



NSLPP MEETING HELD ON 06/09/23

Attachments:

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement (Building Height)
4. View Impact Analysis

ADDRESS/WARD: 27 Elamang Avenue, Kirribilli (C)

APPLICATION No: DA 186/23

PROPOSAL: Alterations and additions to an existing dwelling including a bedroom addition and an extension of a deck on the upper level.

PLANS REF:

Plan No.	Rev.	Description	Prepared by	Dated	Received
DA02	C	Site Plan	Corben Architects	02/08/2023	02/08/2023
DA04	C	Proposed Level 3 Plan	Corben Architects	02/08/2023	02/08/2023
DA05	C	Roof Plan	Corben Architects	02/08/2023	02/08/2023
DA06	C	Western & Eastern Elevations	Corben Architects	02/08/2023	02/08/2023
DA07	C	Northern & Southern Elevations	Corben Architects	02/08/2023	02/08/2023
DA08	C	Sections A & B, & Schedule of Finishes (not height plane)	Corben Architects	02/08/2023	02/08/2023
LP03	F	Landscape – Level 3	Studio U.C	06/06/2023	15/06/2023

OWNER: Bianca Grace White

APPLICANT: John White C/- Corben Architects

AUTHOR: Andrew Beveridge, Assessment Officer

DATE OF REPORT: 25 August 2023

DATE LODGED: 15 June 2023

DATE AMENDED: 2 August 2023

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This development application seeks NSLPP approval for alterations and additions to an existing dwelling house, including a first floor bedroom addition and extension of a deck.

This application is reported to North Sydney Local Planning Panel for determination because the proposed works breach the building height limit by greater than 10%, and the proposal effectively seeks a revision of a previous panel decision (01/02/2023).

As the proposal involves the construction of alterations and additions to an existing single dwelling with a maximum height of 10.2m that is in exceedance of the maximum permitted height limit by 1.7m (20.2%), the applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013. The applicant's submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council [2007] NSWLEC 827* in order to justify the proposed variation. The applicant's Clause 4.6 is considered to be satisfactory given the site circumstances and on the basis that it will not have a significant impact upon the views or general amenity of adjoining properties.

Notification of the proposal has attracted three (3) unique submissions and the assessment has considered these as well as the performance of the application against Council's planning requirements. The amenity impacts upon adjoining properties in regard to views, solar access, and privacy, have been assessed and are considered to be relatively minor and acceptable within the site circumstances. The works will also maintain a sympathetic scale that is consistent with the existing dwelling, with no additional excavation and will not result in any adverse impacts upon Sydney Harbour.

Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in any significant adverse impacts upon the locality or adjoining properties, and the streetscape character will be maintained. The proposal will also not result in any unreasonable impacts on the amenity of adjoining properties such as impacts to views, overshadowing or loss of privacy.

While there will be some minor non-compliances with the side setbacks, and involves a large non-compliance with the maximum height requirement that creates some minor view loss, this is considered to be acceptable on merit on the basis that the proposal would not have significant overall amenity impacts upon adjoining properties and the development has been designed in a manner that is sympathetic to the built form of the neighbourhood and the sloping topography of the site towards Sydney Harbour.

Having regard for the potential impacts upon the amenity of adjoining properties and the surrounding neighbourhood, subject to conditions, the development application is considered to be satisfactory and is recommended for **approval**.

DESCRIPTION OF PROPOSAL

The proposed works are for alterations and additions to an existing dwelling house, adding upon works already approved and under construction by way of a Complying Development Certificate, as follows:

Level 3 (First Floor) & Roof

- Addition of an extension to the north-western corner of Level 3 to create a new master bedroom (Bedroom 1) and an attached rooftop balcony/deck (Deck 2) facing towards the harbour.
- Conversion of the approved bedroom within the north-eastern corner of Level 3 to a study.
- Addition of planters around the sides of the proposed Deck 2 and the eastern side of Bedroom 1.
- Addition of solar panels to the extended hipped metal roof on the north-western roof plane.

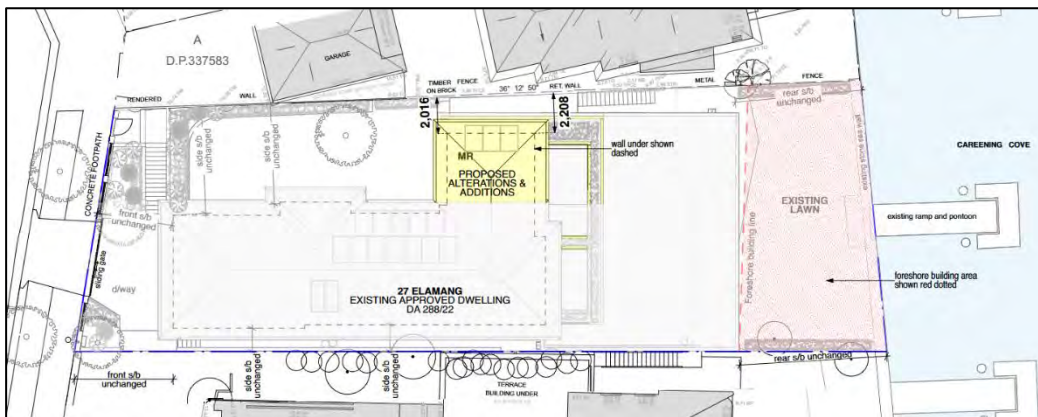


Figure 1. Site Plan.

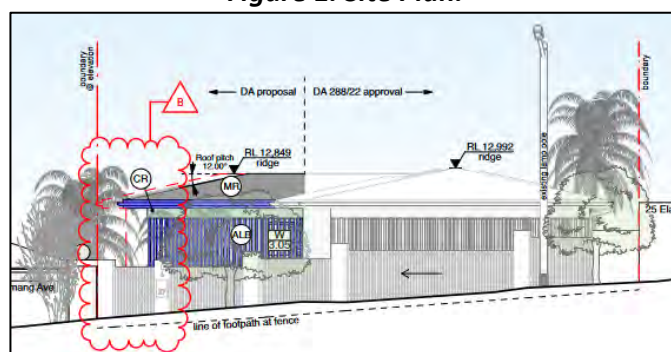


Figure 2. Elamang Avenue street elevation.

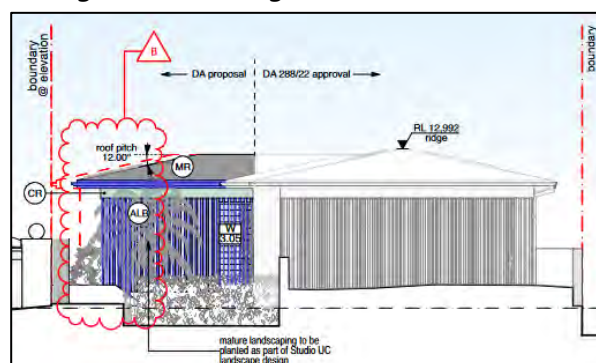


Figure 3. Southern street elevation.

SEPP (Resilience and Hazards) 2021

- Chapter 2 – Coastal Management (Coastal Use Area)
- Chapter 4 – Remediation of Land

SEPP (Building Sustainability Index – BASIX) 2004

Local Development

POLICY CONTROLS

North Sydney Development Control Plan 2013 (NSDCP 2013)

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site (Lot B DP 337583) is located on the northern side of Elamang Avenue. Currently located on site is a 2-3-storey, single dwelling, with a driveway and vehicular access within the south-western corner of the site. The dwelling is currently unoccupied given that the dwelling is a construction site.

The 626.9m² site is rectangular in shape, and the site's topography slopes down to the north where it has a foreshore frontage to Careening Cove of 15.24m. Surrounding development is predominantly residential, comprising multi-storey single dwellings and residential flat buildings. Loreto Kirribilli school is located opposite the subject site on the southern side of Elamang Avenue. Photos of the site and local area are provided below.



Figure 7. Aerial photograph of subject site (outlined yellow).

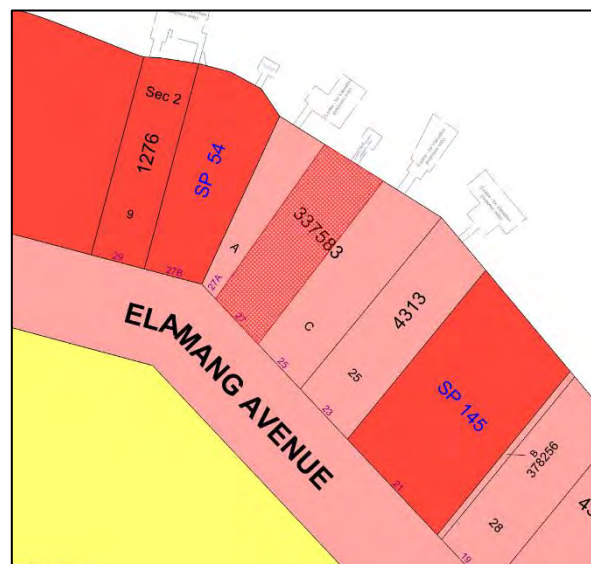


Figure 8. NSLEP Zoning Map with the subject hatched red in the R2 Zone.

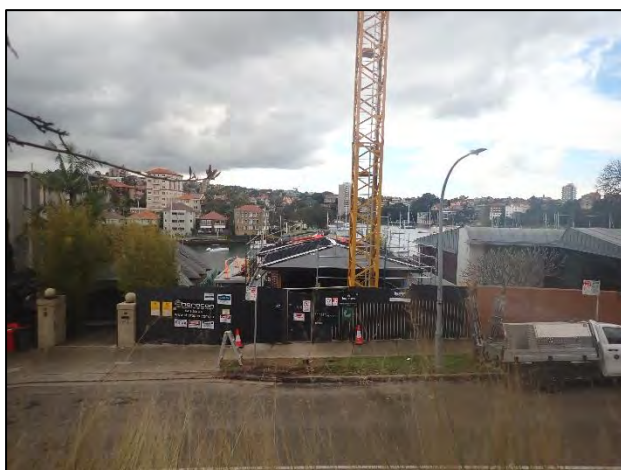


Figure 9. View of the site from the southern side of Elamang Avenue.



Figure 10. View of the eastern side elevation from the Elamang Avenue street level.



Figure 11. View of the subject site from Kesterton Park across Careening Cove.

RELEVANT HISTORY

Complying Development Certificate No. 143/22 for substantial alterations and additions to an existing two-storey dwelling, tree removal, a front addition, internal and external alterations, and an upper level addition containing a master bedroom, was issued on 11 July 2022. These works are currently under construction.

Development Application No. 288/22 (lodged 23 September 2022) for alterations and additions to the existing dwelling adding to the works approved by the above CDC, including a two storey addition in the south-western corner, a new driveway, garage and crossing, and the addition of a bedroom and decks to the north-western corner of Level 3, was considered by NSLPP at its meeting on 2 February 2023. The NSLPP deferred the matter pending the removal of the Level 3 bedroom addition that created view loss impacts. The applicant subsequently submitted plans deleting the Level 3 bedroom addition and associated deck, which were approved by Council's Manager Development Services under NSLPP delegation on 17 March 2023.

CURRENT HISTORY

Date	Action
15 June 2023	The application was lodged with Council
21 June 2023	The subject application was notified to adjoining properties and the Milson Precinct Committee seeking comment between 30 June 2023 and 14 July 2023. Three (3) submissions were received by Council raising various concerns.
2 August 2023	Amended plans that increased the side setback of the additions and extended the planters were submitted to Council.
2 August 2023	The amended plans were notified to adjoining properties and the Milson Precinct Committee seeking comment between 11 August 2023 and 25 August 2023. Three (3) submissions were received from the three previous submitters.
16 August 2023	An inspection of the subject site was undertaken by the assessing officer.

REFERRALS

Building

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

Engineering

The proposal was referred to Council's Development Engineer, who raised no objection subject to the imposition of appropriate conditions (See Conditions **C1, C4, C9, C10, C12, D1, E1, E2, E6, E3, E5, E11, E17, F6, G1, and G3**).

Landscaping

The proposal was referred to Council's Landscape Development Officer, who noted that there were no proposed changes to the landscape plan (as approved under DA288/22) outside of the proposed planters on Level 3, and raised no objection nor required any special conditions.

SUBMISSIONS

Original Plans

On 21 June 2023, the subject application was notified to adjoining properties and the Milson Precinct Committee seeking comment between 30 June 2023 and 14 July 2023. Three (3) submissions were received by Council. The issues raised in the submissions are summarised below and addressed later in this report.

Basis of Submission

- The proposed height breach, additional bulk, and side setback of the addition has the potential to impacts upon the privacy, solar access, and views, particularly from the garage windows, studio, and courtyard area.
- The proposed variation with the height limit and increased height will impact upon water views to Sydney Harbour.
- The proposed solar panels on the western roof plane will result in significant glare and heat directly into the unit.
- The addition will result in privacy impacts to adjoining properties.
- The proposed variation with the height limit and increased height will impact upon harbour views.
- The proposed additional rooftop deck area will impact upon privacy.

Amended Plans

On 2 August 2023, the subject application was notified to adjoining properties and the Milson Precinct Committee seeking comment between 11 August 2023 and 25 August 2023. Three (3) submissions were received from the three previous submitters, and two of which reiterated previous concerns but raised no new issues. One (1) of the submissions raised several new issues, which are summarised below and addressed later in this report.

Basis of Submission

- Concern regarding potential addition of a swimming pool.
- Concern regarding the provision of landscaped area on the site.

CONSIDERATION

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

SEPP (Biodiversity and Conservation) 2021 – Chapter 2 – Vegetation in non-rural areas

On 1 March 2022, the *SEPP (Biodiversity and Conservation) 2021* came into effect, consolidating several planning policies to form chapters within the new SEPP without significant amendment. Under Chapter 2 of this SEPP, which comprises the former *SEPP (Vegetation in Non-Rural Areas) 2017*, the proposed development would not require the removal of any significant vegetation defined under this SEPP or have an impact upon any bushland areas.

SEPP (Biodiversity and Conservation) 2021 – Chapter 6 – Water Catchments

Chapter 6 of this SEPP applies to this site and is required to be considered in the assessment of the application. The site is within the Foreshores and Waterways Area adjoining but not including the zone **W6 - Scenic Waters Active Use**. However, the proposed works do not involve any works within or directly adjoining the foreshore building line. The proposal is unlikely to have an adverse environmental impact as the works are sufficiently set back from the waterway and do not involve any additional excavation works, and consequently will not physically damage or interfere with the ecological or water qualities of Sydney Harbour. In summary, the proposal is considered to be satisfactory having regard for the aims and objectives of the SEPP.

SEPP (Resilience and Hazards) 2021 – Chapter 2 – Coastal Management

The provisions of this chapter do not apply as the site is within the Foreshores and Waterways Area identified within Part 6.4 in Chapter 6 (Water Catchments) of the *SEPP (Biodiversity and Conservation) 2021*. Nevertheless, it is considered that the proposed development is consistent with the objectives of the SEPP, as the proposal will not result in any removal of public access, overshadowing, or the significant loss of views of the public foreshore.

SEPP (Resilience and Hazards) 2021 – Chapter 4 – Remediation of Land

Chapter 4 of this SEPP requires Council to consider the likelihood of land contamination and any remediation necessary to rehabilitate the site. Council's records indicate that the site has previously been used for residential development for a substantial period of time and as such is unlikely to contain any contamination. The proposal also does not include any additional excavation or earthworks. Therefore, the requirements of the above SEPP have been satisfactorily addressed.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has submitted a valid BASIX Certificate (A466522_05, dated 1 May 2023) to satisfy the requirements of the above SEPP.

North Sydney Local Environmental Plan 2013

Permissibility

The subject site is zoned R2 Low Density Residential zone under the provisions of the NSLEP 2013. The proposal involves alterations and additions to an existing detached *dwelling house*, which is a permissible form of development in the zone with consent from Council.

Objectives of the zone

The objectives of the Zone R2 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 the development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development will maintain the existing single dwelling house development in an area characterised by lower and higher density residential developments, and will maintain a high level of amenity for the residents as well as residents of neighbouring properties. The proposal also involves relatively minor alterations and additions that will not have any impact upon the natural or cultural heritage of the area. The proposal will have no impact upon the heritage significance of any nearby heritage item.

Clause 4.3 – Height

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Clause	Proposed	Control	Complies
Clause 4.3 – Heights of Building	Existing: 7.302m Proposed: 10.224m (1.724m/20.28%)	8.5m	No

Due to the steep natural fall of the site and the existing excavated ground level of Level 1, a section of the top of Level 3 and the roof of the eastern end of the dwelling is above the 8.5m high limit at 10.224m (1.724m or 20.28%). Consequently, the proposed changes within Level 3 involve a variation of the Development Standard in clause 4.3 in NSLEP 2013 (see discussion below).

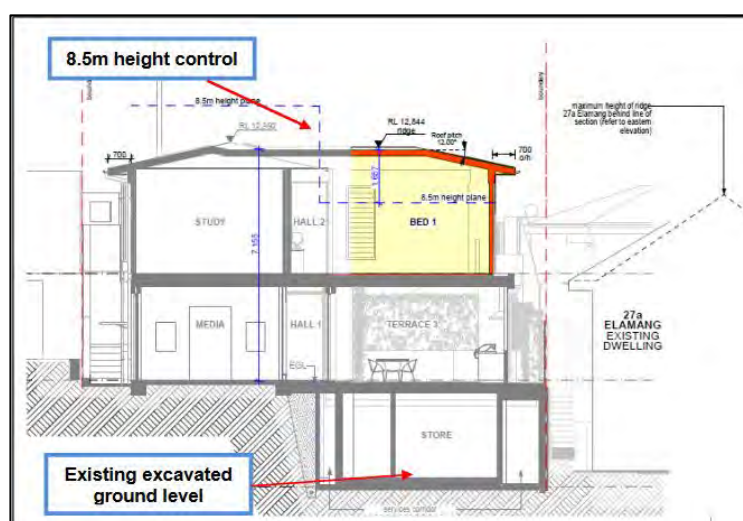


Figure 12. Section diagram looking south, with the areas above 8.5m shown by the blue dotted line.

Clause 4.6 – Exceptions to development standards

The applicant has provided a written request to vary the development standard for height.

Extent of the Variation

The proposed works would exceed the maximum permitted height. The proposed height of the proposed first floor extension results in a maximum variation of 1.724m or 20.28% from the development standard, as shown in the above table.

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

For reference the objectives of the development standard are as follows:

Clause 4.3(1) of North Sydney Local Environmental Plan 2013

- “(1) The objectives of this clause are as follows:
 - (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves, and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.”*
- (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and E4 Environmental Living.*

The Applicant’s written request relies upon *Webhe Test 1* to demonstrate that compliance with the development standard is unreasonable and unnecessary in this instance as the objectives of the development standard would be achieved notwithstanding the non-compliance with the development standard. The development is considered below, having regard to the objectives of the development standard.

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

The proposed dwelling has been designed in a manner that responds to the existing site conditions, with the development stepping down the site to the north-east to follow the natural topography, with the upper Level 3 set back behind each level below. Accordingly, this objective has been achieved.

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

There are a number of adjoining properties within the nearby residential flat building at No. 27B Elamang Avenue, which have Sydney Harbour views and outlooks across the site which will be to varying degrees impacted by the development.

The applicant has provided a View Impact Assessment for several nearby properties that will be affected by the proposed works, including Units 8 and 10 of 27B Elamang Avenue. Council officers have carried out a view impact assessment for Units 8 and 10 below.

Planning Principle – View Sharing

To understand whether the proposal will ensure a reasonable level of view sharing for adjoining properties, consideration is given to the four (4) step process adopted by Commissioner Roseth of the NSW Land and Environment Court in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

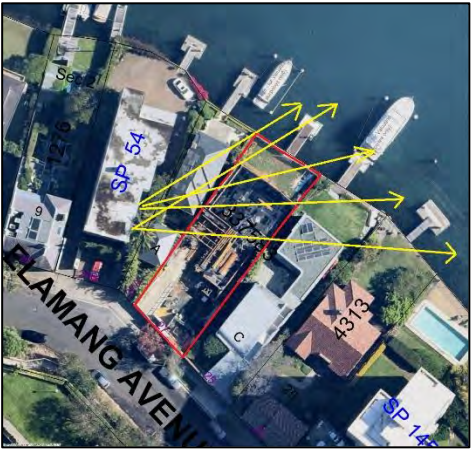

1. Assessment of views to be affected;

“Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.”

2. Consider from what part of the property the views are obtained.

“For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.”

The below table describes the view to be affected, along with the part of the subject site from which the views are obtained:

Address	View	Part of Property
<p>Unit 8/27B Elamang Avenue</p>  <p>Figure 15. Views (in yellow) from balcony and bedroom across the subject site (outlined red).</p>	<p>North-eastern and eastern view of Careening Cove, Neutral Bay and Sydney Harbour beyond. District views towards Kurraba Point.</p>	<p>The affected views are water views from the central loungeroom and secondary bedroom of the unit on the south eastern side elevation of the building. The views are accessed over multiple side boundaries across Nos. 27A, 27, and 25 Elamang Avenue. The views from the bedroom are partially obscured by Palm trees present on 27A Elamang Avenue.</p>
<p>Unit 10/27B Elamang Avenue</p>  <p>Figure 16. Views (in yellow) from balcony and bedroom across the subject site (outlined red).</p>	<p>North-eastern and eastern view of Careening Cove, Neutral Bay and Sydney Harbour beyond. District views towards Kurraba Point.</p>	<p>The affected views are water views from the central loungeroom and secondary bedroom of the unit on the south eastern side elevation of the building. The views are accessed over multiple side boundaries across Nos. 27A, 27, and 25 Elamang Avenue. The views from the bedroom are partially obscured by Palm trees present on 27A Elamang Avenue.</p>

3. Assess the extent of the impact in qualitative terms as negligible, minor, moderate, severe or devastating.

“This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.”

Unit 8/27B Elamang Avenue

Loungeroom – The loungeroom would retain the majority of its water view and district/harbourside views to the northeast but would lose a lower section of the water view due to the new roof level of the development. This loss will partially be created through the Level 3 addition of the subject site, particularly within the north-western corner of the addition that is non-compliant with the height limit. Nevertheless, this overall view and general outlook will be retained by the proposal as the majority of the lower part of the water view is already obstructed by existing buildings on the subject site and adjoining sites, such as the roof of No. 27A Elamang Avenue.



Figure 13. The outlook/view from the loungeroom of Unit 8.

Bedroom – The bedroom would lose a portion of the lower section of the water view to the north-east gained across the side boundaries of Nos. 27A and 27 Elamang Avenue, which is already obscured by intervening buildings and trees. This loss will be created through the Level 3 addition of the subject site, particularly within the north-western corner of the addition. While this will result in the partial loss of water views from this bedroom, this water view across the side boundaries is relatively minor given the existing vegetation and buildings that already obscure views minimises the level of impact from this space, which is a low-use bedroom space. The majority of the view to Kurraba Point and some water view will be retained.

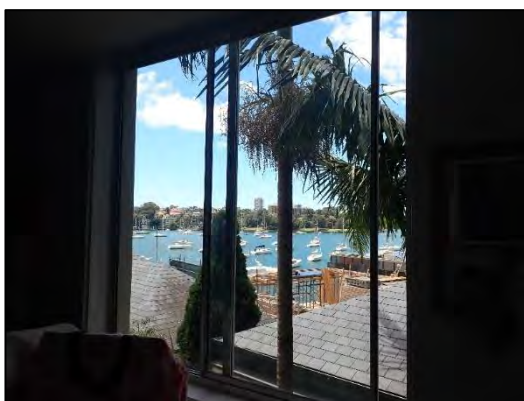


Figure 14. The outlook/views from the bedroom of Unit 8.

Overall, the view impacts to this property are assessed as minor. Refer to **Figures 13-14** above.

Unit 10/27B Elamang Avenue

Loungeroom – The loungeroom would retain the vast majority of its water view and district/harbourside views to the northeast but would lose a very minor lower section of the water view due to the new roof level of the development. This loss will partially be created through the Level 3 addition of the subject site, particularly within the north-western corner of the addition that is non-compliant with the height limit. Nevertheless, this overall view and general outlook will be retained by the proposal as the majority of the lower part of the water view is already obstructed by existing buildings on the subject site.

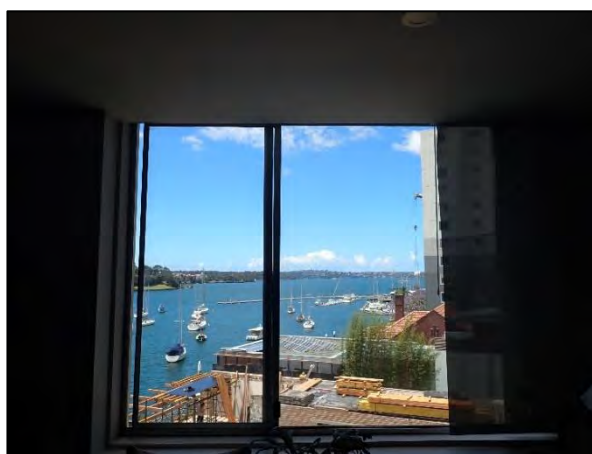


Figure 15. The outlook/view from the loungeroom of Unit 10.

Bedroom – The bedroom would lose a small portion of the lower section of the water view to the north-east gained across the side boundaries of Nos. 27A and 27 Elamang Avenue, which is already obscured by intervening buildings and trees. This loss will be created through the Level 3 addition of the subject site, particularly within the north-western corner of the addition. While this will result in partial loss of water views from this bedroom, this water view across the side boundaries is relatively minor given the existing vegetation and buildings that already obscure views minimises the level of impact from this space, which is a low-use bedroom space. The majority of the view to Kurraba Point and water view will be retained.



Figure 16. The outlook/views from the bedroom of Unit 8.

The impacts for this property are assessed as minor. Refer to **Figures 15-16** above.

4. Assess the reasonableness of the proposal that is causing the impact.

“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

The proposed development results in a breach of the NSLEP height control of 8.5m by up to 1.724m or 20.28%. The majority of this height breach occurs at the north-western end of the Level 3 addition, comprising only the top section of the upper level and part of the roof at this corner. The view loss for the properties at 27B Elamang Avenue, while partially created as a result of non-complying building elements, particularly at the northern end of the Level 3 addition, are considered to be relatively minor and reasonable in their impact due to the minor nature of the views impacted that are filtered through vegetation and the adjoining buildings across several side boundaries, and will have a minimal impact upon the overall views available for these dwellings elsewhere, with the majority of water and district views being retained from these dwellings.

Given the above considerations, on balance, the proposal will result in a reasonable and acceptable level of view loss impacts. As such, it is considered that this objective has been achieved by the proposal.

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

Due to the orientation, topography, and separation from adjoining buildings to the south and east, the proposed development will not result in significant overshadowing for adjoining properties. It is also noted that the elements of the proposal that are above the height of buildings control do not contribute to any significant overshadowing.

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

The proposed works will maintain appropriate levels of privacy for residents of the subject site and adjoining properties. The proposed Deck 2 will be accessed off a bedroom and is unlikely to result in significant privacy impacts for adjoining properties. The proposed planters along the western side of Deck 2 will also further separate this space and provide adequate screening from neighbours. Accordingly, this objective has been achieved.

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

The site is located within the R2 Low Density Residential zone and directly adjoined by buildings within this zone, with residential flat buildings within the R4 High density Residential zone located nearby at Nos. 21 and 27B Elamang Avenue. The proposed works maintain the approved dwelling footprint, which is broadly similar to surrounding development, and have been designed to follow the steep natural topography of the area and take advantage of views and outlooks to the north and east. As a result, it is considered that the proposed northern-western extension is unlikely to result in a development that is incompatible with the R2 zone. Accordingly, this objective has been achieved.

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

The proposed scale and density of the development is appropriate for the site and does not result in significant non-compliances with Council's controls. While the proposal will result in a non-compliance in building height and side setbacks, the overall development is compatible with the existing building and surrounding built forms, which have been designed to maintain views to the north and east in line with the sloping topography. The proposal will result in a built form that demonstrates consistency with the prevailing development pattern and streetscape of the immediate area. Accordingly, this objective has been achieved.

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

Due to the steeply sloping topography of the neighbourhood, particularly along the western side of Elamang Avenue, a built form of 1-2 storeys is not typical, with a built form of 2+ storeys being more typical as a response to the sloping topography. The previously approved building on site is a 2-3-storey dwelling while adjoining buildings to the north and south with similar site conditions are also 2-3 storeys in height. Given that the proposed north-west extension continues the 2-3 storey form that characterises the immediate area, it is considered that this objective has been achieved by the proposal.

Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation

The applicant has provided the following grounds in their Clause 4.6 statement:

- *The variation to the 8.5m height standard pursuant to the North Sydney Local Environmental Plan 2013 is a result of the existing excavated ground level on the site, including an existing sub-floor level beneath the proposed upper-level bedroom addition. As established by the Court in its ruling in Merman Investments Pty Ltd v Woollahra Municipal Council the prior excavation of land beneath an existing building footprint can serve to distort the building height plane when applied to a sloping site, resulting in a non-compliant building height central to a site where otherwise the proposal would comply with the height control when measured at the sites boundaries. This was accepted as an environmental planning ground.*

As noted, in this instance, the existing excavated sub-floor level at the north-eastern portion of the site results in the protrusion of the upper-level bedroom addition above the 8.5m height control, whilst the perceptible height of the development comfortably complies with the height control at a height of 6.7m-7.5m when viewed from the adjoining properties to the east and west.

- *The variation to the height standard is also partly the result of the topography of the subject site which has a fall from its street frontage to the foreshore of 7.71m. The control is a generic one applying to all identified sites on the North Sydney map, the slope here is a particular circumstance of the case where the criteria is both unreasonable and unnecessary.*
- *The portions of the building exceeding the height standard will not be visually discernible as in breach of the control when viewed from the public domain being at the north-eastern portion of the built form and confined to the roof form and upper portion of the bedroom addition. In this case, the building form and scale is suitable for the subject site and compatible with the planning objectives when measured against the intended outcomes of the objectives of the R2 – Low Density Residential zone.*
- *The variation to the height limit does not contribute to additional bulk and scale at the foreshore or adjoining properties noting these elements present a height of 6.7m-7.5m when measured at the building elevations, and would not otherwise be perceptible from Elamang Avenue – public domain. The varying elements will not result in unreasonable privacy impacts, overshadowing, or the loss of views/outlook from the adjoining properties.*
- *The proposed bedroom addition meets the view sharing planning principle. The view impact from 8 and 10/27B Elamang Avenue is negligible noting the height variation is measured to an internal excavated level and the east elevation meets the 8.5m height standard.*
- *Dickson C confirmed in WZSydney Pty Ltd v Ku-ring-gai Municipal Council (Paragraph 78) that the avoidance of impacts is an environmental planning ground as it promotes ‘good design and amenity of the built environment’ being an objective of the EPA Act. In this instance, the proposed variation to building height has been reduced compared to that previously proposed under Development Application D288/22 on the site, with the bedroom addition being 187mm lower in height, reduction in eave overhang by a length of 1.1m-1.975m, and recessed footprint compared to the previously proposed bedroom addition at this portion of the site.*

The associated view impact previously assessed under D288/22 has been significantly reduced as a result of this proposal, with the view impact being negligible in the site circumstances. The proposal has reduced the extent of the view impact presented by the previous proposal, within a form and scale that is appropriate for the subject site.

- *The proposed bedroom addition to the dwelling house including the portion exceeding the 8.5m height standard does not result in the overshadowing of any adjoining properties.*
- *The variation in height is consistent with the following relevant aims of the North Sydney LEP 2013 found at clause 1.2(2):*
 - *(2)(b)(i) The variation does not contribute significant additional bulk to the surrounding area with the resultant built form on the site appearing as two storeys externally and being consistent with that of the adjoining dwelling at 25 Elamang Avenue and other surrounding dwelling houses.*
 - *(2)(b)(ii) The variation being on a foreshore site does not adversely impact upon the visual qualities of Sydney Harbour noting the variation will not be highly perceptible from the waterway, and the varying element – upper level bedroom addition is adequately recessed from the foreshore elevation of the level below. The variation will not adversely impact upon the appearance of the development when viewed from Careening Cove.*
 - *(2)(c)(i) The portions of the development exceeding the height control do not result in unreasonable amenity impacts to adjoining properties or the public domain with regard to overshadowing, privacy or view loss.*
 - *(2)(e)(i) The variation to the height proposed in this development does not impede on the natural landscape of the locality. The proposal has been designed to conform to the topography of the site and utilise the existing footprint of the dwelling on the subject site to mitigate the impact upon the topography of the site. The variation is a result of site specific environmental constraints – existing excavated ground level and topography of the subject site.*
 - *(2)(e)(f) The proposal will not adversely impact upon the heritage significance of the nearby heritage items along Elamang Avenue.*
- *The variation in height is consistent with the following objects of the Environmental Planning and Assessment Act, 1979 as follows:*
 - *1.3(c) – The proposal is an orderly and economic use of the site, and the development is largely consistent with the height standard with a contemporary built form that is compatibility with the desired future character of the locality, and the variation will not result in unreasonable amenity impacts,*
 - *1.3(g) – The variation to the height control presents a good design outcome for the development, allowing for a recessed bedroom addition that contributes to the residential amenity of the development.*

- *1.3(g) – The portion of the development exceeding the height control does not result in unreasonable amenity impacts to adjoining properties or the public domain with regard to overshadowing or loss of views.*

The proposed non-compliance with the height limit only relates to a portion of the north-western corner of Level 3 and does not comprise the entirety of the proposed addition. Furthermore, the amenity impacts of the development are considered to be acceptable and are compliant or acceptable within the site circumstances with Council's other controls in Part B of NSDCP 2013. The proposed works have been sympathetically designed to step down the sloping site topography in a manner that minimises any amenity impacts upon adjoining properties. The proposal is therefore considered to be acceptable within the site circumstances, with no excessive height, bulk, or scale, nor any significant adverse impacts to the amenity and privacy of neighbouring properties, and is considered to be a reasonable improvement to the site.

Clause 4.6(4)(a)(ii) Applicant's written request

The written request provided by the applicant adequately addresses the matters required by subclause (3) as discussed above.

Clause 4.6(4)(a)(ii) Public Interest

The proposed development would be in the public interest because it is consistent with the objectives of the development standard for height and the objectives of the zone as discussed above. It is also considered that the proposal does not result in any significant adverse impacts for the character of the surrounding area or the amenity of adjoining properties.

Conclusion

The applicant has submitted a written request pursuant to Clause 4.6 in NSLEP 2013. The written request has adequately addressed sub clause (3) and, subject to satisfying conditions, is considered to be in the public interest because it is consistent with the relevant development standard and the objectives of the zone.

Clause 5.10 – Heritage conservation

The site is not a heritage item and is not located within a conservation area. While the site is within the vicinity of several heritage items, the works are sufficiently separated from these items and will not have any impact upon the curtilage or public domain views of these heritage items. Consequently, the proposal is acceptable in this regard.

Clause 6.9 – Limited development on foreshore area

While a portion of the site lies within the foreshore building line area, the proposed works are located outside this area, and the development includes sufficient landscaping and stormwater retention on site to minimise any impacts upon foreshore land and the Sydney Harbour waterway. The proposal, therefore, is not considered to have an adverse impact upon the waterway, flora and fauna, or the heritage and environmental significance of the surrounding area.

Clause 6.10 – Earthworks

The works will not entail any excavation or earthworks. Consequently, the proposal is unlikely to negatively affect drainage patterns, soil stability, natural features, or the integrity of adjoining properties.

North Sydney Development Control Plan 2013

Part B Section 1 – Residential Development		
Section	Complies	Comments
1.2 Social Amenity		
Population Mix	Yes	The proposal will maintain the existing single dwelling house on the site, with a minor increase in accommodation provision by one (1) bedroom. The existing dwelling does not involve affordable housing.
Maintaining residential accommodation		
Affordable housing		
1.3 Environmental criteria		
Topography	Yes	The works will not entail any excavation or earthworks that would impact upon the site topography. The proposed Level 3 addition is consistent with the stepped built form that follows the sloping foreshore location.
Properties adjoining bushland	N/A	The site does not adjoin, nor is within close proximity to, any bushland areas.
Properties on Bush Fire Prone Land	N/A	The site is not classified as Bush Fire Prone Land.
Properties with a foreshore frontage	Yes	While a portion of the site lies within the foreshore building line area, the proposed works are located outside this area. The proposal, therefore, is not considered to have an adverse impact upon the waterway, flora and fauna, or the heritage and environmental significance of the surrounding area.
Views	Yes	Refer to the detailed discussion under the Tenacity planning principle assessment earlier within this report, where it is considered that the view impacts are considered to be minor and acceptable within the site circumstances. In order to minimise any potential future view loss arising from planters, the proposed 4 x <i>Rhaphiolepis indica</i> shrubs within the planter along the western side of Deck 2 are recommended to be replaced with a smaller species (see Condition C14).
Solar access	Yes	<p>Due to the orientation, topography, and separation from adjoining buildings to the south and west, the proposed development will not result in significant overshadowing for adjoining properties. Some small additional shadows will occur to the eastern side setback adjacent to the southern garage of No. 27A Elamang Avenue at 9am. However, these shadows will not adversely impact upon the main indoor and outdoor living spaces of this dwelling and the majority of shadows from this new extension will fall over existing shadows and the subject site due to the topography of the area. As a consequence, the development will not affect the primary living areas and private open space for adjoining properties between 9am and 3.00pm in mid-winter.</p> <p>In summary, the solar access impacts are considered to be relatively minor and acceptable within the site circumstances and the conditions of neighbouring properties.</p>

Acoustic and Visual privacy	Yes	<p>There are no new openings to the proposed side elevation facing 27A Elamang Avenue that will result in any privacy impacts. The proposed north-east-facing rear balcony at Level 3 (Deck 2) will only overlook the existing roof plane of 27A Elamang Avenue, and is unlikely to result in additional overlooking to the west or north-west. The proposed addition and deck will also have planters along the side of these additions which will provide further separation and screening for adjoining properties.</p> <p>The proposed works will not have any other privacy impacts, including to the north (facing the harbour), east, or the south (facing Elamang Avenue).</p>
1.4 Quality Built Form		
Context	Yes	<p>The existing building will continue to be located below the Elamang Avenue street level, so will not be highly visible from the street. The proposed additions will be stepped down the topography of the site, with the extended Level 3 maintaining a substantial setback from the rear boundary to the foreshore, which will ensure that the building will sympathetically blend with adjoining properties when viewed from the harbour or harbourside sites such as Kesterton Park/North Sydney High Street Ferry Wharf.</p>
Streetscape	Yes	<p>A small bond is recommended to protect Council's infrastructure outside the site (see Condition C10).</p>
Siting	Yes	<p>The proposed works will be positioned in the same orientation as the previously approved building on site, which remains consistent and characteristic with the neighbourhood.</p>
Setbacks	Yes (Acceptable on merit)	<p>Front The proposed addition will maintain the previously approved front setback to Elamang Avenue.</p> <p>Side – West The proposed Level 3 extension will have a western side setback from the boundary with 27A Elamang Avenue of 2.01-2.2m, which is compliant with Council's 1.5m setback control for two (2) storeys up to 7m in height. The setback is not compliant for the sections above 7m, which are mainly to the rear, where a 2.5m side setback control applies. However, this is considered to be acceptable on the basis that the non-compliance is small (by 300-490mm), the majority of the eastern extension is compliant with the setback control, and the non-compliance is unlikely to result in significant amenity impacts for adjoining properties to the north, particularly regarding privacy and solar access for No. 27A Elamang Avenue and views for Units 8 and 10 of No. 27 B Elamang Avenue, as demonstrated elsewhere in this report.</p> <p>Rear The proposal will maintain the approved rear setback to the foreshore frontage. The addition to level 3 will be recessed behind the floor below and maintain the approved rear setback.</p>
Form, massing & scale	Yes	<p>The proposed works are consistent with the built form, massing, and scale within the area, which allows for a stepped form of 2-3 storeys to follow the steep topography of the area that slopes towards Sydney Harbour. The additional bulk at Level 3 will not significantly encroach upon adjoining properties and will maintain sufficient landscaped setbacks and buffers from adjoining sites. This is assisted by the addition of planters along the western side of the addition, which will create additional building separation from 27A Elamang Avenue through greater setbacks and a more articulated built form.</p>

		<p>Due to the steeply sloping topography along the northern side of Elamang Avenue, a built form of 2-3 storeys is more typical for this neighbourhood. It should be noted that like the subject site, this scale of building is not readily perceptible from the street as these developments are mostly below street level.</p> <p>The overall form of the development is contemporary but is sufficiently articulated, with a variety of materials and design features such as balcony planter boxes and battens/screens to ensure that the facades are not dominated by glass.</p>												
Built form character	Yes	The proposed works are consistent with the existing character of the dwelling and the streetscape, with contemporary style developments stepping down the steep topography with a limited built form to street level. As noted above, the design does not comprise an excessive amount of glazing, and the north-facing balconies are integrated within the stepped rear elevation.												
Roofs	Yes	The proposed additions will continue the previously approved metal hipped roofs.												
Colours and materials	Yes	The proposed colours and materials are acceptable and sympathetic to the surrounding neighbourhood.												
1.5 Quality urban environment														
High quality residential accommodation	Yes	The proposed works will provide a high standard of accommodation for the dwelling.												
Site coverage, Landscaped area and Un-Built Upon Area	N/A	<p>The levels of site coverage, landscaped area, and unbuilt-upon area do not change from the levels approved under DA 288/22. The previously approved levels are provided in the table below:</p> <table border="1" data-bbox="721 1144 1406 1388"> <thead> <tr> <th>Site Area: 626.9m²</th> <th>Approved (288/22)</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>Site Coverage 40% (max)</td> <td>51.65% (323.81m²)</td> <td>No</td> </tr> <tr> <td>Landscaped area 40% (min)</td> <td>40.24% (252.32m²)</td> <td>Yes</td> </tr> <tr> <td>Unbuilt-upon area 20% (max)</td> <td>8.09% (50.77m²)</td> <td>Yes</td> </tr> </tbody> </table>	Site Area: 626.9m ²	Approved (288/22)	Complies	Site Coverage 40% (max)	51.65% (323.81m ²)	No	Landscaped area 40% (min)	40.24% (252.32m ²)	Yes	Unbuilt-upon area 20% (max)	8.09% (50.77m ²)	Yes
Site Area: 626.9m ²	Approved (288/22)	Complies												
Site Coverage 40% (max)	51.65% (323.81m ²)	No												
Landscaped area 40% (min)	40.24% (252.32m ²)	Yes												
Unbuilt-upon area 20% (max)	8.09% (50.77m ²)	Yes												
Safety and Security	Yes	Safety and security would not be compromised as a result of the subject development application. The proposal maintains the existing security and natural surveillance of the subject site to and from the street.												
Vehicle Access and Car parking	N/A	No changes are proposed to the existing and approved vehicular access and parking arrangements.												
Landscaping and front gardens	Yes	The proposal does not alter any existing or previously approved landscaped area on the site. The proposed landscaping for the planters around Deck 2 and the bedroom addition on level 3 will help soften the built form and provide additional separation of the spaces from nearby buildings. Conditions are recommended to ensure that the landscape plan is consistent with the architectural plans, and that the planters comprise appropriate species that can be maintained (see Condition C14).												
Private and Communal Open Space	Yes	The proposal maintains a substantial area of private open space.												
1.6 Efficient use of resources														
Energy efficiency	Yes	A valid BASIX Certificate has been lodged with this proposal. Solar panels are also included for the proposed roof extension.												
Stormwater management	Yes	All stormwater pipes will connect to the approved system, which includes rainwater tanks on site and drainage via the existing arrangements.												

Kirribilli Planning Area (Kirribilli Neighbourhood)

Consideration has been given to the Character Statement for the North Cremorne Planning Area in Part C of NSDCP 2013, particularly Section 8.2 (Kirribilli Neighbourhood) where this site is located. Subject to conditions, the proposal is acceptable as the proposed works are broadly consistent with the existing building and development in the surrounding area, and responds to the existing site topography and constraints without resulting in any significant loss of views, privacy, solar access, or amenity for adjoining properties.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal, which involves development where the cost of the proposed development is more than \$100,000, is classified under the North Sydney Local Infrastructure Contributions Plan 2020 as a 'Type (c) development' that triggers a Section 7.12 contribution of **\$740.00**, for the purpose of local infrastructure provision.

Contribution amounts payable

Applicable contribution type		
s7.12 contribution details	Development cost:	\$148,060.00
<i>(payment amount subject to indexing at time of payment)</i>	Contribution:	\$740.00

A condition is recommended requiring payment prior to issue of any Construction Certificate (refer to **Condition C11**).

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

SUITABILITY OF THE SITE (Section 4.15 of the EPAA 1979)

The proposal involves residential development in a residential zone, so the proposal is considered to be suitable for the subject site.

SUBMISSIONS (Section 4.15 of the EPAA 1979)

The subject application was notified to adjoining properties and the Milson Precinct Committee seeking comment. Three (3) unique submissions were received by Council raising concerns regarding the proposal. The issues raised in the submissions are summarised below and addressed with planning comments:

- ***The proposed height breach, additional bulk, and side setback of the addition has the potential to impacts upon the privacy, solar access, and views, particularly from the garage windows, studio, and courtyard area.***
- ***The proposed height will impact upon water views to Sydney Harbour.***
- ***The addition will result in privacy impacts to adjoining properties.***
- ***The proposed additional rooftop deck area will impact upon privacy.***

See the discussions earlier in this report regarding the form, massing, scale, height level breach, view impacts, privacy, solar access, and setbacks of this development, where it was considered that the proposal has been designed in a manner that responds to the existing site conditions, with articulations and variations in the design to minimise any amenity or visual impacts upon the neighbourhood and adjoining properties.

It is noted that while the view impacts are considered to be relatively minor overall, in order to minimise any potential future view loss arising from the planters, the proposed 4 x *Raphiolepis indica* shrubs within the planter along the western side of Deck 2 are recommended to be replaced with a smaller species (see **Condition C88**).

- ***The proposed solar panels on the western roof plane will result in glare issues.***

A condition has been recommended (see **Condition C20**) to minimise the potential for reflectivity and glare issues from the proposed roof and solar panels.

- ***Concern regarding potential addition of a swimming pool.***

No swimming pool is proposed under the current application, and it is noted that no swimming pool has been approved under the previous DA (288/22) or by way of a Complying Development Certificate. This matter has been referred to Council's Building Compliance Team for further enquiry.

- ***Concern regarding the provision of landscaped area on the site.***

The landscaped area for the site is unchanged by the proposal. The NSDCP landscaped area requirement is 40% for this site, and a compliant level was approved under the previous DA 288/22.

PUBLIC INTEREST (Section 4.15 of the EPAA 1979)

The proposal would provide a high level of amenity for the residents without causing any unreasonable impacts to the area's character, the streetscape, and/or adjoining properties, so the proposal would not be contrary to the public interest, subject to conditions.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION

The subject application was notified to adjoining properties and the Milson Precinct Committee seeking comment and a total of three (3) unique submissions were received raising concerns regarding building height, bulk and scale, visual privacy, view loss and amenity impacts. As demonstrated in this report it is considered that the proposal will not have a significant impact upon the general amenity, privacy, views, stability, or solar access for adjoining properties, subject to appropriate conditions of consent to maintain residential amenity, ensure the works are safe for the community, and enhance the landscaped setting of the site within the locality.

CONCLUSION AND REASONS

The development application has been assessed against the relevant planning instruments and policies, in particular the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013, and generally found to be satisfactory.

The development is generally compliant and acceptable having regard to Council's built form character, form massing and scale, solar access, and visual and acoustic privacy controls, and broadly complies with the objectives and provisions for height, views, setbacks, and the Kirribilli Neighbourhood. While the proposal involves a minor variation to the minimum side setback requirement under the DCP, and involves non-compliance to the maximum building height provision under Clause 4.3 of the LEP, these breaches have been evaluated and considered to be reasonable and acceptable on merit given that the proposal will not have significant view loss, overshadowing, visual privacy and amenity impacts upon adjoining properties and the development has been designed in a manner that is sympathetic to the built form of the neighbourhood and the sloping topography of the site towards Sydney Harbour.

While proposed additions will be above the maximum permitted height limit, the works above the height limit have been designed to be sympathetic to the approved dwelling and surrounding development, and do not result in significant adverse amenity impacts upon nearby properties. The applicant's written statement has been reviewed and is considered to adequately address the matters required by Clause 4.6 of the NSLEP 2013.

Subject to conditions imposed, there would be no unreasonable overshadowing, view loss, privacy loss and/or excessive bulk and scale as a result of the proposal. The proposed addition will not be highly visible from the public domain but is nevertheless consistent with the previously approved dwelling on the site, and is considered a contextually appropriate and sympathetic design outcome that is adequately responsive of the site constraints and setting. The addition of a bedroom within Level 3 of the dwelling is wholly contained within the building footprint and does not result in any changes to the site coverage, landscaped area and un-built upon area as approved under DA288/22. The proposed addition does not contribute to any substantial massing of the built form and is not considered an overdevelopment of the site.

Given the above considerations, the proposed development (as conditioned) will provide a high level of resident amenity without adversely impacting adjoining dwellings and the character of the neighbourhood. The application is considered to be acceptable in the circumstances and it is recommended for **approval** subject to standard and site-specific conditions.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 and **grant consent** to Development Application No. 186/23 for alterations and additions to an existing single dwelling, on land at 27 Elamang Avenue, Cremorne, subject to the following site specific and standard conditions:-

Inconsistency with Development Consent DA288/21

B1. Pursuant to s4.17(1)(b) and s4.17(5) of the *Environmental Planning and Assessment Act 1979*, consent no DA 288/22 for alterations and additions, shall be modified in accordance with Clause 67 of the *Environmental Planning and Assessment Regulation 2021* prior to the issue of a construction certificate for this consent by adding a new condition D3 as follows:

“Development consent DA186/23, authorises additions and alterations to a detached dwelling at 27 Elamang Avenue, Cremorne. Where there is an inconsistency between this consent and consent no DA288/22, then consent no. DA186/23, shall prevail to the extent of the inconsistency.”

(Reason: To provide clarity as to the works approved under both development applications)

Amendments to the Landscape Plan

- C14. The landscape plan must be amended as follows to provide an appropriate landscaped setting:
- 1) The landscape plan numbered LP03 (Revision F), prepared by Studio U.C, dated 6 June 2023, received by Council on 15 June 2023, must be amended and updated to reflect the amendments made in the architectural plans (Numbered DA02, DA04-08, Revision C) prepared by Corben Architects, dated 2 August 2023, and received by Council on 2 August 2023.
 - 2) Details must be provided on the plans for the ongoing maintenance of the planters located along the western side of Bedroom 1 on Level 3, as well as the choice of species (including number and pot size).
 - 3) The 4 x *Rhaphiolepis indica* proposed for planting in the western side planter of Deck 2 shall be replaced with another species that can reach a mature height no greater than 600mm. *Aloe* ‘Bush Baby Yellow’ and *Kalanchoe tomentosa* are appropriate suggested species.

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

(Reason: To ensure an appropriate landscaped context and maintain a consistency of plans)

ANDREW BEVERIDGE
ASSESSMENT OFFICER

MIGUEL RIVERA
A/TEAM LEADER ASSESSMENTS

DAVID HOY
A/MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
27 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 186/23

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 No.	Rev.	Description	Prepared by	Dated	Received
DA02	C	Site Plan	Corben Architects	02/08/2023	02/08/2023
DA04	C	Proposed Level 3 Plan	Corben Architects	02/08/2023	02/08/2023
DA05	C	Roof Plan	Corben Architects	02/08/2023	02/08/2023
DA06	C	Western & Eastern Elevations	Corben Architects	02/08/2023	02/08/2023
DA07	C	Northern & Southern Elevations	Corben Architects	02/08/2023	02/08/2023
DA08	C	Sections A & B, & Schedule of Finishes (not height plane)	Corben Architects	02/08/2023	02/08/2023
LP03	F	Landscape – Level 3	Studio U.C	06/06/2023	15/06/2023

(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.

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)

**27 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 186/23**

Page 2 of 21

No Demolition of Extra Fabric

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

(Reason: To ensure compliance with the approved development)

External Finishes and Materials

- A4. External finishes and materials must be in accordance with the submitted schedule numbered DA08, prepared by Corben Architects, dated and received by Council on 2 August 2023, otherwise modified by Council in writing. Substitution of materials must not be undertaken, except where otherwise approved in writing by Council.

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

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

Inconsistency with Development Consent DA288/22

- B1. Pursuant to s4.17(1)(b) and s4.17(5) of the *Environmental Planning and Assessment Act 1979*, consent no DA 288/22 for alterations and additions, shall be modified in accordance with Clause 67 of the *Environmental Planning and Assessment Regulation 2021* prior to the issue of a construction certificate for this consent by adding a new condition D3 as follows:

“Development consent DA186/23, authorises additions and alterations to a detached dwelling at 27 Elamang Avenue, Cremorne. Where there is an inconsistency between this consent and consent no DA288/22, then consent no. DA186/23, shall prevail to the extent of the inconsistency.”

(Reason: To provide clarity as to the works approved under both development applications)

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

Dilapidation Report Damage to Public Infrastructure

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

**27 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 186/23**

Page 3 of 21

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)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C2. A photographic survey and dilapidation report of adjoining property No 27A Elamang Avenue, Kirribilli 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.

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

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

(Reason: Proper management of records)

Structural Adequacy of Existing Building

- C3. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the 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)

Sediment Control

- C4. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th Edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A 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:

- 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

- C5. 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)

External Colours and Finishes

- C6. The external colours and finishes shall match those as existing and/ or be compatible with surrounding development. A schedule of external colours and finishes must be submitted to the 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 that the completed colours and finishes of the works are compatible with surrounding development)

Roofing Materials and Solar Panels – Reflectivity

- C7. Roofing materials and solar panels must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material/solar panel must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties.

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 that excessive glare or reflectivity nuisance from roofing materials and solar panels does not occur as a result of the development)

Work Zone

- C8. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of any Construction Certificate.

Note: For major development an application for work zone permit must be considered by the North Sydney Local Traffic Committee.

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

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

(Reason: Amenity and convenience during construction)

Stormwater Disposal

- C9. 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)

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

- C10. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$2,500.00 to be held by Council for the payment of cost for any/all of the following:

**27 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 186/23**

Page 7 of 21

- 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:

- 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)

Section 7.12 Contributions

- C11. 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.

**27 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 186/23**

Page 8 of 21

Based on the cost of a total contribution of \$740.00 is to be paid to Council to provide for additional local infrastructure improvements.

The contribution MUST BE paid prior to the issue of any Construction Certificate.
The above amount will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

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

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

Security Deposit/Guarantee Schedule

- C12. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Infrastructure Damage Bond	\$2,500.00
TOTAL BONDS	\$2,500.00

Note: The following fees applicable

Fees	
Section 7.12 Contributions	\$740.00
TOTAL FEES	\$740.00

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

(Reason: Compliance with the development consent)

BASIX Certificate

C13. 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. A466522_05, dated 1 May 2023 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)

Amendments to the Landscape Plan

C14. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- 1) The landscape plan numbered LP03 (Revision F), prepared by Studio U.C, dated 6 June 2023, received by Council on 15 June 2023, must be amended and updated to reflect the amendments made in the architectural plans (Numbered DA02, DA04-08, Revision C) prepared by Corben Architects, dated 2 August 2023, and received by Council on 2 August 2023.
- 2) Details must be provided on the plans for the ongoing maintenance of the planters located along the western side of Bedroom 1 on Level 3, as well as the choice of species (including number and pot size).
- 3) The 4 x *Raphiolepis indica* proposed for planting in the western side planter of Deck 2 shall be replaced with another species that can reach a mature height no greater than 600mm. *Aloe 'Bush Baby Yellow'* and *Kalanchoe tomentosa* are appropriate suggested species.

An amended landscape plan 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 amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure an appropriate landscaped context and maintain a consistency of plans)

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

Public Liability Insurance - Works on Public Land

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

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

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

Sydney Water Approvals

- D2. Prior to the commencement of any works, the approved plans must be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Principal Certifier must ensure that Sydney Water has appropriately stamped the plans before the commencement of building works.

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

(Reason: To ensure compliance with Sydney Water requirements)

Commencement of Works' Notice

- D3. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

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

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

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

Road Reserve Safety

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

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

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

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

(Reason: Stormwater control during construction)

Council Inspection of Public Infrastructure Works

E4. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points:

- a) Vehicular access; and associated road civil works

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

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

Service Adjustments

E5. Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the person acting on the consent and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council.

It is the Applicant's full responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services at the appropriate stage of the development (including water, phone, gas and the like). Council accepts no responsibility whatsoever for any matter arising from its approval of this application involving any influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

Removal of Extra Fabric

E6. 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

E7. The following must be complied with at all times:

- (a) Materials must not be burnt on the site.

**27 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 186/23**

Page 13 of 21

- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

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

Noise and Vibration

- E8. The works must be undertaken in accordance with the "Interim Construction Noise Guideline," published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

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

No Work on Public Open Space

- E9. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

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

Developer's Cost of Work on Council Property

- E10. The developer 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)

No Removal of Trees on Public Property

- E11. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

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

Special Permits

- E12. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

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

1) **On-street mobile plant**

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

(Reason: Proper management of public land)

2) **Hoardings**

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

(Reason: Proper management of public land)

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

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

(Reason: Proper management of public land)

4) Kerbside restrictions, construction zones

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

(Reason: Proper management of public land)

Construction Hours

E13. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
All zones (Excl. B3 Commercial Core and B4 Mixed use zone)	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)

Site Amenities and Facilities

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

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

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

Health and Safety

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

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

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

Prohibition on Use of Pavements

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

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

Plant and Equipment Kept Within Site

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

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

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

Waste Disposal

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

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

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:
- 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 a 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)

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)

Demolition

- F6. 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

- F7. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

**27 ELAMANG AVENUE, KIRRIBILLI
DEVELOPMENT APPLICATION NO. 186/23**

Page 19 of 21

- 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

- F8.
- 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
 - 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)

BASIX Completion Receipt

G4. 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

G5. The landscaping shown in the approved landscape plans numbered LP03 (Revision F), prepared by Studio U.C, dated 6 June 2023, received by Council on 15 June 2023, and as amended by Condition C14 of this consent, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Unpaved Verge

G6. The unpaved verge area must be constructed/reconstructed with an appropriate species of grass prior to completion of the works at no cost to Council if damaged by the works.

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

Compliance with Certain Conditions

- G7. Prior to the issue of any Occupation Certificate, Condition C14 must be certified as having been implemented on site and complied with.

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

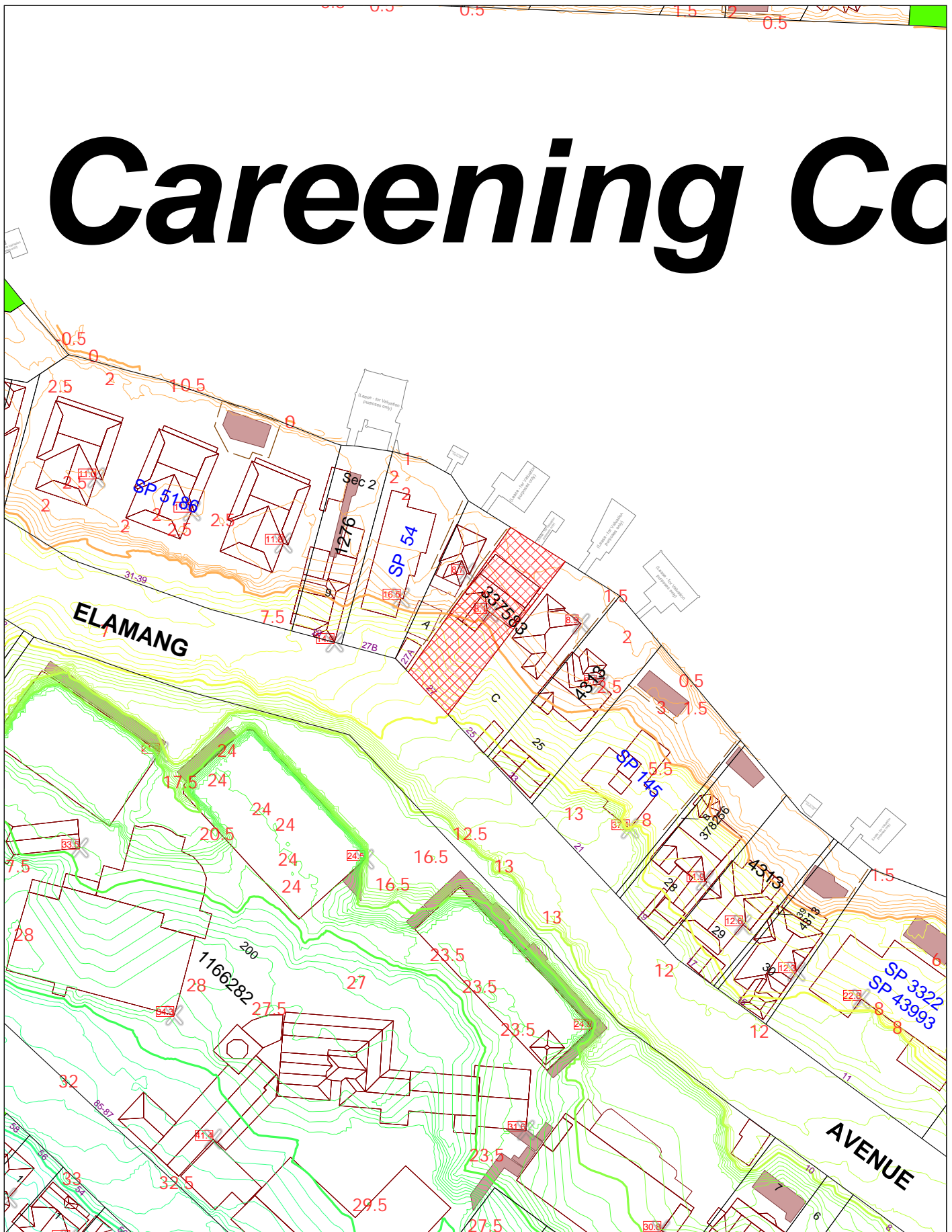
I. Ongoing/Operational Conditions**Maintenance of Approved Landscaping**

- I1. The owner of the premises at 27 Elamang Avenue is to maintain the landscaping approved by this consent generally in accordance with the landscape plans numbered LP03 (Revision F), prepared by Studio U.C, dated 6 June 2023, received by Council on 15 June 2023, and as modified by Condition C14 of this consent.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)

Careening Co



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.



list of abbreviations

A/C	air conditioning
AFFL	above finished floor level
AL	aluminium
ALB	aluminium battens
ALSD	aluminium sliding door
AS	adjustable shelf
AW	aluminium window
BAL	balustrade
BALC	balcony
BLWK	block work
BLWK	block work faced
BS	bath spout
BSN	basin
BWBP	brickwork bagged & painted
BWF	brickwork faced
COF	concrete- off form
CPS	concrete- polished & sealed
CST	concrete- steel trowel finish
CONC	concrete
COS	check on site
CCTV	closed circuit TV
CFC	compressed fibre cement
CHS	circular hollow section
COL	column
CPD	cupboard
CPT	carpet
CR	cement render
CT	ceramic tile
CTP	cooktop
DP	down pipe
DPC	damp proof course
DRY	dryer
DR	drawer
DW	dishwasher
EDB	electrical switch board
EQ	equal
EX	existing
F	fridge
FC	fibrous cement sheet
FCL	finished ceiling level
FFL	finished floor level
FGL	finished ground level
FP	fixed panel
FW	floor waste
G	glass/ glazing
GBL	glass balustrade
GL	glass louvre
GO	glass obscure
GALV	galvanised
GD	grated drain
GPO	general purpose outlet
HR	hanging rail
HT	hose tap
HTR	heated towel rail
HWU	hot water unit
LAM	laminated
LV	louvre
MB	metal balustrade
MDF	medium density fibreboard
MI	mirror
MPBR	membrane pebble ballast roof
MR	metal roof
MSB	main switch board
MS	metal sheeting
MT	mosaic tile
Ø	diameter
OF	overflow
OS	open shelf
PAV	paving
PB	plasterboard
PBFR	plasterboard fire resistant 90/90/90
PBM	plasterboard moisture resistant
PLY	plywood
PNT	paint
PU	polyurethane
RH	range hood
RHS	rectangular hollow section
RL	reduced level
RWH	rainwater head
RWO	rainwater outlet
SD	smoke detector
SED	structural engineers detail
SH	shutters
SHA	shutters automated
SHR	shower
SL	skylight
SK	skirting
SP	set plaster
SPM	set plaster moisture resistant
SS	stainless steel
ST	stone
STL	steel
T	timber
TB	timber battens
TF	timber frame
TFB	timber floorboards
THR	timber handrail
TOF	top of fence
TOW	top of wall
TR	tiled roof
TS	timber screen
US	underside
VN	veneer timber
WB	weatherboards
WC	water closet
WM	washing machine
WPM	water proof membrane

BASIX commitments

Fixtures and systems			Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check	
Hot water						
The applicant must install the following hot water system in the development: electric heat pump system that is eligible to create Renewable Energy Certificates under the (Commonwealth) Renewable Energy (Electricity) Regulations 2001 (incorporating Amendment Regulations 2005 (No. 2)).			✓	✓	✓	
Lighting						
The applicant must ensure a minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.				✓	✓	
Fixtures						
The applicant must ensure new or altered showerheads have a flow rate no greater than 9 litres per minute or a 3 star water rating.				✓	✓	
The applicant must ensure new or altered toilets have a flow rate no greater than 4 litres per average flush or a minimum 3 star water rating.				✓	✓	
The applicant must ensure new or altered taps have a flow rate no greater than 9 litres per minute or minimum 3 star water rating.				✓	✓	
Construction						
The applicant must ensure new or altered showerheads have a flow rate no greater than 9 litres per minute or a 3 star water rating.			✓	✓	✓	
Insulation requirements						
The applicant must construct the new or altered construction (floor(s), walls, and ceilings/roofs) in accordance with the specifications listed in the table below, except that a) additional insulation is not required where the area of new construction is less than 2m2, b) insulation specified is not required for parts of altered construction where insulation already exists.			✓	✓	✓	
Construction	Additional insulation required (R-value)	Other specifications				
concrete slab on ground floor.	nil					
floor above existing dwelling or building.	nil					
external wall: cavity brick	nil					
external wall: framed (weatherboard, fibro, metal clad)	R1.30 (or R1.70 including construction)					
flat ceiling, pitched roof	ceiling: R1.45 (up), roof: foil backed blanket (55 mm)	medium (solar absorptance 0.475 - 0.70)				
flat ceiling, flat roof: concrete/plasterboard internal	ceiling: R0.43 (up), roof: 50 mm foil backed polystyrene board	medium (solar absorptance 0.475 - 0.70)				
Glazing requirements						
			Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check	
Windows and glazed doors						
The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.			✓	✓	✓	
The following requirements must also be satisfied in relation to each window and glazed door:				✓	✓	
Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions.				✓	✓	
Each window or glazed door with improved frames, or pyrolytic low-e glass, or clear/air gap/clear glazing, or toned/air gap/clear glazing must have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions. The description is provided for information only. Alternative systems with complying U-value and SHGC may be substituted.				✓	✓	
For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill.			✓	✓	✓	
Pergolas with polycarbonate roof or similar translucent material must have a shading coefficient of less than 0.35.				✓	✓	
External louvres and blinds must fully shade the window or glazed door beside which they are situated when fully drawn or closed.				✓	✓	
Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50 mm.				✓	✓	
Overshadowing buildings or vegetation must be of the height and distance from the centre and the base of the window and glazed door, as specified in the 'overshadowing' column in the table below.			✓	✓	✓	
Windows and glazed doors glazing requirements						
Window / door no.	Orientation	Area of glass inc. frame (m2)	Overshadowing		Shading device	Frame and glass type
			Height (m)	Distance (m)		
W1.01	NE	7.58	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W1.02	NE	5.4	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W1.03	NE	5.4	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W1.04	NE	9.8	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.01	SW	4.03	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.02	NW	2.8	0	0	eave/verandah/pergola/balcony >=600 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)
W2.06	NW	12.76	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.07	SW	6.14	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.08	SW	2.48	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.09	NE	6.21	0	0	eave/verandah/pergola/balcony >=750 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)
W2.10	SE	0.71	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.11	SE	4.66	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.12	NE	2.3	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.13	NE	15.57	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.14	NE	2.3	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.15	SW	1.8	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.16	SE	6.97	1.8	1.5	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.17	SE	2.16	1.8	1.5	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.18	SE	0.44	1.8	1.5	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.19	SE	1.36	1.8	1.5	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.21	SE	1.97	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2.20	SE	1.56	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W3.01	NW	2.92	0	0	external louvre/blind (adjustable)	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W3.02	NW	2.92	0	0	external louvre/blind (adjustable)	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W3.03	NW	2.92	0	0	external louvre/blind (adjustable)	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W3.04	NW	2.92	0	0	external louvre/blind (adjustable)	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)

drawing list

No.	Drawing Name	Current Rev
DA00	Cover Sheet	C
DA01	Site Analysis	A
DA02	Site Plan	C
DA03	Proposed Level 1 & 2 Plans	A
DA04	Proposed Level 3 Plan	C
DA05	Roof Plan	C
DA06	Western & Eastern Elevations	C
DA07	Northern & Southern Elevations	C
DA08	Sections A & B, Height Plane Diagram & Schedule of Finishes	C
DA09	Shadow Studies - 21 June 9am	A
DA10	Shadow Studies - 21 June 12 pm	A
DA11	Shadow Studies - 21 June 3pm	A
DA12	Shadow Studies - 21 March 9am	A
DA13	Shadow Studies - 21 March 12pm	A
DA14	Shadow Studies - 21 March 3pm	A
DA15	View Impact Analysis	C

DRAWING NOTE:
Building footprint unaltered from DA288/22. The compliance diagram is therefore not required.

Proposed Street Perspective



Windows and glazed doors glazing requirements									
Window / door no.	Orientation	Area of glass inc. frame (m2)	Overshadowing		Shading device	Frame and glass type			
			Height (m)	Distance (m)					
W3.08	NE	9.57	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W3.10	SE	2.9	0	0	eave/verandah/pergola/balcony >=750 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W2.03	NW	2.8	0	0	eave/verandah/pergola/balcony >=600 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)			
W2.04	NW	2.8	0	0	eave/verandah/pergola/balcony >=600 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)			
W2.05	NW	2.8	0	0	eave/verandah/pergola/balcony >=600 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)			
W3.05	SW	2.03	0	0	external louvre/blind (adjustable)	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W3.06	NE	12.5	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W3.07	NE	2.38	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W1.05	NW	0.34	1.8	1.17	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			

Skylights								
The applicant must install the skylights in accordance with the specifications listed in the table below.						✓	✓	✓
The following requirements must also be satisfied in relation to each skylight:							✓	✓
Each skylight may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below.							✓	✓
Skylights glazing requirements								
Glazing requirements						Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Skylight number	Area of glazing inc. frame (m2)	Shading device	Frame and glass type					
S1	2.79	no shading	timber, low-E internal/argon fill/clear external, (or U-value: 2.5, SHGC: 0.456)					
S2	0.92	no shading	timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)					

rev.	date	description
A	24/5/2023	Development Application
B	31/7/2023	DRAFT COUNCIL AMENDMENT
C	2/8/2023	Revised Council Submission - Bed 1 Reduced

SCHEDULE OF ARCHITECTURAL AND GENERAL AMENDMENTS

Amendments to approved DA 288/22 in black
Amendments to current DA 186/23 in RED

Level 3

- Bed 1 extension added
- Deck 1 reduced in size to allow for Deck 2 addition
- 3. BED 1 SIDE BOUNDARY SETBACK INCREASED FROM 1.5/1.7m to 2.0/2.2m**
- 4. BED 1 DECREASED BY 500mm**
- 5. DECK 2 PLANTER INCREASED IN WIDTH TO 1280mm from 400mm**
- 6. PLANTER ADDED TO NORTHERN SIDE OF BED 1**
- 7. DECK 2 REDUCED BY 500mm & SIDE SETBACK INCREASED to 2.88/2.99m**

Roof

- Roof extended over new Bed 1
- PV cells added
- Bed 1 ridge level lowered 183mm

General

- Basix Certificate updated
- 2. VIEW IMPACT ANALYSIS UPDATED**



Development Application

Alterations & Additions to Approved DA 288/22

White Residence Kirribilli

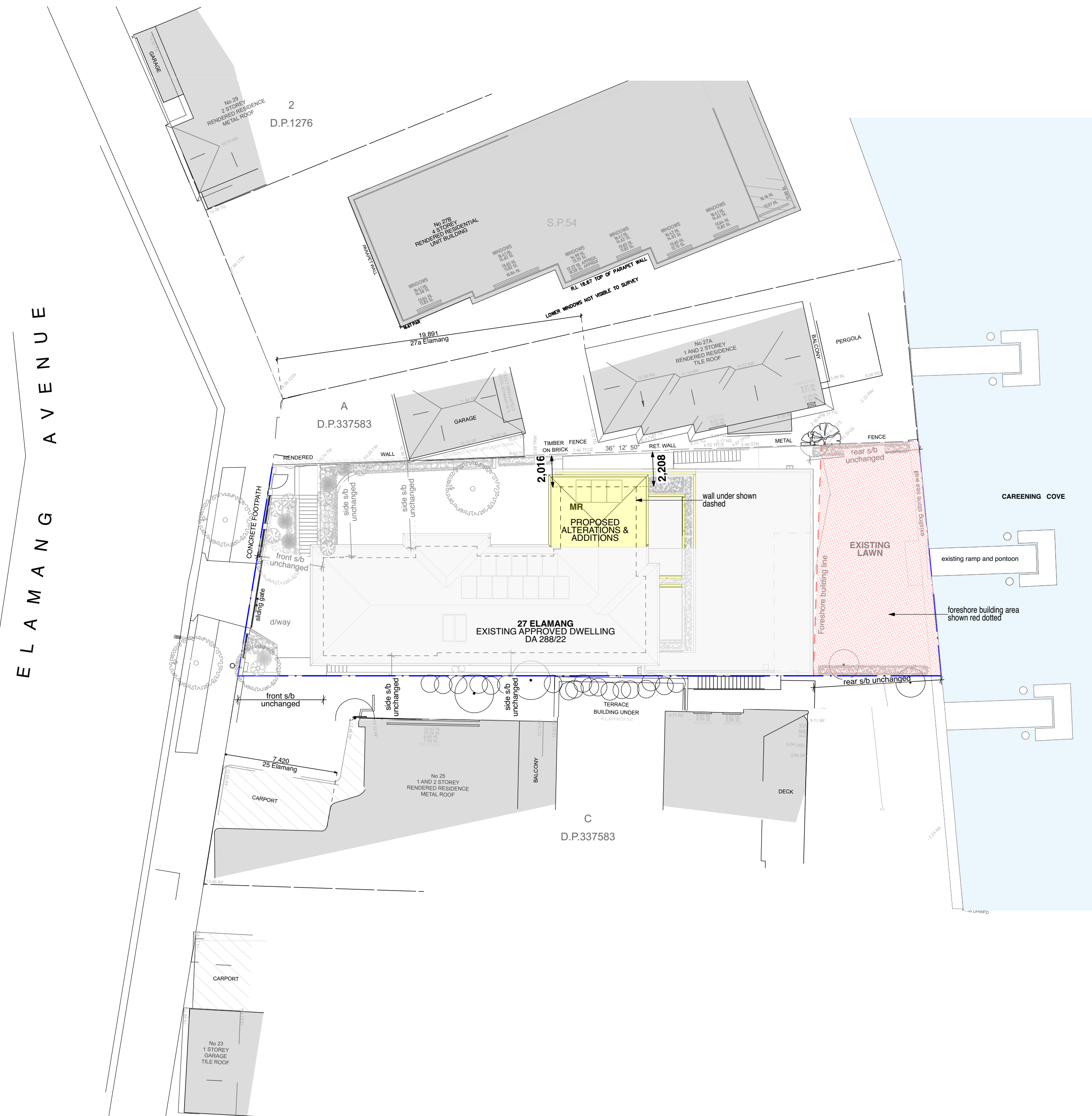
at

27 Elamang Avenue, Kirribilli

for

John and Bianca White

CORBEN ARCHITECTS PO Box 1021 Neutral Bay NSW 2089 Australia 02 9904 1844 mail@corben.com.au corben.com.au <small>Nominated Architect: Philip Corben (Reg. No. 4616)</small>	job no.	WHK	dwg no.	DA00
	drawn	JM	revision	C
	checked	PC		
	scale			



wall type legend	
	existing structure to be demolished
	existing DA 288/22 approved structure to remain
	proposed wall
	proposed alterations and additions (DA)
	existing DA 288/22 approved dwelling footprint

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Rev	Date	Description
A	24/5/2023	Development Application
B	31/7/2023	DRAFT COUNCIL AMENDMENT
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notes

1. Lower windows not visible to survey

2. Foreshore building area shown red dotted

3. Existing stone sea wall

4. Wall under shown dashed

5. Rear s/b unchanged

6. Front s/b unchanged

7. Side s/b unchanged

8. Concrete footpath

9. Sliding gate

10. D/way

11. Carport

12. Deck

13. Terrace building under

14. Balcony

15. Garage

16. Pergola

17. Fence

18. Ret wall

19. Metal

20. Timber fence on brick

21. 36' 12" 50"

22. 2,016

23. 2,208

24. 19,851

25. 27a Elamang

26. 7,420

27. 25 Elamang

28. No 23 1 STOREY GARAGE TILE ROOF

29. No 25 1 AND 2 STOREY RENDERED RESIDENCE METAL ROOF

30. No 27A 1 AND 2 STOREY RENDERED RESIDENCE TILE ROOF

31. No 27B 4 STOREY RENDERED RESIDENTIAL UNIT BUILDING

32. No 27 2 STOREY RENDERED RESIDENCE METAL ROOF

33. No 27 27a Elamang

34. No 27B 27a Elamang

35. No 27C 27a Elamang

36. No 27D 27a Elamang

37. No 27E 27a Elamang

38. No 27F 27a Elamang

39. No 27G 27a Elamang

40. No 27H 27a Elamang

41. No 27I 27a Elamang

42. No 27J 27a Elamang

43. No 27K 27a Elamang

44. No 27L 27a Elamang

45. No 27M 27a Elamang

46. No 27N 27a Elamang

47. No 27O 27a Elamang

48. No 27P 27a Elamang

49. No 27Q 27a Elamang

50. No 27R 27a Elamang

51. No 27S 27a Elamang

52. No 27T 27a Elamang

53. No 27U 27a Elamang

54. No 27V 27a Elamang

55. No 27W 27a Elamang

56. No 27X 27a Elamang

57. No 27Y 27a Elamang

58. No 27Z 27a Elamang

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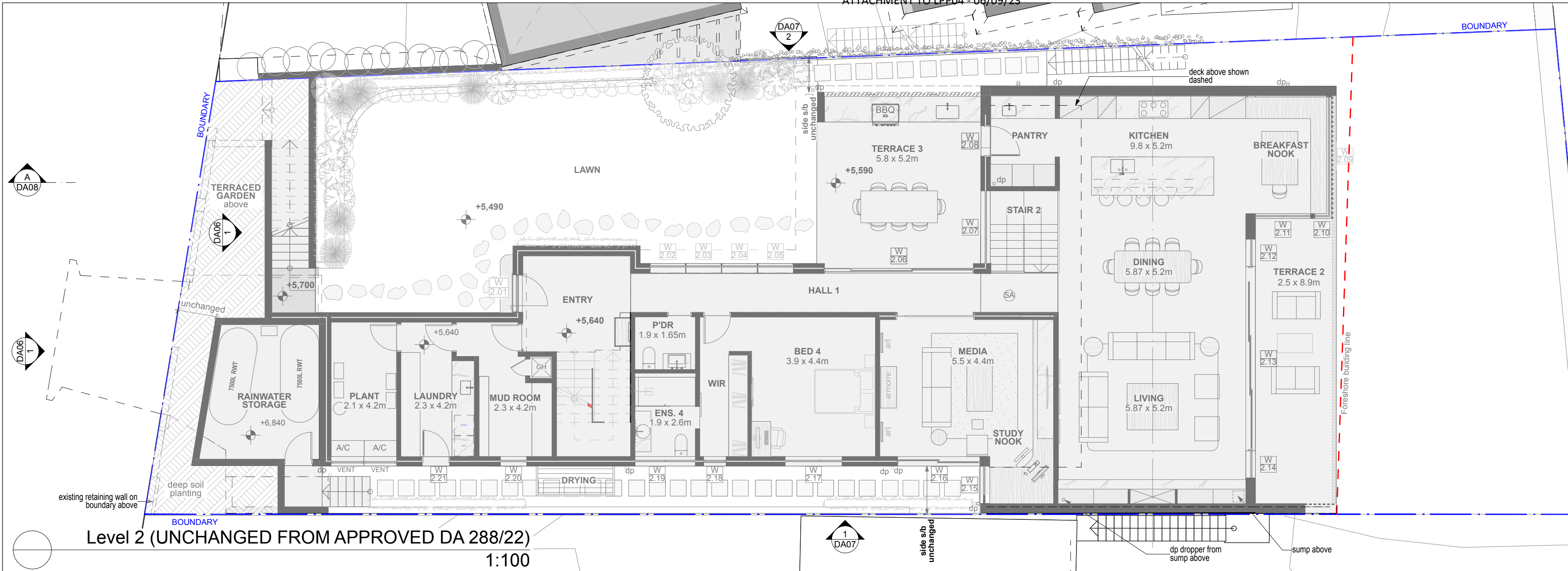
project	Alterations & Additions to an Existing DA 288/22 Approval
address	27 Elamang Avenue Kirribilli NSW
client	John and Bianca White

title	Site Plan
issue	Development Application

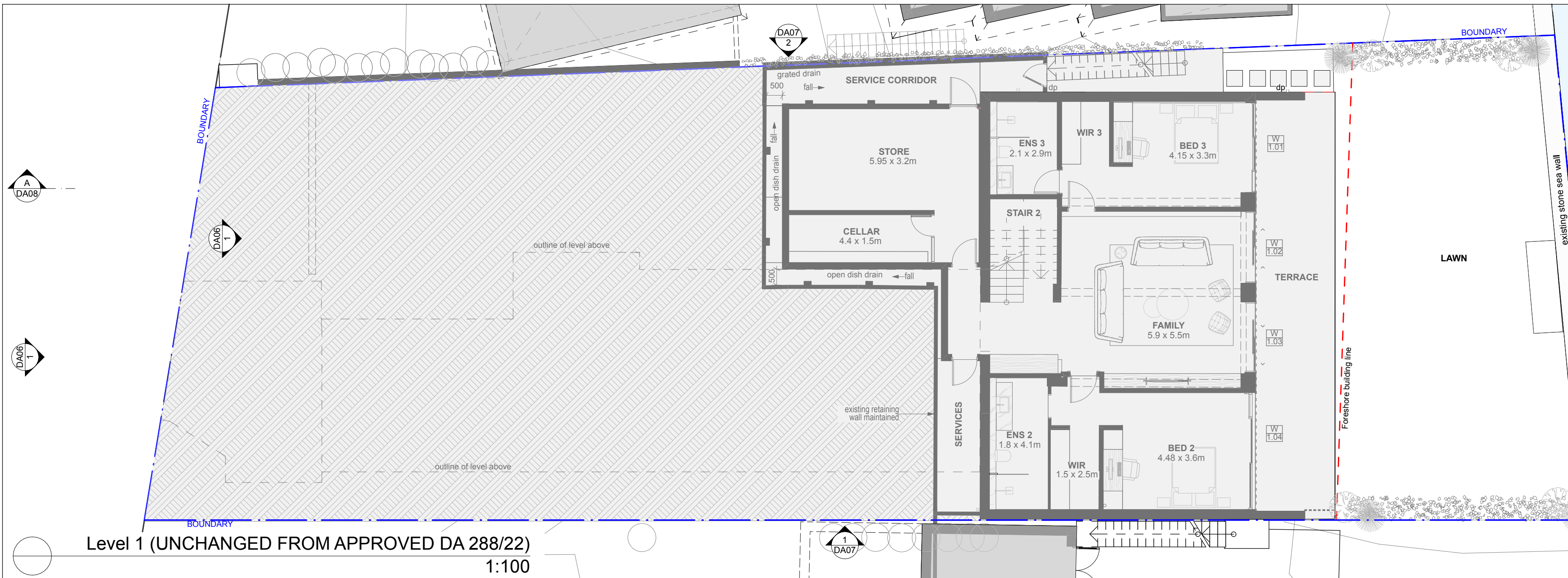
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drawn	JM, AB	revision	C
checked	PC		
scale	1:200		

wall type legend

- existing structure to be demolished
- existing DA 288/22 approved structure to remain
- proposed wall
- proposed alterations and additions (DA)
- existing DA 288/22 approved dwelling footprint



Level 2 (UNCHANGED FROM APPROVED DA 288/22)
1:100



Level 1 (UNCHANGED FROM APPROVED DA 288/22)
1:100

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project Alterations & Additions to an Existing DA 288/22 Approval

address 27 Elamang Avenue Kirribilli NSW

client John and Bianca White

title Proposed Level 1 & 2 Plans

issue Development Application

job no. WHK

drawn JM, AB

checked PC

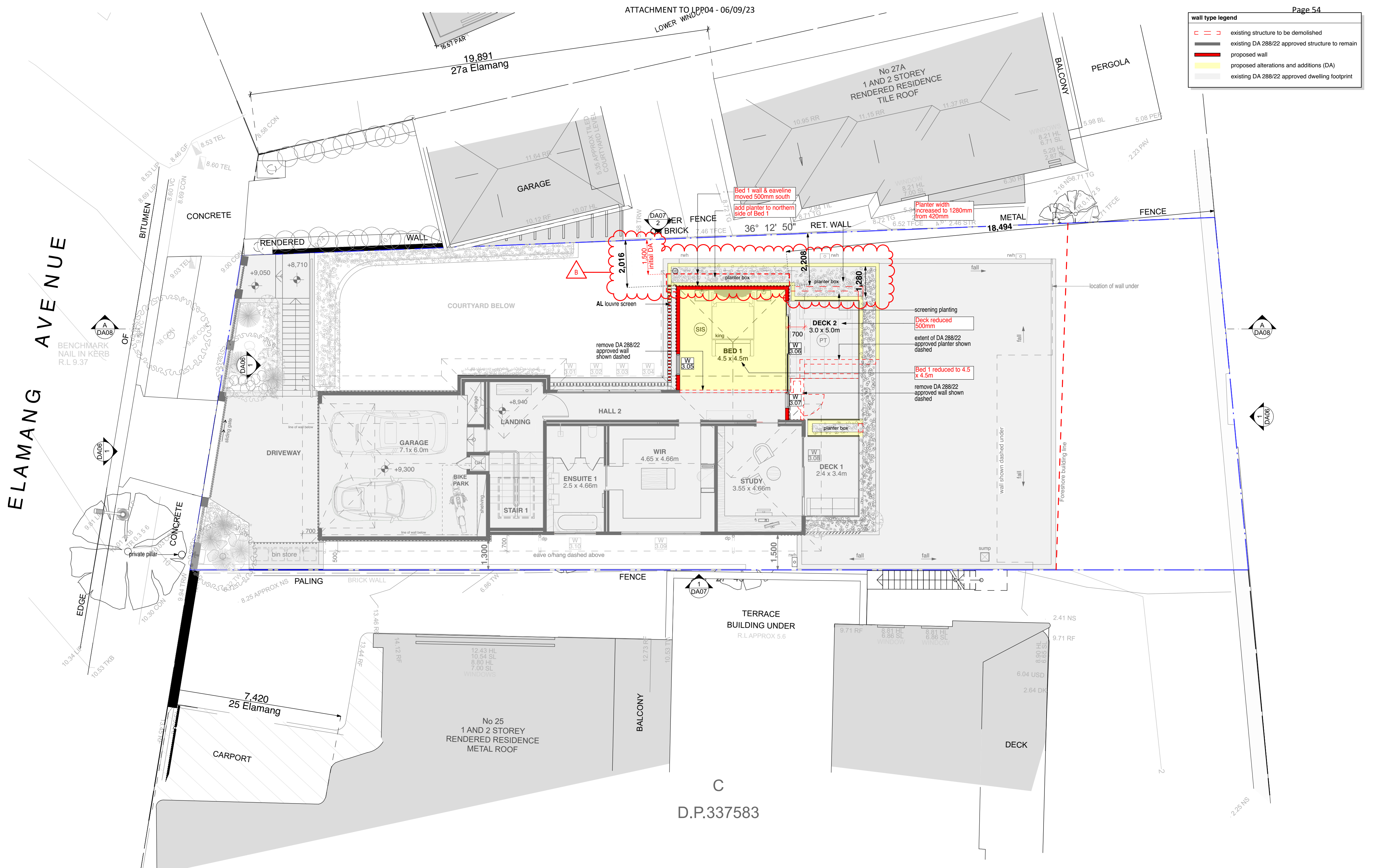
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dwg no. DA03

revision A

wall type legend

- existing structure to be demolished
- existing DA 288/22 approved structure to remain
- proposed wall
- proposed alterations and additions (DA)
- existing DA 288/22 approved dwelling footprint



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B	31/7/2023	DRAFT COUNCIL AMENDMENT
C	2/8/2023	Revised Council Submission - Bed 1 Reduced

notes

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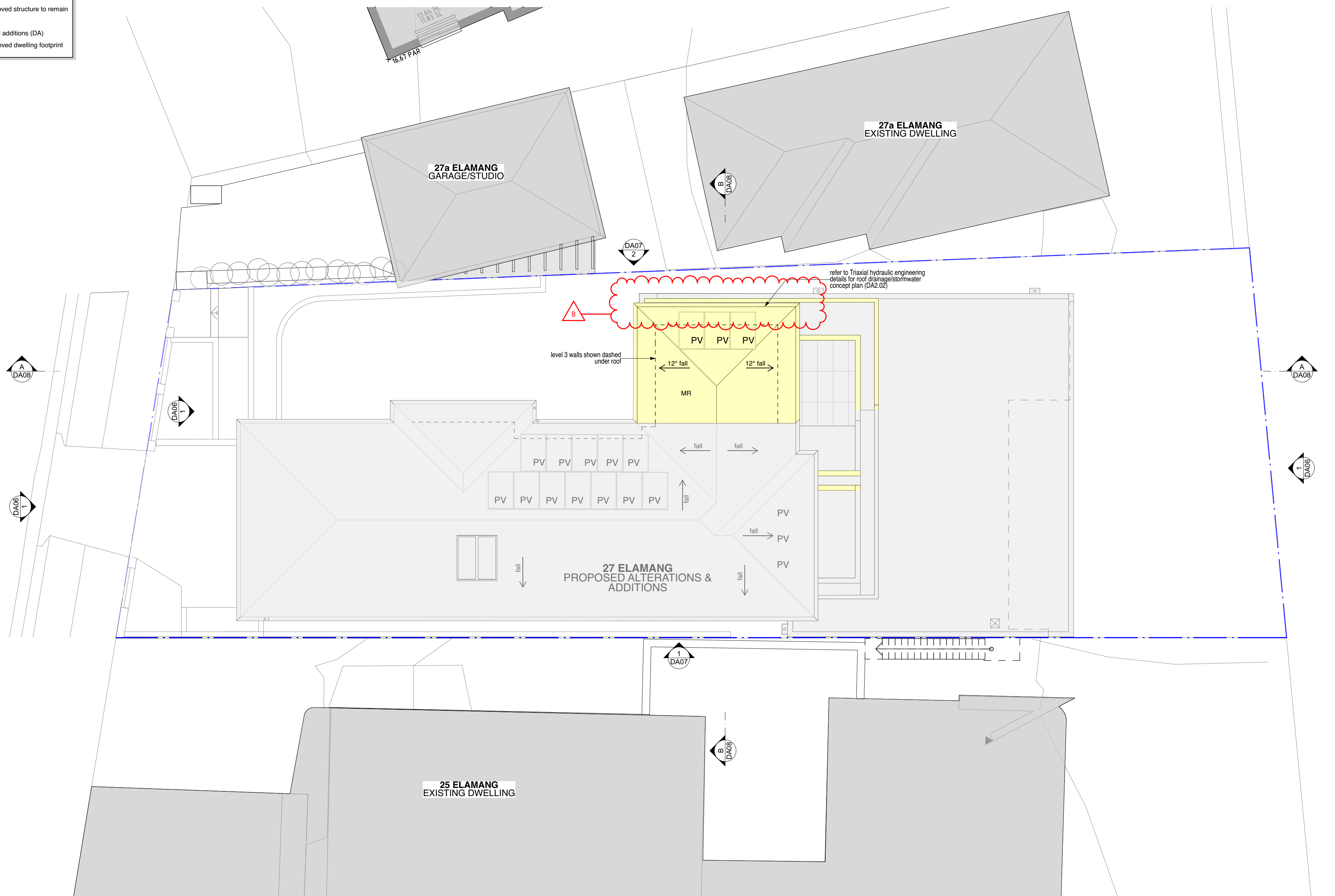
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address 27 Elamang Avenue Kirribilli NSW
client John and Bianca White

title Proposed Level 3 Plan
issue Development Application

job no. WHK
drawn JM, AB
checked PC
scale 1:100

dwg no. DA04
revision C

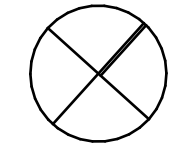
wall type legend	
	existing structure to be demolished
	existing DA 288/22 approved structure to remain
	proposed wall
	proposed alterations and additions (DA)
	existing DA 288/22 approved dwelling footprint



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notes



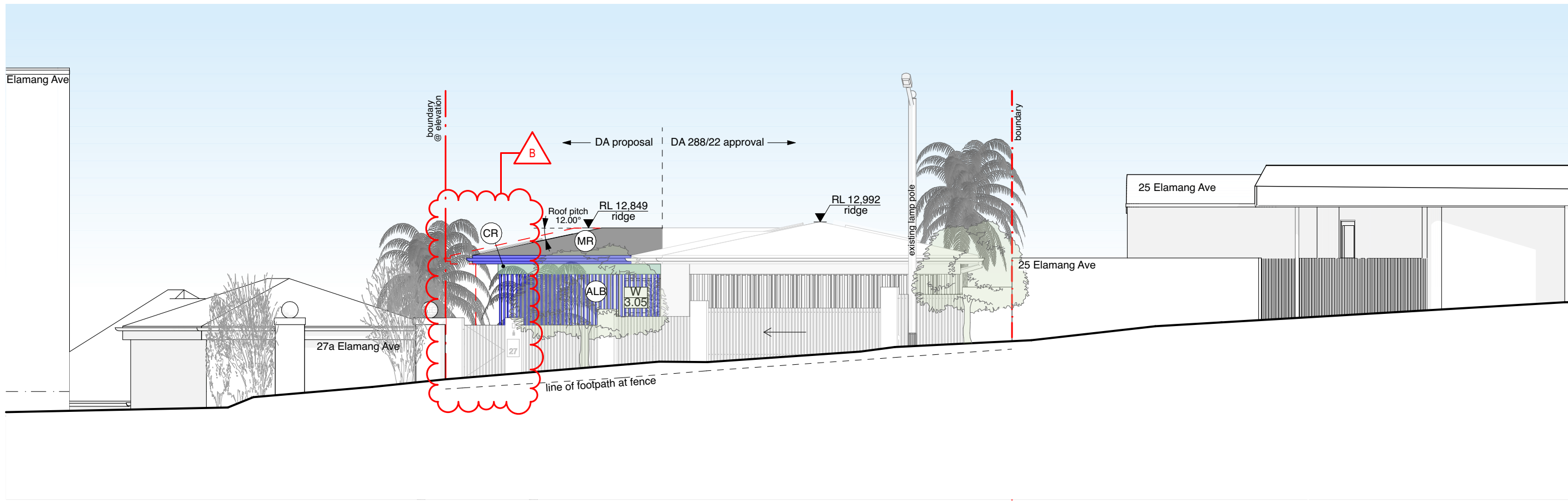
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 mail@corben.com.au
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 Nominated Architect: Philip Corben (Reg. No. 4616)

project Alterations & Additions to an Existing DA 288/22 Approval
address 27 Elamang Avenue Kirribilli NSW
client John and Bianca White

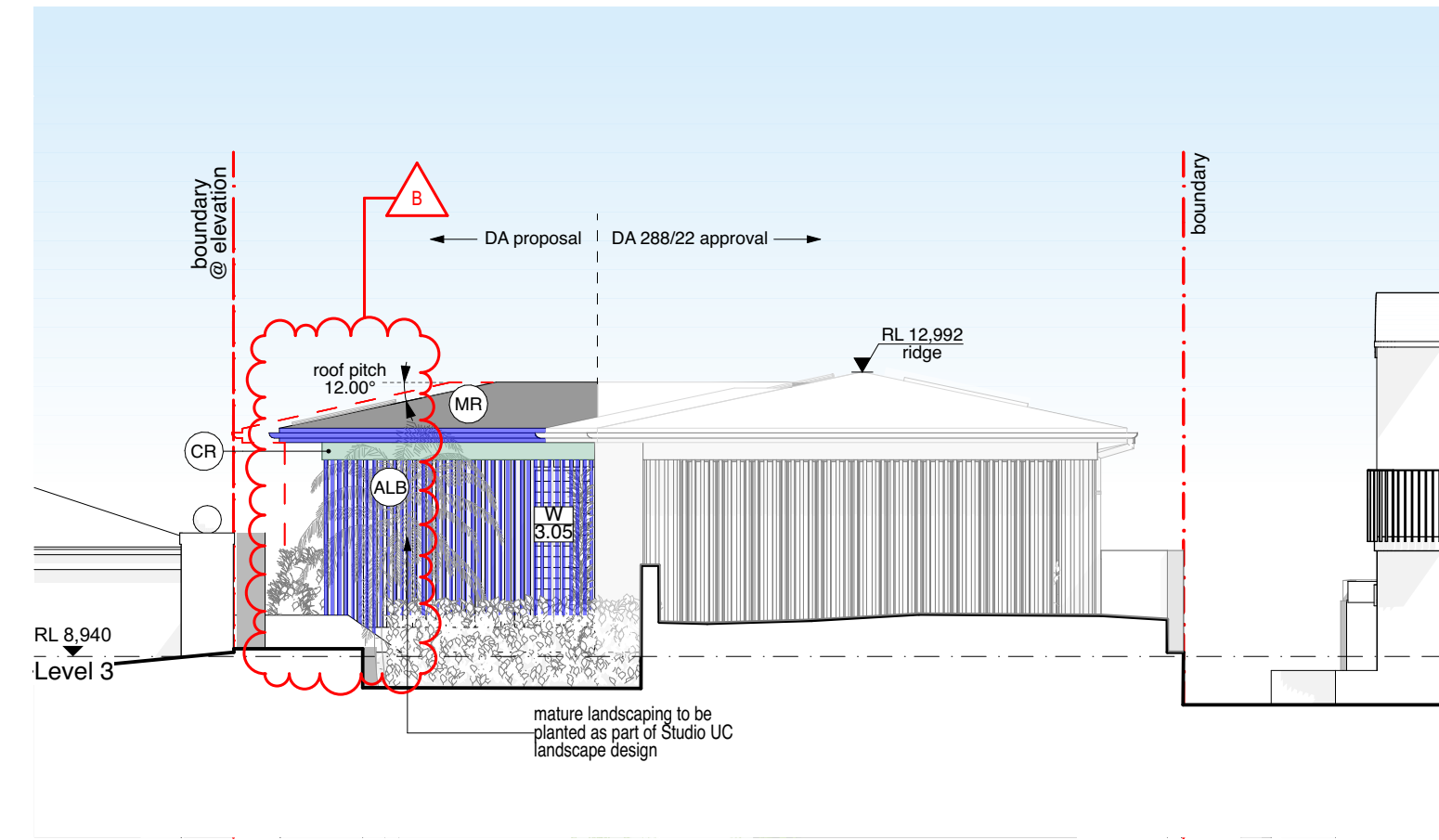
title Roof Plan
issue Development Application

job no. WHK
drawn JM, AB
checked PC
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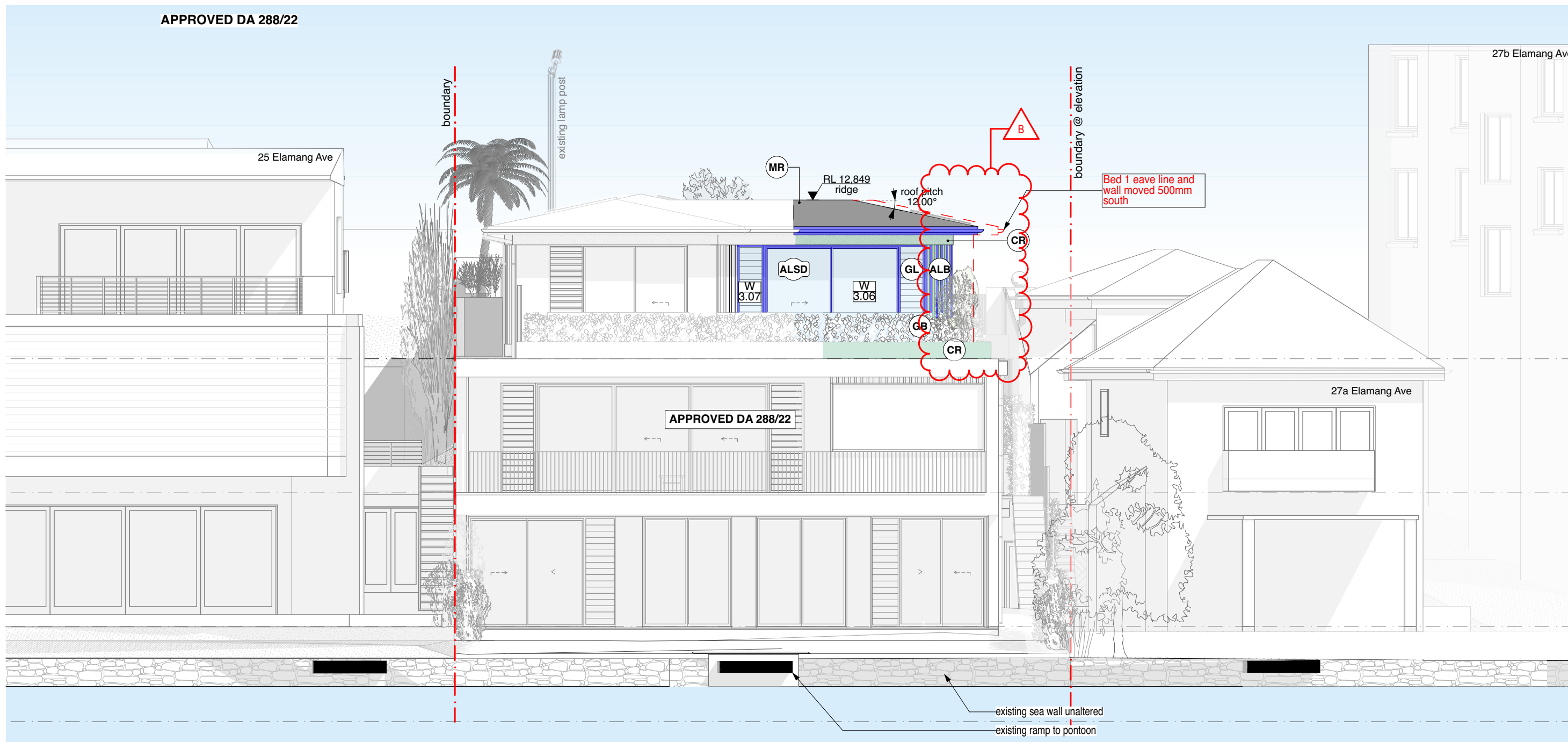
dwg no. DA05
revision C



Streetscape Elevation
1:100



Western Elevation
1:100



Eastern Elevation
1:100

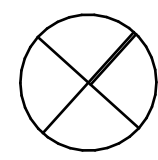
colour legend

Elevation & Section	
colour	material
	Tile
	cement render
	sheet metal /aluminium /steel
	metal roofing
	glazing
	structural timber
	brick

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C	2/8/2023	Revised Council Submission - Bed 1 Reduced

notes



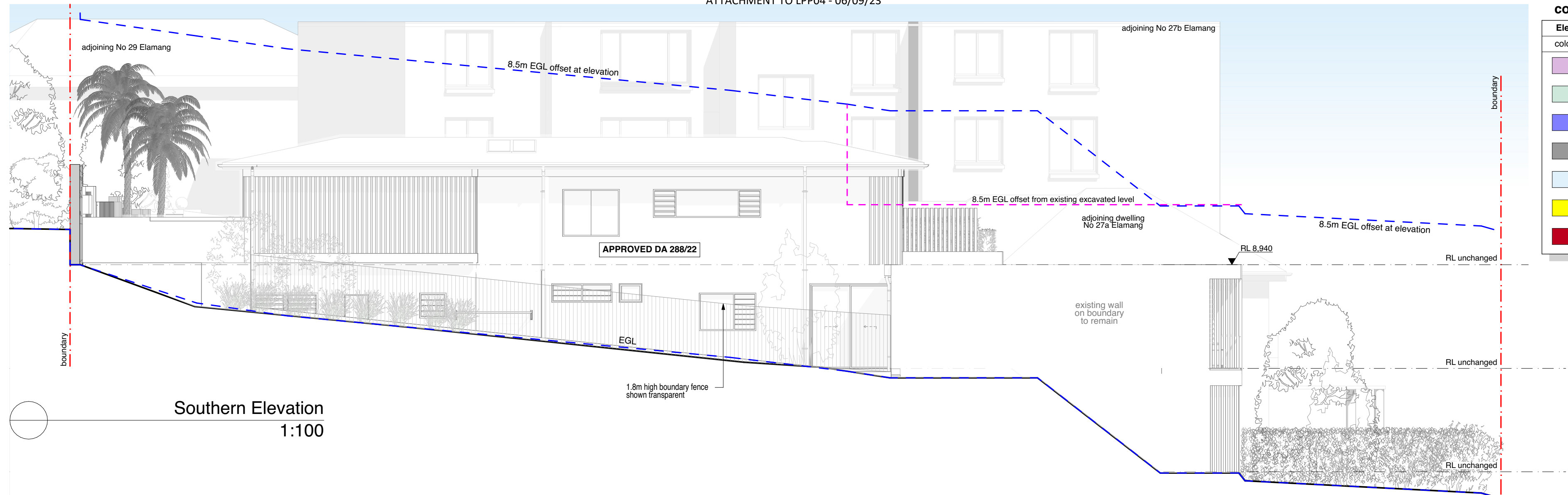
CORBEN ARCHITECTS
 PO Box 1021 Neutral Bay NSW 2089 Australia
 02 9904 1844
 mail@corben.com.au
 corben.com.au
 Nominated Architect: Philip Corben (Reg. No. 4616)

project Alterations & Additions to an Existing DA 288/22 Approval
address 27 Elamang Avenue Kirribilli NSW
client John and Bianca White

title Western & Eastern Elevations
issue Development Application

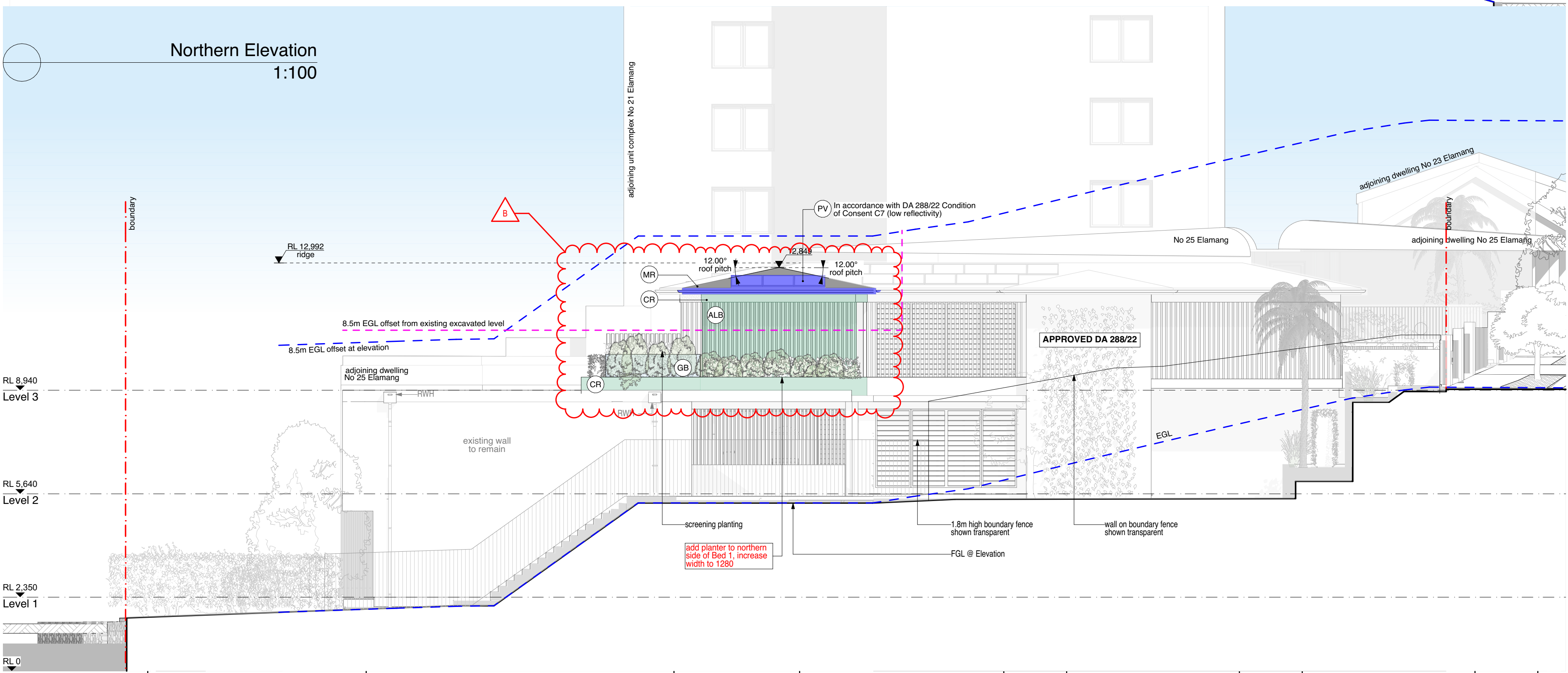
job no. WHK
drawn JM, AB
checked PC
scale 1:100

dwg no. DA06
revision C



Southern Elevation
1:100

colour	material
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	sheet metal /aluminium /steel
	metal roofing
	glazing
	structural timber
	brick

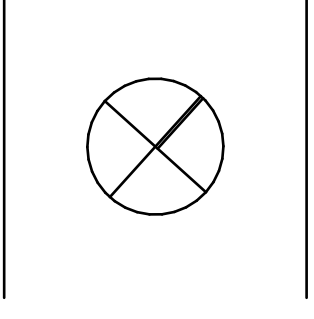


Northern Elevation
1:100

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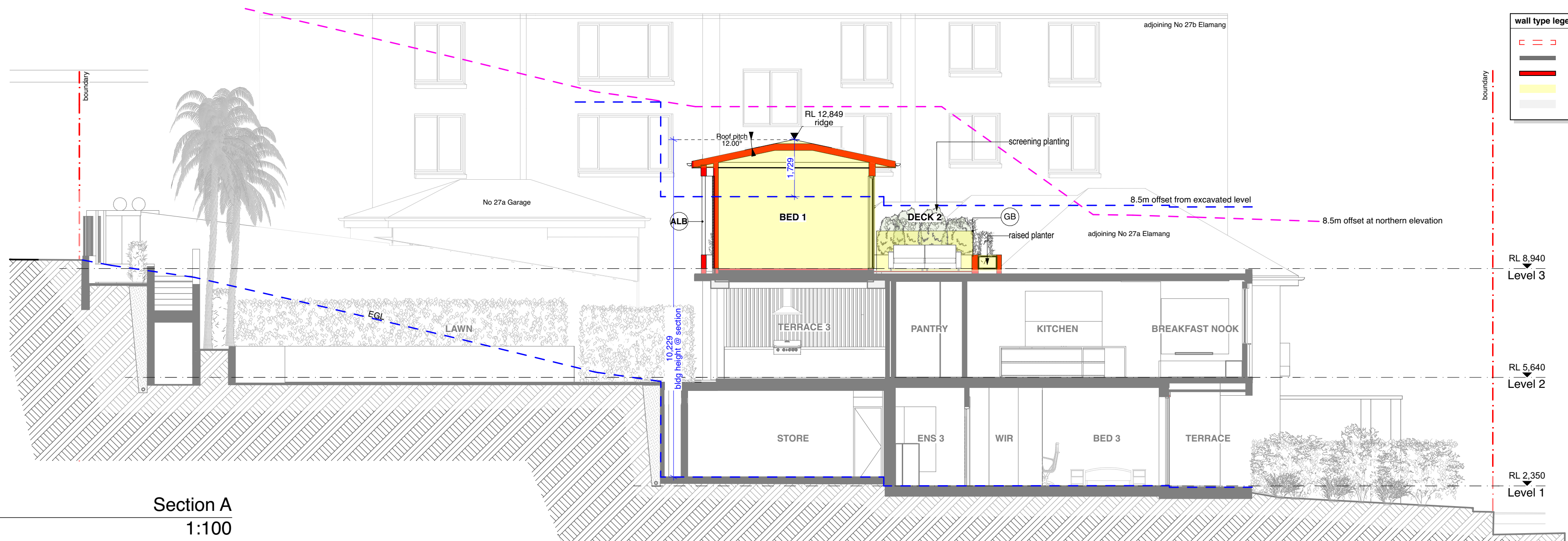
CORBEN ARCHITECTS
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project Alterations & Additions to an Existing DA 288/22 Approval
address 27 Elamang Avenue Kirribilli NSW
client John and Bianca White

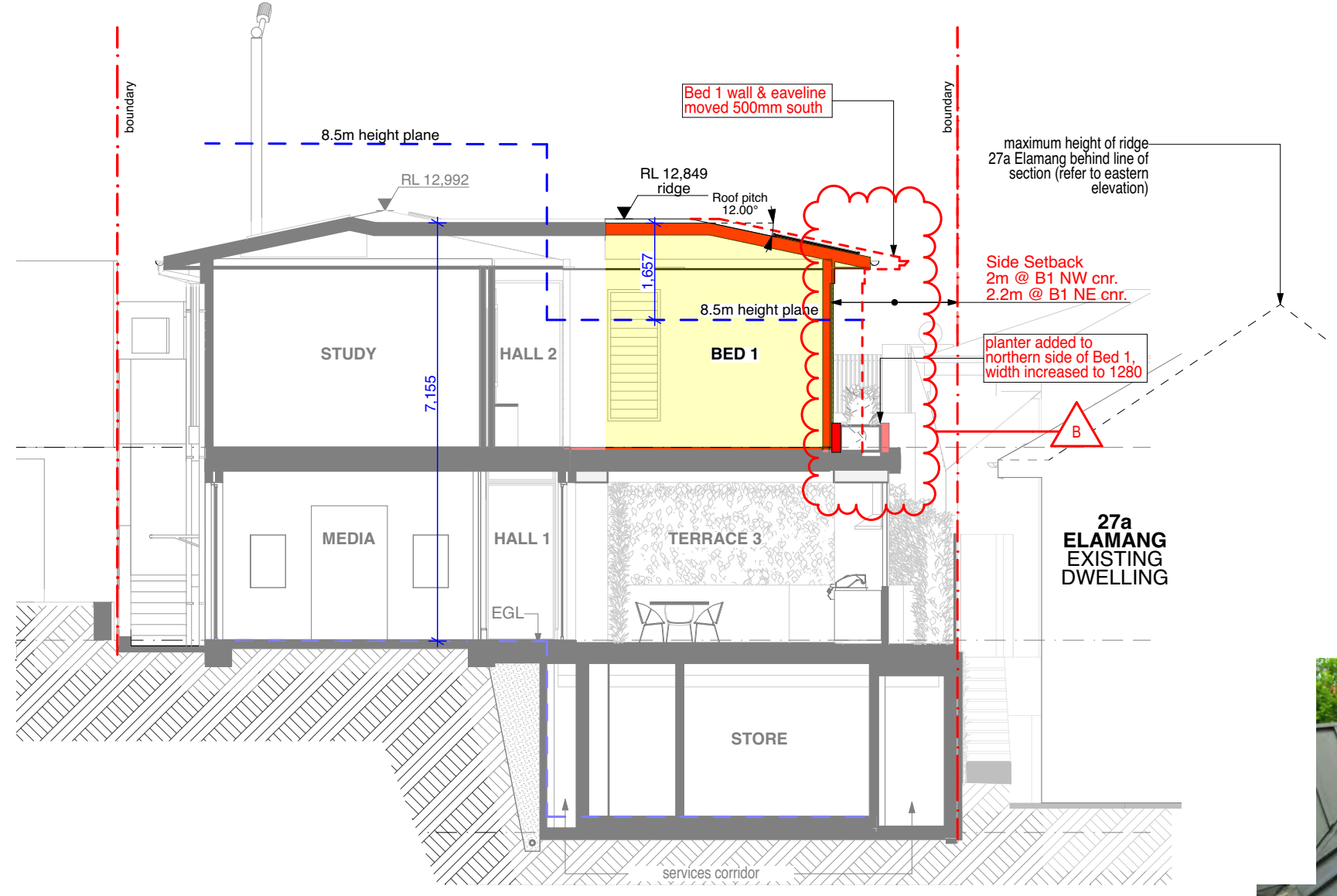
title Northern & Southern Elevations
issue Development Application

job no. WHK
drawn JM, AB
checked PC
scale 1:100

dwg no. DA07
revision C

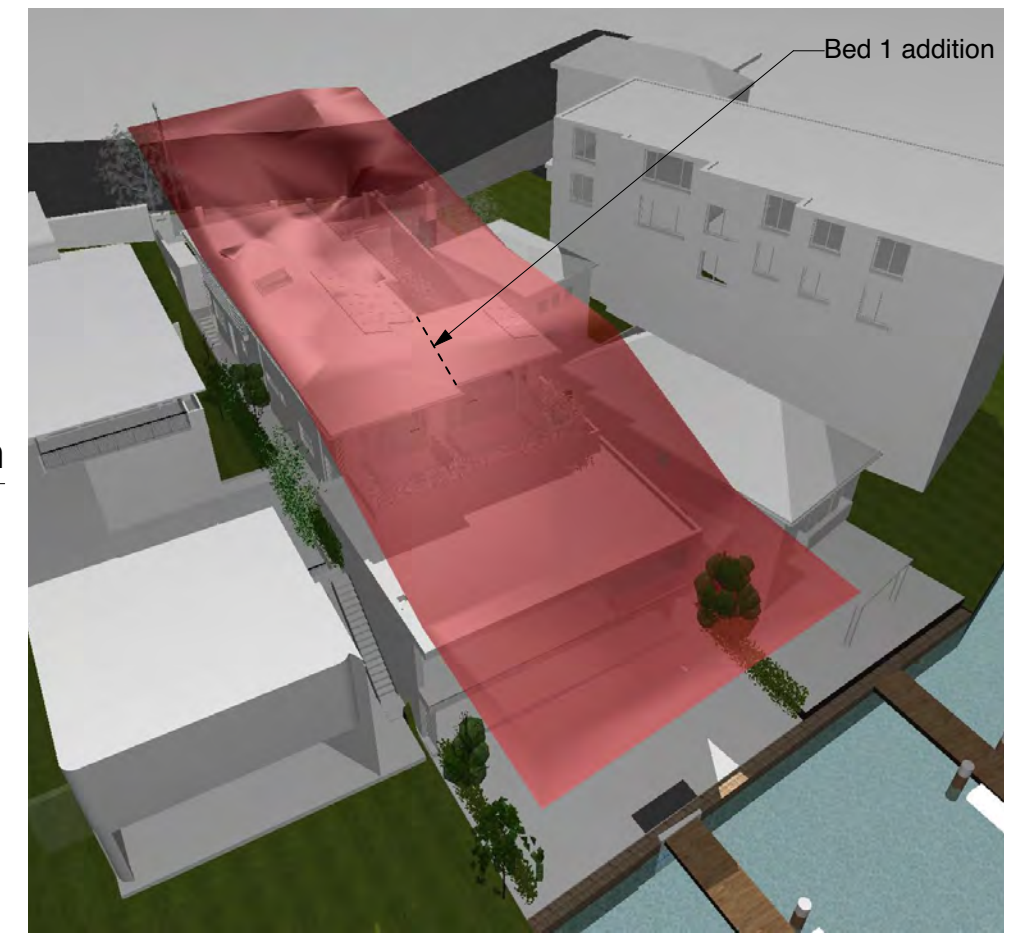


Section A
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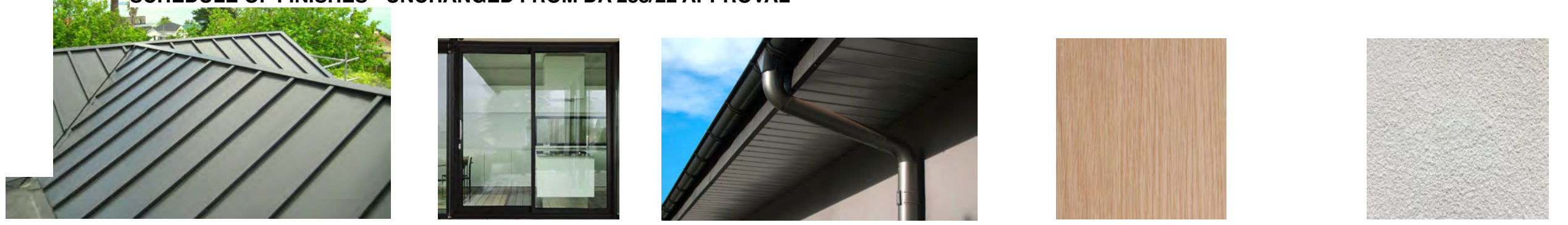


Section B
1:100

Interpolated Height Plane Diagram
UPDATED TO REFLECT THIS DA



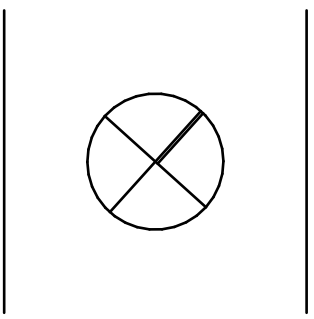
SCHEDULE OF FINISHES - UNCHANGED FROM DA 288/22 APPROVAL



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notes



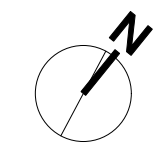
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 Nominated Architect: Philip Corben (Reg. No. 4616)

project Alterations & Additions to an Existing DA 288/22 Approval
address 27 Elamang Avenue Kirribilli NSW
client John and Bianca White

title Sections A & B, Height Plane Diagram & Schedule of Finishes
issue Development Application

job no. WHK
drawn JM, AB
checked PC
scale 1:100

dwg no. DA08
revision C

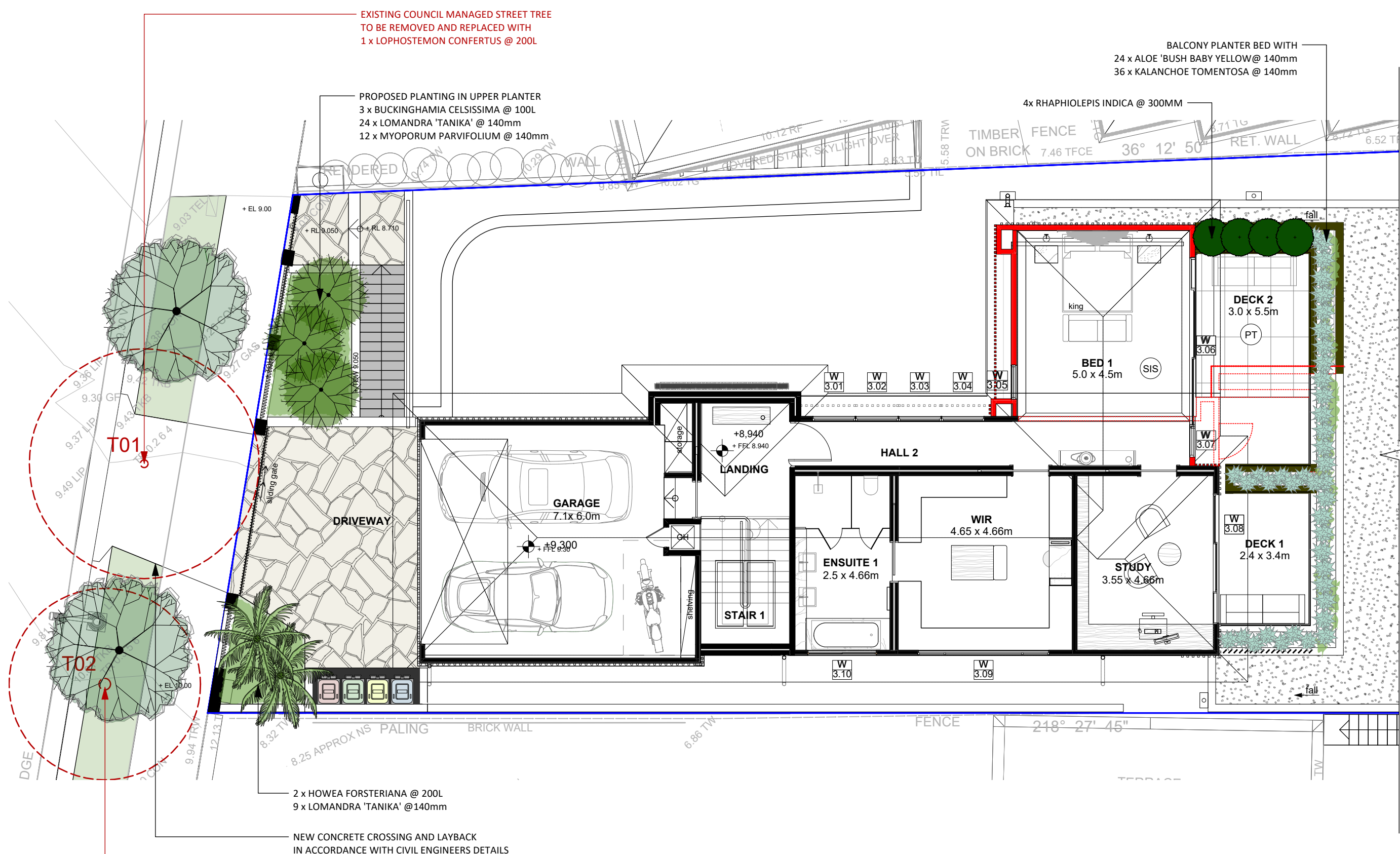


GENERAL NOTES

- Concept plans are not intended for construction
- Figured dimensions shall be taken in preference to scaling
- All dimensions in millimetres (mm) unless otherwise stated
- The contractor shall check all dimensions on site before commencing
- This drawing shall be read in conjunction with all Architectural and Engineering drawings
- All work to be further detailed by Engineer
- Refer to Architectural / Engineering Drawing Set for details of existing and proposed levels, and proposed gradients, and retaining walls
- Refer to Hydraulic Engineering Drawing for Stormwater Retention
- The Landscape Contractor shall ensure all landscape works comply with Local Council By-Laws, and Relevant Standard Codes and Australian Standards
- The Landscape Contractor shall be responsible to locate all services and utilities prior to commencement of Landscape Works

PROJECT 27 ELAMANG AVE, KIRIBILLI
CLIENT WHITE RESIDENCE
DWG LANDSCAPE - LEVEL 3
SCALE 1:100
DRAWN BC
CHECKED BC

DWG LP03
REV F
JOB NO. 22-055
DATE 6/06/2023



EXISTING COUNCIL MANAGED STREET TREE
 TO BE REMOVED AND REPLACED WITH
 1 x LOPHOSTEMON CONFERTUS @ 200L

PROPOSED PLANTING IN UPPER PLANTER
 3 x BUCKINGHAMIA CELSISSIMA @ 100L
 24 x LOMANDRA 'TANIKA' @ 140mm
 12 x MYOPORUM PARVIFOLIUM @ 140mm

BALCONY PLANTER BED WITH
 24 x ALOE 'BUSH BABY YELLOW' @ 140mm
 36 x KALANCHOE TOMENTOSA @ 140mm

4x RHAPHIOLEPIS INDICA @ 300MM

2 x HOWEA FORSTERIANA @ 200L
 9 x LOMANDRA 'TANIKA' @ 140mm

NEW CONCRETE CROSSING AND LAYBACK
 IN ACCORDANCE WITH CIVIL ENGINEERS DETAILS

EXISTING COUNCIL MANAGED STREET TREE
 TO BE REMOVED AND REPLACED WITH
 1 x LOPHOSTEMON CONFERTUS @ 200L

Chapman Planning Pty Ltd

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ULTIMO NSW 2007

Phone: 9560 1718
www.chapmanplanning.com.au

31 May 2023

Clause 4.6 Variation to Development Standard

Property Description: 27 Elamang Avenue, Kirribilli
Development: Alterations and Additions – Dwelling House
Development Standard: Height of Buildings

Introduction

This is a clause 4.6 variation to support the development application for alterations and additions to an existing dwelling house at 27 Elamang Avenue, Kirribilli. The redevelopment of the existing dwelling house is currently being undertaken under Complying Development Certificate No.143/22 issued on 11 July 2022 and Development Application D288/22 approved on 17 March 2023.

This application seeks approval for the erection of an upper level bedroom in addition to the approved built form on the site. The bedroom addition is located at the north-western corner of the approved upper level (Level 3) of the dwelling, and extension of the approved deck at the north-eastern corner of the upper level to be accessed from the bedroom addition. The proposal also seeks to convert the approved bedroom at the north-eastern corner of Level 3 to a study.

This clause 4.6 request seeks a variation to the 8.5m building height development standard contained in clause 4.3 – Height of Buildings of the *North Sydney Local Environmental Plan 2013*.

The maximum variation is measured to the roof from above the proposed bedroom addition. The height is 10.224m, being 1.724m or 20%, when measured to the north-western portion of the upper level.

The height variation is effectively a technical breach resulting from the existing site circumstances with the maximum height in the relevant area being measured from the existing internal excavated ground level of the sub-floor storage area below the proposed upper-level bedroom addition. When assessed from the ground level external to the building i.e. as it is viewed from the surrounding area, the height of the proposed development at the upper level comfortably complies with the height control as depicted in the short section plan at Figure 1 below:

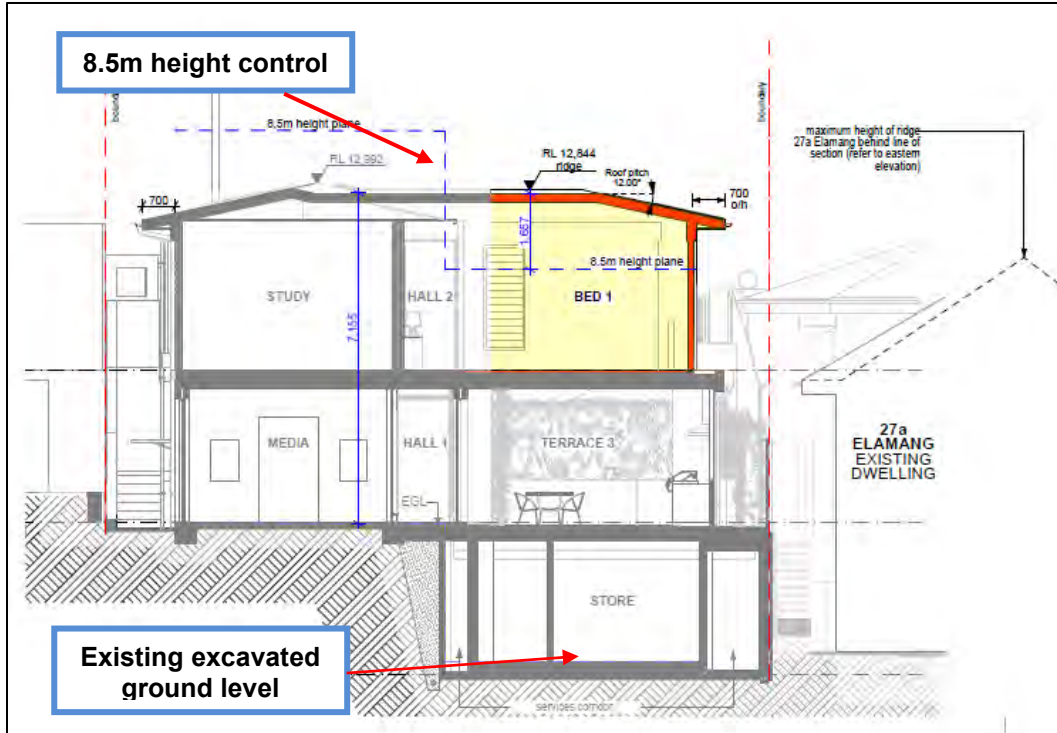


Figure 1: Internal measurements

Source: Corben Architects

Photograph 1 shows the previously excavated undercroft – basement area.



This circumstance supporting variation is also a result of the topography of the site as the land has a significant fall from the street frontage – southern boundary (AHD 9.27) to the northern boundary – foreshore/concrete seawall (AHD 1.56) of 7.71m across the length of the site as also depicted in the long elevation plan at Figure 2 below:

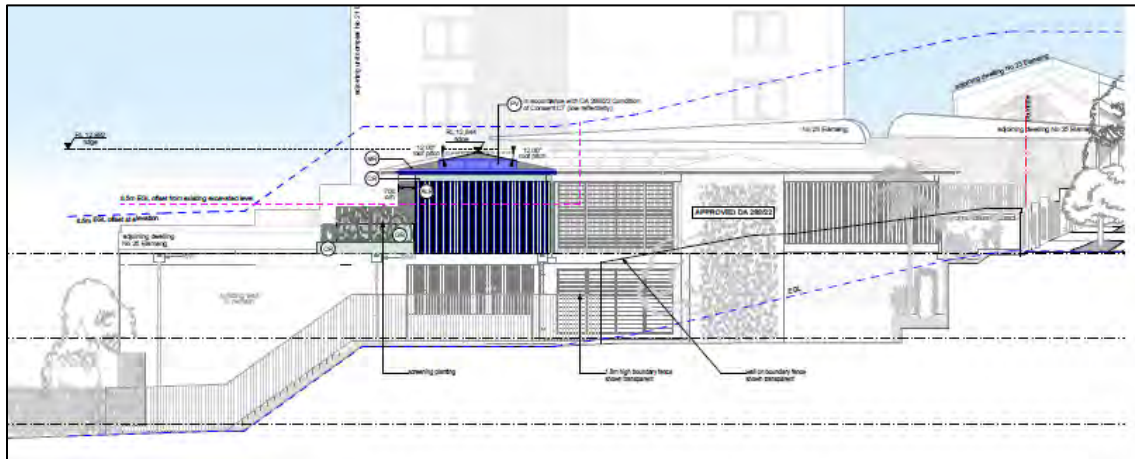


Figure 2: External measurements

It is noted that the proposed additions comfortably comply with the 8.5m height of the buildings elevations based on existing ground levels as depicted on the submitted elevation plans and interpolated height diagram prepared by *Corben Architects*. The height line measured from existing ground levels at the site boundaries is consistent with the assessment of building height applied by the Land and Environment Court under *Bettar v Council of City of Sydney* [2014] NSWLEC 1070 and *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.

The development proposal results in a contemporary two storey building on the subject site, noting the proposed additions results in the dwelling having a two storey scale with pitched roof at the building elevations when viewed from the side and rear elevations. The variation to the height is required due to the definition of existing ground level and the site's historical excavation– sub-floor area immediately below the upper portion of the proposed new bedroom.

As noted, the maximum height is 10.22m measured from existing excavated ground level. The maximum numerical variation is therefore 1.724m, being a variation of 20%.

The exact location of the variation is shown on the section plan extracts below.

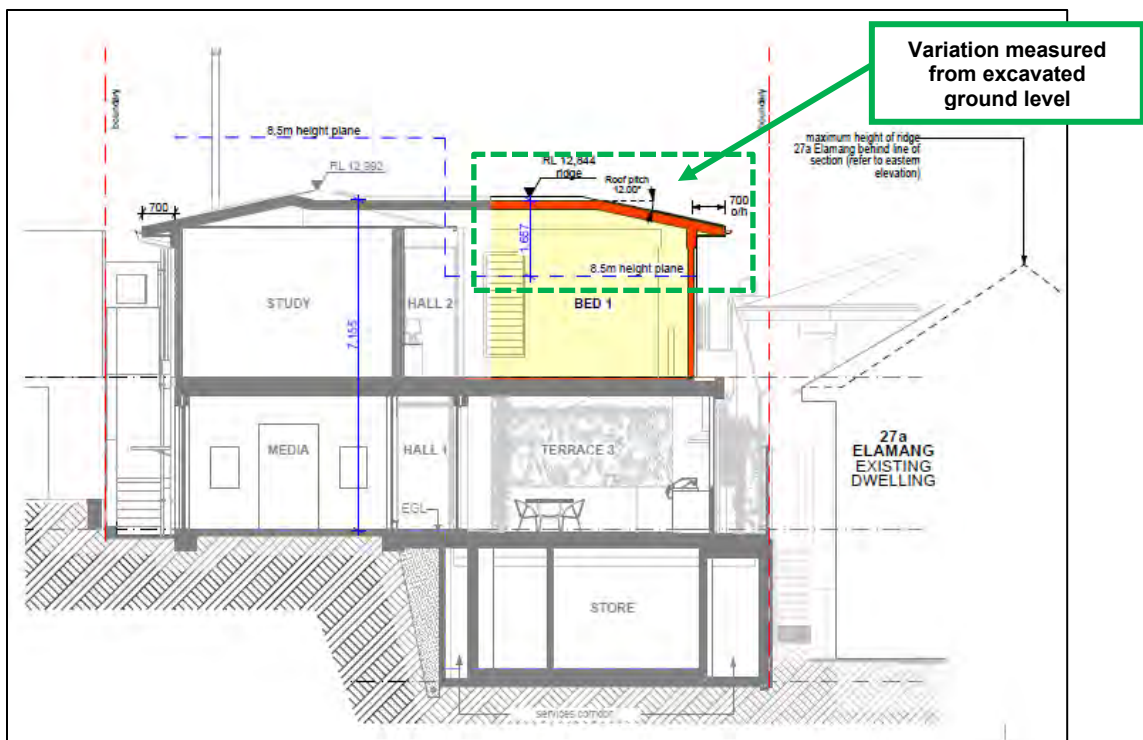


Figure 3: Short section drawing indicating extent of variation to upper-level bedroom addition

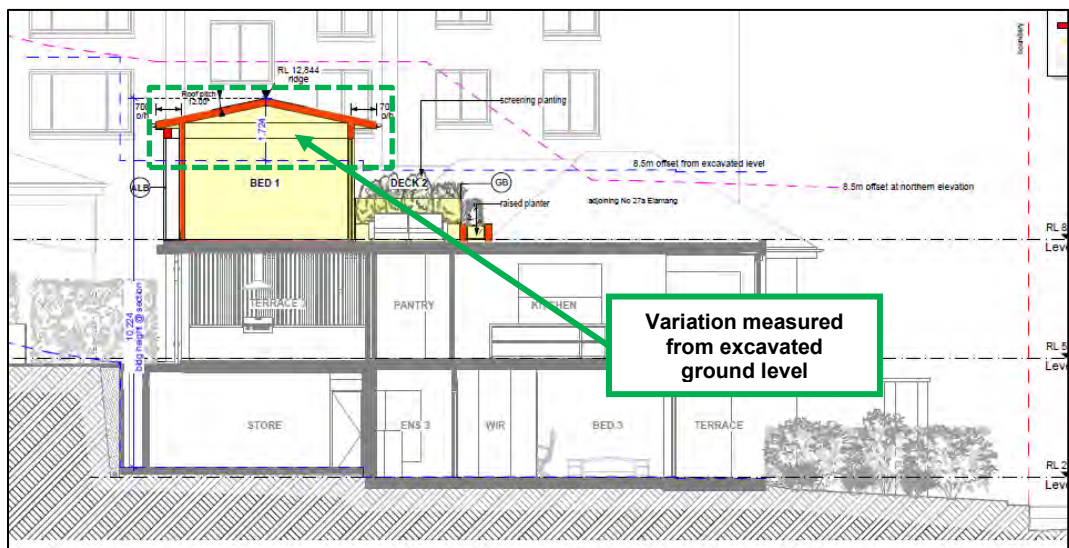


Figure 4: Long section drawing indicating extent of variation to upper-level bedroom addition

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

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

3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; and
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130
7. *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065

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

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

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

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

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

• Objectives of the Height of Buildings Development Standard

The objectives of the development standard are at clause 4.3(1) of the LEP as follows:

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

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

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

Objective (a) – The dwelling in its final form and proposed upper level addition in particular comfortably conforms to the topography of the site which has a significant fall from the street frontage – southern boundary (AHD 9.27) to the northern boundary – foreshore/concrete seawall (AHD 1.56) of 7.71m across the length of the site. The bedroom addition has been recessed from the approved rear waterfront building line at Level 3, as well as the floor below so that the built form is stepped with the slope of the land so as to reflect the natural landform. The technical height breach in fact results from the unnatural landform created by the previous house. The stepping from the road to the foreshore along with the proposed pitched roof reduces its visual prominence at the northern elevation – foreshore frontage of the subject site.

The resultant built form when viewed from the adjoining properties and public domain – streetscape reflects the natural topography of the land and the existing site conditions. The dwelling retains a two-storey form across the length of the site when viewed at the side and rear elevations as depicted in the plan extracts prepared by *Corben Architects* depicting the resultant built form and existing ground level at the side boundaries of the site:

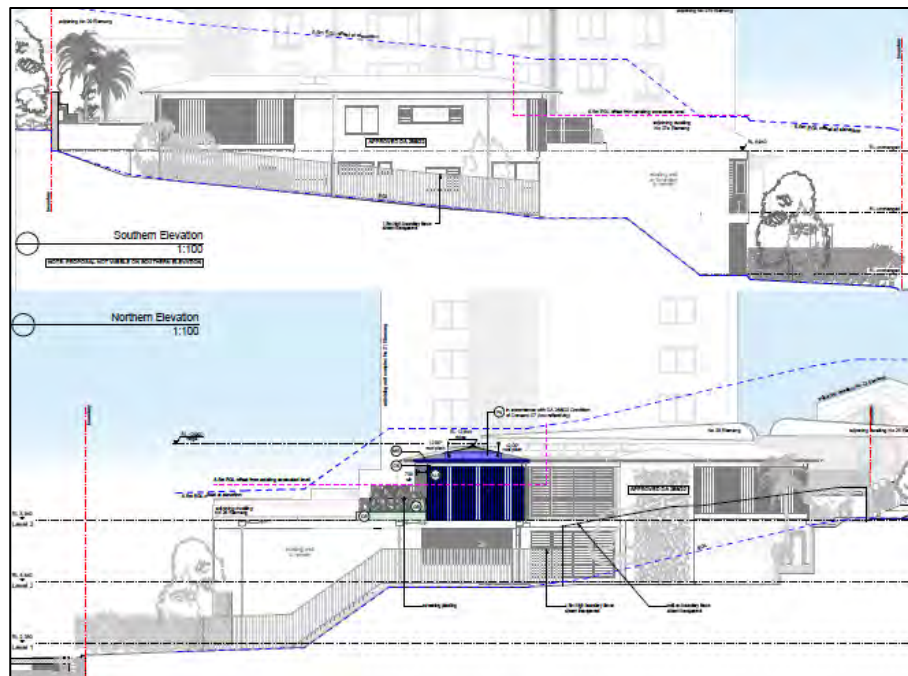


Figure 5: Side elevation plans depicting the proposed built form and ground level at the side boundaries of the site.

Objective (b) – A view impact analysis of the proposed addition has been detailed in the Statement of Environmental Effects. The view impact analysis confirms that

the proposed development will have a negligible impact upon views obtained over the subject site from nearby properties at Units 8 & 10, 27B Elamang Avenue, Kirribilli. The proposed additional built form at the upper level achieves this objective as harbour views across side boundaries of that property and the subject site views obtained from the living room and bedroom of these units will be retained. There will be only a negligible impact upon the standing view from a lounge room of Unit 8, 27B Elamang Avenue with the vast majority of this unit's water view, outlook towards land-sea interface, and the Careening Cove landscape retained.

Further, the development is appropriate with respect to view sharing as the new bedroom has been designed to capture water views whilst still maintaining views obtained over the site across the side boundaries of two properties. Only a small sliver of water view is obscured by the proposed addition. The proposal is skillfully designed to carefully minimize view loss when compared to a complying development. It represents a reasonable form of development on the site that has been designed in accordance with view sharing principles.

Objective (c) – The proposed development has no discernible impact upon the solar access of existing dwellings, public reserves, street or potential future development. The upper-level bedroom addition is located at the north-eastern portion of the site and aligns with the approved rear building line at the upper level of the development as depicted in architectural plans Rev A DA09-014.

Objective (d) – The proposed development has been designed to maintain visual and acoustic privacy of adjoining properties noting the proposed utilization of the existing slab as a deck extension is orientated towards the foreshore and does not have direct sightlines into the private open space or living areas of adjoining properties. The proposed building elements which vary the height control – bedroom addition and roof form do not present any visual privacy impacts upon adjoining properties noting the bedroom windows are only orientated internally to the site and towards the foreshore.

Objective (e) – The subject site is not located at a zone boundary. The development is compatible with the form and scale of surrounding properties including nearby residential flat buildings and 2-3 storey dwellings along the Careening Cove foreshore. The resultant built form is of a contemporary design consistent with the overall form and scale of the adjoining dwelling house at 25 Elamang Avenue and at 15-19 Elamang Avenue, Kirribilli.

Objective (f) – The proposal is consistent with the desired future character of the locality established within Section 8.2 of the North Sydney DCP 2013 for the Kirribilli Neighbourhood. The addition and resultant built form are consistent in form and scale with other development within the visual catchment of the site, and is of a scale and density commensurate with that of other low density residential development in the broader locality which includes larger 2-3 storey dwelling houses and some higher residential flat buildings.

Objective (g) – The proposed alterations to the dwelling house result in a two storey appearance when viewed from Elamang Avenue and the stepped built form at the rear is consistent with the topography of the site presenting a 2-storey

building with a recessed upper level viewed from the foreshore and Careening Cove – Sydney Harbour.

In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827 the proposal meets the first test as the objectives of the development standard are achieved notwithstanding the noncompliance.

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

- The variation to the 8.5m height standard is a result of the existing excavated sub-floor level on the subject site with the maximum height of 10.224m being measured from the existing internal excavated ground level below the proposed upper-level addition. It is unreasonable to require compliance with the height standard as the proposed built form comfortably complies with the 8.5m height control when measured at the building elevations, with a height of 6.7m-7.5m when measured at the side building elevations. The development in this regard presents a compliant building height when viewed from the adjoining properties and the public domain, with the variation being largely imperceptible outside of the site noting the variation is the result of an existing excavated sub-floor level.

The measurement of the building height from existing ground levels at the side boundaries is consistent with the assessment of building height applied by the Land and Environment Court under *Bettar v Council of City of Sydney* [2014] NSWLEC 1070. In this instance the proposal complies with the height control when measured in accordance with the established LEC precedent with respect to measuring building height on already-developed sites. See also *Stamford Properties P/L v City of Sydney* [2015] NSW LEC 1189.

The Land and Environment Court ruling in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 established that the maximum building height can also be measured from the existing excavated ground level beneath an existing building [73]. Notwithstanding, the Court acknowledged in paragraph [74] of this ruling that the prior excavation of land within the footprint of an existing building can 'distort' the building height plane overlaid a sloping site and as such this constitutes an environmental planning ground within the meaning of Clause 4.6(3)(b) of the standard LEP. The environmental planning grounds which support the proposed variation are addressed further within the proceeding sections of this statement.

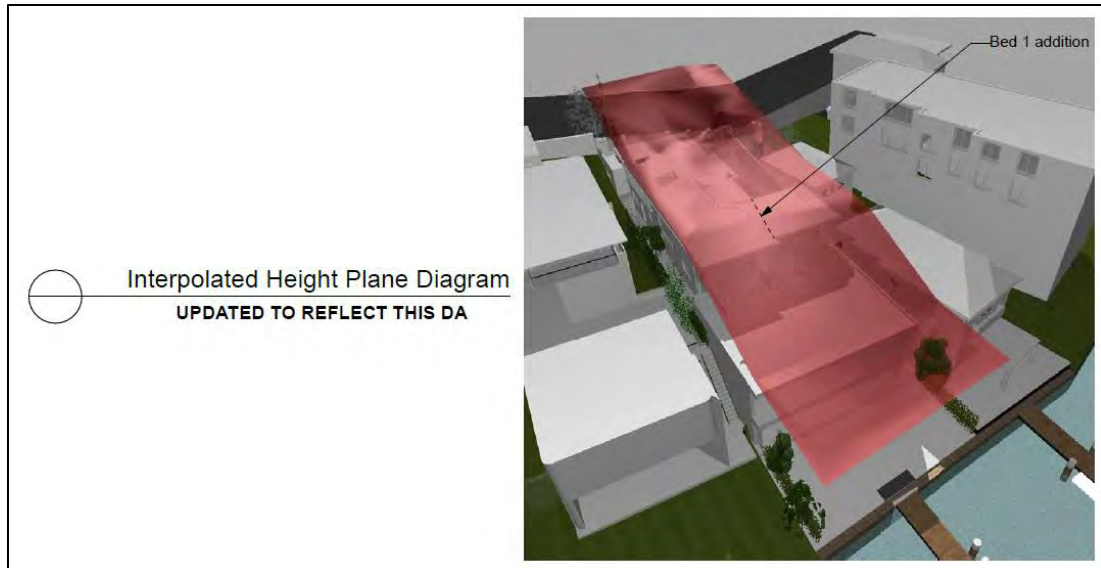


Figure 6: Building height plane based on an extrapolated ground levels at boundary.

- The topography of the subject site also contributes to the proposed variation as the site has a significant fall from its street frontage to the foreshore/concrete seawall of 7.71m across the length of the site. It is unreasonable to require compliance with the standard as the varying element is located central to the site, and will sit comfortably atop the approved built form given the slope of the land, and recessing of the upper-level addition from the northern elevation of the floor below.
- It is unnecessary to require compliance with the height standard as the proposed variation does not result in any significant environmental or amenity impacts when compared with a complying height. The proposal comfortably complies with the height control at the side elevations – interface with adjoining properties and as such the variation does not result in any bulk and scale, overshadowing, or visual impacts beyond that anticipated of a compliant development on the subject site.
- The height is suitable for the subject site and compatible with the planning objectives and intended outcomes for the site and the objectives of the R2 – Low Density Residential zone.

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

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

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the

development standard should be the focus (as opposed to the development as a whole) of any analysis.

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

- The variation to the 8.5m height standard pursuant to the *North Sydney Local Environmental Plan 2013* is a result of the existing excavated ground level on the site, including an existing sub-floor level beneath the proposed upper-level bedroom addition. As established by the Court in its ruling in *Merman Investments Pty Ltd v Woollahra Municipal Council* the prior excavation of land beneath an existing building footprint can serve to distort the building height plane when applied to a sloping site, resulting in a non-compliant building height central to a site where otherwise the proposal would comply with the height control when measured at the sites boundaries. This was accepted as an environmental planning ground.

As noted, in this instance, the existing excavated sub-floor level at the north-eastern portion of the site results in the protrusion of the upper-level bedroom addition above the 8.5m height control, whilst the perceptible height of the development comfortably complies with the height control at a height of 6.7m-7.5m when viewed from the adjoining properties to the east and west.

- The variation to the height standard is also partly the result of the topography of the subject site which has a fall from its street frontage to the foreshore of 7.71m. The control is a generic one applying to all identified sites on the North Sydney map, the slope here is a particular circumstance of the case where the criteria is both unreasonable and unnecessary.
- The portions of the building exceeding the height standard will not be visually discernible as in breach of the control when viewed from the public domain being at the north-eastern portion of the built form and confined to the roof form and upper portion of the bedroom addition. In this case, the building form and scale is suitable for the subject site and compatible with the planning objectives when measured against the intended outcomes of the objectives of the R2 – Low Density Residential zone.
- The variation to the height limit does not contribute to additional bulk and scale at the foreshore or adjoining properties noting these elements present a height of 6.7m-7.5m when measured at the building elevations, and would not otherwise be perceptible from Elamang Avenue – public domain. The varying elements will not result in unreasonable privacy impacts, overshadowing, or the loss of views/outlook from the adjoining properties.
- The proposed bedroom addition meets the view sharing planning principle. The view impact from 8 and 10/27B Elamang Avenue is negligible noting the height variation is measured to an internal excavated level and the east elevation meets the 8.5m height standard.

- Dickson C confirmed in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* (Paragraph 78) that the avoidance of impacts is an environmental planning ground as it promotes 'good design and amenity of the built environment' being an objective of the EPA Act. In this instance, the proposed variation to building height has been reduced compared to that previously proposed under Development Application D288/22 on the site, with the bedroom addition being 187mm lower in height, reduction in eave overhang by a length of 1.1m-1.975m, and recessed footprint compared to the previously proposed bedroom addition at this portion of the site.

The associated view impact previously assessed under D288/22 has been significantly reduced as a result of this proposal, with the view impact being negligible in the site circumstances. The proposal has reduced the extent of the view impact presented by the previous proposal, within a form and scale that is appropriate for the subject site.

- The proposed bedroom addition to the dwelling house including the portion exceeding the 8.5m height standard does not result in the overshadowing of any adjoining properties.
- The variation in height is consistent with the following relevant aims of the *North Sydney LEP 2013* found at clause 1.2(2):
 - (2)(b)(i) The variation does not contribute significant additional bulk to the surrounding area with the resultant built form on the site appearing as two storeys externally and being consistent with that of the adjoining dwelling at 25 Elamang Avenue and other surrounding dwelling houses.
 - (2)(b)(ii) The variation being on a foreshore site does not adversely impact upon the visual qualities of Sydney Harbour noting the variation will not be highly perceptible from the waterway, and the varying element – upper level bedroom addition is adequately recessed from the foreshore elevation of the level below. The variation will not adversely impact upon the appearance of the development when viewed from Careening Cove.
 - (2)(c)(i) The portions of the development exceeding the height control do not result in unreasonable amenity impacts to adjoining properties or the public domain with regard to overshadowing, privacy or view loss.
 - (2)(e)(i) The variation to the height proposed in this development does not impede on the natural landscape of the locality. The proposal has been designed to conform to the topography of the site and utilise the existing footprint of the dwelling on the subject site to mitigate the impact upon the topography of the site. The variation is a result of site specific environmental constraints – existing excavated ground level and topography of the subject site.
 - (2)(e)(f) The proposal will not adversely impact upon the heritage significance of the nearby heritage items along Elamang Avenue.
- The variation in height is consistent with the following objects of the Environmental Planning and Assessment Act, 1979 as follows:

- 1.3(c) – The proposal is an orderly and economic use of the site, and the development is largely consistent with the height standard with a contemporary built form that is compatibility with the desired future character of the locality, and the variation will not result in unreasonable amenity impacts,
- 1.3(g) – The variation to the height control presents a good design outcome for the development, allowing for a recessed bedroom addition that contributes to the residential amenity of the development.
- 1.3(g) – The portion of the development exceeding the height control does not result in unreasonable amenity impacts to adjoining properties or the public domain with regard to overshadowing or loss of views.

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

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

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by clause 4.6(3).

The relevant items in Clause 4.6(3) of the LEP have been adequately addressed above in order to enable the consent authority and the Court to form the requisite opinion of satisfaction.

The proposed development is in the public interest

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

Objective	Consistency
<i>To provide for the housing needs of the community within a low density residential environment.</i>	The proposed alterations and additions provide for the housing needs of the of the residents of the subject site within a built

	form that is consistent with the surrounding character of the low-density residential environment with respect to scale.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents</i>	N/A
<i>To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.</i>	The proposal being for alterations and additions to an existing dwelling house does not compromise the amenity of the surrounding area with respect to visual impact, overshadowing, or privacy. The proposed development will not have a significant adverse impact upon the heritage significance of the nearby heritage items within the vicinity of the site.
<i>To ensure that a high level of residential amenity is achieved and maintained.</i>	The proposal achieves a high level of residential amenity for the existing dwelling providing improved internal amenity – additional bedroom. Further, the proposal retains the existing landscaped area within the foreshore building line contributing to the landscape amenity of the subject site.

In addition to the above reasons, the proposal is also in the public interest for the reasons listed below.

- The development proposal presents a two-storey form to the foreshore and adjoining properties consistent with the character of the locality, and the proposed built form will not present unreasonable bulk and scale impacts to the public domain or adjoining properties,
- The resultant built form is well articulated and is a suitable built form – height for this site that is consistent with the context and scale of other development in the locality including the adjoining dwelling at 25 Elamang Avenue and other dwellings at 15-19 Elamang Avenue.
- The development is generally within the 8.5m height standard at the interface with the adjoining properties being a suitable form and scale of development that is consistent with the envisioned character of development within the R2 Low Density Residential zone.

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

The variation to the 8.5m building height standard is confined to the upper portion of the bedroom addition. The proposal does not attempt to affect the intended planning outcome

for the locality, rather the works are consistent with the envisioned scale and form of development planned for the site.

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

The concurrence of the Secretary

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

In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- a) The proposal is not likely to raise any matter of significance for State or regional environmental planning. As addressed above the variation is consistent with the 8.5m height standard pursuant to the *North Sydney Local Environmental Plan 2013*. The proposal is considered to be in the public interest because the proposed development is consistent with the objectives of the height standard and the objectives of the R2 Low Density Residential zone.
 - b) The public benefit of maintaining the development standard is not considered significant because the building is consistent with the 8.5m height standard contained in *North Sydney Local Environmental Plan 2013*.
 - c) The portions of the development exceeding the height control will not be visually discernible or generate unreasonable additional overshadowing or amenity impacts upon the adjoining properties.

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

Conclusion

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

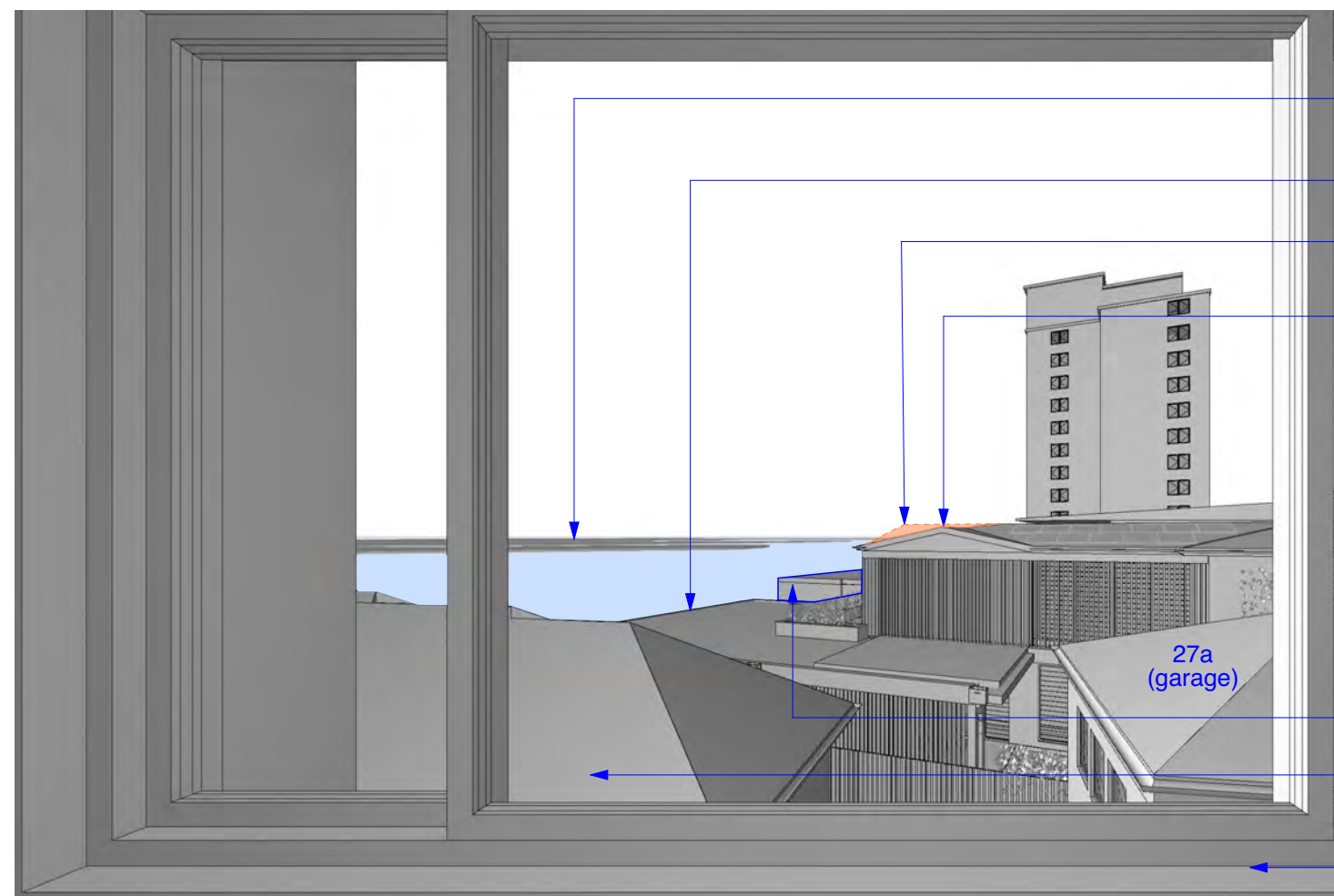
The variation to the building height standard does not attempt to affect the planning outcome for the broader locality, rather the proposed variation and overall development is consistent with the scale and form of development planned for the locality.

The elements which vary the height control will not be visually dominant from the foreshore or adjoining properties, and the variation is a direct result of measurement of the maximum building height from the existing internal previously excavated sub-floor level on the site, noting the height of the built form at the building elevations comfortably complies with the 8.5m control. The proposal will not impact upon the public domain or adjoining properties and will not generate unreasonable view loss impacts noting the proposed works (bedroom addition) results in negligible view impact from 8 and 10/27 Elamang Avenue.

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

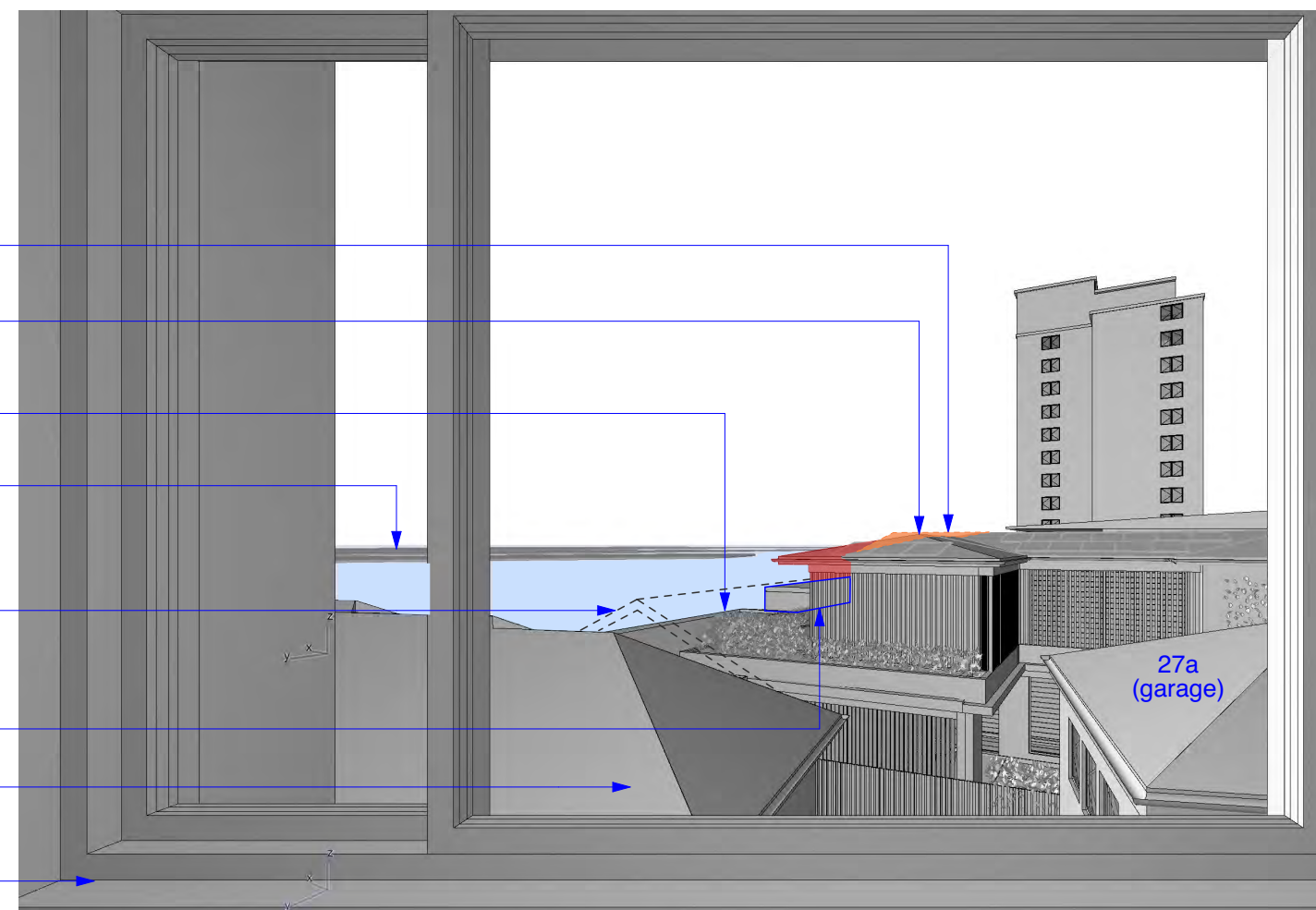
In accordance with the environmental planning grounds addressed in this clause 4.6 variation, the building height can be supported.

Chapman Planning Pty Ltd



Unit 8, 27b Lounge View - Approved DA 288/22

perspective taken 1m in from centre of window at 1.5m AFL



Unit 8, 27b Lounge View - Proposed DA

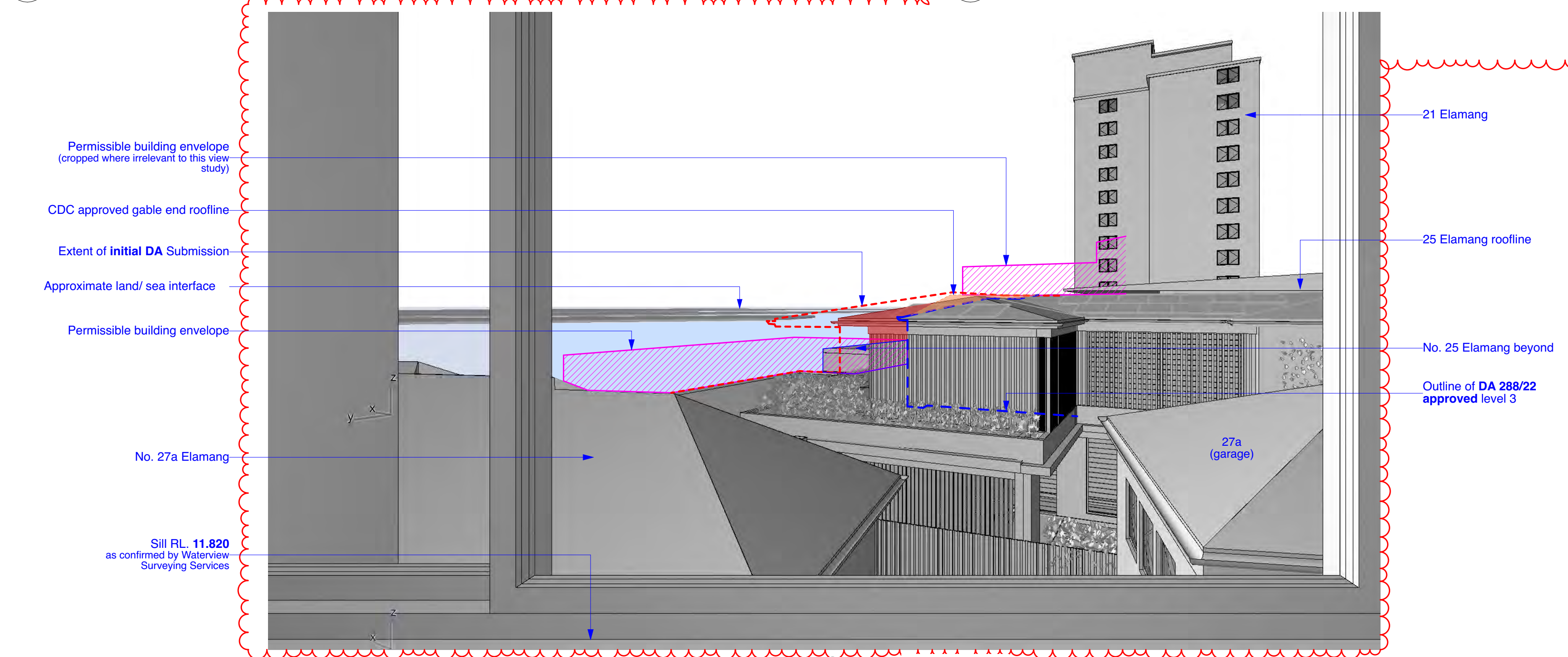
perspective taken 1m in from centre of window at 1.5m AFL

NOTES:

- CAD model generated using surveyed levels and data from Waterview Surveying Services
- Land/ sea interface approximated using sixmaps overlay
- Perspective taken from centreline of window at a height of 1.5m AFL. FFL assumed at AHD 11.02
- Area of view gained by CDC roofline reduction (orange fill) equates to 10% of the proposals view impact (red fill), thus reducing the net view impact of the proposal.
- Accounting for approved and existing structures, **95.4%** of water view is retained from unit 8, 27b, while the impact of the proposal on the view (shown in red) is **4.6%**
- As viewed from unit 8 27b, the demolition of the existing roof form at No. 27 increased access to water views by 15%
- In comparing pre-development (No. 27 existing site condition prior to CDC & DA approval), water view access from U8, 27b, to the current proposal, we calculate a **97.4%** maintenance of combined water views with increased visibility of foreground moorings.

1

2



Unit 8, 27b Lounge View - Proposed DA Overlay [Enlarged]

perspective taken 1m in from centre of window at 1.5m AFL

LEGEND

- Proposal
- CDC approved roof line
- Permissible Building Envelope
- Extent of Initial DA Submission
- No. 25 Elamang beyond

• Any discrepancies to be brought to Architect's attention
 • Use figure dimensions in preference to scaling
 • Only scale under direction from Architect
 • Builder to examine site and verify conditions and dimensions
 • This drawing remains the property of the architect
 • Client is granted conditional license to use the drawings
 • Transfer of license is prohibited
 • Architect reserves the right to terminate the licence
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Rev	Date	Description
A	24/5/2023	Development Application
B	31/7/2023	DRAFT COUNCIL AMENDMENT
C	2/8/2023	Revised Council Submission - Bed 1 Reduced

notes

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project Alterations & Additions to an Existing DA 288/22 Approval

address 27 Elamang Avenue Kirribilli NSW

client John and Bianca White

title View Impact Analysis

job no. WHK

drawn JM, AB

checked

scale

issue Development Application

dwg no. DA15

revision C