

**NSLPP MEETING HELD ON 04/09/2024****Attachments:**

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

**ADDRESS:** 47 Kareela Road, Cremorne Point**APPLICATION NO:** DA 81/22**PROPOSAL:** Alterations and additions to an existing detached dwelling including a two storey rear addition and a new garage structure at the rear with a driveway bridge to Kareela Road**PLANS REF:**

Plan No.	Description	Prepared by	Dated
DA2-02c	Site Plan/Roof Plan	Architelle	12 June 2024
DA2-03c	Ground Floor Plan	Architelle	12 June 2024
DA2-04c	Level 1 Floor Plan	Architelle	12 June 2024
DA2-05c	Level 2 Floor Plan	Architelle	12 June 2024
DA2-06c	Garage Level Floor Plan	Architelle	12 June 2024
DA2-07c	East/West Elevations	Architelle	12 June 2024
DA2-08c	South Elevation	Architelle	12 June 2024
DA2-09c	North Elevation	Architelle	12 June 2024
DA2-10c	East/West Elevations Garage	Architelle	12 June 2024

**OWNER:** Richard and Ione Churcher**APPLICANT:** Ione Churcher**AUTHOR:** Report of Robin Tse, Senior Assessment Officer**DATE OF REPORT:** 27 August 2024**DATE LODGED:** 20 March 2022 (and 03 July 2024 [per 38 EP&A Regs 2021])**DATE AMENDED:** 13 June 2024**RECOMMENDATION:** Refusal

## EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing detached dwelling including a two storey rear addition and a new garage structure at the rear with a driveway bridge to Kareela Road at No.47 Kareela Road.

**The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to a development standard by more than 10% and attracted more than 10 submissions by way of objection. A public determination meeting is required in accordance with the Ministers Direction.**

The application was lodged on 22 March 2022 and has been subject to amendments and the provision of additional information since that time. Given this, it is considered appropriate for determination to occur at this point to give both the applicant and the community clarity on this matter.

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

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

The variation to the building height development standard is not supported because the excessive bulk and scale of the proposed garage structure, including those above the LEP maximum building height limit, that would result in adverse impacts on the amenity of the neighbouring property and the public domain. Furthermore, these adverse impacts do not demonstrate public benefit. Therefore, the variation to the LEP building height control is not considered to be well-founded and strict compliance with the standards is necessary.

The proposal fails to comply with the provisions of *SEPP (Biodiversity and Conservation) 2021* because of the loss of significant views as seen from the Foreshores and Waterways area.

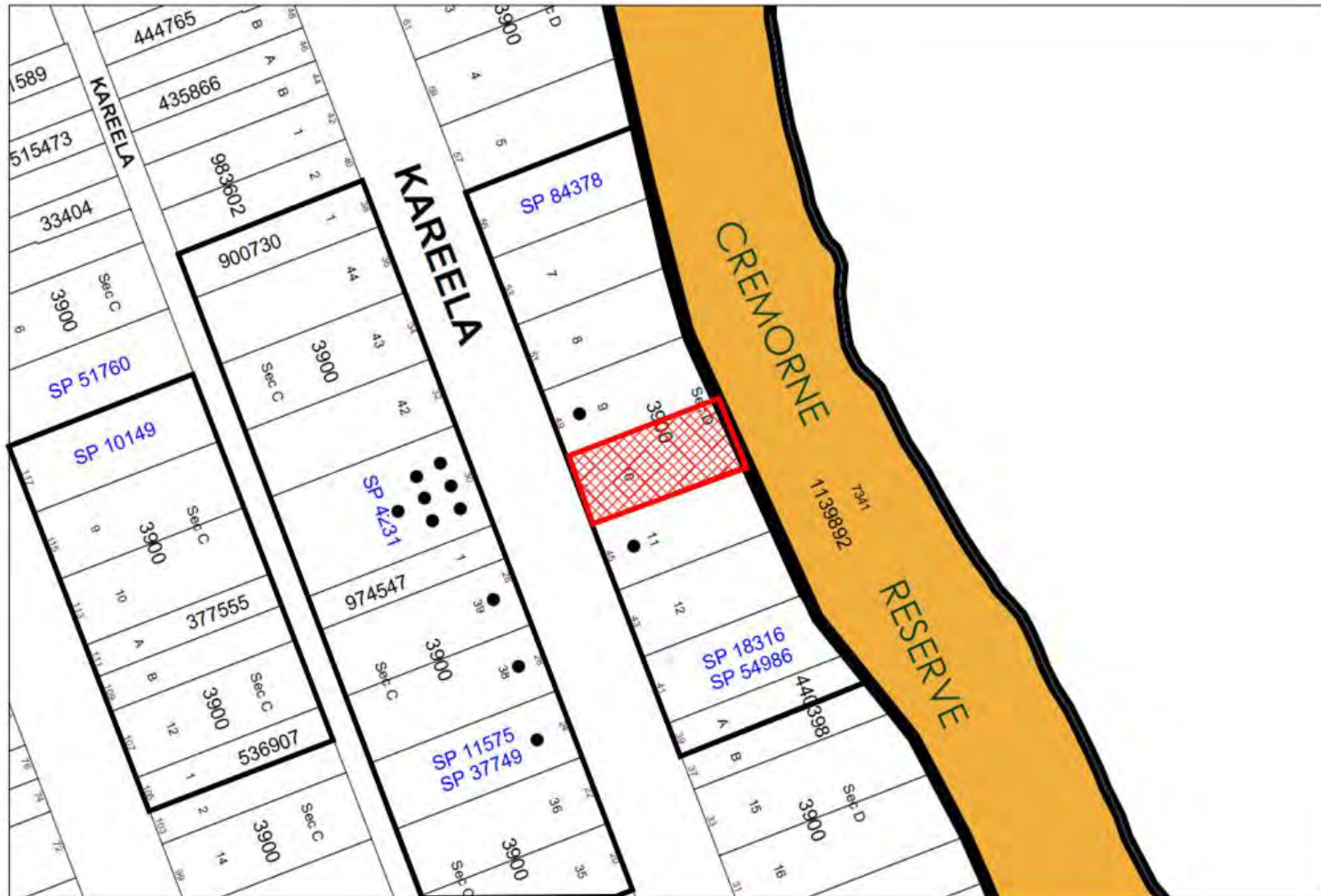
The proposed development is contrary to the objective of the R2 (Low Density Residential) zone because the proposal would have adverse impacts on the amenity of the adjoining properties.



The application was referred to Council's Landscape Development who considered the proposal unsatisfactory because of the likely adverse impacts on an existing Port Jackson fig tree located on Council land adjacent to the subject site.

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

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

LOCATION MAP



 Property/Applicant    ● Submitters - Properties Notified    

## DESCRIPTION OF PROPOSAL

The applicant seeks approval for alterations and additions to an existing two storey detached dwelling including a two storey rear addition to the main dwelling, a garage/studio structure at the rear of the property with a driveway bridge off Kareela Road.

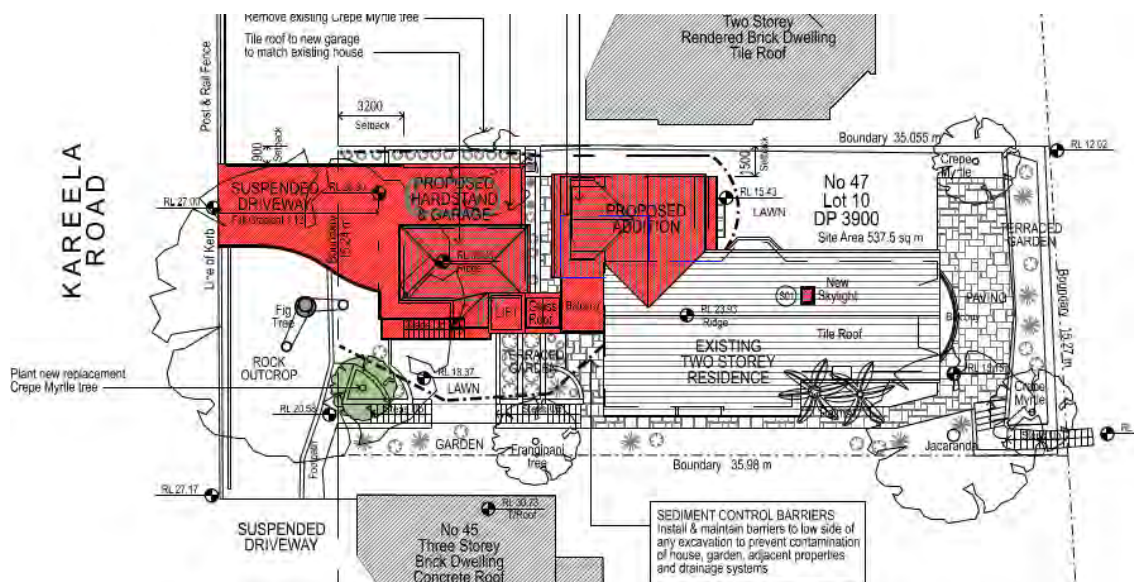
The proposed works, as amended, are summarised below:

### Main Dwelling:

- Demolition of the existing ground level kitchen and the northern walls of an existing Level 1 bedroom at the rear of the main dwelling;
- Construction of a two storey rear addition to accommodate a kitchen and a pantry on the ground level, a new bedroom (Bedroom 3) with an ensuite bathroom on Level 1, and a balcony off the re-configured bedroom 4 on Level 1.

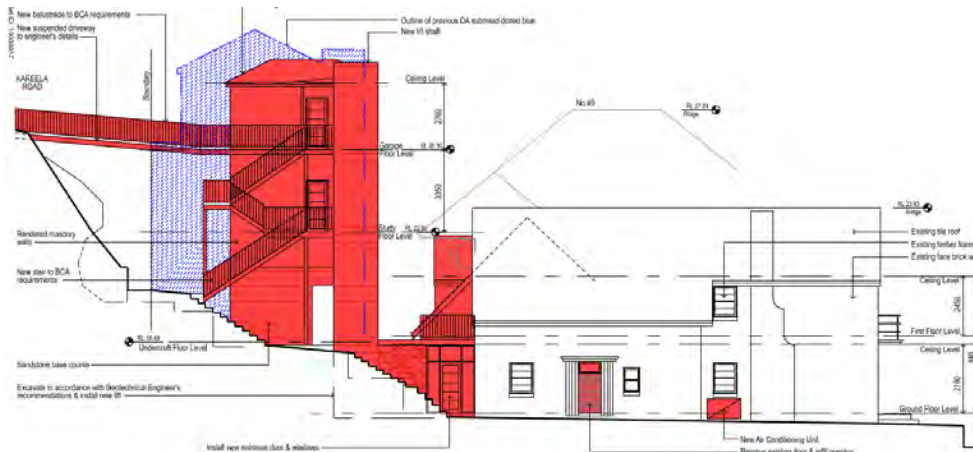
### Garage Structure and Other Works:

- Construction of a garage/car parking structure to accommodate a store room on Level 1, a study on Level 2 and a single garage and a car stand on Level 3 (Kareela Road Level) with a lift and an external staircase; and
- Construction of a new driveway bridge off Kareela Road to provide vehicular access to the garage/carstand

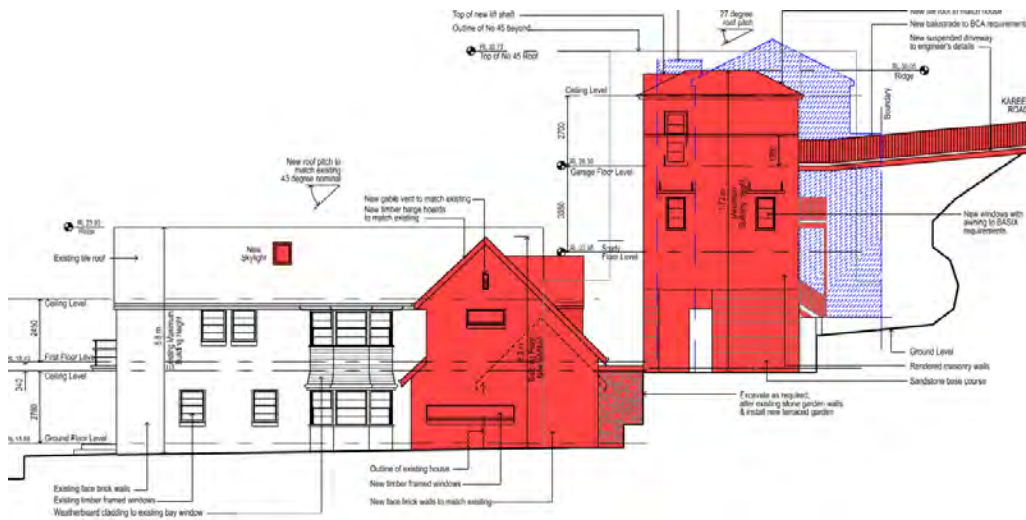


Site Plan

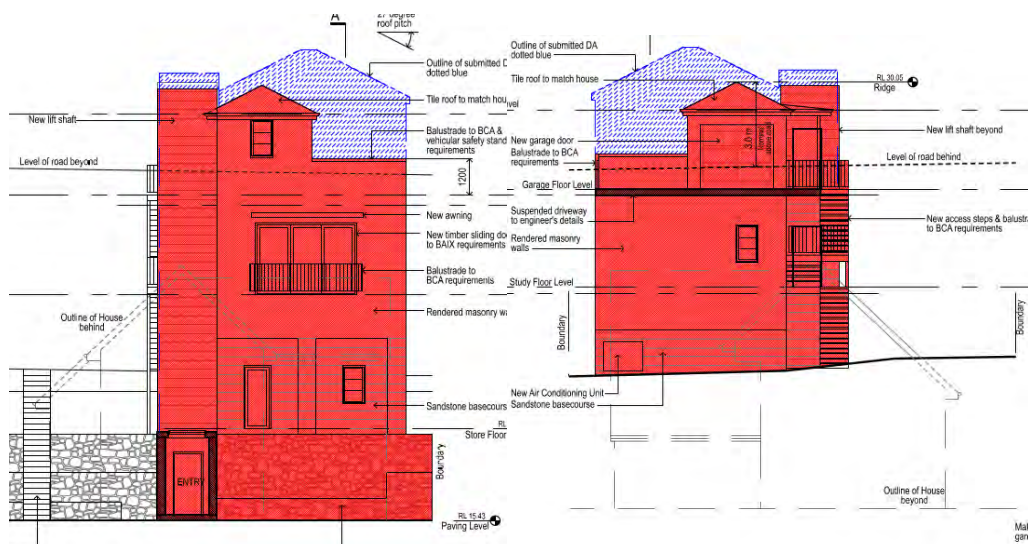




Southern Elevation

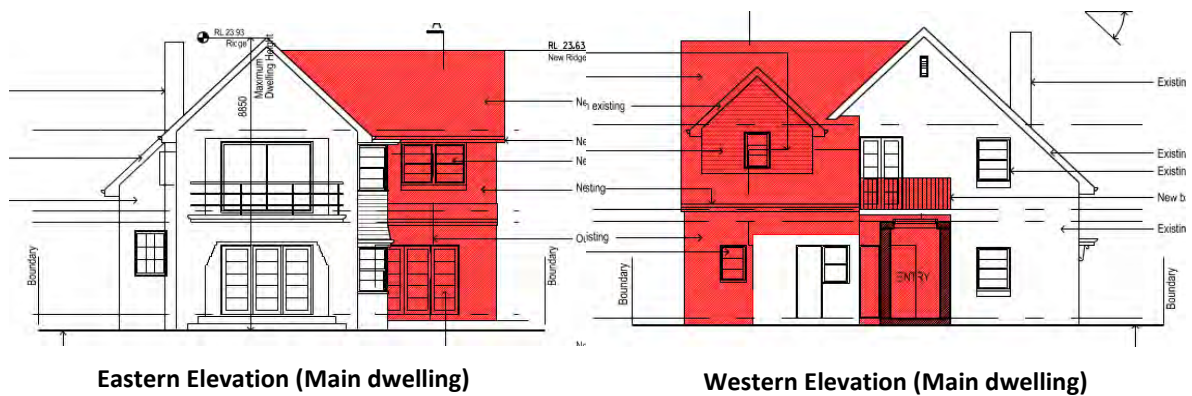


Northern Elevation



Eastern Elevation (Garage Structure)

Western Elevation (Garage Structure)



**Figures 1-7: Proposed development**

The proposed driveway bridge would be located above Council land and owners consent for the lodgement of the subject application by the Director of Engineering and Property Services has been received as part of the DA submission.

### **STATUTORY CONTROLS**

#### *North Sydney LEP 2013*

- Zoning –R2 (Low Density Residential)
- Item of Heritage – No (Contributory Item)
- In Vicinity of Item of Heritage – Yes (Nos 26 & 43 Kareela Road, Cremorne Reserve)
- Conservation Area – Yes (Cremorne Point Conservation Area)
- FSBL - No

#### *Environmental Planning & Assessment Act 1979*

#### *Environmental Planning and Assessment Regulation 2021*

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

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

#### *SEPP (Sustainable Buildings) 2022*

#### Foreshore Development

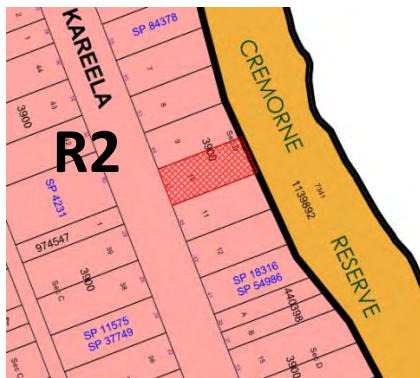
#### Local Development

### **POLICY CONTROLS**

#### NORTH SYDNEY DCP 2013

#### North Sydney Local Infrastructure Contributions Plan 2020

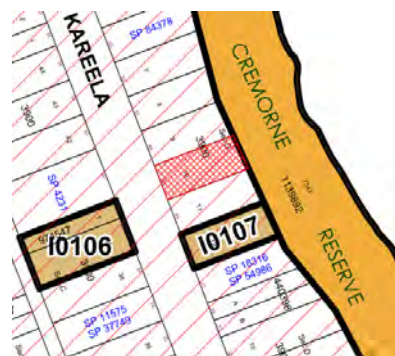
#### Sydney Harbour Foreshores & Waterways Area DCP 2005



**Figure 8: Zoning**



**Figure 9: Building Height**



**Figure 10: Heritage**

## DESCRIPTION OF LOCALITY

The subject site is legally described Lot 10 DP3900, and is known as No. 47 Kareela Road, Cremorne Point. The site is located on the eastern side of Kareela Road with a frontage to Cremorne Reserve to the east and Council land comprising a footpath, vegetations and a rock face along the western boundary of the subject site. The site slopes away from the western property boundary with a fall of approximately 8.6m towards Cremorne Reserve to the east. The site is rectangular in shape and has a total area of 537.5sqm.

Currently occupying the site is a two storey detached dwelling that is identified as a contributory item within Cremorne Point Conservation Area. Pedestrian access to the site is provided by an existing footpath on Council land and no vehicular access from Kareela Road. The dwelling is orientated to the Cremorne Reserve with the rear of the property addressing its street address. This is typical of the majority of properties on the eastern side of Kareela Road.

There are some significant trees along the Council footpath including an established Port Jackson fig tree located on the rock face adjacent to the rear of the subject site. The site also provides a slot view to Mosman Bay from Kareela Road (**Figures 12-13**).





**View from Cremorne Reserve**



**View from Kareela Road (Eastern side)**



**View from Kareela Road (Western side)**

***Figures 11 - 13: Subject site***

The properties along the eastern side of Kareela Road contain primarily dwellings built on sloping sites. Many of these properties provide garages at the rear (western side) of the property via a driveway bridge or a driveway crossing off Kareela Road. It is noted that many of these garage structures were constructed some time ago before the current planning controls.

The adjoining property to the north is a two storey detached dwelling at No. 49 Kareela Road. This property has a garage at the rear off Kareela Road. Pedestrian access to this property is provided via a staircase, integrated into the garage structure, that connects Kareela Road and the

The adjoining property to the south, at No.45 Kareela Road is a detached dwelling with a single garage on the top level of the dwelling and a driveway bridge over Council's footpath providing vehicular access to Kareela Road.

Immediately to the west of the subject site is a strip of Council land between the subject site and the carriageway of Kareela Road. The key features of this strip of land is the cliff face with an approximately 7m fall from Kareela Road and the western (rear) property boundary of the subject site and an established Port Jackson fig tree.

To the west of the site across Kareela Road contains a range of residential developments including detached dwellings (Nos. 26, 28 32 Kareela Road) and an apartment building at No.30 Kareela Road.

To the east of the site is Council's Cremorne Reserve.





**Figure 14: The Locality**



**Figure 15: View from Mosman Bay Wharf**



## RELEVANT HISTORY

### Previous applications

- **3 October 2000** – Development Consent (**D858/00**) was granted under delegated authority for the erection of a new ‘loc-a-bloc’ retaining wall at the rear of 47 Kareela Road adjacent to the public footpath of Cremorne Point Reserve. The wall would replace a collapsed sandstone retaining wall.
- **13 May 2002** – A Section 96 application (**D858/00/2**) seeking modifications to condition C5 from development consent **858/00** to allow regular rather than irregular block sizes to be used in the construction of the approved retaining wall.
- **8 July 2021** – Development application (**D196/21**) for alterations and additions to the existing detached dwelling with a rear addition to the main dwelling, a garage structure and a driveway bridge was rejected from assessment by Council due to the absence of essential documents (including owners consent, compliance diagrams, view analysis, shadow diagrams and excavation details) supporting the DA submission.

### Current Application

- **22 March 2022** – The subject Development Application (**D81/22**) for alterations and additions to the detached dwelling, including internal alterations, a rear addition and a double garage structure with a driveway bridge off Kareela Road was lodged with Council via the Planning Portal.
- **29 March 2022** – The applicant was requested to submit a view loss analysis, better architectural plans and a revised Clause 4.6 written statement seeking variation to the LEP building height development standard.
- **8 to 22 April 2022** – The application was notified to the owners of the adjoining properties and the Cremorne Point Precinct. A total of 12 submissions received.
- **17 June 2022** – A site inspection was carried out by the assessing officers.
- **August 2022** – Inspections of a number of submitters’ properties.
- **29 September 2022** – Comments were provided to the applicant’s planner raising concerns on heritage, planning and landscaping issues relating to the original plans.
- **7 December 2022** – A teleconference was held with the applicant and the applicant’s planner and architect discussing the issues and way forward.
- **February to September 2023** – Preparation of view analysis and further arborist report by the applicant.
- **26 September 2023** – A meeting was held with the applicant on the outstanding issues and submission of plans was requested.
- **24 November 2024** – Draft plans and arborist report were submitted.
- **1 May 2024** – The applicant was contacted and subsequently requested to submit the plans formally for assessment/determination including the need for a further arborist report and other supporting documents.
- **13 June 2024** - The applicant submitted amended plans via the planning portal. The amended proposal involves a revised design for the proposed lift structure and the location of the proposed structure be moved 2m towards the northern property boundary.

- **3 July 2024** – The applicant submitted a further arborist report as part of the amended plans package.

Council excised its rights under cl 38 of the *Environmental Planning and Assessment Regulations 2021* to amend the lodgement date as per the following:

*(2) If the consent authority approves the amendment, the development application is taken to be lodged on the day on which the applicant applied for the amendment if the consent authority—*

*(a) considers the amendment not to be minor, and*

*(b) notifies the applicant, through the NSW planning portal, that the later day applies.*

Subsequently, the application is taken to be lodged on 03 July 2024. The PAN on the NSW Planning Portal has been updated to reflect this amended lodgement date.

- **5 to 19 July 2024** – The amended plans were notified to owners of the adjoining properties and Cremorne Point Precinct. A total of 40 submissions received.
- **26 August 2024** – The applicant submitted a revised Clause 4.6 written request seeking variation to the LEP maximum building height development standard including a montage of the proposed development to demonstrate the likely view impacts for the adjoining properties.

## INTERNAL REFERRALS

### BUILDING

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

### HERITAGE

The application, including the amended plans, has been referred to Council's Conservation Planner who provided the following comments:

*The subject property is a Contributory item located within the Cremorne Point Conservation Area and comprises an Interwar style, exposed brick and tapestry tile dwelling that was constructed sometime in the period between 1933-43.*

*The proposed works are for alterations and additions to the existing dwelling, a new garage with lift and studio below. The amended proposal by Architelle with drawings dated 12 June 2024 is considered to be satisfactory having regard to heritage/conservation, in particular:*

- *The reduction of the garage size from a double garage to a single garage with an open hardstand is supported.*

- *The lowering of the garage floor level is supported, as is the reduction in the height of the garage by 1.2 m as these changes will reduce the visual impact to the street.*
- *The increased setback of the garage from 1.2m to 3.2m will lessen the impact of the bulk to the public domain and is a positive design improvement.*
- *The reduction in the size of the driveway is supported as it will reduce the extent of hardscape.*
- *The increased setback of the studio below the garage from 0m to 3.2m and the reduction in size of the Study will have neutral impact to the dwelling and conservation area.*
- *The additional window to the studio is supported as it introduces visual relief and has a positive impact.*
- *The proposed change of wall material from metal cladding to a rendered finish is supported as this will be characteristic to the conservation area.*
- *The retention of the glazed doors on the ground level east elevation with the mullions is supported as this is the primary façade.*
- *The reduction in paving and proposed Crepe Myrtle tree are supported as this will enhance the garden setting of the dwelling.*

*Clause 5.10 of NSLEP 2013 and Part B Section 13 of NSDCP 2013 are therefore considered to be satisfied having regard to heritage/conservation subject to the application standard heritage conditions and the following site specific requirements should approval be granted for the proposal.*

### **Heritage Requirements**

*The following heritage requirements are to be applied to the proposed development:*

- (a) The new roof tile on the garage and house addition is to match the tapestry style roof tile on the dwelling. Standing seam metal roof sheeting is not to be used.*
- (b) The sandstone to the garage base is to have a rusticated finish, not a sawn finish.*
- (c) The balustrade to the garage structure, and associated driveway and external stair and eastern balcony are to be steel palisade. Match the existing balustrades or painted be timber picket. Glazed balustrades are not approved.*
- (d) The exposed brick on the original Interwar dwelling is not to be rendered and/or painted.*

### **Planning Comment:**

Council Conservation Planner's comments are noted.

Whilst the design of the proposed development is considered to be generally satisfactory on heritage grounds subject to the imposition of appropriate conditions, the proposal is required to satisfy other relevant controls/requirements to warrant an approval of the application.

## **ENGINEERING**

The application, including the amended plans, has been referred to Council's Development Engineers who raised no in-principle objection to some engineering aspects of the proposal (such as driveway design and stormwater management) subject to imposition of appropriate conditions.

It is however noted that a further geotechnical report has not been submitted to support the amended proposal in terms of proposed excavation works associated with the garage structure/lift shaft and the structural adequacy of the cliff face to support the proposed driveway bridge.

Therefore, whilst this may be resolved by additional information, the proposal cannot be supported in its current form.

## **LANDSCAPING**

The application, including the amended plans and associated arborist report has been referred to Council's Landscape Officer who provided the following comments:

*The arborist report has not assessed pruning required for scaffolding as requested, stating that at b) iv. - "If scaffolding is required, further pruning will be required".*

*The arborist has assessed pruning to 500mm clearance from structure, but this would leave it within the 1m building clearances council specifications, so future pruning could be requested and approved, and ongoing council maintenance would then need to be carried out (at council's cost).*

*Pruning cuts shown in marked up photographs do not comply with AS4373, and in order to achieve such compliance, much more extensive pruning would be required than that suggested*

*This tree is regularly maintained by council for view pruning specifications for surrounding residents, being carefully pruned to reduce canopy density while maintaining form and structure. Any pruning should not be more than 10% of the canopy and only involve minor branches.*

*The proposed pruning if permitted, would radically alter the canopy form, and potentially destabilise this tree growing on a rocky outcrop/rock face.*

*It is considered that, despite the amended design, the impact to the subject Port Jackson fig tree is still too great an impact to a mature native public tree in this location.*

### **Planning Comment:**

Council Landscape Development Officer comments are noted and concurred with.

The applicant's submission has not provided sufficient information/evidence that the proposed development, as amended, would have no material impacts on the subject Port Jackson fig tree.

It is therefore considered that the current application does not satisfy the relevant objectives and provisions as contained in North Sydney LEP and DCP.

## **SUBMISSIONS**

### Original proposal

The application was notified to the owners of the adjoining properties and the Cremorne Point Precinct between 8 and 22 April 2022. A total of 12 submissions received including a submission in support of the proposal.

### Amended Proposal

The amended proposal was notified to the owners of the adjoining properties and the Cremorne Point Precinct between 5 and 19 July 2024. A total of 40 submissions received including multiple submissions from some households/individuals. There are three (3) submissions in support of the proposal.

A review of the submissions received from the original and amended proposals has indicated that there are a number of recurrent issues/concerns raised from a number of adjoining properties as summarised below:

### **Immediate adjoining property to the North**

- Excessive building height, bulk and scale and visual dominance of the proposed over-scaled structure.
- Adverse impacts on the streetscape.
- Site unsuitable for off-street parking or large scale development due to site constraints and established vegetation.
- The submitted request seeking variation to the building height development standard is not justified and cannot be supported.
- Significant view loss for neighbouring properties and the public domain (Kareela Road).
- Inadequate building setback of the garage structure from the adjoining property.
- Inadequate setback of the proposed two storey addition resulting excessive bulk and scale and privacy impacts on the indoor and outdoor areas of the adjoining property.
- Inconsistent setback of the proposed garage structure from Kareela Road.
- The loss of visual privacy, views, ventilation and solar access.
- Increased development and the loss of landscaping adjacent to the adjoining property.
- The proposal does not reflect the landform of the subject site with a tall garage structure at the rear.
- Inappropriate/uncharacteristic built form for the desired character of the conservation area.
- Overdevelopment of the subject site with reduced landscaping and additional structures within the site.
- Non-compliance with SEPP (Biodiversity and Conservation) 2021 due to the loss of significant views.
- Adverse heritage impacts on the subject contributory item and the conservation area.

- Adverse impacts on the Port Jackson fig tree due to the encroachment of the proposed works into the structural root zone and the tree protection zone as well as the likely adverse impacts from the extent of pruning of the tree to facilitate the proposed development.
- Objection to the location of new Crepe myrtle tree at the south-eastern corner of the site as it would cause view loss for the adjoining property.
- Inappropriate car parking design for two vehicles.
- Structural adequacy of the existing cliff face to support the proposed driveway bridge.
- The proposed garage structure and driveway bridge would result in major/significant encroachment onto Council's land.
- Misleading/inaccurate information/comments in the submitted documents.
- Insufficient information (view analysis, shadow diagrams, structural engineer's report).
- The submission of an inadequate application should not be permitted.
- Blockage of a public walkway through the rear of the subject site and the adjoining property
- Conflict of interest because the applicant is also a member of the precinct committee.

#### **Nearby properties to the North**

- Uncharacteristic design of the garage structure.
- Privacy impacts on a nearby property to the north.
- Precedent for similar future development.

#### **Immediate adjoining property to the South**

- Excessive height, bulk and scale of the proposed structure.
- The proposed three/five storey scale is inappropriate.
- The proposed garage structure should be smaller in scale.
- The proposal is uncharacteristic within the conservation area.
- Overdevelopment and non-complying landscaped area.
- Adverse impacts on outlook to the fig tree and nearby vegetation/rock face.
- Adverse shadowing impacts on the kitchen window of the adjoining property.
- Adverse impacts on views as seen from properties on the western side of Kareela Road.
- The excessive height of the proposed structure is not justified and the request for the height variation should not be supported.
- Insufficient side boundary setback for the two storey rear addition to the main dwelling.
- Inadequate investigation on the structural support for the proposed driveway bridge.
- Insufficient environmental ground to support the building height variation.
- The proposal is contrary to the SEPP (Biodiversity and Conservation) for development within foreshores and waterways area.

#### **Adjoining property to the west (Immediate across Kareela Road – An Apartment building with multiple units)**

- Significant loss of water views as seen from various apartments and common areas.
- The loss of slot views from Kareela Road.
- Excessive height, bulk and scale.
- Adverse impacts on privacy.
- Uncharacteristic design with excessive driveway.
- Inadequate setback from the street and adjoining property.



- Uncharacteristic building design.
- Adverse impacts on the significance of the conservation area.
- Non-compliance with planning controls including building height limit.
- Reduction in landscaping.
- Adverse impacts on the Port Jackson fig tree.
- Excessive density/overdevelopment with studio and storeroom.
- Adverse impacts on the fig tree with removal of large branches
- The proposal would add a dual occupancy within the site.
- The proposal would result in the loss of on-street parking along Kareela Road.
- Inadequate geotechnical investigation.
- Insufficient environmental grounds.
- Inconsistencies with the zoning objectives.
- The proposal is against the values of many residents and the public.

#### **Nearby properties to the west (across Kareela Road)**

- Concerns about the loss of views as seen from a property on the western side of Kareela Road. Request for the erection of a building height frame/pole.
- Adverse impacts on heritage streetscape.
- Excessive building height.
- Visually dominant and uncharacteristic structure.
- Adverse impacts on privacy of the adjoining properties.
- Overshadowing of the adjoining properties.
- Excessive scale of the proposal.

#### **Submitters from the locality/Neighbourhood**

- Significant loss of water views of Mosman Bay.
- Excessive building height, bulk and scale not in keeping with character of the conservation area.
- Non-complying building height not justified.
- The proposal compromised amenity of neighbouring properties.
- Adverse heritage impacts within a conservation area.
- Overshadowing of adjoining properties.
- Adverse privacy impacts on the adjoining properties.
- Reduction in on-street parking within the neighbourhood.
- Amenity impacts, such as noise, construction traffic/parking, within the locality.
- Excessive parking provision.
- Adverse impacts on the fig tree.
- Impacts on water views.
- Adverse streetscape impacts.
- High rise garage unsuitable in today's context.
- Inadequate building setback.
- Overdevelopment of the site.
- Contrary to the SEPP (Biodiversity and Conservation) for development within foreshores and waterways area as the proposal does not enhance, protect and maintain views to Mosman Bay.

- Council should protect the environment and to maintain the character of Cremorne Point.

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

## **CONSIDERATION**

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

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

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

##### ***Chapter 2 – Vegetation in Non-Rural Areas***

The proposal generally meets the objectives of the *SEPP* because the current application does not propose the clearance of native vegetation, in particular the Port Jackson fig tree at the rear of the subject site or any material impacts on bushland (if any) in the vicinity of the subject site.

As indicated earlier in this report, the applicant has not provided sufficient information/evidence that the proposed development, as amended, would have no material impacts on the Port Jackson fig tree.

Therefore, the proposed development is inconsistent with the following aims of this Chapter as contained under Clause 2.1 of the *SEPP*:

*The aims of this Chapter are—*

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

##### ***Chapter 6 - Water Catchment***

Chapter 6 of the *SEPP* applies to the site.

The site is located in close proximity to the foreshore of Mosman Bay, and is within the Foreshores and Waterways Area, where the foreshores to the east of the site is zoned 'Zone No W8Scenic Water Passive Use'.

The SEE submitted with the original and amended plans did not acknowledge or address the provisions of the *SEPP* which must be considered in the carrying out of development within the catchment.

Consideration has been given to the relevant objectives and provisions of the SEPP, particularly in relation to the relevant heads of consideration for development within Foreshore and Waterways Area as contained Clause 6.28 of the SEPP:

*Clause 6.28 (1)(f):*

*whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*

In addition, Clause 6.28(2) requires the Consent authority to be satisfied with certain criterion before granting consent for a development. It is considered that the following clause is relevant to the consideration of the subject application:

*(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*

- (i) the Foreshores and Waterways Area, and*
- (ii) public places, landmarks and heritage items.*

**Comment:**

***Clause 6.28 (1)(f):***

***whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,***

As indicated earlier in this report and the comments from Council's Landscape Development Officer, the applicant has not adequately addressed the likely impacts of the proposed works on the Port Jackson fig tree at the rear of the subject site. Concerns have been raised by Council's Landscape Development Officer about the extent of pruning of tree branches required for the proposed works (including construction phase) and the likely impacts of such activities on the fig tree.

It is therefore considered that the proposal is inconsistent with the above requirements of the SEPP in terms of protection of native vegetation within the Foreshore and Waterways areas.

***Clause 6.28 (2)(e):***

***the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—***

- (i) the Foreshores and Waterways Area, and***
- (ii) public places, landmarks and heritage items.***

The SEPP requires consideration of view impacts to and from the Foreshore Building Area and public places.

The applicant has not considered the provisions of the *SEPP* and a detailed view analysis for the amended proposal has not been submitted.

Whilst the proposal is not likely to have material view impacts as seen from Mosman Bay (**Figure 15**), the proposed garage structure and new driveway bridge would impact on a slot view of Mosman Bay from Kareela Road along the common property boundary for Nos 47 and 49 Kareela Road towards Mosman Bay.

It is noted that the *SEPP* requires the visual quality of the Foreshores and Waterways Area be enhanced/protected/maintained and the proposal would be contrary to these requirements given the lack of information/evidence to support the proposal.

Therefore, consent cannot be granted for the proposed development in accordance with Clause 6.28(e) of *SEPP (Biodiversity and Conservation) 2021*.

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

The provisions of *SEPP (Resilience and Hazards)* require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The subject site has continued been used for residential purposes and as such is unlikely to contain any contamination; therefore, the requirements of the above *SEPP* have been satisfactorily addressed.

### ***SEPP (Sustainable Buildings) 2022***

The applicant submitted a valid BASIX certificate for the original plans, however, the amended plans are not supported by a revised/updated BASIX Certificate to demonstrate compliance with the requirement of the *SEPP*.

In this regard, the proposal, as amended by the applicant, does not comply with the requirements of Section 27 (1)(a) of the *EP&A Regulations 2021* requiring a development application must be accompanied by a relevant BASIX Certificate.

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

### **1. Permissibility**

The site is located on land zoned R2 (Low Density Residential) under the provisions of the *North Sydney LEP 2013*. The applicant proposes alterations and additions of an existing detached dwelling, which is a permissible form of development in R2 (Low Density Residential) zone with development consent.

It is noted that the proposed garage structure contains a studio and a store room under the garage/car stand. Whilst the studio may be capable to be converted to a separate occupancy, the applicant has not proposed a dual occupancy and a studio can also form part of a single occupancy.

A condition can be imposed requiring the subject site to be used as a single occupancy should approval be granted for the proposed development.

## 2. Objectives of the zone

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

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

The proposal would have adverse impacts on the residential amenity and landscape quality of the locality as detailed throughout this report.

The proposal is therefore contrary to the above zone objectives.

## Part 4 – Principal Development Standards

COMPLIANCE TABLE Principal Development Standards North Sydney Local Environmental Plan 2013				
Site Area –537.5m <sup>2</sup>	Existing	Proposed	Control	Complies
Clause 4.3 – Heights of Building	8.8m	11.72m* 13.75m**	<b>8.5m (max.)</b>	<b>NO</b> (Clause 4.6 written request received)

\* As indicated in the Clause 4.6 written statement

\*\* As measured from the architectural drawings

## 3. Height of Building

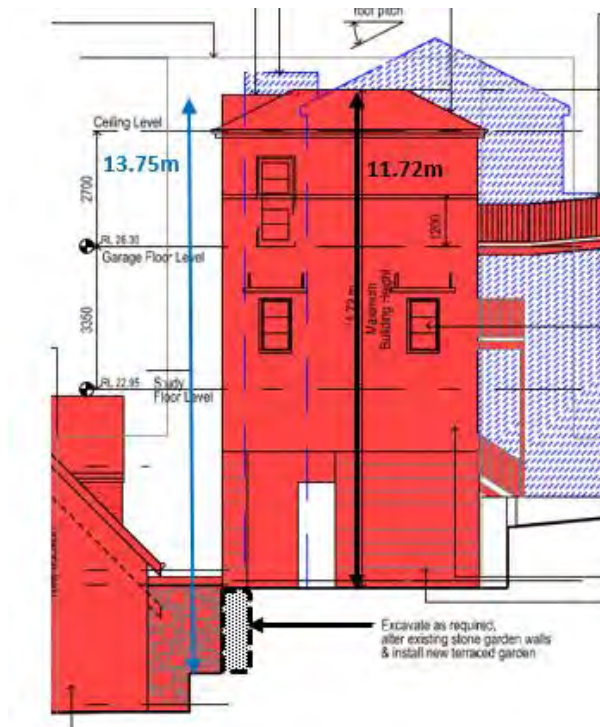
The following objectives for the maximum building height development standard pursuant to clause 4.3 in *NSLEP 2013* are stated below:

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

It is noted that the proposed 2 storey addition at the rear of the main dwelling at 8.2m complies with the LEP maximum building height limit.

However, the proposed garage structure at rear of the subject site would have reach RL30.05. The applicant's Clause 4.6 written statement indicates a maximum building height of this structure at 11.72m.

A review of the survey plan submitted with the DA and the submitted architectural drawings has revealed that the construction of the proposed garage structure would require modifications to the existing stepped garden terrace to the rear of the main dwelling and the construction of new retaining walls on the garden terrace to provide the base for the eastern side of the garage structure. Therefore, it is considered that the height of the new retaining wall on the stepped garden terrace should be included as part of the building height calculation. The maximum building height using a digital measurement software (Objective Trapeze) would be 13.75m as show on **Figure 16** below.



**Figure 16: Maximum building height**



In addition, the submitted survey plan indicates that the level of the garden bed at the base of the eastern building line of the garage structure at RL 16.94. The building height as measured from RL16.94 to the top of the proposed lift shaft (that is approximately 230mm lower than the ridge height of the garage structure at RL29.82) would be 12.88m.

Notwithstanding the building height discrepancies mentioned above, the proposed garage structure fails to comply with the permissible height limit of 8.5m in accordance with clause 4.3 in *NSLEP 2013* and the proposed garage, car stand and the driveway bridge would be above the LEP maximum building height limit.

The applicant has submitted a written request seeking a variation to the LEP maximum building height development standard, including a revised one dated 18 August 2024, pursuant to Clause 4.6 in *NSLEP 2013*.

Consideration has been given to the submitted written request as follows.

#### **4. Clause 4.6 Exception to Development Standards and Applicant's Submission**

##### **Clause 4.6(3) North Sydney LEP 2013**

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

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

Firstly, 4.6(3)(a) requires that:-

- a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

The Clause 4.6 submission lodged with the amended plans fails to adequately address the 'circumstances of the case'. The 'unreasonable/unnecessary' question will be dealt with after examining the objectives of the zone and development standard later in this report.

The applicant's Clause 4.6 dated 18 August 2024 has made the following comment:

*"The height breach is entirely due to the topography of the site (steep escarpment -7.1m drop approximately)."*

This is considered erroneous as the steep topography, being the cliff face along Kareela Road, is located outside the subject site on Council land with the site where the breach occurs being more gently sloped.

In addition, the accuracy of the maximum building height in the Clause 4.6 statement is also questionable as indicated earlier in this report.

Secondly, Clause 4.6(3)(b):-

***'(b) That there are sufficient environmental planning grounds to justify contravening the development standard.'***

The applicant's Clause 4.6 submission states that the 'sufficient environmental planning grounds' to justify the variation to the height of buildings development standard including:-

*"The non-complying garage building as proposed will not have any detrimental effect on the established amenity of the area"*

As indicated in the view assessment later this report, the proposal is likely to cause some loss of water and district views towards Mosman Bay. The impacts on the views resulting from the non-complying building height cannot be justified due to the absence of a detailed view analysis from the applicant for the amended proposal.

The excessive height of the structure together with its proximity to the property boundary also impacts unreasonably on the amenity of the neighbouring property.

In view of the above, it is not considered that there are sufficient environmental planning grounds to justify the contravention of the development standard as proposed.

#### **Clause 4.6(4) North Sydney LEP 2013**

***'Development consent must not be granted for development that contravenes a development standard unless:-***

***(a) the consent authority is satisfied that—***

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and***
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and***

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

\*(with regard to clause 4.6(4)(b) Consent Authorities have assumed concurrence except in certain circumstances)

#### **Clause 4.6(4)(a)(i)**

Firstly, has the applicant's written request adequately addressed the matters required to be demonstrated by subclause (3)?

From the discussion above, it is not considered the current proposal has any unique 'circumstances of the case' to warrant the height variation as proposed. Likewise, no convincing 'environmental planning grounds' have been put forward to justify the extent of the variation as proposed.

Secondly, the consent authority (in this case the Planning Panel) must be satisfied that:-

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

#### **Clause 4.6(4)(a)(ii)**

#### **Objectives of the R2 – Low Density Residential Zone**

It is considered that the following objective of the R2 (Low Density Residential) zone is particularly relevant to the proposed development:

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

It is considered that the proposal does not achieve/maintain a high level of residential amenity for the subject site, the adjoining properties and the locality due to the likely impacts on views as seen from the adjoining properties/public domain and the impacts on landscaping particularly the Port Jackson fig tree.

In view of the above, it is not considered the development satisfactorily meets the objectives of the R2 – Low Density Residential under *NSLEP 2013*.

#### **Objectives of the ‘Height of Buildings’ Development Standard**

A comment on each of the objectives of the building height development standard is provided below:

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.*

#### **The Applicant’s response – (clause 4.6 submission)**

- *The existing dwelling has a non-complying height of approximately 8.8m which is not proposed to be altered. New additions to the existing dwelling are to be lower than the existing dwelling and below the 8.5m maximum height limit.*
- *New work with a non-complying height is limited to the proposed new garage building.*

- *There will be minor adverse impact to views from the neighbouring properties or the public domain due to the proposed development. Views from Kareela Road and properties opposite on the high side of Kareela Road will continue to have access to views of Mosman Bay, both between buildings and over the top of buildings on the subject property. Access to the neighbouring properties to directly assess the view impact, was not provided by the occupants however drones were used to estimate the potential view impact.*
- *The properties on the high side of the street will still have significant views of the water as they look over the development rather than through it. The public views from the street between the properties will remain as the garage structure is located in the middle of the site which allows for the view corridor to remain.*
- *There will be a limited adverse impact to the solar access of neighbouring properties and the public domain due to the non-complying height of the proposed garage.*
- *There will be limited impact on the privacy of neighbouring properties due to the proposed development. New windows in the garage building generally face into the subject site to avoid overlooking into the adjacent properties. The two windows that face the north side boundary are to have obscure glass, and are limited in size to provide reasonable natural light and ventilation to the subject property without having adverse privacy impact to the adjoining property.*
- *The height of the proposed garage is consistent with characteristic development within the vicinity, including garage structures to both adjoining properties (Nos 45 & 49 Kareela Road). The structure will present as a one storey garage at street level.*
- *The proposal will provide two onsite parking spaces thus reducing residents taking up on-street parking.*
- *The height breach is entirely due to the topography of the site (steep escarpment - 7.1m drop approximately).*
- *Due to the definition of "Building Height" being measured from the 'existing ground level' the non-compliance is exacerbated in this circumstance. As the road level is approximately 7.1m higher than the lowest point of the structure, the building height exceedance is inevitable. Building height is defined as:*

*building height (or height of building) means—*

  - (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
  - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*
  - (c) including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*
- *The courts have dealt with the question of height of building on excavated/sloping sites under Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582. In the circumstance of 47 Kareela Road given the unique topography and significant slope, the height breach will be unavoidable, however importantly, majority of the structure will not be perceivable from the street as it is screened by the existing cliff face.*
- *Only a small portion of the structure will be visible from the public domain, being approximately 3m of the structure above the road level which is a single storey structure, being consistent with the objectives of 4.3.*

- *Due to the unique environmental constraints in the locality, access to dwellings on the lower side of Kareela Road is presented with parking platforms that provide access to the dwellings lower down the slope. Given that the only part of the structure perceivable from street level is a single storey element, that's designed to be consistent with the heritage character of the locality and designed to enable adequate view sharing, I am of the view the proposal is consistent with the objectives of the development standard.*

## Assessment

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

The applicant considers that:

*"In the circumstance of 47 Kareela Road given the unique topography and significant slope, the height breach will be unavoidable, however importantly, majority of the structure will not be perceivable from the street as it is screened by the existing cliff face."*

It is noted that it not entirely accurate in the applicant's submission referring to the steep topography and significant slopes affecting the proposed development because the cliff face along Kareella Road is located outside the subject site and is on Council land.

Notwithstanding this, consideration is therefore given to the appropriateness of the proposed garage structure with reference to the other objective for building height as contained in Clause 4.3(1) of *North Sydney LEP 2013*.

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

The amended proposal is not supported by a detailed view analysis in the Clause 4.6 submission. However, the applicant provided the following comments and a photomontage to demonstrate the likely view impacts of the proposal:

- *There will be minor adverse impact to views from the neighbouring properties or the public domain due to the proposed development. Views from Kareela Road and properties opposite on the high side of Kareela Road will continue to have access to views of Mosman Bay, both between buildings and over the top of buildings on the subject property. Access to the neighbouring properties to directly assess the view impact, was not provided by the occupants however drones were used to estimate the potential view impact.*
- *The properties on the high side of the street will still have significant views of the water as they look over the development rather than through it. The public views from the street between the properties will remain as the garage structure is located in the middle of the site which allows for the view corridor to remain.*



**Figure 17: Applicant's photomontage**

**Comment:**

Consideration has been given to the likely view impacts of the proposed development for the adjoining properties to the north and south (Nos 45 and 49 Kareela Road) and to the west (Nos 26, 28 and the apartment building at 30 Kareela Road) of the subject site, based on the principles adopted by Commissioner Roseth of the NSW Land and Environment Court centering around *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* (also known as the Tenacity Test).

The applicant has not provided a detailed view analysis that clearly demonstrate the likely view impacts of the proposed development from the surrounding properties. Inspections were carried out at various neighbouring properties by the assessing officer and the assessment is based on the photographs taken from the inspections.

**No.45 Kareela Road:**

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

It is noted that the proposed garage structure would affect the outlook of this adjoining property from a kitchen window towards the north across side property boundary to nearby vegetation and nearby buildings. Whilst these elements would provide a pleasant outlook, these are not considered to be significant views in accordance with the Tenacity principle.





**Figure 18: View from the kitchen window on the northern elevation of No.45 Kareela Road**

No.49 Kareela Road:

The proposed building elements above the LEP maximum building height limit would have no material impacts on significant water and district views towards the east and south-east as seen from this adjoining property because the proposed garage structure is located at the rear of this adjoining property away from the significant views.

It is noted that the proposed garage structure is likely to obstruct the outlook to the southern sky and across the side boundary towards nearby buildings and vegetation, these elements are not considered to be significant views in accordance with the Tenacity principle.

However, the proximity of the proposed garage structure to this adjoining property would have visual impacts in terms of reduction in the access of natural light and the amount of soft landscaping between the subject site and this adjoining property.



**Figure 19: View of the rear yard of the subject site from the kitchen window of No.49 Kareela Road**

No.26 Kareela Road:

It is noted that the significant views as seen from this adjoining property would be the water/harbour and district/skyline views to the north-east, east and south-east across Mosman Bay.

Therefore, the proposed garage addition would have no material view impacts for these properties because of the north-easterly location of the subject site away from significant water/harbour views and the glimpse of water views as seen from this nearby property on the western side of Kareela Road would likely be retained.



**Figure 20: View from the front terrace of No. 26 Kareela Road**

**No.28 Kareela Road:**

It is noted that the significant views as seen from this adjoining property would be the water/harbour and district views towards across Mosman Bay to the north-east, east and southeast.

The proposed garage structure is likely to have some impacts on the glimpses to the water through existing vegetation, particularly the glimpses of water through the lower canopy of the Port Jackson fig tree. It is considered that the view impacts would be more apparent should there be significant pruning or removal of the fig tree.



**Figure 21: View from the front terrace of No. 28 Kareela Road**

**No.30 Kareela Road:**

The adjoining property located on the western side of Kareela Road is an apartment development constructed on a sloping site with two buildings (eastern and western) in a stepped built form. The eastern building has three storeys with one apartment on each level, all apartments in this building have the living room, kitchen and two bedrooms facing Kareela Road.

The western building is elevated from the eastern building due to the sloping landform of this site and contains six (6) apartments with the main living areas facing the northern and southern side boundaries.

There is a common pedestrian walkway located within the front (Kareela Road) building setback to the main building entrance.

Consideration has been given to the likely view impacts of the proposal for the following apartments:



*Unit 1 (Ground floor - Eastern Building):*

The proposed garage structure would affect the views from all rooms facing Kareela Road within this apartment.

The applicant has submitted a photomontage (**Figure 17**) to demonstrate the view impacts as seen from the ground floor apartment at 30 Kareela Road. The applicant has indicated that the montage was based on photos taken by a drone as access to apartments was not granted.

A review of the photographs taken during the inspection of the Council Officer from this ground floor apartment, the view from the kitchen and bedrooms would be most affected by the proposal. It is also noted that this apartment has limited water views due to the ground floor location of the apartment. The view impacts on the living area would not be as severe due to the angle of view and filtering from existing vegetation.

The bedrooms on the southern side of the building would be more affected by the proposed development because the bedrooms are located directly opposite to the new garage addition as shown in **Figures 23 and 24**.

The impacts would be caused by standing views across the front/boundary of the affected properties.

Given that the view affected would be caused by non-complying building elements involving significant water views, the impacts are considered to be moderate as limited water views are retained as the result.



**Figure 22: View from Unit 1 30 Kareela Road (Kitchen)**



**Figure 23: View from Unit 1 30 Kareela Road (Bedroom)**

*Unit 2 (First Floor – Eastern Building)*

The proposed garage structure would affect the views from this apartment toward Mosman Bay particularly as seen from the balcony and the main bedroom as shown in **Figure 24**.

The impacts would be caused by standing views across the front/boundary of the affected properties.



**Figure 24 :View from Unit 2 30 Kareela Road (Balcony)**

Whilst the view affected would be caused by non-complying building elements involving more significant water views, more water views are retained. Therefore, the impacts are considered to be minor.

*Unit 3 (Second Floor – Eastern Building)*

The proposed garage structure would have some affect the views from this apartment towards Mosman Bay particularly as seen from the balcony as shown in **Figure 25**.

The impacts would be caused by standing views across the front/boundary of the affected properties.



**Figure 25 :View from Unit 3 30 Kareela Road (Balcony)**

Whilst the view affected would be caused by non-complying building elements involving water views, it is however noted the more prominent water views as seen from the subject site would generally be retained. The view impact is considered to be minor for this apartment.

*Unit 5 (Western Building)*

An inspection of this apartment in the elevated western building has a living room balcony that overlooks across the front (eastern) and southern boundaries with primarily district views including glimpses of water views across the subject site and the properties to south along Kareela Road.





**Figure 26: View from Unit 5 30 Kareela Road (Balcony)**

It is noted that the proposed development is likely to be screened by vegetation and the view impacts is likely to be minor as there are glimpses of water views to retained.

Kareela Road (Public Domain):

Whilst there is no view analysis provided by the applicant on the likely view impacts from Kareela Road, a photo taken from the eastern side of Kareela Road shows that a slot view of Mosman Bay containing water, district and skyline view is provided along the common property boundary of the subject site and No. 49 Kareela Road (**Figure 27**).

The applicant indicated in the Clause 4.6 submission that *“the public views from the street between the properties will remain as the garage structure is located in the middle of the site which allows for the view corridor to remain.”*

The proposed development, particularly the building elements above the LEP maximum building height limit would result in adverse view impacts towards Mosman Bay including nearby buildings, vegetation and likely some water views between the existing dwellings.

Furthermore, the proposed garage building is likely to have some impacts on the district and possibly the skyline views. However, the absence of a view analysis does not provide sufficient information to ascertain the extent of view impacts of the proposal.



**Figure 27: View from Kareela Road**

### **Conclusion**

In summary, 'Tenacity' suggests that where 'an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable' and this is considered applicable to the current application. The height variation proposed aggravates a perhaps minor view loss to a more unacceptable level.

In the current proposal the height does not comply by a significant margin 37% minimum and up to 61%.

If the minor/moderate view impacts were caused by a height complying development, there may be reason to support it. However, in the current situation, it is considered the proposal fails the 'reasonableness' test. A complying development would largely retain easterly views.

Therefore, it is considered the proposal fails the Tenacity 4-step view sharing principles.

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

The applicant indicated the following in the Clause 4.6 submission:

*"There will be a limited adverse impact to the solar access of neighbouring properties and the public domain due to the non-complying height of the proposed garage. "*



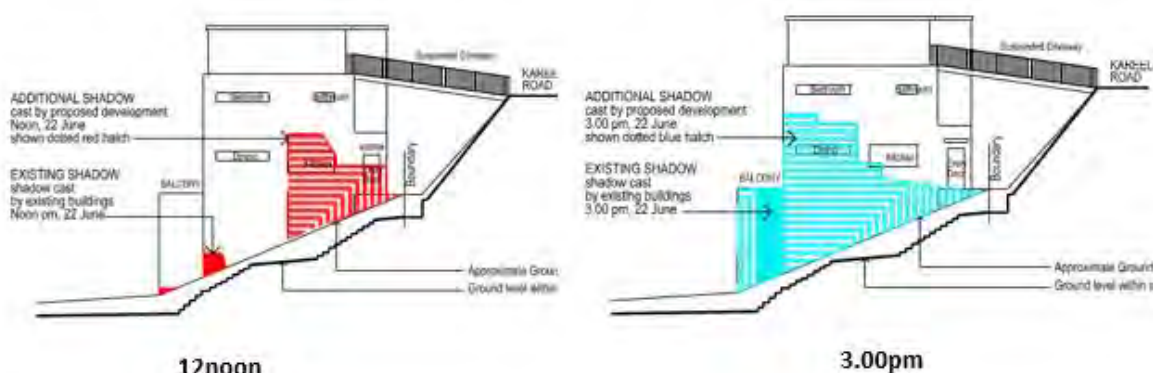
**Comment:**

An examination of the submitted shadow diagrams has indicated that there would be additional shadowing on the windows on the northern elevation of No.45 Kareela Road. The key window on this elevation would be the kitchen window.

Currently all north facing windows of No.45 Kareela Road, including the kitchen window, receive six (6) hours of solar access between 9am and 3pm during mid winter (21 June).

The shadow diagrams submitted by the applicant has indicated that the non-complying building elements would cause shadowing of the kitchen window before 12noon until 3pm during mid-winter. Therefore, the kitchen window is likely to received less than 3 hours of sunlight between 9am and 3pm on 21 June.

This would be contrary to the DCP solar access requirement for a minimum of 3 hours of solar access to windows of main living areas of adjoining residential properties during mid winter.



**Figure 28: Mid-winter shadow diagrams (45 Kareela Road – Northern elevation)**

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

The applicant provided the following comments in the Clause 4.6 submission:

*There will be limited impact on the privacy of neighbouring properties due to the proposed development. New windows in the garage building generally face into the subject site to avoid overlooking into the adjacent properties. The two windows that face the north side boundary are to have obscure glass, and are limited in size to provide reasonable natural light and ventilation to the subject property without having adverse privacy impact to the adjoining property.*

**Comment:**

Some level of overlooking is inevitable for these foreshore properties due to the size of the building/structure and the number of windows to provide light and ventilation. Localised impacts can often be dealt with by privacy screens, high sill windows, curtaining and obscure glazing. It is not considered privacy is an impact that could not be dealt with by appropriate conditions.

- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.*

The applicant provided the following comments in the Clause 4.6 submission:

*“The height of the proposed garage is consistent with characteristic development within the vicinity, including garage structures to both adjoining properties (Nos 45 & 49 Kareela Road).*

*The structure will present as a one storey garage at street level.*

*The proposal will provide two onsite parking spaces thus reducing residents taking up on-street parking.*

*The height breach is entirely due to the topography of the site (steep escarpment -7.1m drop approximately).*

*Due to the definition of “Building Height” being measured from the ‘existing ground level’ the non-compliance is exacerbated in this circumstance. As the road level is approximately 7.1m higher than the lowest point of the structure, the building height exceedance is inevitable. “*

**Comment:**

The height of the proposed garage structure is a design response to facilitate parking from Kareela Road, it has resulted in a free-standing structure that significantly breached the LEP maximum building height limit.

It is noted that the main reason for the proposal is to provide parking and to improve accessibility to the subject site, the proposal for parking in the form of a single garage and a car stand together with a lift shaft has increased the bulk and scale of the structure significantly.

The proposed garage structure is uncharacteristic because it would be significantly larger than other similar garage buildings within the locality. These other garage buildings were generally located closer to the street/cliff face and/or not as bulky visually as compared to the proposed structure.

Despite the top of the proposed garage structure has the appearance of a single storey building as seen from Kareela Road, the height, bulk and scale of the entire free standing structure is uncharacteristic within the locality.

In addition, the accuracy of the building height of the proposed garage structure as contained in the Clause 4.6 statement is also questionable as indicated earlier in this report.

It is considered that the proposal has not satisfactorily addressed objectives (e), (f) and (g) in Clause 4.3 (1) of *North Sydney LEP 2013*.

#### **Clause 4.6 Submission Summary:-**

#### **Is the development Standard 'Unreasonable & Unnecessary'?**

The applicant stated the following in the Clause 4.6 submission:

*In the case of the subject site, the zoning of the land is suitable being zoned R2 Low Density Residential. The surrounding locality of Cremorne Point comprises predominately low density residential areas, with a range of environmental constraints. The proposal has been designed with these constraints in mind, to ensure the resulting land can respond to these constraints. This is demonstrated as:*

- *Adequate view sharing is achieved.*
- *Design of the structure is consistent with the heritage character of the locality.*
- *The proposal ensures the day to day needs of the residents are achieved ensuring adequate vehicle access is provided to the dwelling and providing safe and efficient access to the premises enabling the occupants to age in place.*

*The zoning on the land is reasonable as such this test isn't necessary to be demonstrated. What is demonstrated is that the proposal responds to the zoning constraints in a reasonable manner.*

It is considered that the proposal would have adverse impacts on the retention of significant views as seen from a private property and the public domain. The height, bulk and scale of the proposed free standing structure is also considered to be uncharacteristic. The site was developed and has not had vehicular access in the past.

There are insufficient environmental planning grounds to justify the variation.

The proposed variation would also not be in the public interest as the objectives of both the R2 zoning and height of buildings development standard have not been fully met.

Furthermore, it is questionable whether the applicant's clause 4.6 submission accurately stated the maximum building height of the proposed garage structure as indicated earlier in this report. Even if this were the case, the assessed impacts are significant.

Having regard to the above, the proposal has insufficient reasons to justify that the LEP maximum building height development standard is unreasonable and unnecessary.

#### **Heritage Conservation**

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

As indicated in the comments provided by Council's Conservation Planner earlier in this report, the proposal satisfy clause 5.10 of *NSLEP 2013* subject to the imposition of appropriate conditions.

#### **Earthworks**

The proposal would involve excavation/earthworks within the rear garden to facilitate the construction of the proposed garage structure and the lift shaft.

The applicant has submitted a geotechnical report with the original proposal with various recommendations on the following:

- (a) The appropriate foundation system for the site including design parameters;
- (b) The design of retaining walls and temporary batter slopes during excavation; and
- (c) Construction methods sloping sites.

Consideration has been given to Clause 6.10 of *North Sydney LEP 2013* with the objective that the proposed earthworks would have no detrimental impacts on the surrounding properties.

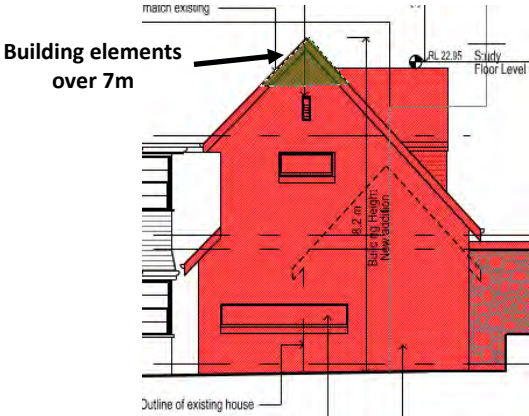
It is noted that the amended proposal involves the lift structure be moved towards the northern property boundary by approximately 2m. Whilst the submission of a further geotechnical report for the amended proposal may address the relevant provisions of Clause 6.10 of the LEP, the absence of such report does not provide the necessary information/evidence to demonstrate that the proposal is satisfactory in this regard.

### NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

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

<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development</b>		
	<i><b>complies</b></i>	<i><b>Comments</b></i>
<b>1.2 Social Amenity</b>		
<b>1.2.1 Population Mix</b> <b>1.2.2 Maintaining Residential Accommodation</b> <b>1.2.3 Affordable Housing</b> <b>1.2.4 Housing for Seniors/ Persons with disability</b>	Yes	There would be no change to the population mix and the level of residential accommodation/affordable housing and housing for seniors/people with disabilities given that the proposal does not involve changes to the single dwelling use of the site.
<b>1.3 Environmental Criteria</b>		
<b>1.3.1 Topography</b>	No	The proposal, as amended, does not involve significant changes to the landform within the subject site. It is noted that excavation would be required for the construction of a lift structure including a lift shaft.  As indicated earlier in this report, the applicant has not submitted a geotechnical report for the revised proposal with recommendations to ensure the structural integrity of the neighbouring properties.
<b>1.3.2 Bushland</b> <b>1.3.4 Foreshore Frontage</b>	No	The site is located within the bushland buffer zone (A) as well as the Foreshores and Waterways Area.  The applicant has not provided sufficient information to demonstrate that the impacts on the proposal on the existing established Port Jackson fig tree would be minimised as indicated in the comments from Council's Landscape Development Officer.
<b>1.3.6 Views</b>	No	As indicated earlier in this report, the proposal would have unacceptable impacts on the water views as seen from the adjoining properties and the public domain.

<p><b>1.3.7 Solar Access</b></p>	<p>No</p>	<p>As indicated earlier in this report, the shadow diagrams submitted by the applicant has indicated that the non-complying building elements would cause shadowing of the kitchen window before 12noon until 3pm during mid-winter. Therefore, the kitchen window is likely to received less than 3 hours of sunlight between 9am and 3pm on 21 June.</p> <p>This would be contrary to the DCP solar access requirement for a minimum of 3 hours of solar access to windows of main living areas of adjoining residential properties during mid winter.</p>
<p><b>1.3.8 Acoustic Privacy</b>  <b>1.3.10 Visual Privacy</b></p>	<p>Acceptable on merit/via condition</p>	<p>As indicated earlier in this report, some level of overlooking is inevitable for these foreshore properties due to the size of the building/structure and the number of windows to provide light and ventilation. Localised impacts can often be dealt with by privacy screens, high sill windows and obscure glazing.</p> <p>It is noted that the obscure glazing can be applied to windows on the northern elevation of the two storey rear addition to the main dwelling to further enhance visual privacy protection for the adjoining property to the north.</p> <p>Similarly, visual privacy protection devices can be applied to the windows on the northern elevation of the proposed garage structure to improve privacy protection for the adjoining properties.</p> <p>There would be a greater separation in excess of 7m between the southern elevation of the proposed garage structure and the adjoining property to the south with planting that enhance privacy protection.</p> <p>The proposed staircase on the southern elevation of the proposed garage structure would cause some privacy impacts particularly for the adjoining property to the south. Given that this staircase would likely be used only at the time when the lift is out of order, the impacts are considered to be minimal.</p> <p>There would be additional noise from the use of the car parking and planting equipment. These impacts are considered to be acceptable given that the property would remain as a residential use and appropriate conditions can be imposed to manage noise from the use of plant equipment if approval be granted for the application.</p>
<p><b>1.4 Quality built form</b></p>		
<p><b>1.4.1 Context</b></p>	<p>No</p>	<p>Whilst the proposed garage structure would have a single storey appearance on the street level, the structure would be free standing with a building height in excess of the LEP maximum building height limit with excessive bulk and scale as seen from the ground level.</p>
<p><b>1.4.2 Subdivision Pattern</b></p>	<p>No change</p>	<p>The proposal would not change the subdivision pattern of the site and the adjoining properties.</p>
<p><b>1.4.3 Streetscape</b></p>	<p>No</p>	<p>Whilst the proposal would have a single storey appearance on Kareela Road, there is insufficient assurance that the Port Jackson fig tree would not be adversely affected by the proposal as indicated earlier in this report.</p>
<p><b>1.4.4 Laneways</b></p>	<p>N/A</p>	<p>The subject site has a rear frontage to Kareela Road and not a laneway, therefore, the DCP controls for laneway do not apply to this application.</p>
<p><b>1.4.5 Siting</b></p>	<p>Yes  No</p>	<p>The proposal does not change the overall siting/orientation of the main dwelling on the site. However, the siting of the proposed garage structure would have adverse impacts on the provision of a slot view above and on the side of the property as required in the DCP character statement.</p>

<p><b>1.4.6 Setback – Side</b></p>	<p>No</p>	<p>A compliance table is provided below:</p> <table border="1" data-bbox="722 315 1433 1196"> <thead> <tr> <th>Control</th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>R2 -1<sup>st</sup> storey (Up to 4m) - 900m Main Dwelling: - Nth elevation - Sth elevation Garage Structure: - Nth elevation - Sth elevation</td> <td>3.5m 2.4m N/A N/A</td> <td>1.5m 2.4m 900mm 4.1m</td> <td>Yes Yes Yes Yes</td> </tr> <tr> <td>R2 – 2<sup>nd</sup> storey (up to 7m) – 1.5m Main Dwelling: - Nth elevation - Sth elevation Garage Structure: - Nth elevation - Sth elevation</td> <td>3.5m 2.1m N/A N/A</td> <td>1.5m 2.4m 900mm 4.1m</td> <td>Yes Yes No Yes</td> </tr> <tr> <td>R2 – 3<sup>rd</sup> storey (Greater than 7m) - 2.5m Main Dwelling: - Nth elevation - Sth elevation Garage Structure: - Nth elevation - Sth elevation</td> <td>6.3m 5.1m N/A N/A</td> <td>1.5m 5.1m 900mm 4.1m</td> <td>No Yes No Yes</td> </tr> </tbody> </table> <p>Main dwelling:</p> <p>The proposed two storey rear addition does not comply with the DCP 2.5m side boundary setback requirements for building elements over 7m. This variation of considered to be acceptable because the proposed rear addition generally complies with the DCP setback requirements with the exception of the top section of the gable on the northern elevation of the proposed addition as illustrated below:</p>  <p><b>Figure 27: Northern elevation of the proposed addition to the main dwelling</b></p> <p>If this matter were the only issue, it might be addressed by a modified roof form.</p>	Control	Existing	Proposed	Compliance	R2 -1 <sup>st</sup> storey (Up to 4m) - 900m Main Dwelling: - Nth elevation - Sth elevation Garage Structure: - Nth elevation - Sth elevation	3.5m 2.4m N/A N/A	1.5m 2.4m 900mm 4.1m	Yes Yes Yes Yes	R2 – 2 <sup>nd</sup> storey (up to 7m) – 1.5m Main Dwelling: - Nth elevation - Sth elevation Garage Structure: - Nth elevation - Sth elevation	3.5m 2.1m N/A N/A	1.5m 2.4m 900mm 4.1m	Yes Yes No Yes	R2 – 3 <sup>rd</sup> storey (Greater than 7m) - 2.5m Main Dwelling: - Nth elevation - Sth elevation Garage Structure: - Nth elevation - Sth elevation	6.3m 5.1m N/A N/A	1.5m 5.1m 900mm 4.1m	No Yes No Yes
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		<p>Garage Structure:</p> <p>The proposed structure would provide a 900mm setback from the northern property boundary and over 65% of the northern wall of this new structure would breach the DCP side boundary setback control.</p> <p>Given the proximity of this proposed structure to the dwelling within the adjoining property and the building height, bulk and scale of this structure as seen from the neighbouring property, the proposed variation is not supported.</p>
<b>P1 Front setback</b>	No change	The proposed works would not change the building setback from the front (Cremorne Reserve) property boundary.
<b>P5 Rear Setback – Rear</b>	Yes	The rear boundary (western) setback of the proposed 2 storey rear addition is acceptable given that it would be generally consistent with the rear boundary setback of adjoining properties.
	No	The proposed garage structure would provide a rear property boundary setback of 3.1m. It is also noted that there are a number of similar garage buildings in the vicinity of the subject site. However, the building height, bulk and scale of the proposed structure has resulted in an inappropriate development at the rear of the subject site.
<b>1.4.7 Form Massing Scale</b> <b>1.4.8 Built Form Character</b>	Yes/ No	<p>No objection is raised to the form, bulk and scale of the proposed rear addition to the main dwelling.</p> <p>However, the proposed garage structure is not supported because of the non-complying building height, bulk and scale and the likely amenity impacts on the surrounding properties and the locality.</p> <p>The proposed garage structure is uncharacteristic because it would be significantly larger than other similar garage buildings within the locality and would be visually dominant due to the height, bulk and scale of the proposed structure with a free standing design.</p>
<b>1.4.9 Dwelling Entry</b>	Yes	<p>The entrance of the main dwelling is currently not highly visible from the public domain due to the sloping landform.</p> <p>The proposed garage structure, incorporating a pedestrian entrance for the subject site via the new lift, would provide a more accessible entrance for the residents and visitors of the property.</p>
<b>1.4.10 Roofs</b>	Yes	The proposed pitched/hipped roof form for the proposed rear addition to the main dwelling and the garage on the top of the lift structure is considered to be acceptable.
<b>1.4.12 Materials</b>	Yes (via condition)	Council’s Conservation Planner has recommended a condition requiring the submission of a schedule of external materials and colours should approval is granted for the application.
<b>1.5 Quality Urban Environment</b>		
<b>1.5.3 Safety and Security</b>	Yes	The proposal, as amended by the applicant, should improve safety and security for the residents of the subject site with the provision of a direct lift access to the street level.

<p><b>1.5.4 Vehicle Access and Parking</b></p>	<p>Yes</p>	<p>Council’s Development Engineer has raised no objection to the proposed vehicular access via a driveway bridge off Kareela Road.</p> <p>Furthermore, the provision of on-site parking for two cars (being a single garage and a car stand) on top of the proposed garage structure complies with DCP’s maximum parking requirement.</p>																
<p><b>1.5.5 Site Coverage</b> <b>1.5.6 Landscape Area</b></p>	<p>No Yes</p>	<p>A compliance table is provided below:</p> <table border="1" data-bbox="788 517 1366 846"> <thead> <tr> <th>Site Area: 537.5sqm</th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site coverage (40% max.)</td> <td>148sqm (28%)</td> <td>217.8sqm (40.5%)</td> <td>No</td> </tr> <tr> <td>Landscaped area (40% min.)</td> <td>262sqm (48%)</td> <td>236.1sqm (44%)</td> <td>Yes</td> </tr> <tr> <td>Unbuilt-upon area (20% max.)</td> <td>127.5sqm (24%)</td> <td>83.6sqm (15.5%)</td> <td>Yes</td> </tr> </tbody> </table> <p>The proposal would cause a minor non-compliance with the DCP’s maximum site coverage requirement by 0.5%. Generally, a minor site coverage variation would have no significant adverse impacts on the overall density and landscape quality of a site.</p> <p>The applicant has also proposed conversion of some paved areas to soft landscaping to maintain compliance with the DCP requirements.</p> <p>The proposal is generally compliant with DCP’s site coverage, landscaped area and unbuilt upon area, however, the applicant has not submitted a detailed landscaped plan to demonstrate how the landscape quality of the site is to be maintained.</p>	Site Area: 537.5sqm	Existing	Proposed	Compliance	Site coverage (40% max.)	148sqm (28%)	217.8sqm (40.5%)	No	Landscaped area (40% min.)	262sqm (48%)	236.1sqm (44%)	Yes	Unbuilt-upon area (20% max.)	127.5sqm (24%)	83.6sqm (15.5%)	Yes
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Unbuilt-upon area (20% max.)	127.5sqm (24%)	83.6sqm (15.5%)	Yes															
<p><b>1.5.8 Landscaping</b></p>	<p>No</p>	<p>The applicant has not submitted a landscape plan to demonstrate the landscaping treatments for the subject site, particularly the area affected by the proposed works.</p>																
<p><b>1.5.9 Front Gardens</b></p>	<p>No change</p>	<p>There would be no change to the front garden facing Cremorne Reserve given that no works have been proposed in front of the front (eastern) building line.</p>																
<p><b>1.5.13 Garbage Storage</b></p>	<p>Yes (via condition)</p>	<p>A standard condition requiring adequate provision of storage for general waste and recycling materials can be imposed should consent be granted for the subject application.</p>																
<p><b>1.6 Efficient Use of Resources</b></p>																		
<p><b>1.6.1 Energy Efficiency</b></p>	<p>No</p>	<p>As indicated earlier in this report, the applicant has not submitted a revised BASIX certificate to demonstrate that the submitted amended plans comply with the requirements of SEPP (Sustainable Building) 2022.</p>																

**South Cremorne Planning Area (Cremorne Point Conservation Area) – Part C of NSDCP 2013**

***Cremorne Point Conservation Area***

Consideration has been given to Part C of NSDCP 2013, in particular Section 6 of the Character Statement for the South Cremorne Planning Area and Section 6.4 for the Cremorne Point Conservation Area.



The proposal is considered to be contrary to DCP character statement particularly P2 in Section 6.4.6 in relation to the siting of the building to maintain slot views above and to the side of the harbour due to the building height and the bulk and scale of the proposed garage structure.

#### LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

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

Applicable Contribution Type		
S7.12 contribution detail	Development cost:	\$990,000.00
(payment amount subject to indexing at time of payment)	Contribution:	\$9,990.00

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

#### ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

#### ENVIRONMENTAL APPRAISAL

#### CONSIDERED

1.	Statutory Controls	Yes
2.	Policy Controls	Yes
3.	Design in relation to existing building and natural environment	Yes
4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	N/A
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant S4.15 considerations of <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	Yes

## **SUBMITTERS CONCERNS**

The application, the original and amended proposals, has been notified to adjoining properties and the Cremorne Point. Council received a total of 52 submissions from two (2) rounds of notifications where a range of concerns/issues were raised from submitters.

The issues relating to non-compliance with the planning controls, amenity impacts (view loss, overshadowing, privacy impacts), impacts on the Port Jackson fig tree, built form, building setbacks, heritage and engineering matters have been addressed throughout this report.

Other specific concerns/matters raised by submitters are addressed below:

- ***Overdevelopment and non-complying landscaped area.***

### **Comment:**

As indicated earlier in this report, the proposal is generally compliant with DCP's site coverage, landscaped area and unbuilt upon area, however, the applicant has not submitted a detailed landscaped plan to demonstrate how the landscape quality of the site is to be maintained.

- ***Inadequate investigation on the structural support for the proposed driveway bridge.***

### **Comment:**

The submission of a geotechnical/structural engineering report would provide the necessary information and recommendations to ensure structural integrity of the rock face.

- ***The proposal would add a dual occupancy within the site.***

An attached dual occupancy is a form of development permissible within a R2 (Low Density Residential) zone. The applicant has not proposed a dual occupancy and a studio can also form part of a single occupancy.

A condition can be imposed requiring the subject site to be used as a single occupancy should approval be granted for the proposed development.

- ***Reduction in on-street parking within the neighbourhood.***
- ***Amenity impacts, such as noise, construction traffic/parking, within the locality.***

The proposal for two parking spaces on site should offset the loss of on-street parking along Kareela Road.

Appropriate conditions can be imposed for the management of construction activities should approval be granted for this application.

- ***Misleading/inaccurate information/comments in the submitted documents.***
- ***Insufficient information (view analysis, shadow diagrams, structural engineer's report).***
- ***The submission of an inadequate application should not be permitted.***

This assessment report has considered the adequacy and examined the accuracy of certain key development parameters/impacts (such as building height and view impacts).

The need for additional document/information (such as geotechnical report, landscape plan, detailed view analysis, updated BASIX certificate) has also been identified.

Council has the obligation to consider any development application in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and its regulations.

- ***Blockage of a public walkway through the rear of the subject site and the adjoining property***
- ***Conflict of interest because the applicant is also a member of the precinct committee.***

These matters, whilst not directly linked to the merits of this application, have been referred to the relevant groups/officers in Council for consideration/actions. It is noted that survey information indicates the pathway in question straddles the boundary with a significant portion located on 47 Kareela Road. It appears to be no public right-of-way that allows access over private land associated with this pathway.

#### **PUBLIC INTEREST**

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

#### **SUITABILITY OF THE SITE**

The proposal would be located in a R2 (Low Density Residential) where alterations and additions to a detached dwelling are a permissible form of development. The proposal is considered to be unsuitable for the site having regard to the merits of the proposal as described in the above report.

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

The subject application, including the amended proposal, was notified to adjoining properties and the Cremorne Point Precinct for 14 days where a number of issues were raised that have been addressed throughout this report.

#### **CONCLUSION**

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

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

The variation to the building height development standard is not supported because the excessive bulk and scale of the proposed garage structure, including those above the LEP maximum building height limit, that would result in adverse impacts on the amenity of the neighbouring property and the public domain. Furthermore, these adverse impacts do not demonstrate public benefit. Therefore, the variation to the LEP building height control is not considered to be well-founded and strict compliance with the standards is necessary.

The proposal fails to comply with the provisions of *SEPP (Biodiversity and Conservation) 2021* because of the loss of significant views as seen from the Foreshores and Waterways area.

The proposed development is contrary to the objective of the R2 (Low Density Residential) zone because the proposal would have adverse impacts on the amenity of the adjoining properties.

The application was referred to Council's Landscape Development who considered the proposal unsatisfactory because of the likely adverse impacts on an existing Port Jackson fig tree located on Council land adjacent to the subject site.

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

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

## **RECOMMENDATION**

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

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, resolve to refuse development consent to Development Application No. 81/22 for alterations and additions to a detached dwelling on land at No.47 Kareela Road, Cremorne Point, for the following reasons:-

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

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

#### **Particulars:**

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed garage structure breaches the 8.5m maximum height of building development standard specified in clause 4.3(2) in *NSLEP 2013*.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the written request submitted with the application seeking a variation to the maximum height of building development standard has inadequately addressed the matters required to be addressed in subclause (3) in clause 4.6 in *NSLEP 2013*.

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

## **2. Inappropriate context, excessive height, bulk and scale and built form**

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

### **Particulars**

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is inappropriate to its context being a free standing structure with excessive building height bulk and scale as seen from the ground level is contrary to aim 1.2 (2)(a) in *NSLEP 2013* as well as section 1.4.1 in Part B of *NSDCP 2013*.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.4.5 in Part B of *NSDCP 2013* because the siting of the proposed garage structure that will result in the loss of slot views from Kareela Road to Mosman Bay.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development contrary to Section 1.4.6 in Part B of *NSDCP 2013* because the non-complying building setback from the northern property boundary and the adverse impacts on the adjoining properties.
- (iv) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.4.7 and 1.4.8 in Part B of *NSDCP 2013* because the proposed garage structure will be excessive in bulk and scale and will be significantly larger than characteristic buildings.

## **3. Unacceptable view impacts**

The proposed garage structure will cause unacceptable impacts on significant views as seen from adjoining properties and the public domain.

### Particulars

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that consent cannot be granted for the proposed development because the proposal is contrary to Clause 6.28(2) of *SEPP (Biodiversity and Conservation) 2021* because the proposed development will cause the loss of significant views within the Foreshore and Waterways area and fails to enhance/protect/maintain views and vista.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development will cause the loss of significant views and is contrary to aim 1.2 (2)(a) and (c)(i) in *NSLEP 2013*.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of *NSLEP 2013* because of the proposed development will cause adverse view impacts and does not promote a high level of residential amenity.
- (iv) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.3.6 in Part B of *NSDCP 2013* because the proposal will cause the loss of significant views as seen from the adjoining properties.
- (v) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposal is contrary to P2 in Section 6.4.6 in Part C of *NSDCP 2013* because the siting of the proposed garage structure will not retain the slot view to Mosman Bay.

#### 4. Adverse Shadowing impacts

The proposed garage structure will cause adverse shadowing impacts on the adjoining property to the south at No.45 Kareela Road.

### Particulars

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development will cause adverse shadowing impacts on an adjoining property and is contrary to aim 1.2 (2)(a) and (c)(i) in *NSLEP*.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of *NSLEP 2013* because of the proposed development will cause adverse shadowing impacts and does not promote a high level of residential amenity.

- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.3.7 in Part B of NSDCP 2013 because the proposal will cause excessive overshadowing of the adjoining properties.

## 5. Landscaping

The proposed development is unacceptable because the proposal is unsatisfactory and fails to address the concerns raised by Council's Landscape Officer particularly the likely impacts on the Port Jackson fig tree on Council land adjacent to the subject site.

### Particulars

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Clause 2.1 and Clause 6.28(1)(f) of *SEPP (Biodiversity and Conservation) 2021* because of the likely adverse impacts on native vegetation in non-rural areas and within the Foreshore and Waterways area.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to aim 1.2 (2)(e) in *NSLEP 2013* as well as section 1.5.7 in Part B of NSDCP 2013.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of *NSLEP 2013* because of the proposed landscape treatments do not promote a high level of residential amenity.
- (iv) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.5.7 in Part B of NSDCP 2013 because the proposal does not achieve a landscaping outcome that will clearly satisfy the DCP objectives and provisions for landscaping.

## 6. Insufficient information

The application has failed to provide the following information to facilitate the assessment of the application:

- (a) A detailed view analysis.
- (b) A detailed landscape plan.
- (c) A revised geotechnical report/structural engineering report.
- (d) An updated BASIX Certificate.

**7. Public Interest**

The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(e) of the *Environmental Planning and Assessment Act 1979* in that the approval of the proposed development is not in public interest because of the excessive building height, bulk and scale of the garage structure and the associated adverse impacts on the residential amenity of the locality.

**ROBIN TSE**  
**SENIOR ASSESSMENT OFFICER**

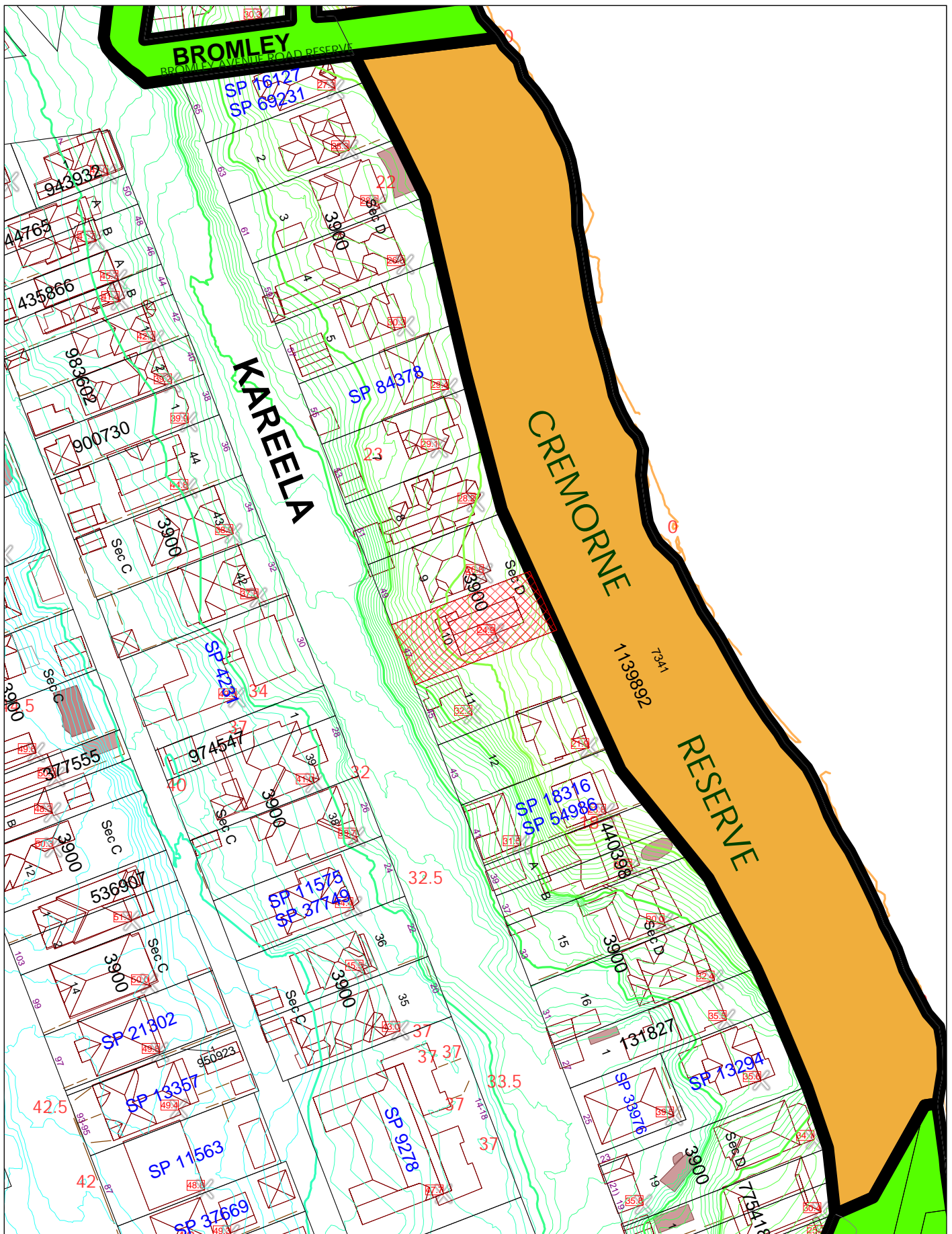
**ISOBELLA LUCIC**  
**TEAM LEADER ASSESSMENTS**

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

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**North Sydney Council**

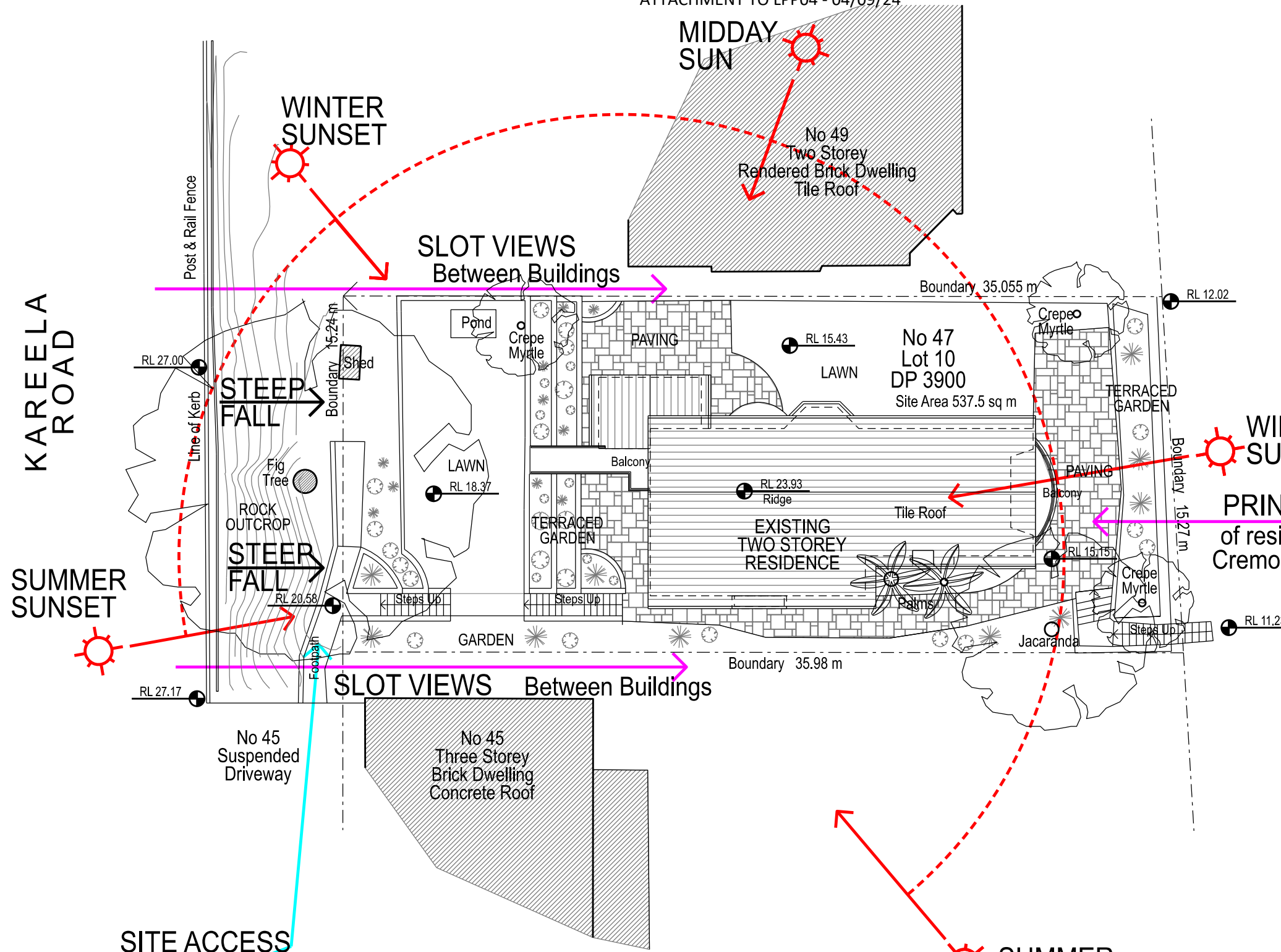
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Scale: 1:1200 approx.



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KAREELA ROAD

SUMMER SUNSET

WINTER SUNSET

MIDDAY SUN

SUMMER SUNRISE

WINTER SUNRISE

COOLING SUMMER BREEZES

COOLING SUMMER BREEZES

SITE ACCESS  
Pedestrian Only  
Remote via  
Council footpath

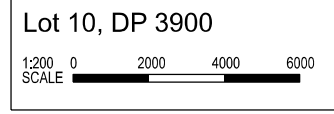
No 45  
Suspended  
Driveway

No 45  
Three Storey  
Brick Dwelling  
Concrete Roof

No 49  
Two Storey  
Rendered Brick Dwelling  
Tile Roof

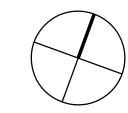
No 47  
Lot 10  
DP 3900  
Site Area 537.5 sq m

EXISTING  
TWO STOREY  
RESIDENCE



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CLIENT I & R Churcher  
PROJECT 2016-64  
DRAWING DA2-01c



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email ms.architelle@gmail.com  
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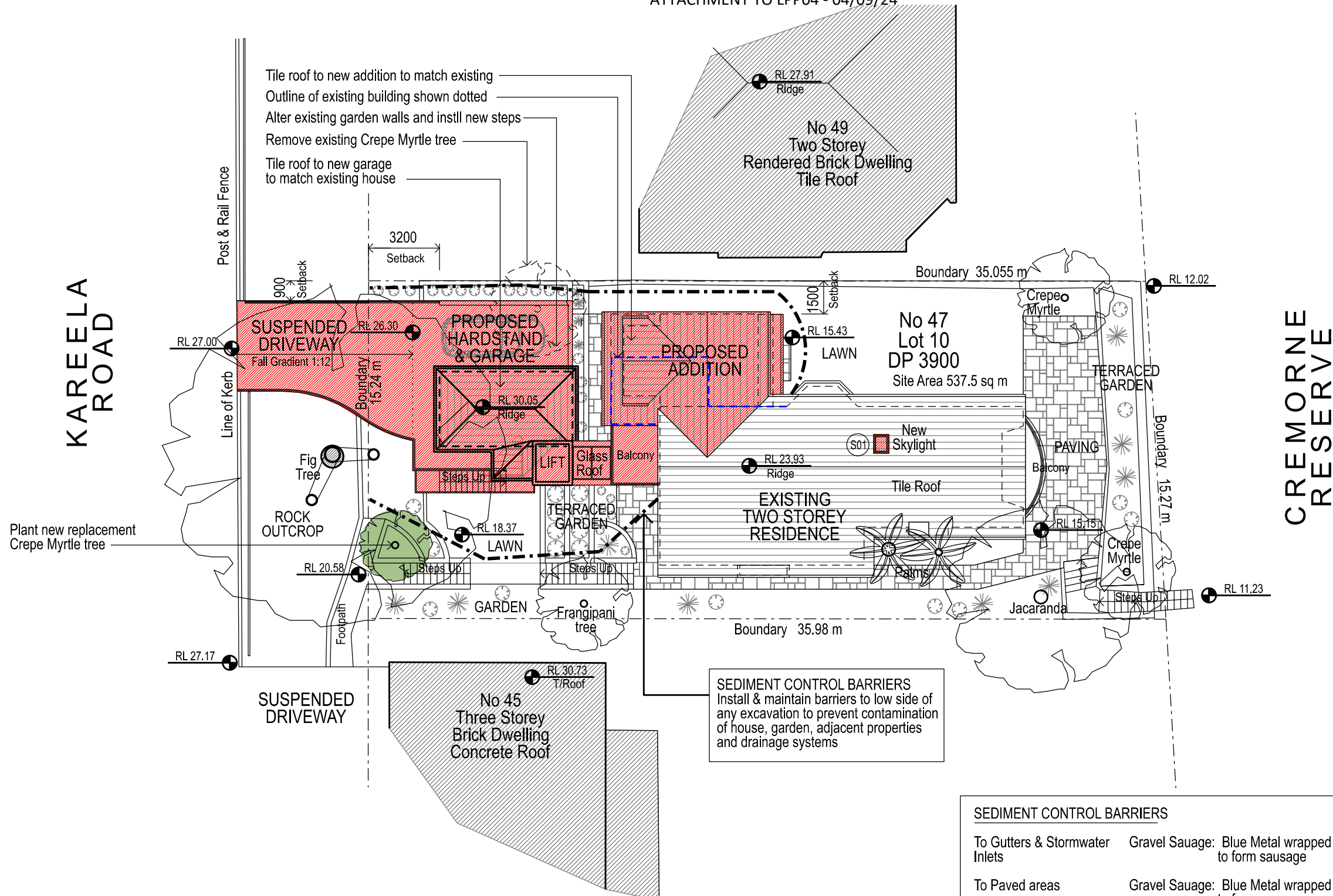
**SITE ANALYSIS PLAN  
Existing Layout**

*Development Application*

**47 Kareela Road  
Cremorne Point NSW**



Document Set ID: 10038617  
Version: 1, Version Date: 13/06/2024



BASIX REQUIREMENTS	
BASIX Certificate No A414351 Date Issued 21 June 2021	
All new work to be in accordance with the requirements of the Certificate	
<b>INSULATION</b>	
Framed Walls	R1.3 minimum
Brick Veneer	R1.16 minimum
Cavity Brick	Nil
Roof	Sarking under all new & altered roof tiles
Ceilings	R3.0 minimum
Flat roof/ceiling	50mm foil backed poly board with R0.93 insulation
Suspended Floor	R0.60 minimum
<b>WINDOWS &amp; SKYLIGHTS</b>	
New windows to be provided with frame, glass & shading as outlined in the Certificate	
<b>HOT WATER UNIT</b>	
To be gas instantaneous in accordance with certificate	

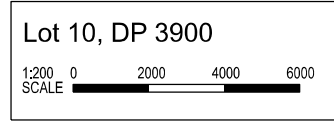
## SITE PLAN / ROOF PLAN Erosion & Sediment Control Plan

Development Application

47 Kareela Road  
Cremorne Point NSW

SEDIMENT CONTROL BARRIERS	
To Gutters & Stormwater Inlets	Gravel Sauge: Blue Metal wrapped in geotextile fabric to form sausage
To Paved areas	Gravel Sauge: Blue Metal wrapped in geotextile fabric to form sausage
To Lawn, Garden & areas	Sediment Fence: Star pickets with geotextile filter fabric trenched into soil, with drainage channel excavated along the high side of the sediment fence
Topsoil Stockpile	Install sediment fence (as above) to low side of any stockpiles. Install minimum 300mm deep diversion drain to high side of stockpile Protect the stockpile with a waterproof covering

- SITE MANAGEMENT**
- Control any flow or water by diverting clean water away from disturbed areas of the site
  - Ensure any contaminated/sediment laden water is treated/filtered prior to leaving the site
  - Minimise disturbance and rehabilitate/revegetate areas as soon as possible
  - Maintain erosion and sediment controls by cleaning and repairing as required.
  - Stockpile topsoil for reuse where possible



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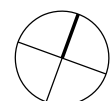
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PROJECT 2016-64  
DRAWING DA2-02c

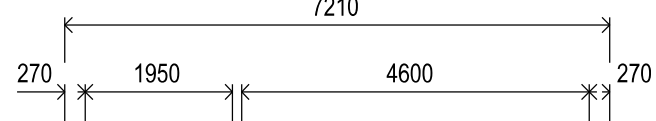
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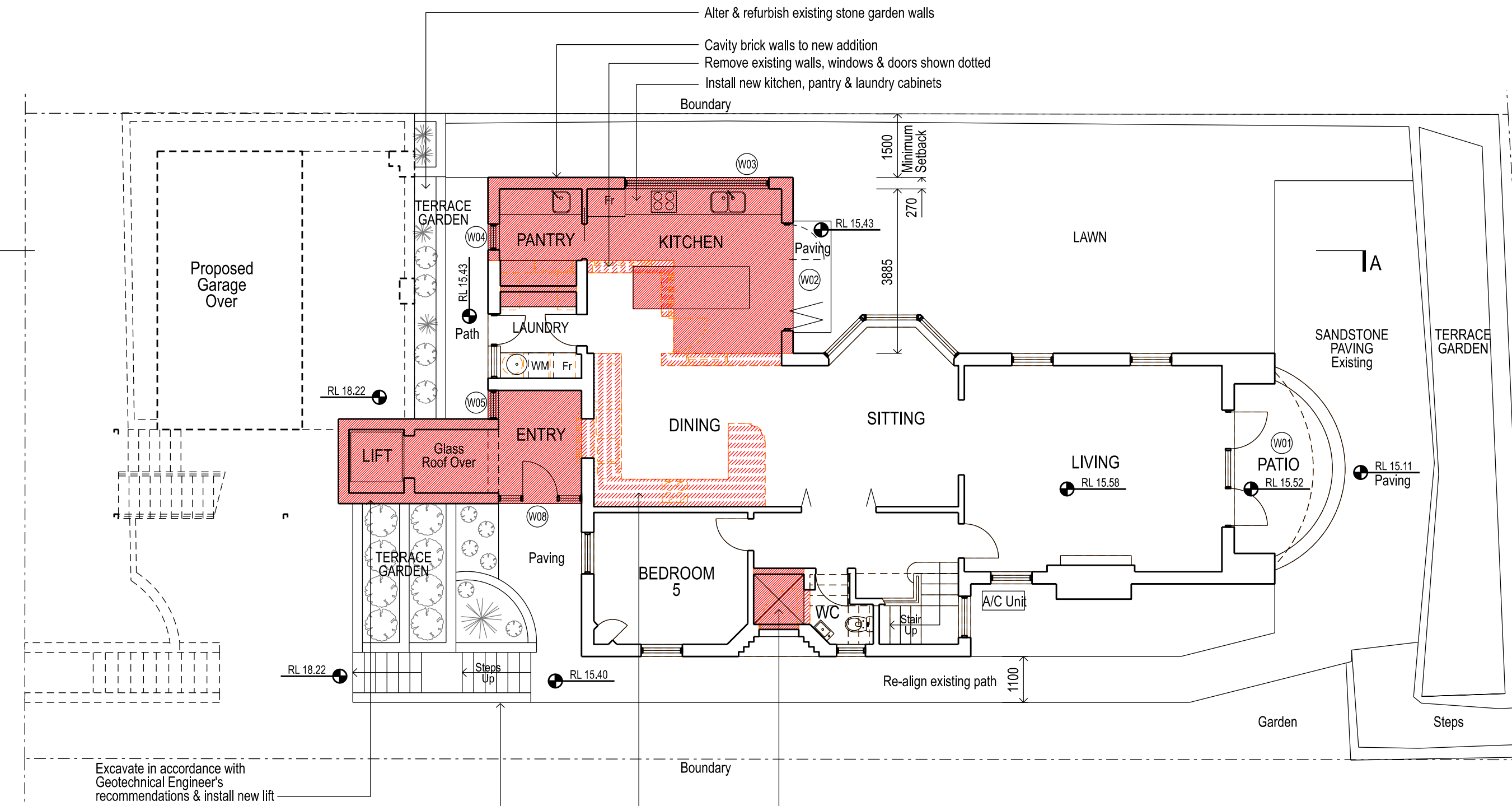
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website architelle.com.au

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KAREELA ROAD



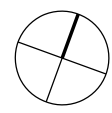
- Excavate in accordance with Geotechnical Engineer's recommendations & install new lift
- Make good existing terraced garden walls and steps
- Remove existing kitchen & make good
- Block up existing front door opening & install new shower with new opening into existing bathroom

Lot 10, DP 3900

1:100 SCALE 0 1000 2000 3000

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GROUND FLOOR PLAN

Development Application

47 Kareela Road  
Cremorne Point NSW

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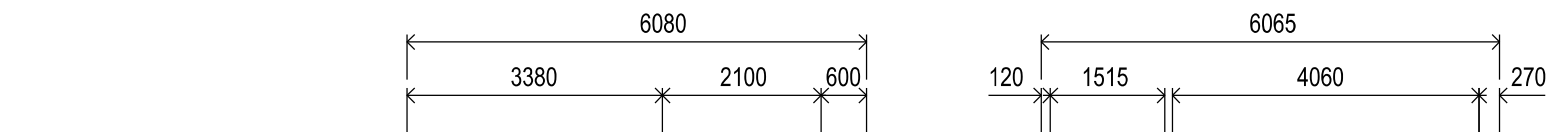
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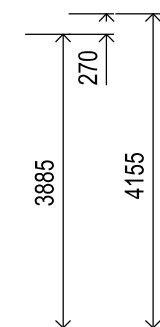
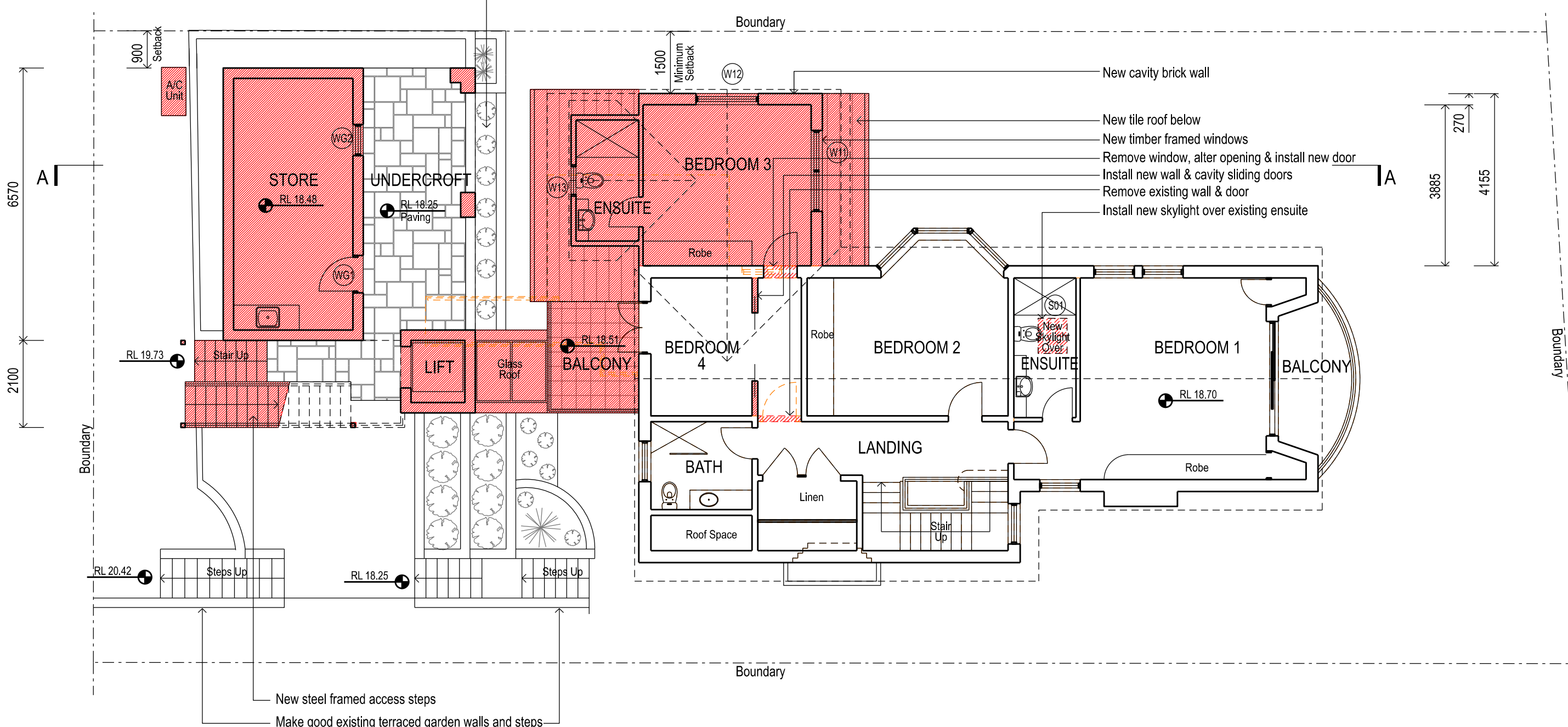
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KAREELA ROAD



Alter existing stone garden walls & install new terraced garden



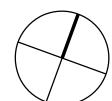
Lot 10, DP 3900  
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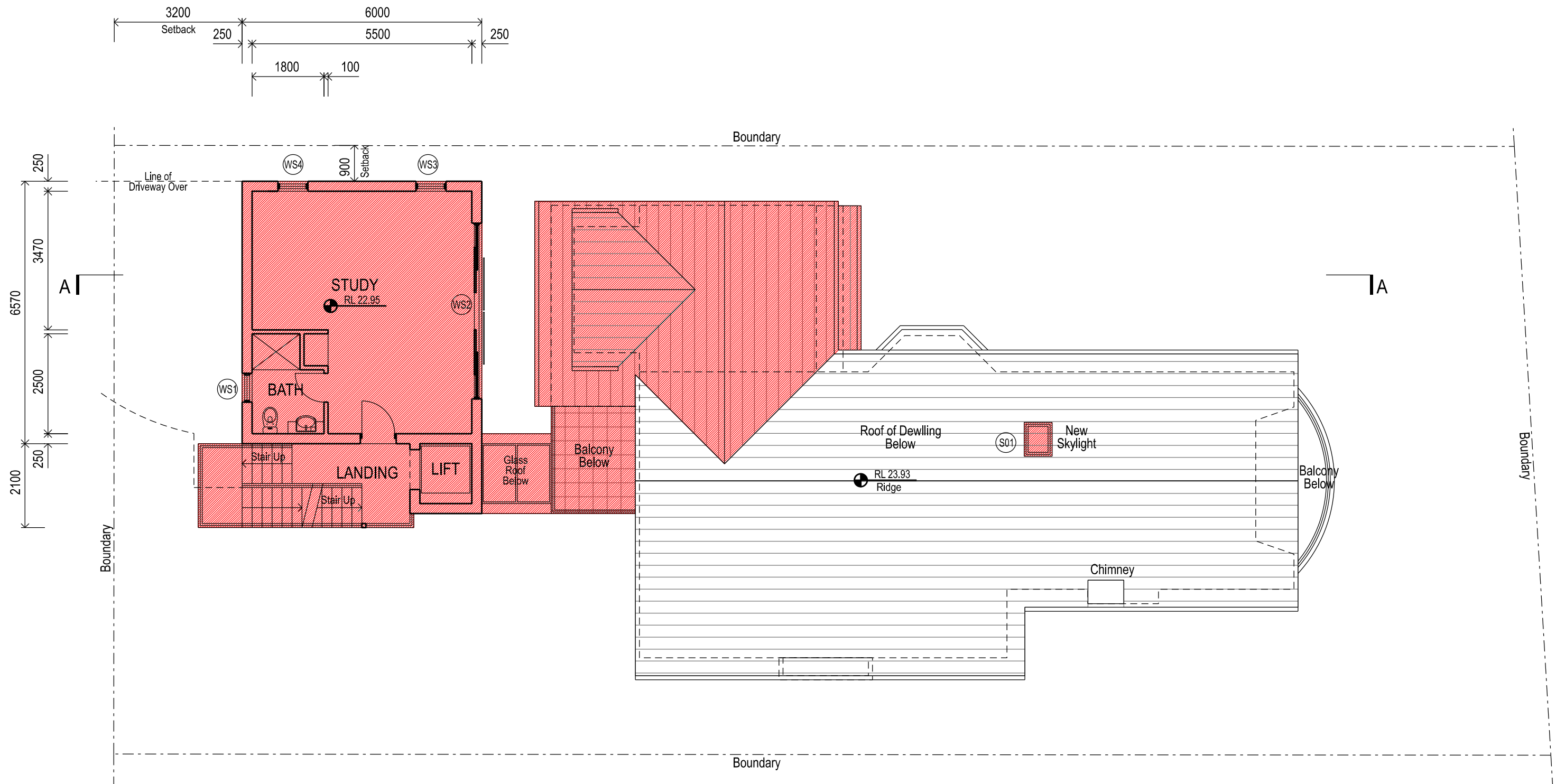
**LEVEL 1 FLOOR PLAN**  
*Development Application*  
 47 Kareela Road  
 Cremorne Point NSW





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KAREELA ROAD



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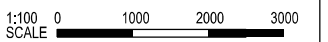
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**LEVEL 2 FLOOR PLAN**

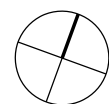
*Development Application*  
**47 Kareela Road  
Cremorne Point NSW**

Lot 10, DP 3900

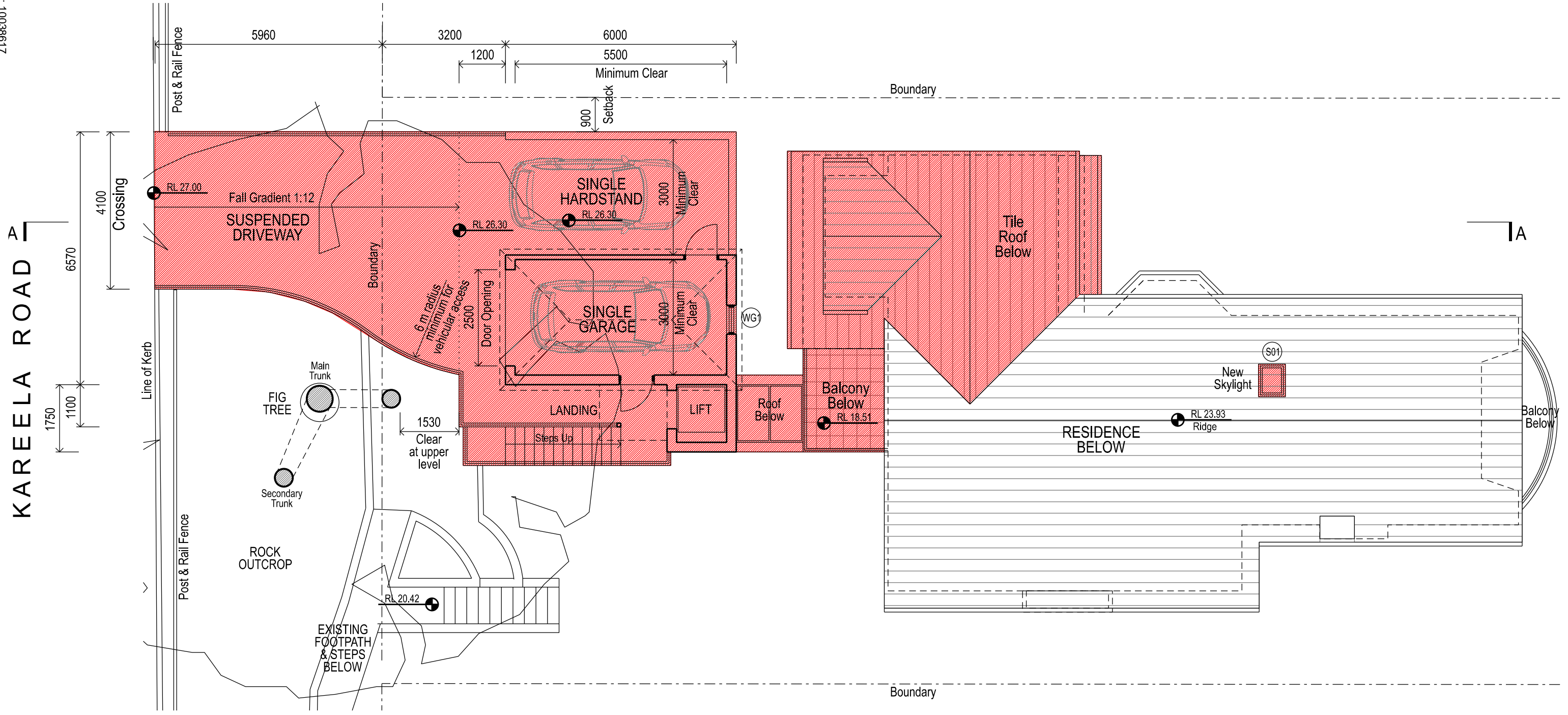


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KAREELA ROAD

### GARAGE LEVEL FLOOR PLAN Street Level

*Development Application*

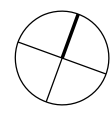
47 Kareela Road  
Cremorne Point NSW

Lot 10, DP 3900

1:100 SCALE

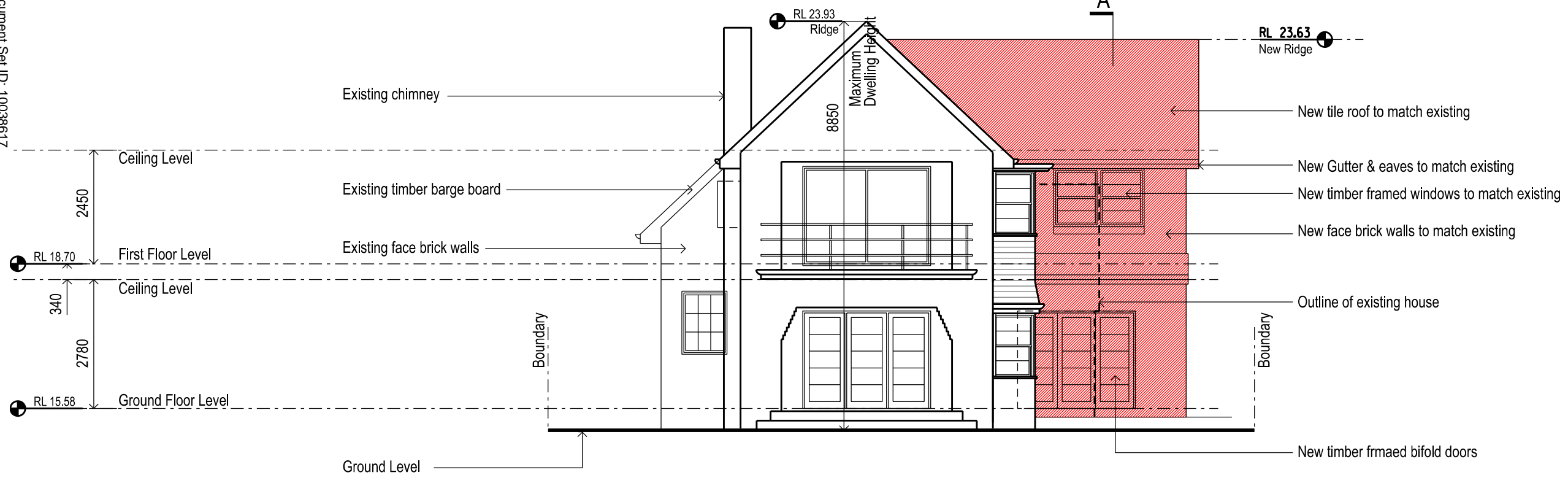
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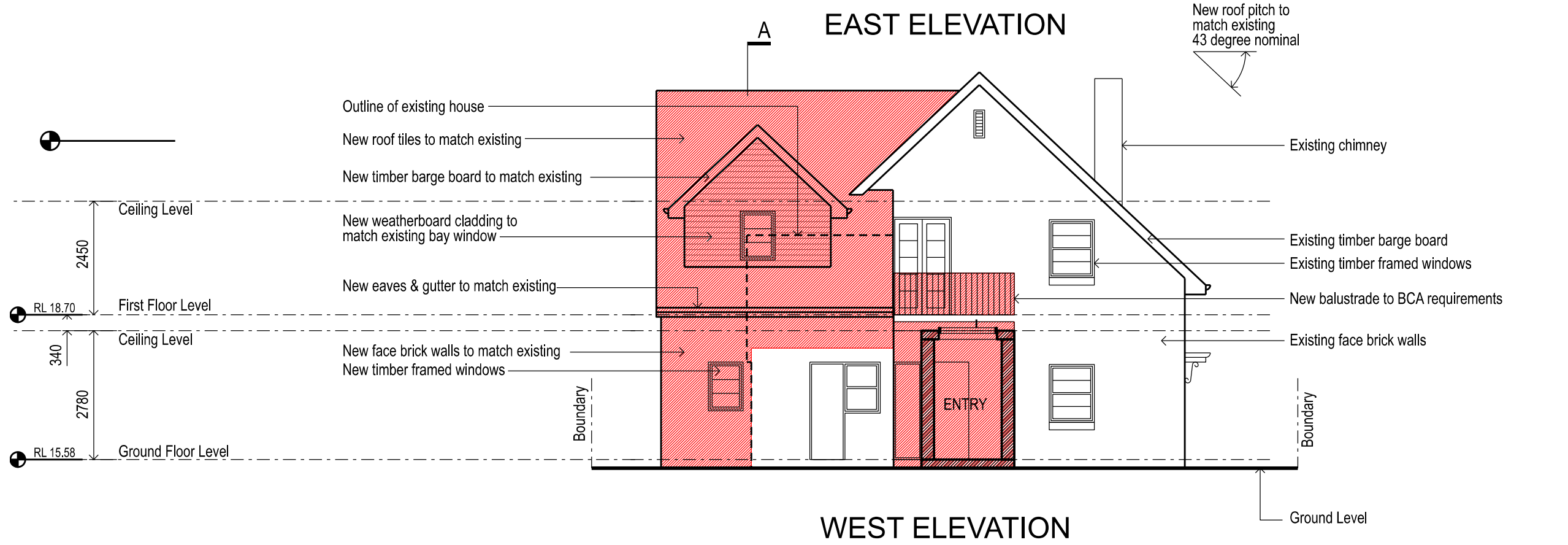


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**EAST ELEVATION**



**WEST ELEVATION**

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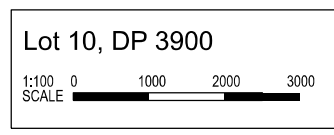
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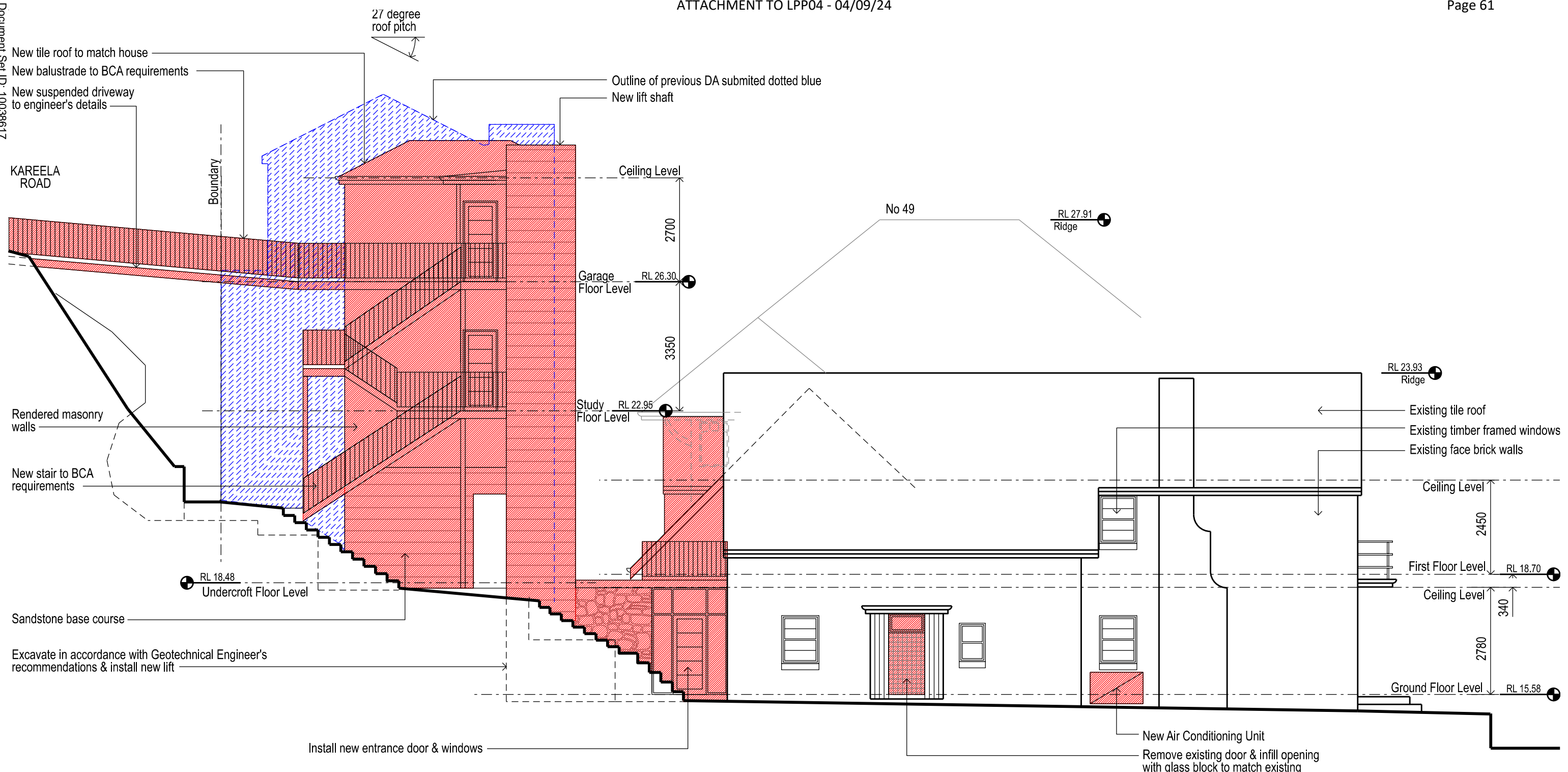
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### SOUTH ELEVATION

Lot 10, DP 3900

1:100 SCALE 0 1000 2000 3000

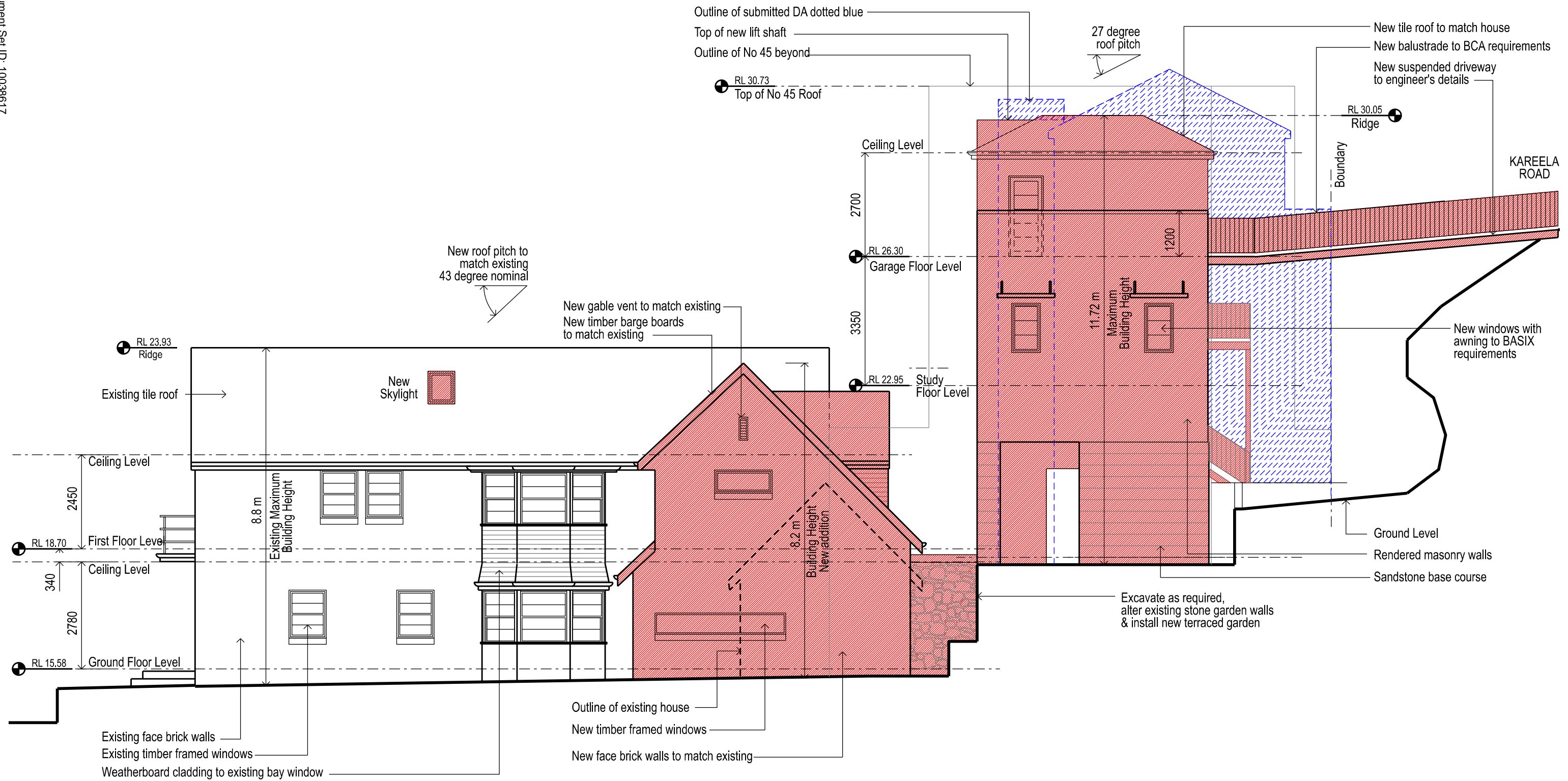
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 47 Kareela Road  
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### NORTH ELEVATION

Lot 10, DP 3900  
 1:100 SCALE 0 1000 2000 3000

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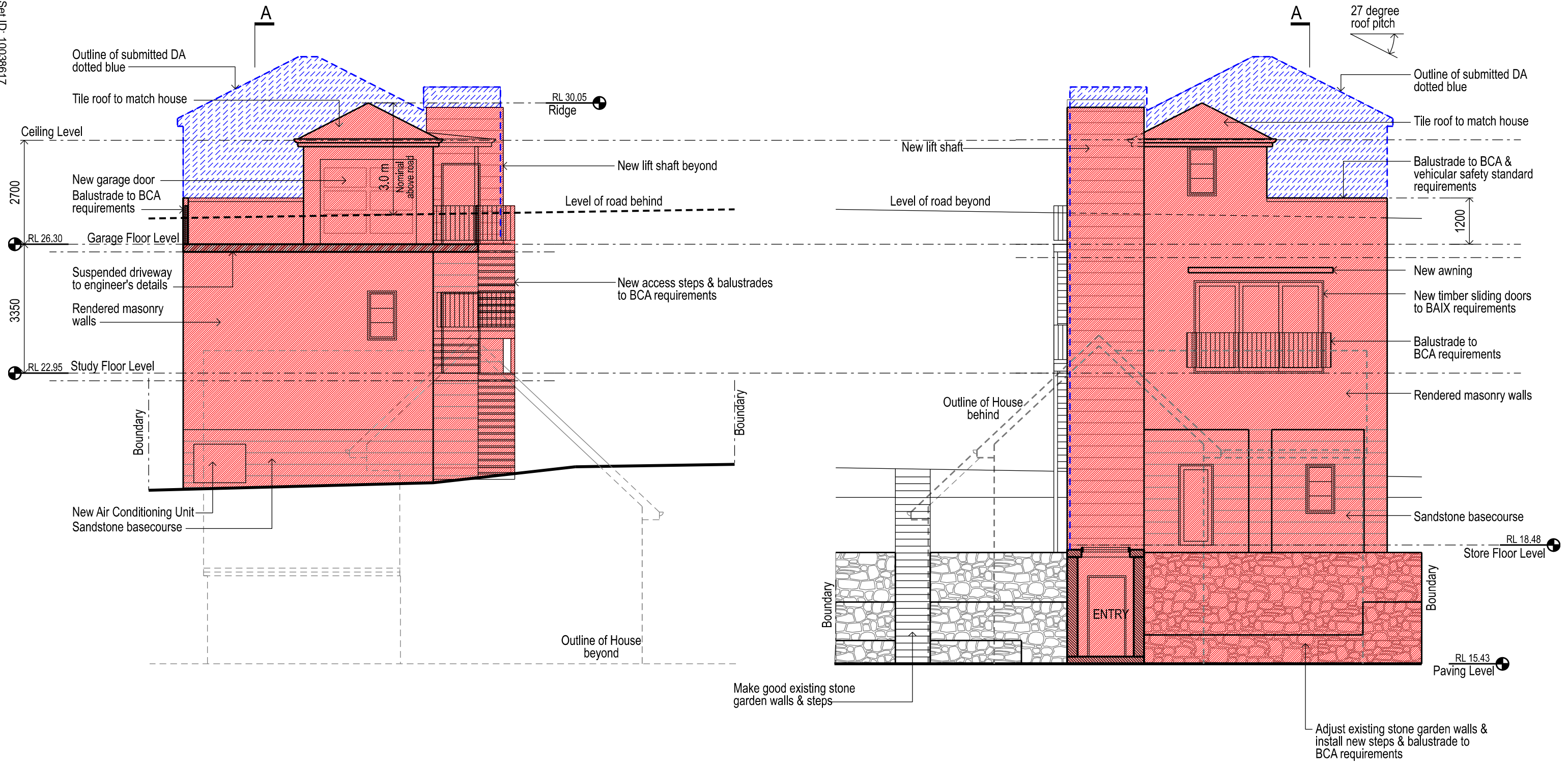
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WEST ELEVATION

EAST ELEVATION

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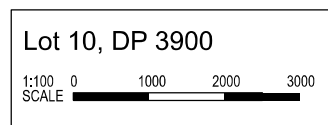
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## GARAGE

Development Application

47 Kareela Road  
Cremorne Point NSW

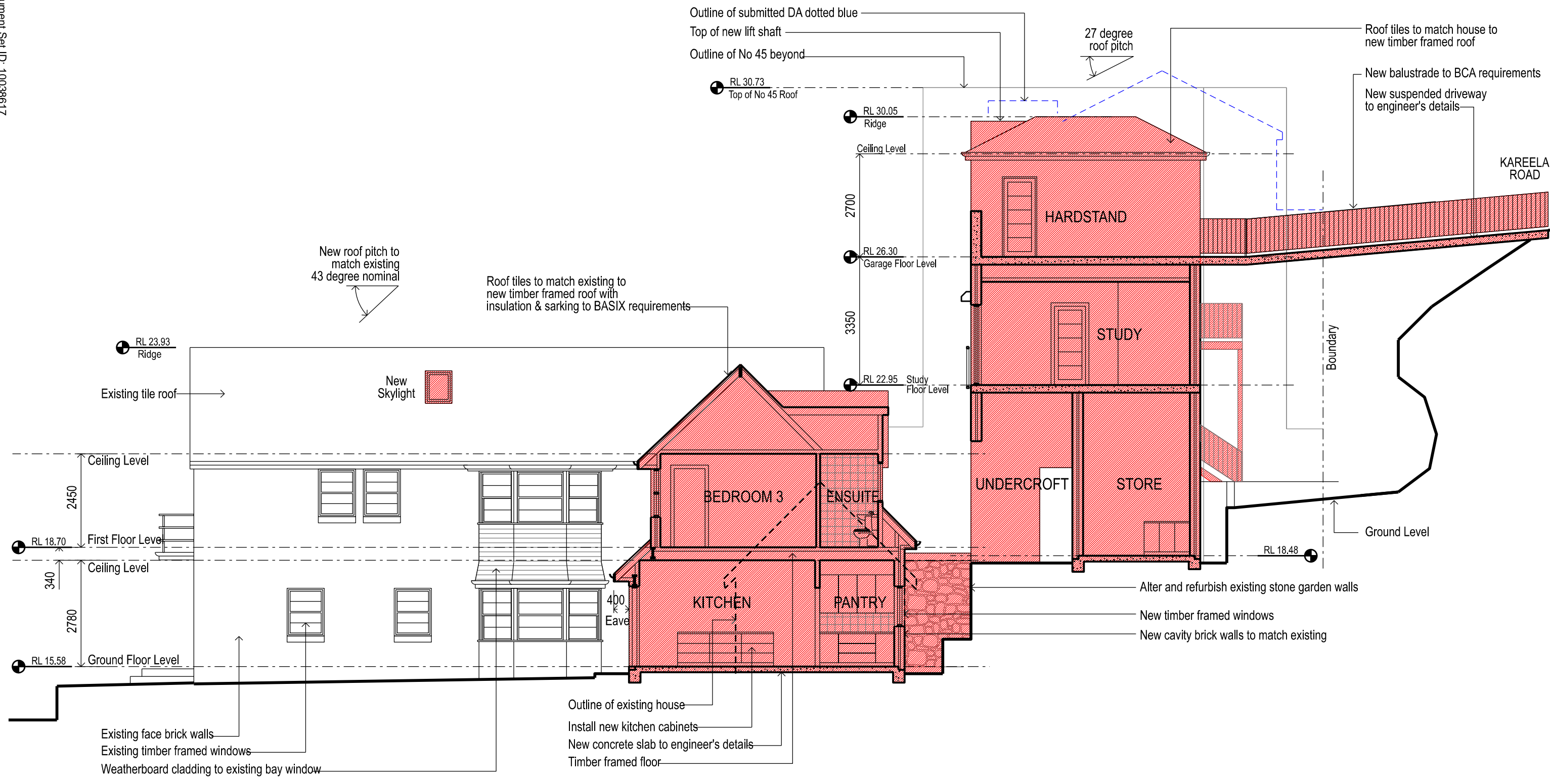


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### SECTION A Through Garage Looking South

Lot 10, DP 3900

1:100 SCALE 0 1000 2000 3000

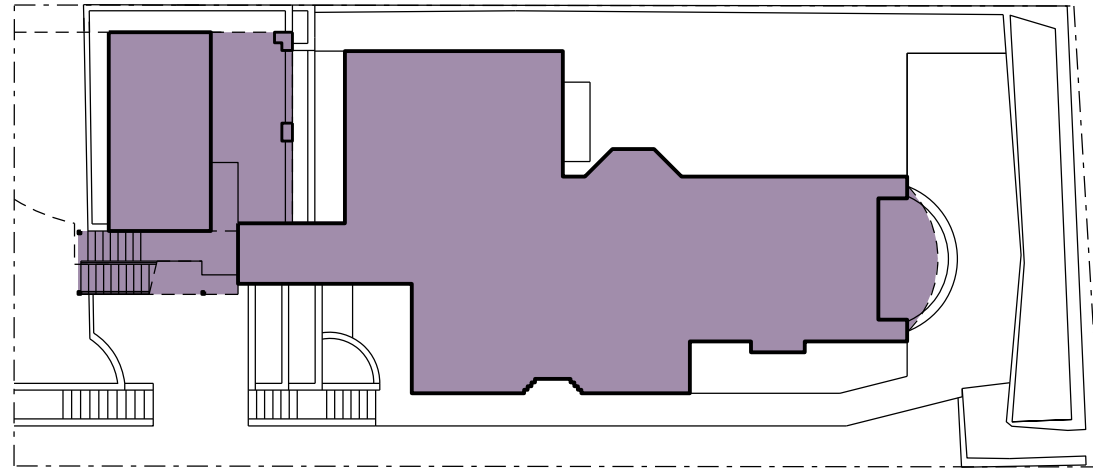
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*Development Application*  
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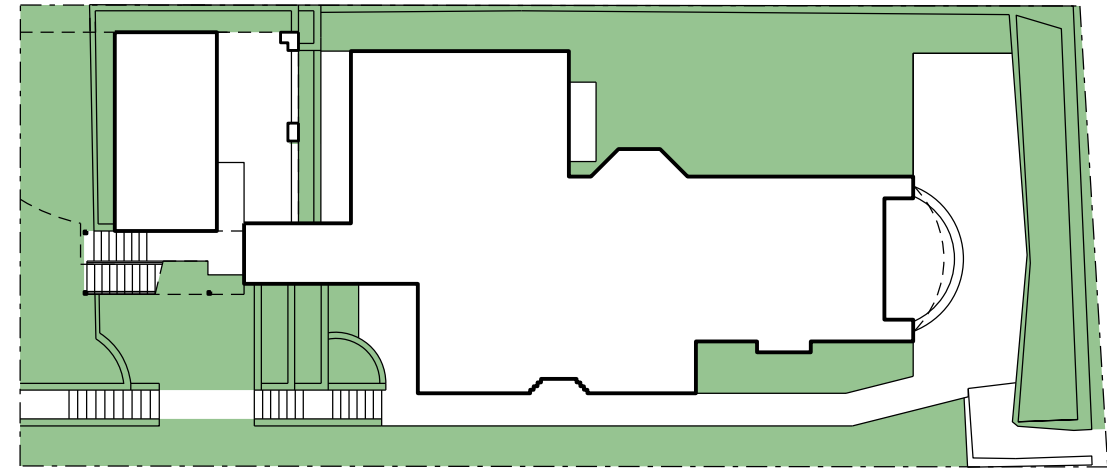


**SITE COVERAGE**

1:250



Site Coverage Area  
205.8 sq m (38.2% of the site)  
DCP 1.5.5 Site Coverage  
Maximum allowable 40%

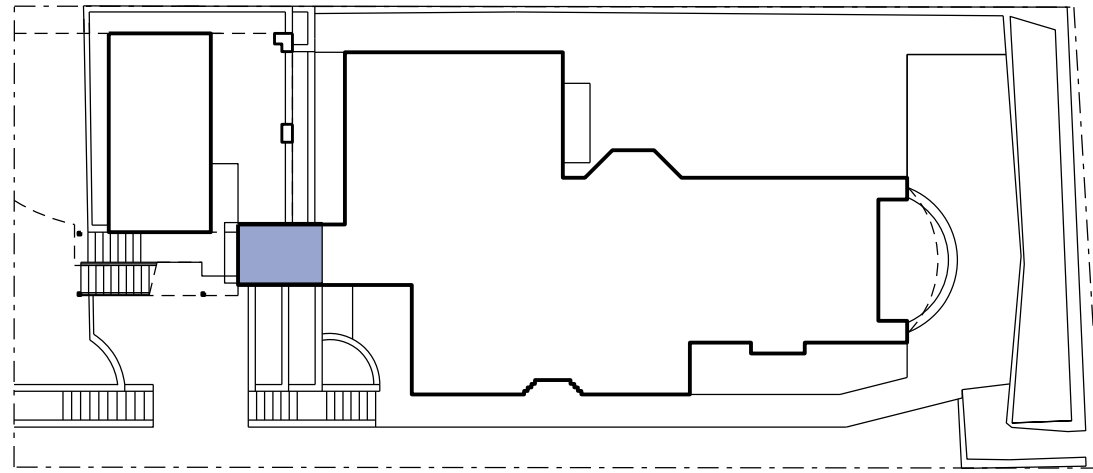


**LANDSCAPE**

1:250



Landscape Area  
248.1 sq m (46% of the site)  
DCP 1.5.6 Landscape Area  
Minimum allowable LA 40%

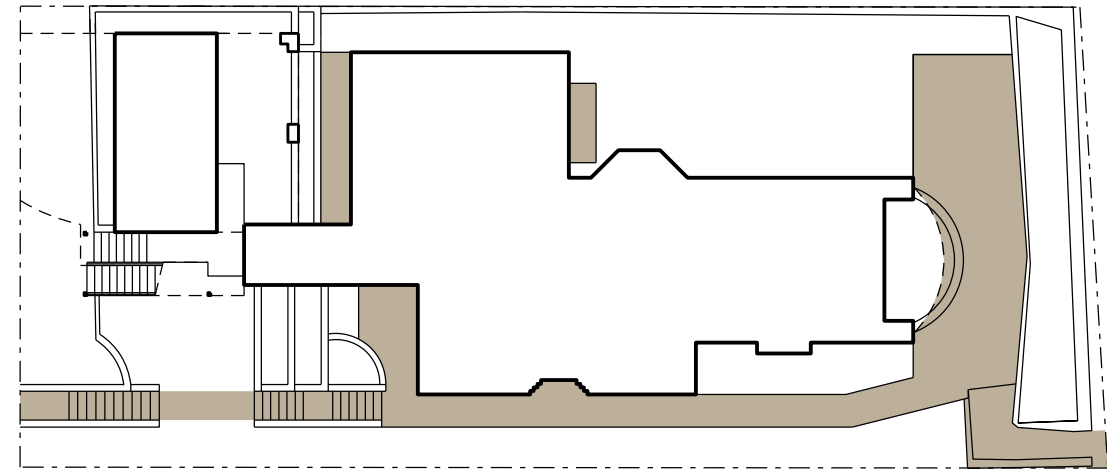


**EXCAVATED AREA**

1:250



Excavated Area  
9 sq m (1.6% of the site)



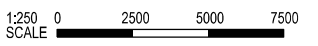
**UNBUILT UPON**

1:250



Unbuilt Upon Area  
89.8 sq m (17% of the site)  
DCP 1.5.6 Landscape Area  
Maximum allowable UBA 20%

Lot 10, DP 3900



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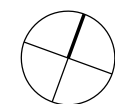
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**AREA CALCULATION PLAN**

Site Area: 537.5 sq m

*Development Application*

**47 Kareela Road  
Cremorne Point NSW**



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PROJECT 2016-64  
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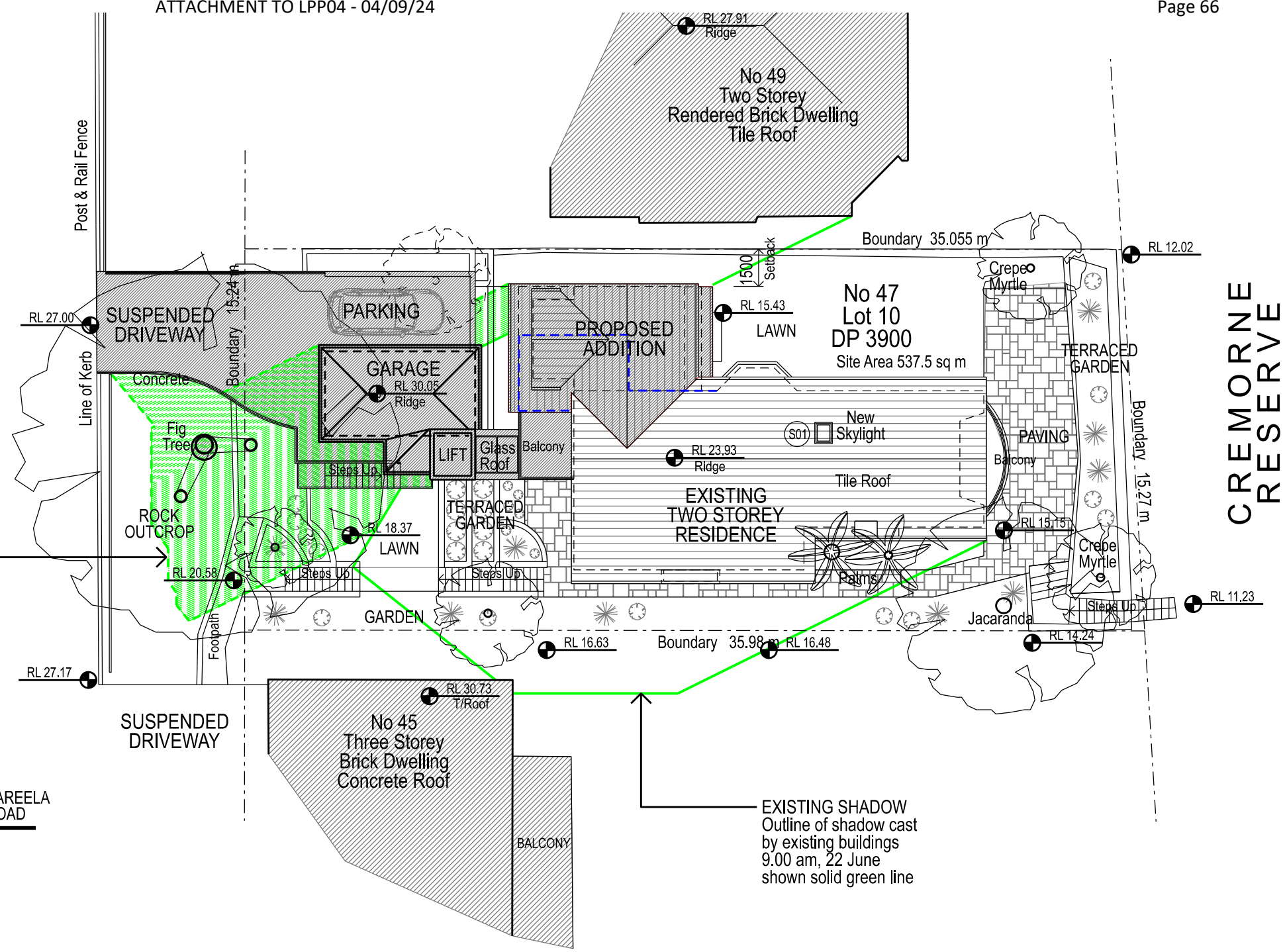
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KAREELA ROAD

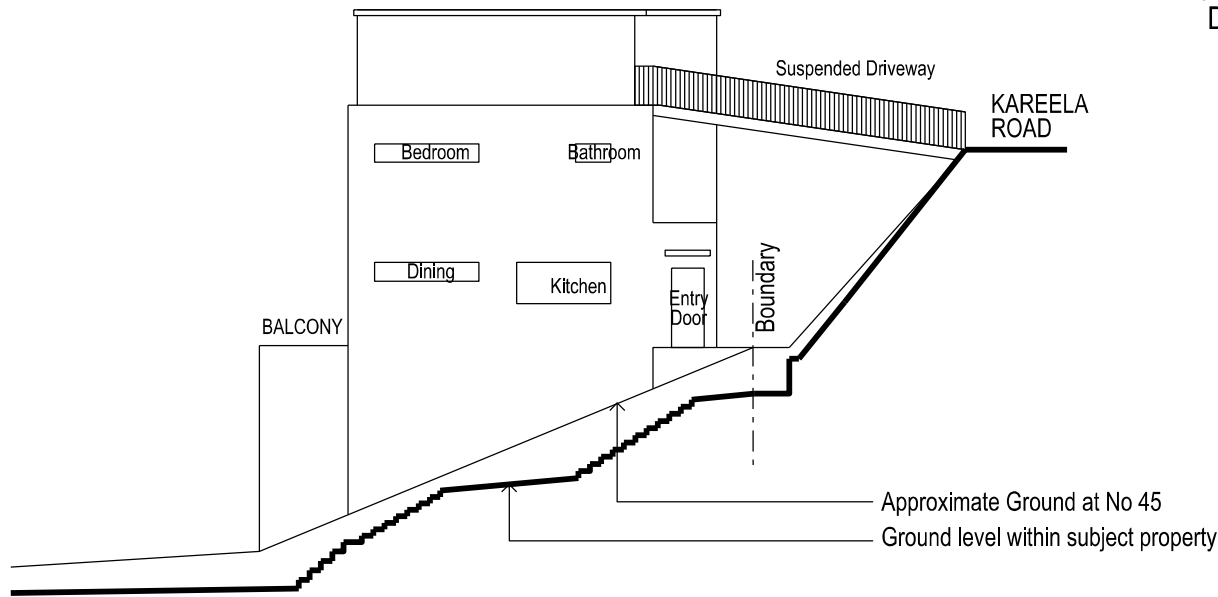
CREMORNE RESERVE

ADDITIONAL SHADOW  
cast by proposed development  
9.00 am, 22 June  
shown hatched green

NO SHADOWS - 9.00 am  
No shadows are cast on the North facade of No 45  
from either existing buildings or proposed new buildings on the subject site, No 47



EXISTING SHADOW  
Outline of shadow cast  
by existing buildings  
9.00 am, 22 June  
shown solid green line



No 45 - NORTH ELEVATION

SHADOW DIAGRAM  
9.00 am, Mid-winter

Development Application

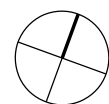
47 Kareela Road  
Cremorne Point NSW

Lot 10, DP 3900

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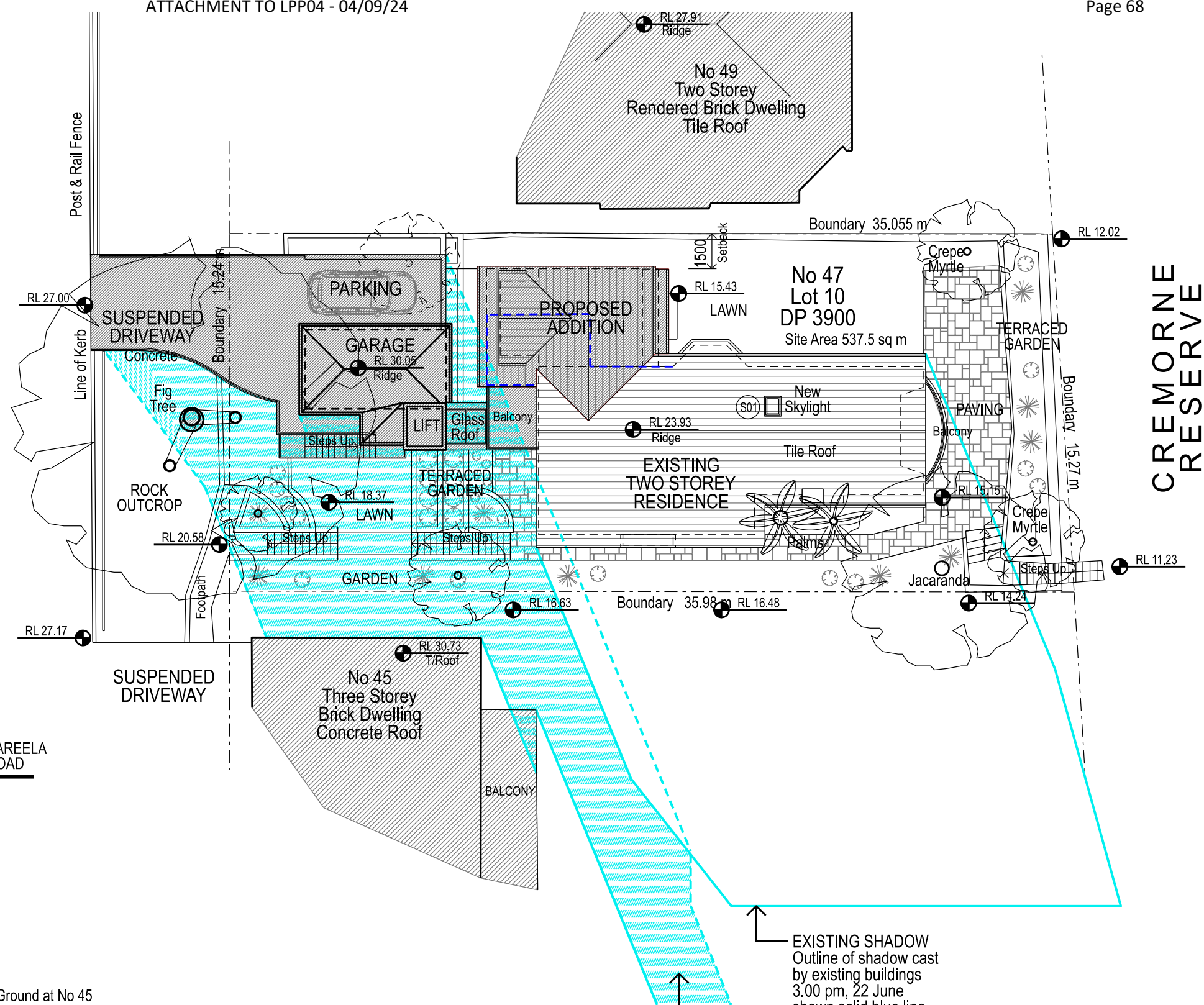
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KAREELA ROAD

CREMORNE RESERVE



ADDITIONAL SHADOW  
cast by proposed development  
3.00 pm, 22 June  
shown dotted blue hatch

EXISTING SHADOW  
shadow cast  
by existing buildings  
3.00 pm, 22 June

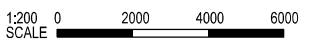
EXISTING SHADOW  
Outline of shadow cast  
by existing buildings  
3.00 pm, 22 June  
shown solid blue line

ADDITIONAL SHADOW  
cast by proposed development  
3.00 pm, 22 June  
shown hatched blue

No 45 - NORTH ELEVATION

SHADOW DIAGRAM  
3.00 pm, Mid-winter

Lot 10, DP 3900



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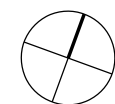
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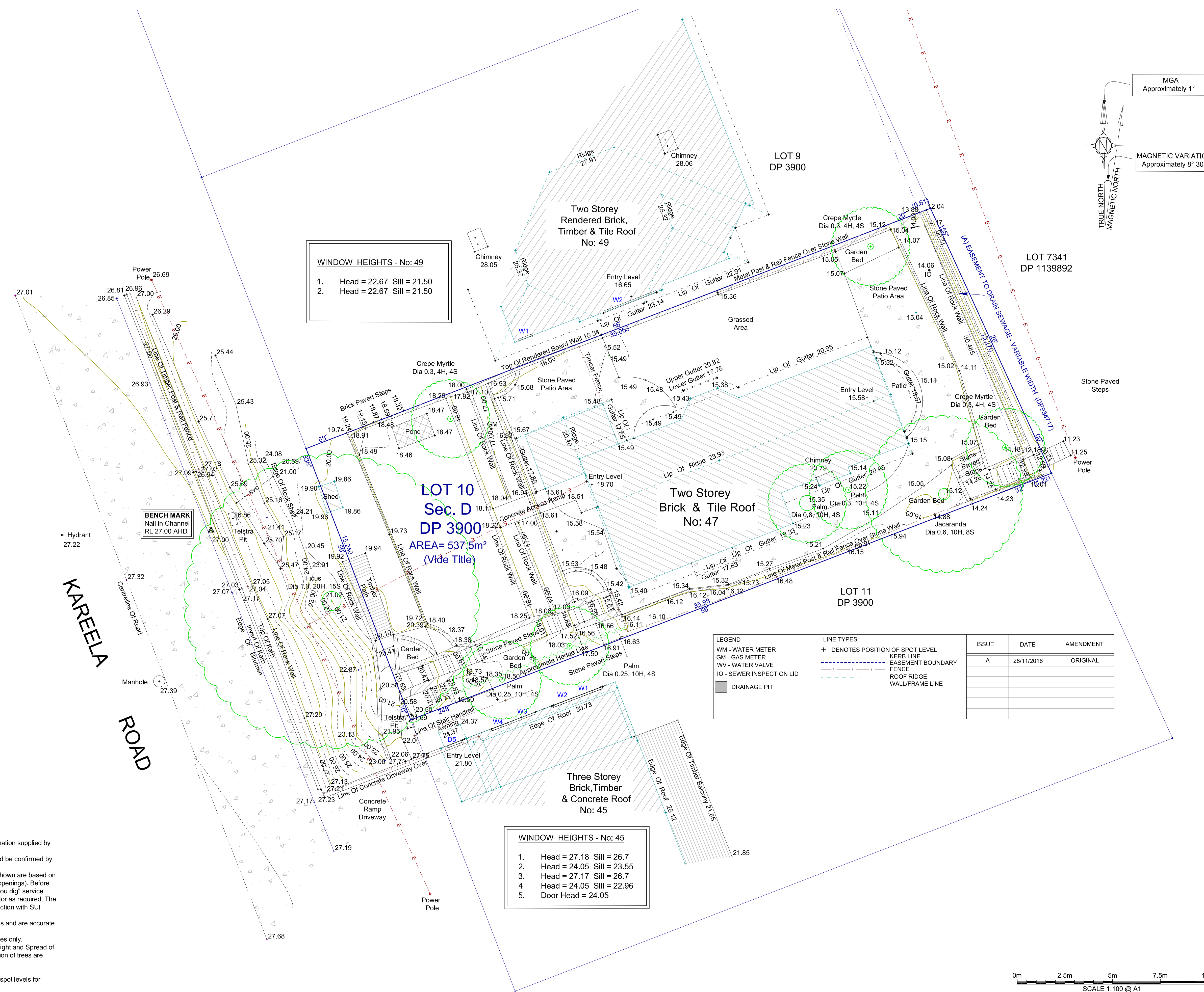
Margaret Skilbeck, Registered Architect NSW No 6144

*Development Application*

47 Kareela Road  
Cremorne Point NSW







**WINDOW HEIGHTS - No: 49**

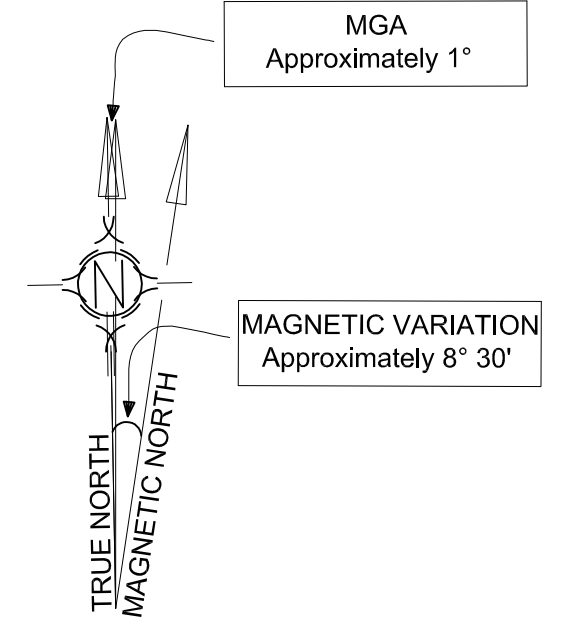
- Head = 22.67 Sill = 21.50
- Head = 22.67 Sill = 21.50

**LOT 10**  
**Sec. D**  
**DP 3900**  
**AREA = 537.5m<sup>2</sup>**  
**(Vide Title)**

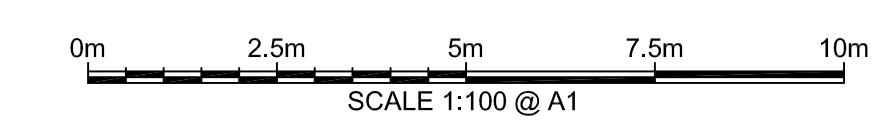
**WINDOW HEIGHTS - No: 45**

- Head = 27.18 Sill = 26.7
- Head = 24.05 Sill = 23.55
- Head = 27.17 Sill = 26.7
- Head = 24.05 Sill = 22.96
- Door Head = 24.05

LEGEND		LINE TYPES		ISSUE	DATE	AMENDMENT
WM - WATER METER	+ DENOTES POSITION OF SPOT LEVEL	--- KERB LINE	--- EASEMENT BOUNDARY	A	28/11/2016	ORIGINAL
GM - GAS METER	---	--- FENCE	---			
WV - WATER VALVE	---	---	---			
IO - SEWER INSPECTION LID	---	---	---			
■ DRAINAGE PIT	---	---	---			



- Notes**
- All bearings are on magnetic meridian.
  - Limited boundary survey has been undertaken.
  - Bearings and measurements shown on the plan are compiled from information supplied by the Land and Property Information Division of the NSW Government.
  - The relationship of improvements and detail to boundaries if critical should be confirmed by a full boundary identification survey or redefinition.
  - No subsurface utility investigation (SUI) has been undertaken. Services shown are based on visible surface indicators present at the time of survey only (i.e. pits and openings). Before any works or extensive designs are undertaken for the site, "Dial before you dig" service plans should be obtained and potholing undertaken by a qualified contractor as required. The location of these services can be plotted by Hammond Smeallie in conjunction with SUI contractors.
  - Ridge, eave, roof gutter, windows have been obtained by indirect methods and are accurate for planning purposes only.
  - Adjoining buildings and features have been plotted for diagrammatic purposes only.
  - Tree detail is shown as Dia xx / Ht xx / Sp xx respectively for Diameter, Height and Spread of the tree. These details are estimates only. If tree details, types and condition of trees are critical a qualified arborist should be consulted.
  - The location of fencing is diagrammatic only.
  - Contours are approximate only and should only be used as a guide. Use spot levels for design purposes. Contour intervals are shown on the plan.

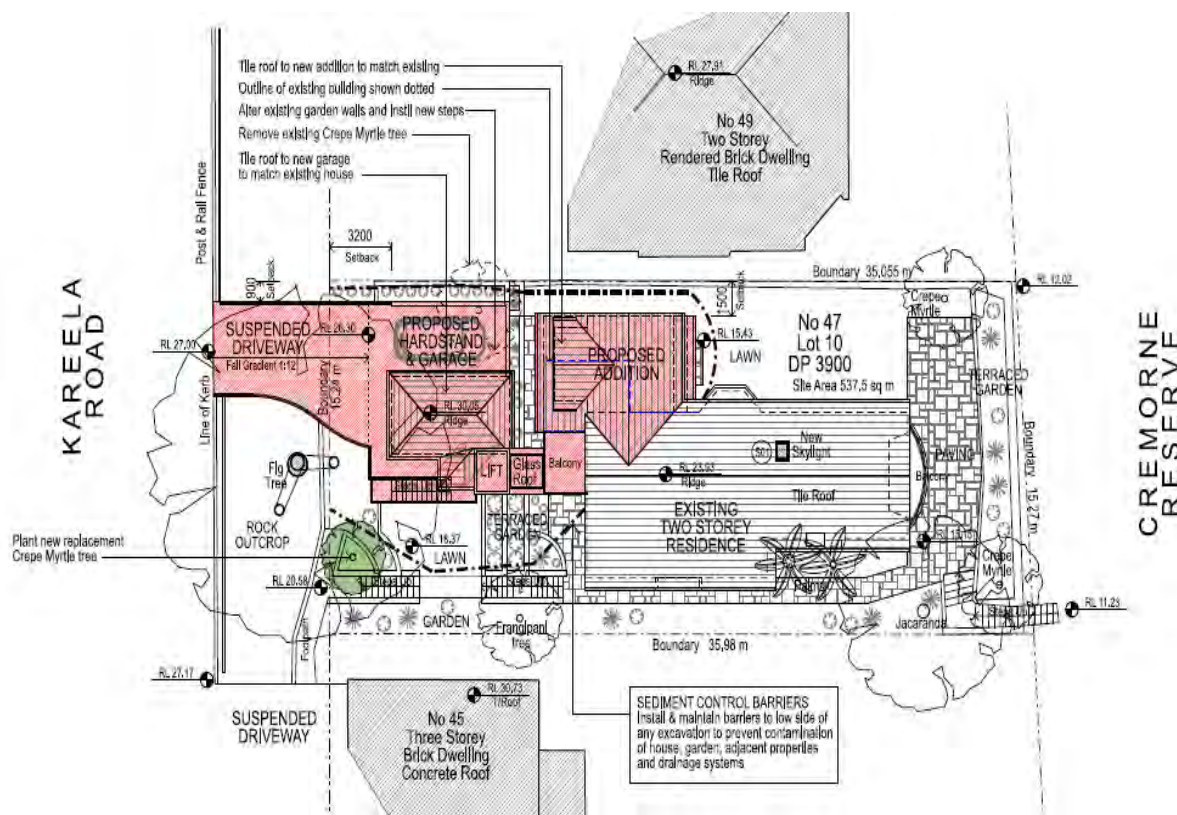


<p><b>Hammond Smeallie &amp; Co Pty Ltd</b>          CONSULTING SURVEYORS AND TOWN PLANNERS</p> <p>7/22 Leighton Place          HORNSBY NSW 2077          P: 02 9477 1577          F: 02 9478 6092          E: info@hammondsmeallie.com.au          W: www.hammondsmeallie.com.au</p> <p>ABN: 16 001 894 800</p>	<p><b>DETAIL AND LEVELS PLAN</b></p>		<p>Horizontal Datum</p> <p>Co-ordinate system: Assumed          Azimuth adopted from: DP 1155876</p>	<p>Sheet No:          1 of 1</p>	<p>Date of survey:          28/11/2016</p>	<p>Plan No:          1</p>
	<p>Project:          Detail &amp; Levels Survey</p> <p>Address:          No. 47 Kareela Road, Cremorne Point          Lot 10 in Section D of D.P.3900</p> <p>Client:          Mrs I Churcher</p>	<p>Vertical Datum</p> <p>Datum: RL 30.00 AHD          Source: SSM 51540          Source SCIMS: UJU</p>	<p>Scale:          1:100 @ A1</p>	<p>Project No:          R.J.S</p>	<p>Revision No:          A</p>	<p>13986</p>



# Clause 4.6 Request – Height of Building

## Alterations and Additions to an existing dwelling



Submitted to North Sydney Council

18 August 2024

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Table of Contents

1.0	Introduction .....	3
2.0	Background and Proposal .....	3
3.0	Consent Authority .....	5
4.0	Purpose of Clause 4.6.....	5
4.1	What are Environmental Planning Grounds? .....	5
4.2	Objectives of Clause 4.6 .....	6
5.0	Onus on Applicant.....	7
6.0	Justification of Proposed Variation .....	8
6.1	The Unreasonable or Unnecessary Test .....	8
6.2	Sufficient Environmental Planning Grounds .....	12
7.	Conclusion.....	14

Prepared by  
 Suzanne Clarke-Nash  
 Lawyer and Town Planner

## 1.0 Introduction

This objection is made pursuant to the provisions of Clause 4.6 of *North Sydney Local Environmental Plan 2013* (NSLEP 2013). In this regard, it is requested that North Sydney Council and the North Sydney Local Planning Panel support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the NSLEP 2013.

## 2.0 Background and Proposal

Clause 4.3 restricts the maximum height of building in this locality to 8.5m and is a development standard as defined by Section 4 of the *Environmental Planning and Assessment Act* (EPA Act).

The proposal involves a variation to the NSLEP 2013, specifically clause 4.3 *Height of buildings*. 47 Kareela Road existing building height does not comply with the maximum height of building control being 8.85m. The proposed alterations being a two storey addition to the existing two storey dwelling (bedroom 3 & Kitchen) does not seek to vary the existing buildings maximum height, and complies with the maximum height being 8.2m in height.

The proposal also includes an additional 3 story structure that is made up of the construction of hardstand area and a single car garage that provides access off the street level, study area on the second floor and storage on the first floor. Lift access is provided from street level to the ground floor of the existing dwelling. This addition results in a maximum height of building, being 11.72m which exceeds the maximum height standard by 3.22m which is a variation of 37.9%.

A detailed SEE accompanies the application and describes the proposal in detail; however it can be summarized in the below tables (Table 1 & Table 2). The proposed Alteration and Addition is demonstrated in Figure 1.

<b>Address/Property</b>	<b>47 Kareela Road Cremorne Point 2090, NSW</b>
<b>Description</b>	Alterations and Additions to existing dwelling
<b>LGA</b>	North Sydney
<b>Zoning</b>	Zone R2 Low-Density Residential
<b>Permissibility</b>	Dwelling housings are permitted with Consent under the NSLEP 2013

Table 1: Project Overview

Site	Maximum Building Height NSLEP	Existing Building Height	Proposed Building Height	Variation to Development Standard
47 Kareela Road	8.5M	8.8m (not changed)	<ul style="list-style-type: none"> <li>8.2m New addition to dwelling</li> <li>11.72m (New Garage building)</li> </ul>	<ul style="list-style-type: none"> <li>No variation to extension (complies)</li> <li>Variation of 37.9% (non-compliance)</li> </ul>

Table 2: Proposed height of building values

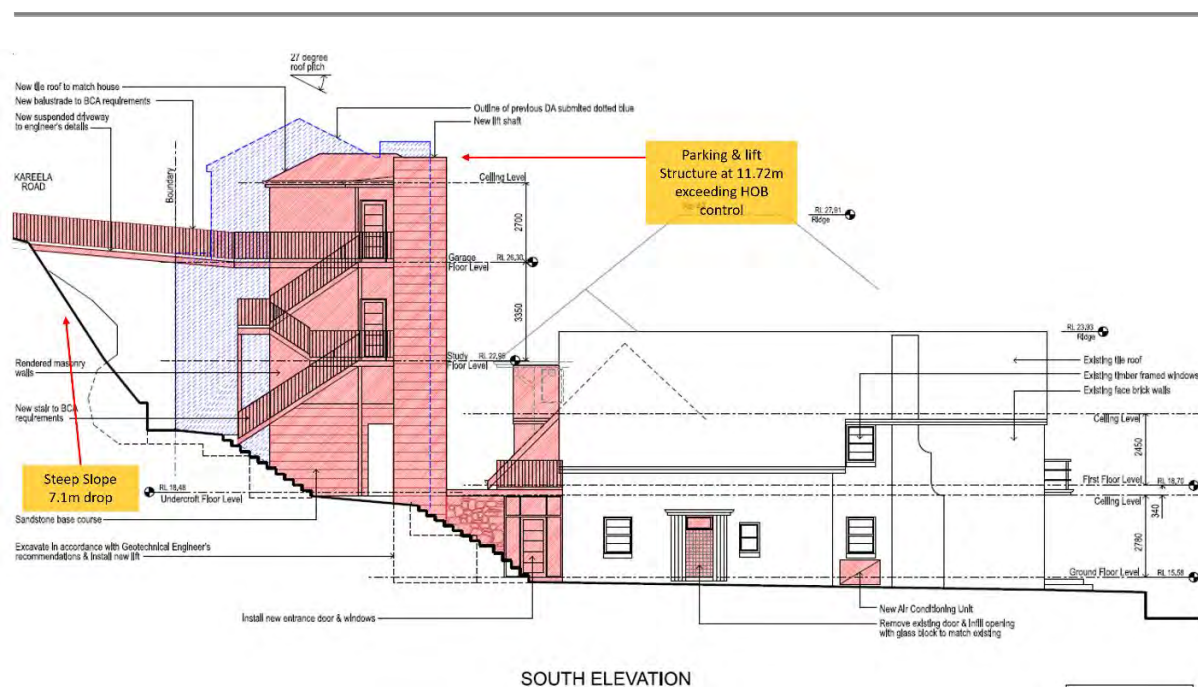


Figure 1: Markup of Southern Elevation (Base Source: Architelle)

In review of Council Clause 4.6 register, it's noted that Council has previously supported alterations and additions application all off which have similar constraints to the proposed application, which involved an exceedance to the maximum height of building standard. The details of this application are:

- *DA339/2022 Lot 1 In DP 1257269*
- *Address 12 Bertha Road Cremorne 2090 Residential - Alterations & additions*
- *Zoned R2 Low Density Residential.*
- *Exceeds Clause 4.3 Maximum height of building by 39.76%*
- *Constraints: Sloping site and heritage*
  
- *DA186/2023 Lot B in DP337583*
- *Address 27 Elamang Avenue Kirribilli 2061 Residential - Alterations & additions*
- *Zoned R2 Low Density Residential*
- *Exceeds Clause 4.3 Maximum height of building by 20.28%%*
- *Constraints: Sloping site and harbour views*
  
- *DA132/2022 Lot 1 in DP 77957*
- *Address 4 Cremorne Road Cremorne Point 2090 Residential - Alterations & additions*
- *Zoned R2 Low Density Residential*
- *Exceeds Clause 4.3 Maximum height of building by 41%%*
- *Constraints: Heritage and harbour views*

The proposal ensures that reasonable access is provided to the site and adequate offstreet parking is provided for residents, as the existing situation does not provide for parking or suitable pedestrian access. As a result of the significant slope on the site the carparking structure breaches the maximum height of building control, however considering the surrounding locality, it is not uncommon for dwellings to be characterized with parking platforms, garages & lifts that provide access to the dwellings located at the bottom of the slope. The proposal provides for improved functionality of the site whilst ensuring the design of the carparking structure is consistent with heritage values of the locality and ensures appropriate view sharing from surrounding receivers.

### 3.0 Consent Authority

As the application involves a breach of the NSLEP 2013 maximum building height development standard by more than 10%, the application will need to be determined by the North Sydney Local Planning Panel (NSLPP).

### 4.0 Purpose of Clause 4.6

The *North Sydney Local Environment Plan 2013* contains its own variations clause (Clause 4.6) to allow a departure from a development standard.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation. In addition to the relevant caselaw's on how to assess and consider a clause 4.6 Request, it is noted that the Department of Planning and Environment (DPE) has recently gazetted its Clause 4.6 Reforms on the 1<sup>st</sup> of November 2023 and are currently in effect. These reforms have resulted in changes to the effect of clause 4.6 and how it is assessed. Certain changes include:

- *retain the existing 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests in clause 4.6(3)*
- *require the applicant and consent authority to consider the same tests, retained in clause 4.6(3)*
- *require the consent authority to be satisfied that the matters in clause 4.6(3) have been demonstrated*
- *remove the need for the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone – this will avoid duplication of tests and matters for consideration covered by other relevant statutory provisions*
- *remove the Planning Secretary's concurrence requirements, replacing them with a new monitoring and reporting framework.*
- *The requirement for a document to accompany a DA has now been explicitly set out in section 35B(2) of the EP&A Regulation. This document (written request) must set out the grounds on which the applicant seeks to demonstrate the 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests.*

As the DA has been amended after the 1<sup>st</sup> of November 2023, these changes apply to the development. As a part of the reforms, DPE has released a guideline to support these changes known as *Guide to Varying Development Standards November 2023*. This Clause 4.6 Request has considered these guidelines in its assessment of the environmental planning grounds to satisfy the breach, and whether compliance is unreasonable in this circumstance. It is my view that there are sufficient grounds to justify the breach as outlined in this 4.6 request.

#### 4.1 What are Environmental Planning Grounds?

The term 'environmental planning grounds', while not defined in the EP&A Act or the Standard Local Environmental Plan, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide as exemplified by the court decisions such as *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [10]*.

Sufficient environmental planning grounds need to be established by the facts of the request. The request must justify the contravention of the development standard, not simply promote the benefits of the development. The grounds must:

- be sufficient to justify the contravention
- focus on the aspect of the development that contravenes the development standard, not the development as a whole.

Avoiding adverse impacts may constitute sufficient environmental planning grounds as it promotes 'good design and amenity of the built environment' – one of the objects of the EP&A Act as outlined in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council [2023] NSWLEC 1065 at [78]*. As outlined in DPE's Guide to Clause 4.6 examples of environmental planning grounds can include, but not limited to:

- *dealing with the unique circumstances of the site such as historical excavation of basements or swimming pools*
- *achieving consistency with the streetscape and existing built form*
- *responding to flood planning levels*
- *responding to topography*
- *improving public benefit*
- *achieving equal or better amenity outcomes (solar access, privacy, views/outlook)*
- *being consistent with the prevailing subdivision pattern*
- *conserving built and cultural heritage values*
- *protecting or avoiding impacts to an area of environmental or biodiversity value.*

In the case of the subject application, this clause 4.6 request will outline the environmental planning grounds to justify the non-compliance in this specific application. This requests outlines that there are environmental planning grounds to satisfy the consent authority in its determination of the application.

#### **4.2 Objectives of Clause 4.6**

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site does not have vehicle access or easy pedestrian access. The proposal provides off-street parking and safe access to the residence enabling the development to meet the day-to-day needs of the occupants whilst ensuring a high level of residential amenity is achieved and maintained. This is consistent with the R2 zone objectives of the NSLEP 2013 which states:

##### *1 Objectives of zone*

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

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

It is assessed that the proposed height breach is consistent with the R2 zone objectives in that it provides for the housing needs of the resident within a low-density environment. This is evidenced as:

- The proposed development will continue to provide for the housing needs of the community and residents within the low density residential environment.
- The proposed development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.
- The roof form, scale and architectural character of the existing building and the proposed new work are characteristic of the Heritage Conservation Area that the site is within. The subject property will continue to contribute positively to the character of the area.
- There will be little detrimental effect on local amenity, including public and private views as the development responds to the topography of the site, and ensures adequate view sharing.
- The development is consistent with the surrounding streetscape character. The surrounding character of Kareela Road is made up of sites that slope towards Mosman Bay. As a result, off street carparking structures are located on the street frontage, whilst the dwellings are located down the slope.
- The amenity of the occupants of the subject property will be improved and the pedestrian access will become significantly safer.

Despite the non-compliance with the maximum building height control, the increased height has limited impact on the streetscape characteristics and provides for adequate view sharing for surrounding receivers. The land will continue to provide suitable amenities for occupants and neighbours, and therefore compliance with the maximum building height standard is unnecessary and unreasonable in the circumstance of 47 Kareela Road.

## **5.0 Onus on Applicant**

Clause 4.6(3) provides that:

- (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.*

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.



## 6.0 Justification of Proposed Variation

### 6.1 The Unreasonable or Unnecessary Test

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case. *Wehbe v Pittwater Council [2007] NSWLEC 827*), outlines a 5-part test to demonstrate 5 common ways clause 4.6(3)(a) can be addressed. DPE's clause 4.6 guide outlines that the applicant needs to only satisfy one part of the *Wehbe* Test. Assessment and comment against this test is provided below:

#### 1. Objectives of the development standard are achieved notwithstanding the non-compliance

The objectives of Clause 4.3 are:

- (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 C4 Environmental Living.*

Under the NSLEP 2013, the site has a maximum building height control of 8.5m as identified in **Table 2**, 47 Kareela Road doesn't comply with this requirement. The proposal results in the following maximum building heights:

- Existing building height 8.8m (not changed).
- Proposed extension to the existing building 8.2m. No variation to extension (complies).
- Proposed garage building at 11.72m (roof ridge line) with a variation of 37.9%.

The proposal is consistent with the objectives as:

- The existing dwelling has a non-complying height of approximately 8.8m which is not proposed to be altered. New additions to the existing dwelling are to be lower than the existing dwelling and below the 8.5m maximum height limit.
- New work with a non-complying height is limited to the proposed new garage building.
- There will be minor adverse impact to views from the neighbouring properties or the public domain due to the proposed development. Views from Kareela Road and properties opposite on the high side of Kareela Road will continue to have access to views of Mosman Bay, both between buildings and over the top of buildings on the subject property. Access to the neighbouring properties to directly assess the view impact, was not provided by the occupants however drones were used to estimate the potential view impact.

The properties on the high side of the street will still have significant views of the water as they look over the development rather than through it. The public views from the street between the properties will remain as the garage structure is located in the middle of the

site which allows for the view corridor to remain.

- There will be a limited adverse impact to the solar access of neighbouring properties and the public domain due to the non-complying height of the proposed garage.
- There will be limited impact on the privacy of neighbouring properties due to the proposed development. New windows in the garage building generally face into the subject site to avoid overlooking into the adjacent properties. The two windows that face the north side boundary are to have obscure glass, and are limited in size to provide reasonable natural light and ventilation to the subject property without having adverse privacy impact to the adjoining property.
- The height of the proposed garage is consistent with characteristic development within the vicinity, including garage structures to both adjoining properties (Nos 45 & 49 Kareela Road). The structure will present as a one storey garage at street level.
- The proposal will provide two onsite parking spaces thus reducing residents taking up on-street parking.
- The height breach is entirely due to the topography of the site (steep escarpment -7.1m drop approximately).
- Due to the definition of “Building Height” being measured from the ‘existing ground level’ the non-compliance is exacerbated in this circumstance. As the road level is approximately 7.1m higher than the lowest point of the structure, the building height exceedance is inevitable. Building height is defined as:

*building height (or height of building) means—*

*(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*

*(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to 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 courts have dealt with the question of height of building on excavated/sloping sites under *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. In the circumstance of 47 Kareela Road given the unique topography and significant slope, the height breach will be unavoidable, however importantly, majority of the structure will not be perceivable from the street as it is screened by the existing cliff face.

Only a small portion of the structure will be visible from the public domain, being approximately 3m of the structure above the road level which is a single storey structure, being consistent with the objectives of 4.3 (Figure 3).



Figure 2: Markup of Photomontage

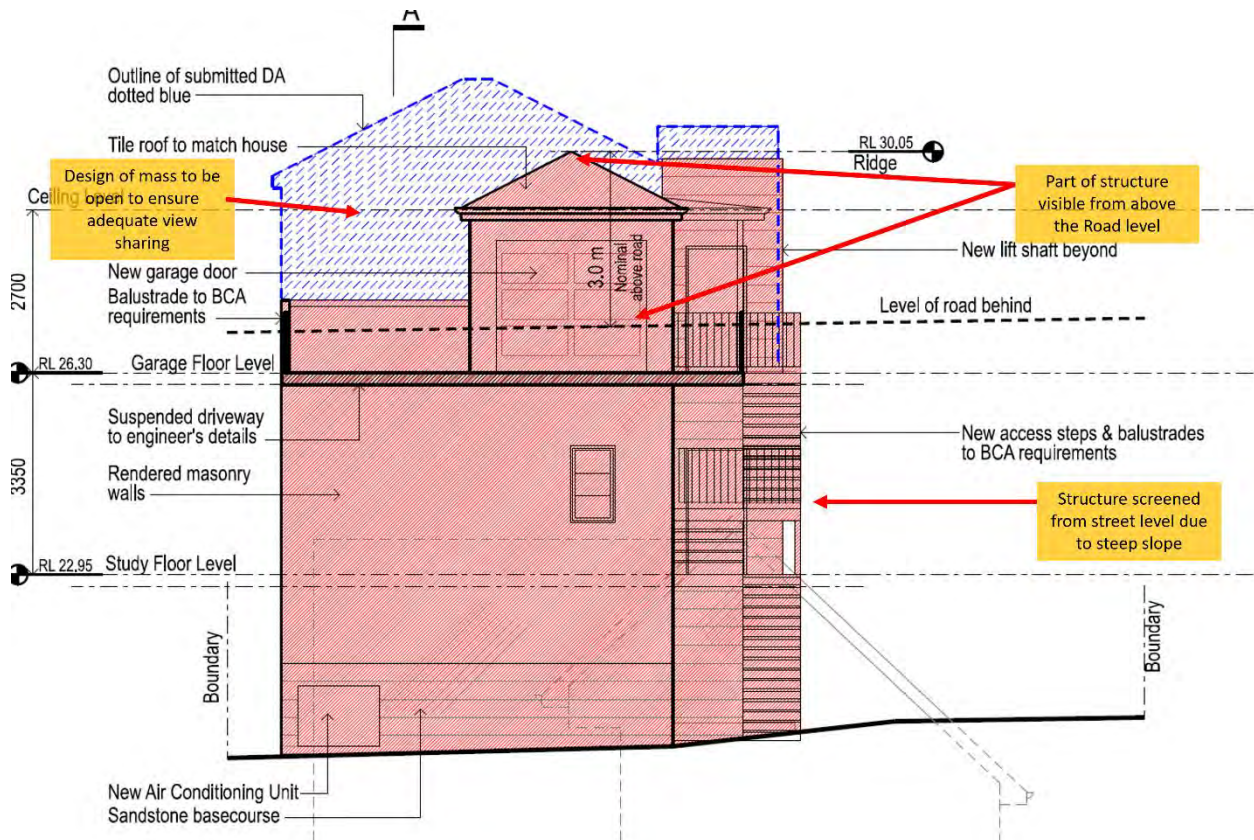


Figure 3: Markup of West Elevation

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Due to the unique environmental constraints in the locality, access to dwellings on the lower side of Kareela Road is presented with parking platforms that provide access to the dwellings lower down the slope. Given that the only part of the structure perceivable from street level is a single storey element, that's designed to be consistent with the heritage character of the locality and designed to enable adequate view sharing, I am of the view the proposal is consistent with the objectives of the development standard.

## **2. Underlying objective or purpose is not relevant to the development**

Given the surrounding locality, the objectives of the development standard are relevant to the proposal. The development has been designed considering these constraints particularly for view sharing and overshadowing.

The garage structure is consistent with other structures in the locality that have steep escarpment for access to their dwellings. To overcome the poor access issue, the platform and garage structure is required to ensure adequate vehicle parking is provided for the dwelling and safe access for residents. The proposed lift will mean that the residents will be able to remain in their family home for another twenty years.

Given the proposed height of building is compatible with the surrounding structures and as the relevant LEP & DCP Objectives are satisfied, Council's support of the variation to the maximum height of building control is requested in this instance. It is unreasonable and unnecessary to require strict compliance with the development standard for the following reasons:

- The non-complying height of the proposed garage is a result of the steep topography at the west end of the property that adjoins Kareela Road. The garage presents to Kareela Road as a complying single storey building. The additional height is located below street level, in the undercroft of the garage. As such it will have no adverse impact too the streetscape of Kareela Road.
- The proposed development achieves the objectives of the prescribed height standard
- The non-complying garage building as proposed will not have any detrimental effect on the established amenity of the area
- The subject property is one of the only properties to the east side of Kareela Road that does not benefit from vehicular access.
- There is also no direct pedestrian access to the property from the street. A footpath that connects to Kareela Road further along the street (in front of No 41), provides the only access from the street. This access route is circuitous, uneven, steep in places and includes many steps. The footpath is more than 38 metres to the front gate of the property and another 19 metres to the front door. The distance and steepness is unreasonable for an older couple to carry household shopping and daily needs when an alternative can be provided.
- The aim of the proposed development is to upgrade the property to provide safe and secure pedestrian and vehicular access, to improve the owners' current amenity and allow the owners to age in place into the future. It will also provide access to the property for family and visitors with varying levels of mobility.
- Compliance with the standard is unreasonable as it would require demolition or substantial alterations to the existing dwelling and it would preclude provision of safe and secure access to the property direct from Kareela Road.

For the above reasons, it would be unreasonable and unnecessary to require strict compliance with the standard, particularly as strict compliance cannot be achieved since the sites existing steep escarpment and the way height of building is calculated means that compliance cannot be achieved. It is considered that the purpose of the standard is relevant, but the purpose is satisfied.

**3. Underlying objective or purpose would be defeated or thwarted if compliance was required.**

Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development. Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

**4. Development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard.**

It is my view that the development standard has not been abandoned by the Council in the granting of development consents. Whilst its noted there are examples of other applications being supported by Clause 4.6, those applications are subject to their own assessment and individual environmental planning grounds that satisfies the consent authority that compliance is unnecessary and unreasonable. In the case of this clause 4.6 request, it demonstrates that compliance in this circumstance is unnecessary and there are sufficient environmental planning grounds to justify the breach.

This test is not necessary to satisfy nor applicable to the proposal.

**5. Zoning of the land on which the development is proposed was unreasonable or inappropriate.**

In the case of the subject site, the zoning of the land is suitable being zoned R2 Low Density Residential. The surrounding locality of Cremorne Point comprises predominately low density residential areas, with a range of environmental constraints. The proposal has been designed with these constraints in mind, to ensure the resulting land can respond to these constraints. This is demonstrated as:

- Adequate view sharing is achieved.
- Design of the structure is consistent with the heritage character of the locality.
- The proposal ensures the day to day needs of the residents are achieved ensuring adequate vehicle access is provided to the dwelling and providing safe and efficient access to the premises enabling the occupants to age in place.

The zoning on the land is reasonable as such this test isn't necessary to be demonstrated. What is demonstrated is that the proposal responds to the zoning constraints in a reasonable manner.

## **6.2 Sufficient Environmental Planning Grounds**

Clause 4.6(3)(b) requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify the exceedance. As outlined in Section 4.1 of this report, this assessment has considered DPE's clause 4.6 guidelines and relevant case law that demonstrates there are sufficient environmental planning grounds to justify the exceedance of 47 Kareela Road, this is outlined below.



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Council's controls in Clause 4.3 provide a maximum height of building of 8.5m. the proposal includes the following heights:

- Existing building height 8.8m (not changed).
- Proposed extension to the existing building 8.2m. No variation to extension (complies).
- Proposed garage building at 11.72m (roof ridge line) with a variation of 37.9%.

The 47 Kareela Road does not comply with the maximum height of building requirement. The development is justified in this instance for the following reasons:

- The proposed development will continue to provide for the housing needs of the community within the established low density residential environment.
- The proposed development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.
- The roof form, scale and architectural character of the existing building and the proposed new work are characteristic of the Conservation Area. The subject property will continue to contribute positively to the character of the area.
- There will be minor detrimental effect on local amenity, including public and private views consistent with the requirements of the Tenacity view sharing principles.
- The amenity of the occupants of the subject property will be improved ensuring that the occupants can age in place.

The following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- There will be minor detrimental effects on the established amenity of the neighbouring properties, including views, solar access or privacy, due to the non-compliance.
- The proposed new garage has been designed to be complementary to the existing building and characteristic buildings in the vicinity.
- The proposed new vehicular access and garage are consistent in siting, form and height with that provided to the majority of properties that have a primary frontage to Cremorne Reserve around the perimeter of Cremorne Point. So there will be no compromise to streetscape or heritage significance of the Conservation Area due to the non-complying height of the proposed garage building.
- The steep escarpment exacerbates the height of building exceedance.
- The proposal provides an improved residential land use outcome that better responds to the topography of the land.
- The proposal ensures the retention of the significant fig tree.



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## 7. Conclusion

This development proposed a departure from the height of building development standard, for 47 Kareela Road, with a maximum height of 11.72m. This results in a non-compliance of 37.9%.

This objection to the maximum height of building specified in Clause 4.3 of the North Sydney LEP 2013 adequately demonstrates that the objectives of the standard will be met. This objection demonstrates that the proposal results in a development that is consistent with the R2 Low-Density Residential zone objectives. The non-compliance with the Height of Building standard should be considered well founded as:

- The proposed development is suitable to the unique nature of the site
- The development will not have an adverse impact on surrounding sites or the public domain.
- The proposed development is consistent with the objectives of the Zone
- The proposed development is consistent with the objectives of the Height standard
- Compliance with the standard will result in no significant improvement to the proposal and would require demolition or substantial alterations to the existing building and would have an adverse impact to the amenity of the occupants of the property.

This Clause 4.6 has demonstrated that strict compliance with the height of building control would be unreasonable and unnecessary in the circumstances of this case. This clause 4.6 has demonstrated that there are sufficient environmental planning grounds to justify the exceedance, therefore the consent authority can be satisfied that this clause 4.6 has addressed the tests under clause 4.6(3) that requires an applicant to demonstrate to the consent authority prior to granting of consent.

In my view this objection is worthy of support from the consent authority as outlined in this report.

Suzanne Clarke-Nash  
Lawyer and Town Planner