

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

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Height
4. Elevations and Sections

**ADDRESS/WARD:** 50 Tobruk Avenue, Cremorne**APPLICATION No:** 349/22**PROPOSAL:** Demolition of existing dwelling and construction of an attached dual occupancy, landscaping and associated works.**PLANS REF:**

Plan No.	Rev No.	Description	Prepared by	Dated
DA 00.00	7	Cover Page	Aurae Architecture	10 11 23
DA 00.01	7	Legend & BASIX	Aurae Architecture	10 11 23
DA 01.01	7	Site Plan	Aurae Architecture	10 11 23
DA 01.03	7	Schedule of Materials and Finishes	Aurae Architecture	10 11 23
DA 01.04	7	Waste Management Plan	Aurae Architecture	10 11 23
DA 02.01	7	GA – Ground Floor	Aurae Architecture	10 11 23
DA 02.02	7	GA – First Floor	Aurae Architecture	10 11 23
DA 02.03	7	GA – Second Floor	Aurae Architecture	10 11 23
DA 02.04	7	GA – Third Floor	Aurae Architecture	10 11 23
DA 02.05	7	Roof Plan	Aurae Architecture	10 11 23
DA 03.01	7	South East (Street) Elevation	Aurae Architecture	10 11 23
DA 03.02	7	South West Elevation	Aurae Architecture	10 11 23
DA 03.03	7	North East Elevation	Aurae Architecture	10 11 23
DA 03.04	7	North West Elevation	Aurae Architecture	10 11 23
DA 04.01	7	Section 01	Aurae Architecture	10 11 23
DA 04.02	7	Section 02	Aurae Architecture	10 11 23
DA 04.03	7	Section 03	Aurae Architecture	10 11 23
DA 01 – DA 07	D	Landscape Development Application Plans	Emily Simpson Landscape Architecture	28 11 23
D01 – D07	A	Stormwater Drainage Plan Set	NB Consulting Engineers	06 12 23

**OWNER:** V Parker**APPLICANT:** V Parker C/- Aurae Architecture**AUTHOR:** Jim Davies, Executive Planner**DATE OF REPORT:** 23 January 2024**DATE LODGED:** 14 November 2022**RECOMMENDATION:** Approval

## **EXECUTIVE SUMMARY**

This development application seeks approval to demolish a dwelling house and replace it with an attached dual occupancy of 2-4 storeys, with parking for four cars.

The application is reported to the North Sydney Local Planning Panel for determination as the proposed building exceeds the 8.5m height limit by up to 2.85m or 33.5%. The application, as originally submitted, also brought into question a non-numeric development standard, whether the building looks like a dwelling house. Despite this, amendments to the design render the proposal consistent with this requirement.

The application was notified twice and at the time of writing 16 submissions had been received. Key issues of concern were:

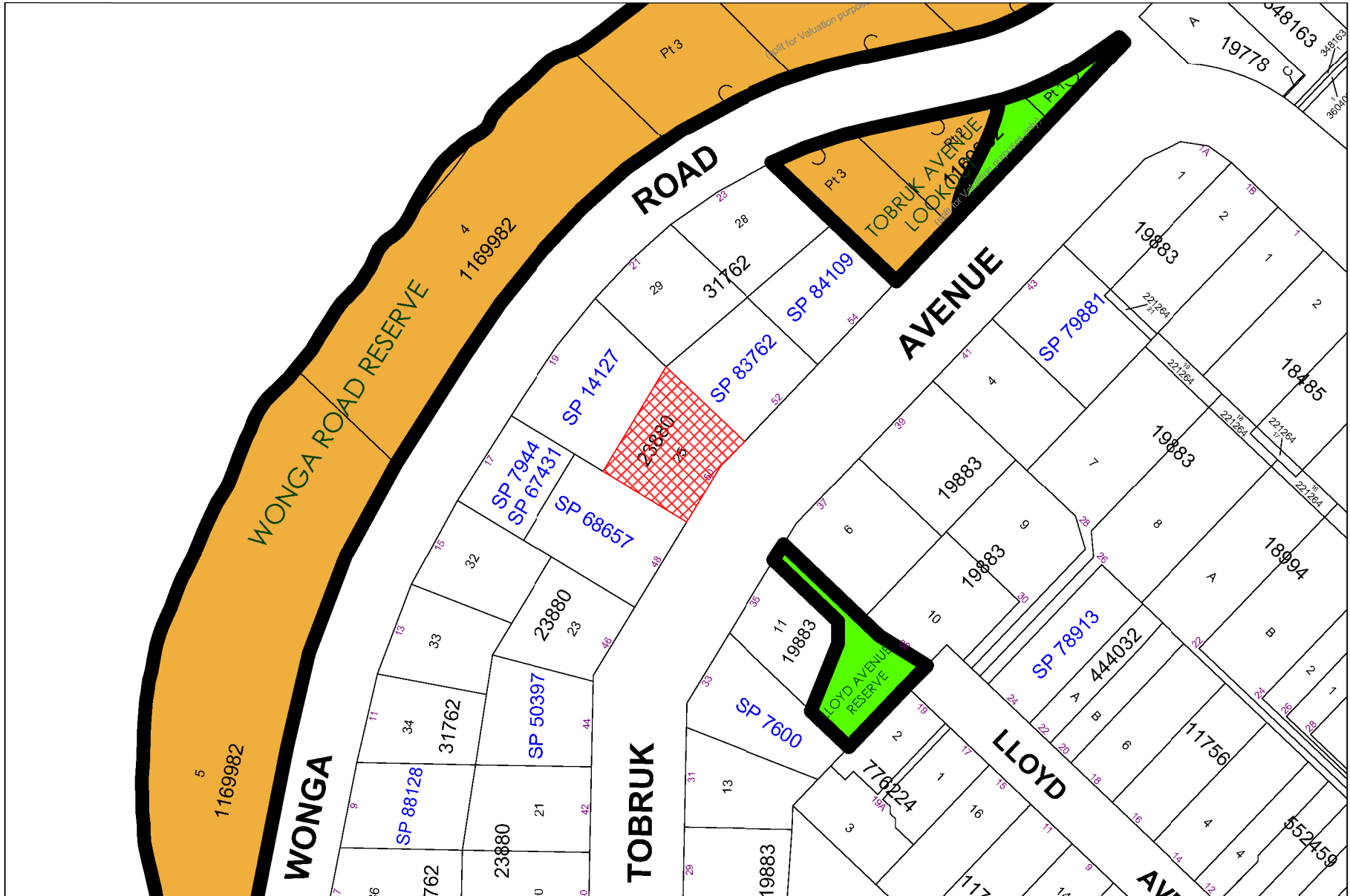
- Amenity impacts,
- Variation of height and setback standards, and
- Adequacy of drainage and sewerage infrastructure.

The report has considered these concerns in an appraisal of the application having regard to relevant State and Council planning requirements.

This assessment concludes the application is generally satisfactory, having been amended to conform with applicable planning objectives and comply with statutory requirements.

Accordingly, granting of consent is recommended.

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

## DESCRIPTION OF PROPOSAL

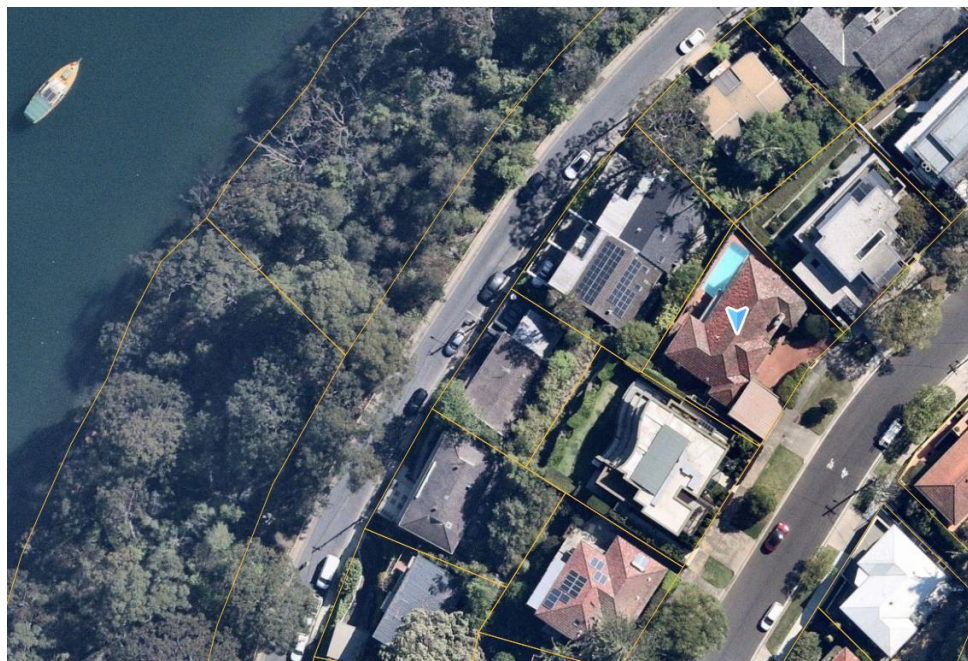
### ***Proposal***

The application seeks consent to demolish a dwelling house and to build an attached dual occupancy as illustrated below, with extracts from the architectural drawings submitted.

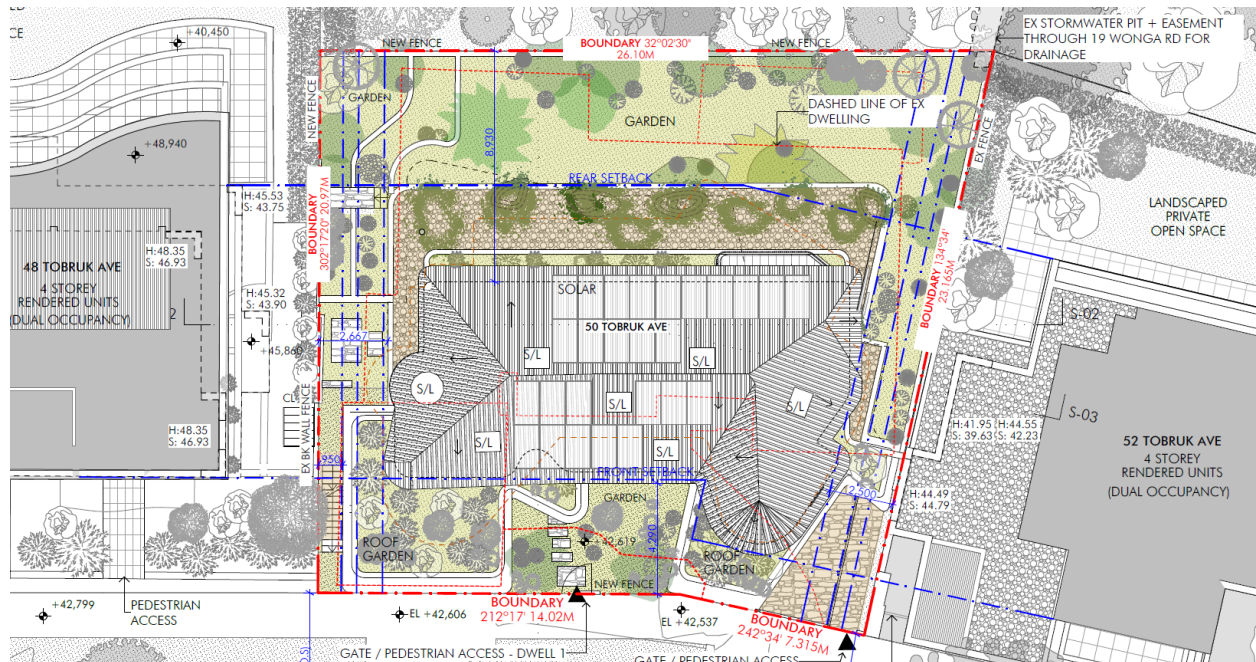
To summarise, the proposed dual-dwelling building has 4 levels, with a dwelling on the bottom two levels and another on remaining top levels. Each dwelling has 3 bedrooms, open plan living areas and a main outdoor terrace at the northern corner. Dwelling 1 has a double garage and No 2 a single garage (with semi-open gate) and an open car space. Each has independent access via stairs and lift.



***Photomontage of the proposed development (Auræ Architecture).***



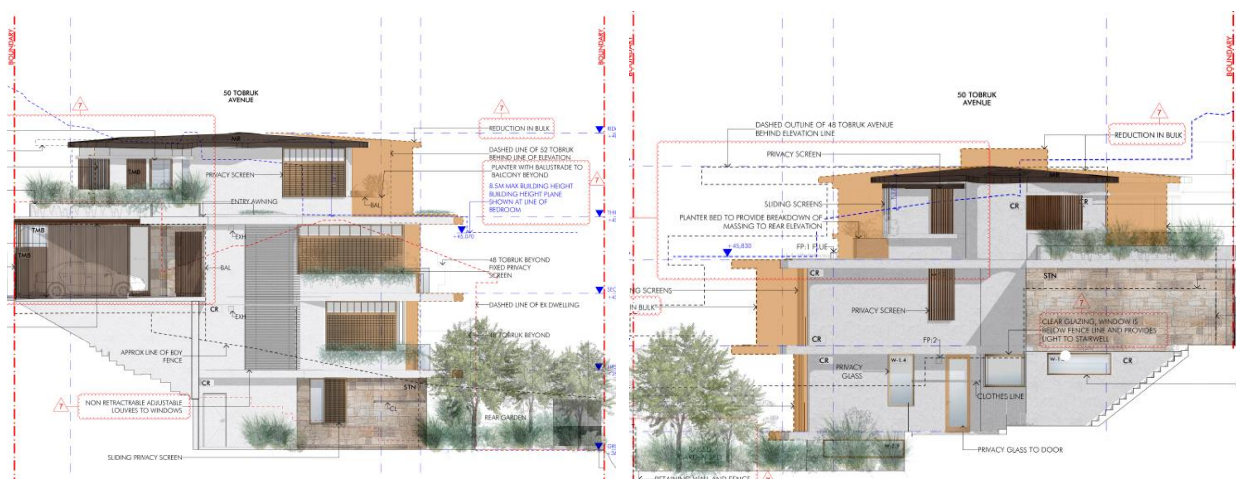
***Site (blue marker) and context (Nearmap 3 October 2023). Site coverage of site and immediate neighbours is typically high in waterfront localities. Very few buildings, if any, appear to fully comply with height, setback and site coverage/landscaped area requisites.***



**The proposed dual occupancy, showing its siting in relation to dwellings either side, to the southwest (No 48) and northeast (No 52). As shown by the broken blue line the rear setback has been established to be consistent with the rear setback of adjoining buildings (Arae Architecture).**



**At street level the building is under the maximum building height (dotted blue line). The originally proposed lift tower has been removed (tan) to reduce bulk and height, and the façade adjusted to reduce visual impact and intrusiveness of parking structures, and reduce the symmetry of the original design (Arae Architecture).**



**Side elevations indicate reduction (tan shade) of the building's size (Auræ Architecture). The smaller upper level has reduced the building's (previous) overbearing bulk and helps the building's apparent stepping with the slope. All side windows are screened for privacy.**

### Site

The site has an irregular shape with non-parallel front and rear boundaries and parallel side boundaries, and has an area of 506m<sup>2</sup> and a frontage of about 21.3m.

The site falls steeply in a north westerly direction toward Willoughby Bay and Folly Point. The subject land drains to Wonga Road via an easement that burdens the downhill neighbouring property, at 19 Wonga Road.

Improvements on the site are a dwelling house, garage and swimming pool, all to be demolished. There are no significant vegetation or other natural features on the site.

### Locality

The site is in the Northern Foreshores Neighbourhood of the North Cremorne Planning Area, of Part C Section 5.4 of the NSDCP 2013, which describes the locality thus:

- Predominantly residential accommodation,
- Falling toward Willoughby Bay with north to northwest aspects,
- Steep slopes of residential properties in the vicinity of the foreshore,
- Remnant bushland in proximity of Willoughby Bay,
- Buildings generally setback from the boundary with garages and carports built to the boundary in the Northern Foreshores Area.

The locality is characterised by large-scale, low density residential development, seeking to optimise floor space, height and access to water views. Architectural styles and ages differ from house to house, as does the number of large canopy trees. Below is a series of images showing residential buildings opposite the site in Tobruk Avenue.



*From left to right, 43, 41 and 39 Tobruk Avenue, opposite the site.*



**37 Tobruk Avenue**



***35 and 33 Tobruk Avenue. Steps at the left of the image climb to the Lloyd Avenue Road Reserve south east of the site. Heavy vegetation limits water views over the site and neighbouring dwellings from this public space.***

## **STATUTORY CONTROLS**

North Sydney Local Environmental Plan 2013 (the LEP)

- Zoning – R2 Low Density Residential
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- Conservation Area - No
- Foreshore Building Line - No

Environmental Planning & Assessment Act 1979 (the Act) - Local Development

SEPP (Resilience and Hazards) 2021

SEPP (Biodiversity and Conservation) 2021

SEPP (Building Sustainability Index: BASIX) 2004

## **POLICY CONTROLS**

North Sydney Development Control Plan 2013 (the DCP)

North Sydney Local Infrastructure Contributions Plan 2020



**RELEVANT HISTORY**

**Previous applications**

None is relevant.

**Subject Application**

<b>Date</b>	<b>Action</b>
14 November 22	Application lodged.
2 December 22	Application notified for 14 days. 10 submissions were received.
27 June 23	<p>Formal request for information sent to applicant, addressing key issues, as follows:</p> <ul style="list-style-type: none"> <li>- Additional details required to be shown on plans,</li> <li>- Further justification for proposed site coverage and landscaped area variations, or submission of a complaint proposal,</li> <li>- Clarification of information submitted with view impact analysis,</li> <li>- Further view impact analysis from dwellings west and north-west of the site,</li> <li>- Compliance with side setbacks being confirmed,</li> <li>- Amendment to show bin storage compliant with DCP requirements,</li> <li>- Clarification and refinement of the submitted clause 4.6 request to vary the building height standard.</li> <li>- Design amendments or a written request in response to the non-numeric development standard, that an attached dual occupancy should appear as a dwelling house,</li> <li>- Submission of a visual impact assessment to support the claim the development is consistent with visual amenity and built form in the locality,</li> <li>- Consideration of DCP controls of the Northern Foreshores Character Statement.</li> <li>- Further consideration required regarding key DCP controls:               <ul style="list-style-type: none"> <li>o Topography,</li> <li>o Privacy,</li> <li>o Context and built form,</li> <li>o Setbacks, and</li> <li>o Site coverage and landscaped area.</li> </ul> </li> </ul>
November – December 2023	<p>The application was amended, responding to the above request as follows (from the applicant’s covering letter, 11 November 23, amending the DA):</p> <ul style="list-style-type: none"> <li>- <i>The amended set of plans has amended the architectural form and siting by shifting the proposal towards the street and increasing the rear setback. The rear setback is now 6,085mm which is greater the rear setbacks at 48, 52 and 54 Tobruk Avenue.</i></li> <li>- <i>In order to minimise the bulk of the building the proposal complies with the side setback controls;</i></li> <li>- <i>The previously submitted office on the southeastern side of the plan has been relocated and its protrusion into the front setback has been removed allowing for a greater area of planting in order to maintain balance between built form and landscape elements;</i></li> <li>- <i>The third level gross floor area has been reduced by 20% and the plan has been shifted towards the street to minimise the non-compliance with the maximum building height, promote view sharing and permit additional solar access for 48 Tobruk Avenue as well as the properties along the opposite side of Tobruk Avenue. This amendment results in an 8,930mm setback for the third level;</i></li> <li>- <i>A new planter bed is proposed along the northwestern façade of the third level in order to minimise the bulk of the proposal as viewed from the public domain / foreshore;</i></li> <li>- <i>The previously submitted vertical stairwell element that protruded above the principal roof line has been deleted;</i></li> </ul>

	<ul style="list-style-type: none"><li>○ <i>The previously submitted two (2) double garages has been changed to; 1 X double garage clad in stone with a timber garage door, (and)</i></li><li>○ <i>1 X single garage clad in timber with a door which mimics the front fence datum + 1 X single uncovered hardstand \ with a permeable door to mimic front fence and match datum height;</i></li><li>○ <i>Entry Access and the stairwell for Dwelling 2 has been relocated in order to reduce the bulk of the proposal and provide greater setbacks to the side boundary between the subject site and 52A Tobruk Avenue. The previously proposed planter at the Dwelling 2 Entry has been removed to reduce bulk and fixed privacy screens have been added to neighbour facing windows.</i></li></ul> <p>- Additional details were added to plans as requested including:</p> <ul style="list-style-type: none"><li>○ Height planes,</li><li>○ Ground levels,</li><li>○ Greater detail shown for each dwelling,</li><li>○ Private open space,</li><li>○ Site coverage reduced to 46.9%,</li><li>○ Increased rear setback, generally in alignment with an adjoining dwelling,</li><li>○ Compliance with side setbacks,</li><li>○ Updated SEE and 4.6 request,</li><li>○ Integration of bin storage in each garage</li></ul> <p>- Design amendments to make the building look like a house:</p> <ul style="list-style-type: none"><li>○ <i>The entry door for Dwelling 2 is not visible from the street and therefore the entry door to Dwelling 1 situated centrally along the front elevation appears as the primary pedestrian entrance;</i></li><li>○ <i>The previously submitted symmetrical green roofs have changed to be asymmetrical in order to appear more like a single dwelling house from the street;</i></li><li>○ <i>The previously submitted double garage for dwelling 2 has been amended to a single garage with hardstand adjacent. This establishes an asymmetrical design and decreases bulk at the street front;</i></li><li>○ <i>The garaging for the two dwellings is designed in different materiality with different treatment on the doors. The dwelling 1 garage is primarily stone clad with a solid timber garage door, whereas the dwelling 2 garage is designed to appear as extension of the fence with a datum of dense battened timber cladding to the level of the front fence with more openly space battens above;</i></li><li>○ <i>The Dwelling 2 single garage is clad in timber rather than stone to present as a landscaped element.</i></li></ul> <p>- Amendments to improve amenity with and or neighbours:</p> <ul style="list-style-type: none"><li>○ <i>All windows on the subject site that are facing the side boundaries have privacy screens or privacy glazing aside from the dwelling 2 ground floor window of the rumpus to dwelling 2 which is only a highlight window, the head of which is well below the fence level;</i></li><li>○ <i>the dwelling 1 stairwell window at first floor level which is at floor level and also below the fence line;</i></li><li>○ <i>Dwelling 1 plant room highlight window is also below fence line.</i></li><li>○ <i>View analysis diagrams have been provided as part of the amended submission and analysed as part of the amended SoEE. We note that as per our email on Thursday, December 15, 2022, there was dialogue between the owners and the neighbours at 48A and 48B Tobruk Avenue with regards to changes that were amenable to both neighbours and amended plans were submitted. The current submission further reduces bulk and deletes the protrusion of the staircase element above the roof plane in order to provide greater amenity to the southern neighbour (48 Tobruk).</i></li><li>○ <i>In response to requests from 35 and 33 Tobruk Avenue, the bulk of the third level has been shifted towards the street and the previously submitted staircase element that protruded above the roof line has been deleted from</i></li></ul>
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	<p><i>the proposal in order to reduce the bulk and facilitate views for both the neighbours and the public domain. As demonstrated in the view analysis these amendments result in a reduced view impact for these neighbours when compared to a compliant envelope.</i></p> <ul style="list-style-type: none"> <li>○ <i>Refer to the amended shadow diagrams and views from the sun submitted. The overshadowing has been addressed in the amended SoEE. As demonstrated in the shadow diagrams, 48 Tobruk maintains in excess of 3 hours solar access between 9am and 3pm on June 2, and there is no overshadowing to 52 Tobruk Avenue between 9am and 3pm on both June 21 and Sep/Mar 21. Claims made in submissions that the proposal causes overshadowing are unsubstantiated given the proposal's compliance with Council controls.</i></li> <li>○ <i>Views from the sun (DA.10.10 and DA.10.05) clearly demonstrate that the proposal has no overshadowing impacts on 19 Wonga Road as claimed in the submission. Below we have shown a view from the sun on December 21 at 9am which demonstrates a decrease in overshadowing onto 19 Wonga Road (unit 2) when compared to the existing.</i></li> </ul> <p>- Other amendments made in response to submissions include:</p> <ul style="list-style-type: none"> <li>○ Reduction of overlooking to the rear,</li> <li>○ Fixed privacy screens,</li> <li>○ Reducing bulk to sides and the front of the building,</li> <li>○ Removal of the sewing room and relocation of the office in unit 1, and</li> <li>○ Screening of windows.</li> </ul>
<p>8 December 2023 - 19 January 2024</p>	<p>The amended application was notified for an extended period over the Christmas/New Year holiday period. 6 additional submissions were received, all but one being from submitters regarding the original application.</p>
<p>11 December 2023</p>	<p>Site inspection.</p>

**INTERNAL 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, except advice was obtained regarding the original application including several habitable rooms not satisfying BCA requirements for natural light and ventilation. This has been corrected in the amended plans submitted.

A comprehensive assessment is still required, 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**

Council's development engineer has considered the application and has recommended conditions addressing construction traffic management, parking and access, stormwater management, sediment and erosion controls, excavation and retaining walls.

**TRAFFIC & TRANSPORT**

The application was referred to the traffic and transport engineers, who made no comments or required any conditions.

## LANDSCAPING

Council's landscape development officer has considered the application and recommends conditions regarding:

- security and physical means of protecting a public tree,
- approval to remove trees from the site,
- implementation of the submitted landscaping plan.

## WASTE MANAGEMENT

Council's waste management officer advised the facilities in this proposal would be acceptable provided:

- A temporary bin holding area being provided for collection off the street and within 2 meters of the street alignment. The proposed holding bay must fit the minimum 1 x 80L and 1 x 140L bins.
- The proposed development adhering to the NSC DCP 2013 Section 19 - Waste Minimisation and Management and Part B: Section 1 - Residential Development requirements.
- The following standard conditions being applied to this proposed development: **Condition C19**.

### ***Planner's comment:***

Conditions are recommended, as above, however the first point is not conditioned as a dual occupancy is of a scale where bins can be taken to the kerb by residents for collection. Additionally, **Condition C19** is inappropriate for the proposal, as it is intended to apply to larger scaled developments.

## EXTERNAL REFERRALS

None required.

## SUBMISSIONS

### **Original proposal**

Council notified adjoining properties and the Willoughby Bay Precinct Committee of the proposed development seeking comment for 14 days, between 2 December 2022 and 16 December 2022. Council received 10 submissions. The matters raised in the submissions are listed below:

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

### **Basis of Submissions – 1<sup>st</sup> Notification period, original DA.**

- Non-compliance with side and rear setbacks. The proposed rear setback does not allow space for building separation (privacy), landscaping and relief of the building's bulk and scale.
- The building is not stepped to achieve a two-storey scale.
- Non-compliance with building height and the excessive number of storeys.
- Non-compliance with site coverage and landscaped area requirements.
- New drainage required to manage stormwater impacts on downstream properties, particularly during storms.
- Identify adequate sewerage with Sydney Water.

- Visual privacy, fixed treatments should be used to minimise overlooking of dwellings to the rear.
- Dense landscaping along the rear boundary is required, at least 3m to 5m high.
- Neighbours request consultation regarding common boundary treatments (fences, walls), noting retaining structures on the boundary are in poor condition. The application does not address this issue.
- Inconsistency with objectives of the zone and the building height standard.
- The proposed dual occupancy does not appear as a dwelling house:
  - There are two double garages presenting to Tobruk Avenue, parking for 4 vehicles is not characteristic of a dwelling house,
  - So too are three gates in the front fence not characteristic of a house, and
  - Neither is a building of 4 levels characteristic, when viewed from each side.
- Adverse impacts on neighbour-amenity are caused by "...the proposal's non-compliance with several core planning controls."
- View loss is caused by excessive height, non-compliant setbacks and excessive tree canopy.
- Loss of solar access and visual bulkiness is caused by excessive height and non-compliant setback.
- The request to vary the height standard is inadequate, not meeting objectives of the standard, because:
  - The building does not step with the landform,
  - Views are not shared,
  - The design reduces access to sunlight,
  - Unacceptable privacy results,
  - Four storeys are proposed, not two.
- The opposing 'wings' of the building's form indicate two dwellings, not one.
- One of two separate entries are 'hidden' causing lack of safety and security, and poor surveillance from the street.
- The application is inconsistent with DCP controls for:
  - Form, massing and scale,
  - Built form character,
  - Front fences, and
  - Vehicle access and car parking.
- Submitted information does not properly address geotechnical impacts, conditions should be imposed to satisfy TfNSW and Sydney Water specifications, a minimum number of boreholes and a groundwater monitoring well be established, no rock hammering be used and minimum vibration limits be adopted and monitored.
- The submitted view impact analysis is inadequate.
- Approval would not be in the public interest, due to non-compliance with numerous controls, excessive bulk and scale and incompatibility with existing and desired local character.
- Built form should be reduced so the development complies with building height, setbacks and site coverage. Excavation should be reduced or limited near side boundaries, garages be replaced by car ports and front fences be 1.0m high.
- The statement of environmental effects contains misleading statements re view impacts.
- View impacts could be reduced by lowering the roof line and reducing bulky structure on north side of building.
- Proposed large trees will overshadow neighbour's garden and affect views Middle Harbour.

### **Amended Proposal**

The applicant submitted amended plans and the application was renotified to adjoining properties, previous submitters and the Willoughby Bay Precinct Committee, from 8 December 2023 until 19 January 2024. Council received 6 submissions (5 from previous submitters). Matters of concern not raised during the first notification period are summarised below.

### **Basis of Submissions – 2<sup>nd</sup> Notification Period – amended DA**

- Privacy – between the proposed development and the dwelling at 52 Tobruk Avenue. The 'lattice' screens on the side of the building should be replaced with vertical screens angled to prevent looking into neighbouring residences.\*
- The building remains in excess of the 8.5m height maximum and will still have unacceptable view impacts.\*\*
- The amended landscaping plan was not available to previous submitters.\*\*\*

- \*As discussed in the DCP assessment table the proposed screens will provide for acceptable levels of privacy.
- \*\* The leading edge (the ridge of the roof as proposed, being the closest and highest part of the building to the submitter's home at No 35 Tobruk) is below the height standard, whereas the submitter claims the height is exceeded by the roof. The section of the building which exceeds the standard is on the 'low' side of the site and will not be visible from the submitter's residence. As discussed in relation to views following the DCP table (including an extract showing the view impacts from No 35) and in relation to the revised clause 4.6 submission, the application has acceptable view impacts from neighbouring dwellings.
- \*\*\* An amended landscape plan was submitted 4 December 2023, which was posted to the DA Tracker on the same date, four days before the second notification commenced.

## **CONSIDERATION**

The relevant matters for consideration under Section 4.15 of the Act, are assessed under the following headings:

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

#### **Development in the Sydney Harbour Catchment**

The land to be developed is in the Harbour Foreshores and Waterways Area as defined by this policy.

#### **Part 6.2 Development in regulated catchments**

##### **Division 2 Controls on development generally**

The following provisions apply to the site, The proposed development is not inconsistent with those relevant.

6.6 Water quality and quantity – a satisfactory erosion and sediment control plan is provided.

6.7 Aquatic ecology - no marine fauna or flora will be directly impacted.

6.8 Flooding – the locality is not flood prone.

6.9 Recreation and public access – waterfront access to the shore and Willoughby Bay are not affected.

6.10 Total Catchment Management – this provision only relates to large-scaled development that could impact a catchment.

6.11 Land within 100m of a natural waterbody – the site is about 60m from the bay. However the proposal has no direct effects, as the site does not abut waterfront land and there is no material conflict of land uses, as land in the locality is used for residential, public recreation and conservation purposes, which, in planning terms, are compatible with one another.

#### **Part 6.3 Foreshores and waterways area (FAWA)**

##### **Division 3 Development in the FAWA**

###### **6.28 General**

- (1) The consent authority must consider these principles when deciding whether to grant approval:

- (i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,*
- (ii) the public good has precedence over the private good,*
- (iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,*
- (b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,*
- (c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*
- (d) whether the development promotes water-dependent land uses over other land uses,*
- (e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,*
- (f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,*
- (h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.*

**Evaluation:** The proposed development is consistent with these principles, as follows:

- (a) The 'public good' inherent to the harbour is not compromised,*
- (b) Use of the FAWA by watercraft is not affected,*
- (c) Commercial and recreational uses are unaffected,*
- (d) Water-dependent land uses are not promoted,*
- (e) The proposal is not at risk from rising sea levels,*
- (f) The site is above the intertidal zone,*
- (g) Aquatic vegetation is not directly affected by the proposal, and*
- (h) Environmental qualities of watercourses and habitats are not directly impacted.*

6.28 (2) The consent authority must be satisfied that:

- (a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,*
- (b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,*
- (c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,*
- (d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*
- (e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*
  - (i) the Foreshores and Waterways Area, and*
  - (ii) public places, landmarks and heritage items.*

**Evaluation:** The consent authority may be satisfied the proposal is consistent with these criteria, in that:

- (a) The site overlooks a part of the harbour that is not a 'working' waterway, it is a waterway primarily of high visual quality and recreational value,
- (b) The locality is solely residential, with land reserved for public recreation and conservation purposes,
- (c) The proposed development is residential in nature,
- (d) The site is not on the foreshore,
- (e) The proposal is considered to have a positive impact the waterway's and surround's visual qualities and views from within its catchment and public places, landmarks and heritage items.

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

Past use of the site for residential purposes is unlikely to have caused contamination to an extent that would require remediation. Neither is any change to the current use proposed, and further investigation or remediation are unnecessary. The application can be approved, as applicable requirements of the policy have been considered.

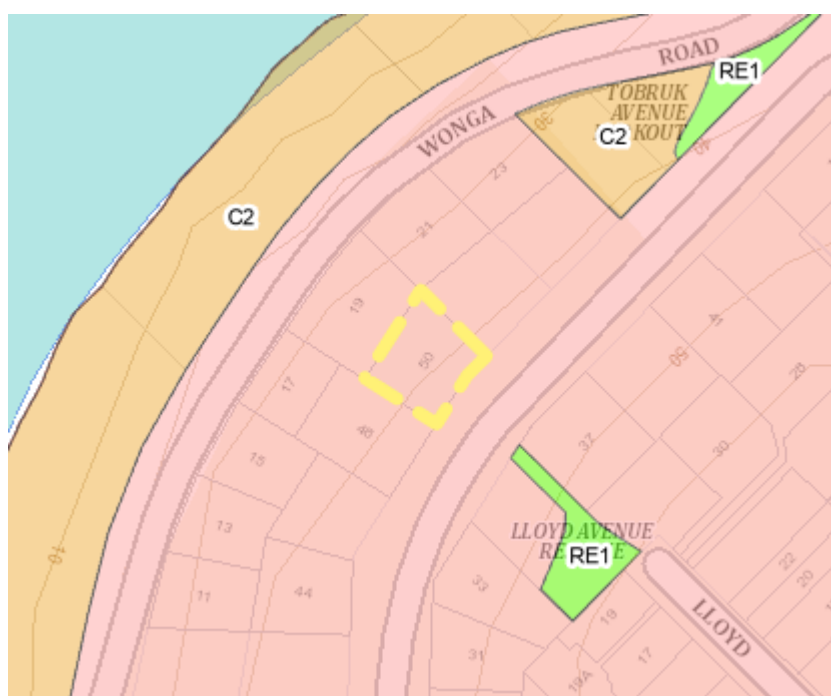
### **SEPP (Building Sustainability Index: BASIX) 2004**

A valid BASIX Certificate No. 1346418M\_03, 20 December 2023 for multi-dwellings has been submitted with the application to satisfy the aims of the SEPP.

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

#### **Permissibility**

The site is zoned R2 Low Density Residential. Attached dual occupancies are permissible with consent in this zone.



**Site (yellow edge) with zoning of site and surrounds, R2 Low Density Residential (Pink), RE1 Public Recreation (Green) and C2 Conservation (Tan) (eplanning spatial viewer).**



## Objectives of the zone

R2 zone objectives are:

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

The proposal is consistent with relevant zone objectives, because:

- The development helps meet housing needs, doubling housing density on the site,
- Non-residential uses are not proposed,
- A dual occupancy is proposed, and does not compromise local amenity, or local natural or cultural heritage, and
- The proposal will achieve and maintain a high level of residential amenity, consistent with other similarly sized and sited developments in the locality.

## Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area - #m <sup>2</sup>	Proposed	Control	Complies
Clause 4.1 – Subdivision lot size			N/A
Clause 4.3 – Heights of Building	11.35m	8.5m	No
Clause 4.4 – Floor Space Ratio			N/A
Clause 4.4a – Non-residential FSR			N/A
Clause 6.6 Dual Occupancy:			
• Appearance as a dwelling house		Non-numeric standard.	Yes, like others in locality.
• Level of attachment to common wall (80%) or common floor to ceiling (80%)	>80% common floor between dwellings	80%	Yes
• Minimum lot size	506m <sup>2</sup>	450m <sup>2</sup>	Yes

## Height of Building

The maximum height of the proposal measured in accordance with the building height definition of the LEP is 11.35m, which exceeds the development standard.

Because the application was made before 1 November 2023, the application has been considered with regard to clause 4.6 as it was before the amendments to the provision were introduced from this date.

#### **Clause 4.6 – Request to contravene the height of building development standard**

The applicant has submitted a written request (attachment 3) pursuant to Clause 4.6 of NSLEP 2013.

- Maximum permitted height: 8.5m.
- Proposed maximum height: 11.35m.
- Proposed contravention: 2.85m or 33.5%.

An approximate reduction of 0.5m building height has been made to arrive at the proposed height.

#### **Summary of the applicant's request (quotes from the applicant are *italicised*):**

##### **Reasons compliance is unreasonable or unnecessary**

- *The proposal appears to step from two storeys at the upper part of the site to 4 storeys at the lower part, with the lowest 2 levels not visible from the street. The physical stepping of the building is not as pronounced except in the elevations where it does visually step from 2 to 4 storeys.*
- *The existing 2 storey dwelling is excavated into the hillside and the proposal extends this excavation towards the street. Utilising this space reduces the visible bulk of the building.*
- *The requested variation to the maximum building height will not impact on existing public views and the impacts on private views are not unreasonable as detailed in the view impact assessment in the submitted Revised Statement of Environmental Effects (SEE). Whilst there is some view loss that would result from the proposal, it is no greater and in most cases less, than a building which fully complied with the controls. The proposal is sensitively designed, providing front and side setbacks that are, for the most part, greater than required, (which) allow view corridors alongside boundaries to be maintained to a greater degree.*
- At least 3 hours (up to 4) of midwinter sun to the southern neighbour (48 Tobruk) is maintained.
- Built form is compatible with that in the locality, noting there are several buildings of 4 storeys in the locality, some of greater bulk than the proposal. Some exceed the building height control by some 5.0m.
- Council and this Panel have previously supported a height breach in similar circumstances, at 18 Tobruk Avenue, where previous excavation distorts height measurement as defined by the LEP, with abrupt changes in levels resulting in buildings having up to 4 levels with part of the top level exceeding the height standard.
- Privacy is maintained, as discussed in the SEE.
- The scale, density and character proposed is compatible with that of the neighbourhood.

- *The built form of mainly 1-2 storeys cannot be 'maintained' as this is not the case in this area. Most buildings are in excess of 2 storeys in the immediate vicinity, albeit those on the low side of the street are not visibly higher when viewed from the street. However, the proposal is consistent with that characteristic. These comments are consistent with Council staff's conclusion in the assessment report from No 18 Tobruk Avenue.\**
- A two storey building would be incompatible with its taller and larger neighbours, thus thwarting the objective promoting compatibility of development.

\*The application at 18 Tobruk Avenue was approved by the Panel with a 5.0m breach of the height standard on 6 July 2022. As with the subject application, the approved development was similar in bulk and scale as surrounding development, up to 4 storeys, and was deemed to have acceptable environmental and amenity impacts.

#### Environmental planning grounds to justify non-compliance

- *The 8.5m control generally allows 2 storey development, however the character of the area is predominantly 3-4 storey development and this is generally due to the relatively steeply sloping nature of the land.*
- *The non-compliance is exacerbated as the lowest level of the existing building on the site is excavated below the 'natural' fall of the land. Being measured to this 'existing' level, makes the proposed height higher than it would otherwise be.*
- *As noted above, the proposal does not have any unreasonable adverse amenity impacts on surrounding development in relation to overshadowing, loss of privacy, view impacts or visual impacts.*

#### Clause 4.6 evaluation

Cl 4.6 Criteria for approval breaching the development standard	Response
1. Is the provision for which contravention is sought a development standard (Cl. 4.6 (2)), which is not excluded from being varied Cl. 4.6 (8)?	Yes, and is not excluded from being varied, subject to satisfying remaining criteria.
2. Has the applicant's request demonstrated (Cl. 4.6 (3)):	
a. that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and	Yes, the written request is sound and concurred with.
b. That there are sufficient environmental planning grounds to justify the non-compliance?	Yes, as summarised above.
3. Is the development in the public interest, despite non-compliance with the development standard, as the development is consistent with (Cl. 4.6 (4) (a)):	
a. applicable objectives of the development standard, and	Yes, as discussed below.
b. applicable objectives of the zoning of the land, applicable to the development?	Yes, see assessment above, in relation to zoning.
4. As a delegate of the Planning Secretary, have the following matters been considered in deciding to grant concurrence (Cl. 4.6 (5)):	
a. non-compliance with the development standard raising any issues of regional or State planning significance,	No, proposed variation of the standard is of local significance only.

b. any public benefit from the development application maintaining the development standard, and	No, as the development otherwise complies with applicable standards and requirements of EPIs and the NSDCP.
c. Consideration of other matters in granting concurrence?	There are no other matters to consider.

### **Consistency with building height standard objectives**

Consistency of the proposed development with the building height standard's objectives is discussed below.

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

**Consistency:** Addressed satisfactorily by the clause 4.6 request.

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

**Consistency:** Views are suitably shared, amendments to the proposal reducing height and bulk of the building's roof and top level, while also considering prevailing built form of the locality .

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

**Consistency:** Shadow and solar view diagrams demonstrate satisfactory impacts.

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

**Consistency:** As shown in the architectural drawings, privacy screening, window location and glazing type to side elevations above fence height reasonably maintain privacy for occupants of the proposal and neighbouring premises. Suitable measures are also deployed to maintain reasonable privacy with neighbours north of and below the site.

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

**Consistency:** This objective has been satisfactorily addressed in the clause 4.6 request.

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

**Consistency:** As above for objective (e).

- (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 C4 Environmental Living.*

**Consistency:** As above for objective (e).

### **Consistency with R2 zone objectives**

Consistency of the proposed development with the building height standard's objectives has been outlined.

## **Earthworks**

The proposal involves excavation, and an assessment has been carried out per cl. 6.10 of the LEP. Provisions of this clause require Council to consider the following, before granting consent:

- Drainage patterns and soil stability,
- Natural features and vegetation on the site and in the locality,
- The effect of the development on likely future use of the land,
- The quality of material to be used as fill or proposed to be excavated,
- The effect of the development on the effect of adjoining properties,
- The source of fill and the destination of any excavated material,
- The likelihood of disturbing Aboriginal relics,
- Proximity to and potential for adversely impacting a water course or environmental sensitive area, and
- Appropriate measures to avoid, minimise or mitigate potential impacts.

A geotechnical report has been submitted with the amended application which suitably addresses these matters, with the exception of those relating to fill and spoil (addressed under waste management and environmental protection legislation) and the likelihood of finding of archaeological artefacts of cultural significance to First Nations people.

The site is predominately natural sandstone with some fill expected (results of preliminary testing). Advice is given regarding the need for dilapidation reports and risks associated with using certain machinery to remove hard rock. The scope of the proposal does not require a comprehensive analysis and assessment of the material to be removed.

The probability of discovering Aboriginal relics is low, despite proximity to Middle Harbour, due to the nature of existing improvements having caused significant site disturbance.

Subject to recommended conditions, the geotechnical aspects of the proposal have been adequately considered.

## **Dual Occupancies**

Earlier in this report the table summarising compliance with applicable LEP standards indicated the proposal satisfies standards for dual occupancy development, for minimum lot size, being sufficiently attached and for appearing as a dwelling house.

Amendments have been made, so the building will appear more like a dwelling house, compared with the design as originally submitted, which arguably may not have been so characterised.

Features of the design which deliver a satisfactory result include:

- Removing the symmetry of the original design which proposed two similar wings either side of the building,
- Removal of one double garage and replacing it with a single garage and an open parking space,
- The garages being finished in different, yet complementary, materials,
- Front fencing design subsuming the pedestrian gates and the second garage gate, by using the same materials, and
- Diversifying façade articulation via the use of stone and timber finishes.
-

**NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013**

The proposal has been assessed in accordance with applicable DCP provisions:

<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development</b>		
	<b>Complies</b>	<b>Comments</b>
<b>1.2 Social Amenity</b>		
<b>1.2.1 Population Mix</b>	Yes	The proposal replaces an existing dwelling with an attached dual occupancy.
<b>1.2.2 Maintaining Residential Accommodation</b>	Yes	The development increases housing density on the site.
<b>1.2.3 Affordable Housing</b>	N/A	
<b>1.2.4 Housing for Seniors/Persons with disability</b>	N/A	
<b>1.3 Environmental Criteria</b>		
<b>1.3.1 Topography</b> Objectives seek to:  <ul style="list-style-type: none"> <li>- Maintain natural topography and landform,</li> <li>- Retain vegetation and trees,</li> <li>- Minimise negative impact on neighbour amenity,</li> <li>- Not disturb local geotechnical and hydrogeological characteristics, and</li> <li>- Minimise effects of adjoining transport infrastructure.</li> </ul>	On merit	The amended development is compliant with side setbacks.  Due to excavation for the extant dwelling, floor levels proposed are above current ground levels.  Comparing sections with the survey plan, levels are similar indicating only minor excavation is required. Excavation is mainly proposed to extend the already excavated area, to shift the building's footprint closer to the street and increase the setback to the rear.  Preliminary geotechnical investigation has occurred, and standard conditions regarding earthworks and dilapidation reports for adjoining development and public infrastructure are recommended.
<b>1.3.2 Bushland</b>	Yes	The site is in a "Bushland Buffer Area A" and the proposal is consistent with the DCP's Section 15 requirements, for landscaping, stormwater management and erosion and sediment control.
<b>1.3.3 Bush Fire Prone Land</b>	N/A	
<b>1.3.4 Foreshore Frontage</b>	N/A	
<b>1.3.6 Views</b>	Yes	A view analysis is presented below this table. The effect of trees proposed near the boundary of the site and the neighbouring dwellings at No 48 are discussed immediately below with examination of solar access.
<b>1.3.7 Solar Access</b>	Yes	See assessment below table.
<b>1.3.8 Acoustic Privacy</b>	Yes	Two dwellings replace an existing dwelling in a low-density residential setting. Noise in addition to that expected from typical domestic activities is not expected to occur.
<b>1.3.9 Vibration</b>	N/A	
<b>1.3.10 Visual Privacy</b> <ul style="list-style-type: none"> <li>• Roof top terraces are only permitted under specific circumstances, and if appropriate,</li> <li>• Must be the smaller of the lesser of either 50% of the floor area below or 18m<sup>2</sup>.</li> </ul>	Yes	Visual privacy appears to be acceptable, taking into consideration the use of various screen types on either side of the proposed building that are visible from openings of neighbouring buildings.

		<p>A submission was received from No 52 requesting the 'lattice' screening be replaced with suitably angled, fixed vertical louvres. The change is unnecessary, the proposed screens, according to the materials board appear to be opaque, and will maintain privacy between the proposed and neighbouring dwellings.</p> <p>Rooftop terracing is not proposed.</p>								
<b>1.4 Quality built form</b>										
<b>1.4.1 Context</b>	Yes	The built form proposed is similar to that of extant buildings in the locality. Reduction of the top level's floor area as amended acceptably reduces the degree of the building height's breach, and hence the bulk of the building. Impacts on local amenity are improved as a result.								
<b>1.4.2 Subdivision Pattern</b>	N/A									
<b>1.4.3 Streetscape</b>	Yes	The proposal's appearance, bulk and scale are consistent with the streetscape. In the site's environs, there are several dual occupancies of two or more storeys, with double garages for each dwelling.								
<b>1.4.4 Laneways</b>	N/A									
<b>1.4.5 Siting</b>	Yes by condition	Siting of the building is acceptable, subject to satisfactory establishment of and justification for the non-compliant rear setback and excess site coverage.								
<b>1.4.6 Setback – Side</b>	Yes.	<table border="1"> <thead> <tr> <th>Control</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Ground floor (Up to 4m) 900mm</td> <td>Yes</td> </tr> <tr> <td>1<sup>st</sup> floor (up to 7m) 1.5m</td> <td>Yes</td> </tr> <tr> <td>2<sup>nd</sup> &amp; 3<sup>rd</sup> floors (Greater than 7m)</td> <td>Yes</td> </tr> </tbody> </table> <p>All side setbacks are at least 2.5m, compliant for a building with wall heights exceeding 7.0m.</p>	Control	Compliance	Ground floor (Up to 4m) 900mm	Yes	1 <sup>st</sup> floor (up to 7m) 1.5m	Yes	2 <sup>nd</sup> & 3 <sup>rd</sup> floors (Greater than 7m)	Yes
Control	Compliance									
Ground floor (Up to 4m) 900mm	Yes									
1 <sup>st</sup> floor (up to 7m) 1.5m	Yes									
2 <sup>nd</sup> & 3 <sup>rd</sup> floors (Greater than 7m)	Yes									
<b>P1 Front setback</b> <ul style="list-style-type: none"> <li>To match adjoining properties</li> </ul> <b>P5 Rear Setback – Rear</b> <ul style="list-style-type: none"> <li>10.0m (Part C)</li> <li>To match adjoining properties</li> </ul>	<p>Front: On merit.</p> <p>Rear: On merit</p>	<p><b>Front setback</b></p> <p>The proposed setbacks of the garage, car port and hardstand are less imposing than other car accommodation either side of Tobruk Avenue, including the double garages near the street boundary next door at 52A and 52B Tobruk Avenue. Proposed vehicle parking is compatible with the locality.</p> <p><b>Rear setback</b></p> <p>8.93m is proposed, the rear setback has been established considering variable lot size and shape, and alignment with dwellings either side.</p> <p>The proposed building has an equivalent setback with No 52 and sits behind the bulk of the terraces at No 48, that protrude towards the water, as shown by the Site Plan in the architectural drawings.</p> <p>The original application proposed a rear setback of 7.1m which was unacceptable, regarding the standard's objectives, particularly when considered with proposed variations to site coverage and landscaped area.</p>								

		Although the proposal does not comply with the rear 10m setback required, the outcome is a vast improvement on the existing development's rear boundary setback, which is less than 1.0m from the boundary. The setback also enables reasonable view sharing with residences either side and provides adequate separation (vertical and horizontal) for visual privacy with occupants of the residence downslope of the site, at 19 Wonga Road.
<b>1.4.7 Form Massing Scale</b> <ul style="list-style-type: none"> <li>Floor to ceiling height 2.7m</li> </ul>	Yes.	As shown shaded tan in the architectural plans, sections of the building have been removed or reduced to reduce the bulk of the building. When also considering the trimming of the top floor to lessen the degree of the height control breach, the resulting built form and mass is suited to the site and locality, while maintaining neighbours' amenity.
<b>1.4.8 Built Form Character</b>	Yes.	As above.
<b>1.4.9 Dwelling Entry</b>	Yes.	Dwelling entries offer a suitable sense of address and security for occupants, while achieving the statutory requisite to minimise appearance of the duplex design.
<b>1.4.10 Roofs</b>	On merit.	The proposed flat roof is acceptable, to ameliorate impact on views from properties across Tobruk Avenue from the site.
<b>1.4.11 Dormers</b>	N/A	
<b>1.4.12 Materials</b>	Yes.	Materials are of a contemporary style and substance compatible with materials and colours used in other buildings in the area.
<b>1.4.13 Balconies – Apartments</b>	N/A	
<b>1.4.14 Front Fences</b> <ul style="list-style-type: none"> <li>No greater than 1m from front building line &amp; along front boundary</li> <li>Transparent fences no greater than 1.5m with 50% solid construction</li> </ul>	Yes.	The front fence and gates are of timber and masonry construction, offering an ability to see through them. They are about 1.5m high. Other residences have fences of a similar height which complement garaging built to the boundary, either side of the street. On the southeastern (high) side of the street, fences are less common and 3m to 4m high retaining walls are used instead, with garage doors accommodated within those walls, often at the boundary.
<b>1.5 Quality Urban Environment</b>		
<b>1.5.1 High Quality Residential Accommodation</b>	N/A	Applies to multi dwelling housing and residential flat buildings.
<b>1.5.2 Lightwells &amp; Ventilation</b>	N/A	As above.
<b>1.5.3 Safety and Security</b>	N/A	As above.
<b>1.5.4 Vehicle Access and Parking</b>	On merit	Vehicle parking is satisfactory, as discussed.
<b>1.5.5 Site Coverage</b>  <b>Objectives</b> <ul style="list-style-type: none"> <li>Eliminate overdevelopment</li> <li>Promote desired character</li> <li>Control density</li> <li>Allow for adequate landscaping</li> </ul>	On merit	See table below.



<b>1.5.6 Landscape Area</b>	See table	<b>Control</b>	<b>Required %</b>	<b>Proposed %</b>	<b>Compliance</b>
		<b>Site coverage (max)</b>	45	47	On merit
		<b>Landscaped area (min)</b>	40	41	Yes
		<b>Unbuilt-upon area (max)</b>	15	12	Yes
<b>Objectives</b> <ul style="list-style-type: none"> <li>- Usable open space</li> <li>- Buffer between properties</li> <li>- Maximise absorption of rain</li> <li>- Promote plant cover including trees to increase canopy cover</li> <li>- Minimise site disturbance</li> <li>- Improve streetscape and amenity</li> <li>- Promote biodiversity</li> </ul>		<p>The existing dwelling has</p> <ul style="list-style-type: none"> <li>- Site coverage of 61%</li> <li>- Landscaped area of 8%</li> <li>- Unbuilt upon area of 30%</li> </ul> <p>The original application proposed:</p> <ul style="list-style-type: none"> <li>- Site coverage of 51%</li> <li>- Landscaped area of 43%</li> <li>- Unbuilt upon area of 6%</li> </ul> <p>By reducing the building's footprint and fine-tuning landscaped and unbuilt upon areas, the degree of non-compliance with site coverage is acceptable, as the key objectives of these controls are satisfied, complemented by compliant side setbacks and increasing the rear setback to better-align with adjacent properties, while improving amenity of neighbours and the development's occupants alike.</p>			
<b>1.5.7 Landscaping</b>	Yes	The Landscape Development Officer endorsed the submitted landscape plan, which is recommended to be stamped as included in the consent.			
<b>1.5.8 Front Gardens</b>	Yes	Despite the land devoted to parking forward of the main building line, there is sufficient area for landscaping the front garden, which will be compatible with other landscaping in the streetscape.			
<b>1.5.9 Private and Communal Open Space</b>	Yes	Large terraces for each dwelling and the rear yard offer adequate open space for each dwelling.			
<b>1.5.10 Swimming Pools</b>	N/A				
<b>1.5.11 Tennis Courts</b>	N/A				
<b>1.5.12 Garbage Storage</b>	Yes	Garbage bin storage has been allocated on the plans.			
<b>1.5.13 Site Facilities</b>	N/A				
<b>1.5.14 Servicing of new lots</b>	N/A				
<b>1.6 Efficient Use of Resources</b>					
<b>1.6.1 Energy Efficiency</b>	Yes	A valid BASIX certificate has been submitted with the application and BASIX commitments included on the plans. These cover applicable provisions of the DCP.			
<b>1.6.2 Passive Solar Design</b>					
<b>1.6.3 Thermal Mass and Insulation</b>					
<b>1.6.4 Natural Ventilation</b>					
<b>1.6.6 Hot Water Systems</b>					
<b>1.6.7 Water Conservation</b>					
<b>1.6.8 Stormwater Management</b>					

**Views**

Compliance establishes the 'starting point' of whether a proposal building promotes 'view sharing' (DCP cl. 1.3.6 part B Residential Development) and 'view retention and sharing', the latter if appropriate (LEP cl. 4.3 (1) (b)). According to the Land and Environment Court's planning principles for view sharing (Tenacity), compliance also 'opens the door' to considering whether design alternatives might lessen view impacts on neighbours, without reducing development potential and amenity for the proposed development's occupants.

The proposal does not align with this 'starting point', as the building exceeds the height standard. Although the rear setback proposed is not the minimum 10m, the building's rear is aligned reasonably with dwellings either side, given variable lot shape and size either side of the site. Side setbacks are complied with and the front setbacks do not impact views from dwellings above the site, as only single-storey car parking is forward of the main two-storey building line.

The height control breach has been justified, including in terms of the design's impact on views from neighbouring dwellings and the public domain. The former are the subject of an assessment against the Court's view sharing principles. In summary, from the oft-quoted Tenacity case, these principles are:

**Principle 1 – the views to be affected**

- *A whole or partial view.*
- *View subjects – e.g. famous or significant landmarks, land and/or water, shorelines of harbours, rivers, estuaries or beaches.*
- *The value, or quality of the view.*

**Principle 2 – from where views are obtained**

- *Over front or rear, or side boundaries.*
- *View from standing or sitting positions.*
- *Retaining views over side boundaries and from sitting positions is difficult and often unrealistic.*

**Principle 3 – extent of impact on views**

- *Views from living areas (indoor – kitchens, lounges, rumpus, dining, home office and outdoor – decks, terraces, balconies) are more significant than views from other rooms – bedrooms, media rooms, games rooms.*
- *Consider the qualitative impact (see Principle 1 – the higher the quality, the greater the potential impact).*

**Principle 4 – assess the reasonableness of the development**

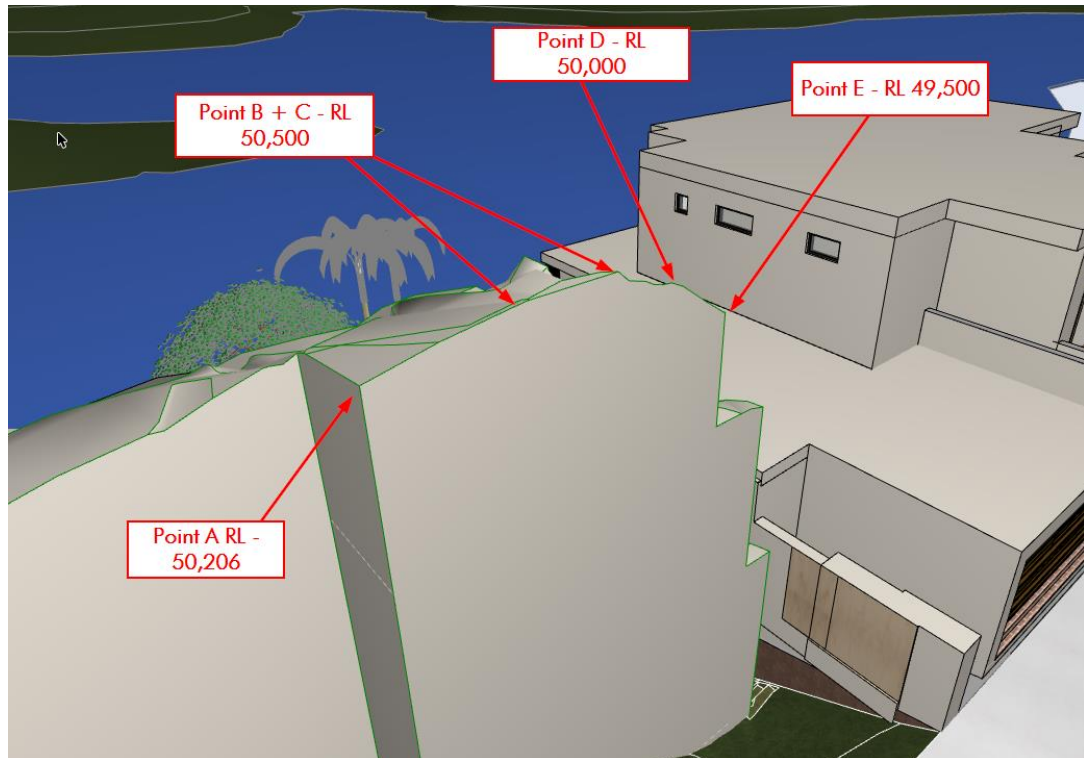
- *A development which complies fully with planning controls is more reasonable than one which does not.*
- *Increasing degrees of non-compliance contribute to the impact being less reasonable.*
- *Whether the design of a compliant development, or a design deemed to comply, could be altered to lessen the impact on neighbour's views and still maintain the amenity and development potential of the subject site, should be considered.*

**Conclusion – ascertain the severity of impact on views**

- *The severity of the impact on a view is derived from considering the previous four principles:*
  - *Are the views of a high or low quality, or somewhere between?*
  - *Are the views direct (front or rear) or indirect (side), from standing or sitting positions?*
  - *Are the views from regularly used living spaces or those less regularly used?*
  - *Is the development compliant with development controls?*
  - *Can the design be altered without impacting development potential or amenity of the site and proposed development?*

The statement of environmental effects submitted with the amended application presents a concise assessment of the proposal regarding the Tenacity principles, which is concurred with. A selection of analyses from properties that have water views over the site, over front boundaries, is presented below. In each view analysed, the existing building, an envelope compliant with height and setback controls and the proposed building's envelope are compared. In each example, the view impact of the proposed development has less impact than the compliant envelope.





Extracts from the view analysis follow.

View impact assessment using Land and Environment Court Planning Principles (Tenacity)					
Location	1. assessment of views to be affected	2. from what part of the property the views are obtained	3. the extent of the impact	4. the reasonableness of the proposal that is causing the impact	
VIEWS FROM 35 TOBRUK AVE 3RD STOREY BALCONY VIEW					
	No 35 (3 <sup>rd</sup> storey)	Whilst tree cover reduces the above view it still includes water views above the existing dwelling except close to the boundary with No 52.	The room adjoining this balcony is a bedroom (based on available information). Views are over a front boundary.	Some of the water views are likely to be reduced. The impact could be described as moderate.	View corridors near side boundaries and over the building will be retained. The impact is less than would result from a complying envelope. In this context the additional view loss compared to the existing situation is not unreasonable.

View impact assessment using Land and Environment Court Planning Principles (Tenacity)				
Location	1. assessment of views to be affected	2. from what part of the property the views are obtained	3. the extent of the impact	4. the reasonableness of the proposal that is causing the impact

View impact assessment using Land and Environment Court Planning Principles (Tenacity)				
Location	1. assessment of views to be affected	2. from what part of the property the views are obtained	3. the extent of the impact	4. the reasonableness of the proposal that is causing the impact
VIEWS FROM 37 TOBRUK AVE 1ST STOREY BALCONY VIEW				
No 37	Water views above adjoining dwelling at 52 Tobruk Ave, district views over subject site.	The first floor level includes balconies and living areas. Views are over a front boundary.	Generally water views are over No 52 and will not be affected. There will be the loss of some district views over the subject site. The impact could be described as negligible.	Water views over No 52 will be retained and any views over the subject site would be similarly impacted by a complying building. In this context the minor additional view loss compared to the existing situation is not unreasonable.

View impact assessment using Land and Environment Court Planning Principles (Tenacity)				
Location	1. assessment of views to be affected	2. from what part of the property the views are obtained	3. the extent of the impact	4. the reasonableness of the proposal that is causing the impact

View impact assessment using Land and Environment Court Planning Principles (Tenacity)				
Location	1. assessment of views to be affected	2. from what part of the property the views are obtained	3. the extent of the impact	4. the reasonableness of the proposal that is causing the impact
VIEWS FROM 33 TOBRUK AVE - THIRD LEVEL - LOUNGE BALCONY VIEW				
No 33	There are water and district views over the subject site and adjoining properties.	The views are from the upper level from a number of rooms (see submitted detailed analysis) including a living room/balcony shown above. The view is over a front boundary.	Given the entire scope of the view and retention of some elements, the impact of the proposal is considered moderate.	Some water views (importantly the water/land interface) will be retained and any views over the subject site would be more greatly impacted by a complying building. In this context the additional view loss compared to the existing situation is not unreasonable.

**Solar access & overshadowing**

Submitted shadow and solar view diagrams indicate satisfactory performance, maintaining at least 3 hours of sunlight for neighbours and for the proposed dwellings in midwinter, by virtue of them having north-westerly exposure.

Submissions were received from the neighbours at 48A and 48B Tobruk Avenue, concerned that proposed landscaping, including trees that could grow to a height of 10m, would overshadow and obstruct views from their properties.

This property, occupied by an attached dual occupancy, is directly southwest of the site. The building, mainly its extensive terraces, extend well forward of the proposed development, being on a block considerably deeper than the site.

Shadow and view of the sun diagrams indicate relatively small areas of additional overshadowing of the lower two (of four) levels closest to the site, over the side boundary, between 9am and noon on the winter solstice.

Following midday, these dwellings have unrestricted solar access, except to rooms at the rear (close to the street) and closest to the site, which are already overshadowed to a large extent by the existing dwelling on the site and boundary fencing.

As is Court-mandated practice, due to the nature and manageability of trees, proposed landscaping has not been considered in the shadow analysis.

According to the latest landscape plans, trees proposed between the proposed building and dwellings at No 48 Tobruk, are 3 Blueberry Ash trees with a height range of 5m-10m and several Banksias of a 2m-3m height range.

The Ash trees are those likely to cause overshadowing of No 48 Tobruk. These trees are proposed in a garden bed at a level of 38.3m, which is about 1-2m lower than the adjacent, second lowest level of the dwellings at No 48. The top of the proposed building adjacent to the building at No 48 is 48.9m. This means the trees *could* grow up to around the same height as the proposed dwelling. Therefore, the overshadowing they would cause, if they were to grow to their potential maximum height, would be slightly more than the building, being sited closer to the boundary than the building.

In these circumstances, also bearing in mind the trees will provide privacy and shade, soften the appearance of the proposal and the neighbouring building, and that the trees will not obstruct primary views from No 48's living areas, likely benefits of the landscaping outweigh potential disbenefits.

The neighbours' submissions also expressed concern landscaping (tree planting) may cause further damage to drainage and sewerage, at the lower, north-western rear of the lots. This is unlikely as large specimens are proposed at the side boundary as discussed and at the front of the dwelling.

### **North Cremorne Planning Area – Part C of the DCP**

The proposal is in the Northern Foreshores neighbourhood and applicable controls are considered below.

The area's character statement declares:

*Development within the Planning Area should result in:*

- *residential growth being provided in accordance with Council's Residential Development Strategy, with the growth concentrated within the Mixed Use zones of the Town Centres located on or in the vicinity of Military Road, and the remainder comprising of multi dwelling housing and residential flat buildings in the surrounding residential areas*
- *residential densities not being increased in foreshore areas and areas of steep terrain*
- *development within the R2 – Low Density Residential zone being of a similar scale to existing characteristic development*
- *a wide range of residential types and sizes being distributed throughout the area according to zone*
- *a range of retail and commercial premises, services and facilities being available to the local community within the Town Centres*

The proposal is consistent with and complements this statement of intent, the third paragraph being most relevant, the proposal being compliant with statutory requirements and consistent with performance-based criteria.

Clause 5.4 has additional provisions that apply to the site:

**Views**

*P7 Buildings should not obstruct views and vistas from public places to the waterway.*

*P8 Development should not adversely restrict views from neighbouring properties. This is especially important in foreshore areas or sites that enjoy water views.*

**Consideration:** View impacts are assessed above, the development does not detract from public views of Willoughby Bay or from the estuary.

Views from nearby residences are considered above. The proposal's impact is consistent with established view-sharing principles. Views from nearby public spaces, namely the Lloyd Avenue Reserve and the Tobruk Avenue Lookout, are unaffected by the proposal.

**Setbacks**

*P9 Front: 3m*

**Consideration:** The building only partly complies with the front setback. This is satisfactory as the setbacks are in character with the streetscape in the site's vicinity.

*P10 Rear: 10m*

**Consideration:** As discussed above, despite the proposal not complying with this minimum, the outcome is satisfactory.

**LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN**

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. The contribution payable is 1% of the applications value of \$4,479,062.50. Levied in accordance with s7.12 of the Act the contribution payable is \$44,790.60.

A condition requiring the payment of the contribution at the appropriate time is included in the attached conditions.

**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 s 4.15 (1) considerations of the Act 1979	Yes

### **PUBLIC INTEREST**

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

### **SUITABILITY OF THE SITE**

The proposed attached dual occupancy is a permissible form of development in the R2 Low Density Residential zone. For this reason and due to the merits of the application the site is deemed suitable for the proposed development.

### **CONCLUSION + REASONS**

The proposal has been considered and is deemed satisfactory having regard to relevant Environmental Planning Instruments and policies, including relevant SEPPs and the principal LEP and DCP for the North Sydney area. Consent is recommended for the following reasons:

1. The proposed development is permissible with consent.
2. Non-compliance with the building height development standard supported by a written request from the applicant that demonstrates strict compliance with the standard would be unreasonable and that there are adequate environmental planning grounds to warrant departure from the standard.
3. The design of the development satisfies statutory controls and policy provisions applicable to the site and attached dual occupancies.
4. The development will have acceptable impacts on built and natural environments, including on residential amenity in and the character of the locality.
5. Matters raised by public submissions have been considered.

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

Council received 16 submissions from 11 correspondents, raising concerns that have been considered in this report, as addressed by amendments to the design of the proposal and with appropriate conditions of consent.

The subject application was notified to adjoining properties and the Willoughby Bay Precinct Committee on two separate occasions, due to the application being substantially amended, in response to several inconsistencies with the North Sydney DCP 2013.



**RECOMMENDATION**

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning and Environment and invoke the provisions of Clause 4.6, North Sydney Local Environmental Plan 2013 with regard to the non-compliance with Clause 4.3 and grant consent to Development Application No. 349/22 for demolition of the existing dwelling house and associated works and construction of an attached dual occupancy, landscaping and associated works, on land at 50 Tobruk Avenue, Cremorne, subject to the conditions attached to this report.

**JIM DAVIES**  
**EXECUTIVE ASSESSMENT PLANNER**

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

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**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**50 TOBRUK AVENUE, CREMORNE**  
**DEVELOPMENT APPLICATION NO. 349/22**

**A. Conditions that Identify Approved Plans**

**Development in Accordance with Plans/Documentation**

- A1. The development must be carried out in accordance with the following drawings endorsed with Council's approval stamp and other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

Plan No.	Rev No.	Description	Prepared by	Dated
DA 00.00	7	Cover Page	Aurae Architecture	10 11 23
DA 00.01	7	Legend & BASIX	Aurae Architecture	10 11 23
DA 01.01	7	Site Plan	Aurae Architecture	10 11 23
DA 01.03	7	Schedule of Materials and Finishes	Aurae Architecture	10 11 23
DA 01.04	7	Waste Management Plan	Aurae Architecture	10 11 23
DA 02.01	7	GA – Ground Floor	Aurae Architecture	10 11 23
DA 02.02	7	GA – First Floor	Aurae Architecture	10 11 23
DA 02.03	7	GA – Second Floor	Aurae Architecture	10 11 23
DA 02.04	7	GA – Third Floor	Aurae Architecture	10 11 23
DA 02.05	7	Roof Plan	Aurae Architecture	10 11 23
DA 03.01	7	South East (Street) Elevation	Aurae Architecture	10 11 23
DA 03.02	7	South West Elevation	Aurae Architecture	10 11 23
DA 03.03	7	North East Elevation	Aurae Architecture	10 11 23
DA 03.04	7	North West Elevation	Aurae Architecture	10 11 23
DA 04.01	7	Section 01	Aurae Architecture	10 11 23
DA 04.02	7	Section 02	Aurae Architecture	10 11 23
DA 04.03	7	Section 03	Aurae Architecture	10 11 23
DA 01 – DA 07	D	Landscape Development Application Plans	Emily Simpson Landscape Architecture	28 11 23
D01 – D07	A	Stormwater Drainage Plan Set	NB Consulting Engineers	06 12 23

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

**Plans on Site**

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

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

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

***B. Matters to be completed before the lodgement of an application for a construction certificate***

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

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

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
  - i. Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways;
  - ii. Signage type and location to manage pedestrians in the vicinity;
  - iii. The locations of any proposed Work Zones in the frontage roadways;
  - iv. Locations and type of any hoardings proposed;
  - v. Area of site sheds and the like;
  - vi. Location of any proposed crane standing areas;
  - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
  - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
  - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
  
- b) A Traffic Control Plan(s) for the site incorporating the following:
  - i. Traffic control measures proposed in the road reserve that are in accordance with the TfNSW publication "Traffic Control at Work Sites Manual" and designed by a person licensed to do so (minimum TfNSW 'red card' qualification).
  - ii. The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each.
  
- c) A detailed description and map of the proposed route for vehicles involved in spoil removal, material delivery and machine floatage must be provided detailing light traffic roads and those subject to a load or height limit must be avoided at all times.

**A copy of this route is to be made available to all contractors and must be clearly depicted at a location within the site.**

- d) A Waste Management Plan in accordance with the provisions of Part B Section 19 of the North Sydney DCP 2013 must be provided. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process;
- (e) Evidence of TfNSW concurrence where construction access is provided directly or within 20m of an Arterial and/or Classified Road;
- (f) A schedule of site inductions to be held on regular occasions and as determined necessary to ensure all new employees are aware of the construction management obligations. These must specify that construction-related vehicles to comply with the approved requirements; and
- (g) For those construction personnel that drive to the site, the Site Manager shall attempt to provide on-site parking so that their personnel's vehicles do not impact on the current parking demand in the area.

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

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

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

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

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

Notes:

- 1) To apply for certification under this condition, an '*Application to satisfy development consent*' must be prepared and lodged with North Sydney Council. North Sydney Council's adopted fee for certification of compliance with this condition must be paid upon lodgement.

**50 TOBRUK AVENUE, CREMORNE  
DEVELOPMENT APPLICATION NO. 349/22**

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- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction and Traffic Management Plan be lodged with Council as early as possible.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed in the condition above.

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

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

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

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

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

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

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

**Dilapidation Report Private Property (Excavation)**

- C2. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

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

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

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

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

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

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

- C3. A photographic survey and dilapidation report of adjoining properties No's. 48 and 52 Tobruk Avenue and 19 Wonga Road detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, **MUST BE** submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.

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

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

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

(Reason: Proper management of records)

### **Shoring for Adjoining Property**

- C4. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.

***Note: Approval of engineering drawings for shoring works to be located on adjoining property by the Principal Certifier does not authorise a trespass on private or public land. All relevant permissions/ legal rights must be obtained to undertake any works on adjoining land.***

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

### **Structural Adequacy of Adjoining Properties – Excavation Works**

- C5. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties Nos. 48 and 52 Tobruk Avenue and 19 Wonga Road, which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

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

**Geotechnical Report**

- C6. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:
- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
  - b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
  - c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
  - d) the existing groundwater levels in relation to the basement structure, where influenced;
  - e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
  - f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

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



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

The design principles for the geotechnical report are as follows:

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

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

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

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

**Sediment Control**

- C7. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th Edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

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

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

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

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

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

**Waste Management Plan**

- C8. A Waste Management Plan is to be submitted for approval by the Principal Certifier prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
  - b) The design of the on-site waste storage and recycling area; and
  - c) Administrative arrangements for waste and recycling management during the construction process.

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

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

### **Skylight(s)**

- C9. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

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

### **Reflectivity Index of Glazing**

- C10. The glazing for windows, walls or roof finishes of the approved development must be factory pre-finished with low glare and reflectivity properties. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: The reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement.

(Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development)

### **Roofing Materials - Reflectivity**

- C11. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

**Work Zone**

- C12. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of any Construction Certificate.

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

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

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

(Reason: Amenity and convenience during construction)

**Stormwater Disposal – Drainage Plan**

- C13. Prior to the issue of any Construction Certificate, site drainage plans must be prepared by a licensed plumber or drainage engineer. The site drainage plans must –be designed in accordance with the following criteria:
- a) compliance with NCC drainage requirements and current Australian Standards and guidelines;
  - b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to Wonga Road via the inter-allotment drainage easement;
  - c) new pipelines within council land shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres;
  - d) the design and installation of the Rainwater Tanks shall comply with BASIX and Sydney Water requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system; and

- e) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.

Drainage plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Proper disposal of stormwater)

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

C14. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$10,000.00 to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and [environmental controls](#)) required in connection with this consent
- c) remedying any defects in any such public work that arise within 6 months after the work is completed.
- d) Council reserves the right to retain all bonds on infrastructure works relating to the completion of required Infrastructure work for a 12-month defect liability period. Council may elect to provide a lesser period for minor residential work.

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

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

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

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

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- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Principal Certifier must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

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

**Tree Bond for Public Trees**

- C15. Prior to the issue of any construction certificate, security in the sum of \$7,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

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

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

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

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

**SCHEDULE**

<b>Tree Species</b>	<b>Location</b>	<b>Bond</b>
1 x <i>Tristaniopsis laurina</i> (4x3m)	Council verge in front of 50 Tobruk Ave	\$7,000

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

### Protection of Trees

- C16. The following tree is required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Height
1 x <i>Tristaniopsis laurina</i>	Council verge in front of 50 Tobruk Ave	4x3m

Plans and specifications, including construction certificate drawings, complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

### Approval for Removal of Trees

- C17. The following trees are approved for removal in accordance with the development consent:

Trees Acceptable to remove	Location	Height (m)
2 x <i>Camellia sp</i>	Front setback 50 Tobruk Avenue	3-4m

Removal or pruning of any other tree on the site is not approved, excluding species exempt under Section 16 of the North Sydney DCP 2013.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

### Asbestos and Hazardous Material Survey

- C18. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

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

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

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

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

#### **Air Conditioners in Residential Premises**

C19. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2017 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
  - (i) before 8.00am and after 10.00pm on any Saturday, Sunday or Public Holiday; or
  - (ii) before 7.00am or after 10.00pm on any other day
- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Noise Policy for Industry 2017 will be applied.

"affected residence" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

"boundary" includes any window or elevated window of an affected residence.



Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Noise Policy for Industry published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

### **Underground Electricity and Other Services**

- C20. (a) All electricity and telecommunication provision to the site is to be designed in conjunction with Ausgrid and any other relevant authority so that it can be easily connected underground when the street supply is relocated underground. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground)

### **Section 7.12 Development Contributions**

- C21. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is \$44,790.60.

#### **Indexation**

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

#### **Timing of payment**

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

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

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

### Security Deposit/Guarantee Schedule

- C22. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

<b>Security Deposit/Guarantee</b>	<b>Amount (\$)</b>
Public Tree Bond	\$7,000.00
Infrastructure Damage Bond	\$10,000.00
<b>TOTAL BONDS</b>	<b>\$17,000.00</b>

Note: The following fees applicable

<b>Fees</b>	
Local Infrastructure Contributions	\$44,790.60
<b>TOTAL FEES</b>	<b>\$44,790.60</b>

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

(Reason: Compliance with the development consent)

### BASIX Certificate

- C23. Under clause 75 of the Environmental Planning & Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1346418M\_03 20 December 2023 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

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

#### **Protection of Trees**

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

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Sensitive construction techniques including hand excavation, pier and beam construction and flexible location of piers/footings shall be used within the TPZ of any protected tree. No roots greater than 40mm shall be cut.

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

**Protection of Public Trees**

- D2. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites.

Tree	Location	Protection
1 x <i>Tristaniopsis laurina</i> (4x3m)	Council verge in front of 50 Tobruk Avenue	1.8m high steel mesh tree protection fencing

Plans and Specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Protection of existing environmental and community assets)

**Public Liability Insurance – Works on Public Land**

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

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

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

**Notification of New Addresses**

- D4. Prior to the commencement of any building works, an application must be made and written confirmation received from North Sydney Council of the allocated street address (house number) and/ or unit numbers of the completed project.

A plan for the proposed dwelling and unit numbering must be submitted to Council for approval with the application for new addresses. Applications for numbering will be considered in accordance with the *NSW Geographical Names Board* requirements outlined in the document titled '*NSW Addressing User Manual*'.

The approved numbering will be recorded in Council's Land & Property Information database and must be clearly displayed at the property at all times. Council will also notify relevant public authorities and some service providers of the approved addresses (including Australia Post). A list of current authorities and service providers notified by Council will be included in the address approval notice.

These details will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard relating to rural and urban addressing. A copy of the allocation confirmation must be submitted to the Principal Certifier with the application for a Construction Certificate.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of the NSW Geographical Names Board and Council's *Property Addressing Policy*)

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

##### **Reuse of Sandstone**

- E1. Sandstone blocks (if any) removed from the site are to be either stored for re-use on site or offered to Council in the first instance.

Note: The provisions of the Heritage Act may also apply to altering any sandstone elements on any site.

(Reason: To allow for preservation of cultural resources within the North Sydney Council area)

##### **Parking Restrictions**

- E2. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

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

**Road Reserve Safety**

- E3. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

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

(Reason: Public Safety)

**Temporary Disposal of Stormwater Runoff**

- E4. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Principal Certifier.

(Reason: Stormwater control during construction)

**Geotechnical Stability during Works**

- E5. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the Geotechnical Investigation Report prepared by JK Geotechnics, dated 26 August 2022, and all subsequent geotechnical inspections carried out during the excavation and construction phase.

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

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

**Dust Emission and Air Quality**

E6. The following must be complied with at all times:

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

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

**Noise and Vibration**

E7. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

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

**No Work on Public Open Space**

E8. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

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

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

- E9. The Developer or the person, company or other entity that is acting upon this consent, must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

**No Removal of Trees on Public Property**

- E10. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

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

**Protection of Trees**

- E11. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

**Notes:**

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- b. An application to modify this consent pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

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

**Trees to be Removed**

- E12. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

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Trees acceptable for removal	Location	Height
2 x <i>Camellia sp</i>	Front setback 50 Tobruk Avenue	3-4m

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

### Special Permits

- E13. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

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

1) **On-street mobile plant**

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

(Reason: Proper management of public land)

2) **Hoardings**

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

(Reason: Proper management of public land)

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

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

(Reason: Proper management of public land)



4) **Kerbside restrictions, construction zones**

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

(Reason: Proper management of public land)

**Construction Hours**

E14. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

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

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

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

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

**Out of hours' Work Permits**

E15. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is at risk**. Applications which seek a variation to construction hours solely to benefit the developer will require the lodgement and favourable determination of a modification application pursuant to the provisions of Section 4.55 of the Environmental Planning and Assessment Act 1979.

## Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.
- 2) Applications for out of hour's works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
  - the erection of awnings,
  - footpath, road and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
  - the erection and removal of hoardings and site cranes, and
  - craneage of materials which cannot be done for public convenience reasons within normal working hours.
- 4) Examples of activities for which permits WILL NOT be granted include:
  - extended concrete pours
  - works which are solely to convenience the developer or client, and
  - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

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

### **Installation and Maintenance of Sediment Control**

- E16. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

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

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

### **Sediment and Erosion Control Signage**

- E17. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

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

### **Site Amenities and Facilities**

E18. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

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

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

### **Health and Safety**

E19. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

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

### **Prohibition on Use of Pavements**

E20. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

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

### **Plant and Equipment Kept Within Site**

E21. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

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

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

### **Imported Fill Material**

E22. The only waste derived fill material that may be received at the development site is:

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

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

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

### **Waste Disposal**

E23. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

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

### **Asbestos Removal**

E24. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

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

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

#### **National Construction Code**

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

(Reason: Prescribed - Statutory)

### Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifier for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
    - i) the name and licence number of the principal contractor, and
    - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this condition is out of date, work must cease, and no further work may be carried out unless the Principal Certifier for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

(Reason: Prescribed - Statutory)

### Appointment of Principal Certifying Authority (PCA)

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

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

**Construction Certificate**

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

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

**Occupation Certificate**

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

(Reason: Statutory)

**Critical Stage Inspections**

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

(Reason: Statutory)

**Commencement of Works'**

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

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

**Excavation/Demolition**

- F8. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

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

**Protection of Public Places**

- F9.
- 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
  - 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
  - 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
  - 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
  - 5) No access across public reserves or parks is permitted.

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

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

**Site Sign**

- F10.
- 1) A sign must be erected in a prominent position on the site
    - a) stating that unauthorised entry to the work site is prohibited;
    - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
    - c) showing the name, address and telephone number of the Principal Certifier for the work.
  - 2) Any such sign must be maintained while building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

**G. Prior to the Issue of an Occupation Certificate****Infrastructure Repair and Completion of Works**

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

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

(Reason: Maintain quality of Public assets)

**Works as Executed Drawings and Video**

- G2. A works-as-executed survey drawing (W.A.E.) of the completed stormwater drainage system must be obtained. The W.A.E. survey drawing must show the alignment, depth and grade of the stormwater drainage pipelines, pits and ancillary plumbing. The W.A.E survey drawing must be reviewed by a qualified and practising civil engineer and certification provided to the Principal Certifier that the as-built system achieves the design intent of the plans approved with the Construction Certificate. Certification must be provided with the W.A.E survey drawing to the Principal Certifier prior to the issue of an Occupation Certificate.

A copy of the WAE survey drawing and certification must be submitted to the Council if it is not the Principal Certifier.

(Reason: Compliance with the Consent)

**Damage to Adjoining Properties**

- G3. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

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



**Utility Services**

- G4. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

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

**Notification of New Address Developments**

- G5. Prior to any Occupation Certificate being issued, the person acting upon this consent must comply with the following: -
- (a) Notify Australia Post of the address(es) as issued by Council and the location in plan form of any secondary, internal addresses, in relation to built public roads. Check Australia Post Website ([www.auspost.com.au](http://www.auspost.com.au)) to find your nearest Australia Post Delivery Facility.

(Reason: To ensure that Council records are accurate, that house numbering complies with the requirements of Council's House Numbering Policy and to assist emergency services.)

**Asbestos Clearance Certificate**

- G6. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Principal Certifier (and a copy forwarded to Council if it is not the Principal Certifier) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following: -

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

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

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

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

### **Certification of Tree Condition**

- G7. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Principal Certifier, describing the health of the tree(s) specifically nominated below: -

<b>Tree</b>	<b>Location</b>	<b>Height</b>
<i>1 x Tristaniopsis laurina</i>	Council verge in front of 50 Tobruk Avenue	4x3m

The report must detail the condition and health of the nominated tree(s) upon completion of the works, and shall certify that the tree(s) has/have not been significantly damaged during the works on the site, and has/have reasonable prospects for survival.

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

### **House Numbering (Dwellings)**

- G8. Prior to any Occupation Certificate being issued an application must be made to North Sydney Council for written confirmation, or allocation, of the street address(es) or apartment number(s) for the completed project in accordance with Council's Property Addressing Policy. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2011.

Note: If apartments are to be sold off the plan, the applicant must have written confirmation from Council of the address and apartment numbering if the apartment number is to be identified on the contract.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties.)

### **Landscaping**

- G9. The landscaping shown in the approved landscape plan prepared by Emily Simpson Landscape Architecture, dated 28 November 2023, must be completed prior to the issue of any Occupation Certificate

(Reason: To ensure compliance)

### **Damage to Adjoining Properties**

- G10. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Principal Certifier (and a copy to Council if it is not the Principal Certifier) certifying:

- a) whether any damage to adjoining properties has occurred as a result of the development;
- b) the nature and extent of any damage caused to the adjoining property as a result of the development;
- c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
- e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

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

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

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

### **Unpaved Verge**

- G11. The unpaved verge area must be constructed or reconstructed and planted with an appropriate species of grass prior to completion of the works at no cost to Council.

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

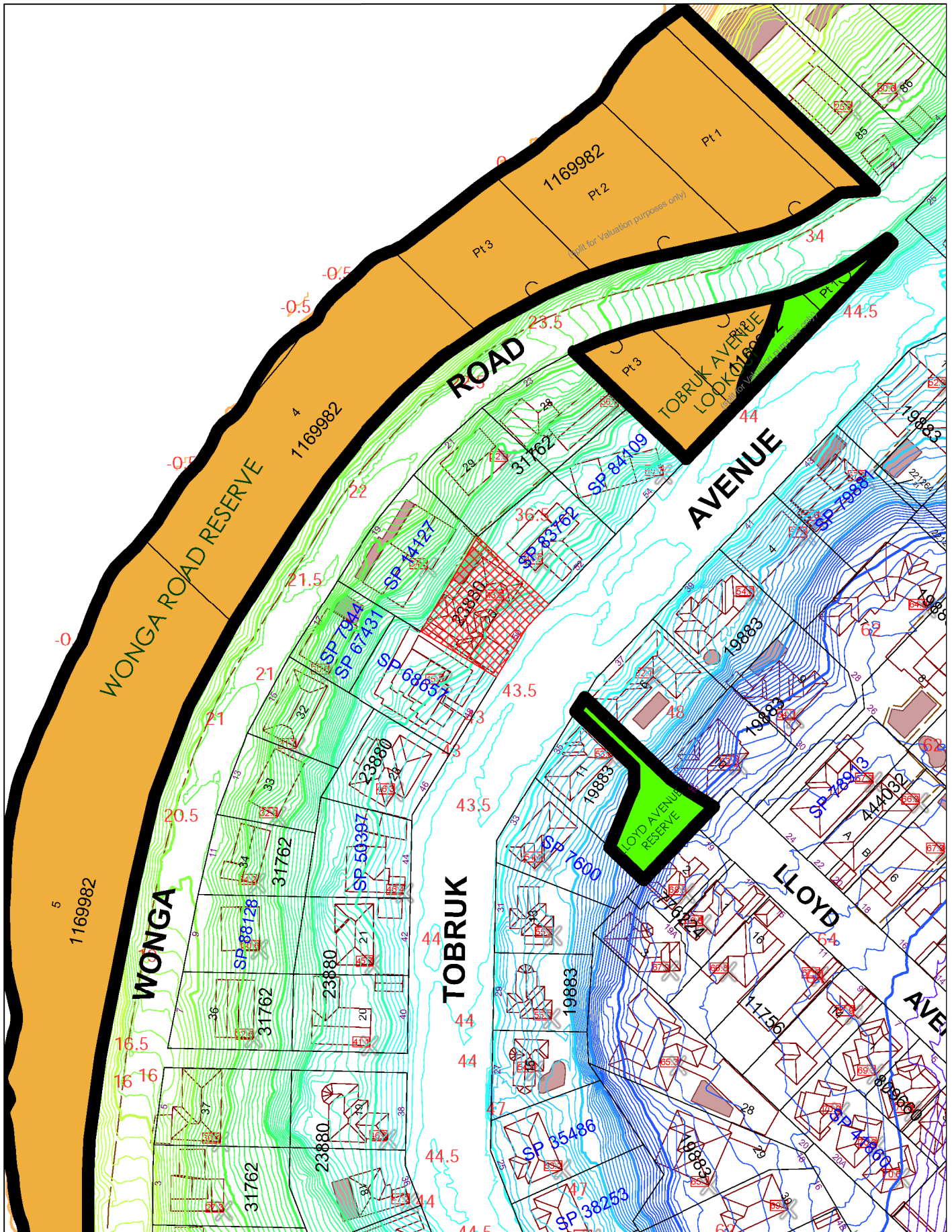
### ***I. On-Going / Operational Conditions***

#### **Maintenance of Approved Landscaping**

- I1. The owner of the premises at 50 Tobruk Avenue is to maintain the landscaping approved by this consent generally in accordance with landscape plans cited in Condition A1.

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

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



**North Sydney Council**

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

Scale: 1:1200 approx.



# DEVELOPMENT APPLICATION

## CREMORNE TWIN HOUSING

50 Tobruk Ave, Cremorne, NSW, 2090, Lot 25 DP 23880



DRAWING No.	DESCRIPTION	SCALE
DA.00.00	COVER PAGE	
DA.00.01	LEGEND & BASIS	
DA.01.01	SITE PLAN	1:200
DA.01.02	SITE ANALYSIS PLAN	1:200
DA.01.03	SCHEDULES OF MATERIALS AND FINISHES	1:100
DA.01.04	WASTE MANAGEMENT PLAN	1:200
DA.02.01	GA - GROUND FLOOR	1:100
DA.02.02	GA - FIRST FLOOR	1:100
DA.02.03	GA - SECOND FLOOR	1:100
DA.02.04	GA - THIRD FLOOR	1:100
DA.02.05	ROOF PLAN	1:100
DA.03.01	SOUTH EAST (STREET) ELEVATION	1:100
DA.03.02	SOUTH WEST ELEVATION	1:100
DA.03.03	NORTH EAST ELEVATION	1:100
DA.03.04	NORTH WEST ELEVATION	1:100
DA.04.01	SECTION 01	1:100
DA.04.02	SECTION 02	1:100
DA.04.03	SECTION 03	1:100
DA.04.04	PRIVACY ANALYSIS - SECTION 04	1:100
DA.05.01	COMPLIANCE CALCULATIONS EXISTING	1:200
DA.05.02	COMPLIANCE CALCULATIONS PROPOSED	1:200
DA.05.03	BUILDING HEIGHT PLANE DIAGRAM	
DA.05.04	COMPLIANT ENVELOPE MODELLING DIAGRAM	1:100
DA.10.01	21 JUN @0900	1:200
DA.10.02	21 JUN @1200	1:200
DA.10.03	21 JUN @1300	1:200
DA.10.04	21 JUN @1500	1:200
DA.10.05	21 MAR @0900	1:200
DA.10.06	21 MAR @1200	1:200
DA.10.07	21 MAR @1500	1:200
DA.10.08	21 JUN @0900 3D	NTS
DA.10.09	21 JUN @1000 3D	NTS
DA.10.10	21 JUN @1100 3D	NTS
DA.10.11	21 JUN @1200 3D	NTS
DA.10.12	21 JUN @1300 3D	NTS
DA.10.13	21 JUN @1400 3D	NTS
DA.11.01	VIEWS: NO 37 2ND STOREY RETREAT	NTS
DA.11.02	VIEWS: NO 37 1ST STOREY BALCONY	NTS
DA.11.03	VIEWS: NO 35 3RD STOREY BALCONY	NTS
DA.11.04	VIEWS: NO 35 2ND STOREY BALCONY	NTS
DA.11.05	VIEWS: NO 48 (TOP RESIDENCE) - MAIN BED VIEW	NTS
DA.11.06	VIEWS: NO 48 (TOP RESIDENCE) - ENSUITE VIEW	NTS
DA.11.07	VIEWS: NO 48 (TOP RESIDENCE) - DINING VIEW	NTS
DA.11.08	VIEWS: NO 48 (TOP RESIDENCE) - KITCHEN VIEW	NTS
DA.11.09	VIEWS: NO 52 - LIVING VIEW	NTS
DA.11.10	VIEWS: NO 33 3RD LEVEL LIVING BALCONY VIEW	NTS
DA.11.11	VIEWS: NO 33 3RD LEVEL MIDDLE WINDOW VIEW	NTS
DA.11.12	VIEWS: NO 33 3RD LEVEL SOUTHERN WINDOW VIEW	NTS
DA.11.13	VIEWS: NO 39 3RD LEVEL BEDROOM	NTS
DA.11.14	VIEWS: NO 39 2ND LEVEL LIVING	NTS
DA.11.15	VIEWS: NO 39 2ND LEVEL BEDROOM	NTS
DA.11.16	VIEWS: LLOYD AVENUE	NTS

7

**Aurae Architecture**

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**General Notes**

The Builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to the architect. Drawings shall not be used for construction purposes until issued for construction. Do not scale or scale off drawings. All boundaries and contours subject to survey. Designs contained in these drawings and specifications are the property of Aurae Architecture and are subject to copy right laws. They must not be reproduced in whole or part, or used in any other way without written consent from Aurae Architecture.

**PROJECT NAME :**

CREMORNE TWIN HOUSING

**COUNCIL :**

North Sydney Council

**CLIENT :**

Vicki & Geoff Parker

50 Tobruk Ave Cremorne NSW 2090  
P +0415433729 | E vaparker123@gmail.com

**SITE :**

50 Tobruk Ave, Cremorne, NSW, 2090 ,  
Lot 25 DP 23880

**SITE AREA :**

506

**PROJECT DESCRIPTION :**

Demolition of existing single dwelling & new build - duplex

**AMENDMENTS :**

- 07 - Amended DA Submission - 10/11/2023
- 06 - Amended DA - 15/12/2022
- 05 - DA Submission - 31/10/2022
- 04 - DA WIP - 26/09/2022
- 03 - Issue to planer - 04/05/2022
- 02 - Sketch Design Living Levels - 24/03/2022
- 01 - Feasibility & Preliminary Sketch Design - 19/12/2021

**Aurae**

**DA**

**REVISION NO.**

**07**

**DRAWING NO.**

**DA.00.00**

**DRAWING TITLE :**  
COVER PAGE

**DRAWN BY :**

EJD

**CHECKED BY :**

SD

**PROJECT NO.**

**023**

**PLOT DATE:**

11/11/2023

### ABBREVIATIONS LEGEND

**TERMS - GENERAL**

- AL Air Lock
- ADJ Adjustable
- BLDG Building
- CH Ceiling Height
- CL Centre Line
- CNR Corner
- DIM Dimension
- DWR Drawer
- EL Existing Level
- EQ Equal
- EX Existing
- EXT External
- FCH Finished Ceiling Height
- FFL Finished Floor Level
- FGL Finished Ground Level
- FIN Finish
- FL Floor Level
- FPL Finished Pelmet Level
- FRL Fire Resistant Level
- INT Internal
- LV Low Voltage
- NTS Not to Scale
- O/A Overall
- OPP Opposite
- RL Reduced Level
- SFL Structural Floor Level
- SIM Similar
- SRZ Structural Root Zone
- TFD To Future Detail
- TMFX To Match Existing
- TPZ Tree Protection Zone
- TYP Typical
- U/C Undercut
- UNO Unless Noted Otherwise
- U/S Under Side
- WL Water Level
- WR Water Resistant

**CONSTRUCTIONS/FITTINGS**

- (CONTINUED)
- FG Fixed Glass
  - FGSS Frameless Glass Shower Screen
  - FLR Floor
  - FP Fireplace
  - FS Fixed Shelves
  - HK Hook
  - HL Horizontal Louver
  - HR Handrail
  - HTR Heated Towel Rail
  - IGS Internal Glazed Screen
  - JU Joinery Unit
  - LV - A Adjustable
  - F Fixed
  - R Retractable
  - MIR Mirror
  - MC Metal Cladding
  - MH Manhole
  - MJ Movement Joint
  - MW Microwave
  - OS Open Shelves
  - PEL Pelmet / Curtain / Rollerblind
  - PF Pool Fence
  - PFF Pre formed Flashing
  - PTN Partition
  - PR Picture Rail
  - RFB Reflective Foil Board insulation
  - RB Roller Blind
  - RH Robe Hook
  - RS Recessed Shelf
  - RSH Roller Shutter
  - SCP Suspended Acoustic Ceiling Panel
  - SD Slot Drain
  - SH Soap Holder
  - SHR Shower
  - SR Shower Rrose
  - SKY-# Sky Light (#)
  - SPB Suspended Plasterboard
  - TB Toilet Brush
  - TR Towel Rail
  - TRH Toilet Roll Holder
  - UA Unequal Angle
  - UB Universal Beam
  - UC Universal Column
  - V Vent
  - VL Vertical Louver
  - W Window
  - W-HL Window - High light
  - WL Wall Light
  - WPM Waterproof Membrane

**HYDRAULIC**

- AG Agricultural Drain
- BG Box Gutter
- BSN Basin
- BT Boundary Trap
- BTH Bath
- CO Cleanout
- CS Cleaners Sink
- DP Down Pipe
- FE Fire Extinguisher
- FH Fire Hydrant
- FHR Fire Hose Reel
- GD Grease Drain
- GM Gas Meter
- GT Grease Trap
- HC Hose Cock
- HWU-# Hot Water Unit (#)
- HYD Hydraulic
- IO Inspection Opening
- MFD-# Hydronic Heating Manifold (#)
- O/F Over Flow
- OFG Over Flow Gully
- RWH-# Rainwater Head (#)
- RWO Rainwater Outlet
- RWT Rainwater Tank
- SD Sewer Drain
- SNK Sink
- SP Spreader
- SW Storm Water
- SWD Storm Water Drain
- TB Laundry Tub
- TD Trench Drain
- VP Vent Pipe
- WC Toilet
- WS Waste Stack
- WTM Water Meter

**MATERIALS / FINISHES**

- AL Aluminium
- BIT Bitumen
- BBK Baggged Brick
- BK Brick
- BLK Block
- BP Brick Pavers
- CFC Compressed Fibre Cement
- CO Copper
- CONC Concrete
- CPT Carpet
- CR Cement Render
- CT Cement Topping with Epoxy Sealer
- DAR Dressed All Round
- DGU Double Glazed Unit
- FBK Face Brick
- FC Fibre Cement Sheeting Product
- FG Fixed Glass
- FGR Fibre Glass Roofing
- GLZ Glass
- GALV Galvanised
- GRF Granolithic Finish
- GRT Granolithic Topping / Epoxy Sealer
- GRVL Gravel
- HWD Hardwood
- INSUL Insulation
- LAM Laminate
- MEL Melamine
- MR Metal Roofing
- MS Mild Steel
- OFC Off Form Concrete
- OG Obscure Glass
- P Paint
- PB Plasterboard
- PLY Plywood
- POL Polished
- POLY Polyurethane
- PQY Parquetry
- RC Reinforced Concrete (Type refer to spec)
- RFT Roof Tile
- RT Recycled Timber
- RUB Rubber
- SB Splashback
- SCP Satin Chrome Plate
- SCR Screed
- SJ Silicon Joint
- SK Skirting
- SKT Skirting Tile
- SP Set Plaster
- SS Stainless Steel
- SSC Stainless Steel Cable
- SSG Stainless Steel (Grade)
- SS CR Stainless Steel Corrosion Resistant
- ST Stone
- STL Steel
- TC Texture Coating
- TLE Tile
- TLE-# Tile Type # (Type refer to spec)
- TMB Timber
- TRT Terracotta Floor Tiles
- TZ Terrozzo
- V Vinyl
- VNR Veneer
- VT Vinyl Tiles
- WBC Weatherboard Cladding
- WRC Western Red Cedar
- WPM Waterproof Membrane
- WPB Waterproof Plasterboard

**LANDSCAPE**

- GBE Garden Bed Edge as specified
- GB Garden Bed
- PP Paving Permeable
- PS Paving Slab
- PV Pavers
- TOW Top of Wall

**ELECTRICAL/MECHANICAL**

- A/C Air Conditioning
- BWU Boiling Water Unit
- BB Circuit Breaker
- BFR Bar Fridge
- DL Down Light
- DR Dryer
- DW Dishwasher
- EDB Electrical Distribution Board
- E/A Exhaust Air
- EXH Exhaust Fan
- ELEC Electrical
- EM Electrical Meter
- FA Fire Alarm
- FIB Fire Indicator Board
- FR Fridge
- FRZ Freezer
- GPO General Power Outlet
- GPO3 GPO 3 Phase
- HTR Heated Towel Rail
- JL Joinery Light
- LS Light Switch
- MECH Mechanical
- MSB Main Switch Board
- MW Microwave
- OV Oven
- RH Rangehood
- R/A Return Air
- S/A Supply Air
- TEL Telephone
- TV Television
- WFR Wine Fridge
- WM Washing Machine

**CONSTRUCTIONS/FITTINGS**

- ACS Acoustic Ceiling System
- ALFG Aluminium Framed Glazing
- ALFL Aluminium Framed Louvres
- AP Access Panel
- AS Adjustable Shelving
- BAL Balustrade
- BHD Bulkhead
- BOOK Bookshelf
- CG Cable Gromet
- CHR Clothes Hanging Rail
- CJ Construction Joint
- CL Clothes Line
- COL Structural Column
- CS Cavity Slider
- CTN Curtain
- D Door
- DPC Damproof Course
- EA Equal Angle
- EJ Expansion Joint
- FD(1) Fire Door (hours)

### BASIX & NATHERS

## BASIX® Certificate

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

### Multi Dwelling

Certificate number: 1346418M\_03

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 Definitions" dated 10/09/2020 published by the Department. This document is available at www.basix.nsw.gov.au

Secretary  
Date of issue: Friday, 04 November 2022  
To be valid, this certificate must be lodged within 3 months of the date of issue.



Project summary		
Project name	220070E - 50 Tobruk Avenue_03	
Street address	50 Tobruk Avenue Cremorne 2090	
Local Government Area	North Sydney Council	
Plan type and plan number	deposited 23880	
Lot no.	27	
Section no.	-	
No. of residential flat buildings	0	
No. of units in residential flat buildings	0	
No. of multi-dwelling houses	2	
No. of single dwelling houses	0	
Project score		
Water	✔ 40	Target 40
Thermal Comfort	✔ Pass	Target Pass
Energy	✔ 81	Target 50

Certificate Prepared by	
Name / Company Name:	Credwell Energy
ABN (if applicable):	625598352

**Nationwide House Energy Rating Scheme — Class 2 summary**  
**NatHERS Certificate No. 0008162310**

Generated on 04 Nov 2022 using BERS Pro v4.1.5 (3.21)

**Property**  
 Address 50 Tobruk Avenue , Cremorne , NSW , 2090  
 Lot/DP 2523880  
 NatHERS climate zone 56

**Accredited assessor**  
 Padraig Healy  
 Credwell Energy  
 phoel@credwell.com.au  
 0498051209  
 Accreditation No. 101028  
 Assessor Accrediting Organisation ABSA

**Verification**  
 To verify this certificate, scan the QR code or visit https://www.nathers.gov.au/QR/Generate?ncxGPAdvYs.  
 When using either link, ensure you are visiting https://www.nathers.gov.au

Certificate number and link	Unit Number	Heating load (MJ/m²p.a.)	Cooling load (MJ/m²p.a.)	Total load (MJ/m²p.a.)	Star rating
0008162310-02	01	34.3	17.9	52.3	5.9
0008162310-02	02	38.7	13.4	52.1	5.9
Average		36.5	15.65	52.2	5.9

**National Construction Code (NCC) requirements**  
 The NCCs requirements for NatHERS-rated buildings are detailed in 3.12.0(a)(i) and 3.12.5 of the NCC Volume Two. For apartments the requirements are detailed in 3.2 and 4.5 of the NCC Volume One.  
 In NCC 2019, these requirements include minimum star ratings and separate heating and cooling load limits that need to be met by buildings and apartments through the NatHERS assessment. Requirements additional to the NatHERS assessment that must also be satisfied include, but are not limited to: insulation (insulation materials, thermal breaks, building sealing, solar heating and pumping), and artificial lighting requirements. The NCC and NatHERS Heating and Cooling Load Limits (Australian Building Codes Board Standards) are available at www.abcb.gov.au.  
 State and territory variations and additions to the NCC may also apply.

**0008162310 NatHERS Certificate** Average 5.9 Star Rating as of 04 Nov 2022

**Explanatory Notes**

**About this report**  
 This summary rating is the average rating of all NCC Class 2 dwellings in a development. The individual dwellings' ratings are a comprehensive, dynamic computer modelling evaluation of a home, using the floorplans, elevations and specifications to estimate the energy load. It addresses the building layout, orientation and fabric (i.e. walls, windows, floors, roofs and ceilings), but does not cover the water or energy use of appliances, or energy production of solar panels. For more details about an individual dwelling's assessment, refer to the individual dwelling's NatHERS Certificate (accessible via link).

**Accredited Assessors**  
 To ensure the NatHERS Certificate is of a high quality, always use an accredited or licenced assessor. NatHERS accredited assessors are members of a professional body called an Assessor Accrediting Organisation (AAO). AAOs have specific quality assurance processes in place, and continuing professional development requirements, to maintain a high and consistent standard of assessments across the country. Any questions or concerns about this report should be directed to the assessor in the first instance. If the assessor is unable to address these questions or concerns, the AAO specified on the front of this certificate should be contacted.

**Disclaimer**  
 The format of the NatHERS Certificate was developed by the NatHERS Administrator. However the content, input and creation of the NatHERS Certificate is by the assessor. It is the responsibility of the assessor who prepared this certificate to use NatHERS accredited software correctly and follow the NatHERS Technical Notes to produce a NatHERS Certificate.

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**General Notes**  
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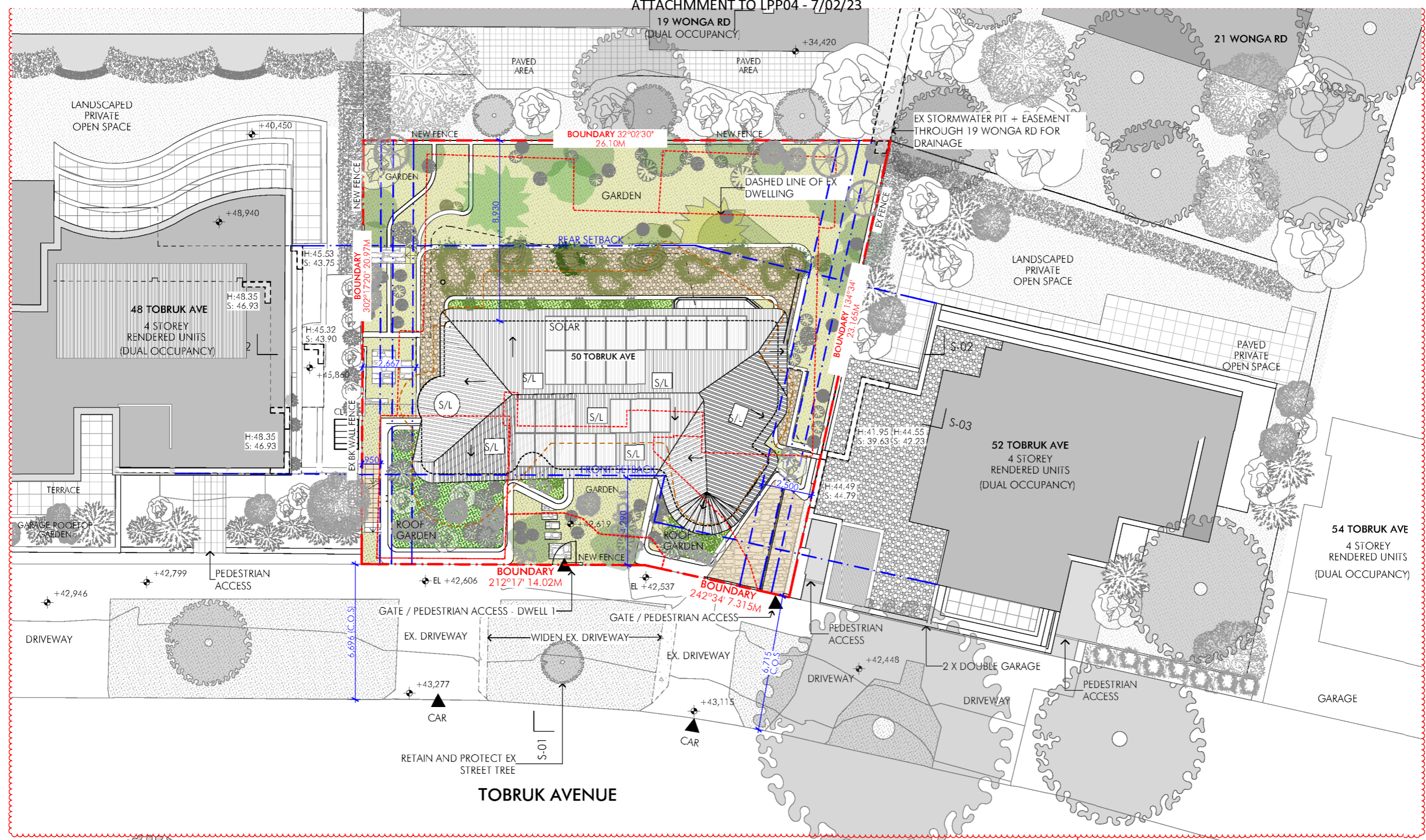
**PROJECT NAME:** CREMORNE TWIN HOUSING  
**COUNCIL:** North Sydney Council  
**CLIENT:** Vicki & Geoff Parker  
 50 Tobruk Ave, Cremorne NSW 2090  
 P +0415433729 | E vaparker123@gmail.com

**SITE:** 50 Tobruk Ave, Cremorne, NSW, 2090, Lot 25 DP 23880  
**COUNCIL:** North Sydney Council  
**SITE AREA:** 506

**AMENDMENTS:**  
 07 - Amended DA Submission - 10/11/2023  
 06 - Amended DA - 15/12/2022  
 05 - DA Submission - 31/10/2022  
 04 - DA WIP - 26/09/2022  
 03 - Issue to planer - 04/05/2022  
 02 - Sketch Design Living Levels - 24/03/2022  
 01 - Feasibility & Preliminary Sketch Design - 19/12/2021

**REVISION NO.:** 07  
**DRAWING NO.:** DA.00.01  
**DRAWING TITLE:** LEGEND & BASIX

**DRAWN BY:** EJD  
**CHECKED BY:** SD  
**PROJECT NO.:** 023  
**PLOT DATE:** 11/11/2023



**Auræ**

**Auræ Architecture**  
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 W: www.aurae.com.au

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**CLIENT:**  
 Vicki & Geoff Parker  
 50 Tobruk Ave, Cremorne NSW 2090  
 P: 041543729  
 E: v.parker123@gmail.com

**PROJECT NAME:**  
 CREMORNE TWIN HOUSING

50 Tobruk Ave,  
 Cremorne, NSW,  
 2090  
 Lot 25 DP 23880

**SITE AREA:**  
 506  
**COUNCIL:**  
 North Sydney Council

**PROJECT DESCRIPTION:**  
 Demolition of existing single dwelling & new build - duplex

**AMENDMENTS:**  
 07 - Amended DA Submission - 10/11/2023  
 06 - Amended DA - 15/12/2022  
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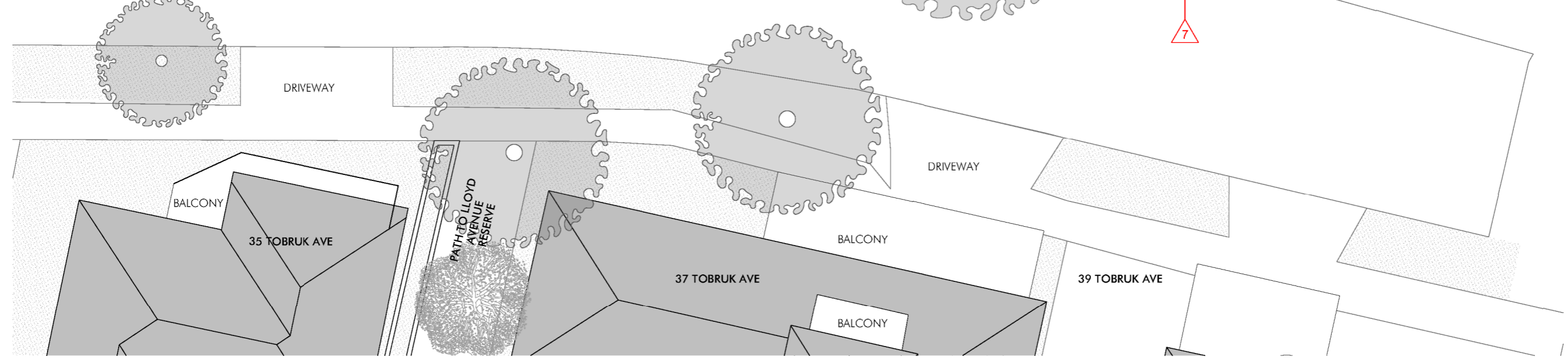


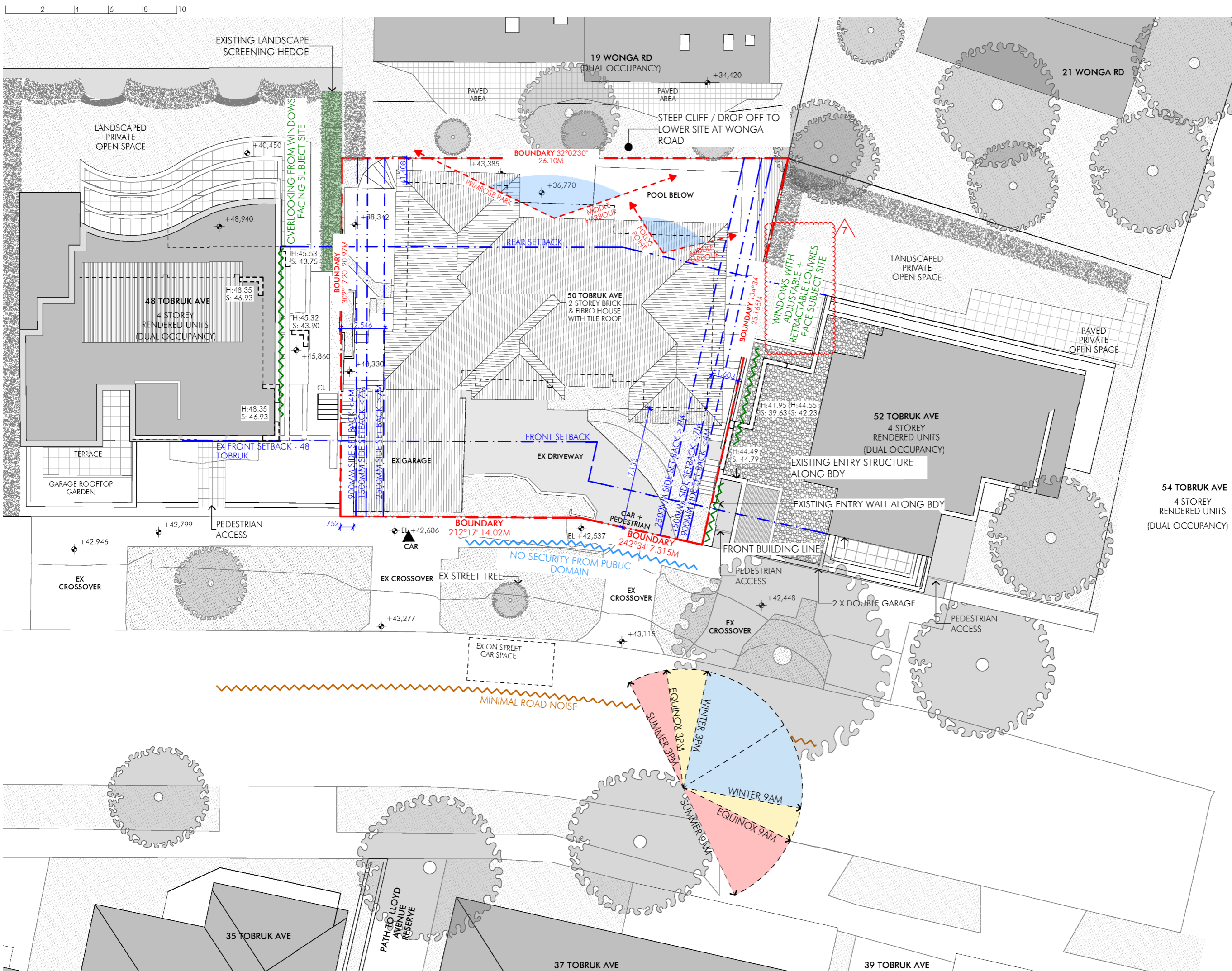
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**REVISION NO.**  
 07  
**DRAWING NO.**  
 DA.01.01  
**DRAWING TITLE:**  
 SITE PLAN

**DRAWN BY:**  
 EJD  
**CHECKED BY:**  
 SD

**PROJECT NO.**  
 023  
**PLOT DATE:**  
 11/11/2023





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**PROJECT NAME:**  
**CREMORNE TWIN HOUSING**  
 50 Tobruk Ave,  
 Cremorne, NSW,  
 2090  
 Lot 25 DP 23880

**SITE AREA:**  
 506  
**COUNCIL:**  
 North Sydney Council  
**PROJECT DESCRIPTION:**  
 Demolition of existing single dwelling & new build - duplex

**AMENDMENTS:**  
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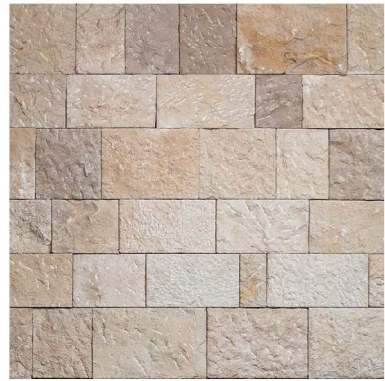
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**07**  
**DRAWING NO.**  
**DA.01.02**  
**DRAWING TITLE:**  
**SITE ANALYSIS PLAN**

**DRAWN BY:**  
 EJD  
**CHECKED BY:**  
 SD

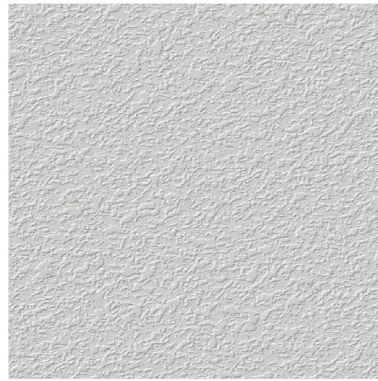
**PROJECT NO.**  
**023**  
**PLOT DATE:**  
 11/11/2023



1. STONE CLADDING TO FEATURE ELEMENTS AND GARDEN WALLS



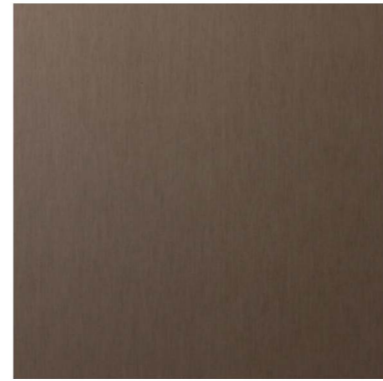
2. RENDER



3. TIMBER DETAILING + CLADDING



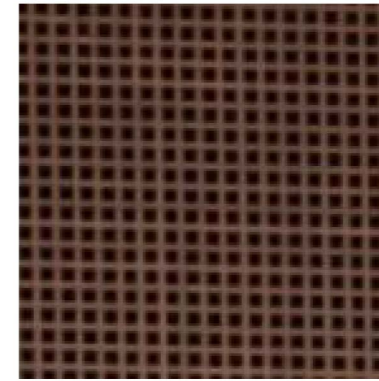
4. METAL ROOF - GREY / BRONZE



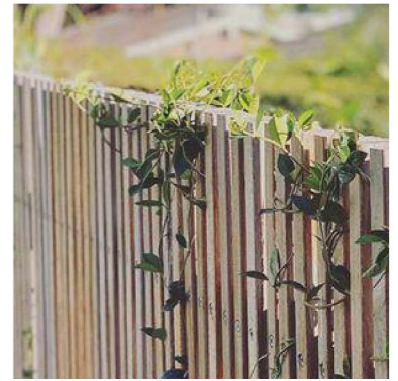
5. GLAZING / POLYCARBONATE



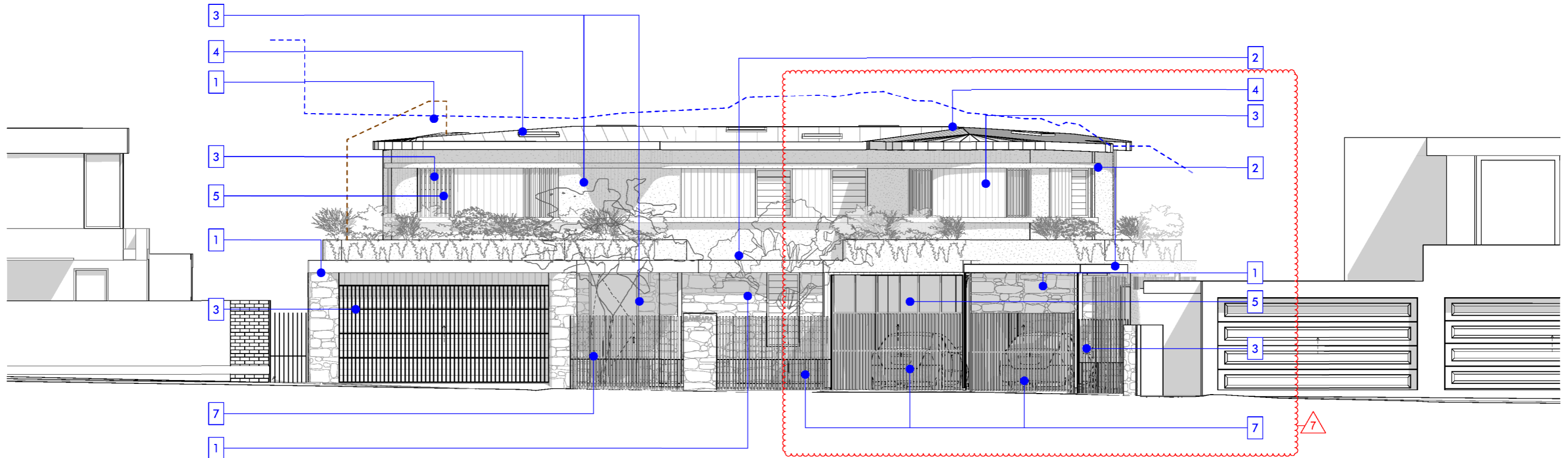
6. SLIDING SCREENS (NORTH WEST ELEVATION)



7. TIMBER BATTENS



50 TOBRUK AVENUE



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Lot 25 DP 23880

SITE AREA:  
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REVISION NO.

**07**

DRAWING NO.

**DA.01.03**

DRAWING TITLE:  
**SCHEDULES OF MATERIALS AND FINISHES**

DRAWN BY:

EJD

CHECKED BY:

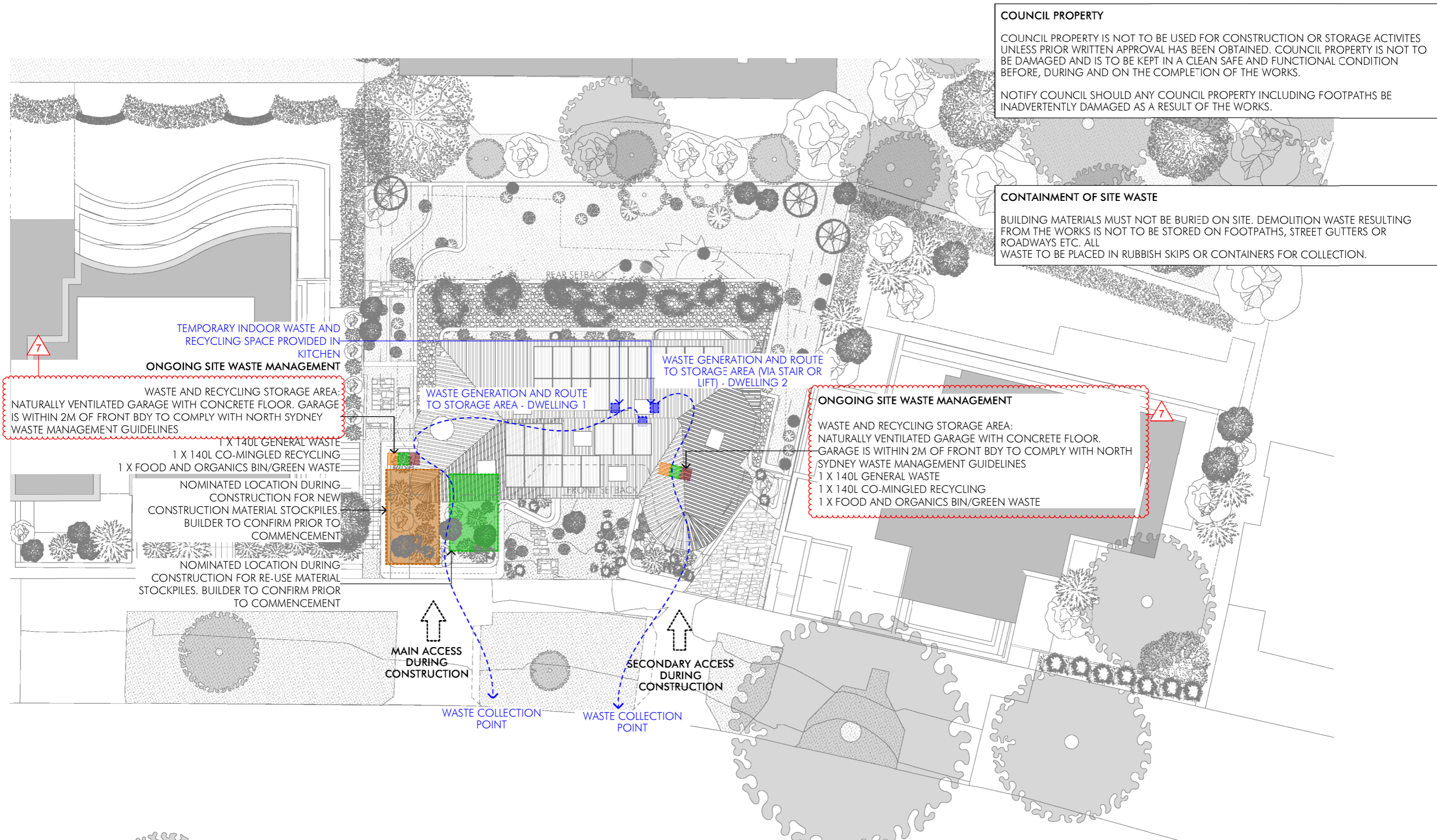
SD

PROJECT NO.

**023**

PLOT DATE:

11/11/2023



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Lot 25 DP 23880

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SCALE: 1:100

REVISION NO.

**07**

DRAWING NO.

**DA.02.01**

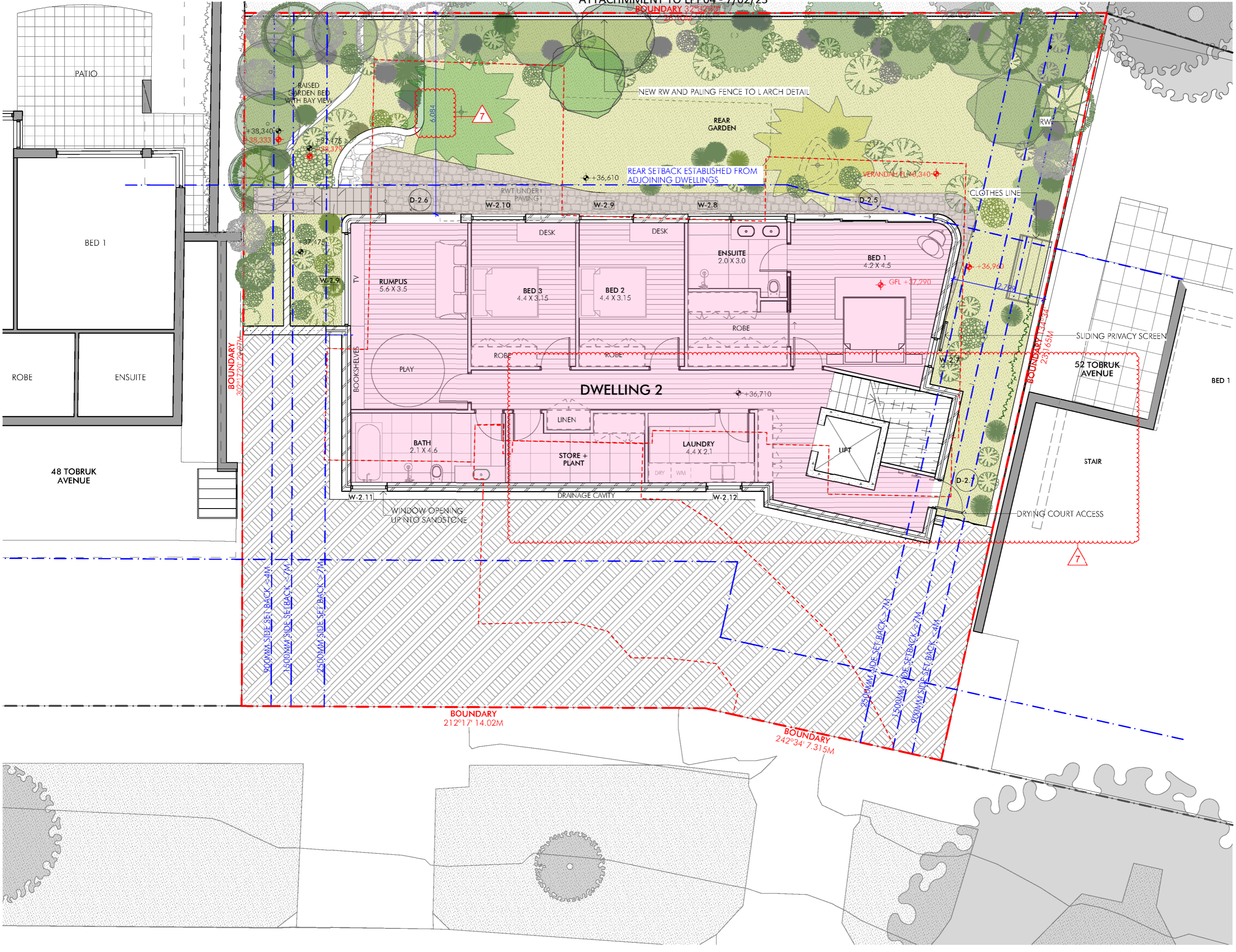
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**GA - GROUND FLOOR**

DRAWN BY:  
EJD

CHECKED BY:  
SD

PROJECT NO.  
**023**

PLOT DATE: 11/11/2023



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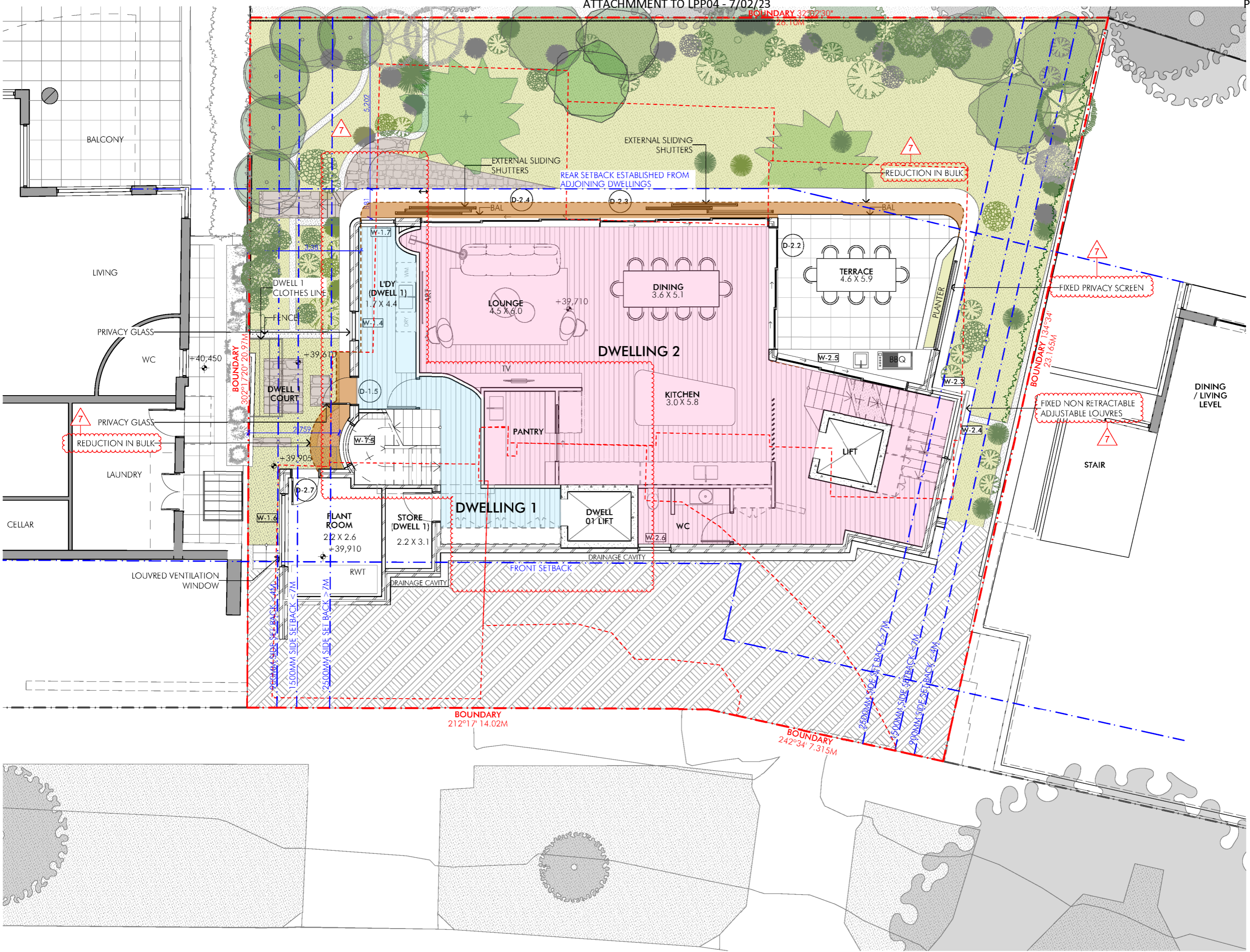


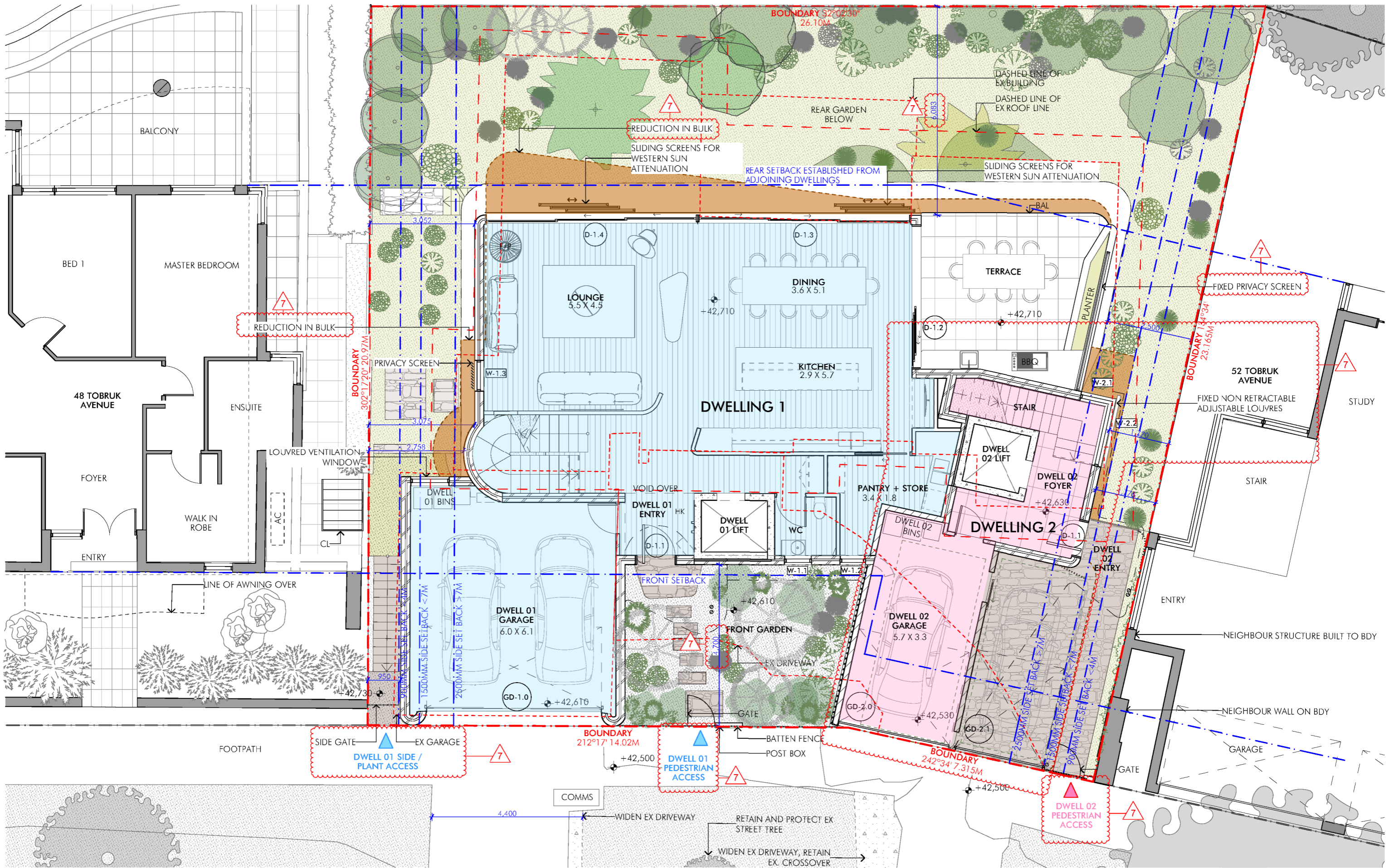
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**07**  
DRAWING NO:  
**DA.02.02**  
DRAWING TITLE:  
GA - FIRST FLOOR

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EJD  
CHECKED BY:  
SD

PROJECT NO:  
**023**  
PLOT DATE:  
11/11/2023





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REVISION NO.  
**07**

DRAWING NO.  
**DA.02.03**

DRAWING TITLE:  
**GA - SECOND FLOOR**

DRAWN BY:  
 EJD

CHECKED BY:  
 SD

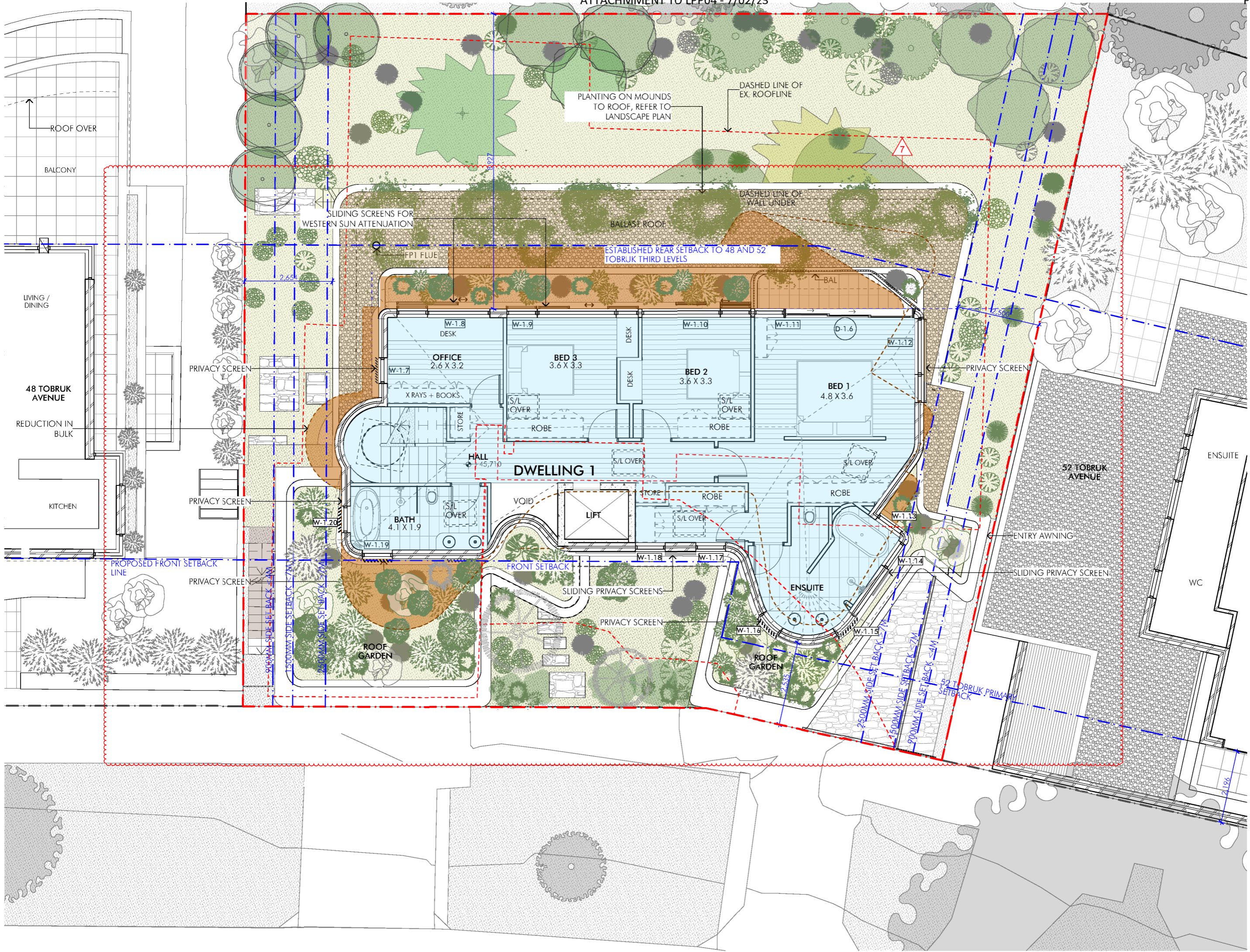
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 11/11/2023

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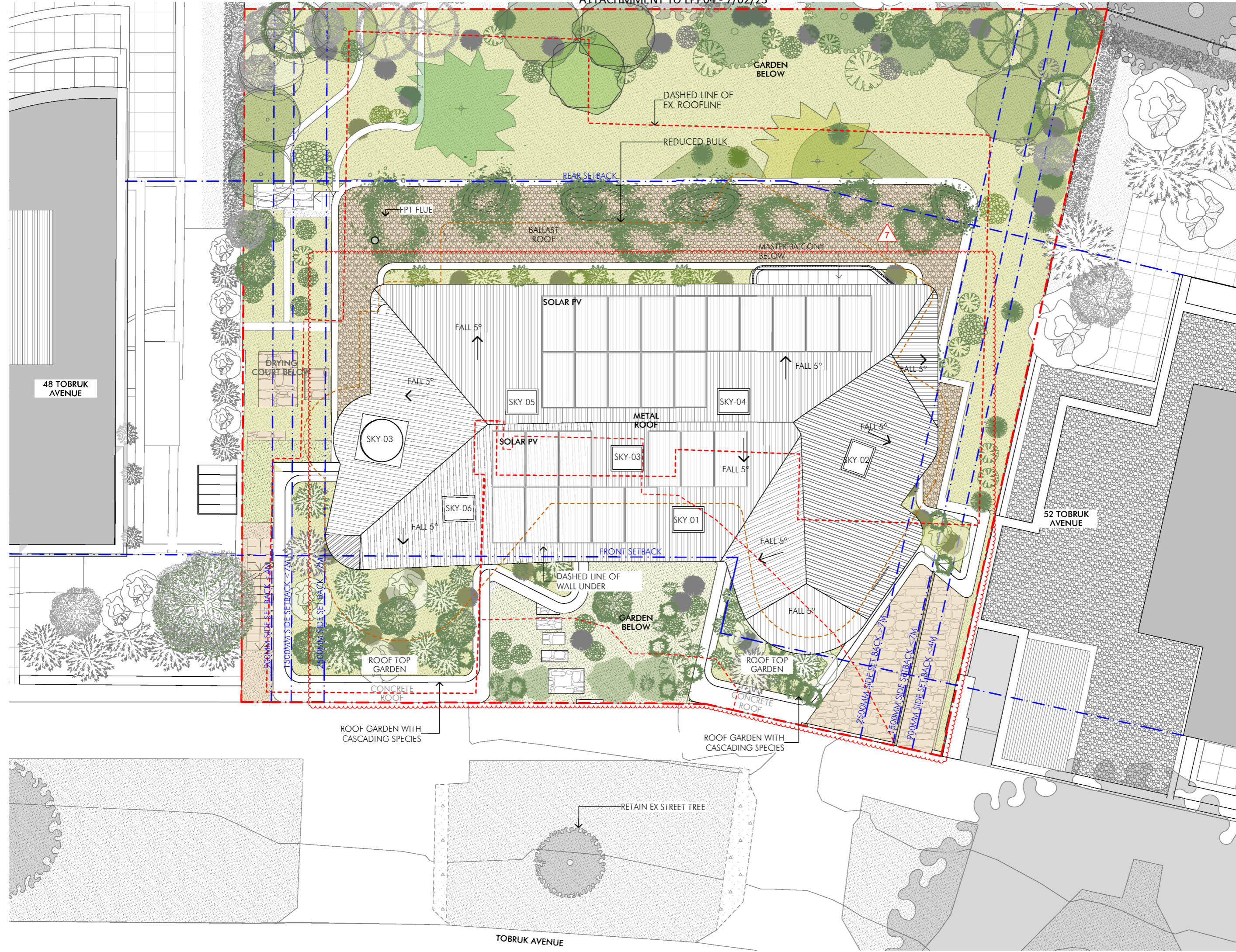


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**REVISION NO.**  
07  
**DRAWING NO.**  
DA.02.05  
**DRAWING TITLE:**  
ROOF PLAN

**DRAWN BY:**  
EJD  
**CHECKED BY:**  
SD

**PROJECT NO.**  
023  
**PLOT DATE:**  
11/11/2023



# DEVELOPMENT APPLICATION

## CREMORNE TWIN HOUSING

50 Tobruk Ave, Cremorne, NSW, 2090, Lot 25 DP 23880



DRAWING No.	DESCRIPTION	SCALE
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DA.10.09	21 JUN @1000 3D	NTS
DA.10.10	21 JUN @1100 3D	NTS
DA.10.11	21 JUN @1200 3D	NTS
DA.10.12	21 JUN @1300 3D	NTS
DA.10.13	21 JUN @1400 3D	NTS
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DA.11.02	VIEWS: NO 37 1ST STOREY BALCONY	NTS
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DA.11.07	VIEWS: NO 48 (TOP RESIDENCE) - DINING VIEW	NTS
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DA.11.11	VIEWS: NO 33 3RD LEVEL MIDDLE WINDOW VIEW	NTS
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DA.11.14	VIEWS: NO 39 2ND LEVEL LIVING	NTS
DA.11.15	VIEWS: NO 39 2ND LEVEL BEDROOM	NTS
DA.11.16	VIEWS: LLOYD AVENUE	NTS

7

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**DA**

**REVISION NO.**

**07**

**DRAWING NO.**

**DA.00.00**

**DRAWING TITLE :**  
COVER PAGE

**DRAWN BY :**

EJD

**CHECKED BY :**

SD

**PROJECT NO.**

**023**

**PLOT DATE:**

11/11/2023



ABBREVIATIONS LEGEND

TERMS - GENERAL

A/L Air Lock
ADJ Adjustable
BLDG Building
CH Ceiling Height
CL Centre Line
CNR Corner
DIM Dimension
DWR Drawer
EL Existing Level
EQ Equal
EX Existing
EXT External
FCH Finished Ceiling Height
FFL Finished Floor Level
FGL Finished Ground Level
FIN Finish
FL Floor Level
FFL Finished Pelmet Level
FRL Fire Resistant Level
INT Internal
LV Low Voltage
NTS Not to Scale
O/A Overall
OPP Opposite
RL Reduced Level
SFL Structural Floor Level
SIM Similar
SRZ Structural Root Zone
TFD To Future Detail
TMFX To Match Existing
TPZ Tree Protection Zone
TYP Typical
U/C Undercut
UNO Unless Noted Otherwise
U/S Under Side
WL Water Level
WR Water Resistant

CONSTRUCTIONS/FITTINGS

(CONTINUED)

FG Fixed Glass
FGSS Frameless Glass Shower Screen
FLR Floor
FP Fireplace
FS Fixed Shelves
HK Hook
HL Horizontal Louver
HR Handrail
HTR Heated Towel Rail
IGS Internal Glazed Screen
JU Joinery Unit
LV - A Adjustable
- F Fixed
- R Retractable
MIR Mirror
MC Metal Cladding
MH Manhole
MJ Movement Joint
MW Microwave
OS Open Shelves
PEL Pelmet / Curtain / Rollerblind
PF Pool Fence
PFF Pre formed Flashing
PTN Partition
PR Picture Rail
RFB Reflective Foil Board insulation
RB Roller Blind
RH Robe Hook
RS Recessed Shelf
RSH Roller Shutter
SCP Suspended Acoustic Ceiling Panel
SD Slot Drain
SH Soap Holder
SHR Shower
SR Shower Rose
SKY-# Sky Light (#)
SPB Suspended Plasterboard
TB Toilet Brush
TR Towel Rail
TRH Toilet Roll Holder
UA Unequal Angle
UB Universa Beam
UC Universa Column
V Vent
VL Vertical Louver
W Window
W-HL Window - High light
WL Wall Light
WPM Waterproof Membrane

HYDRAULIC

AG Agricultural Drain
BG Box Gutter
BSN Basin
BT Boundary Trap
BTH Bath
CO Cleanout
CS Cleaners Sink
DP Down Pipe
FE Fire Extinguisher
FH Fire Hydrant
FHR Fire Hose Reel
GD Grease Drain
GM Gas Meter
GT Grease Trap
HC Hose Cock
HWU-# Hot Water Unit (#)
HYD Hydraulic
IO Inspection Opening
MFD-# Hydronic Heating Manifold (#)
O/F Over Flow
OFG Over Flow Gulley
RWH-# Rainwater Head (#)
RWO Rainwater Outlet
RWT Rainwater Tank
SD Sewer Drain
SNK Sink
SP Spreader
SW Storm Water
SWD Storm Water Drain
TB Laundry Tub
TD Trench Drain
VP Vent Pipe
WC Toilet
WS Waste Stack
WTM Water Meter

MATERIALS / FINISHES

AL Aluminium
BIT Bitumen
BBK Bagged Brick
BK Brick
BLK Block
BP Brick Pavers
CFC Compressed Fibre Cement
CO Copper
CONC Concrete
CPT Carpet
CR Cement Render
CT Cement Topping with Epoxy Sealer
DAR Dressed All Round
DGU Double Glazed Unit
FBK Face Brick
FC Fibre Cement Sheeting Product
FG Fixed Glass
FGR Fibre Glass Roofing
GLZ Glass
GALV Galvanised
GRF Granolithic Finish
GRT Granolithic Topping / Epoxy Sealer
GRVL Gravel
HWD Hardwood
INSUL Insulation
LAM Laminate
MEL Melamine
MR Metal Roofing
MS Mild Steel
OFC Off Form Concrete
OG Obscure Glass
P Paint
PB Plasterboard
PLY Plywood
POL Polished
POLY Polyurethane
PQY Parquetry
RC Reinforced Concrete (Type refer to spec)
RFT Roof Tile
RT Recycled Timber
RUB Rubber
SB Splashback
SCP Satin Chrome Plate
SCR Screed
SJ Silicon Joint
SK Skirting
SKT Skirting Tile
SP Set Plaster
SS Stainless Steel
SSC Stainless Steel Cable
SS 316 Stainless Steel (Grade)
SS CR Stainless Steel Corrosion Resistant
ST Stone
STL Steel
TC Texture Coating
TLE Tile
TLE-# Tile Type # (Type refer to spec)
TMB Timber
TRT Terracotta Floor Tiles
TZ Terrazzo
V Vinyl
VNR Veneer
VT Vinyl Tiles
WBC Weatherboard Cladding
WRC Western Red Cedar
WPM Waterproof Membrane
WPB Waterproof Plasterboard

LANDSCAPE

GBE Garden Bed Edge as specified
GB Garden Bed
PP Paving Permeable
PS Paving Slab
PV Pavers
TOW Top of Wall

BASIX & NATHERS

BASIX Certificate

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

Multi Dwelling

Certificate number: 1346418M\_03

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.

Secretary Date of issue: Friday, 04 November 2022 To be valid, this certificate must be lodged within 3 months of the date of issue.



Project summary table with columns for Project name, Street address, Local Government Area, Plan type and plan number, Lot no., Section no., No. of residential flat buildings, No. of units in residential flat buildings, No. of multi-dwelling houses, No. of single dwelling houses, Project score, Water, Thermal Comfort, Energy.

Certificate Prepared by table with columns for Name / Company Name: Credwell Energy, ABN (if applicable): 625598352

BASIX Planning, Industry & Environment www.basix.nsw.gov.au Version: 3.0 / DARWINIA\_3\_20\_0 Certificate No.: 1346418M\_03 Friday, 04 November 2022 page 1/13

Nationwide House Energy Rating Scheme - Class 2 summary NatHERS Certificate No. 0008162310. Includes property details, a 5.9 star rating graphic, and a summary table of dwellings.

Explanatory Notes and Disclaimer sections of the NatHERS Certificate. The explanatory notes describe the rating process and the disclaimer states that the certificate is the property of the assessor.

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General Notes
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PROJECT NAME: CREMORNE TWIN HOUSING
COUNCIL: North Sydney Council
CLIENT: Vicki & Geoff Parker
50 Tobruk Ave Cremorne NSW 2090
P +0415433729 | E vaparker123@gmail.com

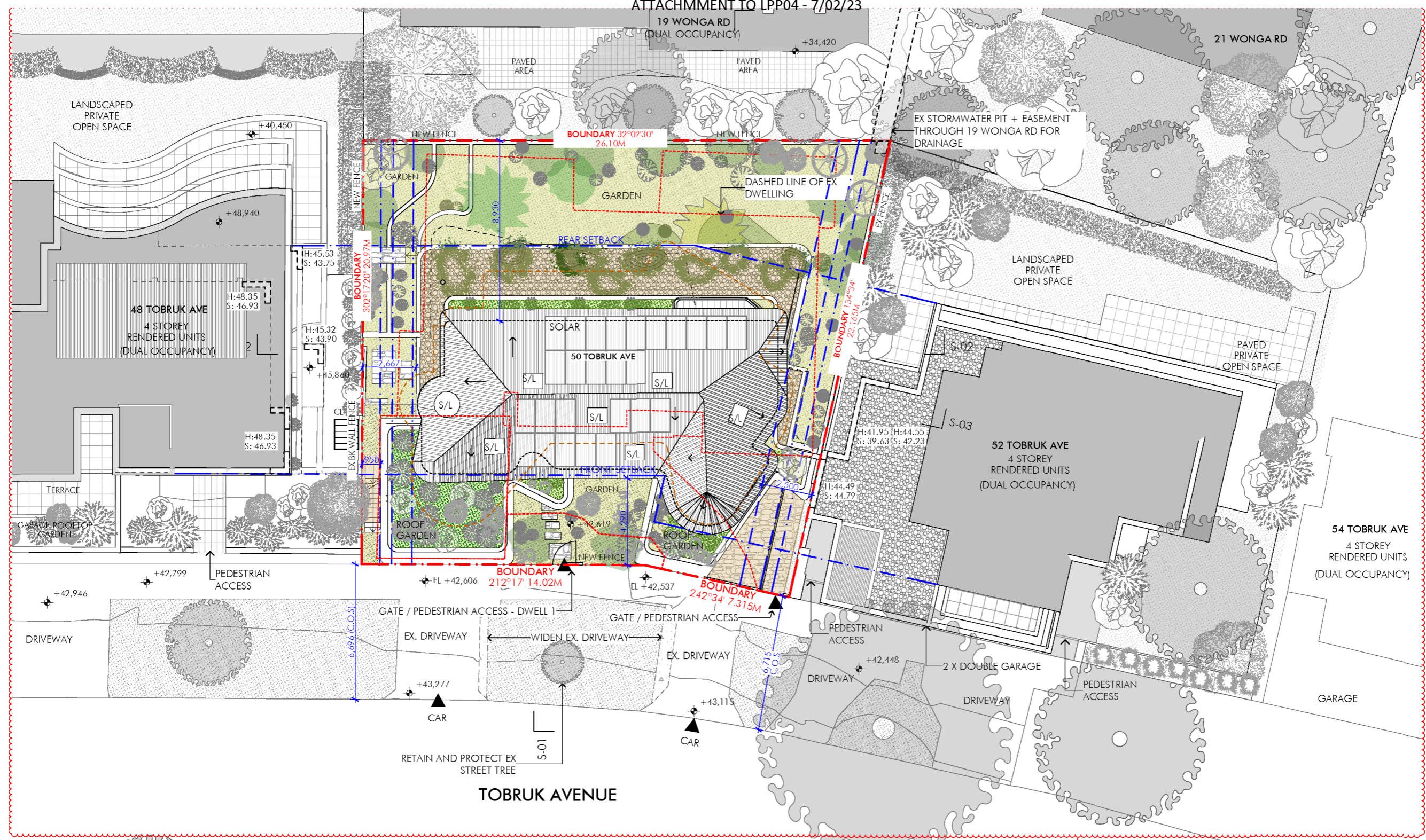
SITE: 50 Tobruk Ave, Cremorne, NSW, 2090, Lot 25 DP 23880
SITE AREA: 506
PROJECT DESCRIPTION: Demolition of existing single dwelling & new build - duplex

AMENDMENTS:
07 - Amended DA Submission - 10/11/2023
06 - Amended DA - 15/12/2022
05 - DA Submission - 31/10/2022
04 - DA WIP - 26/09/2022
03 - Issue to planer - 04/05/2022
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01 - Feasibility & Preliminary Sketch Design - 19/12/2021

REVISION NO: 07
DRAWING NO: DA.00.01
DRAWING TITLE: LEGEND & BASIX

DRAWN BY: EJD
CHECKED BY: SD
PROJECT NO: 023
PLOT DATE: 11/11/2023

NTS



**Auræ**

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 E: v.parker123@gmail.com

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**CREMORNE TWIN HOUSING**

50 Tobruk Ave,  
 Cremorne, NSW,  
 2090  
 Lot 25 DP 23880

**SITE AREA:**  
 506  
**COUNCIL:**  
 North Sydney Council  
**PROJECT DESCRIPTION:**  
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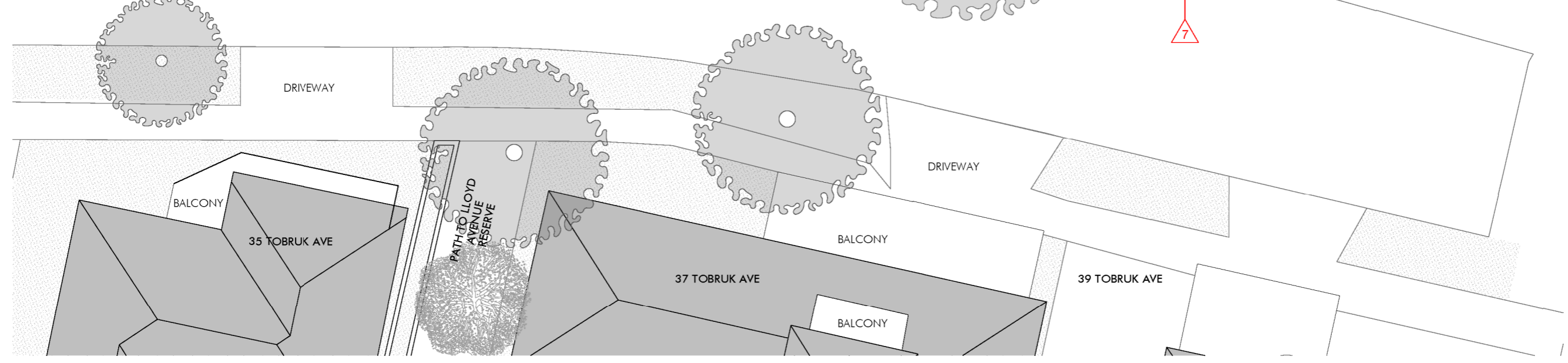
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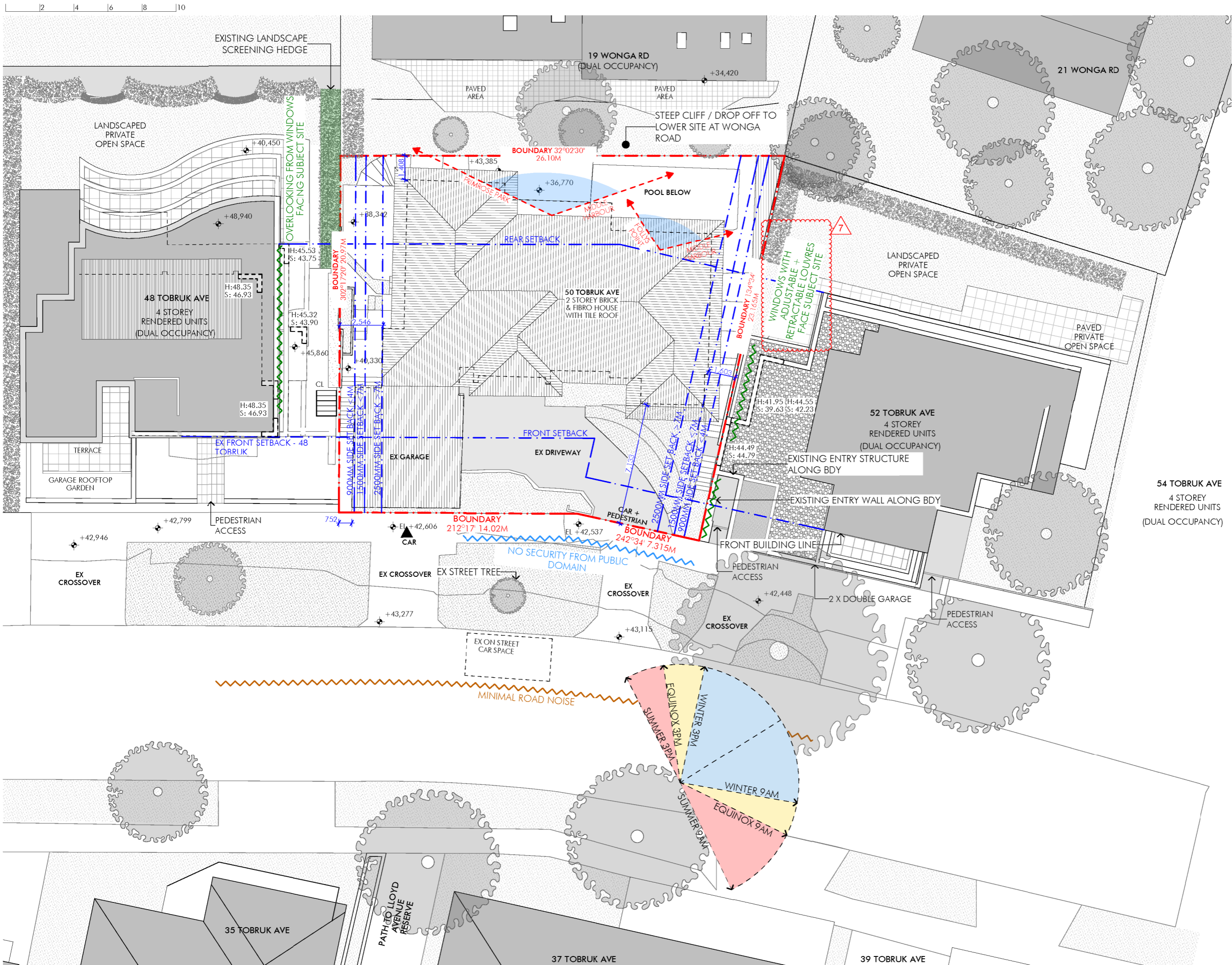
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**REVISION NO.**  
**07**  
**DRAWING NO.**  
**DA.01.01**  
**DRAWING TITLE:**  
**SITE PLAN**

**DRAWN BY:**  
 EJD  
**CHECKED BY:**  
 SD

**PROJECT NO.**  
**023**  
**PLOT DATE:**  
 11/11/2023





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 50 Tobruk Ave,  
 Cremorne, NSW,  
 2090  
 Lot 25 DP 23880

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 North Sydney Council  
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SCALE: 1:200

**REVISION NO. 07**  
**DRAWING NO. DA.01.02**  
**DRAWING TITLE: SITE ANALYSIS PLAN**

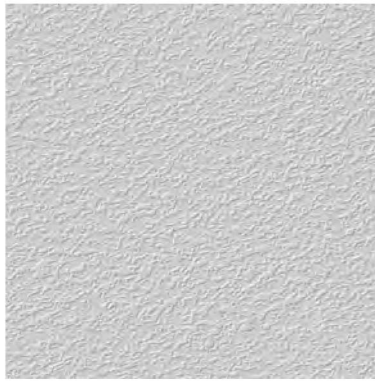
**DRAWN BY:**  
 EJD  
**CHECKED BY:**  
 SD

**PROJECT NO. 023**  
**PLOT DATE:** 11/11/2023

1. STONE CLADDING TO FEATURE ELEMENTS AND GARDEN WALLS



2. RENDER



3. TIMBER DETAILING + CLADDING



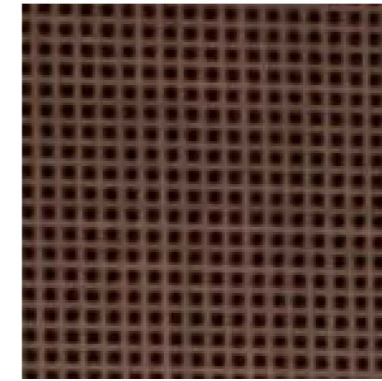
4. METAL ROOF - GREY / BRONZE



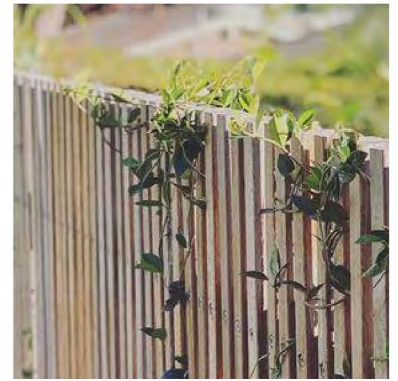
5. GLAZING / POLYCARBONATE



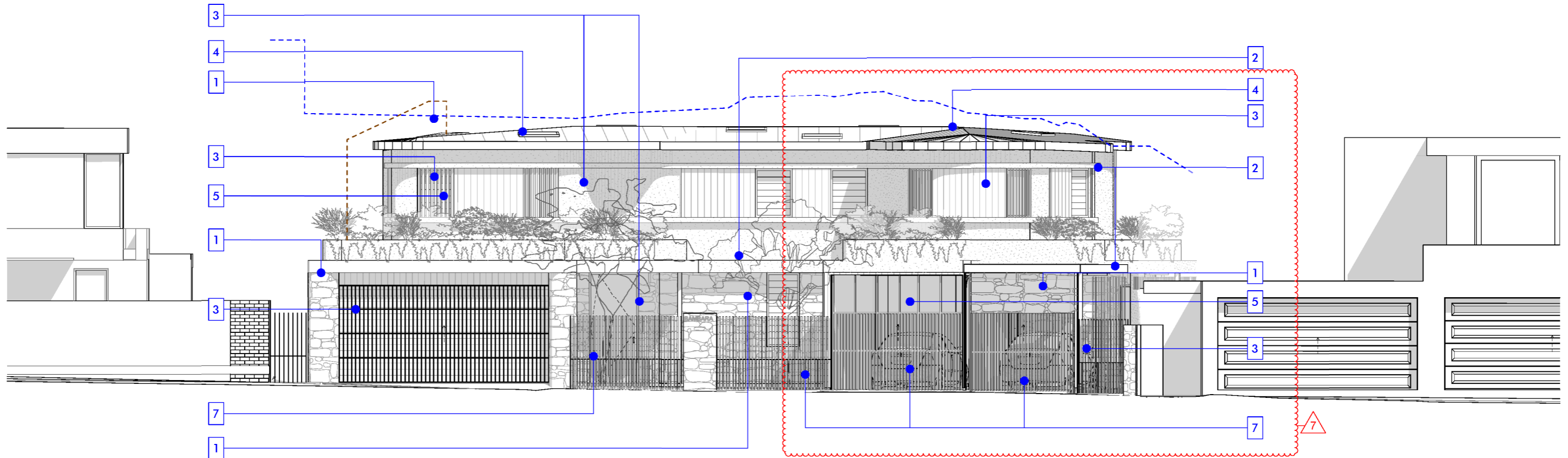
6. SLIDING SCREENS (NORTH WEST ELEVATION)



7. TIMBER BATTENS



50 TOBRUK AVENUE



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**PROJECT NAME :**

CREMORNE TWIN HOUSING

**COUNCIL :**

North Sydney Council

**CLIENT :**

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**SITE :**

50 Tobruk Ave, Cremorne, NSW, 2090,  
Lot 25 DP 23880

**SITE AREA :**

506

**PROJECT DESCRIPTION :**

Demolition of existing single dwelling & new build - duplex

**AMENDMENTS :**

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**REVISION NO.**

07

**DRAWING NO.**

DA.01.03

**DRAWING TITLE :**

SCHEDULES OF MATERIALS AND FINISHES

**DRAWN BY :**

EJD

**CHECKED BY :**

SD

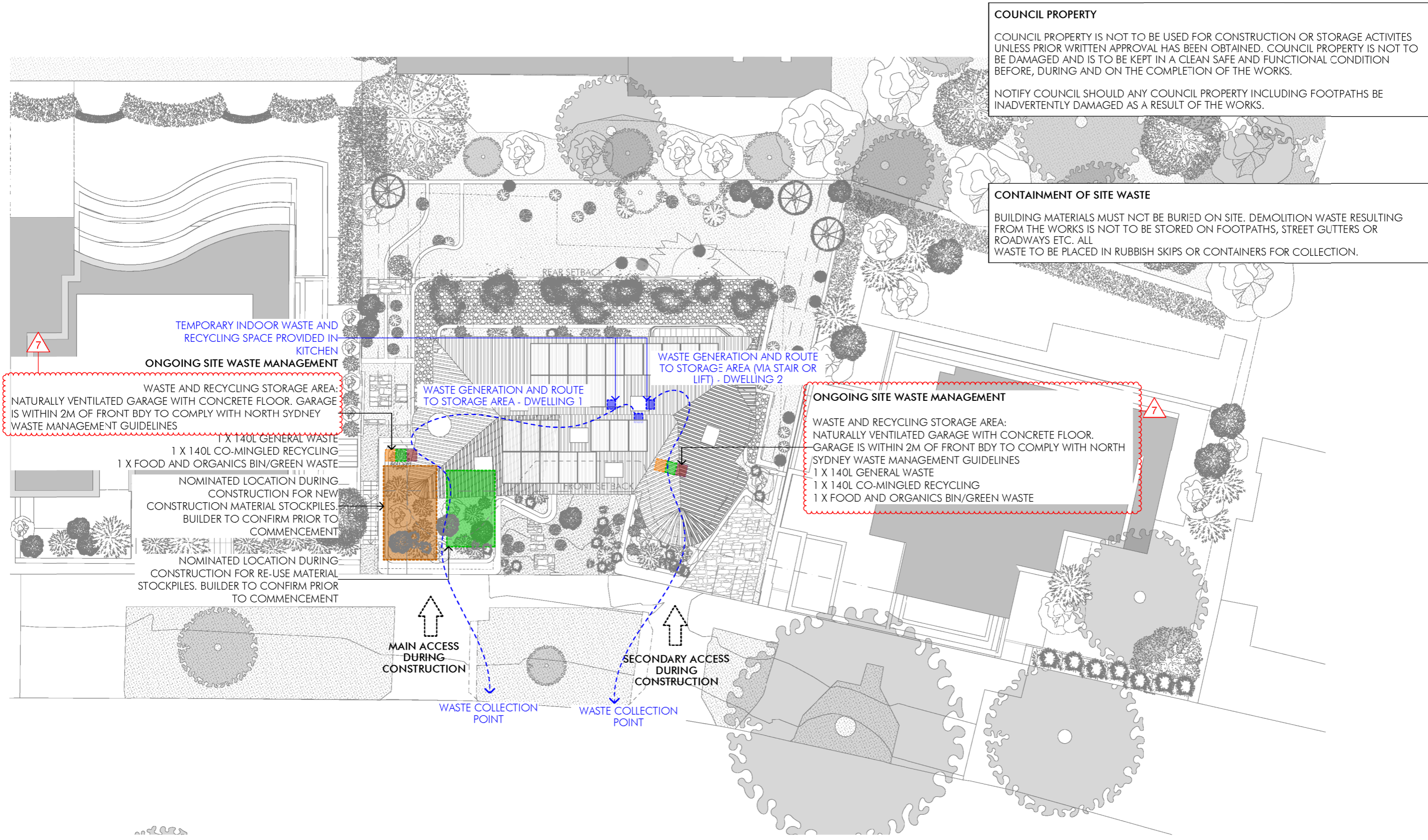
**PROJECT NO.**

023

**PLOT DATE :**

11/11/2023

SCALE: 1:100



**COUNCIL PROPERTY**  
 COUNCIL PROPERTY IS NOT TO BE USED FOR CONSTRUCTION OR STORAGE ACTIVITIES UNLESS PRIOR WRITTEN APPROVAL HAS BEEN OBTAINED. COUNCIL PROPERTY IS NOT TO BE DAMAGED AND IS TO BE KEPT IN A CLEAN SAFE AND FUNCTIONAL CONDITION BEFORE, DURING AND ON THE COMPLETION OF THE WORKS.  
 NOTIFY COUNCIL SHOULD ANY COUNCIL PROPERTY INCLUDING FOOTPATHS BE INADVERTENTLY DAMAGED AS A RESULT OF THE WORKS.

**CONTAINMENT OF SITE WASTE**  
 BUILDING MATERIALS MUST NOT BE BURIED ON SITE. DEMOLITION WASTE RESULTING FROM THE WORKS IS NOT TO BE STORED ON FOOTPATHS, STREET GUTTERS OR ROADWAYS ETC. ALL WASTE TO BE PLACED IN RUBBISH SKIPS OR CONTAINERS FOR COLLECTION.

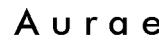
**ONGOING SITE WASTE MANAGEMENT**  
 WASTE AND RECYCLING STORAGE AREA: NATURALLY VENTILATED GARAGE WITH CONCRETE FLOOR. GARAGE IS WITHIN 2M OF FRONT BDY TO COMPLY WITH NORTH SYDNEY WASTE MANAGEMENT GUIDELINES  
 1 X 140L GENERAL WASTE  
 1 X 140L CO-MINGLED RECYCLING  
 1 X FOOD AND ORGANICS BIN/GREEN WASTE

NOMINATED LOCATION DURING CONSTRUCTION FOR NEW CONSTRUCTION MATERIAL STOCKPILES. BUILDER TO CONFIRM PRIOR TO COMMENCEMENT  
 NOMINATED LOCATION DURING CONSTRUCTION FOR RE-USE MATERIAL STOCKPILES. BUILDER TO CONFIRM PRIOR TO COMMENCEMENT

WASTE GENERATION AND ROUTE TO STORAGE AREA (VA STAIR OR LIFT) - DWELLING 2  
 WASTE GENERATION AND ROUTE TO STORAGE AREA - DWELLING 1

**ONGOING SITE WASTE MANAGEMENT**  
 WASTE AND RECYCLING STORAGE AREA: NATURALLY VENTILATED GARAGE WITH CONCRETE FLOOR. GARAGE IS WITHIN 2M OF FRONT BDY TO COMPLY WITH NORTH SYDNEY WASTE MANAGEMENT GUIDELINES  
 1 X 140L GENERAL WASTE  
 1 X 140L CO-MINGLED RECYCLING  
 1 X FOOD AND ORGANICS BIN/GREEN WASTE

MAIN ACCESS DURING CONSTRUCTION  
 SECONDARY ACCESS DURING CONSTRUCTION  
 WASTE COLLECTION POINT  
 WASTE COLLECTION POINT



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PROJECT NAME :  
**CREMORNE TWIN HOUSING**  
 COUNCIL :  
 North Sydney Council  
 CLIENT :  
 Vicki & Geoff Parker  
 50 Tobruk Ave Cremorne NSW 2090  
 P +0415433729 | E vaparker123@gmail.com

SITE :  
 50 Tobruk Ave, Cremorne, NSW, 2090 ,  
 Lot 25 DP 23880  
 SITE AREA :  
 506  
 PROJECT DESCRIPTION :  
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SCALE: 1:200

REVISION NO.  
**07**  
 DRAWING NO.  
**DA.01.04**  
 DRAWING TITLE:  
 WASTE MANAGEMENT PLAN

DRAWN BY :  
 EJD  
 CHECKED BY :  
 SD  
 PROJECT NO.  
**023**  
 PLOT DATE:  
 11/11/2023

**Auræ Architecture**

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**CREMORNE TWIN HOUSING**  
50 Tobruk Ave,  
Cremorne, NSW,  
2090  
Lot 25 DP 23880

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SCALE: 1:100

REVISION NO.

**07**

DRAWING NO.

**DA.02.01**

DRAWING TITLE:  
**GA - GROUND FLOOR**

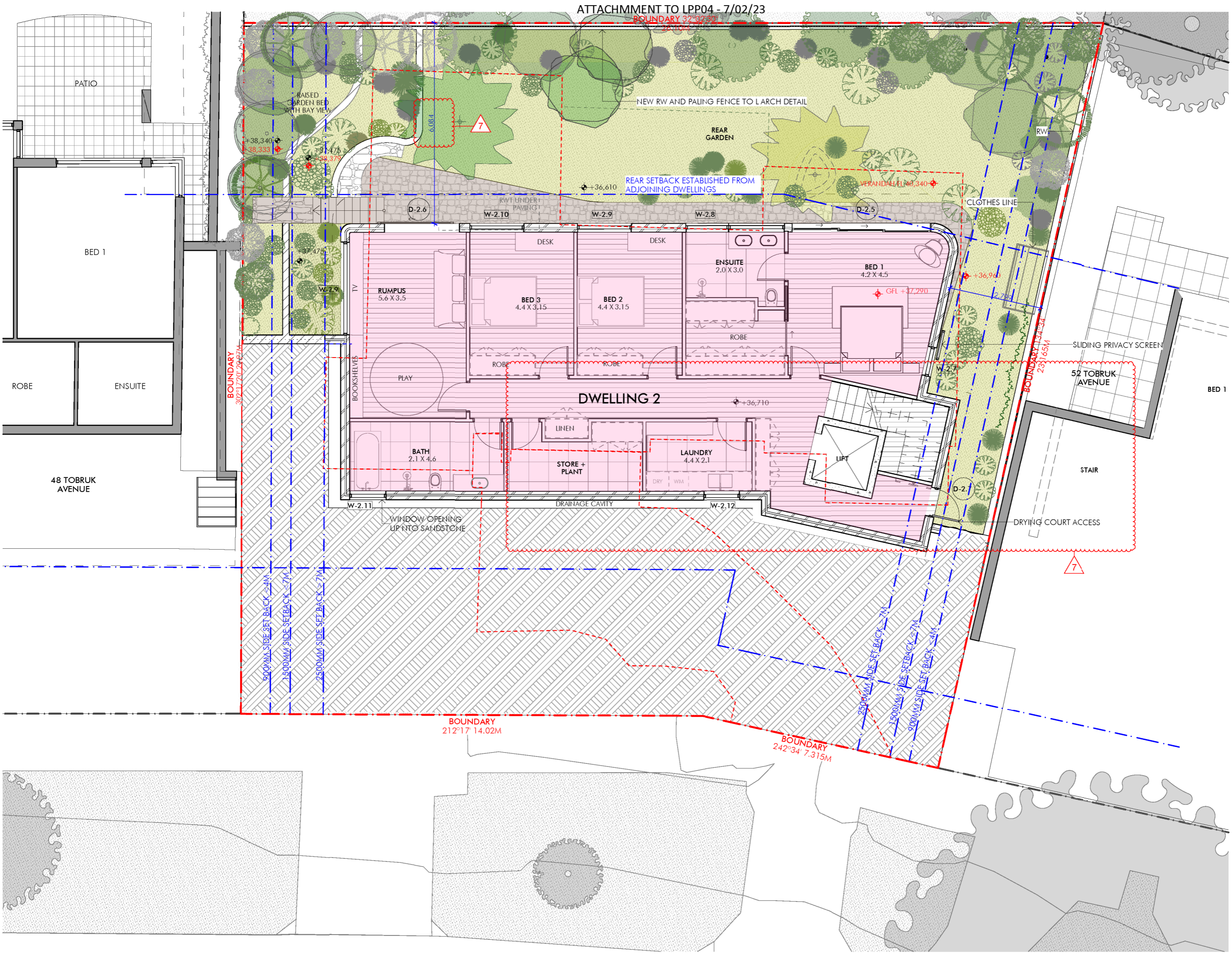
DRAWN BY:  
EJD

CHECKED BY:  
SD

PROJECT NO.

**023**

PLOT DATE: 11/11/2023



ATTACHMENT TO LPP04 - 7/02/23

BOUNDARY 32°02'30"

REAR SETBACK ESTABLISHED FROM ADJOINING DWELLINGS

DWELLING 2

BOUNDARY 212°17' 14.02M

BOUNDARY 242°34' 7.315M

BOUNDARY 302°17'20" 20.8214M

BOUNDARY 113°43'31"

BOUNDARY 233°16'51"

900MM SIDE SETBACK < 4M

1500MM SIDE SETBACK < 7M

2500MM SIDE SETBACK < 7M

2500MM SIDE SETBACK < 7M

1500MM SIDE SETBACK < 7M

900MM SIDE SETBACK < 4M

PATIO

BED 1

ROBE

ENSUITE

48 TOBRUK AVENUE

RAISED GARDEN BED WITH BAY VIEW

NEW RW AND PALING FENCE TO LARCH DETAIL

REAR GARDEN

REAR SETBACK ESTABLISHED FROM ADJOINING DWELLINGS

CLOTHES LINE

CLOTHES LINE

SLIDING PRIVACY SCREEN

BED 1

BED 1

STAIR

DRYING COURT ACCESS

WINDOW OPENING UP INTO SANDSTONE

DRAINAGE CAVITY

LIFT

TV

BOOKSHELVES

DESK

DESK

ENSUITE

BED 1

BED 3

BED 2

ROBE

ROBE

ROBE

PLAY

RUMPUS

BATH

LINEN

STORE + PLANT

LAUNDRY

+38,340

+38,333

+37,475

+38,375

+36,610

VERANDAH ELN +36,340

+36,960

+36,710

D-2.1

D-2.6

W-2.10

W-2.9

W-2.8

D-2.5

W-2.9

W-2.11

W-2.12

W-2.7

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**CREMORNE TWIN HOUSING**  
50 Tobruk Ave,  
Cremorne, NSW,  
2090  
Lot 25 DP 23880

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North Sydney Council  
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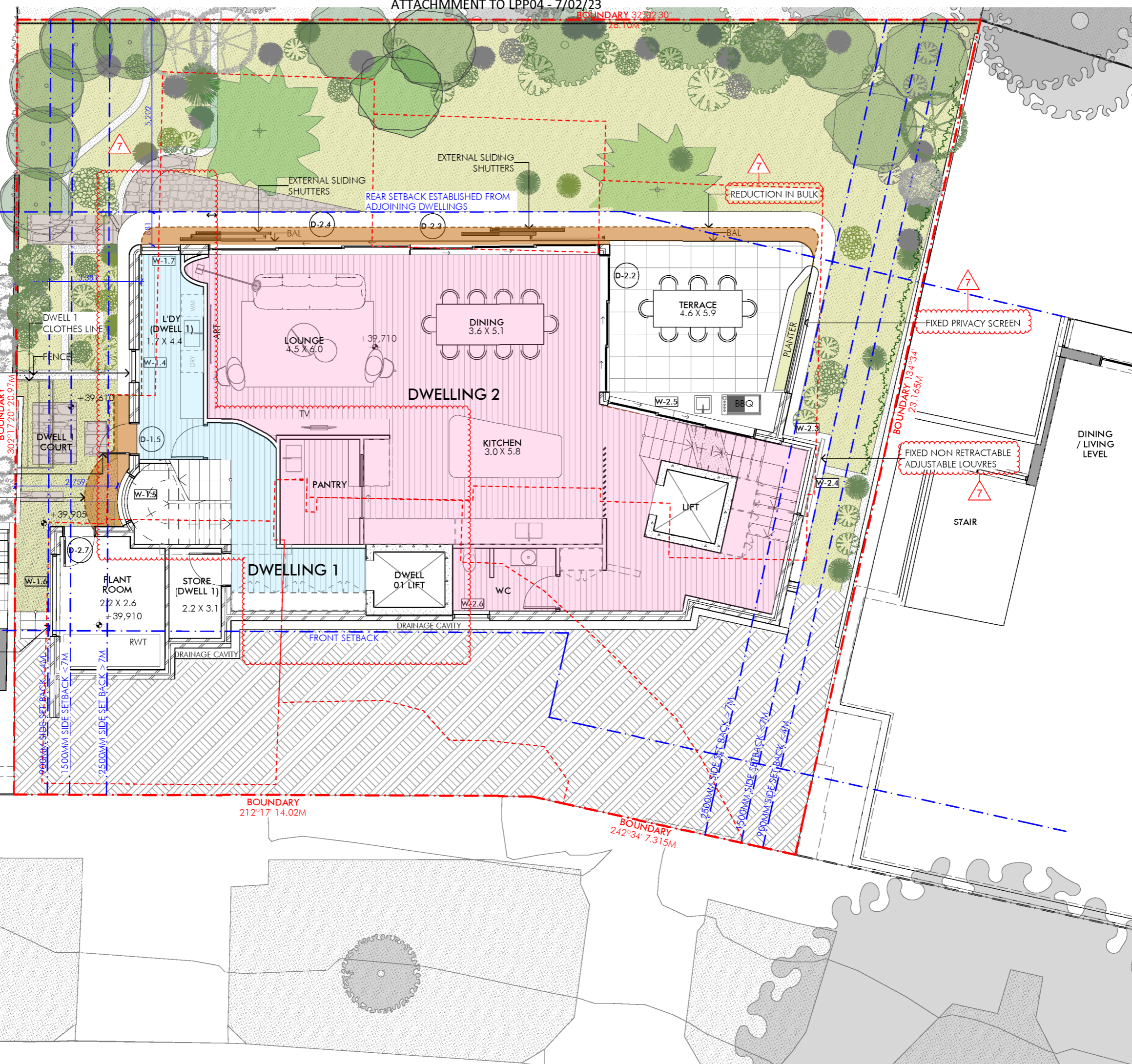
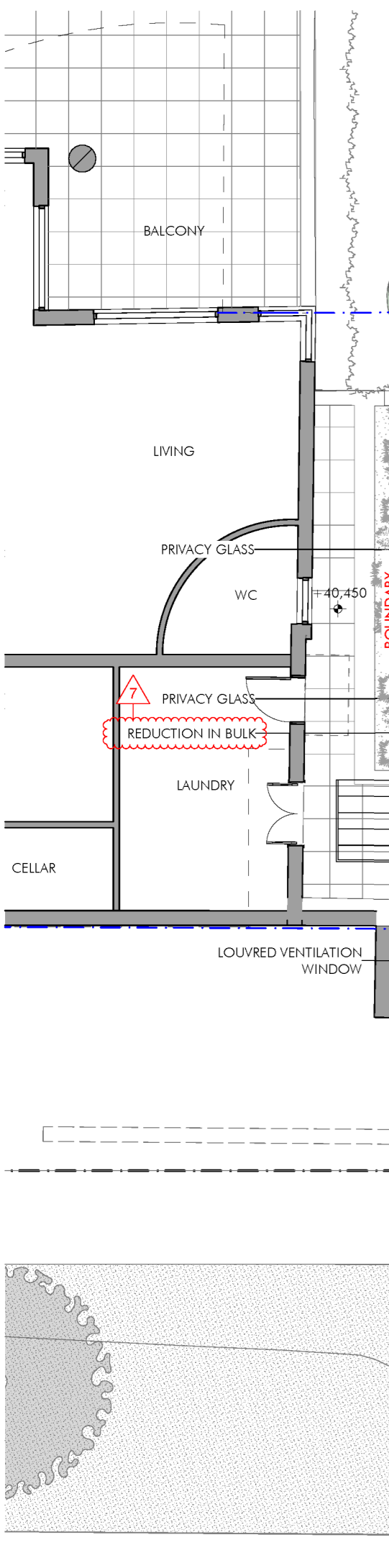
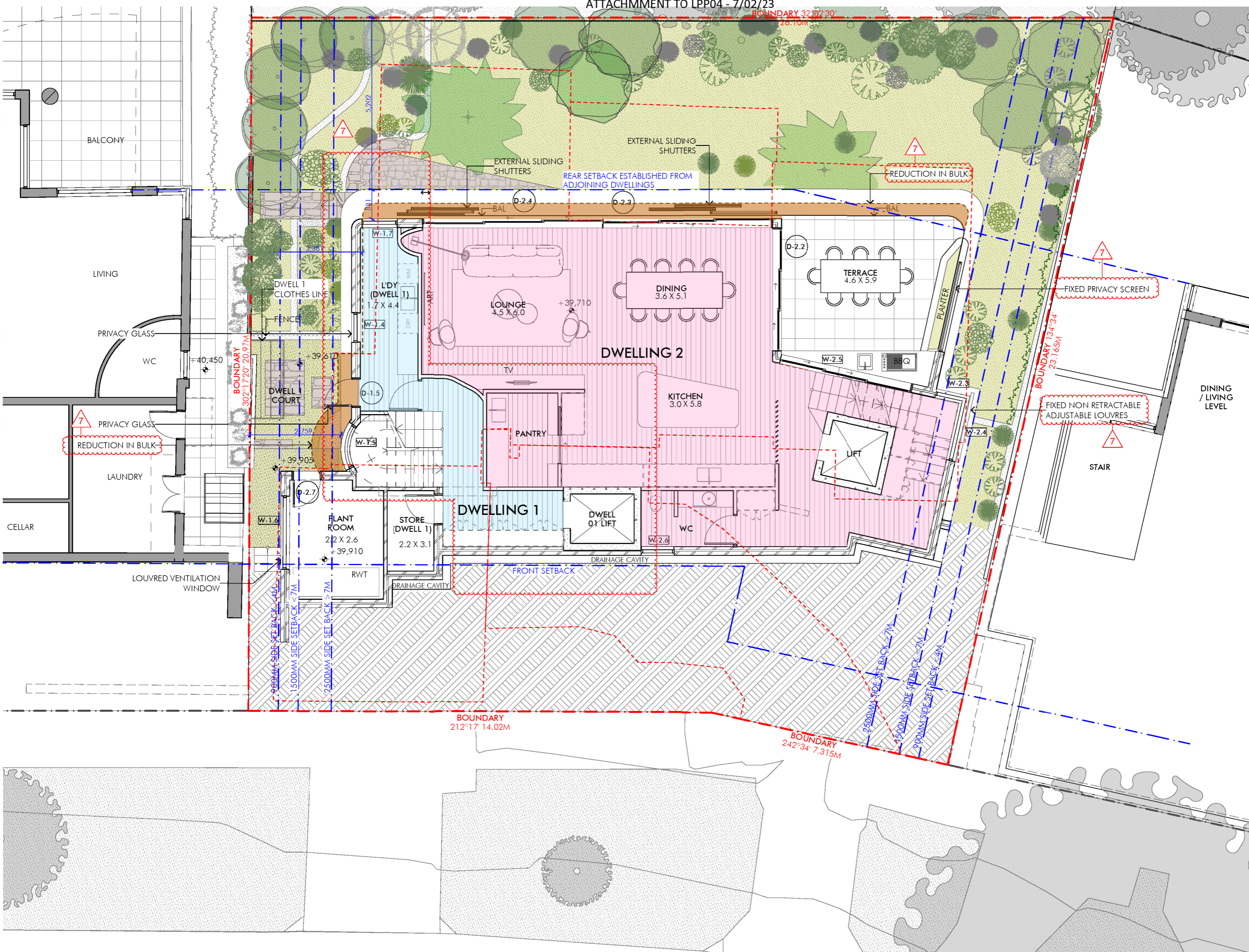


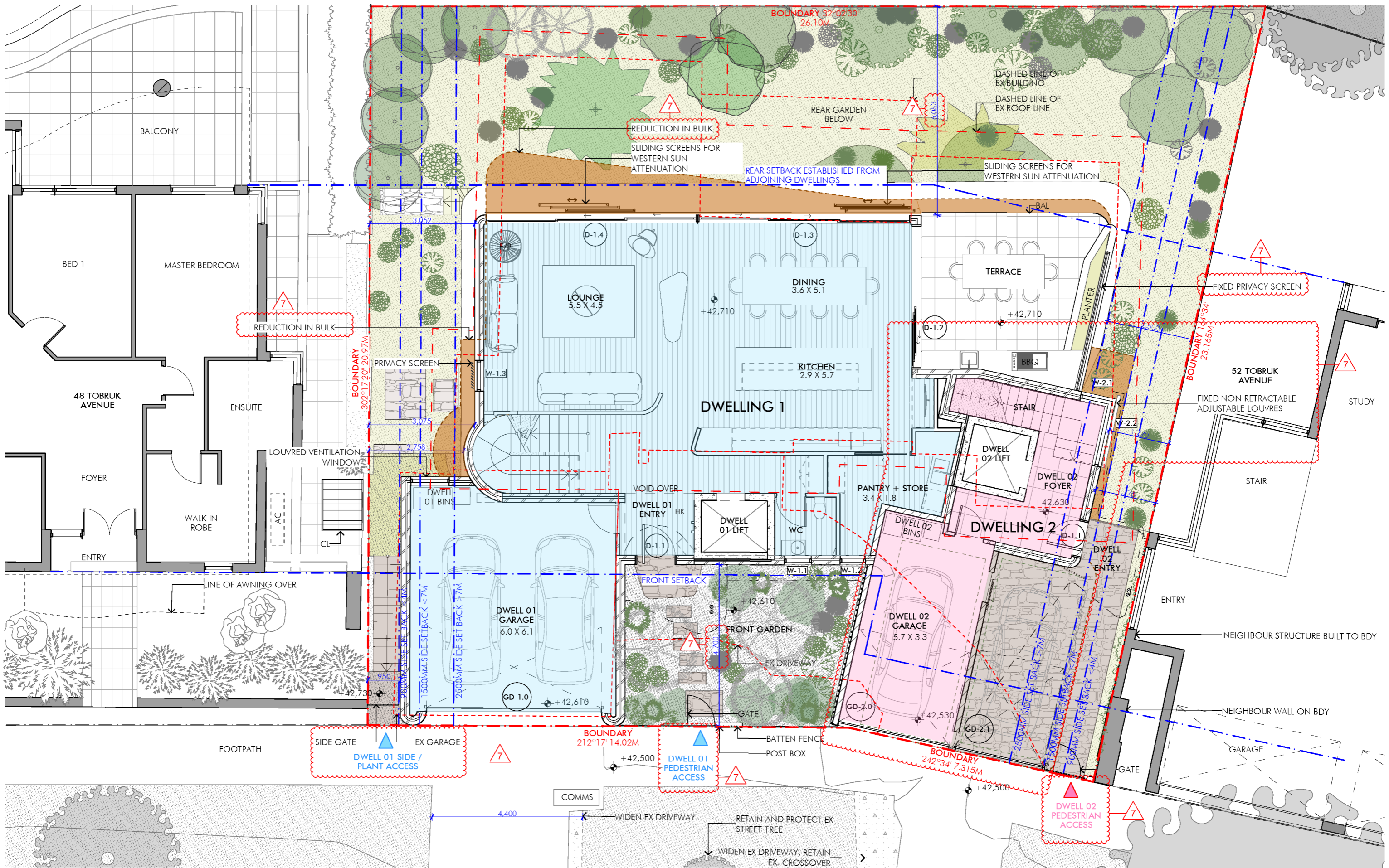
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REVISION NO.  
**07**  
DRAWING NO.  
**DA.02.02**  
DRAWING TITLE:  
GA - FIRST FLOOR

DRAWN BY:  
EJD  
CHECKED BY:  
SD

PROJECT NO.  
**023**  
PLOT DATE:  
11/11/2023





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 50 Tobruk Ave, Cremorne, NSW, 2090,  
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COUNCIL:  
 506

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SCALE: 1:100

REVISION NO.  
**07**

DRAWING NO.  
**DA.02.03**

DRAWING TITLE:  
 GA - SECOND FLOOR

DRAWN BY:  
 EJD

CHECKED BY:  
 SD

PROJECT NO.  
**023**

PLOT DATE:  
 11/11/2023





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E: veparker123@gmail.com

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50 Tobruk Ave,  
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2090  
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506

COUNCIL:  
North Sydney Council

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SCALE: 1:100

REVISION NO.

**07**

DRAWING NO.

**DA.02.04**

DRAWING TITLE:

**GA - THIRD FLOOR**

DRAWN BY:

**EJD**

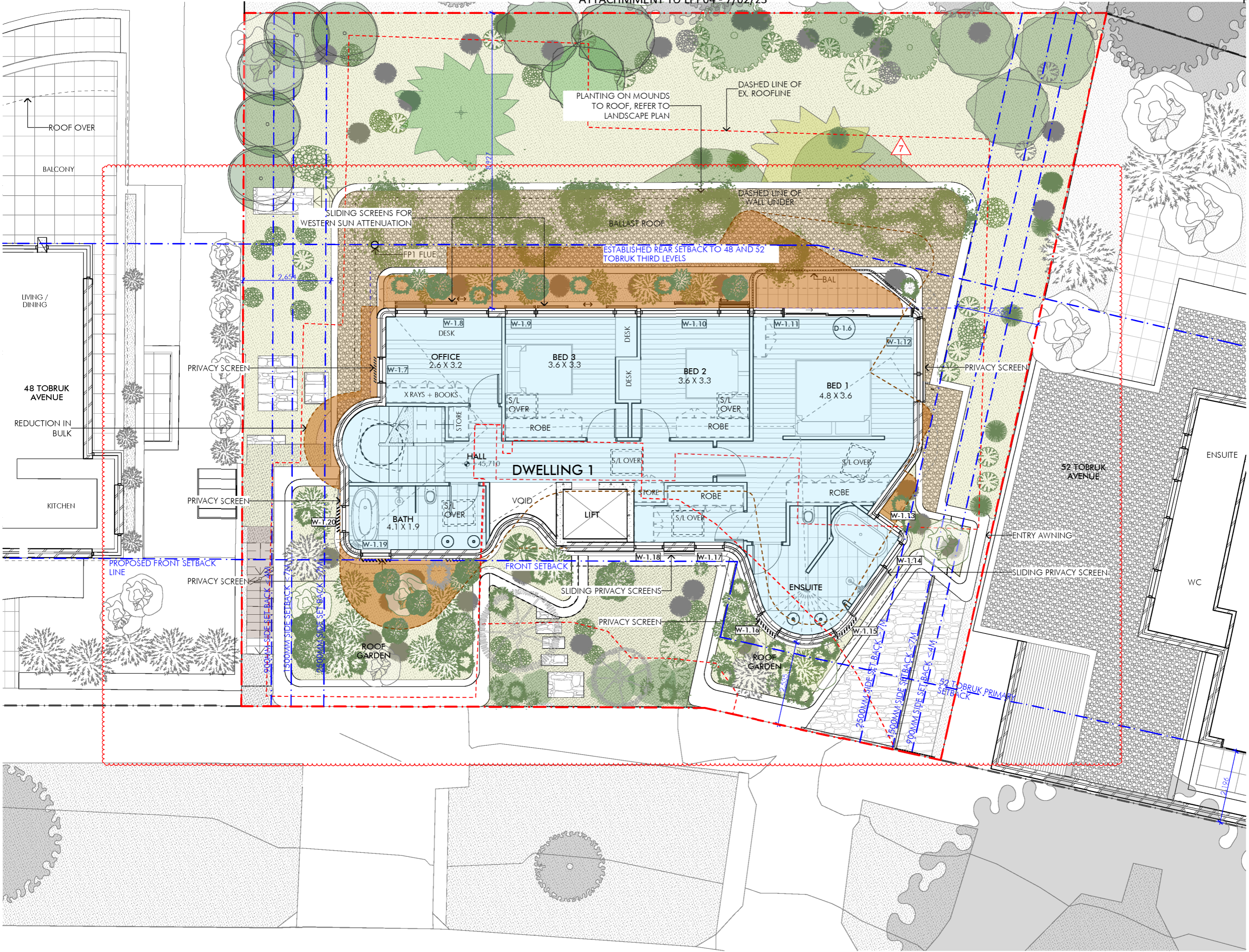
CHECKED BY:

**SD**

PROJECT NO.

**023**

PLOT DATE: 11/11/2023



Auræ

Auræ Architecture

ABN: 28690403542  
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E: enquiries@aurae.com.au  
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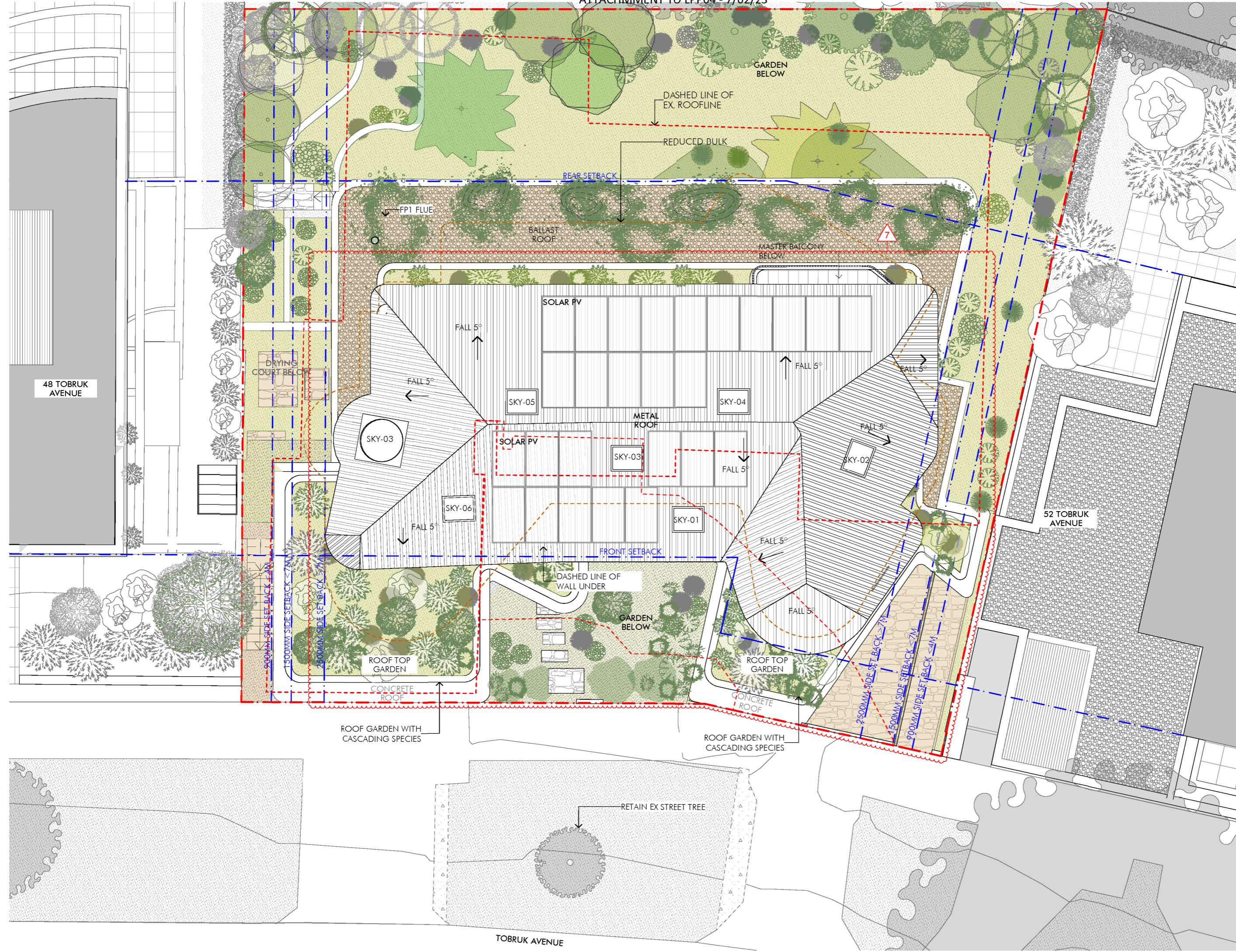


SCALE: 1:100

REVISION NO.  
**07**  
DRAWING NO.  
**DA.02.05**  
DRAWING TITLE:  
**ROOF PLAN**

DRAWN BY:  
EJD  
CHECKED BY:  
SD

PROJECT NO.  
**023**  
PLOT DATE:  
11/11/2023





## REVISED REQUEST TO VARY THE MAXIMUM HEIGHT CONTROL PURSUANT TO CLAUSE 4.6 OF NORTH SYDNEY LEP 2013 (November 2023)

### 1. INTRODUCTION

- 1.1 This written request has been prepared in accordance with Clause 4.6 of the North Sydney Local Environmental Plan 2013 ('LEP') to accompany a development application for a dual occupancy at 50 Tobruk Avenue Cremorne (the 'Site'). In this document, we refer to the written request as a "variation request". It reflects amendments made to the originally submitted plans in response to matters raised by Council and public submissions.
- 1.2 This variation request relates to the maximum height development standard of **8.5m** applicable to the Site pursuant to clause 4.3 of the LEP and the relevant map.
- 1.3 It is important to note at the outset that clause 4.6 of the LEP "*is as much a part of [the 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.*" (SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 at [73]).
- 1.4 This variation request demonstrates that compliance with the maximum height development standard applicable to the Site pursuant to clause 4.3 of the LEP is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the proposed contravention of the development standard, as required pursuant to clause 4.6(3) of the LEP. Additionally, in accordance with clause 4.6(4), it is demonstrated in this variation request that the proposal will be in the public interest because it is consistent with the objectives of the relevant development standard, as well as the R2 Low Density Residential zone objectives.

### 2. DEVELOPMENT STANDARD TO BE VARIED

- 2.1 The land is zoned R3. Clause 4.3 of the LEP includes a development standard for height as follows:

#### **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,**
- (b) to promote the retention and, if appropriate, sharing of existing views,**
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,**
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,**
- (e) to ensure compatibility between development, particularly at zone boundaries,**

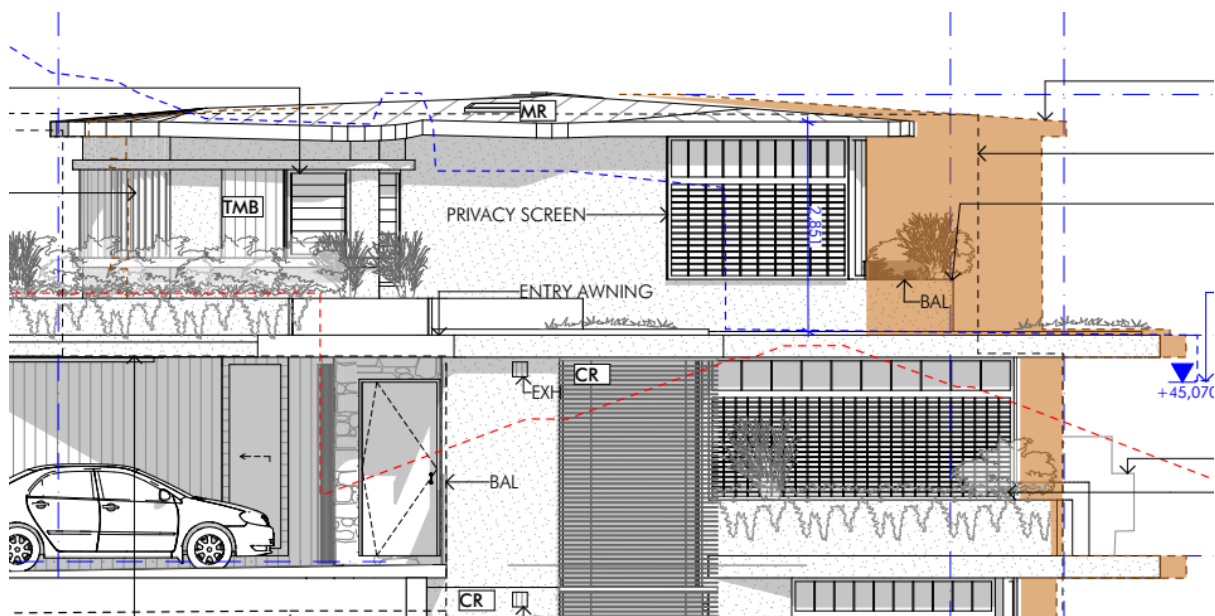


- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.
- (2) 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.
- (2A)–(2C) (Repealed)

- 2.2 Clause 4.3 of the LEP and the digital LEP mapping on the NSW Planning Portal indicates that the site is subject to a height control of **8.5m**.

### 3 PROPOSED NUMERICAL VARIATION TO THE FSR STANDARD

- 3.1 The proposal has a maximum height of 2.851m in the northern corner of the proposed building (see **Figure A**). To the west the non-compliance is reduced to 1.178m. As can be seen below and in the other elevations, due to the slope of the land, the SE half of the building is less than the permitted height, whilst the northern half is above the control to varying degrees.



**Figure A – maximum extent of height breach**

### 4 CLAUSE 4.6 AND RELEVANT CASE LAW

- 4.1 The relevant parts of clause 4.6 of the LEP are:

- (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 Secretary has been obtained.
- 4.2 The development standard in clause 4.3 of the LEP **is not** excluded from the operation of clause 4.6 for this Site by clause 4.6(8).
- 4.3 The purpose of this variation request is to demonstrate the matters required by clause (3)(a) and (b) above and to demonstrate that the consent authority is able to be satisfied about the matters in clause (4)(a)(i), (ii) and 5(a) and (b). In preparing this request, regard has been had to the document: "Varying development standards: A Guide (August 2011)" prepared by the NSW Department of Planning & Infrastructure and relevant Land Environment Court judgments including the following:
- *Wehbe v Pittwater Council* [2007] 156 LGERA 446; [\[2007\] NSWLEC 827](#);
  - *Four2Five Pty Ltd v Ashfield Council* [2007] 156 LGERA 446; [\[2015\] NSWLEC 90](#);
  - *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [\[2018\] NSWCA 245](#);
  - *Initial Action Pty Ltd v Woollahra Council* [\[2018\] NSWLEC 118](#);
  - *Baron Corporation Pty Limited v Council of the City of Sydney* [\[2019\] NSWLEC 61](#);
  - *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [\[2018\] NSWLEC 191](#);
  - *SJD DB2 Pty Ltd v Woollahra Municipal Council* [\[2020\] NSWLEC 1112](#);
  - *Woollahra Municipal Council v SJD DB2 Pty Limited* [\[2020\] NSWLEC 115](#).



## 5 THE REQUIREMENTS OF SUBCLAUSE (3)(a) OF CLAUSE 4.6 OF THE LEP

### 5.1 Subclause 4.6(3)(a) of the LEP: Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

5.2 Whilst it pertained to SEPP 1, the Land and Environment Court judgment *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) (***Wehbe***), remains equally applicable to addressing this subclause. Specifically, in *Wehbe* the Court identified 5 different 'ways' in which it can be established that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. This list of ways, reproduced in the DP&I Guide referred to above, is not exhaustive, but provides as follows:

1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. the underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. *the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

5.3 In regard to the circumstances of the proposed development and this Clause 4.6 variation request, reliance is placed on *Wehbe* ways 1 and 3 (as underlined above).

5.4 It is sufficient to demonstrate **only one** of these ways to satisfy clause 4.6(3)(a) (*Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22], *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]. Further, it is only necessary to demonstrate that strict compliance is either unreasonable or unnecessary.

#### **Wehbe Way 1 - the objectives of the standard are achieved notwithstanding non-compliance with the standard**

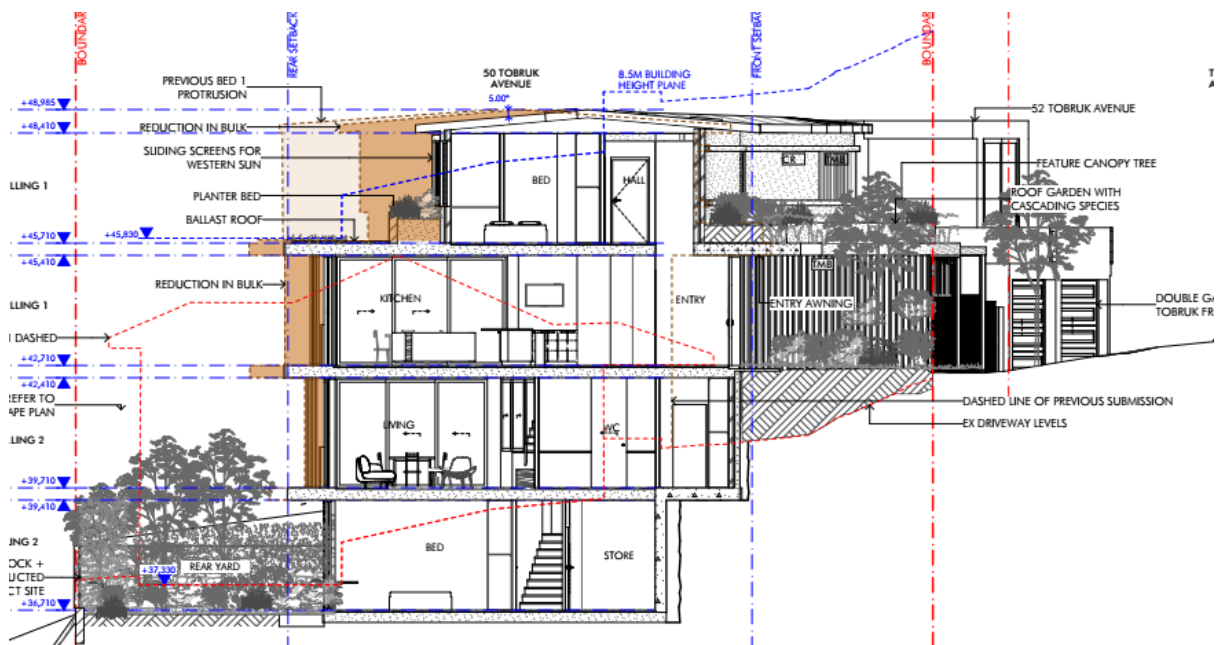
5.4.1 The applicable objectives of the height development standard in clause 4.3 of the LEP (as reproduced in Section 2.1 above) are responded to as follows:

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

Comment – The proposal appears to step from two storeys at the upper part of the site to 4 storeys at the lower part, with the lowest 2 levels not visible from the street. The physical stepping of the building is not as pronounced except in the elevations where it does visually step from 2 to 4 storeys (NE elevation in **Figure A** above).



However even in section there is stepping of the form as indicated below. The proposed excavation is stepped, as is the form of the building with the top level being amended to provide a much greater setback from the levels below to the rear boundary. The overall footprint of the top level is around 131sqm, much less than the 149sqm of the level below.



**Figure B – stepped nature of the building**

The existing 2 storey dwelling is excavated into the hillside and the proposal extends this excavation towards the street. Utilising this space reduces the visible bulk of the building.

In view of the above it is considered that the proposal is adequately 'stepped' to respond to the topography of the site and therefore is consistent with this objective.

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

Comment - The requested variation to the maximum building height will not impact on existing public views and the impacts on private views are not unreasonable as detailed in the view impact assessment in the submitted Revised Statement of Environmental Effects (SEE). Whilst there is some view loss that would result from the proposal, it is no greater and in most cases less, than a building which fully complied with the controls. The proposal is sensitively designed, providing front and side setbacks that are, for the most part, greater than required, allow view corridors along side boundaries to be maintained to a greater degree.

Therefore having regards to the LEC Planning Principles outlined in *Tenacity*, the proposal does not result in any unreasonable view loss and is consistent with this objective.



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

Comment – Shadow diagrams have been provided with the architectural plans showing the extent of additional shadow created by the proposed building which only affect one property – No 48 Tobruk Avenue. These shadow diagrams confirm that the extent of additional shadow is not significant and in particular provides a balanced outcome compared to a fully complying building envelope and retains a minimum of 4 hours solar access at midwinter, exceeding the relevant 3 hour requirement. The proposal is consistent with this objective.

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

Comment – As discussed in detail in the revised SEE, the proposal will not result in any unreasonable privacy impacts on adjoining dwellings. . The proposal is consistent with this objective.

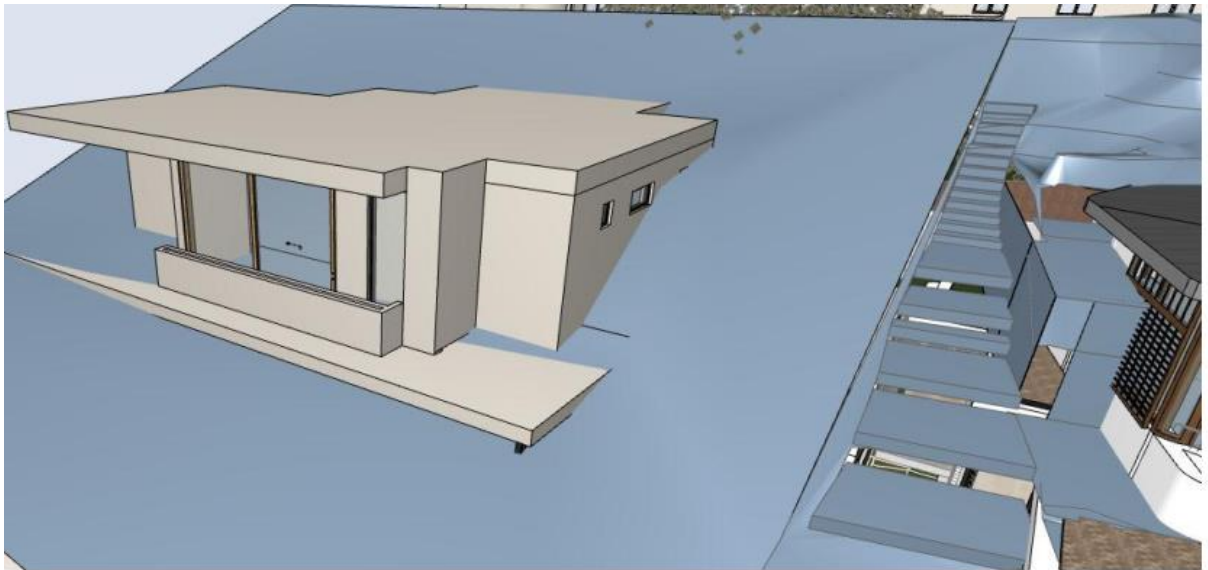
*(e) to ensure compatibility between development, particularly at zone boundaries,*

Comment - The subject site is not near any zone boundaries. However it is within an area where 4 storey buildings are common. Typically this occurs due to the sloping nature of the area, which is a steep escarpment which rises up from the waterways of Middle Harbour to the north-west. Buildings on the high side of Tobruk Avenue are 2-3 storeys above street level garages, giving a 3-4 storey appearance. On the low side buildings appear as 1-2 storeys from the street but step with the slope to be 2-4 storeys at the rear.

Both the immediately adjoining buildings are 4 storeys to the rear and achieve very similar heights to the proposal. These are much bulkier buildings and exceed the height control to a similar or greater degree than the proposal (see **Figure B** below). Whilst these are older buildings, more recent nearby development has been approved with a similar degree of non-compliance. In this regard the approved plans of No 18 Tobruk Ave (approved by the NSLPP on 6.7.22) show the degree of non-compliance which is up to 2 storeys (5m) above the height control. The subject site is similar to No 18, being on the low side of the street and for similar reasons, Council staff and the NSLPP supported a breach of the height control in that circumstance (see **Figure C**).

Therefore to achieve the subject objective to ‘ensure compatibility between development’ the building appropriately provides four storeys. However the top storey is smaller than the level below and therefore will appear more recessive when viewed from locations where the subject site is visible. In this regard the visibility of the 4 storey appearance is limited, being likely to be only the immediately adjoining properties and public and private land in more distant areas. This may include the waterway however from lower areas, the lower levels of the dwelling are not likely to be visible and the building will appear to be compatible with its neighbours (see **Figure D**).





BUILDING HEIGHT PLANE - 52 TOBRUK AVENUE

Figure B– height blanket of approved dual occupancy at 52 Tobruk Ave

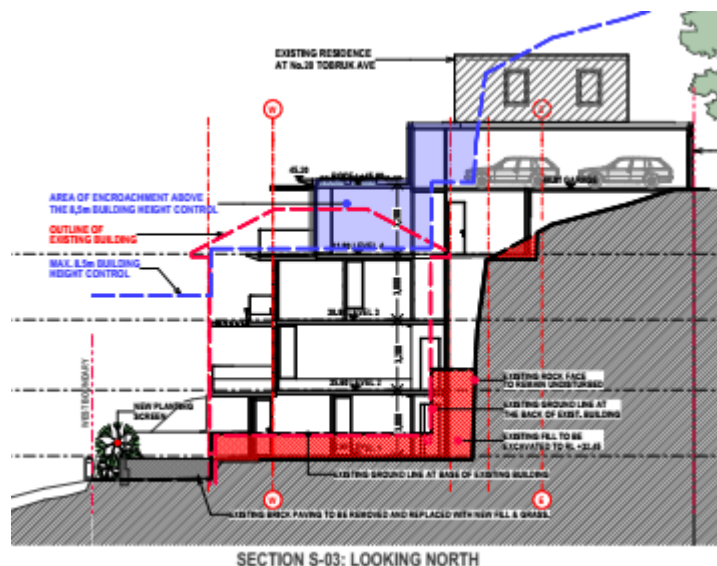


Figure C – degree of non-compliance of approved dual occupancy at 8 Tobruk Ave

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

Comment – As noted above, the form of the building is very much in keeping with the existing character of the area. The specific character statement for the area (Northern Foreshores) does not indicate a prevailing height context in this area. As detailed in the SEE, the proposal is generally consistent with the stated desired future character of the area.



Source – Googlemaps

**Figure D – View towards site from Folly Point Cammeray**

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

Comment – the built form of mainly 1-2 storeys cannot be ‘maintained’ as this is not the case in this area. Most buildings are in excess of 2 storeys in the immediate vicinity, albeit those on the low side of the street are not visibly higher when viewed from the street. However the proposal is consistent with that characteristic. These comments are consistent with Council staff’s conclusion in the assessment report from No 18 Tobruk Avenue.

**Conclusion: Wehbe Way 1**

- 5.4.2 For the detailed reasons provided above the proposal is considered to be consistent with each of the objectives of the height development standard, notwithstanding the proposed non-compliance.
- 5.4.3 In those circumstances it is unnecessary and unnecessary to comply with the development standard.

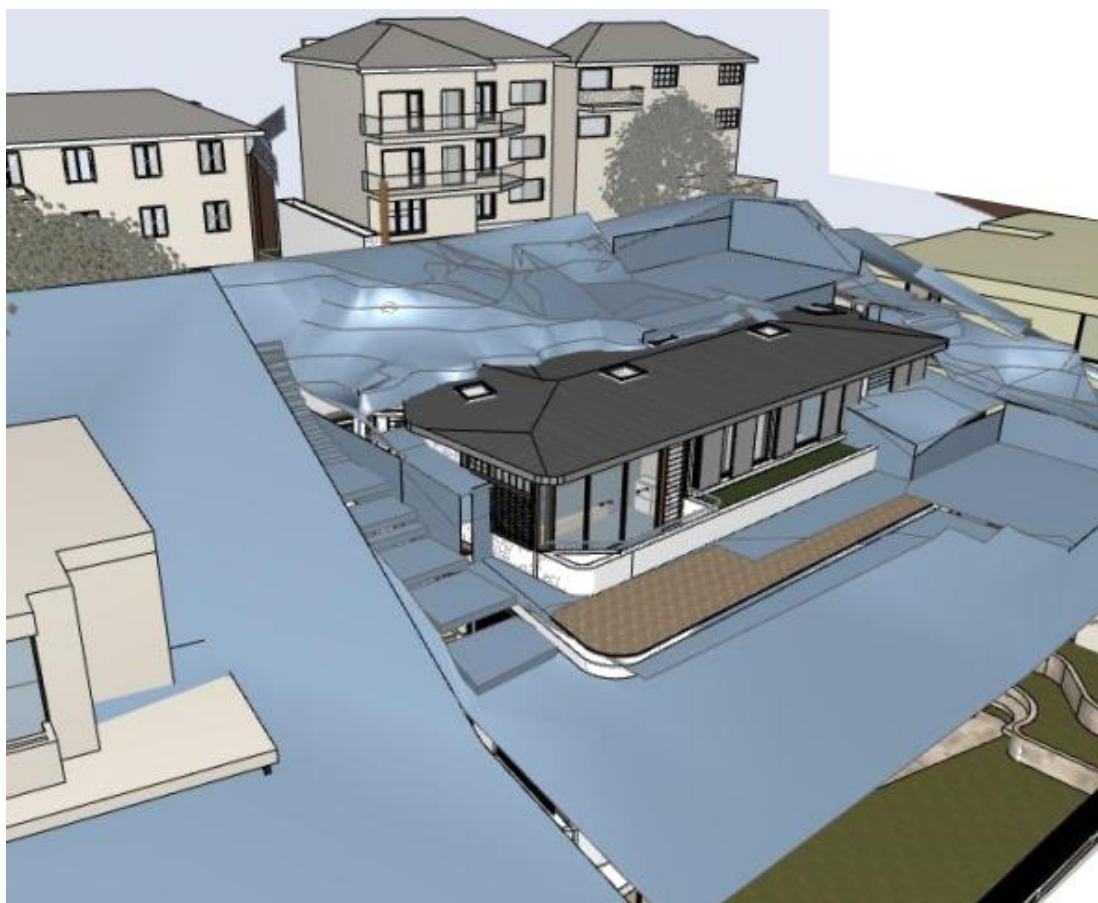
**Wehbe Way 2 - . the underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable**

- 5.4.4 The objective of the height development standard relevant to this is:

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



In this regard if compliance was enforced a significant part of the top level would be required to be removed as indicated in **Figure E**. This would be highly inconsistent with adjoining development and other nearby development that have top storeys that are only moderately smaller or not smaller than the levels below. From the street, the side elevations would be visible and a narrow top storey would appear as an incongruous element in the existing context. The adjoining buildings do not comply with the height control and Council continues to allow similar non-compliances to be achieved in the area as noted above. Therefore enforcing compliance would thwart the achievement of the objective to ensure compatibility between development.



**Figure E – non-compliance drawing**

**Conclusion: 4.6(3)(a)**

- 5.4.5 For the reasons set out above, compliance with the development standard is both unreasonable and unnecessary.
- 5.5 **Subclause 4.6(3)(b): Whether there are sufficient environmental planning grounds to justify contravening the development standard**



- 5.6 The following factors demonstrate that sufficient environmental planning grounds exist to justify the proposed variation to the maximum height standard.

Consistency with character of the area/topography

- 5.6.1 The 8.5m control generally allows 2 storey development, however the character of the area is predominantly 3-4 storey development and this is generally due to the relatively steeply sloping nature of the land. However the higher elements tend to be on the downslope side and in Tobruk Avenue this means higher buildings are visible on the high side of the street with buildings being 1-2 storey when viewed from the street on the low side, then stepping down to be 3-4 storeys. The proposal adopts this same form. Therefore to be consistent with this character, logically the height control must be breached.
- 5.6.2 The non-compliance is exacerbated as the lowest level of the existing building on the site is excavated below the 'natural' fall of the land. Being measured to this 'existing' level, makes the proposed height higher than it would otherwise be.

Lack of impact

- 5.6.3 As noted above, the proposal does not have any unreasonable adverse amenity impacts on surrounding development in relation to overshadowing, loss of privacy, view impacts or visual impacts. It will contribute to the creation of a high quality built form response for the site and the streetscape generally.
- 5.6.4 As determined in *Randwick City Council v Micaul Holdings Pty Ltd*, and supported by Preston CJ in *Initial Action*, lack of impact is a sufficient ground for allowing a breach of a development standard pursuant to Clause 4.6.

**6 THE REQUIREMENTS OF SUBCLAUSE (4) OF CLAUSE 4.6**

- 6.1 **Subclause 4,6(4)(a)(i): Can the consent authority be satisfied that this written request adequately addressed the matters required to be demonstrated by subclause (3)?**
- 6.1.1 Based on the comments in Section 5 above, yes.
- 6.2 **Subclause 4,6(4)(a)(ii): Can the consent authority be satisfied that 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?**
- 6.2.1 Based on the following comments, yes.
- 6.2.2 As noted above the proposal will be consistent with the relevant objectives of the height standard.



6.2.3 In relation to the objectives of the subject R2 zoning the following comments are made:

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

6.2.4 Comment – The proposal provides for housing within a low density residential environment.

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

6.2.5 Comment – NA.

*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.*

6.2.6 Comment – It has been demonstrated above and in the submitted SEE that the proposal does compromise the amenity of the surrounding area. No natural, cultural or heritage areas are affected by the proposal.

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

6.2.8 Comment – The submitted documentation and above discussion demonstrates that the proposal will minimise and have minimal impact on the amenity of neighbours and will not affect the overall quality of the streetscape in which it is located. No private views will be significantly affected. Overshadowing and privacy impacts are limited and not unreasonable.

**Conclusion: The Public Interest**

6.2.9 For the detailed reasons discussed above the consent authority can be satisfied that the proposed development is both consistent with the objectives of the standard and the objectives of the zone. In those circumstances – and for the purposes of cl 4.6(4)(a)(ii) – the consent authority can be satisfied that the proposed development is in the public interest.

6.3 **Subclause 4.6(4)(b): Can the consent authority be satisfied that the concurrence of the Planning Secretary has been obtained?**

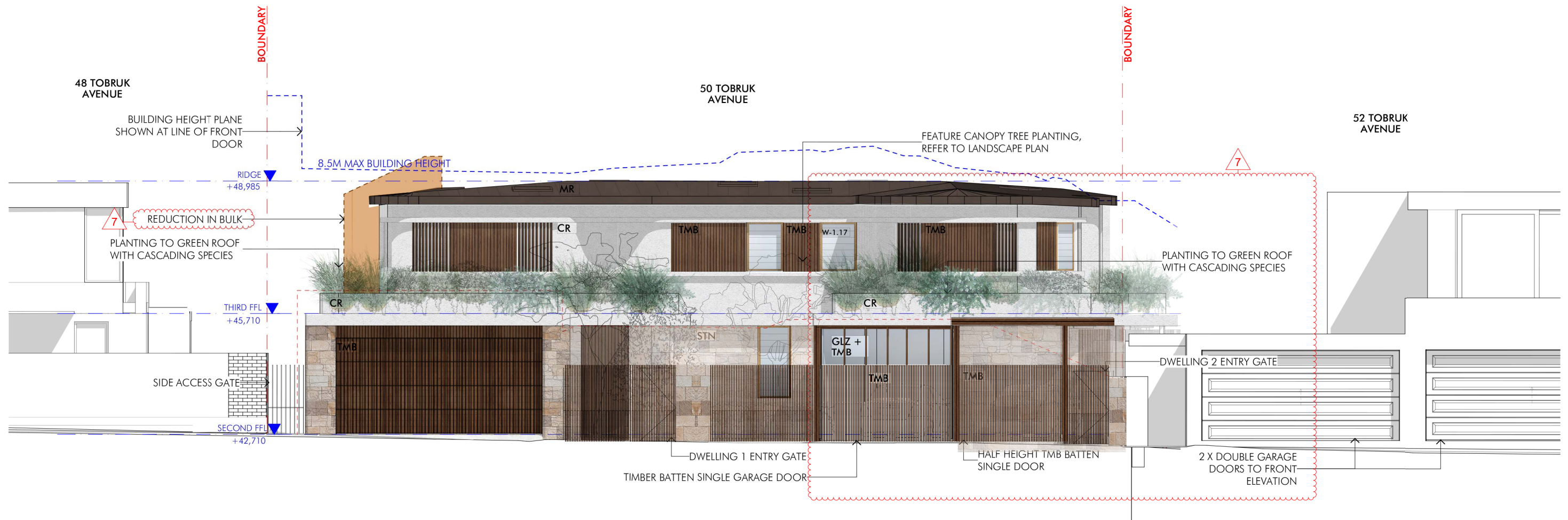
6.3.9 Yes, pursuant to Planning Circular PS18-003 this concurrence can be assumed.



## 7 CONCLUSION

- 7.2 Having regard to the above, it is considered that this variation request satisfies the requirements of clause 4.6 of the LEP and that the consent authority can be satisfied that the proposal also meets the other requirements of clause 4.6.
- 7.3 The proposed contravention of the height standard will meet the objectives of clause 4.6, in particular objective (b) as it achieves *“better outcomes for and from development by allowing flexibility in particular circumstances”*.
- 7.4 It is considered that the proposal represents a high quality planning outcome for the site.

Brett Brown  
Ingham Planning Pty Ltd  
November 2023



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**PROJECT NAME :**

CREMORNE TWIN HOUSING

**COUNCIL :**

North Sydney Council

**CLIENT :**

Vicki & Geoff Parker

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**SITE :**

50 Tobruk Ave, Cremorne, NSW, 2090 ,  
 Lot 25 DP 23880

**SITE AREA :**

506

**PROJECT DESCRIPTION :**

Demolition of existing single dwelling & new build - duplex

**AMENDMENTS :**

- 07 - Amended DA Submission - 10/11/2023
- 06 - Amended DA - 15/12/2022
- 05 - DA Submission - 31/10/2022
- 04 - DA WIP - 26/09/2022
- 03 - Issue to planer - 04/05/2022
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- 01 - Feasibility & Preliminary Sketch Design - 19/12/2021

**REVISION NO.:**

**07**

**DRAWING NO.:**

**DA.03.01**

**DRAWING TITLE :**

SOUTH EAST (STREET) ELEVATION

**DRAWN BY :**

EJD

**CHECKED BY :**

SD

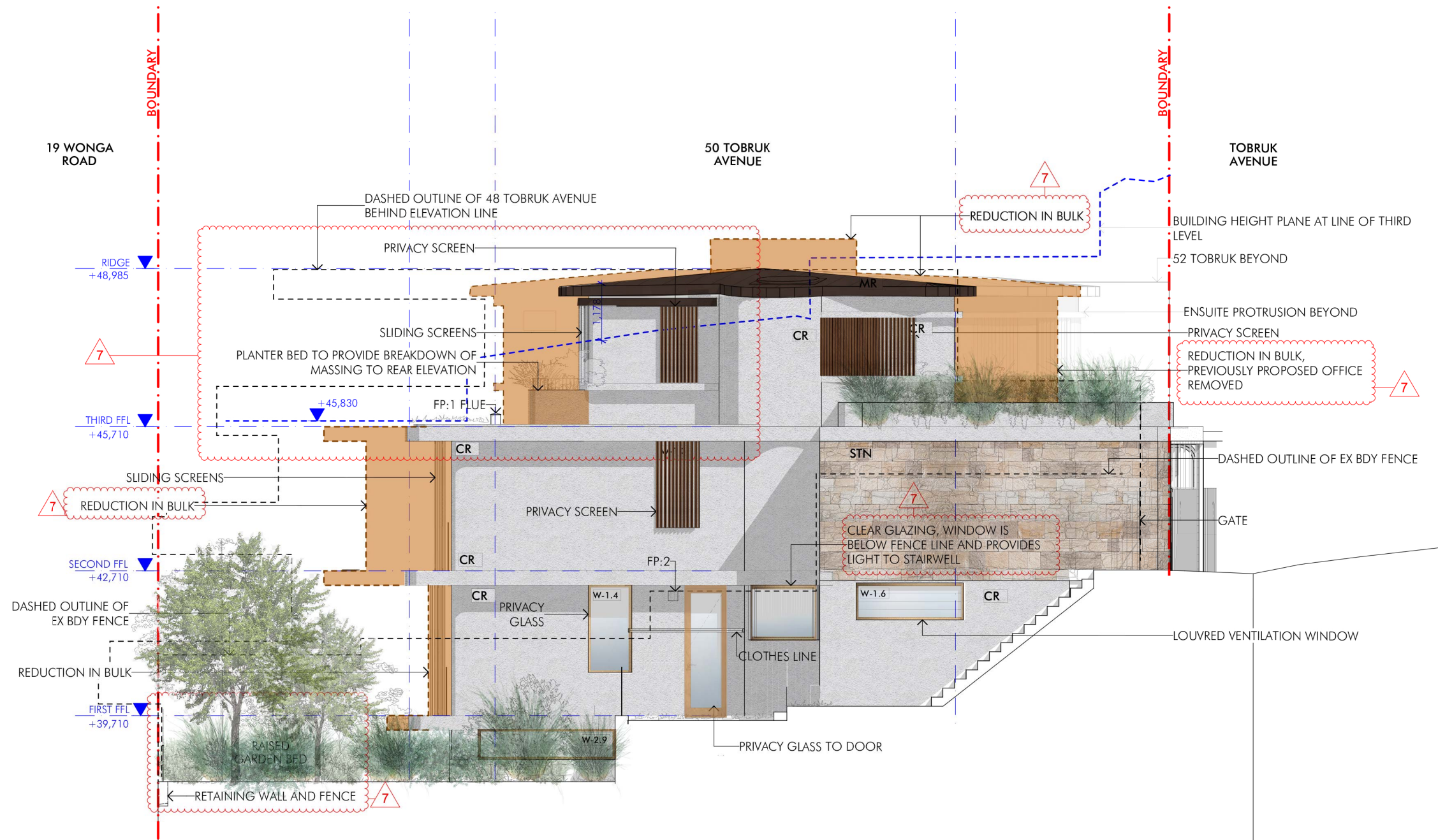
**PROJECT NO.:**

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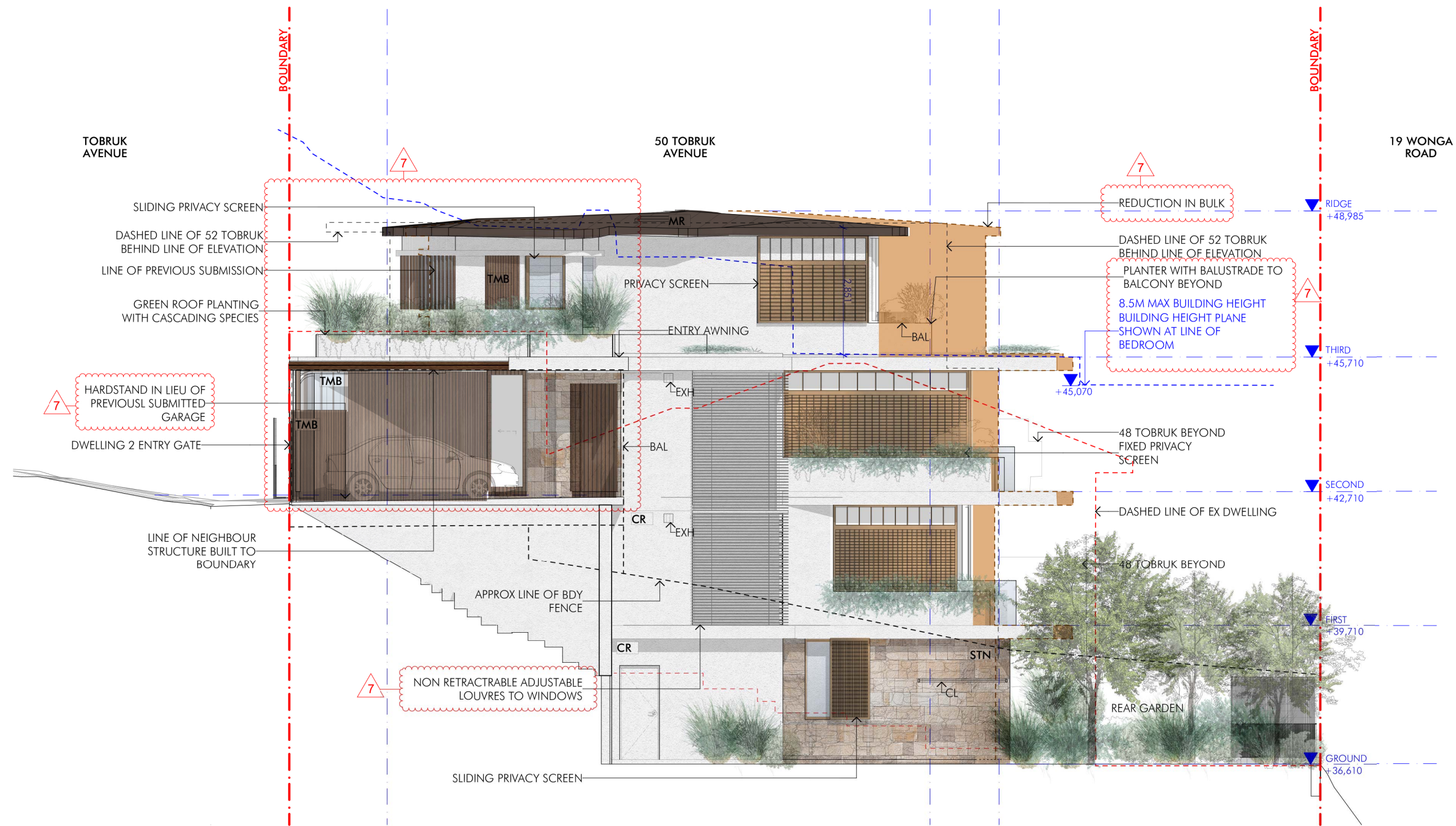
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**REVISION NO.**

**07**

**DRAWING NO.**

**DA.03.04**

**DRAWING TITLE :**

NORTH WEST ELEVATION

**DRAWN BY :**

EJD

**CHECKED BY :**

SD

**PROJECT NO.**

**023**

**PLOT DATE :**

10/11/2023

SCALE: 1:100

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REVISION NO.

07

DRAWING NO.

DA.04.01

DRAWING TITLE:

SECTION 01

DRAWN BY:

EJD

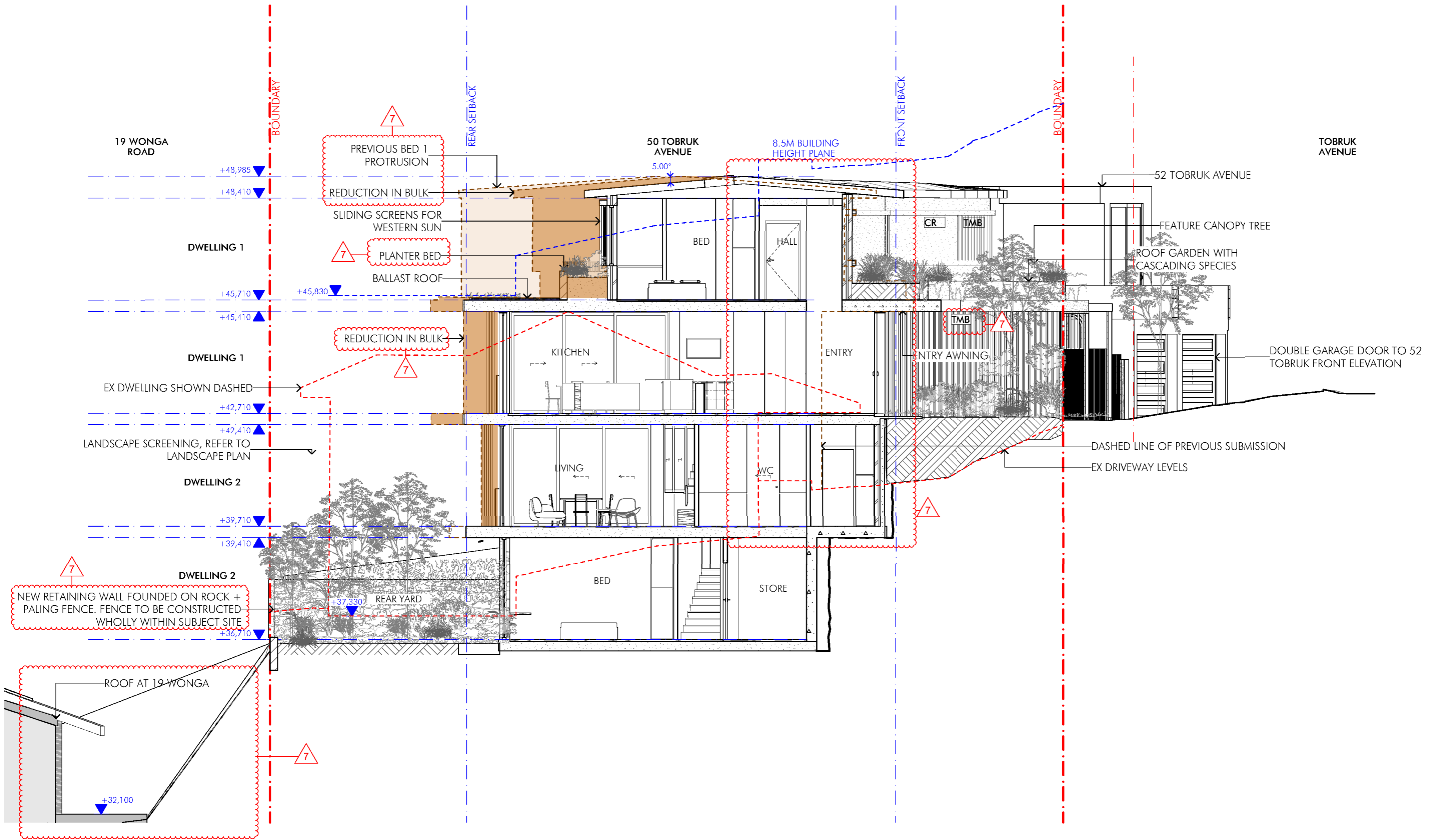
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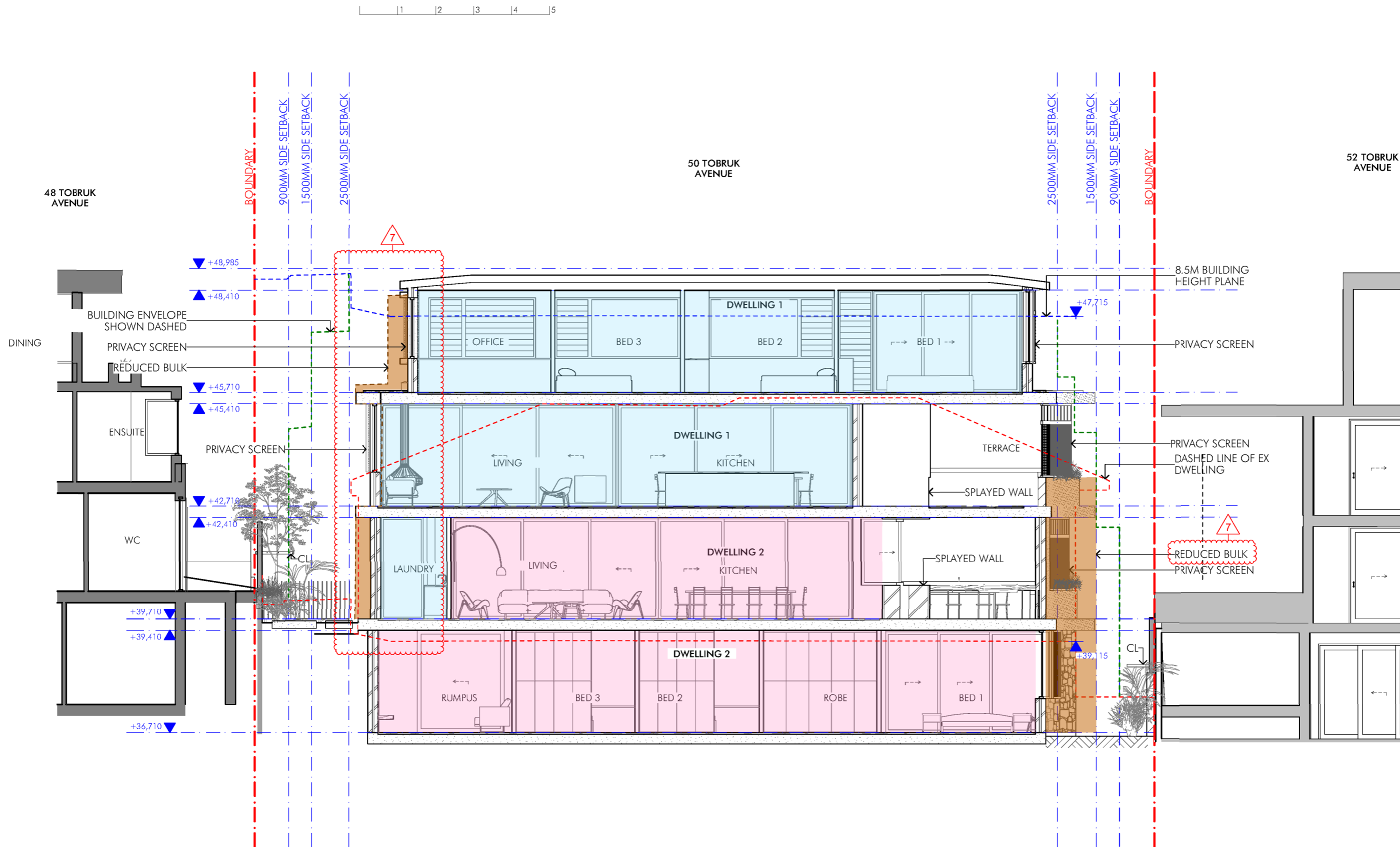
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SCALE: 1:100

**REVISION NO.**

**07**

**DRAWING NO.**

**DA.04.02**

**DRAWING TITLE:**

**SECTION 02**

**DRAWN BY:**

**EJD**

**CHECKED BY:**

**SD**

**PROJECT NO.**

**023**

**PLOT DATE:**

11/11/2023



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PROJECT NAME:  
**CREMORNE TWIN HOUSING**  
 50 Tobruk Ave,  
 Cremorne, NSW,  
 2090  
 Lot 25 DP 23880

SITE AREA:  
 506  
 COUNCIL:  
 North Sydney Council  
 PROJECT DESCRIPTION:  
 Demolition of existing single dwelling & new build - duplex

AMENDMENTS:  
 07 - Amended DA Submission - 10/11/2023  
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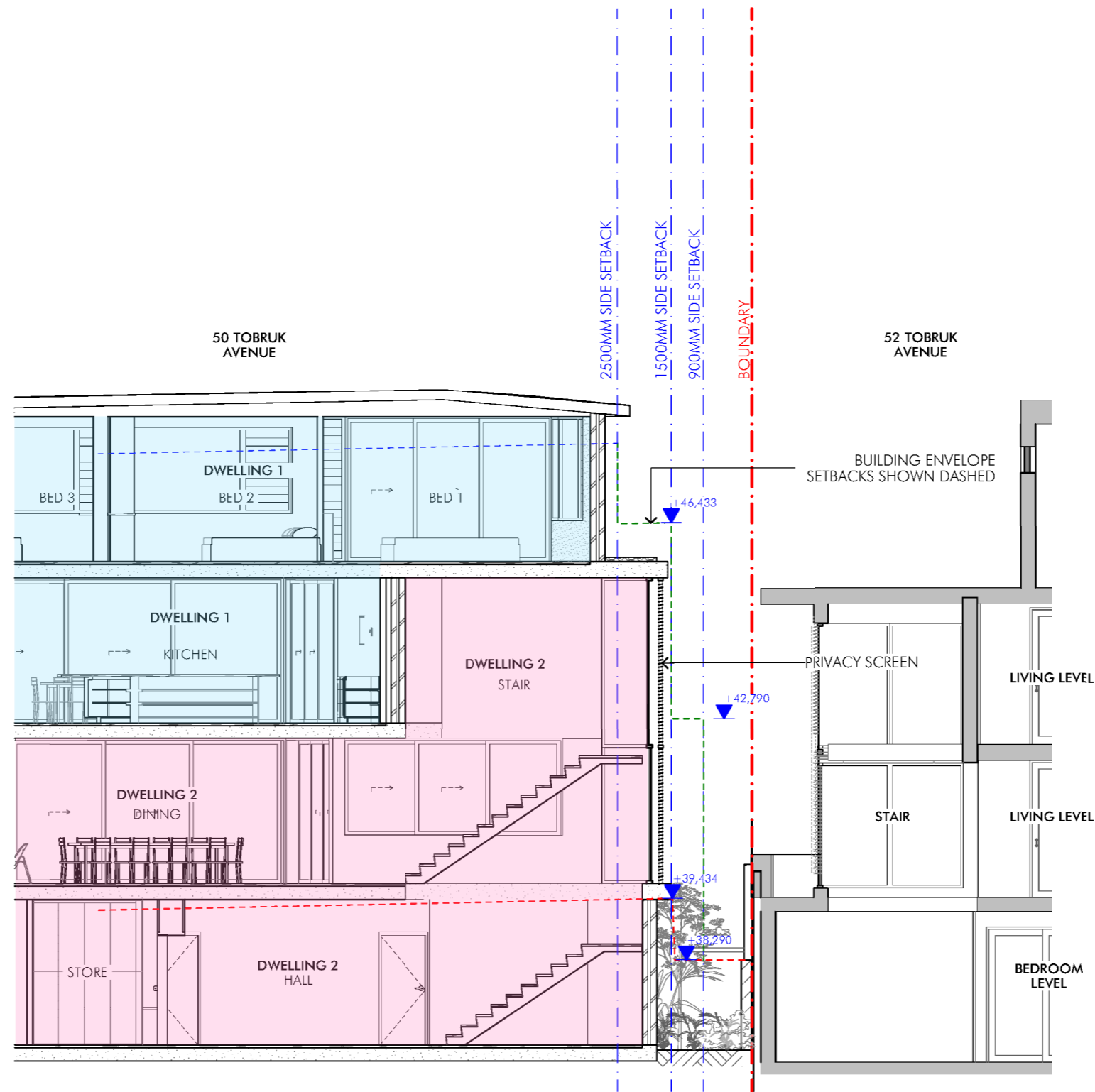
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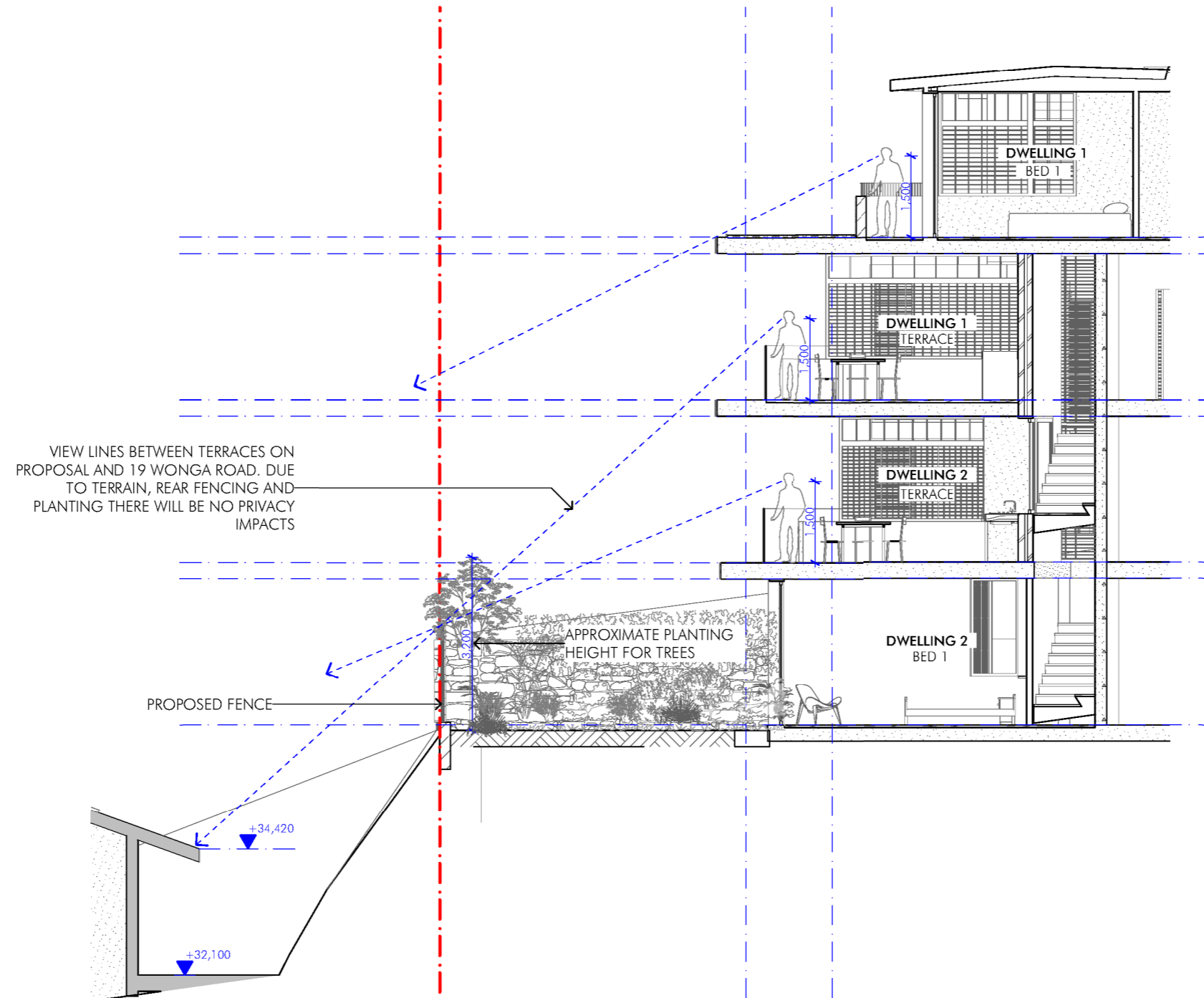
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**07**  
 DRAWING NO.  
**DA.04.03**  
 DRAWING TITLE:  
**SECTION 03**

DRAWN BY:  
 EJD  
 CHECKED BY:  
 SD

PROJECT NO.  
**023**

PLOT DATE: 11/11/2023





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**PROJECT NAME :**

CREMORNE TWIN HOUSING

**COUNCIL :**

North Sydney Council

**CLIENT :**

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**SITE :**

50 Tobruk Ave, Cremorne, NSW, 2090,  
Lot 25 DP 23880

**SITE AREA :**

506

**PROJECT DESCRIPTION :**

Demolition of existing single dwelling & new build - duplex

**AMENDMENTS :**

- 07 - Amended DA Submission - 10/11/2023
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SCALE: 1:100

**REVISION NO.**

07

**DRAWING NO.**

DA.04.04

**DRAWING TITLE :**

PRIVACY ANALYSIS - SECTION 04

**DRAWN BY :**

EJD

**CHECKED BY :**

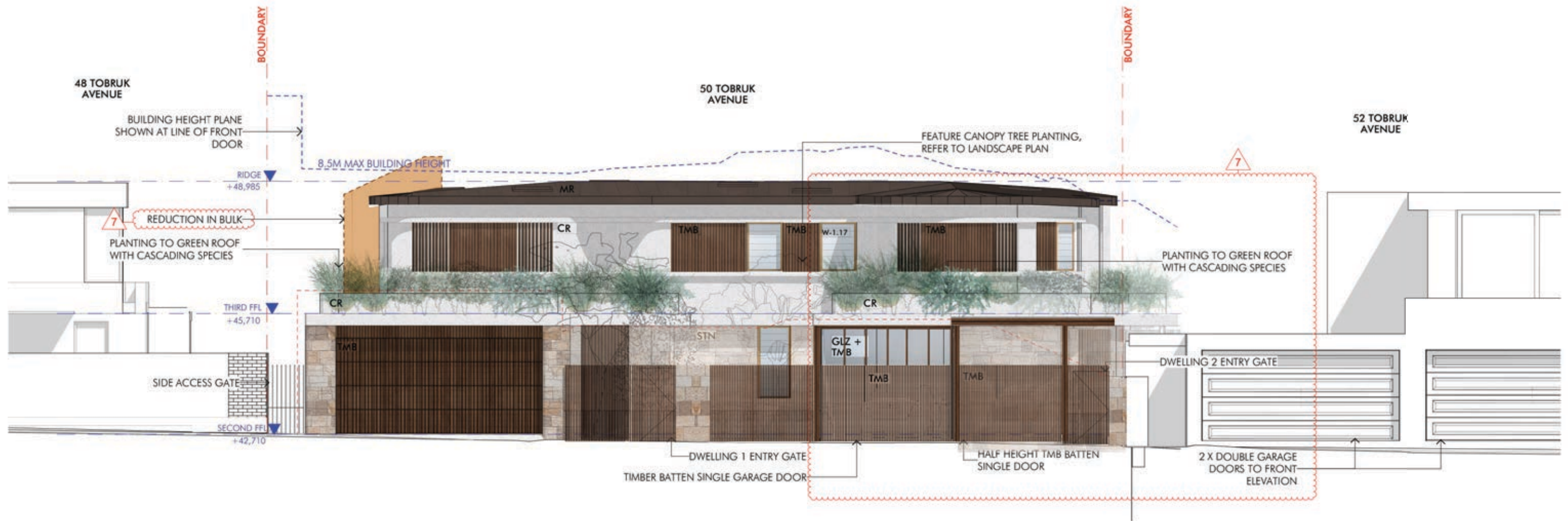
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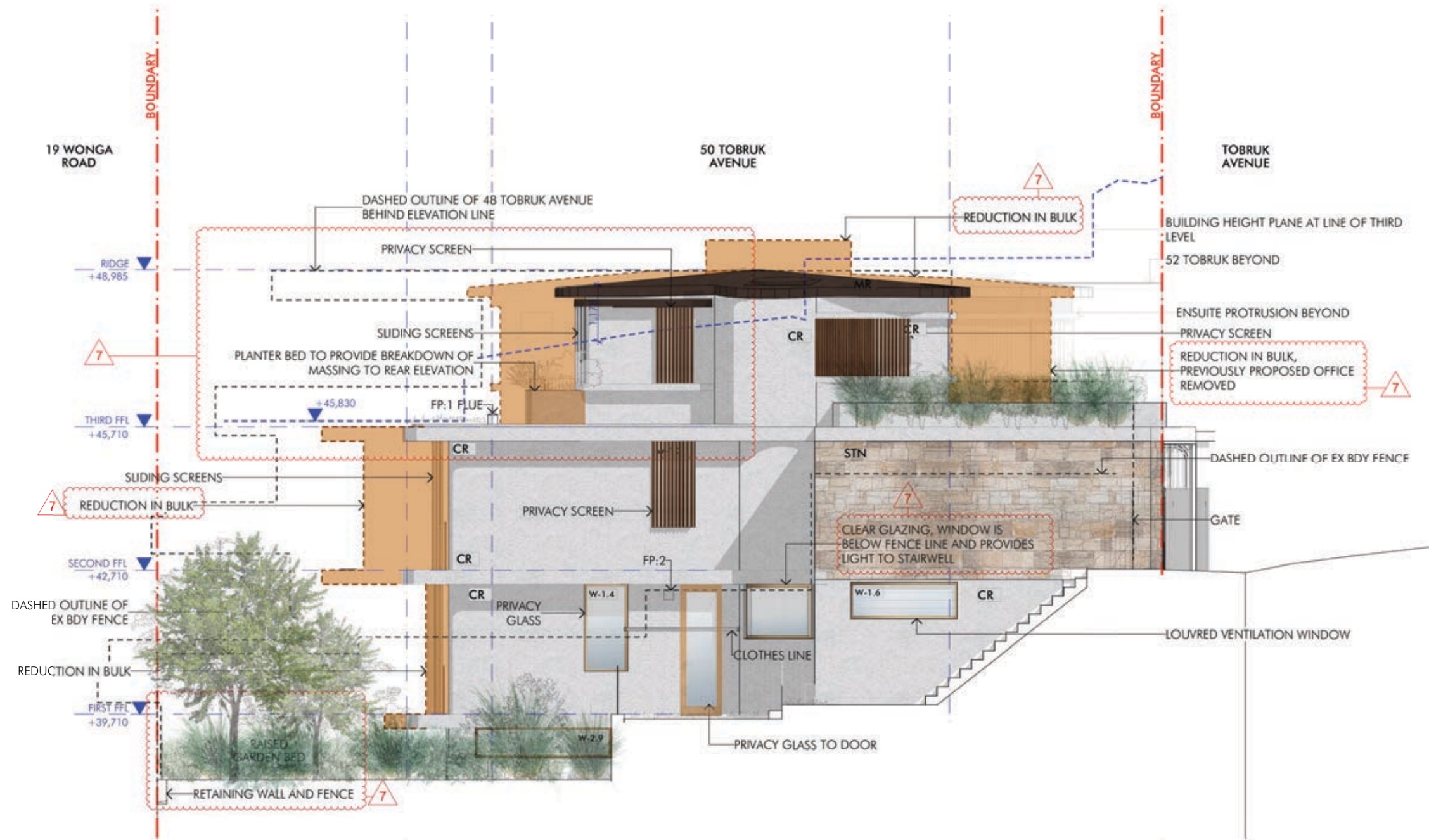
**PROJECT NO.**

023

**PLOT DATE :**

11/11/2023





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**PROJECT NAME**  
 CREMORNE TWIN HOUSING

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**SITE**  
 50 Tobruk Ave, Cremorne, NSW, 2090,  
 Lot 25 DP 23880

**SITE AREA**  
 506

**PROJECT DESCRIPTION**  
 Demolition of existing single dwelling & new build - duplex

**AMENDMENTS**

- 07 - Amended DA Submission - 10/11/2023
- 06 - Amended DA - 15/12/2022
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SCALE: 1:100

**REVISION NO.**  
 07

**DRAWING NO.**  
 DA.03.02

**DRAWING TITLE**  
 SOUTH WEST ELEVATION

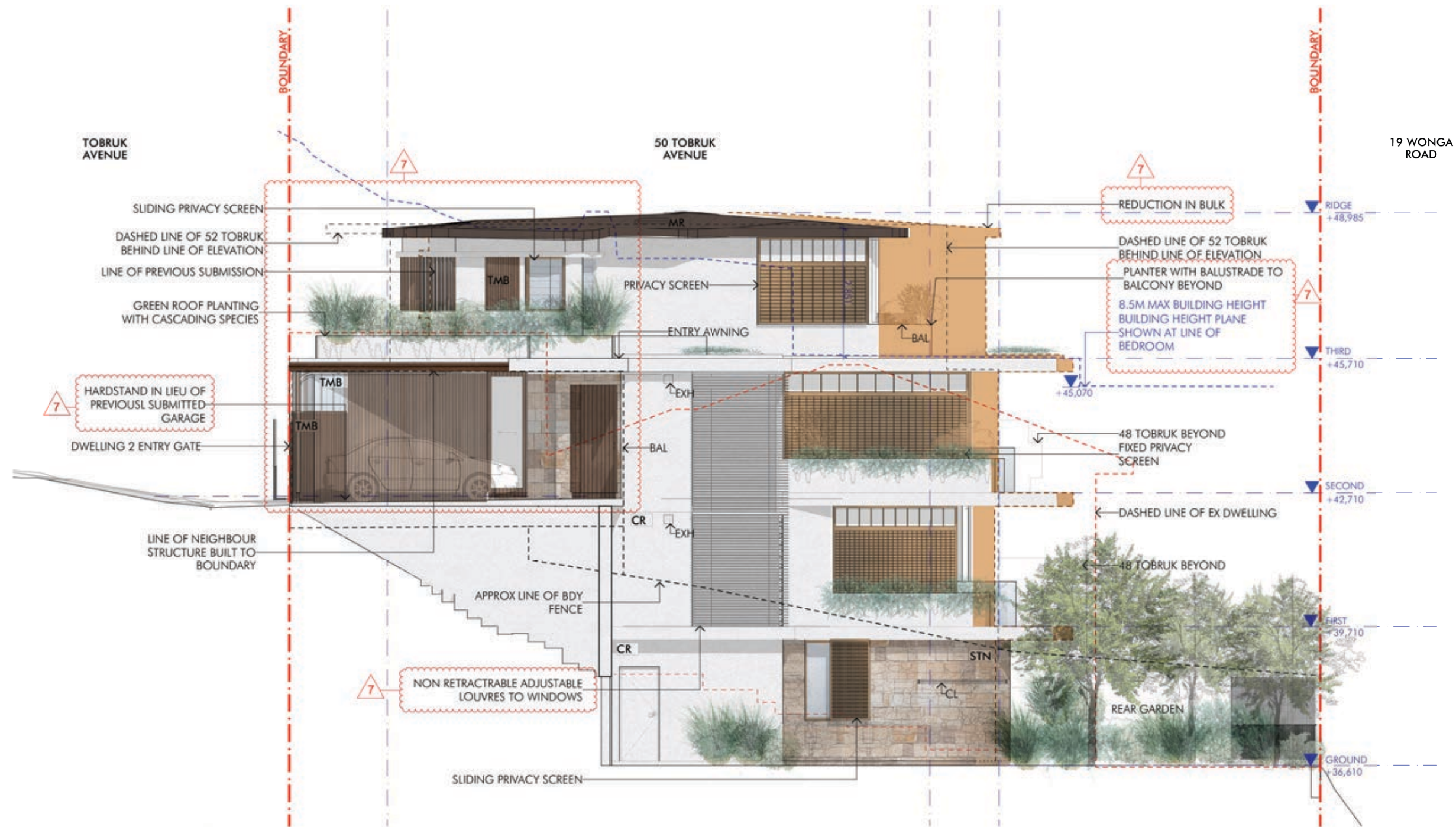
**DRAWN BY**  
 EJD

**CHECKED BY**  
 SD

**PROJECT NO.**  
 023

**PLOT DATE**  
 10/11/2023





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PROJECT NAME  
**CREMORNE TWIN HOUSING**

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SITE  
 50 Tobruk Ave, Cremorne, NSW, 2090,  
 Lot 25 DP 23880

SITE AREA  
 506

PROJECT DESCRIPTION  
 Demolition of existing single dwelling & new build - duplex

AMENDMENTS

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REVISION NO.  
**07**

DRAWING NO.  
**DA.03.03**

DRAWING TITLE  
**NORTH EAST ELEVATION**

DRAWN BY  
 EJD

CHECKED BY  
 SD

PROJECT NO.  
**023**

PLOT DATE  
 10/11/2023



SCALE: 1:100



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SITE:  
 50 Tobruk Ave, Cremorne, NSW, 2090,  
 Lot 25 DP 23880

SITE AREA:  
 506

PROJECT DESCRIPTION:  
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**AMENDMENTS**

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REVISION NO.

**07**

DRAWING NO.

**DA.03.04**

DRAWING TITLE:  
**NORTH WEST ELEVATION**

DRAWN BY:

EJD

CHECKED BY:

SD

PROJECT NO.

**023**

PLOT DATE:

10/11/2023

SCALE: 1:100

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SITE AREA:  
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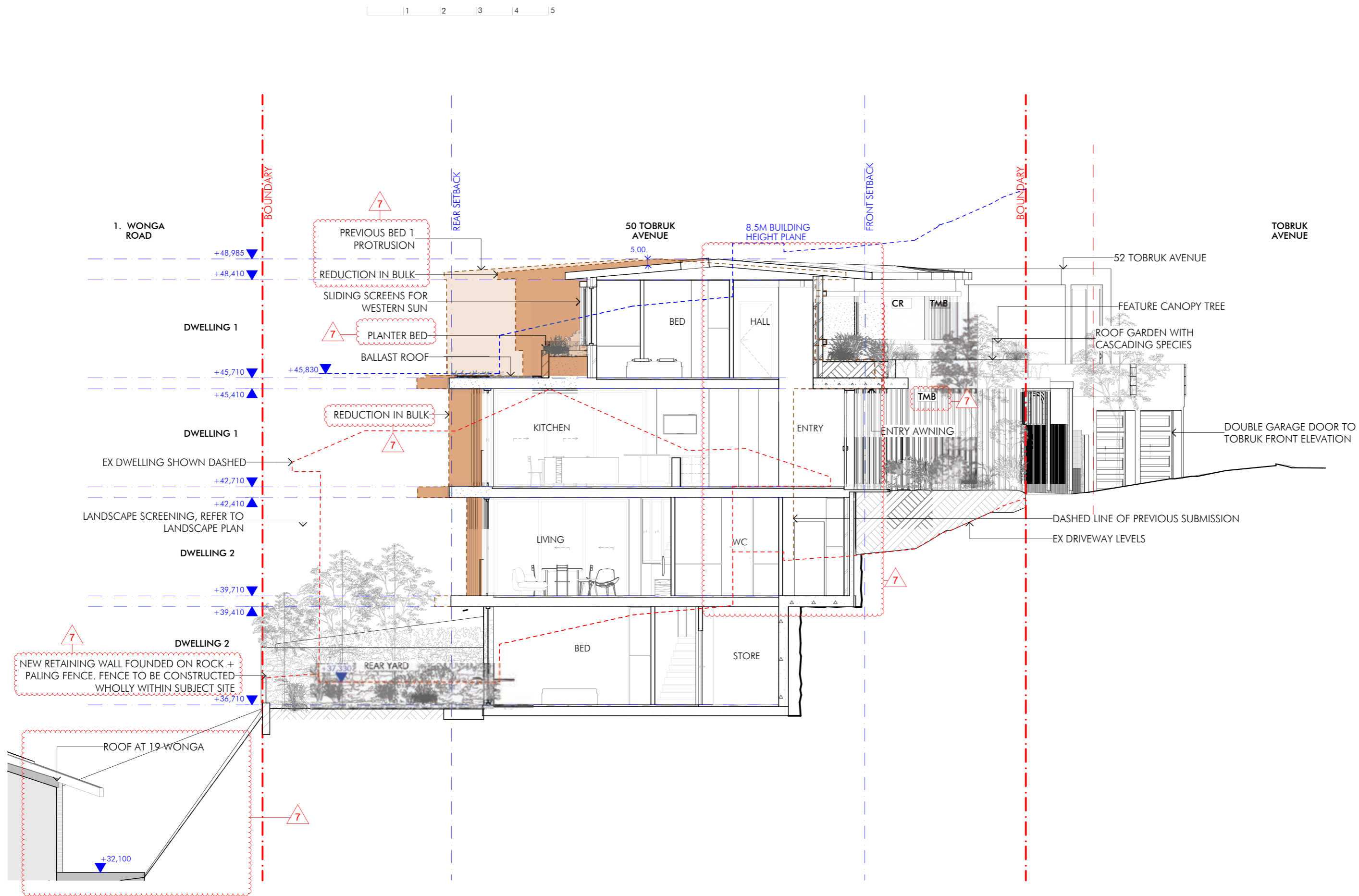
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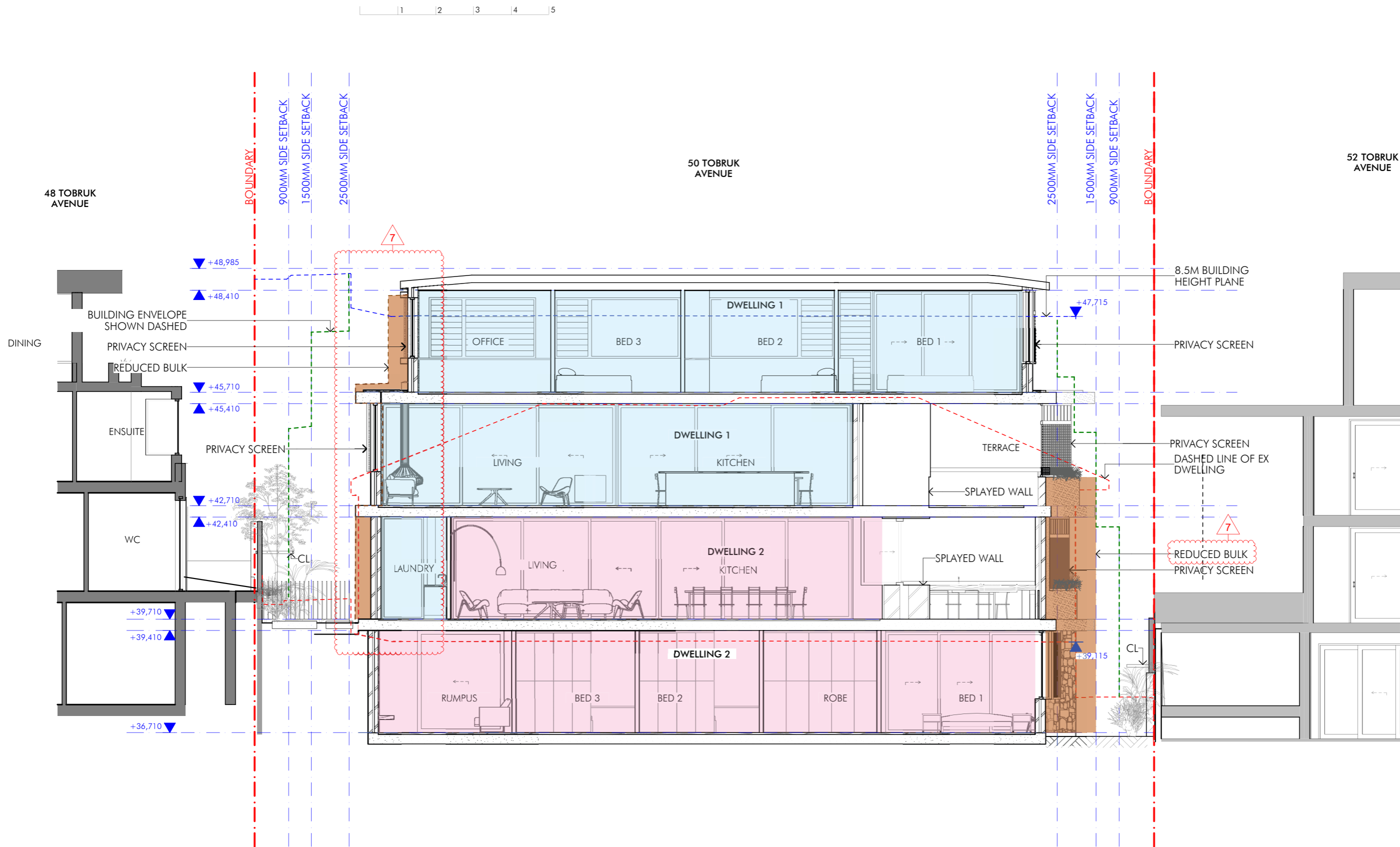
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REVISION NO.  
**07**  
 DRAWING NO.  
**DA.04.01**  
 DRAWING TITLE:  
**SECTION 01**

DRAWN BY:  
 EJD  
 CHECKED BY:  
 SD

PROJECT NO.  
**023**  
 PLOT DATE: 11/11/2023





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REVISION NO.

**07**

DRAWING NO.

**DA.04.02**

DRAWING TITLE:

SECTION 02

DRAWN BY:

EJD

CHECKED BY:

SD

PROJECT NO.

**023**

PLOT DATE: 11/11/2023



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SCALE: 1:100

REVISION NO.

**07**

DRAWING NO.

**DA.04.03**

DRAWING TITLE:

**SECTION 03**

DRAWN BY:

**EJD**

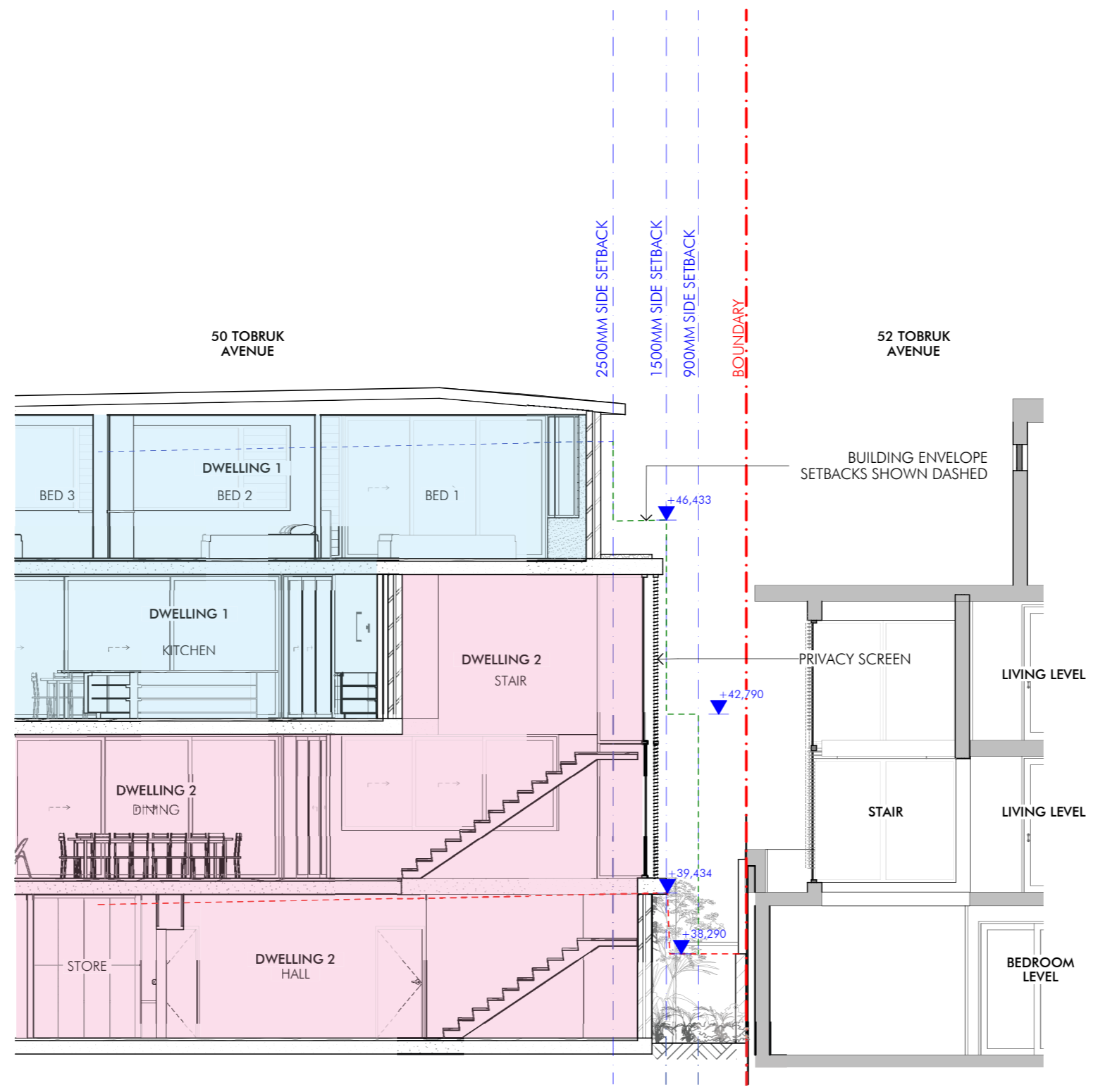
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**SD**

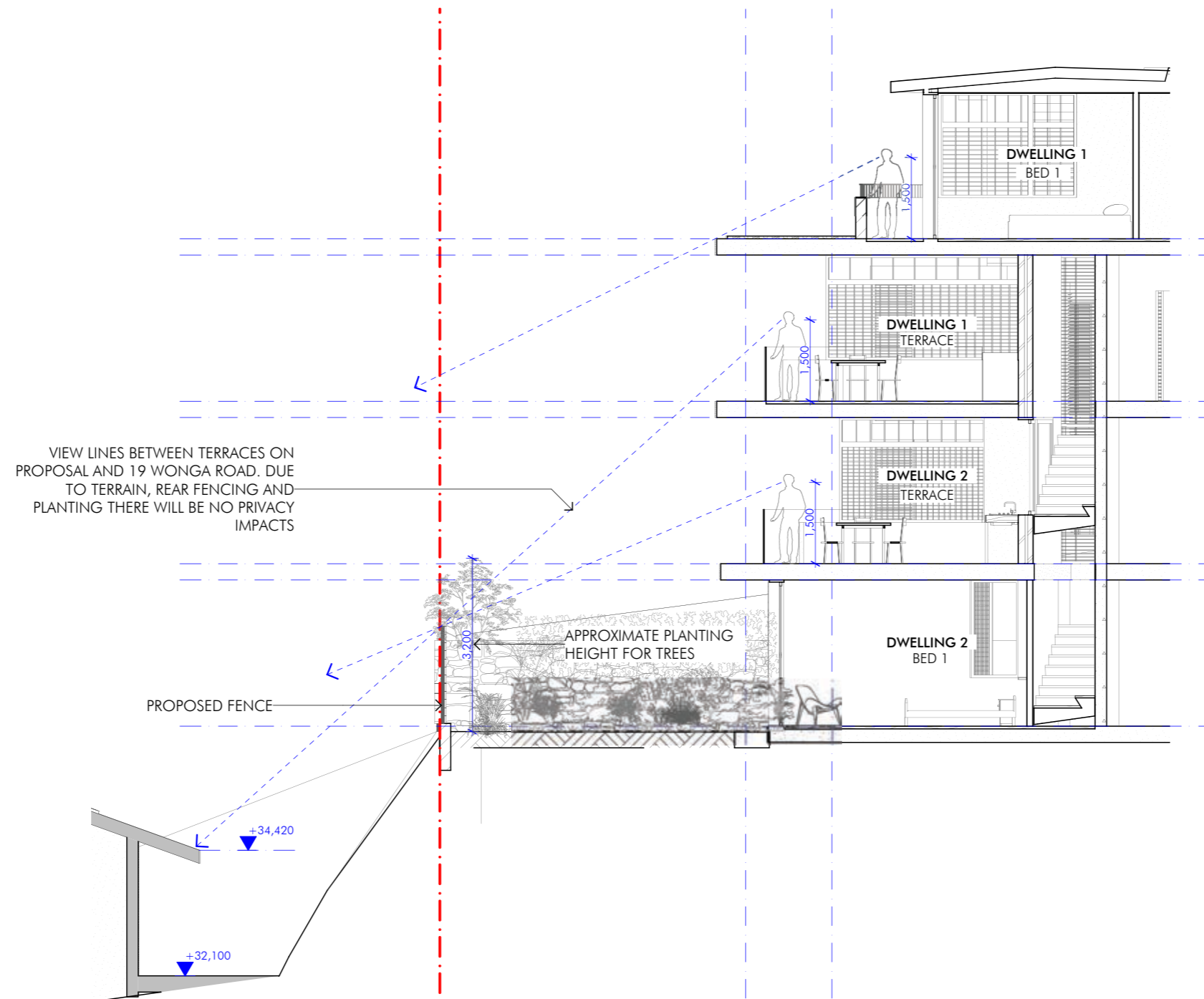
PROJECT NO.

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PLOT DATE: 11/11/2023



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**COUNCIL :**

North Sydney Council

**CLIENT :**

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**SITE :**

50 Tobruk Ave, Cremorne, NSW, 2090 ,  
Lot 25 DP 23880

**SITE AREA :**

506

**PROJECT DESCRIPTION :**

Demolition of existing single dwelling & new build - duplex

**AMENDMENTS :**

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SCALE: 1:100

**REVISION NO.**

**07**

**DRAWING NO.**

**DA.04.04**

**DRAWING TITLE:**

PRIVACY ANALYSIS - SECTION 04

**DRAWN BY:**

EJD

**CHECKED BY:**

SD

**PROJECT NO.**

**023**

**PLOT DATE:**

11/11/2023