



Woollahra Local Planning Panel Electronic Meeting

Thursday 7 July 2022
At the Conclusion of Public Meeting

Agenda

Meeting to be held using conferencing
technology

Compliance with social distancing requirements to limit the spread of COVID-19 virus at Woollahra Local Planning Panel Meetings (Electronic Meetings):

Amendments have been made to the *Local Government Act 1993* to allow councils to meet remotely to reduce the risk of COVID-19 and ensure compliance with the Public Health Order.

Woollahra Council will be holding Woollahra Local Planning Panel (Electronic Meetings) remotely using conferencing technology. The Chair of the panel, members of the Panel and staff will be participating in meetings by an audio-visual link instead of attending in person.

In response to the Directive issued by the Minister for Planning & Public Spaces on 30 June 2020, the Woollahra Local Planning Panel was required to change the way applications are considered from 1 August 2020.

In this regard, the applications listed on this Agenda will not be considered at a public meeting but rather considered **electronically** by the Panel.

When considering applications electronically, the Panel will be provided with an assessment report, relevant attachments and submissions (including copies of any submissions made by members of the public).

Meetings held electronically by the Panel, are not public meetings, and therefore members of the public are **unable** to address the panel meeting.

Late correspondence may be submitted for consideration by the Panel. All late correspondence must be received by **12 noon on the day before the meeting**. Late correspondence is to be emailed to records@woollahra.nsw.gov.au

The Woollahra Local Planning Panel (Electronic Agenda), including the assessment report on the development application, will be publically available on Council's website six (6) days prior to the meeting at: www.woollahra.nsw.gov.au/council/meetings_and_committees/agendas_and_minutes

Minutes of the Woollahra Local Planning Panel (Electronic Meeting) will be posted to Council's website once finalised.

If you have any questions in relation to the above mentioned changes, please contact Council's Governance department on (02) 9391 7001.

Woollahra Local Planning Panel Membership:

1 Chair, 2 Experts and 1 Community Representative

Quorum:

3 Panel members

Woollahra Municipal Council

Notice of Meeting

28 June 2022

To: Woollahra Local Planning Panel Members
Chair
Experts
Community Representative

Dear Panel Members,

Woollahra Local Planning Panel (Electronic Meeting) – 7 July 2022

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council's **Woollahra Local Planning Panel (Electronic Meeting)** meeting to be held **in the Thornton Room at 536 New South Head Road, Double Bay, on Thursday 7 July 2022 at the Conclusion of Public Meeting.**

The applications listed on this Agenda will not be considered at a public meeting but rather considered **electronically** by the Panel.

When considering applications electronically, the Panel will be provided with an assessment report, relevant attachments and submissions (including copies of any submissions made by members of the public). Meetings held electronically by the Panel, are not public meetings, and therefore members of the public are **unable** to address the panel meeting.

Members of the public are however invited to submit late correspondence for consideration by the Panel by emailing records@woollahra.nsw.gov.au by **12noon on the day prior to the meeting.**

If you have any difficulties accessing the meeting please contact (02) 9391 7001.

Regards,

Craig Swift-McNair
General Manager

Woollahra Local Planning Panel (Electronic)

Meeting Agenda

Item	Subject	Page
1.	Opening	
2.	Acknowledgement of Country (Gadigal People and Birrabirrigal People)	
3.	Leave of Absence and Apologies	
4.	Late Correspondence	
5.	Declarations of Interest	

Items to be Decided by the Panel

D1	DA157/2022/1 - Cliff Street, Watsons Bay - 22/121451.....7 *See Recommendation Page 23	
D2	DA502/2021/1 - 2-2A Kulgoa Road Bellevue Hill - 22/123684.....57 *See Recommendation Page 93	
D3	DA 94/2022/1 - 66 New Beach Road Darling Point - 22/123239197 *See Recommendation Page 240	
D4	DA59/2022/1 - 41 Carlotta Road, Double Bay - 22/123127279 *See Recommendation Page 310	

LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D1
FILE No.	DA157/2022/1
ADDRESS	Cliff Street WATSONS BAY (Camp Cove Beach)
COUNCIL WARD	Vaucluse
SITE AREA	1,615.41 m ²
ZONING	RE1 Public Recreation
PROPOSAL	Alterations and additions to existing Camp Cove beach kiosk.
TYPE OF CONSENT	Local development
COST OF WORKS	\$80,300.00
DATE LODGED	03/05/2022
APPLICANT	Corona Projects Pty Ltd
OWNER	Woollahra Municipal Council
AUTHOR	Ms R Meech
TEAM LEADER	Mr M Moratelli
SUBMISSIONS	One (1)
RECOMMENDATION	Approval

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

The application is to be determined by the Woollahra Local Planning Panel as it falls under the category of:

- Conflict of interest
Development for which the applicant or land owner is:
 1. the council

2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory.
- The site is suitable for the proposed development
- The proposal is in the public interest

3. LOCALITY PLAN



4. PROPOSAL

The proposal involves the following works:

Demolition:

- Demolition of the existing shed at the rear.

Additions:

- New storage room with tiled roof;
- New roller shutter;
- External and internal painting of brickwork;
- New fixed awnings; and
- New retractable awning.

5. ISSUES

5.1. Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Nil.

5.2. Primary Issues

Nil.

5.3. Summary of Submissions

The submissions raised the following issues:

Issue	Conclusion	Section
Lack of detail on how the awnings will be fixed and how they will withstand coastal winds.	Condition C.4 (Professional Engineering Details) has been imposed ensuring detailed professional engineering plans and/or specifications be submitted to the Certifying Authority with the application prior to the issue of any Construction Certificate.	23
It would look more harmonious and aesthetic to the eye if the roof additions were synonymous and fitted with the environment.	An assessment has been made against the relevant State Environmental Planning Policies and the controls and objectives of the Woollahra DCP 2015. The proposed works are considered to be appropriate to the surrounding Heritage Conservation Area and will not negatively impact upon the visual amenity and scenic qualities of the coastal environment.	12.1 14.2 14.3

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features
Camp Cove Beach is legally defined as Lot 2 in Deposited Plan 609383. The existing kiosk is located along the northern end of the beach. The kiosk sits upon a concrete paved area and comprises of a small single-storey brick building with a tiled roof.
Topography
The area in which the kiosk is located is relatively flat and setback from the shoreline. There is a number of steps that lead up to the kiosk from the northern end of the beach.
Existing buildings and structures
The site is located at Camp Cove Kiosk and is legally described Lot 2 in Deposited Plan 609383. The site is located on at the northern end of Cliff Street, Watsons Bay. Woollahra Municipal Council's <i>List of Council Land & Property Assets</i> document dated 15 April 2020 refers to the subject site as a commercially leased property at 0 Cliff Street, Watsons Bay
Surrounding Environment
The site is located within the mixed area of Watsons Bay, both public and private space surrounds the area where the kiosk is situated. Nearby structures feature low-density scales, respecting the natural qualities of the surrounding landscaping and ocean outlook.



7. RELEVANT PROPERTY HISTORY

Current use
Kiosk.
Relevant Application History
<u>Finance, Community & Services Committee Meeting - Monday, 4 April 2022</u> Council, as the landowner commenced a tender process in late 2021 for the new licence of Camp Cove Kiosk (Tender SC5403). Consent for the purpose of lodging a Development Application (DA) consistent with the Licensee's Works was granted at the Finance, Community and Services Committee Meeting. Consent was granted to enable the Licensee, Denim Collaborations Pty Ltd, to lodge a Development Application (DA) for the alterations and additions to Camp Cove Kiosk and outdoor seating area, consistent with the Plans as submitted with this DA.
Relevant Compliance History
Nil.

8. REFERRALS

No internal or external referrals required.

Whilst a formal Heritage referral was not required, relevant standard conditions have been imposed.

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
 - i) Environmental impacts on the natural and built environments
 - ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

9. ADVERTISING AND NOTIFICATION

9.1. Submissions

The application was advertised and notified from 25/05/2022 to 09/06/2022 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019.

One (1) submission was received from:

1. Georgina Johnston and Dr John Rooney, 5 Victoria Street WATSONS BAY

The issues raised in the submission are discussed under Section 5.3.

9.2. Statutory Declaration

The applicant has completed the statutory declaration dated 10/06/22 declaring that the site notice for DA157/2022/1 was erected and maintained during the notification period in accordance with the Community Participation Plan.

10. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

SEPP (Building Sustainability Index: BASIX) 2004 is not applicable it relates to an ancillary structure.

11. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 2 Coastal Management

Chapter 2 of SEPP (Resilience and Hazards) 2021, gives effect to the objectives of the Coastal Management Act 2016 from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the Coastal Zone.

The subject land is located within the Coastal Environment Area (Clause 2.10) and the Coastal Use Area (Clause 2.11).

Clause 2.10 states:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

1. *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - b) *coastal environmental values and natural coastal processes,*
 - c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - f) *Aboriginal cultural heritage, practices and places,*
 - g) *the use of the surf zone.*
2. *Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—*
 - a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
 - b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimize that impact, or*

- c) if that impact cannot be minimized—the development will be managed to mitigate that impact.*
3. *This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

The following comments are made in relation to Clause 2.10:

- The proposed works are not considered to adversely impact upon the coastal environment, values and processes, the water quality, the vegetation, the fauna, the undeveloped headlands and rock platforms, the existing public open space and public access, the Aboriginal heritage, practices and places, and the use of the surf zone.

Clause 2.11 states:

Division 4 Coastal use area

2.11 Development on land within the coastal use area

1. *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*
 - a) *has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - i. *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - ii. *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - iii. *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - iv. *Aboriginal cultural heritage, practices and places,*
 - v. *cultural and built environment heritage, and*
 - b) *is satisfied that—*
 - i. *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - ii. *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - iii. *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
2. *This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

The following comments are made in relation to Clause 2.11:

- The proposed works are appropriately located so that the proposal would not adversely impact upon access along the foreshore, solar access to the public places to the foreshore, and aboriginal culture.
- Council's Heritage Officer reviewed the application at the Development Application Assessment Committee (DARC) stage and advised that the proposal would not unreasonably impact cultural and built environment heritage.
- The bulk and scale of the proposed development is appropriate to the surrounding coastal and built environment and will not adversely impact upon the visual amenity and scenic qualities of the coast.

The other provisions of this planning instrument that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast.

It is considered that the proposal, will not have any significant adverse environmental impact upon the harbour coastal locality and is therefore satisfactory with regard to the relevant provisions of the planning instrument.

Chapter 4 Remediation of Land

Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021, requires consideration to be given as to whether the subject land is contaminated. The subject site has a history of residential uses, the land does not require further consideration under this clause.

The proposed modifications are considered to be satisfactory with regard to the relevant provisions of SEPP (Resilience and Hazards) 2021.

12. STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

12.1. Chapter 10 Sydney Harbour Catchment

The provisions of Chapter 10 of the SEPP, require Council to consider the visual impact that a development proposal will have upon Sydney Harbour and adjoining foreshore areas and the likely impact upon available views to and from Sydney Harbour. The subject site has an immediate Harbour frontage and the building will be readily visible from Sydney Harbour.

The rear section of the subject site is located in the WS8 'Scenic Waters: Passive Use' zone under the zoning map, which accompanies the SEPP. None of the proposed works are located within the WS8 zone.

Section 10.23 Foreshore and waterways scenic quality

Section 10.23 states that:

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows—

- a) the scale, form, design and siting of any building should be based on an analysis of—
 - i) the land on which it is to be erected, and*
 - ii) the adjoining land, and*
 - iii) the likely future character of the locality,**
- b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,*
- c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.*

The following comments are made in relation to section 10.23:

- The proposed additions would not significantly alter the scale of the existing structure;
- The proposal retains the overall height of the existing structure;
- Council's Heritage Officer reviewed the application at the Development Application Assessment Committee (DARC) stage and concluded that the proposal would not unreasonably impact the character of the Heritage Conservation Area;
- The proposal is satisfactory with regards to the unique visual qualities of Sydney Harbour and its foreshore;

- The proposed modifications to the existing structure do not include any water based development.

Section 10.24 Maintenance, Protection and Enhancement of Views

Section 10.24 states that:

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows—

- a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,*
- b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,*
- c) the cumulative impact of development on views should be minimised*

The following comments are made in relation to section 10.24:

- The proposal ensures that identified significant public views and vistas are retained.

12.2. Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (DCP)

Part 5: Design Guidelines for Land-Based Development

Part 5.3: Siting of Buildings and Structures

The Kiosk is located at the far northern end of Camp Cove beach. The Kiosk is situated above an existing concrete section of the beach which facilitates pedestrian access to the beach and the South Head Heritage Trail from Cliff Street. The building is oriented to face the beach and it stands at an angle to the central axis of Cliff Street presenting the street with its rear (Figure 1).

The new works include the installation of new fixed and retractable awnings, the demolition of the existing shed, minor extension to the storage area and painting of the internal and external walls. The operating hours are not proposed to change, and the application does not seek any intensification of use. There is no change to the location of the building itself however the proposal will now have greater capacity to accommodate for outdoor seating under the new awnings. The proposed store room addition and shed removal will not have any significant view, overshadowing, visual privacy or visual impacts upon the locality. Accordingly, the proposal will not have an adverse impact upon the heritage conservation area nor the amenity of the neighbouring properties.



Figure 1. Existing structure - Camp Cove Kiosk, Cliff Street WATSONS BAY

Part 5.4: Built Form

The built form of the development should avoid boxy shapes and flat roofs, high fences and walls, bright lighting, reflective materials, unsympathetic colours, a reduction in landscaping, and loss of views of significant features, landmarks or heritage items.

The structure of the kiosk itself will remain as existing with only a minor extension to the storage room at the rear. As described within the Statement of Environmental Effects:

The building is a simple, single storey building constructed in face quality clinker bricks with a steeply pitched skillion roof falling towards the beach. The roof is tiled with concrete tiles. The roof is rectangular with the southern part of the building stepping in underneath forming two protected eaves overhangs above the servery counter divided by a thick brick pier on the corner. The servery has two openings - protected at night by roller shutters – a wider one facing the front and a narrower one facing the side, beside the entrance. The interior is formed by two interlocking spaces with a slight offset. There is a separate external storage room accessible by a small staircase hidden behind the building.

The proposed alterations to the built form of the kiosk are considered satisfactory with regard to Part 5.4 for the following reasons:

- The proposal will retain the built form of the existing structure and will not significantly alter the scale as viewed from the public domain;
- Council's Heritage Officer reviewed the application at the Development Application Assessment Committee (DARC) stage and advised that the proposal would not unreasonably impact the character of the Heritage Conservation Area;
- Significant public and private views and vistas to and from the waterfront are retained and the proposed alterations and additions are not expected to block identified view corridors;

- The proposed colours and materials of the fixed and retractable awnings are to be constructed of colorbond and incorporate a neutral colour (grey) to remain cohesive with the tiles of the existing structure.

Part 5.5 Signage

No signage has been proposed under this application.

Conclusion

The proposal is considered to be satisfactory with regards to the provisions of Chapter 10 of the SEPP and the **Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (DCP)**.

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1. Part 1.2: Aims of Plan

The proposal is consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

13.2. Land Use Table

The proposal is defined as 'Alterations and additions to existing Camp Cove beach kiosk' and as a kiosk, it is permitted and is consistent with the objectives of the RE1 Public Recreation zone.

13.3. Part 4.3: Height of Buildings

No statutory building height applies to the subject site, and accordingly Part 4.3 of the Woollahra LEP 2014 is not applicable to the proposal.

13.4. Part 4.4: Floor Space Ratio

No statutory floor space ratio applies to the subject site, and accordingly Part 4.4 of the Woollahra LEP 2014 is not applicable to the proposal.

13.5. Part 5.4 Controls relating to miscellaneous permissible uses

Part 5.4 considers a variety of miscellaneous permissible uses including the operation of Kiosks. Sub clause (6) permits Kiosks within the locality under the Woollahra LEP 2014, subject that the gross floor area must not exceed 25 square metres.

The proposed works include the addition of a storage area to the existing kiosk. As a result of the alterations and additions to Kiosk will have a total gross floor area of 20.55m².

The proposal is acceptable with regard to Part 5.4 of the Woollahra LEP 2014.

13.6. Part 5.10: Heritage Conservation

Parts 5.10(2) and 5.10(4) require Council to consider the effect of works proposed to a heritage item, building, work, relic or tree, within a heritage conservation area or new buildings or subdivision in a conservation area or where a heritage item is located.

The subject site is located in Watsons Bay Heritage Conservation Area. The subject site is located within proximity to the following Heritage Items:

- Green (Laings) Point Reserve (Item 439 of the Woollahra LEP);

- Green Point Obelisk (Item 440 of the Woollahra LEP);
- Camp Cove Beach (Item 463 of the Woollahra LEP);
- Former Marine Biology Station—building, interiors and grounds 31 Pacific Street (456 local)
- Constable's Cottage group, comprising Police Station and interiors, 32 Cliff Street and interiors; 68 pounder MI and rifle posts and surrounds; sandstone defensive wall and roadway (Item 427 of the Woollahra LEP); and
- Gunnery School group, comprising: former officers' mess (part of conference centre); former battery workshop (Ranger's cottage); former armoury (part of conference centre); former School of Gunnery latrine (toilets); interiors of all buildings; practice battery at seaward cliffs (Item 434 of the Woollahra LEP).



Figure 2. Woollahra LEP 2014 Heritage map – Watsons Bay Heritage Conservation Area (Location of Camp Cove Kiosk circled)

Council's Heritage Officer reviewed the application at the Development Application Assessment Committee (DARC) stage and concluded that there would be no adverse impact on the heritage item located in close proximity. Furthermore, a condition is recommended which pertains to the unexpected findings of Aboriginal Objects.

Subject to the recommended conditions of consent the proposal is acceptable with regard to the objectives in Parts 5.10 of the Woollahra LEP 2014.

13.7. Part 5.21: Flood Planning

Part 5.21 seeks to minimise the flood risk to life and property development, allow development on land that is compatible, consider projected changes as a result of climate change and avoid significant adverse impacts on flood behaviour and the environment in flood prone areas.

The subject site is not located within an area identified as flood affected.

The proposal is acceptable with regard to Part 5.21 of the Woollahra LEP 2014.

13.8. Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, preliminary assessment is not required and there is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Part 6.1.

13.9. Part 6.2: Earthworks

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal does not involve any additional earthworks as part of this application. The proposal is therefore acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

13.10. Part 6.4: Limited Development on Foreshore Area

This clause applies to the site and seeks to ensure that development in the foreshore area does not impact on natural foreshore processes or affect the significance and amenity of the area.

A 12m Foreshore Building Line applies to the subject land and all that land forward of the FSBL is identified as 'Foreshore Area 12'. Council must not grant development for development on land in Foreshore Area 12 unless it is for the purpose of:

- (a) the extension, alteration or rebuilding of an existing building that is wholly or partly in foreshore area 12, or*
- (b) a boat shed, sea retaining wall, wharf, slipway, jetty, waterway access stairs, swimming pool or fence.*

Whilst the subject site of Camp Cove Beach (Lot 2 in DP 609383) is impacted by the clause, the area where the Camp Cove Kiosk is located and where the proposal is physically limited to, does not fall within the Foreshore Area 12. The proposal is therefore acceptable with regard to Part 6.4 of the Woollahra LEP 2014.

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

14.1. Chapter B3: General Development Controls

In accordance with Map 1 of Section B3.1.1, the provisions of Section B3 do not apply to the subject site.

14.2. Chapter C3: Watsons Bay Heritage Conservation Area

The proposal involves the demolition of the existing shed and minor portions of the existing building and the construction of a new storage room with tiled roof, new roller shutter, new fixed awnings and new retractable awning. The purpose of the proposed works is to improve the condition of the Camp Cove Kiosk, to provide additional sun and rain protection for patrons and to allow for greater internal storage whilst utilising an acceptable selection of external materials that will complement the existing structure. The proposal will ensure that external finishes respect and complement the existing structure and the surrounding development within the Heritage Conservation Area.

These proposed works are considered to be of minor impact and the proposed development will continue to meet the objectives of the Watsons Bay Heritage Conservation Area along with Section C3.4 and Section C3.5 of the Woollahra DCP 2015 as detailed below.

14.3. C3.4.8 Precinct H: Victoria Street Waterfront

14.3.1 Topography and vegetation

The proposal does not involve any new works that may impact upon the existing significant cultural plantings in properties along the beachfront. In addition, no new plantings have been proposed.

14.3.2 Townscape

C9 When the opportunity arises, the Camp Cove kiosk should be relocated to open the view corridor to the beach from the north-west end of Cliff Street.

Although the proposal does not propose any changes to the siting and location of the existing kiosk, the alterations and additions are not located within the vicinity of the view corridor and will reduce any further impacts related to important views and vistas. The development ensures that identified significant public views and vistas are retained.

14.3.3 The waterfront

C12 Elements that evoke an early maritime character are to be retained, including traditional verandahed building forms, pitched and hipped corrugated steel or tiled roofs, chimneys and cultural plantings.

C13 Unless shaded, no reflective materials are permitted, including glass balustrades.

The proposal will maintain the existing shed roof style associated with the kiosk and include the addition of awnings over the existing seating area.

The proposal includes the addition of eleven (11) solar panels to the existing roof of the kiosk structure. **Condition C.1** is recommended to require the solar panels to not project 300mm above the roof, and to ensure appropriate treatments to avoid glare.

14.3.4 Contributory items

The subject structure is not identified as a heritage item or contributory item within the Heritage Conservation Area or Victoria Street Waterfront Precinct.

14.3.5 Built form

C23 New development is to respect the character of adjacent contributory items when viewed from the Harbour.

C24 The following materials are appropriate for new buildings:

- a) Walls: weatherboards, sandstone, masonry or exposed, rendered or painted brickwork.*
- b) Roof cladding: corrugated steel, slate, or tiled in unglazed terracotta or dark earth tones.*

The proposed form of the alterations and additions to the structure would be in keeping with that of the existing, including the built form and roof form. The proposal would retain the height of the

existing dwelling. As a result, the works would not visually dominate the streetscape and any surrounding contributory items which is supported.

The applicant has provided additional details in relation to the building materials and details as per below:

- *All internal and external walls will be finished in white;*
- *External bricks will be bag rendered to show some of the brick lines;*
- *Pergola on outdoor seating will be either timber painted white or lacquer finish;*
- *Colorbond roof finished in grey to match existing tiled roof.*

The proposed changes to the materiality of the dwelling will utilise high quality materials whilst maintaining the character and scale of the existing kiosk.

The existing kiosk and surrounding outdoor seating area is significantly weathered and will benefit from the proposed works.

14.3.6 Landscaping and site coverage

The proposal does not involve any works relevant to landscaping and private open space.

14.3.7 Fences and walls

The proposal does not involve any works relevant to existing fences and walls.

14.3.8 Car parking and access

The proposal does not involve any works relevant to car parking or access on the site.

14.4. Part 3.5 General Controls for all development

The following general controls are relevant to the scope of the proposed works and have not been previously addressed by the above-mentioned precinct controls.

14.4.1 C3.5.3 The waterfront

- C1 Development is not to further encroach onto existing public foreshore promenades or beaches.*
- C2 Development is to retain the visual links between the water and foreshore areas.*
- C3 Commercial development is not permitted within the public domain, other than in those areas that are already used commercially.*
- C4 No development is permitted that would prevent public access to the shoreline or create the impression of the foreshore being a private area.*

The proposal intends on creating greater amenity for patrons through the construction of awnings which will provide additional sun and rain protection. The existing right-of-way will be maintained ensuring ease of access for members of the public. The proposed works remain within the area of operation as per the existing kiosk leasing agreement and is not considered to encroach further into the public domain.

The proposal is therefore acceptable with regard to Part C3.5.3 of the Woollahra DCP 2015.

14.5. Chapter E1: Parking and Access

The proposal is not considered to generate any additional traffic or parking demand that is unreasonable in the context of the site and surrounds.

14.6. Chapter E2: Stormwater and Flood Risk Management

The provisions of this chapter requires the adequate provision of sustainable stormwater management, the controlled release of stormwater to prevent flooding downstream in the prevention of stormwater pollution to Sydney Harbour and waterways, and, to protect land and property from flooding.

The proposal complies with the relevant criteria prescribed with regard to the objectives and controls in Chapter E2 of the Woollahra DCP 2015 and are further addressed by Council's standard conditions.

14.7. Chapter E4: Contaminated Land

The provisions of this chapter require the adequate management of potentially contaminated land in order to adequately ensure public health and safety, essentially replicating requirements of SEPP 55-Remediation of Land.

Consideration has been given as to whether the land is contaminated. In the absence of any information indicating the potential contamination of the sites, further consideration of this issue is not warranted in this instance.

The proposal is considered to be acceptable with regard to the objectives and controls in Chapter E4 of the Woollahra DCP 2015.

14.8. Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the on-going use of the building.

The Applicant has noted within the 'Statement of Environmental Effects' that:

Waste produced during the partial demolition and construction stages of this proposal will be appropriately managed by the contractors employed to undertake the work. Materials will be reused or recycled where possible. On-going waste management will occur as per the existing arrangements.

The applicant has not provided a SWMP with the submitted application. Council's standard conditions have been applied in order to adequately address the provisions of Chapter E5 of the Woollahra DCP 2015 have been recommended.

14.9. Chapter E6: Sustainability

Part E6.3: Solar Energy Systems

A solar energy system includes a photovoltaic electricity generating system, solar hot water system, or solar air heating system. The proposal includes the addition of eleven (11) solar panels to the existing roof of the kiosk structure.

Condition C.1(a) is recommended to require the solar panels to not project more than 300mm above the roof, and to ensure appropriate treatments to avoid glare. The proposal is therefore acceptable with regard to the relevant provisions in Part E6.3.

14.10. Chapter E7: Signage

No signage has been proposed under this application.

15. DRAFT AMENDMENTS TO POLICIES AND PLANS

There are no relevant draft amendments that affect the carrying out of the proposed works.

16. CONTRIBUTIONS PLANS

16.1. Section 7.12 Contributions Plan 2021

Section 2.3.2 of the Section 7.12 Contributions Plan 2021 states:

‘ This Plan applies to all development applications and applications for complying development certificates in respect of development on land to which this Plan applies, other than applications made by or on behalf of the Council.’

Accordingly, Section 7.12 contributions are not applicable.

17. APPLICABLE ACTS/REGULATIONS

17.1. Clause 61(1) of the EPA Regulation 2021

Clause 61(1) of the EPA Regulation 2021 requires Council to take into consideration Australian Standard AS 2601-2001: The demolition of structures. This requirement is addressed by Council’s standard condition.

18. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

19. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

20. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

21. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 4.15.

22. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

23. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council as the consent authority, grant development consent to Development Application No. 157/2022/1 for alterations and additions to existing Camp Cove beach kiosk on land at Cliff Street Watsons Bay, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* ("the *Act*") and the provisions of the *Environmental Planning and Assessment Regulation 2000* ("the *Regulation*") such conditions being reasonable and relevant to the development as assessed pursuant to section 4.15 of the *Act*.

Standard Condition: A1 (Autotext AA1)

A.2 Definitions

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act 1987* as in force at the date of consent.

Applicant means the applicant for this consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or **AS/NZS** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney's eastern suburbs (see the brochure titled "Local Native Plants for Sydney's Eastern Suburbs" published by the Southern Sydney Regional Organisation of Councils).

Stormwater drainage system means all works, facilities and documentation relating to:

- the collection of stormwater,
- the retention of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater; and
- connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner-builder has the same meaning as in the *Home Building Act 1989*.

PC means the Principal Certifier under the *Act*.

Principal Contractor has the same meaning as in the *Act*, or where a Principal Contractor has not been appointed by the Owner of the land being developed Principal Contractor means the Owner of the land being developed.

Professional engineer has the same meaning as in the BCA.

Public place has the same meaning as in the *Local Government Act 1993*.

Road has the same meaning as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the Applicant.

Site means the land being developed subject to this consent.

Woollahra LEP means *Woollahra Local Environmental Plan 2014*

Woollahra DCP means *Woollahra Development Control Plan 2015*

Work for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an occupation certificate.

Note: Interpretation of conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.
Standard Condition: A2 (Autotext AA2)

A.3 Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp “Approved” and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
01	Site Plan	Corona Projects	April 2022
03	Proposed Floor Plan		
04	Elevations/Sections		
05	Elevations		
06	Roof Plan		

Note: Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

Note: These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)
Standard Condition: A5 (Autotext AA5)

A.4 Ancillary Aspects of Development (section 4.17(2) of the Act)

The Owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

Note: This condition does not affect the Principal Contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.
Standard Condition: A8 (Autotext AA8)

B. Conditions which must be satisfied prior to the demolition of any building or construction

B.1 Construction Certificate Required Prior to Any Demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 6.6 of the *Act*.

In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the *Act*.

Note: See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.
Standard Condition: B1 (Autotext BB1)

B.2 Identification of Hazardous Material

In accordance with Australian Standard AS2601: *The Demolition of Structures*, the Owner shall identify all hazardous substances located on the site including asbestos, polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc. per clause 1.6.1 of the Standard.

In this regard, **prior to the commencement of any work**, Council shall be provided with a written report prepared by a suitably qualified competent person detailing:

- all hazardous materials identified on the site,
- the specific location of all hazardous materials identified,
- whether the hazardous materials are to be removed from the site as part of the works to be undertaken, and
- safety measures to be put in place.

Note: This condition is imposed to protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.
Standard Condition: B6 (Autotext BB6)

B.3 Public Road Assets Prior to Any Work/Demolition

To clarify the condition of the existing public infrastructure prior to the commencement of any development (including prior to any demolition), the Applicant or Owner must submit to Council a full record of the condition of the public road infrastructure adjacent to the development site.

The report must be submitted to Council **prior to the commencement of any work** and include photographs showing current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- kerb and gutter,
- footway including footpath pavement and driveways,
- retaining walls within the footway or road, and
- drainage structures/pits.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.

If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

Note: If the Applicant or Owner fails to submit the asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose
Standard Condition: B7 (Autotext BB7)

B.4 Aboriginal Objects – Unexpected Findings

If unexpected Aboriginal objects or bones are found during any activity associated with this consent, you must:

- a) Not further disturb or move these objects or bones.
- b) Immediately cease all work at the particular location.
- c) In the case of suspected human remains, notify NSW Police.
- d) Notify the Heritage NSW Environment Line on 131 555 and the La Perouse LALC on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location.
- e) Not recommence any work at the particular location unless authorised in writing by Heritage NSW. Additional assessment and approval pursuant to the *National Parks and Wildlife Act 1974* may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: The Definition of Aboriginal object as per the Woollahra Local Environmental Plan 2014: any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.
Standard Condition: B10 (Autotext BB10)

C. Conditions which must be satisfied prior to the issue of any Construction Certificate

C.1 Modification of Details of the Development (section 4.17(1)(g) of the Act)

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the *Regulation*, must detail the following amendments:

- a) To ensure the proposed solar panels uphold the provisions in Part E6.3 of the Woollahra DCP 2015, they must:
 - i Not project above the roof surface by more than 300mm;
 - ii Not involve mirrors or lenses to reflect or concentrate sunlight; and
 - iii Consist of anti-reflective glass or coating.

C.2 Payment of Long Service Levy, Security, Contributions and Fees

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a Construction Certificate, Subdivision Certificate or Occupation Certificate, as will apply.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
Long Service Levy www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator	Contact LSL Corporation or use online calculator	No	
SECURITY under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>			
Property Damage Security Deposit -making good any damage caused to any property of the Council	\$5,147	No	T115
INSPECTION FEES under section 608 of the <i>Local Government Act 1993</i>			
Security Administration Fee	\$202	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$5,349 plus any relevant indexed amounts and long service levy		

Building and Construction Industry Long Service Payment

The long service levy under section 34 of the *Building and Construction Industry Long Service Payment Act 1986*, must be paid and proof of payment provided to the Certifying Authority prior to the issue of any Construction Certificate. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website www.longservice.nsw.gov.au or the Long Service Corporation on 131 441.

How must the payments be made?

Payments must be made by:

- cash deposit with Council,
- credit card payment with Council, or
- bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,

- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

How will the section 7.12 levy (formerly known as 94A levy) be indexed?

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2011 sets out the formula and index to be used in adjusting the levy.

Do you need HELP indexing the levy?

Please contact Council's Customer Service Team on ph 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the *Act* and could void any such certificate (eg Construction Certificate, Subdivision Certificate, or Occupation Certificate).

Deferred or periodic payment of section 7.12 levy (formerly known as 94A levy) under the Woollahra Section 94A Development Contributions Plan 2011

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- the reasons given,
- whether any prejudice will be caused to the community deriving benefit from the public facilities,
- whether any prejudice will be caused to the efficacy and operation of the Plan, and
- whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

Council may, as a condition of accepting deferred or periodic payment, require the provision of a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 3.13 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

C.3 Structural Adequacy of Existing Supporting Structures

A certificate from a professional engineer (structural engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted with the Construction Certificate application.

Note: This condition is imposed to ensure that the existing structure is able to support the additional loads proposed.

Standard Condition: C35 (Autotext CC35)

C.4 Professional Engineering Details

The Construction Certificate plans and specifications, required by clause 139 of the *Regulation*, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydrogeological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the Certifying Authority with the application for any Construction Certificate.

Note: This does not affect the right of the developer to seek staged Construction Certificates.

Standard Condition: C36

C.5 Stormwater Discharge to Existing Stormwater Drainage System

The Construction Certificate plans and specifications required by clause 139 of the *Regulation*, must detail:

- a) the location of the existing Stormwater Drainage System including all pipes, inspection openings, surface drains, pits and their discharge location,
- b) the state of repair of the existing Stormwater Drainage System,
- c) any remedial works required to upgrade the existing Stormwater Drainage System to comply with the BCA,
- d) any remedial works required to upgrade the existing Stormwater Drainage System crossing the footpath and any new kerb outlets,
- e) any new Stormwater Drainage System complying with the BCA,
- f) interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
- g) any rainwater tank (see Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and
- h) general compliance with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Where any new Stormwater Drainage System crosses the footpath area within any road, separate approval under section 138 of the *Roads Act 1993* must be obtained from Council for those works prior to the issue of any Construction Certificate.

All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012).

Note: Clause F1.1 of Volume 1 and Part 3.1.2 of Volume 2 of the BCA provide that stormwater drainage complying with AS/NZS 3500.3 Plumbing and drainage - Part 3: Stormwater drainage is deemed-to-satisfy the BCA. Council's specifications apply in relation to any works with any road or public place.

Note: The collection, storage and use of rainwater is to be in accordance with *Standards Australia HB230-2008 "Rainwater Tank Design and Installation Handbook"*.

- Note:** Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. For more information go to the Sydney Water website www.sydneywater.com.au/SW/plumbing-building-developing/index.htm or call 1300 082 746.
- Note:** Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003 and the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management can be downloaded from Council's website www.woollahra.nsw.gov.au
Standard Condition: C49

D. Conditions which must be satisfied prior to the commencement of any development work

D.1 Compliance with Building Code of Australia and insurance requirements under the [Home Building Act 1989](#)

For the purposes of section 4.17(11) of the *Act*, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- b) in the case of residential building work for which the [Home Building Act 1989](#) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a) to the extent to which an exemption is in force under the *Home Building Regulation 2004*, or
- b) to the erection of a temporary building.

In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant Construction Certificate is made.

Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the *Home Building Act 1989*. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.
Standard Condition: D1 (Autotext DD1)

D.2 Works (Construction) Zone – Approval and Implementation

A Works Zone may be required for this development. The Principal Contractor or Owner can apply for a works zone. If the works zone is approved the Principal Contractor or Owner must pay all fees for this Works Zone before it can be installed.

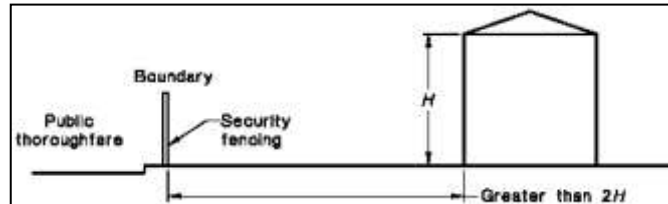
The Principal Contractor must pay all fees associated with the application and occupation and use of the road as a Works Zone. All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any work. Signs are not erected until full payment of works zone fees.

Note: The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Maritime Services under section 50 of the *Transport Administration Act 1988*.

Note: The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service.
Standard Condition: D10 (Autotext DD10)

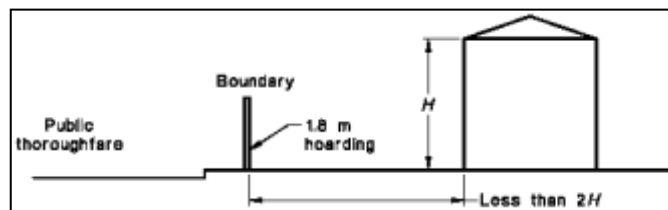
D.3 Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection

Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.



Type A Hoarding

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.



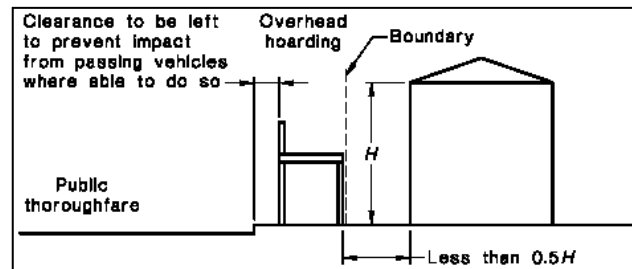
Type B Hoarding

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:

- the vertical height above footpath level of the structure being demolished is less than 4.0m; or
- the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must:

- extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary,
- have a clear height above the footpath of not less than 2.1m,
- terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface, and
- together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.



The Principal Contractor or Owner-builder must ensure that overhead protective structures are installed and maintained in accordance with the NSW “Code of Practice - Overhead Protective Structures 1995”. This is code available at www.safework.nsw.gov.au/_data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf

All Hoardings

Security fencing, hoarding and overhead protective structure must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.

Hoardings on Public Land including ‘Creative Hoardings’

The Principal Contractor or Owner-builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council’s Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the Principal Contractor or Owner-builder. The Creative Hoardings Policy can be downloaded from Council’s website www.woollahra.nsw.gov.au

Note: The Principal Contractor or Owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the *Roads Act 1993* will be subject to its own conditions and fees.

Note: Council seeks to increase public art in the public domain by requiring artwork or historic images on hoardings located on public land. Under the Creative Hoardings Policy an application for a hoarding proposed on public land will require an approved artwork or historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the Policy:

- A. Hoardings proposed on land zoned B2 Local Centre, or B4 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more
OR
- B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more
OR
- C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where:
 - i. the capital investment value of the work to which the hoarding relates is less than \$1 million
OR
 - ii. the land is zoned R2 Low Density Residential
OR
 - iii. the land is zoned R3 Medium Density Residential and the hoarding located in a lane or street that does not have through traffic (eg a cul-de-sac or no through road).

Artwork and historic images for the hoardings are assessed and approved in accordance with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed to the hoardings must be submitted with Council’s form “Application for a permit to use a footpath for the erection of a hoarding/scaffolding”.

The Creative Hoardings Policy can be downloaded from www.woollahra.nsw.gov.au or for more information contact Council’s Cultural Development Team.

Standard Condition: D11 (Autotext DD11)

D.4 Site Signs

The Principal Contractor or Owner-builder must ensure that the sign/s required by clauses 98A and 227A of the *Regulation* is/are erected and maintained at all times.

Clause 98A of the *Regulation* provides:

Erection of signs

- For the purposes of section 4.17(11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a. showing the name, address and telephone number of the Principal Certifier for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c. stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the *Act*, to comply with the Building Code of Australia.

Clause 227A of the *Regulation* provides:

Signs on development sites

If there is a person who is the Principal Certifier or the Principal Contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

- Each such person MUST ensure that a rigid and durable sign showing the person's identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.

Note: Clause 227A imposes a penalty exceeding \$1,000 if these requirements are not complied with.

Note: If Council is appointed as the Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and clause 227A of the *Regulation*.

Standard Condition: D12 (Autotext DD12)

D.5 Toilet Facilities

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

- a) must be a standard flushing toilet, and
- b) must be connected to a public sewer, or
- c) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
- d) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

In this condition:

accredited sewage management facility means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation 1993* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the *Local Government (Approvals) Regulation 1993*.

approved by the Council means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

public sewer has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.
sewage management facility has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

Note: This condition does not set aside the requirement to comply with SafeWork NSW requirements.
Standard Condition: D13 (Autotext DD13)

D.6 Erosion and Sediment Controls – Installation

The Principal Contractor or Owner-builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The Soil and Water Management Plan if required under this consent;
- b) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c) “*Managing Urban Stormwater - Soils and Construction*” 2004 published by the NSW Government (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence.

Note: The International Erosion Control Association – Australasia (www.austieca.com.au/) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.

Note: The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication can be downloaded from www.woollahra.nsw.gov.au and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm

Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the *Act* and/or the *Protection of the Environment Operations Act 1997* **without any further warning**. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.
Standard Condition: D14 (Autotext DD14)

D.7 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)

The erection of the building in accordance with this development consent must not be commenced until:

- a) A Construction Certificate for the building work has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited Certifier, and
- b) The person having the benefit of the development consent has:
 - appointed a Principal Certifier for the building work, and
 - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and

- c) The Principal Certifier has, no later than 2 days before the building work commences:
 - notified the consent authority and the Council (if the Council is not the consent authority) of his or her appointment, and
 - notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- d) The person having the benefit of the development consent, if not carrying out the work as an Owner-builder, has:
 - appointed a Principal Contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - notified the Principal Certifier of any such appointment, and
 - unless that person is the Principal Contractor, notified the Principal Contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

Note: *building* has the same meaning as in section 1.4 of the *Act* and includes part of a building and any structure or part of a structure.

Note: *new building* has the same meaning as in section 6.1 of the *Act* and includes an altered portion of, or an extension to, an existing building.

Note: The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 6.6(2) of the *Act* (including the need for a Construction Certificate) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

Note: Construction Certificate Application, PC Service Agreement and Notice of Commencement forms can be downloaded from Council's website www.woollahra.nsw.gov.au

Note: It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 6.6(2) of the *Act*.
Standard Condition: D15 (Autotext DD15)

E. Conditions which must be satisfied during any development work

E.1 Compliance with BCA and Insurance Requirements under the [Home Building Act 1989](#)

For the purposes of section 4.17(11) of the *Act*, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia (BCA),
- b) in the case of residential building work for which the [Home Building Act 1989](#) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the *Regulation*, or
- b) to the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.
Standard Condition: E1 (Autotext EE1)

E.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: *The Demolition of Structures*.
Standard Condition: E2 (Autotext EE2)

E.3 Requirement to Notify about New Evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifier.
Standard Condition: E4 (Autotext EE4)

E.4 Critical Stage Inspections

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the Principal Certifier is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*.

Critical stage inspections means the inspections prescribed by the *Regulations* for the purposes of section 6.5 of the *Act* or as required by the Principal Certifier and any PC Service Agreement.

Note: The PC may require inspections beyond mandatory critical stage inspections in order that the PC be satisfied that work is proceeding in accordance with this consent.

Note: The PC may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.
Standard Condition: E5 (Autotext EE5)

E.5 Hours of Work –Amenity of the Neighbourhood

- a) No *work* must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- d) The following *work must not* take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
 - (i) piling,
 - (ii) piercing,
 - (iii) rock or concrete cutting, boring or drilling,
 - (iv) rock breaking,
 - (v) rock sawing,
 - (vi) jack hammering, or
 - (vii) machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- g) No rock excavation being cutting, boring, drilling, breaking, sawing , jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

Note: The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

Note: Each and every breach of this condition by any person may be subject to a separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RMS and NSW Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.

Note: Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2017*.

Note: NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nglg.htm
Standard Condition: E6 (Autotext EE6)

E.6 Public Footpaths – Safety, Access and Maintenance

The Principal Contractor or Owner-builder and any other person acting with the benefit of this consent must:

- a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any *work*.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Not stand any plant and equipment upon the road or footway.
- f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- g) Protect heritage listed street name inlays in the footpath which are not to be removed or damaged during development.

This condition does not apply to the extent that a permit or approval exists under the section 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 of the *Local Government Act 1993* except that at all time compliance is required with:

- a) Australian Standard AS 1742 (Set): *Manual of uniform traffic control devices* and all relevant parts of this set of standards.
- b) Australian Road Rules.

Note: Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.

Note: Section 138 of the *Roads Act 1993* provides that a person must not:

- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoining the road, or
- connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

Note: Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the Council including:

- Part C Management of waste:
 - a. For fee or reward, transport waste over or under a public place
 - b. Place waste in a public place
 - c. Place a waste storage container in a public place.

- Part E Public roads:
 - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
 - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.
- Standard Condition: E7 (Autotext EE7)

E.7 Maintenance of Environmental Controls

The Principal Contractor or Owner-builder must ensure that the following monitoring, measures and controls are maintained:

- a) erosion and sediment controls,
- b) dust controls,
- c) dewatering discharges,
- d) noise controls,
- e) vibration monitoring and controls,
- f) ablutions.

Standard Condition: E11

E.8 Support of Adjoining Land and Buildings

A person must not do anything on or in relation to the site (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).

For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.

Note: This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the Principal Contractor or Owner-builder must obtain:

- a. the consent of the owners of such adjoining or supported land to trespass or encroach, or
- b. an access order under the *Access to Neighbouring Land Act 2000*, or
- c. an easement under section 88K of the *Conveyancing Act 1919*, or
- d. an easement under section 40 of the *Land and Environment Court Act 1979* as appropriate.

Note: Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

Note: Clause 20 of the *Roads Regulation 2008* prohibits excavation in the vicinity of roads as follows: **"Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road." Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

Note: The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, Crown land under Council's care control or management, or any community or operational land as defined by the *Local Government Act 1993*.

Standard Condition: E13 (Autotext EE13)

E.9 Erosion and Sediment Controls – Maintenance

The Principal Contractor or Owner-builder must maintain water pollution, erosion and sedimentation controls in accordance with:

- a) the Soil and Water Management Plan required under this consent,
- b) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001, and
- c) “*Managing Urban Stormwater - Soils and Construction*” 2004 published by the NSW Government (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence.



Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the *Act* and/or the *Protection of the Environment Operations Act 1997* without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the *Protection of the Environment Operations Act 1997* provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”.

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

Standard Condition: E15 (Autotext EE15)

E.10 Disposal of Site Water During Construction

The Principal Contractor or Owner-builder must ensure:

- a) Prior to pumping any water into the road or public stormwater system that approval is obtained from Council under section 138(1)(d) of the *Roads Act 1993*.
- b) That *water pollution*, as defined by the *Protection of the Environment Operations Act 1997*, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water.
- c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.

Note: This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.

Standard Condition: E17 (Autotext EE17)

E.11 Placement and Use of Skip Bins

The Principal Contractor or Owner-builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a) Activity Approval has been issued by Council under section 68 of the *Local Government Act 1993* to place the waste storage container in a public place; and
- b) where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules.

Note: Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.
Standard Condition: E21 (Autotext EE21)

E.12 Prohibition of Burning

There must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) treated timber is prohibited in all parts of NSW.

All burning is prohibited in the Woollahra local government area.

Note: Pursuant to the *Protection of the Environment Operations (Clean Air) Regulation 2010* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.
Standard Condition: E22 (Autotext EE22)

E.13 Dust Mitigation

Dust mitigation must be implemented in accordance with “*Dust Control - Do it right on site*” published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- a) Dust screens to all hoardings and site fences.
- b) All stockpiles or loose materials to be covered when not being used.
- c) All equipment, where capable, being fitted with dust catchers.
- d) All loose materials being placed bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

Note: “*Dust Control - Do it right on site*” can be downloaded from Council’s website www.woollahra.nsw.gov.au or obtained from Council’s office.

Note: Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from www.safework.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions and advice may apply.

Note: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.
Standard Condition: E23 (Autotext EE23)

E.14 Site Waste Minimisation and Management – Demolition

In order to maximise resource recovery and minimise residual waste from demolition activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),
- c) provide separate collection bins and/or areas for the storage of residual waste,

- d) clearly 'signpost' the purpose and content of the bins and/or storage areas,
- e) implement measures to prevent damage by the elements, odour, health risks and windborne litter, and
- f) minimise site disturbance, limiting unnecessary excavation.

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act 1997*,
- c) waste is only transported to a place that can lawfully be used as a waste facility,
- d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

Note: Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Standard Condition: E31 (Autotext EE31)

E.15 Site Waste Minimisation and Management – Construction

In order to maximise resource recovery and minimise residual waste from construction activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) arrange for the delivery of materials so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage,
- c) consider organising to return excess materials to the supplier or manufacturer,
- d) allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation),
- e) clearly 'signpost' the purpose and content of the storage areas,
- f) arrange contractors for the transport, processing and disposal of waste and recycling and ensure that all contractors are aware of the legal requirements for disposing of waste,
- g) promote separate collection bins or areas for the storage of residual waste,
- h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter,
- i) minimise site disturbance and limit unnecessary excavation,
- j) ensure that all waste is transported to a place that can lawfully be used as a waste facility, and
- k) retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.

Standard Condition: E32 (Autotext EE32)

E.16 Asbestos Removal

All asbestos removal work must be carried out safely according to NSW work health and safety legislation.

Where hazardous material, including bonded or friable asbestos has been identified in accordance with the conditions in Section B above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

- a) Be undertaken by contractors who hold a current SafeWork NSW "demolition licence" and a current SafeWork NSW "Class A licence" for friable asbestos removal.
- b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.
- c) No asbestos products may be reused on the site.
- d) No asbestos laden skip or bins shall be left in any public place.

Note: This condition is imposed to protect the health and safety of persons working on the site and the public
Standard Condition: E39

E.17 Classification of Hazardous Waste

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the *Protection of the Environment Operations Act 1997* and the NSW EPA *Waste Classification Guidelines, Part 1: Classifying Waste, 2014*.

Note: This condition is imposed to ensure that where hazardous waste will be removed from a site an asbestos licensed contractor can definitively determine where the waste may be legally taken for disposal.
Standard Condition: E40

E.18 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with the hazardous waste classification condition above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Note: This condition is imposed to ensure that asbestos and other hazardous waste is disposed of lawfully under the *Protection of the Environment Operations Act 1997* and relevant NSW EPA requirements.
Standard Condition: E41

E.19 Asbestos Removal Signage

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site when asbestos is being removed.

Note: This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.
Standard Condition: E42

E.20 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted.

The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

Note: This condition has been imposed to ensure that local residents are informed and have adequate communication facilitated for incidents of asbestos removal.
Standard Condition: E43

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 6.9 of the Act)

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 6.10 of the *Act*) unless an Occupation Certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building.
Standard Condition: F1 (Autotext FF1)

F.2 Commissioning and Certification of Systems and Works

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier works-as-executed (WAE) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the *Act*, the *Regulations*, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must include but may not be limited to:

- a) All structural work.
- b) Such further matters as the Principal Certifier may require.

Note: This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the *Act*, comply with the BCA, comply with this consent and so that a public record of works as execute is maintained.

Note: The PC may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the *Act*, *Regulation*, development standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

Note: The PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.
Standard Condition: F7 (Autotext FF7)

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

Nil.

H. Conditions which must be satisfied prior to the issue of the Occupation Certificate for the whole of the building

H.1 Removal of Ancillary Works and Structures

The Principal Contractor or Owner must remove from the land and any adjoining public place:

- a) the site sign,
- b) ablutions,
- c) hoarding,
- d) scaffolding, and
- e) waste materials, matter, article or thing.

Note: This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the Occupation Certificate.
Standard Condition: H12 (Autotext HH12)

I. Conditions which must be satisfied during the ongoing use of the development

Nil.

J. Miscellaneous Conditions

Nil.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and Environmental Laws

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

- a) Issue Penalty Infringement Notices (On-the-spot fines);
- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.

Standard Advising: K1 (Autotext KK1)

K.2 Dial Before You Dig



The Principal Contractor, Owner-builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and dial 1100 Before You Dig or visit www.1100.com.au

When you contact Dial Before You Dig you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

Standard Advising: K2 (Autotext KK2)

K.3 Builder's Licences and Owner-builders Permits

Section 6.6(2)(d) of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a Principal Contractor for residential building work who must be the holder of a contractor licence.

The Owner(s) must appoint the Principal Certifier. The Principal Certifier must check that the required insurances are in place before the commencement of building work. The Principal Contractor (builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the *Home Building Act 1989* for the residential building work.

Note: For more information go to the NSW Fair Trading website

www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating

Standard Condition: K5 (Autotext KK5)

K.4 Building Standards - Guide to Standards and Tolerances

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia.

Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the "NSW Guide to Standards and Tolerances 2017" are achieved.

The quality of any development is a function of the quality of the Principal Contractor's or Owner-builder's supervision of individual contractors and trades on a daily basis during the development. The Principal Certifier does not undertake this role.

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

Note: For more information on the *NSW Guide to Standards and Tolerances* go to the NSW

Fair Trading website www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances or call 133 220.

Standard Condition: K6 (Autotext KK6)

K.5 SafeWork NSW Requirements

The *Work Health and Safety Act 2011* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: For more information go to the SafeWork NSW website www.safework.nsw.gov.au or call 131 050.

Standard Condition: K7 (Autotext KK7)

K.6 Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

Note: Further information can be obtained from the NSW Civil and Administrative Tribunal

www.ncat.nsw.gov.au/Pages/cc/Divisions/dividing_fences.aspx

Note: Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Around 75% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. To contact the Community Justice Centres go to www.cjc.nsw.gov.au or call 1800 990 777.
Standard Advising: K10 (Autotext KK10)

K.7 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Ms R Meech Assessment Officer, on (02) 9391 7016

However, if you wish to pursue your rights of appeal in the Land and Environment Court you are advised that Council generally seeks resolution of such appeals through a section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

K.8 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the *Act*.

The securities will not be released until the Occupation Certificate has been lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

Note: The Refund of Security Bond Application form can be downloaded from

www.woollahra.nsw.gov.au

Standard Condition: K15 (Autotext KK15)

K.9 Recycling of Demolition and Building Material

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17 (Autotext KK17)

K.10 Owner-builders

Under the *Home Building Act 1989* any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from NSW Fair Trading.

Note: For more information go to the NSW Fair Trading website www.fairtrading.nsw.gov.au or call 133 220.

Standard Condition: K18 (Autotext KK18)


K.11 Pruning or Removing a Tree Growing on Private Property

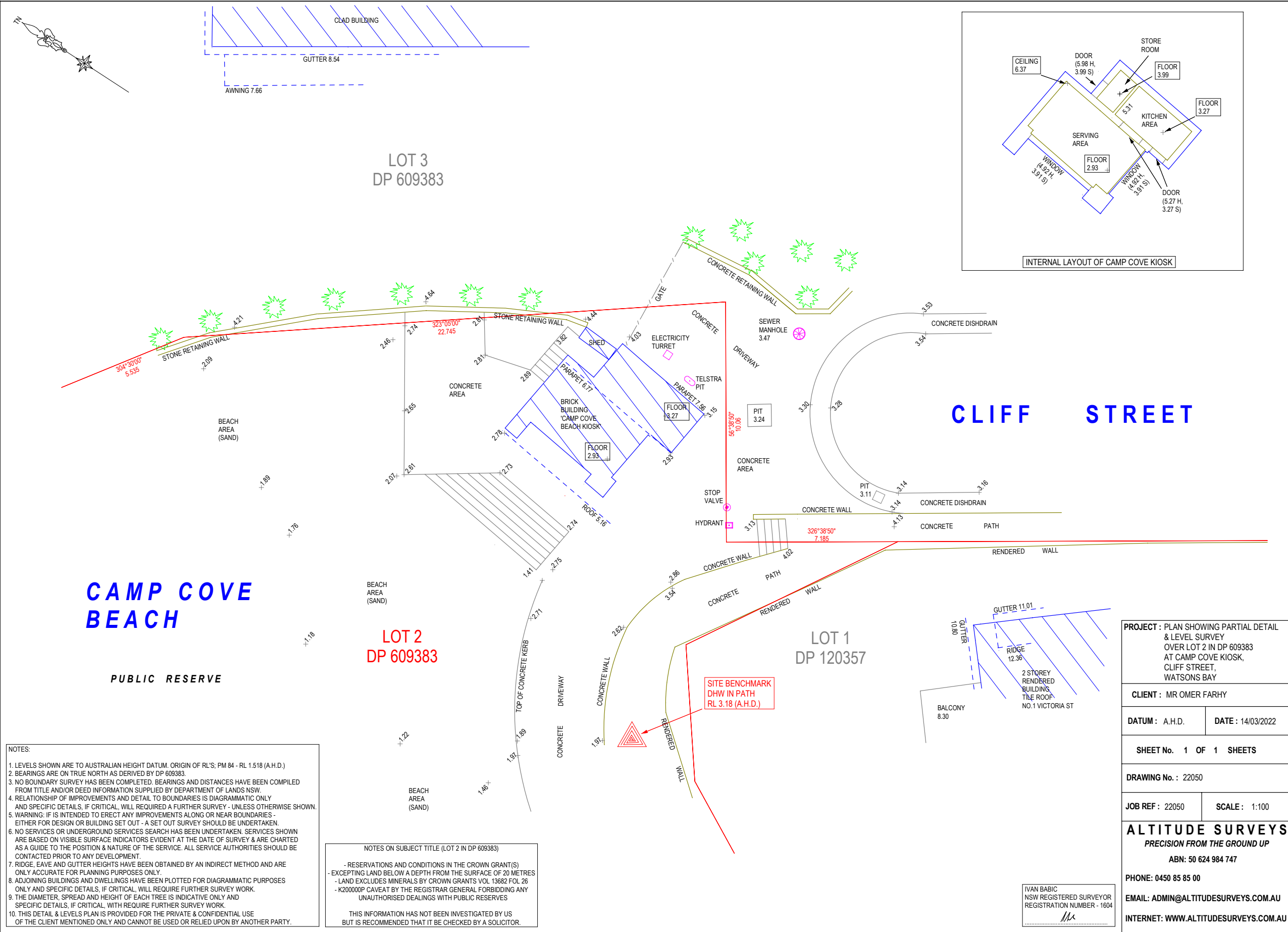
The provisions of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and the Woollahra Development Control Plan 2015 (DCP), Chapter E3 –Tree Management, may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

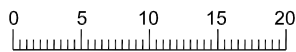
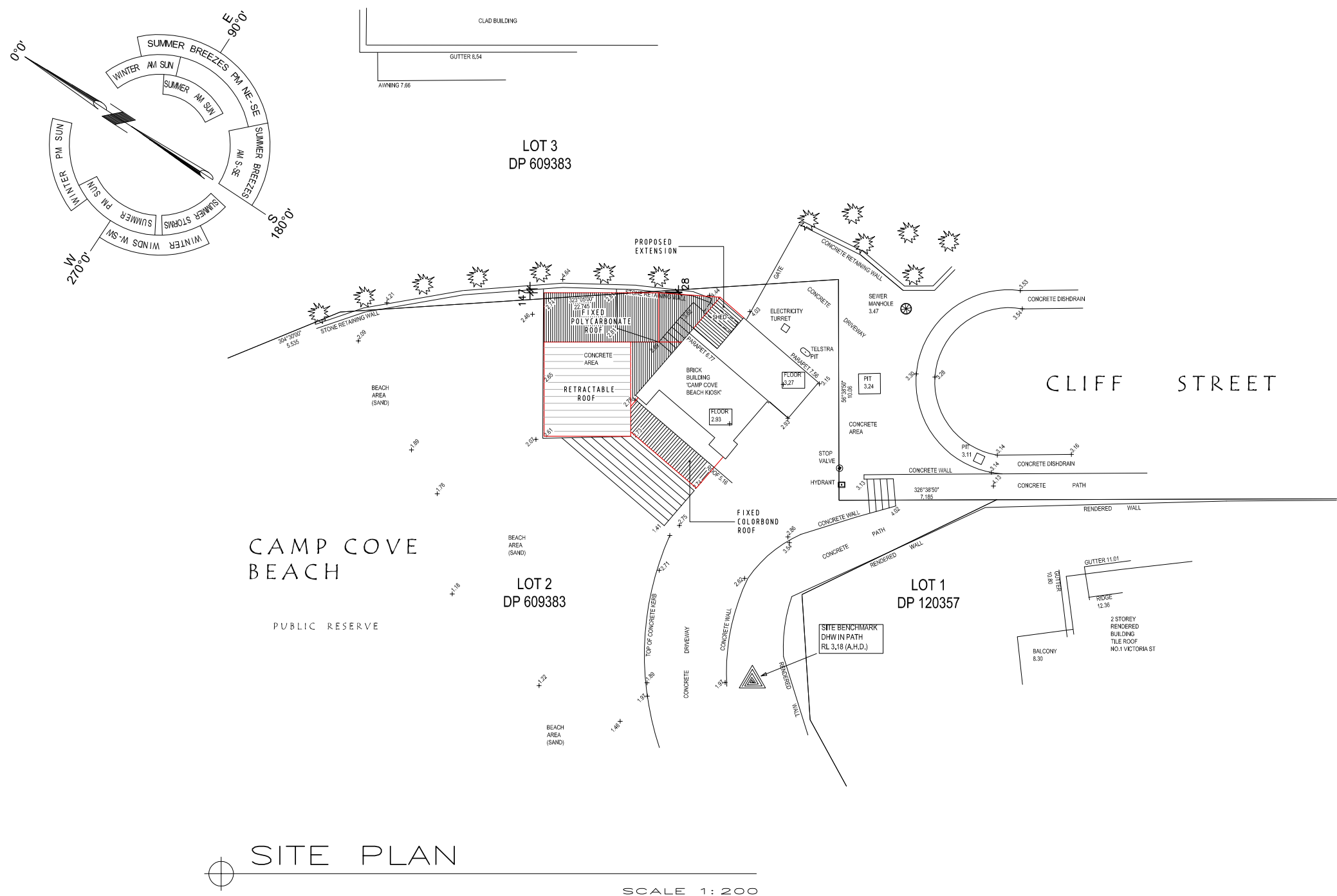
Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the Woollahra DCP from Council's website www.woollahra.nsw.gov.au or call Council on 9391 7000 for further advice.

Standard Condition: K19 (Autotext KK19)

Attachments

1. Architectural drawings  





AMENDMENTS		

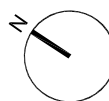
THE WORK IS TO BE COMPLETED WITH THE BUILDING CODE OF AUSTRALIA, SAA CODES AND RELEVANT BY-LAWS.
THE BUILDING MANUFACTURER SHALL CHECK AND VERIFY ALL DIMENSIONS, RL, GROUND LINES AND CONSTRUCTION METHODS PRIOR TO COMMENCEMENT OF WORK.
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A COPY OF THIS PLAN IS TO BE SUBMITTED BY THE PROPRIETOR WITH THE BUILDING APPLICATION TO THE COUNCIL.

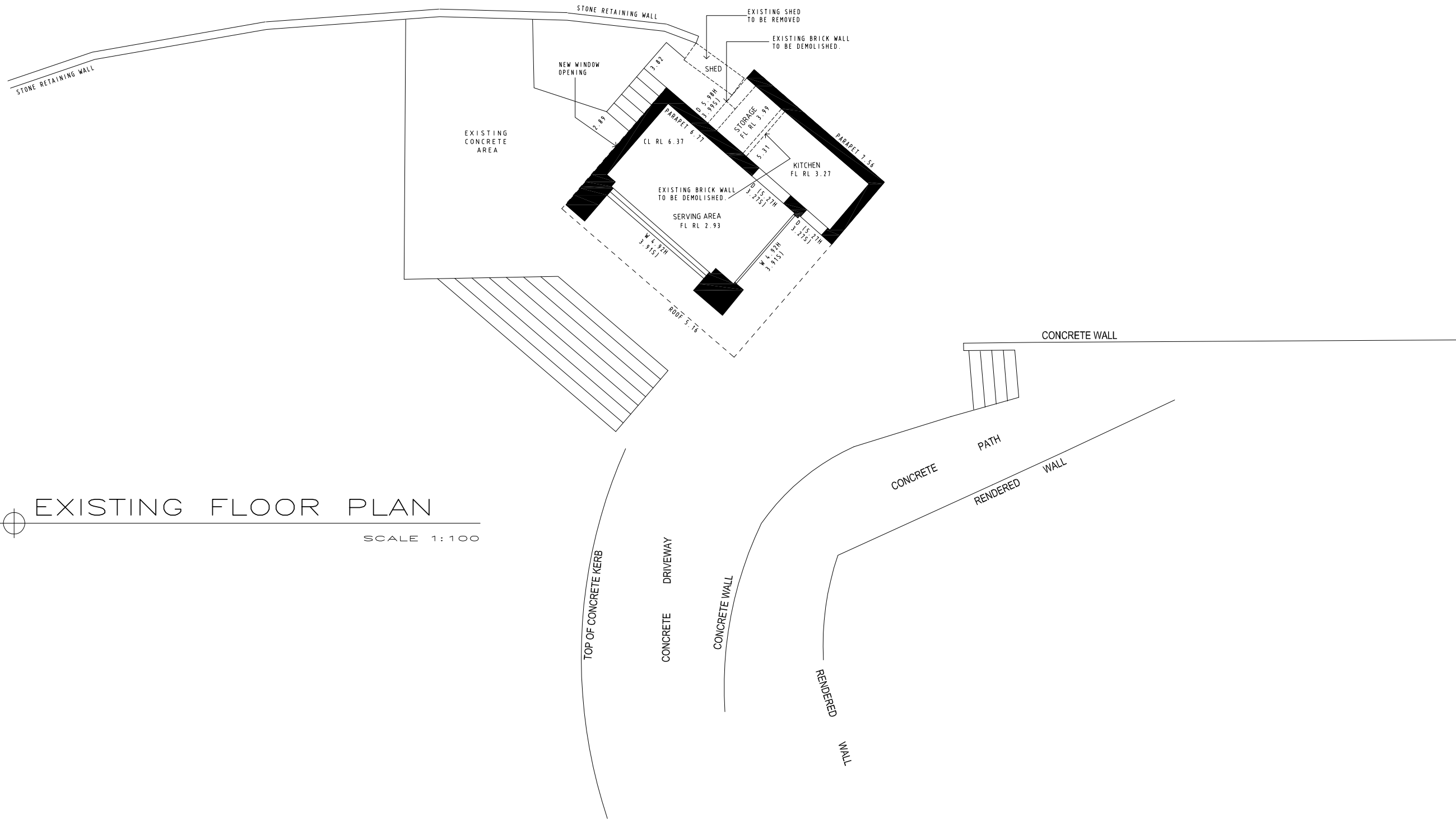


Corona Projects

PO BOX 1749 BONDI JUNCTION NSW 1355
PHONE: 0419 438 956
EMAIL: Info@coronaprojects.com

DRAWING: SITE PLAN	PROJECT: AWNING	SHEET No: 01
SCALE: 1:200 @ A3	ADDRESS: 36 CLIFF ST.	DATE: APRIL





EXISTING FLOOR PLAN
SCALE 1:100



AMENDMENTS

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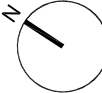
**Corona Projects**

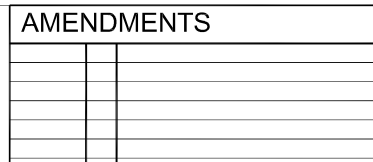
PO BOX 1749 BONDI JUNCTION NSW 1355
PHONE: 0419 438 956
EMAIL: Info@coronaprojects.com

DRAWING: EXISTING FLOOR PLAN
SCALE: 1:100 @ A3

PROJECT: AWNING
ADDRESS: 36 CLIFF ST.

SHEET No: 02
DATE: APRIL





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DRAWING:
PROPOSED FLOOR PLAN

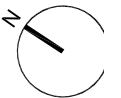
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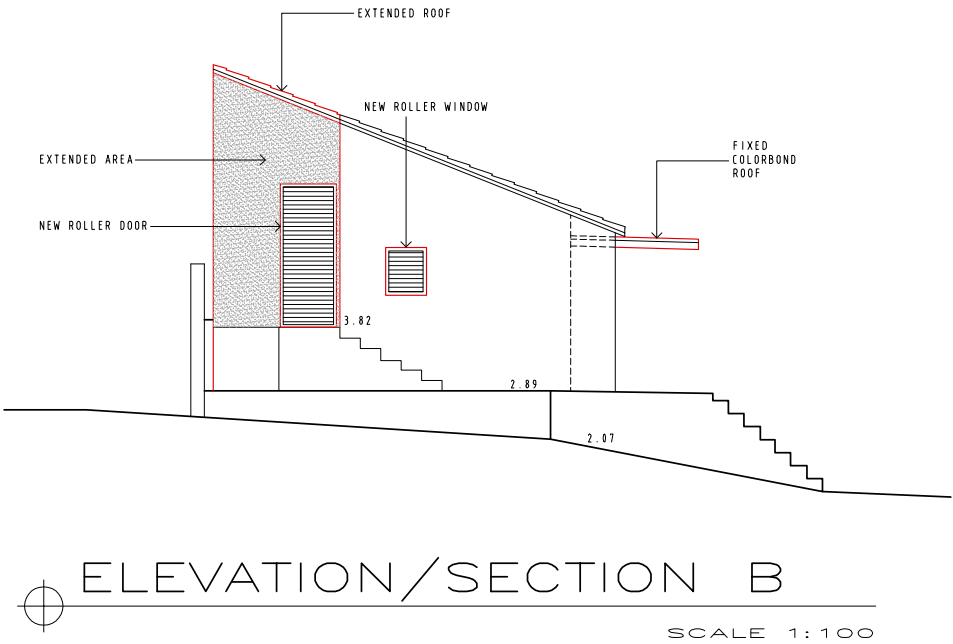
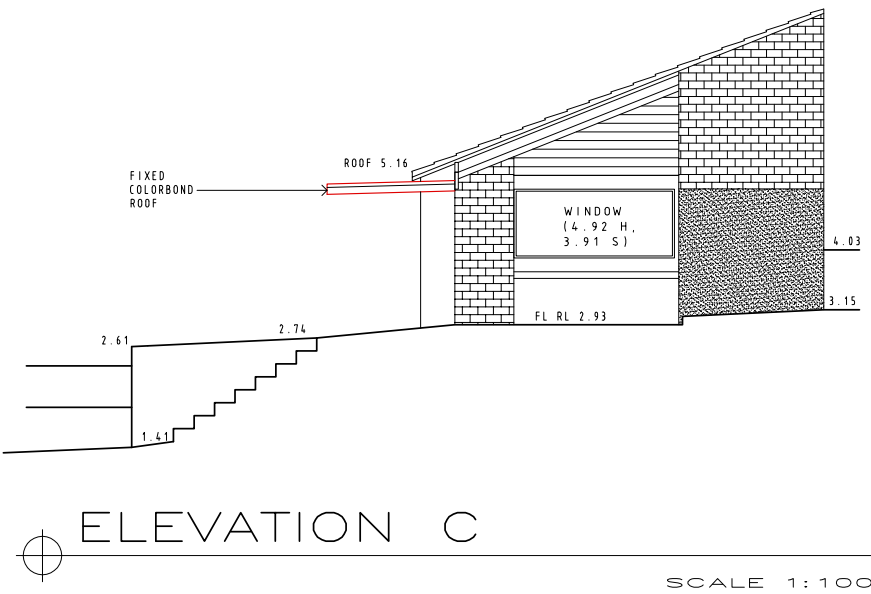
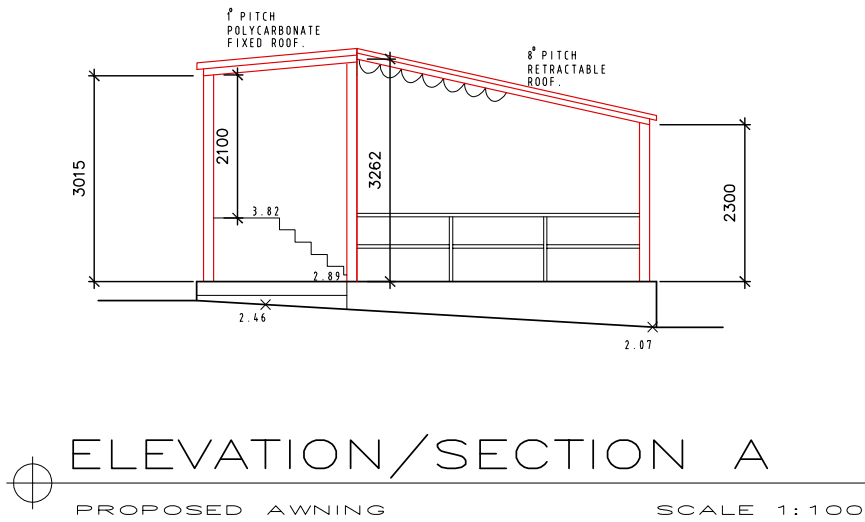
PROJECT:
AWNING

ADDRESS:
36 CLIFF ST.

SHEET No:
03

DATE:
APRIL





AMENDMENTS

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DRAWING:
ELEVATIONS/SECTIONS

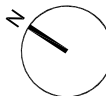
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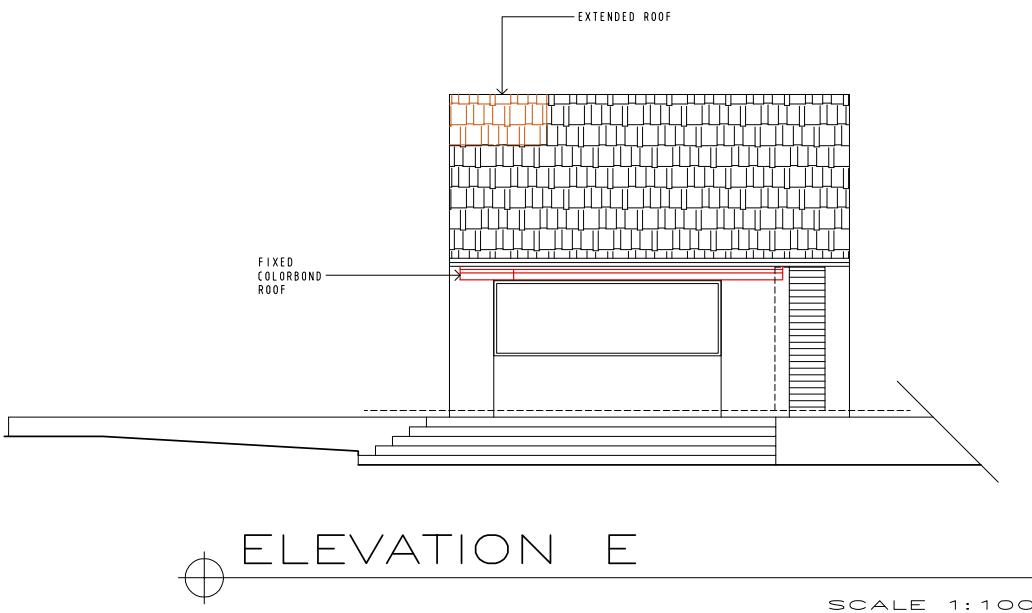
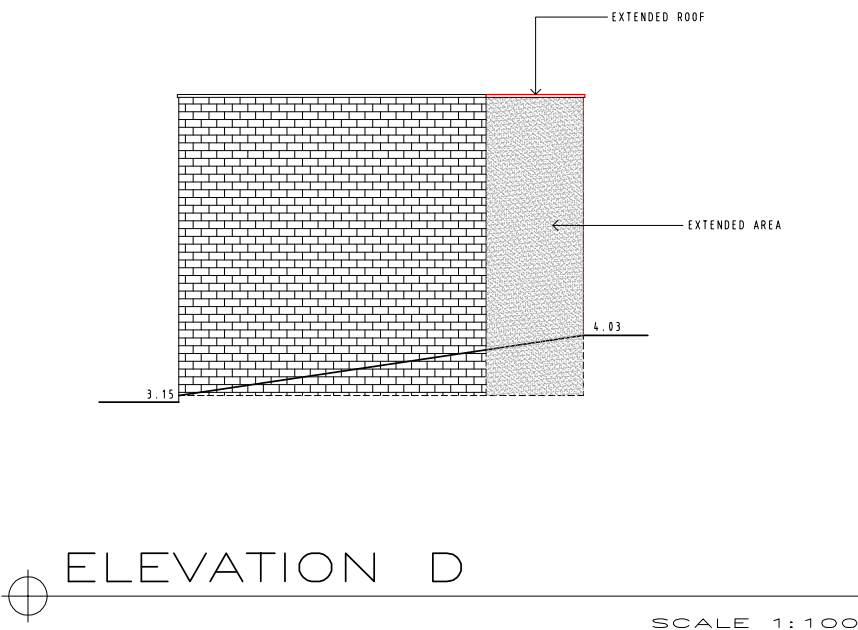
PROJECT:
AWNING

ADDRESS:
36 CLIFF ST.

SHEET No:
04

DATE:
APRIL





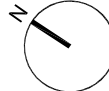
AMENDMENTS		

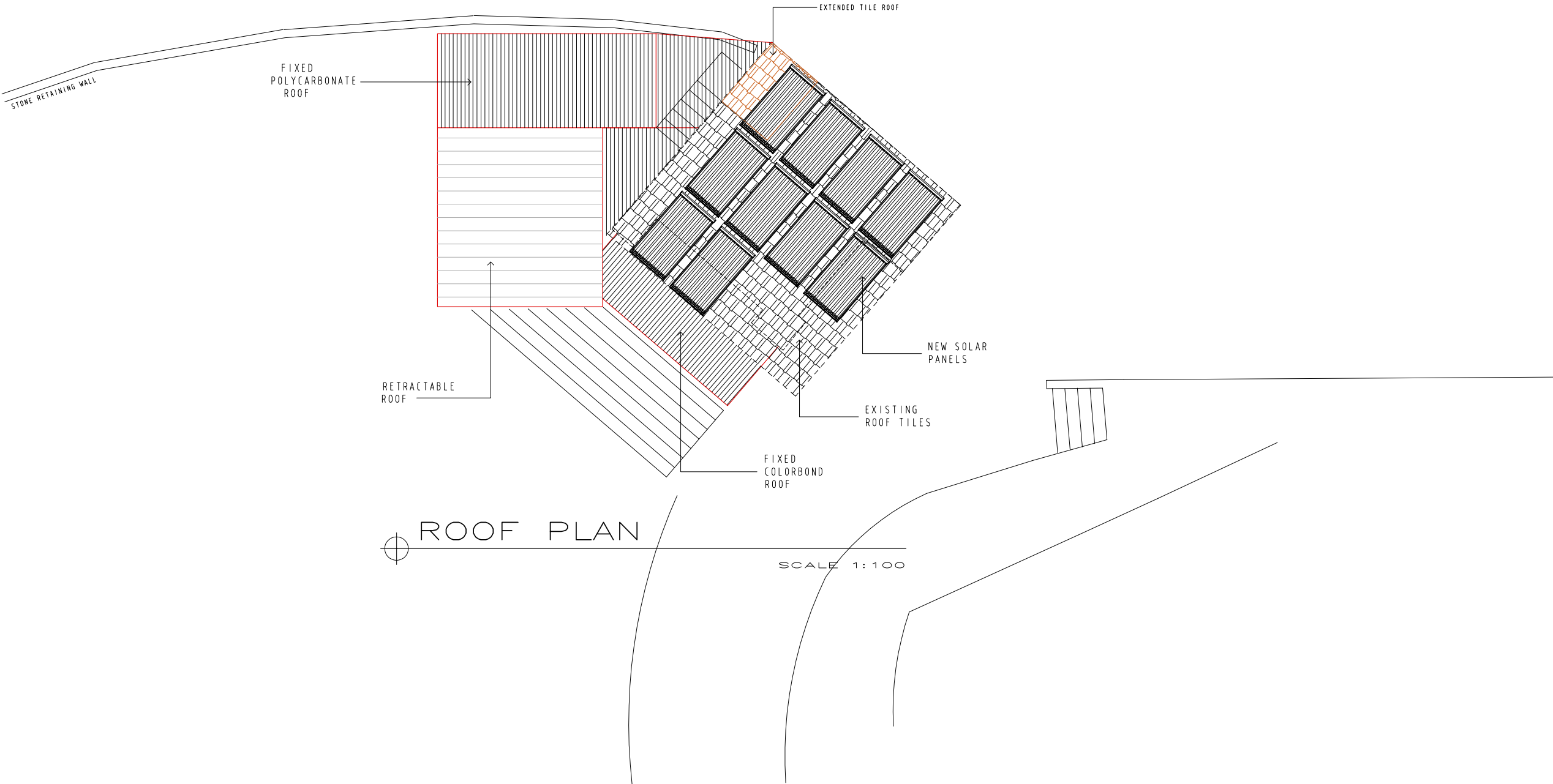
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PHONE: 0419 438 956
EMAIL: Info@coronaprojects.com

DRAWING: ELEVATIONS	PROJECT: AWNING	SHEET No: 05
SCALE: 1:100 @ A3	ADDRESS: 36 CLIFF ST.	DATE: APRIL





ROOF PLAN



AMENDMENTS

THE WORK IS TO BE COMPLETED WITH THE BUILDING CODE OF AUSTRALIA, SAA CODES AND RELEVANT BY-LAWS.
THE DESIGN MANUFACTURER SHALL CHECK AND VERIFY ALL DIMENSIONS, PL GROUND LINES AND CONSTRUCTION METHODS PRIOR TO COMMENCEMENT OF WORK.
PREFERENCES OF DIMENSIONED MEASUREMENTS TO BE TAKEN OVER SCALED MEASUREMENTS.
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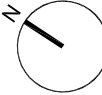
**Corona Projects**

PO BOX 1749 BONDI JUNCTION NSW 1355
PHONE: 0419 438 956
EMAIL: Info@coronaprojects.com

DRAWING: ROOF PLAN
SCALE: 1:100 @ A3

PROJECT: AWNING
ADDRESS: 36 CLIFF ST.

SHEET No: 06
DATE: APRIL



LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D2
FILE No.	DA502/2021/1
ADDRESS	2-2A Kulgoa Road BELLEVUE HILL
COUNCIL WARD	Bellevue Hill Ward
SITE AREA	1717m ²
ZONING	R2 Low Density Residential
PROPOSAL	Demolition of an existing dwelling, construction of a new garage with tennis court above, alterations and additions to the remaining dwelling
TYPE OF CONSENT	Local development
COST OF WORKS	\$1,507,000.00
DATE LODGED	28/10/2021
APPLICANT	Lawton Hurley
OWNER	Mr G E & Mrs A Prosser
AUTHOR	Mr B McIntyre
TEAM LEADER	Mr T Wong
SUBMISSIONS	Three (3)
RECOMMENDATION	Conditional Approval

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

The application is to be determined by the Woollahra Local Planning Panel as it falls under the category of:

- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%

2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory.
- The site is suitable for the proposed development
- The proposal is in the public interest

3. LOCALITY PLAN



4. PROPOSAL

The proposal involves the demolition of one of the existing dwellings (located on the north-western side of the site), construction of a new garage with tennis court above and alterations and additions to the remaining dwelling located on the south-eastern side of the site. A more detailed description of the proposed works is provided below.

Lower Ground Floor Level

- New swimming pool and driveway crossover (Tarrant Avenue) located on the north-western side of the site.
- New garaging to accommodate two (2) car parking spaces, traffic circulation areas, games room, workshop, store room, bin storage area and internal staircase.
- Removal of the existing driveway crossover located off Tarrant Avenue.
- Removal of a street tree and replacement thereof with a new species.
- New masonry fence to the Tarrant Avenue boundary.

Ground Floor Level

- A replacement gate to the existing pedestrian access located off Tarrant Avenue.
- A new tennis court with retractable netting located on the north-western side of the site.
- Extension of the existing dwelling located on the south-eastern side of the subject site in a north-westerly direction to accommodate a new family room, guest room with balcony and ensuite, hall with cloak room, internal staircase.
- A new paved outdoor terrace located off the existing library and new family room.
- A new pond and stairs located to the north of the new paved terrace, within the front setback.
- Demolition of the existing boundary fence along the Tarrant Road frontage.
- New timber fence to the Kulgoa Road boundary to match the existing timber fence.

First Floor Level

- Extension of the first floor level of the existing dwelling located on the south-eastern side of the site to accommodate a studio with balcony, WC, internal staircase and new balcony located off Bedroom 3.

5. ISSUES

5.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings	2.08m or 22% departure from the 9.5m control	Satisfactory

5.2 Primary Issues

Issue	Conclusion	Section/s
Non-compliance with the Height of Buildings development standard	Satisfactory. The submitted written request pursuant to Clause 4.6 of the WLEP 2014 is considered to be well founded.	13.3 & 13.4
Excavation (LEP and DCP)	Satisfactory. Subject to Condition C.1(b) , the proposal satisfies the relevant objectives of the Woollahra LEP and DCP.	13.7 & 14.2.3
Side setback	Satisfactory. Subject to Condition C.1(b) , the proposal satisfies the relevant objectives and controls of the Woollahra DCP 2015.	14.2.1
Acoustic and visual privacy	Satisfactory. The proposal, as conditioned, satisfies the relevant objectives and controls of the Woollahra DCP 2015.	14.2.4
Deep soil landscaping	Satisfactory. The numerical non-compliances are considered to be acceptable as the proposal satisfies the relevant objectives of the control.	14.2.6
Tennis Court	Satisfactory. The numerical non-compliance is considered to be acceptable as the proposal satisfies the relevant objectives of the control.	14.2.6
Parking	The provision of on-site parking is considered to be satisfactory.	14.2.5 & 14.3

5.3 Summary of Submissions

Issue	Conclusion	Section(s)
Excavation <ul style="list-style-type: none"> Non-compliance with the DCP controls Possible damage to the neighbouring property at 3 Tarrant Avenue as a result of the excavation 	The proposal, as conditioned, satisfies the relevant objectives and controls outlined in Part B3.4 of the Woollahra DCP 2015. In addition, Council's Development Engineer has raised no issues on engineering grounds with regard to the proposed excavation, subject to conditions. As conditioned, the proposed excavation does not give rise to concerns relating to safety, impact and structural risks on adjoining properties.	13.7 & 14.2.3
Non-compliance with the DCP with regards to deep soil landscaping and over provision of parking	The proposal results in several non-compliances with the DCP controls. Notwithstanding this, the proposal is considered to achieve the relevant objectives outlined in the DCP and will result in a development which is compatible and consistent with development in this location.	Throughout the report
Acoustic and visual privacy impacts	There will be no unacceptable visual or acoustic privacy impacts to the adjoining properties. The proposal satisfies the relevant objectives and controls of Part B3.5.4 of the Woollahra DCP 2015.	14.2.4

Issue	Conclusion	Section(s)
Overshadowing impacts on adjoining property at 3 Tarrant Avenue as a result of the non-compliant height of the dwelling, elevated tennis court and 5m screening hedge	Shadow diagrams for the proposed development were submitted with the application. The proposal, as conditioned, satisfies the relevant objectives and controls of the Woollahra DCP 2015 with regards to overshadowing impacts on adjoining properties.	14.2.4
Setback distance of the tennis court to common boundary with 3 Tarrant Avenue	The setback of the tennis court from the rear (south-western) boundary complies with the numerical control prescribed in Part B3.7.4 of the Woollahra DCP 2015.	14.2.6
Light spill from the tennis court	The proposal does not include lighting for the tennis court. In addition, Conditions of consent are recommended to be imposed which controls the illumination of outdoor lighting to ensure light spill to adjoining properties is mitigated.	14.2.6
Impacts of water run-off on the adjoining property at 3 Tarrant Avenue	A Stormwater Management Plan was submitted with the Development Application. Council's Development Engineer has carried out an assessment of the proposal and has determined that the proposal is satisfactory, subject to Conditions.	14.4
Insufficient Information provided with regards to boundary fencing and tennis court fencing, shadow diagrams and landscaping.	All documentations have been updated and are adequate for Council assessment.	-

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features
The subject site is located on the north-eastern side of Bellevue Road with a smaller road frontage to Tarrant Avenue at the rear (north-eastern) end of the site. The site is rectangular in shape with a frontage to Kulgoa Road (north-eastern) of 42.67m, a rear (south-western) boundary of 42.67m, side (north-western) boundary to Tarrant Avenue of 40.235m and a side (south-eastern) boundary of 40.235m. Vehicular access to the site is currently provided from Tarrant Avenue. The site measures 1717m ² in extent.
Topography
The site slopes fairly steeply down from Kulgoa Road towards the north-eastern section of the site and then generally levels out towards the rear (south-western) section of the site, with a fall of approximately 3 metres from north-east to south-west through the site's centre.
Existing buildings and structures
Existing development on the subject site comprises two dwellings. Existing development on the property known as No. 2 Kulgoa Road comprises a part two part three storey dwelling and a double garage within the front setback area. A swimming pool, pool house, pool deck and landscaped garden are located within the rear setback area.
Existing development on the property known as No. 5 Tarrant Avenue comprises a part one part two storey dwelling and a double garage located at the lower level, which is accessed via Tarrant Avenue. A swimming pool and landscaped garden are located within the rear setback area.
Surrounding Environment
The site is located within the Bellevue Hill North Residential Precinct. The surrounding environment is characterised by a mixture of large two to three storey dwelling houses buildings of varying architectural styles with a mix of pitched tiled and flat roofs.
Located to the west at 2-4 Tarrant Avenue, in close proximity to the subject site, is a similarly sized property which includes a tennis court within the front setback area.



Aerial view of the subject site (Source: Council GIS)



View of the subject site from Kulgoa Road



View of the subject site from Kulgoa Road



View of the subject site from Tarrant Avenue



View of the existing dwelling (to be demolished) located on the site formerly known as No. 5 Tarrant Avenue (now known as 2A Kulgoa Road), from Tarrant Avenue



View of the existing dwelling (to be demolished) and rear private open space area of the subject site, formerly known as No. 5 Tarrant Avenue (now known as 2A Kulgoa Road)



View from the ground floor terrace of the rear private open space area of the subject site formerly known as No. 5 Tarrant Avenue (now known as 2A Kulgoa Road)



View from the ground floor terrace of the rear private open space area of the subject site formerly known as No. 5 Tarrant Avenue (now known as 2A Kulgoa Road)



View from the lower ground floor terrace of the rear private open space area of the subject site formerly known as No. 5 Tarrant Avenue (now known as 2A Kulgoa Road)



View of the private open space area within the front setback of the subject site formerly known as No. 5 Tarrant Avenue (now known as 2A Kulgoa Road)



View of the rear private open space area of the subject site known as 2 Kulgoa Road



View of the rear private open space area of the subject site known as 2 Kulgoa Road



View of the existing dwelling from the rear private open space area of the subject site known as 2 Kulgoa Road



View of the private open space area within the front setback of No. 2 Kulgoa Road

7. RELEVANT PROPERTY HISTORY

Current use
Two detached dwelling houses
Relevant Application History
No recent relevant application history.
Relevant Compliance History
Nil.
Pre-DA
Nil.
Requests for Additional Information and Replacement Applications
11.11.2021 – A Stop the Clock Letter was sent to the applicant identifying the following deficiencies / lack of information :
<ol style="list-style-type: none"> 1. <i>Revised Stormwater Management Plans and Drains Model</i> 2. <i>Geotechnical and Hydrogeological Investigation and Report</i> 3. <i>Aboriginal Heritage Impact Assessment</i>
A response to the Stop the Clock Letter was received on the 25 th November 2021 addressing the concerns.
Land and Environment Court Appeal(s)
Nil.

8. REFERRALS

Internal Referrals	Summary of Referral Response	Attachment
Technical Services	Satisfactory, subject to Conditions .	3
Heritage	Satisfactory, subject to Conditions . Deferred commencement condition recommended.	4
Trees and Landscaping	Satisfactory, subject to Conditions .	5

External Referral	Summary of Referral Response	Attachment
Heritage NSW	Satisfactory, subject to Condition A.1 .	6

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan

4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
 - i) Environmental impacts on the natural and built environments
 - ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

9. ADVERTISING AND NOTIFICATION

9.1 Submissions

The application was advertised and notified from **17 November 2021 to 2 December 2021** in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. **Ben Elliott**, 3 Tarrant Avenue, Bellevue Hill
2. **Ariane Fuchs**, 12 Tarrant Avenue, Bellevue Hill
3. **Design Collaborative Pty Ltd on behalf of the owners of** 8 Tarrant Avenue, Bellevue Hill

Refer to Section 5.3 of this report for a summary of the submissions.

9.2 Statutory Declaration

The applicant has completed the statutory declaration dated 6 December 2021 declaring that the site notice for DA502/2021/1 was erected and maintained during the notification period in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019.

10. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

10.1. Chapter 2 – Coastal Management

The provisions of this planning instrument that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast.

It is considered that the proposal will not have any significant adverse environmental impact upon the harbour coastal locality and therefore satisfactory with regard to the relevant provisions of the planning instrument.

10.2. Chapter 4 – Remediation Of Land

The aims of Chapter 4 of the Resilience and Hazards SEPP are to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Under Clause 7(1)(a) of the SEPP, consideration has been given as to whether the subject site on which the development is occurring is contaminated. As the site has a long history of residential use, it is considered that the land does not require further consideration under Clause 7 (1) (b) and (c) of the SEPP. The proposal is therefore acceptable with regard to Chapter 4 of the Resilience and Hazards SEPP.

11. STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

The proposed development is obscured from the waterway and the foreshores by existing development and landscaping. The subject site is not a land/water interface development, notwithstanding, Division 2 of Part 10.3 the Biodiversity and Conservation SEPP prescribed matters for consideration for interrelationship of waterway and foreshore uses as well as maintenance, protection and enhancement of views.

The proposal does not result in any detrimental impact on the wetlands or cause pollution or siltation of the waterway. It does not detrimentally impact on existing vegetation or drainage patterns and does not obstruct vistas of the waterway from the public domain.

The proposal therefore satisfies the relevant criteria prescribed by the SEPP.

12. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate No. A428510_02 demonstrating compliance with the SEPP. These requirements are imposed in **Conditions C.3, H.1 and I.1**.

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1 Part 1.2: Aims of Plan

The proposal, as conditioned, is consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

13.2 Land Use Table

The proposal is defined as residential development which is permitted and is consistent with the objectives of the R2 Low Density Residential zone.

13.3 Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 9.5m.

	Existing	Proposed	Control	Complies
Maximum Building Height	11.87m (to top of chimney) 11.73m (to the ridgeline of the existing dwelling)*	11.58m	9.5m	No

**Existing non-compliance*

The proposal does not comply with Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Part 13.4.

13.4 Part 4.6: Exceptions to Development Standards

13.4.1. Departure

The proposal exceeds the 9.5m Height of Buildings development standard under Clause 4.3 of the Woollahra LEP 2014. The proposed building height of 11.58m to the top of the new roof extension, represents a 2.08m (22%) non-compliance with the development standard as illustrated in **Figure 1** below.



Figure 1: Section showing the proposed new non-compliance with the Height of buildings development standard (Source: Clause 4.6 prepared by GSA Planning)

13.4.2. Purpose

Part 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

13.4.3. Written Request

Clause 4.6(3) requires the consent authority to consider the applicant's written request that seeks to justify the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided a written request in relation to the departure which is referenced at **Attachment 2**.

13.4.4. Assessment

Clause 4.6(4) prescribes the following:

Clause 4.6 (4) Consent must not be granted for development that contravenes a development standard unless:

- a) The consent authority is satisfied that:*
 - i. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- b) The concurrence of the Secretary has been obtained.*

Clause 4.6(4)(a)(i) - Assessment

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, have adequately addressed the matters required to be addressed by Cl 4.6(3). There are two separate matters for consideration contained within Cl 4.6(3) and these are addressed as follows:

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

Assessment: The applicant's written request has demonstrated that the objectives of the *Height of Buildings* development standard is achieved, notwithstanding the non-compliances.

In doing so, the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The objectives of the development standard are discussed further in the assessment of Clause 4.6(4)(a)(ii).

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

Assessment: In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (paragraph 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See *Four2Five Pty Ltd. v Ashfield Council*. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act. '

S1.3 of the EPA Act reads as follows:

1.3 Objects of Act

(cf previous s 5)

The objects of this Act are as follows:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

Assessment: The applicant's written request, which supports the proposed non-compliance with the height of building development standard, has adequately demonstrated that the proposed development promotes the orderly and economic use and development of the land; and that the proposal promotes good design and local amenity, in accordance with the objects 1.3(c) and (g) of the EPA Act.

The applicant's written request has therefore demonstrated sufficient environmental planning grounds to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the consent authority can be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

Clause 4.6(4)(a)(ii) - Assessment

Clause 4.6(a)(a)(ii) requires the consent authority to be satisfied that:

- 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*

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the *Height of Buildings* development standard, and the zone objectives of the R2 Low Density Residential Zone. An assessment against these objectives is provided below.

Clause 4.3 – Height of Buildings

The proposal is assessed against the *Objectives of the Development Standard* prescribed by Clause 4.3 which state:

(a) To establish building heights that are consistent with the desired future character of the neighbourhood,

Assessment:

The proposed development is consistent with the desired future character of the neighbourhood, as discussed throughout this report. The proposal maintains a height, bulk and scale which is consistent with development on surrounding and adjacent properties.

The proposal satisfies objective (a) of this part.

(b) To establish a transition in scale between zones to protect local amenity,

Assessment: Not relevant – The subject site is surrounded by properties zoned R2 Low Density Residential zone.

The proposal satisfies objective (b) of this part.

(c) To minimise the loss of solar access to existing buildings and open space,

Assessment: Acceptable – The proposal will not result in any additional unacceptable solar access impacts to existing adjoining buildings and open space areas, as discussed in Section 14.2.4 of this report.

The proposal satisfies objective (c) of this part.

(d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,

Assessment: Acceptable – The non-compliant elements with regard to the height of buildings development standard will not result in unacceptable adverse impacts on adjoining or nearby properties in terms of disruption of views, loss of privacy or overshadowing arising from the proposed development.

The proposal satisfies objective (d) of this part.

(e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

Assessment: Acceptable – The proposal will not result in any loss of public views of the harbour and of surrounding areas.

The proposal satisfies objective (e) of this part.

Conclusion:

The proposal satisfies the objectives prescribed by Part 4.3 of the Woollahra LEP 2014.

Objectives of the R2 Zone

The objectives applying to the R2 Low Density Residential zone and assessment against the objectives is provided below:

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

Assessment: The development will retain the use of the subject site for residential purposes.

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

Assessment: Not relevant to the scope of works proposed.

- *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*

Assessment: The proposal will ensure compatibility with the character of the surrounding neighbourhood is achieved, as discussed throughout this report.

- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

Assessment: The proposal will be of a height, bulk and scale which is consistent with other buildings surrounding the subject site, thereby achieving consistency with the desired future character of the neighbourhood, as discussed throughout this report.

Conclusion:

The departure from the standard is considered to be in the public interest for the following reasons:

- The objectives of the Clause 4.3 Height of Buildings development standard have been satisfied;

- The objectives of the R2 Low Density Residential zone have been satisfied; and
- There are sufficient environmental planning grounds to justify contravening the development standard in this instance.

Clause 4.6(4)(a)(b)

The Department issued Planning Circular No. *PS20-002 (dated 05 May 2020)* which notified Councils of arrangements “...where the Director General's concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument...” Clause 64 of the EPA Regulations provides that Council may assume the Director-General's [Secretary's] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

13.4.5. Conclusion

The written submission from the applicant has adequately demonstrated that the variation of the development standard prescribed by *Clause 4.3* is justified pursuant to the relevant matters for consideration prescribed by *Clause 4.6*.

The consent authority is satisfied that the applicant's written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances in this case, and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the development standard.

The consent authority is satisfied that the proposal is in the public interest as it is consistent with the objectives of the Height of Buildings development standard and those applicable to development within the zone.

Accordingly, departure from the development standard is justified in this instance.

13.5 Part 5.10: Heritage Conservation

The subject site is not located within a heritage conservation area. The subject site is, however, located in the vicinity of the following locally listed heritage item:

- Footpath Street Name Inlays (Tarrant Avenue) – Item No. 671

In this regard, Council's Heritage Officer has recommended conditions of consent be imposed requiring the footpath street name inlay, located on Tarrant Avenue, be protected from potential damage during site preparation and during the proposed works.

In addition, Heritage NSW have also provided advice which has been considered and forms part of the recommended conditions of consent.

Conclusion:

The proposal, as conditioned, satisfies the relevant criteria prescribed by Part 5.10 of the Woollahra LEP 2014.

13.6 Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, preliminary assessment is not required and there is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Part 6.1.

13.7 Part 6.2: Earthworks

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal involves excavation of approximately 510m³ up to a maximum depth of 4m to accommodate the new garage, vehicle circulation areas, games room, workshop, store room, refuse area and internal access stair. The volume and extent of excavation required to achieve the proposal has resulted in non-compliance with Control C1 which restricts the volume of excavation to 400m³.

In deciding whether to grant consent for earthworks, the consent authority must consider the following matters:

- (a) *The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development*
- (b) *The effect of the development on the likely future use or redevelopment of the land*
- (c) *The quality of the fill or the soil to be excavated, or both*
- (d) *The effect of the development on the existing and likely amenity of adjoining properties*
- (e) *The source of any fill material and the destination of any excavated material*
- (f) *The likelihood of disturbing relics*
- (g) *The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*
- (h) **Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.**

Given the extent of the proposed excavation, a geotechnical report was submitted with the application. The extent of the proposed works has been considered by Council's Development Engineer and is considered to be satisfactory, subject to standard conditions to insure the maintenance of amenity on the surrounding neighbourhood and structural integrity of any existing and supporting structures during the excavation/construction phase of the development.

Notwithstanding the comments from Council's Development Engineer, the volume of excavation proposed is considered excessive, as discussed in Section 14.2.3 of this report.

The excessive excavation required to achieve the proposal is largely attributed to the provision of the expansive store room and games room at the lower ground floor level. It is considered that a more skilful design of the lower ground floor area would minimise the volume of excavation required to achieve a similar outcome. In this instance, the excessive excavation is considered unnecessary and is unwarranted.

In this regard, **Condition C.1(b)** is recommended requiring the deletion of the games room and storeroom in order to ensure that bullet point h) under the matters for consideration of Part 6.2 of the Woollahra LEP 2014 is achieved.

Conclusion:

The proposal, as conditioned, is acceptable with regards to Part 6.2 of the Woollahra LEP 2014.

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

14.1 Chapter B1: Bellevue Hill North Residential Precinct

The relevant desired future character objectives for the Bellevue Hill North precinct require development to:

- O1 To respect and enhance the streetscape character and key elements of the precinct.*
- O4 To reinforce a consistent building scale with streets.*
- O5 To ensure that development responds in form and siting to the street and subdivision pattern.*
- O6 To design and site buildings to respond to the topography and minimise cut and fill.*
- O8 To retain and reinforce the green setting of mature street trees, private trees and garden plantings and minimise hard stand areas.*
- O9 To protect important views from the public spaces of the precinct to the harbour and city skyline, including view corridors between buildings.*
- O10 To ensure that development facilitates view sharing to adjoining and adjacent private properties.*
- O11 To ensure on-site parking does not dominate the streetscape.*

Relevant streetscape character and key elements of the precinct:

Development respects and enhances the existing elements of the neighbourhood character that contribute to the precinct including:

- *the rich mixture of residential architectural styles and forms, including dwelling houses and residential flat buildings;*
- *buildings set within highly visible gardens;*
- *the tree canopy formed by both street and private yard plantings; and*
- *mature street trees, grassed verges and sandstone walls.*

The locality is characterised by two and three storey dwelling-houses which present as two storeys to the street. The proposal maintains the 2 storey presentation to the streetscape and overall results in a development which reduces the bulk and scale of the development when viewed from the public domain and adjoining properties. The proposed extension to the existing dwelling, located on the south-eastern section of the site, is consistent with the materiality and design of the existing dwelling and maintains consistency with the bulk and scale of development in this locality.

The proposal will not have any significant impact upon existing public or private views.

In addition, Council's Tree and Landscaping Officer has raised no objections to the proposal, subject to the imposition of suitable conditions to ensure the planting of additional trees, the protection of trees to be retained on the site and the protection of trees located on Council property.

Subject to **Condition C.1(b)**, the proposal is considered to be satisfactory with regards to responding to the topography of the site and will ensure excavation to accommodate the proposal is minimised.

The proposal is considered to meet the streetscape character and key elements of the precinct and desired future character objectives of the Bellevue Hill North Residential precinct, as noted in Part B1.11.2 of the Woollahra DCP 2015. Chapter B3: General Development Controls

14.2. Chapter B3: General Development Controls

14.2.1. Part B3.2: Building Envelope

Site Area: 1717m ²	Existing	Proposed	Control	Complies
Front Setback	7.5m	10.8m (to new games room and store below the tennis court)	7.5m	Yes
Rear Setback	13m	3.4m (garage to the lower ground floor)	10.6m	No
		17.5m (to rear of dwelling)		Yes
Side Boundary Setbacks (NW) – Tarrant Ave	3.1m*	0.055m (light well to the games room)	3.4m	Yes, subject to Condition C.1(b)
Side Boundary Setbacks (SE)	1.9m*	18m	3.4m	Yes
Maximum Wall Height	>7.2m*	<7.2m	7.2m	Yes
Inclined Plane From Wall Height	Beyond 45° *	Not beyond 45°	45°	Yes
Maximum Unarticulated Length to Street	>6.0m*	<6.0m	6.0m	Yes
Maximum Unarticulated Wall Length	<12m	<12m	12m	Yes

*Existing non-compliance

Part 3.2.2: Front Setback

The proposal satisfies the relevant objectives and controls of this part.

Part 3.2.3: Side Setbacks

With a lot width of 42.67m, Control C1 requires a minimum side setback of 3.4m.

The proposed alterations and additions result in non-compliances with the side setback controls, as indicated in the table above. Subject to **Condition C.1(b)**, the proposal satisfies the controls and objectives of this part.

Part 3.2.4: Rear Setback

Control C1 requires a rear setback of 10.6m.

The new parking structure located below the proposed tennis court results in a non-compliance with Control C1, as indicated in the table above.

The relevant objectives of this part read as follows:

- O1 To provide private open space and landscaped areas at the rear of buildings.*
- O2 To provide acoustic and visual privacy to adjoining and adjacent buildings.*
- O3 To avoid an unreasonable sense of enclosure.*
- O4 To provide separation between buildings to facilitate solar access to private open space.*
- O5 To protect vegetation of landscape value and provide for landscaped area and deep soil planting.*

Notwithstanding the non-compliance, the proposal achieves consistency with the relevant objectives of the control in the following manner:

- Whilst not compliant with deep soil landscaping provisions within the rear setback, the proposal overall achieves an outcome where more than adequate private open space and deep soil landscaped areas are provided.
- The proposal, as conditioned, does not result in any unreasonable acoustic or visual privacy impacts on adjoining neighbours.
- The non-compliance with the rear setback control will not result in an unreasonable sense of enclosure and will maintain adequate separation between development on the subject site and existing buildings on adjoining properties.
- The proposal will ensure solar access to private open space areas is achieved.
- The proposal includes the planting of additional trees and is appropriately conditioned to ensure the protection of trees to be retained on the site and the protection of trees located on Council property.

In this instance, and on merit, the proposal is acceptable with regard to satisfying the relevant objectives outlined in Part B3.2.4 of the WDCP 2015.

Part 3.2.5: Wall Height and Inclined Plane

The proposal satisfies the relevant objectives and controls of this part.

Conclusion

The proposal is acceptable with regard to Part B3.2 of the Woollahra DCP 2015.

14.2.2. Part B3.3: Floorplates

Site Area: 1717m² Buildable Area : 790m²	Existing	Proposed	Control	Complies
Maximum Floor Plate	134% (1,057m ²)	138% (1,087m ²)	165% 1,303.5m ²	Yes

The relevant objectives of this part read as follows:

- O1 To ensure the bulk and scale of buildings are consistent with the desired future character of the area.*
- O2 To ensure the size and location of buildings allow for the sharing of views and minimise impact on the privacy and sunlight access to neighbouring properties.*
- O3 To encourage the design and location of car parking within the building envelope.*
- O4 To allow, in certain circumstances, development outside the building envelope.*
- O5 To allow development to respond to the topography and context.*

Control C1 limits the floorplate, being the measurable floor area as a proportion of the buildable area (790m²), is limited to 165%. In this instance, this equates to 1,303.5m². The total floorplate proposed measures 1,087m² in extent which is compliant with Control C1.

The proposal results in non-compliance with Control C2 in that elements of the proposal are located outside of the building envelope, as illustrated in the compliance table under Section 14.2.1 of this report.

Notwithstanding this, the non-compliances are considered acceptable as the proposal satisfies the relevant objectives of Part B3.3 of the Woollahra DCP 2015 in the following manner:

- The proposal is of a bulk and scale which is consistent with the desired future character of the Bellevue Hill North Residential Precinct.

- The only element which extends beyond the building envelope is the proposed parking structure within the rear setback. It is noted, that the parking structure is located below the proposed tennis court and will maintain a bulk and scale which is consistent with development in this locality.
- The proposal will not result in any significant adverse amenity impacts to adjoining properties in terms of visual impact, solar access or view loss.
- The proposal responds to the topography and context in this locality.
- **Condition C.1(b)** is recommended to be imposed requiring the deletion of the games room and storeroom.

In this instance, and on merit, the proposal satisfies the relevant objectives outlined in Part B3.3 of the Woollahra DCP 2015.

Conclusion

The proposal is acceptable with regard to Part B3.3 of the Woollahra DCP 2015.

14.2.3. Part B3.4: Excavation

Site Area: 1717m ²	Proposed	Control	Complies
Maximum Volume of Excavation	Approx. 510m ³	400m ³	No
Excavation, Piling and Subsurface Wall Setback	0.08m (to light well to games room)	3.4m	Yes, subject to Condition C.1(b)
	3.7m (to lower ground floor garages)		Yes
Geotechnical Report	Provided - Up to a maximum depth of 4m	Required Where > 2.0m	Yes

The relevant Objectives and Controls of this part read as follows:

O1 To allow buildings to be designed and sited to relate to the topography.

O2 To minimise excavation.

O3 To ensure the cumulative impacts of excavation do not adversely impact land stabilisation, ground water flows and vegetation.

O4 To minimise structural risks to adjoining structures.

O5 To minimise noise, vibration, dust and other amenity impacts to adjoining and adjacent properties

C1 For a dwelling house, dual occupancy or semi-detached dwelling (including attached and detached garaging)—the maximum volume of excavation permitted is no greater than the volume shown in Figure 14A.

C4 A variation to the volume shown in Figures 14A and 14B will be considered, however the maximum volume of excavation permitted will only be the amount needed to accommodate: car parking to comply with the maximum rates in Part E1 of this DCP and any reasonable access thereto, if the maximum car parking rates are required by the Council; and storage at a rate of 20m³ (cubic metres) per dwelling if for a dwelling house, dual occupancy, semi-detached dwelling or attached housing; or storage at a rate of 8m³ (cubic metres) per dwelling if for a residential flat building, manor houses, multi dwelling housing or multi dwelling housing (terraces) development.

C5 The volume controls in C1 and C2 above do not apply to backyard swimming pools and tennis courts located outside the building envelope. (Note: Separate controls apply which limit excavation, refer to Section 3.7.4 Ancillary development – swimming pools, tennis courts and outbuildings).

C6 Basement walls are no closer to the boundary than permitted by the setback controls (refer to Figure 15).

C9 Excavation below 2m and/or within 1.5m of the boundary may be accompanied by a geotechnical and hydrogeological report and a structural report demonstrating that the works will not have any adverse effect on neighbouring structures.

The proposal involves excavation of approximately 510m³ up to a maximum depth of 4m to accommodate the new garage, vehicle circulation areas, games room (and associated lightwell), workshop, store room, bin area and internal access stair. The volume and extent of excavation required to achieve the proposal has resulted in non-compliance with Control C1 which restricts the volume of excavation to 400m³.

The proposal also results in a non-compliance with Control C6, as indicated in the compliance table above, which requires a minimum setback of excavation of 3.4m to the side boundary.

It is noted that a substantial volume of the non-compliant excavation required to achieve the proposal can be attributed to the provision of the store room and games room at the lower ground floor level. It is considered that a more skilful design of the lower ground floor area could achieve a similar outcome without the need for excavation beyond the controls outlined in the Woollahra DCP 2015. In this instance, it is considered that the non-compliance with the excavation controls is unnecessary and is unwarranted.

In this regard, **Condition C.1(b)** is recommended to be imposed requiring the deletion of the games room and storeroom. The imposition of **Condition C.1(b)** will also ensure compliance with Controls C1 and C6 of this part is achieved.

In addition, Council's Development Engineer has undertaken an assessment of the proposal and considers the proposal to be satisfactory, subject to the imposition of **Conditions** requiring measures to insure the maintenance of amenity on the surrounding neighbourhood and structural integrity of any existing and supporting structures during the excavation/construction phase of the development.

As conditioned, the proposal satisfies the relevant objectives and controls of this part.

Conclusion

The proposal, as conditioned, is acceptable with regards to Part B3.4 of the Woollahra DCP 2015.



Sections indicating the extent of excavation required to achieve the proposal (Source: Architectural Plans prepared by Lawton Hurley)

14.2.4. Part B3.5: Built Form and Context

Site Area: 1717m ²	Existing	Proposed	Control	Complies
Significant Trees	Retained	Retained or replaced	Retained	Yes
Siting of Development	Stepped Down with the Slope	Stepped Down with the Slope	Stepped Down with the Slope	Yes
Colour Scheme	Consistent	Consistent	Consistent	Yes
Roof Form in a HCA	Pitched Roof Form	Match the Pitched Roof Form	Match the Pitched Roof Form	Yes
Solar Access to Open Space of Adjacent Properties	>50% for 2 hours on 21 June	>50% for 2 hours on 21 June	50% for 2 hours on 21 June	Yes
Solar Access to Nth Facing Living Areas of Adjacent Properties	>3 hours on 21 June	>3 hours on 21 June	3 hours on 21 June	Yes
Distance of Habitable Room Windows to Adjacent Dwellings	>9.0m	>9.0m	9.0m	Yes
Setback of Roof Terraces from Open Space/Habitable Room Windows of Adjoining Properties	>12.0m	>12.0m	12.0m	Yes

Part B3.5.1: Streetscape and Local Character

The relevant objectives and controls of this part read as follows:

- O1 To ensure that the built form is compatible with the streetscape and the desired future character of the area.
- O2 To ensure that development is of high visual quality and enhances the street.

O3 To maintain the evolution of residential building styles through the introduction of well-designed contemporary buildings.

O4 To ensure that roof forms are consistent with the existing predominant roof forms in the street and minimise impacts to neighbouring properties.

C1 The building is consistent with the desired future character of the area set out in the precinct controls in Parts B1 and B2 of this DCP. Note: Chapters B1 and B2 in this part of the DCP define the desired future character for each precinct or HCA, and identify special streetscape character, heritage and key elements within each precinct.

C3 Development steps down sloping sites and follows the topography of the land.

C4 External building materials and colours do not detract from the streetscape. Bright or obtrusive colour schemes are avoided.

C5 Roof forms and roof structures (including roof terraces, lifts, lift overruns, stairwells, access hatches, and other like structures) are well-designed, contribute positively to the streetscape, and are well-integrated with the architecture of the building.

The proposal maintains a two storey presentation to Kulgoa Road and includes an extension to the existing house (formerly known as 2 Kulgoa Road) which matches the design and materials of the existing dwelling. The demolition of the dwelling located on the south-western section of the site and the replacement thereof with a tennis court and garages below achieving an outcome which minimises the bulk of the development when viewed from both Tarrant Avenue and Kulgoa Road.

The proposal is consistent in height, bulk and scale with the existing and approved development on adjoining properties and development in this locality. The proposal satisfies the relevant objectives of Part 3.5.1 of the Woollahra DCP 2015 in the following manner:

- The proposal maintains the existing front setback.
- The proposal is compatible with the desired future character of the precinct, as discussed in Section 14.1 of this report, and is compatible with the current streetscape, which reflects a mixture of housing typologies with a mixture of flat and pitched roofs.
- The proposal is of high visual quality and enhances the street.
- The development steps down the site and follows the topography of the land.

The proposal satisfies the relevant objectives and controls of Part B3.5.1 of the Woollahra DCP 2015.

Part B3.5.2: Overshadowing

Concerns were raised by the adjoining property at 3 Tarrant Avenue with regards to potential overshadowing as a result of the proposed additions to the dwelling, the tennis court, privacy screen and landscaping proposed on the south-western boundary of the subject site.

With regards to the potential overshadowing related to the building works, the Applicant submitted 3D elevational shadow diagrams (see **Figure 2** below), which demonstrate that the proposal will ensure solar access to the north facing windows to the upper level habitable rooms of the adjoining dwelling at No. 3 Tarrant Avenue receives at least 3 hours of sun between 9am and 3pm on 21 June over a portion of their surface.

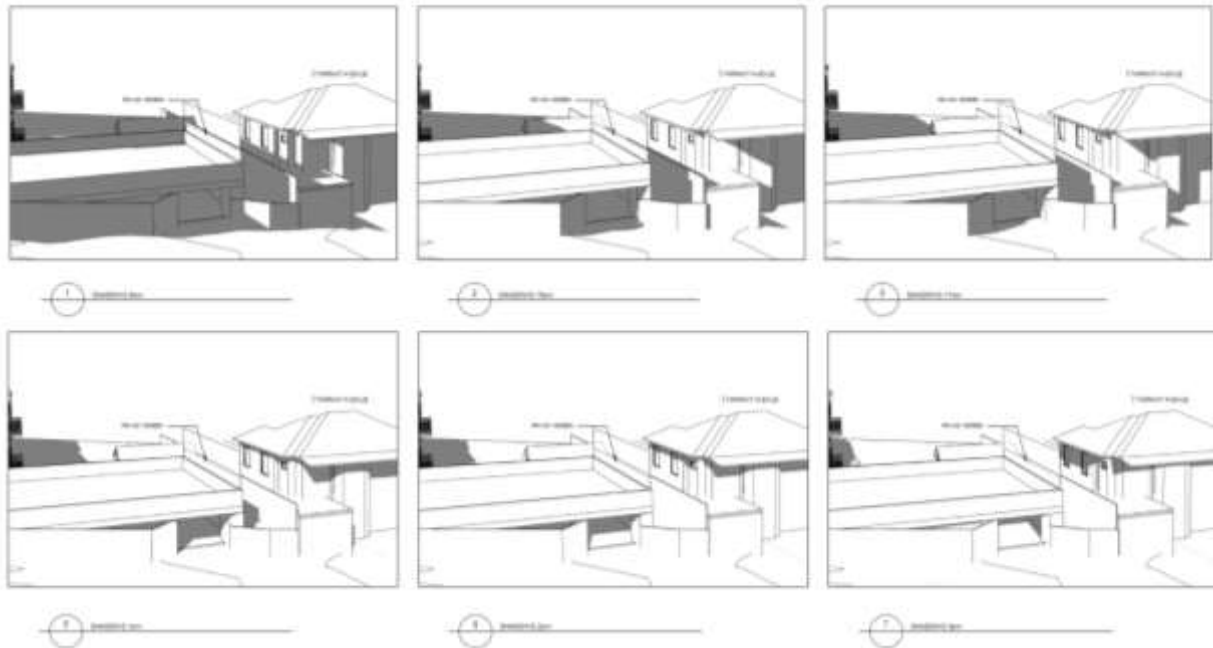


Figure 2: Elevational shadow diagrams demonstrating that the upper level habitable windows receive at least 3 hours of sun between 9am and 3pm on 21 June over a portion of their surface (Source: Lawton Hurley Architecture)

The proposal also includes the removal of two substantial trees (Trees T49 and T50) along the south-western boundary of the subject site and the replacement thereof with landscaping in the form of a screening hedge comprising of *Waterhousia floribunda* (Weeping Lilly Pilly's). It is noted from the submitted Landscape Plan that the *Waterhousia floribunda* (Weeping Lilly Pilly's) proposed along the south-western boundary of the subject site can achieve a mature height of between 5-10m. In this regard, and in consultation with Councils Team Leader - Tree Management (regarding an alternative species of planting), **Condition C.1(c)** is recommended to be imposed requiring an alternative species of landscaping be planted (reaching a mature height of a maximum of 5m) to ensure solar access to the upper level habitable rooms of the adjoining dwelling at No. 3 Tarrant Avenue is achieved.

As conditioned, the proposal satisfies the relevant objectives and controls of this part.

Part B3.5.3: Public and Private Views

The proposal satisfies the relevant objectives and controls of this part.

Part B3.5.4: Acoustic and Visual Privacy

Acoustic Privacy

The relevant objective and control of this part read as follows:

O1 To ensure adequate acoustic privacy for occupants and neighbours.

C1 Dwellings are designed to ensure adequate acoustic separation and privacy to the occupants of all dwellings.

The proposal continues the use of the subject site as residential and is unlikely that significant additional acoustic impacts associated with the proposal would arise.

The new balconies to the proposed additions to the existing dwelling comply with the relevant numerical Controls of this part, thereby ensuring adequate separation from the habitable room windows and private open space areas of adjoining properties, is achieved.

In addition, it is unlikely that there would be significant additional acoustic impacts associated with the proposal as the tennis court will be a lower intensity use compared to the existing swimming pool located in the western corner of the subject site (formerly known as No. 5 Tarrant Avenue).

Relevant conditions are recommended to be imposed requiring that all mechanical plant equipment associated with the development be acoustically treated so that noise from any plant and equipment shall not exceed ambient background noise levels measured at the common boundaries.

Given the commentary provided above, it is considered that the proposal will not result in any unacceptable adverse acoustic impacts on adjoining properties.

The proposal, as conditioned, satisfies the relevant controls and objectives of this part.

Visual Privacy

Concerns were raised by the adjoining property owner located at No. 3 Tarrant Avenue with regards to potential visual privacy impacts to the habitable room window of the adjoining property at No. 3 Tarrant Avenue as a result of the proposed extensions to the existing dwelling and the new tennis court.

In this regard, the following points are noted:

- The proposed new windows and balconies to the proposed additions to the existing dwelling comply with the relevant controls of this part, thereby ensuring adequate separation from the habitable room windows and private open space areas of adjoining properties, is achieved.
- Overlooking opportunities from the upper level terrace to habitable windows of the adjoining upper level terrace of the dwelling already exist. It is considered that the proposal results in an outcome which improves visual privacy impacts on adjoining properties, particularly to the habitable room windows to at No. 3 Tarrant Avenue. See **Figure 3** below.
- Recreational areas associated with dwellings are an expected form of development in residential areas, which do not ordinarily create unreasonable adverse amenity impacts and are therefore considered an acceptable ancillary use to dwelling houses
- The tennis court is set back 3.3m from the rear (south-western) boundary and also includes a privacy screen to the southern edge of the tennis court which achieves a minimum height of 1.8m above the top of the surface of the proposed tennis court. See **Figure 4** below.
- The proposal, as conditioned at **Condition C.1(c)**, will also provide screen planting further ensuring a sense of privacy between the subject site and 3 Tarrant Avenue is achieved.



Figure 3: View of the existing dwelling at No. 3 Tarrant Avenue from the upper level terrace of the existing dwelling located on the subject site (formerly known as 5 Tarrant Avenue)

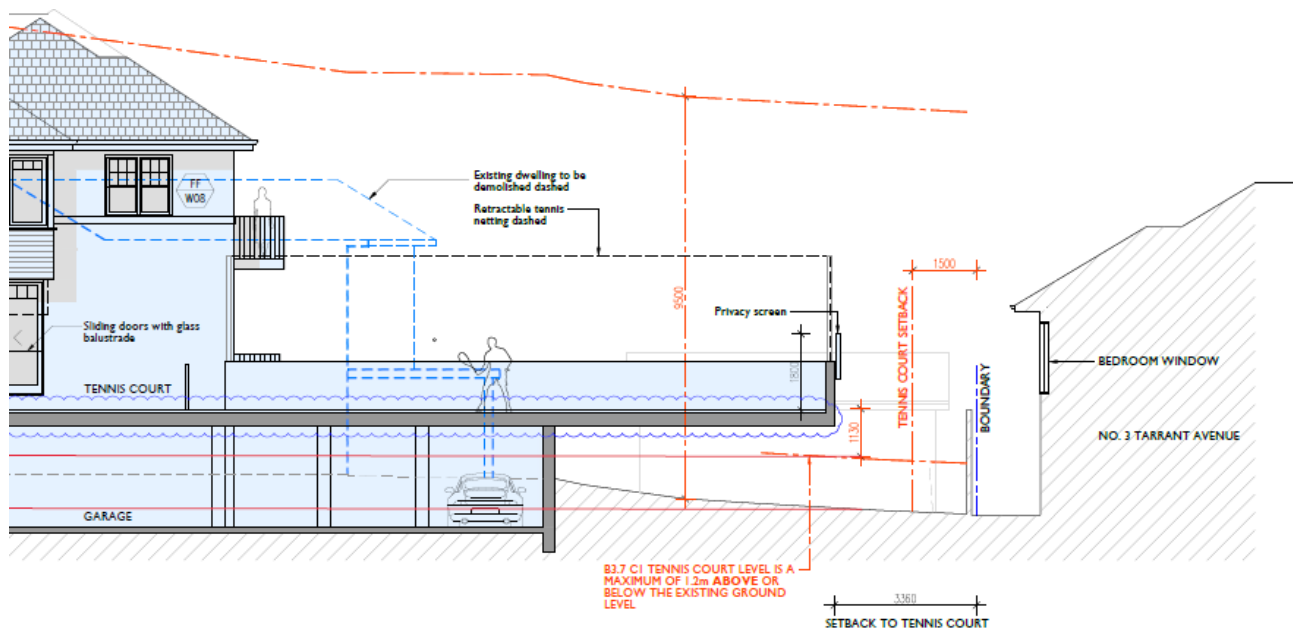
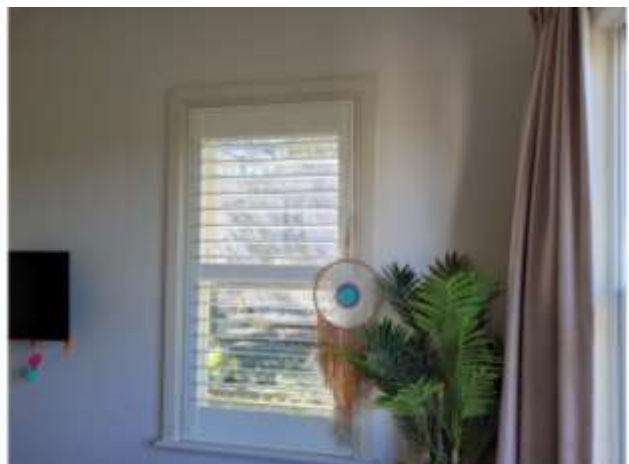


Figure 4: Section showing the 1.8m high privacy screen to the southern edge of the tennis court to ensure privacy impacts to the habitable room windows of the adjoining property at No. 3 Tarrant Avenue are mitigated



Upper level bedroom windows of the adjoining property at 3 Tarrant Avenue

The proposal satisfies the relevant objectives and controls of this part.

Part B3.5.5: Internal Amenity

The relevant Objectives and Controls of this part read as follows:

- O1 To encourage high levels of internal amenity through the provision of direct natural light and direct natural ventilation.*
- O2 To encourage buildings that are designed to maximise natural light provision in habitable rooms.*
- C1 All habitable rooms in a dwelling must have at least one external wall primarily above the existing ground level which provides an unobstructed window opening,*
- C2 All habitable rooms and sanitary compartments in a dwelling must have direct natural light and direct natural ventilation,*
- C3 The area of unobstructed window openings should be equal to at least 20% of the room floor area for habitable rooms,*

The proposed games room (60m²) at the Lower Ground Floor is fully underground. There is no one external wall that would be primarily above the existing ground level. It relies on a lightwell of approximately 3.4m x 1m to provide lighting and ventilation. The size of the proposed window to this lightwell is 3.4m x 2.4m = 8.16m², which is less than 20% of the floor area.



*Extract of section (left) and plan (right) of the proposed underground games room
(Source: Architectural Plans prepared by Lawton Hurley)*

The proposed games room does not comply with Controls C1, C2 and C3 and fails to achieve Objectives O1 and O2.

Condition C.1(b) is therefore recommended requiring deletion of the proposed games room.

Conclusion:

The proposal, as conditioned, is acceptable with regards to Part B3.5 of the Woollahra DCP 2015.

14.2.5. Part B3.6: On-Site Parking

Site Frontage: 42.67m (to Kulgoa Rd) and 40.235m (to Tarrant Ave)	Existing	Proposed	Control	Complies
Location of Parking	Outside the Buildable Area*	New parking off Tarrant Avenue Within the Buildable Area	Within the Buildable Area	Yes
Width of Parking Structure	5.25m	4.9m	40% of Frontage/6m	Yes
Width of Driveway	5.6m (to Tarrant Avenue)	3.5m (to Tarrant Avenue)	3.0m	Yes, subject to Condition C.4(b)

Site Frontage: 42.67m (to Kulgoa Rd) and 40.235m (to Tarrant Ave)	Existing	Proposed	Control	Complies
Maximum Number of Driveways	Two*	Two	One	No

*Existing non-compliance

The relevant objectives and controls of this part read as follows:

- O1 To minimise the visual impact of garages, car parking structures and driveways on the streetscape.*
- O2 To ensure that on-site parking does not detract from the streetscape character and amenity.*
- O3 To minimise loss of on-street parking.*
- O4 To retain trees and vegetation of landscape value.*
- O5 To facilitate on-site parking on steeply sloping sites.*
- O6 To ensure that on-site parking is designed and integrated with the principal building on the site.*
- O7 To ensure that on-site parking does not detract from the streetscape character and amenity.*
- O8 To minimise the visual and environmental impacts of driveways and other hard stand areas associated with car parking*
- C1 On-site parking is designed and located so that it: does not dominate the street frontage; preserves trees and vegetation of landscape value; and is located within the building envelope.*
- C2 For car parking structures facing the street frontage— the maximum car parking structures width is no greater than 40% of the site frontage width or 6m, whichever is the lesser.*
- C4 Where there is no rear lane access, on-site parking is located within the building envelope.*
- C6 Notwithstanding C4, car parking structures may be located in the front setback (i.e. outside the building envelope) where: the rise or fall measured to a distance of 7m from the street frontage is greater than 1 in 3; and the car parking structures is incorporated into a podium or street wall; and the car parking structures is not more than 40m² in area.*
- C7 For car parking structures located in the front setback, the maximum height of the structure is 2.7m above the footpath level. If the existing height of the retaining/street wall or the two adjoining car parking structures is higher than 2.7m, that greater height may be permitted.*
- C10 Garage doors are designed to complement the building design and any important character elements within the street.*
- C11 The width of driveways is minimised. Generally the width is no more than the minimum width required to comply with the relevant Australian Standards (see Section E1).*
- C12 Only one driveway entrance is provided. For example, development involving more than one dwelling shares the driveway access.*

It is noted that the subject site currently contains 2 separate dwelling houses, each with their own double garage (total 4 car parking spaces) and separate driveway crossovers off Kulgoa Road and Tarrant Avenue. The proposal includes the deletion of the double garage and driveway crossover off Tarrant Avenue and the construction of a garage to accommodate 2 parking spaces and a new driveway crossover located near the western corner of the site, in Tarrant Avenue.

The existing double garage and driveway arrangement off Kulgoa Road will be retained as is.



View of the existing parking structures and driveway crossovers of the subject site located in Kulgoa Road (left) and Tarrant Avenue (right)

The proposal results in non-compliance with Controls C6 and C12 in that:

- The car parking structure is more than 40m² in area.
- More than one driveway entrance is provided to the subject site.

Notwithstanding the non-compliances, the proposal achieves consistency with the relevant objectives in the following manner:

- The proposed garage, located underneath the proposed tennis court, does not detract from the streetscape character.
- The proposal results in no net loss of on-street parking.
- The total area provided for the garaging includes ample vehicle turning areas within the parking structure which will ensure vehicles enter and exit the site in a forward direction via Tarrant Avenue.
- Given the topography of the site and proposed location of the new tennis court, the proposed new driveway crossing and parking structure have been positioned in the most appropriate position in order to achieve a feasible on-site parking and access arrangement off Tarrant Avenue.
- The parking structure is skilfully integrated within the proposed development.
- Council's Development Engineer has indicated that the proposal is satisfactory, subject to Conditions.
- The non-compliance with Control C12 is considered acceptable in this instance given the unique circumstances of the subject site as outlined below:
 - The subject site has two road frontages.
 - The proposal does not result in an increase in the number of driveways or the number of parking spaces compared to what currently exists.
 - The driveway crossing off Bellevue Road is the most appropriate position in order to achieve a feasible on-site parking and access arrangement off Tarrant Avenue.

Conclusion

The proposal, as conditioned, is acceptable with regard to the parking controls in Part B3.6 of the Woollahra DCP 2015.

14.2.6. Part B3.7: External Areas

Site Area: 1717m ²	Existing	Proposed	Control	Complies
Deep Soil Landscaping – Outside Buildable Area (927m ²)	43% (400m ²)*	44% (408m ²)	50% of Buildable Area (463.5m ²)	No
Deep Soil Landscaping – Front Setback (320m ²)	47.8% (153m ²)	52.8% (169m ²)	40% (128m ²)	Yes

Site Area: 1717m ²	Existing	Proposed	Control	Complies
Deep Soil Landscaping – Rear Setback (444m ²)	47% (210m ²)*	44% (196m ²)	50% or Rear Setback (222m ²)	No
Minimum Area of Private Open Space at Ground Level	>35m ²	>35m ²	35m ²	Yes
Private Open Space at Ground Level – Maximum Gradient	1:10	1:10	1:10	Yes
Existing Trees	Retained	Tree Removal with Replacement Trees	Incorporated Into Landscaping	Yes, subject to Conditions
Maximum Height of Fencing	1.2m	1.2m	1.2m	Yes
Gate Swing	Opens Inwards	Opens Inwards	Opens Inwards	Yes
Side Fence Height (Tarrant Ave)	1.35m to 1.8m	1.8m	1.8m	Yes
Rear Fence Height	Approx. 2.5m	No change		Yes
Level of Tennis Court Above or Below Ground Level	N/A	2.33m	Maximum 1.2m Change	No
Tennis Court Setback	N/A	1.5m	1.5m	Yes
Colour of Tennis Court Fencing	N/A	Retractable netting recessive in colour	Recessive	Yes

*Existing non-compliances

Part 3.7.1: Landscaped Areas and Private Open Space

The relevant objectives and controls of this part read as follows:

- O1 To ensure that the areas outside the floorplate contribute to the desired future character of the location.*
- O2 To provide sufficient deep soil landscaped area to support substantial vegetation.*
- O3 To provide for on-site stormwater absorption.*
- O4 To ensure the adequate provision of accessible and useable primary open space.*
- O6 To ensure that private open space areas are well-designed.*
- O7 To retain important existing mature trees, vegetation and other landscape features.*
- O9 To ensure that landscaping contributes positively to the streetscape and the amenity of adjoining residents.*
- O10 To ensure that landscaping allows view sharing.*
- C1 For development in the R2 and R3 residential zones—at least 50% of the site area outside the buildable area is deep soil landscaped area.*
- C2 At least 40% of the front setback comprises deep soil landscaped area,*
- C4 At least 50% of the rear setback comprises deep soil landscaped area.*
- C5 The deep soil landscaped area is free of garaging, paving, outbuildings, tennis courts, swimming pools, above ground and below ground structures including stormwater works.*
- C6 For a dwelling house—a primary open space area of at least 35m² is provided.*
- C8 The primary open space area in C6 and C7 above has a gradient of no more than 1 in 10.*
- C16 Existing trees and vegetation of landscape value are incorporated into the landscape area and treatment.*
- C20 The landscape design: uses vegetation types and landscaping styles which contribute to the streetscape and desired future character objectives for the locality; uses vegetation types that will not block views; does not adversely affect the structure of the proposed building or buildings on adjoining properties; contributes to energy efficiency and amenity by providing substantial shade in summer, especially to west facing windows and open car park areas and admitting winter sunlight to outdoor and living areas and other habitable rooms; improves privacy between dwellings*

The proposal results in non-compliance with Controls C1 and C4, however the non-compliances are considered acceptable for the following reasons:

- The existing development is already non-compliant with Controls C1 and C4 relating to deep soil landscaping outside the buildable area and within the rear setback.
- Overall, the proposal achieves an outcome which slightly improves the existing non-compliant deep soil landscaping provisions on the subject site, and in particular within the front setback area and the area outside the buildable area.
- The proposal ensures that the areas outside the floorplate contributes positively to the streetscape and the desired future character of the location.
- The proposal ensure sufficient deep soil landscaped area is provided to support substantial vegetation. In this regard, Councils Tree and Landscape Officer has raised no objections to the proposal subject to the planting of additional trees and conditions which will ensure the protection of trees to be retained on the site and the protection of trees located on Council property.
- The proposal ensures that more than adequate accessible and useable primary open space areas are achieved.
- The proposed landscaping ensures views from adjoining properties are maintained.

On merit, and in this instance, it is considered that the proposal satisfies the relevant objectives of this part.

Part 3.7.2: Fences

The proposal satisfies the relevant objectives and controls of this part.

Part 3.7.4: Ancillary Development – Swimming Pools, Tennis Courts and Outbuildings

The proposal does not include any alterations or additions to the existing swimming pool and outbuilding located on the south-eastern side of the subject site, except for an extension of the pool fencing to ensure compliance with the provisions of the *Swimming Pools Act 1992* and the Building Code of Australia.

The proposal also includes the demolition of an existing dwelling and swimming pool, which are currently located on the north-western side of the subject site, to accommodate a new tennis court.

An assessment relating to the relevant objectives and controls pertaining to tennis courts has been undertaken below.

Tennis Courts

The objectives and controls of this part read as follows:

O1 To provide recreational opportunities for playing tennis without compromising the amenity of adjoining and adjacent properties.

O2 To limit excavation.

O3 To retain trees and vegetation of landscape value.

C1 The tennis court level is a maximum of 1.2m above or below the existing ground level.

C2 The tennis court is at least 1.5m from property boundaries.

C3 The court playing surface is made from a material that minimises light reflection.

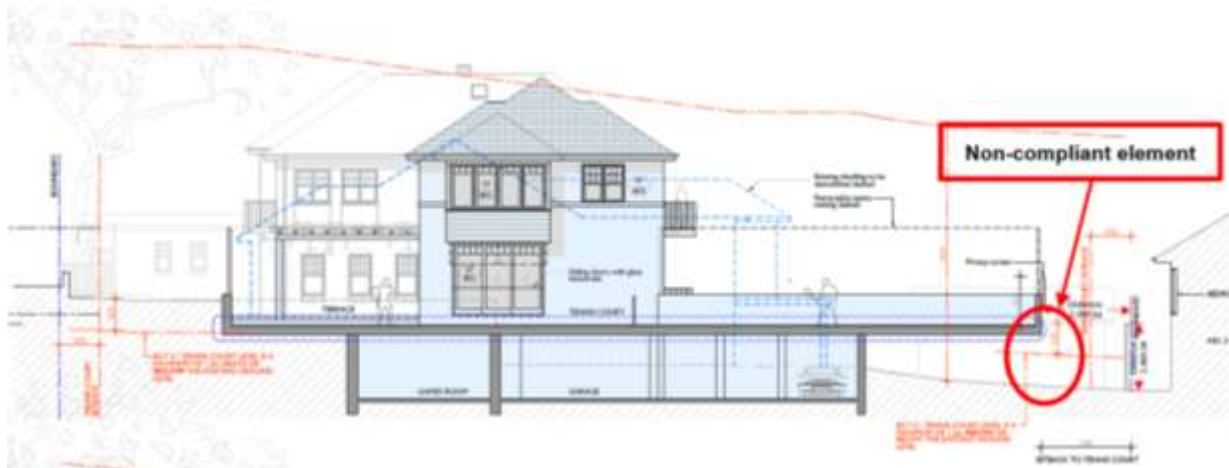
C4 The height and location of court fencing does not unreasonably compromise: a) sharing of views from surrounding properties; or b) solar access to adjoining properties.

C5 Fencing material is a recessive colour.

C6 Where floodlighting is proposed, the lighting does not unreasonably impact on the amenity of adjoining or adjacent properties.

C7 The location of the tennis court and associated works does not adversely impact on prescribed trees.

The proposed tennis court results in a non-compliance with Control C1 in that the level of the proposed tennis court (to the top surface of the court) is located a maximum of 2.33m above existing ground level at the southern end.



Section illustrating the non-compliance with Control C.1 (Source:

Concerns were also raised by adjoining properties with regards to tennis court fencing and possible light spill from floodlighting related to the tennis court. In this regard, the following is noted:

- The proposed fencing to the tennis court consists of retractable tennis netting.
- No flood lighting is proposed for the tennis court under this application.

Notwithstanding the non-compliances, the proposal achieves consistency with the relevant objectives in the following manner:

- The non-compliance with Control C1 is largely attributed to the topography in this locality. It is noted that an elevated tennis court exists at no. 2-4 Tarrant Avenue (see **Figures 5 and 6** below).
- The proposal makes provision for recreational opportunities for playing tennis without compromising the amenity of adjoining and adjacent properties.
- Subject to **Condition C.1(b)**, the proposal ensures excavation is minimised.
- Council's Tree and Landscaping Officer has raised no objections to the proposal, subject to the imposition of suitable conditions to ensure the planting of additional trees, the protection of trees to be retained on the site and the protection of trees located on Council property.



Figure 5: View of the tennis court and fencing located at No. 2-4 Tarrant Avenue



Figure 6: View of the tennis court and fencing located at No. 2-4 Tarrant Avenue

In this instance, and on merit, the non-compliance with Control C1 is considered acceptable.

Conclusion

The proposal, as conditioned, is acceptable with regard to Part B3.7 of the Woollahra DCP 2015.

14.3 Chapter E1: Parking and Access

Part E1.4: Residential parking

	Existing	Proposed	Control	Complies
Max Number of Car Parking Spaces – Dwelling	4 Spaces*	4 Spaces	2 Spaces	No

**Existing non-compliance*

The objectives of this chapter are:

- O1 To minimise the amount and impact of vehicular traffic generated due to proposed development.*
- O2 To ensure that development generating vehicular traffic makes adequate provision off street for the car parking and servicing needs of its occupants and users, including residents, employees, visitors and deliveries.*
- O3 To ensure the safe and efficient movement of vehicles within, entering and leaving properties.*
- O4 To minimise the environmental effects, particularly visual impact, of parked vehicles on the amenity of the municipality.*
- O5 To ensure that access points to car parking areas are situated to minimise disruption of vehicle movement on the public road system.*

Parking for residential uses is calculated using the generation rates specified in E1.4.2. In this instance, the development results in a generation rate of a maximum of two (2) car spaces. The proposed four (4) car parking spaces for the dwelling therefore represents a non-compliance with Part E1.4.2 of the Woollahra DCP 2015.

In circumstances where excessive car parking is provided the following considerations apply:

Where an application proposes to provide more than the number of spaces specified in Table 1, justification must be provided and address such matters as, but not limited to:

- an explanation for additional residential parking demand based on lack of alternative transport options. For example, the proximity and frequency of public transport, availability of car share schemes, and topography;*
- the impact of any increased building bulk on the streetscape;*
- compliance with landscape area requirements;*
- impact of any increased building bulk on the amenity of adjoining properties in terms of:*
- overshadowing*

- *loss of views*
- *overbearing appearance; and*
- *the amount of additional excavation and its impact on:*
 - *land form*
 - *structural integrity of structures and buildings on adjoining land*
 - *stability of land on the site and on adjoining sites*
 - *impact on water permeable ground surfaces arising from an increased building footprint and hard surface driveways.*

In this regard the following points are noted:

- The site currently benefits from four (4) on-site parking spaces which are accommodated within double garages located off Kulgoa Road and Tarrant Avenue.
- A total of four (4) car spaces would be permitted under the potential scenario of the subject site being subdivided into 2 allotments with a dwelling house constructed on each allotment (similar to what currently exists).
- Overall, the proposal results in a development which reduces the bulk and scale of the development when viewed from the public domain, does not result in a structure which has an overbearing appearance, will not result in the loss of views and ensures overshadowing of adjoining properties is minimised.
- The proposal maintains the number of car spaces already existing on site.
- The proposed parking and access arrangement off Tarrant Avenue is improved as vehicles entering and exiting the site will do so site in a forward direction.
- The proposal results in no net loss of on-street parking.
- Subject to **Condition C.1(b)**, the proposal satisfies the relevant objectives and controls related to excavation, as discussed throughout this report.
- Council's Development Engineer has undertaken an assessment of the proposal and considers the proposal acceptable, subject to the imposition of conditions.

In this instance, and on merit, the non-compliance is considered acceptable.

Electric Vehicle Charging Points

Control C.15 requires *evidence of electric circuitry to accommodate 'Level 2' electric vehicle charging points to be integrated into all off-street car parking of new residential development to ensure that 100% of car spaces can install electric vehicle charging points in the future.*

No details have been provided of electric circuitry. Notwithstanding this, the proposal is considered to be acceptable with regard to the objectives and controls in Part E1.11: Electric Vehicle Charging Points of the Woollahra DCP 2015, subject to the imposition of **Conditions C.12** and **F.5** requiring provision for electric vehicle circuitry within the development.

Conclusion:

The proposal, as conditioned, is acceptable with regard to the objectives and controls of Chapter E1 of the Woollahra Development Control Plan 2015.

14.4 Chapter E2: Stormwater and Flood Risk Management

Council's Development Engineer has determined that the proposal is satisfactory, subject to Conditions.

The proposal, as conditioned, is acceptable with regard to the objectives and controls in Chapter E2 of the Woollahra DCP 2015.

14.5 Chapter E3: Tree Management

Council's Tree and Landscaping Officer has raised no objections to the proposal, subject to the imposition of suitable conditions to ensure the planting of additional trees, the protection of trees to be retained on the site and the protection of trees located on Council property.

The proposal, as conditioned, is acceptable with regard to the objectives and controls in Chapter E3 of the Woollahra DCP 2015.

14.6 Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the on-going use of the building.

The SWMMP addresses volume and type of waste and recyclables to be generated, storage and treatment of waste and recyclables on site, disposal of residual waste and recyclables and operational procedures for ongoing waste management once the development is complete.

The applicant provided a SWMMP with the development application and it was found to be satisfactory.

The proposal satisfies the relevant objectives and controls prescribed by this part.

Conclusion:

The proposal is acceptable with regard to the objectives and controls in Chapter E5 of the Woollahra DCP 2015.

15. SECTION 7.12 CONTRIBUTIONS PLAN 2011

In accordance with Schedule 1, a 1% levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 7.12 Contributions Plan 2011. Refer to **Condition C.2**.

Cost of Works	Rate	Contribution Payable
\$1,507,000.00	1%	\$15,070.00

16. APPLICABLE ACTS/REGULATIONS

16.1 Environmental Planning and Assessment Regulation 2021

Clause 61(1): What Additional Matters Must a Consent Authority Take Into Consideration in Determining a Development Application?

Clause 61(1) of the Environmental Planning and Assessment Regulation 2021 requires Council to take into consideration Australian Standard AS 2601-2001: The demolition of structures. This requirement is addressed by Council's standard condition.

16.2 Swimming Pools Act 1992

A swimming pool is at all times to be surrounded by a child-resistant barrier that separates the swimming pool from any residential building and that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations. Additional provisions relate to:

- a) The swimming pool must be registered in accordance with Section 30B of the Swimming Pools Act 1992
- b) A Certificate of Compliance issued pursuant to Section 22D of the Swimming Pools Act 1992
- c) Water recirculation and filtration systems
- d) Backwash must be discharged to the sewer

All requirements in relation to the swimming pools are addressed by the standard conditions being imposed.

17. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

18. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

19. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

20. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 4.15.

21. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

22. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council as the consent authority, is satisfied that the matters required to be addressed under Clause 4.6(4) of the Woollahra Local Environmental Plan 2014 have been demonstrated and that consent may be granted to the development application, which contravenes the height of buildings development standard under Clause 4.3 of Woollahra LEP 2014. The Panel assumes the concurrence of the Secretary, Department of Planning and Environment.

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 502/2021/1 for the demolition of an existing dwelling, construction of a new garage with tennis court above, alterations and additions to the remaining dwelling on land at 2-2A Kulgoa Road Bellevue Hill, subject to the following conditions:

A. General Conditions

A.1 Deferred Commencement - (section 4.16(3) of the Act, clause 76 of the Regulation)

Development consent is granted subject that this consent is not to operate until the applicant satisfies the Council, in accordance with the *Regulations*, as to all matters specified in this condition:

- a) A detailed archaeological inspection of the sandstone outcrop at the rear of the property is to be undertaken by a suitably qualified archaeologist to establish whether this feature is a rock shelter. The outcome of this assessment needs to determine whether the test excavations can occur under the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*, DECCW 2010 or if they must occur under an Aboriginal Heritage Impact Permit (AHIP). If the test excavations can occur under the Code then section b) applies. If an AHIP is required then section d) applies.
- b) A suitably qualified archaeologist is to be engaged to undertake a program of Aboriginal archaeological test excavation at the site using the Code of Practice for Investigating Aboriginal Objects excavation methods and the pre-excavation Aboriginal consultation requirements stipulated by the Code (*Requirement 15a*) where consultation must be undertaken as set out in the NPW Regulation and completed to the stage described in subclause 80C(6) of the Regulation.
- c) If no Aboriginal objects are found, and the archaeological and cultural assessments after the test excavation conclude that there are unlikely to be undetected objects and that there are no Aboriginal heritage constraints to the development from continuing, then the proposed works can continue under the unexpected finds procedure.
- d) If the detailed archaeological inspection of the sandstone outcrop at the rear of the property determines it to be a rock shelter and requires an AHIP for test excavations, or if Aboriginal objects are located by the test excavation program outlined in section b), the Applicant will need to stop works and seek approval from Heritage NSW via an Aboriginal Heritage Impact Permit (AHIP) issued under s.90 of the *National Parks and Wildlife Act 1974*. The AHIP is to be accompanied by an Aboriginal Cultural Heritage Assessment (ACHA) that meets the requirements of the Heritage NSW Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW and which documents Aboriginal community consultation in accordance with Clause 60 of the National Parks & Wildlife Regulation 2019. The Applicant must satisfy the terms and conditions of the issued AHIP before the construction works for the development can commence.

Period within which evidence must be produced

The Applicant must produce evidence to Council sufficient enough to enable it to be satisfied as to those matters above within 365 days (1 year) of the date of determination.

Clause 75 of the *Regulation* states:

- (3) *A consent authority may specify the period within which the applicant must produce sufficient evidence to the consent authority to enable it to be satisfied about the relevant matters.*
- (4) *If the applicant produces evidence in accordance with this section, the consent authority must notify the applicant whether it is satisfied about the relevant matters.*
- (5) *If the consent authority does not notify the applicant within 28 days after the applicant produces the evidence, the consent authority is taken to have notified the applicant, on the day on which the period expires, that it is not satisfied about the relevant matters.*

If the evidence is not produced within 365 days (1 year) of the date of determination this deferred commencement consent is of no effect, the consent does not operate and no Construction Certificate can be issued. No development can lawfully occur under this consent unless it operates.

Note: Nothing in the *Act* prevents a person from doing such things as may be necessary to comply with this condition. (See section 4.16(3) of the *Act*)

This consent does not operate until Council has acknowledged compliance with this condition in writing.

Note: Implementing the development prior to written confirmation of compliance may result in legal proceedings. If such proceedings are required Council will seek all costs associated with such proceedings as well as any penalty or order that the Court may impose. No *Construction Certificate* can be issued until all conditions including this condition required to be satisfied prior to the issue of any *Construction Certificate* have been satisfied.
Standard Condition: A3 (Autotext AA3)

A.2 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* ("the *Act*") and the provisions of the *Environmental Planning and Assessment Regulation 2021* ("the *Regulation*") such conditions being reasonable and relevant to the development as assessed pursuant to section 4.15 of the *Act*.

Standard Condition: A1 (Autotext AA1)

A.3 Definitions

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act 1987* as in force at the date of consent.

Applicant means the applicant for this consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or **AS/NZS** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney's eastern suburbs (see the brochure titled "Local Native Plants for Sydney's Eastern Suburbs" published by the Southern Sydney Regional Organisation of Councils).

Stormwater drainage system means all works, facilities and documentation relating to:

- the collection of stormwater,
- the retention of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater; and
- connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner-builder has the same meaning as in the *Home Building Act 1989*.

PC means the Principal Certifier under the *Act*.

Principal Contractor has the same meaning as in the *Act*, or where a Principal Contractor has not been appointed by the Owner of the land being developed Principal Contractor means the Owner of the land being developed.

Professional engineer has the same meaning as in the BCA.

Public place has the same meaning as in the *Local Government Act 1993*.

Road has the same meaning as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the Applicant.

Site means the land being developed subject to this consent.

Woollahra LEP means *Woollahra Local Environmental Plan 2014*

Woollahra DCP means *Woollahra Development Control Plan 2015*

Work for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an occupation certificate.

Note: Interpretation of conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.
Standard Condition: A2 (Autotext AA2)

A.4 Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp “Approved” and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
EX 01 Issue A	Existing Floor Plans	All by Lawton Hurley	10/2021
EX 02 Issue A	Existing Roof Plan		10/2021
DA 01 Issue B	Roof, Site & Site Analysis Plan		12/2021
DA 02 Issue B	Lower Ground Floor Plan		12/2021
DA 03 Issue B	Ground & First Floor Plan		12/2021
DA 04 Issue B	Sections & Elevations		12/2021
DA 05 Issue B	Sections & Elevations		12/2021
DA 06 Issue B	Elevation		12/2021
No reference	Schedule of Materials & Colours		10/2021
A428510_02	BASIX Certificate	NSW Department of Planning, Industry and Environment	27/08/2021
P2370_01	Geotechnical Report	Morrow Geotechnics P/L	02/11/2021

Reference	Description	Author/Drawn	Date(s)
6695 SW-00-Rev B SW-01-Rev C SW-02-Rev B SW-03-Rev C SW-04-Rev C SW-05-Rev C	Stormwater Management Plans	Harris Page & Associates P/L	07/12/2021 09/12/2021 09/12/2021 09/12/2021 09/12/2021 09/12/2021
L100 C & L010 C	Landscape Plan	Spirit Level	06/9/2021
2723AIA	Arboricultural Impact Assessment Report	Tree Wise Men	20/9/2021

Note: Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

Note: These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)
Standard Condition: A5 (Autotext AA5)

A.5 Ancillary Aspects of Development (section 4.17(2) of the Act)

The Owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

Note: This condition does not affect the Principal Contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.
Standard Condition: A8 (Autotext AA8)

A.6 Tree Preservation & Approved Landscaping Works

All landscape works shall be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

a) The following trees shall be retained

- Trees on Private Land

Council Ref No.	Species	Location	Dimension (metres)
9	Lagerstroemia indica	Refer to the Arboricultural Impact Assessment prepared by Tree Wise Men dated 20 September 2021 for tree locations and numbers.	6 x 2
10	Lagerstroemia indica		6 x 2
12	Syzygium spp.		5 x 2
13	Magnolia grandiflora		12 x 2
14	Magnolia grandiflora		12 x 2
15	Magnolia grandiflora		12 x 2
16	Olea europaea		5 x 2
17	Olea europaea		5 x 2
18	Olea europaea		4 x 2
19	Olea europaea		4 x 2
20	Olea europaea		5 x 2
21	Olea europaea		5 x 2
22	Olea europaea		5 x 2

Council Ref No.	Species	Location	Dimension (metres)
23	Pyrus spp		5 x 2
24	Pyrus spp		5 x 2
25	Pyrus spp		5 x 2
26	Magnolia grandiflora		10 x 2
27	Magnolia grandiflora		10 x 2
28	Magnolia grandiflora		10 x 2
29	Magnolia grandiflora		10 x 2
41	Archontophoenix cunninghamiana		10 x 2
42	Archontophoenix cunninghamiana		15 x 3
43	Archontophoenix cunninghamiana		13 x 3
44	Syzygium spp.		5 x 2
45	Acmena smithii		13 x 3
51	Livistona australis		10 x 2
52	Jacaranda mimosifolia		14 x 8
54	Lagerstroemia indica		6 x 4

• Trees on Council Land

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
1	Platanus orientalis	Refer to the Arboricultural Impact Assessment prepared by Tree Wise Men dated 20 September 2021 for tree locations and numbers.	16 x 4	\$15,000
2	Platanus orientalis		16 x 4	\$15,000
3	Lophostemon confertus		12 x 4	\$5000
4	Lophostemon confertus		15 x 5	\$15,000
5	Prunus spp.		3 x 2	\$1000

Note: The tree/s required to be retained should appear coloured green on the construction certificate plans.

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
6	Duranta erecta	Refer to the Arboricultural Impact Assessment prepared by Tree Wise Men dated 20 September 2021 for tree locations and numbers.	5 x 3
7	Magnolia grandiflora		2 x 1
8	Magnolia grandiflora		5 x 1
11	Syzygium spp.		4 x 1
30	Magnolia grandiflora		10 x 2
31	Murraya paniculata		6 x 5
32	Syzygium spp.		5 x 1
33	Syzygium spp.		17 x 6
34	Howea forsteriana		13 x 2
35	Howea forsteriana		15 x 2
36	Archontophoenix cunninghamiana		16 x 2
37	Howea forsteriana		14 x 2
38	Howea forsteriana		10 x 2
39	Archontophoenix cunninghamiana		9 x 2
40	Archontophoenix cunninghamiana		16 x 3
46	Ficus microcarpa var. Hillii		4 x 2
47	Magnolia grandiflora		4 x 2
48	Magnolia grandiflora		4 x 2
49	Ulmus parvifolia		14 x 6
50	Ulmus parvifolia		14 x 8
53	Acer negundo		9 x 4
55	Magnolia x soulangeana		4 x 2
56	Cyathea spp.		5 x 1

Note: Tree/s to be removed shall appear coloured red on the construction certificate plans.

B. Conditions which must be satisfied prior to the demolition of any building or construction

B.1 Construction Certificate Required Prior to Any Demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 6.6 of the *Act*.

In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the *Act*.

Note: See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.
Standard Condition: B1 (Autotext BB1)

B.2 Establishment of Tree Protection Zone (TPZ) Fence

Tree Protection Zones shall be established around all trees to be retained and in accordance with Section 4 of the *Australian Standard Protection of Trees on Development Sites* (AS 4970-2009). Tree protection zones must also comply with the following requirements;

i Tree Protection Zone areas

Council Ref No.	Species	Tree Location	TPZ Radius from Centre of Trunk (Metres)
1	Platanus orientalis	Refer to the Arboricultural Impact Assessment prepared by Tree Wise Men dated 20 September 2021 for tree locations and numbers.	3.5
2	Platanus orientalis		3.6
3	Lophostemon confertus		2
4	Lophostemon confertus		4.8
5	Prunus spp.		2
9	Lagerstroemia indica		2.4
10	Lagerstroemia indica		2.4
12	Syzygium spp.		2.4
13	Magnolia grandiflora		2.5
14	Magnolia grandiflora		2.3
15	Magnolia grandiflora		2.9
16	Olea europaea		2
17	Olea europaea		2.4
18	Olea europaea		2
19	Olea europaea		2
20	Olea europaea		2.3
21	Olea europaea		2
22	Olea europaea		2
23	Pyrus spp		2.6
24	Pyrus spp		2.3
25	Pyrus spp		2.4
26	Magnolia grandiflora		2.2
27	Magnolia grandiflora		2
28	Magnolia grandiflora		2
29	Magnolia grandiflora		2
41	Archontophoenix cunninghamiana		3
42	Archontophoenix cunninghamiana		4

Council Ref No.	Species	Tree Location	TPZ Radius from Centre of Trunk (Metres)
43	Archontophoenix cunninghamiana		4
44	Syzygium spp.		2
45	Acmena smithii		3.6
51	Livistona australis		3
52	Jacaranda mimosifolia		8.4
54	Lagerstroemia indica		2.3

- ii Tree Protection Zone fencing shall be installed around trees in accordance with the Tree Protection Plan (Dwg No 2723TPP Sheet 1 of 2) prepared by Tree Wise Men dated 13 September 2021.
- iii Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being brought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- iv A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- v No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in Condition B.2 of this consent.
- vi Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.
- vii The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- viii The project arborist shall provide written certification of compliance with the above condition.

B.3 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
52	Jacaranda mimosifolia	8.4	Excavation and construction of tennis courts
51	Livistona australis	3	Excavation and construction of tennis courts

The project arborist shall provide written certification of compliance with the above condition.

B.4 Demolition and Construction Management Plan

The Demolition and Construction Management Plan shall be reviewed and certified by the Project Arborist that appropriate tree protection measures have been accounted for. The Demolition and Construction Management Plan shall be prepared in accordance with all tree protection measures specified within this consent. Considerations by the Project Arborist shall include but not be limited to:

- a) Drawings and method statement showing details and the location of hoarding and scaffold and any pruning required to accommodate the hoarding and scaffolding;
- b) The movement and positioning of heavy machinery, lifting cranes, pier drilling gantry etc;
- c) Site construction access, temporary crossings and movement corridors on the site defined;
- d) Contractors car parking;
- e) Phasing of construction works;
- f) The space needed for all foundation excavations and construction works;
- g) All changes in ground level;
- h) Space for site sheds and other temporary structures such as toilets;
- i) Space for sorting and storing materials (short or long term), spoil and fuel and the mixing of cement and concrete; and
- j) The effects of slope on the movement of potentially harmful liquid spillages towards or into tree protection areas

B.5 Arborists Documentation and Compliance Checklist

The site arborist shall provide written certification that all tree protection measures and construction techniques relevant to this consent have been complied with. Documentation for each site visit shall include:

- A record of the condition of trees to be retained prior to and throughout development;
- Recommended actions to improve site conditions and rectification of non-compliance; and
- Recommendations for future works which may impact the trees

All compliance certification documents shall be kept on site by the Site Foreman.

As a minimum the following intervals of site inspections must be made:

Stage of arboricultural inspection	Compliance documentation and photos shall be included
Installation of tree protection fencing	Compliance with tree protection measures
Demolition of ground surface materials within the TPZ of retained trees	Condition of exposed roots
Earthworks and excavation for tennis court within TPZ of retained trees	Tree sensitive techniques implemented
Prior to pouring of slab for basement and tennis court within TPZ of retained trees	Condition of roots and soil
New landscape works within TPZ of retained trees	Tree sensitive techniques implemented
Prior to the issue of a Final Occupation Certificate	Supervise the dismantling of tree protection measures

Inspections and compliance documentation shall be made by an arborist with AQF Level 5 qualifications.

Additional site visits shall be made when required by site arborist and/or site foreman for ongoing monitoring/supervisory work.

B.6 Identification of Hazardous Material

In accordance with Australian Standard AS2601: *The Demolition of Structures*, the Owner shall identify all hazardous substances located on the site including asbestos, polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc. per clause 1.6.1 of the Standard.

In this regard, **prior to the commencement of any work**, Council shall be provided with a written report prepared by a suitably qualified competent person detailing:

- all hazardous materials identified on the site,
- the specific location of all hazardous materials identified,
- whether the hazardous materials are to be removed from the site as part of the works to be undertaken, and
- safety measures to be put in place.

Note: This condition is imposed to protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.

Standard Condition: B6

B.7 Public Road Assets Prior to Any Work/Demolition

To clarify the condition of the existing public infrastructure prior to the commencement of any development (including prior to any demolition), the Applicant or Owner must submit to Council a full record of the condition of the public road infrastructure adjacent to the development site.

The report must be submitted to Council **prior to the commencement of any work** and include photographs showing current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- kerb and gutter,
- footway including footpath pavement and driveways,
- retaining walls within the footway or road, and
- drainage structures/pits.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.

If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

Note: If the Applicant or Owner fails to submit the asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose

Standard Condition: B7

B.8 Skeletal Remains

If any skeletal remains suspected of being human are found during construction works, work must cease immediately and no further disturbance of the site must occur. The NSW Police and the Department of Premier and Cabinet, Community Engagement, Heritage must be notified and details of the remains and their precise location are to be provided.

Standard Condition: B9

B.9 Aboriginal Objects – Unexpected Findings

If unexpected Aboriginal objects or bones are found during any activity associated with this consent, you must:

- a) Not further disturb or move these objects or bones.
- b) Immediately cease all work at the particular location.
- c) In the case of suspected human remains, notify NSW Police.
- d) Notify the Heritage NSW Environment Line on 131 555 and the La Perouse LALC on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location.
- e) Not recommence any work at the particular location unless authorised in writing by Heritage NSW. Additional assessment and approval pursuant to the *National Parks and Wildlife Act 1974* may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: The Definition of Aboriginal object as per the Woollahra Local Environmental Plan 2014: any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Standard Condition: B10 (Autotext BB10)

B.10 Aboriginal Heritage Due Diligence Responsibilities

Nothing in this approval allows to cause harm to an Aboriginal object as defined in the *National Parks & Wildlife Act 1974*. Under the *National Parks & Wildlife Act 1974*, it is an offence to harm Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) without a valid Aboriginal Heritage Impact Permit under Section 90 of the Act. This applies whether the harm occurs either knowingly [s86(1)] or unknowingly [s86(2)].

It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object.

Standard Condition: B12 (Autotext BB12)

B.11 Aboriginal Heritage Induction

- a) All construction staff and contractors must be made aware of their statutory obligations for Aboriginal heritage under the *National Parks and Wildlife Act 1974*;
- b) An Aboriginal heritage induction is to be delivered by the La Perouse Local Aboriginal Land Council or by a heritage consultant with Aboriginal heritage expertise, if a representative of the Local Land Council is not able to provide the induction), to explain what Aboriginal heritage may be found and outline the unexpected findings procedures; and
- c) Documentary evidence demonstrating compliance with a. and b. above being submitted to Council and the Principal Certifier.

Standard Condition: B13 (Autotext BB13)

B.12 Site Protection

The footpath street name inlay located on Tarrant Avenue is to be protected from potential damage during site preparation and during the proposed works.

C. Conditions which must be satisfied prior to the issue of any Construction Certificate

C.1 Modification of Details of the Development (section 4.17(1)(g) of the Act)

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the *Regulation*, must detail the following amendments:

a) Parking facilities

- i) Finished floor levels on both end of the garage entry shall be clearly depicted on the architectural drawings. Since there is quite a longitudinal fall on the frontage footpath, the applicant shall ensure that the finished levels of the garage slab across the entry is tapered/tilted so that it is parallel to the longitudinal fall of the footpath to prevent car scraping. For design levels at the property boundary, it is required that the existing footpath levels must remain unaltered.
- ii) In light of point (i) above and in order to ascertain whether the proposed vehicular access meets all the requirement of AS 2890.1 in terms of car scraping, longitudinal profiles (scale 1:20) along each side/edge for the proposed crossing shall be prepared by a suitably qualified and experienced person. The driveway profiles along each side/edge of the proposed crossing is to start from the road centreline which include the Council's Standard layback and gutter into the parking slab. Gradients and transitions must be in accordance with Clause 2.5.3 of AS2890.1. The driveway profiles shall be prepared in Scale 1:20 (for template checking purposes) which contain all relevant details: reduced levels in AHD for both existing and proposed finished levels, grades representing in percentage and horizontal distances in chainages. Council's standard layback is 450mm wide and back of layback is 70mm above the gutter invert.

The proposed off-street parking space and vehicular access shall be designed in compliance with AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking*. Access levels and grades must comply with access levels and grade required by Council under the *Roads Act 1993*. The Certifying Authority has no discretion to reduce or increase the number or area of car parking space(s) required to be provided and maintained by this consent.

b) Deletion of Store Room and Games Room

The proposed store room, games room and associated lightwell located on the lower ground floor level must be deleted; and the area must remain unexcavated.

This condition is imposed:

- i to ensure that bullet point h) under the matters for consideration of Part 6.2 of the Woollahra LEP 2014 is achieved.
- ii to achieve Objectives O1-O5 and ensure compliance with Controls C1 and C6 of Part B3.4 of the Woollahra Development Control Plan 2015.
- iii as the proposed games room is non-compliant with Controls C1, C2 and C3 and fails to achieve Objectives O1 and O2 prescribed in Part B3.5.5 of the Woollahra Development Control Plan 2015.

c) Landscape Planting along the South-Western Boundary

The *Waterhousia Floribunda* (Weeping Lilly Pilly's) proposed on the south-western boundary of the subject site are to be replaced with one of the following species:

- *Viburnum sp.* (Viburnum) or
- *Elaeocarpus reticulatus* (Blueberry Ash) or
- *Acmena smithii minor* (Lillypilly) (small growing form),

which will reach, and be maintain at, a mature height of 5m.

This condition is imposed to ensure adequate solar access to the north-facing windows of the upper level bedrooms of the adjoining dwelling located at No.3 Tarrant Avenue is achieved.

[The location of the planting to be replaced is within the oval red line in the diagram below]



Note: The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the *Act*.

Note: Clause 146 of the *Regulation* prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

Note: Clause 145 of the *Regulation* prohibits the issue of any Construction Certificate that is inconsistent with this consent.

Standard Condition: C4 (Autotext CC4)

C.2 Payment of Long Service Levy, Security, Contributions and Fees

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a Construction Certificate, Subdivision Certificate or Occupation Certificate, as will apply.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
Long Service Levy www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator	Contact LSL Corporation or use online calculator	No	
SECURITY under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>			
Property Damage Security Deposit -making good any damage caused to any property of the Council	\$40,066.00	No	T115
Tree Damage Security Deposit – making good any damage caused to any public tree	\$41,000.00	No	T114
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2011 This plan may be inspected at Woollahra Council or downloaded at www.woollahra.nsw.gov.au			
Development Levy (section 7.12)	\$15,070.00 + Index Amount	Yes, quarterly	T96
INSPECTION FEES under section 608 of the <i>Local Government Act 1993</i>			
Public Tree Management Inspection Fee	\$200.00	No	T45
Public Road/Footpath Infrastructure Inspection Fee	\$494.00	No	
Security Administration Fee	\$208.00	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$97,038.00 plus any relevant indexed amounts and long service levy		

Building and Construction Industry Long Service Payment

The long service levy under section 34 of the *Building and Construction Industry Long Service Payment Act 1986*, must be paid and proof of payment provided to the Certifying Authority prior to the issue of any Construction Certificate. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website www.longservice.nsw.gov.au or the Long Service Corporation on 131 441.

How must the payments be made?

Payments must be made by:

- cash deposit with Council,
- credit card payment with Council, or
- bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and

- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

How will the section 7.12 levy (formerly known as 94A levy) be indexed?

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2011 sets out the formula and index to be used in adjusting the levy.

Do you need HELP indexing the levy?

Please contact Council's Customer Service Team on ph 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the *Act* and could void any such certificate (eg Construction Certificate, Subdivision Certificate, or Occupation Certificate).

Deferred or periodic payment of section 7.12 levy (formerly known as 94A levy) under the Woollahra Section 94A Development Contributions Plan 2011

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- the reasons given,
- whether any prejudice will be caused to the community deriving benefit from the public facilities,
- whether any prejudice will be caused to the efficacy and operation of the Plan, and
- whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

Council may, as a condition of accepting deferred or periodic payment, require the provision of a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 3.13 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

C.3 BASIX Commitments

The Applicant must submit to the Certifying Authority BASIX Certificate No. A428510_02 with any application for a Construction Certificate.

Note: Where there is any proposed change in the BASIX commitments the Applicant must submit of a new BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 145 and 146 of the *Regulation*) the Applicant will be required to submit an amended development application to Council pursuant to section 4.55 of the *Act*.

All commitments in the BASIX Certificate must be shown on the Construction Certificate plans and specifications prior to the issue of any Construction Certificate.

Note: Clause 145(1)(a1) of the *Environmental Planning and Assessment Regulation 2000* provides:
"A certifying authority must not issue a Construction Certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires".
Standard Condition: C7

C.4 Road and Public Domain Works

A separate application under Section 138 of the *Roads Act 1993* is to be made to, and be approved by Council as the road authority, for the following infrastructure works prior to the issuing of any Construction Certificate. The infrastructure works must be carried out at the applicant's expense:

- a) The removal of the redundant vehicular crossing including layback and gutter and reinstated into Council's standard kerb and gutter and nature strip to comply with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers.
- b) The construction of a new 3m wide vehicular crossing including replacement of the existing gutter in accordance with Council's standard driveway drawing RF2_D and to the satisfaction of Council's Assets Engineers. The new crossing shall be constructed at right angle to the street kerb in plain concrete and be located at a minimum distance of one (1) metre from the existing power pole. Design longitudinal surface profiles (scale 1:20) along each side/edge of the proposed vehicular crossing must be submitted for assessment.
- c) The reinstatement of all damaged kerb and gutter, footpath and road pavement to match existing.
- d) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

Note: To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

Note: *Road* has the same meaning as in the *Roads Act 1993*.

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any *Construction Certificate*. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Roads Act 1993* approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.

Note: See condition K24 in *Section K. Advisings of this Consent titled Roads Act Application*.
Standard Condition: C13 (Autotext CC13)

C.5 Soil and Water Management Plan – Submission and Approval

The Principal Contractor or Owner-builder must submit to the Certifying Authority a soil and water management plan complying with:

- a) "*Do it Right On Site, Soil and Water Management for the Construction Industry*" published by the Southern Sydney Regional Organisation of Councils, 2001; and
- b) "*Managing Urban Stormwater - Soils and Construction*" 2004 published by the NSW Government (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence.

The Certifying Authority must be satisfied that the soil and water management plan complies with the publications above prior to issuing any Construction Certificate.

Note: This condition has been imposed to eliminate potential water pollution and dust nuisance.

Note: The International Erosion Control Association – Australasia www.austieca.com.au lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.

Note: The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication can be downloaded from www.woollahra.nsw.gov.au, and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm.

Note: Pursuant to clause 161(1)(a)(5) of the *Regulation* an Accredited Certifier may be satisfied as to this matter.

Standard Condition: C25

C.6 Tree Management Plan

The *Construction Certificate* plans and specifications shall show the following information:

- a) Trees to be numbered in accordance with these conditions:
 - shaded green where required to be retained and protected
 - shaded red where authorised to be removed
 - shaded yellow where required to be transplanted
 - shaded blue where required to be pruned
- b) References to applicable tree management plan, arborists report or transplant method statement.

This plan shall be kept on site until the issue of the final occupation certificate.

C.7 Professional Engineering Details

The Construction Certificate plans and specifications, required by clause 139 of the *Regulation*, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydrogeological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the Certifying Authority with the application for any Construction Certificate.

Note: This does not affect the right of the developer to seek staged Construction Certificates.

Standard Condition: C36

C.8 Geotechnical and Hydrogeological Design, Certification and Monitoring

The Construction Certificate plans and specification required to be submitted to the Certifying Authority pursuant to clause 139 of the *Regulation* must be accompanied by a Geotechnical / Hydrogeological Monitoring Program together with civil and structural engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a professional engineer, who is suitably qualified and experienced in geotechnical and hydrogeological engineering.

These details must be certified by the professional engineer to:

- a) Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.

- b) Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).
- c) Provide foundation tanking prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time.
- d) Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.
- e) Provide a Geotechnical and Hydrogeological Monitoring Program that:
 - will detect any settlement associated with temporary and permanent works and structures,
 - will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like),
 - will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity),
 - will detect groundwater changes calibrated against natural groundwater variations,
 - details the location and type of monitoring systems to be utilised,
 - details the pre-set acceptable limits for peak particle velocity and ground water fluctuations,
 - details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
 - details a contingency plan.

Standard Condition: C40 (Autotext: CC40)

C.9 Sight Lines

Prior to issue of any Construction Certificate, the applicant shall submit, for approval by the Certifying Authority, detailed architectural plans and specifications showing the following:

- a) Pursuant to Clause 3.2.4 and Figure 3.3 of AS2890.1, a 2m x 2.5m pedestrian sight splay, clear of any obstructions to visibility, shall be provided on both sides of the driveway exit.

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the *Act*.

Note: Clause 146 of the *Regulation* prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

Note: Clause 145 of the *Regulation* prohibits the issue of any Construction Certificate that is inconsistent with this consent.

Standard Condition: C45 (Autotext: CC45)

C.10 Stormwater Management Plan (site greater than 500m²)

Prior to issue of the Construction Certificate, the applicant must submit, for approval by the Certifying Authority, detailed stormwater management plans prepared by a suitably qualified and experienced civil engineer, which detail the following:

- a) General design in accordance with stormwater management plans, prepared by Harris Page & Associates P/L, referenced 6695-Rev C, dated 09/12/2021, other than amended by this condition below;
- b) The placement of subsoil drainage system is NOT permitted. All below ground structures are to be fully tanked or appropriately design to ensure subsoil drainage/seepage water is NOT collected and directed to the kerb and gutter to comply with Chapter E2.2.5 of Council's DCP;

- c) The discharge of stormwater from the site to Council's kerb and gutter located within the frontage of the site;
- d) Any proposed stormwater pipes across the nature strip must have a minimum grade of 1% to comply with Clause 6.3.4 of AS3500.3. The outlet pipe must be located within the frontage of the site;
- e) The installation of a min. 600x600 boundary junction pit prior to discharging into Council's kerb and gutter system;
- f) All new Stormwater Drainage System complying with the BCA;
- g) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath;
- h) Compliance the objectives and performance requirements of the BCA;
- i) General compliance with the Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

OSD Requirements

The minimum Site Storage Requirements ("SSR") for the on-site detention system shall be 41.62m³ (existing OSD volume = 15m³ and proposed OSD volume = 26.62m³). The Permissible Site Discharge (PSD) discharging to the kerb and gutter in Tarrant Avenue must not exceed 20 l/s.

The *Stormwater Management Plan* must also include the following specific requirements:

Layout plan

A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Institute of Engineers Australia publication, *Australian Rainfall and Run-off*, 1987 edition or most current version thereof. It must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of proposed rainwater tanks,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Councils drainage infrastructure, and
- f) Overland flow paths over impervious areas.

On-site Detention (OSD) details:

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed detention storage,
- c) Diameter of the outlet to the proposed detention storage basin,
- d) Plans, elevations and sections showing the detention storage basin invert level, centre-line level of outlet, top water level, finished surface level and adjacent structures,
- e) Details of access and maintenance facilities,
- f) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products,
- g) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the on-site detention system,
- h) Non-removable fixing details for orifice plates where used,

Rainwater Reuse System details:

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed rainwater storage,
- c) Plans, elevations and sections showing the rainwater tanks, finished surface level and adjacent structures,

- d) Details of access and maintenance facilities,
- e) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products,
- f) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the rainwater tanks,

For any Stormwater Drainage works on Council's property, separate approval under Section 138 of the *Roads Act 1993* must be obtained from Council for those works prior to the issue of any Construction Certificate.

All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012).

Note: This Condition is imposed to ensure that site stormwater is disposed of in a controlled and sustainable manner.

Note: The collection, storage and use of rainwater is to be in accordance with *Standards Australia HB230-2008 "Rainwater Tank Design and Installation Handbook"*.
Standard Condition: C.51 (Autotext CC51)

C.11 Swimming and Spa Pools – Child Resistant Barriers

The Construction Certificate plans and specifications required by clause 139 of the *Regulation* must demonstrate compliance (by showing the proposed location of all child-resistant barriers and the resuscitation sign) with the provisions of the *Swimming Pools Act 1992* and the Building Code of Australia.

Approval is not granted for the modification of any boundary fencing beyond what is authorised by the stamped approved plans, as modified by any condition of consent or what is permitted to be carried out as 'exempt development' pursuant to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Note: A statement to the effect that isolation swimming pool fencing complying with AS1926 will be installed does not satisfy this condition. The location of the required barriers and the sign must be detailed upon the *Construction Certificate* plans.
Standard Condition: C55 (Autotext CC55)

C.12 Electric vehicle circuitry and electric vehicle charging point requirements

An accurate electrical plan and specifications for all off-street car parking must be prepared by a suitably qualified person, demonstrating the following;

- a) That each off-street car parking space will be provided with electrical circuitry to support the installation of a Level 2 electric vehicle charger point. The construction certificate plans are to:
 - Identify the power capacity to each car parking space.
 - identify the load management system on each level of parking such as a distribution board.
 - identify the conduit system to allow each car space to install an electric vehicle charger point - such as cable trays and/or buried cables underground. This system should allow future installation of cabling to power electric vehicle charger points and allow internet access (run Ethernet cable or install 4G modem).
- b) A minimum of one Level 2 electric charger must be provided and Level 2 chargers must be provided to not less than 10% of all car parking spaces. The location of all electric vehicle chargers must be shown on the construction certificate plans.
- c) The certifier must be satisfied that the electrical plans and specifications are consistent with (a) and (b) prior to the issue of the construction certificate.

Note: The minimum electric circuitry requirements for 'Level 2' electric vehicle charging points are:

- a) Privately available spaces including visitor spaces: 'Level 2' slow – single phase 7kW power; and
 - b) Publicly available spaces: 'Level 2' fast – three-phase 11-22kW power
- Standard Condition: C57 (Autotext CC57)

C.13 Acoustic Certification of Mechanical Plant and Equipment

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must be accompanied by a certificate from a professional engineer (acoustic engineer) certifying that the noise level measured at any boundary of the site at any time while the proposed mechanical plant and equipment is operating will not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level*, at any time.

The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90, 15 \text{ minute}}$ level measured by a sound level meter.

Where sound attenuation is required this must be detailed.

Note: Further information including lists of Acoustic Engineers can be obtained from:

- 1. **Australian Acoustical Society**—professional society of noise-related professionals
www.acoustics.asn.au
 - 2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals www.aaac.org.au.
- Standard Condition: C62 (Autotext CC62)

D. Conditions which must be satisfied prior to the commencement of any development work

D.1 Compliance with Building Code of Australia and insurance requirements under the [Home Building Act 1989](#)

For the purposes of section 4.17(11) of the *Act*, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- b) in the case of residential building work for which the [Home Building Act 1989](#) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a) to the extent to which an exemption is in force under the *Home Building Regulation 2004*, or
- b) to the erection of a temporary building.

In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant Construction Certificate is made.

Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the *Home Building Act 1989*. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.
Standard Condition: D1 (Autotext DD1)

D.2 Dilapidation Reports for Existing Buildings

Dilapidation surveys and dilapidation reports shall be conducted and prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely “zone of influence” of any excavation, dewatering and/or construction induced vibration as determined applicable by a Structural Engineer.

These properties must include (but is not limited to):

- No. 3 Tarrant Avenue

The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. A copy of the approved reports shall be submitted to Council with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by S81A(2) of the *Act* not less than two (2) days prior to the commencement of any work.

Note: The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land

Also refer to the Dilapidation Report Advising for more information regarding this condition
Standard Condition: D4 (Autotext DD4)

D.3 Adjoining Buildings Founded on Loose Foundation Materials

The Principal Contractor must ensure that a professional engineer determines the possibility of any adjoining buildings founded on loose foundation materials being affected by piling, piers or excavation. The professional engineer (geotechnical consultant) must assess the requirements for underpinning any adjoining or adjacent buildings founded on such soil on a case by case basis and the Principal Contractor must comply with any reasonable direction of the professional engineer.

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the *Conveyancing Act 1919*.

Standard Condition: D6 (Autotext DD6)

D.4 Works (Construction) Zone – Approval and Implementation

A Works Zone may be required for this development. The Principal Contractor or Owner can apply for a works zone. If the works zone is approved the Principal Contractor or Owner must pay all fees for this Works Zone before it can be installed.

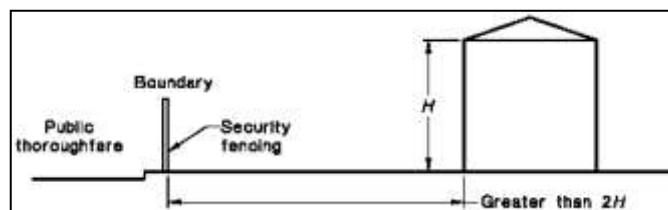
The Principal Contractor must pay all fees associated with the application and occupation and use of the road as a Works Zone. All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any work. Signs are not erected until full payment of works zone fees.

Note: The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Maritime Services under section 50 of the *Transport Administration Act 1988*.

Note: The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service.
Standard Condition: D10 (Autotext DD10)

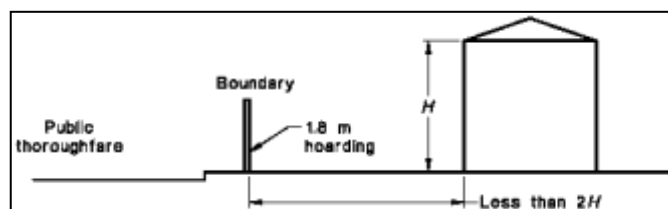
D.5 Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection

Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.



Type A Hoarding

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.



Type B Hoarding

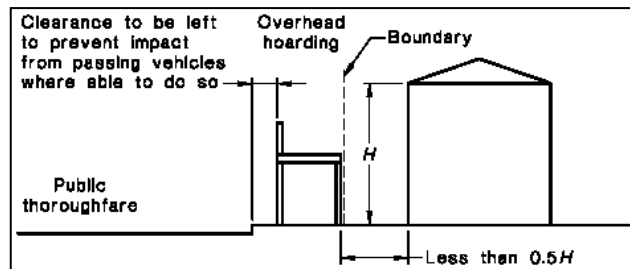
Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:

- the vertical height above footpath level of the structure being demolished is less than 4.0m; or
- the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must:

- extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary,
- have a clear height above the footpath of not less than 2.1m,
- terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface, and

- d) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.



The Principal Contractor or Owner-builder must ensure that overhead protective structures are installed and maintained in accordance with the NSW “Code of Practice - Overhead Protective Structures 1995”. This is code available at www.safework.nsw.gov.au/data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf

All Hoardings

Security fencing, hoarding and overhead protective structure must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.

Hoardings on Public Land including ‘Creative Hoardings’

The Principal Contractor or Owner-builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council’s Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the Principal Contractor or Owner-builder. The Creative Hoardings Policy can be downloaded from Council’s website www.woollahra.nsw.gov.au

Note: The Principal Contractor or Owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the *Roads Act 1993* will be subject to its own conditions and fees.

Note: Council seeks to increase public art in the public domain by requiring artwork or historic images on hoardings located on public land. Under the Creative Hoardings Policy an application for a hoarding proposed on public land will require an approved artwork or historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the Policy:

- A. Hoardings proposed on land zoned B2 Local Centre, or B4 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more
OR
- B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more
OR
- C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where:
 - i. the capital investment value of the work to which the hoarding relates is less than \$1 million
OR
 - ii. the land is zoned R2 Low Density Residential
OR
 - iii. the land is zoned R3 Medium Density Residential and the hoarding located in a lane or street that does not have through traffic (eg a cul-de-sac or no through road).

Artwork and historic images for the hoardings are assessed and approved in accordance with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed to the hoardings must be submitted with Council's form "Application for a permit to use a footpath for the erection of a hoarding/scaffolding".

The Creative Hoardings Policy can be downloaded from www.woollahra.nsw.gov.au or for more information contact Council's Cultural Development Team.

Standard Condition: D11 (Autotext DD11)

D.6 Site Signs

The Principal Contractor or Owner-builder must ensure that the sign/s required by clauses 98A and 227A of the *Regulation* is/are erected and maintained at all times.

Clause 98A of the *Regulation* provides:

Erection of signs

- For the purposes of section 4.17(11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a. showing the name, address and telephone number of the Principal Certifier for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c. stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the *Act*, to comply with the Building Code of Australia.

Clause 227A of the *Regulation* provides:

Signs on development sites

If there is a person who is the Principal Certifier or the Principal Contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

- Each such person MUST ensure that a rigid and durable sign showing the person's identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.

Note: Clause 227A imposes a penalty exceeding \$1,000 if these requirements are not complied with.

Note: If Council is appointed as the Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and clause 227A of the *Regulation*.

Standard Condition: D12 (Autotext DD12)

D.7 Toilet Facilities

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

- a) must be a standard flushing toilet, and
- b) must be connected to a public sewer, or
- c) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or

- d) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

In this condition:

accredited sewage management facility means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation 1993* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the *Local Government (Approvals) Regulation 1993*.

approved by the Council means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

public sewer has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

sewage management facility has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

Note: This condition does not set aside the requirement to comply with SafeWork NSW requirements.
Standard Condition: D13 (Autotext DD13)

D.8 Erosion and Sediment Controls – Installation

The Principal Contractor or Owner-builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The Soil and Water Management Plan if required under this consent;
- b) “Do it Right On Site, Soil and Water Management for the Construction Industry” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c) “Managing Urban Stormwater - Soils and Construction” 2004 published by the NSW Government (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence.

Note: The International Erosion Control Association – Australasia (www.austieca.com.au/) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.

Note: The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication can be downloaded from www.woollahra.nsw.gov.au and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm

Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the *Act* and/or the *Protection of the Environment Operations Act 1997* **without any further warning**. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.
Standard Condition: D14 (Autotext DD14)

D.9 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)

The erection of the building in accordance with this development consent must not be commenced until:

- a) A Construction Certificate for the building work has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited Certifier, and

- b) The person having the benefit of the development consent has:
 - appointed a Principal Certifier for the building work, and
 - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier has, no later than 2 days before the building work commences:
 - notified the consent authority and the Council (if the Council is not the consent authority) of his or her appointment, and
 - notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- d) The person having the benefit of the development consent, if not carrying out the work as an Owner-builder, has:
 - appointed a Principal Contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - notified the Principal Certifier of any such appointment, and
 - unless that person is the Principal Contractor, notified the Principal Contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

Note: *building* has the same meaning as in section 1.4 of the *Act* and includes part of a building and any structure or part of a structure.

Note: *new building* has the same meaning as in section 6.1 of the *Act* and includes an altered portion of, or an extension to, an existing building.

Note: The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 6.6(2) of the *Act* (including the need for a Construction Certificate) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

Note: Construction Certificate Application, PC Service Agreement and Notice of Commencement forms can be downloaded from Council's website www.woollahra.nsw.gov.au

Note: It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 6.6(2) of the *Act*.
Standard Condition: D15 (Autotext DD15)

D.10 Notification of Home Building Act 1989 requirements

- a) For the purposes of section 4.17(11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - In the case of work for which a Principal Contractor is required to be appointed:
 - the name and licence number of the Principal Contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that Act,
 - In the case of work to be done by an Owner-builder:
 - the name of the Owner-builder, and
 - if the Owner-builder is required to hold an Owner-builder permit under that Act, the number of the Owner-builder permit.

- c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- d) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the *Act*, to comply with the Building Code of Australia.
Standard Condition: D17 (Autotext DD17)

E. Conditions which must be satisfied during any development work

E.1 Compliance with BCA and Insurance Requirements under the Home Building Act 1989

For the purposes of section 4.17(11) of the *Act*, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia (BCA),
- b) in the case of residential building work for which the [Home Building Act 1989](#) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the *Regulation*, or
- b) to the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.
Standard Condition: E1 (Autotext EE1)

E.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: *The Demolition of Structures*.

Standard Condition: E2 (Autotext EE2)

E.3 Requirement to Notify about New Evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifier.

Standard Condition: E4 (Autotext EE4)

E.4 Critical Stage Inspections

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the Principal Certifier is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*.

Critical stage inspections means the inspections prescribed by the *Regulations* for the purposes of section 6.5 of the *Act* or as required by the Principal Certifier and any PC Service Agreement.

Note: The PC may require inspections beyond mandatory critical stage inspections in order that the PC be satisfied that work is proceeding in accordance with this consent.

Note: The PC may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5 (Autotext EE5)

E.5 Hours of Work –Amenity of the Neighbourhood

- a) No *work* must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- d) The following *work must not* take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
 - (i) piling,
 - (ii) piercing,
 - (iii) rock or concrete cutting, boring or drilling,
 - (iv) rock breaking,
 - (v) rock sawing,
 - (vi) jack hammering, or
 - (vii) machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- g) No rock excavation being cutting, boring, drilling, breaking, sawing , jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

Note: The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

Note: Each and every breach of this condition by any person may be subject to a separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RMS and NSW Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.

Note: Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2017*.

Note: NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nqlg.htm

Standard Condition: E6 (Autotext EE6)

E.6 Public Footpaths – Safety, Access and Maintenance

The Principal Contractor or Owner-builder and any other person acting with the benefit of this consent must:

- a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any work.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Not stand any plant and equipment upon the road or footway.
- f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- g) Protect heritage listed street name inlays in the footpath which are not to be removed or damaged during development.

This condition does not apply to the extent that a permit or approval exists under the section 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 of the *Local Government Act 1993* except that at all time compliance is required with:

- a) Australian Standard AS 1742 (Set): *Manual of uniform traffic control devices* and all relevant parts of this set of standards.
- b) Australian Road Rules.

Note: Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.

Note: Section 138 of the *Roads Act 1993* provides that a person must not:

- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoining the road, or
- connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

Note: Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the Council including:

- Part C Management of waste:
 - a. For fee or reward, transport waste over or under a public place
 - b. Place waste in a public place
 - c. Place a waste storage container in a public place.
- Part E Public roads:
 - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
 - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.

Standard Condition: E7 (Autotext EE7)

E.7 Tree Preservation

All persons must comply with Council's Development Control Plan (DCP) 2015, Chapter E.3 Tree Management other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

- a) The TPZ must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.

- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

Note: Trees must be pruned in accordance with *Australian Standard AS 4373 "Pruning of Amenity Trees"* and *WorkCover NSW Code of Practice Amenity Tree Industry*.

E.8 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2018). The replacement tree shall be planted in a *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species in accordance with the approved Landscape Plans.

The project arborist shall document compliance with the above condition.

E.9 Paving in the vicinity of trees

Paving works within the TPZ of any tree conditioned for retention shall be constructed in such a way as to ensure that the existing moisture infiltration and gaseous exchange to the tree root system are maintained. When preparing an area for paving within the specified radius the soil surface shall not be skimmed. The new surface shall be established above the former ground level.

Paving works are to be designed in consultation with a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent) and are to utilise such measures as semiporous material.

The project arborist shall document compliance with the above condition.

E.10 Hand excavation within tree root zones

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
51	<i>Livistona australis</i>	Refer to the Arboricultural Impact Assessment prepared by Tree Wise Men dated 20 September 2021 for tree locations and numbers.	3
52	<i>Jacaranda mimosifolia</i>		8.4

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 "Pruning of Amenity Trees" and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

E.11 Maintenance of Environmental Controls

The Principal Contractor or Owner-builder must ensure that the following monitoring, measures and controls are maintained:

- a) erosion and sediment controls,
- b) dust controls,
- c) dewatering discharges,
- d) noise controls,
- e) vibration monitoring and controls,
- f) ablutions.

Standard Condition: E11

E.12 Compliance with Geotechnical / Hydrogeological Monitoring Program

Excavation must be undertaken in accordance with the recommendations of the Geotechnical / Hydrogeological Monitoring Program and any oral or written direction of the supervising professional engineer.

The Principal Contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to:

- a) the location and type of monitoring systems to be utilised,
- b) recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
- c) the contingency plan.

Note: The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the development application to be appointed as the professional engineer supervising the work however, it is the Council's recommendation that the author of the report be retained during the construction stage.

Standard Condition: E12 (Autotext EE12)

E.13 Support of Adjoining Land and Buildings

A person must not do anything on or in relation to the site (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).

For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.

Note: This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the Principal Contractor or Owner-builder must obtain:

- a. the consent of the owners of such adjoining or supported land to trespass or encroach, or
- b. an access order under the *Access to Neighbouring Land Act 2000*, or
- c. an easement under section 88K of the *Conveyancing Act 1919*, or
- d. an easement under section 40 of the *Land and Environment Court Act 1979* as appropriate.

Note: Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

Note: Clause 20 of the *Roads Regulation 2008* prohibits excavation in the vicinity of roads as follows:
“**Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road.” Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

Note: The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, Crown land under Council's care control or management, or any community or operational land as defined by the *Local Government Act 1993*.

Standard Condition: E13 (Autotext EE13)

E.14 Vibration Monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any *building* identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the Principal Contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately.

Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the Principal Contractor and any sub-contractor clearly setting out required work practice.

The Principal Contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifier within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining *building* or such that there is any removal of support to *supported land* the professional engineer, Principal Contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that *supported land* and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the *supported land*.

Note: *professional engineer* has the same mean as in clause A1.1 of the BCA.

Note: *building* has the same meaning as in section 1.4 of the *Act* i.e. “*building* includes part of a building and any structure or part of a structure...”

Note: *supported land* has the same meaning as in the *Conveyancing Act 1919*.

Standard Condition: E14 (Autotext EE14)

E.15 Erosion and Sediment Controls – Maintenance

The Principal Contractor or Owner-builder must maintain water pollution, erosion and sedimentation controls in accordance with:

- a) the Soil and Water Management Plan required under this consent,
- b) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001, and
- c) “*Managing Urban Stormwater - Soils and Construction*” 2004 published by the NSW Government (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence.



Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the *Act* and/or the *Protection of the Environment Operations Act 1997* without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the *Protection of the Environment Operations Act 1997* provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”.

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

Standard Condition: E15 (Autotext EE15)

E.16 Disposal of Site Water During Construction

The Principal Contractor or Owner-builder must ensure:

- a) Prior to pumping any water into the road or public stormwater system that approval is obtained from Council under section 138(1)(d) of the *Roads Act 1993*.
- b) That *water pollution*, as defined by the *Protection of the Environment Operations Act 1997*, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water.
- c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.

Note: This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.

Standard Condition: E17 (Autotext EE17)

E.17 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

The Principal Contractor or Owner-builder must ensure that a registered surveyor carries out check surveys and provides survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The Principal Contractor or Owner-builder must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the Principal Certifier's satisfaction:

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level.
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey.
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof.
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like.
- e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.
- f) Stormwater drainage Systems prior to back filling over pipes confirming location, height and capacity of works.
- g) Flood protection measures are in place confirming location, height and capacity.

Note: This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent. This is critical to ensure that building are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

Standard Condition: E20 (Autotext EE20)

E.18 Placement and Use of Skip Bins

The Principal Contractor or Owner-builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a) Activity Approval has been issued by Council under section 68 of the *Local Government Act 1993* to place the waste storage container in a public place; and
- b) where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules.

Note: Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards. Standard Condition: E21 (Autotext EE21)

E.19 Prohibition of Burning

There must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) treated timber is prohibited in all parts of NSW. All burning is prohibited in the Woollahra local government area.

Note: Pursuant to the *Protection of the Environment Operations (Clean Air) Regulation 2010* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

Standard Condition: E22 (Autotext EE22)

E.20 Dust Mitigation

Dust mitigation must be implemented in accordance with “*Dust Control - Do it right on site*” published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- a) Dust screens to all hoardings and site fences.
- b) All stockpiles or loose materials to be covered when not being used.
- c) All equipment, where capable, being fitted with dust catchers.
- d) All loose materials being placed bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

Note: “*Dust Control - Do it right on site*” can be downloaded from Council’s website www.woollahra.nsw.gov.au or obtained from Council’s office.

Note: Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from www.safework.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions and advice may apply.

Note: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.
Standard Condition: E23 (Autotext EE23)

E.21 Swimming and Spa Pools – Temporary Child Resistant Barriers and other Matters

Temporary child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and Building Code of Australia where any swimming pool or spa pool, as defined by the *Swimming Pools Act 1992*, contains more than 300mm in depth of water at any time.

Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia as soon as practical.

Backwash and any temporary dewatering from any swimming pool or spa pool as defined by the *Swimming Pools Act 1992* must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Note: This condition does not prevent Council from issuing an order pursuant to section 23 of the *Swimming Pool Act 1992* or taking such further action as necessary for a breach of this condition or the *Swimming Pools Act 1992*.
Standard Condition: E26

E.22 Site Waste Minimisation and Management – Demolition

In order to maximise resource recovery and minimise residual waste from demolition activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),
- c) provide separate collection bins and/or areas for the storage of residual waste,
- d) clearly ‘signpost’ the purpose and content of the bins and/or storage areas,
- e) implement measures to prevent damage by the elements, odour, health risks and windborne litter, and

- f) minimise site disturbance, limiting unnecessary excavation.

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act 1997*,
- c) waste is only transported to a place that can lawfully be used as a waste facility,
- d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

Note: Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Standard Condition: E31 (Autotext EE31)

E.23 Site Waste Minimisation and Management – Construction

In order to maximise resource recovery and minimise residual waste from construction activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) arrange for the delivery of materials so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage,
- c) consider organising to return excess materials to the supplier or manufacturer,
- d) allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation),
- e) clearly 'signpost' the purpose and content of the storage areas,
- f) arrange contractors for the transport, processing and disposal of waste and recycling and ensure that all contractors are aware of the legal requirements for disposing of waste,
- g) promote separate collection bins or areas for the storage of residual waste,
- h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter,
- i) minimise site disturbance and limit unnecessary excavation,
- j) ensure that all waste is transported to a place that can lawfully be used as a waste facility, and
- k) retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.

Standard Condition: E32 (Autotext EE32)

E.24 Asbestos Removal

All asbestos removal work must be carried out safely according to NSW work health and safety legislation.

Where hazardous material, including bonded or friable asbestos has been identified in accordance with the conditions in Section B above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

- a) Be undertaken by contractors who hold a current SafeWork NSW “demolition licence” and a current SafeWork NSW “Class A licence” for friable asbestos removal.
- b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.
- c) No asbestos products may be reused on the site.
- d) No asbestos laden skip or bins shall be left in any public place.

Note: This condition is imposed to protect the health and safety of persons working on the site and the public
Standard Condition: E39

E.25 Classification of Hazardous Waste

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the *Protection of the Environment Operations Act 1997* and the NSW EPA *Waste Classification Guidelines, Part 1: Classifying Waste, 2014*.

Note: This condition is imposed to ensure that where hazardous waste will be removed from a site an asbestos licensed contractor can definitively determine where the waste may be legally taken for disposal.
Standard Condition: E40

E.26 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with the hazardous waste classification condition above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Note: This condition is imposed to ensure that asbestos and other hazardous waste is disposed of lawfully under the *Protection of the Environment Operations Act 1997* and relevant NSW EPA requirements.
Standard Condition: E41

E.27 Asbestos Removal Signage

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site when asbestos is being removed.

Note: This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.
Standard Condition: E42

E.28 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted.

The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

Note: This condition has been imposed to ensure that local residents are informed and have adequate communication facilitated for incidents of asbestos removal.
Standard Condition: E43

E.29 Site Protection

The footpath street name inlay located on Tarrant Avenue is to be protected from potential damage during site preparation and during the proposed works.

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 6.9 of the Act)

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 6.10 of the Act) unless an Occupation Certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building.
Standard Condition: F1 (Autotext FF1)

F.2 Amenity Landscaping

The *owner* or *principal contractor* must install all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) prior to any occupation or use of the site.

Note: This condition has been imposed to ensure that the environmental impacts of the development are mitigated by approved landscaping prior to any occupation of the development.

F.3 Commissioning and Certification of Systems and Works

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier works-as-executed (WAE) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the Act, the Regulations, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must include but may not be limited to:

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1: *Off-Street car parking*.
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.
- i) All waterproofing.
- j) Such further matters as the Principal Certifier may require.

Note: This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the Act, comply with the BCA, comply with this consent and so that a public record of works as execute is maintained.

Note: The PC may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the Act, Regulation, development standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

Note: The PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.
Standard Condition: F7 (Autotext FF7)

F.4 Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters

Prior to filling any swimming pool, as defined by the *Swimming Pools Act 1992*:

- a) Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia.
- b) The swimming pool must be registered in accordance with section 30B of the *Swimming Pools Act 1992* on the NSW Government Swimming Pool Register.
- c) The Principal Contractor or Owner must either obtain a certificate of compliance issued pursuant to section 22D of the *Swimming Pools Act 1992* or an appropriate Occupation Certificate authorising use of the swimming pool.
- d) Public pools must comply with the *NSW Health Public Swimming Pool and Spa Pool Guidelines* in force at that time and private pools are encouraged to comply with the same standards as applicable.
- e) Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2010: *Swimming pool safety - Water recirculation systems*.

Backwash must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate before 8 am or after 8 pm on any Sunday or public holiday or before 7 am or after 8 pm on any other day.

Note: NSW Health guidelines and fact sheets are available at www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx
Standard Condition: F13 (Autotext FF13)

F.5 Certification of Electric Vehicle Charging System

Prior to the issue of any Occupation Certificate or occupation or use of part of the building, the Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier, certification by a suitably qualified person that the electric vehicle charger points and/or electric vehicle circuitry, has been installed in accordance with the construction certificate plans and specifications as required by **Condition C.12**.

Standard Condition: F22 (Autotext FF22)

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

Nil.

H. Conditions which must be satisfied prior to the issue of the Occupation Certificate for the whole of the building

H.1 Fulfillment of BASIX Commitments – clause 154B of the *Regulation*

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A428510_02.

Note: Clause 154B(2) of the *Environmental Planning and Assessment Regulation 2000* provides: "A certifying authority must not issue a final Occupation Certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."
Standard Condition: H7 (Autotext HH7)

H.2 Landscaping

The *principal contractor* or *owner* must provide to *PCA* a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works comply with this consent.

Note: This condition has been imposed to ensure that all Landscaping work is completed prior to the issue of the Final Occupation Certificate.

H.3 Removal of Ancillary Works and Structures

The Principal Contractor or Owner must remove from the land and any adjoining public place:

- a) the site sign,
- b) ablutions,
- c) hoarding,
- d) scaffolding, and
- e) waste materials, matter, article or thing.

Note: This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the Final Occupation Certificate.
Standard Condition: H12 (Autotext HH12)

H.4 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Principal Contractor's or Owner's expense:

- a) stormwater pipes, pits and connections to public stormwater systems within the *road*,
- b) driveways and vehicular crossings within the *road*,
- c) removal of redundant driveways and vehicular crossings,
- d) new footpaths within the *road*,
- e) relocation of existing power/light pole,
- f) relocation/provision of street signs,
- g) new or replacement street trees,
- h) new footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street,
- i) new or reinstated kerb and guttering within the *road*, and
- j) new or reinstated road surface pavement within the *road*.

Note: Security held by Council pursuant to section 4.17(6) of the *Act* will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the Final Occupation Certificate to Council. This form can be downloaded from Council's website www.woollahra.nsw.gov.au or obtained from Council's customer service centre.
Standard Condition: H13 (Autotext HH13)

H.5 Works-As-Executed Certification of Stormwater Systems

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- a) compliance with conditions of development consent relating to stormwater,
- b) the structural adequacy of the on-site detention system (OSD),

- c) that the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations,
- d) pipe invert levels and surface levels to Australian Height Datum, and
- e) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the on-site-detention system and/or absorption trenches, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.

Note: The required wording of the Instrument can be downloaded from Council's website www.woollahra.nsw.gov.au. The PC must supply a copy of the WAE plans to Council together with the Final Occupation Certificate.

Note: The Final Occupation Certificate must not be issued until this condition has been satisfied.
Standard Condition: H20 (Autotext HH20)

I. Conditions which must be satisfied during the ongoing use of the development

I.1 Maintenance of BASIX Commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A428510_02.

Note: This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.
Standard Condition: I24

I.2 Ongoing Maintenance of the On-Site-Detention System

The owner(s) must in accordance with this condition and any positive covenant:

- a) Permit stormwater to be temporarily detained by the system.
- b) Keep the system clean and free of silt rubbish and debris.
- c) If the car park is used as a detention basin, a weather resistant sign must be maintained in a prominent position in the car park warning residents that periodic inundation of the car park may occur during heavy rain.
- d) Maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner and in doing so complete the same within the time and in the manner reasonably specified in written notice issued by Council.
- e) Carry out the matters referred to in paragraphs (b) and (c) at the owner's expense.
- f) Not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly.
- g) Permit Council or its authorised agents from time to time upon giving reasonable notice (but at anytime and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant.
- h) Comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice.
- i) Where the owner fails to comply with the owner's obligations under this covenant, permit Council or its agents at all times and on reasonable notice at the owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations.

- j) Indemnify the Council against all claims or actions and costs arising from those claims or actions which Council may suffer or incur in respect of the system and caused by an act or omission by the owners in respect of the owner's obligations under this condition.

Note: This condition has been imposed to ensure that owners are aware of require maintenance requirements for their stormwater systems.

Note: This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.

Standard Condition: I29

I.3 Swimming and Spa Pools – Maintenance

Swimming and spa pools must be maintained:

- a) in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs,
- b) in compliance with the NSW Health "Public Swimming Pools and Spa Pools Advisory Document" in force at that time. Private pools are encouraged to comply with the same standards as applicable,
- c) in compliance with AS 1926.3-2010 *Swimming pool safety - Water recirculation and filtration systems*,
- d) with backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and
- e) with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - before 8 am or after 8 pm on any Sunday or public holiday, or
 - before 7 am or after 8 pm on any other day.

Note: Child-resistant barriers, resuscitation signs, recirculation and filtration systems and controls systems require regular maintenance to ensure that life safety, health and amenity standards are maintained.

Note: The NSW Health public swimming pools and spa pools guidelines are available at www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx

Standard Condition: I30

I.4 Outdoor Lighting – Residential

Outdoor lighting must comply with AS/NZS 4282:2019: *Control of the obtrusive effects of outdoor lighting*. The maximum luminous intensity from each luminaire and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282:2019.

Note: This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

Note: This condition has been imposed to control the obtrusive effects of outdoor lighting.

Standard Condition: I49

I.5 Noise from Mechanical Plant and Equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level* at any time.

The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90, 15 \text{ minute}}$ level measured by a sound level meter.

Note: This condition has been imposed to protect the amenity of the neighbourhood.

Note: Words in this condition have the same meaning as in the *Noise Policy for Industry* (2017)

[www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-\(2017\)](http://www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017))

and *Noise Guide for Local Government* (2013) www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government

Standard Condition: I59

J. Miscellaneous Conditions

Nil.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and Environmental Laws

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

- a) Issue Penalty Infringement Notices (On-the-spot fines);
- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.

Standard Advising: K1 (Autotext KK1)

K.2 Dial Before You Dig



The Principal Contractor, Owner-builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and dial 1100 Before You Dig or visit www.1100.com.au

When you contact Dial Before You Dig you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

Standard Advising: K2 (Autotext KK2)

K.3 Builder's Licences and Owner-builders Permits

Section 6.6(2)(d) of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a Principal Contractor for residential building work who must be the holder of a contractor licence.

The Owner(s) must appoint the Principal Certifier. The Principal Certifier must check that the required insurances are in place before the commencement of building work. The Principal Contractor (builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the *Home Building Act 1989* for the residential building work.

Note: For more information go to the NSW Fair Trading website

www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating

Standard Condition: K5 (Autotext KK5)

K.4 Building Standards - Guide to Standards and Tolerances

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia.

Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the "NSW Guide to Standards and Tolerances 2017" are achieved.

The quality of any development is a function of the quality of the Principal Contractor's or Owner-builder's supervision of individual contractors and trades on a daily basis during the development. The Principal Certifier does not undertake this role.

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

Note: For more information on the *NSW Guide to Standards and Tolerances* go to the NSW

Fair Trading website www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances or call 133 220.

Standard Condition: K6 (Autotext KK6)

K.5 SafeWork NSW Requirements

The *Work Health and Safety Act 2011* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: For more information go to the SafeWork NSW website www.safework.nsw.gov.au or call 131 050.

Standard Condition: K7 (Autotext KK7)

K.6 Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

Note: Further information can be obtained from the NSW Civil and Administrative Tribunal

www.ncat.nsw.gov.au/Pages/cc/Divisions/dividing_fences.aspx

Note: Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Around 75% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. To contact the Community Justice Centres go to www.cjc.nsw.gov.au or call 1800 990 777.
Standard Advising: K10 (Autotext KK10)

K.7 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Brett McIntyre, Assessment Officer, on (02) 9391 7157.

However, if you wish to pursue your rights of appeal in the Land and Environment Court you are advised that Council generally seeks resolution of such appeals through a section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

K.8 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the *Act*.

The securities will not be released until a Final Occupation Certificate has been lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

Note: The Refund of Security Bond Application form can be downloaded from www.woollahra.nsw.gov.au

Standard Condition: K15 (Autotext KK15)

K.9 Recycling of Demolition and Building Material

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17 (Autotext KK17)

K.10 Owner-builders

Under the *Home Building Act 1989* any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from NSW Fair Trading.

Note: For more information go to the NSW Fair Trading website www.fairtrading.nsw.gov.au or call 133 220.

Standard Condition: K18 (Autotext KK18)

K.11 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Development Control Plan (DCP) 2015, Chapter E.3 Tree Management may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions.

You can obtain a copy of the DCP from Council's website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice

K.12 Dilapidation Report

Please note the following in relation to the condition for a dilapidation report:

- a) The dilapidation report will be made available to affected property owners on request and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the Applicant is to demonstrate in writing to the satisfaction of the Principal Certifier that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

Standard Advising: K23 (Autotext KK23)

K.13 Roads Act 1993 Application

Works or structures over, on or under public roads or footpaths are subject to sections 138, 139 and 218 of the *Roads Act 1993* and specifically:

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council's below ground stormwater system
- Installation of soil/rock anchors under the roadway

- Installation of Stormwater outlet pipes across the nature strip

An “Application to Carry Out Works in a Public Road” form must be completed and lodged, with the application fee, at Council’s Customer Services. Detailed plans and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage etc) within existing roads, must be attached, submitted to and approved by Council under section 138 of the *Roads Act 1993*, before the issue of any Construction Certificate.

Detailed engineering plans and specifications of the works required by this condition must accompany the application form. The plans must clearly show the following:

- Engineering drawings (plan, sections and elevation views) and specifications of the footpath, driveways, kerb and gutter, new gully pit showing clearly the connection point of site outlet pipe(s). Note, the connection drainage lines must be as direct as possible and generally run perpendicular to the kerb alignment.
- Engineering drawings of the new drainage line to be constructed joining the new and existing drainage pits including services.

All driveways must include a design longitudinal surface profile for the proposed driveway for assessment. The driveway profile is to start from the road centreline and be along the worst case edge of the proposed driveway. Gradients and transitions must be in accordance with clause 2.5.3, 2.6 of AS 2890.1 – 2004, Part 1 – *Off-street car parking*. The driveway profile submitted to Council must be to (1:25) scale (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

The existing footpath level and grade at the street alignment of the property must be maintained unless otherwise specified by Council. Your driveway levels are to comply with AS2890.1 and Council’s Standard Drawings. There may be occasions where these requirements conflict with your development and you are required to carefully check the driveway/garage slab and footpath levels for any variations.

Note: Any adjustments required from the garage slab and the street levels are to be carried out internally on private property

Drainage design works must comply with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Temporary ground anchors may be permitted, in accordance with Council’s “Rock Anchor Policy”.

Services: Prior to any excavation works, the location and depth of all public utility services (telephone, cable TV, electricity, gas, water, sewer, drainage, etc.) must be ascertained. The Applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the development work and as required by the various public utility authorities and/or their agents.

All public domain works must comply with the latest version of Council’s “*Specification for Roadworks, Drainage and Miscellaneous Works*” unless expressly provided otherwise by these conditions. This specification and the application form can be downloaded from www.woollahra.nsw.gov.au.







Note: To ensure that this work is completed to Council’s satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

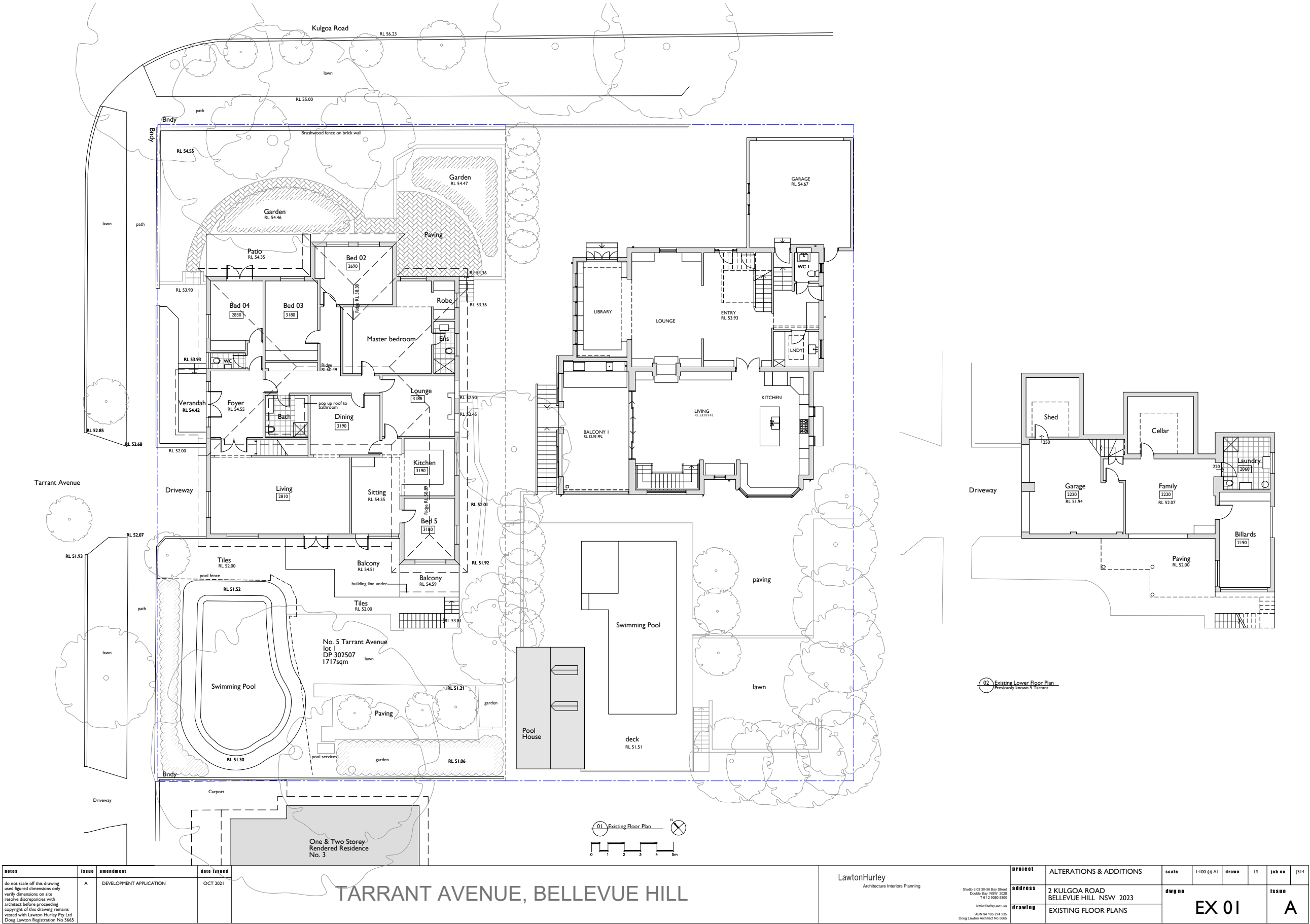
Note: When an application under the *Roads Act* is required, then four (4) weeks is to be allowed for assessment.

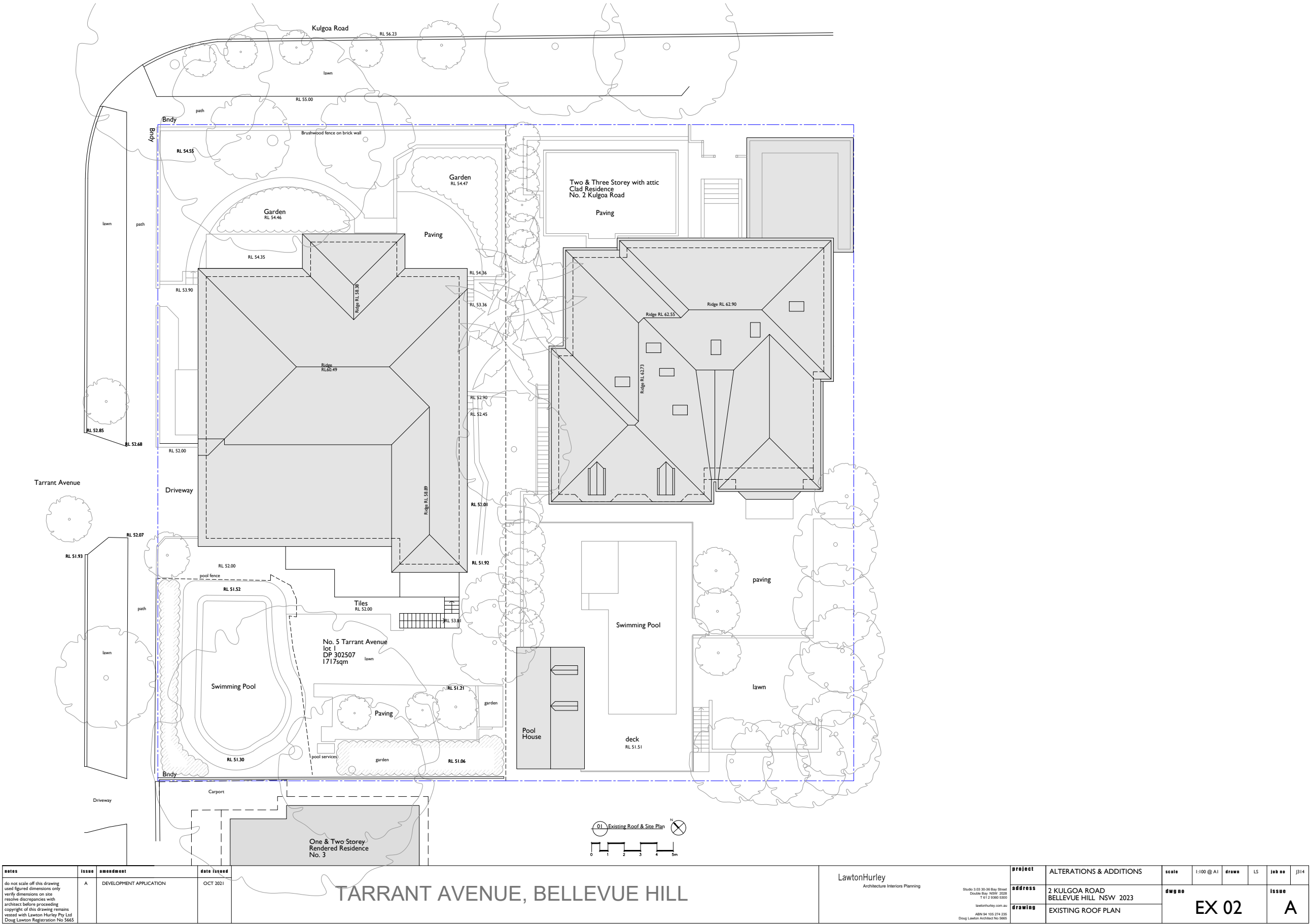
Note: *road* has the same meaning as in the *Roads Act 1993*.

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any Construction Certificate. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Road Act 1993* approvals may necessitate design and levels changes under this consent. This may in turn require the Applicant to seek to amend this consent.
Standard Advising: K24 (Autotext KK24)

Attachments

1. Plans, Sections and Elevations Including Landscaping Plans [↓](#) 
2. Clause 4.6 Written Request (Height of Buildings) [↓](#) 
3. Referral Response - Technical Services [↓](#) 
4. Referral Response - Heritage [↓](#) 
5. Tree and Landscaping Referral Response - Tree and Landscaping [↓](#) 
6. Referral Response - Heritage NSW [↓](#) 



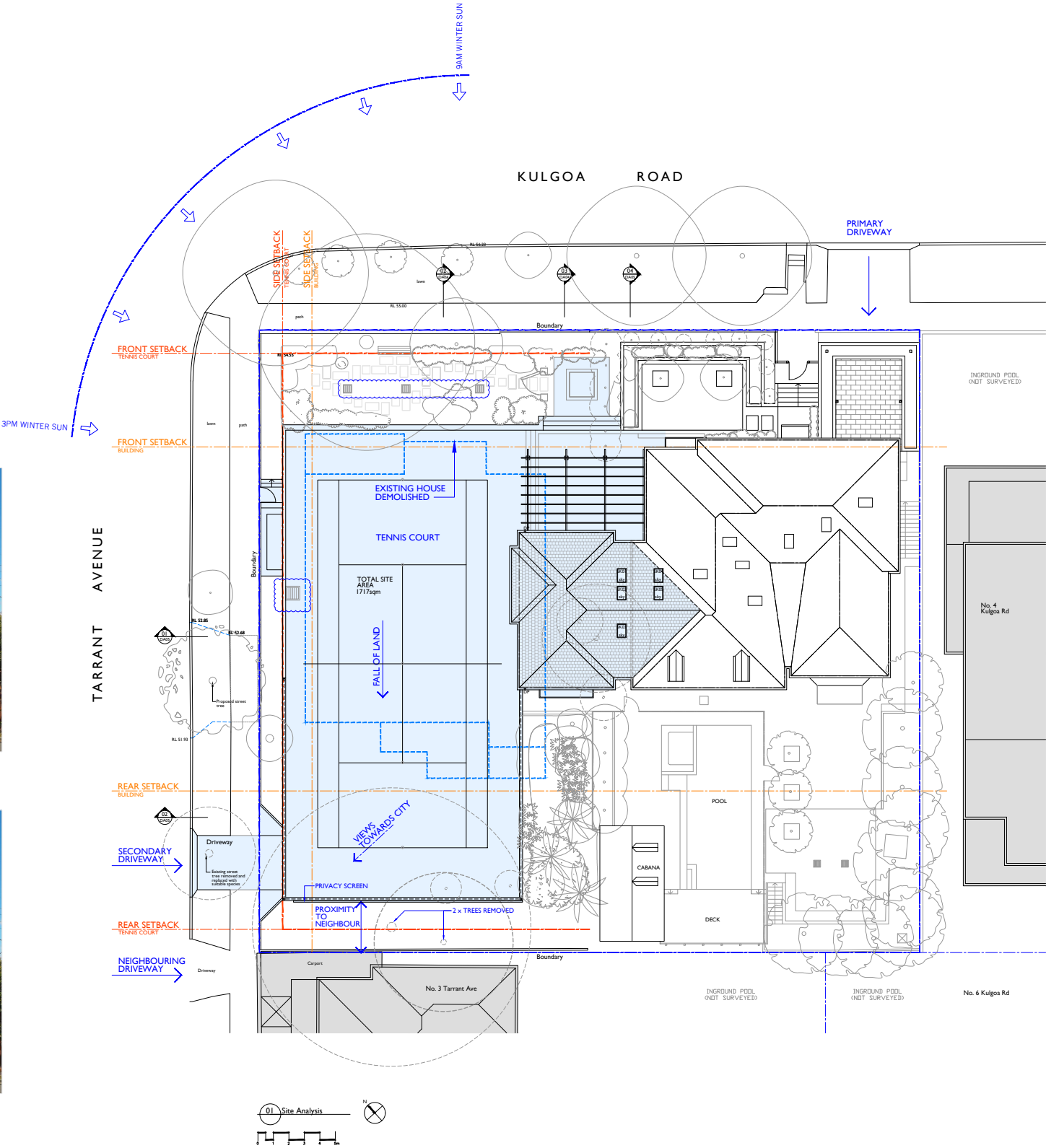




03 Photomontage - View from Kulgoa Road - Proposed



02 Photomontage - View from Kulgoa Road - Existing



AERIAL VIEW

Basic-Commitments
For details: See the Basic certificate/

BASIX Certificate
Building Sustainability Index www.basix.nsw.gov.au
Alterations and Additions
Certificate number: A428510_02
Date of issue: Friday, 27 August 2021
To be valid, this certificate must be lodged within 3 months of the date of issue.

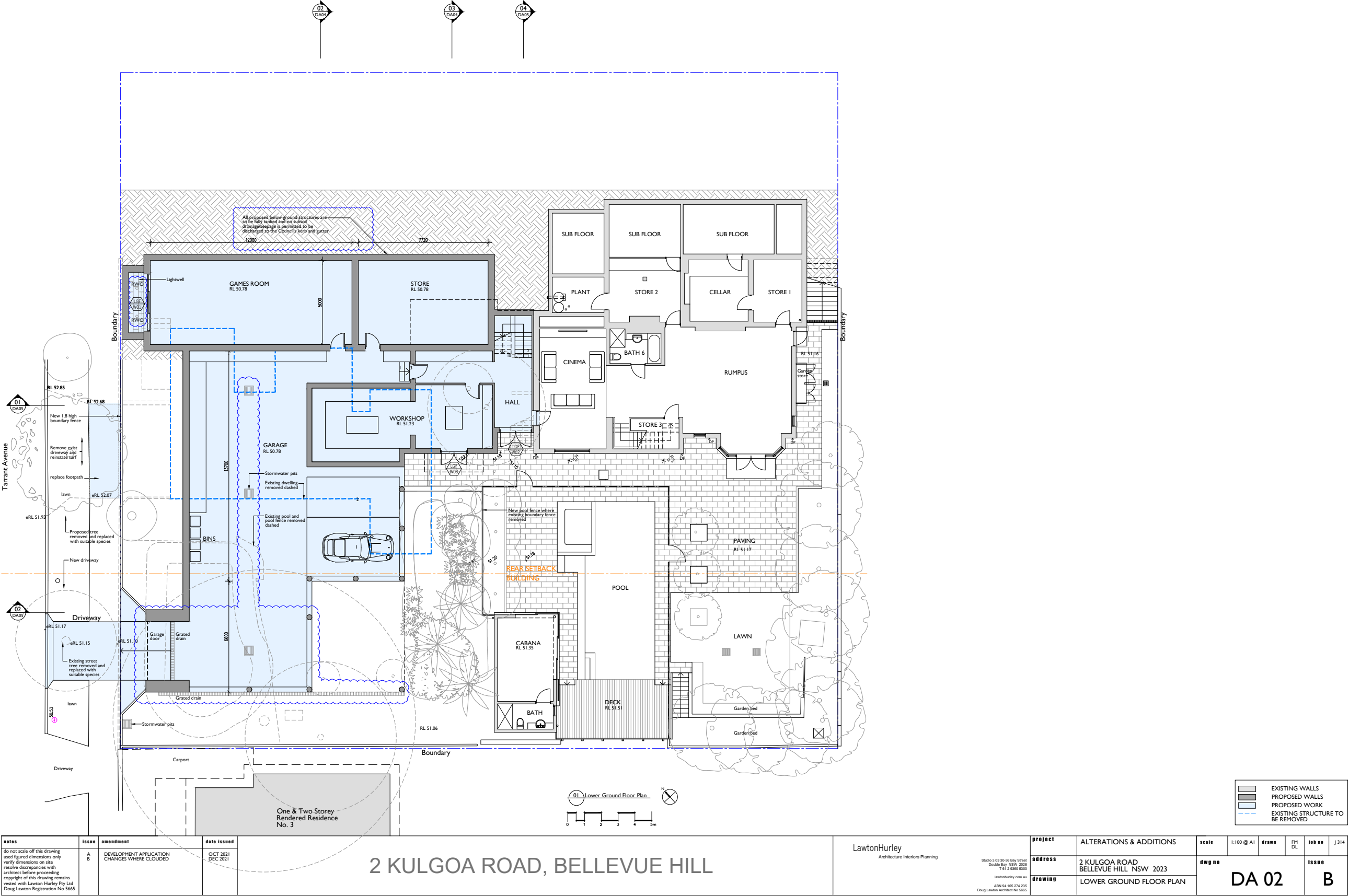
- Fixtures and systems**
- Lighting**
- The applicant must ensure a minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.
- Fixtures**
- The applicant must ensure new or altered showerheads have a flow rate no greater than 9 litres per minute or a 3-star water rating.
 - The applicant must ensure new or altered toilets have a flow rate no greater than 4 litres per average flush or a minimum 3-star water rating.
 - The applicant must ensure new or altered taps have a flow rate no greater than 9 litres per minute or minimum 3-star water rating.

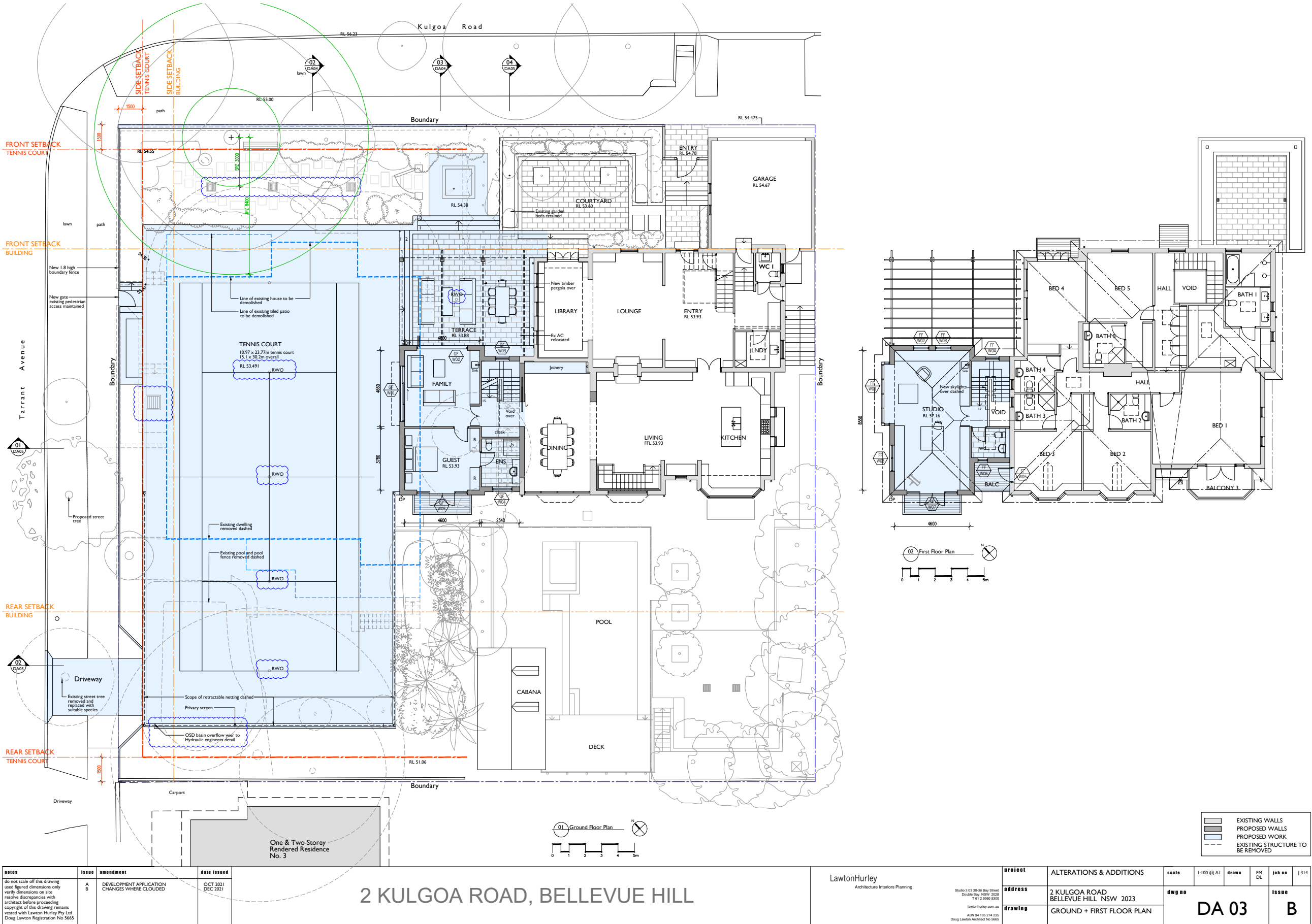
Construction	
Additional Insulation Requirements	
Construction	Additional insulation requirement (R-value)
concrete slab on ground floor	nil
floor above existing dwelling or building	nil
external wall: cavity brick (R0.67)	nil
external wall: other/undecided	R1.70 (including construction)
flat ceiling, pitched roof	ceiling: R2.50 (up), roof: foil/sarking
flat ceiling, flat roof: concrete/plasterboard	ceiling: R2.50 (up), roof: foil/sarking
internal	

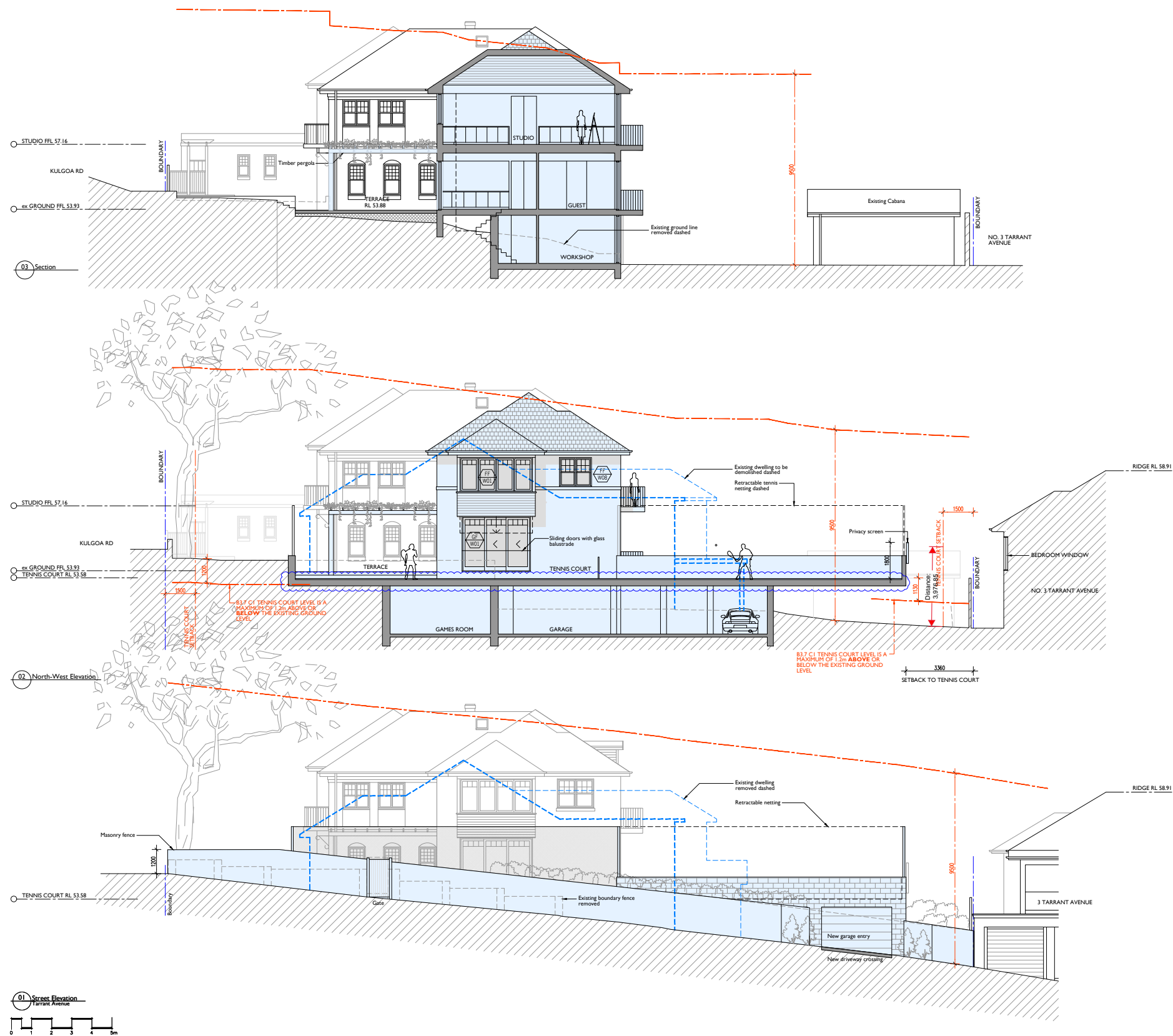
- PROPOSED WORK
- EXISTING WALLS
- PROPOSED WALLS
- EXISTING STRUCTURE TO BE REMOVED

DRAWING	DESCRIPTION
DA01	ROOF, SITE + SITE ANALYSIS PLAN
DA02	LOWER GROUND FLOOR PLAN
DA03	GROUND + FIRST FLOOR PLAN
DA04	SECTIONS + ELEVATIONS
DA05	SECTIONS + ELEVATIONS
DA06	ELEVATION
AR01	FLOOR PLATE AREA DIAGRAM
AR02	DEEP SOIL LANDSCAPED AREA DIAGRAMS
SH01	SHADOW DIAGRAMS

notes	issue	amendment	date issued	2 KULGOA ROAD, BELLEVUE HILL										LawtonHurley Architecture Interiors Planning				project	ALTERATIONS & ADDITIONS	scale	1:150 @ A1	drawn	PM	job no	J 314	
do not scale off this drawing used figured dimensions only verify dimensions on site resolve discrepancies with architect before proceeding copyright of this drawing remains vested with Lawton Hurley Pty Ltd Doug Lawton Registration No 5665	A B	DEVELOPMENT APPLICATION CHANGES WHERE CLOUDED	OCT 2021 DEC 2021											Studio 3 03 30-36 Bay Street Double Bay NSW 2028 T 61 2 9380 5300 lawtonhurley.com.au ABN 04 105 274 235 Doug Lawton Architect No 5885				address	2 KULGOA ROAD BELLEVUE HILL NSW 2023	dwg no	DA 01				issue	B
														drawing	ROOF, SITE + SITE ANALYSIS PLAN											



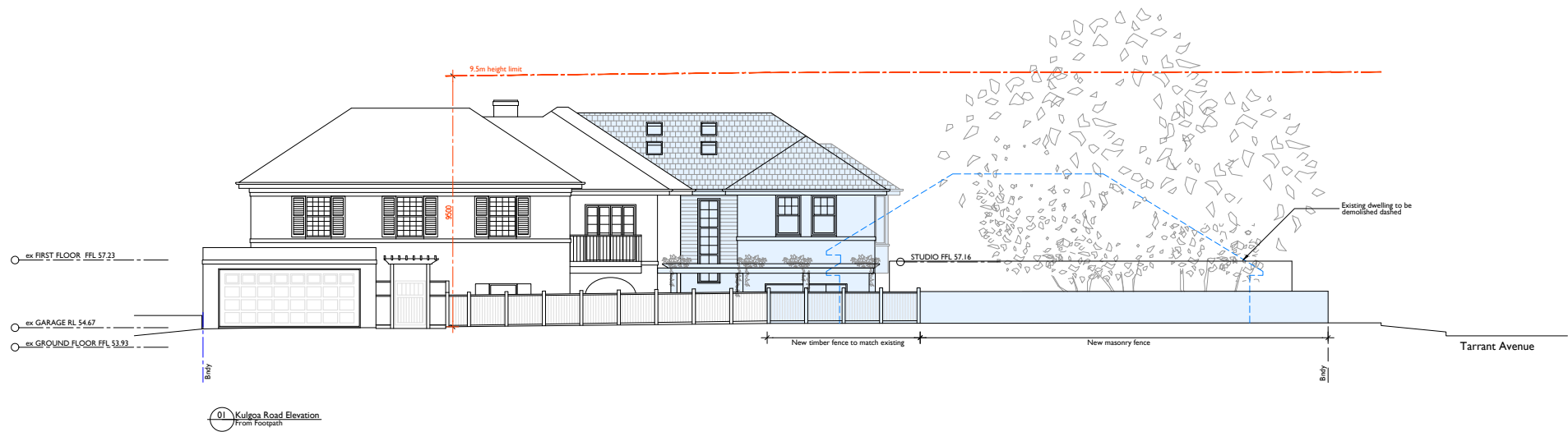




notes	issue	amendment	date issued	2 KULGOA ROAD, BELLEVUE HILL					project	ALTERATIONS & ADDITIONS	scale	1:100 @ A1	drawn	PM	DL	job no	J314		
do not scale off this drawing used figured dimensions only verify dimensions on site resolve discrepancies with architect before proceeding copyright of this drawing remains vested with Lawton Hurley Pty Ltd Doug Lawton Registration No 5665	A B	DEVELOPMENT APPLICATION CHANGES WHERE CLOUDED	OCT 2021 DEC 2021						Studio 3 63 30-36 Bay Street Dundas Bay NSW 2025 T 61 2 9580 5300 lawtonhurley.com.au ABN 94 105 274 235 Doug Lawton Architect No 5665	address	2 KULGOA ROAD BELLEVUE HILL NSW 2023	dwg no	DA 04					issue	B
									drawing	SECTIONS + ELEVATIONS									



<div>notes</div> <div>do not scale off this drawing used figured dimensions only verify dimensions on site resolve discrepancies with architect before proceeding copyright of this drawing remains vested with Lawton Hurley Pty Ltd Doug Lawton Registration No 5665</div>	issue	amendment	date issued	2 KULGOA ROAD, BELLEVUE HILL	<div>LawtonHurley</div> <div>Architecture Interiors Planning</div> <div>Studio 3 03 350 36 Bay Street Dundas Bay NSW 2028 T 61 2 9590 8300 lawtonhurley.com.au Admin 94 165 274 255 Doug Lawton Architect No 5665</div>	project	ALTERATIONS & ADDITIONS	scale	1:100 @ A1	drawn	PM	job no	J314
	A	DEVELOPMENT APPLICATION				address	2 KULGOA ROAD BELLEVUE HILL NSW 2023	dwg no	DA 05			issue	B
	B	CHANGES WHERE CLOUDED				drawing	SECTIONS + ELEVATIONS						



<div><div><div></div><div></div><div></div><div></div></div><div>EXISTING WALLS PROPOSED WALLS PROPOSED WORK EXISTING STRUCTURE TO BE REMOVED</div></div>													
<div><div><div><div>notes</div><div>do not scale off this drawing used figured dimensions only verify dimensions on site resolve discrepancies with architect before proceeding copyright of this drawing remains vested with Lawton Hurley Pty Ltd Doug Lawton Registration No 5665</div></div><div><div>issue</div><div>A B</div></div><div><div>amendment</div><div>DEVELOPMENT APPLICATION CHANGES WHERE CLOUDED</div></div><div><div>date issued</div><div>OCT 2021 DEC 2021</div></div></div><div>2 KULGOA ROAD, BELLEVUE HILL</div><div><div><div><div>LawtonHurley</div><div>Architecture Interiors Planning</div></div><div><div>Studio 3 03 350 36 Bay Street Dundas Bay NSW 2028 T 61 2 9500 8300 lawtonhurley.com.au Adm 64 165 274 235 Doug Lawton Architect No 5665</div></div></div><div><div>project</div><div>ALTERATIONS & ADDITIONS</div></div><div><div>address</div><div>2 KULGOA ROAD BELLEVUE HILL NSW 2023</div></div><div><div>drawing</div><div>ELEVATION</div></div><div><div>scale</div><div>1:100 @ A1</div></div><div><div>drawn</div><div>PM DL</div></div><div><div>job no</div><div>J 314</div></div><div><div>issue</div><div>B</div></div><div><div>dwg no</div><div>DA 06</div></div></div></div>													



Walls - Render painted to match existing



Walls - Weatherboard painted to match existing



Windows - Timber windows painted to match existing



Roof - Terracotta shingle roof tiles to match existing



Gutter + Fascia - Painted to match existing

Schedule of Materials + Colours

LawtonHurley

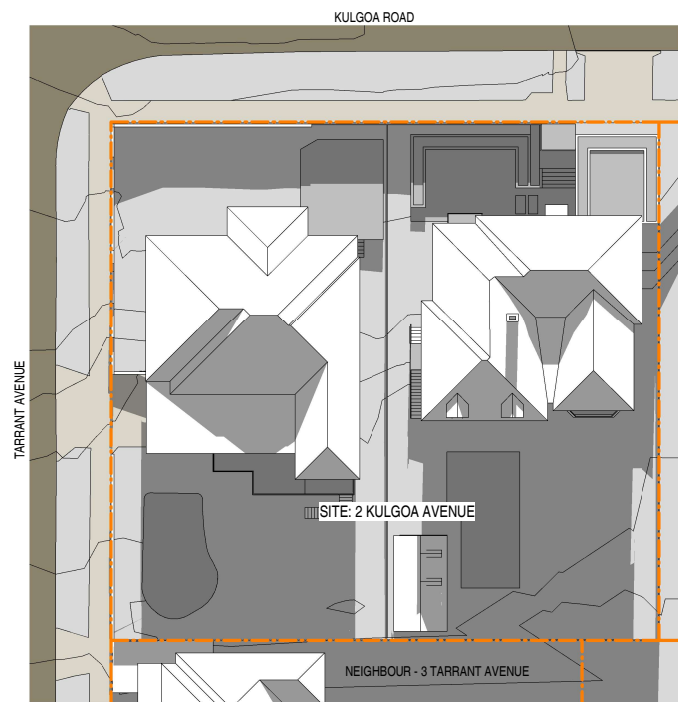
Architecture Interiors Planning

Studio 3.03 30-36 Bay Street
Double Bay NSW 2028
T 61 2 9360 5300

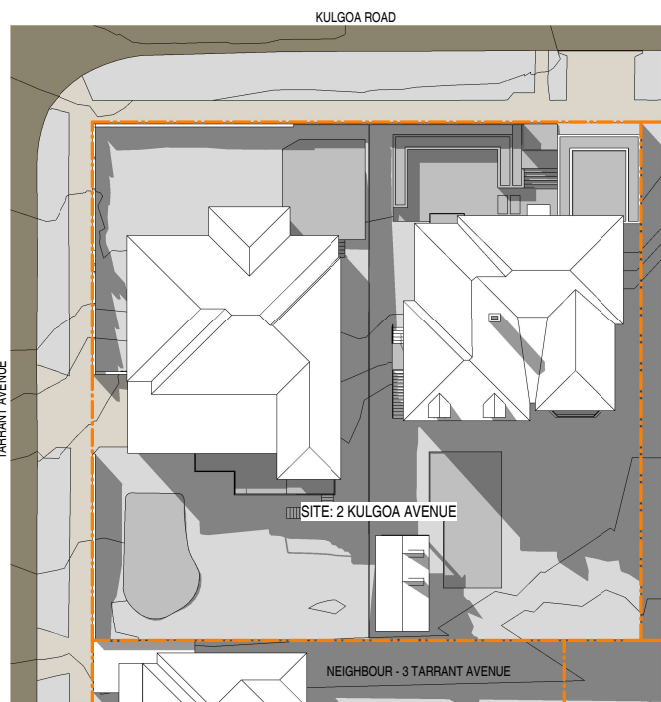
ABN 94 105 274 235
Doug Lawton Architect No 5665

2 Kulgoa Road
Bellevue Hill

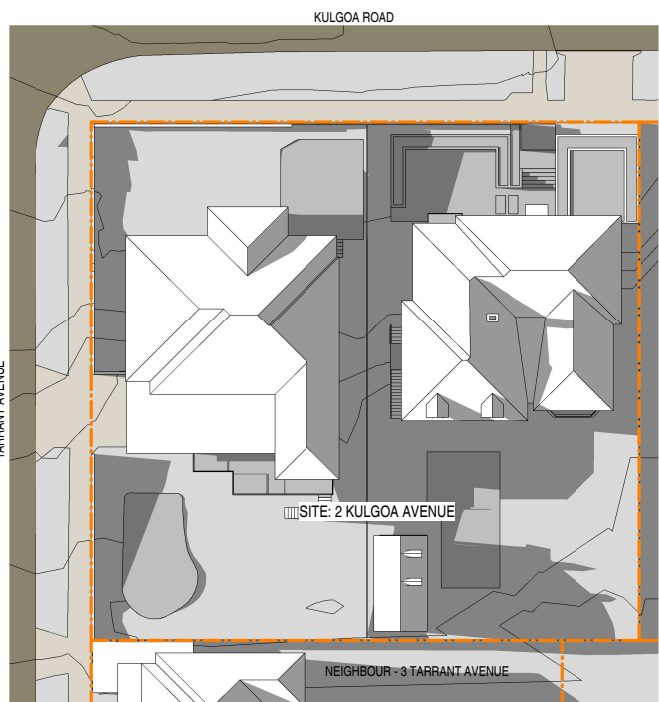
October 2021



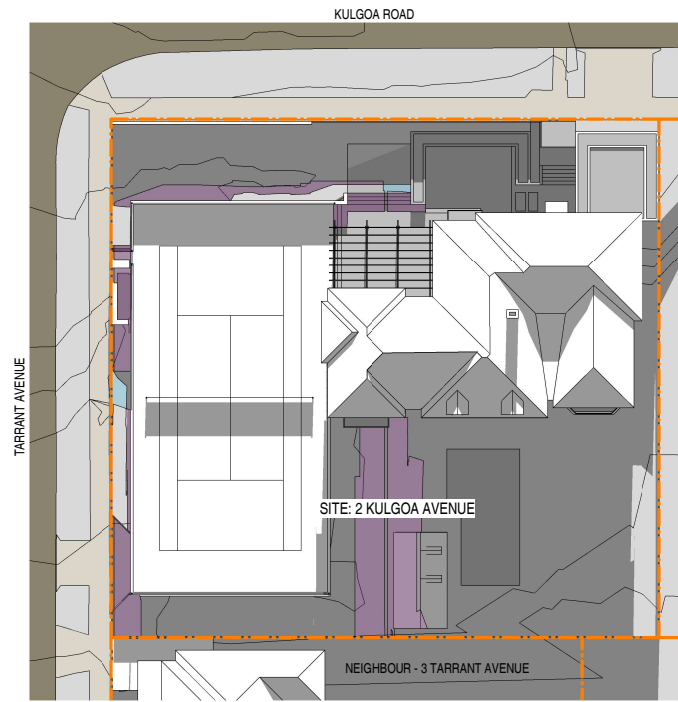
1 EXISTING SHADOWS 21st JUNE - 9AM



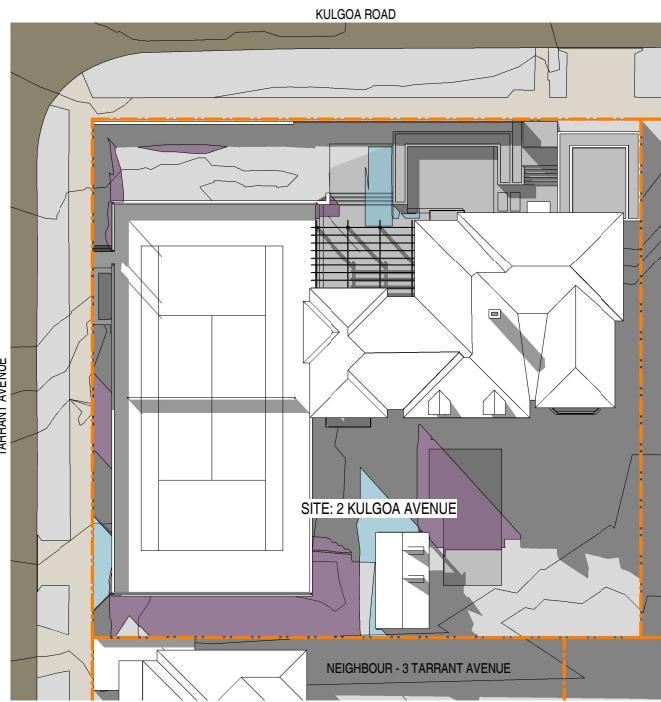
2 EXISTING SHADOWS 21st JUNE - 12PM



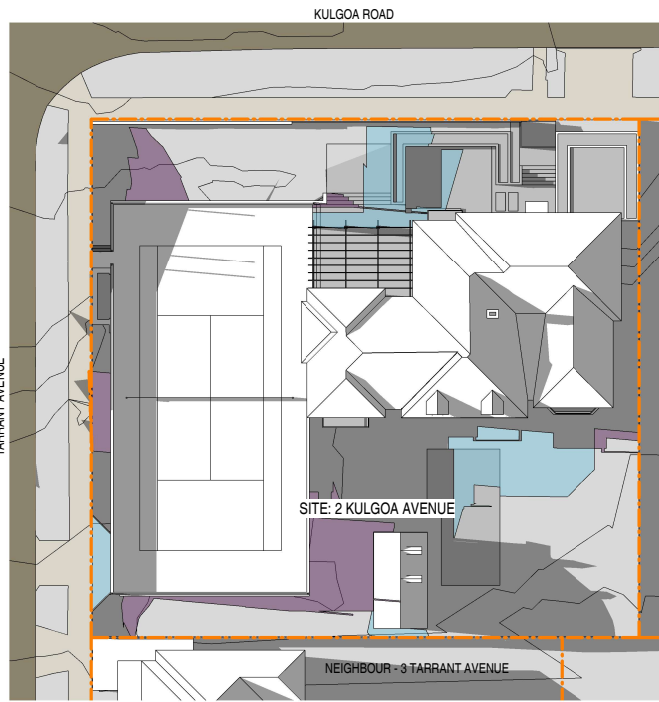
3 EXISTING SHADOWS 21st JUNE - 3PM



4 PROPOSED SHADOWS 21st JUNE - 9AM



5 PROPOSED SHADOWS 21st JUNE - 12PM



6 PROPOSED SHADOWS 21st JUNE - 3PM

ADDITIONAL OVERSHADOWING
REDUCED OVERSHADOWING
BOUNDARY



notes	issue	amendment	date issued
do not scale off this drawing used figures dimensions only verify dimensions on site resolve discrepancies with architect before proceeding copyright of this drawing remains vested with lawton hurley Pty Ltd Doug Lawton Registration No 5665	A	DEVELOPMENT APPLICATION	OCT 2021

2 KULGOA ROAD, BELLEVUE HILL

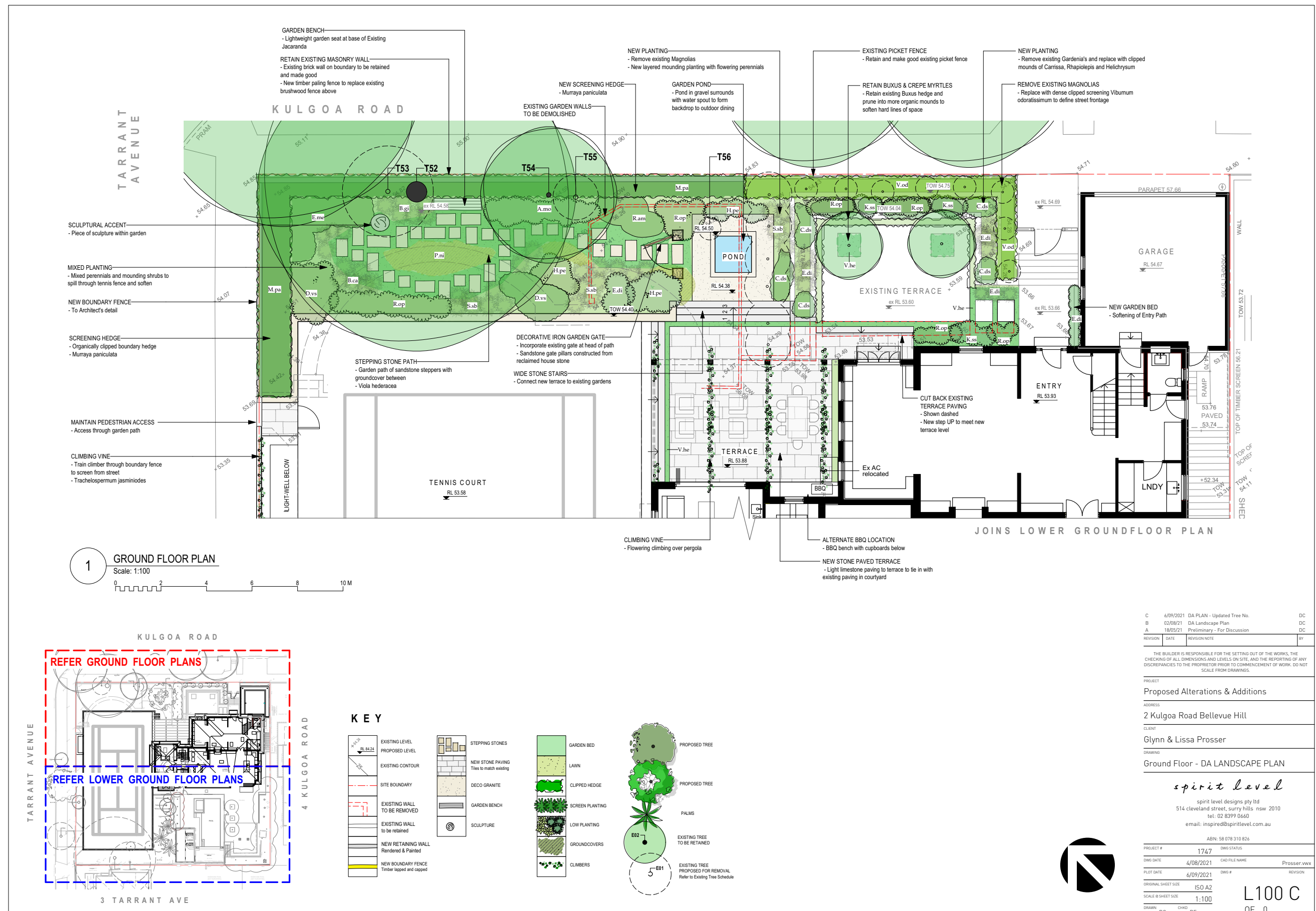
Lawton Hurley
Architecture Interiors Planning

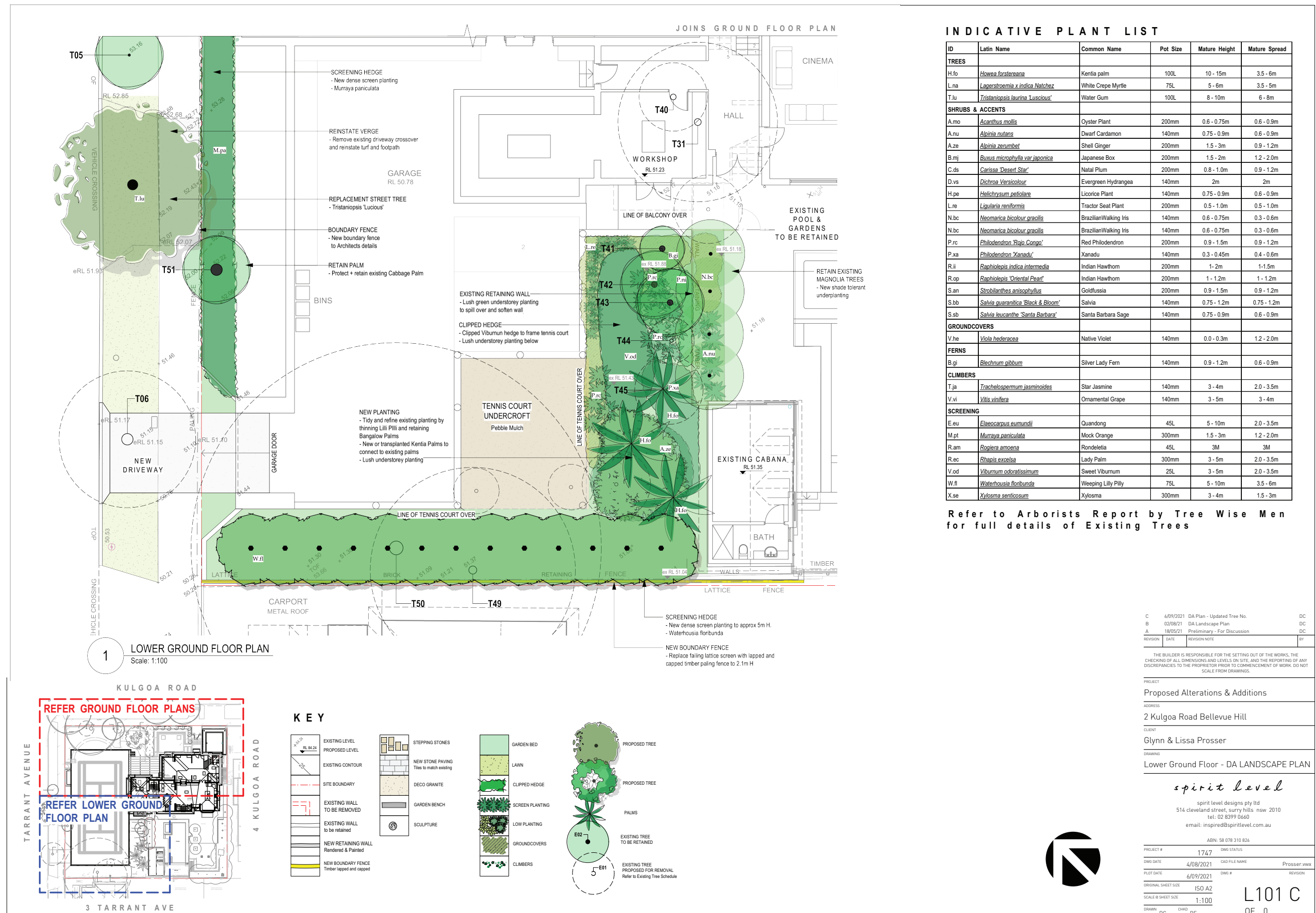
Studio 3.03, 30-34 Bay Street
Double Bay NSW 1501
T +61 2 9360 5300
info@lawtonhurley.com.au
lawtonhurley.com.au
ABN 14 105 274 235
Doug Lawton Architect No 5665

project	ALTERATIONS AND ADDITIONS
address	2 KULGOA ROAD, BELLEVUE HILL
drawing	SHADOW DIAGRAMS

scale	1 : 250 @ A1
dwno	SH01

job no	j314
issue	A







WOOLLAHRA LEP 2014 Clause 4.6 Exceptions to Development Standards – Height of Buildings

Proposed Alterations and Additions to the Existing
Dwelling including a New Tennis Court at

No. 2 Kulgoa Road, Bellevue Hill

Prepared for:

Lawton Hurley Pty Ltd
Suite 303, 30-36 Bay Street
Double Bay NSW 2028

Prepared by:

GSA PLANNING
Urban Design, Environmental & Traffic Planners
(A.B.N. 89 643 660 628)
95 Paddington Street, Paddington NSW 2021
p: 02 9362 3364
e: info@gsaplanning.com.au

JOB NO. 20457
October 2021

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**WOOLLAHRA LOCAL ENVIRONMENTAL PLAN (LEP) 2014
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

APPLICANT'S NAME: Lawton Hurley Pty Ltd

SITE ADDRESS: No. 2 Kulgoa Road, Bellevue Hill

PROPOSAL: Alterations and Additions to the Existing Dwelling, including Demolition of the Other Dwelling to be replaced by a New Tennis Court and Basement Garage

1. (i) Name of the applicable planning instrument which specifies the development standard:

Woollahra Local Environmental Plan (LEP) 2014

(ii) The land is zoned:

R2 Low Density Residential. The objectives of this zone are as stated:

- 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 provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

(iii) The number of the relevant clause therein:

Clause 4.3 – Height of Buildings which is stated as follows:

- (1) The objectives of this clause are as follows—
 - (a) to establish building heights that are consistent with the desired future character of the neighbourhood,
 - (b) to establish a transition in scale between zones to protect local amenity,
 - (c) to minimise the loss of solar access to existing buildings and open space,
 - (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
 - (e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2A) Despite subclause (2) and clause 4.3A, the maximum height of a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.
- (2B) Despite subclause (2) and clause 4.3A, the maximum height of a building on a battle-axe lot on land in Zone R3 Medium Density Residential is 9.5 metres.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

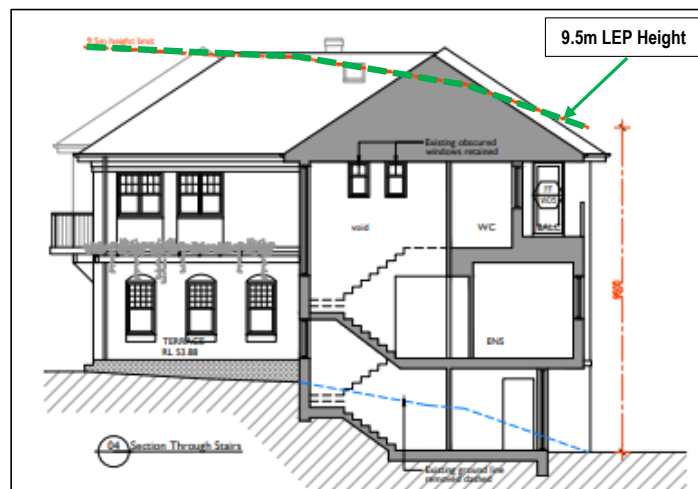
2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height of Buildings Map which indicates a maximum 9.5m applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposal involves demolition of one dwelling on site to be replaced by a tennis court with basement below, and alterations and additions to the remaining existing dwelling. The height non-compliance relates to a portion of the new roof to the extension of the existing dwelling. The new roof ranges from 6.67m – 11.58m in height, providing a maximum departure of 2.08m (22%) from the development standard. The non-compliance is a result of the new roof matching the ridge and form of the existing roof, which is already above the height standard. When viewed from the street, the area above the height standard is relatively minor (see Figure 1).



Source: Lawton Hurley Architecture

Figure 1: Section showing Existing and Proposed Height

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this particular case. The proposed extension is above the height standard due to the height non-compliance of the existing dwelling. If the proposed extension were to comply with the height standard, it would result in a disjointed built form that is not sympathetic to the height and scale of the existing dwelling. Importantly, the aboveground extension maintains a compliant building footprint and floorplate, and the areas of additional height will retain solar access, privacy, and views to neighbouring and nearby development.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, *inter alia*:

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

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies a number of the five tests established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered below.

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

Despite the proposed development's non-compliance with the applicable height development standard, the proposal is consistent with the desired low density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development is consistent with the objectives of the height standard are explained below.

(a) To establish building heights that are consistent with the desired future character of the neighbourhood,

'Desired future character' is not defined in the LEP. The meaning of 'desired future character' is derived from the text and context of the provisions of the LEP in which it is used and the other provisions of the LEP that form the urban character and built form of the area.

The relevant clauses in the LEP which relate to urban character and built form are:

- a. The zoning of the land (Clause 2.2 and the Land Zoning Map);
- b. The zone objectives (Clause 2.3);
- c. The land use table (at the end of Part 2); and
- d. The development standards in Part 4:
 - i. Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 9.5m.

The R2 Low Density Residential zoning permits a wide range of uses and built form on the site, which promotes the eclectic desired future character. The permissible uses are:

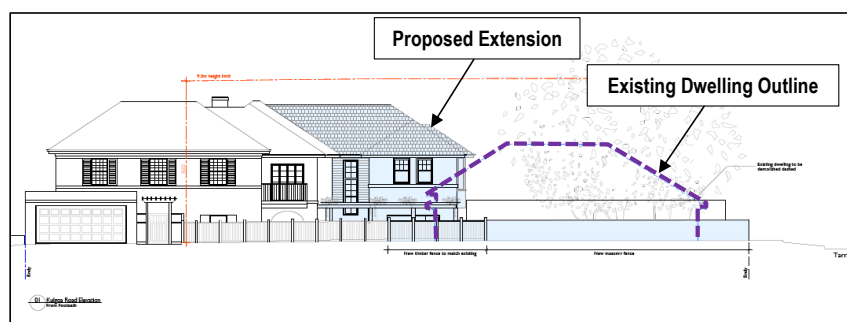
Attached dwellings; Bed and breakfast accommodation; Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Group homes; Home occupations (sex services); Information and education facilities; Office premises; Oyster aquaculture; Pond-based aquaculture; Public administration buildings; Recreation areas; Respite day care centres; Secondary dwellings; Semi-detached dwellings; Shops; Tank-based aquaculture

The proposal will contribute to the eclectic mix of permissible uses in the R2 zone.

As addressed in the SEE, the surrounding development includes large, two to three storey dwellings of varying architectural styles, with a mix of flat and pitched roofs. As the proposed extension maintains the maximum RL of the existing roof and the same roof form and style; the same number of storeys and overall character and appearance of the dwelling; and will replace a second dwelling on the site, it will continue to positively contribute to the streetscape. The proposal is also compatible with the desired future character for the following reasons.

The dwelling will continue to present as two storeys from the street and three storeys to the rear. This is consistent with the height, bulk and scale of the existing and recently approved local developments. The departure from the standard is the result of maintaining the existing dwelling's ridgeline, which is an existing height exceedance.

As the dwelling will follow the existing dwelling's ridgeline and maximum RL, it will present a consistent built form in the streetscape, similar to the existing. A roof height that is lowered to comply with the height standard would create a disjointed appearance in the built form, which would be more discernible from the street and neighbouring properties. Additionally, as the extension will in part replace a second dwelling on the site, it will result in a noticeable reduction in bulk and scale compared to the existing situation (see **Figure 2** on the following page).



Source: Lawton Hurley Architecture

Figure 2: The Existing and Proposed Built Form as Viewed from Kulgoa Road

The proposal provides a visual benefit through provision of high-quality alterations and additions which match the architectural character of the existing dwelling. This will enhance the site's street presentation, positively contribute to the locality's emerging character and continue to provide an appropriate interface with the public domain and adjoining dwellings.

The proposed built form sympathetically responds to the adjacent developments' character. There are a number of examples of low density developments in the vicinity which have been approved under the current controls with building height non-compliances. It is recognised that each application is assessed on its own merits and each site has different characteristics. However, it is a relevant consideration to understand if Council has accepted breaches to the height standard in the past, under what circumstances these were supported and if indeed there are any comparable principles to the subject development application (DA). Based on Council's Clause 4.6 Register, some more recently approved non-compliances include, inter alia:

On **14 April 2021**, Council approved DA 501/2020 for 'alterations and additions to the existing dwelling including demolition of the existing garage and construction of a new garage' at No. 48 Kambala Road, Bellevue Hill, with a height exceedance of 9.68%. The main justification was consistency with the objectives of the height standard and zone and that the proposal was in the public interest.

On **22 February 2021**, Council approved DA504/2020 for 'alterations and additions to the existing dwelling' at No. 133 Victoria Road, Bellevue Hill, with a height exceedance of 27.89%. The main justification was a pre-existing non-compliance and achieving the relevant objectives of the standard and the zone.

On **19 November 2020**, Council approved DA312/2020 for 'alterations and additions including a new first floor addition' at No. 49 Beresford Road, Bellevue Hill, with a 13.5% height exceedance. The main justification was a well-founded request.

On **24 September 2020**, Council approved DA154/2020 for 'alterations and additions to the existing dwelling including extension of the swimming pool, new street wall & entry portico and new soft landscaping' at No. 51 Suttie Road, Bellevue Hill, with a height exceedance of 18.73%. The main justification was an existing non-compliance.

On **8 September 2020**, Council approved DA No. 134/2020 for the 'alterations and additions to the existing dwelling' at No. 111 Victoria Road, Bellevue Hill, with a 9% height exceedance. The main justification was the existing roof was already above the height limit, which would be maintained.

On 4 July 2019, Council approved DA No. 67/2019 for the 'alterations and additions to the existing residence including filling in of the existing tennis court and a new swimming pool' at No. 96 Victoria Road, Bellevue Hill, with a 20% height exceedance. The main justification was the request was well-founded and satisfied the relevant objectives.

Accordingly, the above applications for alterations and additions in the same R2 zone had a similar or greater height breach which was supported by Council staff and the Panel on similar arguments as those made in our submission (maintaining the existing building height, achieving the height standard and zone's objectives, and being in the public interest).

In particular, the proposal will provide a height for the extension that is consistent with the existing building and is similar in overall height to nearby dwellings, maintaining the existing dwelling's maximum RL. Also, despite the height non-compliance, the proposal will reduce the overall building bulk on the site given the extent of the extension in comparison to the existing dwelling on the previous second lot (No. 5 Tarrant Avenue), which is to be demolished to make way for a tennis court.

Therefore, the proposal will not appear out of character when viewed in its context. The proposed height is the same as the existing, is compatible with the neighbourhood's desired future character and will continue to provide an appropriate scale transition. This is further addressed below.

(b) to establish a transition in scale between zones to protect local amenity,

N/A – the site does not adjoin any other zones.

(c) to minimise the loss of solar access to existing buildings and open space,

The proposed area of additional height will minimise impacts on solar access to neighbouring buildings and open space. The proposal will also, in some areas, improve solar access within the site as a result of one of the two existing dwellings being demolished and replaced with a tennis court.

(d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,

The height non-compliance will minimise overshadowing to neighbouring development. The area of additional height relates primarily to the roof form, and therefore will minimise impacts on privacy or visual intrusion. There are no anticipated impacts on views across the site as a result of the additional height, given the proposal reduces the overall extent of built form on the site through demolition of one dwelling. Environmental amenity to neighbouring properties is therefore achieved by the proposed height.

(e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

N/A – No impact on public views of the harbour and surrounding areas anticipated.

Accordingly, although the proposal will exceed the height control, this is unlikely to have any significant adverse impacts as the design is generally contained within a compliant building envelope, or to match the existing height.

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

While the standard has not been virtually abandoned or destroyed, it is important to note that Council have, on previous occasions, consented to proposals in the locality with a Building Height that exceeded the development standard, as evidenced in the Development Variation Registers published on Council's website. As previously discussed, there are numerous examples of residential alterations and additions, within the R2 Zone in Bellevue Hill, that exceed the height standard. These approvals would have similarly achieved the objectives of the standard, as does the current proposal (as discussed in the previous section). A more complete list is outlined in **Table 1**:

Table 1: Approved DAs with Non-Compliant Building Height				
Address	DA Number	LEP Control	Building Height Approved	Variation
29 Bunyula Road, Bellevue Hill	100.2021.00000181.001	9.5m	10.1m	6.3%
48 Kambala Road, Bellevue Hill	100.2020.00000501.001	9.5m	10.42m	9.68%
133 Victoria Road, Bellevue Hill	100.2020.00000504.001	9.5m	12.15m	27.89%
49 Beresford Road, Bellevue Hill	100.2020.00000312.001	9.5m	10.78m	13.5%
51 Suttie Road, Bellevue Hill	100.2020.00000154.001	9.5m	11.28m	18.73%
111 Victoria Road, Bellevue Hill	100.2020.00000134.001	9.5m	10.8m	14%
96 Victoria Road, Bellevue Hill	100.2019.00000067.001	9.5m	11.45m	20%
18 Bulkara Road, Bellevue Hill	100.2019.00000342.001	9.5m	9.63m	4.8%
142 Victoria Road, Bellevue Hill	100.2018.00000485.001	9.5m	10.4m	9.5%
69 Latimer Road, Bellevue Hill	100.2017.00000222.001	9.5m	10.55m	11%
81A Drumalbyn Road, Bellevue Hill	100.2016.00000499.001	9.5m	10.4m	9.5%
30 Rosslyn Street, Bellevue Hill	100.2017.00000134.001	9.5m	10.65m	12%

There are numerous other examples of developments in the Woollahra LGA which have been approved with non-compliances of the maximum Height of Buildings development standard. While each DA is assessed on its own merits and each site has different characteristics, Council has accepted variations to the maximum building height standard in the past for similar circumstances.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposed alterations and additions to the existing dwelling house are permissible within the R2 Low Density Residential Zone and consistent with the height of building objectives, as previously discussed. This report demonstrates the proposed alterations and additions which in part exceed the height standard, will be compatible with nearby and future development in the established low density residential zone.

The area of contravention is unlikely to be readily discernible from the street, given it will provide a roof ridge and built form consistent with the overall height of the existing dwelling to be retained as part of this proposal. Therefore, the height will not affect streetscape amenity or existing characteristics of the locality in this sense. The location of additional height is also required in order to provide appropriate floor-to-ceiling heights of the new addition to the dwelling, and consistency with the existing roof ridgeline.

The area of height exceedance is unlikely to result in adverse amenity impacts in terms of overshadowing, privacy or view loss. Due to the careful design of the extension and its central location within the site, the only additional shadow that occurs is within the subject site itself. The Bellevue Hill North Precinct map in Council's DCP identifies a significant view from the corner of Kulgoa Road and Kulgoa Lane which would extend across the site. However, given the existing built form and topography this view does not exist from a standing position. In any case, the reduction in the scale of dwellings on the site would likely improve potential views across the site from the surrounding private domain. Therefore, we consider the extension of the existing dwelling which results in an exceedance of the height standard as being appropriate in this circumstance.

As indicated, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979. This is particularly the case when the proposed works are otherwise compliant with building height, floorplate and lot size.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal is consistent with the objectives of the Height of Buildings Development Standard, as already demonstrated; and the R2 Zone, as discussed below:

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

Response: The proposal will accommodate an extension to the existing dwelling, to provide for the needs of the owner whilst maintaining the low density character of the area.

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

Response: N/A

Objective: *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*

Response: The proposed departure from the height standard provides a roof form that is consistent with the height and character of the existing building and roof, and surrounding development, without impacting on the amenity of neighbouring dwellings.

Objective: *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

Response: The proposed height is consistent with that of the existing dwelling, and will continue to provide a built form of a height and scale consistent with that of surrounding development. Therefore, the area of additional height will positively contribute to the desired future character of the neighbourhood.

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the dwelling without significantly, unreasonably or unacceptably impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape with the height, scale and character of the existing dwelling, and is complementary to surrounding development.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 2** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the R2 Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix				
Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	9.5m	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Tests 1 and 4 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard; and The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. 	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposed height facilitates a low density development consistent with the planning objectives of the area; The height exceedance is the result of an existing non-compliance and will maintain the existing dwelling's ridgeline and maximum RL; To ensure full compliance would necessitate an inconsistent ridgeline and built form; The proposed area of non-compliance maintains neighbour amenity, privacy, solar access and views; The proposal will reduce the overall bulk and scale; and The proposed height provides a better planning outcome than a compliant envelope. 	YES

26-27	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development is consistent with the objectives of the height standard as addressed under Test 1 of <i>Wehbe</i> . The proposal is also consistent with the objectives of the R2 Zone.	YES
28-29	Second Precondition to Enlivening the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

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Completion Date: 3 May 2022

REFERRAL RESPONSE – DEVELOPMENT ENGINEERING

FILE NO: Development Applications/ 502/2021/1
ADDRESS: 2-2A Kulgoa Road BELLEVUE HILL 2023
PROPOSAL: Demolition of an existing dwelling, construction of a new garage with tennis court above, alterations and additions to the remaining dwelling
FROM: Mr R Lam
TO: Mr B McIntyre

1. ISSUES

- None

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 20457, prepared by GSA Planning, dated October 2021.
- Revised Architectural Plans, referenced J314-Issue B, prepared by Lawton Hurley, dated Dec 2021.
- Survey, referenced 21652, prepared by Bee & Lethbridge, dated 13/05/2020.
- Geotechnical report, reference no. P2370_01, prepared by Morrow Geotechnics P/L, dated 2 November 2021.
- Revised Stormwater Management Plans, reference no. 6695-Rev B & Rev C, prepared by Harris Page & Associates P/L, dated 7/12/21 & 9/12/21.

3. ASSESSMENT

Comments have been prepared on the following. **Where Approval is recommended, Conditions of Consent follow at the end of the comments.**

a. Site Drainage comments

The submitted revised stormwater management plans are considered satisfactory in principle subject to refinements at the CC stage. The applicant has provided an on-site detention (OSD) system to comply with Chapter E2.2.4 of Council's DCP. With regard to stormwater disposal, stormwater runoff from the site will be discharged the street drainage system by gravity. Hence, conditions will be imposed to ensure there is no collection of subsoil drainage and that all below ground structures are to be fully tanked.

Council's Infrastructure & Sustainability Services Division is satisfied that adequate provision could be made for the disposal of stormwater from the land it is proposed to develop and complies with Chapter E2 "Stormwater and Flood Risk Management" DCP.

b. Flooding & Overland Flow comments

The subject property is not subject to flood related development control.

c. Impacts on Council Infrastructure comments

The applicant is required to remove the redundant vehicular crossing and construct a 3 metres wide vehicular crossing as part of this application which will be conditioned accordingly.

d. Traffic comments

Not relevant

e. Vehicle Access & Accommodation comments

The proposed parking dimensions comply with AS2890.1. However, conditions will be imposed to ensure the garage entry slab is tilted so that it is parallel to the longitudinal fall of the existing footpath to prevent car scraping which is to be addressed at the CC stage.

f. Geotechnical, Hydrogeological and/or Structural comments

A Geotechnical Report by Morrow Geotechnics P/L, ref: P2370_01, dated 2 November 2021, has been submitted in support of the application. The proposal involves excavation with a depth of about 4 metres for the proposed garage.

The report identified that the subsurface conditions as:

- a) Fill comprising silty sand to a depth of 0.1m in BH1.*
- b) Depth of natural sand with various density from a depth beneath the fill to a termination depth of 3.8m in BH2.*
- c) Sandstone bedrock was encountered and inferred beneath the natural sand at a termination depth in BH2 and BH1 respectively.*
- d) Groundwater was not encountered during the investigation.*

The report made comments and recommendations on the following:

- Shoring and support,*
- Vibration Monitoring,*
- Excavation method,*
- Further Geotechnical input.*

Council's Infrastructure & Sustainability Services Division has no objection to the proposed excavation on technical grounds. Notwithstanding this, Council's Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and DCP.

4. RECOMMENDATION

Council's Development Engineer has determined that the proposal is satisfactory, subject to the following conditions:

A. General Conditions

A.5 Approved Plans & Supporting documents

Reference	Description	Author/Drawn	Date(s)
P2370_01	Geotechnical Report	Morrow Geotechnics P/L	2 Nov 2021
6695	Stormwater Management Plans	Harris Page & Associates P/L	
SW-00-Rev B			07/12/2021
SW-01-Rev C			09/12/2021
SW-02-Rev B			09/12/2021
SW-03-Rev C			09/12/2021
SW-04-Rev C			09/12/2021
SW-05-Rev C			09/12/2021

A.8 Ancillary Aspect of the Development (S80A(2) of the Act)

B. Conditions which must be satisfied prior to the demolition of any building or construction

B.7 Public Road Assets prior to any work/demolition

C. Conditions which must be satisfied prior to the issue of any construction certificate

C.5 Security Deposits

Property Damage Security Deposit (S138)	\$40,066	No	T115
Public Road and Footpath Infrastructure Inspection Fee (S138 Fee)	\$494	No	T45

C.4 Modification of Details of the Development (section 4.17(1)(g) of the Act)/ Parking Facilities

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the *Regulation*, must detail the following amendments:

- Finished floor levels on both end of the garage entry shall be clearly depicted on the architectural drawings. Since there is quite a longitudinal fall on the frontage footpath, the applicant shall ensure that the finished levels of the garage slab across the entry is tapered/tilted so that it is parallel to the longitudinal fall of the footpath to prevent car scraping. For design levels at the property boundary, it is required that the existing footpath levels must remain unaltered.

- b) In light of point (a) above and in order to ascertain whether the proposed vehicular access meets all the requirement of AS 2890.1 in terms of car scraping, longitudinal profiles (scale 1:20) along each side/edge for the proposed crossing shall be prepared by a suitably qualified and experienced person. The driveway profiles along each side/edge of the proposed crossing is to start from the road centreline which include the Council's Standard layback and gutter into the parking slab. Gradients and transitions must be in accordance with Clause 2.5.3 of AS2890.1. The driveway profiles shall be prepared in Scale 1:20 (for template checking purposes) which contain all relevant details: reduced levels in AHD for both existing and proposed finished levels, grades representing in percentage and horizontal distances in chainages. Council's standard layback is 450mm wide and back of layback is 70mm above the gutter invert.

The proposed off-street parking space and vehicular access shall be designed in compliance with AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking*. Access levels and grades must comply with access levels and grade required by Council under the *Roads Act 1993*. The Certifying Authority has no discretion to reduce or increase the number or area of car parking space(s) required to be provided and maintained by this consent.

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the *Act*.

Note: Clause 146 of the *Regulation* prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

Note: Clause 145 of the *Regulation* prohibits the issue of any Construction Certificate that is inconsistent with this consent.

Standard Condition: C45 (Autotext: CC45)

C.13 Road and Public Domain Works

A separate application under Section 138 of the *Roads Act 1993* is to be made to, and be approved by Council as the road authority, for the following infrastructure works prior to the issuing of any Construction Certificate. The infrastructure works must be carried out at the applicant's expense:

- a) The removal of the redundant vehicular crossing including layback and gutter and reinstated into Council's standard kerb and gutter and nature strip to comply with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers.
- b) The construction of a new 3m wide vehicular crossing including replacement of the existing gutter in accordance with Council's standard driveway drawing RF2_D and to the satisfaction of Council's Assets Engineers. The new crossing shall be constructed at right angle to the street kerb in plain concrete and be located at a minimum distance of one (1) metre from the existing power pole. Design longitudinal surface profiles (scale 1:20) along each side/edge of the proposed vehicular crossing must be submitted for assessment.
- c) The reinstatement of all damaged kerb and gutter, footpath and road pavement to match existing.

- d) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

Note: To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

Note: *Road* has the same meaning as in the *Roads Act 1993*.

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any *Construction Certificate*. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Roads Act 1993* approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.

Note: See condition K24 in *Section K. Advisings* of this Consent titled *Roads Act Application*.

Standard Condition: C13 (Autotext CC13)

C.25 Soil and Water Management Plan – Submissions & Approval

C.36 Professional Engineering Details

C.40 Geotechnical and Hydrogeological Design, Certification & Monitoring

C.45 Sight Lines

Prior to issue of any Construction Certificate, the applicant shall submit, for approval by the Certifying Authority, detailed architectural plans and specifications showing the following:

- a) Pursuant to Clause 3.2.4 and Figure 3.3 of AS2890.1, a 2m x 2.5m pedestrian sight splay, clear of any obstructions to visibility, shall be provided on both sides of the driveway exit.

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the *Act*.

Note: Clause 146 of the *Regulation* prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

Note: Clause 145 of the *Regulation* prohibits the issue of any Construction Certificate that is inconsistent with this consent.

Standard Condition: C45 (Autotext: CC45)

C.51 Stormwater Management Plan

Prior to issue of the Construction Certificate, the applicant must submit, for approval by the Certifying Authority, detailed stormwater management plans prepared by a suitably qualified and experienced civil engineer, which detail the following:

- a) General design in accordance with stormwater management plans, prepared by Harris Page & Associates P/L, referenced 6695-Rev C, dated 09/12/2021, other than amended by this condition below;
- b) The placement of subsoil drainage system is NOT permitted. All below ground structures are to be fully tanked or appropriately design to ensure subsoil drainage/seepage water is NOT collected and directed to the kerb and gutter to comply with Chapter E2.2.5 of Council's DCP;

- c) The discharge of stormwater from the site to Council's kerb and gutter located within the frontage of the site;
- d) Any proposed stormwater pipes across the nature strip must have a minimum grade of 1% to comply with Clause 6.3.4 of AS3500.3. The outlet pipe must be located within the frontage of the site;
- e) The installation of a min. 600x600 boundary junction pit prior to discharging into Council's kerb and gutter system;
- f) All new Stormwater Drainage System complying with the BCA;
- g) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath;
- h) Compliance the objectives and performance requirements of the BCA;
- i) General compliance with the Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

OSD Requirements

The minimum Site Storage Requirements ("SSR") for the on-site detention system shall be 41.62m³ (existing OSD volume = 15m³ and proposed OSD volume = 26.62m³). The Permissible Site Discharge (PSD) discharging to the kerb and gutter in Tarrant Avenue must not exceed 20 l/s.

The *Stormwater Management Plan* must also include the following specific requirements:

Layout plan

A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Institute of Engineers Australia publication, *Australian Rainfall and Run-off*, 1987 edition or most current version thereof. It must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of proposed rainwater tanks,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Councils drainage infrastructure, and
- f) Overland flow paths over impervious areas.

On-site Detention (OSD) details:

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed detention storage,
- c) Diameter of the outlet to the proposed detention storage basin,
- d) Plans, elevations and sections showing the detention storage basin invert level, centre-line level of outlet, top water level, finished surface level and adjacent structures,
- e) Details of access and maintenance facilities,
- f) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products,

- g) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the on-site detention system,
- h) Non-removable fixing details for orifice plates where used,

Rainwater Reuse System details:

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed rainwater storage,
- c) Plans, elevations and sections showing the rainwater tanks, finished surface level and adjacent structures,
- d) Details of access and maintenance facilities,
- e) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products,
- f) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the rainwater tanks,

For any Stormwater Drainage works on Council's property, separate approval under Section 138 of the *Roads Act 1993* must be obtained from Council for those works prior to the issue of any Construction Certificate.

All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012).

Note: This Condition is imposed to ensure that site stormwater is disposed of in a controlled and sustainable manner.

Note: The collection, storage and use of rainwater is to be in accordance with *Standards Australia HB230-2008 "Rainwater Tank Design and Installation Handbook"*.
Standard Condition: C.51 (Autotext CC51)

D. Conditions which must be satisfied prior to the commencement of any development work

D.4 Dilapidation Reports for existing buildings

Dilapidation surveys and dilapidation reports shall be conducted and prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration as determined applicable by a Structural Engineer.

These properties must include (but is not limited to):

No. 3 Tarrant Avenue

The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. A copy of the approved reports shall be submitted to Council with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice*

of commencement required by S81A(2) of the *Act* not less than two (2) days prior to the commencement of any work.

Note: The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out
 - To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land
- Also refer to the Dilapidation Report Advising for more information regarding this condition
Standard Condition: D4 (Autotext DD4)

D.6 Adjoining buildings founded on loose foundation materials
D.10 Works (Construction) Zone – Approval and Implementation
D.14 Erosion and Sediment Controls – Installation

E. Conditions which must be satisfied during any development work

E.7 Maintenance of Vehicular and Pedestrian Safety and Access
E.11 Maintenance of Environmental Controls
E.12 Compliance with Geotechnical/Hydrogeological Monitoring Program
E.13 Support of Adjoining Land Owners
E.14 Vibration Monitoring
E.15 Erosion and Sediment Controls – Maintenance
E.17 Disposal of Site Water during Construction
E.20 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.7 Commissioning and Certification of Systems and Works

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

Nil

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (S109C (1) (c))

H.13 Road Works (including footpaths)
H.20 Works-As-Executed Certification of Stormwater Systems

I. Conditions which must be satisfied during the ongoing use of the development

I.29 Ongoing Maintenance of the On-Site-Detention System

J. Miscellaneous Conditions

Nil

K. Advisings

K.23 Dilapidation Report

K.24 Roads Act Application



Woollahra
Municipal
Council

2 March 2022

REFERRAL RESPONSE - HERITAGE

FILE NO: Development Applications/ 502/2021/1

ADDRESS: 2-2A Kulgoa Road BELLEVUE HILL 2023

PROPOSAL: Demolition of an existing dwelling, construction of a new garage with tennis court above, alterations and additions to the remaining dwelling

FROM: Shona Lindsay - Heritage Officer

TO: Mr B McIntyre

DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Lawton Hurley, dated October and December 2021
- Demolition Report by John Oultram, dated June 2021
- Statement of Environmental Effects by GSA Planning, dated October 2021
- Survey plan
- Aboriginal Heritage Impact Assessment by Dominic Steele, dated 10 December 2021
- Referral response from Heritage NSW dated 11 January 2022

RESEARCH

The following research was undertaken in the preparation of this assessment:

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties.
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps – street view

STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- National Parks & Wildlife Act 1974
- Woollahra LEP 2014
- Woollahra DCP 2015

ASSESSMENT OF HERITAGE IMPACT

Compliance with the relevant legislative framework and planning controls

SIGNIFICANCE OF SUBJECT PROPERTY

The property is not a listed heritage item and is not located within a Heritage Conservation Area.
The demolition report provides the following statement of significance:

22 39623 Referral Response - Heritage - DA2021 502 1 - 2-2A Kulgoa Road BELLEVUE HILL



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5 Tarrant Avenue is an example of an Inter War house built in 1922 for James Cusick, a hotel licensee. The site was originally part of the Bellevue Hill Estate land release of 1902 that was one of the many such releases of the vast landholdings of the Cooper family that covered a large portion of the Woollahra LGA. The majority of the Bellevue Hill estate was sold undeveloped to the British and Australian Asset Company.

The subject site was formed in a re-subdivision of two lots of the Estate by James Cusick who had purchased the lots in 1921. Cusick sold the southern lot in 1923 but developed the subject site for a house that was approved by Woollahra Council in February 1922. The house remained in the family till the 1950s.

The house signals the later development of the area following the break up of the Copper landholdings.

The house is a heavily modified example of an Inter War house originally in the bungalow style that was popular at the time. The house is partly intact to its original form and layout but the distinctive gables have been removed and the main entry relocated to the Tarrant Avenue frontage with original porch infilled. The northern verandah was infilled to form a bedroom and the western verandah has been removed. These works likely occurred in the 1960s and 1970s when plans for alterations were approved by Woollahra Council.

The original drawings for the house do not indicate an architect and the house may have been builder designed. The interior of the house has been heavily altered and much of the original fabric removed and the layout distorted by the later addition to the west.

The demolition/heritage significance report submitted with the development application includes historical research on the development of the property over time. The construction of the dwelling is not associated with any known prominent architect and has no distinctive landmark qualities or other features that would make it potentially significant or rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that the property does not meet the criteria for identification as a place of local significance. The findings of the report are considered to be accurate.

National Parks and Wildlife Act 1974

The site is in an area of Potential Aboriginal Heritage Sensitivity. Therefore, an Aboriginal Heritage Impact Assessment was required as part of the DA to ascertain whether potential Aboriginal cultural heritage will be impacted by the proposal.

Anyone proposing to carry out an activity that may harm an Aboriginal object or a declared Aboriginal place must investigate, assess and report on the harm that may be caused by the activity they propose.

The 'Due Diligence Code of Practice for the protection of Aboriginal Objects in NSW' (2010) prescribes that an extensive search must be undertaken if AHIMS has shown that there are Aboriginal sites or places in the search area.

The Office of Environment & Heritage (OEH) disclosures for AHIMS searches are copied below:

- *You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.*



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- *If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.*
- *The information derived from the AHIMS search is only to be used for the purpose for which it was requested.*
- *AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;*
- *It is not be made available to the public.*
- *Information recorded on AHIMS may vary in its accuracy and may not be up to date.*
- *Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings.*
- *Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.*
- *Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.*

The Applicant has provided an Aboriginal Heritage Impact Assessment (the 'report') prepared in accordance with the 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW' published by the Department of Environment, Climate Change and Water and dated 13 September 2010 and in accordance with Attachment 10 of Council's DA guide available at: https://www.woollahra.nsw.gov.au/__data/assets/pdf_file/0009/248238/DA-Guide-Attachment-10-Aboriginal-Heritage-Impact-Assessment.pdf

Consultation with the La Perouse Local Aboriginal Land Council was undertaken as part of the report. There has been consideration of relevant previous Aboriginal heritage investigations, as detailed in the report.

The report identifies the following potential for significant Aboriginal cultural heritage:

The 2 Kulgoa Road site contains subsurface soil and sediment deposits that may contain Aboriginal objects, archaeological deposits, and environmental history records that have Aboriginal cultural and scientific significance.

The potential archaeological and natural environmental record of the soils and sediments contained within the site will be disturbed by the proposed development.

The report recommends the following:

Test excavation

Test excavation and AHIPs

To identify early as possible whether Aboriginal objects are present on the site we recommended that a program of archaeological test excavation should be carried out to establish if Aboriginal objects and archaeological deposits are present, and if they are present, to enable their extent and significance to be evaluated, and to determine whether an AHIP is required to impact or archaeologically salvage or collect objects under an approval issued by HNSW under s90 of the NPW Act. If Aboriginal objects are present and an AHIP is required, the development becomes an Integrated Development as defined under the EPA Act and Council will be subject to advice provided by HNSW in relation to the Aboriginal heritage matters relating to the DA.

AHIP applications to HNSW need to be accompanied by an Aboriginal Cultural Heritage Assessment Report (ACHAR) that meets the requirements of the 'Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW'. The ACHAR and AHIP application needs to be submitted to Council prior to development approval for referral to HNSW who will provide advice and general terms of approval to Council on Aboriginal heritage matters relating to the development application.



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If no further Aboriginal heritage investigation is required prior to approval and development is approved the ACHAR is submitted by the Applicant to HNSW as part of the AHIP application process. If further investigation is required, such as salvage excavation, before development this can only occur once development approval has been given and the obtaining of an AHIP and undertaking any works under an AHIP approval have to be conditions of development consent.

Code of Practice test excavation

The 'Code of Practice for Archaeological Investigation of Aboriginal Objects' enables archaeological test excavation to be undertaken without an AHIP. If the Code is followed the actions (test excavation) will be excluded from the definition of harm and as such the development proponent will not be committing an offence of harm to an Aboriginal object.

The test excavations permitted by the Code are limited in their scope and there are also a number of pre-conditions that have to be met before commencing the investigations.

The report concludes:

- Council grant approval for the proposed development of 2 Kulgoa Road.
- A suitably qualified archaeologist be engaged to a program of Aboriginal archaeological test excavation should be undertaken at the site using the Code of Practice for Investigating Aboriginal Objects excavation methods and follows the pre-excavation Aboriginal consultation requirements stipulated by the Code (*Requirement 15a*) where consultation must be undertaken as set out in the NPW Regulation and completed to the stage described in subclause 80C(6) of the Regulation.
- If no Aboriginal objects found, and the archaeological and cultural assessments after the test excavation conclude that there are unlikely to be undetected objects and that there are no Aboriginal heritage constraints to the development from continuing.
- If Aboriginal objects are located by the test excavation program the Applicant will need to apply for an AHIP from HNSW under s.90 of the NPW Act and satisfy the terms and conditions of the issued AHIP before the construction works for the development can commence.
- A copy of this report be forwarded to La Perouse Local Aboriginal Land Council.

Heritage NSW have also provided advice which has been considered and forms part of the conditions of consent.

Given the above, it is concluded that conditions of consent will need to be imposed as part of the DA consent.

Woollahra LEP 2014

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is not within a heritage conservation area.

Clause 1.2 Aims of Plan

Subclause 1.2. (2) (f) – to conserve built and natural environmental heritage

The dwelling has no heritage significance and does not make any contribution to the heritage significance of Bellevue Hill. The property is not heritage listed and is not located within a heritage conservation area.

A demolition/heritage significance report has been submitted with the development application and includes historical research on the development of the property over time. The construction of the dwelling is not associated with any known prominent architect and has no distinctive landmark



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qualities or other features that would make it potentially significant or rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that it does not meet the criteria for identification as a place of local significance. The findings of the report are considered to be accurate. Accordingly, the property is not of heritage value and therefore no objection is raised to the proposed demolition of the existing building.

The archival recording including in the demolition report meets the standard requirements for buildings of no significance.

Clause 5.10 Heritage Conservation

Significance of items in the vicinity

The following listed heritage items/heritage conservation areas are located in proximity of the site

- Footpath Street Name Inlays (Tarrant Avenue) – Item No. 671

The footpath street name inlay is located at the corner of Tarrant Avenue and Kulgoa Road. The proposed works will not directly impact the inlay but conditions of consent will be imposed to ensure impacts are mitigated during construction works.

CONCLUSION

National Parks & Wildlife Service Act, 1979

Appropriate conditions of consent to manage Aboriginal heritage will be provided below.

Woollahra LEP 2014

- Clause 1.2 (2) (f) The development does conserve the built heritage of Woollahra.

Part 5.10

- Clause 1(a) The development does conserve the heritage of Woollahra.
- Clause 1(b) The impact upon the heritage significance of the heritage items located in the vicinity will be neutral.
- Clause 4 This referral constitutes an assessment under this clause.

RECOMMENDATION

The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions.

1. Deferred Commencement

Development consent is granted subject that this consent is not to operate until the Applicant satisfies the Council, in accordance with the Regulations, as to all matters specified in this condition:

- a) A detailed archaeological inspection of the sandstone outcrop at the rear of the property is to be undertaken by a suitably qualified archaeologist to establish whether this feature is a rock shelter. The outcome of this assessment needs to determine whether the test excavations can occur under the *Code of Practice for Archaeological*



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Investigation of Aboriginal Objects in New South Wales, DECCW 2010 or if they must occur under an Aboriginal Heritage Impact Permit (AHIP). If the test excavations can occur under the Code then section b) applies. If an AHIP is required then section d) applies.

- b) A suitably qualified archaeologist is to be engaged to undertake a program of Aboriginal archaeological test excavation at the site using the Code of Practice for Investigating Aboriginal Objects excavation methods and the pre-excavation Aboriginal consultation requirements stipulated by the Code (*Requirement 15a*) where consultation must be undertaken as set out in the NPW Regulation and completed to the stage described in subclause 80C(6) of the Regulation.
- c) If no Aboriginal objects are found, and the archaeological and cultural assessments after the test excavation conclude that there are unlikely to be undetected objects and that there are no Aboriginal heritage constraints to the development from continuing, then the proposed works can continue under the unexpected finds procedure.
- d) If the detailed archaeological inspection of the sandstone outcrop at the rear of the property determines it to be a rock shelter and requires an AHIP for test excavations, or if Aboriginal objects are located by the test excavation program outlined in section b), the Applicant will need to stop works and seek approval from Heritage NSW via an Aboriginal Heritage Impact Permit (AHIP) issued under s.90 of the *National Parks and Wildlife Act 1974*. The AHIP is to be accompanied by an Aboriginal Cultural Heritage Assessment (ACHA) that meets the requirements of the Heritage NSW Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW and which documents Aboriginal community consultation in accordance with Clause 60 of the National Parks & Wildlife Regulation 2019. The Applicant must satisfy the terms and conditions of the issued AHIP before the construction works for the development can commence.

2. Site Protection

The footpath street name inlay located on Tarrant Avenue is to be protected from potential damage during site preparation and during the proposed works.

3. Aboriginal Objects – Unexpected Findings

If unexpected Aboriginal objects or bones are found during any activity associated with this consent, you must:

- a) Not further disturb or move these objects or bones.
- b) Immediately cease all work at the particular location.
- c) In the case of suspected human remains, notify NSW Police.
- d) Notify the Heritage NSW Environment Line on 131 555 and the La Perouse LALC on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location.
- e) Not recommence any work at the particular location unless authorised in writing by Heritage NSW. Additional assessment and approval pursuant to the *National Parks and Wildlife Act 1974* may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: The Definition of Aboriginal object as per the Woollahra Local Environmental Plan 2014: any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Standard Condition: B10 (Autotext BB10)



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4. Aboriginal Heritage Due Diligence Responsibilities

Nothing in this approval allows to cause harm to an Aboriginal object as defined in the *National Parks & Wildlife Act 1974*. Under the *National Parks & Wildlife Act 1974*, it is an offence to harm Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) without a valid Aboriginal Heritage Impact Permit under Section 90 of the Act. This applies whether the harm occurs either knowingly [s86(1)] or unknowingly [s86(2)].

It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object.

Standard Condition: B12 (Autotext BB12)

5. Skeletal Remains

If any skeletal remains suspected of being human are found during construction works, work must cease immediately and no further disturbance of the site must occur. The NSW Police and the Department of Premier and Cabinet, Community Engagement, Heritage must be notified and details of the remains and their precise location are to be provided.

Standard Condition: B9

6. Aboriginal Heritage Induction

- a) All construction staff and contractors must be made aware of their statutory obligations for Aboriginal heritage under the *National Parks and Wildlife Act 1974*;
- b) An Aboriginal heritage induction is to be delivered by the La Perouse Local Aboriginal Land Council or by a heritage consultant with Aboriginal heritage expertise, if a representative of the Local Land Council is not able to provide the induction), to explain what Aboriginal heritage may be found and outline the unexpected findings procedures; and
- c) Documentary evidence demonstrating compliance with a. and b. above being submitted to Council and the Principal Certifier.

Standard Condition: B13 (Autotext BB13)

Shona Lindsay - Heritage Officer

7 March 2022

REFERRAL RESPONSE – TREES & LANDSCAPING

FILE NO: DA 502/2021/1
ADDRESS: 2-2A Kulgoa Road BELLEVUE HILL 2023
PROPOSAL: Demolition of an existing dwelling, construction of a new garage with tennis court above, alterations and additions to the remaining dwelling
FROM: Sam Knight
TO: Mr B McIntyre

I refer to the following documents received for this report:

- Architectural Drawings – Revision B, drawn by Lawton Hurley, dated December 2021
- Arboricultural Impact Assessment Report, written by Tree Wise Men, dated 20 September 2021
- Landscape Plans – Revision C, designed by Spirit Level, dated 6 September 2021

A site inspection was carried out on 4 March 2022.

Relevant Control:

- Woollahra Local Environment Plan 2014
- Woollahra Development Control Plan 2015
- Woollahra Street Tree Master Plan 2014 – Part 1, Part 2 (Precinct Plans), Part 3 (appendices)
- Significant Tree Register 1991 Volume 1 Significant Trees Under Private Ownership, Volume 2 Significant Trees Under Private Ownership, Volume 3 Significant Trees, Volume 4 Significant Trees in Public Parks
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

SUMMARY

The proposal is for demolition of an existing dwelling, construction of a new garage with tennis court above, alterations and additions to the remaining dwelling.

A total of 56 trees have been identified within and adjacent to the subject site. The proposed plans and documentation indicate 23 trees are proposed for removal and the remaining 33 trees are proposed for retention.

The Tree and Landscape team support the proposal subject to the below tree conditions which are recommended for inclusion into the Development Application consent.

COMMENTS

Inspection of the site and a review of the documentation has identified 56 trees within and adjacent to the site. This includes 23 trees proposed for removal and the remaining 33 trees will be retained and protected.

The following tree numbering has been adopted from the Arboricultural Impact Assessment prepared by Tree Wise Men dated 20 September 2021.

Tree Removal - Low Retention Value

A total of 12 trees have been identified for removal that are rated as having Low Retention Value. These trees have been noted in poor health, poor structural condition or found to be providing minimal amenity value to the immediate area. These trees are numbered Trees numbered 7, 8, 11, 32, 46, 47, 48, 49, 50, 53, 55 and 56 and are not considered worthy of any design amendments to allow for their retention.

These trees are supported for removal conditional of replacement planting being undertaken in accordance with the Landscape Plans and additional replacement planting condition included below.

Tree Removal - Moderate Retention Value

A total of nine (9) trees have been identified for removal that are rated as having Moderate Retention Value. These trees are numbered 30, 31, 34, 35, 36, 37, 38, 39 and 40 and should be considered for retention.

However, a review of the plans has revealed that the trees are located within footprint of the building extension. Modification to the design to allow for their retention would be extensive and are not considered practical.

Therefore, removal is supported conditional of replacement planting being undertaken at the completion of the works.

Tree Removal - High Retention Value

A total of one (1) tree has been identified for removal that has been rated as having High Retention Value. This tree is numbered 33 and should be considered as priority for retention.

However, a review of the plans has revealed that the trees are located within footprint of the building extension. Modification to the design to allow for its retention would be extensive and is not considered practical.

Tree Retention

The remaining 33 trees within and adjacent to the site will be retained and protected.

A review of the plans and applicants Arborist Report has revealed that none of these trees will be the subject of major encroachments into their Tree Protection Zones (TPZ). The trees can be retained and protected subject to tree sensitive techniques to be undertaken in accordance with the tree protection conditions included in the below recommendations.

RECOMMENDATIONS

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

CONDITIONS OF CONSENT

Please note that the standard conditions of consent are generally modified by the Technical Services Department to suit a particular development application. Please ensure all Technical Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function

A. General Conditions

A.1 Tree Preservation & Approved Landscaping Works

All landscape works shall be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

a) The following trees shall be retained

- Trees on Private Land

Council Ref No.	Species	Location	Dimension (metres)
9	Lagerstroemia indica	Refer to the Arboricultural Impact Assessment prepared by Tree Wise Men dated 20 September 2021 for tree locations and numbers.	6 x 2
10	Lagerstroemia indica		6 x 2
12	Syzygium spp.		5 x 2
13	Magnolia grandiflora		12 x 2
14	Magnolia grandiflora		12 x 2
15	Magnolia grandiflora		12 x 2
16	Olea europaea		5 x 2
17	Olea europaea		5 x 2
18	Olea europaea		4 x 2
19	Olea europaea		4 x 2
20	Olea europaea		5 x 2
21	Olea europaea		5 x 2
22	Olea europaea		5 x 2
23	Pyrus spp		5 x 2
24	Pyrus spp		5 x 2
25	Pyrus spp		5 x 2
26	Magnolia grandiflora		10 x 2
27	Magnolia grandiflora		10 x 2
28	Magnolia grandiflora		10 x 2
29	Magnolia grandiflora		10 x 2
41	Archontophoenix cunninghamiana		10 x 2
42	Archontophoenix cunninghamiana		15 x 3
43	Archontophoenix cunninghamiana		13 x 3
44	Syzygium spp.		5 x 2
45	Acmena smithii		13 x 3
51	Livistona australis		10 x 2
52	Jacaranda mimosifolia		14 x 8
54	Lagerstroemia indica		6 x 4

- Trees on Council Land

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
1	Platanus orientalis		16 x 4	\$15,000

2	Platanus orientalis	Refer to the Arboricultural Impact Assessment prepared by Tree Wise Men dated 20 September 2021 for tree locations and numbers.	16 x 4	\$15,000
3	Lophostemon confertus		12 x 4	\$5000
4	Lophostemon confertus		15 x 5	\$15,000
5	Prunus spp.		3 x 2	\$1000

Note: The tree/s required to be retained should appear coloured green on the construction certificate plans.

- b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
6	Duranta erecta	Refer to the Arboricultural Impact Assessment prepared by Tree Wise Men dated 20 September 2021 for tree locations and numbers.	5 x 3
7	Magnolia grandiflora		2 x 1
8	Magnolia grandiflora		5 x 1
11	Syzygium spp.		4 x 1
30	Magnolia grandiflora		10 x 2
31	Murraya paniculata		6 x 5
32	Syzygium spp.		5 x 1
33	Syzygium spp.		17 x 6
34	Howea forsteriana		13 x 2
35	Howea forsteriana		15 x 2
36	Archontophoenix cunninghamiana		16 x 2
37	Howea forsteriana		14 x 2
38	Howea forsteriana		10 x 2
39	Archontophoenix cunninghamiana		9 x 2
40	Archontophoenix cunninghamiana		16 x 3
46	Ficus microcarpa var. Hillii		4 x 2
47	Magnolia grandiflora		4 x 2
48	Magnolia grandiflora		4 x 2
49	Ulmus parvifolia		14 x 6
50	Ulmus parvifolia		14 x 8
53	Acer negundo		9 x 4
55	Magnolia x soulangeana		4 x 2
56	Cyathea spp.		5 x 1

Note: Tree/s to be removed shall appear coloured red on the construction certificate plans.

A.2 Approved Plans and supporting documents

Reference	Description	Author/Drawn	Date(s)
L100 C & L010 C	Landscape Plan	Spirit Level	6/9/2021
2723AIA	Arboricultural Impact Assessment Report	Tree Wise Men	20/9/2021

B. Conditions which must be satisfied prior to the demolition of any building or construction

B.1 Establishment of Tree Protection Zone (TPZ) Fence

Tree Protection Zones shall be established around all trees to be retained and in accordance with Section 4 of the *Australian Standard Protection of Trees on Development Sites* (AS 4970- 2009). Tree protection zones must also comply with the following requirements;

- a) Tree Protection Zone areas

Council Ref No.	Species	Tree Location	TPZ Radius from Centre
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			of Trunk (Metres)
1	Platanus orientalis	Refer to the Arboricultural Impact Assessment prepared by Tree Wise Men dated 20 September 2021 for tree locations and numbers.	3.5
2	Platanus orientalis		3.6
3	Lophostemon confertus		2
4	Lophostemon confertus		4.8
5	Prunus spp.		2
9	Lagerstroemia indica		2.4
10	Lagerstroemia indica		2.4
12	Syzygium spp.		2.4
13	Magnolia grandiflora		2.5
14	Magnolia grandiflora		2.3
15	Magnolia grandiflora		2.9
16	Olea europaea		2
17	Olea europaea		2.4
18	Olea europaea		2
19	Olea europaea		2
20	Olea europaea		2.3
21	Olea europaea		2
22	Olea europaea		2
23	Pyrus spp		2.6
24	Pyrus spp		2.3
25	Pyrus spp		2.4
26	Magnolia grandiflora		2.2
27	Magnolia grandiflora		2
28	Magnolia grandiflora		2
29	Magnolia grandiflora		2
41	Archontophoenix cunninghamiana		3
42	Archontophoenix cunninghamiana		4
43	Archontophoenix cunninghamiana		4
44	Syzygium spp.		2
45	Acmena smithii		3.6
51	Livistona australis		3
52	Jacaranda mimosifolia		8.4
54	Lagerstroemia indica		2.3

- b) Tree Protection Zone fencing shall be installed around trees in accordance with the Tree Protection Plan (Dwg No 2723TPP Sheet 1 of 2) prepared by Tree Wise Men dated 13 September 2021.
- c) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being bought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- d) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- e) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in Condition B.2 of this consent.

- f) Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.
- g) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- h) The project arborist shall provide written certification of compliance with the above condition.

B.2 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
52	Jacaranda mimosifolia	8.4	Excavation and construction of tennis courts
51	Livistona australis	3	Excavation and construction of tennis courts

The project arborist shall provide written certification of compliance with the above condition.

B.3 Demolition and Construction Management Plan

The Demolition and Construction Management Plan shall be reviewed and certified by the Project Arborist that appropriate tree protection measures have been accounted for. The Demolition and Construction Management Plan shall be prepared in accordance with all tree protection measures specified within this consent. Considerations by the Project Arborist shall include but not be limited to:

- a) Drawings and method statement showing details and the location of hoarding and scaffold and any pruning required to accommodate the hoarding and scaffolding;
- b) The movement and positioning of heavy machinery, lifting cranes, pier drilling gantry etc;
- c) Site construction access, temporary crossings and movement corridors on the site defined;
- d) Contractors car parking;
- e) Phasing of construction works;
- f) The space needed for all foundation excavations and construction works;
- g) All changes in ground level;
- h) Space for site sheds and other temporary structures such as toilets;
- i) Space for sorting and storing materials (short or long term), spoil and fuel and the mixing of cement and concrete; and
- j) The effects of slope on the movement of potentially harmful liquid spillages towards or into tree protection areas

B.4 Arborists Documentation and Compliance Checklist

The site arborist shall provide written certification that all tree protection measures and construction techniques relevant to this consent have been complied with. Documentation for each site visit shall include:

- A record of the condition of trees to be retained prior to and throughout development;
- Recommended actions to improve site conditions and rectification of non-compliance; and
- Recommendations for future works which may impact the trees

All compliance certification documents shall be kept on site by the Site Foreman.

As a minimum the following intervals of site inspections must be made:

Stage of arboricultural inspection	Compliance documentation and photos shall be included
Installation of tree protection fencing	Compliance with tree protection measures
Demolition of ground surface materials within the TPZ of retained trees	Condition of exposed roots
Earthworks and excavation for tennis court within TPZ of retained trees	Tree sensitive techniques implemented
Prior to pouring of slab for basement and tennis court within TPZ of retained trees	Condition of roots and soil
New landscape works within TPZ of retained trees	Tree sensitive techniques implemented
Prior to the issue of a Final Occupation Certificate	Supervise the dismantling of tree protection measures

Inspections and compliance documentation shall be made by an arborist with AQF Level 5 qualifications.

Additional site visits shall be made when required by site arborist and/or site foreman for ongoing monitoring/supervisory work.

C. Conditions which must be satisfied prior to the issue of any construction certificate

C.1 Tree Management Plan

The *Construction Certificate* plans and specifications shall show the following information:

- Trees to be numbered in accordance with these conditions:
 - shaded green where required to be retained and protected
 - shaded red where authorised to be removed
 - shaded yellow where required to be transplanted
 - shaded blue where required to be pruned
- References to applicable tree management plan, arborists report or transplant method statement.

This plan shall be kept on site until the issue of the final occupation certificate.

C.2 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Tree Damage Security Deposit – Making good any damage caused to any public tree as a consequence of	\$41,000	No	T114

the doing of anything to which the consent relates.			
INSPECTION FEES			
under section 608 of the Local Government Act 1993			
Tree Inspection Fee	\$200.00	No	T95

D. Conditions which must be satisfied prior to the commencement of any development work

Nil

E. Conditions which must be satisfied during any development work

E.1 Tree Preservation

All persons must comply with Council's Development Control Plan (DCP) 2015, Chapter E.3 Tree Management other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

- a) The TPZ must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

Note: Trees must be pruned in accordance with *Australian Standard AS 4373 "Pruning of Amenity Trees"* and *WorkCover NSW Code of Practice Amenity Tree Industry*.

E.2 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2018). The replacement tree shall be planted in a *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species in accordance with the approved Landscape Plans.

The project arborist shall document compliance with the above condition.

E.3 Paving in the vicinity of trees

Paving works within the TPZ of any tree conditioned for retention shall be constructed in such a way as to ensure that the existing moisture infiltration and gaseous exchange to the tree root system are maintained. When preparing an area for paving within the specified radius the soil surface shall not be skimmed. The new surface shall be established above the former ground level.

Paving works are to be designed in consultation with a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent) and are to utilise such measures as semiporous material.

The project arborist shall document compliance with the above condition.

E.4 Hand excavation within tree root zones

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
51	Livistona australis	Refer to the Arboricultural Impact Assessment prepared by Tree Wise Men dated 20 September 2021 for tree locations and numbers.	3
52	Jacaranda mimosifolia		8.4

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 "Pruning of Amenity Trees" and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.1 Amenity Landscaping

The *owner or principal contractor* must install all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) prior to any occupation or use of the site.

Note: This condition has been imposed to ensure that the environmental impacts of the development are mitigated by approved landscaping prior to any occupation of the development.

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

Nil

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

H.1 Landscaping

The *principal contractor or owner* must provide to *PCA* a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works comply with this consent.

Note: This condition has been imposed to ensure that all Landscaping work is completed prior to the issue of the Final Occupation Certificate.

I. Conditions which must be satisfied during the ongoing use of the development

Nil

J. Miscellaneous Conditions

Nil

K. Advisings

K.1 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Development Control Plan (DCP) 2015, Chapter E.3 Tree Management may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the DCP from Council's website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice.

Sam Knight
Tree Officer



Reference: DOC21/1115549-27

Mr Brett McIntyre
Woollahra Municipal Council
Email: brett.mcintyre@woollahra.nsw.gov.au

Letter uploaded to the Concurrence and Referral (CNR) portal

Dear Mr McIntyre

**DEVELOPMENT APPLICATION REFERRAL
NATIONAL PARKS AND WILDLIFE ACT 1974**

Address: 2 Kulgoa Road, Bellevue Hill (Lot 1, DP 1265514)
Proposal: Demolition of existing dwelling and construction of a new tennis court and basement garage.
DA application no: DA502/2021, CNR-33133, PAN-159568, received 22 December 2021.

Thank you for referring the above Development Application to Heritage NSW for comment. We note that this development is not being considered as integrated development for the purposes of the *National Parks and Wildlife Act 1974* (NPW Act) and that Council has not requested General Terms of Approval pursuant to the NPW Act.

Heritage NSW has reviewed the application and the supporting information provided with this development application referral. The following comments are provided as advice to assist Council.

Aboriginal cultural heritage

The assessment for this development has been undertaken following the 2010 *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* and a report prepared by Dominic Steele Consulting Archaeology, dated 10 December 2021.

We advise Council that Heritage NSW cannot approve or certify a person's compliance with due diligence requirements carried out under the due diligence code. This is the responsibility of the company or individual doing the activity. As the assessment was undertaken following the due diligence code, we also note that no consultation has been undertaken with the Aboriginal community. This is a potential risk as Aboriginal community consultation may provide more information about the cultural values of the land.

Council is reminded that under the *National Parks and Wildlife Act 1974* all Aboriginal objects and Aboriginal places are protected regardless of the level of disturbance. It is in the interest of the proponent to ensure that all reasonable precautions are taken to prevent the occurrence of harm to Aboriginal objects.

The land has potential to contain Aboriginal objects

While there are no recorded Aboriginal objects on the land subject to this development application, the Aboriginal Heritage Impact Assessment prepared by Dominic Steele Consulting Archaeology and dated 10 December 2021 has identified that the land forms part of a significant Aboriginal cultural heritage landscape with potential to contain subsurface Aboriginal objects and archaeological deposits.

Level 6, 10 Valentine Ave Parramatta NSW 2150 ■ Locked Bag 5020 Parramatta NSW 2124
P: 02 9873 8500 ■ E: heritagemailbox@environment.nsw.gov.au

We support the recommendation by Dominic Steele to undertake test excavations. We recommend detailed archaeological inspection of the sandstone outcrop at the rear of the property to establish whether this feature is a rock shelter. The outcome of this assessment needs to determine whether the excavations can occur under the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*, DECCW 2010 or if they must occur under an Aboriginal Heritage Impact Permit (AHIP).

We strongly recommend that the excavations be undertaken prior to determination of the DA in order to understand the nature and significance of any Aboriginal objects that are present, and the impact of the development on those objects. Please note that although this land has been disturbed by previous construction, if Aboriginal objects are present those objects are protected under the NPW Act and will require an Aboriginal Heritage Impact Permit to continue with the development.

A list of Aboriginal cultural heritage assessment guidelines is provided at **Attachment 1**. Further information about Aboriginal cultural heritage assessment processes is also available on the Heritage NSW website: <https://www.heritage.nsw.gov.au/applications/aboriginal-objects-and-places/>.

If the development application is approved and Aboriginal objects are subsequently identified during works then all work must stop and Heritage NSW must be contacted immediately by calling 131 555 or emailing: info@environment.nsw.gov.au. If harm to Aboriginal objects cannot be avoided then an application for an Aboriginal Heritage Impact Permit (AHIP) must be submitted to Heritage NSW.

If you have any questions regarding the above matter please contact Sarah Robertson, Senior Assessments Officer (Aboriginal Archaeology), at Heritage NSW by telephone (02) 6229 7088 or by email to sarah.robertson@environment.nsw.gov.au.

Yours sincerely,



Nicole Davis
Manager - Assessments
Heritage NSW
Department of Premier and Cabinet
11 January 2022.

Enclosure: Attachment 1 – Heritage NSW Aboriginal Cultural Heritage Assessment Guidelines

Attachment 1 – Heritage NSW Aboriginal Cultural Heritage Assessment Guidelines

- Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, DECCW 2010. Available online at: <https://www.heritage.nsw.gov.au/assets/Uploads/files/Due-Diligence-Code-of-Practice-for-the-Protection-of-Aboriginal-Objects-in-New-South-Wales.pdf>
- Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW. OEH 2011. Available online at: <https://www.heritage.nsw.gov.au/assets/Uploads/files/Guide-to-Investigating-Assessing-and-Reporting-on-Aboriginal-Cultural-Heritage-in-New-South-Wales.pdf>
- Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales, DECCW 2010. Available online at: <https://www.heritage.nsw.gov.au/assets/Code-of-Practice-for-Archaeological-Investigation-in-NSW.pdf>
- Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010. DECCW 2010. Available online at: <https://www.heritage.nsw.gov.au/assets/Uploads/files/Aboriginal-Cultural-Heritage-Consultation-Requirements-for-Proponents.pdf>
- Applying for an Aboriginal Heritage Impact Permit Guide for Applicants, OEH 2011. Available online at: <https://www.heritage.nsw.gov.au/assets/Uploads/files/Applying-for-an-Aboriginal-Heritage-Impact-Permit-Guide-for-applicants..pdf>

LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D3
FILE No.	DA94/2022/1
ADDRESS	66 New Beach Road DARLING POINT
COUNCIL WARD	Double Bay
SITE AREA	325.4m ²
ZONING	R3 Medium Density Residential
PROPOSAL	Alterations and additions comprising a new enclosed addition at roof level.
TYPE OF CONSENT	Local development
COST OF WORKS	\$198,000.00
DATE LODGED	16/03/2022
APPLICANT	Mr R Zha & Mrs X Zha
OWNER	Mrs X Zha
AUTHOR	Mr M D'Alessio
TEAM LEADER	Mr M Moratelli
SUBMISSIONS	3
RECOMMENDATION	Refusal

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

The application is to be determined by the Woollahra Local Planning Panel as it falls under the category of:

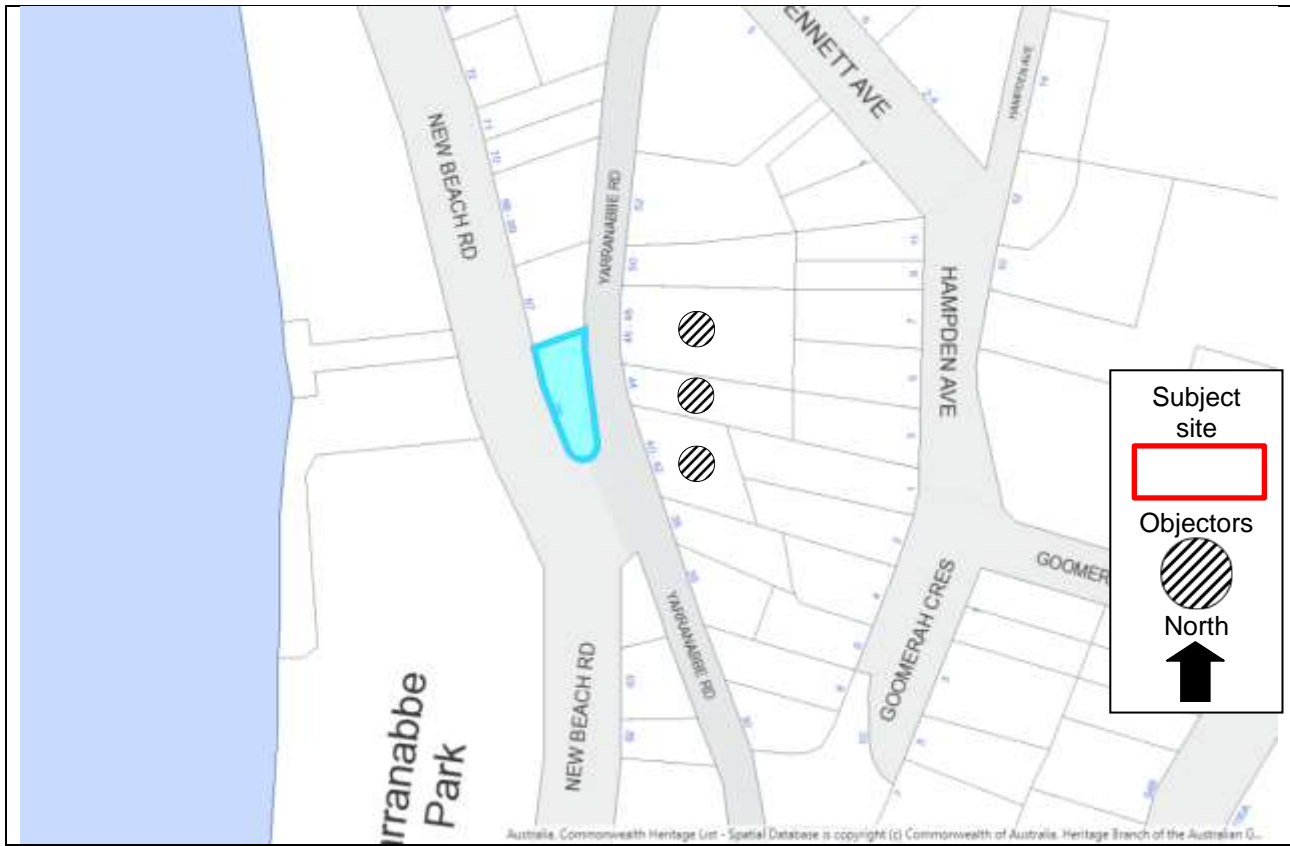
- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%

2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for refusal because:

- It is considered to be unsatisfactory with planning provisions contained in WLEP 2014 and WDCP 2015
- It will have adverse effects on the amenity of adjoining properties and/or local built and natural environment such that refusal is justified
- The site is not suitable for the proposed development
- The proposal is not in the public interest

3. LOCALITY PLAN



4. PROPOSAL

The proposal, involves alterations and additions to the second floor level of a dwelling house comprising the following works:

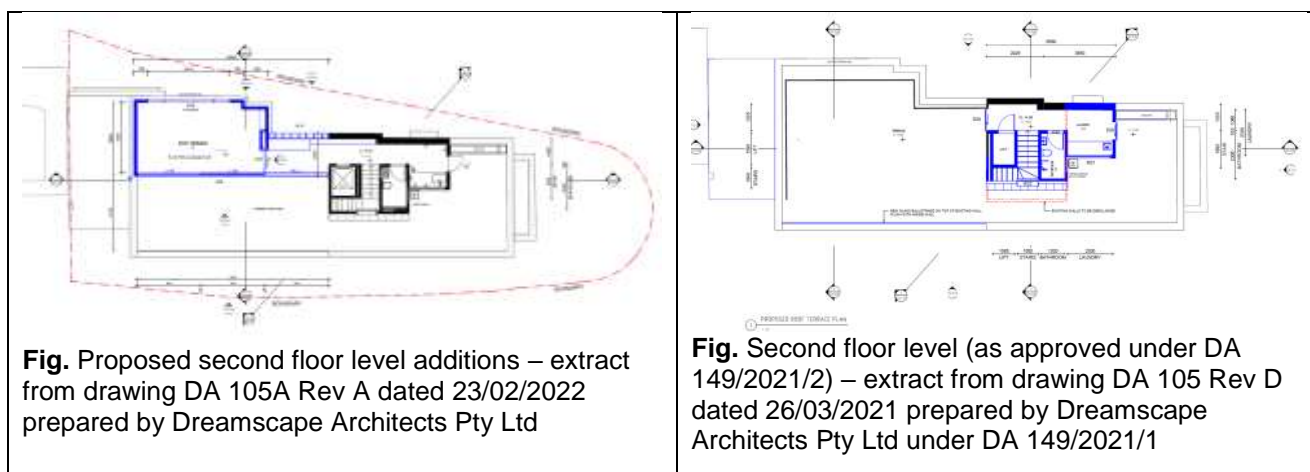
- Adaptation of an existing uncovered private open space roof terrace into an enclosed living area additions (habitable) to access structure (non-habitable) previously approved to be altered under DA 149/2021/1.



Fig. Proposed street front elevation – extract from drawing DA 2000A Rev A dated 23/02/2022 prepared by Dreamscape Architects Pty Ltd



Fig. Street front elevation (as approved under DA 149/2021/2) – extract from drawing DA 1000 Rev A dated 05/08/2021 prepared by Dreamscape Architects Pty Ltd



5. ISSUES

5.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
Clause 4.3(2A)	Height of Buildings	3.12m or 32.8% departure from the 9.5m control	Unsatisfactory – Clause 4.6 request not supported
Clause 4.3A	Height of Buildings (Secondary Building Height)	3.64m or 56% departure from the 6.5m control	Unsatisfactory – Clause 4.6 not submitted

5.2 Primary Issues

Issue	Conclusion	Section
Height, bulk, scale, form, design and siting of the proposed alterations and additions results in adverse view impacts to surrounding properties.	The proposed height, bulk, scale, form, design and siting of the proposed alterations and additions results in adverse view impacts to surrounding properties contrary to the relevant provisions contained in the State Environmental Planning Policy (Biodiversity and Conservation) 2021, Woollahra Local Environmental Plan 2014 and Woollahra Development Control Plans 2015.	12, 13, 14 and recommended reasons for refusal

5.3 Summary of Submissions

Issue	Conclusion	Section
Height of buildings - Non-compliance with the 9.5m maximum height of buildings under Clause 4.3 of the Woollahra LEP 2014, including: <ul style="list-style-type: none"> Breach results in adverse view impacts to surrounding properties Submitted Clause 4.6 variation request not well founded 	<p>The proposal is recommend for refusal including for the reasons raised in the objections.</p> <p>Non-compliance with the 9.5m maximum height of buildings under Clause 4.3(2A) and non-compliance with the 6.5m maximum height of buildings at the highest part of the land (exclusive of any access handles) under Clause 4.3A of the Woollahra LEP 2014 is not supported for the following reasons:</p> <ul style="list-style-type: none"> Height non-compliance results in adverse view impacts to surrounding properties. The proposed height, bulk, scale, form and siting of the proposed alterations and additions are inconsistent with surrounding development. 	13.3 and recommended reasons for refusal

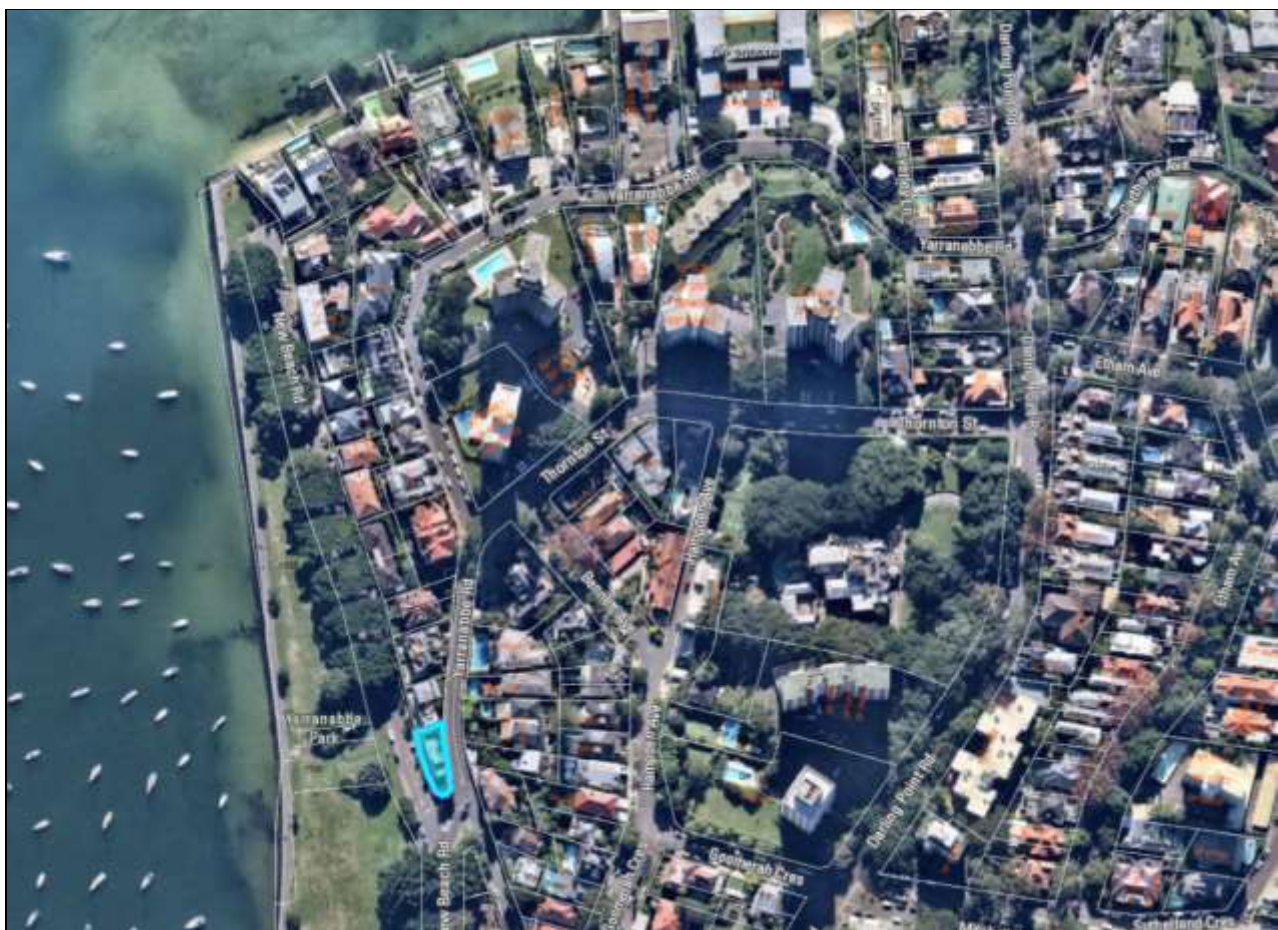
Issue	Conclusion	Section
Private view loss to surrounding properties (2/42 Yarranabbe Road, Darling Point, 44 Yarranabbe Road, Darling Point. 1/46-48 and 2/46-48 Yarranabbe Road, Darling Point) resulting from non-compliance with relevant provisions of SEPP (Sydney Harbour Catchment) 2005, Woollahra LEP 2014 and the Woollahra DCP 2015.	<p>The proposal is recommend for refusal including for the reasons raised in the objections.</p> <p>The proposed height, bulk, scale, form and siting of the proposed alterations and additions results in adverse view impacts to surrounding properties contrary to the relevant provisions contained in the State Environmental Planning Policy (Biodiversity and Conservation) 2021, Woollahra Local Environmental Plan 2014 and Woollahra Development Control Plans 2015., as follows:</p> <p>State Environmental Planning Policy (Biodiversity and Conservation) 2021: Considerations (a), (b) and (c) of Section 10.24 Maintenance, protection and enhancement of views of Chapter 10 Sydney Harbour.</p> <p>Woollahra Local Environmental Plan 2014: aims (a), (b), (g), (j) and (l) of Clause 1.2(2) objective 4 of the R3 Medium Density Residential zone 6.5m secondary building height (at the highest part of the land) under Clause 4.3A (3) 9.5m maximum building height under Clause 4.3 (2A)</p> <ul style="list-style-type: none"> • Woollahra Development Control Plan 2015: <ul style="list-style-type: none"> ○ Desired future character objectives O1, O7 and O8 of the Darling Point Residential Precinct under Part B1.2 Residential Precincts ○ O1, O2, O3 and C1 side setback control under Part B3.2.3 ○ O1, O2, O3, C1, C2 and C3 rear setback controls under Part B3.2.4 ○ O1, O5 and C1 wall height and inclined plane controls under Part B3.2.5 ○ O1, O2, C1, C2 and C3 floorplate controls under Part B3.3 ○ O1 and C1 streetscape and local character controls under B3.5.1 ○ O1, O3, C5, C6, C7 and C8 private view controls under B3.5.4 	12, 13, 14 and recommended reasons for refusal

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features
<p>The subject site: Lot 1 in DP111173 is located on the eastern side of New Beach Road, north of the intersection of New Beach Road and Yarranabbe Road. eastern side of the New Beach Road, Darling Point</p> <p>The site is irregular in shape and has a site area 335.1m² in DP111173. The applicant has specified a site area of 325.4m² which is assumed for this assessment.</p>

The site has a primary street front boundary length of 33.6875m in length to New Beach Road, Darling Point (west boundary), a 34.6725m rear boundary length to Yarranabbe Road (east boundary) and a 13.65m side boundary length adjoining No. 67 New Beach Road, Darling Point (north boundary).
Topography
The natural topography of the site has been altered. The site forms part of an early subdivision of the Yarranabbe estate from the 1856 located on the former shoreline of Darling Point. The site has been extensively filled and terraced and at its eastern rear and terminates at a retaining wall adjoining the Yarranabbe Rd footpath and roadway. The site falls towards the reclaimed land of New Beach Road and Yarranabbe Park.
Existing buildings and structures
The subject site contains an altered four (4) storey residential dwelling house.
Surrounding Environment
The site is located Darling Point Residential Precinct; Chapter B1.2 of the WDCP 2015 provides the following relevant character description: <ul style="list-style-type: none"> <i>The Darling Point precinct is located on a highly prominent peninsula on Sydney Harbour sited between Rushcutters Bay and Double Bay. Darling Point provides spectacular views to the harbour from both private houses and public spaces. The street trees and trees in private yards provide the peninsula with a soft landscape quality.</i> <p><i>The built environment is notable for the wide variety of architectural styles and housing types. The precinct also contains a significant number of heritage items...</i></p>



7. RELEVANT PROPERTY HISTORY

Current use
<ul style="list-style-type: none"> Residential dwelling house – Active construction site notice of commencement CR-2022 - 12433 18/02/2022 in relation to CC149/2021/2 and CC149/2021/1
Relevant Application History
<ul style="list-style-type: none"> DA 149/2021/1 approved 29/6/2021:

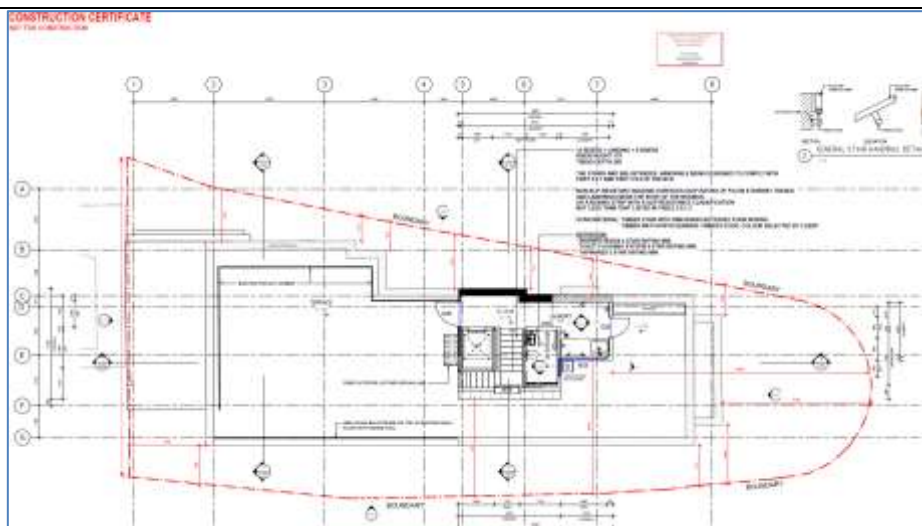


Fig. Extract of approved drawing DA A104 Rev B dated 17/12/2021 prepared by Dreamscape Architects Pty Ltd under CC 149/2001/1

- DA149/2021/2 titled: *Modifications to the approved scheme*, approved 04/11/2021.
- DA149/2021/1 titled: *Substantial alterations and additions to existing dwelling*, approved 29/06/2021.

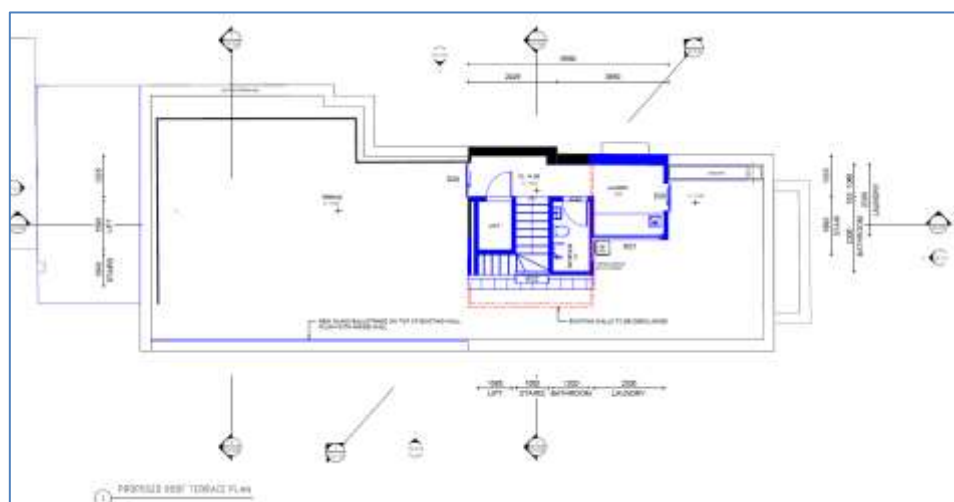
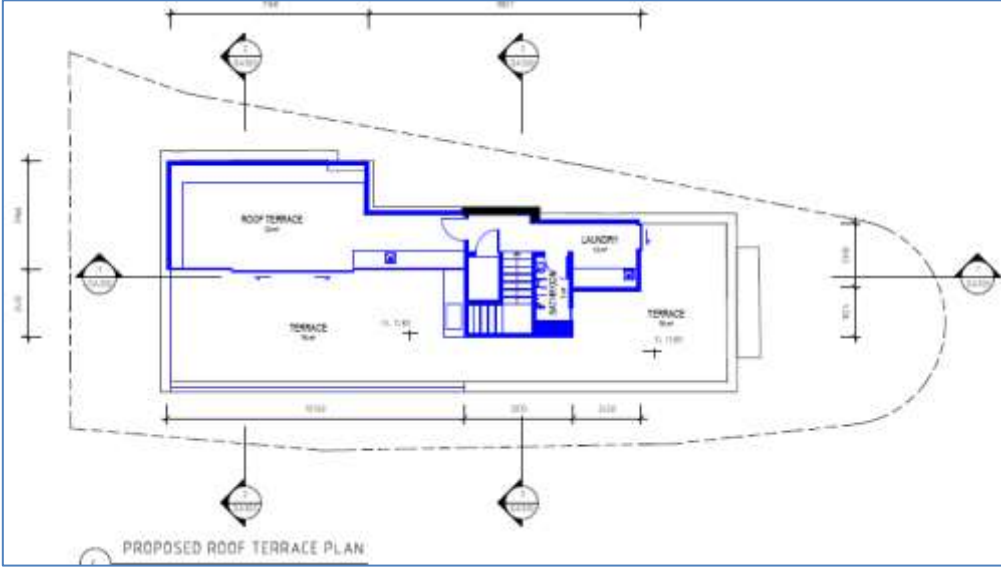


Fig. Extract of approved drawing DA 105 Rev D dated 26/03/2021 prepared by Dreamscape Architects Pty Ltd under DA 149/2021/1

- DA 39/2011/1 titled: *Dwelling House Increase size of existing window*, approved 15/02/2011.
- DA 114/2008/2 titled: *Dwelling House Increase height of attic window*, approved 07/04/2009.
- DA 771/2005/3 titled: *Section 96 Modification Internal changes to garage level, delete plunge pool and planter boxes and extend existing pergola; changes to windows and entry gate, add window to garage level*, approved 16/01/2009.
- DA 114/2008/1 titled: *Dwelling House Internal modifications, addition of staircase and a roof terrace and extension of existing balcony*, approved 19/08/2008.
- DA 771/2005/2 titled: *Dwelling House Section 96 modification to change location of bathroom and walk-in wardrobe, add a staircase and include a roof terrace and amend balcony on first floor*, withdrawn 03/03/2008.
- DA 771/2005/1 titled: *Dwelling House Alterations and additions to existing dwelling*, approved 01/06/2006.
- DA 256/2005/1 titled: *Dwelling House Additions of a new passenger elevator, modification to 2 windows and AC plant*, approved 18/10/2005
- DA 37/2005/1 titled: *Dwelling House Alterations and additions primarily ground floor internal*, approved 15/04/2005.
- DA 634/2000/1 titled: *Extension of existing balcony on level one*, approved 15/09/2000.

<ul style="list-style-type: none"> DA 131/1993 Alterations & additions, withdrawn 16/05/1993. DA 470/1993 Alterations & additions, approved 01/03/1994. DA 1458/1969 Alterations & additions, dated 25/11/1969.
Relevant Compliance History
Nil.
Pre-DA
<ul style="list-style-type: none"> Pre-DA 19/2020/1 titled: <i>Alterations and additions to a dwelling house consultation</i>, meeting on 29/10/2020. The Pre-DA related to works approved under DA 149/2021 and works proposed under the current application.

Extract from Pre-DA 19/2020/1 drawing DA 102 rev C dated 09/10/2020 prepared by Dreamscape Architects Pty Ltd of second floor level additions.
Requests for Additional Information and Replacement Applications
Nil.
Land and Environment Court Appeal(s)
Nil.

8. REFERRALS

Referral	Summary of Referral Response	Attachment
Heritage	Satisfactory - Council's Heritage Officer reviewed the submitted documents in support of the proposal as the time of lodgment and advised that a formal referral response was not required as follows: <ul style="list-style-type: none"> The proposal does not need heritage referral and will be assessed by the Assessment officer under the current DCP controls. There will be no adverse impact on the heritage items located in close proximity to the site. 	N/A
Technical Services	Satisfactory, subject to conditions - Councils' Development Engineer reviewed the submitted documents in support of the proposal as the time of lodgment and advised that a formal referral response was not required subject to standard conditions of development consent: <ul style="list-style-type: none"> A8, B7, C5(\$9,435), C35, C36, C49, D10, E7, F7(g&j) 	N/A

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

- The provisions of any environmental planning instrument

2. The provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority
3. The provisions of any development control plan
4. The provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4
5. The provisions of the regulations
6. The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
7. The suitability of the site for the development
8. Any submissions made in accordance with this Act or the regulations
9. The public interest

9. ADVERTISING AND NOTIFICATION

9.1 Submissions

The application was advertised and notified from 6 April 2022 to 21 April 2022 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Three (3) submissions were received from:

1. Patricia Tardini 2/42 Yarranabbe Road Darling Point NSW 2027
2. XPACE Design Group on behalf of Jack and Maria Zoumaras of 44 Yarranabbe Road Darling Point NSW 2027
3. Dean Scotton Suite 202, 35 Doody Street Alexandria NSW 2015 on behalf of the owners of the residential apartment building at 46-48 Yarranabbe Road, Darling Point (Strata Plan 4056 and 47318)

The issues raised in the submissions have been summarised in Section 5.3 of this report and considered throughout the report.

9.2 Statutory Declaration

The applicant has completed the statutory declaration dated 17/06/2022 declaring that the site notice for DA94/2022/1 was erected and maintained during the notification period.

10. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

The provisions of SEPP (Resilience and Hazards) 2021 that are relevant to the subject site and application involve managing development in terms of the following:

- Chapter 4 Remediation of land

The application maintains the residential land use of the site and the subject land is not within an investigation area.

Assessment of the initial site evaluation information provided by the applicant indicates the land does not require further consideration under Clause 4.6 of the SEPP.

The proposal is therefore acceptable with regard to SEPP (Resilience and Hazards) 2021.

11. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate A446751 demonstrating compliance with the SEPP.

12. STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

The provisions of SEPP (Biodiversity and Conservation) 2021 that are relevant to the subject site and application involve managing development in terms of the following:

- Chapter 2 Vegetation in non-rural areas
- Chapter 10 Sydney Harbour Catchment

12.1 Chapter 2 Vegetation in non-rural areas

In terms of Chapter 2, the proposal is limited to second floor level additions and does not propose to alter or add to existing vegetated areas on the site.

12.2 Chapter 10 Sydney Harbour Catchment

The subject site is highly visible from Sydney Harbour. The site is located in the foreshores and waterways area. Aims (1) (a) of Chapter 10 specifies:

- *(a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained—
(i) as an outstanding natural asset, and
(ii) as a public asset of national and heritage significance,
for existing and future generations,*

Section 10.24 Maintenance, protection and enhancement of views is applicable to the subject development. The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows—

- *(a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,*
- *(b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,*
- *(c) the cumulative impact of development on views should be minimised.*

As set out under consideration of Part B3.5.4 Private views of the Woollahra DCP 2015, the proposal is not supported having regard to the proposed building height, bulk and scale, floor plate and resultant adverse private view impacts arising from the second floor level additions.

The proposal is therefore not acceptable with regard Section 10.24 Maintenance, protection and enhancement of views of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Refer to Reasons for Refusal.

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1 Part 1.2: Aims of Plan

The proposal is unsatisfactory in terms of the following aims of Clause 1.2(2) of the Woollahra LEP 2014 for the following reasons:

- *(b) to promote the management, development, conservation and economic use of property* – The proposed development will result in adverse impacts to the future management, development, and economic use of surrounding property.
- *(g) to protect amenity and the natural environment* – The proposal fails to achieve aim (g) as it would have an unacceptable impact on the amenity of surrounding properties and the New Beach and Yarranabee Road streetscape.
- *(j) to promote a high standard of design in the private and public domain* – The proposal fails to achieve aim (j) as it does not constitute a high standard of design in terms of achieving:
- *(l) to ensure development achieves the desired future character of the area* – The proposal fails to achieve aim (l) as the development is inconsistent with the desired future character of the Darling Point Residential precinct.

Accordingly, the proposal is unsatisfactory in terms of aims (a), (b), (g), (j) and (l) of Clause 1.2(2) of the Woollahra LEP 2014.

Refer to Refusal Reasons.

13.2 Land Use Table

The subject site land is located R3 Medium Density Residential zone land.

Clause 2.3 (2) specifies that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The proposal is permissible but is not consistent with the following objective of the R3 Medium Density Residential zone for the following reasons:

- *The proposal does not achieve Objective 4 which is to ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

Accordingly, the proposal is unsatisfactory in terms of the objective 4 of the R3 Medium Density Residential zone of the Woollahra LEP 2014.

Refer to Refusal Reasons.

13.3 Part 4.3: Height of Buildings

13.3.1. Part 4.3(2A): Height of Buildings

Clause 4.3(2A) limits the maximum height of a dwelling house on land in a R3 Medium Density Residential zone to 9.5m as follows:

(2A) Despite subclause (2) and clause 4.3A, the maximum height of a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.

The Woollahra LEP 2014 defines building height (*or height of buildings*) as follows:

“building height (or height of buildings) means:

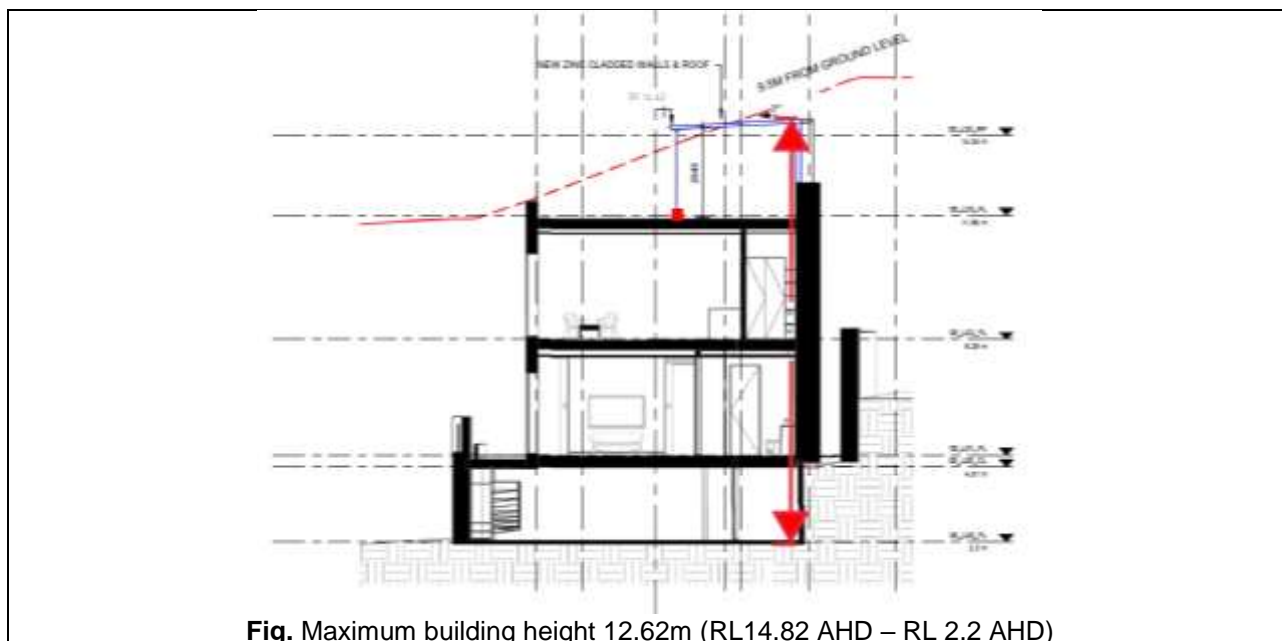
- (a) in relation to the height of a building in metres – the vertical distance from the ground level (existing) to the highest point of the building, or*

- (b) *in relation to the RL of a building – the vertical distance from the Australian Height Datum to the highest point of the building*

The applicant has incorrectly calculated building height using a hypothetical extrapolated method for determining ground level (existing).

	Approved	Proposed	Control	Complies
Maximum Building Height	12.56m (RL14.76 – RL2.2) Under DA149/2021/2	12.62m (RL14.82 – RL 2.2)	9.5m	No*

*Clause 4.6 submitted and found to be unsatisfactory.



The proposal does not comply with Clause 4.3(2A) of Woollahra LEP 2014 as detailed and assessed in Part 16.4.

13.3.2. Part 4.3A: Exceptions to building heights (Areas A–H)

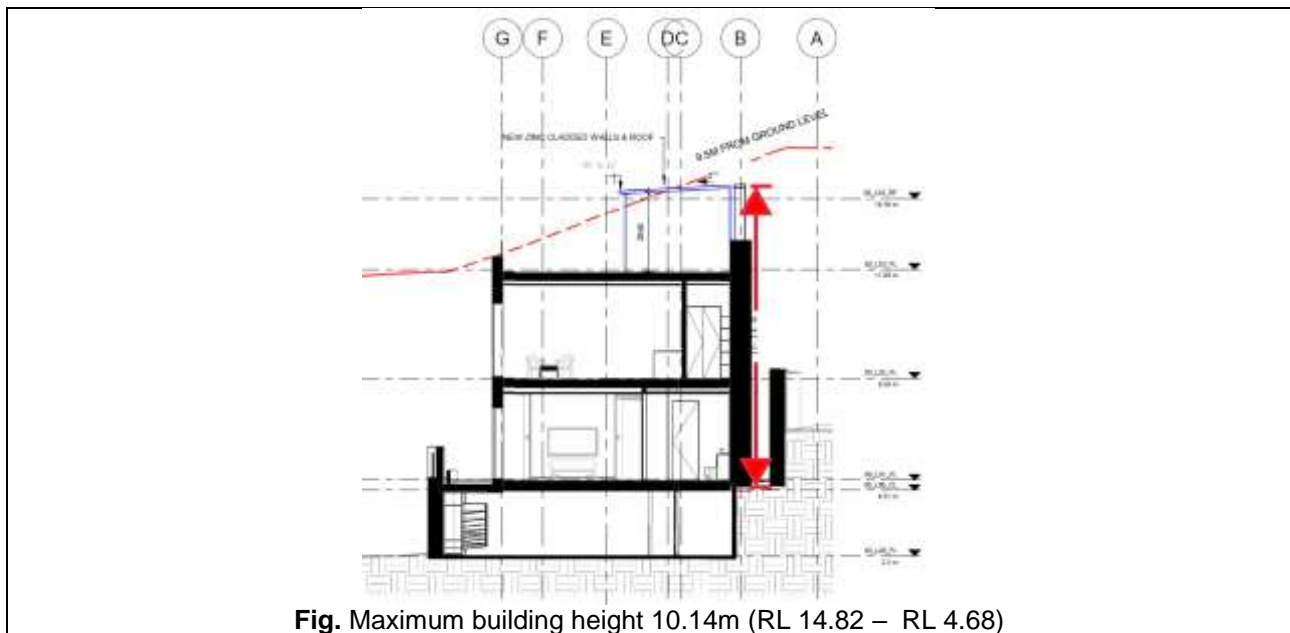
Clause 4.3A Exceptions to building heights (Areas A–H) applies to the subject site located to land identified as “Area C”.

Clause 4.3A (3) limits development at the highest part of the subject site’s land to a maximum building height of 6.5m.

The highest part of the site’s land is detailed in Section 2, to drawing DA300A Rev A dated 23/02/2022 prepared by Dreamscape Architects Pty Ltd.

	Existing	Proposed	Control	Complies
Maximum Building Height at the highest part of the land (exclusive of any access handles)	10.09m (RL14.76 – RL4.67)	10.14m (RL 14.82 – RL4.68)	6.5m	No*

*Clause 4.6 variation request not submitted



The proposal does not comply with Clause 4.3A of Woollahra LEP 2014.

The application has not been supported by a Clause 4.6 written request in terms of the proposed departure from the secondary building height standard under Clause 4.3A as detailed and assessed in Part 13.4.

13.4. Part 4.6: Exceptions to Development Standards

13.4.1. Departure

The proposal involves the following non-compliances with the Woollahra LEP 2014:

- Non-compliance with the 6.5m height of buildings control at the highest part of the land under Clause 4.3A Exceptions to building heights (Areas A–H) of the Woollahra LEP 2014.
- Non-compliance with the 9.5m height of buildings control under Clause 4.3(2A) of the Woollahra LEP 2014.

13.4.2. Purpose

Part 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

13.4.3. Written Request

Part 4.6(3) stipulates that a written request is required from the applicant that justifies the contravention of the development standard by demonstrating that compliance with is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided a detailed clause 4.6 written request prepared by Barker Ryan Stewart Pty Ltd, which justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances and that there are sufficient environmental planning grounds to justify the non-compliance.

The applicant's written request in relation to the departure from the building height development standard under Clause 4.3(2A) includes:

- *Strict compliance with the development standard is considered unnecessary in the circumstances of the proposed development given the height variation and will result in a better urban design outcome than a development that incorporates strict compliance with the control.*
- *The proposed architectural design seeks to retain and expand the existing dwelling in accordance with the objectives of the R3 Medium Density Residential zone.*
- *The design and occupation of the building will generate no unacceptable amenity or environmental impacts on surrounding development.*
- *The clause 4.6 objection has determined that there are sufficient environmental planning grounds to warrant the variation and the proposed development, inclusive of variation to height, is consistent with relevant LEP objectives. The consent authority can be assured that contravention of the control will not result in any unreasonable environmental planning impacts and the request for variation to the height control is therefore considered to be in the public interest.*

The Clause 4.6 written request is silent in terms of Clause 4.3A Exceptions to building heights (Areas A–H) of the Woollahra LEP 2014.

13.4.4. Clause 4.6(4) Assessment

Clause 4.6 (4) 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.*

13.4.5. Clause 4.6(4)(a)(i) - Assessment

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be addressed by CI 4.6(3). There are two separate matters for consideration contained within CI 4.6(3) and these are addressed as follows:

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

The applicant's written request has not demonstrated that the Clause 4.3(2A) development standard is unreasonable or unnecessary in the circumstances of the case. The written request has not demonstrated how the objectives of the height of buildings development standard are achieved, notwithstanding the non-compliance.

In the circumstances of the case the applicant's written request relies upon an incorrectly calculated maximum building height, specifies that the proposed building height variation will not cause adverse view loss.

The written request is silent in terms of Clause 4.3A Exceptions to building heights (Areas A–H) of the Woollahra LEP 2014.

The applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Cl 4.6(3)(a). The objectives of the development standard are discussed further in the assessment of Clause 4.6(4)(a)(ii).

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

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See Four2Five Pty Ltd. v Ashfield Council. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act. '

In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

S1.3 of the EPA Act reads as follows:

1.3 Objects of Act

(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicant's written request, which supports the proposed non-compliance with the height of buildings standard, has not adequately demonstrated that the proposed development satisfies the Clause 1.3 objects of the Environmental Planning and Assessment Act 1979 as copied above.

Therefore, it is considered that the applicant's written request has not adequately demonstrated sufficient environmental planning grounds to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the consent authority cannot be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

Clause 4.6(4)(a)(ii) - Assessment

Clause 4.6(a)(a)(ii) requires the consent authority to be satisfied that:

- 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*

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the height of buildings development standard and the objectives of the R3 Zone. An assessment against these objectives is provided below:

The objectives underlying Clause 4.3 Height of buildings

- (a) *to establish building heights that are consistent with the desired future character of the neighbourhood,*

The proposed height variation would result in a dwelling house of an inappropriate height, bulk and scale, floor plate and contextually inconsistent with the desired future character for the Darling Point Residential Precinct as set out in Part B1.2 of the Woollahra DCP 2015.

Contrary to the desired future character statement the proposal does not result in development that achieves suitable boundary setbacks, roof forms and the thoughtful distribution of building form across the subject site which provides for adequate view sharing for surrounding private properties.

The proposal does not achieve consistency with objective (a).

- (b) *to establish a transition in scale between zones to protect local amenity,*

The applicant's written request has not demonstrated that the proposal accords with objective (b), having regard to subclause 2A of Clause 4.3 and Clause 4.3A of the Woollahra LEP 2014.

The proposal does not achieve consistency with objective (b).

- (c) *to minimise the loss of solar access to existing buildings and open space,*

The proposal does not result in adverse overshadowing impacts to existing buildings and open space. The proposal therefore achieves consistency with objective (c).

- (d) *to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*

The applicant's written request specifies that the proposed height exceedance will generate no unacceptable view impacts to the surrounding residential properties, or areas within the public domain.

However, non-compliant building elements of the second floor level additions, located above the maximum building height control, directly contribute to adverse disruption of views to surrounding properties.

As such, this assessment is not satisfied that the proposal accords with objective (d).

(e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.,

The proposal does not have an adverse impact upon public and private views of the harbour. The proposal achieves consistency with objective (e).

The objectives of the R3 Medium Density Residential zone

The proposal is also considered against the objectives applying to the R3 Zone:

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

The proposed built form is excessive in height, bulk and scale and represents development of the site in excess of the reasonable housing needs in terms of residential dwelling houses within a medium density residential environment when compared to the existing streetscape character.

- *To provide a variety of housing types within a medium density residential environment.*

The proposal does not adversely impact on achievement of this objective.

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

The proposal is not in conflict with this objective.

- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

The proposed variation is of an extent that would create a bulk and scale which is incompatible with the desired future character of the Daring Point Residential Precinct. It is considered that the amenity of surrounding properties would be reduced as a consequence of an excessive height, bulk and scale created by the non-compliance.

Clause 4.6(4)(a)(b) - Assessment

The Department issued Planning Circular No.PS20-002 (dated 5 May 2020) which notified Councils of arrangements "...where the Director General's concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument...". Clause 64 of the EPA Regulations provides that Council may assume the Director-General's [Secretary's] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

In relation to this Part, Preston CJ in Initial Action Pty Ltd v Woollahra Municipal Council (2018) establishes *Planning Principles* which are summarised and assessed as follows:

- Does the applicant's written request demonstrate non-compliance with the development standard is unreasonable or unnecessary?*

No. For the reasons already outlined and discussed in this assessment, the proposal fails to satisfy all objectives which underpin the development standard.

ii. Are there sufficient environmental planning grounds to justify contravening the development standard?

No. The submitted Clause 4.6 variation request has not demonstrated that there are sufficient environmental grounds to justify contravening the development standard in this instance.

iii. The public interest and whether the proposal is consistent with the objectives of the development standard.

No. The proposal height variation is not deemed to be in the public interest as it contravenes the objectives of the development standard.

13.4.6. Conclusion

The written submission provided by the applicant is limited to non-compliance with the 9.5m height of buildings control under Clause 4.3(2A) of the Woollahra LEP 2014.

The written submission is silent in terms of Clause 4.3A Exceptions to building heights (Areas A–H) of the Woollahra LEP 2014.

The written submission has not adequately demonstrated that the variation of the development standard prescribed by 4.3(2A) is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

The consent authority cannot, in this instance, be satisfied that the applicant's written request has demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the standard.

Furthermore, the consent authority cannot be satisfied that the proposal upholds the public interest as the non-compliance is inconsistent with the objectives of the development standard and those applicable to development within the subject R3 Medium Residential Density zone. Departure from the control is not supported.

13.5. Part 5.10: Heritage Conservation

The objectives of Clause 5.10 Heritage conservation are as follows:

- (a) to conserve the environmental heritage of Woollahra,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The subject site is located in the vicinity of the heritage items Nos. 178, 191, 670 and 678 described as follows in Schedule 5 Environmental heritage of the Woollahra LEP 2014:

Heritage items and buildings, works, relics or trees within a heritage conservation area

The following listed heritage items are located in vicinity to the subject site:

Suburb	Item name	Address	Property description	Significance	Item no
Darling Point	"Callooa"—house and interiors, gardens	5 Bennett Avenue	Lot 1, DP 939662	Local	78
Darling Point	Yarranabbe Park seawall and Rushcutters Bay Park seawall	New Beach Road and 2A New South Head Road	Part of Lots 208 and 1666, DP 752011; part of Lots 7328–7330, DP 1161999; part of Lot 7042, DP 1073879; part of Lot 7321, DP 1165813	Local	670
Darling Point	Bus stop shelter	New Beach Road intersection with Yarranabbe Road	Road reserve	Local	178
Darling Point	Former grounds of Goomerah including stone retaining wall and Canary Palm	38 Yarranabbe Road	SP 50008	Local	191
Darling Point	Street name inlays	Various		Local	672

Aboriginal Object or Place

The proposal does not include new earthworks. As set out previously, the natural topography of the site has been substantially altered and is extensively filled and terraced.

The subject site is not identified as potentially Aboriginal Heritage Sensitive land.

As part of the review of the submitted application, Council's Heritage Officer advised that a formal referral was not required as there will be no adverse impact on the heritage items located in close proximity to the site.

Accordingly, the proposed development is acceptable with regard to the objectives in Parts 5.10 of the Woollahra LEP 2014.

13.6. Part 5.21: Flood Planning

The proposal is acceptable with regard to Part 5.21 of Woollahra LEP 2014.

13.7. Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject sites land is located in both "Class 2" and "Class 5" areas as detailed on the Acid Sulfate Soils Map of the Woollahra LEP 2014. The proposal does not include earthworks. Accordingly, preliminary assessment is not required and there is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Part 6.1.

13.8. Part 6.2: Earthworks

The proposal does not include earthworks. The proposal is therefore acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

14.1. Chapter B1 Residential Precincts

This chapter seeks to ensure that development has regard to its context and is compatible with the desired future character for each precinct as described in this chapter.

14.1.1. Part B1.2 Darling Point Residential Precinct

The B1.2.1 precinct character statement includes:

- *The Darling Point precinct is located on a highly prominent peninsula on Sydney Harbour sited between Rushcutters Bay and Double Bay. Darling Point provides spectacular views to the harbour from both private houses and public spaces. The street trees and trees in private yards provide the peninsula with a soft landscape quality.*
- *Significant landmarks within the precinct include: St Mark's church, Ascham School, the heritage properties of Babworth House and Bishops court, harbourside reserves at McKell Park and Yarranabbe Park, and the heritage listed Sir David Martin Reserve which contains the Drill Hall, former HMAS Rushcutter and HMAS Rushcutter slipway.*
- *The Rushcutters Bay foreshore area comprises a mix of buildings, including heritage listed semi-detached dwellings on the south-eastern side of New Beach Road, as well as commercial uses relating to the marinas at Rushcutters Bay.*

The B1.2.2 Desired future character statement includes:

- *The Darling Point precinct is an established residential area with a rich mixture of architectural styles and forms. Development is to retain the visual prominence of the tree canopy, particularly along the ridgeline of Darling Point Road.*
- *Most development is in the form of alterations and additions to the existing housing stock.*
- *Attention must also be given to retaining views from the public domain and providing for view sharing from private properties; these can be achieved by providing suitable side boundary setbacks, roof forms and thoughtful distribution of building form across the site.*

Streetscape character and key elements of the precinct

Development is to respect and enhance the existing elements of the character that contribute to the precinct. The streetscape character and key elements of the Darling Point Residential precinct are as follows:

- a) the rich mixture of architectural styles;*
- b) the stepping of development on the hillside to minimise visual impact and follow the landform;*
- c) the significance of heritage items and the adjacent heritage conservation areas of Darling Point Road, Etham Avenue, Mona Road and Loftus Road/Mona Road and individual heritage items;*
- d) well established gardens and trees;*
- e) remnant estate gardens;*
- f) historic stonewalls on private and public land;*
- g) historic stairway and streetscape elements;*
- h) pedestrian links through the precinct;*
- i) mature street trees especially along the ridgeline;*
- j) the highly visible tree canopy providing a dense green backdrop to views from Sydney Harbour and surrounding lands;*
- k) extensive views afforded from the public spaces including corridors between buildings and the preservation of important iconic and harbour views; and*
- l) waterfront reserves and parks.*

Desired future character objectives

The desired future character objectives of the Darling Point Precinct are as follows:

- O1 To respect and enhance the streetscape character and key elements of the precinct.*
- O2 To maintain the sense of the historic grand estates.*
- O3 To maintain the evolution of residential building styles through the introduction of well designed contemporary buildings incorporating modulation and a varied palette of materials.*
- O4 To maintain the heritage significance of heritage items and buildings in adjacent heritage conservation areas.*
- O5 To ensure that development does not reproduce or match existing intrusive buildings.*
- O6 To ensure that alterations and additions to period buildings, such as semi-detached dwellings and attached dwellings, do not detract from the character of these buildings and their presentation to the street.*
- O7 To ensure roof forms are articulated to provide attractive roofscapes and designed to minimise view loss.*
- O8 To design and site buildings to respond to the topography and minimise cut and fill.*
- O9 To ensure that development is subservient to the tree line along the ridge of Darling Point Road when viewed from the harbour.*
- O10 To retain and reinforce the setting of mature street trees and garden plantings especially along the ridgeline by retaining existing trees and providing appropriate replacement planting.*
- O11 To retain the landscape setting of the locality by maintaining landscaped areas around buildings and minimising hard stand areas.*
- O12 To retain and reinforce the stone and brick retaining walls that characterise the sloping streets of the precinct.*
- O13 To protect important iconic and harbour views from public spaces and to provide additional important views from public spaces when possible.*

The subject development does not adjoin a contributory item or heritage conservation area.

With the exception of boundary sandstone walling, the subject sites altered building does not comprise historic or aesthetic value, sympathetic contemporary design is permitted.

Contrary to the desired future character statement the proposal does not result in development that achieves suitable boundary setbacks, roof forms and the thoughtful distribution of building form across the subject site which provides for adequate view sharing for surrounding private properties.

The proposal is limited to the second floor level additions that includes breaches of the maximum building height control under Clause 4.3(2A) of the Woollahra LEP 2014; new floorplate outside the building envelope contrary to the side setback control under Part B3.2.3, rear setback controls under Part B3.2.4 and Wall height and inclined plane controls under Part B3.2.5 and involves floorplate in excess to that which is permissible under C1 of Part B3.3 which does not achieve an appropriate form, height, bulk and scale when viewed from Sydney Harbour.

The proposal does not fulfil the relevant B1.2.2 objectives, and preserves or enhances the important character elements for the Darling Point Precinct, having particular regard to desired future character objectives O1, O7 and O8:

- *O1 To respect and enhance the streetscape character and key elements of the precinct.*
- *O7 To ensure roof forms are articulated to provide attractive roofscapes and designed to minimise view loss*
- *O8 To design and site buildings to respond to the topography and minimise cut and fill.*

The proposed scale, form, design and siting of the proposed alterations and additions is an overdevelopment in terms of the relevant development controls and the pattern of surrounding development.

Accordingly the proposal is not satisfactory in terms of Part B1.2 Darling Point Residential Precinct of the WDCP 2015.

Refer to Refusal Reasons.

14.2. Chapter B3: General Development Controls

The subject site's allotment is an atypical site in terms of shape and outline.

The site's dwelling predates the current building envelope controls of the Woollahra DCP 2015.

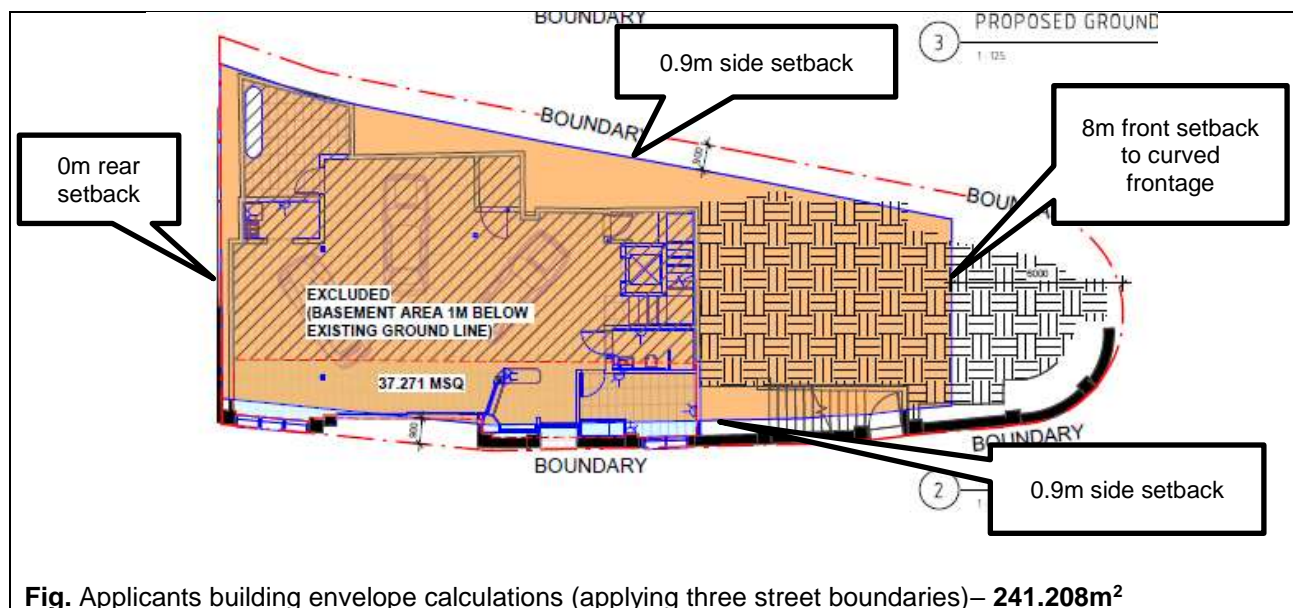
The existing dwelling and as approved to be altered under DA149/2021/1 includes the following building envelope non-compliances:

- Northern side setback non-compliance with the side setback control under Part B3.2.3.
- Non-compliance with the rear setback controls under Part B3.2.4
- Non-compliance with the wall height and inclined plane controls under Part B3.2.5.
- Non-compliance with the permissible numerical floorplate controls under Part B3.3.
- Non-compliance with the maximum building height development standard under Clause 4.3(2A) of the Woollahra LEP 2014.

The proposed alterations and additions do not seek to alter or exacerbate the front and side setback non-compliances under Part B3.2 of the Woollahra DCP 2015

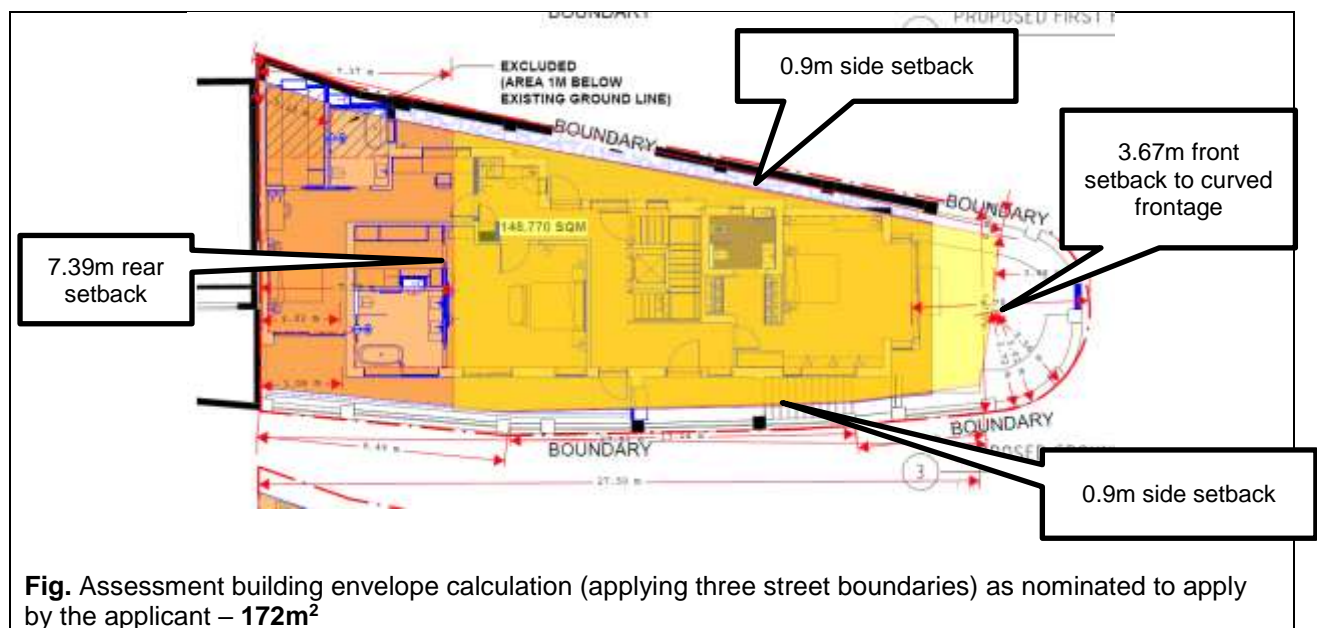
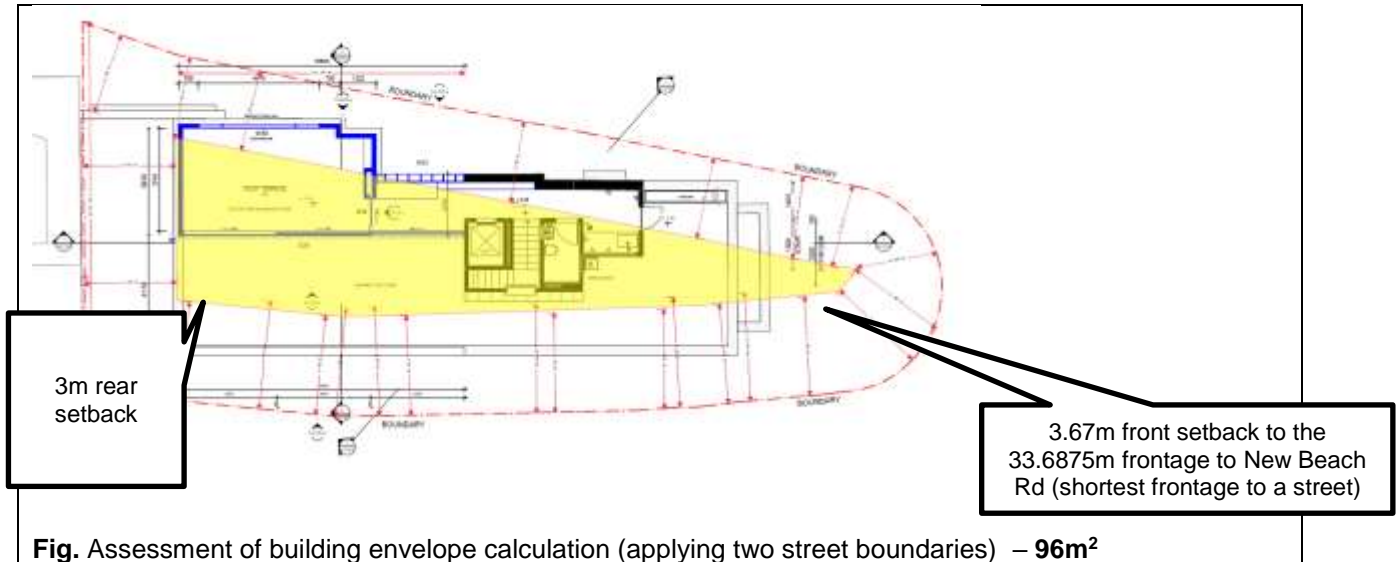
In terms of Part B3.2 Building Envelope and Part B3.3 Floorplate, Page 25 of the SEE in support of the proposal specifies that:

- *The buildable area is identified on DA402A and is shown as being compliant with the floor plate control. The buildable area is calculated as being 241.208m² where the southern façade is assumed as the front setback (in accordance with B3.2.2). A maximum floorplate of 397.99m² is therefore applicable, where the proposed GFA is 370.199m².*



As shown by the following assessment, Sheet DA402A cannot be relied upon in terms of establishing the subject site's theoretical building envelope and resultant permissible floorplate, the documentation includes the erroneous calculations in terms of the application of the following controls:

- C1 front setback control under Part B3.2.2
- C1 and C2 rear setback controls under Part B3.2.4
- C1 and C2 wall height and inclined plane controls under Part B3.2.5
- C1 and C2 floorplate controls under Part B3.3
- The maximum building height under Clause 4.3(2A) of the Woollahra LEP 2014



14.2.1. Part B3.2: Building Envelope

Site Area: 325.4m ²	Existing	Proposed	Control	Complies
C1 B3.2.2 - Front Setback (south elevation) • Second floor level	10.845m	No change	3.67m	Yes
C1, C2, C3 & C4 B3.2.4 - Rear Setback (north elevation) • Second floor level	14m	3.3m	7.39m	No
C1 B3.2.3 - Side Boundary Setbacks (east elevation) • Second floor level	1.3m – 2.275m	1.1m – 2.8m	0.9m	Yes

Site Area: 325.4m ²	Existing	Proposed	Control	Complies
C1 B3.2.3 - Side Boundary Setbacks (west elevation) • Second floor level	4m	4.9m	0.9m	Yes
C1 B3.2.5 - Maximum Wall Height • Rear East elevation	10.09m (RL14.76)	10.14m (RL 14.82)	7.2m	No
C2 B3.2.2 - Maximum Unarticulated Length to Street	<6m	No change	6.0m	Yes
C4 B3.2.3 - Maximum Unarticulated Wall Length	<12m	No change	12m	Yes

* Existing non-compliance and/or not determinative to this application

The building envelope controls in Part B3.2 establish a three dimensional space within which a building is to be located on a site relative to setbacks from the front street boundary, rear and side boundaries. The building envelope is established by applying the following controls:

- front, side and rear setbacks;
- maximum wall height of 7.2m;
- inclined plane of 45° taken from the maximum wall height; and
- maximum building height set by Woollahra LEP 2014.

The building is to be contained within the building envelope, but is to occupy only a percentage of the building envelope (as determined by the floorplate controls in Section B3.3 Floorplate). There is an allowance for eaves outside the building envelope as long as the protrusion is below the inclined plane (where one applies)

Part B3.2.2: Front Setback

Control C1 specifies the following:

- *C1 The front setback of the building envelope is determined by averaging the three most typical setbacks of the four closest residential buildings that face the same side of the street (refer to Figure 3).*

Note: The setback is determined by the distance between the primary street boundary and the outside face of the front building wall, or any protruding balcony deck or the like (excluding car parking structures).

Note: The front setback is the horizontal distance between the building envelope and the primary street boundary, measured at 90° from the boundary (refer to Figure 2).

Note: On corner lots, the shortest frontage to a street is typically where the front setback applies.

The subject site is an irregularly shaped corner allotment with two street frontages:

- 33.6875m primary street front boundary length to New Beach Road, Darling Point (west boundary).
- 34.6725m rear boundary length to Yarranabbe Road (east boundary).

For ease of assessment, this report has adopted the applicant's preference to consider the 10.595m length (3.734 radius) curved frontage to the intersection of New Beach Road and Yarranabbe Road as a separate street frontage.

The numerical front setback control under C1 is the horizontal distance between the building envelope and the primary street boundary (*average of the three most typical setbacks of the four closest residential properties* is No.70 - 4m, No.68–69 - 4m, No.67 - 3m and No. 63 – 0m), measured at 90° from the boundary. This equates to 3.67m.

Applying the applicant's nominated curved frontage to the intersection of New Beach Road and Yarranabbe Road as a separate street frontage, the proposed new works accord with the relevant numerical front setback controls.

Part B3.2.3: Side Setbacks

The side setback is the horizontal distance between the side property boundary and the building envelope, measured at 90° from the boundary at the front setback. Control C1 specifies the following:

- *C1 The minimum side setback for dwelling houses, semi-detached dwellings and dual occupancies is determined by the table in Figure 5A.*

Applying the applicant's nominated curved frontage to the intersection of New Beach Road and Yarranabbe Road as a separate street frontage to establish the front setback:

- Formulaic compliance with C1 (*where a site width measured along front setback line in metres is less than 9m*) results in 0.9m setback requirement.

The proposed second floor level additions seek to rely upon existing parapet walling located variously between 1.1m and 2.8m from the Yarranabbe Road boundary of the site (east elevation).

The proposed new works accord with the relevant numerical side setback controls.

Part B3.2.4: Rear Setbacks

Controls C1, C2 and C4 specify the following:

- *C1 The rear setback is a consequence of the site depth, front setback and building depth as set out in the formula at Figure 6.*
- *C2 The building depth is determined by the sliding scale in Figure 7 and applies to:
a) development in the R2 Low Density Residential Zone; and
b) dwelling house, semi-detached dwelling or dual occupancy in the R3 Medium Density Residential zone.*
- *C4 Notwithstanding C1 above, the minimum rear setback is 3m.*

Applying the applicant's nominated front setback, formulaic compliance with Formulaic compliance with controls C1 and C2 results in the following rear boundary setback area:

- With a site area of 325.4m², Figure 7 Building depth sliding scale equates to 65%. This would result in a theoretical building depth of approximately 20.54m (31.6m x 0.65) and resultant rear setback of 7.39m (31.6m – 20.54m - 3.67m).

The proposed second floor level additions seek to rely upon existing parapet walling sited 3.25m to 3.3m from the northern side boundary of the site.

The SEE in support of the proposal is silent in terms of non-compliance or otherwise with the rear setback controls under B3.2.4. The applicant's nominated building envelope calculation diagrams to Sheet DA402A do not include any consideration of the rear setback controls under B3.2.4.

Numerical non-compliance with the rear setback controls C1 and C2 are not supported having regard to the underlying objectives O1, O2 and O3:

- *O1 To provide private open space and landscaped areas at the rear of buildings.*
- *O2 To provide acoustic and visual privacy to adjoining and adjacent buildings.*
- *O3 To avoid an unreasonable sense of enclosure.*

The proposal is not satisfactory in terms of compliance with Part B3.2.4 of the WDCP 2015.

Refer to Refusal Reasons.

Part B3.2.5: Wall Height and Inclined Plane

C1 and C2 specify:

- *C1 On land zoned R2 Low Density Residential and for a dwelling house, semi-detached dwelling or dual occupancy in the R3 Medium Density Residential zone:*
 - a) *the wall height is 7.2m above existing ground level; and*
 - b) *an inclined plane is taken from a point 7.2m above existing ground level at each of the setbacks (the inclined plane is at 45 degrees from horizontal); and*
 - c) *roof eaves may protrude into the setback if below the inclined plane.*
- *C2 A variation to the wall height of 7.2m may be considered where the slope of the site within the building envelope is greater than 15 degrees. The variation will only be considered to walls located nearest to the downslope section of the building envelope, i.e. the section with the lowest existing ground level.*

As set out previously under B3.2.3 and B3.2.4, the proposed second floor level additions seek to rely upon existing parapet walling located variously between 1.1m and 2.8m from the Yarranabbe Road boundary and 3.25m to 3.3m from the northern side boundary.

As set out previously the proposed rear setback of the second floor level additions are not setback 7.39m in accordance with the theoretical building envelope rear setback for the site and breach the height and incline plane to the western elevation.

Accordingly, the proposed second floor level additions which detail rear wall heights of 10.14m (RL 14.82) above existing ground level (RL4.68) are contrary to the maximum 7.2m wall height control under C1 a) and the inclined plane control under C1 b) which is established at each of the building envelope setbacks.

The SEE in support of the proposal seeks variation to the C1 as follows:

- *Sheets DA402A identifies the applicable wall height and the proposed roof additions will exceed the wall height and inclined plane controls. However the site demonstrates a slope of 15.11 degrees across the building footprint. Sheet DA402A demonstrates that the lower portions of the roof balustrade and roof top level exceed the wall height control without consideration of the topography.*
- *The variation to the wall height is addressed in its entirety as it relates to the building envelope controls below.*

Variation to C1 is not supported having regard C2. The non-compliant rear wall elements are not sited to the nearest downslope section of the building envelope and do not achieve the underlying objectives O1 and O5 as follows:

- O1 To limit the bulk, scale and visual impact of buildings as viewed from the street and from adjoining properties.
- O5 To facilitate views between buildings.

The proposal is not satisfactory in terms of compliance with Part B3.2.5 of the WDCP 2015.

Refer to Refusal Reasons.

Conclusion

The proposal is not acceptable with regard to the building envelope controls in Part B3.2 of the Woollahra DCP 2015.

14.2.2. Part B3.3: Floorplates

Site Area: 324.5m ²	Existing	Proposed	Control	Complies
Maximum Floor Plate (1.65 x 172m ²)	239.5% 412m ²	266% 458m ²	165% 283.8m ²	No



Fig. Calculable floorplate ground floor level



Fig. Existing calculable floorplate first floor level

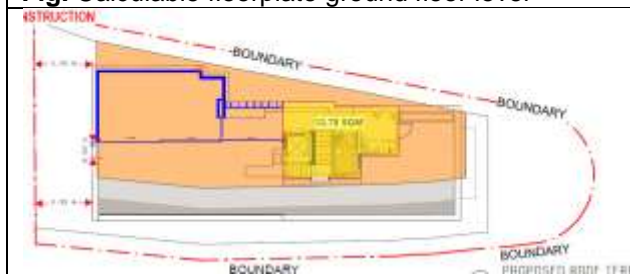


Fig. Existing calculable floor plate second floor level

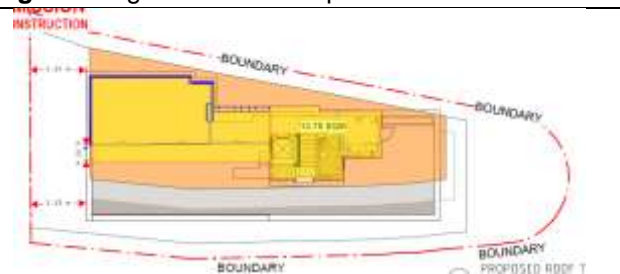


Fig. Proposed calculable floorplate second floor level

The explanation of B3.3 includes that the development potential for a site is determined by the total floorplate. This is calculated as a percentage of the buildable area. The buildable area is the area of the site that is identified once the front, rear and side setbacks have been established.

As set out previously, the subject site's allotment is atypical in terms of shape and outline.

As set out previously, the applicant calculated theoretical building envelope of 241.208m² cannot be relied upon in terms of establishing the subject site's and resultant permissible floorplate, the calculation includes the erroneous calculations in terms of the front setback (*averaging the three most typical setbacks of the four closest residential buildings that face the same side of the street*) and in not applying a minimum 7.39m rear setback.

As shown previously adopting the curved boundary intersection of Yarranabbe Road and New Beach Road as the shortest street frontage of the site would result in a theoretical buildable area of 172m².

Controls C1, C2, C3, C4 and C5 specify the following:

- *C1 The total floorplate of a development does not exceed 165% of the buildable area.*
- *C2. New floorplate is to be wholly within the building envelope (refer to C6 for exceptions).*
- *C3 The floorplates at each level are distributed to:*
 - a) *respond to the predominant character of the immediate streetscape;*
 - b) *retain public views; and*
 - c) *provide for view sharing of private views.*
- *C4 The built form complies with solar access and privacy controls in Section 3.5.2 Overshadowing and Section 3.5.4 Acoustic and visual privacy.*
- *C5 Where car parking is provided within the building envelope, the garage area (up to 40m²) is added to the permitted total floorplate.*

C1 limits the floorplate, being the measurable floor area as a proportion of the buildable area, is limited to 165%. In this instance, this equates to 283.8m².

Contrary to C1, the proposal details 458m² of calculable floorplate as follows:

- Ground floor level – 204m² (no change)
- First floor level – 184m² (no change)
- Second floor level – 70m² (24m² existing and 46m² proposed)

Contrary to C2 the proposal includes new floorplate located outside the building envelope in terms of compliance with:

- C1 and C2 rear setback controls under Part B3.2.4
- C1 and C2 Wall height and inclined plane controls under Part B3.2.5

Contrary to C3, proposed floorplate to the second floor level does not respond to the predominant character of the immediate streetscape and is inconsistent with providing for view sharing of private views.

The SEE in support of proposal specifies that the proposal accords with the applicable floor plate controls as follows:

- *The buildable area is identified on DA402A and shown as being compliant with the floor plate control. The buildable area is calculated as being 241.208m² where the southern façade is assumed as the front setback (in accordance with B3.2.2). A maximum floorplate of 397.99m² is therefore applicable, where the proposed GFA is 370.199m²*

As set out previously, the applicant's nominated building envelope calculation diagrams to Sheet DA402A cannot be relied upon in terms of establishing the subject site's theoretical building envelope and resultant permissible floorplate. Additionally Sheet DA402A does not detail calculated measurable floorplate in accordance with Part B3.3.

Non-compliance with C1, C2 and C3 is not supported having regard to the underlying objectives O1 and O2:

- *O1 To ensure the bulk and scale of buildings are consistent with the desired future character of the area.*
- *O2 To ensure the size and location of buildings allow for the sharing of views and minimise impact on the privacy and sunlight access to neighbouring properties.*

Refer to Refusal Reasons.

Conclusion

The proposal is not acceptable with regard to the floorplate controls in Part B3.3 of the Woollahra DCP 2015.

14.2.3. Part B3.5: Built Form and Context

Part B3.5.1: Streetscape and Local Character

O1 and C1 specify:

- *O1 To ensure that the built form is compatible with the streetscape and the desired future character of the area.*
- *C1 The building is consistent with the desired future character of the area set out in the precinct controls in Parts B1 and B2 of this DCP.*

As set out under consideration of Part B1.2: Darling Point Residential Precinct:

- Contrary to the desired future character statement the proposal does not result in development that achieves suitable boundary setbacks, roof forms and the thoughtful distribution of building form across the subject site which provides for adequate view sharing for surrounding private properties.

The proposal is limited to second floor level additions which are not acceptable in terms of the presentation of additional built form that positively contribute to the New Beach Road and Yarranabbe Road streetscapes.

Refer to Refusal Reasons.

Part B3.5.2: Overshadowing

The proposal is compliant in terms of the applicable objectives and controls:

- O1, C1 and C2 (overshadowing to adjoining properties)

Part 3.5.3: Public and Private Views

Public views

The proposal is compliant in terms of the applicable objectives and controls:

- O1, O2, C1, C2 and C3 (public views and vistas)

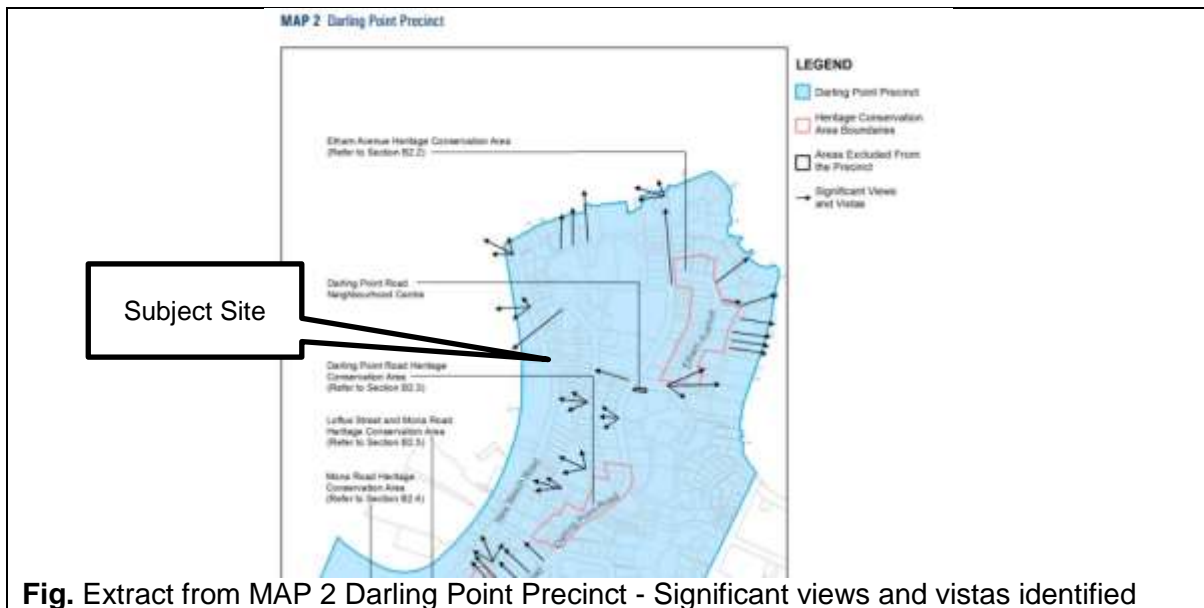


Fig. Extract from MAP 2 Darling Point Precinct - Significant views and vistas identified

Private views

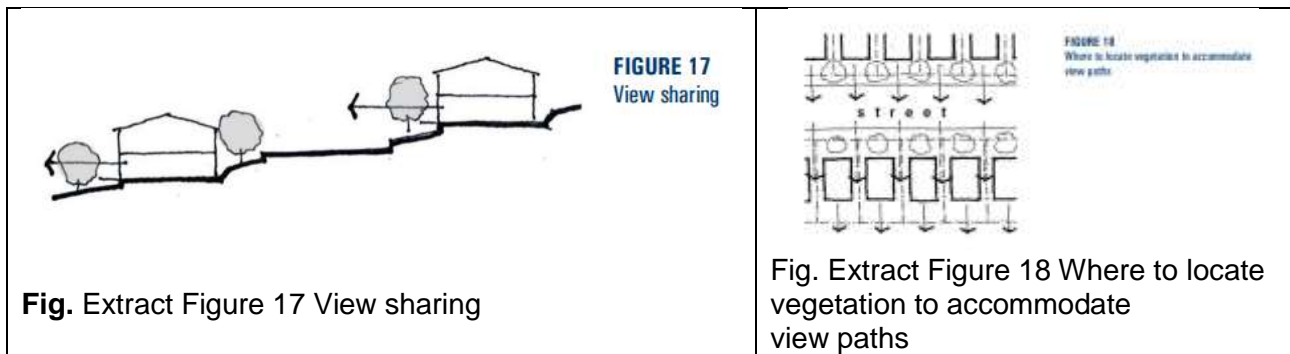
The explanation for B3.5.3 includes the following:

- Views are a special element of Woollahra's unique character. The sloping topography, leafy setting and harbour frontage combine to offer dramatic bushland and water views which contribute to the amenity of both private dwellings and the public domain.*
- View sharing concerns the equitable distribution of views between properties. The view sharing controls in this DCP seek to strike a balance between accommodating new development while providing, where practical, reasonable access to views from surrounding properties.*
- Development should be designed to reflect the view sharing principles in Tenacity Consulting v Warringah Council [2004] NSWLEC 140.*

Controls C5, C6, C7 and C8 specify as follows:

- C5 Development is sited and designed to enable a sharing of views with surrounding private properties, particularly from the habitable rooms (refer to Figures 17 and 18).*
- C6 Development steps down the hillside on a sloping site.*
- C7 The design of the roof form (including roof terraces, lifts, lift overruns, stairwells, access hatches, screens, and other like structures) provides for view sharing.*
- C8 Roof terraces are uncovered to provide for view sharing. All elements on roof terraces are to comply with the maximum building height control.*

Note: Access to roofs should not comprise visually prominent stand-alone structures such as lifts or large stairways, particularly on flat roofs.



The application has been subject to objections from the following properties on the basis of private view loss:

- No.2/42 Yarranabbe Road, Darling Point
- No. 44 Yarranabbe Road, Darling Point
- Unit 1 46-48 Yarranabbe Road, Darling Point
- Unit 2 46-48 Yarranabbe Road, Darling Point

View loss assessments have been undertaken from the objector's properties as detailed below.



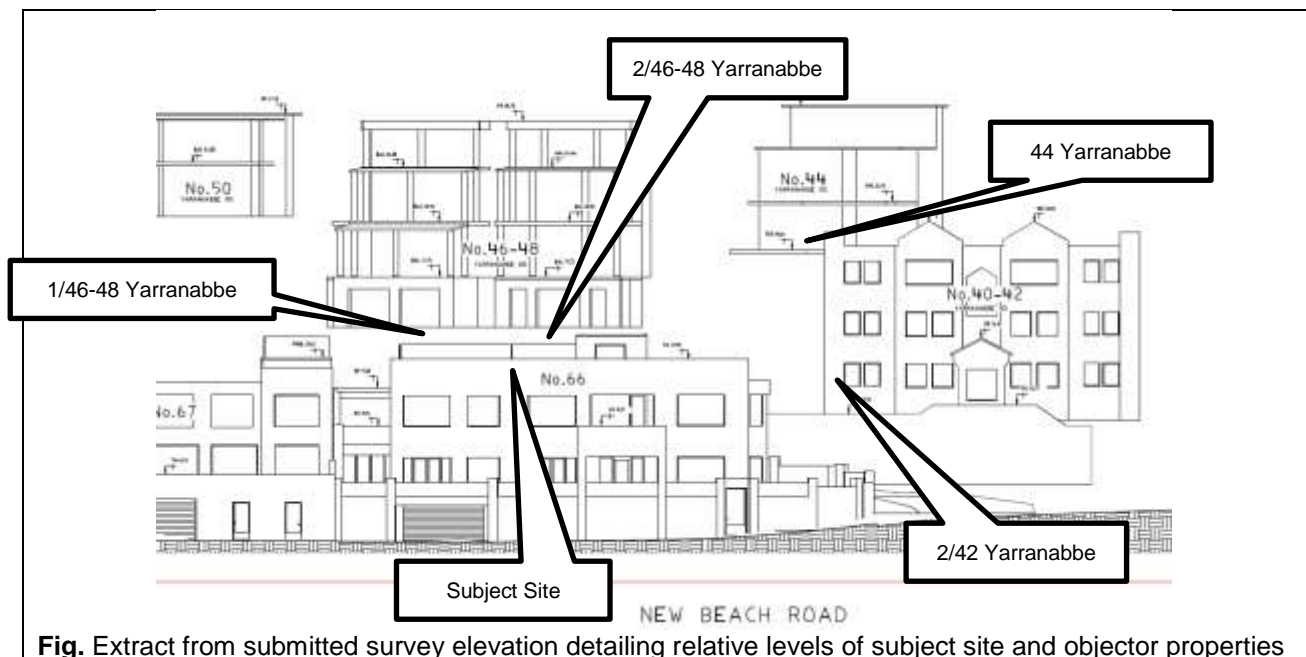


Fig. Extract from submitted survey elevation detailing relative levels of subject site and objector properties

In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the planning principle for “principles of view sharing” established in Tenacity Consulting v Warringah [2004] NSWLEC 140:

- Step 1 - Assessment of views to be affected.
 - *26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*
- Step 2 - Consider from what part of the property the views are obtained.
 - *27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*
- Step 3 - Assess the extent of the impact.
 - *28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

- Step 4 - Assess the reasonableness of the proposal that is causing the impact.
 - *29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. 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. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Part 3.5.3: Private Views – No.2/42 Yarranabbe Road, Darling Point

A view analysis inspection was undertaken from No.2/42 Yarranabbe Road, Darling Point on 1 June 2022. The subject site was only partially inspected externally (No internal inspection occurred).





The location and orientation of the site allows for partial views of the Sydney City skyline and Rushcutters Bay.

The assessment included analysis from the following key locations:

- Externally sited landscaped roof terrace

In terms of Steps 1 to 4 of the planning principle for “principles of view sharing” established in *Tenacity Consulting v Warringah* [2004] NSWLEC 140:

- Step 1. The views affected are partial and incomplete views of the Sydney city skyline. Existing partial/incomplete views of Rushcutters Bay are unaffected.
- Step 2. The views affected are orientated towards the primary street front boundary of the site.
- Step 3. The subject site was only partially inspected externally, no internal inspection occurred. The proposal results in further minor reduction to the incomplete and partial views of the Sydney City skyline.
- Step 4. The elements causing the impact are second floor (level 4) additions. The objection references diminishing views of nightly fireworks arising from previous development to the subject site. In terms of the reasonableness of the impact: As set out throughout this report the development is not a complying development proposal and is considered an over development of the site. The height and siting of the second floor (level 4) additions are:
 - Contrary to the building envelope controls under Part B3.2 and in excess of the floor plate controls under Part B3.3 of the Woollahra DCP 2015.
 - Exceeding the maximum height of buildings development standard under Clause 4.3(2A) of the Woollahra LEP 2014.
 - Inconsistent with control C8 of Part B3.5.3 which specifies that roof terraces are uncovered to provide for view sharing and all elements on roof terraces are to comply with the maximum building height control.

 <p>Fig. View along Yarranabbe Road</p>	 <p>Fig. Externally sited landscaped roof terrace</p>
 <p>Fig. Views from externally sited landscaped roof terrace</p>	 <p>Fig. Views from externally sited landscaped roof terrace</p>

Part 3.5.3: Private Views – No. 44 Yarranabbe Road, Darling Point

A view analysis inspection was undertaken from No. 46-48 Yarranabbe Road, Darling Point on 1 June 2022.

The location and orientation of the site allows for partial views of the Rushcutters Bay, Elizabeth Bay, Sydney City (including Garden Island and Sydney Harbour Bridge).

The assessment included analysis from the following key locations:

- Main ground floor level: living room 1 + balcony 1, living room 2 + balcony 2,
- Lower ground floor level: living area 3 + balcony 3
- Externally sited landscaped areas

In terms of Steps 1 to 4 of the planning principle for “principles of view sharing” established in *Tenacity Consulting v Warringah* [2004] NSWLEC 140:

- Step 1. The views affected are land and water interface views between Yarranabbe Park and Rushcutters Bay to habitable levels and Rushcutters Bay or Sydney city skyline views to lower external landscape areas of the site.
- The objector’s site benefits from recent development approval under DA236/2018/1, analysis of approved plans and elevations concludes that views are also impacted from the approved development, noting that habitable areas have been approved at lower levels of the site.
- Step 2. The views affected are orientated towards the primary street front boundary of the site.
- Step 3. The proposal results in reductions to the limited land and water interface views between Yarranabbe Park and Rushcutters Bay from each level observed. Impacts increase relative to levels on the site. Having regard to views from the whole of the property, the impact is considered minor to moderate.

- Step 4. The elements causing the impact are second floor (level 4) additions. In terms of the reasonableness of the impact, as set out throughout this report the subject application is not a complying development proposal and is considered an overdevelopment of the site. The height and siting of the second floor (level 4) additions are:
 - Contrary to the building envelope controls under Part B3.2 of and in excess of the floor plate controls under Part B3.3 of the Woollahra DCP 2015.
 - Exceeding the maximum height of buildings development standard under Clause 4.3(2A) of the Woollahra LEP 2014.
 - Inconsistent with control C8 of Part B3.5.3 which specifies that roof terraces are uncovered to provide for view sharing and all elements on roof terraces are to comply with the maximum building height control.



Fig. Views from main ground floor level terrace (standing)



Fig. Views from main ground floor level terrace (sitting)

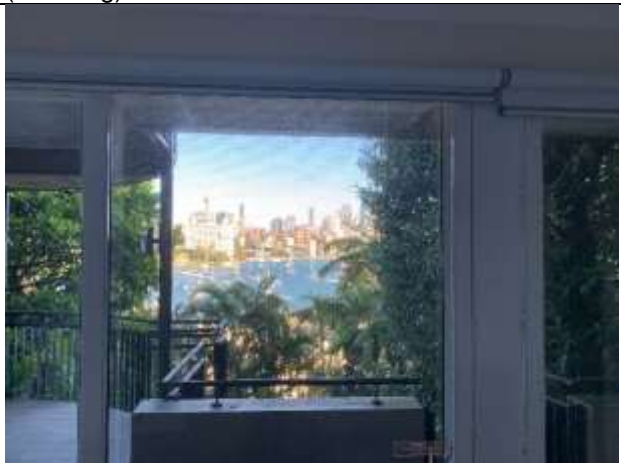


Fig. Views from lower ground floor level living area 3 balcony (standing)



Fig. Views from lower ground floor level living area 3 balcony (sitting)



Fig. Views from lower ground floor level living area balcony 3 (standing)



Fig. Views from lower ground floor level living area balcony 3 (sitting)



Fig. Cropped view from lower ground floor level living area 3 (standing)



Fig. Views from externally sited landscaped area

Fig. Views from externally sited landscaped area

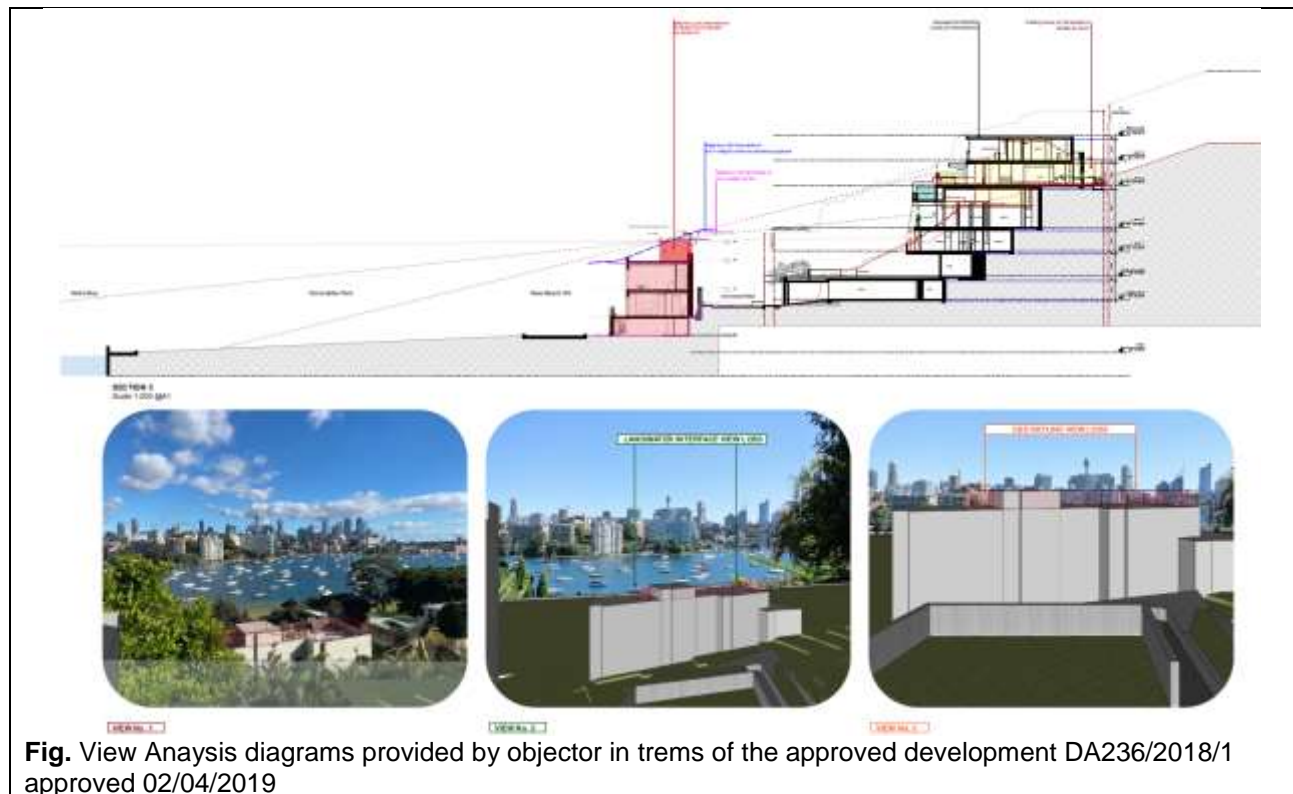


Fig. 1. View Analysis diagrams provided by objector in terms of the approved development DA236/2018/1 approved 02/04/2019

Part 3.5.3: Private Views – Unit 1 46-48 Yarranabbe Road, Darling Point

A view analysis inspection was undertaken from Unit 1 No. 46-48 Yarranabbe Road, Darling Point on 1 June 2022.

The location and orientation of the site allows for views of the Rushcutters Bay, Elizabeth Bay Sydney City (including Garden Island and Sydney Harbour Bridge) and North Sydney.

The assessment included analysis from the following key locations:

- Main level: living/dining room 1 + terrace 1, living room 2 + terrace 2
- Lower level: bedroom + balcony

In terms of Steps 1 to 4 of the planning principle for “principles of view sharing” established in *Tenacity Consulting v Warringah* [2004] NSWLEC 140:

- Step 1. The views affected are land and water interface views between Yarranabbe Park and Rushcutters Bay to habitable levels and Rushcutters Bay.
- Step 2. The views affected are orientated towards the primary street front boundary of the site.
- Step 3. The proposal results in reductions to the limited land and water interface views between Yarranabbe Park and Rushcutters Bay from each level observed. Having regard to views from the whole of the property the impact is considered moderate.
- Step 4. The elements causing the impact are second floor (level 4) additions. In terms of the reasonableness of the impact, as set out throughout this report the subject application is not a complying development proposal and is considered an overdevelopment of the site. The height and siting of the second floor (level 4) additions are:
 - Contrary to the building envelope controls under Part B3.2 of and in excess of the floor plate controls under Part B3.3 of the Woollahra DCP 2015.
 - Exceeding the maximum height of buildings development standard under Clause 4.3(2A) of the Woollahra LEP 2014.

- Inconsistent with control C8 of Part B3.5.3 which specifies that roof terraces are uncovered to provide for view sharing and all elements on roof terraces are to comply with the maximum building height control.



Fig. Views from main level living area 1 (standing)



Fig. Views from main level living area 1 (sitting)



Fig. Views from main level living area 1 terrace 1 (standing)



Fig. Views from main level living area 1 terrace 1 (sitting)

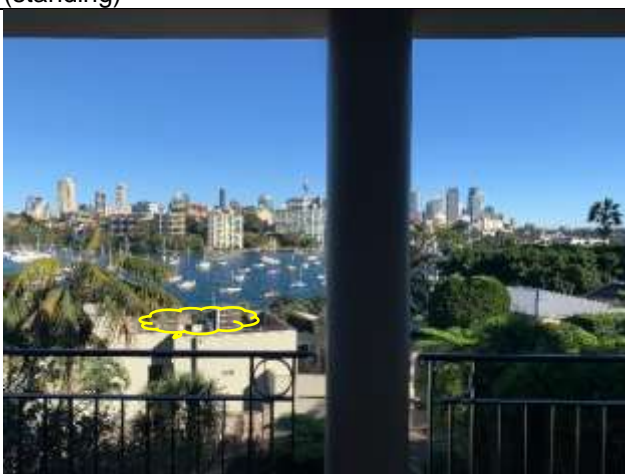


Fig. Views from main level living area 2 terrace 2 (standing)

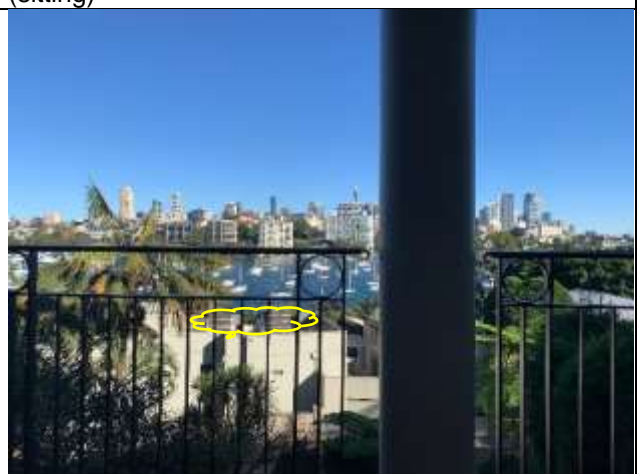


Fig. Views from main level living area 2 terrace 2 (sitting)



Fig. Views from lower level bedroom terrace (standing)



Fig. Views from lower level bedroom terrace (sitting)



Fig. cropped views from main level living area 2 terrace 2 (standing)



Fig. Applicant provided views from 1/46-48 Yarranabbe Road



Fig. Applicant provided views from 1/46-48 Yarranabbe Road



Fig. Objector provided views from 1/46-48 Yarranabbe Road - Photograph taken in standing position from Unit 1 ground floor terrace/ swimming pool area showing loss of their water views of Rushcutters Bay and the total loss of the natural landscape in the immediate foreground



Fig. Objector provided views from 1/46-48 Yarranabbe Road - Photograph taken in standing position from Unit 1 first floor balcony showing loss of the views of the immediate Yarranabbe Park/Rushcutters Bay land/water interface and of their water views of Rushcutters Bay and the natural landscape in the immediate foreground.

Part 3.5.3: Private Views – Unit 2 46-48 Yarranabbe Road, Darling Point

A view analysis inspection was undertaken from Unit 2 No. 46-48 Yarranabbe Road, Darling Point on 1 June 2022.

The location and orientation of the site allows for views of the Rushcutters Bay, Elizabeth Bay Sydney City (including Garden Island and Sydney Harbour Bridge) and North Sydney.

The assessment included analysis from the following key locations:

- Main level: living/dining room 1 + terrace 1, living room 2 + terrace 2
- Lower level: external terrace, pool and landscape area

In terms of Steps 1 to 4 of the planning principle for “principles of view sharing” established in *Tenacity Consulting v Warringah* [2004] NSWLEC 140:

- Step 1. The views affected are land and water interface views between Yarranabbe Park and Rushcutters Bay to habitable levels and Rushcutters Bay or Sydney city skyline views to lower level external areas of the site.
- Step 2. The views affected are orientated towards the primary street front boundary of the site.
- Step 3. The proposal results in reductions to land and water interface views between Yarranabbe Park and Rushcutters Bay from each level observed. Having regard to views from the whole of the property the impact is considered minor to moderate.
- Step 4. The elements causing the impact are second floor (level 4) additions. In terms of the reasonableness of the impact, as set out throughout this report the subject application is not a complying development proposal and is considered an overdevelopment of the site. The height and siting of the second floor (level 4) additions are:
 - Contrary to the building envelope controls under Part B3.2 and in excess of the floor plate controls under Part B3.3 of the Woollahra DCP 2015.
 - Exceeding the maximum height of buildings development standard under Clause 4.3(2A) of the Woollahra LEP 2014.
 - Inconsistent with control C8 of Part B3.5.3 which specifies that roof terraces are uncovered to provide for view sharing and all elements on roof terraces are to comply with the maximum building height control.



Fig. Views from main level living area 1 (standing)



Fig. Views from main level living area 1 (sitting)

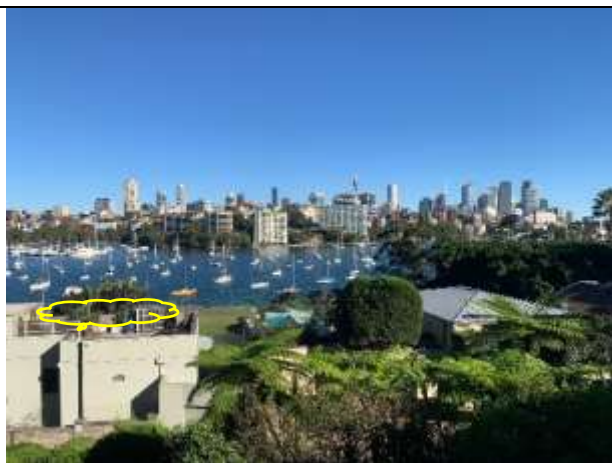


Fig. Views from main level living area 1 terrace 1 (standing)



Fig. Views from main level living area 1 terrace 1 (sitting)



Fig. Views from lower level pool surround (standing)



Fig. Views from lower level landscape area (sitting)



Fig. Cropped views from main level living area 1 terrace 1 (standing)



Fig. Objector provided views from 2/46-48 Yarranabbe Road - *Photograph taken in standing position from Unit 2 first floor balcony showing total loss of the views of the immediate Yarranabbe Park/Rushcutters Bay land/water interface and loss of their water views of Rushcutters Bay and the natural landscape in the immediate foreground*



Fig. Objector provided views from 2/46-48 Yarranabbe Road - *Photograph taken in standing position from Unit 2 ground floor terrace showing loss of their water views of Rushcutters Bay and the total loss of the natural landscape in the immediate foreground..*

Contrary to C5, the design, height and siting of the second floor (level 4) additions is inconsistent with enabling the sharing of views with surrounding private properties as specified by C5.

The second floor (level 4) additions are inconsistent with C6 in terms of development stepping down hillsides on sloping sites as a means of ensuring equitable access to views from surrounding private properties.

The adaptation of otherwise uncovered roof terrace areas for the second floor (level 4) additions located above the maximum building height to is contrary to C7 and C8.

Accordingly, the proposal is not compliant in terms of the applicable objectives and controls:

- Objectives O1 and O3 and controls C5, C6, C7 and C8 (private views)

Part B3.5.4: Acoustic and Visual Privacy

As set out previously the site's existing building and second floor level roof terrace predates the current DCP controls.

The proposal seeks to introduce a habitable living space to the second floor level where no prior development approval has been granted for the use of the second floor level as a habitable level.

Having regard to the approved development, subject to standard conditions, the proposal would not give rise to unacceptable acoustic and visual privacy impacts sufficient to warrant refusal or modification of the proposal.

Accordingly, the proposal is acceptable in terms of the applicable objectives and controls.

Part B3.5.5: Internal amenity

The proposal is compliant in terms of the applicable objectives and controls:

- O1, O2, C1, C2, C3 and C4 (adequate internal amenity)

Conclusion

The proposal is not acceptable with regard to the Built form and context controls in Part B3.5 of the Woollahra DCP 2015.

14.2.4. Part B3.7: External Areas

Site Area: 325.4m²	Existing	Proposed	Control	Complies
C1 Deep Soil Landscaping – Outside Buildable Area 325.4m ² – 172m ² = 153.4m ²	@13.5m ² 8.8%	No change	50% outside Buildable Area 76.7m ²	No
C2 Deep Soil Landscaping – Front Setback 22m ² x 0.4	@6.5m ² 8.5m ²	No change	46.4m ² 40%	No
C4 Deep Soil Landscaping – Rear Setback 95m ² x 0.5	0m 0%	No change	50% of Rear Setback 47.5m ²	No
C6 Minimum Area of Private Open Space	> 35m ²	> 35m ²	35m ²	Yes

Part 3.7.1: Landscaped Areas and Private Open Space

The subject site does not contain compliant deep soil landscaped area currently, or under the approved development.

The proposal does not seek to alter existing provision of deep soil landscape area to the site.

The proposal is limited to second floor (level 4) additions that do not reduce provision of primary open space below 35m².

The proposal is satisfactory in terms of the applicable objectives and controls.

Conclusion

The proposal is acceptable with regard to the external controls in Part B3.7 of the Woollahra DCP 2015.

14.3 Chapter E2: Stormwater and Flood Risk Management

The proposal is acceptable with regard to the objectives and controls in Chapter E2 of the Woollahra DCP 2015

14.4 Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the on-going use of the building.

The applicant provided a SWMMP with the development application and it was found to be satisfactory.

15. SECTION 7.12 CONTRIBUTIONS

15.1 Section 7.12 Development Contributions Plan 2021

In accordance with Section 2.7 of the Woollahra Section 7.12 Contributions Plan 2021 a 0.5% levy would apply to the subject development with the monies being used for a variety of works as outlined in the Plan.

Cost of Works	Rate	Contribution Payable
\$198,000.00	0.5%	\$9,900

As the subject application is recommended for refusal, no development contributions are required.

16. APPLICABLE ACTS/REGULATIONS

16.1 Environmental Planning and Assessment Regulation 2021

Clause 61: Additional matters that consent authority must consider

Clause 61(1) of the EPA Regulation 2021 requires Council to take into consideration Australian Standard AS 2601-1991: The demolition of structures. If the application were recommended for approval, relevant conditions of consent could be imposed in order to satisfy the relevant provisions of the regulations.

17. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

18. THE SUITABILITY OF THE SITE

The site is unsuitable for the proposed development, in its current form.

19. THE PUBLIC INTEREST

The proposal is not considered to be in the public interest.

20. CONCLUSION

The proposal is unacceptable against the relevant considerations under Section 4.15 of the Act.

21. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

22. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is not satisfied that the matters required to be addressed under Clause 4.6(4) of the Woollahra Local Environmental Plan 2014 have been demonstrated and that consent may be granted to the development which contravenes the height of buildings and secondary height of buildings development standard(s) under Clause(s) 4.3 and 4.3A of the Woollahra Local Environmental Plan 2014

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, refuse development consent to Development Application No. 94/2022/1 for alterations and additions comprising a new enclosed addition at roof level on land at 66 New Beach Road Darling Point, for the following reasons:

1. Woollahra Local Environmental Plan 2014, Part 4 – Clause 4.3 Height of Buildings

The proposal does not comply with the 9.5m maximum height of a dwelling house on land in Zone R3 Medium Density Zone and the 6.5m height of a building at the highest part of the land "Area C" development standards under Clause 4.3(2A) and Clause 4.3A of the Woollahra Local Environmental Plan 2014.

Non-compliance with the 9.5m maximum height of buildings under Clause 4.3(2A) is not supported:

- The proposed height, bulk, scale, form and siting of the proposed alterations and additions which exceed the height standard results in development inconsistent with the character of development in the locality and adversely impact on private views of Sydney Harbour to surrounding properties (2/42 Yarranabbe Road, Darling Point, 44 Yarranabbe Road, Darling Point. 1/46-48 and 2/46-48 Yarranabbe Road, Darling Point).
- The applicant submitted clause 4.6 written request is not well founded. The submitted written request fails to justify the contravention of the height of buildings development standards under Clause 4.3 in accordance with Clause 4.6(3)(a) and 4.6(3)(b). The submitted written request has not adequately addressed the matters required to be demonstrated by sub-clause (3) including that:
 - strict compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - there are sufficient environmental planning grounds to justify contravening the development standards;
 - the proposed development will be in the public interest; and
 - the proposed development is consistent with the objectives of the Height of buildings development standards and of the R3 Medium Density Residential zone.

- A Clause 4.6 written request has not been submitted in relation to Clause 4.3A Exceptions to building heights (Area C) of the Woollahra LEP 2014, and therefore consent may not be granted to the proposal, which contravenes this standard.




2. Height, bulk, scale, form and siting of the proposed alterations and additions

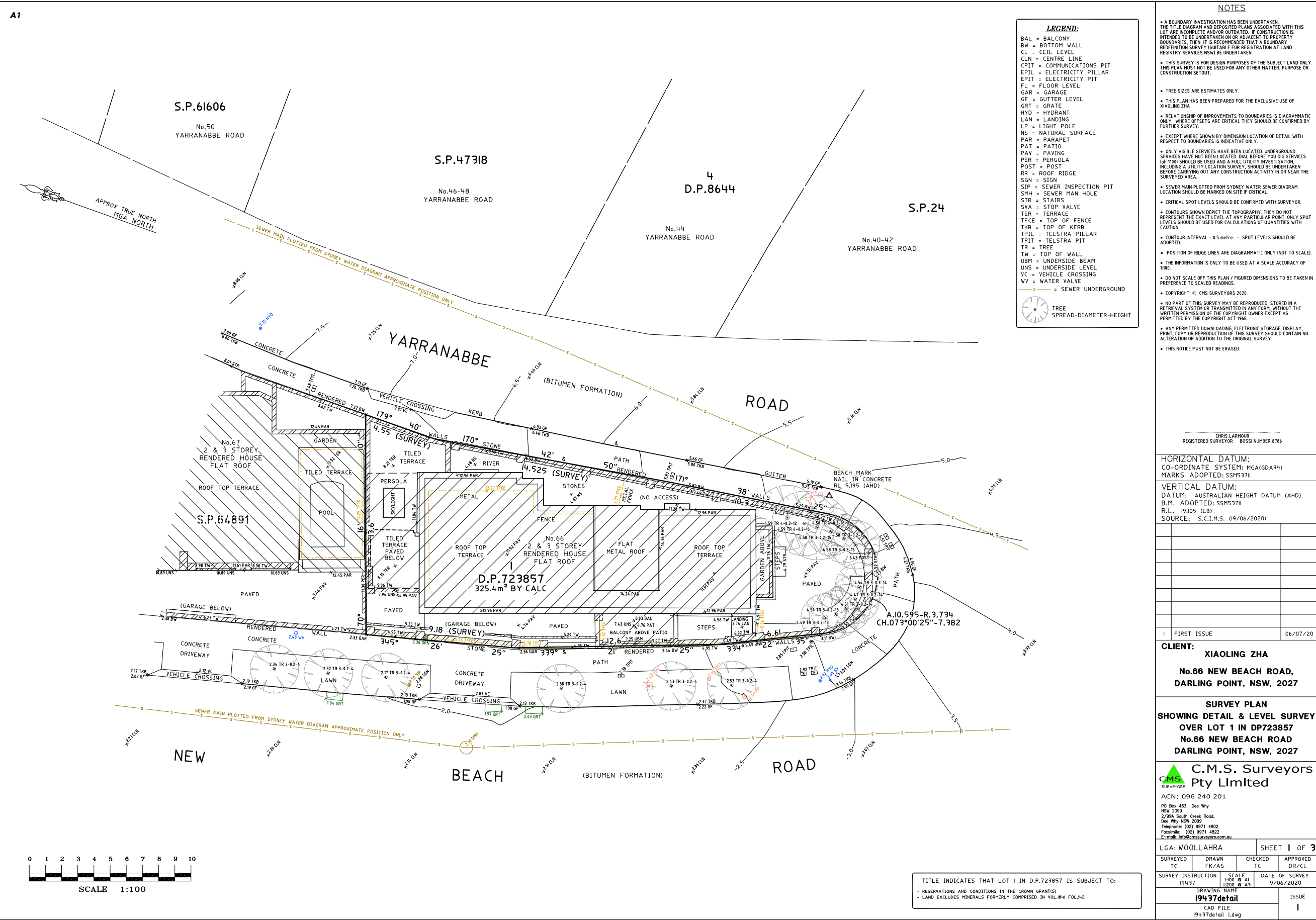
The proposed height, bulk, scale, form and siting of the proposed alterations and additions which exceed the height standard results in development inconsistent with the character of development in the locality and adversely impacts on private views of Sydney Harbour to surrounding properties (2/42 Yarranabbe Road, Darling Point, 44 Yarranabbe Road, Darling Point. 1/46-48 and 2/46-48 Yarranabbe Road, Darling Point).

In this regard the proposal is contrary to the following planning provisions:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021:
 - Considerations (a), (b) and (c) of Section 10.24 Maintenance, protection and enhancement of views of Chapter 10 Sydney Harbour.
- Woollahra Local Environmental Plan 2014:
 - Aims (b), (g), (j) and (l) of Clause 1.2(2) Aims of Plan.
 - Objective 4 of the R3 Medium Density Residential zone of the Land Use Table.
 - 6.5m secondary building height (at the highest part of the land) under subclause 3 (Area C) of Clause 4.3A: Exceptions to building heights (Areas A–H)
 - 9.5m maximum building height under subclause 2A of Clause 4.3 Height of buildings.
- Woollahra Development Control Plan 2015:
 - Chapter B1 Residential Precincts:
 - Future character objectives O1, O7 and O8 under Part B1.2 of the Darling Point Precinct.
 - Chapter B3 General Development Controls objectives and controls:
 - Part B3.2 Building envelope:
 - O1, O2, O3, C1 and C2 rear setback controls under Part B3.2.4.
 - O1, O5 and C1 wall height and inclined plane controls under Part B3.2.5.
 - Part B3.3 Floorplate:
 - O1, O2, C1, C2 and C3 floorplate controls under Part B3.3.
 - Part B3.5 Built form and context
 - O1 and C1 streetscape and local character controls under B3.5.1.
 - O1, O3, C5, C6, C7 and C8 private view controls under B3.5.4.

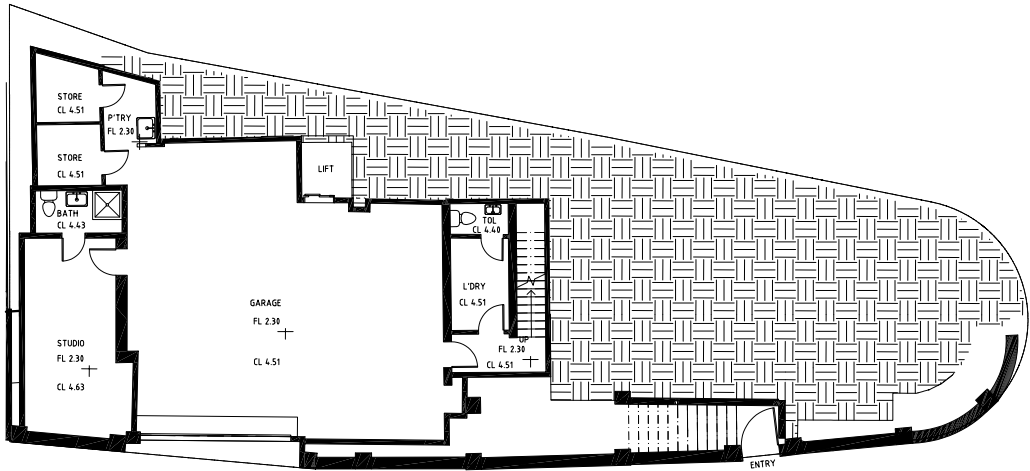
Attachments

1. Plans and elevations [!\[\]\(49aa2e1da5fe39294864e9598c593810_img.jpg\)](#) 
2. Clause 4.6 Variation request [!\[\]\(6557fa7496e6a507d2326ea0bef061ee_img.jpg\)](#) 
3. Stamped Approved Architectural Drawings - DA20211491 [!\[\]\(3f7dbef097b87c46047901c2927193e7_img.jpg\)](#) 

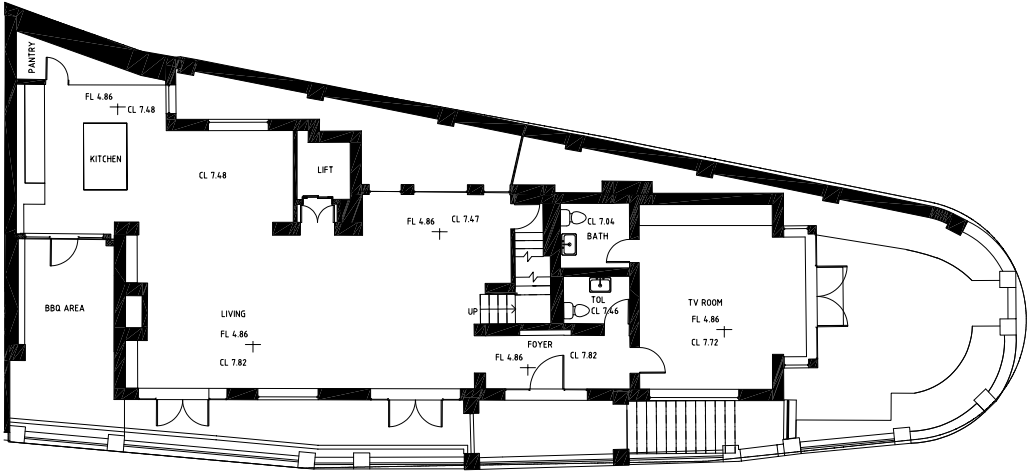


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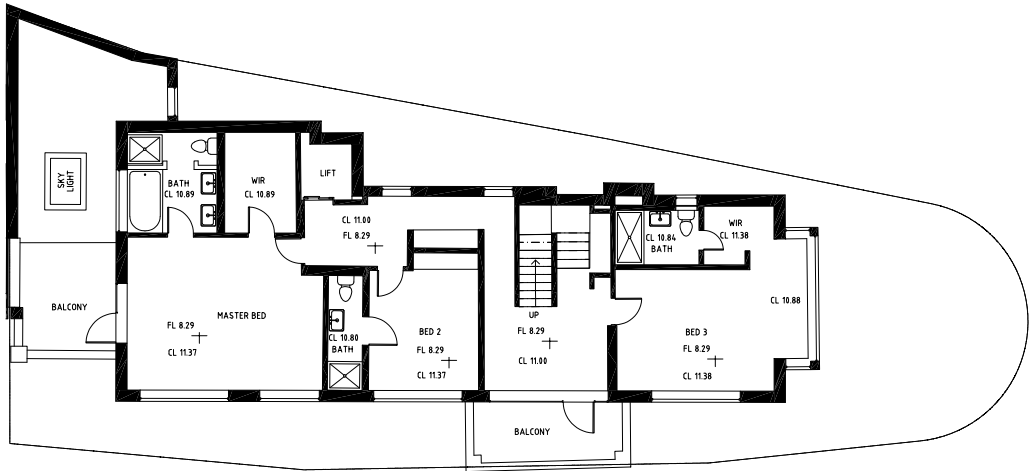
GARAGE FLOOR PLAN



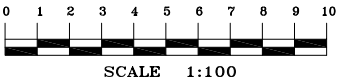
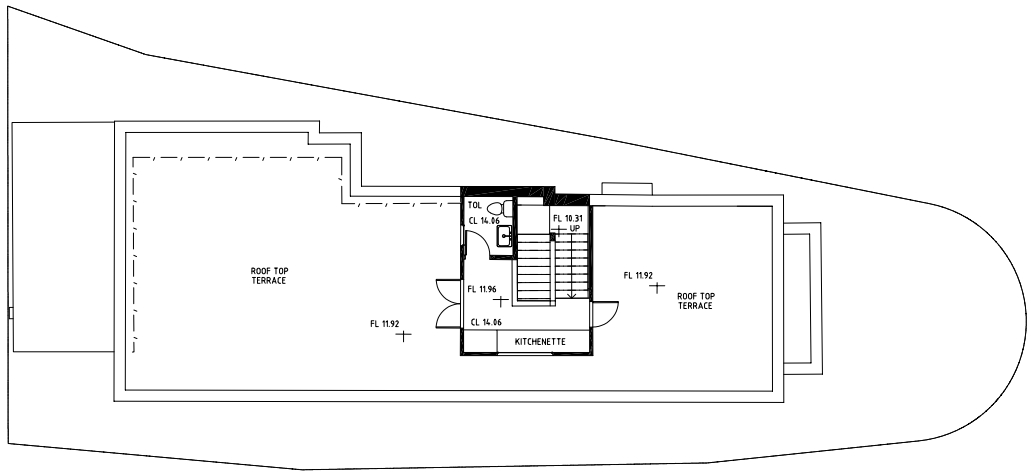
GROUND FLOOR PLAN



FIRST FLOOR PLAN



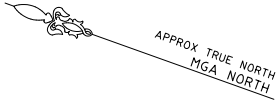
SECOND FLOOR PLAN



LEGEND:

BAL = BALCONY
BW = BOTTOM WALL
CL = CELL LEVEL
CLN = CENTRE LINE
CPIT = COMMUNICATIONS PIT
EPIL = ELECTRICITY PILLAR
EPIT = ELECTRICITY PIT
FL = FLOOR LEVEL
GAR = GARAGE
GF = GUTTER LEVEL
GR = GRATE
HYD = HYDRANT
LAN = LANDING
LP = LIGHT POLE
NS = NATURAL SURFACE
PAR = PARAPET
PAT = PATIO
PAV = PAVING
PER = PERGOLA
POST = POST
RR = ROOF RIDGE
SGN = SIGN
SIP = SEWER INSPECTION PIT
SMH = SEWER MAN HOLE
STR = STAIRS
SVA = STOP VALVE
TER = TERRACE
TFCE = TOP OF FENCE
TKB = TOP OF KERB
TPIL = TELSTRA PILLAR
TPIT = TELSTRA PIT
TR = TREE
TW = TOP OF WALL
UBM = UNDERSIDE BEAM
UNS = UNDERSIDE LEVEL
VC = VEHICLE CROSSING
WV = WATER VALVE
S = SEWER UNDERGROUND

TREE
SPREAD-DIAMETER-HEIGHT



HORIZONTAL DATUM:
CO-ORDINATE SYSTEM: MGA(GDA94)
MARKS ADOPTED: SSM597II

VERTICAL DATUM:
DATUM: AUSTRALIAN HEIGHT DATUM (AHD)
B.M. ADOPTED: SSM597II
R.L. 19.105 (LB)
SOURCE: S.C.I.M.S. (19/06/2020)

I FIRST ISSUE 06/07/20

CLIENT:
XIAOLING ZHA
No.66 NEW BEACH ROAD,
DARLING POINT, NSW, 2027

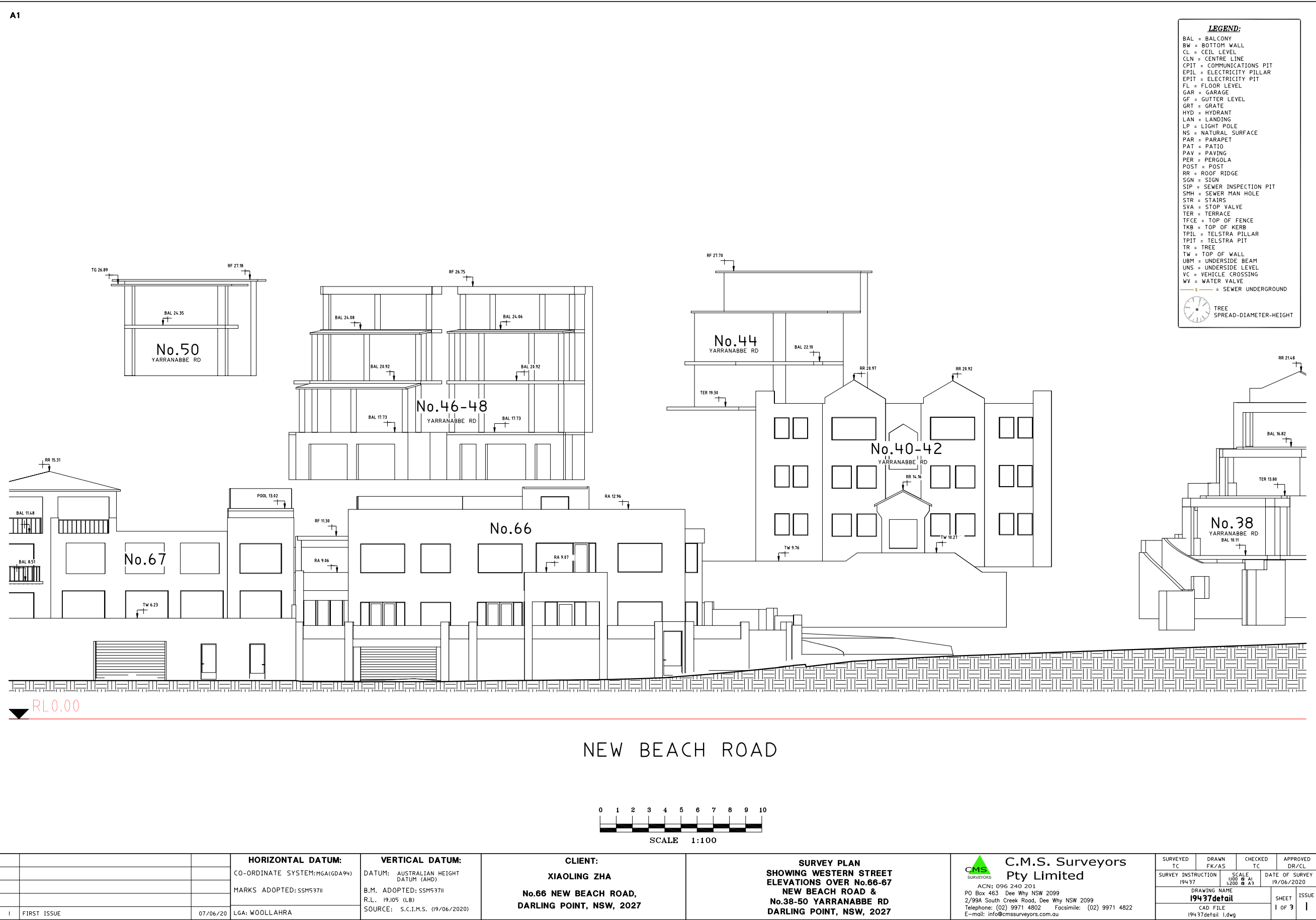
SURVEY PLAN
SHOWING INTERNAL FLOOR PLANS
OVER LOT 1 IN DP23857
No.66 NEW BEACH ROAD
DARLING POINT, NSW, 2027

C.M.S. Surveyors
Pty Limited

ACN: 096 240 201
PO Box 463 Dee Why
NSW 2099
2/99A South Creek Road,
Dee Why NSW 2099
Telephone: (02) 9971 4802
Facsimile: (02) 9971 4822
E-mail: info@cmsurveyors.com.au

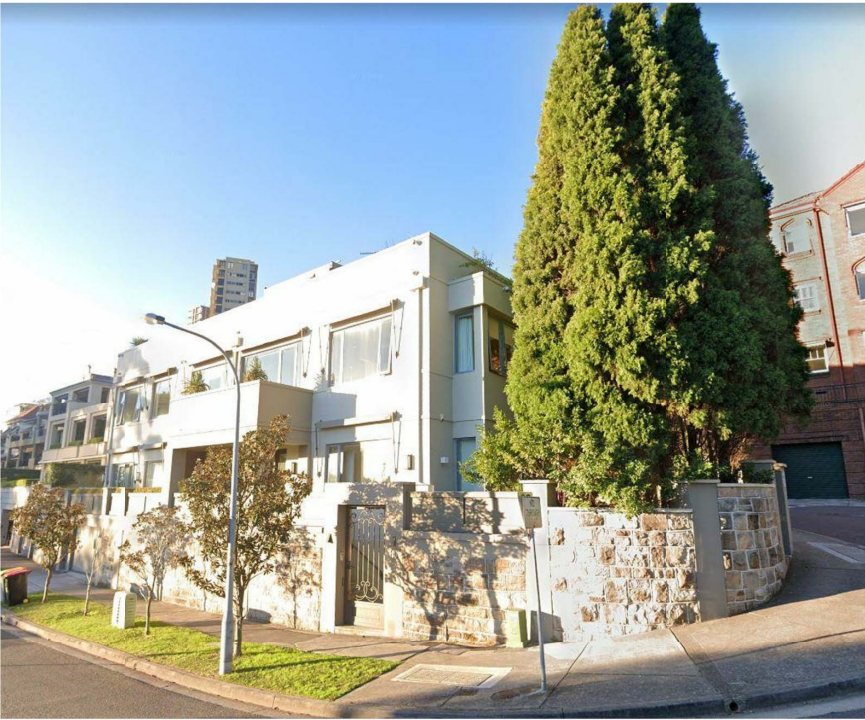
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DRAWING NAME 19437detail	CAD FILE 19437detail.Ldwg	ISSUE 1	



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SHEET LIST - DA2		
Sheet No.	Sheet Name	Current Revision
DA000A	COVER PAGE	A
DA100A	PROPOSED SITE PLAN	A
DA105A	PROPOSED ROOF TERRACE	A
DA106A	PROPOSED ROOF PLAN	A
DA110A	PROPOSED SHADOW PLANS 1/2	A
DA111A	PROPOSED SHADOW PLANS 2/2	A
DA200A	PROPOSED ELEVATIONS 1	A
DA201A	PROPOSED ELEVATIONS 2	A
DA300A	PROPOSED SECTIONS	A
DA400A	PROPOSED GROSS FLOOR AREA & FLOOR SPACE RATIO	A
DA401A	AREA CALCULATION - WESTERN FACADE AS FRONT	A
DA402A	AREA CALCULATION - SOUTH FACADE AS FRONT	A
DA410A	PROPOSED VIEW (SIGHT LINE) DRAWING	A
DA411A	PROPOSED VIEW FROM YARRANABBE PARK 1	A
DA412A	PROPOSED VIEW FROM YARRANABBE PARK 2	A
DA800A	PROPOSED WINDOW & DOOR SCHEDULE	A



SLIDING DOORS AND WINDOW FRAME

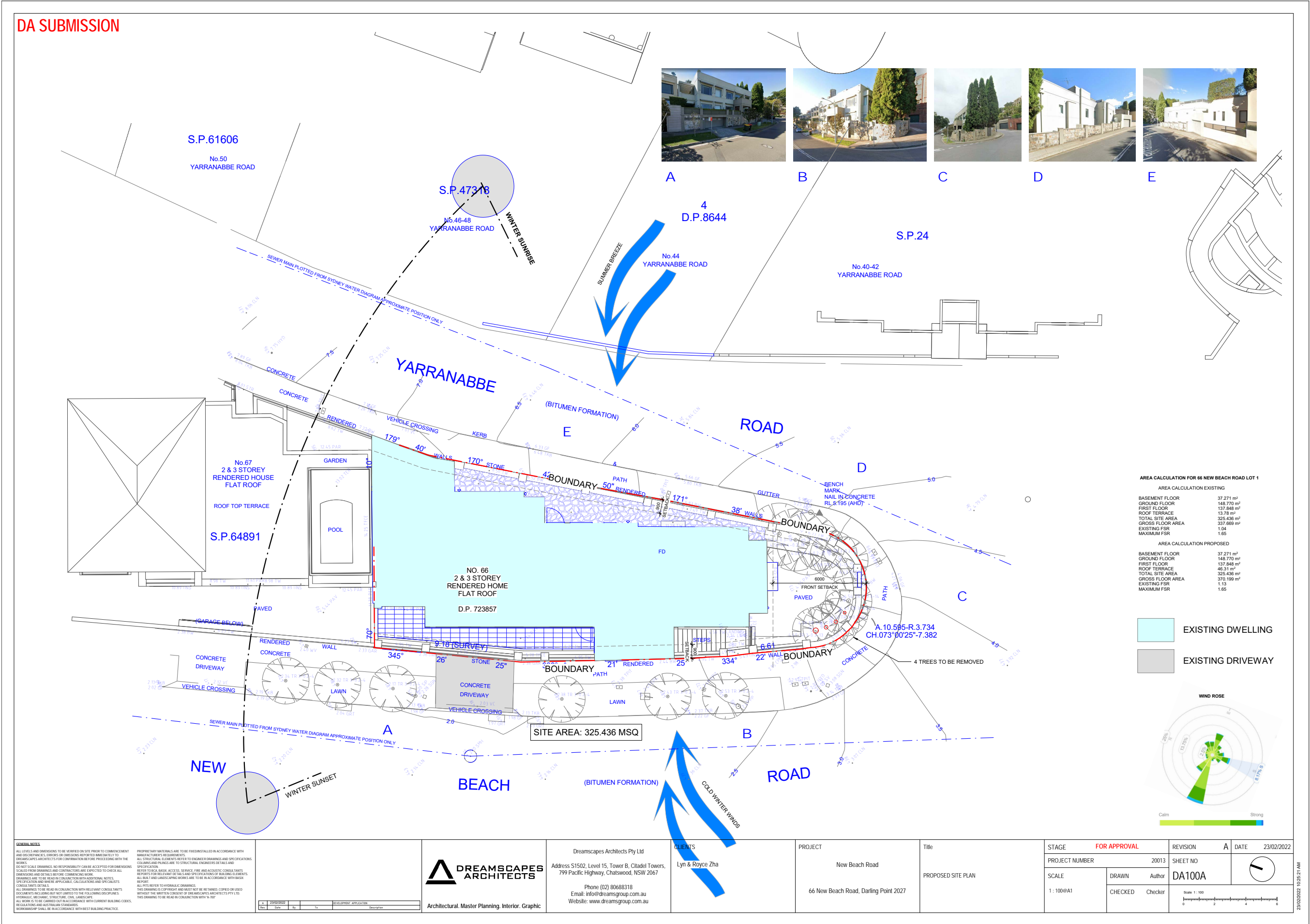
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MATERIAL: ALUMINUM



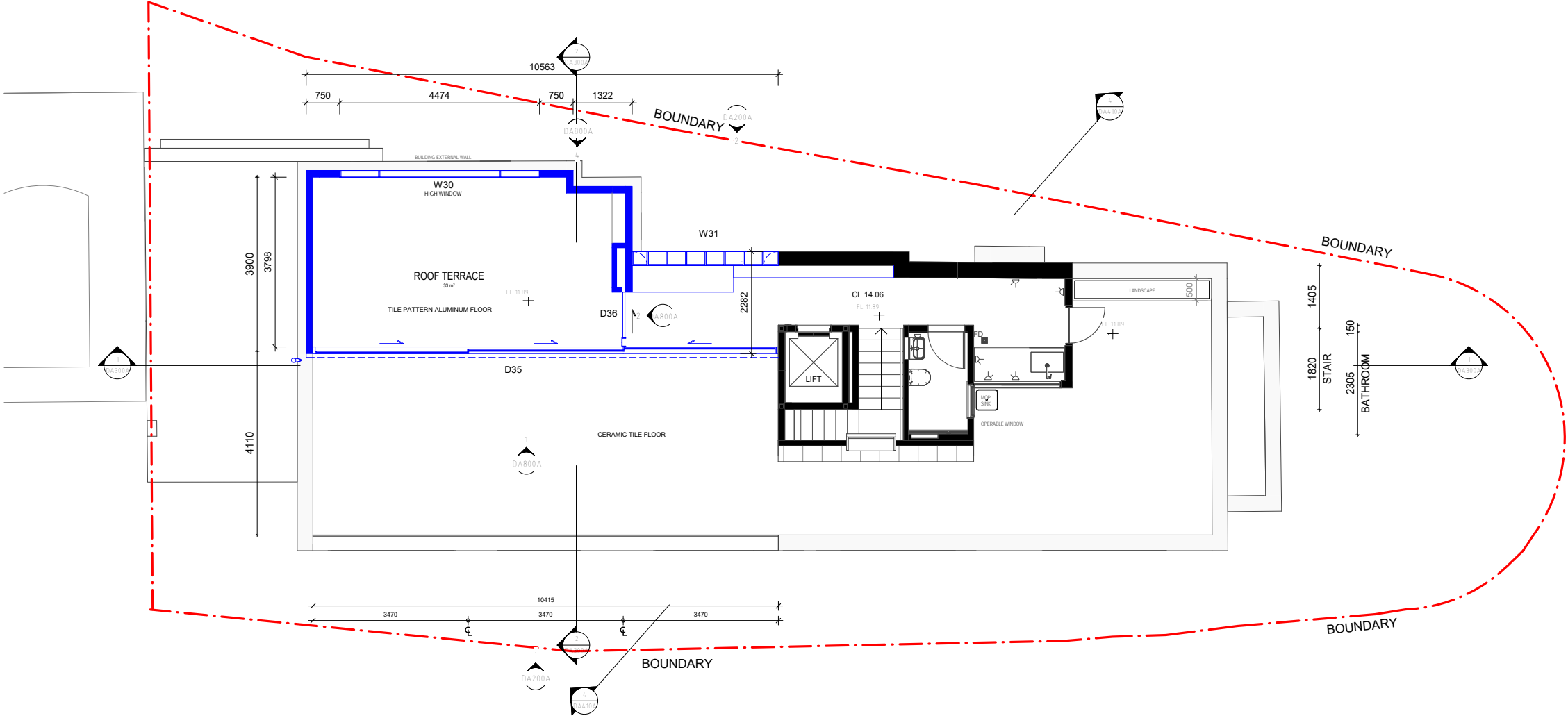
ROOFING

COLOUR: GREY
MATERIAL: STANDING SEAM ZINC ROOF

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							<div>PROJECT NUMBER</div> <div>20013</div>	<div>SHEET NO</div> <div>DA000A</div>	<div>Scale 1:100</div> <div></div>
							<div>SCALE</div> <div>@A1</div>	<div>DRAWN</div> <div>Author</div>	<div>CHECKED</div> <div>Checker</div>



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WORKMANSHIP SHALL BE IN ACCORDANCE WITH BEST BUILDING PRACTICE.

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A	23/02/2022			DEVELOPMENT APPLICATION
Rev	Date	By	Ta	Description



Dreamscapes Architects Pty Ltd
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799 Pacific Highway, Chatswood, NSW 2067
Phone (02) 80688318
Email: info@dreamsgroup.com.au
Website: www.dreamsgroup.com.au

CLIENTS
Lyn & Royce Zha

PROJECT
New Beach Road
66 New Beach Road, Darling Point 2027

Title
PROPOSED ROOF TERRACE

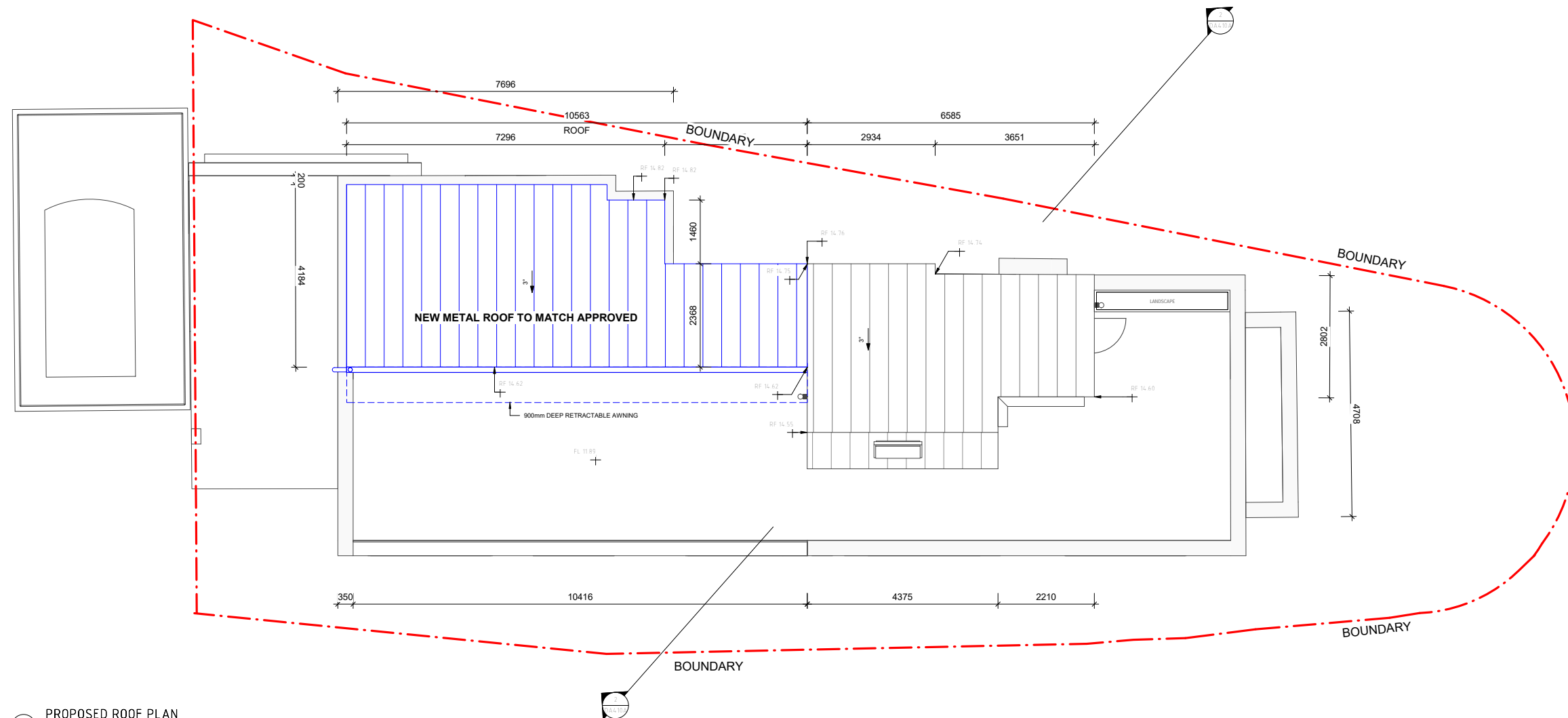
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PROJECT NUMBER 20013
SCALE 1: 50@A1
DRAWN Author
CHECKED Checker

REVISION A
SHEET NO DA105A

DATE 23/02/2022
Scale 1: 100
0 2 4 6

23/02/2022 10:25:38 AM

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1 PROPOSED ROOF PLAN

[illegible]

A	25/02/2022			DEVELOPMENT APPLICATION
Rev	Date	By	To	Description



Architectural. Master Planning. Interior. Graphic

Dreamscapes Architects Pty Ltd
Address S1502, Level 15, Tower B, Citadel Tower
799 Pacific Highway, Chatswood, NSW 2067
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Website: www.dreamsgroup.com.au

	CLIENTS
rs.	Lyn & Royce Zha


PROJECT	New Beach Road
	66 New Beach Road, Darling Point 2027

Title	PROPOSED ROOF PLAN
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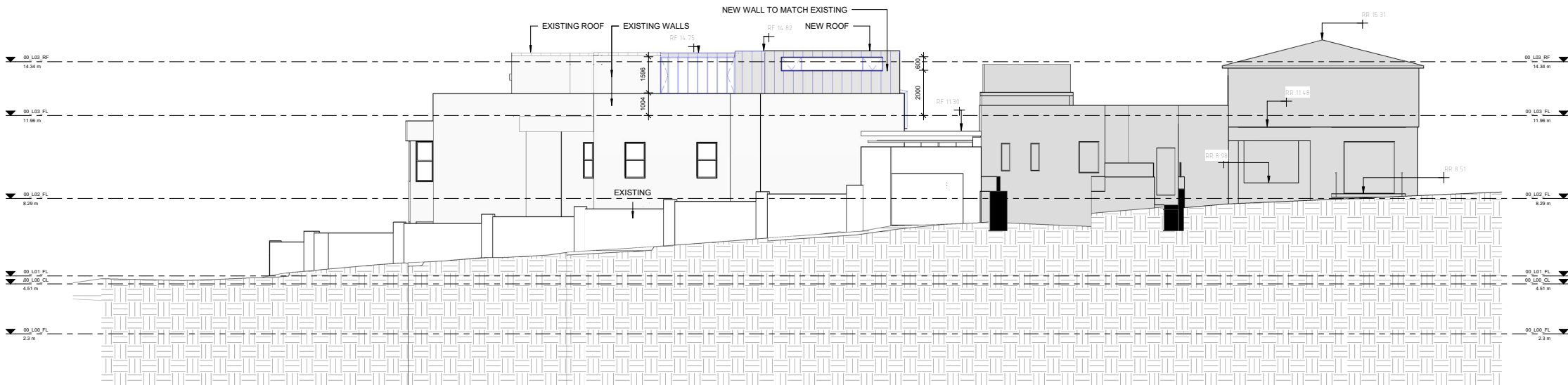
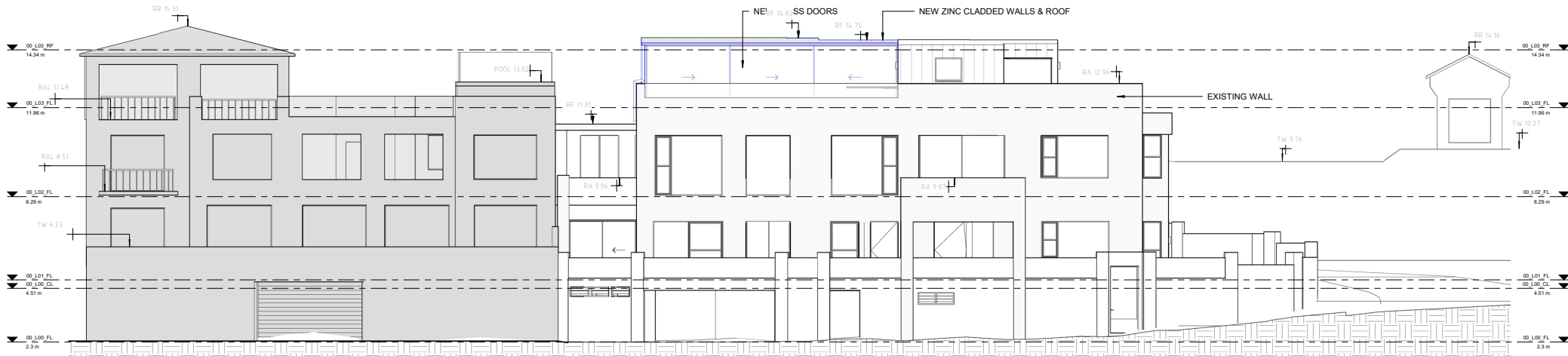
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	REVISION	/
20013	SHEET NO	
Author	DA106A	

A	DATE	23/02/2022
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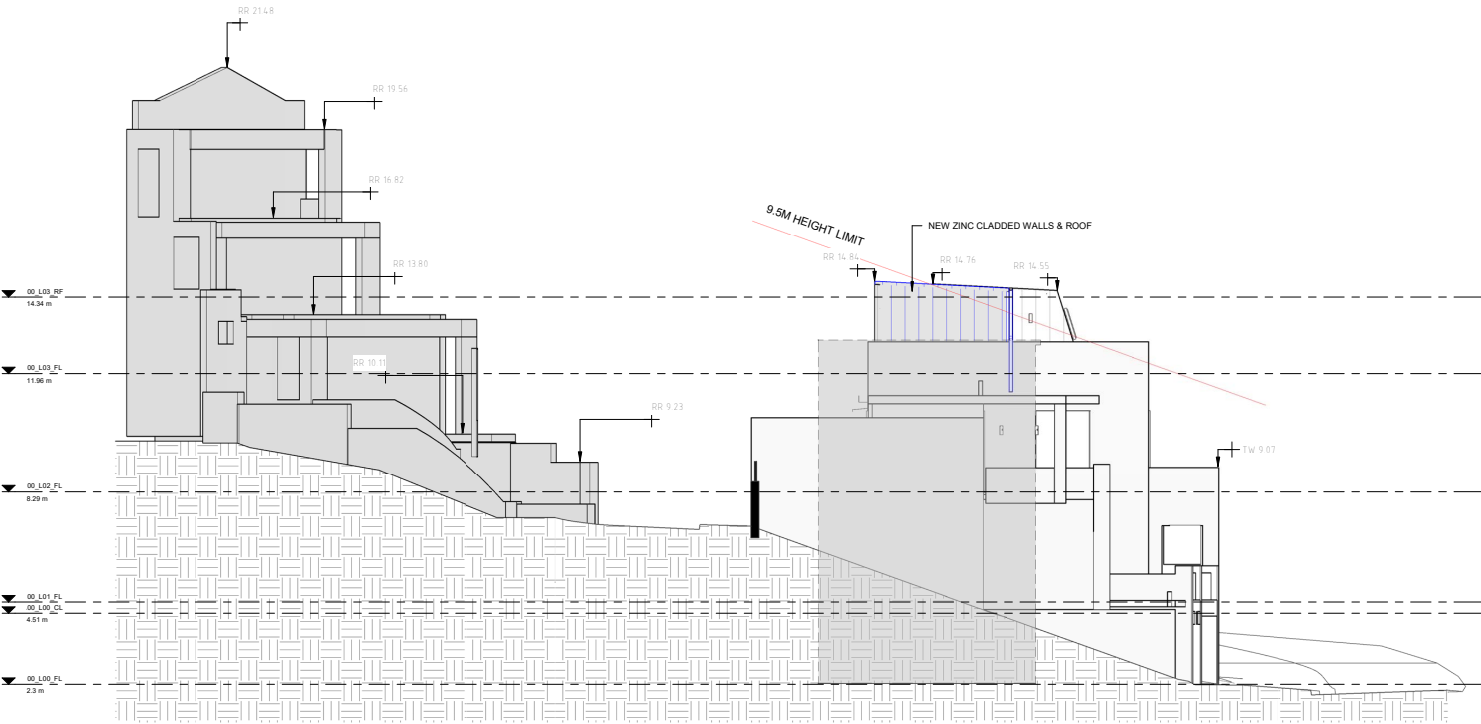


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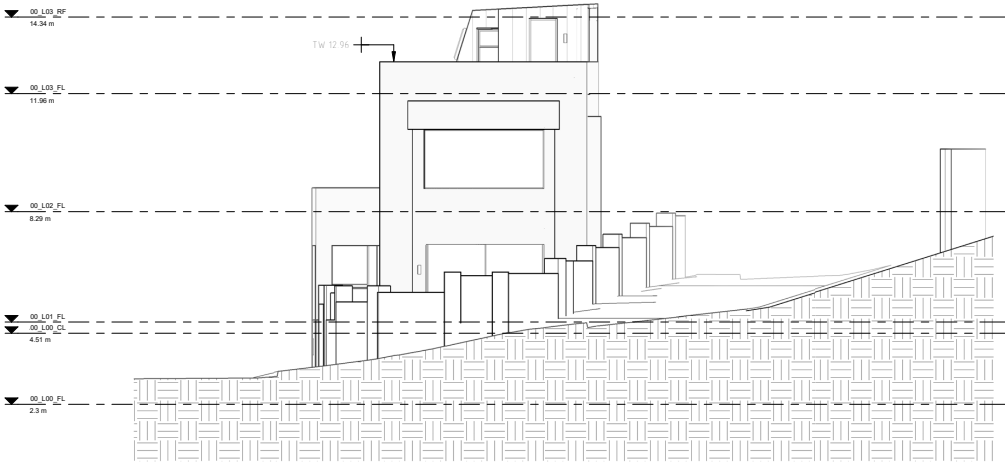


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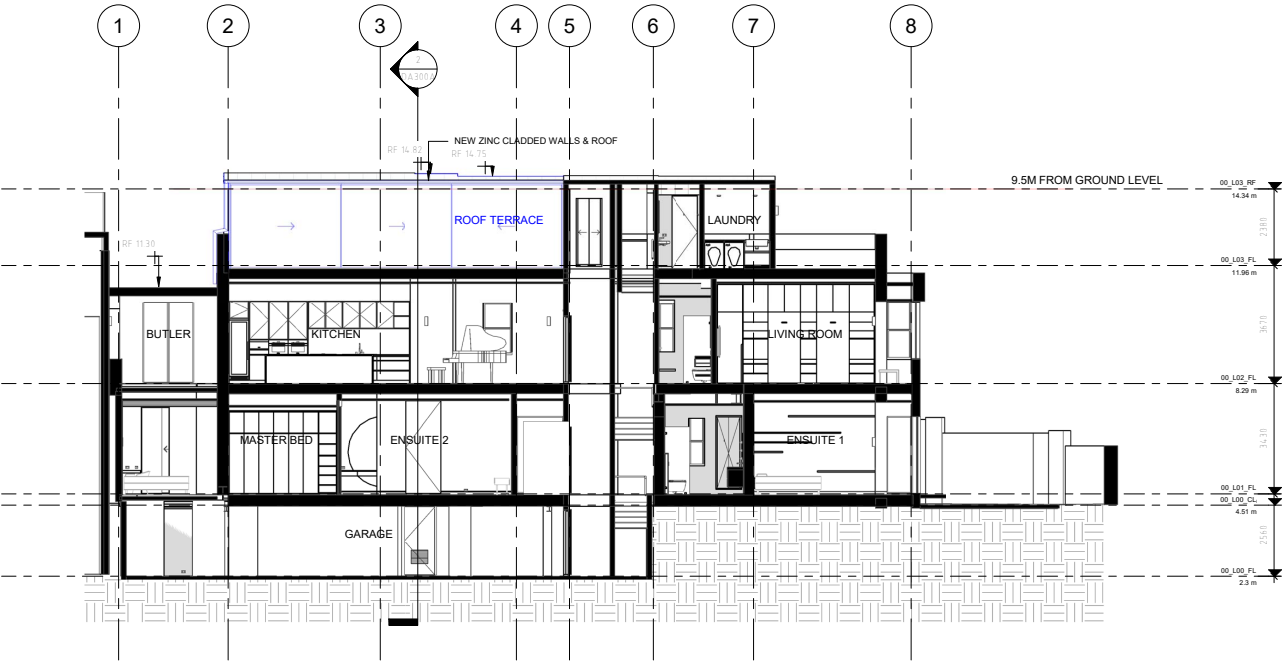
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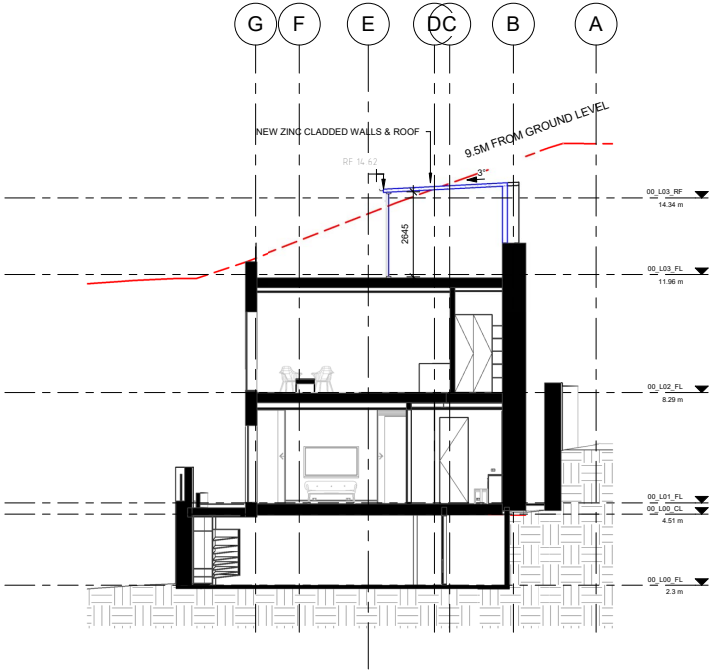
2 Proposed South Elevation
1:100

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1 PROPOSED SECTION 1
1:100



2 SECTION
1:100

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A	23/02/2022				DEVELOPMENT APPLICATION
Rev	Date	By	Ta		Description



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CLIENTS
Lyn & Royce Zha

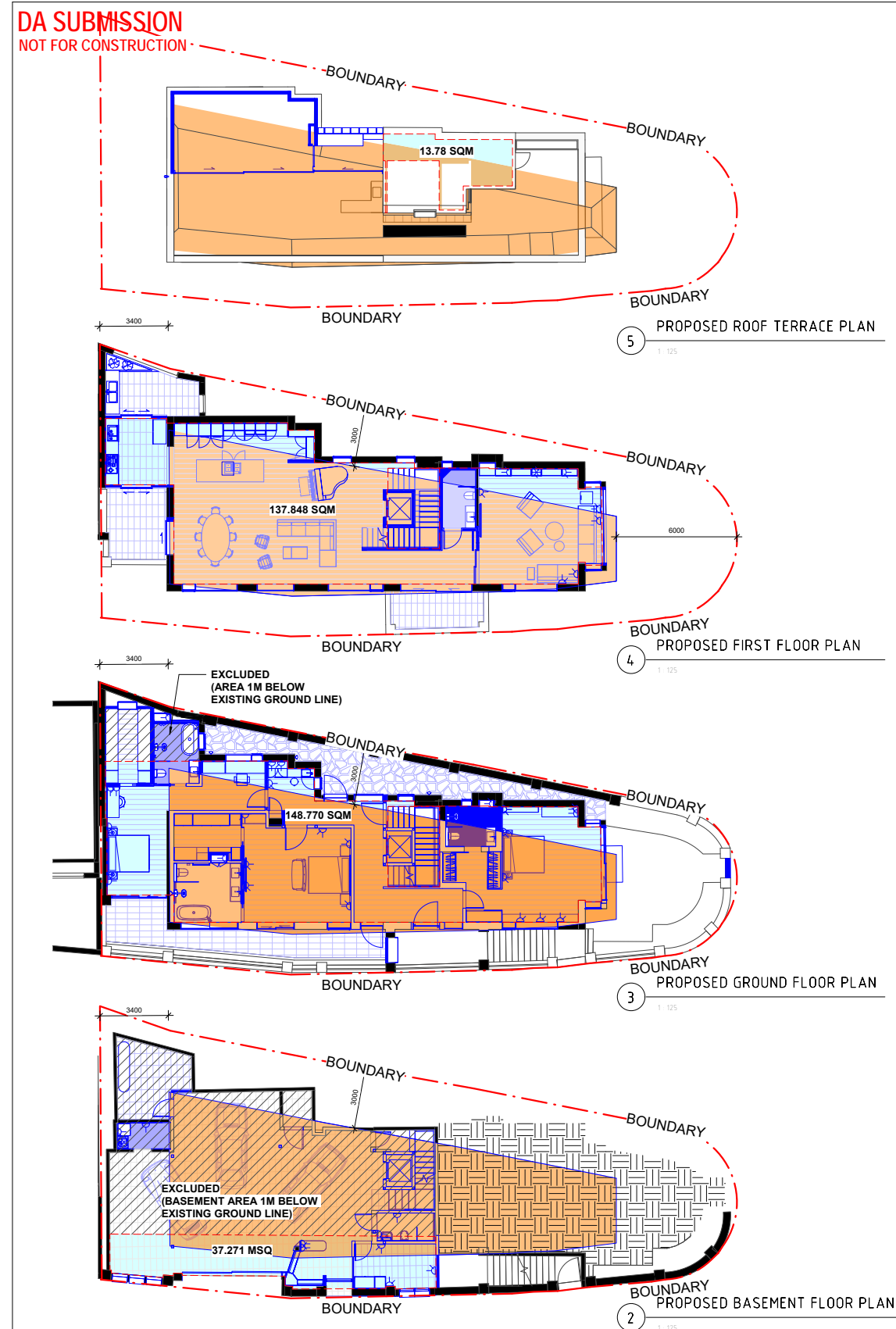
PROJECT
New Beach Road
66 New Beach Road, Darling Point 2027

Title
PROPOSED SECTIONS

STAGE FOR APPROVAL
PROJECT NUMBER 20013
SCALE 1:100@A1
DRAWN Author
CHECKED Checker

REVISION A
DATE 23/02/2022
SHEET NO DA300A
Scale 1:100
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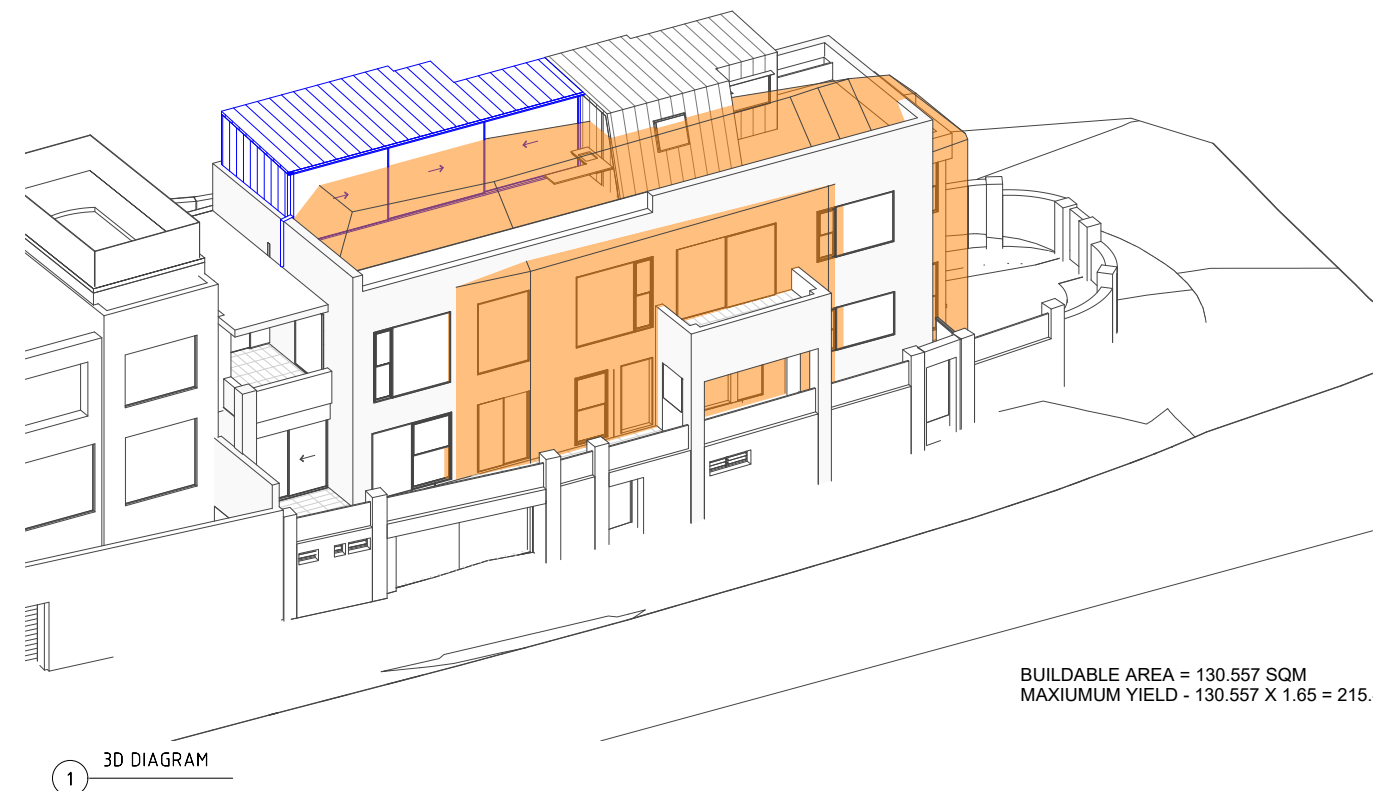
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AVERAGE SETBACK = $(3 + 4 + 4) / 6 = 1.8M$

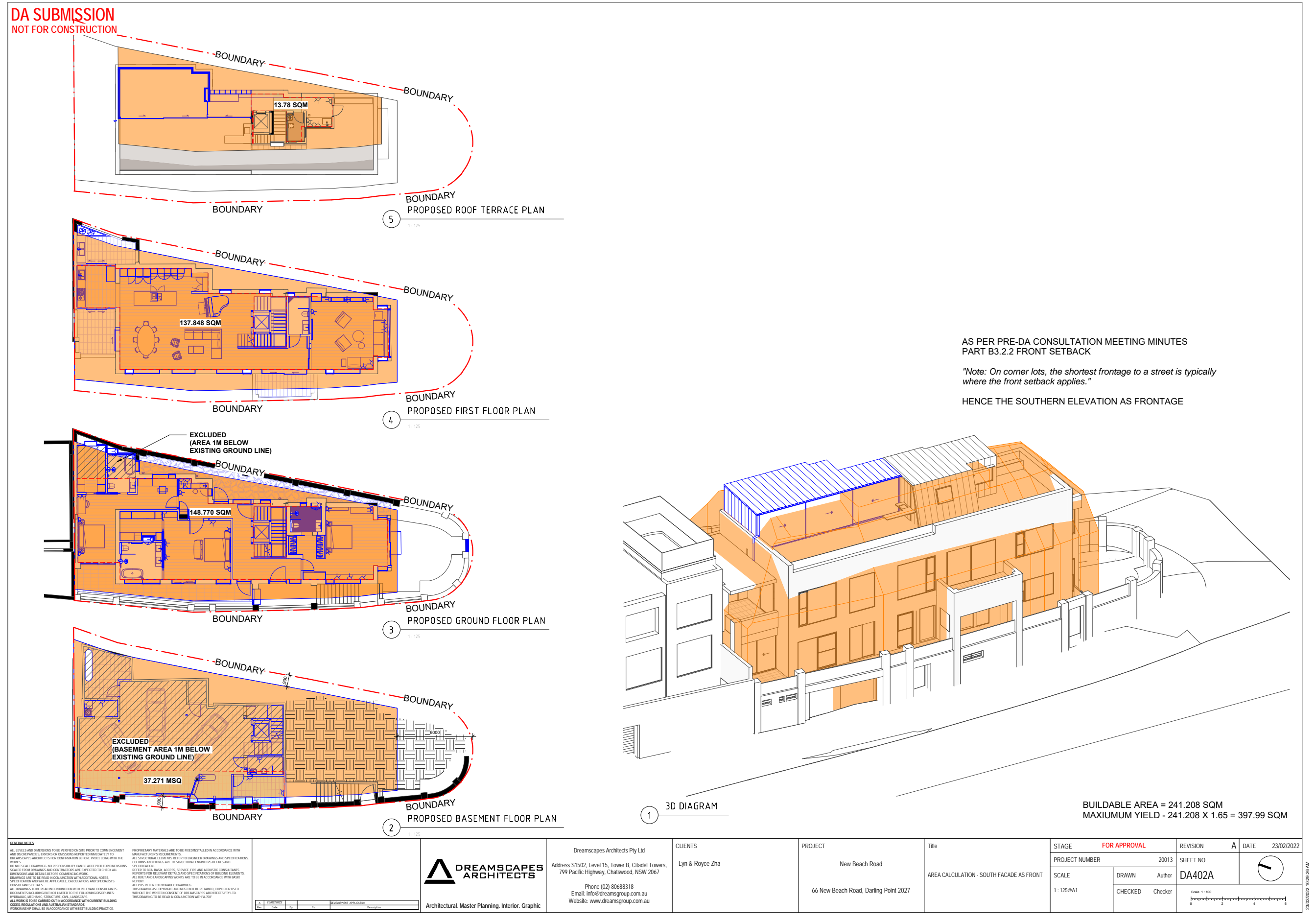
AS PER PREVIOUS DA CONSULTATION MEETING MINUTES
PART B3.2.2 FRONT SETBACK

"The front setback of the building envelope is determined by averaging the three most typical setbacks of the four closest residential buildings that face the same side of the street..."

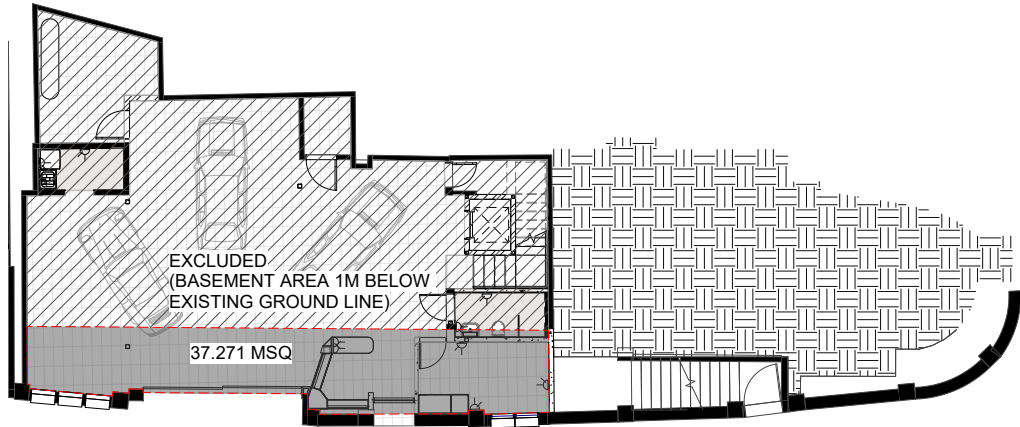


BUILDABLE AREA = 130.557 SQM
MAXIMUM YIELD - 130.557 X 1.65 = 215.419 SQM

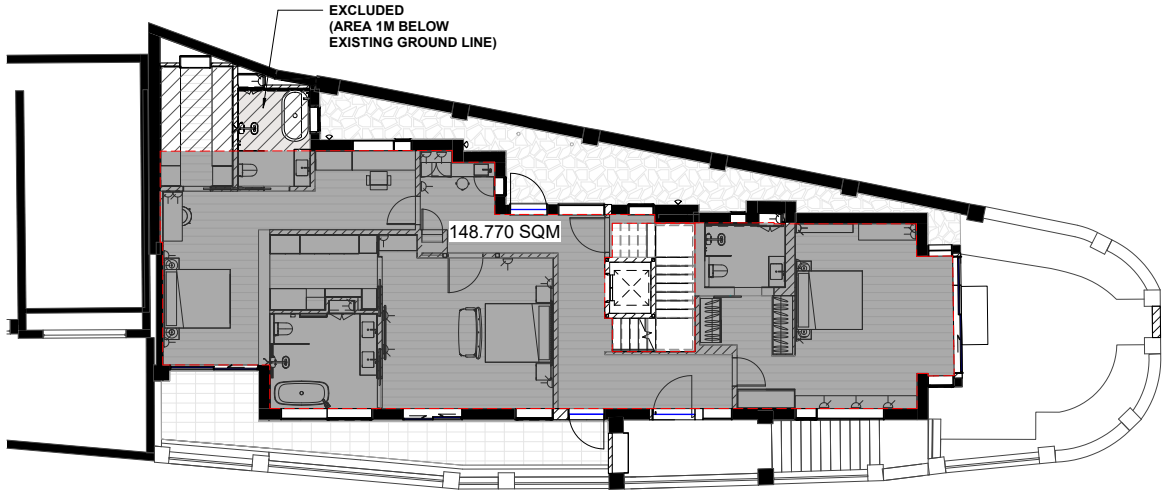
[illegible]



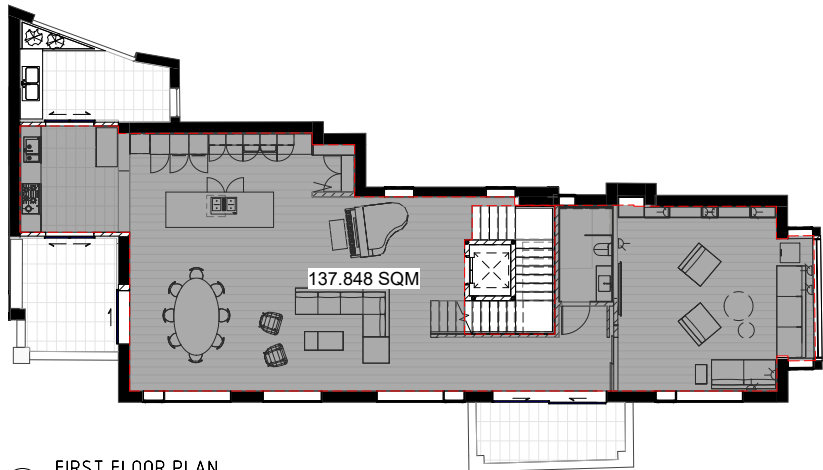
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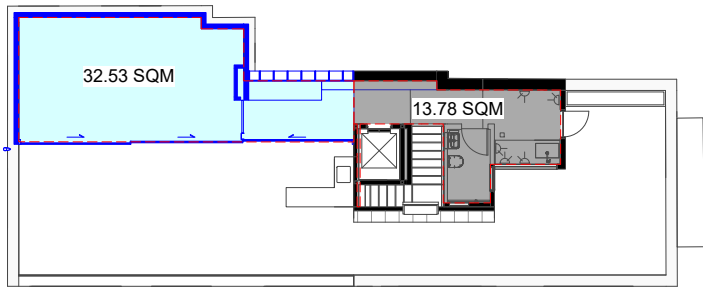
1 BASEMENT FLOOR PLAN
1:100



2 GROUND FLOOR PLAN
1:100



3 FIRST FLOOR PLAN
1:100



4 PROPOSED ROOF TERRACE PLAN
1:100

EXISTING INTERNAL AREA

PROPOSED ADDITIONAL INTERNAL AREA

EXISTING GFA:
 $37.271 + 148.770 + 137.848 + 13.78 = 337.669 \text{ SQM}$

SITE AREA - 325.436 SQM

EXISTING FSR:
 $337.669 / 325.436 = 1.04$

GFA:
 $37.271 + 148.770 + 137.848 + 13.78 + 32.53 = 370.199 \text{ SQM}$

SITE AREA - 325.436 SQM

FSR:
 $370.199 / 325.436 = 1.13$

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						DEVELOPMENT APPLICATION

DREAMSCAPES ARCHITECTS
Architectural, Master Planning, Interior, Graphic

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Website: www.dreamsgroup.com.au

CLIENTS
Lyn & Royce Zha

PROJECT
New Beach Road
66 New Beach Road, Darling Point 2027

Title
PROPOSED GROSS FLOOR AREA & FLOOR SPACE RATIO

STAGE **FOR APPROVAL**
PROJECT NUMBER 20013
SCALE 1:100@A1
DRAWN Author
CHECKED Checker

REVISION A
SHEET NO DA400A

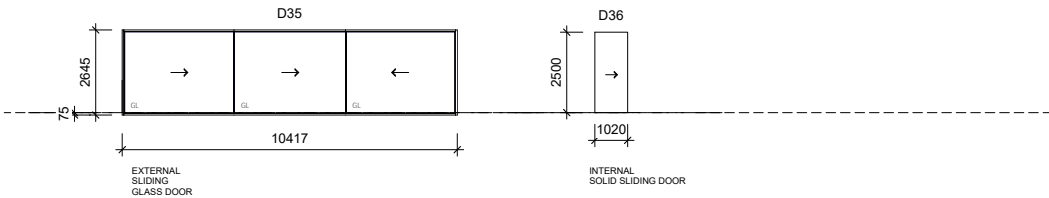
DATE 23/02/2022
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DA SUBMISSION
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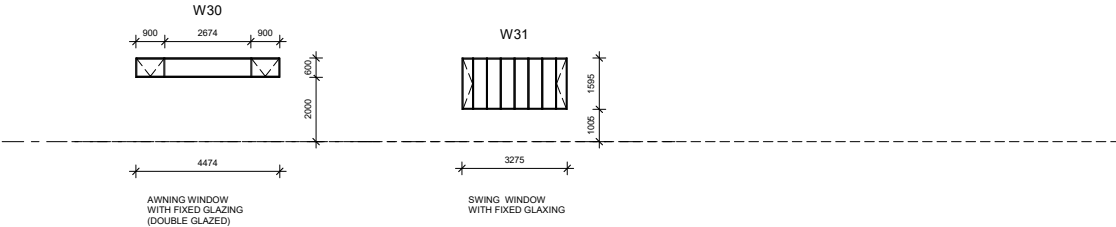
DOORS

ROOF TERRACE



WINDOWS

ROOF TERRACE



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						PROJECT NUMBER 20013		SHEET NO DA8000A	
						SCALE 1:100@A1	DRAWN Author	CHECKED Checker	
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Statement of Environmental Effects

Appendix B Clause 4.6 Variation to Height of Building development standard

Statement of Environmental Effects

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Statement of Environmental Effects

	provides that the maximum height of a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.
Percentage and numeric variation of the proposed development to the development standard:	<p>The proposed development has a maximum RL of 14.83m, measured at the worst case scenario of 12.39m which represents a 2.47m (30.4%) variation to the 9.5m control.</p> <p>The approved dwelling additions granted consent for a height at RL14.74 and the proposal reflects an overall change in height of 7mm.</p>

7.1.4 Nature of the Contravention

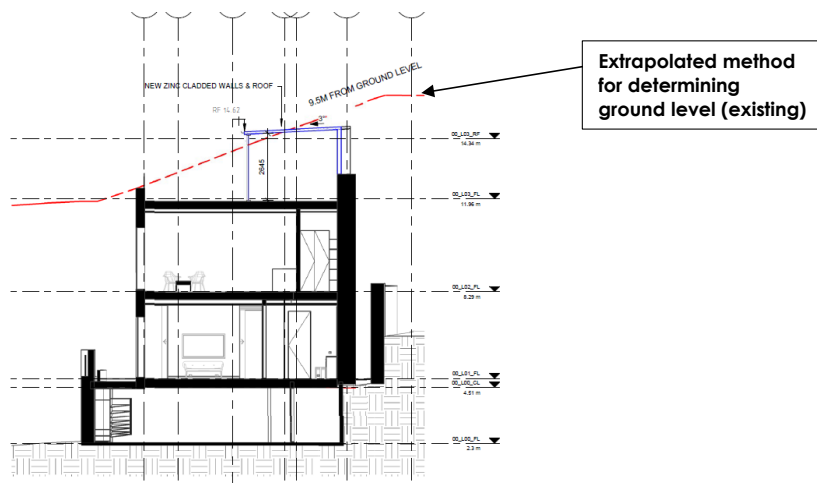
The dwelling additions represent a built form that varies in height between 12.39m and 8.33m. The majority of the existing building height exceeds the maximum building height limit of 9.5m as the existing approved dwelling pre-dates the adoption of the height of building standard. A variation is sought for the height of building standard at the worst case scenario whereby the ground level (existing) is taken from the existing basement floor level and not the extrapolation method as discussed in Section 4.3 of the SEE. This is the approach that Council has previously assessed the development work and advised in the pre-DA meeting.

However, see Section 4.3 of this Statement in relation to the definitions of the WLEP 2014 ground floor level (existing) whereby the NSW Land & Environment Court has in recent times upheld the "extrapolation method" established in *Bettar v Council of the City of Sydney* [2014]NSWLEC 1070. "Bettar" establishes the ground level (existing) from the context of levels within the site and outside the boundaries where the site is a highly altered development site, as is the case for the subject site.

The key areas of variation that relate to the proposed works are as follows;

- Roof terrace level at the western extremity of the roof.

Refer to Figure 17 below for clarification of roof and exceedance of the dwelling.



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Statement of Environmental Effects

- Wehbe v Pittwater Council [2007] NSWLEC 827
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90
- Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248
- Moskovich v Waverley Council [2016] NSWLEC 1015

And additionally, the following caselaw as it relates to height of building and the definition of ground level (existing).

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

7.2 Clause 4.6 Assessment

7.2.1 Overview

Clause 4.6(1) and (2) of the Woollahra LEP 2014 state:

- (1) The objectives of this clause are as follows—
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This objection to the building height development standard addresses sequentially each of the following sub-clauses:

- 3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
 - (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

CC200091 - 66 New Beach Road, Darling Point

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7.3 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

7.3.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

Strict compliance with the development standard is considered unnecessary in the circumstances of this proposal given the height of the existing roof top level, the extent of the proposed height variation, the topography of the land in this location and the irregular shape of the allotment.

The site slopes from east to west and the variation is at its greatest at the western portion of the site as shown in the plans submitted (see Figure 16). The site is a sloping parcel of land with a fall of approximately 5m across the depth of the site, from the Yarranabbe to New Beach Road footpath level. However within the site the difference in levels is approximately 2.3m.

The site is an irregular shaped allotment that has three street frontages and only one common boundary with the adjoining property to the north.

The site is therefore considered to be a highly constrained allotment and requiring strict compliance with the controls in these circumstances is unreasonable, and would not allow for the orderly and economic use of the land. Particularly within the context of the surrounding built environment that includes multi storey developments, and the desired future character attributes of the site.

The variation of the proposed roof height and the approved existing height represents a difference of 7mm to the overall height that was previously approved. This is not readily apparent in the subject application due to the complexities associated with the definition of the ground level (existing).

Despite the numerical non compliance with the 9.5m height limit, the underlying objective of the control has been achieved through a consistent character with the existing locality and the desired future character as articulated in chapter B1.2 of the DCP.

As outlined below, the clause 4.6 confirms that the proposed building height variation will not cause adverse view loss, privacy, overshadowing or visual impacts. It is noted that the subject locality demonstrates a height that is consistent with that proposed (refer photographs 6 and 9) and Figure 18.

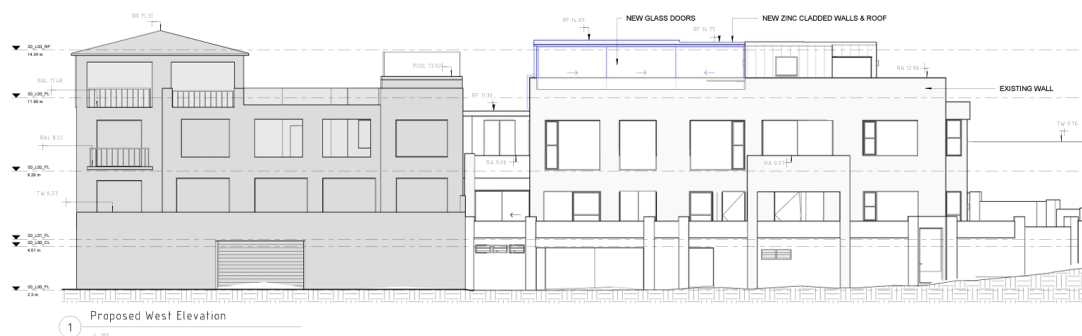


Figure 18: West Elevation (Source: Dreamscapes Architects, 2022)

Figure 19 below indicates the extent that the existing roof varies the applicable development standard and that the entire roof floor level would need to be removed in order to achieve compliance. This would remove critical open space area for the subject site.

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Statement of Environmental Effects

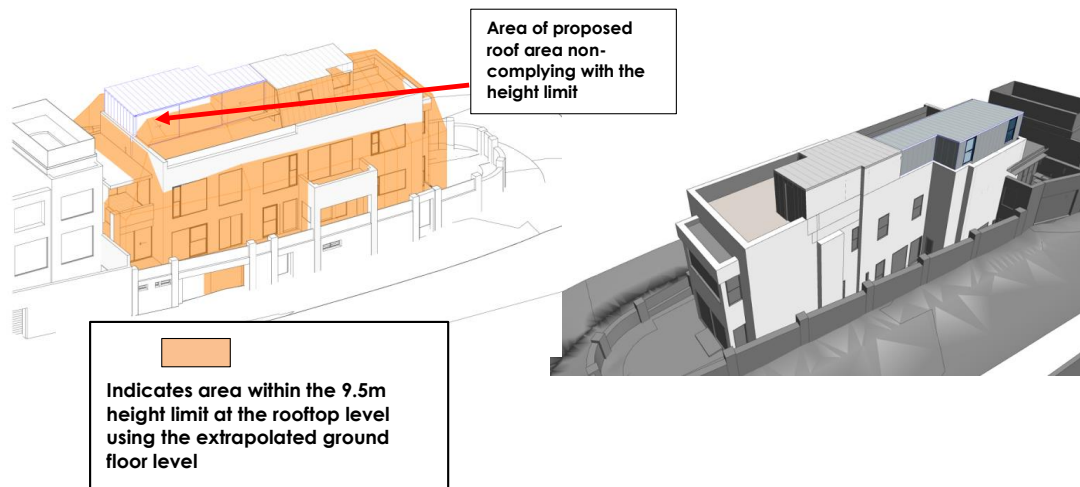


Figure 19: Maximum Buildable Area Diagram (Source: Dreamscapes Architects)

Strict compliance with the building height standard is therefore considered unreasonable and unnecessary for the above reasons.

7.3.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

Yes, if compliance was required, the project could result in reduced building height that is inconsistent with the surrounding locality, and not reflective of the zone objectives within the R3 medium density residential and more reflective of a low density zoning. A better design outcome is achieved through provision of an amended roof level.

Notwithstanding the numerical non-compliance related to building height, the objectives of the zone and height control are met and are consistent with and appropriate for the zone.

7.3.3 Has the development standard been virtually abandoned or destroyed by Council's own actions departing from the standard?

Council has consistently approved a building height along the New Beach Road frontage that is comparable with the proposal. This is demonstrated in photographs 6 and 9. This has established a prevailing height in this location thereby undermining the adoption of this stricter numerical control in this instance.

7.3.4 Is the zoning of the land unreasonable or inappropriate?

No. The site is well within the context of surrounding medium density development of multiple stories. The dwelling is well located to employment, services and public transport and the locality readily supports residential development of this scale.

7.4 Are there sufficient environmental planning grounds to justify contravening the development standard?

Existing established height

The proposed height of the roof structure, while exceeding the applicable development standard for the site, is comparable with the existing roof structure that exists on site. This is as a consequence of the existing dwelling being developed prior to the adoption of the LEP 2014. The proposal is therefore consistent with the perspective of these established heights of the existing dwelling, the streetscape in New Beach Road,

CC200091 - 66 New Beach Road, Darling Point

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Yarranabbe Road, and from the public domain areas in the vicinity of the site. Figure 17 demonstrates this with the existing roof height being comparable with others in the immediate locality. Further, Photograph 15 and Figure 20 identifies that within the context of the character of the site as viewed from Yarranabbe Park, this structure is not a dominant element in the streetscape.

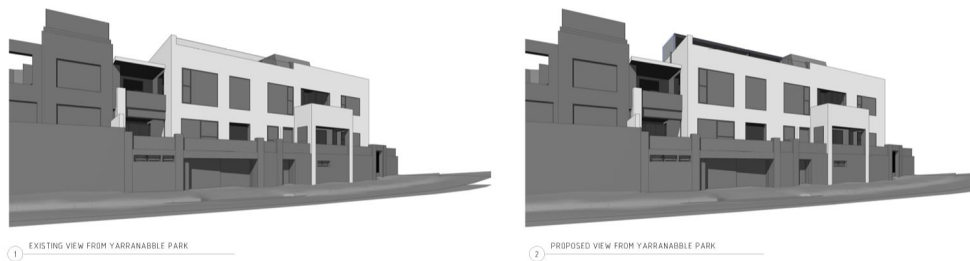


Figure 20: View from Yarranabbe Park Perspective Diagram (Source: Dreamscapes Architects, 2022)



Photograph 14: Subject site as viewed from Yarranabbe Park (Source: Dreamscapes Architects, 2022)

So while the proposal will exceed the numerical variation to the height of building standard, the additions to the dwelling, particularly to the roof top level will remain consistent with the character of this location and moreover the desired future character attributes provided in B1.2.2 in the Woollahra DCP 2015.

Definition of "ground level (existing)"

In *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 at 36 the following comments are made in relation to the definition of ground level (existing).

The definitions of basement, height of buildings and ground level in LEP 2012 have come from the dictionary of the standard instrument (Standard Instrument - Principal Local Environment Plan). Ground level (existing) is defined in LEP 2012 as the existing level of the site at any point. This definition of existing ground level is sufficiently vague that both expert planners' reasoning can be argued, because the particular difficulty in applying this definition to this site is that the existing building occupies the whole of the site area and so there is no 'ground' (as in soil/garden/paving) around the building and on the site, from which the existing ground level can be determined by a site survey.

It is relevant to consider the objectives of the building height development standard in considering how best to determine the maximum height of the building using the dictionary definitions in LEP 2012.

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The objectives include, at cl 4.3(a) of LEP 2012, to ensure the height of development is appropriate to the condition of the site and its context. As one of the purposes of the 38 39 40 41 development standard is to relate the proposal to its context, it follows that the determination of the existing ground level should bear some relationship to the overall topography that includes the site.

In this case, the evidence provided that extrapolated the ground level (existing) from the surrounding footpaths bears a relationship to the context and the overall topography that includes the site [at 41] was taken to be the preferred evidence.

This combined with the internal markings that are taken from the paved areas within the site area, provide a more practical operation of the definition than were the basement floor levels of the existing dwelling utilized. Noting that at the western extremity of the dwelling on the subject site that relates to New Beach Road levels, the works comply with the height standard.

Were the existing basement level used to determine the ground level (existing) this would result in an absurd height plane and does not place the proposed building in its true context on the site and surrounds. This is demonstrated in Figure 21 where the ground level (existing) is taken as the basement level but bears no relationship to the Yarranabbe Road level. The extrapolated height demonstrates a better relationship to the surrounds and the context of the development site.

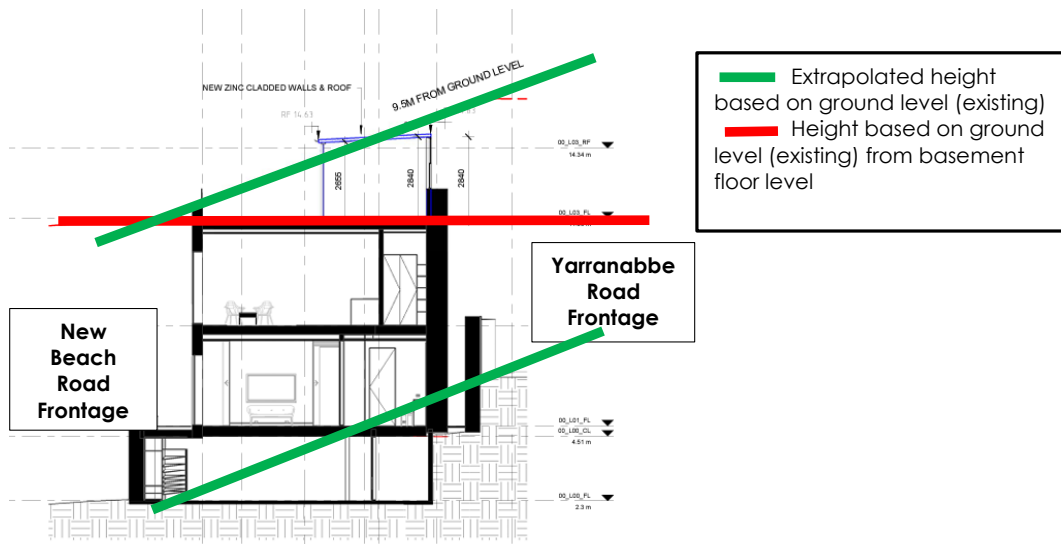


Figure 21: Section identifying the height plane where the basement floor level is used (Source: Dreamscapes Architects, 2022)

Topography of the land

The subject site has a fall from the Yarranabbe Road to the New Beach Road frontage with a natural fall from the north to south across the width of the site. The fall of the land is on average 4.9m from frontage to frontage and is expressed across the depth of the site. This results in a highly irregular natural ground level and accounts for the significant variation to the height standard. This is demonstrated by the compliance of the works at the eastern and western boundary extremities of the site, and the variation identified at the centre portion of the site. This is further compounded by the width of the site being only 13.6m, with an overall gradient of 36%.

The location of the height breach is largely centered in the site and the design adopts a transition consistent with the stepping of the land. The design has carefully recessed the roof space from the western

CC200091 - 66 New Beach Road, Darling Point

Statement of Environmental Effects

wall of the roof floor level, and has been located at the high point of the site. The changes to the balustrade propose a glass balustrade in place of the existing rendered wall which creates an openness to this existing structure.

Accordingly, it is considered that the architectural design, inclusive of height exceedance, will assist with improvements to the scenic value of the site and is responsive to the unique constraints of the topography. The resulting development will be consistent with the existing dwelling on site, and with the height of the surrounding locality.

There are therefore sufficient planning grounds, including the existing circumstances on site, the complexities with defining the ground level, and the highly constrained nature of the site to warrant variation to this standard.

7.5 Is the proposed development 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?

7.5.1 What are the Objectives of the Development Standard?

The objectives of Clause 4.3 relating to building height are:

- (a) to establish building heights that are consistent with the desired future character of the neighbourhood,*
- (b) to establish a transition in scale between zones to protect local amenity,*
- (c) to minimise the loss of solar access to existing buildings and open space,*
- (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- (e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas*

The proposal is considered to satisfy the height objectives for the following reasons:

- Part B1.2 provides the desired future character attributes for this location. The following comment is relevant to the proposal;

Where new development occurs, the buildings are to provide a height, bulk, and scale compatible with those buildings that are predominantly two to four storeys in height, and have regard to the visual impact of the development from the harbour.

The visual impact on the harbour is addressed at Section 4.4 of this Statement, however it is considered that the proposed additions, including the roof top level, will be consistent with the predominant height and not negatively impact on the view of the site from the harbour.

- The proposed built form will adopt a reasonable relationship with the surrounding properties that are zoned R3 Medium Density Residential, where low density is located at a higher topography to the site to the east.
- The variation to the height control will not generate unacceptable impacts to existing view lines as demonstrated in detail at Section 5.3 and Appendix C and D of this Statement.
- The most iconic views towards Sydney Harbour are generally orientated to the north west. Based on a site inspection of existing topography, and the view analysis included in Appendix C, the proposed additions will generate no view impacts on surrounding properties to these iconic views.

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- The proposed height exceedance will generate no unacceptable view impacts to the surrounding residential properties, or areas within the public domain.
- The shadow diagrams submitted with the application identify compliance with solar access principles and confirm that surrounding buildings and the Yarranabbe Park will not be adversely impacted as a result of the height exceedance. The proposed roof level works will not modify the shadow impact of the existing dwelling as a result of the topography of the land, the orientation of the site, and the reduction in the roof space in a western direction.
- The privacy of adjoining dwellings has been considered in the design of the additions and no significant impacts have been identified.

7.5.2 Objectives of the Zone

Under the provisions of the Woollahra LEP the site is zoned R3 Medium Density Residential. The zone objectives are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

Having regard for the height variation, the proposed development is considered to remain consistent with the zone objectives for the following reasons:

- The development will aid in provision of high quality housing for the community.
- The design is compatible with surrounding architectural form, including the scale and facade of immediate development that includes some medium density residential;
- The design will function as a direct response to the site, orientation and visually prominent position of the site and is considered to represent best practice in residential architecture;
- The development is compatible with the established and future character and built form with design emphasis on high amenity and function; and
- The proposal will not require significant levels of vegetation removal and replacement planting is proposed to offer a better choice of specimen for this location.

7.6 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning?

Proposed exceedance of the height control will not raise any matters of state or regional environmental planning significance.

7.7 Would the contravention raise any significant matter or hinder the attainment of the objects of the Act?

The objects of the Act are:

- to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

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- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The proposed variation is consistent with a number of objects including:

- Promotion of the orderly and economic use and development of land through high quality sustainable urban form;
- Promotion of good design and amenity of the built environment through considered architectural response to the site circumstances and the existing dwelling house; and
- Promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

7.8 Is there public benefit in maintaining the development standard?

No. For the reasons outlined above, the proposal is considered to be designed in accordance with the site topography and within the context of the surrounding height and scale of medium density development. The variation to the height will not generate adverse impacts on surrounding development or the environment.

The proposed development will provide a range of social, economic and public benefits including:

- Effective reuse of an existing dwelling located on Sydney Harbour foreshore and adjacent to Yarranabbe Park, within the Darling Point precinct;
- The proposal, inclusive of height exceedance, has been designed to generate minimal impact on adjoining properties and the public domain; and
- The variation in height is confined centrally on site and is considered to be insignificant and supportable on merit based on review of surrounding building heights.

7.9 Is the objection well founded?

The objection has identified that the proposed height variation will result in a better urban design outcome than if strict compliance with the development standard was enforced.

The objection has also determined that the height variation will not generate unacceptable view loss, privacy, overshadowing or visual impacts.

Accordingly, the objection is considered to be well founded.

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Statement of Environmental Effects

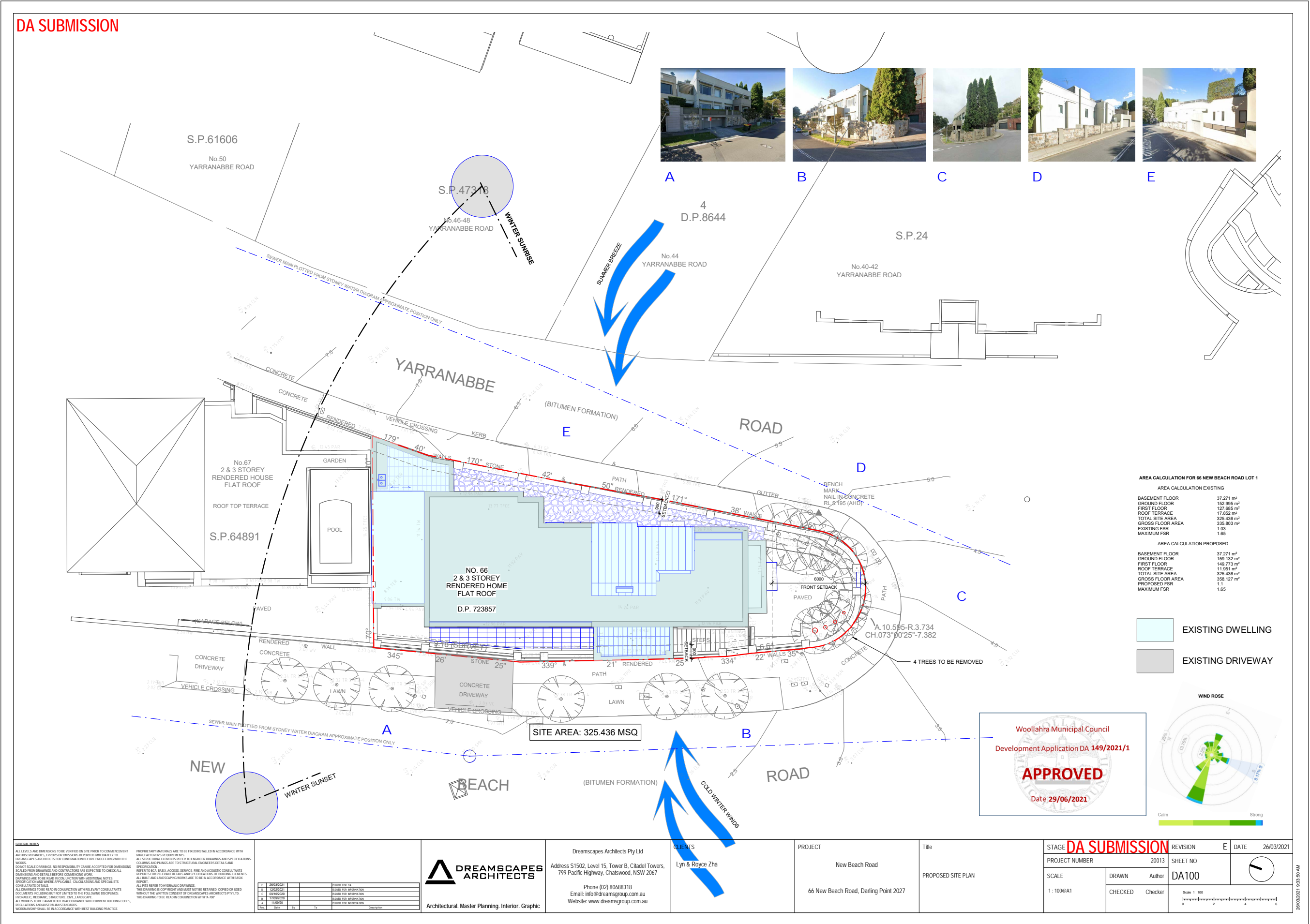
7.10 Conclusion

Strict compliance with the development standard is considered unnecessary in the circumstances of the proposed development given the height variation and will result in a better urban design outcome than a development that incorporates strict compliance with the control.

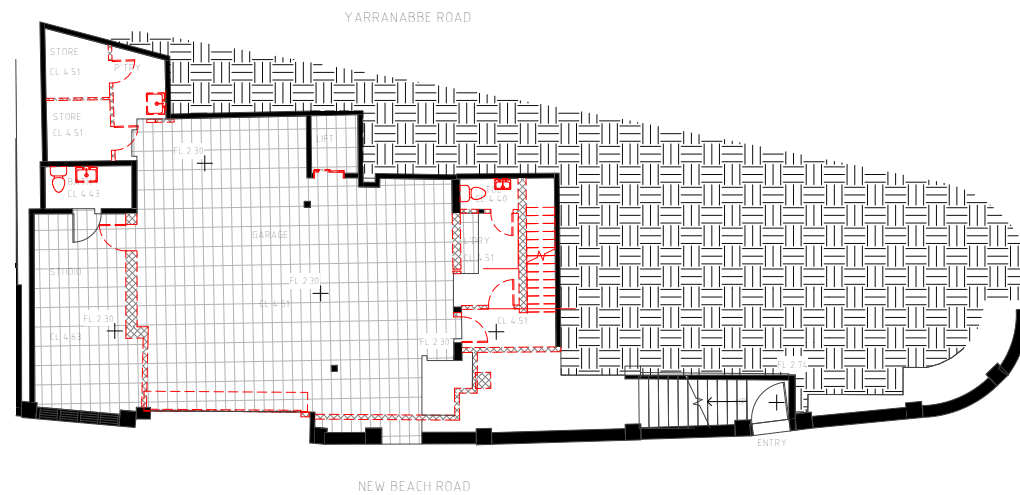
The proposed architectural design seeks to retain and expand the existing dwelling in accordance with the objectives of the R3 Medium Density Residential zone.

The design and occupation of the building will generate no unacceptable amenity or environmental impacts on surrounding development.

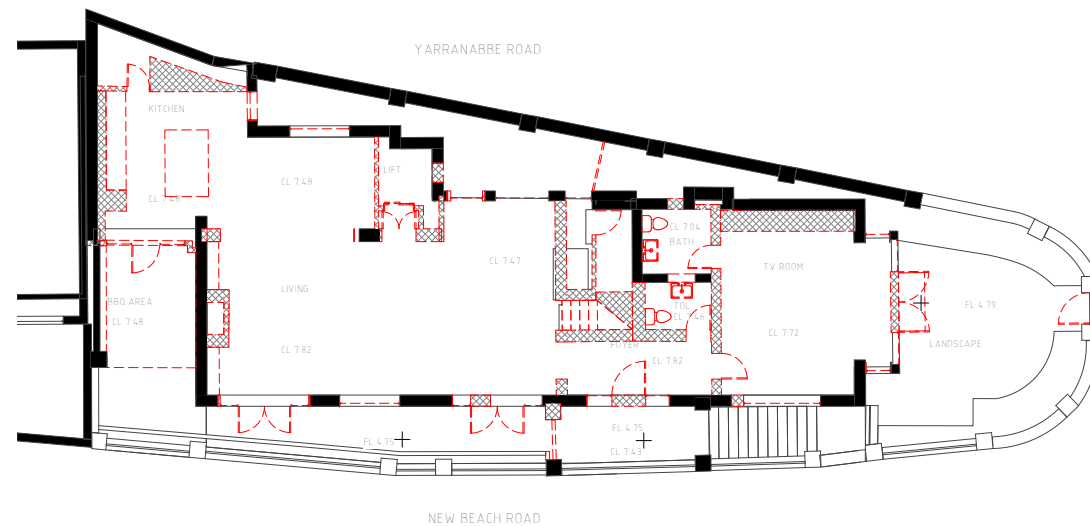
The clause 4.6 objection has determined that there are sufficient environmental planning grounds to warrant the variation and the proposed development, inclusive of variation to height, is consistent with relevant LEP objectives. The consent authority can be assured that contravention of the control will not result in any unreasonable environmental planning impacts and the request for variation to the height control is therefore considered to be in the public interest.



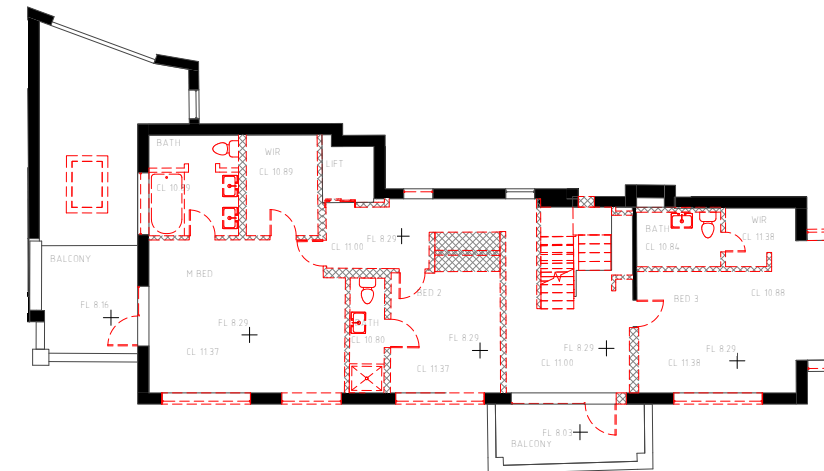
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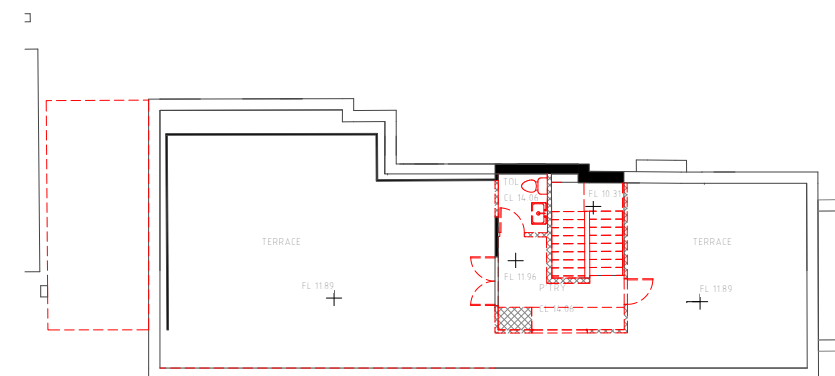
1 DEMOLITION PLAN - BASEMENT FLOOR



2 DEMOLITION PLAN - GROUND FLOOR



3 DEMOLITION PLAN - FIRST FLOOR

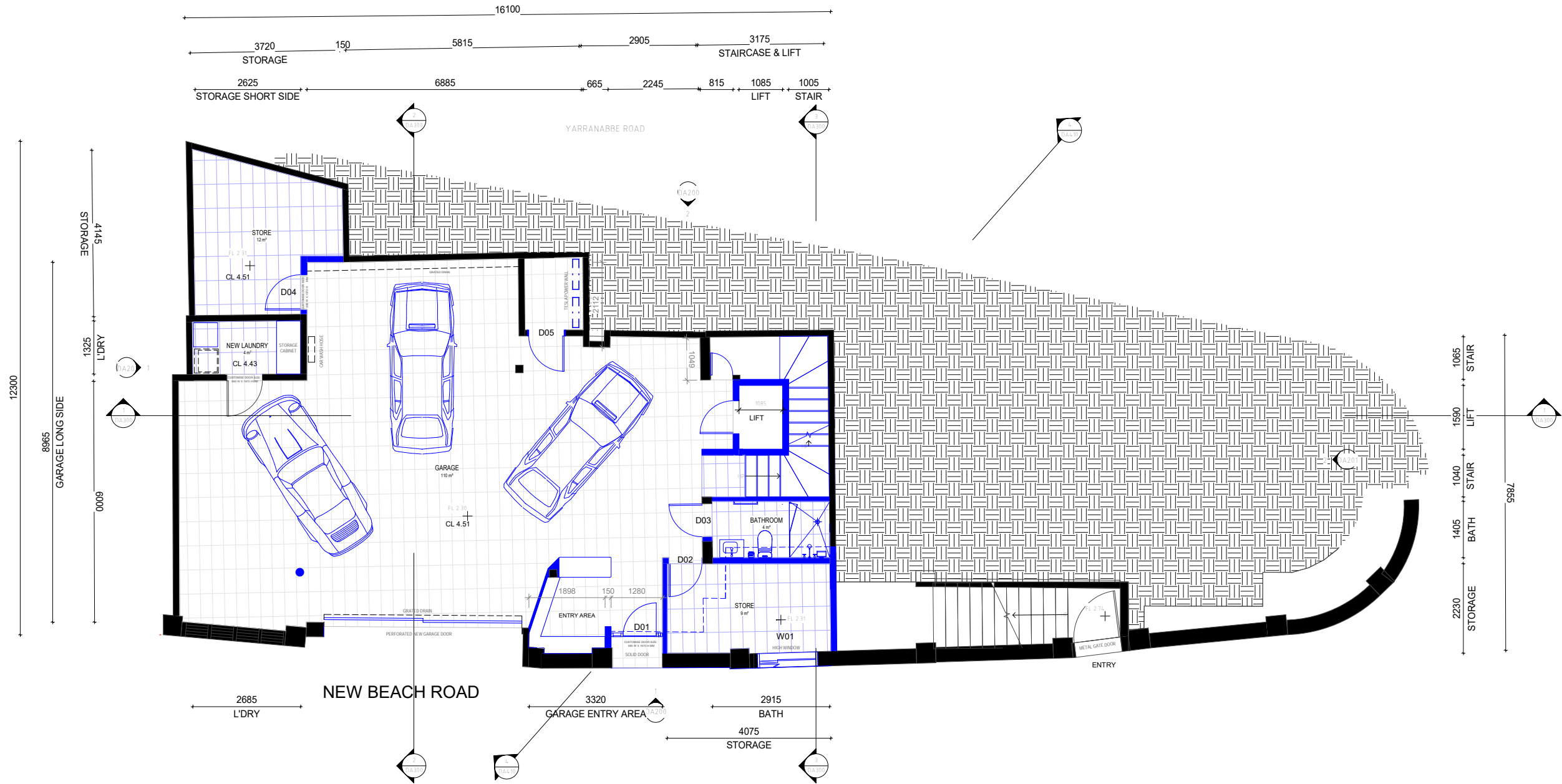


4 DEMOLITION PLAN - ROOF TERRACE

NOTE:
EXISTING WALLS TO BE DEMOLISHED IN RED DASH LINES

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DA SUBMISSION



1 PROPOSED BASEMENT FLOOR PLAN
1: 50

NOTE:
PROPOSED NEW CONSTRUCTION IN BLUE LINES

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1	26/03/2021			ISSUED FOR DA
2	12/03/2021			ISSUED FOR REVISION
3	12/03/2021			ISSUED FOR DETAIL REVISION
4	18/03/2021			PLAN SET APPROVED
5	30/03/2021			REVISION CONCEPT



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CLIENTS
Lyn & Royce Zha

PROJECT
New Beach Road
66 New Beach Road, Darling Point 2027

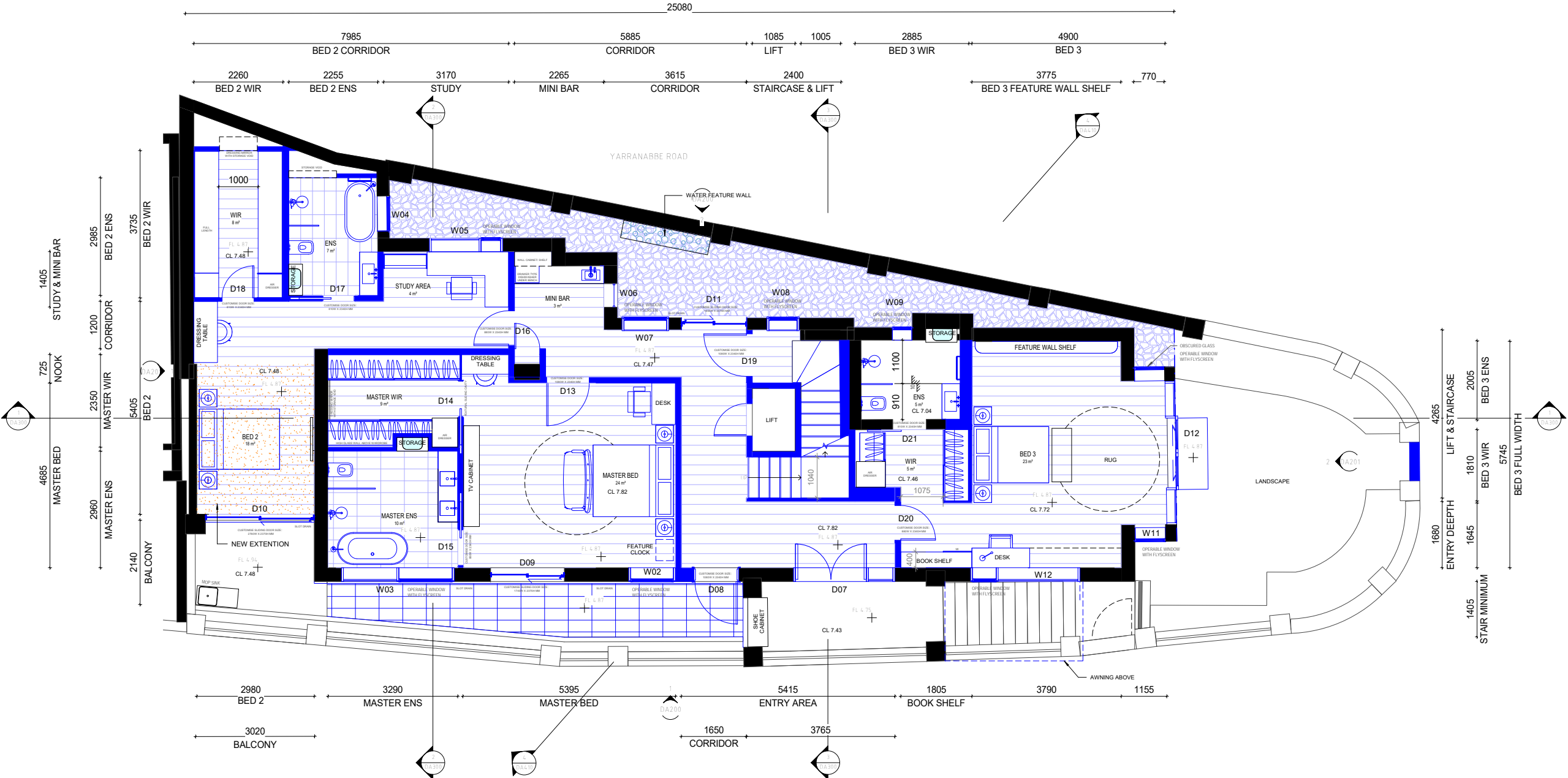
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PROPOSED BASEMENT FLOOR PLAN

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DA SUBMISSION



1 PROPOSED GROUND FLOOR PLAN
1:50

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66 New Beach Road, Darling Point 2027

Title

PROPOSED GROUND FLOOR PLAN

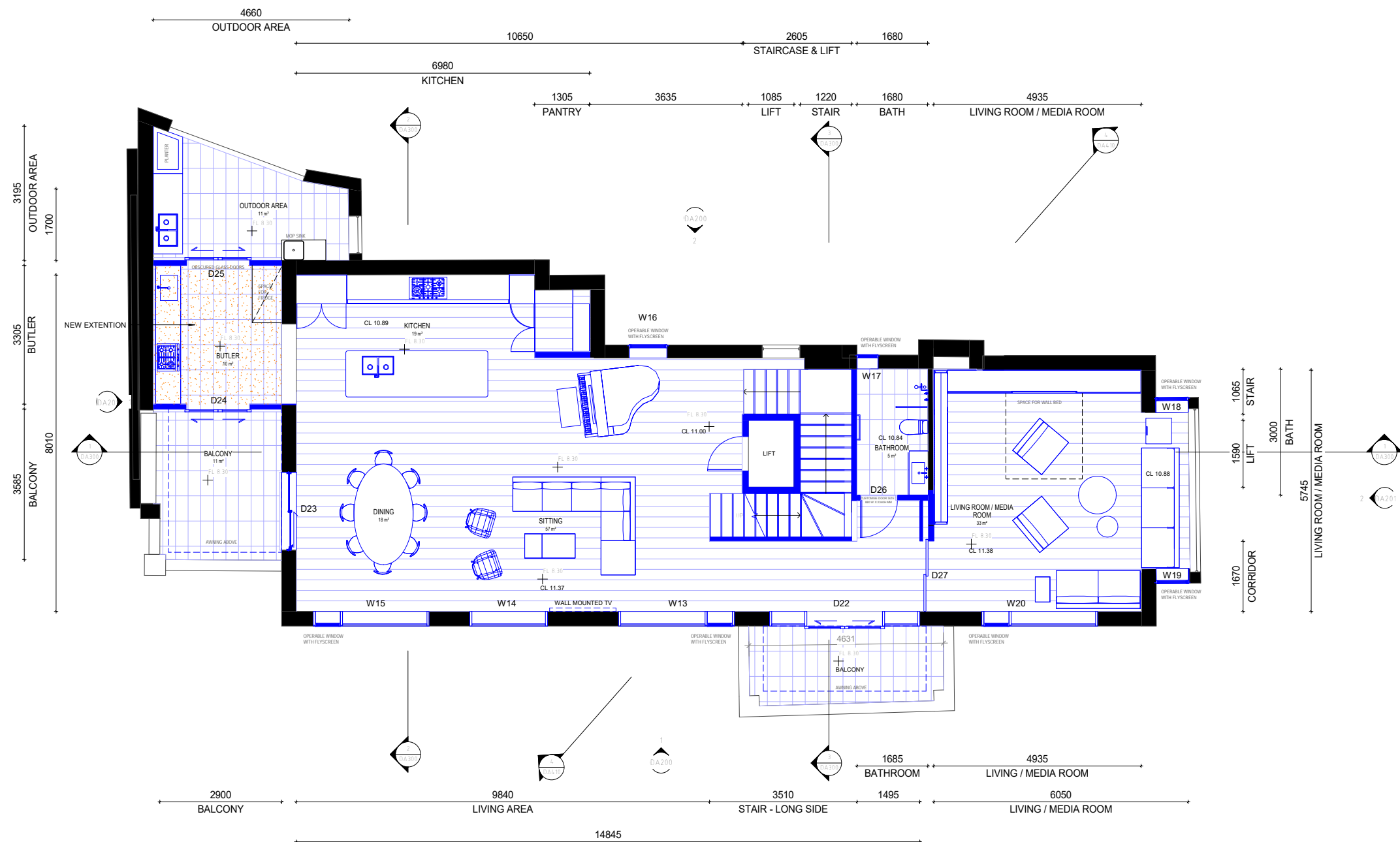
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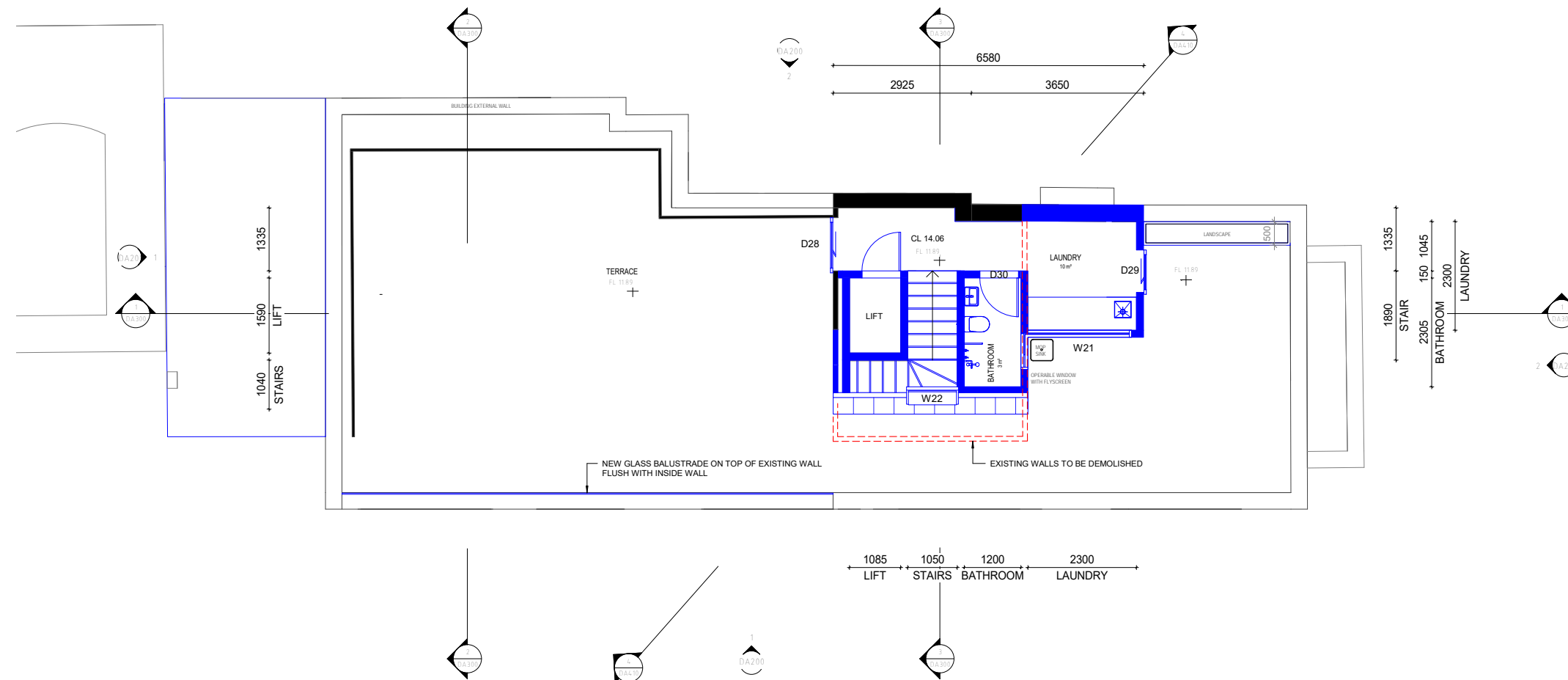
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1 PROPOSED FIRST FLOOR PLAN

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DA SUBMISSION



1 PROPOSED ROOF TERRACE PLAN

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A	30/10/2020			INTERIOR CONCEPT
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	CLIENTS
	Lyn & Royce Zha

PROJECT	New Beach Road
	66 New Beach Road, Darling Point 2027

Title	PROPOSED ROOF TERRACE
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STAGE DA SUBMISSION

PROJECT NUMBER	20013
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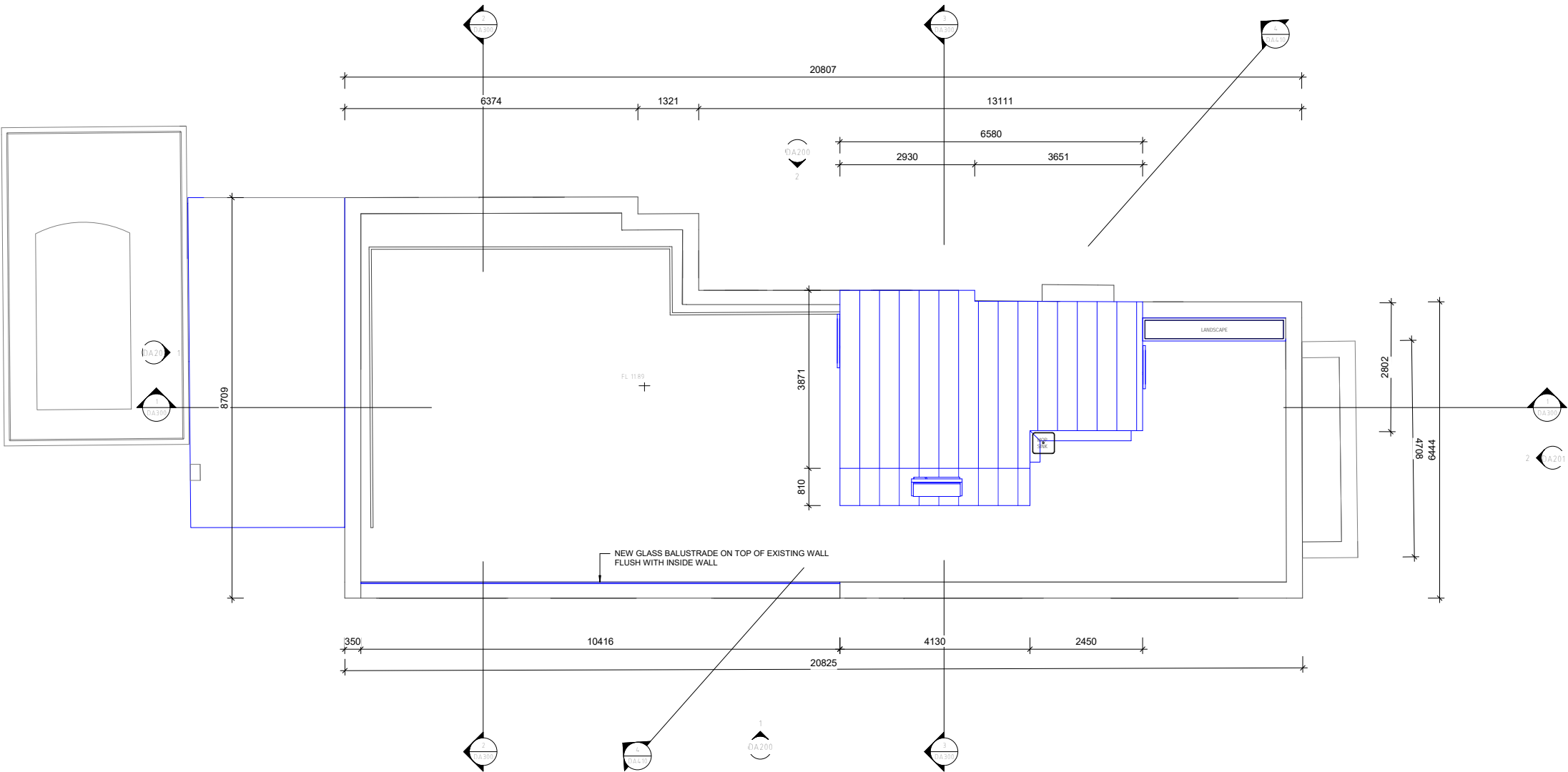
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Table 1

PRELIMINARY



1 PROPOSED ROOF PLAN
1:50

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New Beach Road
66 New Beach Road, Darling Point 2027

Title

PROPOSED ROOF PLAN

STAGE

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PROJECT NUMBER

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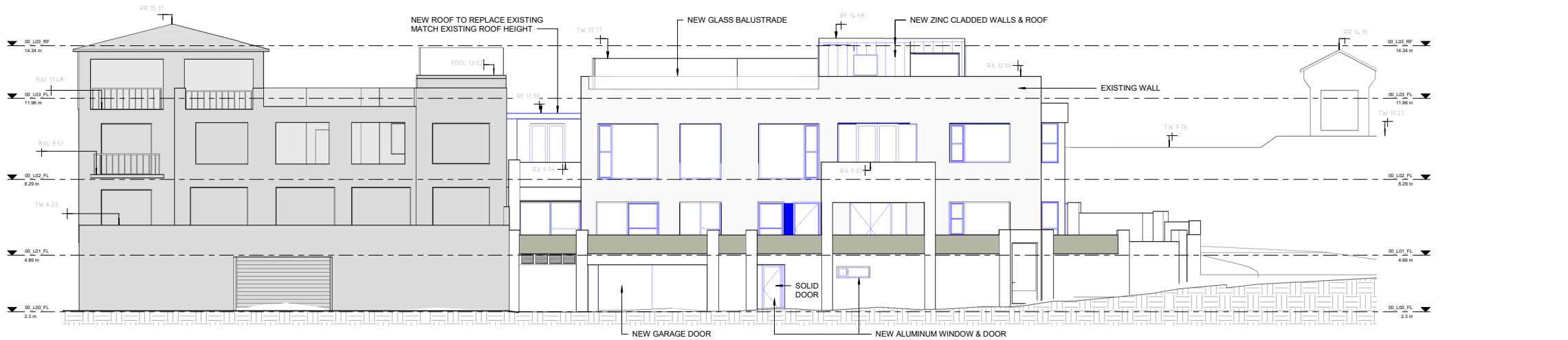
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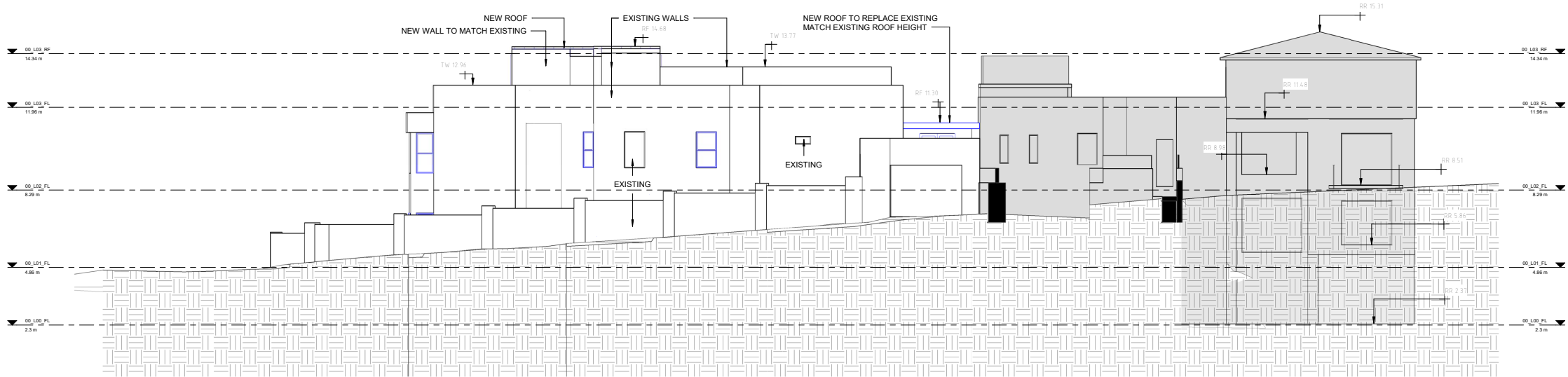
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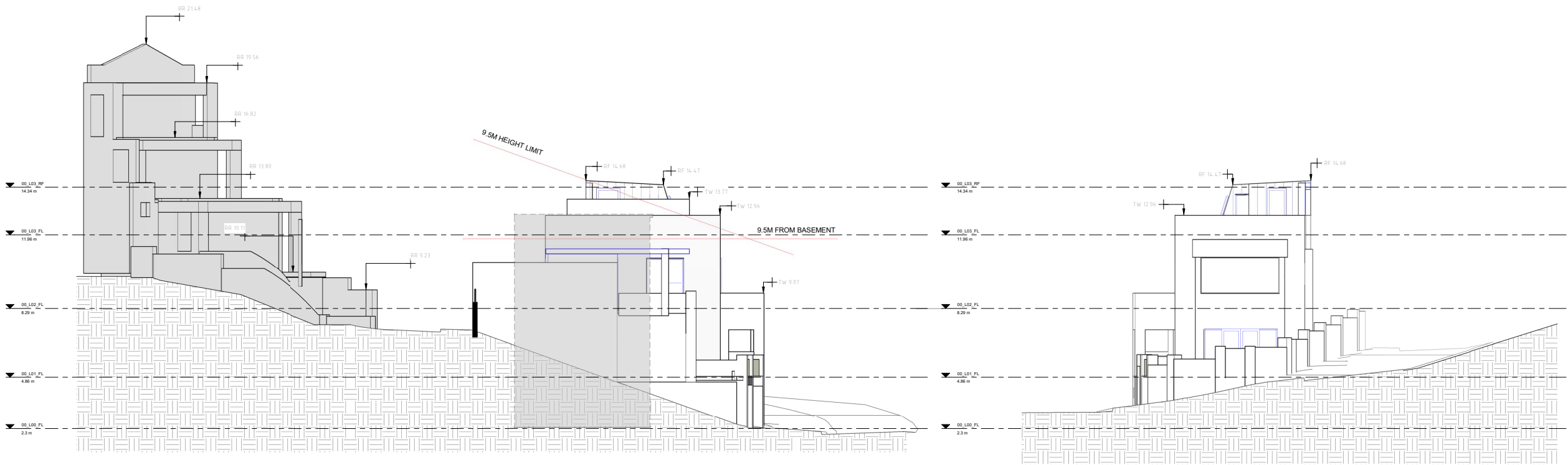
1 Proposed West Elevation
1:100



2 Proposed East Elevation
1:100

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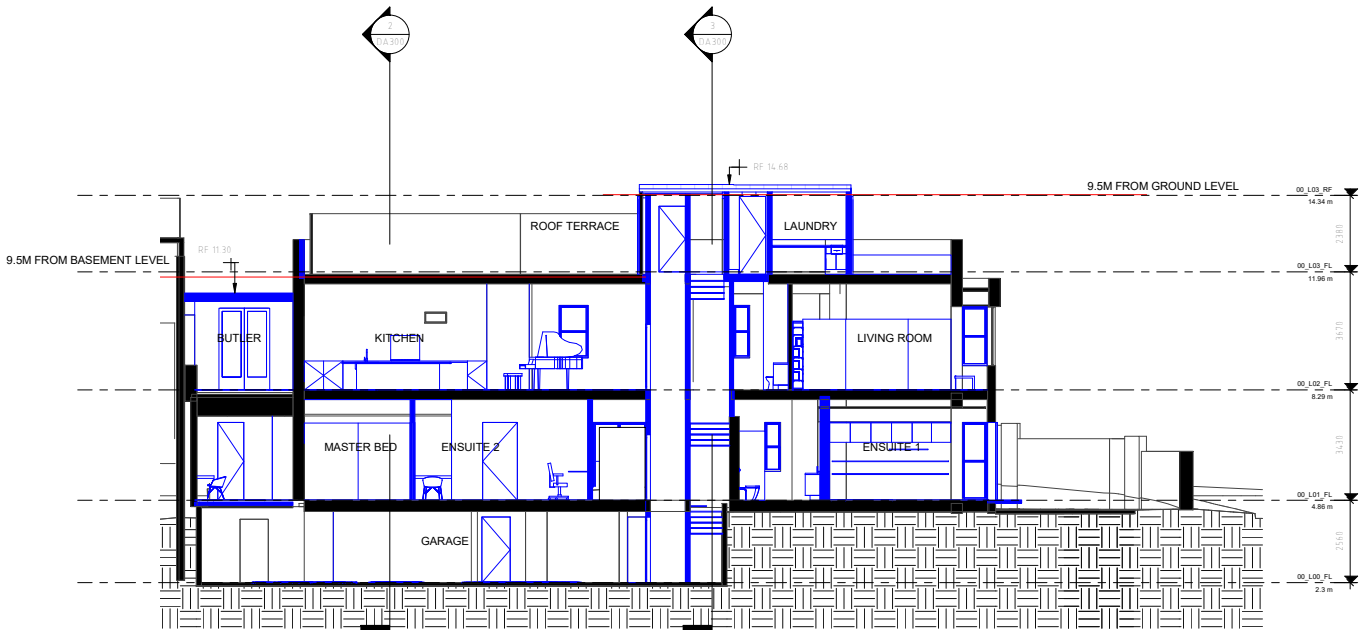


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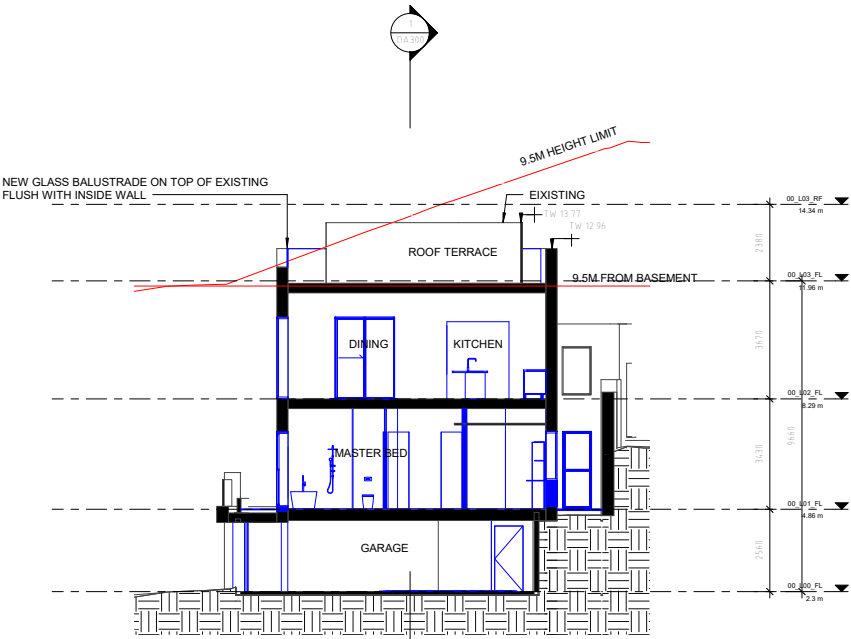
2 Proposed South Elevation
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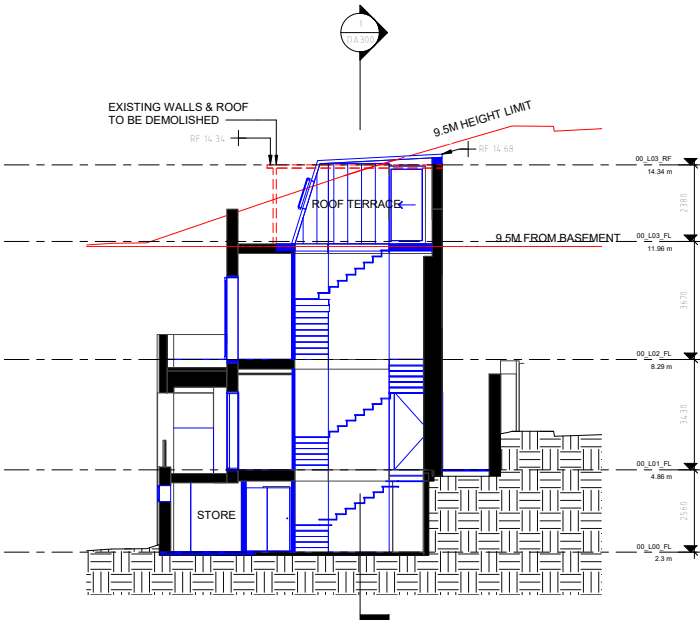
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3 PROPOSED SECTION 3
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2	14/05/2021			ISSUED FOR INFORMATION
3	09/07/2021			ISSUED FOR INFORMATION
4	17/09/2021			ISSUED FOR INFORMATION
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Email: info@dreamsgroup.com.au
Website: www.dreamsgroup.com.au

CLIENTS
Lyn & Royce Zha

PROJECT
New Beach Road
66 New Beach Road, Darling Point 2027

Title
SECTIONS

STAGE	DA SUBMISSION	REVISION	D	DATE	26/03/2021
PROJECT NUMBER	20013	SHEET NO	DA300		
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LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D4
FILE No.	DA59/2022/1
ADDRESS	41 Carlotta Road DOUBLE BAY
COUNCIL WARD	Double Bay
SITE AREA	650.2m ²
ZONING	R3 Medium Density Residential
PROPOSAL	Demolition of the existing dwelling, construction of two semi-detached dwellings, landscaping works, swimming pool and Torrens title subdivision into two lots.
TYPE OF CONSENT	Local development
COST OF WORKS	\$2,945,343.00
DATE LODGED	23/02/2022
APPLICANT	Dallad Pty Ltd
OWNER	S P Jedovnický & A T Jones
AUTHOR	Mr M Kelly
TEAM LEADER	Mr M Moratelli
SUBMISSIONS	1
RECOMMENDATION	Refusal

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

The application is to be determined by the Woollahra Local Planning Panel as it falls under the category of:

- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%

2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for refusal because:

- It is considered to be unsatisfactory with planning provisions contained in WLEP 2014 and WDCP 2015
- The Clause 4.6 variation requests are not well-founded.
- It will have adverse effects on the amenity of adjoining properties and/or local built and natural environment such that refusal is justified
- The site is not suitable for the proposed development
- The proposal is not in the public interest

3. LOCALITY PLAN



4. PROPOSAL

The proposal involves the demolition of the existing dwelling, construction of two semi-detached dwellings, landscaping works, swimming pools and Torrens title subdivision into two lots. The layout of each unit is mirrored and summarised as follows:

Roof level

- Skylights and solar panels proposed on roof

First floor

- Master bedroom with walk-in robe and ensuite and balcony
- Bedrooms 2 & 3
- Bathroom
- Lift and internal stairs and lift
- terrace

Ground floor

- Garage and bin storage
- Kitchen and dining room
- Living room
- Bathroom
- Internal stairs and lift
- Deck

Lower Ground Floor

- Rumpus Room
- Bedroom 4
- Bathroom
- Laundry room
- Cinema

- Internal stairs

External

- Swimming pool
- Pool undercroft/OSD
- Landscaping

5. ISSUES

5.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
Part 4.1	Minimum Subdivision Size	375m ² or 53.5% departure from the 700m ² control	Unsatisfactory
Part 4.3	Height of Buildings	1.9m or 20% departure from the 9.5m control	Unsatisfactory

5.2 Primary Issues

Issue		Section
Subdivision lot size	Unsatisfactory. The application is recommended for refusal. Refer to Reasons for Refusal 4 and 5.	13.3
Building height	Unsatisfactory. The application is recommended for refusal. Refer to Reasons for Refusal 3 and 5.	13.5
Side setback	Unsatisfactory. The application is recommended for refusal. Refer to Reasons for Refusal 7.	14.2
Wall height and inclined plane	Unsatisfactory. The application is recommended for refusal. Refer to Reasons for Refusal 7.	14.2
Pool height	Unsatisfactory. The application is recommended for refusal. Refer to Reasons for Refusal 7.	14.2
Overshadowing	Inadequate information has been submitted to enable full and accurate assessment of the proposal against the overshadowing controls	14.2
Visual privacy	Unsatisfactory. The application is recommended for refusal. Refer to Reasons for Refusal 7.	14.2
Deep soil landscaping	Inadequate information has been submitted to enable full and accurate assessment of the proposal against the deep soil landscaped area controls	14.2
Swimming pool height	Unsatisfactory. The application is recommended for refusal. Refer to Reasons for Refusal 7.	14.2
Excessive excavation	Unsatisfactory. The application is recommended for refusal. Refer to Reasons for Refusal 7.	14.2
Desired Future Character	Unsatisfactory. The application is recommended for refusal. Refer to Reasons for Refusal 6.	14.1

5.3 Issues raised in Submissions

Issue	Assessment comments
<i>"The setback of the property – we are concerned that the property is positioned too far back and that this encroaches upon our property – given us a sense of being enclosed between 41 and 39A Carlotta Rd. This could be resolved with minor amendments to the setback".</i>	<p>The semi-detached dwellings comply with the rear setback controls prescribed by Part B3.2.4 of the WDCP 2015.</p> <p>It is considered that the side setback and overall height of the dwelling and pool structure results in a sense of enclosure.</p> <p>Due to the above the application has been recommended for refusal.</p>

Issue	Assessment comments
<i>"The height of the property and distance to the boundary – we are concerned that height of the building, being significantly higher than the current property, will encroach on our privacy and light into the south side of the house".</i>	<p>In terms of visual privacy, all habitable room windows to the side elevations are fitted with privacy screening ensuring an acceptable visual privacy impact. The elevated ground floor level rear balcony and rear elevated private open space areas result in adverse sightlines across the boundary and are unacceptable.</p> <p>The proposal will not result in any unacceptable overshadowing impacts upon 39b Carlotta Road, which is located directly north of the subject site and is acceptable in this regard.</p>

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

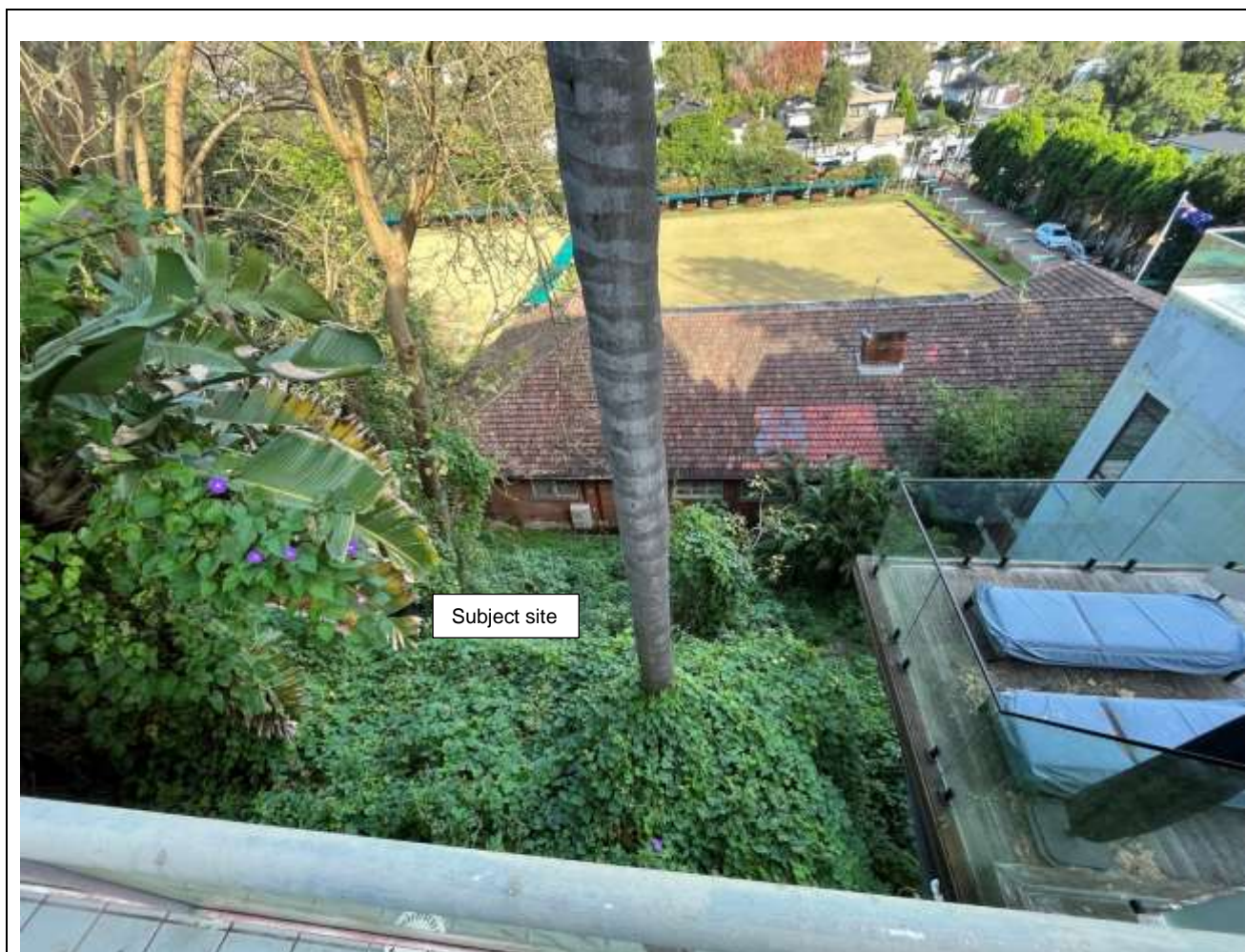
Physical features
The site is rectangular in shape having a width of 15.24m and a length of 42.645m, providing a site area of 650.2m ² .
Topography
The site has a fall of approximately 18m from the street (RL 23.3m) to the rear boundary (RL5.4m). The front of the site is gently sloping and falls steeply at the rear. There is a limited crossfall.
Existing buildings and structures
The site is currently occupied by a dwelling-house.
Surrounding Environment
The surrounding development is typified by low to medium density development including dwelling houses, dual occupancies (attached), semi-detached dwellings and residential flat buildings.

Table 1 – Site Inspection Photos









7. RELEVANT PROPERTY HISTORY

Current use
Dwelling house
Relevant Application History
Development Application DA25/2020/1 was approved on 25/05/2021 for demolition of the existing structures and construction of new dual occupancy and strata subdivision.
Relevant Compliance History
None relevant to the scope of works
Pre-DA
N/A
Requests for Additional Information and Replacement Applications
Stop the Clock Letter dated 9 March 2022 for: <ul style="list-style-type: none"> 3D Images Tree Management Report <p>The request for information was closed on 13 March 2022 following the submission of 3D Images.</p> <p>The request for the Tree Management Report was withdrawn on the basis that Council's Trees and Landscaping Section agreed to review the Tree Management Report previously submitted for the site under DA2020/25/1.</p>
Land and Environment Court Appeal(s)
A Class 1 Appeal (Case number 2022/106763) was filed with the Land and Environmental Court on 13 April 2022 in relation to the subject application.
The application will be subject of a without prejudice meeting on 28 June and a S34 Conciliation on 11 July 2022.

8. REFERRALS

Referral	Summary of Referral Response	Attachment
Technical Services including Drainage	Satisfactory, subject to recommended standard conditions.	2
Trees and Landscaping	Satisfactory, subject to recommended standard conditions.	3

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
 - i) Environmental impacts on the natural and built environments
 - ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

9. ADVERTISING AND NOTIFICATION

9.1 Submissions

The application was advertised and notified from 16/03/2022 to 31/03/2022 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. One submission was received from Peter and Elizabeth Hiom of 39b Carlotta Road. The issues are assessed in Section 5.3 of the Report.

9.2 Statutory Declaration

The applicant has completed the statutory declaration dated 5/04/2022 declaring that the site notice for DA59/2022/1 was erected and maintained during the notification period in accordance with the Woollahra Community Participation Plan.

10. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021, requires consideration to be given as to whether the subject land is contaminated.

As the site has a long history of residential use and therefore unlikely to have resulted in land contamination. A search of Council's GIS mapping does not identify the subject site or surrounding sites as potentially contaminated. It is considered that the land does not require further consideration under Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021.

11. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate No. 1259332M demonstrating compliance with the SEPP.

12. STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 10 – Sydney Harbour Catchment

The land is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area and therefore there are no specific matters for consideration.

The proposal therefore satisfies the relevant criteria prescribed by Chapter 10 – Sydney Harbour Catchment of the Biodiversity and Conservation SEPP 2021.

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1 Part 1.2: Aims of Plan

The proposal is unsatisfactory in terms of the aims in Part 1.2(2) of the Woollahra LEP 2014 for the following reasons:

- The proposed subdivision, which does not comply with the minimum lot size, does not ensure that growth occurs in a planned and co-ordinated way, contrary to aim (a).
- The proposal inadequately protects the amenity of the surrounding properties, contrary to aim (g);
- The proposal does not promote a high standard of design in either the public or private domain, contrary to aim (j).
- The building envelope and floorplate non-compliances neither achieves nor reinforces the desired future character of the neighbourhood, contrary to aim (l).
- The proposal does not minimise excavation and manage impacts as per aim (m).

13.2 Land Use Table

The proposal is defined as a semi-detached dwelling. The proposal is permissible but is not consistent with the objectives of the R3 Low Density Residential zone for the following reasons:

- The proposed bulk and scale of the development is not considered to achieve the desired future character of the neighbourhood, contrary to Clause 1, bullet point 4.

13.3 Part 4.1: Minimum Subdivision Lot Size

Part 4.1(3) specifies a minimum lot size of 700m².

Site Area: 650.2m²	Proposed	Control	Complies
Minimum Lot Size – Subdivision/Dwelling House	325m ²	700m ²	No

The proposal does not comply with Part 4.1(3) of Woollahra LEP 2014 as detailed and assessed in Part 13.6 below.

13.4 Part 4.1B: Exceptions to Minimum Subdivision Lot Sizes for Certain Residential Development

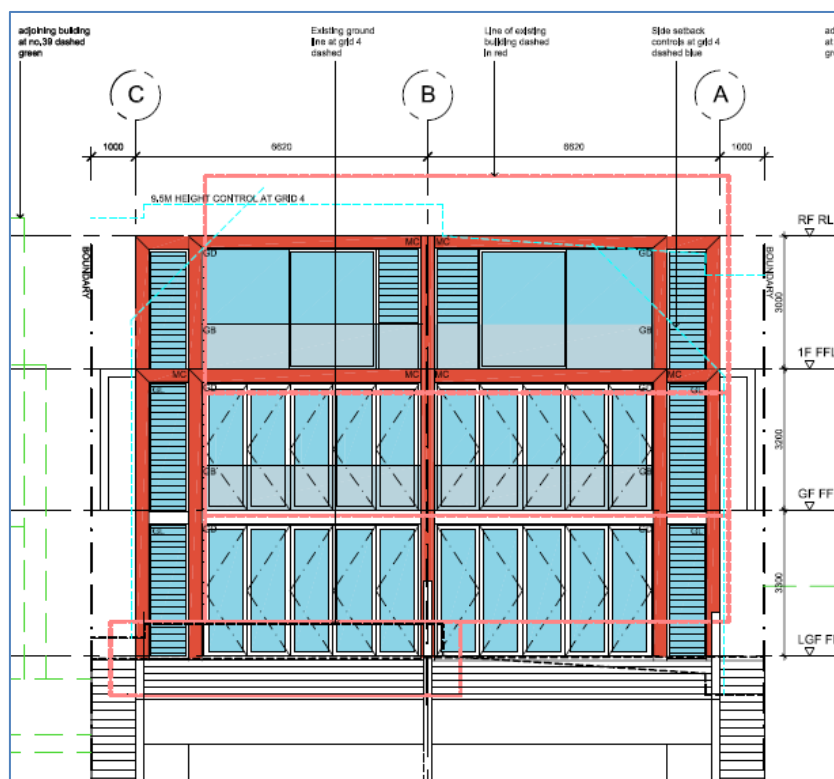
The exemptions to the minimum subdivision lot sizes under Clause 4.1B of WLEP 2014 are not applicable to the subject development pursuant to Clause 4.1B(3)(a) as the subdivision does not result in 3 or more lots.

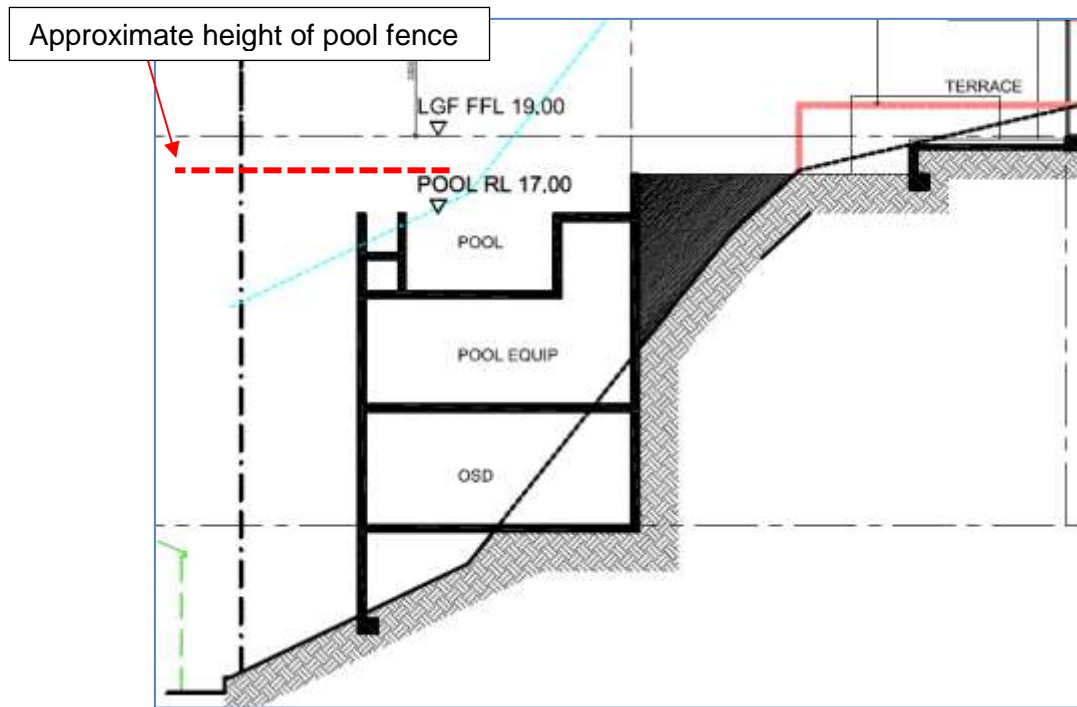
13.5 Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 9.5m.

	Proposed	Control	Complies
Maximum Building Height	10.8 (dwelling) 10.4m (pool) 11.4m (pool fence)	9.5m	No

The proposal results in two key breaches to the maximum height limit of 9.5m. The first being at the rear of the dwelling house of 10.4m. Here the dwelling will exceed the building height requirement by 0.9m or a variation of 9.4%. Secondly, the swimming pool fence in the rear setback area involves a 1.9m (20%) non-compliance. This is demonstrated in the following diagrams.





Accordingly, the proposal does not comply with Part 4.3 of Woollahra LEP 2014 as assessed in Part 13.6 below.

13.6 Part 4.6: Exceptions to Development Standards

13.6.1 Departure

The proposal involves the following non-compliances with the Woollahra LEP 2014:

- Non-compliance with the maximum building height development standard under Part 4.3 as detailed in Section 13.5.
- Non-compliance with the minimum subdivision lot size development standard under Part 4.1 as detailed in Section 13.3.

13.6.2 Purpose

Part 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

13.6.3 Written Request

Clause 4.6(3) requires the consent authority to consider the applicant's written request that seeks to justify the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided a written request in relation to the departures, which is attached in Attachment 4.

13.6.4 Clause 4.6(4) Assessment

Clause 4.6 (4) Consent must not be granted for development that contravenes a development standard unless:

- a) The consent authority is satisfied that:
 - i. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
- b) The concurrence of the Secretary has been obtained.*

Clause 4.6(4)(a)(i) - Assessment

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that the applicant's written requests, seeking to justify the contravention of the development standard, have adequately addressed the matters required to be addressed by Cl 4.6(3). There are two separate matters for consideration contained within Cl 4.6(3) and these are addressed as follows:

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

Assessment: The applicant's written requests have failed to demonstrate that the objectives of the *Height of Buildings* development standard and *minimum subdivision lot size* development standard is achieved, notwithstanding the non-compliances.

In doing so, the applicant's written request has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The objectives of the development standard are discussed further in the assessment of Clause 4.6(4)(a)(ii).

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

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See *Four2Five Pty Ltd. v Ashfield Council*. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act. '

S1.3 of the EPA Act reads as follows:

1.3 Objects of Act **(cf previous s 5)**

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*

- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Comment: The applicant's written request, which supports the proposed non-compliance with the *Height of Buildings* development standard and *Minimum Subdivision Lot Size* development standard, has failed to adequately demonstrate that the proposed development promotes the orderly and economic use and development of the land; and that the proposal promotes good design and local amenity, in accordance with the objects 1.3(c) and (g) of the EPA Act.

The applicant's written request has therefore failed to demonstrate sufficient environmental planning grounds to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the consent authority cannot be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

Clause 4.6(4)(a)(ii) - Assessment

Clause 4.6(a)(a)(ii) requires the consent authority to be satisfied that:

- 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*

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the *Height of Buildings* development standard and *Minimum Subdivision Lot Size* development standard, and the zone objectives of the R3 Medium Density Residential Zone. An assessment against these objectives is provided below.

Clause 4.3 – Height of Buildings

The proposal is assessed against the *Objective of the Development Standard* prescribed by Clause 4.3 which states:

- (a) To establish building heights that are consistent with the desired future character of the neighbourhood,*

Comment: Unacceptable – The proposal is inconsistent with the desired future character of the neighbourhood.

Specifically, it is considered that the building is excessive in bulk and scale and has not been designed to respond to the topography of the land and does not minimise overshadowing.

The proposal fails to satisfy objective (a) of this part.

- (b) To establish a transition in scale between zones to protect local amenity,*

Comment: The subject site is located in the R3 Zone and is surrounded by R3 zoned land with the exception of the Double Bay Bowling Club, which adjoins the western boundary and is zoned RE2 Private Recreation. It is considered that the proposed landuse is characteristic of the R3 Zone however the proposed design does not protect local amenity as discussed in this report.

(c) To minimise the loss of solar access to existing buildings and open space,

Comment: The proposed shadow diagrams indicate that north facing windows and private open space of the adjoining properties are impacted by the proposal and this may be attributed to the building height non-compliance among other building envelope non-compliances. As such, it is not considered that the overshadowing from the proposal is reasonable.

(d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,

Comment: The proposal results in an unacceptable building bulk and scale, and does not minimise overshadowing and visual impacts as viewed from surrounding properties. This is partly attributed to the building height non-compliance in conjunction with the floorplate and residual building envelope non-compliances.

(e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

Comment: The proposal is acceptable in terms of public view impacts.

Clause 4.1 – Minimum Subdivision Lot Size

The proposal is assessed against the Objective of the Development Standard prescribed by Clause 4.1 which are:

(a) to establish a minimum subdivision lot size that is consistent with the desired future character of the neighbourhood,

Comment: The proposal does not achieve Objective (a) for the following reasons:

- The minimum lot size is not consistent with the desired future character of the neighbourhood which is predominately characterised by Torrens Title allotments substantially greater in area than 325m² as proposed under this application.

(b) to ensure that lot sizes support development envisaged under this Plan,

Comment: The proposal does not achieve Objective (b) for the following reasons:

- The minimum subdivision lot size variation could result in a form of development not envisioned by the planning controls.
- The permitted side setback for a site greater than 15m in width is 1.9m. The side setback for a site less than 9m in width is 0.9m. The applicant has indicated that the side setback is 0.9m based on the proposed Torrens Title subdivision, which results in each lot having a respective site width of 7.62m. It is considered that the side setback for the site is 1.9m.
- By virtue of the above, a reduced side setback of 0.9m results in a technical increase to the floorplate and buildable area than would otherwise be permitted on the site.
- Due to the above it is considered that the applicant's buildable area calculations are flawed based on the proposed minimum lot size variation.
- In addition to the above, it is considered that the minimum lot size variation has potential to increase density on the site such as scope for secondary dwellings or dual-occupancies for each allotment, which is not the intention of the Woollahra Local Environmental Plan 2014.

(c) to ensure that lots have a minimum size to retain or enhance amenity by providing useable areas for building and landscaping,

Comment: For the reasons contained within this report the proposal does not provide a high level of residential amenity and is deficient in deep soil landscaping. As such, it has not been demonstrated that the proposal satisfies this objective.

(d) to identify locations suitable for increased development density,

Comment: The subject site has not been identified as an area that would benefit from an increase in development density beyond the development potential afforded by the *Woollahra Local Environmental Plan 2014* and *Woollahra Development Control Plan 2015*.

(e) to ensure that development complies with the desired future character of the area.

Comment: The proposed development involves numerous non-compliances with the building envelope, excavation and deep soil landscaped area requirements and is not considered to be compatible with the desired future character of the area.

Objectives of the R3 Zone

The proposal is also considered against the objectives applying to the R3 Zone as follows:

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

Comment: The proposed use (semi-detached dwelling) is permitted within the R3 Medium Density Residential Zone. The surrounding locality is characterised by residential uses, comprising of residential flat buildings, semi-detached dwellings, dual occupancies and dwelling houses. The proposal continues to provide for housing in a medium density residential environment and is consistent with the first objective of the zone.

- *To provide a variety of housing types within a medium density residential environment.*

Comment: The proposal will result in one new dwelling house on the subject site. This represents an improvement in the variety of housing types on the existing site, which currently comprises of a single dwelling.

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

Comment: Not relevant

- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

Comment: As discussed in this report, the proposed building envelope non-compliances including building height, wall height, inclined plane, side setback and floorplate result in a development that is contrary to the desired future character of the neighbourhood for the following reasons:

- The proposal results in an unacceptable building bulk and scale and visual impacts as viewed from surrounding properties.
- The proposal does not minimise overshadowing.

Clause 4.6(4)(a)(b) - Assessment

The Department issued Planning Circular No.PS20-002 (dated 5 May 2020) which notified Councils of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument...”. Clause 64 of the EPA Regulations provides that Council may assume the Director-General’s [Secretary’s] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

13.6.5 Conclusion

The written submission from the applicant has not adequately demonstrated that the variation of the development standard prescribed by *Clause 4.1 and Clause 4.3* is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

This assessment is not satisfied that the applicant’s written requests has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances in this case, and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the development standard.

It is not considered that the proposal is in the public interest as it is inconsistent with the objectives of the *Height of Buildings* development standard and *Minimum Subdivision Lot Size* development standard and those applicable to development within the zone.

Accordingly, departure from the development standard is not justified in this instance and is listed as a reason for refusal

13.7 Part 5.10: Heritage Conservation

Parts 5.10(2) and 5.10(4) require Council to consider the effect of works proposed to a heritage item, building, work, relic or tree, within a heritage conservation area or new buildings or subdivision in a conservation area or where a heritage item is located.

The application was reviewed by Council’s Heritage Section at the Development Application Review Committee and was found to be satisfactory on heritage grounds subject to standard conditions.

Subject to conditions the proposal is considered to be satisfactory with regard to the provisions of Part 5.10 of Woollahra LEP 2014.

13.8 Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, preliminary assessment is not required and there is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Part 6.1.

13.9 Part 6.2: Earthworks

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal involves substantial excavation to accommodate the proposed lower ground floor level.

A Geotechnical Report by *JK Geotechnics*, referenced No: 32775Srpt, dated 12/11/2021, was submitted with the application.

The proposal was reviewed by Council's Development Engineer and no objection was raised to the proposed excavation on technical grounds, subject to the imposition of standard conditions. Conditions to manage excavation include:

- Geotechnical and hydrogeological design, certification and monitoring
- Undertaking of professional engineering details
- Limitations on the times and duration of machine excavation
- Vibration monitoring
- The preparation of a dilapidation report for buildings located within the zone of influence including 39B Carlotta Road, 43 Carlotta Road and 18 Kiaora Road.
- The protection of adjoining buildings founded on loose foundation materials
- Compliance with recommendations of the Geotechnical / Hydrogeological Monitoring Program
- Support of adjoining land owners
- The implementation of erosion and sediment control and dust control measures
- The maintenance of environmental controls

Subject to conditions, which would be imposed if the application were to be approved, the proposal is acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

13.10. Part 5.21 Flood Planning

Part 5.21 seeks to minimise the flood risk to life and property development, allow development on land that is compatible, consider projected changes as a result of climate change and avoid significant adverse impacts on flood behaviour and the environment in flood prone areas.

The subject site is located in a 'Flood Planning Area', as identified on the Flood Planning Map.

Council's drainage Engineer has determined that the development proposal is generally satisfactory, subject to the following conditions;

"Flood Protection

The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:

- a. *A permanent flood risk management plans shall be installed in garages.*
- b. *The driveway entries shall be protected by a mechanical flood barrier with the threshold set to the flood planning level of 23.6m AHD.*
- c. *The pedestrian entries from Carlotta Road shall be protected by mechanical flood barriers with the threshold set to the flood planning level of 23.6m AHD.*
- d. *Permanent brass plaques shall be mounted adjacent to all mechanical flood barriers and flood proof doors explaining their purpose and operation.*
- e. *Flood compatible materials shall be used for all flood exposed construction*

- f. All flood exposed electrical wiring and equipment is to be waterproofed.*
- g. All flood protection measures are to be inspected and certified as fit for purpose after construction is complete by an engineer experienced in flood mitigation”.*

Subject to conditions which would be imposed if the application were to be approved, the proposal is acceptable with regard to Part 5.21 Flood Planning.

13.11. Part 6.5: Particular Dual Occupancy Subdivisions Must Not Be Approved

Part 6.5(1) of the Woollahra LEP 2014 does not permit the subdivision of a dual occupancy development which would create separate titles. Part 6.5(2) also states:

(2) This clause does not apply in relation to a subdivision under:

(b) the Strata Schemes (Freehold Development) Act 1973.

The proposal is for a semi-detached dwelling:

‘semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling’.

Part 6.5 of the Woollahra LEP 2014 is not applicable to the proposed development.

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

14.1 Chapter B1: Bellevue Hill North Residential Precinct

The desired future character objectives of the Bellevue Hill North Precinct prescribed by Part B1.8.2 of the Woollahra DCP 2015 are as follows:

- O1 To respect and enhance the streetscape character and key elements of the precinct.*
- O2 To maintain the evolution of residential building styles through the introduction of well designed contemporary buildings incorporating modulation and a varied palette of materials.*
- O3 To maintain a transition of development scale from the residential flat buildings that address New South Head Road, to the dwelling houses that dominate the majority of the precinct.*
- O4 To reinforce a consistent building scale with streets.*
- O5 To ensure that development responds in form and siting to the street and subdivision pattern.*
- O6 To design and site buildings to respond to the topography and minimise cut and fill.*
- O7 To reinforce the landscape setting and maintain the existing tree canopy which forms a green backdrop when viewed from the harbour and the surrounding districts.*
- O8 To retain and reinforce the green setting of mature street trees, private trees and garden plantings and minimise hard stand areas.*
- O9 To protect important views from the public spaces of the precinct to the harbour and city skyline, including view corridors between buildings.*
- O10 To ensure that development facilitates view sharing to adjoining and adjacent private properties.*
- O11 To ensure on-site parking does not dominate the streetscape.*
- O12 To retain Inter-War flat buildings, particularly significant and traditional building elements visible from the street.*

The proposal is inconsistent with the streetscape character and key elements, and does not achieve the desired future character objectives of the Bellevue Hill North Precinct, as noted in Part B1.18.2 of the Woollahra DCP 2015, as follows:

- Due to the excessive building bulk resulting from the building envelope and floorplate non-compliances detailed in Section 14.2, the proposal is considered to be contrary to objectives O1, O2, O4.
- The proposal results in a subdivision pattern that does not respond to the predominant street subdivision pattern and is contrary to O5.
- The proposal does not respond adequately to the topography of the land or minimise cut and fill contrary to Objective O6.

This contributes to Reasons for Refusal 6.

14.2 Chapter B3: General Development Controls

Part B3.2: Building Envelope

Site Area: 650.2m ²	Proposed	Control	Complies
Front Setback	4.65m	4.5m	Yes
Rear Setback	18.2m	14.77m	Yes
Side Boundary Setbacks (North)	0.2m	1.9m	No
Side Boundary Setbacks (South)	0.2m	1.9m	No
Setback to Common Boundary of Semi Dwelling	0m	0m	Yes
Maximum Wall Height	8.55m	7.2m	No
Inclined Plane From Wall Height	>45°	45°	No
Maximum Unarticulated Length to Street	<6	6.0m	Yes
Maximum Unarticulated Wall Length	<12m	12m	Yes

Part 3.2.2: Front Setback

The proposal complies with C1 and is acceptable with regard to Part B3.2.2 of the Woollahra DCP 2015.

Part 3.2.3: Side Setbacks

With a lot width of 15.24m, C1 requires a minimum side setback of 1.9m.

The proposal comprises of the following building areas within the side setback:

- First floor level (1m)
- Ground floor level (0.2m - 1m)
- Lower ground floor level (1m)

The relevant objectives are:

- O1 To avoid an unreasonable sense of enclosure and to facilitate an appropriate separation between buildings.*
- O2 To ensure the side elevation of buildings are well articulated.*
- O3 To protect the acoustic and visual privacy of residents on adjoining properties.*
- O4 To facilitate solar access to habitable windows of adjoining properties.*
- O5 To facilitate views between buildings.*
- O6 To provide opportunities for screen planting.*
- O7 To allow external access between the front and rear of the site.*

It is considered that proposal does not achieve Objectives O1 and O7 for the following reasons:

- The side setback non-compliances do not facilitate an appropriate separation between surrounding buildings and are not consistent with the prevailing setbacks in the streetscape.
- The side setback non-compliance reduces solar access to habitable room windows of adjoining properties.
- The side setback non-compliance does not allow external access between the front and rear of the site and contributes to a lack of deep soil landscaping.

This forms Reason for Refusal 7.

Part 3.2.4: Rear Setback

With a site depth of 42.645m, front setback of 4.5m and building depth of 23.45m, the required rear setback in C1 is 14.695m.

The proposal complies with the rear setback control of C1.

The proposal is acceptable with regard to Part B3.2.4 of the Woollahra DCP 2015.

Part 3.2.5: Wall Height and Inclined Plane

C1 specifies a maximum external wall height of 7.2m with an inclined plane of 45 degrees above this height.

The proposal involves a wall height of between 6.7m and 8.55m on the northern elevation. The wall height on the south elevation varies between 5.99m and 9.5m. The proposal extends beyond the 45 degree inclined plane control. Accordingly, the proposal is non-compliant with C1.

The objectives of the external wall height/inclined plane control are:

- O1 To limit the bulk, scale and visual impact of buildings as viewed from the street and from adjoining properties.*
- O2 To limit overshadowing of adjoining properties across side boundaries.*
- O3 To limit overshadowing to south facing rear yards.*
- O4 To provide acoustic and visual privacy to adjoining and adjacent buildings.*
- O5 To facilitate views between buildings.*

The proposal is generally acceptable with regard to Objectives O3, O4 and O5, however it is not considered to achieve Objectives O1 and O2 for the following reasons:

- The bulk and scale is considered to be excessive and the non-compliances result in unreasonable impacts in terms of visual intrusiveness to the streetscape and surrounding properties.
- The proposal does not limit overshadowing across the side boundaries.

This forms Reason for Refusal 7.

Conclusion

The proposal is unacceptable with regard to the building envelope controls and objectives in Part B3.2 of the Woollahra DCP 2015.

Part B3.3: Floorplates

Buildable Area: 268.2m ²	Proposed	Control	Complies
Maximum Floor Plate	585m ²	482.5m ² (C1 & C5)	No

C1 limits the floorplate, being the measurable floor area as a proportion of the buildable area, is limited to 165%. In this instance, this equates to 442.5m². In accordance with C5, 40m² is added to the floorplate control for car parking within the buildable area.

C2 requires the floorplate to be contained within the building envelope.

The proposal is non-compliant with C1 and C2 as the proposed floorplate amounts to 585m² and floorplate is located outside of the buildable area. The relevant objectives are:

O1 To ensure the bulk and scale of buildings are consistent with the desired future character of the area.

O2 To ensure the size and location of buildings allow for the sharing of views and minimise impact on the privacy and sunlight access to neighbouring properties.

For the reasons detailed in Part B3.2 the side setback non-compliance and subsequent floorplate located outside buildable area is considered unsatisfactory.

The building bulk is considered to be inconsistent with the desired future character of the area. Additionally, the floorplate (particularly at second floor level, which involves a wall height and inclined plane non-compliance and building height non-compliance) results in adverse overshadowing impacts.

Due to the above the proposal is considered to be contrary to Objective O1 and O2.

This forms Reason for Refusal 7

Conclusion

The proposal is therefore unacceptable with regard to the floorplate objectives in Part B3.3 of the Woollahra DCP 2015.

Part B3.4: Excavation

Site Area: 650.2m ²	Proposed	Control	Complies
Maximum Volume of Excavation	489m ³ **	220m ³ *	No
Excavation, Piling and Subsurface Wall Setback	1m	1.9m	No
Geotechnical Report	Provided	Required Where > 2.0m	Yes

*Including 20m³/dwelling for storage

** Based on calculation provided by applicant

C1 limits the volume of excavation to 180m³. In accordance with C5 storage at 20m³ per dwelling is permitted.

C6 requires a minimum setback of excavation of 1.9m.

The proposal is non-compliant with C1 as 489m³ of excavation is proposed and C6 as excavation is setback 1m from the side boundary.

The objectives of the excavation controls are:

- O1 To allow buildings to be designed and sited to relate to the topography.
- O2 To minimise excavation.
- O3 To ensure the cumulative impacts of excavation do not adversely impact land stabilisation, ground water flows and vegetation.
- O4 To minimise structural risks to adjoining structures.
- O5 To minimise noise, vibration, dust and other amenity impacts to adjoining and adjacent properties.

It is considered that the proposed volumetric excavation non-compliance is excessive and the proposal has not been designed with sufficient consideration to the topography of the land and does not minimise excavation and associated amenity impacts including noise, vibration and dust upon surrounding properties as required by Objectives O1, O2 and O5.

Conclusion

The proposal is therefore unacceptable with regard to the excavation controls and objectives in Part B3.4 of the Woollahra DCP 2015.

This forms Reason for Refusal 7.

Part B3.5: Built Form and Context

Site Area: 650.2m ²	Proposed	Control	Complies
Significant Trees	Retained	Retained	Yes
Siting of Development	Follows topography	Stepped Down with the Slope	No
Colour Scheme	Consistent	Consistent	Yes
Casual Surveillance – Windows Facing Street/Public Area	>One	One	Yes
Solar Access to Open Space of Adjacent Properties	Insufficient information	50% for 2 hours on 21 June	Insufficient information
Solar Access to Nth Facing Living Areas of Adjacent Properties	Insufficient information	3 hours on 21 June	Insufficient information
Distance of Habitable Room Windows and POS to Adjacent Dwellings	<9.0m	9.0m	No

Part B3.5.1: Streetscape and Local Character

Part B3.5.1 stipulates the following objectives:

- O1 To ensure that the built form is compatible with the streetscape and the desired future character of the area.
- O2 To ensure that development is of high visual quality and enhances the street.
- O3 To maintain the evolution of residential building styles through the introduction of well-designed contemporary buildings

The proposal is considered to be contrary to Objectives O1, O2 and O3 for the following reasons:

- The bulk and scale is considered to be excessive and the built form is not compatible with the streetscape and the desired future character of the area (O1).
- The floorplate and building envelope non-compliance results in an unacceptable building bulk and scale.
- Due to the above, the proposal is not considered to respect or enhance the streetscape character or be a well-designed contemporary building. As such, the proposal is contrary to objectives O1 and O3.

This forms Reason for Refusal 7.

Part B3.5.2: Overshadowing

C1(a) stipulates that sunlight is provided to at least 50% (or 35m²) of the main ground level private open space to adjoining properties for a minimum of two hours between 9am and 3pm on June 21.

C1(b) states that north facing windows to upper level habitable rooms of adjacent dwellings receive at least 3 hours of sun between 9am and 3pm on 21 June over a portion of their surface.

Solar access diagrams are unclear and require updating to clearly indicate the shadow cast by the existing development, the proposed shadow, and an outline of the shadow resulting from the portions of the building which are non-compliant with the building height.

This forms Reason for Refusal 6 and 7.

Part B3.5.3: Public and Private Views

C1 and C2 require the retention of public views and vistas, including along streets.

There are no significant public views identified in Part B1 or observed during this assessment that would be significantly impacted by the proposal.

C5 requires view sharing between properties. Specifically, C6 requires development to step down the site, C7 requires an appropriately designed roof, and C9 requires that plantings must consider the retention of views and should not be used to block views.

No objections were raised on the basis of private view loss. The proposed development would not impact upon any significant views or vistas experienced from surrounding properties.

The proposal is acceptable with regard to Part B3.5.3 of the Woollahra DCP 2015.

Part B3.5.4: Acoustic and Visual Privacy

C1 requires adequate acoustic separation and privacy between dwellings & C3 states that electrical, mechanical, hydraulic and plant equipment are to be suitably housed so as to not create an 'offensive noise', either within or at the boundaries of any property at any time of the day.

The proposal involves a new pool, plant room and lift. The proposal would be acceptable subject to standard conditions, which require that noise from any mechanical plant or equipment does not exceed the background noise level measured from the boundary. These conditions would be recommended if the application were to be approved.

C4 states that there should not be any sightlines from a habitable room window to a habitable room window in an adjoining property within 9.0m. This can be achieved via window location, layout and separation, screens or translucent glazing to 1.5m sill height.

C4 states that there should not be any sightlines from a habitable room window to a habitable room window in an adjoining property within 9.0m. This can be achieved via window location, layout and separation, screens or translucent glazing to 1.5m sill height.

All ground floor level and first floor level habitable room windows to the side elevations are provided with privacy screening. All other windows are considered to be acceptable as they achieve a separation distance greater than 9m or do not result in any unreasonable visual privacy impacts due to their respective location and outlook.

C7 Private open spaces and the trafficable area of roof terraces (at or below the second storey) (refer to Figure 19) are to be suitably located and screened to prevent direct views to neighbouring:

- a) habitable rooms (including bedrooms) within 9m; and*
- b) private open space within 9m.*

Note: Private open space includes an area external to a building including land, terrace, balcony or deck

The ground floor level rear balcony obtains sightlines across the side boundaries within 9m and is therefore non-compliant with C9. Such sightlines would be mitigated through the provision of privacy screening.

The proposed location of the rear elevated pool decks at Lower Ground Floor Level have the potential to result in overlooking of the private open space of adjoining residential properties within 9m, to the north (39B Carlotta Road) and south (43 Carlotta Road).

The issue could be addressed by the provision of privacy screening if the application were to be approved.

Part B3.5.5: Internal Amenity

The application proposes an excavated basement level comprising of a laundry and home cinema. As defined in the Building Code of Australia (BCA):

Habitable room means a room used for normal domestic activities, and—

- (a) includes a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room, home theatre and sunroom; but*
- (b) excludes a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom, clothes-drying room, and other spaces of a specialised nature occupied neither frequently nor for extended periods.*

The proposed 'home cinema' therefore constitutes as a 'habitable room', whilst the laundry room does not.

The home cinema component of the proposal is non-compliant with C1 – C5. The relevant objectives are:

O1 To encourage high levels of internal amenity through the provision of direct natural light and direct natural ventilation.

O2 To encourage buildings that are designed to maximise natural light provision in habitable rooms.

It is considered that the proposal is contrary to Objectives O1 and O2 as the 'home theatre' is not provided with natural light and ventilation.

The proposal is unacceptable with regard to Part B3.5.5 of the Woollahra DCP 2015.

This forms Reason for Refusal 7.

Conclusion

The proposal is unacceptable with regard to Part B3.5.5 of the Woollahra DCP 2015.

Part B3.6: On-Site Parking

Site Frontage: 15.24m	Proposed	Control	Complies
Location of Parking	Within the Buildable Area	Within the Buildable Area	Yes
Width of Parking Structure	6m	6m	Yes
Width of Driveway	3m	3m	Yes
Maximum Number of Driveways	Two	One	No

C1 On-site parking is designed and located so that it: does not dominate the street frontage; preserves trees and vegetation of landscape value; and is located within the building envelope.

C2 For car parking structures facing the street frontage— the maximum car parking structures width is no greater than 40% of the site frontage width or 6m, whichever is the lesser.

C4 Where there is no rear lane access, on-site parking is located within the building envelope.

C10 Garage doors are designed to complement the building design and any important character elements within the street.

C11 The width of driveways is minimised. Generally the width is no more than the minimum width required to comply with the relevant Australian Standards (see Section E1).

C12 Only one driveway entrance is provided. For example, development involving more than one dwelling shares the driveway access.

The proposal does not comply with control C12 as two driveways are provided to the site. The relevant objectives are:

O8 to minimise the visual and environmental impacts of driveways and other hard stand areas associated with car parking.

The 3m wide vehicular crossings are supported by Council's Engineering Section and the proposed garages are located within the building envelope.

The extent of deep soil landscaping is unclear and diagrammatic deep soil landscaping calculations are required compliance with the requirements of Part B3.7.1 of the WDCP 2015. Subject to compliance with the deep soil landscaped areas requirements within the front setback the proposal would be acceptable.

Part B3.7: External Areas

Part 3.7.1: Landscaped Areas and Private Open Space

C1 requires that 50% of the site area outside of the buildable area is to comprise deep soil landscaping.

C2 requires that 40% of the front setback area is to comprise deep soil landscaping. 12m²/20m² is to be in a consolidated area.

C4 requires that 50% of the rear setback area comprises deep soil landscaping.

The extent of deep soil landscaping is unclear and diagrammatic deep soil landscaping calculations are required demonstrating compliance with C1, C2 and C4.

C6-C8 requires that each dwelling must have private open space with a minimum area of 35m² with a maximum gradient of 1:10.

Each dwelling incorporates a level private open space area greater than 35m² in area and is therefore compliant with C6-C8.

C9 permits excavation or fill up to 1.2m for the purposes of achieving a compliant gradient.

The proposal involves 1m of excavation and 4.35m of fill in order to achieve the proposed private open space area between the lower ground floor level and pool.

The private open space extend significantly higher and beyond the private open space and pool areas of the immediately adjoining sites, which is considered unacceptable.

This forms Reason for Refusal 7.

Part 3.7.2: Fences

C4 limits fencing to 1.2m, or 1.5m if 50% transparent or open. On the high side of the street, C6 allows fences to a height of 1.2m above the high side.

The proposed 1.5m high front fence complies with C4 and is therefore acceptable.

C9 stipulates that side and rear boundary fences are no higher than 1.8m, as measured from the low side (if applicable). Where there is an increase in ground level in excess of 1.2m, the height may increase by 1.2m.

Lack of detail is provided on the plans in relation to side boundary fencing and as such has not formed part of the assessment.

Part 3.7.3: Site Facilities

A mailbox can be incorporated into the front setback satisfying C1. Storage is located within the at lower ground floor level, satisfying C2. Finally, there is adequate room across the site for the provision of clothes drying facilities, which is allowable under exempt development, thereby satisfying C3 & C4.

The proposal is acceptable with regard to Part B3.7.3 of the Woollahra DCP 2015.

Part 3.7.4: Ancillary Development – Swimming Pools, Tennis Courts and Outbuildings

C1 The swimming pool does not occupy the deep soil landscaped area.

C3 requires excavation for swimming pools to be setback 1.8m from property boundaries.

C4 states that swimming pool surrounds are to be no more than 1.2m above or below ground level.

C5 limits the depth of a swimming pool to 2.0m.

The proposal complies with C3 and C5, however it is non-compliant with C4 as the swimming pool surrounds have a maximum height of 10.3m above the existing ground level. The relevant objectives are:

O1 To provide for recreational opportunities for swimming without compromising the amenity of the adjoining properties.

O2 To limit excavation.

O3 To retain trees and vegetation of landscape value.

The proposed elevated pool extends significantly beyond the private open space and pool areas of the immediately adjoining sites and adversely impacts upon the amenity of the adjoining sites in relation to visual privacy and creating a sense of enclosure.

This forms Reason for Refusal 7.

Part B3.8: Additional Controls for Development Other Than Dwelling Houses

Semi-Detached Dwellings

C1 requires an integrated and complementary design for semi-detached dwellings.

The proposal is satisfactory with regard to C1.

The proposal is satisfactory with regard to Part B3.8 of the Woollahra DCP 2015.

14.3 Chapter E1: Parking and Access

Part E1.4: Residential parking

	Proposed	Control	Complies
Max Number of Car Parking Spaces – Semi Detached Dwelling	1 Space per Dwelling	Maximum of 2 Spaces per Dwelling	Yes

Parking for residential uses is calculated using the generation rates specified in E1.4.2 which allows a maximum of 2 spaces per dwelling.

In this instance, the development makes provision for 1 space per dwelling which is considered to be acceptable.

Part E1.10: Parking and Access Design Standards

Council's Development Engineer provided the following comment with respect to vehicle access and accommodation:

"The access and parking layout is generally satisfactory subject to the following condition;

- The internal driveways shall have a minimum width of 3m each in accordance with AS/NZS 2890.1.*
- Driveway splays shall be provided (inside property boundary) in accordance with Figure 3.3 in Section 3.2.4 of AS/NZS 2890.1. The splays shall align with the width of the 3m vehicular crossings. Alternatively a fence to a maximum height of 0.9m is permitted in the splay area. Exceptions to this may be accepted where an object in the adjoining property creates an obstruction to visibility within the splay area.*
- It shall be ascertained that each proposed garage has an internal height of minimum 2.2m between the floor and any overhead obstruction (including garage door brackets) in accordance with AS/NZS 2890.1".*

Part E1.11: Electric Vehicle Charging Points

C1 Electric circuitry to accommodate 'Level 2' electric vehicle charging points must be integrated into all off-street car parking of new residential and non-residential development to ensure that 100% of car spaces can install electric vehicle charging points in the future. This must include:

- a) *Ensuring adequate electrical capacity and infrastructure (cable size, distribution board size etc.) for the electric vehicle charging point system; and*
- b) *Providing either buried cables underground or cable trays sufficient to accommodate electric circuitry to each car space.*

C2 *Minimum electric circuitry for a 'Level 2' electric vehicle charging point is required to be:*

- a) *Privately available spaces: 'Level 2' slow – single phase with 7kW power; and*
- b) *Publicly available spaces: 'Level 2' fast – three-phase with 11-22kW power.*

C3 *The installation of a 'Level 2' electric vehicle charging point is encouraged for new dwelling houses, semi-detached dwellings or dual occupancies.*

If approval was recommended the abovementioned provisions would be addressed by conditions requiring the installation of electrical circuitry to support the installation of a Level 2 electric vehicle charger point and certification of that circuitry.

Conclusion

Subject to standard conditions, the proposal would be acceptable with regard to Part E1.10 of the Woollahra DCP 2015.

14.4 Chapter E2: Stormwater and Flood Risk Management

The application was referred to Council's Development Engineer and the following comments were provided in the referral response (Attachment 2):

"Site Drainage comments

- *Whilst the Email from Michael Rowley to Emily Oei, regarding Stormwater Easement Refusal, dated 18 February 2022 does not include a formal letterhead to demonstrate that the email is from the Double Bay Bowling Club, due to previous history and knowledge of the site, the easement refusal email is considered satisfactory in this instance.*
- *The submitted Infiltration Testing Report, referenced 32775Srpt infil, prepared by JK Geotechnics, dated 1 February 2022 is also considered satisfactory and as such utilisation of a Pump-out system has been accepted.*

As such, there are no objections Stormwater Management Plan, referenced N0211335, Rev 3, prepared by JN Responsive Engineering, dated 16/02/2022 subject to the following condition;

- *The proposed Holding Tank adjacent to the proposed Rainwater Tank shall be separated from the proposed Pump-out System via partitions (for each proposed lot) and used for irrigation purposes only. Overflow of the Holding Tank is to be directed to the Pump-out System. The Holding Tank shall not be within the Pump-out System.*
- *The Pump-out System volume shall not be utilised toward the required Rainwater Tank/Holding Tank volume. The capacity of the pump out system shall be designed to comply with Section 8.5.6 of AS3500.3.*
- *The maximum discharge rate to Council's kerb and gutter shall be limited to 20l/s for each proposed lot.*
- *All belowground structures shall be tanked with no subsoil drainage pumped out nor drained under gravity to Council's kerb and gutter.*
- *Drainage conduits to Council's kerb and gutter shall not traverse any vehicular crossings.*
- *Drainage conduits, across footpath areas that are discharging to Council's kerb and gutter shall be 125mm x 75mm galvanised box or 65mm to 100mm sewer grade PVC pipes.*

The concept plan is subject to the submission and approval of Stormwater Management Plan for the site prior to release of the Construction Certificate. Details are to be in accordance with Council's Chapter E2 "Stormwater and Flood Risk Management" DCP and Local Approvals Policy. This is to ensure that site stormwater is disposed in a controlled and sustainable manner.

Council's Infrastructure and Sustainability Division is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop and complies with the provisions Council's Chapter E2 "Stormwater and Flood Risk Management" DCP.

Flooding & Overland Flow comments

Council's Drainage Engineer has provided the following comments;

I refer to the following documents received for this report:

22/38864 Document - Flood Risk Management Plan - DA2022-59-1 - 41 Carlotta Road DOUBLE BAY

RECOMMENDATION

Council's drainage Engineer has determined that the development proposal is generally satisfactory, subject to the following conditions;

Flood Protection

The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:

- h. A permanent flood risk management plans shall be installed in garages.*
- i. The driveway entries shall be protected by a mechanical flood barrier with the threshold set to the flood planning level of 23.6m AHD.*
- j. The pedestrian entries from Carlotta Road shall be protected by mechanical flood barriers with the threshold set to the flood planning level of 23.6m AHD.*
- k. Permanent brass plaques shall be mounted adjacent to all mechanical flood barriers and flood proof doors explaining their purpose and operation.*
- l. Flood compatible materials shall be used for all flood exposed construction*
- m. All flood exposed electrical wiring and equipment is to be waterproofed.*
- n. All flood protection measures are to be inspected and certified as fit for purpose after construction is complete by an engineer experienced in flood mitigation".*

Subject to the recommended referral conditions the proposal is acceptable with regard to Chapter E2: Stormwater and Flood Risk Management.

14.5 Chapter E3: Tree Management

The application was reviewed by Council's Trees and Landscaping Officer and the following comments were provided (Attachment 3):

1. *The Arborist Report is dated January 2020 and not contemporary to this development application. Nevertheless, the trees within the subject site should not be considered an impediment to development.*
2. *Trees 1, 6, 7, 8, 9 & 10 are species exempt from the provisions of Council's Chapter E.3 (Tree Management) of the DCP and they can be removed at any time without consent.*
3. *Trees 3-5 & 11-14 have moderate to low landscape significance and there is no issue with their removal.*
4. *The Landscape Plan shows two Olea europea var. europea (European Olive) proposed, one in each of the rear yards. It is contended that these Olive trees are not appropriate to compensate for the loss of canopy cover.*
5. *The landscape plan shows the trees will have a mature size of 6m height x 6m crown spread. It is highly unlikely this species will achieve these dimensions planted on structure.*
6. *The landscape plan should be amended to substitute the Olive with one each of the following:*
 - a) *Caesalpinia ferrea (Leopard tree)*
 - b) *Fraxinus griffithii (Evergreen Ash)*
 - c) *Gordonia axillaris (Gordonia)*
 - d) *Hymenosporum flavum (Native Frangipani)*
7. *The street tree (Olive) is in poor condition and should be removed and replaced in the same location with a species in line with Council's Street Tree Master Plan*
8. *Points 2, 3, 6 & 7 can be dealt with via conditions.*

Subject to the conditions the proposal would be acceptable with regard to Chapter E3: Tree Management.

14.6 Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the ongoing use of the building.

The SWMMMP addresses volume and type of waste and recyclables to be generated, storage and treatment of waste and recyclables on site, disposal of residual waste and recyclables and operational procedures for ongoing waste management once the development is complete.

A SWMMMP was not submitted with the development application. If approval was recommended the abovementioned provisions would be addressed by standard conditions.

14.7 Chapter E6: Sustainability

Part E6.3: Solar Energy Systems

C1 limits solar equipment to 300mm above the roof surface and behind the front setback. It is not to consist of mirrors or lenses and where it is in a heritage conservation area, not be located on the roof plane, wall or chimney of the principal building.

C2 requires that solar energy systems must not have an unreasonable visual impact upon the streetscape or area, views from Sydney Harbour, adjoining properties or views from private property.

The proposal complies with C2, however no details have been provided in relation to how far the solar panels protrude above the roof plane. If approval was recommended, conditions would be imposed requiring that the proposed solar panels do not protrude above the 9.5m building height and more than 300mm above the roof plane.

Conclusion

Subject to conditions the proposal would be acceptable with regard to the objectives and controls in Chapter E6 of the Woollahra DCP 2015.

15. DRAFT AMENDMENTS TO POLICIES AND PLANS

No relevant draft amendments or policies.

16. SECTION 7.12 CONTRIBUTION PLANS

16.1. Section 7.12 Contribution Plan

In accordance with Schedule 1, a 1% (\$29,453) levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 7.12 Contributions Plan.

17. APPLICABLE ACTS/REGULATIONS

17.1 Environmental Planning and Assessment Regulation 2000

Clause 92: What Additional Matters Must a Consent Authority Take Into Consideration in Determining a Development Application?

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider Australian Standard AS 2601-2004: The demolition of structures. If approval was recommended the proposal would be acceptable, subject to standard conditions.

17.2 Swimming Pools Act 1992

A swimming pool is at all times to be surrounded by a child-resistant barrier that separates the swimming pool from any residential building and that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations. Additional provisions relate to:

- a) The swimming pool must be registered in accordance with Section 30B of the Swimming Pools Act 1992
- b) A Certificate of Compliance issued pursuant to Section 22D of the Swimming Pools Act 1992
- c) Water recirculation and filtration systems
- d) Backwash must be discharged to the sewer

If approval was recommended the proposal would be acceptable, subject to standard conditions.

18. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

19. THE SUITABILITY OF THE SITE

The site is unsuitable for the proposed development.

20. THE PUBLIC INTEREST

The proposal is not considered to be in the public interest.

21. CONCLUSION

The proposal is unacceptable against the relevant considerations under Section 4.15.

22. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

23. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is not satisfied that the matters required to be addressed under Clause 4.6(4) of the Woollahra Local Environmental Plan 2014 have been demonstrated and that consent may be granted to the development which contravenes the height of buildings and minimum subdivision lot size development standards under Clauses 4.3 and 4.1 of the Woollahra Local Environmental Plan 2014

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, refuse development consent to Development Application No. 59/2022/1 for demolition of the existing dwelling, construction of two semi-detached dwellings, landscaping works, swimming pool and Torrens title subdivision into two lots on land at 41 Carlotta Road Double Bay, for the following reasons:

1. Woollahra Local Environmental Plan 2014, Part 1 – Clause 1.2 Aims of Plan

The proposal is inconsistent with the aims in Part 1.2(2)(g) and (l) because:

- The proposed subdivision, does not ensure that growth occurs in a planned and co-ordinated way, contrary to aim (a). The proposal inadequately protects the amenity of the surrounding properties, contrary to aim (g);
- The proposal does not promote a high standard of design in either the public or private domain, contrary to aim (j).
- The building envelope and floorplate non-compliances neither achieves nor reinforces the desired future character of the neighbourhood, contrary to aim (l).
- The proposal does not minimise excavation and manage impacts as per aim (m).

2. Woollahra Local Environmental Plan, Part 2, Land Use Table

The proposal is inconsistent with the relevant objective of the R3 Medium Density Residential zone because:

- The proposal is not of a height and scale that will achieve the desired future character of the neighbourhood.

3. Woollahra Local Environmental Plan 2014, Part 4 – Clause 4.3 Height of Buildings

The proposal does not comply with the Height of Buildings development standard prescribed in Clause 4.3 of the Woollahra Local Environmental Plan 2014. The proposal fails to achieve consistency with the relevant Objectives (a), (c) and (d) prescribed in Clause 4.3(1) of the Woollahra Local Environmental Plan 2014.

4. Woollahra Local Environmental Plan 2014, Part 4 – Clause 4.1 Minimum Subdivision Lot Size

The proposal does not comply with the Minimum Subdivision Lot Size development standard prescribed in Clause 4.1 of the Woollahra Local Environmental Plan 2014. The proposal fails to achieve consistency with the relevant Objectives (a), (b), (c) & (e) prescribed in Clause 4.1(1) of the Woollahra Local Environmental Plan 2014.

5. Woollahra Local Environmental Plan 2014, Part 4 – Clause 4.6 Exceptions to Development Standards

The submitted written requests fail to justify the contravention of the *Height of buildings* and *minimum subdivision lot size* development standards under Clauses 4.1 and 4.3 in accordance with Clause 4.6(3)(a) and 4.6(3)(b). The submitted written request have not adequately addressed the matters required to be demonstrated by sub-clause (3) namely that:

- strict compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- there are sufficient environmental planning grounds to justify contravening the development standards;
- the proposed development will be in the public interest; and
- the proposed development is consistent with the objectives of the Height of buildings and minimum lot size development standards and of the R3 Medium Density Residential zone.

6. Woollahra Development Control Plan 2015, Chapter B1: Bellevue Hill North Precinct

The proposal fails to achieve consistency with Desired Future Character Objectives O1, O2 and O4 of the Bellevue Hill North precinct objectives outlined in Part B1.8 of the Woollahra DCP 2015.

7. Woollahra Development Control Plan 2015, Chapter B3: General Development Controls

a. Part B3.2 Building Envelope

The proposed works, which protrude beyond the side setback and maximum wall height and inclined plane, fails to achieve consistency with following objectives:

- Objectives O1, O4 and O7 prescribed in Part B3.2.3 of the Woollahra Development Control Plan 2015.
- Objectives O1 and O2 prescribed in Part B3.2.5 of the Woollahra Development Control Plan 2015.

b. Part B3.3: Floorplate

The building bulk is considered excessive and does not minimise overshadowing and is inconsistent with the desired future character of the area.

Due to the above the proposal is considered to be contrary to Objective O1 and O2.

c. Part B3.5.1: Built Form and Context – Streetscape Character

- The proposal is not consistent with the desired future character objectives of the Bellevue Hill North residential precinct; and therefore fails to satisfy the Objectives (O1 and O2) outlined in Part B3.5.1 of the Woollahra Development Control Plan 2015.

d. Part B3.5.2: Built Form and Context – Overshadowing

Solar access diagrams are unclear and require updating to clearly indicate the shadow cast by the existing development, the proposed shadow, and an outline of the shadow resulting from the portions of the building which are non-compliant with the building height.

Notwithstanding the above, it is considered that the proposal does not minimise overshadowing in accordance with O1.

e. Part B3.5.4: Built Form and Context - Acoustic and visual privacy

The proposal will result in unacceptable adverse impacts with regards to visual privacy of adjoining properties and therefore fails to satisfy the Objectives (O2 & (O3) outlined in Part B3.5.4 of the Woollahra Development Control Plan 2015.

f. Part B3.7.1: External Areas – Landscaped Areas and Private Open Space

Deep soil landscaping diagrams are unclear and require updating to clearly indicate the extent of deep soil landscaping

The proposal does not provide sufficient deep soil landscaping contrary to O1.

g. Part B3.7.4 Ancillary Development – Swimming Pools

The proposed height of the pool and surrounding private open space adversely impacts upon the amenity of the adjoining neighbours contrary to O1.

8. Public Interest





The proposal is not in the public interest.

9. Insufficient information

Inadequate information has been submitted to enable full and accurate assessment of the proposal against the relevant considerations pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979. In particular:

- a) Shadow diagrams are unclear and require updating to fully assess the overshadowing impact.
- b) Deep spoil landscape diagrams are unclear and require updating to fully assess the extent of deep soil landscaping.
- c) Numerous inconsistencies between the submitted architectural drawings, landscape plans and stormwater plans.

Attachments

- 1. Plans and Elevations [!\[\]\(6c117786eacd86d9626685ebfb559b77_img.jpg\)](#) 
- 2. Technical Services Referral Response [!\[\]\(9dd987eb45b20044d8d046315fd0a871_img.jpg\)](#) 
- 3. Tree and Landscaping Comments [!\[\]\(685afdce08c83226b5b443593881fee6_img.jpg\)](#) 
- 4. Clause 4.6 Written Requests [!\[\]\(fb366aca1640c7998720adbca5c2a8b5_img.jpg\)](#) 

2 NEW RESIDENCES

41 Carlotta Road, Double Bay NSW 2028

Development Application Set

November 2021

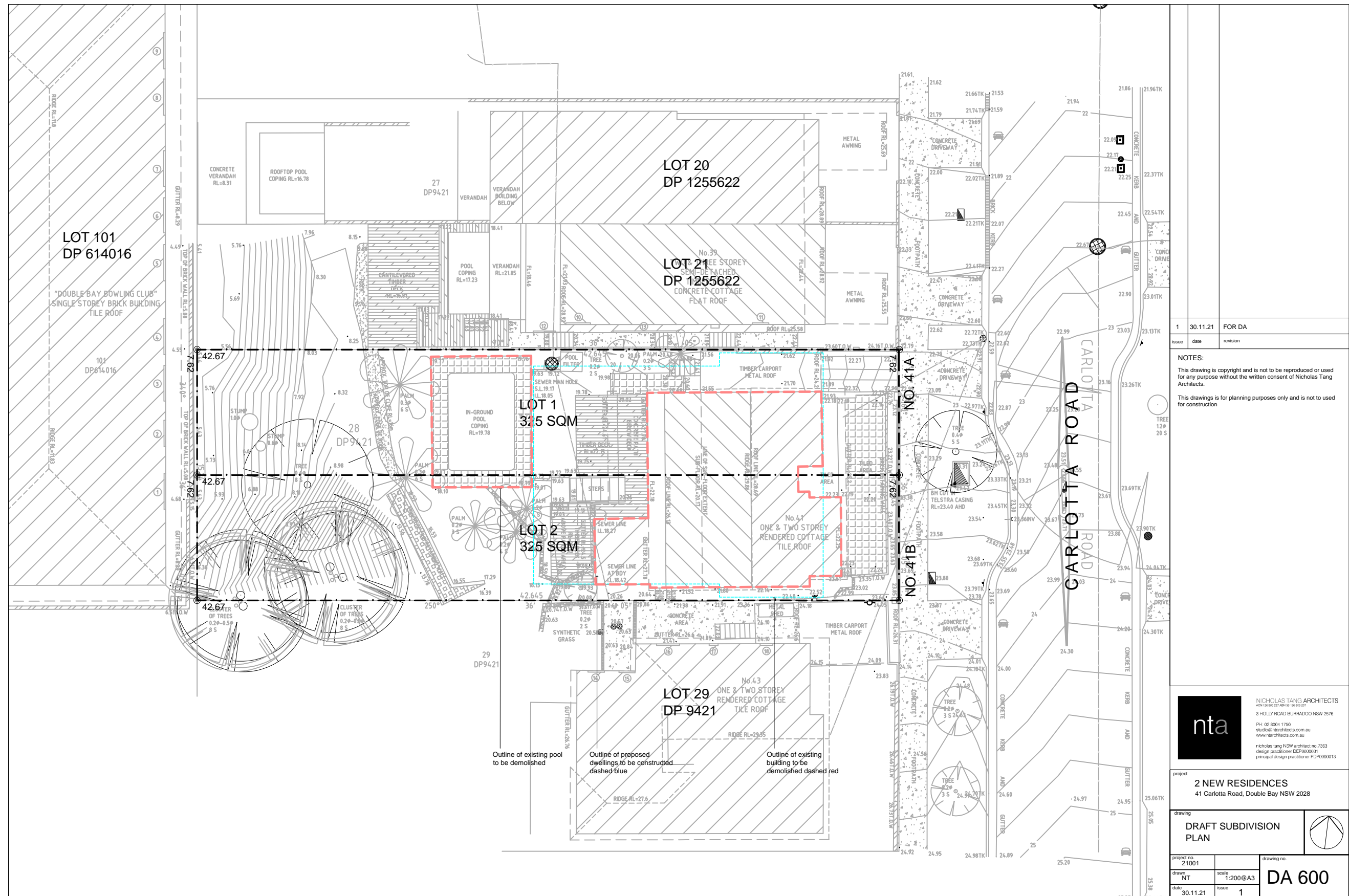
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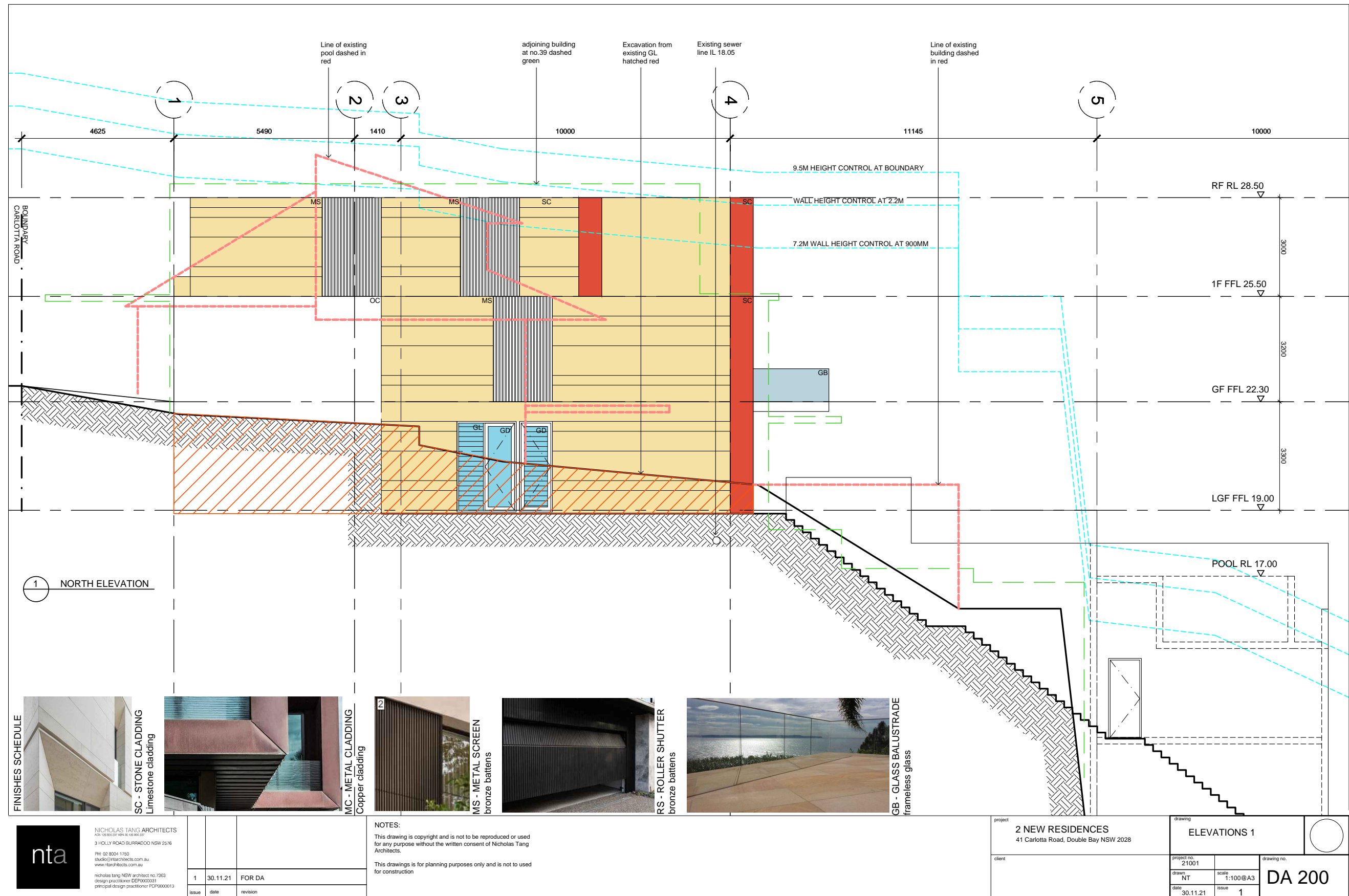
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101	GROUND FLOOR PLAN	1:100	1
102	FIRST FLOOR PLAN	1:100	1
103	ROOF PLAN	1:100	1
200	ELEVATIONS 1	1:100	1
201	ELEVATIONS 2	1:100	1
202	ELEVATIONS 3	1:100	1
203	ELEVATIONS 4	1:100	1
300	SECTIONS 1	1:100	1
400	SHADOW PLANS	1:400	1
401	SHADOW PERSPECTIVES	NTS	1
600	DRAFT SUBDIVISION PLAN	1:200	1
700	FLOOR PLATE CALCS	1:200	1
800	PHOTOMONTAGE	NTS	1

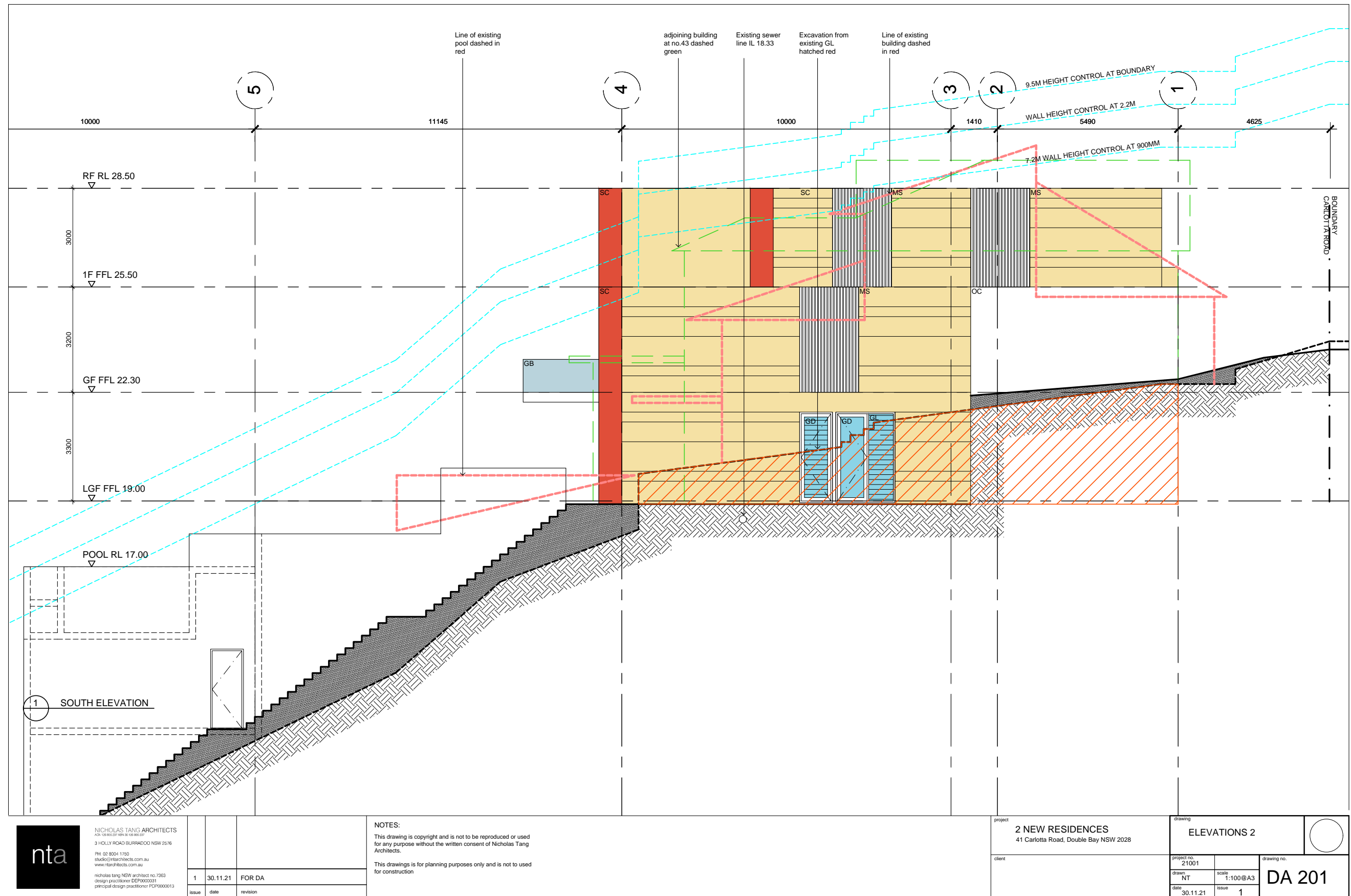


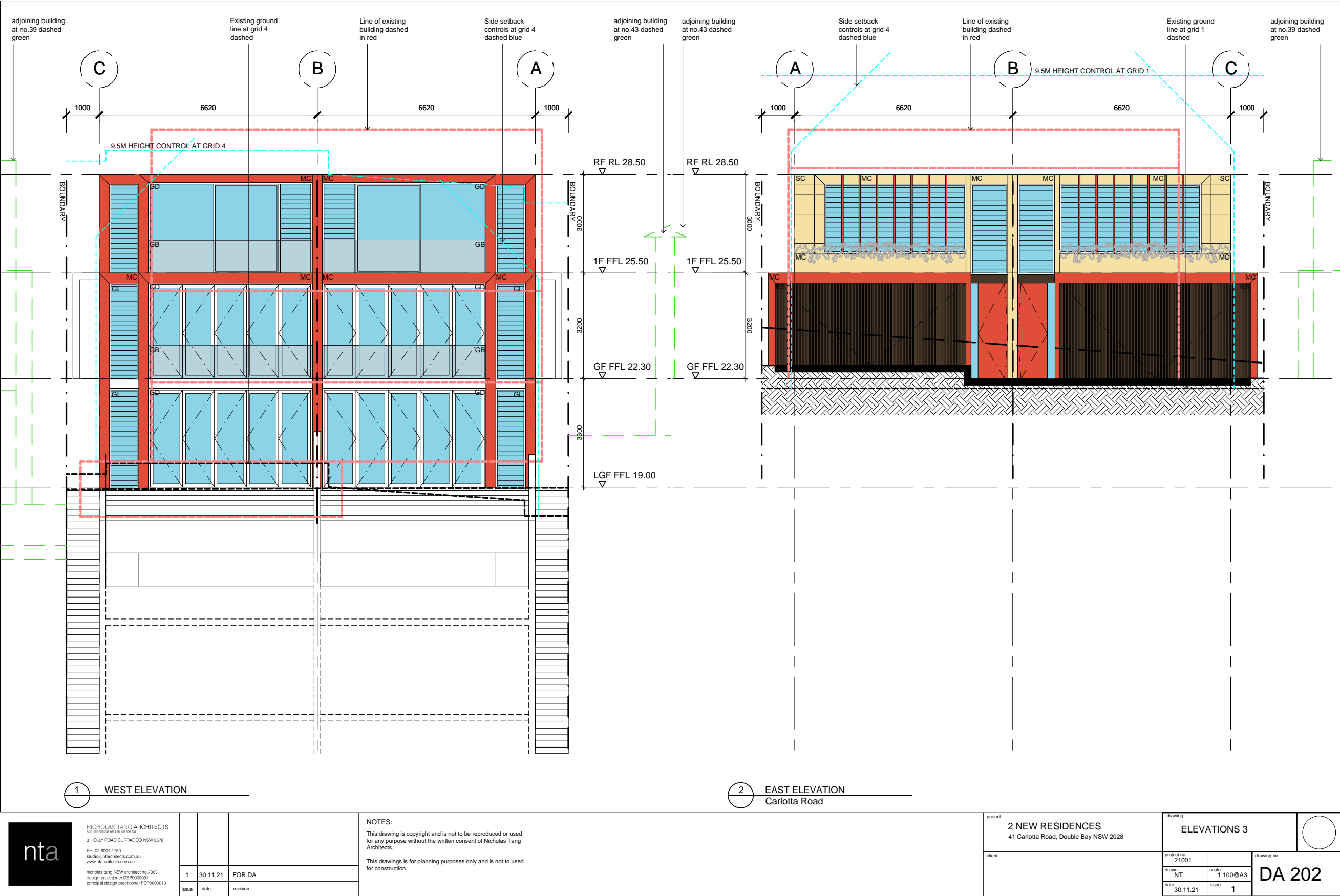
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BURRADOO NSW 2576

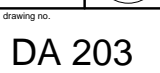
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FX: 02 8004 1775
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www.ntarchitects.com.au

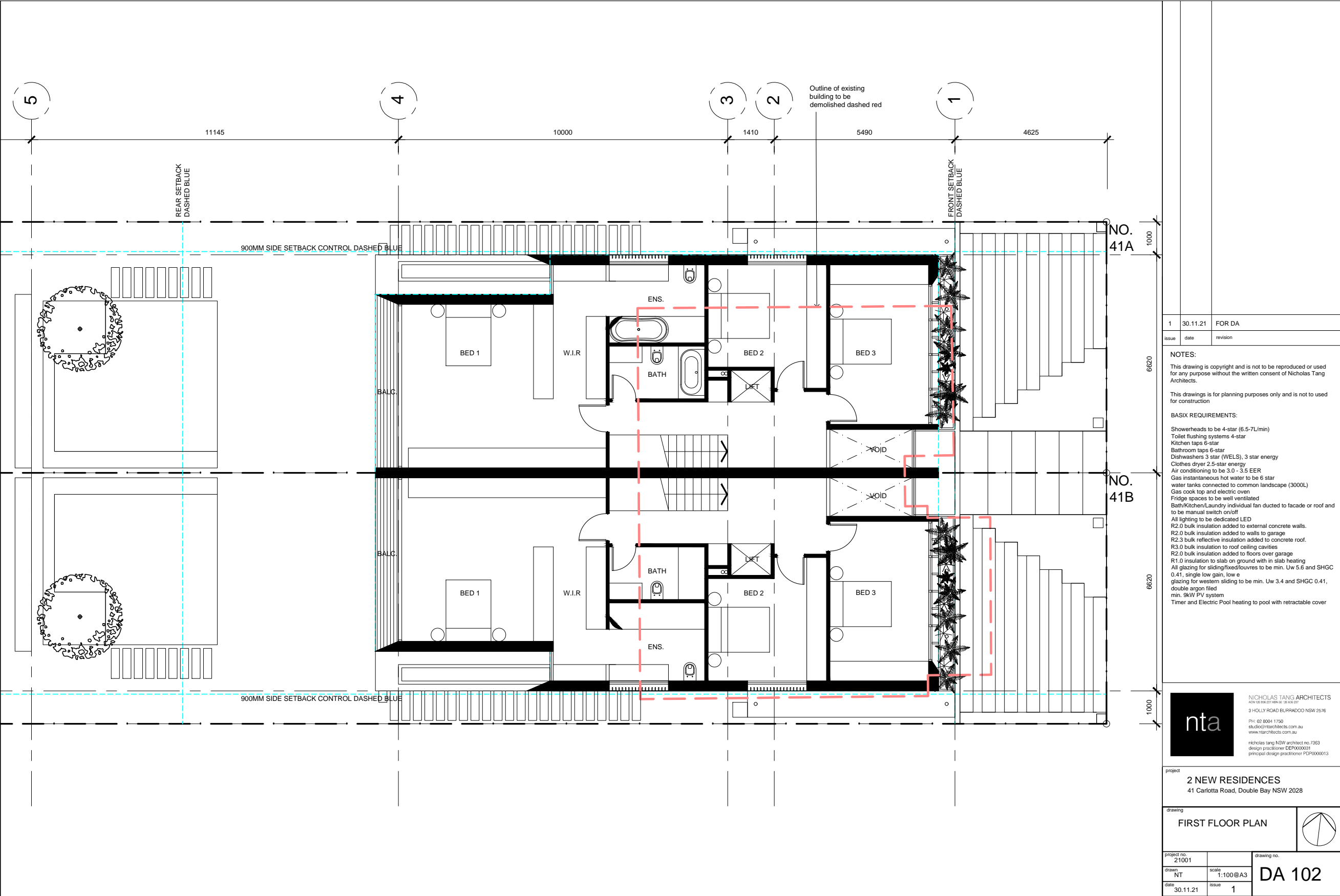


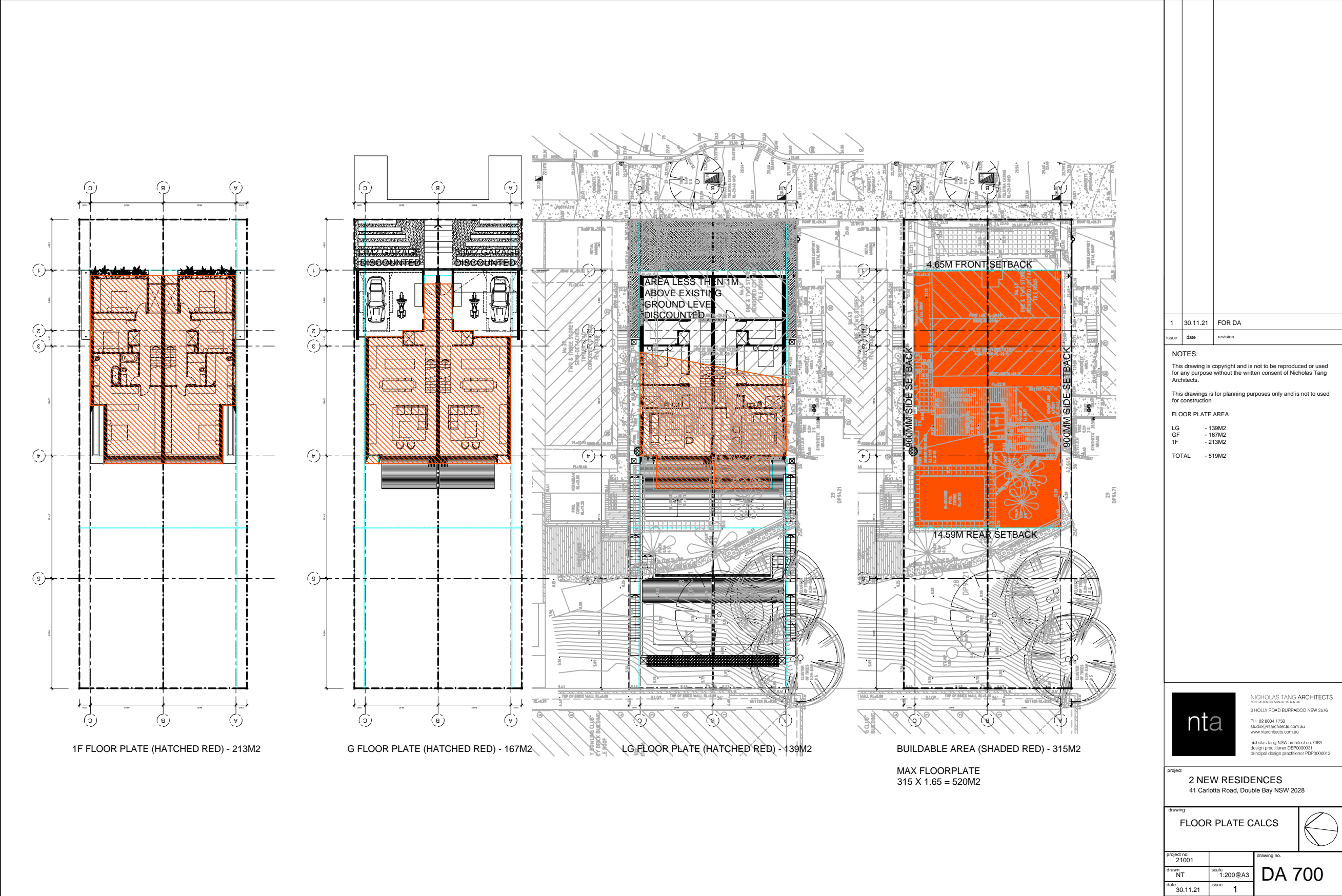


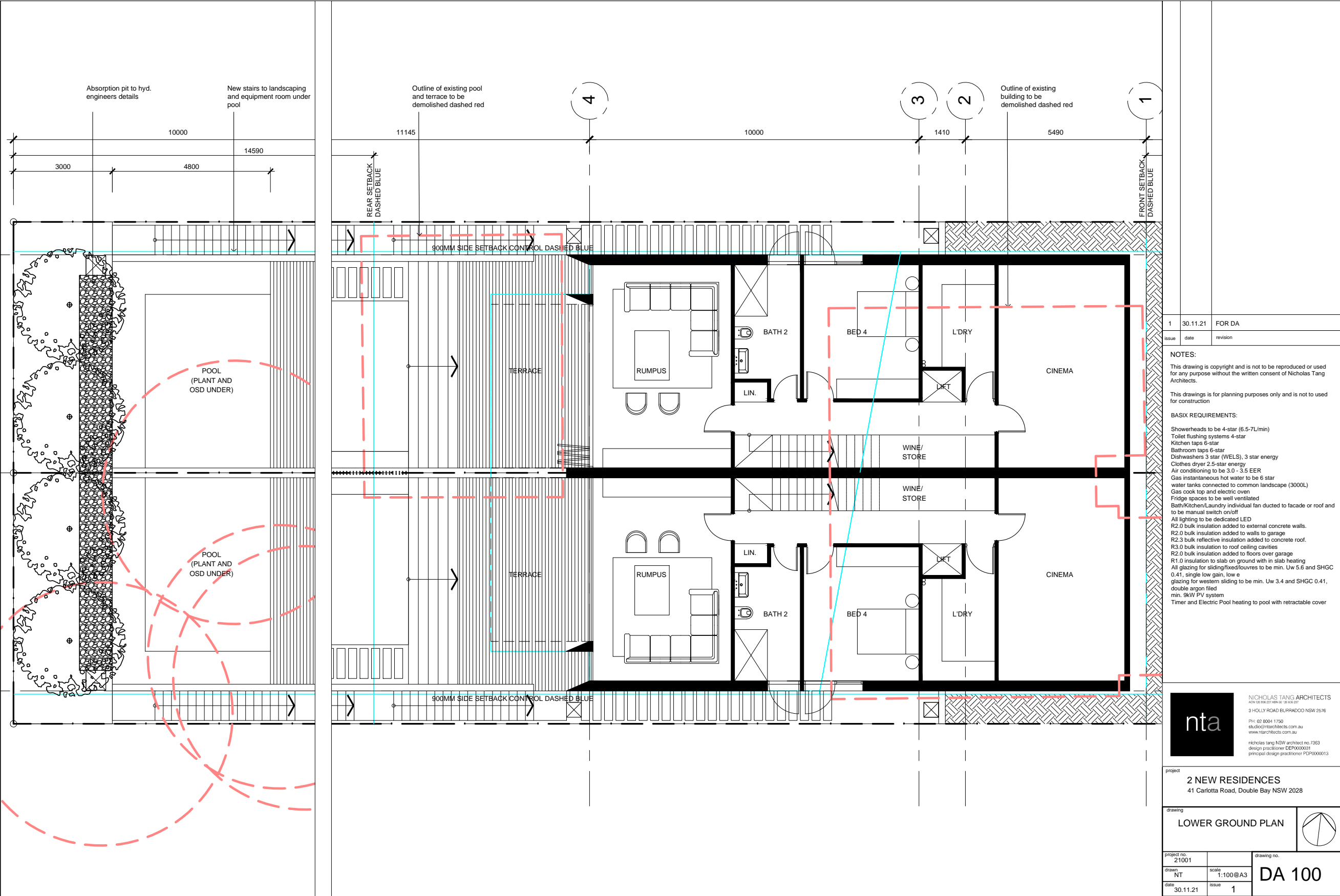






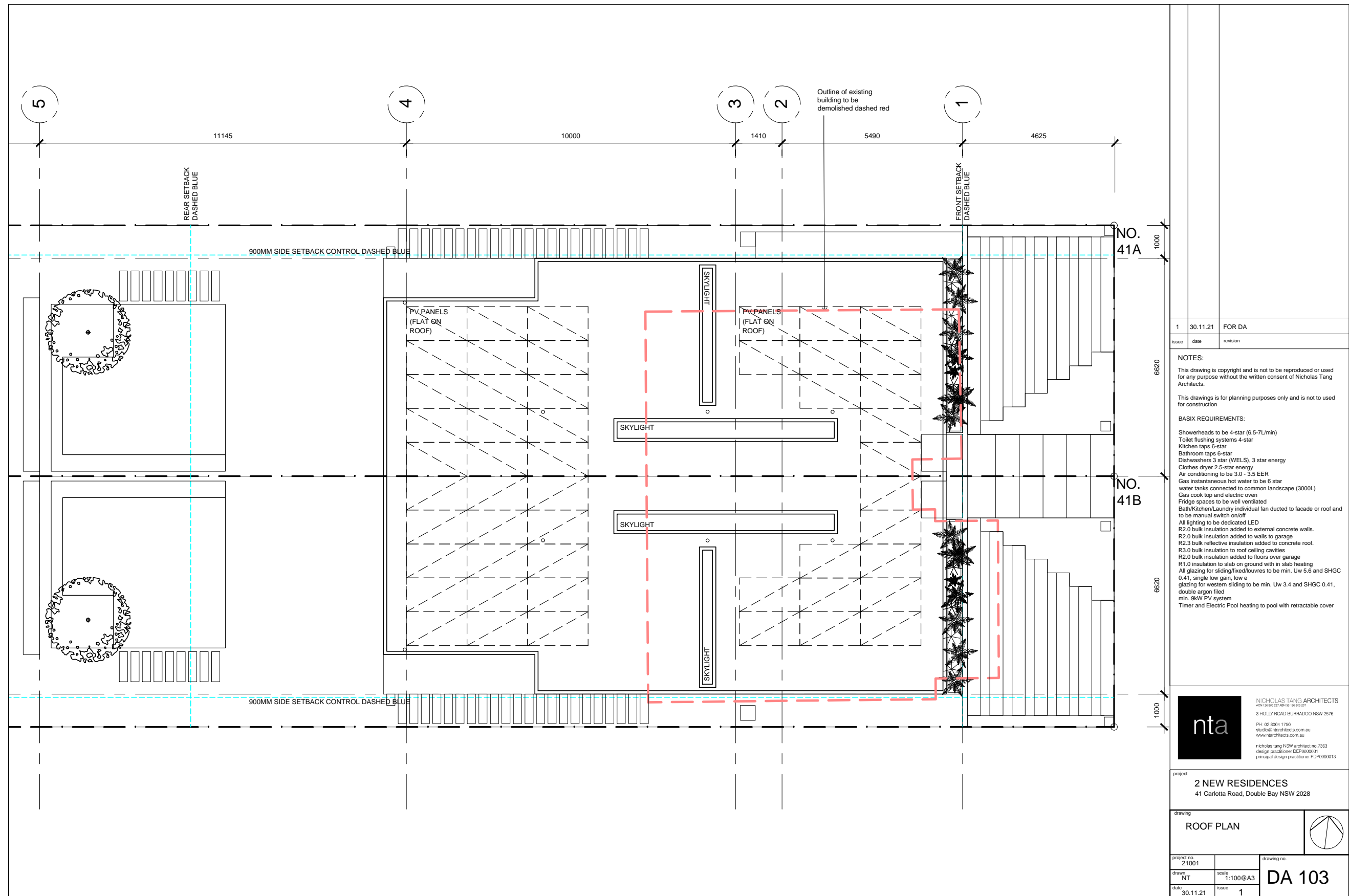


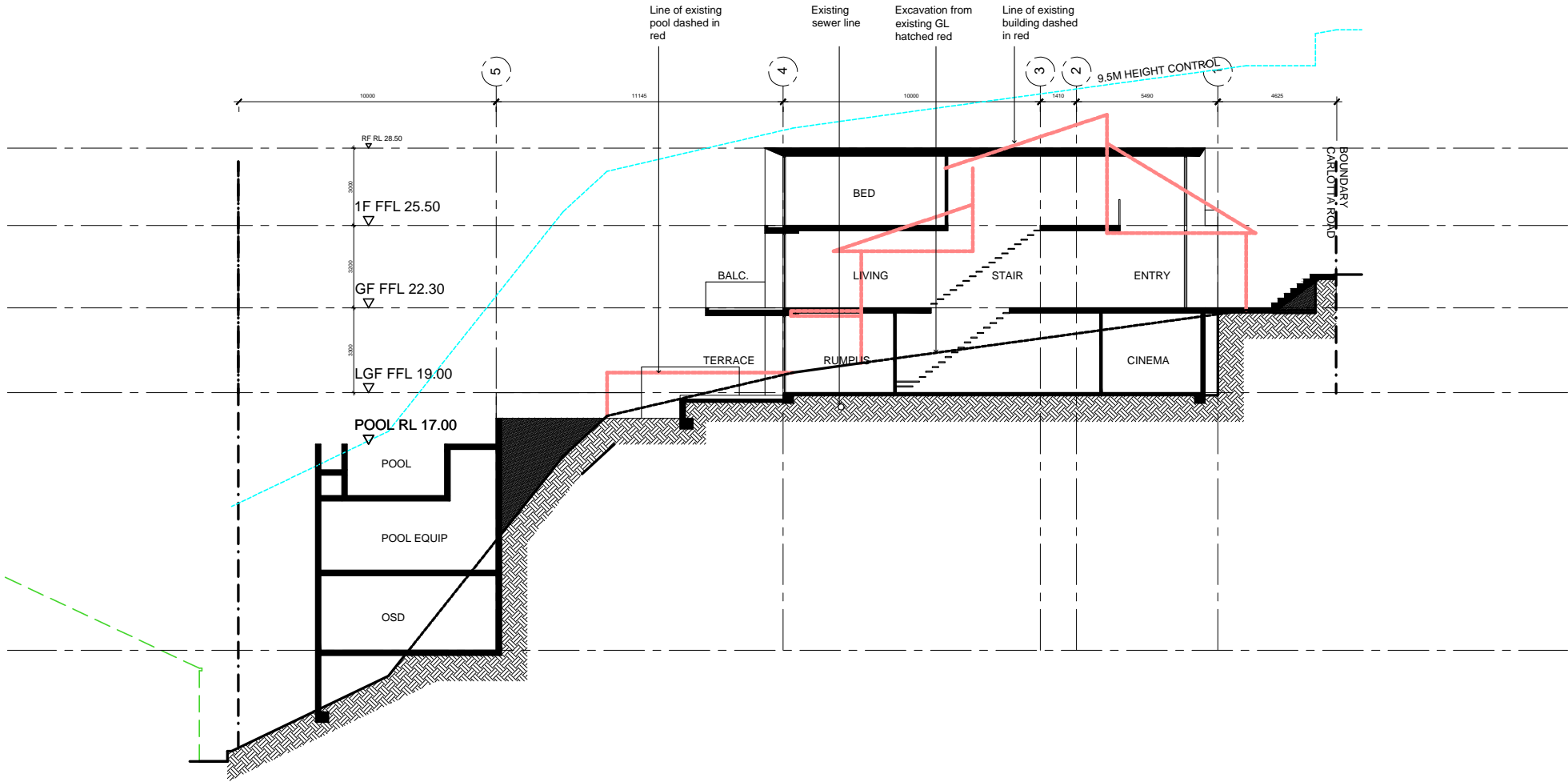






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issue	date	revision
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<div><div>nta</div><div><p>NICHOLAS TANG ARCHITECTS 4/21-10/24 ST MARKS RD 3 HOLLY ROAD BURRADO NSW 2576</p><p>PH: 02 8041 1750 studio@ntarchitects.com.au www.ntarchitects.com.au</p><p>nicholas tang NSW architect no.7363 design practitioner DEP000003 principal design practitioner PDP0000013</p></div></div>		
<p>project</p> <p>2 NEW RESIDENCES 41 Carlotta Road, Double Bay NSW 2028</p>		
<p>drawing</p> <p>PHOTOMONTAGE KIORA LANE</p>		
project no. 21001	drawing no.	
drawn NT	scale N.T.S@A3	DA 800
date 30.11.21	issue 1	





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issue	date	revision

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project
2 NEW RESIDENCES
41 Carlotta Road, Double Bay NSW 2028

client

drawing
SITE SECTION


project no.
21001
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DA 300

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9AM - JUNE 21

winter solstice




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ADJACENT DWELLING AT NO.43

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12NOON - JUNE 21

winter solstice



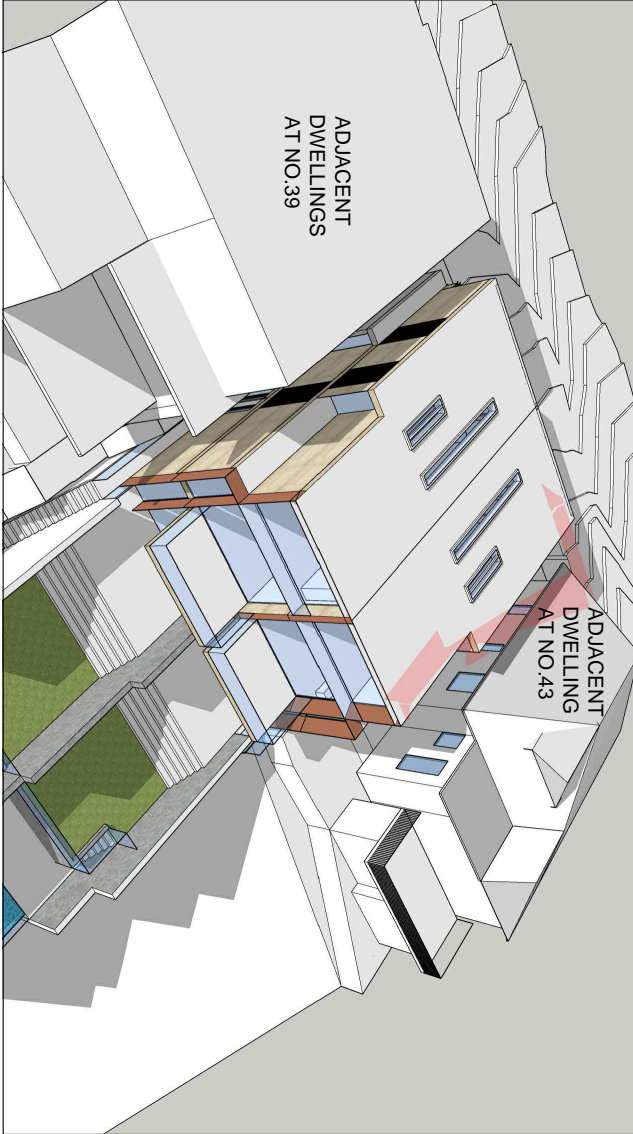
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ADJACENT DWELLING AT NO.43

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3PM - JUNE 21

winter solstice



ADJACENT DWELLINGS AT NO.39

ADJACENT DWELLING AT NO.43

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EXISTING SHADOWS

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project

2 NEW RESIDENCES
41 Carlotta Road, Double Bay NSW 2028

drawing

SHADOW PERSPECTIVES
JUNE 21

project no.
21001

drawn
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date
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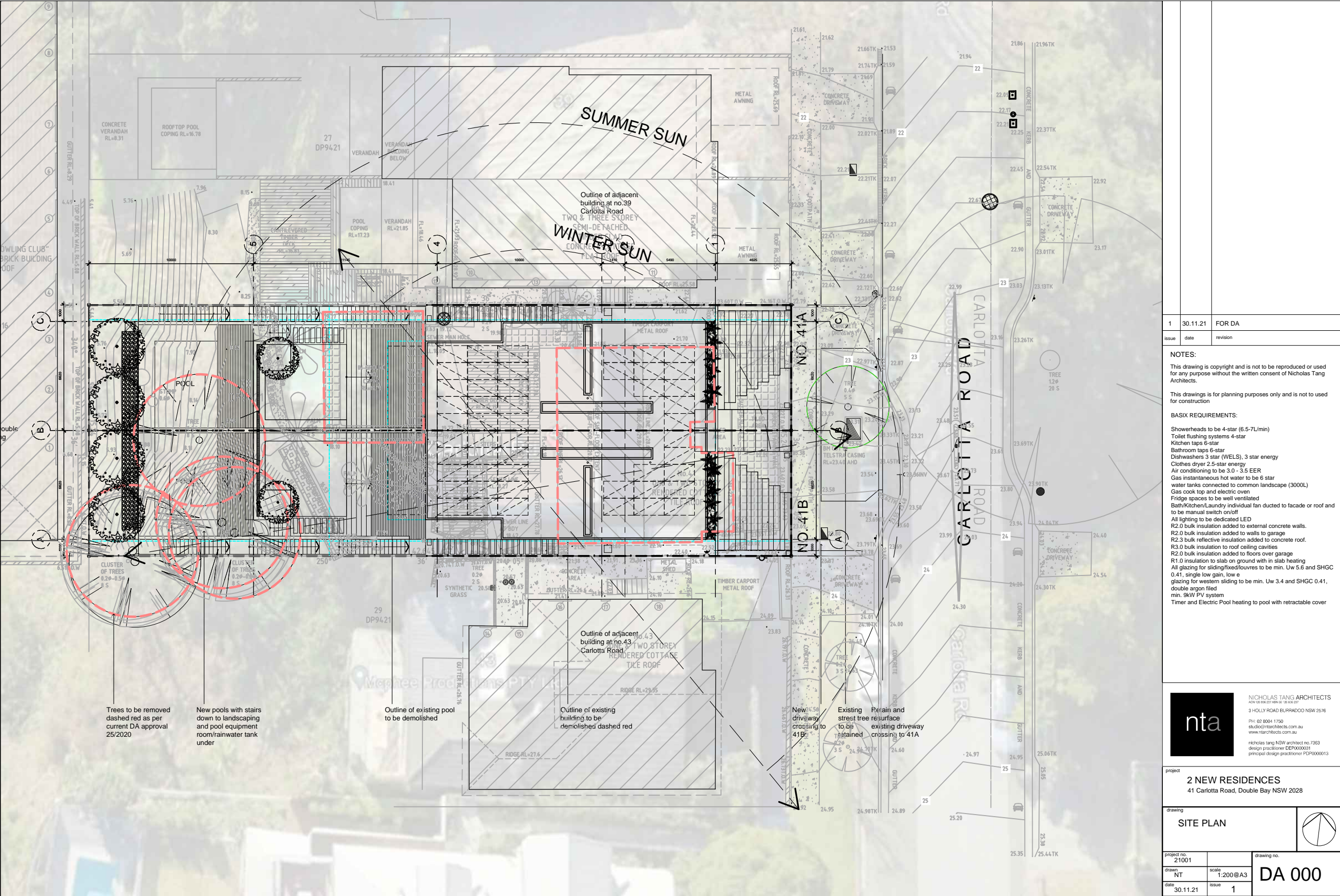
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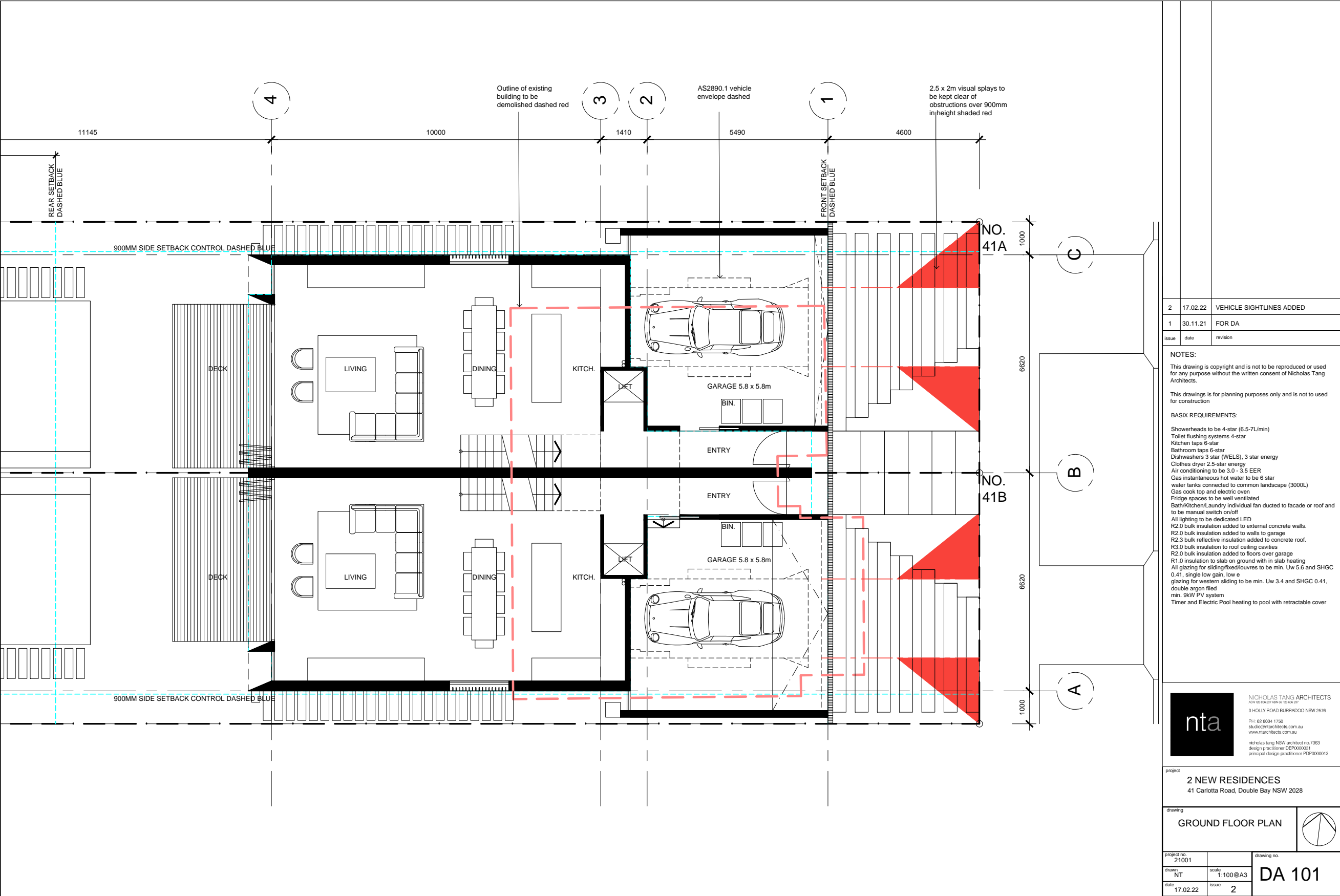
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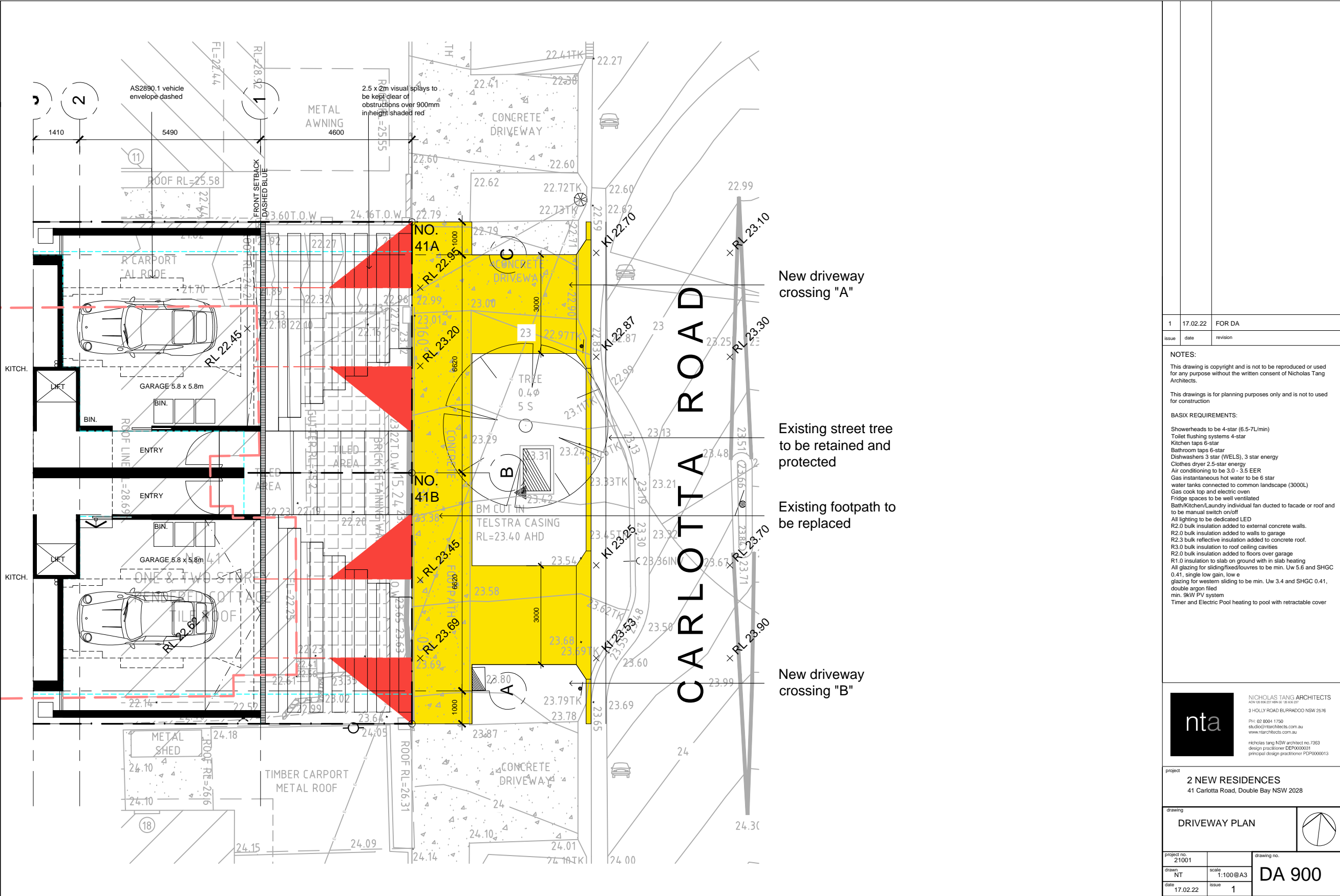
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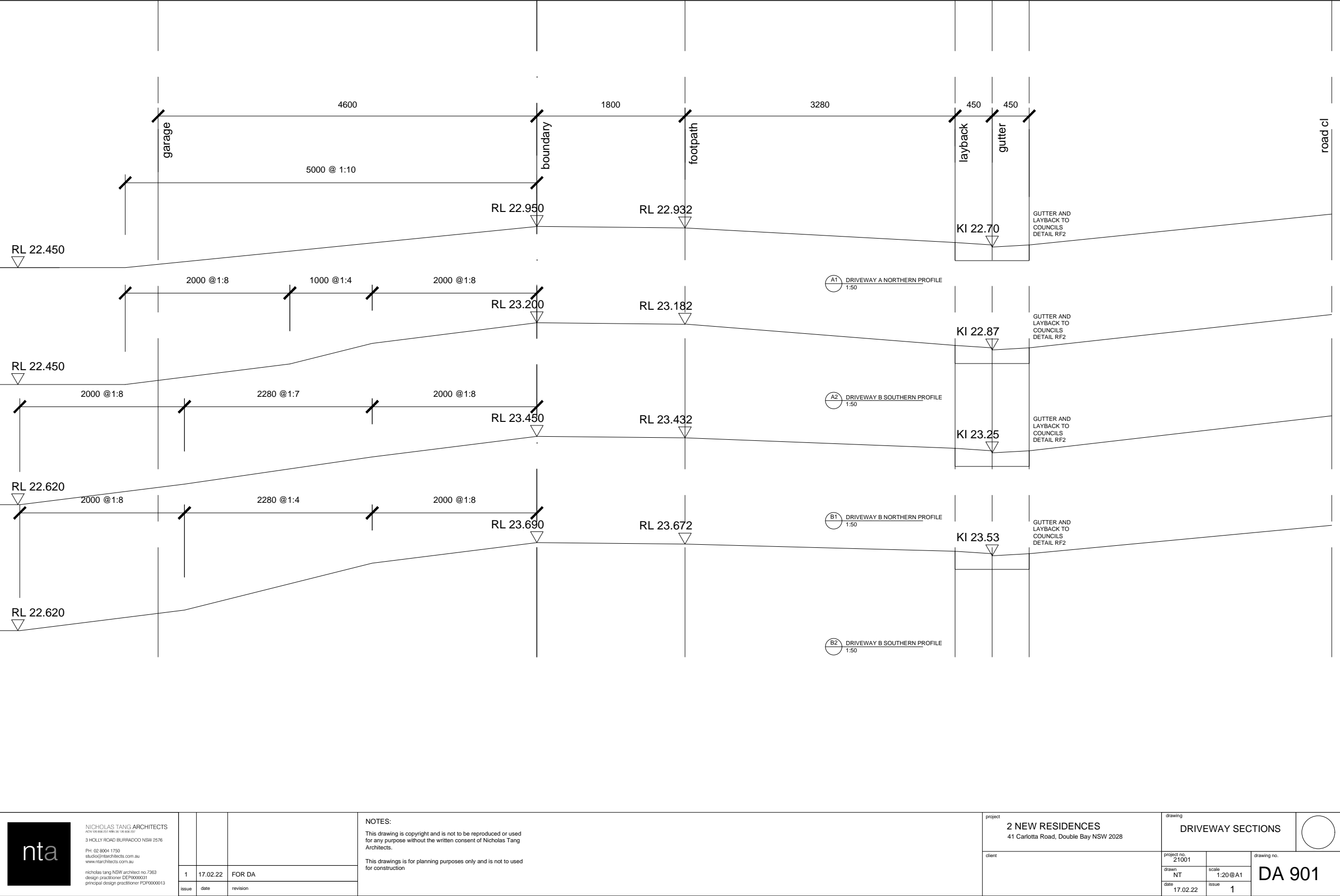
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42 Carlotta Road

DOUBLE BAY, NSW 2028

LANDSCAPE DEVELOPMENT APPLICATION

FOR:WOOLLAHRA COUNCIL

CLIENT:DALLAD









REVISION:A

DATE:09 NOVEMBER 2021



2 Contents

02	Contents
03	Design Statement
04	Landscape Master Plan
05	Landscape Plan - Lower Ground
06	Landscape Plan - Lower Ground
07	Landscape Plan - Level 01
08	indicative Material and Planting Palette

Landscape Appendix		General Legend			Revisions					
400	Planting Schedule		Boundary Line		Existing Levels	Issue	Title	Date	Prepared	Chkd
401	Planting Plan 1 of 3					A	DRAFT	08 NOVEMBER 2021	DO	CT
402	Planting Plan 1 of 3		Existing Trees to Retain		Proposed Levels (Architects)					
403	Planting Plan 1 of 3									
701	Landscape Details		Existing Trees to Remove		Proposed Levels (Architects)					
800	Landscape Specification									
			Proposed Trees							
			Shrubs and Groundcovers							

3 Design Statement

The overall landscape design for this site is to show its character through contemporary materials palette with a minimalistic French Euro style planting palette as requested by client.

Landscape amenities and the private open spaces within the site include infinity edge swimming pools, open lawns, seating opportunities such as dining and lounging settings and considered design elements such as decorative screens, pots and lighting.



minimalistic

palette

4 Landscape Master Plan

Legend

- 01

Existing kerb line made good
- 02

Existing footpath and turf made good
- 03

Driveway entry
- 04

Pedestrian step entry (1.2m width)
- 05

Roof with skylights
- 06

Side access path (0.9m width)

07

Rear upper level decking

08

Step access to open lawn

09

Step access to lower level swimming pool

10

Feature olive trees

11

Glass pool fence and gate (1.2m high)

12

Swimming pool

13

Swimming pool shallow ledge

14

Shade tolerant matrix planting

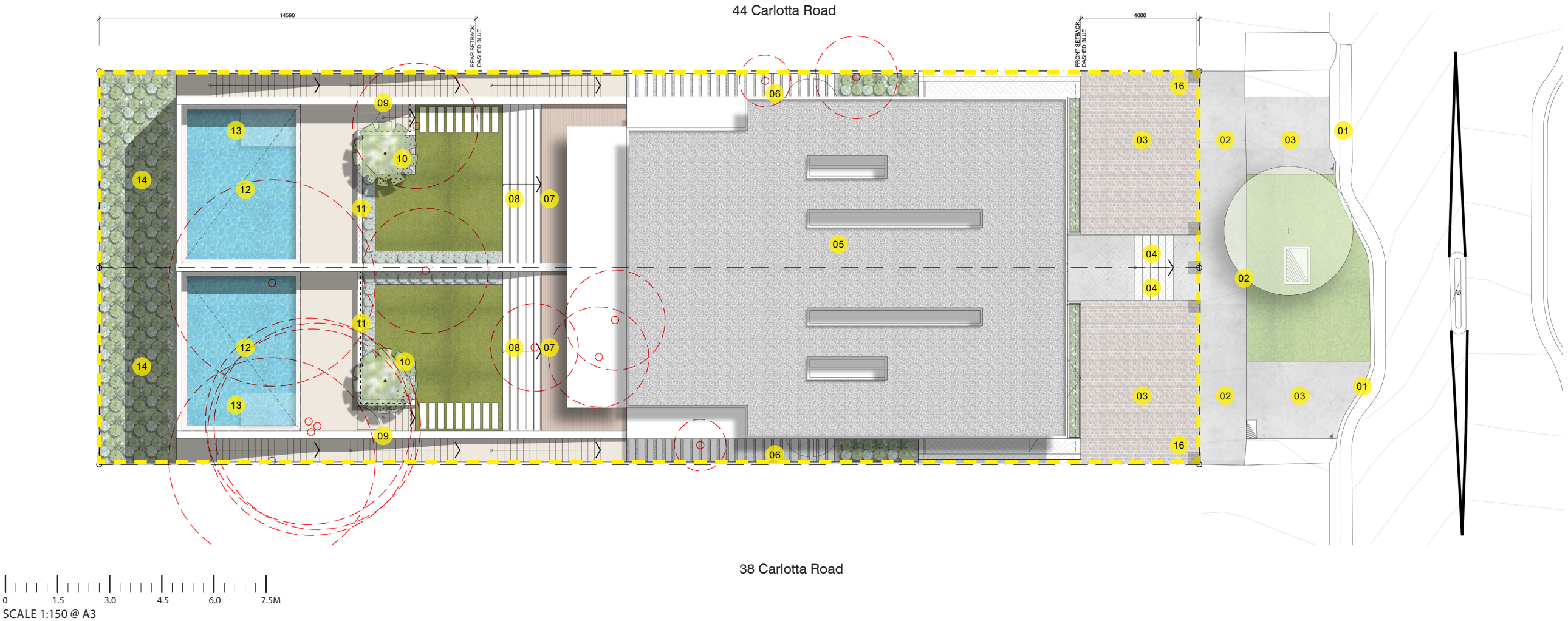
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Existing tree to be retained

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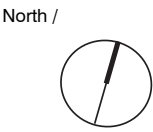
Front boundary piers (1.8m high)

General: 1.8m High Timber Larch Lap Fence around boundary.



LANDFX
LANDSCAPE ARCHITECTURE

Project /
42 CARLOTTA ROAD, DOUBLE BAY, NSW 2028
LANDSCAPE DEVELOPMENT APPLICATION



Prepared By / Landfx Landscape Architecture
Client / Dallad
Architect / Nic Tang Architects

Date / November 2021
Scale / As Shown
Issue / A

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5 Landscape Plan - Lower Ground

Legend

- 01

Side access path (0.9m width)
- 02

Rear upper level decking
- 03

Step access to open lawn
- 04

Step access to lower level swimming pool
- 05

Feature olive trees
- 06

Glass pool fence and gate (1.2m high)

07

Swimming pool

08

Swimming pool shallow ledge

09

Shade tolerant matrix planting

10

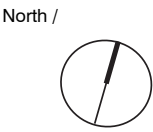
Existing tree to be retained

11

Climbers on both sides of privacy wall

LANDFX
LANDSCAPE ARCHITECTURE

Project /
42 CARLOTTA ROAD, DOUBLE BAY, NSW 2028
LANDSCAPE DEVELOPMENT APPLICATION



Prepared By / Landfx Landscape Architecture
Client / Dallad
Architect / Nic Tang Architects

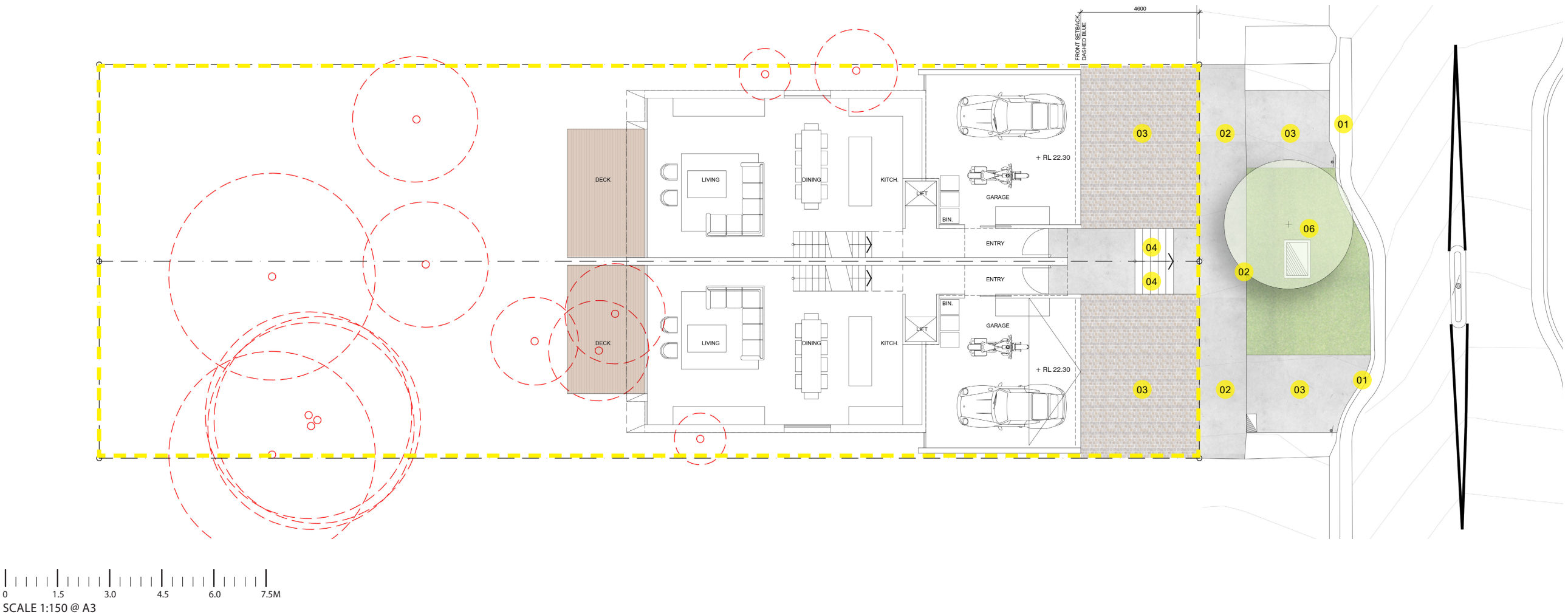
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Issue / A

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6 Landscape Plan - Ground Floor

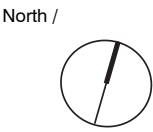
Legend

- 01 Existing kerb line made good
- 02 Existing footpath and turf made good
- 03 Driveway entry
- 04 Pedestrian step entry (1.2m width)
- 05 Level 01 terrace decking with balustrade
- 06 Existing tree to be retained



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Project /
42 CARLOTTA ROAD, DOUBLE BAY, NSW 2028
LANDSCAPE DEVELOPMENT APPLICATION



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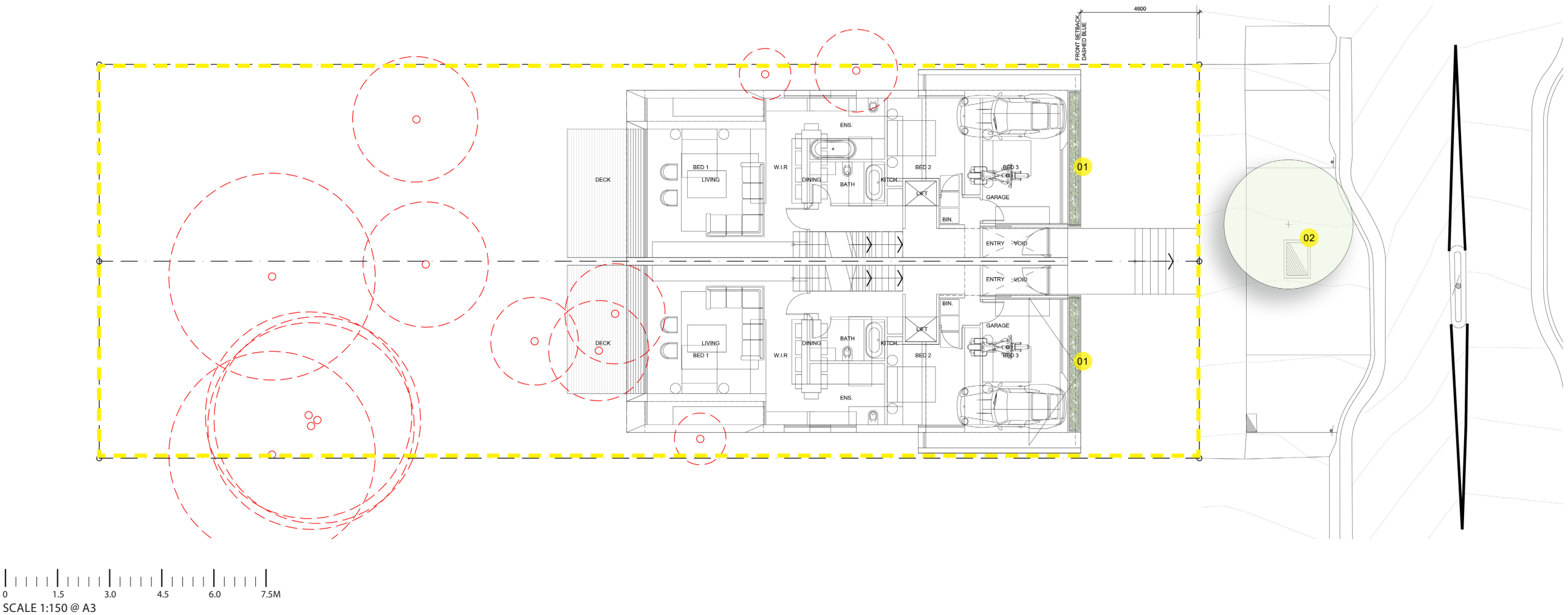
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7 Landscape Plan - Level 01

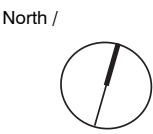
Legend

- 01 Level 01 Planter (1m soil depth)
- 02 Existing tree to be retained



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Project /
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8 Indicative Materials and Planting Palette

The finishes of this site will reflect a minimalistic 'french euro' style. Cool colour and grey tone finishes for materials will tie in with the architectural palette accompanied by splashes of colour and planting textures throughout.

Legend

- 01 Cimbers (star jasmine)
- 02 Stepping stones in turf
- 03 Feature lighting
- 04 Considered pavers
- 05 Feature trees



42 Carlotta Road

DOUBLE BAY, NSW 2028

LANDSCAPE APPENDIX

400	Planting Schedule
401	Planting Plan 1 of 3
402	Planting Plan 1 of 3
403	Planting Plan 1 of 3
701	Landscape Details
800	Landscape Specification



42 Carlotta Road Planting Schedule

Code	Botanic Name	Common Name	Mature Size (H x W)	Proposed Pot Size	Quantity	Desnity (m2)
------	--------------	-------------	---------------------	-------------------	----------	--------------

Trees + Palms

Oe	<i>Olea europaea</i>	Olive Tree	6 x 6	Ex Ground	2	N/A
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Olea europaea

Shrubs + Accents

Co	<i>Crassula ovata</i>	Blue Jade	1 x 1	200 mm	6	N/A
Ld	<i>Lavandula dentata</i> 'Super French'	French Lavender	1 x 1	200mm	18	3



Lavendula dentata

Grasses + Rushes

Lm	<i>Liriope muscari</i>	Lilyturf	0.4 x 0.4	150mm	42	6
Li	<i>Lomandra longifolia</i>	Spiny Headed Mat Rush	1 x 1	150mm	42	4
Lt	<i>Lomandra 'Tanika'</i>	Mat Rush	0.6 x 0.6	150mm	48	6



Liriope muscari



Lomandra tanika



Lomandra longifolia

Groundcovers + Climbers

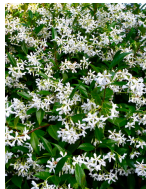
Mp	<i>Myoporum parvifolium</i>	Creeping Boobialla	0.15 x spreading	150mm	42	8
Sb	<i>Scerlanthus biflorus</i>	Two-flowered knawel.	0.15 x spreading	150mm	24	6
Tj	<i>Trachelospermum jasminoides</i>	Star Jasmine	0.25 x 1	150mm	28	8



Myoporum parvifolium



scleranthus biflorus



Trachelospermum jasminoides

LEGEND

ISSUE	REVISION DESCRIPTION	DRAWN	CHECK	DATE
A	DRAFT DEVELOPMENT APPLICATION	DO	CT	06.11.2021

PROJECT
42 CARLOTTA ROAD
DOUBLE BAY, NSW, 2028, AUSTRALIA

STAGE
DEVELOPMENT APPLICATION

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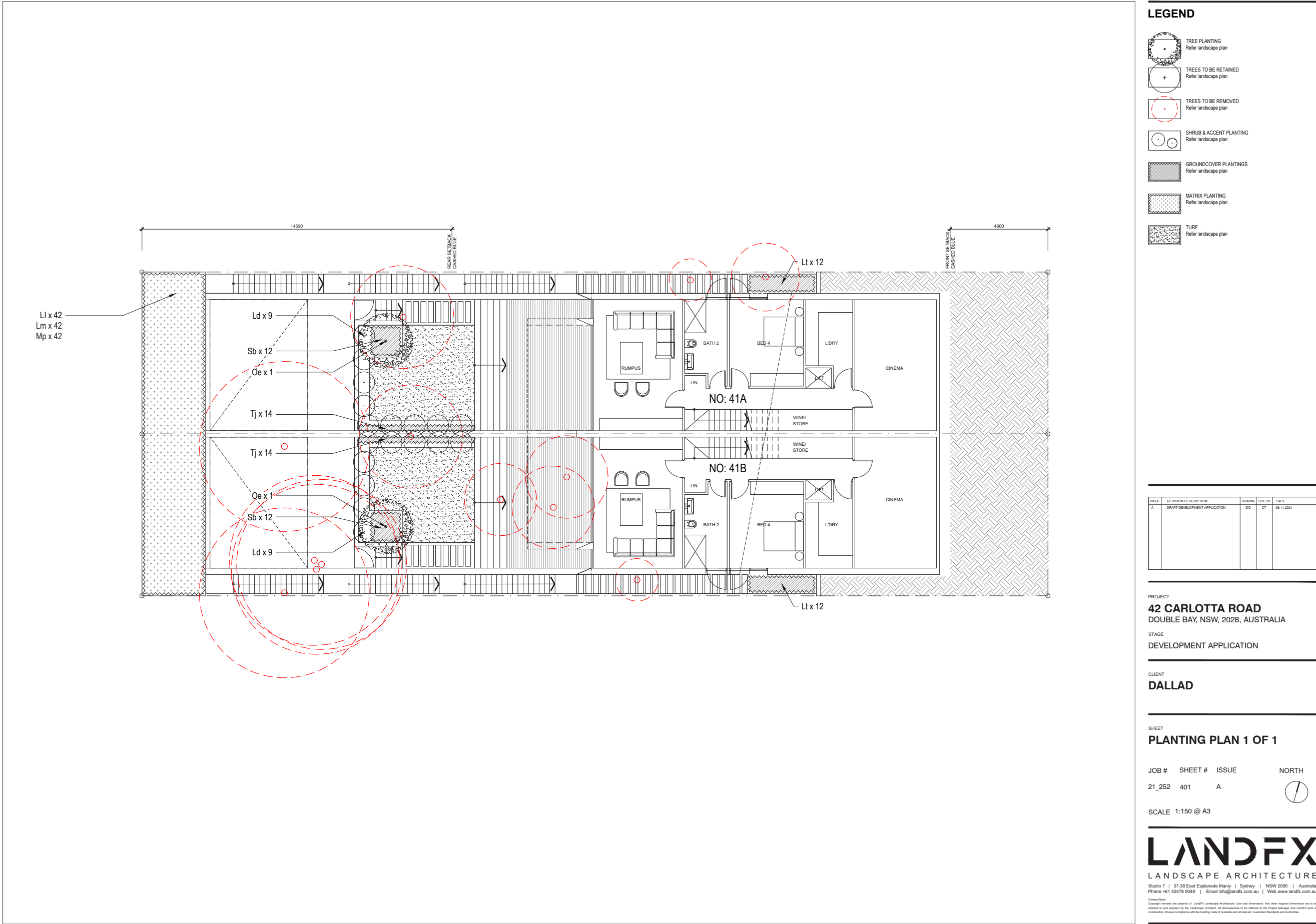
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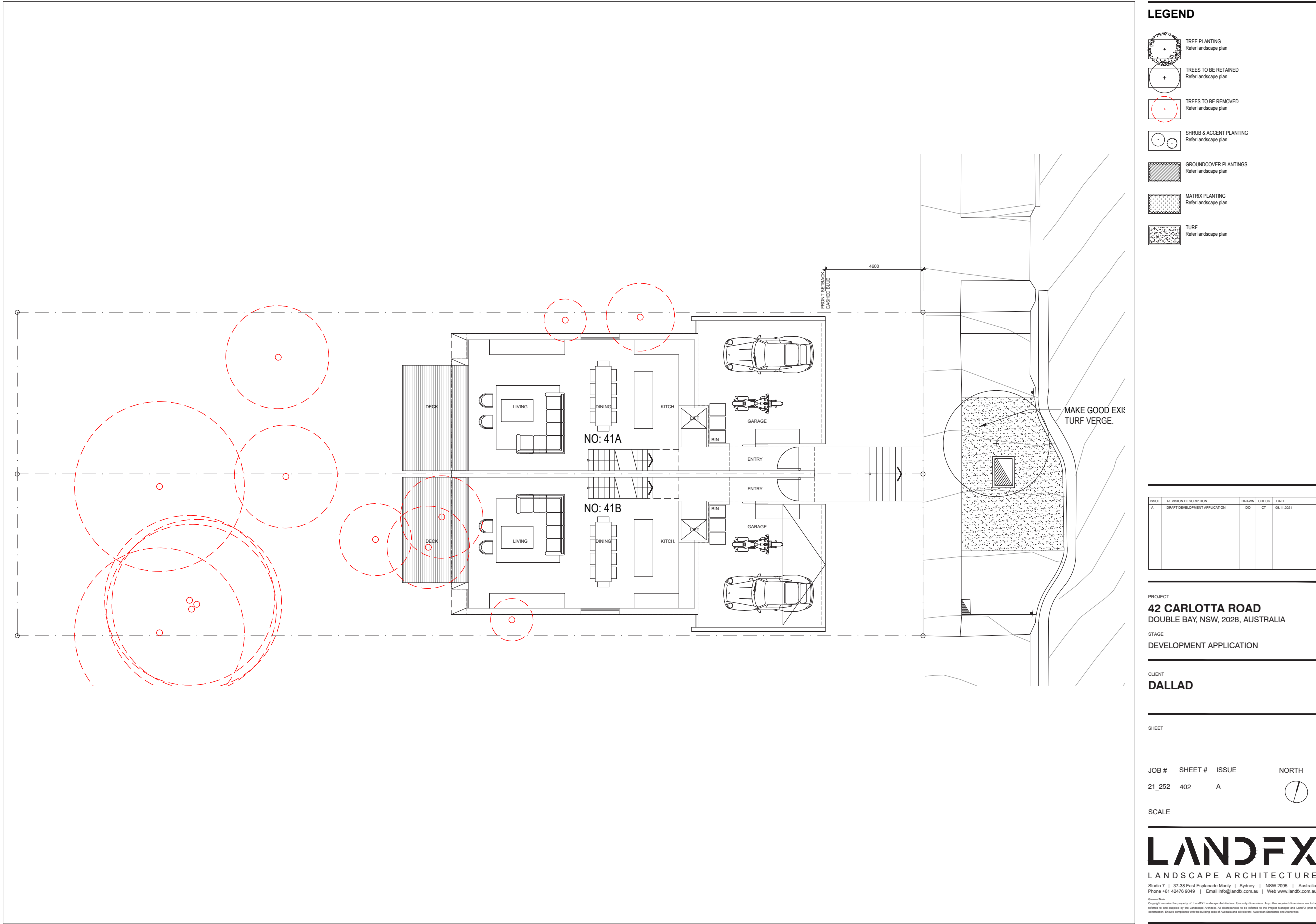
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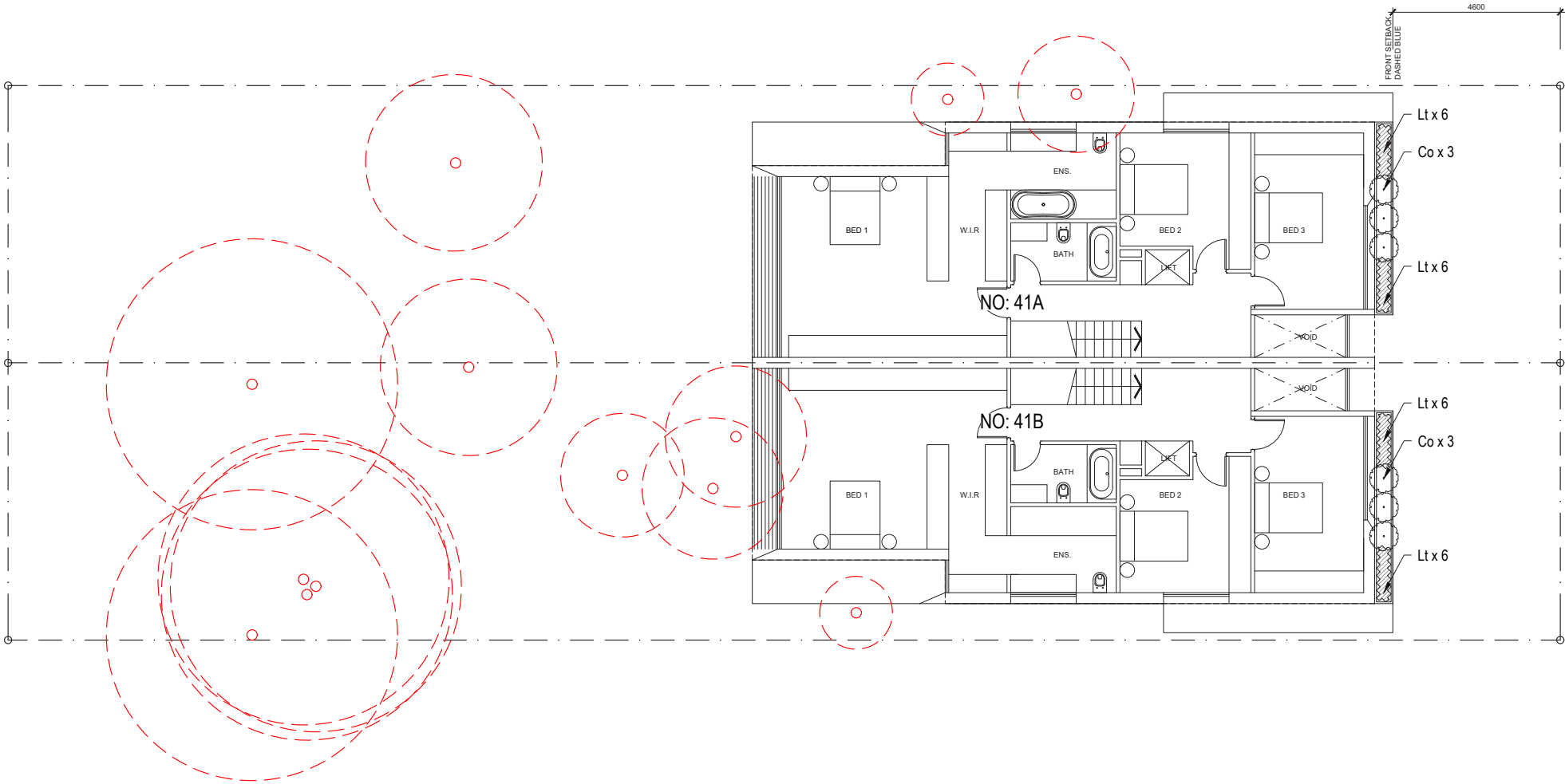
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LEGEND

- TREE PLANTING
Refer landscape plan
- TREES TO BE RETAINED
Refer landscape plan
- TREES TO BE REMOVED
Refer landscape plan
- SHRUB & ACCENT PLANTING
Refer landscape plan
- GROUNDCOVER PLANTINGS
Refer landscape plan
- MATRIX PLANTING
Refer landscape plan
- TURF
Refer landscape plan



ISSUE	REVISION DESCRIPTION	DRAWN	CHECK	DATE
A	DRAFT DEVELOPMENT APPLICATION	DO	CT	06.11.2021

PROJECT
42 CARLOTTA ROAD
DOUBLE BAY, NSW, 2028, AUSTRALIA

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SHEET

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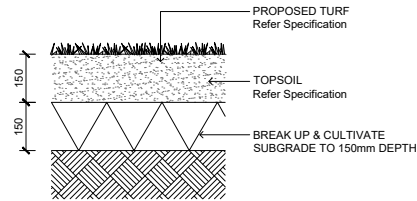
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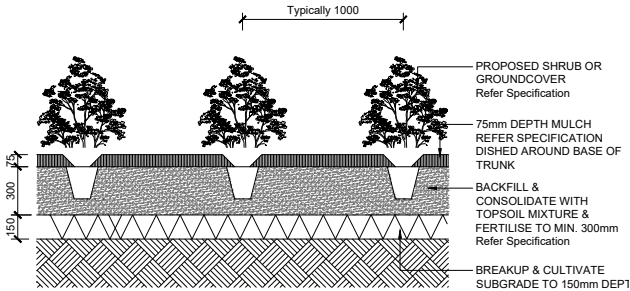
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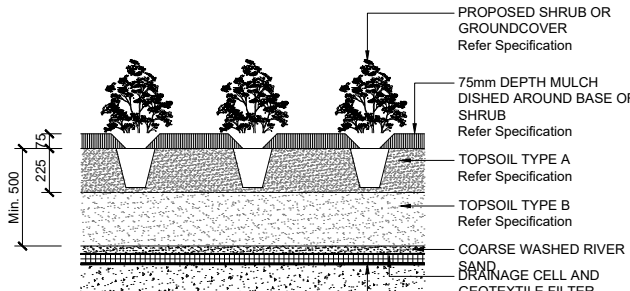
LEGEND



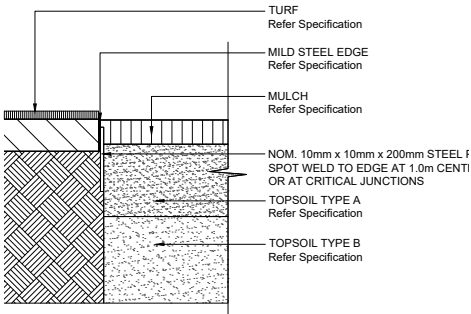
TURF ON GRADE / 1:20 @ A3



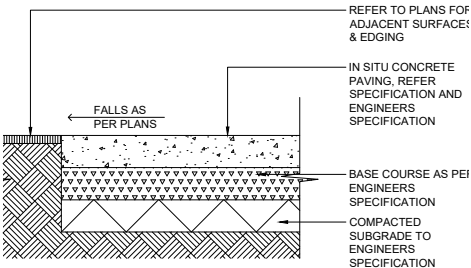
SHRUB PLANTING ON GRADE / 1:20 @ A3



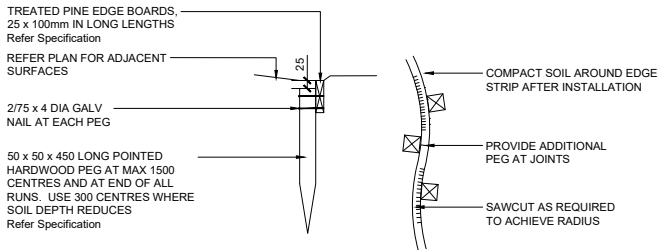
SHRUB PLANTING ON SLAB / 1:20 @ A3



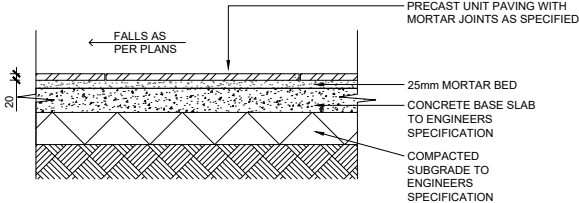
STEEL EDGE ON GRADE 1:20 @ A3



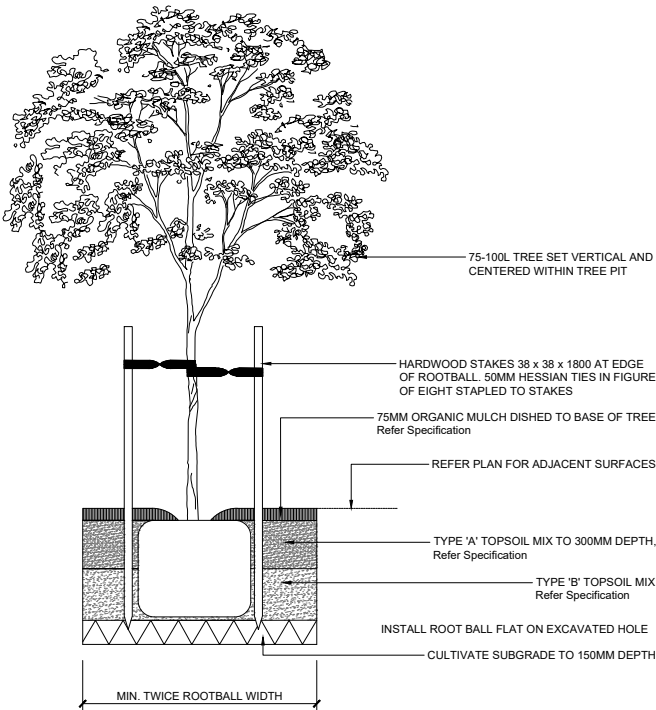
CONCRETE PATH ON GRADE 1:20 @ A3



TIMBER EDGE ON GRADE 1:20 @ A3



CONCRETE PATH ON GRADE 1:20 @ A3



TYPICAL TREE ON GRADE / 1:50 @ A3

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PROJECT
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DOUBLE BAY, NSW, 2028, AUSTRALIA

STAGE
DEVELOPMENT APPLICATION

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LANDSCAPE DETAILS

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LEGEND

Landscape specification notes

Services

Before landscape work is commenced the landscape contractor is to establish the Position of all service lines and ensure tree planting is carried out at least 3 metres Away from these services. Service lids, vents and hydrants shall be left exposed and not Covered by any landscape finishes (turfing, paving, garden beds etc.) Finish adjoining Surfaces flush with pit lids.

Arborist management of tree protection

A qualified and approved arborist is to be contracted to undertake or manage the Installation of protective fencing, and to undertake such measures as he deems appropriate to preserve the subject trees to be retained. The arborist is to be retained for the entire contract period to undertake ongoing management and review of the Trees.

Drainage cell and filter fabric

For on-slab areas install an approved 'drainage cell' product to comprehensively cover the bottom of all planters. Over drainage cell to on-slab areas, a polyfelt geotextile lining (as supplied by 'polyfelt ts' or approved equivalent) is to be installed to cover the bottom of all planters, turned up 300mm and taped to the planter sides to ensure soil mix does not escape into drainage outlets/holes. Install min. 50Mm coarse river sand over all geotextile lining prior to installation of soil mix.

Planting mixture

Shall be homogenous blend of soil and additives in the following proportions:
Existing site soil if suitable or imported topsoil 50% Compost 30% D/w sand 20% soil testing of existing site soil is to be undertaken to assess suitability of use as planting topsoil and compliance with australian standards.(As4419 - soils for landscaping)

Mulch application

Place mulch to the required depth, (refer to drawings) clear of plant stems, and rake to an even surface finishing 25mm below adjoining levels. Ensure mulch is watered in and tamped down during installation.

Mulch type

Forest litter or pine bark: from mature trees, graded in size from 15mm to 30mm, free from wood slivers. Dark brown in colour and texture.
All mulch to be free of deleterious material such as rock, soil, weeds and sticks

Compost

Shall be well rotted vegetative material or animal manure, or other approved material, free from harmful chemicals, grass and weed growth and with neutral ph. Provide a Certificate of proof of ph upon request.

Plant material

All plants supplied are to conform with those species listed in the plant schedule on the drawings. Generally plants shall be vigorous, well established, hardened off, of good form consistent with species or variety, not soft or forced, free from disease or insect pests with large healthy root systems and no evidence of having been restricted or damaged. Trees shall have a leading shoot. Immediately reject dried out, damaged or Unhealthy plant material before planting. All stock is to be container grown for a Minimum of six (6) months prior to delivery to site

Trees in grass and super advanced trees:

Pellets shall be in the form intended to uniformly release plant food elements for a period of approximately nine months equal to shirleys kokei pellets, analysis 6.3:1.8:2.9. Kokei pellets shall be placed at the time of planting to the base of the plant, 50mm minimum From the root ball at a rate of two pellets per 300mm of top growth to a maximum of 8 pellets per tree.
Tree trunks to be a minimum of 700mm from street kerb or guttering.
All tree planting holes are minimum 1.5M diameter and twice the depth of the rootball
Root directors
Install root directors to manufacturers specificatons to protect assets, structures and underground servives

Staking and tying

Stakes shall be straight hardwood, free from knots and twists, pointed at one end. Size shall be 2x38x38x1800mm and shall sit 600mm within ground. Secure the tree firmly with 2n. Hessianties fitted to the stem separately in opposite directions.
Of plants to be staked.
A. 5-15 Litre size plant 1x(1200x25x25mm)
B. 35-75 Litre size plant 2x(1500x38x38mm)
C. 100-Greater than 200litre 3x(1800x50x50mm)
Ties shall be 50mm wide hessian webbing or approved equivalent nailed or stapled to stake.
Drive stakes a minimum one third of their length, avoiding damage to the root system, on The windward side of the plant.

Irrigation system

Supply an automatic watering system using 'toro irrigation system' or similar approved, with micro-jet sprinkler heads and low density, rubber modified polypropylene reticulation, to include filters, bends junctions, ends and other ancillary equipment. The Landscaper shall nominate his source of supply for the watering system and obtain approval from the superintendent before placing orders for equipment or supply.
A schematic plan of the proposed irrigation system is to be prepared by the contractor, showing solenoids, pipe diameters, and all nozzle and trickle attachment types (including spray/head angle), for review by the superintendent prior to installation
the contractor is to liaise with the hydraulic engineer and council as necessary, to ensure the irrigation system conforms with all the council and water board codes and requirements.
Provide an automatic controller that provides for two week scheduling and hourly multi-cycle operation. The controller shall manual override. Programming shall be undertaken by the contractor who shall advise on the operation of the system.
provision of secure housing for the automatic irrigation controller to be located in association with the landscape contractor and location confirmed by the superintendent. Wiring to connect remote solenoid locations is to be provided. The controller shall be located in a dry place, protected from the weather, and all cable connections shall be made with waterproof connectors.

Installation shall be tested under known working conditions. Acceptance of the installed Plant and equipment shall be subject to these being satisfactory.
Timber or steel edging

N/a

Soft edges

All soft edges (mulch, turf, grassed) to be finished to appropriate falls and flush with Adjacent surface treatment.

Turf

Turf all landscape areas as shown on the landscape drawings. Turf is to have To prepare graded areas to receive turf, excavate the area and cultivate so as to allow For importing of 100mm of turf underlay soil. Remove all stones over 50mm ø and remove All weeds and foreign matter. Spread soil mix a.B.S to a depth of 100mm and grade to Appropriate levels to achieve general even grades to drainage outlets installed by Others.

Lay the turf along the land contours with staggered, close butted joints, so that the Finished turf surface is flush with adjacent finished surfaces of paving and the like. As Soon as practicable after laying, roll the turf with a roller weighing not more than 90kg Per metre of width for sandy or light soils.

Water as necessary to keep the soil moist to a depth of 100mm. Protect newly turfed Areas against traffic until grass is established. Fertilise two weeks after laying fertilise A.B.S

'Top dress' the turf when it is established to a depth of 10mm with coarse washed river Sand. Rub the dressing well into the joints and correct any unevenness in the turf Surfaces.

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PROJECT
42 CARLOTTA ROAD
DOUBLE BAY, NSW, 2028, AUSTRALIA

STAGE
DEVELOPMENT APPLICATION

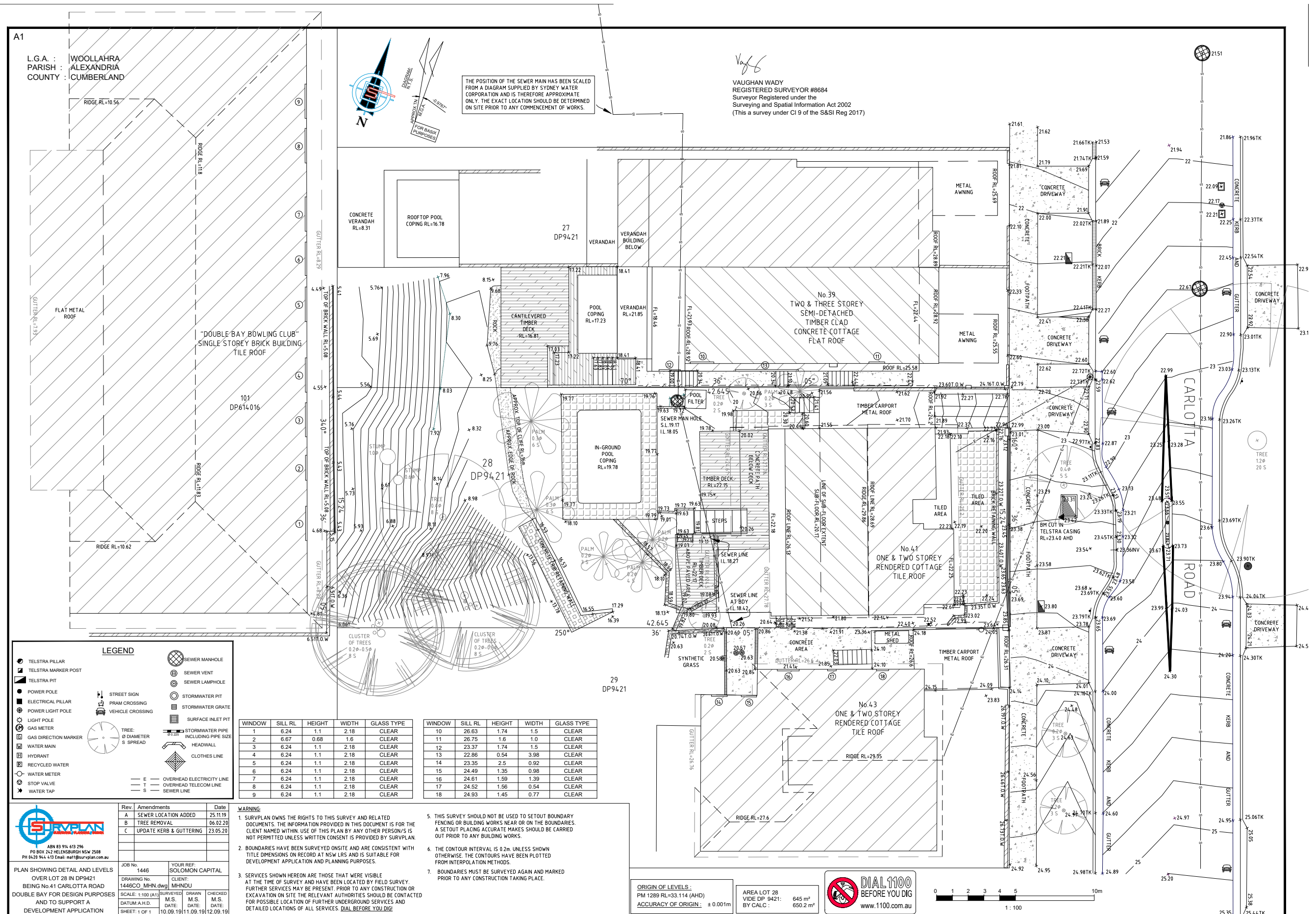
CLIENT
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SHEET
LANDSCAPE SPECIFICATION

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Completion Date: 31/05/2022

REFERRAL RESPONSE – DEVELOPMENT ENGINEERING

FILE NO: Development Applications/ 59/2022/1
ADDRESS: 41 Carlotta Road DOUBLE BAY 2028
PROPOSAL: Demolition of the existing dwelling, construction of two semi-detached dwellings, landscaping works, swimming pool and Torrens title subdivision into two lots.
FROM: Mehrnaz Jamali - Development Engineer
TO: Mr M Kelly

1. ISSUES

- None. Please refer to comments and conditions.

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced M2100546, prepared by Planning Ingenuity, dated 22 February 2022.
- Architectural Plans, Project No. 21001, Issue 1, prepared by Nicholas Tang Architects, dated 30/11/2021.
- Survey, Job No. 1446, Rev C, prepared by Survplan, dated 23/05/2020.
- Stormwater Management Plan, referenced N0211335, Rev 3, prepared by JN Responsive Engineering, dated 16/02/2022.
- Geotechnical & Hydrogeological Investigation Report, referenced 32775Srpt, prepared by JK Geotechnics, dated 12 November 2021.
- Infiltration Testing Report, referenced 32775Srpt infil, prepared by JK Geotechnics, dated 1 February 2022.
- Telstra Asset Relocation Conditions, referenced SS371116-1, prepared by Telstra, dated 22 February 2022.
- Flood Risk Management Report, referenced N0211335.01A, Revision A, prepared by JN Responsive Engineering, dated 09/02/2022.
- Email from Telstra to Emily Oei, regarding Telstra Pit Relocation, dated 27 January 2022.
- Email from Michael Rowley to Emily Oei, regarding Stormwater Easement Refusal, dated 18 February 2022.
- Drainage referral response, dated 24/03/2022.

3. ASSESSMENT

Comments have been prepared on the following. **Where Approval is recommended, Conditions of Consent follow at the end of the comments.**

a. Site Drainage comments

- *Whilst the Email from Michael Rowley to Emily Oei, regarding Stormwater Easement Refusal, dated 18 February 2022 does not include a formal letterhead to demonstrate that the email is from the Double Bay Bowling Club, due to previous history and knowledge of the site, the easement refusal email is considered satisfactory in this instance.*
- *The submitted Infiltration Testing Report, referenced 32775Srpt infil, prepared by JK Geotechnics, dated 1 February 2022 is also considered satisfactory and as such utilisation of a Pump-out system has been accepted.*

As such, there are no objections Stormwater Management Plan, referenced N0211335, Rev 3, prepared by JN Responsive Engineering, dated 16/02/2022 subject to the following condition;

- *The proposed Holding Tank adjacent to the proposed Rainwater Tank shall be separated from the proposed Pump-out System via partitions (for each proposed lot) and used for irrigation purposes only. Overflow of the Holding Tank is to be directed to the Pump-out System. The Holding Tank shall not be within the Pump-out System.*
- *The Pump-out System volume shall not be utilised toward the required Rainwater Tank/Holding Tank volume. The capacity of the pump out system shall be designed to comply with Section 8.5.6 of AS3500.3.*
- *The maximum discharge rate to Council's kerb and gutter shall be limited to 20l/s for each proposed lot.*
- *All belowground structures shall be tanked with no subsoil drainage pumped out nor drained under gravity to Council's kerb and gutter.*
- *Drainage conduits to Council's kerb and gutter shall not traverse any vehicular crossings.*
- *Drainage conduits, across footpath areas that are discharging to Council's kerb and gutter shall be 125mm x 75mm galvanised box or 65mm to 100mm sewer grade PVC pipes.*

The concept plan is subject to the submission and approval of Stormwater Management Plan for the site prior to release of the Construction Certificate. Details are to be in accordance with Council's Chapter E2 "Stormwater and Flood Risk Management" DCP and Local Approvals Policy. This is to ensure that site stormwater is disposed in a controlled and sustainable manner.

Council's Infrastructure and Sustainability Division is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop and complies with the provisions Council's Chapter E2 "Stormwater and Flood Risk Management" DCP.

b. Flooding & Overland Flow comments

Council's Drainage Engineer has provided the following comments;

I refer to the following documents received for this report:

22/38864 Document - Flood Risk Management Plan - DA2022-59-1 - 41 Carlotta Road DOUBLE BAY

RECOMMENDATION

Council's drainage Engineer has determined that the development proposal is generally satisfactory, subject to the following conditions;

C.54 Flood Protection

The Construction Certificate plans and specifications, required by clause 139 of the *Regulation*, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:

- a. A permanent flood risk management plans shall be installed in garages.
- b. The driveway entries shall be protected by a mechanical flood barrier with the threshold set to the flood planning level of 23.6m AHD.
- c. The pedestrian entries from Carlotta Road shall be protected by mechanical flood barriers with the threshold set to the flood planning level of 23.6m AHD.
- d. Permanent brass plaques shall be mounted adjacent to all mechanical flood barriers and flood proof doors explaining their purpose and operation.
- e. Flood compatible materials shall be used for all flood exposed construction
- f. All flood exposed electrical wiring and equipment is to be waterproofed.
- g. All flood protection measures are to be inspected and certified as fit for purpose after construction is complete by an engineer experienced in flood mitigation.

As such the above conditions have been imposed.

c. Impacts on Council Infrastructure comments

- *The discharge of stormwater by two (2) direct connections to back of Council's kerb and gutter fronting each proposed lot on Carlotta Road.
Note: the maximum discharge rate to Council's kerb and gutter shall be limited to 20l/s. All belowground structures shall be tanked with no subsoil drainage pumped out nor drained under gravity to Council's kerb and gutter.
Drainage conduits to Council's kerb and gutter shall not traverse any vehicular crossings. Drainage conduits, across footpath areas that are discharging to Council's kerb and gutter shall be 125mm x 75mm galvanised box or 65mm to 100mm sewer grade PVC pipes.*
- *Construction of a full width vehicular crossing having a width of 3m at property boundary and perpendicular to the road carriageway for each proposed lot (Lot 41A and Lot 41B).
Note: Telstra Pit relocation is required for the proposed vehicular crossing accessing*

proposed Lot 41B. There shall be a clearance of minimum 1m from the proposed vehicular crossing and the Telstra Pit. Written approval from Telstra shall be provided.

The remainder of Council's assets are in serviceable condition - conditions applied.

d. Traffic comments

The expected traffic generation from the proposed development is typical for the zoning of the site.

e. Vehicle Access & Accommodation comments

The access and parking layout is generally satisfactory subject to the following condition;

- *The internal driveways shall have a minimum width of 3m each in accordance with AS/NZS 2890.1.*
- *Driveway splays shall be provided (inside property boundary) in accordance with Figure 3.3 in Section 3.2.4 of AS/NZS 2890.1. The splays shall align with the width of the 3m vehicular crossings. Alternatively a fence to a maximum height of 0.9m is permitted in the splay area. Exceptions to this may be accepted where an object in the adjoining property creates an obstruction to visibility within the splay area.*
- *It shall be ascertained that each proposed garage has an internal height of minimum 2.2m between the floor and any overhead obstruction (including garage door brackets) in accordance with AS/NZS 2890.1.*

f. Geotechnical, Hydrogeological and/or Structural comments

The following documents have been submitted in support of the application;

- *Geotechnical & Hydrogeological Investigation Report, referenced 32775Srpt, prepared by JK Geotechnics, dated 12 November 2021.*
- *Infiltration Testing Report, referenced 32775Srpt infil, prepared by JK Geotechnics, dated 1 February 2022.*

The proposal involves excavation for a lower ground floor level to a maximum depth of about 3.5m and swimming pool to a maximum depth of about 4m.

The report identified that;

- a) Fill – sandy - to depths of 0.25m and 1.3m.*
- b) Aeolian sand – very loose to loose - to depths of 2.35m and 2.7m.*
- c) Groundwater appeared not to be an issue.*
- d) Ground Anchors recommended.*

Note: All belowground structures shall be tanked with no subsoil drainage pumped out nor drained under gravity to Council's kerb and gutter.

Conditions covering these matters as well as others identified by Council have been added to the Referral.

Council's Infrastructure and Sustainability has no objection to the proposed excavation on technical grounds. Notwithstanding this, Council's Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and RDCP.

Note: Use of any Ground Anchors or any retention system extending beyond site boundaries requires the approval of neighbouring properties in writing.

g. Other matters

Development Planning to Note: a Draft Deposited Plan prepared by a registered surveyor has not been submitted for the proposed Torrens title subdivision. This however is advisory only and is not part of this Development Engineering assessment as no easements are required for this proposal.

4. RECOMMENDATION

Council's Development Engineer has determined that the proposal is satisfactory, subject to the following conditions:

Conditions of Consent

Please note that the standard conditions of consent are generally modified by the Infrastructure and Sustainability Division to suit a particular development application. Please ensure all Infrastructure and Sustainability conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function.

A. General Conditions

A.5 Approved Plans & Supporting Documents

Reference	Description	Author/Drawn	Date(s)
N0211335, Rev 3	Stormwater Management Plan	JN Responsive Engineering	16/02/2022
32775Srpt	Geotechnical & Hydrogeological Investigation Report	JK Geotechnics	12 November 2021
32775Srpt infil	Infiltration Testing Report	by JK Geotechnics	1 February 2022
SS371116-1	Telstra Asset Relocation Conditions	Telstra	22 February 2022
N0211335.01A, Revision A	Flood Risk Management Report	JN Responsive Engineering	09/02/2022

A.8 Ancillary Aspects of Development (section 4.17(2) of the Act)

B. Conditions which must be satisfied PRIOR TO THE DEMOLITION of any building or construction

B.7 Public Road Assets Prior to Any Work/Demolition

C. Conditions which must be satisfied PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE

C.5 Payment of Long Service Levy, Security, Contributions and Fees

Property Damage Security Deposit - making good any damage caused to any property of the Council	\$73,723	No	T115
Public Road/Footpath Infrastructure Inspection Fee	\$494	No	T45

C.13 Road and Public Domain Works

A separate application under Section 138 of the *Roads Act* 1993 is to be made to, and approved by Council prior to the issuing of a Construction Certificate for the following infrastructure works, which must be carried out at the applicant's expense:

- a) The discharge of stormwater by two (2) direct connections to back of Council's kerb and gutter fronting each proposed lot on Carlotta Road.
Note: the maximum discharge rate to Council's kerb and gutter shall be limited to 20l/s for each proposed lot. All belowground structures shall be tanked with no subsoil drainage pumped out nor drained under gravity to Council's kerb and gutter. Drainage conduits to Council's kerb and gutter shall not traverse any vehicular crossings. Drainage conduits, across footpath areas that are discharging to Council's kerb and gutter shall be 125mm x 75mm galvanised box or 65mm to 100mm sewer grade PVC pipes.
- b) Construction of a full width vehicular crossing having a width of 3m at property boundary and perpendicular to the road carriageway for each proposed lot (Lot 41A and Lot 41B) in accordance with Council's standard driveway drawing RF2-D.
Note: Telstra Pit relocation is required for the proposed vehicular crossing accessing proposed Lot 41B. There shall be a clearance of minimum 1m from the proposed vehicular crossing and the Telstra Pit. Written approval from Telstra shall be provided.
- c) A design longitudinal surface profile for the proposed driveway shall be submitted for assessment.
- d) Removal and replacement of all cracked or damaged footpath and kerb and gutter for the full width of the property in accordance with Council's standard drawing RF3.
- e) Removal of any driveway crossings and kerb laybacks which will be no longer required.
- f) Reinstatement of footpath, kerb and gutter to match existing.
- g) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

Note: To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

Note: *Road* has the same meaning as in the *Roads Act 1993*.

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any *Construction Certificate*. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Roads Act 1993* approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.

Note: See condition K24 in *Section K. Advisings* of this Consent titled *Roads Act Application*.
Standard Condition: C13

C.25 Soil and Water Management Plan – Submissions & Approval

C.36 Professional Engineering Details

C.40 Geotechnical and Hydrogeological Design, Certification & Monitoring

C.41 Ground Anchors

This development consent does NOT give approval to any ground anchors encroaching onto adjoining private properties. Use of any Ground Anchors extending beyond site boundaries requires the approval of neighbouring private properties in writing.

This development consent does NOT give approval to works or structures over, on or under public roads or footpaths excluding minor works subject to separate Road Opening Permit.

The use of permanent ground anchors under Council land is not permitted.

Temporary ground anchors may be permitted, in accordance with Council's "Rock Anchor Policy", where alternative methods of stabilisation would not be practicable or viable, and where there would be benefits in terms of reduced community impact due to a shorter construction period, reduced disruption to pedestrian and vehicular traffic on adjacent public roads, and a safer working environment.

If temporary ground anchors under Council land are proposed, a separate application, including payment of fees, must be made to Council under section 138 of the *Roads Act 1993*. Application forms and Council's "Rock Anchor Policy" are available from Council's website. Approval may be granted subject to conditions of consent. Four weeks should be allowed for assessment.

Note: To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

Note: *Road* has the same meaning as in the *Roads Act 1993*.

Note: Clause 20 of the *Roads (General) Regulation 2000* prohibits excavation in the vicinity of roads as follows: "**Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road." Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

Standard Condition: C41 (Autotext: CC41)

C.45 Parking Facilities

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS2890.3:1993 *Parking Facilities - Bicycle Parking Facilities*, AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking* and AS 2890.2:2002 – *Off-Street Parking: Commercial Vehicle Facilities* respectively and including the following;

- a) The internal driveways shall have a minimum width of 3m each in accordance with AS/NZS 2890.1.
- b) It shall be ascertained that each proposed garage has an internal height of minimum 2.2m between the floor and any overhead obstruction (including garage door brackets) in accordance with AS/NZS 2890.1.
- c) Driveway splays shall be provided (inside property boundary) in accordance with Figure 3.3 in Section 3.2.4 of AS/NZS 2890.1. The splays shall align with the width of the 3m vehicular crossings. Alternatively a fence to a maximum height of 0.9m is permitted in the splay area. Exceptions to this may be accepted where an object in the adjoining property creates an obstruction to visibility within the splay area.

Access levels and grades must comply with access levels and grade required by Council under the *Roads Act 1993*.

The *Certifying Authority* has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent.

Standard Condition: C45 (Autotext: CC45)

C.51 Stormwater Management Plan

The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must include a Stormwater Management Plan for the site. The Stormwater Management Plan must detail:

- a) General design in accordance with the Stormwater Management Plan, referenced N0211335, Rev 3, prepared by JN Responsive Engineering, dated 16/02/2022, other than amended by this and other conditions;
 - a. The proposed Holding Tank adjacent to the proposed Rainwater Tank shall be separated from the proposed Pump-out System via partitions (for each proposed lot) and used for irrigation purposes only. Overflow of the Holding Tank is to be directed to the Pump-out System. The Holding Tank shall not be within the Pump-out System.
 - b. The Pump-out System volume shall not be utilised toward the required Rainwater Tank/Holding Tank volume. The capacity of the pump out system shall be designed to comply with Section 8.5.6 of AS3500.3.
- b) The discharge of stormwater by two (2) direct connections to back of Council's kerb and gutter fronting each proposed lot on Carlotta Road;
 - a. The maximum discharge rate to Council's kerb and gutter shall be limited to 20l/s for each proposed lot.

- b. All belowground structures shall be tanked with no subsoil drainage pumped out nor drained under gravity to Council's kerb and gutter.
- c. Drainage conduits to Council's kerb and gutter shall not traverse any vehicular crossings.
- d. Drainage conduits, across footpath areas that are discharging to Council's kerb and gutter shall be 125mm x 75mm galvanised box or 65mm to 100mm sewer grade PVC pipes.
- c) Compliance the objectives and performance requirements of the BCA,
- d) Any rainwater tank (see Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System,
- e) General compliance with Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management,
- f) Provision of Mechanical Flood Barriers (refer to Flood Protection condition), 2 Rainwater Tanks (minimum volume 19.7m³ each), 2 Holding Tanks (minimum volume 5.6m³ each) and 2 Pump-out Systems for each proposed lot separately in accordance with the above reference plans.

Note: No OSD system shall be utilised for a low level property.

The Stormwater Management Plan must also include the following specific requirements:

Layout plan

A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Institute of Engineers Australia publication, *Australian Rainfall and Run-off*, 1987 edition or most current version thereof.

The layout plan must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of all retention systems,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Council's drainage infrastructure, and
- f) Overland flow paths over impervious areas.

Stormwater Retention System Details:

The retention systems are to address:

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of all proposed retention storage basins,
- c) Diameter of the outlet to the proposed retention storage basins,
- d) Plans, elevations and sections showing the retention storage basins invert level, centre-line level of outlet, top water level, finished surface level and adjacent structures,
- e) Details of access and maintenance facilities,
- f) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products,
- g) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the retention system, and
- h) Non-removable fixing details for orifice plates where used.

Copies of certificates of title

- a) Showing the creation of private easements to drain water by gravity, if required.

Subsoil drainage

There shall be no subsoil drainage to Council's kerb and gutter. All belowground structures shall be tanked.

Where any new *Stormwater Drainage System* crosses the footpath area within any road, separate approval under section 138 of the *Roads Act* 1993 must be obtained from Council for those works prior to the issue of any *Construction Certificate*.

All *Stormwater Drainage System* work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated February 2012.

Note: This Condition is imposed to ensure that site stormwater is disposed of in a controlled and sustainable manner.

Note: The collection, storage and use of rainwater is to be in accordance with *Standards Australia HB230-2008 "Rainwater Tank Design and Installation Handbook"*.
Standard Condition: C.51 (Autotext CC51)

C.52 Non-Gravity Drainage Systems

C.54 Flood Protection

The *Construction Certificate* plans and specifications, required by Clause 139 of the *Regulation*, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL). The flood planning level shall be based on the 1 in 100 year AEP flood level and the 1 in 20 AEP flood level, detailing:

- a) A permanent flood risk management plans shall be installed in garages.
- b) The driveway entries shall be protected by a mechanical flood barrier with the threshold set to the flood planning level of 23.6m AHD.
- c) The pedestrian entries from Carlotta Road shall be protected by mechanical flood barriers with the threshold set to the flood planning level of 23.6m AHD.
- d) Permanent brass plaques shall be mounted adjacent to all mechanical flood barriers and flood proof doors explaining their purpose and operation.
- e) Flood compatible materials shall be used for all flood exposed construction.
- f) All flood exposed electrical wiring and equipment is to be waterproofed.
- g) All flood protection measures are to be inspected and certified as fit for purpose after construction is complete by an engineer experienced in flood mitigation.

Flood protection is to comply with Woollahra DCP 2015, Part E "General Controls for All Development" Chapter E2 "Stormwater and Flood Risk Management" DCP.

Note: The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1 – 2004, Part 1 (Off-street car parking). The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.

D. Conditions which must be satisfied PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT WORK

D.4 Dilapidation Reports for Existing Buildings

Dilapidation surveys and dilapidation reports shall be conducted and prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely “zone of influence” of any excavation, dewatering and/or construction induced vibration as determined applicable by the Structural Engineer.

These properties must include (but is not limited to):

- a) No. 39B Carlotta Road
- b) No. 43 Carlotta Road
- c) No. 18 Kiaora Road

The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. An approved copy of the reports shall be submitted to Council with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by Section 6.6(2) of the *Act* not less than two (2) days prior to the commencement of any work.

Note: The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out.
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land.

Note: Also refer to the Dilapidation Report Advising for more information regarding this condition
Standard Condition: D4 (Autotext DD4)

D.6 Adjoining Buildings Founded on Loose Foundation Materials

D.10 Works (Construction) Zone – Approval & Implementation

D.14 Erosion & Sediment Control – Installation

E. Conditions which must be SATISFIED DURING ANY DEVELOPMENT WORK

E.7 Public Footpaths – Safety, Access and Maintenance

E.11 Maintenance of Environmental Controls

E.12 Compliance with Geotechnical / Hydrogeological Monitoring Program

E.13 Support of Adjoining Land and Buildings

E.14 Vibration Monitoring

E.15 Erosion & Sediment Controls – Maintenance

E.17 Disposal of Site Water during Construction

E.19 Site Cranes

E.20 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

E.24 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works, Road Works and, Work within the Road and Footway

F. Conditions which must be satisfied PRIOR TO ANY OCCUPATION or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.7 Commissioning & Certification of Systems & Works

G. Conditions which must be satisfied PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE

Nil

H. Conditions which must be satisfied prior to the issue of a FINAL OCCUPATION CERTIFICATE (s109C(1)(c))

H.13 Road Works (including footpaths)

H.20 Positive Covenant and Works-As-Executed Certification of Stormwater Systems

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- a) Compliance with conditions of development consent relating to stormwater,
- b) The structural adequacy of the Mechanical Flood Barriers, Rainwater Tanks, Holding Tanks and the Pump-out Systems.
- c) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations,
- d) Pipe invert levels and surface levels to Australian Height Datum, and
- e) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the Mechanical Flood Barriers, Rainwater Tanks, Holding Tanks and the Pump-out Systems, incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.

Note: The required wording of the Instrument can be downloaded from Council's website www.woollahra.nsw.gov.au. The PC must supply a copy of the WAE plans to Council together with the Final Occupation Certificate.

Note: The Final Occupation Certificate must not be issued until this condition has been satisfied.
Standard Condition: H20 (Autotext HH20)

I. Conditions which must be satisfied during the ONGOING USE OF THE DEVELOPMENT

I.29 On-going Maintenance of the Mechanical Flood Barriers, Rainwater Tanks, Holding Tanks and the Pump-out Systems (Note Special Heading)

The owner(s) must in accordance with this condition and any positive covenant:

- a) Permit stormwater to be temporarily detained by the system.
- b) Keep the system clean and free of silt rubbish and debris.
- c) If the car park is used as a retention basin, a weather resistant sign must be maintained in a prominent position in the car park warning residents that periodic inundation of the car park may occur during heavy rain.
- d) Maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner and in doing so complete the same within the time and in the manner reasonably specified in written notice issued by Council.
- e) Carry out the matters referred to in paragraphs (b) and (d) at the owner's expense.
- f) Not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly.
- g) Permit Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant.
- h) Comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice.
- i) Where the owner fails to comply with the owner's obligations under this covenant, permit Council or its agents at all times and on reasonable notice at the owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations.

- j) Indemnify the Council against all claims or actions and costs arising from those claims or actions which Council may suffer or incur in respect of the system and caused by an act or omission by the owners in respect of the owner's obligations under this condition.

Note: This condition has been imposed to ensure that owners are aware of require maintenance requirements for their stormwater systems.

Note: This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.
Standard Condition: I29

K. Advisings

K.23 Dilapidation Report

K.24 *Roads Act 1993* Application

From: [Andrew Simpson](#)
To: [Matthew Kelly](#)
Subject: 41 Carlotta - Tree & Landscape comments
Date: Tuesday, 24 May 2022 3:36:00 PM
Attachments: [image001.jpg](#)

Hi Matthew,

I have made a review of the Arborist Report and the Landscape Plan and provide the following comments:

1. The Arborist Report is dated January 2020 and not contemporary to this development application. Nevertheless, the trees within the subject site should not be considered an impediment to development.
2. Trees 1, 6, 7, 8, 9 & 10 are species exempt from the provisions of Council's Chapter E.3 (Tree Management) of the DCP and they can be removed at any time without consent.
3. Trees 3-5 & 11-14 have moderate to low landscape significance and there is no issue with their removal.
4. The Landscape Plan shows two *Olea europea var. europea* (European Olive) proposed, one in each of the rear yards. It is contended that these Olive trees are not appropriate to compensate for the loss of canopy cover.
5. The landscape plan shows the trees will have a mature size of 6m height x 6m crown spread. It is highly unlikely this species will achieve these dimensions planted on structure.
6. The landscape plan should be amended to substitute the Olive with one each of the following:
 - a) *Caesalpinia ferrea* (Leopard tree)
 - b) *Fraxinus griffithii* (Evergreen Ash)
 - c) *Gordonia axillaris* (Gordonia)
 - d) *Hymenosporum flavum* (Native Frangipani)
7. The street tree (Olive) is in poor condition and should be removed and replaced in the same location with a species in line with Council's Street Tree Master Plan
8. Points 2, 3, 6 & 7 can be dealt with via conditions.

Sincerely,



Andrew Simpson
Tree Management Team Leader
Woollahra Municipal Council
536 New South Head Road, Double Bay NSW 2028
t: 02 9391 7130
e: andrew.simpson@woollahra.nsw.gov.au w: www.woollahra.nsw.gov.au

Our Values: Respect for People | Integrity and Excellent Performance | Professional Quality Service | Open Accountable Communication
We acknowledge the Gadigal and Birrabirragal people as the traditional custodians of the land in our local area.



ANNEXURE B

Clause 4.6 Variation – Minimum Subdivision Lot Size



Clause 4.6 Variation Statement – Minimum Subdivision Lot Size (Clause 4.1)

1. MINIMUM LOT SIZE STANDARD

Clause 4.1 of WLEP 2014 relates to the minimum lot size requirements for certain building typologies across the LGA and refers to a table contained within the Clause. The Clause states as follows:

(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

The relevant map identifies the subject site as having a minimum lot size of 700m².

2. PROPOSED VARIATION TO MINIMUM LOT SIZE DEVELOPMENT STANDARD

A land survey indicates that the subject site has an area of 650sqm. The development application involves the subdivision of the subject site into 2 allotments with the following variations to Clause 4.1 of WLEP 2014:

Table 3 Lot Size Variations				
	Site Area	Control	Variation	Percentage
Lot 1	325sqm	700sqm	375sqm	53.5%
Lot 2	325sqm	700sqm	375sqm	53.5%

3. CLAUSE 4.6 TO WLEP 2014

The objectives and provisions of clause 4.6 are as follows:

"4.6 Exceptions to development standards

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

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

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

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

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

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

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Planning Secretary has been obtained.*
 - (5) *In deciding whether to grant concurrence, the Planning Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*
 - (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
 - (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4."*

The development standards in Clause 4.1 are not "expressly excluded" from the operation of clause 4.6.

This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, subclause 4.6(6).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit minimum lot sizes of 325sqm which will have a numerical variation of 375sqm and a percentage variation between 53.5%.

4. COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(A))

In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the

development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

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

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

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

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

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Compliance with the minimum lot size development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in this Statement.

It could also be argued that the subdivision of the proposal would also engage Test No. 3 that the *"underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable"*. Clause 4.1B of WLEP 2014 specifically contemplates the subdivision of a site in the R3 Medium Density Residential zone into 230sqm allotments if certain parameters are met. The only objective of Clause 4.1B is to *"to encourage housing diversity without adversely impacting on residential amenity"*. The objective of Clause 4.1B would be thwarted if strict application of Clause 4.1 was applied as the 650sqm of site can easily be divisible into two Torren Title allotments accept for the fact that Clause 4.1B requires 3 or more dwellings.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard 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) is addressed below.



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

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

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

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 whereby Justice Pain ratified the original decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the minimum lot size:

1. Clause 4.1B of WLEP 2014 specifically contemplates that the erection of a dwelling, semi-detached dwelling or attached dwelling on three or more 230sqm Torrens Title allotments within the R3 – Medium Density Residential zone with consent. While Clause 4.1A of WLEP 2014 specifically contemplates the erection of a residential flat building on 700sqm of land within the R3 – Medium Density Residential zone with consent. Therefore, the subject Clause 4.6 variation request to Clause 4.1 of WLEP 2014 is required despite Clause 4.1B contemplating subdivision of 230sqm allotments in the R3 Medium Density Zone. The two allotments would exceed the 230sqm allotment size.
2. Clause 4.1A permits the construction of an attached dual occupancy on an allotment that is a minimum of 460sqm. The subject site exceeds this requirement and the site is capable of accommodating two dwellings. Therefore, Clause 4.1A and 4.1B contemplate dwellings on 230sqm allotments it is simply a difference in the type of subdivision. In either case, strata or Torrens Title, the two dwellings are capable of being accommodated on the site and are separately conveyed. That is, two separate titles will be provided on the site irrespective of the type of subdivision.
3. The provision of a semi-detached dwelling on each of the Torrens Title allotments will be entirely compatible with the subdivision pattern within the Bellevue Hill North precinct which can be described as eclectic. As detailed in Figure 1 below, the allotment size is varied with allotments at No. 39 Carlotta Road matching the size of the proposal (325sqm), allotments at 18-20 Carlotta Road being an average of 200sqm and allotments in Arthur Street being an average of 350sqm. All these allotments are compatible with the size of the proposed Torrens Title allotments. Furthermore, the 325sqm lot size for each dwelling will not be an anomaly but will be entirely compatible with the subdivision pattern of the immediate locality.



Figure 1: Subdivision pattern of the immediate locality with subject site (green) (source: Mecone Mosaic)

4. The proposed development satisfies the objective of Clause 4.1B which states that *"this clause is to encourage housing diversity without adversely impacting on residential amenity"*. The provision of two (2) Torrens Title allotments, each comprising of a semi-detached dwelling will achieve additional housing diversity and density without adversely impacting on the amenity of adjoining properties due to the site specific constraints.
5. The massing of the buildings will not be incompatible with the character of the surrounding development. In this regard, the proposed building envelope is anticipated by Chapter C3 of WDCP 2015. The proposed building will comfortably relate to the character of the locality and has incorporated superior planning outcomes (particularly with regards to setbacks and privacy) to ensure the scale of development is considered to be appropriate in the locality.
6. The proposed development meets the objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (as further detailed in Section 7 below). Insisting on compliance with the minimum lot size would serve no useful purpose and would lead to a reduction in the benefits of the development, including the net increase of one (1) dwelling on site. A reduced density on site within a highly accessible area that is within walking distance of Double Bay and a number of other public transport options would not meet the planned density for the Medium Density Residential (R3) zone (as contemplated in Clause 4.1B) or the desired future character objectives of the locality.
7. It is considered that there is an absence of any significant material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on

area character. Specifically, the extent of non-compliance with the minimum allotment size development standard:

- a. The breach to the minimum allotment size creates no significant overshadowing when compared to a compliant building envelope. Given the topography and site location, the proposed development will not result in any adverse additional overshadowing of adjoining properties. When considered against the backdrop of the applicable planning controls, the extent of additional overshadowing created by the minimum allotment size breach is considered to be insignificant;
 - b. The breach to the minimum allotment size does not result in any significant additional privacy impacts. The building has been designed to ensure all primary living areas are orientated away from neighbouring properties and overlooking is minimised as far as practicable. Given the topography and site location, the proposed development will not result in any adverse additional privacy impacts on adjoining properties. When considered against the backdrop of the applicable planning controls, the extent of privacy impacts created by the minimum allotment size breach is considered to be insignificant or nil; and
 - c. The breach to the minimum allotment size does not result in any significant additional view loss. Given the topography and site location, the proposed development will not result in any significant loss of views to or from adjoining properties. When considering the extent of view sharing against the backdrop of the applicable planning controls, the extent of view loss caused by the non-compliant element would be insignificant or nil.
8. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
- a. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c)); and
 - b. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).
9. The burden placed on the landowner and the wider community of the development (by requiring strict compliance with the minimum lot size) would be disproportionate to the (non-existent or negligible) adverse consequences attributable to the proposed non-compliant development (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development. It is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity or the environmental values of the locality, the amenity of future building occupants and the character of the area. Clearly an attached dual occupancy is permissible on the subject site which can be strata subdivided and therefore separately conveyed, therefore WLEP 2014 2014 contemplates multiple dwellings on the site with the difference being the type of subdivision. The proposal allows for a high quality development providing a semi-detached dwelling on each allotment in a highly accessible location, within a density that is anticipated by the zoning applicable to the site. The

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

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby

properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

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

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3), (CLAUSE 4.6(4)(A)(I))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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))

The Objective of Clause 4.1 is as follows:

- a) to establish a minimum subdivision lot size that is consistent with the desired future character of the neighbourhood,
- b) to ensure that lot sizes support development envisaged under this Plan,
- c) to ensure that lots have a minimum size to retain or enhance amenity by providing useable areas for building and landscaping,
- d) to identify locations suitable for increased development density,
- e) to ensure that development complies with the desired future character of the area.

In order to address the requirements of subclause 4.6(4)(a)(ii), the objective of clause 4.1 is addressed below.

a) to establish a minimum subdivision lot size that is consistent with the desired future character of the neighbourhood,

Objective (a) seeks to establish a minimum lot size that are consistent with the desired future character of the neighbourhood. In terms of the minimum lot size, the proposal will establish this via the provision of two (2) 325sqm allotments that are consistent with the size and dimensions of No. 39 Carlotta Street to the north. The locality contains an eclectic array of lot sizes and typologies reflective of the R3 Medium Density Zoning. WLEP 2014 contemplates allotments with a size of 230sqm in the R3 zone and therefore the size of the proposed allotments (325sqm) are not undersized or out of character in the locality. In fact, as detailed in Figure 1 (above), there are a number of smaller or comparable lots in the surrounding locality which can comfortably accommodate dwellings. The same conclusion must apply in this instance.

In terms of desired future character, this is not defined under WLEP 2014 and is subjective. Historically, Council has relied upon the provisions of WDCP 2015 to set the desired future character objectives of the locality however this was overturned by Preston CJ in *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115*.

The desired future character of the neighbourhood must be set by the existing, recently approved and proposed buildings within the neighbourhood. Therefore, Council is entitled to rely upon the approval of No. 39 Carlotta Road as a consideration as part of the desired future character. Importantly, upon approval of DA 584/2014, Clause 4.1 of Draft WLEP 2014 was a relevant consideration and Woollahra Council resolved to approve the Torren Title subdivision. In any event, the proposal is considered to reflect the desired future character of the locality for the following reasons:

- The proposed development responds to the streetscape character elements in that the overall height is a transition from No. 43 Carlotta Road to No. 39 Carlotta Road and follows the geometry of the road;
- The design of the building responds to the constraints of the site by stepping down the site and following the existing topography of the land;
- The proposed built form will add another layer to the eclectic mix of buildings in the locality and provides for well-designed contemporary dwellings on the site;
- The proposed development will have a stepped building form that creates a two storey appearance when viewed from Carlotta Road;
- The proposed dwelling has been designed to protect as far as practicable any important views existing over and across the site.
- The proposal complies with the deep soil landscaped area requirements and provides for suitable landscaped areas to ensure additional landscaping will complement the existing vegetation on the site and surrounding properties, to maintain the landscaped character of the locality; and
- Where the removal of trees or vegetation is required, the proposed development will provide additional tree plantings on the site and will increase the amount of landscaping on the site to support those existing trees or plantings that are to be retained.

The proposal satisfies objective (a).

b) to ensure that lot sizes support development envisaged under this Plan,

The subject site is zoned medium density residential (zone R3) which permits, amongst other things, attached dwellings, multi-dwelling housing and residential flat buildings with development consent. Specifically, Clause 4.1B permits the provision of a dwelling, semi-detached or attached dwellings on each allotment within the R3 Medium Density zone provided a minimum area of 230sqm per site is achieved. In addition, Clause 4.1A permits the construction of an attached dual occupancy on an allotment that is a minimum of 460sqm. The subject site exceeds this requirement and the site is capable of accommodating two dwellings. Therefore, Clause 4.1A and 4.1B contemplate dwellings on 230sqm allotments and it is simply a difference in the type of subdivision. In either case, strata or Torrens Title, the two dwellings are capable of being accommodated on the site and are separately conveyed. That is, two separate titles will be provided on the site irrespective of the type of subdivision.



The proposed development sits comfortably between the two adjoining dwellings to the north and south and is of a lot size and configuration that matches No. 39 Carlotta Road to the north and contemplated by Clause 4.1B of WLEP 2014. The proposed development has been designed to maximise the amenity for future occupants without adversely affecting the amenity of the adjoining properties. Despite the non-compliance with the minimum lot size, the proposal is capable of accommodating the density envisaged through the R3 zoning and applicable planning controls.

The proposal satisfies objective (b).

c) to ensure that lots have a minimum size to retain or enhance amenity by providing useable areas for building and landscaping,

The proposed layout of the dwelling-houses will maximise the internal amenity for the occupants with appropriately placed windows and openings to provide a greater level of connectivity to the private open space at the rear of the site. The proposal will provide 2 x 3 bedroom semi-detached dwellings which will be entirely compatible with the scale and form of adjoining properties and reflect the anticipated scale and density under Clauses 4.1A and 4.1B of WLEP 2014. In fact, the proposal will result in a superior design, appearance and level of functionality when compared to surrounding dwellings.

Each dwelling will provide a minimum of 50sqm of deep soil landscaped area which complies with the deep soil landscaped requirements under WDCP 2015. The proposed development will be situated within a landscaped setting, with dense planting provided within the front, side and rear setback areas, as is typical for the locality to enhance the landscaped character despite the numerical variation. .

The proposal satisfies objective (c).

d) to identify locations suitable for increased development density,

The subject site is a suitable location to increase the density and adjoins No. 39 Carlotta Street which has undertaken a similar Torren Title subdivision. The proposal involves the replacement of a single detached dwelling with two semi-detached dwellings that contribute towards the supply of additional housing within the Woollahra Council LGA and greater housing diversity. The R3 Medium Density Residential zone is an appropriate location for increased density on smaller and more compact lot size as contemplates by Clause 4.1B of WLEP 2015.

The proposed development generally complies with the building envelope, private open space and deep soil landscaped area requirements which demonstrates the proposed development is compatible with the scale and density anticipated by the controls, and certainly consistent with the allotment size contemplated under Clause 4.1B of WLEP 2014. That is, the site is suitable for the density of the proposed development.

The proposal satisfies objective (d).

e) to ensure that development complies with the desired future character of the area.

The desired future character of the Fletcher Street precinct is considered under objective (a) above. For the reasons discussed in Objective (a), the proposal satisfies objective (e).

7b. Zone objectives

The objectives of development in the zone are as follows:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

The proposal satisfies the zone objectives for the following reasons:



- The proposal will replace the existing dwelling with new contemporary semi-detached dwellings that will provide appropriate medium density residential accommodation in a medium density residential zone;
- The proposed development is for medium density residential use but does not prejudice the facilities or services required to meet the day to day needs of residents;
- The proposed development is compatible with the character of development in the locality (discussed above) and will not have an adverse impact on the amenity of adjoining properties or the surrounding neighbourhood;
- The proposed development is compatible with the height and scale of adjoining properties and therefore achieving the desired future character of the locality.

8. SECRETARY'S CONCURRENCE

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

9. STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(A))

There is no identified outcome which would be deleterious to planning matters of state or regional significance that would result because of varying the development standard as proposed under the subject application.

10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(B))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the minimum allotment size. As such there is no public benefit in maintaining strict compliance with the development standard.

The proposal seeks a 375sqm (or 53.5%) variation on the minimum allotment size of 700sqm under Clause 4.1 of WLEP 2014.

Whilst the proposed development is below the minimum allotment size, the proposal matches that approved at No. 39 Carlotta Road and is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

11. CONCLUSION

This written request has been prepared in relation to the proposed variation to the minimum allotment size development standard contained in WLEP 2014.

Despite the non-compliance with the minimum allotment size development standard, the proposed allotment size and resultant built form is compatible with the character of the locality as anticipated by the planning controls under WLEP and WDCP.

It has been demonstrated that the proposed development sits comfortably within the locality and provides and appropriate built form that is compatible with the eclectic mix of building heights in the locality. Furthermore, the proposed development will not have an adverse impact on the amenity of adjoining properties.

The request explains that, with the proposed variation, the development satisfies the objective of the standard and the objectives of Zone R3. It further explains why it is therefore unreasonable and unnecessary to require strict compliance with the height of buildings development standard. In addition, this request demonstrates that there are sufficient site specific environmental planning grounds to justify the variation, and therefore the proposal is considered to be in the public interest.



ANNEXURE C

Clause 4.6 Variation – Height of Building



Clause 4.6 Variation Statement – Height of Building (Clause 4.3)

1. HEIGHT OF BUILDINGS STANDARD

Clause 4.3 (2) of WLEP 2015 relates to the maximum height requirements and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum height of 9.5m. Building height is defined as:

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

2. PROPOSED VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

The proposal results in two breaches of the LEP’s maximum height limit of 9.5m. The first being at the rear of the dwelling house of 10.4m where the existing ground level is RL 18.1m and the roof level is 28.5m. Here the dwelling will exceed the building height requirement by 0.9m or a variation of 9.4%. Secondly, the swimming pool in the rear setback area involves a 0.9m (9.4%) non-compliance to pool and a 2m (21%) non-compliance to the dividing fence. Both variations are addressed below.

As indicated in the elevation included in Figure 1 below, the roof slab on the western portion of the semi-detached dwelling exceeds the maximum height. The height breach is a maximum of 0.9m which occurs at the south western of the southern dwelling. The non-compliance is due to the very steep topography of the site. The dwellings easily comply with the height limit at the front of the site.

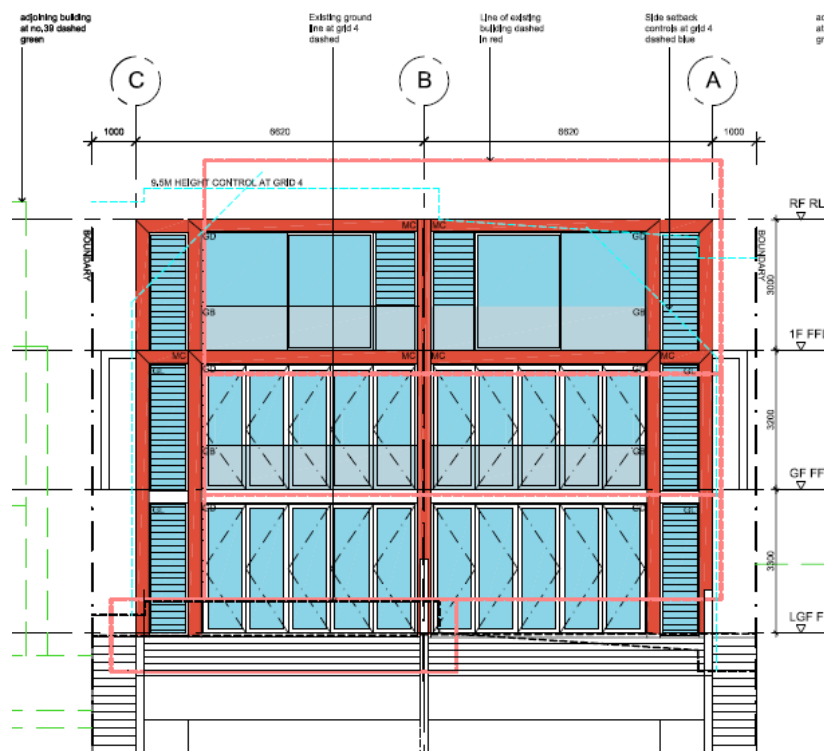


Figure 1 – Western elevation showing extent of non-compliance cut at the elevation (height plane dashed in light blue)

As indicated in the cross section included in Figure 2 below, western section of coping to the swimming pool exceeds the maximum height in force under clause 4.3 of WLEP 2014. The height breach is a maximum of 0.9m which occurs along the western face of the pool structure. The elevations detail the dividing fence between the pools which extends 2m above the 9.5m height of buildings development standard (11.5m). The non-compliance is due to the very steep topography of the site and the need to provide privacy between the swimming pools. The remainder of the pool structure is compliant with the LEP height limit.

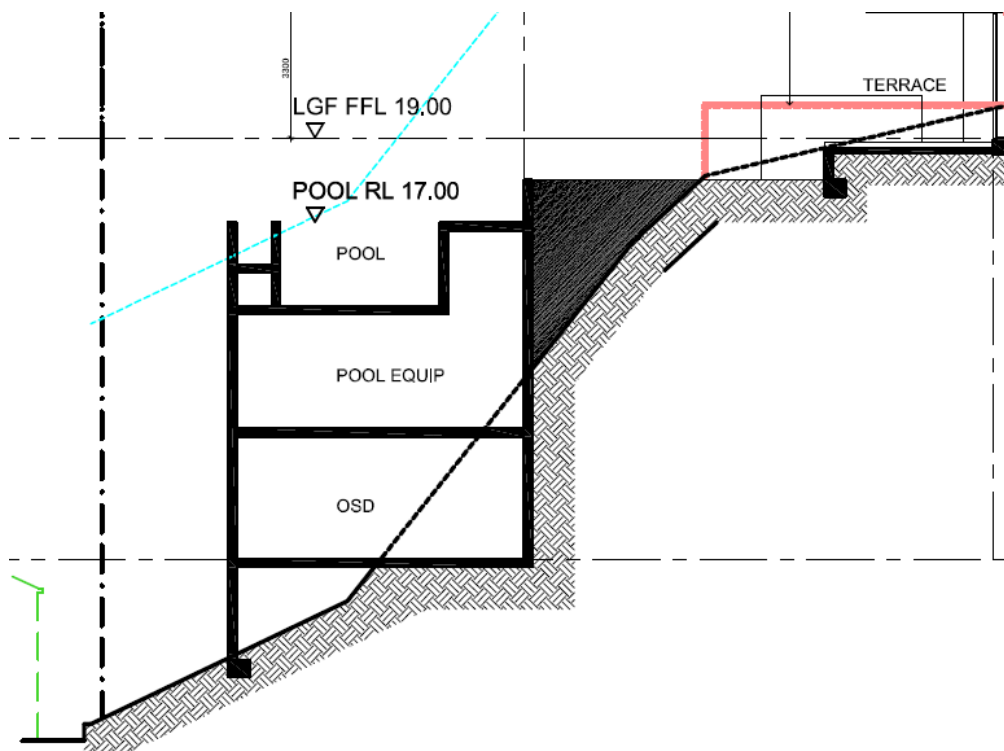


Figure 2 – Western section of swimming pool showing extent of non-compliance

3. CLAUSE 4.6 TO WLEP 2012

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

“4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
 - (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Planning Secretary has been obtained.*
 - (5) *In deciding whether to grant concurrence, the Planning Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*
 - (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include all these zones.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
 - (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4.*

The development standards in clause 4.3 are not "expressly excluded" from the operation of clause 4.6. This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, subclause 4.6(6).

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

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

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

The judgement goes on to state that:

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

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

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

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

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in Section 7 of this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard 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) is addressed in Section 6 below.

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

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

The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development

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

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

1. The height breach occurs for at the western (rear) elevation of the building and the swimming pool where the slope of the land is at its greatest given a fall of 18m from front to rear. The maximum breach of 0.9m at the rear of the dwelling is offset by the fact that the eastern (front) elevation of the building will be 3.6m below the maximum height limit and therefore the height variation can be attributed to the topography of the land which is a site specific condition.
2. To the casual observer along Carlotta Road, the proposal would appear compliant with the intended height and form of development on the site. The variation for the dwelling is setback more than 20m from the Carlotta Road boundary and will be behind parts of the building that comply, or are up to 3.6m below the maximum height. Similarly, the height breach for the swimming pool and fence is setback over 35m from the street, will be greater than 6m below street level and shielded from view by the proposed dwellings on Carlotta Road. Therefore the variation is limited and will not have an adverse visual impact when viewed from the public domain and certainly will not be obvious or visually jarring.
3. The height of the proposed development will be entirely compatible with the heights of adjoining properties to the north and south, despite the variation. The proposed second floor level will have a height of RL 28.5 which is lower and entirely compatible with the height of No. 39 Carlotta Road to the north (RL28.92 approx.) and No. 43 Carlotta Road to the south (RL29.35) and continues to step with the street. Similarly, the height of the swimming pool and dividing fence will be compatible with No., 39 Carlotta Road which has a pool coping of RL17.23 which is 230mm more than the pool coping of the proposal (RL 17).
4. Insistence on compliance with the height control would not significantly alter the appearance of the amended proposal but will result in the deletion of a part of the first floor level rear bedroom, part of the pool and dividing fence. This would have disproportionate impacts on the occupants by deleting an element that provides them with a high level of amenity with no significant benefit to the streetscape or amenity of adjoining properties given it is the compliant elements of the dwelling-house that are causing the amenity impacts.
5. It is considered that there is an absence of any significant material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically:
 - o The extent of the non-compliance creates no significant additional overshadowing to adjoining properties and satisfies the solar access requirements for private open space and north facing windows under WDCP 2015. If the GFA of the non-compliant element is redistributed to the front of the building which is up to 3.6m below the maximum height, the proposed development would have a significantly greater impact on the solar access of No. 43 Carlotta Road. Furthermore, when considering the extent of overshadowing against the backdrop of the applicable planning controls, the extent of overshadowing caused by the non-compliant element would be insignificant.
 - o The height breach does not result in any significant additional privacy impacts. The area of the height breach does not contain any habitable room windows and will minimise overlooking to open space



and windows of adjoining properties. The extent of the variation will have no greater impact on the privacy of adjoining properties when compared to the complying elements of the building; and

- The height breach does not result in any significant additional view loss. The proposed development will not result in any material loss of views or outlook when compared to a building with a compliant height. When considering the extent of view sharing against the backdrop of the applicable planning controls, the extent of view loss caused by the non-compliant element would be insignificant.
- 6. The height breach does not correlate with a breach of the floorplate and therefore the massing of the building will not be incompatible with the character of the surrounding development or that anticipated by the planning controls. The proposed building will comfortably relate to the character of the locality and has incorporated superior planning outcomes (particularly with regards to setbacks and privacy) to ensure the scale of development with regards to height is considered to be appropriate in the locality.
- 7. The proposed development meets the objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (as further detailed in Section 7 below).
- 8. The proposed development achieves the Objects in Section 1.3 of the EPA Act. Specifically that the proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3g).
- 9. The height of the pool is consistent with the swimming pools constructed on the adjoining property to the north (No 39A & 39B Carlotta Road) which is located on a very steep sloping site and will have similar visual impacts. The majority of the height of the pool structure is screened by the eastern façade of the Double Bay Bowling Club clubhouse.
- 10. Due to the steeply sloping topography at the rear part of the site there is very limited opportunity for its use as private open space without considerable alteration to levels and construction of an elevated pool structure.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the increased floor level being a direct result of providing a floor level compliant with the flooding and freeboard requirements which has necessitated the breach to the height limit.

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

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

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





As outlined above, it is considered that the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3), (CLAUSE 4.6(4)(A)(I))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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))

7a. Objectives of Development Standard

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

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

- a) *to establish building heights that are consistent with the desired future character of the neighbourhood,*
- b) *to establish a transition in scale between zones to protect local amenity,*
- c) *to minimise the loss of solar access to existing buildings and open space,*
- d) *to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- e) *to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.*

The Height of Buildings Map nominates a maximum height of 9.5m for the site. It is requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum height of 10.4m for the western elevation.

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of Clause 4.3 are addressed in turn below.

Objective (a) seeks to establish heights that are consistent with the desired future character of the neighbourhood. The desired future character of the locality is not defined under WLEP 2014 and is subjective. Historically, Council has relied upon the provisions of WDCP 2015 to set the desired future character objectives of the locality however this was overturned by Preston CJ in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115.

The desired future character of the neighbourhood must be set by the existing, recently approved and proposed buildings within the neighbourhood. Despite the R3 Medium Density Residential zoning, the site is located in a





streetscape with varied building typologies and heights. The proposed development is considered to be consistent with other recently approved developments to the north, including Nos. 37 and 39 Carlotta Road. At the very least, the proposal is compatible with the scale of surrounding buildings and provides an appropriate transition that follows the slope of the road.

The height of the proposal, containing three storeys with a flat roof, promotes a form that is compatible with the built form of adjoining properties. The location of the swimming pool is in the rear yard as anticipated by the planning controls. The proposal will appear generally as an LEP height compliant building, with the non-compliant part of the first floor level setback over 20m from Carlotta Road with the pool over 35m. Therefore, the non-complaint elements are visually recessive and would not be alarming to the visual aesthetic of the streetscape or adjacent public open space. Importantly, the proposed building is at least 3.6m below the maximum height at the front of the building which is the equivalent of a storey

The proposal is considered to reflect the desired future character of the locality for the following reasons:

- The proposed development responds to the streetscape character elements in that the overall height is a transition in heights from No. 43 Carlotta Road to No. 39 Carlotta Road and follows the geometry of the road;
- The design of the building responds to the constraints of the site by stepping down the site and following the existing topography of the land;
- The proposed built form will add another layer to the eclectic mix of buildings in the locality and provides for well-designed contemporary dwellings on the site;
- The proposed development will have a stepped building form that creates a two storey appearance when viewed from Carlotta Road;
- The proposed dwelling has been designed to protect as far as practicable any important views existing over and across the site.
- The proposal complies with the deep soil landscaped area requirements and provides for suitable landscaped areas to ensure additional landscaping will complement the existing vegetation on the site and surrounding properties, to maintain the landscaped character of the locality; and
- Where the removal of trees or vegetation is required, the proposed development will provide additional tree plantings on the site and will increase the amount of landscaping on the site to support those existing trees or plantings that are to be retained.
- The proposed swimming pool structure within the rear setback has been designed to avoid adverse visual impacts to adjoining properties and its location is consistent with other swimming pools in the local area.

The proposal satisfies objective (a).

Objective (b) seeks to establish a transition in scale between zones to protect local amenity. The site is not adjacent to a zone boundary and therefore this objectives is not applicable in this instance.

Objective (c) seeks to minimise the loss of solar access to existing buildings and open space.

The degree of overshadowing caused by the proposed variation of 0.9m in the south-western corner of the building is considered to be minimal. The extent of overshadowing to No. 43 Carlotta Road is considered to be entirely reasonable. The extent of the non-compliance creates no significant additional overshadowing to adjoining properties and satisfies the solar access requirements for private open space and north facing windows under WDCP 2015. If the GFA of the non-compliant element is redistributed to the front of the building which is up to 3.6m below the maximum height, the proposed development would have a significantly greater impact on the solar access of No. 43 Carlotta Road.

Therefore, when considering the extent of overshadowing against the backdrop of the applicable planning controls, the extent of overshadowing caused by the non-compliant element would be minimal. The proposal satisfies objective (c).

Objective (d) seeks to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion. The impacts of overshadowing and visual intrusion or the impact of bulk are considered above, however, the impacts on privacy and views are considered below.





In terms of privacy, the elements of the building above the 9.5m height limit do not contain any habitable room windows and are for the bedroom level which will not be used frequently or for extended periods. The element of the pool causing the non-compliance is the dividing fence which provides privacy between the two swimming pools. The non-compliance will not create any significant additional privacy impacts above those which result from compliant portions of the proposed dwelling. Therefore the loss of privacy caused by the non-complaint element would be insignificant or nil.

In terms of views, it is not anticipated that the proposed variation to the height control would have a significant impact on the views of adjoining properties given it is predominantly shielded to the east of the building (which complies with the height limit).

The proposed swimming pool structure located in the rear setback of the both sites will avoid unreasonable impacts to adjoining properties including disruption of views, overshadowing or unreasonable visual intrusion. The location of the swimming pool is consistent with the swimming pools that have been constructed at No 39A and 39B Carlotta Road.

The proposal satisfies objective (d).

Objective (e) aims to protect the amenity of the public domain by providing public views of the harbour and surrounding areas. The proposed non-compliance will not impact on the public domain by obstructing significant views any further than that of a compliant scheme.

The proposal satisfies objective (e).

7b. Zone objectives

The objectives of development in the zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

The proposal satisfies the zone objectives for the following reasons:

- The proposal will replace the existing dwelling with new contemporary semi-detached dwellings that will provide appropriate medium density residential accommodation in a medium density residential zone;
- The proposed development is for medium density residential use but does not prejudice the facilities or services required to meet the day to day needs of residents;
- The proposed development is compatible with the character of development in the locality (discussed above) and will not have an adverse impact on the amenity of adjoining properties or the surrounding neighbourhood;
- The proposed development is compatible with the height and scale of adjoining properties and therefore achieving the desired future character of the locality.

8. SECRETARY'S CONCURRENCE

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

9. STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(A))

There is no identified outcome which would be deleterious to planning matters of state or regional significance that would result because of varying the development standard as proposed under the subject application.





10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(B))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height. As such there is no public benefit in maintaining strict compliance with the development standard.

The proposal seeks a maximum height of 10.4m or a variation of 0.9m (9.4%) for the dwelling, 10.4m for the pool coping and 11.5m for the dividing fence or a maximum variation of 2m (21%) under Clause 4.3 of WLEP 2014.

Whilst the proposed building height exceeds the maximum permitted on the site, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

11. CONCLUSION

This written request has been prepared in relation to the proposed variation to the height of buildings development standard contained in WLEP 2014.

Despite the non-compliance with the height of buildings development standard, the proposed built form of the semi-detached dwellings and the swimming pool are compatible with the character of the locality as anticipated by the planning controls under WLEP and WDCP.

It has been demonstrated that the proposed development sits comfortably within the locality and provides and appropriate built form that is compatible with the eclectic mix of building heights in the locality. Furthermore, the proposed development will not have an adverse impact on the amenity of adjoining properties.

The request explains that, with the proposed variation, the development satisfies the objective of the standard and the objectives of Zone R3. It further explains why it is therefore unreasonable and unnecessary to require strict compliance with the height of buildings development standard. In addition, this request demonstrates that there are sufficient site specific environmental planning grounds to justify the variation, and therefore the proposal is considered to be in the public interest.

