

**NSLPP MEETING HELD ON 06/09/23****Attachments:**

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

**ADDRESS/WARD:** 5 Little Wonga Road, Cremorne.**APPLICATION No:** 51/2023**PROPOSAL:** Alterations and additions to the existing dwelling for a new garage, lift, rumpus room, and balconies.**PLANS REF:**

Plan #	Rev No.	Description	Prepared by	Dated
DA-1	Rev-K	Cover Sheet	Council Approval Design	19/09/21
DA.2	Rev-K	3D Render	Council Approval Design	19/09/21
DA.4	Rev-l	Site Plan	Council Approval Design	21/01/19
DA-5	Rev-l	Site Analysis & Landscaping	Council Approval Design	21/01/19
DA.6	Rev-l	Site Coverage	Council Approval Design	21/01/19
DA.7	Rev-l	Sediment Control Details	Council Approval Design	21/01/19
DA.8	Rev-K	Floor Plan First Level	Council Approval Design	19/09/21
DA.9	Rev-K	Floor Plan Second Level	Council Approval Design	19/09/21
DA.10	Rev-K	Floor Plan 3 <sup>rd</sup> Level	Council Approval Design	19/09/21
DA.11	Rev-K	Floor Plan 4 <sup>th</sup> Level	Council Approval Design	19/09/21
DA.12	Rev-K	Elevations 1	Council Approval Design	19/09/21
DA.13	Rev-K	Elevations 2	Council Approval Design	19/09/21
DA,14	Rev-K	Sections 1	Council Approval Design	19/09/21
DA.17	Rev-K	Scheduling	Council Approval Design	19/09/21
A485156		BASIX Certificate	Jan Taljaard	05/02/2023
30847 – H1		Stormwater Concept Plan	Jack Hodgson Consultant	07/05/18
		Waste Management Plan	Council Approval Design	Feb 2023

**OWNER:** Props of SP18845**APPLICANT:** Jan Taljaard**AUTHOR:** Josie Maejiirs**DATE OF REPORT:** 18 August 2023**DATE LODGED:** 22 February 2023**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

This development application seeks consent from NSLPP for alterations and additions to the existing attached dual occupancy dwelling which includes excavation for a rumpus room and garage, a new lift, a new balcony on level two, and a new balcony on level three.

**The application is reported to NSLPP because the proposed works at upper third and fourth storey levels is above the permissible height limit of 8.5m pursuant to clause 4.3(2) in NSLEP 2013. The non-compliance with the permitted height limit is greater than 10% requiring determination by NSLPP as directed by the Minister for Planning.**

The building is an existing approved dual occupancy and alterations are proposed only within the physical limits of the existing approved structure. Due to the sloping nature of the site, the rear elevation has a height of 6.89m while the front elevation has a height of 13.86m. There is no new works proposed above the approved roof height of the existing building.

Notification of the proposal has attracted one submission raising particular concerns about 'structural integrity of the partition wall to be maintained throughout construction'. The assessment has considered this concern as well as the performance of the application against Council's planning requirements.

This development application has been assessed against the North Sydney Local Environmental Plan 2013, the North Sydney Development Control Plan 2013 and the relevant State Planning Policies and found to be satisfactory in the site circumstances.

Consideration has been given to the Clause 4.6 request for a variation to the LEP's building height development standard as submitted by the applicant. The variation to the building height development standard is justifiable, and the proposed works above 8.5 metres will not materially alter the form of the building, the roof is to remain unchanged, and this part of the development would not impact on the residential amenity of surrounding properties or the streetscape.

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



## **DESCRIPTION OF PROPOSAL**

The applicant seeks development consent from the North Sydney Local Planning Panel for alterations and additions to the existing attached dual occupancy dwelling for excavation for a rumpus room and garage, a new lift, a new balcony on level two, new balcony on level three to replace the existing balcony.

The proposed works is further detailed as follows:

### **First Storey (Lower level)**

- Demolish existing walls, subfloor walls, and external staircase.
- Excavate 2.6m below existing ground level to form a new double garage.
- New stairs from new double garage to the level above.
- External extension to the front (west) side of the dwelling (1.5m deep by 8m across)
- Construct a new retaining wall to the southeast side of the dwelling.
- Rubbish storage area to the southeast side of the dwelling.
- A new entry and new lift.

### **Second Storey**

- Excavation to a depth of 3.5m and required demolition for
  - a new underground rumpus room; and
  - underground void to accommodate a lightwell window for the room.
- Demolition of the existing kitchenette, walls and external stairs and provision of a lift.
- An additional internal staircase.
- Provision of an internal lift.

### **Third Storey**

- Demolish the external staircase and entry, and a build new bathroom.
- Replace the existing balcony (2.4m x 7.7m) with a new balcony of the same dimensions, supported by pillars extending to the new deck below.
- New sliding doors to the balcony.
- Internal lift.
- New metal grate over rumpus window void.

### **Fourth Storey**

- Demolition of existing windows to the front (west) elevation and replacement with new windows and a bi-folding door, along with a new false balcony.

The above proposed works are detailed in the architectural plans drawn by Council Approval Design, dated 21 January 2019 (Revision I). Supporting documentation, owner's consent, and consultant reports, are also provided for the proposed development.



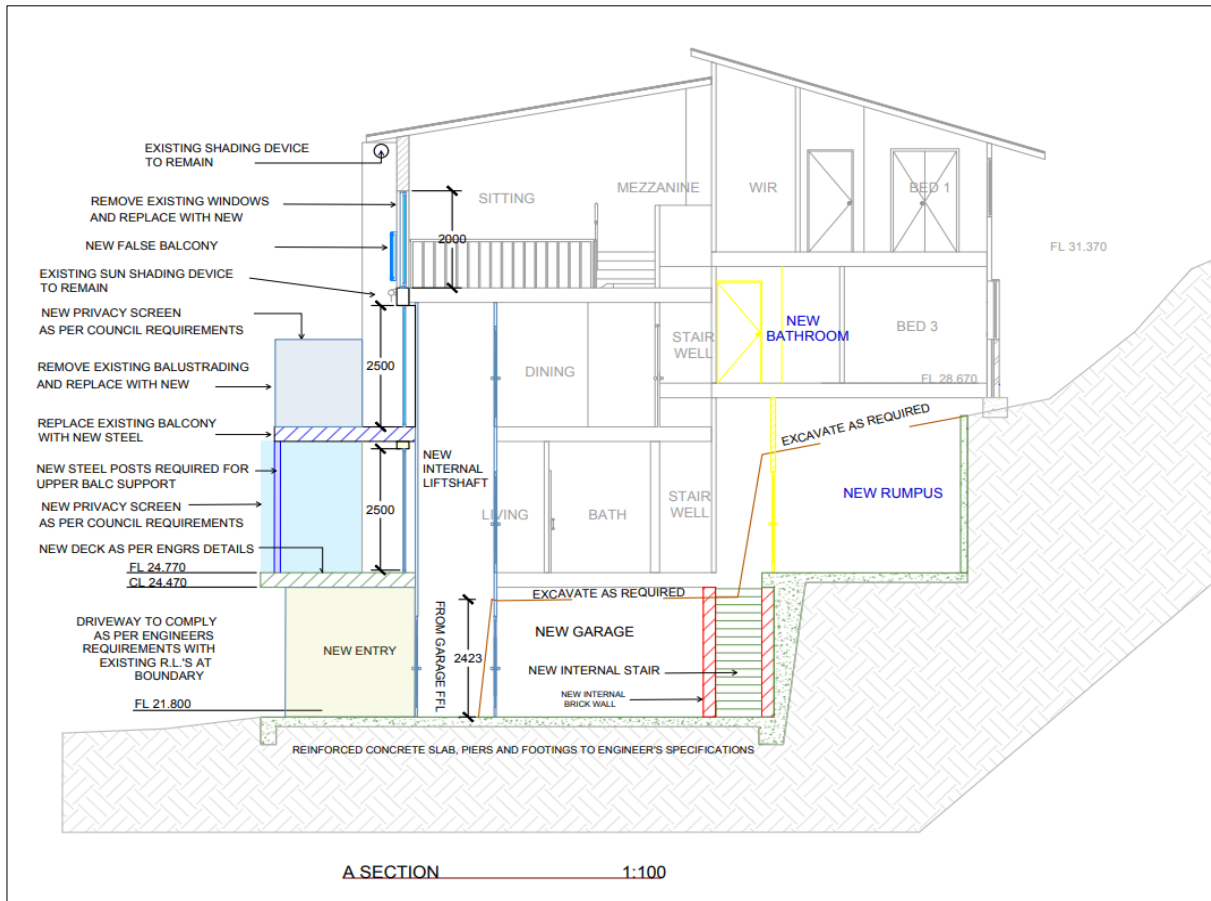


Figure 1: Extract of Section Plan (Council Approval Design)

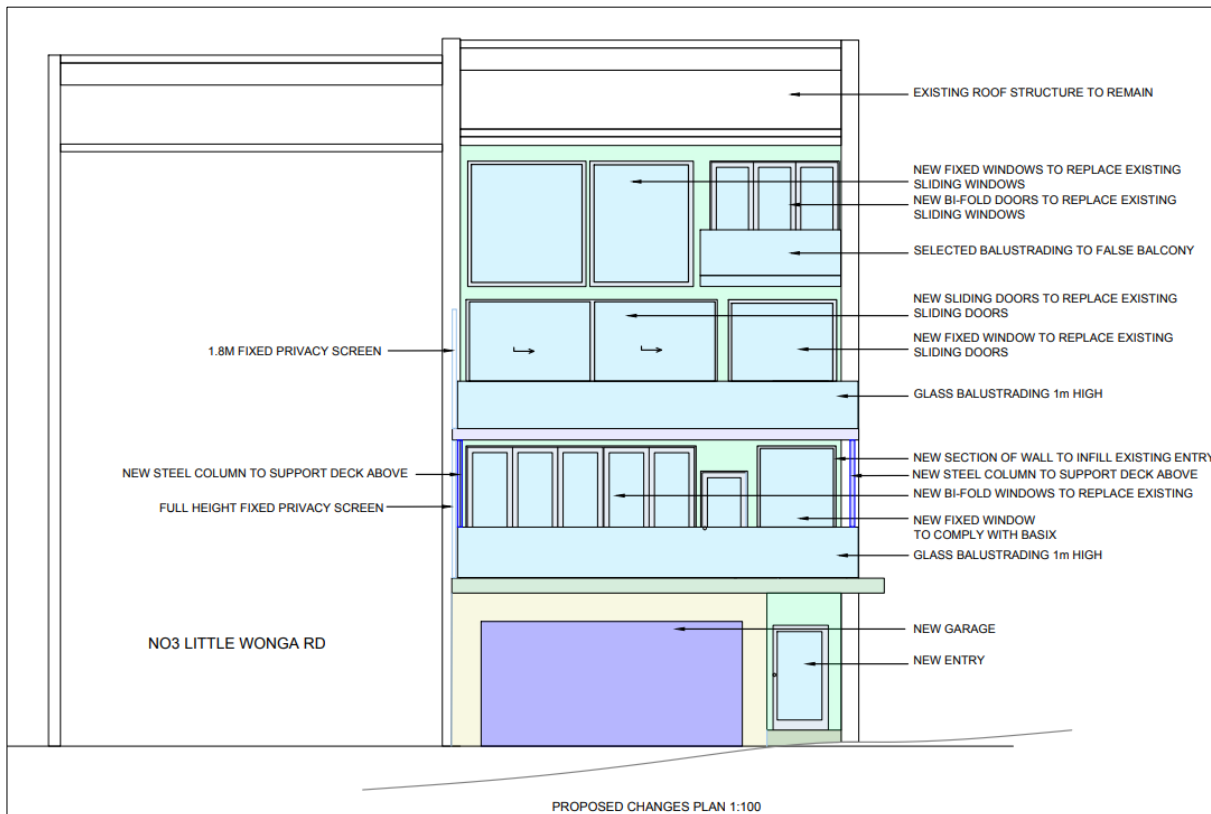


Figure 2: Extract of Section Plan (Council Approval Design)

## STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning: R2 Low Density Residential
- Item of Heritage: No
- In Vicinity of heritage items: No
- Conservation Area: No
- FSBL: No

Environmental Planning & Assessment Act 1979  
SREP (Sydney Harbour Catchment) 2005  
SEPP No. 55 – Remediation of Land  
SEPP (Biodiversity and Conservation) 2021  
SEPP (Building Sustainability Index – BASIX) 2004  
Local Development

## POLICY CONTROLS

NORTH SYDNEY DCP 2013  
Sydney Harbour Foreshores & Waterways Area DCP 2005

## DESCRIPTION OF LOCALITY

The subject site is legally described as Lot 4 in SP18845, 5 Little Wonga Road, Cremorne. The site accommodates an attached dual occupancy, set over three levels, which has been strata subdivided into two lots, Lot 4 which contains the subject site known as 5 Little Wonga Road, and Lot 3, which contains the property known as 3 Little Wonga Road.

The existing dwelling includes a suspended timber deck at the front of the site and private open space gardens at the rear. The front of the site comprises a concrete driveway and car parking area. A sandstone outcrop or large boulder has been incorporated into brick structure at the front of No.3 Little Wonga. The rear of the site is dominated by a 3 to 5 metre high (approximate) sandstone cliff. The cliff is located close to the eastern site boundary and comprises medium to high strength Hawkesbury Sandstone.



*Figure 3: Subject site (Council's Mapping)*

The cliff is undercut in sections and includes a single sub-vertical joint through the centre of the cliff. The cliff is considered to generally be stable. The rear gardens comprise a series of steep terraces with shrubs and plants, mature trees and grassed areas. The terraces in the rear garden are retained by sandstone block walls (dry) and detached rock boulders. The rear garden area is accessed via a concrete staircase that leads up the southern side of the dwelling.

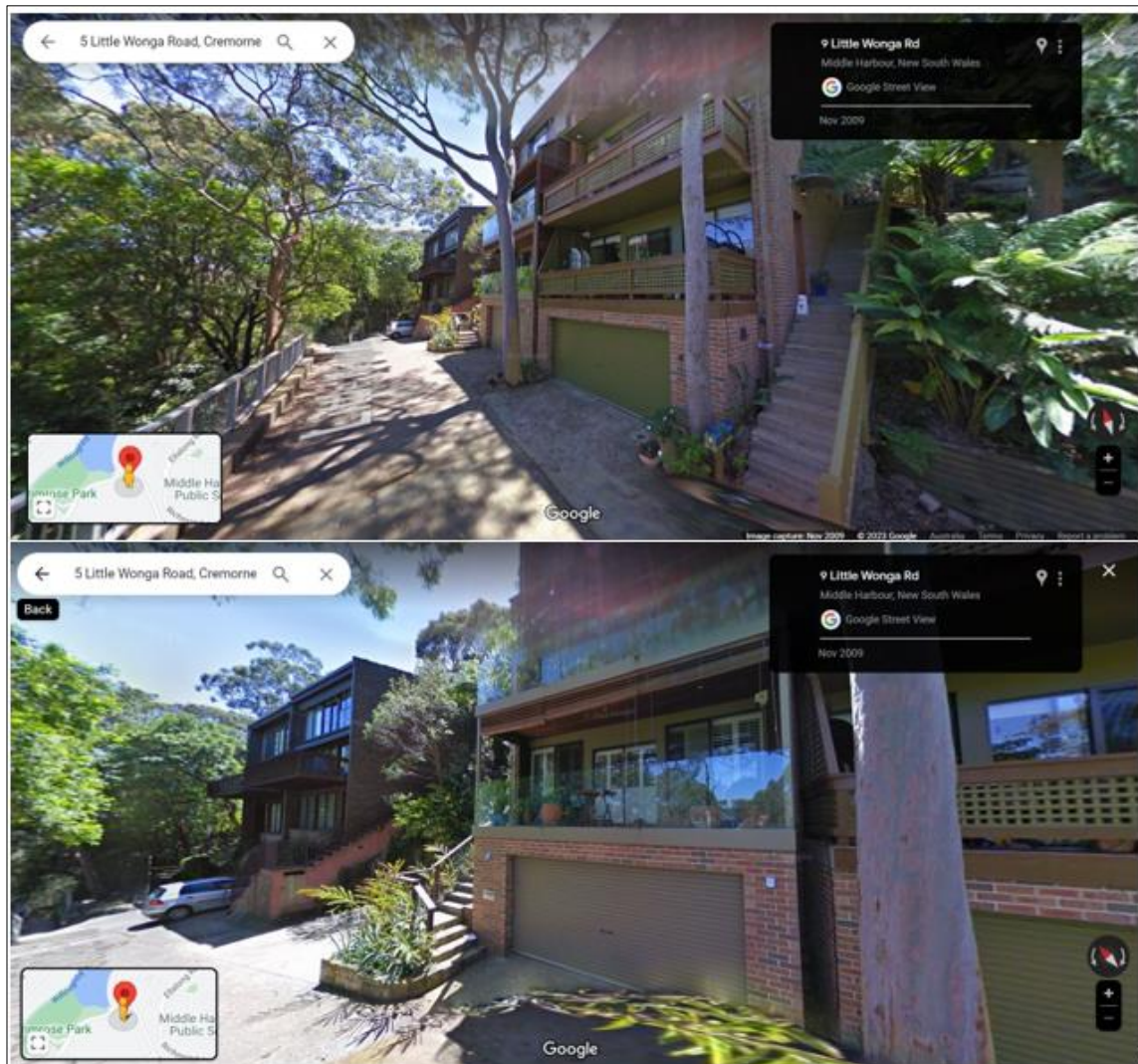
The site is located on the western face of a north south trending escarpment, with a regional fall to the west towards Brightmore Reserve and Willoughby Bay. The ground surface on the site falls approximately 12 metres to the west from RL32 metres at the toe of the cliff in the rear garden to RL 20.0 metres to the concrete driveway Infront of the dwelling.

An inspection the subfloor space for the proposed garage area and rumpus area was also carried out during the inspection. The subfloor space in the garage area comprises sandstone bedrock (either in-situ or large detached boulders) immediately below the floorboards. The conditions observed in the proposed rumpus room area comprised a steeply cut soil slope with several large, detached boulders at its crest. A boulder on the northern side of the building has been incorporated into the party wall foundations.



**Figure 4: Street View of Subject site (Google Maps)**





**Figure 5: Street View of Site (Google Maps)**

## RELEVANT HISTORY

### Previous applications

<b>Date</b>	<b>DA</b>	<b>Action</b>
22/03/2017	DA384/2016	DA withdrawn based on the proposed use found to be prohibited, topography and excavation issues, non-compliance with site coverage, bulk and scale, internal amenity, and inadequate plans.
20/06/2017	DA1267/92 Appeal Ref. 10541	DA approved by the Land and Environment Court for a studio development within the subfloor area of the dwelling with no permission granted for a kitchen within the studio space.
03/10/2018	DA201/2018	DA refused by the NSLPP for the following reasons: <ul style="list-style-type: none"> <li>• <i>Lack of detail on Owners Corporation consent, in particular the use of the common property for the exclusive use and benefit of the applicant.</i></li> <li>• <i>Insufficient detail, adequacy and information provided on the survey, trees impacted by construction; structural and geotechnical engineering methodology, and the extent of excavation; and the amenity of the excavated rumpus room.</i></li> </ul>

### **Current Application**

<i>Date</i>	<i>Action</i>
23 February 2023	DA lodged
17/03/2023 – 31/03/2023	Notification to adjoining residents and Willoughby Bay Precinct
30/03/2023	One submission received
May 2023	Officer reallocation

## **INTERNAL REFERRALS**

### **Building**

The proposed works the subject of this application have been assessed by Council's Building Section and the following is advised:

*The building is classified by the National Construction Code – Building Code of Australia 2022, Volume 2 (NCC – BCA 2022) as a class 1a building. A review of the Plans submitted with the application revealed the proposed development can likely comply with the NCC BCA 2022, Volume 2 however it must be noted that the replacement of the two balconies will require the construction of a fire rated external wall between the two balconies and the adjoining dwelling in accordance with Part 9, Clauses 9.2.1, 9.2.5 & 9.2.9 of the NCC BCA 2022, Volume 2 and this may result in a slight change to the proposed balcony design.*

*A detailed assessment of compliance with the NCC - BCA 2022, Volume 2 will be undertaken by an appropriately registered certifier at the Construction Certificate Stage of the proposed development.*

#### **Standard condition F1 – National Construction Code**

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

## **SUBMISSIONS**

### **Original proposal**

On 17 March 2023, Council notified adjoining properties and the Willoughby Bay Precinct of the proposed development seeking comment between 17 March 2023 to 31 March 2023. Council received one (1) submission. The matters raised in the submissions are listed below:

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

### **Basis of Submissions**

- Concern raised on the structural integrity of the partition wall to be maintained throughout construction'.

Planner response: the proposed works will be supported independently of the party wall and will not rely on the party wall for lateral and/or vertical wall support. A geotechnical report submitted, has assessed, and considered various construction methods for excavation adjacent to the party walls. The external walls of the existing dwelling will remain, with the excavation of the garage and rumpus room extending up to the existing external walls and the party wall with No.3, which is also to remain. The recommendations presented in the Geotechnical report include specific issues to be addressed during the construction phase of the project. Therefore, the structural integrity of the partition wall will be maintained throughout construction and use of the dwelling.

## **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) Environmental Planning and Assessment Regulation 2000**

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

##### **Chapter 2 – Vegetation in Non-Rural Areas**

The proposal meets the objectives of the SEPP because there would be no clearance of native vegetation, or any materials impacts on bushland (if any) in the vicinity of the subject site.

##### **Chapter 6 - Bushland in urban areas**

The proposal is considered to be acceptable having regard to the above chapter in the SEPP concerned with bushland areas as vegetation on the site is retained as per Landscape Plan. Existing trees on the site will be managed throughout construction with 'Tree Protection Measures' under condition of consent (Condition D2)

##### **Chapter 10 - Sydney Harbour Catchment**

Having regard to the SEPP (Biodiversity and Conservation) 2021, concerned with the Sydney Harbour Catchment and the Sydney Harbour Foreshores and Waterways Area DCP 2005, 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 location at 5 Little Wonga Street, located 70m to Willoughby Creek. As such, the development is acceptable having regard to the provisions contained within the above SEPP 2021 and the Sydney Harbour Foreshores and Waterways DCP 2005.

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

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

## SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate No: A485156 dated 05 February 2023 for alterations and additions to attached dwelling has been submitted with the application to satisfy the Aims of the SEPP. (See Condition No. C27, G14)

## NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

### 1. Permissibility

The proposed works can be defined as alterations and additions to an existing attached dual occupancy dwelling (3-5 Little Wonga) and are permissible in the zone with development consent.

### 2. Objectives of the zone

The objectives for a R2 Zone are stated below:

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

The proposed works enhances the liveability of the occupants and their housing needs. The proposed works maintains the low-density residential environment and maintains the residential amenity of its occupant and neighbouring properties. Therefore, the proposed works achieves the objectives of the zone and is consistent with the relevant objectives of the zone.

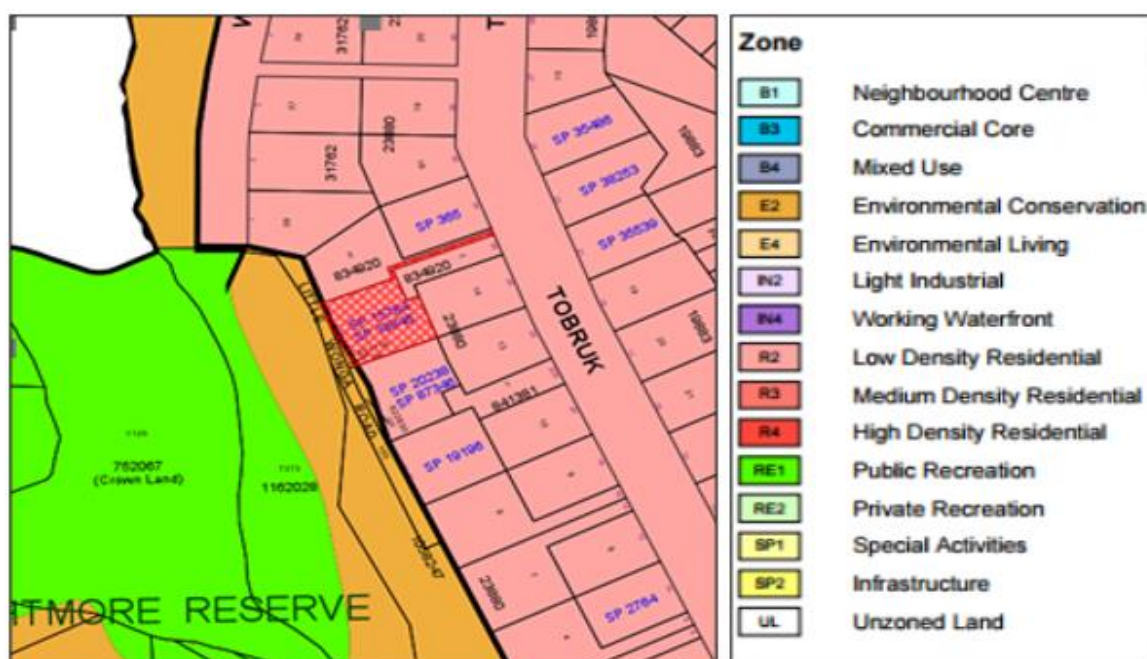


Figure 6: Zoning of site

## Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area - #m <sup>2</sup>	Proposed	Control	Complies
Clause 4.3 – Heights of Building	Existing height 13.86m at front 6.89m at rear	8.5m	NO Clause 4.6

### 3. Height of Building

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

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
  - (b) *to promote the retention and, if appropriate, sharing of existing views,*
  - (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
  - (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
  - (e) *to ensure compatibility between development, particularly at zone boundaries,*
  - (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*
- The attached dual occupancy dwelling has an existing height of 13.86m at the front and 6.89m at the rear. The proposed works is undertaken within the existing height of the dwelling creating a non-compliance to the building height in accordance with clause 4.3 in NSLEP 2013.

The non-compliance creates a variation of 5.36m equivalent to 63% variation. The applicant has provided a Clause 4.6 seeking an exception to the development standard for the maximum building height for dwellings in Zone R2 to be varied to allow for the proposed development. The variation is 63%% to the standard. The Clause 4.6 written request has been assessed below:

#### **Clause 4.6 - Exemptions to Development Standards**

A written request prepared by Council Approval Experts dated February 2023 was submitted as part of the application. The written request acknowledges the departure of more than 10% from the development standard.

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



- 3) *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.*
  
- 4) *Consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Director-General has been obtained.*
  
- 5) *In deciding whether to grant concurrence, the Director-General must consider:*
  - a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - b) *the public benefit of maintaining the development standard, and*
  - c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

**1. What Clause is sought to be varied:**

The applicant seeks to vary Clause 4.3 'Building Height', the development standard of the NSLEP 2013. Clause 4.3 of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) states that the maximum building height for a building on any land is not to exceed the building height of 8.5m. The existing building height is 13.86m, exceeding the development standard by 5.36m, equivalent to 63% variation to the development standard. It is important to note that the subject application does not increase the existing building height.

**2. Clause 4.6 Objectives**

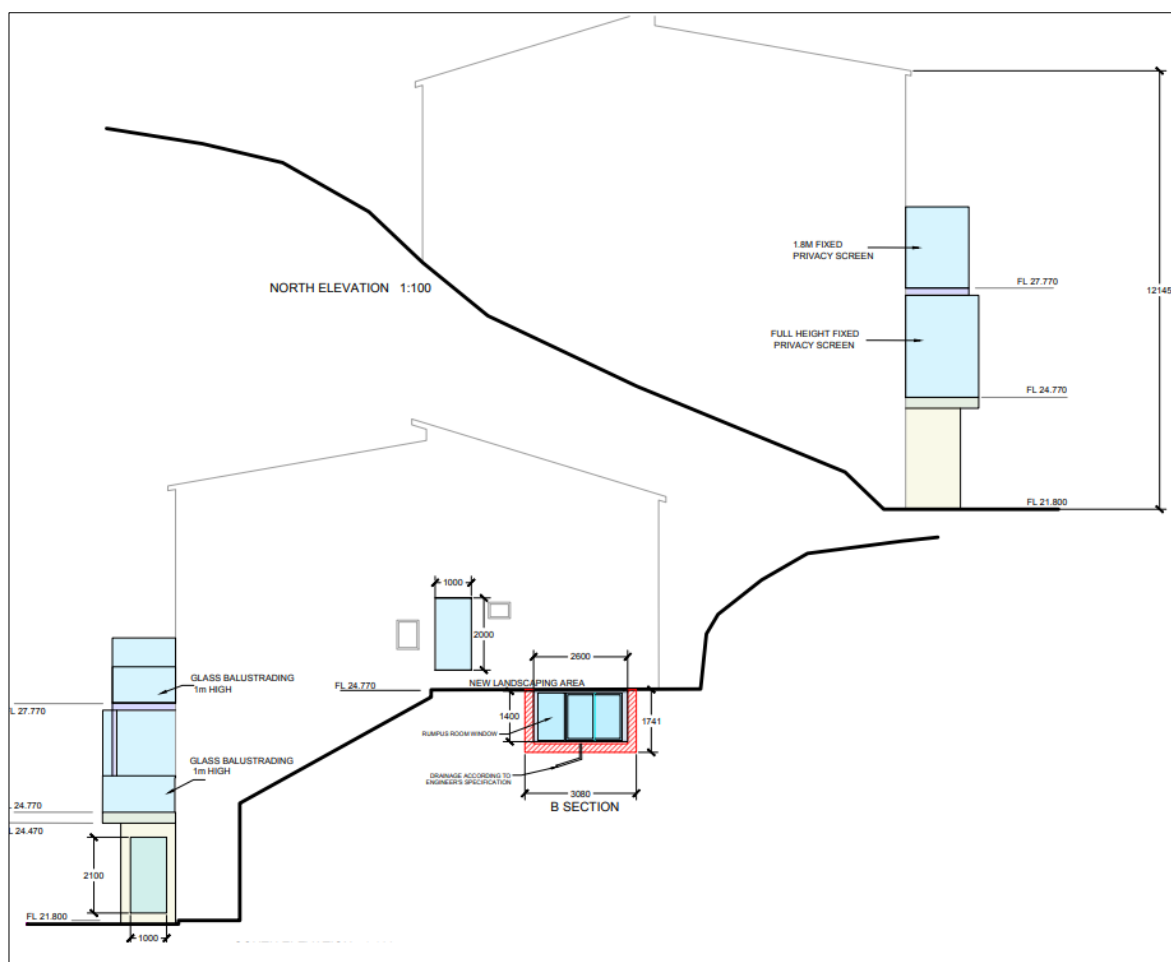
The following objectives are contained in Clause 4.6 of the North Sydney LEP 2013: -

- 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.*

In consideration of the applicant's written submission, Council is satisfied that it is appropriate to invoke the provisions of Clause 4.6 to vary the maximum building height development standard being an existing building height and to allow the proposed alterations and additions. The applicant has demonstrated that there are sufficient planning grounds to vary the building height development standard, given the circumstances of the development proposal as follows: -

- The variation to the height is a result of the height of the existing attached dual occupancy on a sloping site. The height is an existing variation and does not manifest itself in any other issues of non-compliance.
- The numeric variation is existing, and the non-compliance is existing, and the proposal does not cause further non-compliance and maintains the existing scale, built form, and density.
- The proposal is compliant with the floor space ratio, achieve acceptable setbacks, enhances landscaped areas and site coverage, which therefore maintained the density and scale of the RFB building.
- The amenity issues, privacy, overshadowing, visual and acoustic privacy are respected and maintained.
- The proposed alterations and additions are found to be consistent with developments in the street and in the locality.

Council considers that the written request satisfactorily addresses the two criteria i.e., that complying with the building height development standard is unreasonable or unnecessary in the circumstances of the case as the objectives of the LEP and DCP are satisfied, and that there are sufficient environmental planning grounds to justify contravening the standard and that compliance with the development standard is unreasonable and unnecessary.



**Figure 7: Elevation Plan - Works are wholly within existing building (Council Approval Design)**

### 3. Clause 4.6 (3) Provisions

Sub-clause (3) of Clause 4.6 of the NSLEP 2013 states that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating the following:

- 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.*

Council is also satisfied that the proposed development is in the public interest because it is consistent with the following objectives of the 'Building Height' development standard, as contained in Clause 4.3 of the NSLEP 2013, for the reasons set out below: -

- a) *to ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality and positively contribute to the streetscape and public spaces,*
- b) *to protect the amenity of residential accommodation, neighbouring properties and public spaces in terms of—*
  - i. *visual and acoustic privacy, and*
  - ii. *solar access and view sharing,*
- c) *to establish a transition in scale between medium and high-density centres and adjoining lower density and open space zones to protect local amenity,*
- d) *to ensure that buildings respond to the natural topography of the area.*

In consideration of the applicant's written submission, Council is satisfied that there are sufficient environmental planning grounds to justify contravening the building height standard by achieving the building height objectives as set out below:

- The proposed works do not increase the building height and continue to contribute and maintains the scale and bulk of the attached dual occupancy dwelling within the streetscape.
- The proposed works does not cause any overlooking or privacy issues to the neighboring properties with visual and acoustic privacy respected and maintained with the proposed landscaping slope improving the interface and visual privacy of the development along the neighboring dwellings.
- The proposal is found to maintain the low-density scale of development of the zone whilst protecting local amenity of the site and the neighbouring sites.

Council is also satisfied that in accordance with sub-clause (4) (ii) of Clause 4.6, the proposal will be in the public interest because it is consistent with the following objectives of the R2 (Low Density) Residential zone in which the site is located, for the reasons stated below: -

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

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

In consideration of the applicant's written submission, Council is satisfied that there are sufficient environmental planning grounds to justify contravening the building height standard by achieving the zone objectives as set out below:

- The proposal demonstrates that it continues to provide housing needs for the occupants of the site and achieves housing to the community.
- The neighbouring site amenity impacts along with public and private views are maintained. The proposal maintains the character, scale and low-density developments in the street and in the locality.

In accordance with sub-clause (4) of Clause 4.6 of the NSLEP 2013, and in view of the above assessment, Council is satisfied that the applicant's written request to vary the Building Height development standard adequately addresses the matters required to be demonstrated under sub-clause (3) and that the written submission is well-founded.

Sub-clause (4) (b) states that development consent must not be granted unless the concurrence of the Secretary of the Department of Planning and Environment (DPE) has been obtained. The council has been advised that it can assume the concurrence of the Secretary of the DPE. Under Sub-clause (5) the Secretary is required to consider the following when deciding to grant concurrence: -

- a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- b) the public benefit of maintaining the development standard, and
- c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Council is satisfied that the contravention of the 'Building Height' development standard in this case will not raise any matter of significance for state or regional environmental planning and that the public benefit of the 'Building Height' development standard will be maintained.

## **Part 6 – Additional local Provisions**

### **Division 2 – General Provisions**

#### **4. Dual Occupancies**

The following matters apply to any attached dual occupancy development:

- (a) the form of the building will appear as a dwelling house, and*
- (b) the dwellings in the dual occupancy will be attached by at least 80% of the common wall or 80% of the common floor or ceiling, and*
- (c) the area of the lot on which the dual occupancy is to be situated is at least 450 square metres.*

The proposed development is undertaken on an existing attached dual occupancy dwelling. The proposed works does not change the bulk and scale of the attached dual occupancy dwelling. It continues to achieve at least 80% of the common wall. The site area of 611.8m<sup>2</sup> achieves the lot site area of at least 450m<sup>2</sup>.

## **5. Limited development on foreshore area**

The subject site is located on the foreshores of Sydney Harbour where a foreshore building line applies so the proposal has been assessed under clause 6.9 in NSLEP 2013 below. The site is located approximately 70m to Willoughby Creek.

*Development consent must not be granted for development on land in the foreshore area except for the following purposes:*

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
- (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
- (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

*Development consent must not be granted under subclause (2) unless the consent authority is satisfied that:*

- (a) the development will contribute to achieving the objectives for the zone in which the land is located, and*
- (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- (c) the development will not cause environmental harm such as:
  - (i) pollution or siltation of the waterway, or*
  - (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
  - (iii) an adverse effect on drainage patterns, and**
- (d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- (e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- (f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- (g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- (h) sea level rise or change of flooding patterns as a result of climate change has been considered.*

The location of the site and the nature of the proposed development location will not interfere with the foreshore area. The proposed alterations and additions will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed stormwater arrangement will ensure proper management of stormwater and run off from the site during construction and ongoing use of the residential site from pollution or siltation of the waterway, or adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats. The development will contribute to achieving the objective for the zone in which the land is located.

## **6. Earthworks**

The application involves considerable excavation, so an assessment has been carried out under matters raised in clause 6.10 in NSLEP 2013 as follows:

The site is located on sloping ground and therefore construction of the garage and rumpus room will require excavating below the existing ground surface. The maximum depth of excavation for the garage will be in the order of 2.5 metres and construction of the rumpus room will require excavating up to 3.5 metres below the existing ground surface. Where the garage meets the rumps the excavation depth will likely increase in the order of 6 metres. The external walls of the existing dwelling will remain, with the excavation of the garage and rumpus room extending up to the existing external walls and the party wall with No.3, which is also to remain.

A geotechnical report submitted, has assessed and considered various construction methods for excavation adjacent to the party walls.

Clause 6.10 (3) of NSLEP requires a number of matters to be considered prior to granting consent for earthworks, and these are assessed below.

**(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:**

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

**(i) drainage patterns and soil stability in the locality of the development,**

The majority of the earthworks proposed within this application are to take place under the footprint of the existing building and will therefore be contained by the existing structure above. Sediment control details have been submitted and conditions are also proposed relating to sediment control, to protect the environment from the effects of sedimentation. (*refer to Conditions C8, E11, E12*).

A Geotech Report by Green Geotechnics Pty Ltd dated 29 September 2020, submitted with the application, has provided recommendations to manage the excavation aspects of the development. A number of conditions are proposed to ensure the stability of the adjoining dwelling at 3 Little Wonga Road is not compromised (*refer to Conditions C3, C4, C5, C6, C7*)

**(ii) natural features of, and vegetation on, the site and adjoining land,**

The proposed development would not result in the loss of any significant trees. The natural features of the site including vegetation would generally be protected through applicable consent conditions.

***(b) the effect of the development on the likely future use or redevelopment of the land,***

The site is residential in nature, and this is unlikely to change in the foreseeable future. The development is unlikely to impact negatively on the future use or development of the land.

***(c) the quality of the fill or the soil to be excavated, or both,***

The excavated material is unlikely to be contaminated given that the site has historically been used for residential purposes.

***(d) the effect of the development on the existing and likely amenity of adjoining properties,***

The effect of the development on the amenity of surrounding residents has been considered and is acceptable with proposed privacy screens on all balconies, to avoid a loss of visual and maintain privacy for 3 Little Wonga Road and 7 Little Wonga Road.

***(e) the source of any fill material and the destination of any excavated material,***

The application confirms that excavated fill would be disposed of at an approved waste facility, and a condition is proposed relating to imported fill (*refer to Condition G6*).

***(f) the likelihood of disturbing Aboriginal objects or relics,***

Applicable consent conditions will be imposed to protect any relic discovered during different stages of the development.

***(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,***

The application is accompanied by a stormwater plan which confirms that the development will connect into the existing drainage system. Given that most of the earthworks are to take place within the building footprint it is unlikely that there would be any adverse impact on waterways, drinking water or environmentally sensitive areas, subject to conditions relating to sediment control, to protect the environment from the effects of sedimentation (*refer to Conditions C11, C12*).

***(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.***

Sediment control plan submitted as part of the application will be supported further by consent conditions relating to sediment control, to protect the environment from the effects of sedimentation (*refer to Conditions C8, E11, E12*).

A Geotechnical Report by Green Geotechnics Pty Ltd dated 29 September 2020, was submitted with the application, which concludes that the proposed development can be constructed with recommendations to be following at every construction stage to occupation of the dwelling.

The proposal is found acceptable on balance considering the topography of the site and subject to consent conditions.

## 7. Vehicular access

A double garage is proposed in the subject application. The vehicular access to the proposed garage is from Little Wonga Road. The site has a narrow and steep nature of Little Wonga Road, there would be adequate space for other vehicles (including emergency vehicles) to enter the site, and manoeuvre in and out of the garage, and for the neighbours at 3 Little Wonga Road to access their parking area.

A construction traffic management plan to be conditioned will ensure construction works do not unreasonably inconvenience other residents around the site.

### NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

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

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
<b>1.2 Social Amenity</b>		
<b>1.2.2 Maintaining Residential Accommodation</b>		The proposal would not change the population mix and the level of residential accommodation available within the locality and would not affect the supply of affordable housing and housing for seniors or people with disabilities.
<b>1.3 Environmental Criteria</b>		
<b>1.3.1 Topography</b>	Yes	<p>The application proposes a new rumpus room, which would involve excavating to 3.5 metres below ground level, and a new garage involving excavation up to 2.6m metres below existing ground level. The proposal also involves excavation and earthworks alongside the strata boundary with 3 Little Wonga Road, and as such the development does not comply with NSDCP controls. However, the proposal is acceptable on balance in the site circumstances subject to conditions as discussed below:</p> <ul style="list-style-type: none"> <li>• The proposed garage is a non-habitable space, and whilst the rumpus room is to be habitable, it is not a main living area or sleeping space and would be likely to comply with minimum NCC requirements in terms of light and ventilation.</li> <li>• The proposed excavation being underground would not noticeably alter the existing landform and topography of the site as the works are largely located within the hillside under the building.</li> <li>• The proposed sediment control measures submitted together with consent conditions will ensure better management and protection of the environment from the effects of sedimentation (<i>refer to Conditions C8, E11, E12</i>).</li> <li>• A Geotechnical Report by Jack Hodgson Consultants Pty Ltd dated 4th April 2018, submitted with the application, which concludes that the proposed development can be constructed with an acceptably low level of risk.</li> <li>• A more detailed Geotechnical Report has been submitted and is found satisfactory.</li> <li>• A number of other conditions are proposed to ensure the development does not adversely affect the structural integrity of the adjoining property at 3 Little Wonga Road (<i>refer to Conditions C3, C4, C5, C6</i>)</li> </ul>



<b>1.3.2 Bushland</b>	Yes	The property is in close proximity to bushland, and an assessment of the development with reference to Section 15 'Bushland' in NSDCP is set out later in this report.
<b>1.3.3 Bush Fire Prone Land</b>	N/A	The site is not identified as bush fire prone.
<b>1.3.4 Foreshore Frontage</b>	Yes	The site is located approximately 70m to Willoughby Creek and the proposed works will not cause adverse impacts to the foreshore. The proposal is contained wholly within the FRB footprint and will not alienate public access to foreshores by the location of foreshore structures.
<b>1.3.6 Views</b>	Yes	<p>The subject property and other properties along little Wonga Road have views towards the surrounding trees and Brightmore Reserve to the west and southwest, and a filtered water view to the northwest. The proposed development is unlikely to material affect views from any neighbour as discussed below.</p> <p>Views impact is not significant for the proposed site and adjoining properties have maintained views from their balconies. Having all properties set on higher levels, they would not experience any loss of view as they are set at a higher level than the proposed extensions and would not materially affect the view.</p>
<b>1.3.7 Solar Access</b> <ul style="list-style-type: none"> <li>• More than 3 hours between 9am – 3pm</li> <li>• RFB – 70% of dwellings 2hrs solar access</li> </ul>	Yes	The proposed development is unlikely to result in any loss of solar access for any neighbour given the scale and siting of the proposed works. The submitted Shadow Plans indicate the proposed works would largely fall within existing shadows. New shadows are considered minor and would fall on the road and on the area between the subject site and the property to the south. No habitable rooms or outdoor living areas would be materially affected. The public realm would also not be affected given the small scale of the proposed works in comparison to the bulk of the existing building.
<b>1.3.8 Acoustic Privacy</b> <ul style="list-style-type: none"> <li>• Living areas Day/Night <math>\leq</math> 40_dBA</li> <li>• Sleeping areas Day/Night <math>\leq</math>35_dBA</li> </ul> <b>1.3.10 Visual Privacy</b> <ul style="list-style-type: none"> <li>• Roof top terraces less than 50% of the floor area below or &gt; than 18m<sup>2</sup></li> </ul>	Yes	<p>The proposed development is unlikely to result in an undue loss of privacy for any neighbour subject to conditions as discussed below.</p> <ul style="list-style-type: none"> <li>• As discussed earlier in this report, the works to the top (fourth) level of the building would not result in any privacy impacts given that the windows face the trees and reserve to the west rather than any neighbour.</li> <li>• The re-built balcony at third storey level replaces the existing balcony with the same dimensions separated by 9m from the open balcony at 7 Little Wonga Road. A privacy screen proposed to the north will prevent overlooking into the adjoining property at 3 Little Wonga Road.</li> <li>• As the re-built third storey balcony is to be the same size as it is currently, it is unlikely that any existing noise impacts would be intensified.</li> </ul>

		<ul style="list-style-type: none"> <li>The proposed deck above the proposed garage extension would be located immediately alongside an existing studio space within the lower level of 3 Little Wonga Road adjoining to the immediate northwest and will be located some 9 metres from 7 Little Wonga Road to the southeast, which has balconies on both the ground and first floors. A condition is proposed for a privacy screen to be provided to both the northwestern and southeastern edges of the new deck to avoid visual privacy impacts for these neighbours (<b>refer to Condition C12</b>)</li> <li>The proposed deck above the proposed garage extension has an area of 20.9 sq.m, which is larger than the existing 18.48m<sup>2</sup> balcony above, and larger than the existing lower level balcony alongside the site at 7 Little Wonga Road which is approximately 17m<sup>2</sup> in area. To be consistent with other development around the site, a condition is proposed to reduce the size of the new deck to match that of the existing balcony above (<b>refer to Condition C1</b>). Subject to this condition, noise impacts from the deck are acceptable on balance given the existing development around the site and the location of the deck at the front of the property away from the private amenity areas to the rear.</li> <li>The proposed new deck at the rear of the property is provided with a privacy screen to its northwestern side which is adequate to prevent direct or close overlooking of 3 Little Wonga Road. This deck will not overlook any other neighbour.</li> </ul> <p>No other properties around the subject site would be materially affected in terms of visual and acoustic privacy given the distance between the proposed works and adjoining neighbouring properties.</p>																									
<b>1.4 Quality built form</b>																											
<b>1.4.1 Context</b>		The proposed alterations and additions maintain the built form of the attached dual occupancy dwelling in its established residential context.																									
<b>1.4.3 Streetscape</b>		The proposed alterations and additions do not increase the building height and continues to contribute and maintains the scale and bulk of low-density dwellings within the streetscape.																									
<b>1.4.5 Siting</b>		The proposed development will not alter or diminish the siting of the existing attached dwelling in the street and the immediate surrounding low-density zone area.																									
<b>1.4.6 Setback – Side</b>  <b>P1 Front setback</b> <ul style="list-style-type: none"> <li>To match adjoining properties.</li> </ul> <b>P5 Rear Setback – Rear</b> <ul style="list-style-type: none"> <li>To match adjoining properties.</li> </ul> <b>P7 Laneways</b> <b>P8 Building Separation</b>		<table border="1"> <thead> <tr> <th>Elevation</th> <th>Existing</th> <th>Proposed</th> <th>Control</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>Basement/First Storey - SE Elevation</td> <td>N/A</td> <td>2.36m</td> <td>900mm</td> <td>Yes</td> </tr> <tr> <td>Second Storey - SE Elevation</td> <td>2.36m</td> <td>2.36m</td> <td>1.5m</td> <td>Yes</td> </tr> <tr> <td>Third Storey - SE Elevation</td> <td>2.36m</td> <td>2.36m</td> <td>2.5m</td> <td>No*</td> </tr> <tr> <td>Fourth Storey - SE Elevation</td> <td>2.36m</td> <td>2.36m</td> <td>2.5m</td> <td>No*</td> </tr> </tbody> </table>	Elevation	Existing	Proposed	Control	Complies	Basement/First Storey - SE Elevation	N/A	2.36m	900mm	Yes	Second Storey - SE Elevation	2.36m	2.36m	1.5m	Yes	Third Storey - SE Elevation	2.36m	2.36m	2.5m	No*	Fourth Storey - SE Elevation	2.36m	2.36m	2.5m	No*
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		The existing building line is to remain unaltered. The proposed works comply at the northwestern side boundary of the site which is beyond 3 Little Wonga Road on the other side of the strata titled site.
<b>1.4.7 Form Massing Scale</b> <ul style="list-style-type: none"> <li>Floor to ceiling height 2.7m</li> </ul>	Yes	The proposed finished floor height of the rumpus room is 3.6m. The finished floor height of the proposed garage is 2.67m. As a non-habitable room, it complies with the minimum height requirement of 2.1m in accordance with the BCA. The proposed additions and alterations is considered to be acceptable and in keeping with the form, mass, and scale of the existing dwelling and adjoining sites.
<b>1.4.8 Built Form Character</b>	Yes	The proposed additions and alterations is considered to be acceptable and in keeping with the form, mass, and scale of the existing dwelling and adjoining sites.
<b>1.4.9 Dwelling Entry</b>	Yes	The resulting development is generally in keeping with the built form character of the area.
<b>1.4.10 Roofs</b>	Yes	Existing roof is retained.
<b>1.4.12 Materials</b>	Yes	The proposed materials and colours are acceptable.
<b>1.4.13 Balconies – Apartments</b> <ul style="list-style-type: none"> <li>Min depth – 2m</li> <li>Min area – 8m<sup>2</sup></li> </ul>	Yes	The proposed balconies are integrated into the overall architectural form and detail of the balcony.
<b>1.4.14 Front Fences</b> <ul style="list-style-type: none"> <li>No greater than 1m from front building line &amp; along front boundary</li> </ul>	Yes	The property has no front fence, which is characteristic of all properties along this section of Little Wonga Road. No changes to this are proposed, which is acceptable given the existing streetscape.
<b>1.5 Quality Urban Environment</b>		
<b>1.5.1 High Quality Residential Accommodation</b>	Yes	The proposed alterations and additions will increase the quality of the residential spaces within the dwelling for the enjoyment of the occupants.
<b>1.5.3 Safety and Security</b> <ul style="list-style-type: none"> <li>No more than 10 dwellings per entry/lobby</li> </ul>	Yes	The proposed works will maintain the level of personal safety for people who use or visit the building. The development maintains a high number of rooms facing the street to maintain natural surveillance. The proposal complies in terms of safety and security.
<b>1.5.4 Vehicle Access and Parking</b> <ul style="list-style-type: none"> <li>Part B – Section 10 – Car parking</li> <li>Limit width of vehicle access- 2.5m</li> </ul>	Yes	A proposed garage for two vehicles is acceptable and will improve the current parking arrangement as cars will no longer be parked at the front of the property
<b>1.5.5 Site Coverage</b>	Yes	The maximum site coverage for dual occupancy is 45%. The proposed site cover is 38.87%
<b>1.5.6 Landscape Area</b>	Yes	A landscape Plan is provided for the site and the proposed development.
<b>1.5.7 Excavation</b> <ul style="list-style-type: none"> <li>Min 50% unexcavated area at the rear</li> <li>Min 30% unexcavated area at the front</li> <li>Provision of min 1.5 wide landscaped strip along side boundaries</li> </ul>	Yes	The proposed excavation is found acceptable and is supported by the Geotech Report and applicable consent conditions. The Geotechnical report noted that underpinning of the existing structure may be required where excavations are undertaken in the subfloor of the residence. Details of any temporary support can be outlined and approved by a structural engineer before any excavation or demolition occurs. This will be conditioned to the consent to bed provided prior to issuing a construction certificate (CC)
<b>1.5.8 Landscaping</b> <ul style="list-style-type: none"> <li>Planters – 110mm (diameter) x depth 135mm</li> <li>Trees should provide 50% canopy cover over landscaped areas at maturity</li> </ul>	Yes	A proposed sloping landscaping strip terracing of the steep landscaped area to the south side of the dwelling, for stabilisation of that area to be included within the sediment control condition, and for protection of trees.

<b>1.5.9 Front Gardens</b>	Yes	The property has no front garden. Given the limited setback from the Little Wonga Road and the paved nature of all front garden areas along Little Wonga Road, there is little practical opportunity to incorporate any soft landscaping into the front garden area, and the proposal complies with the objectives of the control.																									
<b>1.5.10 Private and Communal Open Space</b> <ul style="list-style-type: none"> <li>Private open space at ground level – 4m min dimension &amp; 2m above ground level</li> <li>Must be provided off living areas</li> <li>Min communal open space between 25% &amp; 30% of the site area</li> </ul>		<table border="1"> <thead> <tr> <th>Site Area</th> <th>Existing</th> <th>Proposed</th> <th>Control</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>611.8m<sup>2</sup></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Site Coverage</td> <td>34.7%</td> <td>38.8%</td> <td>40% (max)</td> <td>Yes</td> </tr> <tr> <td>Landscaped Area</td> <td>40.3%</td> <td>42.2%</td> <td>40% (min)</td> <td>Yes</td> </tr> <tr> <td>Unbuilt Upon Area</td> <td>15.4%</td> <td>18.83%</td> <td>20% (max)</td> <td>Yes</td> </tr> </tbody> </table>	Site Area	Existing	Proposed	Control	Complies	611.8m <sup>2</sup>					Site Coverage	34.7%	38.8%	40% (max)	Yes	Landscaped Area	40.3%	42.2%	40% (min)	Yes	Unbuilt Upon Area	15.4%	18.83%	20% (max)	Yes
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Private open space and communal open space is provided at the rear of the site.																											
<b>1.5.13 Garbage Storage</b>	Yes	Garbage storage area provided.																									
<b>1.5.14 Site Facilities</b>	Yes	Adequate storage areas are provided within the dwelling.																									
<b>1.6 Efficient Use of Resources</b>																											
<b>1.6.1 Energy Efficiency</b>	Yes	A valid BASIX certificate has been provided demonstrating efficient use of resources.																									
<b>1.6.2 Passive Solar Design</b>	Yes	The proposed works provide sufficient solar access to the apartment living areas and outdoor spaces.																									
<b>1.6.4 Natural Ventilation</b>	Yes	The existing habitable rooms maintain its direct access to fresh air and the proposed internal configurations. The proposed balconies and windows will continue to promote air circulation, ventilation and comfort.																									
<b>1.6.8 Stormwater Management</b>	Yes	The proposed development will connect into the existing stormwater system. A Stormwater Concept Plan is provided for the development to manage stormwater on site and flows off the site.																									
<b>1.6.9 Water Management and Minimisation</b>	Yes	A Waste Management Plan has been submitted to minimise and manage material usage and waste during building, construction, and demolition.																									

### Relevant Planning Area 5.4 Benelong and Northern Foreshore Neighbourhoods – Part C of NSDCP 2013

The subject site is located within the Northern Foreshores Neighbourhood. The proposed development has been considered in accordance with the character statement for the Northern Foreshores Neighbourhood and is found satisfactory with regards to the provisions relating to the existing and desired character of the area s discussed throughout this report.

### LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020. The proposed development attracts a Section 7.12 contribution. A condition is recommended to ensure compliance with Council’s Contributions Plan.

## ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

## SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Willoughby Bay Precinct. Council received one (1) where the following matters were raised: -

- *Concern raised on the structural integrity of the partition wall to be maintained throughout construction'.*

Planner response: the proposed works will be supported independently of the party wall and will not rely on the party wall for lateral and/or vertical wall support. The geotechnical report submitted, has assessed, and considered various construction methods for excavation adjacent to the party walls. The external walls of the existing dwelling will remain, with the excavation of the garage and rumpus room extending up to the existing external walls and the party wall with No.3, which is also to remain. The recommendations presented in the Geotechnical report include specific issues to be addressed during the construction phase of the project. Therefore, the structural integrity of the partition wall will be maintained throughout construction and use of the dwelling.

## PUBLIC INTEREST

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

## **SUITABILITY OF THE SITE**

The proposal would be located in a R2 (Low Density) zone where alterations and additions are a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

## **CONCLUSION**

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

The application proposes alterations and additions that is a permissible form of development in the R2 (Low Density) Residential zone.

The Clause 4.6 written submission submitted by the applicant is acceptable for the following reasons:

- The development application has been assessed against the North Sydney Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and generally found to be satisfactory.
- From the reasons listed above, the proposal is unlikely to cause adverse amenity impacts to adjoining properties. The proposed development maintains and enhances views to the Kurraba Point foreshore, and Sydney Harbour. The proposal does not impact potential view loss for surrounding developments.
- The proposed development is contained wholly within the residential flat building. The curtilage of the existing residential flat building is assessed and found that the subject site is visually separated from the two heritage items and the proposed works will not impact the curtilage, setting or views to the heritage items in the vicinity of the site.
- There is no change to the built form and scale of the residential flat building. The proposed pergola and retractable awning and internal works are proposed within the built form and scale of the building. The non-compliance with the building height control is triggered by the existing height and the proposed pergola does not increase the height and is considered acceptable and unlikely to materially impact the amenity of surrounding properties and is not highly visible from the public domain.
- The written request seeking a variation to the building height control is considered to be well founded as it has demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

Council received one (1) submission that raised concerns about the structural integrity of the party wall that have been discussed in this report and addressed with appropriate conditions of consent.

Having regard to the provisions of Section 4.15 (1) of the Environmental Planning & Assessment Act 1979, the proposed development will not result in any unreasonable amenity or environmental impacts. The application is considered satisfactory and is recommended for approval.

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

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

### **RECOMMENDATION**

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

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 Height of Building and grant consent to Development Application No. # 51/2023 for alterations and additions to the existing dwelling for a new garage, lift, rumpus room, and balconies on land at 5 Little Wonga Road, Cremorne.

**JOSIE MAEJIIS**  
**ASSESSMENT OFFICER**

**DAVID HOY**  
**TEAM LEADER (ASSESSMENTS)**

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**STEPHEN BEATTIE**  
**MANAGER DEVELOPMENT SERVICES**

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**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**5 LITTLE WONGA ROAD, CREMORNE**  
**DEVELOPMENT APPLICATION NO. 51/23**

**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 endorsed with Council's approval stamp and other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

Plan #	Rev No.	Description	Prepared by	Dated
DA-1	Rev-K	Cover Sheet	Council Approval Design	19/09/21
DA.2	Rev-K	3D Render	Council Approval Design	19/09/21
DA.4	Rev-l	Site Plan	Council Approval Design	21/01/19
DA-5	Rev-l	Site Analysis & Landscaping	Council Approval Design	21/01/19
DA.6	Rev-l	Site Coverage	Council Approval Design	21/01/19
DA.7	Rev-l	Sediment Control Details	Council Approval Design	21/01/19
DA.8	Rev-K	Floor Plan First Level	Council Approval Design	19/09/21
DA.9	Rev-K	Floor Plan Second Level	Council Approval Design	19/09/21
DA.10	Rev-K	Floor Plan 3 <sup>rd</sup> Level	Council Approval Design	19/09/21
DA.11	Rev-K	Floor Plan 4 <sup>th</sup> Level	Council Approval Design	19/09/21
DA.12	Rev-K	Elevations 1	Council Approval Design	19/09/21
DA.13	Rev-K	Elevations 2	Council Approval Design	19/09/21
DA,14	Rev-K	Sections 1	Council Approval Design	19/09/21
DA.17	Rev-K	Scheduling	Council Approval Design	19/09/21
A485156		BASIX Certificate	Jan Taljaard	05/02/2023
30847 – H1		Stormwater Concept Plan	Jack Hodgson Consultant	07/05/18
		Waste Management Plan	Council Approval Design	Feb 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 plans endorsed with Council's approval stamp, 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 Certifier.



**5 LITTLE WONGA ROAD, CREMORNE  
DEVELOPMENT APPLICATION NO. 51/23**

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

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

**No Demolition of Extra Fabric**

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

(Reason: To ensure compliance with the approved development)

**External Finishes and Materials**

A4. External finishes and materials and colours shall be provided in accordance with the submitted schedule shown on Drawing DA17 listed in Condition A1 above, except where modified by the conditions of this consent. Substitution of materials must not be undertaken, except where otherwise approved in writing by Council.

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

***Ancillary Matters to be Completed Prior to Issue of Construction Certificate***

**Construction and Traffic Management Plan (Major DAs and sites with difficult access)**

B1. Prior to issue of any Construction Certificate, a Construction and Traffic Management Plan must be prepared. The following matters must be specifically addressed in this Plan:

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
  - i. Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways;
  - ii. Signage type and location to manage pedestrians in the vicinity;
  - iii. The locations of any proposed Work Zones in the frontage roadways;
  - iv. Locations and type of any hoardings proposed;
  - v. Area of site sheds and the like;
  - vi. Location of any proposed crane standing areas;
  - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
  - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and

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- ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
- b) A Traffic Control Plan(s) for the site incorporating the following:
- i. Traffic control measures proposed in the road reserve that are in accordance with the RMS publication "Traffic Control Worksite Manual" and designed by a person licensed to do so (minimum RMS 'red card' qualification).
  - ii. The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each.
- c) A detailed description and map of the proposed route for vehicles involved in spoil removal, material delivery and machine floatage must be provided detailing light traffic roads and those subject to a load or height limit must be avoided at all times.
- A copy of this route is to be made available to all contractors and must be clearly depicted at a location within the site.**
- d) A Waste Management Plan in accordance with the provisions of Part B Section 19 of the North Sydney DCP 2013 must be provided. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process;
- (e) Evidence of RMS concurrence where construction access is provided directly or within 20m of an Arterial and/or Classified Road;
- (f) A schedule of site inductions to be held on regular occasions and as determined necessary to ensure all new employees are aware of the construction management obligations. These must specify that construction-related vehicles to comply with the approved requirements; and
- (g) For those construction personnel that drive to the site, the Site Manager shall attempt to provide on-site parking so that their personnel's vehicles do not impact on the current parking demand in the area.

A suitably qualified and experienced traffic engineer or consultant must prepare the Construction and Traffic Management Plan.

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As this plan has a direct impact on the local road network, it must be submitted to and reviewed by Council prior to the issue of any Construction Certificate. A certificate of compliance with this condition from Council's Development Engineers as to the result of this review must be obtained and must be submitted as part of the supporting documentation lodged with the Principal Certifier for approval of the application for a Construction Certificate.

The construction management measures contained in the approved Construction and Traffic Management Plan must be implemented prior to the commencement of, and during, works on-site.

All works must be undertaken in accordance with the approved Construction and Traffic Management Plan.

**A copy of the approved Construction and Traffic Management Plan must be kept on the site at all times and be made available to any officer of the Council on request.**

Notes:

- 1) To apply for certification under this condition, an '*Application to satisfy development consent*' must be prepared and lodged with North Sydney Council. North Sydney Council's adopted fee for certification of compliance with this condition must be paid upon lodgement.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction and Traffic Management Plan be lodged with Council as early as possible.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed in the condition above.

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

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

- C1. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.
  - 1) The proposed new deck at second storey level shall be modified to match the external extent of the re-built balcony above on level three with maximum dimensions of 7.7m width x 2.4m depth.

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- 2) The steep area of new landscaping to the south side of the dwelling shall be terraced and densely planted with locally indigenous plants selected from the Middle Harbour indigenous species list available on Council's website.
- 3) No works including no garden, no deck, no steps. shall occur at the rear of the site in the vicinity of the rockface,

Plans and specifications which comply with this condition shall be submitted to the Certifying Authority for approval prior to the issue of a 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 visual and aural privacy impacts are minimised, and to ensure the deck matches the scale and proportions of the existing building and that planting is suitable given the close proximity of the site to nearby bushland, and to conserve archaeological sites, and Aboriginal objects which may exist in this location)

**Dilapidation Report Damage to Public Infrastructure**

- C2. 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 Principal Certifier 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 Principal Certifier with submission of the Construction Certificate documentation.

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

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**Dilapidation Report Private Property (Excavation)**

- C3. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

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

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

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

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

(Reason: To record the condition of property/ies prior to the commencement of construction)

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

- C4. A photographic survey and dilapidation report of adjoining properties No's. 3 Little Wonga Road Cremorne, 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, **MUST BE** submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, 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.

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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 Adjoining Properties – Excavation Works**

- C5. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties No's. 3 Little Wonga Road which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

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

**Structural Adequacy of Existing Building**

- C6. 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 Principal Certifier for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

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

**Geotechnical Report**

- C7. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:

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- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
- b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
- c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
- d) the existing groundwater levels in relation to the basement structure, where influenced;
- e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
- f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

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

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

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The design principles for the geotechnical report are as follows:

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

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

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

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

**Sediment Control**

- C8. 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.

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



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

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

The Principal Certifier 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**

- C9. A Waste Management Plan is to be submitted for approval by the Principal Certifier 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)

**Maintain Property Boundary Alignment Levels**

- C10. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

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

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

**Stormwater Disposal**

C11. 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 NCC and current plumbing standards and guidelines. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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)

**Stormwater Management and Disposal Design Plan – Construction Issue Detail**

C12. Prior to issue of any Construction Certificate, a site drainage management plan must be prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:

- a) Compliance with NCC drainage requirements, Council's Engineering Performance guide and current Australian Standards and guidelines, including the Plumbing Code of Australia (PCA).;
- b) Stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity existing stormwater lines.
- c) All civil and drainage works within the road reserve must be designed and built in accordance with Council's current "Infrastructure Specification". Engineering plans and specifications, prepared by a qualified civil drainage design engineer must be approved, in writing, by Council's Development Engineer prior to issue of any Construction Certificate. The required documentation must provide engineering construction detail for public infrastructure works that must be completed as part of the approved development.
- d) A digital video inspection recording of completed drainage work within the public domain must be carried out by a suitably qualified person and the recording submitted to Council for review by Council's Development Engineer or Drainage to support the certification. Bonds held by Council will be returned after receipt of satisfactory information.

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- e) The stormwater drainage system shall be designed for an average recurrence interval (A.R.I) of 1 in 20 years.
- f) All redundant stormwater pipelines within the footpath area shall be removed and footpath and kerb shall be reinstated.
- g) pipelines within the footpath area shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres.
- h) the design and installation of the rainwater tank(s) must comply with BASIX and Sydney Water requirements. Overflow from the tank(s) shall be connected by gravity to the stormwater disposal system;
- i) any proposed fence/building structure is to be constructed so as not to impede the natural overland flow ; and
- j) provision is to be made for the collection and disposal in an approved manner of any overland flow entering the subject property or concentrated as a result of the proposed works.
- k) surface inlet pits shall be located to catch surface flows and shall be provided at all pipe junctions, changes in pipe direction exceeding 45 degrees, prior to connection to the public drainage system and shall be of sufficient size to accept the flow.
- l) all sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer shall be submitted with the application for a Construction Certificate.
- m) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.
- n) provide subsoil drainage to all necessary areas with pump out facilities as required.

A site drainage management plan which complies with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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 controlled stormwater management and disposal without nuisance)

**Asbestos Material Survey**

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

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

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

The report must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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)

**Privacy**

- C14. The following privacy devices are to be provided:

- a) Fixed obscure or frosted glass privacy screens with a minimum height of 1.7 metres shall be attached to the to proposed deck (7.7m width x 2.4m depth) on level two under the new balcony (7.7m width x 2.4m depth).
- b) A privacy screen to be provided to the north of the rebuilt balcony on level three to prevent overlooking into the adjoining property at 3 Little Wonga Road.
- c) A privacy screen to be provided on the proposed new deck (at the rear) to its northwestern side to prevent direct overlooking to 3 Little Wonga Road.

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Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier 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 an adequate level of privacy is provided to adjoining property located at 3 Little Wonga Road, Cremorne.

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

- C15. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of **\$5,000** to be held by Council for the payment of cost for any/all of the following:
- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
  - b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and [environmental controls](#)) required in connection with this consent
  - c) remedying any defects in any such public work that arise within 6 months after the work is completed.
  - d) Council reserves the right to retain all bonds on infrastructure works relating to the completion of required Infrastructure work for a 12-month defect liability period. Council may elect to provide a lesser period for minor residential work.

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 Development Engineers or Manager of Development Services.

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:

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- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Principal Certifier 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)

**Asbestos Material Survey C55**

- C16. 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 Principal Certifier as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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)

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**Section 7.12 Development Contributions**

- C17. 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 \$6,190.00.

**Indexation**

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

**Timing of payment**

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

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

- C18. 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>
Council Assets Damage Bond	\$5,000.00
<b>TOTAL BONDS</b>	<b>\$5,000.00</b>

Note: The following fees applicable

<b>Fees</b>	
Local Infrastructure Contributions	\$6,190.00
<b>TOTAL FEES</b>	<b>\$6,190.00</b>

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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**

C19. Under clause 75 of the Environmental Planning & Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate (No. A485156) for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier 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)

**Notice of Proposed Work (Contaminated Land)**

D2. Notice of proposed work must be given to the Council in accordance with Clause 16 of State Environmental Planning Policy No 55—Remediation of Land.

The following additional information must be submitted with the notice to the Council:

- a) Copies of any preliminary investigation, detailed investigation and remediation action plan for the site; and
- b) Contact details for the remediation contractor and any other party responsible for ensuring compliance of remediation work with regulatory requirements.



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Note: 30 days' notice is required for any remediation work. In the case of work required to be carried out immediately under the terms of a remediation order a minimum of two days' notice is required)

(Reason: Protection of the environment, SEPP 55 compliance)

**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 2 days notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

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

**Road Reserve Safety**

- E1. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

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

(Reason: Public Safety)

**Geotechnical Stability during Works**

- E2. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

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

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

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

**Removal of Extra Fabric**

- E3. 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**

- E4. The following must be complied with at all times:
- (a) Materials must not be burnt on the site.
  - (b) Vehicles entering and leaving the site with soil or fill material must be covered.

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(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**

E5. 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)

**Compliance with Construction Noise Management Plan**

E6. All works conducted on site which form part of this development must be carried out in accordance with the submitted Construction Noise Management Plan submitted with the Construction Certificate and all conditions of consent.

(Reason: To ensure noise generating activities are appropriately managed and nearby sensitive receivers protected)

**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)

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

E8. The applicant or the person, company or other entity that is acting upon this consent, 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)

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**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)

**Construction Hours**

- E10. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

<b>Standard Construction Hours</b>		
<b>Location</b>	<b>Day</b>	<b>Hours</b>
<b>All zones (Excl. B3 Commercial Core and B4 Mixed use zone)</b>	Monday - Friday	7.00am - 5.00pm
	Saturday	8.00am - 1.00pm
	Sunday Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above, the EPA Noise Policy for Industry 2017 and any Construction Noise Management Plan required under this consent.

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

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

**Installation and Maintenance of Sediment Control**

- E11. 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**

- E12. 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**

- E13. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of work-place determines the type of amenities required.

Further information and details can be obtained from the Internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

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

**Health and Safety**

- E14. 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)

**Community Information**

- E15. Reasonable measures must be undertaken at all times to keep nearby residents informed about the proposed work, such as by way of signs, leaflets, public meetings and telephone contact numbers, to ensure that adjoining residents are aware of the likely duration of the construction works on the site.

(Reason: To ensure that residents are kept informed of activities that may affect their amenity)

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**Archaeological Discovery During Works**

E16. Should any historical or Aboriginal relic be discovered on the site during demolition, excavation or site preparatory works, all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW must be informed in accordance with the provisions of the Heritage Act 1977 and/or National Parks and Wildlife Act, 1974. Works must not recommence until such time as approval to recommence is given in writing by Council or a permit from the Director of the NPWS is issued.

(Reason: To prevent the unnecessary destruction or removal of unrecorded historical or Aboriginal relics)

**Prohibition on Use of Pavements**

E17. 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**

E18. 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)

**Imported Fill Material**

E19. The only waste derived fill material that may be received at the development site is:

- a) Virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997); and
- b) Any other waste-derived material the subject of a resource recovery exemption under cl. 51A of the Protection of the Environment Operations (Waste) Regulation 2005 that is permitted to be used as fill material.

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Any waste-derived material the subject of a resource recovery exemption received at the development site, must be accompanied by documentation as the material's compliance with the exemption conditions and must be provided to the Principal Certifier on request.

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

**Waste Disposal**

E20. 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**

E21. 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 Certifier for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:

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

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

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

**Construction Certificate**

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

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



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**Occupation Certificate**

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

(Reason: Statutory)

**Critical Stage Inspections**

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

(Reason: Statutory)

**Commencement of Works' Notice**

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

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

**Protection of Public Places**

- F9. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.

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

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

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

**Site Sign**

- F10. 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 Certifier for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

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

**Infrastructure Repair and Completion of Works**

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

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

to the satisfaction of Council Engineers at no cost to Council. Council's development engineer must be contacted to arrange inspections of the completed works in the Public Domain.

(Reason: Maintain quality of Public assets)

**Damage to Adjoining Properties**

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

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

**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 Principal Certifier (and a copy forwarded to Council if it is not the Principal Certifier) 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.

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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)

**Disposal Information**

G5. Upon completion of works and prior to occupation, a report including the following information must be provided to Council's Open Space and Environmental Services Department:

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

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

**BASIX Completion Receipt**

G6. 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)

**Landscaping**

G7. The landscaping shown in the approved landscape plan, DA-5, Rev-I prepared by Council Approval Design, dated 21/01/2019, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

**Damage to Adjoining Properties**

G8. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Principal Certifier (and a copy to Council if it is not the Principal Certifier) certifying:

- a) whether any damage to adjoining properties has occurred as a result of the development;
- b) the nature and extent of any damage caused to the adjoining property as a result of the development;
- c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;

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- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
- e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

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

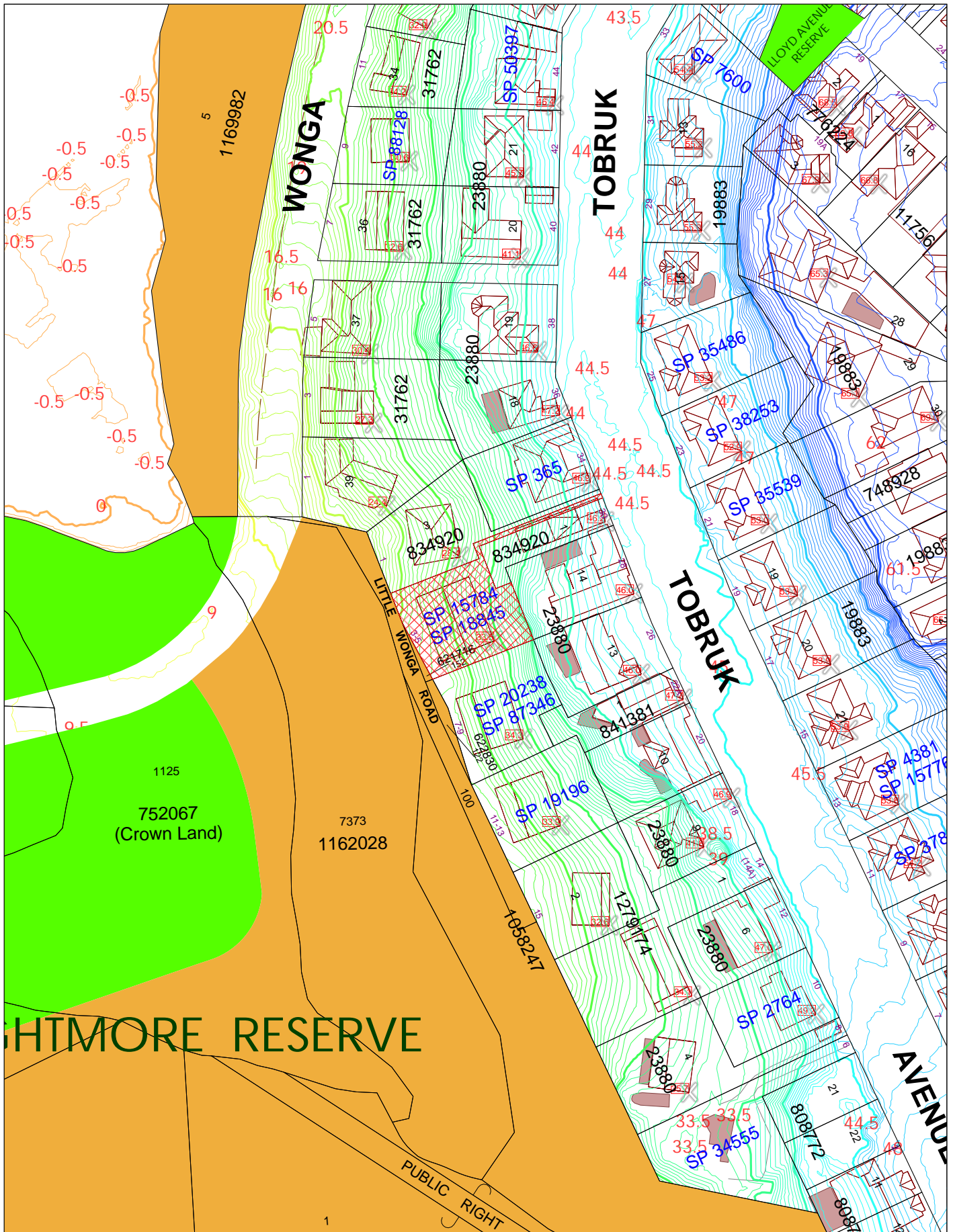
A copy of the report and certification required by this condition must be submitted to Council with the Final Occupation Certificate. All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To record the condition of adjoining properties prior to completion of the development and to facilitate claims against damage)

**Compliance with Certain conditions**

- G9. Prior to the issue of any Occupation Certificate, conditions C1, C12, 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**

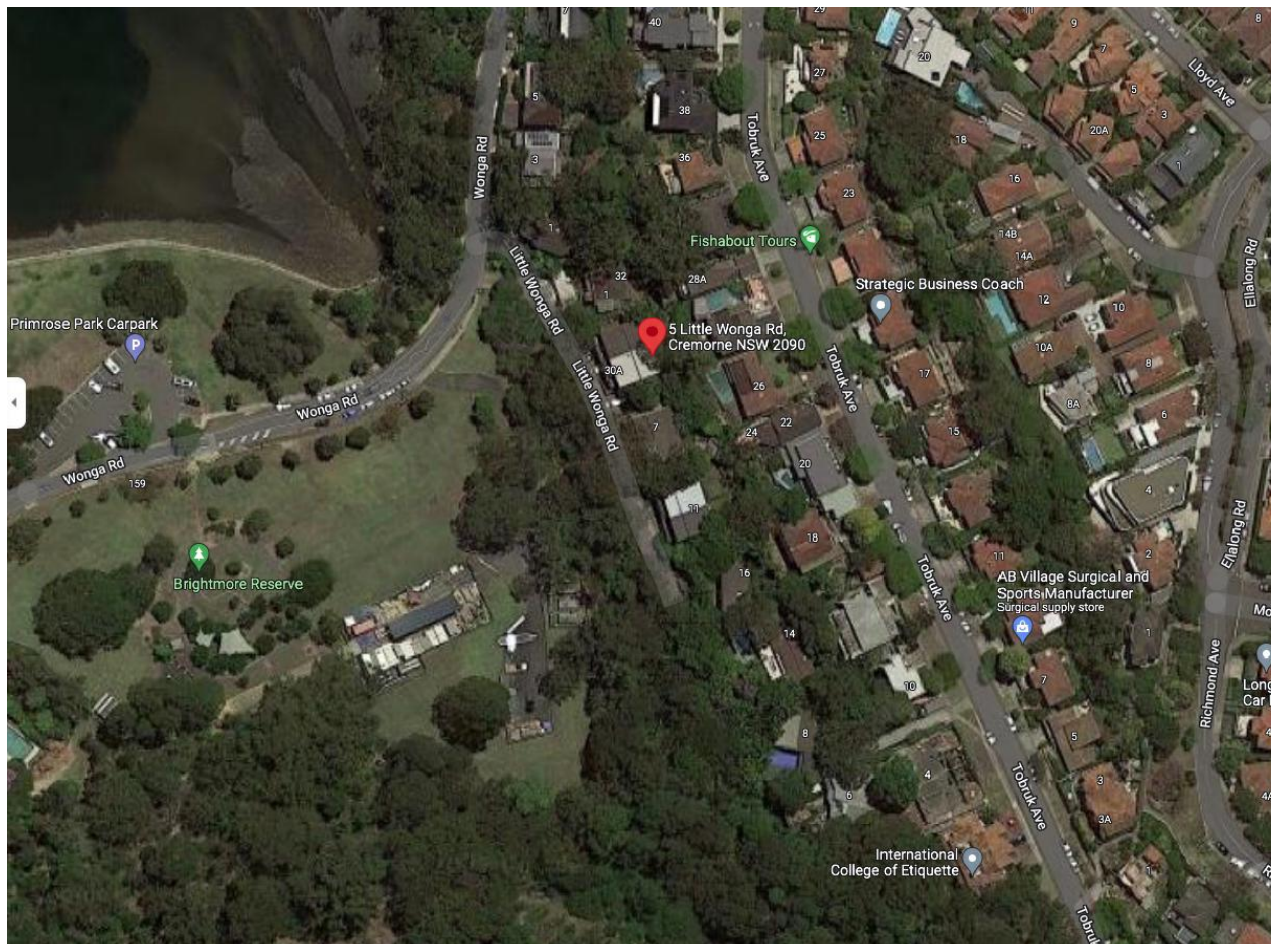
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Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.

Scale: 1:1200 approx.







# DA PLANS - 5 LITTLE WONGA RD, CREMORNE

ID LAYOUT

DA.1 COVER SHEET

DA.2 3D RENDER

DA.3 SITE SURVEY

DA.4 SITE PLAN

DA.5 SITE ANALYSIS

DA.6 SITE COVERAGE

DA.7 SEDIMENT CONTROL

DA.8 FLOOR PLAN 1ST LEVEL

DA.9 FLOOR PLAN 2ND LEVEL

DA.10 FLOOR PLAN 3RD LEVEL

DA.11 FLOOR PLAN 4TH LEVEL

DA.12 ELEVATIONS 1

DA.13 ELEVATIONS 2

DA.14 SECTIONS 1

DA.16 SHADOW DIAGRAMS

DA.17 SCHEDULING

K	REPLACED LIFTSHAFT	19/09/2021
J	CHANGES AS AGREED WITH NO 3	04/06/2021
I	RE-SUBMISSION TO COUNCIL	21/01/2019
H	RUMPUS WINDOW	20/09/2018
G	RFI 27/07/2018	27/07/2018
F	SITE COVERAGE DIAGRAM	06/06/2018
E	CLIENT MINOR CHANGES 2	27/04/2018
D	CLIENT MINOR CHANGES 1	20/04/2018
C	BASIX CERTIFICATE	26/03/2018
B	CHECKING/ AMENDMENTS	14/03/2018
A	DA PLANS - INITIAL	07/03/2018
REV	DETAILS	DATE



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w: www.councilapproval.com.au  
ABN 89 104 442 337  
Bradax Pty Ltd

Client:  
Jan Taljaard

Project:  
Proposed Addition/Alteration for Lot 4 SP18845  
5 Little Wonga Rd, Cremorne, NSW, 2090

Figured dimensions take precedence over scale dimensions.  
Contractors must verify all dimensions on site before commencing any work or making shop drawings.

Concrete	Tile
Brick	Natural stone
Steel	Cement board
Glass	Timber
Aluminium	

Drawing name: COVER SHEET

Drawing Number: DA.1

Scale: NO SCALE Revision: K



K	REPLACED LIFTSHAFT	19/09/2021
J	CHANGES AS AGREED WITH NO 3	04/06/2021
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- Steel
- Glass
- Aluminium
- Tile
- Natural stone
- Cement board
- Timber

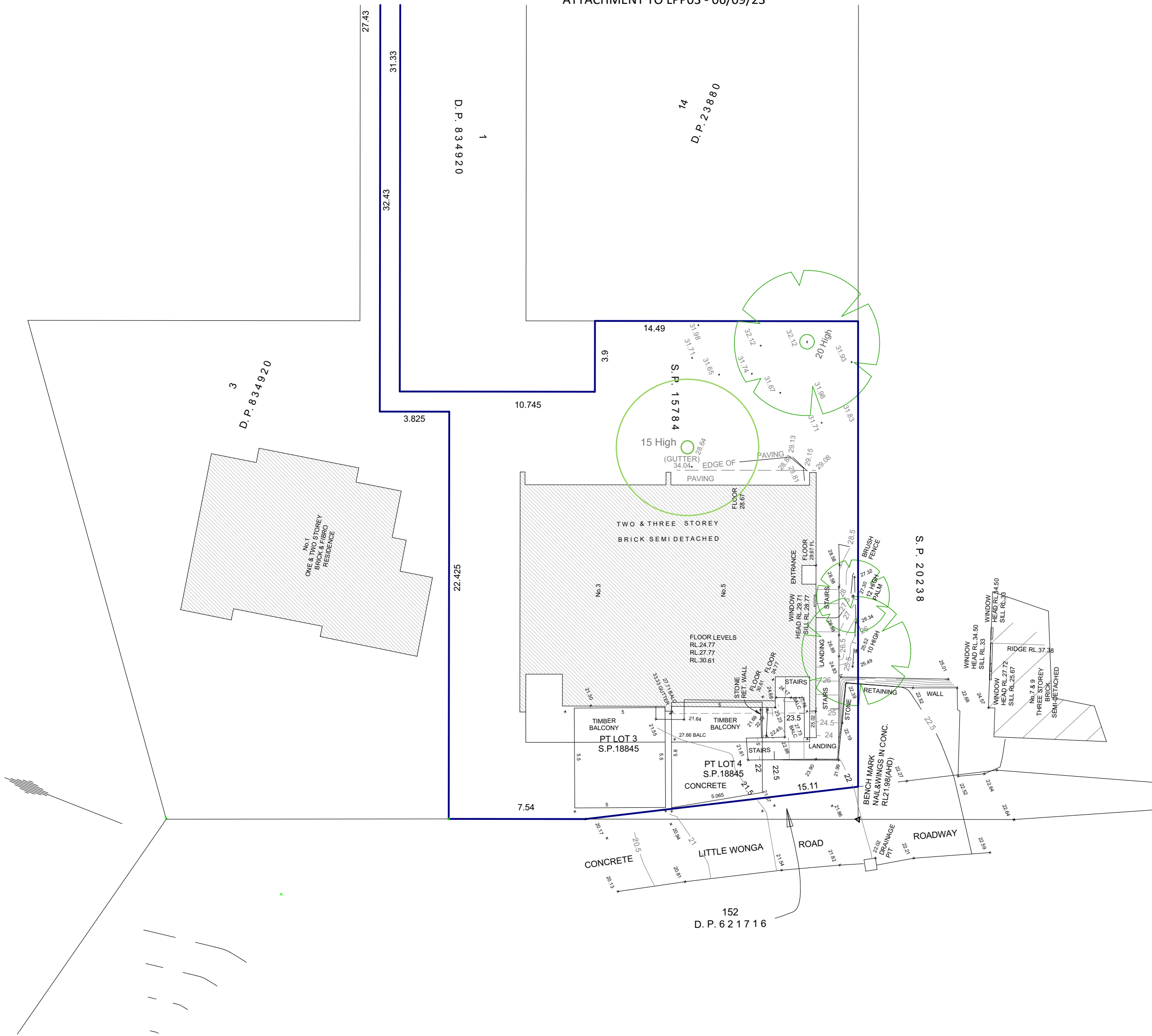
Drawing name: 3D RENDER

Drawing Number: DA.2

Scale: NO SCALE Revision: K



REV.	DETAILS	INT	DATE
I	RE-SUBMISSION TO COUNCIL	JA	21/01/19
H	RUMPUS WINDOW	JA	20/09/18
G	RFI 27/07/18	JA	29/08/18
F	SITE COVERAGE DIAGRAM	JA	06/06/18
E	CLIENT MINOR CHANGES 2	JA	27/04/18
D	CLIENT MINOR CHANGES 1	JR	20/04/18
C	BASIX CERTIFICATE	JA	26/03/18
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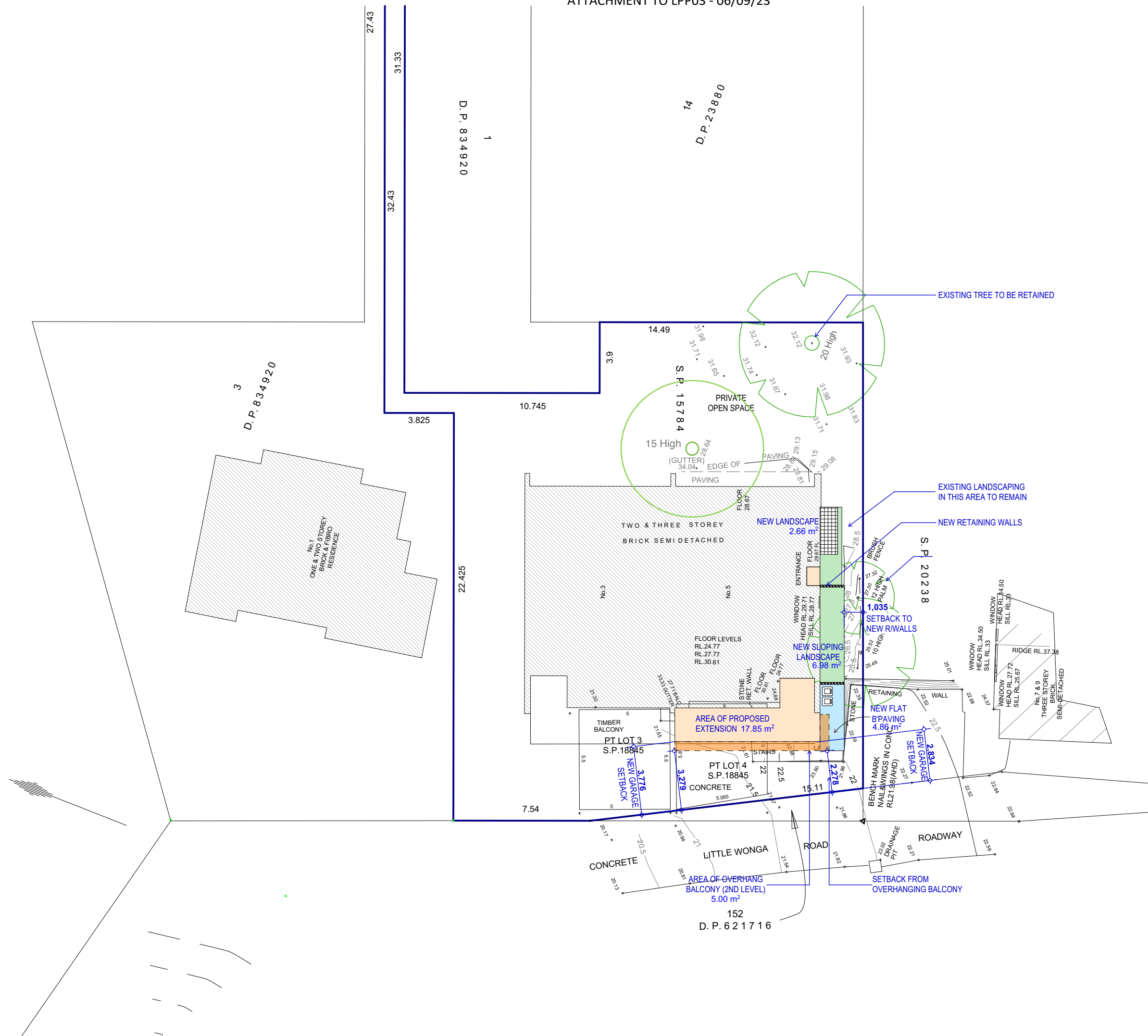
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 drawn by **JA** checked **NL/TK**

drawing name  
**SITE SURVEY**

drawing number **DA.3** scale **1:200** revision **1**

I	RE-SUBMISSION TO COUNCIL	JA	21/01/19
H	RUMPUS WINDOW	JA	20/09/18
G	RFI 27/07/18	JA	29/08/18
F	SITE COVERAGE DIAGRAM	JA	06/06/18
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REV.	DETAILS	INT	DATE



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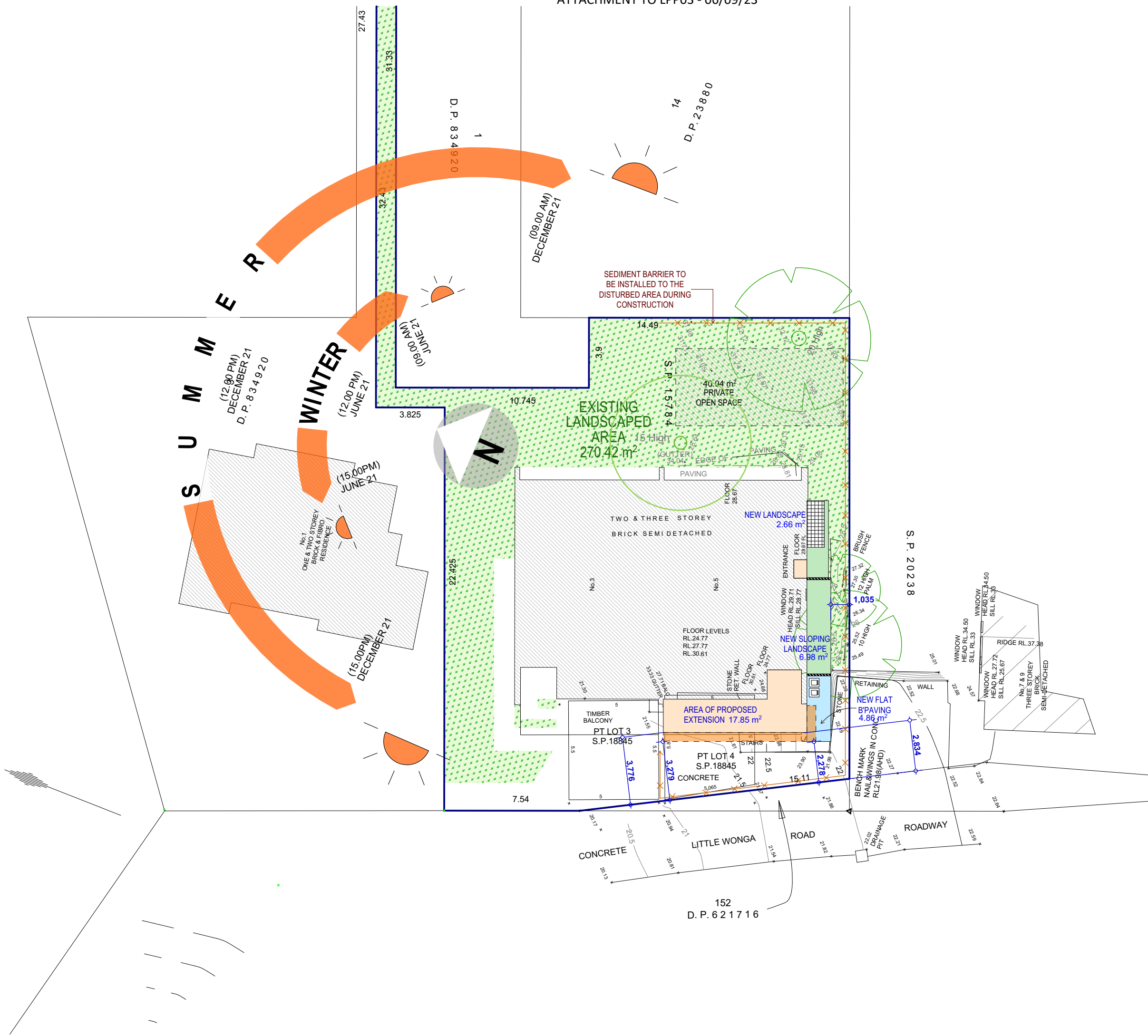


drawn by  
 JA checked  
 NL/TK

drawing name  
**SITE PLAN**

drawing number  
 DA.4 scale  
 1:200 revision  
 |

REV.	DETAILS	INT	DATE
I	RE-SUBMISSION TO COUNCIL	JA	21/01/19
H	RUMPUS WINDOW	JA	20/09/18
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drawing name  
**SITE ANALYSIS AND LANDSCAPING**

drawing number  
**DA.5**

scale  
**1:200**

revision  
**1**

drawn by  
**JA**

checked  
**NL/TK**

I	RE-SUBMISSION TO COUNCIL	JA	21/01/19
H	RUMPUS WINDOW	JA	20/09/18
G	RFI 27/07/18	JA	29/08/18
F	SITE COVERAGE DIAGRAM	JA	06/06/18
E	CLIENT MINOR CHANGES 2	JA	27/04/18
D	CLIENT MINOR CHANGES 1	JR	20/04/18
C	BASIX CERTIFICATE	JA	26/03/18
B	CHECKING/ AMENDMENTS	JA	14/03/18
A	DA PLANS - INITIAL	JA	07/03/18
REV.	DETAILS	INT	DATE



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**Jan Taljaard**

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drawing name  
**SITE COVERAGE DIAGRAM**

drawing number  
 DA.6

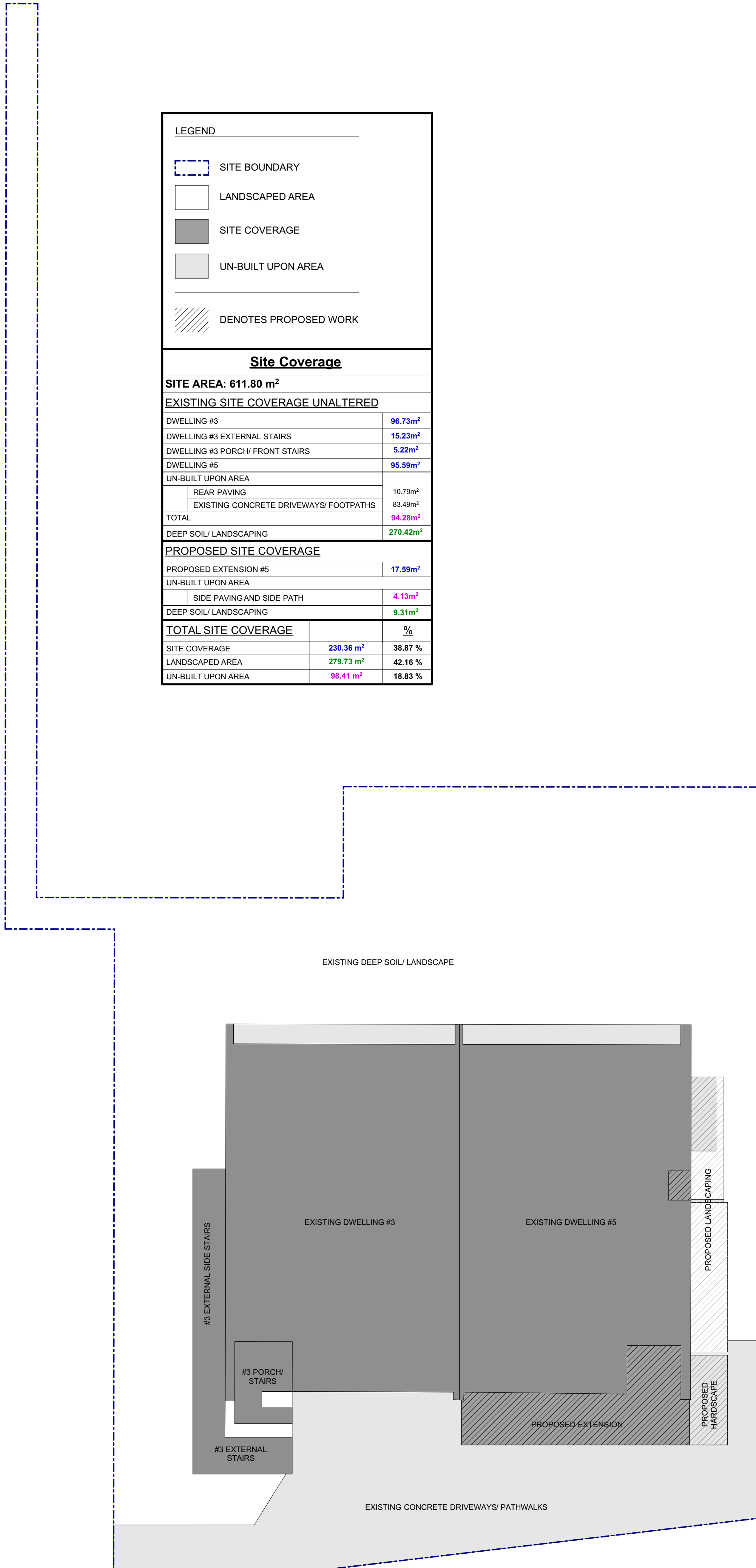
scale  
 1:100 @ A2

revision  
 1

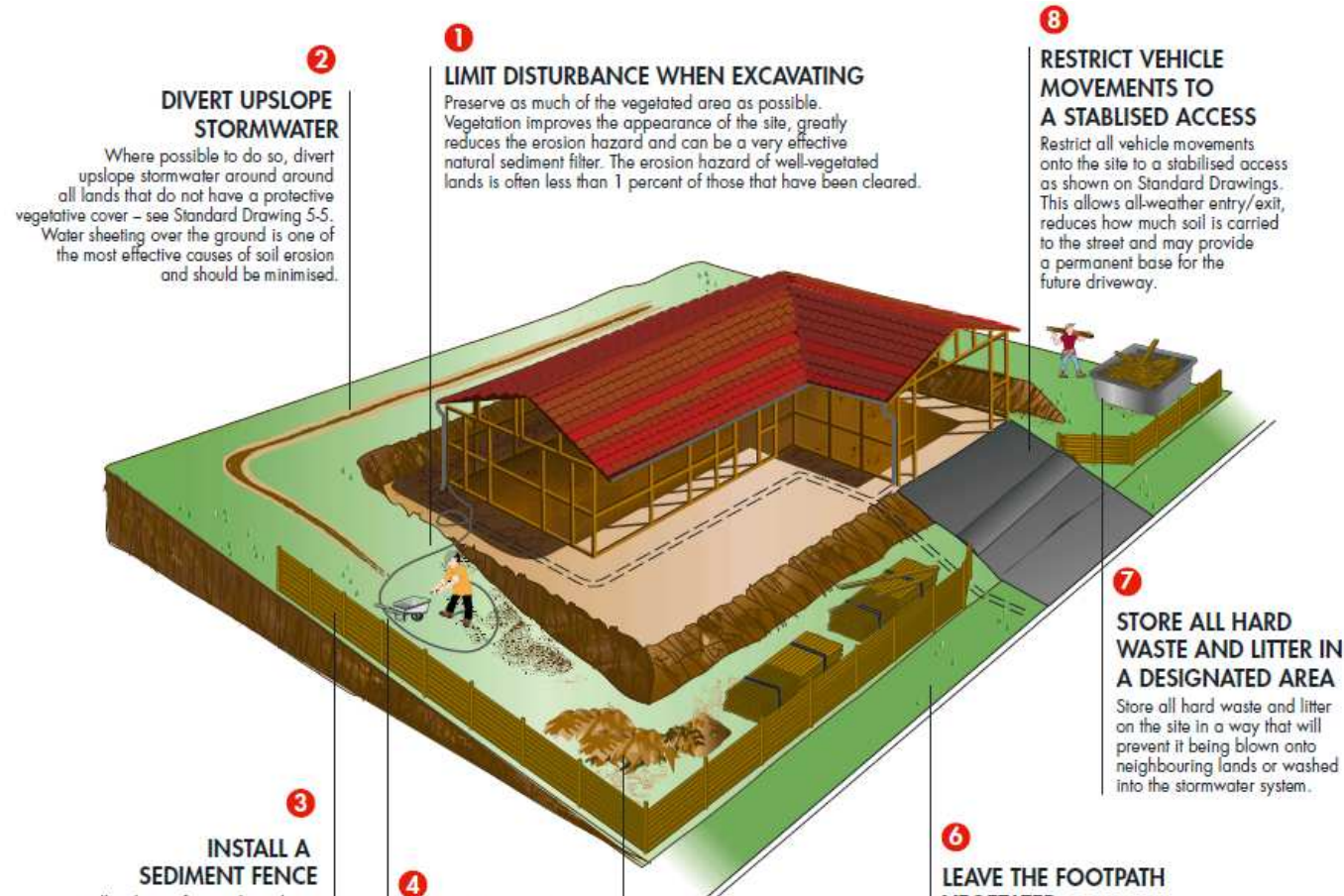
LEGEND		
	SITE BOUNDARY	
	LANDSCAPED AREA	
	SITE COVERAGE	
	UN-BUILT UPON AREA	
	DENOTES PROPOSED WORK	

Site Coverage		
<b>SITE AREA: 611.80 m<sup>2</sup></b>		
<b>EXISTING SITE COVERAGE UNALTERED</b>		
DWELLING #3		96.73m <sup>2</sup>
DWELLING #3 EXTERNAL STAIRS		15.23m <sup>2</sup>
DWELLING #3 PORCH/ FRONT STAIRS		5.22m <sup>2</sup>
DWELLING #5		95.59m <sup>2</sup>
UN-BUILT UPON AREA		
REAR PAVING	10.79m <sup>2</sup>	
EXISTING CONCRETE DRIVEWAYS/ FOOTPATHS	83.49m <sup>2</sup>	
<b>TOTAL</b>	<b>94.28m<sup>2</sup></b>	
DEEP SOIL/ LANDSCAPING		270.42m <sup>2</sup>
<b>PROPOSED SITE COVERAGE</b>		
PROPOSED EXTENSION #5	17.59m <sup>2</sup>	
UN-BUILT UPON AREA		
SIDE PAVING AND SIDE PATH	4.13m <sup>2</sup>	
DEEP SOIL/ LANDSCAPING		9.31m <sup>2</sup>
<b>TOTAL SITE COVERAGE</b>		<b>%</b>
SITE COVERAGE	230.36 m <sup>2</sup>	38.87 %
LANDSCAPED AREA	279.73 m <sup>2</sup>	42.16 %
UN-BUILT UPON AREA	98.41 m <sup>2</sup>	18.83 %







**2 DIVERT UPSLOPE STORMWATER**

Where possible to do so, divert upslope stormwater around all lands that do not have a protective vegetative cover – see Standard Drawing 5-5. Water sheeting over the ground is one of the most effective causes of soil erosion and should be minimised.

**1 LIMIT DISTURBANCE WHEN EXCAVATING**

Preserve as much of the vegetated area as possible. Vegetation improves the appearance of the site, greatly reduces the erosion hazard and can be a very effective natural sediment filter. The erosion hazard of well-vegetated lands is often less than 1 percent of those that have been cleared.

**8 RESTRICT VEHICLE MOVEMENTS TO A STABILISED ACCESS**

Restrict all vehicle movements onto the site to a stabilised access as shown on Standard Drawings. This allows all-weather entry/exit, reduces how much soil is carried to the street and may provide a permanent base for the future driveway.

**7 STORE ALL HARD WASTE AND LITTER IN A DESIGNATED AREA**

Store all hard waste and litter on the site in a way that will prevent it being blown onto neighbouring lands or washed into the stormwater system.

**6 LEAVE THE FOOTPATH VEGETATED**

Apart from the stabilised entrance, maintain a well vegetated (grassed) footpath. Keeping lands vegetated is the single most important thing that can be done to reduce erosion hazard.

**5 PLACE SANDS AND SOIL STOCKPILES BEHIND A SEDIMENT FENCE**

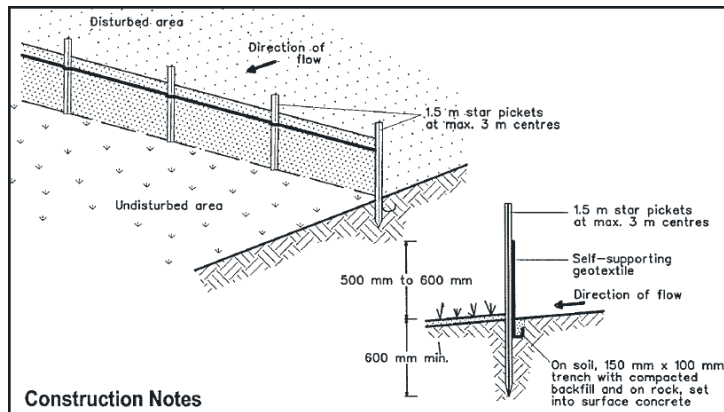
Place all stockpiles totally on the site well away from drainage paths and, where they comprise erodible materials such as sand and soil, behind a sediment barrier – see Standard Drawing 4-1. Ensure soil and cement bags are covered at the end of each day if rain or excessive wind are likely.

**4 WASH EQUIPMENT IN DESIGNATED AREA**

Wash all equipment, including that with concrete waste in a designated area that does not drain to the stormwater system.

**3 INSTALL A SEDIMENT FENCE**

Install sediment fences downslope of all disturbed lands to filter coarse sediment before it gets into the gutters, drains and watercourses. Details on their construction are shown on Standard Drawings.

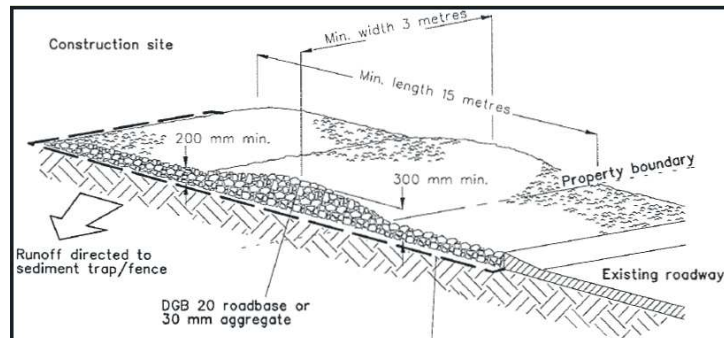


**Construction Notes**

1. Construct sediment fence as close as possible to parallel to the contours of the site.
2. Drive 1.5 metre long star pickets into ground, 2.5 metres apart (max.).
3. Dig a 150 mm deep trench along the upslope line of the fence for the bottom of the fabric to be entrenched.
4. Fix self-supporting geotextile to upslope side of posts with wire ties or as recommended by geotextile manufacturer.
5. Join sections of fabric at a support post with a 150 mm overlap.
6. Backfill the trench over the base of the fabric and compact it thoroughly over the geotextile

**SEDIMENT FENCE**

**SD 6-8**

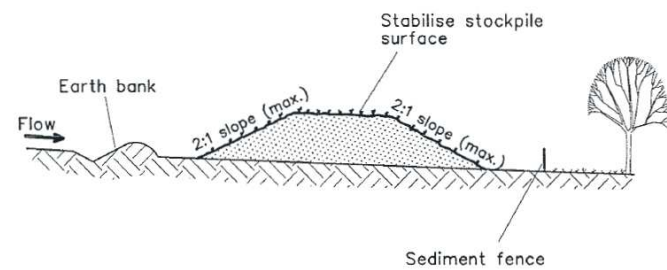


**Construction Notes**

1. Strip topsoil and level site.
2. Compact subgrade.
3. Cover area with needle-punched geotextile.
4. Construct 200 mm thick pad over geotextile using roadbase or 30 mm aggregate. Minimum length 15 metres or to building alignment. Minimum width 3 metres.
5. Construct hump immediately within boundary to divert water to a sediment fence or other sediment trap.

**STABILISED SITE ACCESS**

**SD 6-14**

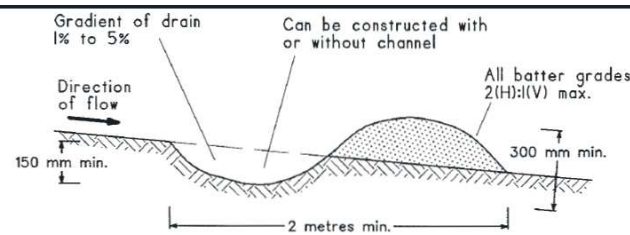


**Construction Notes**

1. Where possible locate stockpile at least 5 metres from existing vegetation, concentrated water flows, roads and hazard areas.
2. Construct on the contour as a low, flat, elongated mound.
3. Where there is sufficient area topsoil stockpiles shall be less than 2 metres in height.
4. Rehabilitate in accordance with the SWMP/ESCP.
5. Construct earth bank (Standard Drawing 5-5) on the upslope side to divert run off around the stockpile and a sediment fence (Standard Drawing 6-8) 1 to 2 metres downslope of stockpile.

**TOPSOIL STOCKPILE**

**SD 4-1**



**Construction Notes**

1. Construct with gradient of 1 per cent to 5 per cent.
2. Avoid removing trees and shrubs if possible.
3. Drains to be of circular, parabolic or trapezoidal cross section not V-shaped.
4. Earth banks to be adequately compacted in order to prevent failure.
5. Permanent or temporary stabilisation of the earth bank to be completed within 10 days of construction.
6. All outlets from disturbed lands are to feed into a sediment basin or similar.
7. Discharge runoff collected from undisturbed lands onto either a stabilised or an undisturbed disposal site within the same subcatchment area from which the water originated.
8. Compact bank with a suitable implement in situations where they are required to function for more than five days.
9. Earth banks to be free of projections or other irregularities that will impede normal flow.

**EARTH BANK (LOW FLOW)**

**SD 5-5**

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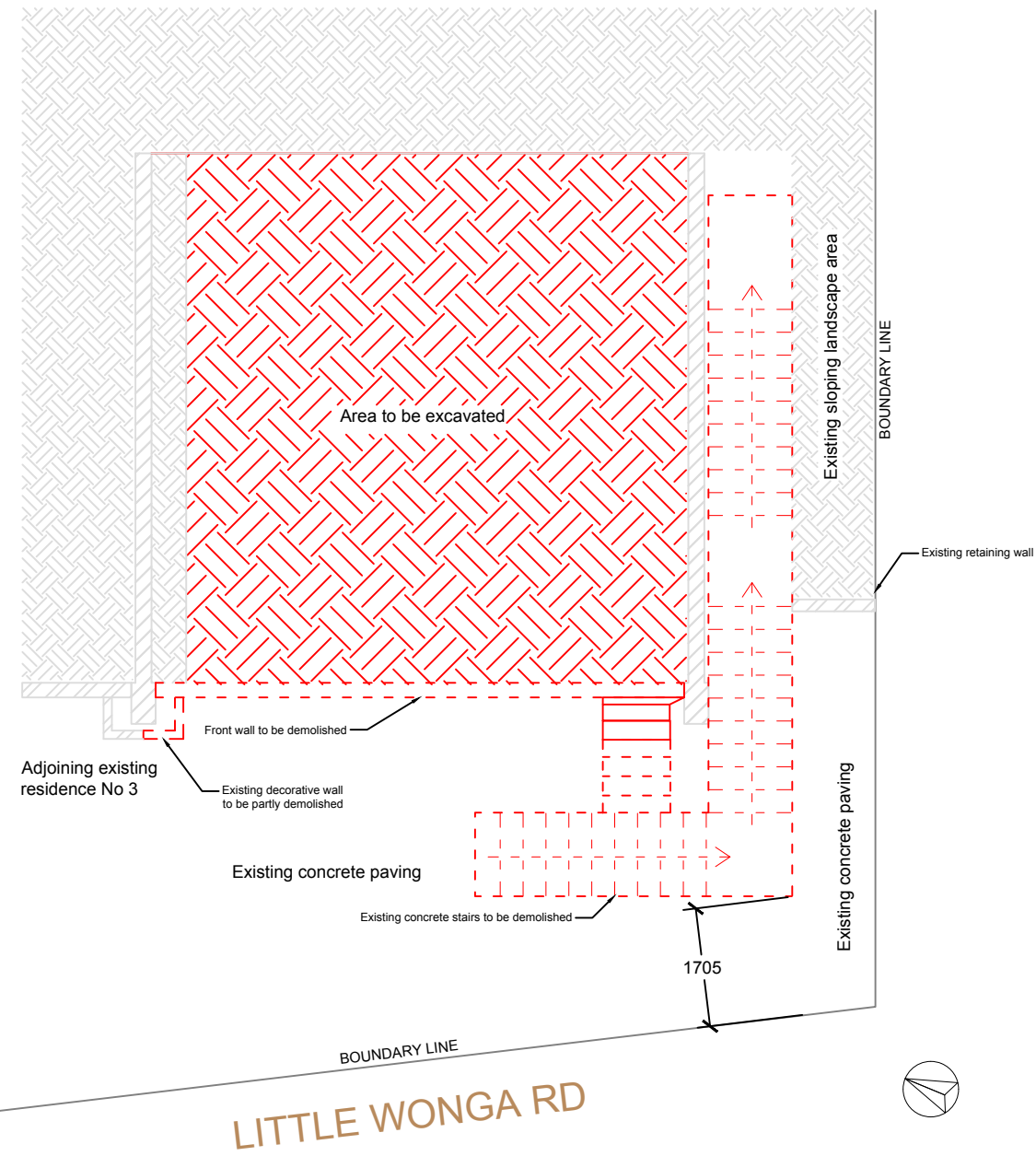


drawn by  
 JA checked  
 NL/TK

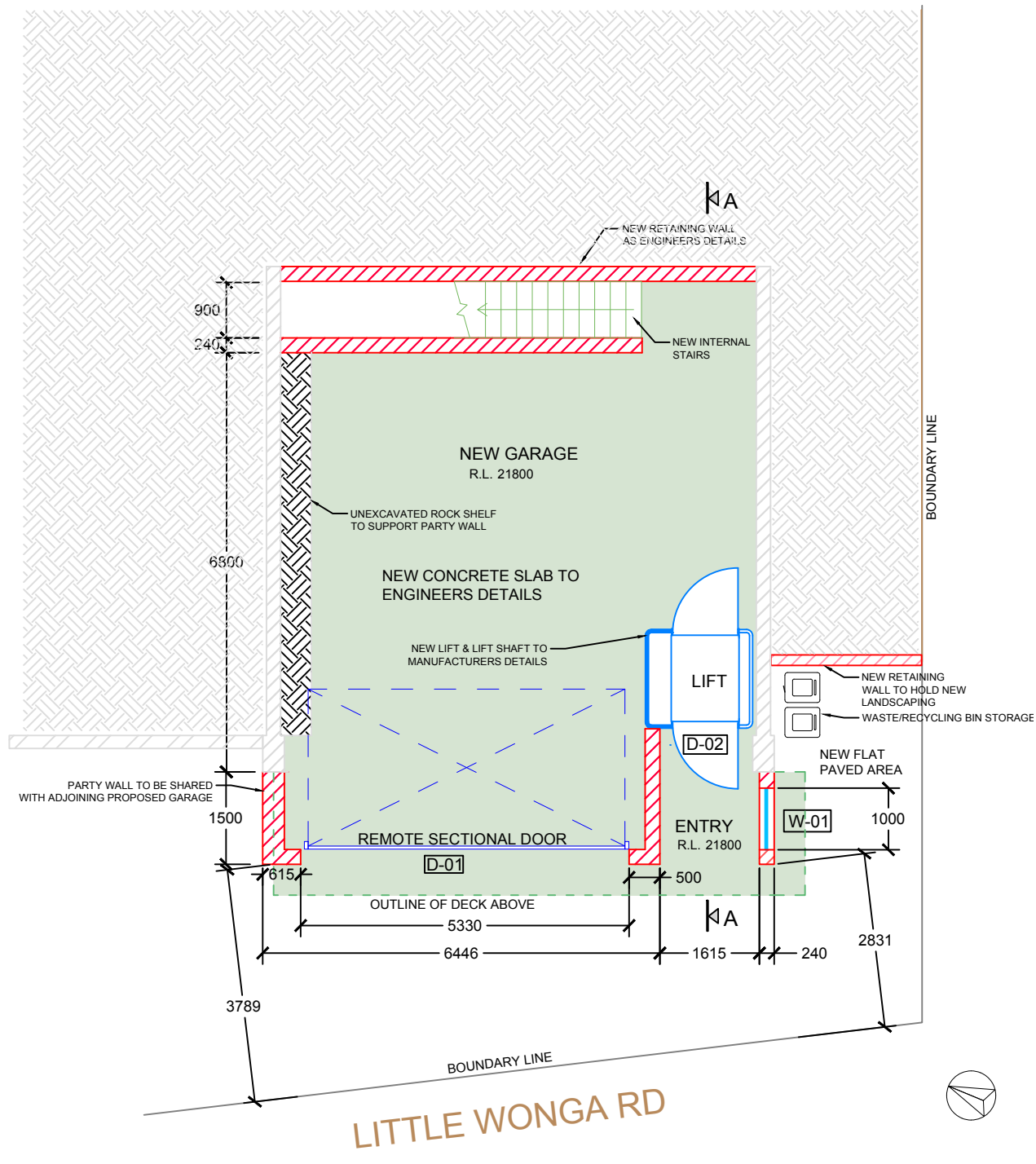
drawing name  
**SEDIMENT CONTROL DETAILS**

drawing number  
 DA.7 scale  
 Not to Scale revision  
 |





FIRST LEVEL DEMOLITION PLAN 1:100



PROPOSED FIRST LEVEL PLAN 1:100

K	REPLACED LIFTSHAFT	19/09/2021
J	CHANGES AS AGREED WITH NO 3	04/06/2021
I	RE-SUBMISSION TO COUNCIL	21/01/2019
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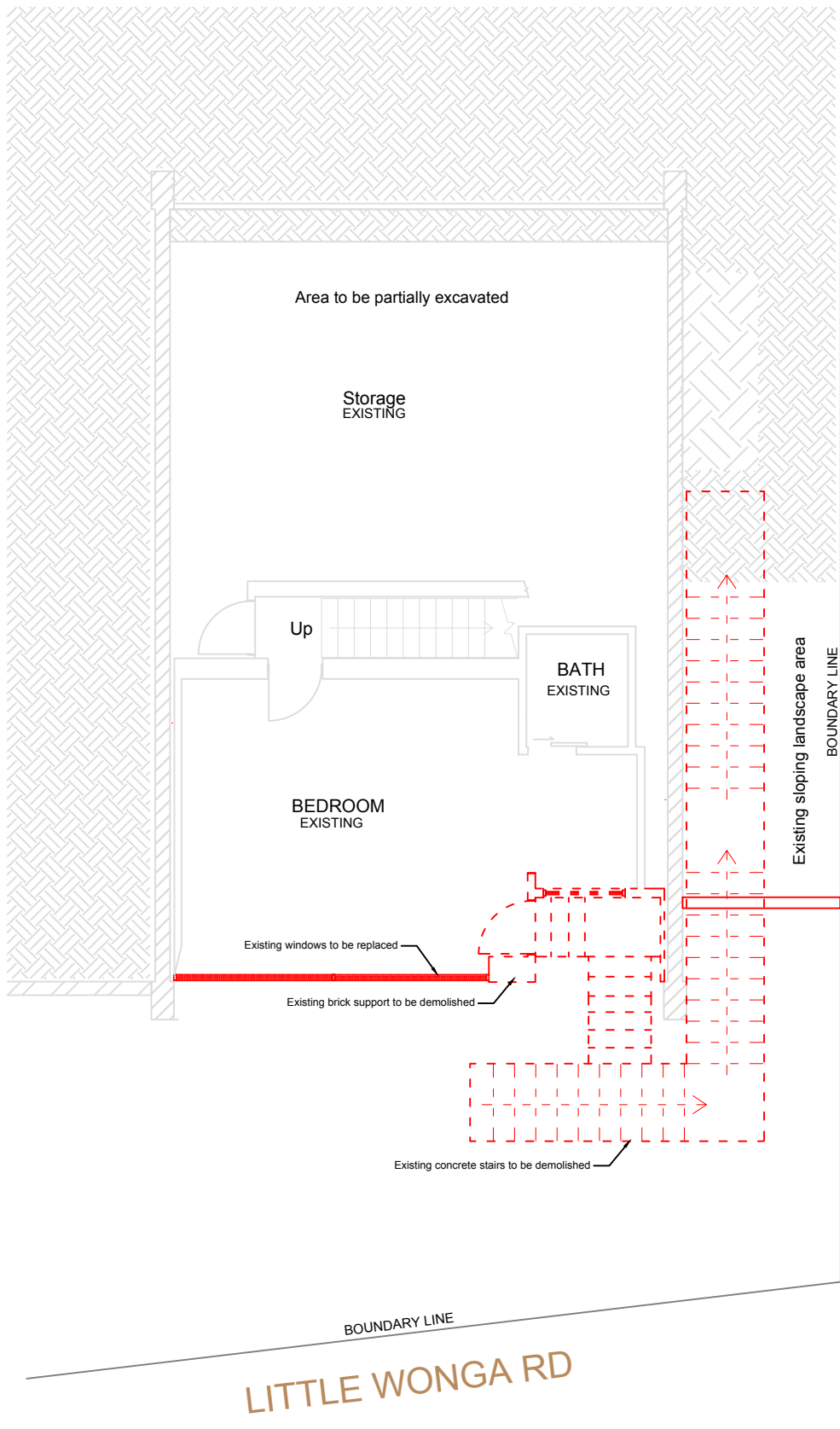
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- Concrete
- Tile
- Brick
- Natural stone
- Steel
- Cement board
- Glass
- Timber
- Aluminium

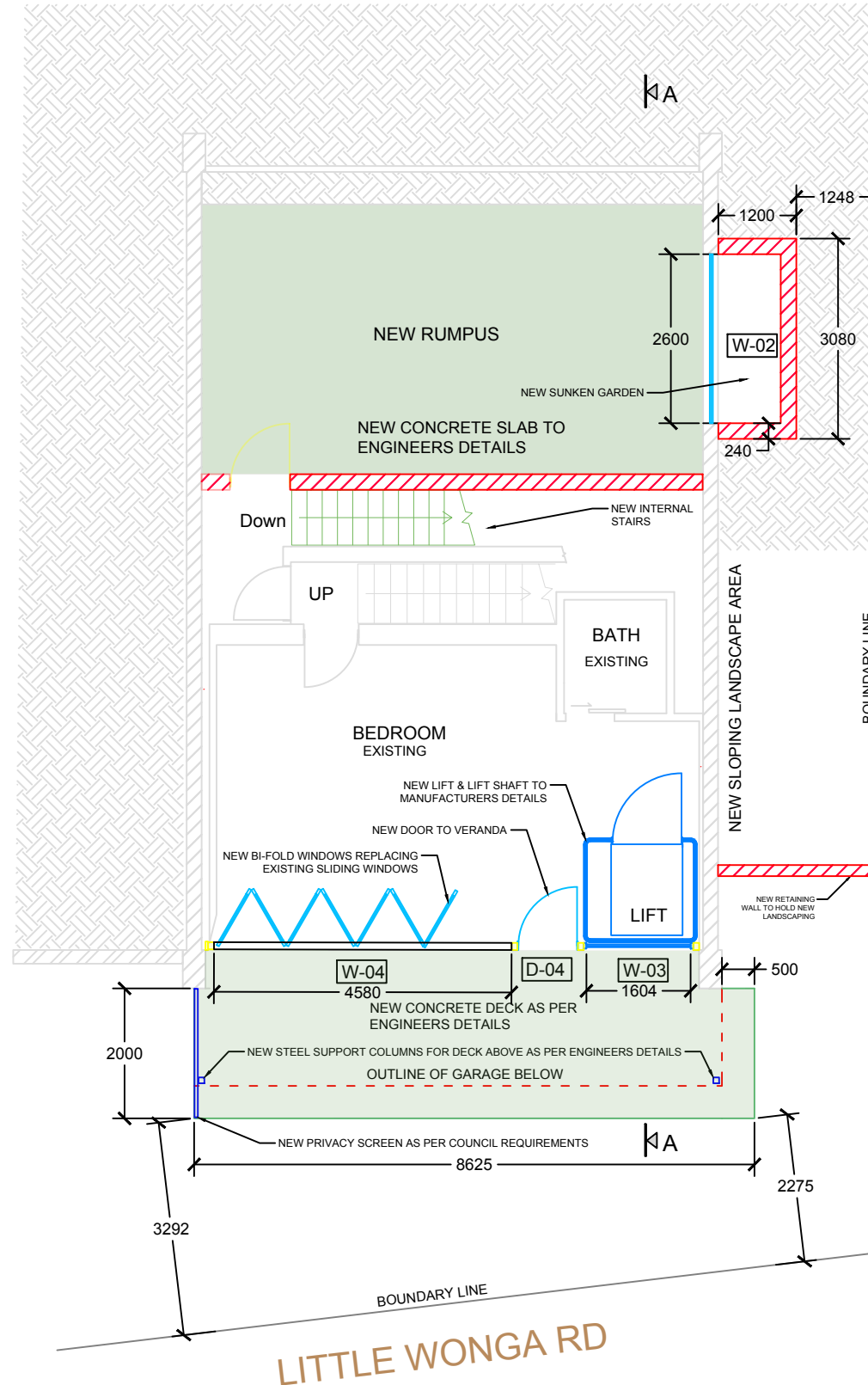
Drawing name: FLOOR PLAN 1ST LEVEL

Drawing Number: DA.8

Scale: 1:100 Revision: K



SECOND LEVEL DEMOLITION PLAN 1:100



PROPOSED SECOND LEVEL FLOOR PLAN 1:100

K	REPLACED LIFTSHAFT	19/09/2021
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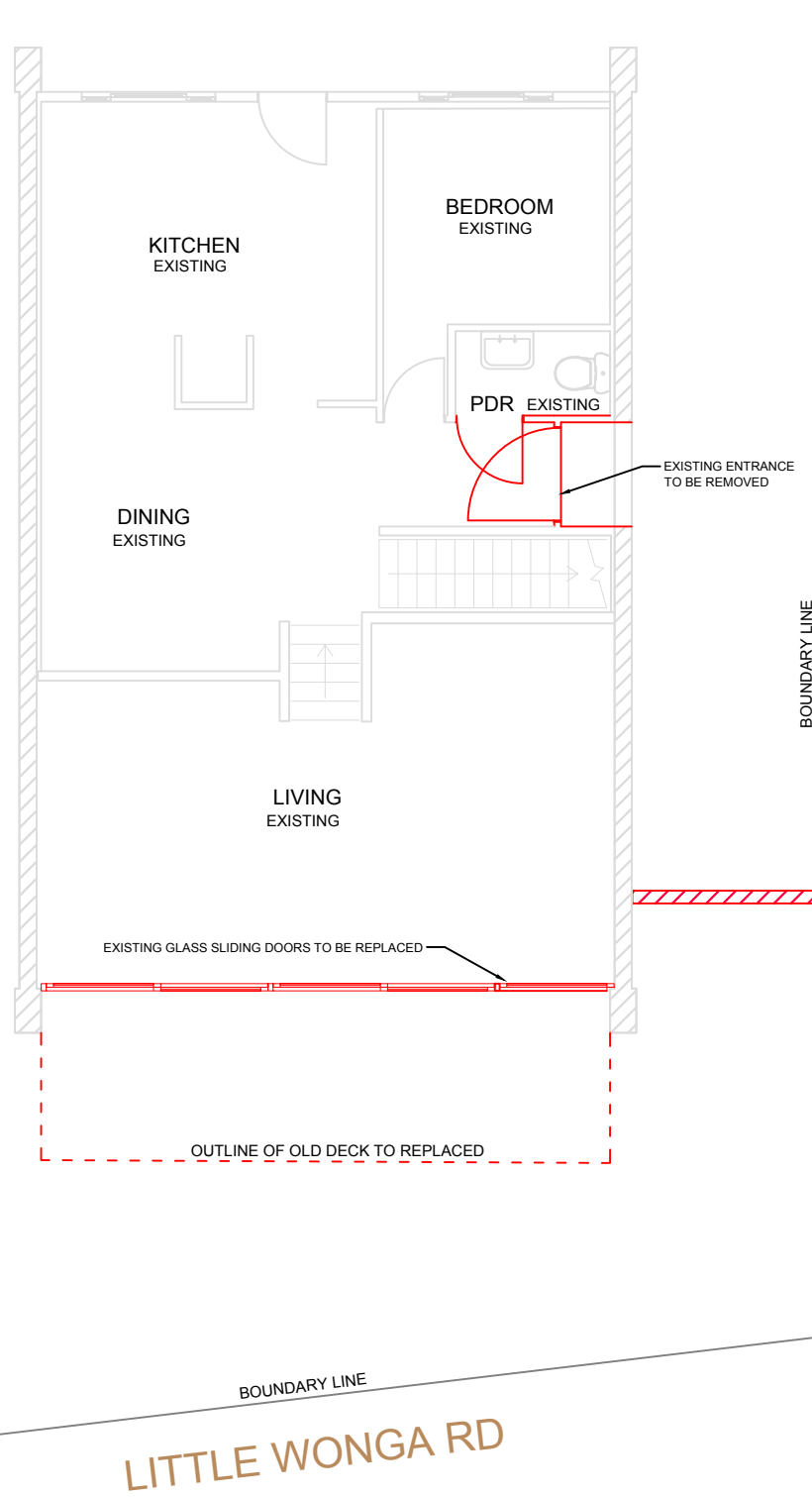
- Concrete
- Brick
- Steel
- Glass
- Aluminium
- Tile
- Natural stone
- Cement board
- Timber

Drawing name: FLOOR PLAN 2ND LEVEL

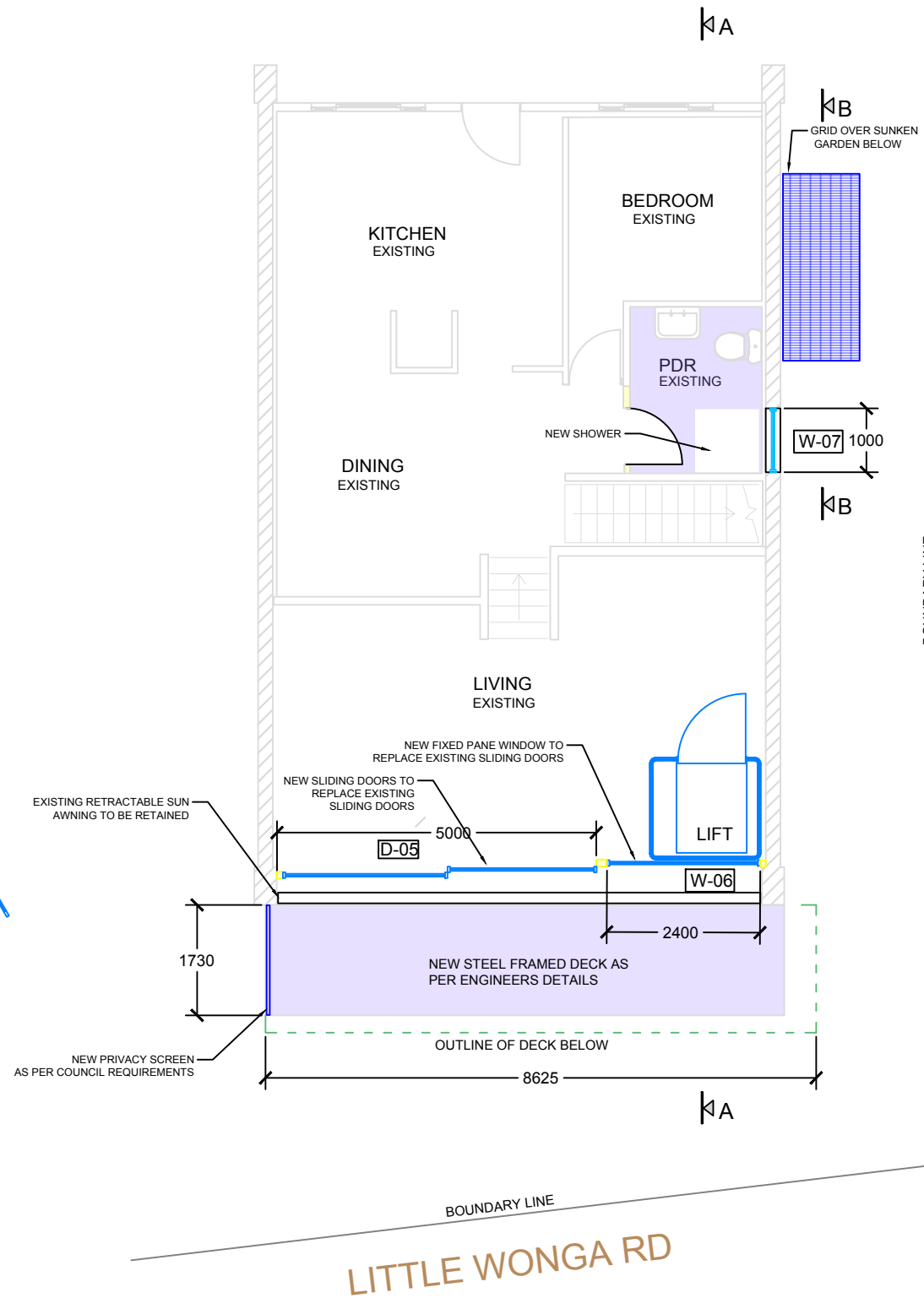
Drawing Number: DA.9

Scale: 1:100

Revision: K



THIRD LEVEL DEMOLITION PLAN 1:100



PROPOSED THIRD LEVEL PLAN 1:100

K	REPLACED LIFTSHAFT	19/09/2021
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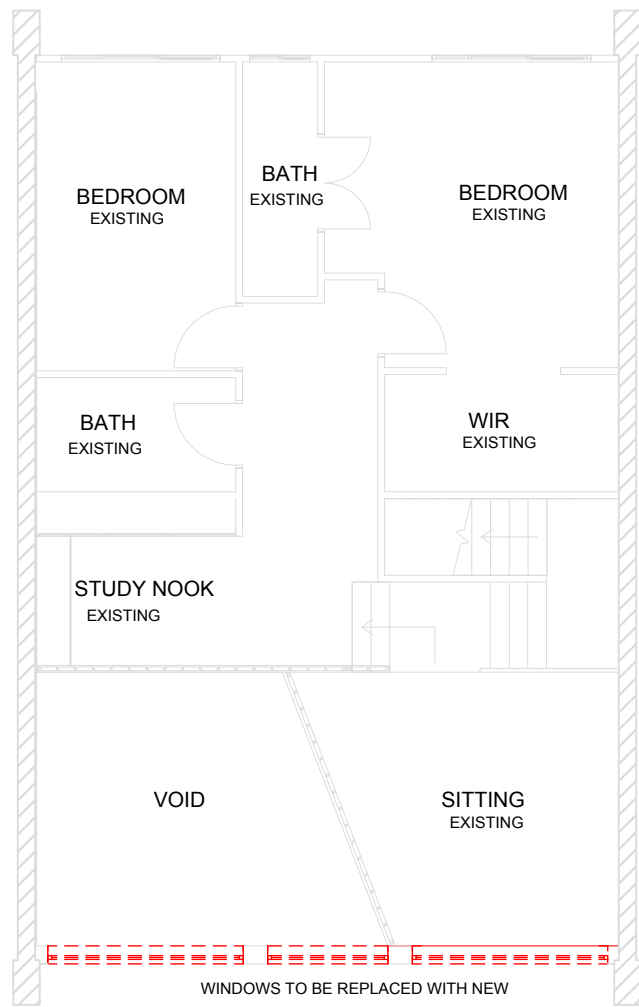
- Concrete
- Tile
- Brick
- Natural stone
- Steel
- Cement board
- Glass
- Timber
- Aluminium

Drawing name: FLOOR PLAN 3RD LEVEL

Drawing Number: DA.10

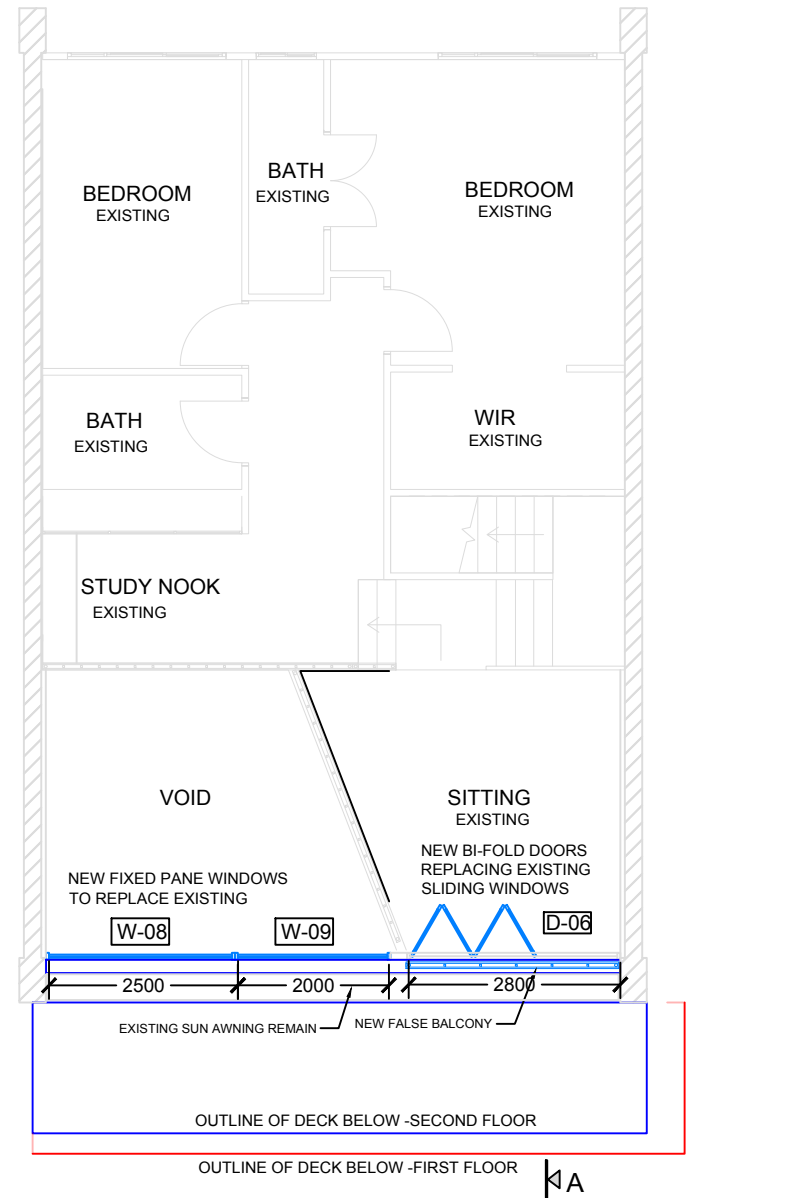
Scale: 1:100      Revision: K





FOURTH LEVEL DEMOLITION PLAN 1:100

LITTLE WONGA RD



PROPOSED FOURTH LEVEL FLOOR PLAN 1:100

LITTLE WONGA RD

K	REPLACED LIFTSHAFT	19/09/2021
J	CHANGES AS AGREED WITH NO 3	04/06/2021
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REV	DETAILS	DATE



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- Concrete
- Brick
- Steel
- Glass
- Aluminium
- Tile
- Natural stone
- Cement board
- Timber

Drawing name: FLOOR PLAN 4TH LEVEL

Drawing Number: DA.11

Scale: 1:100      Revision: K

K	REPLACED LIFTSHAFT	19/09/2021
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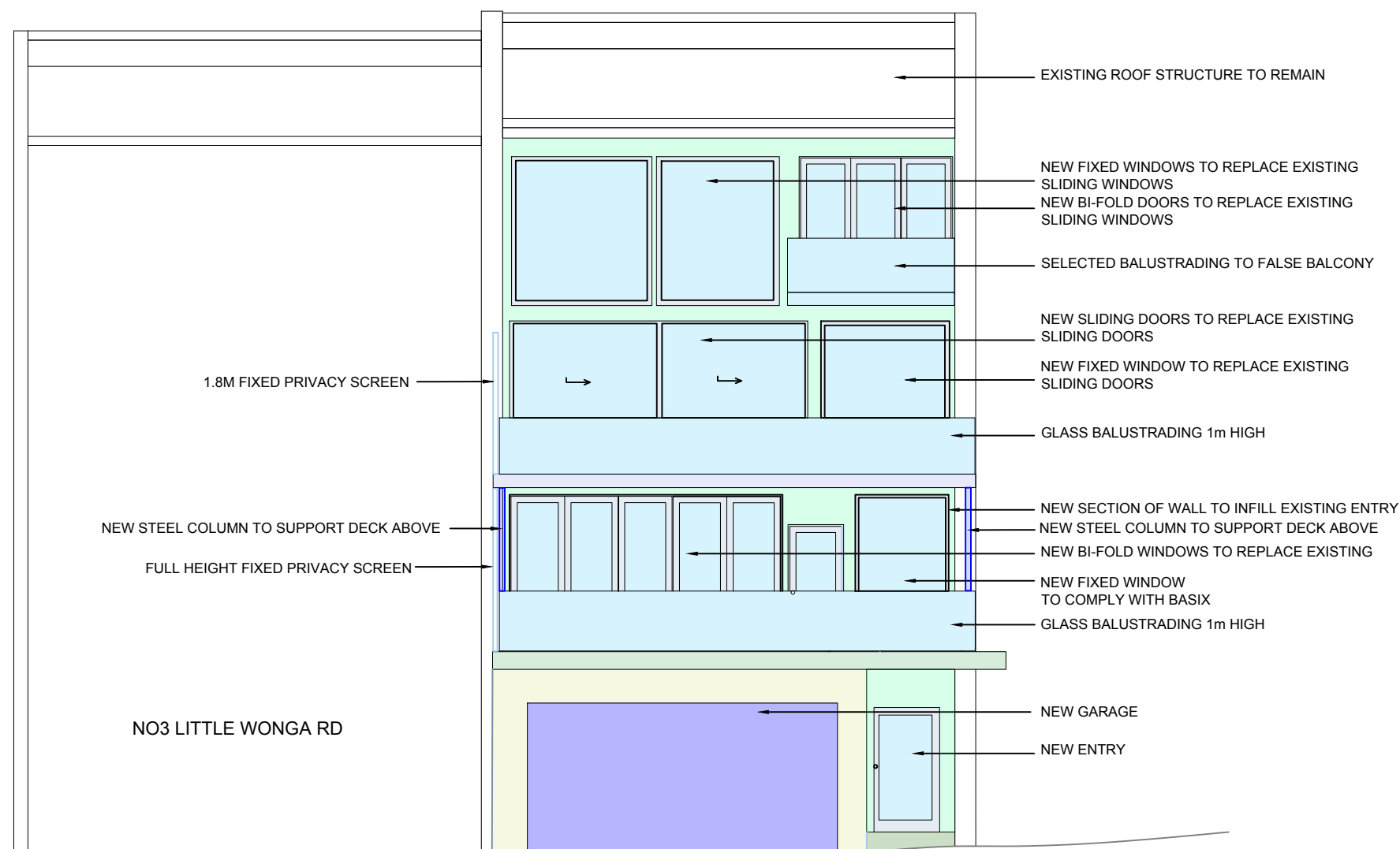
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- |           |               |
|-----------|---------------|
| Concrete  | Tile          |
| Brick     | Natural stone |
| Steel     | Cement board  |
| Glass     | Timber        |
| Aluminium |               |



PROPOSED CHANGES PLAN 1:100

Drawing name: ELEVATIONS 1

Drawing Number: DA.12

Scale: 1:100 Revision: K

K	REPLACED LIFTSHAFT	19/09/2021
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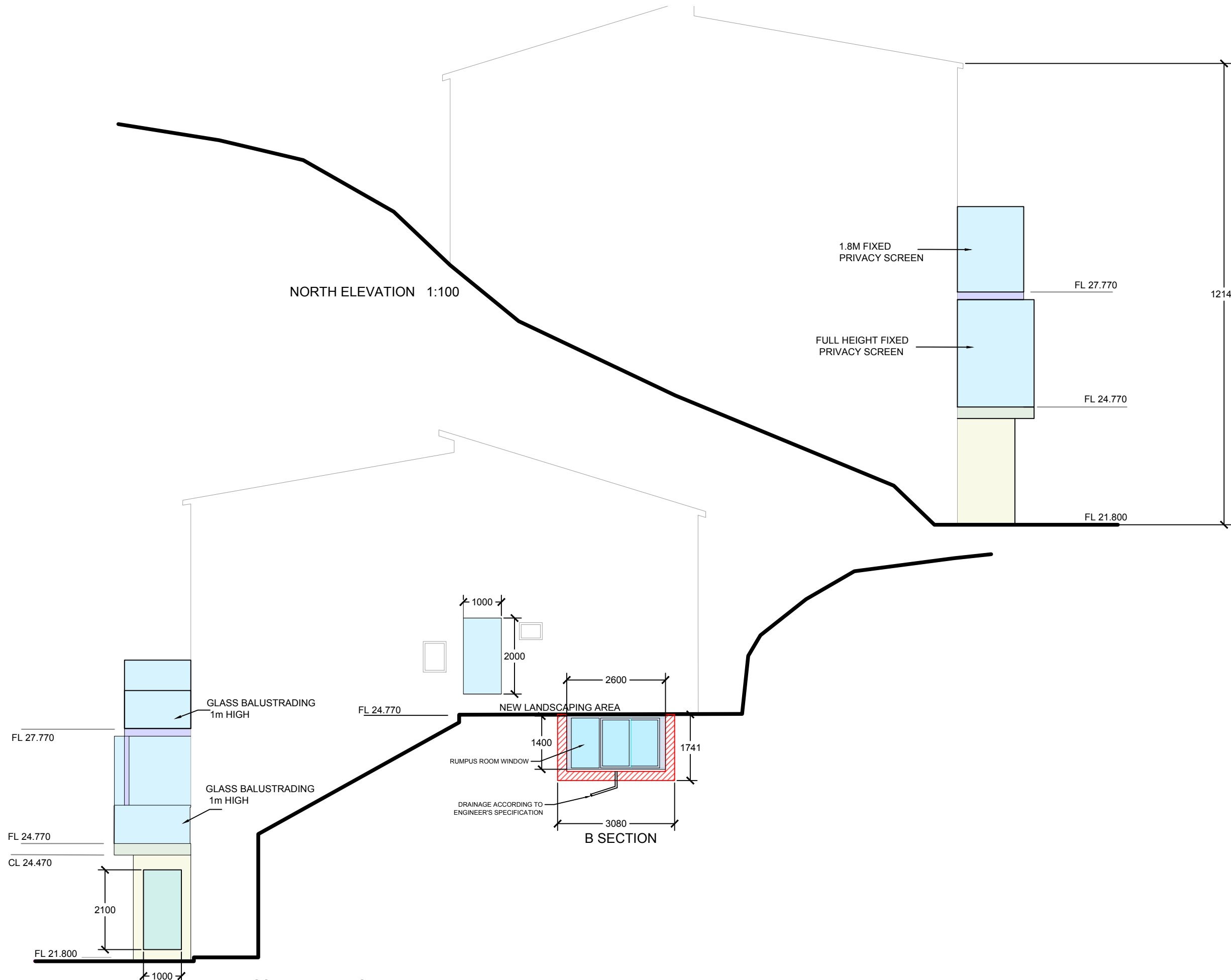
- Concrete
- Brick
- Steel
- Glass
- Aluminium
- Tile
- Natural stone
- Cement board
- Timber

Drawing name: ELEVATIONS 2

Drawing Number: DA.13

Scale: 1:100

Revision: K



K	REPLACED LIFTSHAFT	19/09/2021
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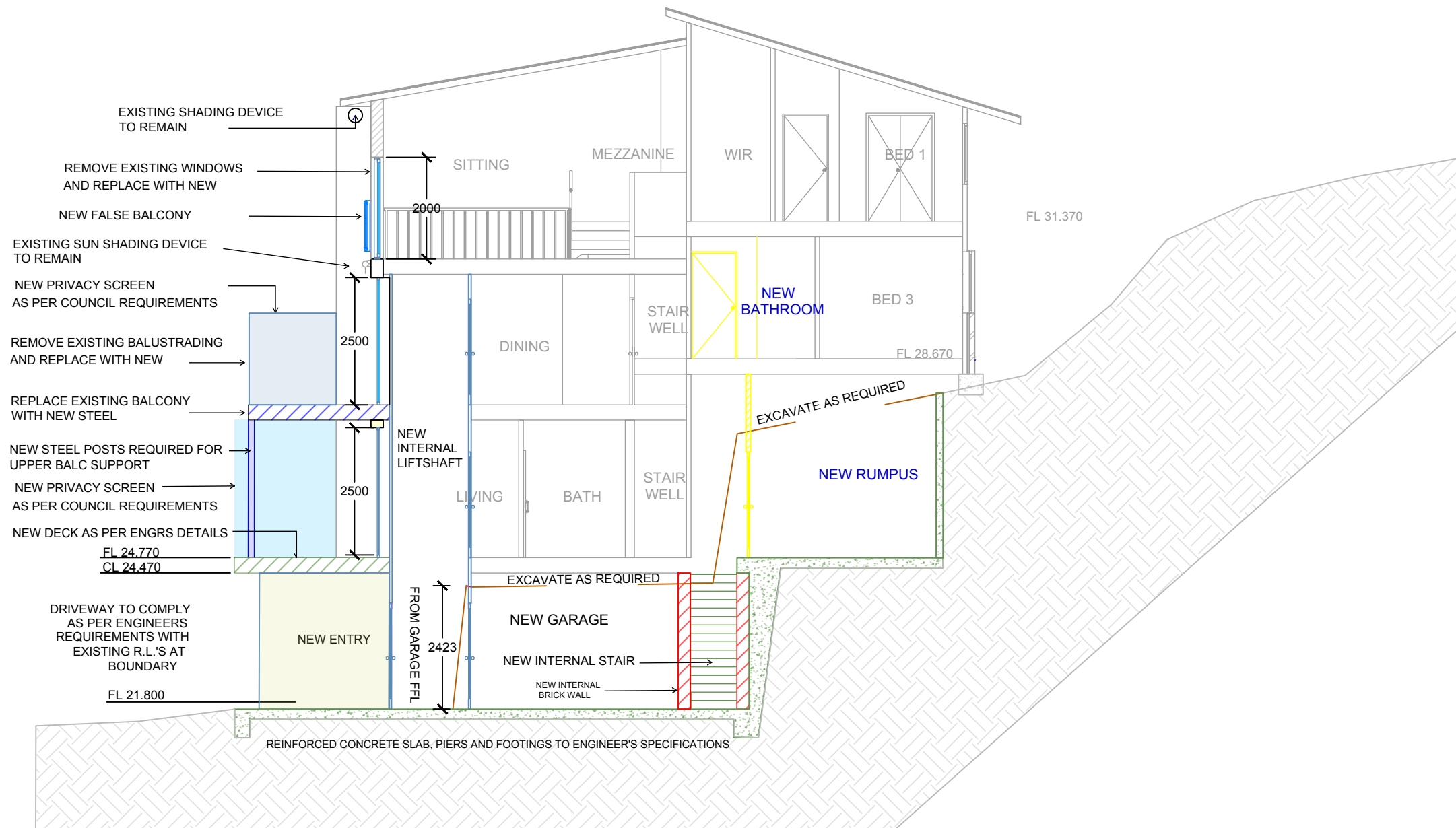
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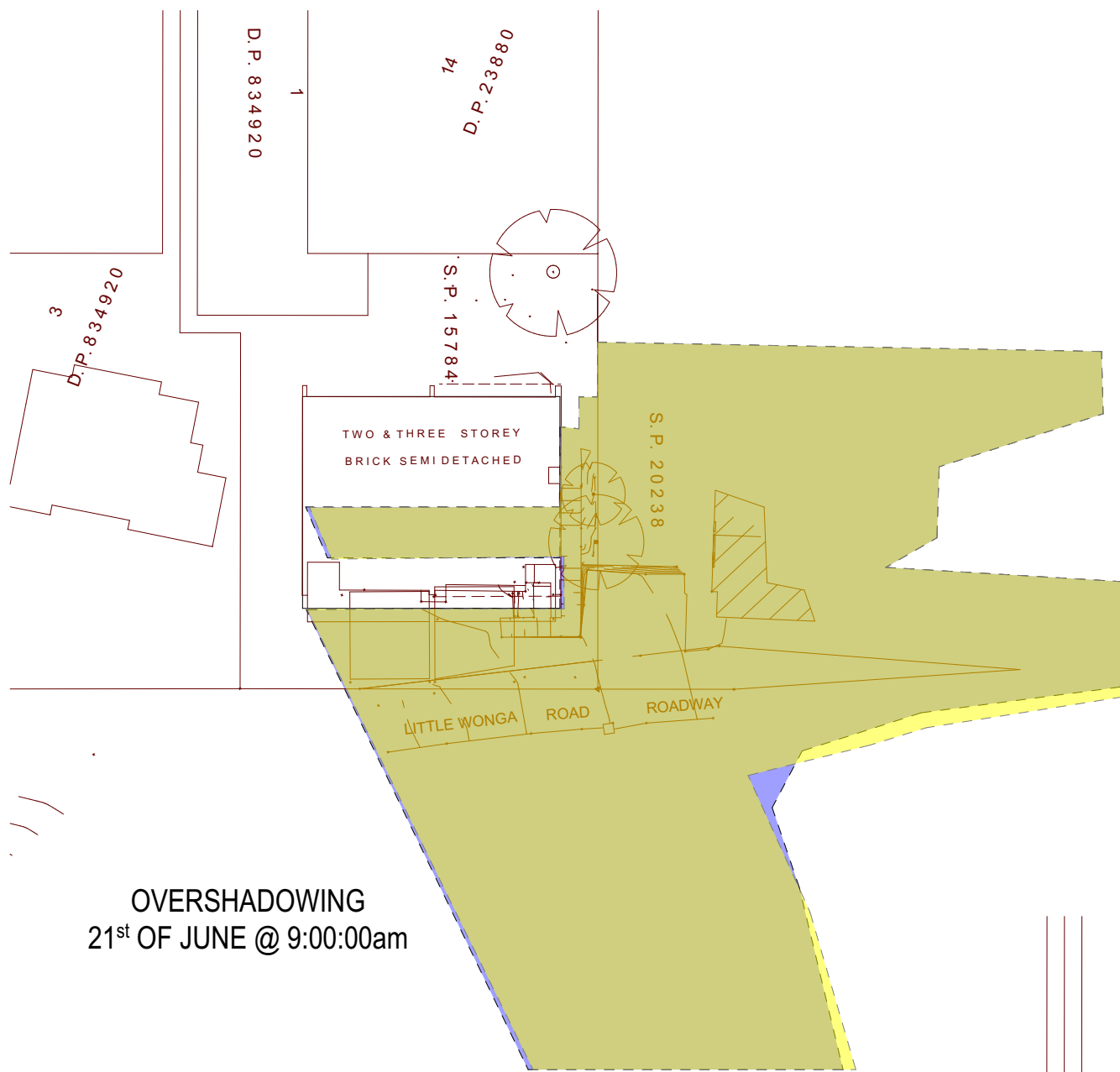
- Concrete
- Tile
- Brick
- Natural stone
- Steel
- Cement board
- Glass
- Timber
- Aluminium



A SECTION 1:100

Drawing name: SECTIONS 1  
 Drawing Number: DA.14  
 Scale: 1:100      Revision: K

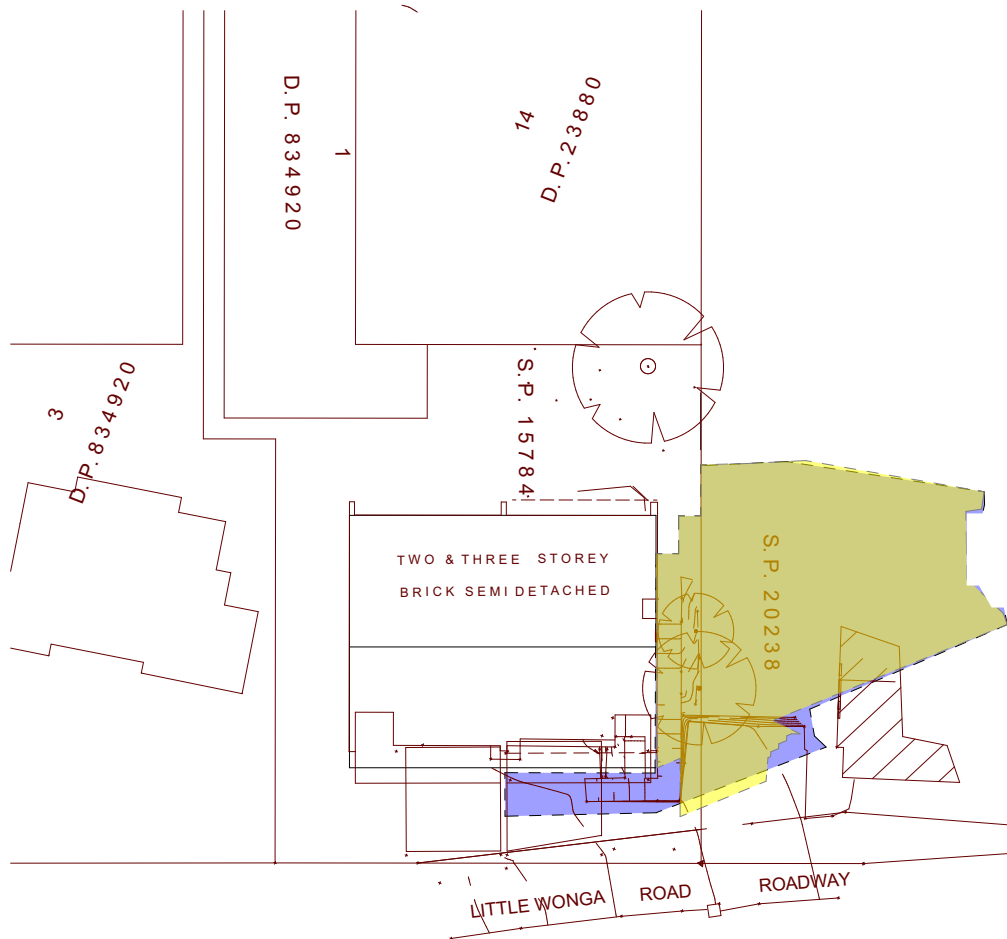
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OVERSHADOWING  
21<sup>st</sup> OF JUNE @ 9:00:00am



OVERSHADOWING 21<sup>st</sup> OF JUNE @ 12:00:00pm



OVERSHADOWING 21<sup>st</sup> OF JUNE @ 3:00:00pm

**Legend**

Overlapping Fill - Existing shadow diagram

New Shadow diagram



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drawn by  
 JA  
 checked  
 NL/TK

drawing name  
 SHADOW DIAGRAMS + OVERLAY

drawing number  
 DA.16  
 scale  
 1:400  
 revision  
 1

Windows List

- [N] New window
- [R] Replace existing window

ID	W-01 [N]	W-02 [N]	W-03 [N]	W-04 [R]
Height	2,156	1,400	2,500	2,000
Width	1,000	2,600	1,600	4,580
Area	2.156	3.64	3.84	9.16

ID	W-06 [N]	W-07 [N]	W-08 [R]	W-09 [R]
Height	2,500	2,000	2,000	2,000
Width	2,250	1,000	2,500	2,000
Area	5.625	2.0	5.0	4.00

Doors List

- [N] New door
- [R] Replace existing door

ID	D-01 [N]	D-02 [N]	D-04 [N]
Height	2100	2100	2100
Width	5200	900	900
Area	10.92	1.890	1.890

ID	D-05 [R]	D-06 [R]
Height	2,500	2,000
Width	5,000	2,800
Area	12.5	5.6

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G	RFI 27/07/2018	27/07/2018
F	SITE COVERAGE DIAGRAM	06/06/2018
E	CLIENT MINOR CHANGES 2	27/04/2018
D	CLIENT MINOR CHANGES 1	20/04/2018
C	BASIX CERTIFICATE	26/03/2018
B	CHECKING/ AMENDMENTS	14/03/2018
A	DA PLANS - INITIAL	07/03/2018
REV	DETAILS	DATE

SCHEDULE OF FINISHES

ITEM	MATERIAL	FINISH
EXISTING EXTERNAL WALLS	BRICK VENEER UNLESS NOTED OTHERWISE	COLOUR/ TEXTURE TO MATCH EXISTING
GARAGE WALL	BRICK WITH CLADDING	NATURAL SANDSTONE CLADDING
NEW EXTERNAL WALLS	CEMENT BOARD ON TIMBER FRAME	PAINTED CHARCOAL/DARK GREY
INTERNAL WALLS	SELECTED DRY PLASTERBOARDS ON TIMBER FRAME	WHITEWASH GENERIC
FASCIA'S	TO MATCH EXISTING	TO MATCH EXISTING
BARDGE BOARDS	TO MATCH EXISTING	TO MATCH EXISTING
GUTTERS	TO MATCH EXISTING	TO MATCH EXISTING
ROOF	TO MATCH EXISTING	TO MATCH EXISTING
DOWNPIPES	TO MATCH EXISTING	TO MATCH EXISTING
WINDOWS FRAME	SELECTED ALUMINIUM	POWDERCOATED COMPLIMENTING COLOUR
GLAZING	GENERIC SINGLE CLEAR	N/A



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 Bradax Pty Ltd

Client:  
 Jan Taljaard

Project:  
 Proposed Addition/Alteration for Lot 4 SP18845  
 5 Little Wonga Rd, Cremorne, NSW, 2090

Figured dimensions take precedence over scale dimensions.  
 Contractors must verify all dimensions on site before commencing any work or making shop drawings.

- Concrete
- Tile
- Brick
- Natural stone
- Steel
- Cement board
- Glass
- Timber
- Aluminium

Drawing name: SCHEDULING

Drawing Number: DA.17

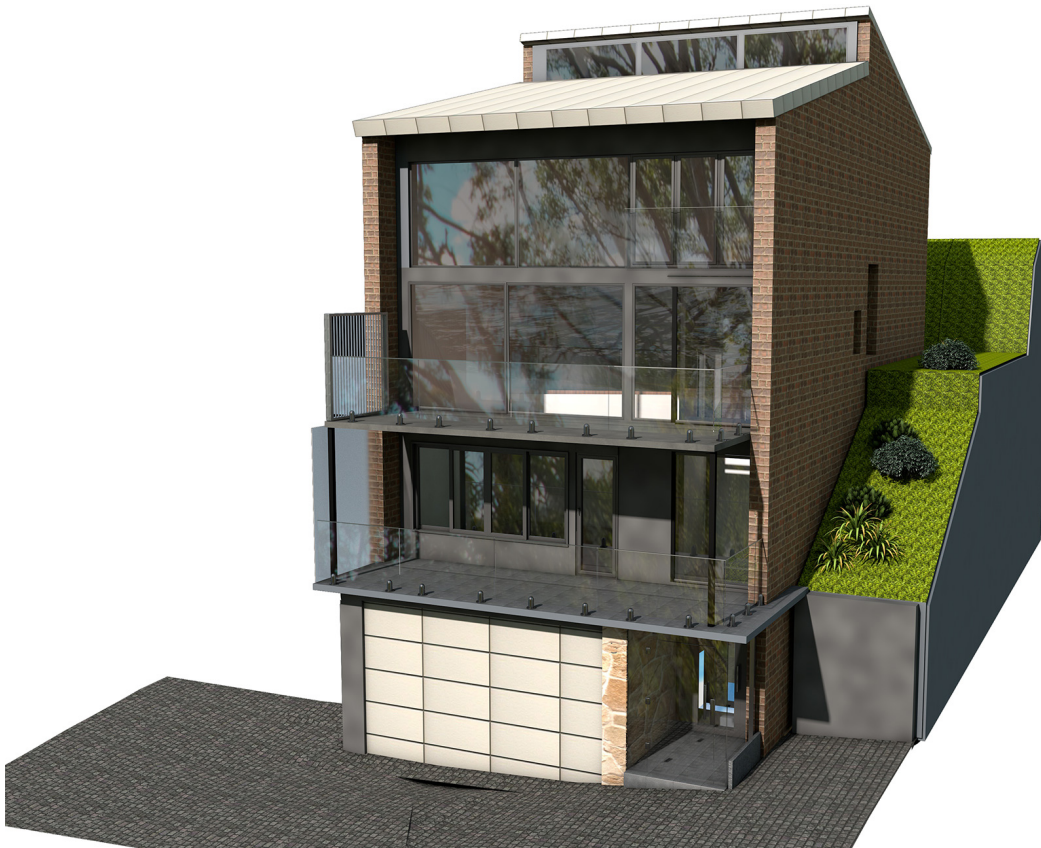
Scale: 1:100

Revision: K



5 Little Wonga Road  
Cremorne

# Clause 4.6 Variation



February 2023

THE COUNCIL APPROVAL EXPERTS



Created	NL
Checked	MF

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**Clause 4.6 Variation Report**  
[5 Little Wonga Crescent Cremorne](#)

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## Clause 4.6 Application to Vary a Development Standard - minimum lot size for a Dual Occupancy.

### 1. The Subject Site

The subject site is located at 5 Little Wonga Road, Cremorne NSW 2090 and is legally described as SP 15784. The property has frontage to Little Wonga Road and is improved by a strata subdivided dual occupancy. Surrounding land uses are residential to the north, east and south. Brightmore Reserve and Middle Harbour are located to the west and north west of the subject site.

### 2. Subject Site Details

Address	SP	Size
5 Little Wonga Road, Cremorne NSW 2090	SP 15784	611.8 sqm

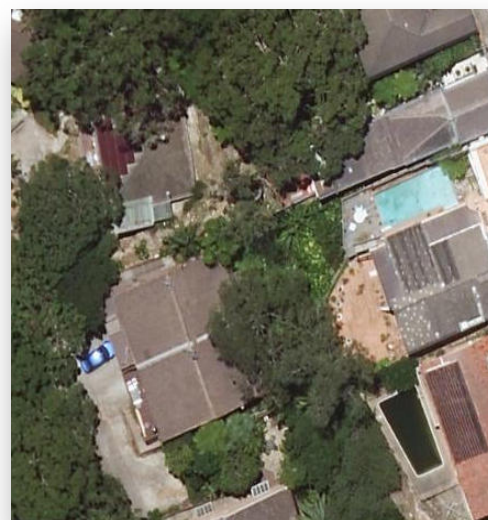
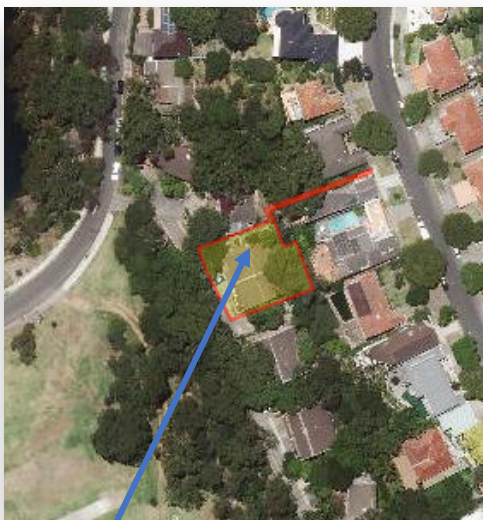


Diagram 1: Aerial

Subject Site



Diagram 2: Locality Plan



Diagram 3: Streetview Image

### 3. Proposed Development

The proposed development is for alterations and additions to an existing dual occupancy (attached). Specifically, the proposal includes:

- Excavate underneath the existing residence to construct a new garage with balcony above and an internal staircase and lift,
- Demolish the existing external concrete stairway,
- Replace the existing front balcony and external doors,
- New bathroom on 3<sup>rd</sup> level,
- Convert the underfloor storage area into a rumpus room,

### 4. Clause 4.6

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

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

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

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

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

- (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,*

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

It is of interest that the consent authority specifies a substantial number of development standards that cannot be varied under Clause 4.6, listed in Clause 4.6(8). Clause 4.3 Height of Buildings is not one of the standards excluded from departure under Clause 4.6.

## 5. Environmental Planning Instrument Details (North Sydney LEP 2013)

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

North Sydney Local Environmental Plan 2013 (LEP 2013)

### 5.2 What is the zoning of the land?

R2 – Low Density Residential

### 5.3 What are the objectives of the zone?

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

### What is the development standard being varied?

CI 4.3 of the North Sydney Local Environmental Plan 2013, *Height of Buildings*

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

CI 4.3 of the North Sydney Local Environmental Plan 2013 (LEP 2013)

*Height of Buildings*

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

### 5.5 What are the objectives of the development standard?

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

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

The maximum building height is 8.5m.

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

The subject site has an existing building with a height of 13.86m.

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

The percentage variation sought is 63%.  $(13.86\text{m} - 8.5\text{m} = 5.36\text{m} / 8.5\text{m} * 100)$



## 6. NSW Land and Environment Court Case Law

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

### 6.1 *Wehbe v Pittwater* [2007] NSW LEC 827

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

The five ways outlined in *Wehbe* include:

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

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

### 6.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

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

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

### **6.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7**

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

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

### **6.4 Zhang v City of Ryde**

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

- 1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;*
- 2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and*
- 3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.*

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

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

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



## 7. Consideration

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

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

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

The five ways outlined in *Wehbe* include:

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

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

The objectives of the standard are:

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

It is considered that the proposal is consistent with the objectives of the standard for the following reasons:

- This building is an existing approved dual occupancy and alterations are proposed only within the physical limits of the existing approved structure.
- No new works are proposed above the approved roof height of the existing building.
- Due to the sloping nature of the site, the rear elevation has a height of 6.89m while the front elevation has a height of 13.86m.

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

Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.

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

Not applicable. The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required.

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

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

**5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

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

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

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

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

Yes. The building is an existing approved dual occupancy and alterations are proposed only within the physical limits of the existing approved structure. No new works are proposed above the approved roof height of the existing building.

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

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

**Zone – R2 Low Density Residential**

<b>Objective</b>	<b>Assessment</b>
<i>To provide for the housing needs of the community within a low density residential environment.</i>	Consistent.  The building is an existing approved dual occupancy. No new works are proposed above the approved roof height of the existing building.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	Not relevant as the proposal is for the provision of housing, not other land uses that provide facilities or services for residents.
<i>To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.</i>	Consistent.  The building is an existing approved dual occupancy. No new works are proposed above the approved roof height of the existing building.
<i>To ensure that a high level of residential amenity is achieved and maintained.</i>	Consistent.  The building is an existing approved dual occupancy. No new works are proposed above the approved roof height of the existing building.

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

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

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

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

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

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

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

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* being:

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

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* as the building is an existing approved dual occupancy and alterations are proposed only within the physical limits of the existing approved structure. No new works are proposed above the approved roof height of the existing building.

## Summary of Justification / Conclusion

In summary, this clause 4.6 variation request, to the height of building control in LEP 2013 satisfies the **four tests imposed by Clause 4.6 being:**

1. That compliance with the relevant development standard must be **unreasonable or unnecessary** in the circumstances of the case;
2. That there are **sufficient environmental planning grounds** to justify contravening the development standard;
3. That the applicant's written request has **adequately addressed the matters** required to be demonstrated by subclause 3;
4. That the proposed development would be in the public interest because it is **consistent with the objectives of the particular standard and the objectives for development within the relevant zone.**

The proposed development, alterations and additions to an existing dual occupancy, seeks a variation under Clause 4.6, to LEP 2013 Clause 4.3 – Height of Buildings.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as the proposal complies with the *First Way* of the *Five Part Test* outlined in *Wehbe*, in that the objectives of the standard are achieved, notwithstanding non-compliance with the standard.

The environmental planning grounds that justify contravening the development standard are the fact that the building is an existing approved dual occupancy and alterations are proposed only within the physical limits of the existing approved structure. No new works are proposed above the approved roof height of the existing building.

It is considered that this written request adequately addresses the matters required to be demonstrated, and;

The proposed development is in the public interest because it is consistent with the objectives of the particular standard, the objectives for development within the zone, the aims of LEP 2013 and Section 1.3 of the EPA Act.