the artificial increase of the existing ground level at the site, which is also contrary to Council's DCP Topography controls (Section 1.3.1) as well as Objective 4.3(a) of the Height of Buildings control.***

Comment:

Disagreed, there is no need to fill the site to construct two, two storey dual occupancy developments. Single and two storey built forms are specifically preferred as the LEP height objective 1(g) is 'to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential'.

- 4) ***The pitched roof design is an important and identifiable character element of development in the locality and the conservation area, and is an appropriate design response to the adjoining and adjacent properties. The proposed strong pitched roof has been developed to specifically respond to Council's LPP feedback on DA308/20 where it was requested that a strong pitched roof and replanning of the design layout be provided. This design best addresses streetscape and character and reduces the overall height and bulk and scale at the rear of the buildings.***

Comment:

It is not considered the 'proposed strong pitched roof' claimed is, a strong pitched roof form. It is a shallow (22.5 degree) hipped roof which appears as an 'add on' or an afterthought element to an otherwise flat roof house design.

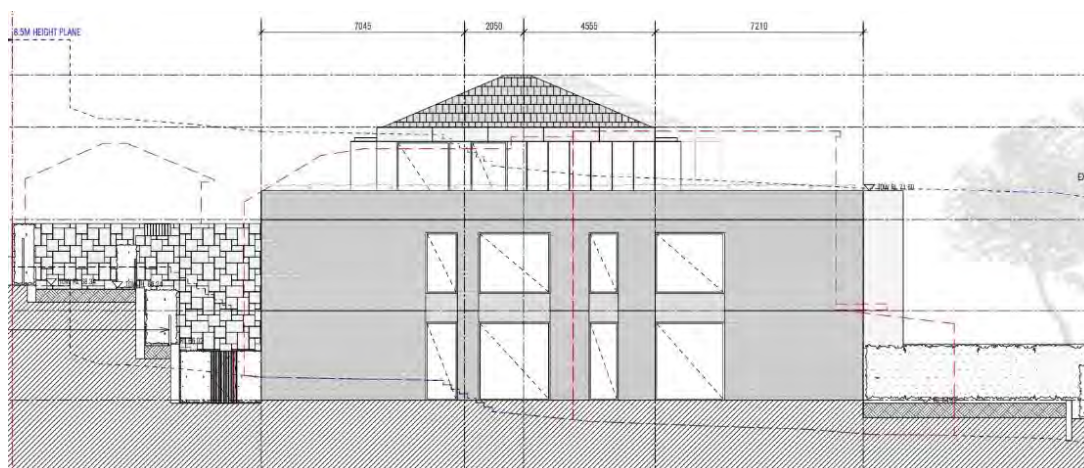


Figure 27: West Elevation displaying the roof which appears to be a minor element of the overall design (Plan DA11 Mathieson Architects).

The Planning Panel report for the previous refused DA recommended that for any amended plans:-

- *The upper level should read primarily as a strong pitched roof form that has the capacity to contain internal spaces. This in essence will require a reduction in floor area and replanning of the dwellings. Unification of the roof form for each building will provide a better street presentation and avoid a mirror image.*

Whilst this recommendation was for the previous refused application, the reasoning is still sound and the current design has not considered the above and has provided two buildings which will have inadequate pitched roof forms and a mirror image presentation on the streetscape.

- 5) ***The elements that cause the breach do not create additional amenity impacts on surrounding properties. Accordingly, there would be no purpose served by requiring strict compliance with the height standard under the circumstances of this application as it would simply create a poorer heritage and design outcome without mitigating any environmental impacts.***

Comment:

The elements that cause the breach do create additional amenity impacts in the form of a slightly increased shadows to adjoining properties. If the buildings complied with the height control it could be argued that these impacts, in themselves are not overly significant, but as the height variation is unjustified, any additional overshadowing impact is unreasonable.

The element which substantially causes the breach, also permits the third storey to exist, which in turn has visual and privacy impacts on adjoining properties, particularly the two adjoining heritage items. It is considered a two storey, height compliant development would have a better heritage outcome than the current proposal.

In summary, it is considered the five environmental planning grounds put forward by the applicant fail to justify contravening the height of buildings development standard.

Whether the proposed development will be in the public interest?

Clause 4.6 (4)(a)(ii) require that Council be satisfied that:-

‘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.....’

An assessment has previously been carried out in this report comparing the proposed development with the objectives of both the Residential R2 zone and the ‘Height of Buildings’ development standard. Also, as previously determined, the development fails to meet (in varying degrees) many of the objectives within NSLEP. As such, the development fails to meet the requirements of clause (4)(a)(ii).

With regard to clause (4)(a)(ii) regarding whether ‘the concurrence of the Planning Secretary has been obtained’, the Secretary’s concurrence under clause 4.6(4)(b) of NSLEP has been delegated to Council.

Conclusion

It is considered that the applicant has not adequately demonstrated that the Height of Buildings development standard is unreasonable or unnecessary for this proposal. Likewise, no compelling justification has been put forward that there are special/unique circumstances in this case.

The environmental planning grounds put forward have been examined and have been found to have insufficient merit to justify contravening the development standard.

In relation to public interest, it is not considered it would be served by approving the variation as the development does not meet many of the objectives of the zone, or the objectives of the development standard. Further, approval would set a precedent for other developments to breach the development standard merely to obtain an additional level to a building. The proposed development is also located in a Conservation Area and more importantly, adjoining two heritage items which makes compliance with development standards and other requirements more important.

5. Floor space ratio

N/A

6. Non-Residential floor space ratios

N/A

Part 5 – Miscellaneous Provisions

7. Architectural roof features

N/A

8. Heritage Conservation

The subject site is located in a Conservation Area under Schedule 5 in NSLEP, so the following planning objectives apply to the site:

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

In addition to the above, Part 5 of the NSLEP, clause 5.10 states:-

*‘(5) **Heritage assessment** The consent authority may, before granting consent to any development—*

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),*

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.’

In addition to being located in a Conservation Area, the subject site adjoins two heritage items. The following are excerpts from each items ‘Statement of Significance’ in the State Heritage Inventory:-

1) 19 Bennett Street ‘Ingleneuk’

‘Ingleneuk is significant as a large, distinctive Queen Anne style house constructed in 1903 by noted architect Henry A. Wilshire. Its general form, architectural style, interiors and exteriors survive from its original date of construction. Still located on the majority of its original allotment, Ingleneuk is significant for its generous garden setting containing remnant landscape features and layout related to its original construction date.’

.....

'Located on a visually prominent site, Ingleneuk and its garden setting contribute greatly to the character of the area and is one of a number of significant, early to mid-twentieth century residences on large allotments located in the vicinity.'

2) 4 Bertha Road

Statement of Significance

An excellent example of the Interwar Spanish Mission style house, using restraint in detail, but achieving a strong stylisation through broad effects. The style was important as a major divergence from the traditionally English-derived architecture of the late nineteenth century. The house is also representative of the development typical of the vicinity in the period.

The applicant has submitted a Heritage Impact Statement (HIS) prepared by Urbis Pty Ltd, some of the report's conclusions are commented on as follows:-

- *'There would be no material impacts on any sites which are identified as heritage or contributory items as the works are wholly contained within the subject site, and no physical alterations are proposed to any of the vicinity heritage items. All vicinity heritage items would be retained as is including all established heritage curtilages.'*

Comment:

Whilst the proposal may have little direct physical impact in the Heritage items and Conservation Area (CA) it is considered that their settings will be affected.

- *'The new development would not result in any adverse heritage impacts on any established significant views to or from vicinity heritage items or significant views within the CA. the proposed development is not considered to have an adverse visual impact on this heritage item.'*

Comment:

The proposed buildings, being higher than the previous refused application will affect CBD views of adjoining properties in Bennett Street and the outlook north from the heritage items to the south. The two four storey buildings will have an overbearing impact on adjoining properties.

- *'There would be no impact on the setting of the adjoining heritage items as a result of this developmentthese two heritage items from Bertha Road and Bennett Street will be unaffected by the proposal.'*

Comment:

Not agreed. It is acknowledged that the Urbis report was prepared before Council's Landscape Officer commented that the existing trees to the rear of the site would not survive the development as proposed, in particular the large Magnolia tree T7 which provides extensive screening between the properties. Trees in the front setback and street are also proposed to be removed which will impact the streetscape and setting.

- *'The new development will be a good example of sympathetic, contemporary neutral infill and is considered an appropriate response to the forms, scales and character of established development within the Cremorne Conservation Area. The design has considered the Character Statement for the Conservation Area set out in the DCP, and responded appropriately in terms of building form, scale and materiality.'*

Comment:

The pair of buildings appears as a post-modern structures with a token low pitched hipped tiled roof to try to 'fit in' with the pitched tiled roof buildings of the conservation area. The pair being mirror images of each other is incongruous in the conservation area which is noted by its diversity of buildings. A previous Planning Panel recommendation that any proposal should '.... avoid a mirror image' has not been heeded.

- *The three-storey scale of the new buildings is in keeping with the varied scale of development along Bennett Street and within the Conservation Area more broadly. The proposed internal configurations of each floor have been designed with consideration for keeping the overall height and scale of the new buildings as low as possible to avoid any visual domination of the Conservation Area or streetscape.*

Comment:

Whilst it is true that development along Bennett Street and the conservation area has a varied scale however in this sensitive location a two storey development with possible rooms in the roof may be more appropriate and height compliant.

- *The visible 'break' between the 2 buildings will reinforce their legibility as modestly-scaled, freestanding dwellings as viewed from Bennett Street, providing the appearance of smaller individual building forms. The scale and rhythm of the two forms has responded to the scale of individual dwelling houses in the area and is, as such, resolved in accordance with clause 6.6 of the North Sydney LEP 2013.*

Comment:

The visible break is only at the third storey and the buildings do appear generally conjoined. Having regard to the LEP requirement that *'the form of the building will appear as a dwelling house'*, the mirror image design does nothing to assist in this regard.

- *Sufficient front, side, and rear setbacks will be retained to the new buildings, from a heritage perspective, which will allow the new development to maintain a landscaped setting and an appropriate physical separation from adjoining buildings.*

Comment:

Side setbacks proposed are minimal and the rear setback, whilst perhaps adequate for a compliant 2 storey dwelling, is insufficient to prevent the building appearing somewhat overbearing when viewed from the rear, in view of the loss of screening vegetation.

- *The proposed pitched roof forms – which will to be clad with slate – are a sympathetic response to the established pattern of roofs within the conservation area and respond to materiality typically found in the area. This is also the case with the use of a high-quality face brick which is a crafted material appropriate for the character of the Conservation Area and takes design cues from the interwar residential flat buildings located along Bennett Street. The design also incorporates sandstone as a response to the traditional materiality and character of the Conservation Area.*

Comment:

As mentioned previously, the low pitched, hipped roofs proposed appear to be an afterthought design element in an attempt to 'blend in' with the pitched tiled roofs dominant in the Conservation Area.

In addition, Council's Conservation Planner has provided detailed comments earlier in this report under the heading "INTERNAL REFERRAL – HERITAGE".

Part 6 – Additional local Provisions

Division 2 – General Provisions

Clause 6.6 Dual Occupancies

The following matters apply to any attached dual occupancy development:

- (a) *the form of the building will appear as a dwelling house, and*
- (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*
- (c) *the area of the lot on which the dual occupancy is to be situated is at least 450 square metres.*

In relation to (a), it is not considered the form of the buildings appear as two dwelling houses due to the conjoined nature of the first two floors and the mirror image façade and roofs of the buildings. It is possible that the previous Planning Panel's recommendations were misunderstood.

The proposal does however meet matters (b) and (c).

- (2) *A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless—*
 - (a) *there is no existing building erected on the land, or*
 - (b) *the dual occupancy—*
 - (i) *will be situated substantially within the fabric of an existing building, and*
 - (ii) *will conserve the appearance of the existing building, as visible from a public place, and*
 - (iii) *will conserve the majority of the significant fabric of the existing building.*

This issue has already been addressed within this report and as the existing dwelling is within a CA and has not been demolished (at the time of preparation of this report), the provisions of clause 6.6(2)(a) prohibit approval of the proposed dual occupancies.

9. Earthworks

The application involves considerable excavation for the underground carpark so an assessment has been carried out under matters raised in clause 6.10 in NSLEP in particular:

(a) *the likely disruption of, or any detrimental effect on—*

- (i) *drainage patterns and soil stability in the locality of the development, and*
- (ii) *natural features of, and vegetation on, the site and adjoining land,*

Trenching for the proposed stormwater system has been mentioned by Council's Landscape officer as the principle factor in the loss of trees at the rear of the site. Excavation at the front of the site for the driveway, car lift etc. will also mean the loss of trees in this location. Concern was raised by the previous Planning Panel regarding dilapidation reports and these would be required for surrounding properties if the application was to be approved.

Council's Development Engineer has recommended appropriate engineering conditions.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

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

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.1 Population Mix	Yes	A mix of Dwellings is not required for Dual Occupancy development however the proposed development for 2 x 3 bedroom units and 2 x 3 bedroom + media room units is unlikely to cause any adverse impact on the population mix within the locality.
1.2.2 Maintaining Residential Accommodation	Yes	The proposal will increase the housing stock of the LGA
1.2.3 Affordable Housing	N/A	
1.2.4 Housing for Seniors/Persons with disability	N/A	
1.3 Environmental Criteria		
1.3.1 Topography	Yes	Excavation for basement parking is not generally permitted however due to the fall of the land from the street, is justifiable in this case to prevent the streetscape being dominated by garages/carports. The proposal will involve significant excavation not only for the parking, but also the car lift plant. However, in general, no significant change to the topography is proposed as the site has been previously excavated for the house and tennis court.
1.3.2 Bushland	N/A	
1.3.3 Bush Fire Prone Land	N/A	
1.3.4 Foreshore Frontage	N/A	

<p>1.3.6 Views</p>	<p>No</p>	<p>As detailed earlier in this report the view impacts are expected to properties on the northern side of Bennett Street and these will be exacerbated by the proposed development exceeding the statutory height limit.</p>
<p>1.3.7 Solar Access</p> <ul style="list-style-type: none"> • More than 3 hours between 9am – 3pm • RFB – 70% of dwellings 2hrs solar access 	<p>No</p>	<p>Adjoining properties are likely to receive their minimum solar access requirement.</p> <p>Nuisance morning shadowing of properties to the west in mid-winter and some increase in winter afternoon shadowing to the curtilage of the two Heritage items to the south and southeast is expected.</p> <p>If the development was a height compliant development, these relatively minor impacts may be acceptable. However, as the proposal is non-compliant, these impacts would appear to be unnecessary and unreasonable.</p>
<p>1.4.3 Acoustic Privacy</p> <ul style="list-style-type: none"> • Living areas Day/Night $\leq 40_{\text{dBA}}$ • Sleeping areas Day/Night $\leq 35_{\text{dBA}}$ 	<p>No</p>	<p>Sufficient separation distances will be provided between the rear outdoor spaces of the proposed ground and first floors, and the dwellings within the adjoining properties to the south and west.</p> <p>The additional 3rd floors with their entertaining decks would result in increased noise experienced by adjoining dwellings. (This could be avoided if the 3rd level was deleted from the scheme.)</p> <p>If the application was approved in its current form a standard condition relating to noise from plant and equipment is recommended to minimize noise from plant including the car lift.</p>
<p>1.3.9 Vibration</p>	<p>N/A</p>	
<p>1.4.4 Visual Privacy</p> <ul style="list-style-type: none"> • P6 Limit the width and depth of any deck, patio or terrace located greater than 1m above ground level (existing) where privacy and loss of views is an issue and consider using screen devices where relevant 	<p>No</p>	<p>Whilst some privacy screening to the sides of the rear decks has been employed, the number of rear decks above 1m from ground level is of concern. In particular, the 3rd floor (or level 2) rear decks which are not solely for the master bedrooms, but separately accessible – which would lend themselves to entertaining.</p> <p>A number of objections have been received in relation to this issue and the elevated nature, in addition to the removal of most of the rear screening vegetation as this would impact the privacy of dwellings to the west, south-west and south.</p> <p>Windows on the west elevation at 2nd floor (level 1) will also be an issue and obscure glazing or high level windows are able to be conditioned should the application be approved.</p>
<p>1.4 Quality built form</p>		
<p>1.4.5 Context Objective</p> <p>O1 To ensure that the site layout and building design responds to the existing characteristics, opportunities and constraints of the site and within its wider context (adjoining land and the locality).</p> <p>Provisions</p>	<p>No</p>	<p>It is not considered the building design responds to the wider context of the locality. The character statement for the Cremorne conservation area states that the characteristic Built elements are two storey terraces or single and two storey dwellings with reduced scale to the rear, with pitched, hipped and gable roofs pitched between 30 and 45 degrees. The proposed development would appear at odds with all these elements.</p>

<p>P1 Proposed developments must be designed to respond to the issues identified in the site analysis and in the relevant area character statement</p>		<p>Further, uncharacteristic elements include: over-scaled additions; roof terraces and modern infill development, all of which the current development exhibits.</p>																								
<p>1.4.2 Subdivision Pattern</p>	<p>N/A</p>	<p>Subdivision previously approved.</p>																								
<p>1.4.3 Streetscape</p>	<p>No</p>	<p>Some street trees are to be lost as a result of the proposal as indicated earlier in this report under the heading "Internal Referral – Landscaping".</p>																								
<p>1.4.4 Laneways</p>	<p>N/A</p>																									
<p>1.4.5 Siting</p>	<p>Yes</p>	<p>The siting and the orientation of the proposed dual occupancies are generally consistent with surrounding developments within the locality.</p>																								
<p>1.4.6 Setback – Side</p>	<p>No</p>	<table border="1"> <thead> <tr> <th data-bbox="868 665 1038 701">Control</th> <th data-bbox="1038 665 1150 701">Existing</th> <th data-bbox="1150 665 1278 701">Proposed</th> <th data-bbox="1278 665 1433 701">Compliance</th> </tr> </thead> <tbody> <tr> <td colspan="4" data-bbox="868 701 1433 736">Zone R2 (Low Density Residential)</td> </tr> <tr> <td data-bbox="868 736 1038 976"> R2 - 1st storey Up to 4m - 900mm Eastern elevation Western elevation </td> <td data-bbox="1038 736 1150 976"> 13.38m 1.5m </td> <td data-bbox="1150 736 1278 976"> 1.5m 1.5m </td> <td data-bbox="1278 736 1433 976"> Yes </td> </tr> <tr> <td data-bbox="868 976 1038 1216"> R2 - 2nd storey up to 7m - 1.5m Eastern elevation Western elevation </td> <td data-bbox="1038 976 1150 1216"> 13.38m 1.5m </td> <td data-bbox="1150 976 1278 1216"> 1.5m 1.5m </td> <td data-bbox="1278 976 1433 1216"> Yes </td> </tr> <tr> <td data-bbox="868 1216 1038 1456"> R2 - 3rd storey (> 7m- 2.5m) Eastern elevation Western elevation </td> <td data-bbox="1038 1216 1150 1456"> 13.38m 1.5m </td> <td data-bbox="1150 1216 1278 1456"> >2.5m >2.5m </td> <td data-bbox="1278 1216 1433 1456"> Yes </td> </tr> <tr> <td data-bbox="868 1456 1038 1753"> R2 - 3rd storey (> 7m- 2.5m) Internal setback Between Dual Occupancies </td> <td data-bbox="1038 1456 1150 1753"> Nil </td> <td data-bbox="1150 1456 1278 1753"> 1.5m* </td> <td data-bbox="1278 1456 1433 1753"> No </td> </tr> </tbody> </table> <p data-bbox="868 1787 1433 1904">* Nil Setback between the two dual occupancies for ground and first floors, the top floor would have a 1.5m setback resulting in a non-compliance with the DCP requirement.</p>	Control	Existing	Proposed	Compliance	Zone R2 (Low Density Residential)				R2 - 1 st storey Up to 4m - 900mm Eastern elevation Western elevation	13.38m 1.5m	1.5m 1.5m	Yes	R2 - 2 nd storey up to 7m - 1.5m Eastern elevation Western elevation	13.38m 1.5m	1.5m 1.5m	Yes	R2 - 3 rd storey (> 7m- 2.5m) Eastern elevation Western elevation	13.38m 1.5m	>2.5m >2.5m	Yes	R2 - 3rd storey (> 7m- 2.5m) Internal setback Between Dual Occupancies	Nil	1.5m*	No
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		The proposed setback resulting from the podium design is not supported because the 'podium structure' appearance linking the two dual occupancies is inappropriate as indicated in the comments provided by Council's Conservation Planner. A redesign of the development was recommended so that the podium structure containing the two dual occupancies are to be separated.
P1 Front setback <ul style="list-style-type: none"> To match adjoining properties. P5 Rear Setback – Rear <ul style="list-style-type: none"> To match adjoining properties. 	Yes	There is no immediate dwelling to the east of the existing dwelling due to the tennis courts and to the west is a corner block. However, the front setback is also generally commensurate with the streetscape. The rear setback proposed is approximately 8.5m which would appear reasonable. However, as the basement carpark also extends up to this, impacts on Tree T7 are expected and not supported.
1.4.7 Form Massing Scale <ul style="list-style-type: none"> Floor to ceiling height 2.7m 	No	2.7m ceiling heights have been provided. However, as a third floor is proposed and the building exceeds the maximum height limit, the proposal will appear excessively bulky from most elevations.
1.4.8 Built Form Character	No	Single and two storey dwellings with 30-45 deg. pitched, hipped and gable roof forms are typical in the locality and conservation area. The proposal however will be a three storey modern structure with low pitched (22.5 degree) hipped roof does not appear to match the architecture/design for the remainder of the building. The mirror image design of the pair of dual occupancies is not favoured and was expressly mentioned by the NSLPP in their report on the previous proposal for the site. The proposal will have a bulky and overbearing appearance from adjoining properties including the two Heritage items to the rear. The current design of the proposed dual occupancy dwellings will not complement the existing character of the locality and the Cremorne conservation area in a positive way.
1.4.9 Dwelling Entry	No	Dwelling entries to ground floor dwellings E1 & W1 appear to have a poor relationship with the street.
i. Roofs As per Character Statement Pitched, hip & Gable 30-45 deg.	No	Very low pitched (22.5deg) hipped roof proposed, no gables, mirror image to both dual occupancies.
1.4.11 Dormers	N/A	
1.4.12 Materials	Yes	Generally acceptable.

<p>1.4.13 Balconies –</p> <ul style="list-style-type: none"> • Min depth – 2m • Min area – 8m² • P3 Balconies must be incorporated within building envelope (as specified by setbacks and or building height plane) and should not be located on roofs, podiums or be cantilevered. 	<p>No</p>	<p>Upper levels would overlook adjacent properties and third floor level balconies are essentially roof/podiums. Therefore, this aspect of the proposal is not supported.</p>									
<p>1.4.14 Front Fences</p> <ul style="list-style-type: none"> • No greater than 1m from front building line & along front boundary • Transparent fences no greater than 1.5m with 50% solid construction 	<p>No</p>	<p>Fencing up to 1.8m has been proposed. Council's Heritage Officer has recommended modifications to provide:-</p> <p><i>'a garden fence that is the dominant element with no more than a 1.0m height'</i>.</p>									
<p>1.5 Quality Urban Environment</p>											
<p>1.5.3 Safety and Security</p>	<p>Yes</p>	<p>The proposed entries appear to be safe, however pedestrian access to each of the units within the development would be complex due to the single entrance from the street and location of unit entrances at different levels.</p>									
<p>1.5.4 Vehicle Access and Parking</p> <ul style="list-style-type: none"> • Part B – Section 10 – Car parking • Limit width of vehicle access to 2.5m 	<p>Yes*</p>	<p>Car spaces are accessed via a car hoist and the proposed two (2) parking space per dwelling (with a total of 8 spaces within the basement carpark under the east and west buildings) and complies with DCP's maximum parking requirements.</p> <p>*Council's Engineer did not object to the following however :-</p> <ul style="list-style-type: none"> • Southernmost 'end bay' spaces appear difficult to manoeuvre to gain entry/exit. • No weather protection over hoist would likely result in issues during severe storm events. 									
<p>1.5.5 Site Coverage</p> <ul style="list-style-type: none"> • Max 45% 	<p>No*</p>	<p>Proposed Eastern Lot - 45.5% Proposed Western Lot – 45.3%</p> <p>*Minor non compliances of site coverage of 3m² and 1m² for east and west dual occupancies, respectively. Whilst minor, as this is a 'new build', the proposal should comply (although by themselves, the variations would not warrant a refusal of the subject application).</p>									
<p>1.5.6 Landscape Area</p>	<p>Yes</p>	<table border="1"> <thead> <tr> <th>Control</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Landscaped area Min 40%</td> <td>41.5% East 44.4% West</td> <td>Yes</td> </tr> <tr> <td>Unbuilt-upon area 15% Max</td> <td>13% East 10.3% West</td> <td>Yes</td> </tr> </tbody> </table>	Control	Proposed	Compliance	Landscaped area Min 40%	41.5% East 44.4% West	Yes	Unbuilt-upon area 15% Max	13% East 10.3% West	Yes
Control	Proposed	Compliance									
Landscaped area Min 40%	41.5% East 44.4% West	Yes									
Unbuilt-upon area 15% Max	13% East 10.3% West	Yes									
<p>1.5.7 Landscaping</p> <ul style="list-style-type: none"> • Planters – 110mm (diameter) x depth 135mm • Trees should provide 50% canopy cover over landscaped areas at maturity 	<p>No</p>	<p>Council's Landscape Officer does not support the current landscape plans and details submitted as indicated earlier in this report under the heading "Internal Referrals -Landscaping".</p>									

1.5.8 Front Gardens	No*	*Physical area would appear to be sufficient, terraced design proposed, however large tree in front setback to be removed (refer to this report as indicated earlier in this report under the heading "Internal Referrals - Landscaping").
1.5.9 Private Open Space (POS) Private open space at ground level <ul style="list-style-type: none"> • 4m min dimension & 2m above ground level • Must be provided off living areas 	No*	*Ground level dwellings comply, however, upper dwellings (W2 & E2) have <40m ² of POS in the form of elevated decks, with ground level POS located in the front setback. This would appear unsatisfactory in view of the Conservation Planner recommendation for a maximum 1m front fence.
1.5.10 Swimming Pools	N/A	
1.5.11 Tennis Courts	N/A	
1.5.12 Garbage Storage	Yes	Basement storage area provided.
1.5.13 Site Facilities	Yes	
1.5.14 Servicing of new lots	Yes	No issues with the provision of services expected.
1.6 Efficient Use of Resources		
1.6.1 Energy Efficiency		The application is accompanied by a compliant BASIX Certificates. A condition is requiring compliance with the requirements of the certificates could be imposed if the application was approved.
1.6.8 Stormwater Management 1.6.9 Water Management and Minimisation	Yes	Stormwater Management plan submitted and was found satisfy subject to the imposition of appropriate condition should consent be granted for this application.

Part C of NSDCP 2013 – 6.0 SOUTH CREMORNE PLANNING AREA CHARACTER STATEMENT

'Development within the Planning Area should result in:

- *no substantial change to residential densities;*
- *no significant change in intensity of development;*
- *a wide range of single household residential types being distributed in a number of distinctive built form/landscape areas;*
- *the conservation of features which contribute to the local identity.'*

6.3 Cremorne Conservation Area (CA)

Characteristics	Proposal	Comment
6.3.5 Characteristic buildings P1 Single and two storey detached late Victorian, Federation and Edwardian dwelling houses. Inter war residential flat buildings.	Three storey modern building	Whilst replicas of period dwellings are not usually favoured, the design proposed is incongruous with adjoining development and the conservation area.
6.3.6 Characteristic built elements		
Siting P1 To the middle of the lot with gardens to the front and rear	Development sited in the centre of the site, gardens front and rear.	Satisfactory

<p>Roofs P3 Pitched, hipped and gables roofs pitched between 30 and 45 degrees with skillion roofs to rear. Brick and rendered chimneys. Parapets to flat roof residential flat buildings.</p>	<p>One very low pitched (22.5deg) hipped roof.</p>	<p>Low pitched hipped roofs proposed appear token features on essentially a flat roofed development.</p>
<p>Materials P4 Walls: Face and rendered brick on sandstone foundations; dark brick to Inter-war residential flat buildings. P5 Roofs: Slate; terracotta tile and corrugated metal to the rear; flat roofs to residential flat buildings. P6 Timber verandahs and Federation and Arts and Crafts detailing.</p>	<p>External walls red brick Slate tiled roof, some metal cladding</p>	<p>Wall and roof materials generally satisfactory</p>
<p>Windows and doors P7 Consistent with building period and style. Timber.</p>	<p>Extensive areas of glazing, metal framed</p>	<p>Glazing and windows consistent with a 'modern' building</p>
<p>Fences P8 Low scale 900-1200 mm height; sandstone walls; metal palisade; timber pickets.</p>	<p>Palisade metal fencing to 1.8m some sandstone and metal cladding around entry.</p>	<p>Council's Conservation Planner has recommended front fencing to be reduced to 1m.</p>
<p>Car accommodation P9 Set back from the main building line.</p>	<p>Parking setback and in excavation.</p>	<p>Parking setback an in basement.</p>
<p>6.3.7 Uncharacteristic elements</p>		
<p>P1 Over-scaled additions; dormers and skylights to front roof slopes; roof terraces; carports and garages to the street; paved hardstand areas within front setbacks high solid fences to the street; rendering and painting of face brick; loss of original detail; modern infill development and residential flat buildings.</p>	<p>Large bulky development, extensive 3rd floor balconies could be considered similar to 'roof terracing'. Design 'modern' infill development.</p>	<p>Proposal would appear to have several elements deemed 'uncharacteristic'.</p>

Whilst not a specific list of requirements, the above guides development as to what the existing characteristics of the Cremorne conservation area are and what elements are not common and to be avoided if possible. From the above, it is evident that the design proposed is at odds with many of the elements common in the Cremorne conservation area and any redesigned proposal should try to incorporate as many characteristics as feasible.

NORTH SYDNEY LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN 2020

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

Population Increase

Development type	Existing	Proposed	Unit	Increase
Residential accommodation	1 x 3 Bed	4 x 3 Bed		7.8 residents
Non-residential accommodation	N/A	N/A	N/A	N/A
Office premises – building up to and including 3 storeys	N/A	N/A	N/A	N/A

Contribution amounts payable

Applicable contribution type		
s7.11 contribution		
<i>(Net population increase)</i>	Open space and recreation facilities:	\$33,038.67
	Public domain:	\$18,391.65
	Active transport:	\$1,049.72
	Community facilities:	\$6,635.97
	Plan administration and management:	\$883.98
	Total:	\$60,000.00

Conditions requiring the payment of contributions at the appropriate time can be imposed should approval be granted for the subject application.

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 4.15 considerations of Environmental Planning and Assessment Act 1979 | Yes |
|----|--|-----|

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Bennett Precinct. Council received 30 submissions, including several very detailed and comprehensive submissions from the owners of:-

- 4 Bertha Road (Heritage Item);
- 19 Bennett Street (Heritage Item), and;
- 19 Burroway Street.

Instead of individually addressing each of the submissions, the issues have been collated and the following matters were raised:-

- 1. Proposal exceeds the 8.5m height limit Development Control in the LEP and seeks a waiver that would create a precedent for future developments;**

Comment:

The development does indeed exceed the height limit and although each development is assessed on its merits, continually permitting unjustified variations would create a precedent for future developments.

- 2. Proposal impacts privacy of adjoining properties, caused by substantial balcony spaces;**

Comment:

Agreed, the 3rd storey balconies/decks in particular will overlook adjoining properties, this impact exacerbated by the loss of substantial screening vegetation.

- 3. Proposal fails to give due consideration to the heritage listed homes that neighbour this property.**

Comment:

Agreed. It is considered the 3 storey proposal, as designed, will have an overbearing visual impact on the adjoining heritage items in addition to some overshadowing and impact the settings of these items. Council's Heritage Advisor has also recommended such modifications to the design of the development that the proposal cannot be recommended for approval in its current form.

- 4. Proposal would create an unacceptable precedent within the heritage and conservation of this neighbourhood.**

Comment:

Agreed. As previously mentioned, every development is assessed on its merits. However, the continuous approval of unacceptable developments dilutes Council's ability to achieve sympathetic development outcomes in the Conservation Area.

5. Design will not fit in with current aesthetics of the neighbourhood;

Comment:

Agreed. The current proposal does not appear to be consistent with the Cremorne Conservation Area's character statement. The three storey modern development is overbearing and incongruous in the locality.

6. Proposal is not in keeping with the area, is a vast overdevelopment and is clearly driven by financial return;

Comment:

Agreed, the proposal is not in keeping with the area and although no 'Floor Space Ratio' applies to the site, setbacks and height standards control development. In this regard, the height non-compliance does create an 'overdevelopment' of the site, whilst 'vast' may be an exaggeration, it is still an overdevelopment.

With regard to the second point, most development is driven by financial return, with the exception of development for a single family home, or in some cases 'granny flat' style dual occupancies.

7. Visual impact of the development, too large in scale:

Comment:

Agreed, the 8.5m height development standard implicitly guides development to two storey, pitched roof development, one of the objectives of the Height of Buildings' development standard is:- *'to maintain a built form of mainly 1 or 2 storeys in Zone R2 - Low Density Residential'*.

8. Car lift is unlikely to be used, additional 8 cars on the street.

Comment:

The usage of the carlift is speculative currently, but, there may be temptation for residents returning home temporarily to leave their cars in the street for convenience. Parking for longer periods or overnight would encourage garage use for security.

9. Impact from large glass areas of DA 353/2021 overlooking neighbours (similar to that of the new 8 Bertha Road);

Comment:

The large areas of glass facing the rear of the property is a concern, particularly from the third floor, and west facing windows at the second floor. However, the third floor level and the rear facing decks are not supported in their current form. Obscure glazing could be conditioned for the second floor west facing windows, if the proposal was to be approved.

10. Further vehicles being added would only exacerbate parking issues for existing residents;

Comment:

The development would, as a result of increasing the number of dwellings on site by three, also increase traffic and on-street parking, however, this impact is relatively minor as the proposal complies numerically with the provision of car spaces.

11. North Sydney Council has already met their new dwelling targets provided by the State Government, so there is no outside pressure for further development or for requirements to be relaxed;

Comment:

This is a valid point as there is no 'public interest' benefit in approving a proposal that creates an overdevelopment of the site.

12. Non-compliance with DCP Part B Section 13.4. The plans fail to give due consideration to the houses and grounds of the adjoining heritage listed properties;

Comment:

This matter is addressed above in issue 3.

13. Non-compliance with LEP Clause 4.3 (2) – Height of Buildings. Both buildings exceed the 8.5 metre height restriction for R2 Low Density Residential;

Comment:

This issue has been touched on in Issue 1 above and it is noted that whilst the applicant has lodged a submission to vary the development standard, that submission was not found to be convincing.

14. Non-compliance with LEP Clause 4.3 (1)(a)– Height of Buildings. The plans do not step development on sloping land to follow the natural gradient;

Comment:

Although the site is lower than street level, the area of the site to be built upon has already been excavated and is generally level, this requirement is of less weight than the overall height non-compliance.

15. Non-compliance with LEP Clause 4.3 (1)(d)– Height of Buildings. The plans do not maintain privacy for residents of existing dwellings;

Comment:

Agreed, the height non-compliance permits a third storey with its associated privacy and other impacts.

- 16. Non-compliance with DCP Part B Section 1.3.10. The plans do not provide a reasonable level of visual privacy – overlooking from elevated rear balconies;**

Comment:

This issue has been mentioned above in Issue 2,

- 17. Non-compliance with DCP Part B Section 1.3.8 - Acoustic Privacy. The plans do not provide a reasonable level of acoustic privacy;**

Comment:

It would be difficult to refuse an application for a two storey, height compliant, house or dual occupancy on this issue alone. However, the third floor levels and entertaining decks would exacerbate this issue and are not supported within a R2 (Low Density Residential) zone.

- 18. Non-compliance with DCP Part B Section 1.3.7 - Solar Access. The development will impact the solar access of neighbouring properties;**

Comment:

Whilst adjoining properties would likely receive the minimum solar access requirement, some unnecessary additional overshadowing caused by the excessive height may occur, and as previously mentioned in this report, there is no good reason why neighbours should experience any additional impact (however minor) from a non-compliant building design.

- 19. Non-compliance with LEP Clause 4.3 (1)(c) – Height of Buildings. The development will impact the solar access of neighbouring properties;**

Comment:

Associated with the DCP requirements addressed above in issue 18.

- 20. Non-compliance with LEP Clause 4.3 (1)(f) – Height of Buildings. The development is an inappropriate scale and density;**

Comment:

As previously mentioned, height requirements, in addition to setbacks, control the building envelope thus scale and density. The proposed internal zero setback for the first two levels of the development, in addition to the 1.5m third floor setback (which is generally required to be 2.5m) both give the development more floorspace than that of two detached dual occupancies.

The excess height, permitting a third level, makes the buildings even bigger and bulkier contributing to their inappropriate scale and density.

- 21. Non-compliance with LEP Clause 4.3 (1)(g) – Height of Buildings. The development is not 1 or 2 storeys;**

Comment:

Agreed, the proposal goes against this objective. The 8.5m maximum also appear to imply two storey (pitched roof) structures in the R2 –Low Density Residential Zone,

- 22. Non-compliance with DCP Part B Section 1.4.7 - Form, massing & scale. The proposed buildings are not consistent with surroundings;**

Comment:

Agreed, the proposal will appear bulky and overbearing to adjoining properties. Council's Heritage Officer also recommends a lower streetscape appearance.

- 23. Non-compliance with DCP Part B Section 1.4.8 - Built form character. The proposed buildings are not complementary to the character of the locality;**

Comment:

Agreed, the Character Statement for the Cremorne Conservation Area favours single and two storey development. The mirror image design is also out of place in the streetscape.

- 24. Inconsistent with DCP Part C Section 6 the South Cremorne Planning Area Character Statement. The proposed buildings are not consistent with the Character Statement;**

Comment:

Agreed, as addressed in this report and in issue 23 above.

- 25. The development is likely to impact on established trees in the vicinity;**

Comment:

Agreed, Council's Landscape Officer has been critical of the proposal and Landscape plans / details submitted. Most vegetation on site is to be lost including significant trees and screening vegetation. Council's street trees are also impacted.

- 26. The seeming lack of consideration of the feedback from the NSLPP;**

Comment:

Only some of the recommendations of the NSLPP have been adopted. An important recommendation is that (emphasis in **bold**):-

- **The upper level should read primarily as a strong pitched roof form** that has the capacity to contain internal spaces. This in essence will **require a reduction in floor area and replanning of the dwellings. Unification of the roof form for each building** will provide a better street presentation and **avoid a mirror image.**

Most of the above is self-explanatory, and has been overlooked in the current design, however, the 'Unification of the roof form' comment may have been misinterpreted. Even Council's Heritage Officer has commented that:-

'The ground floor and first floor resolution facing Bennett Street in the earlier scheme are a better resolution in the Bennett Street streetscape as compared with the current proposal.'

In essence, the previous, refused proposal had a better streetscape appearance of two separate and individual dual occupancies, than the current mirror image, podium design.

27. Non-compliance with DCP Part B Section 1.3.6 - Views. The plans will impact the views of neighbouring properties particularly those on the north side of Bennett Street;

Comment:

Agreed, the proposed height, which is greater than the previous refused proposal, would unnecessarily impact iconic views of adjacent properties.

28. The design and quality of the plans are inconsistent with our heritage and conservation area;

Comment:

Agreed, the development proposed is a bulky modern structure with token low 22.5 degree pitched roofs which give the impression of an afterthought in the design process. Whilst copying a period late 18th century to early 20th century design is not favoured, the design proposed appears not sympathetic with the CA or adjoining items.

29. The development will not contribute to the supply of low-cost housing in our area;

Comment:

The proposed development is not obliged to provide low income housing on-site and given its location, it is unrealistic to expect this.

30. It is incorrect to suggest that excavation at the southern end results in a lower 'existing ground level' for the site than from ... surrounding properties.;

Comment:

Possibly correct, from the appearance of the site, tennis court and survey plans some fill excavated from the north of the site towards Bennett Street may have deposited on the southern parts of the site to level the land for the tennis court.

31. The size of the land allows for more than adequate development without the need to exceed the height controls. The minimum subdivision size is 450 sq. metres. The blocks are each 531.3 sq. metres;

Comment:

Agreed, the development is a 'new build' and no convincing arguments have been put forward to vary the height control.

- 32. There are no environmental planning grounds to justify the contravening of the development standard, there is significant public benefit to maintaining the development standard;**

Comment:

Agreed, and as discussed in this report - no environmental planning grounds or public benefit justifies relaxing the height development standard.

- 33. The proposal creates visually very imposing and noisy buildings;**

Comment:

Agreed, the building design is imposing, even overbearing and the additional 3rd floor and its terraces may contribute to increased unnecessary noise to adjoining properties.

- 34. Concern about the internal and external lighting;**

Comment:

The proposed third floor would appear to be increase nuisance lighting to adjoining properties, if the third floors and more importantly the terraces, are deleted from the scheme this impact would be more manageable.

- 35. Overlooking properties to south-west;**

Comment:

This matter has been previously mentioned in issues 2 and 9 above.

- 36. Overshadowing property to south-west;**

Comment:

As mentioned in issues 18 & 19 above the proposed design will result in nuisance shadowing that is unnecessary and exacerbated by the height non-compliance.

- 37. Impact on trees, particularly row of pines that provide privacy;**

Comment:

Refer to Council's Landscape Officers report, most screening vegetation will be lost.

38. Impact on Tree (T7) Magnolia Grandiflora:

Comment:

The Landscape Officer's report states that the impact on this significant tree will likely result in its loss.

39. Impact on Heritage Tennis courts – shadowing and visual impact;

Comment:

The proposed development will have a visual and overshadowing impact on the tennis court to the south, these impacts could be ameliorated with a reduction in height and/or the deletion of level 3.

40. Allowing a modern development to take place will degrade the value of surrounding properties;

Comment:

The issue of devaluation of properties is often raised however no empirical evidence has been provided to support this claim.

41. Non-compliance with DCP Part B Section 1.3.6 - Views. The plans will impact the views of neighbouring properties particularly those on the north side of Bennett Street;

Comment:

Agreed, and mentioned in issue 27 above, impacts on views of the CBD, parts of the harbour and sails of the Opera House will result from the development as proposed, exacerbated by the height non-compliance.

42. The 3 habitable levels have 6 sets (approximately 60 lineal metres) of full-length glass doors to the south of the buildings. In addition, these adjoin 6 terraces / balconies totalling approximately 124sq metres. The 4 balconies directly overlook the back living areas /gardens of 4 neighbours. This creates an unacceptable imposition on the privacy and the quite enjoyment of these properties;

Comment:

This issue has been addressed in 2, 9 and 16 above.

43. Same restrictions should apply to developers as existing buildings within conservation area;

Comment:

This is a difficult issue as more modern buildings and new infill development do not necessarily have to comply with heritage considerations of a Heritage Item, or period building. However, newer development should still be sympathetic to the Conservation Area.

44. Developer maximizing financial gain;

Comment:

Noted. The proposed height variation would facilitate a third floor and additional floorspace for the larger upper floor dwellings and this will have implications on the value and returns of the development.

45. Third attempt at a 3 storey development which does not comply with requirements, perhaps it is time to acknowledge that the ambitions are not achievable. It is suggested a 2-storey development would be appropriate.

Comment:

Agreed, the previous North Sydney Local Planning Panel did recommend a replanned development and suggested rooms in the roof.

46. Devaluation of Heritage items.

Comment:

The development will have impacts on the adjoining Heritage items, however, the issue of devaluation of properties adjoining proposed developments is an issue often brought up in objections, but it is an issue that has never been resolved satisfactorily in planning practice. (i.e. no empirical evidence has been submitted to support the submission.)

47. Approval would indicate heritage items not important, potential lifting of Heritage Status and redevelopment of 19 Bennett Street.

Comment:

This may be the opinion of the objector, but not of Council as every development is considered on its merits. In this case, the development, as proposed, is not supported in its current form.

Harrison Precinct - Minutes of Meeting held on Thursday, 2 December 2021

The precinct considered the proposal and identified the following issues:

- Detrimental impact on heritage items in the vicinity:
- Loss of privacy
- Excessive Height
- View sharing
- Lack of Reasonable Solar Access
- Visual Privacy
- Acoustic Privacy impacts
- Non-conformity Scale and density is inconsistent with surrounding, characteristic dwellings;
- Inconsistent with the Area Character Statement for the Cremorne Conservation Area of the South Cremorne Planning Area;

- Proposed 3 storeys plus basement is inconsistent with the surrounding built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential,
- Protect existing trees and vegetation during construction of Development;
- A number of significant trees on the construction site or adjoining properties will have their root protection zones breached and may not survive the construction;
- Increase in vehicle movements

Action: Meeting attendees voted unanimously to object. Convenor to lodge submission.

Comment:

The issues raised by the precinct have been also been covered in the discussion of objector submissions above and do not require re-examination.

Basis of submission supporting the proposal

The supporter claims that:-

- 1) The application meets all LEP requirements other than the height. The submitted design is reasonable given the contours of the site;**

Comment:

Not agreed, whilst no other development standards are being breached, several objectives of both the zone and development standard are not met. Likewise, the Heritage Provisions of the LEP have not been properly taken into consideration. Further a significant number of DCP requirements have not been met.

- 2) The streetscape to Bennett shows a two storey format matching other dwellings in the street. The original natural ground level is uncertain;**

Comment:

The streetscape of Bennett Street is varied - two storey development as well as single storey developments are evident, Council's Heritage Officer has recommended the design to be revised to:- *'..... generally present a single storey character to the street and continue to appear as a separate pair without a podium linking structure...'*. It is agreed the original ground level is uncertain.

- 3) The roof form is pitched as requested by North Sydney Council. There is no real requirement to pitch the roof as it is not a dominant element in the building elevations. If the roof is not a pitched form, the height standard, as defined by Council, has a less than 10% non-compliance to the LEP standard;**

Comment:

The roof form is pitched, however the 22.5 degree pitch is minimal, unsatisfactory and it is correct the roof isn't a 'dominant element' as it appears a token feature. If the roof were flat it would be an even more incongruous design.

- 4) **The claim that this development will affect the adjacent heritage properties. I would draw Council's attention to the history of the area. There are many council approved developments next to heritage items with no detrimental effects. The setback to 4 Bertha Street to the south of the project is over 20 meters from the southern boundary. For 19 Bennett St to the east, the project is adjacent to a tennis court. The house at 19 Bennett St is setback 7 meters to the southerly part of this boundary.**

Comment:

Every development is assessed on its merits and if this development was appropriately and sensitively designed, may have little detrimental effect. The setbacks quoted may be adequate for a two storey house, but the proposal is 3 storeys, exacerbated by the loss of virtually all screening vegetation.

- 5) **There has been an organised campaign of objection to this development. This campaign includes a lot of mis-information. It also called for groups of people who are in no way affected by the development to object. This organised attack is disruptive for the community. If there are non-compliance issues, it is the role of the Council to consider these matters.**

Comment:

The organisation of objectors against a development proposal is not unusual and as this is the third attempt at redevelopment, the public would be familiar with the process. Any interested party can lodge a submission and since the proposal is in a Conservation Area adjoining Heritage items, the wider community is justified in being interested in the proposal.

- 6) **The development would enhance the area and would provide much needed accessible accommodation for the area. The use of available technology for traffic management and people access should be commended.**

Comment:

There is no fundamental objection to a pair of dual occupancy developments but the design of the current proposal is at issue, in particular the height and bulk.

PUBLIC INTEREST

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

SUITABILITY OF THE SITE

The proposal would be located in a R2 - Low Density Residential Zone where dual occupancies are a permissible form of development. However, the current proposal is not considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

CONCLUSION + REASONS

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

The proposal is of excessive height and bulk and creates impacts on the streetscape of the conservation area and adjoining properties, two of which are Heritage items. Further impacts of overlooking and to a lesser extent overshadowing will result from the bulk and scale of the development.

An objection under clause 4.6 to the Height of Building development standard has been assessed as having insufficient merit. Furthermore, clause 6.6(2)(a) prohibits development for Dual Occupancies on land that already contains a building.

Council received 30 submissions that raised concerns about a number of design and heritage issues that have been discussed in this report.

Having regard to the merits of the proposal, the application is recommended for refusal for the reasons provided below.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Harrison Precinct for 14 days where a number of issues were raised that have been addressed in this report.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, resolve to refuse development consent to Development Application No. DA 353/21 for development of demolition of the existing structures and erection of an attached dual occupancy and associated works on each lot in an approved subdivision of the subject land into 2 lots (Consent DA 237/2018) on land at 11 Bennett Street, Cremorne, as shown on plans submitted, for the following seven (7) reasons:-

1) The proposed development is contrary to the following objectives of the NSLEP, R2 – Low Density Residential Zone:-

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

(Reasons: The current design of the Dual Occupancies will compromise the amenity of the surrounding area and Heritage items and the existing high level of residential amenity of the surrounds will be degraded)

2) The proposed development is contrary to the objectives of NSLEP, Clause 4.3, Height of Buildings Development Standard:-

Clause 4.3(1)

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

and:

- (2) 'The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map'.*

(Reasons: The design of the dual occupancies as currently proposed will impact views, solar access and privacy of adjoining development. Furthermore, the 3 storey development has excessive bulk and scale and does not maintain the built form of 1 or 2 storeys specified.)

3) The provisions of NSLEP, Clause 4.6 (3)(a) & (b) have not been met as the applicant has failed to demonstrate that:-

- '(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.'*

(Reasons: The applicant's submission under clause 4.6 has not demonstrated that compliance with the height standard is unreasonable, or that there are any special circumstances of the case. No convincing environmental planning grounds have been put forward)

4) The provisions of NSLEP, Clause 4.6 (4)(a)(i) & (ii) have not been met;

(Reasons: The applicant's clause 4.6 submission has not adequately addressed the matters required to be demonstrated by subclause (3) above and the proposed development is not in the public interest because it is inconsistent with several of the objectives of the Height of Buildings Development Standard and two of the objectives for development within the R2 – Low Density Residential zone)

5) The following objectives of NSLEP, Clause 5.10 - Heritage conservation have not been met, specifically:-

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

(Reasons: The development (as proposed) is not sympathetic to the Conservation Area or the two adjoining Heritage items. Further, the settings and outward views of the items are impacted by the height and bulk of the proposal which is exacerbated by loss of screening trees and vegetation)

6) The proposed development is contrary to Clause 6.6(2)(a) in NSLEP.

(Reasons: The proposed dual occupancy is a form of development prohibited within a conservation area where existing structures on the site have not been demolished pursuant to Clause 6.6(2)(a) in NSLEP)

7) The proposal does not comply with North Sydney DCP 2013 Part B Section 1- Residential Development in the following matters:-

1.3 Environmental Criteria

- **1.3.6 Views**
- **1.3.7 Solar Access**
- **1.3.10 Visual Privacy**

1.4 QUALITY BUILT FORM

- **1.4.6 Setback – Side**
- **1.4.7 Form Massing Scale**
- **1.4.8 Built Form Character**
- **1.4.9 Dwelling Entry**
- **1.4.10 Roofs**
- **1.4.13 Balconies**
- **1.4.14 Front Fences**

1.5 QUALITY URBAN ENVIRONMENT

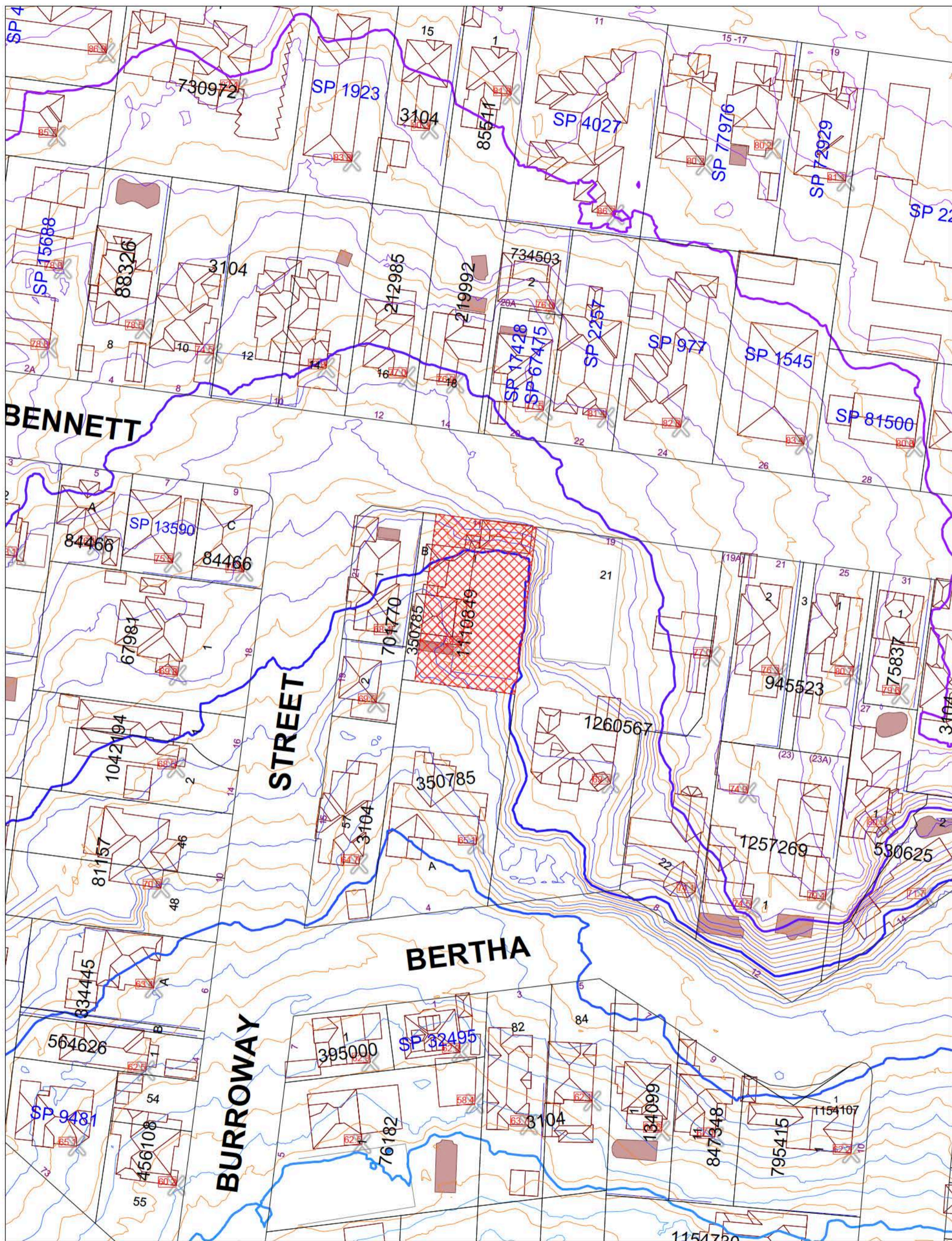
- **1.5.5 Site Coverage**
- **1.5.6 Landscape Area**

(Reasons: The proposed pair of dual occupancies does not comply with the requirements of the sections of the NSDCP as specified above and as discussed within the Planning Report prepared for the North Sydney Local Planning Panel)

John McFadden
CONSULTANT PLANNER

Robyn Pearson
TEAM LEADER ASSESSMENTS

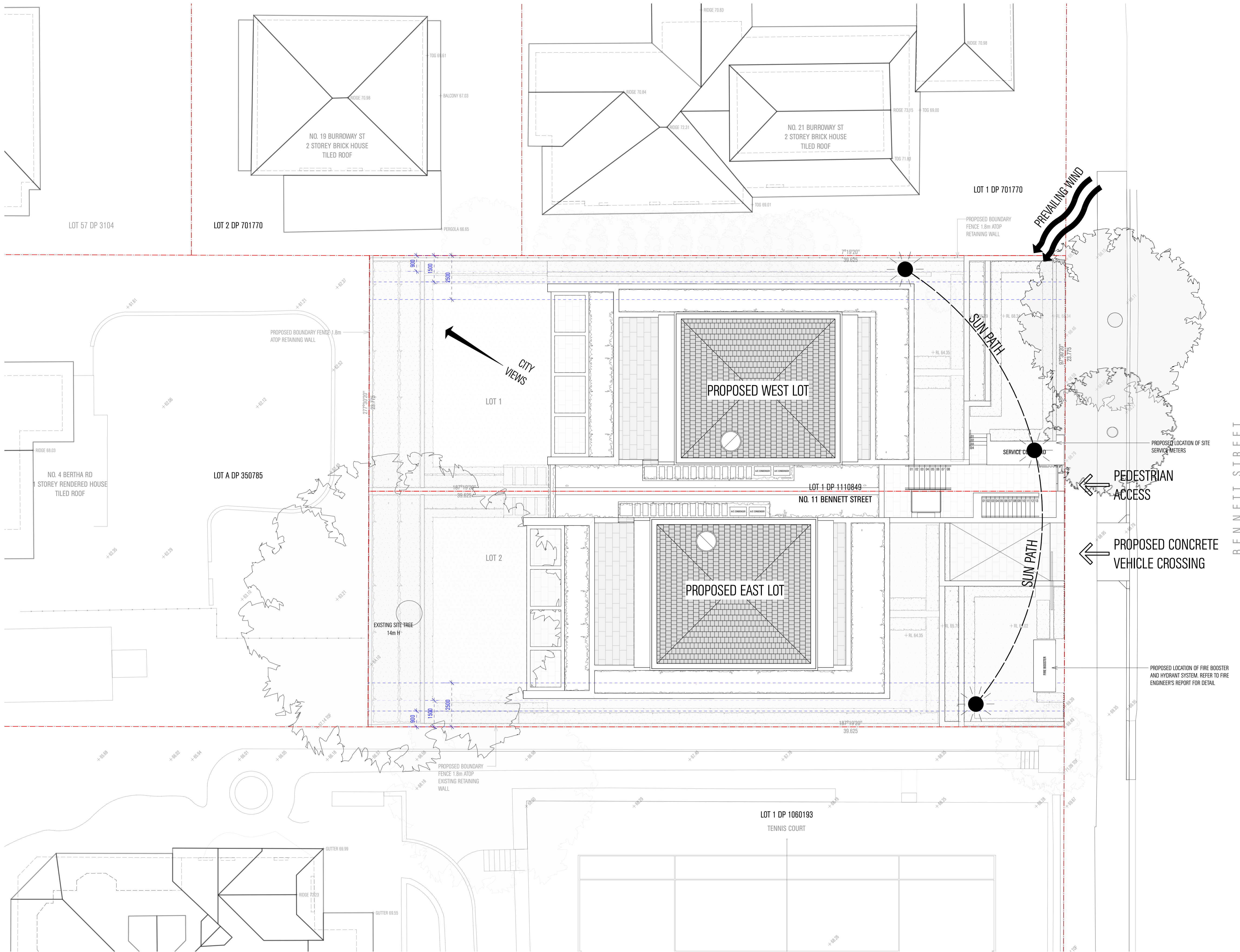
Stephen Beattie
MANAGER DEVELOPMENT SERVICES



North Sydney Council

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MATHIESON ARCHITECTS
 201/105 RESERVOIR ST SURRY HILLS NSW 2010 AUSTRALIA
 T: +61 2 9280 4100 INFO@MATHIESONARCHITECTS.COM

LEGEND

- Site Boundary
- Council setbacks / Height requirements
- New brick wall
- New blockwork wall / concrete structure
- New timber structure
- New lightweight walls
- New glazing
- New metal structure / cladding
- New render finish



NOTES

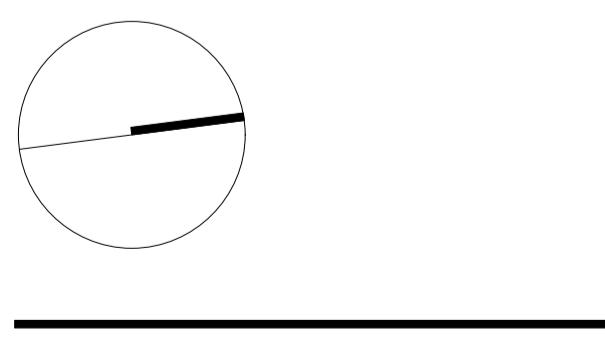
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REV. NO.	DATE	REVISIONS	BY	CHK
A	17.09.21	DA ISSUE	JR	CS

PROJECT BENNETT STREET RESIDENCES
ADDRESS 11 BENNETT STREET
 CREMORNE 2090
DOCUMENT DEVELOPMENT APPLICATION

DRAWING PLAN
 SITE ANALYSIS PLAN

DATE 17.09.21 **SCALE** 1:100@A1
DRAWN JR/MS **PROJECT NO.** 21010
DRAWING NO. DA.02 **REV. NO.** A

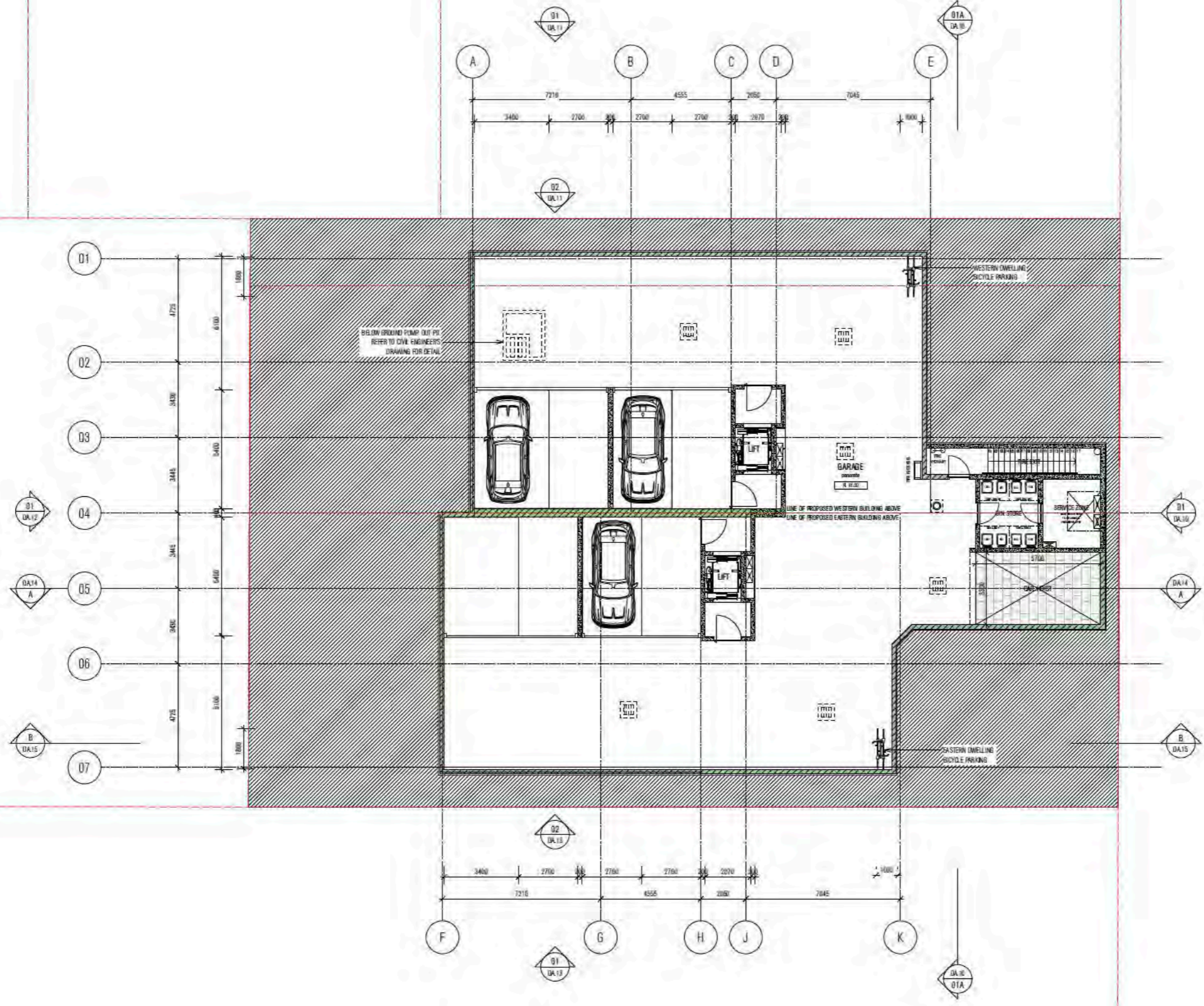


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01 PLAN
SITE ANALYSIS PLAN
 Scale 1:100 @ A1 / 1:200 @ A3

LEGEND

[Red dashed line]	Site Boundary
[Red solid line]	Classed setbacks / Street easements
[Green hatched]	Vegetated area
[Blue hatched]	Watercourse and / or watercourse
[Yellow hatched]	High voltage ducts
[Orange hatched]	Low voltage ducts
[Purple hatched]	Proposed
[Green hatched]	Proposed structure / Landmark
[Light green hatched]	Abandonment Area



REVISIONS

NO.	DATE	DESCRIPTION	BY	CHK
1	17/02/21	DA.03/01	DA	CS

REV NO.	DATE	DESCRIPTION	BY	CHK
1	17/02/21	DA.03/01	DA	CS

PROJECT	BENNETT STREET RESIDENCES
ADDRESS	11 BENNETT STREET CREMORNE 2030
DEVELOPMENT	DEVELOPMENT APPLICATION
DRAWING	PLAN LOWER GROUND FLOOR
DATE	17.09.21
SCALE	1:100@A1
COMMITTEE	JP/MS
PROJECT NO.	21010
DRAWING NO.	DA.03
REV NO.	A

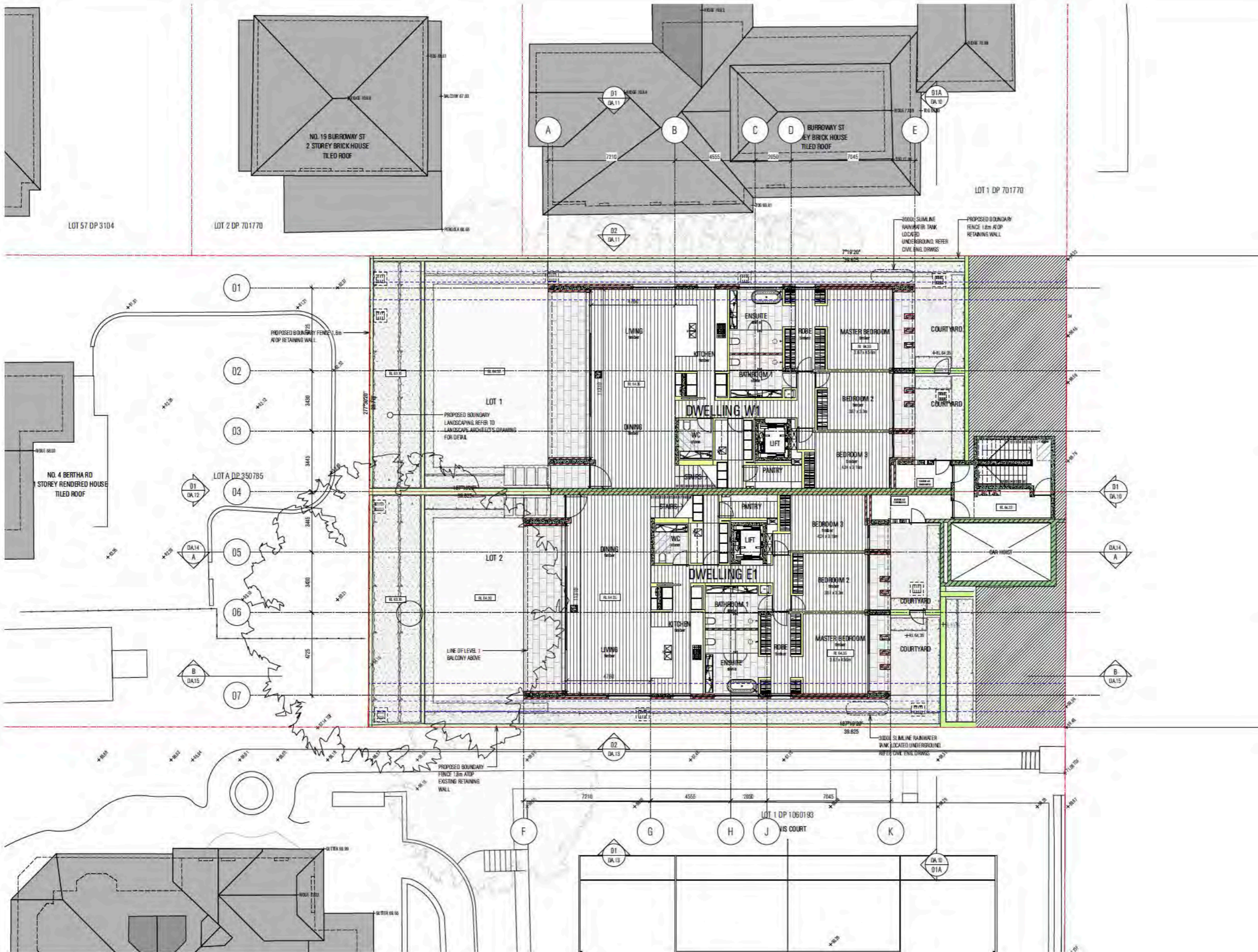


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LEGEND

- Site Boundary
- Closed staircase / lift equipment
- New brick wall
- New brickwork wall / concrete structure
- New timber structure
- New light weight walls
- New glazing
- New metal structure / cladding
- New concrete form



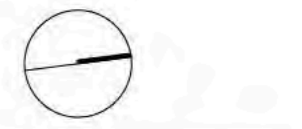
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REV	NO	DATE	REVISIONS	BY	CHK
A	1	17/09/21	DA 001E	JM	CS

PROJECT: BENNETT STREET RESIDENCES
 ADDRESS: 11 BENNETT STREET
 CREMORNE 2090
 DOCUMENT: DEVELOPMENT APPLICATION

DRAWING: PLAN
 GROUND FLOOR
 DATE: 17.09.21 SCALE: 1:100@A1
 DRAWN: JR/JMS PROJECT NO: 21010
 DRAWING NO: DA.04 REV NO: A



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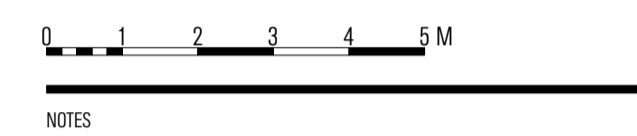
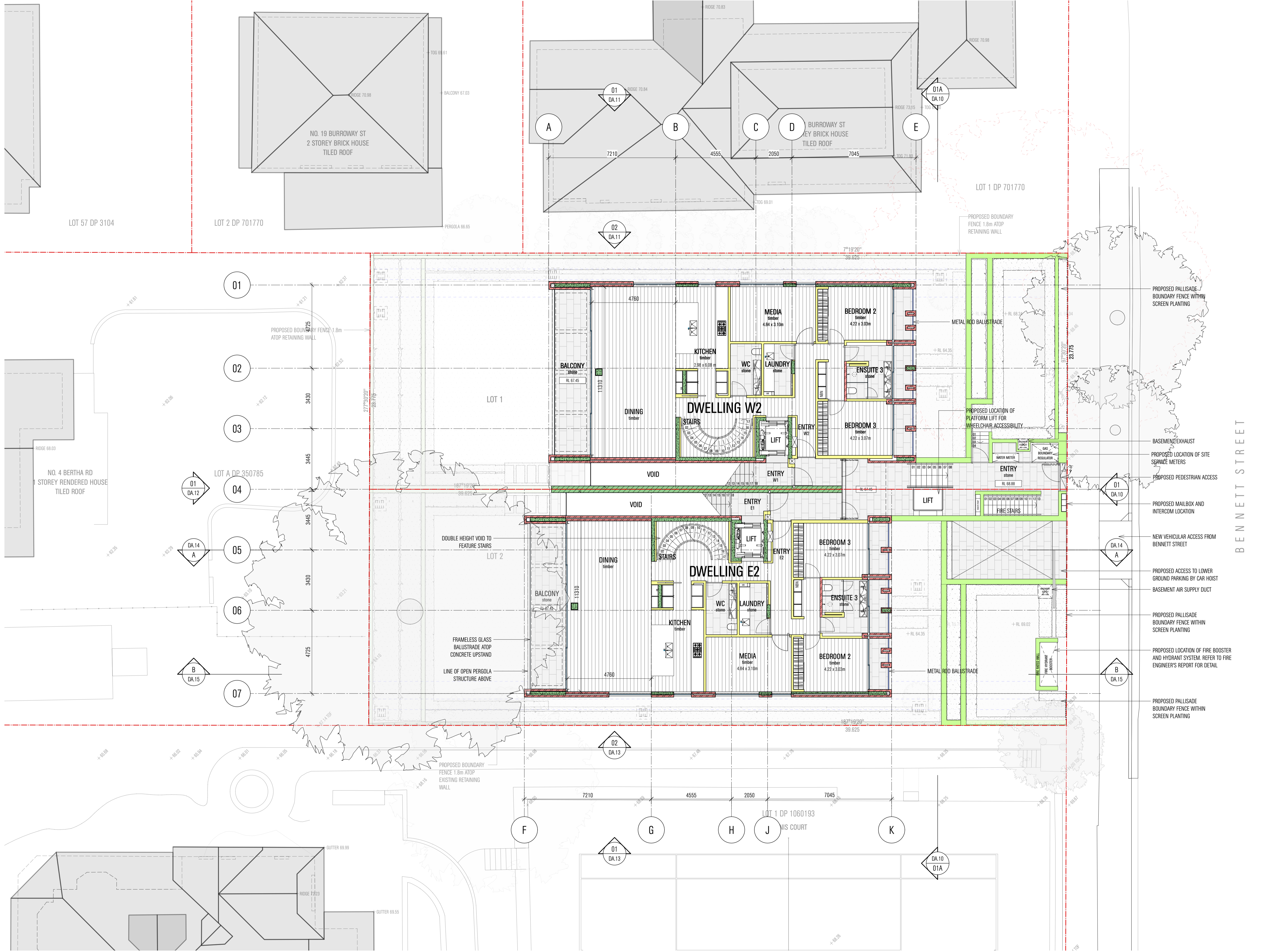
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01 PLAN
GROUND FLOOR
 Scale 1:100 @A1 / 1:200 @A3

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LEGEND

- Site Boundary
- Council setbacks / Height requirements
- New brick wall
- New blockwork wall / concrete structure
- New timber structure
- New lightweight walls
- New glazing
- New metal structure / cladding
- New render finish
- Existing RL
- Proposed RL

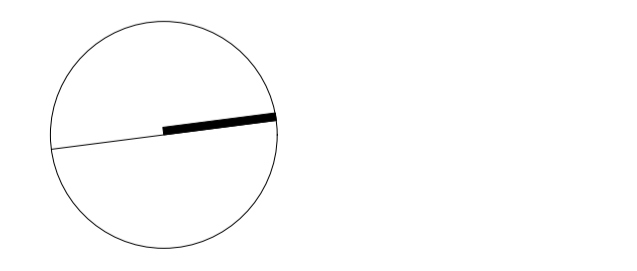


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REV NO.	DATE	REVISIONS	BY	CHK
A	17.09.21	DA ISSUE	JR	CS

PROJECT: BENNETT STREET RESIDENCES
 ADDRESS: 11 BENNETT STREET
 CREMORNE 2090
 DOCUMENT: DEVELOPMENT APPLICATION

DRAWING: PLAN
 LEVEL 1
 DATE: 17.09.21 SCALE: 1:100@A1
 DRAWN: JR/MS PROJECT NO: 21010
 DRAWING NO: DA.05 REV NO: A

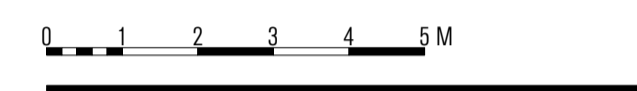


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01 PLAN
LEVEL 1
 Scale 1:100 @ A1 / 1:200 @ A3

LEGEND

	Site Boundary
	Council setbacks / Height requirements
	New brick wall
	New blockwork wall / concrete structure
	New timber structure
	New lightweight walls
	New glazing
	New metal structure / cladding
	New render finish
	Existing RL
	+RL 00.00 Proposed RL



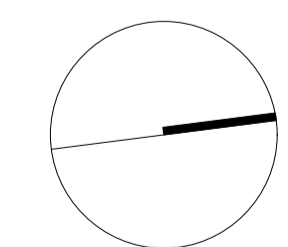
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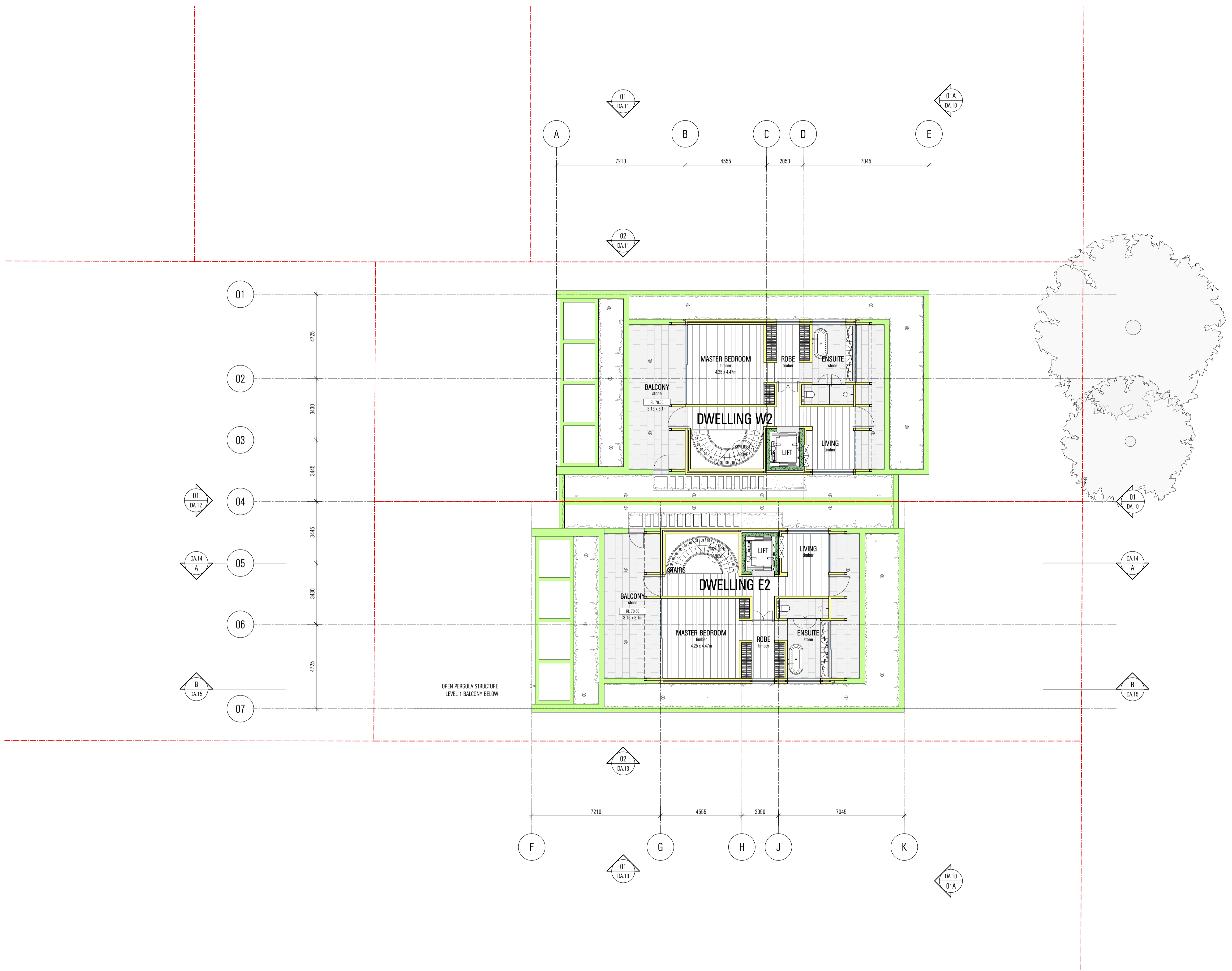
REV NO.	DATE	REVISIONS	BY	CHK
A	17.09.21	DA ISSUE	JR	CS

PROJECT BENNETT STREET RESIDENCES
ADDRESS 11 BENNETT STREET
 CREMORNE 2090
DOCUMENT DEVELOPMENT APPLICATION

DRAWING PLAN
 LEVEL 2
DATE 17.09.21 **SCALE** 1:100@A1
DRAWN JR/MS **PROJECT NO.** 21010
DRAWING NO. DA.06 **REV NO.** A



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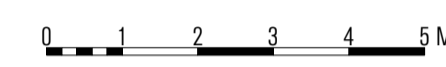
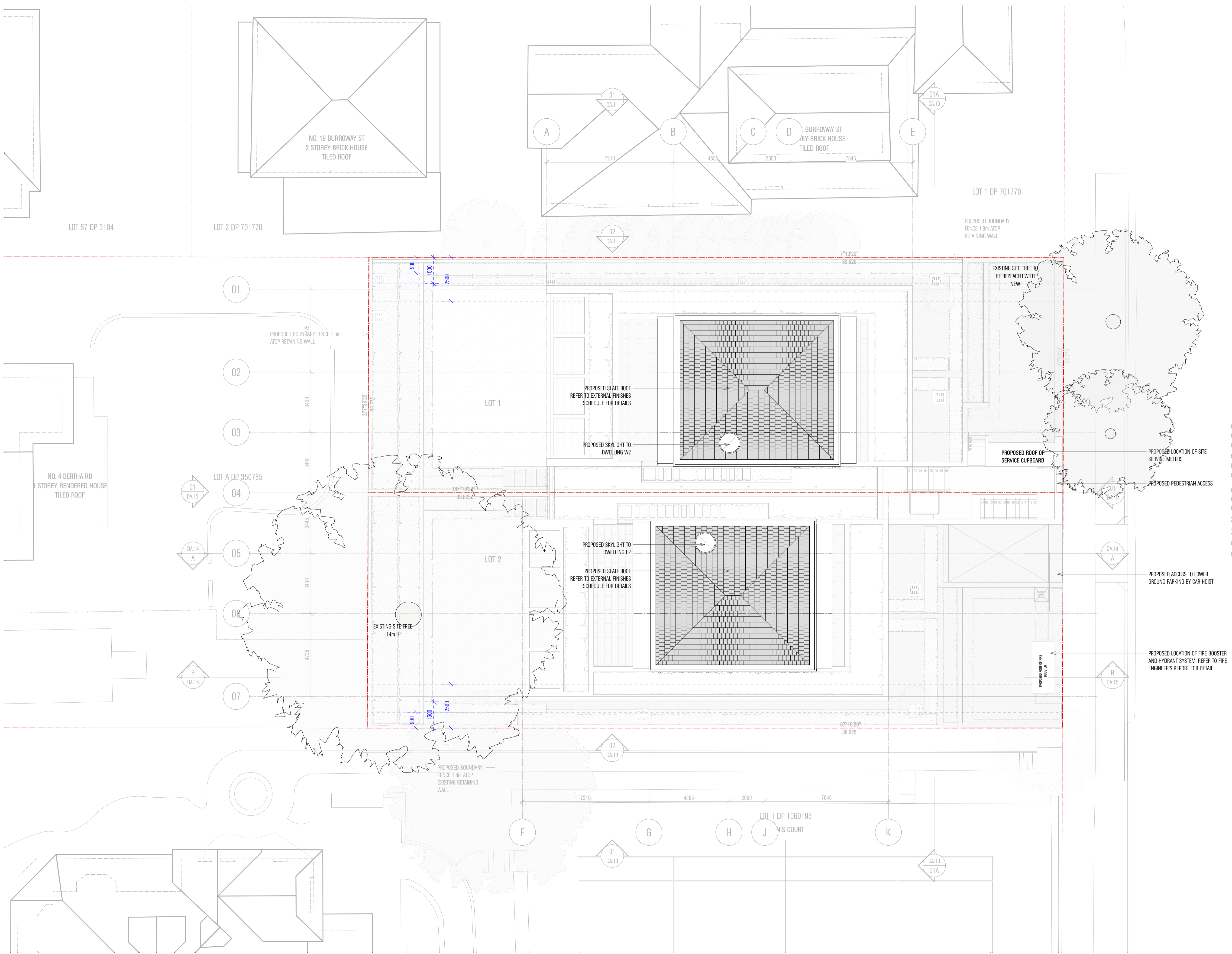


01 PLAN
LEVEL 2
 Scale 1:100 @ A1 / 1:200 @ A3

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LEGEND

- Site Boundary
- Council setbacks / Height requirements
- New brick wall
- New blockwork wall / concrete structure
- New timber structure
- New lightweight walls
- New glazing
- New metal structure / cladding
- New render finish
- Existing RL
- +RL 00.00 Proposed RL



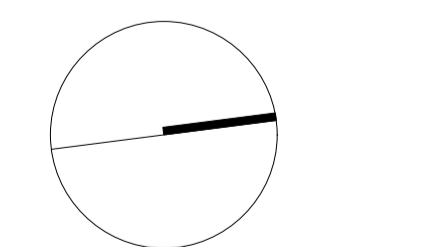
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REVISIONS

REV NO.	DATE	REVISIONS	BY	CHK
A	17.09.21	DA ISSUE	JR	CS

PROJECT BENNETT STREET RESIDENCES
ADDRESS 11 BENNETT STREET
CREMORNE 2090
DOCUMENT DEVELOPMENT APPLICATION

DRAWING PLAN
ROOF PLAN
DATE 17.09.21 SCALE 1:100@A1
DRAWN JR/MS PROJECT NO. 21010
DRAWING NO. DA.07 REV NO. A



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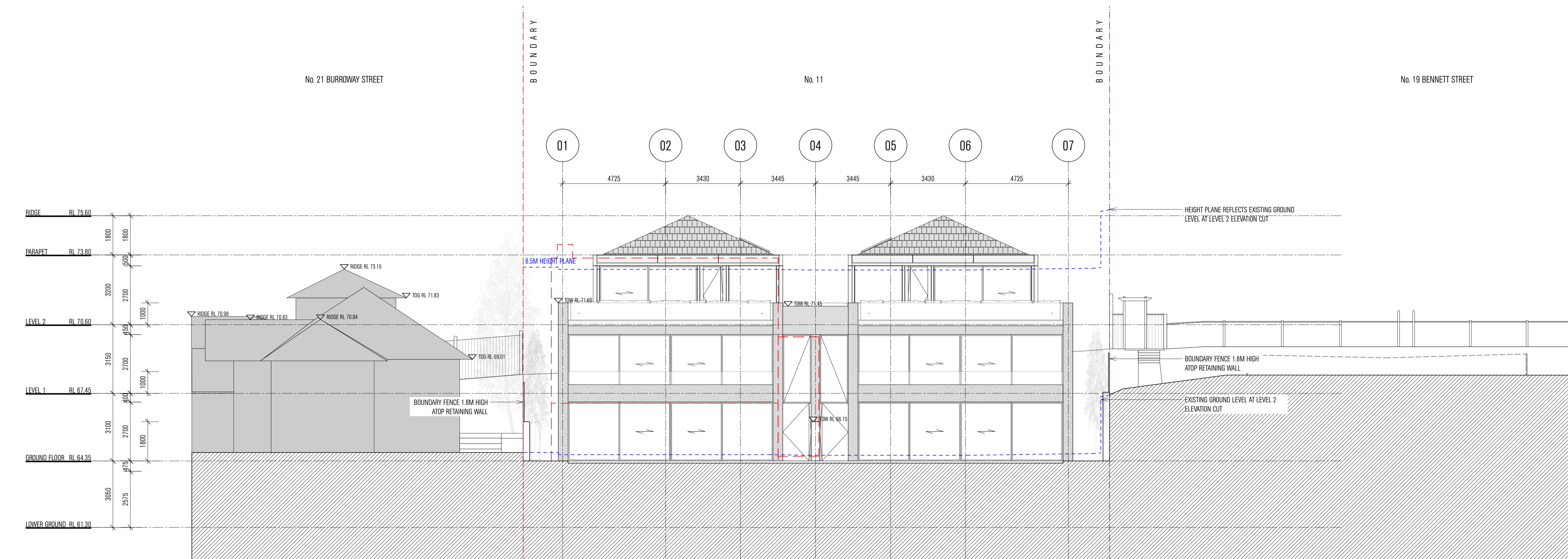
01 PLAN
ROOF PLAN
Scale 1:100 @ A1 / 1:200 @ A3

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LEGEND

- Site Boundary
- Council setbacks / Height requirements
- Proposed Demolition
- New brick wall
- New blockwork wall / concrete structure
- New timber structure
- New lightweight walls
- New glazing
- New metal structure / cladding
- New render finish

TOW - Top of Wall
TOG - Top of Gutter



NOTES

REV NO.	DATE	REVISIONS	BY	CHK
A	17.09.21	DA ISSUE	JR	CS

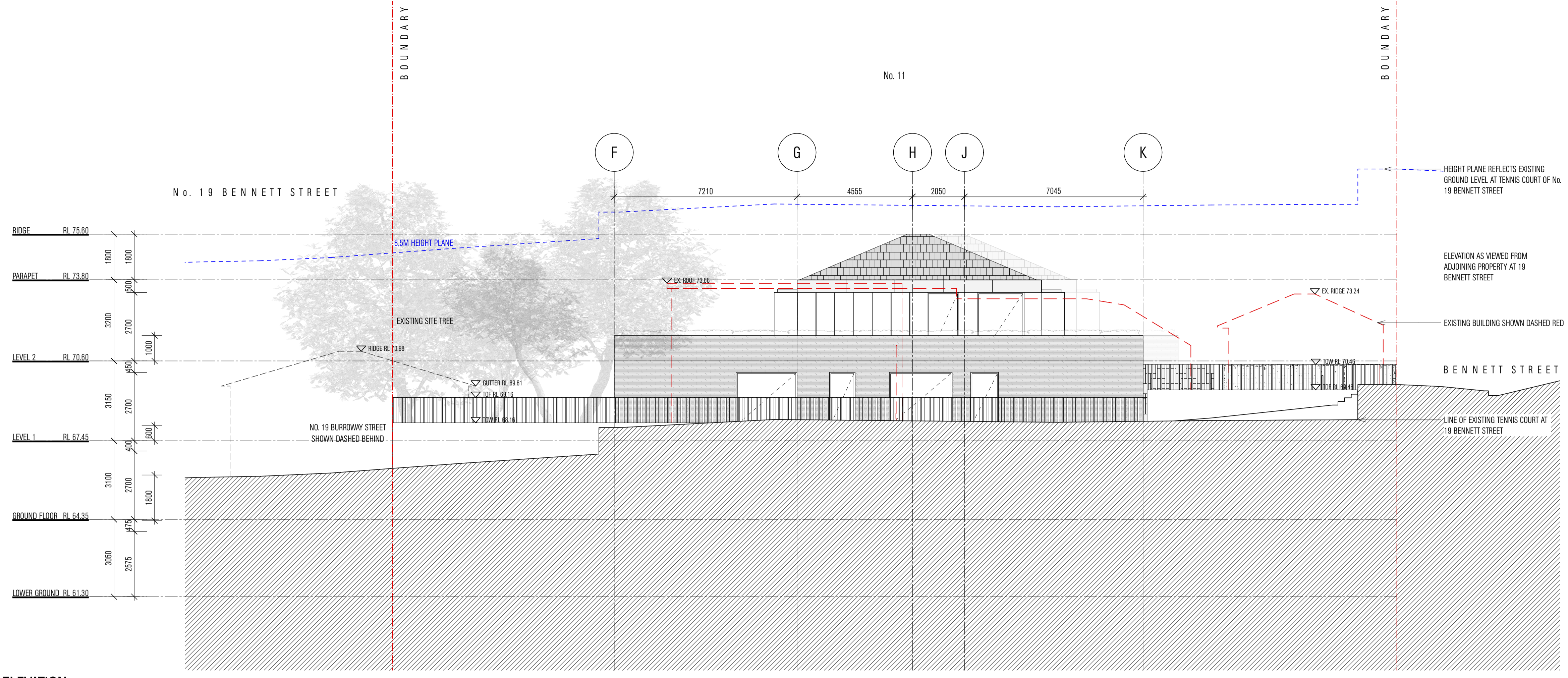
01 ELEVATION
SOUTH
Scale 1:100 @ A1 / 1:200 @ A3

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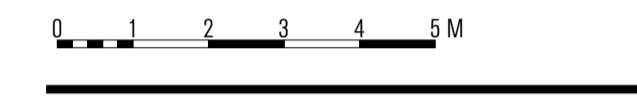
LEGEND

- Site Boundary
- Council setbacks / Height requirements
- Proposed Demolition
- New brick wall
- New blockwork wall / concrete structure
- New timber structure
- New lightweight walls
- New glazing
- New metal structure / cladding
- New render finish

TOW - Top of Wall
 TGB - Top of Gutter

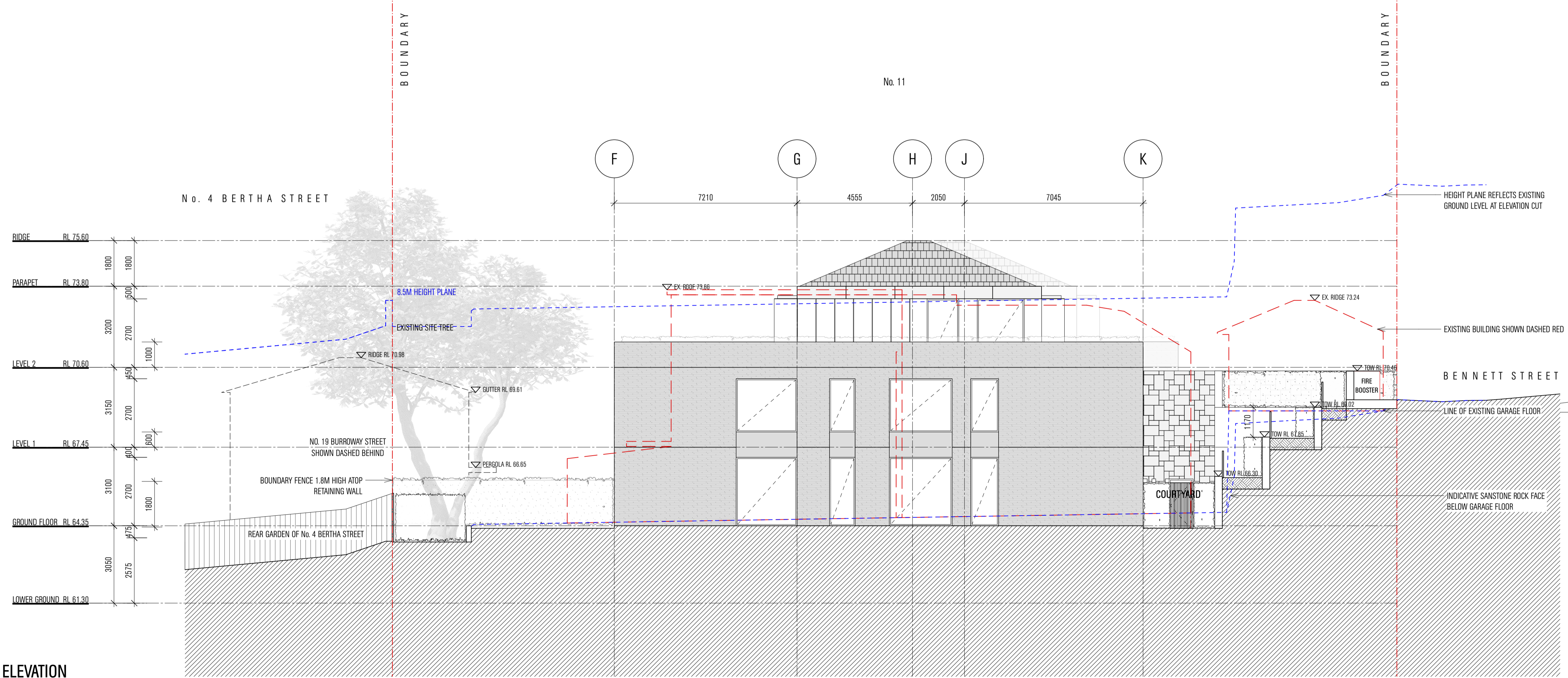


01 ELEVATION
 DA.13 EAST (VIEW FROM ADJOINING PROPERTY)
 Scale 1:100 @ A1 / 1:200 @ A3



NOTES

REV NO.	DATE	REVISIONS	BY	CHK
A	17.09.21	DA ISSUE	JR	CS



02 ELEVATION
 DA.13 EAST
 Scale 1:100 @ A1 / 1:200 @ A3

PROJECT BENNETT STREET RESIDENCES
 ADDRESS 11 BENNETT STREET
 CREMORNE 2090
 DOCUMENT DEVELOPMENT APPLICATION

DRAWING ELEVATION
 EAST ELEVATION

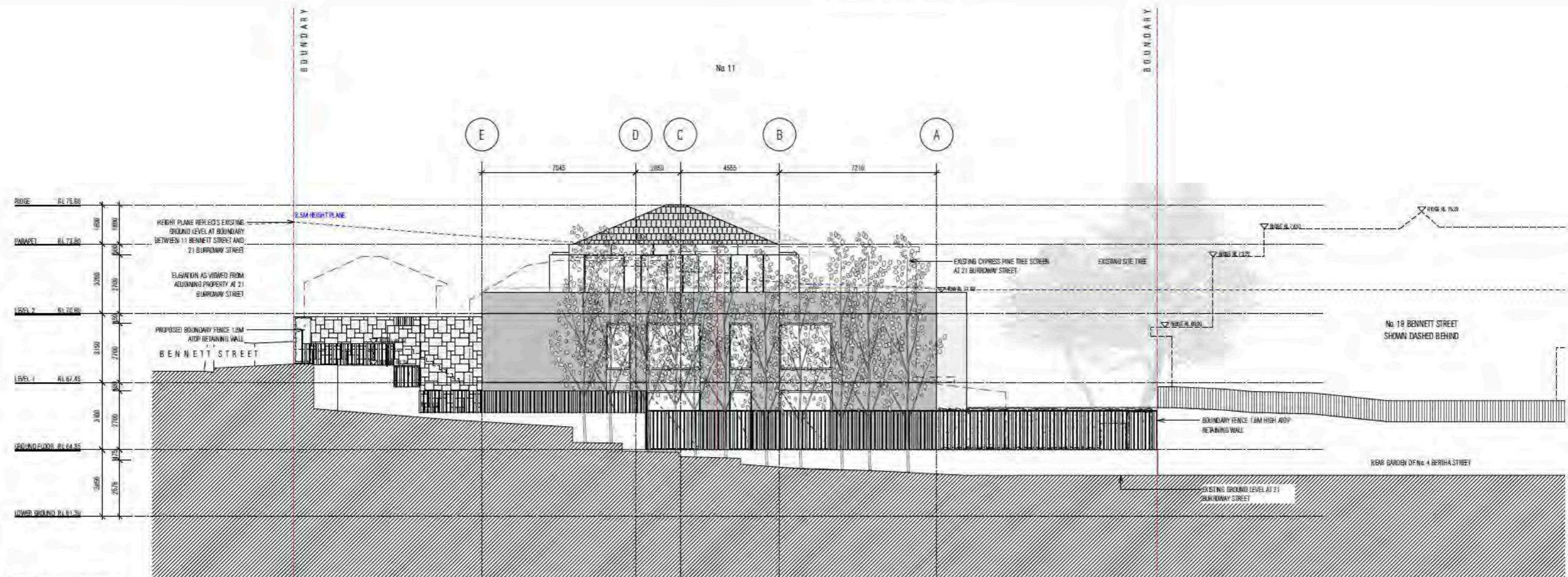
DATE 17.09.21 SCALE 1:100 @ A1
 DRAWN JR PROJECT NO. 21010
 DRAWING NO. DA.13 REV NO. A

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LEGEND

- One Boundary
- Council setbacks / height requirements
- Proposed Construction
- Existing wall
- New brickwork wall / masonry structure
- New timber structure
- Existing height wall
- Existing glass
- New metal structure / cladding
- New metal skin
- LHM - Top of Wall
- LHM - Top of Sub

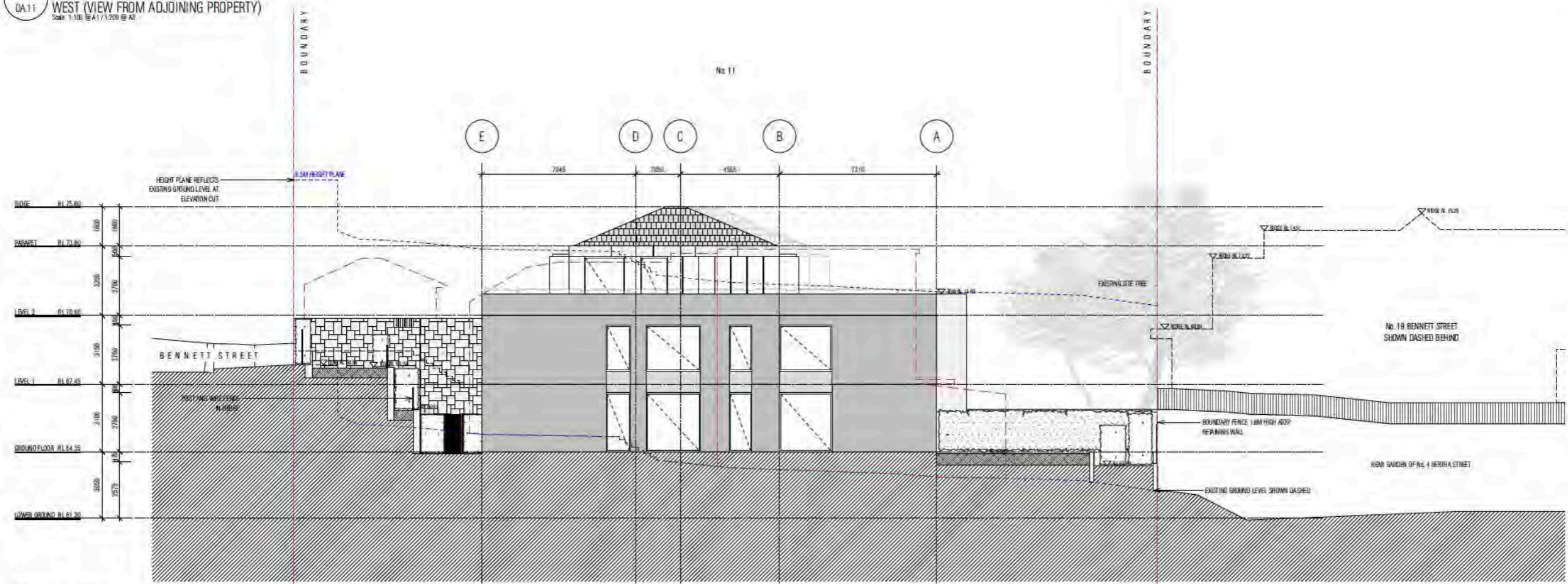


01 ELEVATION
 DA11 WEST (VIEW FROM ADJOINING PROPERTY)
 Scale: 1:100 @ A1/1:200 @ A3



REVISIONS

REV NO.	DATE	REVISION	BY	CHK
A	22/01/22	ISSUE	JP	CS



02 ELEVATION
 DA11 WEST
 Scale: 1:100 @ A1/1:200 @ A3

PROJECT: BENNETT STREET RESIDENCES
 ADDRESS: 11 BENNETT STREET
 CREMORNE 2000
 DOCUMENT: DEVELOPMENT APPLICATION
 DRAWING: ELEVATION
 WEST ELEVATION
 DATE: 17.09.21 SCALE: 1:100 @ A1
 DRAWN: JR PROJECT NO: 21013
 DRAWING NO: DA.11 REV NO: A

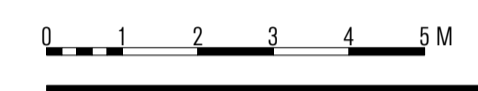
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LEGEND

- Site Boundary
- Council setbacks / Height requirements
- Proposed Demolition
- New brick wall
- New blockwork wall / concrete structure
- New timber structure
- New lightweight walls
- New glazing
- New metal structure / cladding
- New render finish

TOW - Top of Wall
 TOG - Top of Gutter



NOTES

REV NO.	DATE	REVISIONS	BY	CHK
A	17.09.21	DA ISSUE	JR	CS

PROJECT **BENNETT STREET RESIDENCES**

ADDRESS **11 BENNETT STREET**

CREMORNE 2090

DOCUMENT **DEVELOPMENT APPLICATION**

DRAWING **SECTION**

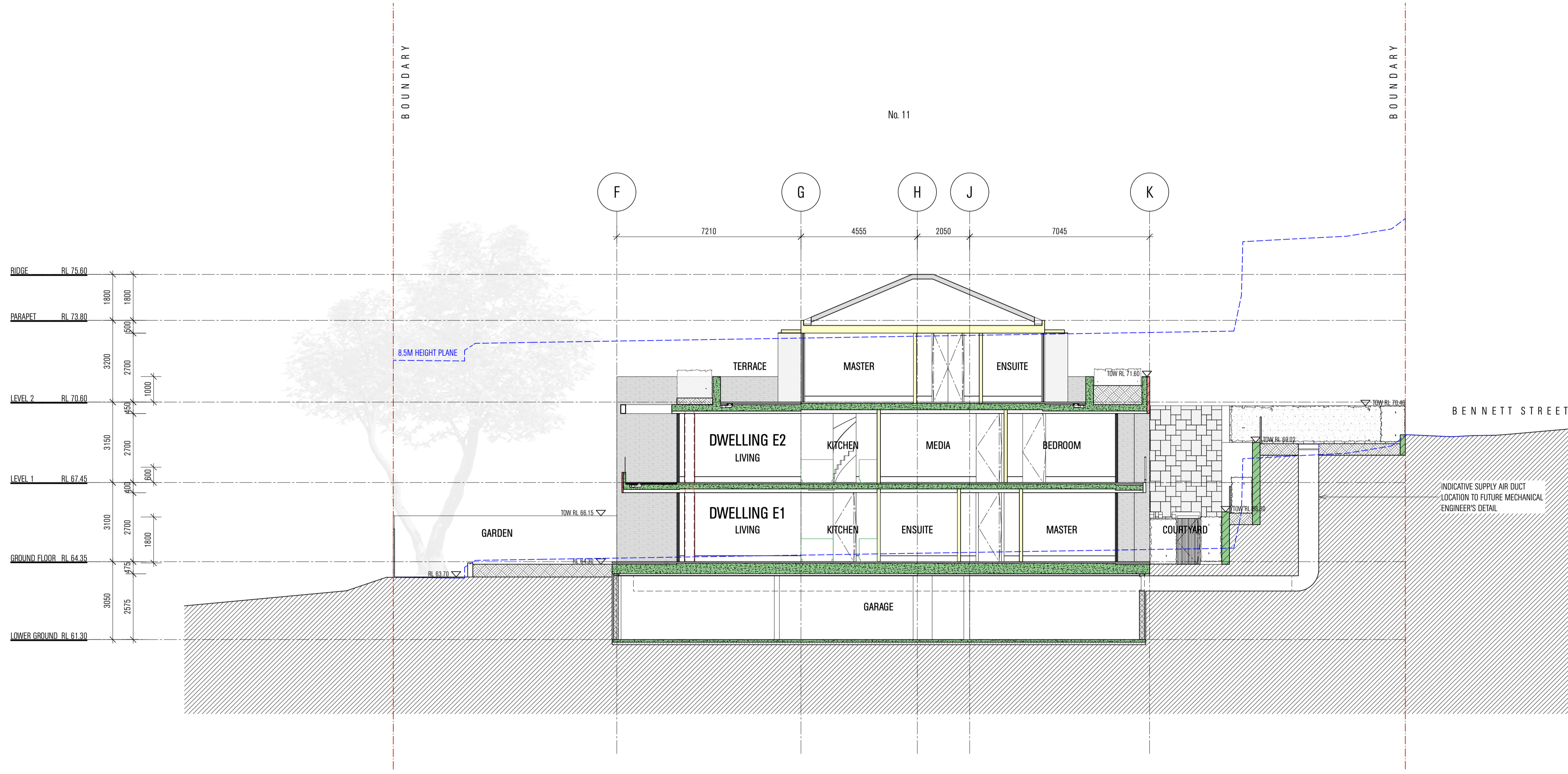
SECTION BB - EAST BUILDING

DATE **17.09.21** SCALE **1:100 @ A1**

DRAWN **JR** PROJECT NO. **21010**

DRAWING NO. **DA.15** REV NO. **A**

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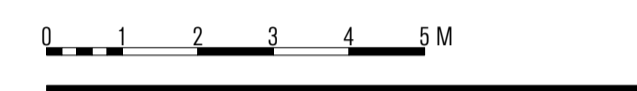
01 SECTION
BB - EAST BUILDING
 Scale 1:100 @ A1 / 1:200 @ A3

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LEGEND

- Site Boundary
- Council setbacks / Height requirements
- Proposed Demolition
- New brick wall
- New blockwork wall / concrete structure
- New timber structure
- New lightweight walls
- New glazing
- New metal structure / cladding
- New tile
- New render finish

TOW - Top of Wall
 TOG - Top of Gutter



NOTES

1. HEIGHT PLANE REFLECTS EXISTING GROUND LEVEL AT SECTION CUT
2. STRUCTURAL COLUMN TO ENGINEER'S SPEC

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A	17.09.21	DA ISSUE	JR	CS

PROJECT BENNETT STREET RESIDENCES

ADDRESS 11 BENNETT STREET
 CREMORNE 2090

DOCUMENT DEVELOPMENT APPLICATION

DRAWING SECTION
 SECTION AA - EAST BUILDING

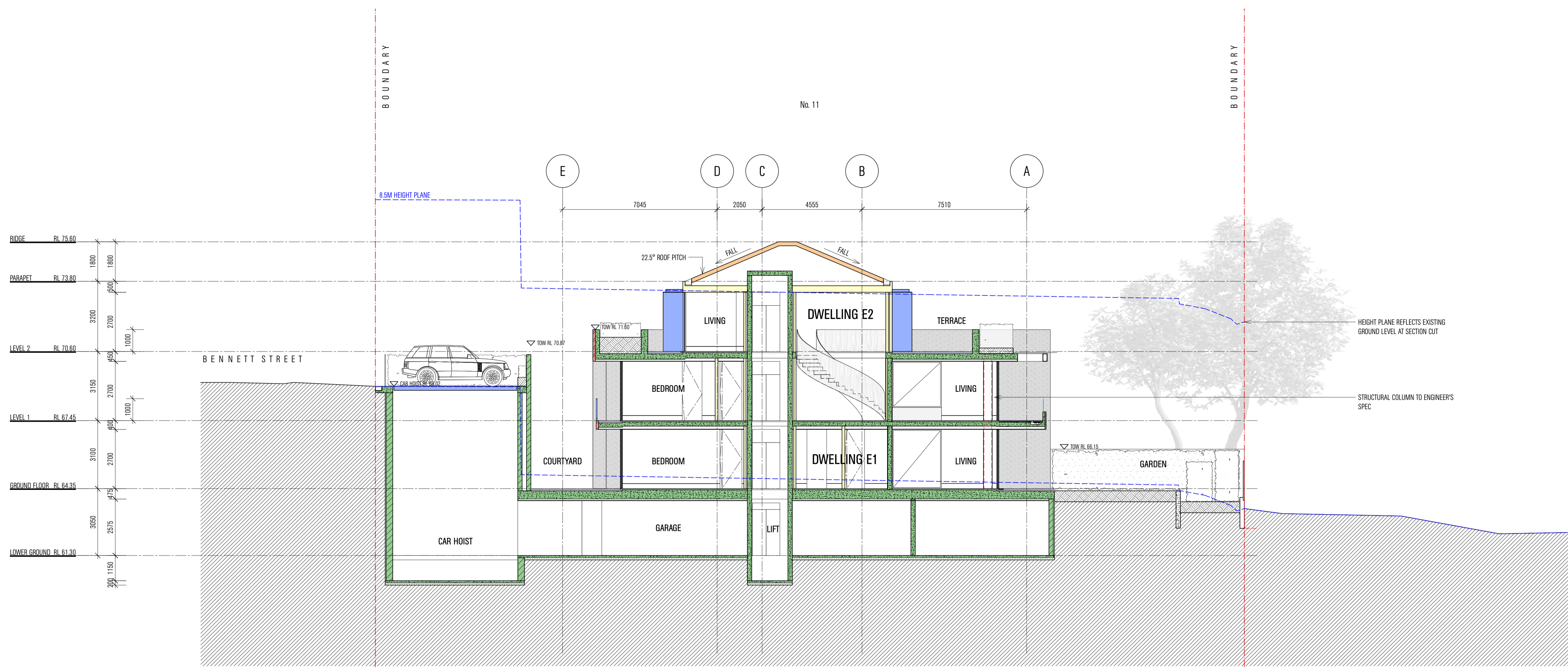
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DRAWN JR **PROJECT NO.** 21010

DRAWING NO. DA.14 **REV NO.** A

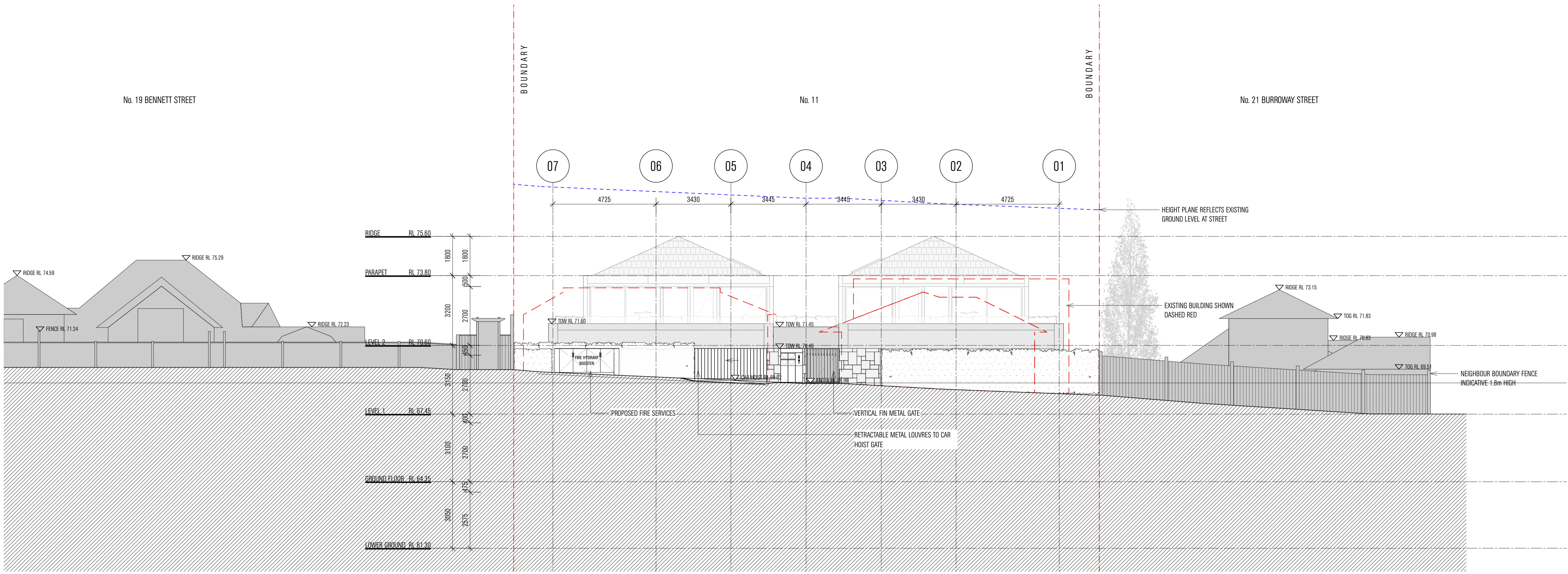
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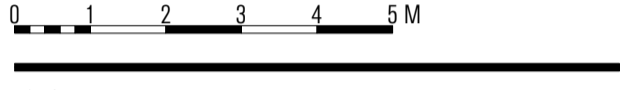


01 SECTION
AA - EAST BUILDING
 Scale 1:100 @ A1 / 1:200 @ A3

LEGEND	
(Red dashed line)	Site Boundary
(Blue dashed line)	Council setbacks / Height requirements
(Red solid line)	Proposed Demolition
(Green solid line)	New brick wall
(Brown solid line)	New blockwork wall / concrete structure
(Tan solid line)	New timber structure
(Yellow solid line)	New lightweight walls
(Blue hatched area)	New glazing
(Blue solid line)	New metal structure / cladding
(Green solid line)	New render finish
TOW - Top of Wall TOG - Top of Gutter	



01 ELEVATION
NORTH (STREET)
Scale 1:100 @ A1 / 1:200 @ A3



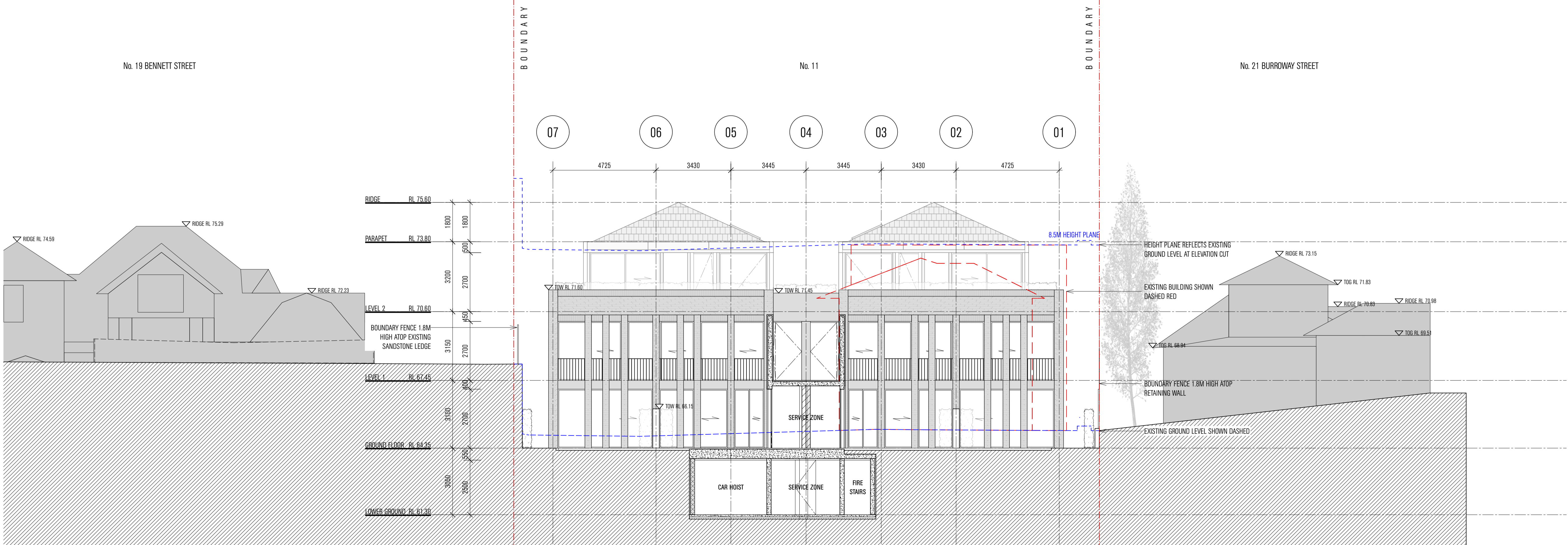
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REV NO.	DATE	REVISIONS	BY	CHK
A	17.09.21	DA ISSUE	JR	CS

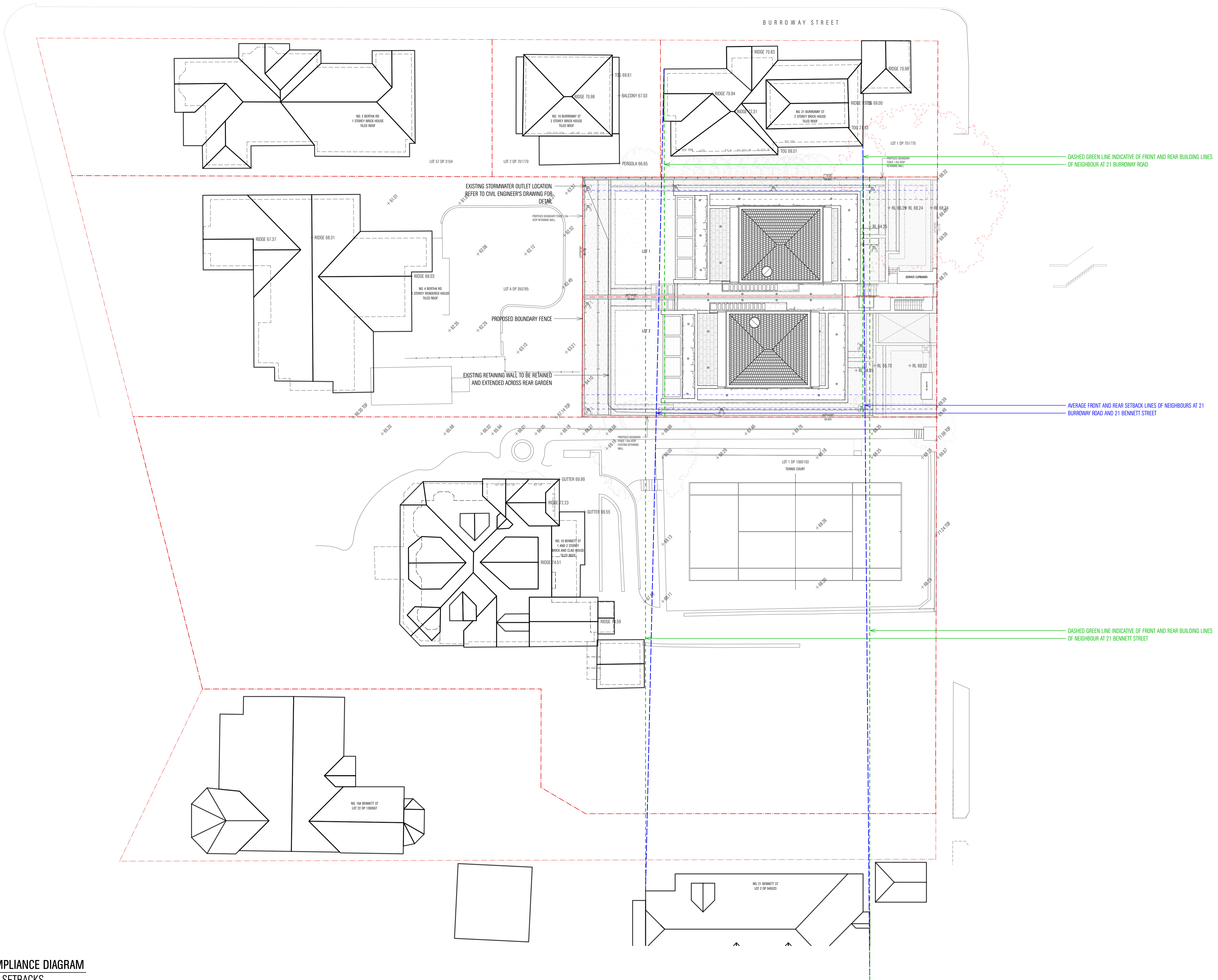
PROJECT	BENNETT STREET RESIDENCES
ADDRESS	11 BENNETT STREET CREMORNE 2090
DOCUMENT	DEVELOPMENT APPLICATION

DRAWING	ELEVATION
NORTH (STREET) ELEVATION	
DATE	17.09.21
SCALE	1:100 @ A1
DRAWN	JR
PROJECT NO.	21010
DRAWING NO.	DA.10
REV NO.	A

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01A ELEVATION
NORTH
Scale 1:100 @ A1 / 1:200 @ A3



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LEGEND

- [Red dashed line] Site Boundary
- [Blue dashed line] Council setbacks / Height requirements
- [Green dashed line] Neighbour Front and Rear Building setbacks

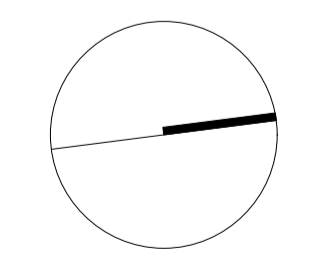
NOTES

REV NO.	DATE	REVISIONS	BY	CHK
A	15.09.21	DA ISSUE	JR	CS

PROJECT BENNETT STREET RESIDENCES
ADDRESS 11 BENNETT STREET
 CREMORNE 2090
DOCUMENT DEVELOPMENT APPLICATION

DRAWING COMPLIANCE DIAGRAM
 SITE SETBACKS

DATE 17.09.21 **SCALE** 1:200@A1
DRAWN JR/MS **PROJECT NO.** 21010
DRAWING NO. DA.26 **REV NO.** A



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01 COMPLIANCE DIAGRAM
SITE SETBACKS
 Scale 1:1,200 @ A1 / 1:400 @ A3

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2.1 DUAL OCCUPANCY HOUSING - 2.1M STORAGE REQUIREMENTS

OBJECTIVES	DESIGN CRITERIA
Objective 2.1M-1 Adequate, well-designed storage is provided in each dwelling.	72. In addition to storage in kitchens and bedrooms, the following storage with a minimum dimension of 500mm is provided: - 1 bed 6m ³ - 2 bed 8m ³ - 3+ bed 10m ³ 73. At least 50% of the required storage is located inside the dwelling. 74. Storage not located in dwellings is secure and clearly allocated to specific dwellings, if in a common area.

LEGEND

Storage

WESTERN LOT

DWELLING W1 = 17.52m³ (3+ bed: min 10m³)

DWELLING W2 = 10.65m³ (3+ bed: min 10m³)

EASTERN LOT

DWELLING E1 = 17.52m³ (3+ bed: min 10m³)

DWELLING E2 = 10.65m³ (3+ bed: min 10m³)

NOTES

REV. NO.	DATE	REVISIONS	BY	CHK.
A	15/09/21	DATE ISSUE	JR	CS

PROJECT BENNETT STREET RESIDENCES

ADDRESS 11 BENNETT STREET

CREMORNE 2090

DOCUMENT DEVELOPMENT APPLICATION

DRAWING COMPLIANCE DIAGRAM

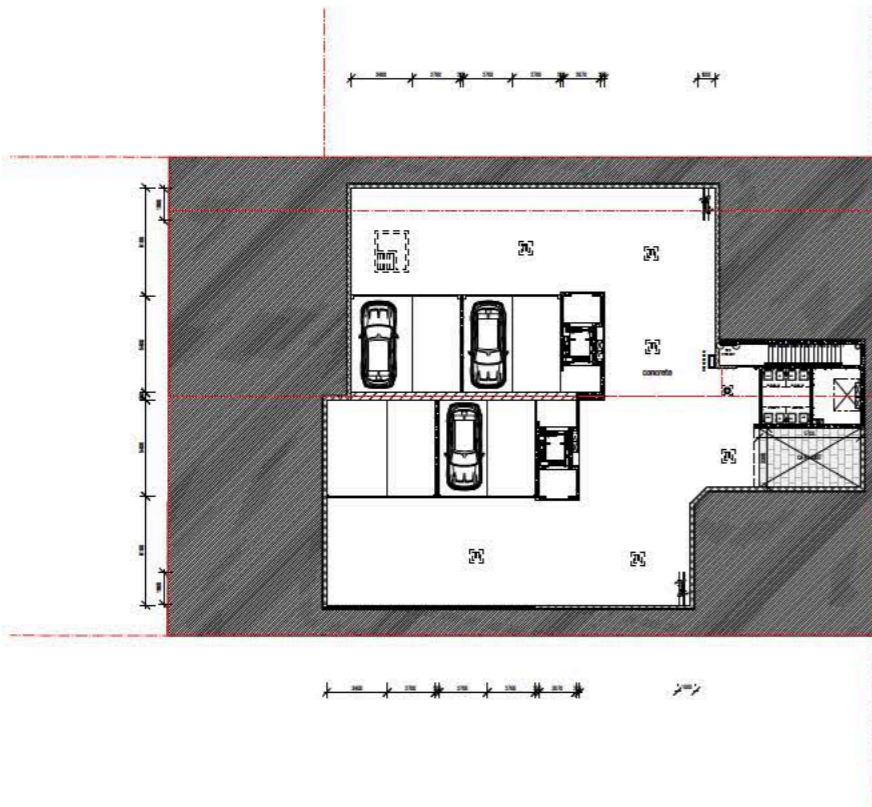
STORAGE

DATE 17.09.21 SCALE 1:200@A1

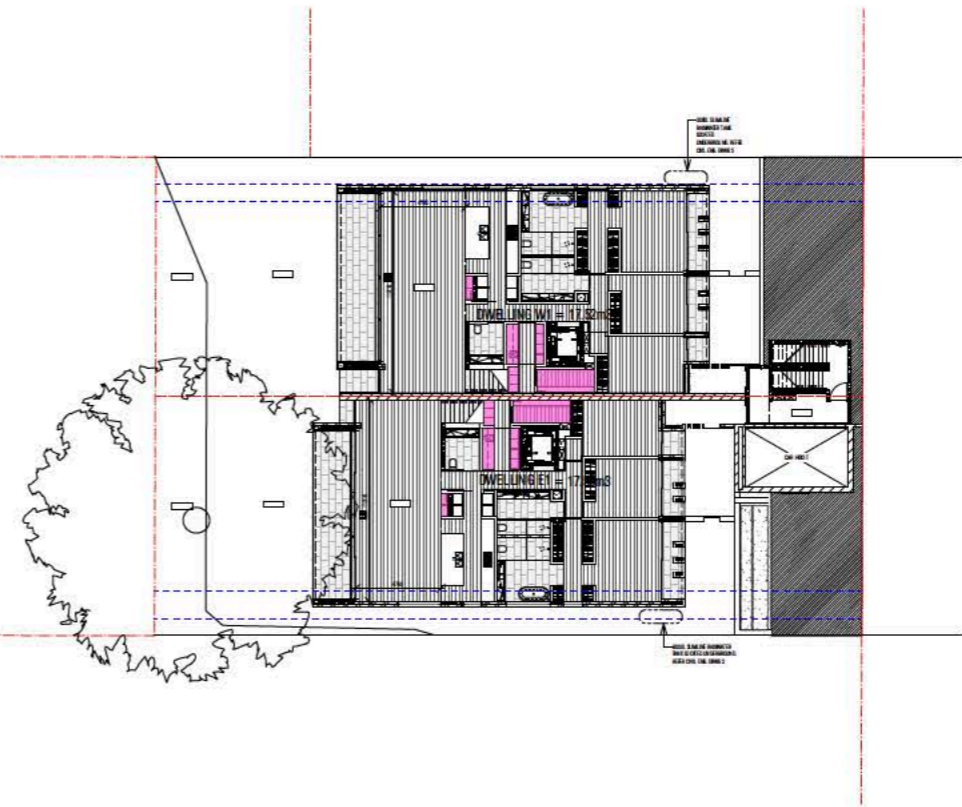
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DRAWING NO DA.25 REV NO A

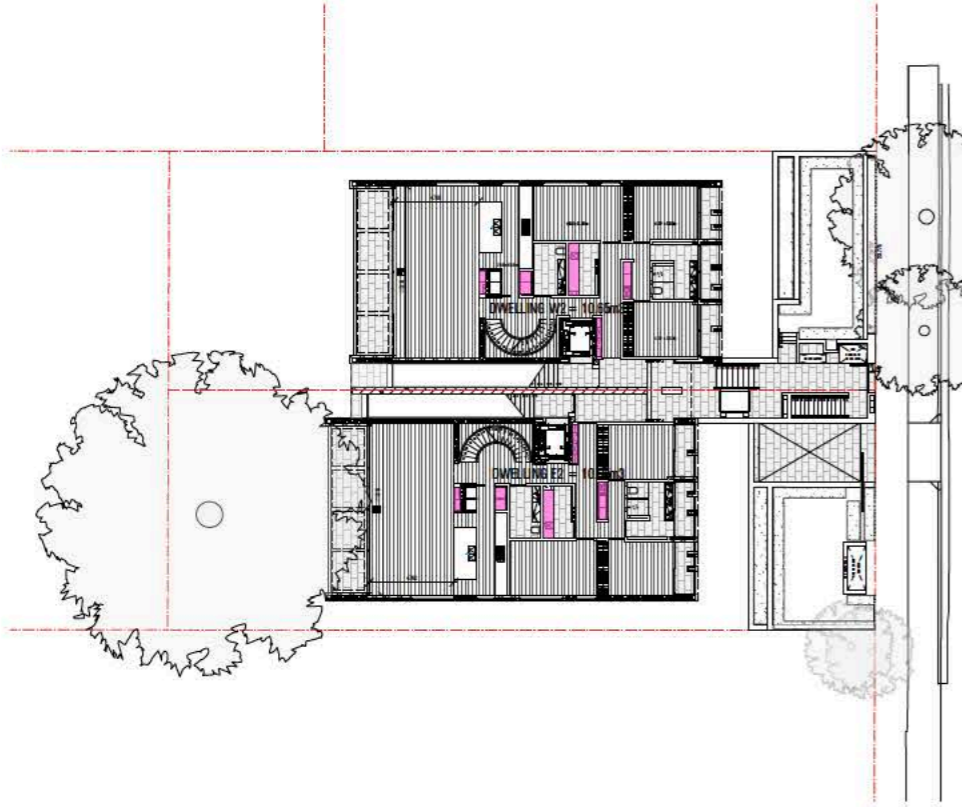
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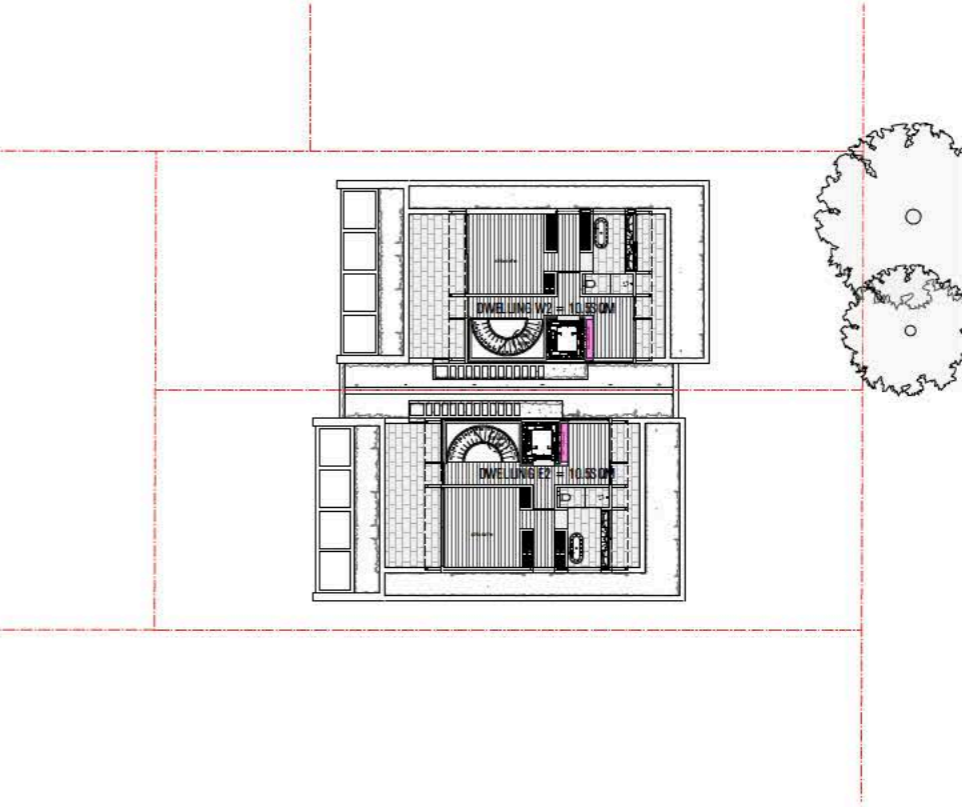
01 COMPLIANCE DIAGRAM
BASEMENT STORAGE
Scale 1:200 @ A1



02 COMPLIANCE DIAGRAM
GROUND FLOOR STORAGE
Scale 1:200 @ A1



03 COMPLIANCE DIAGRAM
LEVEL 1 STORAGE
Scale 1:200 @ A1



04 COMPLIANCE DIAGRAM
LEVEL 2 STORAGE
Scale 1:200 @ A1

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LEGEND

FUTURE WEST LOT

SITE AREA:
531.4sqm total
(256sqm unexcavated)

AREA:	PERCENTAGE
Excavation	276sqm 52%
Un-excavated area (rear)	146sqm 58%
Un-excavated area (front)	86sqm 34%

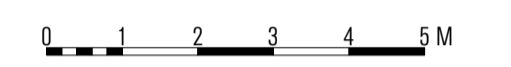
FUTURE EAST LOT

SITE AREA:
531.4sqm total
(230.4sqm unexcavated)

AREA:	PERCENTAGE
Excavation	301sqm 57%
Un-excavated area (rear)	132sqm 57%
Un-excavated area (front)	66sqm 30%

DCE CONTROLS

- 1.3 / 1.3.1 P9: Consent must not be granted where excavation exceeds 70% of the site area
- 1.3 / 1.3.1 P10(a): 50% of the unexcavated area should be located in the rear of the site
- 1.3 / 1.3.1 P10 (b): 30% of the unexcavated area should be located in the front of the site



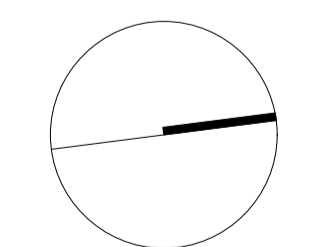
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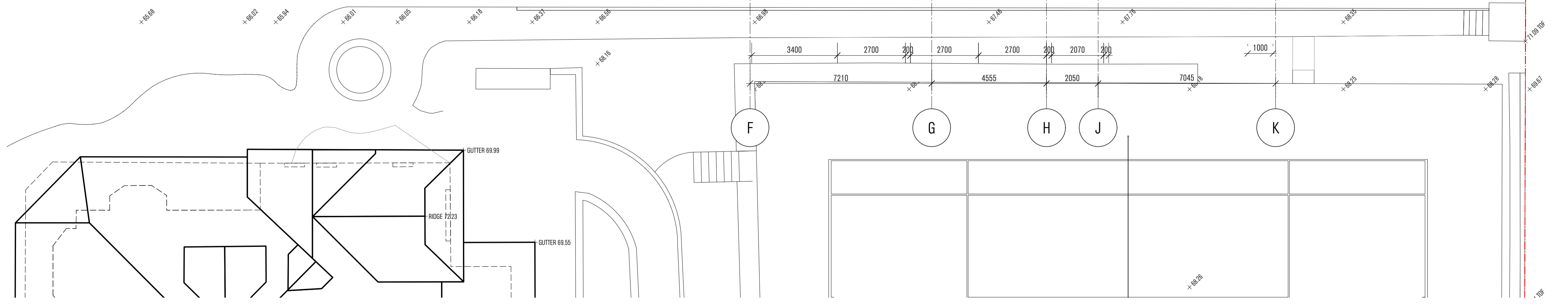
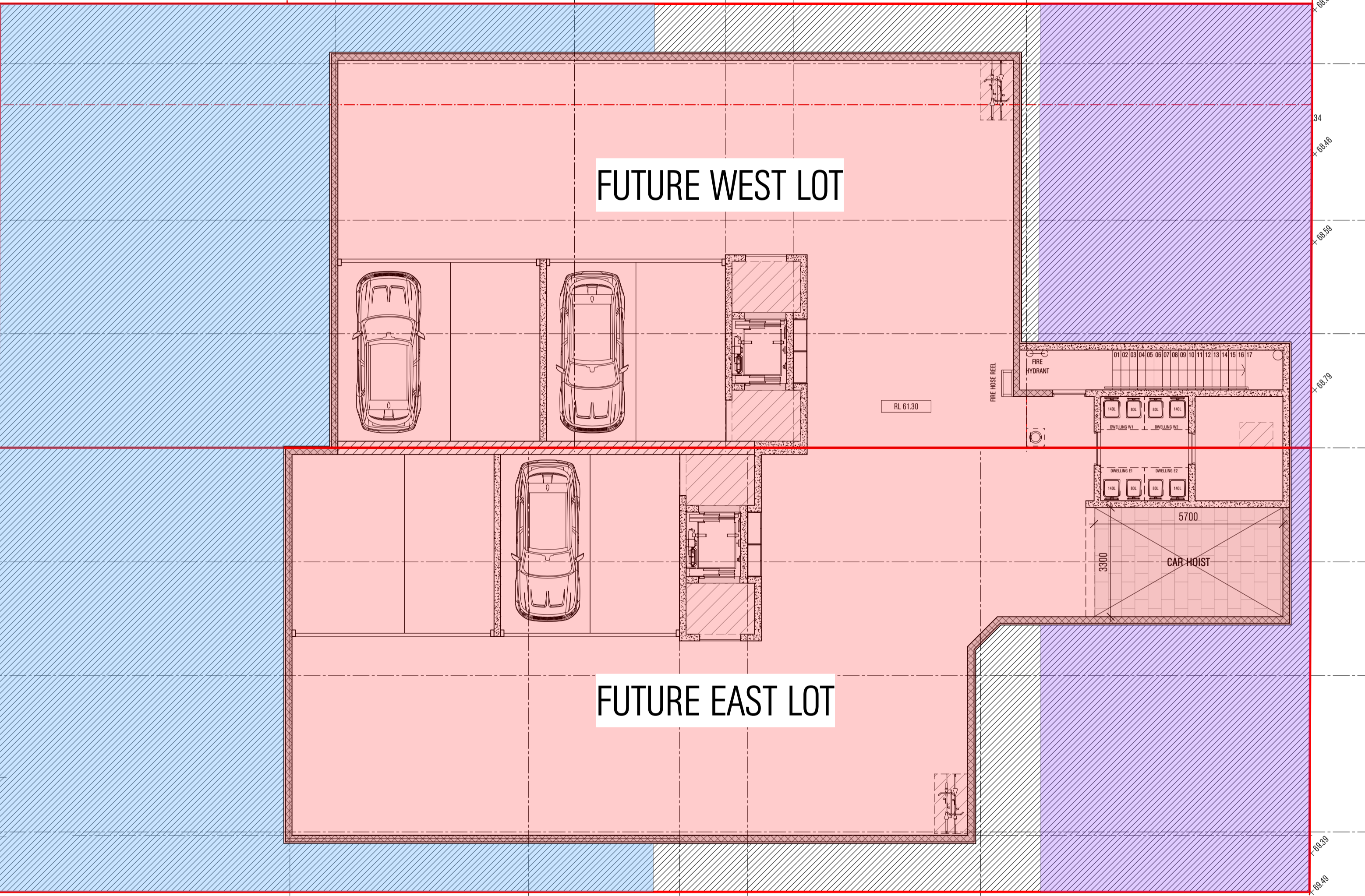
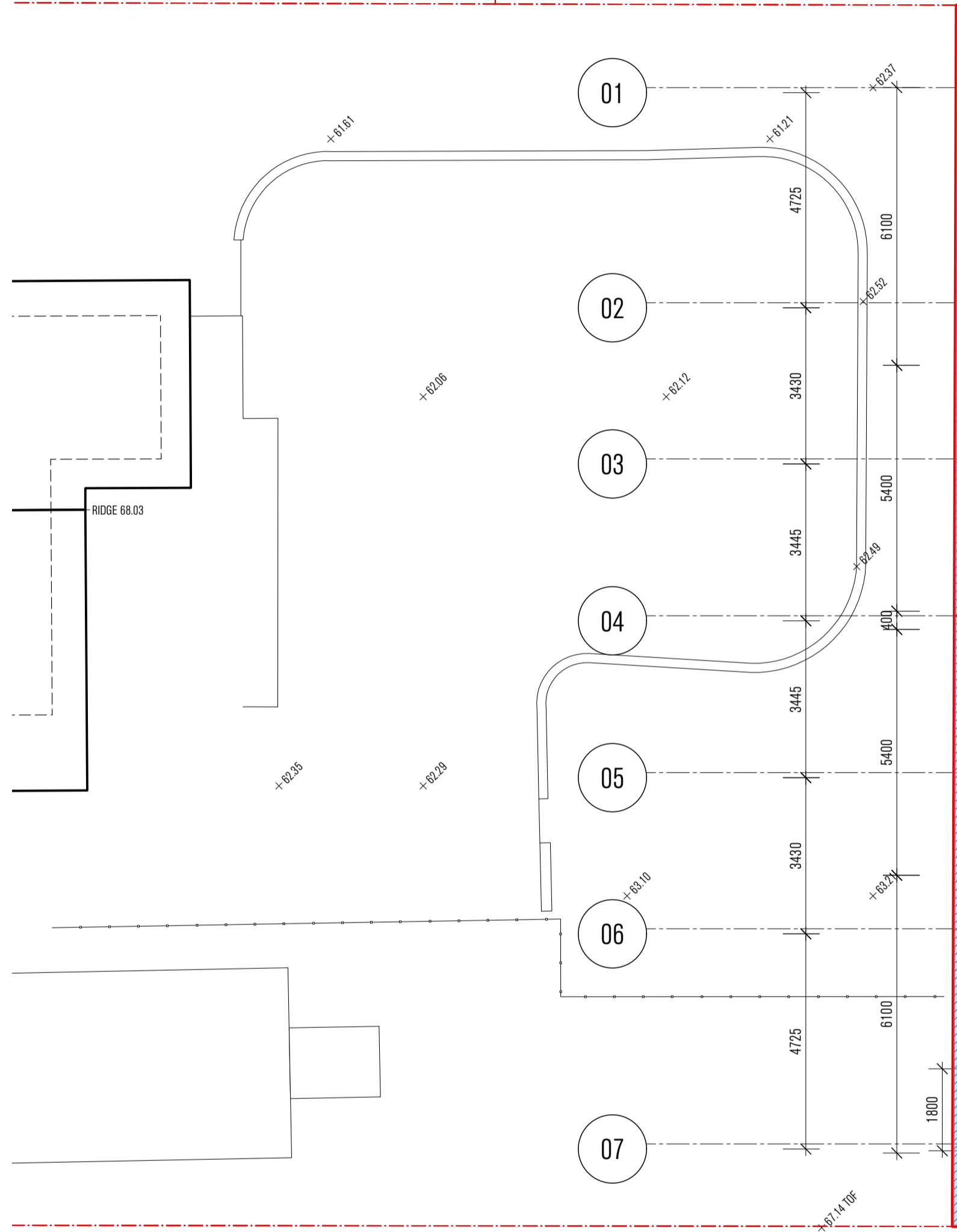
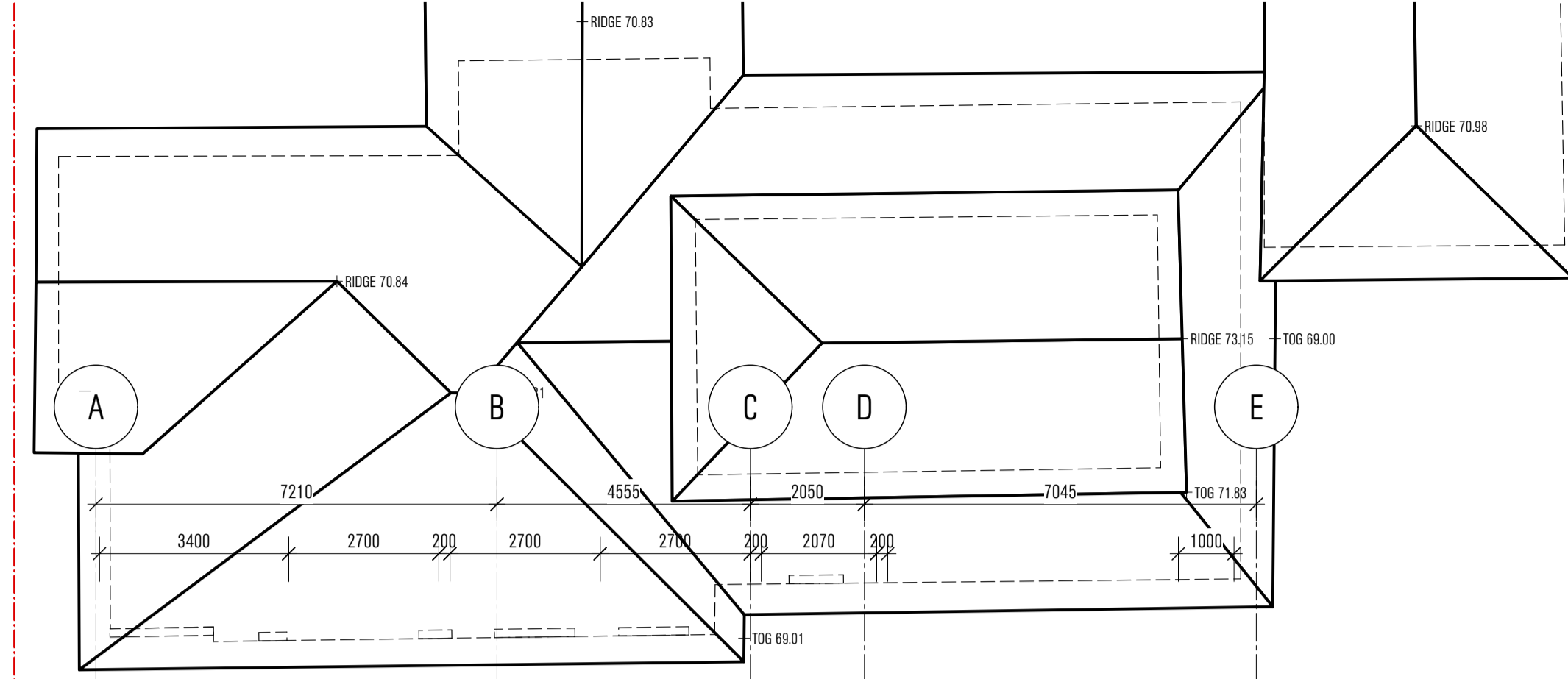
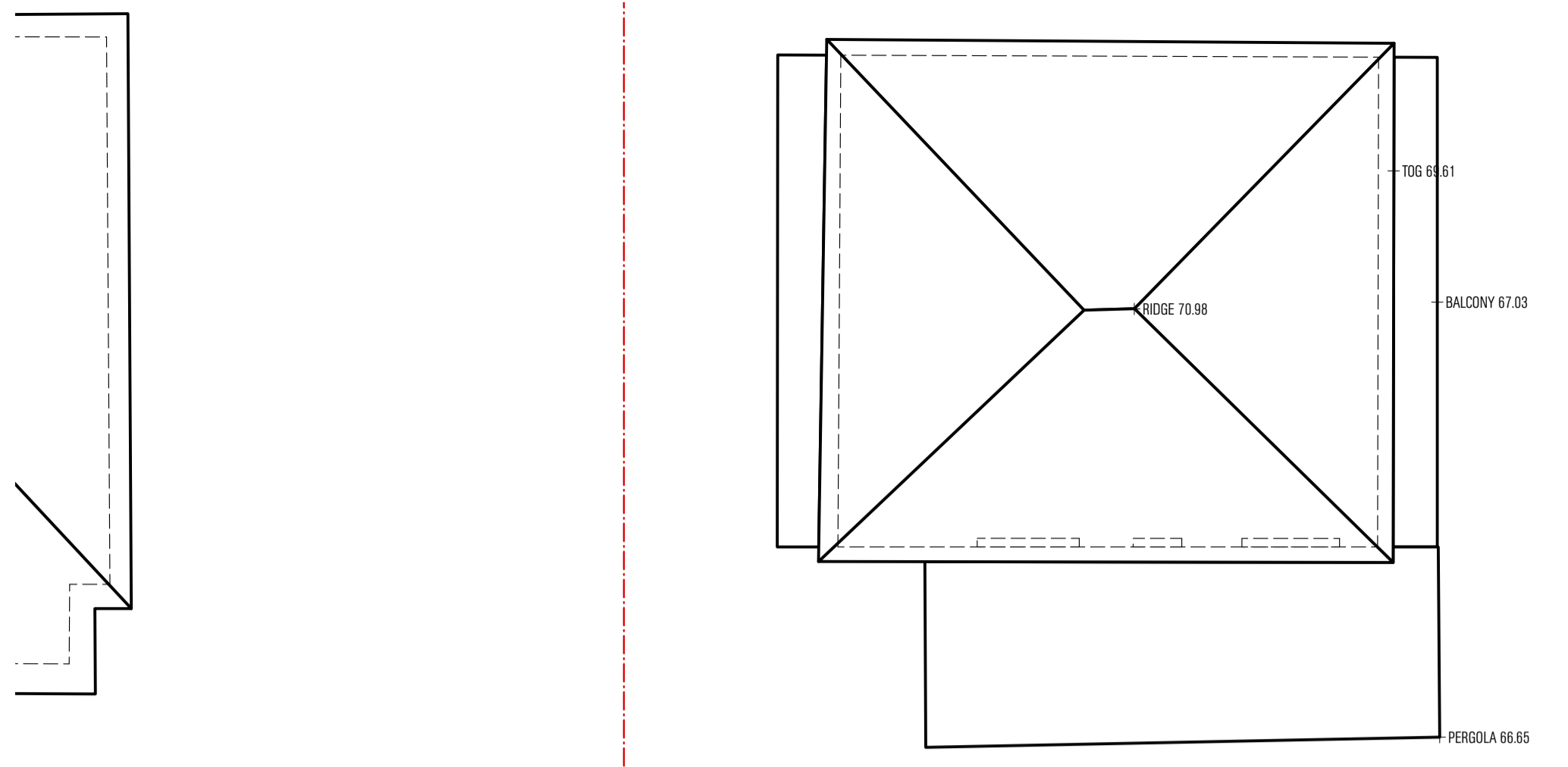
REV NO.	DATE	REVISIONS	BY	CHK
A	17.09.21	DA ISSUE	JR	MS

PROJECT	BENNETT STREET RESIDENCES
ADDRESS	11 BENNETT STREET CREMORNE 2090
DOCUMENT	DEVELOPMENT APPLICATION

DRAWING	COMPLIANCE DIAGRAM
EXCAVATION	
DATE	17.09.21
SCALE	1:100
DRAWN	JR/MS
PROJECT NO.	21010
DRAWING NO.	DA.22
REV NO.	A



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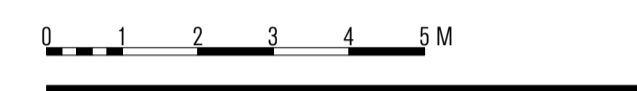
01 BASEMENT PLAN
EXCAVATION
Scale 1:100 @ A1 / 1:200 @ A3

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 2017/05 RESERVOR ST SURRY HILLS NSW 2010 AUSTRALIA
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LEGEND

FUTURE WEST LOT		
WEST LOT AREA		AREA:
Site Coverage	240.6sqm	45.3%
Un-built upon area	54.7sqm	10.3%
Landscape	236sqm	44.4%

FUTURE EAST LOT		
EAST LOT AREA		AREA:
Site Coverage	242.1sqm	45.5%
Un-built upon area	88.6sqm	13%
Landscape	220.6sqm	41.5%

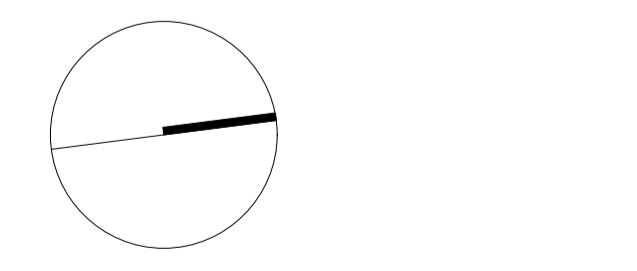


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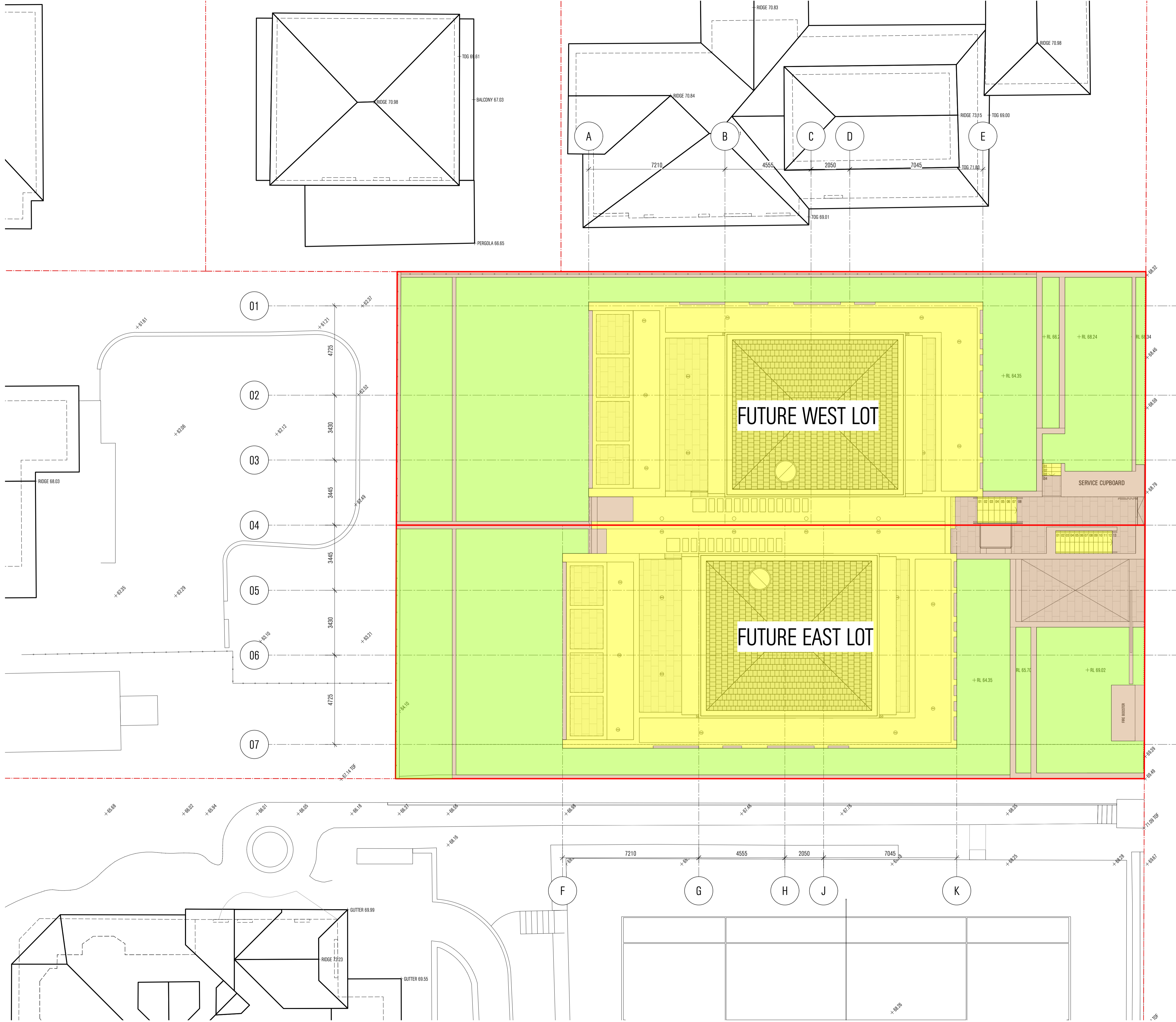
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A	15.09.21	DA ISSUE	JR	

PROJECT **BENNETT STREET RESIDENCES**
 ADDRESS **11 BENNETT STREET**
CREMORNE 2090
 DOCUMENT **DEVELOPMENT APPLICATION**

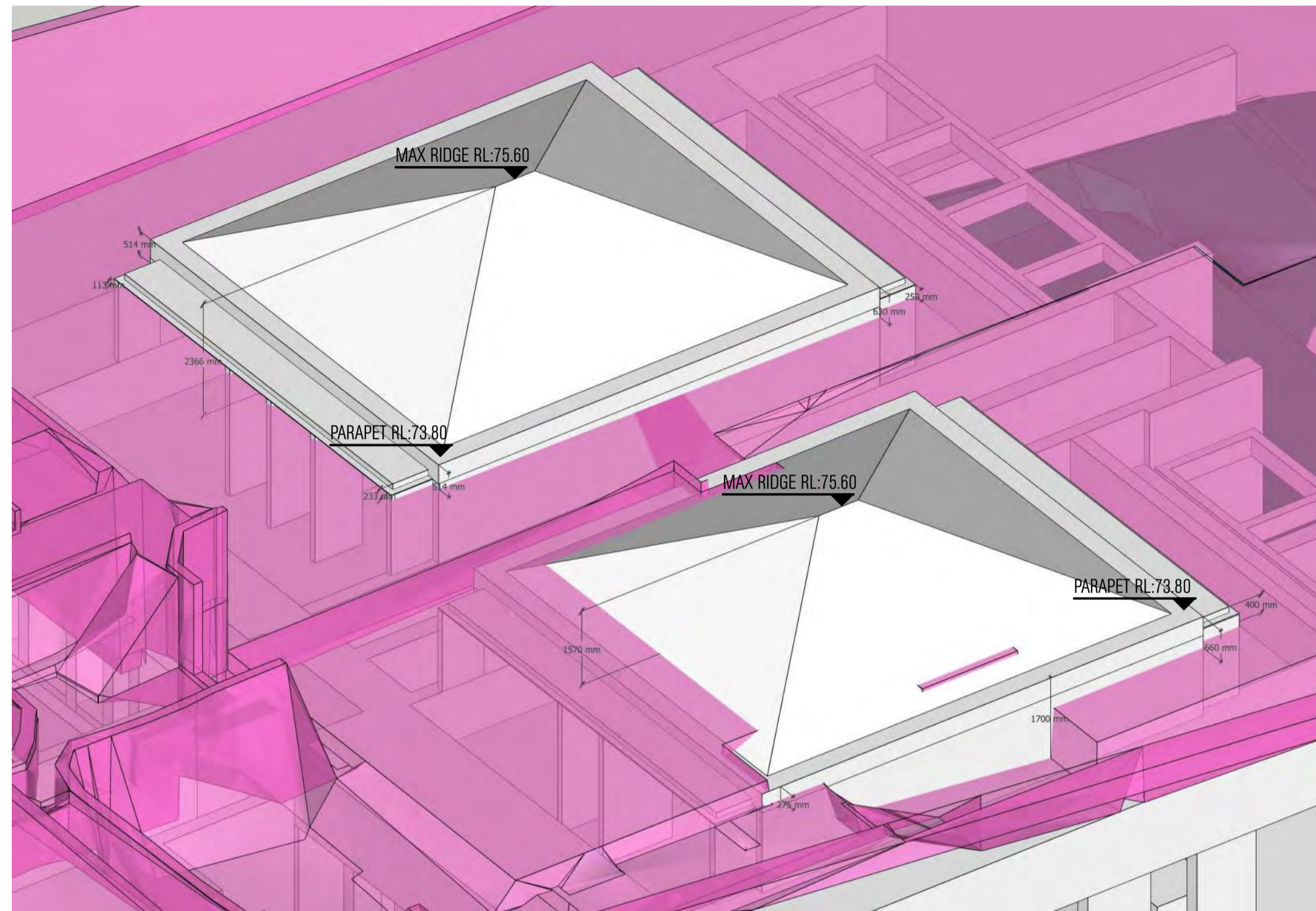
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FUTURE LOTS
 DATE **17.09.21** SCALE **1:100@A1**
 DRAWN **JR/MS** PROJECT NO. **21010**
 DRAWING NO. **DA.21** REV. NO. **A**



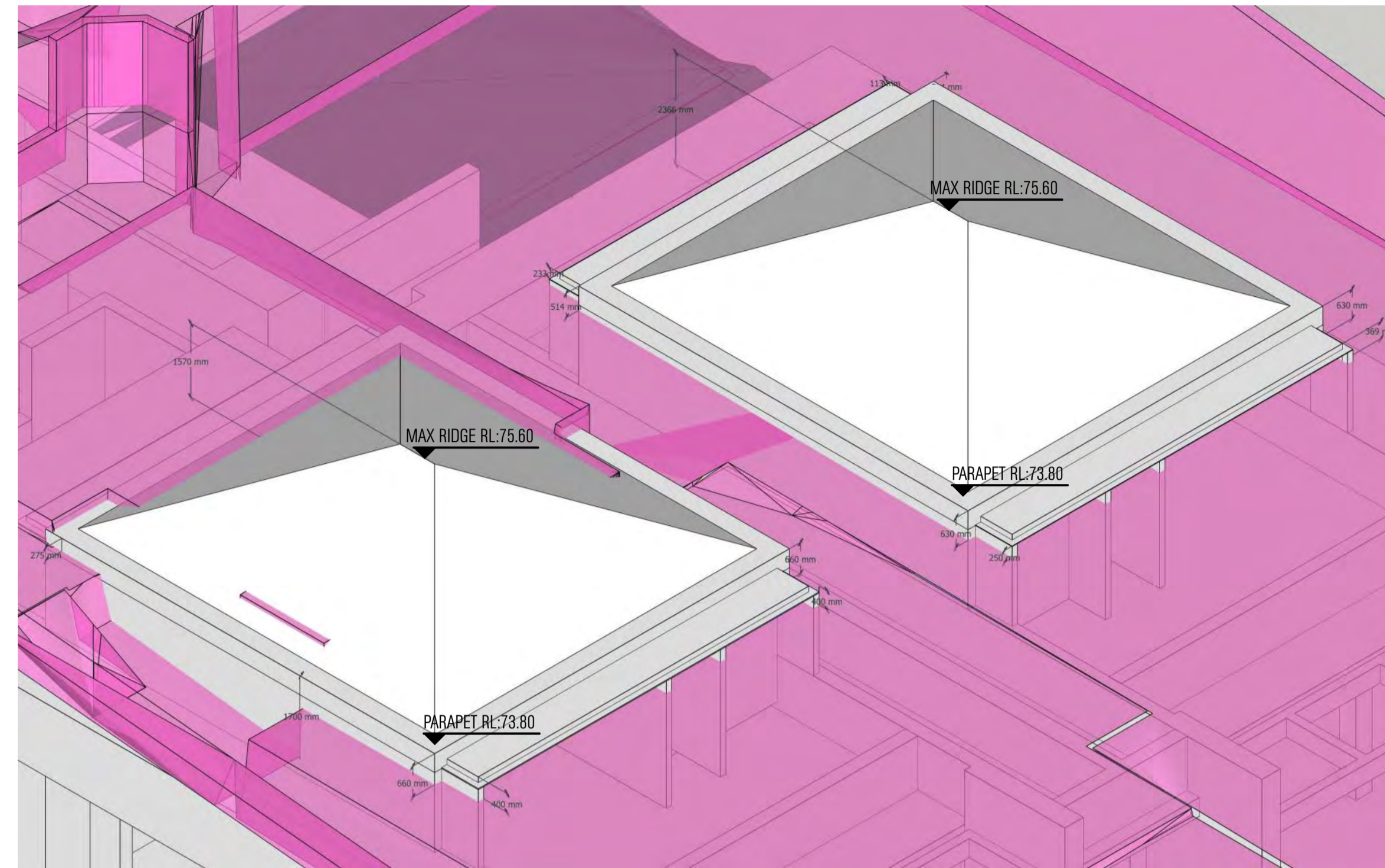
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01 PLAN
SITE / ROOF
 Scale 1:100 @ A1 / 1:200 @ A3



03 ISOMETRIC
HEIGHT PLANE FROM NW
NTS

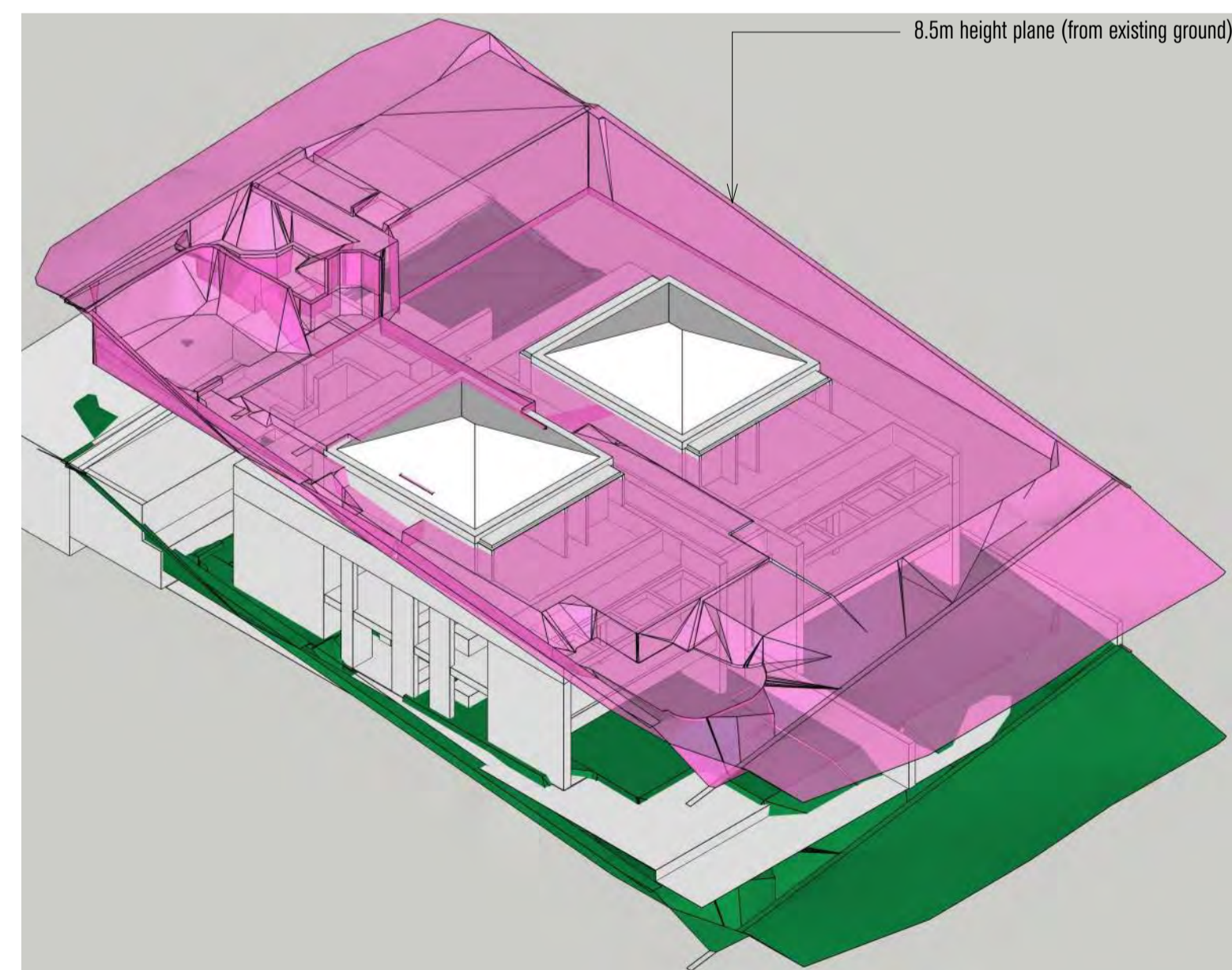


04 ISOMETRIC
HEIGHT PLANE FROM SE
NTS

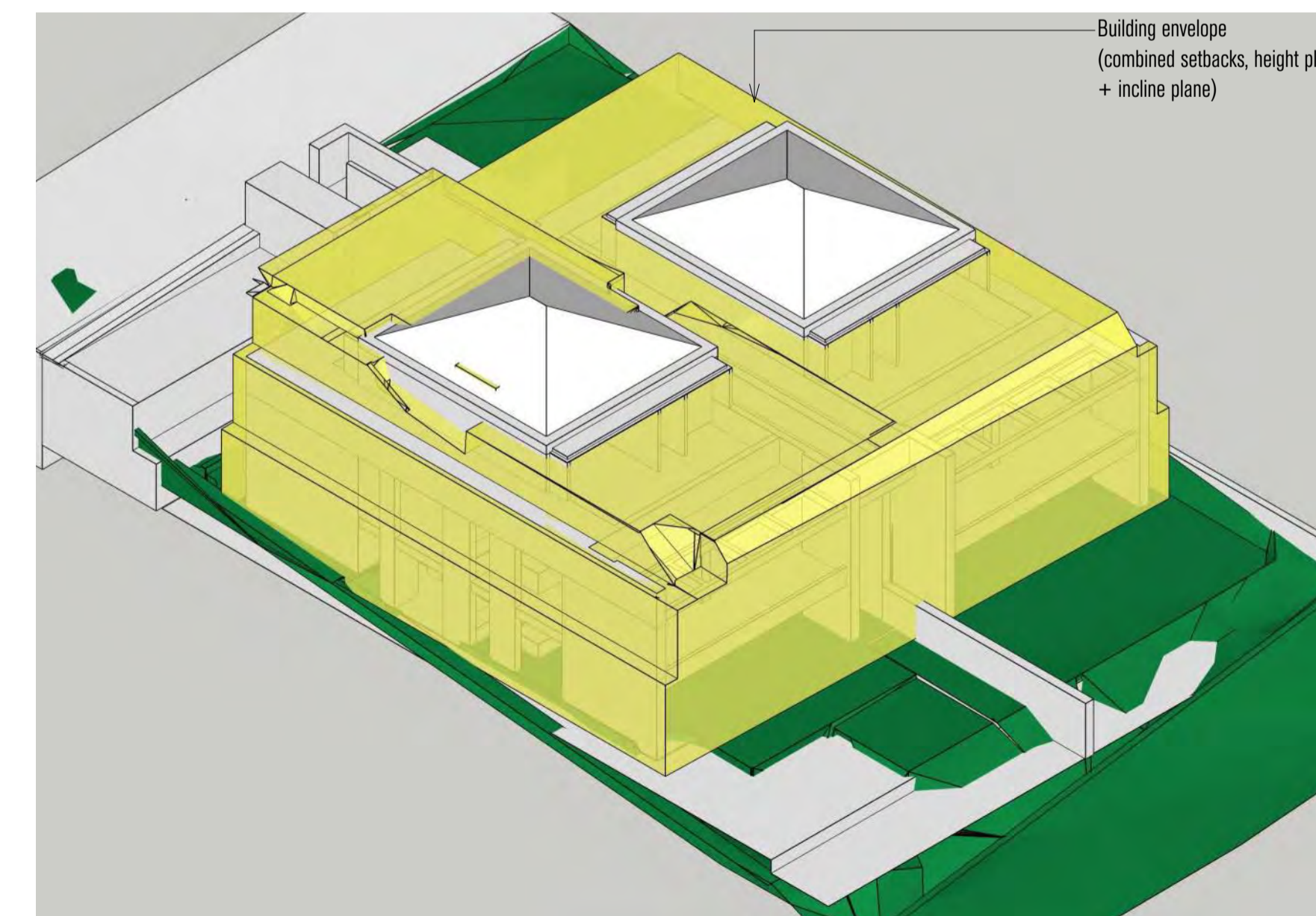
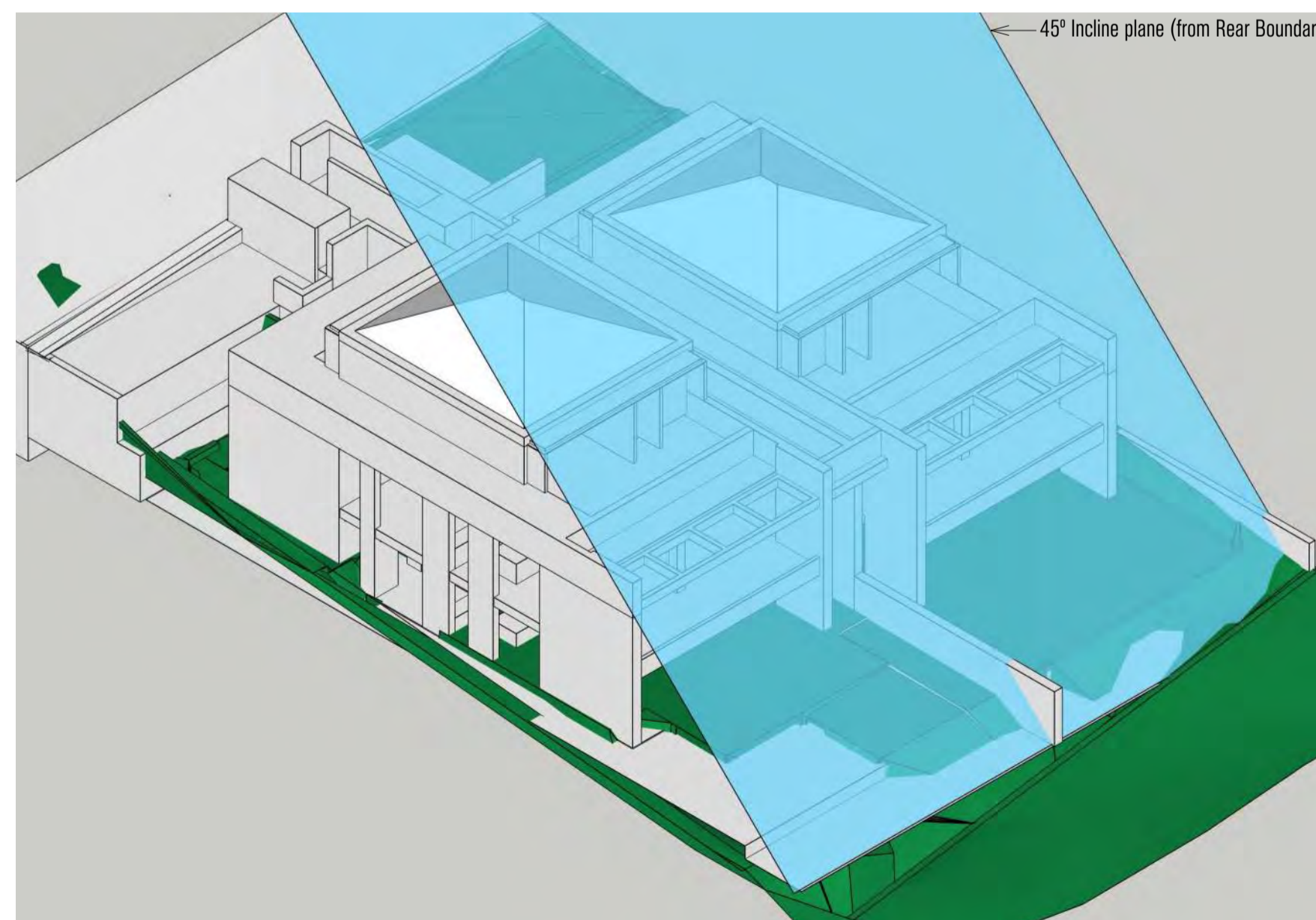
NOTES

REVISIONS

REV NO.	DATE	REVISIONS	BY	CHK
A	17.09.21	DA ISSUE	JR	MS



01 ISOMETRIC
HEIGHT PLANE
Scale 1: NTS



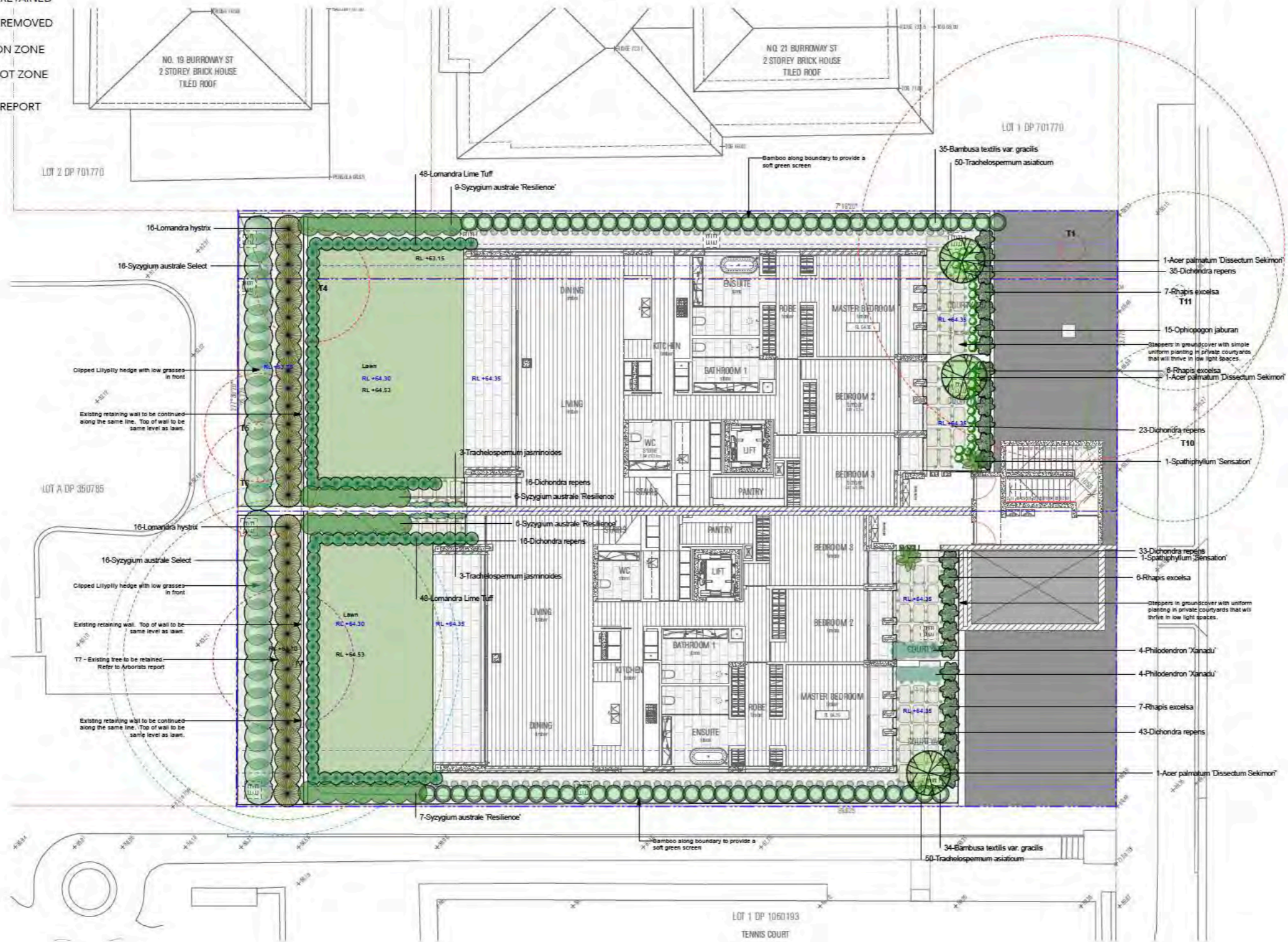
02 ISOMETRIC
PERMISSIBLE BUILDING ENVELOPE
NTS

PROJECT BENNETT STREET RESIDENCES
ADDRESS 11 BENNETT STREET
CREMORNE 2090
DOCUMENT DEVELOPMENT APPLICATION
DRAWING COMPLIANCE DIAGRAM
HEIGHT PLANE
DATE 17.09.21 SCALE NTS
DRAWN JR/MS PROJECT NO. 21010
DRAWING NO. DA.31 REV. NO. A

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LEGEND

- + 57.62 EXISTING LEVEL
- + 57.62 PROPOSED LEVEL
- BOUNDARY
- (+ in circle) EXISTING TREE TO BE RETAINED
- (+ in square) EXISTING TREE TO BE REMOVED
- (circle with cross) TPZ - TREE PROTECTION ZONE
- (circle with dots) SRZ - STRUCTURAL ROOT ZONE
- REFER TO ARBORISTS REPORT



NOTES

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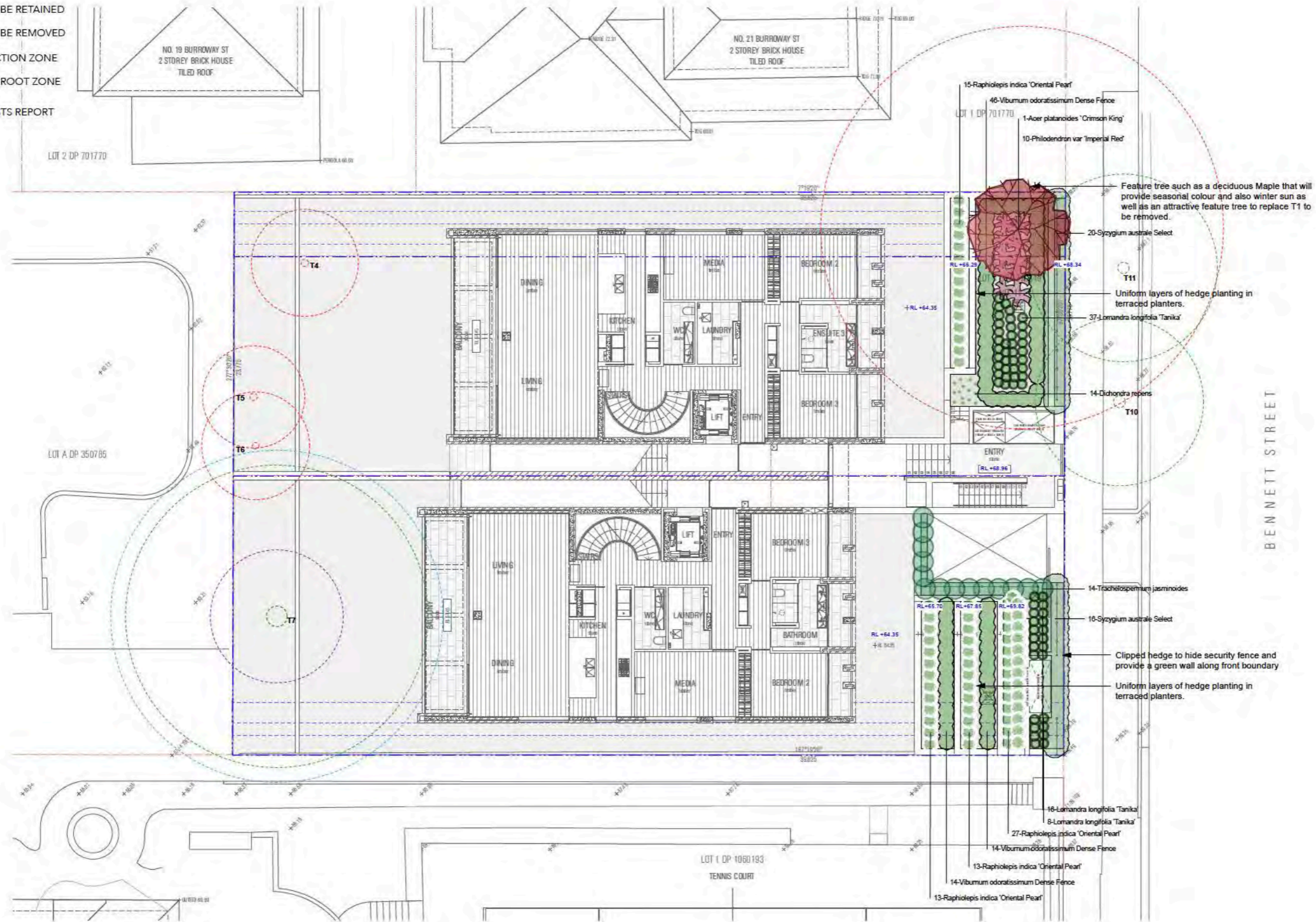
Landscape Design Consultants
 edwina@edwinastuart.com
 www.edwinastuartlandscapedesign.com

Project:
11 Bennett Street Cremorne

Dwg No: LP 01	Scale: 1:200 @ A3	Drawn By: ES	Date: 14.09.21
Title: LANDSCAPE PLAN - GROUND			REV: 0

LEGEND

- + 57.62 EXISTING LEVEL
- + 57.62 PROPOSED LEVEL
- BOUNDARY
- EXISTING TREE TO BE RETAINED
- EXISTING TREE TO BE REMOVED
- TPZ - TREE PROTECTION ZONE
- SRZ - STRUCTURAL ROOT ZONE
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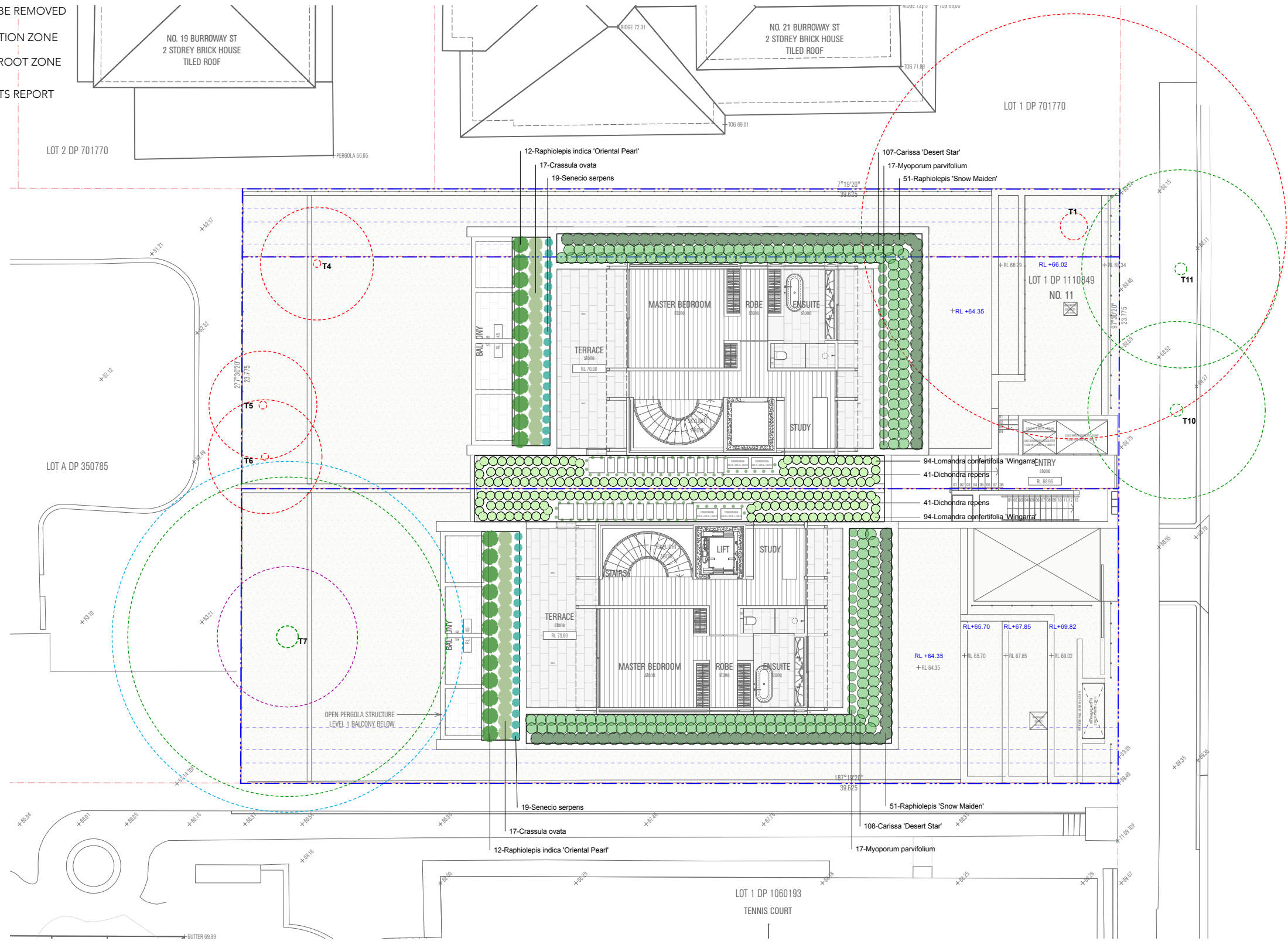
Project:
11 Bennett Street Cremorne

Dwg No: LP 02	Scale: 1:200 @ A3	Drawn By: ES	Date: 14.09.21
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Title: LANDSCAPE PLAN - LEVEL 1	REV: 0
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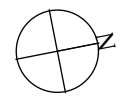
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- + 57.62 PROPOSED LEVEL
- BOUNDARY
- EXISTING TREE TO BE RETAINED
- EXISTING TREE TO BE REMOVED
- TPZ - TREE PROTECTION ZONE
- SRZ - STRUCTURAL ROOT ZONE
- REFER TO ARBORISTS REPORT



BENNETT STREET

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Project:
11 Bennett Street Cremorne

Dwg No: LP 03	Scale: 1:200 @ A3	Drawn By: ES	Date: 03.09.21
Title: LANDSCAPE PLAN - LEVEL 2			REV: 0

Plant Schedule						
ID	Qty	Latin Name	Common Name	Size	Spread	Height
Acrim	1	Acer platanoides 'Crimson King'	Crimson King Norway Maple	200L	5000	7500
Apds	3	Acer palmatum 'Dissectum Sekimori'	Weeping Japanese Maple	75L	2000	3000
Bta	69	Bambusa textilis var. gracilis	Slender Weaver bamboo	300 mm	800	4000
Cds	215	Carissa 'Desert Star'	Dwarf Natal Plum	300 mm	500	400
Co	34	Crassula ovata	money plant	200mm	800	2000
Dr	248	Dichondra repens	Kidney Weed	100mm	150	300
Lcw	188	Lomandra confertifolia 'Winqarra'	Winqarra	140mm	400	400
Llt	24	Lomandra longifolia 'Tanika'	Spiny-headed mat rush	140 mm	500	600
Lohv	32	Lomandra hystrix	Spiny-headed mat rush	140mm	1200	1200
LomLT	96	Lomandra Lime Tuff	Spiny-headed mat rush	100mm	600	600
Mp	34	Myoporum parvifolium	Creeping Boobialla	140mm	400	400
OJB	28	Ophiopogon jaburan	Giant Mondo Grass	140mm	400	400
PhXa	8	Philodendron 'Xanadu'	Philodendron 'Xanadu'	200mm	800	800
Plr	10	Philodendron var 'Imperial Red'	Philodendron	300mm	1100	600
Re	26	Rhapis excelsa	Lady Palm	300mm	900	1500
Rop	92	Raphiolepis indica 'Oriental Pearl'	Indian Hawthorn	200mm	800	800
Rsm	102	Raphiolepis 'Snow Maiden'	Dwarf hawthorn	200mm	600	800
Ss	38	Senecio serpens	Blue Chalk Sticks	175 mm	400	400
SW	2	Spathiphyllum 'Sensation'	Giant Peace Lily	200mm	1200	1000
Syau	68	Syzygium australe Select	Lilly Pilly	300mm	1300	4000
Syr	28	Syzygium australe 'Resilience'	Lillypilly	400 mm	1000	4000
Ta	100	Trachelospermum asiaticum	Japanese star jasmine	140 mm	300	610
Ti	20	Trachelospermum jasminoides	Star Jasmine	140mm	1000	1000
Vo-3	74	Viburnum odoratissimum Dense Fence	sweet viburnum	200mm	800	800
	0				0	0



Acer October Glory



Acer Sango Kaku



Aspidistra elatior



Bambusa textilis var. gracilis



Carissa Desert Star



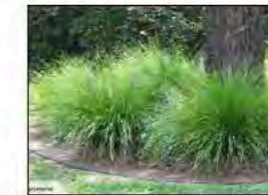
Crassula ovata



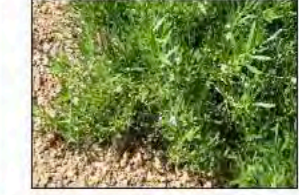
Dichondra repens



Lomandra tanika



Lomandra Lime Tuff



Myoporum parvifolium



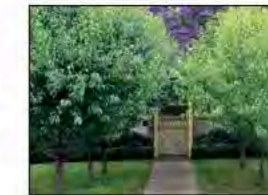
Ophiopogon japonicus Nana



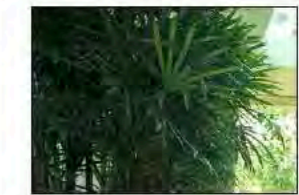
Philodendron Xanadu



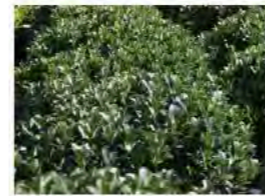
Philodendron Rojo Congo



Pyrus nivalis



Rhapis excelsa



Raphiolepis Oriental Pearl



Raphiolepis Snow Maiden



Spathiphyllum Sensation



Syzygium australe



Trachelospermum asiaticum



Trachelospermum jasminoides



Trachelospermum tricolour



Viburnum Dense Fence



Senecio serpens

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Project:

11 Bennett Street Cremorne

Dwg No:

PS 01

Scale:

NA

Drawn By:

ES

Date:

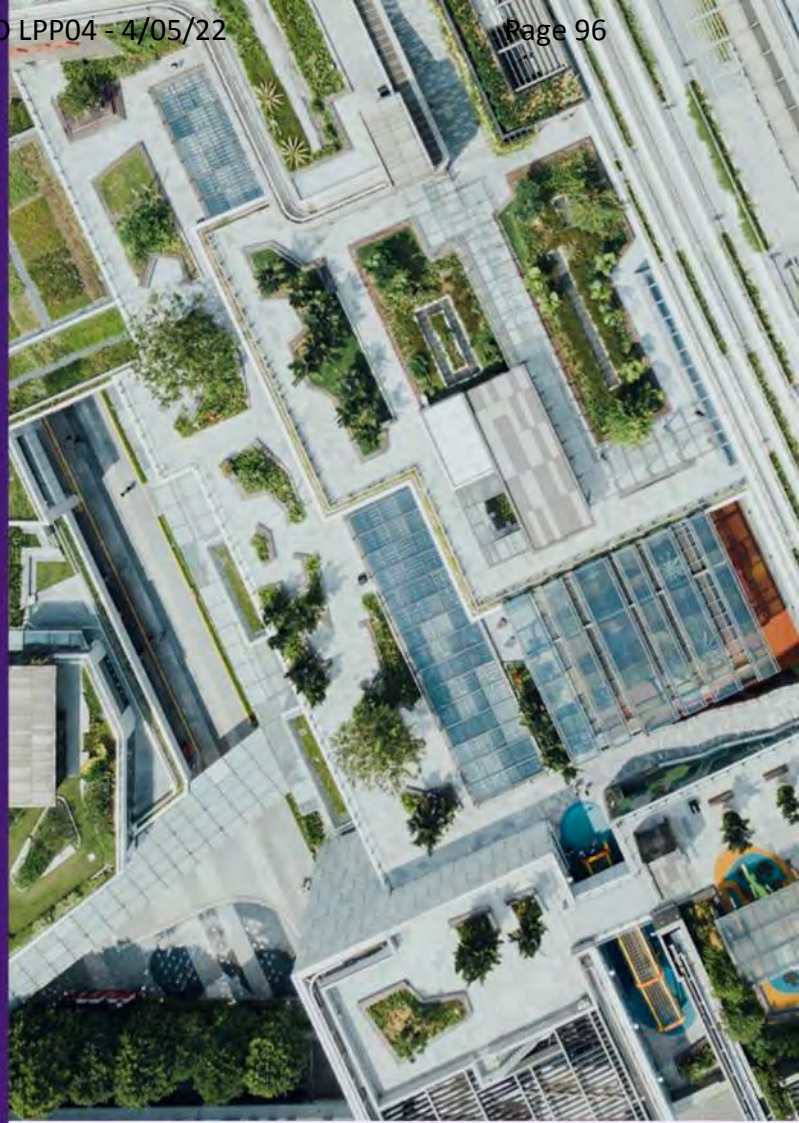
14.09.21

Title:

PLANTING SCHEDULE

REV:

0



11 Bennett Street, Cremorne

Clause 4.6 Variation Request – Height
of Buildings

On behalf of
CMBR Marine Pty Ltd
October 2021

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1 Introduction

This Clause 4.6 Variation Request seeks to allow a variation to the Height of Buildings development standard associated with the Development Application at 11 Bennett Street, Cremorne (the site). The DA seeks approval for

The DA seeks approval for construction of two x 3-storey dual occupancy dwellings (attached) on the two new lots formed in the approval of DA237/18. These will appear as one detached dwelling on each new Lot 1 and Lot 2, 11 Bennett Street Cremorne.

The Clause 4.6 Variation Request seeks to vary one development standard within the North Sydney Local Environmental Plan 2013 (NSLEP2013):

- Clause 4.3 – Height of Buildings

This Clause 4.6 Variation Request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context and existing building, and as such, is justified on environmental planning grounds.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliances, the proposed development:

- Achieves the objectives of the development standard in Clause 4.3 of NSLEP 2013, despite the non-compliance with the numerical standard in Clause 4.3;
- Achieves the objectives of the R2 Low Density Residential zone;
- Will deliver a development that is appropriate for its context, despite the numerical breach to development standard 4.3, and therefore has sufficient environmental planning grounds to permit the variation; and
- Is therefore in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the NSLEP 2013.



2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the NSLEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Specifically, the objectives of this clause are:

- To provide flexibility in the application of a development standard; and
- To achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has provided a written request that has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has provided a written request that has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That 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.

The consent authority's satisfaction as to those matters must be informed by the objectives of Clause 4.6, which are:

- providing flexibility in the application of the relevant control; and
- to achieve better outcomes for and from development.

Clause 4.6 of the NSLEP 2013 reads as follows:

Clause 4.6 Exceptions to development standards

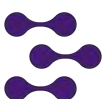
(1) *The objectives of this clause are as follows:*

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

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

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

- that compliance with the development standard is **unreasonable or unnecessary in the circumstances of the case**, and*



- (b) that there are **sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
- (i) the applicant's written request has adequately **addressed** the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be **in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,** and
- (b) the concurrence of the Secretary has been obtained.
- (5) 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.

3 The Development Standard to be varied

This Clause 4.6 Variation Request has been prepared in a written format, seeking to justify the variation to the following development standard in the NSLEP2013:

- Clause 4.3 (Height of Buildings) – which permits a maximum Height of Buildings of 8.5m Refer to Figure below.

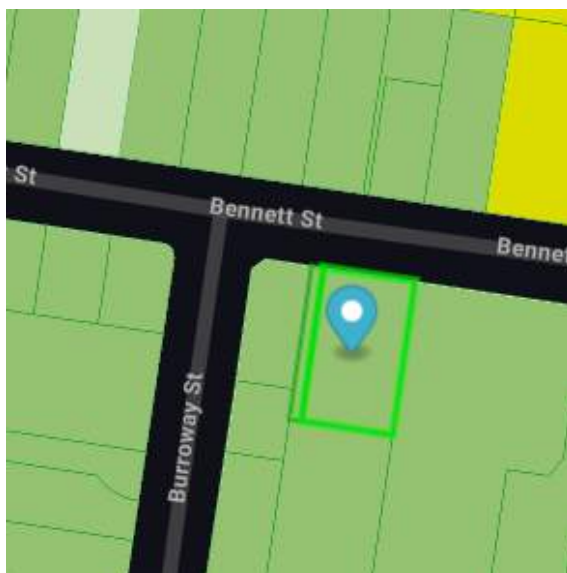


Figure 1 Subject site – Height Standard (Clause 4.3 NSLEP2013)

Clause 4.3 states:

4.3 Height of buildings

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



- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
 - (b) to promote the retention and, if appropriate, sharing of existing views,
 - (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,
 - (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
 - (e) to ensure compatibility between development, particularly at zone boundaries,
 - (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,
 - (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

4 Extent of Variation to the Development Standard

The subject application proposes a maximum building height of 10.87m for the eastern dwelling and 10.07m for the western dwelling, which represents a 28% variation (eastern) and 18% variation (western) to the height control respectively.

The Figures below shows the building elements that sit above the 8.5m height planes.

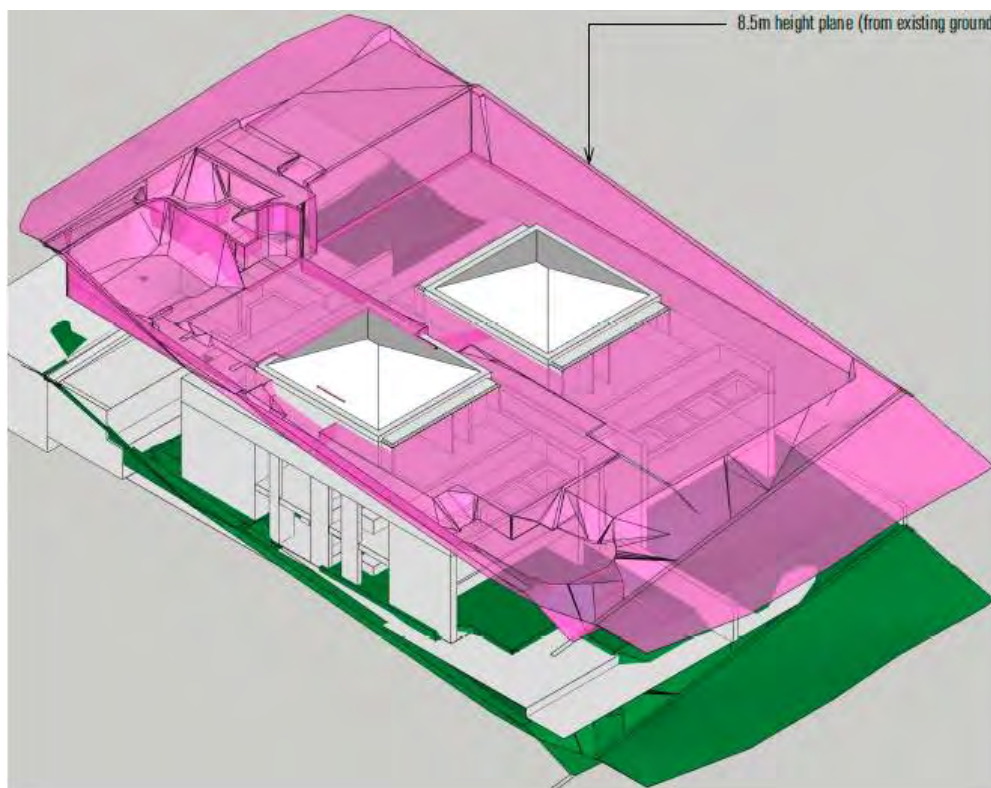


Figure 2 Subject site – Height Plane Overlay (Mathieson Architects)



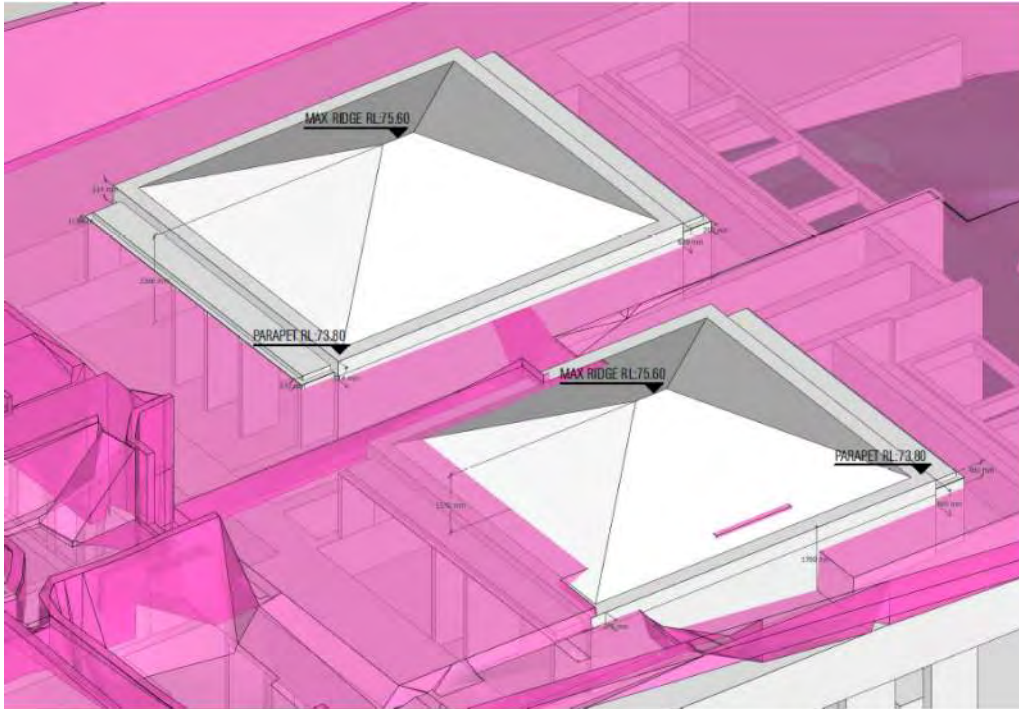


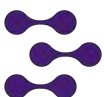
Figure 3 Dimensions and extent of breach (Mathieson Architects)

The area of breach for the proposal relates to the roof form and pitch, which have been designed to present a traditional strong pitched roof consistent with the controls for the Cremorne Conservation Area.

It is noted that the variation results, in part, from prior excavation of the site, which results in a lower 'existing ground level' for the site than from the street and surrounding properties. This is demonstrated by the fact that the two dwellings will present as two modest, two-storey dwellings from the Bennett Street frontage. Refer to the Photomontage below.



Figure 4 Photomontage from Bennett St



4.1 Objectives of the Standard

The objectives of the Standard are as follows:

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

4.2 Objectives of the Zone

The Objectives of the R2 Low Density Residential zone are as follows:

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

5 Assessment

5.1 Clause 4.6(3)(a) – compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

1. Compliance with the height standard is unreasonable and unnecessary as the objectives of the FSR development standard are achieved notwithstanding non-compliance with the numerical standard (Wehbe 1# test):
 - 1.1. As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]–[48], a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary.
 - 1.2. Furthermore, Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]–[51] outlined five common ways in which an applicant might demonstrate



that compliance with a development standard is unreasonable and unnecessary which are summarised below:

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

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

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

Test 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; or

Test 5. The compliance with 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.

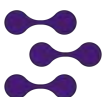
- 1.3. These five ways to demonstrate that compliance is unreasonable or unnecessary are not exhaustive, and it may be sufficient to establish only one way.
- 1.4. With respect to the subject application, we consider that the proposed development meets the requirements of Wehbe Test 1 and therefore compliance with the development standard is unreasonable and unnecessary when considered holistically with the development outcome being sought.

5.1.1 Wehbe Test 1 – Objectives of the Standard are achieved

2. *Objective (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
 - 2.1. The site itself is set lower than the ground-level of the footpath, reflecting the natural and significant fall of the topography. This is most evident when viewing the existing dwelling, which is set below the level of the footpath. It is noted that the dwelling adjoining the site to the west demonstrates similar topographical constraints, while other properties to the east (including heritage item 0029) are set at ground level.
 - 2.2. The existing site is currently significantly excavated, with a drop of approximately 4.5m to the tennis court and the front sunken courtyard, descending a further 2m at the south-east boundary of the site. This can be shown in the Figure below, which outlines the existing ground level of the site (blue dash) and existing building (red dash).
 - 2.3. The proposed development has been designed to largely reflect the existing excavated form to also enable the appearance of a modest 2-storey built form with a traditional pitched roof that is compatible with the surrounding conservation area. Additional excavation has been designed to be compliant with Council's topography controls, and any proposal to increase or lower the existing ground level beyond that proposed would not be consistent with Council's DCP Controls for Topography (1.3.1).



- 2.4. The new development will respond to the site's unique topography by being set down into the property, which will therefore allow for the ongoing legibility of the locality's topographical features.
- 2.5. The landscaping of the development is stepped down from Bennett Street to also reflect the natural gradient of the site. This is an appropriate landscape setting that does not diminish or detract from the locality.
3. *Objective (b) to promote the retention and, if appropriate, sharing of existing views,*
 - 3.1. The roofs of the buildings where the breach of the height standard occurs is not likely to affect any existing private views from adjoining and adjacent properties and there will only be a minor impact on the existing views from properties on the opposite side of Bennett Street, consistent with the view sharing Land and Environment Court principles for private and public land.
 - 3.2. The proposal will create no detrimental view impacts towards adjacent heritage items.
4. *Objective (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
 - 4.1. The proposal has been designed to ensure compliance with the overshadowing requirements in Section 1.3.7 of the North Sydney DCP 2013 (NSDCP 2013). Whilst the new development will create some additional overshadowing to surrounding neighbours, each adjoining property will continue to achieve at least 3 hours sunlight to significant parts of their primary private open space and living area windows at June 21st.
 - 4.2. Further, as demonstrated in the overshadowing diagrams provided as part of the DA, the area of the site that breaches the height controls creates negligible solar impacts beyond a compliant envelope.
5. *Objective (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
 - 5.1. The overall dwellings have been designed to maintain visual and acoustic privacy with neighbours. This includes ensuring compliance with side and rear setback controls, and appropriate visual and acoustic screening as required by Council's controls.
 - 5.2. The proposed height breach is almost entirely located within a roof form, with the design intended to improve privacy compared to the previous scheme considered in DA308/20. In its consideration of the previous scheme, the North Sydney Local Planning Panel stated "*The upper level should read primarily as a strong pitched roof form that has the capacity to contain internal spaces. This in essence will require a reduction in floor area and replanning of the dwellings. Unification of the roof form for each building will provide a better street presentation and avoid a mirror image.*"
 - 5.3. The subject proposal has incorporated this feedback, which has resulted in a greater proposed variation to the height control due to the increased pitch of the roof. However, this design change has also improved privacy for existing and future residents as it has reduced the floorspace at the tallest part of the



development, and replanned it to other areas less subject to acoustic and privacy impacts.

6. *Objective (e) to ensure compatibility between development, particularly at zone boundaries,*
 - 6.1. The proposed dual occupancy dwellings will maintain compatibility with the height, scale, and varied character of residential development in the area, which comprises a variety of two storey and three storey dwelling houses and three-four storey apartment buildings along Bennett Street.
 - 6.2. The new building responds to the site's topography by being set down low on the property with the new, sympathetic pitched roof maintaining the most noticeable street presence. The visual setting of adjoining heritage items will not be compromised.
7. *Objective (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
 - 7.1. The proposed development will reflect and reinforce the established character of the area. The most visible parts of the new building will be the tiled, pitched roofs and the simple, rectilinear building envelope, which is in keeping with the character of the street, the locality and the Cremorne Conservation Area.
 - 7.2. The proposed alterations and additions will be an appropriate scale and density and compatible with the varied character of the residential development in the immediate area.
 - 7.3. The proposal achieves an acceptable outcome and an appropriate level of consistency with the objectives of the standard, particularly in relation to compatibility with the local area character, and minimising the effects of bulk and scale, and maintaining local amenity in particular views and view sharing and solar access and privacy.
8. *Objective (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*
 - 8.1. Although each dual occupancy dwelling is a 3-storey building, the natural topography and fall of the land means that the dwellings will only present as 2 storeys to Bennett Street, and from the eastern and southern neighbouring heritage items at 19 Bennett Street and 4 Bertha Road. Refer to the Figures below demonstrating views from these boundaries.



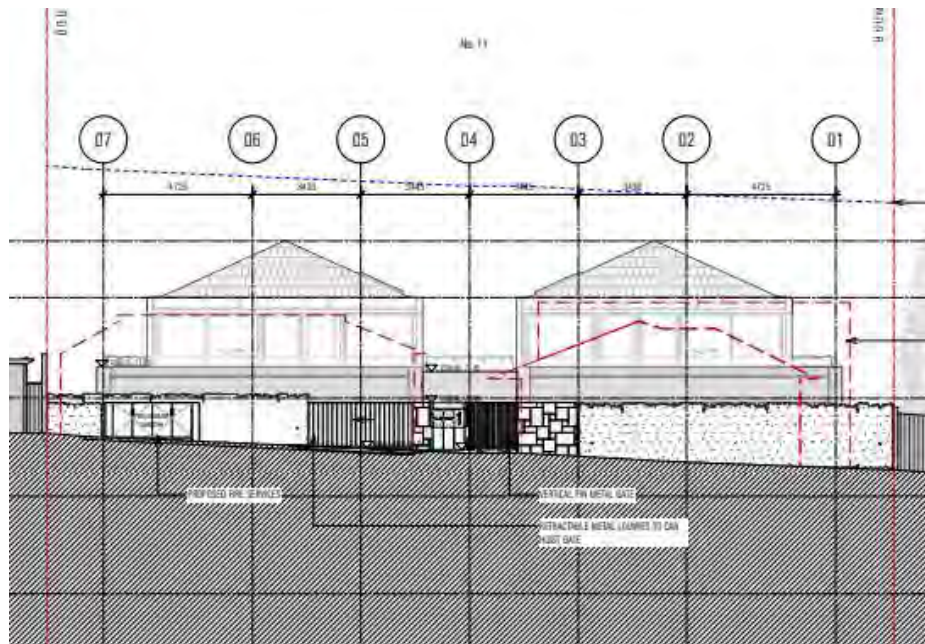


Figure 5 Northern elevation from Bennett Street (Mathieson Architects)

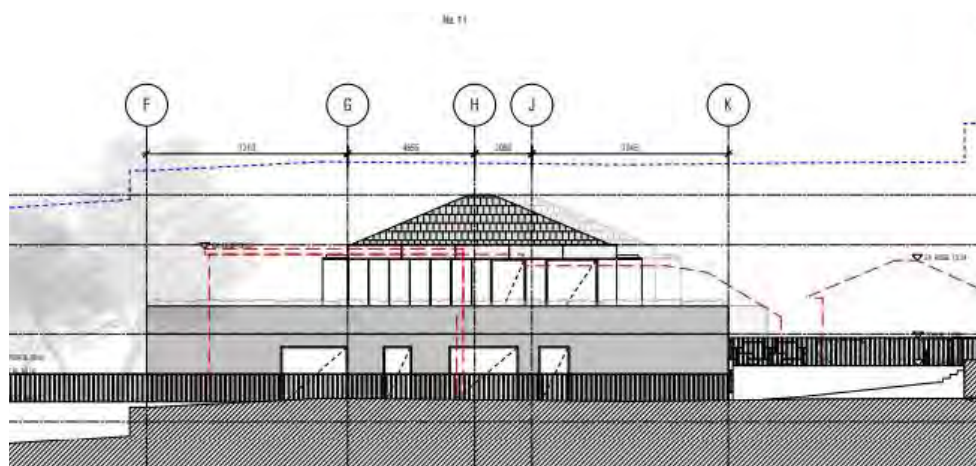


Figure 6 Eastern elevation as viewed from neighbouring property (Mathieson Architects)

- 8.2. The southern neighbour has a significantly lower property, and with large existing vegetation. Accordingly, any future development will not appear as being of a greater bulk or scale than approximately 2 storeys.
- 8.3. Whilst the development will appear to be approximately 2-3 storeys when viewed from the rear yard of the western neighbour, the subject proposal includes significant screening with landscaping, and existing fences will reduce the appearance to approximately 2 storeys for part of the site. It is also noted that the western neighbour already views the existing building as three storeys from their property, with no major change in scale proposed.
- 8.4. The proposal will present as 2 storeys from the only public domain vantage point, as well as most interfaces with other private residential properties including heritage items, and therefore is consistent with this Objective, particularly given the large level changes across the precinct between properties.



5.2 Clause 4.6(3)(b) – sufficient environmental planning grounds to justify contravening the development standard

9. There are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:
 - 9.1. As discussed earlier in the Clause 4.6 Variation Request, the subject site's 'existing ground level' is significantly lower compared to Bennett Street (approximately 4.5 down to 6.5m). This creates a situation where a building on site that complies with the 8.5m height control from the excavated 'existing ground level' would appear as an awkward built form that wouldn't be compatible with the surrounding conservation area.
 - 9.2. In order to remove the breach of the height control, the built form would need to be amended to either remove (or significantly reduce) the pitched roof form, or present as a single half-storey dwelling from Bennett Street, which is not a good heritage or design outcome.
 - 9.3. Any alternate solution would require the artificial increase of the existing ground level at the site, which is also contrary to Council's DCP Topography controls (Section 1.3.1) as well as Objective 4.3(a) of the Height of Buildings control.
 - 9.4. The pitched roof design is an important and identifiable character element of development in the locality and the conservation area, and is an appropriate design response to the adjoining and adjacent properties. The proposed strong pitched roof has been developed to specifically respond to Council's LPP feedback on DA308/20 who requested a strong pitched roof and replanning of the design layout. This design best addresses streetscape and character and reduces the overall height and bulk and scale at the rear of the buildings.
 - 9.5. The elements that cause the breach do not create additional amenity impacts on surrounding properties. Accordingly, there would be no purpose served by requiring strict compliance with the height standard under the circumstances of this application as it would simply create a poorer heritage and design outcome without mitigating any environmental impacts.
10. Accordingly, it is considered that there are sufficient environmental planning grounds to justify contravening the development standards, as the development will deliver one of the key Objects of the Planning Act, while also allowing for the promotion and coordination of the orderly and economic use and development of the land for community housing, community services and local commercial services.
11. In addition, it is noted that the proposed development will still produce a contextually appropriate outcome consistent with the objectives of the height of buildings development standard, despite the non-compliance with the numerical height provision.



5.3 Clause 4.6(4)(a)(i) – consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

12. As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates;

12.1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and

12.2. There are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with the findings of Commissioner Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request adequately addresses the matters in Clause 4.6(3).

5.4 Clause 4.6(4)(a)(ii) – the proposed development is in the public interest because it is consistent with the objectives of the particular and the objectives for development within the zone in which the development is proposed to be carried out

13. The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings:

14. The objectives of the particular standard

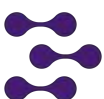
14.1. It has been demonstrated elsewhere in this report that the development achieves the objectives of Clauses 4.3, of the NSLEP2013 notwithstanding the non-compliance with the standard.

15. The objectives for development within the zone in which the development is proposed to be carried out. Consistency with the objectives of the R2 zone is described below:

15.1. To provide for the housing needs of the community within a low density residential environment: The proposal will deliver new dual occupancy dwellings, which are a permitted land use in the zone. The delivery of additional dual occupancy dwellings will support the diversity of housing needs in this community and provide residents with additional housing options in the immediate area.

15.2. To enable other land uses that provide facilities or services to meet the day to day needs of residents: This objective is not relevant to the proposal.

15.3. To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area: The proposed dual occupancy development of each lot will not compromise the amenity of the surrounding area or the heritage significance of the Cremorne Heritage



Conservation area and the adjacent heritage listed houses at 19 Bennett Street and 4 Bertha Road.

The overall proposal is consistent with the planning controls and creates no inappropriate amenity impacts on surrounding development. In particular, the breach – which relates largely to the pitched roof form – has been designed to better integrate and respond to the surrounding heritage items and conservation area.

- 15.4. To ensure that a high level of residential amenity is achieved and maintained:
Each of the dwellings in the proposed dual occupancy developments will achieve a high level of residential amenity for residents and will also maintain the amenity of residents of the surrounding properties. As demonstrated in the Statement of Environmental Effects, the proposed development is consistent with Council's amenity controls in the LEP and DCP and does not create additional inappropriate impacts on the surrounding in excess of the controls.

6 Matters of significance for State or regional environmental planning

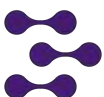
16. Contravention of the standard raises no matters of significance for state or regional environmental planning.

7 Secretary's concurrence

17. The Planning Circular PS 18-003, issued on 21 February 2018 (Planning Circular), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The NSLEP2013 is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.
18. We note that under the Planning Circular this assumed concurrence is subject to some conditions - where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council. This restriction however does not apply to decisions made by a local planning panel, as they are not legally delegates. The proposed development will be assessed by a local planning panel, and as such the 10% limit does not apply.

8 No public benefit in maintaining the development standard

19. There is no public benefit in maintaining the development standards, due to the reasons outlined in Sections 5 and 6 above.



9 Conclusion

20. The variation to the Height of Buildings development standard should be supported for the following reasons:

20.1. The development achieves the objectives of the development standard in Clause 4.3 of NSLEP 2013;

20.2. The development achieves the objectives of the R2 Low Density Residential zone under NSLEP 2013;

20.3. There are sufficient environmental planning grounds to permit the variation to the standard under the circumstances; and

20.4. Compliance with the height of buildings development standard is unreasonable or unnecessary under the circumstances and therefore the variation is in the public interest.

