

**NSLPP MEETING HELD ON 07/12/2022****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Height of Buildings

ADDRESS/WARD: 8 Elamang Avenue, Kirribilli**APPLICATION No:** DA 317/22**PROPOSAL:** Alterations and additions to an existing detached dwelling conversion of existing roof space into habitable attic space.**PLANS REF:**

Plan No.	Rev No.	Description	Prepared by	Dated
001	A	Proposed Attic: Site/Roof Plan & Section AA	Ben Gerstel Architecture Pty Ltd	April 2022
002	B	Proposed Attic: First Floor & Attic		April 2022
003	B	Proposed Attic: NE & SW Elevations		April 2022
004	B	Proposed Attic: NW & SE Elevations		April 2022
006	B	Proposed Attic: Section B		August 2022

OWNER: Dr Emma Currie and Dr Justin Currie**APPLICANT:** Ben Gerstel Architecture Pty Ltd**AUTHOR:** Ruth Bennett, Senior Assessment Officer**DATE OF REPORT:** 14 November 2022**DATE LODGED:** 19 October 2022**SUBMISSIONS:** One (1) in support**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

This development application seeks approval for alterations and additions to an existing detached dwelling including a proposed habitable attic on land at 8 Elamang Avenue, Kirribilli.

The application is reported to North Sydney Local Planning Panel for determination as the application seeks a variation to a development standard by more than 10% and the proposal involves partial demolition of a Heritage Item. In accordance with the Minister's direction of 1 August 2020 a public determination meeting is not required because there were no submissions by way of objection. One submission, however, was received in support of the proposal.

The subject site is zoned R2 Low Density Residential where development for the purpose of detached dwellings is a permitted use.

The proposed development breaches the maximum permitted building height of 8.5m by up to 2.44m, equating to a variation of 28.7%. The proposed variation relates to the two new dormer windows and four skylights and one skytube proposed. The proposed works have a maximum height of 10.34m, and the attic extension on the rear elevation has a maximum height of 10.94m. The variation is a result of the height of the existing dwelling which is 11 metres. The additional works are within the existing built form and do not increase the height of the overall dwelling. The variation is consistent with surrounding development, is a result of the topography of the site, and is limited to a small form that is part of the rear southern roof plane where there will be a negligible impact.

The applicant has submitted a written request to vary the development standard pursuant to clause 4.6 in NSLEP 2013 which satisfactorily demonstrates that compliance with the development standard is both unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify the variation. The proposed development would be in the public interest. The submitted written request is considered to be well-founded and worthy of support.

The proposed development would improve the amenity of the existing dwelling by increasing the habitable area within the existing dwelling by converting the existing roof space into a habitable attic space of 23m² in area. The attic space will be accessed via a spiral staircase installed at the first floor level where a bedroom will be converted into a walk in robe area, and a curvilinear lightweight wall installed to frame the staircase. The proposed alteration and addition is setback within the existing roof form which will be extended on the rear elevation. This minor change will ensure retention of the existing built form character of the detached two storey dwelling which positively contributes to the streetscape, being a local heritage item known as 'Clutha'.

The plans submitted with the application were notified in accordance with Council's Community Engagement Protocol and one submission in support was received.

On balance, the proposed development is considered acceptable and is recommended for approval subject to various site specific and standard conditions.

LOCATION MAP

† Property/Applicant ● Submitters - Properties Notified



One submission received by email from a McMahons Point resident, in support of proposal.

DESCRIPTION OF PROPOSAL

The development application seeks consent for alterations and additions to an existing detached two-storey dwelling, including conversion of existing roof space into habitable attic space, with two dormer windows on the rear and side elevations, four skylights, one skytube over the stairwell and an internal spiral staircase to access the area.

The proposed works include:

First Floor Level - RL 24.39; ceiling RL 27.64

- Partial removal of eastern wall of bedroom to facilitate the internal spiral staircase to connect first floor level with attic level
- Convert former bedroom for use as a new walk-in-robe/dressing room associated with the main bedroom including new joinery
- Install new lightweight staircase from first floor to new attic space. Install lightweight curvilinear wall to separate staircase from new walk-in-robe area

Attic Level - Exterior RL 28.21 - ridgeline RL 31.70

- Extend the rear southern gable (SW rear elevation) to expand the available attic space to an area of 23m² and insert a large timber-framed dormer window with louvres painted white
- Install new timber-framed dormer window with bay to western roof plane (SE side elevation) with louvres painted white
- Lay new zinc either side of dormer windows
- Install four skylights to eastern and northern roof planes, of powdercoated aluminium in Monument (black): two are on the front elevation; two are on the south-eastern side elevation
- Install skytube over new staircase
- Walls are in timber cladding, painted green to match the existing
- The dormer walls on the rear south western elevation are in zinc to match the existing
- Roofing material of the rear roof extension is slate tiles to match the existing; additional finials and ridge detail will be installed where required to match the existing

Attic Level - Interior RL 28.21

- Line and finish walls and ceilings of attic space, including insulation
- Lay carpet to floor
- Window openings are to comply with NCC/BCA requirements.
- Shading requirements are to comply with BASIX requirements.

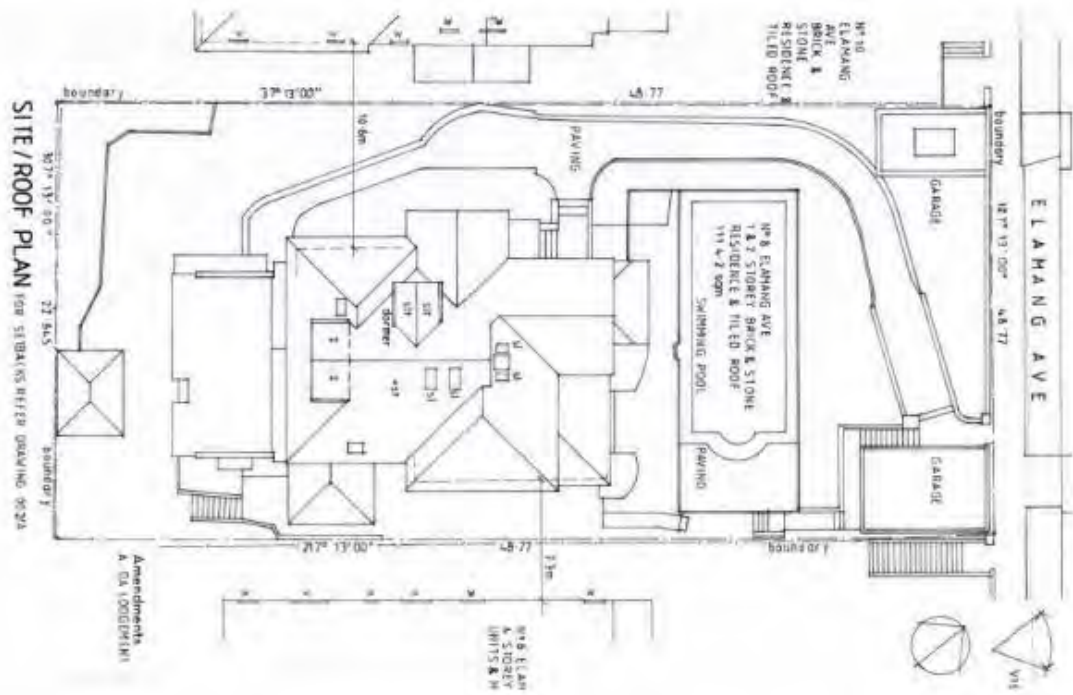


Figure 1. Proposed Site / Roof Plan

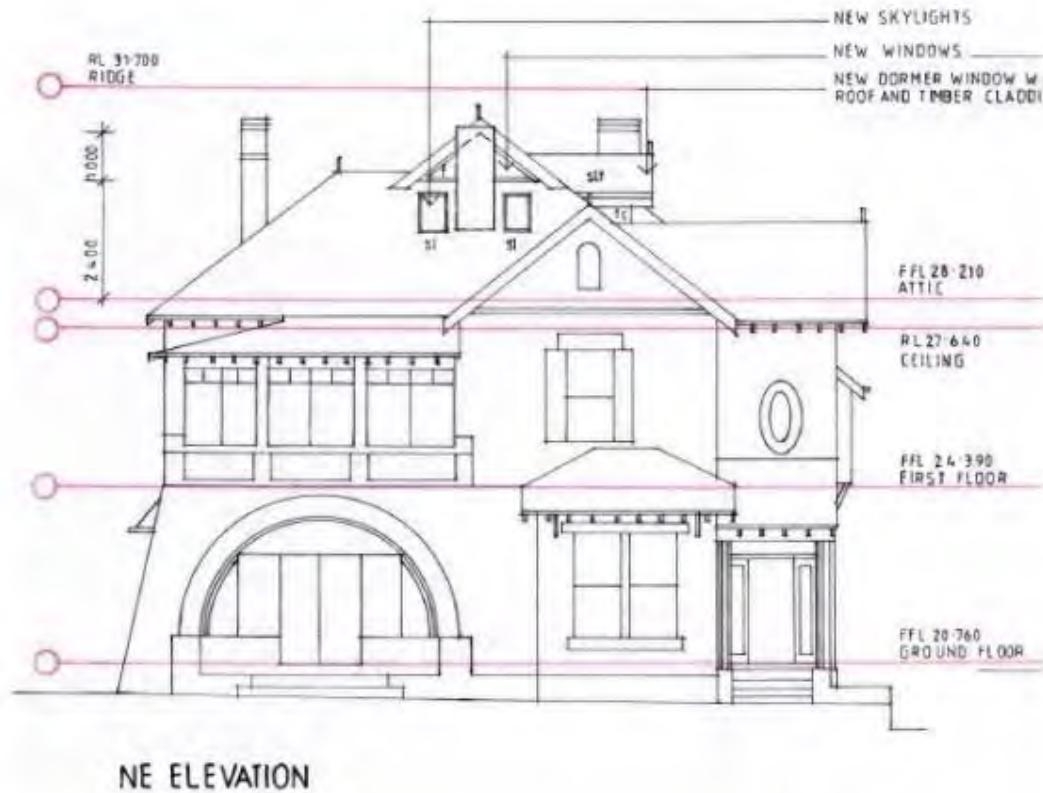


Figure 2. Proposed North Eastern Elevation



Figure 3. Proposed South Western Elevation



Figure 4. Proposed North Western and South Eastern Elevations

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013

- Zoning - R2 Low Density Residential
- Item of Heritage - Yes, Local Heritage item no. I0213
- In Vicinity of Item of Heritage - Yes, Local Heritage item no. I0214 at 10 Elamang Street
- Conservation Area - No, but adjacent to Kirribilli Conservation Area CA11
- Foreshore Building Line - No

Environmental Planning & Assessment Act 1979 (As amended)

- Section 7.11/12 Infrastructure Contributions
- SEPP (Biodiversity and Conservation) 2021
SEPP (Building Sustainability Index: BASIX) 2004
SEPP (Resilience and Hazards) 2021

POLICY CONTROLS

North Sydney Development Control Plan 2013

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site is legally described as Lot 1 in DP 102047 and is known as 'Clutha', 8 Elamang Avenue, Kirribilli, and is on the southern side of Elamang Street with the nearest cross street being Peel Street to the east. The site is zoned R2 Low Density Residential, and the R3 zone is immediately adjacent. The site is rectangular with a width of 22.845m and depth of 48.77m, equating to a site area of 1114m². The land falls from the rear boundary (RL 23.12) to the front boundary (RL 14.23), a fall of approximately 8 m. The subject site is local heritage item no. 0213, does not form part of a listed Heritage Conservation Area, and is next to local heritage item no. I0214, 'Vandaura' at 10 Elamang Avenue, and is adjacent to the Kirribilli Conservation Area (CA11).

'Clutha' is a two storey asymmetrical Queen Anne style dwelling ca. 1905-1907 with a hip and valley roof form with a contemporary double-storey addition at the rear ca. 2013, of brick, glass and metal. The house is of brick construction, slate tiled roof, with timber framed doors and window and connects to the addition via a steel-framed glass link. The rear addition contains a rumpus room and bedroom. The original portion of the dwelling is substantially intact, with key original features retained. There is a swimming pool in the front yard (ca. 1980s), two single garages at the front boundary, and a shed.

Elamang Avenue extends along the northern side of the Kirribilli Peninsula and contains both detached dwellings and residential flat buildings. To the west of the subject site is the girls' school Loretto Kirribilli. East of the site are several residential flat buildings. There is a large London Plane tree on the verge at no. 8 Elamang Avenue, but otherwise minimal landscaping on the verge.

An aerial view of the site, and its heritage context are shown in the images below.



Figure 5. Aerial Image of the subject site and surrounds (Source: SIX Maps 2022)

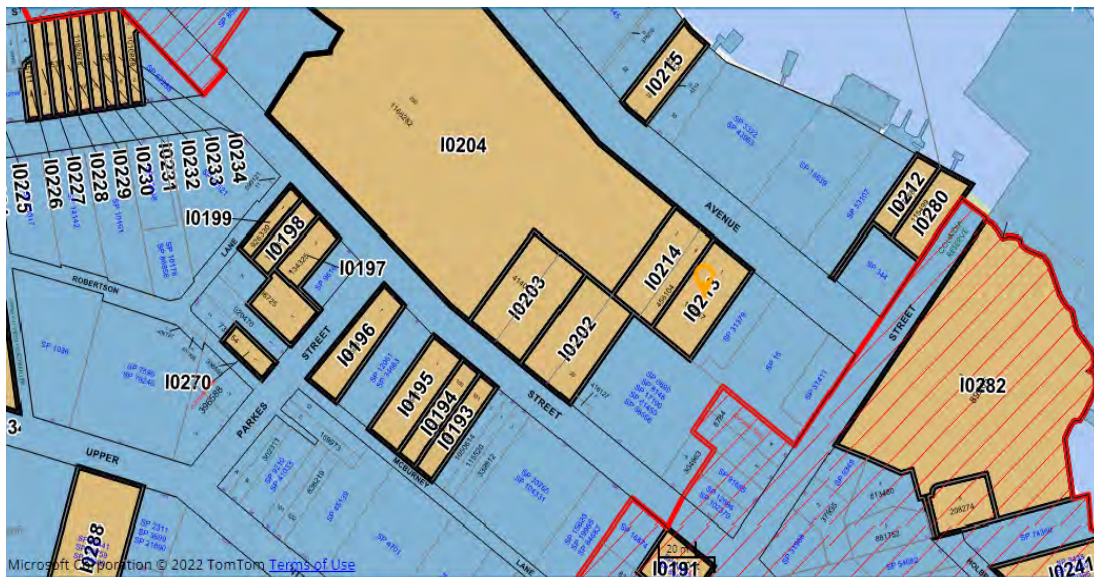


Figure 6. Heritage Context, subject site shown marked (Source: NSC Maps, 2022)

Additional photos of the subject site and surrounding area are provided below.



Figure 7. No 8 Elamang Avenue and adjoining dwelling at 10 Elamang Avenue



Figure 8. Street view, view south-west towards subject site from Elamang Avenue (Source: Google maps ca. 2019)



Figure 9. Principal front northern elevation



Figure 10. Western elevation rear addition



Figure 11. West elevation glass link at rear



Figure 12. Principal entry west elevation



Figure 13. Western roof plan and rear contemporary addition



Figure 14. View north showing western elevation and roof profile

RELEVANT DEVELOPMENT HISTORY

Date	Previous Development Application History
31 October 2012	DA 359/2012 was determined and granted approval for internal alterations to convert a first-floor bedroom to a bathroom, form two new doorways and close an opening.
4 April 2013	DA 23/2013 was determined and granted approval for alterations and additions to an existing dwelling including two storey rear addition.
19 July 2016	DA 211/2016 was determined and granted approval for the proposed replacement of an existing retaining wall and external stairs within the rear yard.
30 November 2016	DA 211/2016/2 was determined to modify development consent No 211/2016 to delete stairs within the rear garden.
27 July 2022	DA 217/2022 for alterations and additions was rejected due to insufficient information.
26 August 2022	DA 245/2022 for alterations and additions to an existing detached dwelling was rejected due to insufficient information. This was under the provisions of Part 3 Division 2 Clause 39 of the Environmental Planning and Assessment Regulation 2021 on 26 August 2022. Reasons included that a Clause 4.6 Exemption Justification, a survey plan and revised shadow diagrams were required.

RELEVANT APPLICATION HISTORY

Date	Assessment
10 October 2022	The application was lodged with Council via the NSW Planning Portal.
4 November 2022	The application was notified in accordance with Council's Community Engagement Protocol from 4 November 2022 to 18 November 2022. One submission in support was received.
23 November 2022	A site inspection was undertaken by Council assessment staff, being Council's assessing officer and Council's Conservation Planner.

REFERRALS

Building

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

HERITAGE

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

1. **Heritage Status and Significance**

The subject heritage item is

- *A heritage item.*
- *An excellent Federation period two-storey residence set high above Elamang Ave. There is a contemporary rear addition.*
- *It is not located in a Conservation Area.*
- *Located in the vicinity of other heritage items being: 10 Elamang Ave and Loreto School as well as 69 Carabella St located towards the west.*

2. **Heritage Impact Assessment**

a. North Sydney LEP 2013 Clause 5.10 and b. North Sydney DCP 2013

The proposed works are considered to satisfy clause 5.10 of NSLEP 2013 in that the primary form, front façade and significant interiors will remain intact. The works are generally compliant with Part B Section 13 of NSDCP 2013.

3. **Conclusion**

The proposed spiral staircase and walk-in-robe are considered to be satisfactory as they will be located in a secondary room on the first level, the majority of the joinery will remain intact and the floorplan will remain interpretable.

The proposed materials are considered to be acceptable with slate to match the roofing. Skylights would have black frames and the new windows would be timber framed. The new timberwork on the original dwelling will be painted green to match the existing dwelling.

The proposed glazing within the gable end on the front façade is not compliant, however, it will not be highly visible from the public domain due to the elevated position of the dwelling and the location of the chimney.

The addition at the rear is acceptable as it will not be visible from the public domain, retains a large portion of the original hipped roof plane and is submissive having regard to the massing the primary roof form.

The height of the proposed dormer on the side elevation is not compliant, however, no objection is made as it will be screened from the public domain by the existing projecting gable end.

No objection is raised to the proposed skylights and skytube on the side roof plane. However, the skylights on the front roof plane are not supported as they will be visible from Elamang Avenue. (See C16, G6 Heritage Requirements)

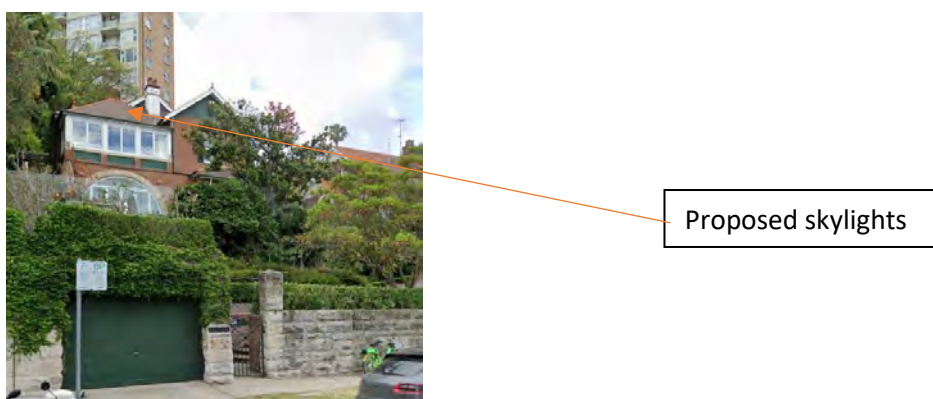


Figure 13: The proposed location of the skylights on the front elevation

Comment:

Council's Conservation Planner's comments in relation to the proposal are generally concurred with subject to the recommended site-specific conditions **(See conditions A3, A4, C5, C6, C16 Heritage Requirements)**.

SUBMISSIONS

The development application was notified in accordance with Council's Community Engagement Protocol from 4 November 2022 until 18 November 2022 and one submission was received which was in support of the proposal.

The original submission may be viewed by way of DA tracking on Council's website https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs and is available for review by NSLPP members.

The matters raised in the submission are listed below:

Basis of Submissions

Basis of Submissions

- *Supports conversion if it results in an increase in the number of beds*
- *This is a way to achieve the NSW government mandated increase in residents in North Sydney*
- *Objects to high rise development over the last 10 years that has been used to achieve the mandate as it destroys the community and creates wind tunnels*

CONSIDERATION

The relevant matters for consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed under the following headings:

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The proposed development does not require the removal of or impact to any protected trees on the subject site or within the vicinity of the site. The proposed development is consistent with the objectives of Chapter 2 *Vegetation in non-rural areas* of the Policy.

The subject site is visible from Sydney Harbour or its foreshores given the short distance to the water, and it overlooks Careening Cove. The proposal therefore would have the potential to impact upon the scenic quality of Sydney Harbour or its waterways. Due to the works being mostly contained within the roof cavity and the first-floor level with the insertion of a spiral staircase, the works which include dormer windows and skylights and minor modification to the rear southern gable do not markedly alter the building typology and will have minimal impact on the surroundings. The development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given that the proposal is a minor alteration and does not greatly alter the historic character of the detached dwelling and is submissive to the building in character and size. As such the development is considered acceptable having regard to the provisions contained within Chapter 10 *Sydney Harbour Catchment* of the Policy.

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

A valid BASIX Certificate No. A472779_02 dated 5/09/2022 has been submitted to satisfy the aims of the SEPP. A condition is recommended requiring compliance with the commitments contained in the certificate (**See Condition no. C15 & G5**).

State Environmental Planning Policy (Resilience and Hazards) 2021

The provisions of Chapter 4 *Remediation of Land* in the Policy require Council to consider the likelihood that the site has been previously contaminated and to address the methods necessary to remediate the site. The subject site has historically been used for residential development since 1905 and as such is unlikely to contain any contamination. Therefore, the requirements in clause 4.6 of the Policy are considered to be satisfied.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The subject site is zoned R2 Low Density Residential under North Sydney Local Environment Plan 2013. The proposed development seeks consent for alterations and additions to an existing detached dwelling which is a permitted use within the R2 Low Density Residential zone.

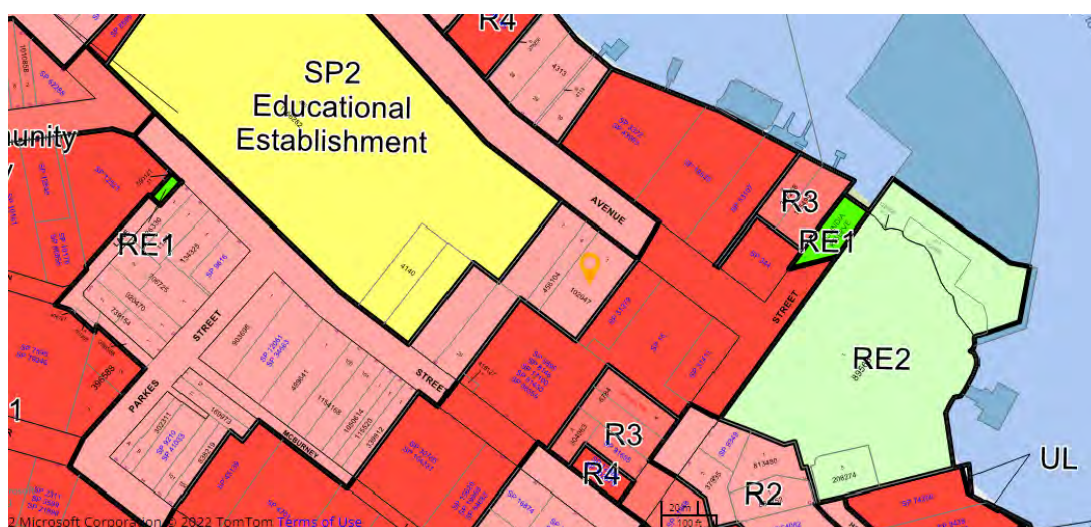


Figure 14. NSLEP 2013 Land use zoning map with the subject site shown marked

2. Objectives of the zone

The objectives of the R2 Low Density Residential zone relevant to the proposed development is 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 development will provide for the housing needs of the community within a low-density residential environment by improving the amenity of the existing dwelling, maintaining its character, improving its residential amenity by providing additional habitable area within an attic space.

The proposed works are limited to the existing central bedroom east of the first-floor hallway and the existing roof cavity, with a minor extension of the rear southern gable which will extend the existing rear ridge line to expand the available attic space to create a habitable area of 23m². On the first floor level the new spiral staircase will be accommodated with a wall dividing it from the remaining area which is given over to a walk-in robe/dressing room. The minor alteration will not alter the building typology and will provide amenity to the new attic space so that it is functional, well-lit and easily ventilated. The new dormer bay window in the western roof plane, the larger dormer window within the southern gable on the rear elevation, and the new skylights in the eastern roof planes and skytube over the stairwell on the side roof will not be highly visible from the street. The dormer windows will provide amenity to the new attic space which is to be insulated and lined in timber, with new carpet flooring. We note that the new skylights on the northern roof plane on the front elevation are not supported on this Local Heritage item as outlined above in Council's Conservation Planner's comments. The windows, skylights, skytube and roof extension are in materials and colours to match the existing features of the building.

There is not expected to be any additional overshadowing to the adjoining dwelling to the west and a negligible amount of additional overshadowing to the adjoining residential flat building to the east at 3pm as the works are primarily within the roof cavity which is being slightly altered on the rear elevation. Solar access diagrams have been submitted with the application.

The proposed development promotes the character of the subject heritage item and the character of the surrounding area. The proposal will result in a development that would not have adverse impacts on the significance of the subject heritage-listed dwelling as detailed in the comments from Council's Conservation Planner, subject to removal of the skylights on the front roof elevation as recommended.

The proposed works would not compromise the natural or cultural heritage of the area given the proposed development would not impact existing areas of landscaping or natural areas.

The proposed development would achieve a high level of residential amenity for the existing dwelling and would reasonably maintain the amenity of surrounding dwellings and residential flat buildings.

Part 4 - Principal Development Standards

Principal Development Standards - North Sydney Local Environmental Plan 2013			
Site Area - 1114m ²	Proposed	Control	Complies
Clause 4.3 - Heights of Building	11m (RL 31.70) to existing ridgeline; dormer windows proposed at RL 30.70 and skylights at RL 29.70 Window 2 is at RL 29.11.	8.5m (RL 29.20)	No

3. Clause 4.3 - Height of Buildings

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

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

The proposed works would have a maximum height of 10.94m that fails to comply with the maximum permitted building height limit of 8.5m in accordance with clause 4.3(2) in NSLEP 2013. The existing building has a maximum height of 11m (RL 31.70) measured from the existing ground level to the ridgeline. The proposed development breaches the maximum permitted building height of 8.5m by up to 2.44m and equates to a variation between the proposal and the environmental planning instrument of 21.64% for the new dormer window which has a maximum height of 10.34m, and a variation of 28.7% for the extension of the existing roof on the south west rear elevation where the extension of the attic has a maximum height of 10.94m (RL 31.64). The additional works are within the existing built form and do not increase the height of the overall dwelling. The variation is consistent with surrounding development, is a result of the topography of the site, and is limited to a small form within the rear elevation where there will be a negligible impact due to two dormer windows being proposed at the rear and side elevations, and four skylights and one skytube also proposed to provide additional solar amenity.



Figure 15. NSLEP 2013 Height of Buildings Map subject site marked (Source: NSC, 2022)



Figure 16. Height of Buildings - exceedance is from RL 29.20 and above (8.5m maximum height of building standard)

Clause 4.6 - Contravention of a Development Standard

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

Clause 4.6(3)(a)

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

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

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater Council [2007] NSW LEC 827* is considered.

The five ways outlined in *Wehbe* include:

4.1 Five (5) Part Test - *Wehbe v Pittwater*

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way)

The objectives of the standard are:

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

The variation in the height limit is the result of an increase in floor area above the height limit which is 8.5 metres. However, the additional works do not increase the height of the overall dwelling which is 11 metres.

The written request demonstrates that the proposed development conforms with the existing development on the site as it maintains and extends the habitable area within the existing dwelling and does not impact upon the natural ground level. The variation is a result of the height of the existing dwelling which is 11 metres at the ridgeline, and the additional works are within the existing built form with a minor extension within the rear roof line and do not increase the height of the overall dwelling. The variation is consistent with surrounding development and is a result of the site topography where the subject site falls steeply from the rear boundary to the front boundary by approximately 8m. The variation is limited to a small form where impacts are negligible. The written request considers that this objective is met despite the numerical variation.

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

The written request has identified that there is no view loss as a result of the proposed variation, and considers that this objective has been met, despite the numerical variation. The proposed addition and alteration which provides for the conversion of the roof cavity to habitable attic space and includes two dormer windows and skylights do not impact upon any significant views, and the views straight over the dwelling are retained, and existing views continue to be adequately shared.

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

The written request has identified that the proposed variation to height does not result in any unreasonable solar access impacts to adjoining dwellings. Solar access for neighbours remains fully compliant with the majority of the dwelling remaining the same as existing. There is negligible impact in terms of additional overshadowing on the adjoining residential flat building at 3pm. Solar access to the public domain is not impacted. There will be adequate solar access within the site for future development.

Given that compliant solar access is achieved for the neighbouring properties, despite the height variation sought, it is considered the underlying objective of this clause has been satisfied.

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

The written request has demonstrated that the proposed variation which involves a small area of height variation within the extended gable roof within the rear elevation would not result in any unreasonable privacy impacts. The layout of the subject site and the surrounding lots and the topography results in differing floor levels, and there is natural screening through vegetation.

Given the above, it is considered that the underlying objective of this clause has been satisfied.

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

The written request has described the proposed development as being consistent in scale with neighbours (residential flat building) and with the existing dwelling.

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

The written request has described the proposed development with its proposed variation to height as being of a compatible scale and well suited and complimenting the character of the Kirribilli locality.

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

The written request has described the scale of the subject dwelling as having the number of storeys stepped with the site and is unchanged from the existing. The development retains a two-storey dwelling with an attic form. These elements are in accordance with the objective.

The written request states that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe. Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

Clause 4.6.(3) states:

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

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

There are sufficient environmental planning grounds to permit the variation of the development standard, as advanced in the written request. The applicant has provided a detailed list of environmental planning grounds on pages 10-13 (Att_3) of the written request (see report entitled *Clause 4.6 Variation Height 8 Elamang Avenue Kirribilli*, report prepared for Ben Gerstel, by Watermark Planning, dated October 2022) that relate specifically to the variation and are in part based around the objectives in section 1.3 of the Act. The grounds relate to:

- *Details of the variation which include a bay window with a height of 10.34m, a variation of 21.64%, and an extension to the attic of 10.94m or a variation of 28.7%. Both variations are for a very limited area within the context of the existing large dwelling and the works are not easily visible from the street or side neighbours, and do not create detriment with bulk or scale.*
- *The small variations to the height are lower than the existing maximum height and only result in a breach of the height due to this existing form. The dormer window sits below the existing ridge and the extension of the roof form is at a higher point of the site.*
- *Absence of impacts to neighbouring amenity as the variations sit centrally within the existing built form and are well setback. There is existing landscape screening on the site. There is no impact on neighbours to the rear due to the vegetation screening in the rear of the site, and impacts on side neighbours are barely discernible, as the residential flat buildings are of a far greater scale.*
- *The site-specific constraints and design response particularly in relation to the existing height of the dwelling, and the architectural character of the locality.*
- *The design of the additions retains the character of the existing dwelling and will not present with excessive bulk from the public domain and does not affect the streetscape appeal.*
- *Consistency with the objectives of the zone and the development standard.*
- *Environmentally sustainable development and absence of impacts to the natural environment.*

The submitted justifications are generally concurred with. The proposed development does not increase the bulk and scale of the dwelling as the proposed works would be mostly contained within the existing roof form with a minor extension to the rear southern gable. The existing character of the dwelling is retained, and greater residential amenity is achieved, without adversely impacting the amenity of surrounding dwellings.

Clause 4.6(4) - Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

Clause 4.6.(4) states:

- (4) *Development consent must not be granted for development that contravenes a development standard unless –*
 - (a) *the consent authority is satisfied that –*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Planning Secretary has been obtained.*

Clause 4.6(4)(a)(i)

It is considered that the consent authority can be satisfied that the applicant's written request adequately addresses the matters required to be demonstrated by subclause (3) as discussed in detail above.

Clause 4.6(4)(a)(ii)

It is considered that the consent authority can be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standards and the objectives for development within the zone in which the development is proposed to be carried out.

Objectives of the Standard

It is considered that the consent authority can be satisfied that the proposed development is consistent with the objectives of the height of building development standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below.

Objectives of the Zone

It is considered that the consent authority can be satisfied that the proposed development is consistent with the objectives of the zone as discussed above. The proposed development retains the existing low-density dwelling, and provides for improved amenity for the site, while also being appropriate with regard to impact on neighbouring sites with regards to views, privacy, solar access and general amenity.

Clause 4.6(4)(b)

In accordance with the *Planning Circular PS20-002* dated 5 May 2020, concurrence may be assumed under clause 4.6 in NSLEP 2013 but not by a delegate because the numerical variation (maximum 28.7%) is greater than 10%. Concurrence may only be assumed by Council's independent assessment panel (also referred to local planning panel) to ensure a greater level of public scrutiny.

The application is referred to the North Sydney Local Planning Panel for determination as the application meets the referral criteria listed in schedule 1 of the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 30 June 2020 being that the application involves a contravention to a development standard by greater than 10%.

Part 5 - Miscellaneous Provisions

3. Heritage Conservation

The subject site is listed as a Local Heritage Item I0213 and is adjacent to Local Heritage Item I0214 and the Kirribilli Conservation Area (CA11) under Schedule 5 in NSLEP 2013 so the following planning objectives apply to the site:

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

As mentioned earlier in this report, the proposal satisfies Clause 5.10 of North Sydney LEP 2013 in that the proposed works will have a neutral impact upon the heritage significance of the building and will have a positive impact upon its streetscape presentation, subject to the recommendation in the Heritage Impact Statement by Urbis, dated 15 July 2022 which recommended that the detailing of the proposed skylights and skytube, including the profile and finish be confirmed with a qualified heritage consultant prior to installation.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

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

DEVELOPMENT CONTROL PLAN 2013 - Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.1 Population Mix 1.2.2 Maintaining Residential Accommodation 1.2.3 Affordable Housing 1.2.4 Housing for Seniors/Persons with disability	No change	The proposal would not change the population, as one bedroom on the first level is being converted to create the area for the spiral staircase to be inserted and to provide for a walk-in-robe area adjoining the master bedroom, and a habitable area is being created in the attic space. The proposal would not change the supply of residential accommodation, affordable housing as well as housing for seniors/people with disabilities.
1.3 Environmental Criteria		
1.3.1 Topography	Yes	The proposal would not change the landform within the subject site.
1.3.6 Views	Yes	The proposal to convert the area within the roof cavity to a habitable attic space with dormer windows and skylights does not create any material view impacts for the adjoining properties.
1.3.7 Solar Access <ul style="list-style-type: none"> • More than 3 hours between 9am - 3pm • RFB - 70% of dwellings 2hrs solar access 	Yes	There is no unreasonable solar access impacts to adjoining dwellings. Solar access for neighbours remains fully compliant as demonstrated in the shadows diagrams at 9.00 am and midday with the majority of the dwelling remaining the same as existing.

1.3.8 Acoustic Privacy <ul style="list-style-type: none"> Living areas Day/Night ≤ 40 dBA Sleeping areas Day/Night ≤ 35 dBA 	Yes	There is no material noise impacts for the adjoining properties given that the new attic would be contained within the building envelope.
1.3.10 Visual Privacy <ul style="list-style-type: none"> Roof top terraces less than 50% of the floor area below or > than 18m² 	Yes	<p>There is negligible increase in visual privacy impacts as the small area of height variation is concealed due to the layout of adjoining lots and the topography resulting in differing floor levels and the natural screening afforded through existing vegetation.</p> <p>It is noted that the north west dormer window overlooks the roof ridge at 10 Elamang Avenue, and this combined with the wider 450mm eave at 10 Elamang Avenue ensures minimal or no loss of privacy.</p>
1.4 Quality built form		
1.4.1 Context	Yes	The design of the altered roof gable and dormer windows is sympathetic with the existing dwelling and the locality, as indicated in the comments by Council's Conservation Planner earlier in this report. There is a minor alteration of the roof form with the extension of the rear southern gable to expand the available attic space. The works will not detract from the significance of the subject heritage item.
1.4.3 Streetscape	Yes	The design will suitably compliment the streetscape and maintain the character of the heritage item within the setting.
1.4.5 Siting	No change	The proposal would not change the orientation and siting of the existing detached dwelling.
1.4.7 Form Massing Scale <ul style="list-style-type: none"> Floor to ceiling height 2.7m 	Yes	<p>As indicated in Council's Conservation Planner's comments earlier in this report, the proposed internal changes on the first-floor level and the creation of a habitable attic space within the roof cavity with dormer windows and skylights will have no impact on the retention of the heritage item and will satisfy clause 5.10 of NSLEP 2013.</p> <p>The form and scale of the dwelling will remain the same with the exception of a minor extension to the rear southern gable to expand the available attic space to an area of 23m², with the insertion of a larger dormer window on the southern elevation, and a new dormer bay window within the western roof plane on the side elevation. These works are largely contained to the side and rear of the dwelling and are submissive in scale, and mostly located within the interior of the dwelling.</p>
1.4.8 Built Form Character	Yes	<p>The subject site is a local heritage item located next to another heritage item at no. 10 Elamang Avenue. The dwelling is not located within a heritage conservation area although it is adjacent to the Kirribilli Conservation Area.</p> <p>Provision 1 of Section 1.4.8 of Part B in NSDCP 2013 requires additions to a building that are part of a group of a uniform group of buildings of similar character to be located towards the rear and not be visible from the street.</p> <p>The proposed alterations and additions are considered not to detract from the heritage item as the works are submissive in scale, and largely contained to the side</p>

		and rear within the roof cavity. They will have a negligible impact on the character of this local heritage item which will remain consistent with the architectural character of the locality. The design is harmonious and appealing, and will suitably compliment the neighbourhood setting and streetscape.
1.4.9 Dwelling Entry	No change	There are no changes proposed to the existing dwelling entry on the front elevation.
1.4.10 Roofs	Yes	The proposed alteration will extend the rear southern gable to expand the available attic space, and facilitate the insertion of two dormer windows with skylights and skytube. This alteration to the roof form is within the maximum existing height of the dwelling which is 11m in height, and involves a minor change to the roof form and scale within the rear roof plane, so that the overall bulk and scale of the dwelling is largely unaltered and is not visible from the street.
1.4.11 Dormers <ul style="list-style-type: none"> • Pitch of dormer roof <36° • No more than 1/3 of the width of the roof plane 	Yes	The two dormer windows will suitably be inserted within the existing and extended roof space and are no more than 1/3 of the width of the roof plane.
1.4.12 Materials and Colours	Yes	The alterations and additions are proposed to be finished to match the existing external finishes, and utilises primarily timber framing for the dormer windows, zinc and timber cladding on the walls, and powdercoated aluminium in Monument for the skylights and skytube. The proposed works have utilised materials and colours that have been reviewed by Council's Conservation Planner, and are considered to be generally acceptable, and will maintain the existing built form character of the building when viewed from the street and adjoining dwellings.
1.5 Quality Urban Environment		
1.5.2 Lightwells & Ventilation	Yes	The works include two dormer windows, skylights and a skytube. This will provide adequate solar access and ventilation for the new habitable attic space that will result from this conversion of roof space.
1.5.3 Safety and Security <ul style="list-style-type: none"> • No more than 10 dwellings per entry/lobby 	Yes	The proposed development would not detract from the existing levels of safety and security within a low density residential area.
1.5.4 Vehicle Access and Parking <ul style="list-style-type: none"> • Part B - Section 10 - Car parking • Limit width of vehicle access to 2.5m 	No change	There are two single garages on site and there is no change proposed to this parking provision.
1.5.5 Site Coverage	No change	The site has an area of 1114m ² . There is no change to the existing site coverage, unbuilt upon area and landscape area provision. The alterations and additions are within the building fabric of the existing dwelling.
1.6 Efficient Use of Resources		
1.6.1 Energy Efficiency	Yes	A valid BASIX Certificate has been provided.

CHARACTER STATEMENTS - PART C of NSDCP 2013

Kirribilli Planning Area – Kirribilli Neighbourhood

The subject dwelling is located in the Kirribilli Neighbourhood within the Kirribilli Planning Area and provides a satisfactory response to the planning provisions within Section C of NSDCP 2013 for the following reasons:

Section 8.2.3 Desired Built Form

Form, scale and massing

P1 Development is to generally conform with the provisions contained within Part B – Development Controls of the DCP.

Materials

- P3 Walls – Masonry, face brick
- P4 Windows – Timber framed
- P5 Roofs – Terracotta tiles, slate

The proposed development maintains a two storey appearance from the street, with the attic space set within the existing cross ridgeline which is reflective of the adjoining low density residential development. The design and architectural style of the amended roof with dormer windows and skylights is generally sympathetic with the built form of the existing detached Queen Anne Style dwelling. Council's Conservation Planner has raised no objection to the proposal, with the exception of skylights not being supported within the front roof section where they would be visible from the street. The materials are in accordance with the character statement.

SECTION 7.11/12 LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal is not subject to Local Infrastructure Contributions in accordance with the North Sydney Local Infrastructure Contributions Plan (as amended). There is no required contribution given that the cost of works is less than \$100,000 and there is no increase in population. The proposed development would not increase the number of residents within the locality as the number of bedrooms within the dwelling remains unchanged. Therefore a contribution levied under section 7.11 or 7.12 of the Act is not required.

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	N/A
5.	Traffic generation and Carparking provision	N/A
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 S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

The application was notified in accordance with Council's Community Engagement Protocol from 4 November to 18 November 2022 to adjoining properties and the Milson Precinct. Council received one (1) submission in support of the proposal.

SUITABILITY OF THE SITE

The proposed development involves alterations and additions to an existing dwelling being a Heritage Item that is a permissible form of development on the subject site. Consequently, the proposal is considered to be suitable for the subject site having regard to the merits of the proposal as described in the above report.

PUBLIC INTEREST

There are no matters raised in which approval of the application would not be in the public interest.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified in accordance with Council's Community Engagement Protocol from 4 November to 18 November 2022 to adjoining properties and the Milson Precinct for 14 days. A submission was received in support of the proposal. No objections were received, nevertheless, the potential impact of the proposed development on the amenity of surrounding properties has been considered. Appropriate conditions of consent have been recommended to maintain the character of the local heritage item. Additionally, conditions of consent have been recommended to minimise potential construction impacts.

CONCLUSION + REASONS

After a detailed assessment of the application, it was found that the matters for consideration as outlined in section 4.15(1) of the Act have been satisfied.

The proposed development exceeds the maximum permitted building height development standard by 2.44m or 28.7% and is supported by a written request to contravene the development standard pursuant to clause 4.6 in NSLEP 2013. The written request demonstrates that strict compliance with the development standard is both unreasonable and unnecessary because the proposed development would be consistent with the objectives of the height of buildings development standard, and there are sufficient environmental planning grounds to justify the variation in the circumstances. The proposed development would be in the public interest because it is consistent with the objectives of the zone and the development standard to be varied.

The proposed development would improve the amenity of the existing dwelling by creating a habitable attic space within the roof cavity and improve the residential amenity within the dwelling with the creation of a walk-in robe for the master bedroom. The alterations and additions are suitable in design, colours and materials to the existing building fabric. The proposed alteration is mainly within the roof cavity and is setback behind the existing roof form within the rear roof plane. The dormer windows and skylights are in keeping with the existing building form character of this Queen Anne style dwelling, and the amended building form will contribute positively to the streetscape. The addition is not highly visible from the street and is mainly located within the side and rear of the roof cavity. Suitable materials including timber cladding and zinc, with additional slate tiling on the new roof section, terracotta finials and ridge capping will assist to break down the visual massing of the extension to the roof form.

The proposed development would not have an unreasonable impact on the amenity of the surrounding properties with regards to the retention of views, privacy and solar access.

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

Council received one submission in support of the application.

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

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 in NSLEP 2013 and grant consent to Development Application No. 317/2022 for 'Alterations and additions to an existing detached dwelling, conversion of existing roof space into habitable attic space' on land at 8 Elamang Avenue, Kirribilli subject to the following site specific condition and attached standard conditions:-

Heritage Requirements

C16. The following heritage requirements are to be met:

- a) The two skylights on the front roof plane addressing Elamang Avenue are to be deleted.
- b) The glazing on the dormer on the North West Elevation on the original dwelling is to consist of three traditional casement windows not louvres.
- c) The new joinery for the walk-in robe is to be set below the existing cornices so that the volume of the room is readily interpretable.
- d) New slate is to be similar in colour and texture to the existing slate. Artificial slate is not to be used.

The Certifying Authority must also 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 retain the heritage significance of the dwelling)

RUTH BENNETT
SENIOR ASSESSMENT OFFICER

ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
8 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 317/22

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

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

Plan No.	Rev No.	Description	Prepared by	Dated
001	A	Proposed Attic: Site/Roof Plan & Section AA	Ben Gerstel Architecture Pty Ltd	April 2022
002	B	Proposed Attic: First Floor & Attic		April 2022
003	B	Proposed Attic: NE & SW Elevations		April 2022
004	B	Proposed Attic: NW & SE Elevations		April 2022
006	B	Proposed Attic: Section B		August 2022

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

Plans on Site

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

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

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

No Demolition of Extra Fabric

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

(Reason: To ensure compliance with the approved development)

External Finishes and Materials

- A4. External finishes and materials must be in accordance with the submitted schedule titled 'External Finishes and Materials for Proposed Attic at 8 Elamang Avenue, Kirribilli', prepared by Ben Gerstel Architecture Pty Ltd and received by Council on 21 October 2022 unless otherwise modified by Council in writing. 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 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)

Structural Adequacy of Existing Building

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

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

Sediment Control

- C3. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

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

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

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

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

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

Waste Management Plan

- C4. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
 - b) The design of the on-site waste storage and recycling area; and
 - c) Administrative arrangements for waste and recycling management during the construction process.

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

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

Colours, Finishes and Materials (Heritage Items)

- C5. A traditional palette of finishes, materials and colour schemes must be selected for the new building works appropriate to the architectural style of the original building and 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 prior to the release of the Construction Certificate.

(Reason: To ensure that exterior colours, finishes and materials are sympathetic to the significance of the heritage item.)

Heritage Architect to be Commissioned

- C6. An appropriately qualified and experienced heritage architect must be commissioned to assist the design development, contract documentation and overseeing of construction works on the site for their duration by undertaking regular inspections of the works in progress and providing advice in relation to heritage matters.

Written details of the engagement of the experienced heritage architect must be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Note: If advice provided by the heritage architect is to the effect that works requiring development consent be carried out, such works would require an application under s96 of the *Environmental Planning and Assessment Act 1979* or further development application. This condition, and any advice given by the heritage architect, should not be construed as authorising the carrying of development with/ otherwise than in accordance with the development consent.

(Reason: To ensure that all matters relating to significant fabric and spaces are resolved and recorded using best practice for heritage conservation)

Skylight(s)

- C7. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100 mm above roof plane when in a closed position with the exception of the skylights on the front elevation to be deleted from the application under condition C16. 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)

Stormwater Disposal

- C8. Stormwater runoff generated by the approved development must be conveyed by gravity to the existing site stormwater drainage disposal system. A licensed tradesman shall install plumbing components to achieve this requirement in accordance with the BCA and current plumbing standards and guidelines. 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 appropriate provision for disposal and stormwater management arising from the development)

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

- C9. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of **\$2,500.00** to be held by Council for the payment of cost for any/all of the following:
- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
 - b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
 - c) remedying any defects in any such public work that arise within six months after the work is completed.

**8 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 317/22**

Page 6 of 22

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

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

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

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

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

Tree Bond for Public Trees

- C10. Prior to the issue of any construction certificate, security in the sum of **\$3,000.00** 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.

**8 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 317/22**

Page 7 of 22

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

SCHEDULE

Tree	Location	Height (m)
London Plane Tree	Council's Verge	Approx. 10m

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

Protection of Trees

- C11. 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 (m)
London Plane Tree	Council's Verge	Approx. 10m

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)

Garbage and Recycling Facilities

- C12. Adequate provision must be made for the storage of waste and recyclable material generated by the premises. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the provision of appropriate waste facilities and to ensure efficient collection of waste by collector contractors)

Asbestos Material Survey

- C13. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

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

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

Security Deposit/Guarantee Schedule

- C14. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Street Tree Bond (on Council Property)	\$3,000.00
Footpath Damage Bond	\$2,500.00
TOTAL BONDS	\$5,500.00

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

C15. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A472779, dated 5 September 2022 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Heritage Requirements

C16. The following heritage requirements are to be met:

- a) The two skylights on the front roof plane addressing Elamang Avenue are to be deleted.
- b) The glazing on the dormer on the North West Elevation on the original dwelling is to consist of three traditional casement windows not louvres.
- c) The new joinery for the walk-in robe is to be set below the existing cornices so that the volume of the room is readily interpretable.
- d) New slate is to be similar in colour and texture to the existing slate. Artificial slate is not to be used.

The Certifying Authority must also 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 retain the heritage significance of the dwelling.)

D. *Prior to the Commencement of any Works (and continuing where indicated)***Photographic Survey (Heritage Items)**

D1. Prior to any works commencing a photographic survey recording, in accordance with the NSW Heritage Office Guidelines, "Photographic recording of Heritage Items using file or digital capture," is to be prepared to the satisfaction of Council's Historian and Conservation Planner. Two (2) copies of the photographic survey must be provided to Council.

(Reason: To provide a historical record of heritage significant fabric on site for archival purposes)

**8 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 317/22**

Page 10 of 22

Protection of Trees

- D2. All trees that are specifically nominated to be retained by notation on the plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites).

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

Temporary Fences and Tree Protection

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

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:

(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)

Asbestos Material Survey

- D5. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

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

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

Commencement of Works' Notice

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

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

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

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

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

Road Reserve Safety

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

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

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

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

(Reason: Stormwater control during construction)

Removal of Extra Fabric

- E4. 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

- E5. 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

- E6. 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)

Applicant's Cost of Work on Council Property

- E7. The applicant must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

No Removal of Trees on Public Property

- E8. 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

- E9. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. 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.
- b. An application to modify this consent pursuant to Section 4.55 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)

Special Permits

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

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

1) On-street mobile plant

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

(Reason: Proper management of public land)

2) Hoardings

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

(Reason: Proper management of public land)

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

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

(Reason: Proper management of public land)

4) Kerbside restrictions, construction zones

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

(Reason: Proper management of public land)

**8 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 317/22**

Page 16 of 22

Construction Hours

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

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

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

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

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

Installation and Maintenance of Sediment Control

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

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

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

Sediment and Erosion Control Signage

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

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

Site Amenities and Facilities

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

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

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

Health and Safety

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

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

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

Prohibition on Use of Pavements

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

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

Plant and Equipment Kept Within Site

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

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

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

Waste Disposal

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

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

Asbestos Removal

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

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

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

National Construction Code

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

(Reason: Prescribed - Statutory)

Home Building Act

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

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

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

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

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

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

Construction Certificate

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

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

Occupation Certificate

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

(Reason: Statutory)

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)

Demolition

- F7. Demolition work must be undertaken in accordance with the provisions of AS2601-Demolition of Structures.

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

Protection of Public Places

- F8. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

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

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

Site Sign

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

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
 - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

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

(Reason: Maintain quality of public assets)

Damage to Adjoining Properties

- G2. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

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

**8 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 317/22**

Page 22 of 22

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)

Disposal Information

- G4. Upon completion of works and prior to occupation, a report including the following information must be provided to Council's Open Space and Environmental Services Department:

- (a) the total tonnage of all waste and excavated material disposed of from the site (including any tipping docket); and
- (b) the disposal points and methods used.

(Reason: To ensure appropriate disposal methods are undertaken for auditing and inspection purposes)

BASIX Completion Certificate

- G5. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate, the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

Compliance with Certain Conditions

- G6. Prior to the issue of any Occupation Certificate, C16 Heritage Requirements must be certified as having been implemented on site and complied with.

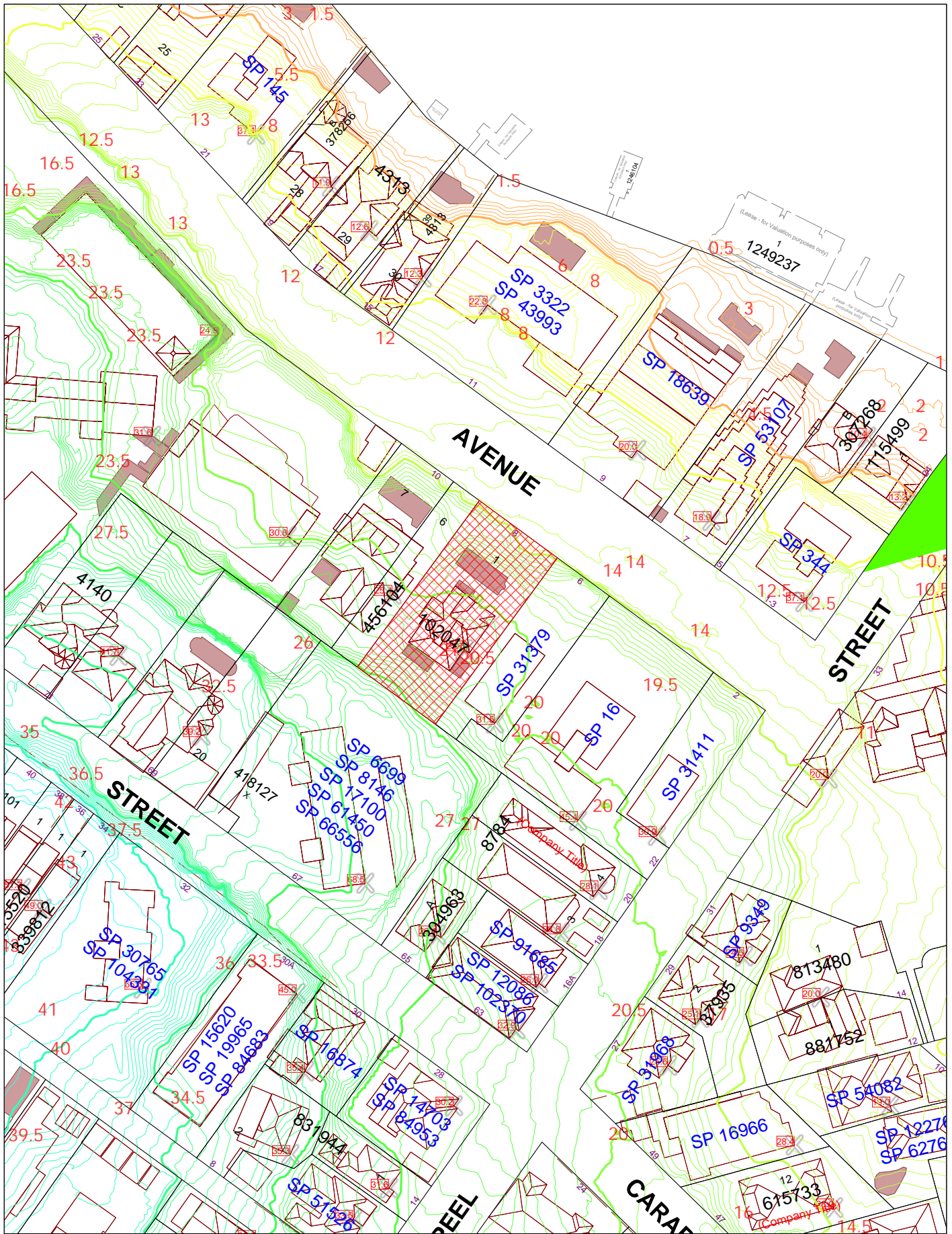
(Reason: To ensure the development is completed in accordance with the requirements of this consent)

I. Ongoing/Operational Conditions

Single Occupancy

- I1. Nothing in this consent authorises the use of the premises other than for a single occupancy.

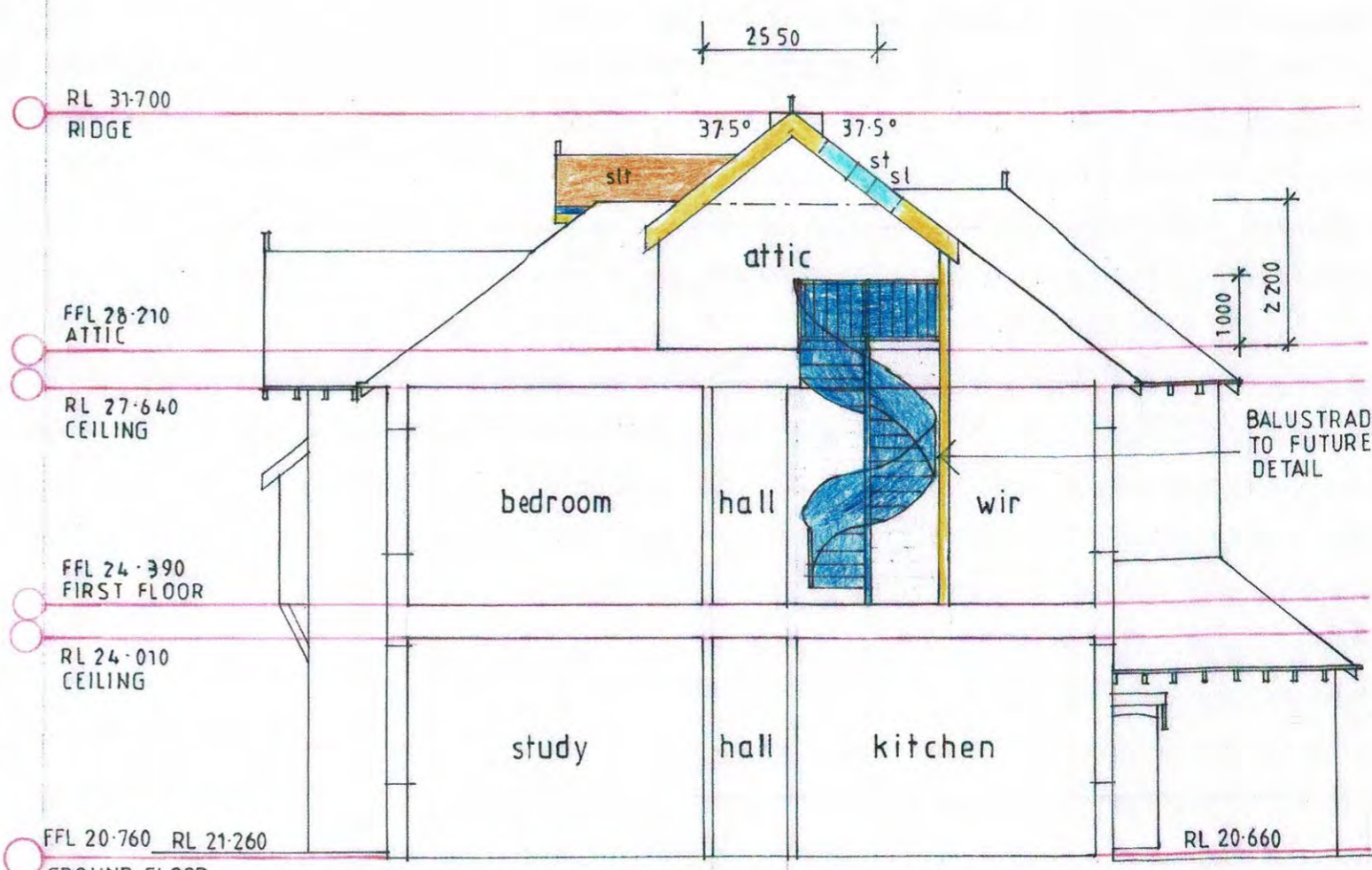
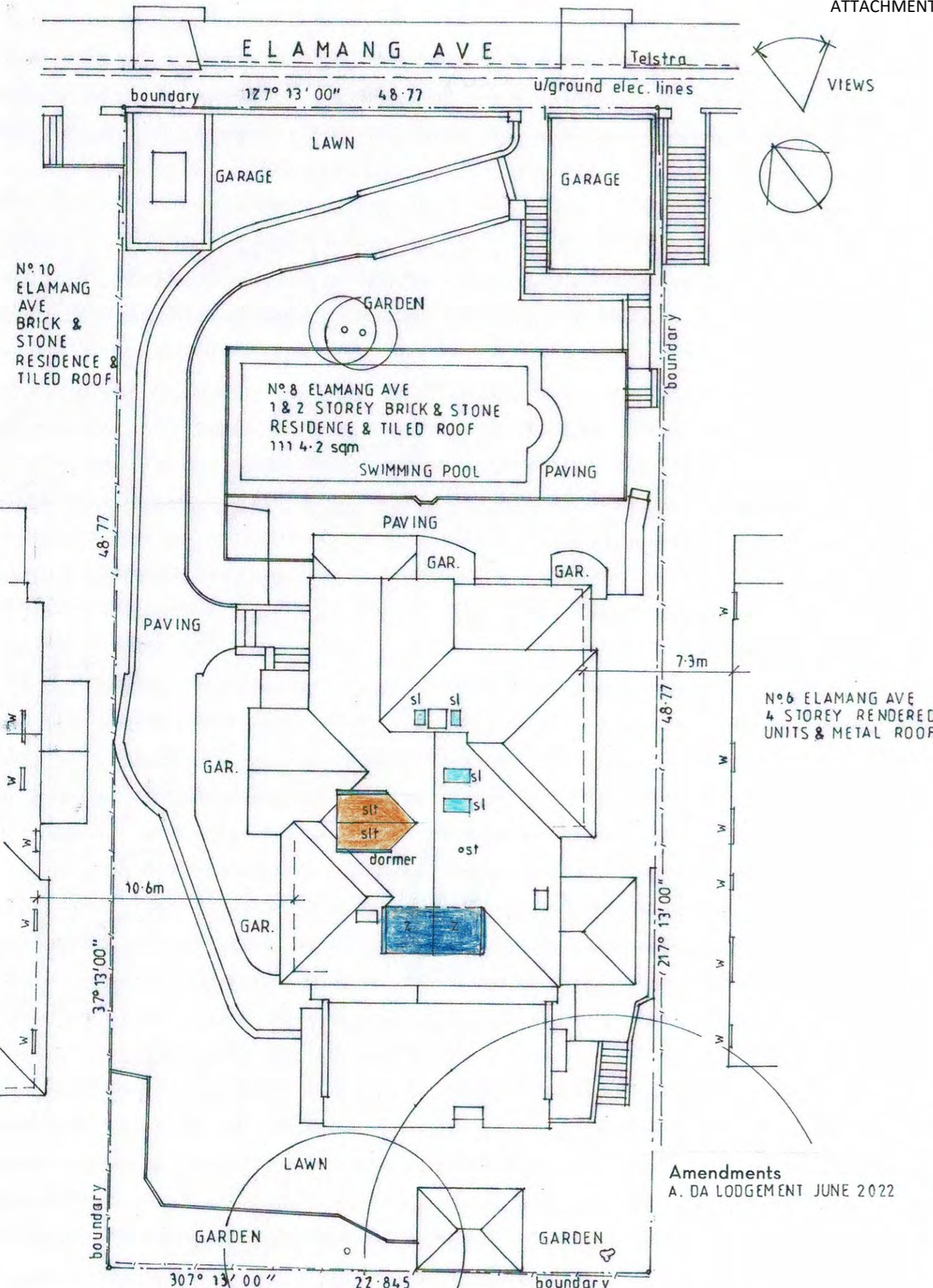
(Reason: To ensure compliance with the terms of this consent)



North Sydney Council

Copyright © North Sydney Council - No part of this map may be reproduced without permission. Commercial decisions should not be made based on information contained in this map without first checking details held by the responsible Government authority.

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



SECTION AA EXISTING WINDOWS SHOWN

LEGEND

sl	SKYLIGHTS black	f	FIXED GLAZING
slt	SLATE TILE existing	z	ZINC CLADDING brown to match exist.
st	SUN TUNNEL	fc	FIBROCEMENT PLASTERBOARD
tc	TIMBER CLADDING green to match exist.	pb	PLASTERBOARD
			WINDOWS white
			SW WINDOW black

GUTTERS & TIMBERWORK
to match exist.



APPLICANT: EMMA CURRIE
LOT:1 DP:102047

BEN GERSTEL
ARCHITECTURE PTY LTD

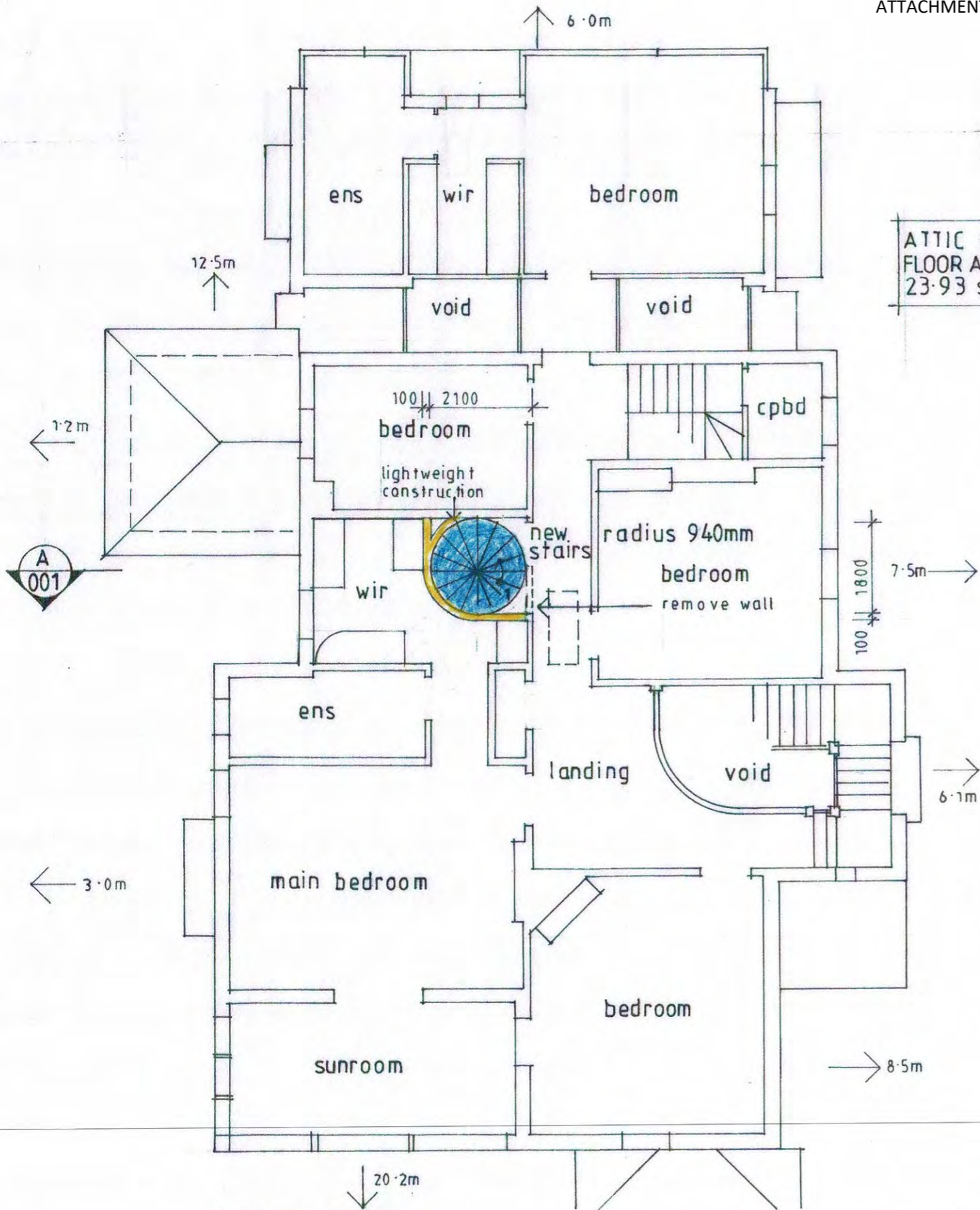
13 Sunnyside Crescent
Castlecrag NSW 2068
T 02 9967 0640
NSW Architect's Registration Board
No 5646 Nominated Architect: Ben Gerstel

BGA ALTERATIONS &
ADDITIONS TO
8 ELAMANG AVENUE, KIRIBILLI
PROPOSED ATTIC: SITE/ROOF
NOTE: PLAN & SECTION AA
ALL DIMENSIONS TO BE CONFIRMED ON
SITE. ANY DISCREPANCIES TO BE REPORTED
TO ARCHITECT PRIOR TO PROCEEDING.

Scale	1:100, 1:200
Date	APRIL 2022
Drawn	BG
Dwg No	001
Job No	2202
Rev.	A

SITE/ROOF PLAN FOR SETBACKS REFER DRAWING 002/A

Amendments
A. DA LODGEMENT JUNE 2022

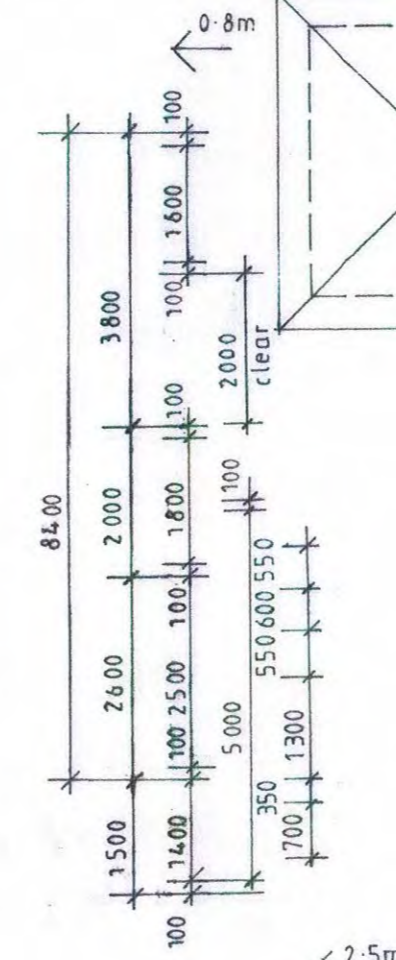


FIRST FLOOR
FFL 24.390
 WALL SETBACKS TO THE BOUNDARY

SITE AREA: 1114 sqm
 EXIST. LANDSCAPED AREA: 462.54 sqm
 SITE COVERAGE: 651.46 sqm

Amendments
 A. DA LODGEMENT JUNE 2022
 B. WINDOW No'S ADDED SEPT 2022

ATTIC FLOOR AREA: 22.88sqm
 FLOOR AREA AT 2.20m HIGH:
 23.93 sqm



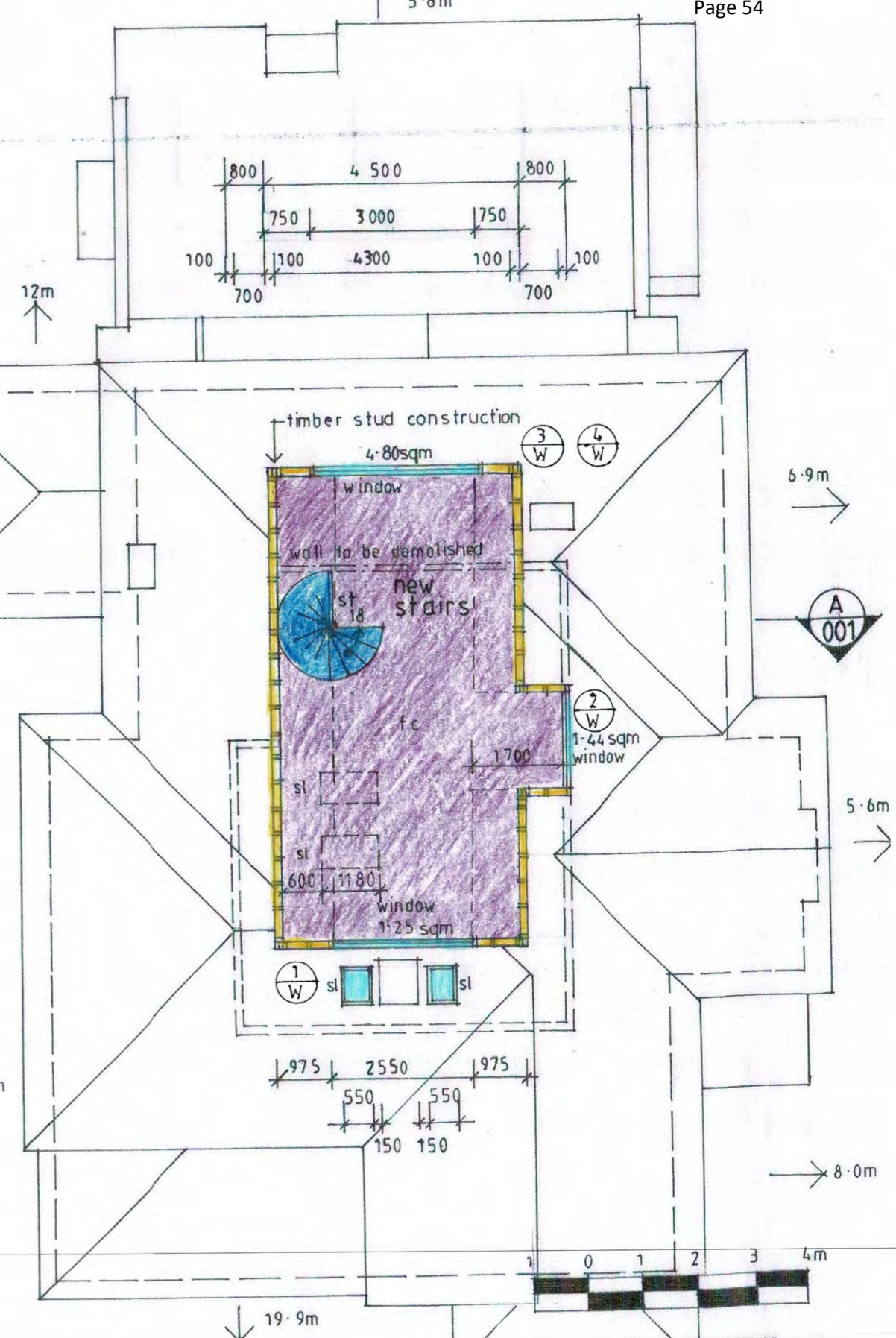
ATTIC
FFL 28.210

ROOF SETBACKS TO THE BOUNDARY

APPLICANT: EMMA CURRIE
 LOT: 1 DP: 102047

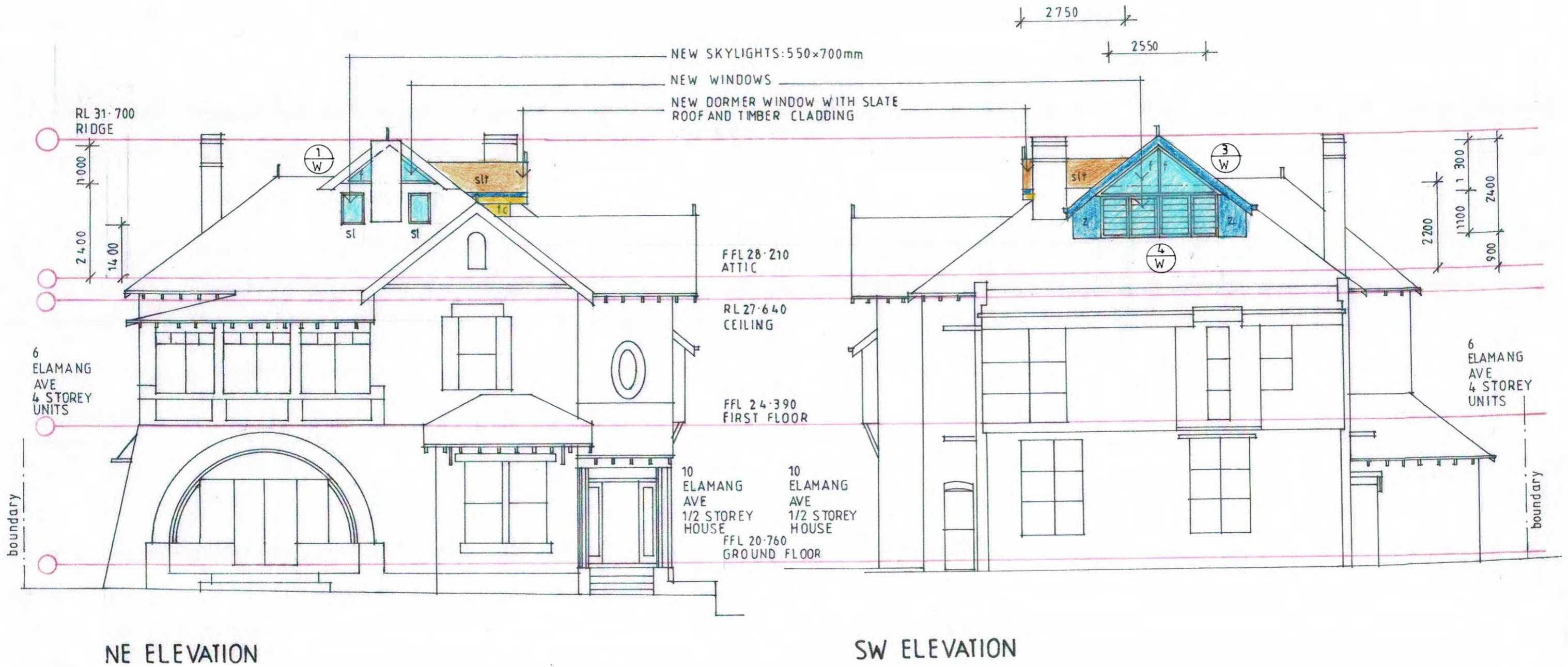
BEN GERSTEL
ARCHITECTURE PTY LTD

13 Sunnyside Crescent
 Castlecrag NSW 2068
T 02 9967 0640
 NSW Architect's Registration Board
 No 5646 Nominated Architect: Ben Gerstel



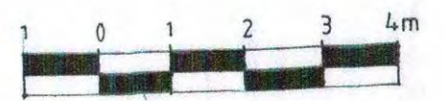
BGA ALTERATIONS & ADDITIONS TO
 8 ELAMANG AVENUE, KIRRIBILLI
 PROPOSED ATTIC: FIRST FLOOR
 NOTE: & ATTIC
 ALL DIMENSIONS TO BE CONFIRMED ON SITE. ANY DISCREPANCIES TO BE REPORTED TO ARCHITECT PRIOR TO PROCEEDING.

Scale 1:100
 Date APRIL 2022
 Drawn BG
 Dwg No 002
 Job No 2202
 Rev. B



NE ELEVATION

SW ELEVATION



APPLICANT: EMMA CURRIE
 LOT:1 DP:102047

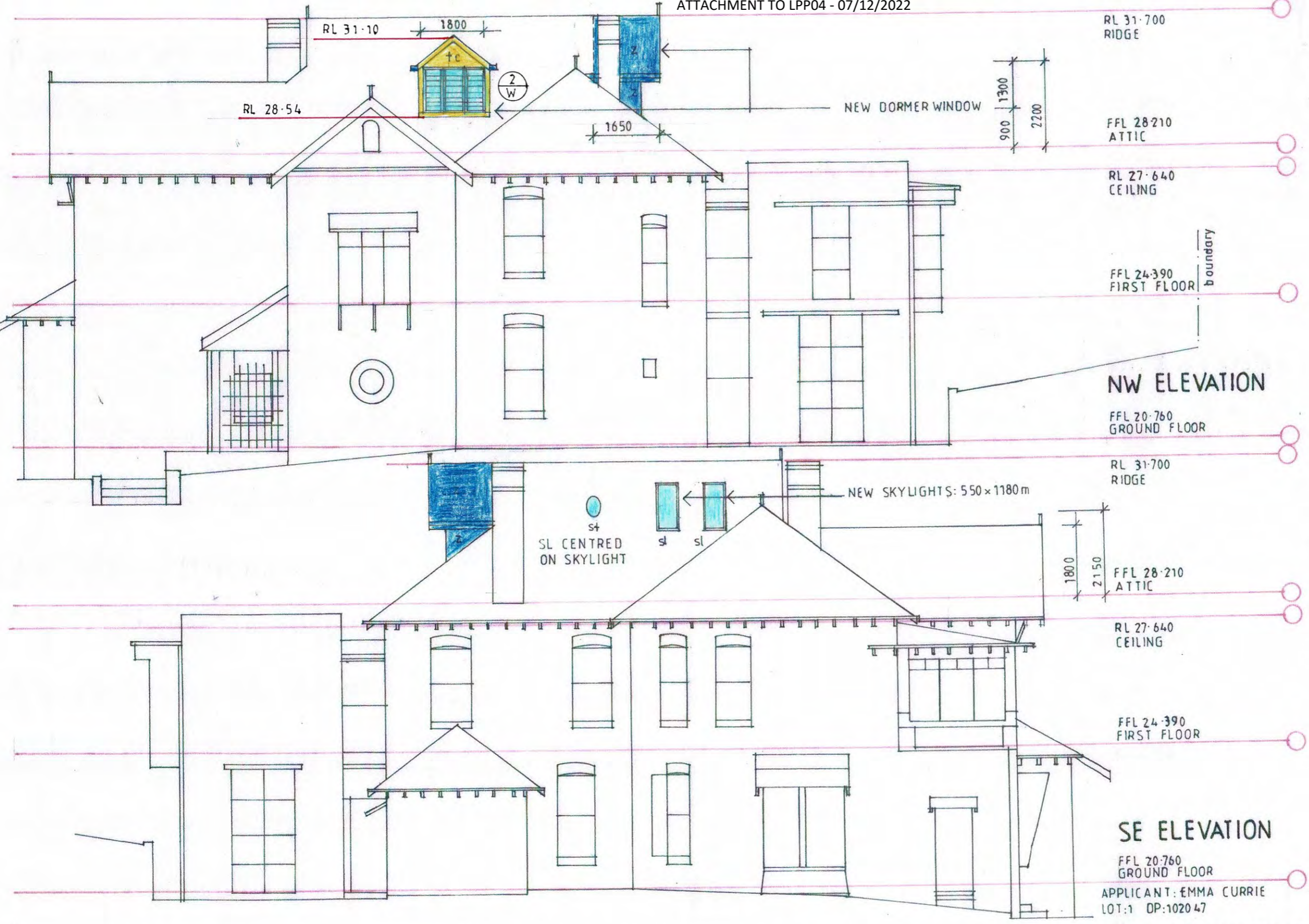
Amendments
 A. DA LODGEMENT JUNE 2022
 B. WINDOW No'S ADDED SEPT.2022

BEN GERSTEL
 ARCHITECTURE PTY LTD
 13 Sunnyside Crescent
 Castlecrag NSW 2068
T 02 9967 0640
 NSW Architect's Registration Board
 No 5646 Nominated Architect: Ben Gerstel

BGA ALTERATIONS & ADDITIONS TO
 8 ELAMANG AVENUE, KIRIBILLI
 PROPOSED ATTIC.
 NOTE: NE & SW ELEVATIONS
 ALL DIMENSIONS TO BE CONFIRMED ON SITE. ANY DISCREPANCIES TO BE REPORTED TO ARCHITECT PRIOR TO PROCEEDING.

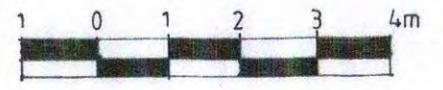
Scale	1:100
Date	APRIL 2022
Drawn	BG
Dwg No	003
Job No	2202
Rev.	B

- NOTES:
- 1) All dimensions and levels to be confirmed on site with the builder
 - 2) Figured dimensions to be taken in preference to scaled readings. All dimensions are in millimetres. Do not scale the drawings
 - 3) These drawings are copyright and property of the architect. It must not be retained, used or copied for any other project without the architects' written authority
 - 4) All new DP's to be connected into the existing stormwater system
 - 5) All new building work is to be in accordance with the Building Code of Australia and the satisfaction of Council requirements and other authorities
 - 6) Written permission is required to copy any documents or drawings from the office of Ben Gerstel Architecture Pty Ltd



NW ELEVATION

SE ELEVATION



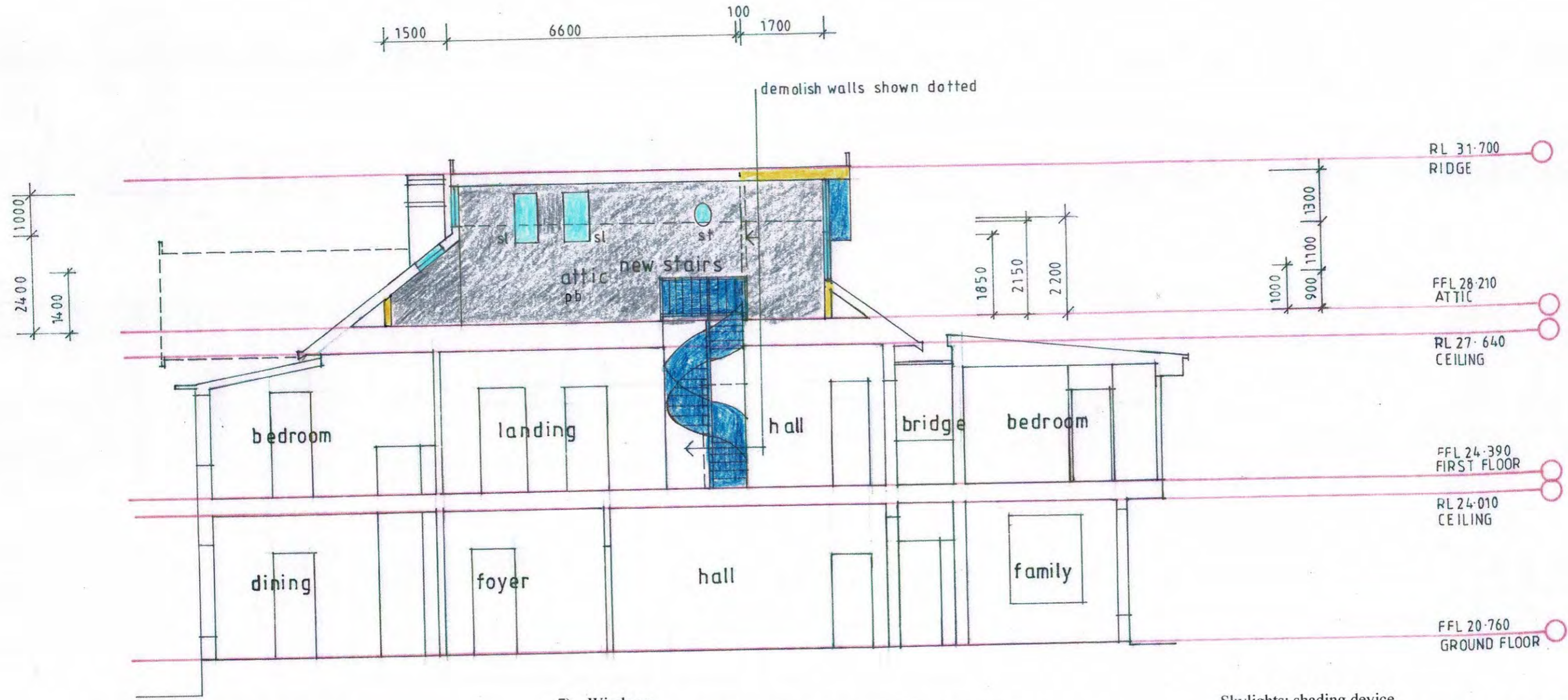
Amendments
 A. DA LODGEMENT JUNE 2022
 B. WINDOW No'S & RL'S ADDED SEPT. 2022

BEN GERSTEL
 ARCHITECTURE PTY LTD
 13 Sunnyside Crescent
 Castlecrag NSW 2068.
T 02 9967 0640
 NSW Architect's Registration Board
 No 5646 Nominated Architect: Ben Gerstel

BGA ALTERATIONS & ADDITIONS TO
 8 ELAMANG AVENUE, KIRIRIBILLI
 PROPOSED ATTIC:
 NOTE: NW & SE ELEVATIONS
 ALL DIMENSIONS TO BE CONFIRMED ON SITE. ANY DISCREPANCIES TO BE REPORTED TO ARCHITECT PRIOR TO PROCEEDING.

Scale	1:100
Date	APRIL 2022
Drawn	BG
Dwg No	004
Job No	2202
Rev.	B

APPLICANT: EMMA CURRIE
 LOT:1 DP:102047



SECTION B

7) Windows
 Windows: timber single clear (or U-value: 5.71, SHGC: 0.66)
 W1, 2, 3, 4

Skylights: shading device
 S1, S2, S3, S4 external adjustable awning or blind

BASIX CERTIFICATE

- 1) A minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent or light emitting diode (LED) lamps
- 2) Floor above existing dwelling or building: nil
- 3) External wall: framed (fibro): R1.30 (or R1.70 including construction)
- 4) Raked ceiling, pitched roof framed: ceiling: R0.74 (up)
 roof: foil backed blanket (100 mm)
 dark (solar absorptance > 0.70)

Windows: shading device
 W1 P/H above sill ratio ≥ 0.29
 W2, W3 eave /verandah /pergola / balcony ≥ 450 mm
 W4 none

8) Skylights
 S1, S2, S3, S4 aluminium, moulded plastic single clear
 (or U-value: 6.21, SHGC:0.808)



Amendments
 A. DA LODGEMENT AUGUST 2022
 B. BASIX INFORMATION ADDED SEPT.2022

APPLICANT: EMMA CURRIE
 LOT:1 DP: 102047

BEN GERSTEL
 ARCHITECTURE PTY LTD

13 Sunnyside Crescent
 Castlecrag NSW 2068
T 02 9967 0640
 NSW Architect's Registration Board
 No 5646 Nominated Architect: Ben Gerstel

BGA ALTERATIONS & ADDITIONS TO
 8 ELAMANG AVENUE, KIRRIBILLI
 PROPOSED ATTIC: SECTION B

NOTE:
 ALL DIMENSIONS TO BE CONFIRMED ON SITE. ANY DISCREPANCIES TO BE REPORTED TO ARCHITECT PRIOR TO PROCEEDING.

Scale: 1:100
 Date: AUGUST 2022
 Drawn: BG
 Dwg No: 006
 Job No: 2202
 Rev: B

**BEN GERSTEL ARCHITECTURE PTY LTD
13 SUNNYSIDE CRESCENT
CASTLECRAIG NSW 2068
ABN 38 077 550 157**

NSW ARCHITECT'S REGISTRATION BOARD No.5646
NOMINATED ARCHITECT: BEN GERSTEL

mob: 0426 758 700

**email: bgerstel@optusnet.com.au
www.bengerstelarchitecture.com.au**

**EXTERNAL FINISHES AND MATERIALS FOR
PROPOSED ATTIC AT 8 ELAMANG AVENUE, KIRRIBILLI**

<u>Walls</u>	Timber cladding
Colour	Painted green to match existing For the SW dormer walls, zinc to match existing
<u>Windows</u>	Timber casement windows and louvres Opening amount to the Building Code of Australia
Colour	Painted white to match existing
<u>Roof</u>	Slate tiling to match existing, for the SW dormer roof, zinc to match existing
<u>Skylights</u>	Powdercoated aluminium
Colour	Monumentt (black)



8 ELAMANG AVENUE KIRRIBILLI

CLAUSE 4.6 VARIATION HEIGHT



Report prepared for
Ben Gerstel
October 2022



Clause 4.6 Exceptions to Development Standards Height of Buildings 8 Elamang Avenue, Kirribilli

1. Introduction

Clause 4.6 of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*



The aims and objectives of North Sydney LEP 2013 Clause 4.6 are as follows:

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

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

Under Clause 4.6(3) and (4) of the NSLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

2. Environmental Planning Instrument Details

2.1 What is the name of the environmental planning instrument that applies to the land?

North Sydney Local Environmental Plan 2013

2.2 What is the zoning of the land?

R2 Low Density Residential

2.3 What are the objectives of the zone?

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

2.4 What is the development standard being varied?

Cl 4.3 - Height of Buildings

2.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.3 of the North Sydney Local Environmental Plan 2013

2.6 What are the objectives of the development standard?

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

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

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

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

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

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

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

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

2.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

2.8 What is proposed numeric value of the development standard in your development application?



The new Dormer window proposes a maximum height of 10.34 metres.
The extension of the attic a maximum height of 10.94 metres.

2.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation between the proposal and the environmental planning instrument is 21.64% for the window, and 28.7% for the extension of the existing roof on the south west elevation.

3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

3.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827*, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

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



In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

3.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each, but it is not essential.

3.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

3.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent



with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to *four2five*, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

3.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In *Action Pty Ltd v Woollahra Municipal Council*, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

4. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

4.1 Five (5) Part Test - *Wehbe v Pittwater*

- 1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***



The objectives of the standard are:

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

Comment

The variation is a result of the height of the existing dwelling, which is 11 metres. The additional works are within the existing built form and do not increase the height of the overall dwelling.

The variation is consistent with surrounding development, a result of the site topography and limited to a small form where impacts are negligible. It is considered this objective is met, despite the numerical variation.

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

Comment

There is no view loss as a result of the proposed variation. It is considered this objective is met, despite the numerical variation.

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

Comment

The proposed variation to height does not result in any unreasonable solar access impacts to adjoining dwellings. Solar access for neighbours remains fully compliant with the vast majority of the dwelling remaining the same as existing.

Given that compliant solar access is achieved for the neighbour, despite the height variation sought, it is considered the underlying objective of this clause has been satisfied.

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

Comment

The small area of height variation does not result in any loss of privacy for neighbouring sites, with layout of lots and topography resulting in differing floor levels and natural screening through vegetation.

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



Comment

The proposed development is consistent in scale with neighbours and with the existing dwelling.

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

Comment

The proposed variation to height results in a dwelling which is of compatible scale and well suits and complements the character of the Kirribilli locality.

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

Comment

The number of storeys steps with the site and is unchanged from existing. The development retains a 2-storey , with attic form.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).

This exception to development standards request does not rely on this reason.

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is,



the particular parcel of land should not have been included in the particular zone (Fifth Way).

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*.

In particular:

Detail of Variation

- The proposed variation includes a bay window with a height of 10.34 metres, a variation of 21.64%; and an extension to the attic of 10.94 metres or a variation of 28.7%.
- Both variations are for a very limited area within the context of the existing large dwelling. The works will not be easily visible from the street or side neighbours. The apparent bulk through the variation is negligible and not to the detriment of the apparent scale of the dwelling from any point satisfying Cl1.3(g).
- The small variations to the height are lower than the existing dwelling's maximum height and only result in a breach of the height due to this existing form. The dormer window sits below the existing ridge and the extension of the roof form is at a higher point of the site than where the maximum height is reached. The impact of this keeps the dwelling consistent whilst improving the floor area available satisfying Cl1.3(g).

Neighbour Amenity

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The variations sit centrally within the existing built form and are well setback from neighbouring boundaries as a result. In addition to extensive setbacks, there is also



existing landscape screening on the site. The small height variation will have no impact the neighbours to the rear. Compliance with the development standard would be unreasonable.

- Compliance with the height control at the rear would not result in a building which has a significantly lesser bulk and the impact to neighbours of compliance would be barely discernible to the side neighbours who are of far greater scale comprising residential flat buildings in many instances. Accordingly, compliance with the development standard in this instance is unreasonable.
- Solar access impacts as a result of the small height variation are negligible. Solar access on the neighbouring sites is compliant as the development is proposed as is detailed in the accompanying solar access diagrams. The shadows diagrams demonstrate 9 am and midday have no impact with retention of solar access compliant for the neighbouring properties. Accordingly, compliance with the development standard based on this would be unreasonable.
- The retention of the variations have no impact on privacy for neighbours, being confined to the attic space. Accordingly, the variation is reasonable in the circumstances of the case.
- The NW dormer window overlooks the roof ridge at 10 Elamang Avenue. This combined with the wide 450 mm eave at 10 Elamang Avenue ensures minimal or no loss of privacy.

Site Constraints

- The design with a minor variation to the height, is a result of the existing height of the dwelling, and it would be unreasonable to require compliance with the development standard, when the variation result allows for the orderly and economic use of the site and allows for an ecologically sustainable development revitalising an existing underdeveloped site satisfying Cl1.3(g) and (f).

Design and Streetscape Appeal

- Strict numerical compliance with the height control would not result in a better urban design outcome. The roof form and scale of the dwelling remain consistent with the architectural character of the locality and will complete a very appealing design. Compliance with the development standard based on this would be unreasonable.



- The proposed development will not present with excessive bulk from the public domain satisfying Cl1.3(g). The streetscape appeal is unaffected by the small variation to the height standard, and it would be unreasonable to require compliance with development standard based on this.

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone ensuring that appropriate and reasonable housing suitable for the local community is proposed. Compliance with the development standard based on this would be unreasonable.

Natural Environment

- The inclusion of the small height variation has not impact on the natural environment. The small variation sits within the attic area and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the minor varied height satisfying Cl1.3(b). The natural environment is unaffected by the small departure to the development standard and it would be unreasonable for the development to be refused on this basis.

Environmentally Sustainable Development

- The proposal represents an environmentally sustainable design allowing for extension of the life on an existing dwelling satisfying Cl1.3(f). Compliance with the development standard based on this would be unreasonable.

Social and economic welfare

- The small variation to the height as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b)and accordingly refusal of the development based on this reason would be unreasonable.



- The small variation to the height as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.
- The variation does not result in a roof form or height beyond that which is found in the immediate context, including the immediately neighbouring sites. The maximum RL of the varied portion of the roof sits well below the immediate neighbours and the highest point of the existing dwelling. The small variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.
- Removal of the non-compliance would not result in alter the perceived bulk and scale due to the minor nature, siting and topography.

The discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and retention of amenity. These are not simply benefits of the development as a whole, but are a direct result of the breach of the maximum height control.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

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

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

Objectives of zone



- *to provide for the housing needs of the community within a low-density residential environment.*

Consistent. The proposed development retains the an existing low density dwelling.

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

N/A

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

Consistent. The proposed development retains the values and amenity of the locality.

- *To ensure that a high level of residential amenity if achieved and maintained.*

Consistent. The development provides improved amenity for the site whilst also being appropriate with regard to impact on neighbouring sites with regard to views, privacy, solar access and general amenity.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it represents a minor exceedance, and is consistent with the existing dwelling and surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard. The variation is reasonable, with the vast majority of the development easily complying and small component where the variation is sought being not easily visible from any viewpoint.



Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

As proposed the development allows for all of the above objects to be achieved. In particular it is noted that there is no social or economic impact other than the benefit of a small amount of employment through the works which will be undertaken.

The upgrade and redevelopment of an existing dwelling to an improved standard is a positive environmentally sustainable result.



The development proposed a good design which is achieved partly through the minor development standard variation.

Strict compliance with the 8.5 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

Conclusion

The proposed development is for alterations and additions to an existing residential dwelling on land zoned R2 Low Density Residential.

As stated above the proposed non-compliance is minor 21.64% for the window, and 28.7% for the attic. The variation does not result in any unreasonable impacts and is entirely a result of the scale of the existing dwelling. It is of a very limited area and located centrally within the footprint resulting in it not being easily visible from any location, and appearing appropriate and consistent from those areas where it may be viewed.

The proposed development presents with a comparable height to Elamang Avenue and does not present with excessive bulk in comparison to surrounding properties. There will not be any view loss and solar access is fully compliant with Council controls. Amenity is retained for all neighbours.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.