

**NSLPP MEETING HELD ON 6/10/21****Attachments:**

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

ADDRESS/WARD: 5 Earle Street, Cremorne**APPLICATION No:** DA63/2021**PROPOSAL:** Construction of a dwelling house, retaining walls and associated landscaping**PLANS REF:**

Plan No	Issue	Title	Dated	Prepared	Received
5	C	Site Plan	17 July 2021	Peak Architecture	4 August 2021
6	C	Floor Plans	17 July 2021		4 August 2021
7	C	Floor Plans	17 July 2021		4 August 2021
8	C	Ground Floor Plan	17 July 2021		4 August 2021
9	C	First Floor Plan	17 July 2021		4 August 2021
10	C	Second Floor Plan	17 July 2021		4 August 2021
11	C	Roof Plan	17 July 2021		4 August 2021
12	C	Landscape Plan	17 July 2021		4 August 2021
16	C	Northern Elevations	17 July 2021		4 August 2021
17	C	South Elevation	17 July 2021		4 August 2021
18	C	East & West Elevations	17 July 2021		4 August 2021
19	C	Sections A&B	17 July 2021		4 August 2021
20	C	Section C	17 July 2021		4 August 2021
21	C	Window & Door Schedule	17 July 2021		4 August 2021

OWNER: Jiazhen Tian**APPLICANT:** Rahmani Esan**AUTHOR:** Report of Michael Stephens, Senior Assessment Officer**DATE OF REPORT:** 24 September 2021**DATE LODGED:** 15 March 2021**RECOMMENDATION:** Approval (Deferred Commencement)

EXECUTIVE SUMMARY

This development application seeks approval for construction of a part 2, part 3 storey dwelling house with a double garage, retaining walls and associated landscaping. and is reported to North Sydney Local Planning Panel for determination as the proposed development breaches the maximum permitted building height by 10%.

The written request to vary the development standard in clause 4.3 satisfactorily demonstrates that strict compliance with the development standard is unreasonable and unnecessary in the circumstance as the proposed development is consistent with the objectives of the standard and that there are sufficient environmental planning grounds to justify the variation. The proposed variation is caused by the previous excavation where the previous dwelling has been demolished under CDC142/20. Without demolition, the proposed development would otherwise comply with the development standard when compared to the existing land levels within the side setback areas which provide a reasonable indication of the height of the proposed development in its setting.

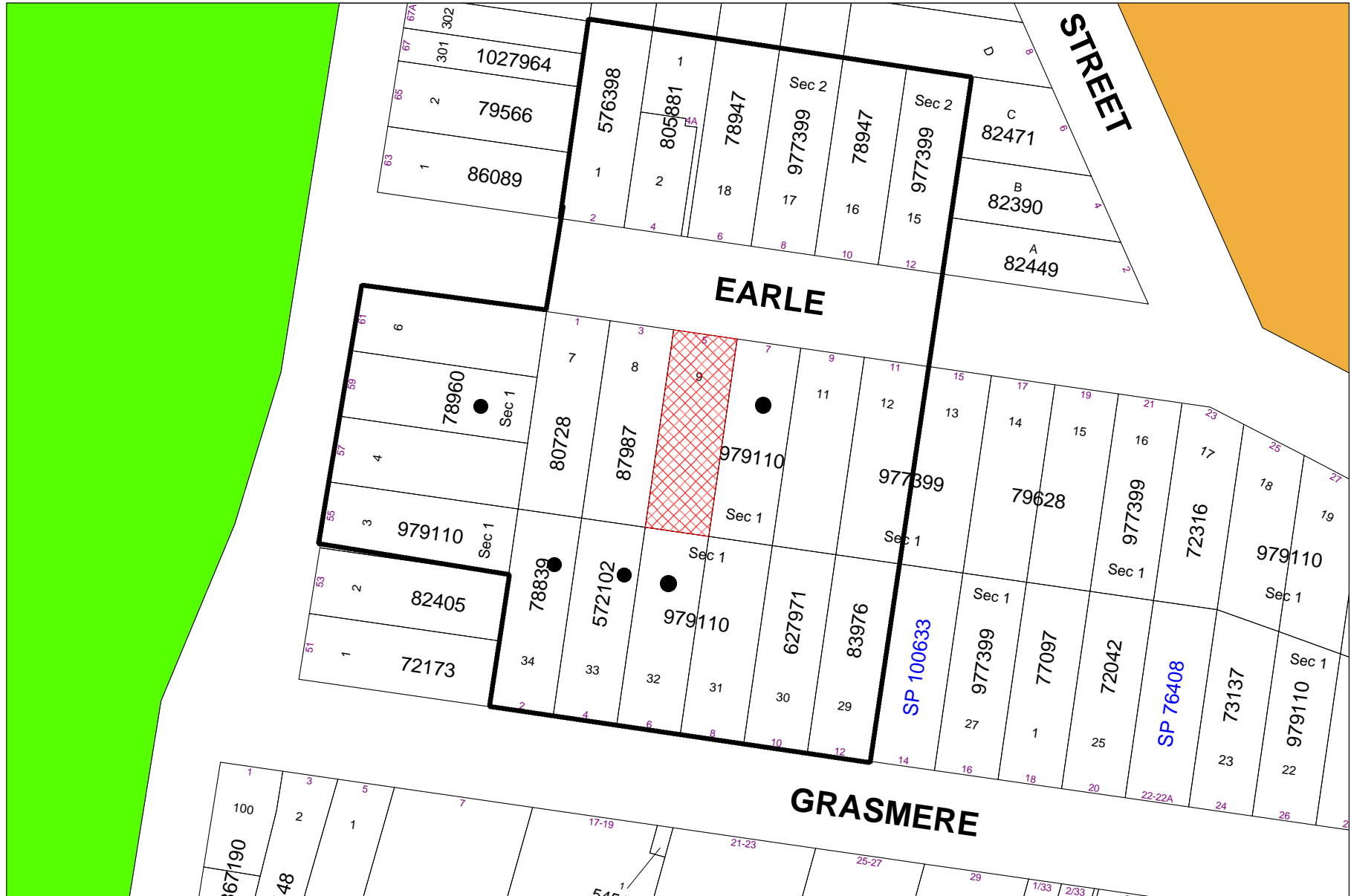
The proposed dwelling has a more contemporary design, however, the subject site is located within an area that includes mixed architectural styles from different periods of development. The use of materials and high quality finishes would provide an attractive built form softened through the proposed landscaping.

The proposed development complies with the relevant numerical building envelope and landscaping controls. The proposed rear building line extends beyond the prevailing rear building line of the adjoining properties however complies with the Benelong Neighbourhood character statement and would have an acceptable impact on the amenity of the adjoining properties, with the exception of the proposed overhang which exacerbates the inconsistency between the adjoining properties and creates an incohesive built form. A deferred commencement condition is recommended to realign the rear building line by removing the proposed overhang on the upper most level.

Notification of the proposal has attracted seven submissions raising particular concerns regard the proposed building height, built form character, bulk and massing, privacy, views, solar access and landscaping.

The application has been assessed having regard to the submissions received and the relevant development controls and is considered to be reasonable in the circumstances and is recommended for **deferred commencement approval** subject to conditions

LOCATION MAP



Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

This development application seeks consent for construction of a part 2, part 3 storey dwelling house with a double garage, retaining walls and associated landscaping.

The proposed works include:

Dwelling House

Ground Floor - RL 53.600

- Two vehicle garage
- Front foyer
- Bedroom 1
- Bathroom
- Office
- Home gym and sauna
- Laundry
- Home theatre
- Wine Cellar

First Floor - RL 56.800

- Open plan kitchen, living and dining area with a rear patio area at ground level.
- Bathroom
- Two bedrooms, one with an ensuite, with a shared front balcony,

Second Floor - RL 60.100

- Two bedroom, one with ensuite and walk in robe.
- Bathroom
- Secondary living room with front balcony

Front Fence

- Masonry front fence to a maximum height of 0.9m above the footpath level.

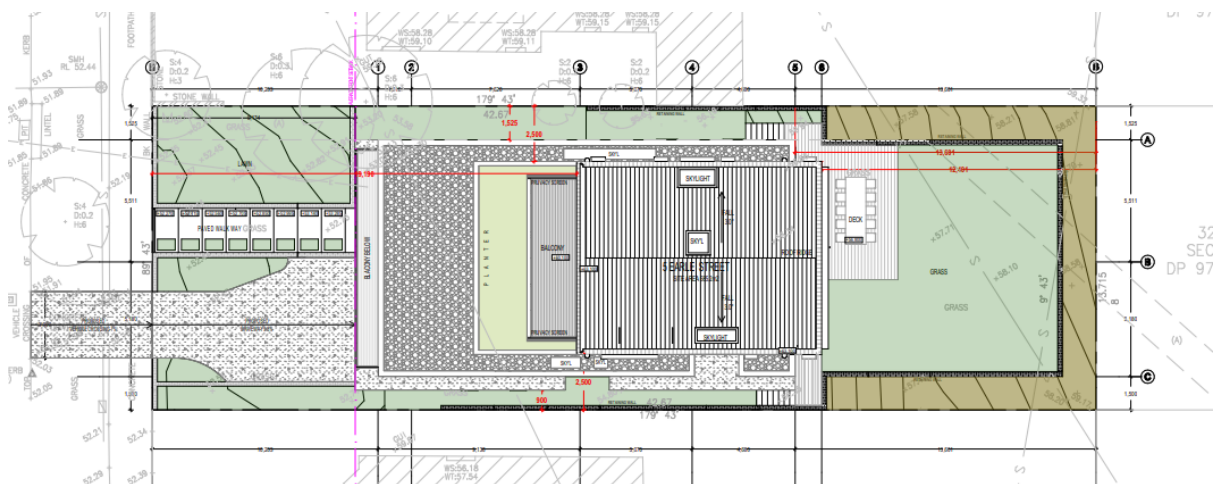


Figure. Site Plan

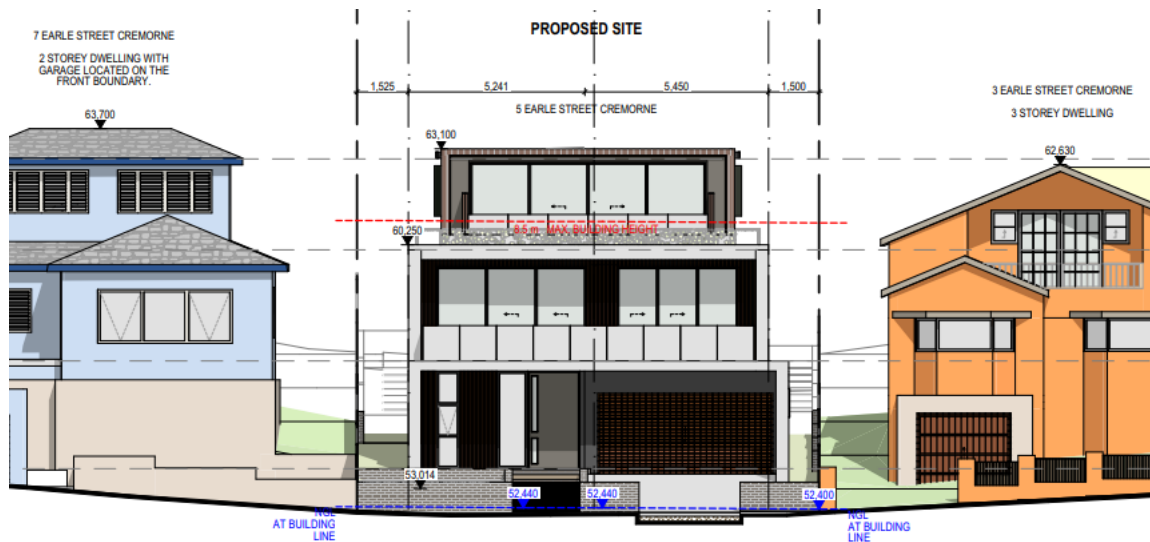


Figure 2. Northern Elevation

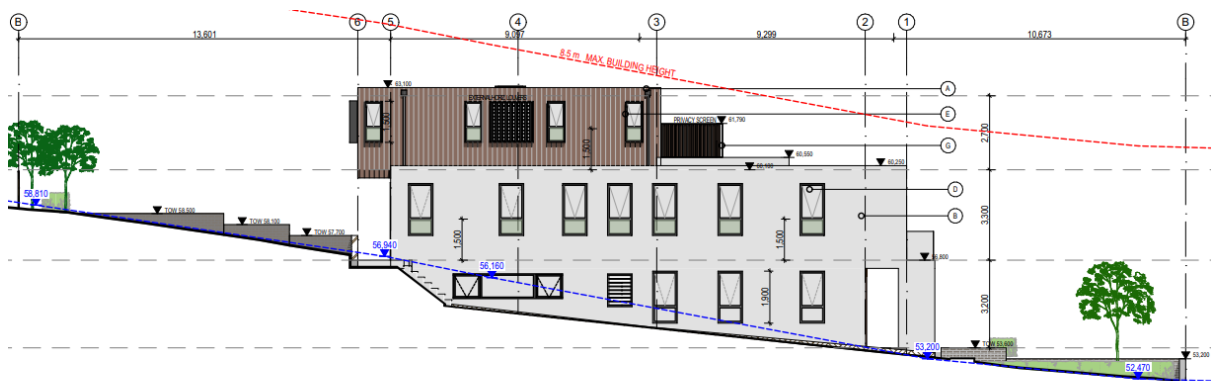


Figure 3. Eastern Elevation

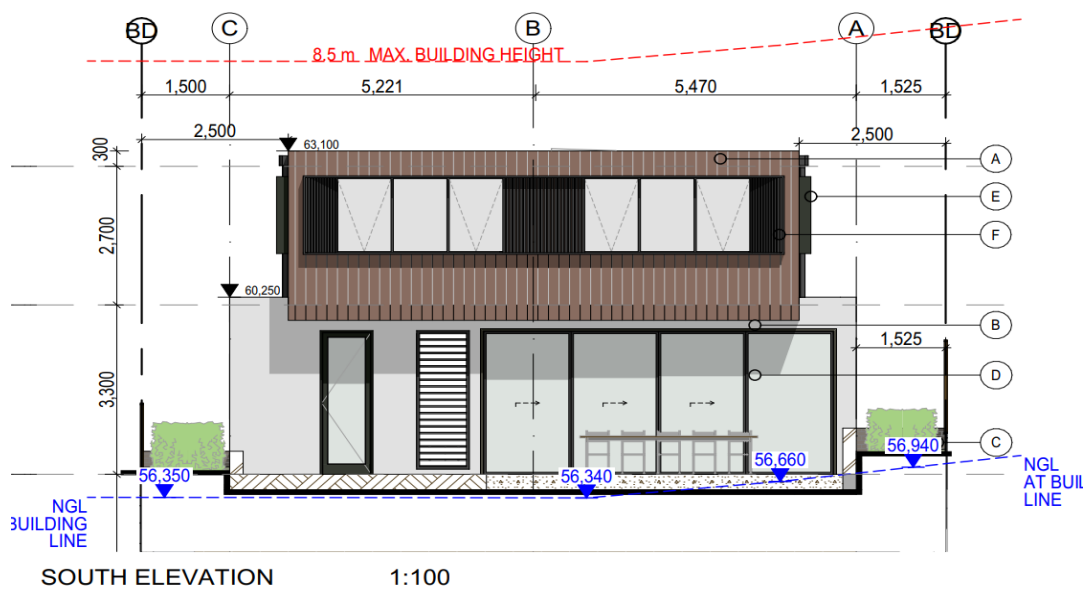


Figure 4. Southern Elevation

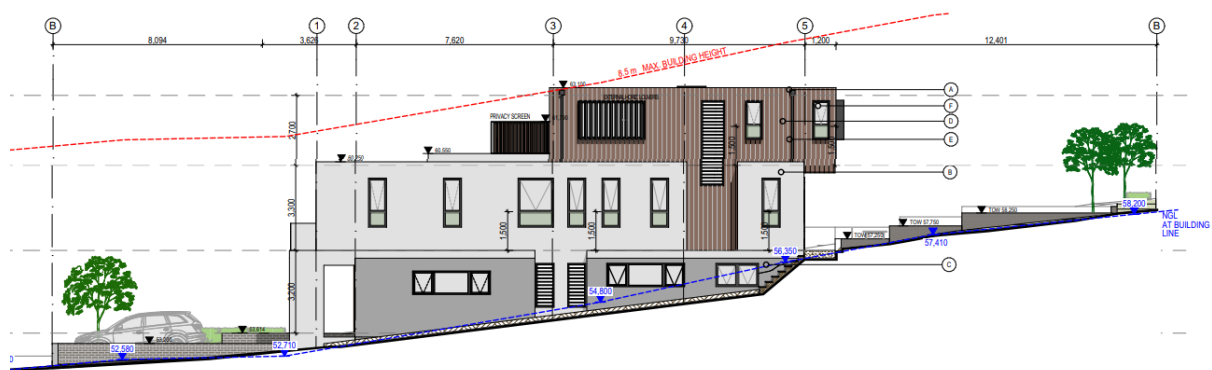


Figure 5. Western Elevation

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning - R2 Low Density Residential
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- Conservation Area - No

Environmental Planning and Assessment Act 1979

- Section 7.11/12 Contribution

SEPP No. 55 - Remediation of Land and Draft Remediation SEPP

SREP (Sydney Harbour Catchment) 2005 and Draft Environment SEPP

SEPP (Building Sustainability Index: BASIX) 2004 and Draft Design and Place SEPP

SEPP (Vegetation in Non-Rural Areas) 2017

Local Development

POLICY CONTROLS

North Sydney Development Control Plan 2013

Sydney Harbour Foreshore and Waterways Development Control Plan 2005

North Sydney Development Contributions Plan 2020

DESCRIPTION OF THE LOCALITY

The subject property is described as Lot 9, Sec 1 of DP 979110 and is known as 5 Earle Street, Cremorne. The site is located on the northern (high) side of Earle Street between Park Avenue and Grafton Street. The subdivision pattern is rectilinear. The site has a width of 13.715m and depth of 42.67m, equating to a site area of 585.22sqm. The subject site is zoned R2 Low Density Residential. The site is not listed as a heritage item or located within a conservation area.

The land slopes from the rear to the front by approximately 6m. There is little cross fall and each adjoining dwelling is located at a higher level than the subject site which is located within a dip along Earle Street.

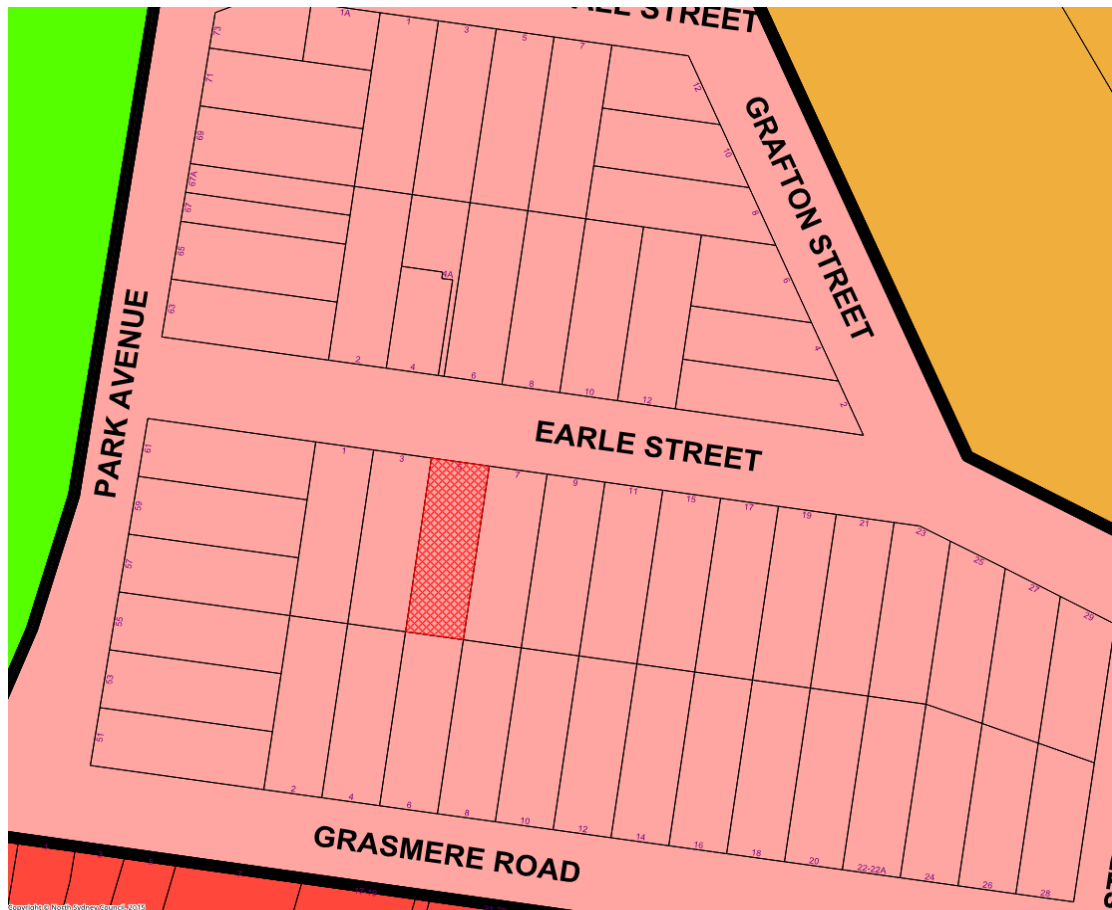


Figure 6 NSLEP 2013 Land use zoning map with the subject site shown crosshatched in red.

The site is currently vacant following the demolition of a dwelling house under a complying development certificate. There is an existing vehicle crossing and a *Callistemon* street tree within Council's verge. The streetscape includes a mixture of two and three storey dwelling houses which reflect the various periods of development. There are also a number of double garages located within the front setback of nearby dwellings.



Indirect views are available to Willoughby Bay of Middle Harbour to the north east from the upper levels of some dwellings surrounding the subject site.

RELEVANT DEVELOPMENT HISTORY

Complying Development Certificate **CDC 142/2020** for demolition of an existing dwelling house.

RELEVANT APPLICATION HISTORY

A pre-lodgement meeting was held with the applicant on 10 December 2020.

Date	Assessment
15 March 2021	The development application was lodged with Council.
18 March 2021	A "Stop the lock" Letter was sent to the Applicant requesting a current site survey and an amended clause 4.6 variation.
19 March 2021	The application was notified in accordance with Council's Community Engagement Protocol from 26 March 2021 until 9 April 2021.
29 April 2021	The additional information request 18 March 2021 was provided to Council.
	A site inspection was undertaken by Council Assessment Staff.
6 June 2021	A preliminary assessment letter was sent to the application outlining issues regarding the building height, location of the garage and the submissions.
27 July 2021	The applicant lodged amended Plans with Council.
4 August 2021	The amended application was renotified in accordance with Council's Community Engagement Protocol from 13 August 2021 until 27 August 2021.

REFERRALS

Engineering

The application was referred to Council's Development Engineer who raised no objection to the proposed works and recommended standard conditions of consent.

Landscaping

The application was referred to Council's Landscape Development Officer who provided the following assessment requiring the retention of a number of trees within the rear of the site. The following trees are considered to be worthy of retention and would not be impacted by the proposed construction of the dwelling. Some amendments would be required to the proposed landscaping and retaining walls within the rear of the site to accommodate the retention of these trees which are reflected in the recommended conditions of consent.

Tree No.	Species	Height	Location
T10	<i>Lagerstroemia indica</i>	7m	Rear setback area
T15	<i>Lagerstroemia indica</i>	7m	Rear setback area
T16	<i>Camelia japonica</i>	3m	Rear setback area

Standard conditions of consent including the protection of the existing street tree and additional tree replenishment were also recommended.

SUBMISSIONS

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.

The development application was notified in accordance with Council's Community Engagement Protocol from 26 March 2021 until 9 April 2021. Five submissions were received which are summarised below.

The applicant lodged amended plans that were renotified in accordance with Council's Community Engagement Protocol from 13 August 2021 until 27 August 2021. A further two submissions were received which are also summarised below.

Basis of Submissions

- The height and size of the dwelling out of proportions to the area.
- The design of the dwelling does not fit with the surrounds.
- The proposal breaches the maximum permitted building height.
- The proposed building should be limited to two storeys.
- The outlook to the verdant valley towards the north east would be lost.
- The height standard should be upheld to maintain the privacy and amenity of the surrounding dwellings.
- The proposed development would overshadow the eastern elevation of the adjoining property at 3pm in midwinter.
- The rear elevation of the proposed dwelling would overlook the rear private open space, swimming pool, living areas and bedrooms of the adjoining property to the rear.
- The proposed development would block views from the adjoining property to the rear.
- The removal and replanting of the existing trees along the rear boundary of the site would reduce privacy.
- The proposal breaches the maximum permitted building height.
- The proposed development would block views of Cammeray and Middle Harbour from the surrounding properties to the rear.
- The proposed rear elevated deck would impact the privacy of the surrounding properties to the rear.
- The proposed windows within the rear elevation would overlook surrounding properties to the rear.
- The scale of the proposed development is inconsistent with the streetscape and is excessive for the site.
- The proposed landscaping would not achieve the required landscaped area given the inclusion of the side setback areas in the calculation.
- The proposed rear building line is excessive with the upper level shifted closer to the rear boundary.

The submissions may be viewed by way of the DA tracker on Council's website and are available for review by NSLPP members.

CONSIDERATION

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

State Regional Environmental Policy (Sydney Harbour Catchment) 2005 and DRAFT Environment SEPP

The subject site is not highly visible from Sydney Harbour or its foreshores. The proposal therefore would not impact upon the scenic quality of Sydney Harbour or its waterways and is considered acceptable with regard to the above SREP and Draft Policy.

State Environmental Planning Policy 55 - Remediation of Land and Draft Remediation of Land SEPP

The provisions of SEPP 55 require Council to consider the likelihood of land contamination and any remediation necessary to rehabilitate the site. Council's records indicate that the site has previously been used for residential development and as such is unlikely to contain any contamination; therefore, the requirements of the above SEPP have been satisfactorily addressed.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The applicant has submitted a valid BASIX Certificate to satisfy the requirements of the above SEPP. Refer to Condition C25 and G6

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The proposed development seeks consent for the removal of a number of trees within the rear of the site including trees protected by Council's Tree Management Plan in Section 16 of Part B in NSDCP 2013. Council's Landscape Development Officer has recommended the retention of a number of healthy, well located trees which would contribute to the landscape character of the area and would be further supported by the proposed landscaped planting scheme which includes garden areas with screen planting and small feature trees. Subject to conditions (**Refer to condition AA1 and C17**), the proposed development would satisfy the objectives of the Policy.

NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013

Permissibility

The subject site is zoned R2 Low Density Residential. The development application seeks consent for construction of a dwelling house which is a permitted use within the R2 Low Density Residential zone.

Objectives of the zone

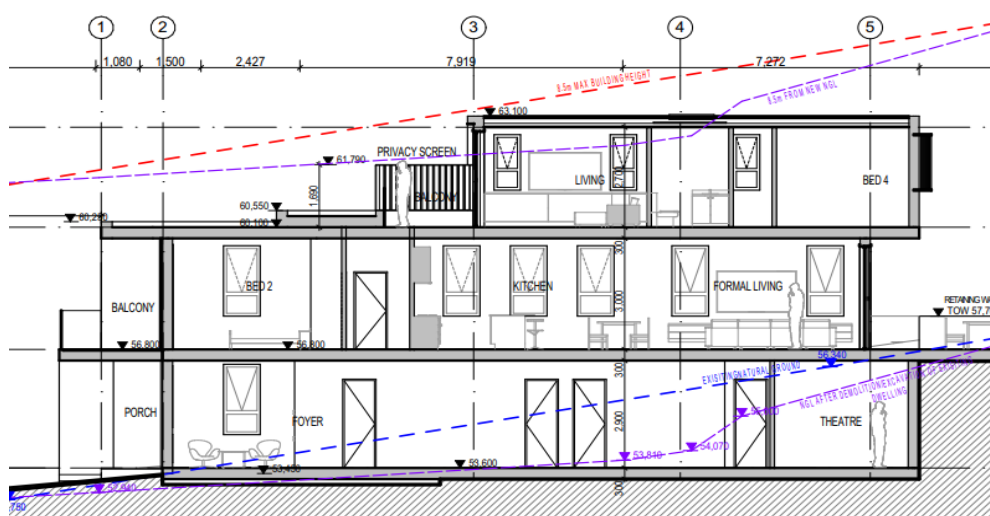
The objectives of the R2 Low Density Residential zone are as follows:

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

The proposed dwelling would provide for the housing needs of the community within a low density zone. Whilst there would be a non-compliance with the permitted building height, there would be no unreasonable impacts for adjoining properties in terms of overshadowing, view loss and impacts on acoustic and visual privacy as demonstrated throughout this report. Consequently, the proposed development is considered to be consistent with the objectives of the zone.

Clause 4.3 - Height

The subject site has a maximum permitted building height of 8.5m pursuant to clause 4.3(2) in NSLEP 2013. The proposed development has a maximum height of 9.45m measured from existing ground level. The proposed variation equates to 0.95m or 10%.



In accordance with the requirements of Clause 4.6 in NSLEP 2013 the applicant's written submission is assessed below.

Clause 4.6 - Exceptions to Development Standards.

A written request to contravene the development standard for height has been submitted and has been considered below.

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

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

The height variation is caused by the excavation of the site undertaken during the demolition of the previously existing dwelling house. The depression in the land relates to the previous dwelling footprint and reflects the lower ground floor level of the dwelling.

The proposed development would otherwise generally comply with the development standard if measured from the existing ground level within the eastern and western side setbacks where the ground level remains undisturbed. The levels have also been compared against the submitted survey which is generally aligned with indicative existing ground level line (blue) transposed through the building sections and elevations.

This methodology is consistent with the approach in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 which found that a more accurate indication of the maximum height of the building was provided by measuring it in its context.

In this instance the ground floor level is largely located within the existing depression in the land and is excavated towards the rear where it is considered a basement. The upper level of the proposed dwelling is setback towards the rear of the site to maintain a two storey built form at the front the rear of the building with a portion being partly three storeys through the middle. This stepping of the proposed built form generally follows the slope of the land from the rear to the front. The subject site is also located within a low point in the street with the land falling from both the eastern and western sides towards the site.

A comparison of the proposed building height to the existing undistributed ground level within the eastern and western side setbacks demonstrates that the dwelling has been steeped to follow the natural topography of the area. The use of the previously excavated area provides no detriment to the adjoining properties in comparison to a complying built form had the site not been partially excavated.

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

The surrounding properties to the rear enjoy an outlook over the subject site towards the suburban area of Cammeray peninsular with its leafy character although does not strictly constitute a view for the purpose of this objective. Nevertheless, the proposed dwelling is similar in scale to the adjoining properties and complies with the maximum permitted building height towards the rear where the building is two storeys with a flat roof.



Figure 7: Existing outlook from properties in Grasmere Road to the rear of the subject site.

The outlook towards Cammeray is currently blocked by the existing trees along the rear boundary of the subject site that would be maintained with the proposed development as seen from the dwellings at the rear of the subject site.

The proposed development would not adversely impact any views to Middle Harbour to the north-east as the subject site is within the low point within the street. The adjoining property to the west is part two, part three storeys although does not have any windows along the eastern elevation of the upper level that would be required to be able to benefit from water views. Nevertheless, the upper level of the proposed dwelling is set further towards the rear than the adjoining dwellings northern windows and would not impact any views, if even available, at an oblique angle.

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

As indicated above, the proposed building generally complies with the permitted building height control in comparison to the existing ground level surrounding the building. Therefore, the resulting overshadowing caused by the proposed development is consistent with a compliant built form. The proposed development also incorporates strictly complying side setbacks.

The existing development pattern has a favourable north south orientation and as a result many dwellings along the street are designed with living rooms orientated with towards the north. The proposed variation would not create any material overshadowing greater than a complying form.

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

The proposed dwelling includes appropriate design details such as raised windows sills and fixed privacy screening to prevent any overlooking from the upper level where the numerical non-compliance occurs.

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

The proposed development would be compatible with the surrounding development. The subject site does not share a zone boundary.

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

As noted above, the height of the building is consistent with the existing topography where the site has not been previously excavated. The height of the dwelling is also consistent with the ridge height of the adjoining properties. The proposed dwelling has a flat roof. However, the upper level has been set in from the floor below on the side and front and utilises a different external cladding material to manage the bulk and massing of the building and soften the built form.

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

It is considered that there are sufficient environmental planning grounds in the circumstances of the case that justify the contravention of the development standard. The following environmental planning grounds were advanced as summarised below:

- *The variation relates to the central excavated area of the site where the previous dwelling has been demolished.*
- *The subject site falls from the rear to the front by approximately 6.39m and the proposed dwelling has been designed to follow the topography should the land level be extrapolated through the excavated area.*
- *The portion of the dwelling that exceeds the maximum permitted building height would not be visibly discernible from the street as it is set back towards the rear of the dwelling.*
- *The roof height of the proposed development is comparable to the adjoining dwellings.*
- *The portion of the dwelling that exceeds the maximum permitted building height is confined to the leading roof edge and is set back from the front and side of the storey below.*
- *The portion of the dwelling that exceeds the maximum permitted building height would not result in unreasonable impacts to the adjoining properties.*
- *The proposed development is consistent with the aims of the Plan in Clause 1.2.*

- *The proposed development attains a number of the objectives of the Act in Section 1.3.*

It is generally concurred that the proposed variation is the result of the previous excavation of the site and that the design of the dwelling is consistent with the natural topography of the subject site and surrounding area and has been designed and articulated to reflect the topography and to prevent any unreasonable impacts to the adjoining properties. The proposed development is largely consistent with the extent of development permitted on the site noting the high degree of compliance with the relevant numerical DCP controls which are assessed in detail below.

Whether the proposed development will be in the public interest?


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

Concluding Remarks


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

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013 - Part B, Section 1 Residential Development		
	<i>Complies</i>	<i>Comments</i>
1.2 Function		
Maintaining residential accommodation	Yes	The proposed development would replace the existing dwelling demolished under CDC 142/2020.
Maintaining affordable housing	N/A	Part 3 in SEPP (ARH) 2009 does not apply to the proposed development.
1.3 Environmental criteria		
Topography	Yes Acceptable	<p>Proposed Dwelling</p> <p>The proposed multilevel dwelling is sited to address the existing topography of the subject site. The ground floor level aligns with the existing ground level at the front of the site. The ground floor level is excavated into the land which rises towards the rear and would be considered a basement towards the rear. The first floor (middle) level aligns with the existing ground level at the rear of the site and the proposed living room opens at grade to the proposed private open space within the rear setback area.</p> <p>Rear Private Open Space</p> <p>The existing rear setback area contains a number of trees within a sloping landscaped area. The proposed development seeks to excavate a portion of the rear setback area to align the ground level with the existing ground level at the rear of the dwelling</p>

		<p>to provide private open space area that would be directly accessed from the living room of the proposed dwelling. The proposed excavation is setback from the side and rear boundaries and retaining walls have been incorporated to manage the change in levels. The proposed excavation would not adversely impact the amenity of the adjoining properties and visual and acoustic privacy would be further increased as the usable area would be located further below the surrounding fence line.</p> <p>The proposed excavation would conflict with a number of trees which are proposed to be removed. Council's Landscaped Development Officer has recommended the retention of a portion of these trees which can be accommodated given that they are generally located within close proximity to the side and rear boundaries within the proposed garden bed areas. Conditions C# is recommended to ensure that the proposed excavation and construction of retaining walls would not adversely impact the health and stability of these trees.</p>
<p>Views</p>	<p>Yes</p>	<p>The area slope from the south towards the north as the topography of the area slope towards Middle Harbour towards the north-east. An outlook is also available to Cammeray with its leafy character. It is also noted that the proposed development is comparable in height to the adjoining property at No. 3 Earle Street.</p>  <p>Figure.8 View from rear elevated deck of Grasmere Road property (Also see Figure* above).</p> <p>Views from the surrounding properties to the rear which face Grasmere Road are limited as described above and would not be unreasonably impacted as the proposed development is two storeys at the rear and is generally consistent with the scale of surrounding development. The surrounding properties to the rear have an elevated position above the subject site and would retain views over the proposed development.</p>
<p>Solar access</p>	<p>Yes</p>	<p>The subject site has a favourable north south orientation. The proposed building would result in additional overshadowing to the adjoining property to the west (No. 3 Earle Street) in the morning hours between 9:00-10:00am and adjoining property to the east (No. 7 Earle Street) in the afternoon hours between 1:00-3:00pm, however, would not unreasonably impact solar access to either dwelling.</p> <p>The proposed development complies with the numerical side setback provisions and exceeds the numerical rear setback provision, despite extending beyond the prevailing rear building line. The resultant overshadowing is consistent with the extent of development permitted on the site.</p>

<p>Acoustic privacy</p>	<p>Acceptable</p>	<p>Private Open Space</p> <p>The proposed multi-level dwelling has been designed with the primary living area on the middle level which opens at grade to the rear setback area. Other secondary living areas are located within the lower ground floor and upper most level. The primary area of private open space is located within the rear setback area at ground level.</p> <p>The proposed front balcony area is accessed via bedrooms and is located above street level. The use of this balcony would be limited given its location adjacent to the road reserve and is unlikely to have an adverse impact on the acoustic privacy of the adjoining properties. A number of other dwellings in the street also have raised front balconies to take advantage of the favourable northerly aspect and views to Middle Harbour from the upper level.</p> <p>The proposed rooftop terrace area is accessed from the upper level is set back from either side boundary by 3.5m and is limited in size to minimise the use and therefore potential acoustic impact.</p> <p>The proposed dwelling would result in some increased acoustic impact given the inclusion of balcony and terrace areas however it is considered that these have been reasonably designed and located to minimise the potential acoustic impact and on balance provide reasonable amenity of the proposed dwelling.</p> <p>Mechanical Noise and Vibration</p> <p>The proposed lift equipment is located within the lower ground floor level of the dwelling and is set back from the side boundaries. The use of the lift is unlikely to result in any discernible noise or vibration within the proposed dwelling or adjoining properties. Conditions C20 & C21 are recommended that would ensure that the proposed lift is designed and installed to operate within acceptable tolerances.</p>
<p>Visual privacy</p>	<p>Yes</p>	<p>All windows on the eastern and western side elevations, except those located below the fence level, have a fixed and obscure lower portion to a minimum height of 1.5m above the internal finished floor level on each level or an external louvered privacy screen. These privacy measures would ensure that the adjoining properties would retain reasonable levels of privacy.</p> <p>The proposed first floor level front balcony is located at the front of the dwelling and would overlook the street and front setback areas of the adjoining dwellings. The proposed blade wall ends of the dwelling extend along the majority of the depth of the proposed balcony along each side edge which would reasonably prevent overlooking to the adjoining properties to the east and west.</p> <p>The proposed second floor level front roof terrace area is limited in size to 15sqm which complies with Provision P8 of Section 1.3.10 of Part B in NSDCP 2013. The terrace area is accessed from the adjoining living area and is setback from the front and sides of the building to minimise the potential impact to the adjoining properties. An angled louvered privacy screen is also incorporated along each side of the terrace area to prevent direct overlooking to the adjoining properties.</p> <p>The rear deck area is located at existing ground level and would not affect the privacy of the adjoining dwellings. The rear setback is surrounding by landscaped screening along the side and rear boundaries.</p>
<p>1.4 Quality Built Form</p>		
<p>Context</p>	<p>Yes</p>	<p>The proposed dwelling addresses the topography of the site and the wider street. The lower ground floor level aligns within the existing topography at the front of the dwelling and the middle level aligns with the existing topography at the rear of the dwelling. The design of the dwelling is more contemporary which is considered acceptable within the Benelong Neighbourhood character area.</p>
<p>Siting</p>	<p>Yes</p>	<p>The street has a rectilinear subdivision pattern. The proposed dwelling aligns with the development pattern of surrounding properties and is sited parallel to the site boundaries. The proposed building complies with the numerical setback requirements and is stepped to address the fall of the land from the rear to the front.</p>

Front Setback	Yes	The front setback of the proposed dwelling is 11.15m and generally aligns with the prevailing front setback line of the street as it is approximately 0.8m behind the average setback of the surrounding dwellings.																			
Setbacks	Yes	<p>The proposed side setbacks are assessed against the side setback controls in section 1.4.6 of Part B in NSDCP 2013.</p> <table border="1" data-bbox="722 432 1289 622"> <thead> <tr> <th></th> <th>Eastern</th> <th>Western</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Ground Floor (<4m)</td> <td rowspan="2">1.5m</td> <td rowspan="2">1.5m</td> <td rowspan="2">Yes</td> </tr> <tr> <td>0.9m</td> </tr> <tr> <td>First Floor (<7m)</td> <td rowspan="2">1.5m*</td> <td rowspan="2">1.5m*</td> <td rowspan="2">Yes</td> </tr> <tr> <td>1.5m</td> </tr> <tr> <td>Second Floor (>7m)</td> <td rowspan="2">2.5m</td> <td rowspan="2">2.5m</td> <td rowspan="2">Yes</td> </tr> <tr> <td>2.5m</td> </tr> </tbody> </table> <p>* The external wall height at the front of the dwelling has a maximum height of 7.2m above the existing ground level. Due to the sloping topography of the site the variation is only present for a length of 800mm. The variation is considered negligible and does not result in any material impact on the amenity of the adjoining dwellings.</p>		Eastern	Western	Compliance	Ground Floor (<4m)	1.5m	1.5m	Yes	0.9m	First Floor (<7m)	1.5m*	1.5m*	Yes	1.5m	Second Floor (>7m)	2.5m	2.5m	Yes	2.5m
	Eastern	Western	Compliance																		
Ground Floor (<4m)	1.5m	1.5m	Yes																		
0.9m																					
First Floor (<7m)	1.5m*	1.5m*	Yes																		
1.5m																					
Second Floor (>7m)	2.5m	2.5m	Yes																		
2.5m																					
Rear Setback		<p>The Benelong Neighbourhood character statement requires a minimum rear setback of 10m. The proposed dwelling has a rear setback from the rear boundary of the site of 13.6m at ground level (middle level) and 12.4m at the first floor level (upper level). The first floor level overhangs the ground floor level by 800mm. The proposed rear building line extends beyond those of the directly adjoining properties.</p>  <p>Figure 9. Rear Building Line Analysis</p> <p>Whilst the proposed development exceeds the rear building line of the adjoining properties, these properties are not considered to be developed to the extent permitted by NSDCP 2013. The proposed dwelling complies with the site coverage provision and side setback controls and aligns with the prevailing front building line. The proposed dwelling is two storey at the rear where it exceeds the length of the adjoining dwellings and is significantly below the maximum permitted building height being approximately 6m in height.</p> <p>The extent of the dwelling beyond the rear building line of the adjoining dwellings would result in some visual impact given the massing and scale of the dwelling and some additional overshadowing to the private open space however the proposed overhang of the upper level further to the rear exacerbates these potential impacts and provides an incohesive form. Consequently, Condition AA1 A is recommended to realign the rear building line to reduce the bulk and scale of the building.</p> <p>Subject to the realignment of the rear building line, these impacts however are consistent with the applicable development controls and would not have an unreasonable impact on the adjoining properties.</p>																			
Front fences	Yes	The proposed front fence is constructed of masonry and has a maximum height of 0.9m above the adjacent footpath level. The proposed fencing complies with the fencing controls and likely to provide good visibility from the dwelling to the public domain.																			

Form, massing and scale	Yes	<p>The proposed development does not strictly comply with the maximum permitted building height in Clause 4.3 in NSDCP 2013 however the submitted Clause 4.6 written request is considered to adequately address the variation which is primarily caused by the existing depression in the land where the previous dwelling has been demolished.</p> <p>The proposed dwelling is designed to step down the slope of the land and has a part two, part three storey built form. The proposed upper level is set back towards the rear of the dwelling to minimise its visibility from the street and conform with the existing topography. The upper level is also set in from each side compared to the storey below to articulate and minimise the massing of the upper level.</p>																									
Built form character	Yes	<p>The upper level is clad with a manufactured timber cladding, which creates a visual break in the built form which softens the massing of the upper level.</p> <p>The extent of glazing along the rear and side elevations is well proportioned. More significant glazing is proposed along the front elevation given the outlook to the north and views to Middle Harbour which are available from the upper level.</p>																									
Dwelling entry	Yes	The proposed dwelling has a central front entry on the ground floor which provides a good relationship between the dwelling and the street and allow for passive surveillance of the footpath.																									
Roofs	Yes	The Benelong Neighbourhood character statement identifies low pitched roofs as being characteristic and limits the use of flat roofs to certain streets to support view retention.																									
Colours and materials	Acceptable	The proposed materials and finishes are high quality and are considered acceptable within the Benelong Neighbourhood Area																									
1.5 Quality urban environment																											
Safety and security	Yes	The proposed dwelling would promote reasonable levels of safety and security within a low density residential environment.																									
Car parking rates Table B-10.1 - Residential Parking Rates Max 1 / dwelling containing 1-2 Bedrooms Max 2 / dwelling containing 3+ bedrooms	Yes	The proposed garage has two parking spaces. The proposed dwelling contains five bedrooms and therefore complies with the maximum permitted parking rates in section 10.2 of Part B in NSDCP 2013.																									
Location of car parking and Vehicle Access	Yes	The proposed garage is incorporated within the dwelling behind the front building line and complies with the car parking location requirements.																									
Site Coverage, Unbuilt Area and Landscaped Area	Yes	<p>The site has an area of 585.2sqm. The proposed development is assessed against the relevant site coverage, unbuilt upon area and landscaped area provisions in section 1.5.5 and 1.5.6 of Part B in NSDCP 2013.</p> <table border="1" data-bbox="715 1624 1295 1818"> <thead> <tr> <th></th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site Coverage</td> <td>-</td> <td>228sqm</td> <td rowspan="2">Yes</td> </tr> <tr> <td>40%</td> <td></td> <td>38%</td> </tr> <tr> <td>Unbuilt-upon Area</td> <td>-</td> <td>117sqm</td> <td rowspan="2">Yes</td> </tr> <tr> <td>20%</td> <td></td> <td>20%</td> </tr> <tr> <td>Landscape Area</td> <td>585.2sqm</td> <td>250sqm</td> <td rowspan="2">Yes</td> </tr> <tr> <td>40%</td> <td>100%</td> <td>43%</td> </tr> </tbody> </table> <p>The proposed development complies with the relevant site coverage, unbuilt upon area and landscaped area provisions.</p>		Existing	Proposed	Compliance	Site Coverage	-	228sqm	Yes	40%		38%	Unbuilt-upon Area	-	117sqm	Yes	20%		20%	Landscape Area	585.2sqm	250sqm	Yes	40%	100%	43%
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Unbuilt-upon Area	-	117sqm	Yes																								
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Landscape Area	585.2sqm	250sqm	Yes																								
40%	100%	43%																									
Front gardens	Yes	The front setback area comprises a driveway, entry pathway and landscaping. The extent of the paving for the driveway is considered to be excessive and therefore condition AA1 (D) is recommended to proportionally reduce the driveway width where practical to minimise the proportion of the front setback area that is not landscaping. A feature tree is to be planted within the front garden area.																									
Garbage storage	Yes	Provision is made for storage of garbage bins within the garage and would not be visible from the street.																									

1.6 Efficient use of resources		
BASIX	Yes	A valid BASIX Certificate has been provided to comply with the SEPP.

Part C - Character statements – Benelong Neighbourhood, North Cremorne Planning Area

The development has been assessed against the relevant provisions of the Benelong Neighbourhood under section 5.4 in Part C of NSDCP 2013.

Section 5.4.1 Significant Elements

P16 Fencing

According to provision 16 of section 5.4.1, low height masonry fencing is characteristic. The proposed front fencing is of masonry construction and has a maximum height of 0.9m above the footpath level.

Section 5.4.3 Desired Future Form

P2-4 Form, Massing and Scale

The form, massing and scale controls are centred around sites which are located in close proximity to the foreshore or bushland or have significant natural features and are not relevant to the subject site.

P5-6 Roofs

Developments should maintain low pitched roofs except where a flat roof is required to ensure the retention of views in certain foreshore areas.

The proposed development has flat roof which reflects the contemporary form of the development and to maximise views across the site.

SECTION 7.11/12 CONTRIBUTIONS

The proposed development seeks consent for the construction of a dwelling house with three or more bedrooms. Ordinarily a credit would be applied for the demolition of the existing dwelling house. In this instance the previously existing dwelling house has already been demolished under CDC142/2020 however, whilst demolition does not form part of this application, it is considered reasonable to provide a credit for the demolished dwelling as in effect there is no increase in the number of lots or dwellings on the site. The previous 1920's dwelling contained two bedrooms and therefore the total residential increase is calculated to be 0.6 residents for the purpose of calculating the levy under section 7.11 of the Act.

The total applicable contribution is \$15 (Refer to Condition C23). It is noted that the levy, and therefore credit, for a two-bedroom dwelling is approaching \$20K given the ongoing CPI increases which therefore explains the minimal cost of the levy.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant s 4.15(1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

PUBLIC INTEREST

The proposal is not considered to be contrary to the public interest.

SUBMITTERS CONCERNS

The development application was notified in accordance with Council's Community Engagement Protocol from 26 March 2021 until 9 April 2021 and the amended plans were notified from 13 August 2021 until 27 August 2021. A total of seven submissions were received which are addressed below. It should be noted that similar issues are grouped.

- *The height and size of the dwelling is out of proportion to the area.*
- *The design of the dwelling does not fit with the surrounds.*
- *The scale of the proposed development is inconsistent with the streetscape and is excessive for the site.*

The character of the proposed dwelling is more contemporary in form than the surrounding development that features a mix of different architectural styles reflecting the periods of construction. The proposed development is largely compliant with the DCP building envelope controls although would appear slightly larger than the surrounding dwellings. Whilst the character of the proposed dwelling differs in comparison to the adjoining properties, it is not necessarily apathetic to any unified character given the mixed character of the area.

- *The proposed building should be limited to two storeys.*

The proposed dwelling is stepped down the site to align with the sloping topography and is largely two storeys. The upper level is set back towards the rear of the dwelling and would not appear as a third storey when viewed from the street. The proposed dwelling would also appear as two storeys when viewed from the rear.

- *The proposed development would overshadow the western elevation of the adjoining property at 3pm in midwinter.*

The proposed development would result in some overshadowing of the adjoining property to the east at 3pm in mid-winter which is consistent with the orientation of the lots. The proposed building has compliant side setbacks and is reasonably steeped to follow the topography of the site noting the previous assessment of the numerical height variation. The additional overshadowing would not cause an unreasonable loss of amenity for the adjoining property.

- *The removal and replanting of the existing trees along the rear boundary of the site would reduce privacy.*

Council's Landscape Development Officer has recommended the retention of a number of trees which would assist in the short term however, the proposed replacement planting is considered to reasonably address privacy between the two properties, particularly given that the subject site is located at the lower level.

- *The proposal breaches the maximum permitted building height.*
- *The height standard should be upheld to maintain the privacy and amenity of the surrounding dwellings.*
- *The proposal breaches the maximum permitted building height.*

The application has submitted a written request to vary the height of buildings development standard pursuant to clause 4.6 in NSLEP 2013. The proposed variation is caused largely by the existing excavation of the site. The development would generally comply with the development standard when measured from the surrounding existing ground level which is considered to be appropriate in order to assess the potential impact of the development in comparison to a strictly complying form.

- *The proposed development would block views of Cammeray and Middle Harbour from the surrounding properties to the rear.*
- *The proposed development would block views from the adjoining property to the rear.*
- *The outlook to the verdant valley towards the north-east would be lost.*

The proposed dwelling is consistent with the height of the adjoining dwellings and is located at the low point in the road. The proposal would not adversely impact any views, however, it is noted that the views are largely of the surrounding urban area, which whilst pleasant do not constitute retention where the development otherwise is acceptable.

- *The proposed rear elevated rear deck would impact the privacy of the surrounding properties to the rear.*

The proposal was amended to delete this element.

- *The proposed windows within the rear elevation would overlook surrounding properties to the rear.*
- *The rear elevation of the proposed dwelling would overlook the rear private open space, swimming pool, living areas and bedrooms of the adjoining property to the rear.*

The proposed dwelling is two storeys at the rear and contains bedrooms on the first floor level. The rear setback is a minimum of 12.4m and the existing sloping topography rises towards the rear. This would prevent any material overlooking of the surrounding properties to the rear.

- *The proposed landscaping would not practically achieve the minimum required area given the inclusion of the side setback areas in the calculation.*
- *The proposed rear building line is excessive with the upper level shifted closer to the rear boundary.*

The proposed rear building line complies with the numerical setback requirements of the Benelong Area character statement however the proposed overhang of the first floor level at the rear is inconsistent with the otherwise cohesive building form and would have an adverse visual and amenity impact on the adjoining properties to the east and west. Consequently, Condition AA1 is recommended to require the rear building line of the first floor level to be shifted to the north to align with the level below.

SITE SUITABILITY

The subject site is considered suitable for the proposed development.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The development application was notified in accordance with Council's Community Engagement Protocol. Amended plans were requested which reduce the overall height of the building towards the front of the proposed dwelling. The amended plans were also notified in accordance with Council's Community Engagement Protocol. The issues raised in all submissions have been considered in this report. Additionally, conditions have been recommended to ensure that construction does not unduly impact the amenity of the surrounding area.

CONCLUSION + REASONS

The development application seeks consent for the construction of a part two, part three storey dwelling house on a currently vacant lot. The matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. The proposed development is permissible and meets the relevant provisions of NSLEP 2013, subject to a clause 4.6 variation to justify the 10% variation to the height of buildings development standard.

The written request to vary the development standard in clause 4.3 satisfactorily demonstrates that strict compliance with the development standard is unreasonable and unnecessary in the circumstance as the proposed development is consistent with the objectives of the standard and that there are sufficient environmental planning grounds to justify the variation. The proposed variation is caused by the previous excavation where the previous dwelling has been demolished, the proposed development would otherwise comply with the standard when compared to the existing land levels within the side setback areas which provide a reasonable indication of the height of the proposed development in its setting. The variation will be in the public interest because it is consistent with the objectives of the standard and objectives of the zone.

The development is also generally in accordance with the objectives of the NSDCP 2013 and complies with the numerical building envelope controls. The dwelling has been designed to step down the land to reflect the natural topography of the site through the building footprint. The upper level is set back towards the rear and is set in form the storey below to manage the bulk and massing of the building when viewed from the street to and soften the built form.

The proposed rear building line extends beyond the adjoining properties, however, it complies within the numerical requirements within the Benelong Neighbourhood Character Statement. The extension of the building beyond the adjoining properties would have some additional impact in terms of the proposed bulk and scale, its visual impact and overshadowing. However, the building is setback from each side boundary and is limited to approximately 6m in height at the rear. The proposed overhang of the first floor level however, further extends the massing of the proposed development towards the rear and creates an incohesive built form. The deferred commencement condition is recommended to realign the rear building line and create a cohesive building form which would appropriately manage the bulk and scale of the dwelling.

The proposed dwelling has a more contemporary design, however, it is located within an area that includes development from a mix of construction periods. The proposed dwelling has been designed to provide a high level of amenity for the residents and would not have an unreasonable impact on the amenity of the surrounding properties with regard to the retention of views, privacy and solar access.

The application and amended plans were notified in accordance with Council's Community Engagement Protocol and received seven (7) submissions raising issues regarding the proposed height, built form character, bulk and massing, privacy, views, solar access and landscaping. The issues raised by the submitters were addressed in this report that were either found to be acceptable and/or addressed with appropriate conditions of consent

On balance, the proposed development is considered reasonable and is recommended for deferred commencement approval to rationalise the rear building line.

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, as the consent authority, assume the concurrence of the Secretary, Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 of NSLEP 2013 and grant consent to Development Application No. 63/2021 for the construction of a dwelling house retaining walls, fencing and associated landscaping on land at No. 5 Earle Street, Cremorne subject following site specific and the attached standard conditions:-:-

AA. Deferred Commencement Condition

This consent shall not operate until the following deferred commencement condition(s) has/have been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement condition within 6 months of the date of the grant of this consent.

If the applicant fails to satisfy Council as to the matters specified in the deferred commencement conditions within 6 months from the date of this consent It will lapse in accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979.

Design Amendments

AA1 The following amendments are required:

- a. The rear building line of the second floor level (Drawing 10) is to be shifted 800mm to the north to align with the rear building line of the level below. An associated internal replanning to accommodate change may be undertaken.

- b. The retaining walls and garden beds within the rear setback area are to be redesigned to accommodate the retention of trees T10, T15 and T16 (as identified in the Arborist Report prepared by Treehaven Envionscapes, dated 2/3/2021).

(Reason: to rationalise the rear building line to create a cohesive building form, and to retain existing landscaping)

This consent shall not operate until such time as the written approval from Council's Manager Development Services stating that the requirements of this condition have been satisfied.

Michel Stephens
SENIOR ASSESSMENT OFFICER

Robyn Pearson
TEAM LEADER (ASSESSMENTS)

Stephen Beattie
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
5 EARLE STREET, CREMORNE
DEVELOPMENT APPLICATION NO. 63/21

DEFERRED COMMENCEMENT CONDITIONS

This consent shall not operate until the following deferred commencement condition has been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement condition within 6 months of the date of the grant of this consent.

If the applicant fails to satisfy Council as to the matters specified in the deferred commencement conditions within 6 months of the date of the grant of this consent this consent will lapse in accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979.

NOTE: Consideration should be given to providing the evidence to Council to allow sufficient time consider the same and form a view as to whether the deferred commencement conditions are satisfied or not. You are also advised of your appeal rights under clause 95(6) of the Environmental Planning and Assessment Regulation 2000, which provides that: *If the consent authority has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the consent authority is, for the purposes only of section 8.7 of the Act, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.*

Design Amendments

AA1. The following amendments are required:

- a. The rear building line of the second floor level (Drawing 10) is to be shifted 800mm to the north to align with the rear building line of the level below. An associated internal replanning to accommodate change may be undertaken.
- b. The retaining walls and garden beds within the rear setback area are to be redesigned to accommodate the retention of trees T10, T15 and T16 (as identified in the Arborist Report prepared by Treehaven Envionscapes, dated 2/3/2021).

(Reason: to rationalise the rear building line to create a cohesive building form, and to retain existing landscaping)

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Upon satisfaction of the deferred commencement condition, the following conditions apply:

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/documentation

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

Plan No	Issue	Title	Dated	Prepared	Received
5	C	Site Plan	17 July 2021	Peak Architecture	4 August 2021
6	C	Floor Plans	17 July 2021		4 August 2021
7	C	Floor Plans	17 July 2021		4 August 2021
8	C	Ground Floor Plan	17 July 2021		4 August 2021
9	C	First Floor Plan	17 July 2021		4 August 2021
10	C	Second Floor Plan	17 July 2021		4 August 2021
11	C	Roof Plan	17 July 2021		4 August 2021
12	C	Landscape Plan	17 July 2021		4 August 2021
16	C	Northern Elevations	17 July 2021		4 August 2021
17	C	South Elevation	17 July 2021		4 August 2021
18	C	East & West Elevations	17 July 2021		4 August 2021
19	C	Sections A&B	17 July 2021		4 August 2021
20	C	Section C	17 July 2021		4 August 2021
21	C	Window & Door Schedule	17 July 2021		4 August 2021

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

Plans on Site

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

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

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

No Demolition of Extra Fabric

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

(Reason: To ensure compliance with the approved development)

External Finishes & Materials

- A4. External finishes and materials must be in accordance with the submitted schedule on drawings 16, 17 and 18, Rev C, dated 23 July 2021, prepared by Peak Architecture and received by Council on 4 August 2021 unless otherwise modified by Council in writing.

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

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

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

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

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

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

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

Dilapidation Report Private Property (Excavation)

- C2. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the 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 is 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/ies prior to the commencement of construction)

Shoring for Adjoining Property

- C3. 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.

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

C4. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties No's. 3 and 5 Earle Street which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the 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)

Geotechnical Report

C5. A report prepared by an appropriately qualified Geotechnical Engineer certifying that the existing rock formations and substrate on the site is capable of:

- a) withstanding the proposed loads to be imposed;
- b) withstanding the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
- c) providing protection and support of adjoining properties; and
- d) the provision of appropriate subsoil drainage during and upon completion of construction works

must be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate.

Recommendations made in the certified report must be complied with at all times.

Building plans and specifications submitted for approval with any construction certificate application must comply with (a), (b), (c) and (d) above and the certified report, including any recommendations made in the said certified report.

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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 the structural integrity of the subject site and adjoining sites during the excavation process)

Sediment Control

C6. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication Managing Urban Stormwater: Soils & Construction (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

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

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

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

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

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

Waste Management Plan

- C7. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
 - b) The design of the on-site waste storage and recycling area; and
 - c) Administrative arrangements for waste and recycling management during the construction process.

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

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

Skylight(s)

- C8. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the 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)

No External Service Ducts

- C9. Service ducts must be provided within the building to keep external walls free of plumbing, drainage or any other utility installations. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure quality built form of the development)

Work Zone

- C10. 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)

Obtain Driveway Crossing Permit under S.138 Roads Act 1993

- C11. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable issue of the permit. The requirements of the permit must be complied with at all times.
- a. The proposed vehicular access ways must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor.
 - b. The width of the vehicular layback must be 5.0m (including the wings).
 - c. The vehicular laybacks must be set square to the kerb.
 - d. The crossing (between the layback and the property boundary) must be perpendicular on a single straight grade of approximately 4.5%, falling to the back of the layback.

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- e. The boundary footpath levels must match the existing levels and shall not be altered unless agreed to by Council.
- f. The gutter levels and road shoulder levels on Earle Street must stay unchanged.
- g. The kerb gutter, and 600 mm road shoulder wide- strip, adjacent to all new layback and gutter works, on Earle Street must be reconstructed, to ensure uniformity in the road reserve.
- h. The full property frontage footpath, kerb & gutter and grass verge on Earle Street must be reconstructed to ensure uniformity on the footpath.
- i. Any twisting of driveway access to ensure vehicles do not scrape must occur wholly within the subject property.
- j. All inspection openings, utility services must be adjusted to match the proposed driveway levels and location.
- k. The design detail has to be provided with **vehicular access application** and must include sections along centre-line and extremities of the crossing at a scale of 1:25. Sections are to be taken from the centre of the roadway through to the parking area itself and shall include all changes of grade and levels, **both** existing and proposed.
- l. A longitudinal section along the footpath property boundary at a scale of 1:50 is required and shall include all changes of grade and levels, **both** existing and proposed.

The permit must be granted by Council prior to the issue of any Construction Certificate.

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

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

Foundations Adjacent to Drainage Easements

- C12. The foundations for building structures and walls adjacent to the drainage easement are to be constructed in such a manner that does not affect stormwater drainage lines. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To allow maintenance without affecting the building and to ensure there is no damage to public assets)

Stormwater Management and Disposal Design Plan – Construction Issue Detail

- C13. Prior to issue of the Construction Certificate, the applicant shall have a site drainage management plan prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:
- a. Compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code.
 - b. Stormwater runoff and subsoil drainage generated by the approved dwellings must be conveyed in a controlled manner by gravity via a direct connection to Council's stormwater gully pit in Earle. When a direct connection to the pit option is implemented then the pipeline within the footpath area shall have a minimum cover of 300mm.
 - c. All redundant stormwater pipelines within the footpath area shall be removed and the footpath and kerb reinstated.
 - d. Pipelines within the footpath area shall be hot dipped galvanized steel rectangular hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres.
 - e. Any footpath panel on Earle Street disturbed for the purpose of stormwater connection shall be reconstructed as whole panel.
 - f. Provision is to be made for the collection and disposal in an approved manner of any overland flow entering the subject property, or concentrated as a result of the proposed works.
 - g. All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer, shall be submitted with the application for a Construction Certificate.
 - h. 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.
 - i. The foundations for building structures and walls adjacent to the drainage easement are to be constructed in such a manner that does not affect stormwater drainage lines.

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

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

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

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

C14. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$26,000.00 to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and [environmental controls](#)) required in connection with this consent
- c) remedying any defects in any such public work that arise within 6 months after the work is completed.

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

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate 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

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- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

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

Tree Bond for Public Trees

- C15. Prior to the issue of any construction certificate, security in the sum of \$7,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

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

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

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

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

Tree Species	Location	Bond
T1 <i>Callistemon viminalis</i>	Council verge in front of 5 Earle Street	\$5,000
1 x newly planted unidentified small street tree	Council verge in front of 7 Earle Street	\$1,000
1 x newly planted unidentified small street tree	Council verge in front of 7 Earle Street	\$1,000

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

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Tree Protection Measures to be shown on Construction Drawings

- C16. The tree protection measures contained in the arborist report prepared by Treehaven Environscapes, dated 2 March 2021, and subsequently amended by any further approved Arborist reports, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Protection of Trees

- C17. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Height
T1 <i>Callistemon viminalis</i>	Council verge in front of 5 Earle Street	5m
T3 <i>Camellia japonica</i>	Front setback 7 Earle Street	2m
T4 <i>Leptospermum petersonii</i>	Front setback 7 Earle Street	4m
T5 <i>Magnolia soulangiana</i>	Front setback 7 Earle Street	7m
T6 <i>Pittosporum euginiodes</i>	Western boundary 7 Earle Street	6m
T7 <i>Plumeria acutifolia</i>	Western boundary 7 Earle Street	5m
T10 <i>Lagerstroemia indica</i>	Rear setback 5 Earle Street	7m
T15 <i>Lagerstroemia indica</i>	Rear setback 5 Earle Street	7m
T16 <i>Camellia japonica</i>	Rear setback 5 Earle Street	5m
1 x newly planted unidentified small street tree	Council verge in front of 7 Earle Street	
1 x newly planted unidentified small street tree	Council verge in front of 7 Earle Street	

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.

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

(Reason: Protection of existing environmental and community assets)

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Approval for removal of Trees

- C18. The following tree(s) are approved for removal in accordance with the development consent:

Trees that are acceptable to remove	Location	Height
T2 <i>Carya illinoensis</i> (9m)	Front setback 5 Earle Street	9m
T8 <i>Melaleuca lanceolata</i> (6m)	Rear setback 5 Earle Street	
T9 <i>Melaleuca lanceolata</i> (5m)	Rear setback 5 Earle Street	5m
T11 <i>Melaleuca lanceolata</i> (6m)	Rear setback 5 Earle Street	6m
T12 & T13 <i>Celtis chinensis</i> (6m)	Rear setback 5 Earle Street	6m
T14 <i>Prunus persica</i> (4m)	Rear setback 5 Earle Street	4m

Removal or pruning of any other tree on the site is not approved, excluding species exempt under Council's Tree Preservation Order.

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

(Reason: Protection of existing environmental and community assets)

Location of Plant

- C19. All plant and equipment (including but not limited to air conditioning equipment) is to be located within the basement of the building and is not to be located on balconies or the roof. Plans and specifications complying with this condition must be submitted to the Certifying Authority for Approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Minimise impact on surrounding properties, improved visual appearance and amenity for locality)

Noise from Plant and Equipment

- C20. The use of all plant and equipment installed on the premises must not:

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

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(b) Cause “offensive noise” as defined in the *Protection of the Environment Operations Act 1997*.

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

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

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

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

Vibration from Plant and Equipment

C21. The use of all plant and equipment to be installed on the premises must comply with the vibration limits specified in “Assessing Vibration: a technical guideline” issued by the NSW Environment Protection Authority, at the boundary of any affected receiver.

A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants must be submitted to the Certifying Authority, certifying that all plant and equipment on the site, together with the proposed plant and equipment, operating contemporaneously will comply with the requirements of this condition.

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.

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

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

“contemporaneously” means *existing at or occurring in the same period of time* (Macquarie Dictionary 3rd rev. ed. 2004).

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

Air Conditioners in Residential Premises

- C22. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:
- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - (i) before 8.00am and after 10.00pm on any Saturday, Sunday or Public Holiday; or
 - (ii) before 7.00am or after 10.00pm on any other day
 - (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy will be applied.

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

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

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

(Reason: To maintain residential amenity)

SECTION 7.11 CONTRIBUTIONS

- C23. A monetary contribution pursuant to the provisions of Section 94 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council Section 94 Contribution Plan for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

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A	B (\$)
Open space and recreation facilities:	\$8.16
Public domain:	\$4.54
Active transport:	\$0.26
Community facilities:	\$1.64
Plan administration and management:	\$0.22
TOTAL	\$15.00

The contribution MUST BE paid prior issue of any Construction Certificate.

The above amount, will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Local Infrastructure Contributions 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 retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

Security Deposit/ Guarantee Schedule

C24. 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 (\$)
Drainage Infrastructure Damage Bond	\$20,000.00
Engineering Construction Bond	\$6,000.00
Others	
TOTAL BONDS	\$26,000.00

Note: The following fees applicable

Fees	
Section 7.11 Contributions	\$15.00
TOTAL FEES	\$15.00

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

(Reason: Compliance with the development consent)

BASIX Certificate

C25. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1180379S_2 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Amendments to the Landscape Plan

C26. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- Detailed plan showing plant species (and cultivar if applicable), number, and pot size.
- *Acmena smithii* shown to be planted in the "Lawn" area on eastern boundary within the front setback of subject site shall be replaced with 1 x *Hibiscus tileaceus* 'Rubra' (75l)
- Side setbacks between the front and rear building line shall include tall, narrow screening planting
- 1 x *Cupaniopsis anacardioides* (75l) and 1 x *Tristaniopsis laurina* (75l) shall be planted within the rear setback of the subject site

An amended landscape plan complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

Non-Trafficable Roof

C27. The landscaped area on the second floor level (Drawing 10 C) surrounding the balcony area is to be demarcated as non-trafficable and is only to be accessible for maintenance purposes.

(Reason: To maintain privacy for surrounding properties)

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

Protection of Trees

- D1. The tree protection measures detailed in the approved Tree Protection and Management Plan, prepared by Treehaven Environments dated 2/3/21, and as subsequently amended by any further approved arborist reports and as directed by the project arboriculturist shall be established before work commences.

(Reason: To ensure that the stability and ongoing viability of trees being retained are not compromised Tree protection measures)

Protection of Public Trees

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

Tree	Location	Protection
T1 <i>Callistemon viminalis</i>	Council verge in front of 5 Earle Street	1.8m high steel mesh tree protection fencing
2 x newly planted unidentified small street tree	Council verge in front of 7 Earle Street	1.8m high steel mesh tree protection fencing

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

(Reason: Protection of existing environmental and community assets)

Temporary Fences and Tree Protection

- D3. All protected trees on-site that are specifically nominated as per Condition C17 to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time.

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

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

Public Liability Insurance – Works on Public Land

D4. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note, and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

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

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

Sydney Water Approvals

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

Notes:

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

(Reason: To ensure compliance with Sydney Water requirements)

Commencement of Works Notice

- D6. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least 2 days notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

E. During Demolition and Building Work**Cigarette Butt Receptacle**

- E1. A cigarette butt receptacle is to be provided on the site for the duration of excavation/demolition/construction process, for convenient use of site workers.

(Reason: To ensure adequate provision is made for builders' waste)

Parking Restrictions

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

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

Road Reserve Safety

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

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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

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

(Reason: Stormwater control during construction)

Structures Clear of Drainage Easements

- E5. It is the full responsibility of the Developer and their contractors to: -
- a) Ascertain the exact location of the Council drainage infrastructure traversing the site in the vicinity of the works;
 - b) Take full measures to protect the in-ground Council drainage system; and
 - c) Ensure dedicated overland flow paths are satisfactorily maintained through the site.

Drainage pipes can be damaged through applying excessive loading (such as construction plant, material storage and the like). All proposed structures and construction activities are to be located clear of Council drainage pipes, drainage easements, watercourses and trunk overland flow paths on the site. Trunk or dedicated overland flow paths must not be impeded or diverted by fill or structures unless otherwise approved.

In the event of a Council drainage pipeline being uncovered during construction, all work is to cease and the Certifying Authority and Council (if it is not the Certifying Authority) must be contacted immediately for advice. Any damage caused to a Council drainage system must be immediately repaired in full as directed, and at no cost to Council.

(Reason: Protection of Public Drainage Assets)

Geotechnical Stability during Works

- E6. 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 report prepared to satisfy Condition C5 and all subsequent geotechnical inspections carried out during the excavation and construction phase.

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

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

Council Inspection of Public Infrastructure Works

- E7. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points: -

- a) Vehicular access; and
- b) associated road civil works.

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

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

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Removal of Extra Fabric

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

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

Dust Emission and Air Quality

- E9. The following must be complied with at all times:
- (a) Materials must not be burnt on the site.
 - (b) Vehicles entering and leaving the site with soil or fill material must be covered.
 - (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
 - (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

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

Noise and Vibration

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

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

No Work on Public Open Space

- E11. No work can be undertaken within adjoining public lands (ie. 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.

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

Developer's Cost of Work on Council Property

E12. The developer must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

No Removal of Trees on Public Property

E13. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

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

Protection of Trees

E14. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by Treehaven Environments dated 2/3/21, and as subsequently amended by any further approved arborist reports, must be implemented for the duration of the works.

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

Notes:

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

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

**5 EARLE STREET, CREMORNE
DEVELOPMENT APPLICATION NO. 63/21**

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Trees to be Removed

- E15. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal: -

Trees that are acceptable to remove	Location	Height
T2 <i>Carya illinoensis</i>	Front setback 5 Earle Street	9m
T8 <i>Melaleuca lanceolata</i>	Rear setback 5 Earle Street	6m
T9 <i>Melaleuca lanceolata</i>	Rear setback 5 Earle Street	5m
T11 <i>Melaleuca lanceolata</i>	Rear setback 5 Earle Street	6m
T12 & T13 <i>Celtis chinensis</i>	Rear setback 5 Earle Street	6m
T14 <i>Prunus persica</i>	Rear setback 5 Earle Street	4m

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

Special Permits

- E16. 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**

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

(Reason: Proper management of public land)

2) **Hoardings**

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

(Reason: Proper management of public land)

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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

E17. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
All other zones	Monday – Friday	7.00am – 5.00pm
	Saturday	8.00am – 1.00pm
	Sunday Public holiday	No work permitted

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

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

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

Installation and Maintenance of Sediment Control

- E18. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

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

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

Sediment and Erosion Control Signage

- E19. 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

- E20. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of work place determines the type of amenities required.

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

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

Health and Safety

- E21. 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.

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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

E22. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

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

Plant & Equipment Kept Within Site

E23. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

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

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

Imported Fill Material

E24. The only waste derived fill material that may be received at the development site is: -

- a) Virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997); and
- b) Any other waste-derived material the subject of a resource recovery exemption under cl. 51A of the Protection of the Environment Operations (Waste) Regulation 2005 that is permitted to be used as fill material. Any waste-derived material the subject of a resource recovery exemption received at the development site, must be accompanied by documentation as the material's compliance with the exemption conditions and must be provided to the Certifying Authority on request.

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

Waste Disposal

E25. 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)

Service Adjustments

E26. Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the person acting on the consent and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the Applicants full responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services at the appropriate stage of the development (including water, phone, gas and the like). Council accepts no responsibility whatsoever for any matter arising from its approval of this application involving any influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

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:

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- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
 - (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this condition is out of date, work must cease and no further work may be carried out unless the Principal 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.

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

Occupation Certificate

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

(Reason: Statutory)

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

- 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.

(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.

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- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

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

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

Site Sign

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

(Reason: Prescribed - Statutory)

G. *Prior to the Issue of an Occupation Certificate*

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:

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

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

(Reason: Maintain quality of Public assets)

Certification- Civil Works

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

(Reason: Compliance with the Consent)

Utility Services

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

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

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)

Certification of Tree Condition

- G5. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below: -

Tree	Location	Height
T1 <i>Callistemon viminalis</i>	council verge in front of 5 Earle Street	5m

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DEVELOPMENT APPLICATION NO. 63/21**

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T3 <i>Camellia japonica</i>	Front setback 7 Earle Street	2m
T4 <i>Leptospermum petersonii</i>	Front setback 7 Earle Street	4m
T5 <i>Magnolia soulangiana</i>	Front setback 7 Earle Street	7m
T6 <i>Pittosporum eugenioides</i>	Western boundary 7 Earle Street	6m
T7 <i>Plumeria acutifolia</i>	Western boundary 7 Earle Street	5m
T10 <i>Lagerstroemia indica</i>	Rear setback 5 Earle Street	7m
T15 <i>Lagerstroemia indica</i>	Rear setback 5 Earle Street	7m
T16 <i>Camellia japonica</i>	Rear setback 5 Earle Street	5m
1 x newly planted unidentified small street tree	Council verge in front of 7 Earle Street	
1 x newly planted unidentified small street tree	Council verge in front of 7 Earle Street	
1 x <i>Hibiscus tileaceus</i> 'Rubra'	Front setback of subject site	75l
1 x <i>Melaleuca linarifolia</i>	Front setback of subject site	75l
tall, narrow screen planting	Side setbacks of subject site	
1 x <i>Cupaniopsis anacardioides</i>	Rear setback of subject site	75l
1 x <i>Tristaniopsis laurina</i>	Rear setback of subject site	75l

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

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

BASIX Completion Certificate

- G6. 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)

Landscaping

- G7. The landscaping shown in the approved landscape plan numbered 12 C prepared by Peak Architecture dated 17 July 2021 and received by Council on 4 August 2021 as amended by the conditions in this consent must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Unpaved Verge

- G8. The unpaved verge area must be constructed/reconstructed with an appropriate species of grass prior to completion of the works at no cost to Council

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

I. On-Going / Operational Conditions

Noise and Vibration Impact

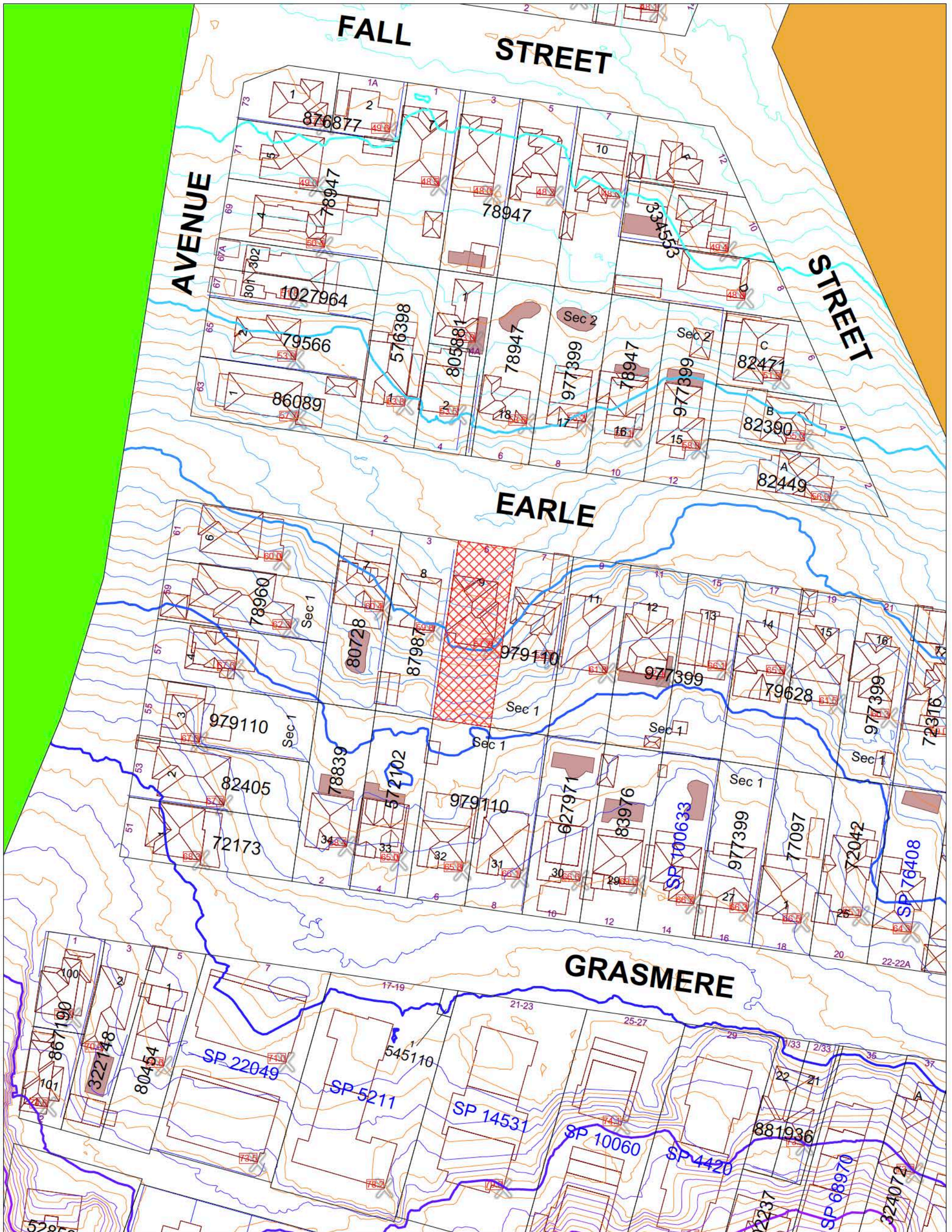
- I1. The on-going use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

Non-Trafficable Roof

- I2. The landscaped area of the second floor level (Drawing 10 C) surrounding the balcony area is to be non-trafficable and is only to be accessed for maintenance purposes.

(Reason: To maintain privacy for surrounding properties)



North Sydney Council

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



DRAWING INDEX			
DWG #	DRAWING NAME	ISSUE DATE	REV
0	COVER	15/07/2021 10:33 AM	C
1	DEMOLITION PLAN	15/07/2021 10:33 AM	C
2	BASIX COMMITMENTS	15/07/2021 10:33 AM	C
3	SITE ANALYSIS	15/07/2021 10:33 AM	C
4	STREET ELEVATION	15/07/2021 10:33 AM	C
5	SITE/ROOF PLAN	15/07/2021 10:33 AM	C
6	FLOOR PLANS	15/07/2021 10:33 AM	C
7	FLOOR PLANS	15/07/2021 10:33 AM	C
8	GROUND FL PLAN	15/07/2021 10:33 AM	C
9	FIRST FL PLAN	15/07/2021 10:33 AM	C
10	SECOND FL PLAN	15/07/2021 10:33 AM	C
11	ROOF PLAN	15/07/2021 10:33 AM	C
12	LANDSCAPE PLAN	15/07/2021 10:33 AM	C
13	SHADOW DIAGRAMS	15/07/2021 10:33 AM	C
14	GFA & LANDSCAPE CALCS	15/07/2021 10:33 AM	C
15	STREETSCAPE ELEVATION	15/07/2021 10:33 AM	C
16	NORTH ELEVATIONS	15/07/2021 10:33 AM	C
17	SOUTH ELEVATION	15/07/2021 10:33 AM	C
18	EAST & WEST ELEVATION	15/07/2021 10:33 AM	C
19	SECTION A & B	15/07/2021 10:33 AM	C
20	SECTION C	15/07/2021 10:33 AM	C
21	WINDOW & DOOR SCHEDULE	15/07/2021 10:33 AM	C



TWO STOREY DWELLING HOUSE			
LEP / DCP CONTROLS	ALLOWED/ REQUIRED	PROPOSED	COMPLYS
ZONING	R2		
SITE AREA:	585.2m ²		
DEFINED AS	THREE STOREY DWELLING		
HEIGHT	8.5m	8.5m	NO
PRIVATE OPEN SPACE	50m ²	122m ²	YES
LANDSCAPING: UN-BUILT UPON AREA (MAX)	20% OR 117m ²	20% OR 117m ²	YES
LANDSCAPING: LANDSCAPED AREA (MIN)	40% OR 234m ²	43% OR 250m ²	YES
SITE COVERAGE:	40% (234m ²)	38% OR 228m ²	YES
STREET FRONTAGE	9.174m	13.715m	
FRONT SETBACKS:	Street Average	11.151m	YES
REAR SETBACKS:	Street Average	13.400m	YES
SIDE SETBACKS:	1st (up to 4m) - 900mm 2nd (up to 7) - 1500mm 3rd - 2500mm	1st (up to 4m) - 900-1500mm 2nd (up to 7) - 1500mm 3rd - 2500mm	YES
PARKING: GENERAL SPACES	2	2	YES



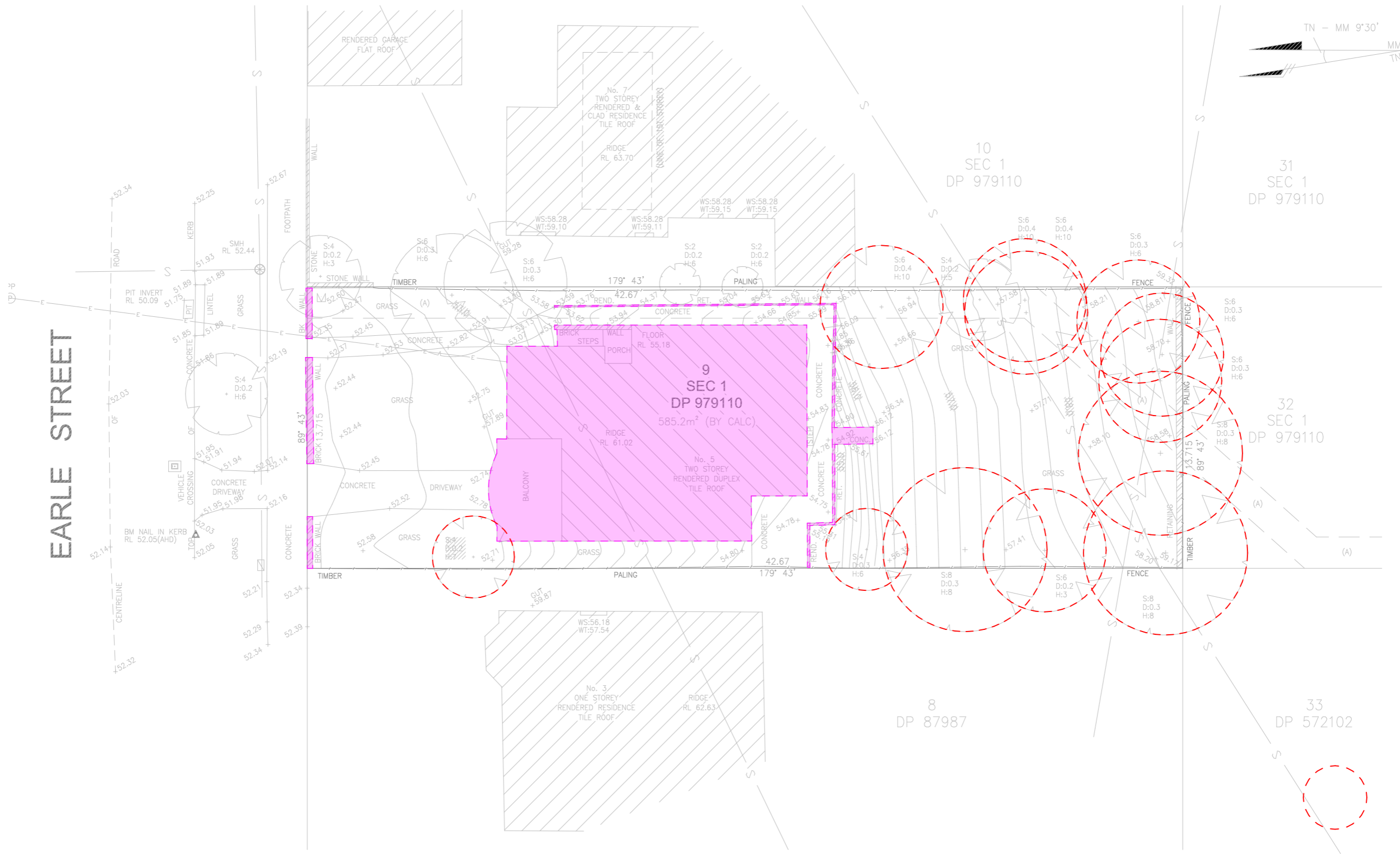
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 info@peakarchitects.com.au
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 @peak.architects
 Nominated Architects:
 Esan Rahmani NSW 10560

DEVELOPMENT APPLICATION - SINGLE DWELLING 5 EARLE STREET CREMORNE

#Client Company

EARLE STREET
 KEY MAP





DEMOLITION PLAN

1:200



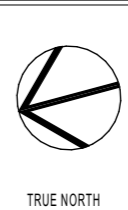
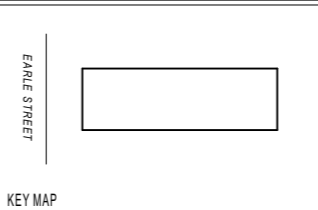
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REV.	DESCRIPTION	DATE
A	DA SUBMISSION	10/03/2021
B	REPOSE TO COUNCIL	26/04/2021
C	REPOSE TO COUNCIL	21/07/2021

PROJECT:	5 EARLE STREET CREMORNE
PROJECT TYPE:	SINGLE DWELLING
CLIENT:	#CLIENT NAME



DRAWING #:	1	DRAWING NAME:	DEMOLITION PLAN
DEVELOPMENT APPLICATION		SCALE	AS SHOWN @ A3
PROJECT NO:	20-09	DATE:	23/07/2021
DRAWN	FK	CHECKED	ER
ISSUE			C



13 Earle Street Cremorne

11 Earle Street Cremorne

9 Earle Street Cremorne

7 Earle Street Cremorne

5 Earle Street Cremorne

3 Earle Street Cremorne

1 Earle Street Cremorne



STREET ELEVATION

1:100



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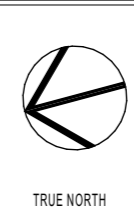
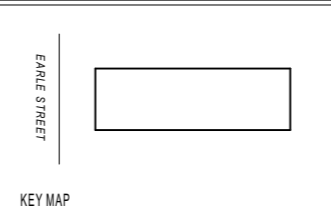
Nominated Architects:
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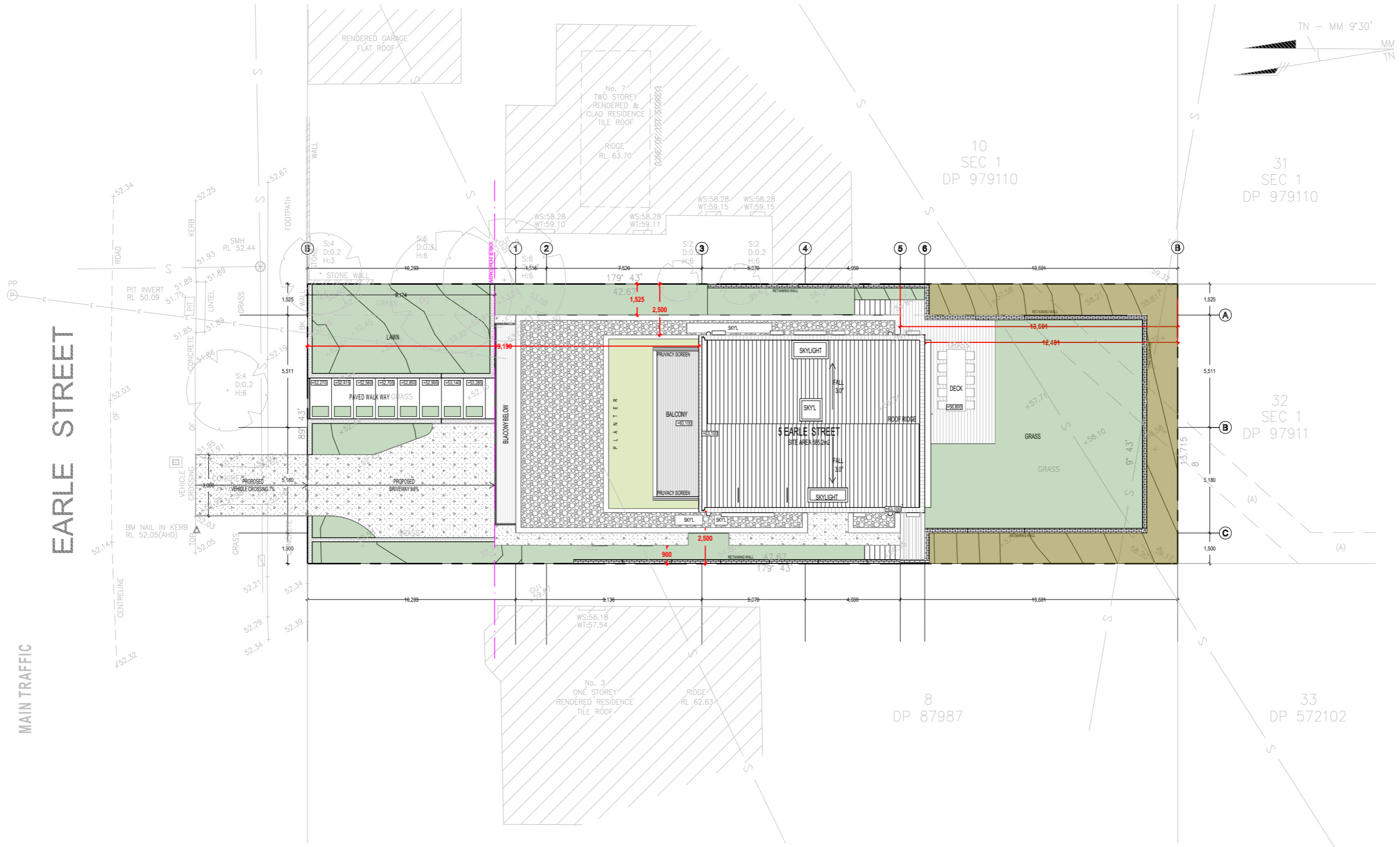
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C	REPOSE TO COUNCIL	21/07/2021

PROJECT:	5 EARLE STREET CREMORNE
PROJECT TYPE:	SINGLE DWELLING
CLIENT	#CLIENT NAME



DRAWING #:	4	DRAWING NAME:	STREET ELEVATION
DEVELOPMENT APPLICATION		SCALE	AS SHOWN @ A3
PROJECT NO:	20-09	DATE:	23/07/2021
DRAWN	FK	CHECKED	ER
ISSUE			C



SITE/ROOF PLAN

1:200



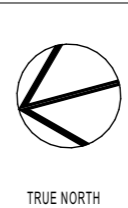
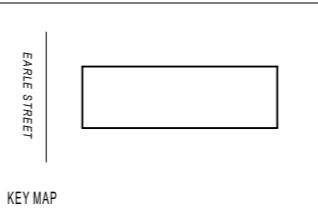
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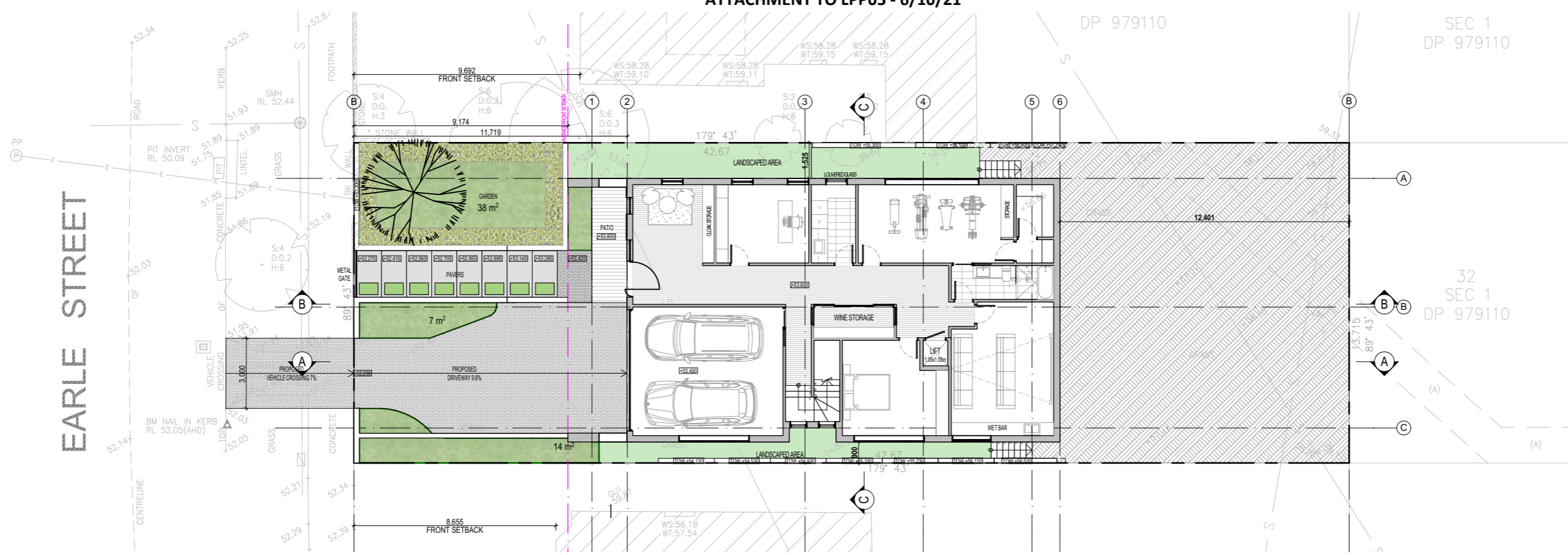
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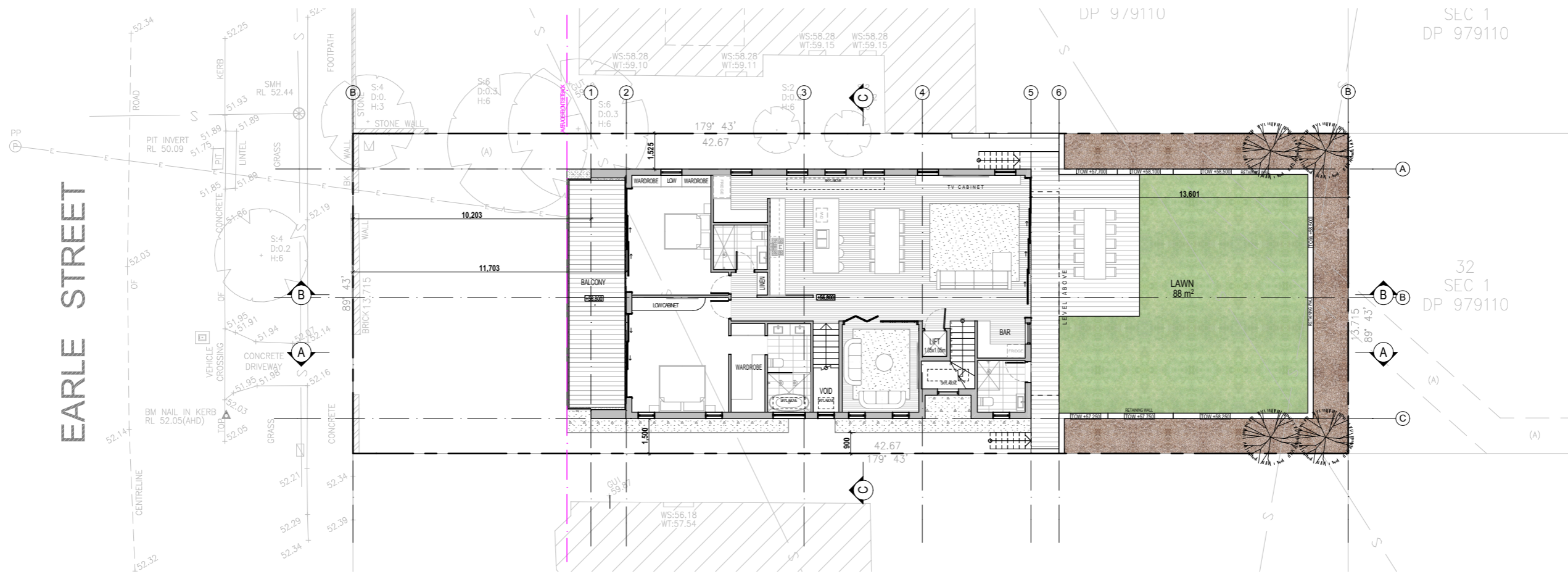
PROJECT:	5 EARLE STREET CREMORNE
PROJECT TYPE:	SINGLE DWELLING
CLIENT	#CLIENT NAME



DRAWING #:	5	DRAWING NAME:	SITE/ROOF PLAN
DEVELOPMENT APPLICATION		SCALE	AS SHOWN @ A3
PROJECT NO:	20-09	DATE:	23/07/2021
DRAWN	FK	CHECKED	ER
ISSUE			C



GROUND FL PLAN 1:200



FIRST FL PLAN 1:200



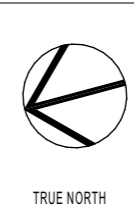
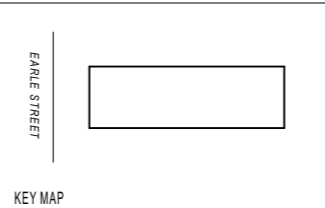
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C	REPOSE TO COUNCIL	21/07/2021

PROJECT:	5 EARLE STREET CREMORNE
PROJECT TYPE:	SINGLE DWELLING
CLIENT:	#CLIENT NAME



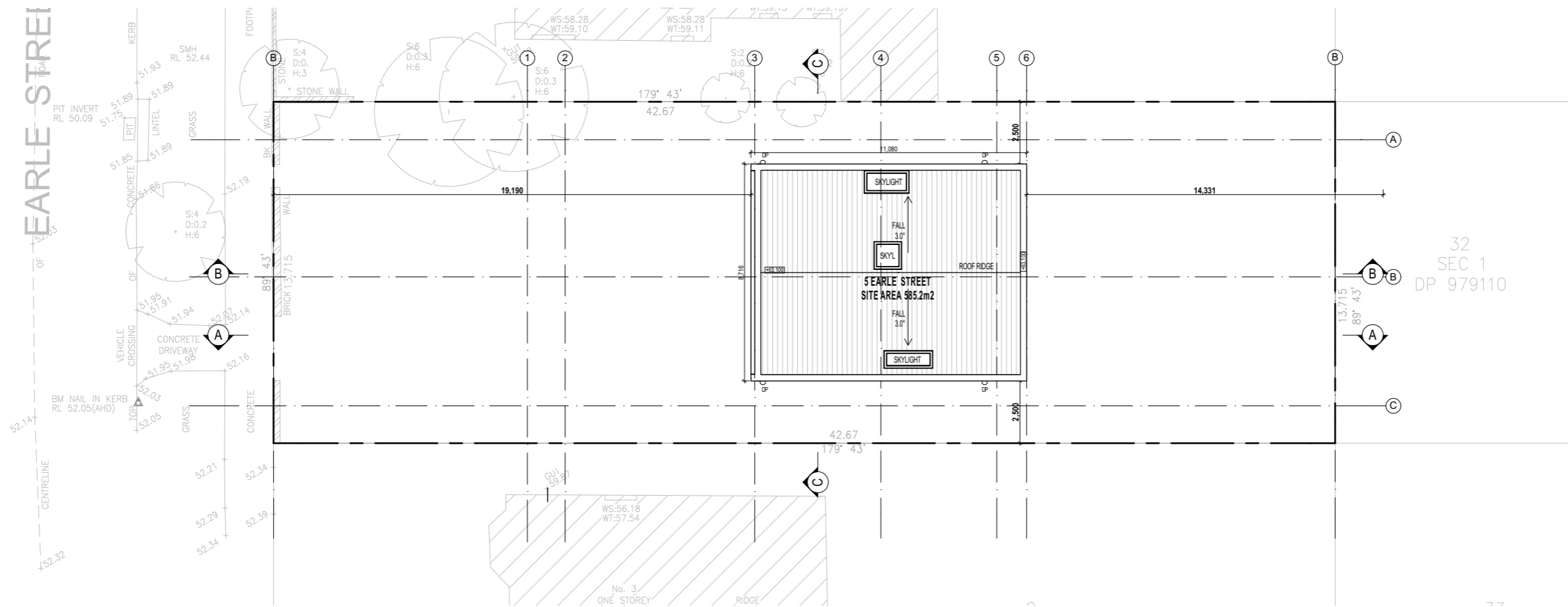
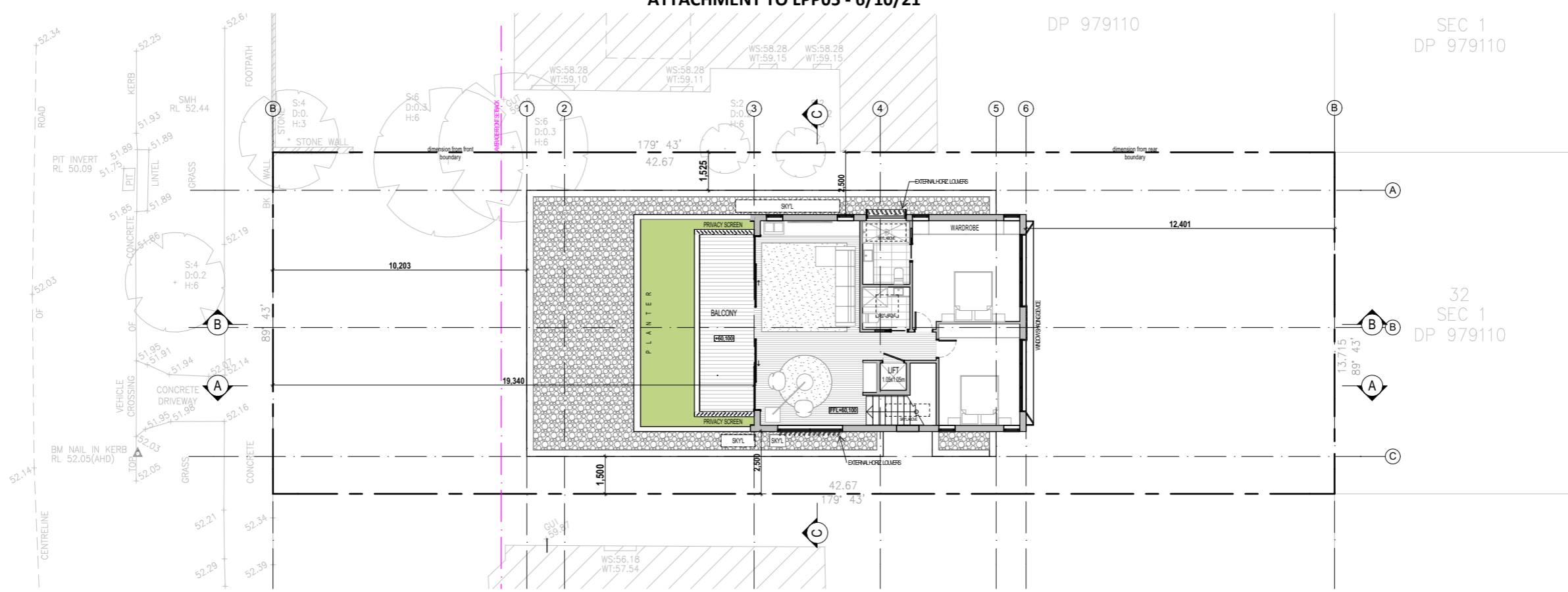
DRAWING #:	6	DRAWING NAME:	FLOOR PLANS
DEVELOPMENT APPLICATION		SCALE:	AS SHOWN @ A3
PROJECT NO:	20-09	DATE:	23/07/2021
DRAWN:	FK	CHECKED:	ER
ISSUE:			C

EARLE STREET

EARLE STREET

SECOND FL PLAN 1:200

ROOF PLAN 1:200



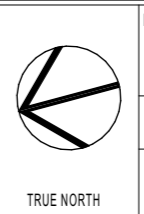
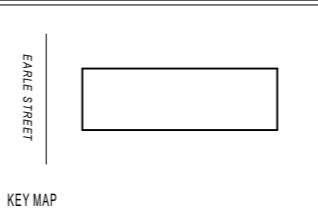
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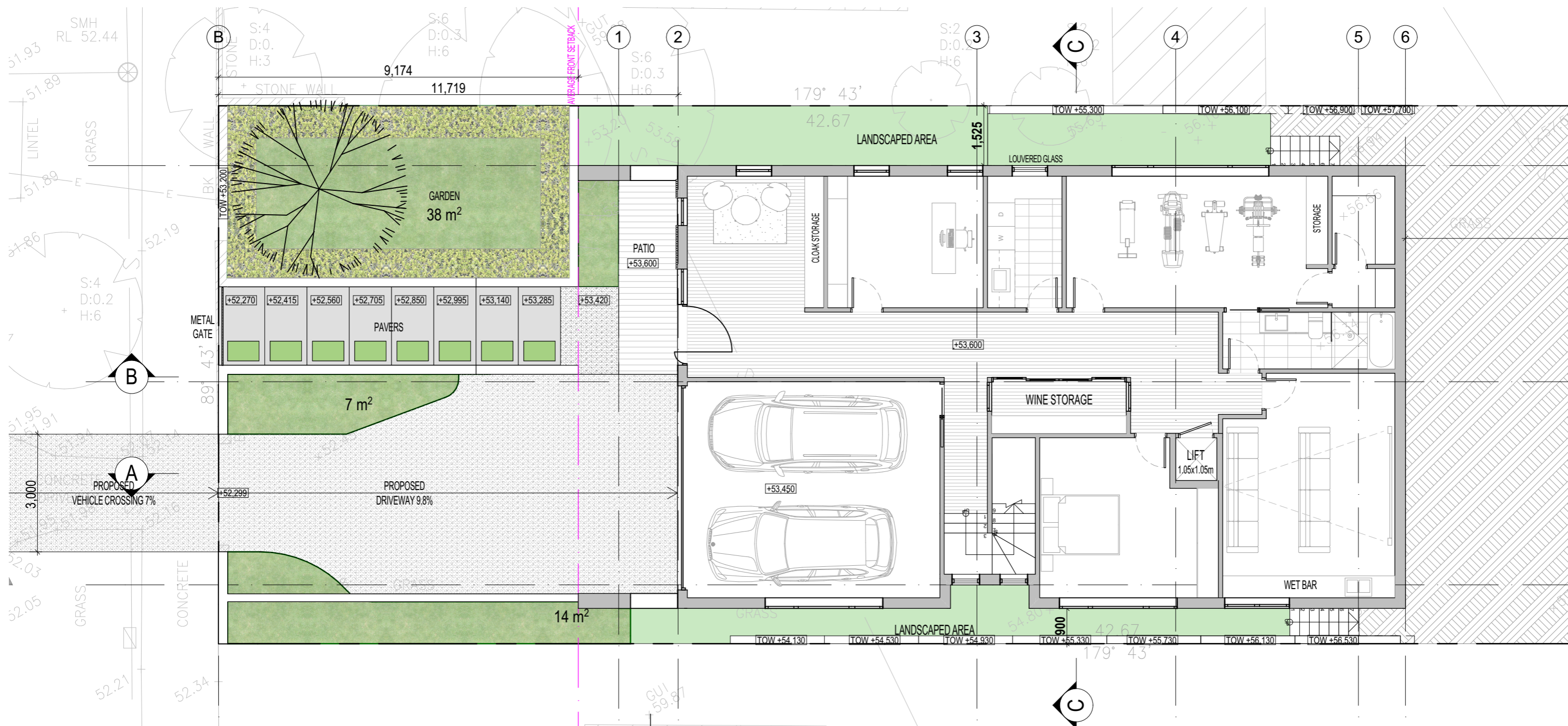
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PROJECT: 5 EARLE STREET CREMORNE
PROJECT TYPE: SINGLE DWELLING
CLIENT #CLIENT NAME



DRAWING #: 7	DRAWING NAME: FLOOR PLANS
DEVELOPMENT APPLICATION	
SCALE AS SHOWN @ A3	
PROJECT NO: 20-09	DATE: 23/07/2021
DRAWN FK	CHECKED ER
ISSUE C	



GROUND FL PLAN 1:100



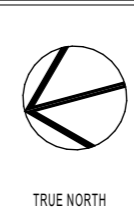
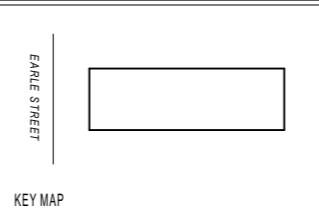
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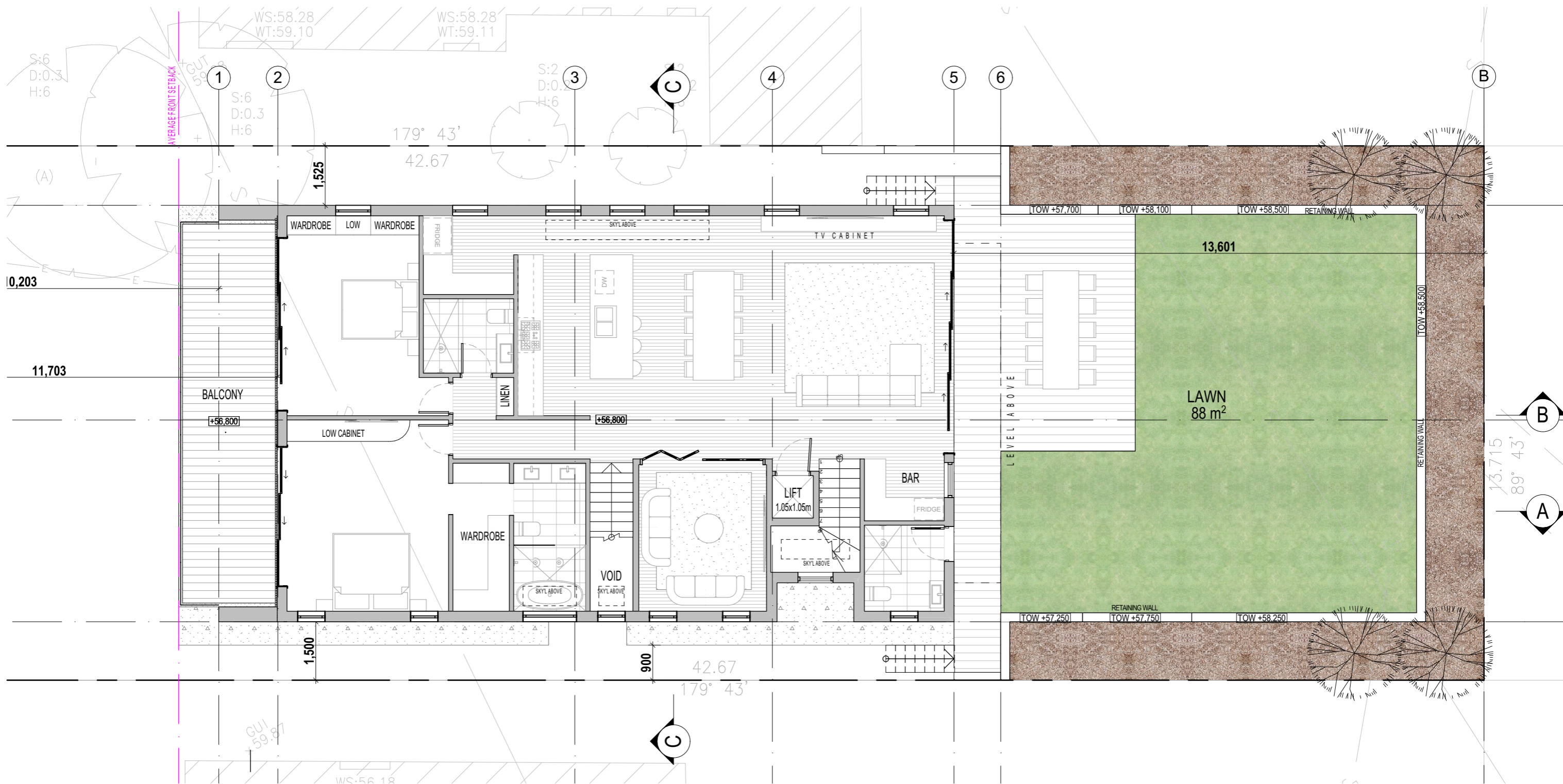
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PROJECT: 5 EARLE STREET CREMORNE
 PROJECT TYPE: SINGLE DWELLING
 CLIENT #CLIENT NAME



DRAWING #: 8	DRAWING NAME: GROUND FL PLAN	DEVELOPMENT APPLICATION			SCALE AS SHOWN @ A3
PROJECT NO: 20-09	DATE: 23/07/2021	DRAWN FK	CHECKED ER	ISSUE C	



FIRST FL PLAN 1:100



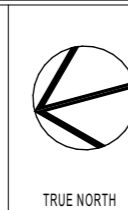
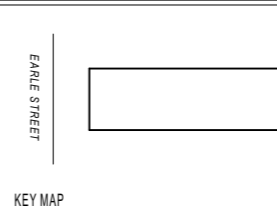
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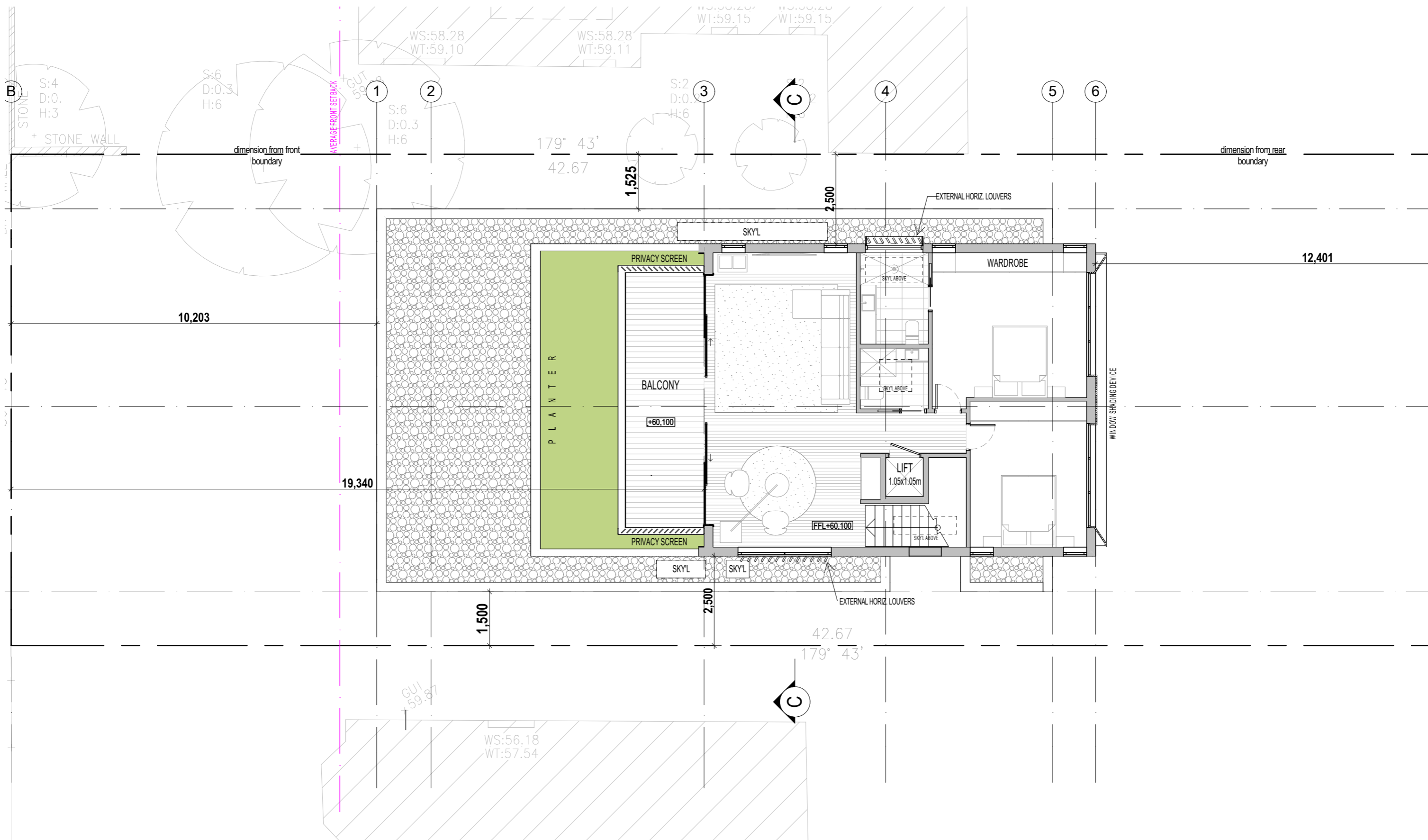
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PROJECT: 5 EARLE STREET CREMORNE
 PROJECT TYPE: SINGLE DWELLING
 CLIENT #CLIENT NAME



DRAWING #: 9	DRAWING NAME: FIRST FL PLAN	DEVELOPMENT APPLICATION			SCALE AS SHOWN @ A3
PROJECT NO: 20-09	DATE: 23/07/2021	DRAWN FK	CHECKED ER	ISSUE C	



SECOND FL PLAN 1:100



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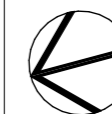
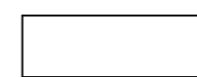
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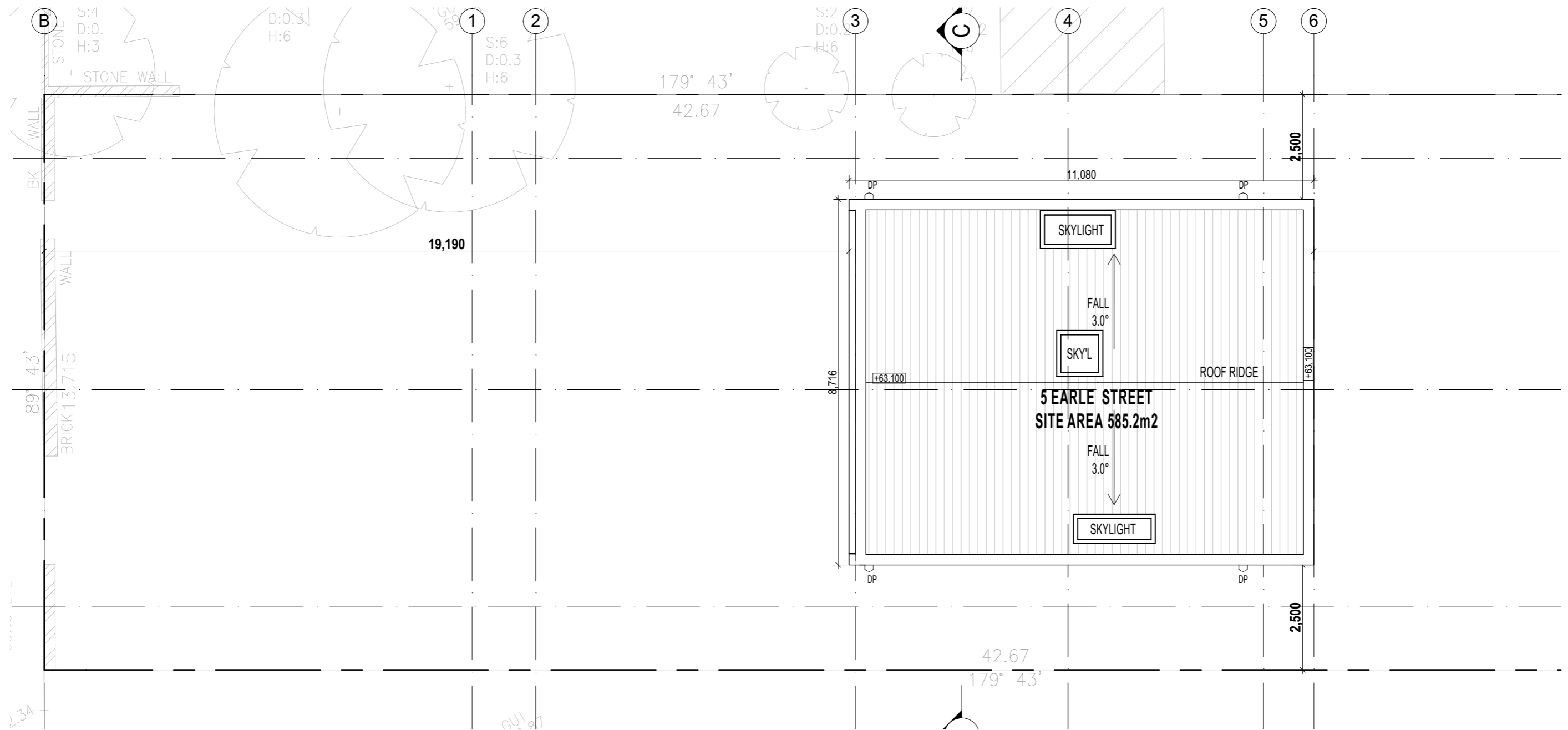
PROJECT: 5 EARLE STREET CREMORNE
 PROJECT TYPE: SINGLE DWELLING
 CLIENT #CLIENT NAME

EARLE STREET
 KEY MAP



TRUE NORTH

DRAWING #: 10	DRAWING NAME: SECOND FL PLAN	SCALE AS SHOWN @ A3		
DEVELOPMENT APPLICATION		PROJECT NO: 20-09	DATE: 23/07/2021	ISSUE C
DRAWN FK	CHECKED ER			



ROOF PLAN 1:100



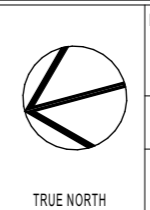
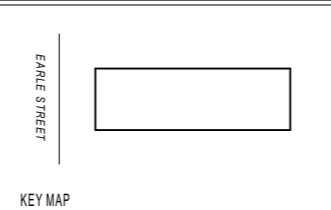
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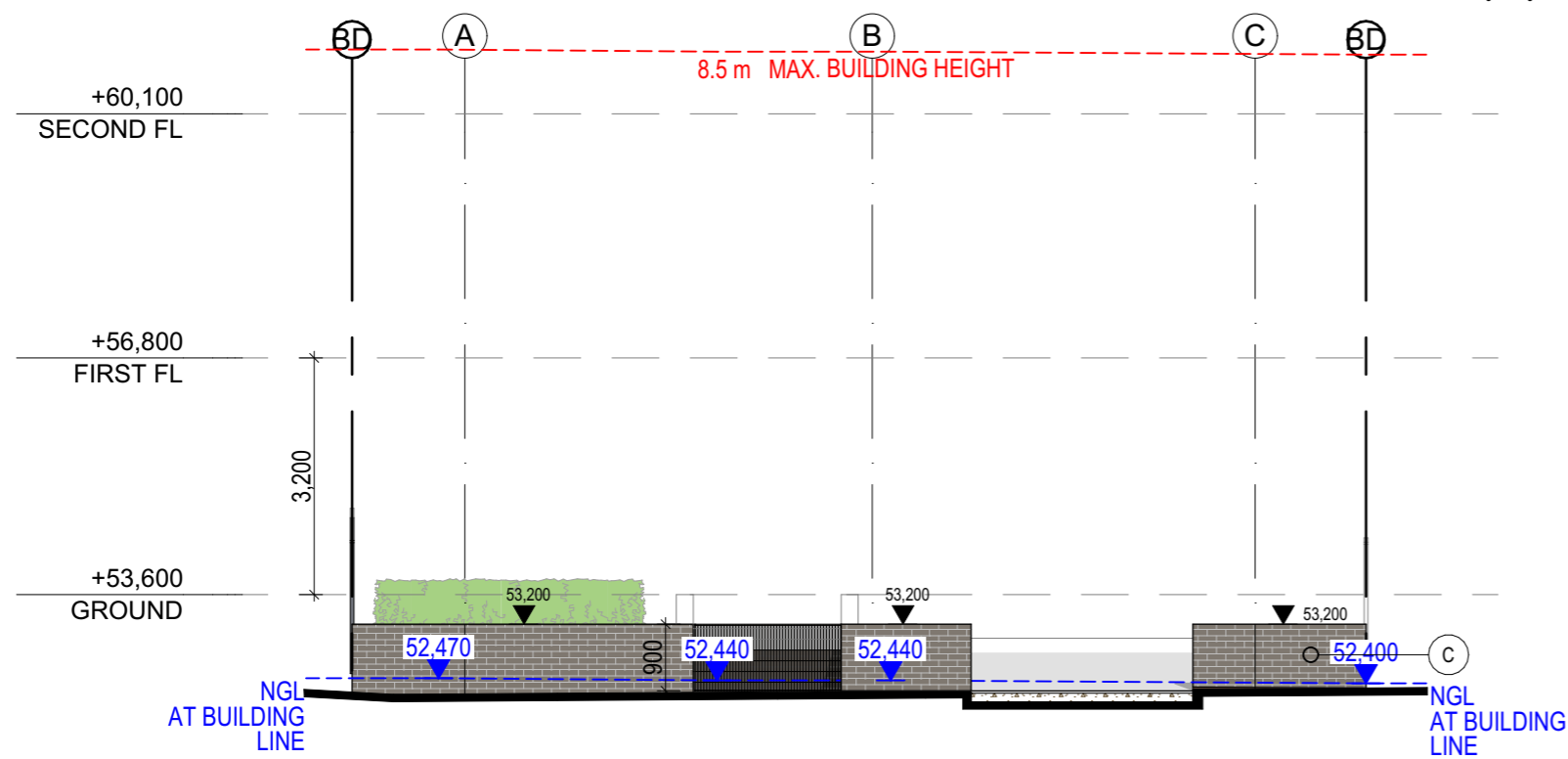
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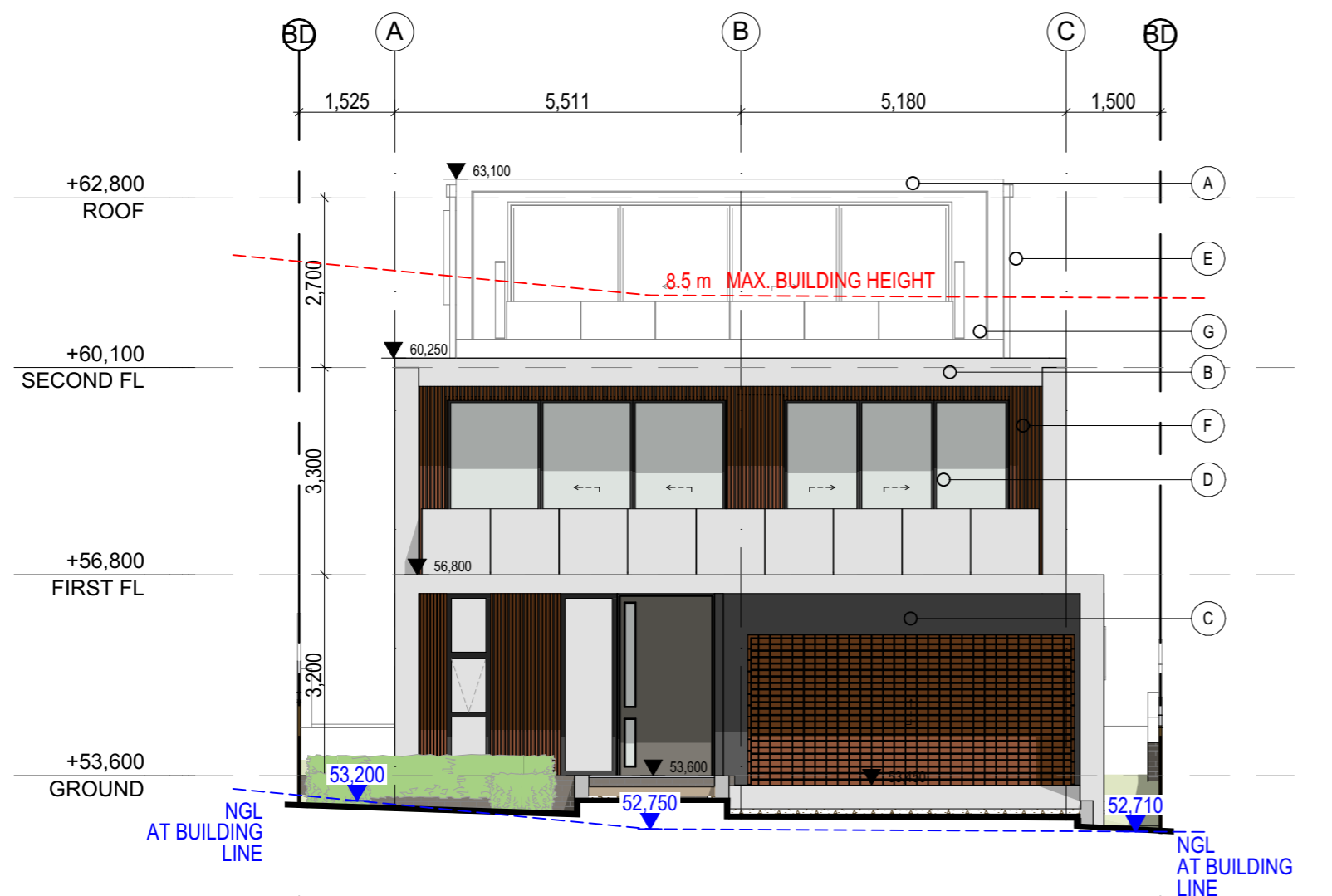
PROJECT: 5 EARLE STREET CREMORNE
 PROJECT TYPE: SINGLE DWELLING
 CLIENT #CLIENT NAME



DRAWING #: 11	DRAWING NAME: ROOF PLAN
DEVELOPMENT APPLICATION	
SCALE AS SHOWN @ A3	
PROJECT NO: 20-09	DATE: 23/07/2021
DRAWN: FK	CHECKED: ER
ISSUE: C	



BOUNDARY FENCE ELEVATION 1:100



NORTH ELEVATION 1:100



A
NEWTECHWOOD COMPOSITE CLADDING
 WALNUT -
 ALL FACADES ON THE SECOND FLOOR

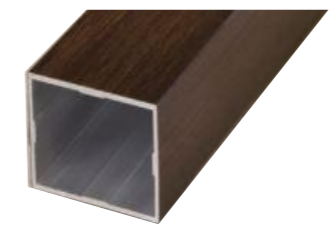


D
CLEAR GLAZING

E
WINDOW SHROUD
 DULUX BLACK SATIN 9109024S
 POWDER COATING OR SIMILAR
 WINDOWS ON THE EAST AND WEST FACADE

B
CEMENT RENDER PAINT FINISH
 DULUX VIVID WHITE

F
COVET TIMBER LOOK ALUMINIUM BATTENS
 - DAAKU PAIN OR SIMILAR



C
BRICK
 PGH - Lang Mursten - Gehl
 GROUND FLOOR AND FRONTYARD RETAINING WALLS



G
FRAMELESS GLASS
BALUSTRADE



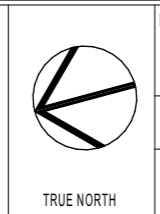
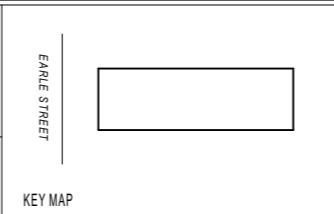
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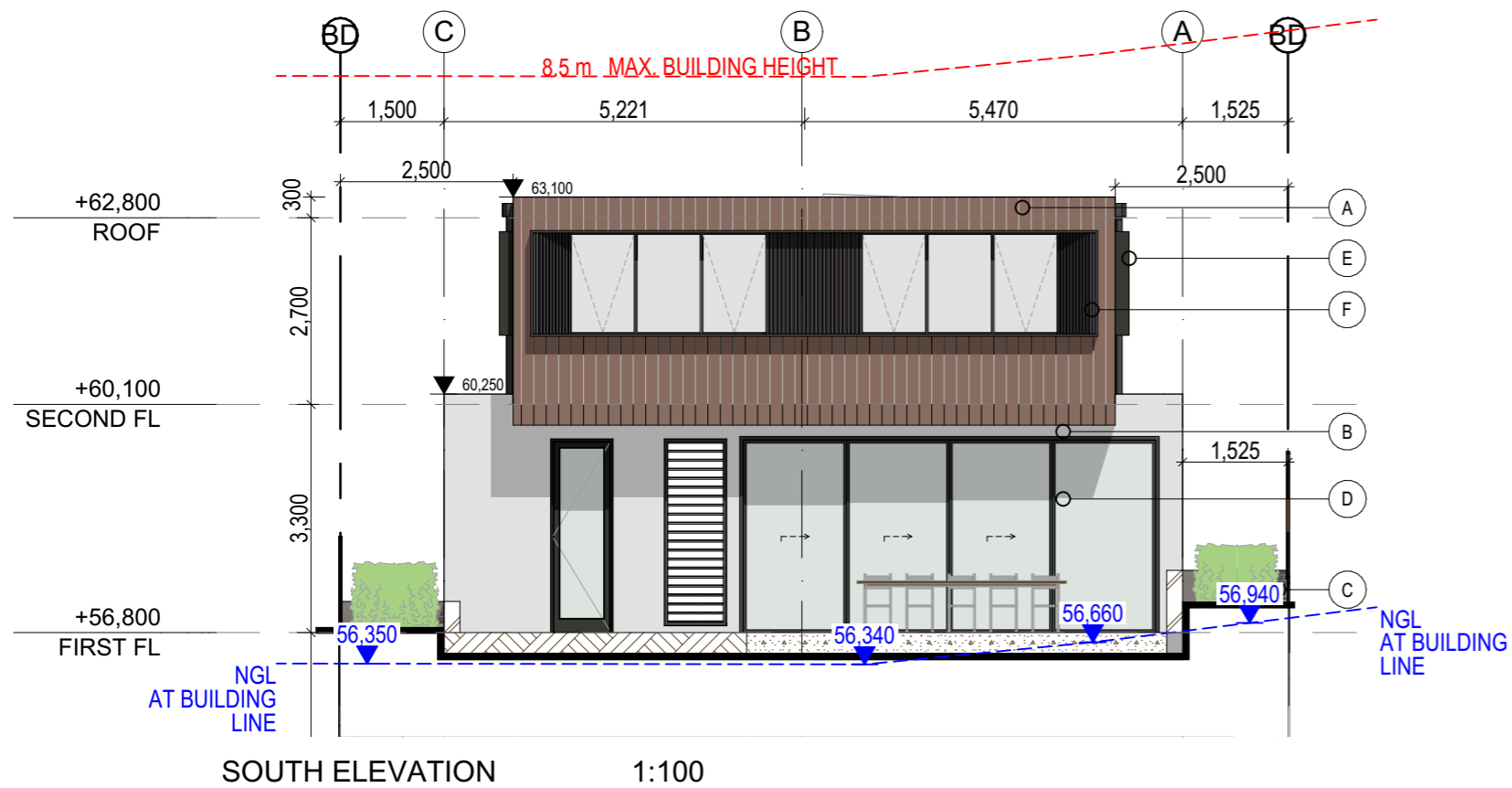
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PROJECT: 5 EARLE STREET CREMORNE
 PROJECT TYPE: SINGLE DWELLING
 CLIENT #CLIENT NAME



DRAWING #: 16	DRAWING NAME: NORTH ELEVATIONS
DEVELOPMENT APPLICATION	
SCALE AS SHOWN @ A3	
PROJECT NO: 20-09	DATE: 23/07/2021
DRAWN: FK	CHECKED: ER
ISSUE: C	



A
NEWTECHWOOD COMPOSITE CLADDING
 WALNUT -
 ALL FACADES ON THE SECOND FLOOR

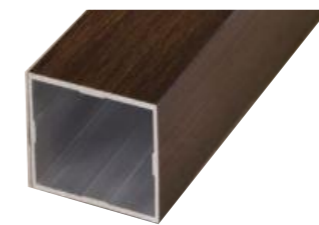


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CLEAR GLAZING

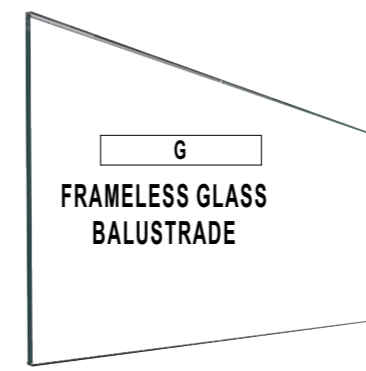
E
WINDOW SHROUD
 DULUX BLACK SATIN 9109024S
 POWDER COATING OR SIMILAR
 WINDOWS ON THE EAST AND WEST FACADE

B
CEMENT RENDER PAINT FINISH
 DULUX VIVID WHITE

F
COVET TIMBER LOOK ALUMINIUM BATTENS
 - DAAKU PAIN OR SIMILAR



C
BRICK
 PGH - Lang Mursten - Gehl
 GROUND FLOOR AND FRONTYARD RETAINING WALLS



G
FRAMELESS GLASS
BALUSTRADE

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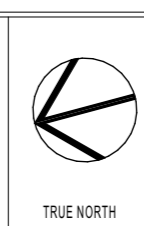
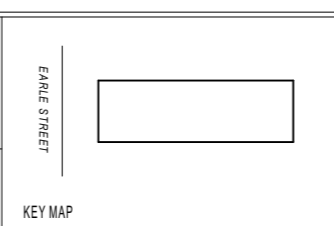
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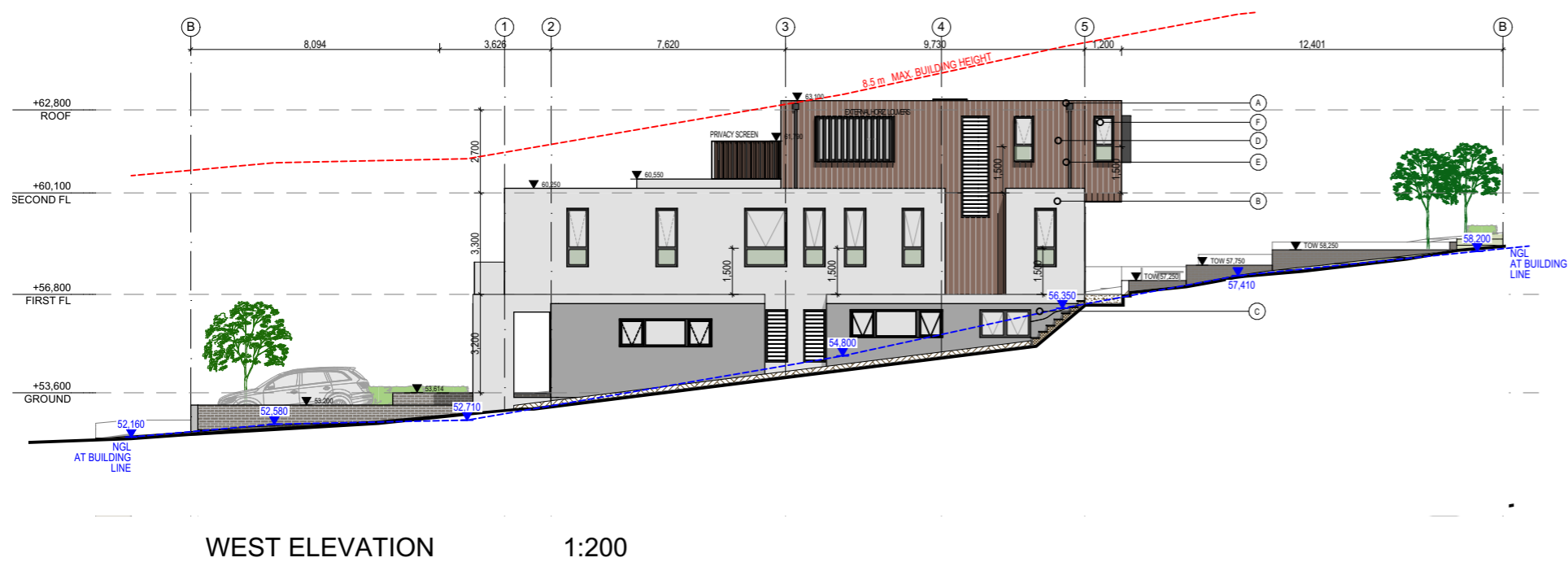
PROJECT: 5 EARLE STREET CREMORNE

PROJECT TYPE: SINGLE DWELLING

CLIENT #CLIENT NAME



DRAWING #: 17	DRAWING NAME: SOUTH ELEVATION
DEVELOPMENT APPLICATION	
SCALE AS SHOWN @ A3	
PROJECT NO: 20-09	DATE: 23/07/2021
DRAWN: FK	CHECKED: ER
ISSUE: C	



A
NEWTECHWOOD COMPOSITE CLADDING
 WALNUT -
 ALL FACADES ON THE SECOND FLOOR



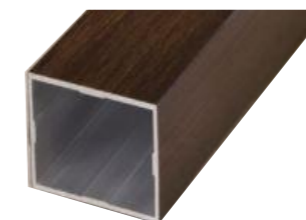
D
CLEAR GLAZING

E
WINDOW SHROUD
 DULUX BLACK SATIN 9109024S
 POWDER COATING OR SIMILAR

WINDOWS ON THE EAST AND WEST FACADE

B
CEMENT RENDER PAINT FINISH
 DULUX VIVID WHITE

F
COVET TIMBER LOOK ALUMINIUM BATTENS
 - DAAKU PAIN OR SIMILAR



C
BRICK
 PGH - Lang Mursten - Gehl
 GROUND FLOOR AND FRONTYARD RETAINING WALLS

OPAQUE
 GLASS



G
FRAMELESS GLASS
BALUSTRADE



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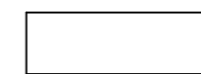
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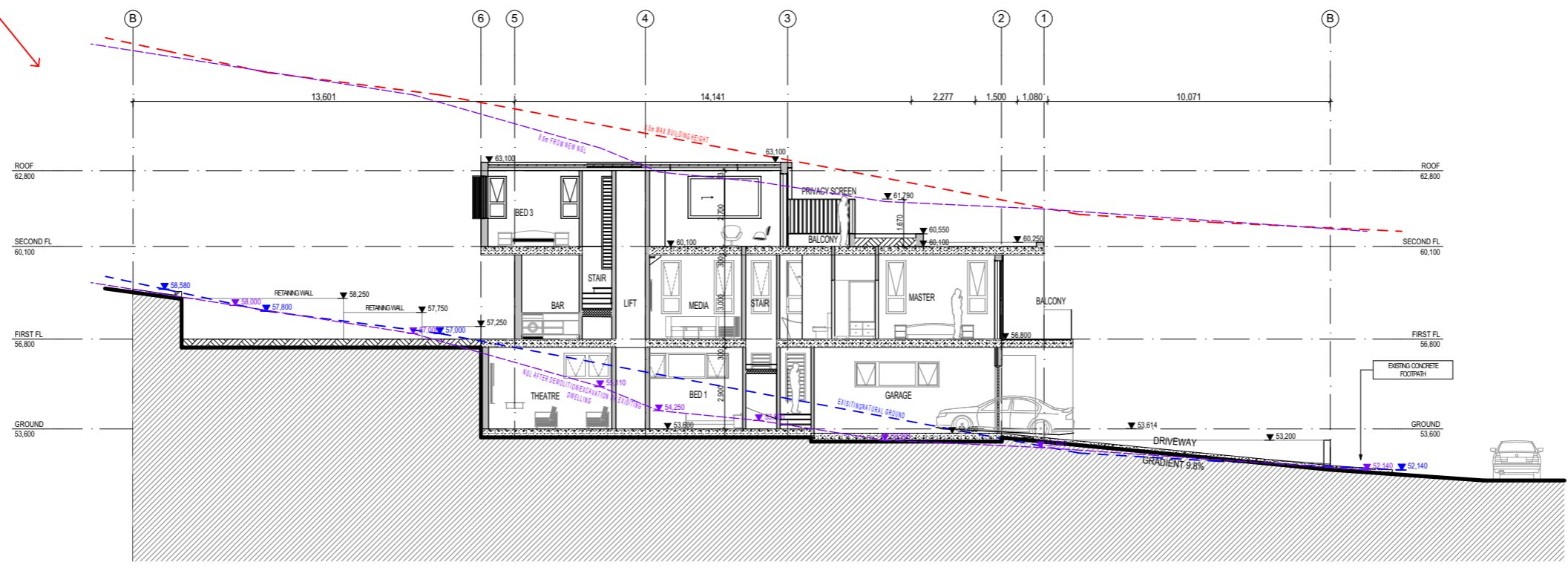
PROJECT: 5 EARLE STREET CREMORNE
 PROJECT TYPE: SINGLE DWELLING
 CLIENT #CLIENT NAME

EARLE STREET
 KEY MAP



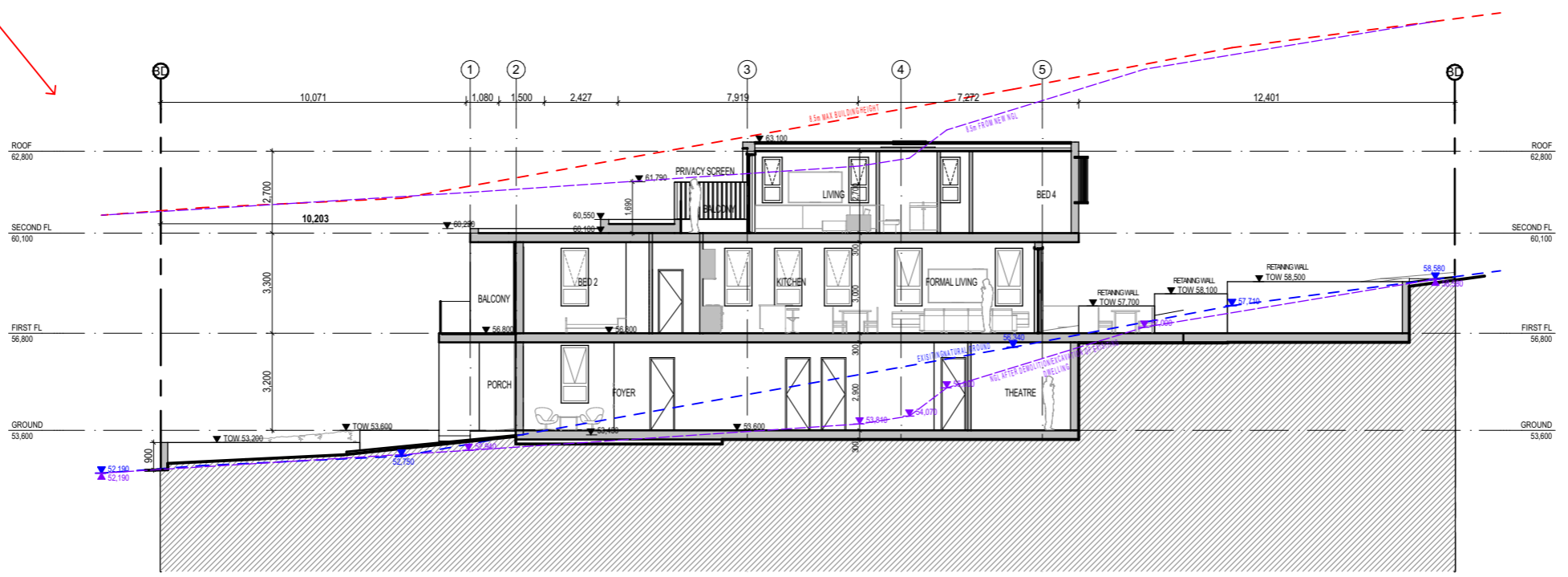
DRAWING #: 18	DRAWING NAME: EAST & WEST ELEVATION
DEVELOPMENT APPLICATION	
SCALE AS SHOWN @ A3	
PROJECT NO: 20-09	DATE: 23/07/2021
DRAWN FK	CHECKED ER
ISSUE C	

SECTION SHOWS NGL FROM BOTH THE EXISTING SURVEY (BEFORE DEMOLITION) AND THE UPDATED SURVEY (AFTER DEMOLITION OF THE EXISTING DWELLING).



SECTION A 1:200

SECTION SHOWS NGL FROM BOTH THE EXISTING SURVEY (BEFORE DEMOLITION) AND THE UPDATED SURVEY (AFTER DEMOLITION OF THE EXISTING DWELLING).



SECTION B 1:200



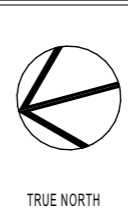
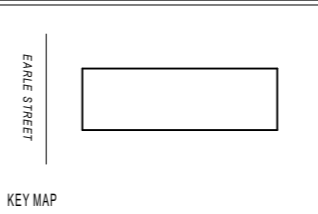
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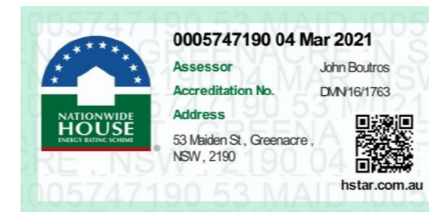
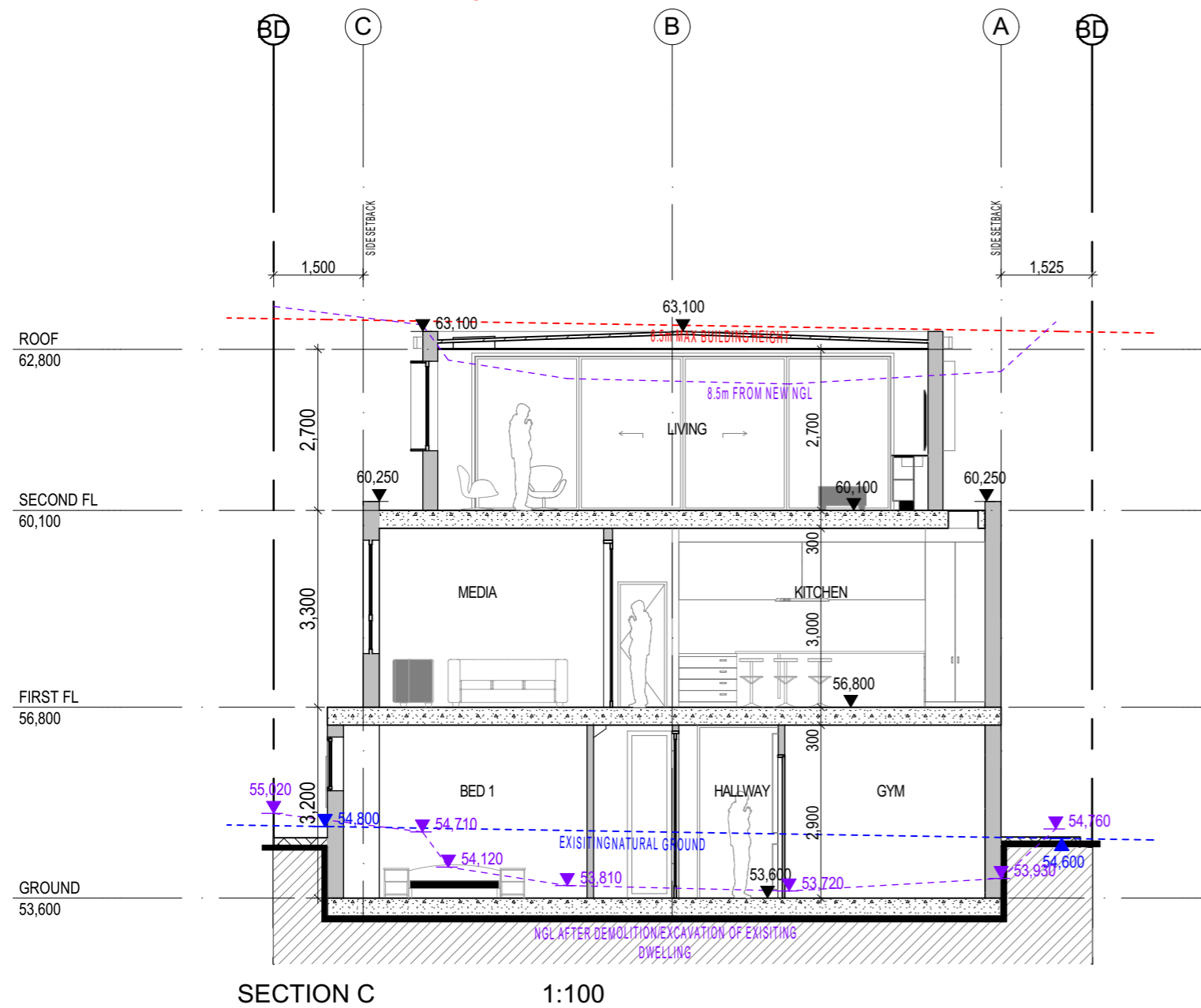
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PROJECT: 5 EARLE STREET CREMORNE
 PROJECT TYPE: SINGLE DWELLING
 CLIENT: #CLIENT NAME



DRAWING #: 19	DRAWING NAME: SECTION A & B
DEVELOPMENT APPLICATION	
SCALE: AS SHOWN @ A3	
PROJECT NO: 20-09	DATE: 23/07/2021
DRAWN: FK	CHECKED: ER
ISSUE: C	

SECTION SHOWS NGL FROM BOTH THE EXISTING SURVEY (BEFORE DEMOLITION) AND THE UPDATED SURVEY (AFTER DEMOLITION OF THE EXISTING DWELLING).



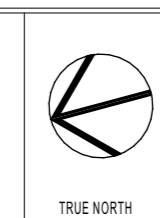
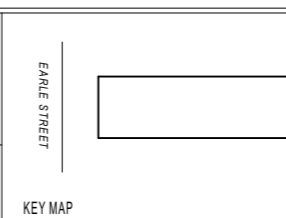
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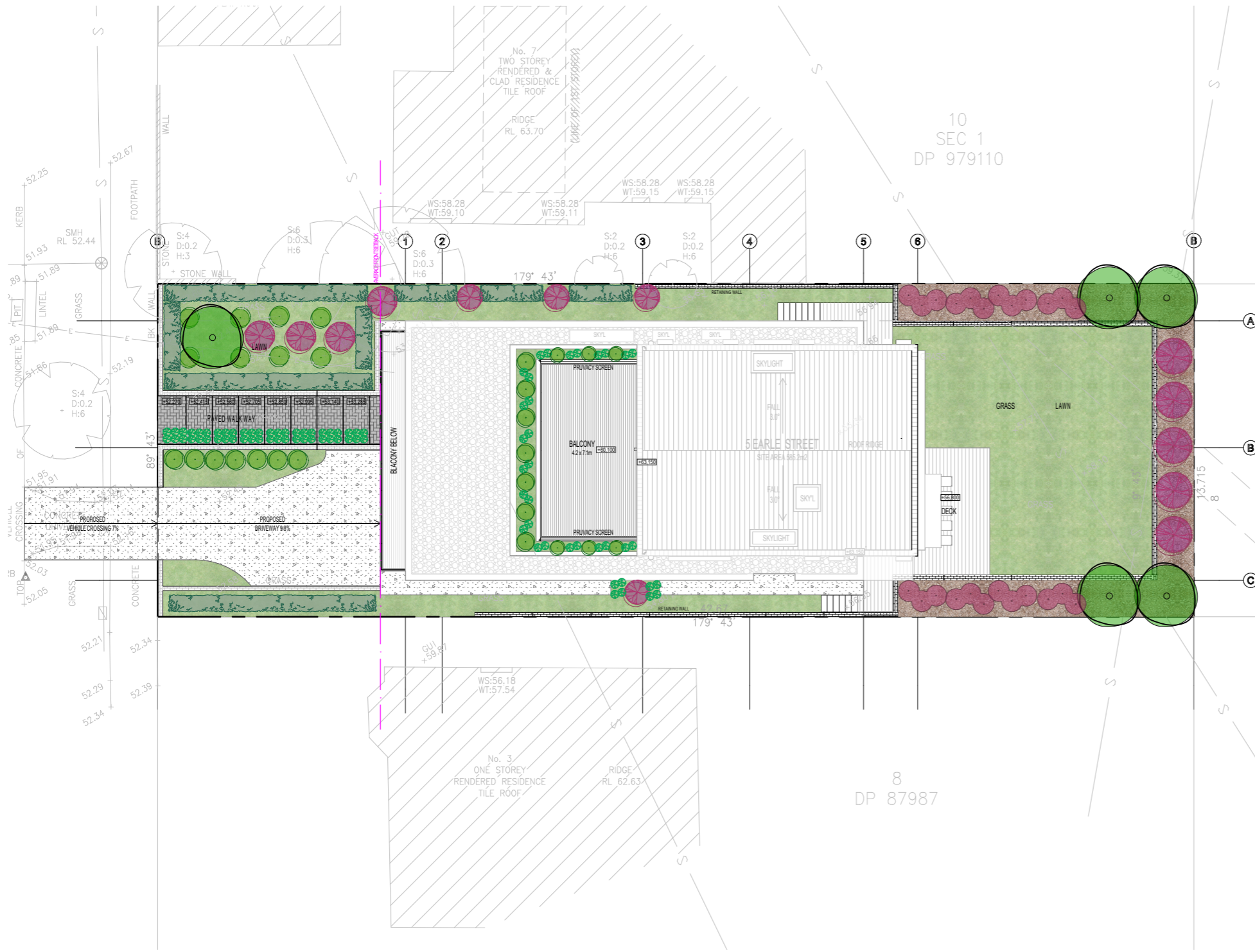
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PROJECT: 5 EARLE STREET CREMORNE
 PROJECT TYPE: SINGLE DWELLING
 CLIENT #CLIENT NAME

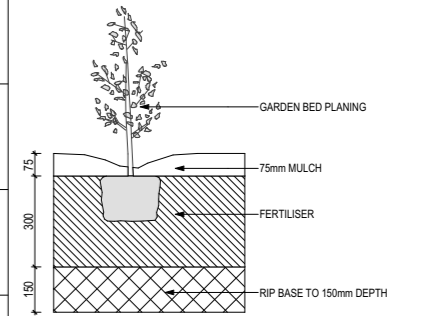


DRAWING #: 20	DRAWING NAME: SECTION C	SCALE AS SHOWN @ A3		
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DRAWN FK	CHECKED ER	SCALE AS SHOWN @ A3		



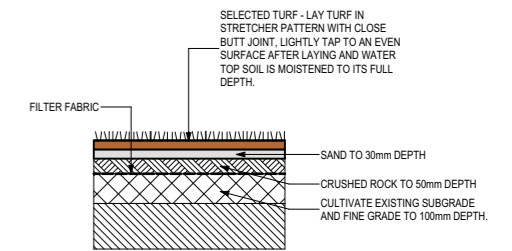
LANDSCAPE PLAN 1:200

PLANT SCHEDULE			
IMAGE	NAME	GRAPHIC	QTY
	ACMENA SMITHIA LILLY PILLY		5
	DIANELLA CAERULEA BLUE FLAX LILY		28
	DODONAEA VISCOSA HOPBUSH		13
	LOMANDRA FILIFORMIS SAVANNAH BLUE		82
	CORREA ALBA WHITE CORREA		45
	BREYNIA CERNUA COFFEE BUSH		8



150-200mm SHRUB / PLANT DETAIL

OUTDOOR FINISHES		
	PAVED PATHWAY	
	TIMBER OR COMPOSITE DECK	
	TURF SIR WALTER BUFFALO	
	CYPRUS MULCH	
	DARK CONCRETE DRIVEWAY	



TURF DETAIL



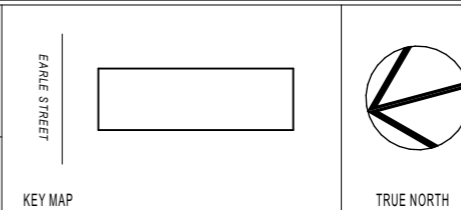
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 Nominated Architects:
 Esan Rahmani NSW 10560

NOTES:
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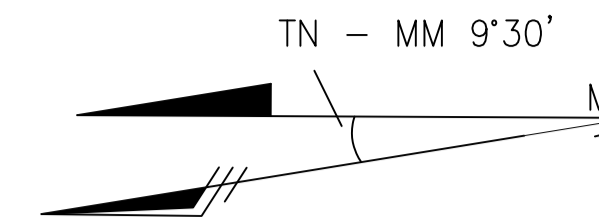
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REV.	DESCRIPTION	DATE
A	DA SUBMISSION	10/03/2021
B	REPOSE TO COUNCIL	26/04/2021
C	REPOSE TO COUNCIL	29/06/2021

PROJECT: 5 EARLE STREET CREMORNE
 PROJECT TYPE: SINGLE DWELLING
 CLIENT: #CLIENT NAME



DRAWING #: 12	DRAWING NAME: LANDSCAPE PLAN
DEVELOPMENT APPLICATION	
SCALE: AS SHOWN @ A3	
PROJECT NO: 20-09	DATE: 07/07/2021
DRAWN: FK	CHECKED: ER
ISSUE: A	



EARLE STREET

LEGEND

- WATER METER
- BENCH MARK
- COMMUNICATION PIT
- ELECTRICITY POWER LINE
- SEWER LINE
- PP : POWER POLE/SERVICES
- GUT : TOP OF GUTTER
- WS : BOTTOM OF WINDOW
- WT : TOP OF WINDOW
- SMH : SEWER MANHOLE
- S:3 (SPREAD)
- D:0.3 (DIAMETER)
- H:10 (HEIGHT)
- SHRUB
- HYDRANT

NOTES

NO BOUNDARY SURVEY HAS BEEN UNDERTAKEN. BEARINGS, DIMENSIONS AND AREAS ARE FROM TITLE ONLY AND ARE SUBJECT TO CONFIRMATION BY BOUNDARY SURVEY.

DIMENSIONS SHALL NOT BE OBTAINED BY SCALING THE DETAIL FROM THE DRAWING. SURVEYOR MUST BE CONTACTED IF THERE ARE ANY DISCREPANCIES.

SERVICES SHOWN ARE INDICATIVE ONLY. POSITIONS ARE BASED ON SURFACE INDICATOR(S) LOCATED DURING FIELD SURVEY. CONFIRMATION OF THE EXACT POSITION SHOULD BE MADE PRIOR TO ANY EXCAVATION WORK. OTHER SERVICES MAY EXIST WHICH ARE NOT SHOWN.

LEVELS ARE BASED ON AUSTRALIAN HEIGHT DATUM (A.H.D.) USING PM 40834 R.L. 54.95m.

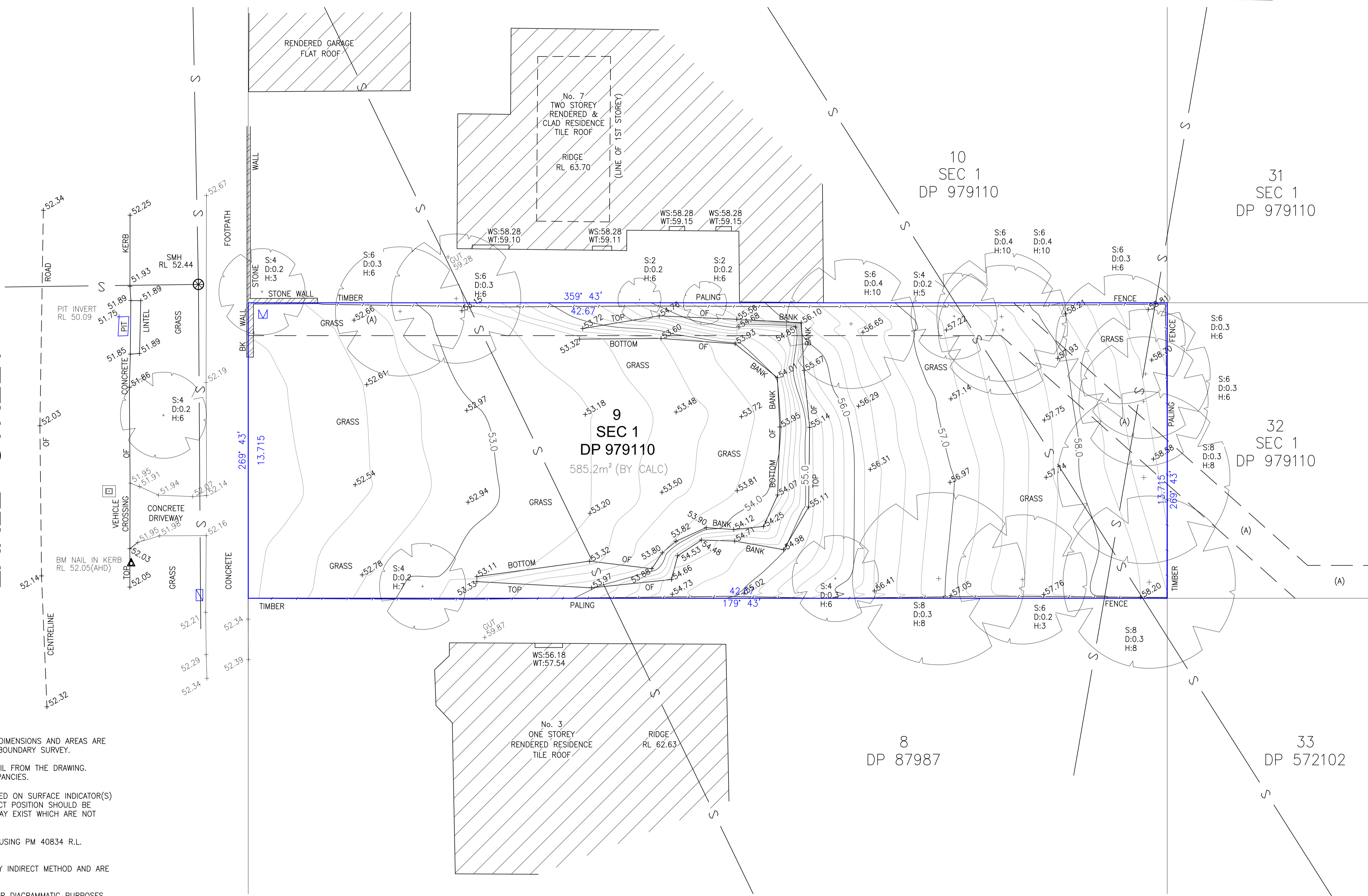
RIDGE, WINDOW & GUTTER HEIGHTS HAVE BEEN OBTAINED BY INDIRECT METHOD AND ARE ACCURATE TO ±0.05m

ADJOINING DWELLINGS & BUILDINGS HAVE BEEN PLOTTED FOR DIAGRAMMATIC PURPOSES ONLY.

CONTOURS ARE AN INDICATION OF LANDFORM AND SHOULD NOT BE TAKEN IN PREFERENCE TO SPOT LEVELS SHOWN.

CONTOUR INTERVALS 0.2m.

(A) DRAINAGE EASEMENT 1.525 WIDE



A	15.04.21	INITIAL ISSUE

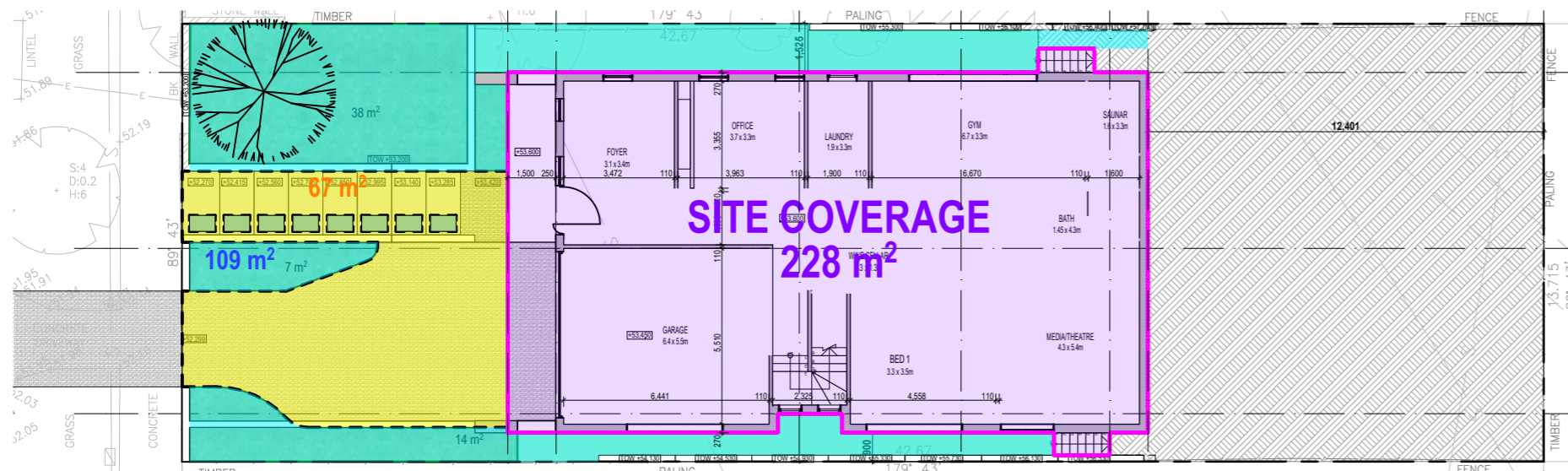
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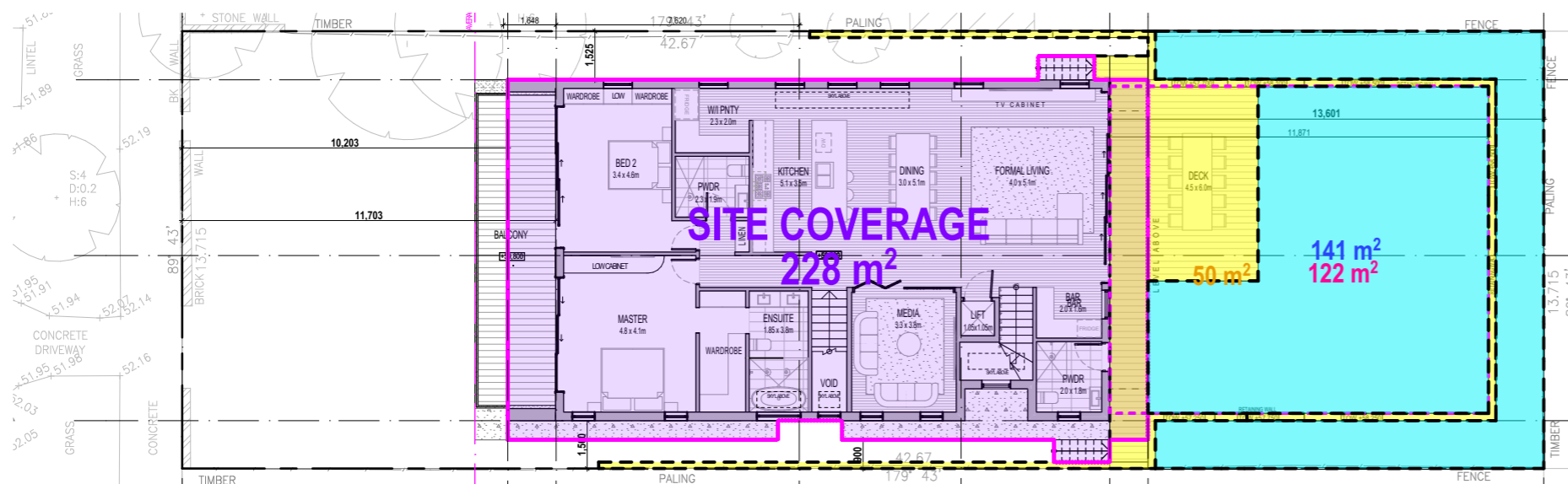
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SURVEY	M.W.
DRAWN	L.M.
CLIENT	PEAK ARCHITECTS
DATE OF SURVEY	15.04.21
CHECKED	R.M.
HEIGHT ORIGIN	AHD
APPROVED	H.T.

PROJECT TITLE	5 EARLE STREET, CREMORNE
DRAWING TITLE	PLAN SHOWING LEVELS & DETAIL OVER LOT 9 IN SECTION 1 IN DP 979110

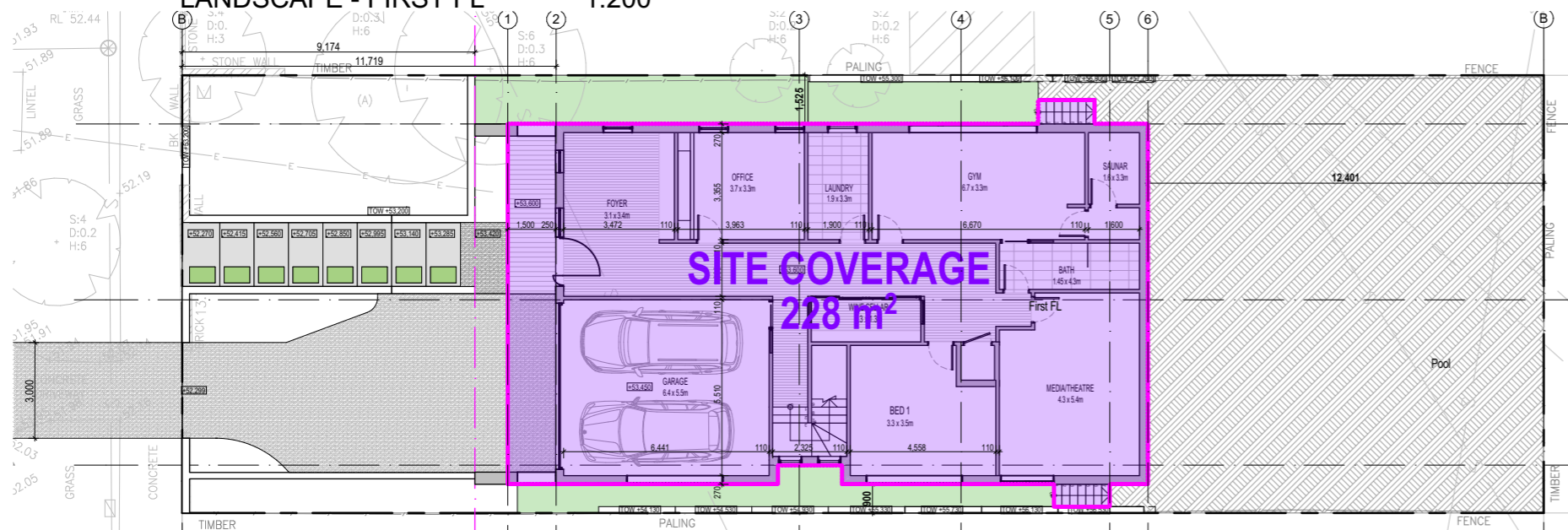
CAD REF	C:\200489.dwg
DRAWING NO	200489/001B
SHEET	1 OF 1
JOB NAME	EARLE
REV	A



LANDSCAPE - GROUND FL 1:200



LANDSCAPE - FIRST FL 1:200



SITE COVERAGE 1:200

SITE COVERAGE CALCULATIONS	
SITE AREA	585.2m ²
SITE COVERAGE - ALLOWABLE	40% OR 234m ²
PROPOSED -	38% OR 228m ²

LANDSCAPE CALCULATIONS		
PRIVATE OPEN SPACE	50m ²	122m ²
UNBUILD UPON: MAX	20% OR 117m ²	20% OR 117m ²
LANDSCAPING: MIN	40% OR 234m ²	43% OR 250m ²



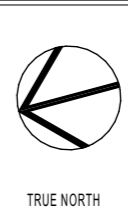
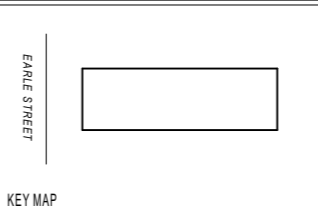
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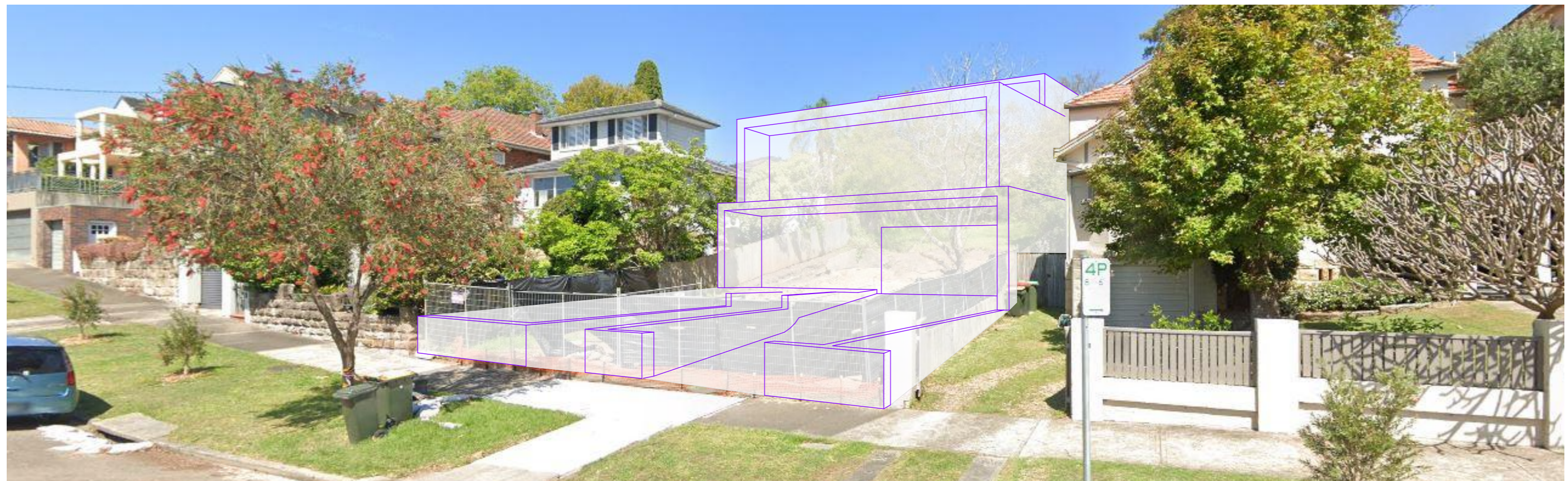
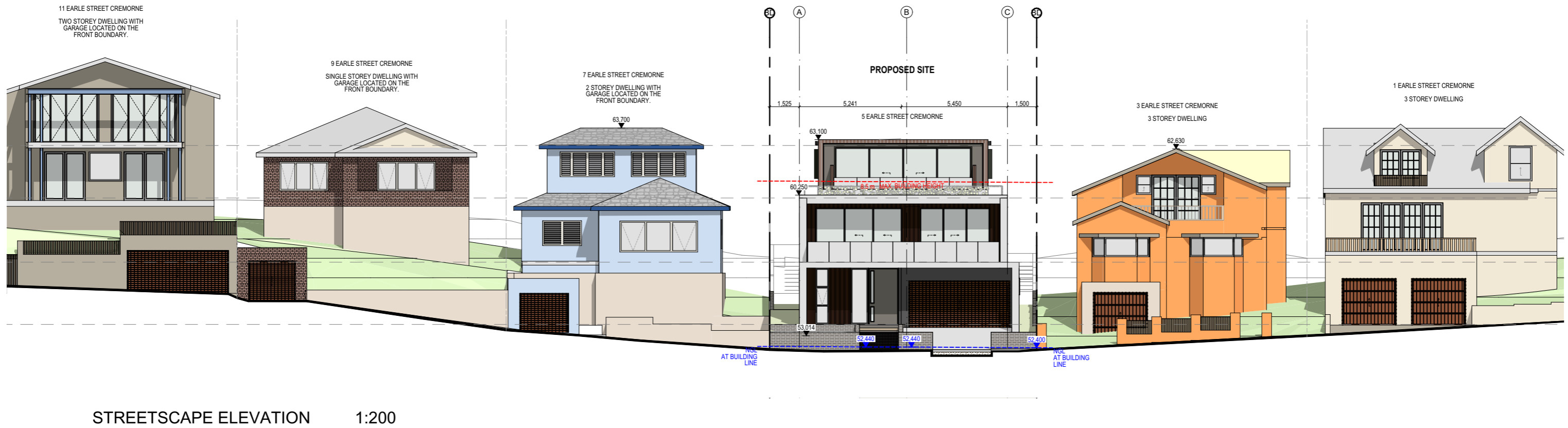
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REV.	DESCRIPTION	DATE
A	DA SUBMISSION	10/03/2021
B	REPOSE TO COUNCIL	26/04/2021
C	REPOSE TO COUNCIL	21/07/2021

PROJECT: 5 EARLE STREET CREMORNE
 PROJECT TYPE: SINGLE DWELLING
 CLIENT: #CLIENT NAME



DRAWING #: 14	DRAWING NAME: GFA & LANDSCAPE CALCS
DEVELOPMENT APPLICATION	
SCALE: AS SHOWN @ A3	
PROJECT NO: 20-09	DATE: 23/07/2021
DRAWN: FK	CHECKED: ER
ISSUE: C	



<p>2B / 5 Belmore Street Burwood NSW 2134 02 9747 5872 0406 004 418 info@peakarchitects.com.au peakarchitects.com.au @peak.architects</p> <p>Nominated Architects: Esan Rahmani NSW 10560</p>	<p>NOTES: FORM INFORMATION ONLY NOT FOR CONSTRUCTION</p>	<table border="1"> <thead> <tr> <th>REV.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>DA SUBMISSION</td> <td>10/03/2021</td> </tr> <tr> <td>B</td> <td>REPOSE TO COUNCIL</td> <td>26/04/2021</td> </tr> <tr> <td>C</td> <td>REPOSE TO COUNCIL</td> <td>21/07/2021</td> </tr> </tbody> </table>	REV.	DESCRIPTION	DATE	A	DA SUBMISSION	10/03/2021	B	REPOSE TO COUNCIL	26/04/2021	C	REPOSE TO COUNCIL	21/07/2021	<p>PROJECT: 5 EARLE STREET CREMORNE</p> <p>PROJECT TYPE: SINGLE DWELLING</p> <p>CLIENT #CLIENT NAME</p>	<p>EARLE STREET</p> <p>KEY MAP</p>	<p>TRUE NORTH</p>	<p>DRAWING #: 15</p> <p>DRAWING NAME: STREETScape ELEVATION</p>	<p>DEVELOPMENT APPLICATION</p> <p>SCALE AS SHOWN @ A3</p>	<table border="1"> <thead> <tr> <th>PROJECT NO:</th> <th>DATE:</th> <th>DRAWN:</th> <th>CHECKED:</th> <th>ISSUE:</th> </tr> </thead> <tbody> <tr> <td>20-09</td> <td>23/07/2021</td> <td>FK</td> <td>ER</td> <td>C</td> </tr> </tbody> </table>	PROJECT NO:	DATE:	DRAWN:	CHECKED:	ISSUE:	20-09	23/07/2021	FK	ER	C
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22 July 2021

Clause 4.6 Variation to Development Standard

Property Description: 5 Earle Street, Cremorne

Development: New Dwelling

Development Standard: Height of Buildings

Introduction

This is an amended clause 4.6 variation prepared following the issue of amended plans dated 21 July 2021 prepared by Peak Architects.

This clause 4.6 variation supports the development proposal for a 2-3 storey dwelling house at 5 Earle Street, Cremorne. This clause 4.6 request seeks a variation to the 8.5m building height development standard contained in clause 4.3 – Height of Buildings of the *North Sydney Local Environmental Plan 2013*.

The variation to the height is measured to the front (northern) parapet of the upper-level roof form, central to the site. Due to the existing dwelling on the site being recently demolished and the irregular excavated ground line within dwelling footprint, the height of building technically presents a variation of 0.88m – 1.05m to the development standard, being a maximum of 12.3% of the development standard.

It is noted, when measured from extrapolated ground line, the proposed dwelling complies with the 8.5m height of buildings limit central to the site with the variation attributed to the technical interpretation of the height of building standard being measured from existing ground level.

The proposed variation is largely a result of the excavated basement of the demolished dwelling previously on the subject site, however is partially a result of topography of the site which has a fall from the rear boundary (RL58.58) to the front boundary – Earle Street (RL 52.19) of 6.39m across a length of 42.67m.

The fundamental role of clause 4.6 in any local environmental plan is reflected in the recent decision of Commissioner Clay in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In particular, Commissioner Clay notes at [73] of his decision that:

“First, it should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.”

The objectives of clause 4.6 facilitate the flexible application of development standards to particular development in order to achieve an improved environmental planning outcome.

This request has been prepared having regard to the Department of Planning and Environment’s Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the Land and Environment Court and Court of Appeal of NSW.

The development proposal results in a predominantly 2 storey form to Earle Street noting the 19.1m setback to the upper level. The variation to the height is measured from existing natural ground level to top of upper level roof form at its northern edge, central to the site, set back 19.1m from the street.

The upper level of the proposed dwelling has been set back from the street frontage, behind the established building alignment of both number 3 and number 7 Earle Street and the roof parapet provides a maximum height of RL63.1 comfortably sitting within the established streetscape of Earle Street. The technical variation to the height of buildings development standard facilitates a better urban design outcome than an otherwise compliant building. Strict compliance with the height standard, noting the dwelling complies with the extrapolated ground line is unreasonable and would thwart the intent of the height standard, notably objective 4.3(1)(f)

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

The maximum height is 9.55m measured from existing natural ground level. The numerical variation is 1.05m being a variation of 12.3%. v

The extent of the variation is shown on the sections below, with the existing and extrapolated natural ground heights shown accordingly.

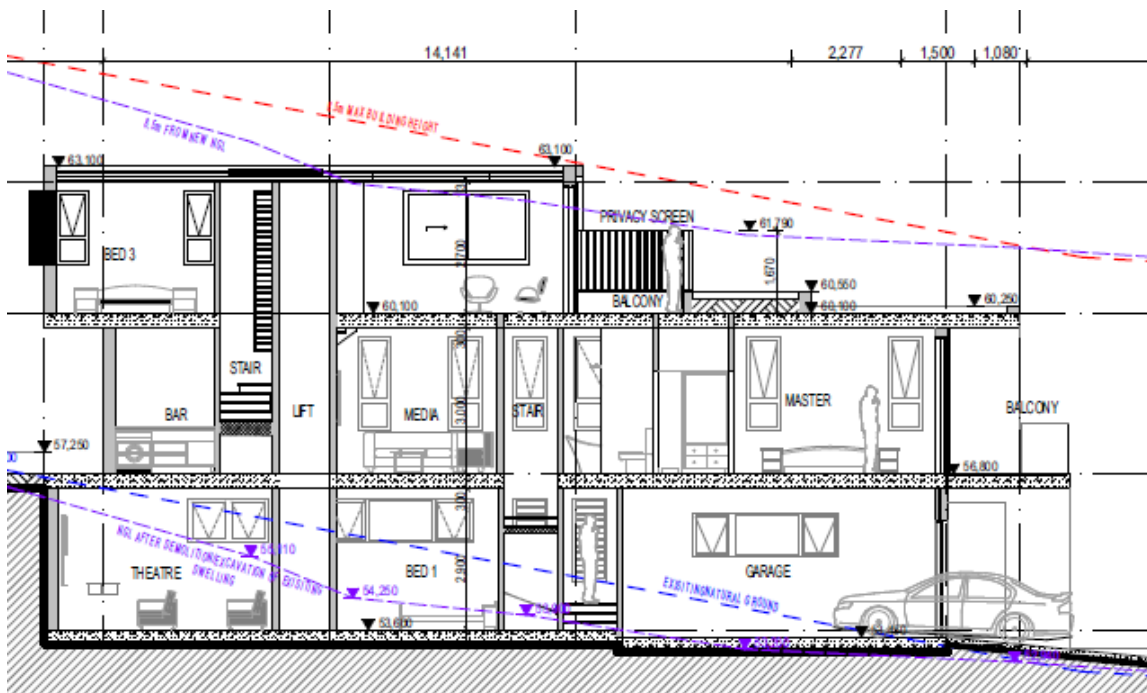


Figure 1: Section A indicating maximum extent of variation (0.88m)

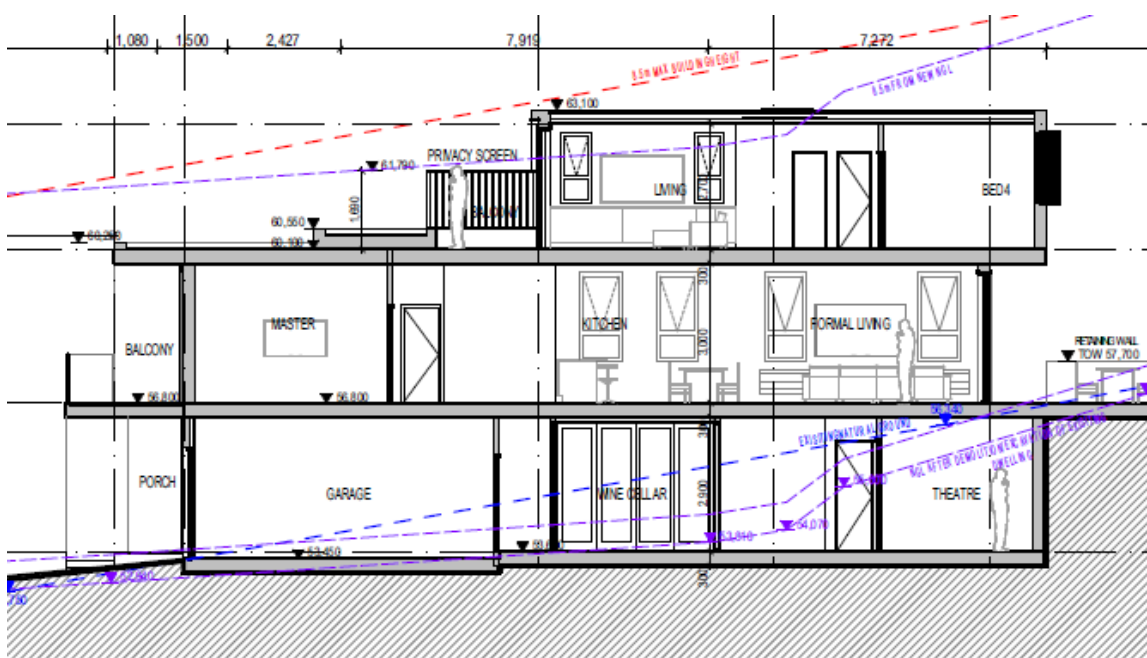


Figure 2: Section B indicating maximum extent of variation (1.05m)

The request to contravene the development standard for the building height has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79;
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446;

3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; and
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the development consistent with the objectives of the zone?
2. Is the proposed development consistent with the objectives of the development standard which is not met?
3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a) and cl 4.6(4)(a)(i))
4. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b) and 4.6(4)(a)(ii))

Is the proposed development in the public interest because it is consistent with the objectives of the standard and the zone? (cl 4.6(4)(a)(ii))

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a) of the LEP, the variation to the height of buildings development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because the proposed development is consistent with the objectives of the height of buildings standard, notwithstanding non-compliance with the standard.

• Objectives of the Height of Buildings Development Standard

The objectives of the development standard are at clause 4.3(1) of the LEP 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.*

The proposed development meets the objectives of Clause 4.3 of the LEP based on the following assessment:

Objective (a) – The proposed dwelling has been designed to conform to the topography of the site which has a significant fall from the rear boundary (RL58.58) to the front boundary – Earle Street (RL 52.19) of 6.39m across a length of 42.67m. the dwelling complies with the 8.5m height limit central to the building when measured from extrapolated ground line.

The upper level has been recessed, from the level below, set back 19.1m from the front boundary so that the built form is compatible with adjoining dwelling houses, and to reduce its visual prominence at the front elevation.

The extent of the variation is attributed to the technical measurement of the building height from excavated ground line, noting recent demolition of the dwelling on the subject site.

Objective (b) – The development has been sited in accordance with the building character of the locality. The part of the building that is over the height limit is attributed to an excavated basement level which is lower than the predominant ground line on the site.

The portion of the building technically varying the height limit located central to the built form and at the northern edge of the upper level roof form and will not have an unreasonable impact upon views. The ridge height of the proposal is compatible with the ridge heights of the adjoining dwellings.

Objective (c) – The proposed development allows for adequate solar access to the adjoining properties, noting the north-south orientation of the site allows for the adjoining dwellings to retain 3 hours of solar access to private open space and living areas. The portion of the building which varies the height limit does not result in additional overshadowing and is set back on the allotment, 19.1m from the front boundary.

Objective (d) – The proposed dwelling has been designed to maintain visual and acoustic privacy of adjoining properties noting balconies are orientated to the street and do not have direct sightlines into the private open space or living areas of adjoining properties.

Objective (e) – The proposed dwelling is compatible with the existing dwellings within the street, particularly with regard to the nearby dwellings along the southern side of Earle Street which are characterised predominantly by 2-3 storey scale. The roof height of the proposed dwelling is compatible with adjoining dwellings presenting a ridge height of RL63.1. No 3 Earle Street presents a ridge height of RL62.6 and No. 7 Earle Street presents an RL of RL 63.7.

Objective (f) – The proposed dwelling is consistent with the desired future character of the locality. The dwelling sits comfortably within the established streetscape being designed within a 2 storey form to the street and a set back upper level. The variation to the height limit is a function of the excavated basement of the demolished dwelling noting the proposal complies with the extrapolated

ground line demonstrating its compatibility with the objective of the development standard.

The technical variation to the height of buildings development standard facilitates a better urban design outcome than an otherwise compliant building. Strict compliance with the height standard, noting the dwelling complies with the extrapolated ground line is unreasonable and would thwart the intent of the height standard

It is unnecessary to require compliance with the height of buildings development standard due to the following reasons:

- The variation to the 8.5m height standard is confined to the northern edge of the upper level roof form, central to the site. This element will not result in any significant adverse visual impacts upon the adjoining properties or the public domain, with the proposed built form being suitable within the context of the subject site.
- The proposed building height is a result of the excavated basement of the demolished dwelling previously on the subject site rather than additional building height of the new building. The development proposal has been designed to reflect the topography of the subject site which has a fall of approximately 6.39m from the southern (rear) to the northern (front) boundary and complies with the 8.5m limit when measured from the extrapolated ground line.
- A development that would comply with the height control would be unnecessary as the variation is minor, and confined to the northern edge of the upper level roof form set back 19.1m from the street boundary. The proposed variation does not result in any significant environmental or amenity impacts when compared with a complying height at this element of the proposal.
- The height is suitable for the subject site and compatible with the planning objectives and intended outcomes for the site and the objectives of the R2 – Low Density Residential zone.

Furthermore, it is unreasonable to enforce strict compliance with the height of buildings development standard noting the extent of the variation to height is largely the result of the technical interpretation of the ground line, with the existing dwelling being demolished. The ridge height of the proposed dwelling is comparable to that of the adjoining residential dwellings, ensuring the proposal is consistent with the established built form when viewed from the public domain. Strict technical compliance with the 8.5m height of buildings standard would thwart the intent of the control and preclude the site from being developed to a form consistent with the established streetscape.

The below streetscape elevation demonstrates how the proposed dwelling comfortably sits on the subject site in relation to the established streetscape.



Figure 2: Streetscape Elevation



Figure 3: Street Montage

In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, it is clear that compliance with a development standard is unreasonable or unnecessary if the objectives are met.

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

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height of buildings development standard because:

- The variation to the 8.5m height standard pursuant to the *North Sydney Local Environmental Plan 2013* is a result of the excavated ground level central to the site, a result of the basement from previously demolished dwelling. The development proposal complies with height limit when measured from the extrapolated ground line central to the site.
- The subject site has a fall from the rear boundary to the street of 6.39m across the site and the proposal has been designed to comply with the height when measured extrapolated ground line, demonstrating the built form is appropriate for the site and its context. The element varying the height control is located central to the site directly above the excavated ground line from the demolition of the previous dwelling.
- The portion of the building exceeding the height standard will not be visually discernible from the public domain being central to the site, setback 19.1m from the front boundary and a result of the excavated ground level beneath the building footprint rather than additional building height noting the building complies with the 8.5m height limit when measured from extrapolated ground line.
- The roof height of the proposed dwelling is compatible with adjoining dwellings and its context presenting a ridge height of RL63.1. No 3 Earle Street presents a ridge height of RL62.6 and No. 7 Earle Street presents an RL of RL 63.7.
- The variation to the height limit confined to the roof form – northern edge does not contribute to additional bulk and scale at the street level or adjoining property noting this element is central to the building footprint, setback 19.1m, and recessed from the level below. The varying element will not result in unreasonable privacy impacts, overshadowing, or the loss of views/outlook from the adjoining properties.
- The variation in height is consistent with the following relevant aims of the *North Sydney LEP 2013* found at clause 1.2(2):
 - (2)(b)(i) The variation does not contribute significant additional bulk to the area, noting it is confined to the northern edge of the upper level roof form and the building complies with the extrapolated ground line.
 - (2)(c)(i) The portion of the roof form exceeding the height control does not result in unreasonable amenity impacts to adjoining properties or the public domain with regard to overshadowing.
 - (2)(e)(i) The variation to the height proposed in this development does not impede on the natural landscape of the locality. The proposed skillion roof form has been designed to fall with the topography of the site, noting compliance with the 8.5m height limit when measured from extrapolated ground line and the variation is a result of the environmental constraint – historically excavated basement central to building footprint.
- The variation in height is consistent with the following objects of the Environmental Planning and Assessment Act, 1979 as follows:
 - 1.3(c) – The proposal is an orderly and economic use of the site and the development is consistent with the intent of the height standard with a

contemporary built form that is compatibility with the desired future character of the locality. The variation is the result of the technical interpretation of the ground line and will not result in unreasonable amenity impacts,

- 1.3(g) – The variation to the height control presents a good design outcome for the development, allowing for a roof form that responds to the topography of the site and is compatible with its context.
- 1.3(g) – The portion of the roof form exceeding the height control does not result in unreasonable amenity impacts to adjoining properties or the public domain with regard to overshadowing or loss of views.

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

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

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance.
2. The environmental planning grounds relied on are sufficient to justify the development standard.

In accordance with the findings of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request addresses Clause 4.6(3). Under Clause 4.6(4)(a)(i) the Consent Authority is not to determine in their opinion whether the request satisfies the requirements of Clause 4.6(3)(a) and (b), just that the request has been made and that these items have demonstrated.

The relevant items in Clause 4.6(3) have been demonstrated above.

The proposed development is in the public interest

In relation to clause 4.6(4)(a)(ii) of the LEP, the proposed development is in the public interest because it is consistent with the objectives of the applicable height of buildings standard and the objectives for development in the R2 Low Density Residential zone in accordance with the planning assessment provided as follows:

Objective	Consistency
<i>To provide for the housing needs of the community within a low density residential environment.</i>	The proposed development maintains the domestic scale of development within the R2 zone. The residential dwelling has been designed with a 2 – 3 storey form consistent with the built form within the locality.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents</i>	N/A

<i>To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.</i>	The development proposal will not present unreasonable amenity impacts to the adjoining residential dwellings noting the proposal does not result in unreasonable overshadowing, privacy or loss of views/outlook.
<i>To ensure that a high level of residential amenity is achieved and maintained.</i>	<p>The proposed variation is located central to the site at the northern edge of the upper level roof form, and this element will not result in amenity impacts upon the adjoining property or public domain.</p> <p>The variation is the result of the technical interpretation of the ground level central to the building footprint rather than additional building height.</p>

In addition to the above reasons, the proposal is also in the public interest because:

- The subject site is currently vacant. Permitting the variation to building height will facilitate the site being developed to a form and scale consistent with the desired future character expressed under the planning controls.
- The development proposal presents a 2 - 3 storey form to the streetscape with the ridge height compatible with adjoining dwellings. The proposed built form complies with the extrapolated ground line central to the site and the additional height resulting from an excavated ground line will not present unreasonable bulk and scale impacts to the public domain or adjoining properties,
- The building is an articulated/contemporary built form that is a suitable built form – height for this site that is consistent with the context and scale of other development in the locality including contemporary dwellings along Earle Street,

Taking into consideration the above, the proposed development is in the public interest as it is consistent with the objectives of the development standard and the R2 Low Density Residential zone under the *North Sydney Local Environmental Plan 2013*.

The variation to the 8.5m building height standard is confined to the upper level roof form's northern edge. The proposal does not attempt to affect the intended planning outcome for the locality, rather the works are consistent with the envisioned scale and form of development planned for the site and the variation is attributed to a unique site circumstance – excavated ground level.

For these reasons, the proposal and the variation does not undermine the integrity of the building height development standard and its objectives, as well as the zoning objectives which have been adopted by Council as being in the public interest.

The concurrence of the Secretary

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.

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.*
- a) The proposal is not likely to raise any matter of significance for State or regional environmental planning. As addressed above the variation is consistent with the 8.5m height standard pursuant to the *North Sydney Local Environmental Plan 2013*. The proposal is considered to be in the public interest because the proposed development is consistent with the objectives of the height standard and the objectives of the R2 Low Density Residential zone.
 - b) The public benefit of maintaining the development standard is not considered significant because the building is consistent with the objectives of the 8.5m height standard contained in *North Sydney Local Environmental Plan 2013*.
 - c) The portion of the upper level roof form – northern edge exceeding the height control will not be visually discernible or generate unreasonable additional overshadowing or amenity impacts upon the adjoining property noting the additional height is the result of an excavated level central to the building footprint. The building has been designed to comply with the extrapolated ground line.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted under clause 4.6(5) of the LEP. The exceedance of the standard will not result in adverse amenity impacts and is in the public interest.

Conclusion

The development proposal has a variation to the 8.5m building height control contained in Clause 4.3 of the *North Sydney LEP 2013*; notwithstanding, the proposal has been designed with a built form that is consistent with the intent of the height standard and is suitable for the subject site.

The variation to the building height standard does not attempt to affect the planning outcome for the broader locality; rather the proposed variation and overall development is consistent with the scale and form of development planned for the locality.

The variation is largely attributed to the existing dwelling being demolished and the technical interpretation of the existing ground line. The variation is confined to the northern

edge of the upper level roof form will not be visually dominant at the street level, presenting a comparable roof height to the adjoining properties. The proposal will not impact upon the public domain or adjoining properties and will not generate unreasonable overshadowing or amenity impacts.

The application to vary the 8.5m building height development standard pursuant to *North Sydney Local Environmental Plan 2013* is well founded and, as addressed above, the proposed height meets the objectives of the building height development standard. The proposal achieves an acceptable design that does not result in unreasonable visual and amenity impacts upon surrounding properties and is a desirable outcome in terms of built form for the site and locality.

In accordance with the environmental planning grounds addressed in this clause 4.6 variation, the building height can be supported.

Chapman Planning Pty Ltd