

**NSLPP MEETING HELD ON 07/08/2024****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Height of Buildings

ADDRESS/WARD: 20 Folly Point, Cammeray (S)**APPLICATION No:** DA 79/24**PROPOSAL:** Alterations and additions to existing dwelling including internal reconfiguration and installation of a lift.**PLANS REF:**

No.	Revision	Title	Drawn by	Dated	Received
DA.02	L	Site Plan	Roth Architects	26/07/2024	26/07/2024
DA.03	L	Demolition Plan	Roth Architects	26/07/2024	26/07/2024
DA.04	L	Proposed Ground Floor Plan	Roth Architects	26/07/2024	26/07/2024
DA.05	L	Proposed First Floor Plan	Roth Architects	26/07/2024	26/07/2024
DA.06	L	Proposed Second (Entry)	Roth Architects	26/07/2024	26/07/2024
DA.07	L	Proposed Roof	Roth Architects	26/07/2024	26/07/2024
DA.12	L	Proposed – South East Elevation	Roth Architects	26/07/2024	26/07/2024
DA.13	L	Proposed – North East Elevation	Roth Architects	26/07/2024	26/07/2024
DA.14	L	Proposed – North West Elevation	Roth Architects	26/07/2024	26/07/2024
DA.15	L	Section AA	Roth Architects	26/07/2024	26/07/2024
DA.16	L	Section BB	Roth Architects	26/07/2024	26/07/2024
DA.20	L	Existing External Finishes	Roth Architects	26/07/2024	26/07/2024

OWNER: Sarah Louise Smithyman**APPLICANT:** Alex Roth, Roth Architecture Workshop Pty Ltd**AUTHOR:** Andrew Beveridge, Senior Assessment Officer**DATE OF REPORT:** 26 July 2024**DATE LODGED:** 13 May 2024**DATE AMENDED:** 26 July 2024**SUBMISSIONS:** Nil**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

This development application seeks NSLPP approval for alterations and additions to an existing semi-detached dwelling including an internal reconfiguration and installation of a lift, at 20 Folly Point, Cammeray.

The application is reported to the North Sydney Local Planning Panel for determination as the application is seeking a variation to a development standard by more than 10%.

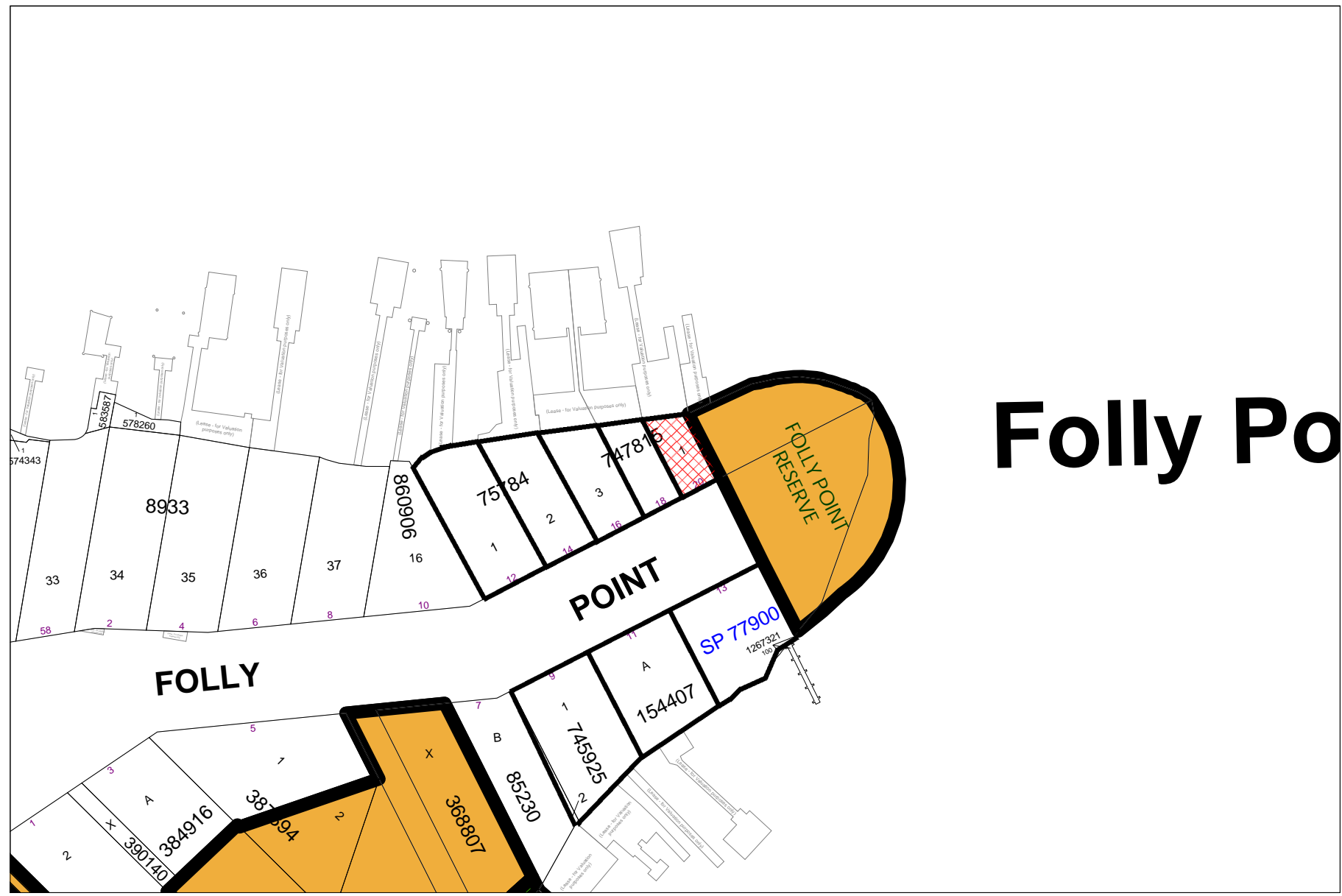
Although the existing maximum height of the dwelling on the site of 12.5m (a variation of 4m or 47.05%) is not being altered, the proposed development breaches the maximum permitted building height of 8.5m by 1.95m or 22.9%. The applicant's submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council [2007] NSWLEC 827* in order to justify the proposed variation. The applicant's Clause 4.6 is considered to be satisfactory given the site circumstances and on the basis that it will not have a significant impact upon the general amenity of adjoining properties.

The application was notified in accordance with the community engagement protocol and Council received no submissions. The amenity impacts upon adjoining site have been assessed and are considered to be negligible and acceptable within the site circumstances. The works will also maintain a sympathetic scale that is consistent with the existing building and surrounding buildings, and accords with the built form of the neighbourhood and the sloping topography of the site.

Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in any significant adverse impacts upon the locality or adjoining properties, and the streetscape character will be maintained. The proposed development would be in the public interest as the submitted written request is considered to be well founded and worthy of support.

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

LOCATION MAP



Folly Po

Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The proposal involves alterations and additions to the existing detached dwelling at No. 20 Folly Point, Cammeray, including the following:

Ground Floor

- Internal reconfiguration to accommodate two bedrooms, two bathrooms/laundry and rumpus room.
- New glass lift to access upper floors of the dwelling.
- Extension of bedroom 4 to include demolition of existing balcony.

First Floor

- Internal reconfiguration of internal walls and doors to accommodate a kitchen, living, dining study and WC.
- Proposed balcony extension above ground level with the existing balustrade to be removed and replaced with glass.
- Replacement of existing glazing to kitchen.
- New glass lift to access upper and lower floors.

Second Floor (entry level)

- Internal reconfiguration to accommodate two bedrooms, two bathrooms, WIR, entry and double garage.
- Existing balustrade to be removed and replaced with glass.
- New glass lift to access lower floors or the dwelling

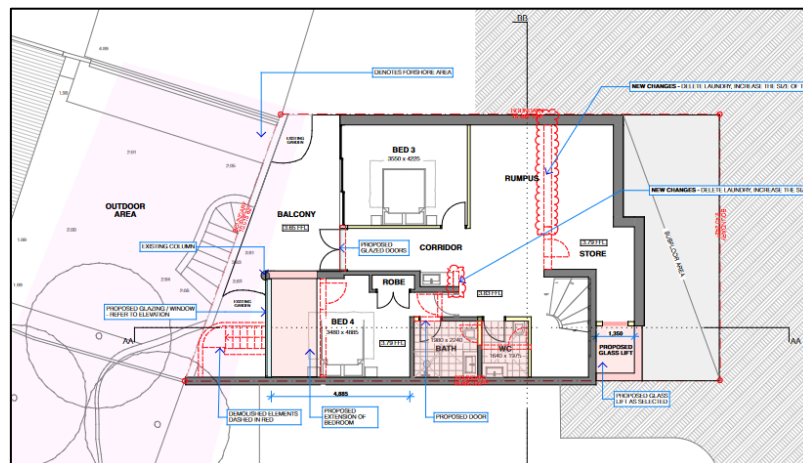


Figure 1. Proposed Ground Floor Plan

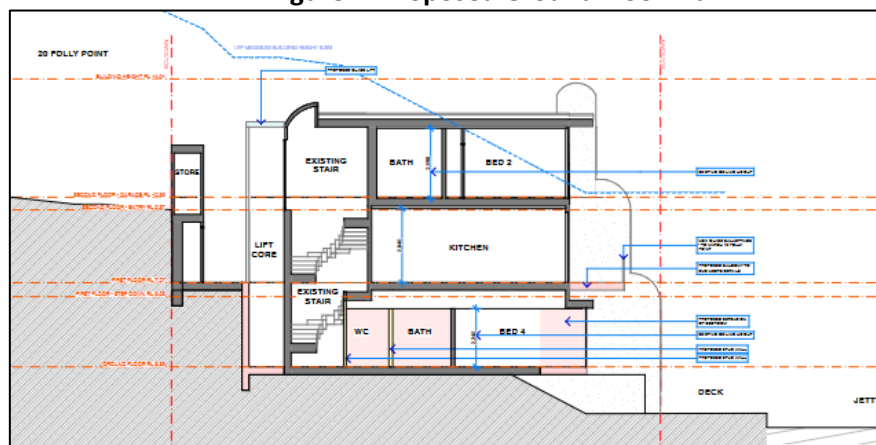


Figure 2. Proposed long section

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

- Zoning – C4 Environmental Living
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No
- Foreshore Building Line – Yes

Environmental Planning & Assessment Act 1979

SEPP (Biodiversity and Conservation) 2021

- Chapter 2 – Vegetation in non-rural areas
- Chapter 6 – Water Catchments (Foreshores and Waterways Area)

SEPP (Resilience and Hazards) 2021

- Chapter 2 – Coastal Management
- Chapter 4 – Remediation of Land

SEPP (Sustainable Buildings) 2022

Local Development

POLICY CONTROLS

North Sydney Development Control Plan 2013 (NSDCP 2013)

- Bushland Buffer – Buffer Area A (100m)

Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site is legally described as Lot 1 in DP747815, and is known as 20 Folly Point, Cammeray. The site is located on the northern side of the Folly Point Peninsula and has a total area of approximately 161.97m².

The site slopes from Folly Point to the foreshore area below by approximately 4.75m and currently contains a three-storey semi-detached dwelling that is attached to the property to the west at 18 Folly Point. When viewed from the waterway the dwelling presents as three storeys, consistent with surrounding dwellings, but appears as a single storey dwelling with a double car garage at the street level. The property was designed and built in 1986 as his residence by Mirvac co-founder, Henry Pollack (1922-2005).

Surrounding development is entirely residential, comprising single-storey and 2-3-storey single dwellings, with some interspersed dual occupancies and residential flat buildings. The site adjoins the Folly Point Reserve to the east, which is zone C2 Environmental Conservation. Photos of the site and local area are provided below.

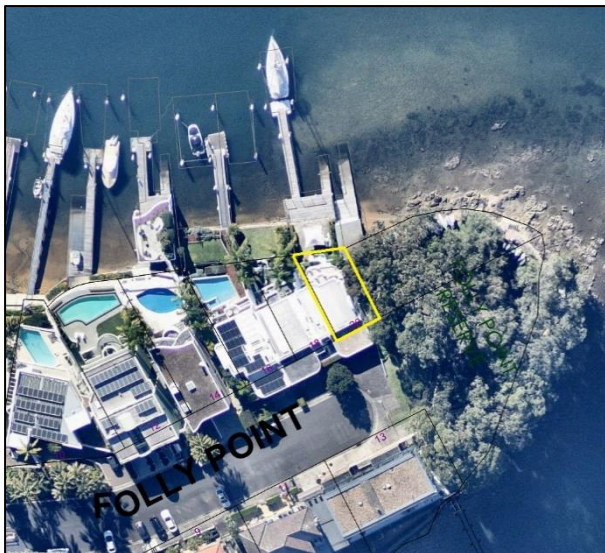


Figure 3. Aerial photograph of subject site (outlined yellow) and surrounding development.

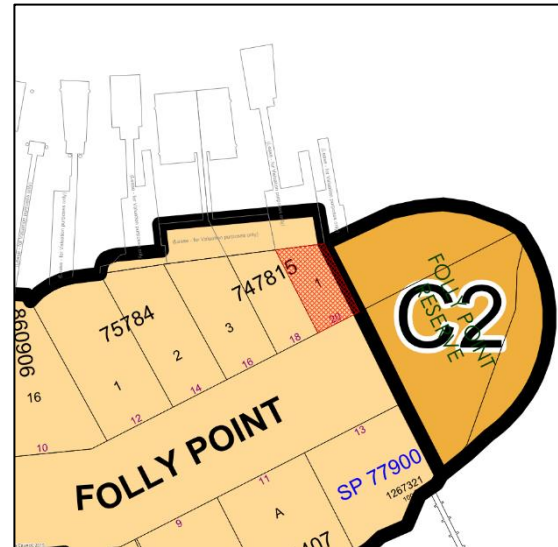


Figure 4. NSLEP Zoning Map with the subject site hatched red in the C4 Zone.



Figure 5. View of the site from Folly Point road.



Figure 6. View of the central light well, the location of the proposed lift.



Figure 7. View of the existing first floor balcony looking northeast.



Figure 8. View of the existing ground floor level looking north.

RELEVANT HISTORY

Development Application No. 1399/85 for the construction of a group of three attached terrace dwellings at what was known as 148-152 Cammeray Road (later known as 16, 18 and 20 Folly Point), and the subdivision of the original lots into three lots, was granted by Council on 18 April 1986.

Building Application No. 86/108 for the construction of a semi-detached three-storey terrace house on what was known as 152 Cammeray Road (later known as 20 Folly Point), as part of a wider development of a group of three attached terrace dwellings, was approved by Council on 23 May 1986.

On 12 February 2010, the name of the street fronting Nos. 77-95 and 136-152 Cammeray Road, was officially renamed in the NSW Government Gazette to “Folly Point”, with the subject site, then known as 152 Cammeray Road, renamed 20 Folly Point, with effect from 19 April 2010.

Development Application No. 161/21 for the installation of an internal lift within an existing attached dwelling at 18 Folly Point to the west of the subject site, was approved on 2 September 2021.

Current Application History

A brief history of the current application is summarised below: -

Date	Action
13 May 2024	The application was lodged with Council.
23 May 2024	The subject application was notified to adjoining properties and the Bay Precinct Committee between 31 May 2024 and 14 June 2024. No submissions were received.
29 May 2024	A site visit was undertaken by Council Officers.
26 July 2024	Amended Plans for various minor internal changes were submitted by the applicant on the NSW Planning Portal. These did not require renotification or change any of the assessed issues.

REFERRALS

Building

The proposed works as amended have not been assessed in accordance 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 may be necessary.

Engineering

Council’s Development Engineer has reviewed the proposal and raised no objection nor recommended any special conditions.

SUBMISSIONS

On 23 May 2024, the subject application was notified to adjoining properties and the Bay Precinct Committee between 31 May 2024 and 14 June 2024. No submissions were received.

CONSIDERATION

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

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

The proposed development would not require the removal of any significant vegetation defined under this SEPP or have any impact upon any bushland areas.

SEPP (Biodiversity and Conservation) 2021 – Chapter 6 – Water Catchments Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

Chapter 6 of this SEPP applies to this site and is required to be considered in the assessment of the application. The site is within the Foreshores and Waterways Area adjoining but not including the zone **W8 – Scenic Waters Passive Use**. The proposal is unlikely to have an adverse environmental impact as the works are relatively minor in nature, are sufficiently set back from the waterway, will generally have a positive impact upon the general appearance and accessibility of the site, and will not physically damage or interfere with the ecological or water qualities of Sydney Harbour.

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

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

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

The provisions of the SEPP require Council to consider the likelihood of land contamination and any remediation necessary to rehabilitate the site. Council's records indicate that the site has previously been used for residential development since its original 1925 subdivision and as such is unlikely to contain any contamination, and the proposal will not involve any significant excavation. Therefore, the requirements of the above SEPP have been satisfactorily addressed.

SEPP (Sustainable Buildings) 2022

The applicant has submitted a valid BASIX Certificate (A1742849) to satisfy the requirements of the above SEPP.

NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013

Permissibility

The subject site is Zoned C4 Environmental Living under the provisions of the *NSLEP 2013*. The modifications involve alterations and additions to an existing semi-detached dwelling house, which is a permissible form of development in the Zone C4 with consent from Council.

Objectives of the zone

The objectives of the Zone C4 are stated below:

- *To provide for low-impact residential development in areas with special ecological, scientific, or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development will retain the existing semi-detached dwelling in an area characterised by lower density residential development, and will ensure that a high level of amenity for the residents, as well as those of neighbouring properties, is likely to be maintained. The proposal also involves relatively minor alterations and additions that will not have a significant impact upon the natural or cultural heritage of the area.

Clause 4.3 – Height of buildings

A maximum height of buildings of 8.5m is permitted under *NSLEP 2013*. Although the existing maximum height of the dwelling on the site is 12.5m (a variation of 4m or 47.05%), this existing height is not being altered, with the majority of works being internal or from existing ground level. The proposed works located above the height limit are contained within the existing building envelope on the second floor level to a maximum height of 10.45m. This represents a maximum variance of 1.95m or 22.9%, and consequently requires a variation to the development standard in clause 4.6 in *NSLEP 2013* (see discussion below).

Clause 4.6 – Contravention of a Development Standard

Extent of the Variation

The proposed works located above the height limit are contained within the existing building envelope on the second floor level to a maximum height of 10.45m. This represents a maximum variance of 1.95m or 22.9%.

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

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

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

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

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

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

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

The proposed works above the height limit be contained within the existing building footprint above ground level and would not alter the development's overall relationship to the topography, continuing the stepped built form of the existing building. The proposal includes some minor excavation up to a depth of 300-900mm to enable the addition to the lift core. This excavation will not be visible from the public domain and the overall form and character of the existing dwelling, with its characteristic relationship to the area's topography, will be maintained.

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

There would be no view loss for adjoining dwellings given that the of the works would be contained within the existing footprint, and the additions above the height limit will not be higher than the existing roof ridge height of the existing dwelling. As such, view impacts are likely to be negligible for any adjoining or nearby property or the public domain.

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

The levels of solar access for nearby properties will not substantially change as a result of the proposal. The shadows cast by the new additions will fall within existing shadows cast by the building and adjoining buildings.

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

The proposal is unlikely to create significant additional privacy impacts when compared to existing. The 4.6 statement has adequately addressed this provision.

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

The site is located within the C4 Environmental Living zone and adjoins the C2 Environmental Conservation zone to the east. The proposed works will retain the existing footprint of the building, with some additions partially above the height limit, with a development that is broadly consistent with residential developments in the C4 zone. The proposed additions will not interfere nor encroach upon the C2 zone.

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

The proposed scale and density of the development is appropriate for the site and does not result in significant non-compliances with Council's controls. While the proposal involves works to a building with an existing non-compliance in building height, the overall development is generally compatible with the existing building and surrounding buildings, with the majority of changes occurring internally and not impacting upon the primary façade facing Folly Point. The lift shaft structure will be very similar to the lift added to the attached dwelling to the west at 18 Folly Point under DA 161/21.

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

The proposal involves works to an existing 3-storey building. As the number of storeys in this development does not change, the built form character of the area is unlikely to be significantly changed by this development, which will remain compatible with surrounding buildings.

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

The applicant has provided the following grounds for the variation to the permissible height limit:

- 1. The proposed works which exceed the 8.5m height limit are limited to internal upgrades on the second floor and removal of existing balustrade to existing balcony on second floor and replacement with glass. The proposed development does not exceed the maximum height of the existing dwelling (12.5m) with all works significantly below this height and below the existing roof. Insisting on compliance with the height of buildings development standard would result in the upper level being sterilised and no upgrades possible which would be a disproportionate outcome to the lack of amenity impacts as a result of the height variation.*
- 2. The variation to the height limit is largely a result of the existing building and historical excavation to establish the ground level which is largely ignored by the 8.5m height of buildings development standard. This coupled with the topography and a fall of over 4.5m results in a variation to the height of buildings development standard by the existing building and the two attached buildings to the west (Nos. 16-18 Folly Point). The proposed works do not exceed the roof of the existing building and will not alter the perception of height of the existing building. This is a site specific condition that results in a variation of the LEP height limit.*

3. *It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties and on the character of the locality. Specifically:*
 - *The extent of the additional height creates no significant adverse overshadowing impacts to adjoining development or public domain when compared to the existing building envelope. That is, the proposed development is largely internal and will not alter the existing shadows to surrounding properties or the public domain. The proposal does not result in any non-compliance with Council's solar access controls. As such, the increase to overshadowing caused by the non-compliant elements would be insignificant or nil;*
 - *The height breach does not result in any adverse additional privacy impacts. The non-compliant elements are limited to non-habitable areas or the upper level of windows where the compliant parts of the window would have the same or greater impact on overlooking. As such, the loss of privacy caused by the non-compliant elements would be insignificant or nil; and*
 - *The height breach will not result in any significant view loss. Surrounding properties maintain a clear outlook towards the north which is facilitated by the steep local topography and building design. When considering the extent of view sharing against the backdrop of the applicable planning controls, the extent of view loss caused by the non-compliant element is insignificant or nil.*
4. *The locality is not characterised by height compliant development due largely to local topography and site constraints which existing in the immediate locality. The proposal does not alter the existing maximum building height nor the building envelope above the 8.5m height limit. This ensures that the existing relationship between the existing built form and surrounding development when viewed from the public domain will remain as existing. There are no works above the 8.5m height limit which will be perceptible or visually jarring from the public domain and surrounding area.*
5. *The proposed side additions have been designed to integrate with the existing building so as not to create any adverse visual impacts. The height variation will contain a design and materials that are compatible with the colours, materials and finishes, form and proportionality of the existing dwelling and other dwellings on the foreshore, including Nos. 16-18 Folly Point attached to the site. The proposed variation will not detract from the character of the streetscape or the foreshore locality.*
6. *The proposed development meets the objectives of the development standard and meets the objectives of the C4 – Environmental Living zone.*
7. *The proposed development achieves the Objects in Section 1.3 of the EPA Act. Specifically:*
 - a. *The proposal promotes the orderly and economic use and development of land through the upgrading of a residential dwelling (1.3(c)); and*
 - b. *The proposed development promotes good design and amenity of the built environment through a well-considered contemporary design which is responsive to its setting and context, providing a high quality family home at an appropriate location (1.3(g)).*

The above environmental planning grounds are considered to be well-grounded and are adequately justified within the submitted 4.6 variation request. Furthermore, the amenity impacts of the development are considered to be negligible and compliant with Council's controls in Part B of NSDCP 2013. The proposed alterations to the existing building will not significantly alter the existing scale of the building and have been designed to be relatively sympathetic to the surrounding area. The proposal is therefore considered to be acceptable within the site circumstances.

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

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

Conclusion

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

Clause 6.9 – Limited development on foreshore area

While a portion of the site lies within the foreshore building line area, the majority of the proposed works are located outside this area. The only elements within the foreshore building line are the demolition of the existing external staircase in the north-western corner of the dwelling and the addition of a new balcony on the first floor level off the existing kitchen. These works are minor, with no significant excavation or additional bulk and scale, and are not considered to have an adverse impact upon the waterway, flora, and fauna or the heritage and environmental significance of the surrounding area.

Clause 6.10 – Earthworks

The proposal includes some minor excavation up to 300-900mm in depth to facilitate the installation of the lift shaft. These excavation works are unlikely to affect the stability and topography of the site and adjoining sites. Council's Development Engineer has raised no objection in this regard. The works are therefore considered compliant in this regard.

North Sydney Development Control Plan 2013

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013		
PART B - SECTION 1 - Residential Development		
	<i>Complies</i>	<i>Comments</i>
1.2 Function		
Mixed residential population Maintaining residential accommodation	Yes	The proposal will not change the accommodation provision or use of the existing dwelling.

1.3 Environmental criteria		
Topography	Yes	<p>The proposed works would be mostly contained within the existing building footprint above ground level and would not alter the development's overall relationship to the topography, continuing the stepped built form of the existing building. The proposal includes excavation up to a depth of 300-900mm for the lift shaft core to improve accessibility.</p> <p>This excavation will not be visible from the public domain and the overall form and character of the existing dwelling, with its characteristic relationship to the area's topography, will be maintained. Council's Development Engineer has also raised no objection.</p>
Properties in proximity to Bushland	Yes	<p>While the site directly adjoins bushland in the Follow Point Reserve to the east, the proposed works will not have any discernible effect upon this bushland area, with the proposed works confined within the existing dwelling footprint, with only minor excavation to facilitate the lift shaft.</p>
Properties on Bush Fire Prone Land	N/A	<p>The site is not classified as Bush Fire Prone Land.</p>
Properties with a foreshore building line	Yes	<p>While a portion of the site lies within the foreshore building line area, the majority of the proposed works are located outside this area. The only elements within the foreshore building line are the demolition of the existing external staircase in the north-western corner of the dwelling and the addition of a new balcony on the first floor level off the existing kitchen. These works are minor, with no significant excavation or additional bulk and scale, and are not considered to have an adverse impact upon the waterway, flora, and fauna or the heritage and environmental significance of the surrounding area.</p>
Views	Yes	<p>There would be no view loss for adjoining dwellings given that the of the works would be contained within the existing footprint, and the additions above the height limit will not be higher than the existing roof ridge height of the existing dwelling. As such, view impacts are likely to be negligible for any adjoining or nearby property or the public domain.</p>
Solar access	Yes	<p>The levels of solar access for nearby properties will not substantially change as a result of the proposal. The shadows cast by the new additions will fall within existing shadows cast by the building and adjoining buildings.</p>
Acoustic privacy Visual privacy	Yes	<p>The proposed works are unlikely to create significant additional privacy impacts when compared to existing.</p>
1.4 Quality Built Form		
Siting	Yes	<p>The works are consistent with the existing siting of the building.</p>
Setbacks	Yes	<p>There are no changes proposed to the existing dwelling setbacks. The proposed demolition of the north-western corner external staircase will be replaced by a balcony in a similar footprint and setback that will have no impact upon nearby sites.</p>

Form, massing and scale	Yes	The proposed works are consistent with the built form, massing, and scale within the area by maintaining the overall maximum height and scale of the existing terraced dwelling. The proposed additions will not result in a built form that is significantly out of scale with nearby developments.																
Built form character	Yes	The existing appearance of the dwelling as viewed from the street will not be substantially altered. The visual appearance and materials are also consistent with nearby development.																
Dwelling entry	N/A	The proposed modifications will have no impact on the dwelling entry.																
Roofs	Yes	The existing dwelling roof will be maintained, which is consistent with the characteristic roof forms of the surrounding area.																
Colours and materials	Yes	The proposed colours and materials are generally consistent with the existing and surrounding dwellings.																
1.5 Quality urban environment																		
High quality residential accommodation	Yes	The amenity of the dwelling will be enhanced by this proposal through a rationalised internal floorplan and improved usability/accessibility of internal spaces.																
Safety and security	Yes	Safety and security would not be compromised as a result of the subject development application.																
Site Coverage, Unbuilt-Upon Area, and Landscaped Area	No (Acceptable on merit)	<p>The subject site includes a significant level of site coverage the covers almost the entire site, apart from some garden beds/paving along the northern boundary. The proposed removal of the north-western corner stair and its replacement with a balcony at level 1, will result in a slight reduction in site coverage and increase in paving, but the existing levels will otherwise not change. The proposed and existing levels of site coverage, landscaped area and unbuilt-upon area indicated in the table below:</p> <table border="1" data-bbox="837 1467 1444 1825"> <thead> <tr> <th>Site Area: <i>161.8m²</i></th> <th>Existing</th> <th>Proposed</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>Site Coverage 60% (max)</td> <td>99.19% 160.5m²</td> <td>97.96% 158.5m²</td> <td>No (Reduced)</td> </tr> <tr> <td>Landscaped area 20% (min)</td> <td>0.8% 1.3m²</td> <td>0.8% 1.3m²</td> <td>No (Unchanged)</td> </tr> <tr> <td>Unbuilt-upon area 20% (max)</td> <td>0% 0m²</td> <td>1.23% 2m²</td> <td>No (Increased)</td> </tr> </tbody> </table>	Site Area: <i>161.8m²</i>	Existing	Proposed	Complies	Site Coverage 60% (max)	99.19% 160.5m ²	97.96% 158.5m ²	No (Reduced)	Landscaped area 20% (min)	0.8% 1.3m ²	0.8% 1.3m ²	No (Unchanged)	Unbuilt-upon area 20% (max)	0% 0m ²	1.23% 2m ²	No (Increased)
Site Area: <i>161.8m²</i>	Existing	Proposed	Complies															
Site Coverage 60% (max)	99.19% 160.5m ²	97.96% 158.5m ²	No (Reduced)															
Landscaped area 20% (min)	0.8% 1.3m ²	0.8% 1.3m ²	No (Unchanged)															
Unbuilt-upon area 20% (max)	0% 0m ²	1.23% 2m ²	No (Increased)															
Vehicle Access and Car parking	Yes	The existing parking arrangement is unchanged by this proposal.																
Landscaping and front gardens	Yes	The proposal will not result in any change to landscaped elements.																
Private and communal open space	Yes	A substantial area of private open space is retained for the dwelling.																

1.6 Efficient use of resources		
Stormwater management	Yes	The proposal is unlikely to have a significant impact upon stormwater flows.
Energy Efficiency	Yes	A valid BASIX Certificate has been lodged with this proposal.

Part C – Section 4 – Cammeray Planning Area (Cammeray Neighbourhood)

Consideration has been given to the Character Statement for the Cammeray Planning Area in Part C of NSDCP 2013, including Section 4.2 (Cammeray Neighbourhood) where this site is located. The proposal is acceptable as the works are visually recessive and sympathetic to the style and character of the existing building. The proposal is therefore likely to comply with the desired characteristic development of the neighbourhood, and is unlikely to create significant adverse impacts upon the amenity of nearby dwellings.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal, which involves development where the cost of the proposed development is more than \$100,000, is classified under the North Sydney Local Infrastructure Contributions Plan 2020 as a 'Type (c) development' that triggers a Section 7.12 contribution of **\$6,423.00**, for the purpose of local infrastructure provision.

Contribution amounts payable

Applicable contribution type		
s7.12 contribution details	Development cost:	\$642,273.00
<i>(payment amount subject to indexing at time of payment)</i>	Contribution:	\$6,423.00

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

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL

CONSIDERED

- | | | |
|----|---|-----|
| 1. | Statutory Controls | Yes |
| 2. | Policy Controls | Yes |
| 3. | Design in relation to existing building and natural environment | Yes |
| 4. | Landscaping/Open Space Provision | Yes |
| 5. | Traffic generation and Carparking provision | N/A |

6.	Loading and Servicing facilities	N/A
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant S4.15 considerations of <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	Yes

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

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

SUBMISSIONS (Section 4.15 of the EPA&A 1979)

The application was notified to surrounding properties and the Bay Precinct Committee. No submissions were received.

PUBLIC INTEREST (Section 4.15 of the EPAA 1979)

The proposal would provide improved amenity for the residents without causing any unreasonable impacts to the area character, the streetscape, and/or adjoining properties so the proposal would not be contrary to the public interest.

HOW THE COMMUNITY VIEWS WERE TAKEN INTO CONSIDERATION

The development application was notified in accordance with Council's Community Engagement Protocol and no submissions were received. Nevertheless, it is considered that, subject to conditions, the proposal would provide improved amenity for the residents without causing any unreasonable impacts to the streetscape, conservation area, and/or adjoining properties.

DELEGATION FOR DETERMINATION

Given that the proposal involves works breach a development standard by more than 10% (Clause 4.3 – Height of Buildings – of *NSLEP 2013*), determination of applications of this type would normally be referred to NSLPP for determination under the Directions from the Minister. However, on 4 November 2020, NSLPP granted delegation pursuant to Section 2.20(8) of the *Environmental Planning & Assessment Act 1979*, to the Manager Development Services, to determine development applications "involving a variation to the maximum height of building development standard contained within Clause 4.3 of the *North Sydney LEP 2013* by greater than 10%, which relates to an existing building on land in the R2, R3, R4, B1, B3 and B4 zones where no material significant increase in overall building height or yield."

While the proposal involves works that do not increase the existing building height or yield, this does not fall under the above delegations for determination by Council officers, as the subject site falls within a C4 Environmental Living zone, which is not a zone listed above, despite the context of the development being almost entirely similar to nearby zones. It is therefore recommended that the panel consider an amendment to the above delegation dated 4 November 2020 to include developments within C4 zones.

CONCLUSION AND REASONS

The matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of *NSLEP 2013* subject to the written request to vary the height of buildings development standard made pursuant to clause 4.6 of *NSLEP 2013*. The proposed development is also generally in accordance with the objectives in *NSDCP 2013*.

The proposed additions are mostly compliant with Council's controls in *NSDCP 2013*, with alterations and additions that will not be highly visible from the public domain and will broadly retain the existing built form and bulk and scale of the existing dwelling. The clause 4.6 submitted demonstrates that in the particular circumstances of the case that strict compliance is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify the variation.

There would be no unreasonable overshadowing, view loss, privacy loss and/or excessive bulk and scale as a result of the proposal given that the majority of the works will be mostly contained within the overall footprint of the existing building and will be sympathetic to the existing dwelling, and the adjoining buildings.

On balance, the application is considered reasonable and is recommended for **approval** subject to site specific and standard conditions.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning and Environment and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to the non-compliance with Clause 4.3 and **grant consent** to Development Application No. 79/24 for alterations and additions to an existing semi-detached dwelling, on land at 20 Folly Point, Cammeray, subject to the following standard conditions:-

ANDREW BEVERIDGE
SENIOR ASSESSMENT OFFICER

ISOBELLA LUCIC
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
20 FOLLY POINT, CAMMERAY
DEVELOPMENT APPLICATION NO. 79/24

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.

No.	Revision	Title	Drawn by	Dated	Received
DA.02	L	Site Plan	Roth Architects	26/07/2024	26/07/2024
DA.03	L	Demolition Plan	Roth Architects	26/07/2024	26/07/2024
DA.04	L	Proposed Ground Floor Plan	Roth Architects	26/07/2024	26/07/2024
DA.05	L	Proposed First Floor Plan	Roth Architects	26/07/2024	26/07/2024
DA.06	L	Proposed Second (Entry)	Roth Architects	26/07/2024	26/07/2024
DA.07	L	Proposed Roof	Roth Architects	26/07/2024	26/07/2024
DA.12	L	Proposed – South East Elevation	Roth Architects	26/07/2024	26/07/2024
DA.13	L	Proposed – North East Elevation	Roth Architects	26/07/2024	26/07/2024
DA.14	L	Proposed – North West Elevation	Roth Architects	26/07/2024	26/07/2024
DA.15	L	Section AA	Roth Architects	26/07/2024	26/07/2024
DA.16	L	Section BB	Roth Architects	26/07/2024	26/07/2024
DA.20	L	Existing External Finishes	Roth Architects	26/07/2024	26/07/2024

(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.

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

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

No Demolition of Extra Fabric

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

(Reason: To ensure compliance with the approved development)

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 Survey Private Property (Neighbouring Buildings)

- C2. A photographic survey and dilapidation report of adjoining property No. 18 Folly Point detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, MUST BE submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.

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

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

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

(Reason: Proper management of records)

Structural Adequacy of Existing Building

- C3. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Principal Certifier for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

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

Sediment Control

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

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DEVELOPMENT APPLICATION NO. 79/24**

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

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

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

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

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

Waste Management Plan

C5. A Waste Management Plan is to be submitted for approval by the Principal Certifier prior to the issue of any Construction Certificate. The plan must include, but not be limited to:

- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
- b) The design of the on-site waste storage and recycling area; and
- c) Administrative arrangements for waste and recycling management during the construction process.

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

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

External Colours and Finishes

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

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

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.

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

(Reason: Amenity and convenience during construction)

Stormwater Disposal

- C8. Stormwater runoff generated by the approved development must be conveyed by gravity to the existing site stormwater drainage disposal system. A licensed tradesman shall install plumbing components to achieve this requirement in accordance with the NCC and current plumbing standards and guidelines. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure appropriate provision for disposal and stormwater management arising from the development)

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

- C9. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$2,500.00 to be held by Council for the payment of cost for any/all of the following:
- 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.

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

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

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

Noise from Plant and Equipment

C10. 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 or in the strata scheme or in the mixed strata schemes 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)

Section 7.12 Development Contributions

C11. A monetary contribution pursuant to the provisions of Section 7.12 of the *Environmental Planning and Assessment Act 1979* is to be paid to Council, in accordance with the North Sydney Council’s Contribution Plan, to provide for local infrastructure improvements.

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Based on the cost of development at the date of determination, the total contribution payable to Council is \$6,423.00.

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

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

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

Note: The following fees applicable

Fees	
Section 7.12 Development Contributions:	\$6,423.00
TOTAL FEES	\$6,423.00

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

(Reason: Compliance with the development consent)

BASIX Certificate

C13. Under clause 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A1742849 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

D. *Prior to the Commencement of any Works (and continuing where indicated)***Public Liability Insurance - Works on Public Land**

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

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

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

Commencement of Works' Notice

D2. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

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

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

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

Road Reserve Safety

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

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

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

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

(Reason: Stormwater control during construction)

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Removal of Extra Fabric

- E4. 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

- E5. The following must be complied with at all times:
- (a) Materials must not be burnt on the site.
 - (b) Vehicles entering and leaving the site with soil or fill material must be covered.
 - (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
 - (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

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

Noise and Vibration

- E6. 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

- E7. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

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

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Applicant's Cost of Work on Council Property

- E8. The applicant or the person, company or other entity that is acting upon this consent, must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

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

No Removal of Trees on Public Property

- E9. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

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

Protection of Trees

- E10. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within this consent must be implemented for the duration of the works.

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

Notes:

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

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

Special Permits

- E11. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

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

1) **On-street mobile plant**

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

(Reason: Proper management of public land)

2) **Hoardings**

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

(Reason: Proper management of public land)

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

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

(Reason: Proper management of public land)

4) **Kerbside restrictions, construction zones**

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

(Reason: Proper management of public land)

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Construction Hours

- E12. 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
Residential zones	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 of residents and the community)

Service Adjustments

- E13. Where required, the adjustment or inclusion of any new utility service or facilities must be carried out by an appropriate contractor in accordance with the requirements of the relevant utility authority.

These works shall be at no cost to Council. It is the Applicant's responsibility to contact the relevant utility authorities to ascertain the impacts of the proposal upon utility services prior to the commencement of any work, including demolition (including water, phone, gas and the like).

Council accepts no responsibility for any impact on or influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

Out-of-hours' Work Permits

- E14. 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)

Installation and Maintenance of Sediment Control

- E15. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

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

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

Sediment and Erosion Control Signage

E16. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

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

Site Amenities and Facilities

E17. 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

E18. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

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

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

Prohibition on Use of Pavements

E19. 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

- E20. 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)

Waste Disposal

- E21. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

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

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

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

(Reason: Prescribed - Statutory)

Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifier for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or

- (b) in the case of work to be done by an owner-builder:
- (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this condition is out of date, work must cease, and no further work may be carried out unless the Principal Certifier for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

(Reason: Prescribed - Statutory)

Appointment of Principal Certifier (PC)

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

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

Construction Certificate

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

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

**20 FOLLY POINT, CAMMERAY
DEVELOPMENT APPLICATION NO. 79/24**Page 19 of 21

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)

Excavation/Demolition

- F6. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

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

Protection of Public Places

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

**20 FOLLY POINT, CAMMERAY
DEVELOPMENT APPLICATION NO. 79/24**

Page 20 of 21

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

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

Site Sign

- F8. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifier for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Infrastructure Repair and Completion of Works

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

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

(Reason: Maintain quality of Public assets)

Damage to Adjoining Properties

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

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

Utility Services

- G3. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

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

BASIX Completion Certificate

- G4. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate the Principal Certifier must provide a BASIX completion receipt.

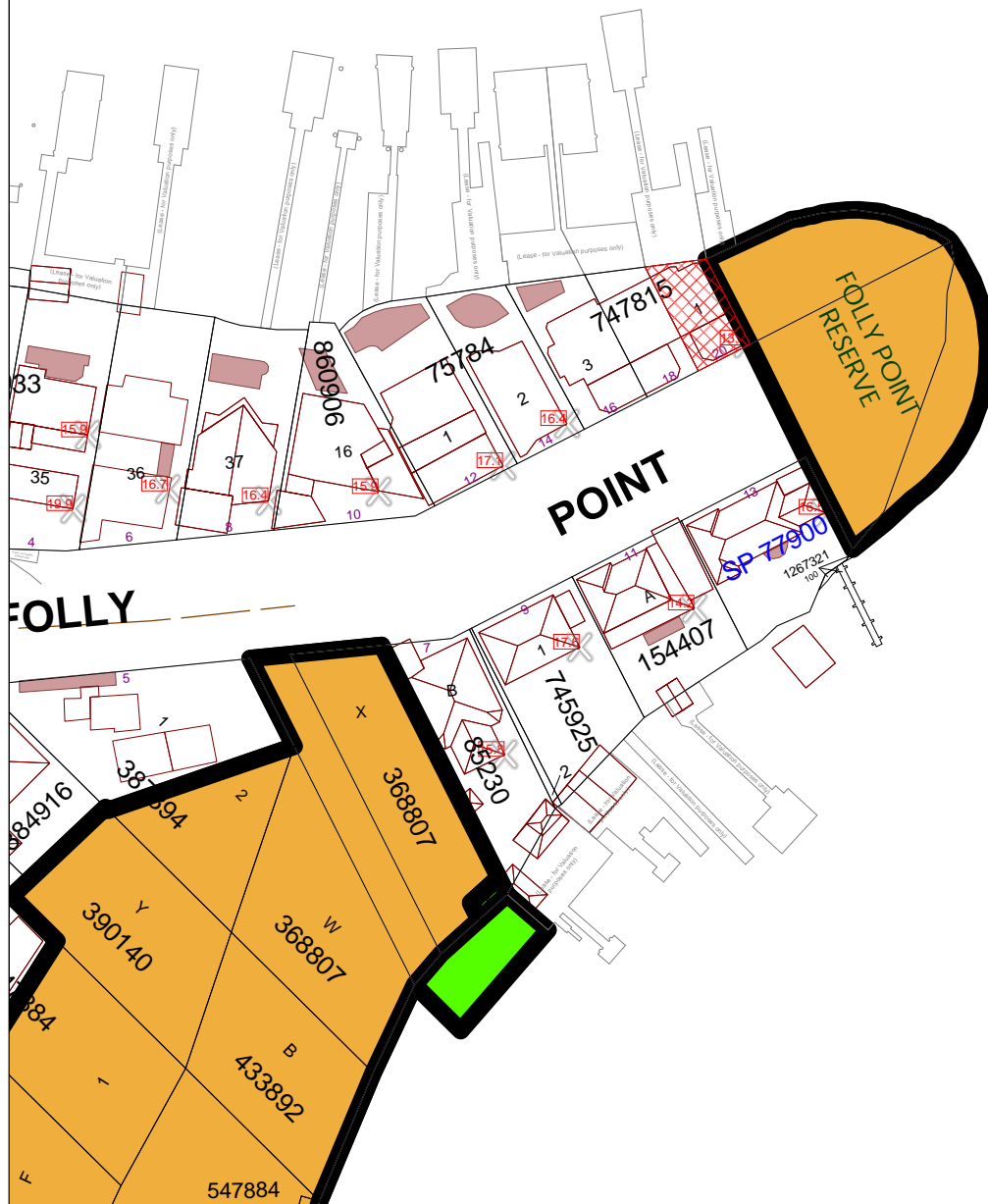
(Reason: To ensure compliance with the Regulations)

I. Ongoing/Operational Conditions**Single Occupancy**

- I1. Nothing in this consent authorises the use of the premises other than for a single occupancy.

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

ng Bay



North Sydney Council

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

Scale: 1:1200 approx.



DEVELOPMENT APPLICATION

WARREN

20 FOLLY POINT CAMMERAY NSW 2062

LOT 1 / DP 747815

NORTH SYDNEY COUNCIL

DA DRAWING REGISTER

DWG	DRAWING TITLE	SCALE
DA.00	COVER	
DA.01	SITE ANALYSIS PLAN	1:200
DA.02	SITE PLAN	1:200
DA.03	DEMOLITION PLAN	1:200
DA.04	PROPOSED GROUND FLOOR PLAN	1:100
DA.05	PROPOSED FIRST FLOOR PLAN	1:100
DA.06	PROPOSED SECOND (ENTRY)	1:100
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DA.08	BASIX PLANS	1:200
DA.09	COMPLIANCE FSR	1:200
DA.10	COMPLIANCE LANDSCAPE	1:200
DA.11	COMPLIANCE SITE COVERAGE	1:200
DA.12	PROPOSED - SOUTH EAST ELEVATION	1:100
DA.13	PROPOSED - NORTH EAST ELEVATION	1:100
DA.14	PROPOSED - NORTH WEST ELEVATION	1:100
DA.15	SECTION AA	1:100
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DA.17	SHADOWS 21 JUNE 9AM	1:250
DA.18	SHADOWS 21 JUNE 12PM	1:250
DA.19	SHADOWS 21 JUNE 3PM	1:250
DA.20	EXISTING EXTERNAL FINISHES	

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
 20 FOLLY POINT CAMMERAY NSW 2062
 LOT 1 / DP 747815

COVER

AMENDMENTS
 L - ADDITIONAL INFORMATION SUBMISSION
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 J - DEVELOPMENT APPLICATION ISSUE



ROTH
ARCHITECTS

DA.00 (L)

WARREN

COVER

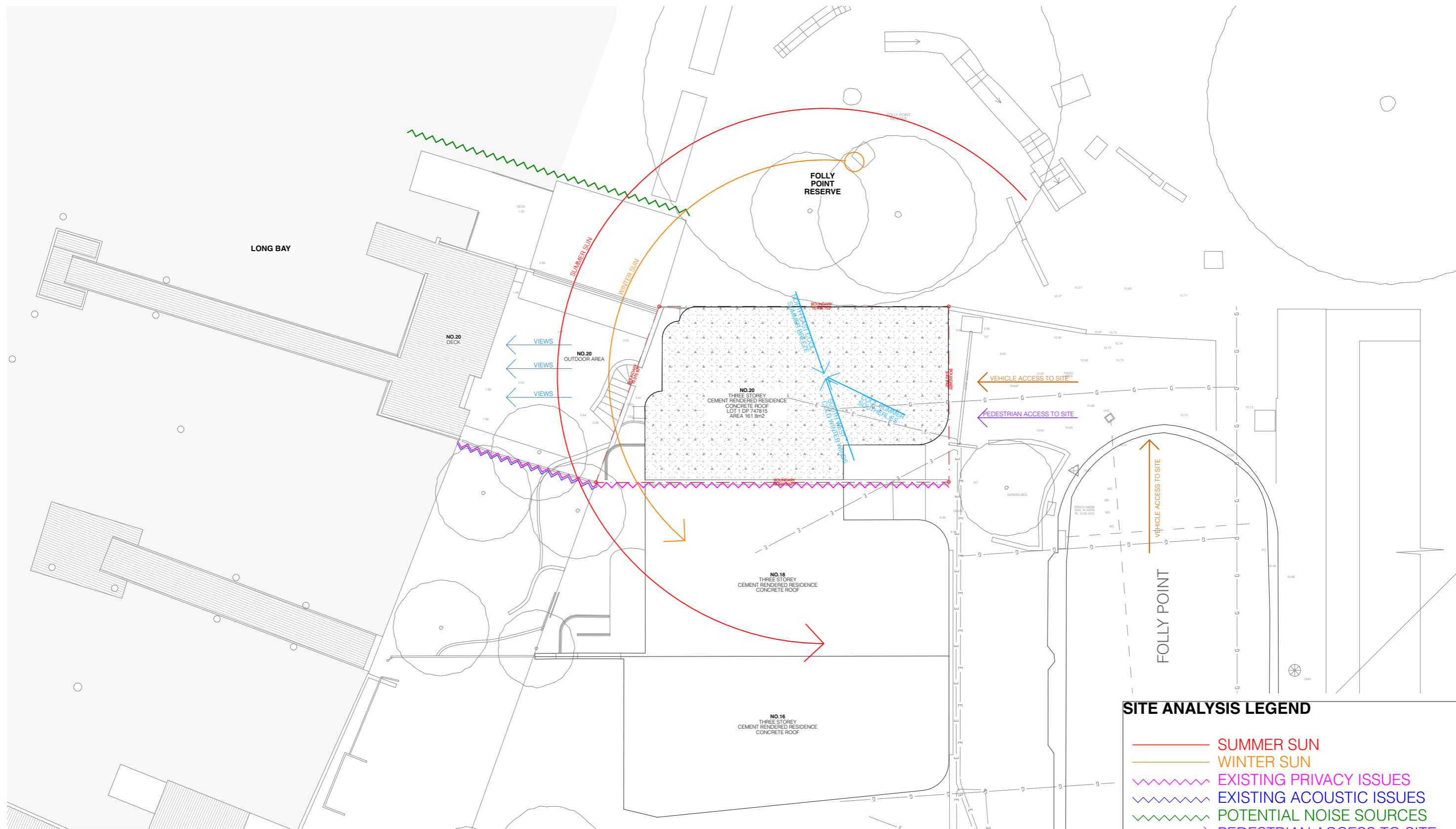
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SITE ANALYSIS LEGEND

- SUMMER SUN
- WINTER SUN
- ~~~~~ EXISTING PRIVACY ISSUES
- ~~~~~ EXISTING ACOUSTIC ISSUES
- ~~~~~ POTENTIAL NOISE SOURCES
- PEDESTRIAN ACCESS TO SITE
- VEHICLE ACCESS TO SITE
- WIND

SITE ANALYSIS PLAN
SCALE 1:200

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
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SITE ANALYSIS PLAN. 1:200

AMENDMENTS
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WARREN

DA.01 (L)

SITE ANALYSIS PLAN

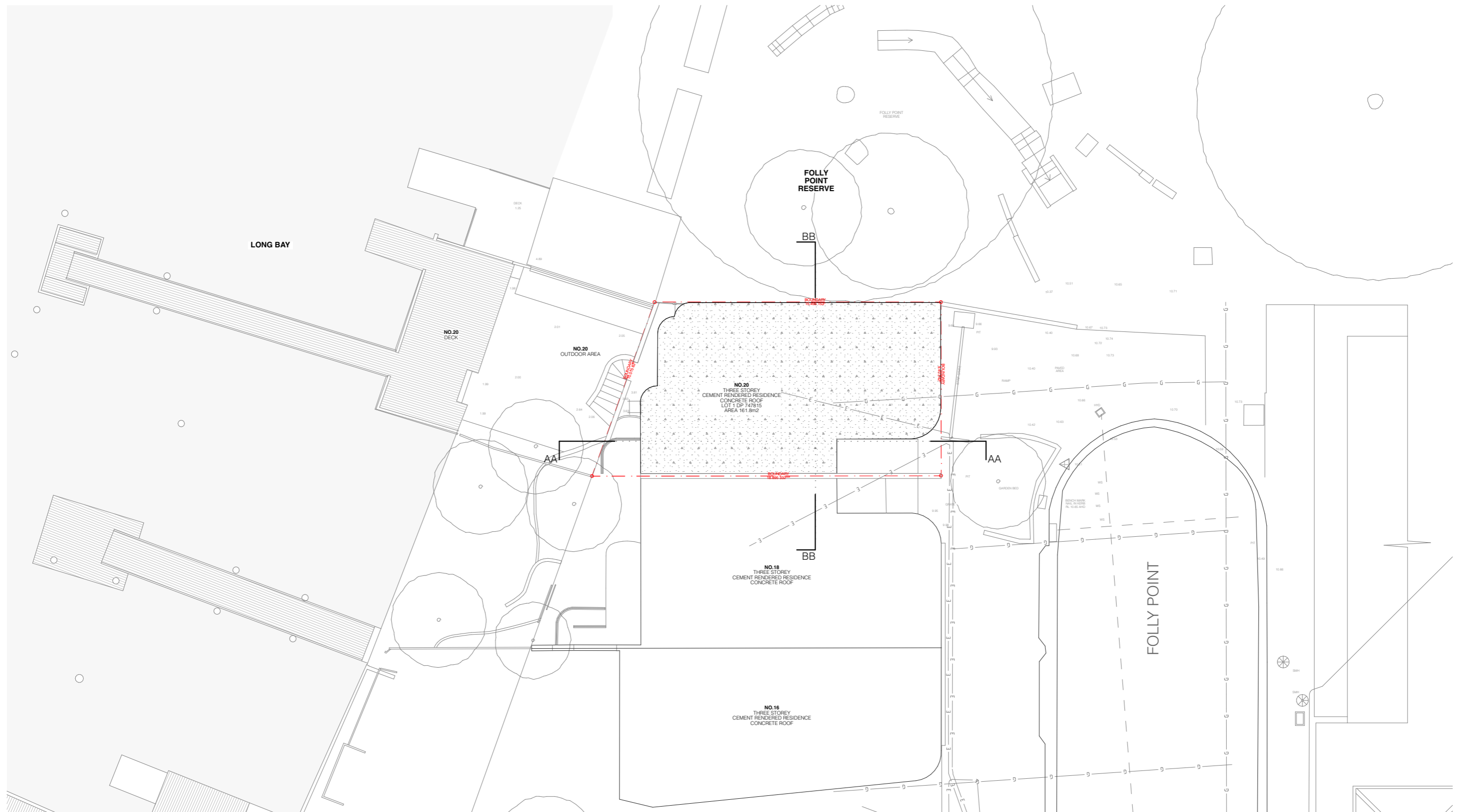
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SITE PLAN
SCALE 1:200

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
LOT 1 / DP 747815

SITE PLAN. 1:200

AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
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WARREN

DA.02 (L)

SITE PLAN

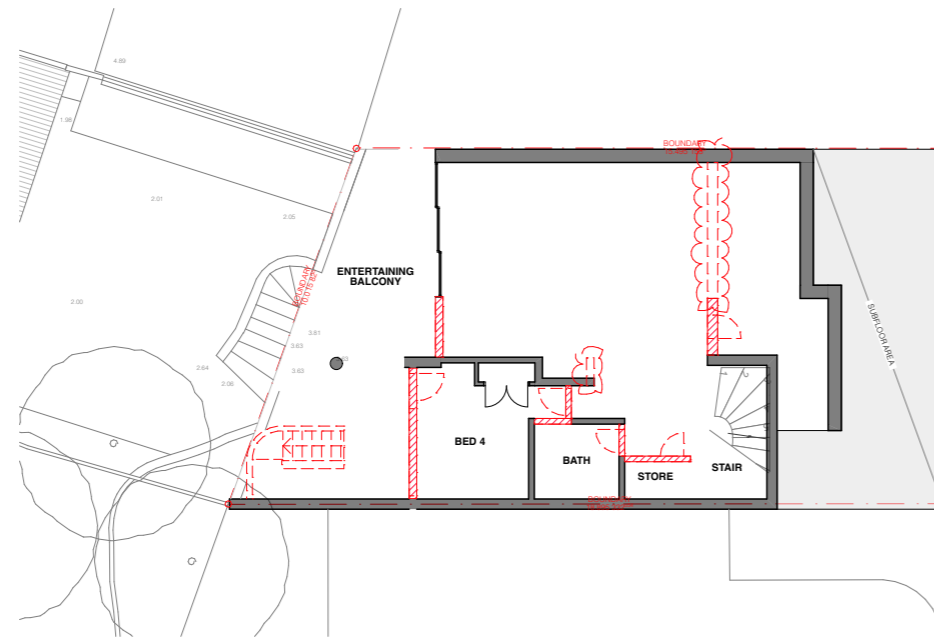
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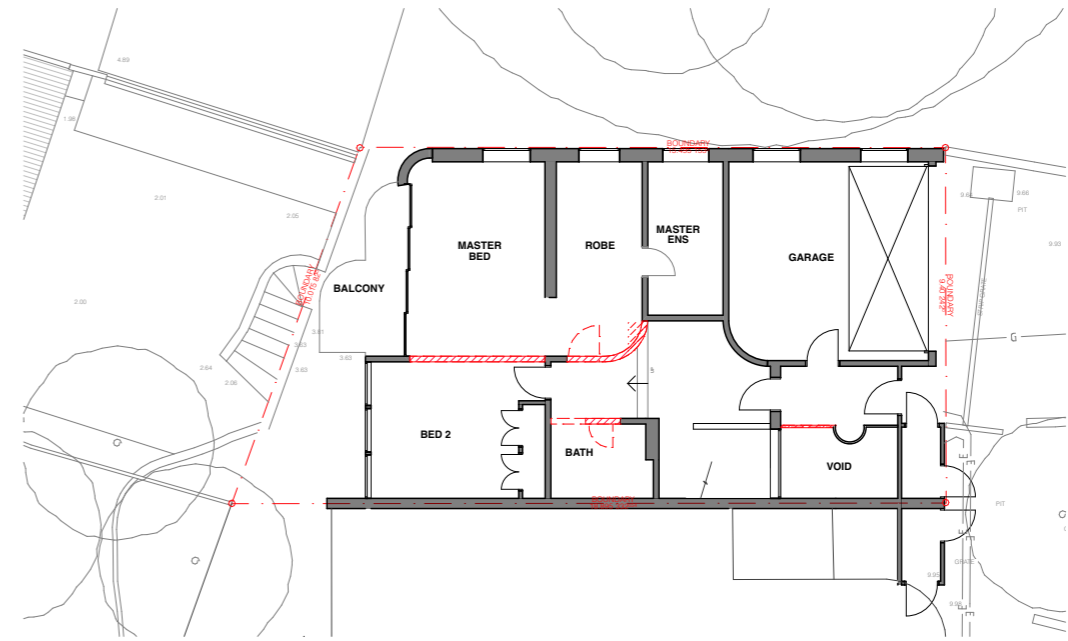
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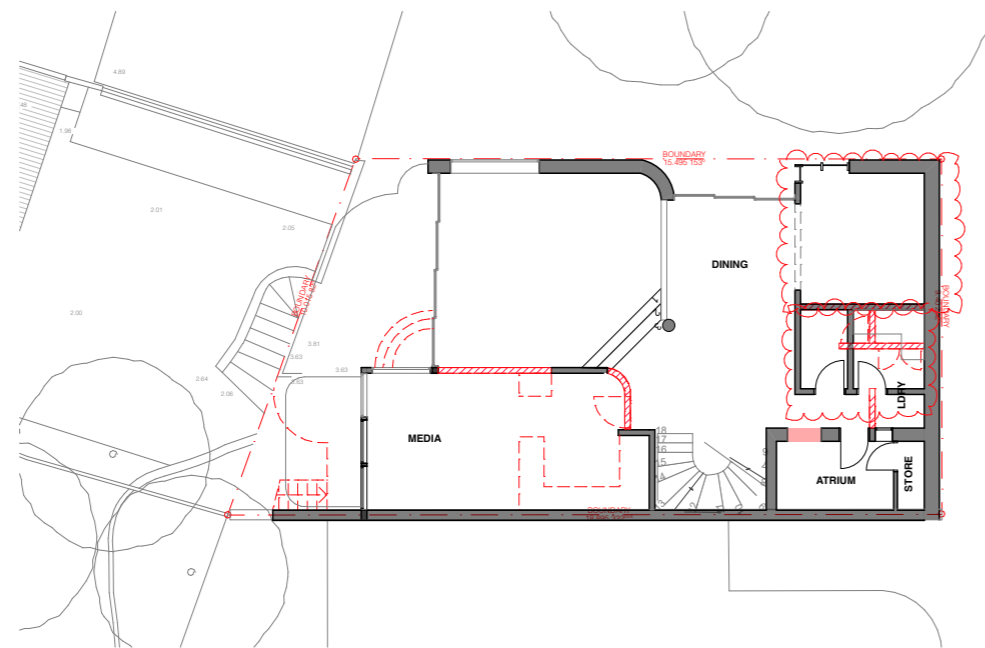
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GROUND FLOOR



SECOND FLOOR



FIRST FLOOR

DEMOLITION PLANS
SCALE 1:200

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
LOT 1 / DP 747815

DEMOLITION PLAN. 1:200

AMENDMENTS
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WARREN

DA.03 (L)
DEMOLITION PLAN

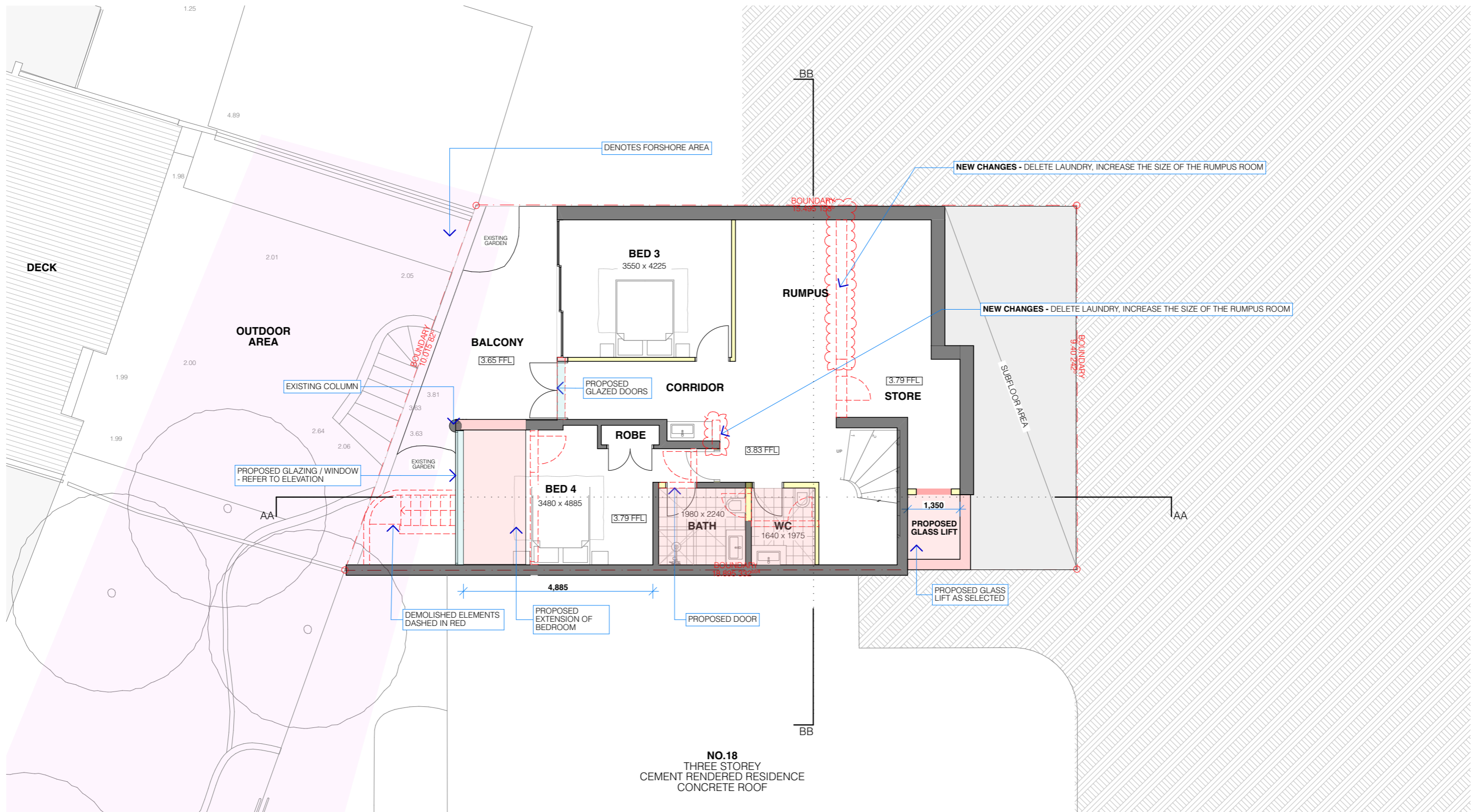
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PROPOSED GROUND FLOOR PLAN
SCALE 1:100

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
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PROPOSED GROUND FLOOR PLAN. 1:100

AMENDMENTS
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WARREN

DA.04 (L)

PROPOSED GROUND FLOOR PLAN

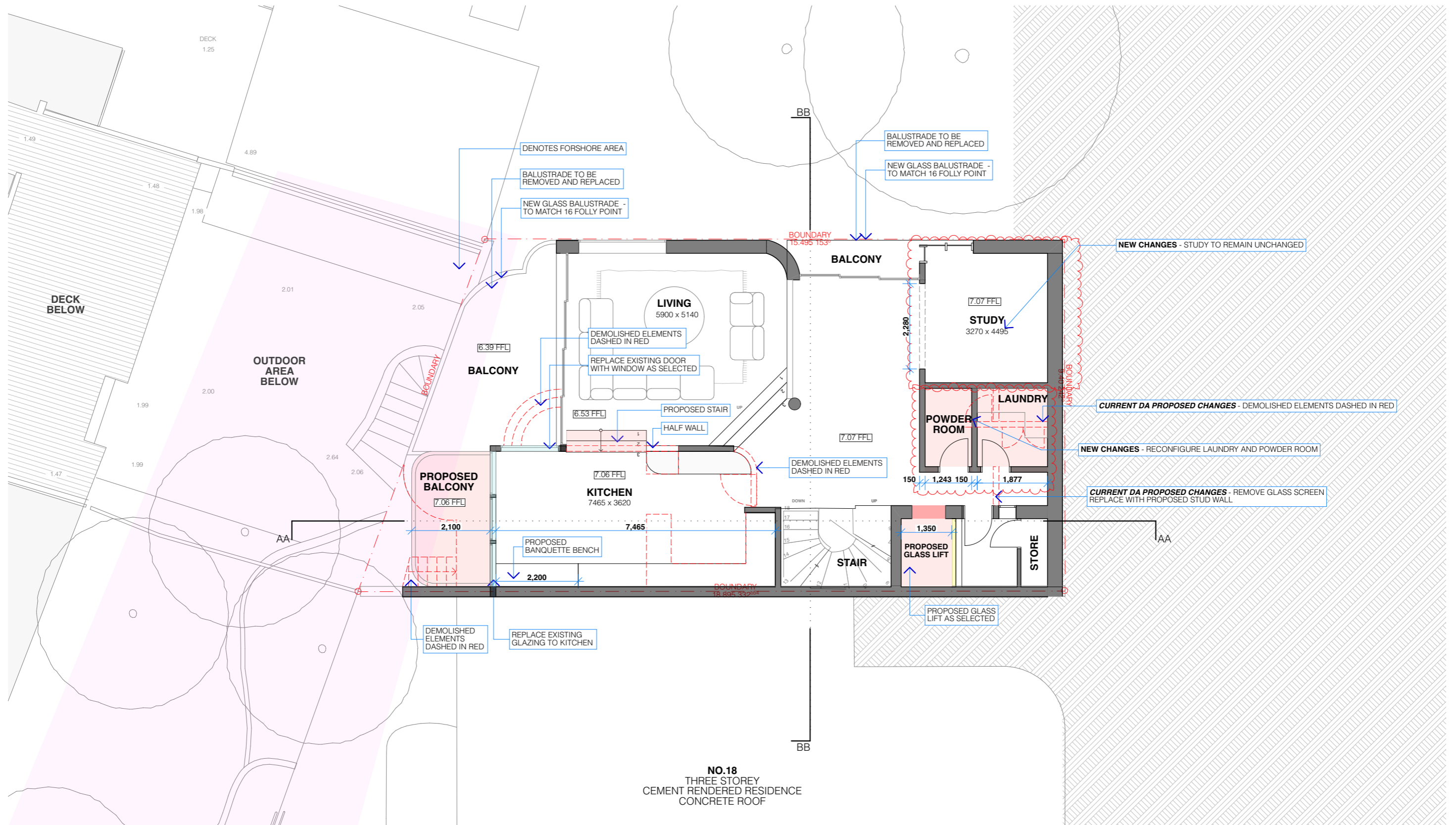
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PROPOSED FIRST FLOOR PLAN
SCALE 1:100

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
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PROPOSED FIRST FLOOR PLAN. 1:100

AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
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DA.05 (L)

PROPOSED FIRST FLOOR PLAN

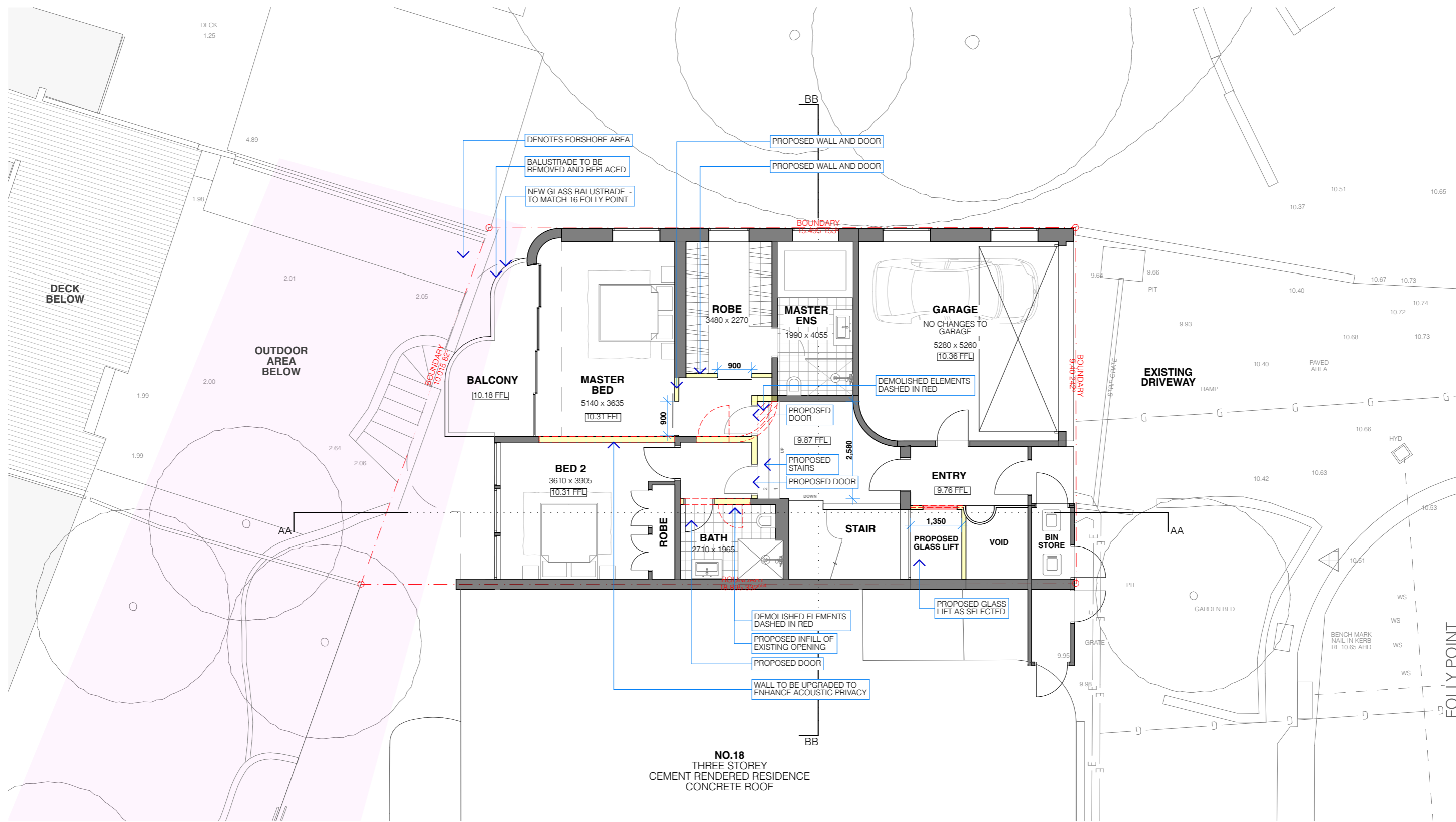
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PROPOSED SECOND FLOOR PLAN (ENTRY)
SCALE 1:100

PROJECT DETAILS
ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
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PROPOSED SECOND (ENTRY). 1:100
AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
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DA.06 (L)

PROPOSED SECOND (ENTRY)

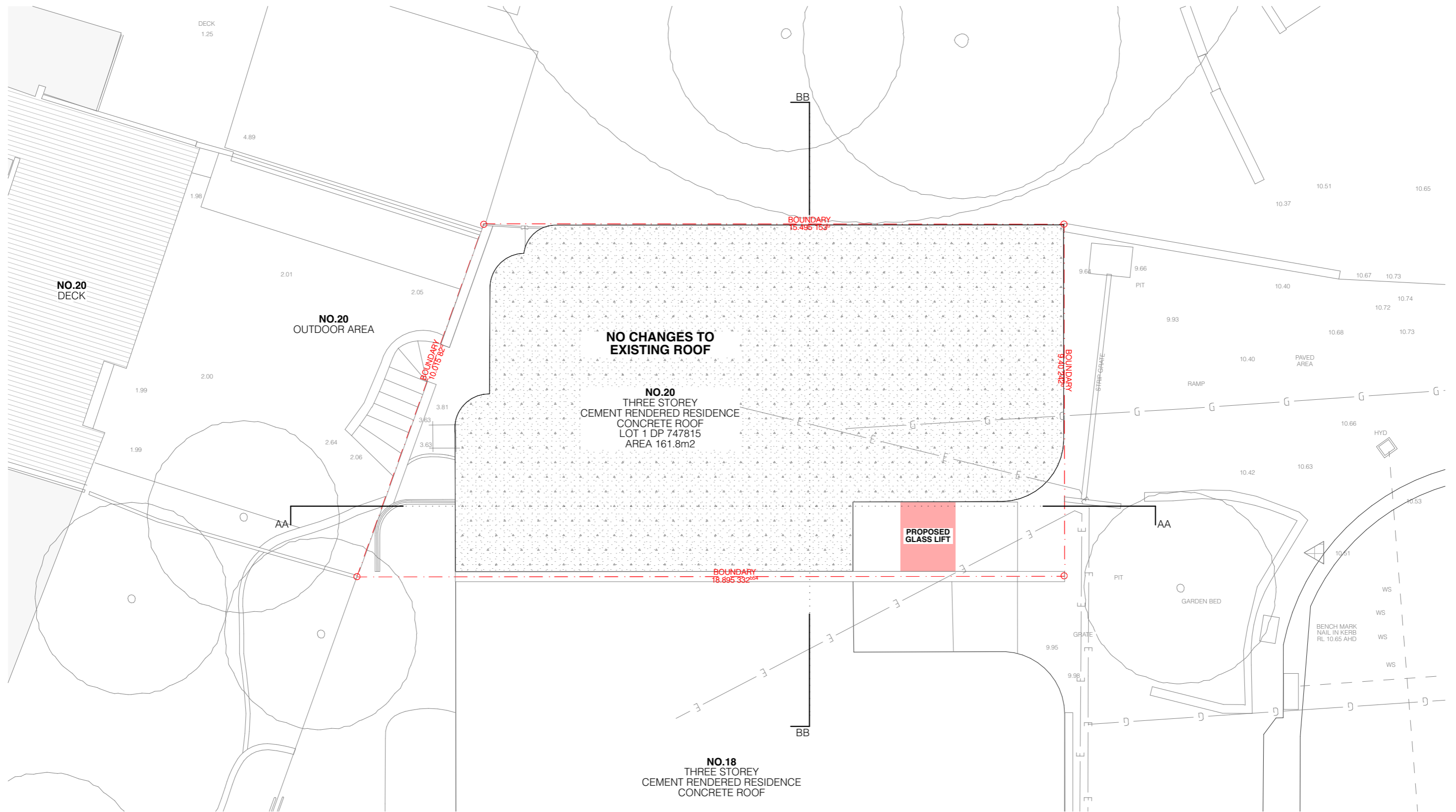
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PROPOSED ROOF PLAN
SCALE 1:100

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
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PROPOSED ROOF. 1:100

AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
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J - DEVELOPMENT APPLICATION ISSUE



WARREN

DA.07 (L)

PROPOSED ROOF

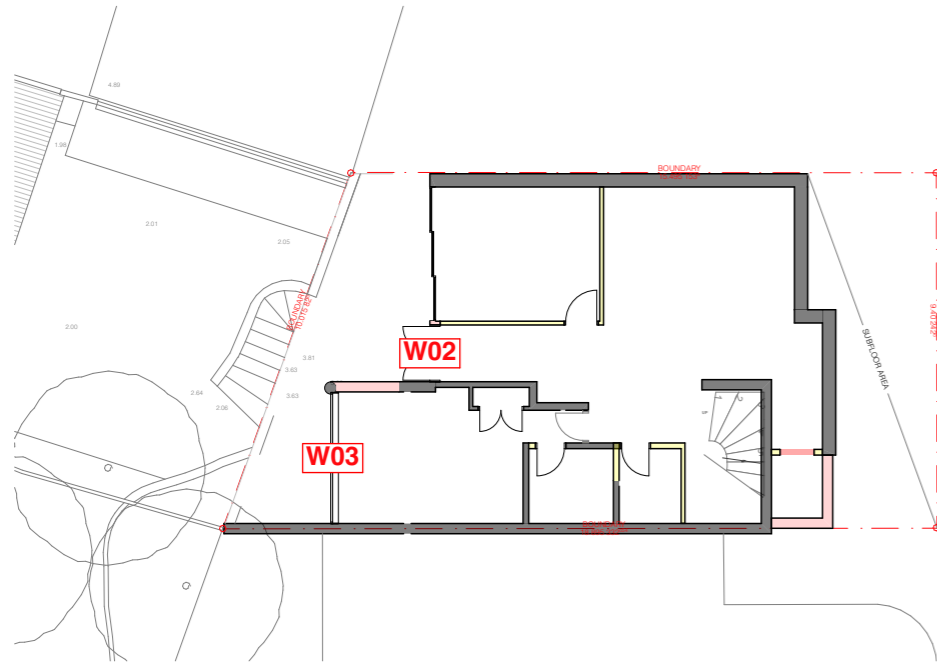
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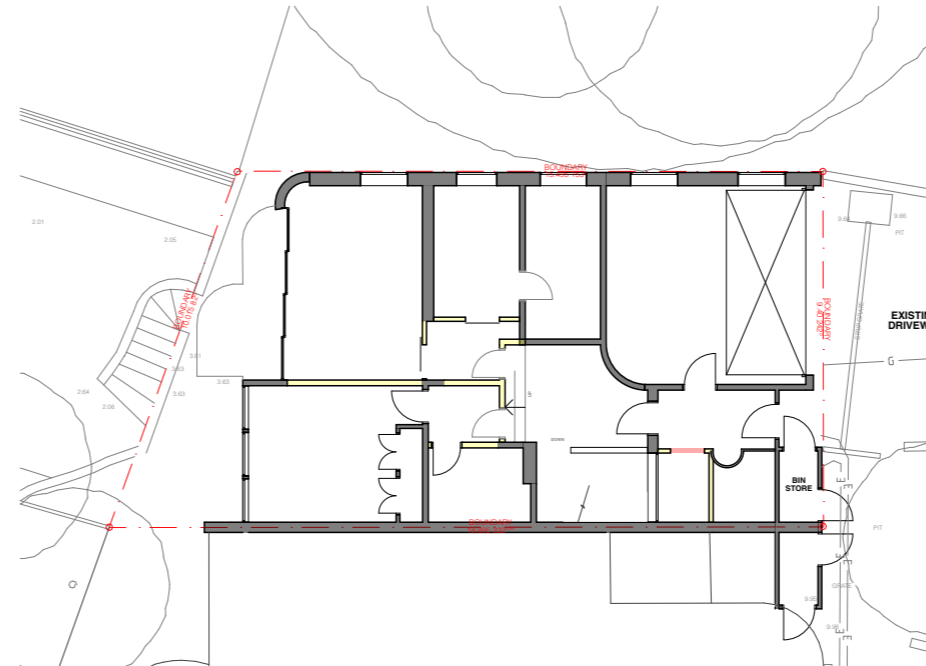
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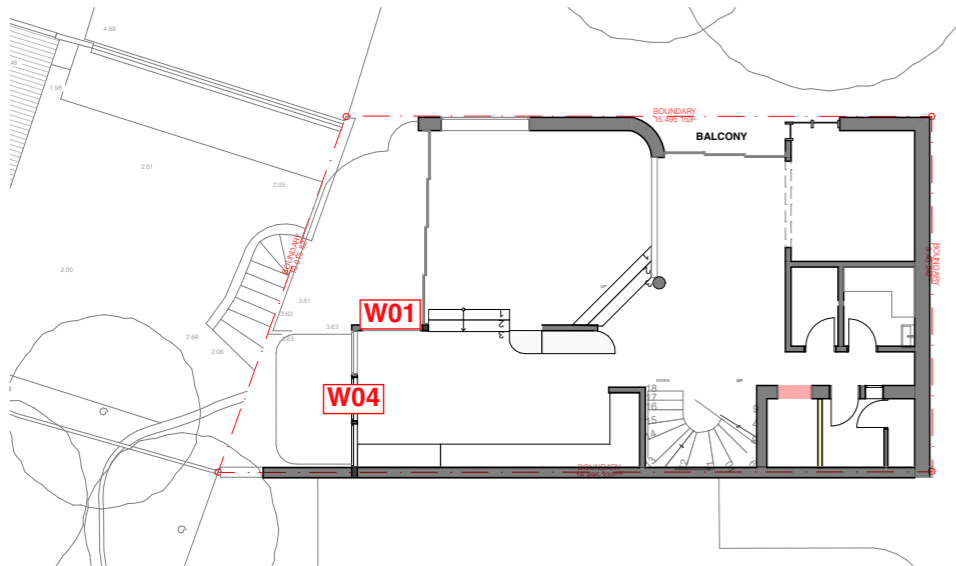
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GROUND FLOOR



SECOND FLOOR



FIRST FLOOR

BASIX PLAN
SCALE 1:200

BASIX COMMITMENTS

Hot water

The applicant must install the following hot water system in the development: gas instantaneous.

Lighting

The applicant must ensure a minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.

Fixtures

The applicant must ensure new or altered shower heads have a flow rate no greater than 9 litres per minute or a 3 star water rating.

The applicant must ensure new or altered toilets have a flow rate no greater than 4 litres per average flush or a minimum 3 star water rating.

The applicant must ensure new or altered taps have a flow rate no greater than 9 litres per minute or minimum 3 star water rating.

Insulation requirements

The applicant must construct the new or altered construction (floor(s), walls, and ceilings/roofs) in accordance with the specifications listed in the table below, except that a) additional insulation is not required where the area of new construction is less than 2m², b) insulation specified is not required for parts of altered construction where insulation already exists.

Construction	Additional Insulation required (R-value)	Other specifications
Suspended floor with open subfloor: Concrete (R0.6)	R0.9 (down) (or R1.50 including construction)	N/A
External wall: Cavity brick	Nil	

Windows and glazed doors

The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.

The following requirements must also be satisfied in relation to each window and glazed door:

Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions.

For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill.

Pergolas with polycarbonate roof or similar translucent material must have a shading coefficient of less than 0.35.

External louvres and blinds must fully shade the window or glazed door beside which they are situated when fully drawn or closed.

Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50 mm.

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
LOT 1 / DP 747815

BASIX PLANS. 1:200

AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
K - NOTIFICATION PLANS
J - DEVELOPMENT APPLICATION ISSUE



WARREN

DA.08 (L)

BASIX PLANS

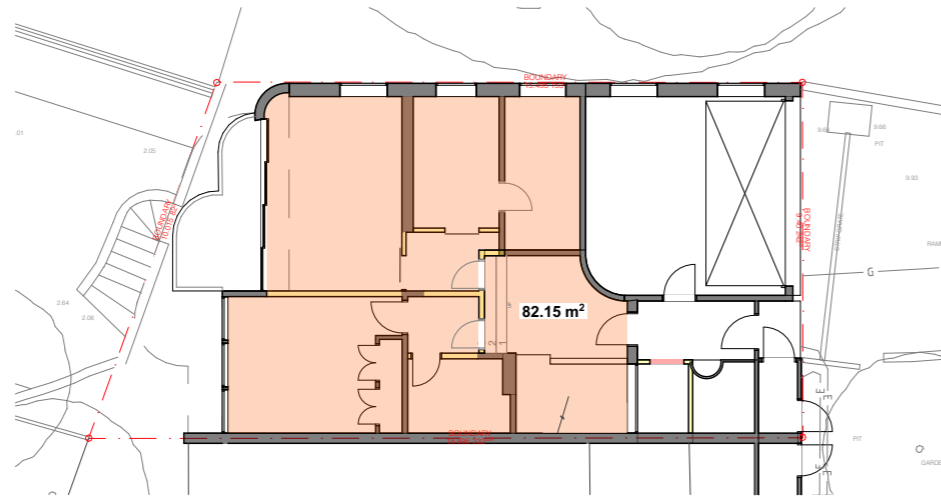
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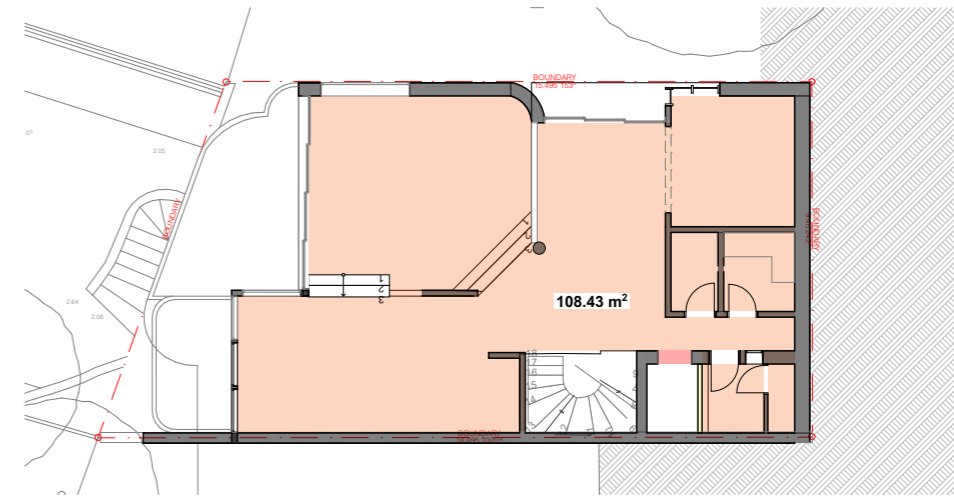
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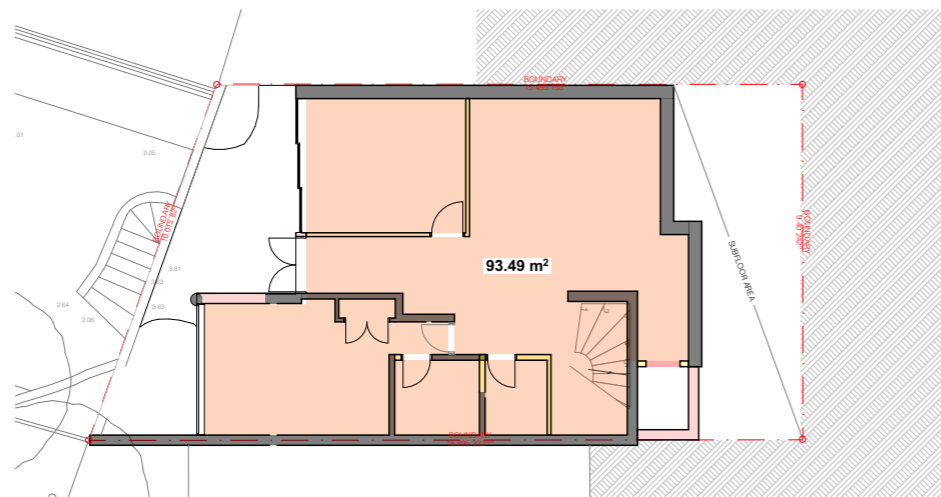
1:200 @ A3



SECOND FLOOR



FIRST FLOOR



GROUND FLOOR

COMPLIANCE DIAGRAM

SCALE 1:200

FLOOR SPACE RATIO

MAXIMUM FLOOR SPACE RATIO = N/A

SITE AREA = **161.8 m²**

EXISTING GROSS FLOOR AREA = **278.51m²**

PROPOSED GROSS FLOOR AREA = **287.07 m²**

PROPOSED FLOOR SPACE RATIO = **1.78:1**

COMPLIES / EXISTING NON-COMPLIANCE / RECTIFIES NON-COMPLIANCE

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
 ANTHONY WARREN
 20 FOLLY POINT CAMMERAY NSW 2062
 LOT 1 / DP 747815

COMPLIANCE FSR. 1:200

AMENDMENTS
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 J - DEVELOPMENT APPLICATION ISSUE



WARREN

DA.09 (L)

COMPLIANCE FSR

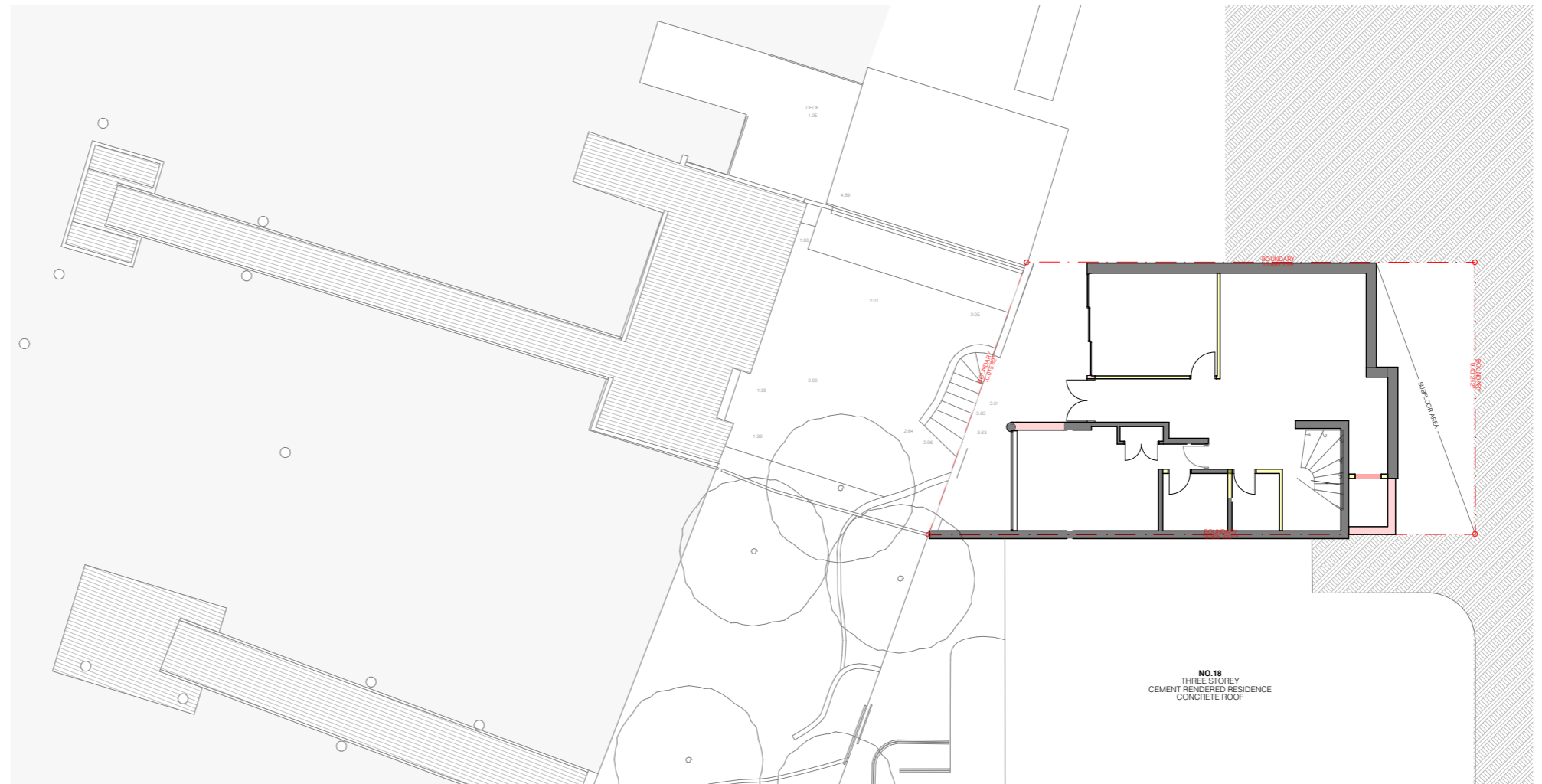
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1:200 @ A3



COMPLIANCE DIAGRAM
SCALE 1:200

LANDSCAPED AREA

MINIMUM LANDSCAPED AREA = **20% OF SITE AREA**

EXISTING LANDSCAPED AREA
= 0 m²
= **0% OF SITE AREA**

PROPOSED LANDSCAPED AREA
= 0 m²
= **0% OF SITE AREA**

NO CHANGE TO EXISTING LANDSCAPING CALCULATIONS

COMPLIES / EXISTING NON-COMPLIANCE / RECTIFIES NON-COMPLIANCE

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
LOT 1 / DP 747815

COMPLIANCE LANDSCAPE. 1:200

AMENDMENTS
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J - DEVELOPMENT APPLICATION ISSUE



WARREN

DA.10 (L)

COMPLIANCE LANDSCAPE

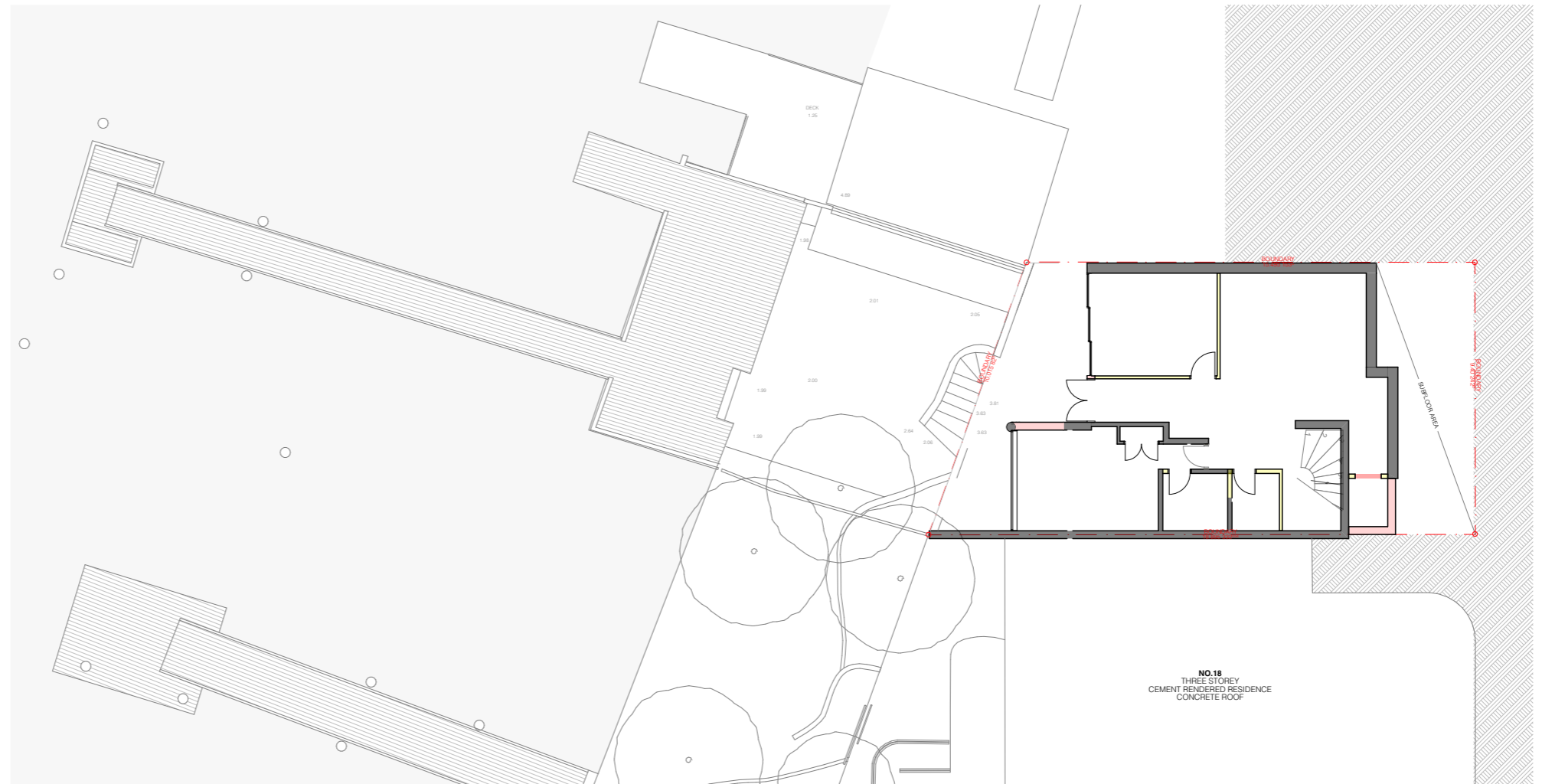
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COMPLIANCE DIAGRAM
SCALE 1:200

SITE COVERAGE

SITE AREA = **161.8 m²**
 MAXIMUM SITE COVERAGE = **60% OF SITE AREA = 97.08 m²**

EXISTING SITE COVERAGE = **161.8 m² = 100%**
 PROPOSED SITE COVERAGE = **161.8 m² = 100%**

COMPLIES / EXISTING NON-COMPLIANCE / RECTIFIES NON-COMPLIANCE

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
 ANTHONY WARREN
 20 FOLLY POINT CAMMERAY NSW 2062
 LOT 1 / DP 747815

COMPLIANCE SITE COVERAGE. 1:200

AMENDMENTS
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WARREN

DA.11 (L)

COMPLIANCE SITE COVERAGE

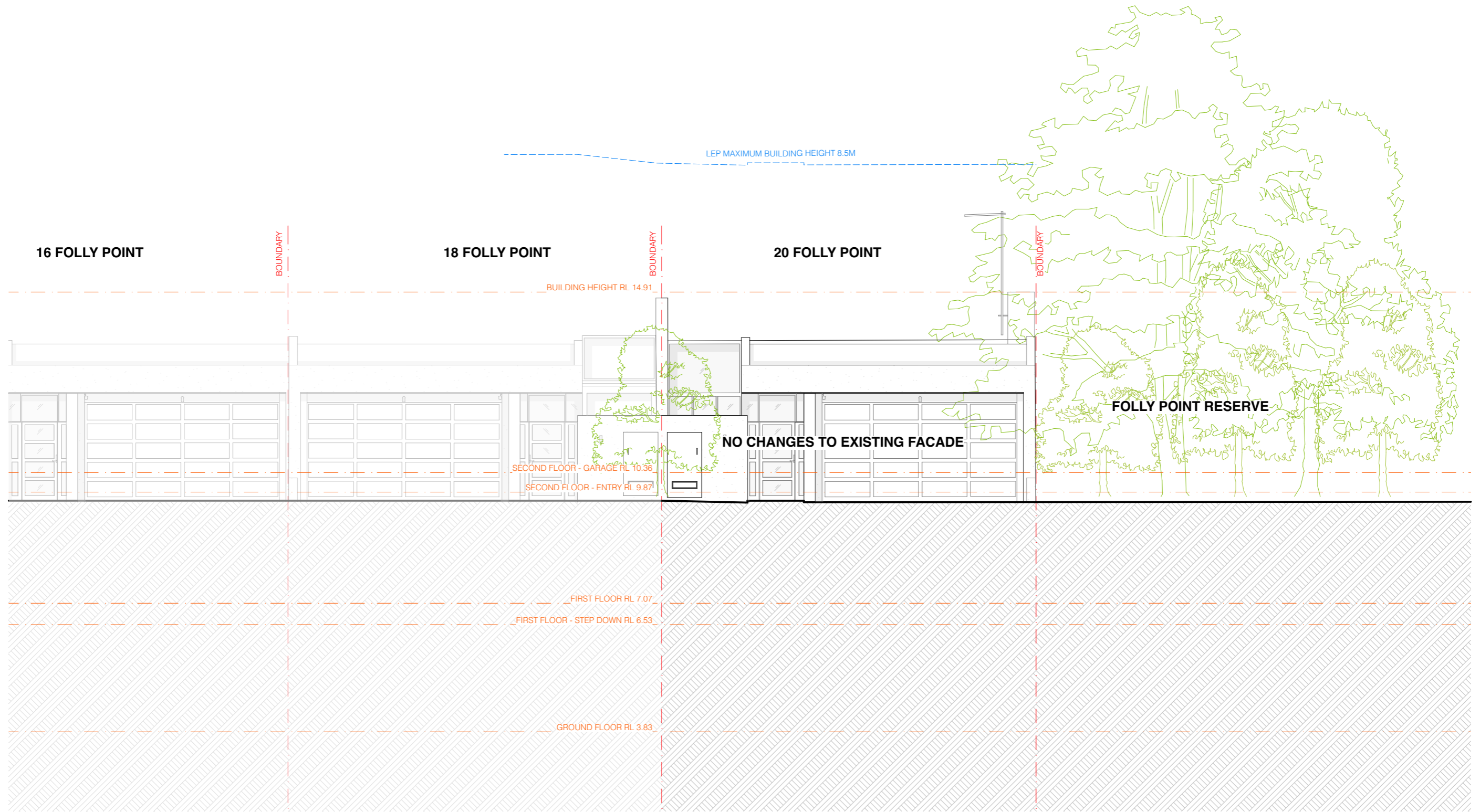
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SOUTH EAST ELEVATION (FRONT)
SCALE 1:100

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
LOT 1 / DP 747815

PROPOSED - SOUTH EAST ELEVATION. 1:100

AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
K - NOTIFICATION PLANS
J - DEVELOPMENT APPLICATION ISSUE



WARREN

DA.12 (L)

PROPOSED - SOUTH EAST ELEVATION

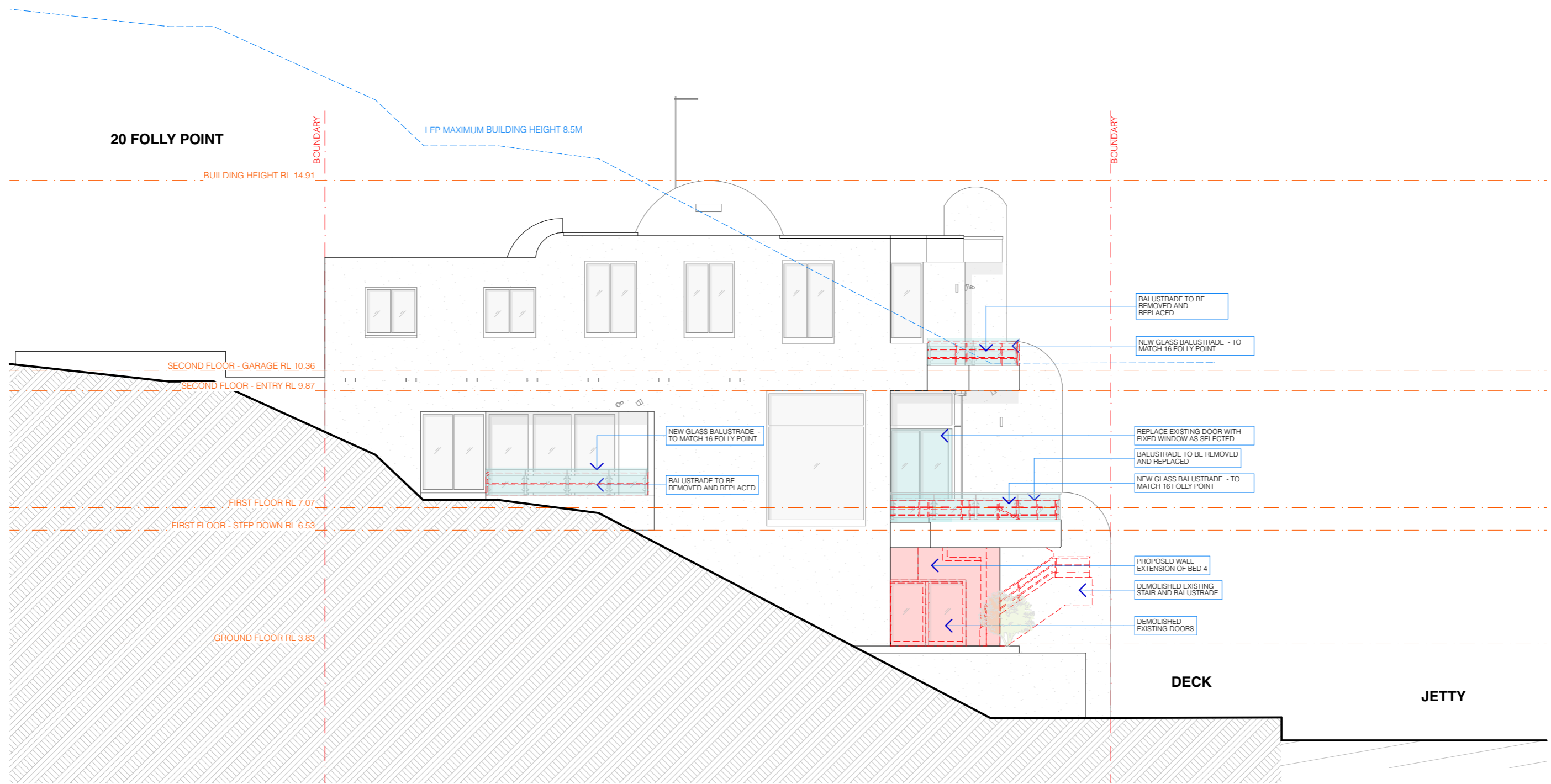
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NORTH EAST ELEVATION (SIDE)
SCALE 1:100

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
LOT 1 / DP 747815

PROPOSED - NORTH EAST ELEVATION. 1:100

AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
K - NOTIFICATION PLANS
J - DEVELOPMENT APPLICATION ISSUE



WARREN

DA.13 (L)

PROPOSED - NORTH EAST ELEVATION

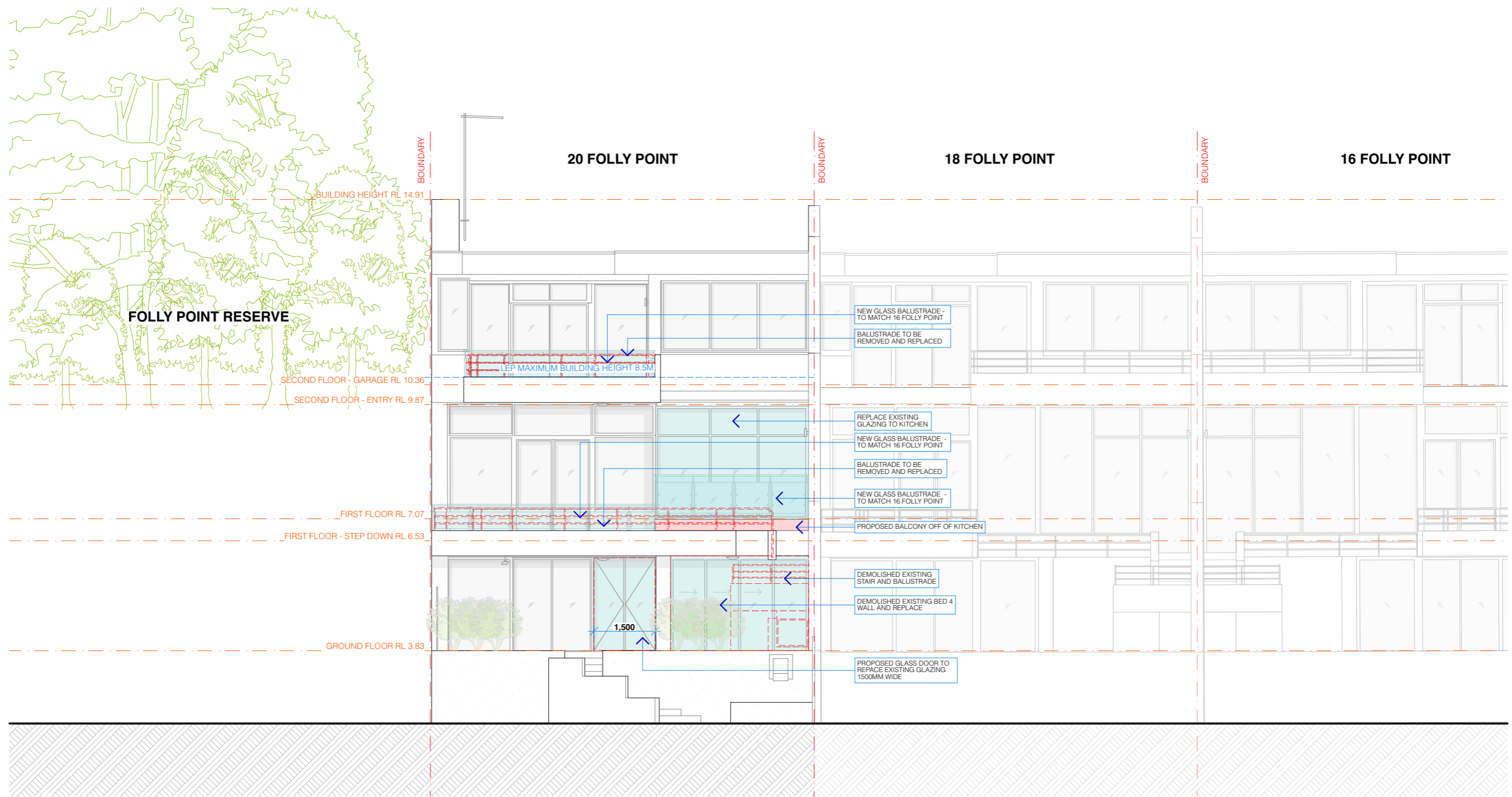
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NORTH WEST ELEVATION
SCALE 1:100

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
LOT 1 / DP 747815

PROPOSED - NORTH WEST ELEVATION. 1:100

AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
K - NOTIFICATION PLANS
J - DEVELOPMENT APPLICATION ISSUE



WARREN

DA.14 (L)

PROPOSED - NORTH WEST ELEVATION

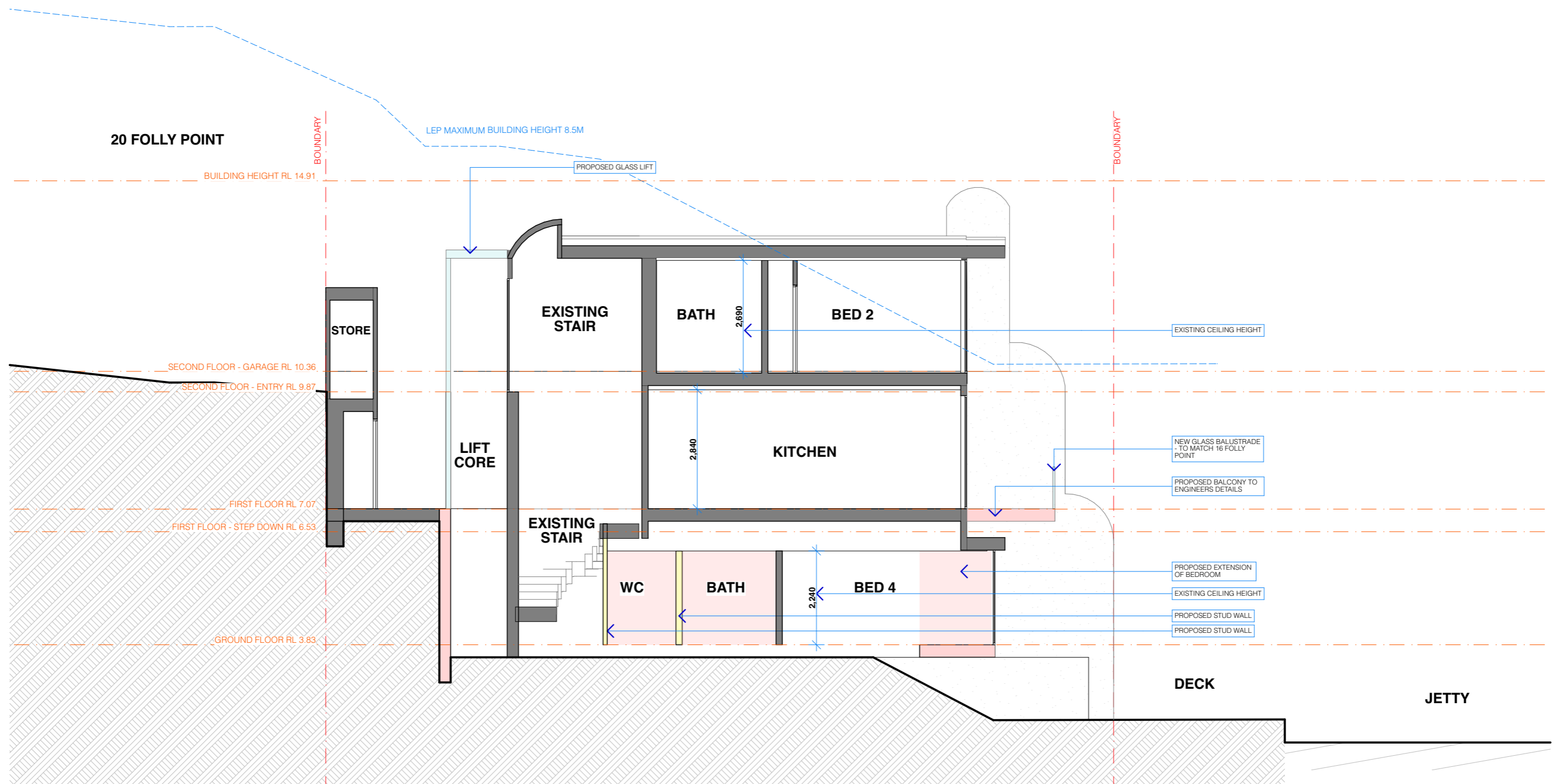
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TYPICAL SECTION - AA
SCALE 1:100

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
LOT 1 / DP 747815

SECTION AA. 1:100

AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
K - NOTIFICATION PLANS
J - DEVELOPMENT APPLICATION ISSUE



WARREN

DA.15 (L)

SECTION AA

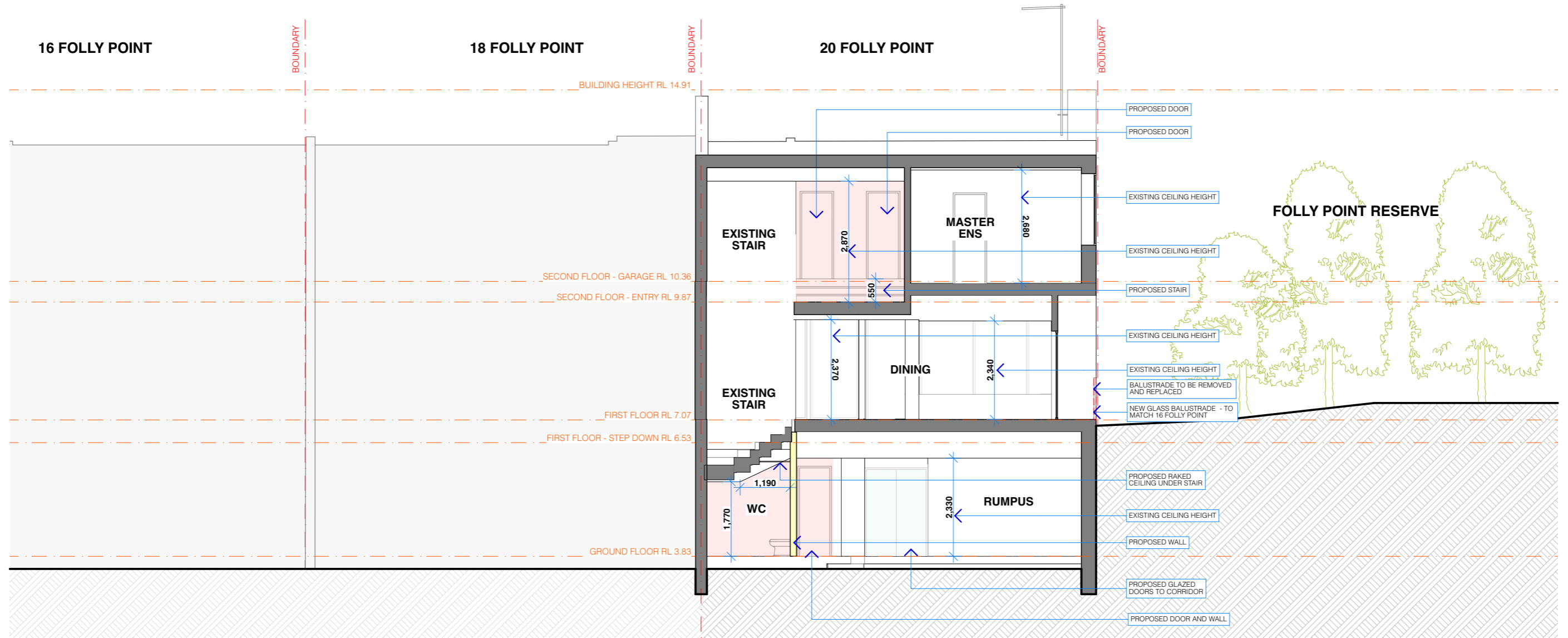
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TYPICAL SECTION - BB
SCALE 1:100

PROJECT DETAILS
ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
LOT 1 / DP 747815

SECTION BB. 1:100
AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
K - NOTIFICATION PLANS
J - DEVELOPMENT APPLICATION ISSUE



WARREN

DA.16 (L)
SECTION BB

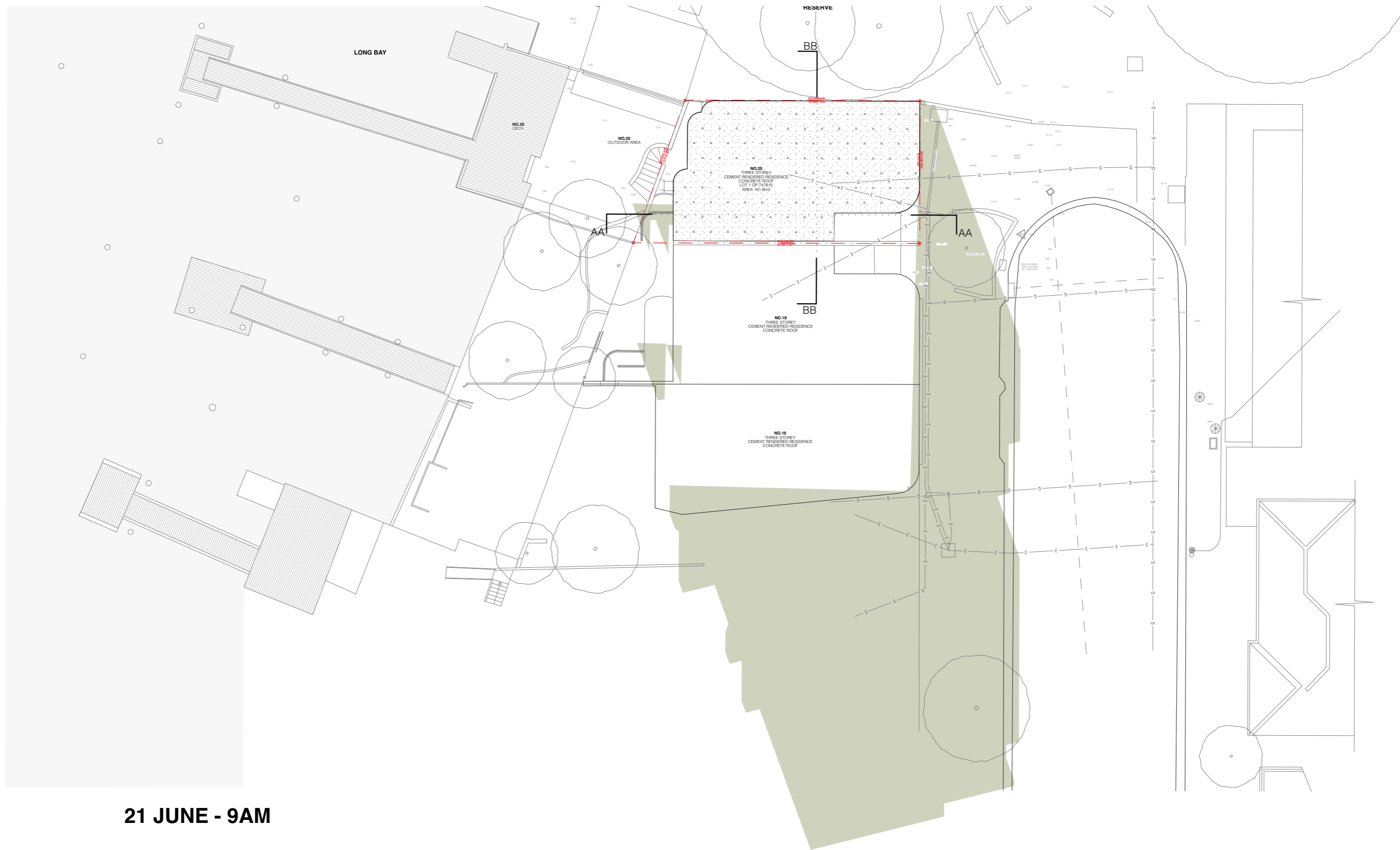
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1:100 @ A3



21 JUNE - 9AM

SHADOW DIAGRAMS
SCALE 1:200

- EXISTING SHADOW
- NEW SHADOW
- REMOVED SHADOW

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
LOT 1 / DP 747815

SHADOWS 21 JUNE 9AM. 1:250

AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
K - NOTIFICATION PLANS
J - DEVELOPMENT APPLICATION ISSUE



WARREN

DA.17 (L)

SHADOWS 21 JUNE 9AM

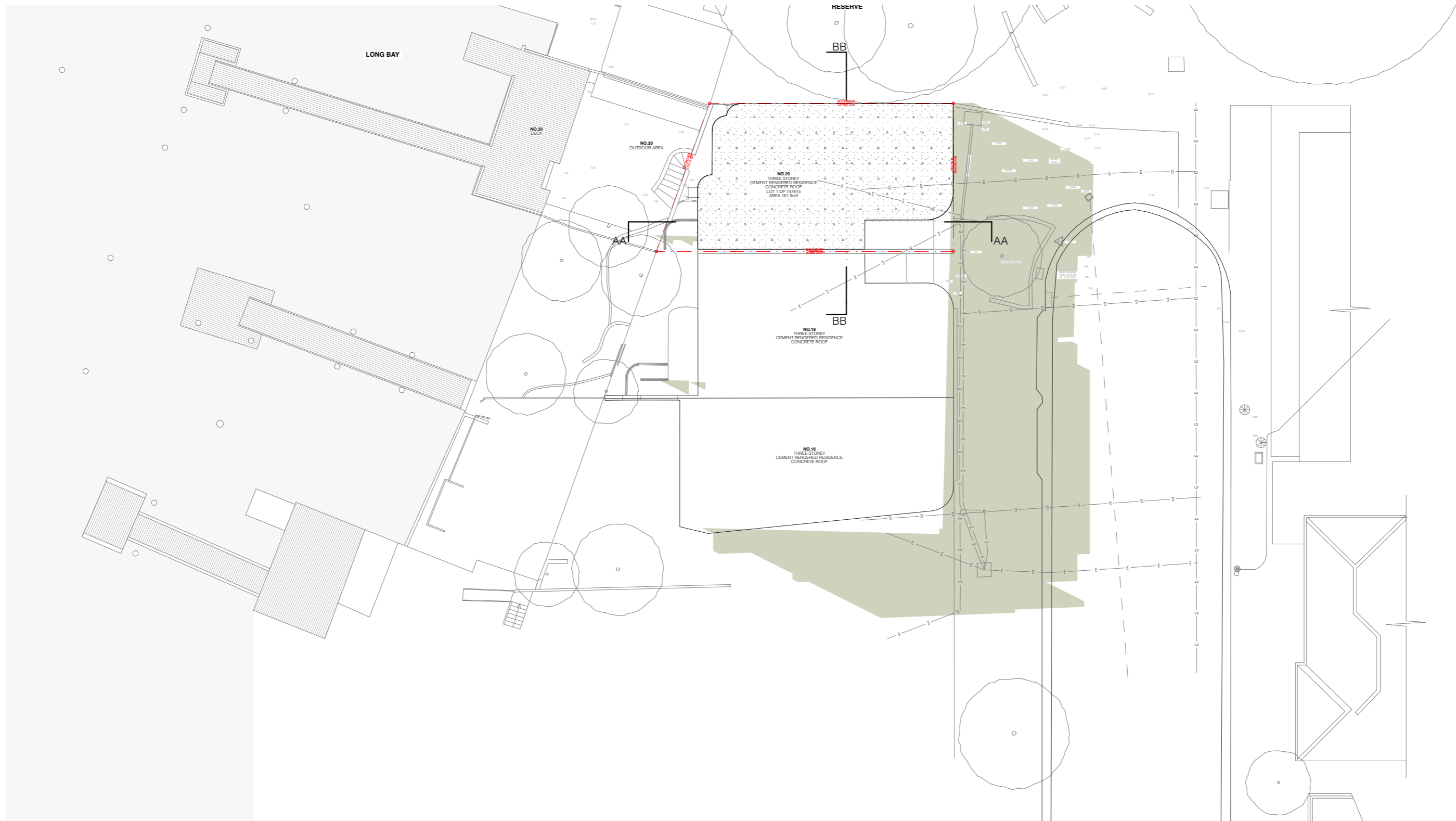
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1:250 @ A3



21 JUNE - 12PM

SHADOW DIAGRAMS
SCALE 1:200

- EXISTING SHADOW
- NEW SHADOW
- REMOVED SHADOW

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
20 FOLLY POINT CAMMERAY NSW 2062
LOT 1 / DP 747815

SHADOWS 21 JUNE 12PM. 1:250

AMENDMENTS
L - ADDITIONAL INFORMATION SUBMISSION
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J - DEVELOPMENT APPLICATION ISSUE



WARREN

DA.18 (L)

SHADOWS 21 JUNE 12PM

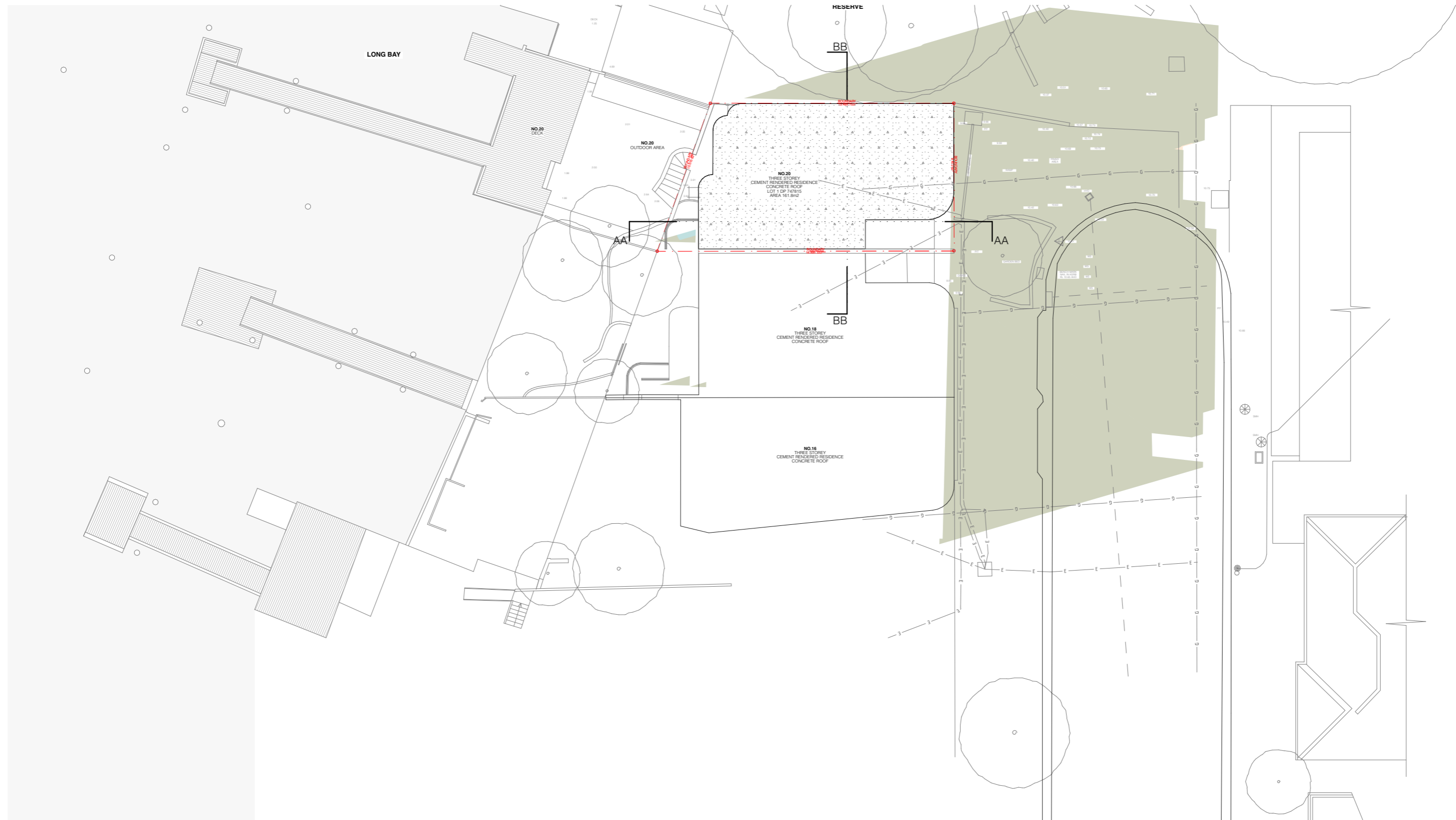
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21 JUNE - 3PM

SHADOW DIAGRAMS SCALE 1:200

- EXISTING SHADOW
- NEW SHADOW
- REMOVED SHADOW

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
 ANTHONY WARREN
 20 FOLLY POINT CAMMERAY NSW 2062
 LOT 1 / DP 747815

SHADOWS 21 JUNE 3PM. 1:250

AMENDMENTS
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WARREN

DA.19 (L)

SHADOWS 21 JUNE 3PM

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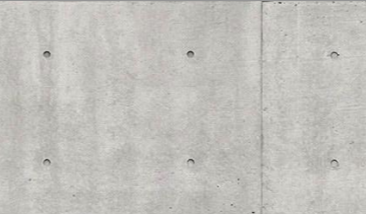




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EXTERNAL FINISHES SCHEDULE

ITEM	MATERIAL / FINISH	
ROOF	Concrete - No change	
EXTERNAL WALLS	Brick Cavity - Render - To match existing	
WINDOWS	Aluminium - To match existing	
EXTERNAL DOORS	Aluminium - To match existing	
BALUSTRADE	Glass - To match 16 Folly Point	

PROJECT DETAILS

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING
ANTHONY WARREN
 20 FOLLY POINT CAMMERAY NSW 2062
 LOT 1 / DP 747815

EXISTING EXTERNAL FINISHES

AMENDMENTS
 L - ADDITIONAL INFORMATION SUBMISSION
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 J - DEVELOPMENT APPLICATION ISSUE



DA.20 (L)

WARREN **EXISTING EXTERNAL FINISHES**

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ANNEXURE C

Clause 4.6 Variation - Building Height



Clause 4.6 variation statement – maximum height (clause 4.3)

1. HEIGHT OF BUILDINGS STANDARD

Clause 4.3 of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) relates to the maximum building height and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum building height of 8.5m. Building Height is defined as follows:

“building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

The relevant map [sheet HOB_003] indicates that the maximum building height permitted at the subject site is 8.5m.



Figure 1 Extract from the Height of Buildings Map [I=8.5m]

2. PROPOSED VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

The existing built form on site has a maximum building height of 12.5m when measured to the top of the common wall element. This exceeds the maximum building height by 4m and results in a variation to the control of 47%.

The proposed alterations and additions are located well below the maximum height of the existing building and are contained within the building envelope. The proposed development does include internal and external works to a maximum height of 10.45m which results in a variation to the control of 1.95m or 22.9%. Refer to Figure 2 below:

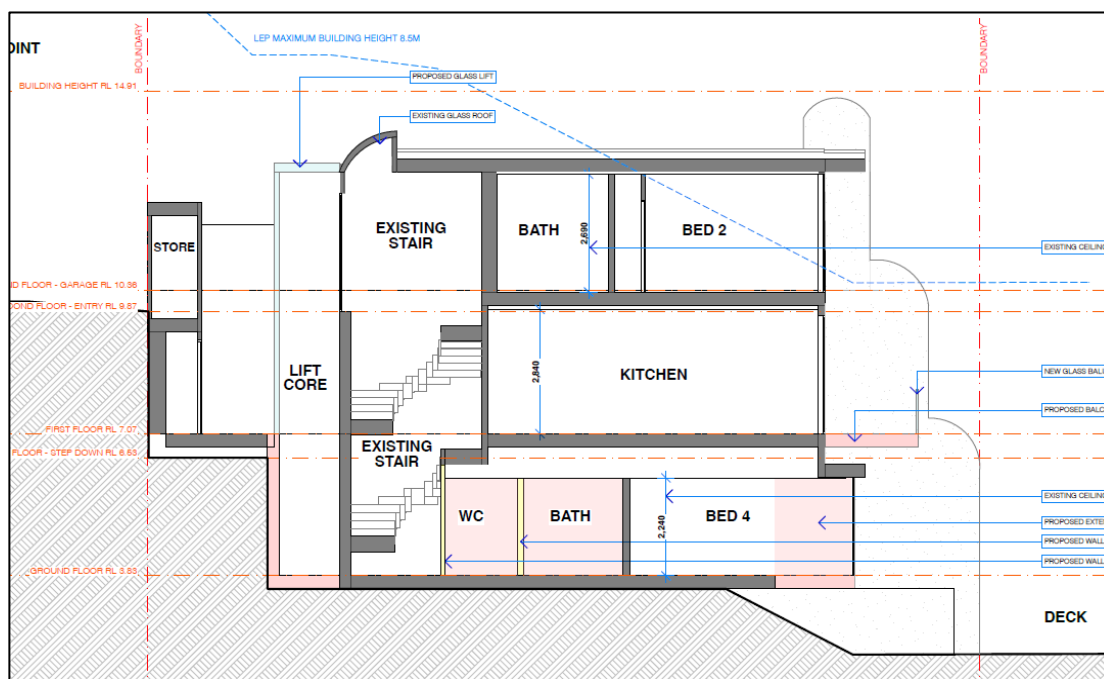


Figure 2 Section extract

The variation to the height of buildings standard does not result in any additional building height greater than the existing. All works above the height limit are internal or relate to the replacement of balustrades. Because of the location of the ground level, the lift complies with the height of buildings development standard.

3. CLAUSE 4.6 TO NSLEP 2013

The maximum height control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP. The objectives and provisions of clause 4.6 are as follows:

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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) *(Repealed)*

(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) *(Repealed)*

(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)*

The development standard in clause 4.3 is not “expressly excluded” from the operation of clause 4.6. This submission will address the requirements of subclause 4.6(3) in order to demonstrate that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, it is noted that the extent of the

discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, for example, subclause 4.6(8).

4. COMPLIANCE IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

Of relevance to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“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.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

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

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...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.”

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons discussed below. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Objectives of Development Standard

The relevant objectives of clause 4.3 are as follows, inter alia:

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

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

In order to address the requirements of subclause 4.6(3)(a), each of the relevant objectives of Clause 4.3 are addressed in turn below.

Objective (a) seeks to promote development that conforms to and reflects natural landform through stepping development on sloping land to follow the natural gradient.

With respect to this objective, the works above the 8.5m height limit have no effect upon landform. The proposed works are all located within the existing building envelope and footprint and it is simply a technical breach for internal works above the height limit. The proposal therefore does not alter the natural landform or stepped form of the building and therefore satisfies objective (a).

Objective (b) seeks to promote retention and sharing of existing views.

As previously discussed, all works proposed above the 8.5m height limit are within the existing building envelope. This ensures that these works do not affect any existing views to or from the site. The proposal satisfies objective (b).

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

Given that all works above the 8.5m height plane are within the existing building envelope, these works will not create any additional overshadowing and maintain existing solar access. This also ensures that the works do not affect solar access to future development. The proposal satisfies objective (c).

Objective (d) seeks to maintain and promote privacy.

As previously discussed, all works proposed above the 8.5m height limit are within the existing building envelope. This ensures no significant implications for visual and acoustic privacy. Any works above the height limit in relation to the replacement of the balustrades will provide for better views for the applicant without having any adverse privacy impacts on adjoining properties given the location of the common wall. The proposal satisfies objective (d).

Objective (e) seeks to ensure compatibility between development, in particular at zone boundaries.

Given all works above the 8.5m height limit are within the existing building envelope, the form, scale and height of the built form above 8.5m will remain as existing. The site is part of an attached dwelling group with No. 16-18 Folly Point, which all share the same height and topography resulting in similar variations that are not considered by the building height limit. The proposal will not alter the existing maximum height and will maintain compatibility with surrounding development. Therefore, the breach of the height of building

development standard and can be considered as representing a desired future character of the locality. The proposal satisfies objective (e).

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

The height, form and scale of built form above 8.5m will be retained as existing following the proposed works. This maintains the existing scale and density above the 8.5m height limit. The existing built form is also a representation of development in the immediate locality, and is not considered to create detrimental impacts to adjoining properties and the character of the area. The proposal satisfies objective (f).

Objective (g) seeks to maintain a 1-2 storey built form within the zone.

The proposal does not affect the existing number of storeys on site, and is a reflection of development in the immediate locality, which is also located on a heavily constrained site. It is considered that this objective is not relevant to the proposed development.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in Section 5 below.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(B))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the recent decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson. The following environmental planning grounds are submitted to justify contravening the maximum building height:

1. The proposed works which exceed the 8.5m height limit are limited to internal upgrades on the second floor and removal of existing balustrade to existing balcony on second floor and replacement with glass. The proposed development does not exceed the maximum height of the existing dwelling (12.5m) with all works significantly below this height and below the existing roof. Insisting on compliance with the height of buildings development standard would result in the upper level being sterilised and no upgrades possible which would be a disproportionate outcome to the lack of amenity impacts as a result of the height variation.
2. The variation to the height limit is largely a result of the existing building and historical excavation to establish the ground level which is largely ignored by the 8.5m height of buildings development standard. This coupled with the topography and a fall of over 4.5m results in a variation to the

height of buildings development standard by the existing building and the two attached buildings to the west (Nos. 16-18 Folly Point). The proposed works do not exceed the roof of the existing building and will not alter the perception of height of the existing building. This is a site specific condition that results in a variation of the LEP height limit.

3. It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties and on the character of the locality. Specifically:
 - The extent of the additional height creates no significant adverse overshadowing impacts to adjoining development or public domain when compared to the existing building envelope. That is, the proposed development is largely internal and will not alter the existing shadows to surrounding properties or the public domain. The proposal does not result in any non-compliance with Council's solar access controls. As such, the increase to overshadowing caused by the non-compliant elements would be insignificant or nil;
 - The height breach does not result in any adverse additional privacy impacts. The non-compliant elements are limited to non-habitable areas or the upper level of windows where the compliant parts of the window would have the same or greater impact on overlooking. As such, the loss of privacy caused by the non-compliant elements would be insignificant or nil; and
 - The height breach will not result in any significant view loss. Surrounding properties maintain a clear outlook towards the north which is facilitated by the steep local topography and building design. When considering the extent of view sharing against the backdrop of the applicable planning controls, the extent of view loss caused by the non-compliant element is insignificant or nil.
4. The locality is not characterised by height compliant development due largely to local topography and site constraints which existing in the immediate locality. The proposal does not alter the existing maximum building height nor the building envelope above the 8.5m height limit. This ensures that the existing relationship between the existing built form and surrounding development when viewed from the public domain will remain as existing. There are no works above the 8.5m height limit which will be perceptible or visually jarring from the public domain and surrounding area.
5. The proposed side additions have been designed to integrate with the existing building so as not to create any adverse visual impacts. The height variation will contain a design and materials that are compatible with the colours, materials and finishes, form and proportionality of the existing dwelling and other dwellings on the foreshore, including Nos. 16-18 Folly Point attached to the site. The proposed variation will not detract from the character of the streetscape or the foreshore locality.
6. The proposed development meets the objectives of the development standard and meets the objectives of the C4 – Environmental Living zone.
7. The proposed development achieves the Objects in Section 1.3 of the EPA Act. Specifically:
 - a. The proposal promotes the orderly and economic use and development of land through the upgrading of a residential dwelling (1.3(c)); and

- b. The proposed development promotes good design and amenity of the built environment through a well-considered contemporary design which is responsive to its setting and context, providing a high quality family home at an appropriate location (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the historical excavation and height of the existing building creating the large majority of the variation. Furthermore, the proposed variation is largely contained within the existing building envelope and will not have any material adverse impacts on the amenity of adjoining properties.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

6. CONCLUSION

This Clause 4.6 written request to vary the height of buildings development standard under Clause 4.3 of NSLEP 2013 has adequately addressed the matters required to be demonstrated under clause 4.6(3) in order for any consent authority to be satisfied that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify contravening the development standard.

We are of the opinion that the consent authority should be satisfied that the proposed development achieves the objectives of Clause 4.3 of NSLEP 2013 and provides sufficient environmental planning grounds to support the variation. On that basis, the request to vary Clause 4.3 of NSLEP 2013 should be upheld.