



DATE: 20 JULY 2022

A meeting of the **WAVERLEY LOCAL PLANNING PANEL** will be held by video conference at:

11.00AM WEDNESDAY, 27 JULY 2022

QUORUM: Three Panel members.

APOLOGIES: By email to WLPP@waverley.nsw.gov.au

AGENDA

WLPP-2207.A Apologies

WLPP-2207.DI Declarations of Interest

The Chair will call for any declarations of interest.

WLPP-2207.1 PAGE 5 28 & 30 Bourke Street QUEENS PARK NSW 2022 -Modification to extend the operational hours of the Childcare Centre to Mon - Fri 7.45am - 5.45pm; allow leaf blowing from 7am-7.45am; upgrade of boundary fences for acoustic compliance; and increase age from 0-5 years. (DA-133/1987/B)

Report dated 7 July 2022 from the Development and Building Unit.

Council Recommendation: That the application be APPROVED in accordance with the conditions contained in the report.

WLPP-2207.2 PAGE 43 30 Dellview Street, TAMARAMA NSW 2026 - New swimming pool, deck and cabana at rear, relocation of existing retaining wall to side and rear boundaries and landscaping, and change of use of duplex to a residential dwelling house. (DA-67/2015/1/A)

Report dated 13 June 2022 from the Development and Building Unit.

Council Recommendation: That the application be REFUSED for the reasons contained in the report.

WLPP-2207.3 PAGE 67 5 Pacific Avenue, TAMARAMA NSW 2026 - Demolition of existing residential flat building and construction of a part four and five-storey residential flat building containing 5 apartments, basement level parking and swimming pool. (DA-44/2022)

Report dated 13 July 2022 from the Development and Building Unit.

Council Recommendation: That the application be granted DEFERRED COMMENCEMENT CONSENT for the reasons contained in the report.

WLPP-2207.4**PAGE 149**

78 Military Road, DOVER HEIGHTS NSW 2030 - Modification to alter internal layout, windows and deletion of roof terrace. (DA-115/2021/A)

Report dated 13 July 2022 from the Development and Building Unit.

Council Recommendation: That the application be APPROVED in accordance with the conditions contained in the report.

WLPP-2207.5**PAGE 197**

99 Military Road, DOVER HEIGHTS NSW 2030 - Demolition of existing two storey detached dwelling to construct a two storey attached dual occupancy with basement carparking, swimming pool at the rear and Strata subdivision into two lots. (DA-475/2021)

Report dated 13 July 2022 from the Development and Building Unit.

Council Recommendation: That the application be REFUSED for the reasons contained in the report.

WLPP-2207.6**PAGE 244**

250 Military Road, DOVER HEIGHTS NSW 2030 - Alterations and additions to an existing dwelling including widening of the existing double garage. (DA-171/2022)

Report dated 15 July 2022 from the Development and Building Unit.

Council Recommendation: That the application be APPROVED in accordance with the conditions contained in the report.

WLPP-2207.7**PAGE 288**

Units 1 & 2, 16 Consett Avenue, BONDI BEACH NSW 2026 - Alterations and additions to Units 1 & 2 including modification to strata plan allotments. (DA-217/2022)

Report dated 12 July 2022 from the Development and Building Unit.

Council Recommendation: That the application be APPROVED in accordance with the conditions contained in the report.

WLPP-2207.8**PAGE 329**

25-27 Curlewis Street, BONDI BEACH NSW 2026 - Alterations and additions to an existing mixed-use building, specifically units 1 and 4. (DA-135/2022)

Report dated 17 July 2022 from the Development and Building Unit.

Council Recommendation: That the application be APPROVED in accordance with the conditions contained in the report.

53,55 & 57 Beaumont Street, ROSE BAY NSW 2029 - Demolition of the existing dwelling at 55 Beaumont Street and subdivision of the existing 3 lots into 2 lots (Torrens Title). (DA-118/2022)

Report dated 12 July 2022 from the Development and Building Unit.

Council Recommendation: That the application be APPROVED in accordance with the conditions contained in the report.



Report to the Waverley Local Planning Panel

Application number	DA-133/1987/B
Site address	28-30 Bourke Street, Queens Park
Proposal	Modification to extend the operational hours of the Childcare Centre to Mon - Fri 7.45am - 5.45pm; allow leaf blowing from 7am-7.45am; upgrade of boundary fences for acoustic compliance; and increase age from 0-5 years.
Description of Approved Development	Effect alterations and additions for a pre-school and two dwellings.
Date of lodgement	23 December 2021
Owner	Mr B Shirley
Applicant	Mr Samer Mansour
Submissions	14
Amended cost of works	N/A
Principal Issues	<ul style="list-style-type: none"> • Leaf Blower • Consistent conditions with previous consents
Recommendation	That the application be APPROVED in accordance with the conditions contained in the report.

SITE MAP



(Source: Nearmap, 2022)

1. PREAMBLE

1.1. Executive Summary

The modification application seeks to modify development consent, known as DA-133/1987 for alterations and additions to a pre-school and two dwellings at the site known as 28-30 Bourke Street, Queens Park. In summary, the proposed modifications are to extend the operational hours of the Childcare Centre to Monday - Friday 7.45am - 5.45pm; allow leaf blowing from 7am - 7.45am; upgrade of boundary fences for acoustic compliance; and increase age from 0-5 years.

The principal issues arising from the assessment of the application are as follows:

- Use of the leaf blower.

The assessment finds the use of a leaf blower is outlined within Protection of the Environment Operations (Noise Control) Regulation 2017. Therefore, this application will not include this as part of the assessment.

A total number of 14 submissions were received and the issues raised in the submissions have been considered and addressed in this report and in the recommendation.

The application has been assessed against relevant sections of the Act and is recommended for approval subject to conditions of consent.

1.2. Site and Surrounding Locality

A site visit was carried on 22 June 2022.

The site is identified as Lot 1 in DP620728 and Lot 10 in DP778434, known as 28-30 Bourke Street, Queens Park.

The site is occupied by a two storey child care centre.

The site is adjoined by residential dwellings on either side.

The site is within a low density residential locality.

Figures 1 to 2 are photos of the site and its context.

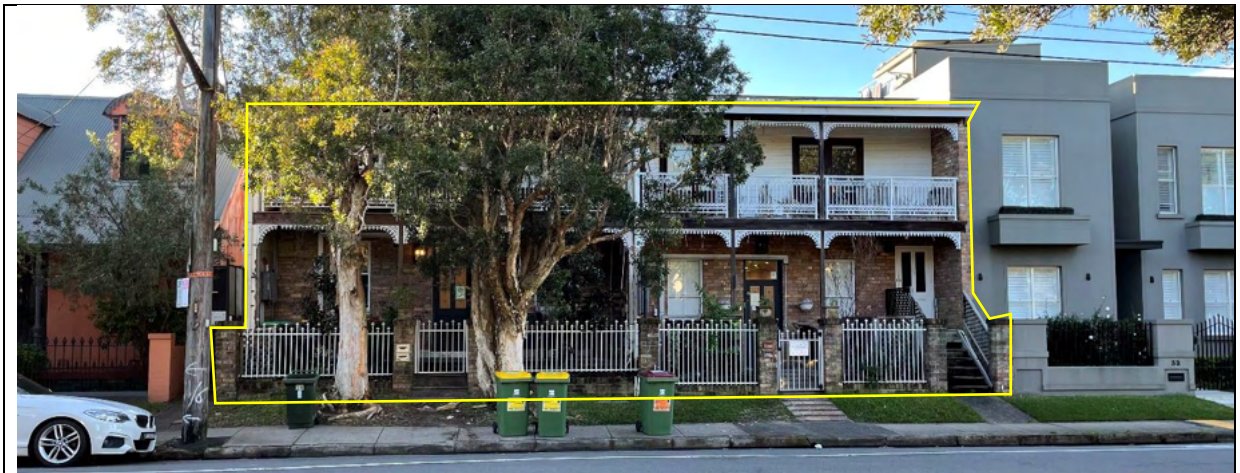


Figure 1: Front of the child care centre from Bourke Street, looking east.



Figure 2: Rear of the child care centre from Isabella Street, looking east at the elevated play area.

1.3. Details of Approved Development

DA-133/1987

Alterations and additions for a pre-school and two dwellings

Condition 17: *The combined pre-school to provide maximum accommodation for 44 children ranging in age from 2.5 – 5 years with a total of 4 staff with any variation subject to further consent.*

Condition 18: *Operation of the pre-school confined to the hours of 8:30am – 3:30pm, Monday – Friday.*

Approved: 24 November 1987

DA-133/1987/A

Modification to conditions of consent for preschool/s and increase in the number of children from 49 to 51 and staff from 5 to 6.

Condition 1: *The two childcare centres, Nos 28 and 30 Bourke Street, are always to be operated conjointly with shared outdoor play area and associated facilities. Neither childcare centre may operate independently from the other and if one ceases to operate, the other must cease to operate also, subject to further development consent from Council.*

Condition 2: *The combined childcare centres shall provide maximum accommodation for 49 children ranging in age from 2.5 to 5 years with a total of 6 staff with any variation subject to further consent of Council.*

Approved: 18 December 2006

DA-766/2006

The extension of decking to the rear of the property.

Refused: 24 April 2007

DA-158/2008

Extension and enclosure of rear first floor decking.

Refused: 24 July 2008

DA-417/2009

Amended plans for first floor extension and partial enclosure of rear decks of residential tenancies for an existing child care centre.

Refused: 03 June 2009

DA-729/2010

Construction of an elevated outdoor play area at rear and increase number of children to 51 to existing child care centre.

Condition 2: *The elevated play platform may only be used in conjunction with the approved childcare centre at No. 28 Bourke Street, in accordance with the conditions of the consent and the conditions of the Development Consent No. 133/87, as modified. The elevated play platform is not to be used by the residents on the Site or for any other purpose. The elevated play platform is to be removed upon the cessation of the use of No. 28 Bourke Street as a childcare centre.*

Condition 5: The use of the elevated play platform for the external playground of the childcare centre and the increase to 27 children at No. 28 Bourke Street and 24 children at No. 30 Bourke Street is subject to approval from the Department of Community Services.

Evidence of such approved is to be provided to the Council prior to the issue of the Construction Certificate.

Condition 30: The use of the elevated play platform is to be fully supervised by staff at all times. The elevated play platform is only to be used for children's passive recreation during two (2) forty five (45) minute periods during the hours of 8:30am and 5:30pm, Monday to Friday, in accordance with the approved plan of management.

Condition 31: The hours of operation are restricted to between: 8:30am and 5:30pm, Monday to Friday.

Condition 33: A maximum of 27 children are to attend the child care centre at No. 28 Bourke Street at any one time and a minimum of 3 staff are to present at all times during the operation of the centre. No more than 9 children are to use the elevated play platform at any one time.

A maximum of 24 children are to attend the child care centre at No. 30 Bourke Street at any one time and a minimum of 3 staff are to be present at times during the operation of the centre.

Approved: 21 April 2011 by the Land and Environment Court

DA-729/2010/A

Modification for the ongoing operation of the existing child care centre from 7:45am to 5:45 pm, Monday to Friday, allowing for leaf blowing from 7am onwards.

The following was advised to the applicant:

I have discussed your modification application with the Area Manager and together, we hold the opinion that the consent you are seeking to have modified (DA-729/2010) relates to the use and operation of the elevated play platform only. Therefore, the proposal to modify the hours of operation for the entire premises (ie. childcare centre) cannot be undertaken as a modification to that application (ie, to modify condition 31 of DA-729/2010) as this would not be considered 'substantially the same'.

It is recommended, you consider the following options going forward:

- 1. The current application be withdrawn. A brand new DA is then lodged with plans that encompass the entire site and operations as they function today, including any works approved previously for the site (that is, a DA that reflects the current operations and current plans for the premises in 1 single DA), in lieu of reliance on multiple consents (DA-133/1987, DA-729/2010 and DA-232/2019). This new DA would propose the continued use of the site as a childcare centre for the new proposed hours of operation and enable a single consolidated consent to operate for the site, which from a logistical/managerial perspective, a cleaner option than the alternatives below. If approved, the relevant conditions from previous consents would carry across into the new, and another condition imposed for the three previous active consents to be surrendered. This is the preferred option and would be most beneficial moving forward from an operation perspective.*
- 2. The current application be withdrawn. A modification application to the parent consent (DA-133/1987/A) is lodged that seeks to modify the approved hours of operation for the childcare centre in Condition 18 of that consent. This modification application is to be accompanied by plans that demonstrates all works undertaken under DA-133/1987, DA-729/2010 and DA-232/2019. You must also demonstrate that these works are substantially the same as the*

original approval for **DA-133/1987**. Having regard to operations/building works that have occurred since this 1987, this may not be the cleanest method (which comes back to option 1 above being the preferred approach).

3. The current application is determined but will relate to the outdoor elevated play deck only (ie any change of hours is only relevant to that section of the site).

Withdrawn: 17 June 2021.

DA-232/2019

Alterations and additions to childcare facility including construction of a cot room, relocation of chicken coup and new signage.

Approved: 11 December 2019

1.4. Proposal

The modification application has been submitted under section 4.55 (2) of the *Environmental Planning and Assessment Act 1979*. It seeks consent for the following modifications to the approved development:

- Operation Hours:
 - Modify hours of operation from 8:30am – 5:30pm (Monday – Friday) to 7:45am – 5:45pm (Monday – Friday).
 - Allow for leaf blowing from 7am to 7:45am onwards (Monday – Friday).
- Amendment of Age of Child Placements:
 - Amend the approval of 2.5 years old to 5 years old children to include children from 0 to 5 years old with the following configuration:
 - 0-2 years old: 8 children
 - 2-3 years old: 15 children
 - 3-5 years old: 28 children
- Upgrade of fencing along Isabella Street and the two boundary fences adjoining the residential dwelling at 37 Isabella Street to achieve acoustic compliance.

2. ASSESSMENT

The following matters are to be considered in the assessment of this modification application under relevant sections of the *Environmental Planning and Assessment Act 1979* (the Act).

2.1. Section 4.55 – Modification of consents – generally

The application is made under section 4.55(2) of the Act.

The quantitative and qualitative elements and impacts between the approved development and the development, as proposed to be modified, are not considered overly dissimilar as demonstrated in the following sections of this report. In this regard, the proposal is considered to be *substantially the same* as the originally approved development with regard to matters arising from the NSW Land and Environment Court case of *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 298*.

The application was publicly notified and 14 submissions were received. The issues and matters raised in public submissions are discussed in section 2.3.4 of this report.

2.2. Evaluation of Matters for Consideration under Section 4.15

In accordance with section 4.55(3) of the Act the following is an assessment of the proposed modifications of the development consent against the relevant matters for consideration under section 4.15(1) of the Act.

2.2.1. Planning Instruments and Development Control Plans

The following is an assessment against relevant environmental planning instruments, including State environmental planning policies (SEPPs), and development control plans.

State Environmental Planning Policies (SEPPs)

The following SEPPs apply from the 1st March 2022 and have been considered acceptable in the assessment of this development application:

- SEPP (Building Sustainability Index – BASIX) 2004
- SEPP (Transport and Infrastructure) 2021

A detailed discussion is provided for relevant SEPP as follows:

SEPP (Transport and Infrastructure) 2021

The proposed modification to an existing childcare centre does not require an assessment against the relevant section of this SEPP.

Draft Waverley Local Environmental Plan 2022 (Draft Waverley LEP 2022)

The Draft Waverley Local Environmental Plan 2022 was exhibited from 12 November 2021 to 23 January 2022, however at the time of this assessment, there are no relevant matters for consideration.

Waverley Local Environmental Plan 2012 (Waverley LEP 2012)

The land use definition of the approved development as a centre-based child care centre continues to be permitted development in the Low Density Residential 'R2' zone under Waverley LEP 2012.

The quantities of the approved development, as proposed to be modified, remain unchanged in relation to principal development standards under Waverley LEP 2012.

The approved development, as proposed to be modified, continues to comply with the relevant parts and sections of Waverley DCP 2012. Only the following parts and sections of Waverley DCP 2012 that apply to the proposed modifications are outlined in **Tables 2** and **3** of this report and detailed discussion below these tables.

Table 1: Waverley DCP 2012 – Part B General Provisions Compliance Table

Development Control	Compliance	Comment
1. Waste	N/A	No changes are proposed to waste.
9. Heritage	Yes	The proposed fence will not have an impact on the heritage conservation area.

Table 2: Waverley DCP 2012 – Part D1 Commercial and Retail Development Compliance Table

Development Control	Compliance	Comment
1.1 Other Policies, Strategies and Standards		
1.2 Design		
1.2.4 Noise	N/A	The application seeks consent to allow for leaf blowing from 7am to 7:45am onwards (Monday – Friday). A DA cannot provide consent for the hours that a leaf blower can be used. This falls under Protection of the Environment Operations (Noise Control) Regulation 2017
1.3 Hours of operation		
All Residential Zones General base trading hours: • 7.00am to 10.00pm, 7 days a week	Yes	The application proposed to modify hours of operation from 8:30am – 5:30pm (Monday – Friday) to 7:45am – 5:45pm (Monday – Friday). This complies with the hours of operation within a residential zone.

2.2.2. Other Impacts of the Development

The proposal is considered to have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

2.2.3. Suitability of the Site for the Development

The site is considered suitable for the proposal.

2.2.4. Any Submissions

The application was notified for 14 days between 10 January 2022 and 25 January 2022 in accordance with the *Waverley Community Development Participation and Consultation Plan*.

A total of 14 unique submissions were received from the following properties:

Table 4: List of properties who objected.

Address
32 Bourke St, Queens Park
37 Bourke St, Queens Park
1/37A Bourke St, Queens Park
37- 37A Bourke Street, Queens Park
24 Isabella Street Queens Park
29 Isabella Street Queens Park
30 Isabella Street, Queens Park
31 Isabella Street, Queens Park
33 Isabella Street, Queens Park
37 Isabella Street, Queens Park
39 Isabella Street, Queens Park
20 Cuthbert St, Queens Park
24 Cuthbert St, Queens Park
Queens Park Precinct Committee

The following issues raised in the submissions have already been discussed and addressed in the body of this report and/or the Recommendation:

- Leaf Blowing / Acoustic report does not support leaf blower
- Similar to other application previously withdrawn (see history section of report)
- Increased hours of operation

All other issues raised in the submissions are summarised and discussed below.

Issue: Only business in Bourke Street operating as a business in a residential area / Not compatible with zoning objectives.

Response: The business has been operating since the 1980's. The modification does not seek to alter the existing use.

Issue: Increased Traffic

Response: The application retains the maximum number of children and staff as previously approved. Additionally, the application does not trigger a referral to the Roads and Maritime Services.

Issue: Parking Impacts

Response: The application retains the maximum number of children and staff as previously approved. Additionally, the application does not trigger a referral to the Roads and Maritime Services.

Issue: Bus stop used as drop off point

Response: This is not permitted. If this continues, the individual is to contact the relevant authority.

Issue: No properties to the western side of Bourke Street were monitored for noise.

Response: It is considered the Acoustic report sampled an appropriate number of neighbouring properties.

Issue: 37 Bourke Street was not notified.

Response: Council's records indicate this property was notified.

Issue: 20 Cuthbert Street was not notified.

Response: This property was not notified. This was **not** a Council error.

Issue: Littering

Response: If the applicant is accusing the business of littering, proof must be obtained and the relevant authority is to be alerted.

Issue: Business operating outside of approved hours.

Response: If this continues, Council's Compliance team is to be advised.

Issue: No access to Plan of Management

Response: A condition is recommended.

Issue: Children under 2 will result in increased noise.

Response: The use is permitted on the zone.

Issue: The proposed fence should not be higher than the existing fence as it will obstruct light to neighbouring property.

Response: A condition is recommended that the fence not exceed 1.8m as per the Waverley DCP 2012.

2.2.5. Public Interest

The proposal is considered to have no detrimental effect on the public interest, subject to appropriate conditions being imposed.

3. REFERRALS

The following internal and external referral comments were sought:

3.1. Community Development

An internal referral was sought from Council's Community Development Department, who did not object to the application.

3.2. Environmental Health

An internal referral was sought from Council's Health Department, who stated:

It is advised that the proposal is unsatisfactory to this section as follows:

- 1. The acoustic report prepared by Koikas Acoustics (ref no: 5099R20211206as28-30BourkeStQueensPark-S4.55) and dated 7 December states that the noise from the use of the leaf blower is considered intrusive and offensive and it is unlikely that any suitable mitigation options exists.*
- 2. The use of the leaf blower at the proposed times is considered undesirable and unnecessary and will not comply with the requirements of the Protection of the Environment Operations Act 1997.*

Should approval be granted for the extension of trading hours, the recommendations made in the above report must be complied with including the limitations on the use of the outdoor areas.

Appropriate conditions are recommended.

4. CONCLUSION

The modification application seeks to modify development consent, known as DA-133/1987 for alterations and additions to a pre-school and two dwellings at the site known as 28-30 Bourke Street, Queens Park. In summary, the proposed modifications are to extend the operational hours of the Childcare Centre to Monday - Friday 7.45am - 5.45pm; allow leaf blowing from 7am - 7.45am; upgrade of boundary fences for acoustic compliance; and increase age from 0-5 years.

The principal issues arising from the assessment of the application are as follows:

- Use of the leaf blower.

The assessment finds the use of a leaf blower is outlined within Protection of the Environment Operations (Noise Control) Regulation 2017. Therefore, this application will not include this as part of the assessment.

A total number of 14 submissions were received and the issues raised in the submissions have been considered and addressed in this report and in the recommendation.

The application has been assessed against relevant sections of the Act and is recommended for approval subject to conditions of consent.

Development and Building Unit (DBU) Decision:



The application was reviewed by the DBU at the meeting on 21/06/2022 and the DBU determined:

(a) The application is acceptable and should be approved, subject to the conditions in Appendix A.

DBU members: *M Reid, B Magistrale, T Sneesby*

5. RECOMMENDATION TO WAVERLEY LOCAL PLANNING PANEL

That the modification application be APPROVED by the Waverley Local Planning Panel subject to modified and new conditions in Appendices A and B.

Report prepared by:	Application reviewed and agreed on behalf of the Development and Building Unit by:
	
Joseph Somerville	Tim Sneesby
Senior Development Assessment Planner	Manager, Development Assessment (Area 1) (Reviewed and agreed on behalf of the Development and Building Unit)
Date: 22 June 2022	Date: 7 July 2022

Reason for WLPP referral:

The consent authority for the original development application was the WLPP, this modification is made under section 4.55(2) of the Act and relates to:

1. Contentious development (10 or more objections)

APPENDIX A – CONDITIONS OF CONSENT TO BE MODIFIED

A. Amended/Deleted Conditions

Nil

B. New Conditions

20. APPROVED PLANS AND DOCUMENTATION

The development must be in accordance with:

(a) Architectural Plans prepared by Plan Ahead Designs including the following:

<i>Plan Number and Revision</i>	<i>Plan description</i>	<i>Plan Date</i>	<i>Date received by Council</i>
<i>Unknown</i>	<i>Fencing Plan</i>	<i>Unknown</i>	<i>22/12/2022</i>

(b) Acoustic report prepared by Koikas Acoustics, dated 7 December 2021 and received by Council on 22/12/2021.

Except where amended by the following conditions of consent.

(ADDED DA-133/1987/B)

21. GENERAL MODIFICATIONS

The application is approved subject to the following plan amendments;

(a) The proposed fence is not to exceed 1.8m from Existing Ground Level.

The amendments are to be approved by the Principal Certifying Authority prior to the issue of any Construction Certificate.

(ADDED DA-133/1987/B)

22. USE OF LEAF BLOWER

Consent to use the leaf blower is not required under a Development Application. The use of a leaf blower must comply with the Protection of the Environment Operations (Noise Control) Regulation 2017.

(ADDED DA-133/1987/B)

23. USE OF CHILD CARE CENTRE TO OPERATE IN ACCORDANCE WITH DA-729/2010

The use of the child care centre is to operate in accordance with DA-729/2010. Where a condition under DA-133/1987/B contradicts a condition within DA-729/2010, the condition under DA-133/1987/B is to supersede.

(ADDED DA-133/1987/B)

24. CHILD CARE CENTRE

This application approves the use of the premises as a Long Day Child Care Centre.

The maximum number of children to be cared for at any one time on the premises shall not exceed 51 children comprising;

- *8 children 0 to 2 years*
- *15 children 2-3 years*
- *28 children 3-5 years*

The use cannot operate without an appropriate licence from the NSW Department of Education and Communities.

(ADDED DA-133/1987/B)

A. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

GENERAL REQUIREMENTS

25. NO BUILDING OR DEMOLITION WORKS PRIOR TO RELEASE OF CONSTRUCTION CERTIFICATE

The building work, or demolition work, must not be commenced until:

- (a) a Construction Certificate has been obtained from Council or an Accredited Certifier in accordance with the Environmental Planning and Assessment Act 1979;*
- (b) a Principal Certifying Authority has been appointed and Council has been notified of the appointment in accordance with the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000; and*
- (c) Council is given at least two days' notice in writing of the intention to commence the building works.*

(ADDED DA-133/1987/B)

CONTRIBUTIONS, FEES & BONDS

26. SECURITY DEPOSIT

A deposit (cash or cheque) or guarantee for the amount of \$1,750.00 must be provided to Council for any damage caused to any property of the consent authority (ie. public land) as a consequence of the works and completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent.

This deposit (cash or cheque) or guarantee must be provided to Council prior to the issue of any Construction Certificate. The full amount of the deposit, minus Council's costs for any repair of damage to Council property or rectification of unauthorised works on Council property, will be refunded after satisfactory completion all of works associated with this consent (including the required public works) to the person who paid the deposit.

(ADDED DA-133/1987/B)

27. LONG SERVICE LEVY

A long service levy, as required under section 34 of the Building and Construction Industry Long Service Payments Act, 1986, is to be paid in respect of this building work. Evidence that the levy has been paid is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

***Note:** Council acts as an agent for the Long Service Payment Corporation and the levy may be paid at Council's office. The levy rate is 0.35% of building work costing \$25,000 or more.*

(ADDED DA-133/1987/B)

CONSTRUCTION & SITE MATTERS

28. HOARDING

To ensure the site is contained during construction, a hoarding is required for the approved works, which is to be designed and constructed in accordance with the requirements of Safe Work NSW. Where the hoarding is to be erected over the footpath or any public place, the approval of Council's Compliance Unit must be obtained and the applicable fees paid, prior to the erection of the hoarding.

(ADDED DA-133/1987/B)

29. ENGINEERING DETAILS

Structural details are to be prepared and certified by a practicing Structural Engineer in connection with all structural components of the approved works, prior to the issue of the relevant Construction Certificate.

(ADDED DA-133/1987/B)

B. COMPLIANCE PRIOR TO WORK COMMENCING AND DURING CONSTRUCTION

PRIOR TO ANY WORKS

30. CONSTRUCTION SIGNS

Prior to commencement of any works on the site and during construction a sign shall be erected on the main frontage of the site detailing the name, address and contact details (including a telephone number) of the Principal Certifying Authority and principal contractor (the coordinator of the building works). The sign shall be clearly legible from the adjoining street/public areas and maintained throughout the building works.

(ADDED DA-133/1987/B)

DEMOLITION & EXCAVATION

31. DEMOLITION – ASBESTOS AND HAZARDOUS MATERIALS

The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- *Work Health and Safety Act 2011;*

- *Work Health and Safety Regulation 2017;*
- *SafeWork NSW Code of Practice for the Safe Removal of Asbestos;*
- *Australian Standard 2601 (2001) – Demolition of Structures;*
- *Protection of the Environment Operations Act 1997.*

At least 5 days prior to the demolition, renovation work or alterations and additions to any building, the person acting on the consent shall submit a Work Plan to the Principal Certifying Authority in accordance with Australian Standard AS 2601-2001, Demolition of Structure and a Hazardous Materials Assessment prepared by a person with suitable expertise and experience. The Work Plan and Hazardous Materials Assessment shall:

- (a) Outline the identification of any hazardous materials, including surfaces coated with lead paint;*
- (b) Confirm that no asbestos products are present on the subject land, or*
- (c) particularise a method of safely disposing of the asbestos in accordance with the Code of Practice on how to safely remove asbestos published by SafeWork NSW (catalogue WC03561);*
- (d) Describe the method of demolition;*
- (e) Describe the precautions to be employed to minimise any dust nuisance; and*
- (f) Describe the disposal methods for hazardous materials.*

(ADDED DA-133/1987/B)

32. CONTROL OF DUST ON CONSTRUCTION SITES

The following requirements apply to demolition and construction works on site:

- (a) Hazardous dust is not to be allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended. Any existing accumulations of dust (e.g. ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particle air (HEPA) filter. All dusty surfaces and dust created from work are to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.*
- (b) All contractors and employees directly involved in the removal of hazardous dusts and substances are to wear protective equipment conforming to Australian Standard AS1716 Respiratory Protective Devices.*

(ADDED DA-133/1987/B)

CONSTRUCTION MATTERS

33. CONSTRUCTION HOURS

Demolition and building work must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays and 8am to 3pm on Saturdays, with no work to be carried out on Sundays and public holidays.

Excavation works involving the use of heavy earth movement equipment, including rock breakers and the like, must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays, with no such work to be carried out on Saturday, Sunday or a public holiday.

Noise from construction activities shall comply with the Protection of the Environmental Operations (Noise Control) Regulation 2017.

(ADDED DA-133/1987/B)

34. STOCKPILES, STORAGE OF MATERIALS AND LOCATION OF BUILDING OPERATIONS

All building materials and any other items associated with the development are to be stored within the property. No materials are to be stored on Council's footpath, nature strip, or road reserve without prior Council approval.

(ADDED DA-133/1987/B)

35. CONSTRUCTION INSPECTIONS

The building works are to be inspected during construction by the Principal Certifying Authority (PCA) in accordance with the Building Legislation Amendment (Quality of Construction) Act 2002, clause 162A of the Environmental Planning and Assessment Regulation 2000 and the requirements of any other applicable legislation or instruments.

(ADDED DA-133/1987/B)

36. CERTIFICATE OF SURVEY – LEVELS

All construction works are to be in accordance with the Reduced Levels (RLs) as shown on the approved plans. Certification from a Registered Surveyor certifying ground, upper floor/s and finished ridge levels is to be submitted to the Principal Certifying Authority during construction and prior to continuing to the construction of a higher level of the building.

(ADDED DA-133/1987/B)

37. CERTIFICATE OF SURVEY - BOUNDARIES AND LOCATION OF BUILDING

A Certificate of Survey prepared by a Registered Surveyor setting out the boundaries of the site and the location of the building on the site is to be submitted to the Principal Certifying Authority to certify the building is located in accordance with the development consent plans. The Certificate is to be submitted prior to the construction of the external walls above the ground floor level of the building.

(ADDED DA-133/1987/B)

38. WORK OUTSIDE PROPERTY BOUNDARY

This consent does not authorise any work outside the property boundary.

(ADDED DA-133/1987/B)

C. PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE OR SUBDIVISION CERTIFICATE

CERTIFICATES, LICENCES, EASEMENTS AND RESTRICTIONS

39. FINAL OCCUPATION CERTIFICATE

Prior to occupation or use of the development, an Occupation Certificate must be obtained.

The Principal Certifying Authority must be satisfied that the requirements of the Environmental Planning & Assessment Act 1979 have been satisfied including all critical stage inspections. Documentary evidence of all required inspections is to be submitted to Council.

(ADDED DA-133/1987/B)

40. CHILD CARE LICENCE

Prior to the issue of an Occupation Certificate for the use of the premises for child care purposes, the operator is to be appropriately licensed in accordance with the requirements of the Department of Education and Communities.

(ADDED DA-133/1987/B)

MANAGEMENT PLANS

41. PLAN OF MANAGEMENT – GENERAL USE

A Plan of Management (PoM) (or amended Plan of Management) is to be submitted for the operation of the premises and is to include details of the operational and management procedures as well pro-active measures to control the following:

- (a) Amenity impacts to the surrounding neighbourhood of the premises;*
- (b) Compliance with conditions (relating to patron capacity, approved hours of operation, any trial periods, noise conditions, handling of complaints);*
- (c) The behaviour of patrons;*
- (d) Liquor practices (if licensed, including the responsible service of alcohol);*
- (e) Staffing roles and responsibilities (including security personnel if required);*
- (f) Management of patrons within the premises and their exit and dispersal from the area; and*
- (g) Other such operational matters to ensure compliance with relevant regulatory requirements.*

The PoM shall be submitted to and approved by Council's Executive Manager, Development Assessment (or delegate) prior to the issue of any Occupation Certificate.

D. OPERATIONAL MATTERS

42. OPERATION IN ACCORDANCE WITH PLAN OF MANAGEMENT (PoM)

- (a) The operation and management of the premises shall be in accordance with a Council approved Plan of Management (PoM) at all times.*
- (b) The approved PoM shall be adopted by the Management of the premises.*
- (c) The plan shall be reviewed (at minimum) on an annual basis, and at any time there is a change in business ownership of the premises.*

(ADDED DA-133/1987/B)

43. COPIES OF CONSENTS AND MANAGEMENT PLANS

A full copy of all current development consents (including approved plans) for the operation of the premises, any compliant registers (or other) required and any required Plan of Managements must be kept on the premises and made available for inspection immediately upon request by Council Officers, Police Officers and/or ILGR Authorised Officers.

(ADDED DA-133/1987/B)

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The hours of operation for the premises are restricted to:

INDOOR AREA

Monday to Friday: 7:45am – 5:45pm.

(ADDED DA-133/1987/B)

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The following advisory matters are provided as additional information to ensure compliance with the relevant legislation and requirements. You must also check other Commonwealth and NSW Acts and Regulations which may apply to the works or use approved in this application.

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- Attention the documentation to the relevant officer/position of Council (where known/specified in condition).*

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 - *Include condition number/s seeking to be addressed.*
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- (ADDED DA-133/1987/B)*

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Any trees not identified for removal in this application have not been assessed and separate approval may be required. Any pruning of trees on adjoining properties required for the erection of scaffolding and/or the construction of the building may also require approval.

(ADDED DA-133/1987/B)

AD5. SUITABLY QUALIFIED ACOUSTIC CONSULTANT

In these conditions, reference to a suitably qualified acoustic consultant means an individual who possesses the qualifications to render them eligible for membership of both the Australian Acoustics Society and Institution of Engineers Australia at the grade of member or an individual who is employed by a member firm of the Association of Australian Acoustic Consultants.

(ADDED DA-133/1987/B)

APPENDIX B – FULL SET OF CONDITIONS

A. CONDITIONS APPROVED UNDER DA-133/1987 and DA-133/1987/A

- 1.** Pursuant to the applicant's objection under State Environmental Planning Policy No. 1, and the powers delegated to the Council by the Director of Environment and Planning, the provision of Clause 13 - Floor Space Ratios of Waverley Local Environmental Plan 1985, are waived to permit a maximum floor space ratio of 0.87:1 in respect to 30 Bourke Street, Bondi Junction.
- 2.** Except as provided by Condition 1, the proposed development to conform with the provisions of Waverley Local Environmental Plan 1985, as published in Government Gazette No. 145 of 25th October, 1985, as amended.
- 3.** The total development on the subject properties to have a maximum floor space ratio of 0.65:1, and in this regard the plans to be amended prior to the submission of a formal building application.
- 4.** The proposal to provide two (2) off street car parking spaces with direct access off Isabella Street, to the requirements of the Municipal Engineer, and in this regard the applicant is to confer with that Officer prior to the submission of a formal building application.
- 5.** The applicant/owner, at his expense, is to enter into a deed of agreement, to the satisfaction of Council's Solicitors, to provide that the subject properties are always operated conjointly and are not to be operated individually, with such deed to be executed prior to the release of approved building plans.
- 6.** Compliance with, and consent of, the Department of Youth and Community Services, and in this regard verification of such consent to be submitted with the formal building application.
- 7.** All unpaved areas of the unbuilt upon area of the site to be landscaped and turfed in accordance with the requirements of the Municipal Parks Supervisor, and in this regard a schedule of such landscaping to be submitted for the approval of that Officer upon completion of the external walls of the building.
- 8.** The open private balconies attached to the proposed building not to be enclosed at any future time, in accordance with the provisions of Council's General Policy, and in this regard the door openings within the external walls adjoining the private open balconies to be constructed so as to prevent the penetration of rain or other waters to the inner part of the building.

9. The rear verandah of 30 Bourke Street to be provided with a 1m wide planter box and a 1.8m high privacy screen for the full length of the southern boundary of the verandah, and in this regard the plans to be amended prior to the submission of a formal building application.
10. The building at 30 Bourke Street to have a maximum floor to ceiling height at each level of 2.7 m. with an overall height from natural ground level to the ridge line not exceeding 7.5 m. and in this regard the plans to be amended prior to the submission of a formal building application.
11. The proposed building being designed and constructed in accordance with the requirements of Part XI of the Local Government Act and Ordinance 70 thereunder, and in this regard the applicant to comply with Council's Building Approval and Conditions, and any requirements of the Director of Environmental Health and Building Services.
12. All seepage and surface waters and roof waters being collected and conveyed to Council's stormwater system, in accordance with the requirements of the Municipal Engineer, and the applicant to confer with that officer prior to submission of a formal building application.
13. Clothes drying facilities comprising 7.5 m. of line per flat, or alternatively, heat operated drying cabinets being installed in the laundry of each flat, to be provided to the building in accordance with the provisions of Ordinance 70.
14. No building materials to be stored on a public place during the course of building operations.
15. Building work being confined between the hours of 7 am and 5 pm only Mondays to Saturdays inclusive, and no building work to be carried out or machinery used in connection therewith on Sundays or public holidays, and in this regard, the owner 'to enter into a written undertaking prior to release of approved building plans.
16. The method of collection and disposal of garbage and refuse arising from the usage of the building being in accordance with the requirements of the Director of Environmental Health and Building Services, and in this regard the applicant/owner to consult with that officer prior to submission of a formal building application.

17. ~~The combined pre-school to provide maximum accommodation for 44 children ranging in age from 2.5 – 5 years with a total of 4 staff with any variation subject to further consent of Council~~

The combined childcare centres shall provide maximum accommodation for 49 children ranging in age from 2.5 to 5 years with a total of 6 staff with any variation subject to further consent of Council.

(AMENDED DA-133/1987/A)

18. Operation of the pre-school being confined to the hours of 8.30am – 3.30pm Monday – Friday.
19. The two childcare centres, Nos 28 and 30 Bourke Street, are always to be operated conjointly with shared outdoor play area and associated facilities. Neither childcare centre may operate independently from the other and if one ceases to operate, the other must cease to operate also, subject to further development consent from Council.

(ADDED DA-133/1987/A)

B. APPROVED DEVELOPMENT

20. APPROVED PLANS AND DOCUMENTATION

The development must be in accordance with:

(c) Architectural Plans prepared by Plan Ahead Designs including the following:

Plan Number and Revision	Plan description	Plan Date	Date received by Council
Unknown	Fencing Plan	Unknown	22/12/2022

(d) Acoustic report prepared by Koikas Acoustics, dated 7 December 2021 and received by Council on 22/12/2021.

Except where amended by the following conditions of consent.

(ADDED DA-133/1987/B)

21. GENERAL MODIFICATIONS

The application is approved subject to the following plan amendments;

(b) The proposed fence is not to exceed 1.8m from Existing Ground Level.

The amendments are to be approved by the **Principal Certifying Authority** prior to the issue of any Construction Certificate.

(ADDED DA-133/1987/B)

22. USE OF LEAF BLOWER

Consent to use the leaf blower is not required under a Development Application and therefore this does not require Council consent. The use of a leaf blower must comply with the Protection of the Environment Operations (Noise Control) Regulation 2017.

(ADDED DA-133/1987/B)

23. USE OF CHILD CARE CENTRE TO OPERATE IN ACCORDANCE WITH DA-729/2010

The use of the child care centre is to operate in accordance with DA-729/2010. Where a condition under DA-133/1987/B contradicts a condition under DA-729/2010, the condition under DA-133/1987/B is to supersede.

(ADDED DA-133/1987/B)

24. CHILD CARE CENTRE

This application approves the use of the premises as a Long Day Child Care Centre.

The maximum number of children to be cared for at any one time on the premises shall not exceed 51 children comprising;

- 8 children 0 to 2 years
- 15 children 2-3 years

- 28 children 3-5 years

The use cannot operate without an appropriate licence from the NSW Department of Education and Communities.

(ADDED DA-133/1987/B)

C. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

GENERAL REQUIREMENTS

25. NO BUILDING OR DEMOLITION WORKS PRIOR TO RELEASE OF CONSTRUCTION CERTIFICATE

The building work, or demolition work, must not be commenced until:

- (d) a Construction Certificate has been obtained from Council or an Accredited Certifier in accordance with the *Environmental Planning and Assessment Act 1979*;
- (e) a Principal Certifying Authority has been appointed and Council has been notified of the appointment in accordance with the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*; and
- (f) Council is given at least two days' notice in writing of the intention to commence the building works.

(ADDED DA-133/1987/B)

CONTRIBUTIONS, FEES & BONDS

26. SECURITY DEPOSIT

A deposit (cash or cheque) or guarantee for the amount of \$1,750.00 must be provided to Council for any damage caused to any property of the consent authority (ie. public land) as a consequence of the works and completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent.

This deposit (cash or cheque) or guarantee must be provided to Council prior to the issue of any Construction Certificate. The full amount of the deposit, minus Council's costs for any repair of damage to Council property or rectification of unauthorised works on Council property, will be refunded after satisfactory completion all of works associated with this consent (including the required public works) to the person who paid the deposit.

(ADDED DA-133/1987/B)

27. LONG SERVICE LEVY

A long service levy, as required under section 34 of the *Building and Construction Industry Long Service Payments Act, 1986*, is to be paid in respect of this building work. Evidence that the levy has been paid is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Note: Council acts as an agent for the Long Service Payment Corporation and the levy may be paid at Council's office. The levy rate is 0.35% of building work costing \$25,000 or more.

(ADDED DA-133/1987/B)

CONSTRUCTION & SITE MATTERS

28. HOARDING

To ensure the site is contained during construction, a hoarding is required for the approved works, which is to be designed and constructed in accordance with the requirements of Safe Work NSW. Where the hoarding is to be erected over the footpath or any public place, the approval of Council's Compliance Unit must be obtained and the applicable fees paid, prior to the erection of the hoarding.

(ADDED DA-133/1987/B)

29. ENGINEERING DETAILS

Structural details are to be prepared and certified by a practicing Structural Engineer in connection with all structural components of the approved works, prior to the issue of the relevant Construction Certificate.

(ADDED DA-133/1987/B)

D. COMPLIANCE PRIOR TO WORK COMMENCING AND DURING CONSTRUCTION

PRIOR TO ANY WORKS

30. CONSTRUCTION SIGNS

Prior to commencement of any works on the site and during construction a sign shall be erected on the main frontage of the site detailing the name, address and contact details (including a telephone number) of the Principal Certifying Authority and principal contractor (the coordinator of the building works). The sign shall be clearly legible from the adjoining street/public areas and maintained throughout the building works.

(ADDED DA-133/1987/B)

DEMOLITION & EXCAVATION

31. DEMOLITION – ASBESTOS AND HAZARDOUS MATERIALS

The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2017;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- *Protection of the Environment Operations Act 1997.*

At least 5 days prior to the demolition, renovation work or alterations and additions to any building, the person acting on the consent shall submit a Work Plan to the Principal Certifying Authority in

accordance with Australian Standard AS 2601-2001, Demolition of Structure and a Hazardous Materials Assessment prepared by a person with suitable expertise and experience. The Work Plan and Hazardous Materials Assessment shall:

- (a) Outline the identification of any hazardous materials, including surfaces coated with lead paint;
- (b) Confirm that no asbestos products are present on the subject land, or
- (c) particularise a method of safely disposing of the asbestos in accordance with the Code of Practice on how to safely remove asbestos published by SafeWork NSW (catalogue WC03561);
- (d) Describe the method of demolition;
- (e) Describe the precautions to be employed to minimise any dust nuisance; and
- (f) Describe the disposal methods for hazardous materials.

(ADDED DA-133/1987/B)

32. CONTROL OF DUST ON CONSTRUCTION SITES

The following requirements apply to demolition and construction works on site:

- (c) Hazardous dust is not to be allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended. Any existing accumulations of dust (e.g. ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particle air (HEPA) filter. All dusty surfaces and dust created from work are to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.
- (d) All contractors and employees directly involved in the removal of hazardous dusts and substances are to wear protective equipment conforming to Australian Standard AS1716 Respiratory Protective Devices.

(ADDED DA-133/1987/B)

CONSTRUCTION MATTERS

33. CONSTRUCTION HOURS

Demolition and building work must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays and 8am to 3pm on Saturdays, with no work to be carried out on Sundays and public holidays.

Excavation works involving the use of heavy earth movement equipment, including rock breakers and the like, must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays, with no such work to be carried out on Saturday, Sunday or a public holiday.

Noise from construction activities shall comply with the *Protection of the Environmental Operations (Noise Control) Regulation 2017*.

(ADDED DA-133/1987/B)

34. STOCKPILES, STORAGE OF MATERIALS AND LOCATION OF BUILDING OPERATIONS

All building materials and any other items associated with the development are to be stored within the property. No materials are to be stored on Council's footpath, nature strip, or road reserve without prior Council approval.

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The building works are to be inspected during construction by the Principal Certifying Authority (PCA) in accordance with the *Building Legislation Amendment (Quality of Construction) Act 2002*, clause 162A of the *Environmental Planning and Assessment Regulation 2000* and the requirements of any other applicable legislation or instruments.

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This consent does not authorise any work outside the property boundary.

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(ADDED DA-133/1987/B)

ISABELLA ST

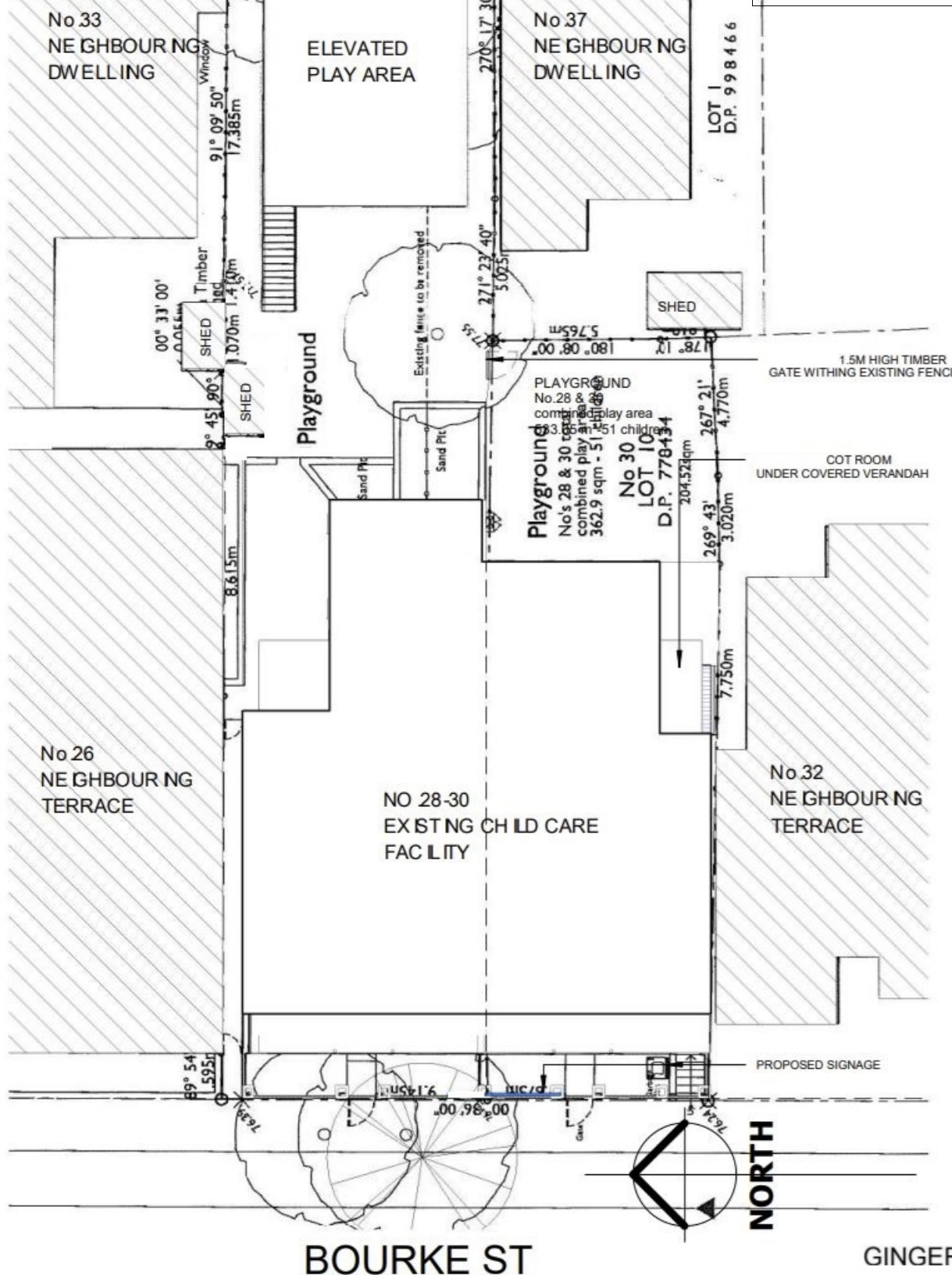
RELOCATION OF CHICKEN COUPE

RECEIVED

Waverley Council

Application No: DA-133/1987/B

Date Received: 22/12/2021



BOURKE ST

GINGERBREAD KINDERGARTEN



PO BOX 464 BONDI JUNCTION
N.S.W 1355
M 0414 387 500

www.planahead.com.au

Project number	296-19
Date	29/10/19
Drawn by	ROC
Checked by	PAN

Area calculation:

Location	Floor Area	Sqm per child	No. of children
Indoor space	170	3.25	51
Outdoor space	358.04	7.00	51
Shade Audit	156.50	2.5	51

ISABELLA ST

RELOCATION OF CHICKEN COUPE

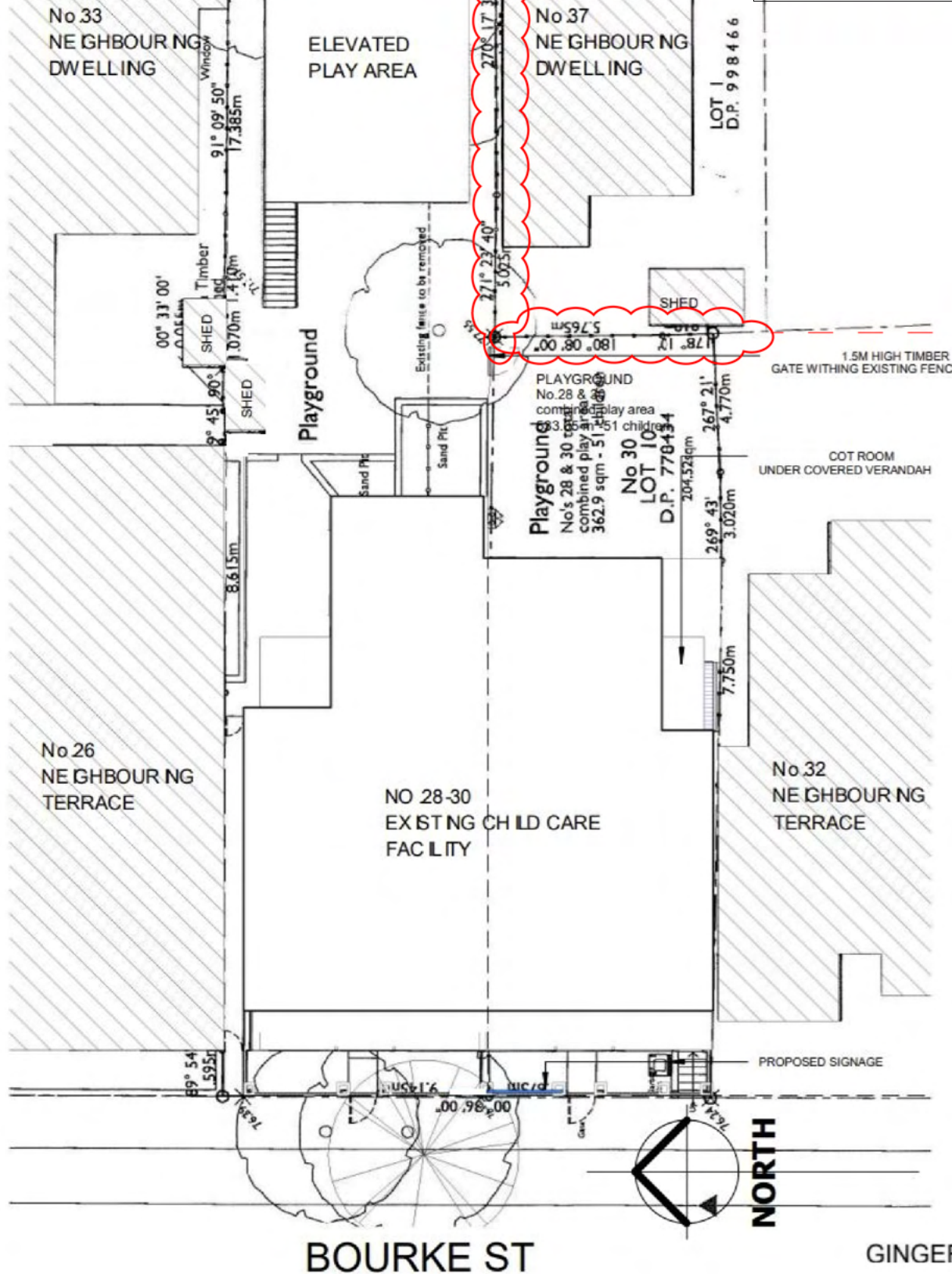
RECEIVED

Waverley Council

Application No: DA-133/1987/B

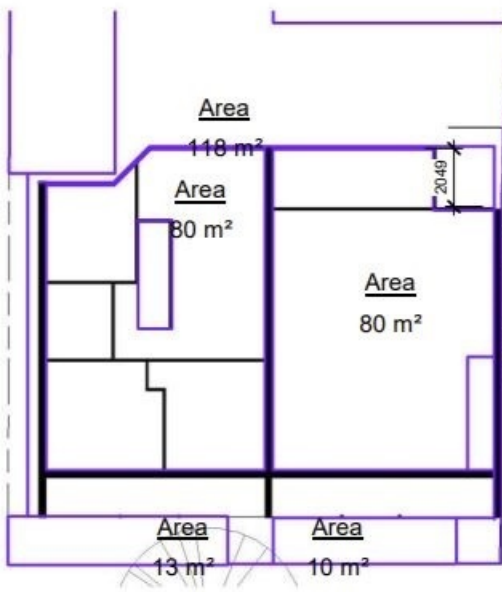
Date Received: 22/12/2021

FENCING UPGRADE AS PER ACOUSITC
REPORT COMMENTS



Application No: DA-133/1987/B

Date Received: 22/12/2021

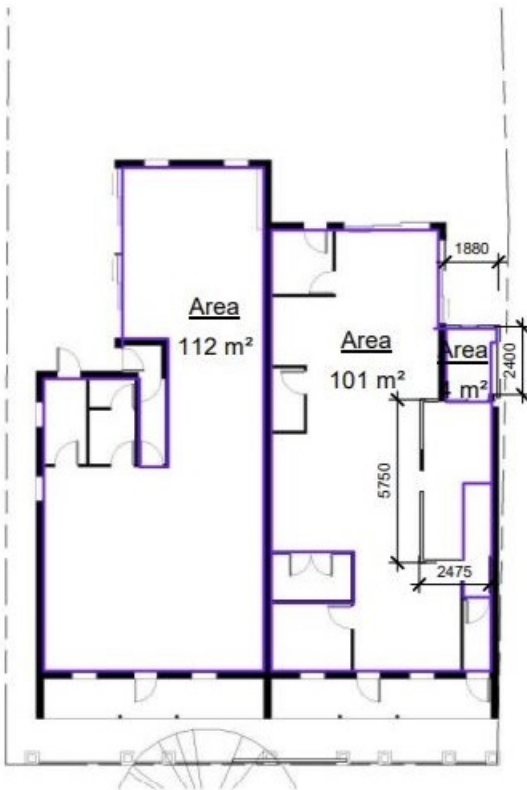


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Date	29/10/19
Drawn by	ROC
Checked by	PAN

2

Level 1

1 : 200



SITE ANALYSIS

SITE AREA 596.2 M²

FLOOR AREA

EXISTING

GROUND FLOOR 216 M²

FIRST FLOOR 160M²

TOTAL FLOOR AREA 376M²

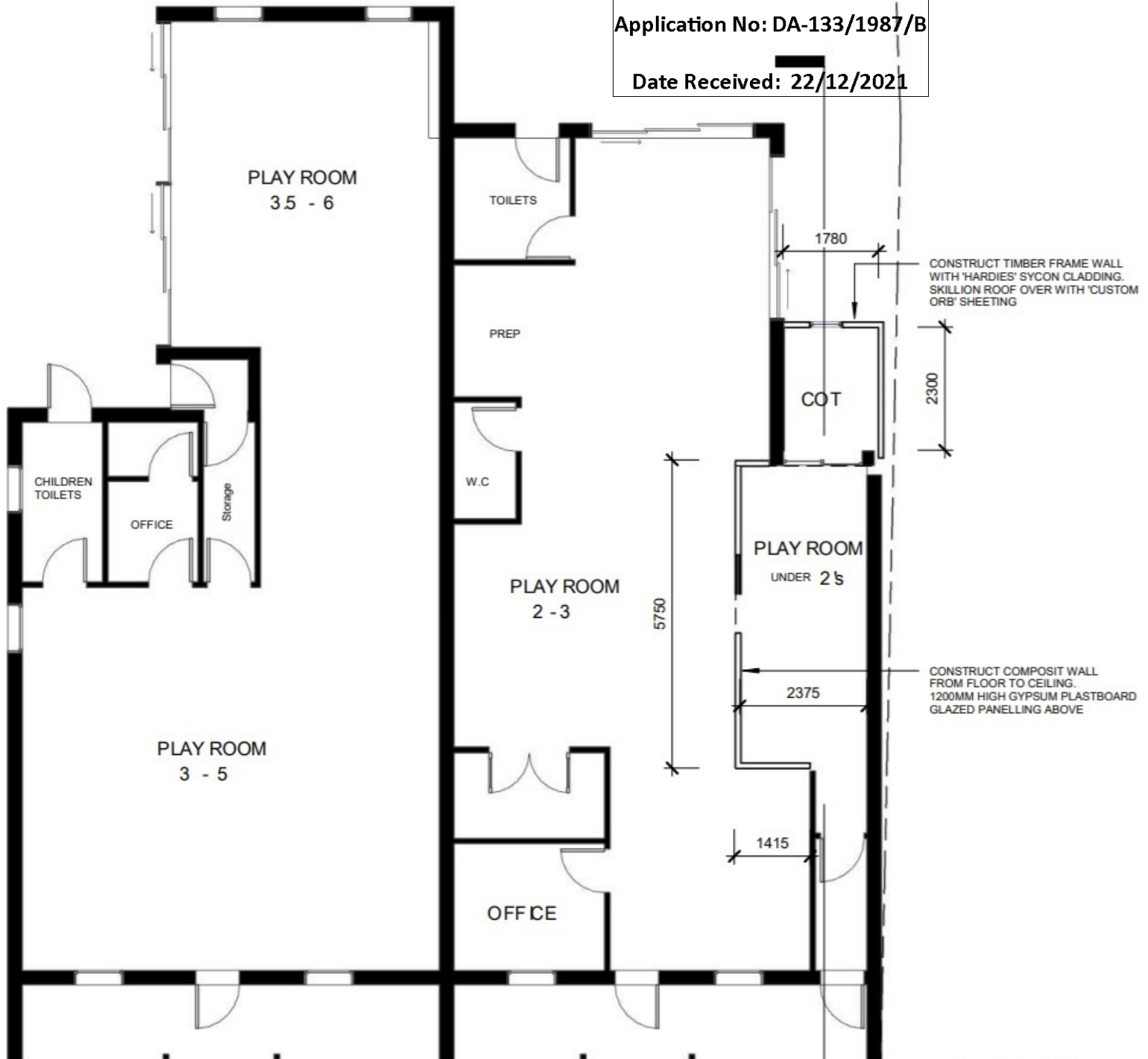
FLOOR SPACE RATIO 0.63 : 1

1

Ground Floor

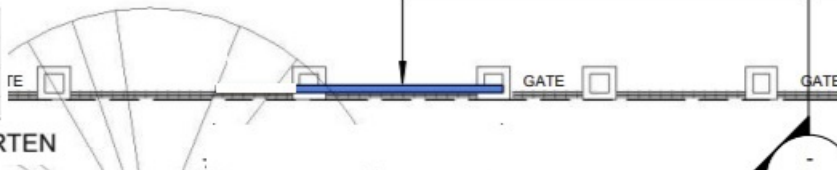
1 : 200

GINGERBREAD KINDERGARTEN



Project number	296-19
Date	29/10/19
Drawn by	ROC
Checked by	PAN

GINGERBREAD KINDERGARTEN



PO BOX 464 BONDI JUNCTION
N.S.W 1355
M 0414 387 500

www.planahead.com.au

RECEIVED
Waverley Council

Application No: DA-133/1987/B

Date Received: 22/12/2021

L1 Ceiling ▼ 5700

Level 1 ▼ 3000

Ground Floor ▼ 0

Street ▼ -700

1

South Elevation

1 : 100

NO 28-30
EXISTING CHILD CARE

L1 Ceiling ▼ 5700

Level 1 ▼ 3000

PROPOSED SIGNAGE

Ground Floor ▼ 0

Street ▼ -700

2892

1050

3100

2100

1010

1800

1080

2

West (Street) Elevation

1 : 100

GINGERBREAD KINDERGARTEN

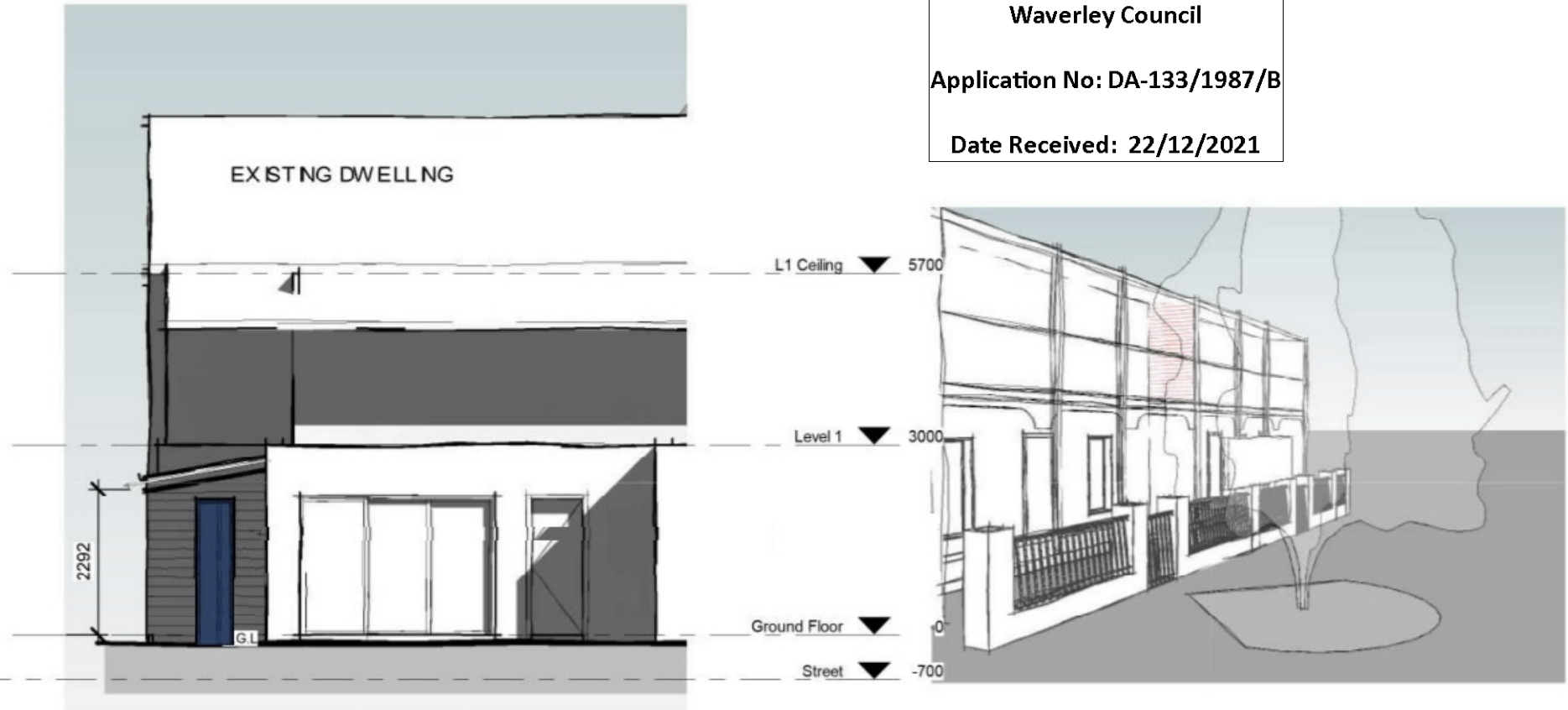
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PLAN AHEAD
DESIGNS



East Elevation

3

1:100



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GINGERBREAD KINDERGARTEN



Report to the Waverley Local Planning Panel

Application number	DA-67/2015/1/A
Site address	30 Dellview Street, Tamarama
Proposal	Changes to planting schedule
Description of Approved Development	New swimming pool, deck and cabana at rear, relocation of existing retaining wall to side and rear boundaries and landscaping, and change of use of duplex to a residential dwelling house.
Date of lodgement	25 November 2021
Owner	Ms A T Seigel and Mr A T Harris
Applicant	Mr A T Harris
Submissions	14 unique submissions were received objecting the to the application
Amended cost of works	No change
Principal Issues	<ul style="list-style-type: none"> • View loss from the public domain • View loss from neighbouring dwellings • Additional impacts, including loss of daylight and sunlight, and potential maintenance issues for neighbouring buildings
Recommendation	That the application be REFUSED for the reasons contained in the report.

SITE MAP



1. PREAMBLE

1.1. Executive Summary

The modification application seeks to modify development consent, known as DA-67/2015/1 new swimming pool, deck and cabana at rear, relocation of existing retaining wall to side and rear boundaries and landscaping, and change of use of duplex to a residential dwelling house at the site known as 30 Dellview Street, Tamarama.

The proposed modifications are for changes to the approved landscaping to include the planting of large trees at the site.

The principal issue arising from the assessment of the application are as follows:

- View loss from neighbouring dwellings
- Impact on vistas from the public domain

The assessment finds these issues unacceptable due to the unreasonable impact on neighbouring properties and the public domain.

A total number of 14 submissions were received and the issues raised in the submissions have been considered and addressed in this report and in the Recommendation.

The application has been assessed against relevant matters for consideration under section 4.56 of the *Environmental Planning and Assessment Act 1979* and is recommended for refusal.

1.2. Site and Surrounding Locality

A site visit was undertaken on 5 July 2022.

The site is identified as Lot 5 in DP 15588, known as 30 Dellview Street, Tamarama. The site is irregular in shape. The site has an area of 461.7m².

The site is occupied by a two storey detached dwelling with vehicular access provided from Dellview Street to a hardstand located along the northern (upper side) boundary.

The rear of the site has been levelled, a rear deck and pool have been constructed, with a retaining wall set-in from the southern boundary.

The rear yard features planting areas along the northern, eastern and southern boundaries. *Banksia Integrifolia* trees are planted along each of the boundaries. The subject modification application relates to this planting.

Levels on the site fall significantly adjacent to the retaining wall along the southern and eastern boundaries. The southern planting area adjacent to the swimming pool is approximately 3.2m lower than the pool coping level, and approximately 4.4m below the pool fence height.

The land in the surrounding area falls steeply from north to south, with the land at the rear of the adjacent site at number 28 being approximately 2.6m higher than at the subject site.

The subject site is adjoined by a multi-dwelling housing development of 3 units to the north at 28 Dellview Street, and a residential flat building to the south at 32 Dellview Street. The Locality is characterised by a variety of residential developments including detached dwellings and residential flat buildings.

The property is not listed as a heritage item under the WLEP 2012 and is not located within a heritage conservation area.

Figures 1 to 5 are photos of the site and its context.



Figure 1: Aerial view of the site and surrounding coastline

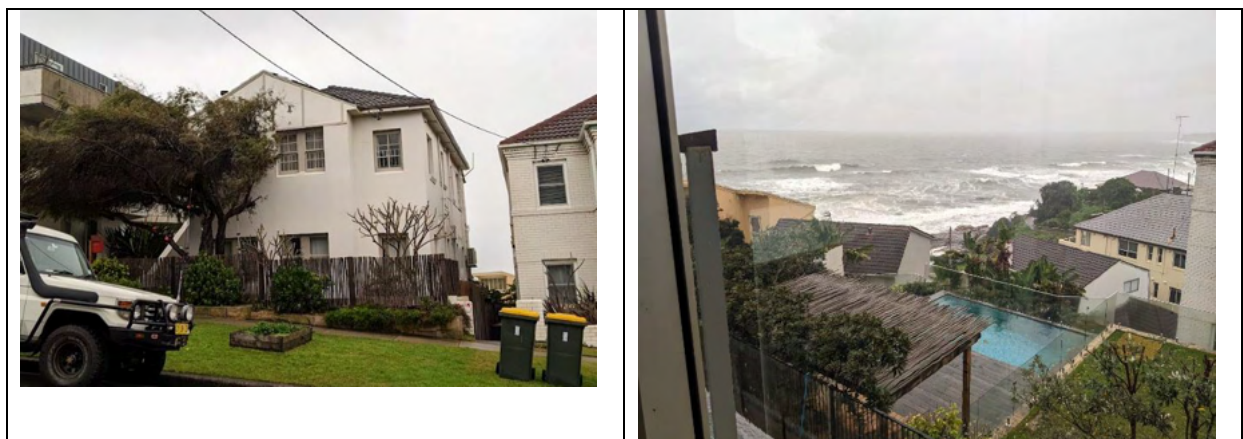




Figure 2: Subject site viewed from Dellview Street, looking east	Figure 3: Rear yard of the site viewed from the first floor of 1/28 Dellview Street, looking south east
	
Figure 4: Rear of site viewed from the rear private open space of 1/28 Dellview Street, looking south-east	Figure 5: Rear of site viewed from the rear private open space of 1/28 Dellview Street, looking south-west

1.3. Details of Approved Development

The existing development consent DA-67/2015 was approved by the Land and Environment Court, after the original development application and a review application were both refused by Waverley Council's Development Building Unit (DBU).

The existing consent is for "construction for a new swimming pool, deck and cabana at rear, relocation of existing retaining wall to side and rear boundaries and landscaping, and change of use of the duplex to a residential dwelling house".

Further information is set out below, in chronological order.

The original application DA-67/2015 was refused by the DBU on 1 October 2015 for multiple reasons, including issues with the proposed earthworks, the proposed planting not including native species, and excessively high retaining walls. The following reason for refusal is relevant to the current modification application:

- *"The proposed development is not considered to satisfy Part C1 Section 1.9 Views (c) as the proposed landscaping along the northern boundary is designed to obstruct views from the private open space, living and bedroom areas of the three units within the adjacent/neighbouring development."*

The proposed planting included bamboo planting with an estimated height of 4m.

Subsequently, the applicant amended the proposal and lodged a review application reference DA-67/2015/1. The review application was refused by the DBU on 23 March 2016. View loss was not one of reasons for refusal. The officer's report at the time noted that:

- *“The applicant has also revised the boundary planting to 3m Lilly Pilli’s from bamboo which has reduced view obstructions from upper levels of the development on the adjoining northern property.”*

The applicant appealed the decision, and the Land and Environment Court approved the development on 20 September 2020.

The approved plans are annotated with *Acmena smithii* (Lilly Pilly) along the northern boundary, *Lomandra longifolia* (Basket Grass) along the southern boundary, and the retention of existing planting along the eastern boundary. The landscape also visually depicted trees along the southern boundary, but provided no annotations regarding these trees.

Condition 16 of the conditions of consent is relevant to the application, and is set out below.

16. AMENDED LANDSCAPE PLAN

The Landscape Plan is to be amended by the following changes:

- a) All new trees and plants to be shown on landscape plan and shall include species type, pot size and location.*
- b) The species of planting used along the southern side shall be limited to planting species with a mature growth height of no greater than pool coping level. The planting species selected for this area shall be low maintenance.*
- c) Landscape Plan to provide for a minimum of 50% local native species.*

The amended landscape plan is to be submitted to the Principal Certifying Authority with the plans for the Construction Certificate.

Subsequently, the private Principal Certifying Authority issued a construction certificate with an amended landscape plan with the following planting:

- Northern boundary:
 - Bamboo gracilis
 - Streitzia nicolai
 - Sygium cascade
- Southern boundary:
 - Banksia integrifolia
 - Banksia serrata
- Eastern boundary:
 - Banksia integrifolia
 - Banksia serrata
 - Plumeria rubra
 - Lomandra longifolia

1.4. Compliance action

The site has been subject to compliance action regarding various aspects of the approved development, including building outside of the boundaries and non-compliant chimney flues. The following compliance action is relevant to the modification application.

On 4 March 2021 the private Principal Certifying Authority issued a Written Directions Notice due to the landscape planting along the northern boundary not being planted in accordance with the approved plans.

On 2 August 2021, Council's Senior Building Surveyor advised the applicant's representative that either the planting needs to be removed and replanted as per the approved drawing, or a modification application must be made to Council for assessment.

1.5. Proposal

The modification application has been submitted under section 4.56 of the *Environmental Planning and Assessment Act 1979*.

It seeks consent for modifications to the court-approved landscape plan.

The most significant modifications are the introduction of *Banksia Integrifolia* trees along the northern, eastern and southern boundaries, and *Magnolia Grandiflora* trees along the northern boundary.

A summary of the differences between the court-approved plans, the certifier-approved plans, and the proposed plans are shown in the table below. The proposed modification is to the court-approved plans, however the certifier-approved plans are provided for context.

Table 1: Northern boundary planting

Court-approved	Certifier- approved	Proposed
Acmena smithii	Bamboo gracilis	Banksia integrifolia
	Streitzia nicolai	Plumeria Rubra
	Syzygium cascade	Syzygium cascade
		Asplenium australasicum, Dicksonia Antartica, Blechnum Silver Lady and Cyathea Australis
		Magnolia Grandiflora
		Trachelospermum Tricolor

Table 2: Southern boundary planting

Court-approved	Certifier- approved	Proposed
Lomandra longifolia	Banksia integrifolia	Banksia integrifolia

	Banksia serrata	Trachelospermum Tricolor
--	-----------------	--------------------------

Table 3: Eastern boundary planting

Court-approved	Certifier- approved	Proposed
Retention of Metrosideros	Banksia integrifolia	Banksia Integrifolia
Retention of Fiscus	Banksia serrata	Syzygium Cascade
	Plumeria rubra	Plumeria Rubra
	Lomandra longifolia	

1.6. Background

The modification application was lodged on 25 November 2021.

The application was deferred on 8 April 2022, as the lodged landscape plans were unclear regarding the species, location, number of plants, pot sizes, and heights of the plants proposed.

Amended plans were received on 25 May 2022.

The application was again deferred on 25 May 2022 as the amended plans did not provide the information requested, and in addition the amended plans included changes to other aspects of the development consent unrelated to landscaping.

The further amended plans were received 14 June 2022.

2. ASSESSMENT

The following matters are to be considered in the assessment of this modification application under relevant sections of the *Environmental Planning and Assessment Act 1979* (the Act).

2.1. Section 4.56 – Modification by consent authorities of consents granted by the Court

The application is made under section 4.56 of the Act as the original consent was granted by the Court. The quantitative and qualitative elements and impacts between the approved development and the development, as proposed to be modified, are not considered overly dissimilar as demonstrated in the following sections of this report. In this regard, the proposal is considered to be substantially the same as the originally approved development with regard to matters arising from the NSW Land and Environment Court case of *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 298*.

The application was publicly notified and fourteen submissions were received. Reasonable attempts have been made to notify each person who made a submission in respect to the relevant development application of the proposed modification. The issues and matters raised in public submissions are discussed in section 2.3.4 of this report.

The reasons given by the Court to give consent to the original development consent have also been considered in the assessment of this modification application.

2.2. Evaluation of Matters for Consideration under Section 4.15

In accordance with 4.56(1A) of the Act the following is an assessment of the proposed modifications of the development consent against the relevant matters for consideration under section 4.15(1) of the Act.

2.2.1. Planning Instruments and Development Control Plans

The following is an assessment against relevant environmental planning instruments, including State environmental planning policies (SEPPs), and development control plans.

State Environmental Planning Policies (SEPPs)

The following SEPPs apply from the 1st March 2022 and have been considered acceptable in the assessment of this development application:

- SEPP (Biodiversity and Conservation) 2021
- SEPP (Resilience and Hazards) 2021

Draft Waverley Local Environmental Plan 2022 (Draft Waverley LEP 2022)

The Draft Waverley Local Environmental Plan 2022 was exhibited from 12 November 2021 to 23 January 2022, however at the time of this assessment, there are no relevant matters for consideration.

Waverley Local Environmental Plan 2012 (Waverley LEP 2012)

The land use definition of the approved development as dwelling house remains unchanged and continues to be permitted development in the R3 Medium Density Residential zone under Waverley LEP 2012.

The quantities of the approved development, as proposed to be modified, remain unchanged in relation to principal development standards under Waverley LEP 2012. All other relevant provisions of Waverley LEP 2012 remain compliant.

Waverley Development Control Plan 2012 (Waverley DCP 2012) – Amendment No.9

The approved development, as proposed to be modified, does not comply with the relevant parts and sections of Waverley DCP 2012. Only the following parts and sections of Waverley DCP 2012 that apply to the proposed modifications are outlined in **Tables 4** and **5** of this report and detailed discussion below these tables.

Table 4: Waverley DCP 2012 – Part B General Provisions Compliance Table

Development Control	Compliance	Comment
3. Landscaping and Biodiversity 3.2.2 Habitat Corridors and Recognised Habitat <ul style="list-style-type: none">50% of the proposed trees, 50% of the shrubs and 50% of the grasses and groundcovers (not including turfed areas) are to be indigenous local native plants that are listed in Annexure B2-1.	No	Unsatisfactory. The proposed Lilly Pilly 'Cascade' is a tree cultivar that is not listed in the DCP Annexure. In addition, the requirement is also not met for groundcover.
12. Design Excellence <ul style="list-style-type: none">Development will not be supported where detrimental impacts upon views and	No	Unsatisfactory. The proposal will have an unacceptable impact on ocean views from Dellview Street, and will have an unacceptable impact on neighbouring amenity in terms of view loss.

Development Control	Compliance	Comment
<p>vistas is imposed, particularly those views from the public domain.</p> <ul style="list-style-type: none"> Development must consider the relationship of the development to other development on neighbouring sites in terms of amenity 		<p>Further discussion is found below the DCP compliance tables.</p>
<p>16. Public Domain 16.1 Improving the public domain</p> <ul style="list-style-type: none"> Development is not to impede important or significant views from the public domain to public places, parks, Sydney Harbour or the eastern coastline, heritage buildings, monuments, or public artworks. 	No	<p>Unsatisfactory. The proposal will have an unacceptable impact on ocean views from Dellview Street.</p> <p>Further discussion is found below the DCP compliance tables.</p>

Table 5: Waverley DCP 2012 – Part C Residential Development Compliance Table

Development Control	Compliance	Comment
<p>2.7 Views</p> <ul style="list-style-type: none"> Existing views and vistas available from the public domain views are to be maintained where possible by the design of buildings Lower density residential accommodation is to be designed and sited so as to enable a sharing of views with surrounding dwellings particularly from habitable rooms and decks Where views are enjoyed by a 	No	<p>Unsatisfactory. The proposal will have an unacceptable impact on ocean views from Dellview Street, and will have an unacceptable impact on neighbouring amenity in terms of view loss.</p> <p>Further discussion is found below the DCP compliance tables.</p>

Development Control	Compliance	Comment
neighbouring property across a proposed terrace, balcony or deck, it is accepted that privacy is of lesser value than the retention of views and it may not be appropriate to erect a privacy screen		

The following is a detailed discussion of the issues identified in the compliance tables above in relation to Waverley DCP 2012.

View loss

The modification application proposes plant species along the northern, eastern and southern boundaries that are significantly higher than those approved by the both the court and the private certifier.

The most significant impact will be along the northern boundary. The court-approved *Acmena smithii* (Lilly Pilly) has a mature height of approximately 4m, and the certifier-approved *Syzygium cascade* (Lilly Pilly) and *Bamboo Gracilis* have mature heights of 2-3m and 2-8m respectively. The approved species all can be hedged, meaning they are suitable for pruning to a desired height.

The proposed *Banksia integrifolia* (Coast Banksia) has a potential mature height of 5 -10 m in a garden setting, and up to 20 metres in a sheltered site. The proposed *Magnolia grandiflora* (Bullbay Magnolia) has potential mature height of 10-20m, and the proposed *Plumeria rubra* (Red Frangipani) has a potential mature height of 5 metres. The proposed trees are not suited to hedging to a desired height.

The proposed plant species will have an unacceptable impact on public views and vistas along Dellview Street, and on views from neighbouring dwellings, contrary to DCP sections B12 *Design Excellence* and C2.7 *Views*, and contrary to planning principles as set out below.

Views from the public domain

The impact on views from the public domain is unreasonable, is not justifiable, and cannot be supported.

Figures 6 to 8 below show existing views and vistas from Dellview Street, and provide references in terms of the height of the adjacent building at 28 Dellview Street. The *Banksia* trees may grow higher than the second floor deck at 28 Dellview Street, and the *Magnolia* may grow higher than the ridge of that building, therefore obscuring or blocking views of the ocean and cliffs.

The proposed view loss is unnecessary, is detrimental to the amenity of the public domain, is contrary to DCP sections B12 *Design Excellence*, B16 *Public Domain* and C2.7 *Views*, and is not supported.



Figure 6: View along Dellview Street looking south



Figure 7: View along Dellview Street looking south. For reference, the floor level of the protruding second floor roof deck at 28 Dellview Street visible toward the right of the photo is 8.6m above the rear yard level at number 30. The roof ridge of the same building is 12.1m above the rear yard level at number 30. The Banksia and Magnolia trees are planted to the right of the hipped-roof building in the lower portion of the photo.



Figure 8: View from Dellview Street looking south-east. For reference, the floor level of the protruding concrete roof deck at 28 Dellview Street visible at the far-right of the photo is 8.6m above the rear yard level at number 30.



Figure 9: Line of affected view (yellow arrow) from Dellview Street across the subject site. The subject site is denoted by the red arrow.

Views from neighbouring dwellings

The proposal also has an unacceptable view-loss impact on neighbouring dwellings.

The most significant impact is on the dwelling immediately to the north, at 1/28 Dellview Street. An assessment of the view loss under the view sharing planning principles from *Tenacity Consulting v Waringah* [2004] NSWLEC 140 is found below.

Tenacity sets out a four-step process to assess view-sharing.

The first step is the assessment of views to be affected. In this case the views affected are very highly valued. The views are of the ocean and land-water interface north-east of Tamarama beach, and of the ocean and land-water interface including headlands and cliffs south of Bronte.



Figure 10: View from the first floor living room window of 1/28 Dellview Street, looking south-east across the rear of the subject site.



Figure 11: View from the second floor bedroom window of 1/28 Dellview Street, looking south-east across the rear of the subject site.



Figure 12: View from the private open space of 1/28 Dellview Street, looking south across the rear of the subject site.

The second step is consideration of what part of the property the views are obtained. In this case the views are obtained diagonally to the rear across a side boundary. The protection of views across a side boundary are generally more difficult than protection across the front or rear boundary, however in this case the view is across the adjacent private open space at number 30 and is therefore not difficult to protect as no buildings exist or are proposed in this location. The impacted views are obtained from both standing and seated positions at ground, first and second floor levels of the affected property.

The third step is to assess the extent of the impact. In this case the impact is severe, and possibly devastating.

It is not possible to assess the precise extent of the impact, due to the inherent uncertainties of estimating mature tree heights, canopy spread, and ongoing health in any given specific location. However, the planting of trees capable of reaching between 10m to 20m in height along the northern boundary has the potential to lead to severe or devastating loss of views from the ground and first floor of number 28 property, given that the first floor ceiling height of that property is approximately 8.2m above the lawn level at number 30. The open-plan kitchen and primary living area is located on the first floor, and views from these areas are highly valued. Views from the ground floor secondary living area and private open space will also be removed.

The second floor ceiling height is 10.8m above the lawn level at number 30, and therefore the proposal also has the capacity to have a severe loss of views at second floor level too, from bedroom windows.

The fourth step is to assess the reasonableness of the proposal. In this case the development was originally approved with planting along the northern boundary that would not impact views. The proposed modification to change the planting to species which will severely impact views is not reasonable. It is also noted that the DCP requirement of 50% of planting to be native species can be achieved without impacting views.

Under the planning principle set out in *Tenacity*, the proposal has a severe and unreasonable impact on views from 1/28 Dellview Street, and is not acceptable.

The assessment above has been undertaken regarding views from the most affected property, however it is noted that 2/28 and 3/28 will also be affected, as well as units at 19 Dellview Street and to a lesser extent the dwellings at 15 and 17 Dellview Street.



Figure 13: View from the upper ground floor front yard of 19 Dellview Street, looking east along the side setback of the subject site.

Additional impacts

The proposed modification will have impacts additional to view loss. The close proximity of the trees to the retaining wall at number 28 and the fence at number 32 may lead to long term structural issues for those structures, will lead to ongoing maintenance issues in terms of falling leaves and debris, and the proximity of the trees to windows at those properties will lead to loss of daylight and sunlight. In this regard, the proposed modification is contrary to DCP section B12.1 *Design excellence* due to its negative environmental impacts on neighbouring properties.

Non-compliance with conditions of consent

The proposal is contrary to condition 16(b) of the consent, which requires the planting along the southern boundary to reach heights no higher than the pool coping level. The proposed Banksia along this boundary has the potential to grow significantly higher than the coping level, will contribute to view loss, loss of daylight, and may cause structural issues to the adjacent fence.

2.2.2. Other Impacts of the Development

The proposal is considered to have a significant detrimental effect relating to environmental impacts on the locality, for the reasons set out above and is recommended for refusal.

2.2.3. Suitability of the Site for the Development

The site is not considered suitable for the proposed modifications.

2.2.4. Any Submissions

The application was notified 14 days between 30 November to 16 December 2021 in accordance with the *Waverley Community Development Participation and Consultation Plan*.

A total of 14 unique submissions were received from the following properties:

Table 6: Number of and where submissions were received from.

Count	Property Address
1.	15 Dellview Street
2.	17 Dellview Street
3.	2&4/19 Dellview Street
4.	3/19 Dellview Street
5.	Unspecified unit at 19 Dellview Street
6.	Unspecified unit at 19 Dellview Street
7.	1/28 Dellview Street (first submission)
8.	1/28 Dellview Street (second submission)
9.	3/28 Dellview Street

10.	2/28 Dellview Street
11.	9/32 Dellview Street
12.	32 Dellview Street
13.	2/32 Dellview Street
14.	2/4 Silva Steet

The following issues raised in the submissions have already been discussed and addressed in the body of this report and/or the Recommendation:

- View loss from dwellings
- View loss from the public domain
- Non-compliance with conditions of consent
- Loss of light to 1/28 and 32 Dellview Street
- Debris from trees

All other issues raised in the submissions are summarised and discussed below.

Issue: The landscape plan shows a 200mm increase to the approved lawn height.

Response: Although the change in height is not considered significant, the modification is recommended for refusal for the reasons set out elsewhere in this report

Issue: Other parts of the development have not been built in accordance with the approved plans.

Response: The modification to the planting does not affect other aspects of the development.

2.2.5. Public Interest

The proposal is considered to have a detrimental effect on the public interest, and is recommended for refusal.

3. REFERRALS

The following internal and external referral comments were sought:

3.1. Tree Management

Council's tree management officer provided advice and information to the assessing planner regarding the suitability of the proposed species and the potential mature heights of the proposed species. This information has been used in the preparation of this report.

3.2. Biodiversity

Council's biodiversity specialist advised that the proposed trees do not meet the DCP requirement 50% to be native species because Lilly Pilly 'Cascade' is a cultivar that is not listed in the DCP Annexure. The specialist also advised that ferns are considered a groundcover for these purposes, so the 50% requirement for groundcovers has not been met either.

4. CONCLUSION

The modification application seeks to modify development consent, known as DA-67/2015/1 new swimming pool, deck and cabana at rear, relocation of existing retaining wall to side and rear boundaries and landscaping, and change of use of duplex to a residential dwelling house, at the site known as 30 Dellview Street, Tamarama.

The proposed modifications are for changes to the approved landscaping to include the planting of large trees at the site.

The principal issue arising from the assessment of the application are as follows:

- View loss from neighbouring dwellings
- Impact on vistas from the public domain

The assessment finds these issues unacceptable due to the unreasonable impact on neighbouring properties and the public domain.

A total number of 14 submissions were received and the issues raised in the submissions have been considered and addressed in this report and in the Recommendation.

The application has been assessed against relevant sections of the Act and is recommended for refusal.

Development and Building Unit (DBU) Decision:



The application was reviewed by the DBU at the meeting on 5 July 2022 and the DBU determined:

- The application is not acceptable and should be refused for the reasons in Appendix A.

DBU members: *M Reid, T Sneesby, B McNamara and B Magistrale*

5. RECOMMENDATION TO WAVERLEY LOCAL PLANNING PANEL

That the modification application be REFUSED by the Waverley Local Planning Panel for the reasons contained in Appendix A.

Report prepared by:	Application reviewed and agreed on behalf of the Development and Building Unit by:
	
David Knight	Tim Sneesby
Senior Development Assessment Planner	Manager, Development Assessment (Reviewed and agreed on behalf of the Development and Building Unit)
Date: 7 June 2022	Date: 13 June 2022

Reason for WLPP referral:

The consent authority for the original development application was not determined by the WLPP, however this modification is made under section 4.56 of the Act and relates to:

1. Contentious development (10 or more objections)

OFFICE USE ONLY

Affordable Rental Housing Units? <small>*This is a planning portal reporting requirement</small>	No
Secondary Dwelling <small>*This is a planning portal reporting requirement</small>	No
Boarding House <small>*This is a planning portal reporting requirement</small>	No
Group Home <small>*This is a planning portal reporting requirement</small>	No
Trial Period database entry required	No
VPA submitted – follow up actions required	No
Refer to compliance for investigation	No
Commercial/liquor operational conditions	No
Other (please specify):	No

APPENDIX A – REASONS FOR REFUSAL

1. The application does not satisfy section 4.15 (1)(a)(iii) of the Act as it is contrary to Waverley Development Control Plan (WDCP) 2012, in respect to the following provisions:

Part B3, section 3.2.2 Habitat Corridors and Recognised Habitat

- a. Objectives (b) and (c), and control (a), as the proposed modification does not enhance or reconstruct native vegetation, and does not provide a minimum of 50% of proposed trees, shrubs and grasses as indigenous local native plants that are listed in Annexure B2-1 of the DCP

Part B12 Design Excellence, section 12.1 Design

- a. Objective (a), as the proposed modification does not contribute to the overall urban design quality of Waverley due to impacts on views.
- b. Controls (b), (c), and (e)(iv) and (e)(vii), as the proposed modification has a detrimental impact on view corridors, on the amenity of the public domain, and does not adequately consider the relationship between the proposed landscaping and neighbouring sites, and has negative environmental impacts in terms of view loss, loss of daylight and solar access, and potential structural and maintenance issues.

Section B16 Public Domain, section 16.1 Improving the public domain

- a. Objectives (b) and (f), as the proposed modification does not protect significant views and vistas from the public domain, and has a negative impact on the character of the area.
- b. Controls (b) and (c) as the proposed modification impedes significant views of the eastern coastline and degrades view corridors.

Part C2.7 Views

- a. Objectives (a) and (b), as the proposed modification does not minimise the impact on existing views and vistas from neighbouring residential development and the public domain, does not encourage view sharing.
- b. Controls (a) and (c) as the proposed modification does not maintain existing views and vistas from the public domain, and is not designed so as to enable the sharing of views with surrounding dwellings.

2. The application does not satisfy section 4.15 (1)(b) of the Act as the proposed modification results in unacceptable environmental impacts on the natural and built environment in terms of neighbouring amenity, potential damage to neighbouring structures, and failure to provide sufficient native planting.
3. The application is contrary to section 4.15 (1)(d) of the Act in relation to matters raised in the public submissions received that object to the proposed development.

4. The modification application is contrary to section 4.15 (1)(e) of the Act in relation to the public interest as it is not compatible with the existing and desired future character of the locality and the broader Waverley local government area.

CODE	SPECIES	POT SIZE	NOTES
1.	Syzygium Cascade	75Ltr	
2.	Banksia Integrifolia		
3.	Banksia Integrifolia		
4.	Plumeria Rubra	75Ltr	
5.	Asplenium australasicum, Dicksonia Antarctica, Blechnum Silver Lady and Cyathea Australis	50Ltr	Plants are interspersed
6.	Magnolia Grandiflora	75Ltr	
7.	Trachelospermum Tricolor	100mm	

Species	Pot size	Total number	Full grown height
<i>Banksia integrifolia</i>	75 Ltr	12	6-8 m (exposed coastal position, as planted)
<i>Syzygium cascade</i>	50 Ltr	8	4-6 m
<i>Plumeria rubra</i>	75 Ltr	6	4-6 m
<i>Magnolia grandiflora</i>	75 Ltr	6	4-8 m in exposed coastal position, as planted
<i>Asplenium australasicum</i>	200 mm	8	< 1 m
<i>Dicksonia Antarctica</i>	Large	9	2 - 3 m
<i>Cyathea Australis</i>	200 mm	7	2 - 3 m
<i>Blechnum Silver Lady</i>	200 mm	18	< 1 m
<i>Trachelospermum Tricolor</i>	100 mm	8	Ground cover
<i>Viola hederacea</i>	140 mm	22	Ground cover
<i>Westringia Fruticosa</i>	200 mm	10	< 1 m
<i>Cycas Revoluta</i>	300 mm	3	< 1 m

Abbreviations						Rev	Description
AC	Air Conditioning	EQ	Equal	JU	Joinery Unit	REM.	Remainder
ADJ	Adjustable	EX	Existing	MDR	Metal Deck Roof	TIL	Tile
BDY	Site Boundary	FB	Face Brick	PB	Plasterboard	TM	Timber
BWK	Brickwork	FC	Fibre Cement	PV	Paving	TMD	Timber Deck
CON	Concrete	FG	Fixed Glazing	RM	Rendered Masonry	TMF	Timber Floor
COS	Confirm on Site	FW	Floor Waste	RT	Roof Tile	WB	Weatherboard
CPT	Carpet	GDR	Grated Drain	SK	Skylight	WPB	Water Resistant PB
DP	Downpipe	GLV	Glass Louvre	SS	Stainless Steel	WT	Water Tank
EQ	Equal	HWU	Hot Water Unit	ST	Stone	ZNC	Zinc

Date
05/05/2022
14/06/2022

North / Keyplan



Consultants

Project
30 Dellview Street, Tamarama

Client
Amber Seigal and Andrew Harris

Drawing Title
Existing Landscape Plan

Scale 1:100 0 0.5 1 2.5m
@A3

Proj No Dwg No Date Rev
104 400 14/06/2022 B

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Report to the Waverley Local Planning Panel

Application number	DA-44/2022
Site address	5 Pacific Avenue TAMARAMA
Proposal	Demolition of existing residential flat building and construction of a part four and five-storey residential flat building containing 5 apartments, basement level parking and swimming pool.
Date of lodgement	03/02/2022
Owner	Proprietors of Strata Plan 3867
Applicant	Mark Shapiro Architects
Submissions	7 objections
Cost of works	\$4 104 848
Principal Issues	<ul style="list-style-type: none"> • FSR and height • Separation distances • Excavation
Recommendation	That the application be granted DEFERRED COMMENCEMENT CONSENT in accordance with the conditions contained in the report.

SITE MAP



1. PREAMBLE

1.1. Executive Summary

The development application seeks consent for the demolition of the existing residential flat building and construction of a part four and five-storey residential flat building containing 5 apartments, basement level parking and swimming pool at 5 Pacific Avenue, Tamarama.

The principal issues arising from the assessment of the application are as follows:

- The proposal does not meet the separation distance requirements of the ADG.
- The proposal exceeds the height and FSR development standards of the LEP.
- The proposal seeks to vary various controls of the DCP.

The assessment finds these issues acceptable. The proposal replaces an existing building which already exceeds the height and FSR development standards with a building that will be lower by 1.67m. The additional FSR can be attributed to infilling the lower parking level of the building and providing an underground car park. The resultant building is contained within the envelope of the existing building on the site with the exception of being marginally lower at the front and rear. The lowering of the height of the building overall will have measurably improved amenity for surrounding properties including increased views and reduced overshadowing. Privacy impacts are not unreasonable subject to conditions.

The applicant has submitted an undertaking to Council regarding their commitment to enter into a voluntary planning agreement (VPA) for the additional gross floor area above the existing building on the site in accordance with the *Waverley Council Planning Agreement Policy 2014*. A suitable public purpose or benefit is considered to be provided in the form of the forthcoming execution of a planning agreement, which would contribute to public works or a similar public benefit within the catchment of the site.

A total number of seven submissions were received and the issues raised in the submissions have been considered and addressed in this report and in the Recommendation.

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. It is recommended for approval subject to conditions of deferred commencement consent.

1.2. Site and Surrounding Locality

A site visit was carried out on 22/03/2022.

The site is identified as CP SP 3867, known as 5 Pacific Avenue, Tamarama. The site is generally rectangular in shape with a splayed frontage to Pacific Street, measuring 12.4m. It has an area of 662.5m² and falls from the rear towards the front by approximately 11m.

The site is occupied by a part four and five-storey residential flat building containing six apartments with vehicular access provided from Pacific Street to parking located within the ground floor level of the building.

The site is adjoined by a four-storey residential flat building to the west and a two-storey dwelling to the east. The site is located opposite Tamarama Beach Park and beach. The locality is characterised by a variety of low and medium residential development with views toward Tamarama Beach and the Pacific Ocean.

Figures 1 to 4 are photos of the site and its context.



Figure 1: Subject site as viewed from Pacific Avenue



Figure 2: Rear elevation of the building as viewed from Silva Street



Figure 3: Pacific Avenue streetscape viewed from the west



Figure 4: Pacific Avenue streetscape viewed from the east

1.3. Relevant Development History

A search of Council's records revealed the following recent and relevant development history of the site:

- **DA-229/2015** for the demolition of existing building and construction of a part four and five-storey residential flat building with nine units and basement car parking was refused on 05/11/2015. A subsequent appeal to the Land and Environment Court (LEC) was discontinued by the applicant on 19/12/2016.
- **PD-1/2016** for a Pre-DA for demolition of existing buildings, construction of a five-storey residential flat building was submitted to Council on 11/04/2016.
- **PD-17/2021** for a Pre DA for demolition of existing residential flat building and construction of a new residential flat building containing five units, basement parking and a swimming pool at rear was submitted to Council on 27/04/2021. Advice provided included:
 - Height and FSR, particularly that any replacement building needs to be contained wholly within the existing building envelope and is to be designed to provide greater and improved amenity for occupants in addition to greater and improved amenity for neighbouring properties.
 - In assessing any variation to the development standards, Council will have regard to the impacts on the amenity of neighbouring properties and the locality in terms of overshadowing, visual bulk and scale, streetscape impacts, traffic impacts, visual and acoustic privacy and view loss. These impacts are to be assessed against the impacts from the existing building on site with the documentation submitted with the DA clearly demonstrating this.
 - Earthworks
 - Built form and urban design
 - Landscaping
 - Ecologically sustainable development
 - Stormwater
 - Waste management.

1.4. Proposal

The development application seeks consent for the demolition of all structures on the site and construction of a new part four and five-storey residential flat building.

The proposal includes a basement car park providing nine parking spaces, six of which are provided within car lifts. The basement will also provide plant, OSD tank, garbage storage room (including storage for bulky waste) and three motorcycle spaces.

The proposed building will provide five three-bedroom residential apartments with balconies at the front and rear. The apartment at Level 1 will have exclusive use of the rear yard with a swimming pool.



Figure 5: Photomontage of proposed residential flat building as viewed from Pacific Avenue



Figure 6: Photomontage showing proposal within the streetscape

1.5. Background

The development application was lodged on 02/02/2022 and further information requested on 07/02/2022 as follows:

1. Shadow diagrams that demonstrate the overshadowing from a height and FSR compliant development as compared to the proposed development.
2. The height must be calculated from the “existing ground level”, not an assumed natural ground level. The plans indicate that natural ground level has been used to calculate height. All associated documentation, including the Clause 4.6 Objection must be updated to reflect the height from the existing ground level.
3. The cost of work may be undervalued. Please review and clarify the cost of works.

The amended information was provided to Council on 15/02/2022.

2. ASSESSMENT

The following matters are to be considered in the assessment of this development application under section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act).

2.1. Planning Instruments and Development Control Plans

The following is an assessment against relevant legislation, environmental planning instruments, including State environmental planning policies (SEPPs), and development control plans.

2.1.1. State Environmental Planning Policies (SEPPs)

The following SEPPs apply from 1 March 2022 and have been considered acceptable in the assessment of this development application:

- SEPP (Building Sustainability Index – BASIX) 2004
- SEPP 65 (Design Quality of Residential Apartment Development) 2002
- SEPP (Biodiversity and Conservation) 2021
- SEPP (Resilience and Hazards) 2021

A detailed discussion is provided for relevant SEPP as follows:

SEPP (Design Quality of Residential Apartment Design)

The application was referred to the Waverley Design Advisory Excellence Panel (DEAP) on 16 March 2022. The DEAP’s comment of the proposed development against the nine design quality principles under Schedule 1 of SEPP 65 and a planning response to each comment where required are set out in **Table 1** of this report.

Table 1: Assessment against the Nine Design Quality Principles under SEPP 65

<p>Principle 1: Context and Neighbourhood</p> <p><i>The proposal does achieve this principle in the following ways:</i></p> <ul style="list-style-type: none"> <i>The proposal creates a more interesting form and expression than the existing building.</i>
<p>Principle 2: Built Form and Scale</p> <p><i>The proposal does not achieve this principle in the following ways:</i></p> <ul style="list-style-type: none"> <i>While the massing is not larger than the existing building, the size of the basement excavation is very significant. The Panel suggests that the applicant consider moving the car stacker location to the south, or simply parking on grade in a larger basement area, so the depth of excavation at the northern end is reduced.</i> <i>Any sandstone that is excavated can also potentially be used for paving or wall cladding.</i> <i>The panel suggest consideration of a basement layout that reduces excavation. This could be a series of perpendicular spaces with dual stackers perpendicular to the aisle or other.</i> <p>Planning comment: As will be discussed in greater detail later in this report, the excavation is to be reduced to comply with the requirements of the DCP for a 1.5m side setback side boundary. It is acknowledged that the subject site is narrow and in order to achieve parking, bin storage and common circulation, 1.5m cannot be achieved from both boundaries. In this regard, it is considered appropriate to have one side boundary with 1.5m and deep soil planting along this boundary. A condition of deferred commencement to this effect is included in the Appendix A.</p>
<p>Principle 3: Density</p> <p><i>No comment.</i></p>
<p>Principle 4: Sustainability</p> <p><i>The proposal does achieve this principle in the following ways:</i></p> <ul style="list-style-type: none"> <i>Exclusion of the use of natural gas in the building for cooktops, spatial heating, and water heating. Instead the building should use electricity for these items, and the future occupants therefore have the option of purchasing fully sustainable electricity.</i> <i>Electric car charging in the garage areas can be allowed for with the provision of separate cabling and charging points, that are linked to the electrical system for the strata component related to each carspace. Alternatively the minimum acceptable approach would be the inclusion of ducting that allows for future cabling and charging systems to be added.</i> <i>Privacy screening on the side walls will assist in reducing heat loads on the east and west facades</i> <i>The proposed 6KW PV Panel system on the roof is supported.</i> <i>Provision of ceiling fans to living and bedrooms is supported.</i>

Planning comment: Council does not currently have a policy to support the exclusion of use of natural gas within the building and as such, this cannot be required. A condition of deferred commencement regarding electric car charging is included in Appendix A.

Principle 5: Landscape

The proposal does achieve this principle however:

- *The Panel recommend where suitable throughout the deep soil zones to plant more endemic small to medium coast / salt tolerant species such as Banksia integrifolia that will provide long term amenity and habitat in this section of the coast.*
- *The Panel suggested that the Proponent look at opportunities to create a non habitable green roof on the most northern roof zone. Appropriate endemic coastal species are recommended.*

Planning comment: The site is located within a habitat corridor under DCP 2012 and as such a condition is included requiring that a minimum of 50% of the proposed trees, shrubs and grasses and groundcovers (not including turfed areas) are to be indigenous or local native plants as listed in the DCP.

The northern part of the roof will contain a 6kw solar photovoltaic system and therefore, cannot also contain a green roof. There is an opportunity to provide a green roof over the southern part of the roof adjoining the roof terrace however any species would need to be low growing to ensure the retention of significant views across the site from adjoining properties. A condition of deferred commencement to this effect is included in Appendix A.

Principle 6: Amenity

The proposal does not achieve this principle in the following ways:

- *Given the proximity of Tamarama Beach, an outdoor shower and towel hanger on the pathway up to the main entrance would be a sensible thing to include.*

Planning comment: This is exempt development subject to certain criteria.

Principle 7: Safety

The proposal does not achieve this principle in the following ways:

- *The lift system currently opens directly in the apartments on Levels 1, 2, and 4. The panel notes that this creates significant security and privacy issues. In particular, on Level 4 the lift opens directly into the main living space. While the lift could potentially be configured to only serve one apartment at a time, it would be better if the plans were reconfigured, so the lift simply opened into a secure lobby space.*

Planning comment: The opening of the lift directly into the apartment is not uncommon. Controlled access can be provided within the lift to ensure that only those occupants of each apartment can gain access.

Principle 8: Housing Diversity and Social Interaction

No comment

Principle 9: Aesthetics

The proposal does not achieve this principle in the following ways:

- The materials proposed for the building are generally supported with the exception of the proposed white painted render. The panel notes that the existing building and a number of neighbours have stain issues on painted render and suggest that more durable options be considered.*
- The panel recommend that an alternative finish other than painted cement render be considered. The alternative material would be best if a natural finish such as stone as one example that is capable of withstanding the harsh environmental conditions.*

Planning comment: A deferred commencement condition to this effect is included in Appendix A.

Apartment Design Guide

Clause 6A of SEPP 65 requires that development control plans (DCPs) cannot be inconsistent with the Apartment Design Guide (ADG) in respect of the following:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

If a DCP contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect. An assessment against the provisions within the ADG is provided in **Table 2** of this report.

Table 2: Apartment Design Guide

Design Criteria	Compliance	Comment
3F Visual privacy		
<ul style="list-style-type: none">Min separation distances from buildings to side and rear boundaries:Up to 12m (4 storey) – 6m habitable & 3m non-habitable	No	<p>The development maintains the side setbacks of the existing residential flat building on the site, providing 2.73m from the eastern (side) boundary and 2.875 from the western (side) boundary. Refer to detailed discussion following this table.</p> <p>The separation distance from the rear boundary, at 9.02m, is compliant with the ADG.</p>

Design Criteria	Compliance	Comment
4A Solar and daylight access		
<ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of units receive minimum of 2 hours direct sunlight between 9am-3pm mid-winter A maximum of 15% receive no direct sunlight between 9am-3pm mid-winter. 	Yes	<ul style="list-style-type: none"> 80% of units receive at least 2 hours mid-winter. All units are at least triple aspect and as such all receive some direct sunlight mid-winter. <p>The proposal is consistent with the remaining objectives of this part of the ADG ensuring that daylight access is satisfactory and incorporating shading in the warmer months.</p>
4B Natural ventilation		
<ul style="list-style-type: none"> All habitable rooms are naturally ventilated Number of units with natural cross ventilation is maximised: <ul style="list-style-type: none"> At least 60% of units naturally ventilated 	Yes	<ul style="list-style-type: none"> All habitable rooms are provided with at least one window for natural ventilation. All units have at least triple aspects. In this regard, 100% of the units can be naturally cross ventilated. <p>The proposal uses a combination of full height openable doors and windows to achieve appropriate cross ventilation within the building.</p>
4C Ceiling heights		
<ul style="list-style-type: none"> Habitable rooms – 2.7m Non-habitable rooms – 2.4m 2 storey units – 2.7m main level (living) & 2.4m upper floor where its area does not exceed 50% of the unit area Attics – 1.8m at edge of room with a 30° min ceiling slope 	Yes	<p>The ceiling heights within all units comply with the minimum requirement.</p>
4D Apartment size and layout		
<p>The following minimum internal areas apply:</p> <ul style="list-style-type: none"> 3 Bed = 90 m² Add 5m² for each additional bathroom (above 1) <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.</p>	Yes	<p>All apartments have internal areas in excess of the minimum ADG requirements. In this regard, the proposed apartment sizes and layout are acceptable.</p> <p>The Applicant states the proposal achieves compliance with the minimum glazed area to each habitable room.</p> <p>All bedrooms meet the minimum requirements in terms of dimensions and area.</p> <p>All kitchens are separate to the circulation spaces.</p>

Design Criteria	Compliance	Comment
		<p>All robes are adequately sized.</p> <p>The proposal is consistent with the objectives of this part of the ADG.</p>
4E Private open space and balconies		
<p>All apartments provide primary balcony as follows:</p> <ul style="list-style-type: none"> • 3+bed - 12m² & 2.4m depth • Ground level, min 15m² & 3m depth 	Yes	<p>100% of the units are provided with a balcony or courtyard accessed from the main living areas that meets the minimum requirements of the ADG in terms of area and depth.</p> <p>The design of the balconies and courtyards are integrated into, and contributes to, the architectural form and detail of the building. The finishes of the balconies are consistent with the contemporary palette of materials in the building overall.</p>
4F Common circulation and spaces		
<ul style="list-style-type: none"> • Max of 8 units accessed off a circulation core on a single level 	Yes	A maximum of two apartments are accessed off the circulation core.
4G Storage		
<p>In addition to kitchens, bathrooms and bedrooms, the following is provided:</p> <ul style="list-style-type: none"> • 3+bed – 10m³ 	Yes	The proposal provides separate storage within each apartment. The storage provided meets the requirements and objectives of the ADG.

The following is a detailed discussion of the issues identified in **Table 2** of this report in relation to the ADG.

Separation Distances

The ADG requires minimum separation distances from windows and balconies to side and rear boundaries of 6m for habitable rooms and 3m for non-habitable rooms for a four-storey building. The development maintains the side setbacks of the existing residential flat building on the site, providing 2.73m from the eastern (side) boundary and 2.875 from the western (side) boundary.

As is often the case with infill buildings, it is difficult to achieve 6m side boundary separation distances, as this would result in narrow buildings and apartments with poor internal amenity. In practice, a variation to the side setback is often permitted subject to appropriate consideration of the additional impacts and measures to ameliorate any impact.

The proposal has been designed to be contained within the envelope and footprint of the existing building. The overall height of the proposal will be less than the existing building on the site however the footprint, including side, rear and front setbacks will be maintained. The overshadowing impacts of the proposed new building are reduced from the impacts already experienced upon adjoining properties. The view impacts are also reduced as discussed in detail later in this report.

The proposal incorporates privacy screening to the windows on the side elevation to reduce privacy impacts upon adjoining properties. The exceptions to this are the side windows toward the front of the site, which have no screening. On the western side elevation, the unscreened portion of the window is directly opposite a window at the adjoining dwelling at No. 6 Pacific Avenue at the ground floor level (refer to **Figure 5** below). To protect the privacy of this window a deferred commencement condition is recommended to continue the screening at the ground and first floor levels to inhibit cross-viewing between the two properties.

On the eastern elevation, the front portion of the window that is unscreened is not opposite windows on the adjoining property at No. 4 Pacific Avenue however is located opposite the front balconies. Internal blade walls allow angled views toward the beach during the normal use of these rooms (ie, not standing directly in front of the window). It is also noted that the existing building has a greater privacy impact as side balconies wrap around the side of the existing building which are not included in the proposal. **Figure 5** below demonstrates that the balconies at 4 Pacific Avenue are currently overlooked by windows and side balconies. The proposed new building contains the balconies at the front of the building, removing the side balconies however, will retain a window on each level at the front on the side elevation. This represents a lesser impact than the existing building and is considered acceptable.

Although not technically a roof terrace, the proposal includes a large terrace over the front portion of the roof accessed by Unit 5 at the topmost level. This terrace is set back from all boundaries and is allocated to a single unit. Notwithstanding, the size of this terrace is excessive and as it is an introduced element to this building (ie, a new impact) and given the lack of separation distances, it is considered appropriate to limit the size to ensure that when in use, it cannot hold a significant amount of people resulting in unreasonable visual and acoustic impacts upon surrounding properties. A deferred commencement condition will require that the terrace is decreased in size and is included in Appendix A.



Figure 7: Existing building demonstrating the relationship of existing windows and balconies of adjoining properties

The reduced side setbacks are consistent with the existing building on the site and the pattern of development within the area and will not result in unreasonable additional amenity impacts upon surrounding properties. Accordingly, the variation to the separation distances is considered acceptable.

2.1.2. Draft Waverley Local Environmental Plan 2022 (Draft Waverley LEP 2022)

The Draft Waverley Local Environmental Plan 2022 was exhibited from 12 November 2021 to 23 January 2022, however at the time of this assessment, there are no relevant matters for consideration.

2.1.3. Waverley Local Environmental Plan 2012 (Waverley LEP 2012)

The relevant matters to be considered under the Waverley LEP 2012 for the proposed development are outlined below:

Table 3: Waverley LEP 2012 Compliance Table

Provision	Compliance	Comment
Part 1 Preliminary		
1.2 Aims of plan	Yes	The proposal is consistent with the aims of the LEP.
Part 2 Permitted or prohibited development		

Provision	Compliance	Comment
Land Use Table R3 Medium Density Residential Zone	Yes	The proposal is defined as a residential flat building which is permitted with consent in the R3 zone.
Part 4 Principal development standards		
4.3 Height of buildings <ul style="list-style-type: none"> 9.5m 	No	<p>The proposal has a maximum height of 15.23m exceeding the development standard by 5.73m or 60.3%.</p> <p>It should be noted that the proposal reduces the overall height of the building on site by 1.67m. The existing residential flat building on the site has a maximum height of 16.9m exceeding the development standard by 7.4m or 77.9%.</p>
4.4 Floor space ratio <ul style="list-style-type: none"> 0.6:1 397.5m² 	No	<p>The proposed development will have an FSR of 1.198:1 (794.12m²) exceeding the development standard by 396.62m² or 99.8%.</p> <p>It should be noted that the existing residential flat building on the site has an FSR of 1.048:1 exceeding the development standard by 297.36m² or 74.8%.</p> <p>The additional floor space proposed beyond that which already exists on the site equates to 99.26m².</p>
4.6 Exceptions to development standards	See discussion	The application is accompanied by a written request pursuant to clause 4.6 of Waverley LEP 2012 to vary the height and FSR development standards. A detailed discussion of the variation to the development standards is presented below this table.
Part 5 Miscellaneous provisions		
5.10 Heritage conservation	Yes	<p>The site is not heritage listed or located within a conservation area. However, the site is located opposite the Tamarama Beach, Park and Marine Drive Landscape Conservation Area (C61) and Tamarama Park Landscape Conservation Area (C62).</p> <p>The proposal will not harm the character or significance of the conservation area.</p>
Part 6 Additional local provisions		

Provision	Compliance	Comment
6.1 Acid sulfate soils	Yes	The site is designated as Class 5 on the Acid Sulfate soils map. A geotechnical investigation report has been submitted with the application which indicates that the water table is expected to be well below the subject site. As such, the proposal is unlikely to encounter acid sulfate soils.
6.2 Earthworks	Yes	<p>A Geotechnical Investigation Report has been provided which provides recommendations for excavation on the site. All standard conditions relating to excavation are included in the consent conditions. Further detailed geotechnical investigations are required as part of the construction certificate.</p> <p>As detailed later in this report, the basement will be required to be set back from one boundary by at least 1.5m to protect adjoining properties and provide deep soil for landscaping.</p>

The following is a detailed discussion of the issues identified in the compliance table above in relation to the Waverley LEP 2012.

Clause 4.6 Exceptions to Development Standards (Height)

The application seeks to vary the height of buildings development standard in clause 4.3 under Waverley LEP 2012.

The site is subject to a maximum height development standard of 9.5m. The proposed development has a height of 15.23m, exceeding the standard by 5.73m equating to a 60.3% variation.

However, it should be noted that the proposal is 1.67m lower than the existing building on the site. The existing residential flat building on the site has a maximum height of 16.9m exceeding the development standard by 7.4m or 77.9%.

A written request has been submitted to Council in accordance with clause 4.6(3)(a) and (b) of Waverley LEP 2012 seeking 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 standard.

A copy of the applicant's written request has been provided to the Waverley Local Planning Panel for consideration.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

The applicant seeks to justify the contravention of the height development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) *The amenity of the neighbouring properties is improved by this development as compared to the existing building.*
 - (ii) *Whilst it can be said that the material impacts from the development are greater than a 'fully compliant' building, this is not a practical application of the term 'preservation' in this particular case. It is inconceivable that the existing building would one day be replaced by a development that is almost half its size, as this would be counter to the economic and orderly development and use of the land – an Object of the EP&A Act.*
 - (iii) *Retention and renovation of the building would have 'negative environmental outcomes and would retain existing substandard levels of amenity, if a renovation were completed within the existing envelope it must follow that that development preserves the amenity of the neighbouring properties. That is, from a renovation there would be no greater impact but also no material benefit. It is a practical extension of this logic that a replacement building of the same or smaller scale as a renovated building, with improved environmental outcomes, increased amenity, better design and a reduced impact on the neighbouring properties therefore similarly preserves the neighbouring amenity to the same or greater degree'.*
 - (iv) *The variation of the standard, which results in a building form that is effectively and calculably lower than the existing building, allows for greater privacy, solar access, views and perceived visual bulk, and therefore greater amenity to neighbouring properties.*
 - (v) *In relation to privacy, the non-complaint height is not attributable to any visual or acoustic privacy impacts beyond the current levels of amenity experienced by the neighbouring properties. Privacy screens are proposed to side facing openings, whilst open balconies are replaced in their existing (albeit lower) locations.*
 - (vi) *With respect to overshadowing, detailed analysis accompanies the proposal that demonstrates there are solar gains to adjoining properties and no adverse impacts arising from the proposed height nor the redistribution in gross floor area within the existing building envelope.*
 - (vii) *With respect to views, detailed analysis again accompanies the proposal that illustrates that there will be a minor increase in views associated with the removal of the pitched roof form – and no further impact from any properties.*

- (viii) *The development offers a significantly improved presentation to the street and a meaningful contribution to the landscape setting through the introduction of compliant landscaped and deep soil areas that will accommodate over 1000 plants.*
 - (ix) *The building is compatible with the bulk, scale, streetscape and desired future character of the locality as it removes a bulky 1970s flat building that has a particularly poor streetscape presentation and substandard levels of amenity and environmental performance, and replaces it with a contemporary building form that makes a genuine contribution to the desired future character of the locality.*
 - (x) *The proposal's satisfaction of this objective does not rely solely on the premise that it is smaller than the existing building, nor that it provides greater amenity to neighbouring properties than existing buildings. The proposed development satisfies the objectives of the WDCP controls that assist with determining compatibility with character and acceptability of height.*
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) *The height variation is required to facilitate a replacement building on the site that, if not for the variation, would not be economically viable. Facilitating redevelopment on the site is fundamental to the orderly and economic use and development of the land where the existing building is past its useful life and has inadequate standards of occupant amenity, environmental sustainability and design excellence. The proposed variation relates to the top levels of the proposed development and it is the variation itself that facilitates attainment of an Object of the EP&A Act, as per Section 1.3(c).*
 - (ii) *Despite being above the height standard, the proposed development is lower than the existing building. This has allowed for improvements in amenity to the adjoining properties with respect to views, solar access, privacy, visual bulk and design.*
 - (iii) *The variation itself is exaggerated as a consequence of the topography of the site and the extant excavation of the existing building into the natural topography which artificially exaggerates the measurable height above existing ground level. This is an acknowledged environmental planning ground within the meaning of cl 4.6(3)(b) – see Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582.*
 - (iv) *The height is necessary to achieve design excellence on the site and to provide an appropriate correlation between the height and FSR development standards, as well as compliance with key WDCP objectives for height and building design, as well as Apartment Design Guide and SEPP 65 compliance.*
 - (v) *The height is necessary to satisfy Object 1(g) of the EP&A Act which seeks to promote good design and amenity of the built environment, whereby a compliant form would be incongruent with surrounding buildings.*
 - (vi) *The height is necessary to provide a development that is compatible with the desired future character of the locality. Similar to the development outcomes as per Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161, the height and FSR standards for this site are generic and do not account for existing and approved development in the locality or the nuances of this individual site. The existing building exceeds the height standard by 77.9% (and the FSR standard by 74.8%). A number of surrounding buildings have similar*

variations, demonstrating a disconnect between the standards and the character of the area. A detailed urban design study accompanies the application that illustrates that a replacement building of non-compliant height is necessary to meet the desired future character of the area having regard to the particular circumstances of the site.

- (vii) *The proposal is consistent with the objectives of the development standard and the objectives of the zone.*

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of clause 4.6 being 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 standard; and
- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at clause 4.6(3)(a)?

It is considered that the applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and has referenced one or more of the following justifications as set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446:

- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- (b) to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (c) to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- (d) to establish that 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; and*
- (e) to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant specifically relies upon justification (a) outlined above to address clause 4.6(3)(a) of Waverley LEP 2012. The applicant has provided sound justification establishing that the proposal is consistent with the objectives of the height development standard and the zoning.

Does the written request adequately address those issues at clause 4.6(3)(b)?

The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard. The environmental planning grounds used to justify the breach are well-considered and sound.

Is the development in the public interest?

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

The objectives of the height development standard are as follows:

- (a) to establish limits on the overall height of development to preserve the environmental amenity of neighbouring properties and public spaces and, if appropriate, the sharing of views,*
- (b) to increase development capacity within the Bondi Junction Centre to accommodate future retail and commercial floor space growth,*
- (c) to accommodate taller buildings on land in Zone B3 Commercial Core of the Bondi Junction Centre and provide an appropriate transition in building heights surrounding that land,*
- (d) to ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality and positively complement and contribute to the physical definition of the street network and public space.*

Objectives (b) and (c) are not relevant to the subject site.

Objective (a) requires that the overall height of development ‘preserves’ the amenity of surrounding properties. It is not a practical or realistic expectation that buildings which exceed the development standards will be replaced with buildings with a much lower height and reduced FSR than the existing building on the site to improve the amenity of surrounding properties. In order for the proposal to be consistent with objective (a) it need to ‘*preserve*’ the amenity of surrounding properties, not improve it.

The proposal replaces an existing building which already exceeds the height development standard by 7.4m or 77.9%, with one that will be lower by 1.67m to the rear portion of the building (except to the lift overrun) and 1m to the front portion. The proposal also contains the new building within the footprint of the existing building maintaining setbacks. The lowering of the height of the building overall will have measurably improved amenity for surrounding properties including increased views and reduced overshadowing. As previously discussed in Section 2.1.1 of this report, the proposal will not result in unreasonable privacy impacts to adjoining properties, subject to modifications required by conditions. As such, the proposal is consistent with objective (a).

The proposal will replace an existing building with limited contribution to the streetscape due to poor articulation and interface with the public domain, and inadequate front landscaping and open space. The proposed building will provide landscaping within the front setback to replace an existing paved area that is used for informal parking and vehicle manoeuvring. The terraced landscaping and front courtyard to the ground level apartment within the front setback improves the interface with the pedestrian environment and contributes to the streetscape appearance of the building. The replacement building, although over the height and FSR development standards, will provide improved amenity for occupants, a better resolved parking arrangement with less visibility and greater safety, and a highly articulated contemporary building that contributes to the streetscape.

The height of the proposed development will be commensurate with the height of other residential flat buildings fronting Pacific Avenue which is a mixture of two and three-storey dwellings and higher four-storey residential flat buildings. The applicant argues in the written objection that *'the height variation is required to facilitate a replacement building on the site that, if not for the variation, would not be economically viable. Facilitating redevelopment on the site is fundamental to the orderly and economic use and development of the land where the existing building is past its useful life and has inadequate standards of occupant amenity, environmental sustainability and design excellence. The proposed variation relates to the top levels of the proposed development and it is the variation itself that facilitates attainment of an Object of the EP&A Act, as per Section 1.3(c).'* This argument is agreed and the replacement of an existing over height building with a slightly lower building with improved amenity, reduced impacts upon neighbouring properties and design excellence is considered appropriate.

Given the above analysis, the proposal is considered to be consistent with objective (d).

The objectives of the R3 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 maximise public transport patronage and encourage walking and cycling.*

The proposal provides for the housing needs of the community by contributing to the variety and amount of housing stock available within the area, particularly as it provides larger three-bedroom apartments able to accommodate larger family groups. The proposal provides less parking than allowed by the maximum rates of the DCP and includes bicycle parking, both encouraging patronage of public transport and walking and cycling. In this regard, the proposal is consistent with the relevant objectives of the zone.

Conclusion

For the reasons provided above the requested variation to the height development standard is supported as the applicant's written request has adequately addressed the matters required to be

addressed by clause 4.6 of the Waverley LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height development standard and the R3 zone.

Clause 4.6 Exceptions to Development Standards (FSR)

The application seeks to vary the floor space ratio (FSR) development standard in clause 4.4 under Waverley LEP 2012.

The site is subject to a maximum FSR development standard of 0.6:1. The proposed development has an FSR of 1.198:1, exceeding the standard by 396.62m² equating to a 99.8% variation.

It should be noted that the existing residential flat building on the site has an FSR of 1.048:1 exceeding the development standard by 297.36m² or 74.8%. The proposal will result in an increase in gross floor area (GFA) of 99m².

A written request has been submitted to Council in accordance with clause 4.6(3)(a) and (b) of Waverley LEP 2012 seeking 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 standard.

A copy of the applicant's written request has been provided to the Waverley Local Planning Panel for consideration.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

The applicant seeks to justify the contravention of the FSR development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) *The finished height of the proposed building has an appropriate correlation with the density controls, although the calculable maximum building height is above the development standard by some margin. This margin is caused by the existing ground levels being taken from the excavated basement levels, exaggerating the calculable height, as well as pursuit of a replacement building that is viable to promote the orderly and economic use and development of the land, being a stated Object of the EP&A Act.*
 - (ii) *The existing density on the site is 6 units. It is proposed to provide 5 units. This level of density is appropriate to the R3 zoning. Given the variations to both the height and FSR caused by the existing and proposed development, the breach in FSR will not be perceived as additional or adverse bulk, nor will it be discordant with the height standard.*

- (iii) *The building is compatible with the bulk, scale, streetscape and desired future character of the locality as it removes a bulky 1970s flat building that has a particularly poor streetscape presentation and substandard levels of amenity and environmental performance, and replaces it with a contemporary building form that makes a genuine contribution to the desired future character of the locality. This is specifically achieved by the proposed additional floor area at the lower levels of the existing building where it makes a significant, positive contribution to the streetscape appearance of the building, replacing a two-storey garage wall.*
 - (iv) *The proposal's satisfaction of this objective does not rely solely on the premise that it is smaller than the existing building, nor that it provides greater amenity to neighbouring properties than existing buildings. The proposed development satisfies the objectives of the WDCP controls that assist with determining compatibility with character.*
 - (v) *The Urban Design Report by AE Design Partnerships accompanying this proposal assesses the local character via a study of the specific nuances of this site and the locality. It also informs the design in relation to desired future character and its compatibility with that character. It concludes that the design of the building achieves design excellence through responding to and respecting the surrounding and adjoining developments. In all cases, the development either preserves or improves impacts to and from neighbouring properties. This demonstrates that the proposal "achieves better outcomes for and from development by allowing flexibility in particular circumstances", as per cl4.6(1)(b) of the WLEP.*
 - (vi) *The amenity of the neighbouring properties is improved by this development as compared to the existing building.*
 - (vii) *Whilst it can be said that the material impacts from the development are greater than a 'fully compliant' building, this is not a practical application of the term 'preservation' in this particular case. It is inconceivable that the existing building would one day be replaced by a development that is almost half its size, as this would be counter to the economic and orderly development and use of the land – an Object of the EP&A Act.*
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) *The floor space is required to facilitate attainment of the desired future character objectives of the locality. Without a variation the existing building with its inappropriate presentation to the streetscape would remain.*
 - (ii) *The floor space is necessary to achieve design excellence on the site and provide an appropriate correlation between the height and FSR development standards, as well as compliance with key WDCP objectives regarding building design.*
 - (iii) *The floor space is necessary to satisfy Object 1(g) of the EP&A Act 1979 which seeks to promote good design and amenity of the built environment, whereby a compliant form would be incongruent with surrounding buildings.*
 - (iv) *The amount of additional floor space is necessary to satisfy Object 1(c) of the EP&A Act 1979 which seeks to promote the orderly and economic use and development of land. The addition of 99m² is modest and is attributable to an area where the existing building already has established a building envelope. If strict compliance with the standard was required, it would*

undermine the viability of a development on this site, causing the preservation of an existing 1970s building that is incompatible with the desired future character of the locality.

- (v) *The accommodation of the additional GFA is within the existing building envelope and its redistribution compared to the existing building has positive impacts on adjoining properties. Despite being above the standard, the proposed development is lower and has less bulk than the existing building. This has allowed for improvements in amenity to the adjoining properties with respect to views, solar access, privacy, visual bulk and design.*
- (vi) *The applicant is open to a dialogue with Council regarding a Planning Agreement (PA) that would be in accordance with the Waverley Planning Agreements Policy 2014 (Amendment 3). Any contribution associated with a PA would be for the express purpose of providing a public benefit.*
- (vii) *The floor space is necessary to provide a development that is compatible with the desired future character of the locality. Similar to the development outcomes as per Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161, the height and FSR standards for this site are generic and do not account for existing and approved development in the locality or the nuances of this individual site. The existing building exceeds the FSR standard by 74.8% (and the height FSR standard by 77.9%).*
- (viii) *A number of surrounding buildings have similar variations, demonstrating a disconnect between the standards and the character of the area. A detailed urban design study accompanies the application that illustrates that a replacement building of non-compliant FSR is necessary to meet the desired future character of the area having regard to the particular circumstances of the site.*
- (ix) *The proposal is consistent with the objectives of the development standard and the objectives of the zone.*

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of clause 4.6 being 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 standard; and
- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at clause 4.6(3)(a)?

It is considered that the applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and has referenced one or more of the following justifications as set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446:

- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- (b) to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (c) to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- (d) to establish that 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; and*
- (e) to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant specifically relies upon justification (a) outlined above to address clause 4.6(3)(a) of Waverley LEP 2012. The applicant has provided sound justification establishing that the proposal is consistent with the objectives of the FSR development standard and the zoning.

Does the written request adequately address those issues at clause 4.6(3)(b)?

The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard. The environmental planning grounds used to justify the breach are well-considered and sound.

Is the development in the public interest?

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

The objectives of the FSR development standard are as follows:

- (a) to ensure sufficient floor space can be accommodated within the Bondi Junction Centre to meet foreseeable future needs,*
- (b) to provide an appropriate correlation between maximum building heights and density controls,*
- (c) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,*
- (d) to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and the locality.*

Objective (a) is not relevant to the subject site.

The bulk and scale of the proposal has been discussed in detail in the previous section relating to the variation to the height development standard. In summary, the proposal will not result in any additional amenity impacts upon surrounding properties and will possibly increase amenity through increased views and reduced overshadowing. This is also true for impacts upon the locality as the proposal will likely improve public views and decrease overshadowing of public spaces. The building will also replace an older style building that makes a poor contribution to the streetscape with an articulated, contemporary building with greater internal amenity, environmental sustainability and design excellence. The proposal is considered consistent with the relevant objectives of the FSR development standard.

The applicant has submitted an undertaking to Council regarding their commitment to enter into a voluntary planning agreement (VPA) for the additional gross floor area above the existing building on the site in accordance with the *Waverley Council Planning Agreement Policy 2014* (the Policy).

The Policy provides a mechanism to address the public benefit offset of additional reasonable impacts from developments exceeding development standards. The offer to enter into a planning agreement addresses the public benefit aspect of maintaining the FSR development standard when Council considers a variation with the standard by way of assessing and determining a development application.

The fundamental principle of the Policy is that any benefit that arises from agreement to vary development standards is shared between developer and the community and must be acceptable on environmental impact grounds. The reasonableness of impacts associated with the additional floor space of the proposed development has been considered against the likely public interest (i.e. public domain improvements in the area), which has been found to be acceptable in this instance. The reasonableness relates to the merits of this case only as discussed in the body of this assessment report.

The proposal is in accordance with other variations which have been permitted in conjunction with public benefits or purpose, such as affordable housing, public domain works or the like. The proposed development is not against the public interest as it complies with the limitations set in the Policy.

A suitable public purpose or benefit is considered to be provided in the form of the forthcoming execution of a planning agreement, which would contribute to public works or a similar public benefit within the catchment of the site. Appropriate conditions are included in Appendix B in relation to the Planning Agreement.

The proposal is considered to be consistent with the objectives of the R2 zone as previously discussed.

Conclusion

For the reasons provided above, the requested variation to the FSR development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Waverley LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of FSR development standard and the R3 zone.

2.1.4. Draft Waverley Local Environmental Plan 2022 (Draft Waverley LEP 2022)

It is acknowledged that the Draft Waverley Local Environmental Plan 2022 is on exhibition from 12 November 2021 to 23 January 2022, however at the time of this assessment, there are no relevant matters for consideration.

2.1.5. Waverley Development Control Plan 2012 (Waverley DCP 2012) – Amendment No.9

The relevant matters to be considered under the Waverley DCP 2012 for the proposed development are outlined below:

Table 4: Waverley DCP 2012 – Part B General Provisions Compliance Table

Development Control	Compliance	Comment
1. Waste	Yes	Satisfactory
2. Ecologically Sustainable Development	Yes	Satisfactory
3. Landscaping and Biodiversity	Yes	The proposal provides sufficient landscaped area however a condition is recommended regarding species selection as the site is located within a habitat corridor.
5. Vegetation Preservation	N/A	There are no trees or significant vegetation proposed to be removed from the site.
6. Stormwater	Yes	Satisfactory subject to conditions recommended by Council's Stormwater Engineer.
7. Accessibility and Adaptability	Yes	Satisfactory as a lift is provided to all levels for accessibility. A condition is recommended regarding the provision of an accessible space.
8. Transport Zone 2 Minimum parking rate: • Nil Maximum parking rate: • 8 Visitor parking: • 1 Motorcycle parking: • 3 Bicycle parking:	Yes (subject to conditions)	The proposal provides for 10 car spaces, six of which are provided in double car stackers and three motorcycle spaces. This exceeds the maximum DCP rate of nine vehicle spaces. Deferred commencement conditions increasing the side setback of the basement level (discussed later in this report) will likely result in a reduced amount of parking spaces within the basement. Given that the DCP has a minimum rate of nil, this will continue to be compliant with the DCP controls. A visitor bicycle space is provided adjacent to the lobby. Residents have storage spaces on title large enough to accommodate Class 1 bicycle

Development Control	Compliance	Comment
<ul style="list-style-type: none"> Resident: 5 Visitor: 1 		<p>lockers, meeting the specific requirement of the DCP.</p> <p>One accessible space is required and a condition is recommended to address this.</p> <p>Further conditions have been recommended by Council's Traffic Engineers which are included in Appendix B.</p>
9. Heritage	Yes	Satisfactory
10. Safety	Yes	Satisfactory
12. Design Excellence	Yes	Satisfactory
14. Excavation	No	The excavation does not add to the bulk and scale of the building. The excavation is within 900mm of the boundary and should be set back 1.5m. This issue is discussed in detail following the tables in this report.

Table 5: Waverley DCP 2012 – Part C3 Other Residential Development Compliance Table

Development Control	Compliance	Comment
3.1 Site, scale and frontage		
<ul style="list-style-type: none"> Minimum frontage: 15m – R3 zone 	No	<p>The site frontage is 12.4m. Although less than the minimum frontage, the proposal replaces an existing residential flat building on the site in the same footprint. Given the existing situation, and that additional impacts are minimised, the site frontage is considered acceptable.</p>
3.2 Height		
<ul style="list-style-type: none"> Maximum external wall height: R3/9.5m – 7m 	No	<p>Wall height exceeds at 16m. The overall height of the building has been previously discussed in this report and found to be acceptable.</p> <p>The proposal presents to the street and all boundaries with a similar height to the existing building on the site. No new amenity impacts will be introduced to surrounding properties as a result of the development. The design and appearance of the building is vastly improved both within the streetscape and on all elevations presenting to adjoining buildings. The wall height is therefore considered acceptable.</p>
3.3 Setbacks		

Development Control	Compliance	Comment
3.3.1 - Street setbacks <ul style="list-style-type: none"> Consistent street setback 	Yes	The street setback is consistent with the existing building on the site. The setback is staggered between the two adjoining properties and is considered appropriate given the splayed frontage to this section of the road.
3.3.2- Side and rear setbacks <ul style="list-style-type: none"> Minimum side setback: 1.5-2.5m Minimum rear setback: 6m or predominant rear building line, whichever is the greater setback Deep soil along one side boundary min 2m wide 	Yes	<p>The development maintains the side setbacks of the existing residential flat building on the site, providing 2.73m from the eastern (side) boundary, 2.875 from the western (side) boundary and 9.02m from the northern (rear) boundary.</p> <p>Deferred commencement conditions will ensure that the basement is set back from one side boundary to allow deep soil planting to a width of 1.5m. This is considered acceptable particularly as the excavation controls of the DCP require only 1.5m for the basement rather than 2m.</p>
3.4 Length and depth of buildings		
<ul style="list-style-type: none"> Maximum building length: 24m Façade to be articulated Maximum depth: 18m 	Yes Yes No	<p>The width of the building at the street frontage is 8m. The design is appropriately articulated with balconies and finishes to minimise perceived bulk and contribute to the streetscape.</p> <p>The proposed building exceeds a depth of 18m. Notwithstanding, all apartments have at least three aspects, often four aspects and as such there is satisfactory solar access, light and ventilation. The footprint reflects the existing building on the site and as such, no additional impacts are introduced as part of the proposal.</p>
3.5 Building design and streetscape		
<ul style="list-style-type: none"> Respond to streetscape Sympathetic external finishes 	Yes	<p>The proposal provides a building with an improved streetscape appearance. The existing non-descript building is considered to detract from the streetscape particularly in regard to the two-storey blank façade at the lower level. The proposal will provide an appropriately articulated building with an improved appearance, particularly at the pedestrian level. The proposal results in an improvement to the old building stock through replacement with a well designed building with improved internal amenity and superior environmental sustainability.</p> <p>In response to the DEAP comments, deferred commencement conditions are recommended</p>

Development Control	Compliance	Comment
		addressing the external finishes, as previously discussed.
3.7 Fences and walls		
<p><i>Front fence:</i></p> <ul style="list-style-type: none"> • Maximum height 1.2m • Maximum 2/3 solid • Maximum height of 1.8m and solid when secondary wall set within property if required for traffic noise <p><i>Side fence:</i></p> <ul style="list-style-type: none"> • Maximum height: 1.8m <p><i>Rear fence:</i></p> <ul style="list-style-type: none"> • Maximum height: 1.8m 	<p>Yes</p> <p>N/A</p> <p>N/A</p>	<p>The front boundary treatment is terraced with a low front wall, fencing and planters stepping back to a front terrace raised above the footpath level to the ground floor apartment. This is an appropriate response to the slope of the site and will provide an interesting interface with the footpath and the street.</p> <p>Details regarding side and rear boundary fences have not been provided and as such the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 will apply unless separate development consent is sought at a later date.</p>
3.8 Pedestrian access and entry		
<ul style="list-style-type: none"> • Entry at street level and respond to pattern within the street • Accessible entry • Separate to vehicular entry • Legible, safe, well-lit 	Yes	Entry is provided along the western boundary via a ramp from the street to a central lobby. The pedestrian entry is separate to the vehicular entry and is legible and safe.
3.9 Landscaping		
<ul style="list-style-type: none"> • Comply with Part B3-Landscaping and Biodiversity • Minimum of 30% of site landscaped: 198.75m² • 50% of the above is to be deep soil: 99m² 	<p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>Refer to Table 4.</p> <ul style="list-style-type: none"> • 31.5% of the site is to be landscaped. • 50% is deep soil noting that this will likely increase due to the recommended deferred commencement conditions.
3.10 Communal open space		
<ul style="list-style-type: none"> • Minimum 15% communal (R3 zone) • Min 25% communal (R4 zone) • Minimum dimensions: 6m x 6m • Minimum of 30% of communal area must receive three hours of sunlight 	No	The proposal provides no communal open space however each apartment is provided with sufficient private open space to meet user needs and the site is located opposite Tamarama Beach and foreshore parks which provide an abundance of recreational areas.

Development Control	Compliance	Comment
<ul style="list-style-type: none"> • Accessible 		
3.12 Vehicular access and parking		
<ul style="list-style-type: none"> • Car parking to be integrated into the design of the development • Max 1 x 2-way vehicle access point • Pedestrian safety considered • Basement parking should not contravene deep soil zone controls 	Yes	<p>The basement car park will be located below the building ensuring integration into the design of the building.</p> <p>The proposed driveway is 3m wide providing a one-way access point. At present almost the entire frontage of the site is a driveway crossing and therefore the proposal will allow increased on-street parking in front of the site.</p> <p>Pedestrian safety has been considered by providing progressively lower walls at the front of the site to enable sightlines to the footpath.</p> <p>Deferred commencement conditions will ensure that the proposal meets the deep soil controls.</p>
3.13 Solar access and overshadowing		
<ul style="list-style-type: none"> • New development should maintain at least two hours of sunlight to solar collectors on adjoining properties in mid-winter. • Direct sunlight to north facing windows of habitable rooms on all private open space areas of adjacent dwellings to less than three hours of sunlight on 21 June. 	Yes	<p>The proposal will result in reduced or the same level of overshadowing of surrounding properties as the existing building on site is higher than the proposed and the footprint is the same.</p>
3.14 Views and view sharing		
<ul style="list-style-type: none"> • Minimise view loss through design • Landscaping on sites adjacent to a Council park or reserve should be sympathetic to soften the public/private interface. • Views from public spaces to be maintained. 	Yes	<p>Refer to detailed discussion following this table.</p> <p>The site is located opposite Tamarama Beach and Park. The proposal provides increased and improved landscaping within the front setback contributing to the character of the site overall and softening the public/private interface of the site.</p> <p>The proposal will not impact upon any known public domain views.</p>
3.15 Visual privacy and security		

Development Control	Compliance	Comment
<ul style="list-style-type: none"> Dwellings to be orientated to the street with entrances and street numbering visible Above ground open space must not overlook rooms and private landscaped areas of adjoining properties or be screened Privacy be considered in relation to context density, separation use and design. Prevent overlooking of more than 50% of private open space of lower level dwellings in same development Roof tops are to be non-trafficable, unless there is a predominance of roof terraces in the immediate vicinity of the site. 	Yes	<p>Privacy impacts have been discussed previously in Section 2.1.1 of this report (refer to separation distances discussion).</p> <p>The main living areas and connecting private open spaces are orientated toward the street for passive surveillance.</p> <p>The balconies at the rear will have outlook to 10 Silva Street and across side boundaries. These balconies are accessed via bedrooms which are rooms of low use with fewer privacy impacts. The balconies are also secondary balconies unlikely to be used as the principal area of private open space for entertaining, given views achieved from the main balconies at the front that are accessed from living areas. It should be noted that the existing building has balconies at the rear in a similar location and as such, no additional privacy impacts will be introduced as part of this proposal. Providing side screening to the balconies may result in loss of water glimpses from surrounding properties and as such, is not recommended. There is sufficient distance (9m) from the rear boundary to ensure that privacy impacts upon the adjoining rear properties is not unreasonable.</p> <p>The balconies within the development are located to ensure minimal overlooking of the properties below. The rear yard allocated to Unit 2 will be overlooked by the balconies above however, as previously outlined, these balconies are not the principal private open space area and as such are considered acceptable.</p> <p>Side windows are appropriately screened to enhance the privacy of adjoining properties.</p>
3.19 Acoustic privacy		
<ul style="list-style-type: none"> Internal amenity by locating noisy areas away from quiet areas 	Yes	<p>Acoustic privacy has been considered in the design by locating rooms with similar uses above and below each other.</p> <p>The main principal balconies are located at the front of the site overlooking the street where noise levels are higher.</p>
3.21 Building services		

Development Control	Compliance	Comment
<ul style="list-style-type: none"> Services are to be integrated into the design of buildings (garbage rooms, mail boxes, fire hydrants boosters, electrical substations, down pipes, plant rooms, satellite/communications structures) Outdoor Communal clothes drying area to be provided Plant rooms away from entry communal and private open spaces and bedrooms. Services on roof not to be seen from street or impact public or private views and be min 2m from the building edge 	Yes	<p>Services are integrated into the design of the building. The letter boxes will be located adjacent to the main entry accessed via the side ramp.</p> <p>There are no services proposed on the roof of the building, with the exception of solar panels.</p> <p>There is no communal space on site and as such, no communal clothes drying area is provided. Each apartment provides two balconies with the north facing rear balconies having sufficient area for the drying of clothes.</p> <p>Plant is located within a half basement area on the ground floor level away from windows. A condition regarding noise from mechanical plant is included in Appendix B.</p>

The following is a detailed discussion of the issues identified in the compliance tables above in relation to the Waverley DCP 2012.

Excavation

The proposal largely complies with the DCP controls and objectives for excavation except that the DCP requires that it is not to occur within a 1.5m setback from side boundaries and shall only occur within the building footprint except where access to a basement car park is required. It is noted that there is a large amount of excavation proposed however this is due to the steep slope of the land from the rear to the front. This also allows the building to provide one and half levels of basement to accommodate plant and storage below ground level.

The proposed basement is to be within 1.5m of the side boundary on both sides and outside of the footprint of the building above. Given the limited width of the site, and to enable manoeuvrability within the car park, the basement needs to be larger than the footprint of the building. A Geotechnical Investigation Report has been provided which provides initial recommendations in relation to the protection of adjoining properties and conditions will require more detailed geotechnical investigations as part of the construction certificate and certification.

In order to ensure deep soil along one side boundary and to provide increased protection to the adjoining dwelling with limited setbacks along the western boundary, it is considered appropriate to increase the setback of the basement on the western side to 1.5m. To provide 1.5m side setbacks from both side boundaries would result in minimal parking provided on site and potentially inadequate vehicle

manoeuvrability within the car park. It is also noted that a driveway at No. 4 Pacific Avenue on the eastern side provides separation to the building on this site. The geotechnical report will provide the means for ensuring the protection of the adjoining properties as required by conditions. Accordingly, the excavation is considered acceptable subject to deferred commencement conditions increasing the setback of the basement from the western side boundary.

View Impacts

The proposal will not result in view loss from surrounding properties as it is contained within the footprint and envelope of the existing building. In effect, given that the proposed building will be lower than the existing building on the site, the proposal may result in improved views over the site. The following images were provided by the Applicant indicating the potential views from two properties to the rear of the site, 10 Silva Street directly to the rear of the site and 15/3-4A Pacific Avenue, adjoining to the north-east of the site (rear apartment in adjoining residential flat building complex):

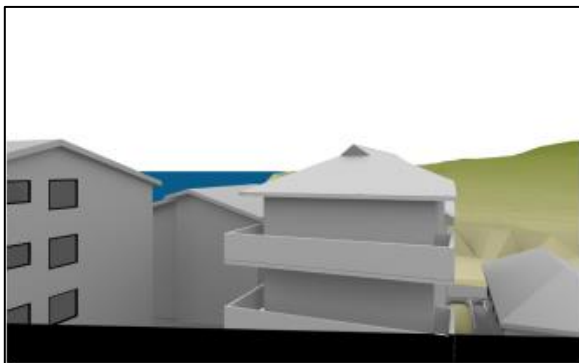


Figure 8: Indicative existing view from 10 Silva Street to the north of the site



Figure 9: Indicative proposed view from 10 Silva Street to the north of the site

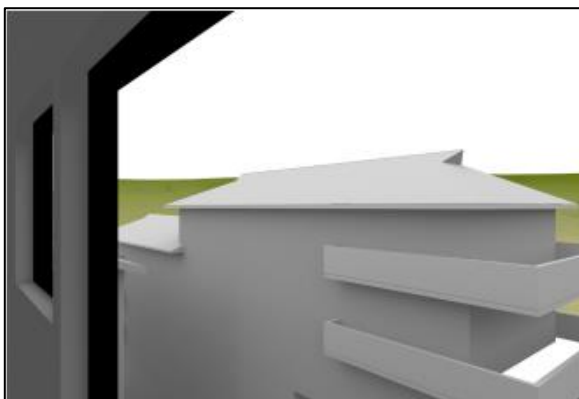


Figure 10: Indicative existing view from bedroom of 15/3-4A Pacific Avenue to the north-east of the site

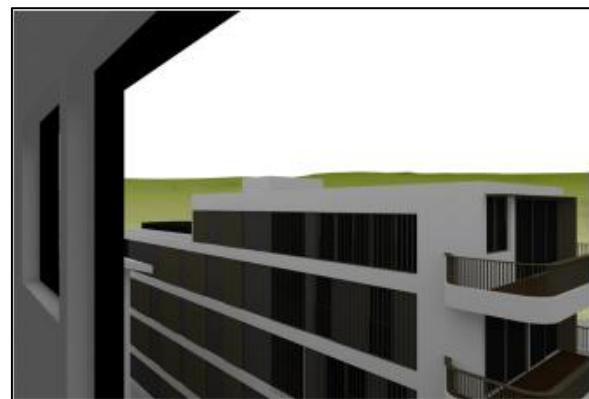


Figure 11: Indicative proposed view from bedroom of 15/3-4A Pacific Avenue to the north-east of the site

It should be noted that objections were not received from the above properties shown in **Figures 8 to 11**. Objections raising view impacts were received from other surrounding properties including from 8 Silva Street, 7 Pacific Avenue and photographs were provided. Assessment of the view impacts was undertaken based upon the photographs provided and given that the proposed will be lowering the

overall height of the building (both at the front and the rear) and containing the proposal to the footprint of the existing building, current views will either be maintained or improved.

One objection raised the issue of the solar panels extending to be within the view corridors. The applicant has advised that the solar panels will generally be flush with the roof extending above approximately 250mm (RL 32.30). Solar panels can be carried out as complying development subject to meeting prescribed criteria under SEPP (Transport and Infrastructure) 2021. The solar panels on the rear roof would have a maximum height of 1m under this legislation. This would continue to be lower than the existing building on the site and as such is unlikely to impact upon views. As the building will exceed the height development standard, it is important to ensure that the solar panels should be limited in height to ensure that they do not extend above the existing height of the building. In this regard, a condition will require that the solar panels are flush with the roof and extend no more than 250mm above the roof.

Given the above analysis, the proposal is unlikely to impact upon existing views over the site and is more likely to result in improved views from surrounding properties.

2.2. Other Impacts of the Development

The proposal is considered to have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

2.3. Suitability of the Site for the Development

The site is considered suitable for the proposal.

2.4. Any Submissions

The application was notified for 21 days and a site notice erected on the site in accordance with the *Waverley Community Development Participation and Consultation Plan*.

A total of 7 unique submissions were received from the following properties (not including submission without an address provided):

Table 6: Number of and where submissions were received from.

Count	Property Address
1.	5/3 Pacific Avenue, Tamarama
2.	7 Pacific Avenue, Tamarama (2 unique submissions)
3.	8 Silva Street, Tamarama (2 unique submissions)
4.	12 Silva Street, Tamarama
5.	2/3-4 Pacific Avenue, Tamarama
6.	No address provided

The following issues raised in the submissions have already been discussed and addressed in the body of this report and/or the Recommendation:

- Excavation
- Stormwater
- FSR (overdevelopment)
- Height
- Streetscape
- Privacy
- Non-compliance with LEP and DCP
- Parking
- View impact

All other issues raised in the submissions are summarised and discussed below.

Issue: Insufficient information to enable an accurate assessment of the proposal, particularly in regard to details of the existing building and potential view loss and overshadowing. No structural reports validating end of useful life of the existing building.

Response: The existing floor plans have been provided demonstrating the GFA/FSR of the existing building. There is no requirement that proof must be provided of end of structural life to demolish a building. Sufficient information has been provided for assessment purposes. View impact diagrams were included as shown in the previous discussion in Section 2.1.5 of this report.

Issue: Any new building should have to adhere to the LEP and DCP controls, not utilise the existing building envelope.

Response: This has been discussed in detail previously in Section 2.1.4 of this report.

Issue: Cost of works is underestimated.

Response: A QS report was provided at the request of Council verifying the cost of works as correct.

Issue: Sets a precedent for overdevelopment.

Response: All development applications are assessed in accordance with the controls and on their own merits.

Issue: Construction issues including noise and access; request for dilapidation reports if approved.

Response: Council cannot refuse the application due to construction issues. A condition regarding dilapidation reports is included in Appendix B.

2.5. Public Interest

The proposal is considered to have no detrimental effect on the public interest, subject to appropriate conditions being imposed.

3. REFERRALS

The following internal and external referral comments were sought:

3.1. Traffic and Development

Conditions were recommended which are included in Appendix B.

3.2. Stormwater

The stormwater plans were considered unsatisfactory however this matter can be dealt with post-consent. Conditions were recommended which are included in Appendix B.

3.3. Tree Management

Conditions were recommended which are included in Appendix B.

3.4. Waste Management

Conditions were recommended which are included in Appendix B.

3.5. Biodiversity

Conditions were recommended which are included in Appendix B.

3.6. Strategic Planning

A condition was recommended in relation to the planning agreement which is included in Appendix B.

4. CONCLUSION

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the Act. It is recommended for approval subject to conditions of deferred commencement consent.

Development and Building Unit (DBU) Decision:



The application was reviewed by the DBU at the meeting on 31/05/2022 and the DBU determined:

- (a) The application is acceptable and should be approved, subject to the conditions in Appendices A and B.

DBU members: *M Reid, A Rossi, B Magistrale, D Knight and T Sneesby*

5. RECOMMENDATION TO WAVERLEY LOCAL PLANNING PANEL

That the development application be GRANTED DEFFERED COMMENCMENT CONSENT by the Waverley Local Planning Panel subject to the conditions in Appendix A and B.

Report prepared by:	Application reviewed and agreed on behalf of the Development and Building Unit by:
	
Kylie Lucas	Tim Sneesby
Senior Development Assessment Planner	Acting Manager, Development Assessment (Area 1) (Reviewed and agreed on behalf of the Development and Building Unit)
Date: 06/07/2022	Date: 13 July 2022

Reason for WLPP referral:

3. Departure from any development standard in an EPI by more than 10%
4. Sensitive development:
 - (a) SEPP 65 development
 - (b) Planning Agreements

ATTACHMENT A

The consent authority must be satisfied as to the following matters before the consent can operate.

DEFERRED COMMENCEMENT

That the Council grant deferred commencement consent in accordance with the provisions of Section 4.16 (3) of the Environmental Planning and Assessment Act 1979.

The consent is not to operate until the applicant has satisfied Council as to the following matters:

1. In order to ensure deep soil along one side boundary and to provide increased protection to the adjoining dwelling with limited setbacks along the western boundary, the basement is to be set back a minimum of 1.5 metres from the western side boundary. The number of car parking spaces may be reduced to accommodate this.
2. Electric car charging in the garage areas must be allowed for through the provision of separate cabling and charging points, that are linked to the electrical system for each car space. Alternatively, the minimum acceptable approach would be the inclusion of ducting that allows for future cabling and charging systems to be added.
3. The top floor terrace allocated to 'Unit 5' at Level 4 shall be reduced to a maximum area of 15m² to reduce visual and acoustic privacy impacts upon surrounding properties. The remaining roof area shall be converted to a 'green roof' with low growing species that have a mature height of no more than 1 metre. A minimum of 50% of the species are to be indigenous or local native plants listed in Annexure B2-1 of Waverley Development Control Plan 2012.
4. The white paint render is to be replaced with a more durable option for the coastal environment and the green roof. The alternative material would be best if a natural finish such as stone as one example that is capable of withstanding the harsh environmental conditions.
5. The screening of windows on the western elevation to the living areas at ground and first floor levels shall be continued for the full extent of the glazing to limit privacy impacts on the opposing eastern window of No. 6 Pacific Street.
6. The solar panels are to be flush mounted on the roof and extend no more than 250mm above the roof.

This development consent does not operate until the applicant satisfies Waverley Council, in accordance with the regulations, as to the matters specified in the above conditions and Waverley Council confirms such satisfaction in writing.

Attachment B

Upon satisfying the consent authority as to the matters in Attachment A, the following conditions will apply.

A. APPROVED DEVELOPMENT

1. APPROVED PLANS AND DOCUMENTATION

The development must be in accordance with:

- (a) Architectural Plans prepared by Mark Shapiro Architects of Project No: 20022 including the following:

Plan Number and Revision	Plan description	Plan Date	Date received by Council
DA 1001 Rev. A	SITE ANALYSIS PLAN	15/12/2022	02/02/2022
DA 2000 Rev. A	BASEMENT & GROUND PLAN	15/12/2022	02/02/2022
DA 2001 Rev. A	LEVEL 1 & 2 PLANS	15/12/2022	02/02/2022
DA 2002 Rev. A	LEVEL 3 & 4 PLANS	15/12/2022	02/02/2022
DA 2003 Rev. A	ROOF PLAN	15/12/2022	02/02/2022
DA 2004 Rev. A	GROUND LEVEL DETAIL PLAN	15/12/2022	02/02/2022
DA 2005 Rev. A	GROUND LEVEL REAR DETAIL PLAN	15/12/2022	02/02/2022
DA 2006 Rev. A	LEVEL 1 DETAIL PLAN	15/12/2022	02/02/2022
DA 2007 Rev. A	LEVEL 1 REAR DETAIL PLAN	15/12/2022	02/02/2022
DA 2008 Rev. A	LEVEL 2 DETAIL PLAN	15/12/2022	02/02/2022
DA 2009 Rev. A	LEVEL 3 DETAIL PLAN	15/12/2022	02/02/2022
DA 2010 Rev. A	LEVEL 4 DETAIL PLAN	15/12/2022	02/02/2022
DA 2011 Rev. A	ROOF PLAN	15/12/2022	02/02/2022
DA 2300 Rev. B	SITE SECTIONS	11/02/2022	11/02/2022
DA 2301 Rev. A	DRIVEWAY ENTRY RAMP SECTION	15/12/2022	02/02/2022
DA 2400 Rev. A	ELEVATIONS NORTH & SOUTH	15/12/2022	02/02/2022
DA 2401 Rev. A	ELEVATIONS EAST & WEST	15/12/2022	02/02/2022
DA 2402 Rev. A	EXTERNAL FINISHES	15/12/2022	02/02/2022

- (b) Landscape Plan No. LP01-2021, LP02-2021 and LP03-2021 and documentation prepared by Tanya Wood Landscape Architecture, dated 18/08/2021 and received by Council on 02/02/2022,
- (c) BASIX Certificate,
- (d) Geotechnical Investigation reference 34268PHrpt prepared by JK Geotechnics dated 3 September 2021 and received by Council on 02/02/2022,

- (e) Traffic and Parking Assessment Report reference 21411 prepared by Varga Traffic Planning dated 22 October 2021 and received by Council on 02/02/2022,
- (f) The Site Waste and Recycling Management Plan (SWRMP) Part 1.

Except where amended by the following conditions of consent.

NOTE – Plan references above are likely to change following satisfaction of the deferred commencement matter. As this occurs, condition 1 will be updated to reflect the new documentation.

2. MULTI UNIT HOUSING DEVELOPMENT DESIGN (SEPP 65 DEVELOPMENT)

The approved design (including any element or detail of that design) or materials, finish or colours of the building must not be changed without the written approval of Council.

B. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

GENERAL REQUIREMENTS

3. NO BUILDING OR DEMOLITION WORKS PRIOR TO RELEASE OF CONSTRUCTION CERTIFICATE

The building work, or demolition work, must not be commenced until:

- (a) a Construction Certificate has been obtained from Council or an Accredited Certifier in accordance with the *Environmental Planning and Assessment Act 1979*;
- (b) a Principal Certifying Authority has been appointed and Council has been notified of the appointment in accordance with the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*; and
- (c) Council is given at least two days' notice in writing of the intention to commence the building works.

CONTRIBUTIONS, FEES & BONDS

4. PLANNING AGREEMENT

- (a) The owner/applicant is to:
 - (i) Enter into an Agreement in accordance with Waverley's Planning Agreement Policy 2014 prior to the issue of any Construction Certificate for the development that relates to works contained in **DA-44/2022**; and
 - (ii) Pay a monetary contribution amount of **\$340,319.86** prior to the issue of any Occupation certificate for the Development
 - (iii) A Planning Agreement will be entered into under Section 7.4 of the Environment Planning and Assessment Act 1979 between the applicant/owner of the land subject of the Development and Council.
- (b) In accordance with the said offer, the Planning Agreement shall make provision in respect to the following:
 - (i) The Planning Agreement shall be registered upon the title to the land the subject of the Development prior to the issue of any Construction Certificate for the Development
 - (ii) The owner/applicant shall provide Council with a Bank Guarantee to secure the payment of the Monetary Contribution prior to the issue of any Construction Certificate for the Development which is:
 - In a form acceptable to Council and from an institution acceptable to Council
 - Irrevocable
 - Unconditional
 - With no end date

- (c) The payment of the Monetary Contribution to Council is to be made prior to the issue of any Occupation Certificate for the Development and is to be applied towards a public purpose in accordance with the Agreement and Council's Planning Agreement Policy 2014.

5. SECTION 7.12 CONTRIBUTION

A monetary development contribution is payable to Waverley Council pursuant to section 7.12 of the *Environmental Planning and Assessment Act 1979* and the Waverley Council Development Contributions Plan 2006 in accordance with the following:

- (a) A cost report indicating the itemised cost of the development shall be completed and submitted to Council:
- (i) Where the total development cost is less than \$500,000:
"Waverley Council Cost Summary Report"; or,
 - (ii) Where the total development cost is \$500,000 or more:
"Waverley Council Registered Quantity Surveyor's Detailed Cost Report".

A copy of the required format for the cost reports are provided in the Waverley Council Contributions Plan 2006, available on Council's website.

- (b) As legislated in section 25K of the Environmental Planning and Assessment Regulation 2000, the levy must be paid in accordance with the following;
- (i) A development valued at \$100,000 or less will be exempt from the levy;
 - (ii) A development valued at \$100,001 - \$200,000 will attract a levy of 0.5% of the full cost of the development; or
 - (iii) A development valued at \$200,001 or more will attract a levy of 1% of the full cost of the development.

Prior to the issue of any Construction Certificate, evidence must be provided that the levy has been paid to Council in accordance with this condition or that the cost of works is less than \$100,000.

6. SECURITY DEPOSIT

A deposit (cash or cheque) or guarantee for the amount of **\$82,097** must be provided to Council for any damage caused to any property of the consent authority (ie. public land) as a consequence of the works and completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent.

This deposit (cash or cheque) or guarantee must be provided to Council prior to the issue of any Construction Certificate. The full amount of the deposit, minus Council's costs for any repair of damage to Council property or rectification of unauthorised works on Council property, will be refunded after satisfactory completion all of works associated with this consent (including the required public works) to the person who paid the deposit.

7. LONG SERVICE LEVY

A long service levy, as required under section 34 of the *Building and Construction Industry Long Service Payments Act, 1986*, is to be paid in respect of this building work. Evidence that the levy has been paid is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Note: Council acts as an agent for the Long Service Payment Corporation and the levy may be paid at Council's office. The levy rate is 0.35% of building work costing \$25,000 or more.

PLAN DETAILS

8. VERIFICATION OF CONSTRUCTION CERTIFICATE DOCUMENTATION (SEPP 65 BUILDINGS)

The preparation of the construction certificate plans shall be supervised and be to the satisfaction of an architect who is registered in accordance with the *Architects Act 2003* (i.e. a qualified designer) in accordance with the requirements of the *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development*.

In accordance with the Environmental Planning and Assessment Regulation 2000, the Principal Certifying Authority must not issue a construction certificate unless it has received a design verification statement from a qualified designer which verifies that the construction certificate plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in *State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development*.

9. UNIVERSAL HOUSING

Apartments in the development are to be provided with universal design features (as outlined in the *Liveable Housing Design Guidelines*) to meet the changing need of occupants over their lifetimes in accordance with Part B7 of the *Waverley Development Control Plan 2012*.

CONSTRUCTION & SITE MATTERS

10. HOARDING

To ensure the site is contained during construction, a hoarding is required for the approved works, which is to be designed and constructed in accordance with the requirements of Safe Work NSW. Where the hoarding is to be erected over the footpath or any public place, the approval of Council's Compliance Unit must be obtained and the applicable fees paid, prior to the erection of the hoarding.

11. EROSION & SEDIMENT CONTROL

A Soil and Water Management Plan (SWMP), also known as an Erosion and Sediment Control Plan must be prepared in accordance with Waverley Council's Water Management Technical Manual.

The SWMP must be approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. A copy of the SWMP must be kept on site at all times and made available to Council officers upon request.

The recommendations of the SWMP must be implemented and maintained during all construction activities and until the site is fully stabilised following construction.

12. DETAILS OF EXCAVATION, SHORING OR PILE CONSTRUCTION

(g) A report shall be prepared by a suitably qualified and practising Structural Engineer/Geotechnical Engineer detailing the proposed methods of bulk excavation, shoring or pile construction, including details of vibration emissions and any possible damage which may occur to adjoining or nearby properties as a result of the proposed building and excavation works.

(h) Any practices or procedures specified in the Structural Engineer's report in relation to the avoidance or minimisation of structural damage to adjoining properties are to be fully complied with and incorporated into the plans and specifications together with the Construction Certificate.

13. ENGINEERING DETAILS

(i) Structural details are to be prepared and certified by a practicing Structural Engineer in connection with all structural components of the approved works, prior to the issue of the relevant Construction Certificate.

14. TELECOMMUNICATIONS IN NEW RESIDENTIAL FLAT BUILDING AND MIXED USE DEVELOPMENTS

Evidence is to be provided to the Principal Certifier that arrangements have been made for;

- (a) The installation of fibre-ready facilities to all individual lots and/or premises to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and
- (b) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises demonstrated through an agreement with a carrier.

15. SYDNEY WATER SECTION 73 COMPLIANCE CERTIFICATE APPLICATION

An application to obtain a Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be made prior to the issue of the relevant Construction Certificate. The application must be made through an authorised Water Servicing Coordinator.

For more information about making an application to obtain a Section 73 Compliance Certificate, please consult Sydney Water's website.

Following this application, a "Notice of Requirements" will be provided by Sydney Water that outlines any requirements of works to be completed prior to the issue of the Section 73 Compliance Certificate. Please make early contact **with the Coordinator**, as building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

A Section 73 Compliance Certificate must be issued from Sydney Water prior to the issue of an occupation certificate.

TRAFFIC MANAGEMENT

16. CONSTRUCTION TRAFFIC MANAGEMENT PLAN (CTMP) (TO BE IMPOSED BY TRAFFIC)

The applicant is to submit a Construction Traffic Management Plan (CTMP) for the approval of Council's Executive Manager, Infrastructure Services, or delegate, prior to the issue of any Construction

Certificate. For further information on what is required in the CTMP, please refer to Council's website at:

https://www.waverley.nsw.gov.au/building/development_applications/post_determination/development_applications_-_conditions_of_consent

STORMWATER & FLOODING

17. STORMWATER MANAGEMENT

To ensure that stormwater runoff from the development is drained in an appropriate manner, without impact to neighbouring properties and downstream systems, a detailed plan and certification of the development's stormwater management system must be submitted and approved by the Executive Manager, Infrastructure Services (or delegate) prior to the issue of the relevant Construction Certificate.

The submitted stormwater management plan prepared by itm design Pty Ltd, Job No. 20/329, Drawing No. H-DA-00, H-DA-01, H-DA-02, H-DA-03, H-DA-04 & H-DA-05, Issue A, dated 4/11/2021, is considered unsatisfactory.

The applicant must submit plans and specifications to comply with the current Waverley Council Water Management Technical Manual and Development Control Plan (DCP) at the time of engineering plan approval. The submitted plans shall be prepared by a suitably qualified and practising Civil Engineer and:

- a) The plans shall provide details of any required On-Site Stormwater Detention (OSD) system and its details e.g. pit dimensions, cross & long sections, significant water invert levels of inlet and outlet pipes, details of Discharge Control Pit, orifice plate details including orifice diameter, depth of water above centreline of orifice etc., pit overflow, OSD plaque, OSD warning sign and catchment plan. Council's mandatory OSD checklist as set out in Council's Water Management Technical Manual shall be completed and submitted.
- b) The plans shall provide a complete and detailed OSD design including multiple cross-sections (drawn to a suitable scale), proposed construction materials, and full orifice details.
- c) The building works appear to be located within the path of the natural runoff caused by the localised upstream catchment from the rear. Given that the site incorporates on-site stormwater detention (OSD), the engineer shall demonstrate that the water caused from the upstream catchment can be captured and redirected to the kerb and gutter via a swale and pipe or pit and pipe system along the boundaries (independent of any OSD system). Calculations in relation to the upstream catchment and the proposed system shall be submitted to Council demonstrating that the proposed system has sufficient capacity to capture and discharge the flows generated during the storm event.
- d) The invert level of the OSD system shall be higher than the hydraulic grade line (HGL) at the discharge point to prevent any backwater effects. No submerged conditions and/or the use of non-return valve will be permitted.
- e) Seepage water must not be directly or indirectly discharged to Council's street gutter.
- f) Any underground basement shall be protected from possible inundation by surface waters from the street.
- g) Show an alarm system comprising of basement pump-out failure warning sign together with a flashing strobe light and siren installed at a clearly visible location at the entrance to the basement

in case of pump failure. A minimum freeboard of 150 mm from the pump out system to all parking spaces and full hydraulic details and pump manufacturers specification are to be provided.

- h) Pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits and inspection openings and their location shall be provided. Calculations demonstrating that the proposed stormwater drainage system can cater for the relevant design storm event shall be provided.
- i) A sediment control stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- j) A long section of the connection to Council's infrastructure shall be provided and its details must be included (e.g. the location of existing services crossing and the clearances, existing surface levels, obvert and invert of existing pipe and invert level of the outlet pipe).
- k) A grated trench drain shall be provided across the (garage entrance/driveway/street boundary) within private property. Unless otherwise sized by a suitably qualified and practising Engineer, the dimensions of the trench grate shall be no less than 300mm wide by 100mm deep at the shallow end and have a "bottom" slope of 2%. This trench drain shall be connected to an approved drainage system.
- l) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath shall be provided.
- m) The wing of any vehicular crossing shall have a clearance of at least 500 mm from any stormwater kerb inlet pit. The proposed kerb inlet pit must be constructed to Council's satisfaction. Details are to form part of the Construction Certificate documentation.
- n) Any affected Council's infrastructure as the result of construction activities within the public domain area, inclusive of stormwater, stormwater outlet/s, kerb and gutter, pavement, grass verges and vehicle crossovers within the extent works shall be replaced as per Waverley Council Public Domain Technical Manual. All associated costs shall be borne by the applicant.

Notes:

- Since a sewer main runs through the property, plans must also be presented to a Sydney Water Tap in™ for their approval.
- The Applicant is advised to consider the finished levels of the public domain, including new or existing footpaths and pavement prior to setting the floor levels for the proposed development.
- Waverley Council standard drawings for public domain infrastructure assets are available upon request. Details that are relevant may be replicated in the Engineering design submissions however, Council's title block shall not be replicated.
- Prior to commencement of works a security deposit will be made payable to Council to ensure any additional damage or unauthorised works within the Council property, not conditioned above. Council will reserve the right to withhold the cost of restoring the damaged assets from the security deposit should the applicant fail to restore the defects to the satisfaction of Council.
- Council's contact for infrastructure assessment: E-mail: assets@waverley.nsw.gov.au or Phone: 9083 8886 (operational hours between 9.30am to 4pm Monday to Friday). The expected duration to review and approve the stormwater management plan may take at least 15 working days from the date of submission.

ENERGY EFFICIENCY & SUSTAINABILITY

18. BASIX

All requirements of the BASIX Certificate and NatHERS documentation are to be shown on the Construction Certificate plans and documentation.

WASTE

19. SITE WASTE AND RECYCLING MANAGEMENT PLAN

A *Site Waste and Recycling Management Plan (SWRMP) - Part 2* is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Construction Certificate, which outlines materials to be reused and/or recycled as a result of demolition and construction works. At least one copy of the *SWRMP Part 2* is to be available on site at all times during construction. Copies of demolition and construction waste dockets that verify the facility that received the material for recycling or disposal and the quantity of waste received, must be retained on site at all times during construction.

20. WASTE STORAGE AREAS

The development must have a bin storage area with sufficient space to accommodate the following minimum number of bins for the development.

Residential (5 units with 2+ bedrooms)

- 3 x 240L Mobile Garbage Bin (MGB) for general waste collected weekly
- 3 x 240L MGB for container recycling collected fortnightly
- 3 x 240L MGB for paper and cardboard recycling collected fortnightly

A designated area of approximately 4m² floor space is required for the on-site storage of bulky waste awaiting collection and 1m² floor space is required for additional problem waste streams (such as electronic waste or textile waste).

All waste and recycling storage rooms must be built to meet all appropriate design requirements set in Part B1 of the *Waverley Council Development Control Plan 2012* to the satisfaction of the Principal Certifying Authority.

LANDSCAPING & TREES

21. GREEN ROOF LANDSCAPING DETAILS

The construction certificate landscape plans are to comply with the controls for green roofs in Part B3.1 of the *Waverley Development Control Plan 2012* including;

- (a) Comprise plants that are suitable for the site in relation to the environmental conditions (sun, wind and views) and include indigenous or local native plants to Waverley (see Annexure B2 – 1).
- (b) Have a minimum soil depth of 300mm and use lightweight soil mixes that are porous, able to drain freely, and suitable for the selected plant species
- (c) The green roof is to be designed to be a non-trafficable area (with no balustrades) and must be irrigated without requiring frequent maintenance access. Any access to the roof is to be for servicing purposes only.

A qualified landscape architect must review the design and verify that it complies with the above requirements.

22. LANDSCAPE WORKS IN A HABITAT CORRIDOR

A landscape plan is to be submitted to and approved by Council's Executive Manager, Environmental Sustainability (or delegate) with a plant species list having a minimum of 50% of the proposed trees, 50% of the shrubs and 50% of the grasses and groundcovers (not including turfed areas) are to be indigenous or local native plants listed in Annexure B2-1 of the *Waverley Development Control Plan 2012*.

NOISE

23. NOISE EMISSIONS

The use of the premises shall not give rise to the transmission of "Offensive noise" as defined in the Protection of the Environment Operations Act 1997 to any place of different occupancy.

24. DILAPIDATION REPORT

A Dilapidation report is to be prepared for any adjoining or nearby property that may be subject to potential damage as a result of any works being undertaken. The dilapidation report is to be made available to affected property owners.

The report is to be dated, submitted to, and accepted by the Principal Certifying Authority, prior to any work commencing on the site.

Note: Any damage that may be caused is a civil matter. This consent does not allow or authorise any party to cause damage, trespass, or any other unlawful act and Council will not be held responsible for any damage that may be caused to adjoining buildings as a consequence of the development being carried out. Council will not become directly involved in disputes between the builder, owner, developer, its contractors and the owners of neighbouring buildings.

C. COMPLIANCE PRIOR TO WORK COMMENCING AND DURING CONSTRUCTION

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required.

PRIOR TO ANY WORKS

25. CONSTRUCTION SIGNS

Prior to commencement of any works on the site and during construction a sign shall be erected on the main frontage of the site detailing the name, address and contact details (including a telephone number) of the Principal Certifying Authority and principal contractor (the coordinator of the building works). The sign shall be clearly legible from the adjoining street/public areas and maintained throughout the building works.

DEMOLITION

26. DEMOLITION – ASBESTOS AND HAZARDOUS MATERIALS

The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2017;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- *Protection of the Environment Operations Act 1997*.

At least 5 days prior to the demolition, renovation work or alterations and additions to any building, the person acting on the consent shall submit a Work Plan to the Principal Certifying Authority in accordance with Australian Standard AS 2601-2001, Demolition of Structure and a Hazardous Materials Assessment prepared by a person with suitable expertise and experience. The Work Plan and Hazardous Materials Assessment shall:

- (a) Outline the identification of any hazardous materials, including surfaces coated with lead paint;
- (b) Confirm that no asbestos products are present on the subject land, or
- (c) particularise a method of safely disposing of the asbestos in accordance with the Code of Practice on how to safely remove asbestos published by SafeWork NSW (catalogue WC03561);
- (d) Describe the method of demolition;
- (e) Describe the precautions to be employed to minimise any dust nuisance; and
- (f) Describe the disposal methods for hazardous materials.

27. CONTROL OF DUST ON CONSTRUCTION SITES

The following requirements apply to demolition and construction works on site:

- (a) Hazardous dust is not to be allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended. Any existing accumulations of dust (e.g. ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particle air (HEPA) filter. All dusty surfaces and dust created from work are to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.
- (b) All contractors and employees directly involved in the removal of hazardous dusts and substances are to wear protective equipment conforming to Australian Standard AS1716 Respiratory Protective Devices.

28. CLASSIFICATION OF WASTE/ DISPOSAL OF EXCAVATED SOILS

Prior to the exportation of waste (including fill or soil) from the site the material must be classified in accordance with the provisions of the Protection of the Environment Operations Act, 1997 and the NSW EPA Waste Classification Guidelines 2014.

29. EXCAVATION AND BACKFILLING

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

If an excavation associated with the erection or demolition of a building extends below the level of the footings of a building on an adjoining allotment of land, the excavation is to be managed by a practising structural engineer.

CONSTRUCTION MATTERS

30. CONSTRUCTION HOURS

Demolition and building work must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays and 8am to 3pm on Saturdays, with no work to be carried out on Sundays and public holidays.

Excavation works involving the use of heavy earth movement equipment, including rock breakers and the like, must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays, with no such work to be carried out on Saturday, Sunday or a public holiday.

Noise from construction activities shall comply with the *Protection of the Environmental Operations (Noise Control) Regulation 2017*.

31. STOCKPILES, STORAGE OF MATERIALS AND LOCATION OF BUILDING OPERATIONS

All building materials and any other items associated with the development are to be stored within the property. No materials are to be stored on Council's footpath, nature strip, or road reserve without prior Council approval.

32. CONSTRUCTION INSPECTIONS

The building works are to be inspected during construction by the Principal Certifying Authority (PCA) in accordance with the *Building Legislation Amendment (Quality of Construction) Act 2002*, clause 162A of the *Environmental Planning and Assessment Regulation 2000* and the requirements of any other applicable legislation or instruments.

33. CERTIFICATE OF SURVEY - LEVELS

All construction works are to be in accordance with the Reduced Levels (RLs) as shown on the approved plans. Certification from a Registered Surveyor certifying ground, upper floor/s and finished ridge levels is to be submitted to the Principal Certifying Authority during construction and prior to continuing to a higher level of the building.

34. CERTIFICATE OF SURVEY - BOUNDARIES AND LOCATION OF BUILDING

A Certificate of Survey prepared by a Registered Surveyor setting out the boundaries of the site and the location of the building on the site is to be submitted to the Principal Certifying Authority to certify the building is located in accordance with the development consent plans. The Certificate is to be submitted prior to the construction of the external walls above the ground floor level of the building.

35. WORK OUTSIDE PROPERTY BOUNDARY

This consent does not authorise any work outside the property boundary.

TREE PROTECTION AND REMOVAL

36. TREE PROTECTION

All trees on site and adjoining properties, including street trees, are to be retained and protected in accordance with AS4970-2009 'Protection of Trees on Construction Sites' and to be certified by an Arborist with AQF level 5 qualification or above, unless approved to be removed in this development consent.

37. STREET TREES TO BE RETAINED/TREE PROTECTION

No existing street trees shall be removed without Council approval. Precautions shall be taken when working near trees to ensure their retention, including the following:

- (a) Do not store harmful or bulk materials or spoil under or near trees;
 - (b) Prevent damage to bark and root system;
 - (c) Do not use mechanical methods to excavate within root zones;
 - (d) Do not add or remove topsoil from under the drip line;
 - (e) Do not compact ground under the drip line;
 - (f) Do not mix or dispose of liquids within the drip line of the tree; and
 - (g) All trees marked for retention must have a protective fence/guard placed around a nominated perimeter in accordance with AS4970-2009 "Protection of trees on construction sites.
- If any trees on neighboring properties require canopy pruning or root pruning, an application to prune/root prune or remove trees on private property is to be presented to Council for processing.

- If any tree roots are exposed during any approved works, then roots smaller than 30mm are to be pruned as per the specifications below. Any roots greater than 30mm are to be assessed by a qualified arborist before any pruning is undertaken. Permission must be gained from the owner of the tree(s) and an application to prune/root prune or remove trees on private property is to be presented to Council for processing.
- If tree roots are required to be removed for the purposes of constructing the approved works, they shall be cut cleanly by hand, by an experienced Arborist/Horticulturist (with a minimum of the Horticulture Certificate or Tree Surgery Certificate). Permission must be gained from the owner of the tree(s) and an application to prune/root prune or remove trees on private property is to be presented to Council for processing.
- It is the arborist's responsibility to determine if such root pruning is suitable. If there are any concerns regarding this process, then Waverley Council's Tree Management Officer is to be contacted to make final determination.

VEHICLE ACCESS & PUBLIC DOMAIN WORKS

38. NEW VEHICLE CROSSING

A new vehicle crossing is to be provided to access the proposed basement. A separate application is required for the vehicle crossing, with all work to be carried out with the approval of and in accordance with the requirements of Council.

Note: Prior to the submission of the vehicle crossing application, works as executed drawings shall be submitted to Council for the approval of the Executive Manager Creating Waverley confirming the finished levels of the internal driveway between the property boundary and the garage floor comply with the approved driveway long sections.

39. EXISTING VEHICLE CROSSING IS TO BE CLOSED

The existing vehicle crossing is to be closed and all work associated with the closure is to be carried out with the approval of, and in accordance with, the requirements of Council

40. VEHICULAR ACCESS - FINISHED LEVEL TO FOOTPATH

The finished level at the property boundary on **both** sides of the vehicle crossing is to be **50mm above** the level of the existing concrete footpath

D. PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE OR SUBDIVISION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required, prior to the issue of an Occupation Certificate or Subdivision Certificate, whichever applies.

CERTIFICATES, LICENCES, EASEMENTS AND RESTRICTIONS

41. FINAL OCCUPATION CERTIFICATE

Prior to occupation or use of the development, an Occupation Certificate must be obtained.

The Principal Certifying Authority must be satisfied that the requirements of the *Environmental Planning & Assessment Act 1979* have been satisfied including all critical stage inspections. Documentary evidence of all required inspections is to be submitted to Council.

42. CERTIFICATION OF BASIX COMMITMENTS

The Principal Certifying Authority shall certify that the all the undertakings in the approved BASIX certificate have been completed.

43. CERTIFICATION OF APPROVED DESIGN

In accordance with the Environmental Planning and Assessment Regulations 2000, the Principal Certifying Authority must not issue an occupation certificate, to authorise a person to commence occupation or use of the development unless it has received a design verification statement from an architect who is registered in accordance with the Architects Act 2003 (i.e. qualified designer) that verifies that the building achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles.

44. CERTIFICATION OF LANDSCAPING

At the completion of all works a certificate is to be submitted to the Principal Certifying Authority from a qualified Landscape and/or Arboriculture Consultant certifying that the work has been completed in accordance with the approved Landscape Plan and that a maintenance program has been established. If relevant, the waterproofing on any green roof is to be tested and evidence of the test is to be provided with the certification.

45. CERTIFICATION OF STORMWATER SYSTEM

Prior to issue of an occupation certificate, certification is to be provided from a suitably qualified Hydraulics Engineer, that the stormwater system has been constructed in accordance with the approved stormwater management plans and to best engineering practice.

46. CERTIFICATION OF ALL MECHANICAL PLANT

A Certificate of Test of all mechanical plant together with a copy of the final test figures, conducted by a suitably qualified person, certifying that the system complies with the conditions of this consent, National Construction Code (NCC) and relevant Australian Standards.

47. CERTIFICATION OF SWIMMING POOL/OUTDOOR SPA

Prior to the pool being used, the following must be provided;

- (a) Certification that the pool has been constructed in accordance with the consulting engineers design;
- (b) Evidence that the swimming pool/outdoor spa has been registered on the State Government Swimming Pool Register (<http://www.swimmingpoolregister.gov.au>);
- (c) A sign outlining details of resuscitation techniques for adults, children and infants has been placed in a prominent position, close to the pool/outdoor spa. Signs are available from Council;
- (d) A copy of the occupation certificate must be submitted to Council.

Note: Swimming/spa pool pumps are restricted from use between 8pm to 7am weekdays and Saturdays, 8pm to 8am on Sundays and public holidays in accordance with the requirements of the Protection of the Environment Operations (Noise Control) Regulation 2017.

48. SYDNEY WATER SECTION 73 COMPLIANCE CERTIFICATE

A Section 73 Compliance Certificate must be issued from Sydney Water prior to the issue of an occupation certificate.

STORMWATER

49. WORKS-AS-EXECUTED DRAWINGS – STORMWATER DRAINAGE SYSTEM

- a. A Works-As-Executed drawing (WAED) of the stormwater drainage system must be prepared, stamped and signed by a Registered Surveyor. This drawing must detail the alignment of all pipelines, pits, basement pump-out facility, the detention facility and other drainage related infrastructure. An original or a colour copy must be submitted to Waverley Council. Where changes have occurred, the Council approved plans shall be marked-up in red ink and shall include levels and location for the drainage structures and works.
- b. A suitably qualified and practising Engineer must provide certification of the WAED of the stormwater drainage system that the stormwater drainage works were constructed to their satisfaction and in accordance with the Development Consent, Water Management Technical Manual, all applicable Codes, Policies, Plans, Standards and good engineering practice. A copy of the aforementioned letter of certification must be submitted to Council.

50. CREATION OF POSITIVE COVENANT AND RESTRICTION FOR OSD

Prior to the issue of an Occupation Certificate, a “Positive Covenant” and “Restriction on the Use of Land” shall be created for the On-Site Stormwater Detention (OSD) system, under Section 88E of the

Conveyancing Act 1919. This is to place a restriction on the Title that the OSD system is maintained and kept free of debris/weed to allow unobstructed passage of stormwater through the site and underneath the residence. The property owner/occupant shall not modify or remove the OSD system without consent from Council.

The wording of the Instrument shall be submitted to and approved by Executive Manager, Infrastructure Services (or delegate) prior to lodgement at NSW Land Registry Services.

Where a Title exists, the Positive Covenant and Restriction on the Use of Land is to be created via an application to the NSW Land Registry Services using forms 13PC and 13RPA. Accompanying this form is the requirement for a plan to scale showing the relative location of the OSD system, including its relationship to the building footprint. Electronic colour photographs of the OSD system shall accompany the application for the Positive Covenant and Restriction on the Use of Land.

The Instrument shall be registered and a registered copy of the document shall be submitted to and approved by the consent authority prior to the issue of an Occupation Certificate or use of the building. All associated costs shall be borne by the applicant.

51. PLANNED PREVENTATIVE MAINTENANCE SCHEDULE FOR PUMP OUT SYSTEM

The registered proprietor shall be required to submit written intent to establish and maintain a Planned Preventative Maintenance (PPM) schedule of the pump out system prior to the issue of Occupation Certificate. Council will not be liable for any claims for damages arising from the failure of the pump out system. Evidence shall be submitted to the Executive Manager, Infrastructure Services or delegate prior to the issue of the Occupation Certificate.

52. POST-CONSTRUCTION STORMWATER PIPE CCTV DILAPIDATION REPORT

Prior to the issue of the Occupation Certificate, a post-construction CCTV report shall be submitted to Council on any installed pipeline at least up to the next pit downstream of the proposed works. This is to ensure Council's stormwater infrastructure is adequately protected and there are no damages due to proposed construction activities and property drainage connections.

An electronic closed circuit television report (track mounted CCTV camera footage) prepared by an accredited operator that assesses the condition of the pipeline is required. The report is to be dated and submitted to and accepted by Council's Executive Manager, Infrastructure Services (or delegate).

The report shall be used by Council's Executive Manager, Infrastructure Services (or delegate) to assess whether any rectification works will be required. The applicant shall obtain written approval from Council's Executive Manager, Infrastructure Services (or delegate) prior to the issue of the Occupation Certificate.

VEHICLE ACCESS AND PARKING

53. CAR PARKING

A maximum of 9 car vehicle parking spaces are to be provided within the development, allocated in the following manner:

- (a) A maximum of 8 residential parking spaces
- (b) A minimum of 1 visitor parking spaces
- (c) A minimum of 1 of the spaces to be a disabled space with adjacent shared area in accordance with Australian Standard AS2890.6 - 2009 Off Street Parking for People with Disabilities
- (d) 1 'Level 2' AC fast electric vehicle charging points to be installed
- (e) 1 electric charging point and parking space for bicycles and motor scooters.

Car parking spaces are to be allocated with the rates specified in the DCP, with no more than 2 spaces allocated to any residential unit/dwelling with 3 or more bedrooms. All car spaces are to be appropriately signposted and parked.

54. BICYCLE PARKING

A **minimum** of 6 bicycle parking spaces are to be provided within the development.

The bicycle spaces are to be designed in accordance with Australian Standard AS2890.3 - 2015 Parking Facilities - Bicycle Parking.

The bicycle spaces are to be provided by way of a secure lockable area, individual lockers or suitable bicycle racks and are to be located within the ground floor foyer or adjacent within any forecourt or within the basement car parking area. Signage and line-marking (way finding) is to be provided to guide visitors to the allocated bicycle parking spaces to ensure a safe path of travel to the bicycle spaces (separate to cars). Details of this are to be submitted to Council for the approval of the Executive Manager, Infrastructure Services, or delegate.

55. STREET NUMBER/S

The street number for the property shall be a minimum of 75mm high and shall be positioned 600mm-1500mm above ground level on the site boundary that fronts the street. Should the number be fixed to an awning then it shall be a minimum 150mm high.

56. ALLOCATION OF STREET NUMBER

The redevelopment of the property has led to the following allocation of primary and sub-premises (unit) numbering:

- No. 5 - primary address site number
- Pacific Avenue primary address location.

The primary address site number for the property shall be a minimum of 75mm high and shall be positioned 600mm-1500mm above ground level, located near the pedestrian entry point and be clearly visible on the site boundary that fronts Pacific Avenue.

The following sub-addressing will apply:

- Nos. 1-5 for the residential sub-address sites within the building correlating with Nos. 1-5 on the floor plans for the building.

The address number for a sub-address site shall not consist of the primary address number on its own. The address number for a sub-address site shall not consist of the primary address number with an alpha suffix.

Sub-address numbers shall be applied in a logical sequence and within a primary address site shall be unique regardless of the type of the address. The primary and sub-address site numbers are to be positioned on the site prior to the issue of the Occupation/Subdivision Certificate.

Any variation to the above premises numbering requires a new application for a Change of street number and/or location to be lodged with Council.

57. PLAN OF MANAGEMENT - WASTE AND RECYCLING STORAGE & COLLECTION

A Waste Management Plan must be submitted to Council's Executive Manager, Environmental Sustainability (or delegate) and include including the following:

- (a) Onsite collection is required in line with the Pacific Building's existing servicing arrangements
- (b) All arrangements including relevant and current contracts for recyclables and all other waste (collection and disposal)
- (c) The waste storage area and bins must be cleaned and maintained regularly with appropriate lighting.
- (d) The role and responsibility of managing composting facilities (if provided);
- (e) Clear signage identifying the different bin types, space for reusable items such as crates and pallets, bulky household waste and problem waste must be displayed.
- (f) The recycling bins must be placed alongside the general waste bins for ease of access and to encourage recycling habits.
- (g) Responsibilities for transporting bins from the storage points to the nominated collection area, cleaning of bins, cleaning of storage areas and booking and transporting bulky waste for Council pick up must be outlined in contracts with the building manager, cleaners and tenants.
- (h) The occupant/body corporate shall be provided with at least one copy of the Waste Management Plan. An additional copy of the plan is be available on site when requested.
- (i) At no times shall bins be stored on the public domain (e.g. footpaths).

E. OPERATIONAL MATTERS

58. VEHICLE ACCESS

All vehicles including service vehicles entering and exiting the building are to do so in a forward direction.

Any vehicle utilising a car, motorcycle or bicycle space is to be parked fully within the confines of the site and is not to park over the public footway at any time.

59. PARKING PERMITS

Occupants of the building are not to be eligible for resident parking permits under Council's Residents Preferential Parking permits scheme.

60. HEADROOM CLEARANCE

The headroom clearance on the driveway and within the carpark for access to car parking spaces is to be a minimum of 2.2 metres in general and 2.5 metres above the disabled parking spaces and shared zones for the car parking spaces.

61. ADJUSTMENTS TO STREET SIGNS

Any street signs required to be removed as a result of the works shall be relocated at the applicant and/or owner's expense in accordance with Council's requirements.

62. WASTE MANAGEMENT PLAN REVIEW

After 5 years of operation under this development consent, the Approved Waste Management Plan is to be reviewed to ensure that the details including contracts, roles and responsibilities, commercial tenants (if relevant) are current. The updated plan is to supersede the previous plan.

ADVISORY MATTERS

The following advisory matters are provided as additional information to ensure compliance with the relevant legislation and requirements. You must also check other Commonwealth and NSW Acts and Regulations which may apply to the works or use approved in this application.

AD1. POST CONSENT CONDITIONS REQUIRING COUNCIL INPUT

Various conditions require further input, review or approval by Council in order to be satisfied following the determination of the application (that is, post consent). In those instances, please adhere to the following process to avoid delays:

- Please read your conditions carefully.
- Information to be submitted to Council should be either via email to info@waverley.nsw.gov.au or via the NSW Planning Portal (if required).
- Attention the documentation to the relevant officer/position of Council (where known/specified in condition).
- Include DA reference number.
- Include condition number/s seeking to be addressed.
- Where multiple conditions need Council input, please try to group the documentation / email/s into relevant subjects (multiple emails for various officers may be necessary, for example).
- Information to be submitted in digital format – refer to ‘Electronic lodgement guidelines’ on Council’s website. Failure to adhere to Council’s naming convention may result in documentation being rejected.
- Where files are too large for email, the digital files should be sent to Council via CD/USB. Council does not support third party online platforms (data in the cloud) for receipt of information.
- Please note, in some circumstances, additional fees and/or additional documents (hard copy) may be required.
- Council’s standard for review (from date the relevant officer receives documentation) is 14 days. Times may vary or be delayed if information is not received in this required manner.

AD2. DIAL BEFORE YOU DIG

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (this is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual’s responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

AD3. TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra’s network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra’s infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra’s assets in any way, you are required to contact: Telstra’s Network Integrity Team on Phone Number 1800810443.

AD4. EXCAVATION TO BE LIMITED

Excavation shall be limited to that shown in the approved plans. Any further excavation will require Council approval.

AD5. TREE REMOVAL/PRESERVATION

Any trees not identified for removal in this application have not been assessed and separate approval may be required. Any pruning of trees on adjoining properties required for the erection of scaffolding and/or the construction of the building may also require approval.

AD6. SYDNEY WATER CERTIFICATE

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. **Application must be made through an authorised Water Servicing Coordinator, for details see the Sydney Water website.**

Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact **with the Coordinator**, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

AD7. SUITABLY QUALIFIED ACOUSTIC CONSULTANT

In these conditions, reference to a suitably qualified acoustic consultant means an individual who possesses the qualifications to render them eligible for membership of both the Australian Acoustics Society and Institution of Engineers Australia at the grade of member or an individual who is employed by a member firm of the Association of Australian Acoustic Consultants.

AD8. ENGINEERING PLANS ASSESSMENT AND WORKS INSPECTION FEES

The Applicant is to pay to Council fees for the assessment of all engineering plans and inspection of the completed works in the public domain inclusive of all stormwater assessment, in accordance with Council's Schedule of Fees & Charges at the time of engineering plan approval, prior to such approval being granted by Council.

An invoice will be issued to the applicant for the amount payable, which will be calculated based on the design plans for the subject development.

AD9. SITE RECTIFICATION WORKS

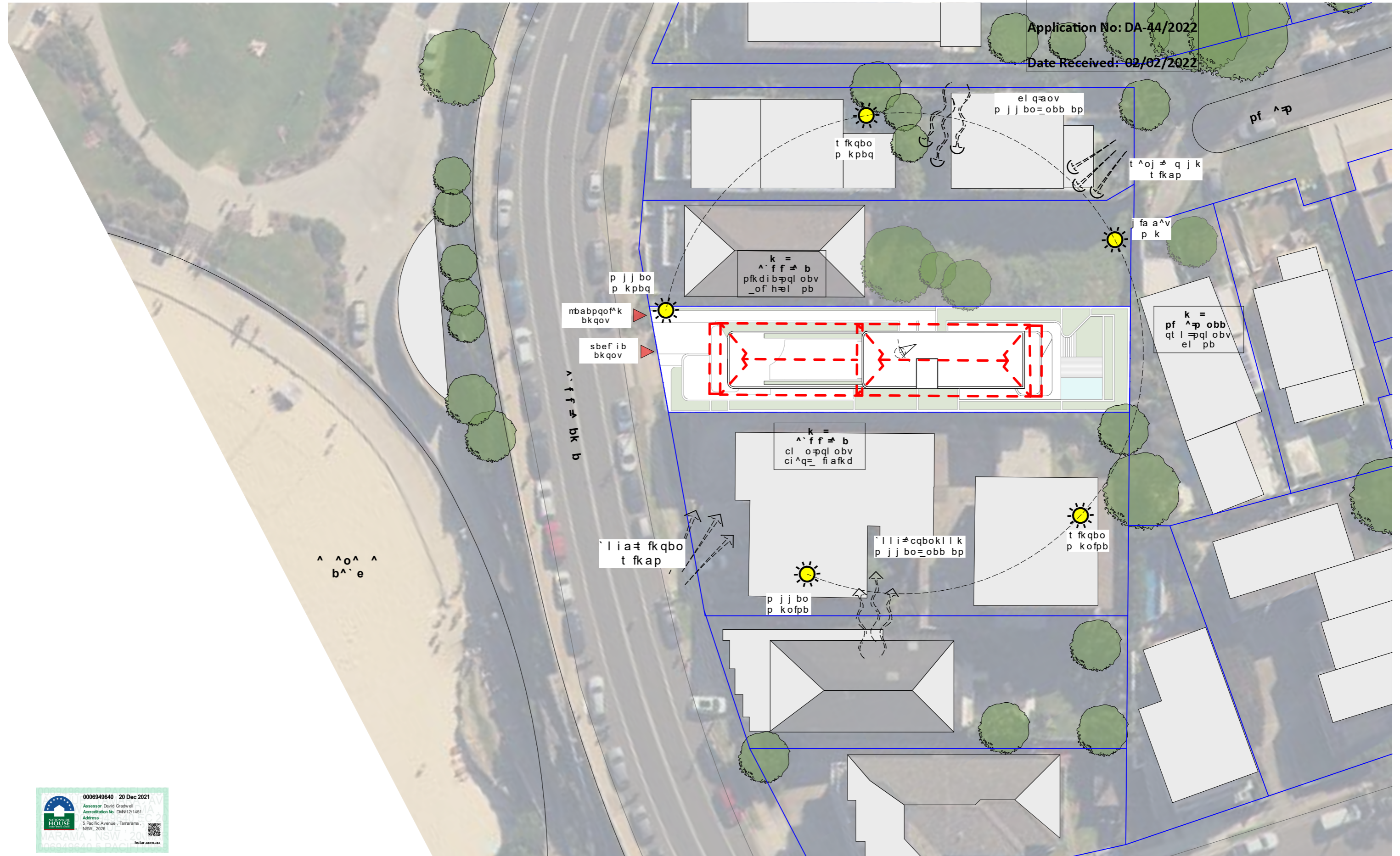
The vacant site is to be maintained in a safe and secure manner. Fencing is to be erected around the perimeter of the site once demolition has been completed to secure the site. The site is to be protected from windblown soil loss and stormwater erosion at all times.

If the site is commenced to be developed and there is suspension in activity for 6 months (or suspensions of activity which in the aggregate exceed 6 months), resulting in a building site which has an appearance not acceptable to Council, then the Council will have the readily enforceable rights to:

- (i) Require certain works including but not limited to:

- (a) make the building/site safe and of an appearance acceptable to Council.
 - (b) Allow the ground level to be landscaped and of an appearance acceptable to Council from any public vantage point; or
 - (c) For the hole to be covered to allow it to be landscaped and made attractive from any public vantage point.
 - (d) AND to call on such bank guarantee to cover the cost thereof.
- (ii) In the event of default, have the right to enter and carry out these works and to call upon security in the nature of a bank guarantee to cover the costs of the works.

Application No: DA-44/2022
Date Received: 02/02/2022



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NSW REG. 9789
ABN 646 2000 7678

Copyright of this drawing is retained by Mark Shapiro Architects. Authority is required for reproduction. Contractor to verify all dimensions on site prior to commencing work. MSA is to be notified of any discrepancies in the dimension and setting out of the work.

ISSUE	DATE	REVISION
A	2021-12-15	FOR DEVELOPMENT APPLICATION

CLIENT: STM 123 PTY LTD
14 Queen St,
Woollahra NSW 2025,
Australia

PROJECT: PROPOSED NEW RESIDENTIAL FLAT BUILDING
5 Pacific Ave
Tamarama NSW 2026
DRAWING: SITE ANALYSIS PLAN

PROJECT NO: 20022
PLOTTED: 2021-12-15
DRAWING NO: DA1001
REV: A



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A	2021-12-15	FOR DEVELOPMENT APPLICATION
ISSUE	DATE	REVISION

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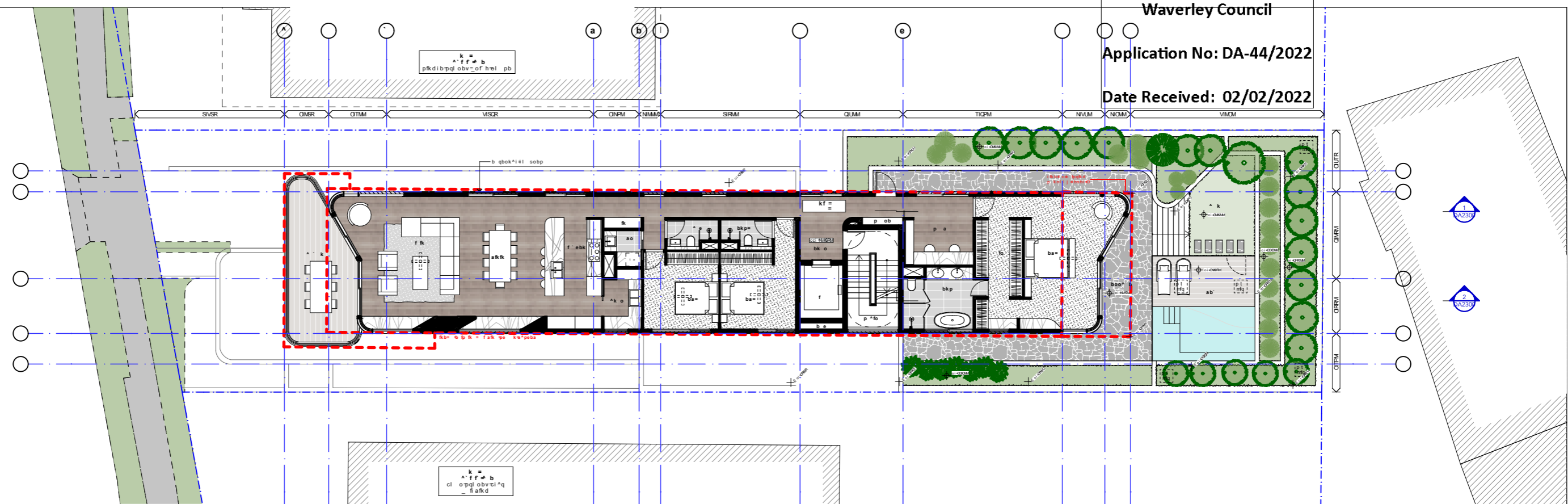
STM 123 PTY LTD
14 Queen St,
Woollahra NSW 2025,
Australia

PROJECT:
PROPOSED NEW RESIDENTIAL FLAT BUILDING
5 Pacific Ave
Tamarama NSW 2026
DRAWING:
BASEMENT & GROUND PLAN

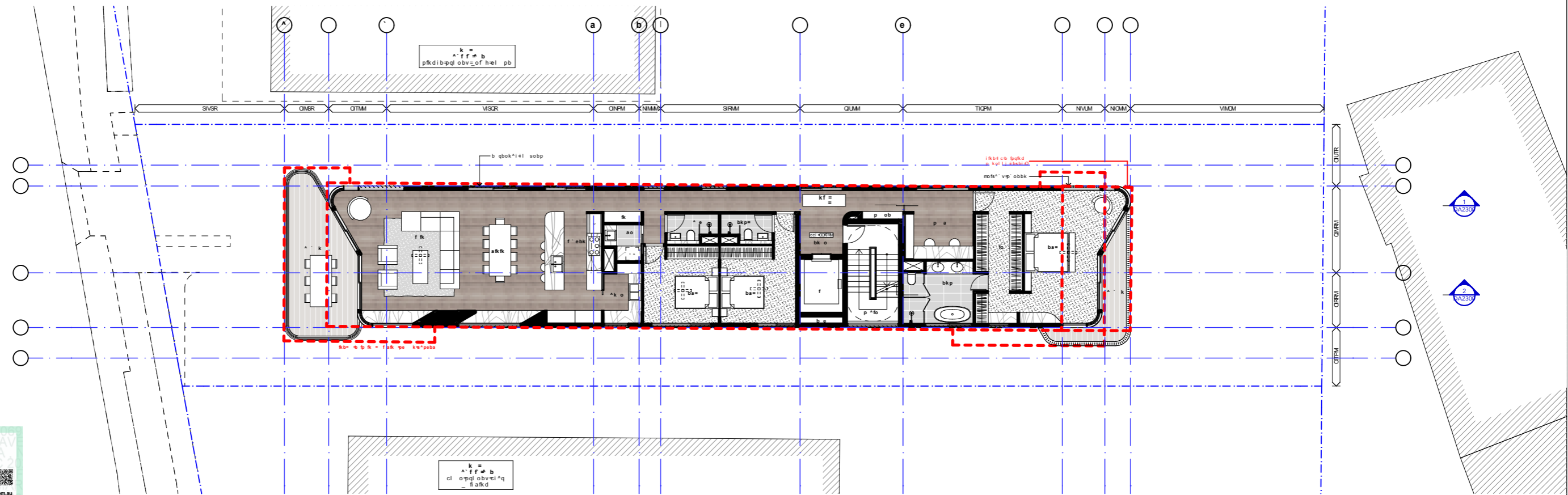
PROJECT NO:
20022

PLOTTED: 2021-12-15

DRAWING NO: REV:
DA2000 A



NOM



NQMM



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A	2021-12-15	FOR DEVELOPMENT APPLICATION
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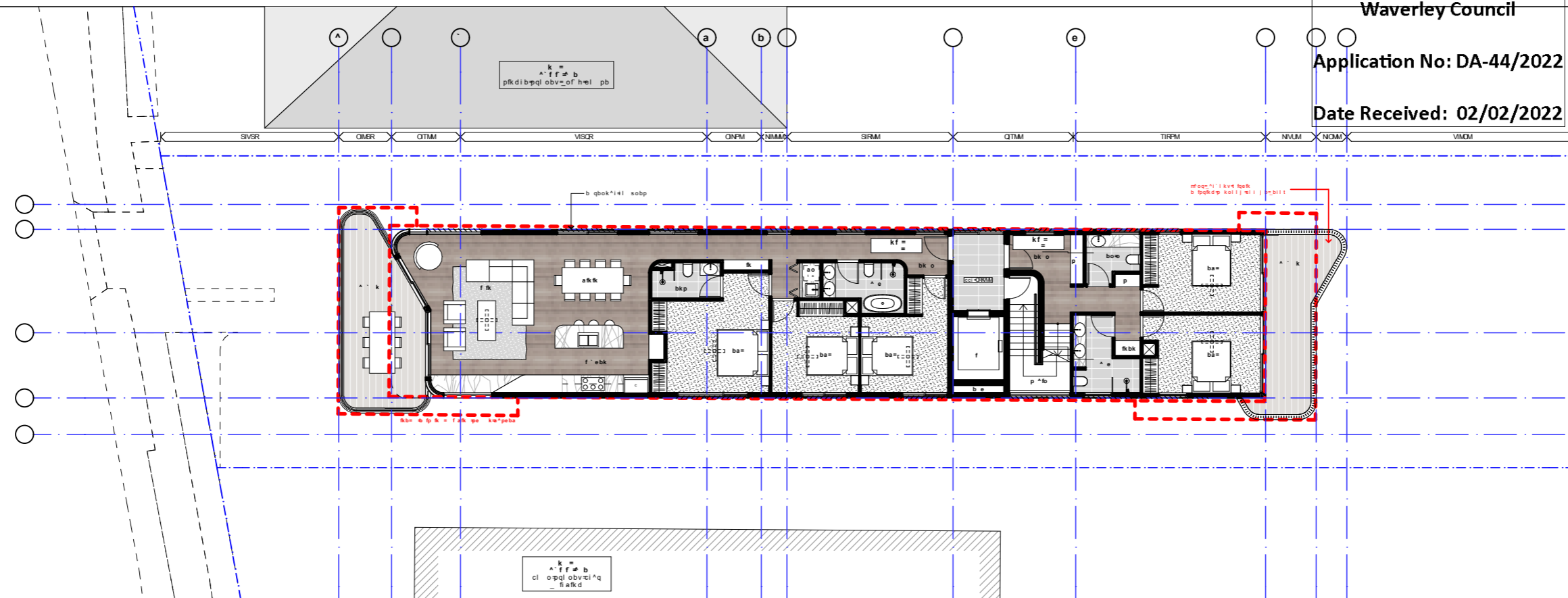
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14 Queen St,
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PROJECT:
PROPOSED NEW RESIDENTIAL FLAT BUILDING
5 Pacific Ave
Tamarama NSW 2026
DRAWING:
LEVEL 1 & 2 PLANS

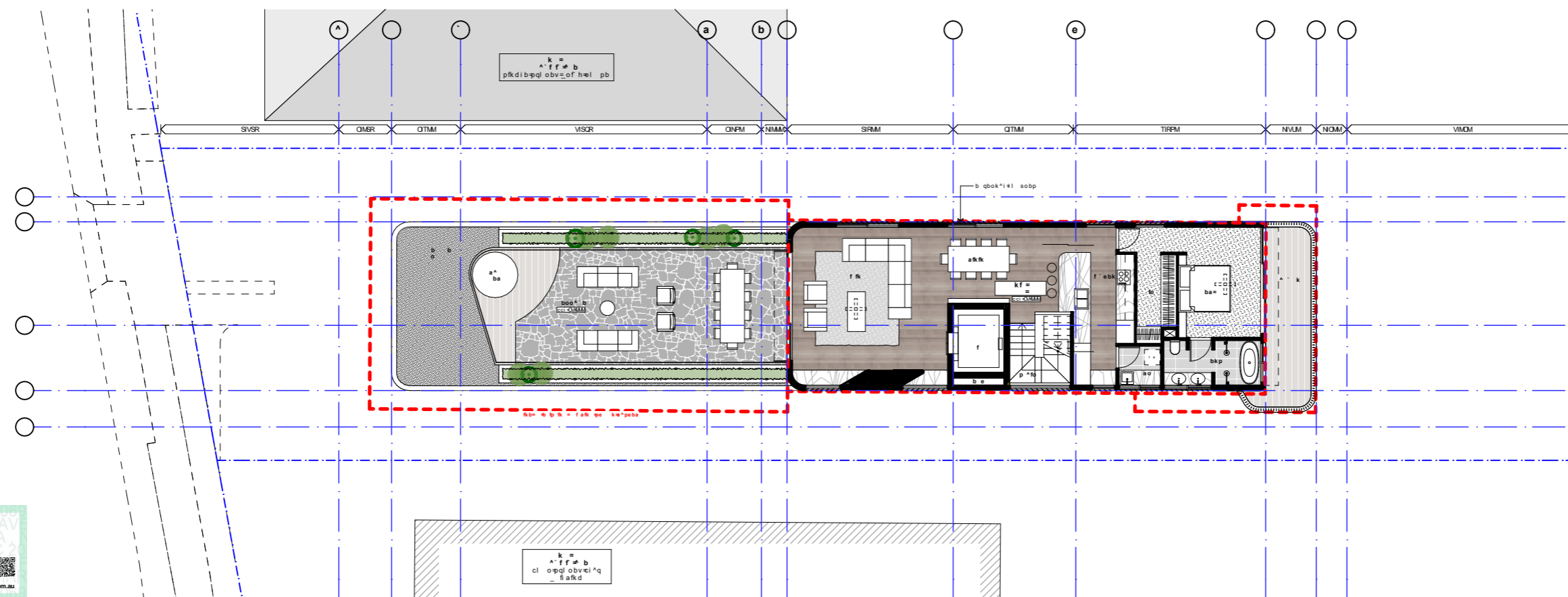
PROJECT NO:
20022

PLOTTED: 2021-12-15

DRAWING NO: REV:
DA2001 A



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$\wedge p f = f$		$b k p$	
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CLIENT:

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14 Queen St,
Woollahra NSW 2025,
Australia

PROJECT:
PROPOSED NEW RESIDENTIAL FLAT BUILDING
5 Pacific Ave
Tamarama NSW 2026

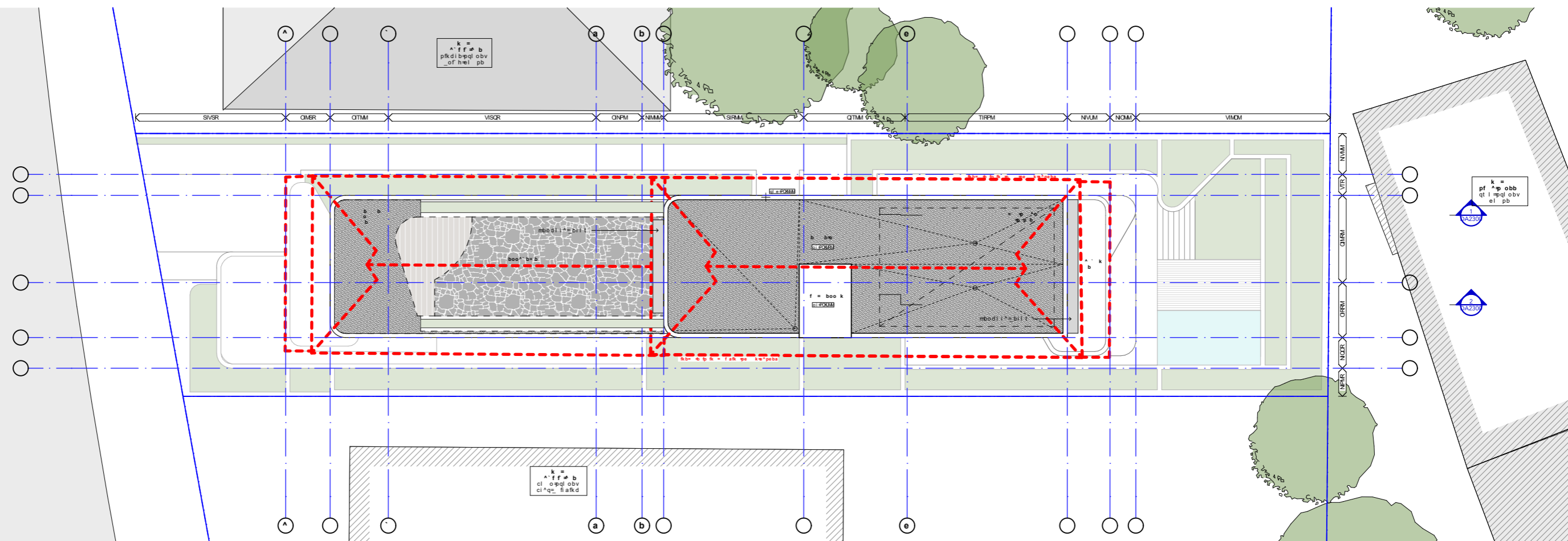
DRAWING:
LEVEL 3 & 4 PLANS



PROJECT NO:
20022

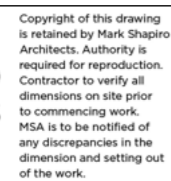
PLOTTED: 2021-12-15

DRAWING NO: REV:
DA2002 A



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Ext. Walls:	Construction Concrete Lined	Insulation R1.5 added		Colour Medium	Details As per plans
Int. Walls:	Construction Plasterboard on Stud Concrete with Plasterboard	Insulation None None			Details As per plans Intertenancy
Floors:	Construction Concrete	Insulation R1.0 added			Details Above garage & subfloor
Ceilings:	Construction Plasterboard	Insulation None			Details As per plans
Roof:	Construction Concrete	Insulation R2.3 added		Colour Medium	Details As per plans
Windows:	Product ID	Glass	Frame	Uw/SHGCw	Details
Group B	ALM-006-03 A	Double Clear	Aluminium	4.1/0.52	Fixed, Sliding, Double Hung
Skylights:	Product ID	Glass	Type	Uw/SHGCw	Details
Other:	Orientation 297	Terrain Suburban	Rangehood Ducted	Recessed Downlights Sealed LED - 1 per 2.5m²	Software Version Bers Pro 4.4



A	2021-12-15	FOR DEVELOPMENT APPLICATION
ISSUE	DATE	REVISION

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CLIENT:

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Woollahra NSW 2025,
Australia

PROJECT:
PROPOSED NEW RESIDENTIAL FLAT BUILDING
5 Pacific Ave
Tamarama NSW 2026

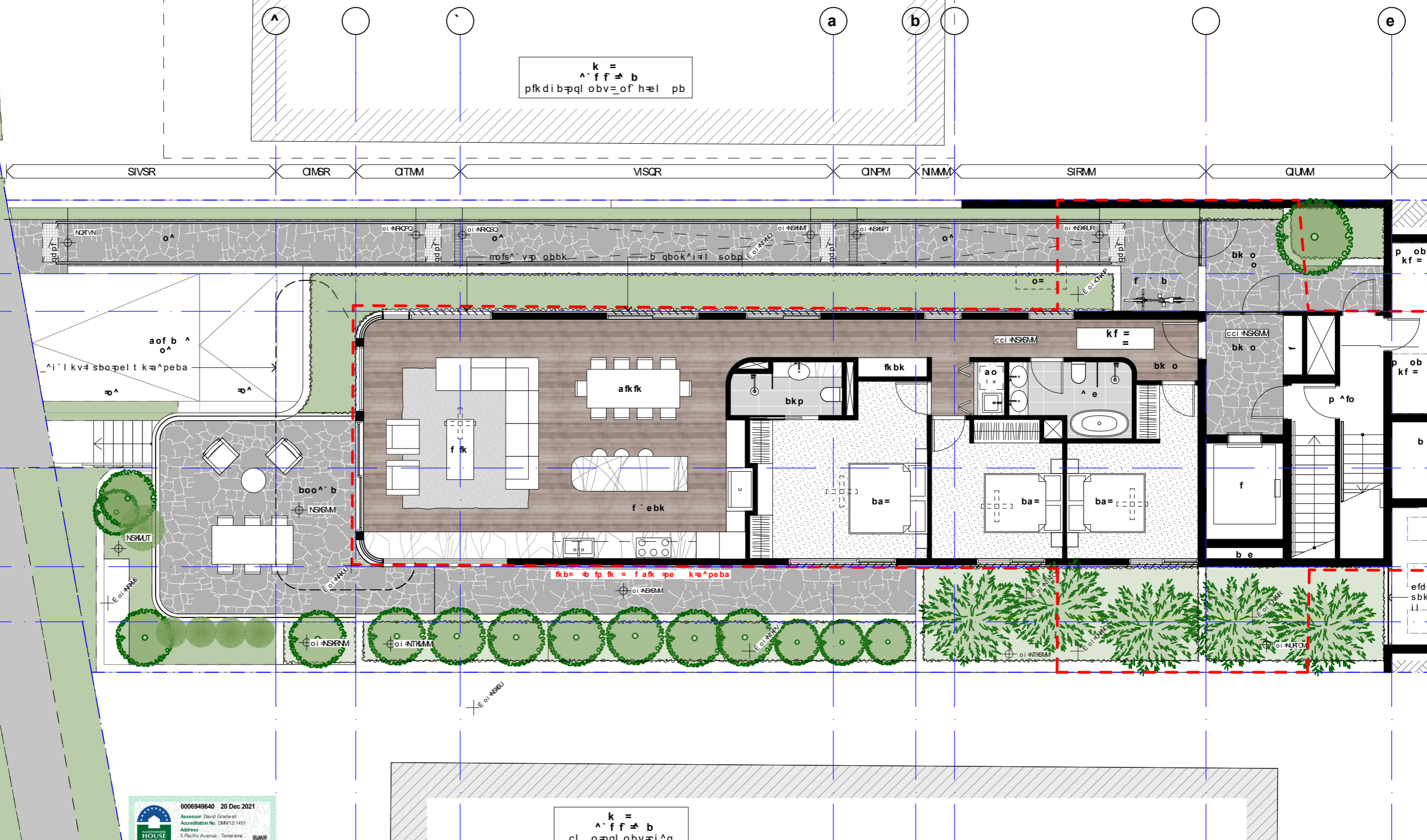
DRAWING:
ROOF PLAN



PROJECT NO:
20022

PLOTTED: 2021-12-15

DRAWING NO: REV:
DA2003 A



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ISSUE	DATE	REVISION

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CLIENT:

STM 123 PTY LTD
14 Queen St,
Woollahra NSW 2025,
Australia

PROJECT:
PROPOSED NEW RESIDENTIAL FLAT BUILDING
5 Pacific Ave
Tamarama NSW 2026

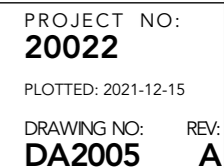
DRAWING:
GROUND LEVEL DETAIL PLAN

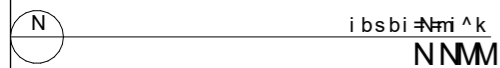


PROJECT NO:
20022

PLOTTED: 2021-12-15

DRAWING NO: REV:
DA2004 A





A	2021-12-15	FOR DEVELOPMENT APPLICATION
ISSUE	DATE	REVISION

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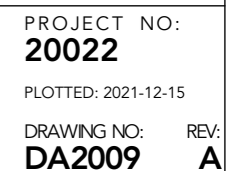
PROJECT:
PROPOSED NEW RESIDENTIAL FLAT BUILDING
5 Pacific Ave
Tamarama NSW 2026
DRAWING:
LEVEL 1 DETAIL PLAN

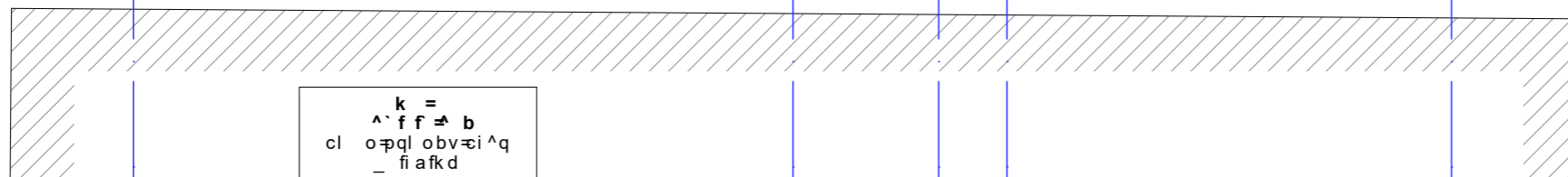
PROJECT NO:
20022

PLOTTED: 2021-12-15

DRAWING NO: REV:
DA2006 A



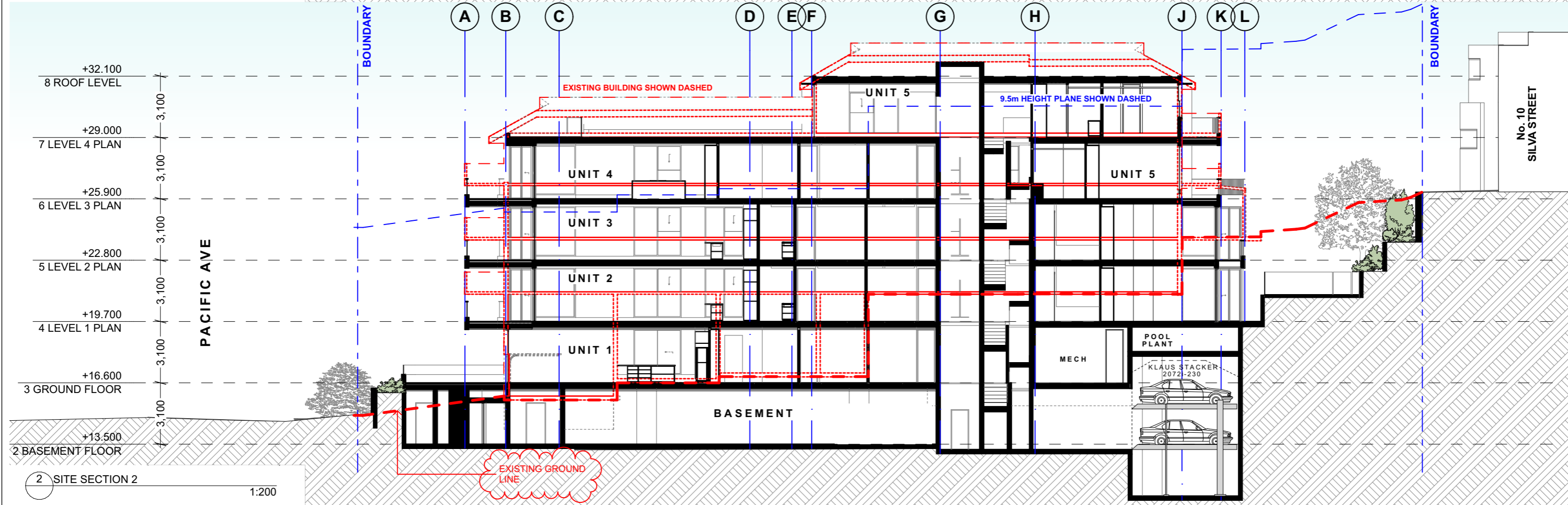
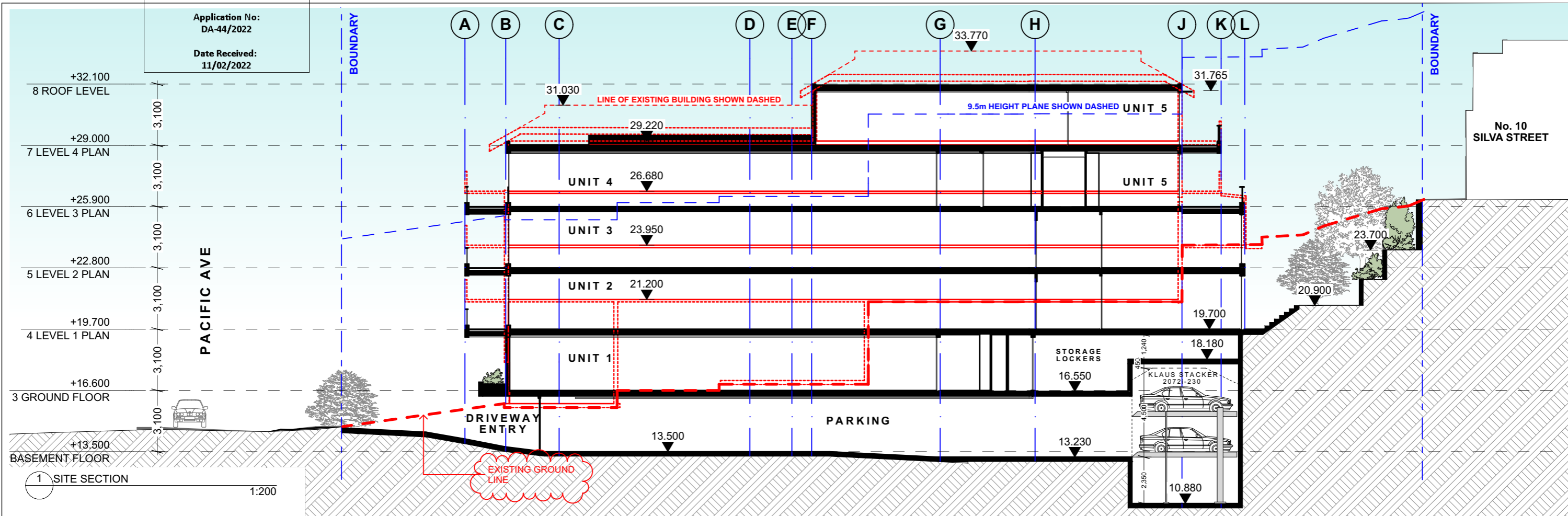




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B	11/2/22	FOR RESUBMISSION
A	16/12/21	FOR DEVELOPMENT APPLICATION
ISSUE	DATE	REVISION

BASIX COMMITMENTS
(ALL OTHER BASIX COMMITMENTS AS PER BASIX CERTIFICATE AND STAMPED PLANS)

WATER OPTIONS

SHOWERHEADS:
TOILETS:
CLOTHES WASHERS:
KITCHEN TAPS:
BATHROOM TAPS:
DISHWASHERS:
POOL/SPA:
No central rainwater tanks required by BASIX

ENERGY OPTIONS

COOLING:
HEATING:
WATER HEATING:
COOK TOPS:
REFRIGERATOR SPACE:
CLOTHES DRYING LINES:
ALTERNATIVE SUPPLY:
POOL/SPA:

LEGEND

CEILING FAN

CLIENT:

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Woollahra NSW 2025,
Australia

PROJECT:

PROPOSED NEW RESIDENTIAL FLAT BUILDING
5 Pacific Ave
Tamarama NSW 2026
DRAWING:
SITE SECTIONS

PROJECT NO:

20022

PLOTTED: 11/2/22

DRAWING NO:

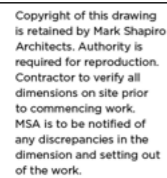
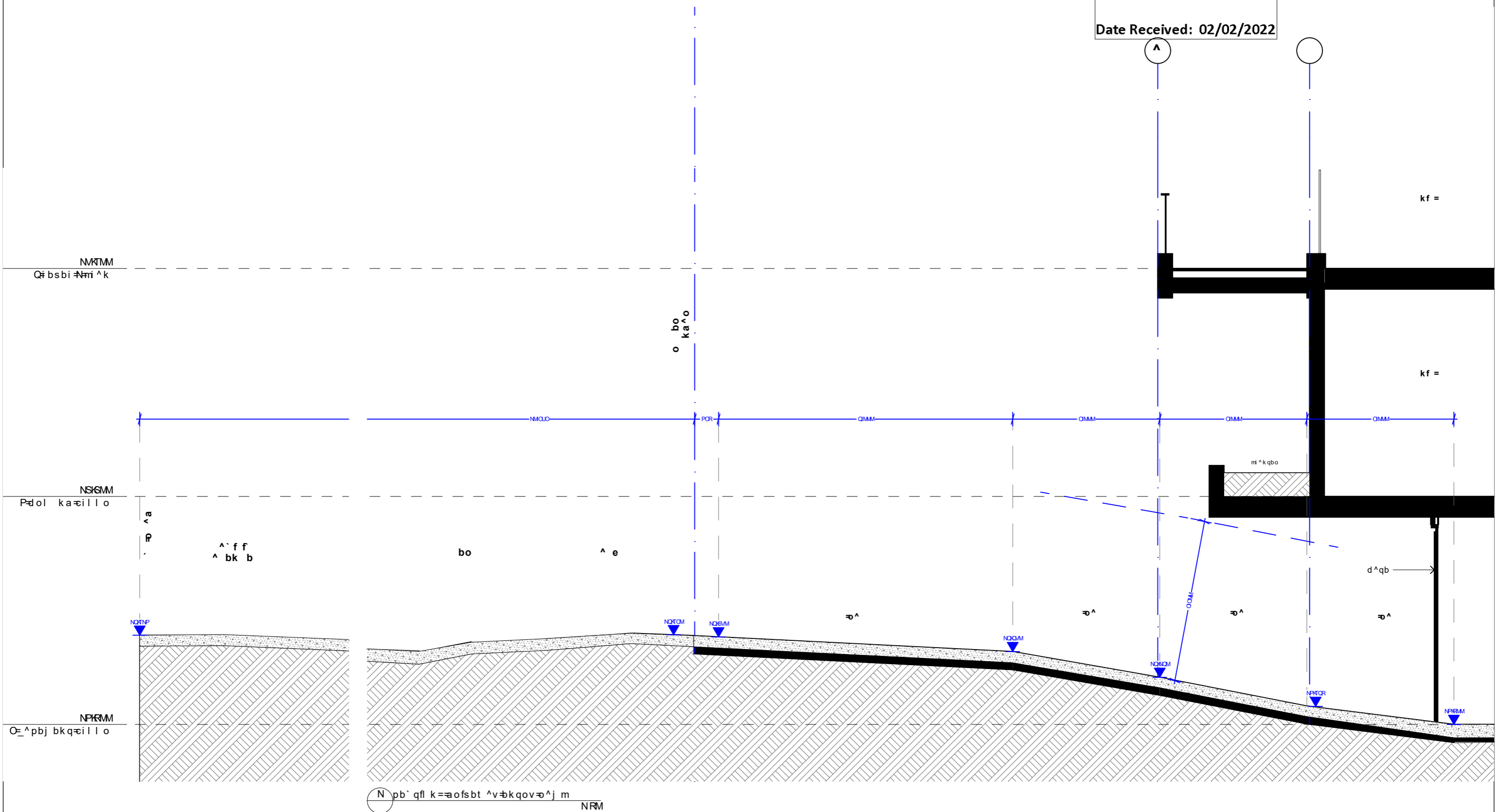
DA2300

REV:

B

Application No: DA-44/2022

Date Received: 02/02/2022



T 0421 996 467
W markshapiro.com.au
E mark@markshapiro.com.au

NSW REG. 9789
ABN 646 2000 7678

A	2021-12-15	FOR DEVELOPMENT APPLICATION
ISSUE	DATE	REVISION

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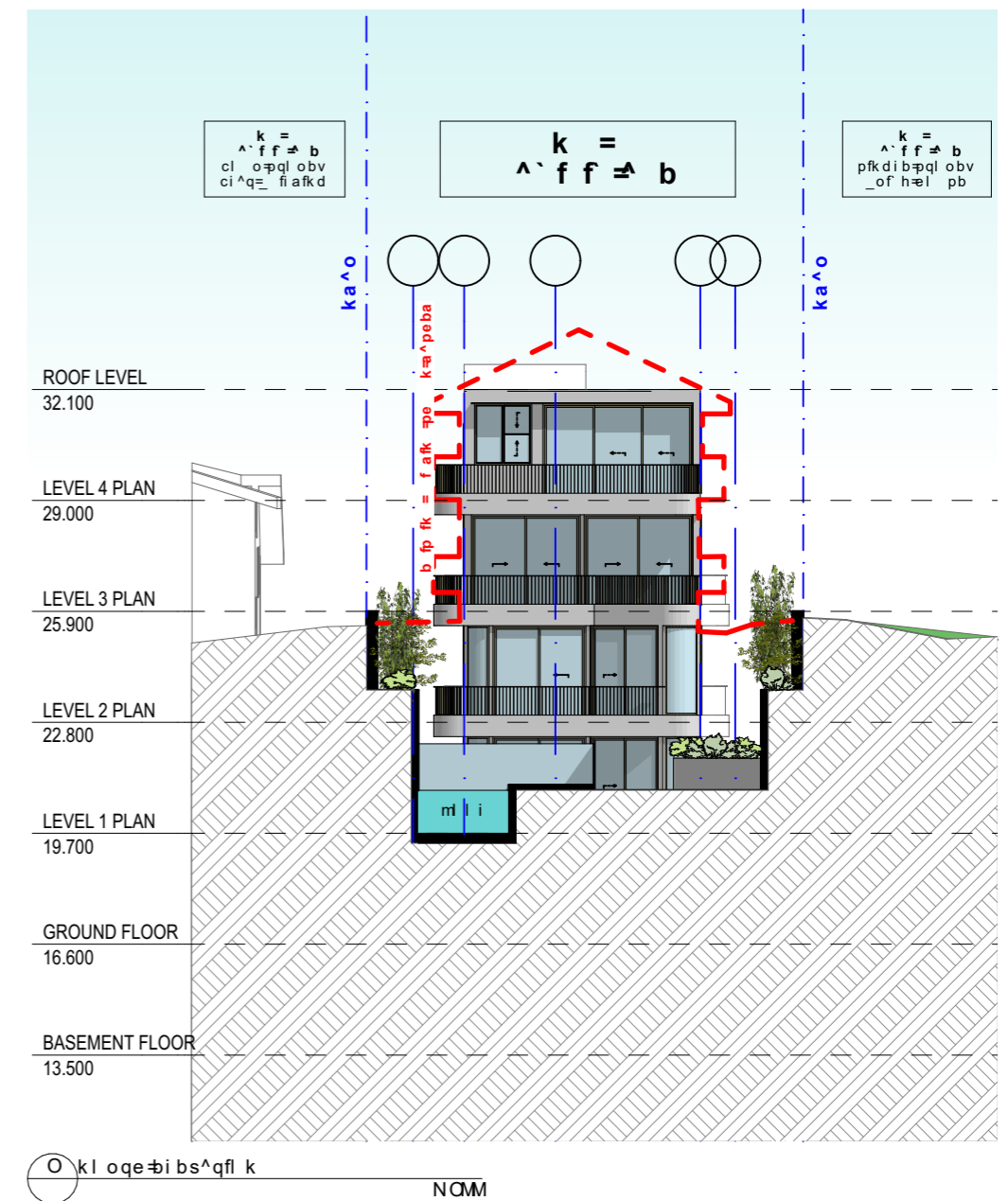
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PROJECT:
PROPOSED NEW RESIDENTIAL FLAT BUILDING
5 Pacific Ave
Tamarama NSW 2026
DRAWING:
DRIVEWAY ENTRY RAMP SECTION

PROJECT NO:
20022

PLOTTED: 2021-12-15

DRAWING NO: REV:
DA2301 A



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E mark@markshapiro.com.au

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ISSUE	DATE	REVISION

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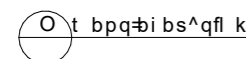
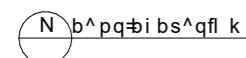
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Australia

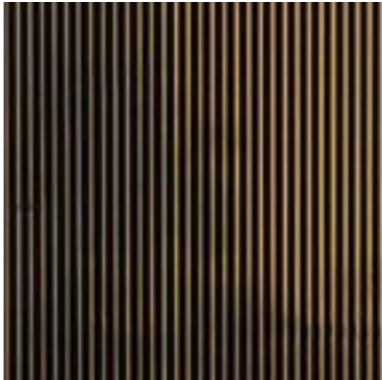
PROJECT:
PROPOSED NEW RESIDENTIAL FLAT BUILDING
5 Pacific Ave
Tamarama NSW 2026
DRAWING:
ELEVATIONS NORTH & SOUTH

PROJECT NO:
20022

PLOTTED: 2021-12-15

DRAWING NO: REV:
DA2400 A





Vertical wooden slats



Light-colored textured wall



Large window with dark frame



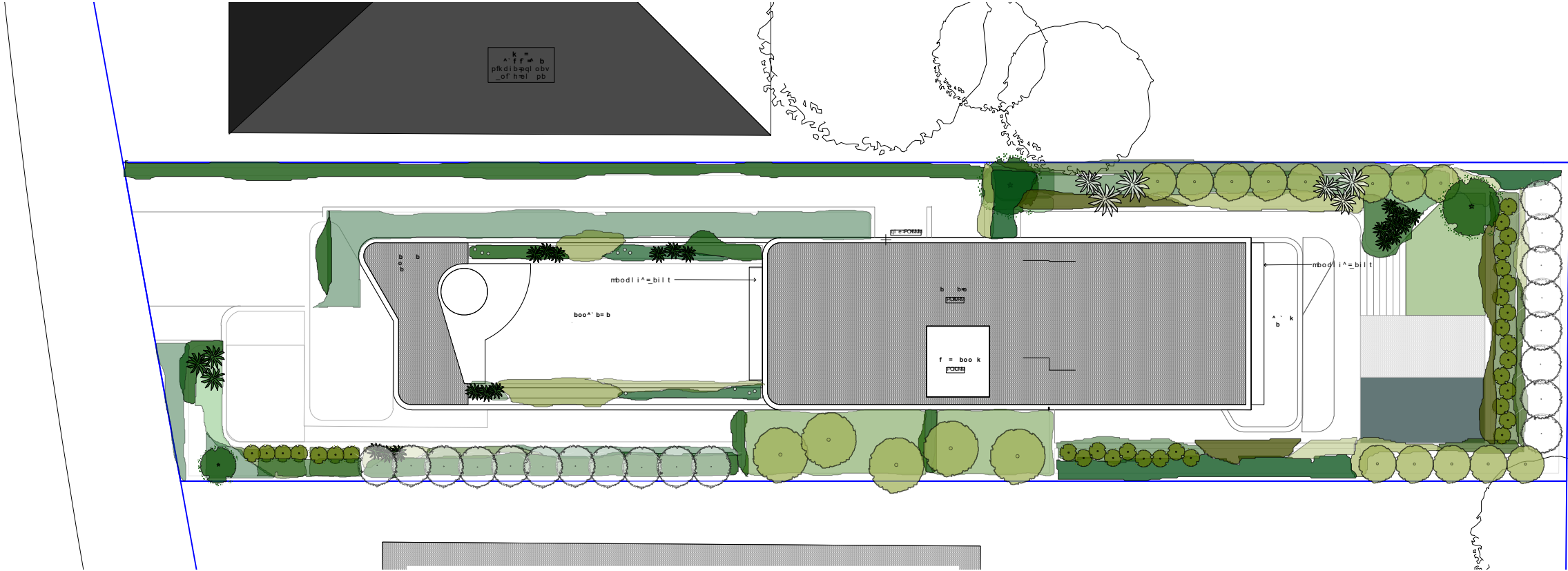
Vertical wooden slats



Balcony with glass railing



Vertical wooden slats

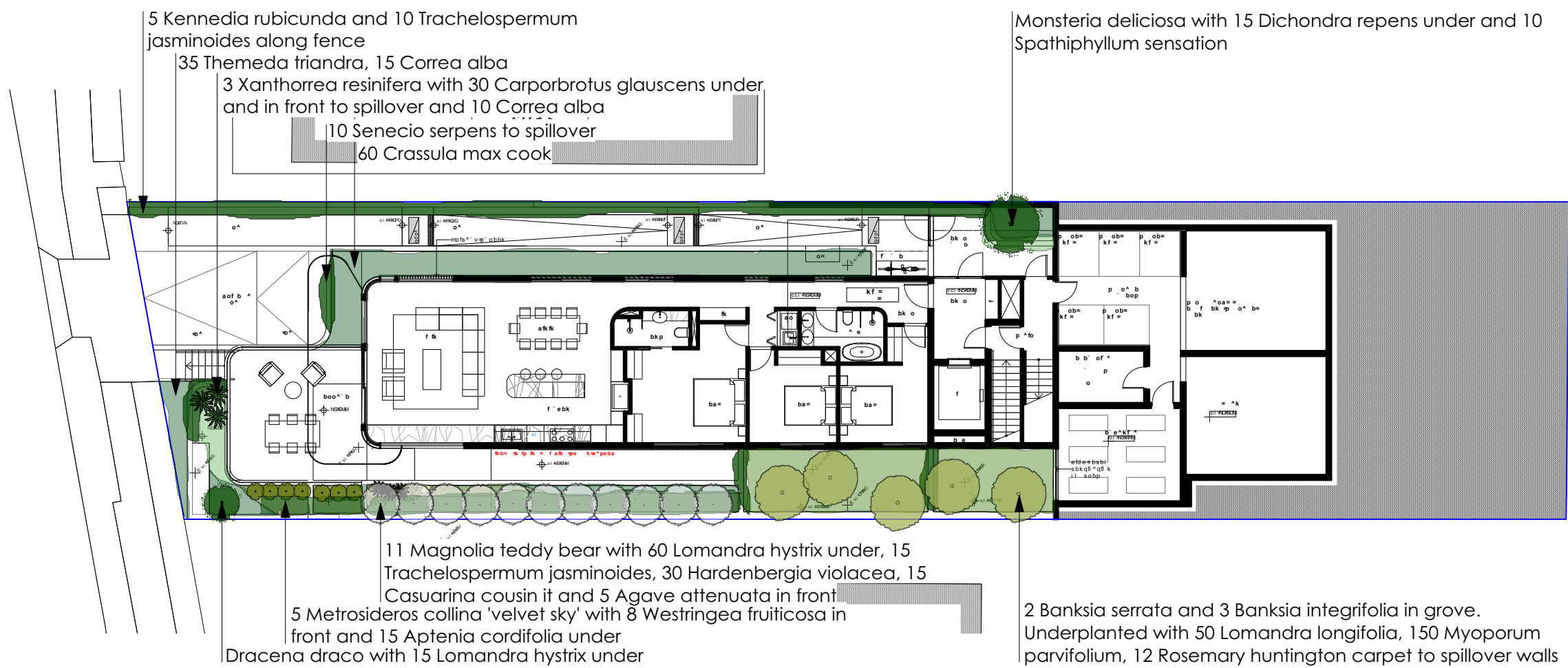


- NOTE:**
1. Figure dimensions shall take precedence over scale.
 2. Contractors must verify all dimensions on job before commencing any work or making shop drawings.
 3. All structural works including demolition to be verified by Structural Engineer prior to contractor undertaking any works. All structural landscaping and building works to be undertaken by suitably qualified, insured and licensed persons in the field only. Supervision and coordination of such work to be undertaken by suitably qualified, insured, licensed and experienced structural landscaper and/or builder only.
 4. Verify all plant numbers on site prior to ordering and advise Landscape Architect if any changes are deemed necessary. Responsibility of number of plant stock ordered rests solely with contractor not Landscape Architect. Plant schedule for approval process only, not to be used for orders or quotes. Set out instructions as given on site by TWLA including any amendments to plant species and type as given on site remain the responsibility of contractor to update quote and order accordingly. Plant schedule as guide only.
 5. Automatic irrigation system to be installed by irrigation subcontractor who is a suitably qualified, insured and licensed persons in the field only.
 6. Check existing RL's and all soil depths on site. Advise Landscape Architect of any discrepancies before commencement. Allow for adjustments to suit discrepancies.
 7. Contractor/s to familiarize self and team with existing site conditions prior to undertaking any works, including any underground services.
 8. Forest Fines Mulch from Australian Native Landscapes to be evenly distributed under all completed garden beds post soil, plant, irrigation and electrical install (Ph: 13 14 58).
 9. Lighting to be from Nocturnal Lighting (Sydney Distributor Ph: 02 9699 6007) or Lumascape Lighting (+61 7 3854 5000), to electrician detail. Allow for power to all garden beds as directed by TWLA.
 10. Pot selection from The Balcony Garden and Martin Kellock Pots, TBD by TWLA.
 11. Any natural materials used in the project including but not limited to timber, stone and plant material, may change in appearance and dimension following exposure to use or climatic conditions and this is typical of such materials. Any discrepancy regarding natural or non-natural material to be directed to supplier, landscape contractor, stonemason, manufacturer or the like. No responsibility for material used on project rests with Landscape Architect.
 12. Comply with relevant authority requirements.
 13. Comply with National Construction Code requirements.
 14. Comply with Australian Standards for material, construction and landscape practice.
 15. Comply with BASIX certificate, if applicable.
 16. Do not scale from drawings.
 17. This drawing is protected by copyright.

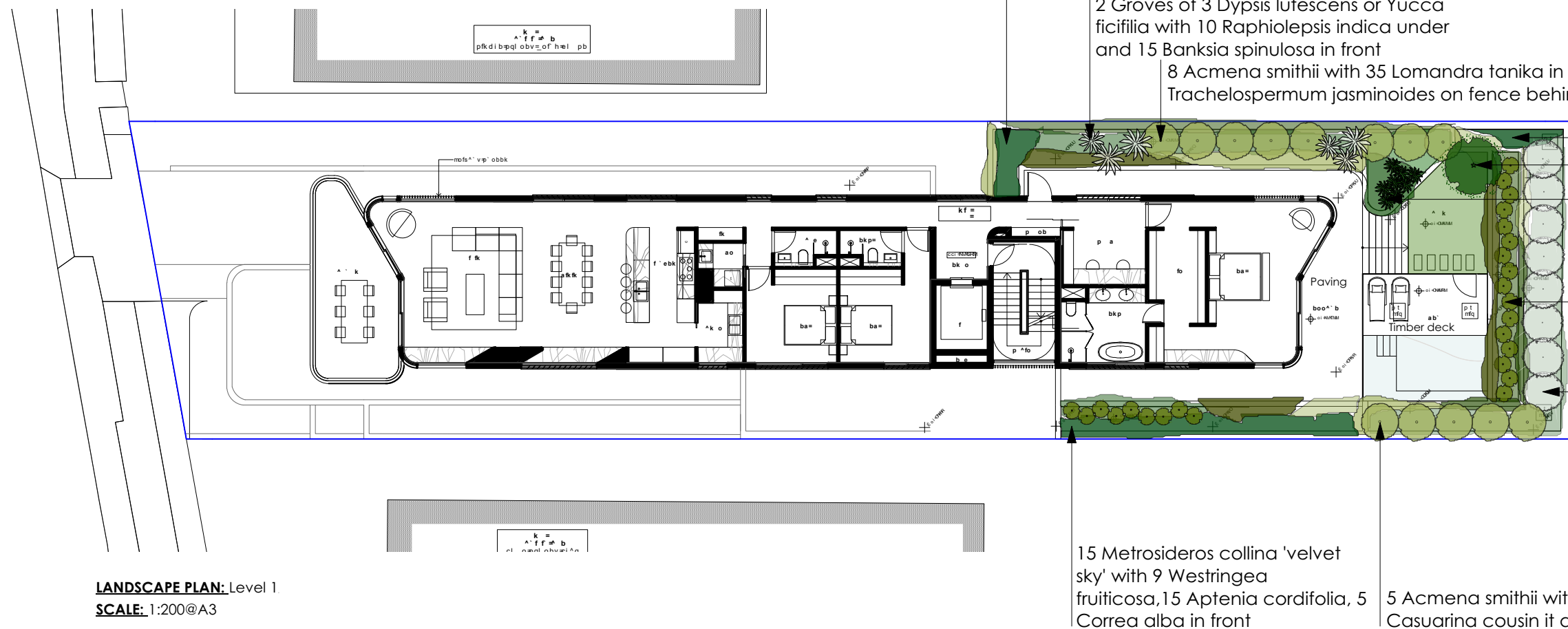
PLANT SCHEDULE				
Botanic Name	Common Name	Pot Size	Max Height (mm)	NO.
<i>Agave attenuata</i>	Agave	200	600	18
<i>Acmena smithii</i> *	Lilly pilly	100L	6000	13
<i>Aptenia cordifolia</i>	Baby sun rose	200	groundcover	65
<i>Aloe ferox</i>	Bitter aloe	300	2000	6
<i>Banksia serrata</i> *	Old man banksia	200L	6000	2
<i>Banksia integrifolia</i> *	Coastal banksia	200L	10000	3
<i>Banksia spinulosa</i> *	Birthday candles	200	groundcover	15
<i>Brachychiton rupestris</i> *	Bottle tree	broot	4000	1
<i>Correa alba</i> *	Correa	200	1500	30
<i>Carpobrotus glauscens</i> *	Pigs face	200	groundcover	51
<i>Crassula max cook</i>	Curly jade	200	600	95
<i>Casuarina cousin it</i> *	Cousin it	200	groundcover	25
<i>Crassula blue bird</i>	Blue jade	200	600	10
<i>Cissus ellen danica</i> *	Snake vine	200	groundcover	25
<i>Cleistocactus strausii</i>	Silver torch	300	1000	10
<i>Echeveria sp</i>	Hens and chooks	200	groundcover	10
<i>Hardenbergia violacea</i> *	Native violet	200	groundcover	30
<i>Hibbertia scandens</i> *	Guinea flower	200	groundcover	10
<i>Kennedia rubicunda</i> *	Coral pea	200	climber	5
<i>Lomandra hystrix</i> *	Hystrix	200	1000	75
<i>Lomandra longifolia</i> *	Mat rush	200	1000	50
<i>Lomandra tanika</i> *	Tanika	200	600	35
<i>Monstera deliciosa</i>	Monstera	300	4000	2
<i>Metrosideros collina</i>	Velvet sky	100L	3000	20
<i>Magnolia teddy bear</i>	Teddy bear	200L	4000	19
<i>Myoporum parvifolium</i> *	Dwarf native myrtle	200	groundcover	150
<i>Rosemary huntington carpet</i>	Trailing rosemary	200	spillover	51
<i>Raphiolepis indica</i>	Indica hawthorne	200	1500	10
<i>Senecio serpens</i>	Blue chalk	200	groundcover/spillover	22
<i>Senecio cylindrica</i>	Cylinder blue chalk	200	groundcover/spillover	20
<i>Spathiphyllum sensation</i>	Sensation	300	1000	10
<i>Trachelospermum jasminoides</i>	Star jasmine	200	climber	47
<i>Themeda triandra</i> *	Kangaroo grass	200	600	35
<i>Westringea fruticosa</i> *	Coastal rosemary	300	2000	47
<i>Xanthorea resinifera</i> *	Grass tree	45L	2500	3

*Denotes endemic and/or native species: 60%





LANDSCAPE PLAN: Basement & Ground
SCALE: 1:200@A3

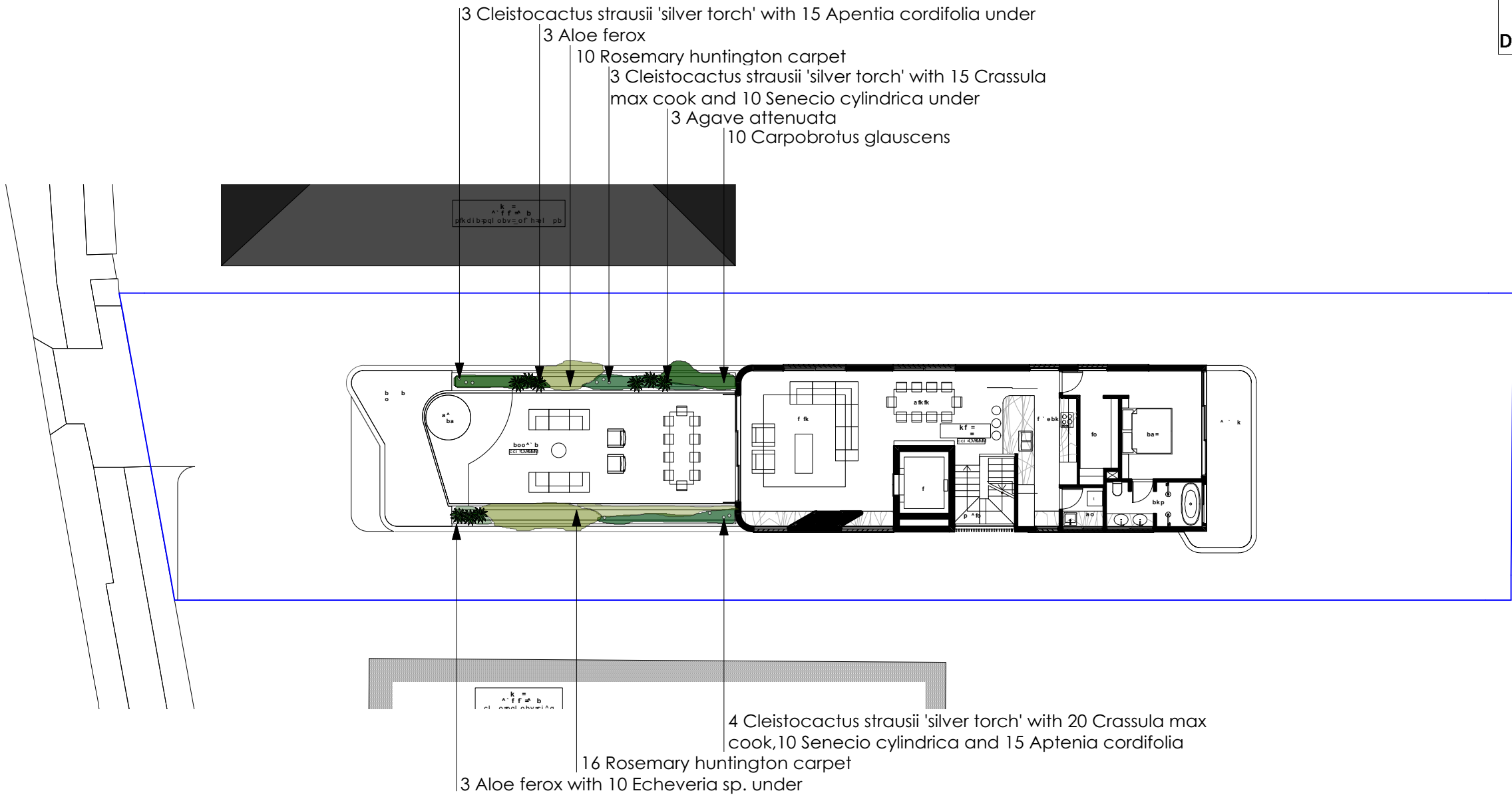


LANDSCAPE PLAN: Level 1
SCALE: 1:200@A3

Monstera deliciosa
Brachychiton rupestris
10 Agave attenuata, 20 Aptenia cordifolia
20 Westringea fruticosa with 10 Rosemary huntington carpet, 10 Crassula blue bird, 5 Carpobrotus glaucens to spillover
8 Magnolia teddy bear, 10 Senecio serpens, 12 Trachelospermum jasminoides and 5 Carpobrotus glaucens to spillover

15 Metrosideros collina 'velvet sky' with 9 Westringea fruticosa, 15 Aptenia cordifolia, 5 Correa alba in front
5 Acmena smithii with 25 Cissus ellen danica under, 10 Casuarina cousin it and 10 Hibbertia scandens to spillover





DATE	REVISION	NOTE	RECIPIENT
18.08.2021	A	Issued for client/architect comment	Architect/client

Figure dimensions shall take precedence over scale. Contractors must verify all dimensions on job before commencing any work or making shop drawings. Check existing RL's on site. Advise Landscape Architect of any discrepancies before commencement. Allow for adjustments to suit discrepancies. Comply with relevant authority requirements. Comply with National Construction Code requirements. Comply with Australian Standards for material and construction practice. Comply with BASIX certificate. Do not scale from drawings. This drawing is protected by copyright.

Project:
5 Pacific Ave Tamarama

Client:
STM

Dwg no:
LP03-2021

Title:
Landscape Plan L4

Drawn by:	Checked:	Scale:
TW	TW	1:200@A3
Issue:	Revision:	Date:
01	A	Aug 2021

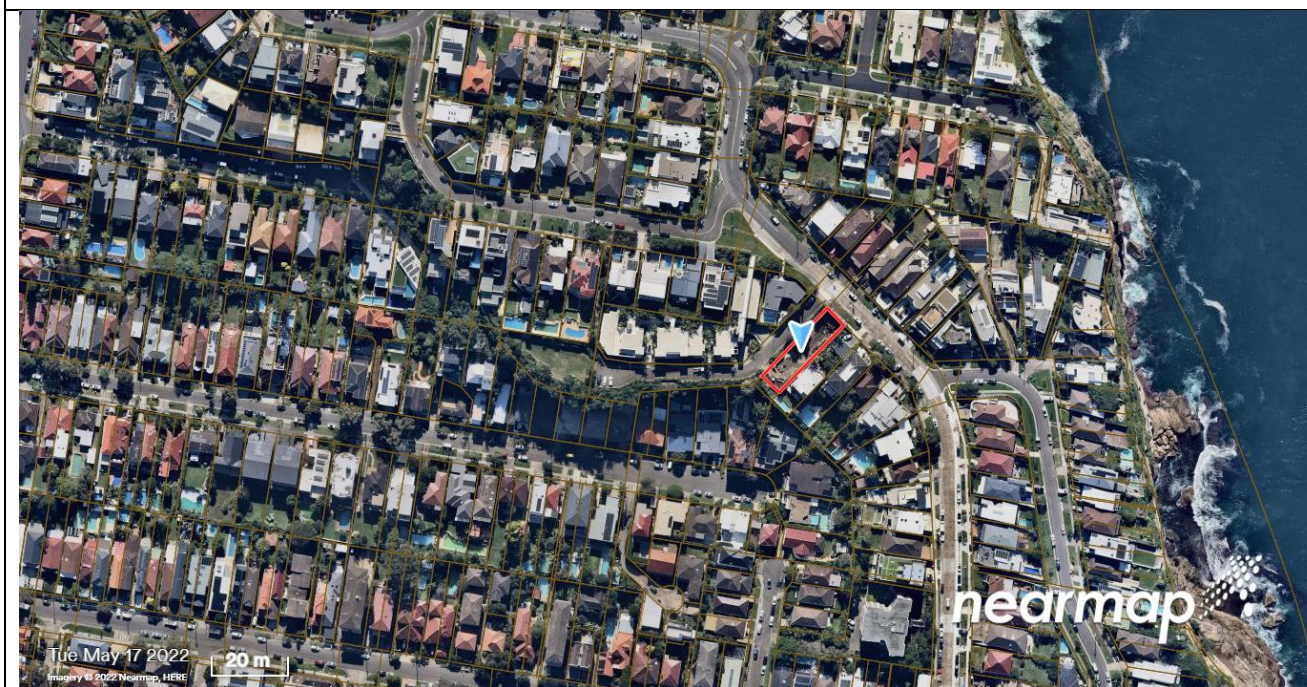




Report to the Waverley Local Planning Panel

Application number	DA-115/2021/A
Site address	78 Military Road, DOVER HEIGHTS
Proposal	Modification to alter internal layout, windows and deletion of roof terrace
Description of Approved Development	Demolition of existing structures, construction of a new dual occupancy with integrated parking, swimming pool and Strata subdivision
Date of lodgement	16 March 2022
Owner	Cadigal No. 1 Pty Ltd
Applicant	Mr Andrew Travers
Submissions	Nil
Amended cost of works	As per the original application (\$1,947,558.00)
Principal Issues	<ul style="list-style-type: none"> FSR non-compliance; and Finished wall height.
Recommendation	That the application be APPROVED in accordance with the conditions contained in the report

SITE MAP



1. PREAMBLE

1.1. Executive Summary

The modification application seeks to modify development consent, known as DA-115/2021/A for demolition of the existing structures and construction of a new dual occupancy with integrated parking, swimming pool and Strata subdivision, at the site known as 78 Military Road, DOVER HEIGHTS. In summary, the proposed modifications are to alter the internal layout, windows, driveway design and deletion of the roof terrace.

The principal issues arising from the assessment of the application are as follows:

- FSR non-compliance; and
- Finished wall height.

The assessment finds these issues acceptable because the additional floor space is largely contained within the approved envelope of the development and the finished wall height would not give rise to additional bulk and scale impacts. There would be minimal change to the approved shadow profile, with no additional windows or areas of private open space on adjoining properties being shadowed as a result of the proposed modification.

No submissions were received during notification of the modification application.

The application has been assessed against the relevant matters for consideration under section 4.55 (2) of the *Environmental Planning and Assessment Act 1979* and is recommended for approval subject to conditions of consent.

1.2. Site and Surrounding Locality

A site visit was carried out during the assessment of the original development application.

The site is identified as Lot B in DP 385993, known as 78 Military Road, DOVER HEIGHTS and is located on the corner of Military Road and Cadigal Place.

The site is a corner lot and is rectangular in shape with a primary north-eastern frontage to Military Road measuring 12.19m and a secondary north-western frontage to Cadigal Place measuring 48.265m. It has an area of 588m² and falls from the footpath on Military Road to the front setback area by approximately 4.5m and from the front setback area to the rear of the site by approximately 2.2m.

Prior to demolition of the structures on the site, the site was occupied by a part one, part two storey dwelling house with vehicular access provided from Military Road to a single car garage.

The site is adjoined by a dwelling house at its south-eastern side boundary (76 Military Road) and a small vacant lot at its south-western rear boundary that also belongs to 76 Military Road. The locality is characterised by low density residential development.

Figures 1 to 4 are photos of the site and its context.

	
<p>Figure 1: Subject site prior to demolition viewed from Military Road, facing south-west</p>	<p>Figure 2: Subject site prior to demolition viewed from Military Road, facing south-west</p>
	
<p>Figure 3: Rear setback of site prior to demolition, facing south</p>	<p>Figure 4: Swimming pool of 76 Military Road and adjoining vacant lot to the rear of the subject site</p>

1.3. Details of Approved Development

The original development application, known as DA-115/2021 for demolition of the existing structures and construction of a new dual occupancy with integrated parking, swimming pool and Strata subdivision, was approved on 25 August 2021 by the Waverley Local Planning Panel.

The modification application seeks to amend Condition 1, to reflect the new architectural plans and delete the general modification conditions under Condition 2, as these have been previously satisfied, as set out in a letter from Council to the applicant, dated 2 May 2022. Condition 2 reads as follows:

2. GENERAL MODIFICATIONS

The application is approved subject to the following plan amendments;

- (a) *The planter box on the roof terrace is to be deleted to maintain views from properties on Military Road.*
- (b) *The architectural and landscape plans are to be amended as follows to be consistent with advice provided by Council's Public Domain Engineer:*
 - (i) *The kerb return at the corner of Military Road and Cadigal Place is to be deleted; and*
 - (ii) *The stepping stones within Council's road reserve fronting Cadigal Place are to be deleted.*
- (c) *The landscape plans are to be amended to demonstrate the planting of two *Banksia integrifolia* (coast *Banksia*) replacement trees on the naturestrip at either side of the new driveway. The replacement trees must be a minimum pot size of 45 litres when planted.*
- (d) *The landscape plans are to be amended to be consistent with the amended architectural plans.*

The amendments are to be approved by the Executive Manager, Development Assessment (or delegate) prior to the issue of any Construction Certificate. An electronic copy of the amended plans or additional information (see website for electronic document requirements) addressing this condition, including a covering letter shall be provided to Council for review.

Construction Certificate, CCB-120/2022, for Stage 1 early works, site establishment and excavation to approved reduced levels (RLs), retaining walls to boundary and utility services (excluding stormwater works and connection) was issued on 13 May 2022 by a private certifier. As the dwelling has been demolished under this construction certificate, physical commencement of the approved development consent has been undertaken and the consent has been activated.

1.4. Proposal

The modification application has been submitted under section 4.55 (2) of the *Environmental Planning and Assessment Act 1979*. It seeks consent for the following modifications to the approved development:

- Lower ground floor
 - Internal layout reconfiguration.
 - New internal wall.
 - New glass floor over.
- Ground floor
 - Raise finished floor level.
 - New separate driveways, lower garage No.2 finished floor level, new rainwater tank.
 - Modify and reposition window (bed 1).
- First Floor
 - Raise finished wall height.
 - Raise finished floor level.
 - Extend floor area, reducing balcony and adding a planter.
 - New footpath realignment.
- Roof

- Raise finished wall height
- Delete roof terrace and stair and widen skylight.

1.5. Background

The modification application was lodged on 16 March 2022 and a request for clarification of the shadow impacts resulting from the proposed modification was made on 15 June 2022. The requested information was provided to Council on 20 June 2022.

2. ASSESSMENT

The following matters are to be considered in the assessment of this modification application under relevant sections of the *Environmental Planning and Assessment Act 1979* (the Act).

2.1. Section 4.55 – Modification of consents – generally

For section 4.55(2) – Other impact

The application is made under section 4.55(2) of the Act.

The quantitative and qualitative elements and impacts between the approved development and the development, as proposed to be modified, are not considered overly dissimilar as demonstrated in the following sections of this report. In this regard, the proposal is considered to be *substantially the same* as the originally approved development with regard to matters arising from the NSW Land and Environment Court case of *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 298*.

The application was publicly notified and there were no submissions received.

2.2. Evaluation of Matters for Consideration under Section 4.15

In accordance with section 4.55(3) of the Act the following is an assessment of the proposed modifications of the development consent against the relevant matters for consideration under section 4.15(1) of the Act.

2.2.1. Planning Instruments and Development Control Plans

The following is an assessment against relevant environmental planning instruments, including State environmental planning policies (SEPPs), and development control plans.

State Environmental Planning Policies (SEPPs)

The following SEPPs apply from the 1st March 2022 and have been considered acceptable in the assessment of this development application:

- SEPP (Building Sustainability Index – BASIX) 2004
- SEPP (Biodiversity and Conservation) 2021.

Draft Waverley Local Environmental Plan 2022 (Draft Waverley LEP 2022)

The Draft Waverley Local Environmental Plan 2022 was exhibited from 12 November 2021 to 23 January 2022, however at the time of this assessment, there are no relevant matters for consideration.

Waverley Local Environmental Plan 2012 (Waverley LEP 2012)

The land use definition of the approved development, being dual occupancy, remains unchanged and continues to be permitted development in the R2 Low Density Residential zone under Waverley LEP 2012.

The quantities of the approved development, as proposed to be modified, have changed as outlined in **Table 1** of this report in relation to principal development standards under Waverley LEP 2012. All other relevant provisions of Waverley LEP 2012 remain compliant or are non-compliant for the reasons discussed below.

Table 1: Waverley LEP 2012 Compliance Table

Provision	Approved	Proposed Modified	Compliance
4.3 Height of buildings <ul style="list-style-type: none">• 8.5m	8.5m	The reconfiguration of the floor levels and deletion of the roof terrace results in a height of 8.5m, remaining compliant with the height standard.	Yes
4.4 Floor space ratio and 4.4A Exceptions to floor space ratio <ul style="list-style-type: none">• 0.5:1 (294m²)	0.698:1 (410.43m ²)	0.736:1 (432.94m ²)	No

The following is a detailed discussion of exceedances of particular development standards under Waverley LEP 2012 as a result of the approved development, as proposed to be modified.

Floor Space Ratio (FSR)

The proposed modifications result in a net increase of gross floor area (GFA) of 22.51m², resulting in an overall FSR of 0.736:1. This culminates in an overall exceedance of the FSR development standard by 138.94m² or 47.26%. The net increase of FSR due to the proposed modifications represents 16.2% of the overall exceedance of the standard.

The applicant has provided some written justification for the non-compliance with the FSR development standard and has based the justification on the performance of the proposal against the objectives of the development standard. The relevant objectives of the development standard are as follows:

- (b) to provide an appropriate correlation between maximum building heights and density controls,*
- (c) to ensure that buildings are compatible with the bulk, scale, streetscape and desired future character of the locality,*
- (d) to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and the locality.*

The justification provided by the applicant to support the increased exceedance of the FSR development standard is summarised as follows:

- *continues to provide a compliant building height, and maintains the density originally approved;*
- *improves the building's compatibility in relation to bulk, scale, streetscape appearance or its contribution to the desired future character of the locality as compared to the original approval;*
and
- *preserves the environmental amenity of neighbouring properties and introduces no new impacts on the amenity of the locality.*

The additional floor space is largely contained within the approved envelope of the development. The majority of the floor space is sought at the lower ground level, (11.95m²) converting an area that was previously allocated for inground rainwater tanks and onsite detention, to a laundry cellar and storage space. The proposed reconfiguration enables a larger kitchen and dining area, contained within the approved building envelope. The additional floor space sought at ground floor level (2.14m²) is attributable to a minor alteration to the top of stairs within dwelling 1 and does not alter the building footprint. The additional floor space at first floor level (8.42m²) is as a result of a minor extension of the front of dwelling 1 into the approved balcony, increasing the internal living spaces and reducing the overall area of the balcony. The extension would result in a minor increase of the building envelope at the front however the overall footprint of the development would be maintained.

The additional floor space would not give rise to additional bulk and scale impacts and there would be minimal change to the approved shadow profile, with no additional windows or areas of private open space on adjoining properties being shadowed as a result of the proposed modification.

The approved development, as proposed to be modified, will achieve and be consistent with the relevant objectives of the FSR development standard. Therefore, the net exceedance is deemed acceptable and is supported.

Waverley Development Control Plan 2012 (Waverley DCP 2012) – Amendment No.9

The approved development, as proposed to be modified, continues to comply with the relevant parts and sections of Waverley DCP 2012. Only the following parts and sections of Waverley DCP 2012 that apply to the proposed modifications are outlined in **Tables 2** and **3** of this report and detailed discussion below these tables.

Table 2: Waverley DCP 2012 – Part B General Provisions Compliance Table

Development Control	Compliance	Comment
1. Waste	Yes	Satisfactory.
2. Ecologically Sustainable Development	Yes	Satisfactory.
3. Landscaping and Biodiversity	Yes	Satisfactory.
6. Stormwater	Yes	Satisfactory.
8. Transport Minimum parking rate: <ul style="list-style-type: none"> Nil Maximum parking rate: <ul style="list-style-type: none"> 1 space for 2 or less bedrooms 2 spaces for 3 or more bedrooms. 	Yes	The proposal provides for two car spaces for each dwelling. Its design and location are satisfactory. The modification application seeks an amended driveway design. Further detail provided in Table 3 and Section 3.1 of this report.
10. Safety	Yes	Satisfactory.
12. Design Excellence	Yes	The proposed modification will not alter the character of the streetscape, or detract from the approved development and is considered to achieve design excellence.
14. Excavation	Yes	The proposed modification does not seek to increase excavation on the site.

Table 3: Waverley DCP 2012 – Part C2 Low Density Residential Development Compliance Table

Development Control	Compliance	Comment
2.0 General Objectives		
	Yes	The proposal does not contravene the general objectives of this part of the DCP.
2.1 Height		
Flat roof dwelling house <ul style="list-style-type: none"> Maximum wall height of 7.5m 	Acceptable on merit	<i>See discussion below.</i>

Development Control	Compliance	Comment
2.2 Setbacks		
2.2.1 Front and rear building lines <ul style="list-style-type: none"> Predominant front building line Predominant rear building line at each floor level 	Yes	The proposal reduces the first floor setback from the Military Road site boundary from 8.5m to 7.7m, measured to the side of dwelling 1. Despite the reduced setback, the modification remains consistent with front setbacks to the south-east of the site. In addition, the balcony has been reduced in area, therefore the overall footprint of the development along the Military Road remains as approved.
2.2.2 Side setbacks <ul style="list-style-type: none"> Minimum of 0.9m (for height up to 8.5m) 	N/A	Side setbacks are unaltered under the modification application.
2.3 Streetscape and visual impact		
<ul style="list-style-type: none"> New development to be compatible with streetscape context Significant landscaping to be maintained. 	Yes	The proposed modification is consistent with the approved scheme in terms of streetscape compatibility and context. The development responds to the topographical features of the site and continues to maintain a two storey appearance to both frontages. The deletion of the roof terrace reduces the overall height of the development and the appearance of bulk and scale.
2.5 Visual and acoustic privacy		
<ul style="list-style-type: none"> Habitable windows are not to directly face habitable windows or open space of neighbouring dwellings unless direct views are screened or other appropriate measures are incorporated into the design Maximum size of balconies: <i>10m² in area</i> <i>1.5m deep</i> Roof tops to be non-trafficable unless predominant in the immediate vicinity 	Yes	<p>The modified window at ground floor level facing Cadigal Place has been reduced in scale and are not likely to give rise to privacy concerns.</p> <p>As noted above, the first floor level balcony within dwelling 1 would be reduced in area as a result of the minor extension to the first floor level.</p> <p>The modification includes deletion of the roof terrace and therefore potential visual and acoustic privacy impacts are significantly reduced as a result of the modification application.</p>
2.6 Solar access		
<ul style="list-style-type: none"> Minimum of three hours of sunlight to living areas and principal open space areas on 21 June. 	Yes	The modification complies with the minimum requirements for solar access to living areas and principal open space on the subject site.
	Yes	

Development Control	Compliance	Comment
<ul style="list-style-type: none"> Minimum of three hours of sunlight maintained to at least 50% of principal open space areas of adjoining properties on 21 June. Avoid unreasonably overshadowing of solar collectors (including habitable windows). 	Yes	<p>There is a minor change to the shadow profile of the proposed development, given the modified finished wall height. Notwithstanding, the submitted shadow diagrams indicate that the proposal would not give rise to additional shadowing of the open space area of No. 76 Military Road and is compliant with the control.</p> <p>The proposal would give rise to very minor additional shadowing to the northern side of the dwelling at No. 76 Military Road. The shadowing would not result in additional windows being overshadowed and would be barely discernible from the approved shadow profile. The proposal complies with the control.</p>
2.7 Views		
<ul style="list-style-type: none"> Views from the public domain are to be maintained Development to be designed and sited so as to enable a sharing of views with surrounding dwellings particularly from habitable rooms and decks. 	Yes	Views from the public domain would not be altered by the modification application.
	Yes	Notwithstanding the proposed modified finished wall height, views have been maintained and view sharing remains available from surrounding properties. The Statement of Environmental Effects (SEE) notes that deletion of the roof terrace was primarily in response to the increased wall heights to ensure the retention of views and the view analysis submitted with the application demonstrates that the proposal would not result in view loss or impact on views from surrounding properties.
2.8 Car parking		
2.8.6 Driveways <ul style="list-style-type: none"> Maximum of one per property Maximum width of 3m at the gutter (excluding splay) Crossings not permitted where 2 on street spaces are lost 	Acceptable by condition	The modification proposes two separate driveways to each dwelling. The original development application proposed one driveway. Council's Traffic Engineer noted that the two separate driveways are acceptable in this instance, subject to the separation distance between each driveway being increased. The requirement is included as a condition of consent and is discussed in further detail in Section 3.1.

The following is a detailed discussion of the issues identified in the compliance tables above in relation to Waverley DCP 2012.

Finished wall height

The proposed modification seeks to amend the finished wall height, across the development. The finished wall height of dwelling 1A has been raised by 200mm from RL 67.500 to RL 67.700, due to the

raised floor level below. The finished floor level of dwelling 1 has also been raised by 200mm from RL 67.200 to RL 67.400 (see **Figure 6** and **7**).



Figure 5: Northwest elevation showing DA approved wall height and proposed modified wall height

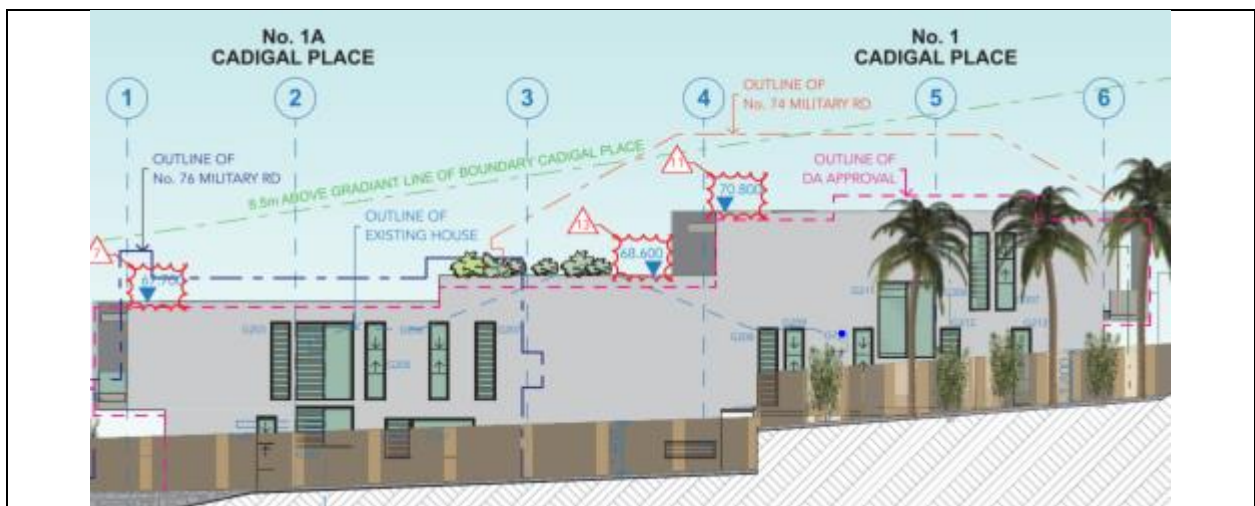


Figure 6: Southeast elevation showing DA approved wall height and proposed modified wall height

Figures 6 and **7** shows the proposed marginal increase in wall height. The modified finished wall height would not give rise to any discernible shadowing impacts above those assessed and approved under the original application. In addition, the roof terrace to dwelling 1A has been deleted to ensure that view sharing is maintained. The assessment finds that the proposed increased finished wall height is acceptable as it would not give rise additional bulk and scale or shadowing impacts.

2.2.2. Other Impacts of the Development

The proposal is considered to have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

2.2.3. Suitability of the Site for the Development

The site is considered suitable for the proposal.

2.2.4. Any Submissions

The application was notified 14 days in accordance with the *Waverley Community Development Participation and Consultation Plan*.

No submissions were received.

2.2.5. Public Interest

The proposal is considered to have no detrimental effect on the public interest, subject to appropriate conditions being imposed.

3. REFERRALS

The following internal and external referral comments were sought:

3.1. Traffic and Development

Council's Traffic Engineer noted that the application includes provision of two 3m wide driveways with a 2m separation. The approved development has a single driveway 6m wide at the street. The Waverley DCP requires a single driveway for dual occupancy development however it is appropriate to consider separate driveways if they present a benefit to the landscape and public domain.

Traffic noted that the separate driveways present a lesser impact on the visual landscape compared to the approved driveway. However, the 2m separation which results in the lesser impact makes one car space in each garage inaccessible.

A condition of consent is recommended to require each driveway crossing to be 3m wide at the property boundary. The width at the street is to be 3m plus 0.45m splays.

4. CONCLUSION

The modification application seeks to modify development consent, known as DA-115/2021/A for demolition of the existing structures and construction of a new dual occupancy with integrated parking, swimming pool and Strata subdivision, at the site known as 78 Military Road, DOVER HEIGHTS. In summary, the proposed modifications are to alter the internal layout, windows, driveway design and deletion of the roof terrace.

The principal issues arising from the assessment of the application are as follows:

- FSR non-compliance; and
- Finished wall height.

The assessment finds these issues acceptable because the additional floor space is largely contained within the approved envelope of the development and the finished wall height would not give rise to additional bulk and scale impacts. There would be minimal change to the approved shadow profile, with no additional windows or areas of private open space on adjoining properties being shadowed as a result of the proposed modification.

There were no submissions received during notification and no declared conflicts of interest on the application.

The application has been assessed against relevant sections of the Act and is recommended for approval subject to conditions of consent.

Development and Building Unit (DBU) Decision:

The application was reviewed by the DBU at the meeting on 28 June 2022 and the DBU determined:

- (a) The application is acceptable and should be approved, subject to the conditions in Appendix A.

DBU member: *B McNamara and B Magistrale.*

5. RECOMMENDATION TO WAVERLEY LOCAL PLANNING PANEL

That the modification application be APPROVED by the Waverley Local Planning Panel subject to modified and new conditions in Appendices A and B.

Report prepared by:	Application reviewed and agreed on behalf of the Development and Building Unit by:
	
Alana Jelfs	Ben Magistrale
Senior Development Assessment Planner	Manager, Development Assessment (Area 2) (Reviewed and agreed on behalf of the Development and Building Unit)
Date: 11 July 2022	Date: 13 July 2022

Reason for WLPP referral:

The consent authority for the original development application was the WLPP, this modification is made under section 4.55(2) of the Act and relates to:

1. Departure from any development standard in an EPI by more than 10%

APPENDIX A – CONDITIONS OF CONSENT TO BE MODIFIED

A. Amended/Deleted Conditions

A. APPROVED DEVELOPMENT

1. APPROVED PLANS AND DOCUMENTATION

The development must be in accordance with:

- (a) Architectural Plans prepared by Mark Shapiro Architects of Project No: 20006 including the following:

Plan Number	Revision	Plan Description	Plan Date	Date received by Council
DA0000	B-D	Cover Page	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2000	B-D	Lower Ground + Ground Floor Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2001	B-D	First Floor and Roof Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2002	B-D	Lower Ground Floor Detail Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2003	B-D	Ground Floor Detail Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2004	B-D	First Floor Detail Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2005	B-D	Roof Detail Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2300	B-D	Major Sections	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2301	B-D	Driveway Sections	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2400	B-D	Elevations	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2401	B-D	Elevations	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA9300	D	External Finishes	01/03/2022	16/03/2022

- (b) BASIX Certificates

- (c) Draft Strata Plan prepared by Mark Shapiro Architects dated 18/6/21 and received by Council on 19 June 2021

- ~~(d) Schedule of external finishes and colours received by Council on (07/04/2021)~~

[DELETED BY DA-115/2021/A]

- (e) The Site Waste and Recycling Management Plan (SWRMP) Part 1 (07/04/2021)

Except where amended by the following conditions of consent.

2. GENERAL MODIFICATIONS

The application is approved subject to the following plan amendments;

- ~~(a) The planter box on the roof terrace is to be deleted to maintain views from properties on Military Road.~~
- ~~(b) The architectural and landscape plans are to be amended as follows to be consistent with advice provided by Council's Public Domain Engineer:
 - ~~(i) The kerb return at the corner of Military Road and Cadigal Place is to be deleted; and~~
 - ~~(ii) The stepping stones within Council's road reserve fronting Cadigal Place are to be deleted.~~~~
- ~~(c) The landscape plans are to be amended to demonstrate the planting of two *Banksia integrifolia* (coast Banksia) replacement trees on the naturestrip at either side of the new driveway. The replacement trees must be a minimum pot size of 45 litres when planted.~~
- ~~(d) The landscape plans are to be amended to be consistent with the amended architectural plans.~~

~~The amendments are to be approved by the **Executive Manager, Development Assessment (or delegate)** prior to the issue of any Construction Certificate. An electronic copy of the amended plans or additional information (see website for electronic document requirements) addressing this condition, including a covering letter shall be provided to Council for review.~~

[DELETED BY DA-115/2021/A]

37. NEW VEHICLE CROSSING

~~A new shared vehicle crossing is to be provided to access the proposed garages. The new vehicle crossing is to be 6.0 metres wide with 0.45 metre splays at the street.~~

Two new vehicle crossings are to be provided to access the proposed garages. The crossings are to be 3.0 metres wide at the property boundary. The width at the street is to be 3.0 metres plus 0.45 metre splays. No structures above 1.15 metres are to be within 2 x 2.5 metre sight triangles measured from the footpath.

A separate application is required for the vehicle crossings, with all work to be carried out with the approval of and in accordance with the requirements of Council.

[AMENDED BY DA-115/2021/A]

39. VEHICULAR ACCESS – FINISHED LEVEL

The finished level at the property boundary on **both** sides of the **two**-vehicle crossings is to match the level of the existing concrete footpath.

[AMENDED BY DA-115/2021/A]

APPENDIX B – FULL SET OF CONDITIONS

A. APPROVED DEVELOPMENT

1. APPROVED PLANS AND DOCUMENTATION

The development must be in accordance with:

- (a) Architectural Plans prepared by Mark Shapiro Architects of Project No: 20006 including the following:

Plan Number	Revision	Plan Description	Plan Date	Date received by Council
DA0000	B-D	Cover Page	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2000	B-D	Lower Ground + Ground Floor Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2001	B-D	First Floor and Roof Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2002	B-D	Lower Ground Floor Detail Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2003	B-D	Ground Floor Detail Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2004	B-D	First Floor Detail Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2005	B-D	Roof Detail Plan	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2300	B-D	Major Sections	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2301	B-D	Driveway Sections	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2400	B-D	Elevations	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA2401	B-D	Elevations	18/6/21 01/03/2022	19 June 2021 16/03/2022
DA9300	D	External Finishes	01/03/2022	16/03/2022

- (b) BASIX Certificates

- (c) Draft Strata Plan prepared by Mark Shapiro Architects dated 18/6/21 and received by Council on 19 June 2021

- (d) DELETED BY DA-115/2021/A

- (e) The Site Waste and Recycling Management Plan (SWRMP) Part 1 (07/04/2021)

Except where amended by the following conditions of consent.

2. GENERAL MODIFICATIONS

(DELETED BY DA-115/2021/A)

3. PUBLIC DOMAIN IMPROVEMENTS

The public domain is to be upgraded along Military Road and Cadigal Place frontages of the development site in accordance with the current Waverley Council Development Control Plan (DCP) and Public Domain Technical Manual (PDTM) at the time of engineering plan approval. A public domain plan for the following works shall be submitted to Council, and approved by the **Executive Manager, Infrastructure Services (or delegate)** prior to the issue of the relevant Construction Certificate.

- Pedestrian footpath
- Vehicular crossing
- Kerb and gutter
- Stormwater infrastructure
- Retaining wall
- Associated undergrounding works
- Landscape and street tree plantings

B. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required.

GENERAL REQUIREMENTS

4. NO BUILDING OR DEMOLITION WORKS PRIOR TO RELEASE OF CONSTRUCTION CERTIFICATE

The building work, or demolition work, must not be commenced until:

- (a) a Construction Certificate has been obtained from Council or an Accredited Certifier in accordance with the *Environmental Planning and Assessment Act 1979*;
- (b) a Principal Certifying Authority has been appointed and Council has been notified of the appointment in accordance with the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*; and
- (c) Council is given at least two days' notice in writing of the intention to commence the building works.

5. HOME BUILDING ACT

The builder or person who does the residential building work shall comply with the applicable requirements of Part 6 of the *Home and Building Act, 1989*. In this regard a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy the Principal Certifying Authority that they have complied with the applicant requirements of Part 6, before any work commences.

CONTRIBUTIONS, FEES & BONDS

6. SECTION 7.12 CONTRIBUTION

A cash contribution is payable to Waverley Council pursuant to section 7.12 of the *Environmental Planning and Assessment Act 1979* and Waverley Council Development Contributions Plan 2006 in accordance with the following:

- (a) A cost report indicating the itemised cost of the development shall be completed and submitted to Council:
 - (i) Where the total development cost is less than \$500,000:
"Waverley Council Cost Summary Report"; or,
 - (ii) Where the total development cost is \$500,000 or more:
"Waverley Council Registered Quantity Surveyor's Detailed Cost Report".

A copy of the required format for the cost reports are in the Waverley Council Contributions Plan 2006, available on Council's website.

- (b) As legislated in section 25K of the Environmental Planning and Assessment Regulation 2000, the levy must be paid in accordance with the following;
 - (i) A development valued at \$100,000 or less will be exempt from the levy.
 - (ii) A development valued at \$100,001 - \$200,000 will attract a levy of 0.5% OR
 - (iii) A development valued at \$200,001 or more will attract a levy of 1% based on the full cost of the development.

Prior to the issue of any Construction Certificate, evidence must be provided that the levy has been paid to Council in accordance with this condition or that the cost of works is less than \$100,000.

7. SECURITY DEPOSIT

A deposit (cash or cheque) or guarantee for the amount of **\$38,000** must be provided to Council for any damage caused to any property of the consent authority (ie. public land) as a consequence of the works and completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent.

This deposit (cash or cheque) or guarantee must be established prior to the issue of any Construction Certificate. The full amount of the difference after recovery of Council's cost for any repair of damage to Council property or rectification of unauthorised works on Council property will be refunded after satisfactory completion all of works associated with this consent (including the required public works) to the person who paid the deposit.

8. LONG SERVICE LEVY

A long service levy, as required under Section 34 of the *Building and Construction Industry Long Service Payments Act, 1986*, is to be paid in respect to this building work. In this regard, proof that the levy has

been paid is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Note: Council acts as an agent for the Long Service Payment Corporation and the levy may be paid at Council's office. The levy rate is 0.35% of building work costing \$25,000 or more.

CONSTRUCTION MATTERS

9. HOARDING

To ensure the site is contained during construction, a hoarding is required for the approved works which is to be designed and constructed in accordance with the requirements of Safe Work NSW. Where the hoarding is to be erected over the footpath or any public place, the approval of Council's Compliance Unit must be obtained and applicable fees paid, prior to the erection of the hoarding.

10. EROSION & SEDIMENT CONTROL

A Soil and Water Management Plan (SWMP), also known as an Erosion and Sediment Control Plan shall be prepared in accordance with Waverley Council's Water Management Technical Manual be installed and maintained until construction activities have been completed and the site is fully stabilised. A copy of the SWMP must be kept on site at all times and made available to Council officers upon request.

11. DETAILS OF EXCAVATION, SHORING OR PILE CONSTRUCTION

A report shall be prepared by a suitably qualified and practising Structural Engineer/Geotechnical Engineer detailing the proposed methods of bulk excavation, shoring or pile construction, including details of vibration emissions and any possible damage which may occur to adjoining or nearby properties as a result of the proposed building and excavation works.

Any practices or procedures specified in the Structural Engineer's report in relation to the avoidance or minimisation of structural damage to adjoining properties are to be fully complied with and incorporated into the plans and specifications together with the Construction Certificate.

12. ENGINEERING DETAILS

Structural details are to be prepared and certified by a practicing Structural Engineer in connection with all structural components of the approved works, prior to the issue of the relevant Construction Certificate.

STORMWATER & FLOODING

13. STORMWATER & PUBLIC INFRASTRUCTURE MANAGEMENT

To ensure that stormwater runoff from the development is drained in an appropriate manner, without impact to neighbouring properties and downstream systems, a detailed plan and certification of the development's stormwater management system must be submitted and approved by the **Executive Manager, Infrastructure Services (or delegate)** prior to the issue of the relevant Construction Certificate.

The submitted stormwater civil plans prepared by R. Balas Consulting P/L, Drawing No. 1823-C01, 1823-C02, 1823-C03, 1823-C04 & 1823-C05, dated 25/03/2021 are considered concept only.

The applicant must submit plans and specifications to comply with the current Waverley Council Water Management Technical Manual and Development Control Plan (DCP) at the time of engineering plan approval. The submitted plans shall be prepared by a suitably qualified and practising Civil Engineer and:

- (a) Additional/updated details of the proposed OSD system and its details are to be submitted.
- (b) The permissible site discharge (PSD) for the property has been determined to be 20 L/s. The stormwater management plan (or supporting documentation) must calculate and note the discharge rate from each OSD system as well as the rate of runoff from the areas bypassing the systems to demonstrate the PSD is not exceeded.
- (c) A sediment control pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets. Details are to be included.
- (d) Seepage water must not be directly or indirectly discharged to Council's street gutter.
- (e) Details of any rainwater tank required by BASIX commitments or as nominated on the architectural plan, including the overflow connection to the approved stormwater drainage system shall be provided.
- (f) Pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits and inspection openings and their location are to be provided.
- (g) Where the stormwater disposal system is being connected into an existing below ground kerb inlet pit or stormwater conduit, a long section of the connection (drawn at a suitable scale) must be provided and its details must be included (e.g. the chainage/location of existing services crossing and the clearances, existing surface levels and obvert and invert of any pipe).
- (h) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system (independent of any OSD system).
- (i) A grated trench drain shall be provided across the (garage entrance/driveway/street boundary) within private property. Unless otherwise sized by a suitably qualified and practising Engineer, the dimensions of the trench grate shall be no less than 300 mm wide by 150 mm deep at the shallow end and have a "bottom" slope of 2%. This trench drain shall be connected to an approved drainage system.
- (j) Any proposed pump out system shall be designed in accordance with AS/NZS 3500.3:2018.
- (k) Any affected Council's infrastructure as the result of construction activities within the public domain area, inclusive of stormwater, stormwater outlet/s, kerb and gutter, pavement, grass verges and vehicle crossovers within the extent works shall be replaced as per Waverley Council Public Domain Technical Manual. All associated costs shall be borne by the applicant.

Notes:

- The Applicant is advised to consider the finished levels of the public domain, including new or existing footpaths and pavement prior to setting the floor levels for the proposed development.

- Prior to commencement of works a security deposit will be made payable to Council to ensure any additional damage or unauthorised works within the Council property, not conditioned above. Council will reserve the right to withhold the cost of restoring the damaged assets from the security deposit should the applicant fail to restore the defects to the satisfaction of Council.
- Council's contact for infrastructure assessment: E-mail: assets@waverley.nsw.gov.au or Phone: 9083 8886 (operational hours between 9.30am to 4pm Monday to Friday)

Council must be notified when the connection has been made to the kerb inlet pit and an inspection must be made by a Council officer prior to public domain restoration and backfill at the point of connection. An inspection fee will apply for each inspection visit required by a Council officer, payable prior to any site inspection. Minimum 72 hour's notice must be provided to Council prior to inspection.

14. ENGINEERING PLANS ASSESSMENT AND WORKS INSPECTION FEES

The applicant is to pay to Council fees for assessment of all engineering plans and inspection of the completed works in the public domain inclusive of all stormwater assessment, in accordance with Council's Schedule of Fees & Charges at the time of engineering plan approval, prior to such approval being granted by Council.

An invoice will be issued to the applicant for the amount payable, which will be calculated based on the design plans for the subject development.

PUBLIC DOMAIN

15. BASIX

Public infrastructure works shall be designed and constructed as outlined in this condition of consent. The approved works must be completed to Council's satisfaction at no cost to Council.

Full design engineering drawings to be prepared by a suitably qualified and experienced engineering professional must be submitted to Council, and approved by the Executive Manager, Infrastructure Services (or delegate) prior to the issue of the relevant Construction Certificate.

The Applicant must submit plans and specifications for the following infrastructure works to Council's Infrastructure Engineer:

- Footpath, Kerb and Gutter:** The existing pedestrian footpath, footpath steps, kerb and gutter, and nature strip traversing Military Road frontage to be reconstructed and upgraded in accordance with the current Waverley Council Development Control Plan (DCP) and Public Domain Technical Manual (PDTM) at the time of engineering plan approval. The proposed footpath, kerb and gutter profiles to include longitudinal and cross sections to ensure proper connections to the existing Council infrastructure traversing the development site.
- Retaining Wall:** the existing retaining wall along Cadigal Place frontage must be removed and a new structural retaining wall shall be constructed on the property boundary. Full structural details of the wall along with a design certificate shall be submitted to Council.
- Street Tree:** A minimum two street trees must be planted along Military Road frontage. All new trees proposed within the Council verge will require the installation as per the Waverley Council Public

Domain Technical Manual. The chosen tree species and location shall not interfere with the wheel swept path or obstruct the proposed vehicular crossing.

- (d) The construction of the access stone steppers along the driveway edges, any entries to the premises and within Councils road reserve along the full frontage of the site is NOT permitted. The new pedestrian access entry points shall be constructed in a 1.2m wide plain concrete in accordance with Councils requirements and satisfaction.
- (e) All mains electrical connections to the development must be routed underground. Council will not accept the erection of newly placed electricity pillars within the Council's public domain to support the new development. Utility Pillars will need to be placed within the private property within a dedicated easement.

Note: Council's contact for public domain: E-mail: assets@waverley.nsw.gov.au or Phone: 9083 8886 (operational hours between 9.30am to 4.00pm Monday to Friday).

ENERGY EFFICIENCY & SUSTAINABILITY

16. BASIX

All requirements of the BASIX Certificate and NatHERS documentation are to be shown on the Construction Certificate plans and documentation.

WASTE

17. SITE WASTE AND RECYCLING MANAGEMENT PLAN

A *Site Waste and Recycling Management Plan (SWRMP) - Part 2* is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Construction Certificate, which outlines materials to be reused and/or recycled as a result of demolition and construction works. At least one copy of the *SWRMP Part 2* is to be available on site at all times during construction. Copies of demolition and construction waste dockets that verify the facility that received the material for recycling or disposal and the quantity of waste received, must be retained on site at all times during construction.

LANDSCAPING & TREES

18. GREEN ROOF LANDSCAPING DETAILS

The construction certificate landscape plans are to comply with the controls for green roofs in Part B3.1 of the *Waverley Development Control Plan 2012* including;

- (a) Comprise plants that are suitable for the site in relation to the environmental conditions (sun, wind and views) and include indigenous or local native plants to Waverley (see Annexure B2 – 1).
- (b) Have a minimum soil depth of 300mm and use lightweight soil mixes that are porous, able to drain freely, and suitable for the selected plant species.

- (c) The green roof is to be designed to be a non-trafficable area (with no balustrades) and must be irrigated without requiring frequent maintenance access. Any access to the roof is to be for servicing purposes only.

A qualified landscape architect must review the design and verify that it complies with the above requirements.

C. COMPLIANCE PRIOR TO WORK COMMENCING AND DURING CONSTRUCTION

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required.

PRIOR TO ANY WORKS

19. CONSTRUCTION SIGNS

Prior to commencement of any works on the site and during construction a sign shall be erected on the main frontage of the site detailing the name, address and contact details (including a telephone number) of the Principal Certifying Authority and principal contractor (the coordinator of the building works). The sign shall be clearly legible from the adjoining street/public areas and maintained throughout the building works.

20. DILAPIDATION REPORT

A Dilapidation report is to be prepared for any adjoining or nearby property that may be subject to potential damage as a result of any works being undertaken. The dilapidation report is to be made available to affected property owners.

Note: Any damage that may be caused is a civil matter. This consent does not allow or authorise any party to cause damage, trespass, or any other unlawful act and Council will not be held responsible for any damage that may be caused to adjoining buildings as a consequence of the development being carried out. Council will not become directly involved in disputes between the builder, owner, developer, its contractors and the owners of neighbouring buildings.

DEMOLITION & EXCAVATION

21. DEMOLITION – ASBESTOS AND HAZARDOUS MATERIALS

The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2017;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;

- The Protection of the Environment Operations Act 1997;

At least 5 days prior to the demolition, renovation work or alterations and additions to any building, the person acting on the consent shall submit a Work Plan to the Principal Certifying Authority in accordance with Australian Standard AS 2601-2001, Demolition of Structure and a Hazardous Materials Assessment prepared by a person with suitable expertise and experience. The Work Plan and Hazardous Materials Assessment shall:

- Outline the identification of any hazardous materials, including surfaces coated with lead paint;
- Confirm that no asbestos products are present on the subject land; or
- Particularise a method of safely disposing of the asbestos in accordance with the Code of Practice on how to safely remove asbestos published by SafeWork NSW (catalogue WC03561)
- Describe the method of demolition;
- Describe the precautions to be employed to minimise any dust nuisance; and
- Describe the disposal methods for hazardous materials.

22. CONTROL OF DUST ON CONSTRUCTION SITES

The following requirements apply to demolition and construction works on site:

- Hazardous dust is not to be allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended. Any existing accumulations of dust (e.g.: ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particle air (HEPA) filter. All dusty surfaces and dust created from work are to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.
- All contractors and employees directly involved in the removal of hazardous dusts and substances are to wear protective equipment conforming to Australian Standard AS1716 Respiratory Protective Devices.

23. CLASSIFICATION OF WASTE/ DISPOSAL OF EXCAVATED SOILS

Prior to the exportation of waste (including fill or soil) from the site the material must be classified in accordance with the provisions of the Protection of the Environment Operations Act, 1997 and the NSW EPA Waste classification guidelines 2014.

24. EXCAVATION AND BACKFILLING

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

If an excavation associated with the erection or demolition of a building extends below the level of the footings of a building on an adjoining allotment of land. The excavation is to be managed by a practising structural engineer.

CONSTRUCTION MATTERS

25. CONSTRUCTION HOURS

Demolition and building work must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays and 8am to 3pm on Saturdays with no work to be carried out on:

- (a) Sundays and public holidays;
- (b) Excavation works involving the use of heavy earth movement equipment including rock breakers and the like must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays with no such work to be carried out on Saturday, Sunday or a public holiday.

Noise from construction activities shall comply with the Protection of the Environment Operations (Noise Control) Regulation 2017.

26. STOCKPILES, STORAGE OF MATERIALS AND LOCATION OF BUILDING OPERATIONS

All building materials and any other items associated with the development are to be stored within the property. No materials are to be stored on Council's footpath, nature strip, or road reserve without prior Council approval.

27. CONSTRUCTION INSPECTIONS

The building works are to be inspected during construction by the Principal Certifying Authority (PCA) in accordance with the Building Legislation Amendment (Quality of Construction) Act 2002 and 162A Critical stage inspections for building work of the Environmental Planning and Assessment Regulation 2000.

28. CERTIFICATE OF SURVEY - LEVELS

All construction works are to be in accordance with the Reduced Levels (RLs) as shown on the approved plans. Certification from a Registered Surveyor certifying ground, upper floor/s and finished ridge levels is to be submitted to the Principal Certifying Authority during construction and prior to continuing to a higher level of the building.

29. CERTIFICATE OF SURVEY - BOUNDARIES AND LOCATION OF BUILDING

A Certificate of Survey prepared by a Registered Surveyor setting out the boundaries of the site and the location of the building on the site is to be submitted to the Principal Certifying Authority to certify the building is located in accordance with the development consent plans. The Certificate is to be submitted prior to the construction of the external walls above the ground floor level of the building.

30. CONSTRUCTION OF SWIMMING POOLS AND OUTDOOR SPAS

The following applies to the construction of swimming pools and outdoor spas:

- (a) Reinforcement of the swimming pool/outdoor spa is to be inspected by an Accredited Officer or other suitably qualified person prior to the pouring of concrete
- (b) The electrical wiring system for any proposed underwater artificial lighting installation to the pool/spa is to be installed in accordance with the requirements of Australian Standard 3000, Part 1 - Wiring Rules
- (c) The swimming pool/outdoor spa water is to be treated by an approved water treatment and filtration unit

- (d) To prevent noise nuisance to surrounding properties, the swimming pool/outdoor spa filtration motor and pump unit is to be housed within a ventilated soundproof enclosure
- (e) Waste waters from the swimming pool/outdoor spa are to be discharged into Sydney Water's sewerage system and in this regard, approved plans **MUST** be submitted to Sydney Water at least 14 days prior to commencement of building operations.

TREE PROTECTION AND REMOVAL

31. REPLACEMENT STREET TREES

The applicant may remove the two (2) dead Banksia trees and T6 on the Landscape plan (Banksia) at their expense. Two (2) replacement trees are to be planted on the naturestrip either side of the new driveway. The trees are to be a two (2) *Banksia integrifolia* (coast Banksia) and must be a minimum pot size of 45 litres when planted. The trees are to be planted by a horticulturist (Min qualification AQF Level 3).

32. TREE BOND (NEW STREET TREES ON CADIGAL PLACE)

A bond of **\$1,000.00** is to be lodged with Council either as cash or by way of an unconditional bank guarantee to ensure the protection of the newly planted two (2) *Banksia integrifolia* (coast Banksia) the naturestrip. The bond is to be lodged prior to the issue of a Construction Certificate.

The sum will be forfeited to the Council at its discretion for a breach of these requirements and will be refunded three (3) months from the issue of the Occupation Certificate subject to the satisfaction of Council.

33. TREE BOND (EXISTING TREE ON MILITARY ROAD)

A bond of **\$5,000.00** is to be lodged with Council either as cash or by way of an unconditional bank guarantee to ensure the protection and maintenance of the street tree at the front of the property. The bond is to be lodged prior to the issue of a Construction Certificate.

The sum will be forfeited to the Council at its discretion for a breach of these requirements and will be refunded twelve (12) months from the issue of the Occupation Certificate subject to the satisfaction of Council.

34. TREE PROTECTION

All trees on site and adjoining properties, including street trees are to be retained and protected in accordance with AS4970-2009 'Protection of Trees on Construction Sites' and to be certified by an Arborist with AQF level 5 qualification or above, unless approved to be removed in this development consent.

35. STREET TREES TO BE RETAINED/TREE PROTECTION

The existing ***Callistemon*** and ***Banksia*** trees down the side of the property in Cadigal Place, Dover Heights (labelled T5, T7, T8 and T9 on the landscape plans) **are to be protected for the duration of the construction works.**

TPZ – A 1.8m chain link wire fence or the like shall be erected around the above trees to be retained to protect them from damage during construction. Fencing is not to be removed until all building work has been completed. Fencing to be installed to the dimensions outlined in the table above.

Precautions shall be taken when working near trees to ensure their retention, including the following:

- (a) Do not store harmful or bulk materials or spoil under or near trees;
- (b) Prevent damage to bark and root system;
- (c) Do not use mechanical methods to excavate within root zones;
- (d) Do not add or remove topsoil from under the drip line;
- (e) Do not compact ground under the drip line;
- (f) Do not mix or dispose of liquids within the drip line of the tree; and
- (g) All trees marked for retention must have a protective fence/guard placed around a nominated perimeter.

No existing street trees shall be removed without Council approval. A 1.8m high chain link wire fence or the like shall be erected around the existing street trees to protect them from damage during construction. Where approval is granted for the removal of a street tree the applicant is to pay for its replacement with a super advanced tree of a species nominated by Council.

VEHICLE ACCESS & PUBLIC DOMAIN WORKS

36. CONSTRUCTION TRAFFIC MANAGEMENT PLAN (CTMP)

The applicant is to submit a Construction Traffic Management Plan (CTMP) for the approval of **Council's Executive Manager, Infrastructure Services, or delegate** prior to the issue of any Construction Certificate. For further information on what is required in the CTMP, please refer to Council's website at:

https://www.waverley.nsw.gov.au/building/development_applications/post_determination/development_applications_-_conditions_of_consent

37. NEW VEHICLE CROSSING

Two new vehicle crossings are to be provided to access the proposed garages. The crossings are to be 3.0 metres wide at the property boundary. The width at the street is to be 3.0 metres plus 0.45 metre splays. No structures above 1.15 metres are to be within 2 x 2.5 metre sight triangles measured from the footpath.

A separate application is required for the vehicle crossings, with all work to be carried out with the approval of and in accordance with the requirements of Council.

[AMENDED BY DA-115/2021/A]

38. EXISTING VEHICLE CROSSING IS TO BE CLOSED

The existing vehicle crossing is to be closed and all work associated with the closure is to be carried out with the approval of, and in accordance with, the requirements of Council

39. VEHICULAR ACCESS - FINISHED LEVEL

The finished level at the property boundary on **both** sides of the two vehicle crossings is to match the level of the existing concrete footpath.

[AMENDED BY DA-115/2021/A]

40. PUBLIC DOMAIN ENGINEERING INSPECTIONS

To ensure all public infrastructure engineering works required by Council under this consent will be constructed to Council satisfaction, inspection(s) will be required and compliance certificates must be obtained from Council's Infrastructure Engineer for the kerb and gutter, stormwater, footpath paving, undergrounding works, street trees and landscaping hold points.

All applicable engineering inspection fees in accordance with Council's Management Plan are to be fully paid prior to issue of Construction Certificate for the works. A minimum 48 hours' notice will be required when booking for the site inspections.

D. PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE OR SUBDIVISION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required, prior to the issue of an Occupation Certificate or Subdivision Certificate, whichever applies.

41. FINAL OCCUPATION CERTIFICATE

Prior to occupation or use of the development, the Principal Certifying Authority must issue an Occupation Certificate. The Principal Certifying Authority must be satisfied that the requirements of the Environmental Planning & Assessment Act, 1979 have been satisfied including all critical stage inspections. Documentary evidence of all required inspections is to be submitted to Council.

42. CERTIFICATION OF BASIX COMMITMENTS

The Principal Certifying Authority shall certify that the all the undertakings in the approved BASIX certificate have been completed.

43. CERTIFICATION OF STORMWATER SYSTEM

Prior to issue of an occupation certificate, certification is to be provided from a suitably qualified Hydraulics Engineer, that the stormwater system has been constructed in accordance with the approved stormwater management plans and to best engineering practice.

44. WORKS-AS-EXECUTED DRAWINGS – STORMWATER DRAINAGE SYSTEM

- (a) A Works-As-Executed drawing (WAED) of the stormwater drainage system must be prepared by a Registered Surveyor. This drawing must detail the alignment of all pipelines, pits, any detention facility and other drainage related infrastructure. An original or a colour copy must be submitted to Waverley Council. Where changes have occurred, the Council approved plans shall be marked-up in red ink and shall include levels and location for the drainage structures and works.

- (b) A suitably qualified and practising Engineer must provide certification of the WAED of the stormwater drainage system that the stormwater drainage works were constructed to their satisfaction and in accordance with the Development Consent, Water Management Technical Manual, all applicable Codes, Policies, Plans, Standards and good engineering practice.

45. ON-SITE STORMWATER DETENTION CERTIFICATION

The submission of certification by a suitably qualified and practising Engineer for any on-site stormwater detention system, attesting the storage volume, discharge rate and satisfactory operation of the system prior to the release of any Occupation Certificate.

46. CREATION OF POSITIVE COVENANT AND RESTRICTION FOR OSD

A “Restriction on the Use of Land” and “Positive Covenant” shall be created for any On-Site Stormwater Detention (OSD) system, under Section 88E of the Conveyancing Act 1919. This is to place a restriction on the title that any OSD system is maintained and kept free of debris/weed to allow unobstructed passage of stormwater through the site and underneath the residence. The property owner/occupant shall not modify or remove any OSD system without consent from Council.

The wording of the Instrument shall be submitted to and approved by **Executive Manager, Infrastructure Services (or delegate)** prior to lodgement at NSW Land Registry Services. The Instrument shall be registered and a registered copy of the document shall be submitted to and approved by the consent authority prior to the issue of an Occupation Certificate/use of the building. All associated costs shall be borne by the applicant.

47. PLANNED PREVENTATIVE MAINTENANCE SCHEDULE FOR PUMP OUT SYSTEM

The registered proprietor shall be required to submit written intent to establish and maintain a Planned Preventative Maintenance (PPM) schedule of any pump out system prior to the issue of Occupation Certificate. Council will not be liable for any claims for damages arising from the failure of any pump out system. Evidence shall be submitted to the **Executive Manager, Infrastructure Services or delegate** prior to the issue of the Occupation Certificate.

48. SUPERVISING ENGINEER FINAL CERTIFICATE & WORK-AS-EXECUTED PLAN – PUBLIC DOMAIN

Prior to the issue of any Occupation Certificate for the works, the Applicant shall submit to Council, a Final Certificate from the Supervising Engineer confirming that the public domain works have been constructed in accordance with the Council approved plans and Waverley Council standards and specifications. The certificate shall include commentary to support any variations from the approved drawings.

To ensure public infrastructure works required under the consent are completed in accordance with approved plans and specifications, a Work-as-Executed plan of the works, prepared by a registered surveyor is to be submitted to the Principal certifying Authority and Council for review with any required rectification works completed and approved by Council prior to issue of any Occupation Certificate.

49. CERTIFICATION OF PUBLIC INFRASTRUCTURE WORKS

Prior to the issue of any Occupation Certificate, a final Compliance Certificate shall be obtained from Council confirming that all works in the road reserve including all public domain infrastructure works and restoration, have been completed to Council's satisfaction.

50. CERTIFICATION OF SWIMMING POOL/OUTDOOR SPA

Prior to the pool being used, the following must be provided;

- (a) Certification that the pool has been constructed in accordance with the consulting engineers design
- (b) Evidence that the swimming pool/outdoor spa have been registered on the State Government Swimming Pool Register (<http://www.swimmingpoolregister.gov.au>)
- (c) A sign outlining details of resuscitation techniques for adults, children and infants has been placed in a prominent position, close to the pool/outdoor spa. Signs are available from Council
- (d) A copy of the occupation certificate must be submitted to Council

Note: Swimming/spa pool pumps are restricted from use between 8pm to 7am weekdays and Saturdays, 8pm to 8am on Sundays and public holidays in accordance with the requirements of the Protection of the Environment Operations (Noise Control) Regulation 2017.

51. STREET NUMBERS

The street number for the property shall be a minimum of 75mm high and shall be positioned 600mm-1500mm above ground level on the site boundary that fronts the street. Should the number be fixed to an awning then it shall be a minimum 150mm high.

52. ALLOCATION OF STREET NUMBER

The primary address number and location for the common property strata:

- 1 Cadigal Place - primary address site (Common property strata)

The redevelopment or subdivision of the property requires the allocation of street numbers as follows:

- No. 1A Cadigal Place for the north/eastern (upper levels);
- No. 1B Cadigal Place for the south/western (lower levels).

Any variation to the above street numbering requires a new application to be lodged with Council.

E. ADVISORY MATTERS

The following advisory matters are provided as additional information to ensure compliance with the relevant legislation and requirements. You must also check other Commonwealth and NSW Acts and Regulations which may apply to the works or use approved in this application.

AD1. POST CONSENT CONDITIONS REQUIRING COUNCIL INPUT

Various conditions require further input, review or approval by Council in order to be satisfied following the determination of the application (that is, post consent). In those instances, please adhere to the following process to avoid delays:

- Please read your conditions carefully.
- Information to be submitted to Council should be either via email to info@waverley.nsw.gov.au or via the NSW Planning Portal (if required).
- Attention the documentation to the relevant officer/position of Council (where known/specified in condition).
- Include DA reference number.
- Include condition number/s seeking to be addressed.
- Where multiple conditions need Council input, please try to group the documentation / email/s into relevant subjects (multiple emails for various officers may be necessary, for example).
- Information to be submitted in digital format – refer to 'Electronic lodgement guidelines' on Council's website. Failure to adhere to Council's naming convention may result in documentation being rejected.
- Where files are too large for email, the digital files should be sent to Council via CD/USB. Council does not support third party online platforms (data in the cloud) for receipt of information.
- Please note in some circumstances, additional fees and/or additional documents (hard copy) may be required.
- Council's standard for review (from date the relevant officer receives documentation) is 14 days. Times may vary or be delayed if information is not received in this required manner.

AD2. SYDNEY WATER REQUIREMENTS

You are required to submit your plans to the appropriate Sydney Water office to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements.

If you are increasing the density of the site, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. The application must be made through an authorised Water Servicing Coordinator, for details see the Sydney Water website.

Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact **with the Coordinator**, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

AD3. DIAL BEFORE YOU DIG

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

AD4. TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

AD5. EXCAVATION TO BE LIMITED

Excavation shall be limited to that shown in the approved plans. Any further excavation will require Council approval.

AD6. TREE REMOVAL/PRESERVATION

Any trees not identified for removal in this application have not been assessed and separate approval may be required. Any pruning of trees on adjoining properties required for the erection of scaffolding and/or the construction of the building may also require approval.

AD7. SYDNEY WATER CERTIFICATE

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. **Application must be made through an authorised Water Servicing Coordinator, for details see the Sydney Water website.**

Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact **with the Coordinator**, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

AD8. SITE RECTIFICATION WORKS

The vacant site is to be maintained in a safe and secure manner. Fencing is to be erected around the perimeter of the site once demolition has been completed to secure the site. The site is to be protected from windblown soil loss and stormwater erosion at all times.

If the site is commenced to be developed and there is suspension in activity for 6 months (or suspensions of activity which in the aggregate exceed 6 months), resulting in a building site which has an appearance not acceptable to Council, then the Council will have the readily enforceable rights to:

- (i) Require certain works including but not limited to:
 - (a) make the building/site safe and of an appearance acceptable to Council.
 - (b) Allow the ground level to be landscaped and of an appearance acceptable to Council from any public vantage point; or
 - (c) For the hole to be covered to allow it to be landscaped and made attractive from any public vantage point.
 - (d) AND to call on such bank guarantee to cover the cost thereof.

- (ii) In the event of default, have the right to enter and carry out these works and to call upon security in the nature of a bank guarantee to cover the costs of the works.

AD9. RAINWATER HARVESTING AND REUSE

The operation of all devices or appliances installed within the development approved by this consent as required by conditions pertinent to rainwater harvesting and rainwater reuse must be maintained in good operating order at all times.

AD10. PRE-CONSTRUCTION DILAPIDATION REPORT

To ensure Council's infrastructure is adequately protected a pre-construction dilapidation report on the existing public infrastructure within the vicinity of the proposed development and along the travel routes of all construction vehicles is to be submitted to Council. The report shall detail, but not be limited to, the location, description and photographic record (in colour) of any observable defects to the following infrastructure where applicable:

- Road pavement
- Kerb and gutter
- Footpath
- Drainage pits and lintels
- Traffic signs
- Any other relevant infrastructure

The report is to be dated, submitted to, and accepted by Councils Infrastructure Engineer, prior to any work commencing on the site. All fees and charges associated with the collation of this report shall be at the cost of the Applicant.

AD11. PUBLIC UTILITIES AND SERVICE ALTERATIONS

Any utility services and all public infrastructure which require alteration due to works associated with the development, both internally and externally of the development boundary, shall be altered at the Applicant's expense. This includes both temporary and permanent alterations. Upon notifying Council, the Applicant must comply with the requirements (including financial costs) of the relevant utility service provider (e.g. Ausgrid, Sydney Water, Telstra, RMS or similar) in relation to any connections, repairs, relocations, replacements and/or adjustments to public infrastructure or services affected by the proposed works.

Written approval from the applicable Public Authority shall be submitted to Council along with the Public Domain design plans submission.

AD12. NOTICE OF INTENTION TO COMMENCE PUBLIC DOMAIN WORKS

Prior to commencement of the public domain works notice shall be submitted to Councils Infrastructure Engineer. This notice shall include the name and insurance details of the Contractor who will be responsible for the construction works, and details of the managing site supervisor/engineer. The applicant is also responsible for obtaining all Road Activity Permits required for the works, from the respective authorities.

AD13. PUBLIC DOMAIN PRE-CONSTRUCTION MEETING

To ensure all public infrastructure works approved under this consent will be completed to Council's satisfaction and a program of required inspections is established, a preconstruction meeting shall be arranged with Council's engineering inspector/s prior to works commencing on site.

AD14. COMPLETION OF PUBLIC INFRASTRUCTURE WORKS

The refund of any damage and/or security deposits will be subject to satisfactory restoration and rectification of all civil infrastructure that have dilapidated as a result of the construction activities associated with this development consent.

To ensure satisfactory performance of the public domain works, a defects liability period of twelve (12) months shall apply to the works completed by the applicant/developer following completion of the development. The defects liability period shall commence from the date of issue of the Occupation Certificate for the development. The applicant shall be liable for any part of the work which fails to perform in a satisfactory manner as outlined in Council's standard specification, during the twelve (12) months' defects liability period.

AD15. WORK OUTSIDE PROPERTY BOUNDARY

This consent does not authorise any work outside the property boundary.

78 Military Road Dover Heights Sydney NSW 2030

DRAWING No	DRAWING NAME	SCALE	REV
DA0000	COVERPAGE		D
DA1000	SITE PLAN	1:400	D
DA1100	SITE ANALYSIS AND LOCATION PLAN		D
DA2000	LOWER GROUND + GROUND FLOOR PLAN	1:200	D
DA2001	FIRST FLOOR AND ROOF PLAN	1:200	D
DA2002	LOWER GROUND FLOOR DETAIL PLAN	1:100	D
DA2003	GROUND FLOOR DETAIL PLAN	1:100	D
DA2004	FIRST FLOOR DETAIL PLAN	1:100	D
DA2005	ROOF DETAIL PLAN	1:100	D
DA2300	MAJOR SECTIONS	1:200	D
DA2301	DRIVEWAY SECTIONS	1:50	D
DA2400	ELEVATIONS	1:200	D
DA2401	ELEVATIONS	1:200	D
DA9000	STREETSCAPE AND SETBACK DIAGRAM	1:200	D
DA9001	GFA CALCULATION	1:200	D
DA9002	HEIGHT PLANE DIAGRAM	1:200	D
DA9100	SHADOW DIAGRAMS	1:500	D
DA9101	SHADOW DIAGRAMS 3D		D
DA9200	VIEW ANALYSIS		D
DA9201	PHOTOMONTAGE		D
DA9300	EXTERNAL FINISHES		D
DA9500	LANDSCAPE PLAN CALCULATIONS		D
DA9600	NOTIFICATION PLAN	1:400	D



SECTION 4.55

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Waverley Council

Application No: DA-115/2021/A

Date Received: 16/03/2022



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Contractor to verify all
dimensions on site prior
to commencing work.
MSA is to be notified of
any discrepancies in the
dimension and setting out
of the work.

ISSUE	DATE	REVISION
D	1/3/22	S4.55

CLIENT:
Cadigal Number 1
Pty Ltd

PROJECT:
PROPOSED DUAL OCCUPANCY
78 Military Road
Sydney NSW 2030
DRAWING:
COVERPAGE

PROJECT NO:
20006
PLOTTED: 1/3/22
DRAWING NO:
DA0000 REV:
D

1-INTERNAL LAYOUT RE-CONFIGURATION EXTENDING INTO APPROVED PLANT ROOM AND INTO NORTHER VOID CAVITY UNDER PROPOSED DRIVEWAYS. RELOCATING OSD/RW TANK AND POOL/AC PLANT
1B- NEW METALLIC LOUVERS FOR PLANT ROOM VENTILATION
2-NEW INTERNAL WALL
3-NEW GLASS FLOOR OVER



3-NEW GLASS FLOOR
4-RAISE FFL FROM 64.100 TO 64.300
5-NEW SEPARATE DRIVEWAYS, LOWER GARAGE 2
FFL FROM 64.300 TO 64.145 AND
RAISE GARAGE 1 FFL FROM 64.300 TO 64.345
NEW RW/OSD TANK UNDER DRIVEWAYS
6-MODIFY AND REPOSITION WINDOW ON BED 1



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D	1/3/22	\$4.55
ISSUE	DATE	REVISION

Application No: DA-115/2021/A

Date Received: 16/03/2021 Page 184 of 386

BASIX water commitments include:
Showers low flow 6 to 7.5 L/min
Toilets 4 star
Taps 3 star
2500L individual rainwater tanks each collecting at least 118m2 and 151m2 of roof and used for landscape and cold tap in laundry
BASIX energy commitments include:
5 star instantaneous gas hot water
Air-conditioning 1 phase 2.5 star heating/ cooling (zoned)
Gas cook top & electric oven
2.7kW solar electric (PV) each dwelling

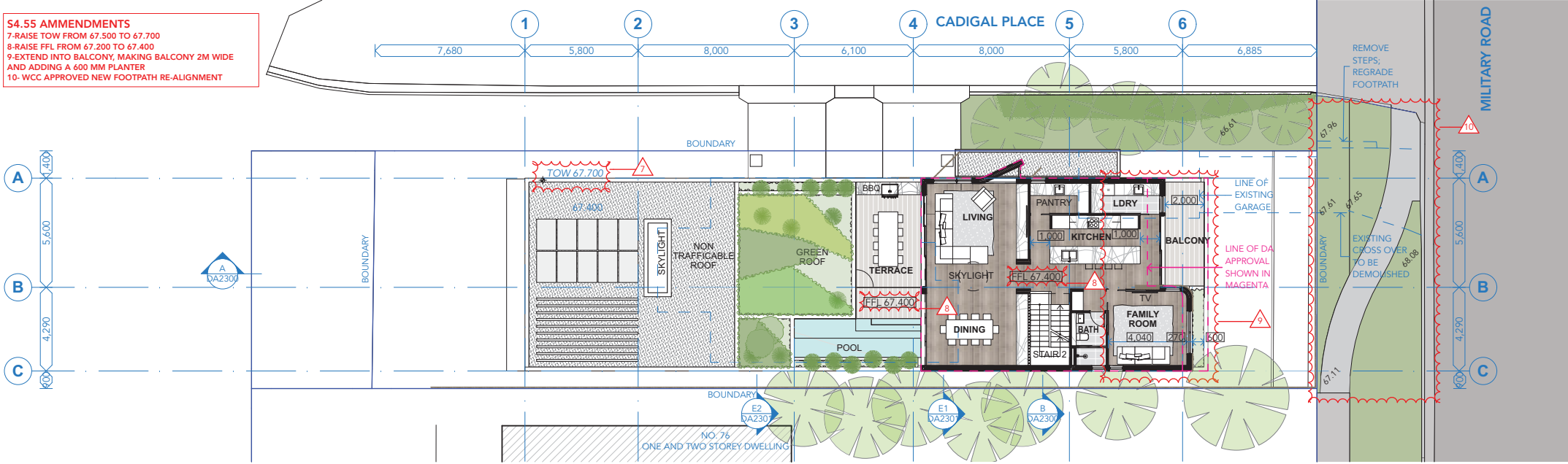
CLIENT:
**Cadigal Number 1
Pty Ltd**

PROJECT:
PROPOSED DUAL OCCUPANCY
78 Military Road
Sydney NSW 2030
DRAWING:
LOWER GROUND + GROUND FLOOR



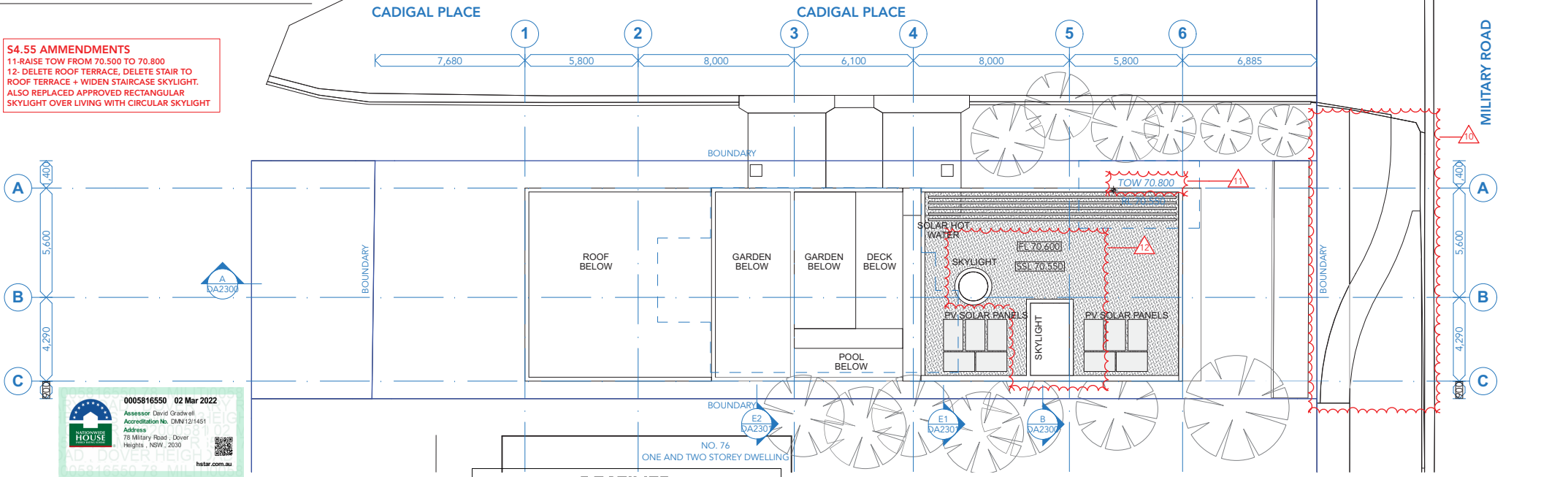
PROJECT NO: 20006	
PLOTTED: 1/3/22	
DRAWING NO: DA2000	REV: D

S4.55 AMMENDMENTS
 7-RAISE TOW FROM 67.500 TO 67.700
 8-RAISE FFL FROM 67.200 TO 67.400
 9-EXTEND INTO BALCONY, MAKING BALCONY 2M WIDE
 AND ADDING A 600 MM PLANTER
 10- WCC APPROVED NEW FOOTPATH RE-ALIGNMENT



1 FIRST FLOOR 1:200

S4.55 AMMENDMENTS
 11-RAISE TOW FROM 70.500 TO 70.800
 12- DELETE ROOF TERRACE, DELETE STAIR TO ROOF TERRACE + WIDEN STAIRCASE SKYLIGHT.
 ALSO REPLACED APPROVED RECTANGULAR SKYLIGHT OVER LIVING WITH CIRCULAR SKYLIGHT



2 ROOF LEVEL 1:200



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ISSUE	DATE	REVISION
D	1/3/22	S4.55

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Waverley Council
Application No: DA-115/2021/A

Date Received: 16/03/2022

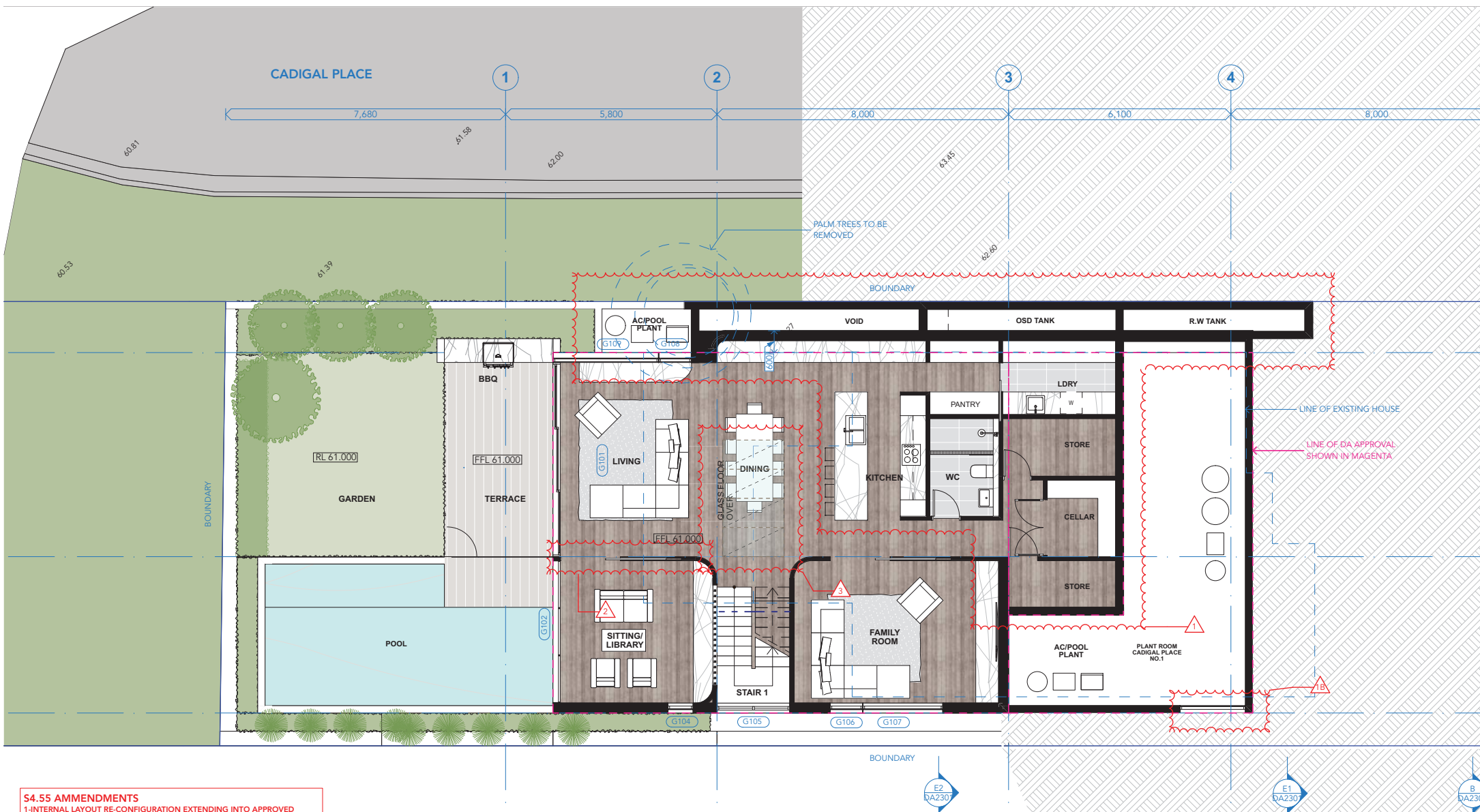
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BASIX energy commitments include:
 5 star instantaneous gas hot water
 Air-conditioning 1 phase 2.5 star heating/ cooling (zoned)
 Gas cook top & electric oven
 2.7kW solar electric (PV) each dwelling

CLIENT:
Cadigal Number 1
Pty Ltd

PROJECT:
PROPOSED DUAL OCCUPANCY
 78 Military Road
 Sydney NSW 2030
DRAWING:
FIRST FLOOR AND ROOF PLAN



PROJECT NO:
20006
PLOTTED: 1/3/22
DRAWING NO:
DA2001
REV:
D



S4.55 AMMENDMENTS
 1-INTERNAL LAYOUT RE-CONFIGURATION EXTENDING INTO APPROVED PLANT ROOM AND INTO NORTHER VOID CAVITY UNDER PROPOSED DRIVEWAYS. RELOCATING OSD/RW TANK AND POOL/AC PLANT
 1B- NEW METALLIC LOUVERS FOR PLANT ROOM VENTILATION
 2-NEW INTERNAL WALL
 3-NEW GLASS FLOOR OVER

NO. 76
 ONE AND TWO STOREY DWELLING



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ISSUE	DATE	REVISION
D	1/3/22	S4.55

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Waverley Council
Application No: DA-115/2021/A

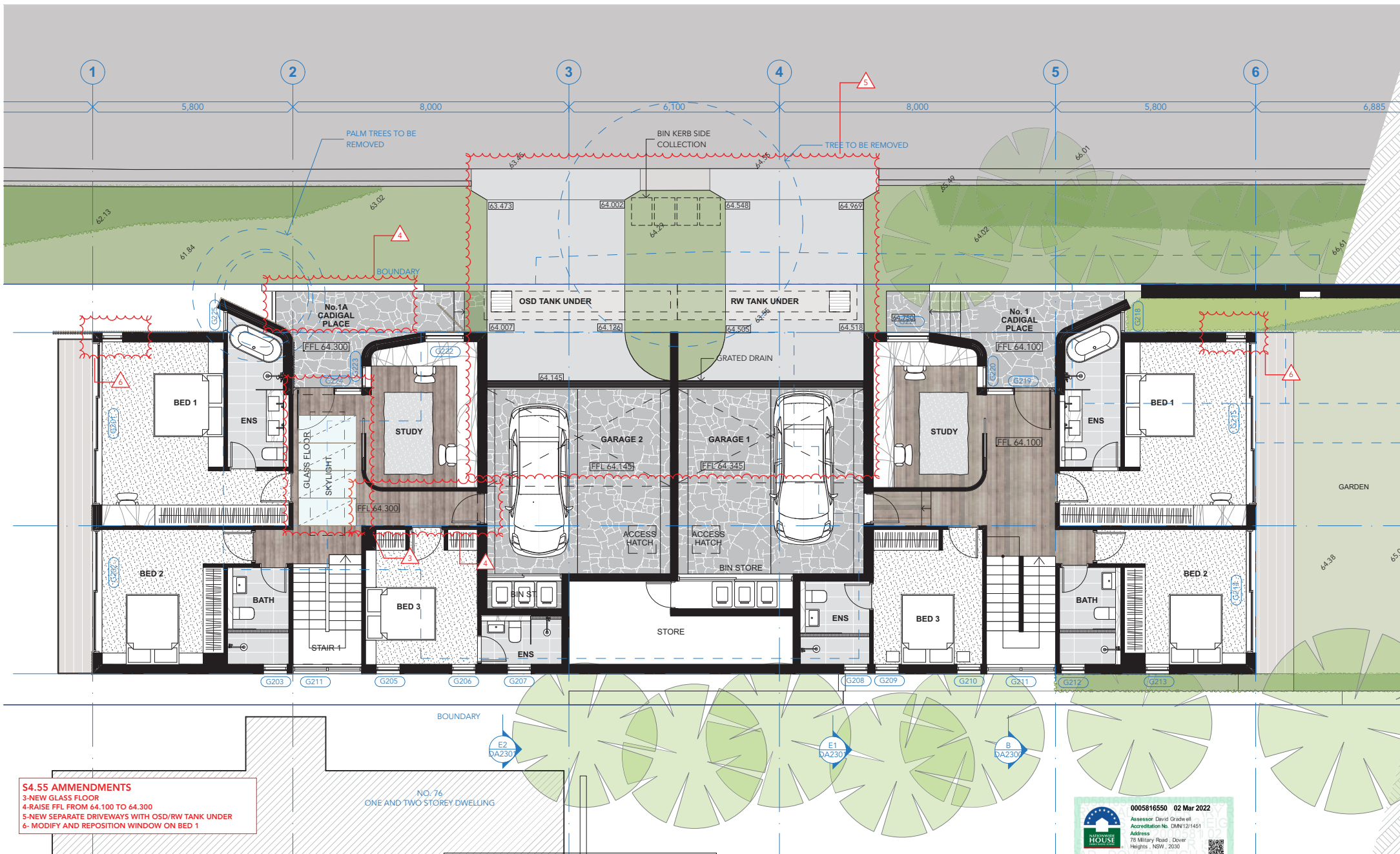
Date Received: 16/03/2022

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 Air-conditioning 1 phase 2.5 star heating/ cooling (zoned)
 Gas cook top & electric oven
 2.7kW solar electric (PV) each dwelling

CLIENT:
Cadigal Number 1
Pty Ltd

PROJECT:
PROPOSED DUAL OCCUPANCY
 78 Military Road
 Sydney NSW 2030
DRAWING:
LOWER GROUND FLOOR DETAIL PLAN

PROJECT NO:
20006
PLOTTED: 1/3/22
DRAWING NO:
DA2002
REV:
D



S4.55 AMMENDMENTS
 3-NEW GLASS FLOOR
 4-RAISE FFL FROM 64.100 TO 64.300
 5-NEW SEPARATE DRIVEWAYS WITH OSD/RW TANK UNDER
 6- MODIFY AND REPOSITION WINDOW ON BED 1



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ISSUE	DATE	REVISION
D	1/3/22	S4.55

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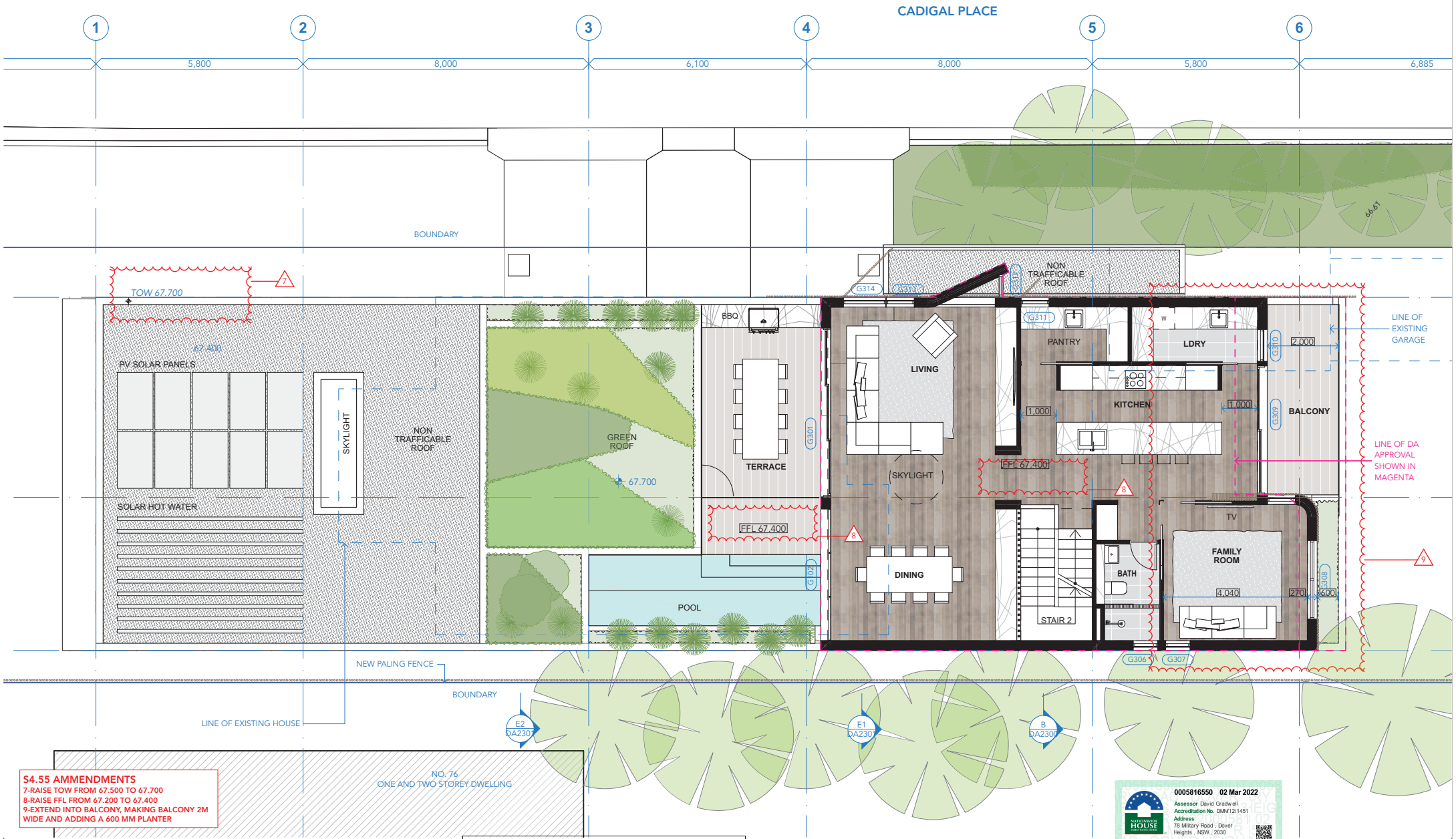
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 Gas cook top & electric oven
 2.7kW solar electric (PV) each dwelling

CLIENT:
Cadigal Number 1
Pty Ltd

PROJECT:
PROPOSED DUAL OCCUPANCY
 78 Military Road
 Sydney NSW 2030
DRAWING:
GROUND FLOOR DETAIL PLAN

PROJECT NO:
20006
PLOTTED: 1/3/22
DRAWING NO:
DA2003
REV:
D



S4.55 AMMENDMENTS
 7-RAISE TOW FROM 67.500 TO 67.700
 8-RAISE FFL FROM 67.200 TO 67.400
 9-EXTEND INTO BALCONY, MAKING BALCONY 2M WIDE AND ADDING A 600 MM PLANTER

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ISSUE	DATE	REVISION
D	1/3/22	S4.55

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Application No: DA-115/2021/A

Date Received: 16/03/2022

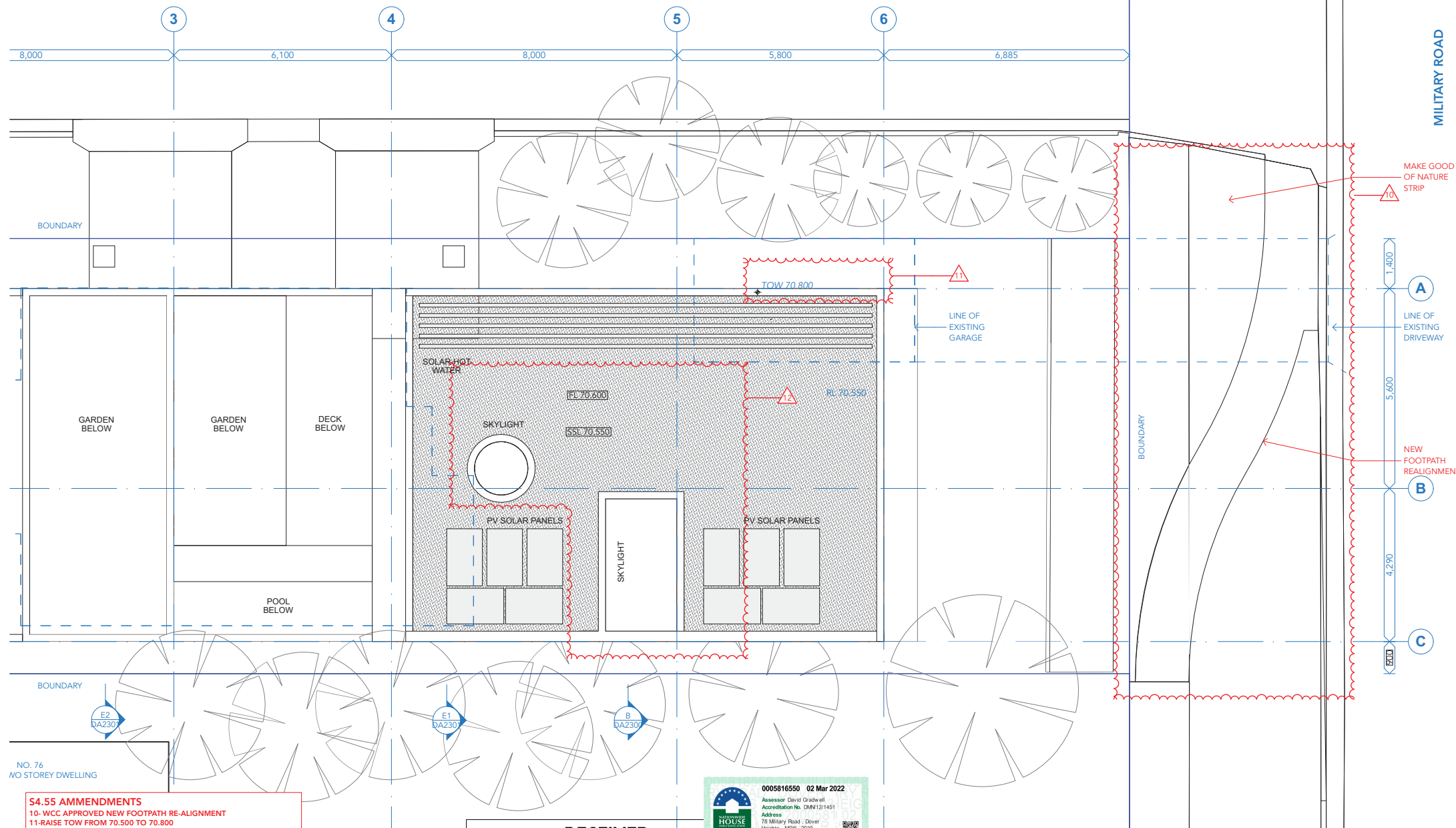
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CLIENT:
Cadigal Number 1
Pty Ltd

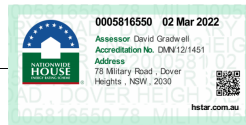


PROJECT:
PROPOSED DUAL OCCUPANCY
 78 Military Road
 Sydney NSW 2030
DRAWING:
FIRST FLOOR DETAIL PLAN

PROJECT NO:
20006
PLOTTED: 1/3/22
DRAWING NO:
DA2004
REV:
D



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Application No: DA-115/2021/A

Date Received: 16/03/2021

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CLIENT:
Cadigal Number 1
Pty Ltd

PROJECT:
PROPOSED DUAL OCCUPANCY
 78 Military Road
 Sydney NSW 2030
 DRAWING:
 ROOF DETAIL PLAN

PROJECT NO:
20006
 PLOTTED: 1/3/22
 DRAWING NO:
DA2005
 REV: D

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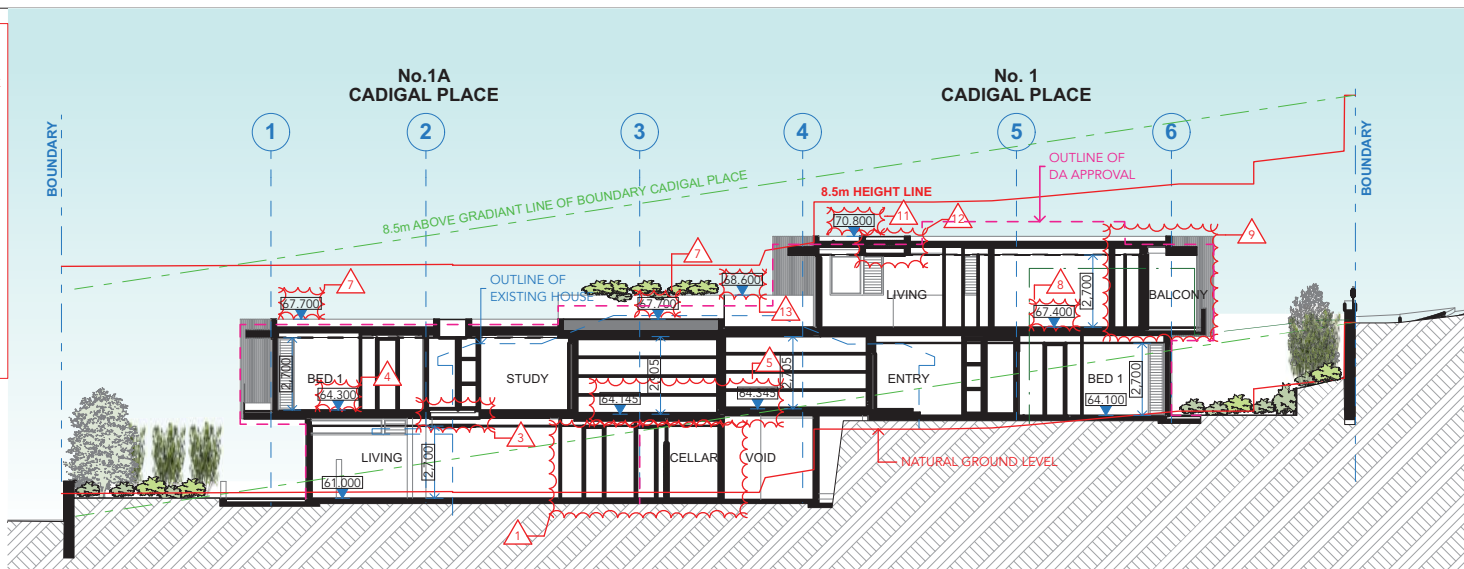
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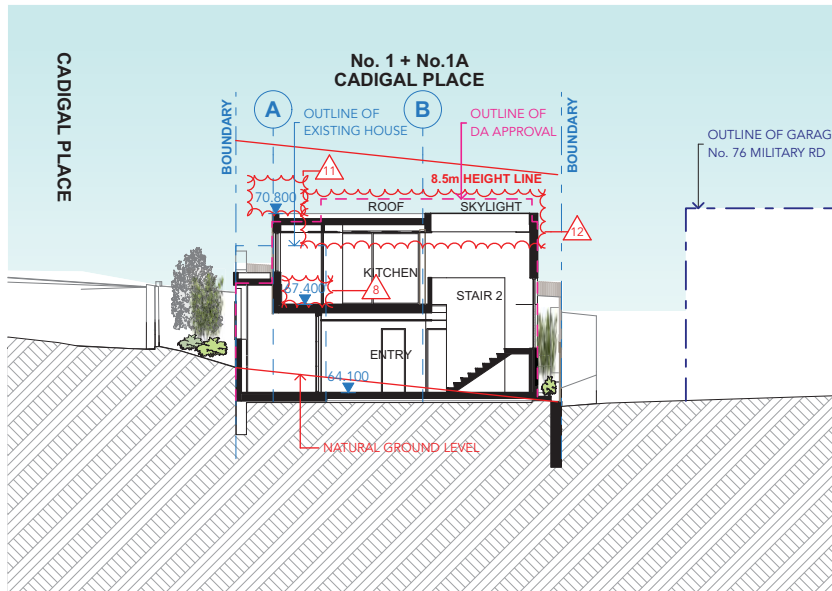
D	1/3/22	S4.55
ISSUE	DATE	REVISION

S4.55 AMMENDMENTS

- 1-INTERNAL LAYOUT RE-CONFIGURATION EXTENDING INTO APPROVED PLANT ROOM AND INTO NORTHER VOLD CAVITY UNDER PROPOSED DRIVEWAYS. RELOCATING OSD/RW TANK AND POOL/AC PLANT
- 2-NEW INTERNAL WALL
- 3-NEW GLASS FLOOR
- 4-RAISE FFL FROM 64.100 TO 64.300
- 5-NEW SEPARATE DRIVEWAYS. LOWER GARAGE 2 FFL FROM 64.300 TO 64.145 AND RAISE GARAGE 1 FFL FROM 64.300 TO 64.345
- 6-MODIFY AND REPOSITION WINDOW ON BED 1
- 7-RAISE TOW FROM 67.500 TO 67.700
- 8-RAISE FFL FROM 67.200 TO 67.400
- 9-EXTEND INTO BALCONY, MAKING BALCONY 2M WIDE AND ADDING A 600 MM PLANTER
- 10-WCC APPROVED NEW FOOTPATH RE-ALIGNMENT
- 11-RAISE TOW FROM 70.500 TO 70.800
- 12-DELETE ROOF TERRACE, DELETE STAIR TO ROOF TERRACE + WIDEN STAIRCASE SKYLIGHT. ALSO REPLACED APPROVED RECTANGULAR SKYLIGHT OVER LIVING WITH CIRCULAR SKYLIGHT
- 13-RAISE TOW FROM 68.200 TO 68.600



1 SECTION A 1:200



2 SECTION B 1:200

Ext. Walls:	Construction	Insulation	Colour	Details	
	Concrete Lined Cavity Brick	R1.5 added 25mm Kooltherm K8 or equiv (R1.2)	Medium	As per plans As per plans	
Int. Walls:	Construction	Insulation		Details	
	Concrete with Plasterboard Plasterboard on Stud	None R2.5 added		Intertency To garage	
Floors:	Construction	Insulation		Details	
	Concrete Concrete	R4.5 added R1.4 added		Above garage Where open below	
Ceilings:	Construction	Insulation		Details	
	Plasterboard	None		As per plans	
Roof:	Construction	Insulation	Colour	Details	
	Concrete	90mm PIR or equiv (R4.5)	Medium	As per plans	
Windows:	Product ID	Glass	Frame	Uw/SHGCw	Details
Group B	ALM-006-03 A	Double Clear	Aluminium	4.1/0.52	Fixed, Sliding, Double Hung (No 1A Cadigal Place)
Group B	ALM-002-03 A	Single Low E	Aluminium	5.4/0.58	Louvre (No 1A Cadigal Place)
Group B	ALM-002-03 A	Single Low E	Aluminium	5.4/0.58	Fixed, Sliding, Double Hung, Louvre (No 1 Cadigal Place)
Skylights:	Product ID	Glass	Type	Uw/SHGCw	Details
	DG-Generic	Double Clear	Roof Light	4.2/0.72	As per plans
Other:	Orientation	Terrain	Rangehood	Recessed Downlights	Software Version
	315	Exposed	Ducted	Sealed LED - 1 per 2.5m²	Bers Pro 4.4



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ISSUE	DATE	REVISION
D	1/3/22	S4.55

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Waverley Council
Application No: DA-115/2021/A

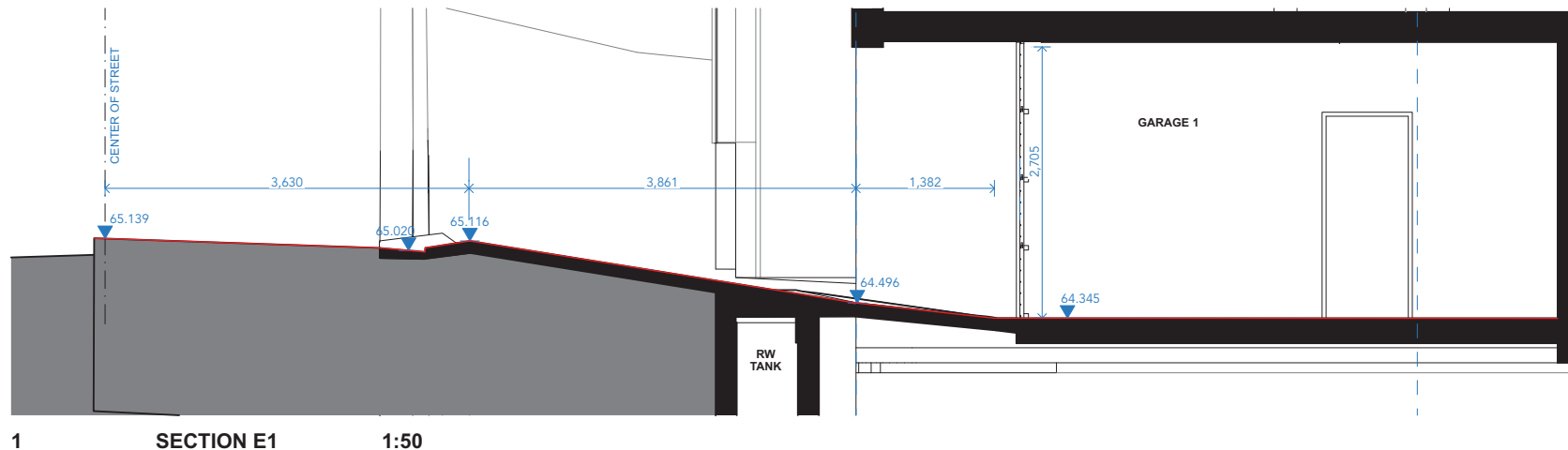
Date Received: 16/03/2022
Page 190 of 386

BASIX water commitments include:
Showers low flow 6 to 7.5 L/min
Toilets 4 star
Taps 3 star
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2.7kW solar electric (PV) each dwelling

CLIENT:
Cadigal Number 1
Pty Ltd

PROJECT:
PROPOSED DUAL OCCUPANCY
78 Military Road
Sydney NSW 2030
DRAWING:
MAJOR SECTIONS

PROJECT NO:
20006
PLOTTED: 1/3/22
DRAWING NO:
DA2300
REV: D

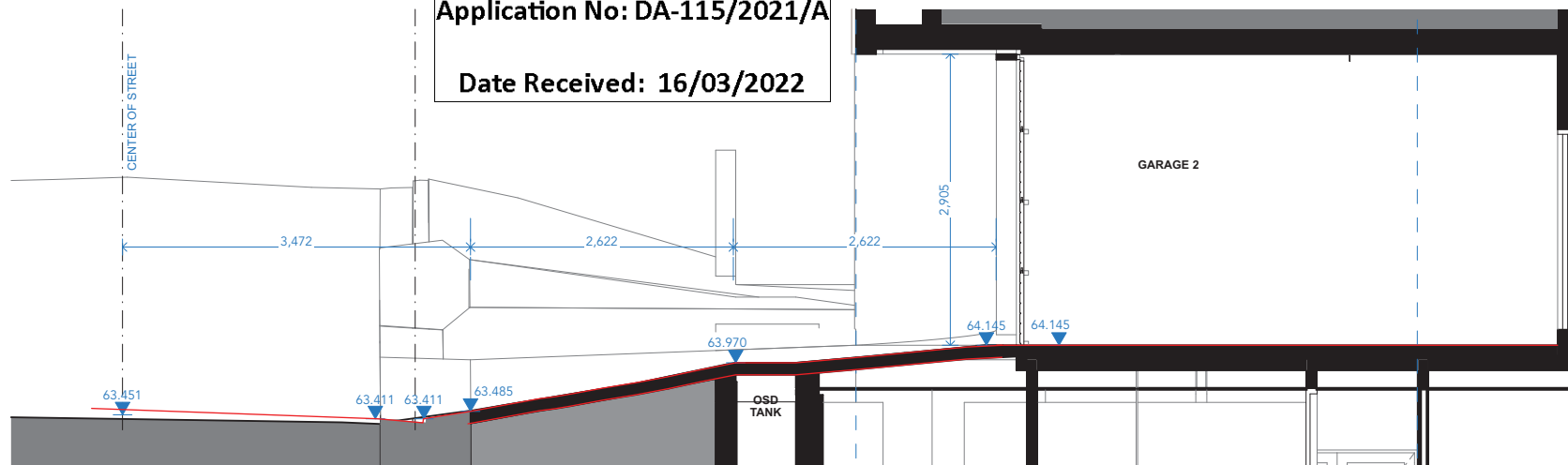


1 SECTION E1 1:50

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Application No: DA-115/2021/A

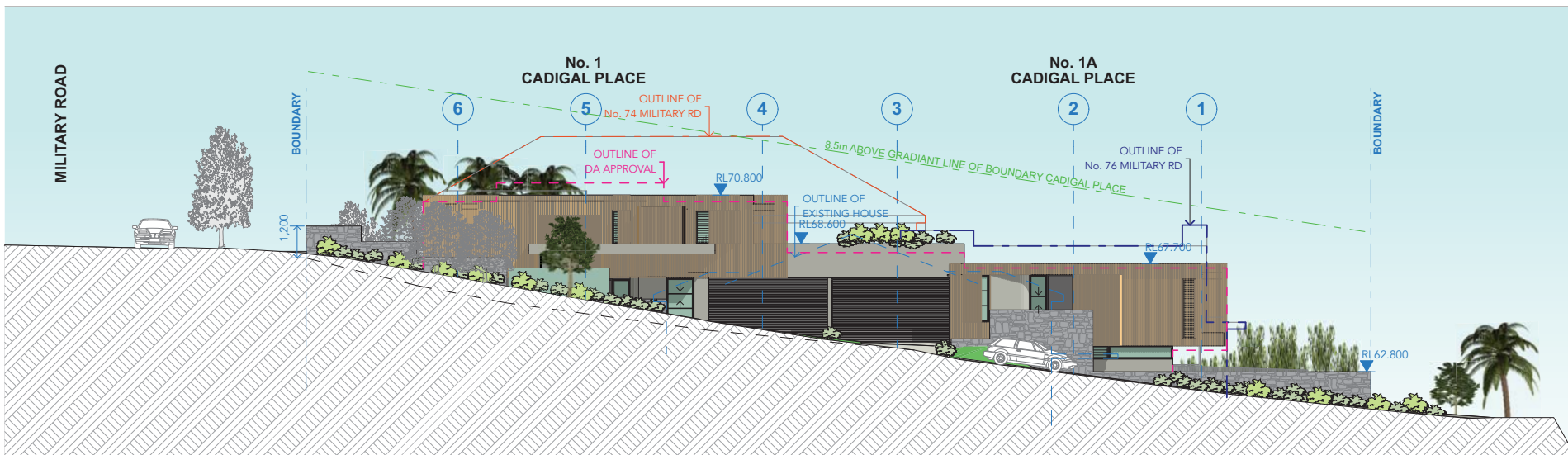
Date Received: 16/03/2022



2 SECTION E2 1:50

NOTE: LEVELS TO BE CONFIRMED AND THIS
DRAWING TO BE READ IN CONJUNCTION WITH CIVIL
ENGINEER AND ASPECT CONSTRUCTION'S DRAWINGS



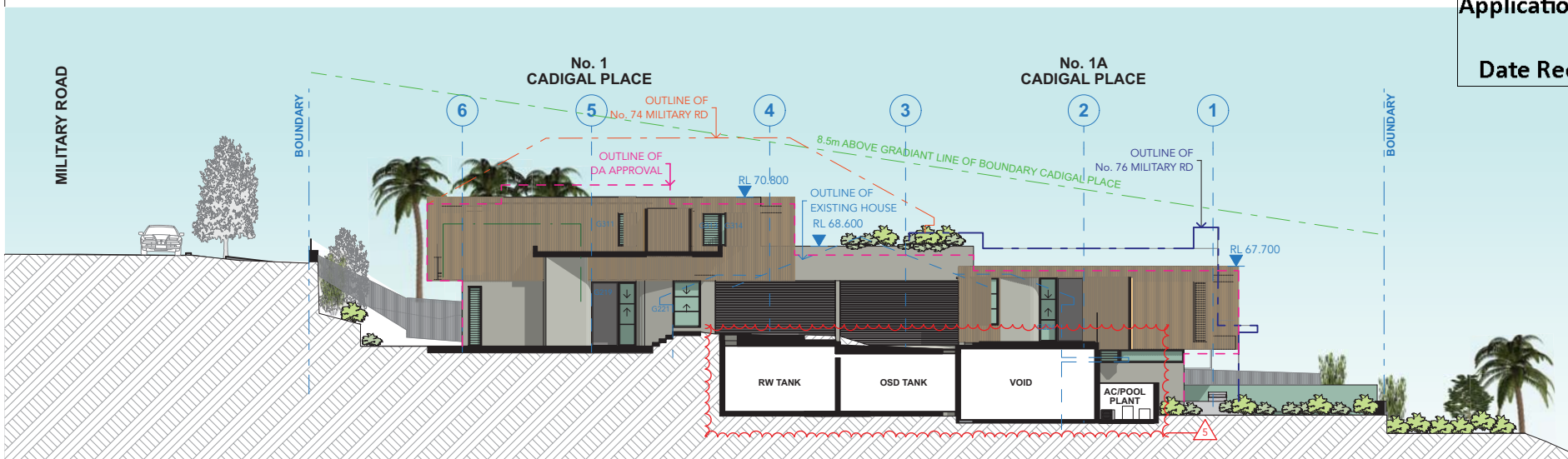


1 NORTH WEST ELEVATION (STREET VIEW) 1:200

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Waverley Council

Application No: DA-115/2021/A

Date Received: 16/03/2022



2 NORTH WEST ELEVATION 1:200



S4.55 AMMENDMENTS
5-NEW SEPARATE DRIVEWAYS WITH OSD/RW TANK UNDER +
NEW A/C & POOL PLANT



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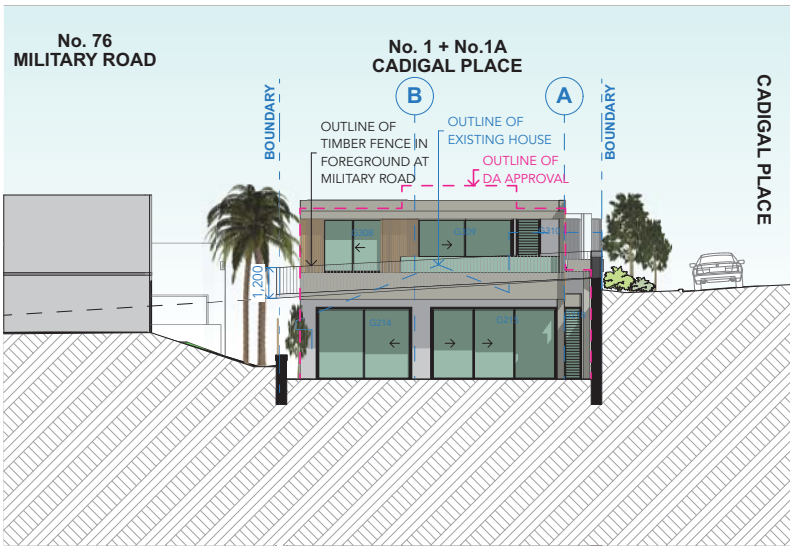
ISSUE	DATE	REVISION
D	1/3/22	S4.55

BASIX water commitments include:
Showers low flow 6 to 7.5 L/min
Toilets 4 star
Taps 3 star
2500L individual rainwater tanks each collecting at least 118m² and 151m² of roof and used for landscape and cold tap in laundry
BASIX energy commitments include:
5 star instantaneous gas hot water
Air-conditioning 1 phase 2.5 star heating/ cooling (zoned)
Gas cook top & electric oven
2.7kW solar electric (PV) each dwelling

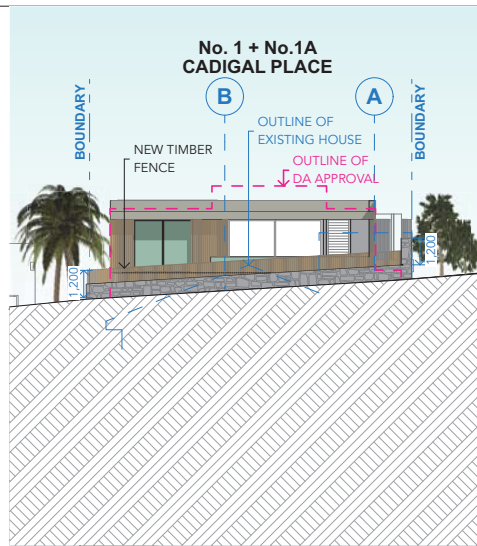
CLIENT:
Cadigal Number 1
Pty Ltd

PROJECT:
PROPOSED DUAL OCCUPANCY
78 Military Road
Sydney NSW 2030
DRAWING:
ELEVATIONS

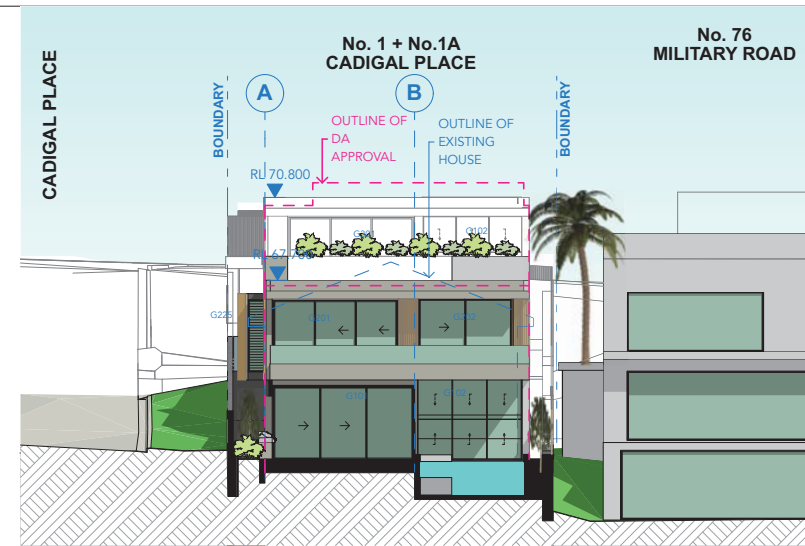
PROJECT NO:
20006
PLOTTED: 1/3/22
DRAWING NO:
DA2400 REV: D



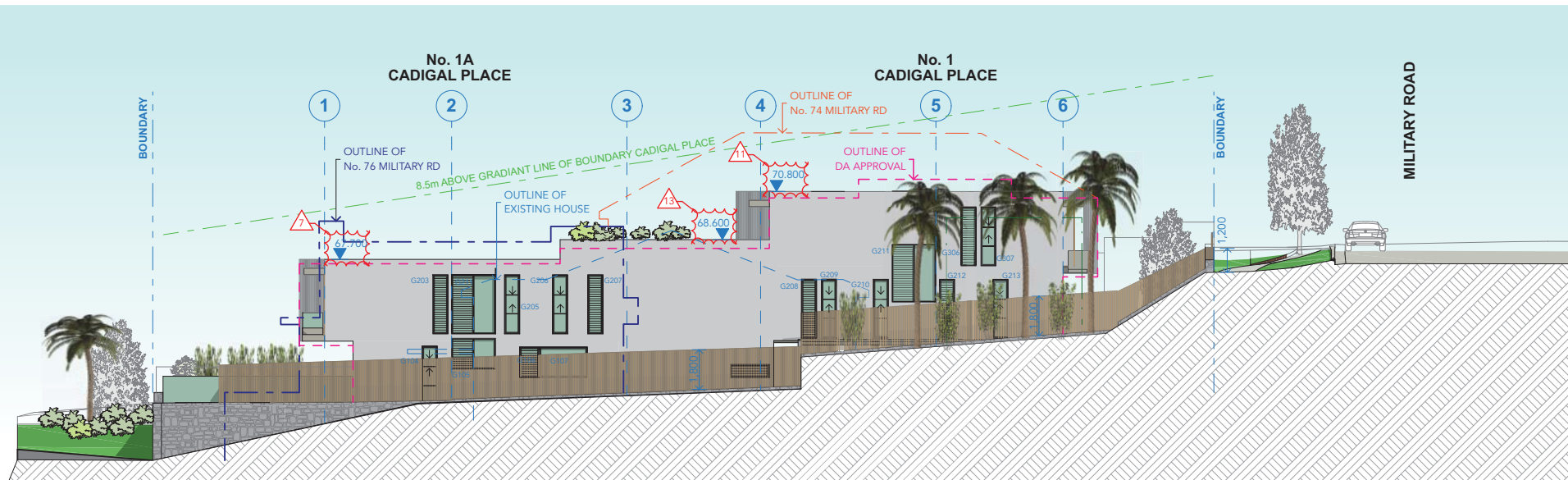
1 NORTH EAST ELEVATION 1:200



2 NORTH EAST ELEVATION (STREET VIEW) 1:200



3 SOUTH WEST ELEVATION 1:200



4 SOUTH EAST ELEVATION 1:200



RECEIVED
Waverley Council

Application No: DA-115/2021/A

Date Received: 16/03/2022

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ISSUE	DATE	REVISION
D	1/3/22	S4.55

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Pty Ltd

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PROPOSED DUAL OCCUPANCY
78 Military Road
Sydney NSW 2030
DRAWING:
ELEVATIONS

PROJECT NO:
20006
PLOTTED: 1/3/22
DRAWING NO:
DA2401
REV: D



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Application No: DA-115/2021/A

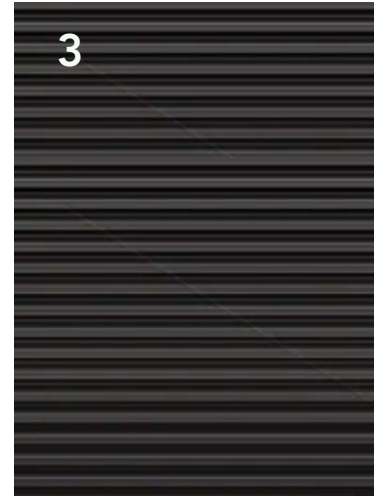
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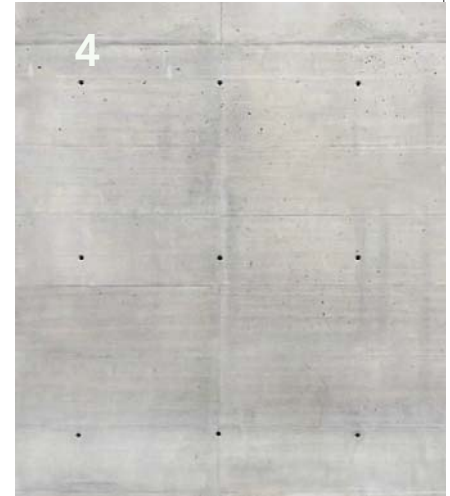
TIMBER LOOK BATTENS



NATURAL STONE STYLE CLADDING

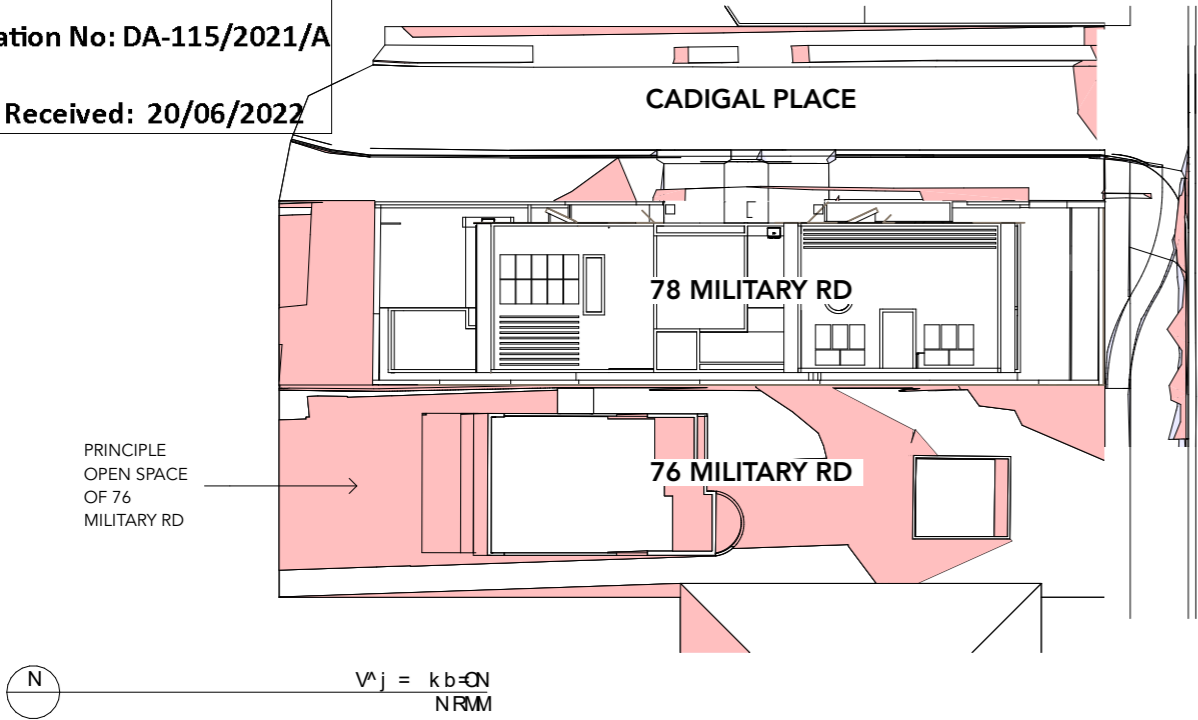


DARK GREY FRAMING AND GARAGE
DOORS

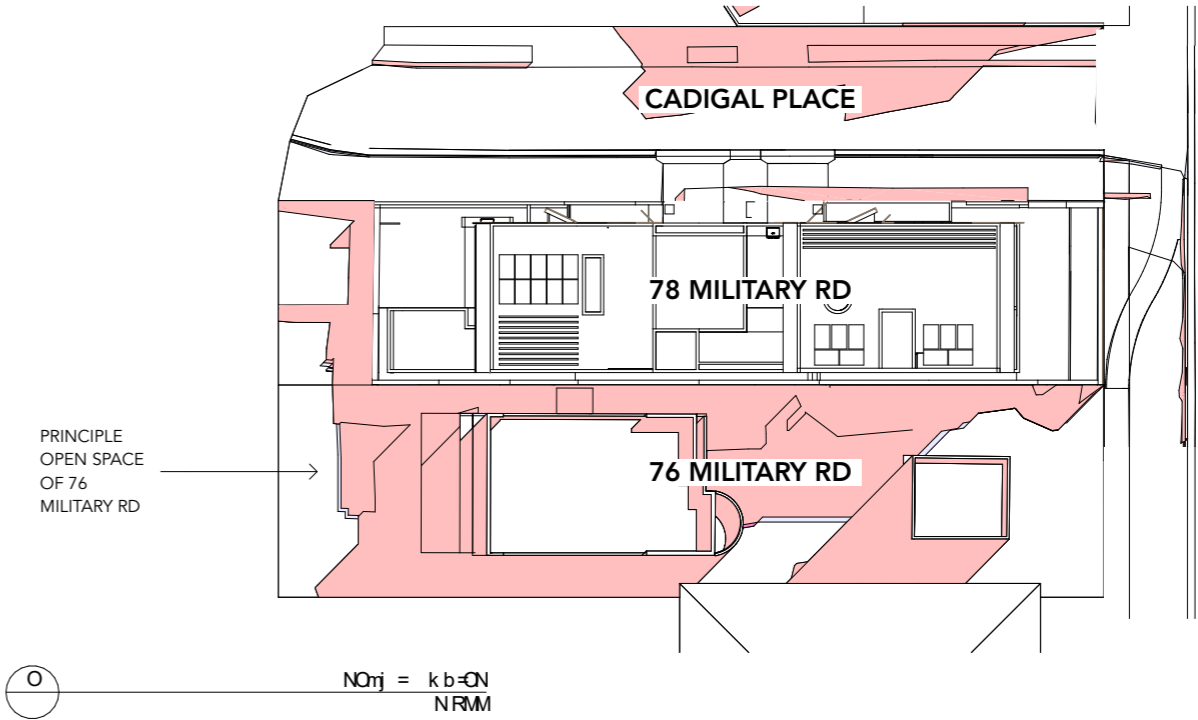


OFF FORM CONCRETE LOOK

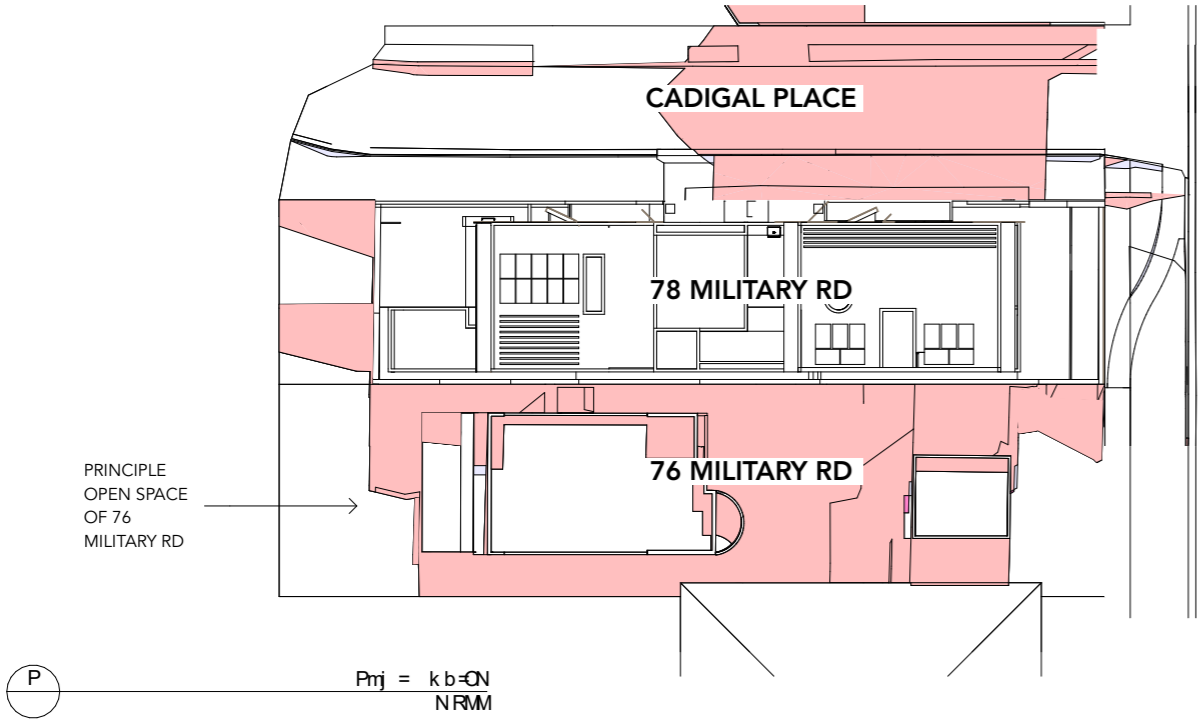
RECEIVED
Waverley Council
Application No: DA-115/2021/A
Date Received: 20/06/2022



MILITARY RD



MILITARY RD



MILITARY RD

E	17/6/22	Revised S4.55
D	2/3/22	S4.55
C	16/11/21	S4.55
ISSUE	DATE	REVISION

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- pQR mmol m pba pe^al t p
- oba `ba pe^al t p

CLIENT:
Cadigal Number 1 Pty Ltd

PROJECT:
PROPOSED DUAL OCCUPANCY
78 Military Road
Sydney NSW 2030
DRAWING:
SHADOW DIAGRAMS



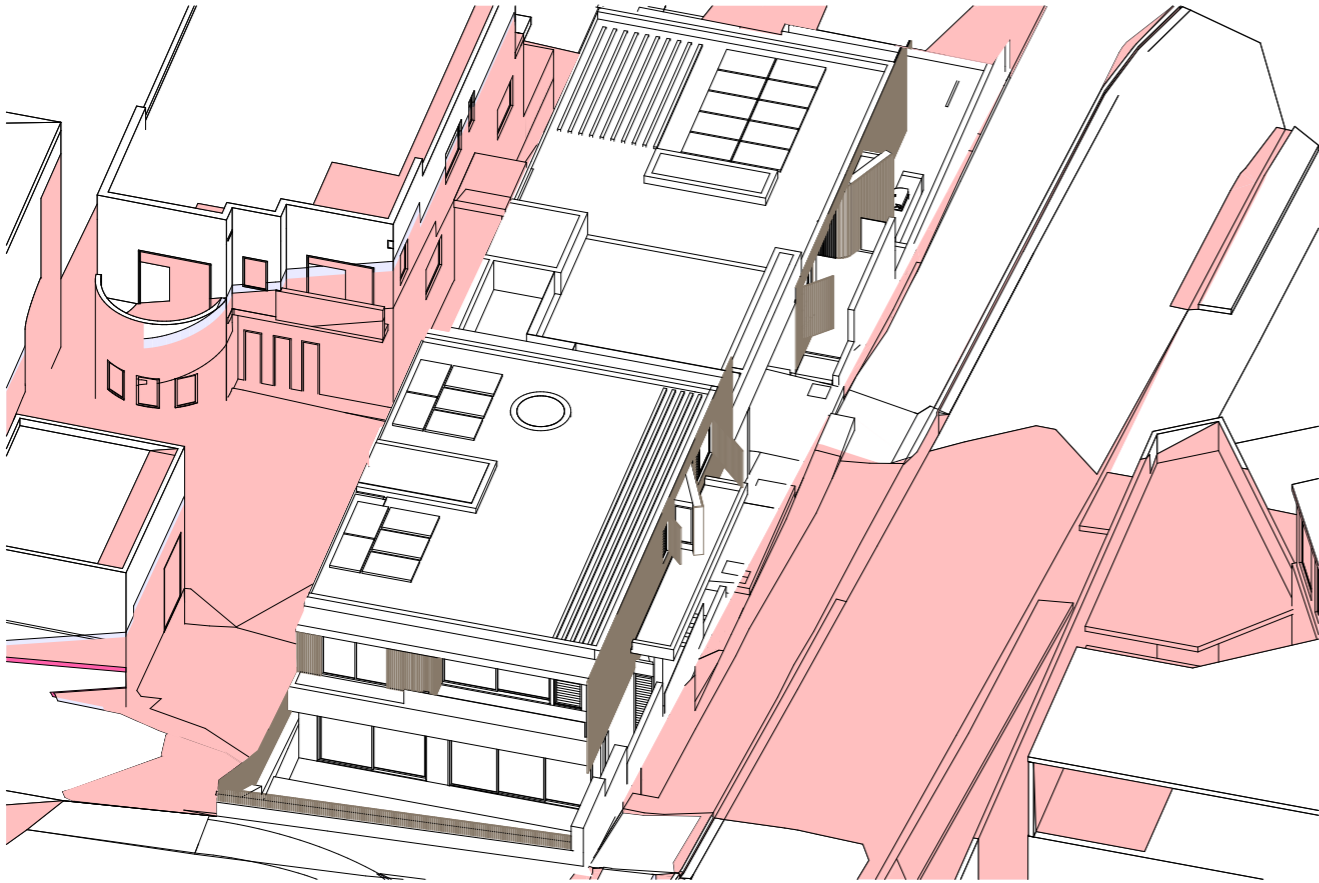
PROJECT NO:
20006
PLOTTED: 17/6/22
DRAWING NO:
DA9100
REV: **E**



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E	17/6/22	Revised S4.55
D	2/3/22	S4.55
C	16/11/21	S4.55
ISSUE	DATE	REVISION

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	p`mmol ml pba`pe^al t p
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CLIENT:
Cadigal Number 1 Pty Ltd

PROJECT:
PROPOSED DUAL OCCUPANCY
78 Military Road
Sydney NSW 2030
DRAWING:
SHADOW DIAGRAMS 3D

PROJECT NO:
20006
PLOTTED: 17/6/22
DRAWING NO:
DA9101
REV: **E**



Report to the Waverley Local Planning Panel

Application number	DA-475/2021
Site address	99 Military Road, Dover Heights
Proposal	Demolition of existing two storey detached dwelling to construct a two storey attached dual occupancy with basement carparking, swimming pool at the rear and Strata subdivision into two lots.
Date of lodgement	2 November 2021
Owner	Mr R Kharzoo
Applicant	Mr R Kharzoo
Submissions	Ten (10) submissions
Cost of works	\$2,475,387
Principal Issues	<ul style="list-style-type: none"> • FSR • Overshadowing • Balcony size.
Recommendation	That the application be REFUSED for the reasons contained in the report.

SITE MAP



1. PREAMBLE

1.1. Executive Summary

The development application seeks consent for demolition of existing two storey detached dwelling for the construction of an attached dual occupancy, including excavation for lower ground level for car parking, plant and storage areas, swimming pools at the rear and Strata subdivision into two lots at the site known as 99 Military Road, Dover Heights.

The principal issues arising from the assessment of the application are as follows:

- Floor Space Ratio (FSR) non-compliance;
- Overshadowing; and
- Balcony size.

The assessment finds these issues unacceptable as the variation to the FSR development standard under the Waverley Local Environmental Plan (WLEP) 2012 results in overshadowing of a habitable room window to the adjacent property to the south between 9am and 3pm on 21 June and fails to satisfy the principal objective of the development standard to preserve environmental amenity of neighbouring properties.

A total number of ten (10) submissions were received and the issues raised in the submissions have been considered and addressed in this report and in the Recommendation. No Councillor submissions have been received.

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. It is recommended for refusal.

1.2. Site and Surrounding Locality

A site visit was carried out on 18 January 2022.

The site is identified as Lot 148 in DP 11822, known as 99 Military Road, Dover Heights.

The site is rectangular in shape with a frontage to Military Road, measuring 12.5m. It has an area of 569.1m² and it falls from the rear (east) boundary towards the front (west) boundary by approximately 3m.

The site is occupied by a two storey dwelling house with vehicular access to a garage provided from Military Road. Access to the existing dwelling is provided via a set of stairs along the northern side setback.

The site is adjoined by a two storey dwelling to the south and a two storey dual occupancy development that is currently under construction to the north. To the west of the site, on the opposite side of Military Road are two storey dwelling houses. The locality is characterised by a variety of low density residential

development predominantly comprising two storey dwelling houses in a low-density residential neighbourhood.

Figures 1 to 7 are photos of the site and its context.



Figure 1: View of site looking east from Military Road



Figure 2: Existing front building line, looking south from site towards No 97 Military Road



Figure 3: Existing front building line, looking north from site towards No 101 Military Road



Figure 4: Looking south-west from subject rear yard



Figure 5: Looking south from subject rear yard



Figure 6: Looking east towards rear boundary of the site



Figure 7: View towards the rear of No 101 Military Road, looking north-west from subject rear yard

1.3. Relevant Development History

A search of Council's records revealed there are no recent and relevant development history of the site.

1.4. Proposal

The development application seeks consent for demolition of the existing two storey dwelling and construction of an attached dual occupancy development, excavation for a lower ground floor and new swimming pools at the rear, specifically the following:

Lower ground floor

- Excavation for garages to accommodate 1 car space per dwelling;
- Lift and stair access;
- Laundry;
- Cellar; and
- Plant room.

Ground floor

- Lounge room and bathroom fronting Military Road with front terraces above garage;
- Main entry to dwellings from the north and south side boundaries;
- Open plan kitchen and living area with terrace to the rear; and
- Stairs and lift.

First Floor

- Three bedrooms with ensuite and separate bathroom;
- Green roof above ground floor rear terraces;
- Laundry chute to basement; and
- Stairs and lift.

Roof

- Flat metal roof with 1 skylight per dwelling; and
- Solar panels.

External works

- Replace existing driveway with 2 separate driveways within the property boundary, with a shared vehicular crossing at Military Road;
- Pedestrian gate and external stair access along the northern and southern side boundaries;
- Vehicular gates along the front property boundary;
- Removal of existing street tree on nature strip in front of the site;
- New swimming pools and pool fencing at the rear of each dwelling; and
- Landscape works to the front and rear setbacks.

1.5. Background

The development application was lodged on 2 November 2021 and deferred on 9 November 2021 for the following reasons:

1. Incorrect calculation of gross floor area (GFA), floor space ratio (FSR) and building height.
2. Extent of excavation and scale of proposal be amended to reduce FSR.
3. Amended SEE and Clause 4.6 required to reflect accurate FSR building height calculations.
4. Proposed front and rear building lines are inconsistent with immediately adjoining properties.
5. Additional contextual details of immediately adjoining properties required to be shown on the architectural plans including the location of window openings, building envelopes and RLs.
6. Additional details to be shown on shadow diagrams including all property boundaries of adjoining properties to enable assessment of shadow impacts to private open spaces.
7. Existing street tree in front of the site has not been identified on proposed plans and has not been adequately addressed in supporting documentation.

On 25 November 2021 amended plans and additional supporting information were submitted to address the issues raised in Council's letter listed above. Council officers reviewed the amended plans and a further deferral letter was sent on 24 February 2022, for the following reasons:

1. Incorrect calculation of GFA in the lower ground floor level as the laundry, stairs and circulation are required to be included in accordance with the definition for GFA under the Waverley LEP 2012.
2. The configuration of car parking within the garage does not sufficiently accommodate 2 car spaces.
3. The vehicular crossing at the gutter and driveway widths are consistent with Council requirements and is to be amended to minimise impact on the public domain and improve accessibility to the garages.
4. Amended stormwater management plans and supporting information are required to be submitted to demonstrate compliance with relevant stormwater management requirements.
5. Amended shadow diagrams are required to clearly distinguish the proposed additional overshadowing to the rear private open space of the adjoining property at 3pm on 21 June.

On 8 March 2022, amended plans and a revised Clause 4.6 written justification was submitted to address the issues raised in Council's deferral letter dated 24 February 2022. The amended plans have been reviewed by Council officers and are considered to have adequately addressed the design of the garage and driveway crossing, stormwater management and shadow diagram requirements. However, the variation to the FSR development standard remains a pertinent issue for the amended form of the development as it does not preserve the environmental amenity of neighbouring properties and the broader locality.

2. ASSESSMENT

The following matters are to be considered in the assessment of this development application under section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act).

2.1. Planning Instruments and Development Control Plans

The following is an assessment against relevant legislation, environmental planning instruments, including State environmental planning policies (SEPPs), and development control plans.

2.1.1. State Environmental Planning Policies (SEPPs)

The following SEPPs apply from the 1st March 2022 and have been considered acceptable in the assessment of this development application:

- SEPP (Building Sustainability Index – BASIX) 2004
- SEPP (Biodiversity and Conservation) 2021
- SEPP (Resilience and Hazards) 2021

2.1.2. Draft Waverley Local Environmental Plan 2022 (Draft Waverley LEP 2022)

The Draft Waverley Local Environmental Plan 2022 was exhibited from 12 November 2021 to 23 January 2022, however at the time of this assessment, there are no relevant matters for consideration.

2.1.3. Waverley Local Environmental Plan 2012 (Waverley LEP 2012)

The relevant matters to be considered under the Waverley LEP 2012 for the proposed development are outlined below:

Table 1: Waverley LEP 2012 Compliance Table

Provision	Compliance	Comment
Part 1 Preliminary		
1.2 Aims of plan	Yes	The proposal is not inconsistent with the objectives of the plan.
Part 2 Permitted or prohibited development		
2.6 Subdivision – consent requirements	N/A	The provisions for subdivision of land are not applicable to the proposed Strata subdivision

Provision	Compliance	Comment
		of the dual occupancy development into two lots.
Land Use Table <ul style="list-style-type: none"> R2 Low Density Residential Zone 	Yes	The proposal is defined as dual occupancy development, which is permitted with consent or prohibited in the R2 Low Density Residential zone.
Part 4 Principal development standards		
4.3 Height of buildings <ul style="list-style-type: none"> 8.5m 	Yes	The proposal has a maximum building height of 8.47m measured above the floor level of the existing garage to the top of the flat roof of the proposed development. At the rear, the proposal has a building height of 6.6m. The proposal complies with the maximum building height development standard.
4.4 Floor space ratio and 4.4A Exceptions to floor space ratio <ul style="list-style-type: none"> 0.5:1 (284.5m²) 	No	The proposal has a GFA of 450.1m ² resulting in a FSR of 0.79:1 (variation of 58% (165.6m ²) to the FSR development standard). The variation is approximately the combined GFA of the proposed first floor level. The proposed built form comprising two storeys above garages is consistent with existing developments within the streetscape. See discussion below this table.
4.6 Exceptions to development standards	See discussion	The application is accompanied by a written request pursuant to clause 4.6 of Waverley LEP 2012 to vary the FSR development standard. A detailed discussion of the variation to the development standard is presented below this table.
Part 6 Additional local provisions		
6.2 Earthworks	Yes	The proposed excavation is consistent with the provisions under the DCP as the excavation works are set back 925mm from the side boundaries and will not result in any adverse environmental impacts, subject to imposition of appropriate conditions.

The following is a detailed discussion of the issues identified in the compliance table above in relation to the Waverley LEP 2012.

Clause 4.6 Exceptions to Development Standards

The application seeks to vary the floor space ratio (FSR) development standard in clause 4.4 under Waverley LEP 2012.

The site is subject to a maximum or minimum FSR development standard of 0.5:1. The proposed development has a FSR of 0.79:1, exceeding the standard by 166.5m² equating to a 58.5% variation.

A written request has been submitted to Council in accordance with clause 4.6(3)(a) and (b) of Waverley LEP 2012 seeking 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 standard.

A copy of the applicant's written request has been provided to the Waverley Local Planning Panel for consideration.

Applicant's Written Request – Clause 4.6(3)(a) and (b)

The applicant seeks to justify the contravention of the FSR development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The proposal provides an acceptable correlation between maximum building height and density controls as the proposed height is consistent with the permissible height for a first floor addition to the existing dwelling and complements the height of developments to the north and within the locality.*
 - (ii) The proposal is of comparable size and dimension to similar scale dual occupancy developments in the locality, has acceptable setbacks and complements the desired future character of the area.*
 - (iii) There are no detrimental environmental impacts on adjoining properties or the streetscape.*
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) A compliant dual occupancy with dwellings measuring 140m² would be inconsistent with the size and scale of existing dwellings in the locality.*
 - (ii) The proposed FSR is consistent with existing and future developments in the vicinity of the site.*
 - (iii) The proposal does not result in any unreasonable environmental and amenity impacts on adjoining properties such as view loss, visual bulk, overshadowing or loss of privacy.*

Consideration of Applicant's Written Request – Clause 4.6(4) (a) (i) and (ii)

Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of clause 4.6 being 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 standard; and
- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at clause 4.6(3)(a)?

It is considered that the applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and has referenced one or more of the following justifications as set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446:

- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- (b) to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (c) to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- (d) to establish that 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; and*
- (e) to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant specifically relies upon justification (a) outlined above to address clause 4.6(3)(a) of Waverley LEP 2012. In particular, the applicant has identified that the proposed built form, despite the variation to the FSR development standard, satisfies the objectives of the development standard as it does not exceed the maximum height control and is compatible with the bulk and scale of surrounding developments and the desired future character of the area without any unreasonable amenity impacts on adjoining properties.

The Clause 4.6 written justification has not adequately demonstrated that the proposal satisfies objective (d) of the FSR development standard which reads as follows:

- (d) to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and the locality.*

Specifically, the proposal, which exceeds the FSR development standard by 58.5%, will result in complete overshadowing of a habitable room window on the northern elevation of the adjoining property at No. 97 Military Road between 9am and 3pm on 21 June. The existing habitable room window at No. 97 Military Road currently receives direct solar access to more than 50% of the area of the window hourly between 9am and 3pm. The amenity for occupants at No. 97 will be significantly impacted by the extensive overshadowing and as such, the Clause 4.6 written justification has failed to adequately demonstrate that the proposal, despite the variation to the development standard, preserves the environmental amenity of adjoining properties and satisfies subclause (d).

Does the written request adequately address those issues at clause 4.6(3)(b)?

The applicant has not adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard. In particular, the applicant relies on the argument that the built form of existing developments in the vicinity of the site supports the proposed breach the FSR development standard as the bulk and scale of the proposed development are consistent with the desired future character of the locality and does not result in any unreasonable environmental impacts to adjoining properties.

As discussed above, the proposal will result in extensive additional overshadowing to a habitable room window on the northern elevation of the adjoining property at No. 97 Military Road between 9am and 3pm, on 21 June. The Clause 4.6 written justification has not adequately demonstrated that a design with a compliant FSR will have the same environmental impacts to adjoining properties or would detract from the character of the streetscape.

Is the development in the public interest?

The proposed development will not be in the public interest because it is inconsistent with relevant objectives of the particular development standard.

The relevant objectives of the FSR development standard are as follows:

(b) to provide an appropriate correlation between maximum building heights and density controls,

(c) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,

(d) to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and the locality.

Whilst the proposal does not exceed the maximum building height development standard, the extent of the variation to the FSR development standard and additional building bulk to the rear of the site contributes to additional overshadowing that does not satisfy the objective to preserve the environmental amenity of adjoining properties and cannot be supported.

The objectives of the R2 Low Density Residential zone are as follows:

- *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 maximise public transport patronage and encourage walking and cycling.*

The proposal to replace an existing dwelling with a dual occupancy development is consistent with the objectives of the R2 Low Density Residential zone.

Conclusion

For the reasons provided above the requested variation to the FSR development standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by clause 4.6(3) of the Waverley LEP 2012. In addition, the proposed development is not in the public interest because it is inconsistent with the objectives of FSR development standard required to be compatible with the desired future character of the locality and preserve the environmental amenity of neighbouring properties.

The proposal satisfies the objectives of the R2 Low Density Residential zone however, the environmental impacts and inconsistency with the objectives of the FSR development standard will result in additional impacts on the amenity of adjoining properties and is not in the public interest.

2.1.4. Waverley Development Control Plan 2012 (Waverley DCP 2012) – Amendment No.9

The relevant matters to be considered under the Waverley DCP 2012 for the proposed development are outlined below:

Table 2: Waverley DCP 2012 – Part B General Provisions Compliance Table

Development Control	Compliance	Comment
1. Waste	Yes	Satisfactory.
2. Ecologically Sustainable Development	Yes	Satisfactory.
5. Vegetation Preservation	Yes	<p>The proposal seeks to remove one tree within the rear yard along the northern side boundary. Council's Tree Management Officer has reviewed the proposal and identified there are no significant trees on the site and raises no objection to tree removal and landscaping works, subject to recommended conditions which have been included in Appendix A.</p> <p>The proposed removal of an existing street tree (small <i>Metrosideros thomasi</i> (NZ Christmas bush)) is supported by Council's Tree Management Officer subject to replacement trees.</p>
6. Stormwater	Yes	Satisfactory. Refer to section 3 of this report on referral commentary in relation to stormwater.
8. Transport Minimum parking rate: <ul style="list-style-type: none"> Nil 	Yes	The proposal seeks approval for 1 car space per dwelling within the garages. The proposed driveway can also accommodate an additional car per dwelling resulting in a total of 2 car spaces per

Development Control	Compliance	Comment
Maximum parking rate: <ul style="list-style-type: none"> 2 spaces for 3 or more bedrooms. 		dwelling which is consistent with car parking provisions under the DCP. Council's Traffic Engineer is satisfied with the proposed design and location of the car spaces raises no objection subject to conditions.
12. Design Excellence	No	The proposal results in extensive overshadowing of the adjoining property at No. 97 Military Road and does not satisfy the objectives of the FSR development standard for preserving the environmental amenity of adjoining properties.
13. Subdivision	N/A	The proposed Strata subdivision is not subject to the provisions under the DCP.
14. Excavation	Yes	Satisfactory.
16. Public Domain	Yes	Satisfactory, subject to replacement tree plantings as recommended by Council's Tree Management Officer.

Table 3: Waverley DCP 2012 – Part C2 Low Density Residential Development Compliance Table

Development Control	Compliance	Comment
2.0 General Objectives		
<ul style="list-style-type: none"> Proposed bulk and scale is appropriate for the allotment and is sympathetic to surrounding developments and desired future character of the area Does not detract from the amenity, privacy or views of other dwellings or public domain Ecologically sustainable development High design quality 	No	The proposal comprises a built form that is compatible with the bulk and scale of adjoining properties however, the variation to the FSR development standard contributes to extensive additional overshadowing. It therefore does not satisfy the objective of the DCP and fails to preserve the amenity of neighbouring properties.
2.1 Height		
Flat roof dwelling house <ul style="list-style-type: none"> Maximum wall height of 7.5m 	Partial Compliance	The proposed wall height at the front of the dwelling, measured to the existing finished floor level of the garage, is between 8.3m and 8.4m which exceeds the wall height control of 7.5m. The rear of the site which does not consist of an existing lower ground level has a proposed building wall height measuring between 6.6m and 7.2m which complies with the maximum wall height control of 7.5m.

Development Control	Compliance	Comment
2.5 Visual and acoustic privacy		
<ul style="list-style-type: none"> Habitable windows are not to directly face habitable windows or open space of neighbouring dwellings unless direct views are screened or other appropriate measures are incorporated into the design 	Yes	<p>The proposed windows to habitable rooms on the northern and southern elevations are not directly aligned with adjoining habitable room windows except for the dining room and lounge room windows on the ground floor level. These windows are not considered to have unreasonable amenity impacts on adjoining properties as the windows are predominantly screened by the 1.8m high side boundary fence.</p> <p>On the first floor level, the proposed windows to the stairs (W09) and hallway (W07) are adjacent to the windows to the stairs at No. 101 Military Road and will not result in any unreasonable loss of privacy or amenity impacts as the windows service circulation areas within the dwellings.</p> <p>The first floor windows on the southern elevation are above top of window heights of the ground floor windows at No. 97 Military Road and look directly at the roof of No. 97 Military Road. The proposed windows W06, W07 and W09 are from the stairs, hallway and an ensuite which are not primary habitable rooms and are unlikely to result in unreasonable amenity impacts on the adjoining property, subject to privacy treatment to the glazing to minimise overlooking.</p> <p>The first floor window to Bedroom 2 on the southern elevation (W10) is not directly aligned with the existing ground floor window at No. 97 Military Road, however given the elevated position of the proposed window, a condition requiring privacy treatment to the glazing to minimise privacy impacts on the adjoining property would be recommended if the proposal was supported.</p>
<ul style="list-style-type: none"> External stairs are not acceptable. 	Yes	<p>The proposal includes external stairs along the northern and southern side boundaries to provide access to the ground floor entries to the proposed dual occupancy. The proposed stairs are acceptable as the stairs are within the front setback and will not result in any loss of amenity for adjoining properties.</p>
<ul style="list-style-type: none"> Maximum size of balconies: 		<p>The proposal seeks consent for first floor balconies fronting Military Road measuring 4.7m x 2.3m (10.8m²). Whilst the dimension and area of</p>

Development Control	Compliance	Comment
10m ² in area 1.5m deep	No – acceptable on merit	the balconies exceed the provisions under the DCP, the balconies are accessed from bedrooms and provide passive surveillance to the public domain without any unreasonable amenity impacts on adjoining properties.
2.6 Solar access		
<ul style="list-style-type: none"> Minimum of three hours of sunlight to living areas and principal open space areas on 21 June 	Yes	The proposal achieves a minimum of 3 hours of direct sunlight to living areas and private open space between 9am and 3pm on 21 June.
<ul style="list-style-type: none"> Minimum of three hours of sunlight maintained to at least 50% of principal open space areas of adjoining properties on 21 June. 	Yes	<p>The proposal results in some additional overshadowing within the front building setback and the rear private open space at No. 97 Military Road between 9am and 11am, and 12noon and 3pm on 21 June.</p> <p>The proposal will cast additional shadows to the rear private open space at No. 97 Military Road between 12noon and 3pm on 21 June. Whilst a minimum of 3 hours of direct sunlight to 50% of the rear open space is achieved, the proposal has not adequately demonstrated that the scale of the development (exceeding the FSR development standard) achieves the objective of the development standard by preserving the environmental amenity of surrounding properties. Specifically, the proposal will result in additional overshadowing that reduces existing solar access to the rear opens space at 2pm (less than 50% of the area) and nil sunlight at 3pm.</p>
<ul style="list-style-type: none"> Avoid unreasonably overshadowing of solar collectors (including habitable windows). 	No	<p>The proposal results in complete overshadowing of the north facing habitable room window of No. 97 Military Road between 9am and 3pm, on 21 June. The window currently receives direct sunlight between 9am and 3pm, on 21 June and the proposal, which exceeds the maximum FSR development standard, results in excessive additional overshadowing impacts and is not acceptable.</p> <p>Surrounding properties do not have solar panels that will be overshadowed by the proposal.</p>
2.7 Views		
<ul style="list-style-type: none"> Views from the public domain are to be maintained 	Yes	The proposal will not impact on any existing views from surrounding public spaces.

Development Control	Compliance	Comment
<ul style="list-style-type: none"> Development to be designed and sited so as to enable a sharing of views with surrounding dwellings particularly from habitable rooms and decks. 	Yes	The proposal will not impact on existing views to the Harbour Bridge from the rear windows and deck of properties to the east (Nos. 21 and 23 Lord Howe Street) and maintains acceptable view sharing of district views of the city skyline with surrounding properties. See discussion below.
2.8 Car parking		
2.8.1 Design Approach <ul style="list-style-type: none"> Parking only allowed where site conditions permit Designed to complement the building and streetscape Car parking structures to be behind the front building line Driveways are to be located to minimise the loss of on street parking 	Yes Yes Yes Yes	The proposed garages are located behind the front building line and is consistent with the location of car parking for surrounding properties. The new shared vehicle crossing does not result in loss of more than one street car parking space and is acceptable.
2.8.2 Parking rates	Yes	Parking rates are set by Part B8 of Waverley DCP 2012.
2.8.3 Location <ul style="list-style-type: none"> Behind front building line for new dwellings Existing development to be in accordance with the hierarchy of preferred car parking locations 	Yes Yes	The location of the garages is located behind the front building line and is consistent with the hierarchy of car parking spaces for the locality.
2.8.4 Design <ul style="list-style-type: none"> Complement the style, massing and detail of the dwelling Secondary in area and appearance to the design of the residences Gates to have an open design 	Yes	The garages do not dominate the primary façade of the dual occupancy when viewed from the public domain. The new front boundary fence including vehicle gates comprise open style balustrades that enable clear sightlines between the public domain and the front building setback.
2.8.5 Dimensions <ul style="list-style-type: none"> 5.4m x 2.4m per vehicle 	Yes	Each garage provides a single car parking space measuring 3m x 6m.
2.8.6 Driveways <ul style="list-style-type: none"> Maximum of one per property Maximum width of 3m at the gutter (excluding splay) 	Yes	The proposal seeks to provide one vehicle crossing measuring 3m at the gutter, excluding the required splay, shared by the dual occupancy dwellings. Within the property boundary a 3m wide driveway is provided to each dual occupancy.

Development Control	Compliance	Comment
<ul style="list-style-type: none">Crossings not permitted where 2 on street spaces are lost		The proposal does not result in a loss of more than 1 on street car parking space.
2.9 Landscaping and open space		
<ul style="list-style-type: none">Overall open space: 40% of site area (227.6m²)	Yes	Council’s Assessment Officer has calculated a total of 297.3m ² (52%) of open space excluding the covered terrace areas at the front and rear of the dwelling.
<ul style="list-style-type: none">Overall landscaped area: 15% of site area	Yes	Council’s Assessment Officer has calculated a total landscaped area of 98.5m ² (17%) comprising of the garden areas within the front building setback, landscaping around the pools and roof garden above the ground floor rear terraces.
<ul style="list-style-type: none">Minimum area of 25m² for private open space	Yes	Not including the area occupied by the swimming pool and boundary landscaping, each dwelling has approximately 26m ² of private open space adjacent to principal living areas.
<ul style="list-style-type: none">Front open space: 50% of front building setback area	Yes	The front building line comprises 100% open space.
<ul style="list-style-type: none">Front landscaped area: 50% of front open space provided (44.8m²)	No	The front setback contains approximately 20.3m ² of soft landscaping and the remainder of the area comprising of hard paving and stairs. Given the compliant driveway and car parking design for the dual occupancy, additional landscaping is constrained. However, the proposed landscaping within the front setback is similar to landscaping provided to recently constructed dual occupancy developments in the locality and does not detract from the streetscape.
<ul style="list-style-type: none">Outdoor clothes drying area to be provided	Not Shown	Outdoor clothes drying can be adequately accommodated within the rear private open spaces.
2.10 Swimming pools and spa pools		
<ul style="list-style-type: none">Located in the rear of propertyPool decks on side boundaries must consider visual privacy	Yes Yes	The new swimming pools are located within the rear private open spaces adjacent to the rear boundary. Landscaping is provided between the pool and the side and rear boundaries minimising privacy impacts on adjoining properties.
2.15 Dual Occupancy Development		
<ul style="list-style-type: none">Min 450m² attached dwellings	Yes	The site has an area of 569m ² and complies with the minimum lot size for an attached dual occupancy.

Development Control	Compliance	Comment
<ul style="list-style-type: none"> Single vehicle crossing to the street 	Yes	The proposal provides a new single vehicle crossing to the street shared by the dual occupancy dwellings.

The following is a detailed discussion of the issues identified in the compliance tables above in relation to the Waverley DCP 2012.

View loss

Section 2.7 in Part C2 details all objectives and strategies for public and private domain views and view sharing, which generally seek to reduce impacts on existing views and vistas from the private and public domain. The proposal will not result in any loss of views from the public domain and is considered consistent with the objectives and provisions of the DCP.

During the notification period, view loss concerns were raised by the neighbouring property to the west of the site. Potential view loss impacts particularly from the rear of No. 26 Lyons Street has been assessed in accordance with the NSW Land and Environment Court Planning Principle based on *Tenacity Consulting v Warringah [2004] NSWLEC 140*. The view sharing planning principle requires a four step assessment to determine if view sharing is reasonable as follows:

- 1. 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.*
- 2. 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.*
- 3. 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).*
- 4. 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.

No. 23 Lord Howe Street is located directly to the east of the site and contains a single storey dwelling with a lower ground garage fronting Lord Howe Street. Views towards the city skyline and Harbour Bridge from the west facing windows of No. 23 Lord Howe Street are partially obscured by vegetation (see **Figure 8** of this report). The proposed development is compliant with the maximum building height development standard and side setback controls and will not significantly or unreasonably impact existing views of the city skyline viewed through the canopy of established trees. The proposal will not result in any additional view impacts of the Harbour Bridge as views to the Bridge are obtained across No. 101 Military Road.

No. 21 Lord Howe Street is located to the north-east of the subject site and contains a two storey dwelling. Views of the city skyline and Harbour Bridge from the first floor rear living area and balcony are obtained across the front and rear boundaries of the subject site and No. 101 Military Road. Views of the city skyline across the subject site are partially obscured by vegetation (see **Figure 9** of this report). The proposal will not significantly or unreasonably impact existing views of the city skyline as the proposed building height is similar to the existing ridge line and does not extend beyond the height of the existing trees that obscure the view. The proposal will not have any additional view loss impacts of the Harbour Bridge as the views are not obtained across the subject site and maintains reasonable view sharing.



Figure 8: View west from the rear living room and kitchen of No. 23 Lord Howe Street (photo taken in 2010 prior to construction of new two storey dwelling at No. 101 Military Road).



Figure 9: View looking west from first floor rear living area at No. 21 Lord Howe Street

2.2. Other Impacts of the Development

The proposal is considered to have a significant detrimental effect relating to environmental, social or economic impacts on the locality, and is recommended for refusal.

2.3. Suitability of the Site for the Development

The site is not considered suitable for the proposal.

2.4. Any Submissions

The application was notified for 14 days between 30 November and 16 December 2021 in accordance with the *Waverley Community Development Participation and Consultation Plan*.

Following receipt of amended plans and additional information, the application was not notified as the amended form of the proposal represents a lesser impact than that of the original form that was publicly notified, for the following reasons:

- Increase front and rear setbacks to not extend beyond the front and rear building lines of the adjoining property at No. 101 Military Road;
- Reduction in car parking from 2 car spaces per dwelling to 1 car parking space per dwelling;
- Redesign of new vehicle crossing and driveway to achieve required widths to provide appropriate vehicular access; and
- Amended shadow diagrams clarifying the extent of additional shadow impacts.

A total of ten (10) unique submissions were received, including one submission without a property address. The other submissions received were from the following properties:

Table 4: Number of and where submissions were received from.

Count	Property Address
1.	97 Military Road, Dover Heights
2.	21 Lord Howe Street, Dover Heights
3.	23 Lord Howe Street, Dover Heights
4.	16 Pindari Road, Dover Heights
5.	54 Mackenzie Street, Bondi Junction
6.	114 Dover Road, Dover Heights
7.	78 Liverpool Street, Dover Heights
8.	175 Military Road, Dover Heights
9.	1 Raleigh Street, Dover Heights
10.	Unknown address

The following issues raised in the submissions have already been discussed and addressed in the body of this report and/or the Recommendation:

- FSR;
- Building height;
- Building bulk;
- Privacy impacts;
- Depth of rear balconies;
- View loss;
- Overshadowing impacts; and
- Excavation impacts on adjoining properties.

All other issues raised in the submissions are summarised and discussed below.

Issue: Dilapidation reports be prepared for adjoining properties prior to construction works.

Response: If the proposal were to be supported, a condition would be imposed requiring the preparation of dilapidation reports for adjoining properties.

Issue: No structures, even temporary structures during construction, should exceed the roof height.

Response: There are specific restrictions to the height of temporary structures required for construction works to be maintained under the maximum building height control.

Issue: No services or fixtures should be on the roof that may detract from views from surrounding properties.

Response: The proposal does not include any services or fixtures on the roof that would adversely impact existing views from surrounding properties.

Issue: Insufficient information submitted to address underground water impacts on neighbouring properties.

Response: Council's Stormwater Engineer has reviewed the proposal and has not raised any concerns relating to underground water.

Issue: New plantings with a mature height of 6m should be replaced with low height species to minimise view loss impacts.

Response: The proposal includes 2 x Water Gums have a nominated mature height of 7m and are located within the front building setback. Given the location of the trees in a narrow garden bed, it is unlikely to grow beyond the height of the proposed dwelling and is unlikely to result in view loss impacts.

Issue: Updated survey plan required to reflect structures at No. 23 Lord Howe Street prior to commencement of any works.

Response: The proposal is not supported and as such, there is no need for an amended survey plan identifying the structures of adjoining properties to the east.

Issue: Insufficient information shown on plans identifying air conditioning units, pool equipment, solar panels and privacy screens.

Response: The proposed solar panels have been included on the roof plans. The proposed plant room is capable of accommodating services for the dwellings. If the proposal were to be supported, conditions requiring details of services such pool equipment and air conditioning units could be imposed.

Issue: Dust protection for neighbouring properties should be erected during construction works.

Response: Standard conditions relating to dust management during construction works can be imposed should the proposal be supported.

2.5. Public Interest

The proposal is considered to have a detrimental effect on the public interest and is recommended for refusal.

3. REFERRALS

The following internal referral comments were sought:

3.1. Traffic and Development

Council's Traffic Engineer has reviewed the proposal and identified that the proposed internal garage dimensions are capable of accommodating one car space per dwelling with a second vehicle parked on the hard stand area. No objection is raised to the proposal subject to conditions.

3.2. Stormwater

Council's Stormwater Engineer has reviewed the proposal and raises no objection to the proposal subject to conditions.

3.3. Tree Management

Council's Tree Management Officer has reviewed the proposal and raises no objection to the removal of trees on the site or within the public domain subject to replacement tree planting and conditions.

3.4. Information/GIS

Council's Information/GIS officer reviewed the proposal and raises no objection subject to conditions.

4. CONCLUSION

The development application seeks consent for demolition of the exiting dwelling and the construction of a two storey dual occupancy with basement garage, new swimming pools at the rear and landscape works at the site known as 99 Military Road, Dover Heights.

The principal issues arising from the assessment of the application are as follows:

- Floor Space Ratio (FSR) non-compliance;
- Overshadowing; and
- Balcony size.

The assessment finds these issues unacceptable as the variation to the FSR development standard under the Waverley Local Environmental Plan (WLEP) 2012 results in overshadowing of a habitable room window to the adjacent property to the south between 9am and 3pm on 21 June and fails to satisfy the principal objective of the development standard to preserve environmental amenity of neighbouring properties.

A total number of ten (10) submissions were received and the issues raised in the submissions have been considered and addressed in this report and in the Recommendation. No Councillor submissions have been received.

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. It is recommended for refusal.

Development and Building Unit (DBU) Decision:

The application was reviewed by the DBU at the meeting on 10 May 2022 and the DBU determined:

(b) The application is not acceptable and should be refused for the reasons in Appendix A.

DBU members: *M Reid, A Rossi, B McNamara, B Matlawski and B Magistrale*

5. RECOMMENDATION TO WAVERLEY LOCAL PLANNING PANEL

That the development application be REFUSED by the Waverley Local Planning Panel for the reasons contained in Appendix A.

Report prepared by:	Application reviewed and agreed on behalf of the Development and Building Unit by:
	
Peggy Wong	Ben Magistrale
Senior Development Assessment Planner	Manager, Development Assessment (Area 2) (Reviewed and agreed on behalf of the Development and Building Unit)
Date: 12 July 2022	Date: 13 July 2022

Reason for WLPP referral:

2. Contentious development (10 or more objections)
3. Departure from any development standard in an EPI by more than 10%

APPENDIX A – REASONS FOR REFUSAL

Having regard to section 4.15(1) of the Environmental Planning and Assessment Act 1979 (the Act) the development application (the application) is refused for the following reasons:

1. The proposal does not satisfy the objectives of the Act, as stipulated in section 1.3(g) as the proposal does not promote good design or amenity of the built environment.
2. The proposal does not satisfy section 4.15(1)(a)(i) of the Act, as the proposal does not satisfy the Waverley Local Environmental Plan 2012 (WLEP), in particular the following provisions:
 - a. Clause 4.4 Floor Space Ratio (FSR) as the proposal exceeds the maximum allowable FSR of 0.5:1 and the applicant's written request under clause 4.6 of WLEP has failed to adequately address the required matters under subclauses 4.6 (3)(a) and (b) of WLEP. The proposal results in adverse overshadowing impacts, and therefore, does not preserve the environmental amenity of neighbouring properties and the surrounding locality as required under Clause 4.4(1)(d) of WLEP.
 - b. Clause 4.6 Exceptions to development standards (1) and (3) as the applicant has failed to demonstrate that the proposed development will result in a better outcome for the site and a compliant development is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify the breach to the FSR development standard. The proposal is not considered to be in the public interest.
3. The application does not satisfy section 4.15(l)(a)(iii) of the Act as it is contrary to Waverley Development Control Plan 2012, in respect to the following provisions:
 - a. Part B12 - Design Excellence

Section 12.1 Design specifically objectives (c) and (d), controls (e)(vii) and 12.2 Context Analysis objectives (a), (b) and (d) as the proposal has failed to consider the suitability of the land for development given the breach to the floor space ratio development standard and additional overshadowing impacts to adjoining properties.
 - b. Part C2 – Low Density Residential Development

Section 2.0 General Objectives specifically objectives (a) to (d) and Section 2.6 Solar Access, specifically objectives (a) to (d), as the proposal exceeds the maximum floor space ratio development standard and results in extensive overshadowing impacts on adjoining properties.
4. The application does not satisfy section 4.15 (l)(b) of the Act as the proposed development in terms of the additional building bulk results in unacceptable amenity impacts on adjoining properties.

5. The application is contrary to section 4.15 (1)(c) of the Act due to the site being unsuitable to accommodate the proposed development. The scope of the development exceeds the FSR development standard resulting in additional amenity impacts on adjoining properties and is an over development of the site.
6. The application is contrary to section 4.15 (1)(d) of the Act in relation to matters raised in the public submissions received that object to the proposed development.
7. The application is contrary to section 4.15 (1)(e) of the Act in relation to the public interest as the variation sought to the floor space ratio development standard has not been adequately justified by a Clause 4.6 written request demonstrating that compliance with the development standards is unnecessary or unreasonable and that there are sufficient environmental planning grounds to contravene the standards.

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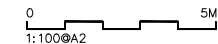
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DA	A	AMENDED DA ISSUE		19.11
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PROPOSED GROUND FLOOR PLAN				

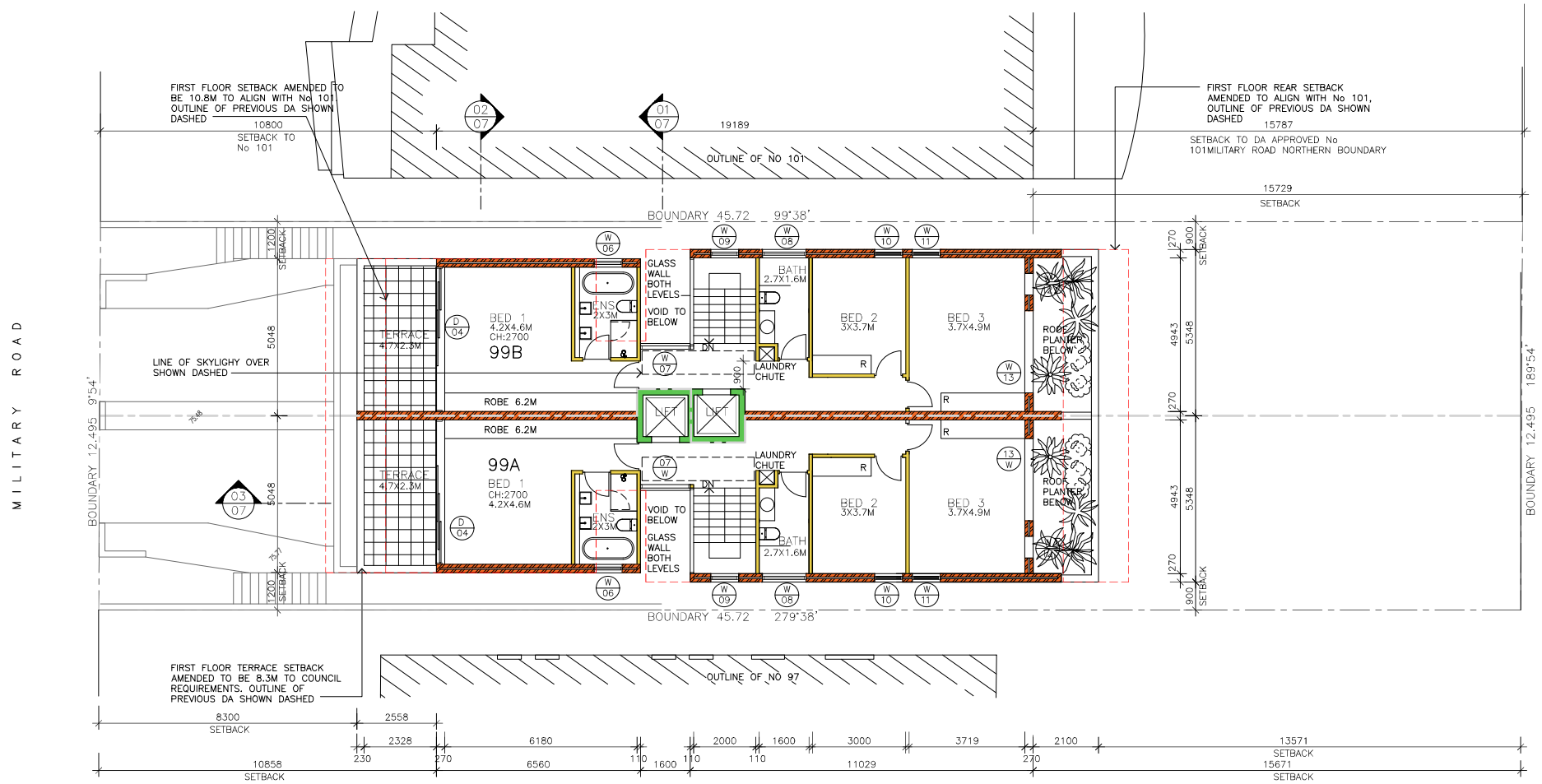
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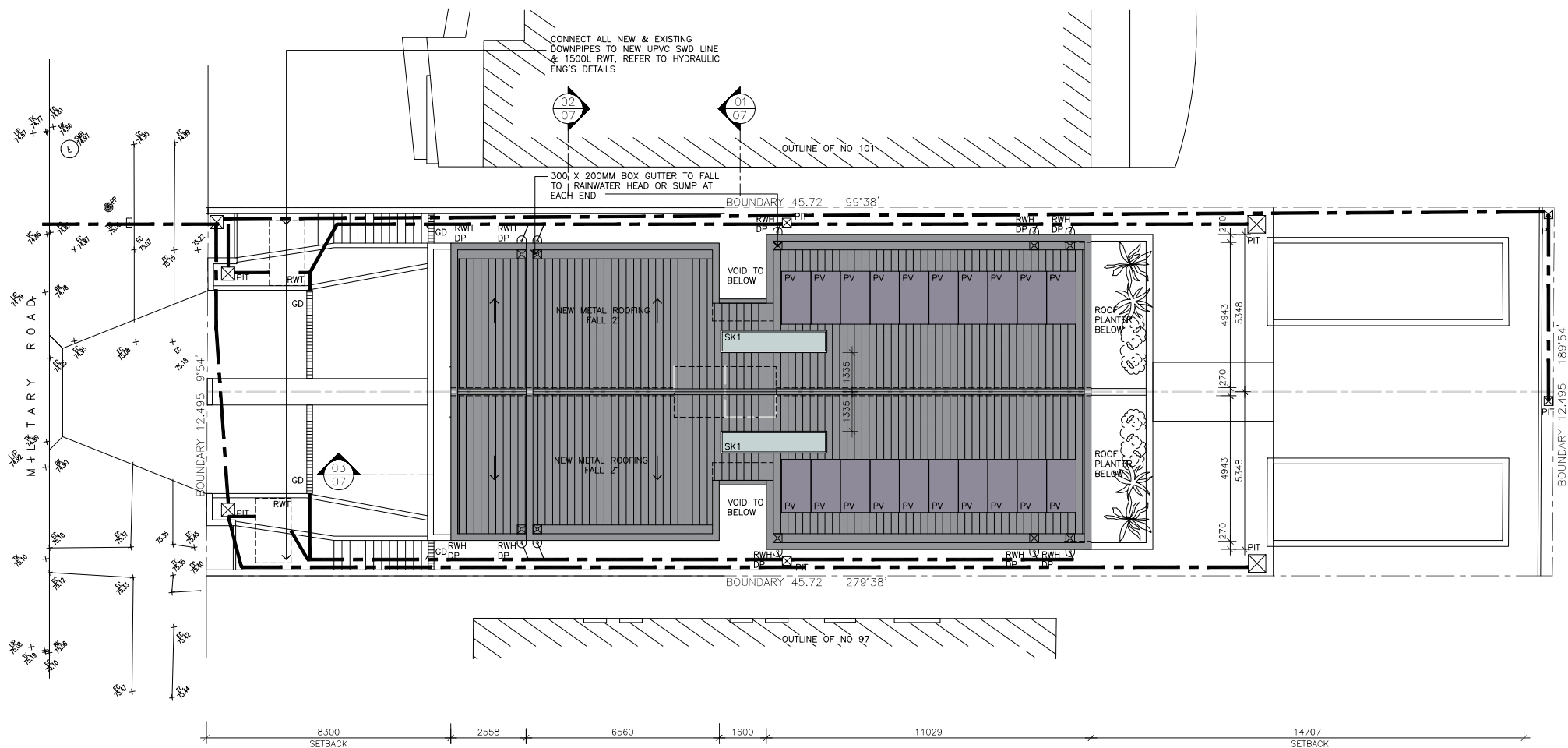
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AMENDED PLANS

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Waverley Council
Application No: DA-475/2021
Date Received: 08/03/2022



AMENDED PLANS



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**PROPOSED ROOF AND CONCEPT
STORMWATER PLAN**

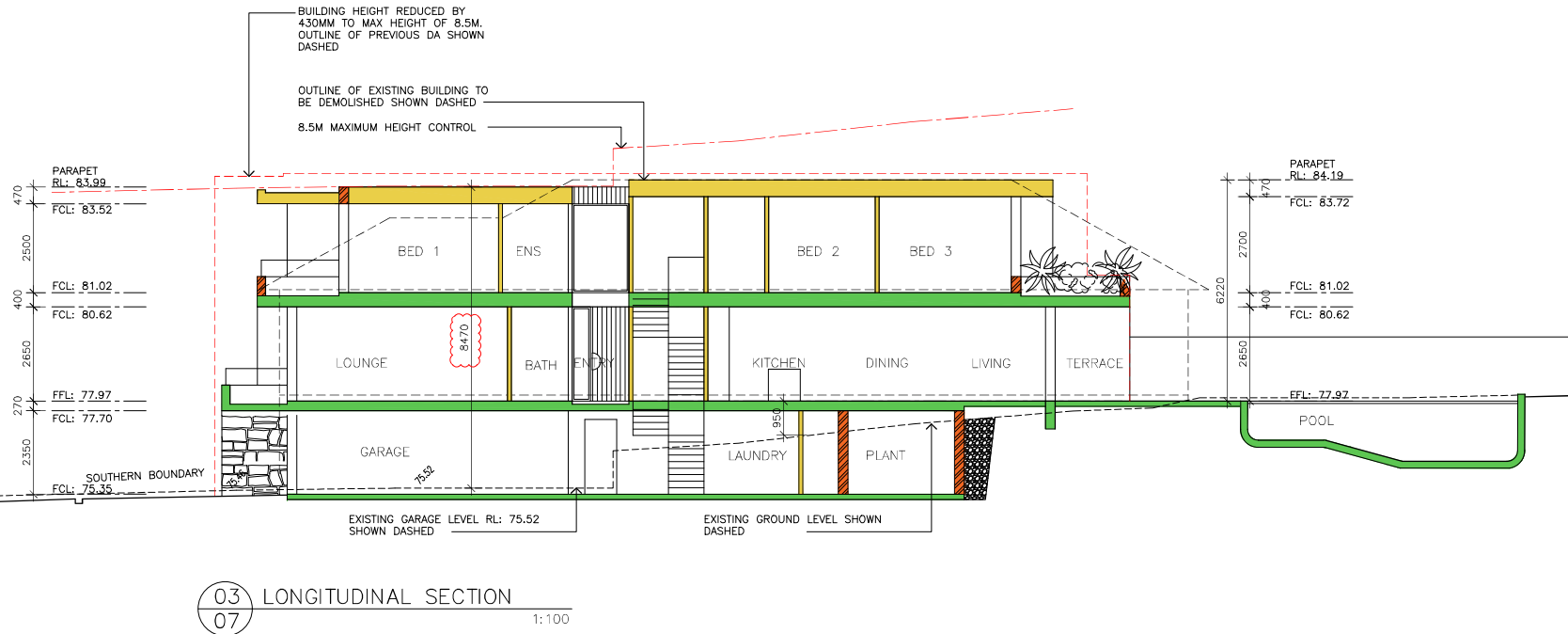
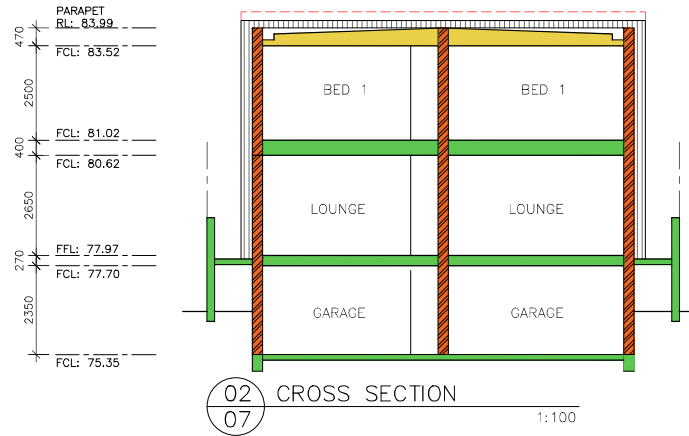
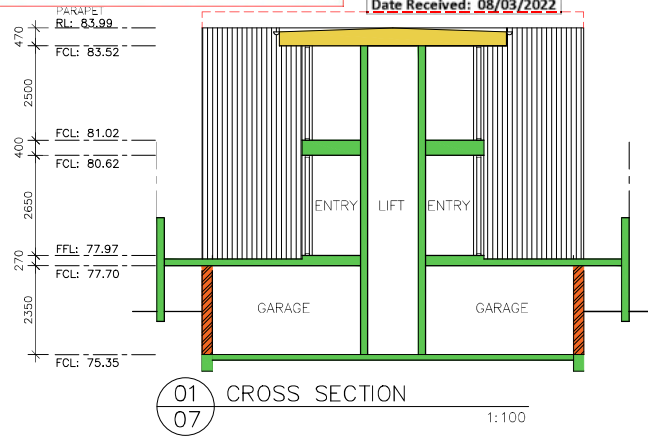
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AMENDED PLANS

RECEIVED
Waverley Council
Application No: DA-475/2021
Date Received: 08/03/2022



99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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PROPOSED SECTIONS

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Waverley Council
Application No: DA-475/2021
Date Received: 08/03/2022



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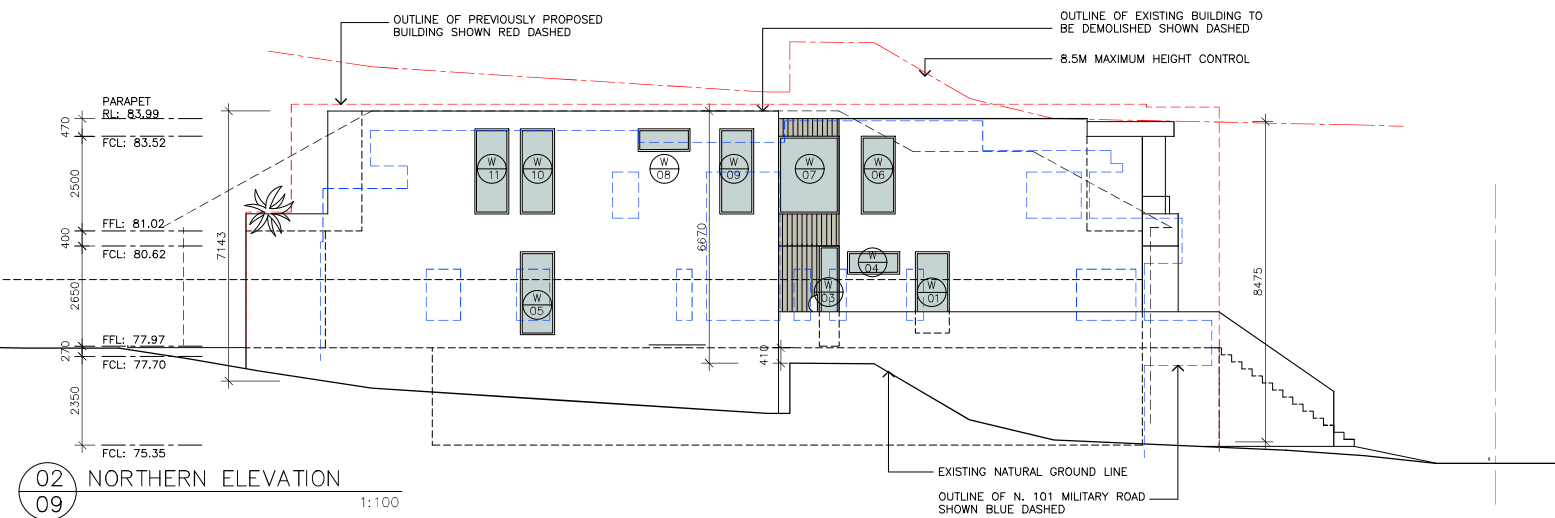
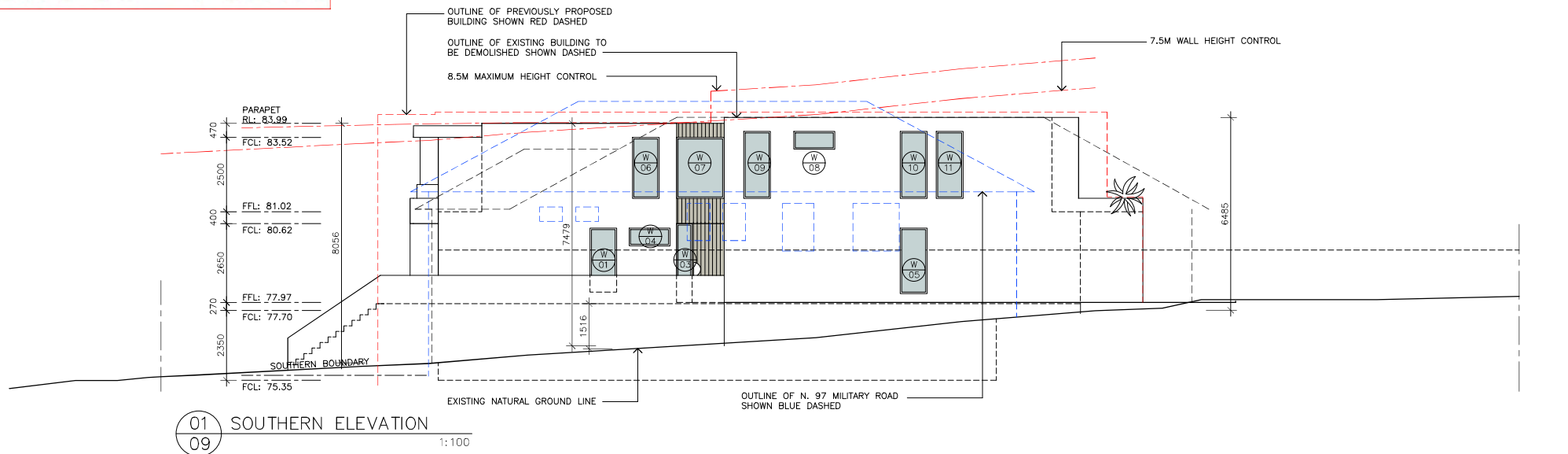
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AMENDED PLANS

RECEIVED
Waverley Council
Application No: DA-475/2021
Date Received: 08/03/2022



99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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AMENDED PLANS

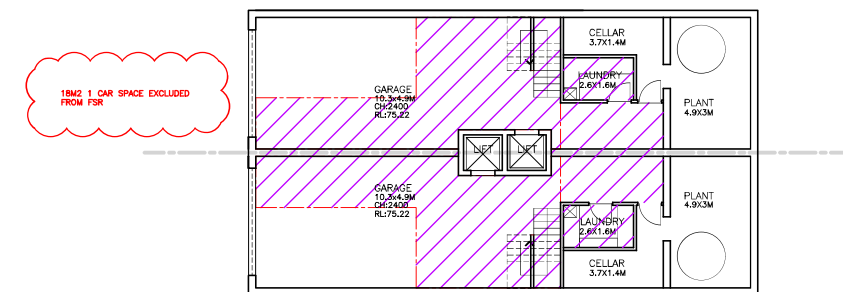
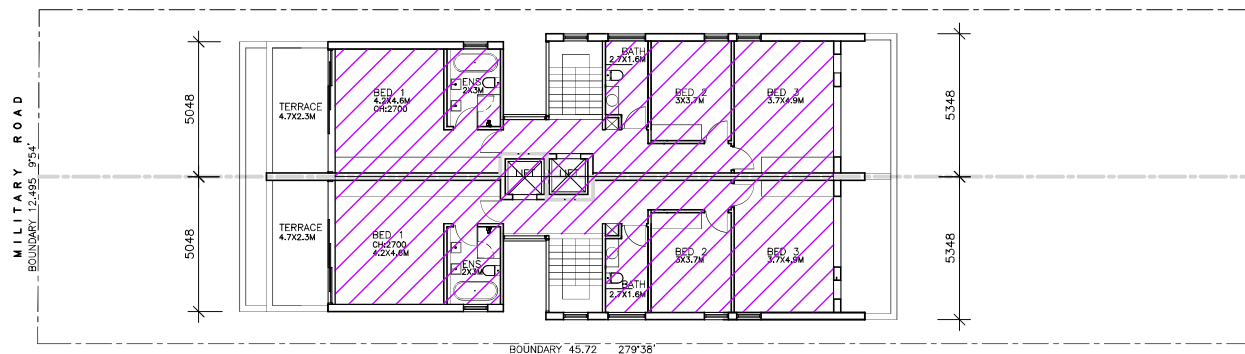
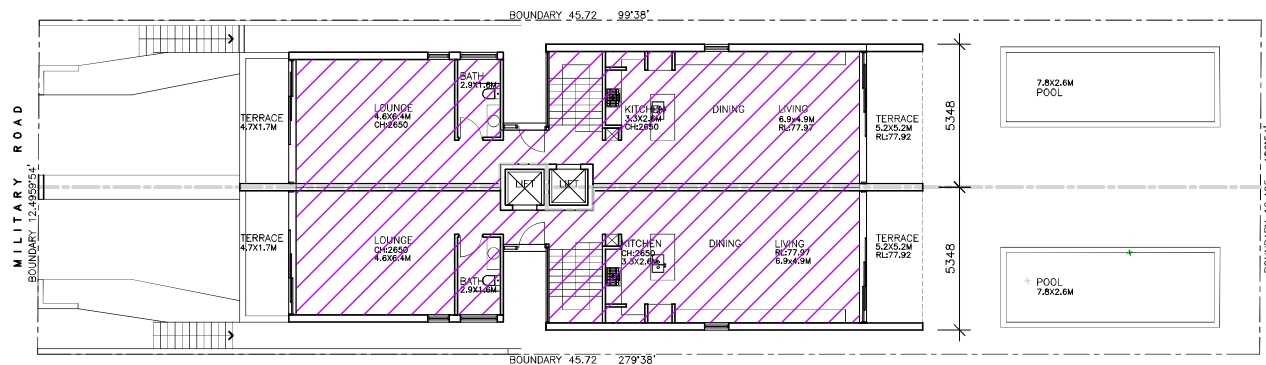
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Application No: DA-475/2021

Date Received: 11 May 2022

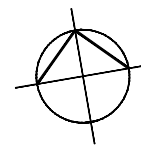
AREAS - 99 MILITARY ROAD

SITE AREA:	569.00 M2
PROPOSED GROUND FLOOR (99A)	96.3 M2
PROPOSED GROUND FLOOR (99B)	96.3 M2
PROPOSED FIRST LEVEL (99A)	81.2 M2
PROPOSED FIRST LEVEL (99B)	81.2 M2
PROPOSED BASEMENT LEVEL (99A)	48 M2
PROPOSED BASEMENT LEVEL (99B)	48 M2
TOTAL FLOOR AREA (99A)	216.6 M2
TOTAL FLOOR AREA (99B)	216.6 M2
TOTAL PROPOSED FLOOR AREA	451 M2
PROPOSED F.S.R =	0.79:1
GARAGE & PLANT FLOOR AREA (99A)	71 M2
GARAGE & PLANT FLOOR AREA (99B)	71 M2



99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2 X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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drawn FS scale 1:200 date 11.05.22 issue DA amend C
drawing: FSR CALCULATION DIAGRAM

issue	amendment	date
DA C	AMENDED DA ISSUE	11.5.22
DA B	AMENDED DA ISSUE	23.05.22
DA A	AMENDED DA ISSUE	19.11.21
DA -	DA ISSUE	04.10.21
DA -	DA PRELIMINARY ISSUE	07.09.21

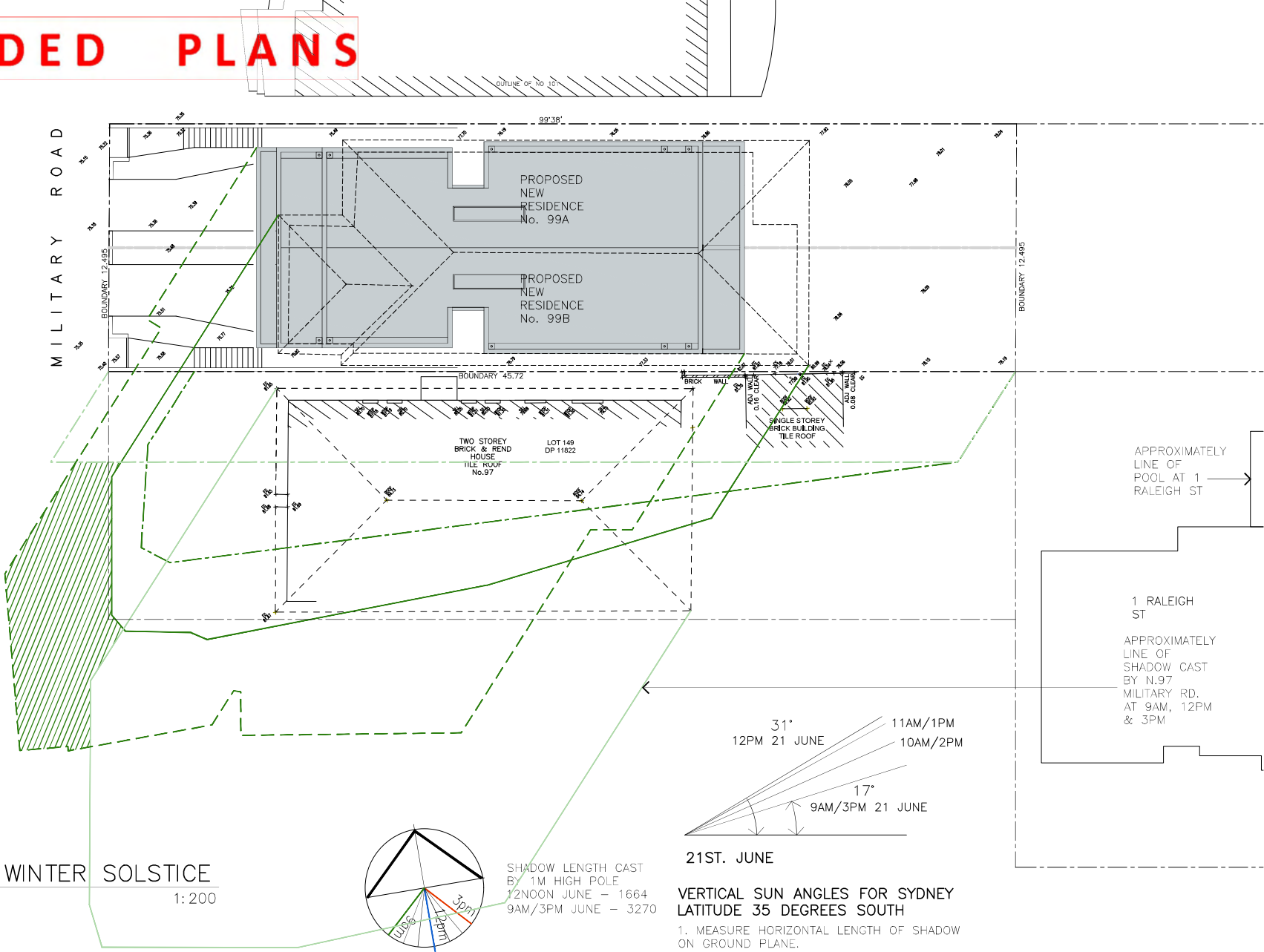
0 10m
1:200 @ A3

A11

LEGEND

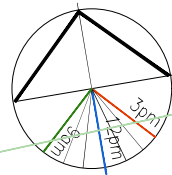
- NEW ADDITION
- EXISTING TO BE DEMOLISHED
- LINE OF SHADOW CAST BY EXISTING RESIDENCE AT 9AM
- APPROX. LINE OF SHADOW CAST BY PROPOSED FENCE AT 9AM
- APPROX. LINE OF SHADOW CAST BY EXISTING FENCE AT 9AM
- LINE OF SHADOW CAST BY PROPOSED DEVELOPMENT AT 9AM
- ADDITIONAL OVERSHADOWING CAUSED BY PROPOSED DEVELOPMENT AT 9AM

RECEIVED
Waverley Council
Application No: DA-475/2021
Date Received: 03/06/2022

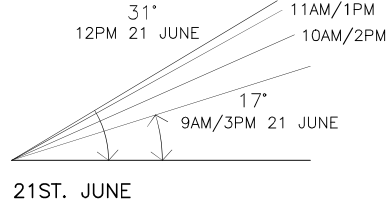


01 SHADOW DIAGRAM – WINTER SOLSTICE
14 PROPOSED 1:200

WINTER SOLSTICE – 21ST. JUNE		
9AM	12NOON	3PM
43 DEGREES NE	0 DEGREES N	43 DEGREES NW



HORIZONTAL SUN ANGLES FOR SYDNEY
LATITUDE 35 DEGREES SOUTH
ANGLES ARE TAKEN FROM MAGNETIC NORTH



VERTICAL SUN ANGLES FOR SYDNEY
LATITUDE 35 DEGREES SOUTH
1. MEASURE HORIZONTAL LENGTH OF SHADOW ON GROUND PLANE.
2. PLACE THIS LENGTH ON SHADOW ALONG THE HORIZONTAL SUN ANGLE ON PROTRACTOR RELATIVE TO NORTH.
3. MAKE ADJUSTMENTS TO HORIZONTAL ALIGNMENT OF THE SITE.

0 10m
1:200 @ A3

99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2 X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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drawn	scale	date	issue	amend
FS	1:200	23.02.22	DA	B
drawing: SHADOW DIAGRAM – WINTER SOLSTICE– 9AM				

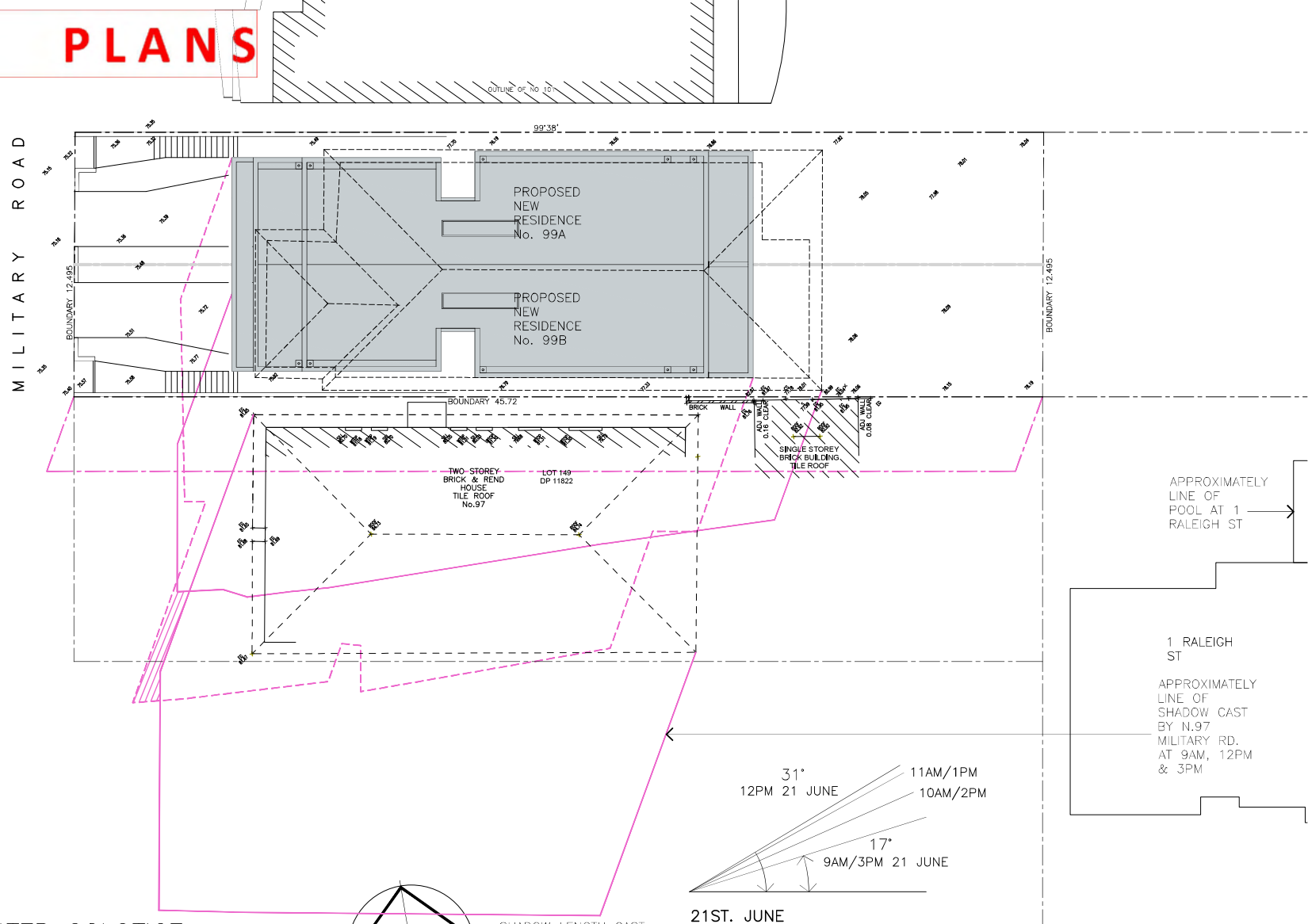
DA	B	AMENDED DA ISSUE	23.02.22
DA	A	AMENDED DA ISSUE	19.11.21
DA	–	DA ISSUE	04.10.21
DA	–	DA PRELIMINARY ISSUE	07.09.21
issue	amendment	date	

A14

LEGEND **AMENDED PLANS**

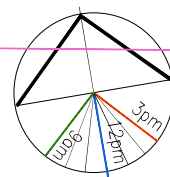
- NEW ADDITION
- EXISTING TO BE DEMOLISHED
- LINE OF SHADOW CAST BY EXISTING RESIDENCE AT 10AM
- APPROX. LINE OF SHADOW CAST BY EXISTING FENCES AT 10AM
- LINE OF SHADOW CAST BY PROPOSED DEVELOPMENT AT 10AM
- ADDITIONAL OVERSHADOWING CAUSED BY PROPOSED DEVELOPMENT AT 10AM

RECEIVED
Waverley Council
Application No: DA-475/2021
Date Received: 03/06/2022



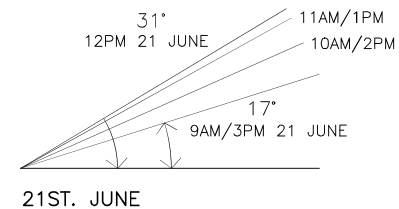
01 SHADOW DIAGRAM – WINTER SOLSTICE
15 PROPOSED 1:200

WINTER SOLSTICE – 21ST. JUNE
 9AM 12NOON 3PM
 43 DEGREES NE 0 DEGREES N 43 DEGREES NW



HORIZONTAL SUN ANGLES FOR SYDNEY
LATITUDE 35 DEGREES SOUTH
 ANGLES ARE TAKEN FROM MAGNETIC NORTH

SHADOW LENGTH CAST
 BY 1M HIGH POLE
 12NOON JUNE – 1664
 9AM/3PM JUNE – 3270



VERTICAL SUN ANGLES FOR SYDNEY
LATITUDE 35 DEGREES SOUTH
 1. MEASURE HORIZONTAL LENGTH OF SHADOW ON GROUND PLANE.
 2. PLACE THIS LENGTH ON SHADOW ALONG THE HORIZONTAL SUN ANGLE ON PROTRACTOR RELATIVE TO NORTH.
 3. MAKE ADJUSTMENTS TO HORIZONTAL ALIGNMENT OF THE SITE.

0 10m
 1:200 @ A3

99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2 X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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drawn FS scale 1:200 date 23.02.22 issue DA amend B
 drawing: SHADOW DIAGRAM – WINTER SOLSTICE–10AM

issue	amendment	date
DA	B	AMENDED DA ISSUE 23.02.22
DA	A	AMENDED DA ISSUE 19.11.21
DA	–	DA ISSUE 04.10.21
DA	–	DA PRELIMINARY ISSUE 07.09.21

A15

LEGEND

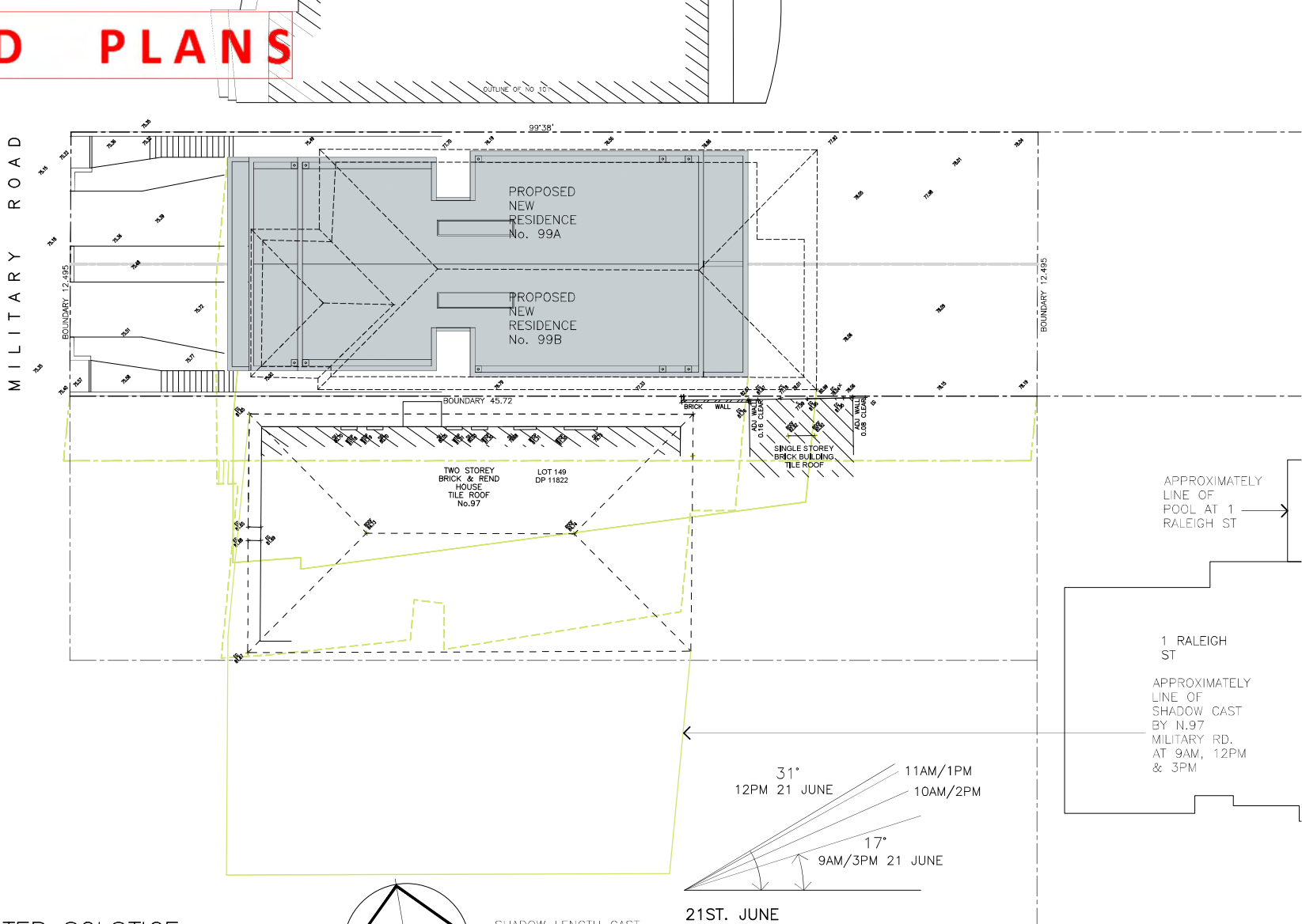
AMENDED PLANS

- NEW ADDITION
- EXISTING TO BE DEMOLISHED
- LINE OF SHADOW CAST BY EXISTING RESIDENCE AT 11AM
- APPROX. LINE OF SHADOW CAST BY EXISTING FENCES AT 11AM
- LINE OF SHADOW CAST BY PROPOSED DEVELOPMENT AT 11AM
- ADDITIONAL OVERSHADOWING CAUSED BY PROPOSED DEVELOPMENT AT 11AM

RECEIVED
Waverley Council

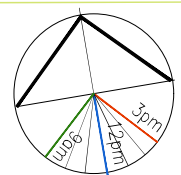
Application No: DA-475/2021

Date Received: 03/06/2022



01 SHADOW DIAGRAM – WINTER SOLSTICE
16 PROPOSED 1:200

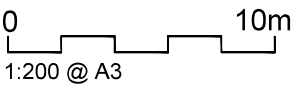
WINTER SOLSTICE – 21ST. JUNE		
9AM	12NOON	3PM
43 DEGREES NE	0 DEGREES N	43 DEGREES NW



HORIZONTAL SUN ANGLES FOR SYDNEY
LATITUDE 35 DEGREES SOUTH
ANGLES ARE TAKEN FROM MAGNETIC NORTH

SHADOW LENGTH CAST
BY 1M HIGH POLE
12NOON JUNE – 1664
9AM/3PM JUNE – 3270

- VERTICAL SUN ANGLES FOR SYDNEY
LATITUDE 35 DEGREES SOUTH
1. MEASURE HORIZONTAL LENGTH OF SHADOW ON GROUND PLANE.
 2. PLACE THIS LENGTH ON SHADOW ALONG THE HORIZONTAL SUN ANGLE ON PROTRACTOR RELATIVE TO NORTH.
 3. MAKE ADJUSTMENTS TO HORIZONTAL ANGLES WITH RESPECT TO THE NORTH ALIGNMENT OF THE SITE.



99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2 X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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drawn	scale	date	issue	amend
FS	1:200	23.02.22	DA	B
drawing:				
SHADOW DIAGRAM – WINTER SOLSTICE–11AM				

DA	B	AMENDED DA ISSUE	23.02.22
DA	A	AMENDED DA ISSUE	19.11.21
DA	–	DA ISSUE	04.10.21
DA	–	DA PRELIMINARY ISSUE	07.09.21
issue	amendment		date

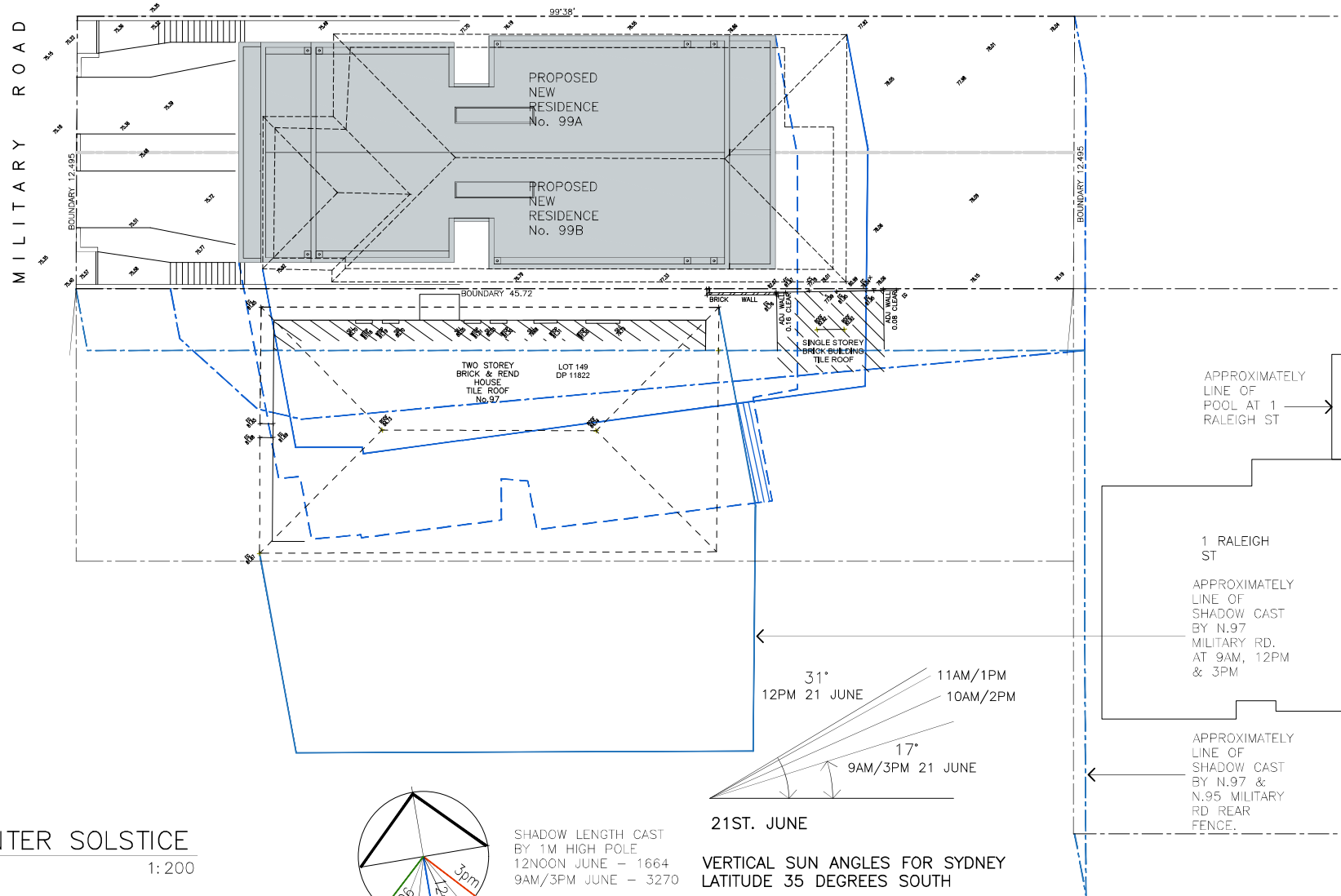
A16

LEGEND

AMENDED PLANS

- NEW ADDITION
- EXISTING TO BE DEMOLISHED
- LINE OF SHADOW CAST BY EXISTING RESIDENCE AT 12NOON
- APPROX. LINE OF SHADOW CAST BY PROPOSED FENCE AT 12NOON
- APPROX. LINE OF SHADOW CAST BY EXISTING FENCE AT 12NOON
- LINE OF SHADOW CAST BY PROPOSED DEVELOPMENT AT 12NOON
- ADDITIONAL OVERSHADOWING CAUSED BY PROPOSED DEVELOPMENT AT 12PM

RECEIVED
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Application No: DA-475/2021
Date Received: 03/06/2022

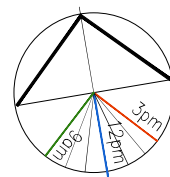


01 SHADOW DIAGRAM – WINTER SOLSTICE

17 PROPOSED 1:200

WINTER SOLSTICE – 21ST. JUNE

9AM	12NOON	3PM
43 DEGREES NE	0 DEGREES N	43 DEGREES NW



HORIZONTAL SUN ANGLES FOR SYDNEY LATITUDE 35 DEGREES SOUTH

ANGLES ARE TAKEN FROM MAGNETIC NORTH

SHADOW LENGTH CAST BY 1M HIGH POLE
12NOON JUNE – 1664
9AM/3PM JUNE – 3270

VERTICAL SUN ANGLES FOR SYDNEY LATITUDE 35 DEGREES SOUTH

1. MEASURE HORIZONTAL LENGTH OF SHADOW ON GROUND PLANE.
2. PLACE THIS LENGTH ON SHADOW ALONG THE HORIZONTAL SUN ANGLE ON PROTRACTOR RELATIVE TO NORTH.
3. MAKE ADJUSTMENTS TO HORIZONTAL ANGLES WITH RESPECT TO THE NORTH ALIGNMENT OF THE SITE.

0 10m
1:200 @ A3

99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2 X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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drawn	scale	date	issue	amend
FS	1:200	23.02.22	DA	B

drawing:
SHADOW DIAGRAM – WINTER SOLSTICE–12PM

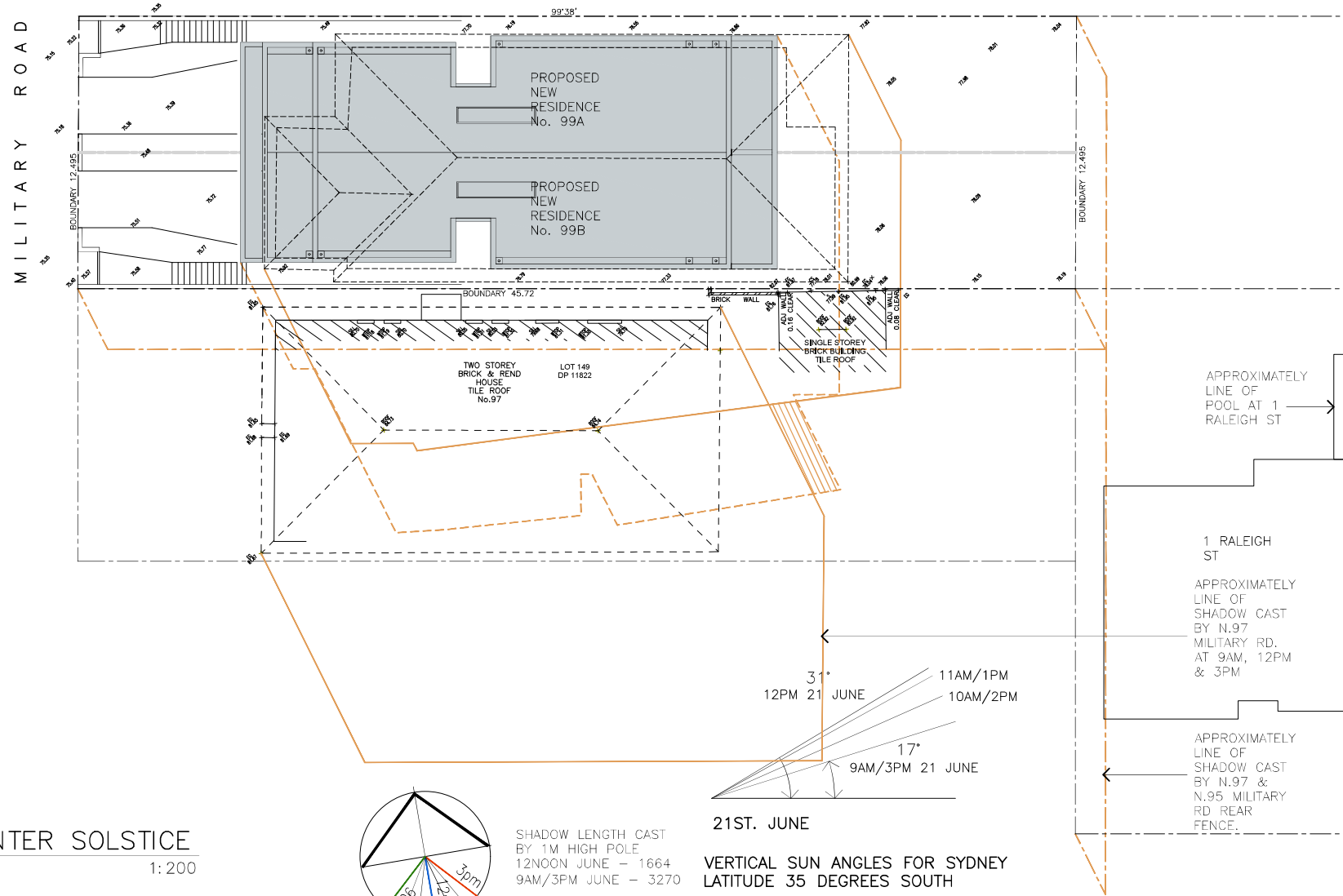
DA	B	AMENDED DA ISSUE	23.02.22
DA	A	AMENDED DA ISSUE	19.11.21
DA	–	DA ISSUE	04.10.21
DA	–	DA PRELIMINARY ISSUE	07.09.21
issue	amendment		date

A17

LEGEND AMENDED PLANS

- NEW ADDITION
- EXISTING TO BE DEMOLISHED
- LINE OF SHADOW CAST BY EXISTING RESIDENCE AT 1PM
- APPROX. LINE OF SHADOW CAST BY EXISTING FENCES AT 1PM
- LINE OF SHADOW CAST BY PROPOSED DEVELOPMENT AT 1PM
- ADDITIONAL OVERSHADOWING CAUSED BY PROPOSED DEVELOPMENT AT 1PM

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Application No: DA-475/2021
Date Received: 03/06/2022



01 SHADOW DIAGRAM - WINTER SOLSTICE
18 PROPOSED 1:200

WINTER SOLSTICE - 21ST. JUNE
9AM 12NOON 3PM
43 DEGREES NE 0 DEGREES N 43 DEGREES NW

99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2 X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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drawn FS scale 1:200 date 23.02.22 issue DA amend B
drawing: SHADOW DIAGRAM - WINTER SOLSTICE-1PM

DA	B	AMENDED DA ISSUE	23.02.22
DA	A	AMENDED DA ISSUE	19.11.21
DA	-	DA ISSUE	04.10.21
DA	-	DA PRELIMINARY ISSUE	07.09.21
issue	amendment		date

0 10m
1:200 @ A3

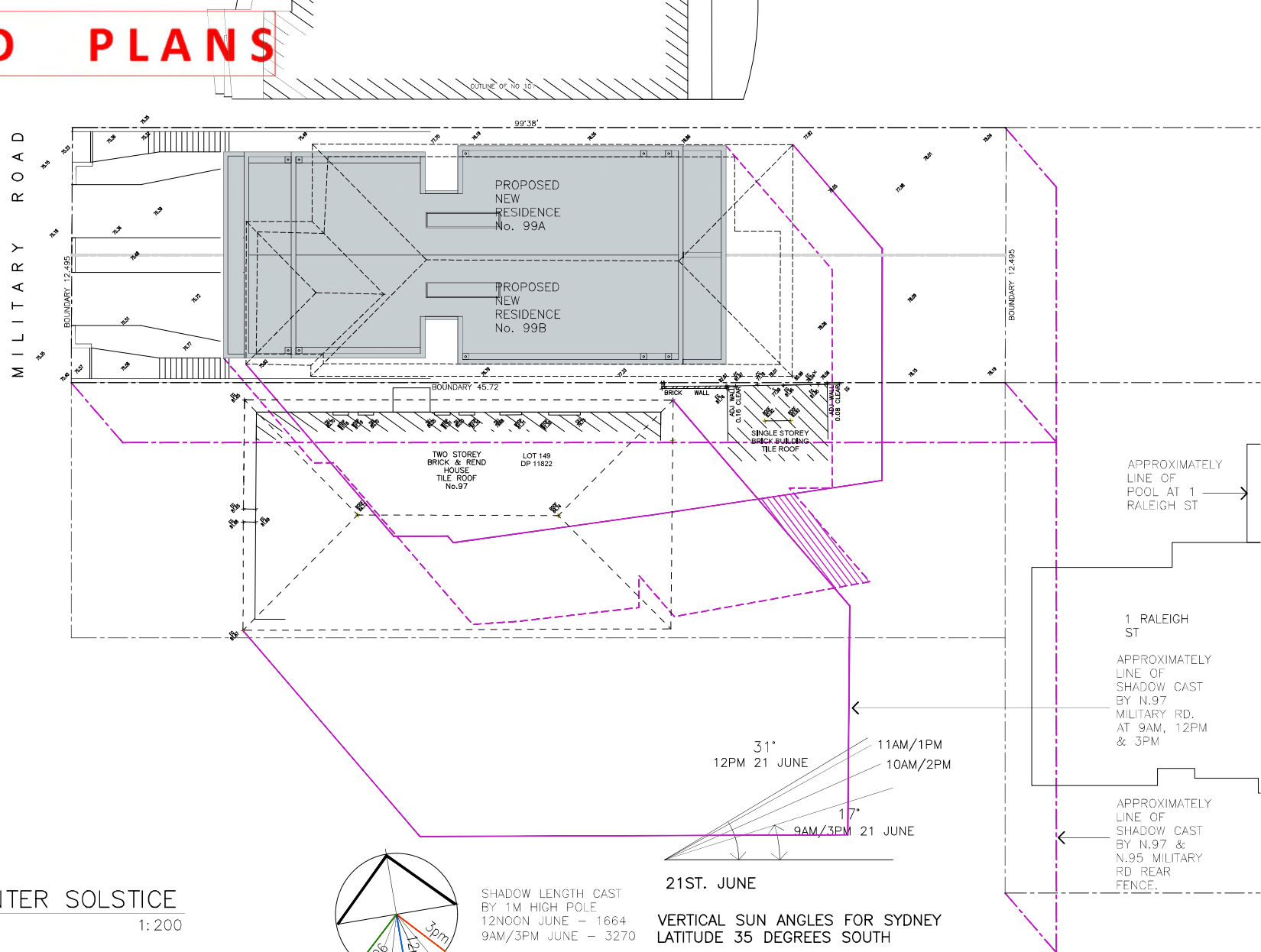
A18

LEGEND

AMENDED PLANS

- NEW ADDITION
- EXISTING TO BE DEMOLISHED
- LINE OF SHADOW CAST BY EXISTING RESIDENCE AT 2PM
- APPROX. LINE OF SHADOW CAST BY EXISTING FENCES AT 2PM
- LINE OF SHADOW CAST BY PROPOSED DEVELOPMENT AT 2PM
- ADDITIONAL OVERSHADOWING CAUSED BY PROPOSED DEVELOPMENT AT 2PM

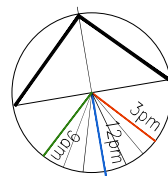
RECEIVED
Waverley Council
Application No: DA-475/2021
Date Received: 03/06/2022



01 SHADOW DIAGRAM – WINTER SOLSTICE

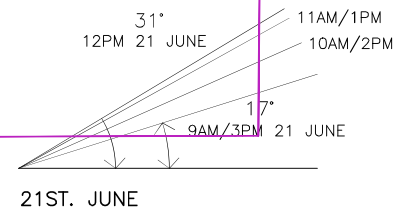
19 PROPOSED 1:200

WINTER SOLSTICE – 21ST. JUNE
9AM 12NOON 3PM
43 DEGREES NE 0 DEGREES N 43 DEGREES NW



HORIZONTAL SUN ANGLES FOR SYDNEY
LATITUDE 35 DEGREES SOUTH
ANGLES ARE TAKEN FROM MAGNETIC NORTH

SHADOW LENGTH CAST
BY 1M HIGH POLE
12NOON JUNE – 1664
9AM/3PM JUNE – 3270



VERTICAL SUN ANGLES FOR SYDNEY
LATITUDE 35 DEGREES SOUTH

1. MEASURE HORIZONTAL LENGTH OF SHADOW ON GROUND PLANE.
2. PLACE THIS LENGTH ON SHADOW ALONG THE HORIZONTAL SUN ANGLE ON PROTRACTOR RELATIVE TO NORTH.
3. MAKE ADJUSTMENTS TO HORIZONTAL ALIGNMENT OF THE SITE.

0 10m
1:200 @ A3

99 MILITARY ROAD, DOVER HEIGHTS, NSW

PROPOSED 2 X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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drawn FS scale 1:200 date 23.02.22 issue DA amend B
drawing: SHADOW DIAGRAM – WINTER SOLSTICE–2PM

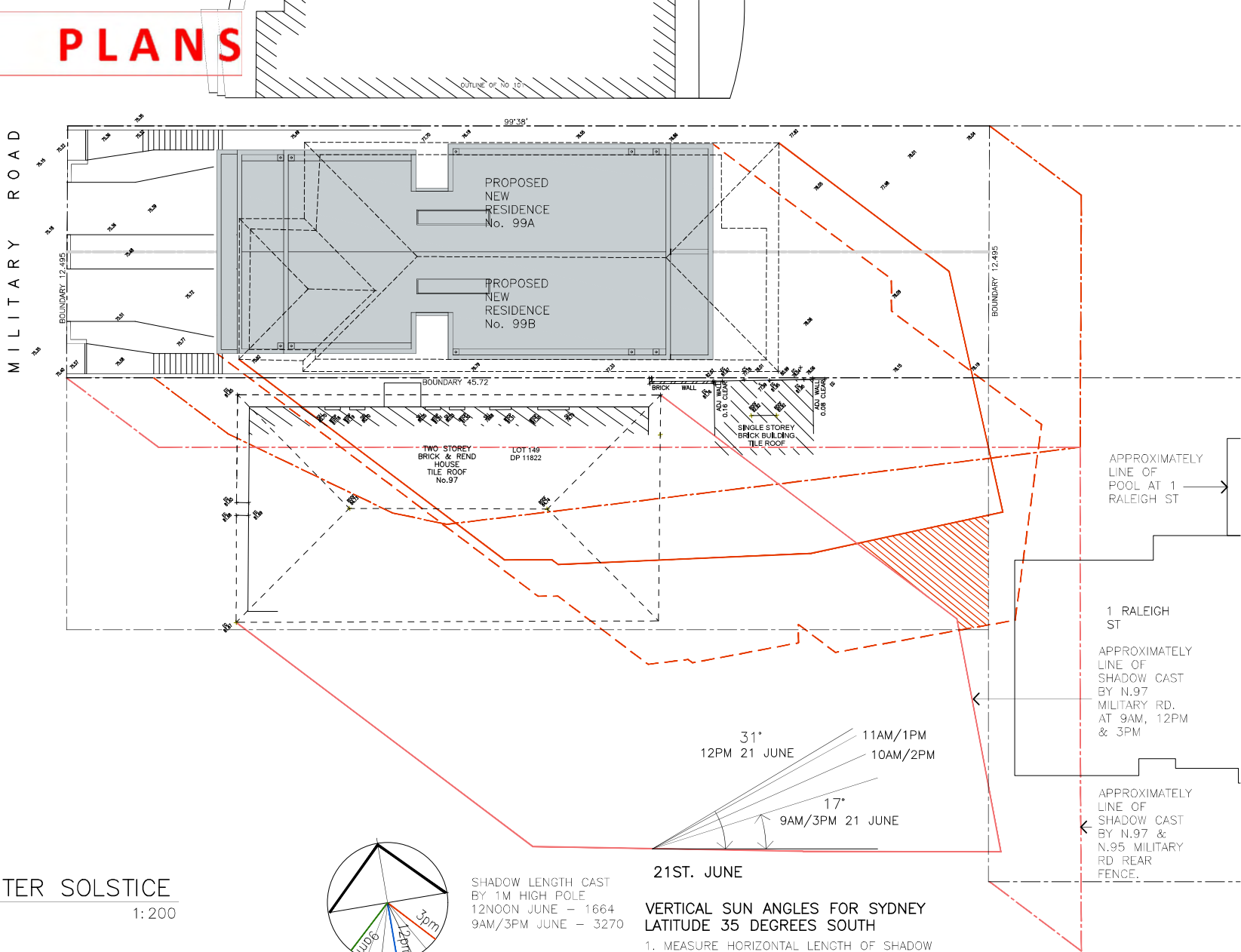
DA	B	AMENDED DA ISSUE	23.02.22
DA	A	AMENDED DA ISSUE	19.11.21
DA	–	DA ISSUE	04.10.21
DA	–	DA PRELIMINARY ISSUE	07.09.21
issue	amendment	date	

A19

LEGEND **AMENDED PLANS**

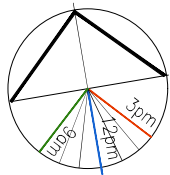
- NEW ADDITION
- EXISTING TO BE DEMOLISHED
- LINE OF SHADOW CAST BY EXISTING RESIDENCE AT 3PM
- APPROX. LINE OF SHADOW CAST BY PROPOSED FENCES AT 3PM
- APPROX. LINE OF SHADOW CAST BY EXISTING FENCES AT 3PM
- LINE OF SHADOW CAST BY PROPOSED DEVELOPMENT AT 3PM
- ADDITIONAL OVERSHADOWING CAUSED BY PROPOSED DEVELOPMENT AT 3PM

RECEIVED
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Application No: DA-475/2021
Date Received: 03/06/2022



01 SHADOW DIAGRAM – WINTER SOLSTICE
20 PROPOSED 1:200

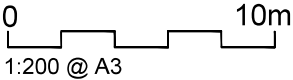
WINTER SOLSTICE – 21ST. JUNE		
9AM	12NOON	3PM
43 DEGREES NE	0 DEGREES N	43 DEGREES NW



HORIZONTAL SUN ANGLES FOR SYDNEY
LATITUDE 35 DEGREES SOUTH
ANGLES ARE TAKEN FROM MAGNETIC NORTH

SHADOW LENGTH CAST
BY 1M HIGH POLE
12NOON JUNE – 1664
9AM/3PM JUNE – 3270

21ST. JUNE
VERTICAL SUN ANGLES FOR SYDNEY
LATITUDE 35 DEGREES SOUTH
1. MEASURE HORIZONTAL LENGTH OF SHADOW
ON GROUND PLANE.
2. PLACE THIS LENGTH ON SHADOW ALONG
THE HORIZONTAL SUN ANGLE ON PROTRACTOR
RELATIVE TO NORTH.
3. MAKE ADJUSTMENTS TO HORIZONTAL
ANGLES WITH RESPECT TO THE NORTH
ALIGNMENT OF THE SITE.



99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2 X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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drawn	scale	date	issue	amend
FS	1:200	23.02.22	DA	B
drawing:				
SHADOW DIAGRAM – WINTER SOLSTICE–3PM				

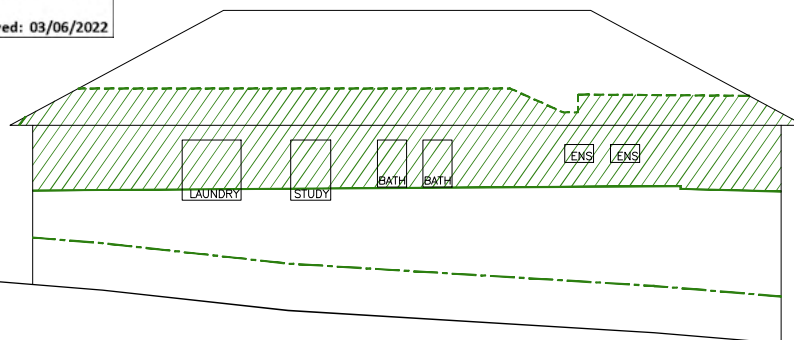
DA	B	AMENDED DA ISSUE	23.02.22
DA	A	AMENDED DA ISSUE	19.11.21
DA	–	DA ISSUE	04.10.21
DA	–	DA PRELIMINARY ISSUE	07.09.21
issue/amendment		date	

A20

AMENDED PLANS

LIVING ROOM & KITCHEN FACE EAST
& RETAIN FULL SUN FOR 3 HOURS IN THE MORNING
MAIN 2 BEDROOMS FACE WEST
& RETAIN FULL SUN FOR 3 HOURS IN THE AFTERNOON

RECEIVED
Waverley Council
Application No: DA-475/2021
Date Received: 03/06/2022

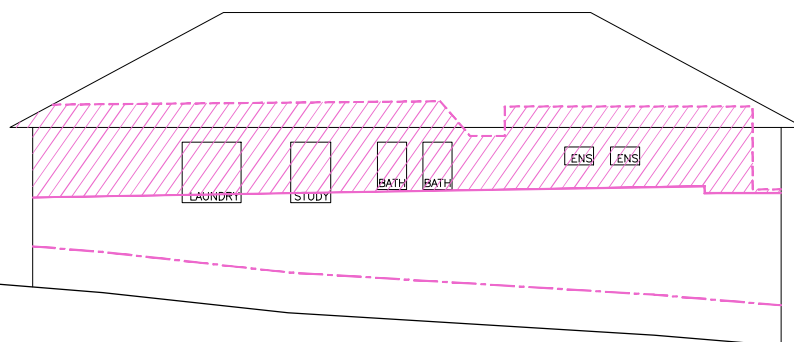


RL: 75.35

01 OVERSHADOWING ELEVATION — 9AM
21 PROPOSED OVERSHADOWING TO 97 MILITARY ROAD N/A

— LINE OF SHADOW CAST BY EXISTING BUILDING AT 9AM DURING THE WINTER SOLSTICE
— LINE OF SHADOW CAST BY EXISTING BOUNDARY FENCE AT 9AM DURING THE WINTER SOLSTICE
— LINE OF SHADOW CAST BY 99 MILITARY RD PROPOSED ADDITION AT 9AM DURING THE WINTER SOLSTICE
/ / / ADDITIONAL OVERSHADOWING AT 9AM DURING THE WINTER SOLSTICE

LIVING ROOM & KITCHEN FACE EAST
& RETAIN FULL SUN FOR 3 HOURS IN THE MORNING
MAIN 2 BEDROOMS FACE WEST
& RETAIN FULL SUN FOR 3 HOURS IN THE AFTERNOON



RL: 75.35

01 OVERSHADOWING ELEVATION — 10AM
21 PROPOSED OVERSHADOWING TO 97 MILITARY ROAD N/A

— LINE OF SHADOW CAST BY EXISTING BUILDING AT 10AM DURING THE WINTER SOLSTICE
— LINE OF SHADOW CAST BY EXISTING BOUNDARY FENCE AT 10AM DURING THE WINTER SOLSTICE
— LINE OF SHADOW CAST BY 99 MILITARY RD PROPOSED ADDITION AT 10AM DURING THE WINTER SOLSTICE
/ / / ADDITIONAL OVERSHADOWING AT 10AM DURING THE WINTER SOLSTICE

99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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JUSTIN LONG DESIGN
NSW REGISTERED ARCHITECT 10844
www.jladesign.com.au
0413 268 725

Architectural
Justin Long Design

drawn FS scale 1:100 date 02.06.22 issue DA amend C
drawing OVERSHADOWING ELEVATIONS FOR 97 MILITARY ROAD

issue	amendment	date
DA - C	AMENDED DA ISSUE	02.06.22
DA - B	AMENDED DA ISSUE	01.05.22
DA - A	AMENDED DA ISSUE	19.11.21
DA - A	DA ISSUE	05.10.21

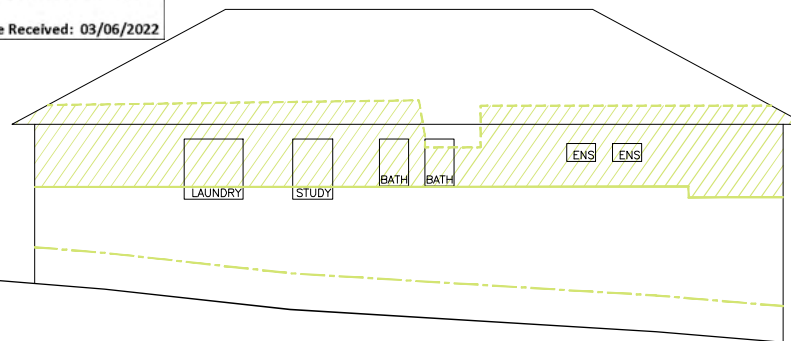
0 5M
1:100@A2

A21

AMENDED PLANS

RECEIVED
Waverley Council
Application No: DA-475/2021
Date Received: 03/06/2022

LIVING ROOM & KITCHEN FACE EAST
& RETAIN FULL SUN FOR 3 HOURS IN THE MORNING
MAIN 2 BEDROOMS FACE WEST
& RETAIN FULL SUN FOR 3 HOURS IN THE AFTERNOON

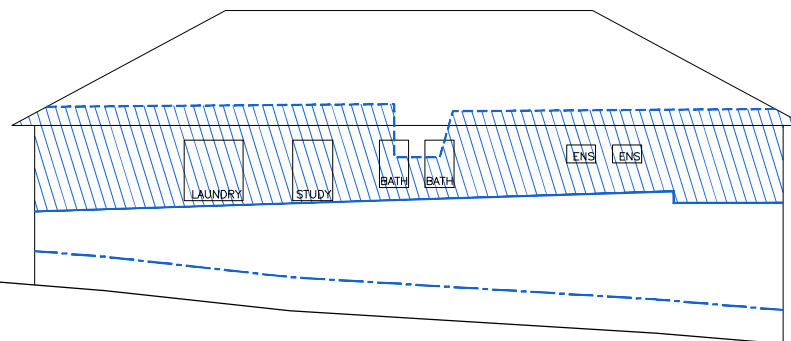


RL: 75.35

01
22 OVERSHADOWING ELEVATION — 11AM
PROPOSED OVERSHADOWING TO 97 MILITARY ROAD N/A

- LINE OF SHADOW CAST BY EXISTING BUILDING AT 11AM DURING THE WINTER SOLSTICE
- LINE OF SHADOW CAST BY EXISTING BOUNDARY FENCE AT 11AM DURING THE WINTER SOLSTICE
- LINE OF SHADOW CAST BY 99 MILITARY RD PROPOSED ADDITION AT 11AM DURING THE WINTER SOLSTICE
- ADDITIONAL OVERSHADOWING AT 11AM DURING THE WINTER SOLSTICE

LIVING ROOM & KITCHEN FACE EAST
& RETAIN FULL SUN FOR 3 HOURS IN THE MORNING
MAIN 2 BEDROOMS FACE WEST
& RETAIN FULL SUN FOR 3 HOURS IN THE AFTERNOON



RL: 75.35

02
22 OVERSHADOWING ELEVATION — 12PM
PROPOSED OVERSHADOWING TO 97 MILITARY ROAD N/A

- LINE OF SHADOW CAST BY EXISTING BUILDING AT 12PM DURING THE WINTER SOLSTICE
- LINE OF SHADOW CAST BY EXISTING BOUNDARY FENCE AT 12PM DURING THE WINTER SOLSTICE
- LINE OF SHADOW CAST BY 99 MILITARY RD PROPOSED ADDITION AT 12PM DURING THE WINTER SOLSTICE
- ADDITIONAL OVERSHADOWING AT 12PM DURING THE WINTER SOLSTICE

0 5M
1:100@A2

99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

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NSW REGISTERED ARCHITECT 10844
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0413 268 725

Architectural
Justin Long
design

drawn FS scale 1:100 date 02.06.22 issue DA amend C
drawing OVERSHADOWING ELEVATIONS FOR 97 MILITARY ROAD

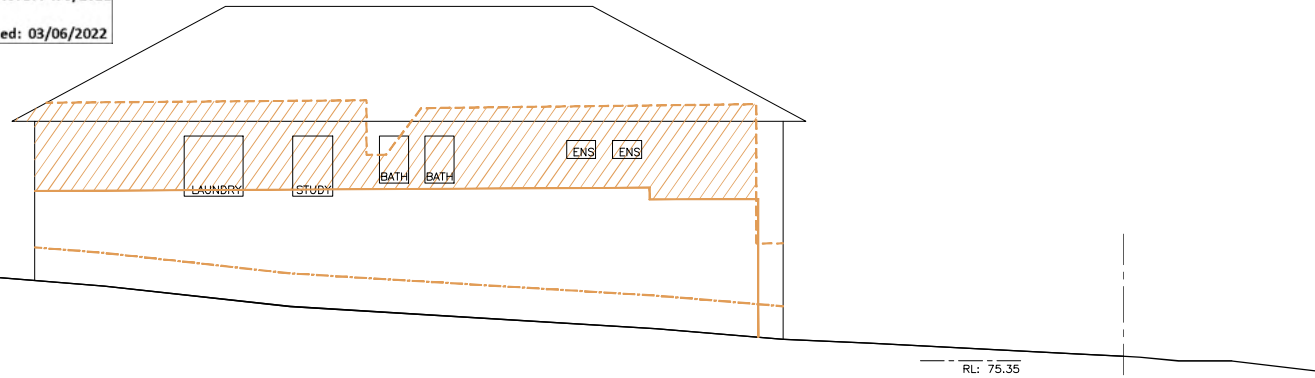
issue	amendment	date
DA - C	AMENDED DA ISSUE	02.06.22
DA - B	AMENDED DA ISSUE	01.06.22
DA - A	AMENDED DA ISSUE	19.11.21
DA - A	DA ISSUE	05.10.21

A22

AMENDED PLANS

LIVING ROOM & KITCHEN FACE EAST
& RETAIN FULL SUN FOR 3 HOURS IN THE MORNING
MAIN 2 BEDROOMS FACE WEST
& RETAIN FULL SUN FOR 3 HOURS IN THE AFTERNOON

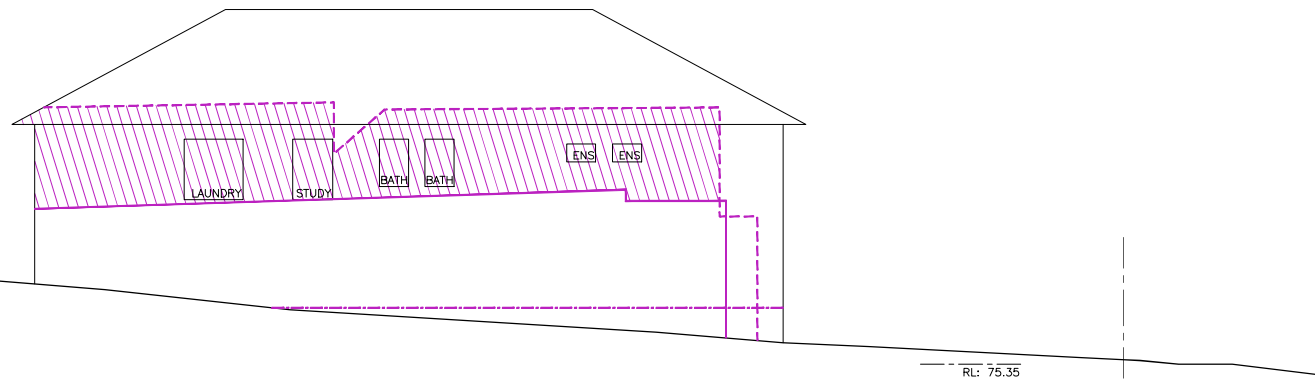
RECEIVED
Waverley Council
Application No: DA-475/2021
Date Received: 03/06/2022



01
23 OVERSHADOWING ELEVATION — 1PM
PROPOSED OVERSHADOWING TO 97 MILITARY ROAD N/A

— LINE OF SHADOW CAST BY EXISTING BUILDING AT 1PM DURING THE WINTER SOLSTICE
— LINE OF SHADOW CAST BY EXISTING BOUNDARY FENCE AT 1PM DURING THE WINTER SOLSTICE
— LINE OF SHADOW CAST BY 99 MILITARY RD PROPOSED ADDITION AT 1PM DURING THE WINTER SOLSTICE
Hatched orange area: ADDITIONAL OVERSHADOWING AT 1PM DURING THE WINTER SOLSTICE

LIVING ROOM & KITCHEN FACE EAST
& RETAIN FULL SUN FOR 3 HOURS IN THE MORNING
MAIN 2 BEDROOMS FACE WEST
& RETAIN FULL SUN FOR 3 HOURS IN THE AFTERNOON



02
23 OVERSHADOWING ELEVATION — 2PM
PROPOSED OVERSHADOWING TO 97 MILITARY ROAD N/A

— LINE OF SHADOW CAST BY EXISTING BUILDING AT 2PM DURING THE WINTER SOLSTICE
— LINE OF SHADOW CAST BY EXISTING BOUNDARY FENCE AT 2PM DURING THE WINTER SOLSTICE
— LINE OF SHADOW CAST BY 99 MILITARY RD PROPOSED ADDITION AT 2PM DURING THE WINTER SOLSTICE
Hatched purple area: ADDITIONAL OVERSHADOWING AT 2PM DURING THE WINTER SOLSTICE

0 5M
1:100@A2

99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO

Contractors Must verify all dimensions on site prior to starting any work or making any shop drawings.
Figured dimensions are to be taken in preference to scale readings. This drawing is copyright and the property of Justin Long Design.



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design

drawn FS scale 1:100 date 02.06.22 issue DA amend C
drawing OVERSHADOWING ELEVATIONS FOR 97 MILITARY ROAD

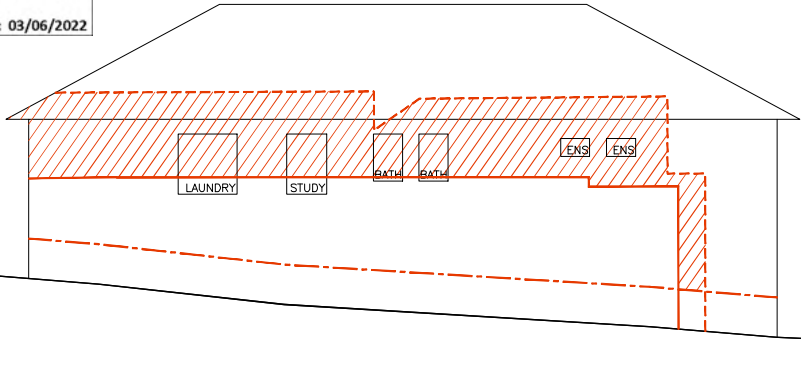
issue	amendment	date
DA - C	AMENDED DA ISSUE	02.06.22
DA - B	AMENDED DA ISSUE	02.06.22
DA - A	AMENDED DA ISSUE	03.10.21
DA - A	DA ISSUE	03.10.21

A23

AMENDED PLANS

RECEIVED
Waverley Council
Application No: DA-475/2021
Date Received: 03/06/2022

LIVING ROOM & KITCHEN FACE EAST
& RETAIN FULL SUN FOR 3 HOURS IN THE MORNING
MAIN 2 BEDROOMS FACE WEST
& RETAIN FULL SUN FOR 3 HOURS IN THE AFTERNOON



01 OVERSHADOWING ELEVATION — 3PM
24 PROPOSED OVERSHADOWING TO 97 MILITARY ROAD N/A

- LINE OF SHADOW CAST BY EXISTING BUILDING AT 3PM DURING THE WINTER SOLSTICE
- LINE OF SHADOW CAST BY EXISTING BOUNDARY FENCE AT 3PM DURING THE WINTER SOLSTICE
- LINE OF SHADOW CAST BY 99 MILITARY RD PROPOSED ADDITION AT 3PM DURING THE WINTER SOLSTICE
- ADDITIONAL OVERSHADOWING AT 3PM DURING THE WINTER SOLSTICE

99 MILITARY ROAD, DOVER HEIGHTS, NSW
PROPOSED 2X NEW SEMI DETACHED DWELLINGS
FOR ROBERT KHARZOO
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design

drawn	scale	date	issue	amend
FS	1:100	02.06.22	DA	C
drawing				
OVERSHADOWING ELEVATIONS FOR				
97 MILITARY ROAD				

issue	amendment	date
DA - C	AMENDED DA ISSUE	02.06.22
DA - B	AMENDED DA ISSUE	04.06.22
DA - A	AMENDED DA ISSUE	19.11.21
DA - E	DA ISSUE	05.10.21

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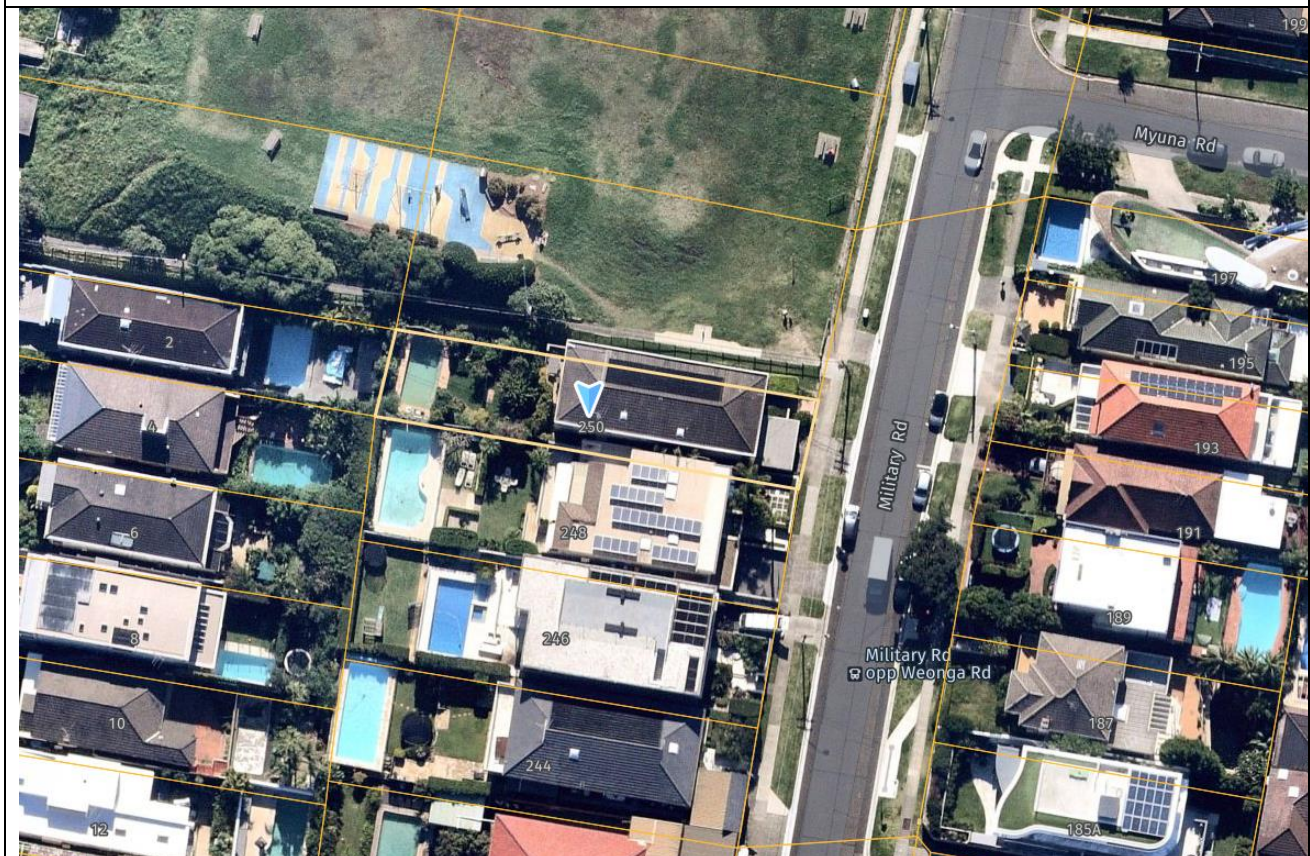
A24



Report to the Waverley Local Planning Panel

Application number	DA-171/2022
Site address	250 Military Road, Dover Heights
Proposal	Alterations and additions to an existing dwelling including widening of the existing double garage.
Date of lodgement	29 April 2022
Owner	Mrs R and Mr L Gentin
Applicant	VRM Architects
Submissions	Nil
Cost of works	\$402,600
Principal Issues	<ul style="list-style-type: none"> • Height of Building and FSR breach; • Front fence height; and • Driveway width at boundary.
Recommendation	That the application be APPROVED in accordance with the conditions contained in the report.

SITE MAP



1. PREAMBLE

1.1. Executive Summary

The development application seeks consent for the alterations and additions to an existing dwelling including widening of the existing double garage at the site known as 250 Military Road, Dover Heights.

The principal issues arising from the assessment of the application are as follows:

- Height of building and Floor Space Ratio (FSR) development standard breaches;
- Front fence height; and
- Driveway width at boundary.

The assessment finds these issues acceptable as the alterations are generally retained within the existing building envelope through filling in a small portion of the rear balcony, filling in the first floor window and replacing the roof. The existing dwelling is currently over the building height and FSR development standard and compliance with the standard is unnecessary. The application is supported with a well-founded Clause 4.6 variation for both standards. In addition, the proposal will not result in significant adverse environmental impacts in regard to visual privacy, overshadowing or view loss. The front fence height and driveway crossing are considered acceptable and proposes a similar built form to surrounding properties along Military Road.

No submissions were received during the notification period.

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. It is recommended for approval subject to conditions of consent.

1.2. Site and Surrounding Locality

A site visit was carried out on 22 June 2022.

The site is identified as Lot D in DP 175693, known as 250 Military Road, Dover Heights.

The site is rectangular in shape with a frontage to Military Road, measuring 9.74m and has a northern boundary facing Dudley Page Reserve, measuring 49.21m. It has an area of 494.5m² and it falls from the front eastern boundary towards the rear southern boundary by approximately 5.44m.

The site is occupied by a three storey dwelling house with vehicular access provided from Military Road to an existing double garage. The site has a pool in its rear yard and the existing dwelling has large balconies along the northern and western elevations to maximising views of the city and harbour.

The site is adjoined by a three storey dwelling to the south and Dudley Page Reserve to the north. The locality is characterised by a variety of low residential development.

Figures 1 to 6 are photos of the site and its context.



Figure 1: Front façade of the subject site viewed from Military Road.



Figure 2: Northern elevation of the subject site from Dudley Page Reserve.



Figure 3: Southerly view of the rear balcony proposed to be enclosed.



Figure 4: Easterly view of the rear elevation.



Figure 5: South westerly view of the neighbouring garage at No. 248 Military Road.



Figure 6: View of the garage proposed to be widened.

1.3. Relevant Development History

A search of Council's records revealed the following recent and relevant development history of the site:

- BA-273/1995: Building Application for the construction of alterations and an additional storey and garage to the dwelling, approved 4 July 1995;

- BA-660/1997: Building Application for the construction of a swimming pool, approved 18 November 1997; and
- LD-388/2001: Local Development for the alterations and additions to the existing upstairs bathroom, approved 8 September 2001.

1.4. Proposal

The development application (DA) seeks consent for alterations and additions to dwelling house, specifically the following:

Lower Ground Level

- New store room entry;

Ground Level

- Demolish internal walls;
- Enclosure of the rear balcony including new windows and extend floor and raise the level at formal dining area;
- Façade alterations at the front to widen the double garage by 1.2m and new garage concrete floor;
- New windows to northern façade;
- New entry gate, 1.8m bin storage shed and door to the lobby;
- New high level window to southern elevation;

First Floor Level

- Façade alterations at the rear to replace existing window;
- Internal works to bathroom, dressing room, laundry and ensuite; and

Roof

- Replace existing roof with a new metal roof at same height and pitch.

1.5. Background

The DA was lodged on 29 April 2022 and a request for additional information was made on 12 May 2022 as follows:

1. Submission of a clause 4.6 written request to vary the height of buildings development standard.
2. Submission of amended elevations to indicate a maximum height plane of 8.5m and a roof plan.

The requested information was received by Council on 19 May 2022.

2. ASSESSMENT

The following matters are to be considered in the assessment of this development application under section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act).

2.1. Planning Instruments and Development Control Plans

The following is an assessment against relevant legislation, environmental planning instruments, including State environmental planning policies (SEPPs), and development control plans.

2.1.1. State Environmental Planning Policies (SEPPs)

The following SEPPs apply from the 1st March 2022 and have been considered acceptable in the assessment of this development application:

- SEPP (Building Sustainability Index – BASIX) 2004

2.1.2. Draft Waverley Local Environmental Plan 2022 (Draft Waverley LEP 2022)

The Draft Waverley Local Environmental Plan 2022 was exhibited from 12 November 2021 to 23 January 2022, however at the time of this assessment, there are no relevant matters for consideration.

2.1.3. Waverley Local Environmental Plan 2012 (Waverley LEP 2012)

The relevant matters to be considered under the Waverley LEP 2012 for the proposed development are outlined below:

Table 1: Waverley LEP 2012 Compliance Table

Provision	Compliance	Comment
Part 1 Preliminary		
1.2 Aims of plan	Yes	The proposal meets the aims of the WLEP.
Part 2 Permitted or prohibited development		
Land Use Table R2 Low Density Residential Zone	Yes	The proposal is defined as alterations and additions to a dwelling house, which is permitted with consent in the R2 zone.
Part 4 Principal development standards		
4.3 Height of buildings <ul style="list-style-type: none">• 8.5m	No	The proposal results in a maximum building height of 10.65m to the existing roof ridge which is being replaced and a window replacement to the first floor is above the height of buildings development standard of 8.5m.

Provision	Compliance	Comment
4.4 Floor space ratio and 4.4A Exceptions to floor space ratio <ul style="list-style-type: none"> 0.56:1 (277.4m²) 	No	The proposal results in a maximum FSR of 0.68:1 (337.4m ²). Enclosing the balcony results in an additional 7.8m ² of gross floor area to the existing FSR is at 0.66:1 (329.6m ²).
4.6 Exceptions to development standards	See discussion	The application is accompanied by a written request pursuant to clause 4.6 of Waverley LEP 2012 to vary the height of building and FSR development standards. A detailed discussion of the variation to the development standards is presented below this table.

The following is a detailed discussion of the issues identified in the compliance table above in relation to the Waverley LEP 2012.

Clause 4.6 Exceptions to the Height of Building Development Standard

The application seeks to vary the height of buildings development standard in clause 4.3 under Waverley LEP 2012.

The site is subject to a maximum height of building development standard of 8.5m. The proposed development has a height of 10.65m, exceeding the standard by 2.15m, equating to a 25% variation.

A written request has been submitted to Council in accordance with clause 4.6(3)(a) and (b) of Waverley LEP 2012 seeking 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 standard.

A copy of the applicant's written request has been provided to the Waverley Local Planning Panel for consideration.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

The applicant seeks to justify the contravention of the height of building development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) *The height non compliance is existing and the proposed replacement roof does not increase the height of the building or its existing building envelope.*

- (ii) *The proposed development will be in the public interest because it is consistent with the objectives of the Height of Building standard and the zone objectives.*
 - (iii) *The proposed height non-compliance maintains largely the existing building envelope which has been previously approved and is deemed to be consistent with the desired scale and character of the street and locality.*
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) *The proposed design of the development achieves an appropriate built form in that it enhances the public domain, maintains the character of the streetscape, along with providing good internal amenity and outlook.*
 - (ii) *The proposal will maintain and enhance the residential amenity of the surrounding dwellings including their current levels of solar access, visual and acoustic privacy and ventilation.*
 - (iii) *No impacts from the proposed replacement roof are anticipated to neighbouring amenity, including to views enjoyed by neighbours.*
 - (iv) *The visual impact of the building will be the same as that which is currently on site as a result of the proposed height non-compliance.*
 - (v) *The proposed design of the development achieves an appropriate built form in that it enhances the public domain, maintains the character of the streetscape, along with providing improved internal amenity and outlook. The proposal demonstrates a good quality designed building which achieves the design standards for the locality.*
 - (vi) *The proposed massing of the development is considered acceptable with regard to the height controls and intent for the locality, and appropriate building setbacks have been implemented and maintained.*
 - (vii) *The provision of a mix of façade treatments and articulation contribute to minimising the visual perception of bulk and scale of the buildings.*
 - (viii) *The overall scale and bulk of the proposed building are similar to surrounding residential developments in the area, and are considered appropriate to the locality.*
 - (ix) *The proposed use gives provision of an improved residential dwelling that is compatible with the surrounding residential land uses and provides for the continued use of the site as a residential allotment.*
 - (x) *The scale of the development and its typology is considered to be appropriate for the site and the surrounding area and meets the needs of the local residents and the wider Sydney metropolitan area.*

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of clause 4.6 being 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 standard; and

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

Does the written request adequately address those issues at clause 4.6(3)(a)?

It is considered that the applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and has referenced one or more of the following justifications as set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446:

- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- (b) to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (c) to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- (d) to establish that 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; and*
- (e) to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant specifically relies upon justification (a) and (b) outlined above to address clause 4.6(3)(a) of Waverley LEP 2012. The applicant has provided sufficient justification to each of the objectives of the land zone and the height of buildings development standard. Despite the numerical noncompliance, the development maintains the existing height, bulk, scale of the desired character of the locality, which is currently over the maximum height limit for the site. Compliance with the height limit would require removal of the first floor which is unnecessary. The minor alterations achieve compliance with the objectives of the development standard.

Does the written request adequately address those issues at clause 4.6(3)(b)?

The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard, noting that the existing first floor and roof were constructed over the height limit at 10.65m. The replacement roof is built to the same height and pitch of the existing and the replacement windows do not change the wall height. The proposal maintains the existing building envelope approved under BA-273/1995, which was before the 2012 LEP came into effect. The development is deemed to be consistent with the desired scale and character of the street and locality and preserves the existing environmental amenity for surrounding properties.

Is the development in the public interest?

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

The relevant objectives of the height of building development standard are as follows:

- (a) *to establish limits on the overall height of development to preserve the environmental amenity of neighbouring properties and public spaces and, if appropriate, the sharing of views,*
- (b) *to ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality and positively complement and contribute to the physical definition of the street network and public space.*

Comment: The height non-compliance relates to the new metal roof and replacement window (see **Figure 7** of this report). The extent of the non-compliance is the same height as the originally approved non-compliance of 2.15m, therefore preserving the existing amenity of the neighbouring properties. The roof and new window maintain the existing building envelope and do not change the existing shadows or result in view impacts. The proposal and existing roof form are compatible with the height, bulk and scale of the desired character of the locality.

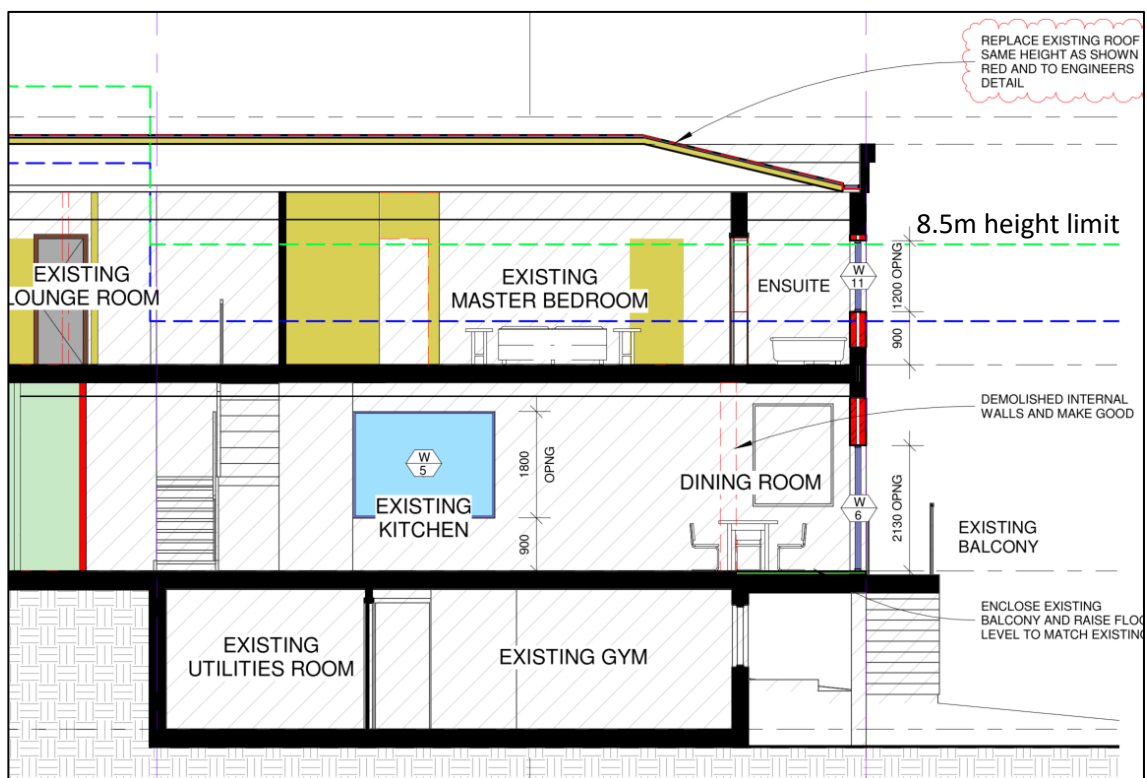


Figure 7: Section 1 showing the extent of the height breach (green line shows the 8.5m height).

The relevant objectives of the R2 zone are as follows:

- *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.*

Comment: The alterations and additions will facilitate the efficient use of an existing residential dwelling situated in a prominent and desirable location. The proposed development is compatible with surrounding detached dwellings. The proposal does not inhibit any existing or future land uses intended to meet the day to day needs of residents.

Conclusion

For the reasons provided above the requested variation to the height of building is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Waverley LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of building and the R2 Low Density Residential Zone.

Clause 4.6 Exceptions to FSR Development Standard

The application seeks to vary the floor space ratio (FSR) development standard in clause 4.4 under Waverley LEP 2012.

The site is subject to a maximum FSR development standard of 0.56:1 (277.4m²). The proposed development has a FSR of 0.68:1 (337.4m²), exceeding the standard by 60m² equating to a 21% variation. A written request has been submitted to Council in accordance with clause 4.6(3)(a) and (b) of Waverley LEP 2012 seeking to justify the contravention of the development standard by demonstrating:

- (c) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- (d) That there are sufficient environmental planning grounds to justify contravening the standard.

A copy of the applicant's written request has been provided to the Waverley Local Planning Panel for consideration.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

The applicant seeks to justify the contravention of the FSR development standard on the following basis:

- (c) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) *The proposed FSR exceeds the development standard by 21% (noting the existing building does by 17%), and the additional gross floor area (7.889m²) is located at the rear. In our opinion, the proposal will provide an appropriate correlation between maximum building heights and density controls for the following reasons.*

- (ii) *The variation enables reasonable redevelopment of a site currently comprising an older-style dwelling. The proposed FSR is 21% over the maximum, and only 4% more than the existing and will maintain the single dwelling appearance of the site and can therefore be considered acceptable. The additional FSR is considered appropriate in this locality of Dover Heights.*
- (iii) *The non-compliance primarily relates to the development providing an increased window bay at the rear of the building and subsequently additional gross floor area over what currently exists on site.*
- (iv) *The proposal is permissible in the R2 Low Density Residential zone, is consistent with the relevant zone objectives and satisfies an 'unreasonable and unnecessary' test established in Wehbe. The contemporary addition provides upgraded living space, positively contributes to the local housing stock and character, and is of a similar scale to both existing and desired future developments in the area. The proposal maintains the appearance of a two-storey development when viewed from Military Road and surrounding areas.*
- (v) *As indicated, there are numerous examples of recent dual occupancies and alterations and additions in the vicinity which have been approved under the current controls with FSR non-compliances (Table 2).*

Address	DA Number	Description of Development	Extent of FSR Non Compliance
78 Military Road	115/2021	Dual occupancy	39.6%
187 Military Road	379/2020	Dual occupancy	9.2%
131 Military Road	259/2020	Dual occupancy	50%
59 Wallangra Road	299/2020	Dual occupancy	10%
84 Liverpool Street, Dover Heights	181/2020	Dual occupancy	10%
57 Military Road	280/2019/B	Dual occupancy	17%
105 Military Road	425/2018	Dual occupancy	32%
110 Military Road	534/2017	Dual occupancy	41%
62 Military Road, Dover Heights	286/2017	Dual occupancy	14%

Table 2: Examples of extent of FSR non-compliance in Dover Heights.

- (d) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) *There are sufficient environmental planning grounds to justify the FSR non-compliance, especially as the existing building exceeds the maximum FSR by 17%, and the proposed additional floor space is only 7m². All new floor space is accommodated below the maximum building heights, with compliant setbacks and more than compliant open space and landscaping.*

- (ii) *The FSR contravention relates primarily to providing an additional window bay at the rear and subsequently additional gross floor area over what currently exists on site. There are numerous examples of recent dual occupancies in the vicinity which have been approved with FSR non-compliances, in the same R2 zone which had an FSR breach which was supported by Council staff and the Panel based on similar arguments as those made in our submission (being compatible with surrounding development and consistent with the objectives of the standard and the zone). The floor space variation will enhance the site appeal with an architecturally designed addition that will maintain or even improve the relationship with surrounding developments.*
- (iii) *This report demonstrates the proposed additions will be compatible with nearby developments. The contravention will not be noticeable from the public domain or surrounding sites and therefore will not impact the streetscape amenity or existing characteristics of the area. The FSR exceedance will also not unreasonably impact neighbour amenity and will not be out of character with surrounding properties in terms of bulk or scale, nor will it be incompatible with the area's desired future character.*
- (iv) *In summary, the main grounds for contravening the standard are that the bulk and scale of existing dwelling is largely similar to the proposal, and that the additional FSR will not have unreasonable amenity impact.*
- (v) *The proposed building envelope is consistent with the existing building envelope of the adjoining buildings and other similar development.*
- (vi) *In light of the proposals contribution to achieving the desired future character of the area, a reduction of gross floor area would serve no material planning purpose, other than numerical compliance with a generic Council control.*

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of clause 4.6 being 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 standard; and
- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at clause 4.6(3)(a)?

It is considered that the applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and has referenced one or more of the following justifications as set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446:

- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- (b) to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (c) to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- (d) to establish that 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; and*
- (e) to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant specifically relies upon justification (a) and (b) outlined above to address clause 4.6(3)(a) of Waverley LEP 2012. The applicant has provided sufficient justification to each of the objectives of the land zone and the FSR development standard. Despite the numerical noncompliance, the development maintains the existing height, bulk, scale of the desired character of the locality, which is currently over the maximum FSR limit for the site. Compliance with the FSR would require removal of the existing floor area of the dwelling, which is unnecessary. The minor alterations achieve compliance with the objectives of the development standard.

Does the written request adequately address those issues at clause 4.6(3)(b)?

The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the FSR development standard, noting that despite the numerical non-compliance, the proposal will deliver a contemporary dwelling of an appropriate scale that is compatible with the proportions of neighbouring developments, maintaining sufficient amenity, and an appropriate relation between height and density. The enclosure of the rear balcony maintains the existing building envelope, therefore preserves the existing privacy and solar access to surrounding properties.

Is the development in the public interest?

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

The relevant objectives of the FSR development standard are as follows:

- (b) to provide an appropriate correlation between maximum building heights and density controls,*
- (c) to ensure that buildings are compatible with the bulk, scale, streetscape and desired future character of the locality,*

(d) to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and minimise the adverse impacts on the amenity of the locality.

Comment: Objective (b) is satisfied as the proposal maintains an appropriate correlation between the existing height of the building and the relevant density controls. The additional floor space does not increase building envelope, bulk or scale. It is noted that the proposal seeks to infill a minor portion of the existing ground floor balcony, which is an increase of 7.9m². The additional GFA proposed in this location will not adversely impact the amenity of neighbouring properties through overshadowing or view impacts and will improve the functionality of the dining and kitchen room. Notwithstanding the FSR standard non-compliance, the proposed development respects the amenity of neighbouring properties and the surrounding locality, demonstrating compliance with objectives (c) and (d).

The relevant objectives of the R2 zone are as follows:

- *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.*

Comment: The alterations and additions will facilitate the efficient use of the dining and kitchen room within the existing residential dwelling. The proposed development is compatible with surrounding detached dwellings. The proposal does not inhibit any existing or future land uses intended to meet the day to day needs of residents.

Conclusion

For the reasons provided above the requested variation to the FSR is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Waverley LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of FSR and the R2 Low Density Residential Zone.

2.1.4. Waverley Development Control Plan 2012 (Waverley DCP 2012) – Amendment No.9

The relevant matters to be considered under the Waverley DCP 2012 for the proposed development are outlined below:

Table 3: Waverley DCP 2012 – Part B General Provisions Compliance Table

Development Control	Compliance	Comment
1. Waste	Yes	Satisfactory.
2. Ecologically Sustainable Development	Yes	Satisfactory.
3. Landscaping and Biodiversity	Yes	Widening the garage will result in a minor reduction of landscape area and removal of shrubs at the front of the site. A small section of

Development Control	Compliance	Comment
		landscaping remains at the front and sufficient landscaping remains at the rear.
6. Stormwater	Yes	Satisfactory. Refer to section 3 of this report on referral commentary in relation to stormwater.
8. Transport Maximum parking rate: <ul style="list-style-type: none"> 2 spaces for 3 or more bedrooms. 	Yes	The garage is widened by 1.2m and provides space for 2 cars. Its design and location are satisfactory and the driveway is preserved.
12. Design Excellence	Yes	The new works to the garage and windows at first floor fronting Military Road will maintain the overall streetscape appearance of the dwelling.

Table 4: Waverley DCP 2012 – Part C2 Low Density Residential Development Compliance Table

Development Control	Compliance	Comment
2.0 General Objectives		
	Yes	The proposal does not contravene the general objectives of this part of the DCP.
2.1 Height		
Pitched roof dwelling house <ul style="list-style-type: none"> Maximum external wall height of 7m 	Yes – existing non-compliance	No change is proposed to the existing external wall height.
2.2 Setbacks		
2.2.1 Front and rear building lines <ul style="list-style-type: none"> Predominant front building line Predominant rear building line at each floor level 	Yes Yes	No change is proposed to the existing front building line as the alterations to the garage increase the width and maintains the depth. The balcony enclosure retains the rear building line of the dwelling.
2.2.2 Side setbacks <ul style="list-style-type: none"> Minimum of 0.9m (for height up to 8.5m) 	Yes	The dwelling's setbacks are maintained. The bin storage shed proposes a nil setback along the northern boundary which is adjacent to Dudley Page Reserve. The shed has a height of 1.8m which provides privacy to the occupants of the subject site/dwelling and is considered acceptable.
2.3 Streetscape and visual impact		
<ul style="list-style-type: none"> New development to be compatible with streetscape context Replacement windows to complement the style and proportions of existing dwelling Significant landscaping to be maintained. 	Yes	The alterations and additions maintain the dwelling's presentation to Military Road. The replacement windows are positioned within the same location of the existing windows but have been made larger. These windows still complement the style of the dwelling. Significant landscaping remains at the rear of the site.

Development Control	Compliance	Comment
<ul style="list-style-type: none"> Minimum area of 25m² for private open space Front open space: 50% of front building setback area Front landscaped area: 50% of front open space provided. 	No	The rear yard provides sufficient private open space.
	No	The garage occupies more than 50% of the front building setback. This non-compliance is considered acceptable and is a common feature along Military Road. The proposal maintains 3m ² of landscaping in front of the bin shed. The lack of landscaped area in the front yard is considered contextually appropriate and will not give rise to adverse streetscape impacts.
2.14 Dual Frontage Development		
2.14.1 - General Controls <ul style="list-style-type: none"> Primary and secondary frontage to be defined Appropriate forms to be provided to each street 	Yes	The secondary frontage to Dudley Page Reserve is still defined and provides appropriate forms to the park.

2.2. Other Impacts of the Development

The proposal is considered to have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

2.3. Suitability of the Site for the Development

The site is considered suitable for the proposal.

2.4. Any Submissions

The application was notified for 14 days between 20 May 2022 and 10 June 2022 in accordance with the *Waverley Community Development Participation and Consultation Plan*.

No submissions were received.

2.5. Public Interest

The proposal is considered to have no detrimental effect on the public interest, subject to appropriate conditions being imposed.

3. REFERRALS

The following internal and external referral comments were sought:

3.1. Traffic and Development

The application was referred to Council's Traffic Engineer for comment. Issues were raised regarding the proposed change of width of the driveway on the property boundary to 5.8m, which is not compliant and should be reduced to 5m. However, the driveway width would not match up to the garage door width. The driveway crossing is considered acceptable and the driveway crossing at the street is not changing.

3.2. Stormwater

The application was referred to Council's Stormwater engineers for comment, however no response was received. Standard conditions of consent are recommended in this regard. As per section 6 of Council's *Water Management Technical Manual October 2021*, given the proposal does not seek to increase impervious area by more than 30m², on-site stormwater detention is not required.

3.3. Tree Management

The application was referred to Council's Tree Management Officer for comment and it was noted that there were no trees of any significance on site. The removal of the landscaping at the front of the site possesses no outstanding attributes worthy of retention due to being under 5m and their removal is supported.

4. CONCLUSION

The development application seeks consent for the alterations and additions to an existing dwelling including widening of the existing double garage at the site known as 250 Military Road, Dover Heights.

The principal issues arising from the assessment of the application are as follows:

- Height of building and FSR breach;
- Front fence height; and
- Driveway width at boundary.

The assessment finds these issues acceptable as the alterations are generally retained within the existing building envelope through filling in a small portion of the rear balcony, filling in the first floor window and replacing the roof. The existing dwelling is currently over the building height and FSR development standard and compliance with the standard is unnecessary. The application is supported with a well-founded Clause 4.6 variation for both standards. In addition, the proposal will not result in significant adverse environmental impacts in regard to visual privacy, overshadowing or view loss. The front fence

height and driveway crossing are considered acceptable and proposes a similar built form to surrounding properties along Military Road.

No submissions were received during the notification period.

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the Act. It is recommended for approval subject to conditions of consent.

Development and Building Unit (DBU) Decision:

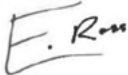
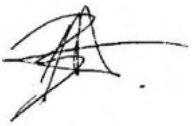
The application was reviewed by the DBU at the meeting on 12 July 2022 and the DBU determined:

- (a) The application is acceptable and should be approved, subject to the conditions in Appendix A.

DBU members: *B McNamara and B Magistrale*

5. RECOMMENDATION TO WAVERLEY LOCAL PLANNING PANEL

That the development application be APPROVED by the Waverley Local Planning Panel subject to the conditions in Appendix A.

Report prepared by:	Application reviewed and agreed on behalf of the Development and Building Unit by:
	
Edwina Ross	Ben Magistrale
Development Assessment Planner	Manager, Development Assessment (Area 2) (Reviewed and agreed on behalf of the Development and Building Unit)
Date: 14/07/22	Date: 15 July 2022

Reason for WLPP referral:

1. Departure from any development standard in an EPI by more than 10%

APPENDIX A – CONDITIONS OF CONSENT

A. APPROVED DEVELOPMENT

1. APPROVED PLANS AND DOCUMENTATION

The development must be in accordance with:

- (a) Architectural Plans prepared by Van Rooijen Meyers Architects of Project No: 892-20 including the following:

Plan Number and Revision	Plan description	Plan Date	Date received by Council
DWG No. A01 - Rev.A	Site Plan and Site Analysis	16/05/2022	19/05/2022
DWG No. A02	Lower Ground Floor Plan	16/05/2022	19/05/2022
DWG No. A03	Ground Floor Plan	16/05/2022	19/05/2022
DWG No. A04	First Floor Plan	16/05/2022	19/05/2022
DWG No. A05 - Rev.A	Southern Elevation	16/05/2022	19/05/2022
DWG No. A06 - Rev.A	Northern Elevation	16/05/2022	19/05/2022
DWG No. A07 - Rev.A	Eastern & Western Elevation	16/05/2022	19/05/2022
DWG No. A08 - Rev.A	Section 1	16/05/2022	19/05/2022
DWG No. A08 - Rev.A	Section 1	16/05/2022	19/05/2022
DWG No. A09 - Rev.A	Section 2	16/05/2022	19/05/2022
DWG No. A16	Roof Plan	16/05/2022	19/05/2022

- (b) Landscape Plan DWG. L/01, L/02 and L/03 and documentation prepared by A Total Concept Landscape Architects & Swimming Pool Designers, dated (31/03/2022) and received by Council on (19/05/2022);
- (c) BASIX Certificate
- (d) Approved Stormwater Details and Documentation in accordance with condition 12 of this development consent.
- (e) The Site Waste and Recycling Management Plan (SWRMP) Part 1 received by Council on (19/05/2022);

Except where amended by the following conditions of consent.

B. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required.

GENERAL REQUIREMENTS

2. NO BUILDING OR DEMOLITION WORKS PRIOR TO RELEASE OF CONSTRUCTION CERTIFICATE

The building work, or demolition work, must not be commenced until:

- (a) a Construction Certificate has been obtained from Council or an Accredited Certifier in accordance with the *Environmental Planning and Assessment Act 1979*;
- (b) a Principal Certifying Authority has been appointed and Council has been notified of the appointment in accordance with the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*; and
- (c) Council is given at least two days' notice in writing of the intention to commence the building works.

3. HOME BUILDING ACT

The builder or person who does the residential building work shall comply with the applicable requirements of Part 6 of the *Home and Building Act 1989*. In this regard a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy the Principal Certifying Authority that they have complied with the applicable requirements of Part 6, before any work commences.

CONTRIBUTIONS, FEES & BONDS

4. SECTION 7.12 CONTRIBUTION

A monetary development contribution is payable to Waverley Council pursuant to section 7.12 of the *Environmental Planning and Assessment Act 1979* and the Waverley Council Development Contributions Plan 2006 in accordance with the following:

- (a) A cost report indicating the itemised cost of the development shall be completed and submitted to Council:
 - (i) Where the total development cost is less than \$500,000:
"Waverley Council Cost Summary Report"; or,
 - (ii) Where the total development cost is \$500,000 or more:
"Waverley Council Registered Quantity Surveyor's Detailed Cost Report".

A copy of the required format for the cost reports are provided in the Waverley Council Contributions Plan 2006, available on Council's website.

(b) As legislated in section 25K of the Environmental Planning and Assessment Regulation 2000, the levy must be paid in accordance with the following;

- (i) A development valued at \$100,000 or less will be exempt from the levy;
- (ii) A development valued at \$100,001 - \$200,000 will attract a levy of 0.5% of the full cost of the development; or
- (iii) A development valued at \$200,001 or more will attract a levy of 1% of the full cost of the development.

Prior to the issue of any Construction Certificate, evidence must be provided that the levy has been paid to Council in accordance with this condition or that the cost of works is less than \$100,000.

5. SECURITY DEPOSIT

A deposit (cash or cheque) or guarantee for the amount of \$ **11,550** must be provided to Council for any damage caused to any property of the consent authority (ie. public land) as a consequence of the works and completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent.

This deposit (cash or cheque) or guarantee must be provided to Council prior to the issue of any Construction Certificate. The full amount of the deposit, minus Council's costs for any repair of damage to Council property or rectification of unauthorised works on Council property, will be refunded after satisfactory completion all of works associated with this consent (including the required public works) to the person who paid the deposit.

6. LONG SERVICE LEVY

A long service levy, as required under section 34 of the *Building and Construction Industry Long Service Payments Act, 1986*, is to be paid in respect of this building work. Evidence that the levy has been paid is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Note: Council acts as an agent for the Long Service Payment Corporation and the levy may be paid at Council's office. The levy rate is 0.35% of building work costing \$25,000 or more.

7. ENGINEERING PLANS ASSESSMENT AND WORKS INSPECTION FEES

The Applicant is to pay to Council fees for the assessment of all engineering plans and inspection of the completed works in the public domain inclusive of all stormwater assessment, in accordance with Council's Schedule of Fees & Charges at the time of engineering plan approval, prior to such approval being granted by Council.

An invoice will be issued to the applicant for the amount payable, which will be calculated based on the design plans for the subject development.

CONSTRUCTION MATTERS

8. HOARDING

To ensure the site is contained during construction, a hoarding is required for the approved works, which is to be designed and constructed in accordance with the requirements of Safe Work NSW. Where the hoarding is to be erected over the footpath or any public place, the approval of Council's Compliance Unit must be obtained and the applicable fees paid, prior to the erection of the hoarding.

9. EROSION & SEDIMENT CONTROL

A Soil and Water Management Plan (SWMP), also known as an Erosion and Sediment Control Plan must be prepared in accordance with Waverley Council's Water Management Technical Manual.

The SWMP must be approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. A copy of the SWMP must be kept on site at all times and made available to Council officers upon request.

The recommendations of the SWMP must be implemented and maintained during all construction activities and until the site is fully stabilised following construction.

10. ENGINEERING DETAILS

Structural details are to be prepared and certified by a practicing Structural Engineer in connection with all structural components of the approved works, prior to the issue of the relevant Construction Certificate.

11. DILAPIDATION REPORT

A Dilapidation report is to be prepared for any adjoining or nearby property that may be subject to potential damage as a result of any works being undertaken. The dilapidation report is to be made available to affected property owners.

The report is to be dated, submitted to, and accepted by the Principal Certifying Authority, prior to any work commencing on the site.

Note: Any damage that may be caused is a civil matter. This consent does not allow or authorise any party to cause damage, trespass, or any other unlawful act and Council will not be held responsible for any damage that may be caused to adjoining buildings as a consequence of the development being carried out. Council will not become directly involved in disputes between the builder, owner, developer, its contractors and the owners of neighbouring buildings.

STORMWATER & FLOODING

12. STORMWATER MANAGEMENT

- (a) Stormwater plans and details shall be prepared by a suitably qualified hydraulics engineer to ensure the management of stormwater runoff from the development is undertaken without impact to the subject site, neighbouring properties or receiving drainage system.
- (b) The plans and details shall be prepared in accordance with Council's *Water Management Technical Manual* and must be submitted to and approved by Council's Executive Manager, Infrastructure Services (or delegate), prior to the issue of any Construction Certificate. For further information regarding this, please contact assets@waverley.nsw.gov.au, phone 9083 8886 or visit Council's website for details:

https://www.waverley.nsw.gov.au/_data/assets/pdf_file/0011/199757/GD00815_Waverley_Council_Water_Management_Manual_V5.pdf

ENERGY EFFICIENCY & SUSTAINABILITY

13. BASIX

All requirements of the BASIX Certificate and NatHERS documentation are to be shown on the Construction Certificate plans and documentation.

WASTE

14. SITE WASTE AND RECYCLING MANAGEMENT PLAN

A *Site Waste and Recycling Management Plan (SWRMP) - Part 2* is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Construction Certificate, which outlines materials to be reused and/or recycled as a result of demolition and construction works. At least one copy of the *SWRMP Part 2* is to be available on site at all times during construction. Copies of demolition and construction waste dockets that verify the facility that received the material for recycling or disposal and the quantity of waste received, must be retained on site at all times during construction.

TRAFFIC MANAGEMENT

15. CONSTRUCTION TRAFFIC MANAGEMENT PLAN (CTMP)

The applicant is to submit a Construction Traffic Management Plan (CTMP) for the approval of Council's Executive Manager, Infrastructure Services, or delegate, prior to the issue of any Construction Certificate. For further information on what is required in the CTMP, please refer to Council's website at:

https://www.waverley.nsw.gov.au/building/development_applications/post_determination/development_applications_-_conditions_of_consent

C. COMPLIANCE PRIOR TO WORK COMMENCING AND DURING CONSTRUCTION

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required.

PRIOR TO ANY WORKS

16. CONSTRUCTION SIGNS

Prior to commencement of any works on the site and during construction a sign shall be erected on the main frontage of the site detailing the name, address and contact details (including a telephone number) of the Principal Certifying Authority and principal contractor (the coordinator of the building works). The sign shall be clearly legible from the adjoining street/public areas and maintained throughout the building works.

DEMOLITION & EXCAVATION

17. DEMOLITION – ASBESTOS AND HAZARDOUS MATERIALS

The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2017;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- *Protection of the Environment Operations Act 1997*.

At least 5 days prior to the demolition, renovation work or alterations and additions to any building, the person acting on the consent shall submit a Work Plan to the Principal Certifying Authority in accordance with Australian Standard AS 2601-2001, Demolition of Structure and a Hazardous Materials Assessment prepared by a person with suitable expertise and experience. The Work Plan and Hazardous Materials Assessment shall:

- (a) Outline the identification of any hazardous materials, including surfaces coated with lead paint;
- (b) Confirm that no asbestos products are present on the subject land, or
- (c) particularise a method of safely disposing of the asbestos in accordance with the Code of Practice on how to safely remove asbestos published by SafeWork NSW (catalogue WC03561);
- (d) Describe the method of demolition;
- (e) Describe the precautions to be employed to minimise any dust nuisance; and
- (f) Describe the disposal methods for hazardous materials.

18. CONTROL OF DUST ON CONSTRUCTION SITES

The following requirements apply to demolition and construction works on site:

- (a) Hazardous dust is not to be allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended. Any existing accumulations of dust (e.g. ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particle air (HEPA) filter. All dusty surfaces and dust created from work are to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.
- (b) All contractors and employees directly involved in the removal of hazardous dusts and substances are to wear protective equipment conforming to Australian Standard AS1716 Respiratory Protective Devices.

19. CLASSIFICATION OF WASTE/ DISPOSAL OF EXCAVATED SOILS

Prior to the exportation of waste (including fill or soil) from the site the material must be classified in accordance with the provisions of the Protection of the Environment Operations Act, 1997 and the NSW EPA Waste Classification Guidelines 2014.

CONSTRUCTION MATTERS

20. CONSTRUCTION HOURS

Demolition and building work must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays and 8am to 3pm on Saturdays, with no work to be carried out on Sundays and public holidays.

Excavation works involving the use of heavy earth movement equipment, including rock breakers and the like, must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays, with no such work to be carried out on Saturday, Sunday or a public holiday.

Noise from construction activities shall comply with the *Protection of the Environmental Operations (Noise Control) Regulation 2017*.

21. STOCKPILES, STORAGE OF MATERIALS AND LOCATION OF BUILDING OPERATIONS

All building materials and any other items associated with the development are to be stored within the property. No materials are to be stored on Council's footpath, nature strip, or road reserve without prior Council approval.

22. CONSTRUCTION INSPECTIONS

The building works are to be inspected during construction by the Principal Certifying Authority (PCA) in accordance with the Building Legislation Amendment (Quality of Construction) Act 2002 and 162A Critical stage inspections for building work of the Environmental Planning and Assessment Regulation 2000.

23. CERTIFICATE OF SURVEY - LEVELS

All construction works are to be in accordance with the Reduced Levels (RLs) as shown on the approved plans. Certification from a Registered Surveyor certifying ground, upper floor/s and finished ridge levels is to be submitted to the Principal Certifying Authority during construction and prior to continuing to a higher level of the building.

24. CERTIFICATE OF SURVEY - BOUNDARIES AND LOCATION OF BUILDING

A Certificate of Survey prepared by a Registered Surveyor setting out the boundaries of the site and the location of the building on the site is to be submitted to the Principal Certifying Authority to certify the building is located in accordance with the development consent plans. The Certificate is to be submitted prior to the construction of the external walls above the ground floor level of the building.

25. WORK OUTSIDE PROPERTY BOUNDARY

This consent does not authorise any work outside the property boundary.

26. VEHICULAR ACCESS - FINISHED LEVEL TO FOOTPATH

The finished level at the property boundary on both sides of the vehicle crossing is to be 50mm above the level of the existing concrete footpath.

TREE PROTECTION AND REMOVAL

27. TREE PROTECTION

All trees on site and adjoining properties, including street trees, are to be retained and protected in accordance with AS4970-2009 'Protection of Trees on Construction Sites' and to be certified by an Arborist with AQF level 5 qualification or above, unless approved to be removed in this development consent.

28. STREET TREES TO BE RETAINED/TREE PROTECTION

No existing street trees shall be removed without Council approval. Precautions shall be taken when working near trees to ensure their retention, including the following:

- (a) Do not store harmful or bulk materials or spoil under or near trees;
- (b) Prevent damage to bark and root system;
- (c) Do not use mechanical methods to excavate within root zones;
- (d) Do not add or remove topsoil from under the drip line;
- (e) Do not compact ground under the drip line;
- (f) Do not mix or dispose of liquids within the drip line of the tree; and
- (g) All trees marked for retention must have a protective fence/guard placed around a nominated perimeter in accordance with AS4970-2009 "Protection of trees on construction sites.

D. PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE OR SUBDIVISION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required, prior to the issue of an Occupation Certificate or Subdivision Certificate, whichever applies.

29. FINAL OCCUPATION CERTIFICATE

Prior to occupation or use of the development, an Occupation Certificate must be obtained.

The Principal Certifying Authority must be satisfied that the requirements of the *Environmental Planning & Assessment Act 1979* have been satisfied including all critical stage inspections. Documentary evidence of all required inspections is to be submitted to Council.

30. CERTIFICATION OF BASIX COMMITMENTS

The Principal Certifying Authority shall certify that the all the undertakings in the approved BASIX certificate have been completed.

31. CERTIFICATION OF STORMWATER SYSTEM

Prior to issue of an occupation certificate, certification is to be provided from a suitably qualified Hydraulics Engineer, that the stormwater system has been constructed in accordance with the approved stormwater management plans and to best engineering practice.

E. ADVISORY MATTERS

The following advisory matters are provided as additional information to ensure compliance with the relevant legislation and requirements. You must also check other Commonwealth and NSW Acts and Regulations which may apply to the works or use approved in this application.

AD1. POST CONSENT CONDITIONS REQUIRING COUNCIL INPUT

Various conditions require further input, review or approval by Council in order to be satisfied following the determination of the application (that is, post consent). In those instances, please adhere to the following process to avoid delays:

- Please read your conditions carefully.
- Information to be submitted to Council should be either via email to info@waverley.nsw.gov.au or via the NSW Planning Portal (if required).
- Attention the documentation to the relevant officer/position of Council (where known/specified in condition).
- Include DA reference number.
- Include condition number/s seeking to be addressed.
- Where multiple conditions need Council input, please try to group the documentation / email/s into relevant subjects (multiple emails for various officers may be necessary, for example).
- Information to be submitted in digital format – refer to ‘Electronic lodgement guidelines’ on Council’s website. Failure to adhere to Council’s naming convention may result in documentation being rejected.
- Where files are too large for email, the digital files should be sent to Council via CD/USB. Council does not support third party online platforms (data in the cloud) for receipt of information.
- Please note, in some circumstances, additional fees and/or additional documents (hard copy) may be required.
- Council’s standard for review (from date the relevant officer receives documentation) is 14 days. Times may vary or be delayed if information is not received in this required manner.

AD2. DIAL BEFORE YOU DIG

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (this is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual’s responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

AD3. ALTERATIONS AND ADDITIONS ONLY

This consent is for alterations and additions to the existing building only and should during the course of construction a significant amount of the remaining fabric of the building be required to be removed, works must cease immediately and a new development application will be required to be submitted for assessment.

AD4. TREE REMOVAL/PRESERVATION

Any trees not identified for removal in this application have not been assessed and separate approval may be required. Any pruning of trees on adjoining properties required for the erection of scaffolding and/or the construction of the building may also require approval.

AD5. BONDI - ROSE BAY SAND BODY

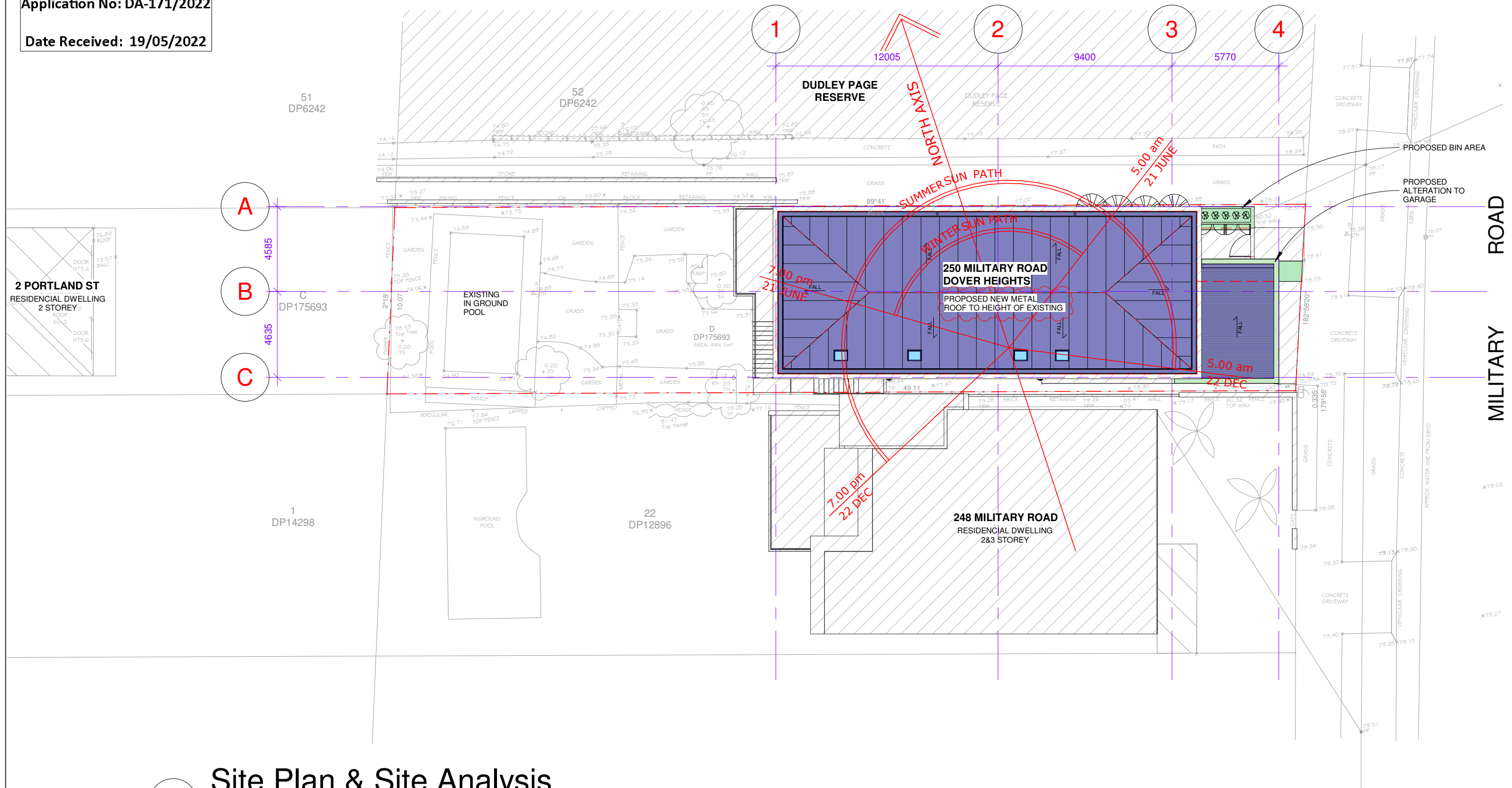
This site may be located within the Bondi - Rose Bay Sand Body as identified in Council's Aboriginal Cultural Heritage Study 2009. Should an object of potential Aboriginal or archaeological significance be discovered during the demolition, excavation or construction period associated with this development, works are to immediately cease and the NSW National Parks and Wildlife Service must be contacted.

Waverley Council must be notified of any referral to the NSW National Parks and Wildlife Service and be provided with a copy of any subsequent response.

RECEIVED
Waverley Council

Application No: DA-171/2022

Date Received: 19/05/2022



1 Site Plan & Site Analysis

1 : 200

PROJECT: GENTIN

Project Name
250 Military Rd,
Dover Heights NSW 2030

Site Plan & Site Analysis

SCALE: 1 : 200

DRAWN: SO

DATE: 16 MAY 22

JOB NO: 892-20

DRAWING NO: A01-Rev.A

NO.	DESCRIPTION	DATE
Rev. A	New roof to same height as existing	16/05/2022

NOTES: 1. The builder is to be held responsible for all levels and the setting out of the work on site. 2. Maintain existing dimensions as required. 3. Figured dimensions are to take precedence over scaling. 4. These plans remain the property of Van Rooijen Meyers and Partners Pty. Ltd., and the designs contained hereon are copyright. They may not be reproduced without permission.



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ARNOLD VAN ROOIJEN, AIA
GARY MEYERS, AIA #4980

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Date Received: 19/05/2022

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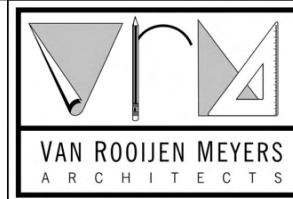
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1 : 100

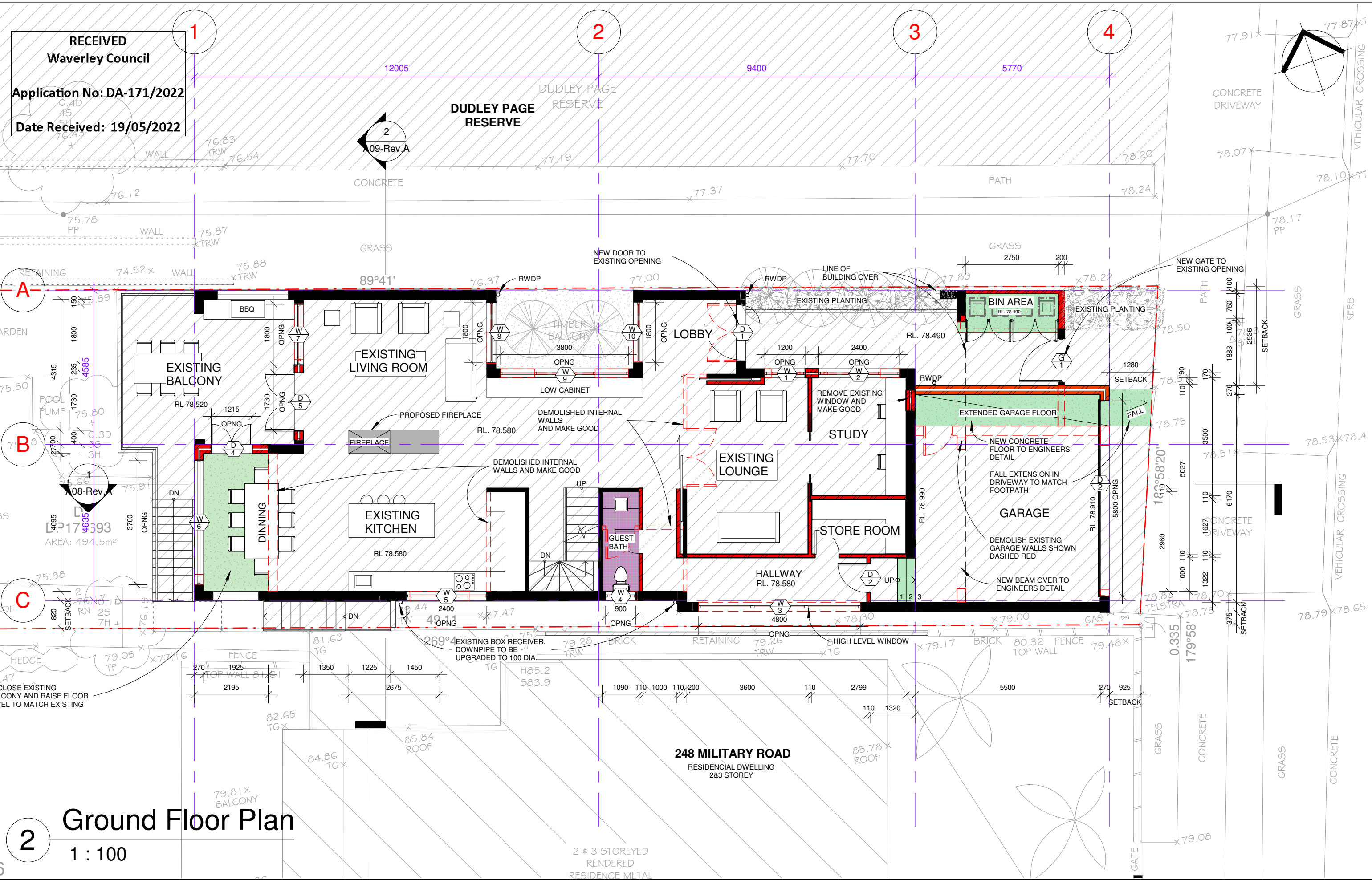
Lower Ground Floor Plan	
SCALE: 1 : 100	DRAWN: SO
DATE: 16 MAY 22	JOB NO: 892-20
DRAWING NO: A02	

[illegible]

NOTES: 1. The builder is to be held responsible for all levels and the setting out of the work on site. 2. Maintain existing dimensions as required. 3. Figured dimensions are to take precedence over scaling. 4. These plans remain the property of Van Rooijen Meyers and Partners Pty. Ltd., and the designs contained hereon are copyright. They may not be reproduced without permission.



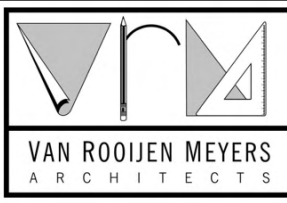
P.O. BOX 114,
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TEL: (02) 9371 9677
FAX: (02) 9371 0114
ARNOLD VAN ROOIJEN, AIA
GARY MEYERS, AIA #4980



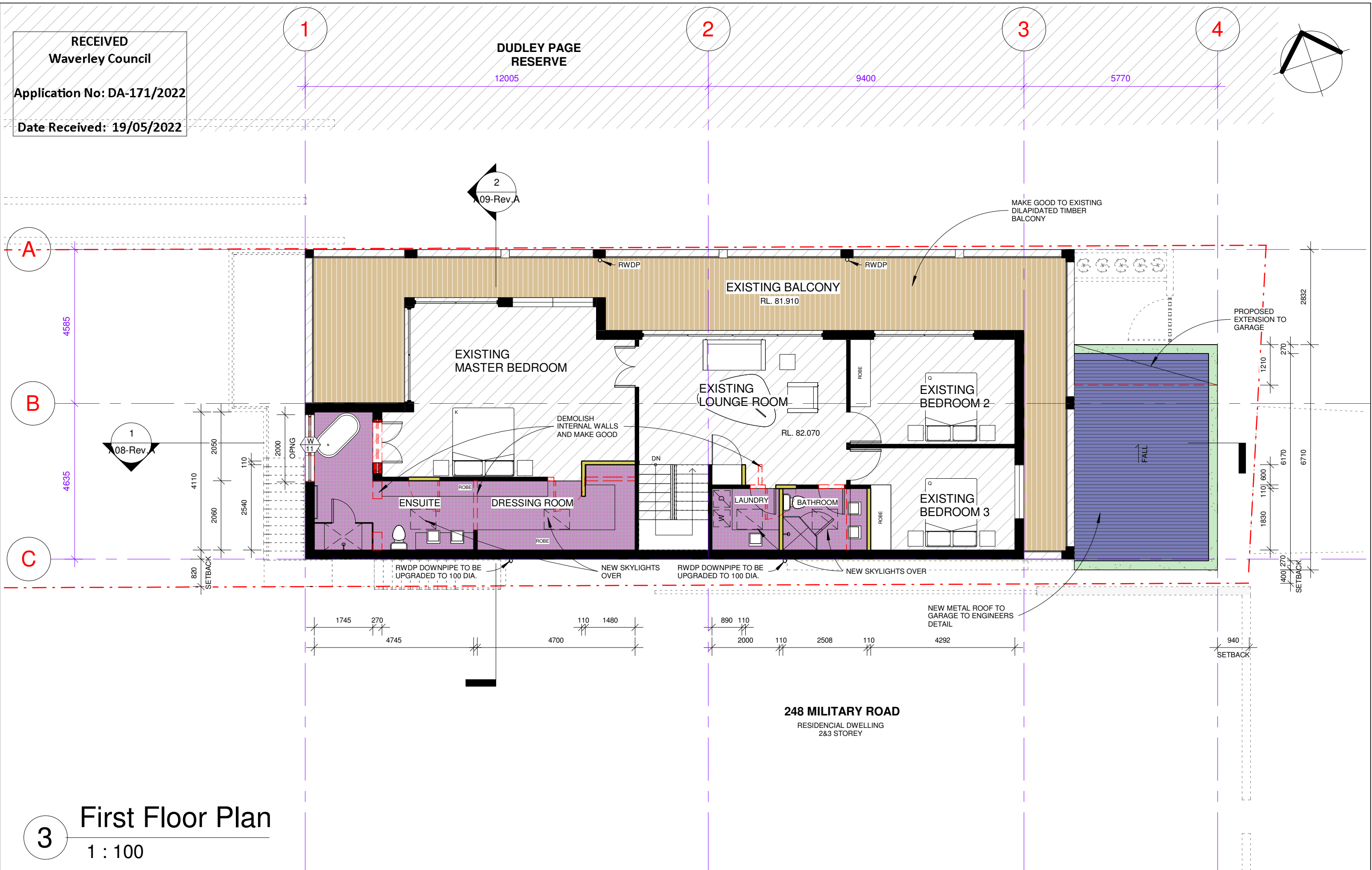
Ground Floor Plan

1 : 100

PROJECT: GENTIN		Ground Floor Plan		NO.	DESCRIPTION	DATE	NOTES: 1. The builder is to be held responsible for all levels and the setting out of the work on site. 2. Maintain existing dimensions as required. 3. Figured dimensions are to take precedence over scaling. 4. These plans remain the property of Van Rooijen Meyers and Partners Pty. Ltd., and the designs contained hereon are copyright. They may not be reproduced without permission.
Project Name		SCALE: 1 : 100	DRAWN: SO				
250 Military Rd, Dover Heights NSW 2030		DATE: 16 MAY 22	JOB NO: 892-20				
		DRAWING NO: A03					
					248 MILITARY ROAD RESIDENCIAL DWELLING 2&3 STOREY		P.O. BOX 114, ROSE BAY NSW 2029 TEL: (02) 9371 9677 FAX: (02) 9371 0114 ARNOLD VAN ROOIJEN, AIA GARY MEYERS, AIA #4980



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Application No: DA-171/2022
Date Received: 19/05/2022



3 First Floor Plan
1 : 100

PROJECT: GENTIN
Project Name
250 Military Rd,
Dover Heights NSW 2030

First Floor Plan	
SCALE: 1 : 100	DRAWN: SO
DATE: 16 MAY 22	JOB NO: 892-20
DRAWING NO: A04	

NO.	DESCRIPTION	DATE

NOTES: 1. The builder is to be held responsible for all levels and the setting out of the work on site. 2. Maintain existing dimensions as required. 3. Figured dimensions are to take precedence over scaling. 4. These plans remain the property of Van Rooijen Meyers and Partners Pty. Ltd., and the designs contained hereon are copyright. They may not be reproduced without permission.

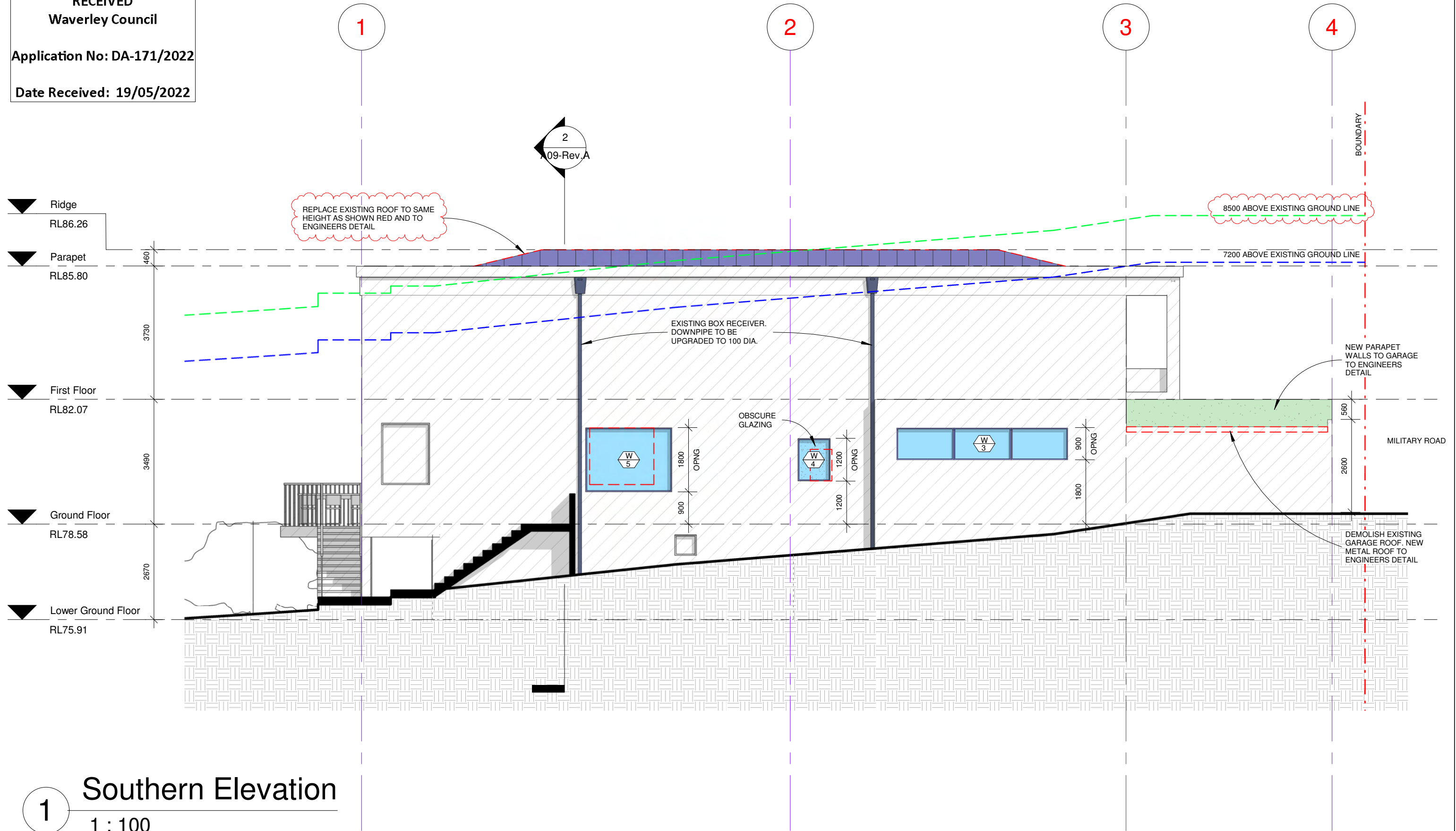


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Application No: DA-171/2022

Date Received: 19/05/2022



1

Southern Elevation

1 : 100

PROJECT: GENTIN

Project Name
250 Military Rd,
Dover Heights NSW 2030

Southern Elevation

SCALE: 1 : 100

DRAWN: SO

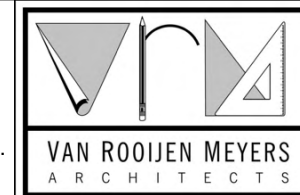
DATE: 16 MAY 22

JOB NO: 892-20

DRAWING NO: A05-Rev.A

NO.	DESCRIPTION	DATE
Rev. A	New roof to same height as existing. Max height notation.	16/05/2022

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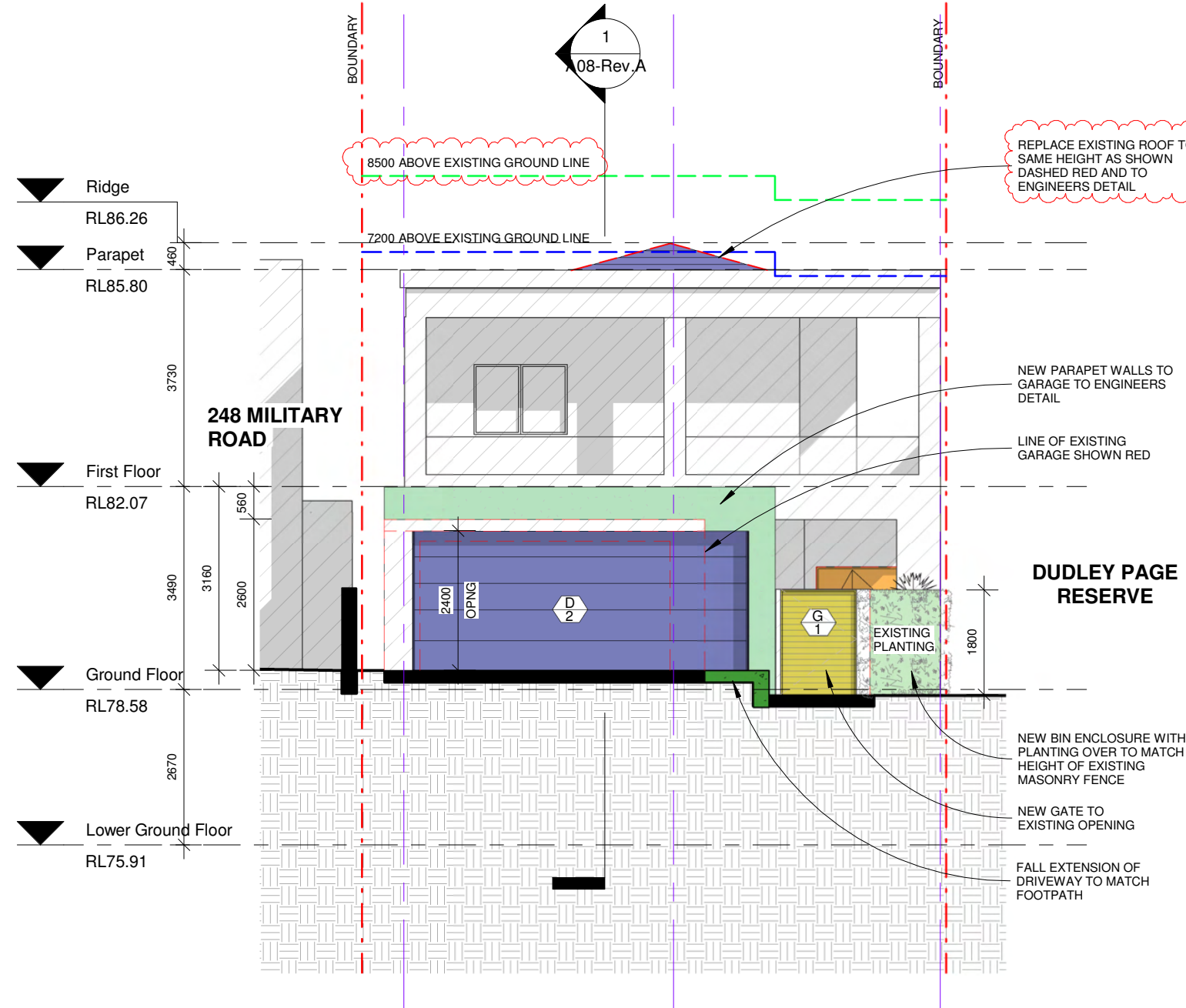


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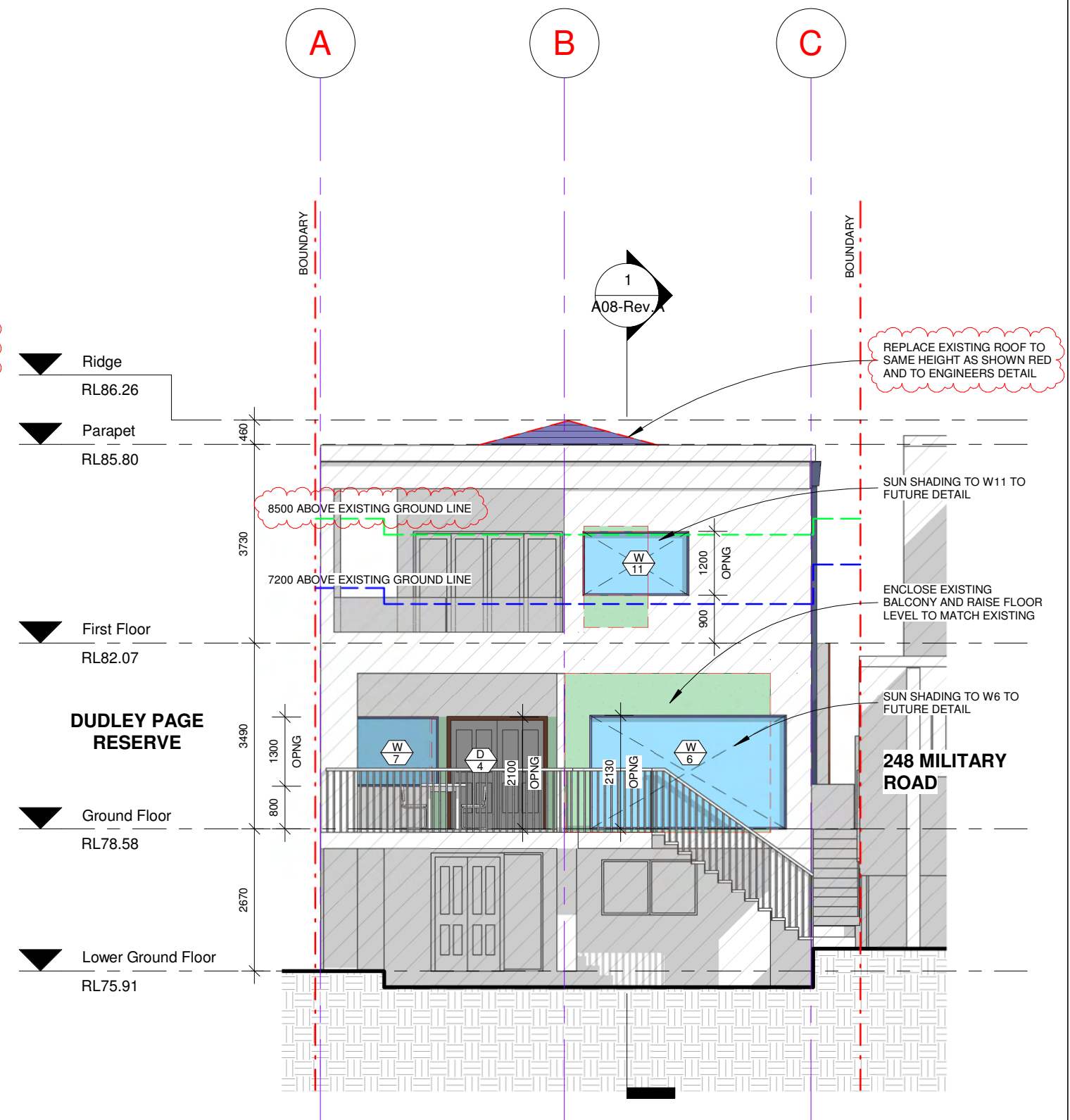
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Application No: DA-171/2022

Date Received: 19/05/2022



3 Eastern Elevation
1 : 100



4 Western Elevation
1 : 100

PROJECT: GENTIN
Project Name
250 Military Rd,
Dover Heights NSW 2030

Eastern & Western Elevation

SCALE: 1 : 100

DRAWN: SO

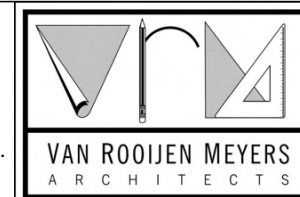
DATE: 16 MAY 22

JOB NO: 892-20

DRAWING NO: A07-Rev.A

NO.	DESCRIPTION	DATE
Rev. A	New roof to same height as existing. Max height notation.	16/05/2022

NOTES: 1. The builder is to be held responsible for all levels and the setting out of the work on site. 2. Maintain existing dimensions as required. 3. Figured dimensions are to take precedence over scaling. 4. These plans remain the property of Van Rooijen Meyers and Partners Pty. Ltd., and the designs contained hereon are copyright. They may not be reproduced without permission.

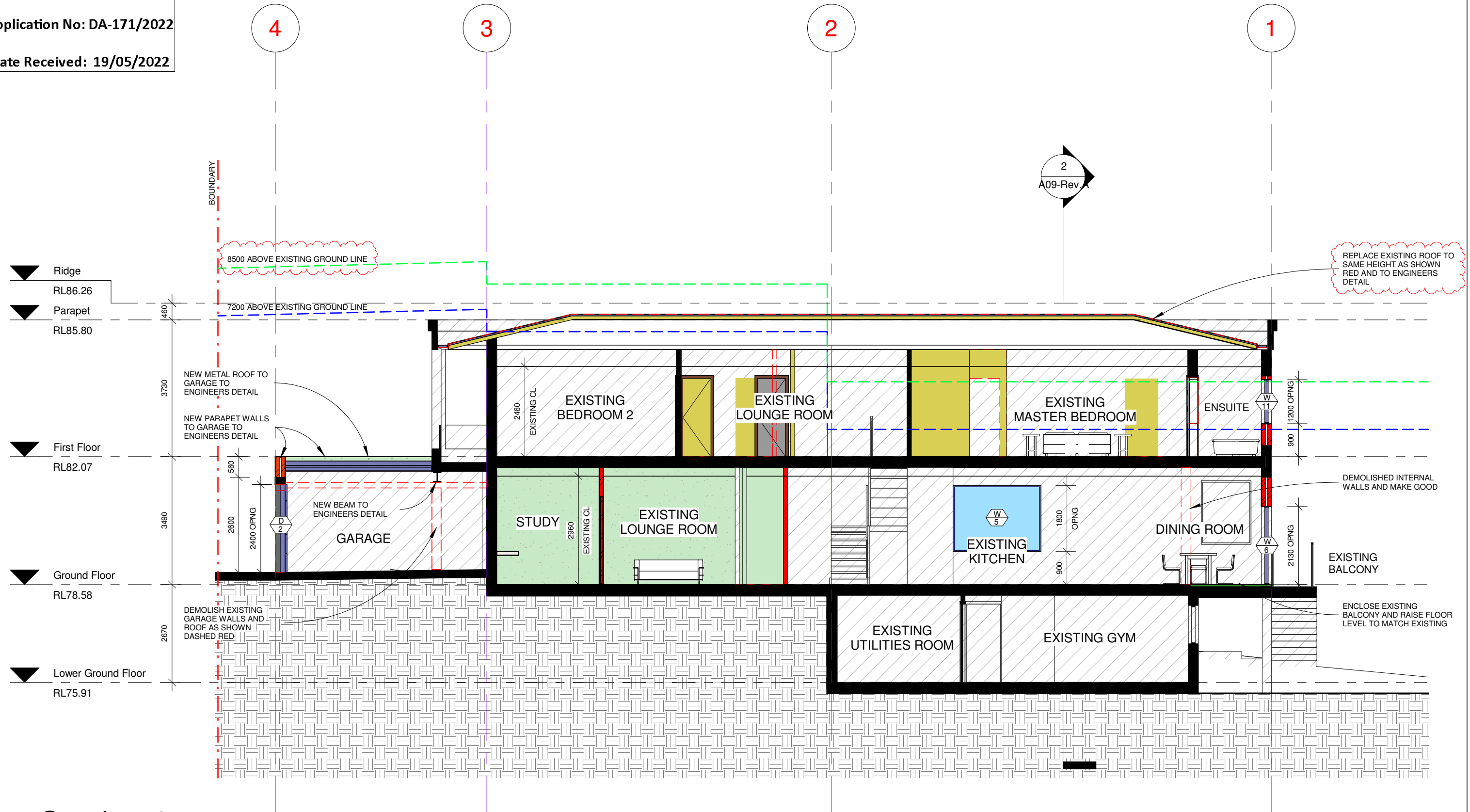


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Application No: DA-171/2022

Date Received: 19/05/2022



Section 1

1

1 : 100

PROJECT: GENTIN
Project Name
250 Military Rd,
Dover Heights NSW 2030

Sections

SCALE: 1 : 100

DRAWN: SO

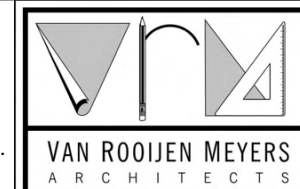
DATE: 16 MAY 22

JOB NO: 892-20

DRAWING NO: A08-Rev.A

NO.	DESCRIPTION	DATE
Rev. A	New roof to same height as existing. Max height notation.	16/05/2022

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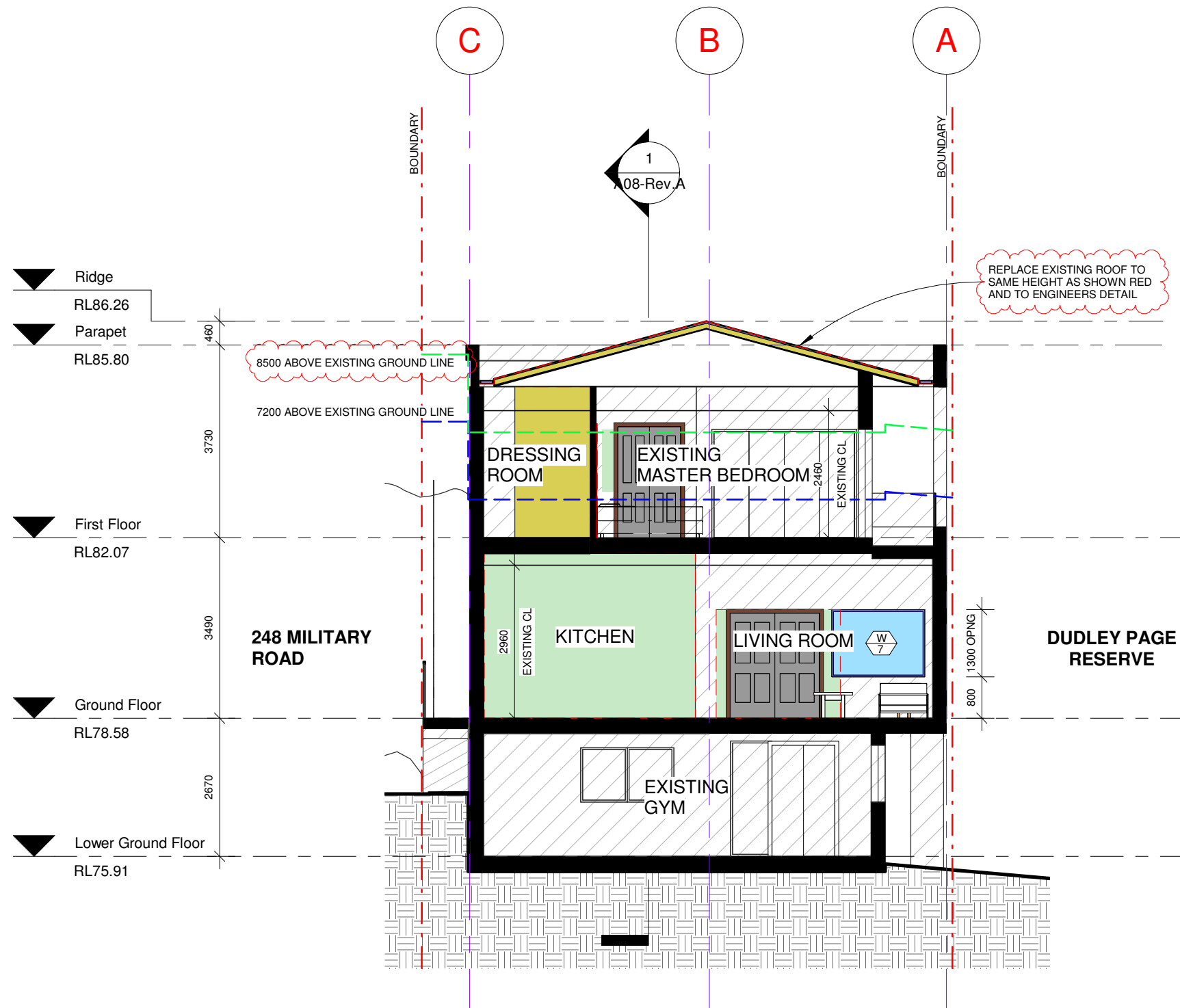


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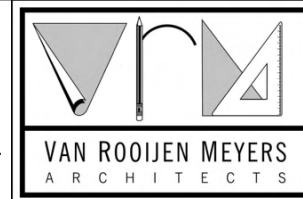
2 Section 2
1 : 100

PROJECT: GENTIN
Project Name
250 Military Rd,
Dover Heights NSW 2030

Sections	
SCALE: 1 : 100	DRAWN: SO
DATE: 16 MAY 22	JOB NO: 892-20
DRAWING NO: A09-Rev.A	

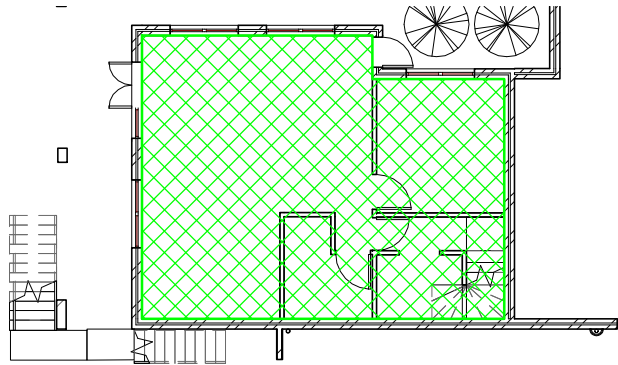
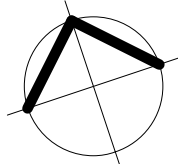
NO.	DESCRIPTION	DATE
Rev. A	New roof to same height as existing. Max height notation.	16/05/2022

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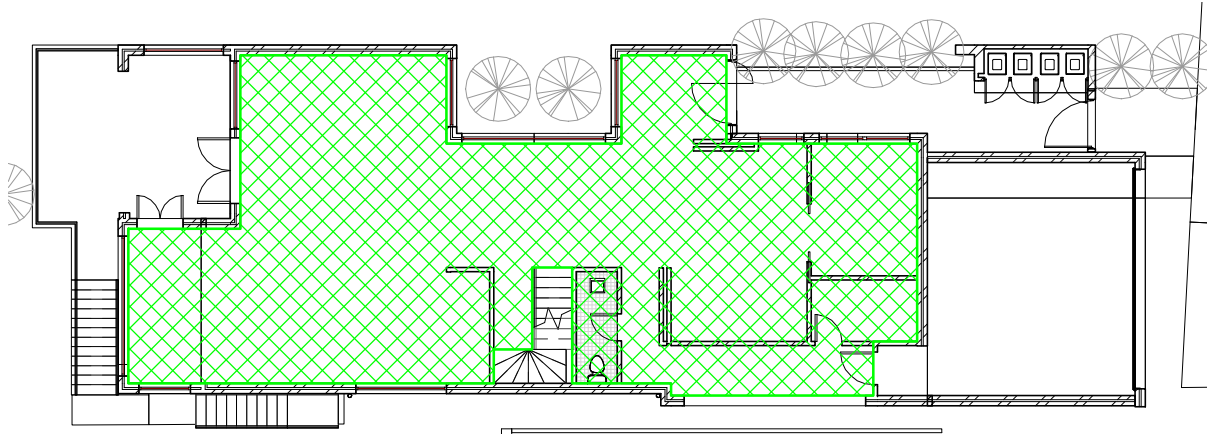


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Application No: DA-171/2022
Date Received: 19/05/2022

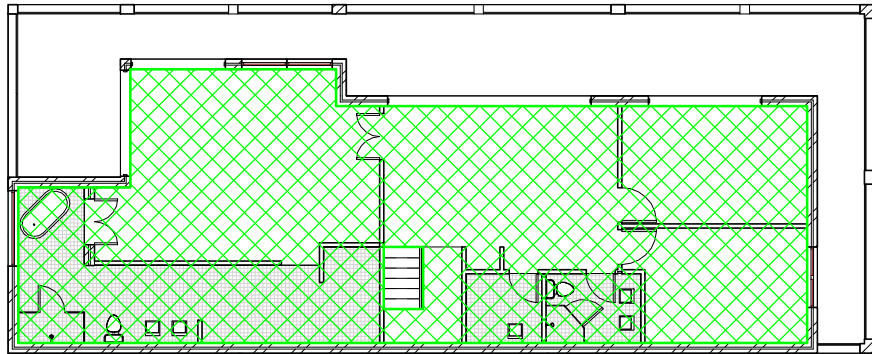


1 Lower Ground Floor-FSR
1 : 200



2 Ground Floor Plan-FSR
1 : 200

FSR CALCULATIONS	
LOWER GROUND FLOOR	67.82m ²
GROUND FLOOR	141.62m ²
FIRST FLOOR	127.96m ²
TOTAL	337.40m²
SITE AREA	494.50m²
FSR	0.68:1



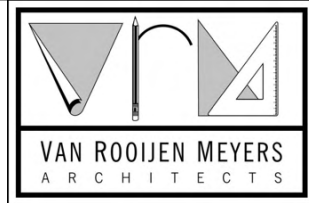
3 First Floor Plan-FSR
1 : 200

PROJECT: GENTIN
Project Name
250 Military Rd,
Dover Heights NSW 2030

FSR Calculations	
SCALE: 1 : 200	DRAWN: SO
DATE: 16 MAY 22	JOB NO: 892-20
DRAWING NO: A10	

NO.	DESCRIPTION	DATE

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BASIX

Certificate

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

Application No: DA-171/2022

Alterations and Additions

Date Received: 19/05/2022

Description of project

Project address	
Project name	11922, 250 Military Rd
Street address	250 Military Road Dover Heights 2030
Local Government Area	Waverley Council
Plan type and number	Deposited Plan 175693
Lot number	D
Section number	
Project type	
Dwelling type	Separate dwelling house
Type of alteration and addition	My renovation work is valued at \$50,000 or more, and does not include a pool (and/or spa).

Certificate Prepared by (please complete before submitting to Council or PCA)	
Name / Company Name: Max Brightwell	
ABN (if applicable): 95897024384	

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Alterations and Additions Definitions" dated 06/10/2017 published by the Department. This document is available at www.basix.nsw.gov.au

Secretary
Date of issue: Monday, 11, April 2022
To be valid, this certificate must be lodged within 3 months of the date of issue.



Fixtures and systems	Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
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	Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Insulation requirements			
The applicant must construct the new or altered construction (floor(s), walls, and ceilings/roofs) in accordance with the specifications listed in the table below, except that a) additional insulation is not required where the area of new construction is less than 2m2, b) insulation specified is not required for parts of altered construction where insulation already exists.			
Construction	Additional insulation required (R-value)		Other specifications
suspended floor with enclosed subfloor, concrete (R0.6).	R0.70 (down) (or R1.30 including construction)		
external wall: cavity brick	nil		
flat ceiling, flat roof: framed	ceiling: R3.00 (up), roof: foil/sarking		medium (solar absorptance 0.475 - 0.70)

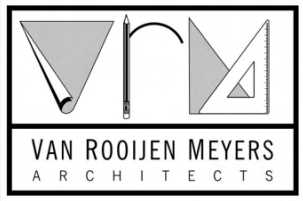
Glazing requirements	Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check			
Windows and glazed doors						
The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.	✓	✓	✓			
The following requirements must also be satisfied in relation to each window and glazed door:		✓	✓			
Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions.		✓	✓			
Each window or glazed door with improved frames, or pyrolytic low-e glass, or clear/air gap/clear glazing, or toned/air gap/clear glazing must have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions. The description is provided for information only. Alternative systems with complying U-value and SHGC may be substituted.		✓	✓			
For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill.	✓	✓	✓			
Pergolas with polycarbonate roof or similar translucent material must have a shading coefficient of less than 0.35.		✓	✓			
Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50 mm.		✓	✓			
Overshadowing buildings or vegetation must be of the height and distance from the centre and the base of the window and glazed door, as specified in the 'overshadowing' column in the table below.	✓	✓	✓			
Windows and glazed doors glazing requirements						
Window / door no.	Orientation	Area of glass inc. frame (m2)	Overshadowing Height (m) Distance (m)	Shading device	Frame and glass type	
W1	N	1.92	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W2	N	3.83	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)

Glazing requirements							Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Window / door no.	Orientation	Area of glass inc. frame (m2)	Overshadowing		Shading device	Frame and glass type			
			Height (m)	Distance (m)					
W3	S	2.88	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W4	S	0.81	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W5	S	3.6	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W6	E	7.88	0	0	eave/verandah/pergola/balcony >=450 mm	improved aluminium, single pyrolytic low-e, (U-value: 4.48, SHGC: 0.46)			
W7	E	2.34	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W8	W	2.16	3	3.8	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W9	N	4.56	0	0	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W10	E	2.16	3	3.8	eave/verandah/pergola/balcony >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W11	E	2.4	0	0	eave/verandah/pergola/balcony >=450 mm	improved aluminium, single pyrolytic low-e, (U-value: 4.48, SHGC: 0.46)			

Legend
In these commitments, "applicant" means the person carrying out the development.
Commitments identified with a "✓" in the "Show on DA plans" column must be shown on the plans accompanying the development application for the proposed development (if a development application is to be lodged for the proposed development).
Commitments identified with a "✓" in the "Show on CC/CDC plans & specs" column must be shown in the plans and specifications accompanying the application for a construction certificate / complying development certificate for the proposed development.
Commitments identified with a "✓" in the "Certifier check" column must be certified by a certifying authority as having been fulfilled, before a final occupation certificate for the development may be issued.

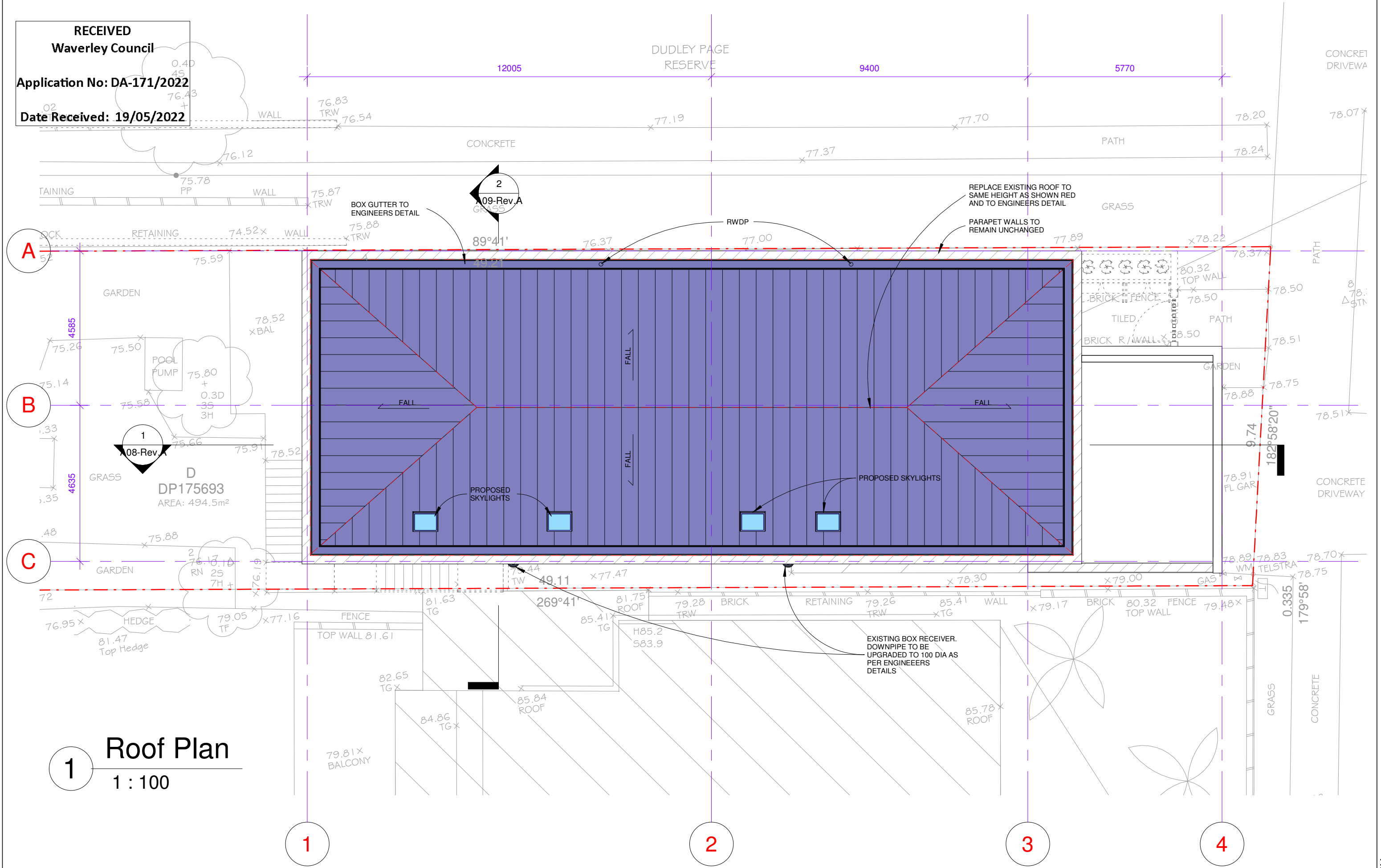
PROJECT: GENTIN Project Name 250 Military Rd, Dover Heights NSW 2030	BASIX		NO.	DESCRIPTION	DATE
	SCALE:	DRAWN: SO			
	DATE: 16 MAY 22	JOB NO: 892-20			
	DRAWING NO: A11				

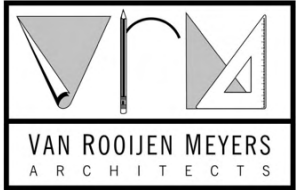
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Application No: DA-171/2022
Date Received: 19/05/2022



PROJECT: GENTIN Project Name 250 Military Rd, Dover Heights NSW 2030	Roof Plan		NO.	DESCRIPTION	DATE	NOTES: 1. The builder is to be held responsible for all levels and the setting out of the work on site. 2. Maintain existing dimensions as required. 3. Figured dimensions are to take precedence over scaling. 4. These plans remain the property of Van Rooijen Meyers and Partners Pty. Ltd., and the designs contained hereon are copyright. They may not be reproduced without permission.	 VAN ROOIJEN MEYERS ARCHITECTS	P.O. BOX 114, ROSE BAY NSW 2029 TEL: (02) 9371 9677 FAX: (02) 9371 0114 ARNOLD VAN ROOIJEN, AIA GARY MEYERS, AIA #4980
	SCALE: 1 : 100	DRAWN: WH						
	DATE: 16 MAY 22	JOB NO: 892-20						
	DRAWING NO: A16							

SHADOW DIAGRAMS OF EXISTING AND PROPOSED BUILDINGS

WINTER SOLSTICE Time: 9am

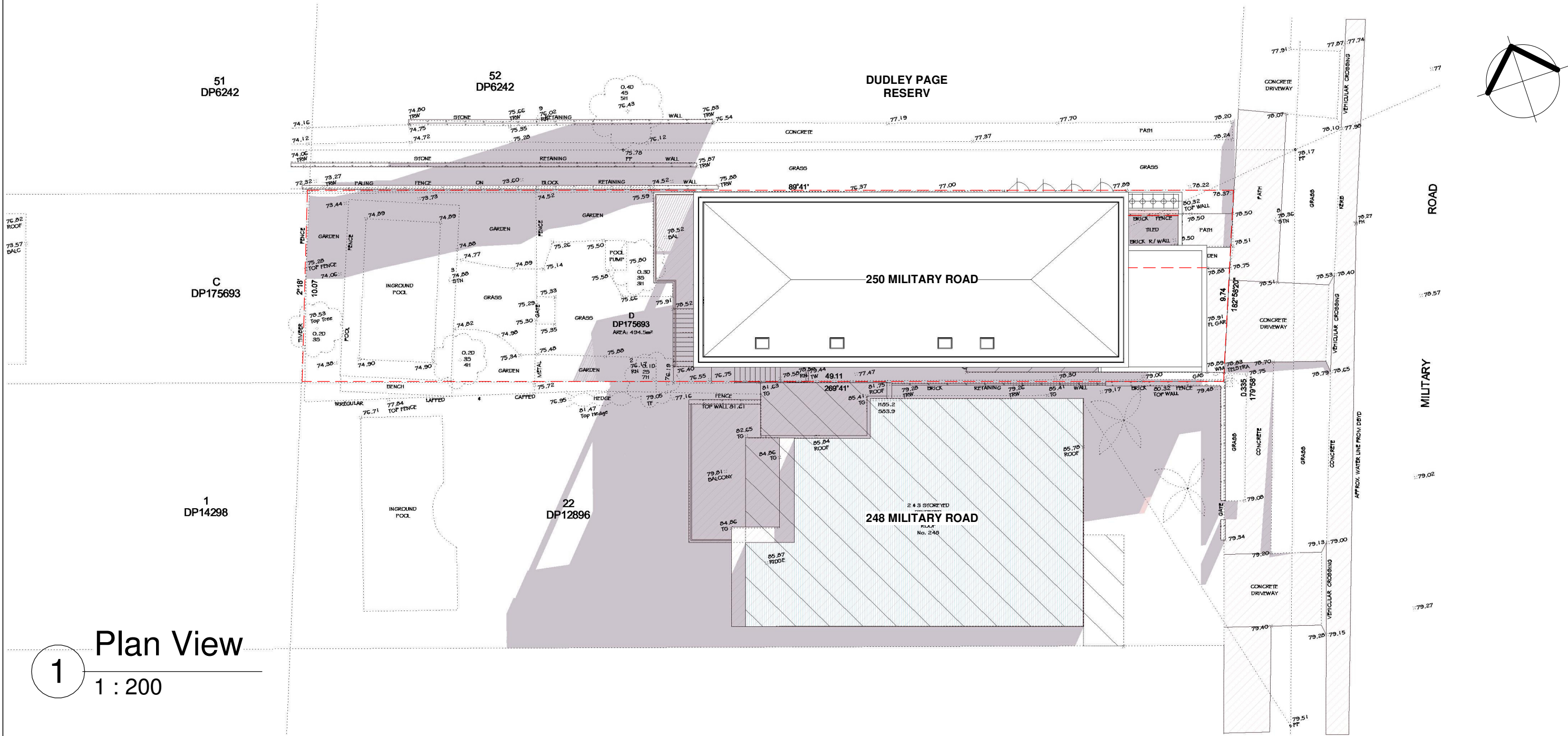
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Application No: DA-195/2022

Date Received: 2/05/2022

The information shown within this shadow analysis was formulated using BIM software where a 3d model of the sites including 248, 250 and Dudley Page Reserve Military road was created using a survey provided by ESA Survey Land Survey Consultants drawing number 4420/21 dated 07/07/21. The BIM software was configured to show the shadows cast in both its current and proposed form based on the sites location and date being the 21st June (Winter Solstice).

LEGEND	
	DENOTES AREA OF ADDITIONAL PROPOSED BUILDING SHADOW
	DENOTES AREA OF EXISTING AND SURROUNDING BUILDING SHADOW



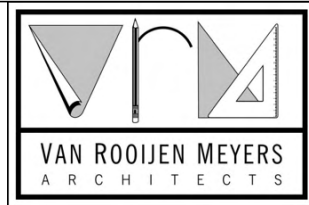
PROJECT: GENTIN

Project Name
**250 Military Rd,
Dover Heights NSW 2030**

Shadow Diagrams - 9am	
SCALE:	DRAWN: SO
DATE: 21 APR 22	JOB NO: 892-20
DRAWING NO: A13	

NO.	DESCRIPTION	DATE

NOTES: 1. The builder is to be held responsible for all levels and the setting out of the work on site. 2. Maintain existing dimensions as required. 3. Figured dimensions are to take precedence over scaling. 4. These plans remain the property of Van Rooijen Meyers and Partners Pty. Ltd., and the designs contained hereon are copyright. They may not be reproduced without permission.



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SHADOW DIAGRAMS OF EXISTING AND PROPOSED BUILDINGS

WINTER SOLSTICE Time: 12pm

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Application No: DA-195/2022

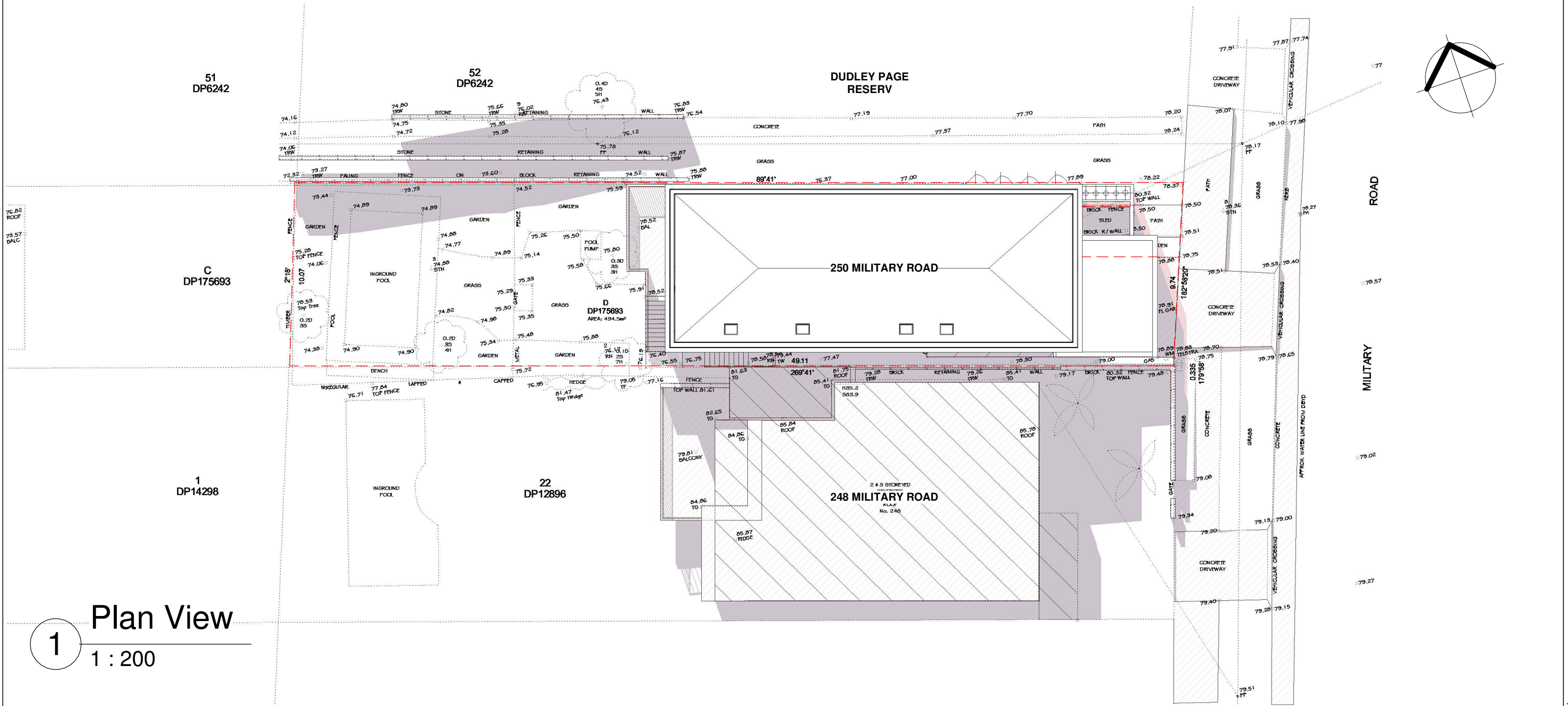
Date Received: 2/05/2022

The information shown within this shadow analysis was formulated using BIM software where a 3d model of the sites including 248, 250 and Dudley Page Reserve Military road was created using a survey provided by ESA Survey Land Survey Consultants drawing number 4420/21 dated 07/07/21. The BIM software was configured to show the shadows cast in both its current and proposed form based on the sites location and date being the 21st June (Winter Solstice).

LEGEND

DENOTES AREA OF ADDITIONAL PROPOSED BUILDING SHADOW

DENOTES AREA OF EXISTING AND SURROUNDING BUILDING SHADOW



SHADOW DIAGRAMS OF EXISTING AND PROPOSED BUILDINGS

WINTER SOLSTICE Time: 3pm

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Application No: DA-195/2022

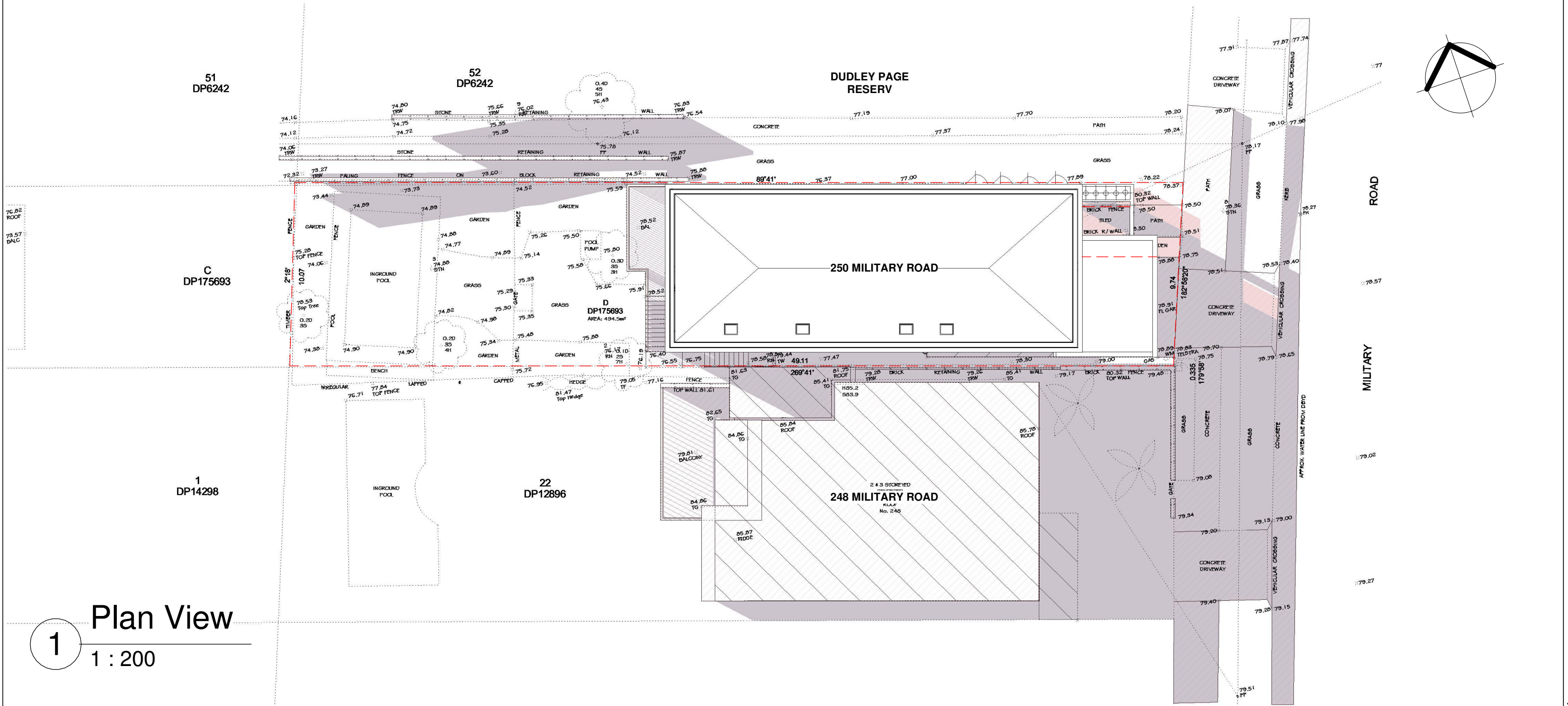
Date Received: 2/05/2022

The information shown within this shadow analysis was formulated using BIM software where a 3d model of the sites including 248, 250 and Dudley Page Reserve Military road was created using a survey provided by ESA Survey Land Survey Consultants drawing number 4420/21 dated 07/07/21. The BIM software was configured to show the shadows cast in both its current and proposed form based on the sites location and date being the 21st June (Winter Solstice).

LEGEND

DENOTES AREA OF ADDITIONAL PROPOSED BUILDING SHADOW

DENOTES AREA OF EXISTING AND SURROUNDING BUILDING SHADOW



1
Plan View
1 : 200

PROJECT: GENTIN Project Name 250 Military Rd, Dover Heights NSW 2030	Shadow Diagrams - 3pm		NO.	DESCRIPTION	DATE	NOTES: 1. The builder is to be held responsible for all levels and the setting out of the work on site. 2. Maintain existing dimensions as required. 3. Figured dimensions are to take precedence over scaling. 4. These plans remain the property of Van Rooijen Meyers and Partners Pty. Ltd., and the designs contained hereon are copyright. They may not be reproduced without permission.	<div><div></div><div>VAN ROOIJEN MEYERS ARCHITECTS</div></div>	P.O. BOX 114, ROSE BAY NSW 2029 TEL: (02) 9371 9677 FAX: (02) 9371 0114 ARNOLD VAN ROOIJEN, AIA GARY MEYERS, AIA #4980
	SCALE:	DRAWN: SO						
	DATE: 21 APR 22	JOB NO: 892-20						
	DRAWING NO: A15							



Report to the Waverley Local Planning Panel

Application number	DA-217/2022
Site address	Units 1 & 2, 16 Consett Avenue, BONDI BEACH
Proposal	Alterations and additions to Units 1 & 2 including modification to strata plan allotments
Date of lodgement	2 June 2022
Owner	Mr A J Anderson & Mr D P Anderson
Applicant	Miles Thorp Architects
Submissions	1 (in support)
Cost of works	\$328,185
Principal Issues	<ul style="list-style-type: none"> Existing Use Rights
Recommendation	That the application be APPROVED in accordance with the conditions contained in the report.

SITE MAP



1. PREAMBLE

1.1. Executive Summary

The development application seeks consent for alterations and additions to Units 1 & 2, including modification to Strata plan allotments at the site known as 16 Consett Avenue, BONDI BEACH.

The principal issues arising from the assessment of the application are as follows:

- Existing use rights;
- FSR non-compliance; and
- Inter-war building character.

The assessment finds these issues acceptable as the additional gross floor area (GFA) is to be contained within the existing built form at the ground floor level of the building and therefore maintains the environmental amenity of surrounding properties. Conditions are recommended to be imposed to ensure the building retains its existing character.

One submission was received in support of the application.

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. It is recommended for approval subject to conditions of consent.

1.2. Site and Surrounding Locality

A site visit was carried out on 1 July 2022.

The site is identified as Lot 3 in SP 22110, known as Units 1 and 2, 16 Consett Avenue, BONDI BEACH.

The site is rectangular in shape with a south-eastern frontage to Consett Avenue, measuring 8.13m. It has an area of 277m² and falls from the rear towards the front of the property by approximately 1.25m.

The site is occupied by a two storey residential flat building consisting of a total of four units with no vehicular access. Unit 1 is located on the ground floor to the front of the site and Unit 2 is located to the rear.

The site is adjoined by a single storey semi-detached dwelling to the northern side boundary and a two storey dwelling to the southern side boundary. The locality is characterised by a variety of low and medium density residential development in close proximity to the Hall Street Town Centre.



Figure 1: Site viewed from Consett Avenue, looking west

1.3. Relevant Development History

A search of Council's records revealed the following recent and relevant development history of the site:

- **L-585/2000:** Demolition of existing dilapidated stairway and its replacement. Approved 26 September 2000.
- **L-271/2002:** Unit 3 - Demolition of existing roof to residential flat building construct a new attic/storeroom plus outdoor area. Approved 20 March 2003.
- **L-272/2002:** Unit 4 - Partial demolition of existing tiled roof to RFB, construct a new/study/attic storage and outdoor area. Approved 20 March 2003.
- **DA-272/2002/A:** Unit 4 - Modification for alterations and additions to existing RFB. Approved 08 June 2006.

Condition No. 22 DA-272/2002/A required:

22 SURRENDERING OF CONSENT

The Development Consent L 271/2002 previously issued for alterations and additions to unit 3/16 Consett Venue is to be surrendered pursuant to the Environmental Planning and Assessment Regulation 2000 – Reg 97.

- **CCB-462/2007:** Unit 4 - Partial demolition of existing tiled roof to RFB construct a new/study/attic storage and outdoor area. Approved 23 November 2007. An Interim Occupation Certificate issued 6 September 2012

- **DA 272/2002/B:** Unit 4 - Modify proposed materials, internal reconfiguration of upper units and changes to planter on upper balcony. Approved 10 July 2012.
Condition No. 23 DA-272/2002/B required:

23. FIRE SAFETY UPGRADE

Fire safety upgrading works are to be carried out in accordance with the report prepared by BCA Logic dated 11 December 2007. Details of compliance are to be included with the Construction Certificate. All works are to be carried out within 3 months from the date of this determination and are to be certified by BCA Logic. The upper level is not to be occupied unless an occupation certificate is granted.

- **DA-373/2019:** Boundary Adjustment to existing residential flat building. Approved 2 December 2019.
- **DA-225/2022:** Unit 3 – Concurrent development application lodged seeking alterations and additions to Unit 3 including construction of a new attic space at second-floor level. At the time of writing this report, the plans are in the process of being amended to delete the new study space proposed and the conversion of the bay window to a balcony. It is anticipated the amended proposal will not result in any change to the GFA/FSR of the building.

1.4. Proposal

The development application seeks consent for alterations and additions to residential flat building, specifically the following:

Unit 1

- Refurbishment of the existing unit to enclose the existing entry (vestibule) to provide a two bedroom, two bathroom unit with an open plan kitchen and living area.
- Enlargement of existing window to the front façade.
- Installation of three new glass brick windows to the northern side elevation to the kitchen and living space.
- Installation of one glass brick window to the southern side elevation to the bathroom.
- Refurbishment of existing entry staircase to BCA standards.

Unit 2

- Refurbishment of the existing unit to provide a one bedroom plus study and one bathroom unit with an open plan kitchen and living area to the rear.
- Demolition of the existing door and window to the rear to access the rear garden to provide a larger sliding door and fixed window within the existing opening.
- Construction of new entry steps to the unit in the southern side boundary.

- Enlargement of existing window on the northern side elevation to provide a new glass brick window to the kitchen and living space.
- Installation of one glass brick window to the southern side elevation to the bathroom.
- Installation of a fire rated glass block blade wall to the rear of the unit.
- Minor extension of existing awning.

Other

- Amendments to strata plan to reflect proposed works.
- Installation of air conditioning units in the northern side setback.

1.5. Background

There is no background relevant to the subject application.

2. ASSESSMENT

2.1. Planning Instruments and Development Control Plans

The following is an assessment against relevant legislation, environmental planning instruments, including State environmental planning policies (SEPPs), and development control plans.

2.1.1. Existing Use Rights Provisions – Section 4.65 of the Act

A merit assessment of the following matters are to be considered of this development application under section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following is a merit assessment against relevant legislation, environmental planning instruments, including State environmental planning policies (SEPPs), and development control plans.

The development application relies on the ‘existing use rights’ provisions under Division 4.11 of the Act and Part 5 of the *Environmental Planning and Assessment Regulation 2000* (the Regulations) as the ‘residential flat building’ component of the proposal is prohibited in the R2: Low Density Residential Zone under Waverley Local Environmental Plan 2012 (Waverley LEP 2021).

Part 5 of the Regulations allows an existing use to be enlarged, expanded, intensified, altered or extended subject to development consent. Section 4.67 of the Act, concerning regulations respecting existing use, states the following:

(1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to—

(a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and

(b) the change of an existing use to another use, and

(c) the enlargement or expansion or intensification of an existing use.

(d) (Repealed)

- (2) The provisions (in this section referred to as the incorporated provisions) of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.*
- (3) An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.*
- (4) Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 4.33 to a development application for consent to carry out prohibited development.*

In *Saffioti v Kiama Municipal Council [2018] NSW LEC 1426* (Saffioti 2018), a Commissioner of the LEC considered the issue of whether the controls in a development control plan (DCP) could be considered in assessing the merits of an application for development consent for development with existing use rights. The Commissioner decided that the relevant controls in the DCP could be considered, as the Act provides that any provisions of an environmental planning instrument (EPI) which would derogate from the provisions in the Regulations have no effect. In Saffioti 2018, the Commissioner found that as a DCP is not an EPI, section 4.67(3) does not apply to the provisions of such an instrument. The Commissioner also considered provisions of the LEP and found that only those provisions of the LEP which could have the effect of prohibiting the development derogated from the incorporated provisions and therefore could not be taken into account.

The Applicant appealed against the Commissioner's findings to a Judge of the Court on questions of law. The appeal was heard by the Chief Judge of the Court and failed on all grounds.

What can be taken away from Saffioti 2018, is that provisions of an EPI (e.g. a local environmental plan) may establish factual pre-conditions that a consent authority must be satisfied exist in order to grant development consent or fix developmental standards. An applicant seeking development consent to enlarge, expand or intensify an existing use must comply with any such provisions.

Such provisions will not derogate from the existing use 'incorporated provisions' in the Regulations. They will only do so (and have no effect for the purpose of section 4.67(3) of the EPA Act) if they derogate from the entitlement to make the relevant development application.

Previously, existing use rights have been assessed as if the provisions of the LEP and DCP do not apply and can only be used as a guide to development in as much as they control development upon surrounding sites. Existing Use Right assessments have been based upon four questions as set out in *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71*.

Given the outcome of *Saffioti 2018*, the assessment of existing use rights should be considered against both the development standards of the LEP and the controls of the DCP as detailed within this report. The applicant has submitted a written request under clause 4.6 of the LEP to contravene a development standard, which is considered in **section 2.1.4** of this report.

In terms of other matters relating to existing use rights, the existing use is not considered to be abandoned as it has not ceased to be used for a continuous period of 12 months.

2.1.2. State Environmental Planning Policies (SEPPs)

The SEPP (Building Sustainability Index – BASIX) 2004 applies and has been considered acceptable in the assessment of this development application.

2.1.3. Draft Waverley Local Environmental Plan 2022 (Draft Waverley LEP 2022)

The Draft Waverley Local Environmental Plan 2022 was exhibited from 12 November 2021 to 23 January 2022, however at the time of this assessment, there are no relevant matters for consideration.

2.1.4. Waverley LEP 2012

The relevant matters to be considered under the Waverley LEP 2012 for the proposed development are outlined below:

Table 1: Waverley LEP 2012 Compliance Table

Provision	Compliance	Comment
Part 1 Preliminary		
1.2 Aims of plan	Yes	The proposal is consistent with the aims of the plan.
Part 2 Permitted or prohibited development		
2.6 Subdivision – consent requirements	Yes	The application seeks amendments to the existing Strata subdivision of the four units under this application.
Land Use Table R2: Low Density Residential Zone	Existing Use Rights	The proposal is defined as a RFB that is prohibited in the R2: Low Density Zone. The existing building was approved and constructed prior to the LEP prohibiting the use within the zone and as such is considered

Provision	Compliance	Comment
		to be an Existing Use under Division 4.11 of the EP&A Act.
Part 4 Principal development standards		
4.3 Height of buildings <ul style="list-style-type: none"> 8.5m 	No change	The existing building is non-compliant with Council's maximum building height control however, no change to existing building height is proposed as part of this proposal.
4.4 Floor space ratio <ul style="list-style-type: none"> FSR: 0.5:1 GFA: 148.5m² 	No	Existing GFA: 314m ² Existing FSR: 1.06:1 Existing Variation: 111% (+165.5m ²) Proposed GFA: 323m ² (+9m ²) Proposed FSR: 1.09:1 Proposed Variation: 118% (174.5m ²)
4.6 Exceptions to development standards	See discussion	The application is accompanied by a written request pursuant to clause 4.6 of Waverley LEP 2012 to vary the FSR development standard. A detailed discussion of the variation to the development standard is presented below this table.
Part 5 Miscellaneous provisions		
5.10 Heritage conservation	Recommended Conditions	<p>The site is not a heritage item and is not located within an existing conservation area; however, the site is located within the Draft O'Brien Estate Urban Conservation Area.</p> <p>The site adjoins a heritage item along the northern side boundary at 18 Consett Avenue and at the rear at 17 and 19 Chambers Avenue.</p> <p>Council's Heritage Advisor has reviewed the proposal due to the proximity of the nearby heritage items and its style as an inter-war flat building. Conditions are recommended to be imposed to maintain the character of the building and its contribution to the streetscape. This is further discussed in Section 2.1.5 of this report.</p>

The following is a detailed discussion of the issues identified in the compliance table above in relation to the Waverley LEP 2012.

Clause 4.6 Exceptions to Development Standards

The application seeks to vary the FSR development standard in clause 4.4 under Waverley LEP 2012.

The site is subject to a maximum FSR development standard of 0.5:1. The proposed development increases the GFA by 9m² and has a FSR of 1.09:1, exceeding the standard by 174.5m² equating to a 118% variation.

A written request has been submitted to Council in accordance with clause 4.6(3)(a) and (b) of Waverley LEP 2012 seeking 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 standard.

A copy of the applicant's written request has been provided to the Waverley Local Planning Panel for consideration.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

The applicant seeks to justify the contravention of the FSR development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) *The proposal is compatible with the desired character of the area. The proposal maintains the overall height, bulk and scale of the existing building and has a built form that is generally consistent with that envisaged by Council's controls.*
 - (ii) *The proposal is located within an existing non-compliant building. The proposed new works are largely internal, with no change to the overall building envelope which presents as part two and part three storeys to Consett Avenue. This results in no change to the scale in the context of surrounding development and continues to positively contribute to the character of the street.*
 - (iii) *The extent of additional non-compliance is minor.*
 - (iv) *The proposal will modify the existing part two and part three storey residential flat building with high quality alterations and additions that make a positive contribution to the locality and have a bulk and scale that will be compatible with the desired future character of the area, notwithstanding the existing use rights provisions.*
 - (v) *As the additional GFA is located at the ground level and within the existing building footprint, there will be no substantial change to the streetscape appearance when compared to the existing situation.*
 - (vi) *There will be no change to the existing scale of development or any change to the building height, or front, side and rear setbacks. The proposal will therefore preserve the environmental amenity of the locality in respect of streetscape character, privacy, solar access and views.*
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) *The extent of additional floor area is minor and occurs at ground level only;*

- (ii) *The location of the additional non-compliant area is located at the front of the building. However, as it is located within an existing semi-enclosed vestibule, will not be readily noticeable from Consett Avenue;*
- (iii) *Despite the non-compliance, the proposed FSR facilitates a scale of residential development that is limited to part two and part three storeys, consistent with the planning objectives of the area as well as other developments in the locality;*
- (iv) *The scale of the proposal will be the same as its existing relationship within the streetscape;*
- (v) *The proposal represents a preferred design outcome as the works occur within the existing building envelope to minimise visual impact;*
- (vi) *Removal of the non-complying element to achieve strict compliance would not result in an improved planning outcome, as this would require the removal of a significant portion of the existing built form;*
- (vii) *The area of non-compliance would not create material impacts on the amenity of adjoining development in respect of privacy given it is located at the ground level only;*
- (viii) *The area of non-compliance will not create material impacts to the amenity of adjoining development in respect of solar access and views, compared to the existing situation; and*
- (ix) *The variation results in improved internal amenity for the occupants.*

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of clause 4.6 being 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 standard; and
- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at clause 4.6(3)(a)?

It is considered that the applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and has referenced one or more of the following justifications as set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446:

- (a) *the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- (b) *to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (c) *to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*

- (d) to establish that 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; and*
- (e) to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant specifically relies upon justification (a) outlined above to address clause 4.6(3)(a) of Waverley LEP 2012. The applicant's justification is considered sound, particularly as the additional GFA is to be located within the existing non-compliant building and the proposal results in no change to the existing building envelope. The proposal would not have amenity impacts upon neighbouring properties and the existing setbacks of the building are maintained.

Does the written request adequately address those issues at clause 4.6(3)(b)?

The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard.

Is the development in the public interest?

The proposed development will be in the public interest because it is consistent with both the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out, despite the fact that the building has existing use rights.

The relevant objectives of the FSR development standard are as follows:

- (b) to provide an appropriate correlation between maximum building heights and density controls,*
- (c) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,*
- (d) to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and the locality.*

The proposal results in a minor increase in GFA (9m²) that equates to a further 7% variation above the existing variation of 111% of the existing building. Notwithstanding, the building footprint, setbacks, height and bulk of the existing building remain unchanged, as the additional floor space is contained within the existing built form. As the bulk and scale of the existing building remains unchanged, the proposal is considered to be consistent with the desired future character of the area. The proposal will not result in any unreasonable privacy, overshadowing or view impacts as outlined further in this report and as a result, the amenity of surrounding properties will be preserved.

The subject site enjoys the benefit of existing use rights. Given that the R2 zoning prohibits the land use of residential flat buildings, the R2 zoning does not apply to the development as it is this part of the LEP which derogates from the existing use 'incorporated provisions' in the Regulations.

Notwithstanding, an assessment against the objectives of the zone is provided following for an abundance of caution.

The objectives of the R2: Low Density Residential zone are as follows:

- *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 maximise public transport patronage and encourage walking and cycling.*

The proposal maintains the existing density on site while providing enhanced residential amenity for two of the four existing units within the building. The development is consistent with the objective to provide for the housing needs of the community within a low density residential environment.

Conclusion

For the reasons provided above the requested variation to the FSR development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Waverley LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the FSR development standard and the R2: Low Density Residential Zone.

2.1.5. Waverley Development Control Plan 2012 (Waverley DCP 2012) – Amendment No.9

Given the zoning of the site and immediate surrounds to low density residential development and the Hall Street Town Centre, it is still considered appropriate to assess the development against the controls reflective of residential flat buildings. The relevant matters to be considered under WDCP 2012 for the proposed development are outlined below:

Table 2: Waverley DCP 2012 – Part B General Provisions Compliance Table

Development Control	Compliance	Comment
1. Waste	Yes	Satisfactory.
2. Ecologically Sustainable Development	Yes	Satisfactory.
3. Landscaping and Biodiversity	Yes	Satisfactory.
5. Vegetation Preservation	Yes	No tree removal required.
7. Accessibility and Adaptability	Yes	Satisfactory.
10. Safety	Yes	Satisfactory.
12. Design Excellence	Recommended Conditions	<i>See discussion below.</i>

Development Control	Compliance	Comment
17. Inter War Buildings	Recommended Conditions	<p>The following aspects of the proposal are recommended to be amended by way of conditions of consent to maintain the character of the building and its contribution to the streetscape:</p> <ul style="list-style-type: none"> No consent is to be granted for the enlargement of the existing window to Unit 1 on the front façade (W01 on the plans). The window is to retain its existing proportions. The proposed glass brick windows are not supported and are to be amended to match the proportions and style of the existing windows on the northern and southern side elevations. The windows provided to the bathrooms of Units 1 and 2 are to be amended to be highlight windows and fitted with translucent glazing to maintain privacy.

Table 3: Waverley DCP 2012 – Part C3 Other Residential Development Compliance Table

Development Control	Compliance	Comment
3.1 Site, scale and frontage		
<ul style="list-style-type: none"> Minimum frontage 	N/A	Not strictly applicable as the site is located within the R2 zone. The site frontage remains unchanged with the proposal.
3.2 Height		
<ul style="list-style-type: none"> Maximum external wall height 	N/A	Not strictly applicable, as the site is located within the R2 zone. The height of the building remains unchanged with the proposal.
3.3 Setbacks		
3.3.1 - Street setbacks <ul style="list-style-type: none"> Consistent street setback 	Yes	The existing setback of the building to Consett Avenue is retained.
3.3.2- Side and rear setbacks	Yes	The existing side and rear setbacks of the building are retained.
3.4 Length and depth of buildings		
<ul style="list-style-type: none"> Maximum building length: 24m Façade to be articulated Maximum unit depth: 18m 	Yes	The existing length and depth of the building is retained. The reconfiguration of Units 1 and 2 do not result in a single unit having a depth greater than 18m.

Development Control	Compliance	Comment
3.5 Building design and streetscape		
<ul style="list-style-type: none"> Respond to streetscape Sympathetic external finishes Corner sites to address both streets as primary frontages Removal of original architectural features not supported. 	Recommended Conditions	The building is an inter-war RFB and the proposed modifications to the windows and the installation of glass brick windows are not acceptable. Conditions are recommended to be imposed to ensure the character of the building and streetscape are retained. <i>See discussion above for further details.</i>
3.7 Fences and walls		
	Yes	No change to fencing on site.
3.8 Pedestrian access and entry		
<ul style="list-style-type: none"> Entry at street level and respond to pattern within the street Accessible entry Separate to vehicular entry Legible, safe, well-lit 	Yes	The proposal provides for reconfigured entries to Units 1 and 2 at the ground floor level of the building that are accessible and legible for occupants and visitors to the site.
3.9 Landscaping		
	Yes	No change to existing landscaping on site.
3.10 Communal open space		
	Yes	The proposed amendments to the Strata plan would not impact upon the existing communal areas within the development. No change to existing solar access received.
3.11 Private Open Space		
	NA	The ground floor external area is communal.
3.13 Solar access and overshadowing		
	Yes	The proposed works are contained within the existing building footprint and will not result in any additional shadow impacts to surrounding properties. Furthermore, the units will continue to receive solar access as existing.
3.14 Views and view sharing		
	Yes	No view loss anticipated as the proposed works are contained to the existing built form at the ground floor level.
3.15 Visual privacy and security		
<ul style="list-style-type: none"> Dwellings to be orientated to the street with entrances and street numbering visible 	Recommended Conditions	As previously discussed, a condition is recommended to be imposed for the size and proportions of the proposed windows to be amended to be consistent with the character of windows of the existing building. It is

Development Control	Compliance	Comment
<ul style="list-style-type: none"> Privacy be considered in relation to context density, separation use and design. 		recommended the glass brick windows provided to the bathrooms of units 1 and 2 at the southern side elevation be amended to highlight windows and fitted with translucent glazing to maintain privacy.
3.16 Dwelling size and layout		
<ul style="list-style-type: none"> Max habitable room depth for single aspect dwelling is 8m from a window Max width of dwelling over 15m deep is min 4m All habitable rooms to have a window Provide a range of dwelling types and sizes Min sizes 1 bedroom = 50m² 2 bedroom = 80m² Flexible design 	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Merit Assessment</p>	<p>The proposal results in the following unit sizes:</p> <ul style="list-style-type: none"> Unit 1: 73m² Unit 2: 58m² <p>Unit 1 is an existing two bedroom unit that is non-compliant with the minimum size for a two bedroom unit. Unit 2 is an existing single bedroom unit only. The proposed reconfiguration of the units will enhance the existing residential amenity for occupants and is considered acceptable.</p>
3.17 Ceiling Heights		
<ul style="list-style-type: none"> Min 2.7m floor to ceiling height residential floors 	Yes	The existing floor to ceiling heights of the units are retained.
3.18 Storage		
<p>In addition to kitchen cupboards and bedroom wardrobes, min storage required is:</p> <ul style="list-style-type: none"> Studio and 1 bed = 6m³ 2 bed = 8m³ 	Yes	Additional storage is to be provided within the units which is acceptable.
3.19 Acoustic privacy		
<ul style="list-style-type: none"> Internal amenity by locating noisy areas away from quiet areas 	Yes	The development is considered to maintain acoustic privacy for the occupants of the site and surrounding properties.
3.20 Natural Ventilation		
	Yes	The plans demonstrate the location of two air conditioning units within the northern side setback. The units have cross ventilation.
3.21 Building services		
	Yes	The existing location of services are to be retained with the proposal. The placement of two AC units within the northern side setback would not be highly visible from the streetscape due to the existing building setback at the front of the site and is acceptable.

2.2. Other Impacts of the Development

The proposal is considered to have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

2.3. Suitability of the Site for the Development

The site is considered suitable for the proposal.

2.4. Any Submissions

The application was notified for 14 days between 14 and 30 June 2022 in accordance with the *Waverley Community Development Participation and Consultation Plan*. One submission was received from the 4/16 Consett Avenue, BONDI BEACH in support of the application.

2.5. Public Interest

The proposal is considered to have no detrimental effect on the public interest, subject to appropriate conditions being imposed.

3. REFERRALS

The following internal and external referral comments were sought:

3.1. Heritage

See comments in section 2.1.4 of this report.

3.2. Fire Safety

The application was referred to Council's Fire Safety Officer who provided the following comments:

Pursuant to Section 64 of the Environmental Planning and Assessment Regulations 2021, it is necessary for Council to determine whether the measures contained in the existing building are inadequate:

(a) to protect persons using the building, and to facilitate their egress from the building, in the event of fire, or

(b) to restrict the spread of fire from the building to other buildings nearby.

An assessment of proposal revealed that there may be a number of non-compliances with the BCA including, but not limited to: -

(i) possible fire separation issues between existing residential sole occupancy units and common areas (i.e. Section C of BCA);

NB. All new building works must comply with the BCA, in particular, protection of openings and fire resistance levels of building elements. The Certifying Authority must ensure subject works can comply with the BCA prior to the issue of a Construction Certificate.

Perusal of Council records indicate that the subject building was required to undergo fire safety upgrade works pursuant to conditions of development consent detailed in DA-585/2000 and DA-272/2002 (and associated Sec. 96 Applications). A Final Occupation Certificate was issued in relation to DA-272/2002 in circa 2020.

Conditions of consent are recommended to be imposed, should the application be supported. These conditions form part of the recommended conditions of consent in Appendix A.

4. CONCLUSION

The development application seeks consent for alterations and additions to Units 1 & 2 including modification to strata plan allotments at the site known as 16 Consett Avenue, BONDI BEACH.

The principal issues arising from the assessment of the application are as follows:

- Existing Use Rights;
- FSR Non-compliance; and
- Inter-war building character.

The assessment finds these issues acceptable, subject to recommended conditions of consent relating to the maintenance of the existing building character. The proposal will enhance the residential amenity for occupants of the subject unit and the additional GFA is to be contained within the existing building footprint, maintaining environmental amenity for surrounding properties.

One submission was received in support of the application.

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the Act. It is recommended for approval subject to conditions of consent.

Development and Building Unit (DBU) Decision:

The application was reviewed by the DBU at the meeting on 5 July 2022 and the DBU determined:

- (a) The application is acceptable and should be approved, subject to the conditions in Appendix A.

DBU members: *B McNamara, B Magistrale, T Sneesby*

5. RECOMMENDATION TO WAVERLEY LOCAL PLANNING PANEL

That the development application be APPROVED by the Waverley Local Planning Panel subject to the conditions in Appendix A.

Report prepared by:



Judith Elijah
Senior Development Assessment Planner

Date: 8 July 2022

**Application reviewed and agreed on behalf of
the Development and Building Unit by:**



Bridget McNamara
**Manager, Development Assessment
(Reviewed and agreed on behalf of the
Development and Building Unit)**

Date: 12 July 2022

Reason for WLPP referral:

1. Departure from any development standard in an EPI by more than 10%

APPENDIX A – CONDITIONS OF CONSENT

A. APPROVED DEVELOPMENT

1. APPROVED PLANS AND DOCUMENTATION

The development must be in accordance with:

(a) Architectural Plans prepared by Miles/Thorp Architects including the following:

Plan No.	Revision	Plan Description	Plan Date	Date received by Council
A05	02	Site Plan	29.03.2022	1 June 2022
A06	02	Proposed Ground Plan	29.03.2022	1 June 2022
A09	02	Proposed Elevations 1/2	29.03.2022	1 June 2022
A10	02	Proposed Elevations 2/2	29.03.2022	1 June 2022
A11	02	Proposed Section	29.03.2022	1 June 2022
A14	02	BASIX	29.03.2022	1 June 2022

(b) BASIX Certificates

(c) Draft Strata Plan prepared by Miles/Thorp Architects dated 29 March 2022 and received by Council on 1 June 2022.

(d) Schedule of external finishes and colours received by Council on 01/06/2022

(e) The Site Waste and Recycling Management Plan (SWRMP) Part 1 01/06/2022

Except where amended by the following conditions of consent.

2. GENERAL MODIFICATIONS

The application is approved subject to the following plan amendments;

- (a) No consent is granted to the enlargement of the existing window to Unit 1 on the front façade, labelled as W01 on the plans. The window is to be amended to retain its existing proportions to maintain the character of the building and its presentation to the streetscape.
- (b) The glass brick windows on the northern side elevation labelled W08, W09, W10 and W11 on the plans are not approved. These windows are to be amended to match the proportions and style of the existing windows of the building to maintain the character of the building. Should windows labelled W09, W10 and W11 be unable to be modified due to the building separation, these windows are to be deleted.
- (c) The glass brick windows provided to the bathrooms of Units 1 and 2 on the southern side elevation, labelled windows W04 and W05 on the plans, are to be amended to be highlight windows with translucent glazing to maintain privacy. The windows are to be in a style that is characteristic of existing windows to maintain the character of the building.

The amendments are to be approved by the **Executive Manager, Development Assessment or delegate** prior to the issue of any Construction Certificate. An electronic copy of the amended plans or additional information (see website for electronic document requirements) addressing this condition, including a covering letter shall be provided to Council for review.

3. COMMON PROPERTY

No exclusive use of common property shall occur without the prior consent of council.

B. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies that the approval of Council or a Council Officer is required.

GENERAL REQUIREMENTS

4. NO BUILDING OR DEMOLITION WORKS PRIOR TO RELEASE OF CONSTRUCTION CERTIFICATE

The building work, or demolition work, must not be commenced until:

- (a) a Construction Certificate has been obtained from Council or an Accredited Certifier in accordance with the *Environmental Planning and Assessment Act 1979*;
- (b) a Principal Certifying Authority has been appointed and Council has been notified of the appointment in accordance with the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*; and
- (c) Council is given at least two days' notice in writing of the intention to commence the building works.

CONTRIBUTIONS, FEES & BONDS

5. SECTION 7.12 CONTRIBUTION

A monetary development contribution is payable to Waverley Council pursuant to section 7.12 of the *Environmental Planning and Assessment Act 1979* and the Waverley Council Development Contributions Plan 2006 in accordance with the following:

- (a) A cost report indicating the itemised cost of the development shall be completed and submitted to Council:
 - (i) Where the total development cost is less than \$500,000:
"Waverley Council Cost Summary Report"; or,
 - (ii) Where the total development cost is \$500,000 or more:
"Waverley Council Registered Quantity Surveyor's Detailed Cost Report".

A copy of the required format for the cost reports are provided in the Waverley Council Contributions Plan 2006, available on Council's website.

- (b) As legislated in section 25K of the Environmental Planning and Assessment Regulation 2000, the levy must be paid in accordance with the following;

- (i) A development valued at \$100,000 or less will be exempt from the levy;
- (ii) A development valued at \$100,001 - \$200,000 will attract a levy of 0.5% of the full cost of the development; or
- (iii) A development valued at \$200,001 or more will attract a levy of 1% of the full cost of the development.

Prior to the issue of any Construction Certificate, evidence must be provided that the levy has been paid to Council in accordance with this condition or that the cost of works is less than \$100,000.

6. SECURITY DEPOSIT

A deposit (cash or cheque) or guarantee for the amount of **\$9,200.00** must be provided to Council for any damage caused to any property of the consent authority (ie. public land) as a consequence of the works and completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent.

This deposit (cash or cheque) or guarantee must be provided to Council prior to the issue of any Construction Certificate. The full amount of the deposit, minus Council's costs for any repair of damage to Council property or rectification of unauthorised works on Council property, will be refunded after satisfactory completion all of works associated with this consent (including the required public works) to the person who paid the deposit.

7. LONG SERVICE LEVY

A long service levy, as required under section 34 of the *Building and Construction Industry Long Service Payments Act, 1986*, is to be paid in respect of this building work. Evidence that the levy has been paid is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Note: Council acts as an agent for the Long Service Payment Corporation and the levy may be paid at Council's office. The levy rate is 0.35% of building work costing \$25,000 or more.

CONSTRUCTION & SITE MATTERS

8. HOARDING

To ensure the site is contained during construction, a hoarding is required for the approved works, which is to be designed and constructed in accordance with the requirements of Safe Work NSW. Where the hoarding is to be erected over the footpath or any public place, the approval of Council's Compliance Unit must be obtained and the applicable fees paid, prior to the erection of the hoarding.

9. EROSION & SEDIMENT CONTROL

A Soil and Water Management Plan (SWMP), also known as an Erosion and Sediment Control Plan must be prepared in accordance with Waverley Council's Water Management Technical Manual.

The SWMP must be approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. A copy of the SWMP must be kept on site at all times and made available to Council officers upon request.

The recommendations of the SWMP must be implemented and maintained during all construction activities and until the site is fully stabilised following construction.

10. ENGINEERING DETAILS

Structural details are to be prepared and certified by a practicing Structural Engineer in connection with all structural components of the approved works, prior to the issue of the relevant Construction Certificate.

TRAFFIC MANAGEMENT

11. CONSTRUCTION TRAFFIC MANAGEMENT PLAN (CTMP)

The applicant is to submit a Construction Traffic Management Plan (CTMP) for the approval of Council's Executive Manager, Infrastructure Services, or delegate, prior to the issue of any Construction Certificate. For further information on what is required in the CTMP, please refer to Council's website at:

https://www.waverley.nsw.gov.au/building/development_applications/post_determination/development_applications_-_conditions_of_consent

ENERGY EFFICIENCY & SUSTAINABILITY

12. BASIX

All requirements of the BASIX Certificate and NatHERS documentation are to be shown on the Construction Certificate plans and documentation.

FIRE SAFETY

13. BUILDING CODE OF AUSTRALIA

All building work must be carried out in accordance with the requirements of the Building Code of Australia.

14. ESSENTIAL SERVICES - EXISTING BUILDING

Details of the currently implemented and proposed essential fire safety measures shall be submitted to Council, with the Construction Certificate, in the form of a Fire Safety Schedule. This Schedule shall be prepared by a person competent to do so and shall specify the minimum standard of performance for each essential fire safety measure included in the Schedule.

At the completion of the installation, a Final Fire Safety Certificate shall be attached to the Occupation Certificate, certifying that each essential fire safety measure specified within the current Fire Safety Schedule:

- (a) has been assessed by a properly qualified person; and
- (b) found to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building for which the Certificate is issued.

15. FIRE SAFETY UPGRADING WORKS

- a) In addition to all new works fully comply with the Building Code of Australia, pursuant to Section 64 of the Environmental Planning and Assessment Regulations 2021, **units 1 & 2** must be upgraded to comply with the following provisions of the Building Code of Australia 2019 (BCA):
 - (i) The subject sole-occupancy units must be separated adjoining sole occupancy units and internal common areas by building elements that comply with the fire resistance performance requirements set out in CP2 and CP8 of Volume 1 of the Building Code of Australia;
 - (ii) Smoke hazard management - Part E2;
 - (iii) Sanitary and other facilities - Part F2;
 - (iv) Room heights - Part F3; and
 - (v) Light and ventilation - Part F4.
- b) If compliance with the deemed-to-satisfy provisions of the BCA and the matters listed in condition (a) above cannot be achieved, an alternative building solution in accordance with Part A2 of the BCA must be prepared by a suitably qualified and accredited person and be submitted to the Certifying Authority illustrating how the relevant performance requirements of the BCA are to be satisfied. Prior to a Construction Certificate being issued, the Certifying Authority must ensure that the building complies with the Building Code of Australia.
- c) The BCA matters identified in (a) above are not an exhaustive list of conditions to verify compliance or non-compliance with the BCA. Any design amendments required to achieve compliance with the BCA must be submitted to Council. Significant amendments may require an application under Section 4.55 of the Act to be lodged with Council to amend this consent.
- d) Prior to the commencement of any required upgrade works, a Construction Certificate must be issued by an accredited Certifying Authority and an accredited PCA be appointed. The required upgrading works detailed in this condition must be completed prior to the issue of an Occupation Certificate.

Note: The provisions of Section 64 of the Environmental Planning and Assessment Regulations 2021 have been considered in the assessment of the proposed development.

WASTE

16. SITE WASTE AND RECYCLING MANAGEMENT PLAN

A *Site Waste and Recycling Management Plan (SWRMP) - Part 2* is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Construction Certificate, which outlines materials to be reused and/or recycled as a result of demolition and construction works. At least one copy of the *SWRMP Part 2* is to be available on site at all times during construction. Copies of demolition and construction waste dockets that verify the facility that received the material for recycling or disposal and the quantity of waste received, must be retained on site at all times during construction.

17. DILAPIDATION REPORT

A Dilapidation report is to be prepared for any adjoining or nearby property that may be subject to potential damage as a result of any works being undertaken. The dilapidation report is to be made available to affected property owners.

The report is to be dated, submitted to, and accepted by the Principal Certifying Authority, prior to any work commencing on the site.

Note: Any damage that may be caused is a civil matter. This consent does not allow or authorise any party to cause damage, trespass, or any other unlawful act and Council will not be held responsible for any damage that may be caused to adjoining buildings as a consequence of the development being carried out. Council will not become directly involved in disputes between the builder, owner, developer, its contractors and the owners of neighbouring buildings.

18. SERVICE AUTHORITIES

The applicant is to seek approval from the relevant service authorities regarding any possible modification to the existing infrastructure within the vicinity of the site prior to the issue of a Construction Certificate.

C. COMPLIANCE PRIOR TO WORK COMMENCING AND DURING CONSTRUCTION

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required.

PRIOR TO ANY WORKS

19. CONSTRUCTION SIGNS

Prior to commencement of any works on the site and during construction a sign shall be erected on the main frontage of the site detailing the name, address and contact details (including a telephone number) of the Principal Certifying Authority and principal contractor (the coordinator of the building works). The sign shall be clearly legible from the adjoining street/public areas and maintained throughout the building works.

DEMOLITION

20. DEMOLITION – ASBESTOS AND HAZARDOUS MATERIALS

The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2017;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- *Protection of the Environment Operations Act 1997*.

At least 5 days prior to the demolition, renovation work or alterations and additions to any building, the person acting on the consent shall submit a Work Plan to the Principal Certifying Authority in accordance with Australian Standard AS 2601-2001, Demolition of Structure and a Hazardous Materials Assessment prepared by a person with suitable expertise and experience. The Work Plan and Hazardous Materials Assessment shall:

- (a) Outline the identification of any hazardous materials, including surfaces coated with lead paint;
- (b) Confirm that no asbestos products are present on the subject land, or
- (c) particularise a method of safely disposing of the asbestos in accordance with the Code of Practice on how to safely remove asbestos published by SafeWork NSW (catalogue WC03561);
- (d) Describe the method of demolition;
- (e) Describe the precautions to be employed to minimise any dust nuisance; and
- (f) Describe the disposal methods for hazardous materials.

21. CONTROL OF DUST ON CONSTRUCTION SITES

The following requirements apply to demolition and construction works on site:

- (a) Hazardous dust is not to be allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended. Any existing accumulations of dust (e.g. ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particle air (HEPA) filter. All dusty surfaces and dust created from work are to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.
- (b) All contractors and employees directly involved in the removal of hazardous dusts and substances are to wear protective equipment conforming to Australian Standard AS1716 Respiratory Protective Devices.

CONSTRUCTION MATTERS

22. CONSTRUCTION HOURS

Demolition and building work must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays and 8am to 3pm on Saturdays, with no work to be carried out on Sundays and public holidays.

Excavation works involving the use of heavy earth movement equipment, including rock breakers and the like, must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays, with no such work to be carried out on Saturday, Sunday or a public holiday.

Noise from construction activities shall comply with the *Protection of the Environmental Operations (Noise Control) Regulation 2017*.

23. STOCKPILES, STORAGE OF MATERIALS AND LOCATION OF BUILDING OPERATIONS

All building materials and any other items associated with the development are to be stored within the property. No materials are to be stored on Council's footpath, nature strip, or road reserve without prior Council approval.

24. CONSTRUCTION INSPECTIONS

The building works are to be inspected during construction by the Principal Certifying Authority (PCA) in accordance with the *Building Legislation Amendment (Quality of Construction) Act 2002*, clause 162A of the *Environmental Planning and Assessment Regulation 2000* and the requirements of any other applicable legislation or instruments.

25. WORK OUTSIDE PROPERTY BOUNDARY

This consent does not authorise any work outside the property boundary.

TREE PROTECTION AND REMOVAL

26. TREE PROTECTION

All trees on site and adjoining properties, including street trees, are to be retained and protected in accordance with AS4970-2009 'Protection of Trees on Construction Sites' and to be certified by an Arborist with AQF level 5 qualification or above, unless approved to be removed in this development consent.

27. STREET TREES TO BE RETAINED/TREE PROTECTION

No existing street trees shall be removed without Council approval. Precautions shall be taken when working near trees to ensure their retention, including the following:

- (a) Do not store harmful or bulk materials or spoil under or near trees;
- (b) Prevent damage to bark and root system;
- (c) Do not use mechanical methods to excavate within root zones;
- (d) Do not add or remove topsoil from under the drip line;
- (e) Do not compact ground under the drip line;
- (f) Do not mix or dispose of liquids within the drip line of the tree; and
- (g) All trees marked for retention must have a protective fence/guard placed around a nominated perimeter in accordance with AS4970-2009 "Protection of trees on construction sites.

D. PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE OR SUBDIVISION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required, prior to the issue of an Occupation Certificate or Subdivision Certificate, whichever applies.

CERTIFICATES, LICENCES, EASEMENTS AND RESTRICTIONS

28. FINAL OCCUPATION CERTIFICATE

Prior to occupation or use of the development, an Occupation Certificate must be obtained.

The Principal Certifying Authority must be satisfied that the requirements of the *Environmental Planning & Assessment Act 1979* have been satisfied including all critical stage inspections. Documentary evidence of all required inspections is to be submitted to Council.

29. SUBDIVISION CERTIFICATE

The Strata Plan shall be updated to reflect the approved scheme. A Subdivision Certificate must be obtained in accordance with Section 109C(d) of the Environmental Planning and Assessment Act 1979, prior to the registration of the subdivision plans.

30. CERTIFICATION OF BASIX COMMITMENTS

The Principal Certifying Authority shall certify that the all the undertakings in the approved BASIX certificate have been completed.

E. ADVISORY MATTERS

The following advisory matters are provided as additional information to ensure compliance with the relevant legislation and requirements. You must also check other Commonwealth and NSW Acts and Regulations which may apply to the works or use approved in this application.

AD1. POST CONSENT CONDITIONS REQUIRING COUNCIL INPUT

Various conditions require further input, review or approval by Council in order to be satisfied following the determination of the application (that is, post consent). In those instances, please adhere to the following process to avoid delays:

- Please read your conditions carefully.
- Information to be submitted to Council should be either via email to info@waverley.nsw.gov.au or via the NSW Planning Portal (if required).
- Attention the documentation to the relevant officer/position of Council (where known/specified in condition).
- Include DA reference number.
- Include condition number/s seeking to be addressed.
- Where multiple conditions need Council input, please try to group the documentation / email/s into relevant subjects (multiple emails for various officers may be necessary, for example).
- Information to be submitted in digital format – refer to ‘Electronic lodgement guidelines’ on Council’s website. Failure to adhere to Council’s naming convention may result in documentation being rejected.
- Where files are too large for email, the digital files should be sent to Council via CD/USB. Council does not support third party online platforms (data in the cloud) for receipt of information.
- Please note, in some circumstances, additional fees and/or additional documents (hard copy) may be required.
- Council’s standard for review (from date the relevant officer receives documentation) is 14 days. Times may vary or be delayed if information is not received in this required manner.

AD2.SYDNEY WATER REQUIREMENTS

You may be required to submit your plans to the appropriate Sydney Water office to determine whether the development will affect Sydney Water’s sewer and water mains, stormwater drains and/or easements.

Contact Sydney Water for more information.

AD3.DIAL BEFORE YOU DIG

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (this is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new

development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

AD4. TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

AD5. TREE REMOVAL/PRESERVATION





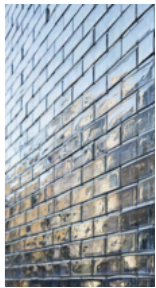
Any trees not identified for removal in this application have not been assessed and separate approval may be required. Any pruning of trees on adjoining properties required for the erection of scaffolding and/or the construction of the building may also require approval.

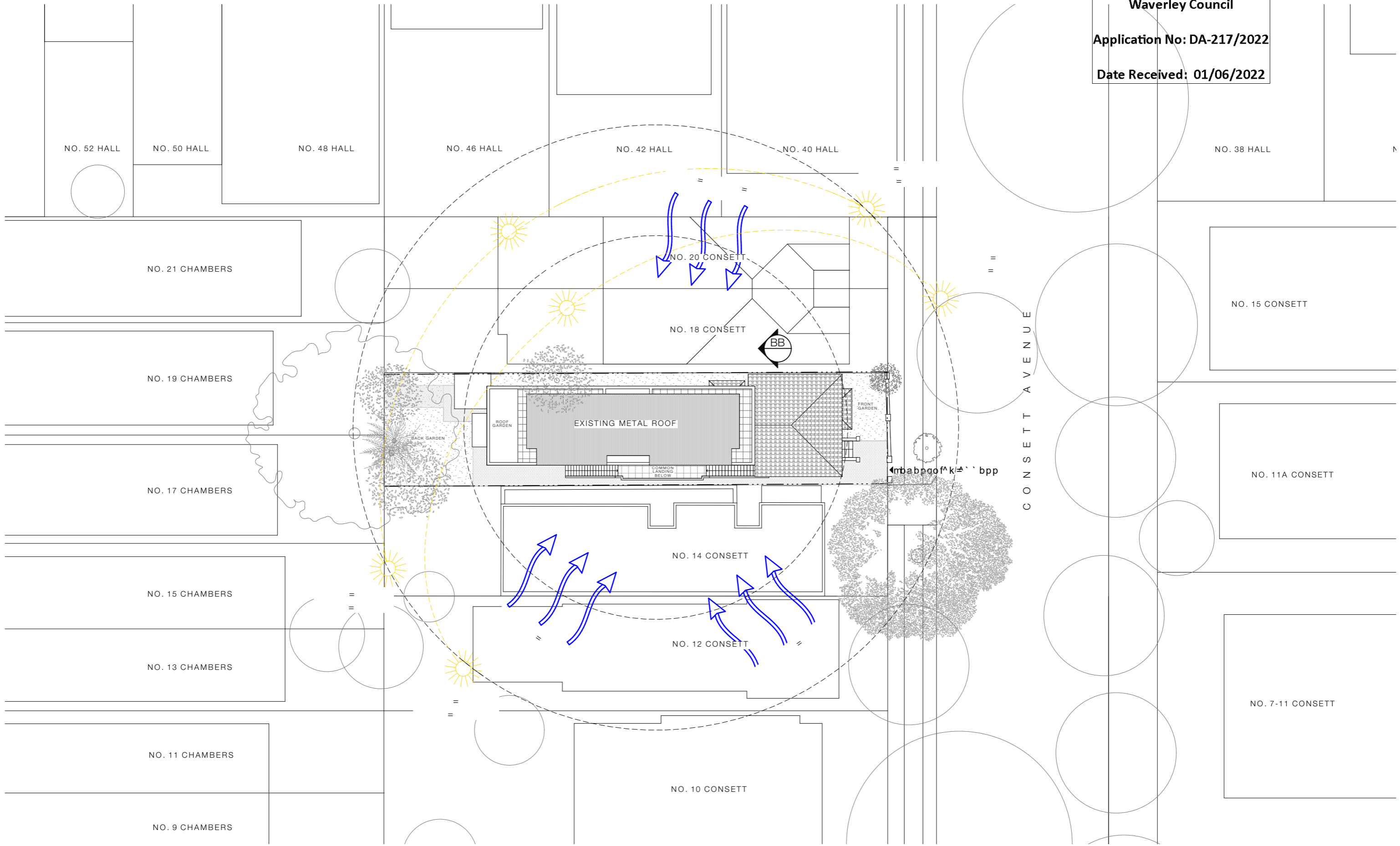


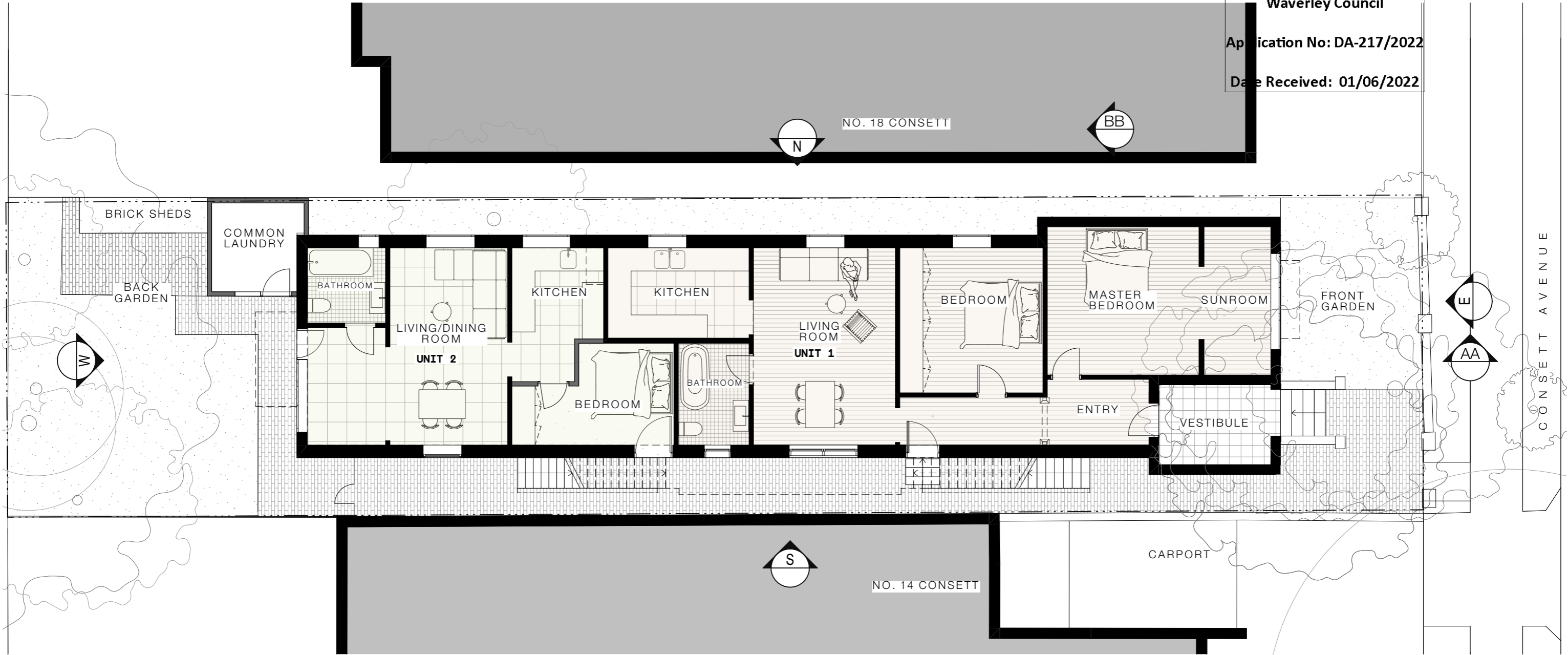
DRAWING INDEX

Number	Drawing Title	Scale	Revision	Date
A00	Cover Sheet		REV02	29.03.2022
A01	Site Analysis	1:250	REV02	29.03.2022
A02	Existing Ground Plan	1:100	REV02	29.03.2022
A03	Existing Elevations 1/2	1:100	REV02	29.03.2022
A04	Existing Elevations 2/2	1:100	REV02	29.03.2022
A05	Site Plan	1:250	REV02	29.03.2022
A06	Proposed Ground Plan	1:100	REV02	29.03.2022
A07	GFA Diagrams	1:200	REV02	29.03.2022
A08	Proposed Strata Plan	1:100	REV02	29.03.2022
A09	Proposed Elevations 1/2	1:100	REV02	29.03.2022
A10	Proposed Elevations 2/2	1:100	REV02	29.03.2022
A11	Proposed Section	1:100	REV02	29.03.2022
A12	Shadow Diagrams	1:500	REV02	29.03.2022
A13	3D Views		REV02	29.03.2022
A14	BASIX		REV02	29.03.2022

EXTERNAL FINISHES SCHEDULE

				
PAV Brick paving	FB Textured render smooth rendered band face brick to match existing	TMB-1 Timber windows	TMB-2 Timber windows White painted finish	GB Glass blocks





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Waverley Council
Application No: DA-217/2022
Date Received: 01/06/2022

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Redfern NSW 2016
Australia

FINISHES
PAV BRICK PAVING
FB FACE BRICK TO MATCH EXISTING
TMB-1 TIMBER DOOR/WINDOW - CLEAR FINISH
TMB-2 TIMBER DOOR/WINDOW - WHITE FINISH
GB GLASS BLOCK

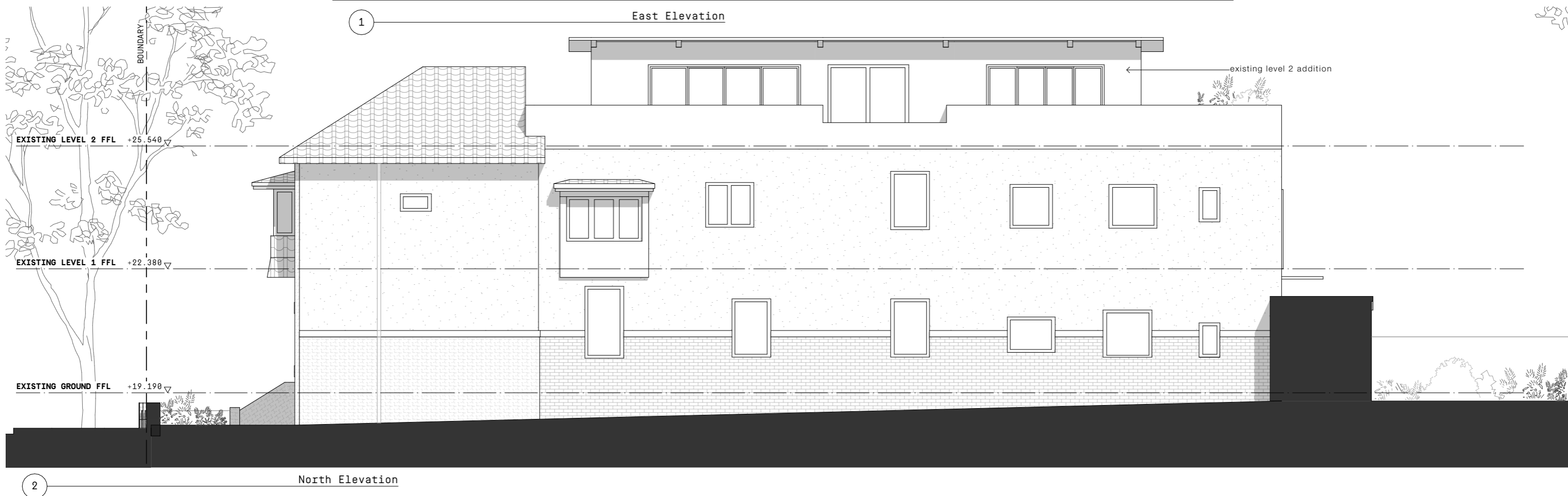
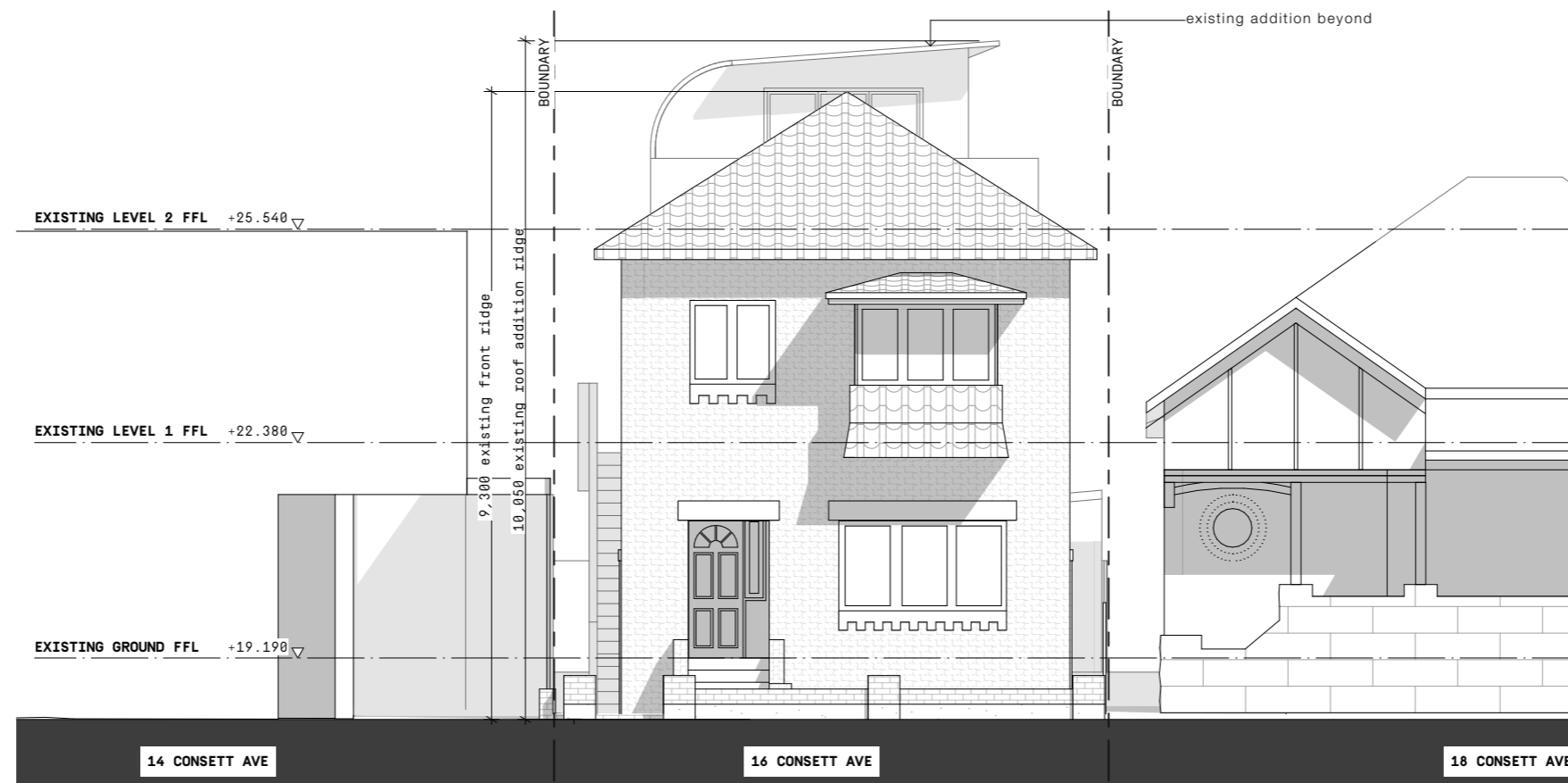
LEGEND
EXISTING
DEMOLISHED
PROPOSED

client
ARVAN & DAMON ANDERSON
project address
Units 1 & 2 16 Consett Avenue
Bondi Beach NSW 2026

revision history
REV00 07.02.2022 draft DA
REV01 17.02.2022 DA
REV02 29.03.2022 DA

scale
1:100 @ A3
north
drawing number
A02
drawing title
Existing Ground Plan

revision
REV02
issue date
29.03.2022



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FINISHES 材料、色、質、種別、施工方法

PAV BRICK PAVING
FB FACE BRICK TO MATCH EXISTING
TMB-1 TIMBER DOOR/WINDOW - CLEAR FINISH
TMB-2 TIMBER DOOR/WINDOW - WHITE FINISH
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REV00	07.02.2022	draft DA
REV01	17.02.2022	DA
REV02	29.03.2022	DA

scale

1:100 @ A3

north



drawing number

A03

drawing title

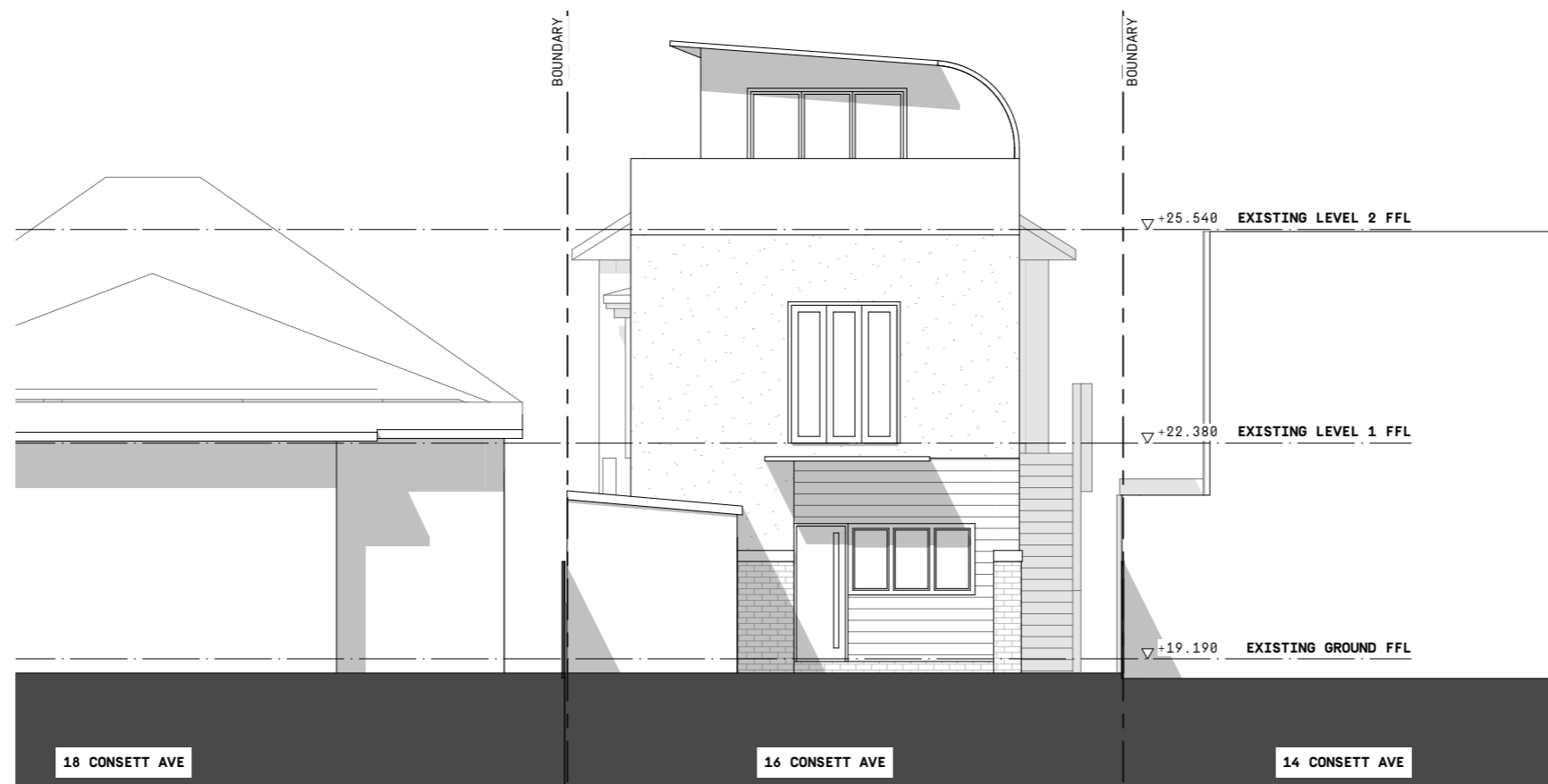
Existing Elevations 1/2

revision

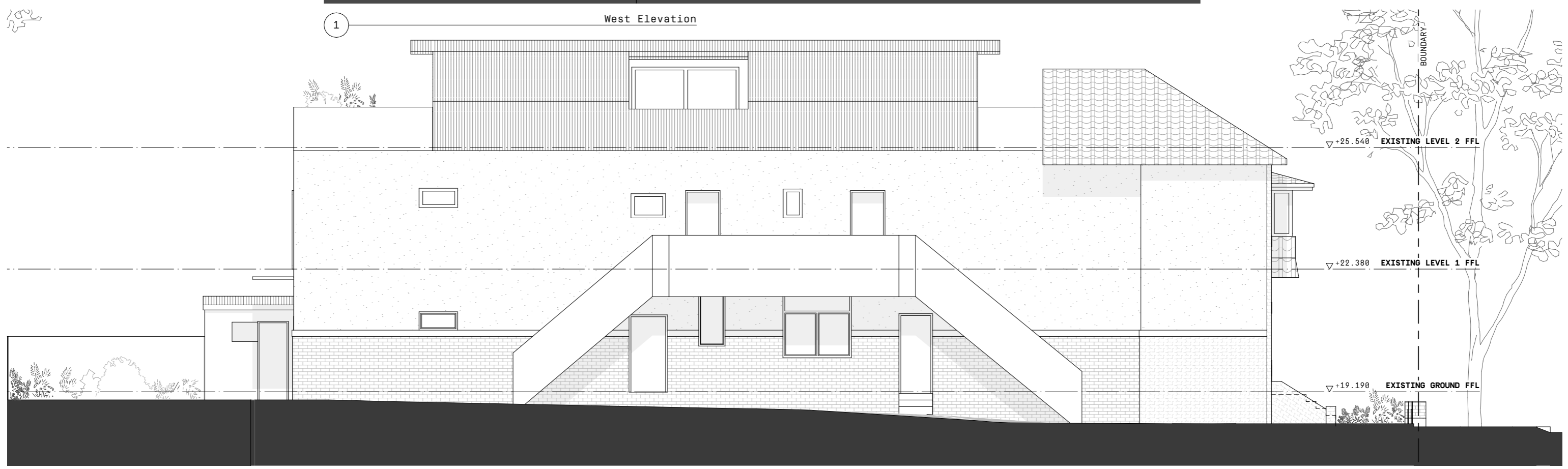
REV02

issue date

29.03.2022



1 West Elevation



2 South Elevation

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LEGEND	LEGEND
EXISTING	EXISTING
DEMOLISHED	DEMOLISHED
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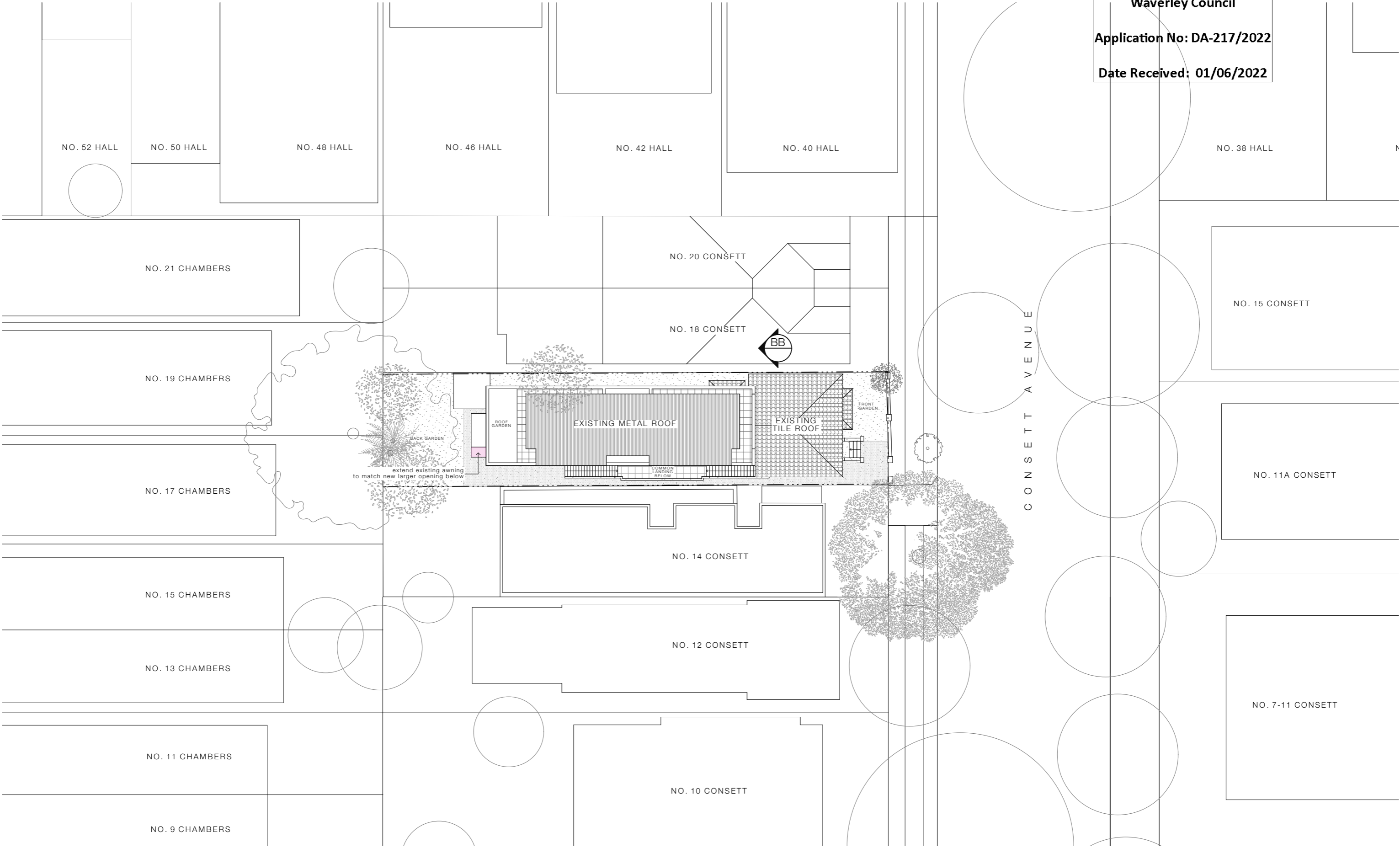
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REV00	07.02.2022
REV01	17.02.2022
REV02	29.03.2022

draft DA	draft DA
DA	DA
DA	DA

scale	scale
1:100 @ A3	1:100 @ A3
north	north

drawing number	drawing number
A04	A04
drawing title	drawing title
Existing Elevations 2/2	Existing Elevations 2/2

revision	revision
REV02	REV02
issue date	issue date
29.03.2022	29.03.2022



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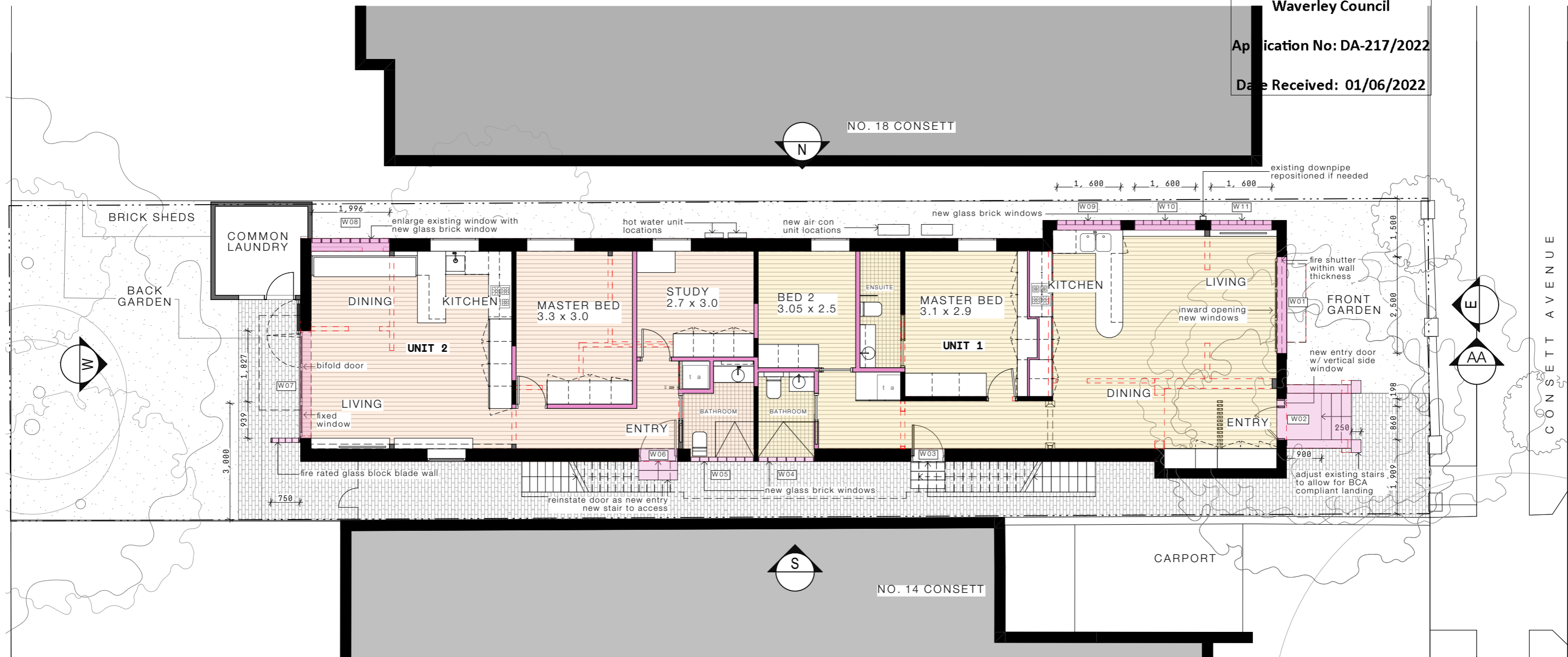
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project address
Units 1 & 2 16 Consett Avenue
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revision history
REV00 07.02.2022
REV01 17.02.2022
REV02 29.03.2022
draft DA
DA
DA

scale
1:250 @ A3
north
drawing number
A05
drawing title
Site Plan

revision
REV02
issue date
29.03.2022



1 Ground Proposed GA

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FINISHES
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TMB-1 TIMBER DOOR/WINDOW - CLEAR FINISH
TMB-2 TIMBER DOOR/WINDOW - WHITE FINISH
GB GLASS BLOCK

LEGEND
EXISTING
DEMOLISHED
PROPOSED

client
ARVAN & DAMON ANDERSON

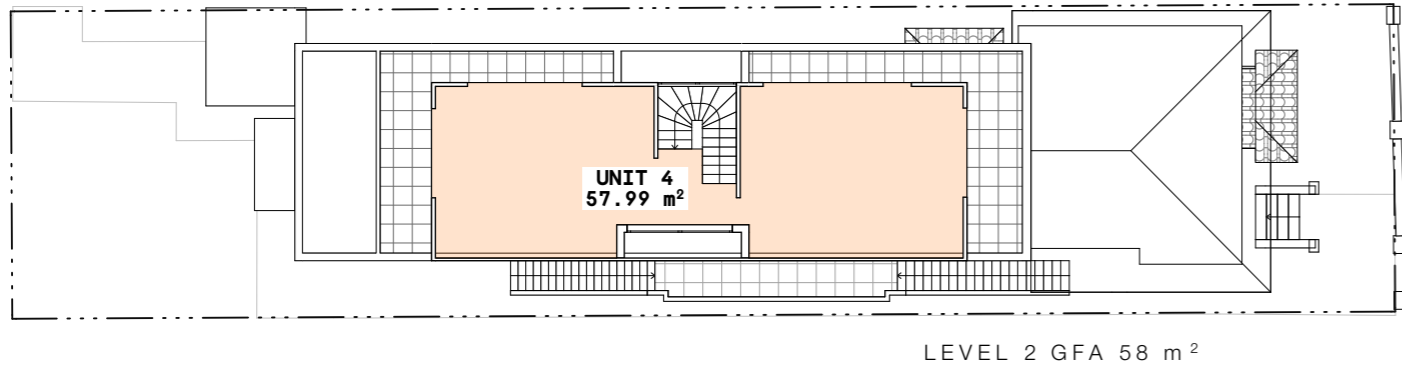
project address
Units 1 & 2 16 Consett Avenue
Bondi Beach NSW 2026

revision history
REV00 07.02.2022 draft DA
REV01 17.02.2022 DA
REV02 29.03.2022 DA

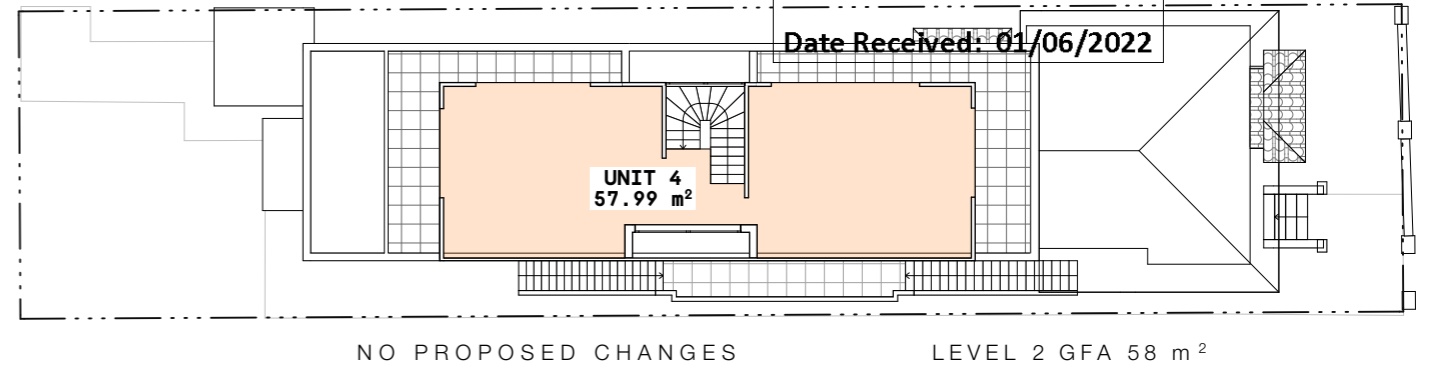
scale
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north

drawing number
A06
drawing title
Proposed Ground Plan

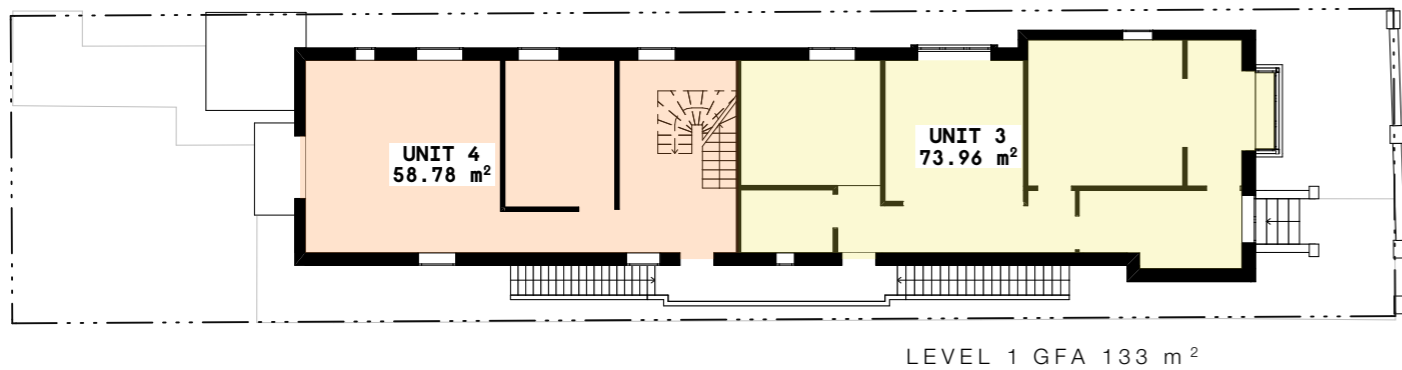
revision
REV02
issue date
29.03.2022



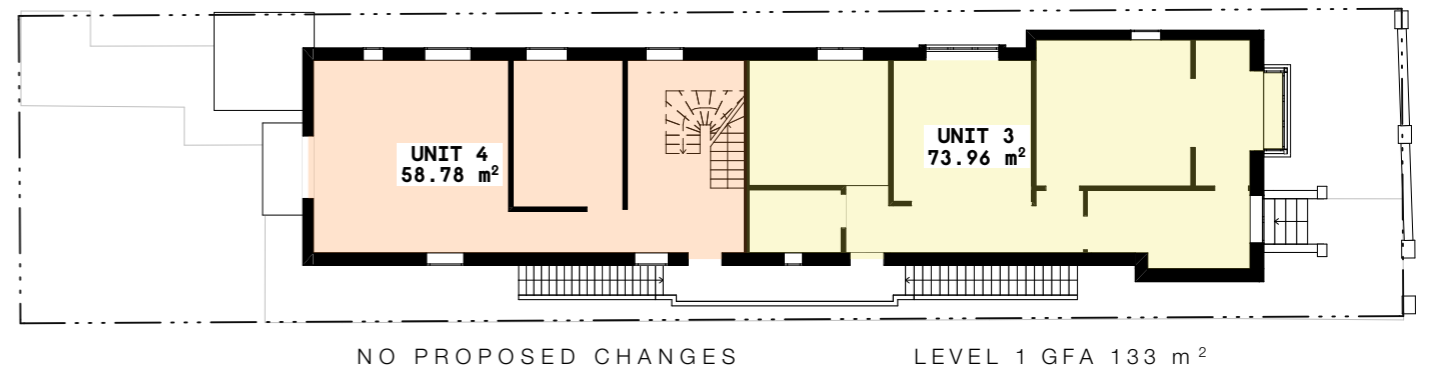
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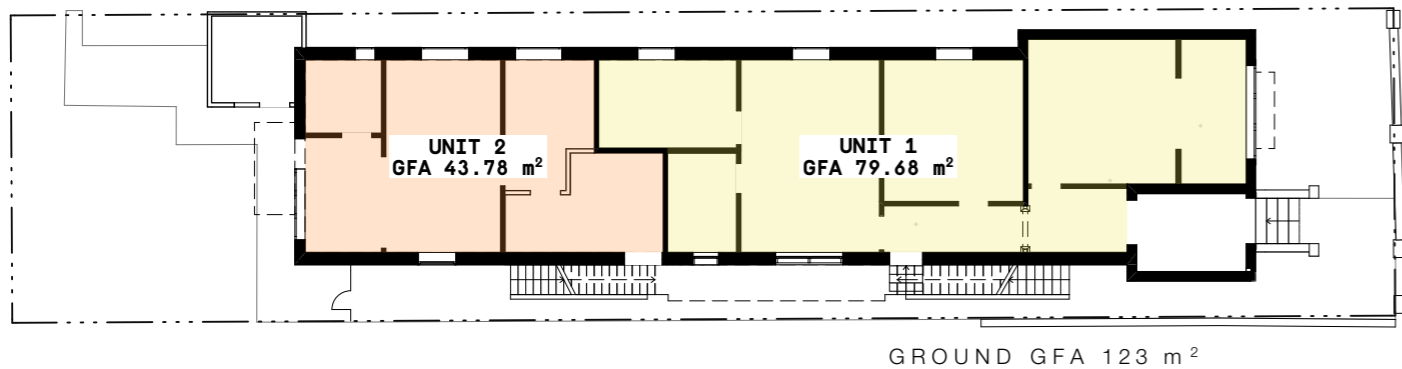
2 Proposed GFA Diagram Level 2



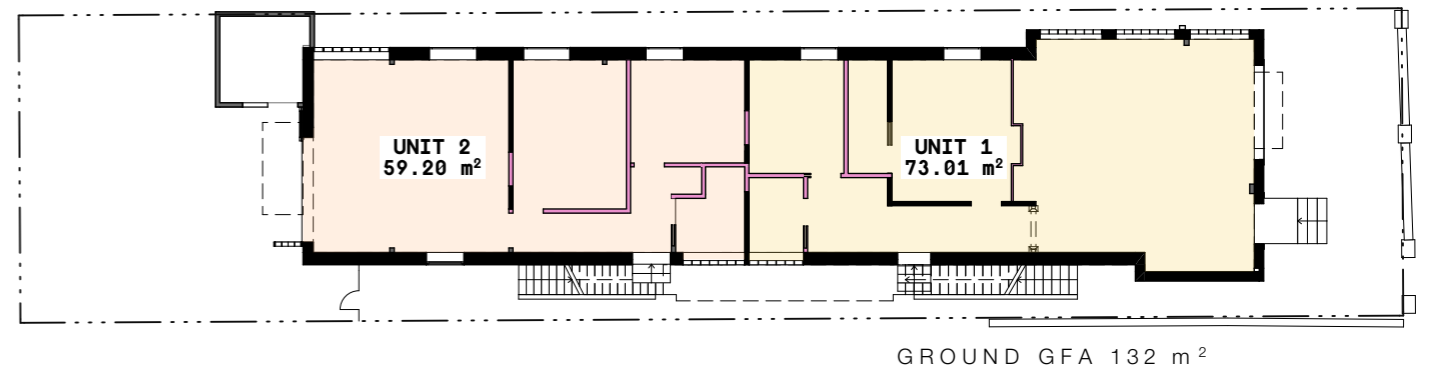
3 Existing GFA Diagram Level 1



4 Proposed GFA Diagram Level 1



5 Existing GFA Diagram Ground



6 Proposed GFA Diagram Ground

TOTAL GFA 314 m²
SITE AREA 297 m²
EXISTING FSR = 1.06

TOTAL GFA 323 m²
SITE AREA 297 m²
PROPOSED FSR = 1.09

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GB GLASS BLOCK

LEGEND
EXISTING
DEMOLISHED
PROPOSED

client
ARVAN & DAMON ANDERSON

project address
Units 1 & 2 16 Consett Avenue
Bondi Beach NSW 2026

revision history
REV00 07.02.2022
REV01 17.02.2022
REV02 29.03.2022

draft DA
DA
DA

scale
1:200 @ A3

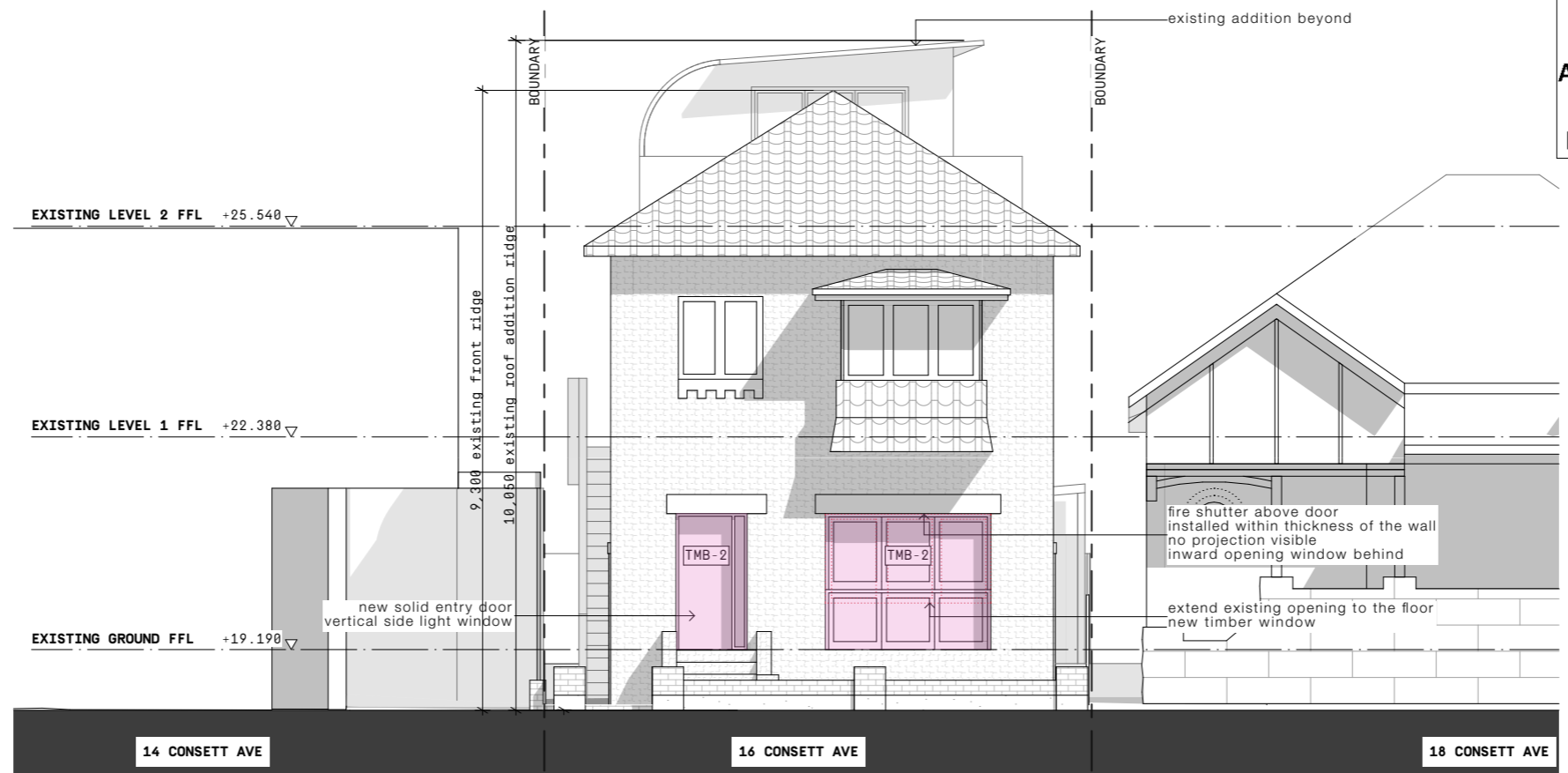
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drawing number
A07

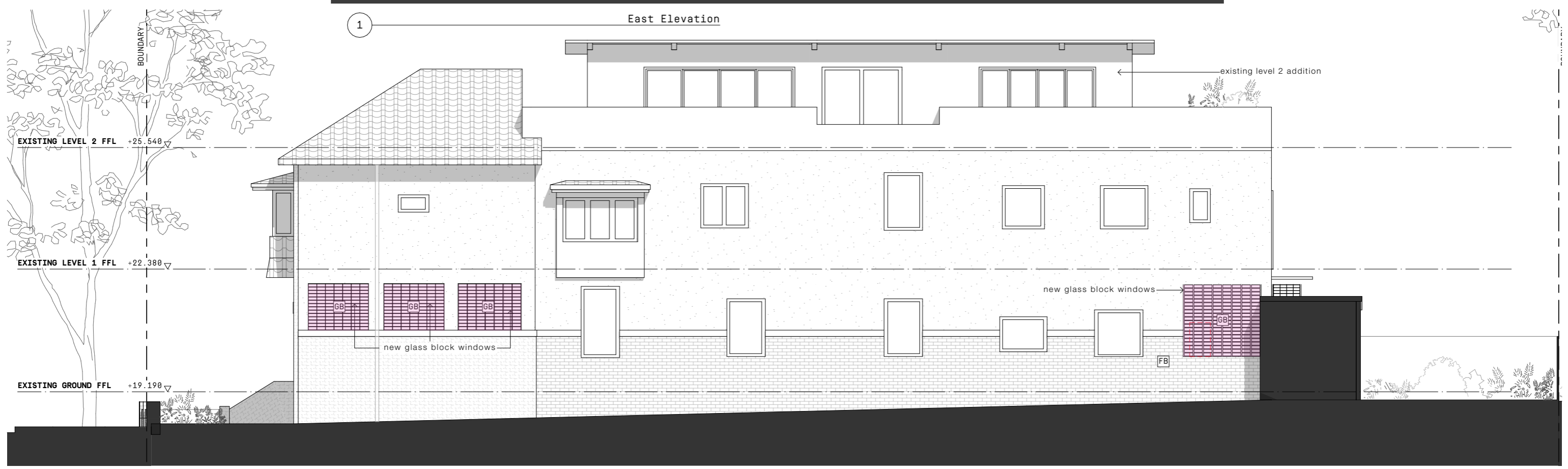
drawing title
GFA Diagrams

revision
REV02

issue date
29.03.2022



1 East Elevation



2 North Elevation

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FB	FACE BRICK TO MATCH EXISTING
TMB-1	TIMBER DOOR/WINDOW - CLEAR FINISH
TMB-2	TIMBER DOOR/WINDOW - WHITE FINISH
GB	GLASS BLOCK

LEGEND	LEGEND
	EXISTING
	DEMOLISHED
	PROPOSED

client
ARVAN & DAMON ANDERSON
project address
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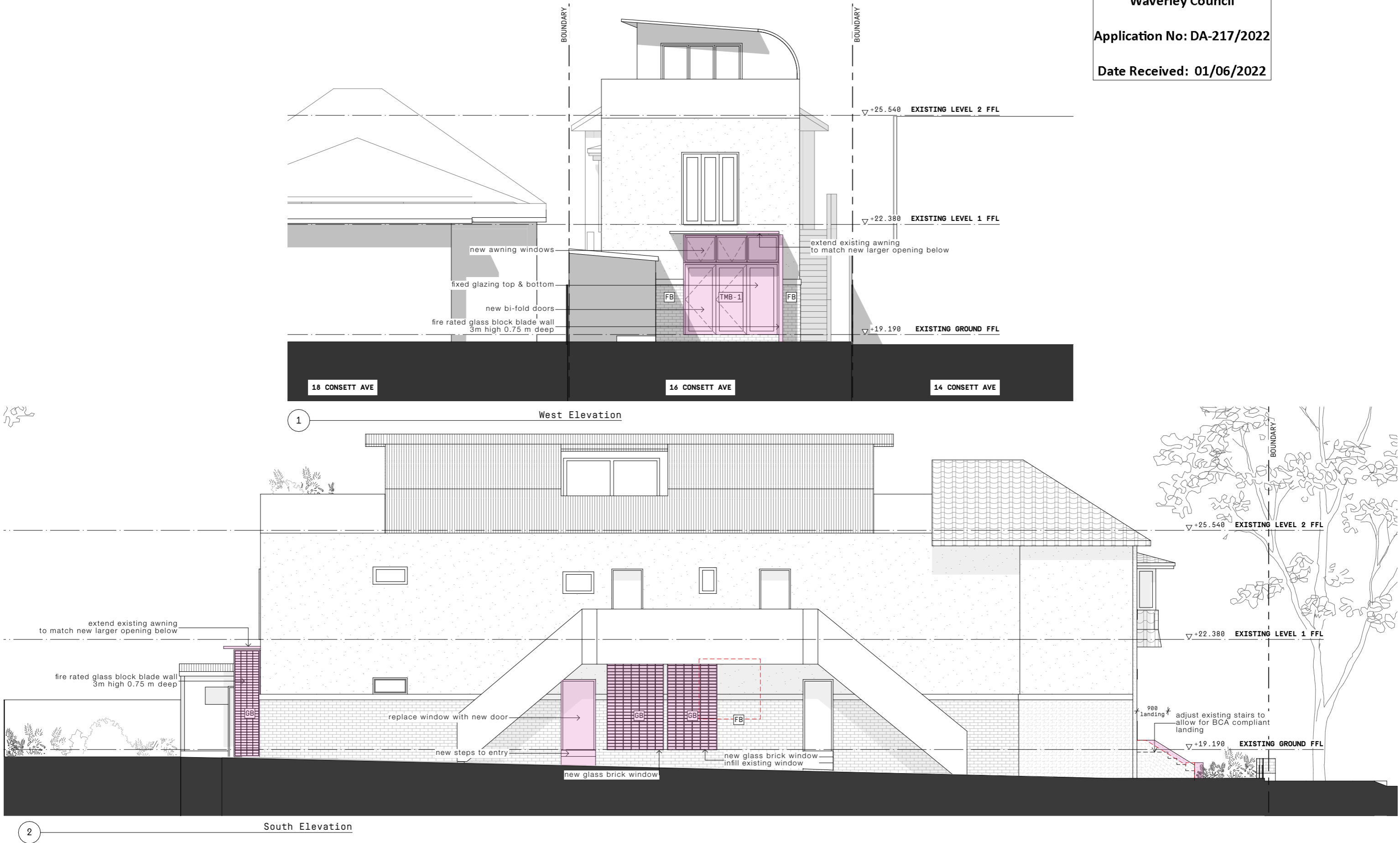
revision history	revision history
REV00	07.02.2022
REV01	17.02.2022
REV02	29.03.2022

draft DA	draft DA
DA	DA
DA	DA

scale	scale
1:100 @ A3	1:100 @ A3
north	north

drawing number	drawing number
A09	A09
drawing title	drawing title
Proposed Elevations 1/2	Proposed Elevations 1/2

revision	revision
REV02	REV02
issue date	issue date
29.03.2022	29.03.2022





Unit 1 BASIX commitments

Glazing requirements	Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check			
Windows and glazed doors						
The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.	✓	✓	✓			
The following requirements must also be satisfied in relation to each window and glazed door:		✓	✓			
Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions.		✓	✓			
For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill.	✓	✓	✓			
Pergolas with polycarbonate roof or similar translucent material must have a shading coefficient of less than 0.35.		✓	✓			
Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50 mm.		✓	✓			
Overshadowing buildings or vegetation must be of the height and distance from the centre and the base of the window and glazed door, as specified in the 'overshadowing' column in the table below.	✓	✓	✓			
Windows and glazed doors glazing requirements						
Window / door no.	Orientation	Area of glass inc. frame (m2)	Overshadowing Height (m) Distance (m)	Shading device	Frame and glass type	
W01	E	2.8	0	0	eave/verandah/pergola/balcony >=750 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W02	E	0.4	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W03	S	2	5	2	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W04	S	3.6	5	2	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W09	N	1.9	3.5	1.5	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W10	N	1.9	3.5	1.5	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W11	N	1.9	3.5	1.5	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)

Unit 2 BASIX commitments

Glazing requirements							Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Windows and glazed doors									
The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.							✓	✓	✓
The following requirements must also be satisfied in relation to each window and glazed door:								✓	✓
Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions.								✓	✓
For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill.							✓	✓	✓
Overshadowing buildings or vegetation must be of the height and distance from the centre and the base of the window and glazed door, as specified in the 'overshadowing' column in the table below.							✓	✓	✓
Windows and glazed doors glazing requirements									
Window / door no.	Orientation	Area of glass inc. frame (m2)	Overshadowing		Shading device	Frame and glass type			
			Height (m)	Distance (m)					
W05	S	4.3	5	1.5	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W06	S	2	5	1.5	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W07	W	5.4	0	0	awning (fixed) >=900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W08	N	3.9	4	2	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			



Report to the Waverley Local Planning Panel

Application number	DA-135/2022
Site address	25-27 Curlewis Street, Bondi Beach
Proposal	Alterations and additions to an existing mixed-use building, specifically units 1 and 4.
Date of lodgement	8 April 2022
Owner	Magney Lodge Limited
Applicant	Habitation Design
Submissions	Nil
Cost of works	\$84,700
Principal Issues	<ul style="list-style-type: none"> Existing Use Rights Breach to Floor Space Ratio
Recommendation	That the application be APPROVED in accordance with the conditions contained in the report.

SITE MAP



(Source: Nearmap, 2022)

1. PREAMBLE

1.1. Executive Summary

The Development Application (DA) seeks consent for alterations and additions to Units 1 and 4 in an existing mixed-use building at the site known as 25-27 Curlewis Street, Bondi Beach.

The principal issues arising from the assessment of the application are as follows:

- Existing Use Rights; and
- Breach to FSR.

The assessment finds these issues acceptable, as a well-founded Clause 4.6 Variation was submitted with the application that justifies the breach to the development standard.

No submissions were received.

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the Act. It is recommended for approval, subject to conditions of consent.

1.2. Site and Surrounding Locality

A site visit was carried out on 17 May 2022.

The site is identified as Lot 1 in DP331439, known as 25-27 Curlewis Street, Bondi Beach.

The site is located on the corner of Curlewis and Wellington Streets; it is rectangular in shape with a northern boundary to Curlewis Street, measuring 12.19m, a western side boundary to Wellington Street measuring 31.25m, an eastern side boundary measuring 31.25m and a southern rear boundary measuring 12.19m. The site has an area of 380.94m² and falls from the rear towards Curlewis Street by approximately 4.93m.

The site is occupied by a two-storey mixed-use building, which comprises of one commercial use at ground floor with four residential units at ground and first floor. Additionally, there is a single detached garage to the rear of the property, accessed from Wellington Street.

The site is adjoined by semi-detached dwellings on either side (to the east and south). The locality is characterised by a variety of low to medium residential and mixed-use development.

Figures 1 to 2 are photos of the site and its context.



Figure 1: Subject mixed-use building as viewed from the corner of Curlewis and Wellington Streets, looking east. (Source: Google Maps, 2022)

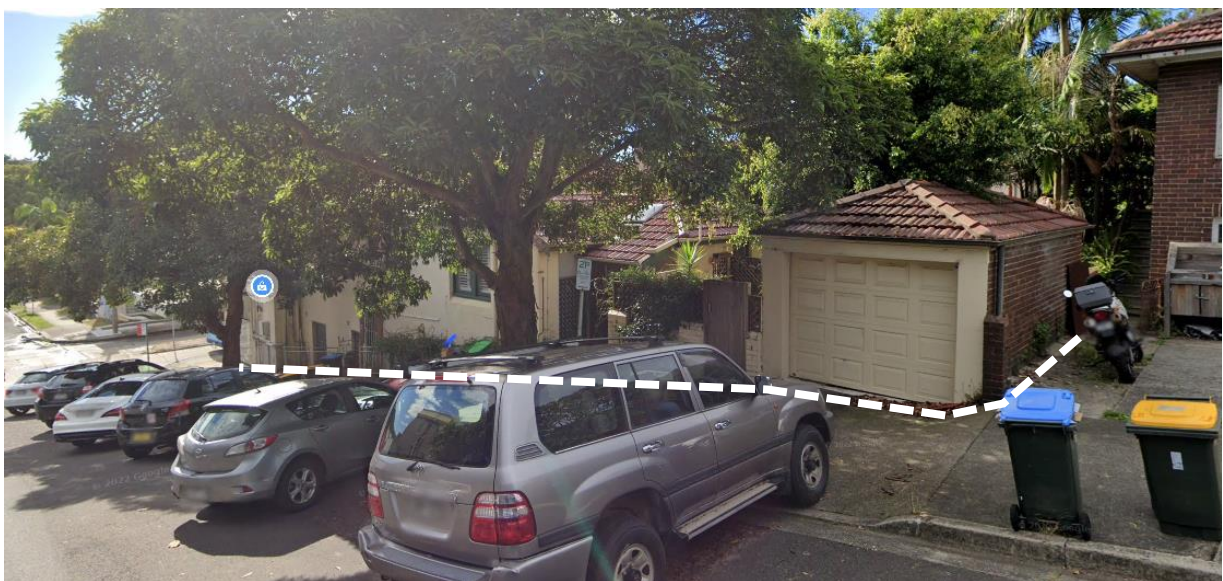


Figure 2: Subject mixed-use building as viewed from Wellington Street, looking north-east. (Source: Google Maps, 2022)

1.3. Relevant Development History

A search of Council's records revealed the following recent and relevant development history of the site:

- DA-57/1982 to use the premises as a doctors surgery with associated dwelling at the rear, approved on 7 April 1982.
- DA-195/1988 to use the ground floor shop for the retail display of ceramic walls and floor tiles and accessories, whilst retaining the existing dwelling.
- DA-117/1995 to establish a chiropractor clinic was approved on 10 May 1995.
- D-257/1995 to establish a cake shop was approved on 5 September 1995.
- D-126/1996 to establish a Solicitors office was approved on 10 July 1996.

- D-159/1996 to convert one bedroom to incorporate a Solicitors office was approved on 10 July 1996.
- DA-224/2011 for a change of use from a Solicitors office to a beauty salon was approved on 22 August 2011.
- DA-52/2018 for alterations and additions to units 3 and 4 including a new roof and attic level and various other internal modifications was approved on 28 August 2019. From reviewing Council records, a Construction Certificate has been submitted with Council.
- DA-52/2018/A modification to alter internal layout of units 3 and 4, alterations to façade, new windows and planters and various other modifications was approved on 21 December 2020.

1.4. Proposal

The DA seeks consent for alterations and additions to the existing mixed-use building, specifically the following:

Ground Floor

- Modify the layout of Unit 1, including:
 - Demolition of existing bathroom to provide a larger Bedroom and construct internal stairs for new external access to Wellington Street;
 - Construction of an ensuite to Bedroom 1;
 - Creation of an open plan lounge, dining and kitchen by demolishing internal and external walls;
 - Construction of a new ensuite; and
 - Demolition of external stairs that accessed Wellington Street.

First Floor

- New access for Unit 1 to Wellington Street street frontage through the construction of internal stairs that are accessed via the existing staircase landing that used to access Unit 4;
- New walls to the side of terrace for Unit 4 that fronts Wellington Street; and
- New elevated landscape area adjacent to the existing laundry.

While works are shown on the submitted plans that works are occurring to Unit 2; this is an error, and a condition is recommended stating no works are approved to Unit 2. Therefore, no works are proposed to the Shop and Units 2 and 3.

1.5. Background

The DA was deferred on 27 May 2022 for the following reasons:

- As the building is defined as a mixed-use building in a medium density residential 'R3' zone, then the Statement of Environmental Effects must assess and justify that the use relies on Existing Use Rights.
- A Building Code of Australia (BCA) report was required.

This information was provided to Council on 15 June 2022.

2. ASSESSMENT

The following matters are to be considered in the assessment of this DA under section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act).

2.1. Planning Instruments and Development Control Plans

The following is an assessment against relevant legislation, environmental planning instruments, including State Environmental Planning Policies (SEPPs), and development control plans.

2.2. Existing Use Rights Provisions – Section 4.65 of the Environmental Planning and Assessment Act

The application relies on the 'existing use rights' provisions under Division 4.11 of the Act and Part 7 of the *Environmental Planning and Assessment Regulation 2000* (the Regulations).

Part 7 of the Regulations allows an existing use to be enlarged, expanded, intensified, altered or extended subject to development consent. Clause 4.67 *Regulations respecting existing use* of the Act states the following:

- (1) *The regulations may make provision for or with respect to existing use and, in particular, for or with respect to—*
 - (a) *the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*
 - (b) *the change of an existing use to another use, and*
 - (c) *the enlargement or expansion or intensification of an existing use.*
 - (d) *(Repealed)*
- (2) *The provisions (in this section referred to as the incorporated provisions) of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.*
- (3) *An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.*
- (4) *Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions do not*

apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 4.33 to a development application for consent to carry out prohibited development.

In *Saffioti v Kiama Municipal Council [2018] NSW LEC 1426* ("*Saffioti 2018*") a Commissioner of the Land and Environment Court (LEC) considered the issue of whether the controls in a Development Control Plan (DCP) could be considered in assessing the merits of an application for development consent for development with existing use rights. The Commissioner decided that the relevant controls in the DCP could be considered, as the Act provides that any provisions of an *environmental planning instrument* (EPI) which would derogate from the provisions in the Regulations have no effect. In *Saffioti 2018*, the Commissioner found that as a DCP is not an EPI, section 4.67(3) does not apply to the provisions of such an instrument. The Commissioner also considered provisions of the Local Environmental Plan (LEP) and found that only those provisions of the LEP which could have the effect of prohibiting the development derogated from the incorporated provisions and therefore could not be taken into account.

The Applicant appealed against the Commissioner's findings to a Judge of the Court on questions of law in *Saffioti v Kiama Municipal Council [2019] NSWLEC 57* ("*Saffioti 2019*"). The appeal was heard by the Chief Judge of the Court and failed on all grounds.

What can be taken away from *Saffioti 2019*, is that provisions of an EPI (eg. a LEP) may establish factual pre-conditions that a consent authority must be satisfied exist in order to grant development consent or fix developmental standards. An applicant seeking development consent to enlarge, expand or intensify an existing use must comply with any such provisions.

Such provisions will not derogate from the existing use 'incorporated provisions' in the Regulations. They will only do so (and have no effect for the purpose of section 4.67(3) of the EPA Act) if they derogate from the entitlement **to make** the relevant DA.

Previously, existing use rights have been assessed as if the provisions of the LEP and DCP do not apply and can only be used as a guide to development in as much as they control development upon surrounding sites. Existing use right assessments have been based upon four questions as set out in *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71*.

Given the outcome of *Saffioti 2019*, the assessment of existing use rights should be considered against both the development standards of the LEP and the controls of the DCP as detailed within this report.

Assessment Officer's Comments

The current use of the development is classed as a mixed-use building as it has a commercial premises at the same level as a residential use. Mixed use development is prohibited in the R3 zone.

Part 7, Clause 163 *Certain development allowed* of the Regulations state an existing use may be enlarged, expanded, intensified, altered or extended. Clause 164 *Enlargement, expansion and intensification of existing uses* and Clause 165 *Alteration of buildings and works* state development consent is required for enlargement, expansion, intensification, alterations or extended with development consent.

A development consent (DA-57/1982) was approved on 7 April 1982 for use of the premises as a doctor surgery with associated dwelling at the rear. A detailed review of the history of the site has detailed that the commercial section of the building has been operating as a commercial premises ever since. Therefore, it is evident that the building has been defined as a mixed-use building for some time and therefore relies on existing use rights.

The Definition of Mixed Development under the Waverley Local Environmental Plan 1985 was ‘Mixed Development’ means a residential flat building, dwelling house or boarding house within the same building as or on the same allotment of land as shops, commercial premises of any other non-residential development”

Mixed Development remained permissible until the Waverley Local Environment Plan 2012 (Waverley LEP 2012) ‘shop-top housing’ definition replaced ‘mixed development’. This required the retail/commercial premises to be on the ground floor and residential accommodation to be on the first floor and above.

Therefore, given the site had residential and commercial components previously on the ground floor, which were permitted under DA-57/1982, it can be concluded that the proposal benefits from existing use rights and the site satisfactory meets Part 5, Clause 42 of the Regs.

2.3. State Environmental Planning Policies (SEPPs)

SEPP (Building Sustainability Index – BASIX) 2004 has been considered acceptable in the assessment of this development application.

2.4. Draft Waverley Local Environmental Plan 2022 (Draft Waverley LEP 2022)

The Draft Waverley Local Environmental Plan 2022 was exhibited from 12 November 2021 to 23 January 2022, however at the time of this assessment, there are no relevant matters for consideration.

2.5. Waverley LEP 2012

The relevant matters to be considered under the Waverley LEP 2012 for the proposed development are outlined below:

Table 1: Waverley LEP 2012 Compliance Table

Provision	Compliance	Comment
Part 1 Preliminary		
1.2 Aims of plan	Yes	The proposal meets the aims of the Waverley LEP 2012.
Part 2 Permitted or prohibited development		
Land Use Table Medium Density Residential ‘R3’ Zone	Existing Use Rights apply	The proposal is defined as a mixed-use building, which is prohibited in the R3 zone. The use relies on Existing Use Rights as has been discussed above.

Provision	Compliance	Comment
Part 4 Principal development standards		
4.3 Height of buildings <ul style="list-style-type: none"> 9.5m 	Yes	The height of the building will not change. All proposed works are under the 9.5m height limit.
4.4 Floor Space Ratio (FSR) <ul style="list-style-type: none"> Lot Size: 380.78m² MAX GFA: 228.5m² MAX FSR: 0.6:1 	No	<u>Gross Floor Area (GFA) Calculations:</u> Ground Floor: 224.7m ² First Floor: 209.5m ² Attic: 91m ² Total GFA: 525.2m ² Total FSR: 1.38:1 The proposed development exceeds the development standard by 296.7m ² or 129.8%. The proposal attributes an additional 5.7m ² or 2.5% to the overall GFA.
4.6 Exceptions to development standards	See discussion	The application is accompanied by a written request pursuant to clause 4.6 of Waverley LEP 2012 to vary the FSR development standard. A detailed discussion of the variation to the development standard is presented below this table.
Part 6 Additional local provisions		
6.1 Acid sulfate soils	Yes	The proposal is located within acid sulfate soils – class 5. However, the proposed works are unlikely to lower the water table.
6.2 Earthworks	Conditions recommended	Excavation is proposed for the proposed subterranean bathroom. Appropriate excavation conditions are recommended.

The following is a detailed discussion of the issues identified in the compliance table above in relation to the Waverley LEP 2012.

Clause 4.6 Exceptions to Development Standards

The application seeks to vary the FSR development standard in clause 4.4 under Waverley LEP 2012.

The site is subject to a maximum FSR development standard of 0.6:1. The proposal is for an additional 5.7m² or 2.5% and results in a FSR of 1.38:1, exceeding the standard by 296.7 m², equating to a 129.8% variation.

A written request has been submitted to Council in accordance with clause 4.6(3)(a) and (b) of Waverley LEP 2012 seeking 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 standard.

A copy of the applicant's written request has been provided to the Waverley Local Planning Panel for consideration.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

The applicant seeks to justify the contravention of the FSR development standard on the following basis:

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

- (i) The proposal meets the objectives of the FSR development standard:

- a. ***To ensure sufficient floor space can be accommodated within the Bondi Junction Centre to meet foreseeable future needs.***

Whilst the subject site is not located within Bondi Junction directly, it is located in an adjoining suburb that also demonstrates a high demand for residential accommodation and a growing population. These proposed alterations and additions will serve to not only upgrade the internal residential amenity of unit 1 but also substantially upgrade the secondary façade fronting Wellington Street.

- b. ***To provide an appropriate correlation between maximum building heights and density controls.***

The FSR and building height development standards together set the parameters for the scale and density of development and its resultant impact on the streetscape and surrounding developments. The building height of the site does not exceed the permissible maximum prescribed by the WLEP 2012 and the proposed alterations to the existing mixed use development is of a minor scale with the majority of works located within the existing building footprint.

- c. ***To ensure that buildings are compatible with the bulk, scale, streetscape and desired future character of the locality.***

The proposal is considered compatible with its context as:

- *The development is consistent with the height, scale and character of development in the locality. The bulk and scale of the development is reasonable and does not visually dominate neighbouring properties.*
- *The proposed 129.8% variation from the maximum FSR is in actual fact only a 3.52% variation to the existing approved GFA and comparable to nearby sites. The below table depicts properties within the same locality with R3 – Medium Density Residential zoning who exceed their maximum FSR, as stipulated by Clause 4.4 of the WLEP 2012. This highlights that the area is characterised by similar densities to that of the proposal.*

- d. ***To establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and minimise the adverse impacts on the amenity of the locality.***

The development results in no unreasonable adverse impacts on adjoining properties. The development does not impact any neighbouring residential

developments in relation to solar access or privacy. There is no view loss impact. Subsequently the development does not detract from the desired future character of the locality.

(ii) The proposal meets the objectives of the zone.

- a. To provide for the housing needs of the community within a medium density residential environment.***
- b. To provide a variety of housing types within a medium density residential environment.***
- c. To enable other land uses that provide facilities or services to meet the day to day needs of residents.***
- d. To maximise public transport patronage and encourage walking and cycling.***

The development is compatible with the zone objectives as it provides improved amenity to the existing units within the mixed use development with the internal expansion and open plan living, kitchen, and dining room of unit 1 and the upgraded façade fronting Wellington Street. The alterations will not impact on the operation of the ground floor commercial premise.

The variation to the floor space ratio does not render the development incompatible with the zone objectives, in accordance with the approach of the former Chief Judge, Justice Pearlman in Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21, in Paragraph [27]:

‘The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.’

(b) That there are sufficient environmental planning grounds to justify contravening the standard:

This report is the written request demonstrating that there are sufficient environmental planning grounds to justify deviation from the development standard.

The development has been designed to complement the existing scale and character of surrounding development. The height and building envelope of the building is compliant with LEP and DCP controls. The proposal does not seek to alter the existing height and building envelope. The proposal will integrate seamlessly with the existing streetscape and does not result in adverse amenity impacts on adjoining properties in the way of bulk impact, shadow impact or privacy loss.

The above is considered to represent sufficient environmental planning grounds to justify the contravention of the development standard. It has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, and thus the resultant development will be in the public interest.

Consideration of Applicant’s Written Request - Clause 4.6(4) (a) (i) and (ii)

Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of clause 4.6 being 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 standard; and
- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at clause 4.6(3)(a)?

It is considered that the applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and has referenced one or more of the following justifications as set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446:

- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- (b) to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (c) to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- (d) to establish that 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; and*
- (e) to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant specifically relies upon justification (a) outlined above to address clause 4.6(3)(a) of Waverley LEP 2012. This is sound justification, as the applicant has demonstrated that despite the numerical non-compliance with FSR the development meets the relevant objectives of both FSR and the zone.

Does the written request adequately address those issues at clause 4.6(3)(b)?

The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard. The applicant has demonstrated that the development:

- Is designed to complement the existing scale and character of the surrounding developments.
- The development does not seek to alter the height or envelope of the building.
- The proposal will integrate well into the streetscape and building itself.
- The proposal does not result in environmental amenity impacts to neighbouring properties.

Is the development in the public interest?

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

The relevant objectives of the FSR development standard are as follows:

Objective (b): To provide an appropriate correlation between maximum building heights and density controls.

Objective (c): To ensure that buildings are compatible with the bulk, scale, streetscape and desired future character of the locality.

Objective (d): To establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and minimise the adverse impacts on the amenity of the locality.

The increased FSR does not result in additional height or bulk or scale that can be identified from the streetscape and is considered acceptable.

The increased FSR does not impact the amenity of neighbouring properties in terms of view loss, overshadowing or loss of visual privacy.

The objectives of the R3 zone are as follows:

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

The proposed development provides housing needs for the community within a medium density residential environment.

Conclusion

For the reasons provided above the requested variation to the FSR is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Waverley LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the FSR development standard and the R3 zone.

2.6. Waverley Development Control Plan 2012 (Waverley DCP 2012) – Amendment No.9

The relevant matters to be considered under the Waverley DCP 2012 for the proposed development are outlined below:

Table 2: Waverley DCP 2012 – Part B General Provisions Compliance Table

Development Control	Compliance	Comment
1. Waste	Conditions recommended	Appropriate waste conditions are recommended.

Development Control	Compliance	Comment
5. Vegetation Preservation	N/A	Tree removal is not proposed.
12. Design Excellence	Yes	The proposed fence and wall will improve the streetscape by updating an old existing fence, which is considered acceptable.
14. Excavation	Conditions recommended	Excavation is proposed for the proposed subterranean bathroom. Appropriate excavation conditions are recommended.

Table 3: Waverley DCP 2012 – Part C3 Other Residential Development Compliance Table

Development Control	Compliance	Comment
3.3 Setbacks		
3.3.2- Side and rear setbacks	Yes	The proposed addition to the living area of Unit 1 will be setback 0.9m from the boundary.
<ul style="list-style-type: none"> Minimum side setback: 0.9m Minimum rear setback: 6m or predominant rear building line, whichever is the greater setback 	Yes	The proposed bathroom will align with the rear building line of bedroom 1. However, as this is subterranean it will have no increase to the bulk and scale of the building.
3.5 Building design and streetscape		
<ul style="list-style-type: none"> Respond to streetscape Sympathetic external finishes Corner sites to address both streets as primary frontages Removal of original architectural features not supported. 		The majority of the works will not be identified from the streetscape. The proposed fencing is supported.
3.7 Fences and walls		
<i>Side fence:</i> <ul style="list-style-type: none"> Maximum height: 1.8m 	Acceptable on merit.	It is noted that the boundary wall as viewed from Wellington Street exceeds 1.8m. However, from the ground level of the courtyard measured from inside the property it will have a height of 1.8m. This breach to height is supported as it provides visual privacy to the Unit 4 terrace and will be adjacent to an existing garage wall, which will remain taller than this fence.
3.8 Pedestrian access and entry		
<ul style="list-style-type: none"> Entry at street level and respond to pattern within the street Accessible entry Separate to vehicular entry Legible, safe, well-lit 	Yes	The amended entry to Unit 1 is supported.

Development Control	Compliance	Comment
3.13 Solar access and overshadowing		
	Yes	As the works are to the lower ground, it will not create additional shadowing.
3.15 Visual privacy and security		
	Yes	No additional visual privacy impacts are created.
3.16 Dwelling size and layout		
<ul style="list-style-type: none"> Min sizes 3 bedroom = 100m² 	Acceptable.	The existing three bedroom unit has an internal area of 77.8m ² . The proposed works increase the internal area of the three bedroom unit to 90.2m ² . Whilst still non-compliant, it is an improvement for the occupant's internal amenity.
3.17 Ceiling Heights		
	Yes	The floor-to-ceiling height of the proposed bathroom is unknown. However, page 39 of the submitted BCA report state the ceiling heights are compliant.
3.18 Storage		
	Yes	The application provides Bedrooms 2 and 3 of Unit 1 with built-in-robos.
3.20 Natural Ventilation		
	Yes	The proposed windows assist with cross-ventilation.

2.7. Other Impacts of the Development

The proposal is considered to have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

2.8. Suitability of the Site for the Development

The site is considered suitable for the proposal.

2.9. Any Submissions

The application was notified for 14 days from 14 April – 2 May 2022 in accordance with the *Waverley Community Development Participation and Consultation Plan*. No submissions were received.

2.10. Public Interest

The proposal is considered to have no detrimental effect on the public interest, subject to appropriate conditions being imposed.

3. REFERRALS

The following internal and external referral comments were sought:

4. Fire Safety

An internal referral was sought from Council's Fire Safety Officer who recommended conditions of consent.

5. CONCLUSION

The DA seeks consent for alterations and additions to Units 1 and 4 in the existing mixed-use building at the site known as 25-27 Curlewis Street, Bondi Beach.

The principal issues arising from the assessment of the application are as follows:

- Existing Use Rights; and
- Breach to FSR.

The assessment finds these issues acceptable as it has been concluded that the use relies on existing use rights and a well-founded Clause 4.6 Variation was submitted to the application that justified the breach to the development standard.

No submissions were received.

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the Act. It is recommended for approval subject to conditions of consent.

Development and Building Unit (DBU) Decision:



The application was reviewed by the DBU at the meeting on 24/05/2022 and the DBU determined:

- (a) The application is acceptable and should be approved, subject to the conditions in Appendix A.

DBU members: *A Rossi, B McNamara, B Magistrale and T Sneesby*

6. RECOMMENDATION TO WAVERLEY LOCAL PLANNING PANEL

That the development application be APPROVED by the Waverley Local Planning Panel subject to the conditions in Appendix A.

Report prepared by:	Application reviewed and agreed on behalf of the Development and Building Unit by:
	
Joseph Somerville	Bridget McNamara
Senior Development Assessment Planner	Manager, Development Assessment (Reviewed and agreed on behalf of the Development and Building Unit)
Date: 05 July 2022	Date: 17 July 2022

Reason for WLPP referral:

1. Breaches a development standard by more than 10%.

APPENDIX A – CONDITIONS OF CONSENT

A. APPROVED DEVELOPMENT

1. APPROVED PLANS AND DOCUMENTATION

The development must be in accordance with:

- (a) Architectural Plans prepared by Habitation Design and Interiors of Project No: 17071 including the following:

Plan Number and Revision	Plan description	Plan Date	Date received by Council
E102 / Rev E	Site Plan	31/03/2022	12/04/2022
E105 / Rev E	Existing / Proposed Plan	31/03/2022	12/04/2022
E106 / Rev E	Proposed First Floor Plan	31/03/2022	12/04/2022
E107 / Rev E	Proposed Elevation	31/03/2022	12/04/2022
E108 / Rev E	Proposed Fence Elevation	31/03/2022	12/04/2022
E109 / Rev E	Materials and Finishes	31/03/2022	12/04/2022

- (b) BASIX and NatHERs Certificates

Except where amended by the following conditions of consent.

2. PROPOSED COURTYARD TO UNIT 2 DOES NOT FORM PART OF THE CONSENT

The proposed courtyard to Unit 2 is a drafting error and does not form part of the consent. No works are to occur to Unit 2

B. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies that the approval of Council or a Council Officer is required.

GENERAL REQUIREMENTS

3. NO BUILDING OR DEMOLITION WORKS PRIOR TO RELEASE OF CONSTRUCTION CERTIFICATE

The building work, or demolition work, must not be commenced until:

- (a) a Construction Certificate has been obtained from Council or an Accredited Certifier in accordance with the *Environmental Planning and Assessment Act 1979*;
- (b) a Principal Certifying Authority has been appointed and Council has been notified of the appointment in accordance with the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*; and
- (c) Council is given at least two days' notice in writing of the intention to commence the building works.

CONTRIBUTIONS, FEES & BONDS

4. SECTION 7.12 CONTRIBUTION

A monetary development contribution is payable to Waverley Council pursuant to section 7.12 of the *Environmental Planning and Assessment Act 1979* and the Waverley Council Development Contributions Plan 2006 in accordance with the following:

- (a) A cost report indicating the itemised cost of the development shall be completed and submitted to Council:
 - (i) Where the total development cost is less than \$500,000:
"Waverley Council Cost Summary Report"; or,
 - (ii) Where the total development cost is \$500,000 or more:
"Waverley Council Registered Quantity Surveyor's Detailed Cost Report".

A copy of the required format for the cost reports are provided in the Waverley Council Contributions Plan 2006, available on Council's website.

- (b) As legislated in section 25K of the Environmental Planning and Assessment Regulation 2000, the levy must be paid in accordance with the following;
 - (i) A development valued at \$100,000 or less will be exempt from the levy;
 - (ii) A development valued at \$100,001 - \$200,000 will attract a levy of 0.5% of the full cost of the development; or
 - (iii) A development valued at \$200,001 or more will attract a levy of 1% of the full cost of the development.

Prior to the issue of any Construction Certificate, evidence must be provided that the levy has been paid to Council in accordance with this condition or that the cost of works is less than \$100,000.

5. SECURITY DEPOSIT

A deposit (cash or cheque) or guarantee for the amount of \$2,900 must be provided to Council for any damage caused to any property of the consent authority (ie. public land) as a consequence of the works and completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent.

This deposit (cash or cheque) or guarantee must be provided to Council prior to the issue of any Construction Certificate. The full amount of the deposit, minus Council's costs for any repair of damage to Council property or rectification of unauthorised works on Council property, will be refunded after satisfactory completion all of works associated with this consent (including the required public works) to the person who paid the deposit.

6. LONG SERVICE LEVY

A long service levy, as required under section 34 of the *Building and Construction Industry Long Service Payments Act, 1986*, is to be paid in respect of this building work. Evidence that the levy has been paid is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Note: Council acts as an agent for the Long Service Payment Corporation and the levy may be paid at Council's office. The levy rate is 0.35% of building work costing \$25,000 or more.

CONSTRUCTION & SITE MATTERS

7. HOARDING

To ensure the site is contained during construction, if hoarding is required for the approved works, which is to be designed and constructed in accordance with the requirements of Safe Work NSW. Where the hoarding is to be erected over the footpath or any public place, the approval of Council's Compliance Unit must be obtained and the applicable fees paid, prior to the erection of the hoarding.

8. EROSION & SEDIMENT CONTROL

A Soil and Water Management Plan (SWMP), also known as an Erosion and Sediment Control Plan must be prepared in accordance with Waverley Council's Water Management Technical Manual.

The SWMP must be approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. A copy of the SWMP must be kept on site at all times and made available to Council officers upon request.

The recommendations of the SWMP must be implemented and maintained during all construction activities and until the site is fully stabilised following construction.

9. DETAILS OF EXCAVATION, SHORING OR PILE CONSTRUCTION

A report shall be prepared by a suitably qualified and practising Structural Engineer/Geotechnical Engineer detailing the proposed methods of bulk excavation, shoring or pile construction, including details of vibration emissions and any possible damage which may occur to adjoining or nearby properties as a result of the proposed building and excavation works.

Any practices or procedures specified in the Structural Engineer's report in relation to the avoidance or minimisation of structural damage to adjoining properties are to be fully complied with and incorporated into the plans and specifications together with the Construction Certificate.

10. ENGINEERING DETAILS

Structural details are to be prepared and certified by a practicing Structural Engineer in connection with all structural components of the approved works, prior to the issue of the relevant Construction Certificate.

11. STRUCTURAL INTEGRITY OF RETAINED BUILDING ELEMENTS

Prior to the issue of a Construction Certificate, a report or certification from a practicing structural engineer must be submitted to the Principal Certifying Authority to explain how the retained building elements, such as building facades are to be retained, supported and not undermined by the proposed development and give details of any intervention or retrofitting needed.

TRAFFIC MANAGEMENT

12. CONSTRUCTION TRAFFIC MANAGEMENT PLAN (CTMP)

The applicant is to submit a Construction Traffic Management Plan (CTMP) for the approval of Council's Executive Manager, Infrastructure Services, or delegate, prior to the issue of any Construction Certificate. For further information on what is required in the CTMP, please refer to Council's website at:

https://www.waverley.nsw.gov.au/building/development_applications/post_determination/development_applications_-_conditions_of_consent

WASTE

13. SITE WASTE AND RECYCLING MANAGEMENT PLAN

A Site Waste and Recycling Management Plan (SWRMP) - Part 2 is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Construction Certificate, which outlines materials to be reused and/or recycled as a result of demolition and construction works. At least one copy of the *SWRMP Part 2* is to be available on site at all times during construction. Copies of demolition and construction waste dockets that verify the facility that received the material for recycling or disposal and the quantity of waste received, must be retained on site at all times during construction.

FIRE SAFETY

14. ESSENTIAL SERVICES - EXISTING BUILDING

Details of the currently implemented and proposed essential fire safety measures shall be submitted to Council, with the Construction Certificate, in the form of a Fire Safety Schedule. This Schedule shall be prepared by a person competent to do so and shall specify the minimum standard of performance for each essential fire safety measure included in the Schedule.

At the completion of the installation, a Final Fire Safety Certificate shall be attached to the Occupation Certificate, certifying that each essential fire safety measure specified within the current Fire Safety Schedule:

- (a) has been assessed by a properly qualified person; and
- (b) found to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building for which the Certificate is issued.

15. FIRE SAFETY UPGRADING WORKS

- a) In addition to all new works fully comply with the Building Code of Australia, pursuant to Section 64 of the Environmental Planning and Assessment Regulations 2021, all existing areas

of the subject building must be upgraded to comply with the following provisions of the Building Code of Australia (BCA):

- (i) Fire resistance and stability – Part C1;
 - (ii) Compartmentation and separation – Part C2;
 - (iii) Protection of openings – Part C3
 - (iv) Provision for escape – Part D1 (excluding widths of existing common stairs);
 - (v) Construction of exits – Part D2;
 - (vi) Access for people with a disability - D3 (to the extent necessary in order to comply with the Disability (Access to Premises - Buildings) Standards 2010);
 - (vii) Fire fighting equipment – Part E1;
 - (viii) Smoke hazard management – Part E2;
 - (ix) Emergency lighting, exit signs and warning systems – Part E4;
 - (x) Sanitary and other facilities – Part F2;
 - (xi) Room heights – Part F3;
 - (xii) Light and ventilation – Part F4; and
 - (xiii) Sound transmission and insulation - Part F5.
- b) If compliance with the deemed-to-satisfy provisions of the BCA and the matters listed in condition (a) above cannot be achieved, a performance solution in accordance with Part A2 of the BCA must be prepared by a suitably qualified and accredited person and be submitted to the Certifying Authority illustrating how the relevant performance requirements of the BCA are to be satisfied. Prior to a Construction Certificate being issued, the Certifying Authority must ensure that the building complies with the Building Code of Australia.
- c) The BCA matters identified in (a) above are not an exhaustive list of conditions to verify compliance or non-compliance with the BCA. Any design amendments required to achieve compliance with the BCA must be submitted to Council. Significant amendments may require an application under Section 4.55 of the Act to be lodged with Council to amend this consent.
- d) Prior to the commencement of the required upgrade works, a Construction Certificate must be issued by an accredited Certifying Authority and an accredited PCA be appointed. The required upgrading works detailed in this condition must be completed prior to the issue of an Occupation Certificate.

Note: The provisions of Section 64 of the Environmental Planning and Assessment Regulations 2021 have been considered in the assessment of the proposed development.

C. COMPLIANCE PRIOR TO WORK COMMENCING AND DURING CONSTRUCTION

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies that the approval of Council or a Council Officer is required.

PRIOR TO ANY WORKS

16. CONSTRUCTION SIGNS

Prior to commencement of any works on the site and during construction a sign shall be erected on the main frontage of the site detailing the name, address and contact details (including a telephone

number) of the Principal Certifying Authority and principal contractor (the coordinator of the building works). The sign shall be clearly legible from the adjoining street/public areas and maintained throughout the building works.

17. DILAPIDATION REPORT

A Dilapidation report is to be prepared for any adjoining or nearby property that may be subject to potential damage as a result of any works being undertaken. The dilapidation report is to be made available to affected property owners.

The report is to be dated, submitted to, and accepted by the Principal Certifying Authority, prior to any work commencing on the site.

Note: Any damage that may be caused is a civil matter. This consent does not allow or authorise any party to cause damage, trespass, or any other unlawful act and Council will not be held responsible for any damage that may be caused to adjoining buildings as a consequence of the development being carried out. Council will not become directly involved in disputes between the builder, owner, developer, its contractors and the owners of neighbouring buildings.

DEMOLITION & EXCAVATION

18. DEMOLITION – ASBESTOS AND HAZARDOUS MATERIALS

The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2017;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- *Protection of the Environment Operations Act 1997*.

At least 5 days prior to the demolition, renovation work or alterations and additions to any building, the person acting on the consent shall submit a Work Plan to the Principal Certifying Authority in accordance with Australian Standard AS 2601-2001, Demolition of Structure and a Hazardous Materials Assessment prepared by a person with suitable expertise and experience. The Work Plan and Hazardous Materials Assessment shall:

- (a) Outline the identification of any hazardous materials, including surfaces coated with lead paint;
- (b) Confirm that no asbestos products are present on the subject land, or
- (c) particularise a method of safely disposing of the asbestos in accordance with the Code of Practice on how to safely remove asbestos published by SafeWork NSW (catalogue WC03561);

- (d) Describe the method of demolition;
- (e) Describe the precautions to be employed to minimise any dust nuisance; and
- (f) Describe the disposal methods for hazardous materials.

19. CONTROL OF DUST ON CONSTRUCTION SITES

The following requirements apply to demolition and construction works on site:

- (a) Hazardous dust is not to be allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended. Any existing accumulations of dust (e.g. ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particle air (HEPA) filter. All dusty surfaces and dust created from work are to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.
- (b) All contractors and employees directly involved in the removal of hazardous dusts and substances are to wear protective equipment conforming to Australian Standard AS1716 Respiratory Protective Devices.

20. CLASSIFICATION OF WASTE/ DISPOSAL OF EXCAVATED SOILS

Prior to the exportation of waste (including fill or soil) from the site the material must be classified in accordance with the provisions of the Protection of the Environment Operations Act, 1997 and the NSW EPA Waste Classification Guidelines 2014.

21. EXCAVATION AND BACKFILLING

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

If an excavation associated with the erection or demolition of a building extends below the level of the footings of a building on an adjoining allotment of land, the excavation is to be managed by a practising structural engineer.

CONSTRUCTION MATTERS

22. CONSTRUCTION HOURS

Demolition and building work must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays and 8am to 3pm on Saturdays, with no work to be carried out on Sundays and public holidays.

Excavation works involving the use of heavy earth movement equipment, including rock breakers and the like, must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays, with no such work to be carried out on Saturday, Sunday or a public holiday.

Noise from construction activities shall comply with the Protection of the Environmental Operations (Noise Control) Regulation 2017.

23. STOCKPILES, STORAGE OF MATERIALS AND LOCATION OF BUILDING OPERATIONS

All building materials and any other items associated with the development are to be stored within the property. No materials are to be stored on Council's footpath, nature strip, or road reserve without prior Council approval.

24. CONSTRUCTION INSPECTIONS

The building works are to be inspected during construction by the Principal Certifying Authority (PCA) in accordance with the *Building Legislation Amendment (Quality of Construction) Act 2002*, clause 162A of the *Environmental Planning and Assessment Regulation 2000* and the requirements of any other applicable legislation or instruments.

25. CERTIFICATE OF SURVEY - BOUNDARIES AND LOCATION OF BUILDING

A Certificate of Survey prepared by a Registered Surveyor setting out the boundaries of the site and the location of the building on the site is to be submitted to the Principal Certifying Authority to certify the building is located in accordance with the development consent plans. The Certificate is to be submitted prior to the construction of the external walls above the ground floor level of the building.

26. WORK OUTSIDE PROPERTY BOUNDARY

This consent does not authorise any work outside the property boundary.

TREE PROTECTION AND REMOVAL

27. TREE PROTECTION

All trees on site and adjoining properties, including street trees, are to be retained and protected in accordance with AS4970-2009 'Protection of Trees on Construction Sites' and to be certified by an Arborist with AQF level 5 qualification or above, unless approved to be removed in this development consent.

28. STREET TREES TO BE RETAINED/TREE PROTECTION

No existing street trees shall be removed without Council approval. Precautions shall be taken when working near trees to ensure their retention, including the following:

- (a) Do not store harmful or bulk materials or spoil under or near trees;
- (b) Prevent damage to bark and root system;
- (c) Do not use mechanical methods to excavate within root zones;
- (d) Do not add or remove topsoil from under the drip line;
- (e) Do not compact ground under the drip line;
- (f) Do not mix or dispose of liquids within the drip line of the tree; and

- (g) All trees marked for retention must have a protective fence/guard placed around a nominated perimeter in accordance with AS4970-2009 "Protection of trees on construction sites.

D. PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE OR SUBDIVISION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies that the approval of Council or a Council Officer is required, prior to the issue of an Occupation Certificate or Subdivision Certificate, whichever applies.

CERTIFICATES, LICENCES, EASEMENTS AND RESTRICTIONS

29. FINAL OCCUPATION CERTIFICATE

Prior to occupation or use of the development, an Occupation Certificate must be obtained.

The Principal Certifying Authority must be satisfied that the requirements of the *Environmental Planning & Assessment Act 1979* have been satisfied including all critical stage inspections.

Documentary evidence of all required inspections is to be submitted to Council.

E. ADVISORY MATTERS

The following advisory matters are provided as additional information to ensure compliance with the relevant legislation and requirements. You must also check other Commonwealth and NSW Acts and Regulations which may apply to the works or use approved in this application.

AD1. POST CONSENT CONDITIONS REQUIRING COUNCIL INPUT

Various conditions require further input, review or approval by Council in order to be satisfied following the determination of the application (that is, post consent). In those instances, please adhere to the following process to avoid delays:

- Please read your conditions carefully.
- Information to be submitted to Council should be either via email to info@waverley.nsw.gov.au or via the NSW Planning Portal (if required).
- Attention the documentation to the relevant officer/position of Council (where known/specified in condition).
- Include DA reference number.
- Include condition number/s seeking to be addressed.
- Where multiple conditions need Council input, please try to group the documentation / email/s into relevant subjects (multiple emails for various officers may be necessary, for example).
- Information to be submitted in digital format – refer to 'Electronic lodgement guidelines' on Council's website. Failure to adhere to Council's naming convention may result in documentation being rejected.
- Where files are too large for email, the digital files should be sent to Council via CD/USB. Council does not support third party online platforms (data in the cloud) for receipt of information.
- Please note, in some circumstances, additional fees and/or additional documents (hard copy) may be required.
- Council's standard for review (from date the relevant officer receives documentation) is 14 days. Times may vary or be delayed if information is not received in this required manner.

AD2.DIAL BEFORE YOU DIG

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (this is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

AD3.TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on 1800 810 443.

AD4.ALTERATIONS AND ADDITIONS ONLY

This consent is for alterations and additions to the existing building only and should during the course of construction a significant amount of the remaining fabric of the building be required to be removed, works must cease immediately and a new development application will be required to be submitted for assessment.

AD5.EXCAVATION TO BE LIMITED

Excavation shall be limited to that shown in the approved plans. Any further excavation will require Council approval.

AD6.BONDI - ROSE BAY SAND BODY

This site may be located within the Bondi - Rose Bay Sand Body as identified in Council's Aboriginal Cultural Heritage Study 2009. Should an object of potential Aboriginal or archaeological significance be discovered during the demolition, excavation or construction period associated with this development, works are to immediately cease and the NSW National Parks and Wildlife Service must be contacted.

Waverley Council must be notified of any referral to the NSW National Parks and Wildlife Service and be provided with a copy of any subsequent response.

AD7.TREE REMOVAL/PRESERVATION

Any trees not identified for removal in this application have not been assessed and separate approval may be required. Any pruning of trees on adjoining properties required for the erection of scaffolding and/or the construction of the building may also require approval.

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Alterations and Additions Definitions" dated 06/10/2017 published by Planning & Infrastructure. This document is available at www.basix.nsw.gov.au

Director-General
Date of issue: Tuesday, 27, February 2018
To be valid, this certificate must be lodged within 3 months of the date of issue.



Fixtures and systems	Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
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.		✓	

Glazing requirements							Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Windows and glazed doors									
The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.									
The following requirements must also be satisfied in relation to each window and glazed door:									
Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions.									
Each window or glazed door with improved frames, or pyrolytic low-e glass, or clear/air gap/clear glazing, or toned/air gap/clear glazing must have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions. The description is provided for information only. Alternative systems with complying U-value and SHGC may be substituted.									
For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill.									
Pergolas with polycarbonate roof or similar translucent material must have a shading coefficient of less than 0.35.									
Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 500 mm.									
Windows and glazed doors glazing requirements									
Window / door no.	Orientation	Area of glass inc. frame (m ²)	Overshadowing Height (m)	Overshadowing Distance (m)	Shading device	Frame and glass type			
U3_Entry	SW	1.08	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
U3_Bed-1	SW	1.4	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
U3_Bed-2	SE	1.4	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			

Construction			Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Insulation requirements					
The applicant must construct the new or altered construction (floor(s), walls, and ceilings/roofs) in accordance with the specifications listed in the table below, except that a) additional insulation is not required where the area of new construction is less than 2m ² , b) insulation specified is not required for parts of altered construction where insulation already exists.				✓	✓
Construction	Additional insulation required (R-value)	Other specifications			
floor above existing dwelling or building.	nil				
external wall: framed (weatherboard, fibro, metal clad)	R1.30 (or R1.70 including construction)				
flat ceiling, flat roof: framed	ceiling: R2.50 (up), roof: foil/sarking	medium (solar absorbance 0.475 - 0.70)			

Glazing requirements						Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Window / door no.	Orientation	Area of glass inc. frame (m ²)	Overshadowing		Shading device	Frame and glass type		
			Height (m)	Distance (m)				
U3_Ens B1	SE	1.4	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)		
U3_Bed1	SE	1.4	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)		
U3_Bed-1	NE	3.3	0	0	eave/verandah/pergola/balcony >=450 mm	improved aluminium, single pyrolytic low-e, (U-value: 4.48, SHGC: 0.46)		
U4_Entry	SW	1.08	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)		
U4_Bed-1	SW	1.4	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)		
U4_Bed-2	NW	1.4	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)		
U4_Ens B1	NW	1.4	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)		
U4_Bed1	NW	1.4	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)		
U4_Bed1	NE	3.3	0	0	eave/verandah/pergola/balcony >=450 mm	improved aluminium, single pyrolytic low-e, (U-value: 4.48, SHGC: 0.46)		

Legend
In these commitments, "applicant" means the person carrying out the development.
Commitments identified with a "✓" in the "Show on DA plans" column must be shown on the plans accompanying the development application for the proposed development (if a development application is to be lodged for the proposed development).
Commitments identified with a "✓" in the "Show on CC/CDC plans & specs" column must be shown in the plans and specifications accompanying the application for a construction certificate / complying development certificate for the proposed development.
Commitments identified with a "✓" in the "Certifier check" column must be certified by a certifying authority as having been fulfilled, before a final occupation certificate for the development may be issued.



REVISION				
E	31/03/22	DEVELOPMENT APPLICATION ISSUE	NVM	JP
D	28/11/19	AMENDMENTS AS PER CONSENT	NVM	JP
C	28/02/18	DEVELOPMENT APPLICATION ISSUE	NVM	JP
B	08/12/17	DEVELOPMENT APPLICATION ISSUE	NVM	JP
ISSUE	DATE	REVISION	BY	CHECKED

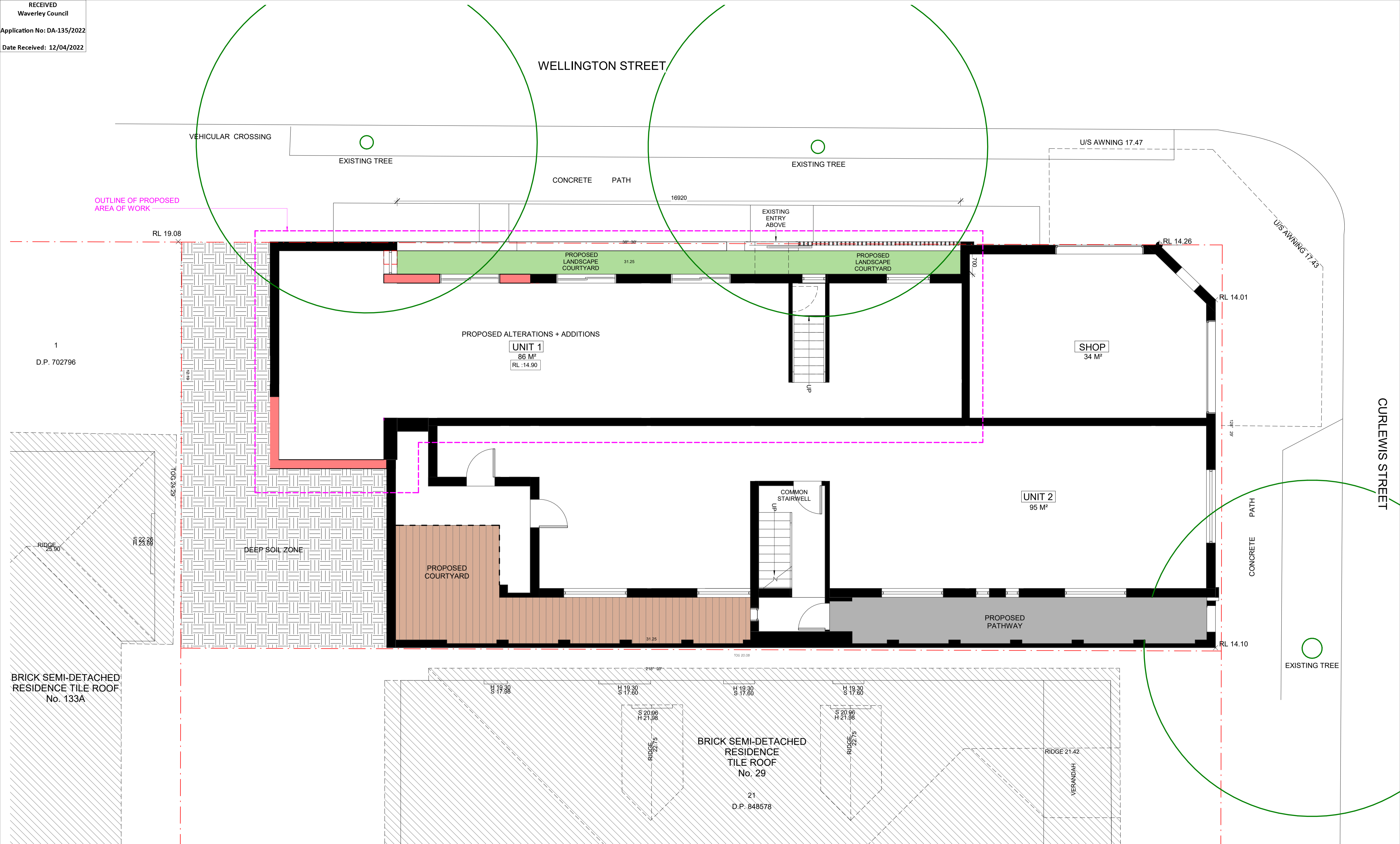
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PRELIMINARY
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ALTERATIONS + ADDITIONS MULTI UNIT DEVELOPMENT		SCALE @ A1:	
		SCALE @ A3:	
CLIENT: MS K. KIRBY		DRAWN BY: M.S	DATE: 31/03/2021
		CHECKED BY: J.P	SHEET NUMBER:
ADDRESS: 25-27 CURLEWIS STREET, BONDI		PROJECT NUMBER: 17071	E101





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Nominated Architect:
Joseph Panella

NSW Architects Registration
Board No: 9505

REVISION				
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ISSUE	DATE	REVISION	BY	CHECKED

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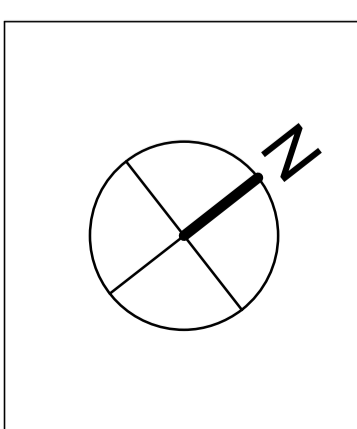
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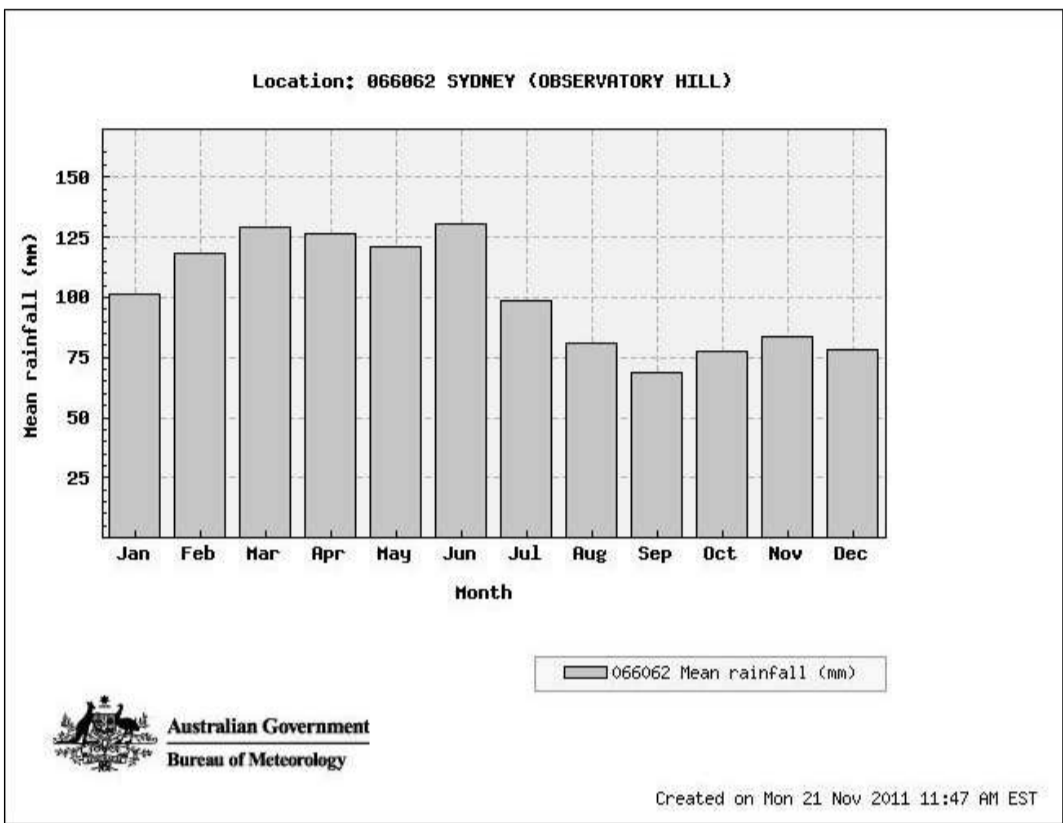
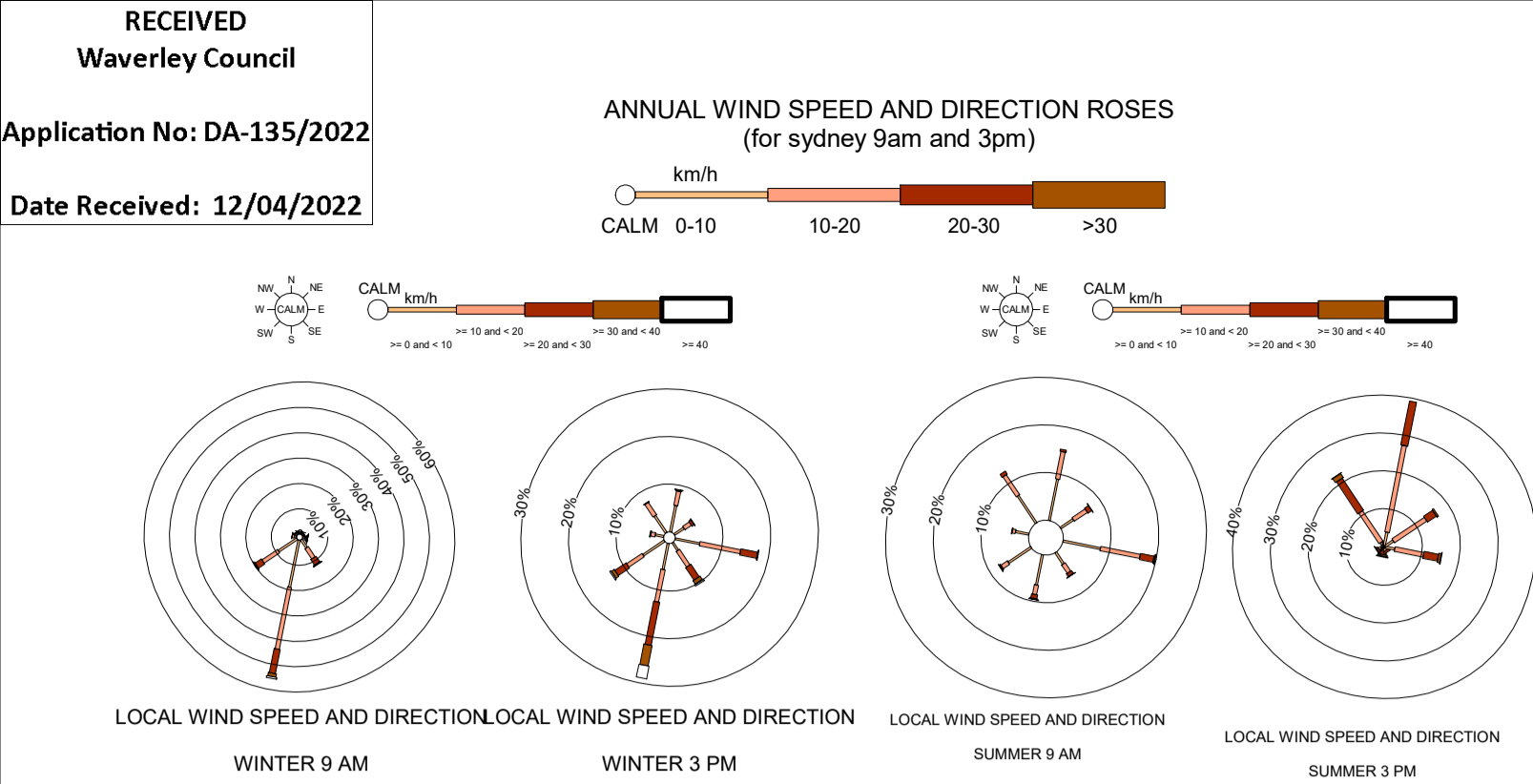
SITE PLAN

PRELIMINARY

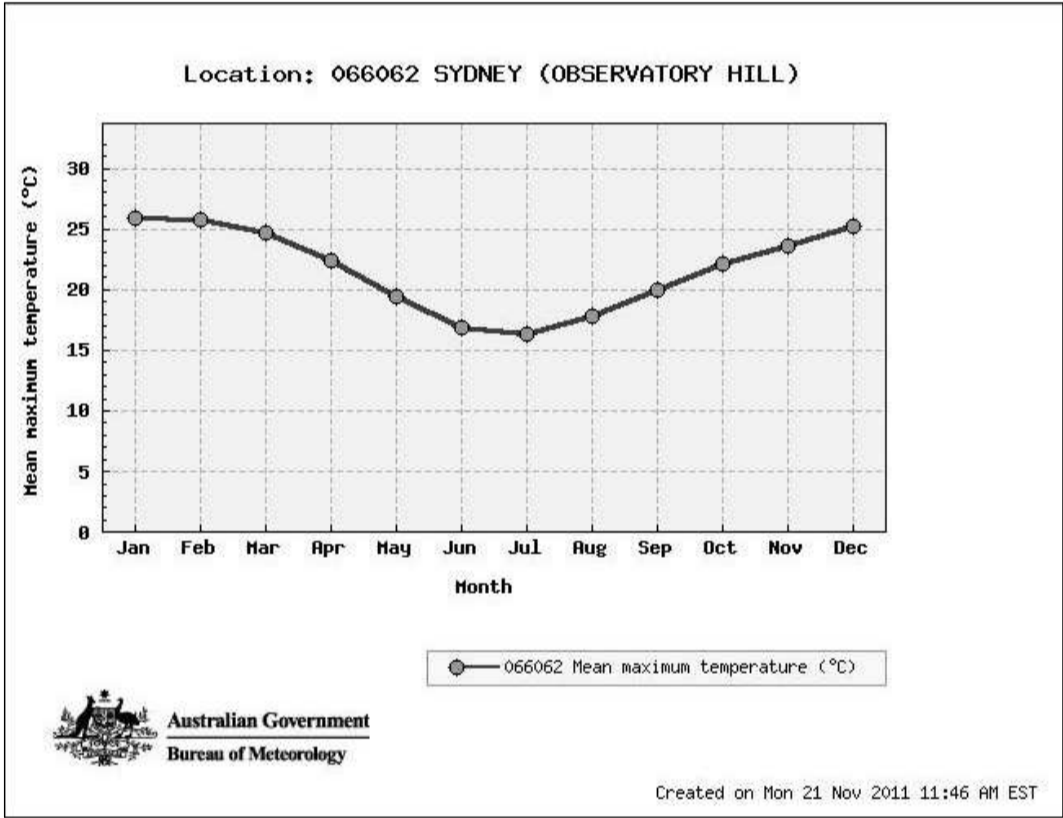
NOT FOR CONSTRUCTION



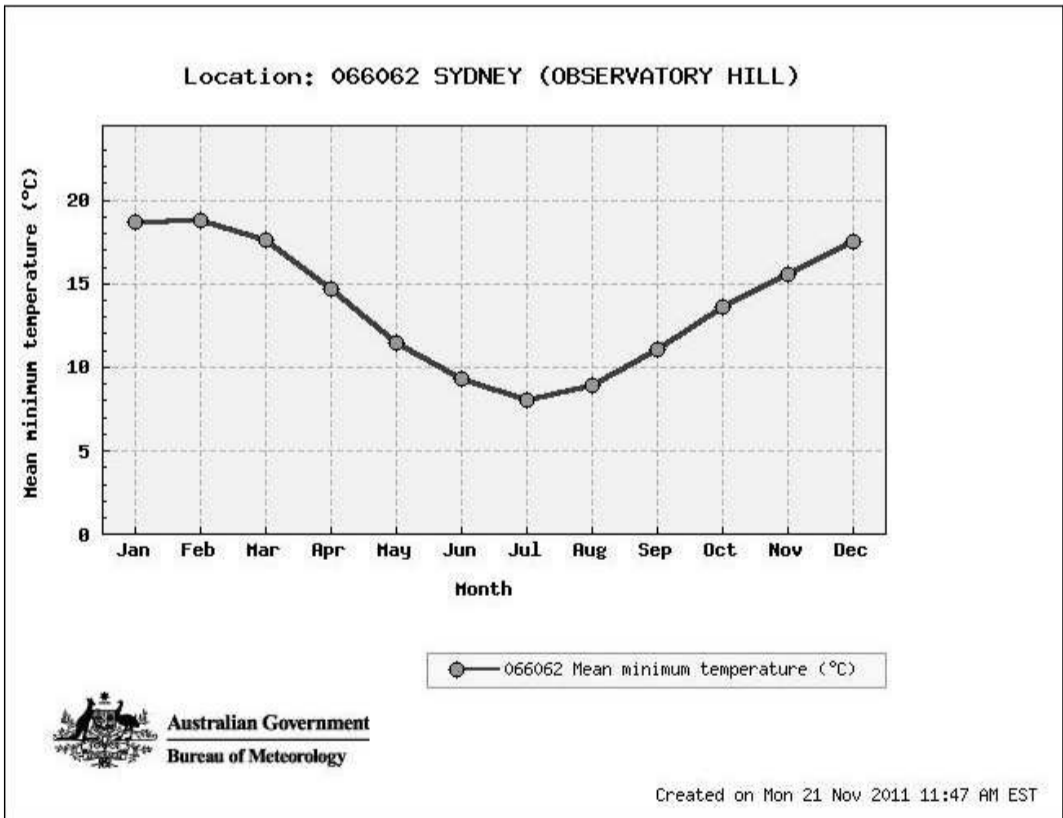
ALTERATIONS + ADDITIONS MULTI UNIT DEVELOPMENT		SCALE @ A1: 1 : 50	
		SCALE @ A3:	
CLIENT:	MS K. KIRBY	DRAWN BY: M.S	DATE: 31/03/2021
		CHECKED BY: J.P	SHEET NUMBER:
ADDRESS: 25-27 CURLEWIS STREET, BONDI		PROJECT NUMBER: 17071	E102



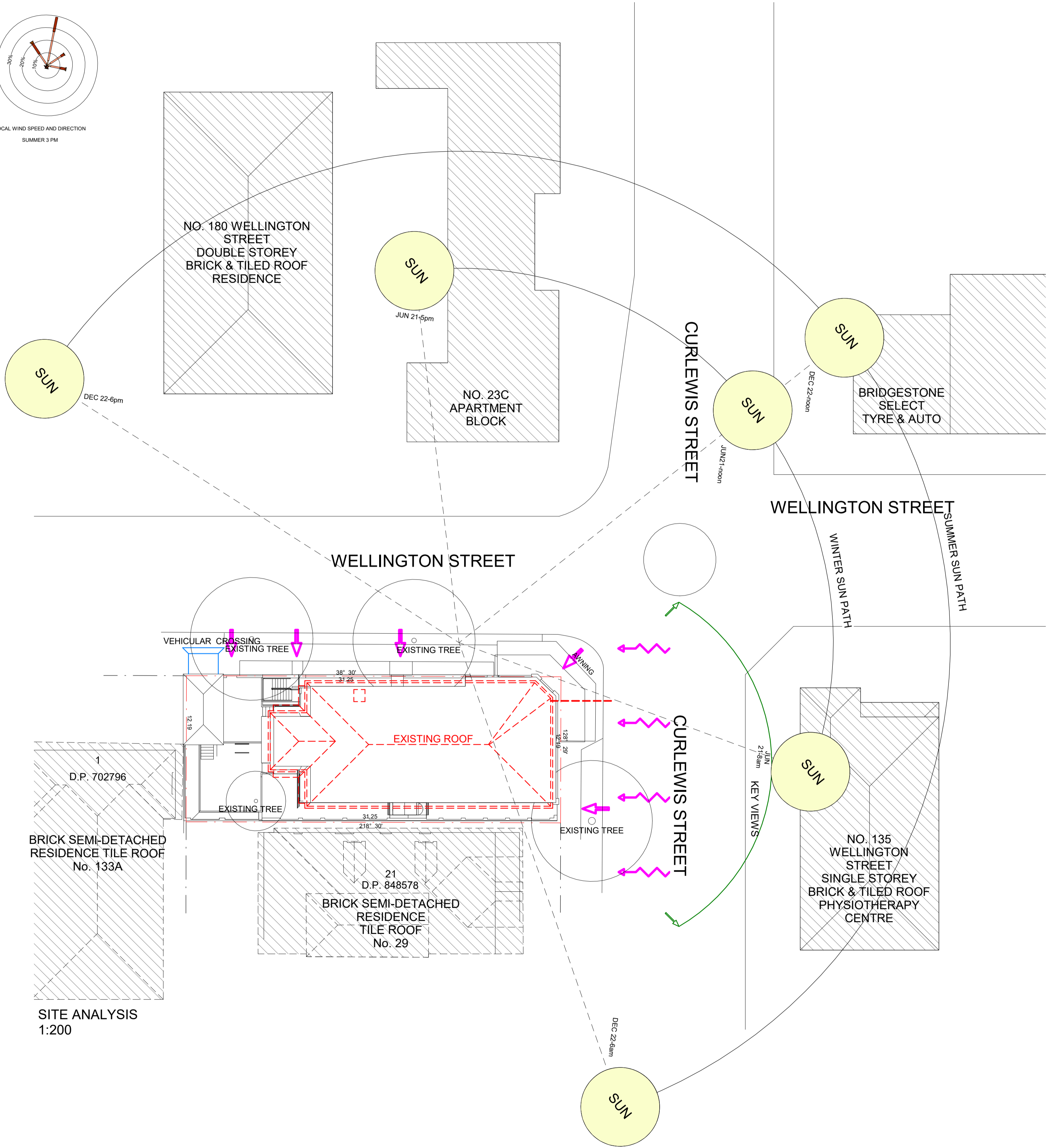
AVERAGE RAINFALL
LOCATION: SYDNEY, NSW



AVERAGE MAX TEMPERATURE
LOCATION: SYDNEY, NSW



AVERAGE MIN TEMPERATURE
LOCATION: SYDNEY, NSW



LEGEND	
TYPE	TYPE
	EXISTING BUILDINGS TO BE DEMOLISHED
	PROPOSED BUILDING FOOTPRINT
	EXISTING BUILDING FOOTPRINT ON SITE
	NEIGHBOURING BUILDINGS
	EXISTING TREES TO BE RETAINED
	EXISTING TREES TO BE REMOVED
	SITE BOUNDARIES
	NEIGHBOURING WINDOW
	KEY VIEWS
	NOISE SOURCE FEATURE
	PROPOSED PRIVATE OPEN SPACE
	PROPOSED VEHICULAR ACCESS POINT DRIVEWAY ENTRY / EXIT
	PROPOSED PEDESTRIAN ACCESS POINT
	PROPOSED DRIVEWAY CROSSING



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ISSUE	DATE	REVISION	BY	CHECKED

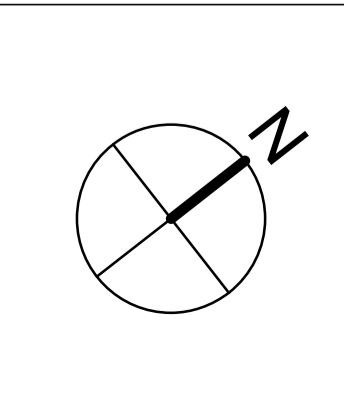
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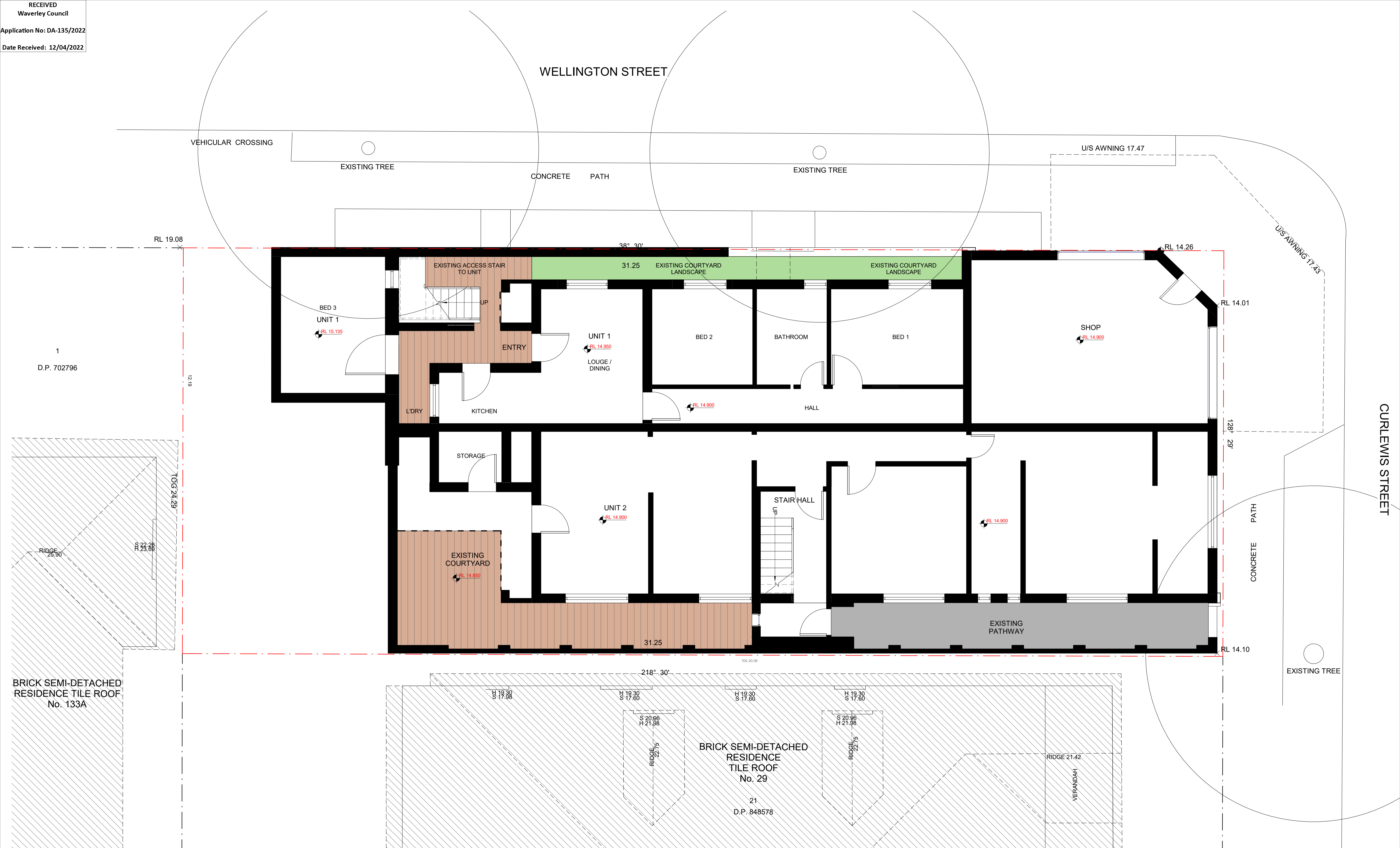
SITE ANALYSIS

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ALTERATIONS + ADDITIONS MULTI UNIT DEVELOPMENT	
CLIENT: MS K. KIRBY	
ADDRESS: 25-27 CURLEWIS STREET, BONDI	

SCALE @ A1: As indicated	
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DRAWN BY: M.S	DATE: 31/03/2021
CHECKED BY: J.P	SHEET NUMBER:
PROJECT NUMBER: 17071	E103





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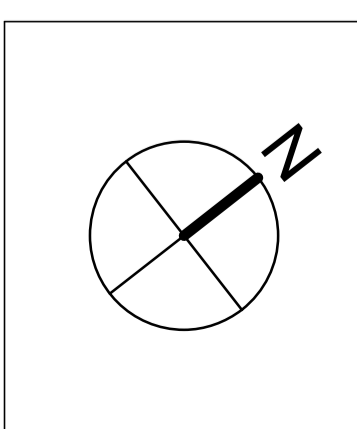
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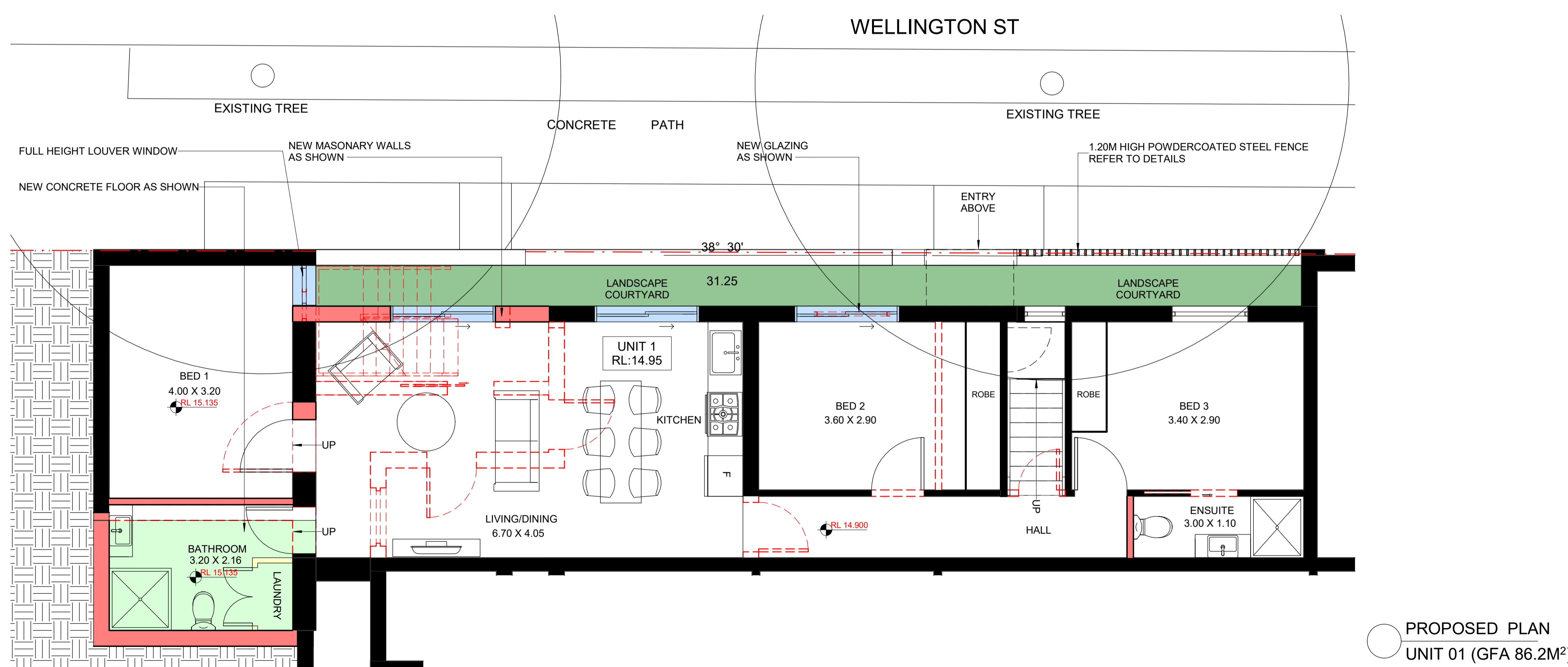
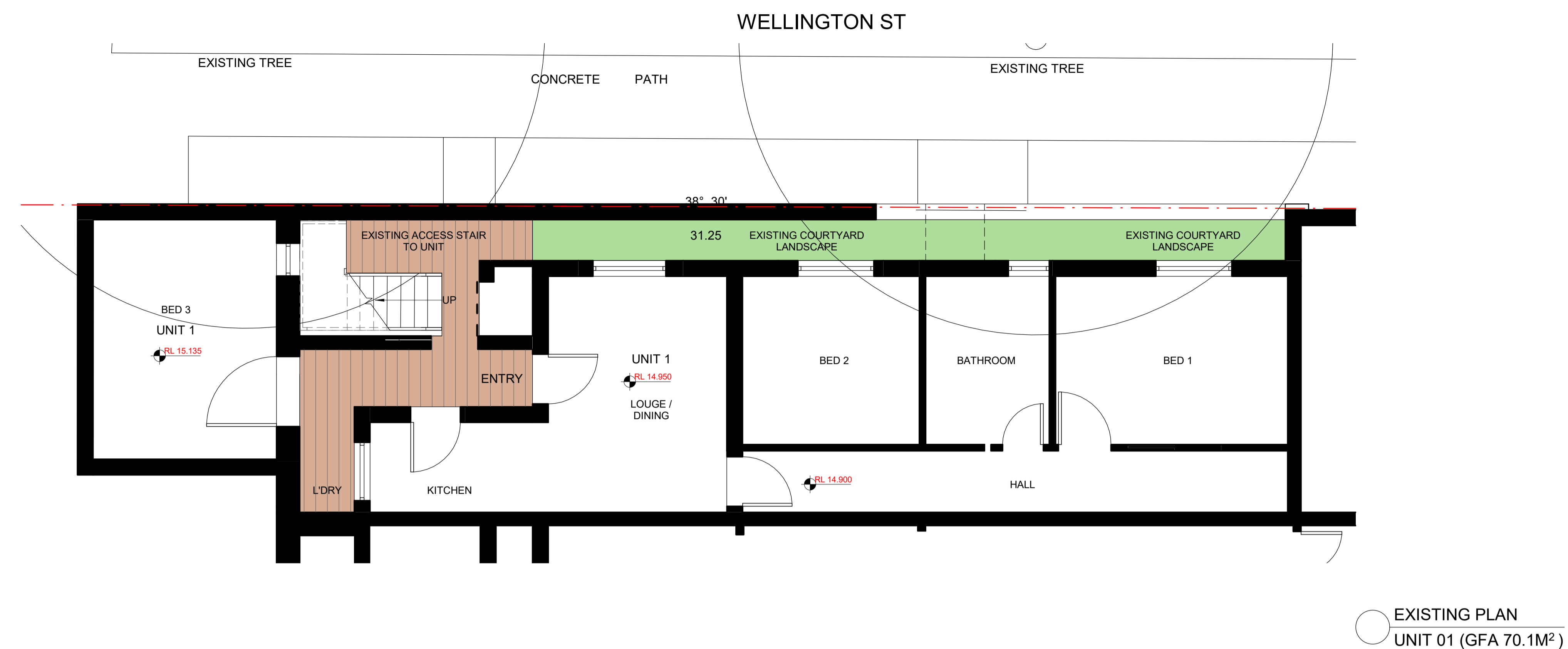
EXISTING GROUND
FLOOR PLAN

PRELIMINARY
NOT FOR CONSTRUCTION



ALTERATIONS + ADDITIONS MULTI UNIT DEVELOPMENT		SCALE @ A1: 1 : 50	
		SCALE @ A3: 1 : 100	
CLIENT:	MS K. KIRBY	DRAWN BY: M.S	DATE: 31/03/2021
		CHECKED BY: J.P	SHEET NUMBER:
ADDRESS:	25-27 CURLEWIS STREET, BONDI	PROJECT NUMBER: 17071	E104

MATERIAL LEGEND	
COLOR	MATERIAL TYPE
	CONCRETE
	BRICK
	TIMBER
	GLASS
	STEEL WORK
	METAL ROOFING
	EXISTING STRUCTURE TO BE RETAINED
	EXISTING STRUCTURE TO BE REMOVED





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ISSUE	DATE	REVISION	BY	CHECKED	

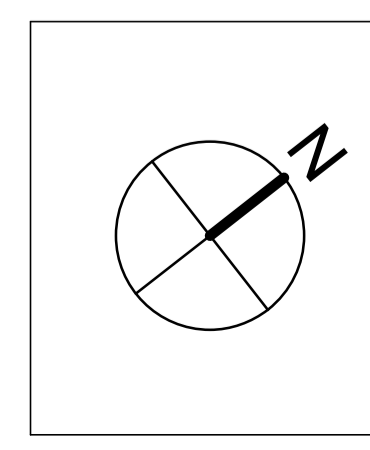
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EXISTING / PROPOSED
PLAN

PRELIMINARY
NOT FOR CONSTRUCTION



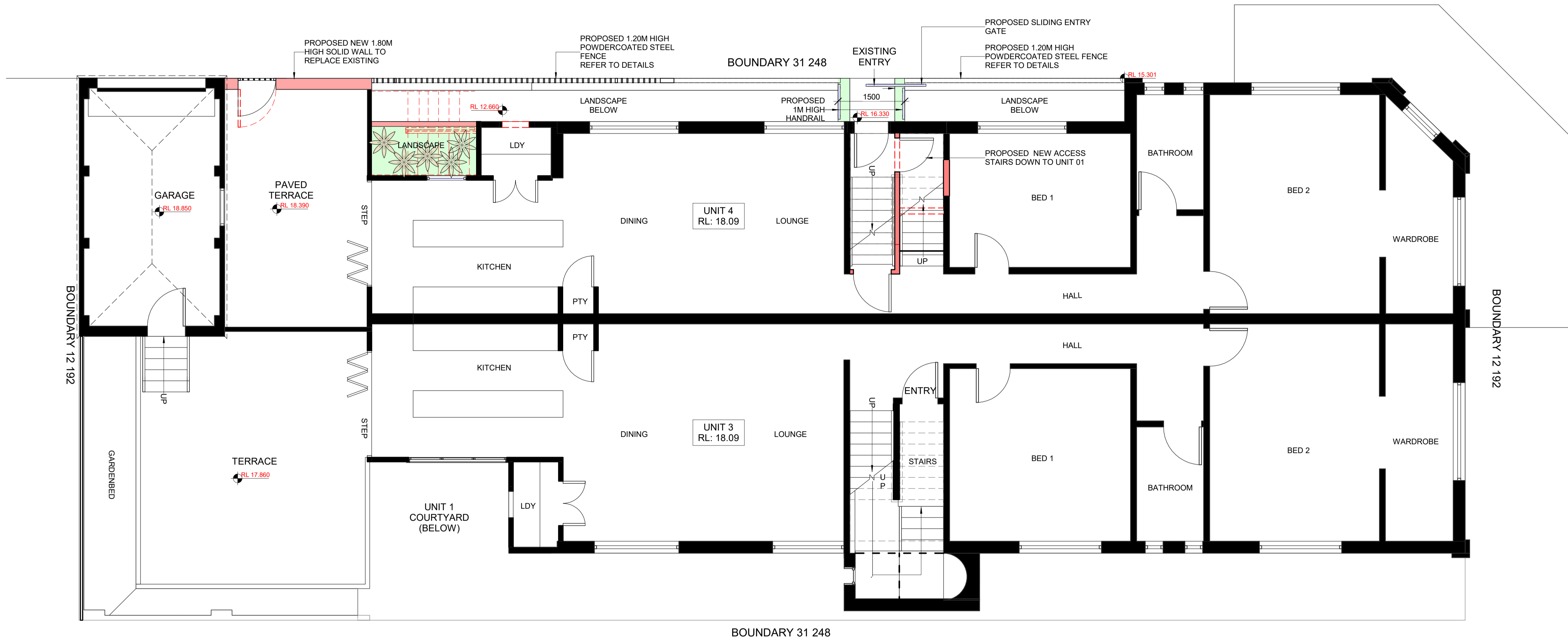
ALTERATIONS + ADDITIONS
MULTI UNIT DEVELOPMENT

CLIENT:
MS K. KIRBY

ADDRESS:
25-27 CURLEWIS STREET, BONDI

SCALE @ A1: As indicated	
SCALE @ A3:	
DRAWN BY: M.S	DATE: 31/03/2021
CHECKED BY: J.P	SHEET NUMBER:
PROJECT NUMBER: 17071	E105

MATERIAL LEGEND	
COLOR	MATERIAL TYPE
	CONCRETE
	BRICK
	TIMBER
	GLASS
	STEEL WORK
	METAL ROOFING
	EXISTING STRUCTURE TO BE RETAINED
	EXISTING STRUCTURE TO BE REMOVED





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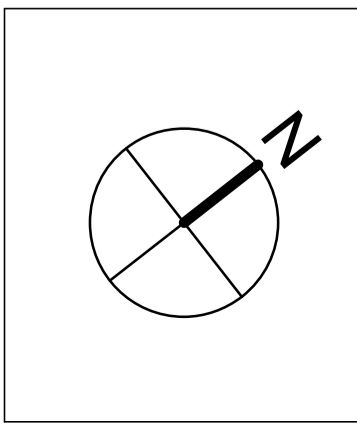
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PROPOSED FIRST FLOOR PLAN

PRELIMINARY

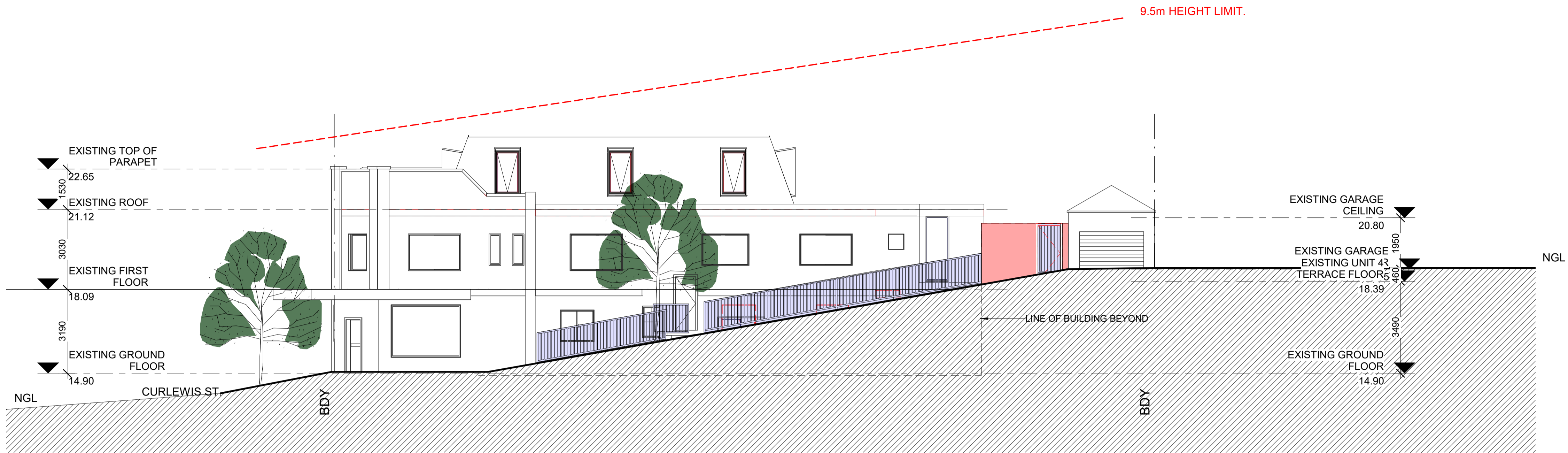
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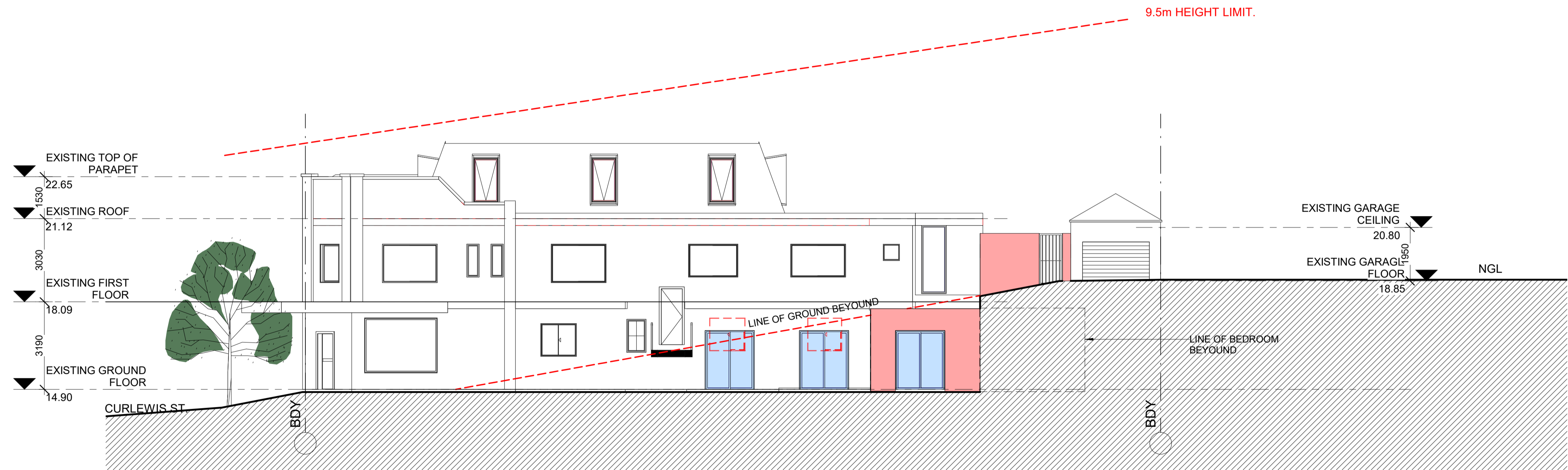
ALTERATIONS + ADDITIONS	
MULTI UNIT DEVELOPMENT	
CLIENT:	MS K. KIRBY
ADDRESS:	25-27 CURLEWIS STREET, BONDI

SCALE @ A1:	As indicated
SCALE @ A3:	1 : 100
DRAWN BY:	M.S
CHECKED BY:	J.P
PROJECT NUMBER:	17071
DATE:	31/03/2021
SHEET NUMBER:	E106

MATERIAL LEGEND	
COLOR	MATERIAL TYPE
	CONCRETE
	BRICK
	TIMBER
	GLASS
	STEEL WORK
	METAL ROOFING
	EXISTING STRUCTURE TO BE RETAINED
	EXISTING STRUCTURE TO BE REMOVED



1 WEST ELEVATION PROPOSED (STREETSCAPE ELEVATION)
1 : 100

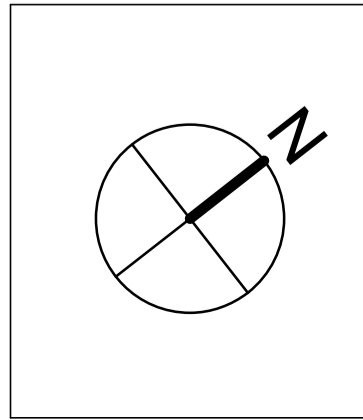


3 PROPOSED WEST ELEVATION..
1 : 100

REVISION					
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ISSUE	DATE	REVISION	BY	CHECKED	

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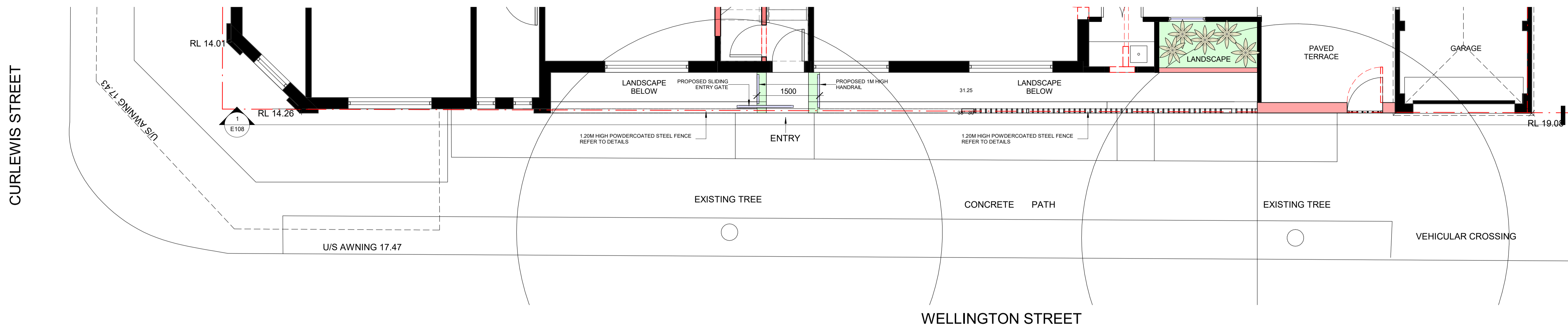
PROPOSED ELEVATION
PRELIMINARY
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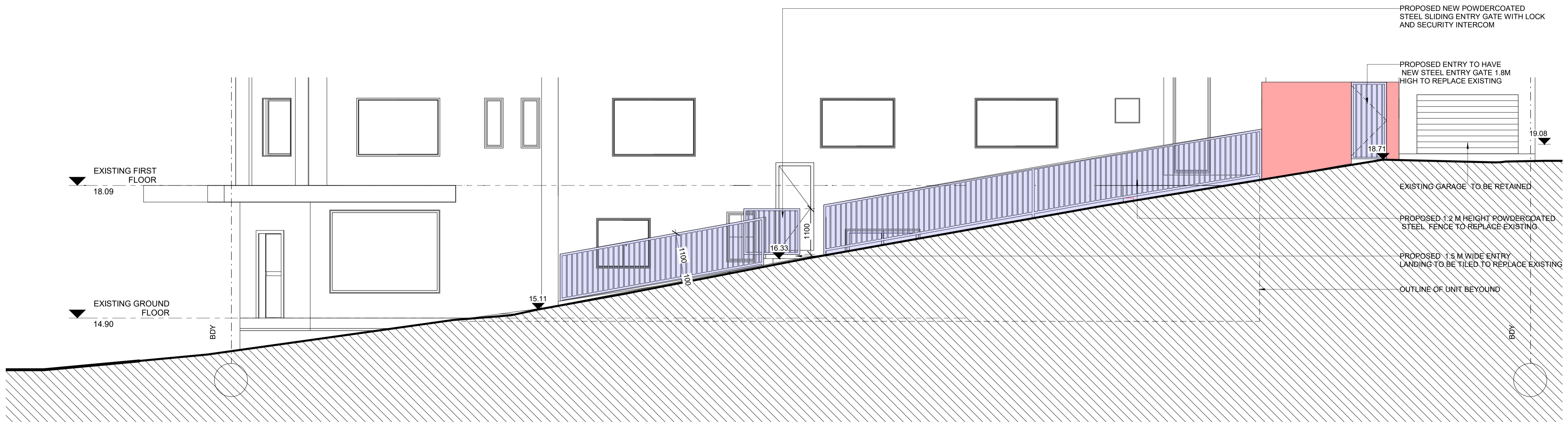
ALTERATIONS + ADDITIONS	
MULTI UNIT DEVELOPMENT	
CLIENT:	MS K. KIRBY
ADDRESS:	25-27 CURLEWIS STREET, BONDI

SCALE @ A1:	As indicated
SCALE @ A3:	
DRAWN BY:	M.S
CHECKED BY:	J.P
PROJECT NUMBER:	17071
DATE:	31/03/2021
SHEET NUMBER:	E107

MATERIAL LEGEND	
COLOR	MATERIAL TYPE
█	BRICK
█	STEEL WORK
█	EXISTING STRUCTURE TO BE RETAINED
- - -	EXISTING STRUCTURE TO BE REMOVED



2 FRONT FENCE DETAIL PLAN
1 : 50

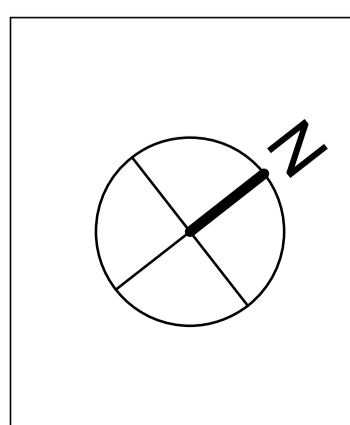


1 FRONT FENCE DETAIL ELEVATION
1 : 50

REVISION					
E	31/03/22	DEVELOPMENT APPLICATION ISSUE	NVM	JP	
D	28/11/19	AMENDMENTS AS PER CONSENT	NVM	JP	
C	28/02/18	DEVELOPMENT APPLICATION ISSUE	NVM	JP	
B	08/12/17	DEVELOPMENT APPLICATION ISSUE	NVM	JP	
ISSUE	DATE	REVISION	BY	CHECKED	

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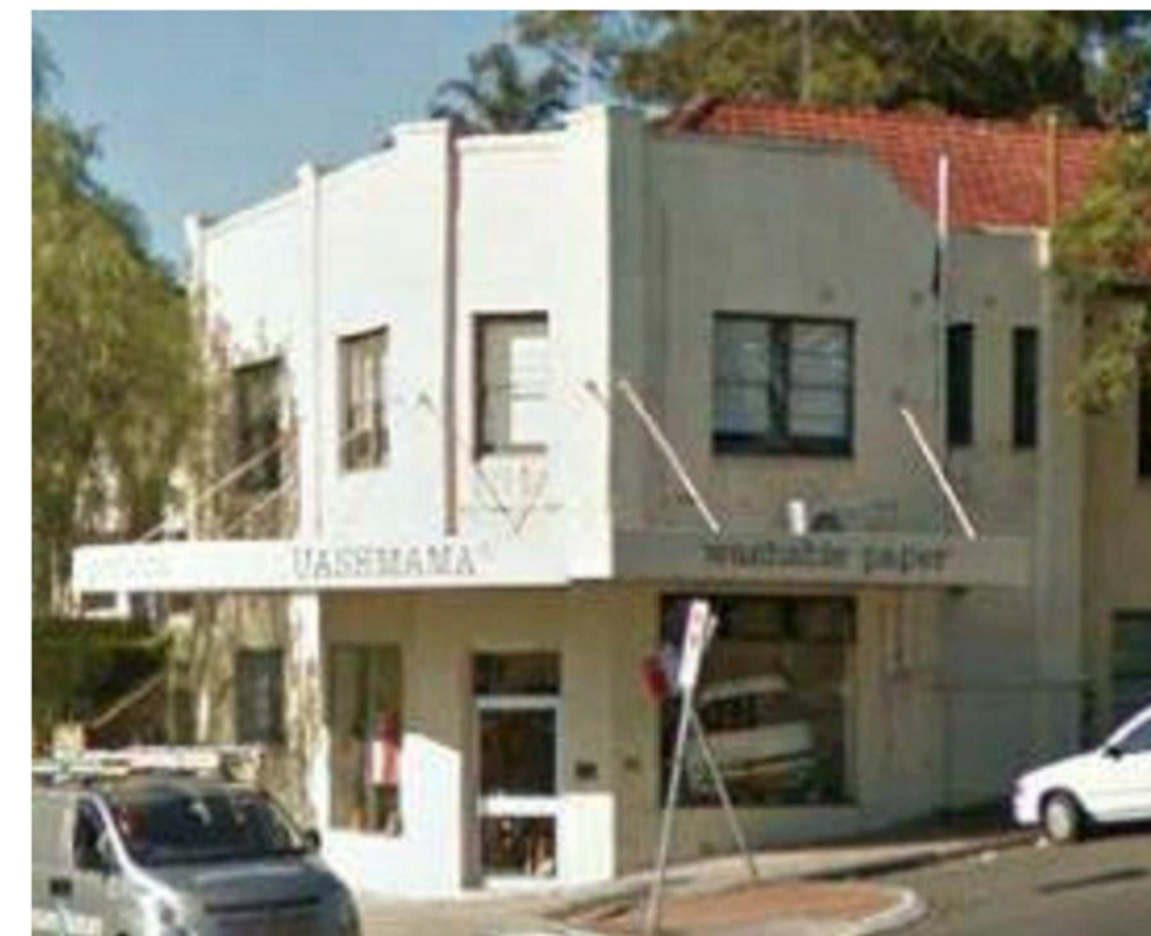
**PROPOSED FENCE
ELEVATION**
PRELIMINARY
NOT FOR CONSTRUCTION



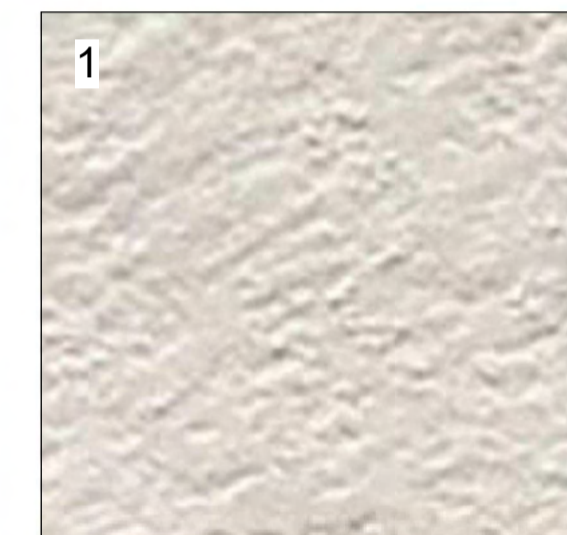
ALTERATIONS + ADDITIONS MULTI UNIT DEVELOPMENT	
CLIENT: MS K. KIRBY	
ADDRESS: 25-27 CURLEWIS STREET, BONDI	

SCALE @ A1: As indicated	
SCALE @ A3:	
DRAWN BY: M.S	DATE: 31/03/2021
CHECKED BY: J.P	SHEET NUMBER:
PROJECT NUMBER: 17071	E108

FAÇADE AND PARAPET OF THE EXISTING BUILDING
SHALL BE MAINTAINED .



EXISTING PARAPET TO BE RETAINED



EXISTING WALL COLOR
DULUX " WHITE"

(SPACKLED RENDER FINISH)



METAL BALUSTRADING
DULUX "NATURAL GREY"
MICACIOUS IRON OXIDE PAINT.

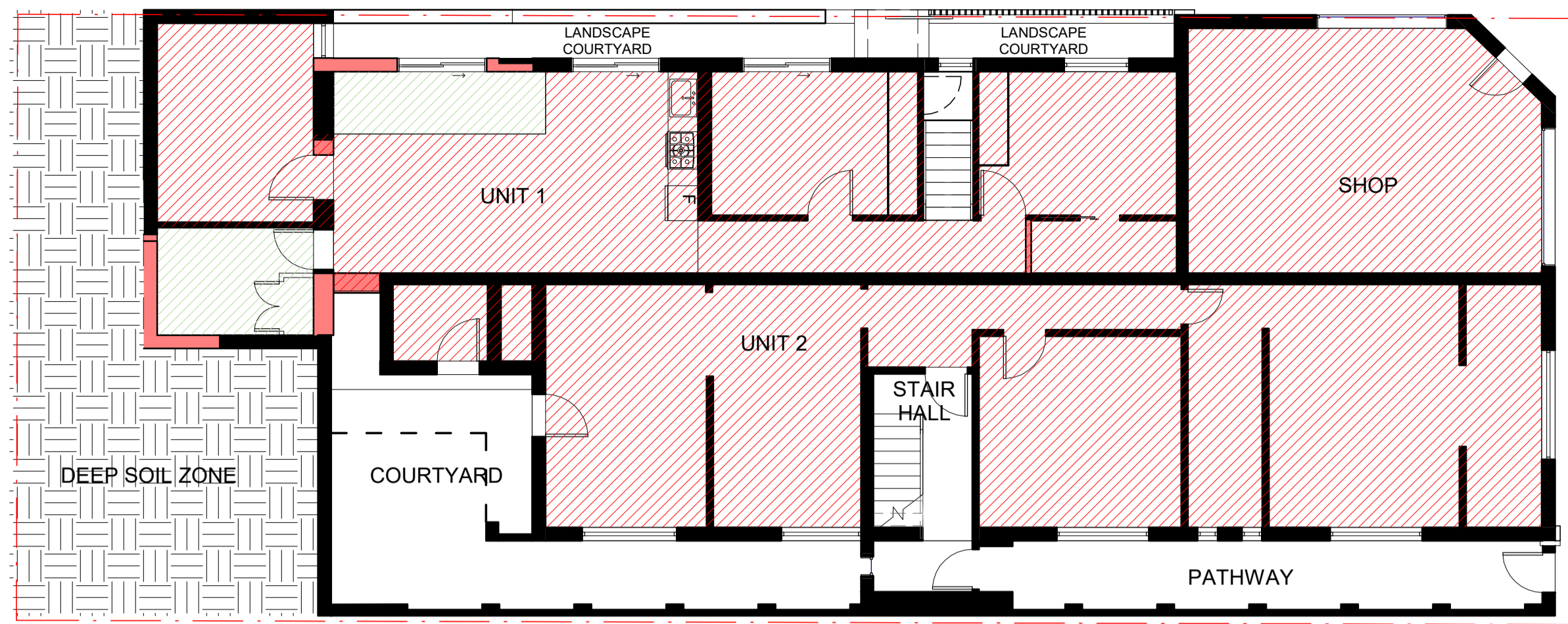


2 WEST ELEVATION PROPOSED MATERIALS

NTS

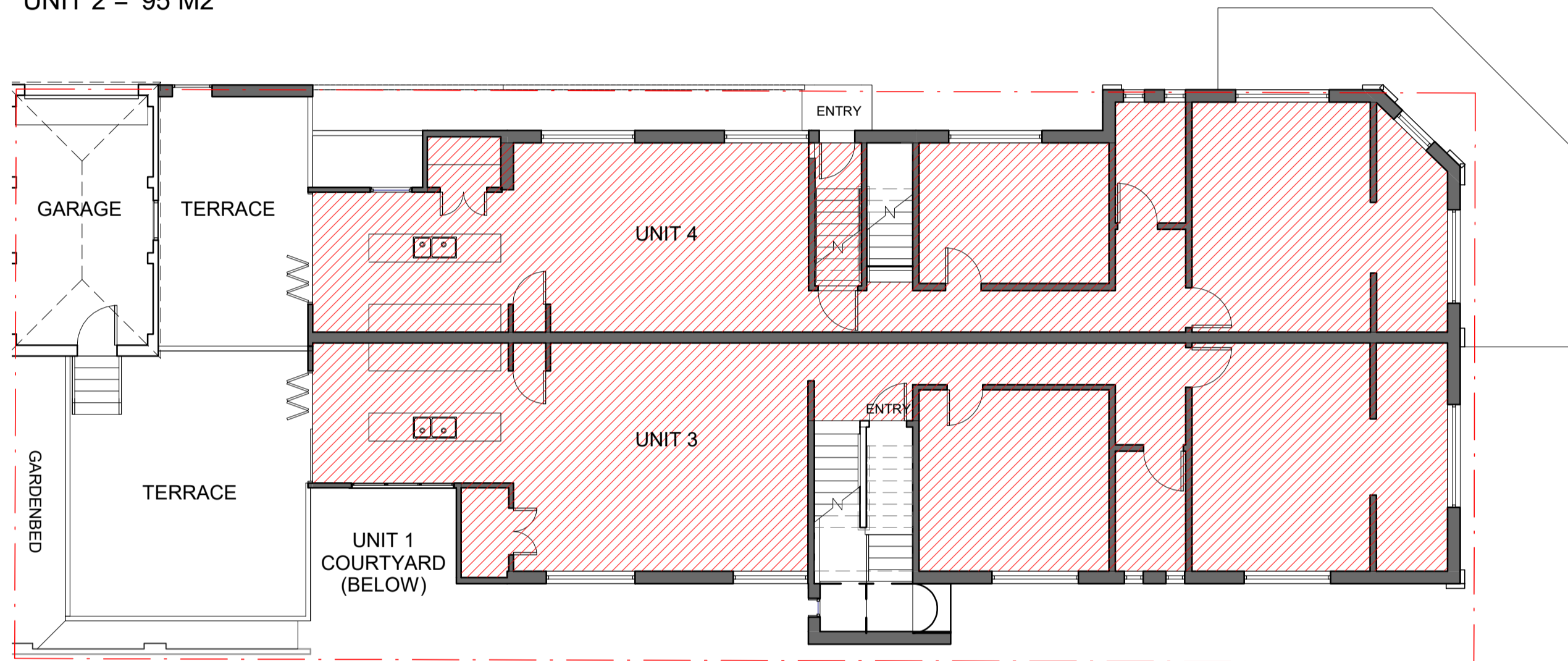
REVISION					
E	31/03/22	DEVELOPMENT APPLICATION ISSUE	NVM	JP	
D	28/11/19	AMENDMENTS AS PER CONSENT	NVM	JP	
C	28/02/18	DEVELOPMENT APPLICATION ISSUE	NVM	JP	
B	08/12/17	DEVELOPMENT APPLICATION ISSUE	NVM	JP	
ISSUE	DATE	REVISION	BY	CHECKED	

	ALTERATIONS + ADDITIONS		SCALE @ A1: NTS	
	MULTI UNIT DEVELOPMENT		SCALE @ A3:	
	CLIENT: MS K. KIRBY	ADDRESS: 25-27 CURLEWIS STREET, BONDI	DRAWN BY: M.S	DATE: 31/03/2021
			CHECKED BY: J.P	SHEET NUMBER:
	PROJECT NUMBER: 17071		E109	

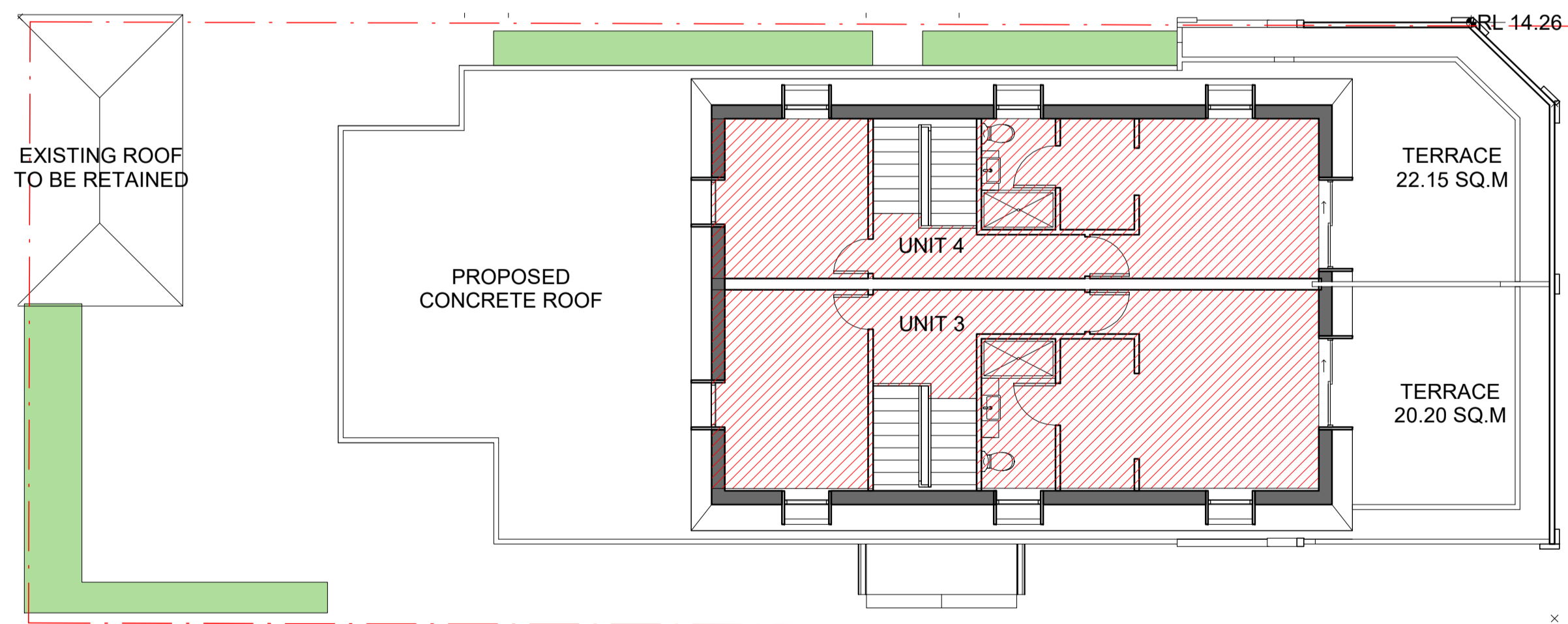


GROUND FLOOR:
SHOP = 34 M2
UNIT 1 = 86.2 M2
UNIT 2 = 95 M2

PROPOSED GROUND FLOOR:
UNIT 1 = 12 M2 (ADDITIONAL)



FIRST FLOOR:
UNIT 3 = 105 M2
UNIT 4 = 98 M2



ATTIC FLOOR:
UNIT 3 = 45 M2
UNIT 4 = 35 M2

SITE CALCULATION

SITE AREA = 380.78 M2

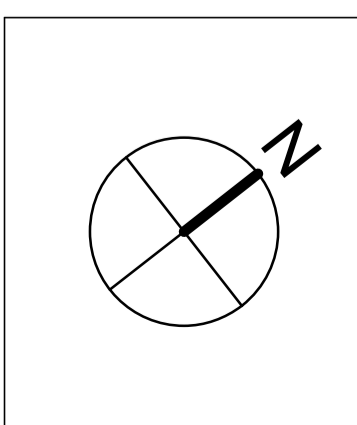
GROUND FLOOR:
SHOP = 34.00 M2
UNIT 1 = 86.20 M2
UNIT 2 = 95.00 M2

FIRST FLOOR:
UNIT 3 = 105.00 M2
UNIT 4 = 98.00 M2

ATTIC LEVEL:
UNIT 3 = 45.00 M2
UNIT 4 = 35.00 M2

TOTAL EXISTING APPROVED GFA = 482 M2
TOTAL PROPOSED GFA = 498.2 M2

TOTAL EXISTING APPROVED FSR = 1.27.1
TOTAL PROPOSED FSR = 1.30.1





Report to the Waverley Local Planning Panel

Application number	DA-118/2022
Site address	53, 55 and 57 Beaumont Street ROSE BAY
Proposal	Demolition of the existing dwelling at 55 Beaumont Street and subdivision of the existing 3 lots into 2 lots (Torrens Title).
Date of lodgement	29/03/2022
Owner	Milsons Magic P/L
Applicant	Pertama Development P/L
Submissions	14 objections
Cost of works	\$20,000
Principal Issues	Nil
Recommendation	That the application be APPROVED in accordance with the conditions contained in the report.

SITE MAP



1. PREAMBLE

1.1. Executive Summary

The development application seeks consent for the demolition of the existing dwelling at No. 55 Beaumont Street (existing central site) and subdivision of the existing three sites into two Torrens title allotments at 53, 55 and 57 Beaumont Street, Rose Bay.

There are no principal issues arising from the assessment of the application as the area of each lot at 770m² and 880m² exceed the minimum subdivision lot size of 500m² required by Waverley Local Planning Environment (Waverley LEP 2012).

The proposed subdivision will maintain the established character of the area as a low density residential environment given each lot will contain a single detached dwelling, post demolition of 55 Beaumont Street. The sites surrounding the subject site are characterised by a variety of low density development forms with larger sites containing detached dwelling houses or dual occupancy developments and smaller sites, particularly at the rear of the subject site, containing semi-detached dwellings.

A total number of 14 submissions were received and the issues raised in the submissions have been considered and addressed in this report and in the Recommendation.

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. It is recommended for approval subject to conditions of consent.

1.2. Site and Surrounding Locality

A site visit was carried out on 21 June 2022.

The site is comprised of three lots identified as:

- Lot 1 in DP 14861, known as 53 Beaumont Street, Rose Bay which contains a two-storey dwelling over a double garage at street level accessed via a double driveway crossing from Beaumont Street. This lot is generally rectangular in shape except for an arced frontage to Beaumont Street measuring 13.52m and an area of 440.8m². The site falls from the rear to the front by approximately 5m.
- Lot 2 in DP 14861, known as 55 Beaumont Street, Rose Bay which contains a single storey dwelling with a single garage within the front setback accessed via a single driveway crossing from Beaumont Street. This lot is generally rectangular in shape except for a splayed frontage to Beaumont Street measuring 11.46m and an area of 406.8m². The site falls from the rear to the front by approximately 4.3m.
- Lot 3 in DP 14861, known as 57 Beaumont Street, Rose Bay which contains a single storey dwelling with integrated garage beneath, accessed via a single driveway crossing from Beaumont Street. This lot is L-shaped with a splayed frontage to Beaumont Street measuring 11.48m and an area of 801m².

The site is irregularly shaped fronting Beaumont Street to the north, with the rear portion of the site adjoining the rear boundaries of 53 and 55 Beaumont Street. The rear portion of the site is relatively flat and the front portion fronting Beaumont Street falls from the rear to the front by approximately 3.5m.

The site is adjoined by dwelling houses on either side and to the rear. The locality is characterised by a variety of low density residential development, including detached dwellings, attached and detached dual occupancies and semi-detached dwellings.

Figures 1 to 7 are photos of the site and its context.



Figure 1: Aerial view of the subject sites in 3D (Source: Realestate.com.au)



Figure 2: 53 Beaumont Street frontage



Figure 3: 55 Beaumont Street frontage



Figure 4: 57 Beaumont Street frontage



Figure 5: Rear elevation of 57 Beaumont Street



Figure 6: Rear yard of 57 Beaumont Street (rear of L-shape)



Figure 7: Rear boundary fence of 57 Beaumont Street

1.3. Relevant Development History

DA-9/2021 for the demolition of three dwelling houses and construction of a three-storey seniors housing development incorporating 10 self-contained apartments, basement car parking and landscaping was refused by the Land and Environment Court (LEC) on 22/12/2021. The appeal was dismissed (refused) by the LEC for the following reasons (summarised):

- Unacceptable bulk and scale.
- A suitable access pathway to facilities, services and public transport was not provided.
- The failure to provide communal open space was unacceptable.

1.4. Proposal

The development application seeks consent for the demolition of the existing dwelling at No. 55 Beaumont Street (existing centre site shown in **Figure 3** above) and subdivision of the existing three sites into two Torrens title allotments.

The western allotment (hereafter referred to as Lot 1 in this report) will have an area of 880m² with an arced frontage to Beaumont Street and will contain the retained two-storey dwelling currently occupying No. 53 Beaumont Street.

The eastern allotment (hereafter referred to as Lot 2 in this report) will have an area of 770m² with a splayed frontage to Beaumont Street and will contain the retained single storey dwelling currently occupying No. 57 Beaumont Street.

2. ASSESSMENT

The following matters are to be considered in the assessment of this development application under section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act).

2.1. Planning Instruments and Development Control Plans

The following is an assessment against relevant legislation, environmental planning instruments, including State environmental planning policies (SEPPs), and development control plans.

2.1.1. State Environmental Planning Policies (SEPPs)

The following SEPPs apply from 1 March 2022 and have been considered acceptable in the assessment of this development application:

- SEPP (Biodiversity and Conservation) 2021
- SEPP (Resilience and Hazards) 2021.

2.1.2. Draft Waverley Local Environmental Plan 2022 (Draft Waverley LEP 2022)

The Draft Waverley Local Environmental Plan 2022 was exhibited from 12 November 2021 to 23 January 2022, however at the time of this assessment, there are no relevant matters for consideration.

2.1.3. Waverley LEP 2012

The relevant matters to be considered under the Waverley LEP 2012 for the proposed development are outlined below:

Table 1: Waverley LEP 2012 Compliance Table

Provision	Compliance	Comment
Part 1 Preliminary		
1.2 Aims of plan	Yes	The proposal is consistent with the aims of the LEP.

Provision	Compliance	Comment
Part 2 Permitted or prohibited development		
2.6 Subdivision – consent requirements	Yes	The application seeks consent for Torrens title subdivision of the site into two allotments.
Land Use Table R2 Low Density Residential Zone	Yes	The proposal is permitted with consent. The proposal will subdivide three sites into two allotments which is consistent with the surrounding low density residential environment. The proposal is considered to be consistent with the objectives of the R2 zone.
Part 4 Principal development standards		
4.1 Minimum subdivision lot size <ul style="list-style-type: none">500m²	Yes	<ul style="list-style-type: none"> Lot 1 is 880m² Lot 2 is 770m² Both lots will exceed the minimum development standard.

2.1.4. Waverley Development Control Plan 2012 (Waverley DCP 2012) – Amendment No.9

The relevant matters to be considered under the Waverley DCP 2012 for the proposed development are outlined below:

Table 2: Waverley DCP 2012 – Part B General Provisions Compliance Table

Development Control	Compliance	Comment
1. Waste	Yes	Satisfactory
5. Vegetation Preservation	N/A	No tree removal is proposed as part of the demolition. A condition is recommended ensuring that the applicant is aware that tree removal is not permitted as part of this application and a separate Tree Management application would be required if works to any trees were to occur.
13. Subdivision	Yes	<p>The proposed subdivision will maintain the established character of the area as a low density residential environment given each lot will contain a single detached dwelling, post demolition of 55 Beaumont Street.</p> <p>The sites surrounding the subject site are characterised by a variety of low density development forms, with larger sites containing detached dwelling houses or dual occupancy developments; and smaller sites, particularly at the rear of the subject site, containing semi-</p>

Development Control	Compliance	Comment
		<p>detached dwellings. Surrounding sites vary in area from smaller 450m² allotments to larger 700-870m² allotments. The proposed two new lots will not be out of character given the variation to allotment sizes surrounding the site.</p> <p>The LEP sets a minimum site area development standard for Torrens tile subdivision of 500m² to ensure that any future development of the site is capable of complying with the controls of the LEP and DCP. Both sites exceed the minimum and are capable of providing compliant low density residential development permitted within the zoning.</p> <p>A conceptual plan has not been provided with the application as the proposal results in lesser lots than currently exist and site areas above the minimum development standard. Each lot will contain a dwelling after demolition of No. 55 Beaumont Street and therefore it is not necessary to demonstrate the development potential of this site, as the dwellings will remain.</p> <p>Amenity impacts upon surrounding properties will be unchanged, or reduced, as the proposal will result in only two dwellings, whereas there are three dwellings at present. Any future development proposal would be subject to assessment; however, each site will provide sufficient area to be capable of compliance with the LEP and DCP.</p> <p>Each lot will contain one frontage to Beaumont Street and retain an existing driveway crossing. A condition will require that the redundant crossing is reinstated.</p> <p>The proposal will not compromise any significant features of the existing or adjoining sites including streetscape character, landscape features or trees.</p> <p>It should be noted that the site areas of existing 53 and 55 Beaumont Street are currently less than the 500m² minimum lot size stipulated in the LEP and the subject application will provide two lots compliant with the minimum development standard.</p> <p>The proposal is consistent with the objectives and relevant controls of this part of the DCP.</p>

2.2. Other Impacts of the Development

The proposal is considered to have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

2.3. Suitability of the Site for the Development

The site is considered suitable for the proposal.

2.4. Any Submissions

The application was notified for 14 days between 7 and 21 April 2022 in accordance with the *Waverley Community Development Participation and Consultation Plan*.

A total of 14 unique submissions were received from the following properties:

Table 3: Number of and where submissions were received from.

Count	Property Address
1.	25 Beaumont Street, Rose Bay (2 submissions)
2.	34 Beaumont Street, Rose Bay
3.	37 Beaumont Street, Rose Bay
4.	39 Beaumont Street, Rose Bay
5.	44 Beaumont Street, Rose Bay
6.	49 Beaumont Street, Rose Bay
7.	59 Beaumont Street, Rose Bay
8.	48 Liverpool Street, Rose Bay
9.	50 Liverpool Street, Rose Bay
10.	52 Liverpool Street, Rose Bay
11.	12 Bangalla Road, Rose Bay
12.	16 Bangalla Road, Rose Bay
13.	24 Bangalla Road, Rose Bay
14.	Address not provided (1)

The following issues raised in the submissions have already been discussed and addressed in the body of this report and/or the Recommendation:

- Inconsistency with the character of surrounding allotments; and
- Size of the proposed allotments.

All other issues raised in the submissions are summarised and discussed below:

Issue: Aged care development will result in amenity impacts upon surrounding properties and increase traffic; the property will be converted into apartments, hostel, Air BnB or aged care facility.

Response: A number of objections were received relating to the development of the properties into an aged care residential development. The previous application, which was dismissed in the LEC, was for an

aged care development. The subject application is simply for subdivision and demolition of one of the three dwellings.

Only land uses permitted within the R2 zone can be considered in any future development. Hostels and residential flat buildings are not permitted. Any other uses would be subject to the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) or Council's controls under a development application.

The subject application is for subdivision and demolition only and as such the impact of alternative speculative land uses cannot be considered as part of this application.

Issue: Insufficient parking; more vehicles will cause congestion.

Response: The proposal is for a reduced number of lots and reduced dwellings. Both dwellings already have parking which will be retained.

Issue: Plans should be provided to understand what the developer is planning.

Response: Conceptual plans are not considered necessary as the sites are large enough to accommodate low density residential development that can comply with the applicable controls. Conceptual plans are commonly required where a subdivision application seeks site areas below the minimum lot size development standard to demonstrate that a proposal can provide sufficient setbacks, open space, landscaped area etc on an undersized allotment. It is clear that larger allotments have sufficient area to provide a development that complies with the controls. If, in the future, a development application is submitted, the impacts and acceptability of that development will be assessed at that time, when the actual proposed development is known.

It should be noted that the proposal includes the demolition of only one of the three dwellings and as such, the proposal technically seeks consent for two allotments each containing a single dwelling. As such, a concept plan is not necessary as the dwellings are being retained under this application.

Issue: Construction issues.

Response: Council cannot refuse an application due to inconveniences or issues during construction.

Issue: Increased water supply and drainage concerns; excavation.

Response: The proposal will result in less dwellings and will retain the existing stormwater drainage from the existing remaining dwellings. There is no excavation proposed as part of this application.

Issue: Developer is trying to circumvent the planning controls; larger lots will accommodate apartments and multiple dwellings; the developer may be able to carry out development under a complying development certificate (CDC) which neighbours cannot comment on; Developers should not be able to lodge CDC applications.

Response: A number of objections raise issues in relation to the future redevelopment potential of the site and that the developer should provide conceptual plans to show the development potential. The site is zoned R2 low density development and a residential flat building (ie, apartments) is not a

permitted land use. Dwelling houses and dual occupancies are permitted and may be subject to a complying development application (CDC). However, this is the case for most sites within the area subject to meeting the development standards of the Codes SEPP and there is no planning reason that the Codes SEPP should not apply to these sites. A proposal under the Codes SEPP is entirely possible and is also reasonable. It is not the role of Council to try to prevent owners from carrying out development in accordance with a state planning policy that can be legally carried out on surrounding sites. It is also noted that surrounding sites have extended or constructed dwellings under the Codes SEPP and this right cannot be excluded for the subject site.

In terms of dual occupancy development as raised by objectors, the current lots would not allow dual occupancies under the Codes SEPP due to insufficient width. The new allotments would have sufficient width for dual occupancy developments on both sites under the Codes SEPP. It should also be noted that Council's DCP 2012 permits dual occupancy development on sites with areas of 450m² subject to consent. Both dwelling houses and dual occupancies are low density developments permitted in the R2 zone that are characteristic of the surrounding area. There are multiple sites within the area that accommodate semi-detached dwellings and dual occupancies and there is no planning reason that this could not be accommodated on these sites subject to consent.

It is also not the role of Council to pre-empt future development of sites and try to thwart that future development when it is in accordance with state planning policies. Council can only assess the proposal for which consent is being sought, which in this instance is demolition of one dwelling and subdivision into two lots, each containing one remaining dwelling. The proposal complies with the development standards and Council's controls and retains a permitted use (dwelling house) on each site. This proposal is entirely reasonable and acceptable.

Issue: Will result in the provision of less housing in the area.

Response: The Waverley Local Government Area (LGA) has numerous zones which allow medium and high density residential uses. The applicable controls encourage an increase in density in certain zonings however the controls do not restrict or prohibit the loss of housing. In this regard, this is not a reason for refusal.

Issue: Sites at the rear will be adjoined by two sites, rather than one resulting in increased privacy, overshadowing, view impacts etc.

Response: Being adjoined by more than one site is not an uncommon situation with residential properties and is not a reason for refusal. There will be no increased amenity impacts as the current proposal is for the retention of two existing dwellings on the site. In actual fact, under the current proposal amenity impacts will be reduced with the demolition of one of the three dwellings currently on the site.

Issue: Council should impose a height restriction of single storey to these sites to protect views.

Response: The height development standard is consistent across all R2 zones at 8.5m. The Codes SEPP also allows a height of 8.5m. It is not reasonable or fair to impose a single storey height limit upon

individual sites to protect private views. Any future development would be subject to a detailed view assessment at that time.

Issue: Request that owner remove an existing fence.

Response: This is not part of the current application and is a civil matter between the two owners.

Issue: Insufficient notification period.

Response: The notification period is in accordance with the *Waverley Community Development Participation and Consultation Plan*.

2.5. Public Interest

The proposal is considered to have no detrimental effect on the public interest, subject to appropriate conditions being imposed.

3. REFERRALS

The following internal and external referral comments were sought:

3.1. Land Information (GIS)

A condition was provided regarding the numbering of the new allotments which is included in Appendix A.

4. CONCLUSION

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the Act. It is recommended for approval subject to conditions of consent.

Development and Building Unit (DBU) Decision:



The application was reviewed by the DBU at the meeting on 05/07/2022 and the DBU determined:

(a) The application is acceptable and should be approved, subject to the conditions in Appendix A.

DBU members: *B McNamara, B Magistrale and T Sneesby*

5. RECOMMENDATION TO WAVERLEY LOCAL PLANNING PANEL

That the development application be APPROVED by the Waverley Local Planning Panel subject to the conditions in Appendix A.

Report prepared by:	Application reviewed and agreed on behalf of the Development and Building Unit by:
	
Kylie Lucas	Bridget McNamara
Senior Development Assessment Planner	Manager, Development Assessment (Reviewed and agreed on behalf of the Development and Building Unit)
Date: 05/07/2022	Date: 12 July 2022

Reason for WLPP referral:

1. Contentious development (10 or more objections)

APPENDIX A – CONDITIONS OF CONSENT

A. APPROVED DEVELOPMENT

1. APPROVED PLANS AND DOCUMENTATION

The development must be in accordance with:

- (a) Architectural Plans prepared by Marchese Partners of Project No: 20081 including the following:

Plan Number and Revision	Plan description	Plan Date	Date received by Council
1.10 Revision A	PROPOSED SUBDIVISION	11/03/2022	29/03/2022
	Demolition Plan	Undated	29/03/2022

- (b) The Site Waste and Recycling Management Plan (SWRMP) Part 1

Except where amended by the following conditions of consent.

2. DEMOLITION WORKS

All demolition works are to be completed prior to the issue of a Subdivision Certificate.

B. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required.

GENERAL REQUIREMENTS

3. NO BUILDING OR DEMOLITION WORKS PRIOR TO RELEASE OF CONSTRUCTION CERTIFICATE

The building work, or demolition work, must not be commenced until:

- (a) a Construction Certificate has been obtained from Council or an Accredited Certifier in accordance with the *Environmental Planning and Assessment Act 1979*;
- (b) a Principal Certifying Authority has been appointed and Council has been notified of the appointment in accordance with the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*; and
- (c) Council is given at least two days' notice in writing of the intention to commence the building works.

CONTRIBUTIONS, FEES & BONDS

4. SECURITY DEPOSIT

A deposit (cash or cheque) or guarantee for the amount of \$1680.00 must be provided to Council for any damage caused to any property of the consent authority (ie. public land) as a consequence of the

works and completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent.

This deposit (cash or cheque) or guarantee must be provided to Council prior to the issue of any Construction Certificate. The full amount of the deposit, minus Council's costs for any repair of damage to Council property or rectification of unauthorised works on Council property, will be refunded after satisfactory completion all of works associated with this consent (including the required public works) to the person who paid the deposit.

5. LONG SERVICE LEVY

A long service levy, as required under section 34 of the *Building and Construction Industry Long Service Payments Act, 1986*, is to be paid in respect of this building work. Evidence that the levy has been paid is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Note: Council acts as an agent for the Long Service Payment Corporation and the levy may be paid at Council's office. The levy rate is 0.35% of building work costing \$25,000 or more.

CONSTRUCTION MATTERS

6. HOARDING

(a) To ensure the site is contained during construction, a hoarding is required for the approved works, which is to be designed and constructed in accordance with the requirements of Safe Work NSW. Where the hoarding is to be erected over the footpath or any public place, the approval of Council's Compliance Unit must be obtained and the applicable fees paid, prior to the erection of the hoarding.

7. EROSION & SEDIMENT CONTROL

A Soil and Water Management Plan (SWMP), also known as an Erosion and Sediment Control Plan must be prepared in accordance with Waverley Council's Water Management Technical Manual.

The SWMP must be approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. A copy of the SWMP must be kept on site at all times and made available to Council officers upon request.

The recommendations of the SWMP must be implemented and maintained during all construction activities and until the site is fully stabilised following construction.

8. DETAILS OF EXCAVATION, SHORING OR PILE CONSTRUCTION

(b) A report shall be prepared by a suitably qualified and practising Structural Engineer/Geotechnical Engineer detailing the proposed methods of bulk excavation, shoring or pile construction, including details of vibration emissions and any possible damage which may occur to adjoining or nearby properties as a result of the proposed building and excavation works.

(c) Any practices or procedures specified in the Structural Engineer's report in relation to the avoidance or minimisation of structural damage to adjoining properties are to be fully complied with and incorporated into the plans and specifications together with the Construction Certificate.

WASTE

9. SITE WASTE AND RECYCLING MANAGEMENT PLAN

A *Site Waste and Recycling Management Plan (SWRMP) - Part 2* is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Construction Certificate, which outlines materials to be reused and/or recycled as a result of demolition and construction works. At least one copy of the *SWRMP Part 2* is to be available on site at all times during construction. Copies of demolition and construction waste dockets that verify the facility that received the material for recycling or disposal and the quantity of waste received, must be retained on site at all times during construction.

10. SYDNEY WATER SECTION 73 COMPLIANCE CERTIFICATE APPLICATION

An application to obtain a Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be made prior to the issue of the relevant Construction Certificate. The application must be made through an authorised Water Servicing Coordinator.

For more information about making an application to obtain a Section 73 Compliance Certificate, please consult Sydney Water's website.

Following this application, a "Notice of Requirements" will be provided by Sydney Water that outlines any requirements of works to be completed prior to the issue of the Section 73 Compliance Certificate. Please make early contact **with the Coordinator**, as building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

A Section 73 Compliance Certificate must be issued from Sydney Water prior to the issue of an occupation certificate.

TRAFFIC MANAGEMENT

11. CONSTRUCTION TRAFFIC MANAGEMENT PLAN (CTMP)

The applicant is to submit a Construction Traffic Management Plan (CTMP) for the approval of Council's Executive Manager, Infrastructure Services, or delegate, prior to the issue of any Construction Certificate. For further information on what is required in the CTMP, please refer to Council's website at:

https://www.waverley.nsw.gov.au/building/development_applications/post_determination/development_applications_-_conditions_of_consent

C. COMPLIANCE PRIOR TO WORK COMMENCING AND DURING CONSTRUCTION

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required.

PRIOR TO ANY WORKS

12. CONSTRUCTION SIGNS

Prior to commencement of any works on the site a sign shall be erected on the main frontage of the site detailing the name, address and contact details (including a telephone number) of the Principal Certifying Authority and principal contractor (the coordinator of the building works). The sign shall be clearly legible from the adjoining street/public areas and maintained throughout the building works.

DEMOLITION & EXCAVATION

13. DEMOLITION – ASBESTOS AND HAZARDOUS MATERIALS

The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2017;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- *Protection of the Environment Operations Act 1997*.

At least 5 days prior to the demolition, renovation work or alterations and additions to any building, the person acting on the consent shall submit a Work Plan to the Principal Certifying Authority in accordance with Australian Standard AS 2601-2001, Demolition of Structure and a Hazardous Materials Assessment prepared by a person with suitable expertise and experience. The Work Plan and Hazardous Materials Assessment shall:

- (a) Outline the identification of any hazardous materials, including surfaces coated with lead paint;
- (b) Confirm that no asbestos products are present on the subject land, or
- (c) particularise a method of safely disposing of the asbestos in accordance with the Code of Practice on how to safely remove asbestos published by SafeWork NSW (catalogue WC03561);
- (d) Describe the method of demolition;
- (e) Describe the precautions to be employed to minimise any dust nuisance; and
- (f) Describe the disposal methods for hazardous materials.

14. CONTROL OF DUST ON CONSTRUCTION SITES

The following requirements apply to demolition and construction works on site:

- (a) Hazardous dust is not to be allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended. Any existing accumulations of dust (e.g. ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particle air (HEPA) filter. All dusty surfaces and dust created from work are to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.

- (b) All contractors and employees directly involved in the removal of hazardous dusts and substances are to wear protective equipment conforming to Australian Standard AS1716 Respiratory Protective Devices.

CONSTRUCTION MATTERS

15. CONSTRUCTION HOURS

Demolition and building work must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays and 8am to 3pm on Saturdays, with no work to be carried out on Sundays and public holidays.

Excavation works involving the use of heavy earth movement equipment, including rock breakers and the like, must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays, with no such work to be carried out on Saturday, Sunday or a public holiday.

Noise from construction activities shall comply with the *Protection of the Environmental Operations (Noise Control) Regulation 2017*.

16. STOCKPILES, STORAGE OF MATERIALS AND LOCATION OF BUILDING OPERATIONS

All building materials and any other items associated with the development are to be stored within the property. No materials are to be stored on Council's footpath, nature strip, or road reserve without prior Council approval.

17. CONSTRUCTION INSPECTIONS

The building works are to be inspected during construction by the Principal Certifying Authority (PCA) in accordance with the Building Legislation Amendment (Quality of Construction) Act 2002 and 162A Critical stage inspections for building work of the Environmental Planning and Assessment Regulation 2000.

18. WORK OUTSIDE PROPERTY BOUNDARY

This consent does not authorise any work outside the property boundary.

TREE PROTECTION AND REMOVAL

19. TREE PROTECTION

All trees on site and adjoining properties, including street trees, are to be retained and protected in accordance with AS4970-2009 'Protection of Trees on Construction Sites' and to be certified by an Arborist with AQF level 5 qualification or above, unless approved to be removed in this development consent.

20. STREET TREES TO BE RETAINED/TREE PROTECTION

No existing street trees shall be removed without Council approval. Precautions shall be taken when working near trees to ensure their retention, including the following:

- (a) Do not store harmful or bulk materials or spoil under or near trees;
- (b) Prevent damage to bark and root system;

- (c) Do not use mechanical methods to excavate within root zones;
- (d) Do not add or remove topsoil from under the drip line;
- (e) Do not compact ground under the drip line;
- (f) Do not mix or dispose of liquids within the drip line of the tree; and
- (g) All trees marked for retention must have a protective fence/guard placed around a nominated perimeter in accordance with AS4970-2009 "Protection of trees on construction sites.

VEHICLE ACCESS & PUBLIC DOMAIN WORKS

21. EXISTING VEHICLE CROSSING IS TO BE CLOSED

The existing vehicle crossing to 55 Beaumont Street is to be closed and all work associated with the closure is to be carried out with the approval of, and in accordance with, the requirements of Council.

D. PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE OR SUBDIVISION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies the approval of Council or a Council Officer is required, prior to the issue of an Occupation Certificate or Subdivision Certificate, whichever applies.

22. SUBDIVISION CERTIFICATE

A Subdivision Certificate must be obtained from Council in accordance with of the *Environmental Planning and Assessment Act 1979* prior to the registration of the subdivision plans.

23. FINAL OCCUPATION CERTIFICATE

Prior to occupation or use of the development, an Occupation Certificate must be obtained.

The Principal Certifying Authority must be satisfied that the requirements of the *Environmental Planning & Assessment Act 1979* have been satisfied including all critical stage inspections. Documentary evidence of all required inspections is to be submitted to Council.

24. ALLOCATION OF STREET NUMBER

The subdivision of the properties has led to the following allocation of primary address numbers:

- No. 53 Beaumont Street for the west allotment.
- No. 57 Beaumont Street for the east allotment.

The primary address numbers for the properties shall be a minimum of 75mm high, shall be positioned 600mm-1500mm above ground level on the site boundaries, located near the entry points and clearly visible from Beaumont Street.

The primary address numbers are to be positioned on the site prior to the issue of the Occupation Certificate.

Any variation to the above premises numbering requires a new application for a Change of street number and/or location to be lodged with Council.

25. SYDNEY WATER SECTION 73 COMPLIANCE CERTIFICATE

A Section 73 Compliance Certificate must be issued from Sydney Water prior to the issue of an occupation certificate.

E. ADVISORY MATTERS

The following advisory matters are provided as additional information to ensure compliance with the relevant legislation and requirements. You must also check other Commonwealth and NSW Acts and Regulations which may apply to the works or use approved in this application.

AD1. POST CONSENT CONDITIONS REQUIRING COUNCIL INPUT

Various conditions require further input, review or approval by Council in order to be satisfied following the determination of the application (that is, post consent). In those instances, please adhere to the following process to avoid delays:

- Please read your conditions carefully.
- Information to be submitted to Council should be either via email to info@waverley.nsw.gov.au or via the NSW Planning Portal (if required).
- Attention the documentation to the relevant officer/position of Council (where known/specified in condition).
- Include DA reference number.
- Include condition number/s seeking to be addressed.
- Where multiple conditions need Council input, please try to group the documentation / email/s into relevant subjects (multiple emails for various officers may be necessary, for example).
- Information to be submitted in digital format – refer to ‘Electronic lodgement guidelines’ on Council’s website. Failure to adhere to Council’s naming convention may result in documentation being rejected.
- Where files are too large for email, the digital files should be sent to Council via CD/USB. Council does not support third party online platforms (data in the cloud) for receipt of information.
- Please note, in some circumstances, additional fees and/or additional documents (hard copy) may be required.
- Council’s standard for review (from date the relevant officer receives documentation) is 14 days. Times may vary or be delayed if information is not received in this required manner.

AD2. DIAL BEFORE YOU DIG

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (this is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual’s responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

AD3. TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra’s network and assets. Any person interfering with a facility or installation owned by Telstra is

committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

AD4. TREE REMOVAL/PRESERVATION

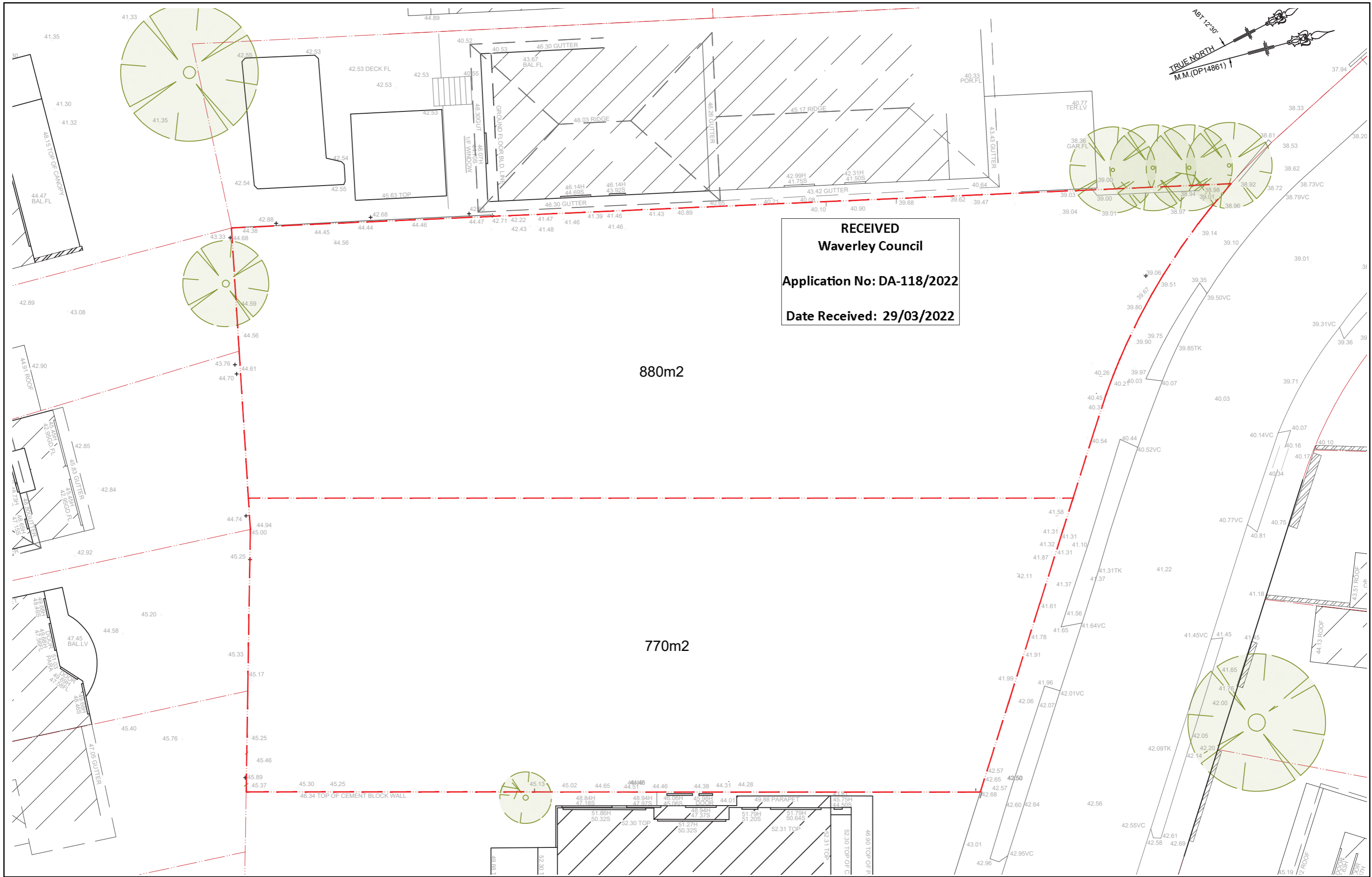
Any trees not identified for removal in this application have not been assessed and separate approval may be required. Any pruning of trees on adjoining properties required for the erection of scaffolding and/or the construction of the building may also require approval.

AD5. SITE RECTIFICATION WORKS

The vacant site is to be maintained in a safe and secure manner. Fencing is to be erected around the perimeter of the site once demolition has been completed to secure the site. The site is to be protected from windblown soil loss and stormwater erosion at all times.

If the site is commenced to be developed and there is suspension in activity for 6 months (or suspensions of activity which in the aggregate exceed 6 months), resulting in a building site which has an appearance not acceptable to Council, then the Council will have the readily enforceable rights to:

- (i) Require certain works including but not limited to:
 - (a) make the building/site safe and of an appearance acceptable to Council.
 - (b) Allow the ground level to be landscaped and of an appearance acceptable to Council from any public vantage point; or
 - (c) For the hole to be covered to allow it to be landscaped and made attractive from any public vantage point.
 - (d) AND to call on such bank guarantee to cover the cost thereof.
- (ii) In the event of default, have the right to enter and carry out these works and to call upon security in the nature of a bank guarantee to cover the costs of the works.



RECEIVED
Waverley Council

Application No: DA-118/2022

Date Received: 29/03/2022

<div>IMPORTANT NOTES: Do not scale from drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author, and must not be retained, copied or used without the express authority of MARCHESE + PARTNERS INTERNATIONAL PTY. LTD.</div> <div>PRELIMINARY</div> <div>NOT FOR CONSTRUCTION</div>	<table><tr><th>REVISION</th><th>DATE</th><th>DESCRIPTION</th><th>BY</th></tr><tr><td>A</td><td>25/08/2021</td><td>DA_Resubmission</td><td>RS</td></tr></table>	REVISION	DATE	DESCRIPTION	BY	A	25/08/2021	DA_Resubmission	RS	<div>marchesepartners</div> <div>Marchese Partners International Pty Ltd Level 1, 53 Walker Street, North Sydney, NSW 2060 Australia P +61 2 9922 4375 F +61 2 9929 5786 E info@marchesepartners.com www.marchesepartners.com Sydney · Brisbane · Canberra · Melbourne · Adelaide Kuala Lumpur · Auckland · Christchurch · London · Madrid ABN 20 098 552 151</div>	<div>CLIENT</div> <div>PERTAMA DEVELOPMENT PTY LTD SUITE 124, 8 QUAY STREET SYDNEY NSW 2000</div> <div>PROJECT</div> <div>BEAUMONT ST 53-57 BEAUMOUNT STREET ROSE BAY NSW 2069</div> <div><div>012345</div></div>	<table><tr><th colspan="4">DRAWING TITLE</th></tr><tr><th colspan="4">PROPOSED SUBDIVISION</th></tr><tr><td>SCALE 1:100 @A1 1:200 @A3</td><td>DATE 11/03/2022</td><td>DRAWN RS</td><td>CHECKED AK</td></tr><tr><td>JOB 20081</td><td colspan="2">DRAWING 1.10</td><td>REVISION A</td></tr></table>	DRAWING TITLE				PROPOSED SUBDIVISION				SCALE 1:100 @A1 1:200 @A3	DATE 11/03/2022	DRAWN RS	CHECKED AK	JOB 20081	DRAWING 1.10		REVISION A
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KEY
TRUNK DIAMETER / SPREAD DIAMETER / APPROXIMATE HEIGHT
TREE DIMENSIONS ARE APPROXIMATE ONLY
ONLY SIGNIFICANT TREES ARE SHOWN
SMALL TREES & BUSHES HAVE NOT BEEN SURVEYED

LOT 1 IN DP14861 IS AFFECTED BY:
1) RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)

LOT 2 IN DP14861 IS AFFECTED BY:
1) RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2) B209172 COVENANT

LOT 3 IN DP14861 IS AFFECTED BY:
1) RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2) 585952 COVENANT AFFECTING THE PART SHOWN SO BURDENED IN THE TITLE DIAGRAM.
3) 653134 COVENANT AFFECTING THE PART SHOWN SO BURDENED IN THE TITLE DIAGRAM.
4) B209172 COVENANT AFFECTING THE PART SHOWN SO BURDENED IN THE TITLE DIAGRAM.

(X) 585952 COVENANT
(Y) 653134 COVENANT
(Z) B209172 COVENANT

TOTAL AREA OF LOTS 1, 2, 3 IN DP14861
IS 1648.6m²

TOTAL AREA OF LOTS 2 & 3 IN DP14861
IS 1207.8m²

To be demolished

Demolition Plan

SYMBOLS & ABBREVIATIONS:

DRILL HOLE & WING	SP	SIGN POLE
ELECTRICITY LINE	SMH	SEWER MANHOLE
GAS METER	SMH	STORMWATER MANHOLE
HYDRANT	TK	TOP OF KERB
KERB OUTLET	UA	UNDERSIDE AWNING
LIGHT POLE	VC	VEHICULAR CROSSING
WATER METER	FL	FLOOR LEVEL
SEWER VENT	W	WINDOW
POWER POLE	D	DOOR
TELECOM PIT	IC	SEWER INSPECTION CAP
		WASHING LINE



See Wei Tan
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E: seewei@cy-interiors.com

No.53-57 BEAUMONT STREET, ROSE BAY
DETAIL AND LEVEL SURVEY
LOTS 1, 2 & 3 IN DP14861
PERTAMA DEVELOPMENT PTY LTD

DRAWN: CHKD: