

**NSLPP MEETING HELD ON 3/11/2021****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 & view loss analysis
4. Applicant's response to Council – Dwelling entry

ADDRESS/WARD: 35 Bay View Street, Lavender Bay**APPLICATION No:** DA 211/21**PROPOSAL:** Substantial alterations and additions to a dwelling house including a new attic level and double garage.**PLANS REF:**

Plan No.	Revision No.	Description	Prepared by	Dated
DA101	A	Site Plan/Roof Plan	LiteraTrotta	05/07/21
DA111	A	Roof Existing/Demo	LiteraTrotta	05/07/21
DA112	A	Level 02 Existing/Demo	LiteraTrotta	05/07/21
DA113	A	Level 01 Existing/Demo	LiteraTrotta	05/07/21
DA114	A	Ground Level Existing/Demo	LiteraTrotta	05/07/21
DA200	A	Roof Plan	LiteraTrotta	22/10/21
DA201	A	Level 03 Plan	LiteraTrotta	1/10/21
DA202	A	Level 02 (Street) Plan	LiteraTrotta	1/10/21
DA203	A	Level 01 Plan	LiteraTrotta	05/07/21
DA204	A	Ground Floor Plan	LiteraTrotta	1/10/21
DA301	B	North Elevation	LiteraTrotta	1/10/21
DA302	A	East Elevation	LiteraTrotta	1/10/21
DA303	A	West Elevation	LiteraTrotta	1/10/21
DA304	A	South Elevation	LiteraTrotta	22/10/21
DA321	A	Section - AA	LiteraTrotta	1/10/21
DA322	A	Section – BB	LiteraTrotta	1/10/21
DA121	A	Materials Board	LiteraTrotta	22/10/21

OWNER: Henry Cheung**APPLICANT:** Bronwyn Litera**AUTHOR:** Sophie Griffiths, Student Town Planner**DATE OF REPORT:** 15 October 2021**DATE LODGED:** 9 July 2021**AMENDED:** 1 October 2021**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

The development application seeks development consent for substantial alterations and additions to an existing dwelling house including attic level additions and double garage at No. 35 Bay View Street, Lavender Bay.

This application is a report to NSLPP for determination because the application being the proposed dormers is above the building height limit by greater than 10% and is therefore required to be determined by the North Sydney Local Planning Panel in accordance with the Minister's directions.

The applicant has provided a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013. The applicant's Clause 4.6 variation statement is considered to be well founded and has provided sufficient environmental planning grounds. The proposal is considered to achieve the objectives of the building height development standard.

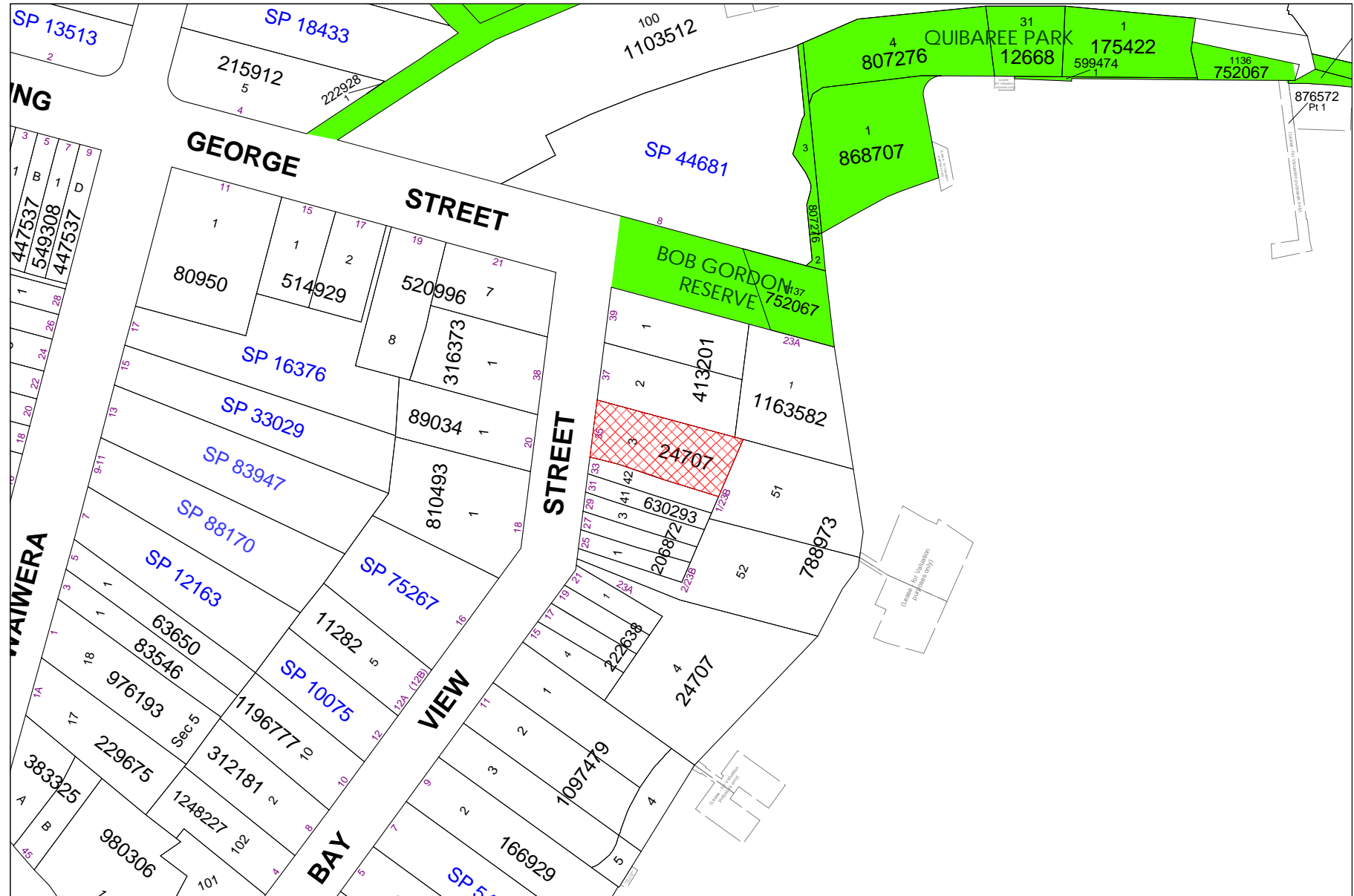
The notification of the application is in accordance with the North Sydney Community Participation Plan 2019. At the end of the notification period, Council received three (3) submissions raising particular concerns about visual privacy, view loss, height, setbacks, solar access and the enclosure of the carport. The proposal has considered these concerns as well as the performance of the application against Council's planning requirements.

The amended proposed largely addresses the issues raised by Council during the assessment of the application. Subject to conditions, the amended proposal is generally considered to maintain the heritage significance and amenity of adjoining dwellings.

The development application has been assessed against all applicable environmental planning instruments and was found to be generally satisfactory, including in relation to the North Sydney LEP 2013 and North Sydney DCP 2013.

Having regard to the provisions of Section 4.15 of the EP&A Act 1979 the application is considered to be satisfactory and is recommended for approval.

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The application proposes substantial alterations and additions to a dwelling including the construction of a double garage and pedestrian access; internal reconfiguration; new rear façade; new attic additions; and landscaping works on land at 35 Bay View Street, Lavender Bay.

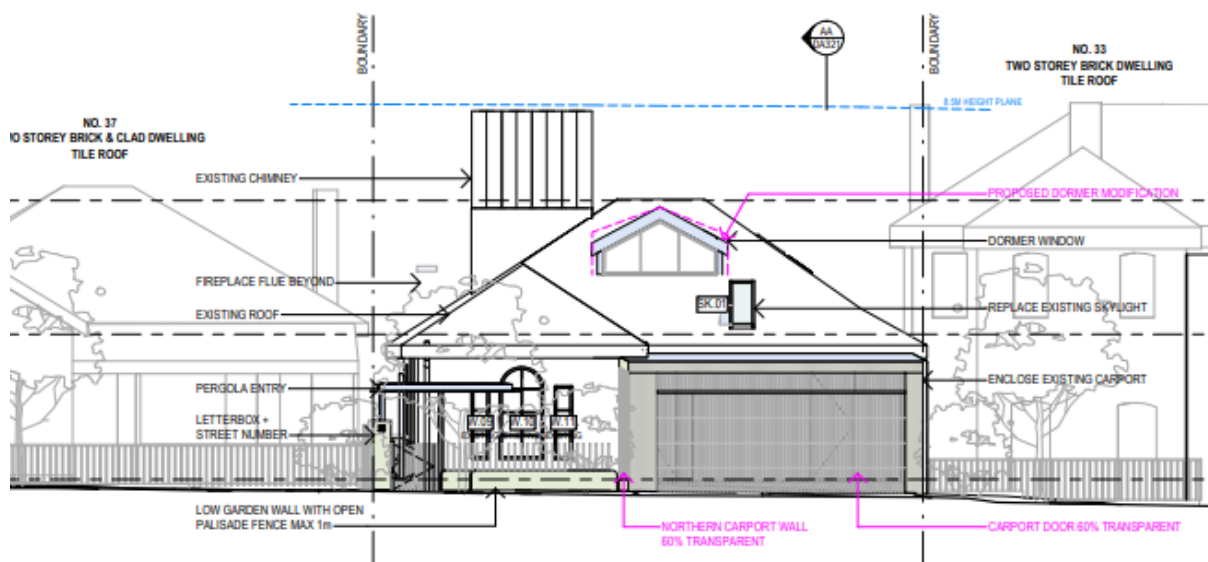


Figure 1: Western elevation of subject site

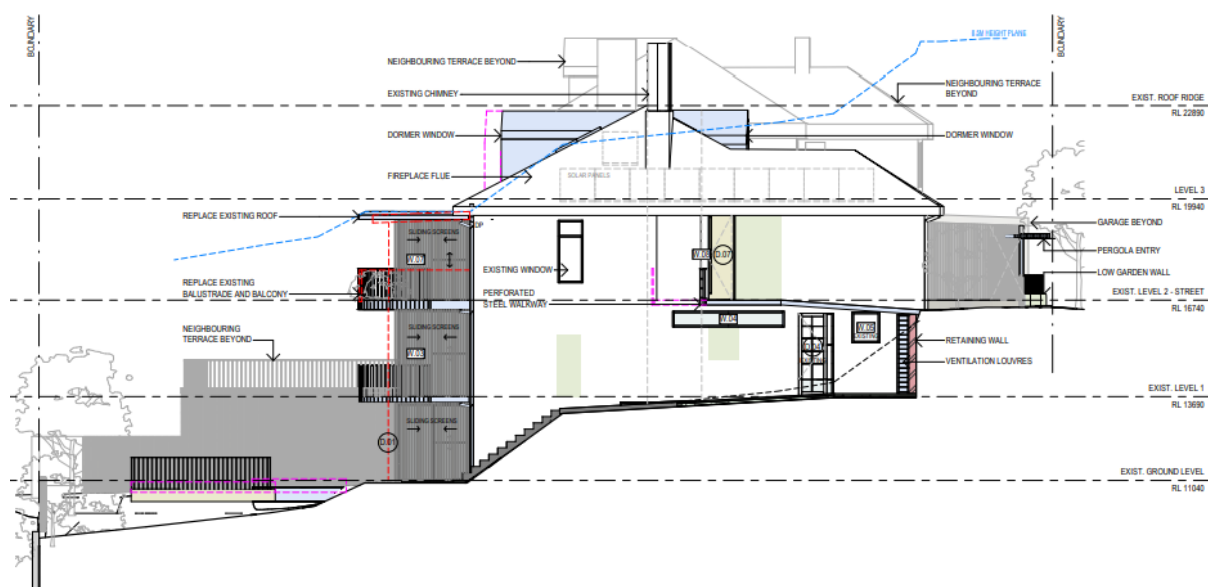


Figure 2: Northern elevation of subject site

The proposed works are summarised below:

Ground Floor:

- Replacement of the internal stairs
- Increase existing lift shaft for access to the upper level

First Floor (Level 01)

- New ventilation void
- Curvature of external façade
- Demolition of existing enclosed patio, to accommodate a new rear terrace
- Demolish remaining partially removed fireplace
- Retain existing slab for new service area
- Increase existing lift shaft removing rear wall
- Replace existing stairs
- Reconfiguration of existing bedrooms

Second Floor (Level 02)

- New entry
- Remove existing fireplace. Retain chimney above
- Increase existing lift shaft, removing rear wall
- Remove existing stair
- Replace existing full height glazing
- Replace existing balcony + balustrade
- Internal reconfiguration

Third Floor (Level 03)

- New attic bedroom within the roof space
- Remove portion of existing roof to accommodate new front and rear former windows
- New western facing dormer window to existing roof
- New eastern facing dormer window to existing roof
- Replace existing skylight

Externally

- Replace existing rear access gate
- New boundary fence
- New garden store
- New outdoor living and dining area
- Landscaping
- New decking
- Removal of northern boundary stairs
- Replacement of existing gate and low level boundary wall
- Enclosure of existing carport

Amended Proposed – 1 October 2021

On the 1 October 2021 the applicant submitted amended plans incorporating the following amendments to the original proposal, which are outlined below:

- Alterations to the proposed entry to the dwelling
- Relocations of the decking to the rear
- Reduction in size of eastern and western facing dormers
- Proposed garage northern and western walls 60% transparent

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R3 Medium Density Residential
- Item of Heritage - No
- In Vicinity of Item of Heritage- Yes (25-33 Bay View Street, Lavender Bay – See Section Schedule 5 of NSLEP 2013)
- Conservation Area – No
- Environmental Planning & Assessment Act 1979 (as amended)

7.12 Contributions

Environmental Planning & Assessment Act 1979

SEPP No. 55 – Contaminated Lands

SREP (Sydney Harbour Catchment) 2005

Local Development

POLICY CONTROLS

NSDCP 2013

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site is identified as Lot 3 in DP24707 and is known as 35 Bay View Street, Lavender Bay. The site is located on the eastern side of Bay View Street, between King George and East Crescent Streets. The site is irregular in shape with a western frontage to Bay View Street of 12.32m, an eastern boundary of 13.355m, a southern boundary of 22.51 and a northern boundary of 32.31m. The site has an area of 385.2sqm.

Currently located on the site is an elevated three storey semi-detached dwelling with a hipped metal roof and chimney. The site has vehicular access off Bay View Street to an existing double carport at the front boundary.

The immediate surrounding locality is characterised by predominantly one to three storey semi-detached and attached residential dwellings. Adjoining the site to the south is No. 33 Bay View Street a part two and three storey dwelling. The dwelling forms part of a group of five heritage attached dwellings. To the north is No 37 Bay View Street a one to three storey face brick building. To the east is Nos 1 and 2/23 B Bay View Street, a pair of one to three storey semi-detached dwellings.

RELEVANT HISTORY

Adjoining properties

21 King George Street (DA 216/21)

Development Application No. 216/21 involving substantial demolition and alterations and additions to a dwelling is currently under assessment. The proposed dwelling is of a highly contemporary design and is located opposite the subject property.

18 Bay View Street (DA 409/16)

Development Application No. 409/16 involving the demolition of the existing dwelling and construction of three storey dwelling. The development application was determined by the North Sydney Local Planning Panel and approved on 5 April 2017, subject to conditions.

Subject site

Development Application No. 521/07 - This Development Application sought the approval from Council for the installation of acoustic screening and glass to the decks at Level 2 and 3 on the southern side of the subject dwelling. To note, the application was approved under delegated approval on 18 February 2008.

Construction Certificate No. X504/01 – Installation of a disabled lift within existing building envelope. Of the dwelling. The works were determined under delegated authority by the granting of approval on 9 May 2001.

Current Application

Date	Action
9 July 2021	The subject application was lodged though the NSW Planning Portal.
5 August 2021	The owners of adjoining properties and the Lavender Bay Precinct were notified of the proposed development for a 14-day period, between 6 August 2021 and 20 August 2021. The notification resulted in three (3) submissions.
2 September 2021	Council sent an amended plans letter to the applicant requesting front and rear dormer amendments, the relocation of the entry way, amendments to the garage and the relocation of the deck to the rear of the site.
1 October 2021	The applicant submitted amended plans and revised Clause 4.6 written request.

REFERRALS

Building

The application was referred to Councils Building Officer where the following comments have been made:

The development application seeks approval for alterations and additions to an existing dwelling.

The building is classified by the NCC BCA 2019, Volume 2 as a class 1a building.

A review of the plans provided with the application, in particular, Drawing No's DA301 & DA302 shows a proposed steel framed walkway is to be constructed on the Nth Elevation to provide new access and entry to the dwelling from street level.

The proposed steel framed walkway, although non-combustible, is not an allowable encroachment pursuant to the Deemed to Satisfy Provisions of Part 3.7, Clause 3.7.2.7 c (iv), of the NCC BCA 2019, Volume 2 as the walkway (ramp) is higher than 1m from ground level beneath.

A detailed assessment of compliance with the Building Code of Australia 2019 will be undertaken by an appropriately accredited certifier at the Construction Certificate Stage of the proposed development, this will likely require the development of a Performance based Solution regarding this non-compliance with the Deemed to Satisfy Provision of the NCC BCA.

It is recommended that confirmation be received from the applicant that a Performance based Solution can be developed prior to the determination of the Development Application as amended plans regarding the dwellings access entry point maybe required should a Performance Solution not be achievable.

Generally, the proposed works are able to comply with the NCC BCA 2019, Volume 2.

Heritage

The application was referred to Council's Conservation Planner who has provided the following comments:

1. Heritage Status and Significance:

35 Bay View Street, Lavender Bay is:

- *not identified as a scheduled heritage item in North Sydney LEP 2013 Part 1, Schedule 5*
- *located in the vicinity of the following heritage items:*
 - *25 -33 Bay View Street being: item no.s I0317/ I 0318/ I 0319/ I 0320/ I03121;*
 - *23A King George Street (I 0329); and*

- *opposite the heritage listed stone retaining wall (I 0322) as per North Sydney LEP 2013 Part 1 of Schedule 5.*
- *not situated within a conservation area but is located in the vicinity of the McMahons Point North heritage conservation area (CA13)*



Sixmaps 1943 aerial image of the site

Image 1: Aerial image of the site

2. *Heritage Impact Assessment and Recommendations:*

An assessment of the proposed development has been undertaken in relation to NSDCP 2013 Part B: s 13.4 Development in the vicinity of heritage items and NSLEP 2013 Clause 5.10(5) (c) Heritage assessment.

The 1943 aerial image of the site confirms the subject dwelling is from a similar period of development as the adjacent heritage item group on the southern side of the site as well as the adjacent dwelling to the north of the site at 39 Bay View Street. Collectively, they depict the overall early 20th Century development of this part of Lavender Bay and are important to the setting of the heritage item group. NB There is no development on the site of 39 Bay View Street.

The Bay View elevation of the subject dwelling still retains its overall character, form, scale and massing including the fenestration openings. The dwelling is still intact but for the extension of the skillion over the porch area that has now been extended to create a carport and hardstand for two vehicles. The southern brick wall of the carport is extended, partially obscuring southward views to the heritage item group. The previous garden would have made a positive contribution to the setting and views to the adjacent heritage items. Regardless, 35 and 37 Bay View Street continue to make a positive contribution to the historical streetscape character and setting of the adjacent heritage item group and to understanding of the evolution of this part of Lavender Bay.



Image 2: Relationship of site with adjacent heritage item group



Image 3: Front elevation (existing)



Image 4: 37 Bay View Street (adjoining)



Image 5: 39 Bay View Street – not evident in the 1943 aerial image

The construction of a formal garage in front of the existing dwelling is not supported on heritage grounds as it creates a negative impact on the setting and views to the heritage item group. Instead, it is recommended that the car parking area be enclosed by low height gates with details similar to those expressed by the proposed fencing along Bay View Street so that the open character of the space is retained and strengthens the streetscape character and setting of the new work with the heritage item group and with the overall historical context of the street.

There are no precedents for dormers on the eastern side of Bay View Street and this is confirmed by a survey of the site and its setting on 21 October 2021. However, it is noted that the 'rear' harbour facing elevation has undergone changes that include the introduction of extensive glazed areas [DA 2007/521]. The modifications are supported based on the physical evidence of the use of glass at this site and other nearby sites in the vicinity. Similarly, whilst dormers are generally discouraged, there are dormer precedents at the adjoining heritage item group that lend to the insertion of a dormer in the harbour facing roof plane of the subject site. However, the dormer details and proportions need to be revised to express a traditional dormer appropriate to the existing dwelling.



Image 6: Draft sketch up of the car parking area

The internal layout is proposed to be extensively altered. Retention of as much of the legibility of the existing layout is encouraged as it relates to an understanding of the original building.

The proposal is supported subject to conditions as recommended below.

3. Conclusion and Recommendations

With reference to the above, an assessment of the proposal has been undertaken in terms of North Sydney LEP 2013 Clause 5.10 Heritage conservation and North Sydney DCP 2013 Part B: Section 13 Heritage and Conservation namely relating to clause 5.10(5)(c) and section 13.4 respectively relating to works within the vicinity of heritage items.

- 1. That the proposed dormer in the street facing elevation of the dwelling is to be deleted*
- 2. That the proposed garage in the front of the existing dwelling is to be deleted and instead be replaced with low height gates [electric?] which will retain the open character of the space and strengthen the streetscape setting and compatibility with the heritage item group.*
- 3. That the harbour facing dormer is to be revised to reflect traditional proportions appropriate to the dwelling.*

(Reason: To protect the setting and views to and from the adjoining heritage item group and the nearby heritage items and heritage conservation area.)

Details of the proposed revisions are to be submitted to Council prior to the issue of any CC.

Planners comment

The impact of the proposed additions on the heritage significance of adjoining properties is addressed in greater detail below. Subject to conditions the proposed additions are considered to be acceptable in the heritage context of the site.

Engineering

The application has been referred to Council's Development Engineer where the following comments have been made:

The proposal has been assessed in relation to:

- Traffic Management
- Stormwater
- Parking and Access
- Sediment and Erosion Control measures
- Excavation and Retaining Walls

In assessing the application, the following DCPs sections, Council's Codes and Infrastructure Guidelines are considered relevant to the proposed development:

- Section 10 Car Parking and Transport
- Section 12 Access
- Section 17 Erosion and Sediment Control
- Section 18 Stormwater Drainage
- Section 20 Public Infrastructure
- North Sydney Council Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works 2016/2017
- North Sydney Council Public Domain Style Manual and Design Codes
- North Sydney LGA Flood Study Final Report February 2017

Comments:

In reference to the proposed development, the following matters have been considered.

Traffic Management:

Minor excavation proposed on a difficult site in a narrow street. CTMP required.
Appropriate conditions shall be imposed in this regard.

Stormwater:

Stormwater to connect to existing.
Appropriate conditions shall be imposed in this regard.

Parking and Access:

No changes proposed to the existing off-street hard stand parking spaces.
Existing crossover and layback to be retained.
No conditions applied.

Sediment and Erosion controls

Appropriate conditions shall be imposed in this regard.

Excavation and Retaining Walls

Minor excavation proposed. The Geotechnical Investigation prepared by JK Geotechnics, dated 21/2/2020 is considered satisfactory.

Appropriate conditions shall be imposed in this regard.

Planning Comment:

The comments and conditions provided by Councils Development Engineer are agreed with. The conditions recommended are included later in the condition set.

SUBMISSIONS

Original Proposal

On 5 August 2021, Council notified adjoining properties and the Lavender Bay Precinct of the proposed development seeking comment between 6 and 20 August 2021. Council received three (3) submissions against the application. The matters raised in the submissions are listed below:

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

Basis of Submissions

- The impact of the height breach is significant view loss from the upper level of our client's proposed dwelling, obscuring the iconic view of the southern pylon of the harbour bridge and city skyline.
- The proposed walkway/entrance along northern side setback:
 1. The bedroom window on the southern elevation of 37 Bay View Street will lose all light and ventilation from the proposed walkway.
 2. Will result in overlooking into 37 Bay View Street
- The proposed new chimney will be right in the view of the bridge
- The proposed rear dormer will result in a non-compliant building element above the existing roof like and will result in significant view loss. The dormer window should be moved back toward the street.
- The proposed vertical screening on the side of balconies should be angled 45 degrees which would still maintain Harbour views.
- The proposed deck is 3m above the garden level of 37 Bay View Street. The proposed deck should be moved to the south and/or the seating area should be re-located.
- The proposed front dormer window is approximately 1.3m high and 3m wide, a width to height ratio of approximately 2.3:1. Part B, Section 13.9.2 of the DCP suggests that Victorian dormer windows are no more than 0.9m wide with a width to height ratio of no more than 0.7:1
- The proposed front dormer window is not characteristic of the building, nor the five heritage items to the south of the property. If a front dormer window is to be approved, a smaller Victorian style would be more contributory to the streetscape. Similar comments apply to the proposed rear dormer window and the view from the water.
- The architectural drawings DA000, DA122 and DA303 show that the battened timber enclosure would present as a 3m high fence along more than 50% of the front boundary.
- The proposed enclosure would not meet the standard provisions for car parking nor for front fences. If enclosure is to be approved, it should be reduced in width and required to be at least 50% transparent, in order to reduce the visual impact on the streetscape and allow views of the front facade.

- The proposed rear dormer window would overlook the rear gardens of the terrace houses to the south of the property, leading to a loss of privacy

Amended Proposal

The applicant submitted amended plans on 1 October 2021 that were not re-notified to adjoining properties in accordance with Section 3.6 of the Community Participation Plans. In Council's opinion the amendments would have lesser adverse effects on adjoining properties. This is because the amended proposal sought to reduce the dormers in size as well as make further alterations in order to satisfy Council's request.

CONSIDERATION

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

SREP – (Sydney Harbour Catchment) 2005

Having regard to the SREP (Sydney Harbour Catchment) 2005 and the Sydney Harbour Foreshores and Waterways Area DCP 2005. The proposed development seeks to upgrade the elevation facing the harbour, which has been heavily modified in previous alterations and additions. The reconfigured roof form will retain the existing maximum ridge height and the original chimneys. The proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore.

The site is located within the Sydney Opera House Buffer Zone under the SREP, which seeks to protect the world heritage value of the Sydney Opera House.

Part 5 Division 3A 58B 'Protection of world heritage value of Sydney Opera House' specifies the matters to be taken into consideration for development within the buffer zone:

- (a) the objectives set out in clause 53 (2),
- (b) the need for development to preserve views and vistas between the Sydney Opera House and other public places within that zone,
- (c) the need for development to preserve the world heritage value of the Sydney Opera House,
- (d) the need for development to avoid any diminution of the visual prominence of the Sydney Opera House when viewed from other public places within that zone.

In response to Clause 58B(a), Clause 53(2) outlines the objectives of the plan in relation to the Sydney Opera House:

Objective (a): to establish a buffer zone around the Sydney Opera House so as to give added protection to its world heritage value, and

Response: As per the SREP Map, No. 35 Bay View Street is located within the buffer zone.

Objective (b): to recognise that views and vistas between the Sydney Opera House and other public places within that zone contribute to its world heritage value.

Response: The proposed is a semi-detached dwelling house which seeks to maintain views and vistas of Sydney Opera House from surrounding public spaces.

Given the nature of the proposed and the distance of the dwelling from the Sydney Opera House, the proposal is not considered to impact upon the world heritage value of the Opera House. The development is acceptable having regard to the provisions contained within SREP 2005 and the Sydney Harbour Foreshores and Waterways DCP 2005.

SEPP 55 – Remediation of Land & Draft

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

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate for alterations and additions has been submitted with the application to satisfy the Aims of the SEPP.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The proposed works can be defined alterations and additions to semi-detached dwelling house and are permissible in the R3 Medium Density Residential zone with development consent. It is noted that the maximum point of the proposed works is located below the existing ridgeline of the dwelling

2. Objectives of the zone

The amended proposal will not compromise the amenity of the surrounding area or the heritage of the area. A high level of residential amenity will be achieved and maintained. The amended proposal is therefore considered to be consistent with the objectives of the R3 Medium Density Residential Zone.

Part 4 – Principal Development Standards

NSLEP 2013 Compliance Table

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 385.2m ²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	11.8m	8.5m	NO (>10%) <i>(Technical non-compliance as works are below the existing ridge of the dwelling)</i>

3. Height of Building

The proposed works would have a maximum height of 11.8m that fails to comply with the permissible height limit of 8.5m in accordance with Clause 4.3 in NSLEP 2013. It is noted that the proposal will retain the existing maximum ridge height. The reconfigured dwelling will have a building height of 11.8m with both the proposed dormers above the 8.5m height control. The remainder of the proposed works are compliant with the maximum height control. All proposed works are below the existing ridge of the dwelling.

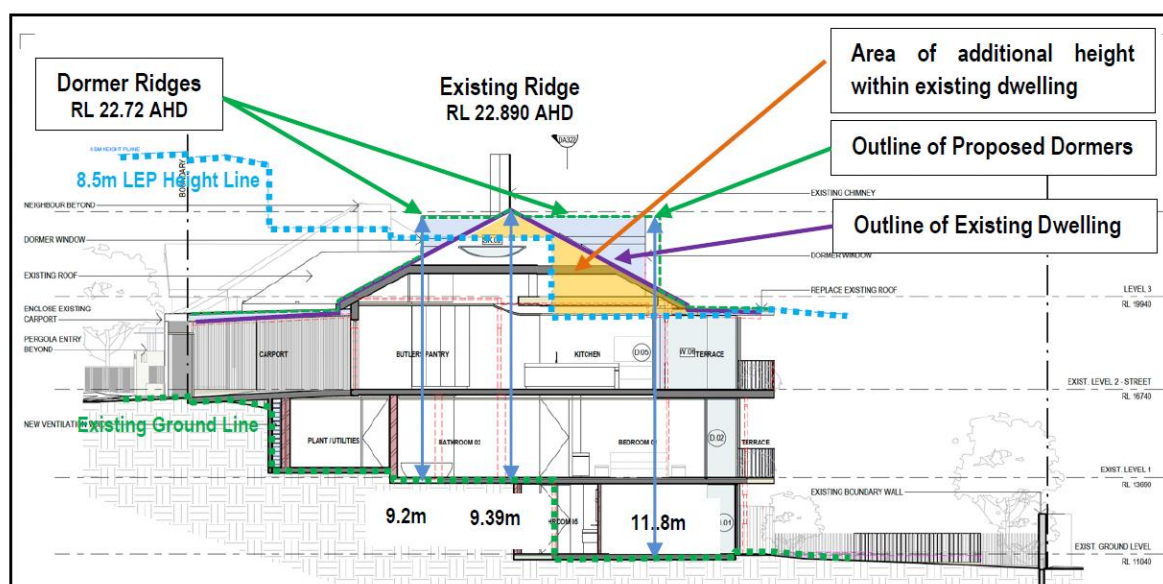


Figure 3: Extract of long section Diagram (source: GSA Planning, Clause 4.6 Exception to a Development Standard.

A written request prepared pursuant to Clause 4.6 in NSLEP 2013 justifying the breach to the building height control was lodged as part of the application. The written request has been considered against relevant case law including *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*) wherein Preston CJ notes at [87] and [90]:

[87]... Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...

And

[90] ... Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

The judgment in Initial Action however, confirms the importance placed on the applicant’s justification provided in addressing the objectives and the “sufficient environmental planning grounds” identified in support of the contravention of the standard.

Clause 4.6(3) states the following:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The written request prepared by GSA Planning states that strict compliance would be unreasonable and unnecessary in the circumstances of the case and the proposal is consistent with the objectives of the building height development standard on the following grounds-

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

Response: Land along Bay view Street falls steeply from the west to the east and steps within the existing dwelling. The proposed alterations and additions to the existing dwelling will generally retain the existing built form of the dwelling and will reflect the natural landform of the site. This will be achieved by retaining the buildings stepped built form and maintaining an single built form from the street and a three storey built form to the rear of the dwelling. The additional height is a function of the sites topography and built form. The proposal will result in the retainment of the natural levels of the site.

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

Response: The subject site obtains views of Sydney Harbour and Lavender Bay, as well as adjoining dwellings on Bay View Street. The proposed works above the height control include a new dormer to the rear, as well at facing Bay View Street. To note the proposed works are to remain below the existing ridge height of the semi-detached dwelling.

Due to Covid-19 Council has been unable to attend the subject site. A combination of the applicants view loss analysis diagrams, as well as the photographs included as part of the submission from 37 Bay View Street and a review of the planning controls in relation to views across side boundaries has been relied upon in order to determine the view loss as a result of this application. A view loss analysis has been undertaken on the basis of existing conditions of adjoining dwellings and has taken into account the existing local views.

The dwelling at No. 37 Bay View Street, Lavender Bay has existing views of Sydney Harbour and Lavender Bay. Due to the siting and position of the dwelling, the proposed rear dormer to is located above any existing living room window and/or terrace area of No. 37. To note, the proposed dormer located within the dwellings front façade is not considered to impact upon the existing views of the dwelling, given its location below the existing ridgeline of the dwelling.

The dwelling at No. 33 Bay View Street, Lavender Bay has existing views of Sydney Harbour and Lavender Bay. To note, the subject dwelling adjoins 33 Bay View Street to the south. Subject to the proposed setback of the dormer to the rear of the site and its location below the existing ridgeline, the views of 33 Bay View Street will be retained.

The properties located to the west of the subject site are positioned well above street level given the steep sloping of the land. Subject to this, the proposal is would not impact upon the existing views of those dwellings located to the west of the subject site.

In terms of building height and the adjoining dwellings, the proposed alterations and additions above the height control will have no unreasonable impacts to the views of Lavender Bay and Sydney Harbour.

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

Response: The shadow diagrams demonstrate that the proposed works in breach of the building height control will not materially affect solar access to adjoining properties. Therefore, the impacts are considered to be acceptable in this regard.

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

Response: In terms of the height breach non-compliance the privacy for residents of the adjacent dwellings and the future occupants of the subject site would not give rise to any adverse visual or acoustic privacy impacts and is accordingly acceptable in this regard. Privacy will be discussed in greater detail under the North Sydney Development Control Plan 2013 Section of the report.

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

Response: The proposal is compatible with the surrounding R3 Medium Density Residential Zone and will not result in any adverse material amenity impacts on adjoining development, as discussed in throughout this report.

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

Response: The extensive alterations and additions will be largely within the height limit. The additional height is a function of the site's steep sloping topography, a characteristic of the locality. The proposal will maintain the existing built form and use of the dwelling and is considered of an appropriate scale for the area.

The applicant has emphasised within their Clause 4.6 *the roof alterations involving the addition of two dormers will be sympathetic in scale, form, massing and materials and they will not generate an adverse streetscape impact.*

The scale and density of the development is considered appropriate and does not result in any adverse impacts with regard to maintaining the significance of the locality, subject to conditions.

(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.

Response: Council notes the existing built form of the dwelling maintains a three storey built form at the rear and a single storey form to Bay View Street with a substantial fall inherent in the existing site topography. The overall maximum height of the existing dwelling is to remain unchanged by the alterations and additions and the proposed works are to remain below the existing ridge height of the dwelling. The existing height, number of storeys, and built form remains consistent with the neighbouring and nearby dwellings and is considered satisfactory in this regard.

Summary

The written request has demonstrated that strict compliance with height of building development standard would be unreasonable and unnecessary as the objectives of the standard are achieved, notwithstanding the non-compliance with the building height standard.

The written request has also demonstrated that there are sufficient environmental planning grounds for contravening the building height control:

- *The additional building height is a function of the site's sloping topography, which falls steeply from the front to the rear, and of stepping within the existing building. The dwelling will continue to present as one storey from Bay View Street and three storeys when viewed from the rear, consistent with the character of the existing building and surrounding development*
- *The areas of additional shadowing have no discernible effect on neighbour amenity and the proposal is considered appropriate in terms of solar access.*

- *While it is not possible to establish available views or from where they would be obtained, for the neighbouring and nearby residents, from our assessment, iconic views would be retained. Accordingly, since it is expected views would be maintained, the proposal is in our opinion reasonable on the basis of Tenacity Consulting v Warringah Council.*
- *No side-facing glazing to the dormer windows are proposed, and no other windows or balconies are proposed above the height line. Accordingly, privacy will be maintained, despite the additional height.*
- *The additional height will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).*

Clause 4.6(4) states the following:

- (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.*

As detailed above, it is considered that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) in NSLEP 2013. Clause 4.6(4)(a)(i) is satisfied.

The proposed development is considered to be consistent with the objectives of the building height standard and the objectives of the R3 Medium Density Residential zone as detailed in the written request.

It is noted that public submissions were received in respect of privacy and view impacts for the adjoining properties.

In respect of privacy, the minor height non-compliance is limited only to the proposed dormers on the upper level of the dwelling, which will not impact privacy for adjoining dwellings. In addition to the front and rear dormers the proposal consists of further alterations and additions, inclusive of the dwelling entry and rear decking at ground level. Subject to a conditional approval the privacy of adjoining dwellings will be maintained.

In respect of views, the submission relates specifically to the originally proposed rear former, located on the upper level of the dwelling, exceeding the 8.5m height limit. To note, the proposal was amended to reduce the dormer in size. Subject to conditions the proposed dormer to the rear is unlikely to adversely impact views of the Sydney Harbour for adjoining dwelling.

The proposed development is therefore considered to be in the public interest. Clause 4.6(4)(a)(ii) is satisfied.

There is assumed concurrence from the Secretary. Clause 4.6(4)(b) is also satisfied.

Clause 4.6(5) states the following:

- (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.*

The proposed breach to the building height development standard is unlikely to create any matter of significance for State or regional environmental planning. Furthermore, there is unlikely to be any public benefit in maintaining strict compliance with the building height control.

In conclusion, the written request seeking a variation to the building height control is considered to be well founded as it has demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of the case, there are sufficient environmental planning grounds and the breaches to the building height are consistent with the objectives of the building height control and the R3 Medium Density Residential zone and therefore in the public interest.

4. Heritage Conservation (Cl. 5.10 NSLEP 2013)

The application has been considered against the heritage provisions of Clause 5.10 of NSLEP 2013 relating to heritage items and heritage conservation areas as the existing dwelling adjoins a row of terrace dwellings to the immediate south.

The dwelling adjoins a group of five local heritage items identified as Items 317-321 at Nos. 25-33 Bay View Street and is visible from Lavender Bay (heritage item curtilage). The site is also located within the Sydney Opera House Buffer Zone under SREP (Sydney Harbour Catchment) and DCP, which is established in part to protect the world heritage value of the Sydney Opera House.

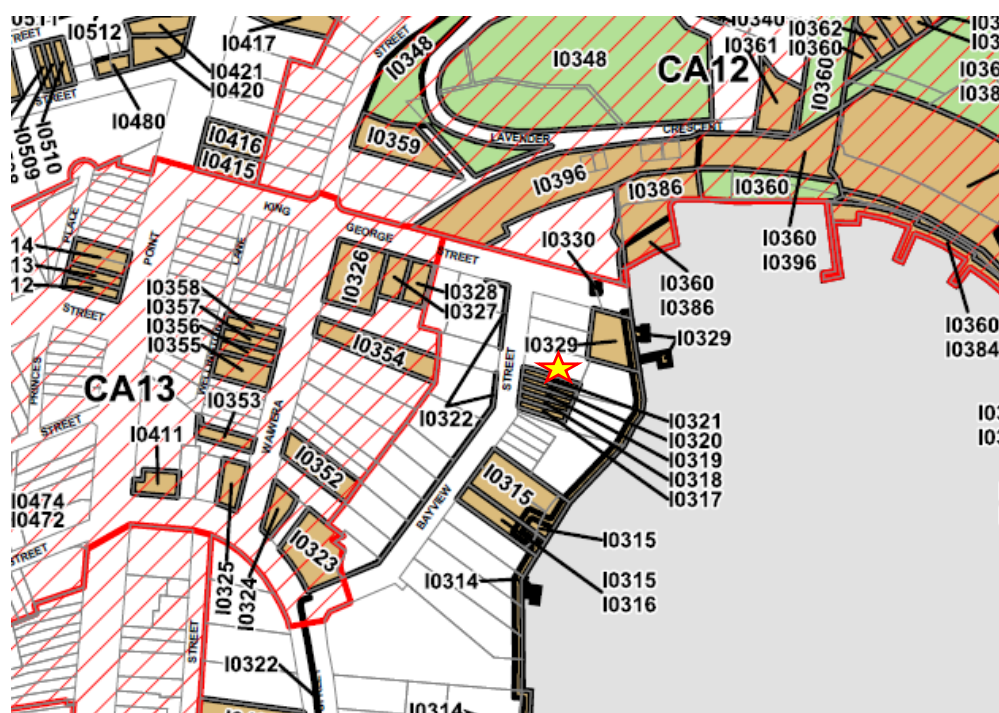


Figure 4: Extract from NSLEP 2013 Heritage Map

The application has been considered against the heritage conservation objectives under Clause, 5.10(1) and the requirements to consider the impact on items of heritage as required under Clause 5.10(4) of the LEP. The proposed works would present some minor impacts on the heritage significance of adjoining heritage items in the following respects:

- The proposed double garage structure would increase the height of the existing uncharacteristic carport structure and would further enclose the front of the site further obscuring the view of the adjoining heritage listed terrace dwellings. A condition is recommended to require revised plans which provide a more open sided and visually transparent structure at the front of the site;
- The proposed use of “Bronze” roofing material is uncharacteristic of the locality and is not supported. A condition is recommended to replace the bronze metal roof sheeting with a more recessive colour.
- The proposed dormer to the street elevation is uncharacteristic of the locality but is regarded as essential to enable access to the top attic level of the additions. The glazing of the dormer however should be reduced.
- The proposed attic dormer to the rear (eastern) elevation is considered to be overscaled and the extent of glazing considered to be excessive, uncharacteristic and readily visible from Lavender Bay. A condition is recommended to reduce the overall width of the dormer and reduce the extent of glazing.

Subject to the above recommended changes the proposed development would satisfactorily achieve the

5. Earthworks

The application involves only minor earthworks to accommodate a small area of excavation within the northern side setback, for the proposed demolition of the existing external stairs and new retaining wall. The earthworks are not considered to detrimentally impact on drainage patterns and/or the structural integrity of adjoining properties. The proposal is considered satisfactory having regard to Clause 6.10 in NSLEP 2013.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

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

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.1 Population Mix	Yes	The proposal will maintain the population mix in Lavender Bay
1.2.2 Maintaining Residential Accommodation	Yes	The proposal will improve residential accommodation on the site.
1.2.3 Affordable Housing		
1.3 Environmental Criteria		
1.3.1 Topography <i>P5 Excavation should not occur within 1m of any property boundary. Where excavation is required within 500mm of a property boundary, Council must not grant development consent unless it is satisfied that the proposed excavation will not result in adversely impacting upon the structural integrity of adjoining properties.</i>	Yes	<p>The proposed works seek to excavate within 500mm of the boundary line along the northern side setback to accommodate the proposed demolition of the existing stairs and a new retaining wall.</p> <p>Provision 5 of Section 1.3.1 of the NSDCP 2013 requires that excavation within 500mm must not result in adverse impacts upon the structural integrity of adjoining properties. The non-compliance is considered to be acceptable given the existing site topography and similar levels of excavation on adjacent properties. Council’s Engineer has also assessed the proposal and considered the Geotechnical Investigation prepared by JK Geotechnics satisfactory subject to the imposition of conditions to ensure the structure integrity of the adjoining dwelling.</p>
1.3.6 Views	Yes	<p>The amended proposal would achieve an acceptable level of view sharing. The proposed rear additions and attic level dormer to the rear roof form will not result in any unreasonable impact on existing views The proposed dormers sit below the existing ridgeline of the dwelling.</p> <p>A detailed view impact analysis has been submitted with the application and is included in Attachment 3 (ECM Doc No. 8644896), which has been considered in this assessment.</p> <p>The impact to the views has been assessed against Council’s controls and the principles of the Land and Environment Courts Planning Principle established in Tenacity Consulting V Warringah Council (2004) as follows:</p> <p>Impact to views on 37 Bay View Street, Lavender Bay</p>

		<ol style="list-style-type: none"> 1. Assessment of views to be affected: The affected views are to be part of Sydney Harbour and city skyline. 2. From where are the views obtained: Views are obtained from second and first storey of the dwelling generally in a standing position near to the window. 3. Extent of Impact: The impact is classified as minor. The proposed vertical screening on the side of the subject sites balconies are considered to maintain privacy to the adjoining sites and would result in minor view loss. Views in all directions are considered to be generally maintained. 4. Reasonableness of proposal that is causing impact: The minor impact is as a result of compliant portions of the proposal. The alterations and additions to the terrace/balconies are minor in nature and remain generally in line with the existing building envelope of the dwelling and is therefore unlikely to result in view loss. <p>The further on the above, the <i>Rose Bay Marina Pty Limited v Woollahra Municipal Council</i> judgment remains broadly consistent with the planning principles as outlined within Tenacity.</p> <p>The process of view loss analysis must account for reasonable development expectations as well as the enjoyment of members of the public of outlooks from public spaces. The subject dwelling, No. 35 Bay View Street is not located in close proximity to public open spaces and is not considered to impact upon the existing views of Lavender Bay and/or Sydney Harbour as a result of the proposed alterations and additions.</p> <p>The proposed works are predominantly to the rear of the site and replace existing rear additions as well as including the dormer windows. Of the proposed works, the dormer windows have been designed to site within the primary roof form of the existing dwelling and reasonably allow view sharing across site boundaries.</p> <p>Overall, the proposal is considered to be compliant with the provisions and objectives outlined in Section 1.3.6 of the NSDCP 2013.</p>
<p>1.3.7 Solar Access</p>	<p>Yes</p>	<p>The proposal will not increase the adverse impact of overshadowing to any adjoining sites primary livings spaces or private open spaces. The proposal will largely retain the existing levels of solar access to adjoining properties.</p>
<p>1.3.8 Acoustic Privacy 1.3.10 Acoustic Privacy</p>	<p>Yes (Subject to conditions)</p>	<p>Subject to a conditional approval, the proposal will not adversely affect the visual privacy of adjoining dwellings.</p> <p>The proposed dwelling entry has a nil setback to the common side boundary and elevated more than 3.05m. The elevated walkway will adversely affect the privacy of 37 Bay View Street, Lavender Bay. A condition is recommended to require the dwelling entry to be amended to be relocated to the front of the dwelling and the walkway to be removed.</p>

		<p>The elevated deck to the rear of the site has been amended to minimise the level of overlooking to the adjoining site to the north.</p> <p>The proposed deck to the rear of the site with a minimum elevation of 1.1m, will result in direct overlooking of the rear yard of the adjoining property. A condition is recommended to require ground level deck to be relocated to the center of the site to ensure privacy is maintained between the properties.</p> <p>Visual privacy measures of screening to the balconies at the rear of the site will provide adequate privacy to adjoining dwellings.</p>
1.4 Quality built form		
1.4.1 Context	Yes	<p>The amended proposed respects the heritage context of the area. The proposal also maintains a similar building envelope in comparison to adjoining properties when viewed from Bay view Street. The proposal meets the majority of numerical controls specified in NSLEP 2013 and NSDCP 2013, whilst also respecting the built form character of the surrounding area.</p>
1.4.3 Streetscape	Yes	<p>The proposal will have no impact upon footpaths, kerb, guttering and/or street trees and will therefore have no impact on the streetscape.</p>
1.4.5 Siting	Yes	<p>The proposal generally remains consistent with the other properties along Bay View Street. The majority of properties have vehicular access and parking structures within the front setback.</p> <p>The street access and local topography requires that any parking structures is located forward of dwellings immediately adjacent to the primary street boundary.</p>
<p>1.4.6 Setbacks</p> <p>Side Setbacks</p> <p>900mm <i>1st Storey (up to 4m)</i></p> <p>1.5m <i>(2nd Storey (up to 7m)</i></p> <p>2.5m <i>(3rd Storey or higher (greater than 7m)</i></p> <p>Rear Setback <i>P5 Provide rear building setbacks that match those on adjoining properties, or, if adjoining properties are not characteristic, with setbacks identified in the relevant area character statement</i></p>		<p>The proposal generally complies with the numerical requirements specified in Section 1.4.6 of the NSDCP 2013. The performance of the proposal against the setback controls are outlined below:</p> <p>Side Setbacks</p> <p>North Side Boundary</p> <p>Ground Floor: min 1.5m Level 01: min 1.2 Level 02: min 1.2</p> <p>Southern Side Boundary 0m (attached)</p> <p>To note the northern and southern boundaries will remain unchanged as a result of the proposal.</p> <p>Rear Setback The proposed rear setback of 10.2m is reasonably consistent with the rear boundary line of adjoining properties and is therefore considered to be acceptable in this regard.</p> <p>Front Setback</p> <p>The proposed front setback measured from the front façade to the front boundary is consistent with the building line of adjoining properties and is therefore considered acceptable in this regard.</p>

		The amended proposal provides adequate separation between buildings, subject to conditions.
1.4.7 Form Massing Scale	Yes	The amended proposal is acceptable in terms of bulk, scale and massing. The amended proposal is appropriate given its site context. The proposal is consistent with the objectives and provisions as outlined in Section 1.4.7 of the NSDCP 2013.
1.4.8 Built Form Character	Yes	The proposed alterations and additions to the dwelling will predominantly be located internally and to the rear of the site and will not be visible from the site's primary frontage. The proposed works located within the front setback do not detract from the existing character of the dwelling or from the heritage significance of adjoining dwellings.
1.4.9 Dwelling Entry	Yes (via Condition)	<p>The proposed dwelling entry and walkway accessed via the northern side of the dwelling and elevated more than 3.05m above the existing ground level is considered to adversely affect the adjoining dwelling. The elevated walkway is likely to reduce the available sunlight to the southern lower ground floor window of 37 Bay View Street. Subject to the proposed nil setback to the boundary and elevation of the dwelling entry and walkway it will likely affect the privacy with the adjoining dwellings, given the close proximity to windows and direct views to the rear yard of 37 Bay View Street.</p> <p>Council notes the existing dwelling has access to two (2) entry points accessed via the sites primary frontage.</p> <p>A condition is recommended to require the relocation of the dwelling entry and walkway to ensure the sufficient building separation and the retainment of privacy to the adjoining site.</p>
<p>1.4.10 Roofs 1.4.11 Dormers</p> <p><i>O1 To ensure that the location, design, pitch and scale of any dormer is appropriate to the building and roof form to which it is attached, is in character with the area and does not result in any negative impacts on the amenity of adjoining properties.</i></p> <p><i>P1 Dormers must be appropriate to the style of building to which it is attached, and their style should reflect that which is characteristic of the neighbourhood.</i></p> <p><i>P6 Dormers must not exceed a height of more than 1.5m from its base to its ridge where it faces the street.</i></p>	Yes (Via Condition)	<p>The proposal does not seek to alter the overall form of the primary roof form of the dwelling.</p> <p>Front Dormer</p> <p>The proposed front dormer will not adversely impact upon adjoining dwellings. The amended front dormer is considered to be sympathetic to the adjoining heritage items with regard to the form massing and scale of the front dormer. Given the location of the dormer and the typography of Bay View Street it will not have direct views into neighbouring dwelling windows, thus privacy is retained for adjoining dwellings. The dormer is 1.45m in height, measured from the base of the dormer to the ridge, which remains consistent with P6 of Section 1.4.11 of NSDCP 2013.</p> <p>Rear Dormer</p> <p>Council notes that the dormer to the rear has been significantly reduced in size, subject to Councils previous request. Following the amendments, the dormer to the rear of the site is still considered to be too wide and incompatible with the character of the area when viewed from the foreshore. The rear dormer remains inconsistent with Provision P1 and Objective O1 in Part B, Section 1.4.11 in NSDCP 2013. A condition is recommended to require the rear dormer to be reduced in size to ensure the character of the dwelling is maintained. The reduction of the size to the dormer limits any view impact.</p>

<p><i>P4 Rear dormers or roof additions must be set back a minimum of 200mm from the ridge line, 500mm from party walls and 400 mm from the rear wall as shown in Figures B1.31 and B-1.32.</i></p>		<p>The proposal is considered to be acceptable in this instance with regard to the character of the existing building and the surrounding area, subject to conditions.</p>																				
<p>1.4.12 Materials</p>	<p>Yes</p>	<p>The proposed materials will generally match the existing and are considered acceptable. The proposed materials remain compatible with adjoining dwellings along Bay View Street.</p>																				
<p>1.4.14 Front Fences</p>	<p>Yes</p>	<p>The proposed front fence will remain in character with the surrounding locality and adjoining heritage items and is considered acceptable in this regard.</p>																				
<p>1.5 Quality Urban Environment</p>																						
<p>1.5.1 High Quality Residential Accommodation</p>	<p>Yes</p>	<p>The proposal seeks to maintain a high level of quality residential accommodation for the occupants.</p>																				
<p>1.5.3 Safety and Security</p>	<p>Yes</p>	<p>The proposal seeks to maintain security and personal safety of the subject site. The proposal is reasonably consistent with the objectives and is acceptable in this regard.</p>																				
<p>1.5.4 Vehicle Access and Parking</p>	<p>Yes</p>	<p>The existing dwelling utilises off street parking via an existing carport. The existing carport provides two parking spaces on site.</p> <p>The proposal seeks to enclose the existing carport, forming a double garage accessed via Bay View Street.</p> <p>Council notes there are a number of properties along Bay View Street which have garages within the front setback, giving the topography of the lots. Therefore, a garage within the front setback is acceptable, subject to the northern wall and western facing panel door maintaining 60% transparency.</p>																				
<p>1.5.5 Site Coverage 1.5.6 Landscape Area</p>	<p>Refer to Table</p>	<p>The amended proposal results in the following performance against the numerical controls.</p> <table border="1" data-bbox="722 1361 1433 1574"> <thead> <tr> <th>Control</th> <th>Existing</th> <th>Proposed</th> <th>Control</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site coverage</td> <td>54%</td> <td>54%</td> <td>50% (max)</td> <td>No</td> </tr> <tr> <td>Landscaped area</td> <td>39%</td> <td>31%</td> <td>30% (min)</td> <td>Yes</td> </tr> <tr> <td>Unbuilt-upon area</td> <td>7%</td> <td>15%</td> <td>20% (max)</td> <td>Yes</td> </tr> </tbody> </table> <p>The proposed variation to the site coverage control is considered acceptable on the basis that the proposed additions removal of existing additions at the rear and the new additions would be consistent with the existing building footprint. The site coverage is therefore to remain the same as existing</p>	Control	Existing	Proposed	Control	Compliance	Site coverage	54%	54%	50% (max)	No	Landscaped area	39%	31%	30% (min)	Yes	Unbuilt-upon area	7%	15%	20% (max)	Yes
Control	Existing	Proposed	Control	Compliance																		
Site coverage	54%	54%	50% (max)	No																		
Landscaped area	39%	31%	30% (min)	Yes																		
Unbuilt-upon area	7%	15%	20% (max)	Yes																		
<p>1.5.7 Excavation</p>	<p>Yes</p>	<p>Subject to conditions, the minor excavation is considered acceptable and unlikely to adversely impact the amenity of surrounding properties.</p>																				
<p>1.5.8 Landscaping</p>	<p>Yes</p>	<p>The proposed works do not involve the removal of any significant landscaping on the subject site. The application is accompanied by a landscape diagram.</p>																				
<p>1.6 Efficient Use of Resources</p>																						
<p>1.6.1 Energy Efficiency</p>	<p>Yes</p>	<p>A valid BASIX Certificate has been submitted as part of the development application.</p>																				

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure.

A s7.11 levy is applicable if the development were to have a net increase in residents or non-residential floor space. The proposed development would not result in any additional bedrooms. Accordingly, a s7.11 contribution rate does not apply.

A s7.12 levy is therefore applicable because the works encompass new residential works with a total cost of works of over \$100,000. The levy based on 1% of the estimated cost of work (2,461,413) is \$24,616.13

The contributions payable have been calculated in accordance with Council's Contributions Plan as follows:

Contribution amounts payable

Applicable Contribution Type		
S7.12 contribution detail	Development cost:	\$2,461,413
(payment amount subject to indexing at time of payment)	Contribution:	\$24,616.13

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

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL

CONSIDERED

- | | | |
|----|--|-----|
| 1. | Statutory Controls | Yes |
| 2. | Policy Controls | Yes |
| 3. | Design in relation to existing building and natural environment | Yes |
| 4. | Landscaping/Open Space Provision | Yes |
| 5. | Traffic generation and Carparking provision | Yes |
| 6. | Loading and Servicing facilities | Yes |
| 7. | Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |

- | | | |
|----|---|-----|
| 8. | Site Management Issues | Yes |
| 9. | All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979 | Yes |

PUBLIC INTEREST

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

SUITABILITY OF THE SITE

The proposal would be located in a R3 Medium Density Residential where extensive alterations and additions including a new attic level to an existing semi-detached dwelling house are a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

SUBMITTERS CONCERNS

Three (3) submissions were raised about the development application at the subject site during notification period. The submissions submitted during the notification period have been addressed below:

Issue: Visual and acoustic privacy concerns relating to the proposed dwelling entry/walkway and rear deck.

Response: Conditions have been recommended in the condition set to mitigate impacts to adjoining dwellings, particularly 37 Bay View Street, Lavender Bay.

Issue: View loss as a result of the rear dormer

Response: The proposed dormer to the rear is located above any existing living room or window to a habitable room or terrace area of the adjoining dwelling at 37 Bay View Street. The submissions received identify view loss impacts to a potential future CDC approval for additions on the adjoining property, which cannot reasonably be considered under the current application. Furthermore, the impact to existing views have been considered and the proposed works considered not to result in any unreasonable view loss. Refer to the View Loss Section in NSDCP table.

Issue: The dormers proposed front dormer is considered non-compliant with regard to Section 13.9.2 of NSDCP 2013

Response: The subject site, 35 Bay View Street is not a listed heritage item, nor is it located in a conservation. The amended proposal is considered to remain in character with the adjoining heritage items.

Issue: The rear dormer results in a building height non-compliance

Response: Refer to the NSLEP 2013 section under Height of Building where the height variation is addressed via a Clause 4.6.

Issue: The enclosure of the garage does not address the standard provisions for carparking.
Response: Refer to the Vehicle Access and Parking section in the NSDCP table. To note, the northern wall and southern facing panel door are to remain 60% transparent as part of this Development Application.

CONCLUSION

The development application has been assessed against the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013. As previously detailed in the DCP compliance table there will be no significant amenity impacts on the adjoining properties (subject to conditions).

The application proposes alterations and additions to a dwelling house that is a permissible form of development in the R3 Medium Density Residential zone.

The amended proposal largely addresses the issues raised by Council during the assessment of the application. Subject to conditions, the amended proposal is considered to maintain the heritage significance of the adjoining dwellings and the locality.

Council received three (3) submissions to the original proposal with the issues largely resolved through the amended proposal and/or addressed with appropriate conditions of consent.

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

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Lavender Bay Precincts for 14 days where a number of issues were raised that have been addressed in this report where appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties and/or the character of the streetscape/conservation area.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 and grant consent to Development Application No. 211/21 for substantial alterations and additions to a dwelling including a new attic level additions and double garage to an at 35 Bay View Street, Lavender Bay subject to the following site specific and attached standard conditions:-

Relocation of Dwelling Entry

- C1. The proposed entry to the dwelling is to be relocated to the front elevation of the dwelling and the walkway is to be deleted.

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

(Reason: To ensure adequate privacy, daylight access and acoustic privacy to No. 37 Bay View Street)

Relocation of Ground Level Deck

- C2. The ground level deck to the rear garden is to be relocated to be centrally placed within the rear yard of the subject dwelling to ensure the protection of views across boundaries and to maintain privacy of adjoining dwellings.

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

(Reason: To maintain residential amenity of adjoining dwellings)

Reduce Dormer to eastern elevation

- C3. The rear dormer in the eastern elevation is to be reduced to have a gable face height of two (2) metres with a corresponding setback from the existing eastern gutter line.

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

(Reason: To reduce the scale of the rear dormer and minimise the visual impact of glazing in the roof plane overlooking Lavender Bay)

SOPHIE GRIFFITHS
STUDENT TOWN PLANNER

DAVID HOY
TEAM LEADER

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
35 BAY VIEW STREET, LAVENDER BAY
DEVELOPMENT APPLICATION NO. 211/21

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

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

Plan No.	Revision No.	Description	Prepared by	Dated
DA101	A	Site Plan/Roof Plan	LiteraTrotta	05/07/21
DA111	A	Roof Existing/Demo	LiteraTrotta	05/07/21
DA112	A	Level 02 Existing/Demo	LiteraTrotta	05/07/21
DA113	A	Level 01 Existing/Demo	LiteraTrotta	05/07/21
DA114	A	Ground Level Existing/Demo	LiteraTrotta	05/07/21
DA200	A	Roof Plan	LiteraTrotta	22/10/21
DA201	A	Level 03 Plan	LiteraTrotta	1/10/21
DA202	A	Level 02 (Street) Plan	LiteraTrotta	1/10/21
DA203	A	Level 01 Plan	LiteraTrotta	05/07/21
DA204	A	Ground Floor Plan	LiteraTrotta	1/10/21
DA301	B	North Elevation	LiteraTrotta	1/10/21
DA302	A	East Elevation	LiteraTrotta	1/10/21
DA303	A	West Elevation	LiteraTrotta	1/10/21
DA304	A	South Elevation	LiteraTrotta	22/10/21
DA321	A	Section - AA	LiteraTrotta	1/10/21
DA322	A	Section - BB	LiteraTrotta	1/10/21
DA121	A	Materials Board	LiteraTrotta	22/10/21

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

Plans on Site

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

**35 BAY VIEW STREET, LAVENDER BAY
DEVELOPMENT APPLICATION NO. 211/21**

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

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

No Demolition of Extra Fabric

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

(Reason: To ensure compliance with the approved development)

External Finishes and Materials

A4. External finishes and materials must be in accordance with the submitted schedule dated 5 July 2021, prepared by LiteraTrotta and received by Council on 22 October 2021 unless otherwise modified by Council in writing. Substitution of materials must not be undertaken, except where otherwise approved in writing by Council

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

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

Construction Management Program - Local Traffic Committee Approval

B1. A Construction Management Program prepared by a suitably qualified and experienced traffic consultant must be submitted for consideration by the North Sydney Traffic Committee and approved in writing by North Sydney Council's Traffic Division PRIOR TO THE ISSUE OF ANY Construction Certificate. Any use of Council property will require appropriate approvals prior to any work commencing. At a minimum, the Construction Management Program must specifically address the following matters:

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
 - i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
 - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
 - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;

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- iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
 - v. Locations of hoardings proposed;
 - vi. Location of any proposed crane standing areas;
 - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
 - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
 - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
- b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
- c) The proposed phases of works on the site, and the expected duration of each phase.
- d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
- e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.
- f) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer and must not involve any permanent or temporary encroachment onto Council's property.
- g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
- h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

All traffic control work and excavation, demolition and construction activities must be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved Program. A certificate of compliance with this condition must be obtained from Council's development engineers. The certificate and the approved Construction Management Program must be submitted as part of the documentation lodged with the application for approval of a construction certificate. A copy of the approved Construction Management Program and any conditions imposed on that Program, must be kept on the site at all times and made available to any officer of Council upon request.

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Notes:

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction Management Plan be lodged with Council as early as possible, as **a minimum six (6) weeks' assessment period** is required, including referral to the Traffic Committee.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

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

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)***Relocation of Dwelling Entry**

- C1. The proposed entry to the dwelling is to be relocated to the front elevation of the dwelling and the walkway is to be deleted.

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

(Reason: To ensure adequate privacy, daylight access and acoustic privacy to No. 37 Bay View Street.)

Relocation of Ground Level Deck

- C2. The ground level deck to the rear garden is to be relocated to be centrally placed within the rear yard of the subject dwelling to ensure the protection of views across boundaries and to maintain privacy of adjoining dwellings.

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

(Reason: To maintain residential amenity of adjoining dwellings.)

Reduce Dormer to eastern elevation

- C3. The rear dormer in the eastern elevation is to be reduced to have a gable face height of two (2) metres with a corresponding setback from the existing eastern gutter line.

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

(Reason: To reduce the scale of the rear dormer and minimise the visual impact of glazing in the roof plane overlooking Lavender Bay)

Dilapidation Report Damage to Public Infrastructure

- C4. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

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

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

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

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

Dilapidation Report Private Property (Excavation)

C5. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

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

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

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

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

(Reason: To record the condition of property/i.e., prior to the commencement of construction)

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Dilapidation Survey Private Property (Neighbouring Buildings)

- C6. A photographic survey and dilapidation report of adjoining properties Nos. 33 & 37 Bay View Street, Lavender Bay detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

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

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

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

(Reason: Proper management of records)

Shoring for Adjoining Property

- C7. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.

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

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

Structural Adequacy of Adjoining Properties - Excavation Works

C8. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties Nos. 33 & 37 Bay View Street, Lavender Bay, which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

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

Structural Adequacy of Existing Building

C9. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Certifying Authority for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

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

Geotechnical Report

C10. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:

- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0 m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;

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

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

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

The design principles for the geotechnical report are as follows:

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

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

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

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

Waste Management Plan

C11. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:

- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
- b) The design of the on-site waste storage and recycling area; and
- c) Administrative arrangements for waste and recycling management during the construction process.

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

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

Skylight(s)

- C12. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100 mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

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

External Colours and Finishes

- C13. The external colours and finishes shall match those as existing and/or be compatible with surrounding development. A schedule of external colours and finishes must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that the completed colours and finishes of the works are compatible with surrounding development)

Reflectivity Index of Glazing

- C14. The reflectivity index (expressed as a per centum of the reflected light falling upon any surface) of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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Note: The reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement.

(Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development)

Work Zone

- C15. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

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

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

(Reason: Amenity and convenience during construction)

Maintain Property Boundary Alignment Levels

- C16. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

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

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

Stormwater Disposal - Drainage Plan

C17. Prior to the issue of any Construction Certificate, site drainage plans must be prepared by a licensed plumber or drainage engineer. The site drainage plans must be designed in accordance with the following criteria:

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

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

(Reason: Proper disposal of stormwater)

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

C18. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$5,000,00 to be held by Council for the payment of cost for any/all of the following:

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- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
- c) remedying any defects in any such public work that arise within six months after the work is completed.

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

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

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

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

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

Section 7.12 Contributions

- C19. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

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Based on the cost of development at the date of determination, the total contribution payable to Council is \$24,616.13.

Indexation

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

Timing of payment

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

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

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

Security Deposits/Guarantee Schedule

C20. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security deposit/ guarantee	Amount (\$)
Infrastructure Damage Bond	\$5,000.00
TOTAL BONDS	\$5,000.00

Note: The following fees applicable

Fees	
Section 7.12 Contributions	\$24,616.13
TOTAL FEES	\$24,616.13

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

(Reason: Compliance with the development consent)

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D. Prior to the Commencement of any Works (and continuing where indicated)**Public Liability Insurance - Works on Public Land**

- D1. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

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

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

Commencement of Works' Notice

- D2. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

E. During Demolition and Building Work**Parking Restrictions**

- E1. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

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

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Road Reserve Safety

- E2. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

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

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

- E3. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

Geotechnical Stability during Works

- E4. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

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

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

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

Removal of Extra Fabric

E5. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

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

Dust Emission and Air Quality

E6. The following must be complied with at all times:

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

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

Noise and Vibration

E7. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

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

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No Work on Public Open Space

- E8. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

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

Applicant's Cost of Work on Council Property

- E9. The Applicant must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

Special Permits

- E10. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

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

1) **On-street mobile plant**

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

(Reason: Proper management of public land)

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DEVELOPMENT APPLICATION NO. 211/21**

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2) Hoardings

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

(Reason: Proper management of public land)

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

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

(Reason: Proper management of public land)

4) Kerbside restrictions, construction zones

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

(Reason: Proper management of public land)

Construction Hours

E11. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

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

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Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

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

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

Installation and Maintenance of Sediment Control

E12. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

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

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

Sediment and Erosion Control Signage

E13. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

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

Site Amenities and Facilities

E14. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

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

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

Health and Safety

- E15. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

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

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

Prohibition on Use of Pavements

- E16. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

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

Plant and Equipment Kept Within Site

- E17. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

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

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

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Waste Disposal

- E18. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

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

Asbestos Removal

- E19. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

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

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

National Construction Code

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

(Reason: Prescribed - Statutory)

Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or

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- (b) in the case of work to be done by an owner-builder:
- (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

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

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

Construction Certificate

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

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

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Occupation Certificate

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

(Reason: Statutory)

Critical Stage Inspections

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

(Reason: Statutory)

Excavation/Demolition

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

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

Protection of Public Places

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

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

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

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

Site Sign

- F9. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and

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- b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)

Certification - Civil Works

- G2. a) An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of an Occupation Certificate.
- b) An appropriately qualified and practicing Civil Engineer must certify to the Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority), upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

Works as Executed Drawings and Video

- G3. A works-as-executed survey drawing (W.A.E.) of the completed stormwater drainage system must be obtained. The W.A.E. survey drawing must show the alignment, depth and grade of the stormwater drainage pipelines, pits and ancillary plumbing. The W.A.E. survey drawing must be reviewed by a qualified and practising civil engineer and certification provided to the Certifying Authority that the as-built system achieves the design intent of the plans approved with the Construction Certificate. Certification must be provided with the W.A.E. survey drawing to the Certifying Authority prior to the issue of an Occupation Certificate.

A copy of the W.A.E. survey drawing and certification must be submitted to the Council if it is not the Certifying Authority.

(Reason: Compliance with the Consent)

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Damage to Adjoining Properties

- G4. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

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

BASIX Completion Certificate

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

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

Damage to Adjoining Properties

- G6. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying:
- a) whether any damage to adjoining properties has occurred as a result of the development;
 - b) the nature and extent of any damage caused to the adjoining property as a result of the development;
 - c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
 - d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
 - e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

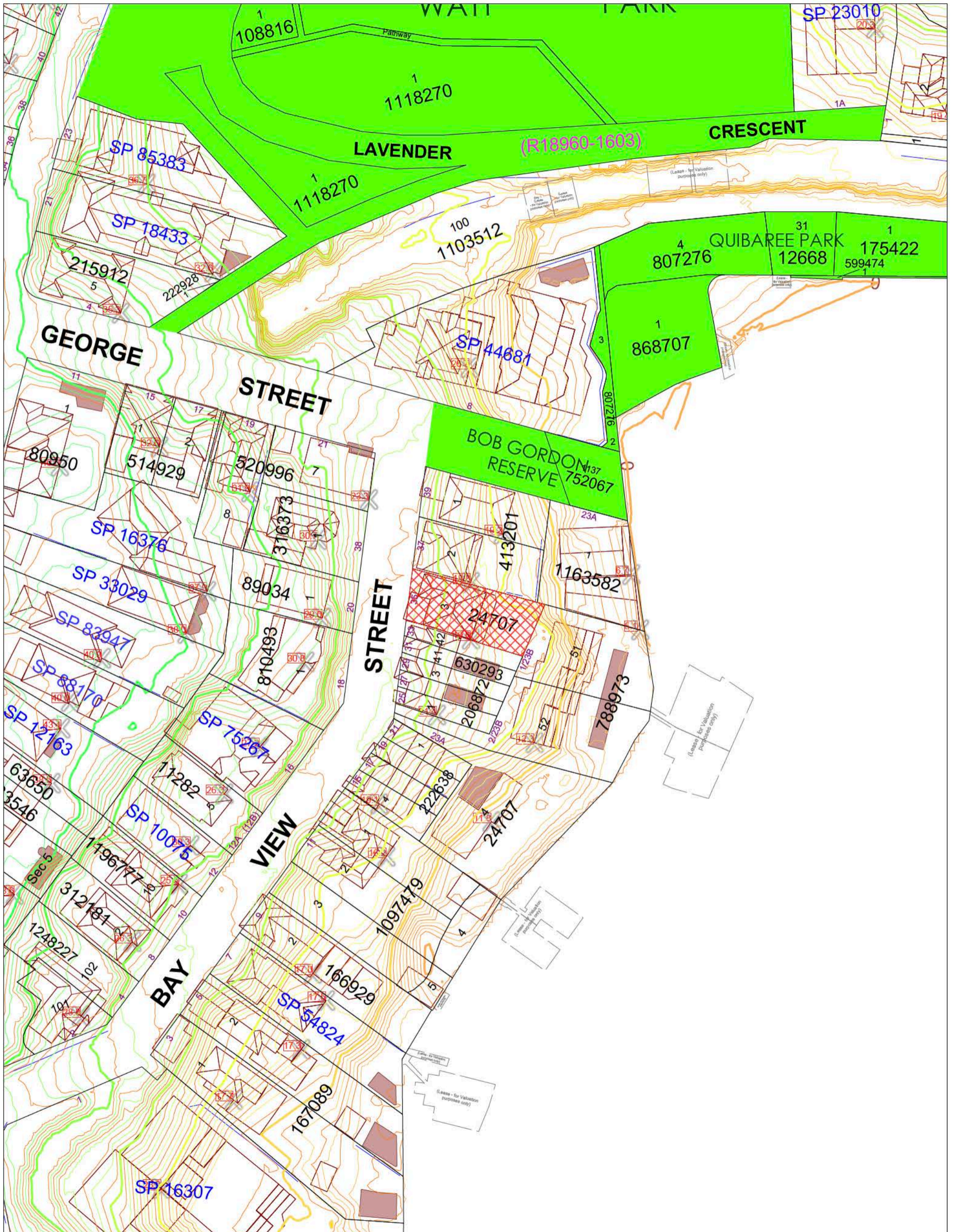
The report and certification must reference the dilapidation survey and reports required to be provided to the Certifying Authority in accordance with this consent.

Where works required to rectify any damage caused to adjoining property as a result of the development identified in the report and certification have not been carried out, a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible prior to the issue of an Occupation Certificate.

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All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To ensure adjoining owner's property rights are protected in so far as possible)



North Sydney Council

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

DRAWING LIST

NO.	REV	NAME
DA000		TITLE PAGE
DA101		SITE PLAN / ROOF PLAN
DA102		SITE ANALYSIS
DA103		SITE CALCULATIONS
DA111		ROOF EXISTING / DEMO
DA112		LEVEL 02 EXISTING / DEMO
DA113		LEVEL 01 EXISTING / DEMO
DA114		GROUND LEVEL EXISTING / DEMO
DA121		MATERIAL BOARD
DA122		PHOTO MONTAGE
DA201		LEVEL 03 PLAN
DA202		LEVEL 02 (STREET) PLAN
DA203		LEVEL 01 PLAN
DA204		GROUND FLOOR PLAN
DA301		NORTH ELEVATION
DA302		EAST ELEVATION
DA303		WEST ELEVATION
DA321		SECTION - AA
DA322		SECTION - BB



35 BAY VIEW ST, LAVENDER BAY

DEVELOPMENT APPLICATION

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DEVELOPMENT APPLICATION

TITLE PAGE

PROJECT
35 BAY VIEW ST, LAVENDER BAY

DRAWING
TITLE PAGE

Scale: @A3 Date: 05/07/21

DA000
STAGE DWG NO.

PROJECT NO. 004 REV

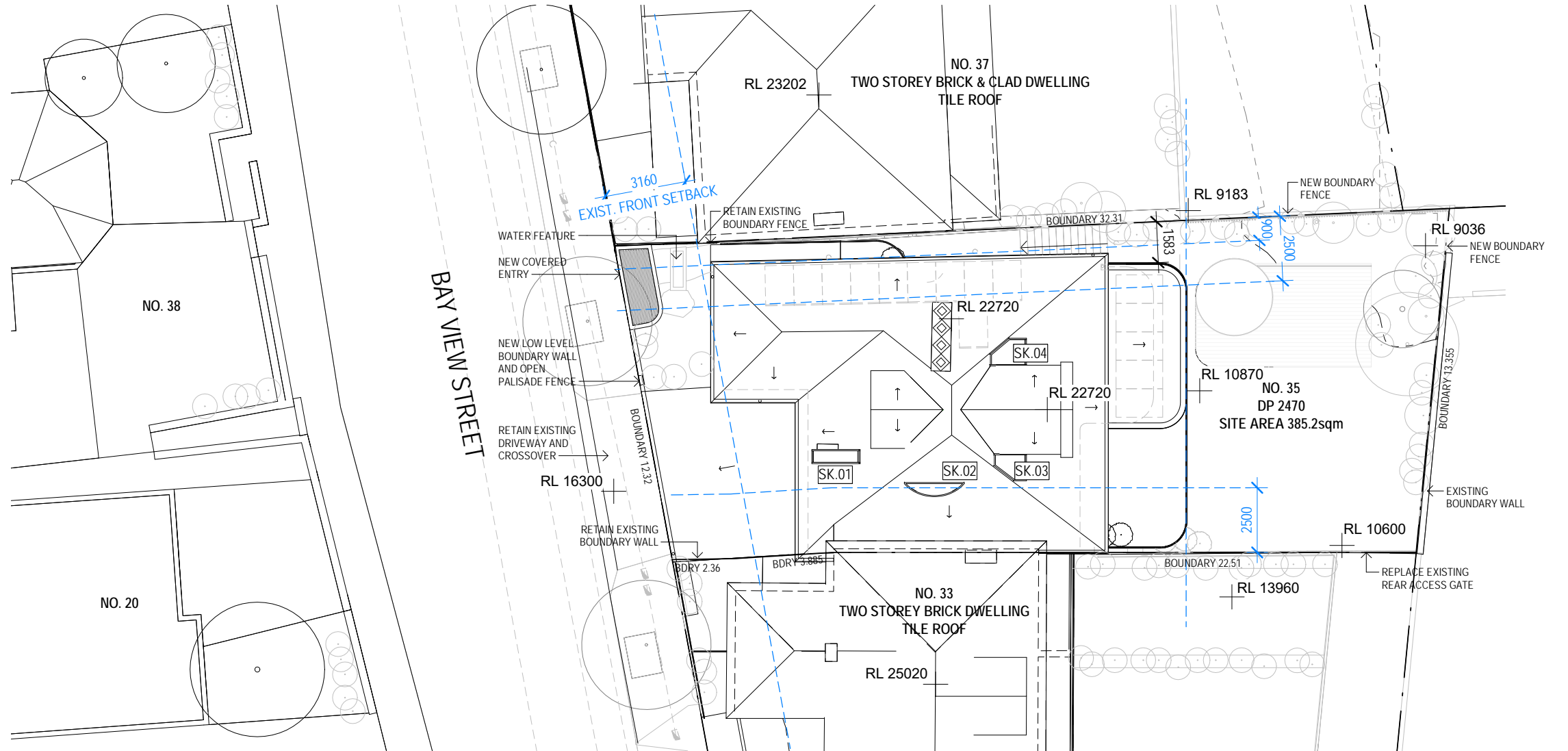
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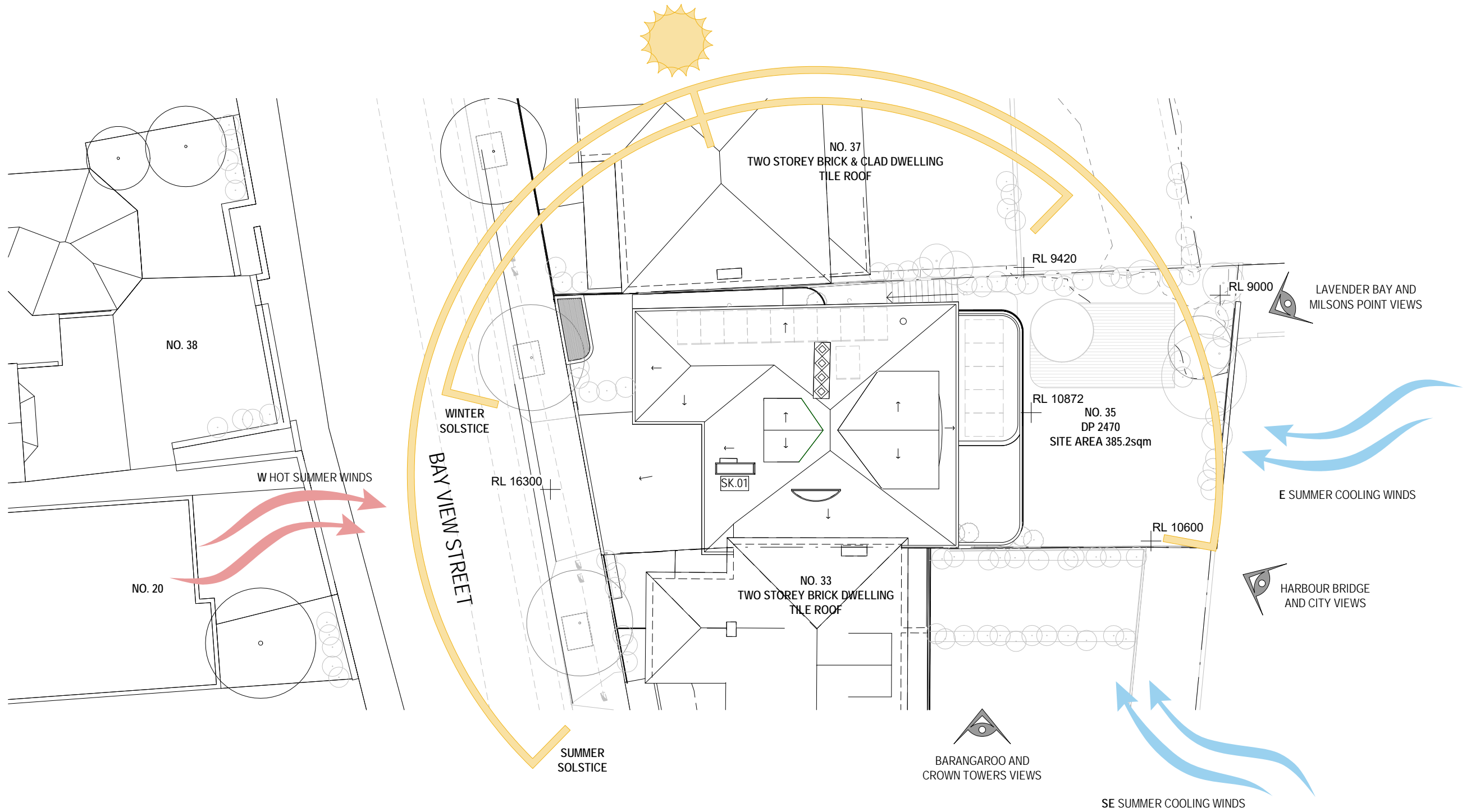
BASIX COMMITMENTS

- HOT WATER**
Hot water system – electric heat pump
- INSULATION**
- Floors** Concrete slabs with in-slab heating system to have R1.0 edge insulation and where elevated above open air or garage, R1 insulation to soffit
- Walls** Cavity brickwork – no insulation required
Framed walls – R1.5 batts with breathable membrane
Internal wall to garage is masonry
- Roof** Metal, medium coloured with breathable membrane on battens with R3.0min. batts
- Windows & Glazed doors**
All windows and glazed doors except W13 & W14 to be improved aluminium frame with single clear Low E glazing - Uw value ≤ 6.39 SHGCw ≤ 0.56
W13 & W14 to be improved aluminium frame with double glazed with clear Low E glazing - Uw value ≤ 4.09 SHGCw ≤ 0.47
- Skylights** U_{sk} value ≤ 2.5 SHGC_{sk} ≤ 0.456

KEY

- BOUNDARY
- - - BUILDING ENVELOPE
- - - DEMOLITION OF EXISTING



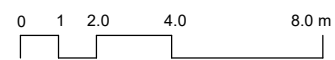


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DEVELOPMENT APPLICATION

SITE ANALYSIS



PROJECT
35 BAY VIEW ST, LAVENDER BAY

DRAWING
SITE ANALYSIS

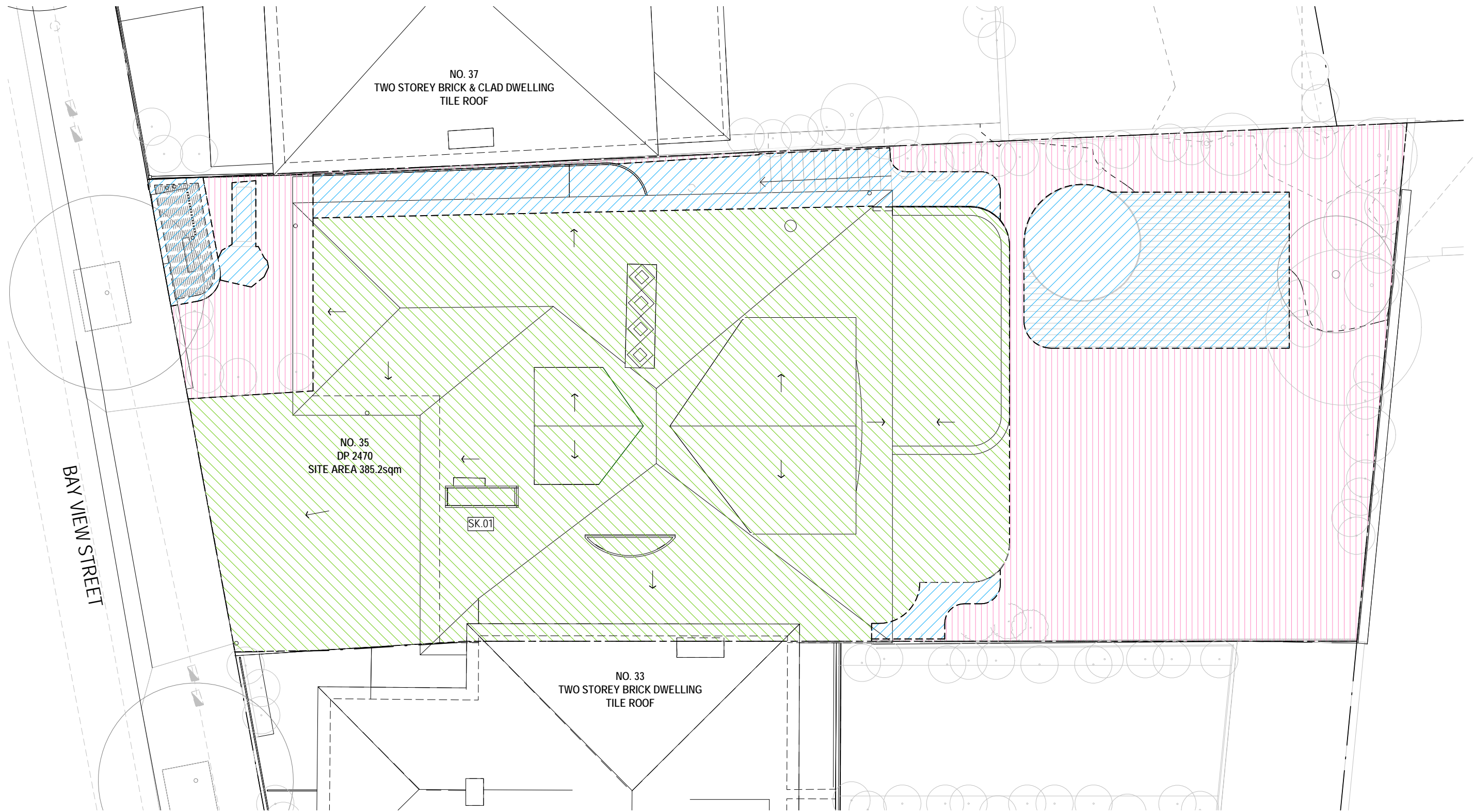
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DA102

STAGE DWG NO.

PROJECT NO. **004** REV

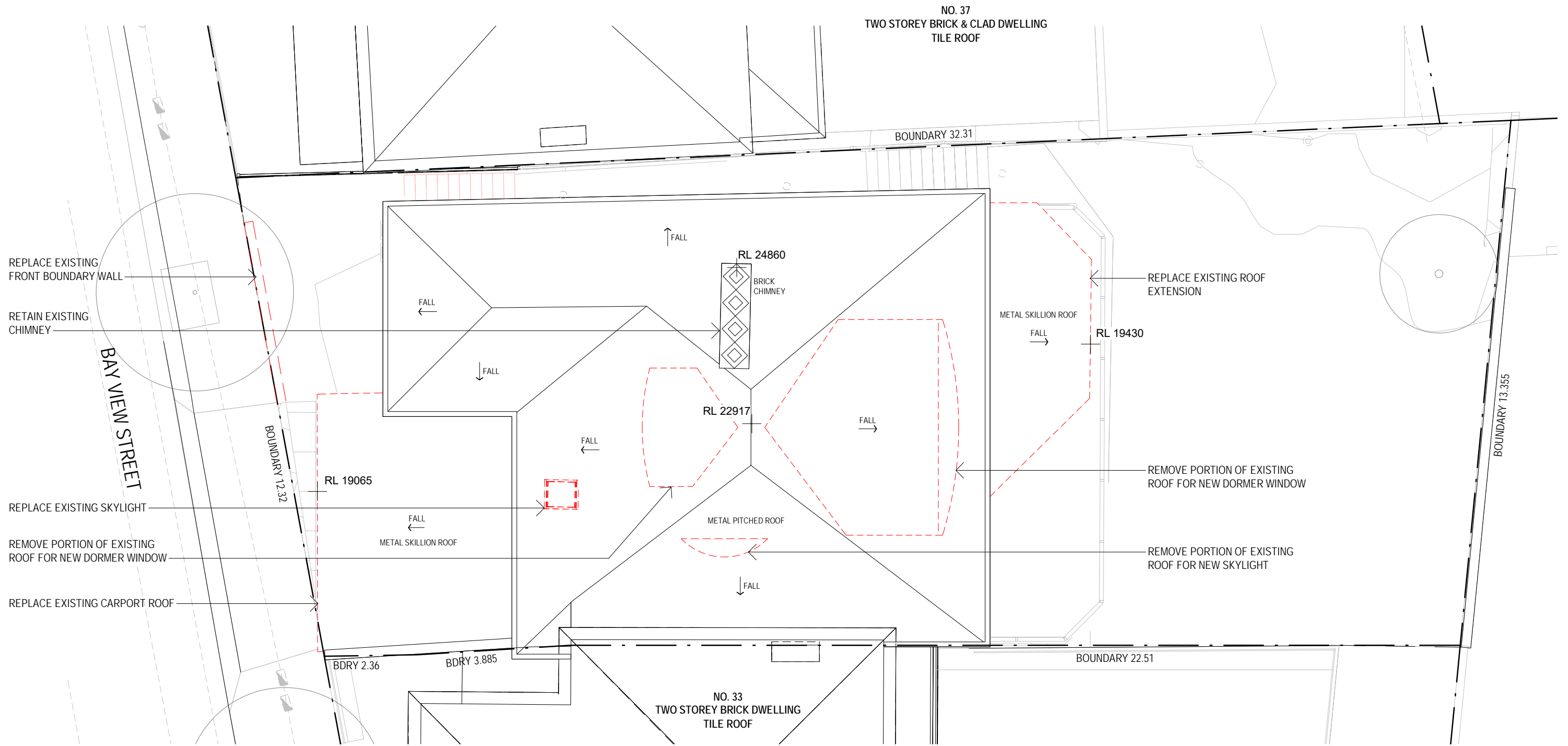
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SITE CALCULATIONS KEY

- SITE COVERAGE (MAX 50%)
- UNBUILT UPON AREA (MAX 20%)
- LANDSCAPE AREA (MIN 30%)

	PERCENTAGE		PERCENTAGE		PERCENTAGE
PERMISSABLE:		EXISTING:		PROPOSED:	
SITE COVERAGE	MAX 50%	SITE COVERAGE	54%	SITE COVERAGE	54%
UNBUILT UPON AREA	MAX 20%	UNBUILT UPON AREA	7%	UNBUILT UPON AREA	15%
LANDSCAPE AREA	MIN 30%	LANDSCAPE AREA	39%	LANDSCAPE AREA	31%



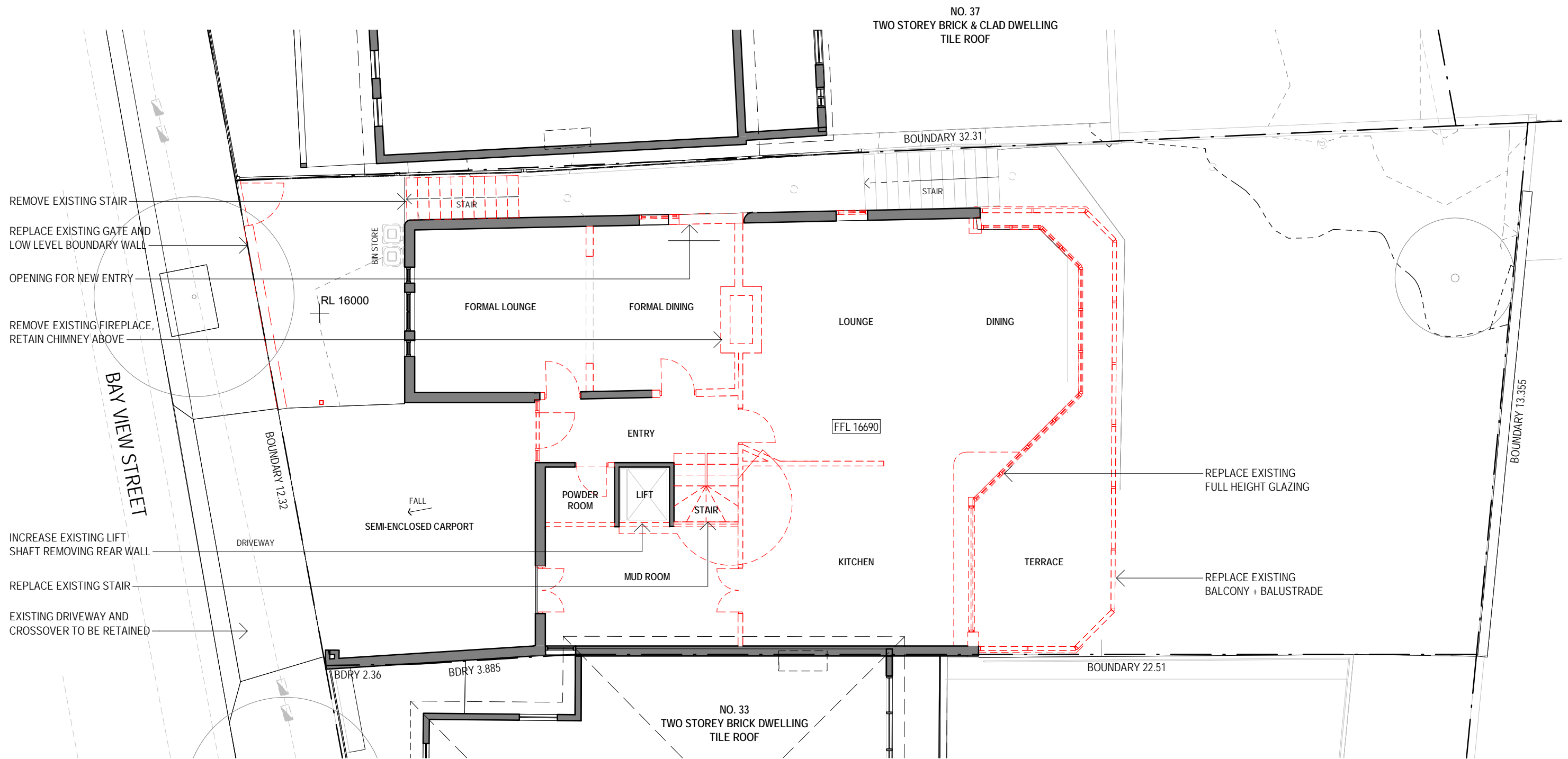
REPLACE EXISTING FRONT BOUNDARY WALL
 RETAIN EXISTING CHIMNEY

REPLACE EXISTING SKYLIGHT
 REMOVE PORTION OF EXISTING ROOF FOR NEW DORMER WINDOW
 REPLACE EXISTING CARPORT ROOF

REPLACE EXISTING ROOF EXTENSION
 REMOVE PORTION OF EXISTING ROOF FOR NEW DORMER WINDOW
 REMOVE PORTION OF EXISTING ROOF FOR NEW SKYLIGHT

KEY

- . — . — . BOUNDARY
- - - - - BUILDING ENVELOPE
- - - - - DEMOLITION OF EXISTING



- REMOVE EXISTING STAIR
- REPLACE EXISTING GATE AND LOW LEVEL BOUNDARY WALL
- OPENING FOR NEW ENTRY
- REMOVE EXISTING FIREPLACE, RETAIN CHIMNEY ABOVE
- INCREASE EXISTING LIFT SHAFT REMOVING REAR WALL
- REPLACE EXISTING STAIR
- EXISTING DRIVEWAY AND CROSSOVER TO BE RETAINED

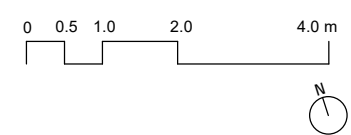
- REPLACE EXISTING FULL HEIGHT GLAZING
- REPLACE EXISTING BALCONY + BALUSTRADE

KEY

- BOUNDARY
- BUILDING ENVELOPE
- DEMOLITION OF EXISTING

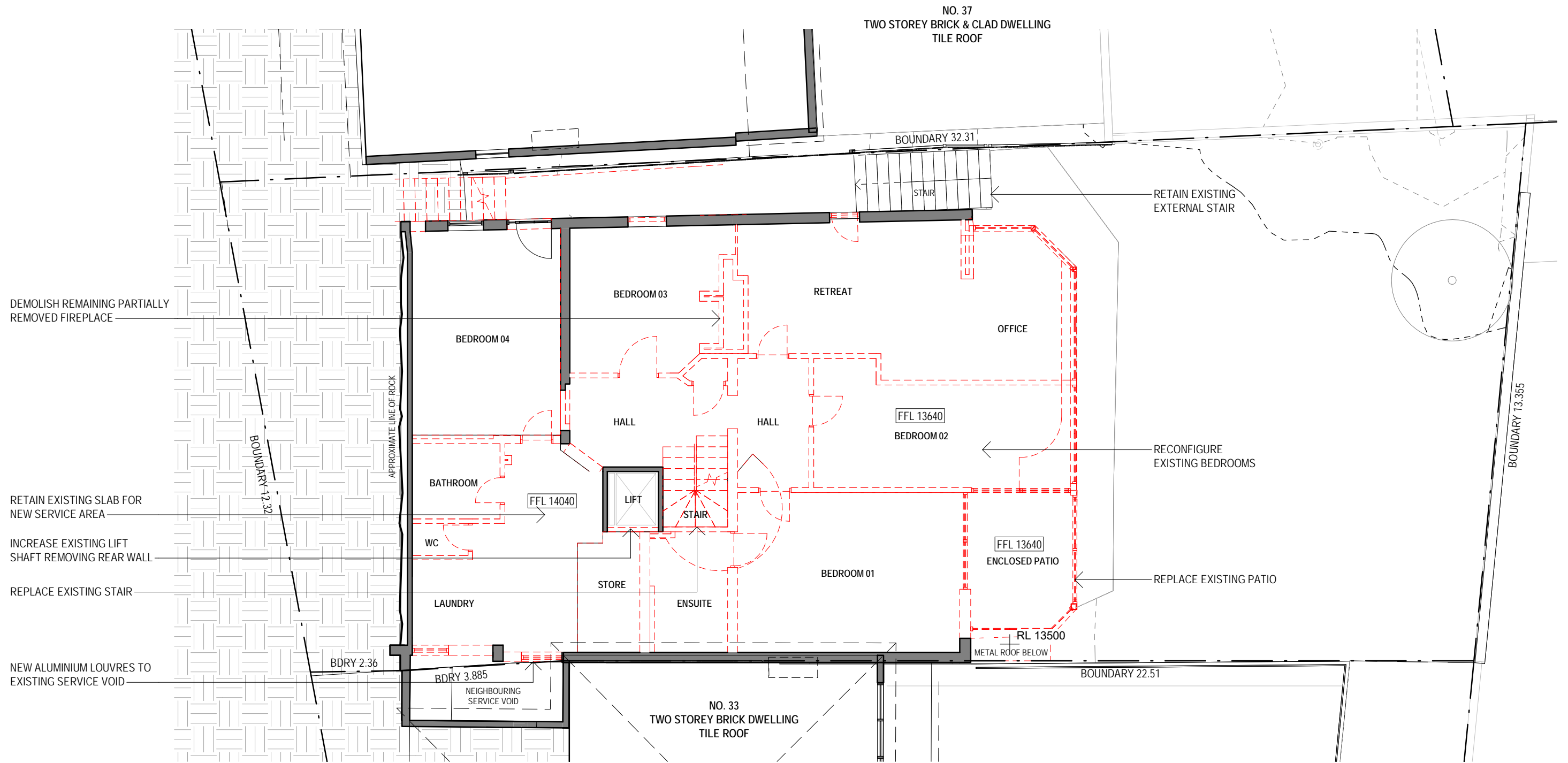
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DEVELOPMENT APPLICATION
LEVEL 02 EXISTING / DEMO



PROJECT
35 BAY VIEW ST, LAVENDER BAY
 DRAWING
LEVEL 02 EXISTING / DEMO
 Scale: 1:100 @A3 Date: 05/07/21

DA112
 STAGE DWG NO.
 PROJECT NO. **004** REV
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DEMOLISH REMAINING PARTIALLY REMOVED FIREPLACE

RETAIN EXISTING SLAB FOR NEW SERVICE AREA

INCREASE EXISTING LIFT SHAFT REMOVING REAR WALL

REPLACE EXISTING STAIR

NEW ALUMINIUM LOUVRES TO EXISTING SERVICE VOID

RETAIN EXISTING EXTERNAL STAIR

RECONFIGURE EXISTING BEDROOMS

REPLACE EXISTING PATIO

KEY

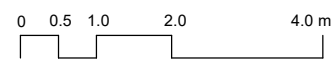
- BOUNDARY
- BUILDING ENVELOPE
- DEMOLITION OF EXISTING

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DEVELOPMENT APPLICATION
LEVEL 01 EXISTING / DEMO



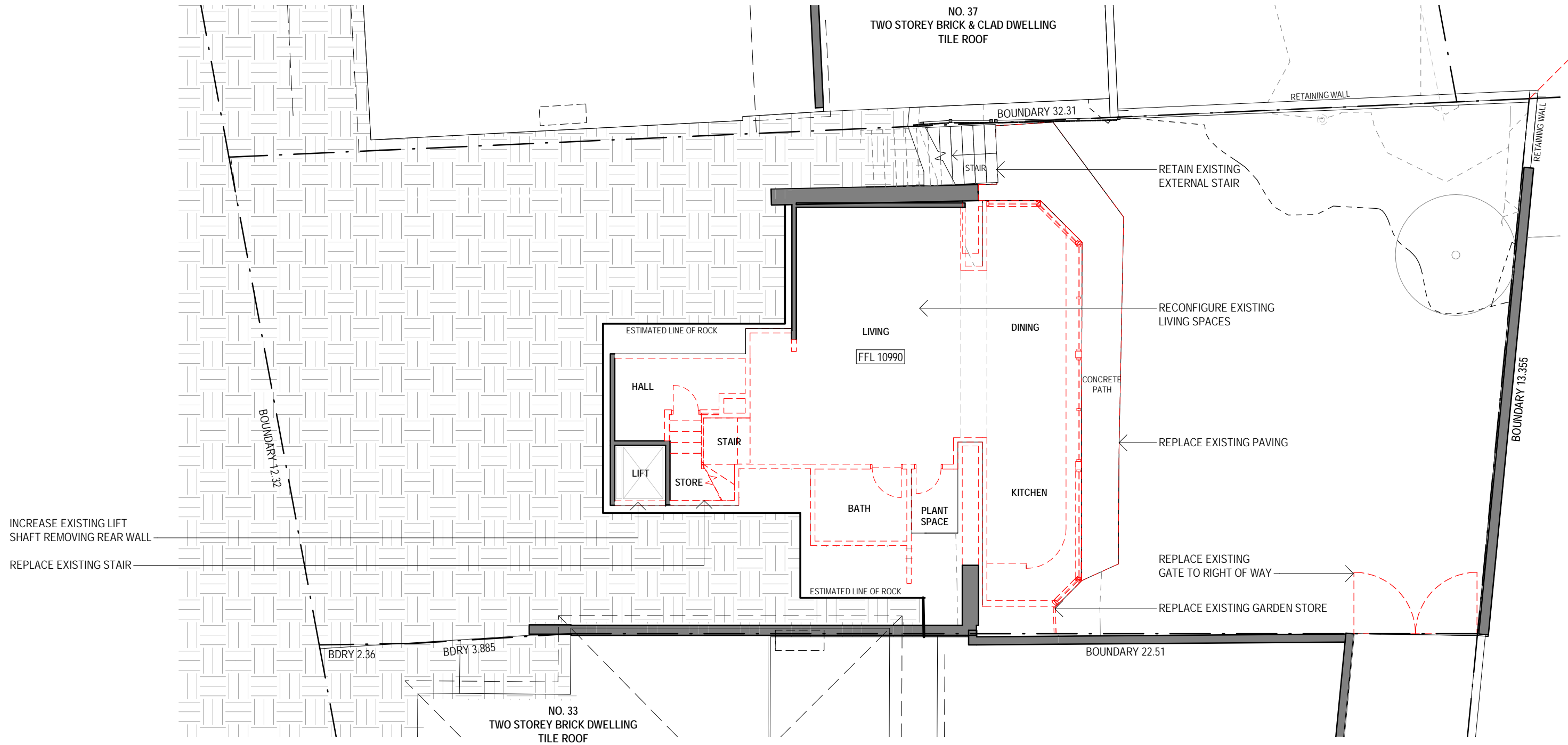
PROJECT
35 BAY VIEW ST, LAVENDER BAY

DRAWING
LEVEL 01 EXISTING / DEMO

Scale: 1:100 @A3 Date: 05/07/21

DA113
STAGE DWG NO.

PROJECT NO. **004** REV
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INCREASE EXISTING LIFT
SHAFT REMOVING REAR WALL

REPLACE EXISTING STAIR

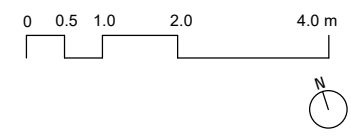
KEY

- · — · — · BOUNDARY
- - - - - BUILDING ENVELOPE
- - - - - DEMOLITION OF EXISTING

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DEVELOPMENT APPLICATION
GROUND LEVEL EXISTING / DEMO



PROJECT
35 BAY VIEW ST, LAVENDER BAY

DRAWING
GROUND LEVEL EXISTING / DEMO

Scale: 1:100 @A3 Date: 05/07/21

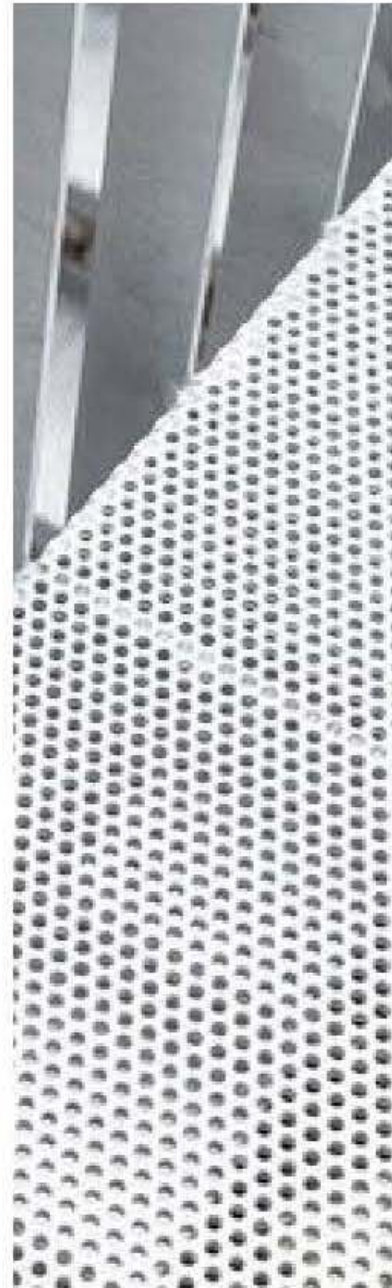
DA114
STAGE DWG NO.

PROJECT NO. **004** REV

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TEXTURED RENDER



PERFORATED METAL



TIMBER BATTENS



BRONZE ROOF SHEETING



EXISTING ROOF SHEETING



METAL BALUSTRADES



CURVED GLASS

NOTES

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DEVELOPMENT APPLICATION

MATERIAL BOARD

PROJECT
35 BAY VIEW ST, LAVENDER BAY

DRAWING
MATERIAL BOARD

Scale: @A3 Date: 22/10/21

DA121
STAGE DWG NO.

PROJECT NO. 004 REV A

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BEFORE



AFTER

NOTES

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DEVELOPMENT APPLICATION

PHOTO MONTAGE

PROJECT
35 BAY VIEW ST, LAVENDER BAY

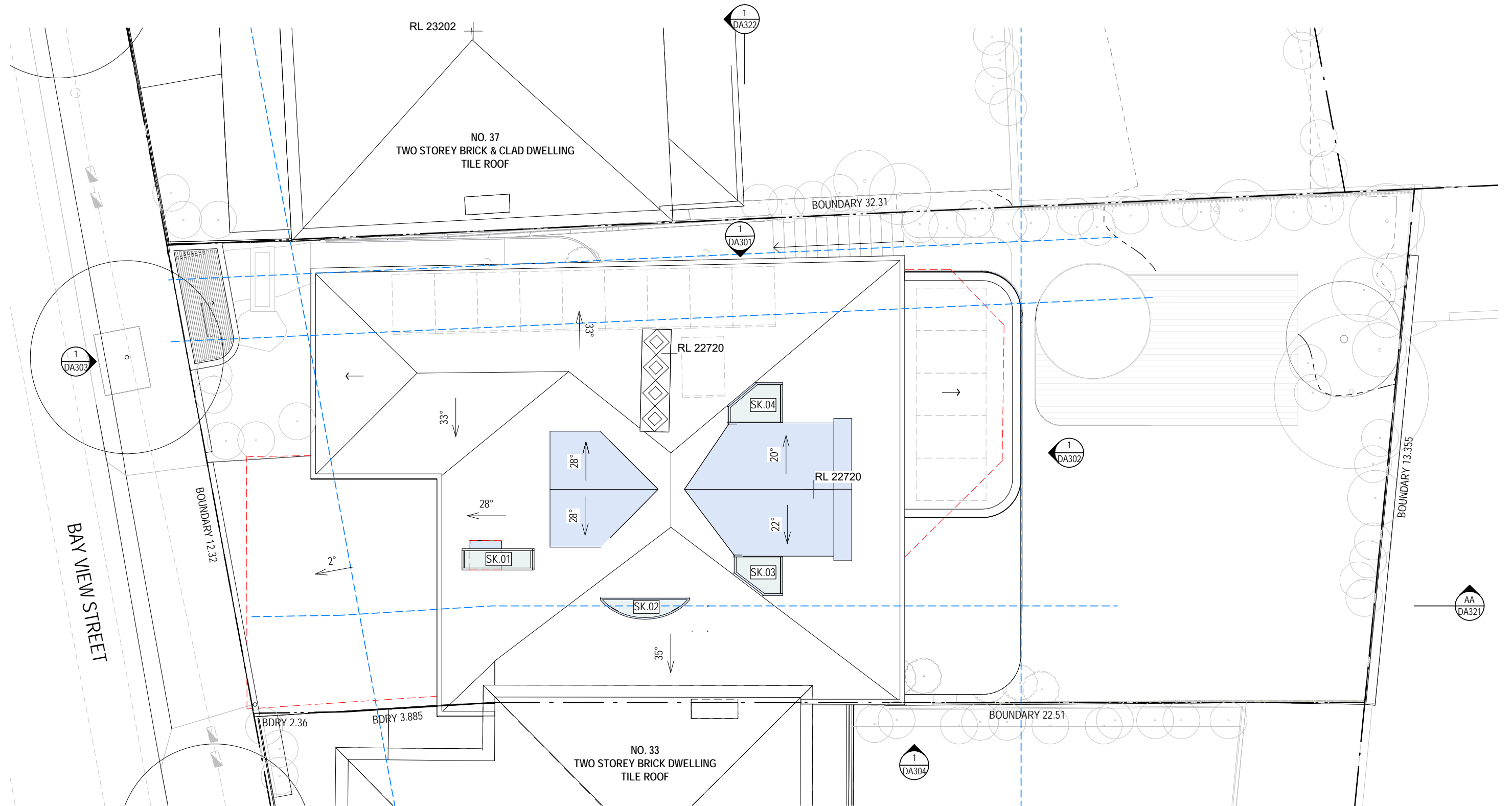
DRAWING
PHOTO MONTAGE

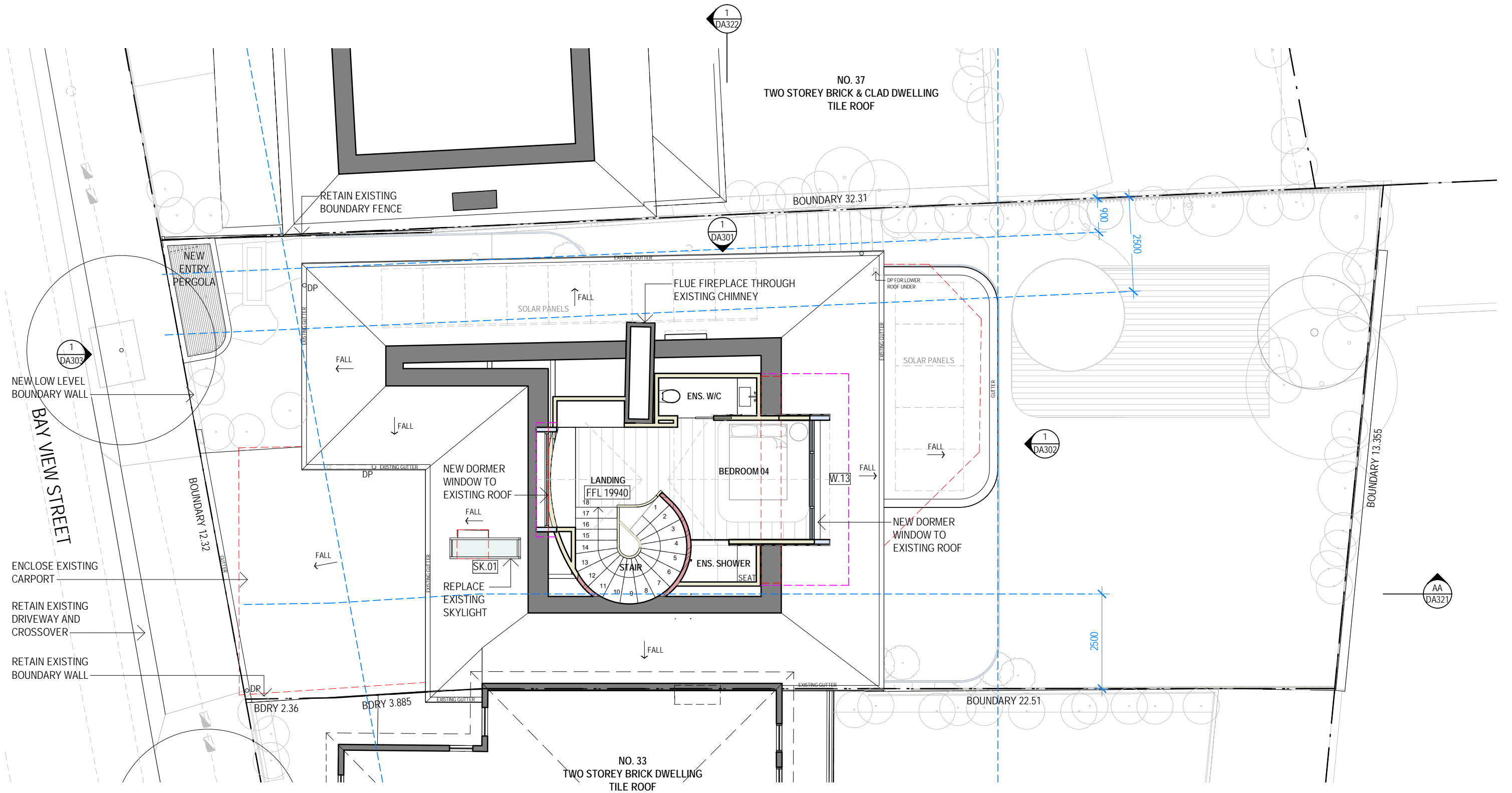
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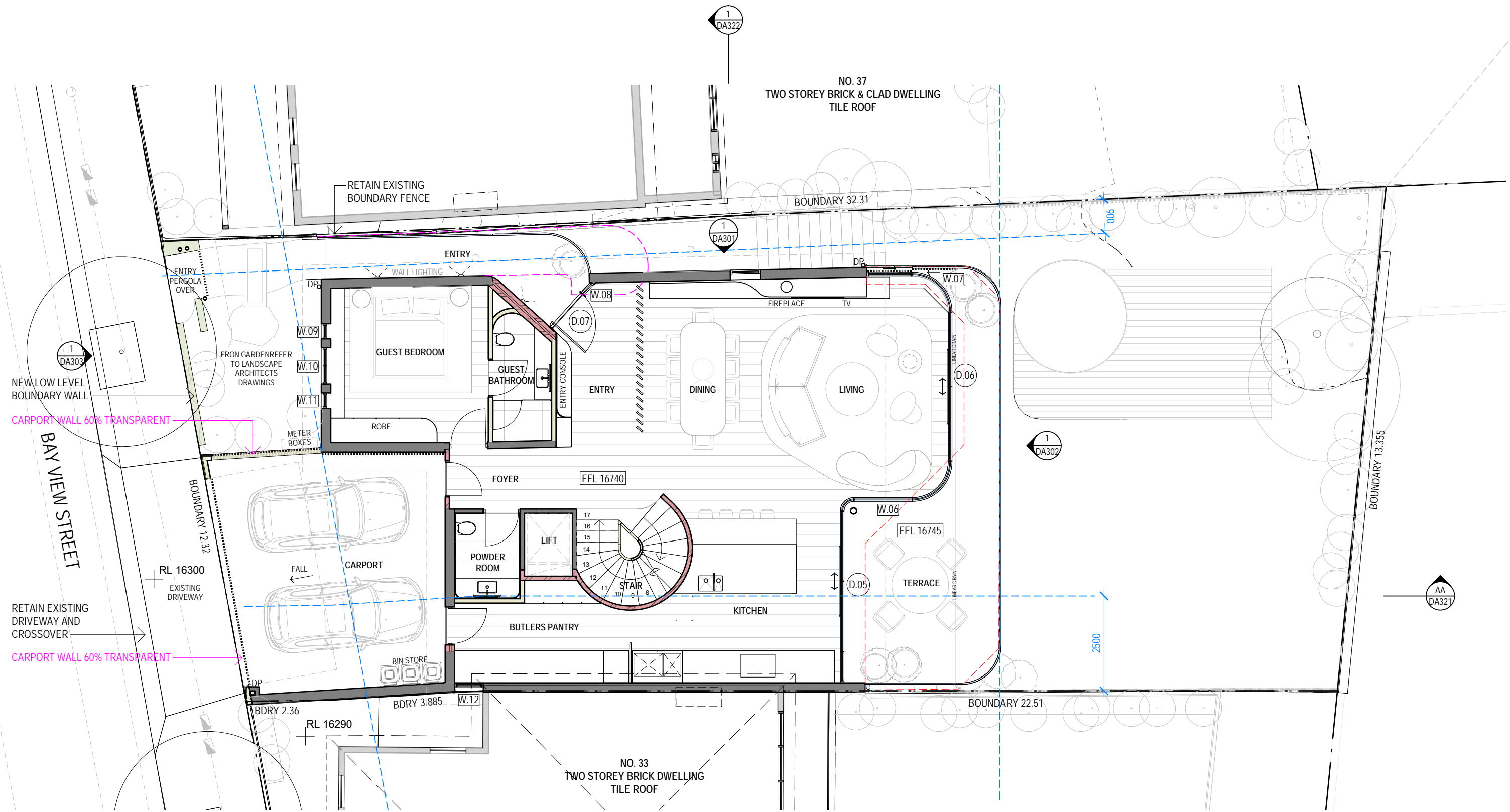
DA122
STAGE DWG NO.

PROJECT NO. **004** REV **A**

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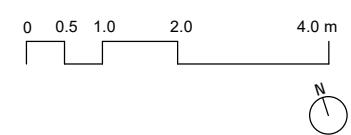
KEY

	BOUNDARY
	BUILDING ENVELOPE
	DEMOLITION OF EXISTING
	MODIFICATION FROM ORIGINAL SUBMISSION

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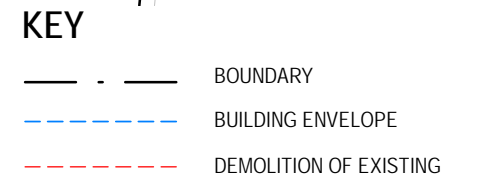
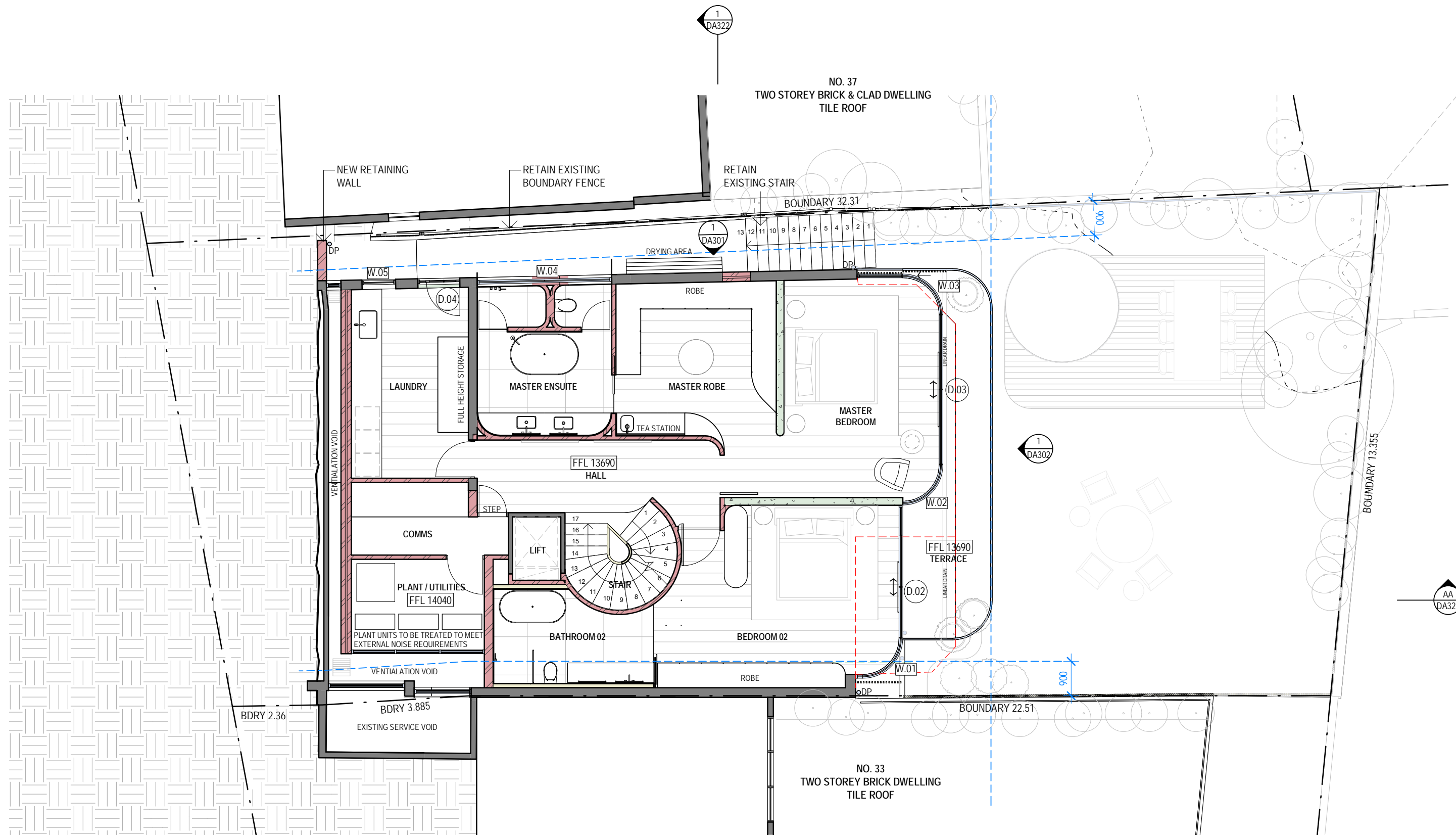
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DEVELOPMENT APPLICATION
LEVEL 02 (STREET) PLAN



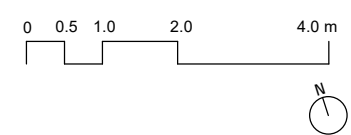
PROJECT
 35 BAY VIEW ST, LAVENDER BAY
DRAWING
 LEVEL 02 (STREET) PLAN
 Scale: 1:100 @A3 Date: 01/10/21

DA202
 STAGE DWG NO.
PROJECT NO. 004 REV A
 Drawn: BL/CT Checked: BL/CT



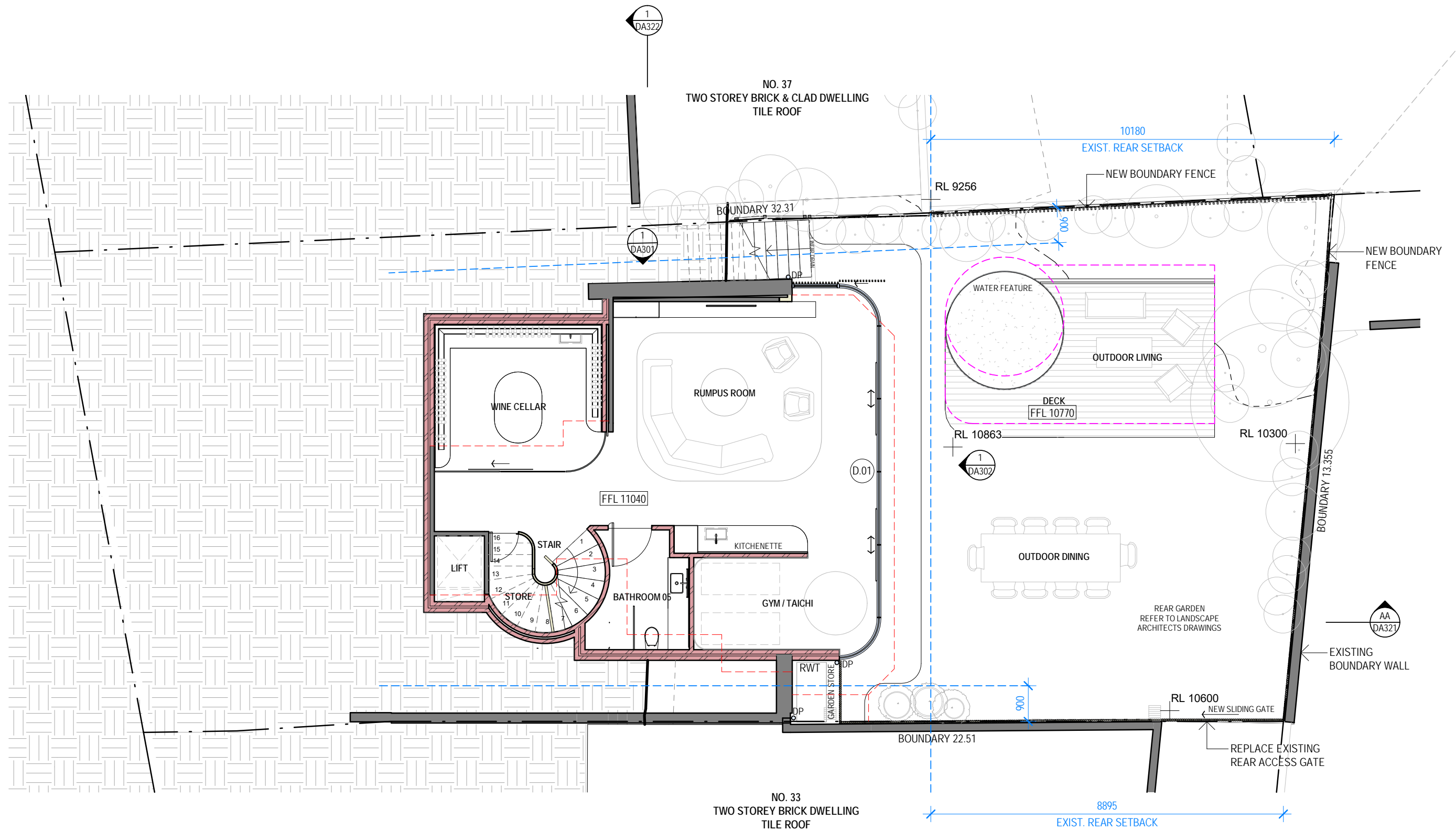
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DEVELOPMENT APPLICATION
LEVEL 01 PLAN



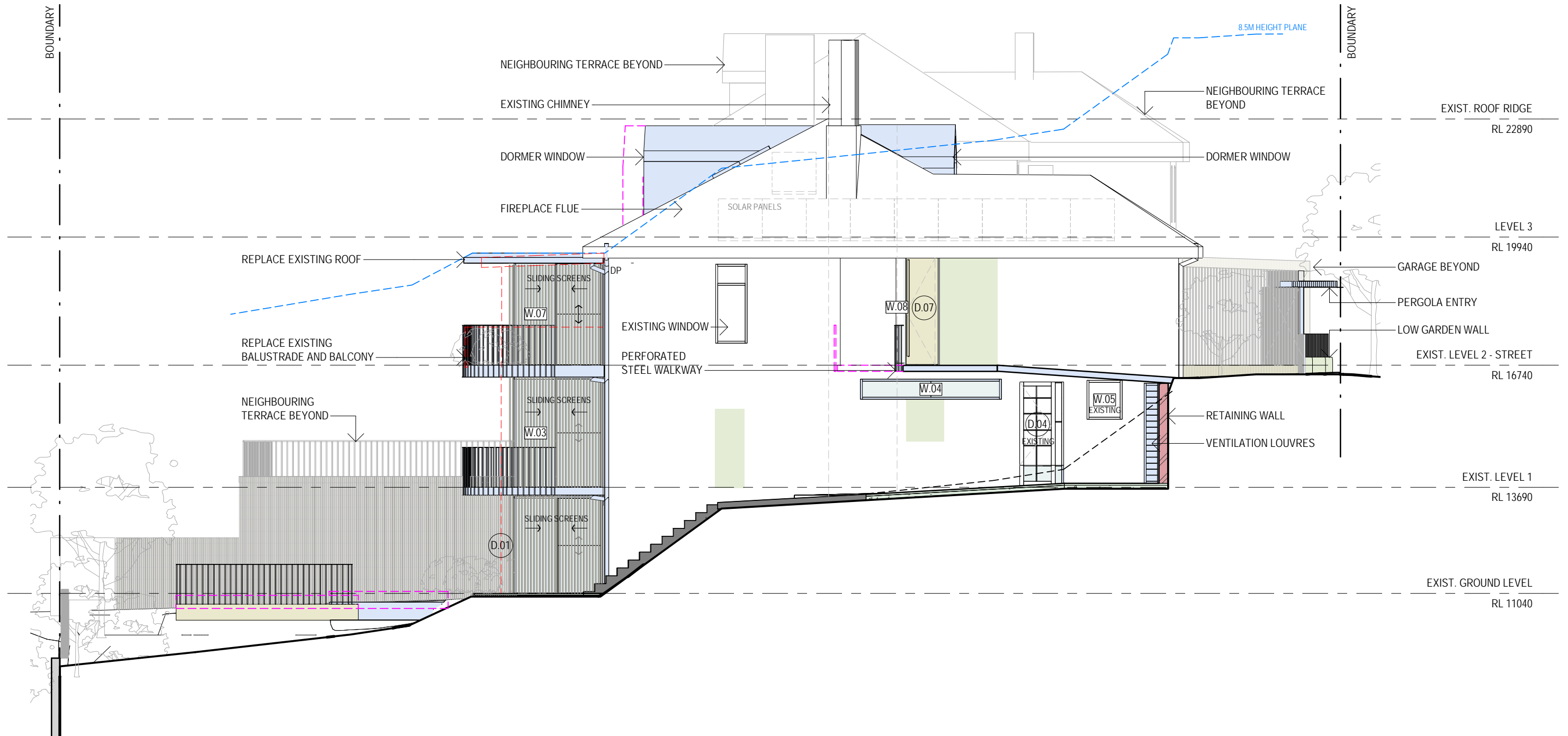
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 35 BAY VIEW ST, LAVENDER BAY
DRAWING
 LEVEL 01 PLAN
 Scale: 1:100 @A3 Date: 05/07/21

DA203
 STAGE DWG NO.
 PROJECT NO. **004** REV
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KEY

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	BUILDING ENVELOPE
	DEMOLITION OF EXISTING
	MODIFICATION FROM ORIGINAL SUBMISSION

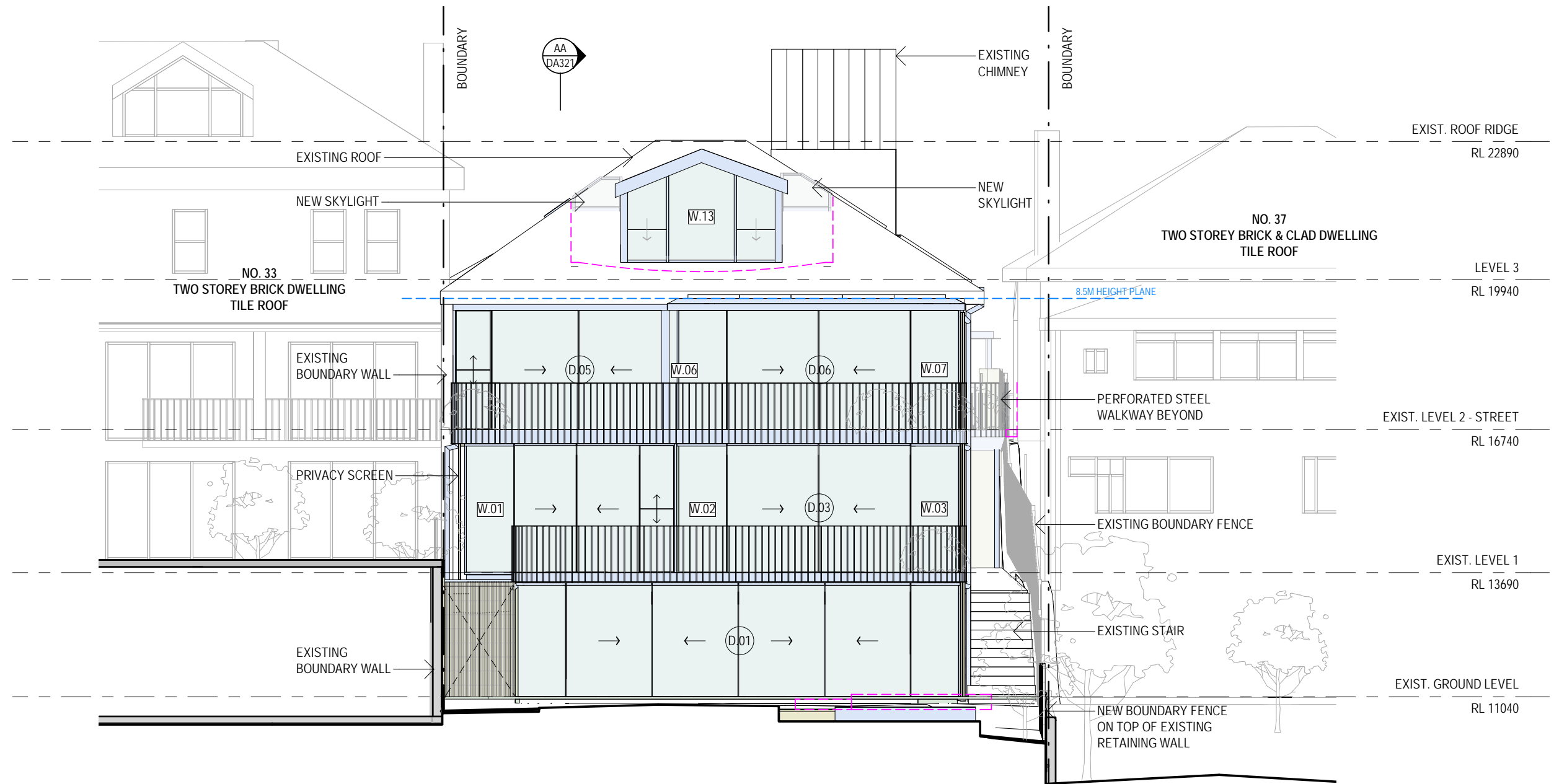


KEY

- BOUNDARY
- BUILDING ENVELOPE
- DEMOLITION OF EXISTING
- MODIFICATION FROM ORIGINAL SUBMISSION

MATERIAL - LEGEND

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|---|---|
| CEMENT RENDER | TIMBER |
| GLASS | NATURAL STONE |
| METAL | SANDSTONE |
| BRICK | CONCRETE |

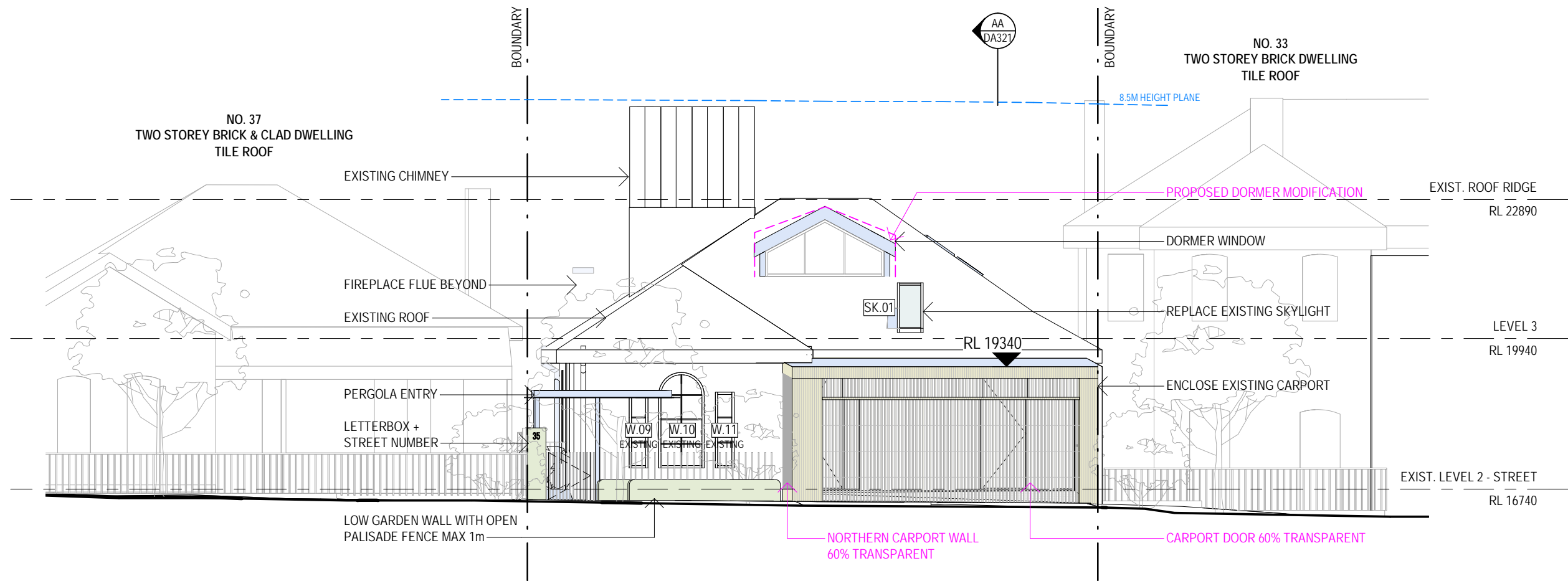


KEY

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MATERIAL - LEGEND

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| | METAL | | SANDSTONE |
| | BRICK | | CONCRETE |

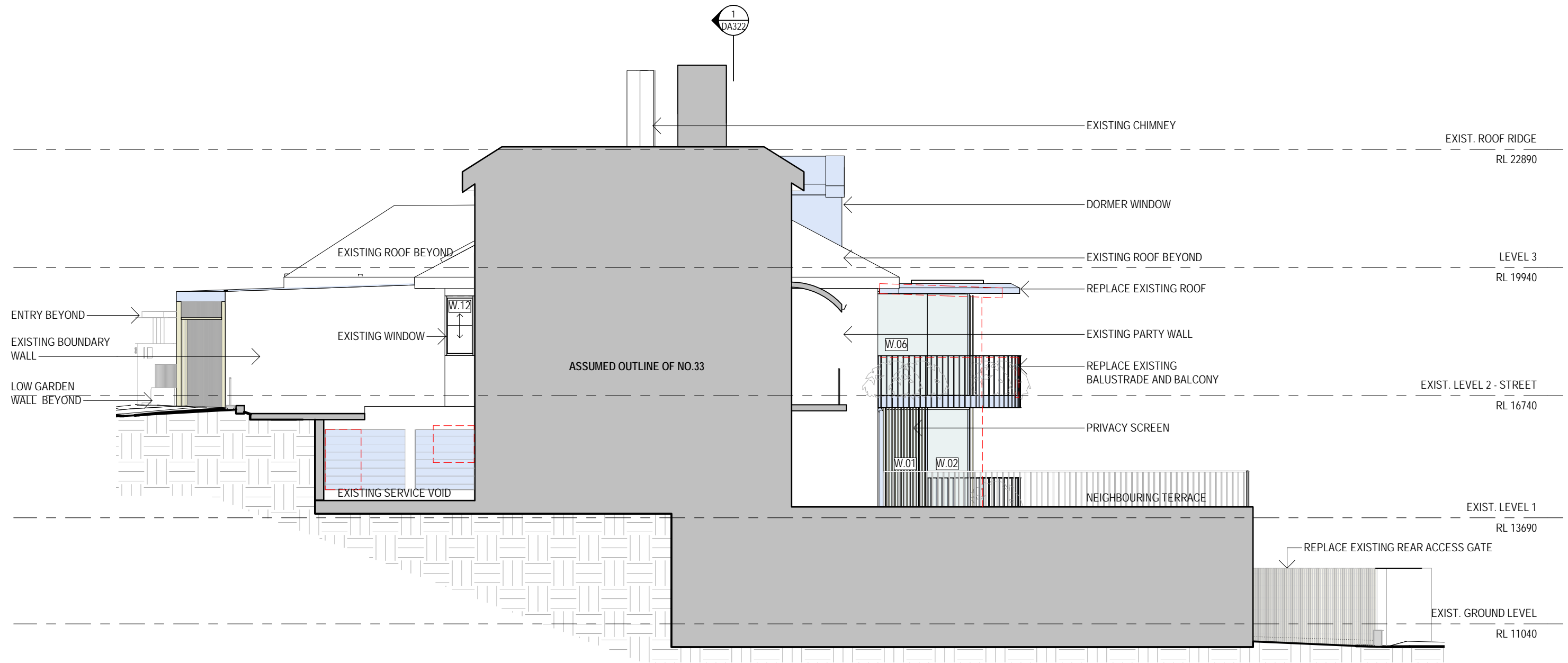


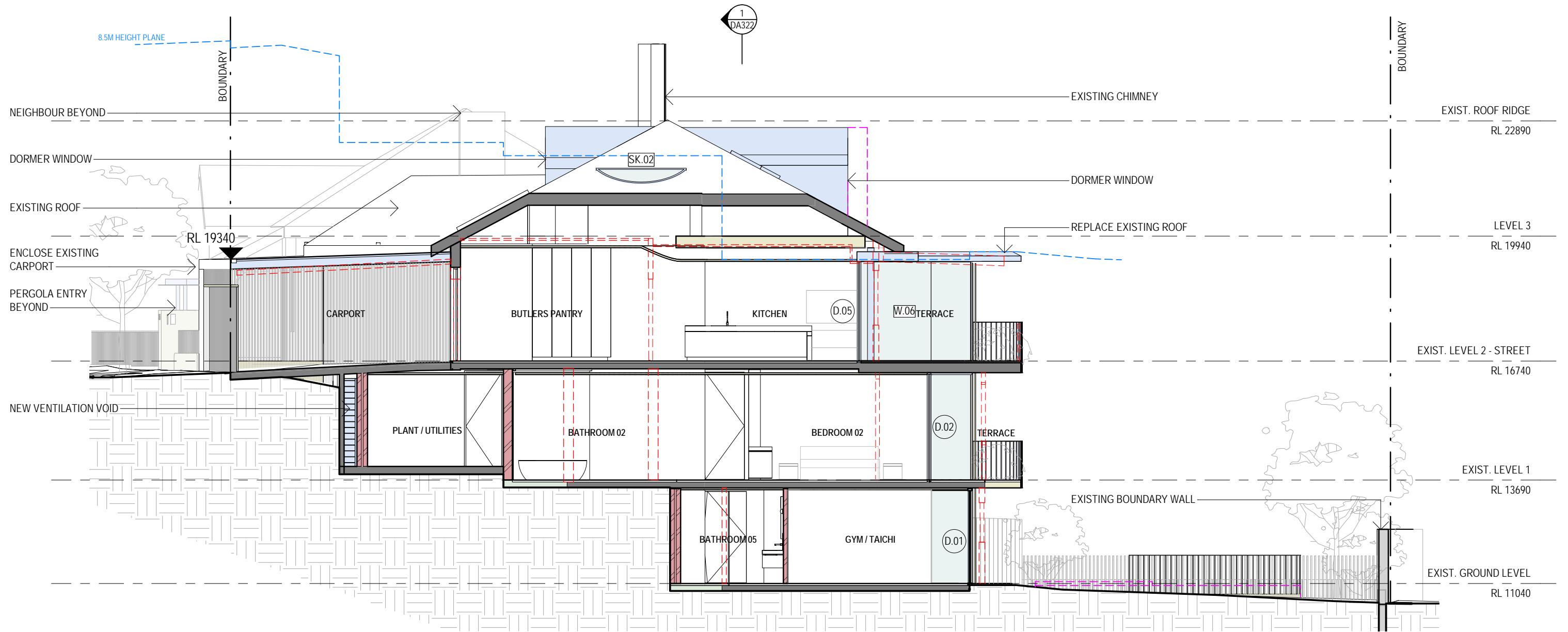
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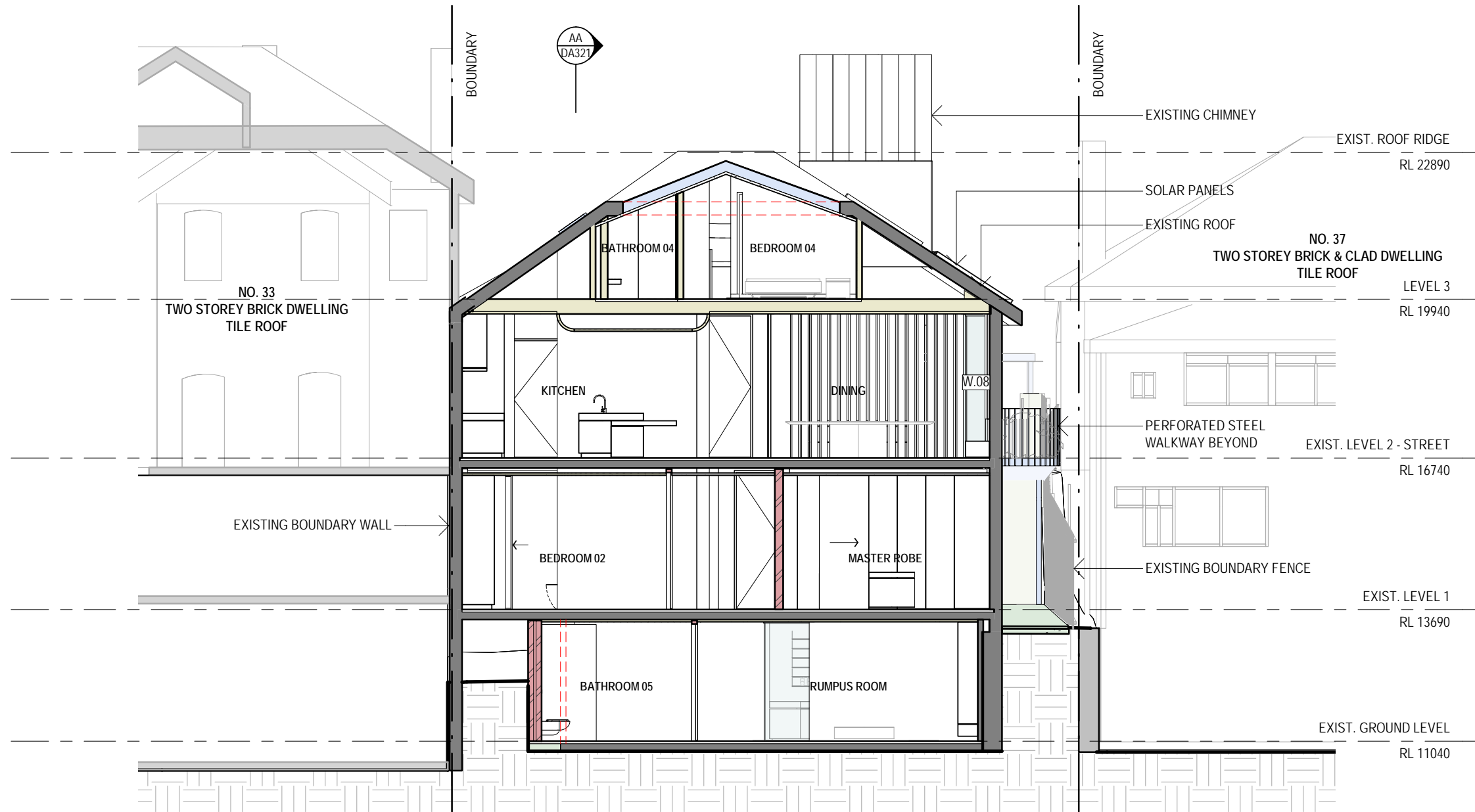
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| CEMENT RENDER | TIMBER |
| GLASS | NATURAL STONE |
| METAL | SANDSTONE |
| BRICK | CONCRETE |





KEY

	BOUNDARY
	BUILDING ENVELOPE
	DEMOLITION OF EXISTING
	MODIFICATION FROM ORIGINAL SUBMISSION



KEY

- BOUNDARY
- BUILDING ENVELOPE
- DEMOLITION OF EXISTING

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DEVELOPMENT APPLICATION

SECTION - BB



PROJECT
35 BAY VIEW ST, LAVENDER BAY

DRAWING
SECTION - BB

Scale: 1:100 @A3 Date: 05/07/21

DA322
STAGE DWG NO.

PROJECT NO. **004** REV
Drawn: BL/CT Checked: BL/CT



NORTH SYDNEY LEP 2013 Clause 4.6 Exceptions to Development Standards – Height of Buildings

Proposed alterations and additions to the existing semi-detached dwelling house at

No. 35 Bay View Street, Lavender Bay

Prepared for:

LiteraTrotta Architecture

Example House

69 Roslyn Street

Rushcutters Bay NSW 2011

Prepared by:

GSA PLANNING

Urban Design, Environmental & Traffic Planners

(A.B.N 89 643 660 628)

95 Paddington Street, Paddington NSW 2021

p: 02 9362 3364

e: info@gsaplanning.com.au

JOB NO. 21066

19 October 2021

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**NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN (LEP) 2013
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

APPLICANT'S NAME: LiteraTrotta Architecture

SITE ADDRESS: No. 35 Bay View Street, Lavender Bay

PROPOSAL: Alterations and additions to the existing semi-detached dwelling house

1. (i) Name of the applicable planning instrument which specifies the development standard:

North Sydney Local Environmental Plan (LEP) 2013

(ii) The land is zoned:

R3 Medium Density Residential. The objectives of which are as stated:

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

(iii) The number of the relevant clause therein:

Clause 4.3 – Height of Buildings which is stated as follows:

- (1) *The objectives of this clause are as follows—*
- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
 - (b) to promote the retention and, if appropriate, sharing of existing views,*
 - (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
 - (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
 - (e) to ensure compatibility between development, particularly at zone boundaries,*
 - (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*
- (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.*
- (2A)–(2C) *(Repealed)*

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds.

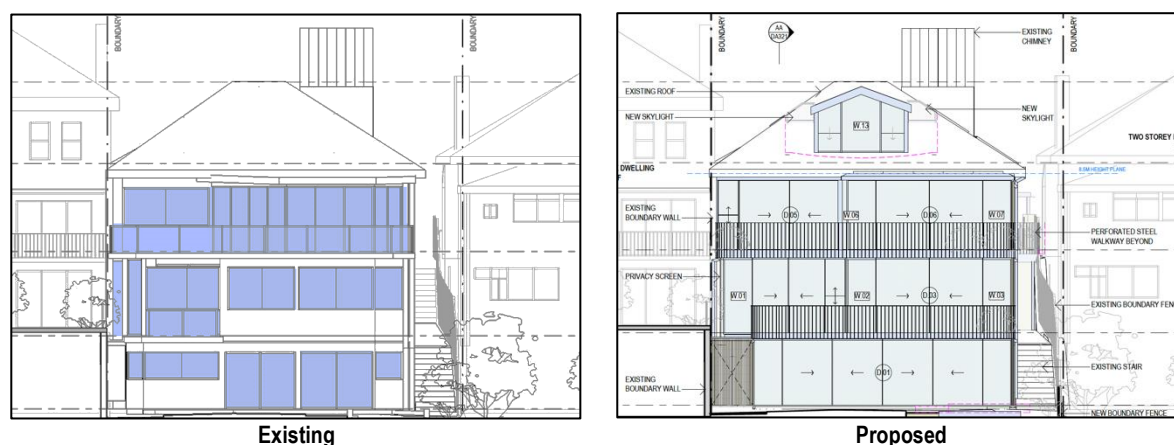
3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height Map which indicates a maximum 8.5m height limit applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The existing one to three storey semi-detached dwelling has a maximum building height of 9.43 metres, measured from the highest roof ridge at RL 22.890 AHD to the existing ground level immediately below. This is an additional height of 0.93m and equates to an existing variation of 10.9% from the height limit.

As most of the existing roof form is already above the height line, any works to the roof will require a Clause 4.6 Variation. The proposal will retain the maximum ridge height of the existing dwelling, which is the highest point of the dwelling (excluding the chimneys).

The proposed works will include internal and external reconfigurations and construction of an attic Master Bedroom within the existing roof space. New dormer windows are provided to the front and rear roof planes. The additional building height above the 8.5m height plane relates to a portion of the front dormer, rear dormer, attic room and replacement roof over the Level 02 balcony (see **Figure 1**).

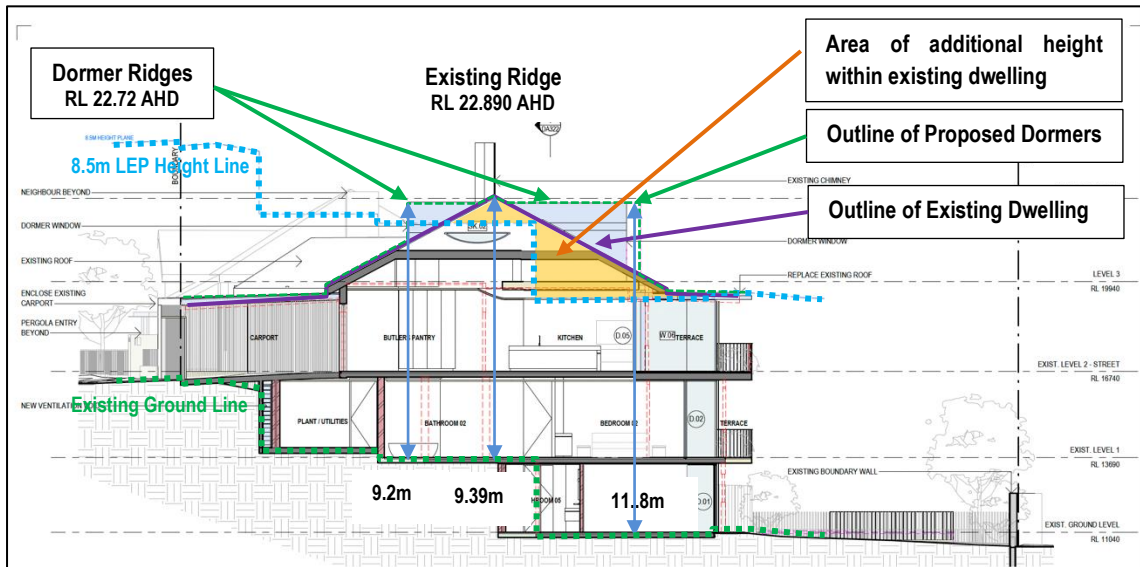


Source: LiteraTrotta

Figure 1: Existing and Proposed East (Rear) Elevation showing Dormer

The reconfigured dwelling will have a building height of 9.2 metres measured from the highest point of the front dormer at RL 22.720 AHD; 11.8 metres from the top of the rear dormer window at RL 22.720 AHD; and 9.43 metres from the highest roof ridge at 22.890 AHD. The maximum heights are measured to the existing ground level immediately below (see **Figure 2** on the following page).

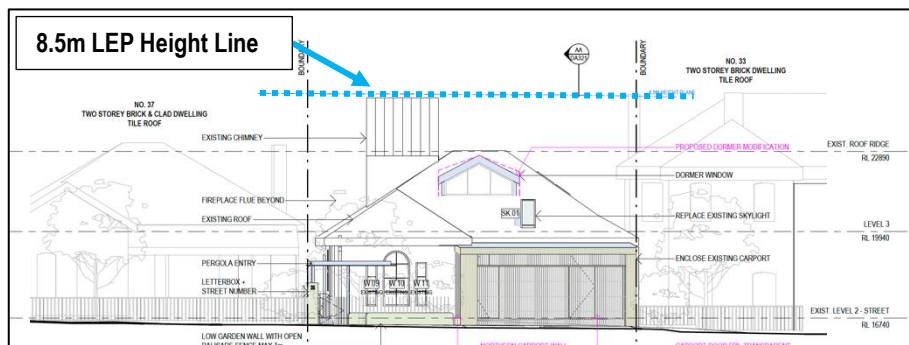
Accordingly, the proposed development will have an additional height of 0.93-3.3m from the 8.5m height development standard, which represents a maximum variation of 38.8%. However, the proposed works will provide only 2.37m of additional building height from the existing maximum building height, which is a 25.1% increase.



Source: LiteraTrotta

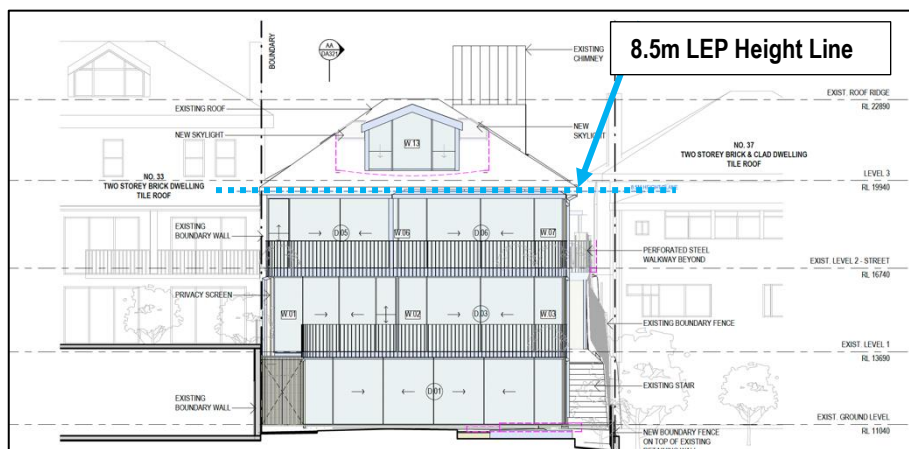
Figure 2: Existing and Proposed Height – Section AA

The additional building height is a function of the site’s sloping topography, which falls steeply from the front to the rear, and of stepping within the existing building. The dwelling will continue to present as one storey from Bay View Street and three storeys when viewed from the rear, consistent with the character of the existing building and surrounding development (see Figures 3 & 4).



Source: LiteraTrotta

Figure 3: The Height Line at the West (Street) Elevation



Source: LiteraTrotta

Figure 4: The Height Line at the East (Rear) Elevation

Importantly, the proposal will maintain the amenity of neighbouring properties. Therefore, the additional height is considered appropriate in this case.

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

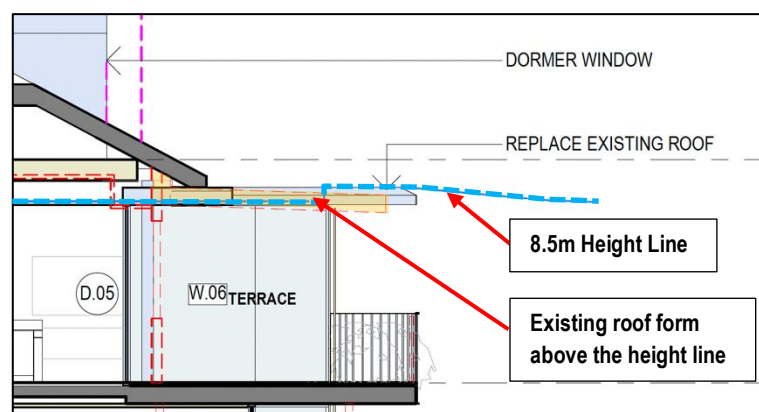
However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this case. In our opinion, the built form within the additional height will facilitate renovation of an existing dwelling that is consistent with the existing and desired future character of the area. As stated, the existing building is already above the height line and any works to the roof will require a Clause 4.6 Variation to the building height development standard.

Importantly, the existing additional height is a function of the site's steep topography and the dwelling's existing basement. The site has a west to east fall of 5.99 metres measured from the centre of the front boundary to the centre of the rear boundary (RL 16.49 AHD to RL 10.5 AHD).

The proposal seeks flexibility in this case, as works above the height limit will allow roof replacement and a very modest attic addition with dormer windows. The replacement roof of a small extension to the living area, is partially above the height line adjacent to the dwelling, and compliant at the outer edge (see **Figure 5**), as is the roof it replaces. Allowing the replacement roof in a similar location will permit a consistent height in this area. This will achieve a better outcome for the development for the living space.



Source: LiteraTrotta

Figure 5: Detail of Replacement Roof

The additional height is predominantly located at the rear of the dwelling, where the existing ground line drops considerably. As the existing roof form and high ridge is retained, the additional building height at the rear will be obscured from view in the streetscape by the front roof.

The dwelling will maintain a general one-storey appearance, with an attic dormer window, from Bay View Street, and three-storey appearance, with attic dormer window, when viewed from the rear. This is consistent with the character of the existing building and surrounding developments in the streetscape.

Strict compliance cannot be achieved on this sloping site and would prevent any works; whether they be repairs or replacement of the existing roof or require artificially stepping the roof form. Such stepping would adversely affect the architectural design of the building and serve no purpose. Flexibility in this circumstance will provide a better outcome for and from development. To refuse this application would prevent the orderly and economic use and development of the land.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

In our opinion, the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

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

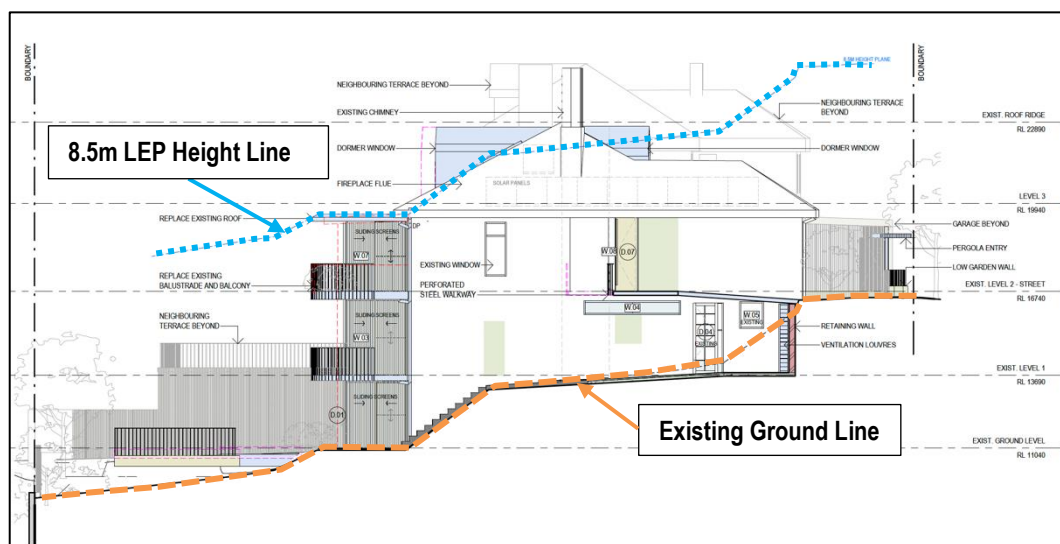
Despite the existing dwelling and proposed works being above the applicable height development standard, the proposal is consistent with the desired medium density character of the area. The proposal has a bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development is consistent with the objectives of the Height standard are explained below.

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

The subject site has a sloping topography, which falls steeply from the front to the rear, and steps within the existing dwelling. As indicated, the additional height is a function of the site's topography and built form, which is located towards the rear of the dwelling where the height line drops substantially.

The proposed alterations and additions will retain the existing semi-detached dwelling. The dwelling will continue to conform to and reflect the natural landform of the site, and the existing built form. This will be achieved by retaining the building's stepped built form, which appears as a single storey from the street and three storeys from the rear. Therefore, the dwelling will follow the site's natural gradient (see **Figure 6**).

Minimal excavation is proposed to accommodate the new works. This allows for the natural levels of the site to be generally maintained. The proposed attic bedroom is consistent with the dwelling's character and will discreetly complement the built form.



Source: LiteraTrotta

Figure 6: Proposed North Elevation, Showing the Sloping Topography
(New Works Shown in Colour)

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

Proposed works above the height plane include new dormers to the proposed attic bedroom and replacing the roof over part of the existing Level 02 living area. We note most of the Level 02 roof, including the leading edge, is below the height limit. As noted, the dwelling will continue to have a one storey appearance from the street frontage. The proposal will retain the roof form and highest ridge of the dwelling, and all new works will be located below the existing ridge height. The works to the rear of the building will be obscured from view in the street by the existing roof form.

To the south, directly adjoining the attic area is a blank wall. Therefore, the attic has no effect on views. On the northern side, the attic area is adjacent to No. 33 Bay View Street's roof (see **Figure 8**) and the only opening facing the subject site is obscured by the existing boundary fence lines, at a lower level. Therefore, there are no effects on views from that building.

In the assessment of development applications relating to view issues, the NSW Land and Environment Court rely on the principle of the *Tenacity v Warringah Council* [2004] NSWLEC 140. Our assessment of the proposal against this planning principle is included below.

The four steps in assessing view affectation are considered as follows:

- *Assessment of the Views Affected*
- *From What Part of the Property are the Views Obtained?*
- *The Extent of the Impact*
- *The Reasonableness of the Proposal*

We have not had the opportunity to inspect of nearby properties and our assessment has relied on an inspection of the subject site, real estate photographs, aerial photography, and survey information. The subject site enjoys water views of Lavender Bay and Sydney Harbour, iconic views of Sydney Harbour Bridge and the Sydney Opera House, and district views of surrounding suburbs. Views from the subject site are obtained from elevated positions, looking towards the north-east, east, and south-east. It is inferred those adjacent dwellings to the north and south are likely to have similar views, to varying degrees.

Properties to the west of the subject site, on the opposite side of Bay View Street are expected to have similar views. However, due to their positions well above street level, it is more likely those properties have views that look over the roof form of the existing dwelling and its neighbours.

Views from adjacent properties to the north and east at No. 37 and 33 Bay View Street are unlikely to be affected by the proposal, as the new works will align with the rear setback of the existing building. Given the orientation of these properties and the consistent built forms, the primary views of the Harbour and iconic landmarks are likely to be to the south-east, from the rear windows and terraces.

Any harbour views from No. 33 and 37 Bay View Street across the subject site will be across side boundaries (see **Figure 7**).

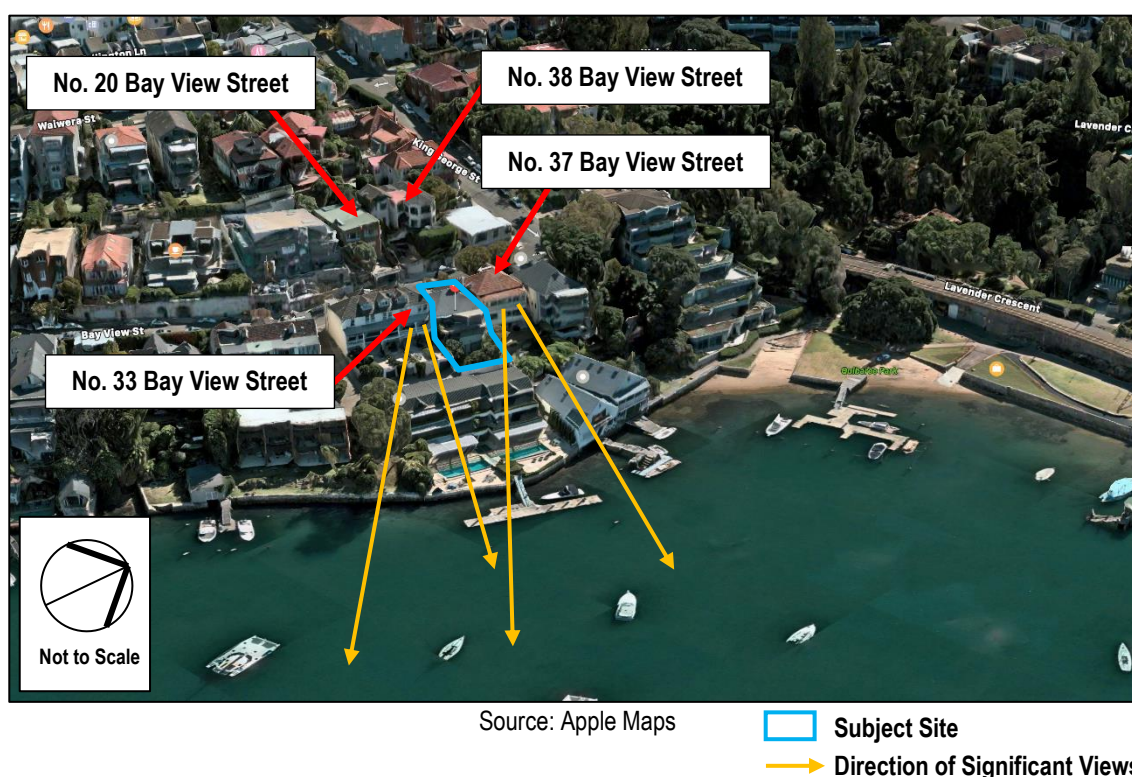
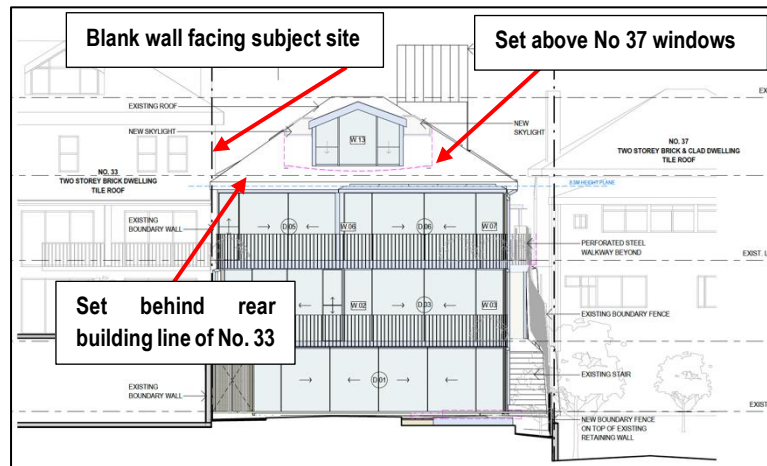


Figure 7: 3D Aerial Image of the Site and Surrounding Context

The additional height associated with the new dormers is unlikely to affect views to the Harbour Bridge or Sydney Opera House from No. 37 Bay View Street as the dormers are located at the roof level (see **Figure 8** on the following page). The flat roof to Level 02 replaces an existing roof and built form in the

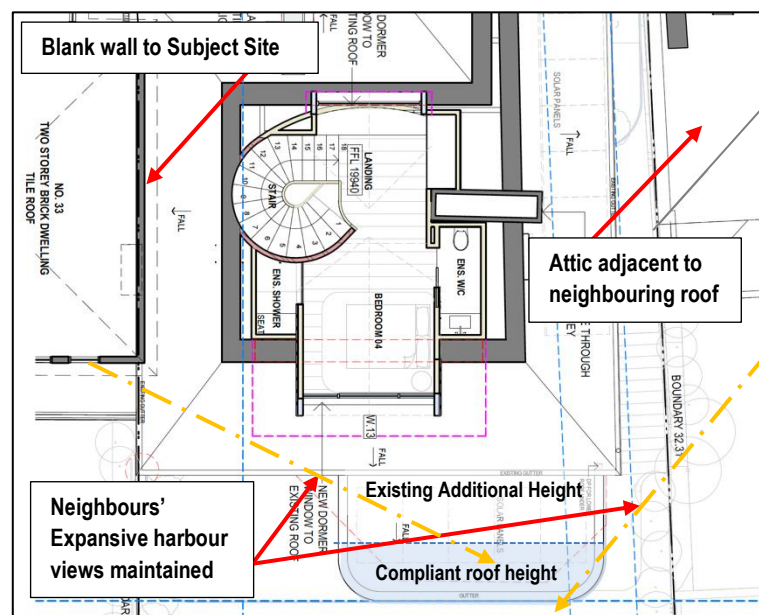
same location, therefore existing views are retained.

The Level 02 roof's area of additional height is adjacent to the existing dwelling at No. 33 Bay View Street which has a blank wall facing the subject site, and therefore is very unlikely to have additional effects on views (see **Figure 9**). Likewise, the dormer window is set back from the rear building line of No. 33 Bay View Street, and therefore has no effect on views from the adjacent dwelling at any level.



Source: LiteraTrotta

Figure 8: Proposed rear elevation, showing relationship to adjacent dwellings

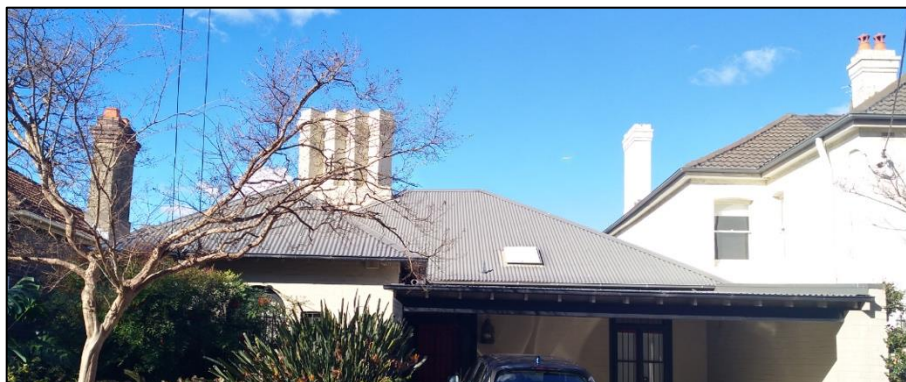


Source: LiteraTrotta

Figure 9: Proposed Attic Plan, showing views are maintained for adjacent buildings

The proposal will retain the maximum ridge height of the existing dwelling at RL 22.890 AHD and will maintain the existing hipped roof form and pitch. Although there will be some additional height relating to the front and rear dormers, both dormers are set below the existing maximum roof ridge and inset from the roof edge.

As the additional building height will predominantly be located at the rear of the dwelling, it will likely be obscured by the existing front roof form, when viewed from the properties to the west, including the substantial four chimneys element at the roof's ridge (see **Photograph 1** on the following page).



Photograph 1: The four chimneys element on the subject dwelling

Views from elevated properties to the west at Nos. 38 and 20 Bay View Street are unlikely to be significantly affected by the proposal. Despite the street numbering, these properties are adjacent to each other and directly opposite the subject site. Due to their higher positions above street level and their lot orientation, existing Harbour views from these sites are expected to be unaffected.

As shown in **Figure 10**, existing views from these properties to the west are likely to look over the roof form of the dwelling and its neighbours towards Sydney Harbour, the Bridge, and Sydney Opera House, beyond.

From reviewing aerial photographs, any available oblique iconic views to the Opera House and Harbour Bridge from No 21 King George Street, which is also elevated above street level, are likely to be over the southern side of the existing roof forms and chimneys of Nos 33 and 35 Bay View Street.

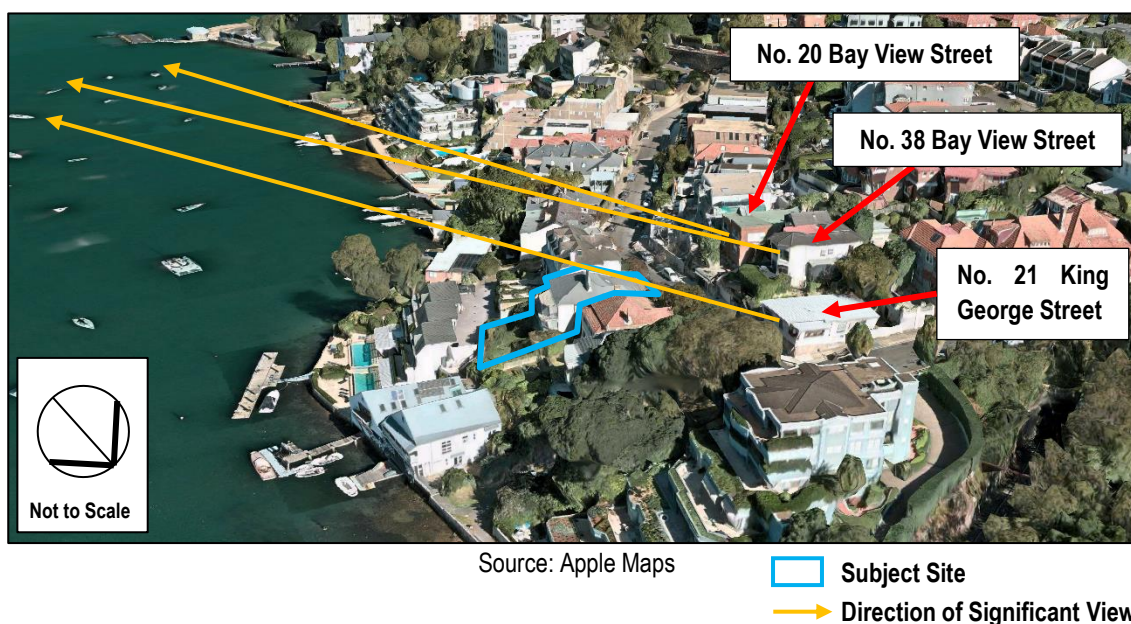


Figure 10: 3D Aerial Image of the Site and Surrounding Context

While it is not possible to establish available views or from where they would be obtained, for the neighbouring and nearby residents, from our assessment, iconic views would be retained. Accordingly, since it is expected views would be maintained, the proposal is in our opinion reasonable based on *Tenacity Consulting v Warringah Council*.

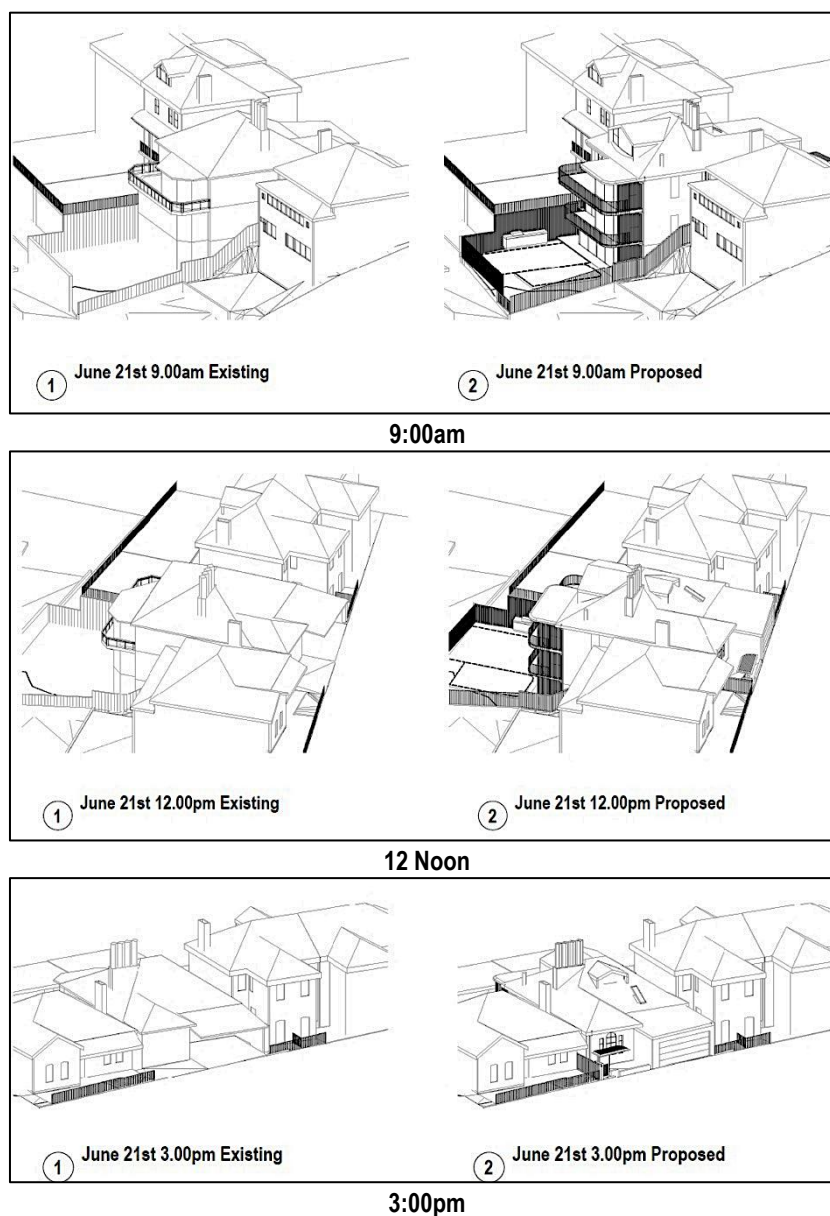
(c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*

To assess the effect of the proposed development in terms of solar access, shadow diagrams and views from the sun diagrams have been prepared for 9:00am, 12 noon and 3:00pm for the winter solstice (21 June). These diagrams demonstrate the proposed development will comply with Council's solar access requirements, for a minimum of three hours of solar access between 9:00am and 3:00pm on 21 June to the subject site and adjoining properties.

As the proposal maintains the existing front and side setbacks and the new works are consistent with the existing rear setback, the shadow diagrams state existing solar access is maintained to the adjacent windows and balcony of No. 33 Bay View Street throughout the day. The views from the sun diagrams prepared for 21 June demonstrate that the areas of additional height, being the new dormers and replacement roof to the Level 02 rear balcony, have no effect on direct sunlight received to the windows of adjacent properties (see **Figure 11** on the following page). Shadows from the rear dormer are understood to be cast on the subject site, that is, it is self-shadowed.

The solar diagrams show very minor additional shadowing is cast at midday to the rear garage roof area of No. 23B Bay View Street and some minor additional shadow on the garage roof of No. 33 Bay View Street. From correspondence provided to us, we understand the adjacent garage roof area of No. 33 Bay View Street is not approved as open space for the adjacent residents and has been the subject of compliance action by Council, including in the Land and Environment Court (NSWLEC 1080 of 2000).

Accordingly, in our opinion, the areas of additional shadowing have no discernible effect on neighbour amenity and the proposal is considered appropriate in terms of solar access.



Source: CAD Draft P/L

Figure 11: Views from the Sun Diagrams – 21 June

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

The works above additional height will maintain privacy for the residents of the adjacent dwellings and the future occupants of the subject site. To the south, directly adjoining the attic area is a blank wall. Therefore, the attic has no effect on views or privacy. On the northern side, the attic area is adjacent to No. 33 Bay View Street's roof (see **Figure 8** previously) and the only opening facing the subject site is obscured by the existing boundary fence lines. Therefore, there are no effects on views or privacy to that building.

The additional height primarily relates to the proposed attic master bedroom, within the existing roof space. The attic addition is a modest size and will be occupied by a bedroom, en-suite, and study desk. Bedrooms are a quiet, habitable use. The proposed attic space is an internal area and does not include any balconies. Therefore, the attic level is expected to maintain aural and visual privacy for the occupants of the site and surrounding properties.

The new dormer windows will be oriented towards the street and the rear of the site. The front dormer faces Bay View Street; however, the sill is at eye level. Development to the rear is below the subject site and therefore views from the rear dormer will overlook roof forms of properties to the east, and towards the views of the Harbour.

No side-facing glazing to the dormer windows are proposed, and no other windows or balconies are proposed above the height line. Accordingly, privacy will be maintained, despite the additional height.

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

Not applicable, as the subject site is not located at a zone boundary.

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

The additional height is a function of the site's steeply sloping topography, a characteristic of the area. The proposal will maintain a part one- and part three-storey built form, which is consistent with the existing building and an appropriate scale for the area. The site's existing use as a single residential dwelling will be maintained and will remain compatible with the density of surrounding development.

The existing dwelling is in a degraded condition. The proposed works will facilitate elegantly designed upgrades to the existing dwelling. The improvements to the building facades will generate a positive outcome for the site, when viewed from surrounding sites, the harbour, and the public domain.

The maximum ridge height of the existing dwelling is retained. New works are set below the ridge and the new dormers feature restrained proportions, to complement the scale and form of the existing dwelling. Nearby properties also have dormers, including the heritage items attached to the subject site at Nos. 27, 29 & 31 Bay View Street (see **Photographs 2 & 3**).



Photograph 2: Dormer window at Nos. 12A-12B Bay View Street, as viewed from Bay View Street



Photograph 3: Dormer windows at Nos. 27, 29 and 31 Bay View Street, as viewed from the upper-level terrace of the existing dwelling

Replacement of the roof over the Level 02 living area is partially above the height limit. The Level 02 roof has a partially compliant roof height and will be similar in extent to the existing roof in the same location. It will complement the architectural style of the alterations and additions. This will enhance the appearance of the dwelling, when viewed from the public domain, neighbouring sites, and the foreshore area.

The new works, including the proposed dormers, are supported in the Heritage Report, prepared by Zoltan Kovacs Architect. The report states, inter alia:

The proposed development consists of alterations and additions to a degraded late Victorian house, which is not in a heritage conservation area. The heritage impacts of the development are outlined below:

- Enclosure of the carport will generate positive conservation impacts, as it conceals an existing intrusive carport with positive impacts for the setting of the adjoining heritage items.
- Construction of the new interiors will have negligible conservation impact as the alterations do not affect significant fabric and they do not affect the streetscape or the setting of the adjoining heritage items.
- **The roof alterations involving the addition of two dormers will be sympathetic in scale, form, massing and materials and they will not generate an adverse streetscape impact.**
- The proposed reinstatement of an open rear veranda will generate a positive impact for the setting of the adjoining heritage items as it removes the enclosed veranda from their visual curtilage, where the existing veranda represents an intrusive element.
- The selected materials and new colour scheme is sympathetic to the character of the heritage items in the vicinity and they will not generate adverse impacts.

The requirement is satisfied.

[Our emphasis]

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

The existing dwelling is already three storeys, which is already outside the built form nominated in this clause. The existing height, number of storeys, and built form are consistent with the neighbouring and nearby dwellings.

Furthermore, the overall height of the existing dwelling is unchanged by the alterations and additions, or by the insertion of an attic level and dormers into the existing roof form. Accordingly, the existing general built form is maintained, which would appear to be consistent with the clause's apparent intent to maintain the built form character of the zone. To reduce the number of storeys would not maintain the existing form, would be inconsistent with neighbouring development, and would require demolition of the existing building, which is neither economically feasible nor reasonable.

Accordingly, although the proposal includes both replacement and new works above the 8.5m height plane, this is unlikely to have any significant effects as the design is generally contained within a compliant building envelope and achieves the relevant height standard objectives.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

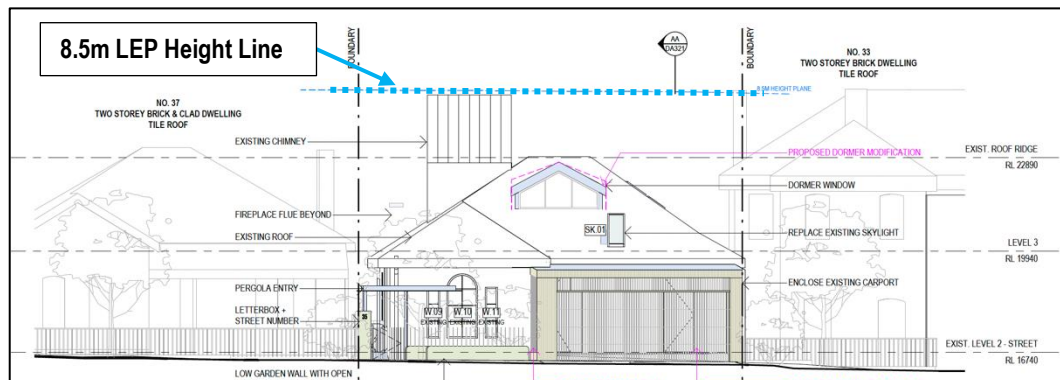
The proposed alterations and additions to the existing semi-detached dwelling are permissible in the R3 Medium Density Residential Zone. The works are consistent with the zone objectives, as discussed in Section 6 of this Clause 4.6 Variation.

The proposed height is also consistent with the surrounding density and scale in the area. In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in *Initial Action* [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

The proposal will be consistent with the character of the surrounding area, which consists of developments that respond to the steep sloping topography of the area. As indicated, the proposal will retain the existing building's ridge height and all new works will be lower than the ridge. This design approach ensures the dwelling will remain compatible with the heights of the adjacent buildings and maintains the streetscape appearance.

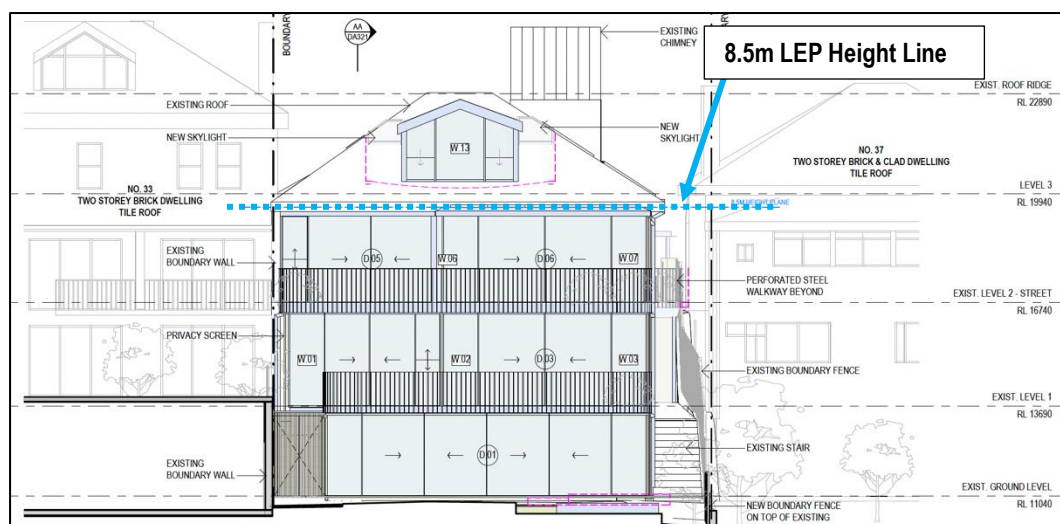
As shown in **Figure 12**, when viewed in the streetscape, the dwelling will continue to present as one storey. The dwelling will appear to have a compliant and compatible building height. The front dormer will be set below the existing roof ridge and will not be readily perceived as additional height. The building will remain compatible with the scale of Nos. 33 and 37 Bay View Street.



Source: LiteraTrotta

Figure 12: Proposed West (Street) Elevation
(New Works Shown in Colour)

As shown in **Figure 13**, the dwelling will maintain a three storey appearance when viewed from the rear, consistent with the heights of Nos. 33 and 37 Bay View Street. The additional height will allow an attic bedroom within the roof space. The new rear dormer will be set below the existing roof ridge and the dwelling will remain consistent with the height and scale of existing and emerging development on Bay View Street.



Source: LiteraTrotta

Figure 13: Proposed East (Rear) Elevation
(New Works Shown in Colour)

In terms of the whole building, the existing dwelling is in a degraded condition and has limited visual appeal when viewed from surrounding properties and the public domain. The additional height will facilitate upgrades to the built form, that will enhance the building's appearance. The building facades will be well-articulated, and the new works will provide a harmonious architectural design that rectifies previous alterations and additions. A cohesive new landscape design will soften the built form, enhance the streetscape presentation, and contribute to the established green setting of the foreshore.

Works above the height line will contribute to the building's enhanced appearance and will add visual interest. The proposed dormers will be consistent with the character of nearby developments, where a number of properties have dormer windows facing the Harbour and street (see **Figure 14**). The replacement roof at Level 02 will replace an existing roof in the same location. The new works above the height line will be constructed with a well-selected palette of materials that will complement the architecture of the dwelling and surrounding buildings.



Figure 14: 3D Aerial Image of the Site and Surrounding Context

The proposal is supported by a Heritage Report, which indicates the works will not adversely affect the nearby items or heritage of Lavender Bay inter alia:

7.4 Conclusion

Having examined the heritage impact of the development, the following can be concluded:

- *the proposed demolition of the rear veranda and interiors will not generate adverse impact;*
- *changes to the carport and the new rear veranda will generate positive impact for the setting of the adjoining heritage items.*

The proposed development does not affect the natural environment and it will have a positive overall impact for the European cultural heritage of Lavender Bay.

8 Recommendations

Having assessed the significance of the place and the heritage impact of the proposed development the following are recommended:

- *that Council should consent to the proposed development in recognition of its lack of adverse heritage conservation impacts and in recognition of its high design quality.*

In respect of the proposed dormers above the height line, the Heritage Report states:

Two dormer windows are proposed, fitted with pitched roofs and contained within the existing roof plane and as such they respond positively to their context. They do not affect the setting of heritage items in the vicinity. The detailed provisions of this section are not relevant, because the development site is not in a heritage conservation area, and it is not a heritage item.

As discussed in the response to Test 1, the proposal will maintain the amenity of neighbouring dwellings in respect of privacy, solar access, and views. The height is a consequence of the steep west to east fall on the site and is necessary to provide a functional internal configuration, for the amenity of the residence.

Enforcing strict compliance would require artificially stepping down the existing roof form and prevent any repairs or maintenance. This would be a poor architectural outcome for the site. It would unreasonably constrain works to the dwelling, without noticeable benefits to surrounding properties or the public domain.

In our opinion, the additional height will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (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*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request and having regard to the site and locality. In our opinion, the proposal is consistent with the objectives of the Height of Buildings Development Standard, as already demonstrated; and the R3 Medium Density Residential Zone, as discussed below:

Objective: To provide for the housing needs of the community within a medium density residential environment.

Response: The proposed works will maintain the existing use of the site, which contributes to housing stock in the medium density residential environment. The additional height will facilitate new dormers and an attic addition, which will enhance the amenity of the dwelling, while also maintaining amenity for neighbouring properties.

Objective: To provide a variety of housing types within a medium density residential environment.

Response: The additional height will provide for well-designed alterations and additions and proper maintenance to the existing building. The site will continue to constitute a semi-detached dwelling, which contributes to the variety of housing in the locality.

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

Response: N/A

Objective: To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.

Response: N/A. The proposal will maintain the existing semi-detached dwelling use of the site.

Objective: To provide for a suitable visual transition between high density residential areas and lower density residential areas.

Response: The proposal will retain the existing low density use of the site. The additional height, relating to the dormers, will be set below the highest ridge of the existing dwelling, to maintain a suitable visual transition.

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

Response: The additional height will facilitate the provision of high-quality upgrades to the existing dwelling, to achieve good residential amenity for the future occupants. The new works above the height line have been carefully designed to maintain a high level of residential amenity for the adjacent properties. Amenity, in respect of privacy, solar access and views, has been discussed in detail in the response to Test 1 in this Clause 4.6 Variation.

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. The existing dwelling is greater than the development standard by more than 10%, and the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The additional height will enhance the amenity and functionality of the proposed dwelling without significantly, unreasonably, or unacceptably affecting neighbouring properties. The extent of additional height will not be discernible when the works are below the existing ridge height.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape and with the existing built form, when viewed from the harbour. The new works are below the existing ridge of the dwelling. Therefore, the dwelling will remain compatible with the heights of adjacent buildings as viewed from Bay View Street.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the R3 Medium Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 Height of Buildings should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	8.5m	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) - That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Test 1 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard. 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. 	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposed height facilitates upgrades to the existing semi-detached dwelling development consistent with the planning objectives of the area; The non-compliance is a function of the site's topography, which falls steeply from the front to the rear of the site, and an existing basement within the dwelling; Permitting works above the height limit will enable roof maintenance and replacement, and well-designed upgrades to the dwelling, that will be consistent with the scale of development in the surrounding area; The proposal will retain the dwelling's one storey appearance in the streetscape and three storey appearance when viewed from the rear. The new attic will be below the existing roof ridge. Therefore, the dwelling will remain consistent with the heights of adjacent buildings when viewed from both Bay View Street and the harbour; and The proposal will maintain the amenity of neighbouring properties, in respect of privacy, solar access and views. 	YES

26-27	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development is consistent with the objectives of the height standard as addressed under Test 1 of <i>Wehbe</i> . The proposal is also consistent with the objectives of the R3 Medium Density Residential Zone.	YES
28-29	Second Precondition to Enlivening the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

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OUR REF: 21066

16 September 2021

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Attention : Luke Donovan - Senior Assessment Officer (Planning)

Dear Luke,

**RE: PRELIMINARY ASSESSMENT BY COUNCIL
NO. 35 BAY VIEW STREET, LAVENDER BAY
(DA 211/21)**

Thank you for your time on the phone to discuss this application, and for granting an extension of time. As we are aware you will be departing Council; we have determined to send you material earlier, in order that you can finalise your recommendation.

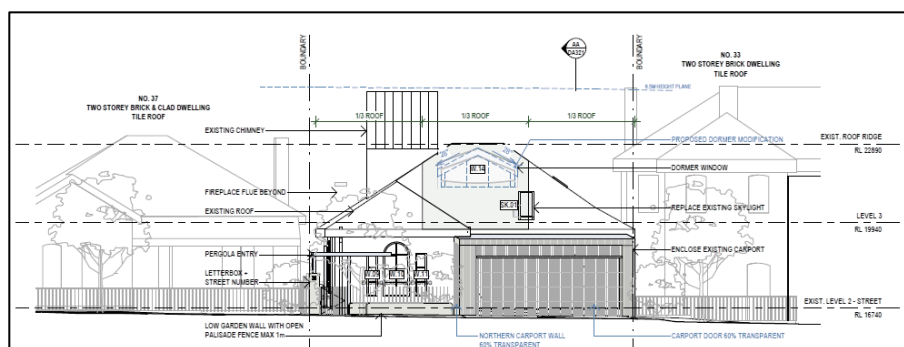
Thank you for the opportunity to provide additional information to assist your assessment. As discussed, we have been working closely with our clients and their architects, Litera Trotta Architecture on No. 35 Bay View Street, Lavender Bay (DA 211/21). LTA have prepared preliminary material and can quickly submit amended drawings to you, in response to any comments you might have regarding the proposed amendments.

We have reviewed and discussed your preliminary assessment, dated 2 September 2021, and your email to us of 9 September 2021, where your concerns and our preliminary discussions were summarised as follows:

- Size of front and rear dormers – both to be reduced to minimise public and private view impacts
- Side elevated walkway – to be relocated to front of dwelling (preferably)
- Front carport – greater degree of transparency, maybe change to materiality – reduce visual impact on public domain).
- Ground level POS- to be lowered to match EGL – centrally located or improve boundary screening and landscaping.

1.0 FRONT DORMER

The front dormer has been adjusted to increase the roof pitch and reduce the width, which results in a form which is considered sympathetic to the streetscape and suits the dwelling form (see **Figure 1**). This amended form is supported by the Heritage Advisor, Zoltan Kovacs.



Source: Litera Trotta Architects

Figure 1: Streetscape Elevation showing Reduced and Altered Dormer

There are constraints associated with the dormer, its function to provide light and cross ventilation to the attic area, and the proximity to the staircase. We consider the altered proportions and reduced size are consistent with the DCP objective: *To ensure that the location, design, pitch and scale of any dormer is appropriate to the building and roof form to which it is attached, is in character with the area and does not result in any negative impacts on the amenity of adjoining properties.*

There are varied dormer forms in the Lavender Bay area (see **Photographs 1 & 2**) and amended front dormer form will complement the streetscape and the current roof form.



Photograph 1: 15 King George Street



Photograph 2: 22 Mackenzie Street

With respect to public view loss, we have viewed photos provided by our client in both summer and winter which demonstrate that the surrounding existing built form (of Nos 37 and 33 Bay View Street and other buildings to the south) obscure any views beyond the site from the street, and therefore the dormer would have no detrimental effect (see **Photographs 3 & 4**).



Photograph 3: Tree in full leaves



Photograph 4: Bare Tree – no effect on views

In this location, we would not expect any private view loss as all views from nearby dwellings would be over the existing roof, noting the dormer is below the ridgeline as required by the DCP.

2.0 REAR DORMER

both to be reduced to minimise public and private view impacts

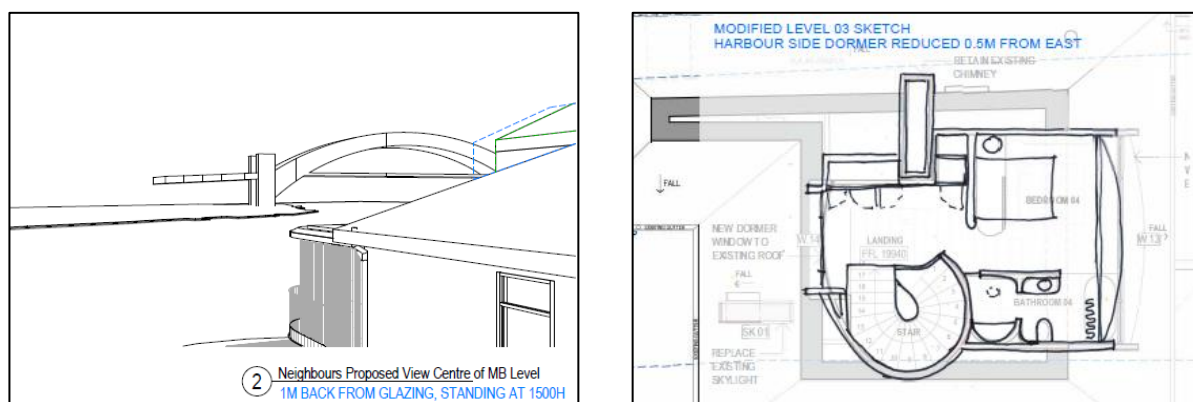
In preliminary assessment it was commented that the rear dormer would not retain existing iconic views of the Sydney Harbour Bridge from the upper level of 37 Bay View Street. As explained in our phone call, at the time of preparing the report, we were not aware the adjacent site was to be redeveloped.

As such, there was no 'existing iconic views' which would be obscured by the proposed dormer because the dormer had been carefully designed as an attic form which was above the roof line of No. 37 Bay View Street.

The neighbour's architects provided information which indicated likely view loss. We note the viewing position was taken from the future Master Bedroom's bed. The location was 1200mm above floor level at the bedhead. This is not how views are assessed under the *Tenacity* planning principle, where standing views are assessed one metre from glazing. Thus, the viewing loss as proposed by the neighbours' architect is an acute view, from a location which would not generally be considered. Furthermore, there are inconsistencies in the very preliminary drawing elements provided to Litera Trotta which indicate full height glazing, facing the side wall of our client's site.

While in our experience Councils do not generally consider unapproved concept plans, we have discussed the potential view loss with Litera Trotta Architects, and they have reduced the projection of the rear dormer. Additionally, our client was happy to accommodate relocating of a new chimney flue, to within the existing Victorian chimneys of the dwelling.

Accordingly, revised views were prepared as would be assessed under *Tenacity*, and these demonstrate there would be minimal effect on the iconic views of the Sydney Harbour Bridge from the windows of a future Master Bedroom of a potentially redeveloped No. 37 Bay View Street. (see **Figure 2**).



Source: Litera Trotta Architects

Figure 2: Potential Views from No. 37 Bay View Street

While the neighbour is also claiming a wish to view the Packer Tower at Barangaroo, this is not classified as an iconic view, and is across a side boundary (and those of neighbours) from a point which would effectively quarantine any further development on our clients' site.

In acknowledging the dormer's additional height above the stepped height limit, we would point Council has supported other dormers above the height limit in the vicinity. A dormer is an effective way to provide more internal space within a built form's maximum height, in a manner which limits effects on streetscape etc. The proposed reduced dormer form has a proportion and scale which is consistent with numerical requirements under the DCP.

In terms of the proposed future Complying Development Certificate under the SEPP (Exempt & Complying Development Codes) 2008, as described by the neighbours' submission, we do question whether the extent of development claimed could be approved as a CDC. The existing dwelling is already up to three storeys and a pitched roof. The proposal includes a garage proposed forward of the existing building line, and with zero setback to the boundary between No.37 and No.35. Furthermore, this structure on the boundary is proposed to be two storeys high. Adjacent to the proposed Master Bedroom, a rooftop terrace is also proposed.

Since the terrain is similar to the subject site, we consider it likely that the form proposed would exceed the Codes height limit and therefore would not be approved as a CDC.

Litera Trotta have collated drawings which indicate the future building currently being designed for the site at No. 37 Bay View Street appears likely to be four storeys. This includes an image shown to LTA by the neighbours' architects (see **Figure 3**).

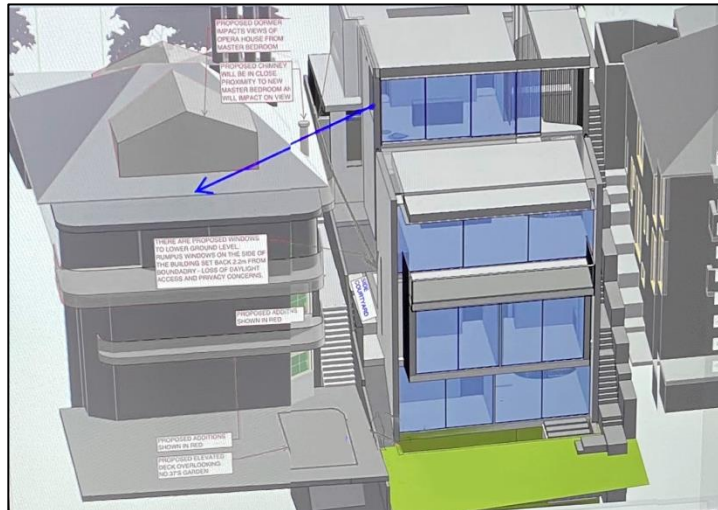
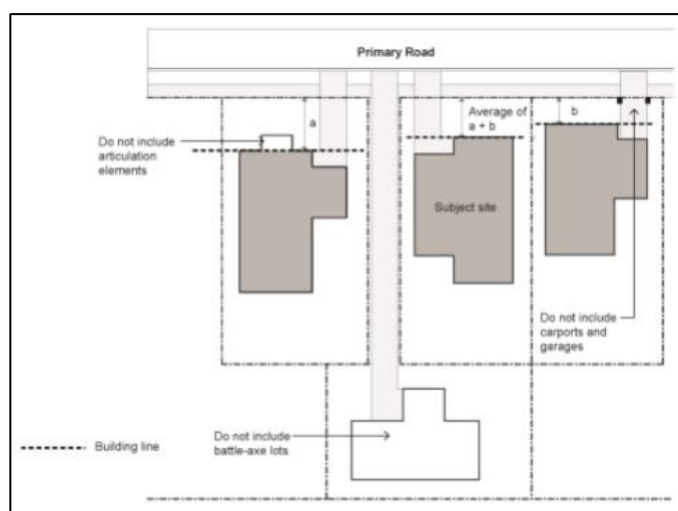


Figure 3: Neighbours' Architect's Image of Proposal at No 37 Bay View Street

This would appear inconsistent also with the Codes SEPP which permits one or two storey development, and limited basements, which are counted as a storey. For more detailed information, please refer to the LTA drawings.

Additionally, the snippets of drawings indicate a two storey frontage set back only 1100mm from the front boundary. From the SEPP (Exempt & Complying Development Codes) 2008, this appears to be inconsistent with the SEPP requirements, which specifically excludes carports and garages when calculating average front setbacks (see **Figure 4**).



Source: Codes SEPP

Figure 4: Method for Calculation of Front Setbacks

A likely average is depicted below in **Figure 5**, which relocates a building further back than the drawings.



Source: SIX Maps

Figure 5: Front Setbacks on either side of No 37 Bay View Street

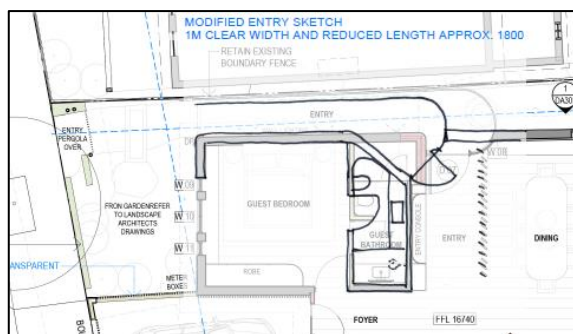
While we appreciate your view that redevelopment is likely, the neighbours' future CDC application might not be approved by a certifier, and therefore the building will either be reduced, or a development application will be required. Therefore, we respectfully point out that it could be considered onerous for Council to require extensive modifications based on a 'potential' and undeveloped proposal, which might not be approved, and might never be constructed.

3.0 SIDE ELEVATED WALKWAY

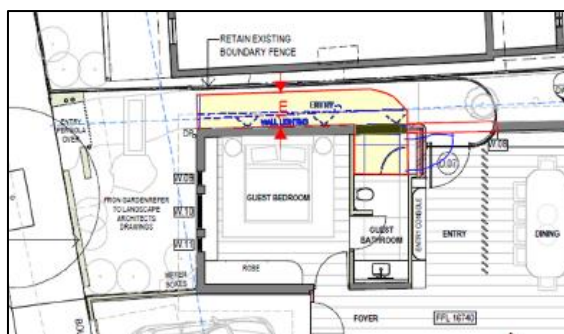
to be relocated to front of dwelling (preferably)

The architects have considered your proposal that the dwelling entry is relocated to the front elevation, however this would disrupt the street elevation which includes the triple window formation. While the Heritage Impact Statement prepared by Zoltan Kovacs notes there is little Victorian ornamentation left to the building, this is a pleasing arrangement (albeit stripped) and to insert a door into the elevation would require its removal. As well, the adjacent room is also of good proportions, and would allow casual surveillance of the street.

LTA have reduced the length of the elevated walkway and splayed the entry to the dwelling, which provides an angled entry to the dwelling. The width is also reduced to one metre clear, which is setback to the common boundary (see **Figure 6**). This reduces slightly the adjacent en-suite. We note that the neighbours' architect had proposed a reduction in the length of the walkway, and that our amended proposal depicts an equivalent reduction. Again, when this was submitted, it was on the assumption it was adjacent to a blank wall.



Amended Proposal



As proposed by neighbour's architect

Figure 6: Adjusted Suspended Walkway

The side walkway amendment is supported by the Heritage Advisor, Zoltan Kovacs, who stated:

the recess in your latest sketch should be acceptable: it is not uncommon and quite traditional to have recessed side entrance porches, provided we keep the roof uninterrupted above and if possible even a masonry lintel to provide a continuous reading of the wall plane

Council can be satisfied this is a sensitive and suitable alternative to forming an opening in the front façade.

4.0 FRONT CARPORT

greater degree of transparency, maybe change to materiality – reduce visual impact on public domain).

LTA have prepared a sketched construction detail which shows how transparency would be achieved; and a rendering depicts 60% transparency (see **Figure 7**). As discussed, this would need to be a panel lift door due to the span and the limited head room. To further increase transparency, the northern side to the carport would also be open with the same style of screening. The intention is to allow filtered views of the carport area; however, views of the dwelling façade are less likely due to the carport's dark interior.



Source: Litera Trotta

Figure 7: Photomontage Showing 60% Transparency to Carport Door

We note No. 39 Bay View street had approval for their carport to be converted as an enclosed garage; and No. 3 Bay View Street uses timber on the garage door so the redesign is also consistent with the streetscape (see **Photographs 5 & 6**).



Photograph 5: No 3 Bay View Street with solid timber garage door



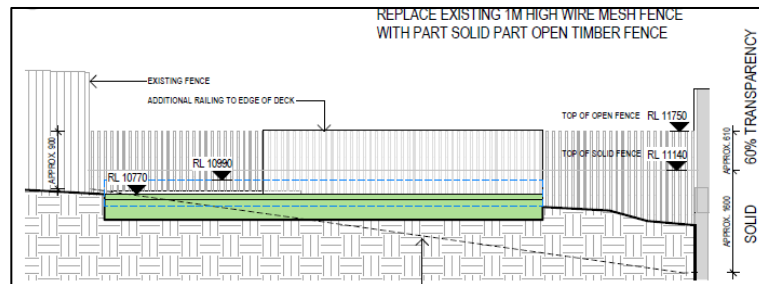
Photograph 6: No 39 Bay View Street with solid timber garage door

5.0 GROUND LEVEL PRIVATE OPEN SPACE

to be lowered to match EGL – centrally located or improve boundary screening and landscaping.

LTA have prepared drawings showing the deck area lowered (by 220mm) and repositioned further south, with a balustrade and planter for greater separation. Additionally, a timber lapped and capped boundary fence to 1600mm high is proposed, with timber slats extended above to 600mm high, as a lattice equivalent (see **Figure 8** on the following page).

The lowered ground level adjacent to the boundary would include planting for a further buffer. The drawings show a shallow viewing angle which would extend across the site, rather than downwards into the adjacent garden. This is considered an improvement on the existing wire fence and passionfruit vine, which provides only limited privacy.



Source: Litera Trotta

Figure 8: Partially Solid and Partially Open Side Fence adjacent to Lowered Deck

6.0 CLAUSE 4.6

As discussed, the Clause 4.6 request will be updated to reflect the reduction in additional height achieved by relocating the rear dormer closer to the roof line. As well, we will provide some commentary on existing iconic views of the Sydney Harbour Bridge from the current roof and potential future upper level of 37 Bay View Street, under the *Tenacity* planning principle.

7.0 CONCLUSION

In conclusion, LTA have commented that No. 35 Bay View Street is the only DA in 20 years on the street that did not seek to demolish the house nor alter the roof line. The house is not a heritage item nor within a conservation area but in the vicinity of items. An easy alternative would have been to demolish and build a compliant “box” form, which seems to be the emerging character of recent developments on the street.

We consider non-compliant proposal, when done well, can achieve a more desirable outcome than a compliant one. In our view, the proposal as submitted, and as amended following our conversation, achieves the zone objectives, the height standard objectives, and the desired character of the area.

We look forward to your comments.

If you require further information, do not hesitate to contact our office on 9362 3364.

Yours faithfully,

Yvette Middleton
ASSOCIATE DIRECTOR