



**NSLPP MEETING HELD ON 02/08/23**

**Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 (HoB) Statement
4. NSLEP 2013 (Amendment No. 35)

**ADDRESS:** Unit 4, 35 Murdoch Street, Cremorne

**APPLICATION No:** DA 9/2023

**PROPOSAL:** Alterations and additions to an existing apartment including construction of a new dormer

**PLANS REF:**

Plan No.	Rev	Description	Prepared by	Dated
DA-03	D	Existing floor plan	Tightknit Building Design	16/11/2022
DA-04	D	Demolition Plan		16/11/2022
DA-05	D	Proposed floor plan		16/11/2022
DA-06	D	Existing Attic		16/11/2022
DA-07	D	Proposed Attic		16/11/2022
DA-08	D	Site & Roof Plan		16/11/2022
DA-09	D	West Elevation & Section A		16/11/2022
DA-10	D	East Elevation		16/11/2022
DA-11	D	North Elevation		16/11/2022
DA-12	D	North Section – Section B-B		16/11/2022
DA-14	D	Material Schedule		16/11/2022

**OWNER:** Alana Chan

**APPLICANT:** Slade Hugall

**AUTHOR:** Report of Thomas Holman, Assessment Officer

**DATE OF REPORT:** 20 July 2023

**DATE LODGED:** 17 January 2023

**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing apartment in a residential flat building, including internal alterations and construction of new window openings on the northern side elevation, two skylights and a dormer addition.

**The development application is reported to the North Sydney Local Planning Panel for determination because the proposed development contravenes a development standard imposed by an environmental planning instrument by more than 10% in accordance with the Ministers Direction “Local Planning Panel Direction – Development Applications” dated 30 June 2020, published to the NSW Planning Portal.**

The proposed dormer addition has a maximum height of 9.8m (15% variation) measured from existing ground level which does not comply with the maximum permitted height of 8.5m in Clause 4.3 in NSLEP 2013. Consideration has also been given to the written request made pursuant to Clause 4.6 in NSLEP 2013 which was considered to be well founded in the site circumstances.

The proposed development is permissible, subject to the savings provision in Clause 1.8 in NSLEP 2013, meets the development standards and relevant provisions of NSLEP 2013, subject to Clause 4.6, and is generally in accordance with the objectives of the NSDCP 2013.

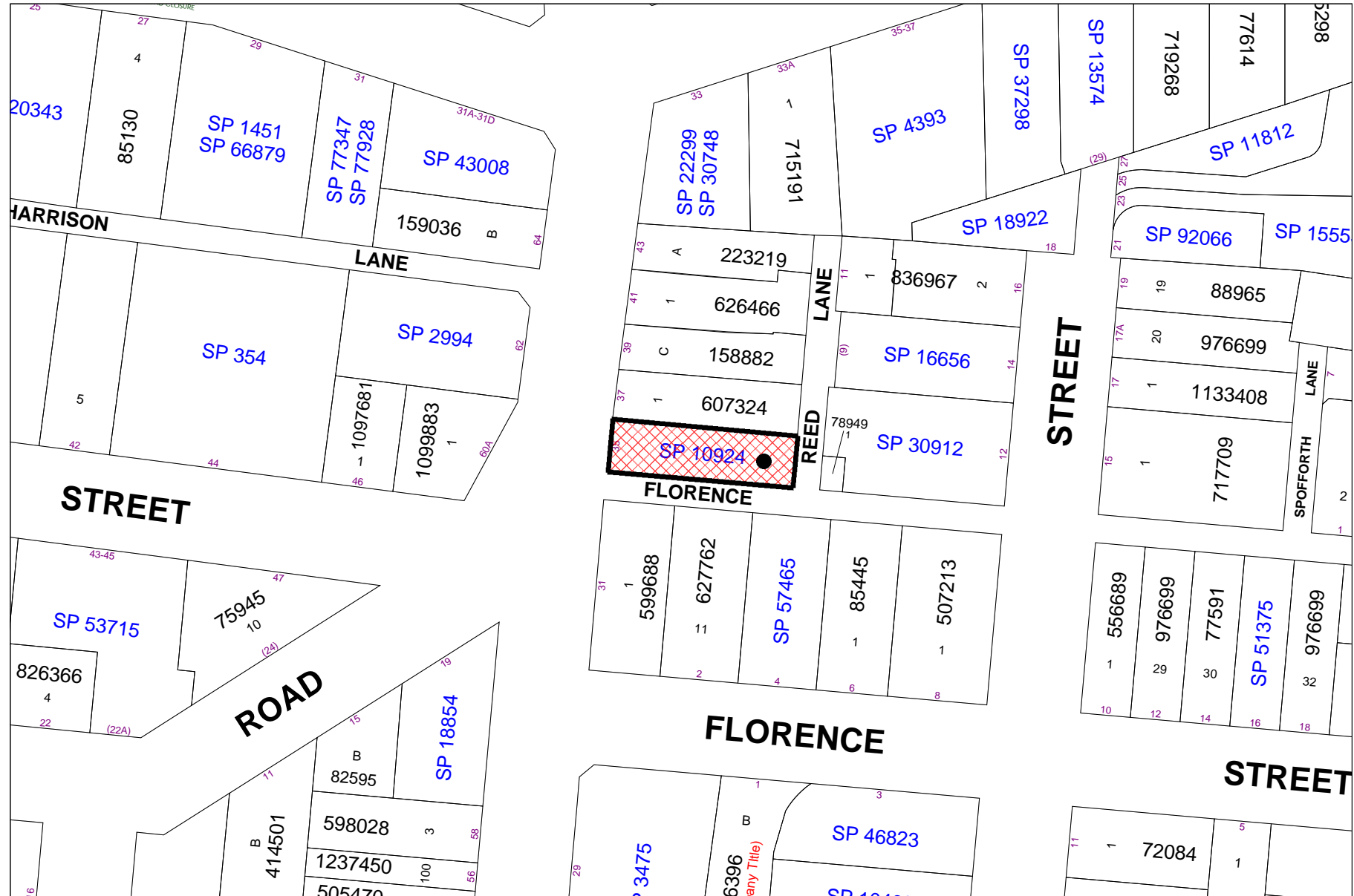
The proposed side dormer is located on the northern roof slope of the existing residential flat building and generally complies with the provisions in Section 1.4.11 *Dormers* of Part B in NSDCP 2013. The proposed dormer is not located on the front street elevation and the design and proportioning is appropriate having regard to the character of the existing building. The proposed works would not adversely impact the significance of the Cremorne Conservation Area in which the site is located, nor would it adversely impact the amenity of the adjoining properties in terms of retaining reasonable solar access and privacy.

Council’s Conservation Planner and Building Surveyor raised no objection to the proposed works, subject to appropriate conditions of consent.

The application was notified in accordance with Council’s Community Engagement Protocol. Council received one submission in support of the proposed works.

Following this assessment, the proposed development is considered to be reasonable in the circumstances and is recommended for **approval** subject to conditions.

**LOCATION MAP**



Property/Applicant    ● Submitters - Properties Notified

## DESCRIPTION OF PROPOSAL

This development application seeks consent for alterations and additions to an existing apartment in a residential flat building, including internal alterations and construction of new window openings on the northern side elevation, two skylights, and a dormer addition.

### First Floor Level (Level 1 – RL 71.53)

- Demolition of existing internal partitions to form a new open plan kitchen/dining room and construction of a pantry and bathroom.
- Demolition of the existing chimney section, doors, and a window partition, and construction of a new ensuite, joinery and structural beam to create a larger front bedroom.
- Installation of three windows in the northern side elevation and a window in the eastern rear elevation.
- Construction of a skylight located on the northern roof plane.

### Attic Room (RL 74.53)

- Construction of a dormer addition on the northern roof plane. The dormer elevations are clad with fibre cement weatherboards, painted in a natural white to match the front façade of the building. The roof of the dormer addition has a shallow pitch (2 degrees) and is constructed of corrugated metal roof sheeting.
- Construction of a small skylight located on the roof of the proposed dormer.

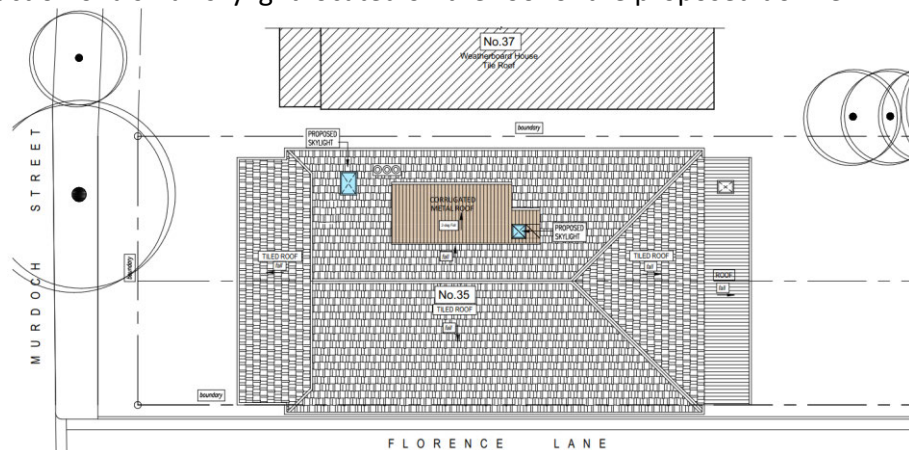
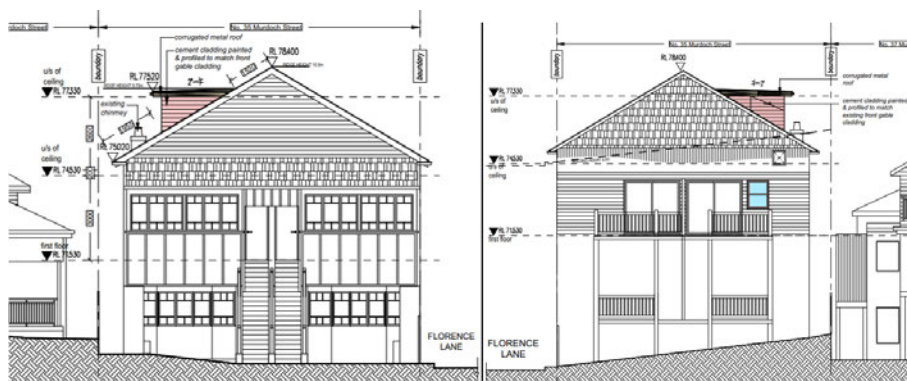


Figure 1. Site & Roof Plan, DA-08 Rev D



Figures 2 & 3. West (Front) Elevation DA-09 Rev D & East (Rear) Elevation DA-10 Rev D

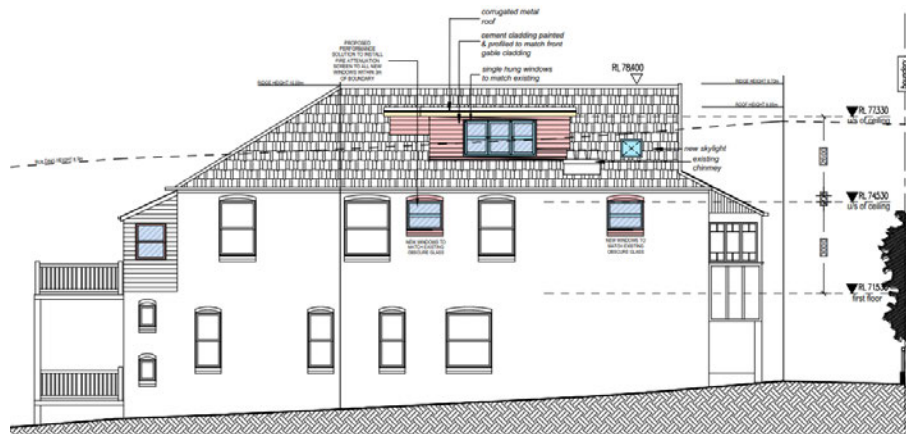


Figure 4. North (Side) Elevation, DA-11 Rev D

## STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R3 Medium Density Residential zone
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- Conservation Area – ‘Neutral Item’ Cremorne Conservation Area

Environmental Planning & Assessment Act 1979

Environmental Planning & Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

- Chapter 2 Vegetation in non-rural areas
- Chapter 6 Water Catchments

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Housing) 2021

SEPP (Resilience and Hazards) 2021

- Chapter 4 Remediation of Land

SEPP 65 – Design Quality of Residential Apartment Development

## POLICY CONTROLS

North Sydney Development Control Plan 2013

North Sydney Local Infrastructure Contributions Plan 2020

## DESCRIPTION OF LOCALITY

The site is legally described as Lot 4 in Strata Plan SP10924 and is known as Unit 4, 35 Murdoch Street, Cremorne. The site is located on the eastern side of Murdoch Street. The site is rectangular in shape and has a site area of 448.6m<sup>2</sup>.

The site contains a residential flat building comprising four apartments and is two storeys in height, constructed of brick and cladded elevations and has a tile pitched roof. Unit 4 is located on the northern side of the first floor level and has a front entry on Murdoch Street and a raised timber deck to the rear.



**Figure 5 & 6. Northern roof slope of site as viewed from footpath of Murdoch Street (left) and 35 Murdoch Street from across the street (right)**

The site is zoned R3 Medium Density Residential and is located within the Cremorne Conservation Area. The site has a maximum permitted building height of 8.5m.



**Figures 7, 8 & 9. Land Zoning Map (left) and Heritage Map (middle) and Height of Buildings Map (right) – subject site hatched in red**

**RELEVANT DEVELOPMENT HISTORY**

Date	Development
15 August 1998	<p>Development Application No. 133/06 for demolition of timber decks at the rear of the units and construction of new timber decks at the ground and first floor levels, balustrading, and a central spiral staircase was approved on 15 August 2006 under delegated authority.</p> <div style="text-align: center;"> <p><b>EAST ELEVATION</b> SCALE: 1/100</p> <p><b>SOUTH ELEVATION</b> SCALE: 1/100</p> </div>

**Figure 10. Approved East Elevation and South Elevation of proposed decks and staircase – DA 133/06**

## RELEVANT APPLICATION HISTORY

Date	Action
17 January 2023	The subject development application was lodged with Council via the NSW Planning Portal.
04 February 2022	The application was notified in accordance with Council's Community Engagement Protocol to the Precinct and surrounding properties from 3 February 2023 until 17 February 2023.
16 June 2023	A site visit was undertaken by the Assessment Officer and Conservation Planner.

## INTERNAL REFERRALS

### Heritage

The application was referred to Council's Conservation Planner who provided the following advice (*in italics*):

*The subject property is a neutral item located within the Cremorne Conservation Area. The late Federation two storey building contains four apartments and is constructed from brick with a terracotta tiled roof. The front verandah on the first floor level has been enclosed with Interwar detailing and there are decks on both levels at the rear.*

*The proposed works are considered to satisfy Clause 5.10 in NSLEP 2013 and Section 13 of Part B in NSDCP 2013 in that the primary form, front facade and building character will be retained. There would be no impact to nearby heritage items. No objection is raised to the proposed attic conversion and associated dormer. The shed style dormer generally complies with the heritage dormers controls in Section 13.9.2 of Part B in NSDCP 2013.*

*The proposed internal changes are acceptable, including the removal of the splayed chimney breast, given the building is not a listed heritage item and has been subjected to earlier modifications internally. It is recommended however, that a condition be imposed to ensure there is no impact caused by the installation of new plumbing to the apartment below and that the new services do not negatively impact upon the north elevation. The proposed new windows are acceptable as the proportions are sympathetic to the building. No objection is raised to the proposed skylight as it is located on a side roof plane.*

*The following standard conditions are recommended:*

- A3. *No Demolition of Extra Fabric*
- C7. *Colours, Finishes, Materials (Conservation Areas)*
- C8. *Skylight/s*
- E4. *Removal of Extra Fabric*

*The following site-specific condition is recommended:*

**Heritage Requirements**

C4. *The following heritage requirements are to be met:*

- a) *The new plumbing and wiring for the new bathrooms and kitchen shall not impact the apartment below. New services located on the exterior of the building shall be incorporated into existing services where possible. Any new pipes/ducts and the like, shall be painted to be visually submissive in colour.*
- b) *The structural soundness of the north-western chimney is to be certified by a structural engineer to ensure its retention at roof level. Any necessary works required by the structural engineer within the attic space to ensure the structural soundness of the chimney are acceptable.*
- c) *New windows are to be timber framed with a painted finish to match the existing windows.*
- d) *The fibre cement weatherboard cladding to the dormer shall be laid horizontally as shown on the elevations.*

*The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition prior to the issue of the Construction Certificate.*

*(Reason: To be sympathetic to the heritage significance of the building.)*

**BUILDING**

The application was referred to Council's Building Surveyor who raised no objections noting the Annual Fire Safety Statement for the property is up to date and the NCC BCA Assessment Report that accompanies the development application finds that the works are capable of complying with the National Construction Code. More detailed advice provided the Building Surveyor is provided below (*in italics*):

*The Development Application seeks consent for alterations and additions to unit 4 within an existing residential flat building.*

*The building will be classified by the NCC BCA 2019 as a class 2 building of Type A construction.*

*A search of Council's records revealed that the property forms part of Council's Annual Fire Safety Statement Register and the submission of an Annual Fire Safety Statement is up to date.*



*The application is supported by a NCC BCA Assessment Report dated 19 September 2022 prepared by Sydney Fire Safety & Building Inspections which concludes that the proposed development is capable of complying with the NCC BCA 2019.*

*It is noted that proposed openings within the north external wall will require fire protection in accordance with the NCC BCA 2019, Volume 1, Clause C3.4 (ii), which states:*

*C3.4- Acceptable methods of protection*

- (a) Where protection is required, doorways, windows and other openings must be protected as follows:*
  - (ii) Windows—*
    - (A) internal or external wall-wetting sprinklers as appropriate used with windows that are automatic closing or permanently fixed in the closed position; or*
    - (B) -/60/- fire windows that are automatic closing or permanently fixed in the closed position; or (C) -/60/- automatic closing fire shutters.*
  - (iii) Other openings—*
    - (A) excluding voids — internal or external wall-wetting sprinklers, as appropriate; or (B) construction having an FRL not less than -/60/-*
    - (B) Fire doors, fire windows and fire shutters must comply with Specification C3.4.*

*Upgrade of the building pursuant to Section 64 of the Environmental Planning & Assessment Regulations 2021 is not required given that the proposed works represent less than 50% of the buildings volume and Council's records show fire safety upgrades were completed in 2014.*

*A detailed assessment of compliance with the NCC BCA 2019 will be undertaken by an appropriately accredited certifier at the Construction Certificate stage of the development. Additionally, a Fire Safety Schedule is to be prepared by the Certifier to accompany the Construction Certificate.*

*The following standard Conditions are recommended:*

*F1. National Construction Code*

*All building work must be carried out in accordance with the provisions of the Building Code of Australia.*

*(Reason: Prescribed Condition)*

## **ENGINEERING**

Council's Development Engineer was not referred the development application due to the limited proposed scope of works, with no additional impervious surfaces. However, where appropriate standard conditions of consent have been recommended requiring a dilapidation report to record the condition of **public infrastructure (C1) and dilapidation survey (C2) / structural adequacy reports (C7) for the existing building and appropriate stormwater management (C10)**.

## **SUBMISSIONS**

The application has been notified in accordance with Council's Community Engagement Protocol with surrounding properties and the Harrison / Bennett Precinct notified from 3 February 2023 until 17 February 2023. Council received one submission in support of the development application which is summarised below and addressed later in this report:

### **Basis of Submissions**

- The development application has been approved by formal resolution of the Owners Corporation.
- The development is in synch with the nature of the block and is appropriate in all circumstances, especially in light of the childcare centre next door.

The original submission may be viewed by way of the DA tracker on Council's website [https://www.northsydney.nsw.gov.au/Building\\_Development/Current\\_DAs](https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs) and is available for review by Panel members.

## **CONSIDERATION**

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

### **Environmental Planning and Assessment Act 1979 (as amended)**

#### **SEPP (Biodiversity and Conservation) 2021**

- **Chapter 2 Vegetation in non-rural areas**

Section 2.6 of the Policy specifies that a person must not clear declared vegetation in a non-rural area of the State without consent of Council. The Policy confers the ability for Council to declare vegetation that consent is required in a Development Control Plan. Section 16 of Part B in NSDCP 2013 specifies declared trees for the purpose of the SEPP which includes trees over 5m in height or canopy. The proposed development does not seek to remove or impact any protected trees.

#### **SEPP (Biodiversity & Conservation) 2021**

- **Chapter 6 Water Catchments**

Having regard to Chapter 6 of the SEPP (Biodiversity and Conservation) 2021 the proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given the site's inland location. The proposed development would not adversely affect the quantity or quality of water entering Sydney Harbour, being a regulated catchment for the purpose of Section 6.6 of the Policy. The application satisfies the requirements of the Policy.

## **SEPP (Resilience and Hazards) 2021**

### **- Chapter 4 Remediation of Land**

Section 4.6 of the SEPP requires the consent authority to consider whether the land is contaminated, and if so whether the land is suitable for the intended use or any remediations measures required. Council's records indicate that the site has historically been used for residential development and as such is unlikely to contain any contamination. Furthermore, the proposed works do not require any excavation and would not disturb soils. The subject site is therefore considered suitable for the proposed use given that contamination is unlikely.

## **SEPP (Building Sustainability Index: BASIX) 2004**

A valid BASIX Certificate (A479811) dated 07 November 2022 for alterations and additions has been submitted to satisfy the Policy (**Conditions C82 and G27**).

## **SEPP 65 – Design Quality of Residential Apartment Development**

This Policy does not apply because the proposed development does not meet the criteria in Section 4 of the SEPP, specifically subsection (1)(b) as the proposed residential flat building is two storey (with an attic) rather than three storeys, being the relevant threshold.

## **SEPP Housing 2021**

Chapter 2, Part 3 *Retention of existing affordable rental housing* of the Policy does not apply to the proposed development. The Policy applies to residential flat buildings, however, does not apply to the alterations or additions to the subject building in accordance with Subsection 46(2) of the Policy because the building has previously been Strata subdivided.

## **NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN (NSLEP 2013)**

### **1. Permissibility**

The site is zoned R3 Medium Density Residential under the provisions of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). The application seeks consent for alterations and additions to an existing residential flat building.

On 19 May 2023, North Sydney Local Environmental Plan 2013 (Amendment No. 35) came into force which prohibited *residential flat buildings* in the R3 Medium Density Residential zone. However, the application benefits from the savings provision in Clause 1.8(2) which states:

- (2) *If a development application has been made, but not finally determined, before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 35), the application must be determined as if that plan had not commenced.*

The amendment commenced on 19 May 2023, being the date it was published to the NSW Legislation website, however the application was lodged prior to this on 17 January 2023. Therefore, the development application must be determined on the basis that residential flat buildings were a permitted use in the R3 Medium Density Residential zone.

## 2. Objectives of the zone

The objectives for a R3 Medium Density Residential Zone are stated below:

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

The proposal is consistent with the relevant objectives of the zone. The proposed works serve the housing needs of the community and would not compromise the natural or cultural amenity of the area. The proposed works would achieve a high level of residential amenity whilst ensuring the amenity of the adjoining properties is also maintained.

## Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 448.6m <sup>2</sup>	Proposed	Control	Complies
Clause 4.3 – Heights of Building	9.8m (Dormer)	8.5m	NO

## 3. Height of Building

The proposed dormer has a maximum height of 9.8m which does not comply with the permissible height limit of 8.5m contrary to Clause 4.3 in NSLEP 2013, being a variation of 15%. The annotated section below highlights the non-compliance with the height limit. It is also noted that the dormer includes a skylight on its roof which is also above the height limit.

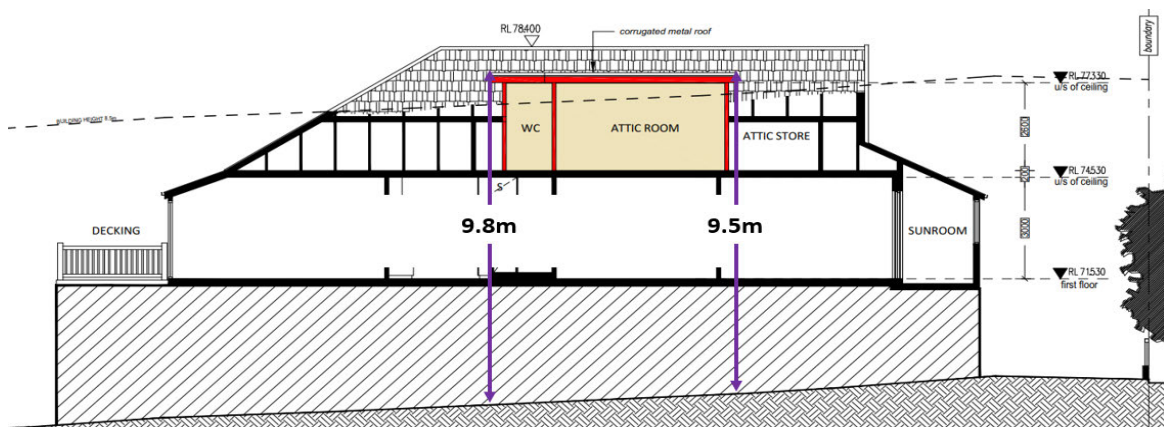


Figure 11. Annotated Section B-B (DA-12 Rev D) indicating the height of dormer measured in a vertical distance from ground level (existing)

A written request to justify a contravention of the development standard for height has been submitted (**ATT\_3**) and is considered below.

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

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

The site contains an existing residential flat building with a small front garden and a large, landscaped rear garden. The topography of the site falls away from Murdoch Street to Reed Lane with a fall from the front boundary to the rear boundary of approximately 2-3 meters.

The works will have no impact on the existing topography of the site with works predominantly internalised or comprising the proposed dormer addition/skylight to the northern roof slope which sits below the existing ridgeline.

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

The proposed alterations and additions would retain the existing maximum height of the building with the only noticeable increase in bulk being the dormer addition on the northern roof plane. The dormer would not substantially affect the bulk and massing of the residential flat building, ensuring that views from surrounding properties are retained.

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

The proposed dormer would not cause any additional overshadowing to adjoining dwellings or the street. Shadows cast from the dormer affect the roof of the subject building only. Consequently, the development maintains the existing solar access afforded to surrounding dwellings and the street in accordance with the objective.

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

The proposed additions to the existing attic to form a larger habitable room with WC entails the construction of a dormer on the northern roof of the building. The dormer includes three windows, modest in size, directing views towards the roof of the adjoining property to the north at 37 Murdoch Street but does not have any direct views to rooms within the adjoining property and would have no discernible impact on its privacy. It is noted that 37 Murdoch Street is an existing childcare centre and has been subject to recent alterations and additions including a first floor addition. The first floor of the childcare centre serve a staffroom, and the southern elevation has two windows with obscure glass. The dormer would therefore have no impact on the privacy of the adjoining property. Below is an excerpt from the southern elevation of the adjoining childcare centre approved by the Land and Environment Court on 11 May 2021 (DA No. 69/20 or File Number 2020/157515) and an annotated aerial map showing approximate views from the proposed dormer addition to the adjoining property.



**Figure 12. Approved South Elevation of 37 Murdoch Street (Dwg No. DA-05/E)**



**Figure 13. Annotated aerial photo (Nearmap) showing site bordered in yellow and potential views from the dormer directed to the roof of 37 Murdoch Street**

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

The site is located in a R3 Medium Density Residential zone and adjoins R2 Low Density Residential zoned land to the south and is opposite R4 High Density Residential zoned land to the west. The proposed works include a dormer addition to an existing residential flat building which would have a limited impact on the bulk, scale and form of the building, thereby maintaining a development commensurate with its surrounds, including properties located within the R2 Low Density Residential zone. The proposed development does not seek to significantly exacerbate the density of the site with the works predominantly internal with a modest dormer on the northern side of the building.

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

The proposed alterations and additions are predominantly contained within the existing building apart from the proposed dormer on the northern side of the roof. Therefore, the scale and density of the development would remain consistent with the existing development on the site and within the surrounding medium density residential environment.

The proposed additions would result in a modest increase in density on the site, however the roof additions including the dormer are considered appropriate in the site context and sit comfortably on the northern roof plane being sited below the existing ridgeline.

***(1)(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential Zone, Zone R3 Medium Density Residential and Zone C4 Environmental Living.***

The existing building is two storeys in height. The use of the attic for habitable space including the addition of a dormer and skylights would retain the two storey built form as viewed from the streetscape meeting the objective.

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

It is considered that there are sufficient environmental planning grounds in the circumstances of the case as outlined in the submitted written request seeking to justify the contravention of the development standard.

The proposed dormer as shown within **Figure 11** is 9.8m in height measured vertically from existing ground level and exceeds the development standard of 8.5m by 1.3m (15%).

The environmental grounds in support of the height variation prepared by Urbanism states the development meets the relevant zone objectives, the proposal is commensurate with the bulk and scale of surrounding development and that the development has negligible amenity impacts and no adverse impact on the public domain. Furthermore, the written request justifies the contravention of the development standard noting that the height of the main roof ridge will remain and there are no alterations to the building setbacks, site coverage or loss in landscaping.

**Whether the proposed development will be in the public interest?**

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

**Concluding Remarks**

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

## 6. Heritage Conservation

The subject site is located in a conservation area, 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.*


The proposed works are confined to within the building envelope and to the northern side roof of the building which maintains the primary form, front façade and built form character of the existing building and its contribution to the heritage significance of the conservation area. The proposed development therefore satisfies Clause 5.10 in NSLEP 2013.

### NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposed development has been assessed against the relevant controls in NSDCP 2013 in the table below:

<b>Part B Section 1- Residential Development</b>		
	<i>Complies</i>	<i>Comments</i>
<b>1.3 Environmental Criteria</b>		
<b>1.3.1 Topography</b>	N/A	The proposed works involve internal alterations and roof additions and therefore do not require earthworks. The proposed works will not impact the topography of the site or structural integrity of adjoining properties.
<b>1.3.6 Views</b>	Yes	The proposed development retains views from adjoining properties, with the proposed works predominantly internalised apart from the dormer/skylight addition to the northern side roof plane. The dormer will have a minor impact on the bulk and massing of the residential flat building and is sympathetic in scale to the roof of the building located below the existing ridgeline and would therefore not detract from views from surrounding properties.  The proposed addition will maintain access to views for adjoining properties in accordance with Objective O2 of Section 1.3.6 Views of Part B in NSDCP 2013.
<b>1.3.7 Solar Access</b>	Yes	The proposed dormer is located on the northern side of the building and therefore any overshadowing caused by the dormer would fall upon the roof of the existing building only, having no impact on adjoining properties.  The subject building and adjoining dwellings retain reasonable solar access in accordance with Objective O1, of Section 1.3.7 Solar Access of Part B in NSDCP 2013.
<b>1.3.8 Acoustic Privacy</b>	Yes	Subject to condition (F1 National Construction Code) the proposal is considered to be capable of achieving compliance with the required building construction levels to meet acoustic standards.

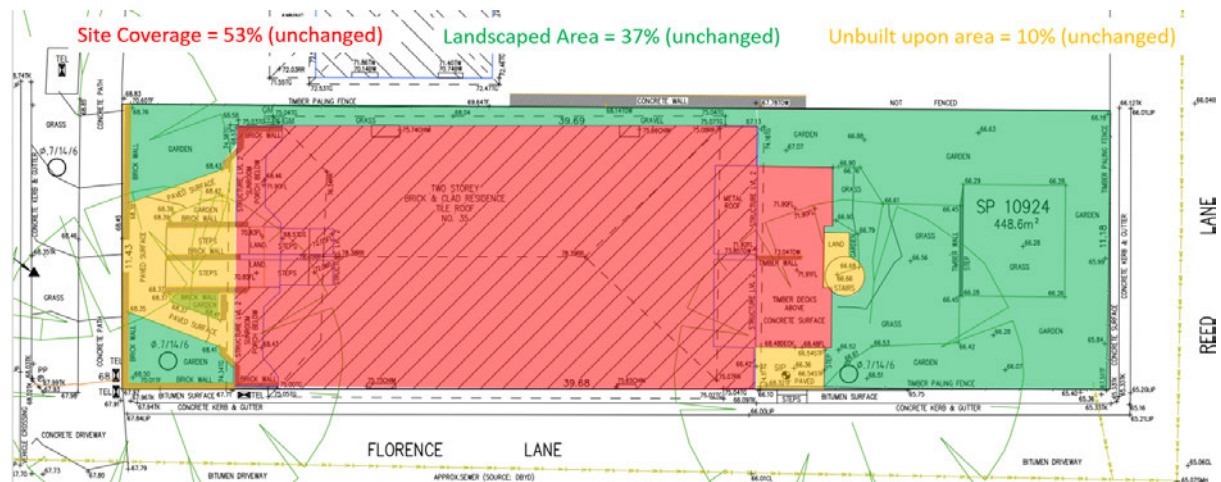


<p><b>1.3.10 Visual Privacy</b></p>	<p>Yes</p>	<p><b>Windows</b></p> <p><b>Side (North) Elevation</b></p> <p>Three windows are proposed in the northern elevation, of which two windows have obscure glazing. It is noted that the windows to have obscure glazing serve bathrooms and the visual privacy measures are primarily for the benefit of the residents of the subject unit.</p>  <p><b>Figure 14. Proposed North Elevation detailing new windows to the first floor of 35 Murdoch Street</b></p> <p>A window is proposed to the rear skillion addition which would have a potential outlook to the adjoining property to the north at 37 Murdoch Street which contains a childcare centre. However, the proposed window would not have any direct or close views into windows of the adjoining property, instead providing an outlook to the southern elevation, or obscure glazed window, of the adjoining property and therefore not unduly impacting privacy.</p>  <p><b>Figure 15. Views from the existing rear balcony of Unit 4 to the southern elevation of 37 Murdoch Street</b></p> <p><b>Dormer</b></p> <p>The proposed dormer windows would have an outlook towards the roof of the adjoining property to the north at 37 Murdoch Street, and would not have any direct views to habitable rooms and would have no discernible impact on the privacy of the property.</p>
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		<p><b>Rear (East) Elevation</b></p> <p>One modest sized window is proposed in the eastern elevation on the first floor level, primarily directing views to the existing raised timber deck. The new glazed doors will have no impact on the visual privacy of neighbouring properties to the rear of the site, noting the outlook will primarily be to the deck, communal garden or laneway at the rear of the site.</p> <p>The proposed development including new or altered windows and skylights is considered acceptable, avoiding direct or close views into windows or private open space of adjoining properties and therefore maintains a reasonable level of visual privacy between neighbours.</p>																				
<p><b>1.4 Quality built form</b></p>																						
<p><b>1.4.1 Context</b></p>	<p>Yes</p>	<p>The proposed development generally responds to the site context and character statement for the Cremorne Conservation Area by ensuring the dormer addition and skylights are not located on the front roof plane. The proposed works are compatible with the existing built form.</p>																				
<p><b>1.4.3 Streetscape</b></p>	<p>Yes</p>	<p>No works are proposed within the road reserve. However, there is potential for damage to public infrastructure through the course of construction. Therefore, it is recommended that a dilapidation report of <b>public infrastructure (Condition C1)</b> is prepared and a corresponding <b>bond for damage and completion of infrastructure works (refer to Condition C11)</b> be provided.</p> <p>One street tree (<i>Lophostemon confertus</i>) is located opposite the subject site in the public footpath. A tree bond is recommended for the protection of this street tree (<b>Condition C12 Tree Bond for Public trees</b>).</p>																				
<p><b>1.4.4 Laneways</b></p>	<p>Yes</p>	<p>The principal frontage of the property faces Murdoch Street, and the southern side boundary adjoins Florence Lane, and the rear boundary adjoins Reed Lane.</p> <p>No works are proposed which would affect the functionality, appearance, or safety of the adjoining laneways.</p>																				
<p><b>1.4.5 Siting</b></p>	<p>Yes</p>	<p>The existing residential flat building would retain its existing siting which is parallel to the corresponding boundaries of the site in accordance with the provisions in Section 1.4.5 <i>Siting</i> of Part B in NSDCP 2013.</p>																				
<p><b>1.4.6 Setback – Front</b></p>	<p>Yes</p>	<p>There is no change proposed to the front building line of the existing building. The existing front setback is similar to that of the adjoining properties in accordance with Provision P1 of Section 1.4.6 <i>Setbacks</i> of Part B in NSDCP 2013.</p>																				
<p><b>1.4.6 Setback – Side</b></p> <p><b>R3 – Medium Residential Density Residential flat buildings</b></p> <p>3m; and the building must not exceed a building height plane commencing at 3.5m above ground level (existing) from side boundaries and projected internally to the site at 450 (refer to Figure B-1.3).</p>	<p>Yes</p> <p>(Merit Assessment)</p>	<p><b>Residential (R3 zone)</b></p> <table border="1"> <thead> <tr> <th colspan="4"><b>Proposed Northern Side Setback</b></th> </tr> <tr> <th></th> <th><b>Existing</b></th> <th><b>Proposed</b></th> <th><b>Complies</b></th> </tr> </thead> <tbody> <tr> <td><b>Ground floor</b></td> <td>900mm</td> <td>900mm</td> <td>No change</td> </tr> <tr> <td><b>First floor</b></td> <td>900mm</td> <td>900mm</td> <td>No change</td> </tr> <tr> <td><b>Second floor (Attic)</b></td> <td>-</td> <td>2.245m</td> <td>Merit</td> </tr> </tbody> </table>	<b>Proposed Northern Side Setback</b>					<b>Existing</b>	<b>Proposed</b>	<b>Complies</b>	<b>Ground floor</b>	900mm	900mm	No change	<b>First floor</b>	900mm	900mm	No change	<b>Second floor (Attic)</b>	-	2.245m	Merit
<b>Proposed Northern Side Setback</b>																						
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<b>Second floor (Attic)</b>	-	2.245m	Merit																			

		<p>The existing building is set back 900mm from the northern boundary and does not comply with the side setback and building height plane requirements set out in Table B-1.5, Provision P2 of Section 1.4.6 <i>Setbacks</i> of Part B in NSDCP 2013.</p> <p>The proposed works are nevertheless supportable noting the existing side setbacks are to be retained, apart from the addition of three windows to the northern elevation and the construction of a dormer. The proposed dormer is set back from the level below and would not result in any material amenity impacts to the adjoining properties. The bulk and scale of the building would remain primarily unchanged with the dormer being appropriately proportioned. Therefore, the development generally complies with the objectives of Section 1.4.6 <i>Setbacks</i> of Part B in NSDCP 2013.</p>
<b>1.4.6 Setback – Rear</b>	Yes	<p>There is no change proposed to the rear building line of the existing building. The existing rear setback is similar to that of the adjoining properties in accordance with Section 1.4.6 <i>Setbacks</i> of Part B in NSDCP 2013.</p>
<b>1.4.7 Form Massing Scale</b>	Yes  (Merit Assessment)	<p>Provision P4 of Section 1.4.7 of Part B in NSDCP 2013 requires floor to ceiling heights to be a minimum of 2.7m, however a lesser height may be permitted if satisfactory daylight and ventilation is achieved.</p> <p>The attic as annotated in Section A has a floor to ceiling height of 2.6m. The floor to ceiling height combined with the three north facing windows and skylight provides sufficient access to sunlight and ventilation thereby ensuring sufficient amenity for occupants. The proposed floor to ceiling height also satisfies the relevant NCC requirements.</p>
<b>1.4.8 Built Form Character</b>	Yes	<p>The proposed alterations are consistent with the existing built form character of the building with the proposed windows being timber framed, or equivalent (<b>Condition C4 – Heritage Requirements</b>). The proposed dormer addition is appropriately proportioned and is clad with horizontally orientated weatherboard (<b>Condition C4</b>). The proposed dormer is visually light-weight in appearance and is compatible with the existing character of the building.</p>
<b>1.4.9 Dwelling Entry</b>	Yes	<p>The existing front entry to the building is to be retained.</p>
<b>1.4.10 Roofs</b>	Yes	<p>The existing pitched tiled roof is to be retained, which is a characteristic roof typology for the Cremorne Conservation Area.</p>
<b>1.4.11 Dormers</b>	Yes	<p>The proposed dormer generally complies with the provisions in Section 1.4.11 <i>Dormers</i> of Part B in NSDCP 2013.</p> <p>The proposed dormer has no significant impact on the visual privacy of 37 Murdoch Street. Council’s Conservation Planner raised no objections to the dormer addition, noting the shed style dormer generally complies with heritage dormer controls in Section 13.9.2 of Part B in NSDCP 2013.</p> <p>The proposed dormer is appropriately located on the side elevation of the building and the sides of the dormer do not contain glass. The scale of the dormer is also supported, being set below the building ridge line.</p>
<b>1.4.12 Colours and Materials</b>	Yes	<p>Council’s Conservation Planner raised no objection to the proposed materials and finishes, subject to the fibre cement weatherboarding being laid horizontally as shown in the elevations and that the new windows are to be timber framed with a painted finish (<b>C4 Heritage Requirements</b>).</p>

		<p>The proposed materials schedule includes colours that reflect the existing colours of the building and therefore are acceptable.</p> <p><b>Condition A4 External Finishes and Materials</b> is recommended, noting the suitability of the submitted <b>material schedule</b>. <b>Condition C7</b> is also recommended as a supplementary condition ensuring finishes, materials and exterior colours complement the building and are sympathetic to the character of the Conservation Area.</p>						
<p><b>1.5 Quality Urban Environment</b></p>								
<p><b>1.5.4 Vehicle Access and Parking</b></p>	<p>N/A</p>	<p>No vehicular access or on site parking is proposed and the existing pedestrian access from Murdoch Street is to be retained.</p>						
<p><b>1.5.5 Site Coverage</b></p> <p><i>Site area = 448.6m<sup>2</sup></i></p> <table border="1" data-bbox="284 790 571 981"> <thead> <tr> <th colspan="2">Table B-1.6: Max Site Coverage</th> </tr> <tr> <th>Development Type</th> <th>Cover (max)</th> </tr> </thead> <tbody> <tr> <td>Residential Flat Building</td> <td>45%</td> </tr> </tbody> </table>	Table B-1.6: Max Site Coverage		Development Type	Cover (max)	Residential Flat Building	45%	<p>Yes</p> <p>(Merit Assessment)</p>	<p>The existing residential flat building has a site coverage of 53% (239.0m<sup>2</sup>).</p> <p>A maximum site coverage of 45% applies to the proposed development in accordance with the exclusions expressed in Provision P2 of Section 1.5.5 <i>Site Coverage</i> of Part B in DCP 2013.</p> <p>The proposed alterations and additions to the existing building do not increase the building footprint and therefore the existing non-compliance remains acceptable, noting that the proposed development will have a neutral outcome.</p>
Table B-1.6: Max Site Coverage								
Development Type	Cover (max)							
Residential Flat Building	45%							



**Figure 16. Approximate Site Coverage, Landscaped Area and Un-Built Upon Area Plans, Annotated Survey Plan 220668-1**

<p><b>1.5.6 Landscape Area (min) &amp; Un-built upon area (max)</b></p> <p><i>Site area = 448.6m<sup>2</sup></i></p> <table border="1" data-bbox="225 383 624 573"> <thead> <tr> <th colspan="3"><i>Table B-1.7: Landscape requirements</i></th> </tr> <tr> <th><b>Development Type</b></th> <th><b>Landscape (min)</b></th> <th><b>UBA (max)</b></th> </tr> </thead> <tbody> <tr> <td>Residential Flat Building</td> <td>40%</td> <td>15%</td> </tr> </tbody> </table>	<i>Table B-1.7: Landscape requirements</i>			<b>Development Type</b>	<b>Landscape (min)</b>	<b>UBA (max)</b>	Residential Flat Building	40%	15%	<p>Yes  (Merit Assessment)</p>	<p>The proposed development un-built upon area and landscape area requirements as assessed below: follows:</p> <table border="1" data-bbox="847 327 1442 640"> <thead> <tr> <th><b>Control</b></th> <th><b>Existing</b></th> <th><b>Proposed</b></th> <th><b>Compliance</b></th> </tr> </thead> <tbody> <tr> <td><b>Site coverage Max 45%</b></td> <td>239m<sup>2</sup> (53%)</td> <td>239m<sup>2</sup> (53%)</td> <td>Merit Assessment</td> </tr> <tr> <td><b>Landscaped area Min 40%</b></td> <td>167m<sup>2</sup> (37%)</td> <td>167m<sup>2</sup> (37%)</td> <td>Merit Assessment</td> </tr> <tr> <td><b>Un-built-upon area Max 15%</b></td> <td>42.6m<sup>2</sup> (10%)</td> <td>42.6m<sup>2</sup> (10%)</td> <td>Yes</td> </tr> </tbody> </table> <p><b>Landscape area (40% min required)</b></p> <p>The proposed development retains the existing landscaped area of 37%, being a minor non-compliance of 3%. The proposed works do not warrant additional landscaped area being required noting that there is minimal increase in the bulk and scale of the existing building.</p> <p><b>Un-built upon area (15% max permitted)</b></p> <p>The proposed development retains the existing un-built upon area of 10% retaining compliance with the maximum un-built upon area requirement stipulated in Table B-1.7, s1.5.6 of NSDCP 2013.</p>	<b>Control</b>	<b>Existing</b>	<b>Proposed</b>	<b>Compliance</b>	<b>Site coverage Max 45%</b>	239m <sup>2</sup> (53%)	239m <sup>2</sup> (53%)	Merit Assessment	<b>Landscaped area Min 40%</b>	167m <sup>2</sup> (37%)	167m <sup>2</sup> (37%)	Merit Assessment	<b>Un-built-upon area Max 15%</b>	42.6m <sup>2</sup> (10%)	42.6m <sup>2</sup> (10%)	Yes
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<p><b>1.5.8 Front Gardens</b></p>	<p>Yes</p>	<p>No works are proposed to the existing front setback which comprises of a small front garden with tree canopy.</p>																									
<p><b>1.5.9 Private and Communal Open Space</b></p>	<p>Yes  (Merit Assessment)</p>	<table border="1" data-bbox="820 1196 1469 1480"> <thead> <tr> <th><b>Residential flat buildings</b></th> <th><b>Existing / Proposed</b></th> <th><b>Compliance</b></th> </tr> </thead> <tbody> <tr> <td>Minimum area at ground level (m<sup>2</sup>/dw) – 25m<sup>2</sup></td> <td>150m<sup>2</sup></td> <td>Yes</td> </tr> <tr> <td>Minimum area above ground level (m<sup>2</sup>/dw) – 3+ bed - 12m<sup>2</sup></td> <td>9m<sup>2</sup></td> <td>Merit Assessment</td> </tr> </tbody> </table> <p>The development retains an area of approximately 150m<sup>2</sup> communal open space for residents of the residential flat building within the rear garden which complies with the requirements in Table B-1.8, Section 1.5.9 of Part B in NSDCP 2013.</p> <p>The proposed development would increase the size of the subject dwelling from two to three bedrooms. Table B-1.8 requires 3 bed units to have an above ground private open space measuring a minimum of 12m<sup>2</sup>. The current raised deck is 9m<sup>2</sup> which does not comply.</p> <p>The development is nevertheless supported, noting the unit has access/use of the ground floor open space and the internal alterations provide a unit with improved internal amenity. The combined use of the rear garden, existing timber deck and internal amenity of the unit would be sufficient to provide residents with a reasonable level of amenity.</p>	<b>Residential flat buildings</b>	<b>Existing / Proposed</b>	<b>Compliance</b>	Minimum area at ground level (m <sup>2</sup> /dw) – 25m <sup>2</sup>	150m <sup>2</sup>	Yes	Minimum area above ground level (m <sup>2</sup> /dw) – 3+ bed - 12m <sup>2</sup>	9m <sup>2</sup>	Merit Assessment																
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<b>1.5.12 Garbage Storage</b>	Yes	The existing garbage and recycling bin storage and method of collection will remain unchanged.
<b>1.6 Efficient Use of Resources</b>		
<b>1.6.1 Energy Efficiency</b>	Yes	A valid BASIX certificate has been submitted.

## CHARACTER STATEMENTS – PART C

### *South Cremorne Planning Area (Cremorne Conservation Area)*

The application generally conforms with the significant elements and characteristics for the Cremorne Conservation Area and appropriately locates the dormer and skylights to the side roof plane, thereby not affecting the front roof plane, noting dormers and skylights to the front roof slope are uncharacteristic elements within the conservation area.

## LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of s7.12 contributions for the provision of local infrastructure. The proposed alterations and additions will not accrue a s7.11 contribution because there is no net increase in dwellings on the land. Confirmation of contributions payable in accordance with Council's Contributions Plan is as follows:

### Contribution

<b>Applicable contribution type</b>		
<b>s7.12 contribution details</b> <i>(payment amount subject to indexing at time of payment)</i>	Development cost:	\$294,000.00
	Contribution:	\$2,940.00

## ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

### ENVIRONMENTAL APPRAISAL

### CONSIDERED

1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	N/A

7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	N/A
9.	All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

### **SUBMITTERS CONCERNS**

The application was notified in accordance with Council's Community Engagement Protocol with surrounding properties and the Harrison / Bennett Precinct notified from 3 February 2023 until 17 February 2023. Council received one submission in support of the proposal which is summarised below:-

- *The development application has been approved by formal resolution of the Owners Corporation. The development is in synch with the nature of the block and is appropriate in all circumstances, especially in light of the childcare centre next door.*

It is noted that owner's consent was submitted with the application and it is concurred that the proposed works are sympathetic to the building and surrounding conservation area.

### **PUBLIC INTEREST**

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

### **SUITABILITY OF THE SITE**

The subject site is zoned R3 Medium Density Residential where residential flat buildings were a permitted form of development at the time the application was lodged. Whilst residential flat buildings have since become prohibited in the zone, the site benefits from a saving provision, notwithstanding, it would otherwise have also benefited from existing use rights. The proposed works are considered to be suitable for the site and surrounds having regard to the existing built form and character of the building, particularly with respect to its location within the conservation area.

### **HOW THE COMMUNITY VIEWS WERE TAKEN INTO CONSIDERATION**

The application was notified to surrounding properties and the Harrison / Bennett Precinct for 14 days where one submission in support of the application was received. Nevertheless, the potential impacts of the proposed development have been considered and are considered acceptable.

### **CONCLUSION + REASONS**

The matters for consideration as outlined in Section 4.15(1) of the Act have been satisfied. The proposed development is permissible, having regard to the saving provision clause 1.8(2) in NSLEP 2013 despite the recent prohibition of residential flat buildings in the R3 Medium Density Residential zone.

The proposed development does not comply with the height of buildings development standard in Clause 4.3 in NSLEP 2013. The proposed dormer has a maximum height of 9.8m, being a variation of 15%, however, the application is supported by a written request made 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 that 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 standard to be varied.

The property is identified as a neutral item in the Cremorne Conservation Area. The proposed works, as assessed by Council's Conservation Planner are considered to satisfy Clause 5.10 in NSLEP 2013 and are generally in accordance with Section 13 *Heritage and Conservation* of Part B in NSDCP 2013.

The proposed side dormer is located on the northern roof plane of the building and not the front roof plane. The proposed dormer and skylights would not have a significant impact on the appearance of the streetscape or the Cremorne Conservation Area and would not adversely impact the amenity of the surrounding properties, in terms of privacy or solar access.

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

## **RECOMMENDATION**

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

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning and Environment to invoke the provisions of Clause 4.6 in NSLEP 2013 regarding the non-compliance with Clause 4.3 and grant consent to Development Application No. 09/2023 for alterations and additions to an existing residential flat building on land at 35 Murdoch Street, Cremorne subject to the following site specific and the attached standard conditions of consent.

### **Heritage Requirements**

C4. The following heritage requirements are to be met:

- a) The new plumbing and wiring for the new bathrooms and kitchen shall not impact the apartment below. New services located on the exterior of the building shall be incorporated into existing services where possible. Any new pipes/ducts and the like, shall be painted to be visually submissive colour.
- b) The structural soundness of the north-western chimney is to be certified by a structural engineer to ensure its retention at roof level. Any necessary works required by the structural engineer within the attic space to ensure the structural soundness of the chimney are acceptable.



- c) New windows are to be timber framed with a painted finish to match the existing windows.
- d) The fibre cement weatherboard cladding to the dormer shall be laid horizontally as shown on the elevations.

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 be sympathetic to the heritage significance of the building)

**Thomas Holman**  
**ASSESSMENT OFFICER**

**Michael Stephens**  
**A/TEAM LEADER ASSESSMENTS**

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**Stephen Beattie**  
**MANAGER DEVELOPMENT SERVICES**

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**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**U4, 35 MURDOCH STREET, CREMORNE**  
**DEVELOPMENT APPLICATION NO. 9/23**

**A. Conditions that Identify Approved Plans**

**Development in Accordance with Plans/Documentation**

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

Plan No.	Rev	Description	Prepared by	Received
DA-04	D	Demolition Plans	TightKnit Building Design	17/01/2023
DA-05	D	Proposed Floor Plans		17/01/2023
DA-07	D	Proposed Attic Plan		17/01/2023
DA-08	D	Site & Roof Plans		17/01/2023
DA-09	D	West Elevations		17/01/2023
DA-10	D	East Elevations		17/01/2023
DA-11	D	North Elevation		17/01/2023
DA-12	D	North Section		17/01/2023

(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)

**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 2 of 23

**No Demolition of Extra Fabric**

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

(Reason: To ensure compliance with the approved development)

**External Finishes and Materials**

- A4. External finishes and materials must be in accordance with the submitted schedule dated 16 November 2022, prepared by Tightknit Building Design and received by Council on 17 January 2023 unless otherwise modified by Council in writing.

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

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

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

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

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

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

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

**Dilapidation Survey Private Property (Neighbouring Buildings)**

- C2. A photographic survey and dilapidation report of adjoining properties Nos. Unit 1, 2 and 3 of 35 Murdoch Street (3 Units within the residential flat building) detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

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

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

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

(Reason: Proper management of records)

**Structural Adequacy of Existing Building**

- C3. 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)

**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 4 of 23

**Heritage Requirements**

- C4. The following heritage requirements are to be met:
- a) The new plumbing and wiring for the new bathrooms and kitchen shall not impact the apartment below. New services located on the exterior of the building shall be incorporated into existing services where possible. Any new pipes/ducts and the like, shall be painted to be visually submissive colour.
  - b) The structural soundness of the north-western chimney is to be certified by a structural engineer to ensure its retention at roof level. Any necessary works required by the structural engineer within the attic space to ensure the structural soundness of the chimney are acceptable.
  - c) New windows are to be timber framed with a painted finish to match the existing windows.
  - d) The fibre cement weatherboard cladding to the dormer shall be laid horizontally as shown on the elevations.

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 be sympathetic to the heritage significance of the building.)

**Sediment Control**

- C5. 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

**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 5 of 23

- 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**

- C6. 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 (Conservation Areas)**

- C7. The finishes, materials and exterior colours shall be complementary to the architectural style of the original building and sympathetic to the character of the Conservation Area. A schedule of finishes, materials and external colours shall 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 prior to the release of the Construction Certificate.

(Reason: To ensure that the completed colours, finishes and materials are complementary to the Conservation Area)

**Skylight(s)**

- C8. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100 mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

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

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

**Work Zone**

- C9. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

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

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

(Reason: Amenity and convenience during construction)

**Stormwater Disposal**

C10. 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**

C11. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$5,000.00 to be held by Council for the payment of cost for any/all of the following:

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

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

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

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

- where the damage constitutes a hazard in which case Council may make use of the security immediately;



**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 8 of 23

- 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**

- C12. Prior to the issue of any construction certificate, security in the sum of \$5,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

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

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

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

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

**SCHEDULE**

<b>Tree</b>	<b>Location</b>	<b>Height (m)</b>	<b>Tree Bond</b>
1 x Lophostemon confertus	Located on the footpath in front of 35 Murdoch Street	8m	\$5,000.00

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

**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 9 of 23

**Protection of Trees**

- C13. 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)
1 x Lophostemon confertus	Located on the footpath in front of 35 Murdoch Street	8m

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)

**Asbestos & Hazardous Material Survey**

- C14. 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.

**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 10 of 23

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)

**Section 7.12 Contributions**

- C15. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is \$2,940.00.

**Indexation**

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

**Timing of Payment**

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

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

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

**Security Deposit/Guarantee Schedule**

- C16. 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:

<b>Security Deposit/Guarantee</b>	<b>Amount (\$)</b>
Street Tree Bond (on Council Property)	\$5,000.00
Infrastructure Damage Bond	\$5,000.00
<b>TOTAL BONDS</b>	<b>\$10,000.00</b>

Note: The following fees applicable

**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 11 of 23

<b>Fees</b>	
Section 7.12 Contributions	\$2,940.00
<b>TOTAL FEES</b>	<b>\$2,940.00</b>

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**

C17. Under clause 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A479811 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)

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

**Protection of Trees**

D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites).

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

**Temporary Fences and Tree Protection**

D2. 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.

**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 12 of 23

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works.

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

**Public Liability Insurance - Works on Public Land**

D3. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

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

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

**Commencement of Works' Notice**

D4. 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.

**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 14 of 23

- (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)

**No Work on Public Open Space**

- E7. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

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

**Developer's Cost of Work on Council Property**

- E8. The developer must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

**No Removal of Trees on Public Property**

- E9. 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)

**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)



**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 16 of 23

**4) Kerbside restrictions, construction zones**

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

(Reason: Proper management of public land)

**Construction Hours**

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

Location			Standard Construction Hours	
			Day	Hours
<b>R3 Residential</b>	<b>Medium Density</b>		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](http://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](http://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](http://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)

**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**Page 20 of 23

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**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)

**Commencement of Works**

- F7. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two (2) days' notice to North Sydney Council of the person's intention to commence the erection of the building.

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

**Excavation/Demolition**

- F8. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 21 of 23

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

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

**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)

**U4, 35 MURDOCH STREET, CREMORNE  
DEVELOPMENT APPLICATION NO. 9/23**

Page 22 of 23

**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)

**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)

**Asbestos Clearance Certificate**

- G4. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos; or
- b) the building/land has asbestos that is presently deemed safe.

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

Note: Further details of licensed asbestos waste disposal facilities can be obtained from [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au).

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

**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.

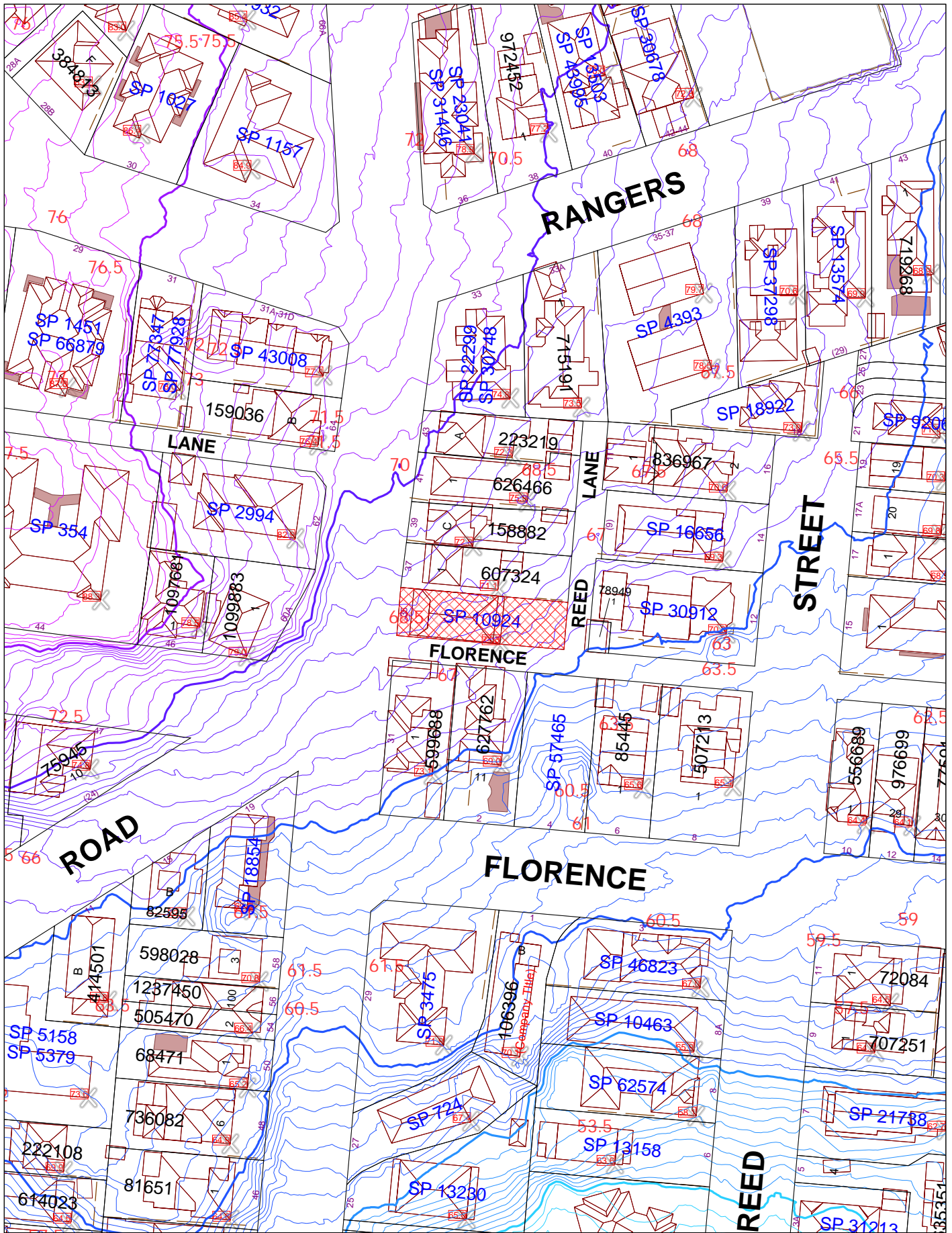
(Reason: To ensure compliance with the Regulations)

**Compliance with Certain Conditions**

G6. Prior to the issue of any Occupation Certificate Condition C4 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)





**North Sydney Council**

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

Scale: 1:1200 approx.



PROPOSED ALTERATION AND ADDITIONS

**UNIT 4 / 35 MURDOCH STREET,  
CREMORNE NSW 2090**

Lot/Section/Plan No: CP/-/SP10924

LOT AREA: 448.6m<sup>2</sup>

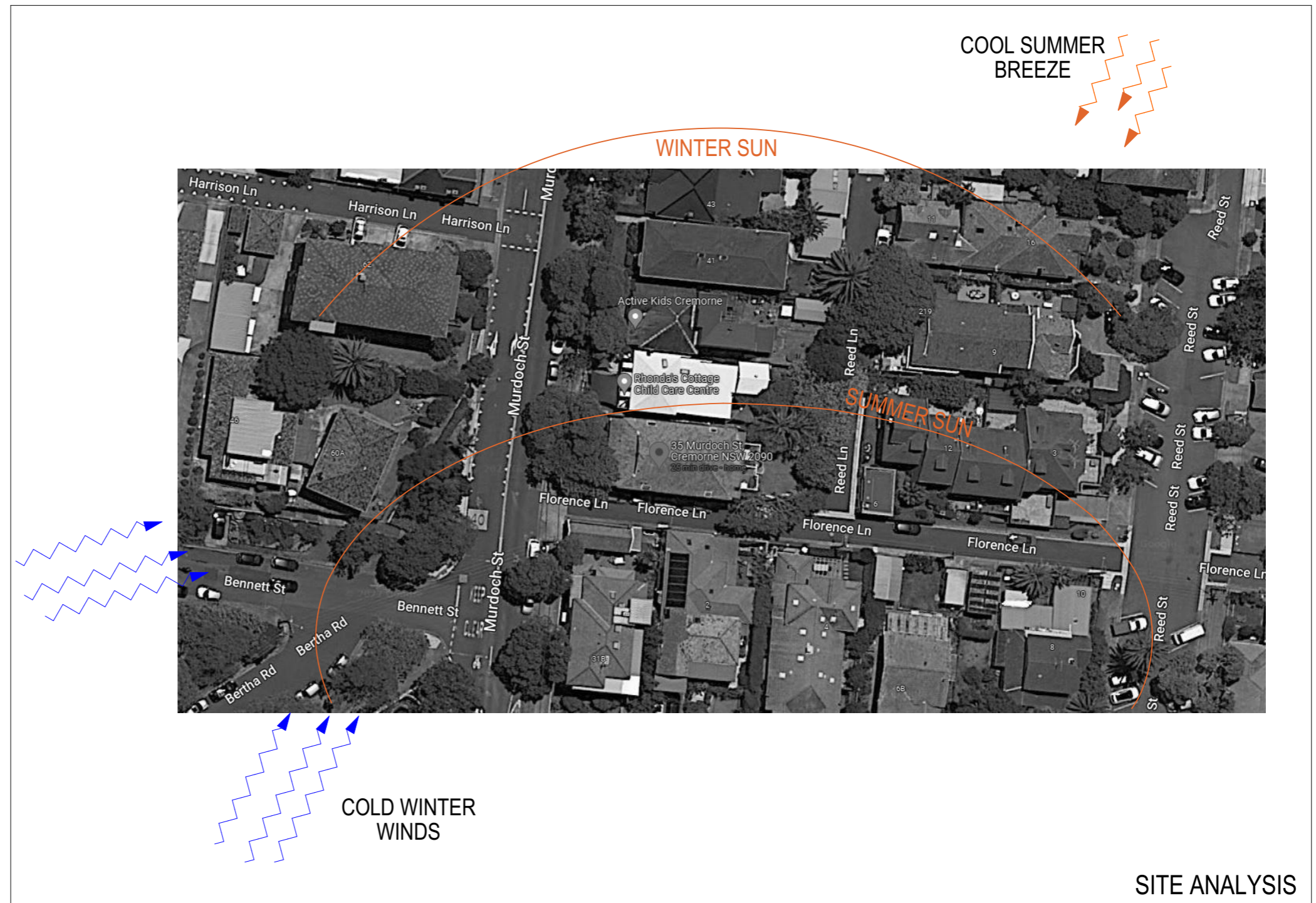
SETBACKS (EXISTING)  
FRONT:4461mm REAR:14137mm  
NORTH: 800mm SOUTH:0mm

GFA  
EXSITING 376.02m2  
PROPOSED 394.55m2

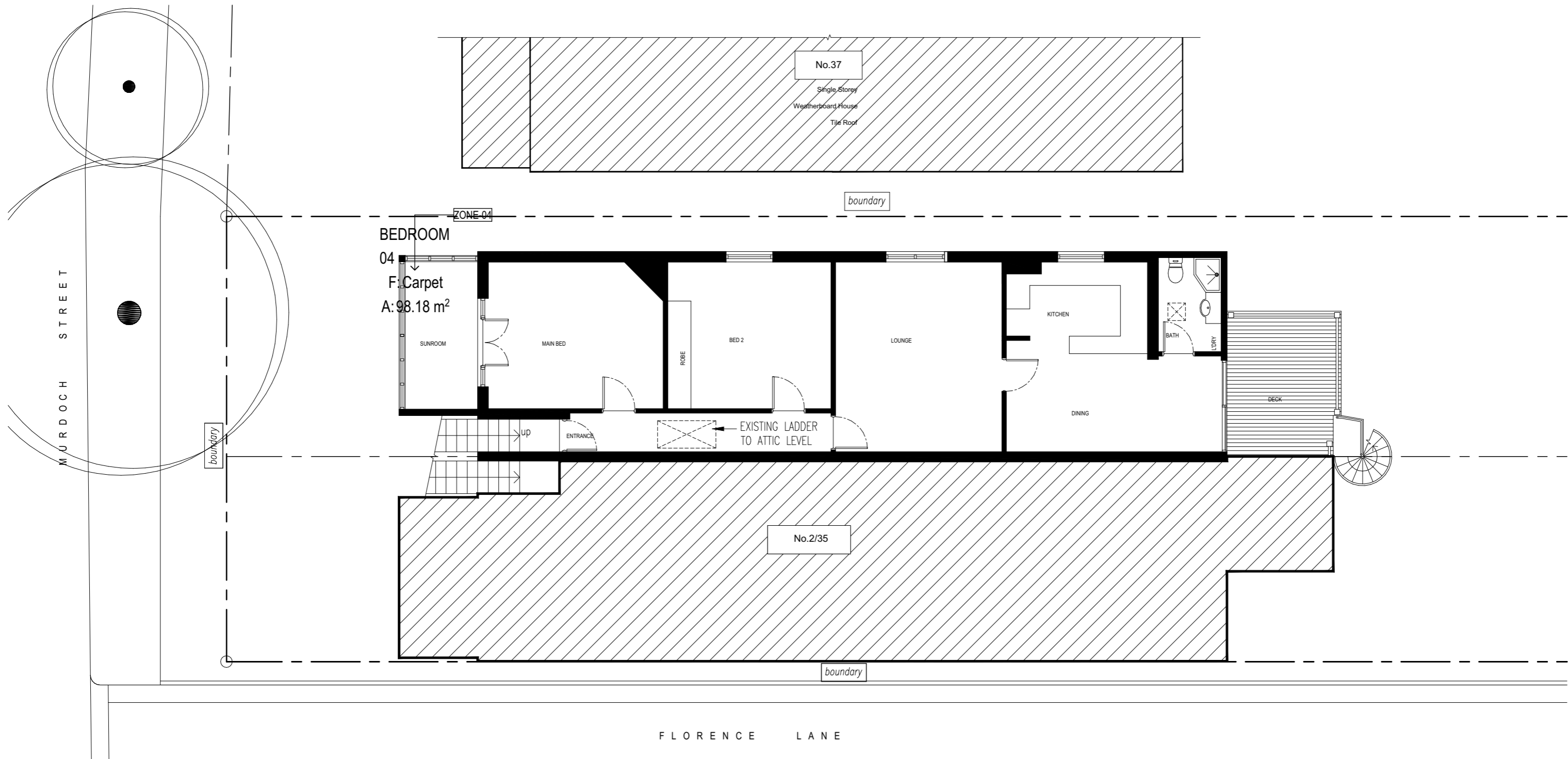
FSR  
EXISTING .84:1  
PROPOSED .88:1

BUILDING HEIGHT (AT STREET  
FACING RIDGE)10.84m

NOTE:  
NO SHADOW DIAGRAM  
PRODUCED AS NEIGHBOURING  
PROPERTY UNAFFECTED BY  
SHADOWING



SITE ANALYSIS



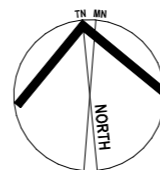
**EXISTING FLOOR PLAN**  
SCALE: 1:100

NOTE:  
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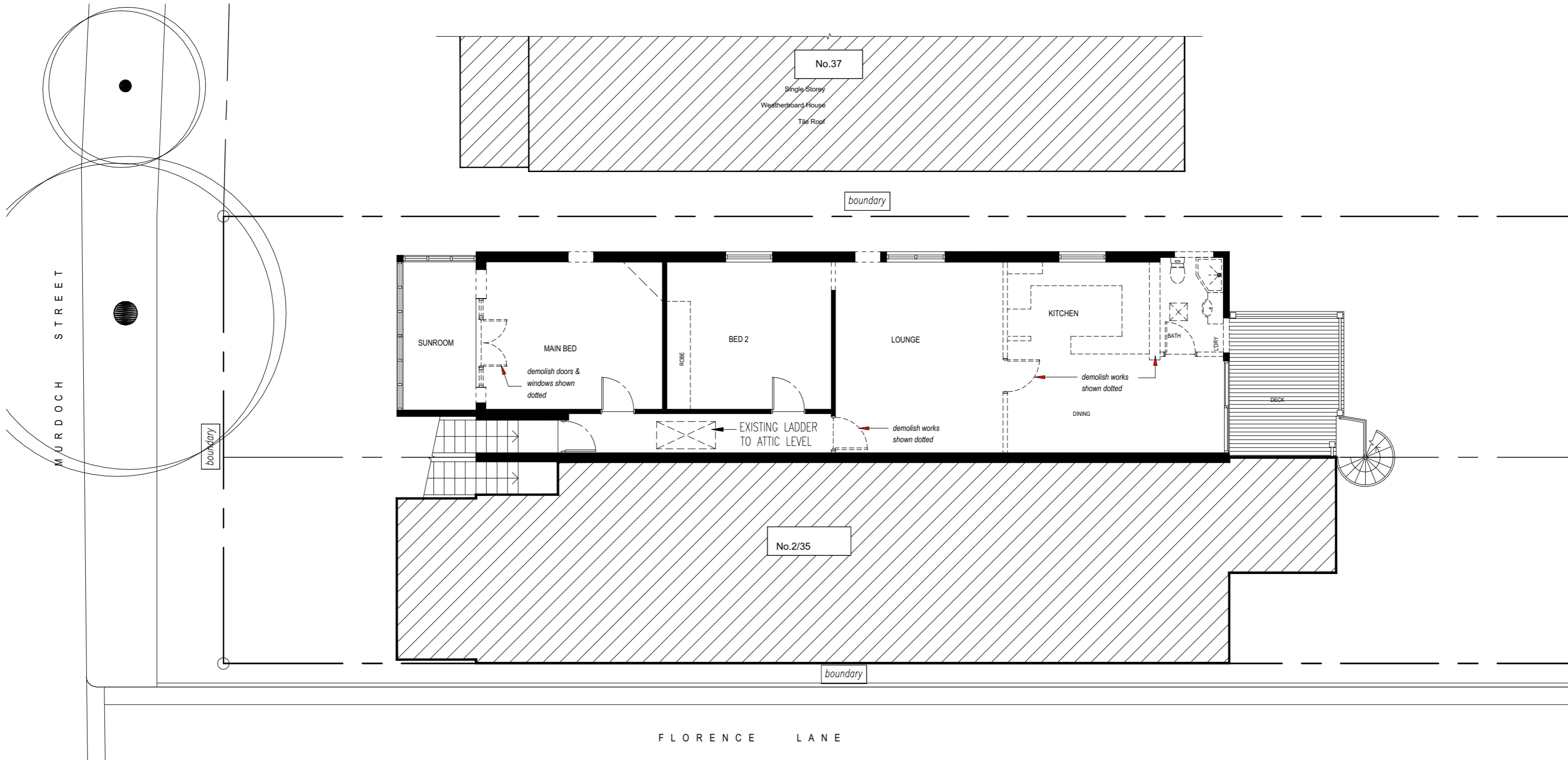
ISSUE	DATE	DESCRIPTION
A	23/05/2022	ISSUE TO TENDER
B	24/08/2022	ISSUE TO DA
C	29/09/2022	SoEE AMENDS
D	16/11/2022	BCA FIRE AMENDS



PROJECT:  
**Alterations & Additions to Existing Residence**  
4/35 Murdoch Street, Cremorne NSW 2090  
CLIENT:  
**Alanna & Slade Hugall**  
4/35 Murdoch Street, Cremorne NSW 2090

SHEET TITLE:  
**EXISTING FLOORPLAN**

SCALE: 1:100 @ A3  
DRAWN: SP  
SHEET SIZE: A3  
DWG NO: DA-03  
REVISION: D



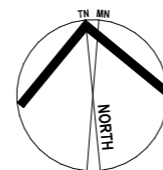
**DEMOLITION PLAN**  
SCALE: 1:100

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D	16/11/2022	BCA FIRE AMENDS

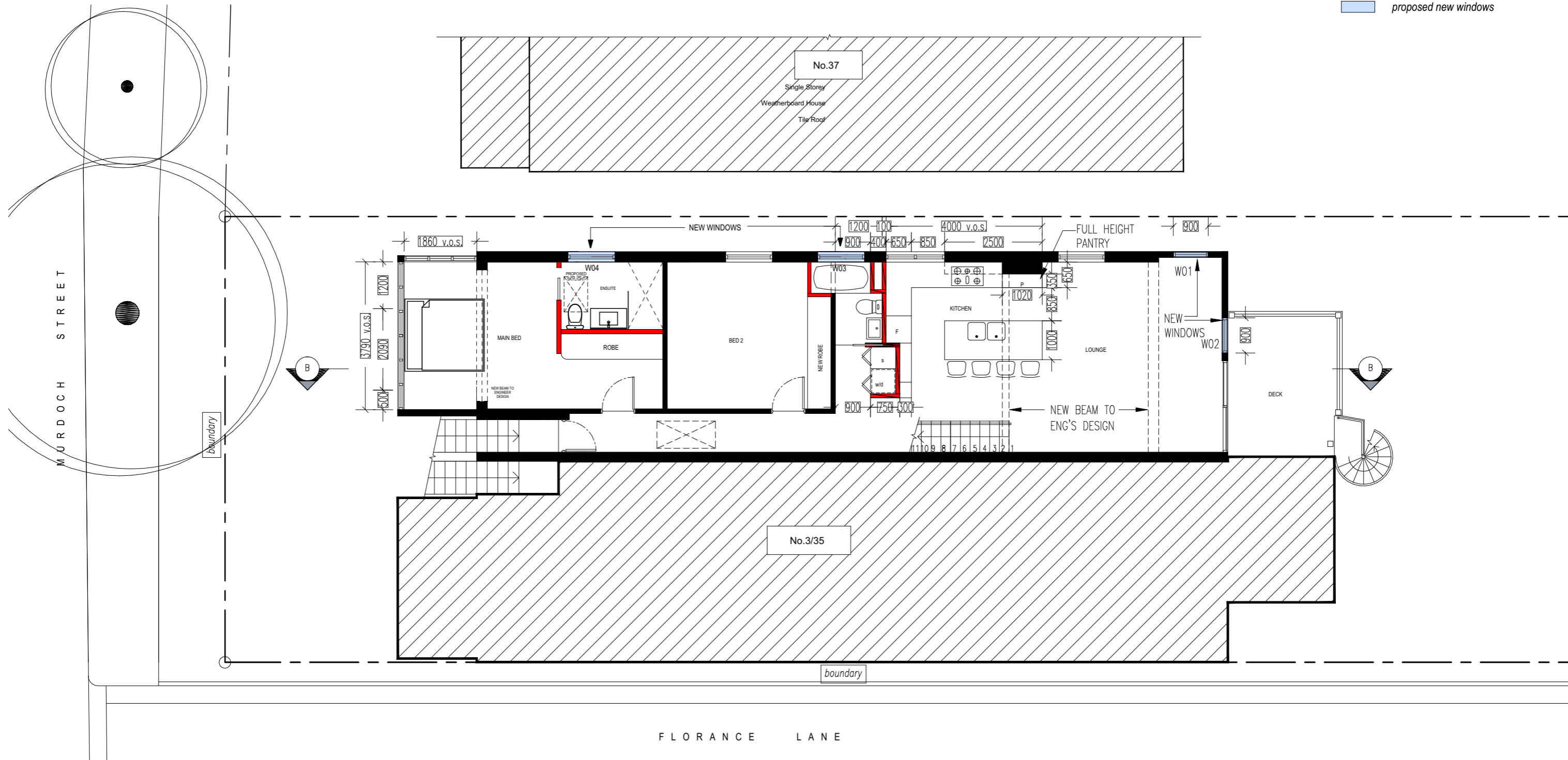


PROJECT:  
**Alterations & Additions to Existing Residence**  
4/35 Murdoch Street, Cremorne NSW 2090  
CLIENT:  
**Alanna & Slade Hugall**  
4/35 Murdoch Street, Cremorne NSW 2090

SHEET TITLE:  
**DEMOLITION PLAN**

SCALE: 1:100 @ A3  
DRAWN: SP  
SHEET SIZE: **A3**  
DWG NO: **DA-04**  
REVISION: **D**

- Legend:**
- existing wall
  - new wall
  - proposed new work
  - proposed new windows



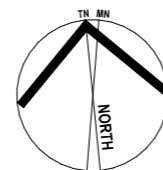
**PROPOSED FLOOR PLAN**  
SCALE: 1:100

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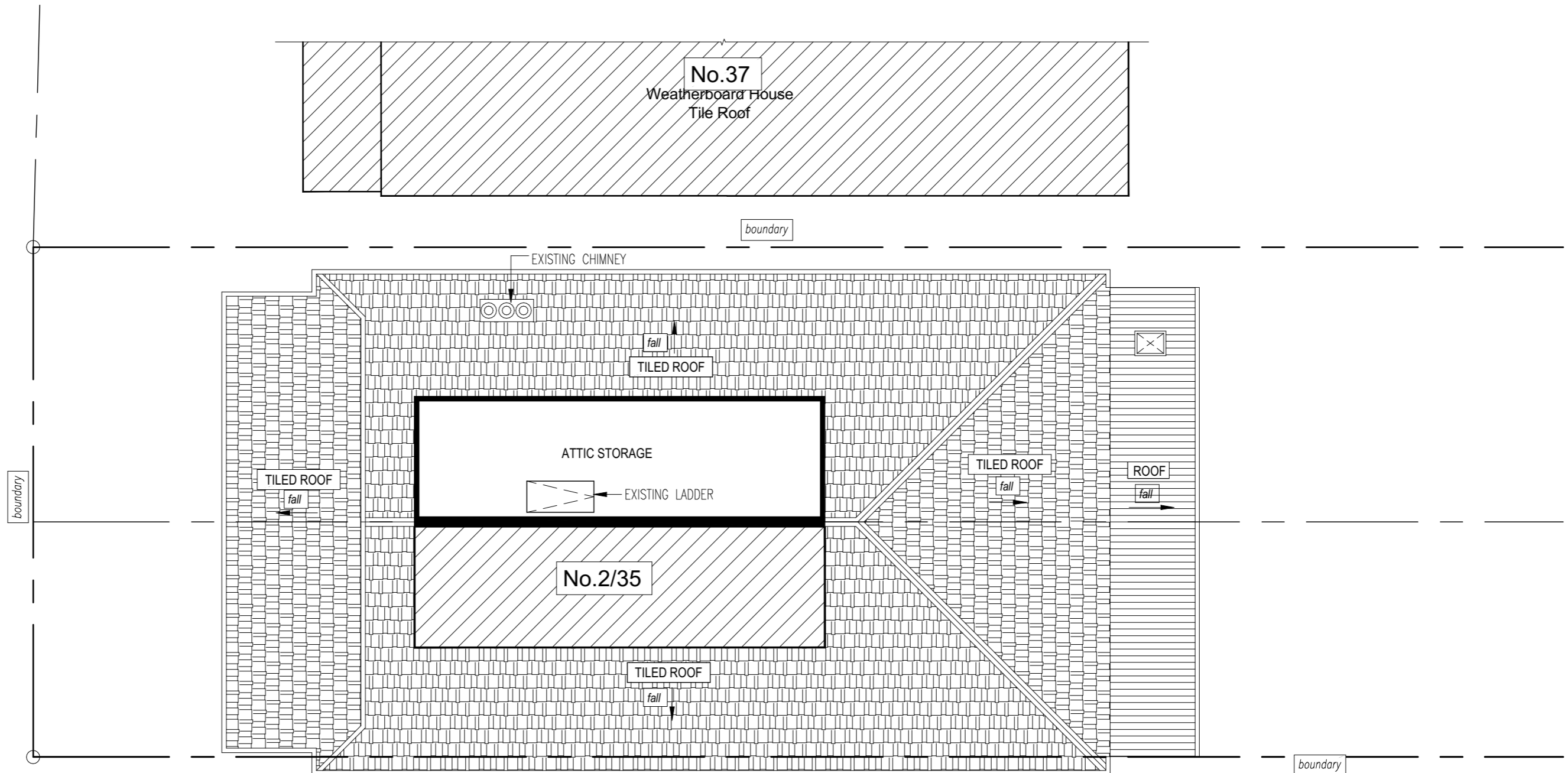
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PROJECT:  
**Alterations & Additions to Existing Residence**  
4/35 Murdoch Street, Cremorne NSW 2090  
CLIENT:  
**Alanna & Slade Hugall**  
4/35 Murdoch Street, Cremorne NSW 2090

SHEET TITLE:  
**PROPOSED FLOORPLAN**

SCALE: 1:100 @ A3  
DRAWN: SP  
SHEET SIZE: **A3**  
DWG NO: **DA-05**  
REVISION: **D**



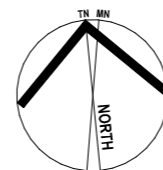
**EXISTING ATTIC PLAN**  
SCALE: 1:100

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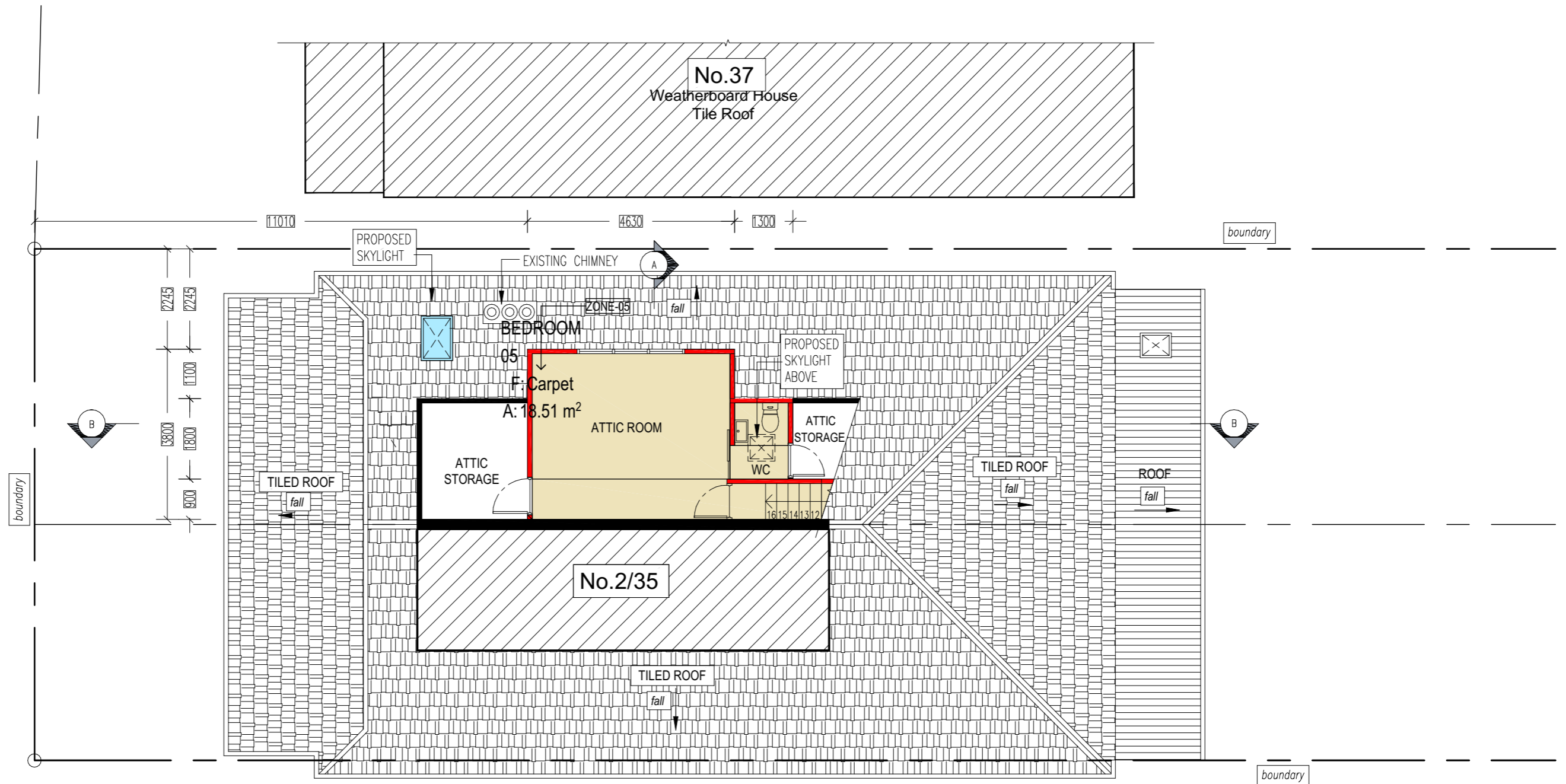


PROJECT:  
**Alterations & Additions to Existing Residence**  
4/35 Murdoch Street, Cremorne NSW 2090  
CLIENT:  
**Alanna & Slade Hugall**  
4/35 Murdoch Street, Cremorne NSW 2090

SHEET TITLE:  
**EXISTING ATTIC**

SCALE: 1:100 @ A3  
DRAWN: SP  
SHEET SIZE: **A3**  
DWG NO: **DA-06**  
REVISION: **D**

- Legend:**
-  existing wall
  -  new wall
  -  proposed new work



**PROPOSED ATTIC PLAN**

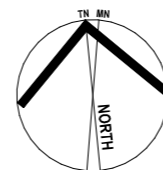
SCALE: 1:100

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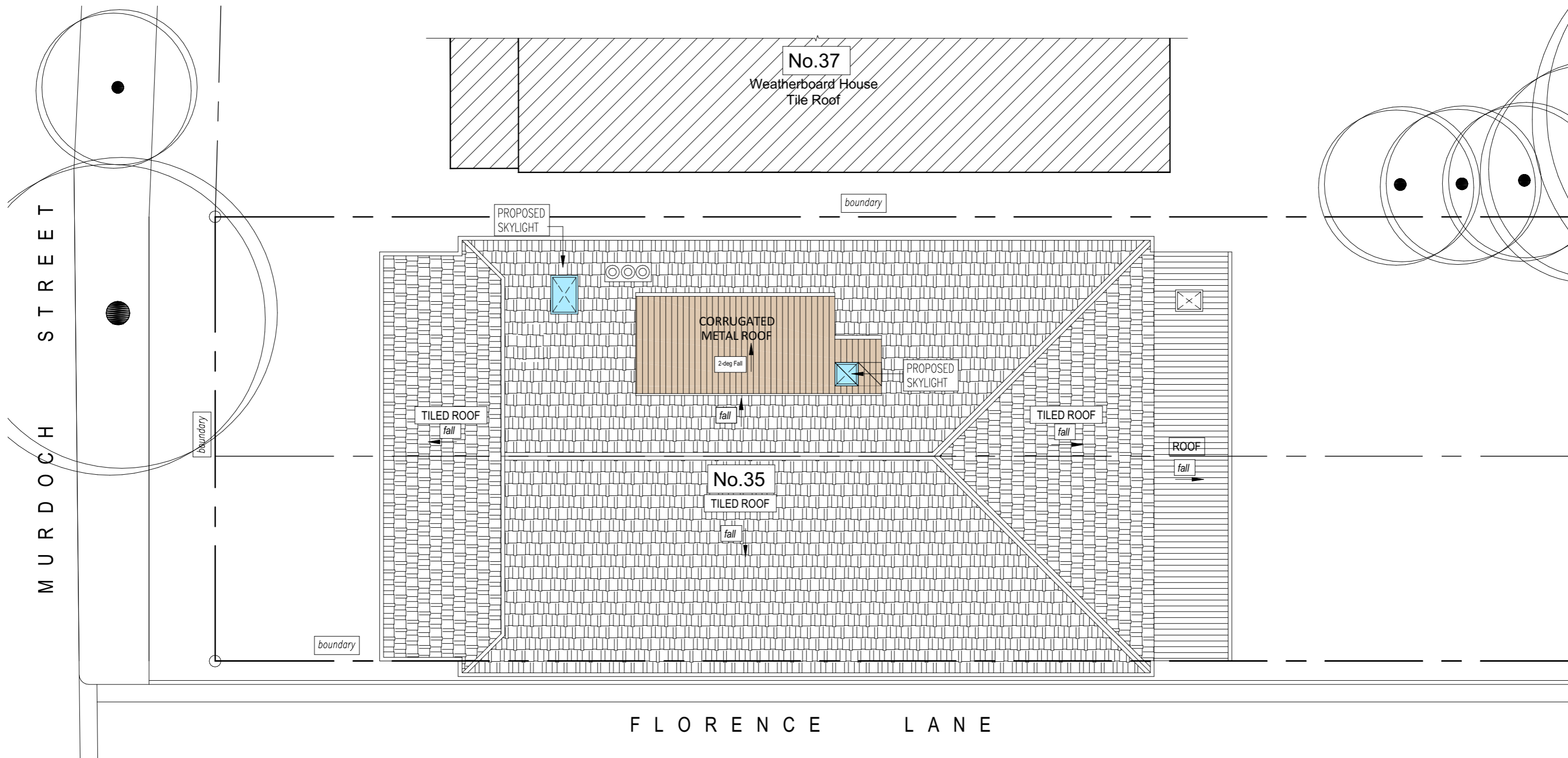


PROJECT:  
**Alterations & Additions to Existing Residence**  
 4/35 Murdoch Street, Cremorne NSW 2090  
 CLIENT:  
**Alanna & Slade Hugall**  
 4/35 Murdoch Street, Cremorne NSW 2090

SHEET TITLE:  
**PROPOSED ATTIC**

SCALE: 1:100 @ A3  
 DRAWN: SP  
 SHEET SIZE: **A3**  
 DWG NO: **DA-07**  
 REVISION: **D**

- Legend:**
-  existing wall
  -  new wall
  -  proposed new work



**PROPOSED SITE & ROOF PLAN**

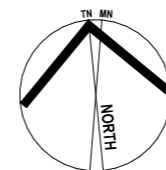
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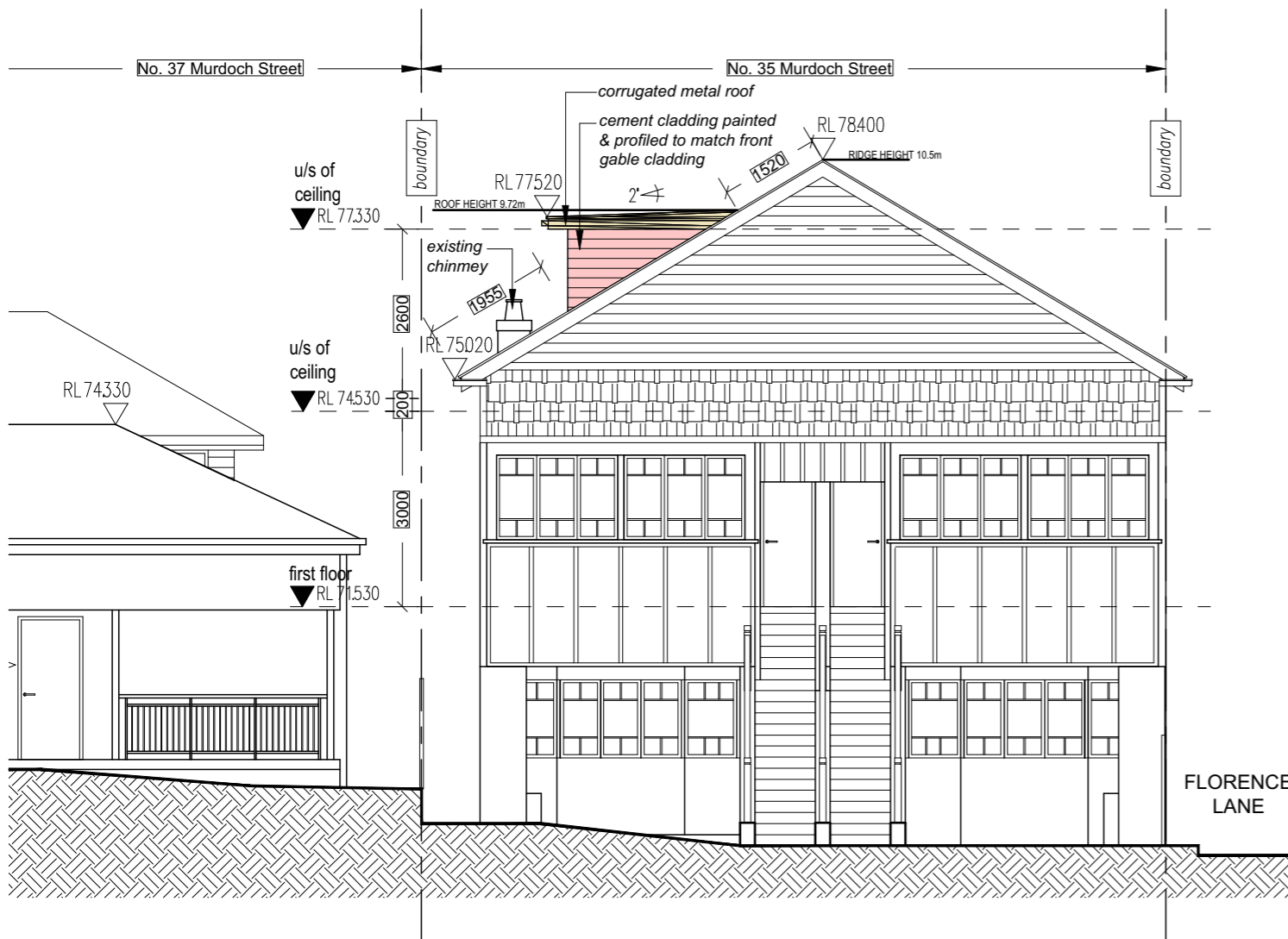


PROJECT:  
**Alterations & Additions to Existing Residence**  
 4/35 Murdoch Street, Cremorne NSW 2090  
 CLIENT:  
**Alanna & Slade Hugall**  
 4/35 Murdoch Street, Cremorne NSW 2090

SHEET TITLE:  
**SITE & ROOF PLAN**

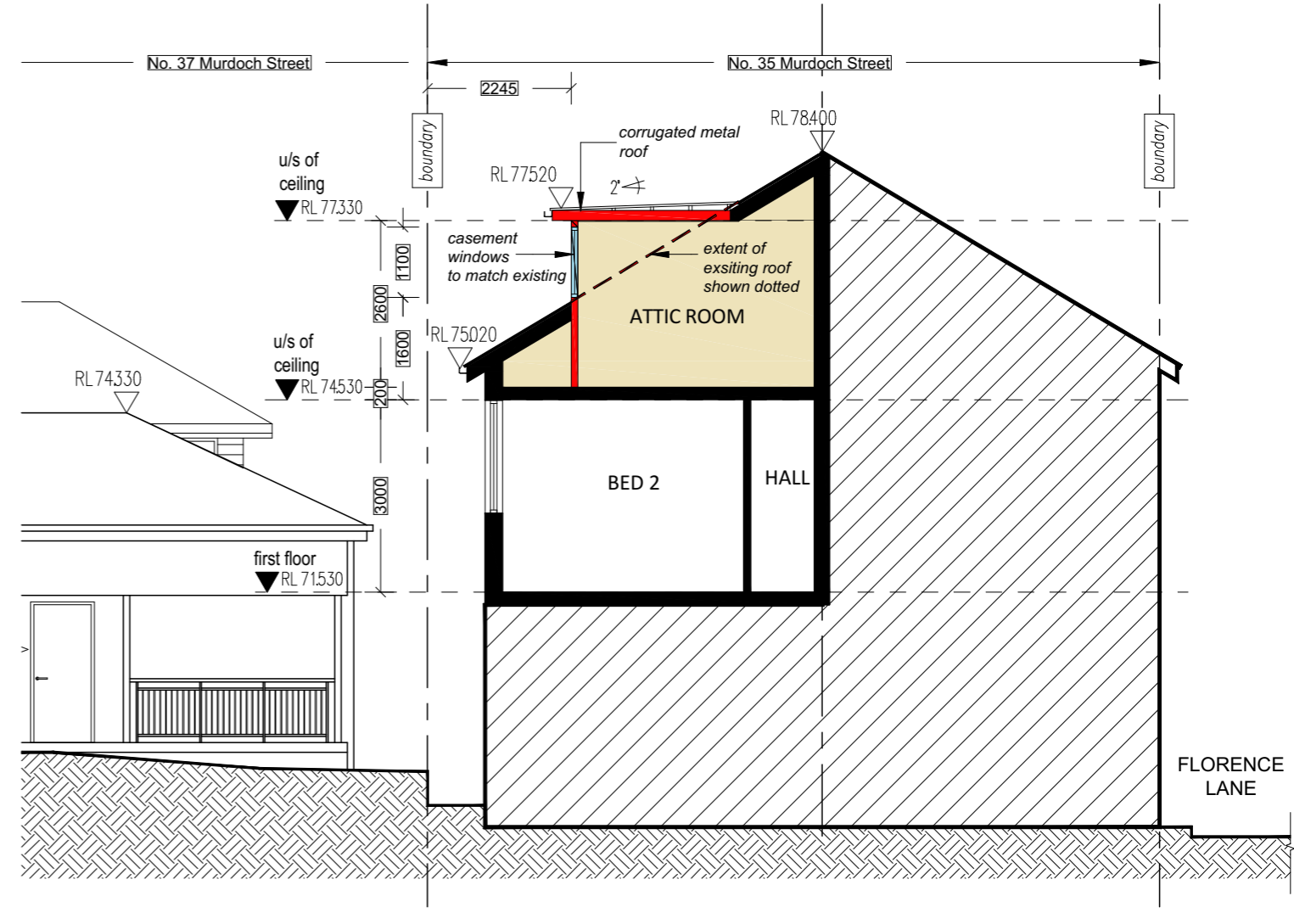
SCALE: 1:100 @ A3  
 DRAWN: SP  
 SHEET SIZE: A3  
 DWG NO: DA-08  
 REVISION: D





**WEST ELEVATION (FRONT)**

SCALE: 1:100



**SECTION A**

SCALE: 1:100

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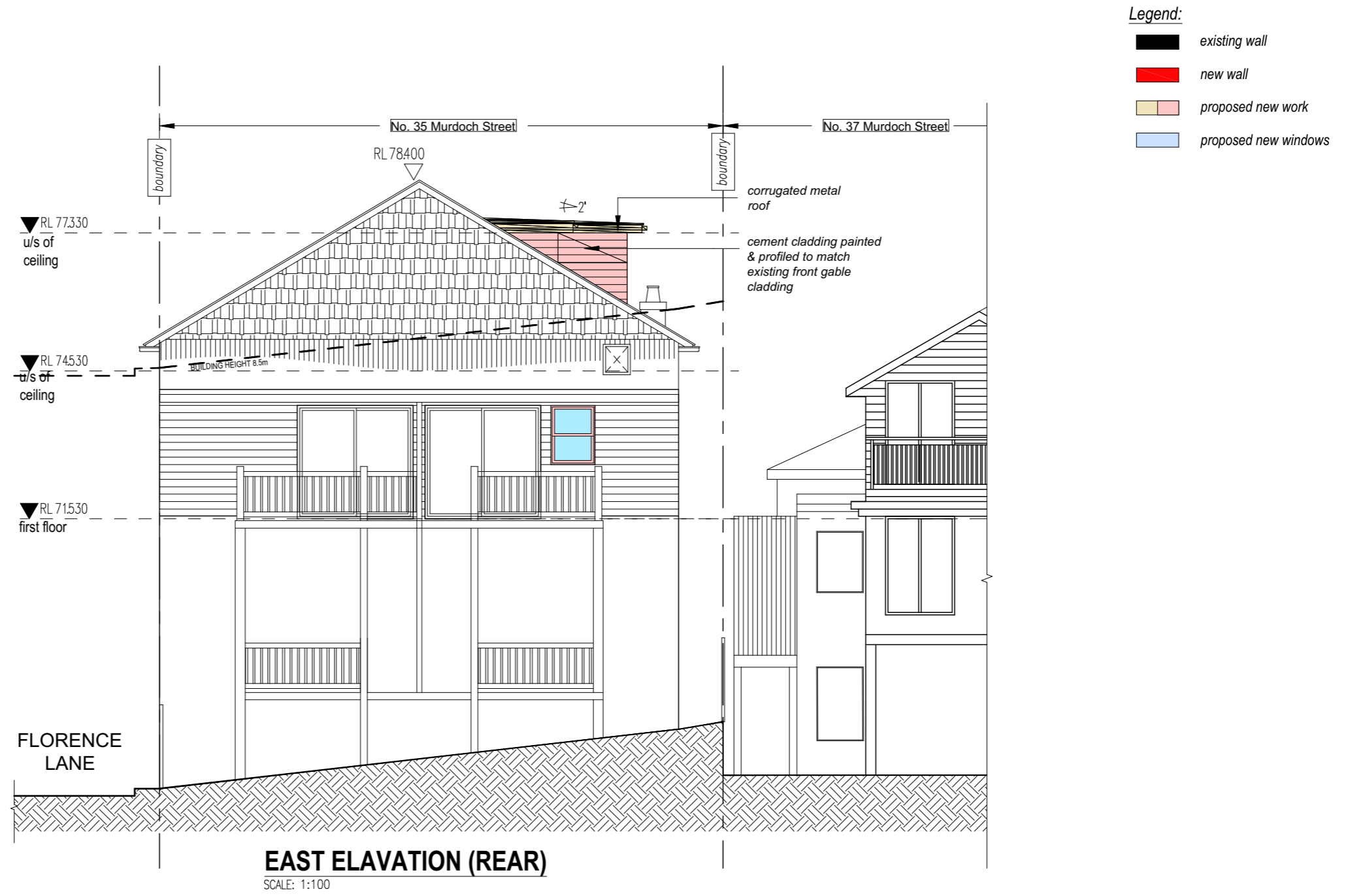
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PROJECT:  
**Alterations & Additions to Existing Residence**  
4/35 Murdoch Street, Cremorne NSW 2090  
CLIENT:  
**Alanna & Slade Hugall**  
4/35 Murdoch Street, Cremorne NSW 2090

SHEET TITLE:  
**WEST ELEVATION**

SCALE: 1:100 @ A3  
DRAWN: SP  
SHEET SIZE: A3  
DWG NO: DA-09  
REVISION: D



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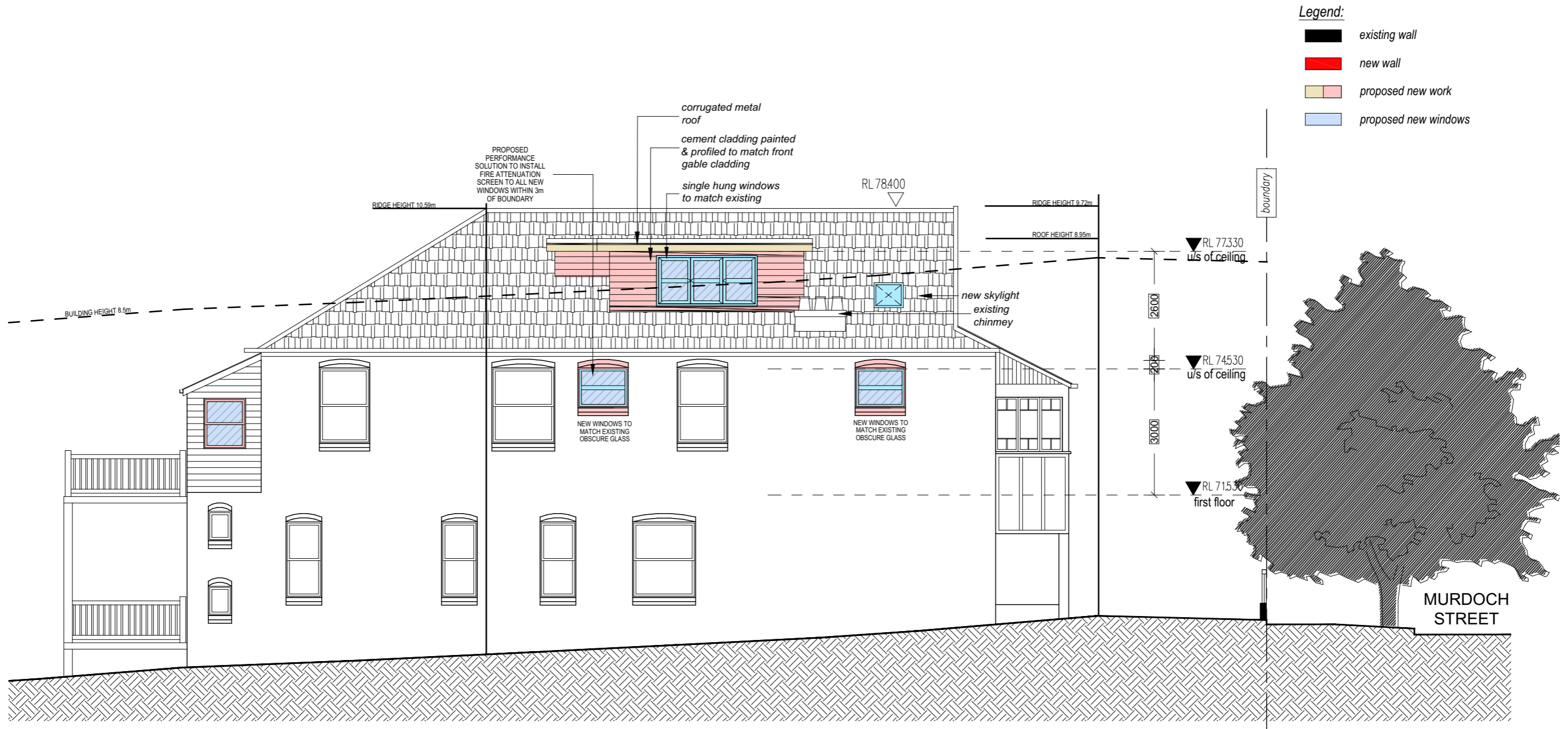
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PROJECT:  
**Alterations & Additions to Existing Residence**  
4/35 Murdoch Street, Cremorne NSW 2090  
CLIENT:  
**Alanna & Slade Hugall**  
4/35 Murdoch Street, Cremorne NSW 2090

SHEET TITLE:  
**EAST ELEVATION**

SCALE: 1:100 @ A3  
DRAWN: SP  
SHEET SIZE: **A3**  
DWG NO: **DA-10**  
REVISION: **D**



**NORTH ELEVATION**  
SCALE: 1:100

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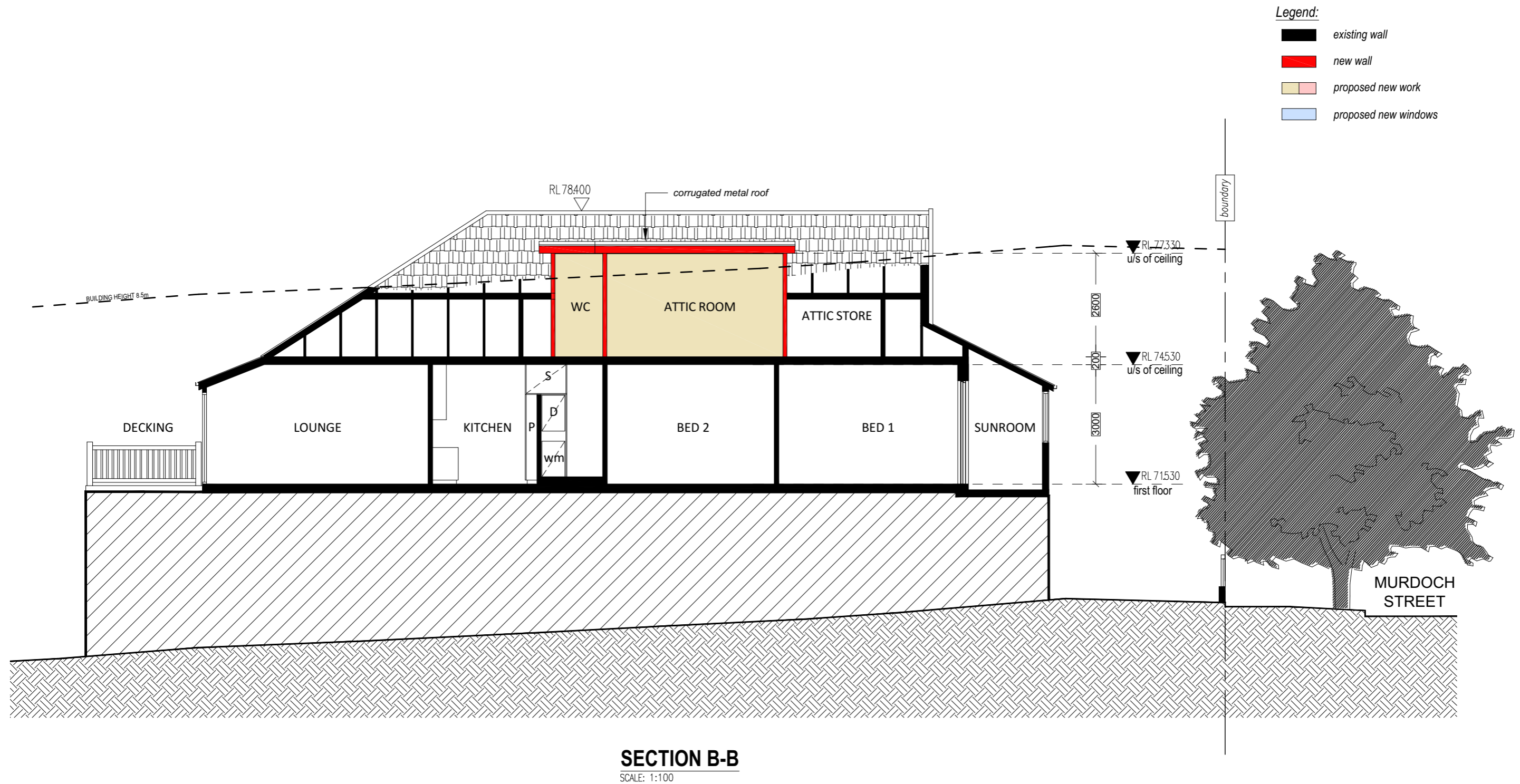
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PROJECT:  
**Alterations & Additions to Existing Residence**  
4/35 Murdoch Street, Cremorne NSW 2090  
CLIENT:  
**Alanna & Slade Hugall**  
4/35 Murdoch Street, Cremorne NSW 2090

SHEET TITLE:  
**NORTH ELEVATION**

SCALE: 1:100 @ A3  
DRAWN: SP  
SHEET SIZE: A3  
DWG NO: DA-11  
REVISION: D



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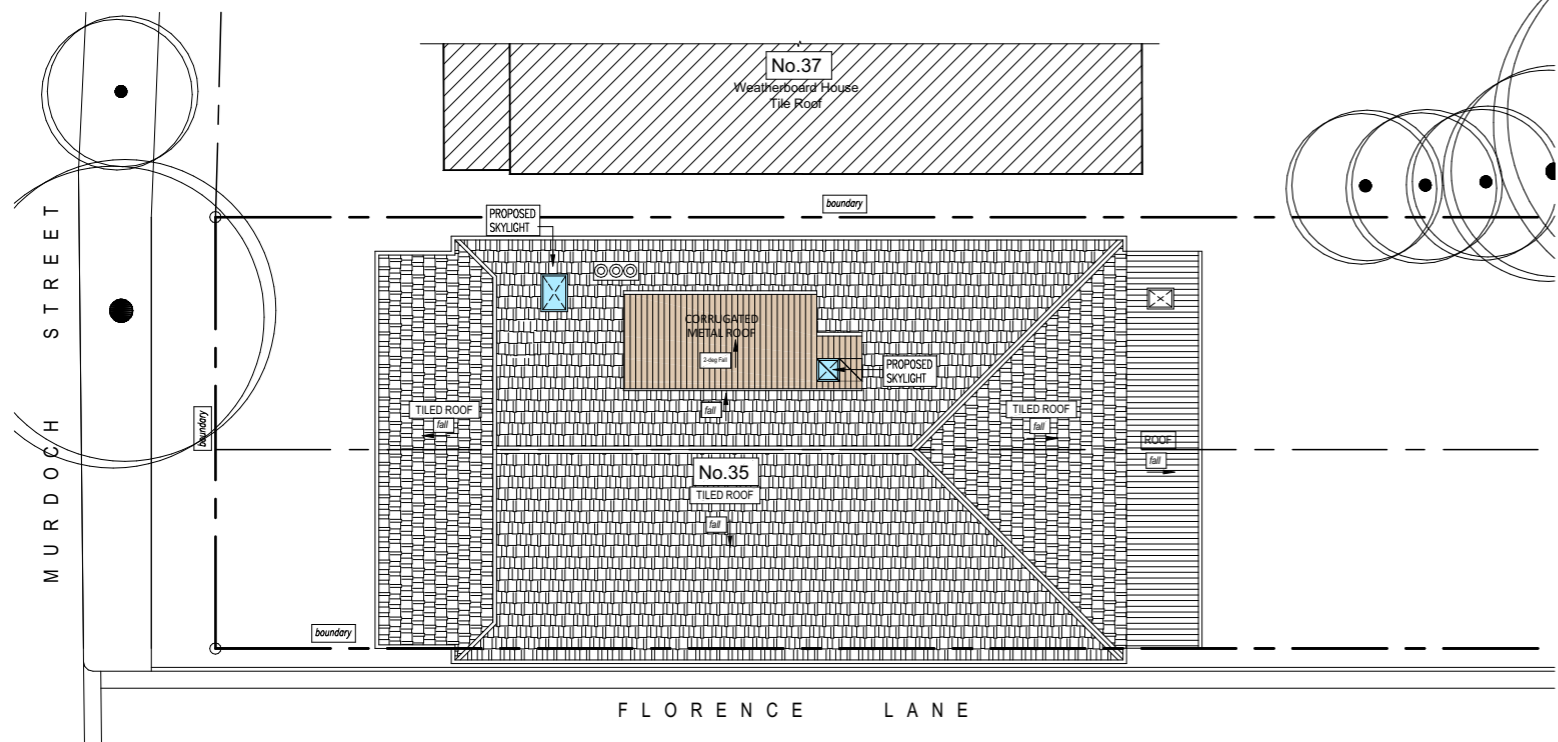
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PROJECT:  
**Alterations & Additions to Existing Residence**  
4/35 Murdoch Street, Cremorne NSW 2090  
CLIENT:  
**Alanna & Slade Hugall**  
4/35 Murdoch Street, Cremorne NSW 2090

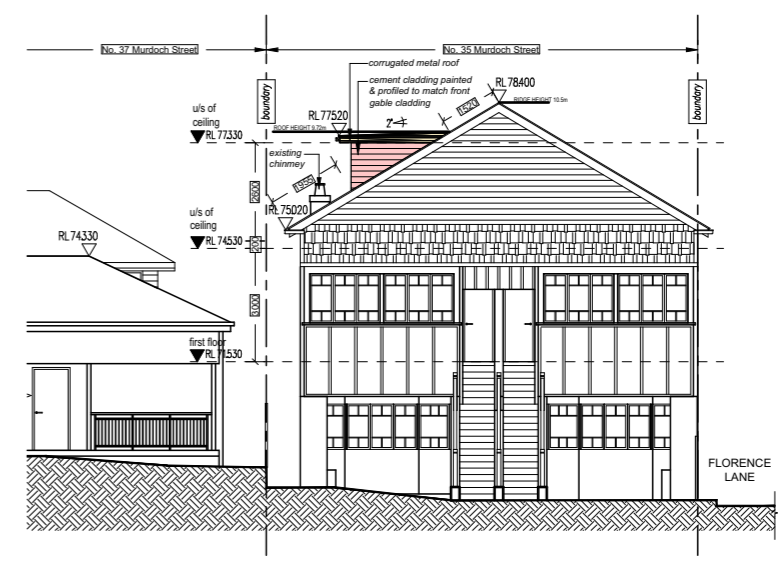
SHEET TITLE:  
**NORTH SECTION**

SCALE: 1:100 @ A3  
DRAWN: SP  
SHEET SIZE: A3  
DWG NO: DA-12  
REVISION: D

**Legend:**  
 existing wall  
 new wall  
 proposed new work

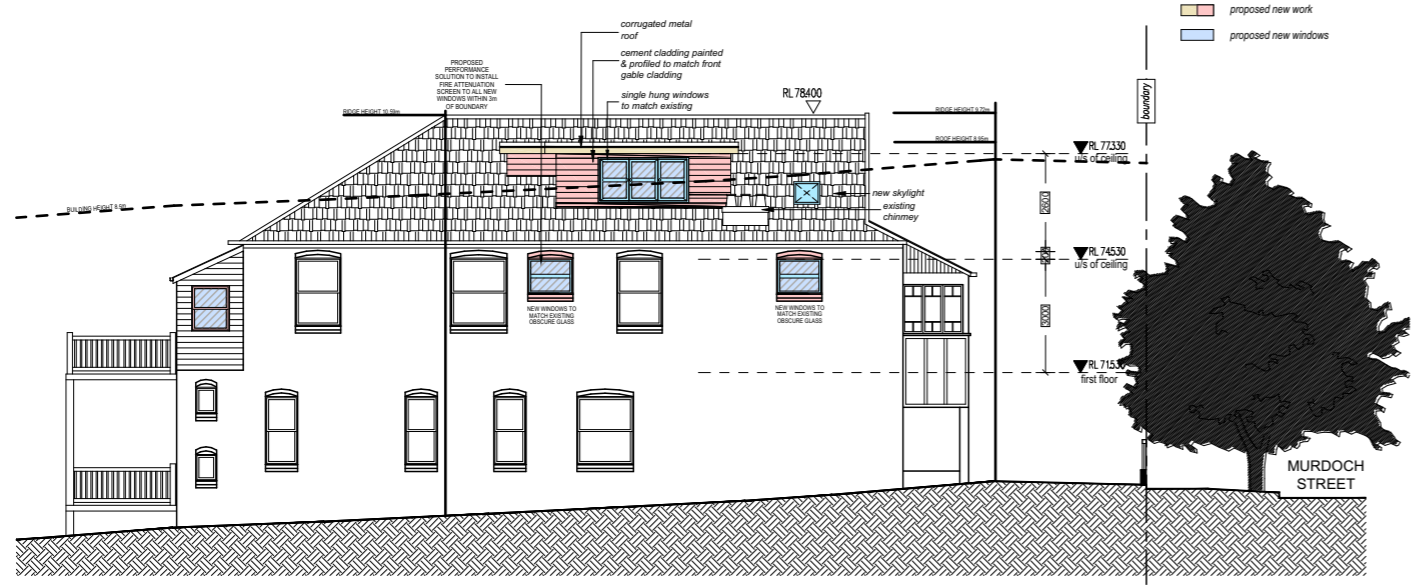


PROPOSED SITE & ROOF PLAN

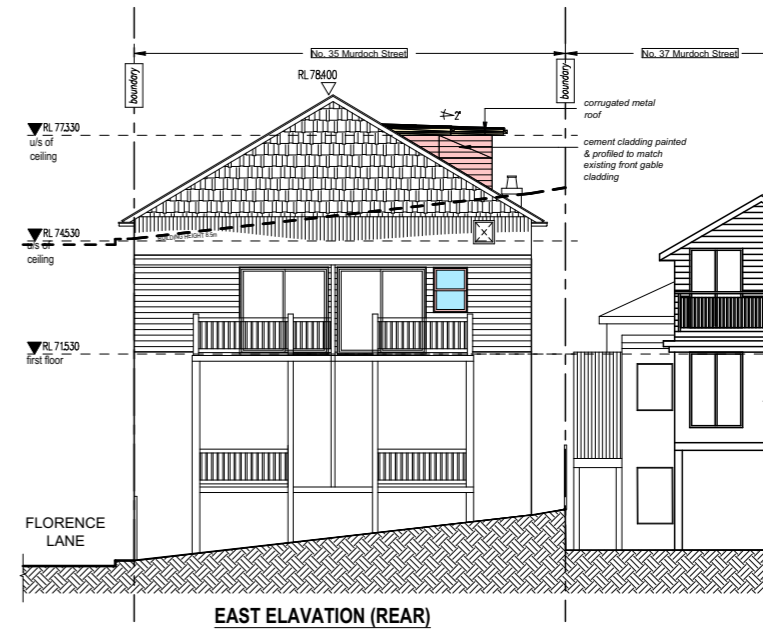


WEST ELEVATION (FRONT)

**Legend:**  
 existing wall  
 new wall  
 proposed new work  
 proposed new windows



NORTH ELEVATION



EAST ELEVATION (REAR)

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**Alterations & Additions to Existing Residence**  
 4/35 Murdoch Street, Cremorne NSW 2090  
 CLIENT:  
**Alanna & Slade Hugall**  
 4/35 Murdoch Street, Cremorne NSW 2090

SHEET TITLE:  
**NOTIFICATION PLAN**

SCALE: 1:250 @ A3  
 DRAWN: SP  
 SHEET SIZE: A3  
 DWG NO: DA-13  
 REVISION: D

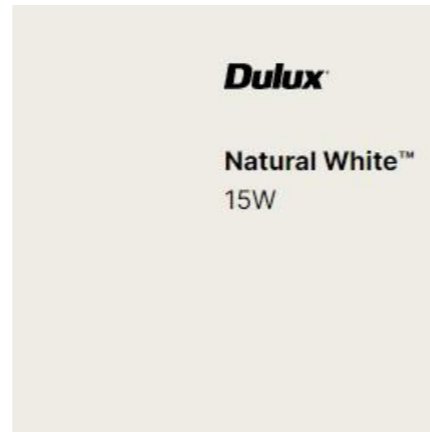
# MATERIAL SCHEDULE

ATTIC ROOF  
METAL ROOF

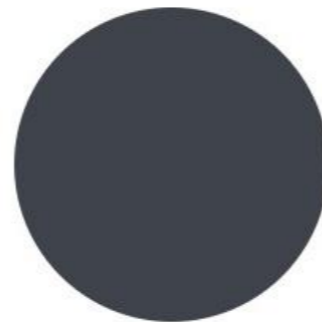


Southerly®

ATTIC CLADDING  
CEMENT BOARD



SKYLIGHTS  
VELUX



Ironstone®

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4/35 Murdoch Street, Cremorne NSW 2090  
CLIENT:  
**Alanna & Slade Hugall**  
4/35 Murdoch Street, Cremorne NSW 2090

SHEET TITLE:  
**MATERIAL SCHEDULE**

SCALE: 1:100 @ A3  
DRAWN: SP  
SHEET SIZE: **A3**  
DWG NO: **DA-14**  
REVISION: **D**

**CLAUSE 4.6 VARIATION TO NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013****MAXIMUM HEIGHT OF BUILDING AS DETAILED IN CLAUSE 4.3(2) OF NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013**

---

Proposal: Alterations and additions to unit 4 of a residential flat building  
Address: U4, 35 Murdoch Street, Cremorne  
Applicant: Alanna & Slade Hugall

---

**1.0 Introduction**

This variation request is made pursuant to the provisions of Clause 4.6 of North Sydney Local Environmental Plan 2013 (NSLEP2013). It is requested that Council supports a variation to the maximum height of the building as described in Clause 4.3(2) of the NSLEP2013.

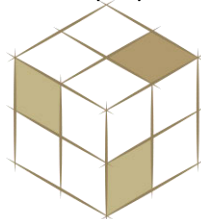
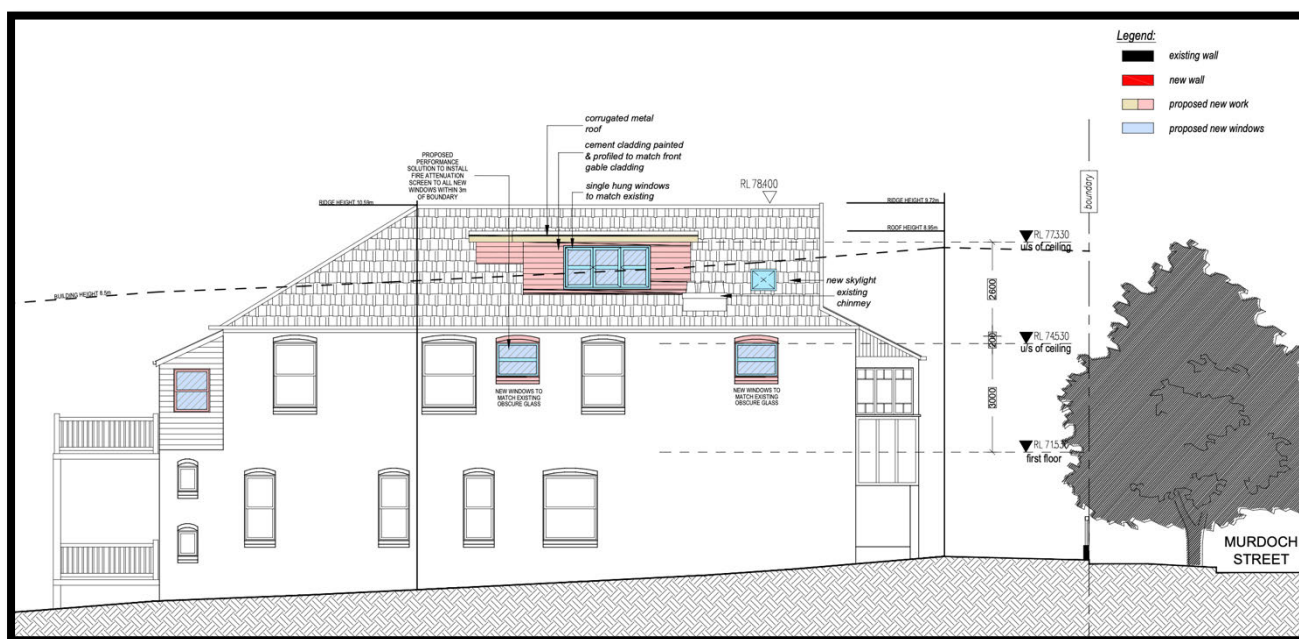
**2.0 Background**

Clause 4.3(2) establishes the height of building for development within this area and refers to the maximum height of building noted within the "Height of Buildings Map".

The relevant height of building for this locality is 8.5m and is considered to be a 'development standard' as defined by Section 4 of the *Environmental Planning and Assessment Act 1979*.

The existing residential flat building has a height of 10.59m from the topmost point of the structure to the ground. This represents an increase over the maximum building height of 24.59%.

The following figure shows the minor nature of the existing encroachment over the maximum building height which will not be altered by the proposed development:


**Figure 1: Elevation showing building height breach**


Source: *TightKnit Building Design*

The alterations and additions include internal and external alterations and additions including partial demolition and the addition of a dormer to the north roof plane. However, the height of the building is not increased by these works.

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

### 3.0 Purpose of Clause 4.6

The NSLEP 2013 contains a variations clause (Clause 4.6) which allows departures from a development standard. Clause 4.6 of the LEP is similar in purpose to the former State Environmental Planning Policy No. 1, however, the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development.

### 4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:





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

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

The development will achieve a better outcome in this instance as the site will provide for the alterations and additions to unit 4 of an existing residential flat building, which is consistent with the stated objectives of the R3 Medium-Density Residential Zone, which are noted as:

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

As sought by the zone objectives, the proposed alterations and additions to unit 4 of an existing residential flat building provide for the housing needs of the community within a medium-density residential environment while maintaining the amenity of the local area.

The front, side and rear setbacks are all unchanged. The external building materials and colours and roof form of the alterations and additions will be consistent with the existing building.

Notwithstanding the non-compliance with the maximum height of building control, the works will maintain an attractive residential development that will not detract from the character and function of the local residential neighbourhood and are therefore consistent with the zone objectives.

## **5.0 Onus on Applicant**

Clause 4.6(3) provides that:

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

- (a) That compliance with the development standard is unreasonable or unnecessary*



*in the circumstances of the case, and*

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

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

## **6.0 Justification of Proposed Variation**

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument and NSLEP2013 should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:

*“Clause 4.6 of LEP 2014 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(i)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl4.6(4)(a)(i)).”*

### **Precondition 1 - Consistency with zone objectives**

The proposed development of and use of the land within the R3 Medium-Density Residential Zone is consistent with the zone objectives, which are noted over as:

- *To provide for the housing needs of the community within a medium-density residential environment.*
- *To provide a variety of housing types within a medium-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.*



- *To encourage the development of sites for medium-density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high-density residential areas and lower-density residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

## Comments

It is considered that the proposed development is consistent with zone objectives for the following reasons:

- The proposal provides for the housing needs of the community. Specifically, the alterations and additions are to be undertaken by the owner comfort of the occupants and the liveability of the development.
- The proposal provides for a variety of housing types specifically with the alterations and additions enhancing the habitability of the existing unit.
- The proposal maintains the existing land use pattern with the alterations and additions proposed broadly maintaining the existing building footprint with the exception of a dormer addition that will accentuate the building's character being from the late Federation/Inter-war era maintaining the primacy and legibility of the building's hipped roof.
- A high standard of design and built form is promoted through the maintenance of setbacks of the existing development which are consistent with the existing and surrounding developments.
- The development provides for a suitable visual transition between high-density to low-density residential areas through the preservation of the existing building height.
- The landscape and open space area on the lot is maintained.

Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum height of building control, whilst maintaining consistency with the zone objectives.

## Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

*“(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”

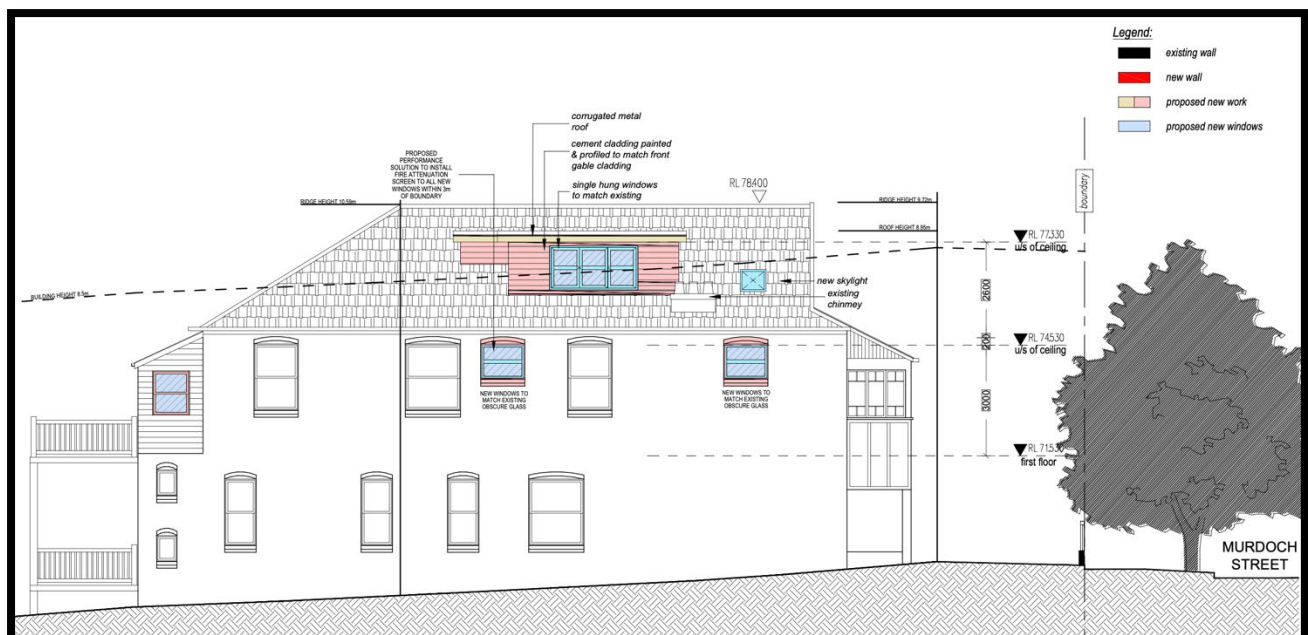
### Comments:

The development is compatible with the existing and desired future character of the locality in height, as the height as viewed from the street is maintained. The height is breached due to the roof pitch and change in the topography of the site.

The proposal does not inhibit any views being at upper level and contained within the building footprint.

The proposal will not result in additional adverse impact from overshadowing or loss of privacy or disrupt the amenity of the locality in general.

**Figure 2: North elevation showing the height line**



Source: TightKnit Building Design

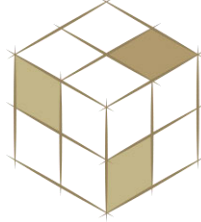
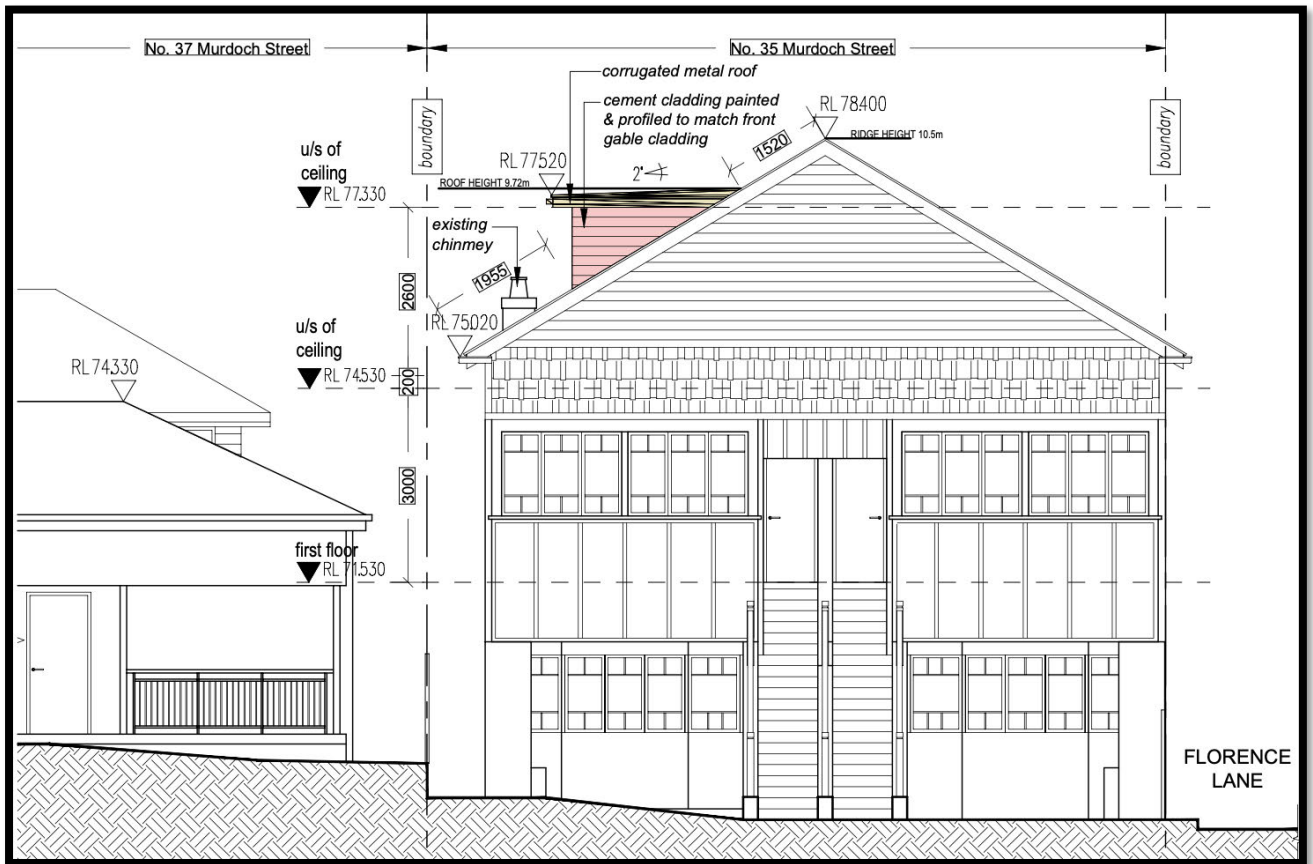
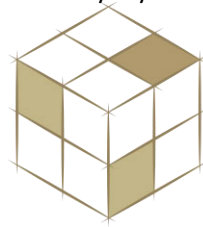
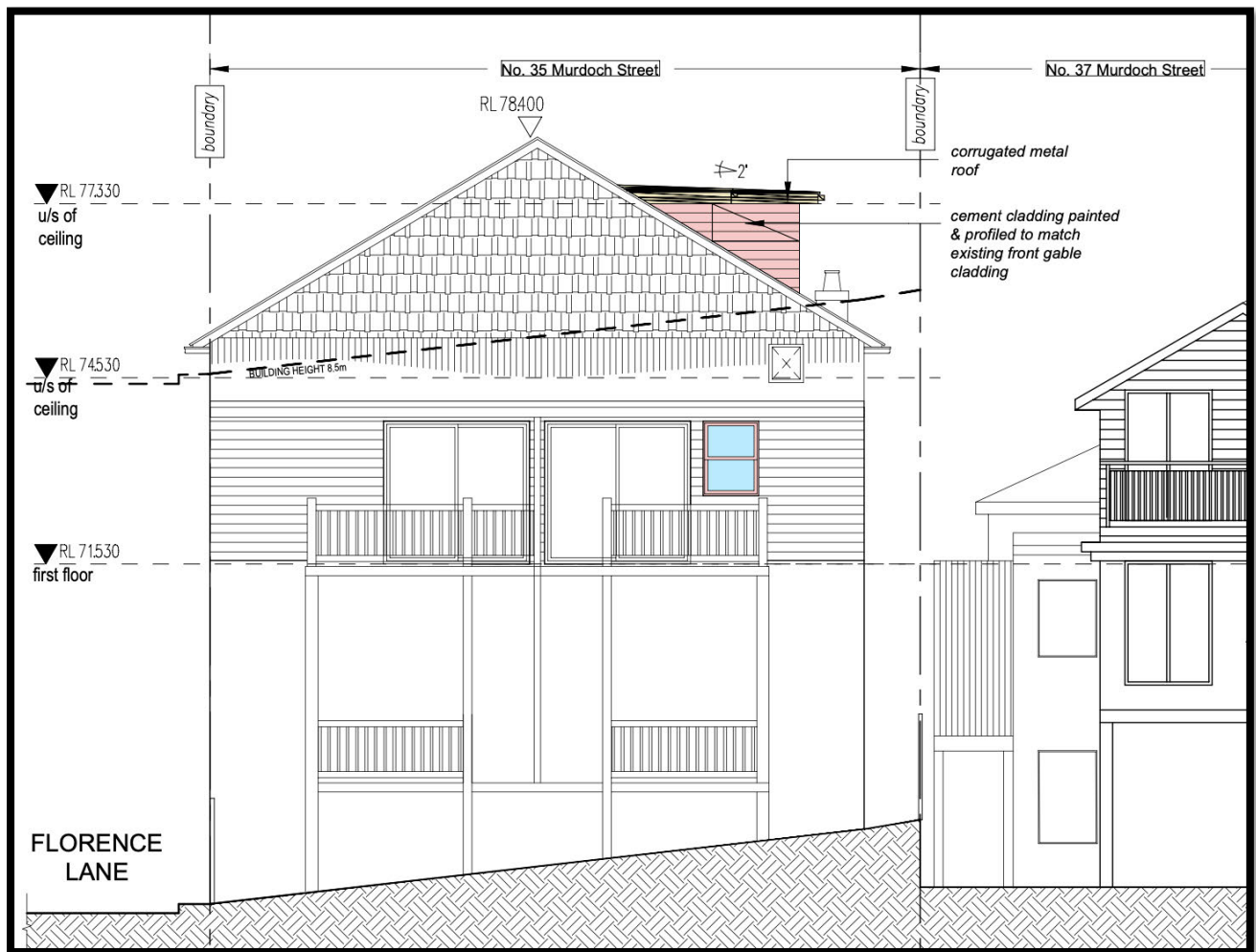


Figure 3: Front elevation (west)



Source: TightKnit Building Design


**Figure 4: Rear elevation (east)**


*Source: TightKnit Building Design*

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

**Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides alterations and additions to an existing residential flat building.

Council's controls in Clause 4.3 provide a maximum height of building of 8.5m.

It is considered that the proposal achieves the objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:



- 1) The development is modest in scale and does not add excessive bulk or scale as demonstrated in NSW Land and Environment Court in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, which considered Scale and density in the context of the surrounding area which formed the following planning principle: Compatibility in the urban environment.

The planning principles provide: The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

In order to test whether a proposal is compatible with its context, two questions should be asked.

- i. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites*

In relation to the physical impacts, consideration is given to noise, overlooking, overshadowing and constraining development potential which can be assessed with relative objectivity (as was applied in this principle).

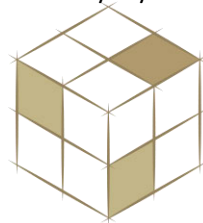
The development is for the alterations and additions to unit 4 of an existing residential flat building. The development proposes alterations and additions to the interior of unit 4 and the addition of a dormer to the north roof plane, the addition will not increase this existing non-compliance. The development will not impact upon privacy being mostly contained within the existing building. The development does not significantly affect solar access to the neighbouring development beyond the existing arrangement. Minor increases in overshadowing are caused however these are confined to very small increases to the adjoining northern property. These changes do not impact the windows of habitable rooms.

- ii. Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by **building height, setbacks and landscaping**. In special areas, such as conservation areas, **architectural style and materials** are also contributors to the character.

The principle provides that buildings do not have to be the same **height** to be compatible. In this regard, the overall height is not proposed to be changed by the alterations and additions as if they were a part of that development in the first instance.

The principle notes front and rear setbacks are an important element of urban character and determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way. The development does not propose a change to the front setback nor the side setbacks. The development does not propose a change to the existing landscaping on the site.



Notwithstanding, in the most common sense, the Commissioner provides that most people “experience the urban environment without applying the kind of analysis described above” and simply moving around a city is enough for a person to respond to their surroundings and like in the planning principle that if simply taking a walk in this neighbourhood there is little chance that with the alterations and additions that this development would be seen “out of context” and therefore within a compatible **Scale and density in the context of the surrounding area.**

For the above reasons it would therefore be unreasonable and unnecessary to require strict compliance with the standard.

**Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed**

Council’s controls in Clause 4.3 provide a maximum height of building of 8.5m for the subject development.

The existing development has a height of building of 10.59m. The alterations and additions maintain the height of building at 10.59m hence the existing non-compliance.

The development is justified in this instance for the following reasons:

- The development is contained within the existing side and front setbacks of the existing building footprint. The development does not alter the private open space on the site or the access to that private open space.
- The development proposes materials consistent with the existing palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality without impact on the character and amenity of the area.
- The development does not significantly increase bulk or scale or decrease the landscaping area.
- The proposed works will provide for improved amenity for the occupants, which promotes good design which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum height of building.

In the recent ‘Four2Five’ judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five





decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The decision on appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2016 the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the Four2Five decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligations is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

*"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".*

Accordingly, in regard to the proposed development at unit 4, 35 Murdoch Street, Cremorne the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposed alterations and additions are considered to promote good sustainable design and enhance the residential amenity of the buildings' occupants, which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard
- The variation to the height of buildings control is inconsequential as it is of negligible impact to the streetscape and the amenity of neighbouring properties and is an existing non-compliance that is not being further breached by this development.

In the Wehbe judgment (*Wehbe v Warringah Council [2007] NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -



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

**Comment:** Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

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

**Comment:** It is considered that the purpose of the standard is relevant and the purpose is satisfied.

- iii. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

**Comment:** Compliance does not defeat the underlying object of the standard development. Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

- iv. *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;*

**Comment:** Not applicable.

- v. *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.*

**Comment:** The development standard is applicable to and appropriate to the zone.

## 7.0 Conclusion

This development proposes a departure from the maximum height of building development standard, with the existing residential flat building featuring a maximum height of building of 10.59m (or 24.59%). The proposed alterations and additions while adding a dormer to the north roof plane, do not increase this existing non-compliance.

This objectives for the maximum building height development standard specified in Clause 4.3(2) of NSLEP 2013 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality. Strict compliance with the maximum height of building would be unreasonable and unnecessary in the circumstances of this case and should be supported.



**URBANISM**  
PLANNING & DEVELOPMENT

Kind regards

**Wesley Folitarik**

B. Environmental Planning (UWS); M. Property Development (UTS)  
Managing Director | Urbanism



New South Wales

# **North Sydney Local Environmental Plan 2013 (Amendment No 35)**

under the

**Environmental Planning and Assessment Act 1979**

The following local environmental plan is made by the local plan-making authority under the *Environmental Planning and Assessment Act 1979*.

**BRENDAN METCALFE**

As delegate for the Minister for Planning and Public Spaces

North Sydney Local Environmental Plan 2013 (Amendment No 35) [NSW]

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## **North Sydney Local Environmental Plan 2013 (Amendment No 35)**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of plan**

This plan is *North Sydney Local Environmental Plan 2013 (Amendment No 35)*.

### **2 Commencement**

This plan commences on the day on which it is published on the NSW legislation website.

### **3 Land to which plan applies**

This plan applies to land in Zone R3 Medium Density Residential under *North Sydney Local Environmental Plan 2013*.

### **4 Amendment of North Sydney Local Environmental Plan 2013**

#### **(1) Clause 1.8A, heading**

Omit “**provision**”. Inert instead “**provisions**”.

#### **(2) Clause 1.8A(2)**

Insert at the end of clause 1.8A, before the note—

- (2) If a development application has been made, but not finally determined, before the commencement of *North Sydney Local Environmental Plan 2013 (Amendment No 35)*, the application must be determined as if that plan had not commenced.

#### **(3) Land Use Table**

Omit “Residential flat buildings;” from Zone R3 Medium Density Residential, item 3.