



NSLPP MEETING HELD ON 01/05/24

Attachments:

1. Architectural Plans
2. Clause 4.6 Statement
3. Heritage Impact Assessment
4. Survey

ADDRESS/WARD: 2 Waiwera Street, Lavender Bay 2060 (LB)

APPLICATION No: DA 10/24

PROPOSAL: Alterations and additions to the existing dwelling and includes a new lift and internal reconfiguration

PLANS REF: Refer Condition A1

OWNER: John Barry Thomas Jr & Anne Ellen Nesbitt

APPLICANT: Daniel Barber

AUTHOR: Report of Rachel Wu, Assessment Officer

DATE OF REPORT: 21 March 2024

DATE LODGED: 17 January 2024

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This development application seeks approval for minor internal alterations and additions to a semi-detached dwelling and the installation of a lift from the existing Lower Ground Floor to the Third Floor (Loft Level).

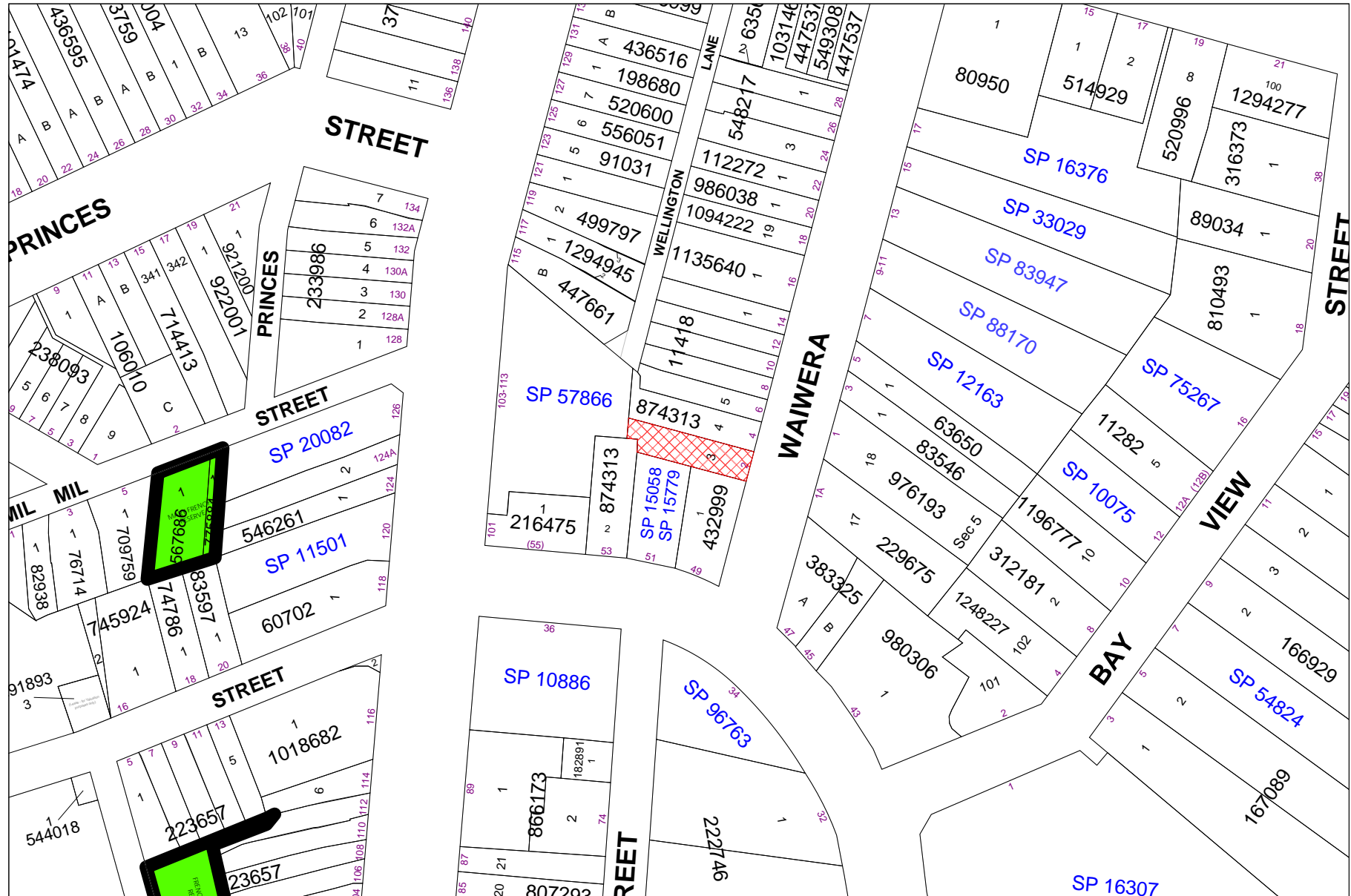
The development application is reported to North Sydney Local Planning Panel for determination for the breach to NSLEP 2013 C14.3 *Height of Building* development standard by 53.4% or 4.54m above the maximum 8.5m height control to reach a maximum height of 13.04m, calculated from the existing subterrain basement (RL34.01).

The subject site is located within an R3 Medium Density Residential zone. The site is not identified as a contributory item nor a heritage item, although it is located within the McMahons Point North Conservation Area (CA13).

Notification of the proposal has attracted one (1) unique submission raising particular concerns about acoustic impact, glass reflectivity, adverse visual impacts from increased massing, and incomplete documentation and detail regarding the proposed lift. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

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

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The applicant is seeking development consent for alterations and additions to a semi-detached dwelling including installation of a lift from the existing Lower Ground Floor to the third floor (Loft level).

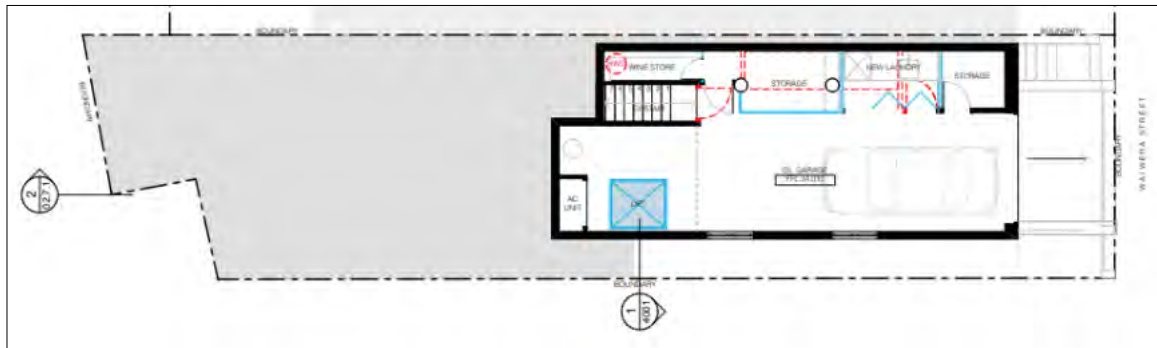


Figure 1: Proposed Lower Ground Floor Plan

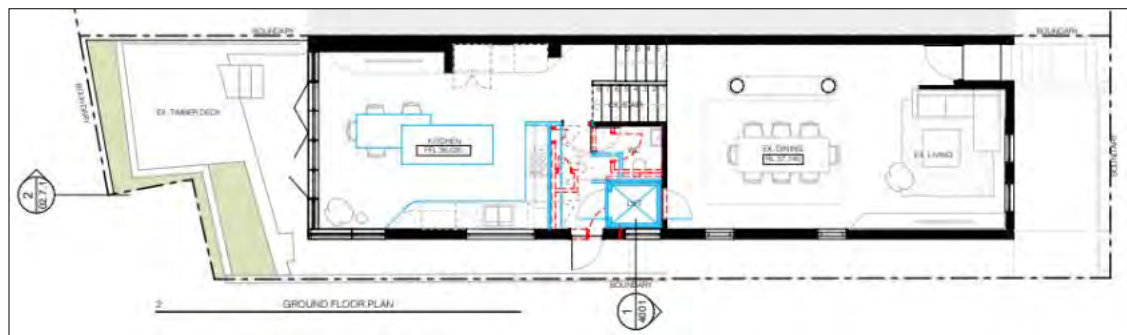


Figure 2: Proposed Ground Floor Plan



Figure 3: Proposed First Floor Plan

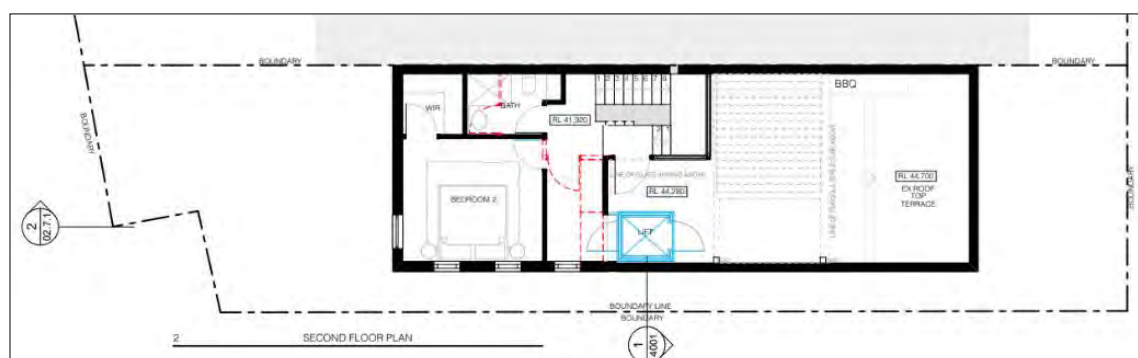


Figure 4: Proposed Second Floor Plan



Figure 5: Proposed Third Level (Loft and outdoor deck) Floor Plan



Figure 5a: Proposed montages with lift highlighted in Blue

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

- Zoning – R3 Medium Density Residential
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes, I0324 (47 East Crescent Street), I0325 (49 East Crescent Street), I0352 (1 Waiwera Street), I0353 (4 Waiwera Street)
- Conservation Area - McMahons Point North Conservation Area (CA13)
- Foreshore building line (FSBL) - No

Environmental Planning & Assessment Act 1979 (as amended)

SEPP (Biodiversity and Conservation) 2021

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Resilience and Hazards) 2021

Local Development

POLICY CONTROLS

North Sydney Development Control Plan 2013 (NSDCP 2013)

North Sydney Local Infrastructure Contributions Plan

REFERRALS

BUILDING

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

HERITAGE

The application has been referred to Council's Conservation Planner who raised no objections to the proposal and recommended conditions to be included in the consent. The relevant comments are included below:

"The existing dwelling has been reconstructed and therefore comprises new fabric. Regardless, the proposed location of the lift element has been nominated to mitigate its impact on the primary layout of the dwelling. At the roof terrace level, the lift element is located towards the centre of the building so that it will not be visible from long views to the site from the street. The lift will be partially visible from the gap view but again, given the location of the lift and that it will be set at a height that is within the height of the upper level, the visual impact will be minimal. The impact on the attached heritage item will also be negligible in this instance. The application is supported on heritage grounds.

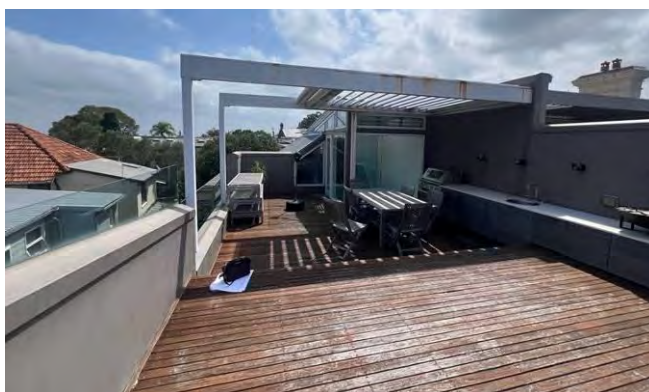
Conclusions and Recommendations

With reference to the above, the proposed installation of a lift to service the dwelling from the garage area to the roof terrace is supported and the following standard conditions are recommended:

1. A3 No Demolition of Extra Fabric
2. C5 Colours, Finishes and materials (Conservation areas)
3. C6 External Colours, Finishes
4. E2 Removal of Extra Fabric"



Lift will not be visible from more longer views from the street



The lift element is set to the centre of the building minimising its visual impact

Planning comment: The above comments are noted and conditions as recommended have been included at the end of the report.

SUBMISSIONS

The application has been notified in accordance with Council's Community Participation Plan with adjoining properties and the Precinct notified between 26 January – 9 February 2024. In response to the notification Council received a total of one (1) unique submission to the proposal.

The following is a summary of issues raised in the submissions:

- Inadequate detail about the proposed lift, including acoustic and lighting assessments.
- Inadequate and incomplete documentation.
- Adverse visual impacts on nearby properties from the increased massing arising from the lift shaft, lift car and associated infrastructure.
- Adverse reflective impacts from the western side of the lift shaft.

CONSIDERATION

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

SEPP (Resilience and Hazards) 2021

The provisions of Chapter 4 of this SEPP require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The subject site has a history of **residential use** and as such is unlikely to contain any contamination. The nature and location of the proposed development (involving alterations and additions to a dwelling house) are such that any applicable requirements of this SEPP have been satisfactorily addressed.

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate **A1730375**, dated **14 December 2023** for alterations and additions to an attached dwelling house has been submitted with the application to satisfy the Aims of the SEPP.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN 2013

1. Aims of Plan

The development application has been assessed against the aims of the North Sydney Local Environmental Plan 2013 and is considered to be satisfactory with respect to the relevant aims of the Plan.

2. Permissibility

The site is zoned R3 Medium Density Residential under the provisions of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). Development for the purposes of semi-detached dwelling is permissible with the consent of Council.

3. Objectives of the zone

The objectives for an R3 Medium Density zone are stated below:

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

The proposal satisfies the objectives by improving the amenity on the subject site with the provision of a lift.

4. Principal Development Standards

The proposal has been assessed against the principal development standards applicable to the development under NSLEP 2013 as follows:

Compliance Table –

| North Sydney Local Environmental Plan 2013 | | | |
|---|---|----------------|----------------------------------|
| Site Area – 172.3m² | Proposed | Control | Complies |
| Clause 4.3 – Heights of Building | 13.04m Existing subterrain basement (RL 34.010) to the ridge of the proposed lift (RL 47.050) Existing Roof Ridge at highest point: RL47.29 | 8.5m | No Variation 4.54m (53.4%) |

**Refer Clause 4.6 Statement below*

5. Height of Building

The following objectives for the permissible height limit are stated below:

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

The proposed works (minor internal reconfiguration and installation of lift) would have a maximum height of 13.04m that exceeds the permissible height limit of 8.5m in accordance with clause 4.3 in NSLEP 2013. The variation from the development standard is 4.54m (53.4%).

The highest point of the dwelling is RL47.29 at the existing roof ridge and the proposed lift (RL47.05) will remain 0.24m below. A Clause 4.6 Height Variation Request has been submitted which provides justification for the non-compliance. The Clause 4.6 written request has been assessed below:

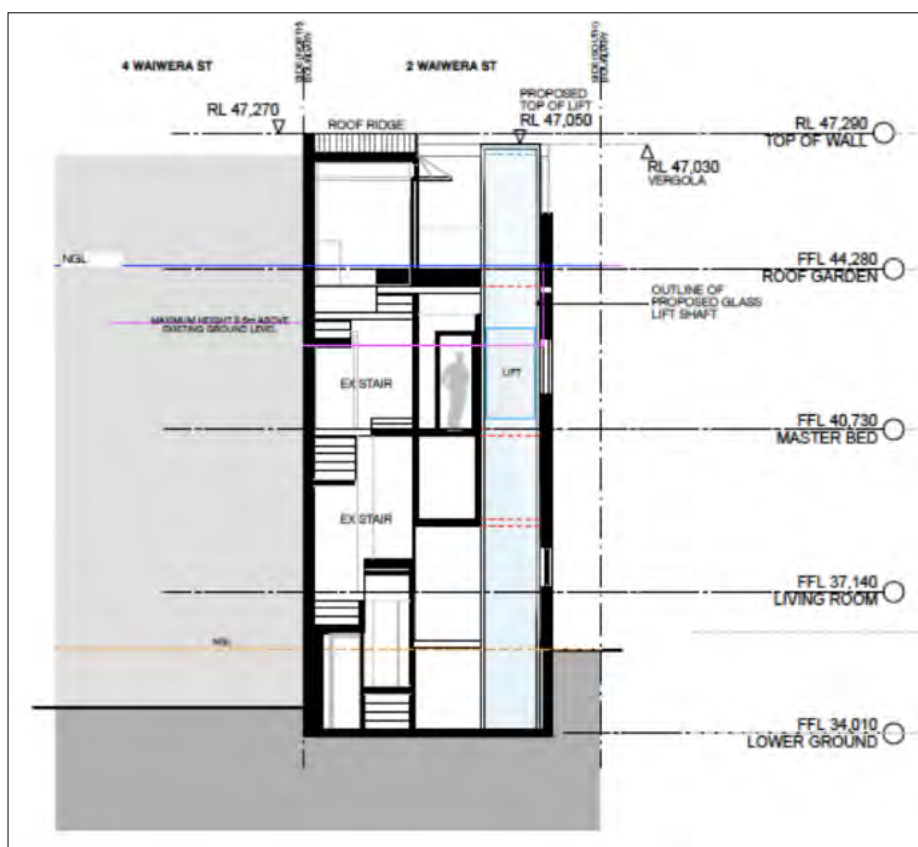


Figure 8: Proposed Section

Clause 4.6 Exceptions to development standards

A written request prepared by Paro Consulting dated December 2022 was submitted as part of the application. The written request acknowledges the departure of approximately 4.54m (53.4%) from Cl4.3 height of building control.

Clause 4.6(3) states the following:

“(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 demonstration:

- (a) The 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.”*

The written request provided by Paro Consulting dated December 2023 has demonstrated that strict compliance is unreasonable and unnecessary in the circumstances of the case. The written request provides the following environmental planning grounds in support of the request which argues that the exceedance should be granted for the following reasons:

- *The proposal (notwithstanding the numerical deviation from the building height standard) remains consistent with the objectives of Clause 4.3 of the North Sydney LEP 2013.*
- *The proposal is consistent with the objectives of the R3 Medium Density Residential Zone.*
- *The variation of the height standard, on Council's method of measurement, is largely the result of there being an existing and approved basement level below the finished ground levels.*
- *The height standard variation (is) reflective of the existing pergola height.*
- *The proposal results in a height and scale that is reflective of the existing building and compatible with the surrounding development.*
- *The proposal has adopted a glass design to reduce the bulk of the addition and minimise overshadowing, view loss and general visual impacts.*
- *The proposal does not increase the height of the existing roof parapet as viewed from Waiwera Street.*
- *The lift includes a sensitive design and is suitably located to ensure there are no unacceptable impacts on the existing values of the McMahons Point North Heritage Conservation Area.*

The proposed development is considered to be consistent with the objectives of the building height development standard as discussed below.

- *"The area of the height non-compliance relates to a lift shaft within the existing roof terrace area, the proposal does not alter the existing landform at the site.*
- *It does not result in any adverse obstruction of significant views from any private residences or the public domain.*
- *Additional sensitive design, incorporating a glass lift structure has been used to minimise potential view impacts*
- *The proposed glass lift is not expected to result in any unreasonable adverse overshadowing impacts for adjoining dwellings, reserves or streets.*
- *The height of the proposed glass lift reflects the existing pergola on the roof terrace, the proposal is compatible with the existing dwelling and the adjoining development.*
- *the proposal does not increase the scale and density of the existing dwelling, whilst the visual bulk is minimised through the glass design.*
- *The proposal does not significantly alter the general character of the area.*
- *The proposed alterations and additions do not increase the number of stories of the existing dwelling.*
- *The proposal is considered to uphold the underlying purpose of the standard, with regards to compatibility, context, character and maintaining the amenity of adjoining neighbours."*

The proposal is considered to achieve the objectives of the R3 Medium Density Residential zone on the basis that the proposal improves amenity for the occupants of the dwelling while not adversely impacting view, solar access or privacy for surrounding properties.

In conclusion, the written request seeking a variation to the building height control is considered to be well founded, has demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of the case and has provided sufficient environmental planning grounds which support the request.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN (NSDCP) 2013

The Development Control plan applies to the site so an assessment has been carried out below:

Compliance Table – Residential Development

| Part B Section 1- Residential Development | | |
|---|----------------------------------|---|
| | <i>complies</i> | <i>Comments</i> |
| 1.2 Social Amenity | | |
| 1.2.2 Maintaining Residential Accommodation | Yes | The proposal provides for a lift that will improve the amenity for residents on the site and maintain residential accommodation. |
| 1.3 Environmental Criteria | | |
| 1.3.1 Topography | Yes | No substantial earthworks is proposed for the installation of the lift from the existing Lower Ground floor. |
| 1.3.6 Views | Yes | The proposed lift will still permit slot views over and between buildings throughout the McMahons Point North Conservation Area as per ACS. |
| 1.3.7 Solar Access | Yes | Overshadowing from the proposed lift occurs on the subject site only and is also in accordance with NSDCP controls. |
| 1.3.8 Acoustic Privacy <i>Objective 1 – To ensure all residents are provided with a reasonable level of acoustic privacy</i> <i>P9 Mechanical equipment, such as pumps, lifts or air conditioners should not be located adjacent to bedrooms or living rooms of dwellings on adjoining properties.</i> <ul style="list-style-type: none"> • Living areas Day/Night ≤ 40 dBA • Sleeping areas Day/Night ≤ 35 dBA | Yes | Subject to conditions, the proposal is considered to be capable of achieving compliance with required building construction levels to meet acoustic standards. The proposal is considered capable of achieving compliance with the relevant objectives and the provisions of NSDCP 2013. |
| 1.3.10 Visual Privacy <ul style="list-style-type: none"> • Roof top terraces less than 50% of the floor area below or > than 18m² | Yes | The proposed lift and minor internal reconfiguration will not create an adverse impact on visual privacy and there is already an existing rooftop terrace and the lift is only used as a temporary enclosure and not an area for long periods of gazing. |
| 1.4 Quality built form | | |
| 1.4.1 Context | Yes | The proposal is generally compatible with the context, noting the addition is located on the third level towards the rear of the dwelling and not highly visible from the public domain. |
| 1.4.3 Streetscape | Yes | The proposal is compatible with the streetscape and will maintain the quality and compatibility of Waiwera Street and the conservation area. |
| 1.4.6 Setback – Side General Residential (R2 & R3 zones) <i>1st storey (up to 4m) – 900mm</i> <i>2nd storey (up to 7m) – 1.5m</i> <i>3rd storey (>7m) – 2.5m</i> | No Acceptable against objectives | The side setbacks of the dwelling are not altered by the proposal with the exception of the lift which is setback 1.3m from the side boundary. There is already an existing pergola besides the location proposed for the lift. |

| Part B Section 1- Residential Development | | |
|---|------------------|---|
| | complies | Comments |
| <i>Relates to: Attached dwellings; Boarding houses; Dual occupancies; Dwelling houses; Group houses; Multi dwelling housing; Secondary dwellings; Semidetached dwellings; Seniors housing</i> | | The subject site is also one of the semi-detached dwellings in the row of attached and semi-detached terraces and the proposed lift set in from the existing side boundary with a glass design is considered satisfactory against the Setback controls under this section of the NSDCP 2013. |
| 1.4.7 Form Massing Scale <ul style="list-style-type: none"> Floor to ceiling height 2.7m | Yes | The size of the proposed additions and alterations is considered to be acceptable and in keeping with the form of development expected within a Conservation area. The proposed works are set below the height of the main dwelling roof and would not be readily visible from the street. The height of the first floor addition additions has been considered in greater detail, as discussed in the Building Height section in this report. |
| 1.4.8 Built Form Character | Yes | Please refer to ACS – Part C below. |
| 1.4.10 Roofs | Yes | The proposed works do not alter the existing roof form but seek to include a glass lift shaft within the existing roof terrace area. |
| 1.4.12 Materials | No Acceptable | Please refer to ACS – Part C below. |

AREA CHARACTER STATEMENTS – PART C

The application has been assessed against the relevant controls in the Character Statements under Part C in NSDCP 2013 below:

Section 9.0 – Lavender Bay Planning Area

Section 9.7 – McMahons Point North Conservation Area

The proposed works are generally consistent with the characteristic built elements described within the Character Statement of the McMahons Point North Conservation Area. The use of glass as the material for the proposed lift is not characteristic to the locality, although the lift will not be protrusive due to its location on Level 3, set a minimum of 11m from the front boundary of the subject site. The proposal is unlikely to create an adverse impact on the locality and adjoining properties and is recommended for approval.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal is subject to Local Infrastructure Contributions (s7.12 contribution) in accordance with the North Sydney Local Infrastructure Contributions Plan (as amended) due to the development cost estimated to be above \$100,000.00. The required contribution has been calculated in accordance with the applicable contribution rates as follows:

| Applicable Contribution Type | | |
|---|-------------------|---------------|
| S7.12 contribution detail | Development cost: | \$ 430,595.00 |
| (payment amount subject to indexing at time of payment) | Contribution: | \$ 4,306.00 |

Conditions requiring payment of contributions are included in the attached recommended conditions of consent.

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

PUBLIC INTEREST

The proposal is considered to be in the public interest for the reasons stated throughout this report, subject to the satisfaction of the imposed conditions of consent.

SUITABILITY OF THE SITE

The proposal would be located in an R3 Medium Density zone where alterations and additions to a semi-detached dwelling are a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

SUBMITTERS CONCERNS

The concerns raised during the notification of the application have been reviewed and addressed in detail under the relevant headings below:

- ***Inadequate detail about the proposed lift, including acoustic and lighting assessment.***

Response: Conditions are recommended to ensure the use of the proposed lift does not adversely impact on adjoining properties acoustically. A condition is imposed to require low-e and low reflectivity glass to be used for the proposed lift. A condition is also imposed to require the southern elevation of the lift to be finished with solid cladding to prevent excessive light spill from the lift.

- ***Inadequate and incomplete documentation on the proposed lift.***

Response: Conditions are imposed in the consent regarding reflectivity, external colours and materials in conservation area, and development in accordance with approved plans that must be submitted for approval by the Principal Certifying Authority.

- ***Adverse visual impacts on nearby properties from the increased massing arising from the lift shaft, lift car and associated infrastructure.***

Response: The proposed lift is an ancillary residential structure which satisfactorily meets the controls of Council's NSDCP 2013. The proposed structure will not present any significant adverse impact to any significant view or present any unreasonable visual privacy. The proposed structure is substantially set back from the subject site is also one in a row of terrace dwellings that are built boundary to boundary and the proposed lift set back from the southern boundary by 1.3m is not uncharacteristic to Waiwera Street.

- ***Adverse reflective impacts from the western side of the lift shaft.***

Response: A condition is imposed for the proposed lift to consist of low e-glare and low-reflectivity properties.

CONCLUSION AND REASONS

The development application has been assessed against the North Sydney Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and generally found to be satisfactory, subject to conditions of consent.

The proposal is unlikely to cause adverse material impacts to adjoining properties subject to the recommended conditions of consent.

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

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

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

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel exercising the functions of Council as the consent authority grant consent to Development Application No. 10/24 for alterations and additions to a semi-detached dwelling subject to the attached Standard conditions and following site specific conditions:-

Southern Elevation of Lift

C12. The southern elevation of the proposed lift is to be finished with solid cladding.

(Reason: To mitigate excessive light spill from the proposed development onto adjoining properties)

Reflectivity Glazing

C13. The glazing for the proposed lift must consist of low glare and low 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)

Noise from Plant and Equipment

C14. The use of all plant and equipment installed on the premises must not:

(a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Noise Policy for Industry 2017 shall be applied.

(b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and parks and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected receiver.

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 an appropriate level of amenity for adjoining land uses)

RACHEL WU
ASSESSMENT OFFICER

Dated: 21/3/2024

DAVID HOY
TEAM LEADER (ASSESSMENTS)

Dated: 16/4/2024

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

Dated: 17/4/2024

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
2 WAIWERA STREET, LAVENDER BAY#
DEVELOPMENT APPLICATION NO. 10/24

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

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

| Plan No. | Rev | Description | Prepared by | Dated |
|-----------------|------------|--------------------|-----------------------|--------------|
| 2000 | A | Floor Plans 01 | Paredes Design Office | 20/12/2023 |
| 2001 | A | Floor Plans 02 | Paredes Design Office | 20/12/2023 |
| 2002 | A | Floor Plans 03 | Paredes Design Office | 20/12/2023 |
| 2003 | A | Roof Plan | Paredes Design Office | 20/12/2023 |
| 3000 | A | Elevation - East | Paredes Design Office | 20/12/2023 |
| 3001 | A | Elevation - South | Paredes Design Office | 20/12/2023 |
| 3002 | A | Elevation - West | Paredes Design Office | 20/12/2023 |
| 4000 | A | Section 01 | Paredes Design Office | 20/12/2023 |
| 4001 | A | Section 02 | Paredes Design Office | 20/12/2023 |

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

Plans on Site

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

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

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

**2 WAIWERA STREET, LAVENDER BAY
DEVELOPMENT APPLICATION NO. 10/24**

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No Demolition of Extra Fabric

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

(Reason: To ensure compliance with the approved development)

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 predeveloped 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.

**2 WAIWERA STREET, LAVENDER BAY
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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)

Structural Adequacy (Semi-detached and Terrace Buildings)

- C3. A report from an appropriately qualified and practising structural engineer, certifying the structural adequacy of the adjoining property No. **4 Waiwera Street, Lavender Bay** which certifies their ability to withstand the proposed works and outlines any measures required to be implemented to ensure that no damage will occur to adjoining premises 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.

Under no circumstances shall the party or common wall be extended or altered without the prior written consent of the adjoining owner. Any such extension of the party wall shall be noted on title by way of appropriate easement or Section 88B instrument.

(Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognised)

Structural Adequacy of Existing Building

- C4. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Principal Certifier for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

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

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Colours, Finishes and Materials (Conservation Areas)

- C5. The finishes, materials and exterior colours shall be complementary to the architectural style of the original building and sympathetic to the character of the Conservation Area. A schedule of finishes, materials and external colours shall be submitted to the 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 prior to the release of the Construction Certificate.

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

External Colours and Finishes

- C6. The external colours and finishes shall match those as existing and/ or be compatible with surrounding development. A schedule of external colours and finishes must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that the completed colours and finishes of the works are compatible with surrounding development)

Work Zone

- C7. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of any Construction Certificate.

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

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

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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)

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

- C8. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of **\$5,000.00** to be held by Council for the payment of cost for any/all of the following:
- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
 - b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent
 - c) remedying any defects in any such public work that arise within 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)

Section 7.12 Development Contributions

- C9. 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 \$4,737.00.

Indexation

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

Timing of Payment

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

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

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

Security Deposit/Guarantee Schedule

- C10. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

| Security Deposit/Guarantee | Amount (\$) |
|-----------------------------------|--------------------|
| Infrastructure Damage Bond | \$5,000.00 |
| TOTAL BONDS | \$5,000.00 |

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Note: The following fees applicable

| | |
|---|-------------------|
| Fees | |
| Section 7.12 Development Contributions: | \$4,737.00 |
| TOTAL FEES | \$4,737.00 |

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

(Reason: Compliance with the development consent)

BASIX Certificate

C11. Under clause 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A1730375 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)

Southern Elevation of Lift

C12. The southern elevation of the proposed lift is to be finished with solid cladding.

(Reason: To mitigate excessive light spill from the proposed development onto adjoining properties)

Reflectivity Glazing

C13. The glazing for the proposed lift must consist of low glare and low 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)

Noise from Plant and Equipment

C14. The use of all plant and equipment installed on the premises must not:

- (a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Noise Policy for Industry 2017 shall be applied.
- (b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and parks and such other affected receiver as may be notified by the Council in writing.

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

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 an appropriate level of amenity for adjoining land uses)

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

Commencement of Works' Notice

D1. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

E. During Demolition and Building Work**Temporary Disposal of Stormwater Runoff**

- E1. 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)

Removal of Extra Fabric

- E2. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

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

Dust Emission and Air Quality

- E3. 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)

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Noise and Vibration

- E4. 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

- E5. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

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

Applicant's Cost of Work on Council Property

- E6. The applicant or the person, company or other entity that is acting upon this consent, must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

No Removal of Trees on Public Property

- E7. 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)

Benchmarks

- E8. All permanent survey markers must be retained, undamaged, and not relocated.

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

Special Permits

- E9. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

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

1) **On-street mobile plant**

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

(Reason: Proper management of public land)

2) **Hoardings**

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

(Reason: Proper management of public land)

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

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

(Reason: Proper management of public land)

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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

E10. 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 (Excl. E2 Commercial Centre MU1 Mixed-use | Monday - Friday | 7.00 am - 5.00 pm |
| | Saturday | 8.00 am - 1.00 pm |
| | Sunday, Public holiday | No work permitted |

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above, 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 and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations)

Out-of-hours' Work Permits

E11. 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*.

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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.

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

Site Amenities and Facilities

- E12. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of work-place determines the type of amenities required.

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

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

Health and Safety

- E13. 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.

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

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

Community Information

E14. Reasonable measures must be undertaken at all times to keep nearby residents informed about the proposed work, such as by way of signs, leaflets, public meetings and telephone contact numbers, to ensure that adjoining residents are aware of the likely duration of the construction works on the site

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

Prohibition on Use of Pavements

E15. 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

E16. 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.

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

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)

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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 Certifier (PC)

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

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

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Construction Certificate

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

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

Occupation Certificate

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

(Reason: Statutory)

Critical Stage Inspections

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

(Reason: Statutory)

Commencement of Works' Notice

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

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

Excavation/Demolition

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

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DEVELOPMENT APPLICATION NO. 10/24**

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

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

Protection of Public Places

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

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

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:

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

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

(Reason: Maintain quality of Public assets)

Damage to Adjoining Properties

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

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

BASIX Completion Receipt

- G3. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

Damage to Adjoining Properties

- G4. 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:

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- 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)

BASIX REQUIREMENTSCERTIFICATE NUMBER: **A1730375**

A minimum of 40% of new or altered light fixtures are to be fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.

All new or altered shower heads are to have a flow rate no greater than 9 litres per minute or a 3 star water rating.

All new or altered toilets are to have a flow rate no greater than 4 litres per average flush or a 3 star water rating.

All new or altered taps are to have a flow rate no greater than 9 litres per minute or a 3 star water rating.



2 WAIWERA STREET
Lavender Bay, NSW 2060
LOT 3 DP 874313

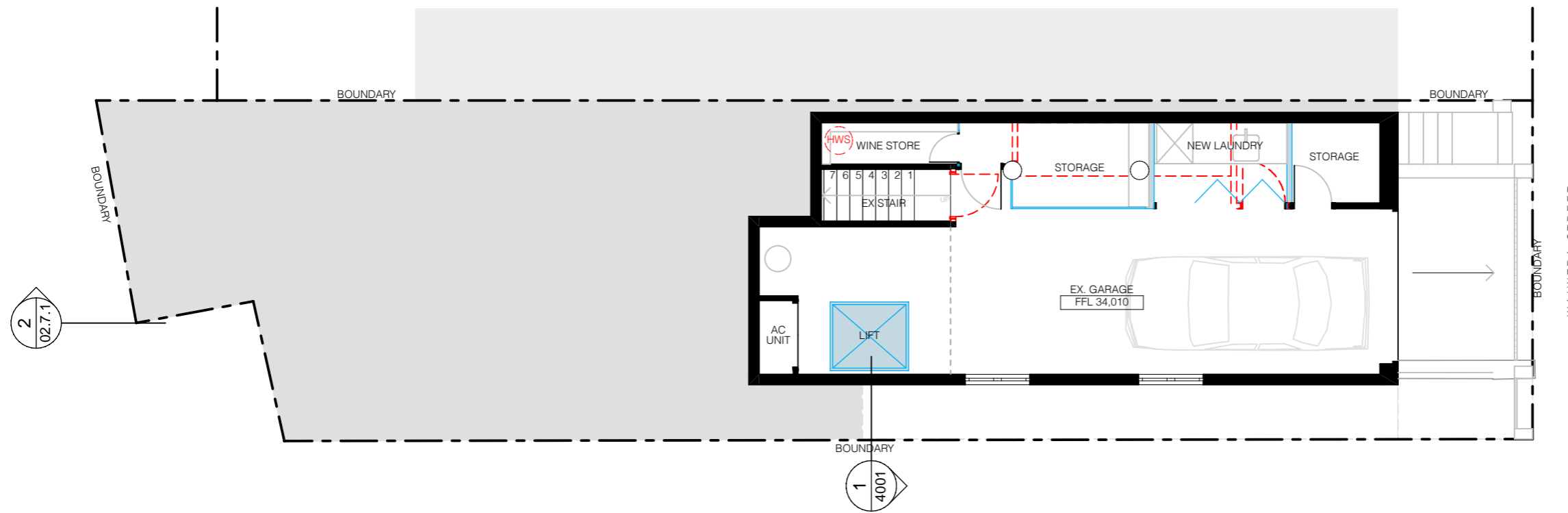
DEVELOPEMENT APPLICATION

ALTERATIONS AND ADDITIONS

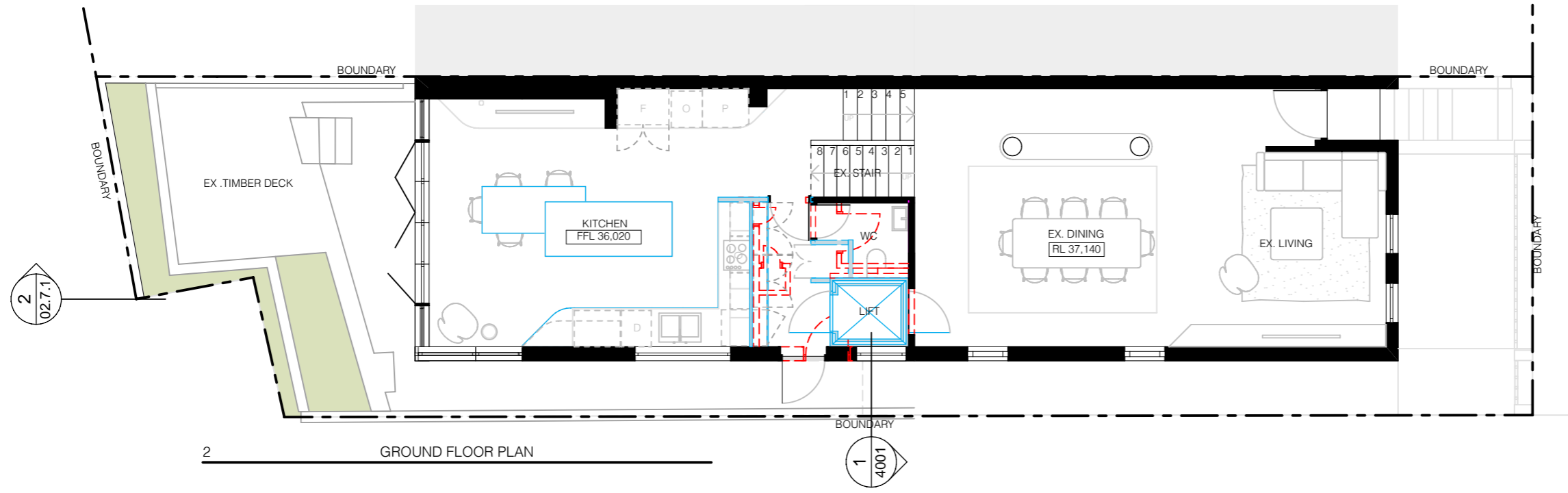
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|-------------|---------------------|
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| 2000 | FLOOR PLANS 01 |
| 2001 | FLOOR PLANS 02 |
| 2002 | FLOOR PLANS 03 |
| 2003 | ROOF PLAN |
| 3000 | ELEVATION - EAST |
| 3001 | ELEVATION - SOUTH |
| 3002 | ELEVATION - WEST |
| 4000 | SECTION 01 |
| 4001 | SECTION 02 |
| 4002 | SHADOW DIAGRAM 9AM |
| 4003 | SHADOW DIAGRAM 12PM |
| 4004 | SHADOW DIAGRAM 3PM |
| 5001 | 3D VIEWS |

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1 LOWER GROUND FLOOR PLAN



2 GROUND FLOOR PLAN

BASIX REQUIREMENTS
 CERTIFICATE NUMBER: **A1730375**
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 All new or altered taps are to have a flow rate no greater than 9 litres per minute or a 3 star water rating.

DEMOLITION NOTES
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LEGEND

- EXISTING
- PROPOSED
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PROJECT TITLE
 WAIWERA
PROJECT NO
 2305
PROJECT ADDRESS
 2 WAIWERA ST, LAVENDER BAY, NSW 2060

DRAWING TITLE
 FLOOR PLANS
DRAWING NO
 2000

REVISIONS

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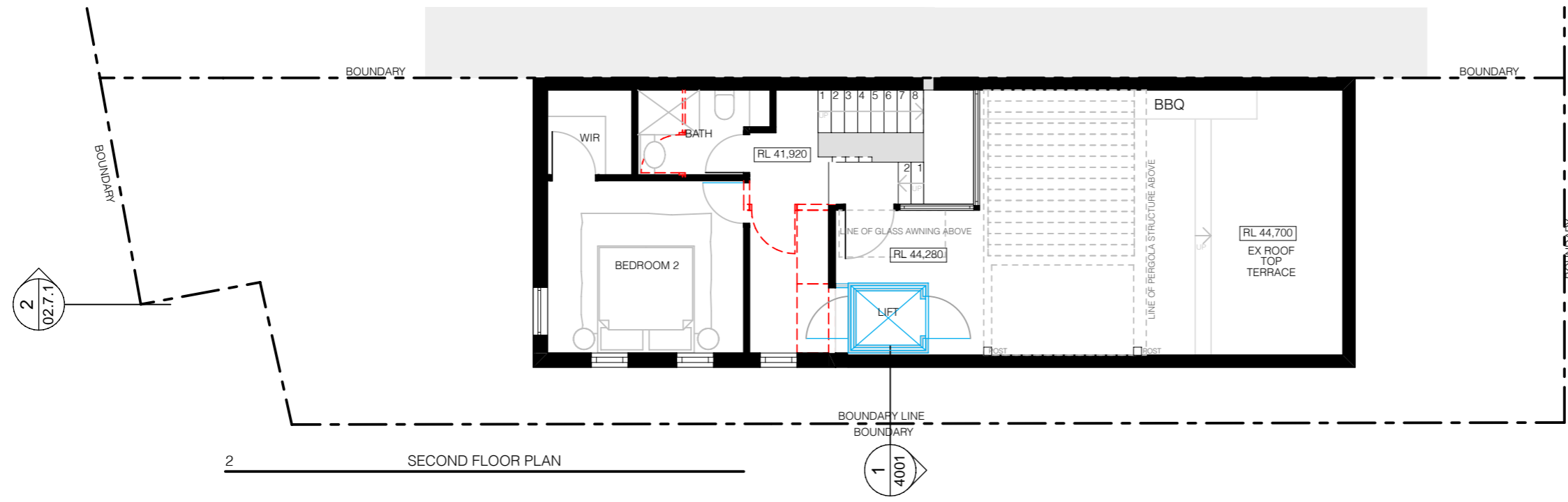
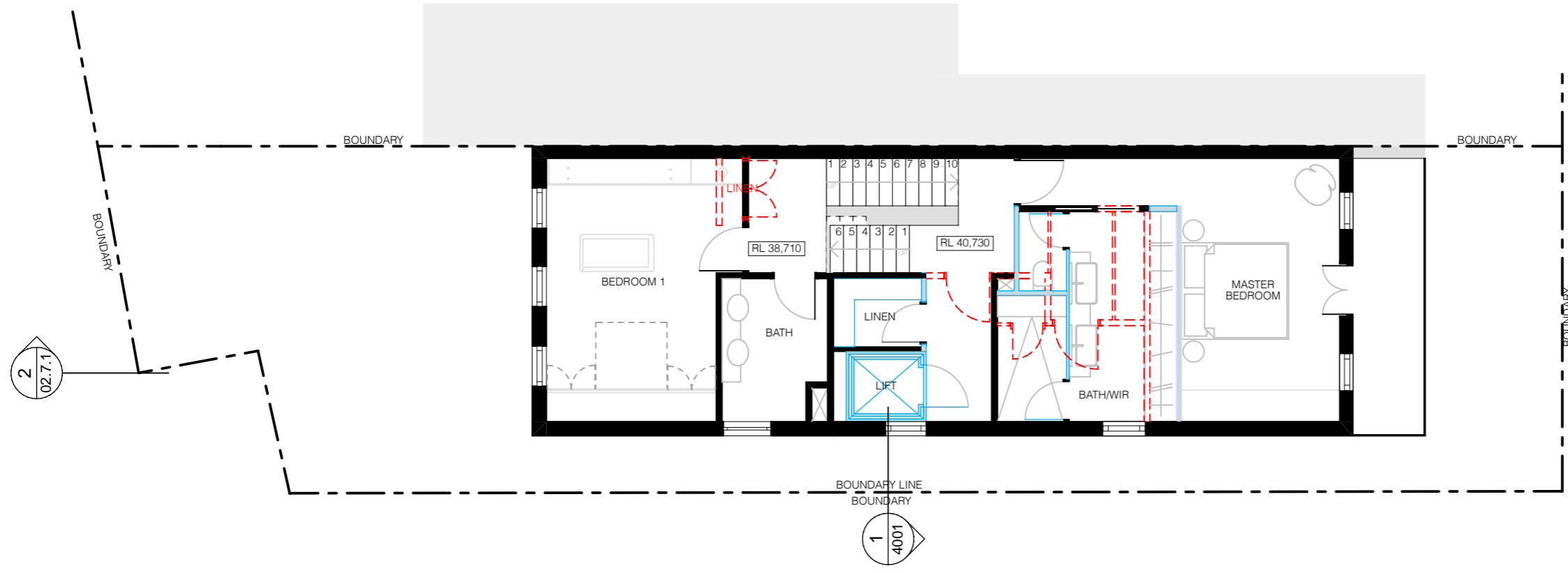
DATE
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CHECK
 MP

REVISION
A
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[NOT FOR CONSTRUCTION]



BASIX REQUIREMENTS
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2 SECOND FLOOR PLAN

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LEGEND

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PROJECT TITLE
 WAIWERA
PROJECT NO
 2305
PROJECT ADDRESS
 2 WAIWERA ST, LAVENDER BAY, NSW 2060

DRAWING TITLE
 FLOOR PLANS 2
DRAWING NO
 2001

REVISIONS

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DRAWN
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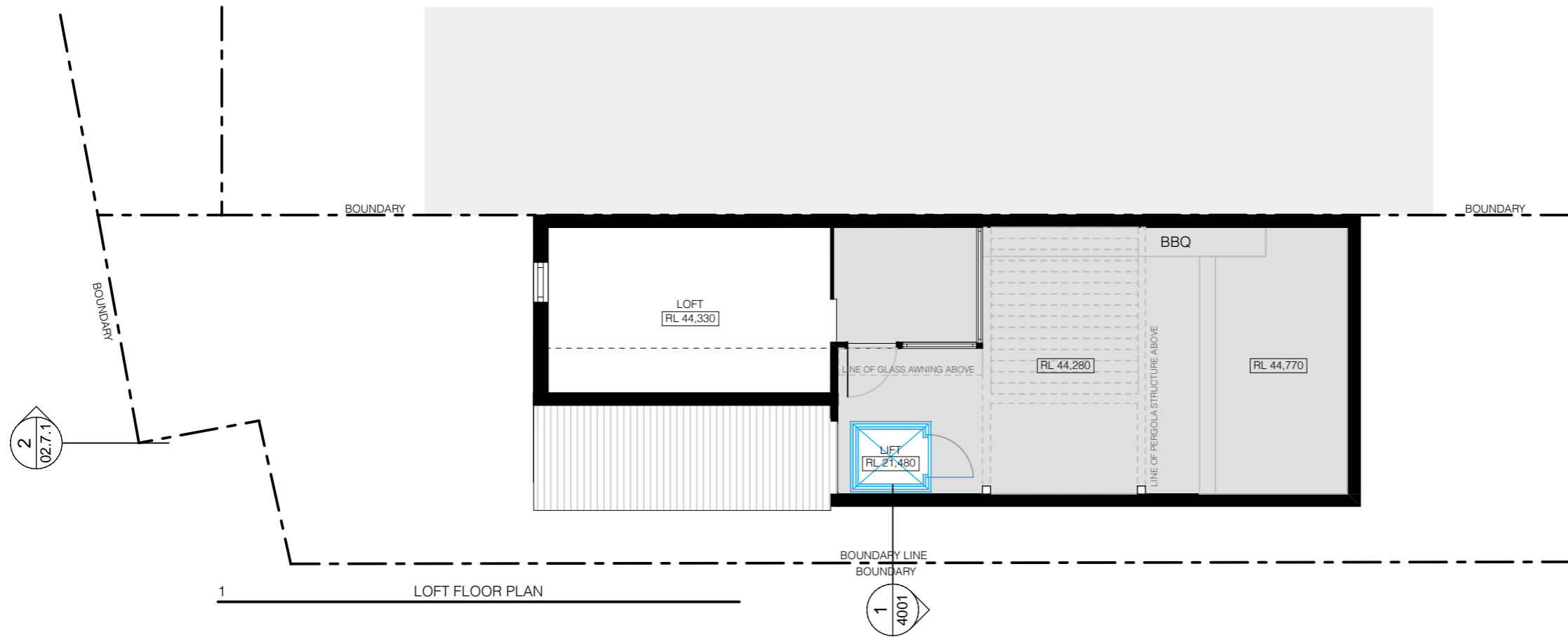
DATE
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STATUS
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[NOT FOR CONSTRUCTION]



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LEGEND

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| | PROPOSED |
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PROJECT TITLE
 WAIWERA
PROJECT NO
 2305
PROJECT ADDRESS
 2 WAIWERA ST, LAVENDER BAY, NSW 2060

DRAWING TITLE
 FLOOR PLANS 3
DRAWING NO
 2002

REVISIONS

SCALE
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DRAWN
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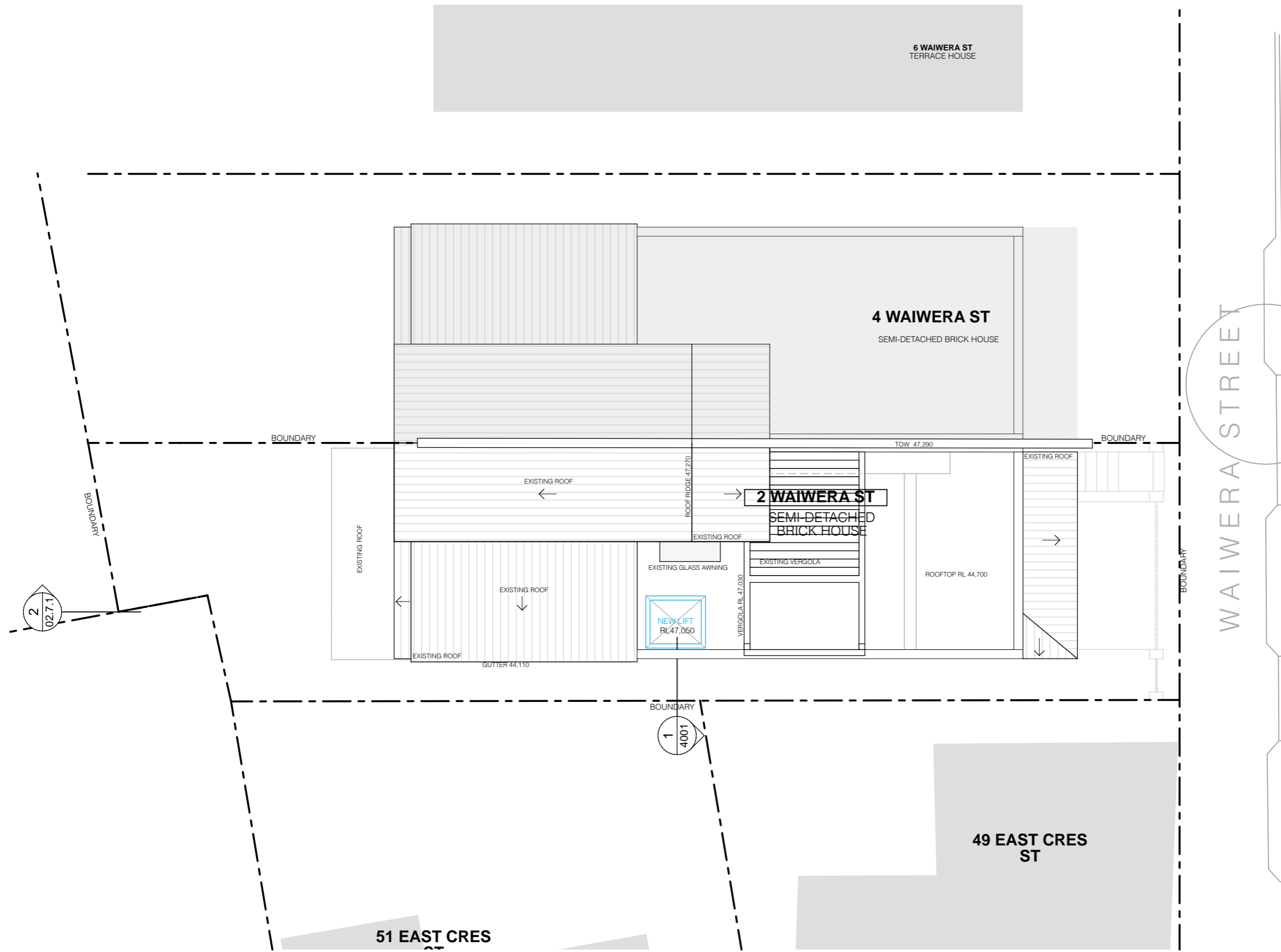
DATE
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CHECK
 MP

REVISION
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STATUS
DA
 [NOT FOR CONSTRUCTION]





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PROJECT TITLE
WAIWERA
 PROJECT NO
2305
 PROJECT ADDRESS
2 WAIWERA ST, LAVENDER BAY, NSW 2060

DRAWING TITLE
ROOF PLAN
 DRAWING NO
2003

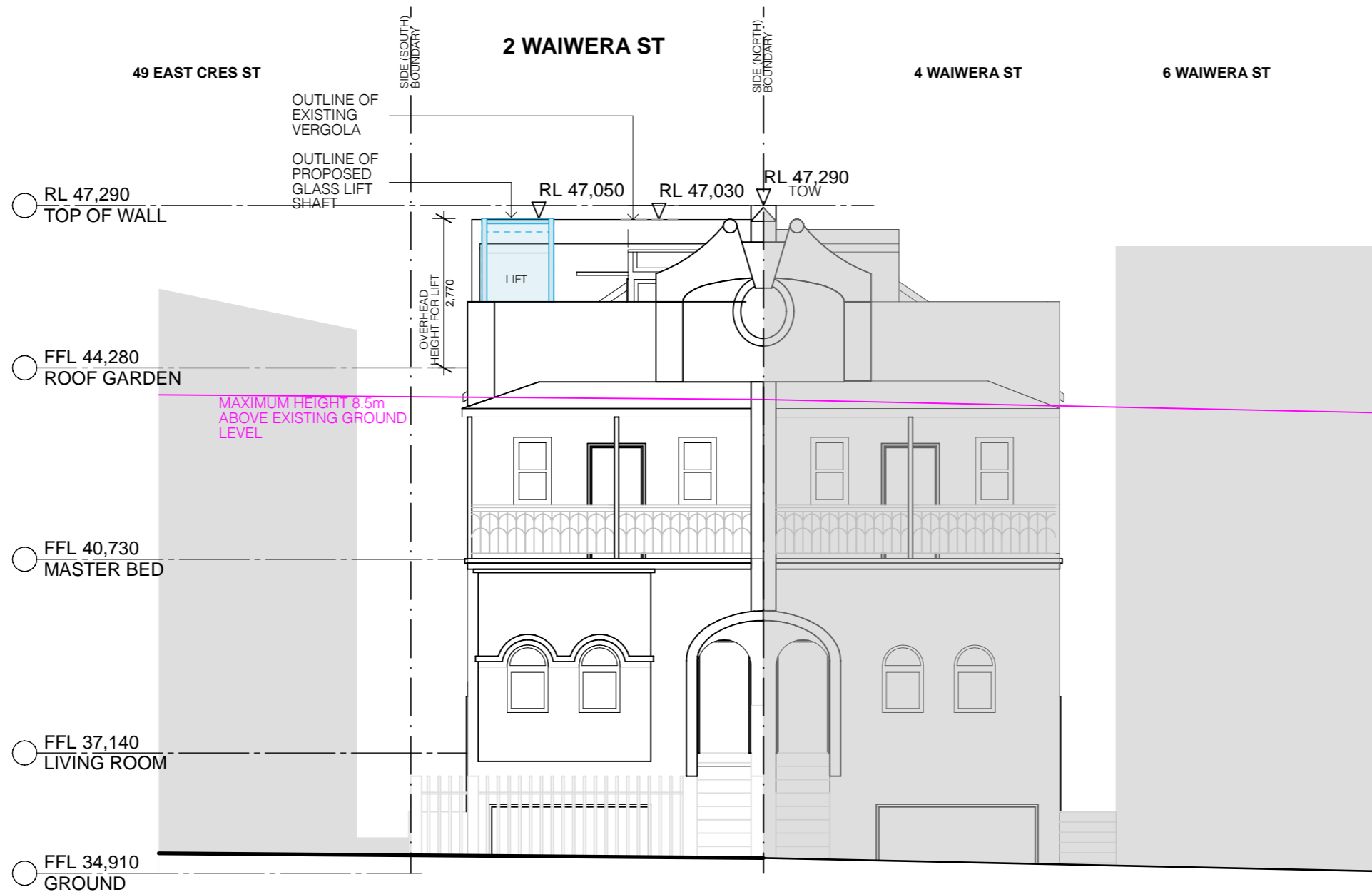
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LEGEND

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PROJECT TITLE
WAIWERA
 PROJECT NO
2305
 DRAWING TITLE
ELEVATION EAST
 PROJECT ADDRESS
2 WAIWERA ST, LAVENDER BAY, NSW 2060
 DRAWING NO
3000

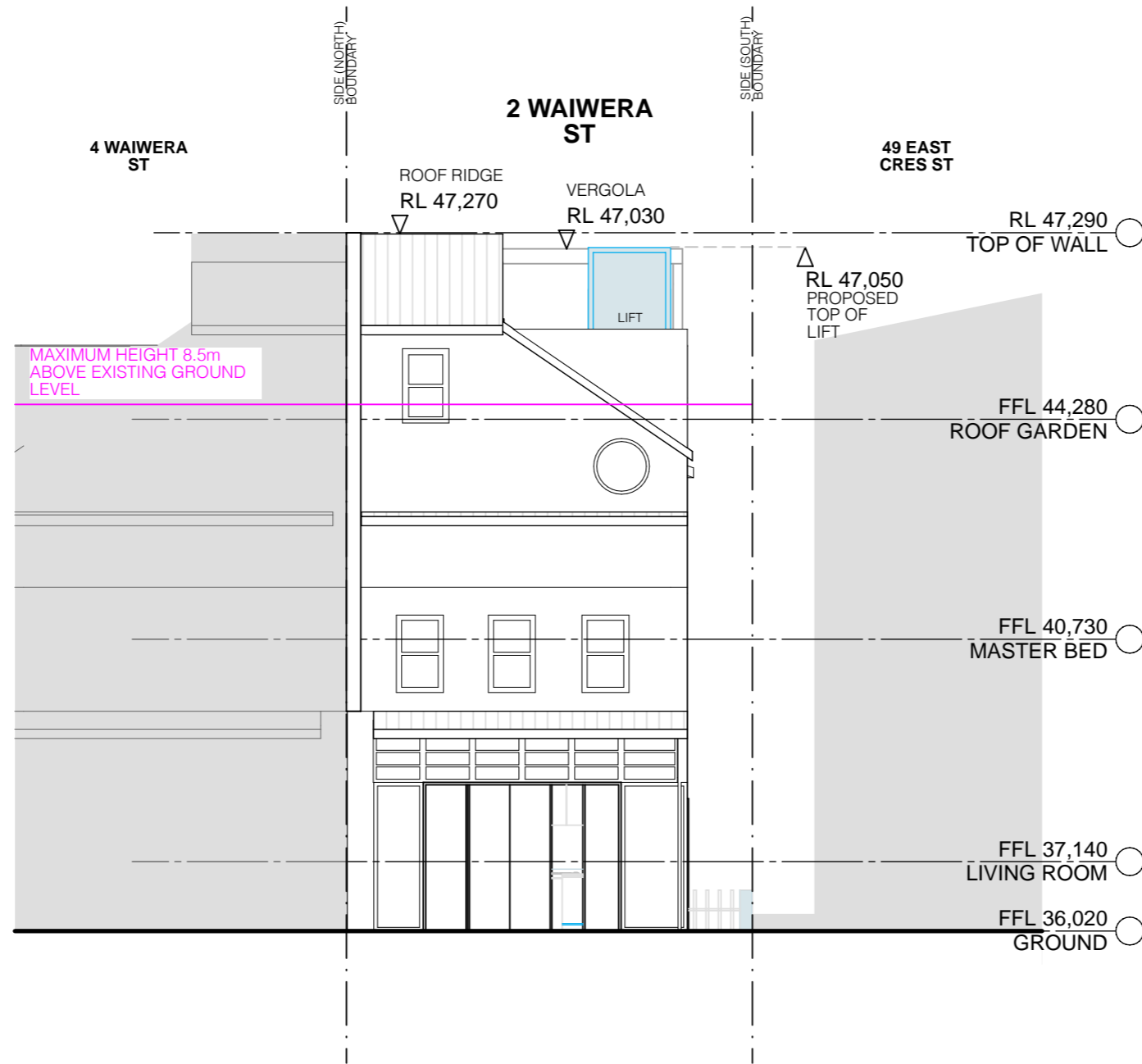
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PROJECT TITLE
 WAIWERA

PROJECT NO
 2305

PROJECT ADDRESS
 2 WAIWERA ST, LAVENDER BAY, NSW 2060

DRAWING TITLE
 ELEVATION WEST

DRAWING NO
 3001

REVISIONS

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DATE
 20/12/23

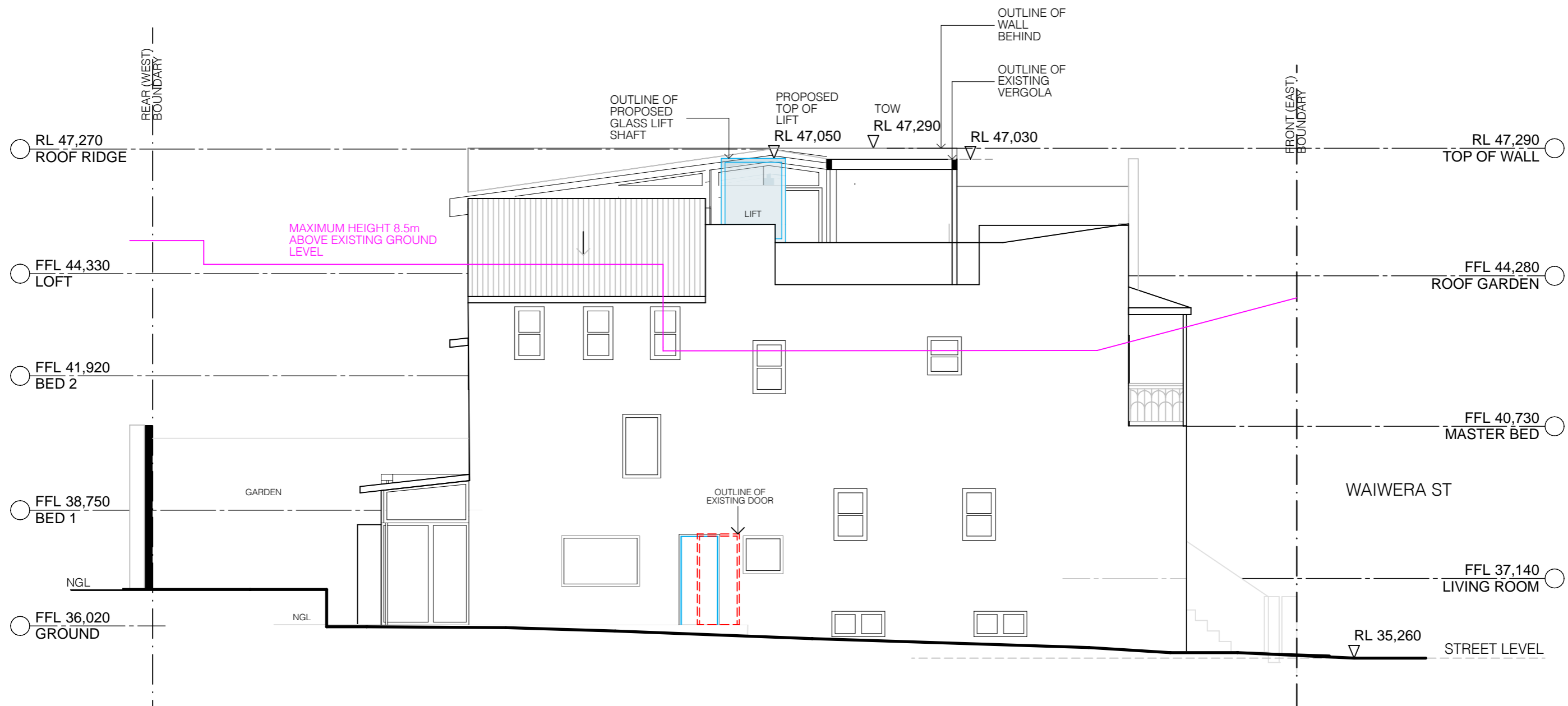
CHECK
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 (NOT FOR CONSTRUCTION)



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LEGEND

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PROJECT TITLE
 WAIWERA

PROJECT NO
 2305

PROJECT ADDRESS
 2 WAIWERA ST, LAVENDER BAY, NSW 2060

DRAWING TITLE
 ELEVATION SOUTH

DRAWING NO
 3002

REVISIONS

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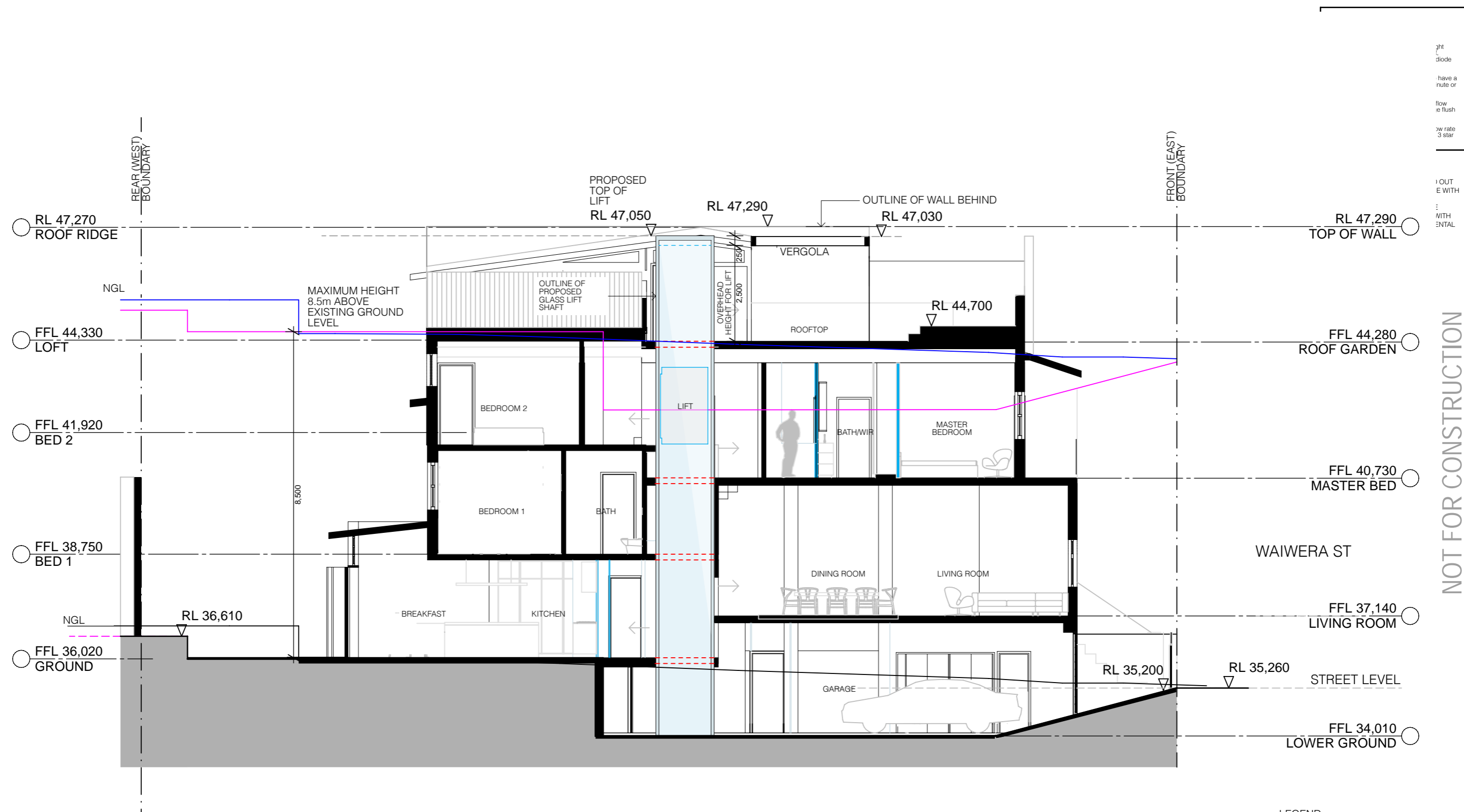
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LEGEND

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PROJECT TITLE
WAIWERA

PROJECT NO
2305

PROJECT ADDRESS
2 WAIWERA ST, LAVENDER BAY, NSW 2060

DRAWING TITLE
SECTION 01

DRAWING NO
4000

REVISIONS

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DRAWN
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DATE
20/12/23

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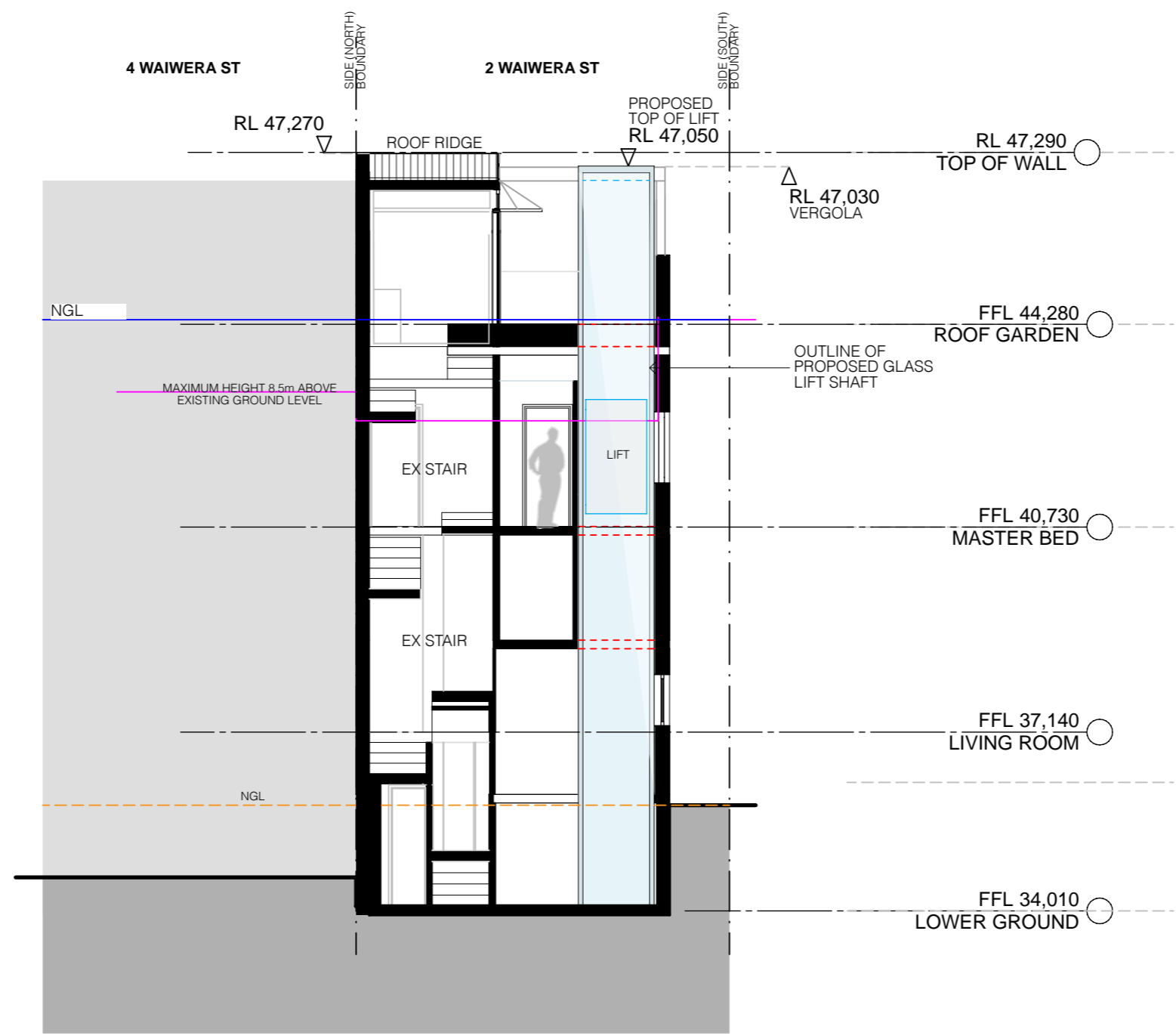
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STATUS
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PROJECT TITLE
WAIWERA
 PROJECT NO
2305
 DRAWING TITLE
SECTION 02
 PROJECT ADDRESS
2 WAIWERA ST, LAVENDER BAY, NSW 2060
 DRAWING NO
4001

REVISIONS
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20/12/23
 REVISION
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SCALE
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 DATE
20/12/23
 REVISION
A
 STATUS
DA
[NOT FOR CONSTRUCTION]



 EXTRA SHADOWS

BASIX REQUIREMENTS
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1 9AM 21/03



2 9AM 21/06



3 9 AM 21/09

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PROJECT TITLE
 WAIWERA
PROJECT NO
 2305
PROJECT ADDRESS
 2 WAIWERA ST, LAVENDER BAY, NSW 2060

DRAWING TITLE
 SHADOW DIAGRAMS 9AM
DRAWING NO
 4002

REVISIONS

SCALE
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 HL

DATE
 20/12/23

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 MP

REVISION
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STATUS
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NOT FOR CONSTRUCTION

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 **EXTRA SHADOWS**



1 12PM 21/03



2 12PM 21/06



3 12PM 21/09

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PROJECT TITLE
 WAIWERA
PROJECT NO
 2305
PROJECT ADDRESS
 2 WAIWERA ST, LAVENDER BAY, NSW 2060

DRAWING TITLE
 SHADOW DIAGRAMS
 12PM
DRAWING NO
 4003

REVISIONS

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DATE
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 All new or altered taps are to have a flow rate no greater than 9 litres per minute or a 3 star water rating.

DEMOLITION NOTES
 ALL DEMOLITION TO BE CARRIED OUT ONSITE IS TO BE IN ACCORDANCE WITH AS/NZ 2601-2001. DISPOSAL OF DEMOLITION MATERIALS IS TO BE CARRIED OUT IN ACCORDANCE WITH THE PROTECTION OF ENVIRONMENTAL ACT 1997.

1 3PM 21/03



2 3PM 21/06



3 3PM 21/09

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PROJECT NO 2305
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DRAWING NO 4004

REVISIONS

SCALE 1:200

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DATE 20/12/23

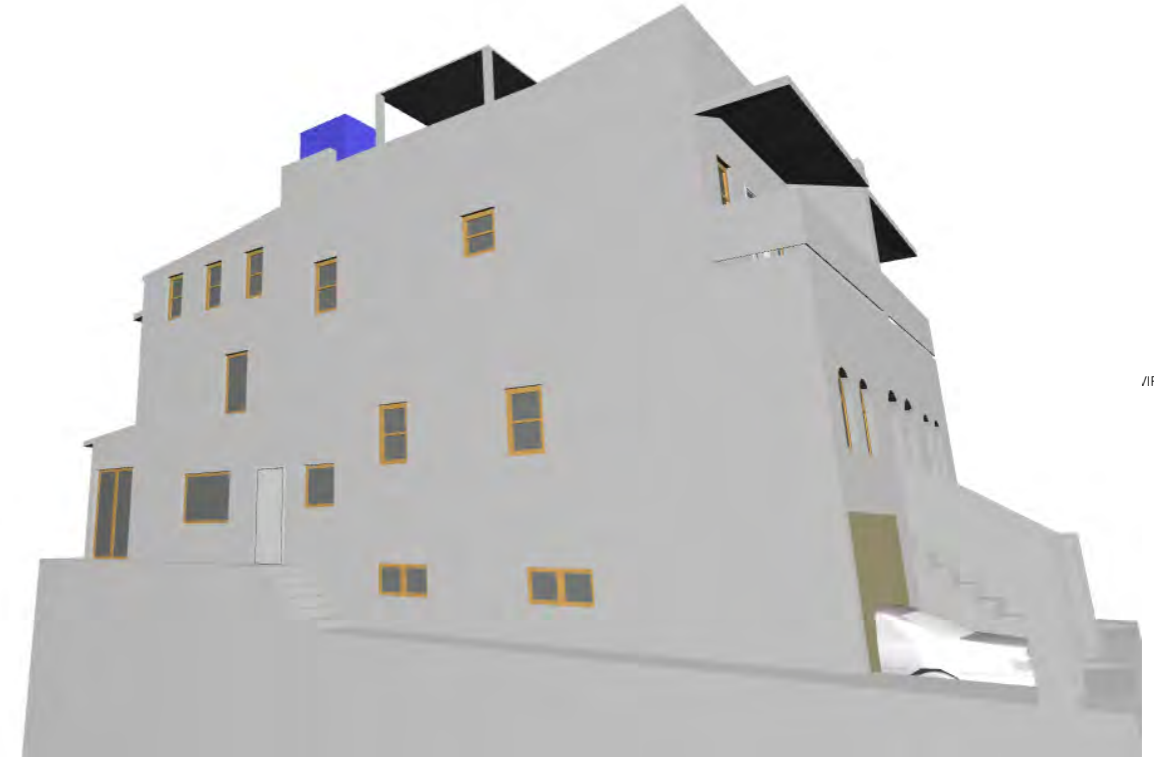
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PROJECT TITLE
WAIWERA

PROJECT NO
2305

DRAWING TITLE
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PROJECT ADDRESS
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Clause 4.6 Variation Request

2 Waiwera Street, Lavender Bay



Prepared by Paro Consulting

April 2023



Clause 4.6 Variation Request – Height

Document status

| Revision | Date | Name | Signature |
|----------|------------|---|---|
| 1 | 15/11/2023 | Daniel Barber, Director B.Plan (Hons), M.ProDev, |  |
| 2 | 11/4/2024 | Daniel Barber, Director B.Plan (Hons), M.ProDev, |  |

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1. Introduction

This is a request to vary a development standard pursuant to the provisions of Clause 4.6 of the North Sydney Local Environmental Plan 2013 (North Sydney LEP 2013), the relevant clause being Clause 4.3(2) of North Sydney LEP 2013 (Height of Building) and the Guide to Varying Development Standards November 2023.

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

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

This request to vary the Clause 4.3 of North Sydney LEP 2013 has regard to the judgments in:

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

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

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

The relevant architectural drawings relied upon are those prepared by Paredes Design Office.

2. Development Standard to be Varied – Height

The relevant *development standard* to be varied is the 8.5m height standard under Clause 4.3(2) of North Sydney LEP. Clause 4.3 of North Sydney LEP relevantly provides:

“4.3 Height of buildings

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 C4 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.*

Clause 4.6 Variation Request – Height



Figure 1: Extract of the Height of Buildings Map of the North Sydney LEP 2013, site in yellow (Source: NSW Planning Portal)

3. Nature of Variation Sought

The requested variation is as follows:

The proposal includes a maximum height of 13.04m, resulting in a 4.54m variation when adopting Council’s method of measuring height by the literal definition of ground level (existing) from the standard instrument. This has been measured from the existing subterranean basement (R.L. 34.010) to the ridge of the proposed lift (R.L. 47.050) (see figures below).

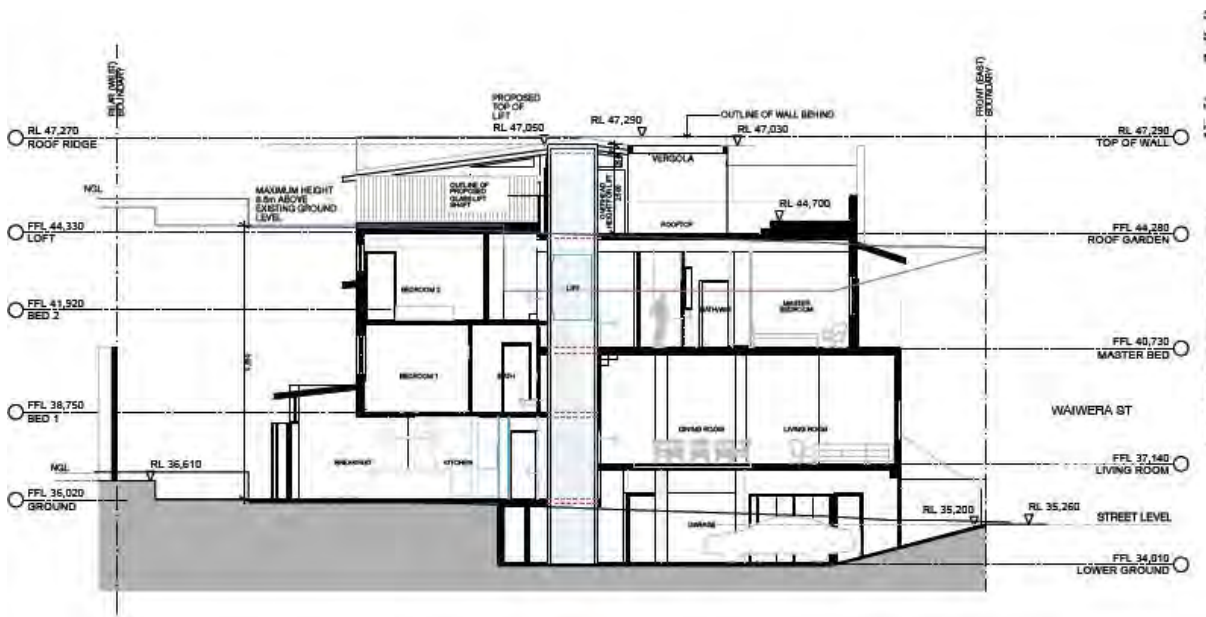


Figure 1: In long section, the height development standard represented by pink line and natural ground level represented by blue line.

Clause 4.6 Variation Request – Height

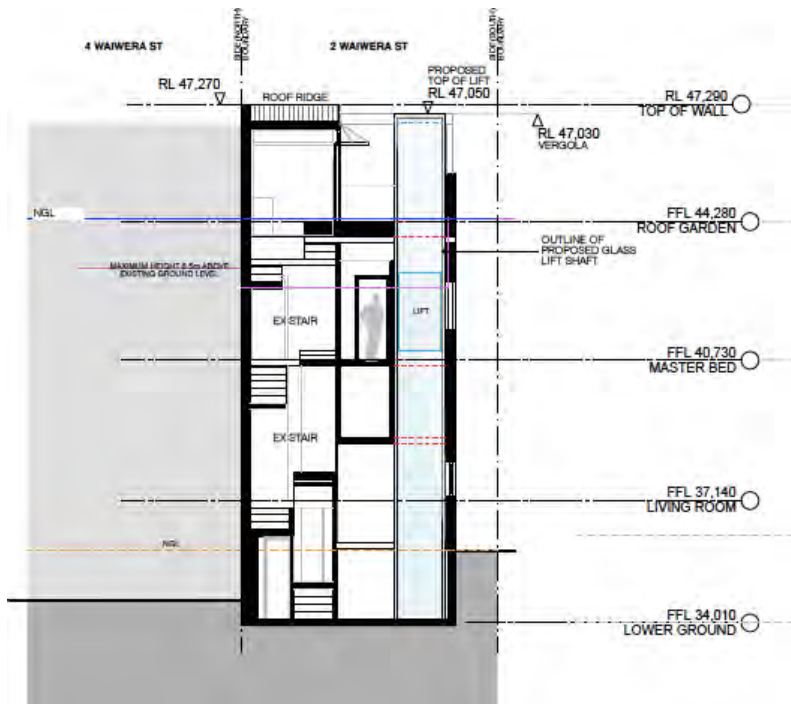


Figure 2. Short Section, the height development standard represented by pink line and natural ground level represented by blue line.

4. Clause 4.6 of North Sydney Local Environmental Plan 2013

Clause 4.6 of the North Sydney LEP 2013 provides a legal pathway by which an applicant can vary a *development standard*. Clause 4.6 of North Sydney LEP 2023 relevantly provides as follows:

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

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

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

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

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

- (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3),*
- and*

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

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

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

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

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

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

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

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

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 4.3 in relation to land identified as "Area 1" on the [Special Provisions Area Map](#), other than subject land within the meaning of clause 6.19C,

(cab) clause 4.4, 5.6 or 6.19C in relation to land identified as "Area 1" on the [Special Provisions Area Map](#),

(cb) clause 6.3(2)(a) and (b),

(cba) clause 6.19A.

(cc) (Repealed)

(8A) (Repealed)"

5. Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

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

Preston CJ at states as follows:

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

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

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

UNREASONABLE AND UNNECESSARY

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

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

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

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

In dealing with the standard, it is necessary to identify the purpose of the height control and then progress to dealing with the achievement or otherwise with the height objectives. The relevant objectives of 4.3 Height of Buildings of the North Sydney LEP 2013 are identified and discussed below:

4.3 Height of buildings

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

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

The area of the height non-compliance relates to a lift shaft within the existing roof terrace area, the proposal does not alter the existing landform at the site. The height of the building has been measured from the bottom of the subterranean basement being ground level (existing) and the extent of the height variation is greater than that visible from the public domain. Should the height of the building be calculated from the perimeter of the building rather than basement, the extent of the variation would be significantly reduced as the proposal would have a maximum height of 11.3m resulting in a maximum 2.8m variation.

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

The area of the height non-compliance is contained within the existing roof terrace area, adjoining an existing pergola, it does not result in any adverse obstruction of significant views from any private residences or the public domain. Additional sensitive design, incorporating a glass lift structure has been used to minimise potential view impacts.

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

The proposed glass lift is not expected to result in any unreasonable adverse overshadowing impacts for adjoining dwellings, reserves or streets.

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

The area of the height non-compliance relates to a lift shaft within the existing roof terrace area, it does not result in any additional adverse privacy impacts.

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

The height of the proposed glass lift reflects the existing pergola on the roof terrace, the proposal is compatible with the existing dwelling and the adjoining development.

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

The area of height non-compliance relates to a glass lift shaft adjoining the existing roof pergola, the proposal does not significantly increase the scale and density of the existing dwelling. The visual bulk is minimised through the glass design and the proposal does not significantly alter the general character of the 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 C4 Environmental Living.

The proposed alterations and additions do not increase the number of stories of the existing dwelling.

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

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

Not relied upon.

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

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

The proposal includes a maximum height of 13.04m, resulting in a 4.54m variation when measuring height by the literal definition of ground level (existing) from the standard instrument. This has been measured from the existing subterranean basement (R.L 34.010) to the ridge of the proposed lift ridge (R.L. 47.050). Strict compliance with the height standard would

result in a building which would have to be predominantly lower in scale when compared to the adjoining dwellings.

The proposed lift which results in the height standard non-compliance, at its highest point (RL 47.050) remains 0.24m lower than the existing road ridge (RL. 47.290). Whilst the proposed addition deviates from the height development standard, the proposal is considered to uphold the underlying purpose of the standard, with regards to compatibility, context, character and maintaining the amenity of adjoining neighbours.

If the height of the building were to be measured from the ground level (existing) at the perimeter of the building and not the basement the extent of the variation would be significantly reduced as the proposal would have a maximum height of 11.3m resulting in a maximum 2.8m variation. Should the building be amended to comply with the height standard as measured from the subterranean basement it would in a built form which would be out of context and lower than the anticipated height of the building as viewed from the public domain.

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

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

There are numerous examples of developments in the North Sydney LGA and in the immediate area which have been approved despite non-compliances with the maximum Height of Building development standard. Whilst each DA is assessed on its own merits and each site has different characteristics, Council has accepted variations to the maximum building height standard in the past.

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

Not relied upon.

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

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

- The proposal (notwithstanding the numerical deviation from the building height standard) remains consistent with the objectives of Clause 4.3 of the North Sydney LEP 2013.
- The proposal is consistent with the objectives of the R3 Medium Density Residential Zone.
- The variation of the height standard as measured from ground level (existing) is largely the result of there being an existing and approved basement level below the finished ground levels. If the building height were to be calculated at the ground levels (existing) outside the basement footprint (as the building is viewed from within and surrounding the property), the proposed non-compliance is significantly reduced (2.8m maximum).
- The height standard variation is reflective of the existing pergola height and the proposal does not increase the height of the existing roof parapet as viewed from Waiwera Street.
- The proposal results in a height and scale that is reflective of the existing building and compatible with the

Clause 4.6 Variation Request – Height

surrounding development. The extent of the height variation will not be readily discernable within the streetscape.

- The proposal has adopted a glass design to reduce the bulk of the addition and minimise overshadowing, view loss and general visual impacts.
- The lift includes a sensitive design and is suitably located to ensure there are no unacceptable impacts on the existing values of the McMahons Point North Heritage Conservation Area.
- The proposed lift satisfies the objectives of the EP&A Act 1979 and ensures the orderly and economic development, by enabling a lift to provide access within the building enabling greater accessibility and for the residents to age in place.

7. Is there any other relevant information relating to justifying a variation of the development standard?

Not required in this instance.

8. Conclusion

This variation request demonstrates, as required by Clause 4.6 of the North Sydney LEP 2013, that:

- Compliance with the development standard is unreasonable and unnecessary, as the development will continue to achieve the objectives of the standard, despite the non-compliance;
- That there are sufficient environmental planning grounds to justify a contravention to the development standard;
- The development achieves the objectives of the development standard.

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

Weir Phillips Heritage and Planning

13th November 2023

J6354

Attention: **General Manager**
 North Sydney Council
 200 Miller Street,
 North Sydney, NSW 2060

Re: **Statement of Heritage Impact**
2 Waiwera Street, Lavender Bay

1 Preamble

This Statement of Heritage Impact (SoHI) has been prepared to accompany a Development Application for alterations and additions to the dwelling at No. 2 Waiwera Street, Lavender Bay, New South Wales consisting of the installation of a lift and internal alterations.

This SoHI accompanies plans prepared by Paredes Design Office and has been prepared on behalf of the owner.

The site is located within North Sydney Council Local Government Area (LGA). The principal planning instrument for the site is the North Sydney Local Environmental Plan 2013 (LEP 2013). The site is not listed as a heritage item by Schedule 5 Part 1 of the LEP 2013. It is, however, located in the McMahons Point North Heritage Conservation Area as listed by Schedule 5 Part 2 of the LEP 2013. It is also located adjacent to and in the vicinity of heritage items listed by Schedule 5 Part 1 of the Plan.

2 Site Location

No. 2 Waiwera Street is located on the western side of and has a frontage to Waiwera Street, Lavender Bay (Figure 1). The site is identified as Lot 3 of DP874313.



Figure 1: Location of No. 2 Waiwera Street, Lavender Bay.
 SIX Maps.

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3 Statutory Heritage Listings for the Site

No. 2 Waiwera Street, Lavender Bay:

- Is located within the McMahons Point North Conservation Area as listed by Schedule 5 Part 2 of the *North Sydney Local Environmental Plan 2013 (LEP 2013)*.

The site:

- Is not listed as a heritage item by Schedule 5 Part 1 of the *North Sydney LEP 2013*.
- Is not listed as a heritage item by the State Heritage Register under the *NSW Heritage Act 1977*.

4 The Site and its Setting

4.1 The Site

The site is an irregularly shaped allotment that is 230 m² in size. The subject site one in a pair of semi-detached Victorian dwellings designed in the Victorian Free Classical Style (although a contemporary building) and is a mirror image of No. 4 Waiwera Street. The dwelling occupies the greater area of the allotment and sits close to the front boundary of the site with a projecting bay consisting the lower floor facade. The façade also includes an upper level verandah facing Waiwera Street with an iron lacework balustrade as well as a prominent parapet with central broken crown pediment with false keystone within the break and moulded oval cartouche motif below.

There is a metal gate with rendered masonry pillars that denotes the front boundary and the entrance to the short driveway that leads to an underground garage area. A set of stairs on the northern side of the front boundary leads to the entrance of the dwelling.

The dwelling on the site is a four-storey rendered masonry dwelling, including a partially covered rooftop area situated towards the front boundary of the dwelling with a hipped Colorbond roof at the rear. Historical research indicates that it was constructed in the late nineteenth century and has since had alterations and additions, notably internal reconstruction in 1994 after unauthorised excavation works was carried out on the dwelling.¹

Refer to Figures 2 to 7.

4.2 The Setting

The site is located on the western side of Waiwera Street. Waiwera Street runs north to south between East Crescent Street and King George Street. The street is mixed character. The western side of Waiwera is predominantly made up of terrace housing rows with the occasional detached dwelling. The eastern side in comparison is primarily comprised of free-standing single and multi-storey dwellings of varying dates of construction. Dwellings on the western side are generally set above the road level whilst those on the eastern side are either level or slightly lower than the road.

¹ House, No. 4 Waiwera Street, Lavender Bay. State Heritage Database No. 2180583. Accessed 13 November 2023, <https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=2180583>

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Directly to the north, adjoining the site is No.4 Waiwera Street, which makes up the other half of the semi-detached pair. No. 4 is listed as a heritage item by the *North Sydney LEP 2013* and is described below in Section 5. Opposite the site is No. 1 Waiwera Street, a Victorian Filigree style dwelling, that is listed as a heritage item under the *North Sydney LEP 2013* and is described below in Section 5. Within the vicinity to the south of the site are Nos. 47 and 49 East Crescent Street, listed as heritage items under the *North Sydney LEP 2013*, both being designed in Victorian Filigree/Victorian Italianate styles and is described below in Section 5.

The subject site's primary frontage is to Waiwera street with the rear of the property backing onto dwellings that have frontages to Blues Point Road. There is a view corridor from East Crescent Street in which the subject site can be viewed from its southern side elevation.

Refer to Figures 8 to 13.



Figure 2:
No. 2 Waiwera Street looking from the eastern side of Waiwera Street.



Figure 3:
Rear roof No. 2 Waiwera Street looking west from rooftop.

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Figure 4:
No. 2 Waiwera
Street from street
view looking
west.



Figure 5:
Southern
boundary and
side elevation of
No. 2 Waiwera
Street.

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Figure 6: Rooftop area of No. 2 Waiwera Street, facing west.



Figure 7: The site, marked by the arrow, looking north west from the eastern side of Waiwera Street.

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Figure 8: View of the site, marked by the arrow, from East Crescent Street looking north.



Figure 9:
View from No. 2 Waiwera Street rooftop looking east. Arrows indicating No. 1 Waiwera Street and No. 47 East Crescent Street, heritage items.

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Figure 10:
Waiwera Street
looking north.



Figure 11: View from No. 2
Waiwera Street rooftop,
looking south.

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Figure 12: No. 49 East Crescent Street, heritage item. Subject site indicated by arrow.

4.3 Heritage Items in the Vicinity of the Site

There are no heritage items listed by the State Heritage Register under the *NSW Heritage Act 1977* in the vicinity of the site.

For the following, refer to Figure 14, a detail of the Heritage Map, *North Sydney 2013*. In this plan, heritage items are coloured brown and numbered and conservation areas are hatched in red. The arrow points to the outlined site.

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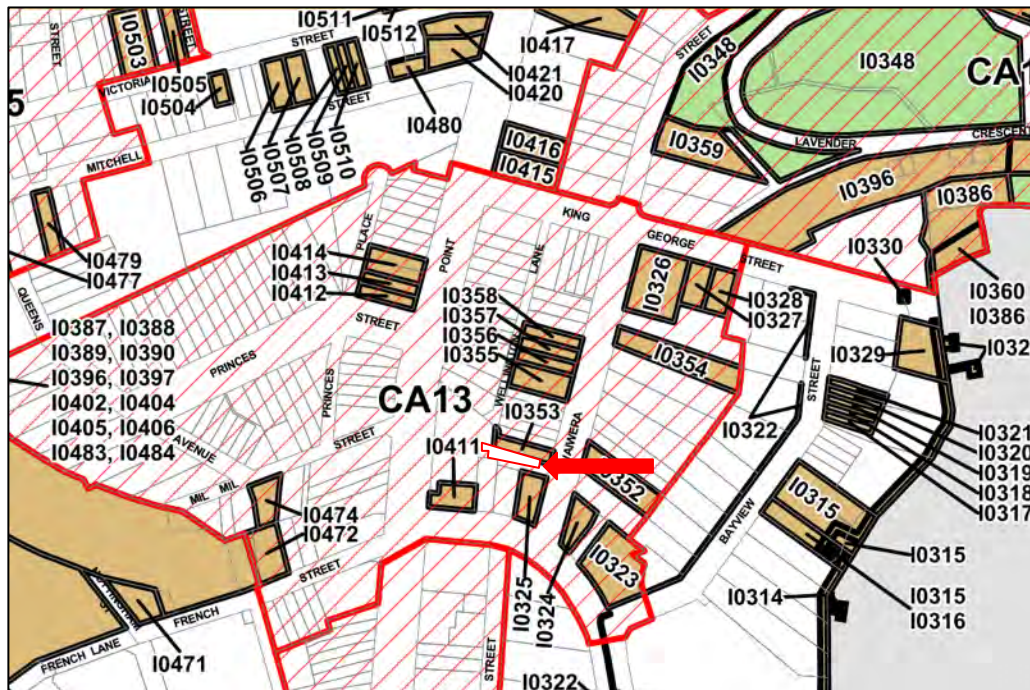


Figure 13: North Sydney LEP Heritage Plan (detail only).

North Sydney LEP 2013; annotation by WP Heritage and Planning.

4.4 Heritage Items Adjoining the Site

The site adjoins the following heritage item:

- House, No.4 Waiwera Street, Lavender Bay (I0353)

This item adjoins the site to the north. The dwelling on this site is a four-level rendered masonry semi-detached house of the Victorian Free Classical Style that mirrors No. 2 Waiwera Street in its façade and design elements, however there are some cosmetic and internal structural differences that have occurred over the years. It is positioned close the front boundary with a prominent frontage to Waiwera Street. Refer to Figures 2 and 8 above.

The State Heritage Inventory (SHI) has assessed the site to have been of local historic significance, aesthetically representatively regionally and socially representative locally as well as a rare example of its type in the local area. The site is also a part of the Waiwera Street Group Heritage ID 2180582, see Section 5.3. The SHI provides the following statement of significance for the site:

‘An unusual and heavily decorated example of a two/three storey Victorian semi detached hour in the Victorian Free Classical Style, prominent in the local streetscape due to its style and ornate decoration.’²

4.5 Heritage Items in the Vicinity of the Site

² House, No. 4 Waiwera Street, Lavender Bay. State Heritage Inventory Database No. 2180583. Accessed 13 November 2023, <https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=2180583>

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The site lies in the vicinity of the following heritage items. 'In the vicinity' has been determined by physical proximity, existing and potential view corridors and the nature of the proposed works:

- House, No. 1 Waiwera Street, Lavender Bay (I0352)

The item is located on the eastern side of Waiwera street diagonally opposite from the subject site. The dwelling is set back from the street boundary and is partially obscured from street view by mature trees and hedges. The roof form and chimney are visible when standing on Waiwera Street looking at the item and the majority of the site can be seen from the rooftop of No. 2 Waiwera Street. The site does not have a statement of significance provided on the SHI, however it is listed as being part of the Waiwera Street Group Heritage ID 2180582, see Section 5.3. Refer to Figure 10 above.

- House, 47 East Crescent Street, Lavender Bay (I0324); and House, 49 East Crescent Street, Lavender Bar (I0325).

These items lie to the south and southeast, respectively, of the subject site and are form the corner dwellings between Waiwera Street and East Crescent Street. Both sites have frontages to East Crescent Street, with the rear No. 49 backing onto the side southern side elevation of the subject site and No. 47 backs onto No. 1A Waiwera Street. The space between No. 49 and No. 51 East Crescent Street's dwellings is one of the only view corridors to view the subject's site side elevation. Refer to Figure 9 above.

No. 49 East Crescent Street does not have a statement of significance, but is a part of the East Crescent Street Group and is noted to have historic, aesthetic, social and representative significance on the SHI.³

The SHI provides the following statement of significance for No. 47 East Crescent:

'Good quality, well-built late-nineteenth century house exhibiting a combination of stylistic features of the period in a well-composed manner. Prominent corner position reinforces the building's importance to the streetscape and it is an important introduction to the nineteenth century houses on Waiwera Street.'⁴

Both items are corner allotments and most elevations are visible from street view and are able to be viewed from No. 2 Waiwera's rooftop. Refer to Figure 10, 12, and 13 above.

- Waiwera Street Group

³ House, No. 49 East Crescent Street, Lavender Bay. State Heritage Inventory Database No. 2180597. Accessed 13 November 2023, <https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=2180597>

⁴ House, No. 47 East Crescent Street, Lavender Bay. State Heritage Inventory Database No. 2180598. Accessed 13 November 2023, <https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=2180598>

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The Waiwera Street Group, Heritage ID 2180582, consists of the following sites, which are all heritage items under the North Sydney LEP 2013 and are located on Waiwera Street: No. 1, Nos. 3-6, No. 10, No. 12, No. 14, No. 16, No. 18, No. 20, No. 22, No. 24, No. 26, and No. 28.

The description provided for the Waiwera Street Group on SHI is as follows:

‘A street on the east side of the ridge of Blues Point, with the west side houses generally set above the road level and the east side at the same or slightly lower level. Much of the west side is intact late nineteenth century housing, predominantly of the terrace form, and the same is true of the east except the middle north end which was the large Brenchley House property and which is now occupied by a group of flats buildings of various ages but generally early twentieth century.’⁵

The statement of significance, which also acts a statement of significance for a number of the dwellings, for the Waiwera Street Group on SHI is as follows:

‘Fine collection of nineteenth century housing, particularly of the two storey terrace variety, appropriate especially as the houses address the harbour view and notable for its upper middle class standard of size and finish to the houses. Houses on the east side tend to be slightly more expensively finished than on the west, though fewer. Important for its intactness, its consistency and the timelessness of quality design.’⁶

5 View Corridors

Figures 2, 4, and 8 above illustrates the site from Waiwera Street. The front façade is clearly visible as well as the driveway that leads to the underground garage. The southern side boundary is also visible with the view stretching back to the rear.

Figure 9 above illustrates the only other accessible viewpoint, which is from East Crescent Street. Partial southern side elevation and roof form can be seen in the view corridor in between Nos. 49 and 50 East Crescent Street, this includes the current glass roof structure on top of No. 2 Waiwera Street.

The principal view corridors out of the site are over Lavender Bay including the harbour area, see Figures 10 and 12.

6 Integrity

A non-invasive visual inspection of the interior and exterior of the site was conducted on the 7th of November 2023 which, along with historical research, informs this section of the HIS. In the case of No. Waiwera Street, the site has a high level of external integrity as a semi-detached dwelling built in the Vitorian Free Classical Style and as a part of a pair with No. 4 Waiwera Street. According to historical aerial photography, the overall footprint of the building has not been substantially altered during the twentieth and twenty-first century. Additionally, historical photography from c.1981 indicated that the overall silhouette has been retained with some minor cosmetic changes. Refer to Figures 14-17.

⁵ *Waiwera Street Group*, State Heritage Inventory Database No. 2180582. Accessed November 13 2023, <https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=2180582>

⁶ Ibid.

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However, the interior does not have the same level of integrity as it has been heavily modified and renovated. The State Heritage Inventory's sheet for No.4 Waiwera Street notes that in 1994 No. 2 Waiwera Street collapsed due to unauthorised excavation works. This would have contributed to a loss of internal fabric. Historically and currently, the dwelling has continuously been residential with almost constant occupation from at least 1899 to the early 1930s, the alternations to the site reflect this pattern of use and changing needs of the dwelling's occupants.



Figure 14: Aerial Photography c. 1943. Subject site denoted by red outline.

NSW Land and Property Information, 2023.



Figure 15: Aerial Photography c.1984. Subject site denoted by red outline.

NSW Land and Property Information, 2023.

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Figure 16: Aerial photography c. 2013. Subject site outlined in red. SIX Maps.



Figure 17: No. 2 and No. 4 Waiwera Street, c. 1981.
Stanton Library, North Sydney, 2023.

7 Significance

7.1 Significance of the Conservation Area.

The subject site is situated in the McMahon's Point North Conservation Area and the *North Sydney Development Control Plan 2013 (DCP 2013)* provides the following statement of significance for the area:

'The McMahon's Point North Conservation Area is significant:

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- a) For its consistent character and unity that derives from its dense urban subdivision pattern and history and which is still clearly seen in the development of the area.
- b) As a predominantly early 20th century precinct with a mix of Federation and 1920's one and two storey housing and a very fine grouping of early 20th century buildings along Blues Point Road.
- c) For the streetscape quality of the Blues Point Road shops.
- d) For its high quality streetscapes, particularly Princes and Waiwera Streets.⁷

7.2 Contribution of the Site to the Conservation Area

The existing dwelling has been deemed a neutral element in the Conservation area by the *North Sydney DCP 2013*. It was developed around the late nineteenth century and is a typical semi-detached dwelling house that is prevalent in the Conservation Area. As it mirrors No.4 Waiwera Street, a heritage item under the *North Sydney LEP 2013 (10353)*, it does have some contribution to the Waiwera streetscape. However, it does not appear to have been the work of a noted architect and has been altered over time, including destructive works that caused significant damage, which has since been repaired. The front elevation is a prominent part of the streetscape, primarily as a matching façade to No. 4 including the shared parapet and decorative mouldings.

8 Scope of Works

The following should be read in conjunction with the plans, prepared by Paredes Design Office that accompany this application.

The proposed works for No.2 Waiwera Street centre around the installation of a lift and lift shaft that will run through the dwelling from the lower ground floor to the top terrace level that serves to cater to the majority of the 7 split levels. The following alterations are proposed to facilitate the installation of the lift as well as improve the amenity of the layout for the occupants:

- There will be internal demolition of floor space on all levels for the installation of the lift.
- On the lower ground floor, the construction of walls to create a new laundry and a new storage space.
- On the ground floor, the removal of the existing laundry to create the lift space as well as a new wall opening into the dining space for access to the lift.
- On the ground floor, the removal of internal walls to open up the breakfast/kitchen space.
- On the ground floor, the removal of the existing kitchen and the installation of a new kitchen fit out.
- On the first floor, the demolition of current internal walls in the master bedroom, ensuite and robe space to create a new master bedroom/ensuite configuration.
- On the first floor, the existing second bedroom will be converted into the life shaft and new linen cupboard space.
- On the second floor, the bedroom size will be reduced, and the bathroom reconfigured to allow for the lift shaft to be installed.
- On the roof top terrace, the top of the lift shaft will be constructed.

⁷ North Sydney Development Control Plan 2023.

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9 Heritage Impact Assessment

The proposed additions and alternation on No. 2 Waiwera Street, Lavender Bay, will have little to no heritage impact on the adjoining items, those in the vicinity, and the McMahon's Point North Conservation area for the following reasons:

- Despite sharing a common wall with No. 4 Waiwera Street (Heritage Item I0353), there will be no physical impact on the item as the lift shaft and related demolition and reconstruction will be located on the southern boundary, away from the shared wall.
- There will be no impact on the ability to understand the adjoining and surrounding dwellings in the vicinity as good examples of late Victorian-era dwellings.
- The view corridors that the installation of the lift shaft on the terrace, being the rear and southern side elevations, are not significant. No views towards heritage items further afield will be interrupted or obscured by the proposed works. The dwelling already has an existing glass structure and roof form on the top terrace level and the proposed lift shaft does not exceed the height of the existing roof ridge.
- The proposed lift shaft that will sit on the top terrace level will be unobtrusive as it will be made out of glass, which will be sympathetic to the existing glass pergola structure.
- The majority of the proposed alterations and additions will be internal, having little impact on the site's street presentation. The current internal configurations and fit outs are contemporary as the site was subjected to unauthorised excavation works in 1994.
- The proposed additions and alterations will not impact the setting of the dwelling on Waiwera Street or its place in the McMahon's Point North Conservation area as it will not change the overall form, structure, setback or materiality of the dwelling as to make it uncharacteristic of the Conservation Area.

10 Conclusion

The proposed modifications will not have an impact on the overall massing, scale, and character existing dwelling. There will be little to no impact on the adjoining heritage items, and heritage items in the vicinity. The site's presentation to the streetscape will not change with the construction of the lift shaft on the terrace roof top as it has been designed to be a sympathetic addition to the current structure and roof form. It will not obstruct any significant views and will sit quietly within the current roof form.

The proposed works are largely internal and relating to the installation of a lift shaft and associated works to accommodate it. The installation of the lift shaft will approve the amenity of the site and allow the elderly occupants to access the multiple floors within the dwelling with greater ease.

Please do not hesitate to contact me on 02 8076 5317 if you have any questions.

Yours faithfully,

James Phillips | Principal

NOTES:

- 1) A BOUNDARY IDENTIFICATION HAS BEEN UNDERTAKEN.
- 2) OFFSET DIMENSIONS TO BOUNDARIES HEREON MUST NOT BE USED FOR CONSTRUCTION.
- 3) CAUTION: SHOULD ANY DEVELOPMENT OR CONSTRUCTION BE PLANNED ON OR NEAR THE BOUNDARIES, THE BOUNDARIES SHOULD BE CLEARLY MARKED ON SITE.
- 4) ORIGIN OF LEVELS ON A.H.D. IS TAKEN FROM S.S.M. 21054 RL. 38.734 A.H.D.
- 5) TREE SPREADS ARE DIAGRAMMATIC ONLY AND ARE NOT SYMMETRICAL.
- 6) UNDERGROUND (NON VISIBLE) SERVICE LINES HAVE BEEN SHOWN FROM "BEFORE YOU DIG AUSTRALIA" SERVICE AUTHORITY RECORDS & ARE DIAGRAMMATIC ONLY IN REGARD TO THEIR POSITION & WIDTH UNLESS STATED OTHERWISE.
- 7) BEARINGS SHOWN ARE ON M.G.A.-(MAP GRID of AUSTRALIA).

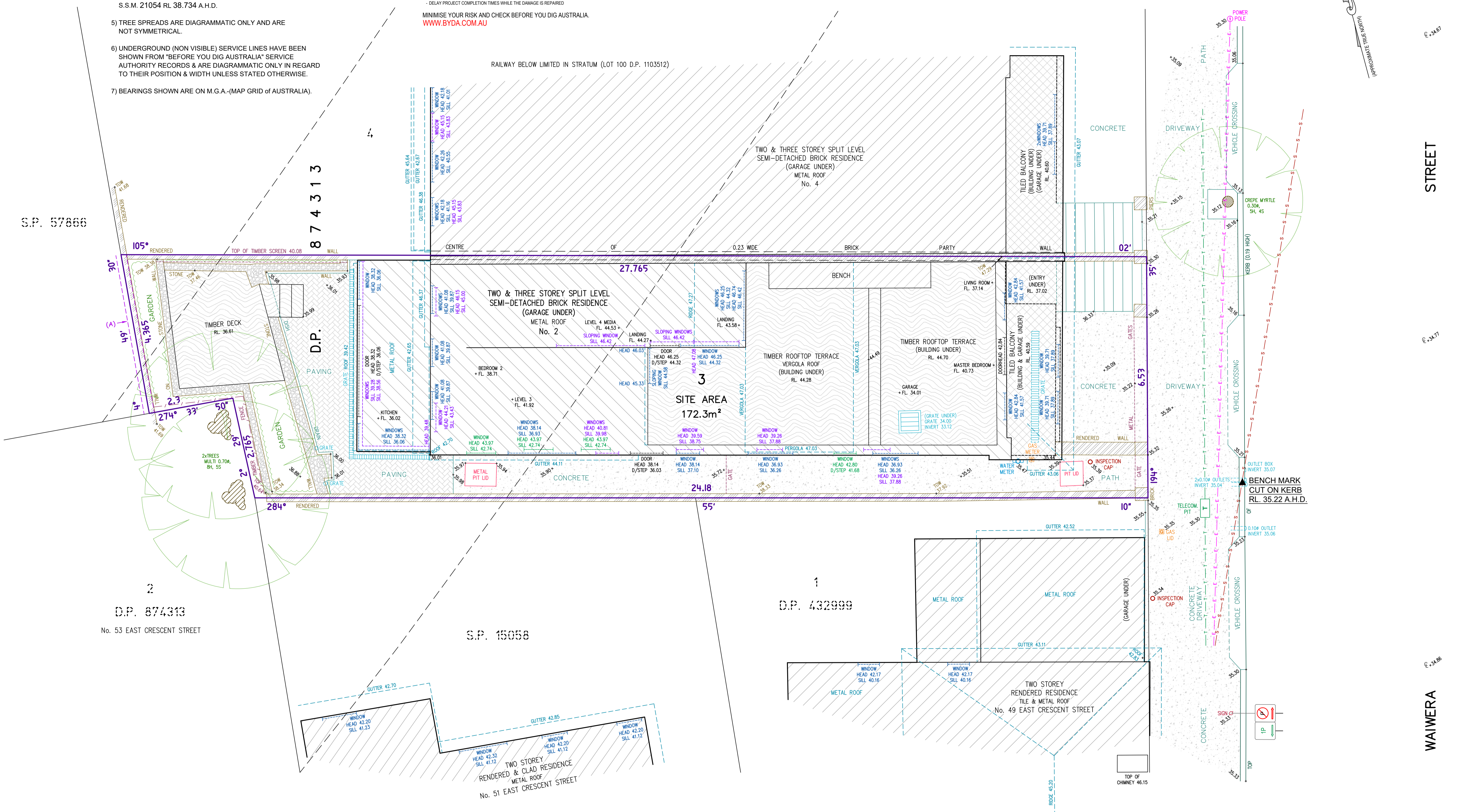
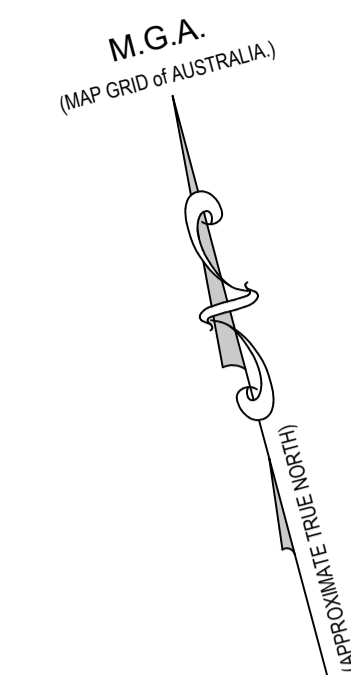
INVESTIGATION OF "BEFORE YOU DIG AUSTRALIA" UNDERGROUND SERVICES HAS BEEN MADE. DETECTION OF UNDERGROUND SERVICES IS NOT AN INTEGRAL PART OF THIS SURVEY. ALL RELEVANT AUTHORITIES SHOULD BE NOTIFIED PRIOR TO ANY EXCAVATION ON OR NEAR THE SITE.

DEVELOPERS & EXCAVATORS MAY BE HELD FINANCIALLY RESPONSIBLE BY THE ASSET OWNER SHOULD THEY DAMAGE UNDERGROUND NETWORKS.

CARELESS DIGGING CAN:

- CAUSE DEATH OR SERIOUS INJURY TO WORKERS AND THE GENERAL PUBLIC
- INCONVENIENCE USERS OF ELECTRICITY, GAS, WATER AND COMMUNICATIONS
- LEAD TO CRIMINAL PROSECUTION AND DAMAGES CLAIMS
- CAUSE EXPENSIVE FINANCIAL LOSSES TO BUSINESS
- CUT OFF EMERGENCY SERVICES
- DELAY PROJECT COMPLETION TIMES WHILE THE DAMAGE IS REPAIRED

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(A) EASEMENT FOR SUPPORT 0.14 WIDE (D.P. 874313)

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PO Box 330, Forsterville, NSW 2087
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Email: survey@beeleth.com.au
ABN: 13 003 194 447
www.beeleth.com.au

LEGEND

- TREE 0.10m SH, 45 DENOTES APPROX. 0.10m DIAMETER OF TREE DENOTES APPROX. 5m HEIGHT OF TREE DENOTES APPROX. 4m SPREAD OF TREE
- GUTTER TOP DENOTES CENTRE LINE OF ROAD DENOTES TOP OF GUTTER DENOTES TOP OF WALL DENOTES TOP OF FENCE
- OVERHEAD ELECTRIC LINES
- BOARDS SEWER
- TELECOMMUNICATION LINES
- WATER LINES
- GAS LINES

Warren Bee
WARREN L. BEE
REGISTERED SURVEYOR N.S.W.
IDENTIFICATION No. SU000448

PLAN SHOWING BOUNDARIES, RELATIVE HEIGHTS & PHYSICAL FEATURES OVER LOT 3 IN D.P. 874313 KNOWN AS No. 2 WAIWERA STREET, LAVENDER BAY.
L.G.A.: NORTH SYDNEY

| | | | |
|---|-----------------|------------------|---------------|
| CLIENT Mr J. THOMAS | | REF No. 23036 | |
| PROPERTY No. 2 WAIWERA STREET, LAVENDER BAY | | SHEET No. 1 of 3 | |
| DATUM A.H.D. | SCALE 1:50 @ A1 | DATE 31/10/2023 | DWG No. 23036 |
| SURVEYED W.B./D.B. | DRAWN L.B. | REV No. 00 | |