

**NSLPP MEETING HELD ON 7/02/24****Attachments:**

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

ADDRESS/WARD: 9 Gundimaine Avenue, Kurraba Point**APPLICATION NO:** DA 381/22**PROPOSAL:** Alterations and additions to an existing detached dwelling including a first floor addition and a double garage**PLANS REF:**

Plan No.	Description	Prepared by	Dated
A-101 Rev A	Existing Lower Ground Floor Plan	Barbara Architecture	4 November 22
A-102 Rev A	Existing Ground Floor Plan	Barbara Architecture	4 November 22
A-103 Rev A	Existing Roof Plan	Barbara Architecture	4 November 22
A-111 Rev A	Lower Ground Floor Demolition Plan	Barbara Architecture	4 November 22
A-112 Rev A	Ground Floor Demolition Plan	Barbara Architecture	4 November 22
A-113 Rev A	Roof Demolition Plan	Barbara Architecture	4 November 22
A-121 Rev A	Proposed Lower Ground Floor Plan	Barbara Architecture	4 November 22
A-122 Rev A	Proposed Ground Floor Plan	Barbara Architecture	4 November 22
A-123 Rev A	Proposed First Floor Plan	Barbara Architecture	4 November 22
A-124 Rev A	Proposed Roof Plan	Barbara Architecture	4 November 22
A-201 Rev A	Elevations - Existing	Barbara Architecture	4 November 22
A-211 Rev A	Proposed Overall Elevations	Barbara Architecture	4 November 22
A-212 Rev A	Proposed North & South Elevations	Barbara Architecture	4 November 22
A-213 Rev A	Proposed East Elevation	Barbara Architecture	4 November 22
A-214 Rev A	Proposed West Elevation	Barbara Architecture	4 November 22
A-311 Rev A	Proposed Long Section	Barbara Architecture	4 November 22
A-312 Rev A	Proposed Cross Section	Barbara Architecture	4 November 22
A-213 Rev A	Proposed East Elevation	Barbara Architecture	4 November 22
A-213 Rev A	Proposed East Elevation	Barbara Architecture	4 November 22
A-213 Rev A	Proposed East Elevation	Barbara Architecture	4 November 22
A-213 Rev A	Proposed East Elevation	Barbara Architecture	4 November 22

OWNER: Catherine Louise Mary Stevens**APPLICANT:** Felicity King, Studio Barbara**AUTHOR:** Report of Robin Tse, Senior Assessment Office**DATE OF REPORT:** 18 January 2024**DATE LODGED:** 8 December 2022**RECOMMENDATION:** Refusal

EXECUTIVE SUMMARY

This development application seeks consent for and additions to an existing detached dwelling including a first-floor addition and a double garage at No.9 Gundimaine Avenue, Kurraba Point.

The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to a development standard by more than 10% in accordance with the direction of the Minister of Planning and Public Spaces.

The application was notified to the owners of the adjoining properties and the Kurraba and Bennett Precinct Committees. A total of five (5) submissions were received at the close of the notification period including one (1) submission in support of the proposal. One (1) submission objecting to the proposal was subsequently withdrawn. The concerns raised in the submission including the height of the proposed addition, adverse impacts on the amenity of the neighbouring properties and the encroachment of an adjoining property. The issues raised in the submissions received have been addressed in this report.

Development for the purpose of alterations and additions to an existing detached dwelling is permitted within the R2 (Low Density Residential) zone.

The development application has been assessed against the *North Sydney LEP 2013* and North Sydney DCP 2013 and was found to be unsatisfactory for reasons discussed herein.

Consideration has also been given to the Clause 4.6 request for a variation to the LEP's building height development standard as submitted by the applicant.

The variation to the building height development standard is not supported because the uncharacteristic design of the building elements, including those above the LEP maximum building height limit, that would result in the loss of the Interwar character of the original dwelling. Furthermore, the uncharacteristic nature of the proposal and its impacts on the conservation area do not demonstrate public benefit. Therefore, a variation to the LEP building height control is not considered to be well-founded and strict compliance with the standards is necessary.

The proposed development is contrary to the objective of the R2 (Low Density Residential) zone because the proposal would detract from the significance of the conservation area.




The proposal does not comply with DCP's site coverage, unbuilt upon area and landscape area requirements. Additionally, the proposed landscaping treatments are unsatisfactory.

The application was referred to Council's Conservation Planner who considered the proposal unsatisfactory because of the adverse impacts on the significance of conservation area.

Accordingly, the proposed development is recommended for **refusal**.

LOCATION MAP



 Property/Applicant  Submitters - Properties Notified 

DESCRIPTION OF PROPOSAL

The applicant seeks NSLPP approval for alterations and additions to an existing part single/two storey detached dwelling including a first floor addition and a double garage.

The proposed works are summarised as follows:

Lower ground floor (FFL13.150):

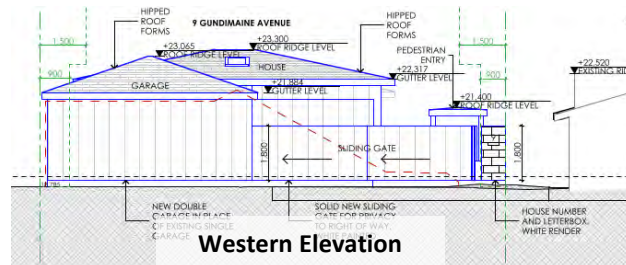
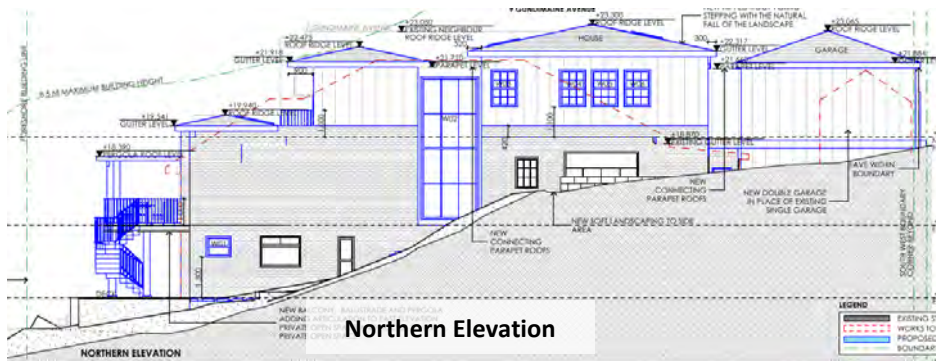
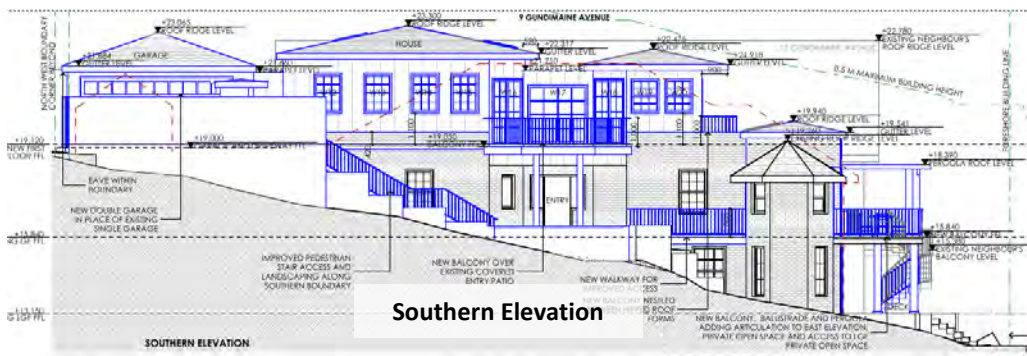
- (a) Demolition of an internal staircase and an external wall between the staircase landing and the rear deck;
- (b) Removal of existing bathroom fitout and installation of new fitout; and
- (c) Construction of a new external staircase to provide access to the new ground floor balcony.

Ground floor (FFL15.840):

- (a) Reconfiguration of the internal layout, including the removal of existing fitouts and some internal partitioning walls/doors to provide an open plan formal living/dining/kitchen area, a lounge room, a study/bedroom, a sunroom, a laundry and new staircases to connect the lower ground floor and the new first floor addition;
- (b) Construction of a new balcony off the new open plan dining/kitchen area on the eastern elevation of the dwelling with an external staircase connecting the deck on the lower ground floor;
- (c) Construction of new retaining walls and a new external staircase along the southern property boundary; and
- (d) Landscaping works and installation of stepping stones along the northern building setback area.

First floor (FFL19120):

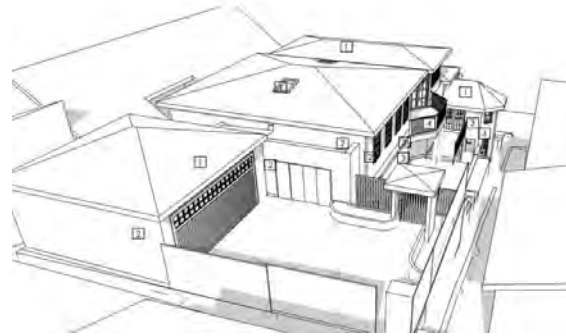
- (a) Demolition of the existing roof and the existing single garage on the western side of the property;
- (b) Construction of a new first floor addition to provide a master bedroom with a walk-in-robe and ensuite bathroom, a guest bedroom/study, a bedroom with ensuite bathroom and walk-in-robe, a storeroom, a library, and a balcony on the eastern elevation of the addition;
- (c) Construction of a double garage with part of this structure over an existing courtyard with a covered access to the main dwelling;
- (d) Construction of a new paved driveway including a slab over an open space between an existing rock face and the western building line of the existing dwelling and the installation of a new driveway gate with associated fencing; and
- (e) Landscaping works.



Figures 1 – 4: Proposed development



Eastern (ShellCove)



Western (Gundimaine Ave)

Figures 5 & 6: Proposed development (3D Imagery)

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R2 (Low Density Residential)
- Item of Heritage – No (Neutral Item)
- In Vicinity of Item of Heritage – Yes (Nos.37, 39 & 45 Shellcove Road)
- Conservation Area – Yes (Kurraba Point Conservation Area)
- FSBL - Yes

Environmental Planning & Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

SEPP (Resilience and Hazards) 2021

SEPP (Sustainable Buildings) 2022

Local Development

POLICY CONTROLS

NORTH SYDNEY DCP 2013

North Sydney Local Infrastructure Contributions Plan 2020

Sydney Harbour Foreshores & Waterways Area DCP 2005

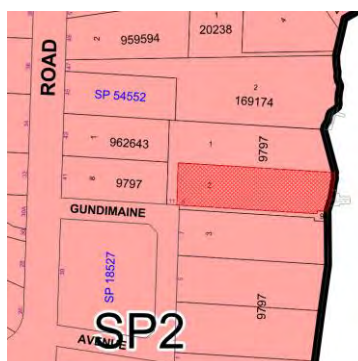


Figure 7: Zoning



Figure 8: Building Height

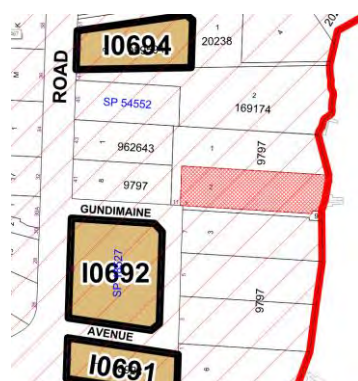


Figure 9: Heritage

DESCRIPTION OF LOCALITY

The subject site is legally described as Lot 2 in DP 9797, and is known as No. 9 Gundimaine Avenue, Neutral Bay. The subject site slopes away from Gundimaine Avenue with a fall of 18m towards the Shellcove foreshore. The site has a total area of 835 square metres.

The subject site contains an existing dwelling, car accommodation, decking and terracing with a boatshed primarily below MHW. The building has an east-west orientation with the front (eastern) elevation facing Shell Cove. There is currently a vehicular driveway crossing at the rear of the site providing access to Gundimaine Avenue adjacent to the western property boundary.

The surrounding locality contains a range of dwelling types including large, detached dwellings along the Shell Cove foreshore and a number of residential flat buildings along Shellcove Road. To the south of the subject site is an allotment, known as Lot 9 DP 9797, that provides right of way for passage and drainage for No.39 Shellcove Road. Further to the south is a part 2/3 storey detached dwelling at No.7 Gundimaine Avenue.

A part 2/3 storey detached dwelling is located to the north of the subject site at No.9 Gundimaine Avenue. This adjoining property has an access handle, located to the west (rear) of the subject site, that provides vehicular access to the property.

The subject site is a neutral item located within Kurraba Point Conservation Area. There are several heritage/contributory item in the vicinity of the site. "Gundimaine", a Heritage Item, is located diagonally across the road to the south-west of the subject site at No.39 Shellcove Road. A second Heritage Item, known as "St Annes", is located adjacent to "Gundimaine", to the south west of the subject site, at No.37 Shellcove Road. Two contributory items are located to the west of the subject site.



Figure 10: Subject site – As seen from Gundimaine Avenue showing the existing single garage and the main dwelling



Figure 11: Subject site as seen from Shell Cove



Figure 12: The locality

RELEVANT HISTORY

Previous applications

- **12 September 2008** – Development consent (**D137/08**) was granted under delegated authority for a new foreshore access stairs along the right of way between No's 7 and 9 Gundimaine Avenue.
- **9 December 2013** - Development consent (**D348/13**) was granted under delegated authority for the construction of a new swimming pool, spa and deck.
- **6 September 2016** – A section 96 application (**D348/13/2**) seeking modifications to the approved swimming pool, deck and landscaping treatments was approved under delegated authority.

Current application

- **8 December 2022** – The subject Development Application (**D381/22**) seeking alterations and additions to an existing part single/two storey detached dwelling was lodged with Council via the Planning Portal.
- **13 to 27 January 2023** – The owners of the adjoining properties and the Kurraba and Bennett Precinct Committees were notified about the application. A total of five (5) submissions were received including one (1) submission in support of the application. One (1) submission objecting to the application was subsequently withdrawn.
- **20 January 2023** – A letter was sent to the applicant requesting the submission of additional shadow diagrams and a view sharing assessment.
- **6 March 2023** – The applicant was requested to consider the comments provided by Council's Conservation Planner following an inspection of the subject site.
- **28 June 2023** – The applicant submitted a set of draft amendments to the original proposal in response to the comments provided by Council Officers.
- **16 August 2023** – Comments were provided to the applicant about the draft amended proposal.
- **6 November 2023** – The applicant advised that the amended proposal would no longer be pursued.

REFERRALS

BUILDING

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

ENGINEERING

The application was referred to Council's Senior Development Engineer Team who raised no in-principle objection to the proposed development subject to the imposition of appropriate engineering conditions should approval be granted for the original DA proposal.

HERITAGE

The application was referred to Council's Conservation Planner who provided the following comments in relation to the original DA proposal:

1. Heritage Status and Significance

The subject property is a Neutral item located within the Kurraba Point Conservation Area. Its Neutral status is possibly because of its low visibility from Gundimaine Avenue. The dwelling is located on a lot that was subdivided from the nearby heritage-listed 'Gundimaine' in 1923 and comprises a c.1923 Interwar Georgian style dwelling that was designed by notable architect S H Buchanan. Buchanan is remembered for his commercial work including the Brisbane War Memorial, Anzac Square, Brisbane and the Art Deco style Manufacturers Mutual House 1935 building at 12-14 O'Connell Street, Sydney which is listed on the Australian Institute of Architects Register of Significant Buildings.

The dwelling is set below the road and is entered via a crazy paving driveway and a side entry. The building is constructed from brick, however the upper level has had its rough cast render removed without consent resulting in damaged brickwork. It does retain however, its original primary form, original terracotta tile hipped roof, pantile wall cladding (unsympathetically painted without consent), leadlight windows, shutters, timber framed window and doors and decorative interior features including plaster patterned ceilings, beamed ceilings and joinery. The original room configuration remains evident. The building has been designed to have two primary elevations on the south and east. The dwelling is very visible from the harbour.

2. Heritage Impact Assessment

a) North Sydney LEP 2013 Clause 5.10

The proposal does not satisfy clause 5.10 of NSLEP 2013, in that it will not retain the remnant fabric of the Interwar dwelling and it will introduce new fabric to further obscure the character and detailing of the original dwelling.

In addition, the storey height and form will be altered by new additions and the eastern and eastern primary elevations will have new contemporary facades.

b) North Sydney DCP 2013

An assessment of the proposal, with reference to Part B Section 13 of the North Sydney DCP 2013 has been made with the following elements of the DCP being of note:

13.4 Development in the Vicinity of Heritage Items

Comment:

Compliant. *The dwelling is set below 'Gundimaine' at No.39 Shellcove Road and will have low impact upon its curtilage and setting.*

13.6.1 General Objectives

O1 Ensure that new development is designed to retain and complement the character and significance of the conservation area

O3 Enable neutral items to be improved such that they contribute to the character of the heritage conservation area through the removal of unsympathetic and inappropriate elements, and reinstating missing details where appropriate

Comment:

Non-compliant. The Interwar character of the dwelling will be lost by the removal of the original roof and the introduction of the new eastern and southern facades. The streetscape presentation of the dwelling will also be detrimentally impacted by the extensive paving and double garage.

13.6.2 Form, Massing and Scale - P9 New work may adopt a contemporary character, provided the development is not likely to have a detrimental impact on the characteristic built form of the area, particularly in terms of bulk, scale, height, form or materials -

Comment:

Non-compliant. The new form and scale will result in the appearance of a contemporary dwelling.

P5 Achieve a neutral outcome to neutral items or improved outcome to neutral items which were constructed in the core period of development by:

- (a) respecting original or characteristic building patterns in terms of bulk, form, scale and height;**
- (b) minimising changes to original and characteristic features;**
- (c) removing unsympathetic and uncharacteristic changes and/or;**
- (d) reinstating characteristic details where there is physical or documentary evidence.**

Comment:

Non-compliant. The proposal does not respect the original Interwar form, scale or detailing. It will introduce new uncharacteristic elements such as the extensive glazing and a large balcony on the eastern elevation.

13.6.3 Roofs - Objective O1 To maintain the characteristic roof profiles and roofing materials within a heritage conservation area

Comment:

Non-compliant. The original roof is to be demolished. The new roof will not be clad in terracotta tile but will use slate which will detrimentally alter the building's character. This could be resolved by a condition should consent be granted for this application.

13.6.4 Additional Storey and Levels - P3 Typically, additions should be set back behind the main roof lines and should be located substantially within the existing roof

Comment:

Non-compliant. The proposed new works will remove the original Interwar roof and introduce a new storey that will detract from the heritage significance of the building.

13.6.5 Internal Layouts – Objective O1- To ensure that significant interiors are retained

Comment:

Non-compliant. The original decorative features such as beamed ceilings, plaster ceilings and original joinery plus the original room configuration will be largely demolished.

13.8 Demolition - P5 Neutral items should not be demolished and demolition will generally not be supported by Council- the proposal is considered to be 'demolition' as defined by the Land & Environment Court Planning Principle Coorey Vs Hunters Hill Council.

P6 Despite P5 above, Council may consider the demolition of a neutral item, but only where the applicant can demonstrate:

(a) the existing building is not capable of adaptation or modification in a way that will reasonably meet contemporary amenity and living standards while also improving the appearance and contribution of the building to the area's character

Comment:

Non-compliant. It is considered that the building is capable of adaptation.

(b) that any replacement building improves the contribution of the site to the area's character in terms of form, setbacks, bulk, scale, materials and style

Comment:

Non-compliant. The western setback will result in no garden and no setting for the building as viewed from the public domain. The style will be altered from Interwar to contemporary. The bulk will be altered by the additional new floor. The massing will be altered by the removal of the original roof and the creation of a new level plus the new balconies on the eastern elevation.

(c) that sustainability outcomes of the proposed replacement development reasonably justify the change.

Comment:

Non-compliant. The application has not submitted any information however, it is unlikely that the carbon footprint of the new development will be an improvement.

(d) that all reasonable alternatives to demolition have been considered.

Comment:

Non-compliant. No information has been submitted.

13.9.1 Skylights, Solar Panels and Satellite Dishes – Objective O1 To ensure that skylights, solar panels and satellite dishes do not detrimentally impact upon the significance of heritage items and heritage conservation areas

Comment:

Compliant.

13.9.3 Verandahs and Balconies - P3 Later and intrusive verandah and balcony enclosures should be removed

Comment:

Non-compliant. The proposal will result in a later intrusive balconies on the eastern and southern elevations which will obscure the original design of the dwelling when viewed from the harbour.

13.9.4 Materials - Objective O1 To ensure that materials and finishes are consistent with the characteristic elements of the heritage item or heritage conservation areas

Comment:

Non-compliant. The new materials alter the roofing from terracotta tile to slate. The proposal indicates black and white colour scheme that is not characteristic to dwellings within the Conservation area. This could be conditioned to require neutral tones should consent be granted for this application.

13.9.5 Garages and Carports- Objective O1 To ensure that vehicular accommodation does not detrimentally impact upon the significance of the heritage item or heritage conservation area

Comment:

Non-compliant. The proposed new driveway and double garage results in there being minimal soft landscape setting to the dwelling when viewed from the street.

13.9.6 Fences – Objective O1 To ensure that fences are consistent with the characteristic elements of the heritage item or heritage conservation area

Comment:

Non-compliant. The new western boundary fence is too high and will detract from the character of the streetscape. This could be conditioned to require the vehicular gate to be an open palisade gate should consent be granted for this application.

13.9.7 P2 Do not develop front garden areas for carparking or pave extensively

Comment:

Non-compliant. The proposal will result in too much hardscape adjacent to Gundimaine Avenue.

13.10.3 Larger Scale Single Dwellings- Provision P2 New additions should generally comply with the examples illustrated in Figures 13.43 to 13.46

Comment:

Non-compliant. The additions are not subservient to the original dwelling but are greater in scale.

3. Conclusion

The proposal is considered to be unsupportable with regard to heritage. The Interwar building designed by SH Buchanan that is visible from Sydney Harbour will not be conserved nor will its character be retained in the proposal. The proposal is defined as 'demolition' and Neutral items are to be retained and have their heritage significance enhanced. Its form, massing, character and materiality will be detrimentally modified, resulting in loss of its remnant aesthetic and historic significance. The exterior colour scheme is also inconsistent with the character and building style.

The resultant development will have a reduced western setback with inadequate soft landscape setting.

The following amendments were previously requested:

- Remove all additions on the southern and eastern significant elevations.
- Retain the hipped roof form and its terracotta tile cladding. Rooms may be contained within the roof.
- Push the roof addition to the west such that it sits beyond the primary roof east/west ridge to the point where it hips down.
- Retain original windows and shutters on the south and east.
- Retain leadlight windows and original front door with jelly glass.
- Reinstate the character and detailing on the eastern and southern façades including rough cast render and paint from the pantiles.
- Retain the tessellated tiles to the entry porch.

- *Materials should match the existing materials and/or reinstated as originally constructed.*
- *Include a garden of the western side of the dwelling.*
- *Minimise the extent of hardscape visible from the street.*

As the applicant has advised that they wish to rely on the original plans, it is recommended that the application be considered for refusal.

Comment:

Council Conservation Planner's comments are noted. The proposal does not comply with a significant number of heritage controls and is not supported.

LANDSCAPING

The application has been referred to Council's Landscape Development Officer who provided the following comments:

The survey plans submitted with the DA, dated 19/12/2011, does not provide the current status of vegetation on site given that a number of trees on site were removed prior to the lodgement of the subject DA.

*No objection is raised to removal of an unnamed tree, which would appear to be a small *Camellia sasanqua* in poor health, as shown on the submitted landscape plan subject to suitable replacement planting.*

*It is however noted that the only remaining canopy tree located to the east of the existing garage but not shown on the submitted landscape plan, a *Glochidion ferdinandii* (5x7m), is likely to require removal under the proposal. An amended proposal allowing for the retention and protection of this tree, with a supporting arborist report including TPMP shall be required.*

It is noted that subject application has proposed the retention of existing landscaping to the east of the main dwelling. However, existing landscaping treatments to the east of the main dwelling is not considered to appropriately address the screening required for the softening of the bulk/scale and built form of the proposed works to the main dwelling as well as the retention of the landscape setting of the subject site as viewed from Shell Cove and/or across the bay.

Furthermore, 3 x very large mature conifers, located in front of the eastern building line of the main dwelling, were removed before the lodgement of the subject DA and no indication on any arrangements for planting of replacement trees. Concerns is therefore raised in additional loss of canopy cover within the LGA.

It is recommended that an amended landscape plan incorporating following requirements be submitted:

- (a) *Detailed landscape treatments of all areas between the dwelling and the foreshore shall be required and shall include a minimum of 2 x Banksia integrifolia (75l), and 1 x Angophora hispida (75l);*
- (b) *The amended landscape plan shall include new planting to provide screening and softening the built form of the proposed works to the main dwelling as viewed from Shell Cove.*
- (c) *The amended landscape plan shall include softening of the sandstone retaining wall, and slatted timber below the existing swimming pool.*
- (d) *The removal of Glochidion ferdinandii (5x7m) to the east of the existing garage;*
- (e) *The location of the proposed planting of 2 x Banksia integrifolia (75l), atop rocky outcrop on lowest level adjacent to boat shed, appears to be sub-optimal. Consideration should be given to a more appropriate/favourable location for the proposed planting.*
- (f) *The submitted landscape Plan does not provide sufficient softening of the current large expanse of sandstone retaining wall, and slatted timber surround below swimming pool,*
- (g) *The submitted landscape plan prepared by Total Concept Landscapes dated 9/5/23 does not adequately include appropriate native species (eg substitution of Elaeocarpus eumundii for Pyrus calleryana 'Capital') for use as edges, and not canopy trees, under the context of this DA.*

Comment:

Council Landscape Development Officer's comments are noted. Given that the applicant has requested the determination of the application based on the original plans, the original proposal is unsatisfactory and does not warrant the approval of the application.

If the panel were of a mind to support the application, it should call for amended landscape details before doing so.

SUBMISSIONS

The owners of the adjoining properties and the Kurraba and Bennett Precinct Committees were notified about the application between 13 and 27 January 2023. A total of five (5) submissions were received at the close of the notification period including one (1) submission in support of the proposal. One (1) submission objecting to the proposal was subsequently withdrawn.

The issues raised in the submissions objecting the proposed development are summarised below and addressed later in this report. The original submissions may be viewed by way of DA tracking on Council's website https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs and are available for review by NSLPP members.

Basis of Submissions

- Impacts on views of surrounding trees as seen from an adjoining property.
- Increase in building height will have adverse amenity impacts for the neighbouring properties.
- Encroachment of the proposed sunroom onto an existing right of way along the southern boundary and would restrict access to Shell Cove.
- Adverse impacts on streetscape due to excessive bulk of the proposed development.
- Traffic and waste management concerns due to the narrow width of Gundimaine Avenue.

- Excessive bulk and scale of the proposal.
- Excessive building height above the LEP maximum building height limit.
- Proposed first floor balcony/ pergola extended beyond prevailing building line.
- Visual privacy impacts from the proposed balconies.
- No encroachment of stormwater drainage line into adjoining properties.
- Adverse view impacts due to excessive building height and bulk.
- Adverse impacts on views to a nearby heritage item.
- Impacts on views of surrounding trees as seen from an adjoining property.
- Increase in building height will have adverse impacts on the right of way to the south of the subject site.

CONSIDERATION

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

Environmental Planning and Assessment Act 1979 (as amended) Environmental Planning and Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in Non-Rural Areas

The proposal generally meets the objectives of the SEPP because the current application does not involve clearance of native vegetation, or any material impacts on bushland (if any) in the vicinity of the subject site.

Chapter 6 Sydney Harbour Catchment

Having regard to the provisions of Chapter 6 of the SEPP and the Sydney Harbour Foreshores and Waterways Area DCP 2005, the proposed development would be visible from the Harbour, it is not considered to be detrimental to general scenic quality and the ecology of the Harbour and will not unduly impose upon the overall character of the foreshore given that the scale and the localised nature of the proposed development. Furthermore, the proposal would not adversely affect the environmental processes, including in relation to water quality and biodiversity.

As such, the development is generally acceptable having regard to the provisions contained within Chapter 6 of the above SEPP and the Sydney Harbour Foreshores and Waterways DCP 2005.

State Environmental Planning Policy (Resilience and Hazards) 2021

Section 4.6 of the SEPP requires the consent authority to consider whether the land is contaminated, and if so whether the land is suitable for the intended use or any remediation measures required. Council's records indicate that the site has historically been used for residential development and as such is unlikely to contain any contamination. The subject site is therefore considered suitable for the proposed use given that contamination is unlikely.

State Environmental Planning Policy (Sustainable Buildings) 2022

On 1 October 2023, the *SEPP (Sustainable Buildings) 2022* came into effect, which repealed the *SEPP (Building Sustainability Index: BASIX) 2004*. However, as this application was submitted prior to the commencement date of the *SEPP (Sustainable Building) 2022*, the new BASIX standards do not apply.

A valid BASIX Certificate has been provided.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The proposed works can be defined as alterations and additions to an existing detached dwelling and are permissible on land within R2 (Low Density Residential) zone with consent from Council.

2. Aims of the LEP

In addition to the objectives of the R2 (Low Density Residential) zone, consideration has been given Clause 1.2 (2)(a) of North Sydney LEP 2013 relating to the following:

2(a) to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment

The proposal is inconsistent with the character and context of Kurraba Point Conservation Area because the proposed works would result in the loss of the character of the existing dwelling and the introduction of uncharacteristic building elements. Therefore, the proposed development would detract from the significance of the conservation area.

2(b)(i) to ensure the new development is compatible with the desired future character of an area in terms of bulk, scale and appearance,

The design of the proposed first floor addition is considered to be incompatible with the character of the conservation area due to its form, bulk, scale and the changes to the roof form of the original dwelling and its contemporary design and treatments.

2(e)(i) to maintain and protect natural landscapes, topographic features and existing ground levels

The proposed landscaping treatments are not considered to be satisfactory and the applicant did not address the comments/requests of Council's Landscape Officer for amendment and further information.

2(f) to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance

As detailed in the heritage discussion above, the proposed works would detract from the significance of Kurraba Point Conservation Area.

In summary, the proposal is inconsistent with the above aims of the LEP.

3. Objectives of the zone

The objective of the R2 (Low Density Residential) zone relevant to the proposed development is as follows:

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

The proposed development does not promote or reinforce the character of the subject dwelling and the character of the conservation area. The proposed development would result in an uncharacteristic building within Kurraba Point Conservation Area as detailed in the comments from Council's Conservation Planner.

Furthermore, the proposal would have adverse impacts on the residential amenity of the locality due to the non-compliance with DCP's site coverage, unbuilt upon area and landscaped area requirements as detailed later in this report.

The proposal is therefore contrary to the above zone objectives.

Part 4 – Principal Development Standards

COMPLIANCE TABLE Principal Development Standards North Sydney Local Environmental Plan 2013				
Site Area - 835m²	Existing	Proposed	Control	Complies
Clause 4.3 – Heights of Building	8.3m	9.5m	8.5m	NO (Clause 4.6 Development Standard variation received.)

4. Height of Building

The proposed works would have a maximum height of 9.5m that fails to comply with the permissible height limit of 8.5m in accordance with clause 4.3 in NSLEP 2013 (**Figure 13**).

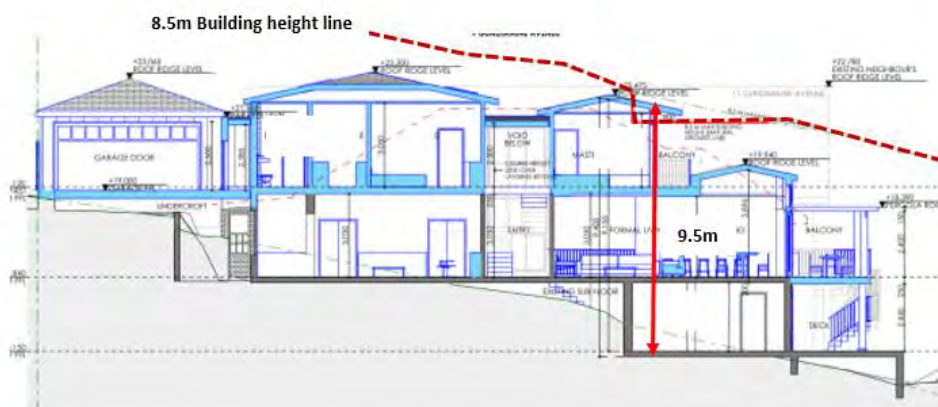


Figure 13: Proposed building height

The applicant has submitted a written request seeking variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013.

5. Clause 4.6 Exceptions to Development Standards

The proposed breach has been assessed against the requirements of Clause 4.6 of NSLEP 2013 and the objectives of the building height control. These matters have been considered below: -

- (1)(a) To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient** – The proposal generally respects the existing landform with a stepped built form on the eastern side of the main dwelling.
- (1)(b) To promote the retention and, if appropriate, sharing of existing views** - The building elements in breach of the LEP building height limit would primarily be the roof over the new master bedroom on the eastern end of the proposed first floor addition (**Figure 13**).

A photograph available on Google Maps (**Figure 14**) and another photograph taken during an inspection of an adjoining property (No.39 Shellcove Road) to the south-west of the subject site (**Figure 15**) provide two perspectives of the relationship of the dwellings at Nos 7, 9 and 11 Gundimaine Avenue as seen from the western side of Gundimaine Avenue and from Shell Cove respectively.



Figure 14: The subject site and adjoining properties as seen from Shell Cove



Figure 15: The subject site and adjoining properties as seen from an adjoining property to the south-west

As illustrated from **Figure 14**, the dwellings to the north and south of the subject site contain a level primarily within the roof of the dwelling with significant water views to the east across Shell Cove.

Consideration has been given to the likely view impacts of the proposed development for the adjoining properties to the north and south (Nos 9 and 11 Gundimaine Avenue) and to the west (Nos 39, 41 and 43 Shellcove Road) of the subject site, based on the principles adopted by Commissioner Roseth of the NSW Land and Environment Court centering around *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* (also known as the Tenacity Test).

The applicant has not provided a detailed view analysis. An inspection was carried out at a first floor apartment at No.39 Shellcove Road. In addition, photographs of Shell Cove and views from various adjoining properties are publicly available from various mapping and real estate websites on the internet.

No.11 Gundimaine Avenue:

The building elements above the LEP maximum building height limit would have no material impacts on the significant views as seen from No.11 Gundimaine Avenue because of the following reasons:

- (a) The proposed first floor addition would provide a 4m setback from the eastern building line of the existing dwelling;
- (b) There are no windows on the southern roof plane of No.11 Gundimaine Avenue that would provide a view across the side property boundary across the subject site as shown in **Figure 15**;
- (c) The significant water views towards the east and south-east would be retained given that the proposed development would maintain a consistent building setback from the eastern boundary (foreshore).

No.9 Gundimaine Avenue:

The proposed building elements above the LEP maximum building height limit would have no material impacts on significant water and district views towards the east and south-east as seen from this adjoining property because of the southerly aspect of this adjoining property away from the subject site.

No.39 Shellcove Road:

This adjoining property contains four (4) apartments. The proposal would have no impacts on the water/harbour views to the east and south-east as seen from the units within No.39 Shellcove Road because of the southerly location of this building away from the significant water views.

Whilst the proposed first floor addition, including the building elements above the LEP maximum building height limit, would cause some obstruction to the outlook to nearby vegetation to the north-east as seen from No.39 Shellcove Road (**Figure 15**). The proposed would only affect the outlook to a small area of vegetation above the eastern side of the existing dwelling and no impact on the view across multiple properties towards the skyline to the north-east as illustrated in **Figure 15**.

Nos.41 & 43 Shellcove Road:

It is noted that the significant views as seen from these adjoining properties are the water/harbour views towards the south-east across the properties to the south of the subject site.

Therefore, the proposed first floor addition would have no material view impacts for these properties because of the easterly location of the subject site away from the significant water/harbour views.



Figure 16: Photo showing the view from the ground floor sunroom at No.41 Shellcove Road (Source: Domain)



Figure 17: Photo showing the view from the first floor balcony at No.43 Shellcove Road (Source: Domain)

Conclusion

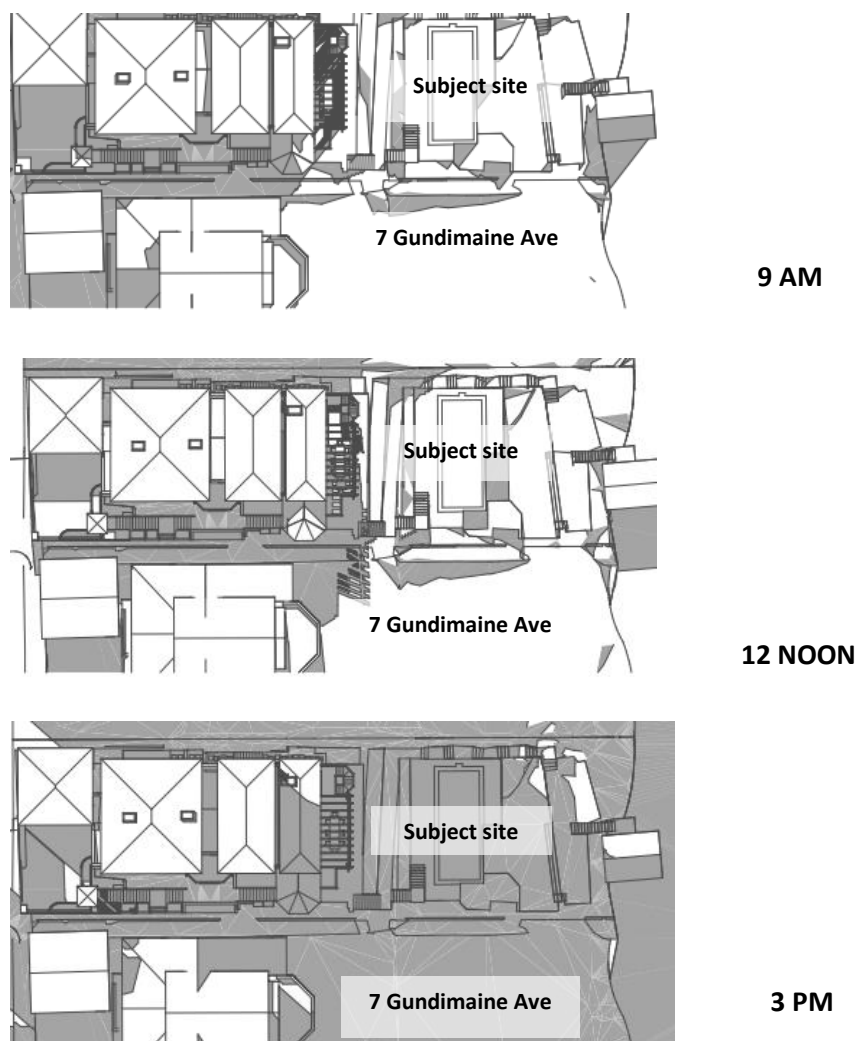
The above assessment suggested that the view loss caused by the non-complying building elements above the LEP building height limit would be negligible given that the significant views towards Shell cove and/or the Sydney Harbour as seen from the above adjoining properties would be retained.

Whilst there would be some obstruction to the outlook of nearby vegetation as seen from the first floor of No.39 Shellcove Road, this impact is considered to be minor because the proposal would have no impact on the view from the first floor of No.39 Shellcove Road to the skyline to the north/north-east.

(1)(c) To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access to future development – The shadows of the building elements above the LEP height limit is unlikely to cause an unacceptable level of overshadowing of the adjoining property to the south (i.e. No. 7 Gundimaine Avenue) given that the shadows from the new first floor addition would affect a ground floor bedroom window on the northern wall of No.7 Gundimaine Avenue. The proposal would have no additional shadowing impacts on the first floor bedroom windows on the northern elevation of No. 7 Gundimaine Avenue.

In addition, the ground floor windows for the main living areas would maintain a minimum 3 hours of solar access between 9am and 3pm during mid winter because the location of these area further away from the northern property boundary.

The proposal would have no material shadowing impacts on the other surrounding properties.



Figures 18 – 20: Shadow diagrams (mid-winter)

- (1)(d) *To maintain privacy for residents of existing dwelling and to promote privacy for residents of new buildings*** – The building elements above the LEP maximum building height limit are preliminary the roof structures above the new first floor master bedroom with no significant openings. Therefore, there would be no material privacy impacts on the surrounding properties as the result of the non-compliance with the LEP maximum building height development standard.
- (1)(e) *To ensure compatibility between development, particularly at zone boundaries***
(1)(f) *To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of the area*

The proposed works, particularly the removal of the existing roof and the new first floor addition, does not promote the character of the conservation area due to the introduction of the new eastern and southern facades and contemporary architectural treatments of the new building elements. Council's Conservation Planner has objected to the proposal on heritage grounds and found the proposal is unacceptable.

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

The proposal would change the built form of the existing building with a third level and is contrary to the above objective seeking to maintain a mainly single/two storey built form on land zoned for low density residential uses.

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

It is concluded that the building element above the LEP building height limit would have a material impact on the locality in terms of uncharacteristic built forms and having a detrimental impact on the significance of the subject building and the conservation area and the amenity of the nearby residential properties. There are insufficient environmental planning grounds to justify contravening the building height control.

Whether the proposed development will be in the public interest?

The proposed development is considered to be unreasonable in terms of the adverse impacts on the heritage significance of the subject property. The proposal does not demonstrate any public benefits and is therefore likely to offend the public interest.

Conclusion

It is concluded that the proposal would detract from the significance of the conservation area in terms of the uncharacteristic built forms.

Having regard to the above, the request under Clause 4.6 of NSLEP 2013 seeking a variation to the LEP building height control is not considered to be well-founded and compliance with the standards is necessary.

6. Heritage Conservation

The subject site is located in a Conservation Area and consideration has been given to Clause 5.10 of the *North Sydney LEP 2013*.

As indicated in the comments provided by Council's Conservation Planner earlier in this report, the proposal does not satisfy clause 5.10 of NSLEP 2013, in that it will not retain the remnant fabric of the Interwar dwelling and it will introduce new fabric to further obscure the character and detailing of the original dwelling.

In addition, the storey height and form will be altered by new additions and the eastern and eastern primary elevations will have new contemporary facades.

7. Limited development on foreshore area

The subject site is located on the foreshores of Sydney Harbour where a foreshore building line applies (**Figure 21**).

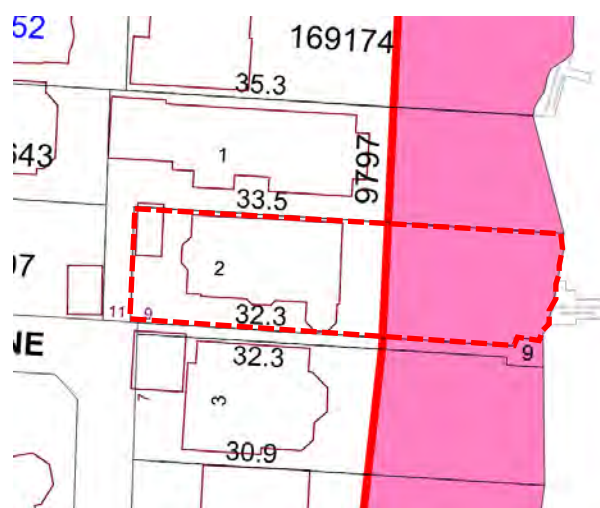


Figure 21: Foreshore building line and footprints of existing buildings

It is considered that the proposal would not offend the relevant provisions under Clause 6.9 in NSLEP 2013 because the proposed building works would be carried out primarily to the main dwelling away from the foreshore area.

8. Earthworks

The proposal does not involve significant earthworks/excavation within the subject site.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

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

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.1 Population Mix	No change	The proposal would not change the population mix, the supply of residential accommodation, affordable housing and housing for senior/persons with disabilities within the locality.
1.2.2 Maintaining Residential Accommodation		
1.2.3 Affordable Housing		
1.2.4 Housing for Seniors/ Persons with disability		
1.3 Environmental Criteria		
1.3.1 Topography	Yes	The proposal generally respects the existing landform with no significant excavation works proposed.
1.3.4 Foreshore Frontage	Yes	The proposal does not offend the relevant DCP provisions given that the works would primarily be located within the existing dwelling and/or its adjacent areas.
1.3.6 Views	Yes	A view assessment has been carried out earlier in this report and no material view impacts for the adjoining properties were identified.
1.3.7 Solar Access	Yes	Consideration has been given to the likely shadowing impacts of the proposed development earlier in this report. The proposal generally complies with the DCP solar access requirements between 9am and 3pm during mid winter (21 June).
1.3.8 Acoustic Privacy	Yes (via condition)	<p>The proposal is unlikely to cause an unacceptable level of noise for the adjoining properties given that the subject site will continue be used as a single dwelling.</p> <p>The noise impacts from the use of the proposed ground floor balcony on the eastern elevation is considered to be acceptable because this will replace an existing open terrace on the lower ground level.</p> <p>The proposed first floor balcony on the eastern elevation of the new addition will only be accessed by the master bedroom and is unlikely to be used for activities that would generate excessive noise.</p> <p>Appropriate conditions relating to the use of plant equipment and air conditioners can be imposed should consent is granted for the proposed development.</p>

<p>1.3.10 Visual Privacy</p>	<p>Yes</p>	<p><i>Eastern (Shell Cove) Elevation:</i></p> <p>The new ground floor and first floor windows and balconies on the eastern (Shell Cove) elevation of the main dwelling are unlikely to cause privacy impacts due to the orientation of the windows toward the harbour and the level of mutual overlooking from the windows and balconies on the eastern elevation of the adjoining properties onto the subject site.</p> <p><i>Western (Gundimaine Avenue) Elevation:</i></p> <p>The western elevation of the proposed first floor addition has no windows/openings to habitable areas.</p> <p>The outlook from the ground floor windows on the western elevation would be screened by existing retaining walls on the western side of the ground floor rear courtyard.</p> <p><i>Northern Elevation:</i></p> <p>The proposed windows on the northern elevation are unlikely to cause material overlooking because these windows do not face directly onto any windows/openings to habitable areas within the adjoining property to the north at No. 11 Gundimaine Avenue.</p> <p><i>Southern Elevation:</i></p> <p>The windows on the southern elevation of the proposed first floor addition are unlikely to cause adverse visual privacy impacts for the adjoining property to the south (No. 7 Gundimaine Avenue) because of the frosting of the first floor northern windows and no new windows on the southern elevation on the ground floor.</p>
<p>1.4 Quality built form</p>		
<p>1.4.1 Context</p>	<p>No</p>	<p>The proposed works would result in a part 2/3 storey dwelling with a similar height as the adjoining dwelling. However, the Interwar character of the existing dwelling will be lost by the removal of the original roof and the introduction of the new eastern and southern facades. The streetscape presentation of the dwelling will also be detrimentally impacted by the extensive paving and double garage.</p> <p>The proposal is therefore contrary to the characteristic built form within the conservation area as indicated in Council's Conservation Planner comments.</p>
<p>1.4.2 Subdivision Pattern</p>	<p>No change</p>	<p>The proposal would not change the subdivision pattern within the subject site and its locality.</p>
<p>1.4.3 Streetscape</p>	<p>No</p>	<p>The western end of the main dwelling and a single garage are visible from Gundimaine Avenue. The proposal for a new double garage with extensive paving would have a detrimental impact on the streetscape.</p>
<p>1.4.5 Siting</p>	<p>Yes</p> <p>No</p>	<p>The proposed development would not change the orientation and siting of the existing detached dwelling.</p> <p>However, the proposed double garage and the extensive paving at the rear of the property would have a detrimental impact on the characteristic garden setting of properties within the conservation area.</p>
<p>1.4.6 Setback – Side</p>	<p>No</p>	<p>A side boundary setback compliance table is provided below:</p>

Elevation	Existing (min)	Proposed	Control	Complies
<i>Lower Ground Floor</i>				
- N Elevation	1.563m	1.563m	900mm	YES
- S Elevation	403mm	403mm	900mm	NO
<i>Ground Floor</i>				
- N Elevation	1.522m	1.522m	900mm	YES
- S Elevation	403mm	403mm	-1.5m*	NO
<i>First Floor</i>				
- N Elevation	N/A	1.522m	900mm	NO
- S Elevation	N/A	2.812m	-2.5m*	Yes
<i>Garage</i>				
- N Elevation	252mm	252mm	900mm	NO
- S Elevation	8.265m	8.265m	900mm	Yes


* Variable side boundary setbacks apply to the side (northern and southern) elevations of the proposed dwelling due to the sloping landform within the subject site.

The proposed works largely comply with the minimum side setbacks and/or are consistent with the side setbacks of the existing dwelling. It is noted that the existing ground floor sitting room structure on the southern elevation currently provides 403mm setback from the southern property boundary. The proposed works do not affect the external design and treatments of southern elevation of this structure would also maintain this building setback.

The northern external walls of the new first floor master ensuite bathroom would provide a setback of 1.553m from the northern property boundary. This building element does comply with the DCP side boundary setback requirement (2.5m) for building elements above 7m in height.

It is however considered that this non-complying building element would have no material impacts on the amenity of the neighbouring property at No.11 Gundimaine Avenue in terms of the loss of significant views, solar access and privacy as indicated earlier in this report. However, this non-complying building element would contribute to the overall building bulk and scale of the proposed development.

The other side boundary setback variation relates the proposed double garage at the western end of the subject site. The proposed garage has a north-south orientation with a 252mm setback from the northern property boundary. This aspect of the proposal would significantly increase the size of the garage and would have an adverse impact on maintaining a landscape setting within the subject site and the streetscape of Gundimaine Avenue as indicated in Council's Conservation Planner comments earlier in this report.

<p>P1 Front setback</p>	<p>No</p>	<p>The proposed ground floor balcony (elevated on the eastern elevation due to the sloping landform of the site) generally matches the building line of the eastern balcony of No.11 Gundimaine Avenue to the north.</p> <p>It is however noted that the building setback for the group of large dwellings at Nos 1 – 11 Gundimaine Avenue are stepped from the foreshore as shown in Figure 22 below:</p>  <p style="text-align: center;">Figure 22: Building setbacks from the foreshore</p> <p>It is considered that the setback of the proposed balcony is inconsistent with the characteristic setbacks of a group of dwellings to the south of the subject site.</p>
<p>P5 Rear Setback – Rear</p>	<p>Yes</p>	<p>The building setback for the proposed garage is generally consistent with the rear property boundary setbacks of the nearby properties including Nos.1 – 11 Gundimaine Avenue.</p>
<p>1.4.7 Form Massing Scale 1.4.8 Built Form Character</p>	<p>No</p>	<p>The proposed first floor addition would not only increase the bulk and scale of the original dwelling, but it would also have an uncharacteristic built form the proposed works resulting in the loss of the original interwar character of the original dwelling.</p>
<p>1.4.9 Dwelling Entry</p>	<p>No change</p>	<p>The proposal would retain the existing dwelling entry on the southern elevation of the existing dwelling.</p>
<p>1.4.10 Roofs</p>	<p>No</p>	<p>The proposal would result in the demolition of the original roof. The proposed use of slate as roofing materials will detrimentally alter the building’s character. This could be resolved by condition should approval be granted for the application.</p>
<p>1.4.12 Materials</p>	<p>No</p>	<p>The applicant has proposed new roofing materials from terracotta tile to slate. The proposal indicates black and white colour scheme that is not characteristic to dwellings within the Conservation area. This could be conditioned to require neutral tones should consent be granted for the application.</p>

1.4.14 Front Fences	N/A	There would be no fencing along the front (eastern) property boundary along the Shell Cove foreshore.																
1.5 Quality Urban Environment																		
1.5.4 Vehicle Access and Parking	No	<p>The proposal involves the construction of a double garage and a large partially elevated paved area at the western end of the subject site to provide vehicular access to Gundimaine Avenue.</p> <p>Whilst this aspect of the proposal complies with the numeric parking requirement, the large paved area would cover an existing courtyard and the removal of existing vegetation and a tree within the western building setback for vehicular access is inconsistent with the DCP objective for maintaining the garden setting within a property.</p>																
1.5.5 Site Coverage 1.5.6 Landscape Area	No	<p>A compliance table is provided below to demonstrate compliance with the relevant DCP requirements:</p> <table border="1" data-bbox="707 761 1380 1120"> <thead> <tr> <th data-bbox="707 761 954 846">Control Site area: 835sqm</th> <th data-bbox="954 761 1106 846">Existing</th> <th data-bbox="1106 761 1257 846">Proposed</th> <th data-bbox="1257 761 1380 846">Complies</th> </tr> </thead> <tbody> <tr> <td data-bbox="707 846 954 936">Site coverage (Max: 35%)</td> <td data-bbox="954 846 1106 936">263.4sqm (31.5%)</td> <td data-bbox="1106 846 1257 936">336.9sqm (40.4%)</td> <td data-bbox="1257 846 1380 936">No</td> </tr> <tr> <td data-bbox="707 936 954 1025">Landscaped area (Min: 45%)</td> <td data-bbox="954 936 1106 1025">238.4sqm (28.5%)</td> <td data-bbox="1106 936 1257 1025">216.5sqm (25.9%)</td> <td data-bbox="1257 936 1380 1025">No</td> </tr> <tr> <td data-bbox="707 1025 954 1115">Unbuilt-upon area (Max: 20%)</td> <td data-bbox="954 1025 1106 1115">333.2sqm (40%)</td> <td data-bbox="1106 1025 1257 1115">281.6sqm (33.7%)</td> <td data-bbox="1257 1025 1380 1115">No</td> </tr> </tbody> </table> <p>The proposal would result in an increase in site coverage (8.9%) and a decrease in landscaped area (2.6%). The new double garage and the covering of the lower ground floor front terrace has contributed to the reduction in unbuilt upon area.</p> <p>The proposed garage and the large paved area at the rear of the site is inconsistent with the objective to maintain the landscape setting of the subject site.</p> <p>Any revised proposal should maintain if not improve on landscape area, not exceed the site coverage control, and further reduce unbuilt upon area.</p> <p>The proposal is therefore considered to be an overdevelopment of the subject site and is unacceptable.</p>	Control Site area: 835sqm	Existing	Proposed	Complies	Site coverage (Max: 35%)	263.4sqm (31.5%)	336.9sqm (40.4%)	No	Landscaped area (Min: 45%)	238.4sqm (28.5%)	216.5sqm (25.9%)	No	Unbuilt-upon area (Max: 20%)	333.2sqm (40%)	281.6sqm (33.7%)	No
Control Site area: 835sqm	Existing	Proposed	Complies															
Site coverage (Max: 35%)	263.4sqm (31.5%)	336.9sqm (40.4%)	No															
Landscaped area (Min: 45%)	238.4sqm (28.5%)	216.5sqm (25.9%)	No															
Unbuilt-upon area (Max: 20%)	333.2sqm (40%)	281.6sqm (33.7%)	No															
1.5.8 Landscaping 1.5.9 Front Gardens	No	As indicated in Council's Landscape Officer comments earlier in this report, the landscape plan submitted with the original DA scheme is insufficient and further amendments are necessary.																
1.5.13 Garbage Storage	Yes (via condition)	A standard condition specifying Council requirements for the storage of general waste or re-cyclable materials can be imposed should consent is granted to the application.																
1.6 Efficient Use of Resources																		
1.6.1 Energy Efficiency	Yes	A valid BASIX Certificate has been submitted with the application.																

South Cremorne Planning Area – Part C of NSDCP 2013

Kurraba Point Conservation Area

Consideration has been given to Part C of NSDCP 2013, in particular Section 6 of the Character Statement for the South Cremorne Planning Area and Section 6.2 for the Kurraba Point Conservation Area.

The proposal is considered to be contrary to the characteristic built form within the conservation area because the Interwar character of the existing dwelling will be lost by the removal of the original roof and the introduction of the new eastern and southern facades. The characteristic siting with front and rear gardens would also be detrimentally impacted by the extensive paving and double garage at the rear (western side) of the subject site.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal is subject to Local Infrastructure Contributions in accordance with the North Sydney Local Infrastructure Contributions Plan (as amended). The required contribution has been calculated in accordance with the applicable contribution rates as follows:

Applicable Contribution Type		
S7.12 contribution detail	Development cost:	\$2,446,400.00
(payment amount subject to indexing at time of payment)	Contribution:	\$24,460.00

Conditions requiring payment of contributions can be imposed should approval be granted for the proposed development.

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 <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	Yes

SUBMITTERS CONCERNS

The owners of the adjoining properties and the Kurraba and Bennett Precinct Committees were notified about the application between 13 and 27 January 2023. A total of five (5) submissions were received at the close of the notification period including one (1) submission in support of the proposal. One (1) submission objecting to the proposal was subsequently withdrawn.

The issues relating to building height, bulk and scale, streetscape, privacy and view impacts have been addressed in detail throughout this assessment report. The remaining matters are addressed below:

- ***Proposed balcony/ pergola extended beyond prevailing building line.***

Comment:

As indicated earlier in this report, the building setback for the group of large dwellings at Nos 1 – 11 Gundimaine Avenue (including the subject site) are stepped from the foreshore as shown in **Figure 22**. The proposal elevated balcony to the open plan living/kitchen area would be inconsistent with the building setback as established by the dwellings along the Shell Cove foreshore.

It is noted from Council's Conservation Planner that the proposed balcony would obscure the view of the original dwelling. Therefore, the removal of this intrusive building element is considered to be appropriate in retaining the significance of the original dwelling.

- ***Encroachment of the proposed sunroom onto an existing right of way along the southern boundary and would restrict access to Shell Cove.***
- ***No encroachment of stormwater drainage line into adjoining properties.***

Comment:

The existing ground floor siting room on the southern side of the original dwelling provides setback of 403mm from the southern property boundary and the southern eave line of this structure has encroached onto the allotment to the south by up to 110mm.

The applicant has proposed the existing siting room be converted to a sunroom with no change to the external design and treatments of southern elevation of this structure would also maintain this building setback.

A condition can be imposed specifying no encroachment of new building works onto the adjoining property should consent be granted for the current application.

- ***Traffic and waste management concerns due to the narrow width of Gundimaine Avenue.***

Comment:

The proposal is unlikely to significantly increase traffic along the street and the demand for waste collection services given that there would be no change to the number of dwellings requiring access Gundimaine Avenue.

- The proposal will adversely affect the view of a nearby heritage item .

Comment:

The proposal is unlikely to have a detrimental impact on the views to the heritage item at No.39 Shellcove Road because of the location of this nearby heritage item away from the foreshore (**Figure 15**). Furthermore, the proposed development would have no impacts on the views of No.39 Shellcove Road as seen from the surrounding streets including Gundimaine Avenue and Shellcove Road.

PUBLIC INTEREST

The proposal is not considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal is considered to be unsuitable for the subject site because its design would detract from the significance of the subject property. Furthermore, the proposal does not comply with the LEP maximum building height development standard given that the design of the proposed addition does not promote the character of the subject building and that of Kurraba Point Conservation Area.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The owners of the adjoining properties and the Kurraba and Bennett Precinct Committees were notified about the application between 13 and 27 January 2023. A total of five (5) submissions were received at the close of the notification period including one (1) submission in support of the proposal. One (1) submission objecting to the proposal was subsequently withdrawn. The issues/concerns raised in the submission have been considered/addressed throughout this assessment report.

CONCLUSION + REASONS

The development application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013 and was found to be unsatisfactory.

Consideration has also been given to the Clause 4.6 request for a variation to the LEP's building height development standard as submitted by the applicant.

The variation to the building height development standard is not supported because the uncharacteristic design of the building elements, including those above the LEP maximum building height limit, that would result in the loss of the Interwar character of the original dwelling. Furthermore, the uncharacteristic nature of the proposal and its impacts on the conservation area do not demonstrate public benefit. Therefore, a variation to the LEP building height control is not considered to be well-founded and strict compliance with the standards is necessary.

The proposed development is contrary to the objective of the R2 (Low Density Residential) zone because the proposal would detract from the significance of the conservation area.

The proposal does not comply with DCP's site coverage, unbuilt upon area and landscape area requirements. Additionally, the proposed landscaping treatments are unsatisfactory.

The application was referred to Council's Conservation Planner who considered the proposal unsatisfactory because of the adverse impacts on the significance of conservation area.

The issues raised in the submissions received have been addressed in this report.

Accordingly, the proposed development is recommended for **refusal**.

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, resolve to refuse development consent to Development Application D381/22 for alterations and additions to an existing attached dual occupancy at No.9 Gundimaine Avenue, Kurraba Point for the following reasons:-

1. The written request pursuant to clause 4.6 of NSLEP is not supported

The written request pursuant to clause 4.6 of NSLEP seeking a variation to the height of building development standard in clause 4.3 of NSLEP is not considered to be well founded.

Particulars:

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not comply the 8.5m maximum height of building development standard specified in clause 4.3(2) in NSLEP 2013.

- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the written request submitted with the application seeking a variation to the maximum height of building development standard has inadequately addressed the matters required to be addressed in subclause (3) in clause 4.6 in NSLEP 2013.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the written request has failed to adequately demonstrate that compliance is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the height of building development standard.
- (iv) The proposed development is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a) and (e) of the *Environmental Planning and Assessment Act 1979* in that the development is not consistent with the objectives of the height of building standard in clause 4.3(1) in NSLEP 2013 and the objectives of the R2 (Low Density Residential) zone (dot point 4) under NSLEP 2013 and is therefore not in the public interest.

2. Unacceptable Heritage Impacts

The proposed development is unacceptable because of the adverse impacts on the subject dwelling and the conservation area.

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy Clause 5.10(1)(a), Clause 5.10(1)(b) and Clause 5.10(4) in Part 5 of NSLEP 2013 due to the detrimental impacts of the proposed development on the subject building and the conservation area, in particular the loss of the interwar character of the original dwelling with the removal of the existing roof over and the uncharacteristic design of the new building elements.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not satisfy the aims of North Sydney Local Environmental Plan 2013 (NSLEP 2013) as listed in Clauses 1.2 (2)(a), (2)(b)(i), and (2)(f) in Part 1 of NSLEP 2013.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the adverse impacts of the proposed development on the significance of the conservation area, particularly dot point 3.
- (iv) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that proposed development does not satisfy the Area Character Statement for South Cremorne Planning Area in Section 6.0 in Part C of North Sydney DCP 2013 (NSDCP 2013) given that the proposal does not promote the character within the conservation area because the design of the proposal fails to reflect and reinforce the characteristic built form as identified in the Area Character Statement.

- (v) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that it fails to satisfy the development controls for the following sections in Part B of the NSDCP 2013 and is therefore considered unacceptable:
- a. Section B – 13.6.1 – General Objectives
 - b. Section B – 13.6.2 – Form Massing and Scale
 - c. Section B – 13.6.3 – Roofs
 - d. Section B – 13.6.4 – Additional Storey and levels
 - e. Section B – 13.6.5 – Internal Layout
 - f. Section B – 13.6.8 – Demolition
 - g. Section B – 13.9.3 – Verandah and Balconies
 - h. Section B – 13.9.4 – Materials
 - i. Section B – 13.9.5 – Garages and Carports
 - j. Section B – 13.9.6 – Fences
 - k. Section B – 13.9.7 – Gardens
 - l. Section B – 13.10.3 – Larger Scale Single Dwelling

3. Inappropriate context, excessive height, bulk and scale and built form

The proposed development is unacceptable because of the proposed works will result in an appropriate built form within the locality.

Particulars

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is inappropriate to its context being a dwelling within a conservation area with uncharacteristic building elements which is contrary to aim 1.2 (2)(a) in NSLEP 2013 as well as section 1.4.1 in Part B of NSDCP 2013.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.4.5 in Part B of NSDCP 2013 because the uncharacteristic siting of the double garage with extensive paving and the loss of a garden setting within the western building setback.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development contrary to Section 1.4.6 in Part B of NSDCP 2013 because the front building setback is not consistent with the front building setback of the group of dwellings along the Shell Cove foreshore.
- (iv) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.4.7 and 1.4.8 in Part B of NSDCP 2013 because the proposed addition will increase the bulk and scale of the existing building with an uncharacteristic built form.

- (v) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that proposed development is contrary to Sections 1.4.10 and 1.4.11 in Part B of NSDCP 2013 because of the inappropriate roofing materials.

4. Overdevelopment

The proposed development is an overdevelopment of the subject site because of the non-compliance with site coverage, unbuilt upon area and landscaped area requirements.

Particulars

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is an overdevelopment of the subject site and is contrary to aim 1.2 (2)(a) in NSLEP 2013 as well as sections 1.5.5 and 1.5.6 in Part B of NSDCP 2013.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the proposed development with a non-complying site coverage and the reduction in landscaped area does not promote a high level of residential amenity.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.5.5 in Part B of NSDCP 2013 because the proposal is not consistent with the objectives of site coverage and does not comply with the maximum site coverage requirements.
- (iv) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.5.6 in Part B of NSDCP 2013 because the proposal is not consistent with the objectives of landscaped area and does not comply with the minimum landscaped area and maximum unbuilt upon area requirements.

5. Landscaping

The proposed development is unacceptable because the proposal is unsatisfactory and fails to address the concerns raised by Council's Landscape Officer.

Particulars

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to aim 1.2 (2)I in NSLEP 2013 as well as section 1.5.7 in Part B of NSDCP 2013.

- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the proposed landscape treatments do not promote a high level of residential amenity.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.5.7 in Part B of NSDCP 2013 because the proposal does not achieve a landscaping outcome that will clearly satisfy the DCP objectives and provisions for landscaping.

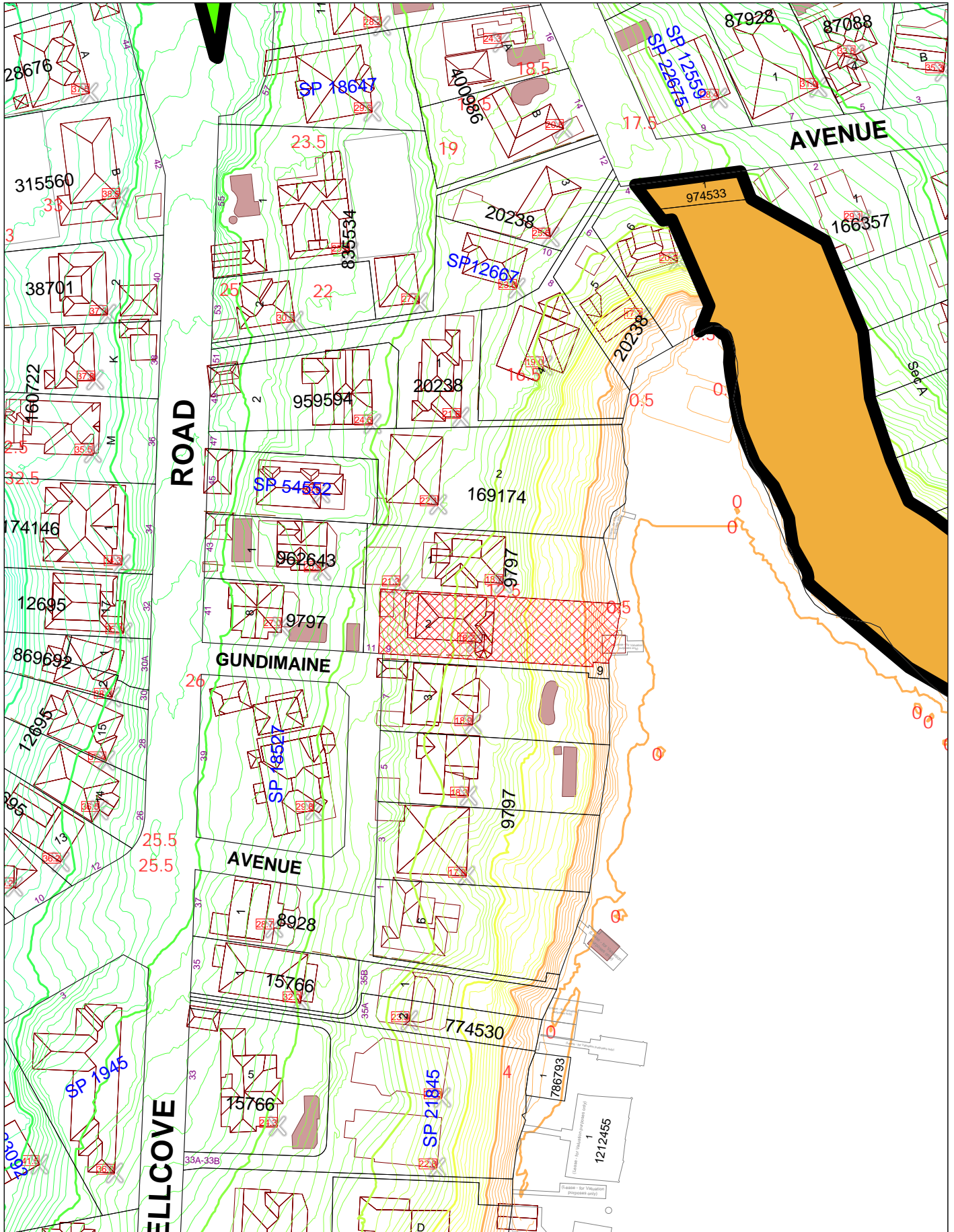
6. Public Interest

The proposed development is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* in that the approval of the proposed development is not in public interest because of the adverse impacts on the significance of conservation area and the adverse impacts on the residential amenity of the locality.

ROBIN TSE
SENIOR ASSESSMENT OFFICER

ISOBELLA LUCIC
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES



North Sydney Council

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Scale: 1:1200 approx.



PROPOSED ALTERATION AND ADDITIONS TO A RESIDENTIAL SINGLE DWELLING AT 9 GUNDIMAINE AVENUE, KURRABA POINT, NSW 2089

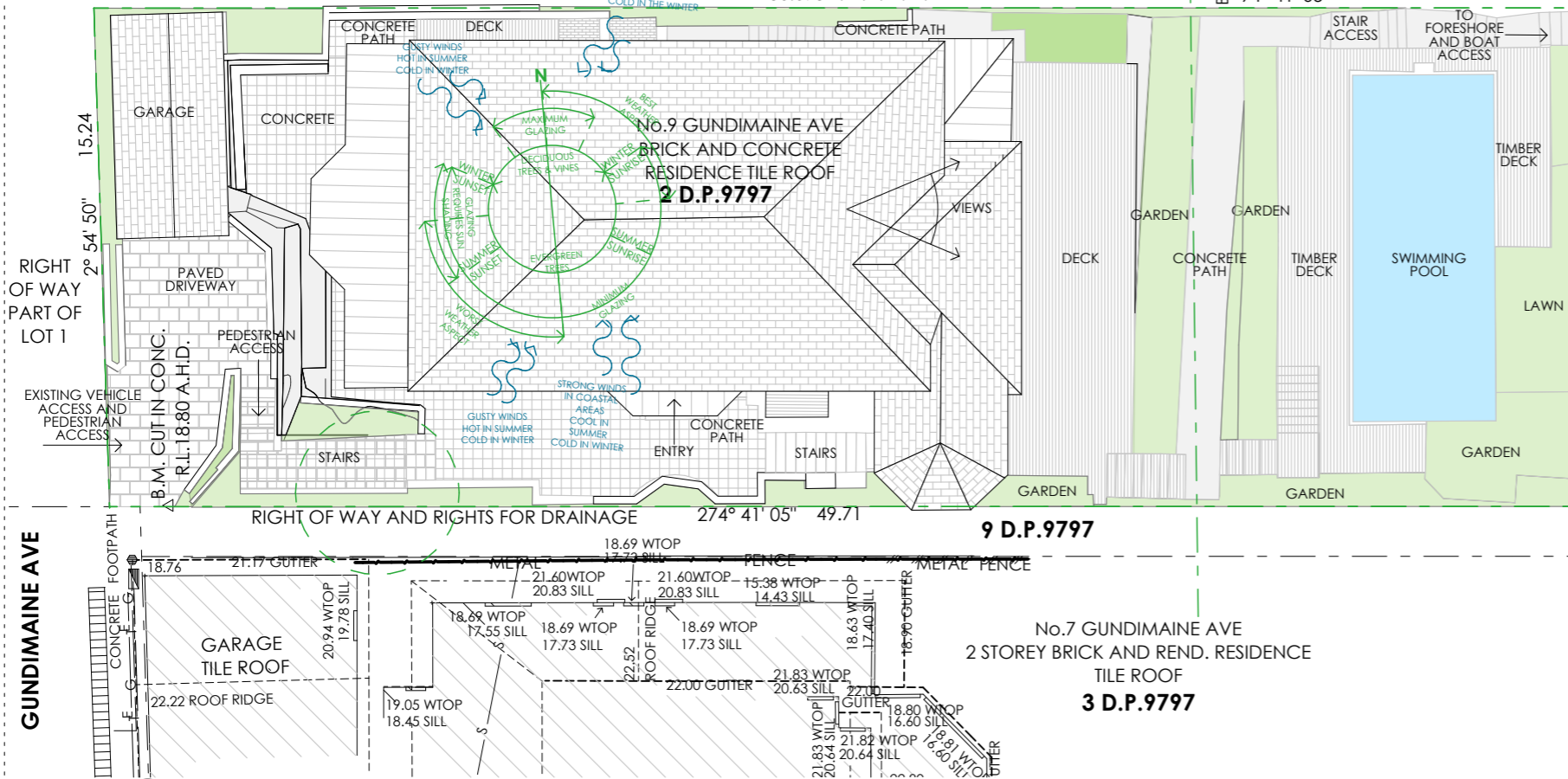
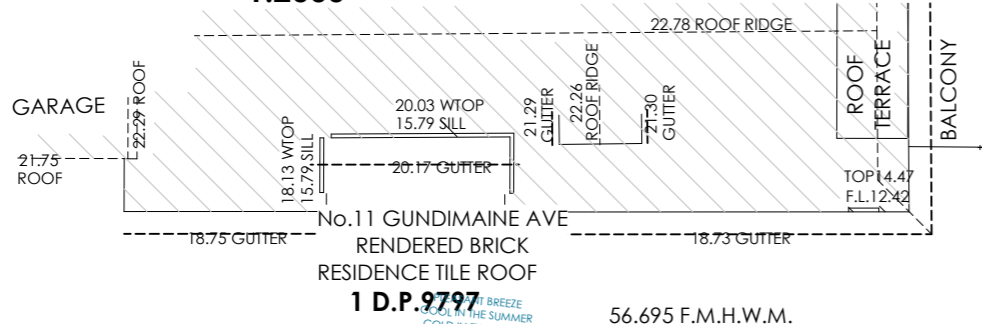


THE SITE

1

SITE MAP

1:2000



2

SITE ANALYSIS PLAN

1:200

DRAWING REGISTER

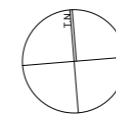
DWG NO.	DWG TITLE	SCALE	SHEET SIZE	CURRENT REVISION	CURRENT ISSUE DATE
A-000	COVER, DRAWING REGISTER, LOCATION & SITE ANALYSIS	1:200	A3	A	04.11.2022
A-001	SITE PLAN AND AREA CALCULATIONS	1:250	A3	A	04.11.2022
A-101	EXISTING LOWER GROUND FLOOR PLAN	1:100	A3	A	04.11.2022
A-102	EXISTING GROUND FLOOR PLAN	1:100	A3	A	04.11.2022
A-103	EXISTING ROOF PLAN	1:100	A3	A	04.11.2022
A-111	LOWER GROUND DEMOLITION PLAN	1:100	A3	A	04.11.2022
A-112	GROUND DEMOLITION PLAN	1:100	A3	A	04.11.2022
A-113	ROOF DEMOLITION PLAN	1:100	A3	A	04.11.2022
A-121	PROPOSED LOWER GROUND FLOOR PLAN	1:100	A3	A	04.11.2022
A-122	PROPOSED GROUND FLOOR PLAN	1:100	A3	A	04.11.2022
A-123	PROPOSED FIRST FLOOR PLAN	1:100	A3	A	04.11.2022
A-124	PROPOSED ROOF PLAN	1:100	A3	A	04.11.2022
A-201	OVERALL EXISTING ELEVATIONS	1:200	A3	A	04.11.2022
A-211	PROPOSED OVERALL ELEVATIONS	1:200	A3	A	04.11.2022
A-212	PROPOSED NORTH & SOUTH ELEVATIONS	1:100	A3	A	04.11.2022
A-213	PROPOSED EAST ELEVATION	1:100	A3	A	04.11.2022
A-214	PROPOSED WEST ELEVATION	1:100	A3	A	04.11.2022
A-311	PROPOSED LONG SECTION - AA	1:100	A3	A	04.11.2022
A-312	PROPOSED CROSS SECTION - BB	1:100	A3	A	04.11.2022
A-501	SHADOWS - JUN 21	1:100	A3	A	04.11.2022
A-502	SHADOWS - MAR 21	1:100	A3	A	04.11.2022
A-503	SHADOWS - SEP 21	1:100	A3	A	04.11.2022
A-510	SCHEDULE OF MATERIALS AND FINISHES		A3	A	04.11.2022
A-511	BASIX COMMITMENTS		A3	A	04.11.2022

GENERAL NOTES

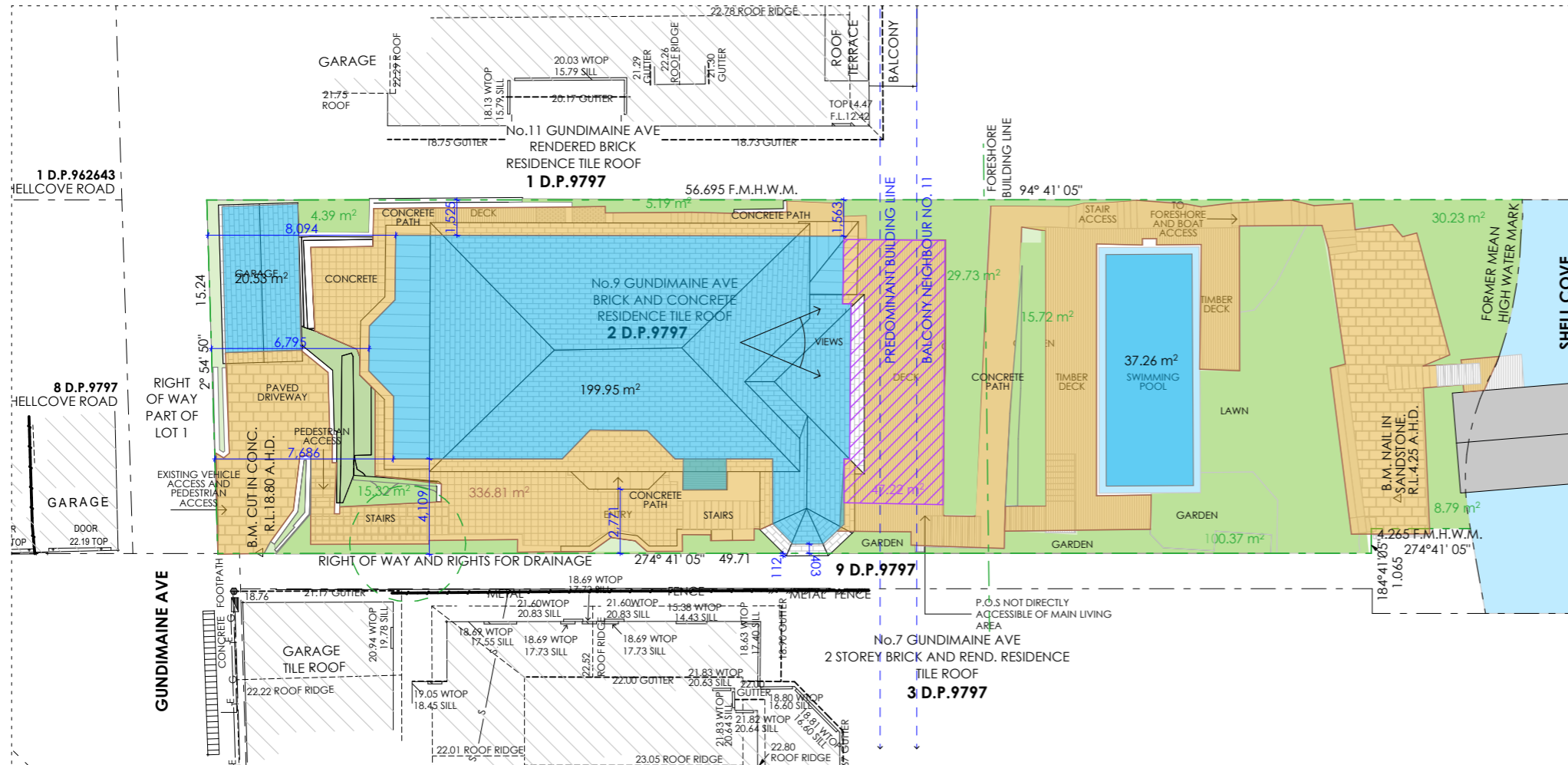
- REFER TO REPORTS:
 - STATEMENT OF ENVIRONMENTAL EFFECTS
 - HERITAGE IMPACT STATEMENT
 - STORMWATER
 - LANDSCAPE
 - BASIX CERTIFICATE

REFER ALL QUERIES & DISCREPANCIES TO THE ARCHITECT. ALL MEASUREMENTS ARE IN MM UNLESS OTHERWISE NOTED.

STANDARD OF WORK & REGULATIONS:
 ALL BUILDING WORKS MUST BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA (BCA) & NCC.
 ALL BUILDING WORKS WILL COMPLY WITH THE SCHEDULE OF BASIX COMMITMENTS SPECIFIED WITHIN THE SUBMITTED BASIX CERTIFICATE
 ALL BUILDING WORKS WILL BE CARRIED OUT IN ACCORDANCE WITH ALL RELEVANT AUSTRALIAN STANDARDS

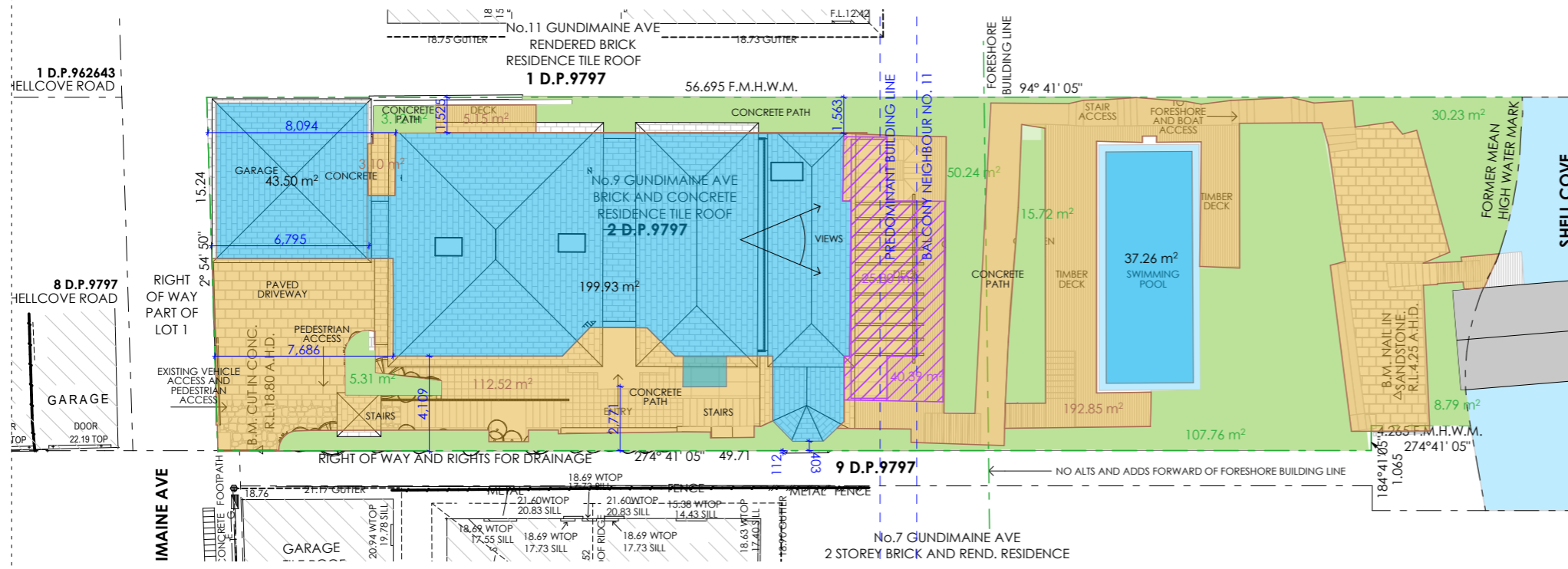


BARBARA



SITE PLAN + AREA CALCULATIONS

1:250



SITE PLAN + AREA CALCULATIONS PROPOSED

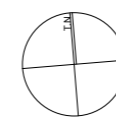
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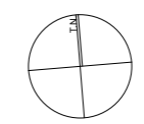
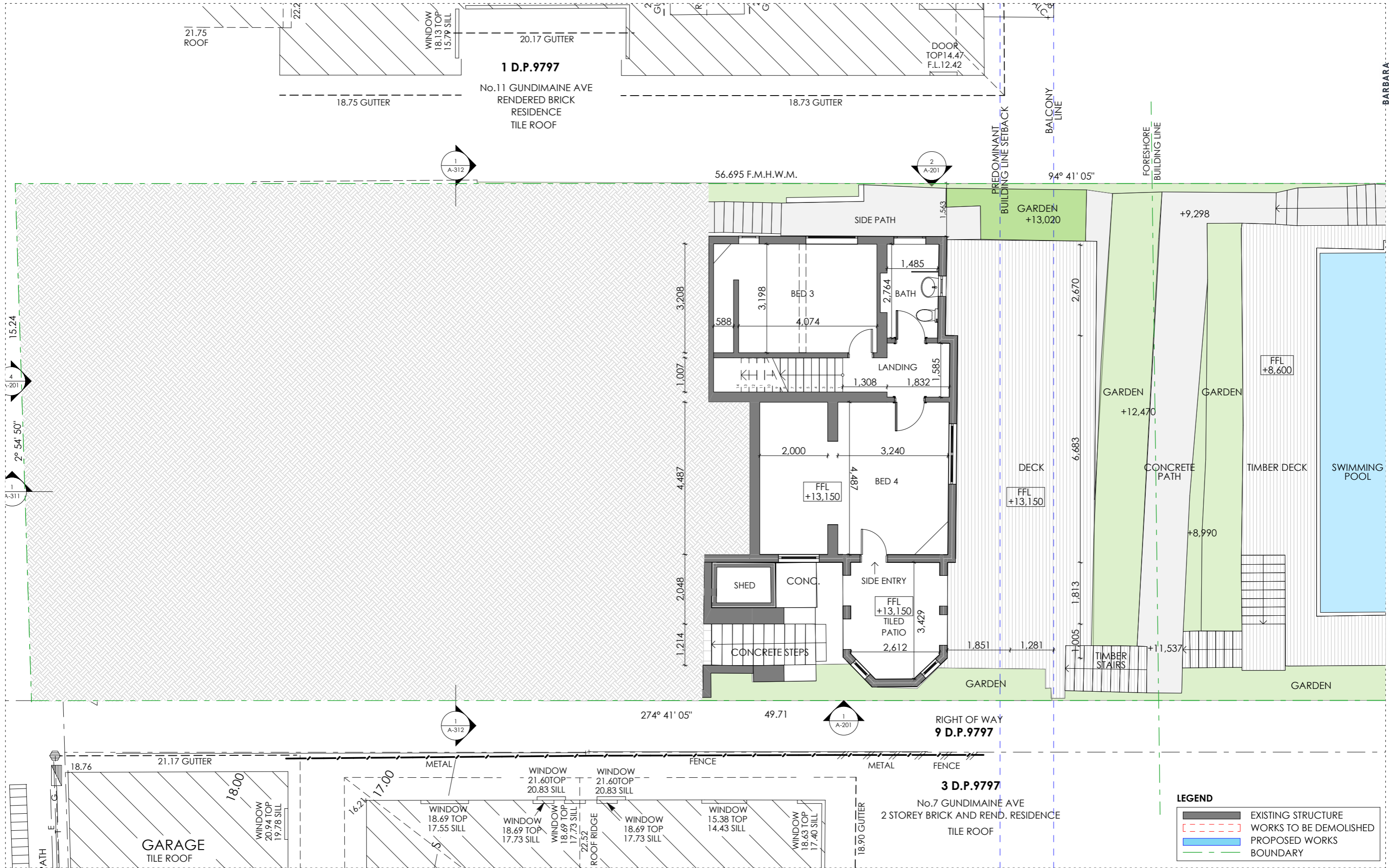
SITE INFORMATION & BUILDING CONTROLS		COMPLIES WITH CONTROLS	COMMENTS
NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013			
LOT:	2		
DP:	DP9797		
LAND ZONING:	R2 - LOW DENSITY RESIDENTIAL		
HEIGHT OF BUILDINGS:	8.5M		
FSR:	N/A		
MINIMUM LOT SIZE:	N/A		
HERITAGE:	KURRABA POINT CONSERVATION AREA		
LAND RESERVATION ACQUISITION:	N/A		
FORESHORE BUILDING LINE:	FORESHORE BUILDING LINE FORESHORE AREA		
ACID SULFATE SOILS:	N/A		
LOCAL ABORIGINAL LAND COUNCIL:	METROPOLITAN		

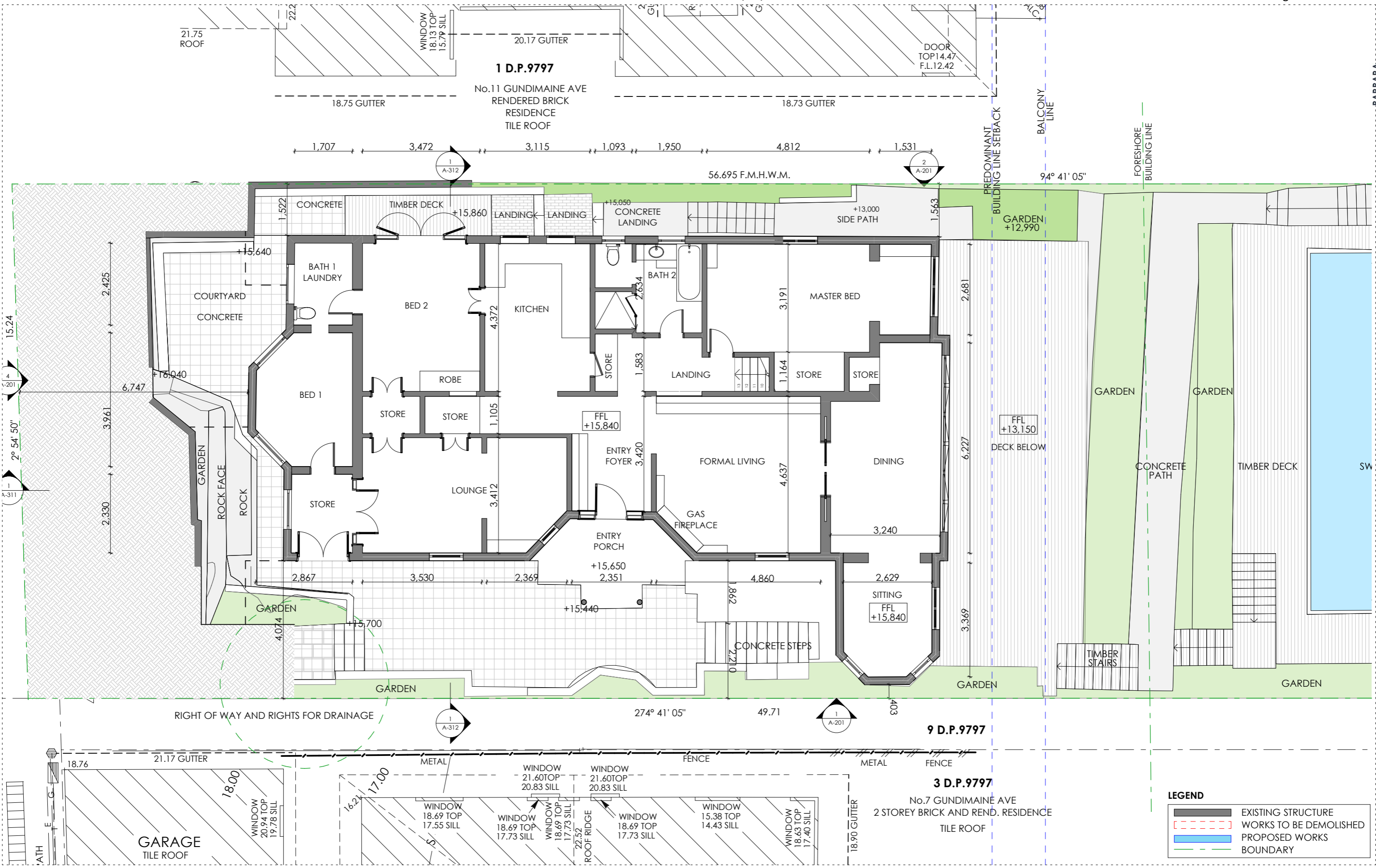
NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013				
SETBACKS				
ORIENTATION	SIDE	CONTROL	EXISTING (mm)	COMMENTS
NORTH	SIDE	0.9M (<4M FIRST STOREY), 1.5M (<7M SECOND STOREY) 2.5M (>7M)	WEST END - 1525MM EAST END - 1563MM	RETAINED
SOUTH	SIDE	0.9M (<4M FIRST STOREY), 1.5M (<7M SECOND STOREY) 2.5M (>7M)	WEST - 4109MM ENTRY - 2771MM EAST (TURRET) - 403MM	RETAINED
WEST	FRONT	PREDOMINANT FRONT BUILDING LINE	6795MM	NO OBVIOUS PREDOMINANT LINE (RETAINED 7686mm)
EAST	REAR	PREDOMINANT REAR BUILDING LINE. PROJECT 45 DEGREES FROM HEIGHT OF 3.5M AT BOUNDARY	FORESHORE BUILDING LINE AND PREDOMINANT BUILDING LINE SHOWN	RETAINED

SITE AREA	835M2
MAXIMUM SITE COVERAGE	35% OF SITE (35% OF 835M2 = 292.25M2)
PRIVATE OPEN SPACE	MIN 50M2 AND MIN DIMENSION OF 4M
LANDSCAPED AREA	45% OF SITE AREA (45% OF 835M2) = 375.75
DEEP SOIL ZONE	N/A
UNBUILT UPON AREA	MAX 20% OF SITE AREA (20% OF 835M2) = 167M2

AREA CALCULATION						
COLOUR	DESCRIPTION	EXISTING AREA (SQM)	EXISTING % OF SITE COVERAGE	OPTION A PROPOSED AREA (SQM)	OPTION A PROPOSED % OF SITE COVERAGE	COMMENTS
	GFA LGF LEVEL	50.84		50.84		
	GFA GF LEVEL	176.34		168.49		
	GFA 1F LEVEL	NIL		111.56		
	TOTAL GFA	227.18		330.89		
	LANDSCAPED AREA	209.74	25.1%	221.17	26.5%	IMPROVES EXISTING
	SITE COVERAGE	257.74	30.9%	280.69	33.6%	COMPLIANT
	UNBUILT UPON AREA	336.81	40.3%	313.62	37.6%	IMPROVES EXISTING
	PRIVATE OPEN SPACE	47.22		66.19		COMPLIANT







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NSW #10607 Felicity King

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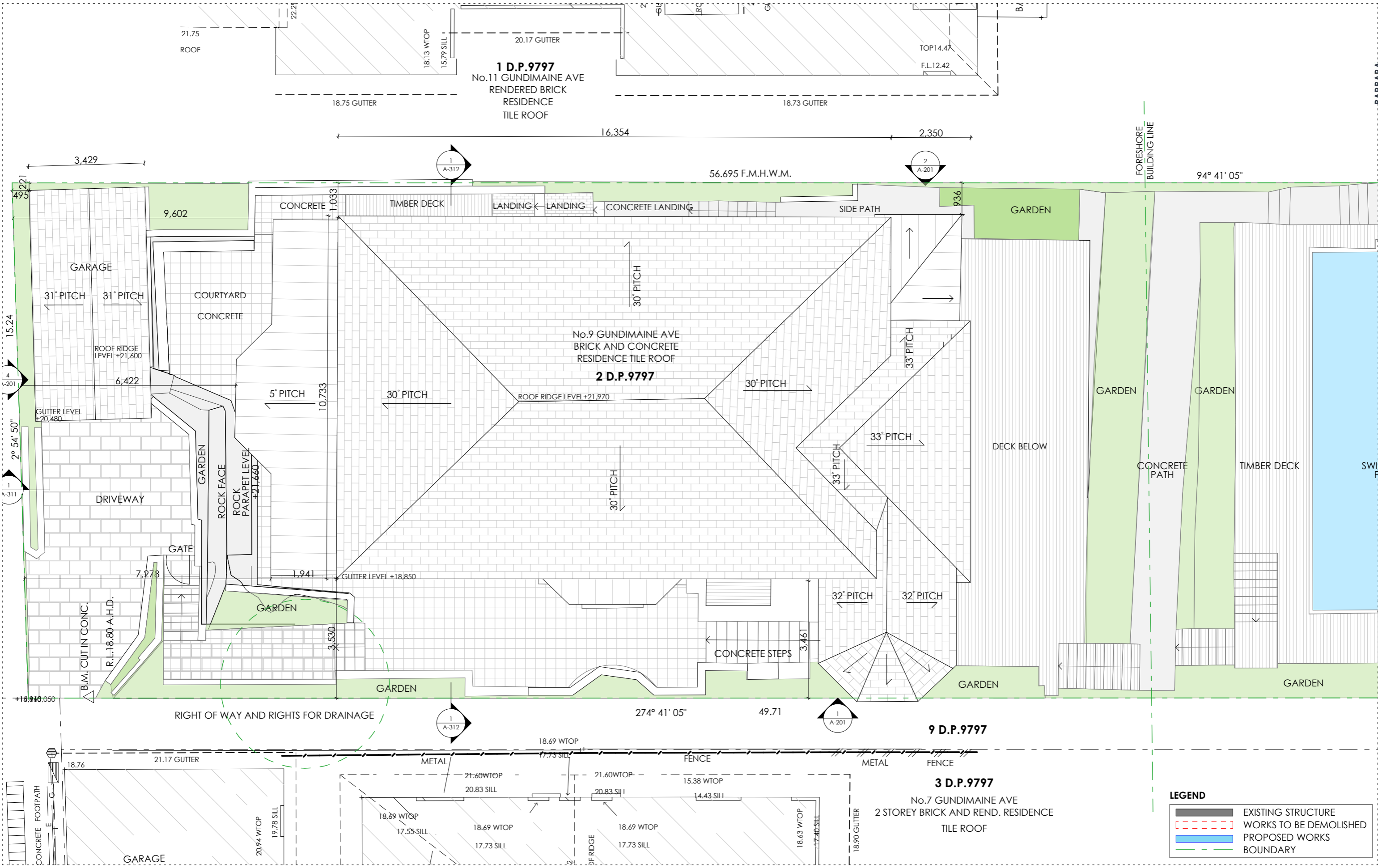
ISSUE FOR
Development Application

CLIENT
Mark & Cate Stevens

PROJECT
Lot 2. DP 9797
9 GUNDIMAINE AVENUE
KURRABA POINT
NSW, 2089

DRAWING
EXISTING GROUND FLOOR PLAN

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE 1:100@ A3
REVISION A	DWG NO. A-102



LEGEND

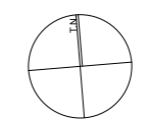
- EXISTING STRUCTURE
- WORKS TO BE DEMOLISHED
- PROPOSED WORKS
- BOUNDARY

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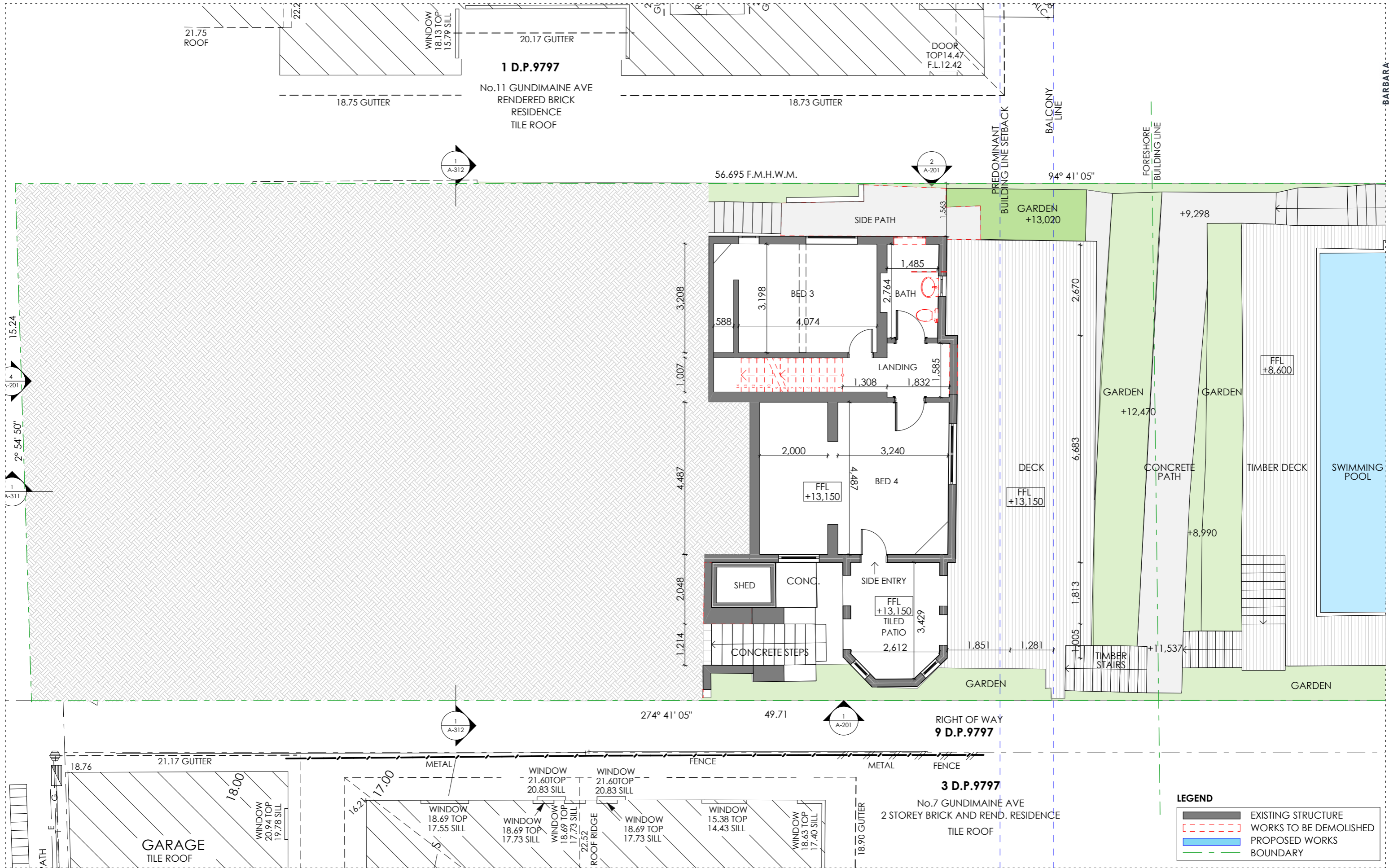
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ISSUE FOR Development Application	CLIENT Mark & Cate Stevens	PROJECT Lot 2. DP 9797 9 GUNDIMAINA AVENUE KURRABA POINT NSW, 2089	DRAWING EXISTING ROOF PLAN	DRAWN WSL	PROJECT NO. 2203
				CHECKED FK	SCALE 1:100@ A3
				REVISION A	DWG NO. A-103

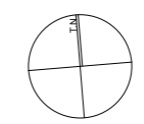


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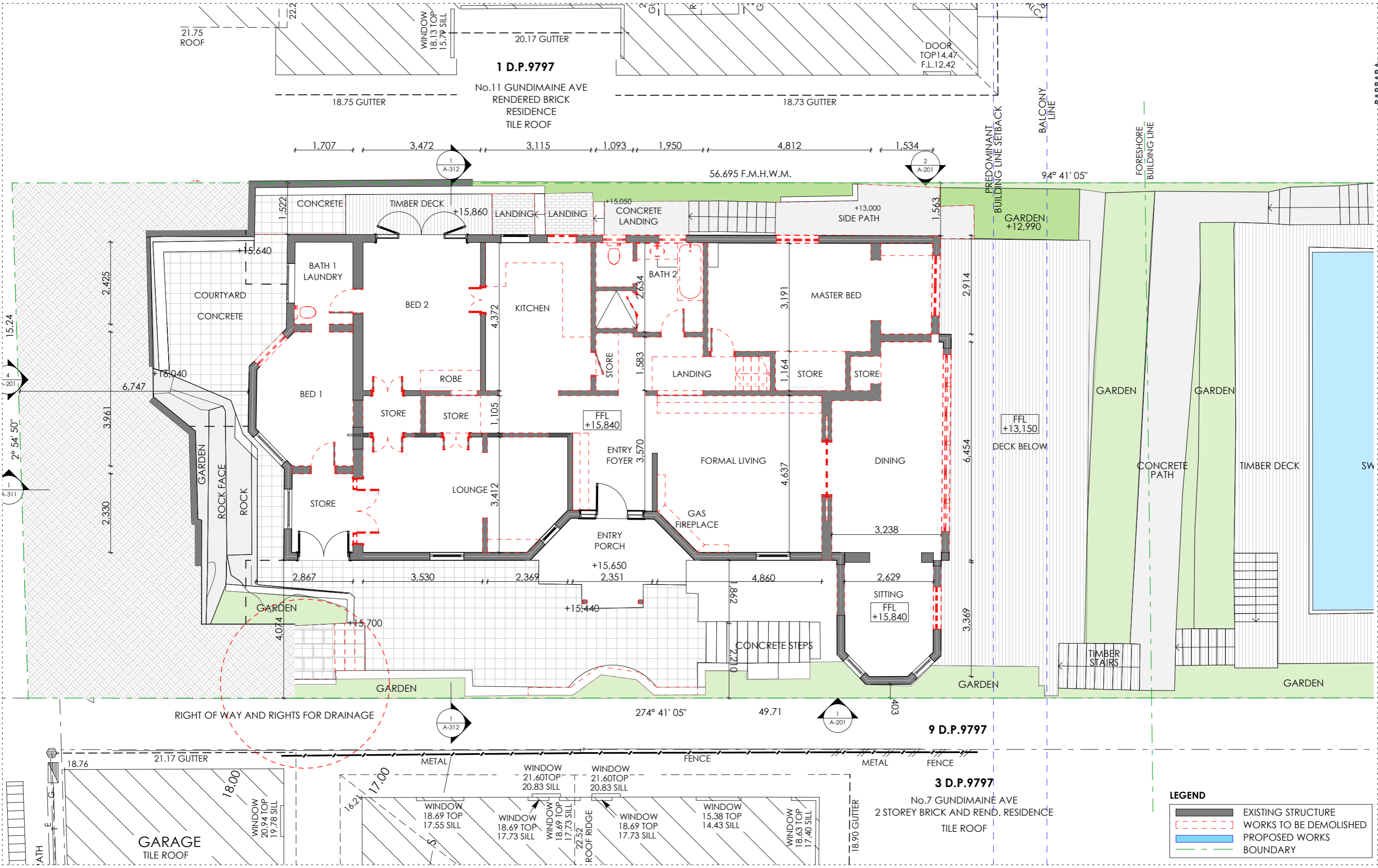
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NSW, 2089

DRAWING
**LOWER GROUND DEMOLITION
PLAN**

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE 1:100@ A3
REVISION A	DWG NO. A-111

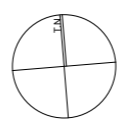


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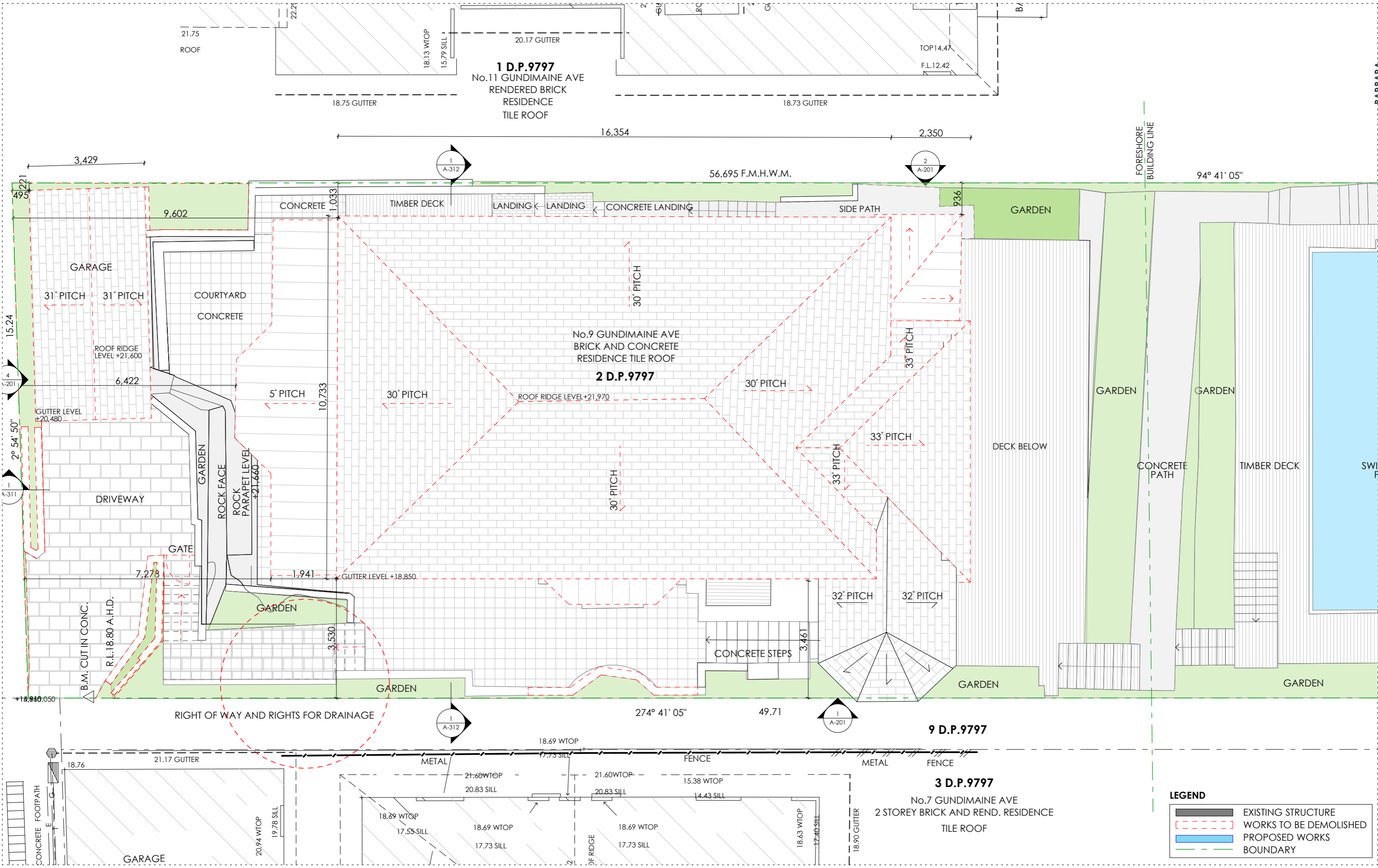
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DRAWING
GROUND DEMOLITION PLAN

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE 1:100@ A3
REVISION A	DWG NO. A-112

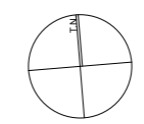


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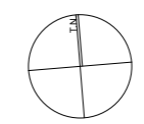
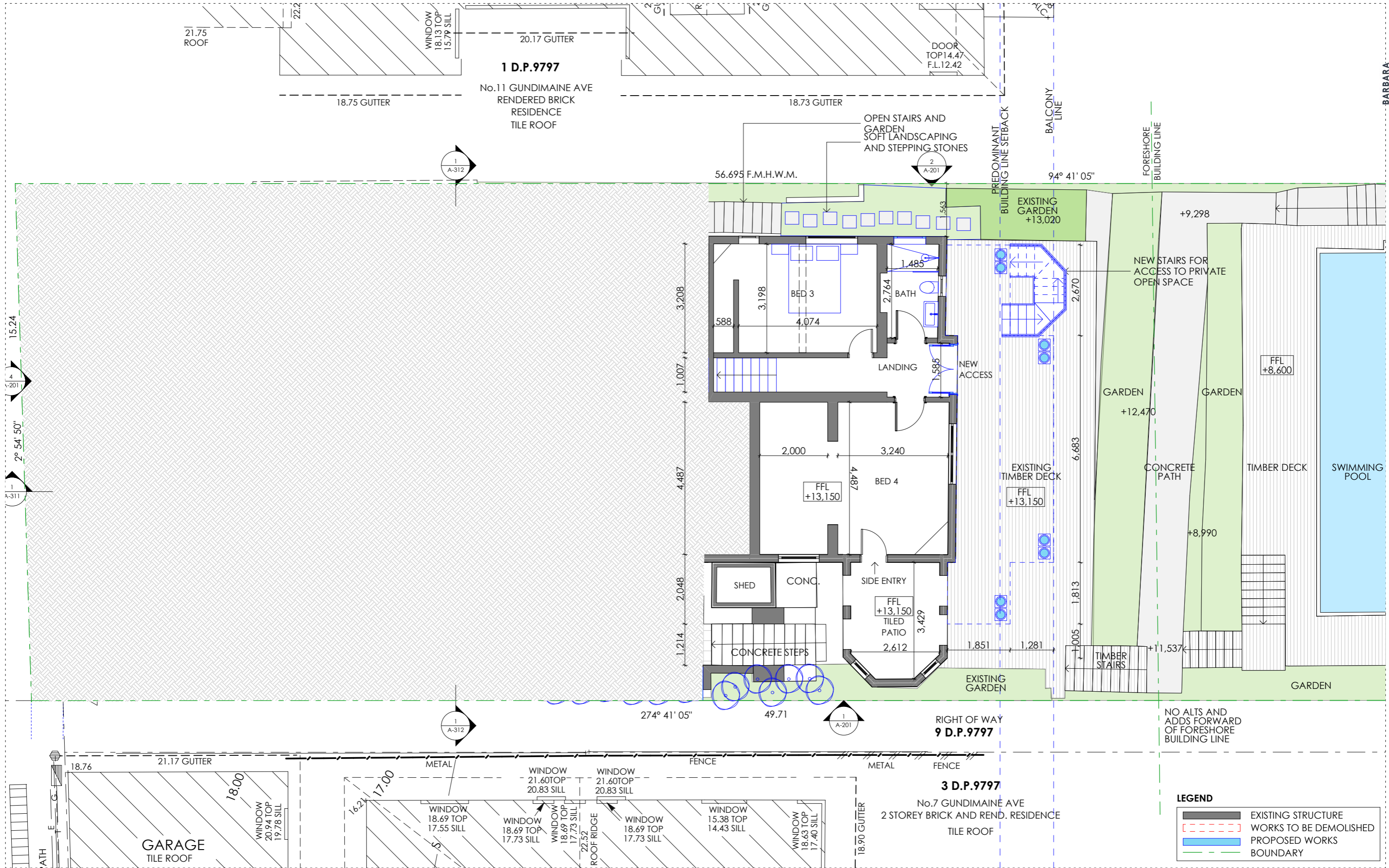
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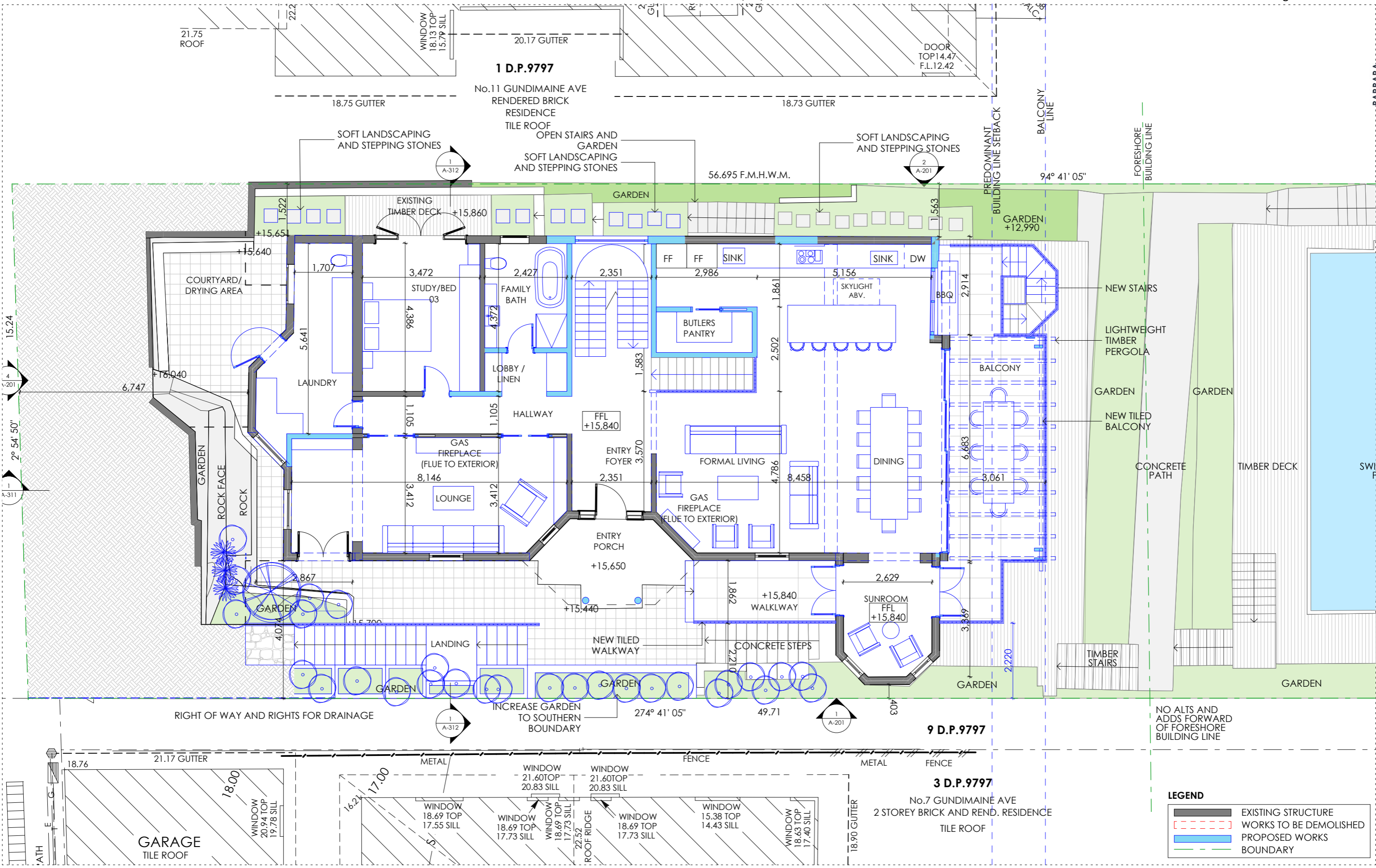
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KURRABA POINT
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DRAWING
ROOF DEMOLITION PLAN

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE 1:100@ A3
REVISION A	DWG NO. A-113



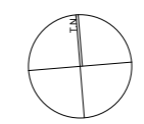


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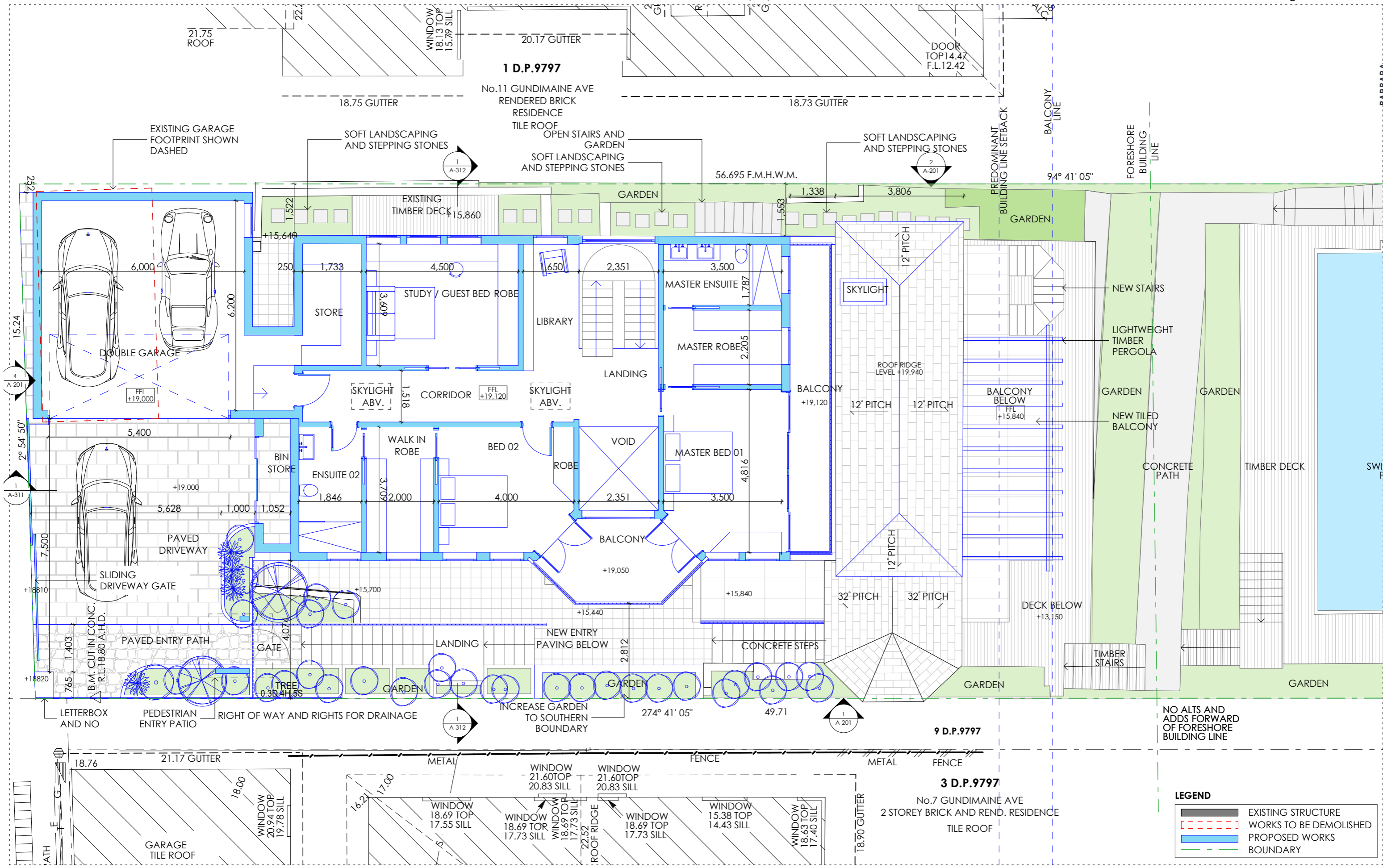
ISSUE FOR
Development Application

CLIENT
Mark & Cate Stevens

PROJECT
Lot 2. DP 9797
9 GUNDIMAINA AVENUE
KURRABA POINT
NSW, 2089

DRAWING
PROPOSED GROUND FLOOR PLAN

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE 1:100@ A3
REVISION A	DWG NO. A-122



LEGEND

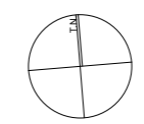
- EXISTING STRUCTURE
- WORKS TO BE DEMOLISHED
- PROPOSED WORKS
- BOUNDARY

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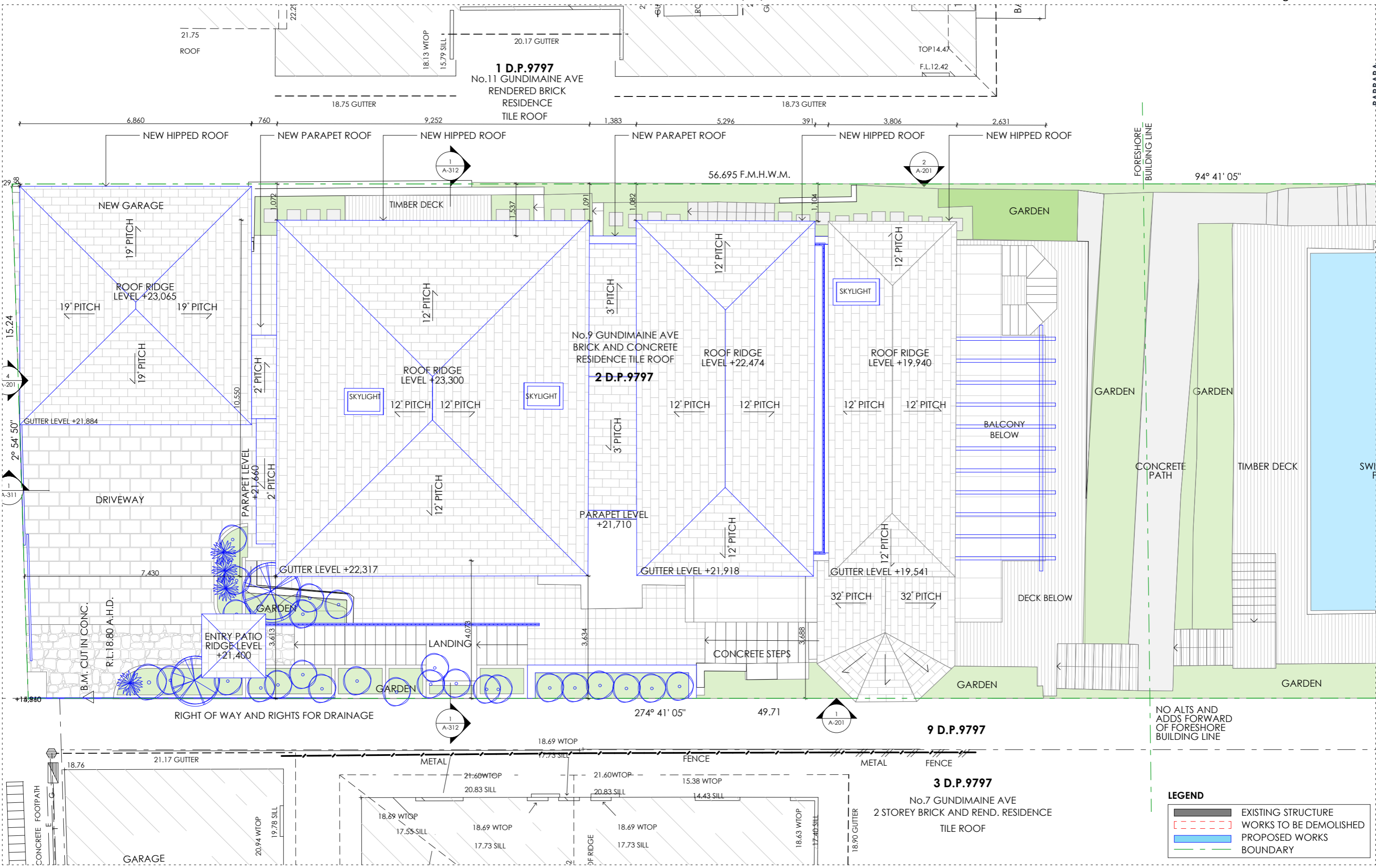
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ISSUE FOR Development Application	CLIENT Mark & Cate Stevens	PROJECT Lot 2. DP 9797 9 GUNDIMAINE AVENUE KURRABA POINT NSW, 2089	DRAWING PROPOSED FIRST FLOOR PLAN	DRAWN WSL	PROJECT NO. 2203
				CHECKED FK	SCALE 1:100@ A3
				REVISION A	DWG NO. A-123

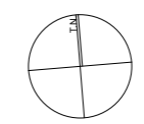


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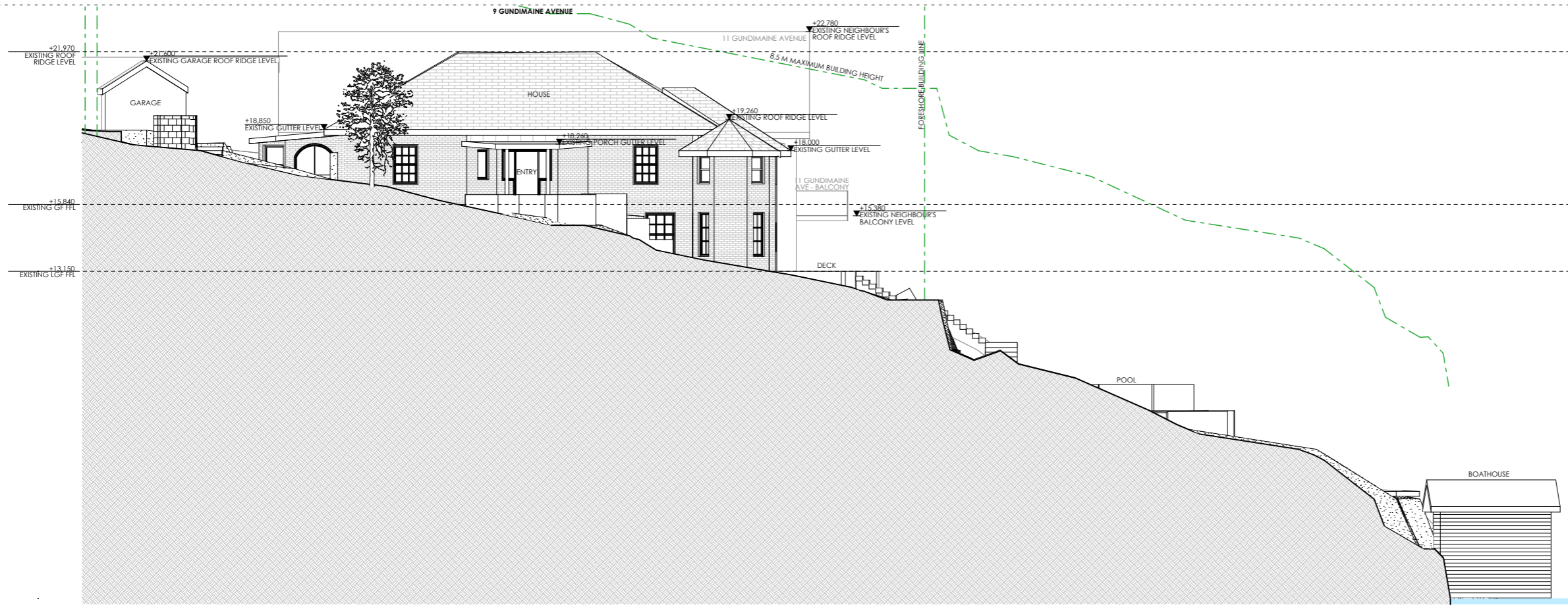
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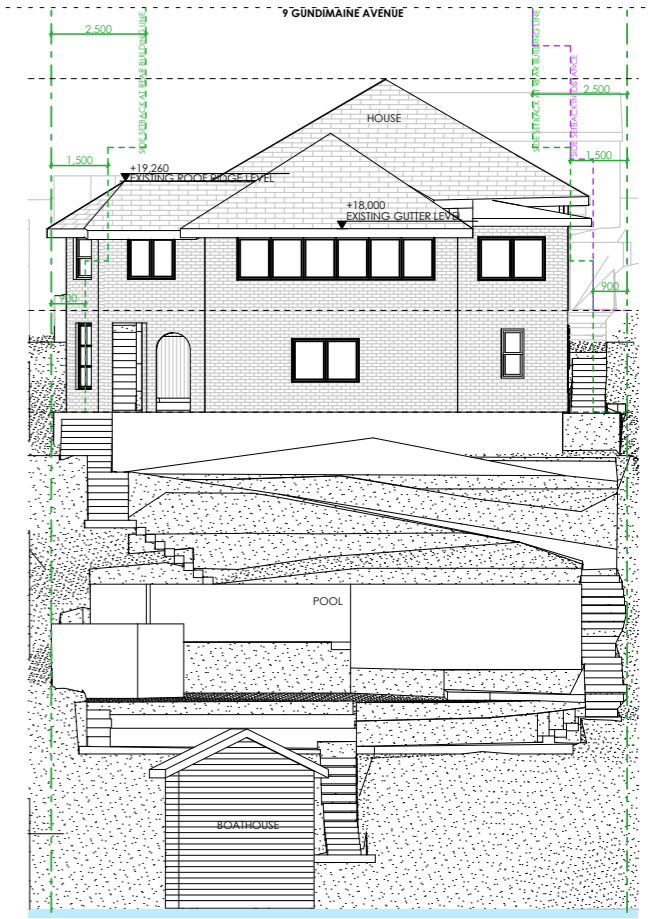
PROJECT
Lot 2. DP 9797
9 GUNDIMAINE AVENUE
KURRABA POINT
NSW, 2089

DRAWING
PROPOSED ROOF PLAN

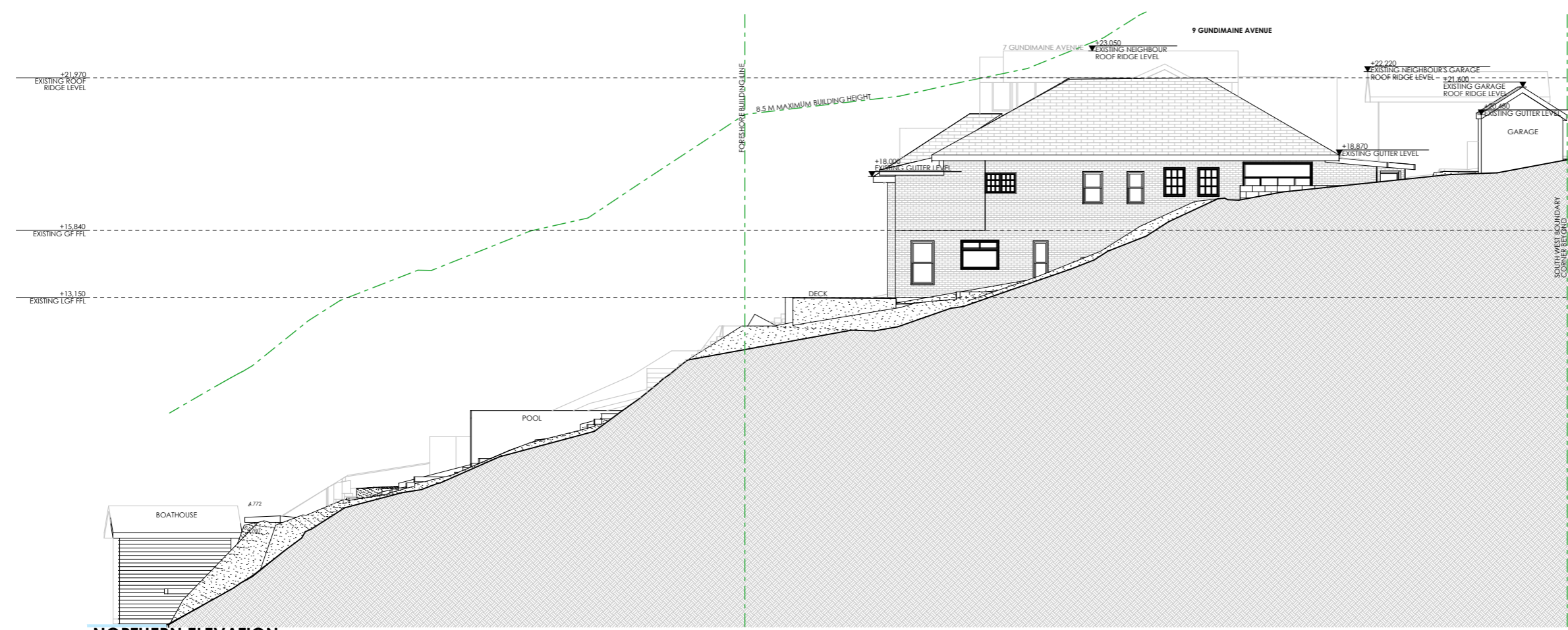
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REVISION A	DWG NO. A-124



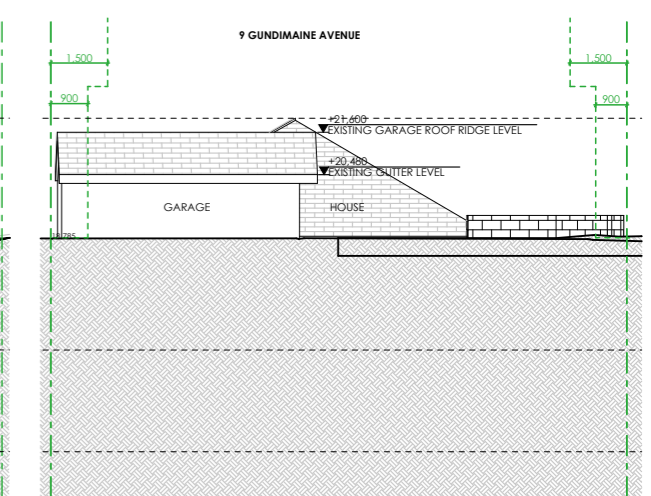
SOUTHERN ELEVATION



EASTERN ELEVATION



NORTHERN ELEVATION



WESTERN ELEVATION

LEGEND

	EXISTING STRUCTURE
	WORKS TO BE DEMOLISHED
	PROPOSED WORKS
	BOUNDARY

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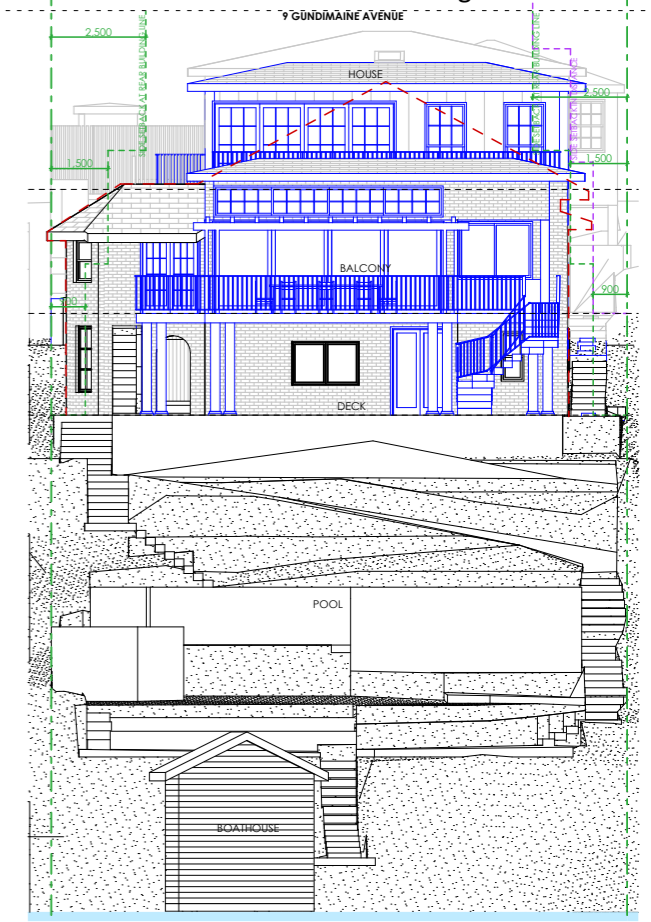
PROJECT
Lot 2. DP 9797
9 GUNDIMAINE AVENUE
KURRABA POINT
NSW, 2089

DRAWING
ELEVATIONS_EXISTING

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE 1:200@ A3
REVISION A	DWG NO. A-201



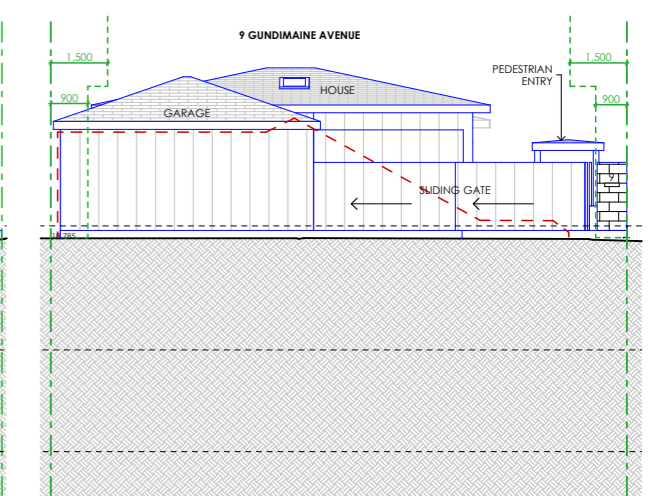
SOUTHERN ELEVATION



EASTERN ELEVATION



NORTHERN ELEVATION



WESTERN ELEVATION

LEGEND

	EXISTING STRUCTURE
	WORKS TO BE DEMOLISHED
	PROPOSED WORKS
	BOUNDARY

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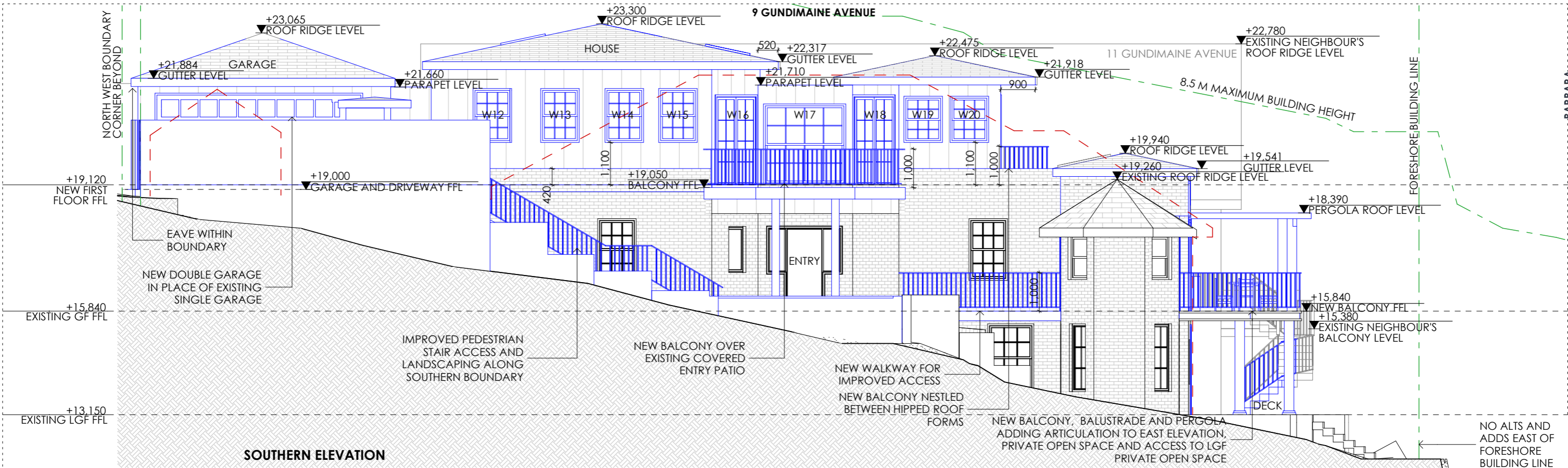
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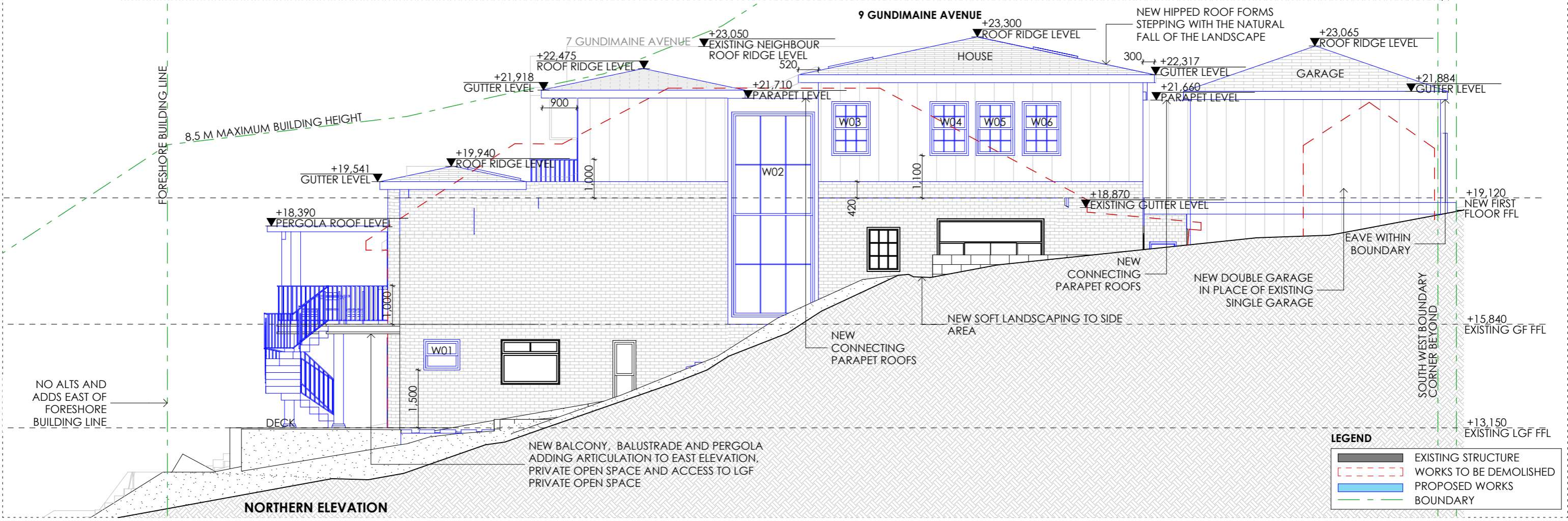
PROJECT
Lot 2. DP 9797
9 GUNDIMAINE AVENUE
KURRABA POINT
NSW, 2089

DRAWING
PROPOSED OVERALL ELEVATIONS

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE 1:200@ A3
REVISION A	DWG NO. A-211



SOUTHERN ELEVATION



NORTHERN ELEVATION

LEGEND

	EXISTING STRUCTURE
	WORKS TO BE DEMOLISHED
	PROPOSED WORKS
	BOUNDARY

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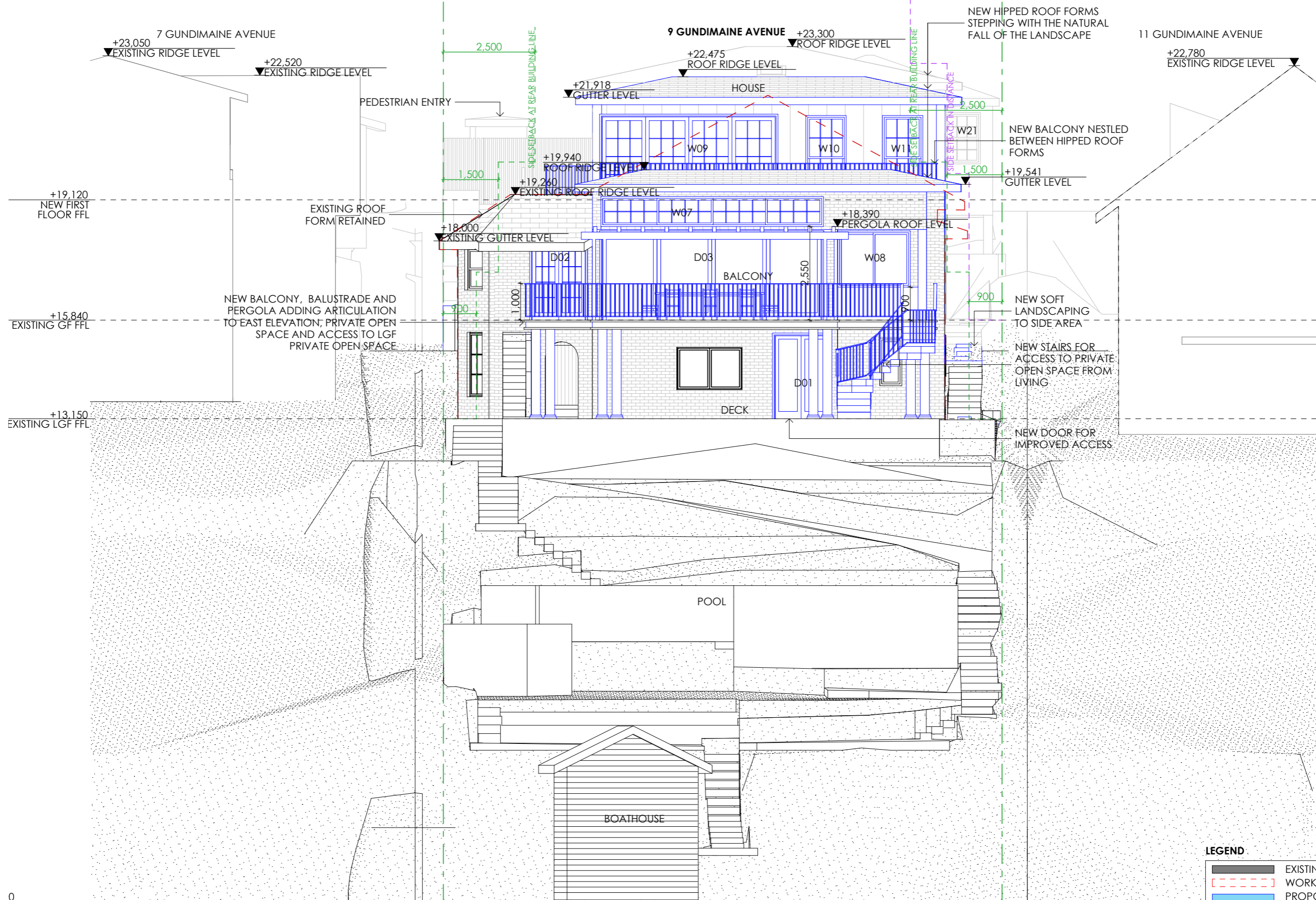
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PROJECT
Lot 2. DP 9797
9 GUNDIMAINE AVENUE
KURRABA POINT
NSW, 2089

DRAWING
PROPOSED NORTH & SOUTH ELEVATIONS

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE 1:100@ A3
REVISION A	DWG NO. A-212



LEGEND

- EXISTING STRUCTURE
- WORKS TO BE DEMOLISHED
- PROPOSED WORKS
- BOUNDARY

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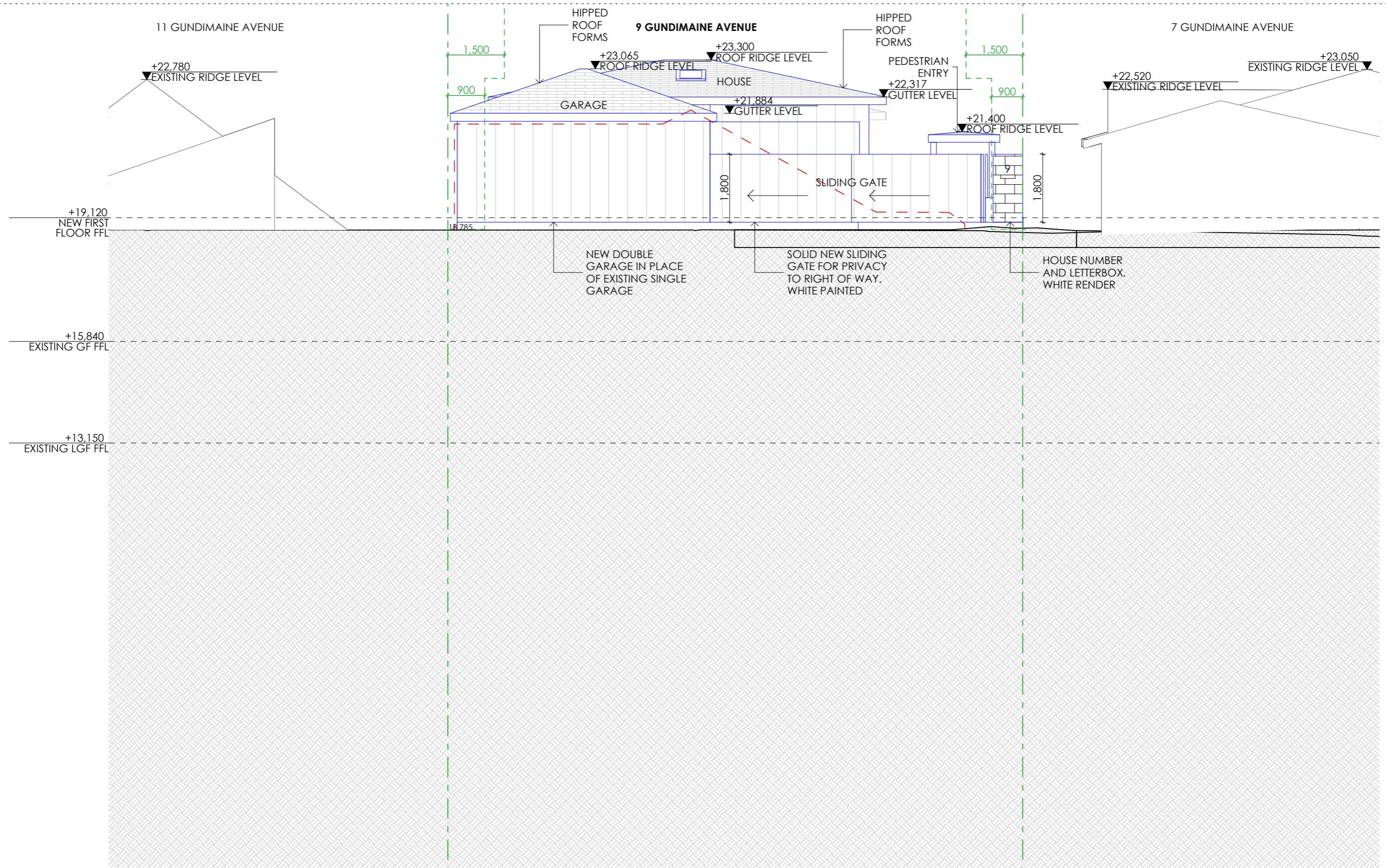
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PROJECT
Lot 2. DP 9797
9 GUNDIMAINE AVENUE
KURRABA POINT
NSW, 2089

DRAWING
PROPOSED EAST ELEVATION

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE 1:100@ A3
REVISION A	DWG NO. A-213



LEGEND

- EXISTING STRUCTURE
- WORKS TO BE DEMOLISHED
- PROPOSED WORKS
- BOUNDARY

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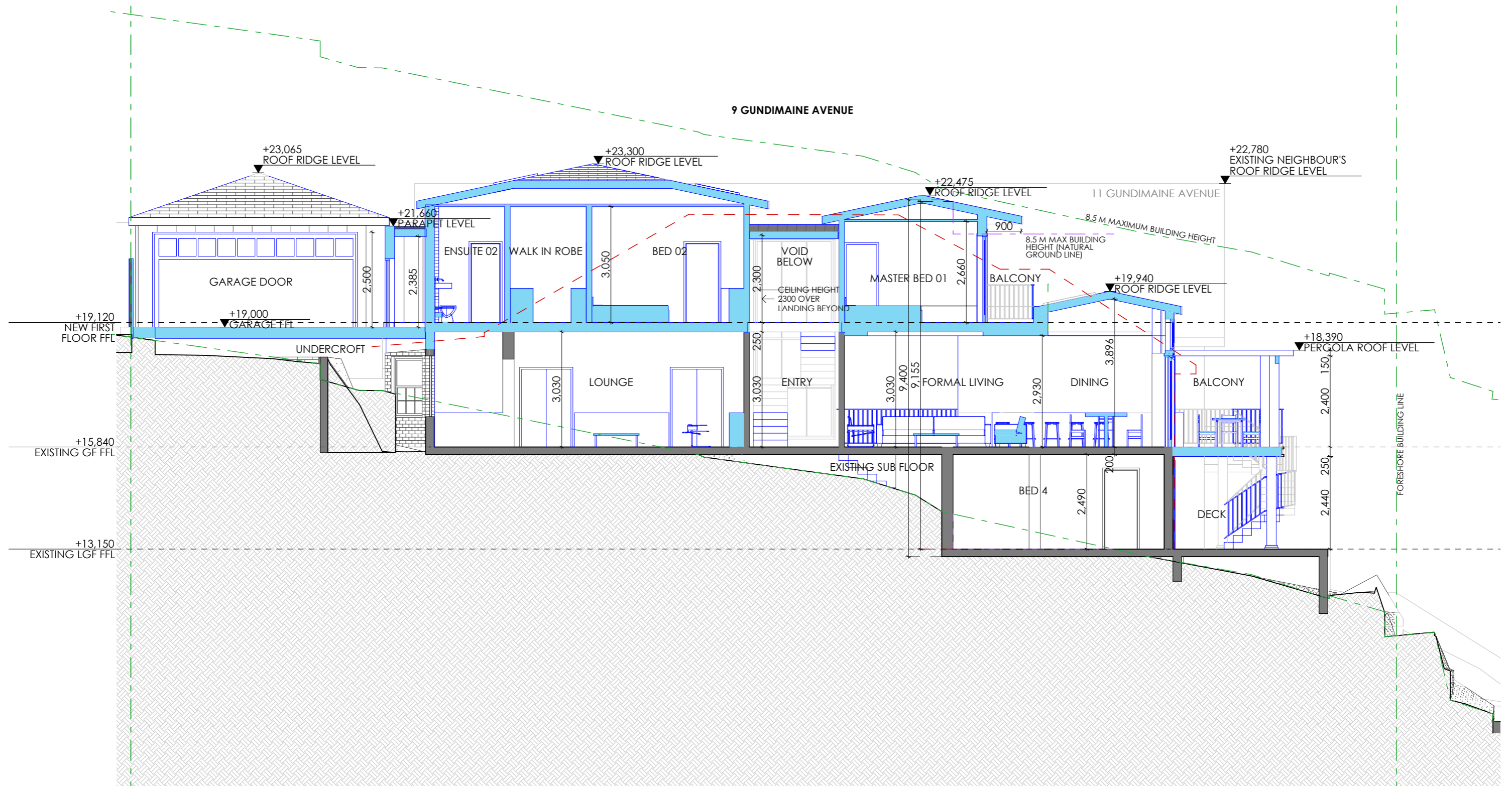
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KURRABA POINT
NSW, 2089

DRAWING
PROPOSED WEST ELEVATION

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE 1:100@ A3
REVISION A	DWG NO. A-214



LEGEND

	EXISTING STRUCTURE
	WORKS TO BE DEMOLISHED
	PROPOSED WORKS
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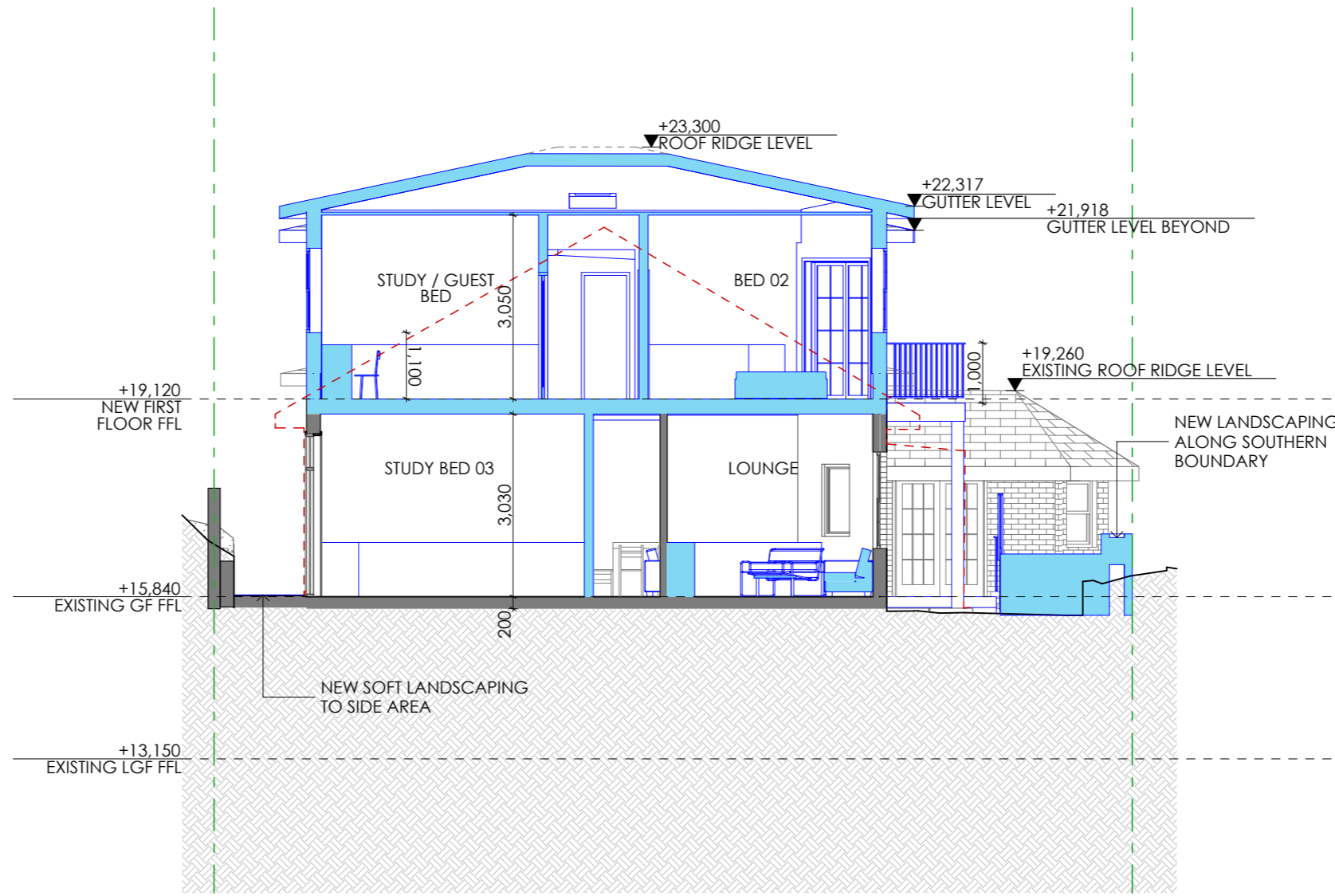
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PROJECT
Lot 2. DP 9797
9 GUNDIMAINE AVENUE
KURRABA POINT
NSW, 2089

DRAWING
PROPOSED LONG SECTION

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE @ A3
REVISION A	DWG NO. A-311



LEGEND

	EXISTING STRUCTURE
	WORKS TO BE DEMOLISHED
	PROPOSED WORKS
	BOUNDARY

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ISSUE FOR
Development Application

CLIENT
Mark & Cate Stevens

PROJECT
Lot 2. DP 9797
9 GUNDIMAINE AVENUE
KURRABA POINT
NSW, 2089

DRAWING
PROPOSED CROSS SECTION

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE @ A3
REVISION A	DWG NO. A-312

BASIX Certificate

Building Sustainability Index www.basix.nsw.gov.au

Alterations and Additions

Certificate number: A474094

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Alterations and Additions Definitions" dated 06/10/2017 published by the Department. This document is available at www.basix.nsw.gov.au

Secretary
Date of issue: Friday, 28, October 2022
To be valid, this certificate must be lodged within 3 months of the date of issue.



Description of project

Project address	
Project name	Gundimaine
Street address	9 Gundimaine Avenue Kurraba Point 2089
Local Government Area	North Sydney Council
Plan type and number	Deposited Plan 9797
Lot number	2
Section number	
Project type	
Dwelling type	Separate dwelling house
Type of alteration and addition	My renovation work is valued at \$50,000 or more, and does not include a pool (and/or spa).

Certificate Prepared by (please complete before submitting to Council or PCA)	
Name / Company Name:	StudioBARBARA
ABN (if applicable):	92468988343

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: gas instantaneous.	✓	✓	✓
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	Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
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	
suspended floor with open subfloor: concrete (R0.6).	R0.9 (down) (or R1.50 including construction)		
floor above existing dwelling or building.	nil		
external wall: framed (weatherboard, fibro, metal clad)	R1.30 (or R1.70 including construction)		
external wall: cavity brick	nil		
internal wall shared with garage: plasterboard (R0.36)	nil		
flat ceiling, pitched roof	ceiling: R1.95 (up), roof: foil backed blanket (55 mm)	medium (solar absorptance 0.475 - 0.70)	

Legend
In these commitments, "applicant" means the person carrying out the development.
Commitments identified with a "✓" in the "Show on DA plans" column must be shown on the plans accompanying the development application for the proposed development (if a development application is to be lodged for the proposed development).
Commitments identified with a "✓" in the "Show on CC/CDC plans & specs" column must be shown in the plans and specifications accompanying the application for a construction certificate / complying development certificate for the proposed development.
Commitments identified with a "✓" in the "Certifier check" column must be certified by a certifying authority as having been fulfilled, before a final occupation certificate for the development may be issued.

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.	✓	✓	✓			
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.	✓	✓	✓			
For projections described as a ratio, the ratio of the projection from the wall to the height above the window or glazed door sill must be at least that shown in the table below.	✓	✓	✓			
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	N	0.74	8.1	9.5	none	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W2	N	11.45	6.8	9.5	external louvre/blind (fixed)	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W3	N	1.4	3	9.4	eave/verandah/pergola/balcony >=600 mm	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W4	N	1.4	3	9.4	eave/verandah/pergola/balcony >=600 mm	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W5	N	1.4	3	9.4	eave/verandah/pergola/balcony >=600 mm	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W6	N	1.4	3	9.4	eave/verandah/pergola/balcony >=600 mm	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
D01	E	3.42	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
D02	E	3.16	0	0	eave/verandah/pergola/balcony >=450 mm	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
D03	E	14.81	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W08	E	3.04	0	0	projection/height above sill ratio >=0.23	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W07	E	4.98	0	0	projection/height above sill ratio >=0.23	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W09	E	11.37	0	0	eave/verandah/pergola/balcony >=750 mm	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W10	E	2.53	0	0	eave/verandah/pergola/balcony >=750 mm	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W11	E	2.53	0	0	eave/verandah/pergola/balcony >=750 mm	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W12	S	1.4	2.3	12.8	none	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W13	S	1.4	2.3	12.8	none	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W14	S	1.4	2.3	12.8	none	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W15	S	1.4	3.3	13.2	none	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W16	S	3.45	0	0	none	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W17	S	4.5	3.9	14.4	none	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W18	S	3.45	0	0	none	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W19	S	1.2	2.9	13.2	none	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W20	S	1.2	2.9	13.2	none	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
W21	E	1.4	0	0	external louvre/blind (fixed)	timber or uPVC, single toned, (or U-value: 5.67, SHGC: 0.49)
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						
Skylight number	Area of glazing inc. frame (m2)	Shading device	Frame and glass type			
S1	0.92	no shading	timber, low-E internal/argon fill/clear external, (or U-value: 2.5, SHGC: 0.456)			
S2	0.92	no shading	timber, low-E internal/argon fill/clear external, (or U-value: 2.5, SHGC: 0.456)			
S3	1.09	no shading	timber, low-E internal/argon fill/clear external, (or U-value: 2.5, SHGC: 0.456)			

BARBARA



SUITE 6/20 MADDOX ST,
ALEXANDRIA NSW
T: +(61) 400 304 070
E: felicity@studiobarbara.com.au
REGISTERED ARCHITECT:
NSW #10607 Felicity King

CHECKED ALL DIMENSIONS ON SITE PRIOR TO THE COMMENCEMENT OF WORK
DO NOT SCALE OFF DRAWING
ALL WORKS TO COMPLY WITH RELEVANT AUTHORITIES REQUIREMENTS
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ALL WORKS TO COMPLY WITH ALL RELEVANT AUSTRALIAN STANDARDS
NOT FOR CONSTRUCTION

DATE 04.11.22 REVISION A ISSUE FOR DEVELOPMENT APPLICATION

ISSUE FOR Development Application

CLIENT Mark & Cate Stevens

PROJECT Lot 2, DP 9797
9 GUNDIMAINE AVENUE
KURRABA POINT
NSW, 2089

DRAWING BASIX COMMITMENTS

DRAWN WSL	PROJECT NO. 2203
CHECKED FK	SCALE
REVISION A	DWG NO. A-511



1 - SLATE ROOF



2 - WHITE FC CLADDING WITH BATTENS



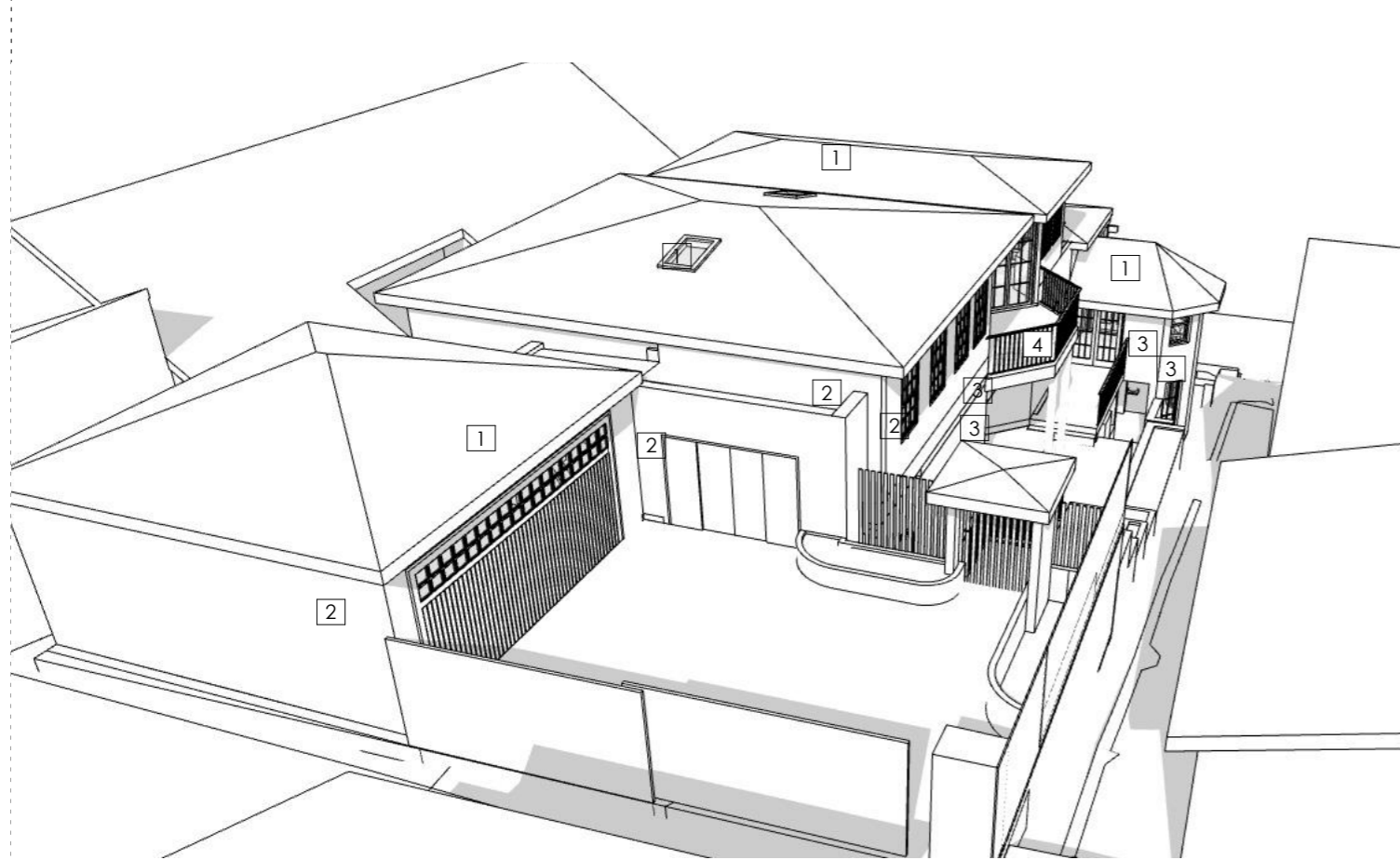
3 - EXISTING BRICK PAINTED WHITE



4 - ALL EXISTING AND NEW WINDOWS TO HAVE BLACK PAINTED TIMBER FRAMES. BLACK STEEL BALUSTRADES



5 - OUTDOOR TERRACE WITH PERGOLA



STREET VIEW







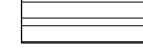





REAR VIEW

1

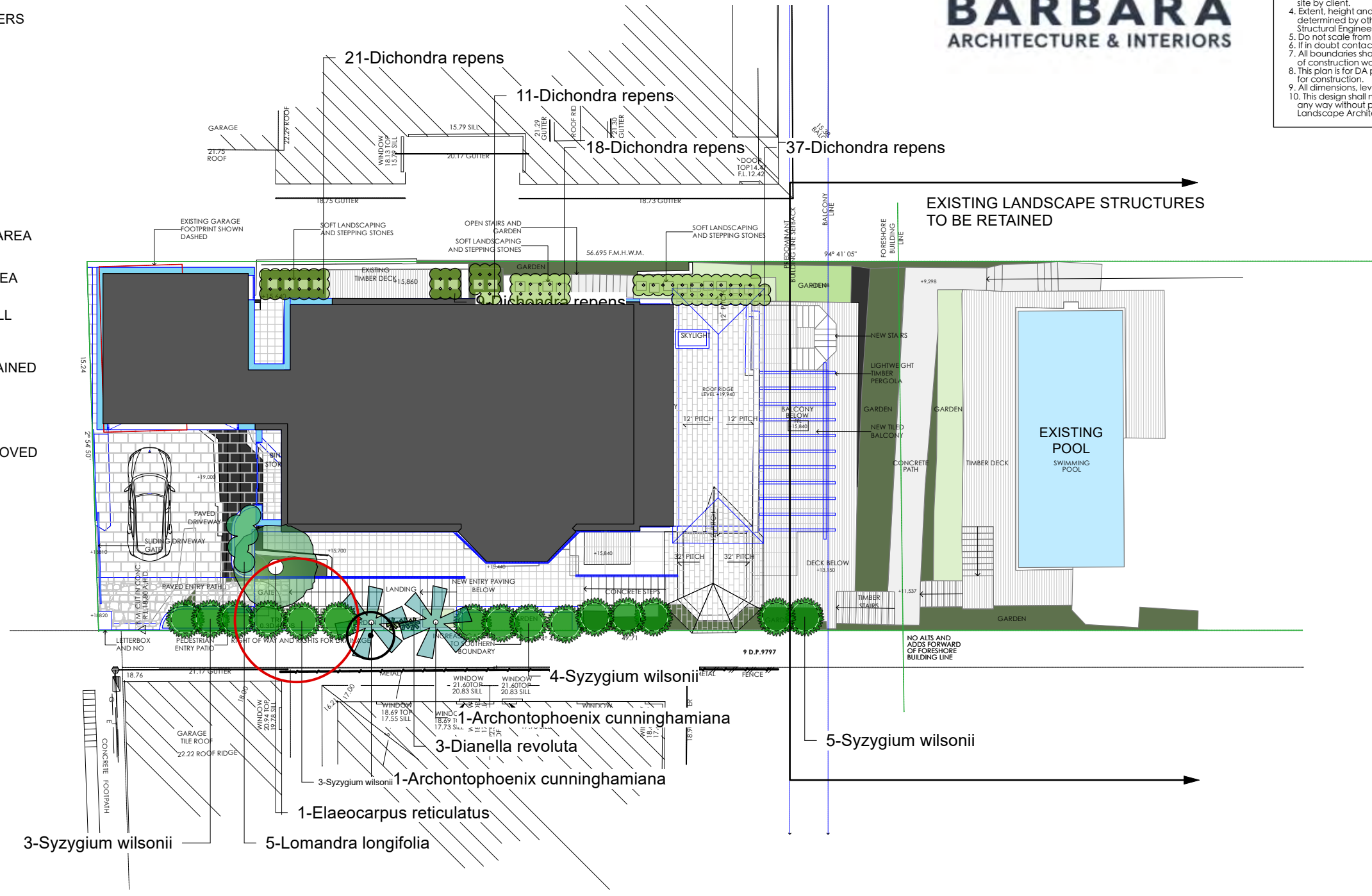
2

LEGEND

-  PROPOSED STEPPING PAVERS
-  EXISTING PAVED AREA
-  EXISTING GARDEN AREA
-  PROPOSED DRIVEWAY
-  PROPOSED PAVED AREA
-  EXISTING HARD SURFACE AREA
-  EXISTING TIMBER DECK AREA
-  PROPOSED RETAINING WALL
-  EXISTING TREE TO BE RETAINED
-  EXISTING TREE TO BE REMOVED

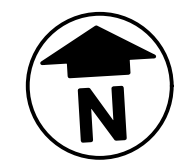
BARBARA
ARCHITECTURE & INTERIORS

- Notes:
1. All dimensions and levels shall be verified by Contractor on site prior to commencement of work.
 2. All detailing of drainage to paved areas shall be by others.
 3. All levels shall be determined by others and approved on site by client.
 4. Extent, height and position of all retaining walls shall be determined by others and approved on site by client, to Structural Engineers detail.
 5. Do not scale from drawings.
 6. If in doubt contact the Landscape Architect.
 7. All boundaries shall be surveyed prior to commencement of construction works.
 8. This plan is for DA purposes only. It has not been detailed for construction.
 9. All dimensions, levels and boundaries are nominal only.
 10. This design shall not be copied, utilised or reproduced in any way without prior written permission of A Total Concept Landscape Architects.

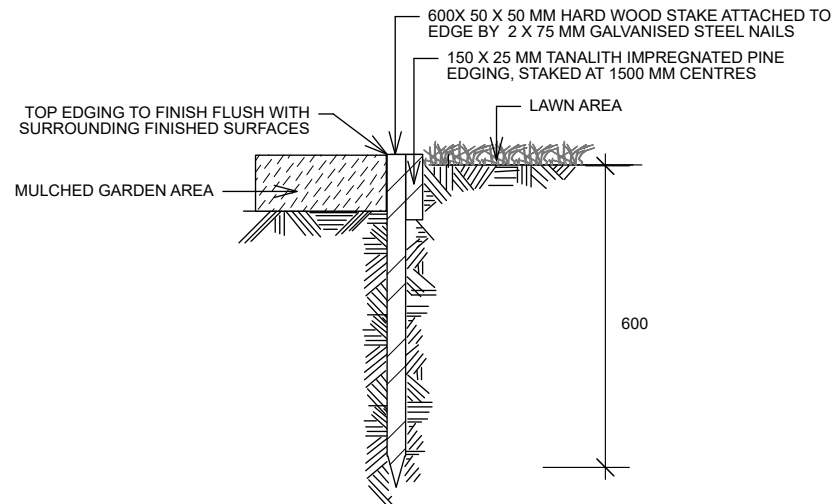


PLANTING SCHEDULE

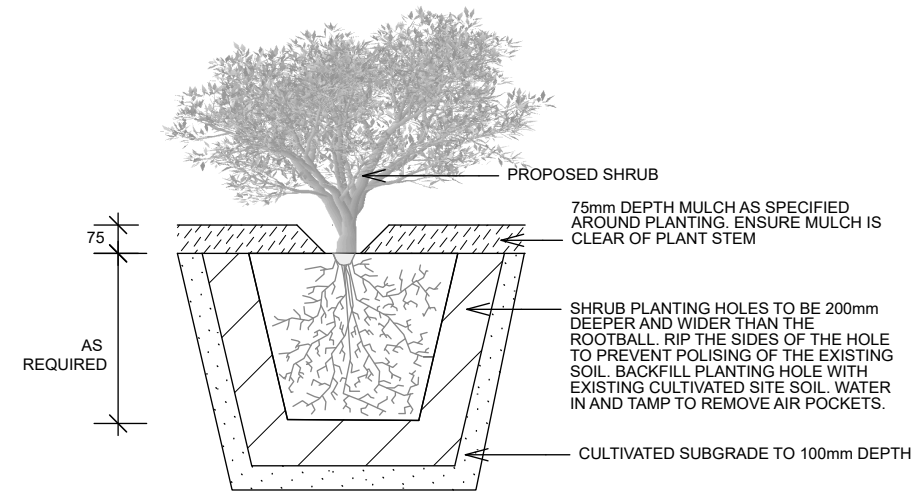
Latin Name	Common Name	Quantity	Scheduled Size	Spread	Height
Archontophoenix cunninghamiana	Bangalow Palm	2	300mm	3000	8000
Dianella revoluta	Mauve Flax Lily	3	150mm	500	600
Dichondra repens	Kidney Weed	96	Tube	500	100
Elaeocarpus reticulatus	Blueberry Ash	1	75lt	3500	6000
Lomandra longifolia	Native Grass	5	200mm	900	600
Syzygium wilsonii	Lillypilly	15	300mm	1600	3500



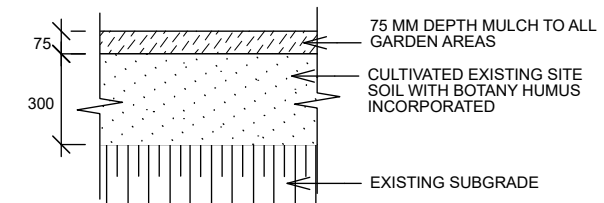
DATE	REVISION		
DRAWING		PROPOSED LANDSCAPE PLAN	
ADDRESS		9 GUNDIMAIN AVENUE, KURRABA POINT	
CLIENT	MARK & CATE STEVENS	PROJECT #	BARBARA ARCHITECTS
		DATE #	20.09.2022
		SCALE @ A3	1:200
		DRAWN	JC
		CHKD	JRC
A Total Concept Landscape Architects & Swimming Pool Designers		DWG #	L/01
65 West Street, North Sydney NSW 2060		REVISION	
Tel: (02) 9957 5122 Fax: (02) 9957 5922			



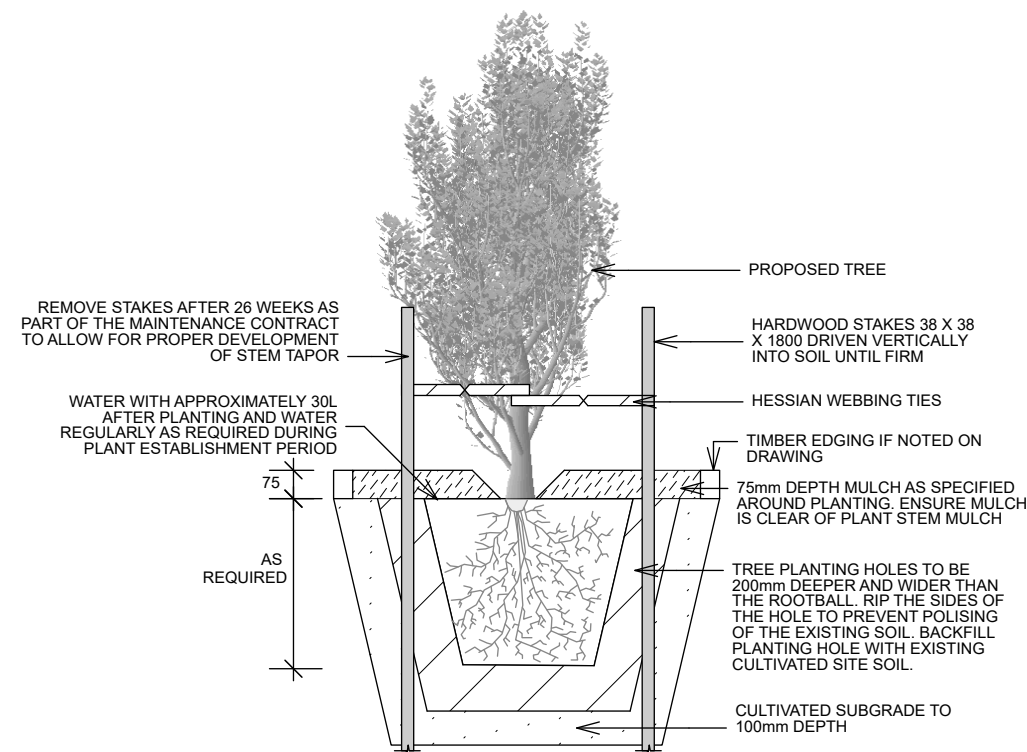
TYPICAL TIMBER EDGE DETAIL
 SCALE 1:10
 DO NOT SCALE



PLANTING DETAIL
 SCALE 1:20




SOIL TO GARDEN AREAS
 SCALE 1:20



TREE PLANTING & STAKING DETAIL
 SCALE 1:20

- Notes:**
1. All dimensions and levels shall be verified by Contractor on site prior to commencement of work.
 2. All detailing of drainage to paved areas shall be by others.
 3. All levels shall be determined by others and approved on site by client.
 4. Extent, height and position of all retaining walls shall be determined by others and approved on site by client.
 5. Do not scale from drawings.
 6. If in doubt contact the Landscape Architect.
 7. All boundaries shall be surveyed prior to commencement of construction works.
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DATE	REVISION		
LANDSCAPE DETAILS			
DRAWING		PROJECT # BARBARA ARCHITECTS	
ADDRESS 9 GUNDIMAIN AVENUE, KURRABA POINT		DATE # 20.09.2022	DWG #
CLIENT MARK & CATE STEVENS		SCALE @ A3 1:200	L/02
A Total Concept Landscape Architects & Swimming Pool Designers 65 West Street, North Sydney NSW 2060 Tel: (02) 9957 5122 Fx: (02) 9957 5922		DRAWN JC	
		CHKD JRC	REVISION
			

OUTLINE LANDSCAPE SPECIFICATION

Preparation by Builder: Builder shall remove all existing concrete pathways, fences, footings, walls etc. not notated to be retained and complete all necessary excavation work prior to commencement on site by Landscape Contractor (Contractor). Builder shall also install new retaining walls, kerbs, layback kerb, crossover, pathways etc. and make good all existing kerbs, gutters etc. as necessary and to approval of Council. Builder shall ensure that a minimum 450mm of topsoil in garden areas and a minimum 150mm of topsoil in lawn areas exists. Should required depths not exist Builder shall contact Landscape Architect and ask for instructions prior to completion of excavation works.

Excavate as necessary, then fill with approved site topsoil to allow for minimum 500mm soil depth in garden areas and 150mm soil depth in lawn areas and to gain required shapes & levels. Ensure all garden and lawn areas drain satisfactorily. All levels & surface drainage shall be determined by others & approved on site by Head Contractor. Note: Approved imported topsoil mix may be utilised if there is insufficient site topsoil available. State in Tender a m3 rate for additional imported topsoil and the quantities of both site topsoil and imported topsoil allowed for in Tender.

Initial Preparation: Verify all dimensions & levels on site prior to commencement. Do not scale from drawings. Locate all underground & above ground services & ensure no damage occurs to them throughout contract. Spray approved weedicide to all proposed lawn & garden areas to manufacturer's directions. Remove existing concrete pathways, footings, walls etc. not notated to be retained & weeds from site. Levels indicated on Plan are nominal only and are derived from Architectural Plans & Drawings by others. Final structural integrity of all items shall be the sole responsibility of Landscape Contractor.

Tree Protection: Trees to be retained shall be protected during site works and construction by the erection of solid barricades to the specification of Council. Storage of machinery or materials beneath canopy of trees to be retained shall not be permitted. Changes to soil level and cultivation of soil beneath canopy of trees to be retained shall not be permitted unless under direct supervision of Landscape Architect. Existing trees shall be pruned to Landscape Architects onsite instructions.

Soil Preparation: Cultivate to depth of 300mm all proposed lawn & garden areas incorporating minimum 100mm depth of organic clay breaker into existing site soil. Do not cultivate beneath existing trees to be retained. In areas where fill is required gain required shapes & levels using a premium grade soil mix. In areas where excavation is required (if in clay) over excavate as required to allow for installation of 500mm depth of premium grade topsoil mix to garden areas and 300mm depth of premium grade topsoil mix to lawn areas. Undertake all required action to ensure that no rootballs of proposed plants sit in clay wells and that all garden areas and lawn areas drain satisfactorily. Note it is intended that wherever possible existing levels shall not be altered through garden and lawn areas. It is the Contractors responsibility to ensure that the end result of the project is that all lawn and garden areas drain sufficiently (both surface & subsurface), are at required finished levels and have sufficient soil depths to enable lawn and plants to thrive and grow. Should alternative works to those specified be required to achieve the above result, Contractor shall inform Builder at time of Tender and request instructions.

Lawn Edging and Stepping Stones:(i) 125 x 25mm approved tanalith impregnated pine edging shall be installed, to lines as indicated on plan and staked with approved stakes at maximum 1500mm centres at ends and changes of direction; stakes shall be nailed to edging with approved galvanised steel nails. Top of edging shall finish flush with surrounding surfaces. Top of stakes shall finish 25mm below top of edging. (ii) Contractor shall install approved bricks on edge on a minimum 100mm deep x 90mm wide concrete footing with brick tor set in, to lines nominated on plan as brick edging. Bricks shall be laid with a nominal 10mm wide approved coloured mortar joint. Bricks needing to be cut shall be done so with clean sharp cuts. Top of edging shall finish flush with surrounding finished surfaces. Approved sandstone stepping stones shall be positioned as indicated on plan on a 25mm river sand bed. Approved sandstone stepping stones shall be positioned as indicated on plan on a 25mm river sand bed.

Retaining Walls: Positions, detail and heights of retaining walls shall be by others.

Planting: Purchase plants from an approved nursery. Plants to be healthy & true to type & species. Set out plants to positions indicated on plan. Following approval, plant holes shall be dug approximately twice width and to 100mm deeper than plant rootballs that they are to receive. Base and sides of hole shall be further loosened. Fertiliser, followed by 100mm depth of topsoil mix shall then be placed into base of hole and lightly consolidated. Base of hole shall then be watered. Remove plant container and install plant into hole. Rootball shall be backfilled with surrounding topsoil and topsoil firmed into place. An approved shallow dish shall be formed to contain water around base of stem. Base of stem of plant shall finish flush with finished soil level. Once installed plant shall be thoroughly watered and maintained for the duration of the Contract.

Staking: All trees shall be staked using 2 x 38mm x 38mm x 2000mm long hardwood stakes per plant and with hessian webbing ties installed to Landscape Architect's on site instructions.

Mulching: Install 75mm depth of 25mm diameter hardwood mulch to all garden areas, coving mulch down around all plant stems & to finish flush with adjacent surfaces.

Turfing: Prepare for, level & lay cultivated Palmetto Buffulo turves to all areas nominated on plan as being lawn. Roll, water, fertilise, mow & maintain lawns as necessary until completion of maintenance period. At same time make good all existing lawn areas using same lawn type. Lawns in shade shall be over sown with an approved seed mix. Allow to retrim and returf councils nature strip as required.

Fencing: Retain all existing fences unless advised otherwise by builder. Install timber paling fences to heights indicated on Plan.

Paving: Areas to be paved shall be excavated or filled to allow for installation of bedding materials. Levels and falls shall be as per Plan. Surface drainage on paving shall be towards grated drains with all drains connected to stormwater system and installed by Builder.

Irrigation: Contractor shall supply and install an approved fully automatic, vandal resistant, computerised irrigation system to all garden and lawn areas, excluding council nature strip. Entire system shall be to approval of Water Board and shall utilise pop-up sprinklers and electronic controllers. Contractor shall be responsible to ensure that system is able to satisfactorily operate on available water pressure. Power supply for use by irrigation system shall be provided to an approved location near southwest corner of residence by others and shall consist of an approved weatherproof G.P.O. The irrigation system controller shall be housed in an approved waterproof cabinet mounted to external wall of residence.

Clotheslines: Contractor shall allow for all necessary labour and materials and shall install clotheslines to positions as indicated on plan to manufacturer's instructions to approval of Landscape Architect. Clothesline type shall be equal to 'Hills Foldaline'.

Completion: Prior to practical completion remove from site all unwanted debris occurring from work. Satisfy Council that all landscaping work has been undertaken in strict accordance with Councils landscape codes & guidelines.

Maintenance Period: A twelve month maintenance period shall be undertaken by owner or owners representative as set out herein. Owner shall have care and maintenance of all work specified under this Contract and shall rectify any defective work for a period of 52 weeks following Practical Completion of Landscape Works. This period shall be herein known as the Maintenance Period. Work shall also include for the care and maintenance of all existing vegetation to be retained and proposed vegetation. Site shall be attended at least weekly and as otherwise required. The following works shall be undertaken during the Maintenance Period.

(a) **Recurrent works** Undertake recurrent works throughout the Maintenance Period. These works shall include but are not limited to watering, weeding, fertilising, pest and disease control, returfing, staking and tying, replanting, cultivation, pruning, aerating, renovating, top dressing and the like.

(b) **Watering** Regularly water all plants and lawn areas to maintain optimal growing conditions. Contractor shall adjust the water quantity utilised with regard to climatic conditions prevalent at the time.

(c) **Replacements** Immediately replace plants which die or fail to thrive (at discretion of Landscape Architect) with plants of same species or variety and of same size and quality unless otherwise specified. Plant replacement shall be at Contractors expense, unless replacement is required due to vandalism or theft, which shall be determined by Landscape Architect. Required replacement of plants due to vandalism or theft shall be undertaken by Contractor and shall be paid for by Client at an agreed predetermined rate.

(d) **Mulched surfaces** Maintain mulched surfaces in clean, tidy, weed-free condition and shall reinstate mulch as necessary to maintain specified depths.

(e) **Stakes & ties** Adjust and/or replace stakes and ties as required. Remove stakes and ties at end of Maintenance Period if directed by Landscape Architect.

(f) **Lawn areas** Lawn areas shall be mown at regular intervals to ensure non heading of lawn with a fine-cutting mulching mower and clippings left on lawn to mulch and self-fertilise lawn areas. Primary cut after laying of lawn by others shall be determined on site taking into consideration season, watering and growth rate of lawn. Following the primary cut all lawns shall be regularly mown as required to ensure a healthy lawn and a neat appearance. Care shall always be taken to ensure that no clippings are left on surrounding roads or garden areas after mowing. Replace lawn areas that fail to thrive at discretion of Landscape Architect. All new and made good lawn areas shall be barricaded off from pedestrian traffic by use of star pickets and brightly coloured plastic safety mesh until establishment of lawn. Barricades shall be removed upon establishment of lawn area.

(g) **Weeding** Remove by hand, or by carefully supervised use of weedicide, any weed growth that may occur throughout Maintenance Period. This work shall be executed at weekly intervals so that all lawn and garden areas may be observed in a weed-free condition.

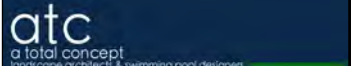
(h) **Pruning** Prune new and existing plants (excluding existing trees) as necessary to maintain dense foliage conditions. Any rogue branches, or branches overhanging or obstructing pathways, roads, doorways, etc., shall be removed by approved horticultural methods.

(i) **Spraying** Spraying for insect, fungal and disease attack shall be undertaken as required and in accordance with spray manufacturers recommendations at intervals taking into account the season of year during which landscape works are to be implemented.

(j) **Tree Care** Should any existing trees be damaged during construction works immediately engage an experienced arboriculturist and then undertake any rectification work recommended by arboriculturist.

Notes:

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DATE	REVISION
DRAWING	
LANDSCAPE SPECIFICATION	
ADDRESS 9 GUNDIMAIN AVENUE, KURRABA POINT	
CLIENT	PROJECT #
MARK & CATE STEVENS	BARBARA ARCHITECTS
DATE #	DWG #
20.09.2022	L/03
SCALE @ A3	
1:200	
DRAWN	CHKD
JC	JRC
REVISION	
A Total Concept Landscape Architects & Swimming Pool Designers 65 West Street, North Sydney NSW 2060 Tel: (02) 9957 5122 Fax: (02) 9957 5922	
	



Clause 4.6 Variation Request


9 Gundimaine Avenue, Kurrabara Point

Prepared by Paro Consulting

October 2022



Document status

Revision	Date	Name	Signature
1	31/10/2022	Daniel Barber, Planning Manager B.Plan (Hons), M.ProDev, CPP MPIA	

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Disclaimer

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Contents

1. Introduction	4
2. Development Standard to be Varied – Height	4
3. Nature of Variation Sought	5
4. Height – Development Standard	8
5. Clause 4.6 of North Sydney Local Environmental Plan 2013	8
6. Relevant NSW LEC Decisions	11
7. Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case	12
8. Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard	15
9. Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in which The Development is Proposed to be Carried Out?	15
10. Clause 4.6(5)(a) – Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?	16
11. Clause 4.6(5)(b) – Is There a Public Benefit of Maintaining the Planning Control Standard?	16
12. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?	16
13. Conclusion	16

1. Introduction

This is a request to vary a development standard pursuant to the provisions of Clause 4.6 of the North Sydney Local Environmental Plan 2013 (NSLEP 2013), the relevant clause being **Clause 4.3(2)** of NSLEP 2013 (Height of Building).

The relevant maximum height of building control is **8.5m**, shown on the relevant Height of Buildings Map.

Height is a *development standard* for the purposes of the *EP&A Act 1979* as it prescribes a numerical value to an aspect of the permitted development (see Justice Mc Clellans decision in *Georgakis v North Sydney Council* [2004] NSWLEC 123).

This request to vary the Clause 4.3 of NSLEP 2013 has regard to the judgments in:

1. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”)
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] (“Wehbe”)
3. *SJD DB2 Pty Ltd v Woollahra Council* [2020] NSWLEC 1112 (*SJD DB2*).

This request to vary the height development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”).

The objectives of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6 1(b).

The objective of Clause 4.6 (1)(a) is to provide an ‘*appropriate degree of flexibility in applying certain development standards to particular development*’. The intent is ‘*to achieve better outcomes for and from development by allowing flexibility in particular circumstances*’ in accordance with Clause 4.6 1(b).

The extent of the discretion available to the consent authority is unfettered (see *SJD DB2*) and therefore a variation can be granted to the height variation articulated in Section 3 of this written request.

The relevant architectural drawings relied upon are those prepared by Studio Barbarra Architecture.

2. Development Standard to be Varied – Height

The relevant *development standard* to be varied is the 9.5m height control under Clause 4.3(2) of NSLEP 2013. Clause 4.3 of NSLEP 2013 relevantly provides:

4.3 Height of buildings

(1) *The objectives of this clause are as follows—*

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

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

The relevant height of buildings map is identified below.

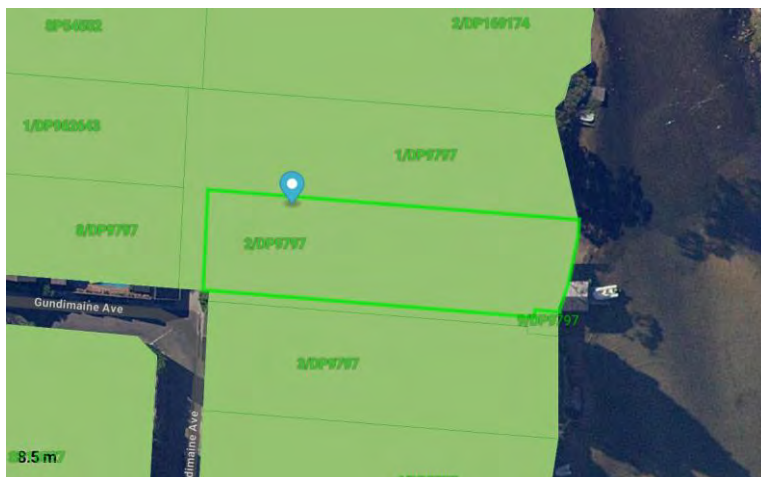


Figure 1. Extract of Height control Map (Source: NSLEP 2013)

3. Nature of Variation Sought

Nominating the “ground level (existing)” is usually achieved by taking the lowest level directly and vertically beneath the highest part of the proposed development on a site (based on surveyed RLs) to determine a maximum building height dimension. However, where an existing building occupies the whole of the site area so that there is no longer any ‘ground’ as in soil/ garden/paving) around the building from which the existing ground level could be determined, this task is not so straight forward.

The issue is compounded where ‘below ground’ excavation has previously occurred on the site (for example below ground basements) and even more so where excavations have occurred only in parts or pockets of a site. In such a situation, if the lowest point of the existing development (i.e. the floor of the lowest basement) is taken to be ground level (existing) then development potential may be artificially and considerably limited and there may also be differing ‘existing levels’ on that land at multiple points. Similarly, issues arise whenever there is some form of concrete slab on a site and as to whether the ‘ground level (existing)’ should be measured from below the thickness of the slab. These considerations are continually being tested in the courts to provide greater clarity in relation to these issues.

Bettar v Council of the City of Sydney [2014] NSWLEC 1070

The original and therefore leading decision on determining “ground level (existing)” on land that is sloping or completely excavated is the decision of Commissioner O’Neill in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 (“*Bettar*”). In *Bettar*, consent was sought for amongst other things, a four and five storey residential flat building on a site where an existing building at ready occupied the entire site. Meaning there was no longer any “ground” for determining the existing ground level. In addition, there was an existing part basement excavated into one part of the site. Council’s argument focused entirely on the existing building on the site and took the approach that the “ground level (existing)” should be calculated using the ground floor level of the existing building and then dropping it down to the basement level in the part of the site where the existing basement was located.

The Commissioner determined that once the existing building is demolished the ground levels of that prior building would no longer be discernible or relevant as a starting point for measuring the height of any new building and that it would be conceivable that surrounding properties (with differing ground floor levels) could have starkly different height limits arising from the same development standard. The Commissioner held at paragraph [40a] that this would result in *a absurd height plane with a large and distinct full storey dip in it as it moves across the site and crosses the basement of the existing building, which relates only to a building that is to be demolished and has no relationship to the context of the site.*

The Commissioner preferred the approach of the Applicant on this issue which was for the existing ground level of the site to be determined by extrapolating the ground levels found on the footpath (i.e. — outside the site) across the entire site to measure the vertical distance to the highest point of the building. The Commissioner’s reasoning for this, given at paragraph [41], was that the level of the footpath at the boundary bears a relationship to the context and the overall topography that includes the site and remains relevant once the existing building is demolished.” In our experience, this has become known as the extrapolation method for determining “ground level existing”.

Stamford Property Services Pty Ltd v City of Sydney [2015] NSWLEC 1189

Similar circumstances came before the Court once again in *Stanford Property Services Pty Ltd v City of Sydney* [2015a NSWLEC 1189 ('Stamford') although this time on a much larger and more steeply sloping site than in *Bettar*. Consent was sought for amongst other things the partial retention of existing development on the site and the construction of a 19 storey tower building with basement parking on a Sydney CBD site. The context of the site was once again of paramount concern to Commissioner Pearson and Acting Commissioner Smithson, who found at paragraph [286] that *'Me extent of excavation from site to site could lead to different height limits applying to adjoining buildings on redevelopment of any of those sites.'*

Unlike the site in *Bettar*, which had two street frontages and vacant adjoining land from which levels could be measured, here the highly developed surrounds meant there were limited levels from which to even extrapolate a ground level (existing). Nevertheless, the Court noted that the availability of survey information necessary in order to be able to apply the *Bettar* extrapolation method may vary from site to site, but was still possible even with limited information and that there was sufficient actual and surveyed levels from the public domain in this case to arrive at a 'ground level (existing)' figure for the (excavated) centre of the site being an average between two surveyed points, rather than a surveyed (and excavated) ground level.

Tony Legge v Council of the City of Sydney [2010] NSWLEC 1424

Solidifying the application of the decision in *Bettar* and *Stanford* to sites that are wholly built out in *Tony Legge v Council of the City of Sydney* NSWLEC 1424 ('*Tony Legge*') the Commissioner found at paragraph [41] that *'it is appropriate to take the levels of the site at its interface with the public domain'*. Further and importantly, the decision in *Tony Legge* reinforces the importance of placing the proposed building in its context rather than relying on the present built form of any existing development on a site.

Overall, I see the courts are taking a more practical approach to measuring height, albeit that it tends to be very reminiscent of the old 'natural ground level' approach to measuring height. In other words, it takes a non-literal approach, but rather a pragmatic and workable approach to determining 'ground level (existing)'.

Slab thickness — should it be excluded?

It could be argued that where the ground of a site has an existing concrete slab, that the height measurement should be artificially lowered by say 200mm below that top of that slab to where the ground beneath the slab might reasonably be expected to be found. There has yet to be a Court ruling on this issue, potentially because the argument is not ultimately pushed by consent authorities when those appeals reach their final hearing. Notwithstanding this, based on my current interpretation of standard instrument a finished (concrete) ground level is nevertheless a 'ground level', which may be walked upon and represents the ground of the site. Whereas to instead try to estimate where one might find the underlying soils below that finished ground level is entirely contrary to the concept of ground level 'existing' and would more correctly be described as a 'natural ground level'.

Therefore, based on the findings of the above NSW LEC Court Decisions the height of building is calculated to be 9.5m as measured using the extrapolated method from the ground level (existing) of the perimeter of the building envelope (see figure 2 below). Notwithstanding this, for abundant caution, the height of building has been measured from the underside of the slab of the historically excavated lower ground level to the apex of the roof which is in accordance with the literal sense of the "ground level (existing)" definition included within the standard instrument (Figure 2 and 3). This measurement equates to a maximum height of building 9.4m on the basis of an estimated subterrain basement and 0.2m slab thickness and results in a 0.9m height variation.

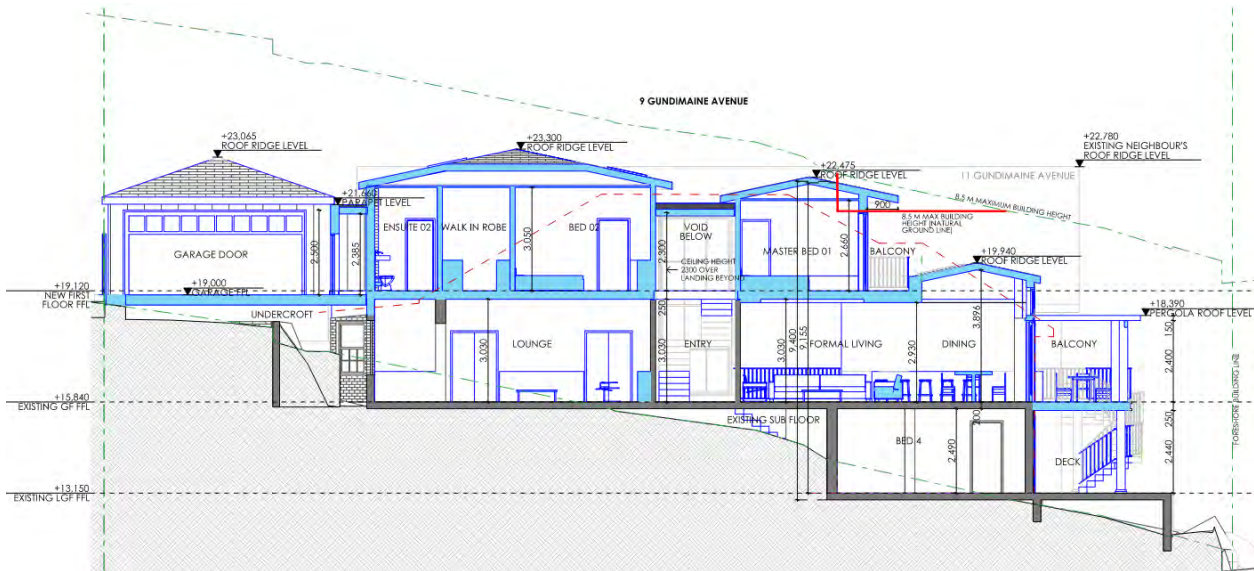


Figure 2. Comparison of height measurement from a long section (source: Studio Barbara)

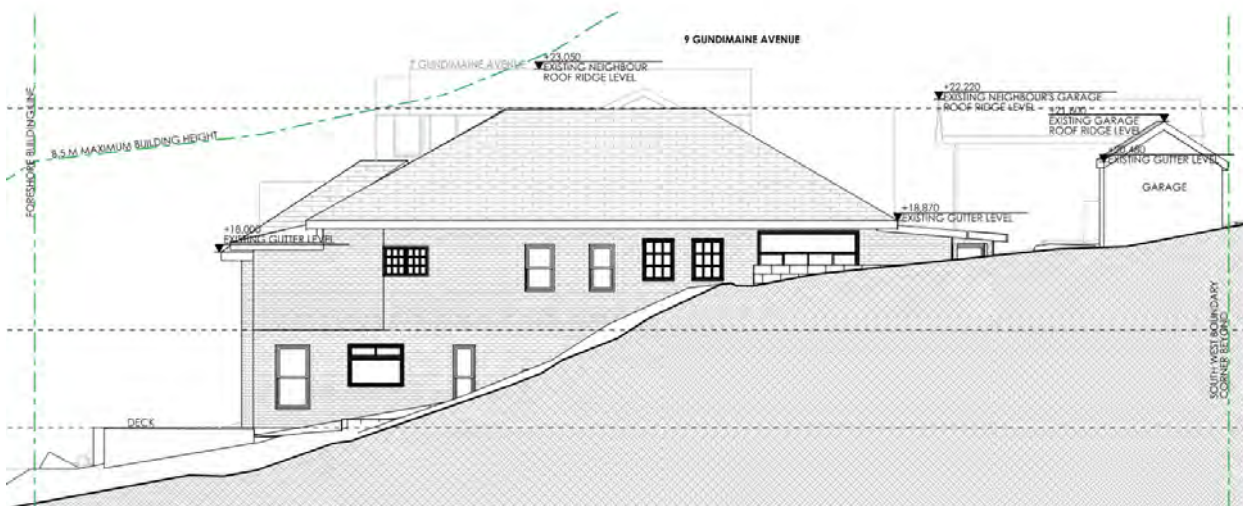


Figure 3. Height measured from southern elevation (Source: Studio Barbara)



Figure 4. Height measured from northern elevation (Source: Studio Barbara)

4. Height – Development Standard

A development standard is defined in s1.4 of the *Environmental Planning and Assessment Act 1979* (“EPA Act”) to mean:

“provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.”*

The 8.5m maximum height standard is a *development standard* as defined under the EP&A Act 1979.

5. Clause 4.6 of North Sydney Local Environmental Plan 2013

Clause 4.6 of the NSLEP 2013 provides a legal pathway by which an applicant can vary a *development standard*. Clause 4.6 of NSLEP 2013 relevantly provides as follows:

“4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows—*
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (caa) clause 5.5,
- (ca) clause 4.3 in relation to land identified as "Area 1" on the [Special Provisions Area Map](#), other than subject land within the meaning of clause 6.19C,
- (cab) clause 4.4, 5.6 or 6.19C in relation to land identified as "Area 1" on the [Special Provisions Area Map](#),
- (cb) clause 6.3(2)(a) and (b),
- (cba) clause 6.19A,
- (cc) clause 6.20.

Response to Clause 4.6 1(a)(b) of NSLEP 2013

The following provides a response to the Clause 4.6 provisions:

"(1) The objectives of this clause are as follows—

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

The purpose of Clause 4.6 of NSLEP 2013 is to provide flexibility in the application of development standards.

Justification within this written request demonstrates that an appropriate degree of flexibility should be applied to this particular application notwithstanding the height variation articulated of this written request.

The environmental planning grounds justifying the variation is provided in this written request.

The proposal whilst exceeding the height development standard provides an acceptable planning outcome based on the following:

- The building height has been measured from beneath the historically excavated subterrain land and existing slab of the lower ground level which has been identified as having a 0.2m thickness and located 1.2m below the ground level (existing) immediately adjoining the perimeter of the lower ground level. Therefore, the proposed height of the building will read as 8.2m as viewed externally from the site and subterranean area and slab does not present any bulk or scale;
- The land falls from the street level to the rear of the site and the proposed upper-level addition which reads as a first-floor addition with a height of 5.58m when measured from the street level and within the height standard. The volume under the height standard is much greater than the building volume greater than the standard;
- The adjoining three storey dwelling houses at 7 and 11 Gundimaine Avenue include a height greater than 8.5m measured from ground level (existing);
- The area of non-compliance relating to the subterrain level does not result in any view loss, overlooking, visual bulk or overshadowing.
- Strict compliance with the development standard would not result in a better outcome for development but would result in a building height which sits artificially below both the adjoining dwelling houses or a roof pitch out of character with the subject dwelling house or adjoining dwelling houses;
- The height non-compliance relates to only to the upper most portion of the apex of the pitched roof and for only a length of 2.4m; and
- Ability to satisfy the height objectives of the development standard and R2 Low Density Zone objectives.

The following provides a response to relevant **Clause 4.6(2)** of NSLEP 2013 provisions. Clause 4.6(2) of NSLEP 2013 provides:

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

The HOB development standard is not expressly excluded from the operation of cl4.6 of NSLEP 2013 and accordingly, consent may be granted.

Clause 4.6 (3) of NSLEP 2013

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and states:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and**
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard. (our emphasis)**

The proposed development does not strictly comply with the HOB development standard pursuant to clause 4.3 of the NSLEP 2013. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request. Sufficient environmental planning grounds exist to justify contravening the development standard.

The majority of the building form and roof line complies with the height limit as demonstrated in Figure 2. In fact, the front portion of the building to the street is significantly under the height standard and reads as a 5.58m height when measured from the street level. The volume under the height control is much greater than the building volume greater than the control.

Clause 4.6(4) of NSLEP 2013 provides that consent must not be granted for development that contravenes a development standard unless:

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

and

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

(b) the concurrence of the Secretary has been obtained".

Sections below of this written request address the matters required under clause 4.6(4)(a)(i)(ii) of the NSLEP 2013 and clause 4.6(4)(b) of NSLEP 2013. Clause 4.6(5) provides that:

(5) In deciding whether to grant concurrence, the Secretary must consider:

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

(b) the public benefit of maintaining the development standard, and

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

This written request addresses the matters required under clause 4.6(5) of the NSLEP 2013.

Clauses 4.6(6) and (8) are not relevant to the proposed development.

Clause 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

6. Relevant NSW LEC Decisions

Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard. There is no provision in the NSLEP 2013 clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J (herein referred to as Rebel MH)".

In *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J* identifies the steps provided in *Initial Action* confirming what the consent authority must do in order to satisfy itself as follows:

"For me to grant development consent for this development as it contravenes the permitted maximum building height development standard, cl 4.6(4)(a) requires me to be satisfied that:

(1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and

(2) *The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and*

(3) *The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and*

(4) *The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)),*

For the first of the above matters, Preston CJ made it clear, in Initial Action at [25], that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it “only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed those matters.”

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (the DA). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (FSR) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, ‘cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome (at [73]).

7. Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

In dealing with the “unreasonable and unnecessary” Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Clause. 4.6(3)(a).

Preston CJ at states as follows:

“As to the first matter required by clause 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Based on the above the following identifies the first method identified in *Wehbe*:

*“Ways of establishing that compliance is unreasonable or unnecessary 42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the **objectives of the development standard are achieved notwithstanding non-compliance with the standard**: (our emphasis).*

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

- *that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Having considered the above, the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the height development standard are achieved notwithstanding the variation.

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard

In dealing with the standard, it is necessary to identify the purpose of the height control and then progress to dealing with the achievement or otherwise with the height objectives. The relevant height objectives are identified and discussed below:

4.3 Height of buildings

(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”,

The dwelling house includes a height of less than 8.5m when measured from the ground level (existing) located immediately outside of the building footprint and building steps with the natural slope of the land. The maximum height of the building sits lower than the height of the two adjoining dwelling houses and therefore sits with the natural landform.

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

The dwelling house includes a height of less than 8.5m when measured from the ground level (existing) located immediately outside of the building footprint, and technically non-compliance relates to the historically excavated subterrain level and slab. The height non-compliance sits 1m below the maximum ridge height of the proposed roof and the maximum ridge height sits 0.8m below the height standard promoting the retention of existing views.

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

The dwelling house includes a height of less than 8.5m when measured from the ground level (existing) located immediately outside of the building footprint, and technically non-compliance relates to the historically excavated subterrain level and slab. The height of the building ensures that neighbour dwelling houses habitable room windows and private open space areas will receive at least 3 hours of mid-winter sunlight access between 9am to 3pm.

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

The dwelling house includes a height of less than 8.5m when measured from the ground level (existing) located immediately outside of the building footprint, and technically non-compliance relates to the historically excavated subterrain level and slab. The area of the height non-compliance either arguable relates to the subterrain level or roof which results in no privacy impacts.

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

The proposed building height is less than that of the adjoining dwelling houses and adjoining dwelling houses include land zoned R2 Low Density Residential.

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

The dwelling house includes a height of less than 8.5m when measured from the ground level (existing) located immediately outside of the building footprint, the historically excavated subterrain level and slab does not contribute any bulk or scale to the area. The proposal includes a scale and density consistent with the two three storey dwelling houses (Figure 4).

“(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 dwelling house includes a height of less than 8.5m when measured from the ground level (existing) located immediately outside of the building footprint and technically non-compliance relates to the historically excavated subterrain level and slab. The proposal includes a height, scale and density consistent with both the adjoining three storey dwelling houses which are also located within the R2 Low Density Residential zone (Figure 4).

“(a) to establish building heights that are consistent with the desired future character of the neighbourhood”

The dwelling house includes a height of less than 8.5m when measured from the ground level (existing) located immediately outside of the building footprint, the historically excavated subterrain level and slab does not contribute any bulk or scale to the area. The proposal includes a scale and density consistent with the two three storey dwelling houses (Figure 5).



Figure 4. View of the proposed third storey addition in context with adjoining dwellings (Source: Studio Barbara)

In summary, achieving compliance with the standard is unreasonable and unnecessary (clause 4.6(3)(a)) as notwithstanding the non-compliance, the development is consistent with the objectives of the standard (clause 4.6(4)(a)(ii)).

Test 2: The underlying objectives or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

Not relied upon.

Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

The underlying purpose of the development standard is to present a building that is compatible with the height, context and character of the locality whilst preserving the amenity of neighbouring properties. Strict compliance with the height development standard would defeat or thwart the achievement of underlying objectives of the standard.

The building height has been measured from beneath the historically excavated subterranean existing slab of the lower ground level which has been identified as having a 0.2m and sits 1m below the ground level (existing) immediately adjoining the perimeter of the lower ground level. Therefore, if the development standard was strictly complied with than the building would read as a height of 7.6m (8.5m minus 0.9m) as measured from ground level (existing surrounding the perimeter of the dwelling house). The height of building would sit out of character of both the three storey adjoining dwelling houses which appear to have a height of 8.5m or greater.

Test 4: The development standard has been virtually abandoned or destroyed by council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

While the standard has not been virtually abandoned or destroyed, it is important to note that Council have consented to proposals in the locality with a building height that exceeds the development standard, as evidenced in the Register of Exceptions to Development Standards published on Council's website.

There are numerous examples of developments in the North Sydney LGA and in the immediate area which have been approved despite non-compliance with the maximum Height of Building development standard. This includes both the adjoining three storey dwelling houses appear to exceed the 8.5m height standard. Whilst each DA is assessed on its own merits and each site has different characteristics, Council has accepted variations to the maximum building height standard in the past.

Further, the building height has been measured from beneath the historically excavated subterrain existing slab of the lower ground level which has been identified as having a 0.2m slab thickness and sits 1m below the ground level (existing) immediately adjoining the perimeter of the lower ground level. Therefore, the proposed height of the building will read as less than 8.5m as viewed externally from the site and subterranean level or slab does not present any bulk or scale and therefore the intent of standard has not been abandoned.

Test 5: The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard is in circumstances of the case would also be unrealistic or unnecessary

Not relied upon.

8. Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

There are sufficient environmental planning grounds to justify the proposed variation to the development standard for the following reasons:

- The proposal is compliant with the 8.5m height of building standard when adopting the practical height of building measurement adopted by the courts in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070;
- The building height has been measured from beneath the historically excavated subterrain existing slab of the lower ground level which has been identified as having a 0.2m thickness and sits 1m below the ground level (existing) immediately adjoining the perimeter of the lower ground level. Therefore, if the development standard was strictly complied with than the building would read as a height of 7.6m (8.5m minus 0.9m) as measured from ground level (existing) surrounding the perimeter of the dwelling house. The height of building would sit out of character of both the three storey adjoining dwelling houses which appear to have a height of 8.5m or greater. Therefore, strict compliance with the height of building standard would defeat or thwart the achievement of underlying objectives of the standard.
- The land falls from the street level to the rear of the site and the proposed upper-level addition which reads as a first-floor addition with a height of 5.58m when measured from the street level and within the height standard. The volume under the height standard is much greater than the building volume greater than the standard.
- The adjoining three storey dwelling houses at 7 and 11 Gundimaine Avenue include a height greater than 8.5m measured from ground level (existing).
- The area of non-compliance relating to the subterrain level does not result in any view loss, overlooking, visual bulk or overshadowing.
- Strict compliance with the development standard would not result in a better outcome for development but would result in a building height which sits artificially below both the adjoining dwelling houses or a roof pitch out of character with the subject dwelling house or adjoining dwelling houses.
- The height non-compliance relates to only to the upper most portion of the apex of the pitched roof and for only a length of 2.4m.
- Ability to satisfy the height objectives of the development standard and R2 Low Density Zone objectives.

9. Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in which The Development is Proposed to be Carried Out?

The proposed development is consistent with the objectives of the height of buildings standard, as shown in Section 6.2.1. The proposal is also consistent with the land use objectives that apply to the site under NSLEP 2013 as demonstrated below. The site is located within the R2 Low Density Residential Zone.

“To provide for the housing needs of the community within a low density residential environment”.

The proposal seeks consent for a height variation only. The site will continue to accommodate a dwelling house and provide for the housing needs of the community in a low-density residential environment.

“To enable other land uses that provide facilities or services to meet the day to day needs of residents”

The proposed height variation will not impact on the ability for facilities and services to meet the day to day needs of residents

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

The proposed height of the dwelling is compatible with the character and amenity of the Kurraba Point local Heritage Conservation Area which is characterised by large two to three storey dwellings situated on sloping sites.

“To ensure that a high level of residential amenity is achieved and maintained”.

The proposed height variation does not adversely impact on the amenity of adjoining residents in regard to overshadowing, solar access, privacy or views.

10. Clause 4.6(5)(a) – Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

11. Clause 4.6(5)(b) – Is There a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the height of building development standard and the land use zoning objectives. The public benefit of maintaining the development standard is not considered significant given that the dwelling will present a compliant building height to the street, reduce the overall height and setbacks of the existing dwelling and not result in any adverse overshadowing, view loss or loss of privacy.

12. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

Concurrence can be assumed. Nevertheless, there are no known additional matters that need to be considered within the assessment of the Clause 4.6 request and prior to granting concurrence, should it be required.

13. Conclusion

The proposal to exercise the flexibility afforded by Clause 4.6 of the NSLEP 2013 results in a better outcome, being an appropriate built form massing for the site. This variation request demonstrates, as required by Clause 4.6 of the NSLEP 2013, that:

- Compliance with the development standard is unreasonable and unnecessary, as the development will continue to achieve the objectives of the standard, despite the non-compliance;
- That there are sufficient environmental planning grounds to justify a contravention to the development standard;
- The development achieves the objectives of the development standard and is consistent with the objectives of the R2 Low Density Residential land use Zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard in this instance; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.